

LEGAL MAIL

February 10, 2014

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RECEIVED

FEB 24 2014

RE: MICHAEL D. McFADDEN V. STATE
APPELLATE CASE NO. 2013-001121

S.C. SUPREME COURT

DEAR HON. SHEARHOUSE:

PLEASE FIND ENCLOSED THE PETITIONERS BRIEF. PLEASE RETURN
A STAMPED CLOCKED COPY TO PETITIONER.

Sincerely yours,

Sl. Michael D. McFadden
MICHAEL D. McFADDEN #126866
ALLENDALE CORR. INST. - FSB227

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO WILLIAMSBURG COUNTY
GEORGE C. JAMES, JR., CIRCUIT COURT JUDGE

RECEIVED

FEB 24 2014

S.C. SUPREME COURT

MICHAEL D. MCFADDEN

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-000121

MEMORANDUM OF LAW

MICHAEL D. MCFADDEN
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PETITIONER

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STATEMENT OF THE CASE

THE PETITIONER WAS CONVICTED DURING THE APRIL 7, 1992 TERM OF GENERAL SESSIONS COURT FOR WILLIAMSBURG COUNTY. THE PETITIONER RECEIVED 25 YEARS FOR ARMED ROBBERY, 30 YEARS FOR KIDNAPPING, AND 5 YEARS FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

THE PETITIONER WAS REPRESENTED BY ATTY. LEONARD CARROWAY, AND THE TRIAL JUDGE WAS THE HON. DUANE M. SHULER, WHO HAD PREVIOUSLY REPRESENTED PETITIONER AS COUNSEL ON A PREVIOUS CHARGE, WHICH WAS SIMILAR TO THE PRESENT CHARGE, AND HAD ENDED IN A ADVERSERIAL PROCEEDING.

DUE TO JUDGE SHULERS PRIOR REPRESENTATION OF PETITIONER, THE PETITIONER HAD REQUESTED THAT TRIAL COUNSEL MAKE A MOTION FOR JUDGE SHULER TO RECUSE HIMSELF FROM THE TRIAL.

PRIOR TO TRIAL, COUNSEL FOR PETITIONER HAD STATED TO THE PETITIONER THAT HE HAD SPOKEN WITH JUDGE SHULER, AND THAT JUDGE SHULER SAID, "IF PETITIONER DID NOT PLEAD GUILTY TO TWENTY (20) YEARS THAT HE WOULD SENTENCE PETITIONER TO NEARLY 70 YEARS IN PRISON." COUNSEL ALSO INFORMED PETITIONER THAT JUDGE SHULER HAD TOLD HIM THAT THE CASE WOULD BE THE FIRST ONE OUT.

THE PETITIONER HAS ALWAYS CLAIMED ACTUAL INNOCENCE, AND THAT HIS CONVICTION WAS OBTAINED AS A RESULT OF PROSECUTORIAL MISCONDUCT, AND A SERIES OF CONSTITUTIONAL VIOLATIONS.

THE PETITIONER HAD FULLY INFORMED COUNSEL CONCERNING EVERY DETAIL OF THE ADVERSERIAL INCIDENT BETWEEN JUDGE SHULER AND THE PETITIONER.

PRIOR TO TRIAL, DURING A PHOTO ARRAY IDENTIFICATION, THE VICTIM TESTIFIED THAT INVESTIGATING OFFICERS TOLD HER THAT SHE PICKED THE WRONG PICTURE.

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INVESTIGATING OFFICERS TESTIFIED THAT THEY FOUND FINGERPRINTS, BUT THAT NONE OF THE PRINTS BELONGED TO PETITIONER.

DURING THE PRESENTATION OF EVIDENCE COUNSEL FAILED TO OBJECT TO A KNIFE THAT HAD BEEN ■ PLACED INSIDE PETITIONER'S EVIDENCE BAG. THE OFFICER ADMITTED THAT HE PLACED IT IN THERE AND THAT IT HAD NOTHING TO DO WITH THE CRIME.

DURING THE PRESENTATION OF EVIDENCE, IT WAS NOTICED THAT PETITIONER'S NAME WAS WRITTEN ABOVE HIS PICTURE IN THE PHOTO ARRAY. THE TRIAL JUDGE ASKED FOR A SCISSOR TO REMOVE THE NAME, AND HE CUT THE NAME OFF. THE VICTIM HAD ALREADY VIEWED THE PHOTOS, AND THE JURY SHOULD HAVE BEEN THE ONE TO MAKE THE DECISION WHETHER OR NOT THE NAME WAS THERE WHEN THE PHOTO ARRAY WAS VIEWED, NOT THE JUDGE.

JUDGE SHULER STATED THAT HE DID NOT WANT THE JURY TO SEE THE NAME ABOVE THE PHOTO. THE OFFICER HAD TESTIFIED THAT ALL THE EVIDENCE WAS THE SAME, AND HAD BEEN KEPT IN A VAULT UNTIL TRIAL. THE PHOTOS WERE THEN PLACED INTO EVIDENCE WITH THE NAME CLIPPED-OFF. TRIAL COUNSEL FAILED TO OBJECT.

THE VICTIM TESTIFIED THAT SHE PICKED MY PHOTO, BECAUSE IT WAS THE ONLY PHOTO IN THE SECOND LINE-UP THAT WAS IN THE FIRST LINE-UP.

THE ARRESTING OFFICERS HAD REMOVED A PHOTO FROM THE PETITIONER'S HOME AND USED IT IN A PHOTO ARRAY, NEVEN SECURING A SEARCH WARRANT OF PETITIONER'S HOME.

WHEN THE PLAINTIFF WAS FINALLY INFORMED BY THE OFFICERS THEIR REASON FOR ARRESTING HIM, THE PETITIONER IMMEDIATELY INFORMED BOTH OFFICERS THAT HE HAD BOUGHT THE JEWELRY

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FROM THE MAN (MICHAEL JOHNSON) SITTING AT THE TABLE WITH HIM. BOTH OFFICERS REFUSED TO QUESTION THIS INDIVIDUAL OR BRING HIM IN FOR QUESTIONING. THE OFFICERS TESTIFIED THAT AFTER PETITIONER INFORMED THEM OF THIS INFORMATION, THAT THEY DID NOT GO BACK TO PICK HIM UP.

THE PETITIONER WAS WITH KEITH PRESSLEY IN PRESSLEY'S CAR WHEN PETITIONER PURCHASED THE JEWELRY FROM MICHAEL JOHNSON AND COREY FULTON. COREY FULTON TESTIFIED DURING TRIAL THAT JOHNSON HAD SOLD THE JEWELRY TO PETITIONER. THE STATE BROUGHT FORTH NO TESTIMONY OR EVIDENCE TO REFUTE FULTON'S TESTIMONY.

TRIAL COUNSEL WAS INFORMED BY PETITIONER FROM THE VERY BEGINNING THAT PETITIONER HAD PURCHASED THE JEWELRY FROM MICHAEL JOHNSON AND NOT INVESTIGATE THIS INFORMATION AT ALL. TRIAL COUNSEL NEVER SPOKE TO ANYONE CONCERNING MICHAEL JOHNSON.

ON SEVERAL OCCASIONS TRIAL COUNSEL REPEATEDLY ATTEMPTED TO PRESSURE THE PETITIONER INTO PLEADING GUILTY BY SAYING THINGS SUCH AS; "I SPOKE TO SHULER TODAY AND YOU BETTER NOT GO TO TRIAL." "SHULER IS GOING TO GIVE YOU A WAGON LOAD IF YOU DONT ACCEPT THE PLEA." "SHULER REALLY DOESN'T CARE FOR YOU TOO MUCH AND YOU NEED TO TAKE THE PLEA."

DURING SUMMATION JUDGE SHULER PERMITTED THE PROSECUTOR TO ARGUE EVIDENCE THAT WAS NOT TESTIFIED TO, AND WHEN TRIAL COUNSEL OBJECTED, JUDGE SHULER THREATENED COUNSEL THAT IF HE DID NOT SIT DOWN THAT HE WOULD CARRY COUNSEL OUT THE COURTROOM, AND MADE TRIAL COUNSEL SIT DOWN, FATALLY CRIPPLING MY DEFENSE.

DURING SUMMATION THE PROSECUTOR WAS ALLOWED TO
5).

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LABEL PETITIONER A "KIDNAPPER AND A ROBBER, AND REFERRED TO PETITIONER AS A CROOK." THE PETITIONER HAD NOT BEEN PROVEN GUILTY OF ANY CRIME, AND THE TRIAL COURT ALLOWING THIS LINE OF ARGUMENT PREJUDICED THE JURY'S DECISION, AND VIOLATED THE PLAINTIFFS DUE PROCESS RIGHTS AS TO INNOCENCE BEFORE BEING PROVEN GUILTY.

JUDGE SHULER FIRST INFORMED THE JURY THAT HE WASN'T GOING TO TELL THEM WHAT REASONABLE DOUBT IS. HE THEN BEGAN TO EXPLAIN A LONG DRAWN OUT, CONFUSING, AND VERY TECHNICAL EXPLANATION OF WHAT REASONABLE DOUBT IS. THE PETITIONER WAS CONFUSED, AND THERE WAS CLEAR CONFUSION ON ALL THE JURY'S FACE. THEY WERE EVEN COMMENTING TO EACH OTHER, NOT UNDERSTANDING WHAT THE JUDGE HAD JUST EXPLAINED.

IDENTIFICATION WAS A CRUCIAL ISSUE IN PETITIONER'S CASE, AND JUDGE SHULER CLAIMED THAT TRIAL COUNSEL DIDN'T GIVE HIM PROPER PAPERS TO HAVE AN EYE-WITNESS EXPERT TESTIFY AT PETITIONER'S TRIAL. COUNSEL STATED THAT THE PAPERS WERE IN ORDER WHEN HE GAVE THEM TO JUDGE SHULER.

AT THE TIME OF TRIAL, THE PETITIONER WAS ON PAROLE FROM THE SENTENCE WHERE JUDGE SHULER HAD REPRESENTED PETITIONER. BEFORE SENTENCING JUDGE SHULER QUESTIONED PETITIONER AND ACKNOWLEDGED THAT HE HAD REPRESENTED THE PETITIONER ON A SIMILAR CHARGE. HE THEN SENTENCED THE PETITIONER TO THE MAX ON ALL THREE CHARGES, CONSECUTIVELY, AND STATED; "LET'S SEE HOW LONG THEY KEEP YOU THIS TIME." "VINDICTIVELY".

THE PETITIONER HAS NEVER RECEIVED A WARRANT FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, WHICH IS A SEPERATE AND DISTINCT CRIME. NONE OF THE CRIMES WERE PROVEN BEYOND A REASONABLE DOUBT, AND THE PETITIONER'S ENTIRE TRIAL

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WAS BIASLY GUIDED BY THE TRIAL JUDGE WHO USED THE TRIAL TO GET REVENGE ON THE PETITIONER. THE PETITIONERS ENTIRE TRIAL WAS A FARCE AND MUCKERY, AND TOTAL MISARRANGE OF JUSTICE.

DUE TO TRIAL COUNSEL NOT HONORING THE PETITIONERS REQUEST TO REUSE JUDGE SHULER, THE PETITIONER WAS MADE TO BE TRIED BEFORE A JUDGE THAT WAS CLEARLY BIAS, AND WHOM THE PETITIONER HAD BEEN IN AN ADVERSARY POSITION. EVEN AT SENTENCING, THE PETITIONER WAS STILL ON PAROLE FROM THE SENTENCE WHERE JUDGE SHULER REPRESENTED HIM.

ARGUMENT

ON NOVEMBER 10, 1991 KEITH PRESSLEY, AFTER MAKING A DEAL IN ORDER TO AVOID DRUG CHARGES, CALLED DET. MICHAEL GRAHAM OF THE KINGS TREE POLICE DEPARTMENT AND TOLD HIM WHERE TO FIND PETITIONER. (SEE TRIAL TRANSCRIPT PAGE 47 LINES 22-25 AND PS. 48 LINES 1-5). THE PETITIONER WAS ARRESTED NOVEMBER 14, 1991.

PRESSLEY DIRECTED DET. GRAHAM TO GO TO PETITIONER'S GIAL-FRIENDS APARTMENT TO RECOVER JEWELRY WHICH PRESSLEY HAD WITNESSED PETITIONER PURCHASE FROM MICHAEL JOHNSON AND COREY FULTON. (TRIAL TRANSCRIPT PAGES 22 AND 23 MISSING).

ALTHOUGH COREY FULTON TESTIFIED AT TRIAL TO BEING WITH JOHNSON WHEN HE SOLD THE JEWELRY TO PETITIONER, THE PETITIONER WAS CONVICTED OF THE ACTUAL ROBBERY OF THE JEWELRY AND SENTENCED TO A TOTAL OF 60 YEARS IN PRISON.

DURING HIS ARREST, THE PETITIONER, ONCE DISCOVERING WHY HE WAS BEING ARRESTED, INFORMED DET. MICHAEL GRAHAM AND DET. MICHAEL KIRBY THAT HE HAD PURCHASED THE JEWELRY FROM THE MAN SITTING AT THE TABLE WITH HIM. NEITHER OF THE OFFICERS MADE ANY ATTEMPT TO QUESTION OR ARREST MICHAEL JOHNSON. (TRIAL TRANSCRIPT PS. 49 LINES 20-25, PS. 50 LINES 1-12, AND PS. 51 LINES 1-18).

KEITH PRESSLEY WAS LISTED AS A WITNESS FOR THE STATE, AND WAS ESCORTED INTO THE COURTROOM BY WILLIAMSBURG CO. SHERIFF DEPARTMENT WHILE HANDCUFFED. WHEN DIRECTED INTO THE COURTROOM BY THE OFFICERS, PRESSLEY REFUSED, AND WAS IMMEDIATELY ESCORTED OUTSIDE IN THE HALL. THE PROSECUTION NEVER CALLED PRESSLEY TO TESTIFY, NEITHER DID COUNSEL FOR PETITIONER AFTER PETITIONER REQUESTED THAT HE DO SO.

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DET. MICHAEL GRAHAM, AFTER SPEAKING WITH THE VICTIM, WENT SEARCHING FOR A SUSPECT FITTING THE DESCRIPTION THAT SHE GAVE HIM. AFTER SPEAKING WITH MS. BARBARA LIARD, HE THEN BEGAN TO SEARCH FOR A SUSPECT FITTING THE DESCRIPTION THAT MS. LIARD HAD GIVEN HIM. HE ADMITTED DURING TRIAL THAT HE ABANDONED SEARCHING FOR THE SUSPECT DESCRIPTION GIVEN TO BY THE VICTIM, AND BEGAN SEARCHING FOR PETITIONER. (SEE TRIAL TRANSCRIPT PS. 21- LINES 4-16 AND PS. 22- LINES 8-10)
NOTE: (TRIAL TRANSCRIPT PAGES 22 & 23 ARE MISSING).

KEITH PRESSLEY HAD STATED TO PETITIONER THAT HE WAS GOING TO WARDS GROCERY TO BUY A PACK OF CIGARETTES. DET. MICHAEL GRAHAM HAD BUSTED PRESSLEY WITH COCAINE INSIDE HIS CAR TRUNK OUTSIDE OF WARDS GROCERY. KEITH PRESSLEY SPOKE TO DET. GRAHAM IN THE PRESENCE OF BARBARA LIARD WHO LABELLED PETITIONER AS THE ROBBER. (SEE TRIAL TRANSCRIPT PS. 23- LINES 18-25).

AS A RESULT OF DET. GRAHAM SEARCHING MY RESIDENCE, HE REMOVED A HIGH SCHOOL PHOTO OF ME, AND PLACED IT IN A PHOTO ARRAY TO BE SHOWN TO THE VICTIM. BECAUSE PETITIONER DID NOT ROB THE VICTIM, SHE PICKED ANOTHER PICTURE FROM THE LINE-UP. (SEE TRIAL TRANSCRIPT PS. 22- LINES 17-25, PS. 23- LINES 1-7, PS. 28- LINES 1-8), (PS. 95- LINES 17-25).

DET. GRAHAM AND DET. LINBY TESTIFIED THAT THE SAME GUY THAT PETITIONER GOT HIS JACKET FROM WAS THE SAME GUY WHO PETITIONER TOLD THEM COMMITTED THE ROBBERY. THE FACT THAT THEY HAD FOUND A JACKET AND THE GUY DIDNT HAVE A JACKET SHOULD HAVE MADE THEM SUSPICIOUS AND QUESTION JOHNSON. (SEE TRIAL TRANSCRIPT PS. 50- LINES 7-12, PS. 107- LINES 8-17).

THE DET. MICHAEL GRAHAM TESTIFIED DURING THE PRESENTATION

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OF EVIDENCE THAT HE HAD PLACED A KNIFE IN PETITIONER'S EVIDENCE BAG THAT WAS UNRELATED TO THE CRIME. NO WEAPON WAS EVER TAKEN FROM PETITIONER, AND THE PETITIONER HAS NEVER RECEIVED AN ARREST WARRANT FOR "POSSESSION OF A WEAPON." (SEE EXHIBIT-F AND EXHIBIT-G), ALSO (TRIAL TRANSCRIPT PS. 42. LINES 22-25, PS. 23. 1-19). UNDER: WONG SUN V. UNITED STATES, 371 U.S. 471, 488, 83 S.Ct. 407, 417, 9 L.ED.2D 441, THE EVIDENCE HAD BEEN TAINTED AND SHOULD HAVE BEEN SUPPRESSED. TRIAL COUNSEL FAILED TO OBJECT TO THE EVIDENCE BEING PRESENTED.

DURING THE PRESENTATION OF EVIDENCE THE PETITIONER'S NAME WAS WRITTEN ABOVE HIS PHOTO IN THE PHOTO ARRAY. THE VICTIM HAD ALREADY SEEN THE PHOTO ARRAY, AND THE JURY SHOULD HAVE BEEN PERMITTED TO DECIDE IF THE NAME WAS THERE WHEN THE VICTIM WAS SHOWN THE PHOTOS. JUDGE SHULER REQUESTED A SCISSOR AND CLIPPED THE NAME OFF. THOSE PHOTOS WERE THEN ADMITTED INTO EVIDENCE. (SEE TRIAL TRANSCRIPT PS. 30. LINES 20-24, PS. 34. LINES 1-6). AT NO TIME DID TRIAL COUNSEL OBJECT TO THE JUDGE'S ACTIONS. THE PETITIONER IS ENTITLED TO EFFECTIVE ASSISTANCE OF COUNSEL DURING TRIAL. SEE STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.ED.2D 674 (1984); McMANN V. RICHARDSON, 397 U.S. 759, 771 N.14 (1970); MARZULLO V. MARYLAND, 561 F.2d 540 (4th Cir. 1977); TURNER V. MARYLAND, 303 F.2d 507 (4th Cir. 1962).

THE DET. MICHAEL GRAHAM TESTIFIED THAT HE SHOWED THE VICTIM PICTURES (PHOTO ARRAY) ON 7-14-91. THE CRIME DIDN'T HAPPEN UNTIL 10-28-91. (SEE TRIAL TRANSCRIPT PS. 31. LINE 3).

PROSECUTOR CLIFTON NEWMAN ARGUED TO THE JURY THAT PETITIONER SOLD FRANCES WAGNER A NECKLACE ON 11-15-91. THE PETITIONER WAS ARRESTED ON 11-14-91. (SEE TRIAL TRANSCRIPT pg 238. LINES 8-19), SEE ALSO ARREST DATE ON (EXHIBIT-F AND EXHIBIT-G).

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DET. MICHAEL KIRBY TESTIFIED THAT THE ROBBER LEFT PRINTS, AND THAT NONE OF THE FINGERPRINTS MATCHED THE PETITIONER. (SEE TRIAL TRANSCRIPT PS. 109. LINES 5-13, PS. 118. LINES 1-10, PS. 119. LINE 1-4).

IN CHOOSING A PICTURE FROM THE PHOTO ARRAY, THE DET. GRAHAM AND DET. KIRBY TESTIFIED THAT THEY DID NOT SUGGEST TO THE VICTIM THAT SHE PICKED THE WRONG PHOTO (SEE TRIAL TRANSCRIPT. PS. 39). THE VICTIM TESTIFIED THAT THE DETECTIVES TOLD HER THAT SHE HAD PICKED THE WRONG PICTURE. (SEE TRIAL TRANSCRIPT. PS. 85. LINES 22-25, PS. 91, PS. 95. LINES 17-25). (SEE UNITED STATES V. WADE, 87 S. CT. 1926 (1967); GILBERT V. STATE OF CALIFORNIA, 87 S. CT. 1951 (1967).

AFTER ADVERSARY JUDICIAL PROCEEDINGS HAVE BEEN INITIATED AGAINST DEFENDANT, LINE IS CRITICAL STAGE OF PROSECUTION, AND SIXTH AMENDMENT REQUIRES PRESENCE OF COUNSEL AT IDENTIFICATION. MOORE V. ILLINOIS, 434 U.S. 220 (1977); KIRBY V. ILLINOIS, 406 U.S. 682 (1972); UNITED STATES V. KALITA, NO. 76-1679 (4TH CIR. SEPT. 28, 1978) (UP).

ONCE ADVERSARY PROCEEDINGS INITIATED, RIGHT TO COUNSEL ATTACHES WHETHER IDENTIFICATION IS LINE-UP OR SHOW-UP. MOORE V. ILLINOIS, 434 U.S. 220 (1977); PATLER V. SLAYTON, 503 F.2d 472 (4TH CIR. 1974).

VALIDITY OF PHOTOGRAPHIC IDENTIFICATION TURNS UPON WHETHER, IN LIGHT OF ALL CIRCUMSTANCES, PRETRIAL PHOTO DISPLAY WAS UNNECESSARILY SUGGESTIVE. SIMMONS V. UNITED STATES, 390 U.S. 377 (1968); UNITED STATES V. HUGHES, 716 F.2d 234 (4TH CIR. 1983); SMITH V. PADERICK, 519 F.2d 70 (4TH CIR. 1975).

STANDARD OF INQUIRY ON APPEAL NOT WHETHER IDENTIFICATION WAS HARMLESS ERROR, BUT WHETHER IMPROPER IDENTIFICATION CONTRIBUTED TO CONVICTION. (SEE THOMPSON V. LEEKE, 756 F.2d 314, 316 (4TH CIR. 1985).

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DURING THE TIME OF TRIAL THE PETITIONER WAS ON PAROLE FROM A CRIMINAL CONVICTION WHERE JUDGE SHULER, THE TRIAL JUDGE HAD REPRESENTED PETITIONER AS COUNSEL. (SEE TRIAL TRANSCRIPT PS. 259. LINES 10-25, SEE EXHIBIT-A. PS. 43. LINES 4-7, PS. 44. LINES 6-24, PS. 45. LINES 1-23), ALSO (SEE EXHIBIT-B).

THE PETITIONER HAD FILED A POST-CONVICTION RELIEF AGAINST JUDGE SHULER ON THE CHARGE, WHICH HAD ENDED IN A ADVERSE RIAL POSITION. (EXHIBIT-A PS. 45. LINES 1-4). THE PETITIONER MADE TRIAL COUNSEL FULLY AWARE THAT HE WOULD NOT RECEIVE A FAIR TRIAL BEFORE JUDGE SHULER, AND COUNSEL FAILED TO REQUEST JUDGE SHULER TO RECUSE HIMSELF ^{FROM} TRIAL. EVEN AFTER TRIAL COUNSEL INFORMED PETITIONER THAT JUDGE SHULER DIDNT CARE FOR PETITIONER TOO MUCH, AND HAD THREATENED PETITIONER WITH A LOT OF TIME. THIS WAS A CLEAR CONFLICT OF INTEREST, AND BIAS AND RETALIATION WAS MADE EVIDENT IN SENTENCING PETITIONER. IT WAS BROUGHT OUT DURING THE PETITIONERS POST-CONVICTION RELIEF HEARING THAT JUDGE SHULER HAD DEVIATED FROM HIS SENTENCING PATTERN. (SEE EXHIBIT-A. PS. 60 LINES 1-25, PS. 61. LINES 1-25).

TRIAL COUNSEL FALSELY TESTIFIED THAT PETITIONER HAD BEEN PREVIOUSLY CHARGED WITH BEATING AND ROBBING AND ODDER LADY IN A PARKING LOT IN ORDER TO JUSTIFY THE SENTENCE AND TO JUSTIFY HIS FAILURE TO REQUEST RECUSAL OF JUDGE SHULER. "THE PETITIONER HAS NEVER RECEIVED A CHARGE FOR ROBBING AND BEATING ANYONE IN A PARKING LOT." (SEE EXHIBIT-A PS. 62. LINES 1-4). THIS STORY IS A TOTAL FABRICATION, AND MOST LIKELY, PREJUDICED PETITIONER AT THE PCR HEARING. THE PETITIONER HAD ONE PRIOR AND TWO MIS-DEMEANOR DUS CHARGE AT THE TIME OF TRIAL, THE PRIOR CHARGE WAS FOR THE ROBBERY OF A LIQUOR STORE, WHICH JUDGE SHULER HAD REPRESENTED PETITIONER ON THAT CHARGE, AND IT ENDED IN

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AN ADVERSARIAL POSITION ON PCR. THE PETITIONER WAS ON PAROLE FROM THAT SENTENCE DURING THE TIME OF TRIAL. JUDGE SHULER INTERFERED, DICTATED, AND SEVERELY HINDERED THE PETITIONER'S DEFENSE. HIS INTERFERENCE TOTAL AFFECTED THE PETITIONER'S ENTIRE TRIAL RESULTING IN THE PETITIONER BEING FOUND GUILTY. NO REASONABLE PERSON COULD EVER CONCLUDE THAT THE PETITIONER RECEIVED A FAIR AND JUST TRIAL IN THIS CASE.

THE PETITIONER HAS A CONSTITUTIONAL RIGHT TO A TRIAL BY AN IMPARTIAL JUDGE. IN RECUSAL CASES, IT IS NOT SOLELY THE REALITY OF ACTUAL BIAS OR PREJUDICE BUT ALSO THE APPEARANCE OF IMPROPRIETY THAT THE COURTS GUARD AGAINST. SEE LITELY V. UNITED STATES, — U.S. —, —, 114 S.Ct. 1147, 1154, 127 L.ED. 2d 474 (1994).

THE SUPREME COURT ACKNOWLEDGED THAT, "A FAIR TRIAL IN A FAIR TRIBUNAL IS A BASIC REQUIREMENT OF DUE PROCESS." FAIRNESS OF COURSE REQUIRES AN ABSENCE OF ACTUAL BIAS IN THE TRIAL OF CASES. BUT OUR SYSTEM OF LAW HAS ALWAYS ENDEAVORED TO PREVENT EVEN THE PROBABILITY OF UNFAIRNESS. IN RE MUNCHISON, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.ED. 942 (1955), WE ARE ALSO MINDFUL THAT "CHARGES OF MISCONDUCT OR PREJUDICE LEVELED AT TRIAL JUDGES SHOULD NOT BE LIGHTLY MADE AND, ONCE MADE, SHOULD NOT BE CASUALLY TREATED BY A REVIEWING COURT. UNITED STATES V. BIGAX, 605 F.2d 509, 510 (10th Cir. 1979) (QUOTING UNITED STATES V. CANDALL, 550 F.2d 604, 606 (10th Cir. 1976), CERT. DENIED, 434 U.S. 841, 98 S.Ct. 137, 54 L.ED. 2d 105 (1977); MITCHELL V. MAYNARD, 80 F.3d 1433 (10th Cir. 1996); TUMLEY V. OHIO, 273 U.S. 510, 47 S.Ct. 437, 71 L.ED. 749 (1927)).

DURING PETITIONER'S TRIAL, WHILE DEFENSE COUNSEL CROSS EXAMINED THE STATES WITNESSES, "THE TRIAL COURT 'REPEATEDLY' USURPED THE QUESTIONING OF WITNESSES FROM COUNSEL WHO WAS COMPETENTLY CONDUCTING THE EXAMINATION". THE FIFTH CIRCUIT

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HEID THAT THE CUMULATIVE EFFECT OF THE MANY AND MANIFEST INTERVENTIONS BY THE JUDGE DEPRIVED APPELLANT OF A FAIR TRIAL. UNITED STATES V. WELLIVER, 601 F.2d 203, 208-09 (5TH Cir. 1979); UNITED STATES V. DANIELS, 572 F.2d 535, 541 (5TH Cir. 1978).

DURING CLOSING ARGUMENT JUDGE SHULER ERRED IN ALLOWING THE PROSECUTION TO ARGUE EVIDENCE THAT WAS NOT ON RECORD. (SEE TRIAL TRANSCRIPT PS. 239. LINES 8-25, AND PG. 240. LINES 1-9). CHAMBERS V. MISSISSIPPI, 410 U.S. 284, 298, 93 S. CT. 1038, 1047 (1973).

THE ABSENCE OF FAIRNESS FROM THE TRIAL JUDGE DURING THE PETITIONERS TRIAL FATAALLY INFECTED THE PETITIONERS STATE TRIAL. UNITED STATES V. VALENZUELA BERNAL, 458 U.S. 858, 872, 102 S. CT. 3440, 3449 (1982).

IN PIERSON V. RAY, 87 S. CT. 1213 (1967), THE SUPREME COURT RULED, "WE SHOULD, OF COURSE, NOT PROTECT A MEMBER OF THE JUDICIARY, WHO IS IN FACT GUILTY OF USING HIS POWERS TO VENT HIS SPIREN UPON OTHERS, OR FOR ANY OTHER PERSONAL MOTIVE NOT CONNECTED WITH THE PUBLIC GOOD." GREGOIRE V. BIDDLE, 177 F.2d 579, 581 (2ND Cir.). TO DENY RECOVERY TO A PERSON INJURED BY THE RULING OF A JUDGE ACTING FOR PERSONAL GAIN OR OUT OF PERSONAL MOTIVES WOULD BE "MONSTROUS." IBID. BUT, IT IS ARGUED THAT ABSOLUTE IMMUNITY IS NECESSARY TO PREVENT THE CHILLING EFFECTS OF A JUDICIAL INQUIRY, OR THE THREAT OF SUCH INQUIRY, INTO WHETHER, IN FACT, A JUDGE HAS BEEN UNFAITHFUL TO HIS OATH OF OFFICE. THUS, IT IS NECESSARY TO PROTECT THE GUILTY AS WELL AS THE INNOCENT.

IT IS CLEAR AND FULLY SUPPORTED BY THE RECORD IN THE
(14).

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DURING THE PETITIONERS TRIAL AND THE EVENTS STEMMING FROM THE TRIAL JUDGE'S PREVIOUS REPRESENTATION OF PETITIONER, THAT THAT THE IMPARTIALITY OF THE TRIAL JUDGE MIGHT REASONABLY BE QUESTIONED. DUE TO THE FACT THERE HAD BEEN AN ADVERSARIAL PROCEEDING BETWEEN THE TRIAL JUDGE AND PETITIONER, AND ALSO THAT THE TRIAL JUDGE HAD REPRESENTED PETITIONER ON A SIMILAR CHARGE, JUDGE SHUER SHOULD HAVE DISQUALIFIED HIMSELF. MURPHY V. MURPHY, 319 S.C. 324, 461 S.E. 2d 39 (S.C. 1995); APP. CT. RULE 501, CODE OF JUDICIAL CONDUCT CANON 3(C); STATE V. PALE, 316 S.C. 71, 447 S.E. 2d 186 (S.C. 1994); STATE V. JACKSON, 353 S.C. 625, 578 S.E. 2d 744 (S.C. APP. 2003); STATE V. KEATHAM, 349 S.C. 101, 561 S.E. 2d 618 (S.C. APP.)

REQUIREMENT THAT JUSTICE MUST SATISFY THE APPEARANCE OF JUSTICE, EVEN TO THE POINT OF REQUIRING TRIAL BY JUDGES WHO HAVE NO ACTUAL BIAS AND WOULD DO THEIR BEST TO WEIGH THE SCALES OF JUSTICE EQUALLY BETWEEN CONTENDING PARTIES, APPLIES WHERE PRIVATE PARTY IS GIVEN STATUTORY AUTHORITY TO ADJUDICATE A DISPUTE. U.S.C.A. CONST. AMEND. 5.

UNDER FEDERAL RULES CRIMINAL PROCEDURE RULE 52 (b), COURT OF APPEAL SHOULD CORRECTPlain, FORFEITED ERROR AFFECTING SUBSTANTIAL RIGHTS IF THE ERROR SERIOUSLY AFFECTS FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF PREJUDICIAL PROCEEDINGS.

THE DUE PROCESS CLAUSE OF THE FIFTH AND FOURTEENTH AMENDMENTS DICTATE THAT THE DEFENDANT IS ENTITLED TO A TRIAL CONDUCTED BY AN IMPARTIAL JUDGE. THUS, WHENEVER IT APPEARS THAT THE TRIAL JUDGE HAS A FINANCIAL OR OTHER PERSONAL INTEREST IN THE OUTCOME OF THE TRIAL, A MOTION SHOULD BE MADE TO HAVE HIM REPLACED. WARD V. VILLAGE OF MONROEVILLE, 409 U.S. 57, 93 S.C.T. 80, 34 L.ED. 2d 267 (1972); TUMCY V. OHIO, 273 U.S. 510, 47 S.C.T. 437, 71 L.ED. 749 (1927).

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PETITIONER REPEATEDLY REQUESTED TRIAL COUNSEL TO FILE THE NECESSARY PAPERS TO HAVE THE TRIAL JUDGE RECUSED. COUNSEL AFTER LEADING PETITIONER TO BELIEVE THAT HE WOULD DO SO, FAILED TO MAKE THE REQUEST. TRIAL COUNSEL'S FAILURE TO HONOR THE REQUEST OF THE PETITIONER GREATLY PREJUDICED THE PETITIONER DURING TRIAL AND LED TO THE ~~THE~~ PETITIONER'S UNJUST CONVICTION AND UNJUST SENTENCE. (SEE EXHIBIT-A, PAGES 11-20, AND PS. 43, LINES 4-11, PS. 44-45).

THE PETITIONER CONTENDS THAT TRIAL COUNSEL'S FAILURE TO PURSUE AND HONOR HIS REQUEST OF RECUSAL WAS DELIBERATE AND POOR TRIAL STRATEGY, ULTIMATELY RESULTING IN PETITIONER'S CONVICTION AND LEAVING PETITIONER TO CRUEL AND UNUSUAL PUNISHMENT IN SENTENCING. TRIAL COUNSEL "BREACHED A FUNDAMENTAL DUTY TO HIS CLIENT." AS SUCH, COUNSEL'S DECISION CANNOT BE SAID TO HAVE BEEN REASONABLE EXERCISE OF PROFESSIONAL JUDGEMENT. THE RECORD IS COMPOUNDED WITH EVIDENCE THAT THE PETITIONER HAS POINTED-OUT, THAT HIS DEFENSE WAS PREJUDICED BY COUNSEL'S INEFFECTIVENESS. GOVERNMENT OF VIRGIN ISLANDS V. WEATHERWAX, 77 F.3d 1425 (3rd Cir. 1996); STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

THERE IS A GENERAL AGREEMENT IN THE CASE LAW AND THE RULES OF PROFESSIONAL RESPONSIBILITY THAT THE AUTHORITY TO MAKE DECISIONS REGARDING THE CONDUCT OF THE DEFENSE IN A CRIMINAL CASE IS SPLIT BETWEEN CRIMINAL DEFENDANTS AND THEIR ATTORNEYS.

SEE JONES V. BARNES, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312-13, 77 L.Ed.2d 987 (1983); UNITED STATES V. TEAGUE, 953 F.2d 1525, 1531 (11th Cir.), CERT. DENIED, 506 U.S. 842, 113 S.Ct. 127, 121 L.Ed.2d 82 (1992); AMERICAN BAR ASSOCIATION'S STANDARDS FOR CRIMINAL JUSTICE § 4-5.2 (2d Ed. 1980 & Supp. 1986).

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THE ACCUSED HAS THE ULTIMATE AUTHORITY TO MAKE CERTAIN FUNDAMENTAL DECISIONS REGARDING THE CASE, JONES V. BARNES, SUPRA.

A LAWYER SHALL ABIDE BY A CLIENT'S DECISIONS CONCERNING THE OBJECTIVES OF REPRESENTATION, AND SHALL CONSULT WITH THE CLIENT AS TO MEANS BY WHICH THEY ARE TO BE PURSUED. IN A CRIMINAL CASE, THE LAWYER SHALL ABIDE BY THE CLIENT'S DECISION. GOVERNMENT OF THE VIRGIN ISLANDS V. WEATHERWAX, 77 F.3d 1425, 1433 (3rd CIR. 1996).

FUNDAMENTAL DECISIONS, SUCH AS WHETHER TO FORGO ASSISTANCE OF COUNSEL, TO WAIVE A JURY TRIAL, OR TO TESTIFY IN ONE'S OWN BEHALF, IN A SENSE MAY BE VIEWED AS STRATEGIC DECISIONS BECAUSE THEY RELATE TO THE MEANS EMPLOYED BY THE DEFENSE TO OBTAIN THE PRIMARY OBJECT~~ED~~ OF THE REPRESENTATION — ORDINARILY, A FAVORABLE END RESULT. NEVERTHELESS, THESE DECISIONS ARE PERSONAL AND CRUCIAL TO THE ACCUSED'S FATE THAT THEY TAKE ON AN IMPORTANCE EQUIVALENT TO THAT OF DECIDING THE OBJECTIVES OF THE REPRESENTATION. AS THE COURT EXPLAINED IN FARETTA V. CALIFORNIA, 422 U.S. 806, 834, 95 S.Ct. 2525, 2540-41, 45 L.Ed. 2d 562 (1975), FOR EXAMPLE, "ALTHOUGH HE MAY CONDUCT HIS OWN DEFENSE ULTIMATELY TO HIS OWN DETRIMENT, HIS CHOICE MUST BE HONORED OUT OF 'THAT RESPECT FOR THE INDIVIDUAL WHICH IS THE LIFEblood OF THE LAW.'" 422 U.S. AT 834, 95 S.Ct. AT 2541 (QUOTING ILLINOIS V. ALLEN, 397 U.S. 337, 350-51, 90 S.Ct. 1057, 1064-65, 25 L.Ed. 2d 353 (1970)).

THE REQUIREMENT THAT COUNSEL CONSULT WITH HIS OR HER CLIENT CONCERNING ISSUES ON WHICH COUNSEL HAS THE FINAL WORD SERVES A NUMBER OF IMPORTANT PURPOSES. FIRST, IT ASSURES THAT THE CLIENT WILL HAVE THE OPPORTUNITY TO

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ASSIST WITH HIS OWN DEFENSE, AS ONE COURT HAS NOTED: "WHILE ATTORNEY'S EDUCATION AND EXPERIENCE GIVE HIM SUPERIOR KNOWLEDGE OF GENERALIZED TECHNICAL INFORMATION, 'THE CLIENT POSSESSES SUPERIOR KNOWLEDGE OF ANOTHER SORT - KNOWLEDGE OF THE FACTS AND CIRCUMSTANCES OF HIS CASE.'"

STAND V. DUBBER, 921 F.2d 1125, 1146 N.33 (11TH CIR.) (SECOND ALTERATION IN ORIGINAL) (QUOTING MARK SPIEGEL, LAWYERING AND CLIENT DECISIONMAKING: INFORMED CONSENT AND THE LEGAL PROFESSION, 128 U. PA. L. REV. 41, 100 (1979)), CERT. DENIED, 502 U.S. 835, 112 S. CT. 116, 116 L. ED. 2d 85 (1991); CF. STRICKLAND, 466 U.S. AT 691, 104 S. CT. AT 2066-67 (NOTING THAT COUNSEL'S DECISION NOT TO INVESTIGATE A MATTER MUST BE EVALUATED IN LIGHT OF INFORMATION THAT THE DEFENDANT MIGHT HAVE SUPPLIED THE LAWYER. SECOND, THE CLIENT'S VIEWS AND DESIRES CONCERNING THE BEST COURSE TO BE FOLLOWED ARE RELEVANT CONSIDERATIONS THAT MUST BE EVALUATED AND TAKEN INTO ACCOUNT BY COUNSEL. THIRD, CONSULTATION SERVES TO PROMOTE AND MAINTAIN A COOPERATIVE CLIENT-COUNSEL RELATIONSHIP. GOVERNMENT OF THE VIRGIN ISLANDS V. WEATHERWAX, 77 F.3d 1425, 1436 (3rd CIR. 1996).

ARGUABLY, MOST IF NOT ALL DECISIONS BY COUNSEL BEFORE, DURING AND AFTER TRIAL CAN BE CONSIDERED STRATEGIC. AS A RESULT, A FINDING THAT A PARTICULAR DECISION WAS STRATEGIC, IN AND OF ITSELF, CANNOT ANSWER THE QUESTION WHETHER THAT DECISION FALLS WITHIN THE "WIDE RANGE OF COMPETENT ASSISTANCE." SEE STRICKLAND V. WASHINGTON, 466 U.S. 668, 694, 104 S. CT. 2052, 2068, 80 L. ED. 2d 674 (1984). PUT DIFFERENTLY, NOT ALL STRATEGIC DECISIONS ARE BY DEFINITION PROFESSIONALLY REASONABLE.

EYEWITNESS IDENTIFICATION WAS ONE OF THE MAIN ISSUES IN THE PETITIONER'S CASE. THERE WAS SERIOUS IDENTIFICATION

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Issues, AND THE TRIAL JUDGE DENIED THE PETITIONER THE RIGHT TO PRESENT A COMPLETE DEFENSE BY DENYING AN EXPERT ON EYEWITNESS IDENTIFICATION TO TESTIFY.

JUDGE SHULEN STATED TO TRIAL COUNSEL, THAT THE PAPERS HE SUBMITTED TO HAVE THIS DONE WAS INCOMPLETE, THAT HE WAS NOT GIVEN PROPER PAPERWORK BY TRIAL COUNSEL. (SEE TRIAL TRANSCRIPT PAGES 151 - 157). THE CONVERSATION BETWEEN THE JUDGE, PROSECUTOR, AND TRIAL COUNSEL SHOWS THAT CLEARLY THE PETITIONER'S DUE PROCESS RIGHTS AND EQUAL PROTECTION RIGHTS UNDER THE U.S. CONSTITUTION WAS VIOLATED.

THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE PETITIONER ON THE CRIMES CHARGED, AND THE TRIAL COURT GUIDED THE TRIAL IN SUCH A WAY THAT HE MADE CONVICTION INEVITABLE.

MAINTAINING THAT "THE EVIDENCE IS INSUFFICIENT TO SUSTAIN A CONVICTION OF SUCH OFFENSES." FED. R. CRIM. P. 29. IN THIS CONTEXT, A REVIEWING COURT IS OBLIGED TO ASSESS "THE EVIDENCE IN ITS TOTALITY, TAKEN IN THE LIGHT MOST FAVORABLE TO THE GOVERNMENT, TOGETHER WITH ALL LEGITIMATE INFERENCE TO BE DRAWN THEREFROM, IN AN EFFORT TO ASCERTAIN WHETHER A RATIONAL TRIER OF THE FACTS COULD HAVE FOUND THE APPELLANT GUILTY BEYOND ANY REASONABLE DOUBT." UNITED STATES V. TIERNEY, 760 F.2d 382, 384 (1st Cir.), cert. denied, 474 U.S. 843, 106 S.Ct. 131, 88 L.Ed. 2d 108 (1988); SEE ALSO UNITED STATES V. BOYLAN, 898 F.2d 230, 238 (1st Cir. 1990); UNITED STATES V. JIMENEZ-PEREZ, 869 F.2d 9, 10 (1st Cir. 1989).

TRIAL COUNSEL MADE A MOTION FOR DIRECTED VERDICT DURING TRIAL DUE TO INSUFFICIENCY OF EVIDENCE. TRIAL COUNSEL ARGUED THAT THE EVIDENCE DID NOT SUPPORT THE DEFENDANT

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AS THE MAN WHO COMMITTED THE ROBBERY. THE TRIAL COURT DENIED THE MOTION.

WHEN A DEFENDANT HAS MOVED UNDER FEDERAL RULE OF CRIMINAL PROCEDURE 29(a) FOR A JUDGEMENT OF ACQUITTAL ON THE GROUND THAT THE EVIDENCE IS INSUFFICIENT TO SUPPORT THE VERDICT, WE REVIEW THE RECORD TO DETERMINE "WHETHER ANY RATIONAL TRIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT." UNITED STATES V. SPANIF, 817 F.2d 1375, 1377 (9th Cir. 1987) (QUOTING JACKSON V. VIRGINIA, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.ED.2d 560 (1979)) (EMPHASIS IN JACKSON). IF NO RULE 29(a) MOTION WAS MADE IN THE TRIAL COURT, WE REVIEW UNDER A MORE RIGOROUS STANDARD OF REVIEW FOR PLAIN ERROR TO PREVENT A "MISCARriage OF JUSTICE." UNITED STATES V. CURTIS, 568 F.2d 643, 647 (9th Cir. 1978). SEE ALSO GIPSON V. LOCKHART, 692 F.2d 66, 68 (8th Cir. 1982) (PER CURIAM); FOWLER V. PARROT, 682 F.2d 746, 751 (8th Cir. 1982); LENZA V. WYRICK, 665 F.2d 804, 812 (8th Cir. 1981); UNITED V. TEAGUE, 956 F.2d 1427, 1433 (7th Cir. 1992); UNITED STATES V. WHALEY, 830 F.2d 1469, 1473 (7th Cir. 1987), CERT. DENIED, 486 U.S. 1009, 108 S.Ct. 1738, 100 L.ED. 2d 202 (1988).

THE DEFENDANT WAS NEVER LAWFULLY CHARGED WITH THE CRIME OF POSSESSION OF WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. THERE HAS NEVER BEEN BEEN A WARRANT ISSUED FOR THIS CRIME AGAINST DEFENDANT AND THE DEFENDANT WAS ALLEGEDLY INDICTED ON THIS CHARGE, IN VIOLATION OF THE DEFENDANTS DUE PROCESS RIGHTS.

COUNSEL ADMITTED THAT THERE WAS NEVER EVEN ANY DISCUSSION AS TO THE SUFFICIENCY OF THE PROOF ON THE KIDNAPPING CHARGE. (SEE ATTACHMENT-A pg. 70. LINES 1-20.)

THE STATE HAS A BURDEN TO PROVE THE ELEMENTS OF
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EVERY CRIME CHARGED BEYOND A REASONABLE DOUBT. FOR TRIAL COUNSEL NOT TO ARGUE THE LACK OF SUFFICIENCY OF EVIDENCE TO CONVICT DEFENDANT ON THIS CHARGE IS A MANIFEST MISCARriage OF JUSTICE. *IN RE WINSHIP*, 397 U.S. 358, 363-64, 90 S.Ct. 1068, 1072-73, 25 L.ED. 2d 368 (1970); SEE ALSO *SULLIVAN V. LOUISIANA*, 113 S.Ct. 2078 (1993); *CABE V. LOUISIANA*, 498 U.S. 39, 111 S.Ct. 328, 112 L.ED. 2d 339; *CHAPMAN V. CALIFORNIA*, 386 U.S. 18, 24, 87 S.Ct. 824, 828; *ARIZONA V. FULMINANTE*, 499 U.S. 279, 111 S.Ct. 1246; *SANDSTROM V. MONTANA*, 442 U.S. 510 (1979).

THE DEFENDANTS INDICTMENT CONTAINED A CHARGE NOT PROPERLY CHARGED IN THE INDICTMENT, *UNITED STATES V. PEEL*, 837 F.2d 975 (11th Cir. 1988); THE JURY CHARGE IMPROPERLY GUIDED THE JURY IN SUCH A SUBSTANTIAL WAY AS TO VIOLATE DUE PROCESS. *UNITED STATES V. PAULY*, 763 F.2d 1256 (11th Cir. 1985), CERT. DENIED, 474 U.S. 1084, 106 S.Ct. 856, 88 L.ED. 2d 896 (1986).

THE "AILING INSTRUCTION BY ITSELF SO INFECTED THE ENTIRE TRIAL THAT THE RESULTING CONVICTION VIOLATED DUE PROCESS." *CUPPA V. NAUGHTEN*, 414 U.S. 141, 147, 94 S.Ct. 396, 400.

PLAIN ERROR OCCURS ONLY WHEN THE INSTRUCTION, CONSIDERED AS A WHOLE, WAS SO CLEARLY ERRONEOUS AS TO RESULT IN THE LIKELIHOOD OF A GRAVE MISCARriage OF JUSTICE. *UNITED STATES V. VARKONYI*, 645 F.2d 453, 460 (5th Cir. 1981); *ESTEILE V. McGUIRE*, 502 U.S. 62, 72, 112 S.Ct. 475, 116 L.ED. 2d 385 (1991); *BOYD V. CALIFORNIA*, 494 U.S. 370, 380, 110 S.Ct. 1190, 108 L.ED. 2d 316 (1990); *HOUSTON V. ROE*, 117 F.3d 901, 908-909 (9th Cir. 1999).

THE TRIAL JUDGE INSTRUCTED THE JURY, "I'M NOT GOING TO DEFINE REASONABLE DOUBT. IT'S WHAT YOU DECIDE IT IS. (SEE TRIAL TRANSCRIPT PS. 243 LINES 13-14). THE TRIAL COURT THEN BEGAN THIS DRAWN OUT, CONFUSING, ELEVEN (11) PAGE LONG DISCUSSION EXPLAINING REASONABLE DOUBT, THAT [REDACTED] HAD THE JURY MEMBERS 20.

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LOOKING AT EACH OTHER CONFUSED AND SAYING THINGS TO EACH OTHER, AND ALSO CONFUSED THE DEFENDANT. DUE TO THE FACT THAT THE TRIAL COURT STATED THAT HE WASNT GOING TO EXPLAIN REASONABLE DOUBT, THE JURY DID NOT UNDERSTAND THE INSTRUCTION. (SEE TRIAL TRANSCRIPT PAGES 243-254).

"FAILURE TO GIVE A CONSTITUTIONAL REASONABLE DOUBT INSTRUCTION CAN NEVER BE HARMLESS ERROR".

THE PRESUMPTION OF INNOCENCE, THE BURDEN OF PROOF, AND THE STANDARD OF PROOF ARE THE FUNDAMENTAL DOCTRINES OF AMERICAN CRIMINAL JURISPRUDENCE AND THE BEDROCK OF DETERMINING GUILT OR INNOCENCE IN A CRIMINAL CASE. "THE FAILURE OF THE TRIAL COURT TO GIVE SUCH CHARGES WOULD BE A VIOLATION OF THE DEFENDANTS STATE AND FEDERAL CONSTITUTIONAL DUE PROCESS RIGHTS." CHAPMAN V. CALIFORNIA, 386 U.S. 18, 87 S. CT. 824, 17 L. ED. 2D 705 (1967). SEE ALSO LITTLE V. STATE, 498 S.E.2D 284 (GA. APP. 1998). THE GIVING OF A CONSTITUTIONALLY DEFICIENT REASONABLE-DOUBT INSTRUCTION IS AMONG THOSE CONSTITUTIONAL ERRORS THAT REQUIRE REVERSAL OF A CONVICTION, RATHER THAN THOSE THAT ARE AMENDABLE TO HARMLESS-ERROR ANALYSIS. SEE CHAPMAN V. CALIFORNIA, 386 U.S. 18, 24, 87 S. CT. 824, 828, 17 L. ED. 2D 705.

UNLIKE AN ERRONEOUS PRESUMPTION REGARDING AN ELEMENT OF THE OFFENSE, SEE SANDSTROM V. MONTANA, 442 U.S. 510, 99 S. CT. 2450, 61 L. ED. 2D 39, A DEFICIENT REASONABLE DOUBT INSTRUCTION VITIATES ALL THE JURY'S FACTUAL FINDINGS. A REVIEWING COURT IN SUCH A CASE CAN ONLY ENGAGE IN PURE SPECULATION - ITS VIEW OF WHAT A REASONABLE JURY WOULD HAVE DONE. WHEN IT DOES THAT, THE WRONG ENTITY JUDGES THE DEFENDANT GUILTY. MOREOVER, DENIAL OF THE RIGHT TO A JURY VERDICT OF GUILT BEYOND A REASONABLE DOUBT, THE CONSEQUENCES OF WHICH ARE NECESSARILY UNQUANTIFIABLE AND INDETERMINATE, IS

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CERTAINLY A "STRUCTURAL DEFECT IN THE CONSTITUTION OF THE TRIAL MECHANISM, WHICH DEFIES ANALYSIS BY 'HARMLESS-ERROR' STANDARDS" UNDER ARIZONA V. FULMINANTE, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed. 2d 302.

WHAT THE FACTFINDER MUST DETERMINE TO RETURN A VERDICT OF GUILTY IS PRESCRIBED BY THE DUE PROCESS CLAUSE. THE PROSECUTION BEARS THE BURDEN OF PROVING ALL ELEMENTS OF THE OFFENSE CHARGED, SEE PATTERSON V. NEW YORK, 432 U.S. 197, 210, 97 S.Ct. 2319, 2327, 53 L.Ed. 2d 281 (1977); LELAND V. OREGON, 343 U.S. 790, 795, 72 S.Ct. 1002, 1005, 96 L.Ed. 1302 (1952), AND MUST PERSUADE THE FACTFINDER "BEYOND A REASONABLE DOUBT" OF THE FACTS NECESSARY TO ESTABLISH EACH OF THOSE ELEMENTS, SEE, E.G., IN RE WINSHIP, 397 U.S. 358, 364, 90 S.Ct. 1068, 1072, 25 L.Ed. 2d 368 (1970); COOL V. UNITED STATES, 409 U.S. 100, 104, 93 S.Ct. 354, 357, 34 L.Ed. 2d 335 (1972) (PER CURIAM). THIS BEYOND-A-REASONABLE-DOUBT REQUIREMENT, WHICH WAS ADHERED TO BY VIRTUALLY ALL COMMON-LAW JURISDICTIONS, APPLIES IN STATE AS WELL AS FEDERAL PROCEEDINGS. WINSHIP, SUPRA.

"SOME CONSTITUTIONAL ERRORS WILL ALWAYS INVALIDATE THE CONVICTION"; ARIZONA V. FULMINANTE, 499 U.S. 279, 309-10, 111 S.Ct. 1246, 1264-1265 (CITING, INTER ALIA, GIDEON V. WAINWRIGHT, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d. 799 (1963) (TOTAL DEPRIVATION TO COUNSEL); *TURNER V. OHIO, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927) (TRIAL BY A BIASED JUDGE); MC/LASKIE V. WIBBINS, 465 U.S. 168, 104 S.Ct. 944, 79 L.Ed. 2d 122 (1984) (RIGHT TO SELF REPRESENTATION); SULLIVAN V. LOUISIANA, 113 S.Ct. 2078, 2081 (1993).

DURING TRIAL THE PROSECUTOR MADE INFLAMMATORY STATEMENTS THAT PREJUDICED THE DEFENDANTS RIGHT TO A FAIR TRIAL. PROSECUTION REFERRED TO THE DEFENDANT AS A CROOK (SEE TRIAL

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TRANSCRIPT PS. 240. LINE 21); PROSECUTOR LABELLED DEFENDANT AS A KIDNAPPER AND A ROBBER. (SEE TRIAL TRANSCRIPT PS. 231. LINE 22). THESE STATEMENTS WERE SO INFLAMMATORY AS TO DENY THE DEFENDANT A FAIR TRIAL AND VIOLATED THE DEFENDANT'S RIGHT TO DUE PROCESS. TRIAL COUNSEL FAILED TO OBJECT TO THESE STATEMENTS, WHICH THE DEFENDANT BELIEVES PREJUDICED HIS DEFENSE. SEE UNITED STATES V. COTNAM, 88 F.3d 487, 498 (7TH CIR. 1996); UNITED STATES V. MORGAN, 113 F.3d 85, 89 (7TH CIR. 1997). SEE ALSO DARDEN V. WAINWRIGHT, 477 U.S. 168 (1986); DONNELLY V. DECRISTOFANO, 416 U.S. 637 (1974); UNITED STATES V. HARRISON, 716 F.2d 1050 (4TH CIR. 1983); UNITED STATES V. BROCKINGTON, 849 F.2d 872 (4TH CIR. 1988).

THE DETECTIVES MICHAEL GRAHAM AND MICHAEL KIRBY WITHHELD EVIDENCE IN THE CASE THAT WAS MATERIAL TO THE GUILT OR INNOCENCE OF THE DEFENDANT, BY CONCEALING THE DEAL DET. GRAHAM MADE WITH KEITH PRESSLEY TO IMPLICATE DEFENDANT AS THE ROBBER, IN VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963).

"WHEN THE RELIABILITY OF A WITNESS MAY BE DETERMINATIVE OF GUILT OR INNOCENCE, NONDISCLOSURE OF EVIDENCE THAT AFFECTS CREDIBILITY IS A DENIAL OF FUNDAMENTAL FAIRNESS REQUIRED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT." UNITED STATES V. SUTTON, 542 F.2d 1239, 1241-42 (4TH CIR. 1976).

GOVERNMENTS DUTY TO DISCLOSE APPLIES WHETHER PROSECUTOR OR POLICE HAVE INFORMATION. BOONE V. PADERICK, 541 F.2d 447 (4TH CIR. 1976), EVEN IN A CASE WHERE INFORMATION IS IN PUBLIC RECORD. ANDERSON V. SOUTH CAROLINA, 709 F.2d 887 (4TH CIR. 1983).

CLEARLY ESTABLISHED FEDERAL LAW, DETERMINED IN BRADY V. MARYLAND, SUPRA, AND ITS PROGENY, PROVIDES THAT A STATE

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VIOLATES A DEFENDANT'S DUE PROCESS RIGHTS WHEN IT FAILS TO DISCLOSE TO THE DEFENDANT PRIOR TO TRIAL, "EVIDENCE FAVORABLE TO AN ACCUSED WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION." *Id.* AT 89, 83 S. CT. 1194. THE BRADY RULE IS NOT INTENDED TO "DISPLACE THE ADVERSARY SYSTEM AS THE PRIMARY MEANS BY WHICH TRUTH IS UNCOVERED, BUT TO ENSURE THAT A MISCARriage OF JUSTICE DOES NOT OCCUR." UNITED STATES V. BABLEY, 473 U.S. 667, 675, 105 S. CT. 3375, 87 L. ED. 2D 481 (1985). THIS LIMITED DEPARTURE FROM THE ADVERSARY SYSTEM "ILLUSTRATES THE SPECIAL ROLE PLAYED BY THE AMERICAN PROSECUTION IN THE SEARCH FOR TRUTH IN CRIMINAL TRIALS." STRICKLER V. GREENE, 527 U.S. 263, —, 119 S. CT. 1936, 1948, 144 L. ED. 2D 286, — (1999). "THE PROSECUTION IS THE REPRESENTATIVE NOT OF AN ORDINARY PARTY TO A CONTROVERSY, BUT OF A SOVEREIGNTY WHOSE INTEREST IN CRIMINAL PROSECUTIONS IS NOT THAT IT SHALL WIN A CASE, BUT THAT JUSTICE SHALL BE DONE." BABLEY, 473 U.S. AT 675 N. 6, 105 S. CT. 3375 (QUOTING BERGER V. UNITED STATES, 295 U.S. 78, 88, 55 S. CT. 629, 79 L. ED. 1314 (1935)); SEE ALSO KYLES V. WHITLEY, 514 U.S. 419, 437, 115 S. CT. 1555, 131 L. ED. 2D 490 (1995) (NOTING THAT "THE INDIVIDUAL PROSECUTION HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THE CASE, INCLUDING THE POLICE." SPICER V. ROXBURY CORRECTIONAL INSTITUTE, 194 F.3D 547 (4TH CIR. 1999)).

THE ARRESTING OFFICER CONSPIRED WITH KEITH PRESSLEY IN ORDER TO ARREST AND CONVICT DEFENDANT. (SEE AFFIDAVIT OF KEITH PRESSLEY - EXHIBIT-C). THIS INFORMATION SATISFIES THE BRADY LAW THAT WAS CLEARLY ESTABLISHED AT THE TIME OF DEFENDANT'S TRIAL.

THE DETENTIONER RECEIVED AN UNCONSTITUTIONAL, VINDICTIVE

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SENTENCE AT THE HANDS OF JUDGE SILVER, AS IT WAS BROUGHT OUT AT PETITIONER'S PCR HEARING, THAT JUDGE SILVER DEVIATED FROM HIS SENTENCING PATTERN IN SENTENCING PETITIONER. (SEE ATTACHMENT-A PAGES 64-69).

THE SAME EVIDENCE WAS USED TO CONVICT THE PETITIONER, AND THE PETITIONER WAS CONVICTED OF TWO ~~SEPARATE~~ SEPARATE CRIMES THAT ALL STEMMED FROM A SINGLE ARMED ROBBERY. THE PETITIONER ARGUES THAT FOR SENTENCING PURPOSES THE SENTENCES SHOULD HAVE MERGED. SEE UNITED STATES V. GADDIS, 424 U.S. 544, 547, 96 S. CT. 1023, 1025-26, 47 L. ED. 2D 222 (1976) (CITING PRINCE V. UNITED STATES, 352 U.S. 322, 329, 77 S. CT. 403, 407, 1 L. ED. 2D 370 (1957); UNITED STATES V. DAVIS, 573 F. 2D 1177, 1179 (10TH CIR.), CERT. DENIED, 436 U.S. 930, 98 S. CT. 2829, 56 L. ED. 2D 775 (1978); UNITED STATES V. DAVIS, 544 F. 2D 1056, 1058 (10TH CIR. 1976); UNITED STATES V. VON RODER, 435 F. 2D 1004, 1010 (10TH CIR. 1970) CERT. DENIED, 403 U.S. 934, 91 S. CT. 2264, 29 L. ED. 2D 713 (1971); PURDAM V. UNITED STATES, 249 F. 2D 822, 826-27 (10TH CIR. 1957), CERT. DENIED, 355 U.S. 913, 78 S. CT. 341, 2 L. ED. 2D 273 (1958); BROWN V. U.S., 34 F. 3D 990, 991 (10TH CIR. 1994).

MULTIPLICITY OF OFFENSES THAT MAY ARISE FROM A SINGLE CRIMINAL TRANSACTION, THE FORMALISTIC BLOCKBURGER TEST, WITH ITS NARROW FOCUS ON THE TECHNICAL ELEMENTS OF THE OFFENSES CHARGED, IS INADEQUATE TO UNDO THE CONSTITUTIONAL GUARANTEE AGAINST RETRIAL. THE GENERAL TEST FOR DETERMINING WHETHER SUCCESSIVE PROSECUTION INVOLVE THE "SAME OFFENSE" IS THEREFORE A MORE FLEXIBLE AND PRAGMATIC ONE WHICH FOCUSES NOT ON THE FORMAL ELEMENTS OF THE TWO OFFENSES, BUT RATHER ON THE ~~EVIDENCE~~ PROOF ACTUALLY UTILIZED TO ESTABLISH THEM. UNDER THIS "SAME EVIDENCE" TEST, "THE SECOND PROSECUTION IS BARRED BY DOUBLE JEOPARDY IF THE EVIDENCE USED TO PROSECUTE THE FIRST OFFENSE

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WOULD SUFFICE TO CONVICT OF THE SECOND OFFENSE AS CHARGED. SEE JORDAN V. VIRGINIA, 653 F.2d 870, 873-74, (4th Cir. 1980); IN RE NELSON, 131 U.S. 176, 188, 9 S.Ct. 672, 676, 33 L.Ed 118 (1889), (QUOTING MOREY V. COMMONWEALTH, 108 MASS. 433, 434 (1871); UNITED STATES V. SABELLA, 272 F.2d 206, 211 (2d Cir. 1959); U.S. V. RABINS, 840 F.2d 1184 (4th Cir. 1988).

THE SENTENCING COURT IN SENTENCING PETITIONER TO CONSECUTIVE SENTENCES FOR THE THREE CHARGES (CONVICTIONS) DID DENY THE PETITIONER DUE PROCESS OF LAW AND DID VIOLATE THE PETITIONER'S RIGHT TO PROTECTION FROM DOUBLE JEOPARDY.

THE SENTENCING COURT LACKED JURISDICTION (STATUTORY AND SUBJECT MATTER) TO SENTENCE THE PETITIONER CONSECUTIVELY. THE PETITIONER WAS SENTENCED TO 30 YEARS FOR KIDNAPPING, 25 YEARS FOR ARMED ROBBERY, AND 5 YEARS FOR POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, ALL CONSECUTIVE TO EACH OTHER. PETITIONER SUBMITS, FIRST, THE ALLEGED CRIMES, IF VIEWED AS THE PROSECUTION PRESENTED AT TRIAL, WERE SIMULTANEOUS ACTS. FOLLOWING CONVICTION, PETITIONER WAS DENIED DUE PROCESS OF LAW IN THE SENTENCE NOT BEING STRUCTURED CONCURRENTLY.

THE SECONDARY OR ULTIMATE CRIME COULD NOT HAVE OCCURRED WITHOUT COMMISSION OF THE OTHER CRIMINAL ACTS. S.C. CODE ANN. § 17-25-15 (1976, AS AMENDED) PROVIDES FOR CONCURRENT SENTENCES WHERE THE ACTS WERE SIMULTANEOUS. THE PETITIONER SUBMITS THAT THE ACTS WERE SO MUCH A PART OF EACH OTHER WHEN VIEWED IN A LIGHT MOST FAVORABLE TO THE STATE THAT ANY SENTENCES FOR THESE CRIMES WOULD BE REQUIRED TO BE SERVED CONCURRENTLY.

THE PETITIONER SUBMITS THAT HE WAS DENIED DUE PROCESS OF LAW AND THAT HE WAS SUBJECTED TO DOUBLE JEOPARDY IN VIOLATION OF AMENDMENT XIV. TO THE U.S. CONSTITUTION (27).

LEGAL MAIL

AND ARTICLE I, § 12 OF THE S.C. CONSTITUTION RESPECTIVELY. THE ACT OF POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME WHILE BEING ARMED IS BOTH AN ELEMENT OF THE ARMED ROBBERY, AND WAS FURTHER USED BY THE STATE TO SHOW A GUME OF KIDNAPPING TO THE JURY, WITH THE PETITIONER RECEIVING A CONSECUTIVE SENTENCE, VIOLATED THE PETITIONERS RIGHT TO PROTECTION FROM DOUBLE JEOPARDY. THE STATE AND FEDERAL CONSTITUTIONS GUARANTEE FREEDOM FROM DOUBLE JEOPARDY AND PROTECT FREEDOM FROM DOUBLE JEOPARDY, AND PROTECT A CRIMINAL DEFENDANT FROM PUNISHMENT FOR BOTH OFFENSES SEPERATELY WHERE THEY WERE COMM. TTED AS A SINGLE ACT.

COMPARE TO: BENTON V. MARYLAND, 395 U.S. 784, 89 S.Ct. 2056 (1969); BROWN V. OHIO, 432 U.S. 161, 97 S.Ct. 2221 (1977); FURTHER COMPARE TO STATE V. LAWSON, 279 S.C. 266, 305 S.E.2d 249, 250 (1983).

PETITIONER SUBMITS THIS IS A JURISDICTIONAL ISSUE. THE ISSUE MAY BE VIEWED AS A DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL (BOTH TRIAL AND APPELLATE) IN THE ALTERNATIVE TO A DENIAL OF DUE PROCESS AS COUNSEL FAILED TO PRESERVE THE ISSUE FOR DIRECT APPELLATE REVIEW (TRIAL COUNSEL), OR IN THE ALTERNATIVE COUNSEL FAILED TO BRIEF AND ARGUE THE ISSUE UPON APPEAL IF REVIEWABLE.

ON APRIL 12/12 THE PETITIONER FILED AN APPLICATION FOR POST-CONVICTION RELIEF (PCR) CITING "NEWLY-DISCOVERED EVIDENCE". KEITH PRESSLEY, WHO INITIALLY GAVE THE POLICE PETITIONERS NAME, CONSPIRING WITH POLICE TO ARREST PETITIONER, STATED IN AN AFFIDAVIT THAT HE WITNESSED ^{PETITIONER} BUY THE STOLEN JEWELRY FROM TWO GUYS, AND THAT HE LIED TELLING POLICE THAT [REDACTED] PETITIONER HAD COMMITTED THE ROBBERY. KEITH PRESSLEY'S AFFIDAVIT CONFIRMS AND CORROBORATES CORY FULTONS TESTIMONY [REDACTED] DURING PETITIONERS TRIAL.

LEGAL MAIL

ALTHOUGH PETITIONERS CLAIM MET ALL THE REQUIREMENTS FOR NEWLY-DISCOVERED EVIDENCE, THE ADMINISTRATIVE JUDGE, GEORGE C. JAMES, JR. DISMISSED THE APPLICATION ON APRIL 21, 2013 WITHOUT HOLDING A HEARING ON RULING ON THE ISSUES/CLAIMS PRESENTED IN THE PCA-APPLICATION. THE PETITIONER HAS ALWAYS CLAIMED ACTUAL INNOCENCE, AND TO ALLOW THE CLAIMS TO GO UNADDRESSED AMOUNTS TO CONTINUED WRONGFUL IMPRISONMENT OF PETITIONER, AND A TOTAL MANIFEST MISCARriage OF JUSTICE.

THE POLICE FAILURE TO DISCLOSE THIS INFORMATION UNDER BRADY IS A VIOLATION OF PETITIONERS DUE PROCESS R.GHTS. THE PETITIONER CONTENDS, THAT HAD THIS INFORMATION FROM KEITH PRESSLEY BEEN KNOWN AT THE TIME OF TRIAL, THAT THE RESULTS OF HIS TRIAL WOULD HAVE BEEN DIFFERENT.

PRESSLEY'S AFFIDAVIT PROVIDES CONCLUSIVE PROOF OF THE PETITIONERS INNOCENCE. SCHULP V. DELO, 115 S.LT. 851 (1995); SEE FAIRMAN V. ANDERSON, 188 F.3d 635 (5TH CIR. 1999).

THE PETITIONER ARGUES, THAT AFTER A REVIEW OF THE ENTIRE RECORD AND EVIDENCE, THAT ITS EVIDENT THAT A MISTAKE HAS BEEN MADE. FAIRMAN V. ANDERSON, 20 AT 640.

KEITH PRESSLEY'S AFFIDAVIT CONFIRMING COREY FUTTON'S TRIAL TESTIMONY CONSTITUTES CONSIDERABLE PROOF OF ACTUAL INNOCENCE, SO THAT FAILURE TO CONSIDER HIS CLAIMS WOULD RESULT IN A COMPLETE MISCARriage OF JUSTICE. CABE V. LOUISIANA, 498 U.S. 39, 111 S.LT. 328, 112 L.ED. 2d 339 (1990); SCHULP V. DELO, SUPRA; SULLIVAN V. LOUISIANA, SUPRA. THE PETITIONER SAYS THAT THERE'S MORE THAN A POSSIBILITY THAT THE NEW EVIDENCE MIGHT HAVE PRODUCED ACQUITTAL. UNITED STATES V. WALLACE, 528 F.2d 863, 866 (4TH CIR. 1976); GORDON V. UNITED STATES, 178 F.2d 896, 900 (6TH CIR. 1949); LARRISON V. UNITED STATES, 24 F.2d 82, 87 (7TH CIR. 1928); U.S. V. HODDLESON, 194 F.3d 214, 217 (1ST CIR. 1999).

DURING TRIAL, THE VICTIM TESTIFIED THAT SHE COULDN'T
29).

LEGAL MAIL

DESCRIBE THE PERSON WHO HAD COMMITTED THE ROBBERY, NOT EVEN THE NEXT DAY. (SEE TRIAL TRANSCRIPT PS. 91. LINES 1-25), WHICH INDICATES THAT IDENTIFICATION WAS AN ISSUE, AND THAT THE TRIAL COURT ABUSED HIS DISCRETION IN REFUSING TO ALLOW DR. COLE, AN EXPERT ON EYEWITNESS IDENTIFICATION TO TESTIFY.

KEITH PRESSLEY'S TESTIMONY/AFFIDAVIT "IS OF SUCH NATURE THAT IT WOULD BE PRACTICALLY CONCLUSIVE THAT HAD SUCH BEEN INTRODUCED AT TRIAL IT WOULD HAVE CAUSED A DIFFERENT RESULT IN THE CONVICTION OR SENTENCE. FAIRMAN V. ANDERSON, SUPRA.

THE FUNDAMENTAL MISCARriage OF JUSTICE EXCEPTION IS CONFINED TO CASES OF ACTUAL INNOCENCE, "WHERE THE PETITIONER SHOWS, AS A FACTUAL MATTER, THAT HE DID NOT COMMIT THE CRIME OF CONVICTION." WARD V. CAIN, 53 F.3d 106, 108 (5TH CIR. 1995); SEE ALSO CONWIN V. JOHNSON, 150 F.3d 467, 473 (5TH CIR. 1998).

TO ESTABLISH THE REQUISITE PROBABILITY THAT HE IS ACTUALLY INNOCENT, THE PETITIONER MUST SUPPORT HIS ALLEGATIONS WITH NEW, RELIABLE EVIDENCE THAT WAS NOT PRESENTED AT TRIAL AND MUST SHOW THAT IT WAS "MORE LIKELY THAN NOT THAT NO REASONABLE JUROR WOULD HAVE CONVICTED HIM IN THE LIGHT OF THE NEW EVIDENCE. SCHLUP V. DELO, 513 U.S. 298, 327, 115 S.Ct. 851, 130 L.ED.2d 808 (1995)

EXAMPLES OF NEW, RELIABLE EVIDENCE THAT MAY ESTABLISH FACTUAL INNOCENCE INCLUDE EXCULPATORY SCIENTIFIC EVIDENCE, CREDIBLE DECLARATIONS OF GUILT BY ANOTHER, TRUSTWORTHY EYEWITNESS ACCOUNTS, AND CERTAIN PHYSICAL EVIDENCE. SEE JO. AT 324, 115 S.Ct. 851; SAWYER V. WHITLEY, 505 U.S. 333, 340, 112 S.Ct. 2514, 120 L.ED.2d 269 (1992). THE PETITIONER HAS PRESENTED CONCLUSIVE EVIDENCE OF HIS INNOCENCE IN THE FORM OF AN AFFIDAVIT FROM KEITH PRESSLEY. INFORMATION THAT IF IT HAD BEEN INTRODUCED AT TRIAL, WOULD HAVE ALTERED THE OUTCOME OF THE TRIAL. STARKLER V. GREENE, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.ED.2d 286 (1999); KYLES V. WHITLEY, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 131 L.ED.2d 490 (1995).

LEGAL MAIL

CORY FULTONS TRIAL TESTIMONY HAS NEVER BEEN REFUTED WITH CREDIBLE EVIDENCE PRESENTED BY THE STATE. PRESSLEY'S AFFIDAVIT CONFIRMS FULTONS TESTIMONY.

SO FAR AS THE RECORD REVEALS, LEITH PRESSLEY IS NOT DELUSIONAL, SUFFERS NO IMPAIRMENTS IN HIS PERCEPTIONS, NOR IS HE AN INCOMPETENT WITNESS - "HE WAS, AFTER ALL, A JEWEL IN THE STATES CASE AGAINST PETITIONER, MENDIOLA V. SCHOMIG, 224 F.3d 589 (7th Cir. 2000).

INJUSTICE THAT RESULTS FROM THE CONVICTION OF AN INNOCENT PERSON HAS LONG BEEN AT THE CORE OF OUR CRIMINAL JUSTICE SYSTEM. THAT CONCERN IS REFLECTED, FOR EXAMPLE, IN THE "FUNDAMENTAL VALUE DETERMINATION OF OUR SOCIETY THAT IT IS FAR WORSE TO CONVICT AN INNOCENT MAN THAN TO LET A GUILTY MAN GO FREE." IN RE WINSHIP, 397 U.S. 358, 372, 90 S. CT. 1068, 1077, 25 L. ED. 2D. 368 (1970),

ALTHOUGH TRIAL COUNSEL FAILED TO OBJECT TO ERRORS AND JURY INSTRUCTIONS AT TRIAL, ON RAISE THESE ISSUES ON APPEAL, THE ERRORS MUST NOT GO UNADDRESSED BY THE THIS COURT. AS THE SUPREME COURT HAS LONG RECOGNIZED, APPELLATE COURTS, PARTICULARLY WHEN REVIEWING CRIMINAL CASES, HAVE THE AUTHORITY TO NOTICE SIGNIFICANT ERRORS SUA SPONTE - TO CORRECT THOSE ERRORS THAT ARE "OBVIOUS" OR "OTHERWISE SERIOUSLY AFFECT THE FAIRNESS, INTEGRITY, OR PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS." SEE UNITED STATES V. ATKINSON, 297 U.S. 157, 160, 56 S. CT. 391, 392, 80 L. ED. 555 (1936), THE ERRORS IN PETITIONERS CASE RISES TO THAT LEVEL. U.S. V. JONES, 104 F.3d 193 (8th Cir. 1997).

TRIAL COURT ERRED IN SEVERAL RULINGS, AND THOSE ERRORS HAD A "SUBSTANTIAL INFLUENCE" OVER THE VERDICT, SEE UNITED STATES V. RAHM, 993 F.2d 1405, 1415 (9th Cir. 1993) AND UNITED

LEGAL MAIL

STATES V. WEBBE, 755 F.2d 1387, 1389 (9th Cir. 1985). THE CUMULATIVE EFFECT OF ERRORS DEPRIVED THE PETITIONER OF A FAIR TRIAL AND REQUIRES A NEW TRIAL OR REVERSAL OF CONVICTION. SEE UNITED STATES V GREEN, 648 F.2d 587, 597 (9th Cir. 1981); U.S. V. Tony, 52 F.3d 207, 211 (9th Cir. 1995).

CONCLUSION

WHEREFORE, DUE TO THE ABOVE REASONS LISTED HEREIN, AND TO PREVENT A TOTAL MISCARriage OF JUSTICE, THE PETITIONER REQUESTS THAT HIS CONVICTION BE REVERSED AND THAT HE BE GRANTED A NEW TRIAL.

Respectfully Submitted,

FEBRUARY 10, 2014
FAIRFAX, S.C. 29827

Sl. Michael D. McFadden
MICHAEL D. MCFADDEN #126806
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(EXHIBIT-A)

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County

Thomas W. Cooper, Jr., Circuit Court Judge

MICHAEL MCFADDEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

SUPPLEMENTAL
APPENDIX

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MR. BARR	4		35	
MR. JONES		30		

LEGRAND CARRAWAY

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E X H I B I T S

(NO EXHIBITS MARKED)

MICHAEL MCFADDEN - DIRECT BY BARR

1 THE COURT: THIS IS THE MATTER OF MICHAEL
2 MCFADDEN. IT'S A WILLIAMSBURG COUNTY CASE. MR. CHARLES
3 BARR OF THE WILLIAMSBURG COUNTY BAR ON BEHALF OF THE
4 APPLICANT AND MR. C H JONES, JR. FOR THE STATE. MR.
5 BARR, IS MR. MCFADDEN READY TO PROCEED?

6 MR. BARR: YES, YOUR HONOR.

7 THE COURT: ALL RIGHT. STATE READY?

8 MR. JONES: YES, YOUR HONOR.

9 THE COURT: ALL RIGHT. MR. BARR, YOU MAY CALL YOUR
10 WITNESS.

11 MR. BARR: THANK YOU. MAY IT PLEASE THE COURT, YOUR
12 HONOR. WE CALL MR. MICHAEL MCFADDEN.

13 MICHAEL MCFADDEN, BEING FIRST
14 DULY SWORN, TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION BY MR. BARR:

16 Q NOW MR. MCFADDEN, YOU HAD FILED A POST CONVICTION
17 APPLICATION. IS THAT CORRECT?

18 A YES, SIR.

19 Q AND INCIDENTALLY, WHERE ARE YOU CURRENTLY? YOU ARE
20 INCARCERATED. WHERE ARE YOU INCARCERATED?

21 A AT LEIBER CORRECTIONAL INSTITUTION.

22 Q AND HOW LONG HAVE YOU BEEN INCARCERATED THERE?

23 A THREE YEARS.

24 Q AND DO YOU RECALL THE DATE THAT YOU WERE SENTENCED?

25 A APRIL FIFTH AND APRIL SIXTH, 1992.

MICHAEL MCFADDEN - DIRECT BY BARR

1 Q AND WHAT WAS THE SENTENCE THAT YOU RECEIVED?

2 A I RECEIVED THIRTY YEARS FOR KIDNAPPING. I RECEIVED
3 TWENTY-FIVE YEARS FOR ARMED ROBBERY AND FIVE YEARS FOR
4 POSSESSION OF FIREARM DURING THE COMMISSION OF A VIOLENT
5 CRIME.

6 Q ALL RIGHT. AND SINCE THAT TIME, YOU HAVE BEEN AT
7 LEIBER?

8 A YES, SIR.

9 Q NOW IF YOU WOULD, PLEASE SIR, YOU HAVE INDICATED THAT
10 YOU BELIEVE THAT YOU ARE ENTITLED TO A NEW TRIAL; IS
11 THAT CORRECT?

12 A YES, SIR.

13 Q AND WHAT IS THE REASON THAT YOU BELIEVE YOU ARE
14 ENTITLED TO A NEW TRIAL? WHAT -- WHY DO YOU BELIEVE THAT?

15 A BECAUSE THE WAY MY CASE WAS HANDLED, THINGS THAT
16 HAPPENED DURING MY COURT PROCEEDING, THE AMOUNT OF THE --
17 THE WAY THAT IT WAS -- THE WAY THAT THE LAWYER REPRESENTED
18 ME, THINGS OF THAT NATURE.

19 Q SO ESSENTIALLY YOU HAVE ALLEGED IN YOUR POST
20 CONVICTION APPLICATION THAT YOU DID NOT RECEIVE THE
21 EFFECTIVE ASSISTANCE OF COUNSEL; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q ALL RIGHT, SIR. ARE THERE ANY OTHER GROUNDS OTHER
24 THAN INEFFECTIVE ASSISTANCE OF COUNSEL THAT YOU BELIEVE
25 WOULD BE A BASIS FOR A NEW TRIAL FOR YOU?

MICHAEL MCFADDEN - DIRECT BY BARR

1 A NOT THAT I CAN THINK OF.

2 Q NOT THAT YOU CAN THINK OF. SO IF WE UNDERSTAND YOU
3 CORRECTLY THEN, YOU ARE ESSENTIALLY COMPLAINING ABOUT THE
4 PERFORMANCE OF YOUR LAWYER, YOUR TRIAL LAWYER; IS THAT
5 CORRECT?

6 A AND ALSO THE PERFORMANCE OF THE OFFICERS THAT
7 CONDUCTED THE INVESTIGATION OF THE CRIME, I MEAN...

8 Q WELL, WHEN YOU SAY THEIR PERFORMANCE, WHAT ARE YOU
9 REFERRING TO?

10 A WERE A LOT OF THINGS THAT THEY KNEW WHEN THEY WERE
11 INVESTIGATING THE CRIME THAT ME BEING -- ME NOT HAVING THE
12 PROPER MEANS OR NOT BEING ABLE TO -- WELL, I DON'T EVEN
13 HAVE A CHANCE TO TALK TO MY ATTORNEY LIKE MAYBE TWO OR
14 THREE WEEKS BEFORE I WENT TO TRIAL.

15 AND I STAYED IN THE COUNTY JAIL FOR -- YOU
16 KNOW -- FOR QUITE SOME TIME. AND YOU KNOW, I WAS BEING
17 TOLD DIFFERENT THINGS BY SLED AGENTS AND ALSO BY THE
18 POLICE DEPARTMENT -- YOU KNOW -- HOW MY CASE WAS BEING
19 HANDLED.

20 Q WELL, TELL ME THIS MUCH. NOW, WHEN WERE YOU
21 ARRESTED?

22 A WHERE WAS I ARRESTED?

23 Q WHEN?

24 A I WAS ARRESTED IN OCTOBER OF 91.

25 Q AND WHEN WERE YOU APPOINTED A LAWYER?

MICHAEL MCFADDEN - DIRECT BY BARR

1 A I GUESS ABOUT THREE MONTHS LATER. I'M NOT SURE.

2 Q THREE MONTHS LATER?

3 A I'M NOT SURE. IT COULD HAVE BEEN SOME -- I WASN'T
4 APPOINTED A LAWYER WHEN I GOT THERE, BECAUSE SLED WAS
5 DOING SOME INVESTIGATION BEFORE THEY TOOK ME TO TRIAL --
6 BEFORE THEY CAME AND BROUGHT WARRANTS AND STUFF. SO I
7 DON'T EXACTLY KNOW THE DATE.

8 Q WELL, INITIALLY WHEN THEY FIRST GOT THE WARRANTS FOR
9 YOU, THEY DIDN'T FIND YOU THEN; DID THEY?

10 A NO.

11 Q IT WAS A WHILE AFTER THE WARRANTS WERE ACTUALLY
12 ISSUED THAT YOU WERE LOCATED; IS THAT CORRECT?

13 A THAT'S CORRECT.

14 Q AND DO YOU REMEMBER WHEN THE WARRANTS WERE ACTUALLY
15 SERVED ON YOU?

16 A I THINK IT WAS A PROBLEM WITH THAT BECAUSE -- WELL,
17 DURING MY TRIAL, MR. CARRAWAY ARGUED THAT -- I THINK ONE
18 OF THE ONES SAID OCTOBER 28TH.

19 AND I'M NOT EXACTLY SURE WHEN IT WAS THAT THEY
20 SAID THAT THEY GOT THE WARRANTS FOR -- IT WAS A PROBLEM
21 WITH THAT.

22 IT WAS ARGUED IN COURT CONCERNING THE DATES ON
23 THE WARRANTS AND STUFF LIKE THAT. SO...

24 Q BUT NOW YOU -- YOU DO RECALL THE AMOUNT OF TIME THAT
25 ELAPSED BETWEEN THE TIME THAT YOU WERE ACTUALLY ARRESTED

MICHAEL MCFADDEN - DIRECT BY BARR

1 AND THE TIME THAT YOU FIRST SAW YOUR LAWYER.

2 A YEAH.

3 Q HOW MUCH TIME WAS THAT?

4 A IT'S -- I SAY MAYBE A COUPLE OF MONTHS.

5 Q COUPLE OF MONTHS?

6 A YEAH.

7 Q ALL RIGHT. AND YOU HAD A PRELIMINARY HEARING;
8 DIDN'T YOU?

9 A YES, I DID.

10 Q WHO REQUESTED THE HEARING FOR YOU?

11 A MR. CARRAWAY.

12 Q AND HE ATTENDED THE PRELIMINARY HEARING WITH YOU?

13 A YES, HE DID.

14 Q OKAY. NOW, OTHER THAN ATTENDING THE PRELIMINARY
15 HEARING, WHAT ELSE DID MR. CARRAWAY DO BY WAY OF
16 REPRESENTING YOU?

17 A HE WENT AROUND -- HE SPOKE WITH PEOPLE, SPOKE WITH MY
18 FAMILY MEMBERS, NAMES OF WITNESSES THEY GAVE HIM. HE
19 SPOKE WITH THE PEOPLE THAT WAS INVOLVED IN THE CRIME AND
20 TALKED TO THE TWO OFFICERS THAT WAS INVESTIGATING THE
21 CRIME.

22 HE BASICALLY -- YOU KNOW -- TOLD ME WHAT WAS
23 GOING ON AND SO FORTH AS MY CASE WAS CONCERNED.

24 Q SO THEN IF I UNDERSTAND YOU CORRECTLY, YOU ARE NOT
25 SUGGESTING THAT MR. CARRAWAY DID NOT PERFORM HIS DUTIES AS

MICHAEL MCFADDEN - DIRECT BY BARR

1 IT RELATES TO THE -- INVESTIGATING YOUR CASE; WOULD THAT
2 BE CORRECT?

3 A YEAH. TO AN EXTENT. YEAH. WELL, I'M SAYING MR.
4 CARRAWAY WASN'T -- MR. CARRAWAY WOULDN'T FULLY REPRESENT
5 ME BECAUSE THERE WAS SOME BIAS CONCERNING MY CASE, SO
6 HE COULDN'T -- HE COULDN'T BE EFFECTIVELY REPRESENTING
7 ME.

8 NOW, I'M SAYING HE HAD SOME ISSUES, BUT HE
9 COULDN'T BE EFFECTIVELY REPRESENTING ME BECAUSE THERE WERE
10 SO MANY THINGS THAT HE WASN'T ALLOWED TO DO IN A
11 COURTROOM.

12 Q WELL, I'M NOT TALKING ABOUT WHAT TRANSPIRED IN THE
13 COURTROOM RIGHT NOW. I'M TALKING ABOUT THE INVESTIGATIVE
14 STAGE. IS THERE ANYTHING THAT YOU ARE AWARE OF THAT HE
15 COULD HAVE DONE?

16 A YEAH.

17 Q PRIOR TO YOUR GOING TO COURT THAT HE DIDN'T DO AS
18 YOUR LAWYER?

19 A YEAH. LIKE I SAID, UP UNTIL THREE WEEKS BEFORE I
20 WENT TO COURT, THAT'S WHEN MR. CARRAWAY REALLY STARTED
21 WORKING ON MY CASE.

22 IF HE HAD STARTED WORKING ON MY CASE FROM THE
23 TIME THAT I HAD SPOKEN WITH HIM, FELT I WOULD HAVE HAD A
24 BETTER SHOT IN COURT IF HE HAD DONE IT THEN.

25 Q WE ALWAYS FEEL LIKE WE'RE GOING TO HAVE A BETTER

MICHAEL MCFADDEN - DIRECT BY BARR

1 SHOT, BUT WHAT I'M TALKING ABOUT SPECIFICALLY WHAT DID --
2 DID YOU WANT HIM TO DO THAT HE DIDN'T DO?

3 A I WAS -- I WAS BEING TOLD TO PLEAD GUILTY AND I
4 WASN'T GOING TO PLEAD GUILTY AND I -- AND THIS PRESSURE
5 WAS STEADY COMING AT ME, YOU NEED TO PLEAD GUILTY, YOU ARE
6 GOING TO GET SEVENTY YEARS. SO I MEAN, THIS WAS COMING
7 FROM MY LAWYER.

8 Q SO NOW, GOING BACK TO THE BASIS FOR YOUR -- FOR YOUR
9 APPLICATION INEFFECTIVE ASSISTANCE OF COUNSEL, IS THERE
10 ANYTHING YOU COULD TELL US TODAY, ANY SPECIFIC THING, THAT
11 YOUR LAWYER DIDN'T DO BY WAY OF INVESTIGATION THAT YOU
12 ASKED HIM TO DO OR THAT YOU WANTED HIM TO DO AND HE DIDN'T
13 DO?

14 A PAPERWORK.

15 Q WHAT KIND OF PAPERWORK?

16 A SO FAR AS THE JUDGE THAT WAS HEARING MY CASE, I SPOKE
17 WITH HIM -- SPECIFICALLY I TOLD HIM THAT IT WOULD BE A --
18 IT WOULD BE SOME BIAS IF HE DIDN'T ASK THIS MAN TO STEP
19 DOWN FOR MY CASE.

20 AND THAT WAS -- THAT WAS THE MAIN ISSUE. THAT
21 WAS MY MAIN CONCERN THE ENTIRE TIME WAS THE JUDGE THAT WAS
22 HEARING MY CASE.

✓ 23 Q SO PRIOR TO THAT TIME, YOU -- PRIOR TO THE TIME YOU
24 WENT TO TRIAL, YOU ASKED YOUR LAWYER TO ASK THE JUDGE, THE
25 TRIAL JUDGE, NOT TO HEAR YOUR CASE?

MICHAEL MCFADDEN - DIRECT BY BARR

1 A TO RECUSE HIMSELF FROM MY CASE. YEAH.

2 Q AND WHO WAS THE TRIAL JUDGE?

✓ 3 A JUDGE SHULER.

4 Q OKAY. AND HOW DID YOU KNOW WHICH JUDGE YOU -- WOULD
5 BE HEARING YOUR CASE?

6 A I WAS IN THE COUNTY JAIL AND I -- THERE WERE GUYS
7 GOING TO COURT AND HE WAS -- HE WAS THE JUDGE THAT WAS
8 SITTING IN FOR THAT TERM.

9 Q SO NOW IF I UNDERSTAND YOU CORRECTLY, YOU DID NOT
10 KNOW UNTIL THAT PARTICULAR TERM OF COURT THAT JUDGE SHULER
11 ACTUALLY WOULD BE TRYING THE CASE?

✓ 12 (A) NO. ALSO MR. CARRAWAY HAD TOLD ME THAT HE WOULD BE
13 THE JUDGE THAT WOULD BE HEARING MY CASE.

14 Q TELL US IF YOU WOULD, PLEASE SIR, WHY IS IT THAT YOU
15 WANTED MR. CARRAWAY TO MOVE TO HAVE JUDGE SHULER RECUSE
16 HIMSELF FROM THE TRIAL OF YOUR CASE.

✓ 17 A JUDGE SHULER USED TO BE MY ATTORNEY. AND DURING
18 THAT TIME HE WAS MY ATTORNEY. WE -- I TOOK HIM TO COURT.

19 Q WELL NOW, HOLD ON JUST -- HE USED TO BE YOUR LAWYER?

20 A YEAH.

21 Q WHAT WAS HE REPRESENTING YOU ON?

22 A HE WAS A PUBLIC DEFENDER.

23 Q I SEE. AND HOW MANY TIMES DOES A PUBLIC DEFENDER IN
24 WILLIAMSBURG COUNTY -- DID JUDGE SHULER REPRESENT YOU?

25 A ONCE.

MICHAEL MCFADDEN - DIRECT BY BARR

1 Q AND WHAT DID HE REPRESENT YOU IN CONNECTION WITH?

2 A IN CONNECTION WITH A ROBBERY.

3 Q YOU WERE CHARGED WITH ROBBERY?

4 A YES.

5 Q HOW WAS THAT CHARGE RESOLVED ULTIMATELY?

6 A HE TRIED TO GET ME TO PLEAD GUILTY TO TWENTY YEARS
7 WHEN THE MAXIMUM SENTENCE WAS TWENTY-FIVE YEARS AND HE
8 DIDN'T -- I TOLD THE JUDGE THEN THAT I DIDN'T WANT HIM
9 REPRESENTING ME.

10 Q DID YOU GO TO JAIL? I'M ASKING.

11 A YEAH. I WENT TO JAIL. I GOT FIFTEEN YEARS.

12 Q WERE YOU TRIED OR DID YOU PLEAD GUILTY?

13 A I PLEAD GUILTY.

14 Q ALL RIGHT. SO YOU ENTERED A PLEA?

15 A RIGHT.

16 Q TO ARMED ROBBERY.

17 A RIGHT.

18 Q DID YOU FILE A POST CONVICTION APPLICATION IN
19 CONNECTION WITH THAT CONVICTION?

20 A YEAH.

21 Q AND WHAT DID YOU ALLEGE AS THE BASIS FOR RELIEF WHEN
22 YOU FILED THAT APPLICATION?

23 A ONLY SPOKE TO HIM ONCE. HE WAS MY ATTORNEY. I
24 ONLY SAW HIM ONCE FOR ABOUT FIVE MINUTES.

25 Q OKAY. SO WOULD IT BE CORRECT THEN TO SAY THAT IN

MICHAEL MCFADDEN - DIRECT BY BARR

1 ESSENSE YOU ACCUSED OR YOU FELT THAT JUDGE SHULER HAD
2 BEEN INEFFECTIVE AS YOUR LAWYER WHEN HE WAS REPRESENTING
3 YOU?

4 A YEAH.

5 Q UH-HUH. AND DID YOU HAVE A POST CONVICTION RELIEF
6 HEARING?

7 A YEAH.

8 Q AND DO YOU RECALL WHERE THE POST CONVICTION RELIEF
9 HEARING WAS HELD?

10 A HERE.

11 Q HERE IN SUMTER?

12 A YEAH.

13 Q DO YOU RECALL WHO THE POST CONVICTION JUDGE WAS?

14 A JUDGE MCINNIS.

15 Q AND WHO REPRESENTED YOU AT THE POST CONVICTION RELIEF
16 HEARING?

17 A I THINK IT WAS GREG ASKINS. ONE OF THE ASKINS' OUT
18 OF HEMINGWAY.

19 Q AND TELL US ABOUT POST CONVICTION RELIEF HEARINGS.

20 A WELL, WHEN WE CAME AND HE WAS -- THERE WAS A GUY FROM
21 THE APPELLATE DEFENSE. AND JUDGE MCINNIS ASKED ME WHAT
22 HAPPENED AND I TOLD HIM THAT HE TRY TO GET ME TO PLEAD.
23 HE CAME IN -- I CALLED HIM ON SEVERAL OCCASIONS AND HE
24 FINALLY CAME IN AND SPOKE WITH ME.

25 THE ONLY THING HE ASKED ME TO DO WAS TO PLEAD

MICHAEL MCFADDEN - DIRECT BY BARR

1 GUILTY TO THE CRIME.

2 Q AND WHO WAS THAT NOW?

3 A JUDGE SHULER. WELL, AT THAT TIME IT WAS AN
4 ATTORNEY. ATTORNEY SHULER. AND I TOLD HIM I WASN'T
5 GOING TO PLEAD GUILTY TO TWENTY YEARS WHEN I COULD ONLY
6 GET TWENTY-FIVE YEARS.

7 THAT I WOULD RATHER GO TO TRIAL. AND HE DIDN'T
8 TRY TO PREPARE A CASE FOR ME. AND WHEN I WENT TO COURT,
9 I GOT FIFTEEN YEARS.

10 Q AND YOU---

11 A SO IT ENDED UP IN THE COURTROOM WITH HIM. AND WHEN I
12 TOLD THE JUDGE THIS -- THERE WAS -- THERE WAS A
13 CONFRONTATION WITH HIM AND THE JUDGE THAT WAS HEARING THE
14 CASE HERE IN SUMTER.

15 THEY WERE TALKING AND HE ASKED HIM WHAT IF --
16 WHAT I WAS SAYING WAS THE TRUTH AND HE SAID YEAH AND THERE
17 WAS SOME -- THERE WAS A LOT OF EMOTION AND STUFF.

18 HE WAS -- YOU KNOW -- HE -- HE BROKE DOWN. I
19 MEAN, HE -- IT WASN'T -- I GUESS HE JUST STARTED
20 PRACTICING LAW OR WHATEVER. I DON'T KNOW.

21 BUT THERE WAS -- BUT THERE WAS A SERIOUS PROBLEM
22 WITH SOMETHING. I DIDN'T UNDERSTAND WHAT WAS GOING ON,
23 BUT HE -- THERE WAS A PROBLEM.

24 Q DID YOU AT THE TIME -- DID YOU HAVE -- HAD YOU LOST
25 CONFIDENCE WITH JUDGE SHULER AS YOUR LAWYER?

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1 A YEAH.

2 Q AND DID YOU MAKE THIS KNOWN TO MR. CARRAWAY BEFORE
3 THE TRIAL?

4 A YES, I DID.

5 Q AND TELL ME IF YOU WOULD, PLEASE SIR, DO YOU THINK
6 THAT -- YOU ARE NOT -- ARE YOU SAYING THAT YOU FELT THAT
7 JUDGE SHULER WAS IMPARTIAL AS THE TRIAL JUDGE?

8 A YES, HE WAS.

9 Q AND SPECIFICALLY, WHAT -- IF ANYTHING, DID YOU
10 OBSERVE ABOUT THE WAY THAT HE TRIED THE CASE TO CAUSE YOU
11 TO BELIEVE THAT HE WAS IMPARTIAL?

12 A WELL, AT THE TIME I WAS ON PAROLE. AND WHEN THEY
13 BROUGHT ME INTO HIM FOR THE -- THEY SET A BOND, THEY
14 BROUGHT ME BEFORE HIM.

15 AND WHEN THEY FIRST BROUGHT ME, HE SAID YEAH, I
16 KNOW YOU. I REMEMBER YOU. AND HE SET MY BOND AT A
17 HUNDRED THOUSAND DOLLARS. I LEFT THAT. THEY TOOK ME
18 BACK.

19 WHEN I CAME BACK FOR COURT, HE WAS IN THERE
20 AGAIN. HE CAME OUT OF THE COURTROOM. HE CAME THROUGH
21 -- AND I WAS SITTING IN THE ROOM WITH THE DOOR OPEN.

22 AND IN WILLIAMSBURG COUNTY COURT -- AND HE CAME
23 TO THE DOOR AND HE WAS MAKING JOKES AND HE SAID YEAH --
24 YOU KNOW -- HE HAD -- HE WAS LIKE YEAH, AND I TOLD MR.
25 CARRAWAY THAT HE DID THIS.

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1 I SAID HE POINTED AT ME SAID YEAH, YOU KNOW.
2 AND I'M LIKE I CAN'T GO BEFORE THAT MAN. I'M NOT GOING
3 IN THAT COURTROOM.

4 HE'S GOING TO BE THE JUDGE, YOU KNOW. I TOLD
5 HIM THIS AND THERE WERE OFFICERS THERE THAT SAW HIM DO
6 THIS.

7 Q WELL NOW, LETS STOP. I WANT TO KEEP TWO THINGS
8 SEPARATE. I WANT TO KEEP GUILT SEPARATE FROM SENTENCE.
9 NOW, WHAT IF ANYTHING DO YOU BELIEVE THAT JUDGE SHULER DID
10 AS RELATES TO YOUR GUILT OR INNOCENCE?

11 A WHEN?

12 Q THAT YOU BELIEVE SHOWED IMPARTIALITY?

13 A WHEN MR. CARRAWAY WAS REPRESENTING ME, THERE -- THE
14 WITNESSES THAT THE STATE HAD ON THE STAND, MR. CARRAWAY
15 CAUGHT EVERY LAST ONE OF THEM LYING.

16 AND EACH TIME HE WOULD DO IT, WHEN HE WOULD PUT
17 THE PRESSURE ON THEM TO TELL THE TRUTH, JUDGE SHULER WOULD
18 STOP HIM AND HE WOULD SAY THINGS LIKE YOU CAN'T DO THAT,
19 WHOA, WHOA, WHOA, WHOA WHOA.

20 AND THEN THERE WAS ONE TIME WHEN THE EVIDENCE
21 CAME UP MR. CARRAWAY CAUGHT THE FACT THAT MY NAME WAS
22 WRITTEN AT THE TOP OF MY PICTURE WHILE THEY WERE
23 QUESTIONING THE GIRL.

24 SHE DIDN'T PICK MY PHOTOGRAPH. AND MR.
25 CARRAWAY CAUGHT THAT. JUDGE SHULER TOOK THE SCISSORS AND

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1 CROPPED MY NAME FROM THE TOP OF MY PHOTO AND THOSE
2 PICTURES WENT INTO EVIDENCE.

3 AND I FELT AS THOUGH HE ABUSED HIS DISCRETION
4 BECAUSE HE SHOULD HAVE ALLOWED THE JURY TO DECIDE WHETHER
5 OR NOT THE NAME WAS ON THE TOP OF THE PICTURE BECAUSE THE
6 GIRL HAD ALREADY SEEN THE PICTURES AND SHE DIDN'T PICK MY
7 PICTURE. SHE PICKED SOMEBODY ELSE'S PICTURE.

8 Q THAT WAS FROM THE FIRST LINE-UP YOU ARE TALKING
9 ABOUT; ISN'T THAT CORRECT?

10 A YEAH. BUT THIS IS DURING THE TRIAL. YOU ASKED ME
11 WHAT I THOUGHT HE DID DURING THE TRIAL.

12 Q GO AHEAD.

13 A THAT'S WHAT HE DID. HE CLIPPED THE NAME FROM ABOVE
14 MY PICTURE. THAT'S ONE THING HE DID.

15 Q DID IT TO KEEP FROM ACTUALLY GOING TO THE JURY.

16 A I'M SAYING IS IF THE GIRL HAD ALREADY -- THE POLICE
17 TESTIFIED, MR. CARRAWAY ASKED THE OFFICER -- HE SAID WAS
18 THESE PICTURES THE SAME WAY WHEN YOU TOOK THEM TO HER?

19 THE OFFICER TESTIFIED YES, THEY WERE. THEY
20 WERE IN A VAULT LOCKED UP IN A JAIL CELL. SO IF THEY --
21 IF THE PICTURES WERE LIKE THAT WHEN SHE SAW THEM THEN,
22 THEN THE JURY IS GOING TO DECIDE -- TO DECIDE WHETHER OR
23 NOT I'M GOING TO SPEND SIXTY YEARS OF MY LIFE IN PRISON,
24 THEN THE JURY SHOULD HAVE SEEN THE SAME THING SHE SAW
25 WITHOUT THE JUDGE CUTTING THE NAME OFF THE TOP OF THE

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1 PICTURE.

2 AND THAT'S WHAT HE DID, HE TOOK -- HE SAID I
3 DON'T WANT THE JURY TO SEE IT AND HE CLIPPED IT.

4 Q WHAT OTHER SPECIFIC INSTANCES AT TRIAL AS RELATES TO
5 YOUR GUILT OR INNOCENCE, WHAT OTHER MATTER DO YOU BELIEVE
6 SHOWED IMPARTIALITY ON THE JUDGE'S PART?

7 A HE ALLOWED MR. NEWMAN TO ARGUE THINGS THAT WASN'T IN
8 EVIDENCE, THAT PEOPLE HADN'T TESTIFIED TO. HE ALLOWED
9 MR. NEWMAN TO ARGUE THESE THINGS, BUT THEN WHEN MR.
10 CARRAWAY DID---

11 Q WELL, SPECIFICALLY WHAT DID HE ALLOW MR. NEWMAN TO
12 DO?

13 A THERE WAS A LADY BY THE NAME OF MRS. BARBARA WARD WHO
14 HADN'T SEEN ME. AND I WAS LIVING IN BOSTON,
15 MASSACHUSETTS.

16 AND SHE SAID SHE CALLED THE POLICE STATION FOUR
17 TIMES SAYING THAT SHE SAW ME AROUND HER PLACE OF
18 BUSINESS.

19 AND WHEN MR. CARRAWAY -- WHEN MR. CARRAWAY GOT
20 HER ON THE WITNESS -- WELL, WHEN HE GOT HER ON THE WITNESS
21 STAND, SHE DIDN'T DENY THAT SHE DIDN'T CALL THE POLICE.
22 SHE SAID NO, I DIDN'T SEE HIM.

23 I DIDN'T CALL THE POLICE. HE WASN'T AROUND MY
24 PLACE OF BUSINESS. AND THEN SHE SAID AFTER HE HAD
25 STARTED TO PRESSURE HER, SHE SAID YEAH, I MAY HAVE CALLED

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1 ONCE. SHE -- HE SAID DID YOU SEE HIM? NO.

2 HE SAID WELL, WHY YOU CALL THE POLICE ON HIM IF
3 YOU DIDN'T SEE HIM? SHE SAID I DID IT ONCE. HE SAID ARE
4 YOU SURE? SHE SAID I'M POSITIVE.

5 NOW, LATER ON MR. NEWMAN TRIED TO ARGUE THAT SHE
6 HAD SAID THAT SHE SAW ME AND THE LADY SAID THAT SHE DIDN'T
7 SEE ME.

8 MR. CARRAWAY MADE THE FACT THAT NO, THE LADY
9 SAID SHE DIDN'T SEE HIM. AND HE SAID NO, LET THE MAN
10 ARGUE THAT BECAUSE IT'S IN EVIDENCE.

11 NOW, WHEN MR. CARRAWAY DID THE SAME THING, HE
12 STARTED ARGUING SOMETHING THAT HE BELIEVED THAT HAPPENED
13 AND THE JUDGE SAID NO, YOU CAN'T DO THAT BECAUSE IT'S NOT
14 IN EVIDENCE.

15 AND IT WAS THINGS LIKE THAT THAT WAS MAKING IT
16 HARD FOR HIM TO TRY TO -- TO REPRESENT ME.

17 Q SO IN ESSENCE, ARE YOU SAYING THAT YOUR LAWYER'S
18 INEFFECTIVENESS WAS OCCASIONED BY THE TRIAL JUDGE THAT YOU
19 HAD HEARING THE CASE?

20 A YEAH. I MEAN, THE MAN TOLD -- THE MAN THREATENED TO
21 THROW ME IN JAIL. I MEAN, HE'S REPRESENTING -- HE'S
22 OBJECTING AND THE JUDGE IS TELLING HIM TO SIT DOWN, HE'S
23 GOING -- HE'S GOING TO THROW ME IN JAIL.

24 I MEAN, WHAT -- I MEAN, HE'S REPRESENTING --
25 HE'S SUPPOSED TO ARGUE.

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1 Q ALL RIGHT. WAS THERE ANYTHING ELSE? ANY OTHER
2 PARTICULAR MATTER AT TRIAL THAT YOU BELIEVE REFLECTS
3 IMPARTIALITY ON THE JUDGE'S PART?

4 A I GUESS JUST DURING MY ENTIRE TRIAL IT WAS LIKE
5 THAT. IT WAS LIKE THAT DURING MY ENTIRE TRIAL.

6 Q AND WHAT -- NOW, WHAT -- YOU WERE -- HOW MUCH -- YOU
7 GOT WHAT, SIXTY YEAR SENTENCE; IS THAT CORRECT?

8 A YES, SIR.

9 Q AND YOU WERE SENTENCED -- HOW WERE YOU SENTENCED?

10 A MR. CARRAWAY CAME TO ME, TOLD ME THAT IF I DIDN'T
11 ACCEPT THE TWENTY YEARS OR WHATEVER THEY WERE OFFERING ME,
12 WHATEVER IT IS THAT THEY WERE DOING, IF I DIDN'T ACCEPT
13 THE LESSER TIME, THAT IF I WENT TO COURT, I WAS GOING TO
14 GET SEVENTY YEARS.

15 AND WHEN THEY FOUND ME GUILTY, JUDGE SHULER
16 SPOKE TO ME, HE SAID YEAH, I KNOW YOU. I SAID YEAH, YOU
17 KNOW ME. YOU USED TO BE MY LAWYER.

18 I SAID THAT'S WHY I DIDN'T WANT YOU TO -- THERE
19 WAS A FEW WORDS PASSED. I DON'T REMEMBER EXACTLY WHAT I
20 SAID TO HIM. AND HE SENTENCED ME TO THIRTY YEARS FOR
21 KIDNAPPING.

22 HE GAVE ME THE MAXIMUM SENTENCE ON EVERYTHING.
23 HE CHARGED -- HE GAVE ME FIVE YEARS FOR A KNIFE THAT THE
→ 24 POLICE ADMITTED THAT WAS HIS.

25 HE HAD IT IN MY EVIDENCE BAG. THEY DIDN'T GET

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1 A WEAPON FROM ME. THE OFFICER SAT ON THE WITNESS STAND
2 AND ADMITTED THAT THE KNIFE BELONGED TO HIM.

3 HE PUT IT IN MY EVIDENCE BAG. THAT IT WAS
4 HIS. BUT I GOT FIVE YEARS FOR IT.

5 Q WELL, THAT WAS FOR -- THAT WAS FOR A CONVICTION FOR
6 POSSESSION OF A WEAPON DURING A VIOLENT CRIME; WAS IT
7 NOT?

8 A I DIDN'T GET CAUGHT WITH NO WEAPON. HOW DID I END
9 UP WITH FIVE YEARS FOR SOMETHING THAT I DIDN'T HAVE?

10 Q SO YOU GOT FIVE YEARS FOR BEING CONVICTED OF THAT.

11 A YEAH.

12 Q ALL RIGHT. AND YOU GOT TWENTY-FIVE YEARS FOR WHAT?

13 A FOR ARMED ROBBERY.

14 Q YOU GOT A TOTAL OF SIXTY YEARS?

15 A SIXTY YEARS.

16 Q NOW, -- WHAT, IF ANYTHING ELSE, DO YOU BELIEVE THAT
17 YOUR LAWYER SHOULD HAVE DONE AT THE TRIAL THAT HE DID NOT
18 DO FOR YOU?

19 A YEAH. THE PAPERS. MR. CARRAWAY WANTED AN EYE
20 WITNESS EXPERT TO COME IN FROM CLEMSON UNIVERSITY, DR.
21 SPURGEON COLE AND TESTIFY THAT THERE WAS NO WAY THAT THE
22 GIRL -- SHE SAID THAT SHE WAS REAL -- THAT SHE WAS
23 SCARED.

24 AND THERE WAS A THING -- HE HAD SOME TYPE OF
25 IDEA THAT SOME THEORY THAT HE HAS THAT WHEN WHITES ARE

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1 AFRAID AND IT'S A BLACK PERSON THAT THEY ARE INVOLVED IN A
2 CRIME WITH, THAT THEY CAN'T REALLY SEE THE CUE FEATURES ON
3 BLACK PEOPLE WHEN THE CRIME IS BEING PERPETRATED BY A
4 BLACK PERSON.

5 AND THEY WENT THROUGH A -- SOME TYPE OF HEARING
6 THING DURING MY TRIAL AND THIS CAME UP. MR. SHULER TOLD
7 MR. CARRAWAY THAT THE PAPERS THAT HE GAVE THEM WASN'T IN
8 ORDER.

9 SO HE WASN'T GOING TO ALLOW THE MAN TO COME AND
10 TESTIFY TO THAT IN MY CASE CONCERNING THAT AND HE SAID THE
11 COUNTY WASN'T GOING PAY FOR IT.

12 YET THE WEEK BEFORE, THE COUNTY HAD DONE THIS
13 FOR SOMEONE BEFORE, BUT THEY WASN'T GOING TO PAY FOR IT
14 DURING MY TRIAL. HE WASN'T GOING TO ALLOW THE COUNTY TO
15 PAY FOR IT DURING MY TRIAL.

16 Q SO YOU FELT THAT THIS IDENTIFICATION EXPERT WOULD
17 HAVE BEEN HELPFUL TO YOUR DEFENSE ON THE ISSUE OF WHETHER
18 OR NOT THE IDENTIFICATION BY THE YOUNG LADY IN THE STORE
19 WAS ACTUALLY CORRECT.

20 A YES, HE WOULD HAVE.

21 Q AND HAD YOU DISCUSSED WITH YOUR LAWYER PRIOR TO TRIAL
22 THE FACT THAT YOU WANTED THIS EXPERT TO COME TO COURT?

23 A YES, SIR.

24 Q NOW, YOU INCLUDED IN YOUR APPLICATION YOU FELT THAT
25 YOU WERE -- YOU ALSO RECEIVED INEFFECTIVE ASSISTANCE OF

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1 COUNSEL FROM YOUR APPELLATE COUNSEL.

2 MR. BARR: COURT'S INDULGENCE, YOUR HONOR.

3 THE COURT: ALL RIGHT, SIR.

4 (WHEREUPON THERE WAS A PAUSE).

5 MR. BARR: YOUR HONOR, MAY WE APPROACH THE BENCH?

6 THE COURT: YES, YOU CAN.

7 (WHEREUPON A BENCH CONFERENCE WAS HELD).

8 THE COURT: MADAM REPORTER, THE RECORD SHOULD REFLECT
9 THE APPLICANT HAS IN HIS APPLICATION FOR POST CONVICTION
10 RELIEF ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL AS
11 WELL AS INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

12 APPELLATE COUNSEL IS NOT IN COURT TODAY AND BY
13 AGREEMENT OF COUNSEL, WE ARE GOING TO BIFURCATE THIS
14 HEARING AND WILL PROCEED ONLY ON THE INEFFECTIVE
15 ASSISTANCE OF TRIAL COUNSEL WITHOUT WAIVING HIS RIGHTS TO
16 RAISE AT A SUBSEQUENT HEARING AND DEAL WITH THE ISSUE OF
17 INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL; IS THAT
18 CORRECT?

19 MR. BARR: YES, SIR. THANK YOU, JUDGE.

20 (WHEREUPON QUESTIONING RESUMED).

21 Q NOW MR. MCFADDEN, DID YOUR LAWYER EXPLAIN TO YOU WHY
22 HE WAS UNABLE TO HAVE THE IDENTIFICATION EXPERT PRESENT AT
23 TRIAL?

24 A I WAS -- I WAS SITTING IN THE COURTROOM WHEN THE
25 PROCEEDINGS TOOK PLACE AND I HEARD WHAT JUDGE SHULER TOLD

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1 THEM.

2 Q AND WHAT -- WHAT IS YOUR RECOLLECTION AS TO WHAT
3 JUDGE SHULER TOLD THEM?

4 A EVIDENTLY THE DAY BEFORE OR SOME TIME THAT DAY, THE
5 NEXT DAY, HE SAID WELL, HE -- JUDGE SHULER SAID THAT MR.
6 CARRAWAY HAD PASSED HIM SOME TYPE OF AFFIDAVIT OR SOME
7 TYPE OF MOTION TO HAVE THIS MAN COME TESTIFY IN MY CASE.

8 HE SAID THAT HE DIDN'T -- HE SAID THAT HE DIDN'T
9 RECEIVE THE PAPERS. MR. CARRAWAY THEN SAID YES, I DID
10 GIVE THEM TO YOU.

11 HE SAID HE DIDN'T GET THEM. HE SAID WHAT IS
12 THIS ABOUT. THE PAPER IN ORDER TO HAVE THE MAN COME
13 TESTIFY AND THAT HE WAS GOING TO CONTINUE WITH MY CASE.

14 Q NOW, AT YOUR TRIAL WAS IDENTIFICATION A MAJOR ISSUE
15 IN THE TRIAL?

16 A YES, IT WAS.

17 Q AND I BELIEVE THAT THERE WERE PERHAPS TWO PEOPLE WHO
18 PUT YOU AT THE CRIME SCENE. DO YOU RECALL WHO THEY WERE?

19 A YES, SIR.

20 Q WHO WERE THEY?

21 A SAMONE HASELDON AND MELISSA ROGERS.

22 Q NOW, WHO IS SAMONE HASELDON?

23 A SHE WAS THE YOUNG LADY THAT HAD TESTIFIED THAT
24 SUPPOSEDLY HAD WORKED AT THE PLACE THE NIGHT BEFORE.

25 Q AND DID TESTIFY THAT YOU WERE IN THE PLACE OF

MICHAEL MCFADDEN - DIRECT BY BARR

1 BUSINESS THE NIGHT BEFORE?

2 A YES, SIR.

3 Q DID SHE ALSO DESCRIBE WHAT SHE CLAIMED THAT YOU WERE
4 WEARING AT THE TIME?

5 A YES, SIR.

6 Q AND WHAT WAS THAT?

7 A A CHARLOTTE HORNETS JACKET.

8 Q AND WAS THAT CHARLOTTE HORNETS JACKET INTRODUCED INTO
9 EVIDENCE AGAINST YOU?

10 A YES, SIR.

11 Q DO YOU BELIEVE THAT THAT EVIDENCE CONTRIBUTED TO YOUR
12 CONVICTION?

13 A YES, IT DID.

14 Q AND WHERE WAS THAT CHARLOTTE HORNETS JACKET FOUND?

15 A THE OFFICER SAID THAT THEY FOUND IT -- I THINK THEY
16 SAID ON THE ROAD OR SOMETHING THEY FOUND IT.

17 Q DID THEY SAY THAT THEY FOUND IT BETWEEN THE CRIME
18 SCENE AND YOUR GRANDMOTHER'S HOUSE?

19 A THEY SAID THEY FOUND IT BETWEEN THE CRIME SCENE AND
20 MY PLACE OF RESIDENCE.

21 Q OKAY. NOW, HOW ABOUT THE OTHER EYE WITNESS. WHO
22 WAS THE OTHER EYE WITNESS?

23 A MRS. ROGERS.

24 Q AND WHAT IS HER FIRST NAME?

25 A MELISSA.

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1 Q AND SHE WHITE OR BLACK?

2 A BOTH OF THEM ARE WHITE.

3 Q PARDON ME?

4 A BOTH WERE WHITE.

5 Q AND DO YOU KNOW WHAT MELISSA'S AGE IS?

6 A NO, I DON'T KNOW.

7 Q I SEE. AND THE EXPERT IDENTIFICATION EXPERT, DO YOU
8 RECALL WHETHER OR NOT HE WOULD HAVE ADDRESSED THE ISSUE OF
9 HOW WELL OR HOW RELIABLE IDENTIFICATIONS ARE WHEN THEY ARE
10 MADE BY YOUNG WHITE FEMALES IDENTIFYING BLACK MALES?

11 A YES.

12 Q AND THAT WAS YOUR UNDERSTANDING AS TO WHAT THE EXPERT
13 WOULD HAVE TESTIFIED TO?

14 A RIGHT.

15 Q NOW, YOU WERE ARRESTED OR YOU WERE CONVICTED OF
16 KIDNAPPING AND POSSESSION OF A WEAPON DURING A VIOLENT
17 CRIME.

18 A RIGHT.

19 Q WOULD IT BE CORRECT TO SAY THAT THE YOUNG LADY WHO
20 WAS A STORE CLERK THAT YOU WERE ACCUSED OF KIDNAPPING, DID
21 SHE TESTIFY AT COURT THAT YOU HAD A WEAPON WHEN SHE SAW
22 YOU?

23 A SHE SAID THAT SHE SAW A SHINY OBJECT. SHE SAID SHE
24 SAW A SHINY OBJECT.

25 Q WELL, SHE SAID SHE THOUGHT YOU HAD A KNIFE; RIGHT?

MICHAEL MCFADDEN - DIRECT BY BARR

1 DIDN'T SHE SAY THAT?

2 A I THINK SHE SAID SHE ASSUMED IT WAS A KNIFE OR
3 SOMETHING LIKE THAT.

4 Q ALL RIGHT, SIR. AND WHAT DID SHE CLAIM THAT YOU DID
5 TO HER AFTER SHE -- AFTER SHE SAID THAT YOU ARRIVED AT THE
6 STORE?

7 A SHE SAID THAT I CAME -- THAT I HAD CAME IN THE STORE
8 THE NIGHT BEFORE AND SHE SAID THAT I CAME IN THE STORE THE
9 NEXT NIGHT.

10 Q WELL, DID SHE SAY THAT YOU CAME IN THE STORE THE
11 NIGHT BEFORE OR DID THE OTHER PERSON SAY THAT YOU CAME THE
12 NIGHT BEFORE?

13 A SHE SAID IT, TOO. SHE SAID THAT THE GIRL THAT
14 WORKED THE NIGHT BEFORE TOLD HER THAT I CAME IN THE STORE
15 THE NIGHT BEFORE.

16 Q WELL, THAT WAS SUBSEQUENT TO THAT, THOUGH; WASN'T
17 IT?

18 A YEAH.

19 Q WELL, I AM TALKING ABOUT WHAT HAPPENED THE NIGHT THAT
20 YOU WENT IN -- THAT SHE CLAIMS THAT YOU WENT IN THE
21 STORE. YOU WERE -- YOU WERE -- WELL, YOU WERE CONVICTED
22 OF KIDNAPPING; WEREN'T YOU?

23 A YES, I WAS.

24 Q TELL US ABOUT THAT.

25 A SHE SAID THAT I HAD GONE INTO THE STORE, THAT I

MICHAEL MCFADDEN - DIRECT BY BARR

1 WALKED AROUND. I THINK SHE SAID I WALKED AROUND AND THEN
2 I CAME -- I APPROACHED HER AT THE REGISTER OR SOMETHING
3 LIKE THAT AND THAT I DEMANDED THE MONEY AND THEN PUT HER
4 IN THE BACK ROOM AND TIED HER UP. AND THAT'S WHERE THE
5 KIDNAPPING CAME IN AT.

6 Q AND TELL ME -- DID -- WEREN'T YOU -- DIDN'T -- DO YOU
7 RECALL THE POLICE OFFICER WHO INVESTIGATED THE CASE FOR
8 THE TOWN OF KINGSTREE? DO YOU RECALL HIS NAME?

9 A MICHAEL GRAHAM.

10 Q AND DO YOU RECALL MICHAEL GRAHAM'S TESTIMONY AT THE
11 TRIAL OF YOUR CASE?

12 A YES, I DO.

13 Q WHAT WAS MICHAEL'S TESTIMONY AS RELATES TO THE
14 IDENTIFICATION, THE ULTIMATE IDENTIFICATION IN COURT THAT
15 WAS MADE BY MRS. ROGERS? WHAT WAS HIS TESTIMONY REGARDING
16 YOUR PARTICIPATION IN LINE-UPS?

17 A HE CAME TO ME AND ASKED ME WOULD I HAVE A PROBLEM
18 GIVING THEM A PICTURE TO TAKE TO THIS PERSON TO BE
19 IDENTIFIED.

20 AND THERE WAS A SLED AGENT WITH THEM. AND I
21 WAS TOLD THAT IF I GAVE THEM PICTURES, THAT IF THE GIRL
22 DIDN'T PICK ME OUT OF A PICTURE LINE-UP, THEN I WOULD BE
23 RELEASED. THEY TOOK MY PICTURE.

24 THEY TOOK IT TO HER. SHE DIDN'T PICK MY
25 PICTURE. SHE PICKED SOMEBODY ELSE'S PICTURE. I DIDN'T

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1 SEE THEM NO MORE FOR MAYBE A COUPLE OF WEEKS.

2 Q ALL RIGHT, SIR. NOW...

3 A SHE ALSO SAID THAT THE OFFICER TOLD HER THAT SHE
4 PICKED THE WRONG PICTURE.

5 Q NOW...

6 A I DIDN'T SEE THEM NO MORE FOR MAYBE A COUPLE OF
7 WEEKS.

8 Q ALL RIGHT, SIR. NOW, THERE WERE A NUMBER OF MATTERS
9 THAT YOU INDICATED THAT YOU BELIEVE THAT YOUR TRIAL LAWYER
10 SHOULD HAVE OBJECTED TO AT TRIAL.

11 AND AS A RESULT OF HIM NOT MAKING THOSE
12 OBJECTIONS, YOU INDICATED THAT YOU THOUGHT THAT HE DID NOT
13 ADEQUATELY REPRESENT YOU. WOULD YOU TELL US, PLEASE SIR,
14 WHAT THOSE OBJECTIONS WERE.

15 A SAY THAT AGAIN.

16 Q YOU HAVE INDICATED THAT YOU DID NOT RECEIVE EFFECTIVE
17 ASSISTANCE OF COUNSEL. AND I THINK YOU HAVE INDICATED
18 ALSO THAT YOU THOUGHT THAT YOUR LAWYER SHOULD HAVE
19 OBJECTED TO SOME MATTERS THAT WENT ON AT TRIAL HE YOU
20 DIDN'T OBJECT TO AND THAT YOU WERE PREJUDICED BY THAT.
21 DO YOU RECALL SPECIFICALLY WHAT THEY WERE?

22 A I REMEMBER AN INCIDENT WITH THE KNIFE. THE JUDGE
23 WAS THE ONE THAT CAUGHT THE KNIFE IN THE BAG. THERE WAS
24 A BAG BEING HELD UP IN THE COURTROOM AND THAT BAG HAD A
25 KNIFE IN IT.

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1 AND THE OFFICER WAS SAYING -- AND MR. NEWMAN HAD
2 THE BAG -- AND MR. NEWMAN SAID THAT THAT WAS -- IT WAS
3 LABELED INTO EVIDENCE.

4 AND HE SAID -- AND THE JUDGE SAID -- HE SAID
5 HOLD IT A MINUTE. HE SAID -- HE SAID THAT BAG RIGHT
6 THERE. HE SAID THERE'S A KNIFE IN THAT BAG. AND THEY
7 WENT ON.

8 HE -- MR. NEWMAN KEPT GOING ON WITH WHAT HE WAS
9 SAYING AND THE JUDGE STOPPED HIM AGAIN. THE JUDGE SAID
10 NO, WHOA, WHOA. THAT KNIFE IN THAT BAG. HE SAID WHAT IS
11 THAT KNIFE DOING IN THAT BAG?

12 AND THE OFFICER ON THE WITNESS STAND SAID IT'S
13 MY KNIFE. HE SAID I PUT IT IN THERE. AND I GUESS THEY
14 WANTED TO KNOW WHAT WAS HIS KNIFE DOING IN MY EVIDENCE BAG
15 BECAUSE THEY DIDN'T GET A WEAPON FROM ME.

16 AND MR. CARRAWAY DIDN'T -- HE DIDN'T OBJECT TO
17 ANY OF THAT. HE DIDN'T SAY ANYTHING.

18 Q ANYTHING ELSE?

19 A AND WITH THE CLIPPING OF THE PICTURE, THE NAME OFF
20 THE PICTURE. I FELT HE SHOULD HAVE SAID SOMETHING ABOUT
21 THAT.

22 HE DIDN'T SAY ANYTHING BECAUSE HE -- WE HAD
23 ALREADY TALKED AND HE HAD ALREADY INFORMED ME THAT HE WAS
24 GOING TO PLACE THESE PICTURES INTO EVIDENCE.

25 SO IF YOU ARE GOING TO PLACE THEM IN EVIDENCE,

MICHAEL MCFADDEN - CROSS BY JONES

1 WHY ARE YOU GOING TO LET THE JUDGE CLIP MY NAME OFF OF THE
2 TOP OF THAT -- TOP OF THE PICTURE?

3 Q WAS THERE ANYTHING ELSE?

4 A I THINK THOSE -- I THINK THOSE WERE THE TWO MAIN
5 THINGS THAT...

6 Q ALL RIGHT. WOULD YOU ANSWER ANY QUESTIONS THAT MR.
7 JONES HAS.

8 THE COURT: MR. JONES, YOU MAY CROSS-EXAMINE.

9 MR. JONES: THANK YOU, YOUR HONOR.

10 CROSS-EXAMINATION BY MR. JONES:

11 Q MR. MCFADDEN, YOUR COUNSEL HAS TRIED TO SUMMARIZE
12 WHAT THE ISSUES ARE ON APPEAL. THAT'S WHAT WE ARE TRYING
13 TO DO IS NARROW IT DOWN FOR THE JUDGE'S CONSIDERATION.
14 YOU SAID THAT MR. CARRAWAY -- YOU KNOW MR. CARRAWAY;
15 RIGHT?

16 A YES, SIR.

17 Q OKAY. THE ISSUE ABOUT THE KNIFE IN THE BAG, HE
18 DIDN'T OBJECT TO THAT?

19 A RIGHT.

20 Q RIGHT? YOU SAID THAT EARLY ON THAT YOU DIDN'T HAVE A
21 WEAPON IN THE CRIMES; IS THAT WHAT IT WAS? WHAT WAS IT
22 YOU SAID?

23 A I DIDN'T SAY IT. I DIDN'T COMMIT NO CRIME. I
24 DIDN'T SAY THAT. I'M SAYING THAT THEY DIDN'T GET A
25 WEAPON FROM ME WHEN THEY ARRESTED ME.

MICHAEL MCFADDEN - CROSS BY JONES

1 Q OKAY. AND THE CLIPPING YOUR NAME OFF THE PHOTO.
2 YOU SAID THERE WAS A NAME ON THE PHOTO THAT WAS CLIPPED
3 OFF AND SHOULDN'T HAVE BEEN DONE AND YOUR ATTORNEY SHOULD
4 HAVE OBJECTED TO THAT?

5 A HE SHOULD HAVE SAID SOMETHING.

6 Q OKAY. NOW, YOU ALSO MENTIONED EARLY ON ABOUT THIS
7 EXPERT FROM CLEMSON. YOU SAY YOUR ATTORNEY DIDN'T DO THE
8 PROPER PROCEDURE TO GET THAT DONE.

9 A YES, SIR.

10 Q OKAY. THAT'S AN EXPERT WITNESS. NOW, THAT ISSUE
11 WAS TAKEN UP TO THE SUPREME COURT; WAS IT NOT?

12 A I THINK IT WAS.

13 Q OKAY. LETS SEE. NOW, YOU MENTIONED EARLIER ON
14 ABOUT HIS PREPARATION, THAT HE DIDN'T START WORKING ON THE
15 CASE FOR -- UNTIL THREE WEEKS BEFORE COURT.

16 BUT DO YOU FEEL HE ADEQUATELY WAS PREPARED TO GO
17 INTO COURT WITH THE CASE AND TALK WITH YOU ENOUGH AND
18 EVERYTHING?

19 A I MEAN, HE -- HE SITTING RIGHT THERE. HE SAID HE
20 WAS -- I MEAN, HE SAID HE WASN'T, BUT THEY WERE GOING TO
21 TRY ME.

22 Q HE SAID HE WAS OR WASN'T?

23 A HE WASN'T. HE WASN'T.

24 Q YOU SAYING HE WAS NOT PREPARED.

25 A NO, HE WASN'T.

MICHAEL MCFADDEN - CROSS BY JONES

1 Q OKAY. HOW WAS HE NOT PREPARED THAT YOU KNEW ABOUT TO
2 PRESENT YOU -- REPRESENT YOU IN YOUR CASE?

3 A WELL, NUMBER ONE I HAD TOLD THE OFFICERS WHEN I WAS
4 ARRESTED -- AND IT'S IN MY TRANSCRIPT. WHEN I FOUND OUT
5 WHAT I WAS BEING ARRESTED FOR, I TOLD THE OFFICERS WHO I
6 HAD GOT THE JEWELRY FROM.

7 Q OKAY.

8 A AND NOBODY SUBPOENAED THIS MAN TO COURT. NOBODY --
9 THE OFFICERS ADMITTED THAT THEY DIDN'T EVEN GO LOOK FOR
10 THIS MAN. AND I TOLD MR. CARRAWAY ALL OF THIS, BUT WHEN
11 I WENT TO COURT, THIS GUY WASN'T THERE.

12 THEY DIDN'T HAVE HIM THERE. ONE OF THE GUYS
13 CAME THERE THAT SOLD ME THE STUFF, BUT THE OTHER ONE
14 DIDN'T.

15 I FELT THE MAIN -- THE MAIN GUY SHOULD HAVE BEEN
16 THERE. AND IF I TOLD MY LAWYER THAT THIS -- THAT
17 HAPPENED, THEN WHY WOULD YOU ALLOW ME TO SIT IN A
18 COURTROOM AND BE TRIED FOR SOMETHING WHEN I ALREADY DONE
19 TOLD YOU WHO DID THIS.

20 BUT I ENDED UP IN A COURTROOM BEING TRIED FOR
21 THIS. I FELT HE SHOULD HAVE PUT MY CASE OFF UNTIL THE
22 POLICE AT LEAST GO LOOK FOR THIS MAN TO TRY TO FIND THIS
23 MAN. THEY NEVER LOOKED FOR THIS MAN.

24 Q OKAY. SO THAT WAS A WITNESS THAT WAS NOT CALLED THAT
25 SHOULD HAVE BEEN CALLED.

MICHAEL MCFADDEN - CROSS BY JONES

1 A YEAH.

2 Q OKAY.

3 A HE WASN'T A WITNESS.

4 Q WITNESS FOR YOU, THOUGH. WOULDN'T HE BE A WITNESS
5 FOR YOU?

6 A HE WOULDN'T HAVE BEEN A WITNESS FOR ME. I TOLD THEM
7 WHO DID -- WHO COMMITTED THE CRIME.

8 Q OKAY. SOMEBODY SHOULD HAVE BEEN CALLED AT THE
9 HEARING, AT THE TRIAL.

10 A YES.

11 Q OKAY. AND I BELIEVE YOU ALSO STATED THAT HE DIDN'T
12 FILE PAPERWORK, THE NECESSARY PAPERWORK, TO GET THE JUDGE
13 REMOVED FROM THE CASE.

14 A RIGHT.

15 Q OKAY. NOW, THOSE ARE THE THINGS -- GOT MY NOTES --
16 THAT YOU SAID HE WAS NOT EFFICIENT ON AND BECAUSE HE
17 DIDN'T -- YOU ALSO SAID THAT HE DIDN'T GET THE JUDGE
18 RECUSED OR REMOVED FROM THE CASE, THAT THAT HURT HIM
19 DURING THE TRIAL REPRESENTING YOU.

20 A YES, IT DID.

21 Q OKAY. BUT DURING THE TRIAL ITSELF, I BELIEVE YOUR
22 TESTIMONY IS HE DID A GREAT JOB IN YOUR OPINION. HE
23 FOUGHT HARD FOR YOU.

24 A I THINK -- I THINK HE COULD HAVE BEEN. IF HE HAD
25 SPENT MUCH MORE TIME PREPARING MY CASE, THAT WOULDN'T HAVE

MICHAEL MCFADDEN - CROSS BY JONES

1 HAPPENED.

2 AND IF HE HAD FILED THE PAPERWORK WHEN I TOLD
3 HIM THAT I DIDN'T WANT JUDGE SHULER HEARING MY CASE, I
4 THINK MY -- I THINK I WOULD HAVE CAME OUT OF THERE AN
5 INNOCENT MAN AS OPPOSED TO SITTING THERE WITH SIXTY
6 YEARS.

7 Q OKAY. SO YOU -- THE ISSUE OF JUDGE SHULER HEARING
8 THE CASE IS OVERRIDING EVERYTHING ELSE BECAUSE THAT'S WHAT
9 YOU THINK REALLY HURT YOU.

10 A HE DIDN'T EVEN FILE THE PAPERS. I MEAN... HE DIDN'T
11 EVEN -- HE DIDN'T -- HE DIDN'T EVEN ASK THE MAN TO STEP
12 DOWN FROM MY CASE.

13 Q I KNOW YOUR ATTORNEY HAS ASKED THIS QUESTION OF YOU
14 BEFORE, BUT I GOT -- THOSE THINGS ARE THE ONES THAT WE ARE
15 TRYING TO NARROW DOWN OR EXPAND ON SO MR. CARRAWAY CAN
16 RESPOND TO THOSE. THOSE ARE THE ISSUES.

17 YOU ARE SAYING THAT HE WAS INEFFECTIVE
18 REPRESENTING YOU BECAUSE YOU -- CAUSES YOU TO BE SERVING
19 TIME.

20 A YES, SIR.

21 MR. JONES: NOTHING ELSE. THANK YOU, YOUR HONOR.

22 THE COURT: THANK YOU. REDIRECT, MR. BARR?

23 MR. BARR: YES, SIR.

24 REDIRECT EXAMINATION BY MR. BARR:

25 Q NOW, AS TO THE AMOUNT OF TIME THAT YOU RECEIVED, THAT

MICHAEL MCFADDEN - REDIRECT BY BARR

1 IS THE SENTENCE ON EACH -- ON THE ARMED ROBBERY,
2 KIDNAPPING AND THE POSSESSION OF A WEAPON DURING A VIOLENT
3 CRIME.

4 IS IT ALSO YOUR CONTENTION THAT THE AMOUNT OF
5 TIME YOU RECEIVED WAS IN SOME WAY DIRECTED BY JUDGE
6 SHULER'S IMPARTIALITY?

7 A YES, SIR. HE RAN MY TIME CONSECUTIVE.

8 Q PARDON?

9 A HE RAN THEM CONSECUTIVE.

10 Q HE RAN THEM CONSECUTIVELY.

11 A YES, SIR.

12 Q GAVE YOU THE MAX.

13 A YES, SIR.

14 Q WHAT KIND OF CRIMINAL RECORD DO YOU HAVE?

15 A JUST THAT -- JUST THAT OTHER PRIOR ROBBERY THAT I WAS
16 INVOLVED IN.

17 Q THAT'S THE ONLY RECORD YOU'VE GOT?

18 A JUST THAT.

19 MR. BARR: I HAVE NOTHING FURTHER, YOUR HONOR.

20 THE COURT: THANK YOU. YOU CAN STEP DOWN, MR.

21 MCFADDEN.

22 (WHEREUPON THE WITNESS LEFT THE STAND).

23 THE COURT: ANYTHING FURTHER FROM THE APPLICANT, MR.

24 BARR?

25 MR. BARR: NOTHING FURTHER.

LEGRAND CARRAWAY - DIRECT BY JONES

1 THE COURT: THANK YOU. MR. JONES?

2 MR. JONES: MR. CARRAWAY.

3 THE COURT: MR. CARRAWAY, COME AROUND, PLEASE SIR,
4 AND BE SWORN.

5 LEGRAND CARRAWAY, BEING FIRST
6 DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. JONES:

8 Q COULD YOU PLEASE STATE YOUR NAME.

9 A LEGRAND CARRAWAY.

10 Q MR. CARRAWAY, WHAT DO YOU DO FOR A LIVING?

11 A I HAVE A -- I'M A -- I'M THE PUBLIC DEFENDER IN
12 WILLIAMSBURG COUNTY.

13 Q AND HOW LONG HAVE YOU BEEN THE PUBLIC DEFENDER
14 THERE?

15 A THREE AND A HALF YEARS.

16 Q HOW LONG YOU BEEN A LAWYER?

17 A FOUR AND A HALF YEARS.

18 Q AND WHAT DID YOU DO THE OTHER YEAR?

19 A I WAS ASSISTANT PUBLIC DEFENDER IN ORANGEBURG.

20 Q OKAY. AND IN THE COURSE OF THESE FOUR AND A HALF
21 YEARS, HAVE YOU HANDLED MANY CRIMINAL CASES?

22 A YES, I HAVE.

23 Q HOW MANY WOULD YOU SAY YOU'VE HANDLED?

24 A FIFTY OR SIXTY I GUESS THROUGH TRIAL.

25 Q THROUGH TRIAL. HOW MANY PLEAS HAVE YOU DONE --

LEGRAND CARRAWAY - DIRECT BY JONES

1 CASES YOU HAVE HAD. FILES YOU HAD. EXCUSE ME.

2 A HUNDREDS. 5, 600, 700, 800. I PROBABLY -- WELL,
3 ACTUALLY OF CLIENTS I'VE HAD OVER THE YEARS HAS PROBABLY
4 BEEN 2,000.

5 Q OKAY. AND THOSE INVOLVE BOTH TRIALS AND GUILTY
6 PLEAS.

7 A THAT IS CORRECT.

8 Q NOW, DO YOU KNOW OF MR. MCFADDEN?

9 A YES, I DO.

10 Q IN PREPARATION FOR THIS HEARING TODAY, HAVE YOU HAD A
11 CHANCE TO REVIEW YOUR TRIAL INVOLVING YOUR REPRESENTATION
12 OF MR. MCFADDEN?

13 A YES, I HAVE.

14 Q COULD YOU LOOK AT YOUR FILE AND TELL US WHEN YOU
15 FIRST GOT NOTICE THAT YOU WERE TO REPRESENT HIM.

16 A I DON'T HAVE THE FILE BEFORE ME.

17 Q OKAY. WHEN DO YOU RECALL? DO YOU RECALL WHEN YOU
18 WERE---

19 A I STARTED TALKING TO HIM THREE OR FOUR MONTHS BEFORE
20 THE TRIAL.

21 Q OKAY.

22 A AND I DID NOT START PREPARING THIS CASE THREE OR FOUR
23 MONTHS BEFORE TRIAL. BUT I WAS AWARE OF HIM AS WELL AS I
24 CAN RECALL ABOUT-TWO YEARS -- FOR QUITE A WHILE HE WAS
25 OVER AT THE JAIL.

LEGRAND CARRAWAY - DIRECT BY JONES

1 Q OKAY. I BELIEVE THE TRIAL TRANSCRIPT WILL REFLECT
2 THAT IT OCCURRED ON APRIL 6TH AND 7TH, 1992. THAT SOUNDS
3 ABOUT RIGHT?

4 A THAT SOUNDS ABOUT RIGHT.

5 Q WHEN YOU FIRST GOT THE CASE, WHAT DID YOU DO?

6 A WHEN I FIRST GOT THE CASE, I ASKED FOR A PRELIMINARY
7 HEARING. WE HAD A PRELIMINARY HEARING. AND THE VICTIM
8 IN THE CASE MELISSA ROGERS DID COME AND TESTIFY THERE AT
9 THE PRELIMINARY HEARING.

10 Q WHO IS MELISSA ROGERS? THAT WAS ONE OF THE
11 PEOPLE -- THE VICTIMS?

12 A SHE WAS THE GIRL THAT WAS KIDNAPPED. I THINK SHE
13 SAID LOCKED IN THE BACK ROOM. TOOK HER IN THE BACK ROOM,
14 MAYBE TIED HER UP IN THE BACK ROOM OR WHATEVER AND TOOK
15 HER BACK AT KNIFE POINT.

16 AND SHE HAD -- SHE SAID AT THE PRELIMINARY
17 HEARING SHE WAS NOT ABLE TO PICK HIM OUT OF A LINE-UP AND
18 IN ADDITION TO THAT SHE SAID SHE LOOKED AT THE LINE-UP AND
19 ACTUALLY PICKED SOMEONE ELSE OUT OF THE LINE-UP OR
20 WHATEVER.

21 Q THIS ALL TRANSPIRED AT THE PRELIMINARY HEARING?

22 A AT THE PRELIMINARY HEARING. AND I HAD A TRANSCRIPT
23 MADE OF THE PRELIMINARY HEARING, SO WE HAD THAT THAT WE
24 COULD CROSS-EXAMINE HER ON.

25 AND AT THE TRIAL, THE OFFICERS TRIED TO SAY

LEGRAND CARRAWAY - DIRECT BY JONES

1 WELL, SHE JUST COULD NOT -- SHE LOOKED AT THE LINE-UP AND
2 WAS NOT ABLE TO PICK ANYBODY OUT.

3 AND -- YOU KNOW -- I QUESTIONED THEM AS FAR AS
4 WELL, DIDN'T SHE PICK THE WRONG PERSON OUT? THEY DENIED
→ 5 THAT.

6 THEN SHE GOT UP THERE AND BECAUSE I HAD WHERE
7 SHE HAD TESTIFIED TO AT THE PRELIMINARY HEARING OR
8 WHATEVER, SHE SAID -- SHE FINALLY ADMITTED THAT YES, SHE
9 HAD PICKED SOMEBODY OUT.

10 Q THIS IS ALL QUESTIONING AT TRIAL?

11 A THAT'S THE QUESTIONING AT THE TRIAL. AND SHE
12 ADMITTED THAT -- YOU KNOW -- SHE HAD PICKED SOMEONE OUT OF
→ 13 THE INITIAL LINE-UP AND THAT IT WAS -- THAT THE OFFICER
14 TOLD HER IT WAS THE WRONG PERSON.

15 Q NOW, GETTING BACK TO THE PREPARATION FOR THE TRIAL,
16 DO YOU RECALL HOW OR WHAT TIME PERIOD BEFORE THE TRIAL
17 THAT YOU STARTED THE FULL PREPARATION FOR THE HEARING?

→ 18 A HE'S PROBABLY CORRECT, TWO OR THREE WEEKS WOULD BE --
19 WOULD BE ABOUT RIGHT.

20 Q DO YOU FEEL IN YOUR REVIEW OF THE FILE AND YOUR
21 RECOLLECTION THAT YOU CONTACTED AND WAS PREPARED TO GO AT
22 TRIAL?

→ 23 A I KNEW THIS TRIAL WAS THE FIRST ONE ON THE LIST. I
24 KNEW IT WOULD BE A TRIAL. THEY HAD TOLD ME IT WAS GOING
25 TO BE THE FIRST ONE OUT.

LEGRAND CARRAWAY - DIRECT BY JONES

1 AND THEY MAY HAVE EVEN TOLD ME THIS AT THE
2 PREVIOUS TERM OF COURT. PROBABLY DIDN'T. THEY
3 PROBABLY -- THIS WAS ONE OF THE RARE OCCASIONS WHEN I
4 BELIEVE I HAD BEEN GIVEN NOTICE THAT SOMEONE IS GOING TO
5 BE TRIED.

6 BUT THIS ONE WAS AT THE VERY TOP OF THE LIST.
7 AND I KNEW TWO TO THREE WEEKS AHEAD OF TIME THAT THIS
8 WOULD BE THE VERY FIRST CASE OUT OF THE BOX WHEN WE
9 STARTED THAT TERM OF COURT. AND IN FACT IT WAS -- AS I
10 RECALL, IT WAS.

11 Q MR. -- THE APPLICANT STATED THAT YOU WERE NOT
12 PREPARED IN THIS MATTER. IN YOUR OPINION, WERE YOU
13 PREPARED TO GO FORWARD WITH THIS CASE?

14 A IN MY OPINION I WAS PREPARED.

15 Q HE MENTIONED ABOUT ONE OF THE INDIVIDUALS. HE SAID
16 THAT HE BOUGHT THE JEWELRY FROM THAT -- THE TWO OF THEM
17 INVOLVED AND COULDN'T FIND ONE OR ONE WASN'T CALLED. WHAT
18 IS YOUR TESTIMONY ON THAT?

→ 19 A WELL, MY TESTIMONY ON THAT IS THIS WAS A FELLOW NAMED
→ 20 MICHAEL JOHNSON WHO KEPT -- HIS NAME KEPT COMING UP
21 HERE.

→ 22 AS A MATTER OF FACT, HE WAS ARRESTED -- I
→ 23 BELIEVE HE WAS SUPPOSEDLY SITTING AT A TABLE IN A BAR WITH
→ 24 MICHAEL JOHNSON AT THAT TIME. AND I'M -- IF I AM NOT
→ 25 MISTAKEN, I BELIEVE THAT IS CORRECT.

LEGRAND CARRAWAY - DIRECT BY JONES

1 AND MICHAEL JOHNSON IS SOMEONE WHO HE SAID HE
2 BOUGHT THIS JEWELRY FROM. AND IN TRYING TO FIND MICHAEL
3 JOHNSON, HE NEVER COULD -- I SAID WHERE IS HE?

4 WHERE CAN WE FIND HIM OR WHATEVER OR WHO KNOWS
5 HIM OR WHATEVER? AND HE DIDN'T KNOW ANYBODY -- HE DIDN'T
6 KNOW WHERE HE WAS AND HE COULDN'T TELL ME -- I SAID TELL
7 ME SOMEBODY WHO KNOWS HIM THAT I MIGHT CAN SOMEHOW RUN HIM
8 DOWN IN THAT WAY, WHAT AREA, WHO ARE HIS FRIENDS OR
9 WHATEVER?

10 AND HE WAS NOT FAMILIAR ENOUGH WITH HIM TO HELP
11 ME WITH ANY OF THAT AS FAR AS WHO HIS FRIENDS WERE OR
12 WHERE HE MIGHT LIVE, IN WHAT AREA OR WHATEVER. SO THAT
13 WAS CRUCIAL RIGHT THERE.

14 WE NEVER -- I NEVER HAD ANY LEADS ON HIM. AND
15 TO SUBPOENA SOMEBODY, YOU CAN'T JUST ISSUE A BLANKET --
16 YOU KNOW -- JUST PUT A NAME ON A SUBPOENA OR WHATEVER.

17 Q HOW ABOUT THE OTHER WITNESS THAT WAS CALLED?

18 A THE OTHER WITNESS DID TESTIFY.

19 Q AND WHAT DID THEY TESTIFY TO? THEY HELP OR HURT?

20 A IT HELPED.

21 Q NOW, DID YOU SUBPOENA THE OTHER WITNESS OR DID LAW
22 ENFORCEMENT SUBPOENA THE OTHER WITNESS? THE OTHER WITNESS
23 THAT THEY CAME IN AND HELPED HIS CASE ABOUT THE JEWELRY.

24 A I SUBPOENAED HIM.

25 Q SO THE ONE YOU COULD FIND, YOU SUBPOENAED HIM.

LEGRAND CARRAWAY - DIRECT BY JONES

1 A THAT IS CORRECT.

2 Q WHAT WAS THAT PERSON'S NAME?

3 A COREY FULTON.

4 Q THE ISSUE OF JUDGE SHULER, DID MR. MCFADDEN TELL YOU
5 THAT HE DIDN'T WANT TO APPEAR BEFORE JUDGE SHULER?

6 A HE TOLD ME HE DID NOT WANT TO APPEAR BEFORE JUDGE
7 SHULER, BUT AS I UNDERSTOOD FROM HIM, THE REASON WAS HE
8 HAD ALREADY BEEN -- HE HAD BEEN -- THE JUDGE SHULER --
9 JUDGE SHULER FOR TEN YEARS HAD BEEN -- HE HAD BEEN A
10 PUBLIC DEFENDER FOR A CERTAIN -- FOR PART OF THAT TIME AND
11 A SOLICITOR FOR PART OF THAT TIME.

12 AND I DON'T KNOW IF MICHAEL HAD ANY RECORD OTHER
13 THAN JUST THAT PREVIOUS ARMED ROBBERY. BUT -- AND IF I
14 AM NOT MISTAKEN, THAT ARMED ROBBERY INVOLVED SOME WOMAN IN
15 A PARKING LOT WHO WAS DRAGGED AROUND IN A PARKING LOT OR
16 SOMETHING LIKE THAT OR WHO AT LEAST WAS -- THE
17 UNDERSTANDING I HAD FROM LAW ENFORCEMENT OR WHATEVER AND
18 FROM JUDGE SHULER OR WHATEVER THAT THAT IS WHAT -- LAW
19 ENFORCEMENT TOLD ME THAT'S WHAT THE PREVIOUS CASE
20 INVOLVED.

21 SOMETHING LIKE THAT. I DON'T KNOW WHETHER HE
22 HAD ANY OTHER RECORD, BUT I GOT THE IMPRESSION THAT HE
23 HAD HAD OTHER CONTACT WITH GENERAL SESSIONS COURT UP
24 THERE.

25 I DON'T KNOW WHETHER HE EVER WAS CONVICTED OF

LEGRAND CARRAWAY - DIRECT BY JONES

1 ANYTHING OR WHATEVER, BUT AS I UNDERSTOOD, HE HAD BEEN
2 THERE BEFORE OR WHATEVER.

3 AND IN TALKING TO MICHAEL, MY MAIN CONCERN WAS
4 THAT JUDGE SHULER WAS JUST AWARE OF HIS RECORD OR
5 WHATEVER.

6 AND HE -- YOU KNOW -- I WAS NOT -- I DON'T
7 RECALL HIM TELLING ME ABOUT THIS P.C.R. HEARING THAT HE
8 HAD WITH HIM OR WHATEVER.

9 HE COULD HAVE SAID SOMETHING ABOUT THAT OR
10 WHATEVER OR THAT HE P.C.R.'D HIM, BUT I DON'T RECALL THE
11 DETAILS HE WENT INTO TODAY SAYING THAT HE ACTUALLY HAD A
12 HEARING AND HAD GONE THROUGH IT AND ACTUALLY COME UP
13 HERE.

14 HE MAY HAVE MENTIONED TO ME THAT HE WAS NOT
15 PLEASED WITH JUDGE SHULER'S PERFORMANCE BEFORE AND HE MAY
16 HAVE SAID SOMETHING LIKE HE WANTED TO P.C.R. OR SOMETHING
17 LIKE THAT, BUT I DON'T RECALL HIM SAYING THAT HE ACTUALLY
18 HAD A HEARING OR WHATEVER.

19 Q DID HE EVER ASK YOU TO GET ANOTHER JUDGE?

20 A HE WANTED ANOTHER JUDGE.

21 Q WHAT DID YOU THINK ABOUT THAT?

22 A WELL, WHAT I THOUGHT ABOUT THAT WAS THAT THE ONLY
23 REASON HE WAS -- I DIDN'T -- I DIDN'T KNOW THIS P.C.R. HAD
24 REALLY GONE THROUGH.

25 I THOUGHT THAT WAS JUST -- I DIDN'T THINK HE HAD

LEGRAND CARRAWAY - DIRECT BY JONES

1 ACTUALLY -- HE DID NOT INFORM ME AND I'M SURE A RED FLAG
2 WOULD HAVE GONE UP IF HE HAD TOLD ME THAT HE ACTUALLY HAD
3 AN ADVERSARIAL JUDICIAL PROCEEDING AGAINST JUDGE SHULER
4 BEFORE.

5 I DID NOT UNDERSTAND THAT. WHAT I UNDERSTOOD
6 FROM HIM, WHAT I GOT FROM HIM WAS THAT BASICALLY JUDGE
7 SHULER JUST KNEW HIM AND KNEW HIS RECORD REAL WELL AND
8 OVER THESE TEN YEARS HAD CONTACT WITH HIM AND DID NOT
9 THINK HIGHLY OF HIM ANY WAY.

10 AND I THOUGHT THAT WAS HIS MAIN REASON FOR
11 THAT. AND I DID NOT FEEL THAT THOSE WERE GROUNDS TO HAVE
12 JUDGE SHULER REMOVED OR ANYTHING LIKE THAT.

13 Q OKAY. SO BASED UPON WHAT YOU HEARD FROM MR.
14 MCFADDEN, YOU THOUGHT IT WAS NOT NECESSARY TO HAVE JUDGE
15 SHULER REMOVED?

16 A I DIDN'T THINK -- IT WOULD HAVE CERTAINLY BEEN
17 ADVANTAGEOUS FOR US TO, BUT I DIDN'T REALLY THINK WE HAD
18 ANY GROUNDS TO.

19 I THOUGHT THE ONLY GROUNDS WERE JUST BASICALLY
20 THAT HE KNEW HIS RECORD OR WHATEVER AND HE DEFINITELY DID
21 NOT WANT JUDGE SHULER TO HEAR THE CASE.

22 Q BUT YOU THOUGHT THROUGH THE WHOLE MATTER.

23 A I DID THINK THROUGH THE WHOLE MATTER. YES.

24 Q OKAY. NOW, AT THE TRIAL, CLIPPING THE NAME OFF THE
25 PHOTO. MR. MCFADDEN SAID THAT YOU SHOULD HAVE OBJECTED TO

LEGRAND CARRAWAY - DIRECT BY JONES

1 HAVING THE NAME CLIPPED OFF.

2 DID THE JUDGE CLIP THE NAME OFF OF THE TOP OF
3 THE PHOTO? DO YOU RECALL THAT?

4 A I DON'T RECALL THAT. HE COULD HAVE. BUT I DID NOT
5 FEEL THAT THAT NAME WAS CERTAINLY UP THERE DURING THE
6 LINE-UP OR ANYTHING LIKE THAT, YOU KNOW. THERE IS NO
7 EVIDENCE OF WHAT OR WHATEVER.

8 I WOULD HAVE CERTAINLY PICKED UP ON THAT. WE
9 DID GO THROUGH AND EXAMINE BOTH THOSE LINE-UPS AND THE
10 PICTURES THEY HAD THERE AND I EVEN QUESTIONED HER ABOUT --
11 YOU KNOW -- HIM BEING -- YOU KNOW -- HIS PICTURE WAS IN
12 THE FIRST LINE-UP AND WAS THE ONLY -- WAS THE ONLY ONE THE
13 SAME PICTURES IN THE SECOND LINE-UP OR WHATEVER. AND
14 THAT THAT WOULD HAVE MADE IT -- YOU KNOW -- VERY
15 SUGGESTIVE OR WHATEVER.

→ 16 Q OKAY. HOW ABOUT THE KNIFE IN THE BAG? WHAT'S
17 THAT?

18 A I DON'T REMEMBER ANYTHING ABOUT THE KNIFE IN THE
19 BAG. DON'T RECALL ANYTHING ABOUT IT.

20 Q WAS HE INDICTED IN FACT, MR. CARRAWAY, FOR ARMED
21 ROBBERY WITH A WEAPON, A KNIFE?

22 A HE WAS -- HE WAS -- HE WAS CHARGED WITH POSSESSION OF
23 A WEAPON DURING A VIOLENT CRIME. YES, SIR.

24 Q HOW ABOUT THE EXPERT WITNESS? DID YOU MAKE A MOTION
25 TO THE COURT FOR AN EXPERT WITNESS?

LEGRAND CARRAWAY - DIRECT BY JONES

1 A YES, I DID. I HAD -- I DON'T RECALL ANYTHING ABOUT
2 ANY PAPERWORK NOT BEING PROPERLY DONE. I HAD ALREADY HAD
3 DR. COLE FROM CLEMSON COME IN.

4 AND WHAT HIS TESTIMONY BASICALLY WAS, WHAT IT
5 CENTERED AROUND IS -- YOU KNOW -- CROSS RACIAL
6 IDENTIFICATION OR WHATEVER, HOW IT'S VERY DIFFICULT AND
7 HOW BASICALLY BLACKS JUST HAVE FEWER CUE FEATURES OR
8 WHATEVER OR IDENTIFIABLE FEATURES THAN WHITES DO.

9 IT'S NOT NECESSARILY THAT -- YOU KNOW -- YOU
10 KNOW -- JUST FROM ONE RACE TO ANOTHER, BUT JUST THAT
11 BLACKS HAVE FEWER IDENTIFYING CHARACTERISTICS IN THE
12 FACE.

13 AND ALSO ANOTHER CRUCIAL PART ABOUT WHAT HE SAYS
14 BELIES -- WHAT -- I THINK PEOPLE COMMONLY THINK THAT
15 DURING A VERY STRESSFUL THING OR WHEN YOU ARE VERY
16 FRIGHTENED OR WHATEVER, IF YOU LOOK RIGHT INTO THE FACE OF
17 SOMETHING, THAT THAT FACE IS BURNED INDELIBLY INTO YOUR
18 MEMORY FOREVER AND EVER AND YOU NEVER FORGET IT.

19 WHAT HE ACTUALLY SAYS IS THAT UP TO A CERTAIN
20 POINT OF EXCITEMENT OR ANXIETY OR WHATEVER -- YOU KNOW --
21 YOUR ABILITY TO MAKE A MENTAL PICTURE AND RECORD A MENTAL
22 PICTURE OF THAT FACE IS HEIGHTENED AND THAT -- YOU KNOW --
23 YOU CAN DO THAT BETTER.

24 BUT BEYOND -- ONCE YOU GET TO A CERTAIN POINT
25 AND YOU BECOME VERY FRIGHTENED, THAT YOU CAN'T REMEMBER

LEGRAND CARRAWAY - DIRECT BY JONES

1 ANYTHING AT ALL IS WHAT HE HAS DETERMINED.

2 AND HE HAS HAD TESTS WHERE THEY HAVE HAD PEOPLE
3 COME INTO A CLASS ROOM OF HIS. THEY HAVE COME IN
4 THERE. THEY HAD A FIGHT. THEY HAD A BLACK FELLOW COME
5 INTO A CLASS ROOM IN CLEMSON, WAS A FIGHT.

6 THEY STAGED A FIGHT OR WHATEVER. AND THE
7 FELLOW WENT OUT AND EVERYBODY WAS ALL EXCITED AND NOBODY
8 COULD TELL OR VERY FEW COULD TELL -- COULD IDENTIFY HARDLY
9 ANYTHING ABOUT THIS PERSON.

10 AND THAT IS PART OF HIS -- YOU KNOW -- PART OF
11 WHAT HIS STUDIES HAVE REVEALED.

12 Q DID YOU TRY TO GET THIS EXPERT TO TRIAL?

13 A I TRIED TO GET -- AND I HAD HIM FOR A PREVIOUS TRIAL
14 AND HE CAME AND TESTIFIED AT A PREVIOUS TRIAL.

15 Q AT THIS TRIAL?

16 A YEAH. AND I TRIED AT THIS PARTICULAR TRIAL, BUT I
17 WAS AWARE FROM BEFORE WHAT THE LAW SAYS WHEN YOU CAN USE
18 AN EXPERT LIKE THIS.

19 AND WHAT IT SAYS IS THIS OTHER TRIAL THIS WAS
20 SOLELY -- THIS WAS A LITTLE GIRL IDENTIFYING A MAN IN HER
21 HOUSE, IN HER BEDROOM OR WHATEVER. AND THAT IS ALL THAT
22 THEY HAD.

23 THEY DIDN'T HAVE ANY OTHER CORROBORATING
24 EVIDENCE. AND THE LAW WAS SPECIFIC ON THAT. IT STATED
25 TWO DIFFERENT WAYS THAT YOU COULD USE THAT. ONLY TWO

LEGRAND CARRAWAY - DIRECT BY JONES

1 DIFFERENT. ONLY TWO THINGS.

2 THERE WAS NOT ANOTHER REASON THAT YOU COULD USE
3 THAT ALSO. AND HERE THERE WAS OTHER CORROBORATING
4 EVIDENCE HERE.

5 I KNEW THAT AHEAD OF TIME AND I HAD TALKED TO
6 HIM AHEAD OF TIME, BUT I HAD MADE A MOTION TO HAVE DR.
7 COLE TO COME AND TESTIFY AND I HAD HIM ON STAND BY -- BUT
8 I WAS -- I HAD -- I WAS AWARE THAT THIS PROBABLY WOULD BE
9 DIFFICULT AT THAT TIME BECAUSE IT REALLY DIDN'T FIT INTO
10 THE WAY THE LAW WOULD ALLOW.

11 Q SO YOU MADE THE MOTION AND THE JUDGE SAID NO?

12 A THAT'S CORRECT.

13 Q OKAY.

→ 14 A AND THAT IS ALL, OF COURSE, ON THE RECORD. IF I MAY
15 ADD, THAT PERSON WAS ACQUITTED IN THAT OTHER TRIAL.

16 Q AS FAR AS YOUR REPRESENTATION DURING THE TRIAL, DO
17 YOU THINK YOU WERE PREPARED TO VERY ADEQUATELY REPRESENT
18 MR. MCFADDEN?

19 A YES, I DO. I WENT OUT AND I TALKED TO -- HIS MAIN
20 PROBLEM IN THIS TRIAL IS HE HAD TWO OR THREE FRIENDS THAT
21 CLAIMED -- AND THESE WERE -- I DON'T KNOW WHETHER THEY
22 WERE FRIENDS, BUT THEY WERE ACQUAINTANCES OF HIS -- AND A
23 GIRL THAT WITHIN ABOUT TWO HOURS AFTER THIS TRIAL, THEY
24 CAME IN AND TESTIFIED THAT HE HAD SOME OF THIS JEWELRY OR
25 WHATEVER, THAT HE HAD SOME OF THE JEWELRY AND HE HAD

LEGRAND CARRAWAY - DIRECT BY JONES

1 EITHER GIVEN IT TO THEM OR GIVEN IT TO ONE OF THEM OR
2 SOMETHING LIKE THAT OR SOLD IT TO ONE OF THEM AND THEY HAD
3 SOME OF IT.

4 AND THE JEWELRY WAS LATER IDENTIFIED. AND I
5 WENT OUT AND I TALKED TO THESE -- IT WAS -- TWO PEOPLE,
6 TWO GIRLS AND A GUY, I BELIEVE.

7 AND I WENT OVER TO THEIR HOUSE AND OVER IN THIS
8 AREA NOW AND I TALKED TO THEM AND I TALKED TO HIS
9 FAMILY.

10 I TALKED TO -- WE HAD A WITNESS COME IN THAT
11 SAID THAT HE WITNESSED MICHAEL BUYING THIS JEWELRY FROM
12 SOMEBODY RIGHT NEAR WHERE THESE PEOPLE LIVED ON THIS
13 PARTICULAR NIGHT.

14 AND THE PROBLEM WITH THIS PARTICULAR WITNESS IS
15 HE WAS IN JAIL AT THE PARTICULAR TIME WITH MICHAEL OR
16 WHATEVER.

17 AND THEY WERE ABLE TO -- YOU KNOW -- THEY CAST
18 SOME DOUBT FOR THAT REASON AS IF THIS WAS A FRIEND OF HIS
19 COMING INTO EVIDENCE TESTIFY -- YOU KNOW -- FOR HIM OR
20 WHATEVER.

21 I DON'T KNOW WHETHER THAT'S THE CASE, BUT THAT'S
22 WHERE THE PERSON WAS. WE BROUGHT HIM OVER FROM THE JAIL
23 TO TESTIFY TO THAT.

24 Q COUPLE MORE ISSUES THA WERE RAISED ABOUT INEFFECTIVE
25 ASSISTANCE OF COUNSEL POSSIBLY. ONE IS HE DIDN'T --

LEGRAND CARRAWAY - DIRECT BY JONES

1 PLEADING GUILTY. DID YOU TRY TO FORCE HIM TO PLEAD
2 GUILTY BEFORE YOU WENT TO TRIAL?

3 A NO. I DIDN'T TRY TO FORCE HIM TO PLEAD GUILTY AT
4 ALL. I WAS AWARE OF -- THE REASON IT WAS -- I WAS AWARE
5 OF HIS RECORD FROM THE -- AT LEAST HE HAD A PREVIOUS -- I
6 DON'T KNOW -- EVEN EVEN WHETHER THAT WAS AN ARMED ROBBERY,
7 BUT AT LEAST STRONG ARMED ROBBERY.

8 AND IT COULD HAVE BEEN ARMED ROBBERY. AND I WAS
9 AWARE HE HAD ALREADY HAD THIS ROBBERY BEFORE OR
10 WHATEVER.

11 AND YOU KNOW, WE HAD BOTH DISCUSSED THIS AND
12 KNEW THE JUDGE WAS GOING TO -- WE KNEW HE WAS GOING TO GET
13 A HEFTY -- EVEN IN A GUILTY PLEA, HE WAS NOT GOING TO GET
14 MUCH TIME OFF OF THE TIME HE WOULD HAVE GOTTEN HAD HE PLED
15 GUILTY.

16 Q DID YOU -- DID YOU INFORM MR. MCFADDEN ABOUT THE
17 POSSIBILITY OF THE LENGTHY SENTENCE?

18 A YES, I DID. HE ALWAYS KNEW THAT BECAUSE OF HIS
19 PRIOR RECORD, THAT WHETHER HE PLED GUILTY OR HAD A TRIAL,
20 HE WAS LOOKING AT A LOT OF TIME. AND THAT'S WHY WE HAD
21 THE TRIAL BASICALLY.

22 MR. JONES: YOUR HONOR, MAY I BEG THE COURT'S
23 INDULGENCE ONE SECOND?

24 THE COURT: YES, SIR.

25 (WHEREUPON THERE WAS A PAUSE).

LEGRAND CARRAWAY - CROSS BY BARR

1 TRACKS. FRIERSON HOMES IS WHERE IT IS.

2 AND OVER ON THE CORNER OF FRIERSON HOMES IS
3 WHERE HE BOUGHT THIS STUFF -- YOU KNOW -- A COUPLE OF
4 HOURS AFTER THIS. HE DIDN'T HAVE ANY IDEA THAT IT WAS
5 STOLEN.

6 Q ALL RIGHT, SIR. SO YOU DID HAVE A WITNESS WHO WAS
7 PRIVY?

8 A TO THIS SALE.

9 Q TO THE SALE.

10 A YES, I DID.

11 Q AND WHO WAS THAT WITNESS?

12 A COREY FULTON.

13 Q AND COREY FULTON TESTIFIED FOR THE DEFENDANT AT
14 TRIAL.

15 A YES, HE DID.

16 Q AND I BELIEVE THAT COREY INDICATED THAT HE WAS
17 PRESENT WHEN MR. MCFADDEN BOUGHT THE JEWELRY FROM ANOTHER
18 PERSON.

19 A THAT'S CORRECT.

20 Q AND WHO DID COREY FULTON SAY THE OTHER PERSON WAS?

21 A I DON'T KNOW WHETHER HE KNEW WHO HE WAS. HE MAY
22 HAVE SAID IT WAS MICHAEL JOHNSON OR HE MAY HAVE SAID
23 MICHAEL OR HE JUST MAY HAVE SAID HE BOUGHT IT FROM
24 SOMEBODY.

25 I DON'T REMEMBER WHO HE SAID HE BOUGHT IT FROM,

LEGRAND CARRAWAY - CROSS BY BARR

1 WITNESS: NOW IF I MAY SAY, NOT THAT HE DID NOT HAVE
2 A -- HE HAD A FAIRLY GOOD CASE ANYHOW. BUT THAT'S WHAT
3 REALLY TIPPED IT THERE THAT WE WERE NOT GOING TO PLEAD
4 GUILTY.

5 MR. JONES: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: THANK YOU. CROSS-EXAMINATION, MR.
7 BARR.

8 MR. BARR: THANK YOU, YOUR HONOR.

9 **CROSS-EXAMINATION BY MR. BARR:**

10 Q MR. CARRAWAY, WHEN YOU ASSUMED REPRESENTATION OF MR.
11 MCFADDEN, I WOULD ASSUME THAT AT SOME POINT YOU DEVELOPED
12 A DEFENSE THEORY.

13 A YES, I DID.

14 Q ESSENTIALLY WHAT WAS THAT DEFENSE STRATEGY, PLEASE,
15 SIR?

16 A THE DEFENSE THEORY WAS THAT HE -- ON THIS PARTICULAR
17 NIGHT THAT HE RAN INTO -- THAT HE CAME IN CONTACT WITH THE
18 PERSON WHO ACTUALLY ROBBED THIS PLACE.

19 HE DIDN'T KNOW THE PERSON HAD ROBBED THIS
20 PLACE. HE JUST CAME IN CONTACT WITH SOMEONE WHO HAD SOME
21 JEWELRY AND WANTED TO SELL SOME JEWELRY AND HE BOUGHT THE
22 JEWELRY FROM THIS PERSON WITH ANOTHER WITNESS RIGHT
23 THERE.

24 AND YOU KNOW, THAT'S HOW -- IT WAS -- THIS
25 PARTICULAR HOUSING DEVELOPMENT IS ACROSS THE RAILROAD

LEGRAND CARRAWAY - CROSS BY BARR

1 BUT YOU KNOW, OF COURSE, THE MAIN POINT WE HAD HERE WAS
2 JUST THAT HE DID OBSERVE HIM BUYING IT FROM SOMEBODY ELSE.

3 Q UH-HUH. WELL, WOULD IT HAVE BEEN IMPORTANT IN YOUR
4 OPINION TO FOLLOW UP ON THE IDENTITY OF THE PERSON WHO MR.
5 MCFADDEN AND COREY FULTON SAID ACTUALLY SOLD---.

6 A AS I SAID.

7 Q -- THE JEWELRY.

8 A WE TRIED TO FIND MICHAEL JOHNSON. I ASKED HIM. I
9 ASKED AROUND AT THE JAIL. I ASKED ALL AROUND, EVERYBODY
10 AROUND IF ANYBODY KNEW WHO MICHAEL -- A PERSON NAMED
11 MICHAEL JOHNSON WHO FIT THIS DESCRIPTION.

12 I ASKED MICHAEL IF YOU KNOW ANYBODY THAT KNOWS
13 HIM THAT CAN GET ME CLOSER TO HIM. DO YOU KNOW WHERE HE
14 LIVES? DO YOU KNOW ANYTHING ABOUT HIM?

15 AND WE HAVE TO FIND HIM OR WHATEVER. AND HE
16 JUST DID NOT KNOW HIM WELL ENOUGH.

17 Q DO YOU THINK HE EXISTS?

18 A I DON'T KNOW WHETHER HE EXISTS.

19 Q WELL, AT THE TIME THAT YOU WERE REPRESENTING MR.
20 MCFADDEN, DID YOU BELIEVE YOUR CLIENT WHEN HE TOLD YOU
21 THAT MICHAEL---.

22 A I ALWAYS BELIEVE MY CLIENTS. I'M REPRESENTING
23 THEM. I BELIEVED HIM AND I TALKED TO HIM ON NUMEROUS
24 OCCASIONS THAT HAD HE GIVEN ME ANY LEADS, I WOULD HAVE
25 FOLLOWED UP ON THAT LEAD.

LEGRAND CARRAWAY - CROSS BY BARR

1 Q NOW, YOU MENTIONED ON DIRECT EXAMINATION IN
2 CONNECTION WITH -- YOU MENTIONED A WITNESS WHO WAS
3 APPARENTLY PRIVY TO THE SALE WHO LACKED CREDIBILITY.

4 A I DIDN'T -- I SAID HE HAPPENED TO BE IN THE JAIL AT
5 THE TIME WITH MICHAEL MCFADDEN. I DIDN'T SAY -- I
6 SAID---.

7 Q I SEE.

8 A I SAID THAT WAS A FACTOR THERE. I DIDN'T SAY HE GOT
9 UP. HE TESTIFIED. HE GAVE A STRONG STORY AS TO WHAT
10 HAPPENED.

11 AND I'M JUST SAYING THAT -- YOU KNOW -- THE
12 PEOPLE WERE TO SIT OUT HERE TO LISTEN, THEY SAY WELL GEE,
13 BOY, THAT SOUNDS PRETTY GOOD OR WHATEVER.

14 Q NOW, WHO ARE YOU REFERRING TO NOW?

15 A I'M REFERRING TO COREY FULTON.

16 Q COREY FULTON.

17 A YEAH.

18 Q UH-HUH.

19 A BUT HE WAS IN JAIL AT THAT PARTICULAR TIME. AND
20 THAT'S WHAT THE PROSECUTION TRIED TO POINT HIM AS SOMEBODY
21 WHO WAS FRIENDS WITH MICHAEL MCFADDEN WHO MIGHT HAVE PUT
22 HIM UP TO THIS AND THAT HE JUST CAME IN THERE AND LIED OR
23 WHATEVER, YOU KNOW.

24 I DON'T KNOW -- YOU KNOW -- I -- HE TOLD THEM --
25 YOU KNOW -- HE TOLD A VERY PLAUSIBLE STORY.

LEGRAND CARRAWAY - CROSS BY BARR

1 Q WHAT -- DID YA'LL CONSIDER THE ALIBI DEFENSE? DID
2 YA'LL CONSIDER---.

3 A HE DID NOT HAVE -- THERE WAS NOT ANY OTHER PLACE --
4 YOU KNOW -- QUITE OFTEN WE'RE NOT IN A GROUP OF PEOPLE IN
5 A CERTAIN TIME WITH EVERYBODY LOOKING AT A WATCH WHEN
6 SOMETHING HAPPENS OR WHATEVER.

7 AND WE TRIED TO DETERMINE OR THEY SAYING THIS
8 HAPPENED AT THIS TIME, DID YOU HAPPEN TO BE ANY OTHER
9 PLACE WITH SOME PEOPLE WHO CAN COME IN HERE AND VERIFY
10 THAT YOU WERE HERE? AND I THINK HE JUST WAS -- YOU KNOW
11 -- IT WAS JUST -- HE WAS -- JUST HAPPENED TO BE AS MOST
12 OF US ARE BY HIMSELF OR HE COULDN'T RECALL BEING WITH
13 SOMEBODY AT THAT PARTICULAR TIME.

14 Q ALL RIGHT. NOW, WHAT TIME ACTUALLY DID HE ROBBERY
15 AT THE CASSETTE STORE OR VIDEO STORE HAPPEN. WHAT TIME?

16 A I DON'T RECALL EXACTLY WHAT TIME IT WAS. IT WAS
17 SOMETIME AROUND 9:30 OR 10 OR MAYBE 10:30. AND I THINK
18 TWO HOURS LATER IS WHEN THESE PEOPLE WERE TALKING ABOUT
19 THERE WAS SOME SORT OF -- THAT THEY NOTICED HIM WITH THE
20 JEWELRY OR WHATEVER.

21 AND THERE WAS SOME TIME IN BETWEEN THAT TIME --
22 THOSE TWO HOURS THAT HE CLAIMS THAT HE AND COREY FULTON
23 CLAIM THAT HE BOUGHT IT FROM SOMEBODY.

24 HE CLAIMS IT WAS MICHAEL JOHNSON. AND COREY
25 FULTON MAY HAVE SAID MICHAEL JOHNSON OR HE JUST MAY HAVE

LEGRAND CARRAWAY - CROSS BY BARR

1 SAID HE OBSERVED HIM BUYING IT FROM SOMEBODY.

2 Q ALL RIGHT. SO NOW -- TO THE BEST OF YOUR
3 RECOLLECTION, THE ROBBERY SUPPOSEDLY TOOK PLACE BETWEEN
4 PERHAPS 9 AND 10.

5 A AS BEST I CAN RECALL.

6 Q AND IS IT YOUR -- YOUR TESTIMONY -- THAT -- DO YOU
7 RECALL SPECIFICALLY WHERE MR. MCFADDEN INDICATED TO YOU HE
8 ACTUALLY WAS AT THAT TIME -- AT THE TIME THE ROBBERY TOOK
9 PLACE?

10 A I DON'T KNOW WHETHER HE KNEW EXACTLY WHERE HE WAS AT
11 THAT TIME. YOU KNOW. I DON'T KNOW.

12 Q DO YOU RECALL ASKING HIM?

13 A WE TRIED TO PUT TOGETHER AN ALIBI ON THAT AS TO
14 WHETHER YOU WERE WITH ANYBODY OR WHATEVER. I DON'T THINK
15 HE KNEW QUITE WHERE HE WAS AT THAT TIME.

16 Q AND YOU DO HAVE AN INDEPENDENT RECOLLECTION OF ASKING
17 HIM WHERE HE WAS OR WHETHER OR NOT THERE WAS ANYBODY THAT
18 COULD VERIFY HIS WHEREABOUTS AT THE TIME.

19 A I REMEMBER US TALKING ABOUT NOW, WERE YOU WITH --
20 THAT'S THE FIRST THING -- WERE YOU WITH ANYBODY ELSE
21 DURING THIS TIME.

22 I LOOKED AT THAT WARRANT AND SEE WHAT TIME IS
23 THERE. WERE YOU SOMEPLACE ELSE OR WHATEVER. AND AS
24 OFTEN HAPPENS, YOU GET COULDN'T RECALL OR JUST DIDN'T
25 HAPPEN TO BE WITH ANYBODY WHO COULD -- YOU KNOW --

LEGRAND CARRAWAY - CROSS BY BARR

1 LOOKING AT THEIR WATCH OR ANYTHING TO SAY HE WAS WITH THEM
2 THEN.

3 Q NOW, ON THE MATTER WITH -- WERE ANY FINGERPRINTS
4 INVOLVED IN THIS -- IN THE INVESTIGATION OR IN THE CASE OR
5 AT ALL?

6 A AS I RECALL, THEY DIDN'T HAVE ANY FINGERPRINTS.

7 Q NOTHING HAVING TO DO WITH FINGERPRINTS?

8 A NO.

9 Q NOW, ON THE -- THE ISSUE OF JUDGE SHULER RECUSING
10 HIMSELF. WHEN DID YOU FIRST LEARN THAT MICHAEL MCFADDEN
11 AND JUDGE SHULER HAD HAD SOME PRIOR RELATIONSHIP OR SOME
12 PRIOR---

13 A PRETTY MUCH RIGHT OFF THE BAT. AFTER TALKING TO
14 HIM. I WAS AWARE -- ANY TIME I HEAR OF SOMEONE WHO HAS
15 HAD A PROBLEM WITH THE CRIMINAL JUSTICE SYSTEM IN
16 WILLIAMSBURG COUNTY OR WHATEVER, THEN I USE -- JUDGE
17 SHULER IS USUALLY ON TOP OF THAT BECAUSE HE WAS EITHER A
18 PUBLIC DEFENDER OR SOLICITOR OR WHATEVER.

19 AND YOU WOULD KNOW THAT. AND IN TALKING TO HIM
20 RIGHT OFF, HE -- YOU KNOW -- WE ALWAYS KNOW ABOUT SIX
21 MONTHS AHEAD WHO THE JUDGES ARE GOING TO BE OR WHATEVER.

22 AND JUDGE SHULER USUALLY DOES MOST OF OUR
23 COURT. AND WE DISCUSSED IT VERY EARLY. AND HE DID NOT
24 WANT HIM, YOU KNOW. HE DID NOT WANT HIM TO BE THE JUDGE.

25 Q SO IN OTHER WORDS, YOU HAD A SITUATION WHERE YOU HAD

LEGRAND CARRAWAY - CROSS BY BARR

1 A CLIENT IN ADVANCE OF TRIAL WHO VIGOROUSLY OPPOSED HAVING
2 A PARTICULAR TRIAL JUDGE WHO WAS A FORMER DEFENSE
3 ATTORNEY?

4 A WHO HAD BEEN HIS LAWYER.

5 Q AS HIS LAWYER.

6 A YEAH.

7 Q NOW, DID YOU AT THAT POINT -- AND KNOWING WHAT HIS
8 FEELINGS WERE -- DID YOU INQUIRE TO DETERMINE WHY IT WAS
9 THAT HE FELT SO STRONGLY ABOUT NOT HAVING JUDGE SHULER TO
10 TRY THIS CASE?

11 A HE NEVER TOLD ME ANYTHING. HE JUST TOLD ME
12 BASICALLY THAT HE -- THAT HE HAD HAD JUDGE SHULER. JUDGE
13 SHULER HAD REPRESENTED HIM BEFORE. I WAS AWARE OF THAT
14 PARTICULAR CASE.

15 AND YOU KNOW, AS FAR AS THE WOMAN BEING DRAGGED
16 AROUND OR BEATEN OUT IN A PARKING LOT OR SOMEWHERE AND I
17 WAS AWARE OF THAT.

18 AND I WAS AWARE THAT HE HAD HAD SOME MORE
19 BRUSHES WITH THE LAW IN WILLIAMSBURG COUNTY. AND
20 BASICALLY THAT'S WHAT I THOUGHT HIS -- JUST THAT JUDGE
21 SHULER KNEW HIM WELL. THAT IT WOULD BE BETTER FOR A JUDGE
22 WHO DIDN'T KNOW HIM AT ALL TO BE DOING THIS.

23 BUT I DIDN'T FEEL THAT THOSE WERE GROUNDS AND I
24 STILL DON'T THINK THAT THOSE ARE GROUNDS FOR HAVING JUDGE
25 SHULER REMOVED OR TO REQUEST THAT HE RECUSE HIMSELF.

LEGRAND CARRAWAY - CROSS BY BARR

1 Q WELL, HOW ABOUT THE -- HE GOT THE FULL LOAD THOUGH ON
2 THE SENTENCE.

3 A YES, HE DID.

4 Q I SEE. AND DID YOU FIND ANYTHING PERHAPS UNUSUAL
5 ABOUT THAT SENTENCE FROM JUDGE SHULER?

6 A I THINK WE ALWAYS KNEW FROM THAT PREVIOUS CASE THAT
7 HE HAD AND EVERYTHING THAT HE WAS GOING TO GET LOADED UP
8 PRETTY WELL.

9 SO -- AND THAT -- THAT WAS ANOTHER REASON WHY WE
10 DIDN'T EVEN THINK ABOUT A GUILTY PLEA OR WHATEVER. WE
11 KNEW THAT WASN'T GOING TO GET HIM ANYWHERE. AND...

12 Q WELL, GO AHEAD.

→ 13 A BUT A CONSECUTIVE SENTENCE IS UNUSUAL. IT'S NOT
14 UN-HEARD OF. IT'S UNUSUAL.

15 Q WELL, YOU'VE BEEN PRACTICING LAW WITH JUDGE SHULER
16 FOR QUITE A WHILE NOW.

17 A YEAH.

18 Q AND YOU ARE FAMILIAR WITH HIS SENTENCING PATTERNS.
19 DID THAT SENTENCE APPEAR TO YOU TO BE A LITTLE BIT
20 INCONSISTENT WITH JUDGE SHULER'S SENTENCING PATTERNS?

21 AS LAWYERS, WE ALL GET IN THE UNPREDICTABLE
22 BUSINESS OF TRYING TO PREDICT JUDGES. BUT IN YOUR
23 OPINION, DID THAT APPEAR TO BE A LITTLE INCONSISTENT WITH
24 THE WAY HE GENERALLY SENTENCES?

25 A WELL, I NEVER HAD A CASE -- THIS WAS A VERY SEVERE

LEGRAND CARRAWAY - CROSS BY BARR

1 CASE RIGHT HERE. IF SOMEONE IS GUILTY OF THIS, OF ARMED
2 ROBBERY, KIDNAPPING AT KNIFE POINT AND DOING THIS. AND
3 ALSO WITH WHAT HE -- I THINK HE SAID HE PLED GUILTY TO
4 BEFORE AND SURROUNDING THAT OR WHATEVER, YOU KNOW.

5 I THINK IT -- I WOULD NOT THINK -- I WOULD NOT
6 THINK THAT EMOTION ENTERED INTO THIS -- ENTERED INTO THIS
7 DECISION OF JUDGE SHULER.

8 I WOULD THINK HE LOOKED AT THE FACTS OF THIS AND
9 HE PERHAPS IN HIS MIND FELT THAT THIS WAS A DANGEROUS
10 PERSON WHO NEEDED TO BE REMOVED FROM WILLIAMSBURG COUNTY
11 FOR A CONSIDERABLE LENGTH OF TIME.

12 AND SO I DON'T THINK ANY ANIMOSITY OR ANYTHING
13 ENTERED INTO THIS. I WOULD NOT SAY THAT.

14 Q AND WHAT FACTS DO YOU THINK THAT COULD HAVE BEEN THAT
15 HE LOOKED AT THAT HE RELIED UPON IN FORMULATING THE
16 SENTENCE?

17 A WELL, THE SERIOUSNESS OF THIS PARTICULAR OFFENSE, IF
18 HE WAS GUILTY. I'M NOT -- YOU KNOW -- I'M NOT SAYING HE
19 WAS -- YOU KNOW. BUT A JURY FOUND HIM GUILTY.

20 Q WHAT DID HE TAKE, \$100 OFF OF SOMEBODY AND SOME
21 WATCHES, TWO NECKLACES AND A -- WHAT ELSE WAS IT?

22 A WELL, THAT'S WHAT I WOULD SAY AS A DEFENSE LAWYER.
23 BUT THE BAD PART IS IT WAS AT KNIFE POINT AND A NINETEEN
24 YEAR OLD GIRL WAS TIED UP IN THE BACK ROOM.

25 SO I CAN LOOK AT IT FROM THAT SIDE. AND ALSO

LEGRAND CARRAWAY - CROSS BY BARR

1 THE PREVIOUS SITUATION, I THINK, THAT HE HAD PLED GUILTY
2 TO, INVOLVED SOME OLDER LADY OR SOME WOMAN BEING BEATEN
3 IN A PARKING LOT OR SOMETHING LIKE THAT AND BEING
4 ROBBED.

5 SO I THINK LOOKING AT IT FROM THOSE TWO THINGS,
6 I DON'T THINK THAT THIS WAS -- YOU KNOW -- I CAN'T SAY
7 THAT I WAS ALL THAT SHOCKED THAT HE GOT CONSECUTIVE
8 SENTENCES.

9 Q WERE YOU AT ALL A BIT CONCERNED WHEN YOU FOUND OUT
10 THAT -- OF COURSE, YOU KNEW THAT YOUR DEFENDANT WAS A
11 BLACK MALE, A YOUNG BLACK MALE, AND THE PRINCIPAL VICTIM,
12 MRS. ROGERS, IS A YOUNG WHITE FEMALE.

13 A UH-HUH.

14 Q WERE YOU AT ALL CONCERNED AS A DEFENSE LAWYER THAT
15 PERHAPS IN THIS INSTANCE YOU MIGHT DO WELL TO EXPLORE
16 FURTHER THE CONCERNS MENTIONED TO YOU BY MR. MCFADDEN AS
17 RELATED TO HIS PRIOR INVOLVEMENT WITH JUDGE SHULER?

18 A I WOULDN'T HAVE THOUGHT THAT WOULD HAVE ENTERED INTO
19 IT WITH JUDGE SHULER. NOW MAYBE WITH A JURY, I MAY HAVE
20 PREFERRED TO HAVE A CERTAIN TYPE OF JURY IN A CASE LIKE
21 THIS.

22 Q UH-HUH.

23 A AS OPPOSED TO OTHERS. THERE MAY HAVE BEEN A CERTAIN
24 TYPE OF JURY THAT I WOULD -- BUT AS FAR AS JUDGE SHULER
25 AND THIS THEORY OF THIS BEING A BLACK AND WHITE CRIME AND

LEGRAND CARRAWAY - CROSS BY BARR

1 THINKING THAT THAT WOULD PRESENT A PARTICULAR PROBLEM,
2 THAT -- NO, THAT NEVER CROSSED MY MIND.

3 Q YOU NEVER CONSIDERED THAT?

4 A NO. NEVER CONSIDERED IT. DON'T CONSIDER IT NOW.

5 Q ALL RIGHT. I THINK YOU AND I TRIED A CAPITAL CASE
6 ONCE.

7 A YES, WE DID.

8 Q SAME KIND OF SCENARIO.

9 A YES, WE DID.

10 Q FROM THE DEFENSE STANDPOINT, DO YOU SEE ANY
11 SIMILARITIES IN THOSE TWO CASES?

12 A YEAH.

13 Q WHAT WOULD BE THE SIMILARITIES?

14 A WELL, EXACTLY THE SAME THING. A BLACK ON WHITE
15 CRIME WITH A YOUNG BLACK MALE AND A YOUNG WHITE FEMALE.

16 Q KILLED A YOUNG WHITE WOMAN.

17 A THAT IS CORRECT.

18 Q WELL, AT LEAST CONVICTED OF IT.

19 A YEAH. I BELIEVE THIS CASE MAY HAVE HAPPENED BEFORE
20 WE TRIED THAT CASE.

21 Q AND IT'S YOUR TESTIMONY TODAY THAT EVEN THOUGH MR.
22 MCFADDEN INDICATED TO YOU -- AND I THINK YOUR WORDS WERE
23 THAT HE WAS WAS PRETTY ADAMANT ABOUT HIM NOT HAVING JUDGE
24 SHULER -- YOU DID NOT QUESTION HIM FURTHER TO FIND OUT
25 ABOUT THE P.C.R. AND TO FIND OUT THAT HE HAD ACTUALLY HAD

LEGRAND CARRAWAY - CROSS BY BARR

1 A -- PERHAPS THE SAME KIND OF SITUATION THAT YOU HAVE GOT
2 ESSENTIALLY TODAY?

3 A QUITE OFTEN WE HAVE -- IN WILLIAMSBURG COUNTY, WE
4 HAVE CLIENTS THAT JUDGE SHULER JUST KNOWS TOO WELL.

5 Q YES, SIR.

6 A HE KNOWS THEM INSIDE OUT OR WHATEVER. IT HELPS
7 SOMETIMES AND SOMETIMES IT DOESN'T. BUT STILL THAT IS
8 NOT TO SAY HE JUST -- HE KNEW THE PREVIOUS RECORD OR
9 WHATEVER AND THAT'S NOT TO SAY BECAUSE HE KNOWS THEM WELL,
10 THAT THEN AN UNJUST OR AN INTEMPERANT SENTENCE COMES
11 DOWN.

12 I JUST THINK WOULD BE -- YOU KNOW -- THERE ARE
13 SOME KIND OF -- CERTAIN KIND OF CLIENTS THAT I WISH WE HAD
14 A JUDGE THAT DIDN'T KNOW IT ALL IF THEY HAD A BAD
15 REPUTATION.

16 AND I THINK HE HAD A BAD REPUTATION. AND --
17 BUT I DON'T THINK THAT'S -- THAT IS GROUNDS RIGHT THERE
18 TO -- IT'S NOT GROUNDS.

19 I COULD HAVE ASKED FOR IT OR WHATEVER, BUT IT'S
20 CERTAINLY NOT GROUNDS TO GRANT A CHANGING OF A JUDGE I
21 DIDN'T BELIEVE ANY WAY. THAT IS WHY I DID NOT ASK.

22 Q WELL, OF COURSE, YOU ARE -- IF YOU ARE ABOUT TO CALL
23 -- ABOUT TO QUALIFY A JURY, ONE OF THE FIRST THINGS YOU
24 ASK THE JUROR, ASK THE PROSPECTIVE JURORS, IS WHETHER OR
25 NOT THEY KNOW ANY OF THE PARTIES, ANY OF THE PRINCIPALS

LEGRAND CARRAWAY - CROSS BY BARR

1 INVOLVED.

2 AND I WOULD ASSUME AS DEFENSE LAWYERS, YOU DO
3 THAT BECAUSE YOU WANT TO DETERMINE WHETHER OR NOT THERE IS
4 ANY POTENTIALITY FOR SOME BIAS, PERHAPS ON BEHALF --
5 PERHAPS ON THE BEHALF. WOULD YOU AGREE?

6 A I WOULD AGREE.

7 Q DO YOU THINK THAT -- THAT THE SAME IS APPLICABLE WHEN
8 IT COMES TO -- OF COURSE, YOU CAN'T SELECT A TRIAL
9 JUDGE -- BUT WHEN IT COMES TO A SITUATION WHERE A
10 DEFENDANT EXPRESSES AN OBVIOUS CONCERN ABOUT WHETHER OR
11 NOT HE WOULD BE GETTING A FAIR SHAKE BECAUSE OF SOME PAST
12 RELATIONSHIP THAT HE HAS HAD WITH A LAWYER WHO HAPPENS NOW
13 TO BE A JUDGE.

14 A I HONESTLY BELIEVE JUDGE SHULER -- AND I HAVE NO
15 PROBLEM -- I DON'T CARE WHO I SEND BEFORE HIM -- WILL GIVE
16 THEM A FAIR TRIAL OR WHATEVER. AND IT WOULD HAVE BEEN
17 BETTER -- IF I MAY GO ON.

18 IT WOULD BE BETTER IF A JUDGE HAD AS FAR AS THE
→ 19 SENTENCING PURPOSES -- A JUDGE THAT WOULD HAVE NOT KNOWN
20 ANYTHING ABOUT HIS BACKGROUND, HE MAY HAVE GOTTEN A
21 LIGHTER SENTENCE THERE.

22 THAT IS NOT TO SAY THAT IT WOULD HAVE BEEN -- IT
→ 23 WOULD HAVE BEEN A MORE JUST SENTENCE.

24 Q WELL, YOU SAID A FEW MINUTES AGO ON DIRECT
25 EXAMINATION AND I QUOTE THAT CERTAINLY WOULD HAVE BEEN TO

LEGRAND CARRAWAY - CROSS BY BARR

1 HIS ADVANTAGE IF HE DIDN'T HAVE JUDGE SHULER.

2 A ABSOLUTELY.

3 Q WHY DO YOU SAY THAT?

4 A WELL, IT WOULDN'T HAVE BEEN -- WOULD HAVE BEEN FOR
5 SENTENCING PURPOSES, NOT FOR TRIAL PURPOSES. I WOULD
6 JUST ASSUME THAT SOMEBODY FROM -- JUDGE SHULER OR SOMEBODY
7 FROM ALASKA COME IN AND TRY THAT.

8 I DON'T FEEL LIKE THERE WAS ANYTHING -- THAT HE
9 WAS PRESSURED AT ALL DURING THE TRIAL. WE WERE ALWAYS --
10 WE WERE ALWAYS CONCERNED ABOUT WHEN IT CAME DOWN TO AS FAR
11 AS A GUILTY PLEA OR DOWN TO THE SENTENCING PHASE OR
12 WHATEVER, BECAUSE HE KNEW HIS PAST REAL WELL AND KNEW HIM
13 REAL WELL.

14 THAT IS NOT TO SAY IT WAS AN UNJUST SENTENCE.
15 IT WAS JUST A -- I'M NOT SAYING IT'S AN UNJUST SENTENCE AT
16 ALL IN LIGHT OF WHAT HE KNEW.

17 Q WELL NOW MR. CARRAWAY, YOU HAVE BEEN PRACTICING LAW
18 WITH JUDGE SHULER FOR...

19 A UH-HUH.

20 Q WELL, AT LEAST CLOSE TO FOUR YEARS. AND YOU GET SOME
21 TOUGH ONES WITH THE RECORDS THAT ARE YEA LONG.

22 A YEAH.

23 Q AND KIDNAPPING AND ARMED ROBBERY, MURDER, I THINK YOU
24 ALREADY INDICATED THAT PERHAPS -- WELL, IF YOU HADN'T, LET
25 ME ASK YOU NOW.

LEGRAND CARRAWAY - CROSS BY BARR

1 DO YOU -- DID YOU FIND THAT THIS PARTICULAR
2 SENTENCE IN THIS CASE WAS SOMEWHAT OUT OF LINE WITH---.

3 A NO. I DON'T THINK IT WAS OUT OF LINE FOR HIS
4 PREVIOUS RECORD AND FOR WHAT HAPPENED HERE TODAY. I
5 DON'T THINK IT'S OUT OF LINE THERE.

6 Q WELL NOW, I'M NOT ASKING YOU WHETHER OR NOT YOU FEEL
7 THAT MICHAEL MCFADDEN'S SENTENCE WAS A FAIR AND JUST
8 SENTENCE --.

9 A WELL, ISN'T THAT THE QUESTION?

10 Q -- HE DESERVED. I'M ASKING YOU WHETHER OR NOT THAT
11 SENTENCE AS AN ATTORNEY, AS A DEFENSE LAWYER AND CERTAINLY
12 ONE WHO IS FAMILIAR WITH JUDGE SHULER'S SENTENCING
13 PATTERNS -- I'M ASKING YOU WHETHER OR NOT THAT SENTENCE
14 APPEARS TO BE INCONSISTENT WITH WHAT HIS GENERAL
15 SENTENCING PATTERN IS AS YOU KNOW.

16 A WELL, NOT FOR THIS PARTICULAR CASE I WOULDN'T SAY IT
17 IS. HE DOESN'T GIVE CONSECUTIVE SENTENCES VERY OFTEN, BUT
18 YOU DON'T HAVE A CASE THIS SERIOUS WITH A PRIOR RECORD
19 THIS SERIOUS ALSO.

20 Q WELL, DO YOU RECALL ONE NOW THAT HE'S GIVEN A
21 CONSECUTIVE---.

22 A YES, I DO.

23 Q WHICH ONE IS THAT?

24 A I HAVE HAD CONSECUTIVE SENTENCES BEFORE.

25 Q DO YOU HAVE A RECOLLECTION OF ONE?

LEGRAND CARRAWAY - CROSS BY BARR

1 A WELL, JUST LAST WEEK I HAD ONE. RICKY SMITH.

2 Q AND WHAT WAS RICKY SMITH CONVICTED OF?

3 A HE WAS CONVICTED OF MURDER.

4 Q RICKY SMITH?

5 A YES, HE WAS. WELL, HE PLED GUILTY.

6 Q WELL, HE PLED GUILTY?

7 A YES.

8 Q GOT WHAT, TWENTY YEARS?

9 A NO, HE GOT THIRTY YEARS FOR MURDER. THIRTY YEARS
10 FOR KIDNAPPING.

11 THE COURT: GOT LIFE FOR MURDER.

12 MR. CARRAWAY: HE GOT -- YEAH. HE GOT -- YEAH. HE
13 GOT LIFE. GOT LIFE. THEN HE GOT THIRTY FOR THE -- ONE
14 OF THE OTHER CHARGES THERE, FOR THE BURGLARY -- HE GOT
15 LIFE FOR BURGLARY, LIFE FOR MURDER, THIRTY YEARS FOR
16 KIDNAPPING AND FIVE YEARS MORE FOR POSSESSION OF A WEAPON
17 DURING THE COMMISSION OF A VIOLENT CRIME. AND THOSE WERE
18 RUN CONSECUTIVE.

19 Q IN SOMEBODY'S HOUSE?

20 A YEAH.

21 Q SOMEBODY ELSE'S HOUSE?

22 A YEAH.

23 Q SHOT AND KILLED A MAN?

24 A YES.

25 Q SAT THERE AND WAITED FOR HIM TO DIE.

LEGRAND CARRAWAY - CROSS BY BARR

1 A WELL, THAT'S WHAT THEY SAID.

2 Q ALL RIGHT. NOW, IS THAT THE KIND OF VIOLENT CRIME
3 THAT YOU WOULD EQUATE TO STAKING OUT SOMEBODY AND TAKING
4 \$300 OR TWO NECKLACES AND -- YOU ARE NOT SAYING THAT THOSE
5 TWO THINGS ARE SIMILAR?

6 A WELL, COMMUNITY MIGHT SAY THE SAME THING IF SOMEBODY
7 GOES IN AND PUTS A KNIFE TO A NINETEEN YEAR OLD GIRL'S
8 THROAT AND TAKES HER IN THE BACK ROOM AND TIES HER UP AND
9 TAKES HER JEWELRY OFF OF HER AND THEN ROBS THE PLACE.
10 THEY MAY LOOK AT THAT AS BEING SOMEWHAT CLOSE.

11 Q WELL, ALL HE'S DONE IS FRIGHTEN HER. HE HASN'T
12 HARMED HER. WELL I MEAN, OR DO YOU---

13 A I DON'T KNOW WHETHER THAT -- I DON'T KNOW WHETHER
14 THAT'S ALWAYS -- HE WAS GOING TO DO OR NOT.

15 Q WELL, HE DIDN'T DO ANYTHING ELSE; DID HE?

16 A NO, HE DIDN'T.

17 Q AT LEAST THE PERSON THAT PERPETRATED THE CRIME. ALL
18 RIGHT.

19 A AND SHE DID SAY THAT HE DID NOT BEAT HER OR DO
20 ANYTHING LIKE THAT. HE JUST TOOK HER BACK THERE. HE
21 DID NOT -- I DON'T THINK HE LAID A HAND ON HER.

22 Q HOW ABOUT THE -- LETS SEE, NOW. THE KIDNAPPING.
23 HE WAS ALSO CONVICTED OF KIDNAPPING; IS THAT CORRECT?

24 A YES, HE WAS.

25 Q AND WHAT IN YOUR OPINION -- DID YOU HAVE A DEFENSE

LEGRAND CARRAWAY - CROSS BY BARR

1 STRATEGY AS RELATES TO THE -- DEFENDING THIS PARTICULAR
2 CHARGE?

3 A NO, NOT THAT -- OUR WHOLE DEFENSE WAS THAT HE DIDN'T
4 DO THIS AT ALL. THAT HE WAS NOT THERE. OUR DEFENSE WAS
5 NOT -- HER TESTIMONY WAS SOMEBODY TOOK ME AT KNIFE POINT
6 IN A BACK ROOM AND TIED ME UP --.

7 Q DID YOU---.

8 A -- SO I WASN'T GOING TO TRY TO START SAYING WELL, IF
9 HE DID DO THIS, WE DON'T THINK THAT THIS MIGHT BE
10 KIDNAPPING BECAUSE GEE WHIZ, HE DIDN'T QUITE DO THIS.

11 NO, I DIDN'T GET INTO THAT PART OF THE CASE. I
12 JUST STUCK WITH IT. HE DIDN'T DO IT. IT'S NOT HIM OR
13 SOMEBODY ELSE.

14 Q DO YOU RECALL WHETHER OR NOT -- WHETHER OR NOT YOU
15 MOVED FOR A DIRECTED VERDICT AFTER?

16 A YES, I DID.

17 Q AND WERE THERE ANY DISCUSSIONS AT THE TIME ON THE
18 SUFFICIENCY OF THE PROOF ON THE KIDNAPPING?

19 A NO, THERE WASN'T ANY DISCUSSION ABOUT IT. JUST
20 MAKING SURE -- MADE THE MOTION.

21 MR. BARR: COURT'S INDULGENCE, YOUR HONOR.

22 THE COURT: YES, SIR.

23 (WHEREUPON THERE WAS A PAUSE).

24 MR. BARR: JUDGE, THAT'S EVERYTHING.

25 THE COURT: THANK YOU, SIR. ANY REDIRECT, MR.

LEGRAND CARRAWAY - CROSS BY BARR

1 SOLICITOR?

2 MR. JONES: NOTHING, YOUR HONOR.

3 THE COURT: MR. CARRAWAY, YOU MAY STEP DOWN.

4 (WHEREUPON THE WITNESS LEFT THE STAND).

5 MR. JONES: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: ANYTHING FROM THE APPLICANT IN REPLY?
7 FROM THIS WITNESS?

8 THE COURT: THANK YOU. YOU MAY STEP DOWN, MR.
9 CARRAWAY.

10 (WHEREUPON THE WITNESS LEFT THE STAND).

11 THE COURT: ANYTHING FURTHER FROM THE APPLICANT, MR.
12 BARR?

13 MR. BARR: NOTHING FURTHER.

14 THE COURT: THANK YOU. GENTLEMEN, I WILL ADVISE YOU
15 ALL OF MY DECISION BY THE MIDDLE OF NEXT WEEK. THE TIME
16 TO APPEAL FROM THE P.C.R. WILL BE TRIGGERED BY RECEIPT OF
17 THE SIGNED ORDER AND NOT BY THE LETTER ANNOUNCING MY
18 DECISION. THANK YOU.

19 -----END OF REQUESTED TRANSCRIPT OF RECORD-----
20
21
22
23
24
25

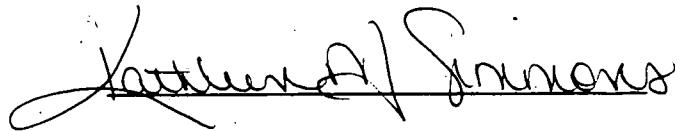
LEGRAND CARRAWAY - CROSS BY BARR

C E R T I F I C A T E

I, THE UNDERSIGNED KATHLEEN M. SIMMONS, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COMMON PLEAS COURT FOR WILLIAMSBURG COUNTY, SOUTH CAROLINA, ON THE THIRD DAY OF NOVEMBER, 1994.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

MARCH 30, 1998

A handwritten signature in cursive script, reading "Kathleen M. Simmons", written over a horizontal line.

CIRCUIT COURT REPORTER

LEGAL MEMORANDUM

TO: TERANI LAW FIRM
FROM: ANNA GOOD
LAW OFFICE OF ANNA GOOD, LLC
SUBJECT: BILAL AL-HAQQ (AKA MICHAEL MCFADDEN)
CASE EVALUATION
DATE: OCTOBER 6, 2011

ISSUE

Does Bilal Al-haqq have any possibilities of relief from his prison sentence resulting from his trial and conviction of Armed Robbery, Kidnapping, and Possession of a Weapon during the Commission of a Violent Crime dated April 7, 1992?

FACTS

On April 6, 1992, Mr. Bilal Al-haqq (hereinafter Mr. Al-Haqq) was convicted of Armed Robbery, Possession of a Weapon during a Violent Crime, and Kidnapping in Williamsburg County, South Carolina. His defense counsel for this trial was Legrand Carraway, and the trial judge was the Honorable Marion Shuler.

When Mr. Al-Haqq learned Judge Shuler was the judge for his trial, he voiced his concern to Mr. Carraway. Prior to being arrested for this charge, Judge Shuler represented Mr. Al-Haqq on a previous armed robbery charge, for which he received jail time. During a Post-Conviction Relief hearing that Mr. Al-Haqq had filed against Judge Shuler, Judge Shuler began to cry under oath and Mr. Al-Haqq decided to withdraw his action due to the situation. In the hallway before Mr. Al-Haqq's current trial for which he is now incarcerated, Judge Shuler saw Mr. Al-Haqq and commented "Hey. I remember you." Judge Shuler also advised Mr. Carraway that if Mr. Al-Haqq would plea guilty, he would sentence him to twenty (20) years, but if he decided to go to trial and

was convicted he was going to give him sixty (60) years in prison. Mr. Al-Haqq again voiced his concern that Judge Shuler was biased against him, but Mr. Carraway failed to make a motion for the judge to recuse himself.

After conviction at trial, Judge Shuler sentenced Mr. Al-Haqq to twenty-five (25) years on the Armed Robbery, five (5) years on the Possession of a Weapon during a Violent Crime, and thirty (30) years on the Kidnapping, all to run consecutively to total sixty (60) years in prison. During the sentencing, Judge Shuler and Mr. Al-Haqq had a colloquy regarding Judge Shuler's previous representation of Mr. Al-Haqq, and Judge Shuler commented, "I want to see how long they [the Department of Corrections] are going to keep you this time." This sentencing pattern was a deviation from Judge Shuler's normal pattern of sentencing multiple convictions as concurrent sentences.

Upon conviction, Mr. Al-Haqq appealed his conviction, and both the Court of Appeals and the Supreme Court denied his appeal. On February 21, 1994, Mr. Al-Haqq filed his first Post-Conviction Relief (PCR) claim against Mr. Carraway. This PCR was dismissed after a hearing on January 20, 1995. He then filed a second PCR against his PCR counsel for not filing a notice of appeal. This was also dismissed. Finally, in 1997, Mr. Al-Haqq filed a third PCR, which was also subsequently dismissed.

Since being incarcerated, Mr. Al-Haqq has been a model inmate. This evaluation is a result of the above conviction and the amount of time he is currently serving in the prison system. Mr. Al-Haqq has hired us to determine if there is any way legally for him to be able to shorten his sentence at this time and have an early release. In order to form my legal opinion, I have conducted interviews with Mr. Al-Haqq and Ben Aplin with the Department of Probation, Pardon, and Parole. In addition, I have reviewed case law, statutes, and transcripts of his trial, subsequent appeals and PCRs to help form an unbiased opinion based upon the information available to me.

DISCUSSION

A. Post-Conviction Relief (PCR) and Appeals

In South Carolina, anyone convicted of, or sentenced, for a crime may file a post-

conviction relief action to remedy the situation if they believe their attorney did not represent them sufficiently. This must be done within one year of the conviction, unless there is a pending appeal. The one year is then tolled until the appeal process has been concluded. Section 17-27-45 S.C. Code Ann. 1976. Many times, these actions are based on ineffective assistance of counsel. In Mr. Al-haqq's case, he has filed three PCR actions (see dates above in Facts), and each one was denied. At this point, Mr. Al-haqq has exhausted all PCR avenues available to him. In addition, Mr. Al-haqq filed an appeal from his trial conviction, and this was also denied. Therefore, Mr. Al-haqq also does not have any appeals left for his case.

B. Sex offender registry

Mr. Al-haqq was convicted of Kidnapping as a result of his trial on April 7, 1992. As a result of this conviction, he was automatically sentenced to be required to register as a sex offender. Mr. Al-haqq will be required to register pursuant to S.C. Code Ann. § 23-3-430 (2007), which provides that persons convicted of certain offenses must register as sex offenders upon their release. The current statute requires that any person convicted of kidnapping a person eighteen years of age or older must register as a sex offender *unless a finding is made on the record that the kidnapping did not include a criminal sexual offense or attempted criminal sexual offense.*

Mr. Al-haqq's kidnapping conviction stemmed from an armed robbery of a convenience store. There is no, and has never been, any allegation that there was any sexual offense involved in this armed robbery. The trial transcript corroborates this notion. In the sentencing portion of his trial, his defense attorney did not ask the judge make a finding on the record that the kidnapping did not include a criminal sexual offense; therefore, Mr. Al-haqq's sentence defaulted to include the sex offender registry.

There is case law exactly on point regarding this issue in South Carolina. In Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (S.C. 2008), the court ruled that if a judge can make a determination that a prior kidnapping offense did not involve sexual misconduct such that the one convicted is required to register as a sex offender, then the defendant shall be removed from the registry. In addition, I have spoken with one of my

contacts at the South Carolina Attorney General's Office, and he informed me that many times, if the proof is overwhelming that no sexual misconduct existed during the commission of the crime, the solicitors have a form they can fill out and the parties do a consent order for the administrative judge to sign regarding removing the defendant from the sex offender registry.

In Mr. Al-haqq's case, the trial transcript provides more than ample information to prove there was no sexual misconduct involved in the armed robbery. In my legal opinion, this would be an issue that could be taken care of simply by contacting the solicitor for Williamsburg County and doing the consent order for the judge's signature. If not, it could be done through the judicial system by obtaining a declaratory judgment in Common Pleas court, following the case law of Hazel v. State.

C. Pardon

Another option for Mr. Al-haqq to end or shorten his sentence is a pardon. Under Section 24-21-950, "an inmate must be considered for pardon before a parole eligibility date only when he can produce evidence comprising the most extraordinary circumstances." Section 24-21-950, S.C. Code Annotated (1977). There is no definition for what constitutes most extraordinary circumstances, nor is there any case law on the subject. I spoke with the South Carolina Department of Probation, Pardon, and Parole agency's attorney, Mr. Ben Aplin, and he informed me that the board normally considers this to mean an inmate with a terminal illness, that must be confirmed by two independent doctors. Mr. Al-haqq does not fit this description, so that would not be an option. However, I did mention some of the facts to Mr. Aplin, and there is still the argument for extraordinary circumstances due to the issue with Judge Shuler's prior representation of Mr. Al-haqq and his comments on the record regarding sentencing, as well as the fact that Mr. Al-haqq has been a model inmate with the South Carolina Department of Corrections, rising to the leader of his ward. In my legal opinion, Mr. Al-haqq has a possibility of receiving a pardon if he were to go this route; however, considering the board normally only considers terminal illnesses as the only extraordinary circumstance, it may be very hard for them to grant him a pardon since it is

outside of their comfort zone. For the pardon hearing, we, if retained, would acquire the prior PCR transcript from Judge Shuler, get an affidavit from Mr. Carraway discussing his conversations with Judge Shuler about the case, and obtain affidavits from the warden and any other people who would be beneficial to show Mr. Al-haqq is a perfect inmate who would deserve a pardon.

D. Motion to Reconsider Sentence

Defendants are allowed to file a Motion to Reconsider their Sentence due to any new evidence indicating the need to lower their sentence. Under Rule 29 of the South Carolina Rules of Criminal Procedure, "post-trial motions shall be made within ten (10) days after the imposition of the sentence. While Mr. Al-haqq may have a good case for why his sentence should be reconsidered due to the argument the trial judge should have recused himself, Mr. Al-haqq would have had to file his Motion to Reconsider Sentence within ten days of his sentencing, which would have been April 16, 1992. Due to this technicality, and the fact there is no new evidence since the argument of the judge recusing himself was known at the time of the trial, it is my legal opinion that Mr. Al-haqq cannot pursue this avenue for a reduction in his sentence.

E. Good time credit/Work release/Early Release

Mr. Al-haqq was sentenced to twenty-five (25) years for the armed robbery conviction, thirty (30) years for the kidnapping conviction, and five (5) years for the possession of a weapon during crime of violence conviction, all to run consecutive to one another. In order to calculate the sentencing for Mr. Al-haqq, the aggregate of the three convictions is taking, making Mr. Al-haqq's sentence sixty (60) years. Normally, in this circumstance, Mr. Al-haqq would be parole eligible; however, due to his situation, he is not parole eligible. Section 24-21-640 of the S.C. Code Ann. (1976) states that

"The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16-1-60."

Mr. Al-haqq has a prior armed robbery conviction from 1985 which subjects him to this statute. While he has been up for parole hearings in the past, the reason he was denied was due to this statute, and he will always be denied.

Since he is required to serve sixty (60) years for all of his charges and is not parole eligible, Mr. Al-haqq must max out his sentence. His max out date would be the year 2051. Mr. Al-haqq was under the impression he was not receiving any "good time" or work credits that apply towards his sentence. I have spoken with Probation, Pardon, and Parole, and he is in fact receiving that time. Due to the good time and work credits he has already accrued, Mr. Al-haqq's projected release date is the year 2027 (24 years less than his max out date. This will continue to accrue and lessen his sentence, assuming Mr. Al-haqq continues his path as a model inmate.

CONCLUSION

After gathering the relevant information needed, it is my legal opinion that Mr. Al-haqq will be able to remove his name from the sex offender registry. In addition, it is my legal opinion that Mr. Al-haqq has two options to lessening his current prison sentence: continuing to earn good time and trying for a pardon. The pardon is a long shot due to the normal decisions the Pardon Board makes regarding extraordinary circumstances, but with the right mitigation and proper arguments, it is possible they may find his situation extraordinary and grant him a pardon.

(EXHIBIT-C)

THE STATE OF SOUTH CAROLINA
THE COUNTY OF ALLENDALE

Affidavit Of Keith Pressley

RE: Michael D. Mcfadden vs. State Of South Carolina

I, Keith Pressley, Keith Pressley, Being duly sworn, deposes and says: That for my conscience sake, Im writting this affidavit so that the truth will be made known, and in order to correct the wrong that has been done. Over 20 years ago, Michael Mcfadden and I were sitting outside of his girlfriend Cassandra Pendergrass house in the Frieson Homes Project. Mr. Mcfadden had just came home to Kingstree, S.C. We had not seen each other for quite some time and had been together most of the day. While sitting in my car at the Rec. Center across from Ms. Pendergrass apartment, two guys approached the car and asked if we wanted to buy some jewelry? Apparently, one of the guys knew Mr. Mcfadden. After taking a look at the jewelry, both me and Mr. Mcfadden told them that we didn't want to buy it. Before the two guys could get away Mr. Mcfadden called them back and offered to buy the jewelry from them, and he did. Later I left Mr. Mcfadden in the project With Ms. Pendergrass and one of her female friends. I came back later that night to pick Mr. Mcfadden up from Ms. Pendergrass apartment. We rode over to the Rocktown community, and I left Mr. Mcfadden inside a club we were at in order to go buy some cigarettes from Wards grocery. I left Mr. Mcfadden ther in order to call officers Michael Graham and Michael Kirby, because they had busted me earlier with drugs. In order to go free of the charge I gave them Michael Mcfadden's name and told them that he had done it, but did not tell them I was with Mr. Mcfadden when he purchased the jewelry from the two guys. Officers Graham and Kirby had caught me selling drugs out the trunk of my car, and because they had asked me about a robbery and some jewelry, I lied in order not to be prosecuted for the drugs that they took from me that afternoon. Im very sorry about what I did, and I pray that Michael and His family will find it in their hearts to forgive me for what I did.

Under the penalty of perjury, I swear that the above information is true and accurate.

sworn and subscribed to before
me this 31 day of Jan, 2012.

Notary Public for S.C. Cynthia G. Sanders

My commission expires 3/9/21.

SI Keith Pressley
Keith Pressley

WITNESSES

KINGSTREE PD

Mike Kirby

Joseph M. Graham

Samuel Hazel

Cynthia Brown

Patsy Powell

Melissa Rodgers

Kaiten Presley

Malinda Hammond

Sandra Pennington

Frances Wagner

Balazs Ward

ARREST WARRANT NO. C 968622 & C 968647

11/14/91

ACTION OF GRAND JURY

True Bill

James A. White
Foreman of Grand Jury

VERDICT

Wanda J. Giles Forelady
"Guilty"

Wanda J. Giles 4/7/92
Foreman of Petit Jury Date:

DOCKET NO.

92-GJ-45-80

The State of South Carolina,

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

FEBRUARY

TERM 1992

THE STATE

vs.

MIKLE DION MCFADDEN

a/k/a/ MICHAEL MCFADDEN

Indictment for

ARMED ROBBERY, POSSESSION OF A
WEAPON DURING A VIOLENT CRIME
AND KIDNAPPING

(EXHIBIT-D)

(EXHIBIT-E)

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

ARMED ROBBERY, POSSESSION OF A WEAPON DURING
A VIOLENT CRIME AND KIDNAPPING

At a Court of General Sessions, convened on February 3, 1992

the Grand Jurors of Williamsburg County present upon their oath:

COUNT ONE - ARMED ROBBERY

/ aka MICHAEL MCFADDEN
That one MIKLE DION MCFADDEN did in Williamsburg County on or about
October 28, 1991, while armed with a deadly weapon, to wit: knife, feloniously
take from the person or presence of Melissa Rodgers by means of force or
intimidation goods or monies of Melissa Rodgers and/or Clemmons Video Store,
such goods or monies being described as follows: \$300.74 cash, two (2)
necklaces, one (1) watch and one (1) class ring.

COUNT TWO - POSSESSION OF A WEAPON DURING A VIOLENT CRIME

/ aka MICHAEL MCFADDEN
That one MIKLE DION MCFADDEN did in Williamsburg County on or about
October 28, 1991, possess or visibly display a knife during the commission
or attempted commission of a violent crime, in violation of § 16-23-490,
Code of Laws of South Carolina (1976), as amended.

COUNT THREE - KIDNAPPING

/ aka MICHAEL MCFADDEN
That one MIKLE DION MCFADDEN did in Williamsburg County on or about
October 28, 1991, unlawfully seize, confine, inveigle, decoy, kidnap, abduct
or carry away Melissa Rodgers without authority of law, in violation of
§ 16-3-910, South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.

A CERTIFIED TRUE COPY

Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Wade S. Kolb, Jr.
SOLICITOR WADE S. KOLB, JR.

ARREST WARRANT

C-968647

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE, S.C.

THE STATE

against

MIKLE DION MCFADDEN

Address: 2107 KINDER RD.

KINGSTREE, S.C.

Phone: _____ SSN: 247-33-9070

Sex: M Race: B Height: _____ Weight: _____

DL State: _____ DL #: _____

DOB: 9/15/65 Agency ORI #: _____

Prosecuting Agency: KINGSTREE POLICE DEPT.

Prosecuting Officer: JOSEPH M. GRAHAM

Offense: KIDNAPPING

Offense Code: _____
Code/Ordinance Sec. 16-3-910This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Mickle Dion McFadden
on 11-14-91

Signature of Constable/Law Enforcement Officer

A CERTIFIED TRUE COPY

RETURN WARRANT TO:

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE, S.C.

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518

Personally appeared before me the affiant JOSEPH M. GRAHAM who
being duly sworn deposes and says that defendant MIKLE DION MCFADDEN
did within this county and state on OCTOBER 28, 1991 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of KINGSTREE, S.C.)
in the following particulars:

DESCRIPTION OF OFFENSE:

KIDNAPPING 16-3-910

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON OCTOBER 28, 1991, ONE MIKLE DION MCFADDEN, DID AFTER ROBIN MELISSA RODGERS
AT CLEMONS VIDEO, 1603 LONGSTREET ST., IN KINGSTREE, S.C. DID TAKE MELISSA
RODGERS INTO A BACK ROOM AREA OF THE STORE, TIED HER UP WITH A ROPE, DEPRIVING
HER OF HER FREEDOM AND CONFINING HER TO THAT ROOM WHILE MIKLE DION MCFADDEN
MADE HIS GET AWAY. KIDNAPPING IS IN VIOLATION OF THE S.C. CODE OF LAWS, SECTION
16-3-910.

Sworn to and subscribed before me
on Nov 14, 1991
Signature of Affiant (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address

401 N. LONGSTREET STREET
KINGSTREE, S.C. 29556

Affiant's Telephone

354-5435

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE, S.C.

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on OCTOBER 28, 1991 defendant MIKLE DION MCFADDEN
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of KINGSTREE, S.C.) as set forth below:

DESCRIPTION OF OFFENSE:

KIDNAPPING 16-3-910

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her
before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge Code: 708

Judge's Address

1 COURTHOUSE SQUARE
KINGSTREE, S.C.

Judge's Telephone

354-5435

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ARREST WARRANT

C-968622

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of

THE STATE

against

MIKLE DION McFADDEN

Address: 2107 KIRBY RDKINGSTREE S.C. 29556Phone: _____ SSN: 247-38-7022Sex: M Race: B Height: _____ MWeight: _____

DL State: _____ DL #: _____

DOB: 9-15-65 Agency ORI #: _____Prosecuting Agency: KINGSTREE POLICE DEPT.Prosecuting Officer: JOSEPH M. GRAHAMOffense: ARMED ROBBERYOffense Code: 16-11-330Code/Ordinance Sec. 16-11-330This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge _____ (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant MIKLE DION McFADDEN
on 11-14-91Signature of Constable/Law Enforcement Officer
Capt Robert J. Lester

A CERTIFIED TRUE COPY

RETURN WARRANT TO

CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 28, 1990
SCCA 518Personally appeared before me the affiant JOSEPH M. GRAHAM / Mike Kirby who
being duly sworn deposes and says that defendant MIKLE DION McFADDEN
did within this county and state on 10-28-91 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of KINGSTREE S.C.)
in the following particulars:DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THAT ON 10-28-91 AT APX. 9:30 P.M. ONE MIKLE DION McFADDEN DID ENTER
CLEMMONS VIDEO ON N. LONGSREET IN KINGSTREE S.C. AND DID ROB ONE MELISSA
RODGERS AT KNIFE POINT OF 300.74, TWO NECKLACES, AWATCH, AND A CLASS RING
VALUED AT APX. 400.00 ARMED ROBBERY IS IN VIOLATION OF S.C. CODE QB LAWS

Sworn to and subscribed before me

on Nov 4, 1991

Signature of Affiant

Affiant's Address _____

Affiant's Telephone _____

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
KINGSTREE S.C.

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 10-28-91 defendant MIKLE DION McFADDENdid violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of KINGSTREE S.C.) as set forth below:DESCRIPTION OF OFFENSE: ARMED ROBBERY 16-11-330Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her
before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge _____ (L.S.)

Judge's Address _____

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☐ Municipal ☐ Circuit

MICHAEL D. MCFADDEN #126806
A/K/A Bilal A. Al-HAQQ
Allendale Corr. Inst. - F5B227
P.O. Box 1151
FAIRFAX, S.C. 29827

Intercept

RECEIVED

FEB 19 2014

MAILROOM
ACI

HON. DANIEL E. SHEARHOUSE, Clerk
Supreme Court of South Carolina
Post Office Box 11330
Columbia, S.C. 29211

(LEGAL MAIL)

LEGAL MAIL

MICHAEL D. MCFADDEN #126806
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