

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Barnwell County

R. Ferrell Cothran, Jr., Circuit Court Judge

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S.C. Supreme Court

MICHAEL KENNEDY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002334

APPENDIX

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STATE OF SOUTH CAROLINA	}	COURT OF GENERAL SESSIONS
COUNTY OF BARNWELL		
		07-GS-06-144,145
		07-GS-06-181,182

THE STATE OF SOUTH CAROLINA	}	TRANSCRIPT OF RECORD
PLAINTIFF		
VS.	}	
MICHAEL C. KENNEDY AND LUGENE	}	
TOOKS		
DEFENDANTS	}	

MAY 7, 2007
BARNWELL, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS A. RUSSO, JUDGE.

A P P E A R A N C E S:

BENJAMIN R. MOORE, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

FRANCHOT A. BROWN, ESQ.
ATTORNEY FOR THE DEFENDANT MR. KENNEDY

GLENN WALTERS, ESQ.
ATTORNEY FOR THE DEFENDANT MR. TOOKS

LISA H. HICKLIN
OFFICIAL COURT REPORTER

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
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(NONE OFFERED)

1 (WHEREUPON, ON MAY 7, 2007 THE FOLLOWING PROCEEDINGS
2 WERE HELD:)

3 THE COURT: ALL RIGHT, SOLICITOR.

4 MR. MOORE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
5 COURT. THESE ARE TWO CASES -- MICHAEL C KENNEDY; HE IS
6 INDICTED ON 2007-144, 145, AND 146. THE CHARGES ARE ARMED
7 ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL, AND
8 CRIMINAL CONSPIRACY. WE ALSO HAVE MR. LUGENE TOOKS WHO
9 HAS THE SAME CHARGES. HE IS 2007-181, 182, 183, AND HE IS
10 ALSO INDICTED FOR ARMED ROBBERY, ASSAULT AND BATTERY WITH
11 INTENT TO KILL, AND CRIMINAL CONSPIRACY. BOTH CURRENTLY
12 HAVE A \$55,000 BOND. BOTH ATTORNEYS -- MR. GLENN WALTERS
13 FOR MR. TOOKS AND MR. FRANCHOT BROWN FOR MR. MICHAEL
14 KENNEDY -- HAVE MADE MOTIONS FOR A BOND REDUCTION.

15 YOUR HONOR, WE HAVE THE VICTIM'S FAMILY HERE. WE
16 ALSO HAVE A FRIEND OF THE FAMILY -- JUDGE PEEPLES -- HERE
17 WHO WOULD LIKE TO SPEAK, AND I'LL BE AVAILABLE TO GIVE ANY
18 FACTS THAT THE COURT WOULD LIKE AT THE APPROPRIATE TIME.

19 THE COURT: ALL RIGHT. LET ME -- JUST FOR
20 CLARIFICATION, THE \$55,000 BOND IS INCLUSIVE OF ALL OF THE
21 CHARGES? THAT'S A CUMULATIVE BOND?

22 MR. BROWN: THAT'S CORRECT.

23 MR. WALTERS: YES, SIR, YOUR HONOR.

24 MR. MOORE: YES, SIR.

25 THE COURT: ALL RIGHT. GENTLEMAN, WHOEVER WANTS TO

(STATEMENT BY MR. WALTERS)

4

1 SPEAK FIRST.

2 MR. WALTERS: MAY IT PLEASE THE COURT.

3 THE COURT: YES, SIR.

4 MR. WALTERS: YOUR HONOR, BEFORE YOU IS MR. LUGENE
5 TOOKS. MR. TOOKS IS 17 YEARS OLD. HE IS THE FATHER OF
6 ONE CHILD THAT'S A YEAR OLD. HE ATTENDED RED OAK BAPTIST
7 CHURCH. IN ADDITION TO THAT HE COMPLETED THE 9TH GRADE
8 EDUCATION. YOUR HONOR, I UNDERSTAND YOU HAVE TO TAKE INTO
9 CONSIDERATION TWO DIFFERENT FACTORS WHEN CONSIDERING THIS.
10 NUMBER ONE IS SERIOUSNESS OF THE THREAT ITSELF, AND,
11 NUMBER TWO, THE POSSIBILITY OF FLIGHT. I'LL BEGIN BY
12 ADDRESSING THE SECOND ISSUE.

13 IN THIS PARTICULAR CASE MR. TOOKS -- HE LIVES WITH
14 HIS MOTHER MICHELLE TOOKS AND MS. TOOKS IS HIS PRIMARY
15 SUPPORT. IN THIS PARTICULAR CASE WE DO HAVE A 17-YEAR-OLD
16 KID THAT'S BEFORE THE COURT. HE HAS NEVER BEEN IN TROUBLE
17 BEFORE, NEVER COMMITTED A CRIME BEFORE, NEVER BEEN
18 INVOLVED IN THIS TYPE OF ACTIVITY. HOWEVER, IN THIS
19 PARTICULAR CASE UNDER THE CIRCUMSTANCES THIS IS A VERY
20 SERIOUS OFFENSE, AND IN NO WAY ARE WE HERE TO TRIVIALIZE
21 WHAT'S BEFORE THE COURT.

22 HOWEVER, IN CONSIDERING THE ISSUES OF FLIGHT, HE DOES
23 NOT HAVE THE WHERE-WITH-ALL, THE SUPPORT, NOR THE MEANS TO
24 GO ANYWHERE. IN THIS PARTICULAR CASE HE'S LIVED HERE ALL
25 OF HIS LIFE. SO, UNDER THE CIRCUMSTANCES WE WOULD SIMPLY

(STATEMENT BY MR. WALTERS)

5

1 PUT BEFORE THE COURT THAT HE IS INDIGENOUS TO THIS
2 POPULATION, AND WE BELIEVE HE'LL CONTINUE TO REMAIN IN
3 THIS SOCIETY UNDER THE CIRCUMSTANCES.

4 THE SECOND ISSUE YOU MUST CONSIDER IS THE SERIOUSNESS
5 OF THE OFFENSE. IN THIS PARTICULAR CASE THE ALLEGATIONS
6 THAT HAVE BEEN MADE ARE VERY, VERY SERIOUS, AND THE
7 INDIVIDUALS THAT ARE BEFORE THE COURT ARE ALL CREDIBLE.
8 THEY'RE GOOD PEOPLE. IN THIS PARTICULAR CASE THIS
9 GENTLEMAN IS IS AN ELDERLY GENTLEMAN, AND, OF COURSE,
10 UNDER THE CIRCUMSTANCES IT IS ALLEGED THAT THERE IS A
11 RELATIONSHIP HERE WHERE THE BOYS HAD SOMEHOW WORKED OR
12 DONE WORK AROUND THAT PARTICULAR HOUSE AND HE WAS
13 ASSAULTED WITH A WINE BOTTLE.

14 IN NO WAY ARE WE HERE TO TRIVIALIZE WHAT HAS
15 OCCURRED, AND, OF COURSE, IT'S A SERIOUS EVENT WHAT HAS
16 OCCURRED TO THE VICTIM IN THIS PARTICULAR CASE. WE WOULD
17 AGREE TO ANY FORM OF RESTRAINING ORDER TO STAY AWAY FROM
18 THE VICTIM, AND IN THIS PARTICULAR CASE IF THERE IS ANY
19 FEAR THAT, YOU KNOW, HE WOULD SOMEHOW COME AROUND THAT
20 HOUSE WE WOULD AGREE TO SOME TYPE OF HOUSE ARREST, BUT
21 UNDER THE CIRCUMSTANCES WE HAVE AN INDIVIDUAL WHO IS
22 ALLEGED TO HAVE COMMITTED A CRIME, AND, NUMBER ONE, HE'S
23 NEVER BEEN CONVICTED OF ANY OFFENSE, AND, NUMBER TWO,
24 THERE'S AN ALLEGATION THAT'S BEEN MADE THAT'S VERY
25 SERIOUS, AND YOUR RESPONSIBILITY SITTING ON THAT BENCH IS

1 TO DETERMINE IF THIS INDIVIDUAL IS GIVEN AN OPPORTUNITY TO
2 POST A BOND THAT IS SUFFICIENT AND HE IS OUT, WHAT CAN YOU
3 DO TO PROTECT THE VICTIM UNDER THE CIRCUMSTANCES WITH THIS
4 ALLEGATION THAT'S BEFORE THE COURT.

5 ALONG WITH THE RESTRAINING, HOUSE MONITORING, AND
6 THINGS OF THAT NATURE IN THIS PARTICULAR CASE, MY CLIENT
7 WILL AGREE TO ANY CONDITION THAT THE COURT PUTS FORWARD,
8 BUT THE BOTTOM LINE IS THAT WE'RE BEFORE THE COURT AT THIS
9 TIME AND WE HAVE THE MERE ALLEGATION THAT'S BEING MADE AND
10 UNDER THE CIRCUMSTANCES WHEN WE HAVE A KID THAT LIVES IN
11 THE COMMUNITY, WHO HAS LIVED HERE ALL OF HIS LIFE, WHO HAS
12 NEVER COMMITTED A CRIME, NEVER BEEN CONVICTED OF A CRIME,
13 AND IN ADDITION TO THAT WE HAVE THIS ALLEGATION, A VERY
14 SERIOUS ALLEGATION THAT'S BEING MADE, WE'RE WILLING TO
15 ABIDE BY THE TERMS AND CONDITIONS THAT THIS COURT SETS,
16 AND UNDER THE CIRCUMSTANCES WE WOULD ASK THAT A BOND BE
17 SET THAT'S REASONABLE UNDER THE CIRCUMSTANCES CONSIDERING
18 THE FACT THAT HIS FAMILY DOES NOT HAVE THE WHERE-WITH-ALL
19 TO POST THIS KIND OF MONEY AS CURRENTLY BEFORE THE COURT.

20 SO, WE'D ASK THAT YOU TAKE THAT ALL INTO
21 CONSIDERATION, THE TOTALITY OF THE CIRCUMSTANCES, AND THE
22 SERIOUSNESS OF THE OFFENSE, AND WE BELIEVE THAT UNDER THE
23 CIRCUMSTANCES THAT IT WARRANTS A BOND REDUCTION.
24 CONSIDERING WHAT'S OCCURRED, IF I WAS LAW ENFORCEMENT AND
25 I SAT DOWN AND I WAS DEALING WITH A GENTLEMAN AS OLD AS

(STATEMENT BY MR. BROWN)

7

1 THE VICTIM IN THIS PARTICULAR CASE, WHAT DO YOU DO? YOU
2 SIT DOWN AND YOU LOAD IT UP -- ARMED ROBBERY, ASSAULT AND
3 BATTERY WITH INTENT TO KILL, CRIMINAL CONSPIRACY. YOU TRY
4 TO THROW THE BOOK AT THIS PARTICULAR PERSON, BUT RIGHT NOW
5 WE'RE AT A STAGE WHERE THERE'S ONLY ALLEGATIONS BEING MADE
6 UNDER THE CIRCUMSTANCES, AND IN THIS PARTICULAR CASE WE
7 ASK FOR SOME EQUITY FROM THE COURT. AS LONG AS IT'S
8 ALLEGATIONS BEING MADE AND THE SERIOUSNESS OF THIS
9 OFFENSE, THE AGE OF THE VICTIM -- OF COURSE, IT LOOKS LIKE
10 A PICTURE WHERE YOU SAY, JUST LOCK HIM UP AND THROW AWAY
11 THE KEY, BUT THE GREAT THING ABOUT BEING IN AMERICA
12 INSTEAD OF BEING IN IRAN OR OR IRAQ OR SOMEWHERE ELSE IS
13 THAT WHEN ALLEGATIONS ARE MADE WE STILL HAVE EQUITY AND
14 FAIRNESS THAT'S PLACED IN THE HANDS OF THE COURT.

15 WE WOULD ASK UNDER THESE CIRCUMSTANCES THAT THE COURT
16 EXERCISE YOUR WISDOM AND YOUR DISCRETION IN THE MANNER
17 THAT WE BELIEVE IS APPROPRIATE CONSIDERING HIS PAST,
18 CONSIDERING HIS RECORD WHICH IS NO RECORD UNDER THE
19 CIRCUMSTANCES AND WE'D ASK THAT YOU TAKE THAT ALL INTO
20 CONSIDERATION IN MAKING YOUR DECISION.

21 THE COURT: MR. BROWN?

22 MR. BROWN: THANK YOU, YOUR HONOR. YOUR HONOR, MY
23 CLIENT WAS 18 WHEN HE WAS ALLEGEDLY INVOLVED IN THIS
24 SITUATION. HE'S TURNED 19, I THINK, IN MARCH OF THIS
25 YEAR. HIS MOTHER IS IN THE COURTROOM. SHE'S BACK IN THE

1 BACK. I'M ALMOST PRO BONO. SO, THE FAMILY DOES NOT HAVE
2 THE ABILITY TO PAY MY FEE AS NORMALLY YOU WOULD EXPECT AND
3 HAVE NOT BEEN ABLE TO COME UP WITH THE MONIES IT TAKES TO
4 POST THE \$55,000 BOND IN THIS SITUATION.

5 MY CLIENT, TOO, IS A NATIVE. ALL OF HIS RELATIVES
6 ARE HERE. ALL OF HIS FAMILY CONTACTS ARE HERE. HE DOES
7 -- HE HAS NO REASON TO LEAVE THIS AREA. HIS FINE FAMILY
8 CERTAINLY WANT TO SAY AT THIS TIME TO THE VICTIM WHO IS
9 NOT HERE AND THE FAMILY AND JUDGE PEEPLES, THESE ARE VERY
10 SERIOUS CHARGES. I AM NOT GOING TO -- I AM NOT GOING TO
11 TRY TO MINIMIZE THAT AT ALL. THEY ARE VERY SERIOUS
12 CHARGES. IN TERMS OF MY CLIENT LEAVING THIS AREA AND NOT
13 BEING IN COURT WHEN THIS CASE IS CALLED, IT'S PROBABLY NO
14 CHANCE OF THAT WHATSOEVER. HE WILL BE HERE.

15 ALSO, I'D LIKE TO SAY THAT MY CLIENT HAS NO PRIOR
16 RECORD, NEVER BEEN IN ANY TROUBLE BEFORE, VOLUNTARILY
17 ENROLLED HIMSELF IN ONE OF THESE STRUCTURED HIGH SCHOOL
18 SITUATIONS TO COMPLETE HIS HIGH SCHOOL -- THE KIND OF
19 SCHOOL THAT RESEMBLES A MILITARY ACADEMY BECAUSE OF ITS
20 REGIMEN -- SOMETHING THAT YOU AND I WOULD NOT GENERALLY
21 CONSIDER OURSELVES TO EVEN THINK ABOUT. SO, HE DID THAT.
22 HE WAS DOING THAT. THAT'S WHAT HE WAS DOING WHEN HE WAS
23 ARRESTED.

24 HE'S BEEN IN JAIL AS YOU KNOW SINCE FEBRUARY. I
25 WOULD LIKE TO JOIN IN EVERYTHING THAT MR. WALTERS SAID. I

(STATEMENT BY MR. BROWN)

9

1 DON'T THINK I NEED TO REPEAT EVERYTHING ELSE. THOSE ARE
2 THE PARTICULARS ON MY CLIENT, AND I'D LIKE THE COURT TO
3 CONSIDER A REDUCTION TO A \$25,000 BOND.

4 THE COURT: ALL RIGHT, SIR. SOLICITOR, ANYTHING FROM
5 THE STATE?

6 MR. MOORE: YOUR HONOR, VERY SIMPLY OUR POSITION IS,
7 NUMBER ONE, THAT A \$55,000 BOND WITH CHARGES THIS SERIOUS
8 IS VERY REASONABLE, AND, SECONDLY, THE DEFENSE HAS SHOWN
9 NO CHANGE OF CIRCUMSTANCES TO MERIT A REDUCTION OF BOND AT
10 ALL. THERE IS CERTAINLY A DANGER TO THE COMMUNITY BASED
11 ON THE CONDUCT THAT HAPPENED HERE -- HITTING AN ELDERLY
12 87-YEAR-OLD MAN OVER THE HEAD WITH A WINE BOTTLE, THROWING
13 HIM DOWN THE STEPS, RIPPING THE WALLET OUT OF HIS BACK
14 POCKET. CERTAINLY, THEY'RE NOT GOING TO FEEL SAFE IF
15 THESE GENTLEMEN ARE OUT, AND I DON'T SEE HOW THE COMMUNITY
16 CAN FEEL SAFE WITH THEM OUT.

17 WE DEFINITELY BELIEVE THEY ARE A THREAT TO THE
18 COMMUNITY, AND AS I STATED BEFORE I JUST DON'T SEE A
19 CHANGE IN CIRCUMSTANCES TO MERIT A BOND REDUCTION. OUR
20 NEXT TERM OF COURT IS JULY 9. THE STATE WILL BE READY TO
21 TRY THE CASE. SO, WE'RE NOT LOOKING AT THIS GOING ON MUCH
22 FURTHER, AND BASED ON THOSE FACTORS WE DO OPPOSE ANY BOND
23 REDUCTION AND I KNOW THE VICTIMS WOULD LIKE TO BE HEARD AT
24 THE APPROPRIATE TIME.

25 THE COURT: ABSOLUTELY. LET ME JUST ASK WHEN THE

1 ORIGINAL BOND WAS SET WAS IT JUST A \$55,000 BOND OR WAS
2 THERE ANY CONDITIONS, ANY RESTRAINING ORDER ASSOCIATED
3 WITH THAT IF THEY DID MAKE BOND?

4 MR. BROWN: NO, YOUR HONOR. THERE WAS NO
5 RESTRICTION.

6 THE COURT: THAT WAS JUST A REGULAR BOND?

7 MR. BROWN: WE WILL SUBMIT TO RESTRICTION IF YOU DO
8 NEED RESTRICTIONS.

9 THE COURT: OKAY. ALL RIGHT. I'LL BE HAPPY TO HEAR
10 FROM ANYONE INVOLVING THE VICTIMS.

11 MR. PEEPLES: MAY IT PLEASE THE COURT.

12 THE COURT: YES, SIR.

13 MR. PEEPLES: JUDGE RUSSO, IT IS THE FIRST TIME I'VE
14 BEEN IN THIS COURTROOM SINCE 1974. IT IS A PLEASURE TO BE
15 BEFORE YOU HERE TODAY, AND I AM HERE ON BEHALF OF THE
16 FAMILY OF TOMMY AND JEANETTE RICHARDSON. MRS. JEANETTE
17 RICHARDSON IS PRESENT. WHILE YOU NEVER TELL A LADY'S AGE,
18 SHE'S SEVERAL YEARS YOUNGER THAN HER HUSBAND WHO IS 86
19 YEARS OF AGE, LIFE-LONG RESIDENT HERE OF BARNWELL COUNTY.

20 I NOTE THAT CHIEF TODD GANTT IS HERE FROM THE CITY OF
21 BARNWELL AS WELL AS INVESTIGATOR WAYNE MARTIN AND SHERIFF
22 ED CARROLL, AND I WANT TO THANK LAW ENFORCEMENT FIRST FOR
23 THE REAL ATTENTION THAT THEY GAVE TO THIS CASE, AND YOU
24 GENTLEMAN, YOUR POSITION IS WHAT AS REGARDS REDUCTION OF
25 BOND?

1 THE POLICE OFFICER: THE CITY OF BARNWELL IS
2 DEFINITELY OPPOSED TO ANY REDUCTION IN BOND, YOUR HONOR.

3 THE SHERIFF: THIS IS A CITY CASE, YOUR HONOR, AND I
4 WAS FORTUNATE ENOUGH TO BE ABLE TO ASSIST HIM, AND I, TOO,
5 WOULD BE OPPOSED TO ANY BOND REDUCTION.

6 MR. PEEPLES: AND IF YOUR HONOR PLEASE, WHEN MENTION
7 IS MADE THAT THE DEFENDANTS ARE NO FLIGHT RISK, LET ME
8 REMIND YOU THIS HAPPENED ON JANUARY 8 -- MINE AND ELVIS
9 PRESSLEY'S BIRTHDAY -- AND IT WASN'T UNTIL FEBRUARY 1 WHEN
10 THE MAN ON THE LEFT WHO -- THESE FRIENDS, LEGIONS OF
11 PEOPLE WHO JUST THINK THE WORLD OF MR. AND
12 MRS. RICHARDSON, THEY RAISED A CONSIDERABLE REWARD. THEY
13 PUT IT OUT ON THE STREET. MONEY TALKS AND BALONEY WALKS.
14 WELL, IT TALKED BECAUSE MR. KENNEDY ALLEGEDLY TOLD JOE
15 SIX-PACK THAT HE AND TOOKS HAD DONE IT. THEY ROBBED
16 MR. RICHARDSON IN HIS HOME. THEN THEY COULDN'T FIND
17 MR. KENNEDY, BUT THEY FOUND MR. TOOKS, AND MR. TOOKS
18 CONFESSED TO IT, AND IT GOES ON FROM THERE, BUT THAT WAS
19 FEBRUARY 1 THAT MR. TOOKS WAS ARRESTED, AND THEY FOUND
20 MR. KENNEDY FEBRUARY 2, I BELIEVE, IN AIKEN COUNTY.

21 IF I MISSTATE ANYTHING, CHIEF OR DETECTIVE MARTIN,
22 PLEASE, I STAND TO BE CORRECTED, BUT INSOFAR AS THE FLIGHT
23 RISK I WOULD URGE UPON THE COURT TO CONSIDER THE FACT THAT
24 THESE GOOD PEOPLE -- TOMMY AND JEANETTE RICHARDSON -- THEY
25 HAVE BEEN LIVING IN FEAR WHEN THIS FELLOW ON THE LEFT WHO

1 ON ONE OCCASION EIGHT MONTHS EARLIER HAD COME TO RAKE THE
2 MAN'S YARD IN THE DAYTIME AND THE SUMMERTIME AND THIS
3 HAPPENED IN THE DARK HOURS -- 6:30. IT IS DARK ON JANUARY
4 8. THESE PEOPLE KNEW THAT MR. RICHARDSON HAS RENTAL
5 PROPERTY THAT HE COLLECTS RENT AND HE HAD MONEY.

6 WE SUBMIT WITHOUT QUESTION IT WAS PREMEDITATED. THEY
7 KNEW JUST WHAT THEY WERE THERE FOR, AND THEN WHEN
8 MR. TOOKS ASKED MR. RICHARDSON -- BOTH OF THEM HAD HOODS
9 OVER THEIR HEAD, BY THE WAY. IT MAY HAVE BEEN COLD
10 WEATHER, BUT WE SUBMIT THEY DIDN'T HAVE A MASK, BUT THEY
11 HAD HOODS OVER THEIR HEAD, AND MR. RICHARDSON -- THEY
12 KNOCKED ON HIS BACK DOOR. HE WENT THERE AND SAYS, NO, I
13 DON'T HAVE ANY WORK FOR YOU TO DO, AND HE TURNED AROUND TO
14 WALK AWAY, AND MR. TOOKS WITH A QUART LIQUOR BOTTLE HITS
15 HIM RIGHT IN THE FOREHEAD -- STITCHES, BLOOD FLOWING.

16 MR. RICHARDSON IS A PRETTY GOOD MAN. HE WAS DOING
17 PRETTY GOOD WRESTLING MR. TOOKS, BUT THEN THE BIG BOY, THE
18 BIG MAN, HE JUMPS OUT OF THE BUSHES AND LITERALLY PICKS
19 MR. RICHARDSON UP AND BODY-SLAMMS HIM ON THE CONCRETE AND
20 BRICK WALKWAY. THAT'S WHEN HE HAD THAT BROKEN OR
21 FRACTURED HIP, AND THAT'S WHY FOR TWO MONTHS HE COULDN'T
22 GET UP AND WALK HE WAS SUFFERING SO, AND HE'S THE
23 CAREGIVER FOR HIS WIFE HERE WHO HAS OSTEOARTHRITIS AND
24 CAN'T WALK BUT WITH A WALKER. SHE IS UP HERE TODAY, AND
25 SHE HAS A SHOT IN HER EYES EVERY THREE MONTHS AND FOR TWO

(STATEMENT BY MR. PEEPLES)

13

1 OR THREE WEEKS SHE CAN'T SEE.

2 SHE CALLED ME SATURDAY. SHE HAD TO GET A MAGNIFYING
3 GLASS TO LOOK UP MY NUMBER, AND THIS HAS BEEN A TERRIBLE
4 THING THAT HAPPENED IN THE BARNWELL COMMUNITY, AND A LOT
5 OF PEOPLE ARE UPSET ABOUT IT. I NOTE MR. TOMMY RICHARDSON
6 -- TOMMY HAYGOOD, EXCUSE ME, FARMER OF MANY YEARS HERE,
7 HIS WIFE MRS. ANN WHO TAUGHT MY LITTLE GIRLS WHO ARE NOW
8 40 AND 36 IN KINDERGARTEN, AND YOU HAVE CHARLES RICHARDSON
9 HERE, HIS NEPHEW, WHO IS IN CHARGE OF THE CITY RECREATION.
10 HIS FATHER-IN-LAW IS BILL WITH THE HIGHWAY PATROL YOU
11 MIGHT REMEMBER FROM OVER IN NORTH AUGUSTA AND MEMBERS OF
12 THE COMMUNITY, JACKIE BO-BO RICHARDSON, MIKE ANDERSON, AND
13 TOMMY SANDERS THAT GO TO CHURCH WITH THIS FAMILY, AND WE
14 WOULD URGE UPON THE COURT WE THINK THAT THE BOND IS TOO
15 LOW, BUT THAT'S NOT BEFORE THE COURT TODAY, BUT WE WOULD
16 URGE UPON YOU THE SERIOUSNESS OF THIS MATTER, AND THESE
17 PEOPLE LIVING IN FEAR OF THEIR LIFE, AND, HOPEFULLY, YOU
18 WILL NOT SEE FIT TO REDUCE THE BOND BECAUSE THEY HAVE
19 ENOUGH TROUBLE SLEEPING AT NIGHT WORRYING ABOUT SOMEBODY
20 COMING TO THEIR HOME AND STEALING FIVE OR \$600, RIPPING
21 YOUR PANTS POCKET OFF OF YOU RIGHT THERE IN YOUR OWN YARD,
22 AND PEOPLE HAVE A RIGHT IN THE CITY OF BARNWELL, THE
23 COUNTY OF BARNWELL, THE STATE OF SOUTH CAROLINA TO BE SAFE
24 AND SECURE IN THEIR HOMES, NOT BE TROUBLED BY PEOPLE LIKE
25 THIS WHO SHOULDN'T REMAIN ON THE STREET, AND, EXCUSE ME, I

(STATEMENT BY MRS. JEANETTE PRICE)

14

1 DON'T MEAN TO SPEAK TOO LONG. I'LL STOP WITH THAT.

2 JEANETTE RICHARDSON HERE WHO IS MARRIED TO BILL
3 PRICE, MY COLLEGE FRIEND AND K.A. HE IS FROM FLORENCE OF
4 MANY YEARS AND HIS -- ONE OF THE GRANDDAUGHTERS AND MY
5 DAUGHTERS WENT TO COLUMBIA COLLEGE AND WHEN THEY WERE
6 FRESHMAN THE SENIORS BEAT THEM, AND WHEN MY DAUGHTERS WAS
7 A SENIOR THE FRESHMEN BEAT THEM. SO, YOU CAN'T BEAT THESE
8 PEOPLE, I'LL TELL YOU. THEY ARE GOOD-HEARTED PEOPLE. I
9 CAN ATTEST TO THAT, BUT THIS IS LITTLE JEANETTE, THEIR
10 ONLY CHILD, WHO HAS JUST LIVED IN BARNWELL THE LAST THREE
11 OR FOUR MONTHS. SHE'S DOWN HERE CARING FOR MOTHER AND
12 DADDY, AND IF SHE COULD BE HEARD, PLEASE.

13 THE COURT: SURE. I'LL BE MORE THAN HAPPY.

14 MRS. JEANETTE PRICE: I AM JEANETTE PRICE AND THE
15 VICTIM TOMMY RICHARDSON IS MY DADDY. HE COULD NOT BE HERE
16 TODAY BECAUSE HE'S IN THE HOSPITAL IN COLUMBIA AFTER
17 HAVING AN OPERATION FOR WHAT COULD HAVE POSSIBLY BEEN
18 RELATED TO WHAT THESE MEN DID TO HIM. AFTER SUFFERING A
19 CONCUSSION AND A BROKEN BONE LIFE HAS JUST NOT BEEN THE
20 SAME FOR HIM THESE LAST FEW MONTHS.

21 THESE TWO MEN NOT ONLY CHANGED MY DADDY'S LIFE WHEN
22 THEY BRUTALLY ATTACKED AND ROBBED HIM ON JANUARY 8, BUT
23 THEY CHANGED THE LIVES OF HIS FAMILY AND THOSE IN THIS
24 COMMUNITY. THE PEOPLE IN THE COMMUNITY BECAME VICTIMS,
25 ALSO. NOT ONLY WERE THEY SADDENED AND ANGERED BY WHAT

(STATEMENT BY MRS. JEANETTE PRICE)

15

1 THESE MEN THAT -- THE FACT THAT THESE MEN COULD DO SUCH A
2 THING TO A KIND, CARING, AND GENEROUS MAN, BUT THEY ALSO
3 BECAME AFRAID AND FELT UNSAFE IN THEIR HOMES. WE KNOW
4 THIS BY THE OUTPOURING OF LOVE AND CONCERN THAT WAS SHOWN
5 TO US AFTER THE ROBBERY AND ALL OF THE COMMENTS THAT THE
6 PEOPLE GAVE US ABOUT HOW SCARED THEY WERE IN THEIR HOMES.
7 BARNWELL IS SUCH A CLOSE-KNIT COMMUNITY THAT WHEN ONE
8 FAMILY IS VICTIMIZED ALL FEEL VIOLATED.

9 IF DADDY HAD NOT BEEN AS FIT AS HE WAS THESE MEN
10 WOULD BE FACING A MURDER CHARGE BECAUSE THAT IS,
11 OBVIOUSLY, WHAT THEY INTENDED TO DO WHEN THEY HIT HIM OVER
12 THE HEAD AND THREW HIM DOWN. ALL OF THIS HAPPENED ACROSS
13 THE STREET FROM THE POLICE DEPARTMENT AND THE CITY HALL
14 WHERE THEY WERE HAVING A MEETING AT THE TIME. IF THESE
15 TWO MEN COULD DO WHAT THEY DID TO A DEFENSELESS
16 86-YEAR-OLD MAN, THERE IS NO TELLING WHAT THEY'RE CAPABLE
17 OF DOING.

18 EVERYONE IN THE COMMUNITY WAS GREATLY RELIEVED WHEN
19 THEY WERE PUT BEHIND BARS, AND WE GIVE SO MUCH CREDIT TO
20 THE DETECTIVES AND THE SHERIFF'S DEPARTMENT FOR THE JOB
21 THAT THEY DID. TO REDUCE THEIR BOND AND PUT THEM BACK ON
22 THE STREET WOULD MAKE THE PEOPLE OF BARNWELL FEAR FOR
23 THEIR LIVES. I ASK YOU NOT TO DO ANYTHING THAT WOULD ABLE
24 THESE MEN WHO, OBVIOUSLY, HAVE NO RESPECT FOR ANYBODY OR
25 ANYTHING TO PUT THEM BACK ON THE STREET.

(STATEMENT BY THE COURT)

16

1 DADDY HAS BEEN -- DADDY AND HIS FATHER AND HIS FATHER
2 AND HIS FATHER HAVE ALL LIVED IN THIS COMMUNITY AND FARMED
3 FOR WELL OVER 100 YEARS, AND THEY HAVE DONE SO MUCH FOR SO
4 MANY PEOPLE. WHEN THE FELLOW CUT HIS YARD BACK AT THE END
5 OF THE SUMMER OR WHENEVER IT WAS, DADDY EVEN OFFERED TO
6 TAKE HIM HOME AND PULLED OUT HIS BILLFOLD TO PAY HIM, AND,
7 OBVIOUSLY, HE SAW THAT HE IS OF THE GENERATION THAT
8 CARRIES SOME MONEY IN HIS BILLFOLD AND THAT AND KNOWING --
9 OBVIOUSLY, THEY KNEW THAT HE MUST HAVE COLLECTED SOME RENT
10 THAT DAY. THEY WERE OUT TO GET THAT MONEY UNDER ANY
11 CIRCUMSTANCES. SO, I DON'T THINK THEY NEED TO BE OUT.

12 THE COURT: THANK YOU, MRS. PRICE. ANYONE ELSE?

13 MR. PEEPLES: IF YOUR HONOR PLEASE, THERE ARE MANY
14 HERE WHO WOULD SPEAK, BUT WE FEEL IT WOULD BE REPETITIVE.
15 WE'LL PROCEED AT THIS TIME.

16 THE COURT: ALL RIGHT. THANK YOU.

17 MR. PEEPLES: YES, SIR.

18 THE COURT: LET ME SAY THANK YOU TO ALL WHO ARE
19 HERE -- BOTH OF THOSE WHO ARE HERE ON BEHALF OF THE VICTIM
20 AND THEIR FAMILIES AS WELL AS THOSE WHO ARE HERE ON BEHALF
21 OF THE TWO YOUNG MEN MR. TOOKS AND MR. KENNEDY. IT MEANS
22 A LOT TO SEE PEOPLE SHOW UP AND BE SUPPORTIVE. I HAVE
23 SEEN IT. THOSE OF YOU WHO WORK IN THE COURT SEE IT.
24 OFTENTIMES YOUNG MEN SUCH AS THESE WHO COME BEFORE THE
25 COURT ON VARIOUS MATTERS AND THEY'RE BY THEMSELVES, AND

(STATEMENT BY THE COURT)

17

1 THAT'S SAD. THESE ARE VERY SERIOUS CHARGES WHICH CARRY
2 VERY SERIOUS CONSEQUENCES, AND, SO, I APPRECIATE THOSE
3 FAMILY MEMBERS BEING HERE AS WELL.

4 LET ME START BY SAYING THAT BOTH MR. TOOKS AND
5 MR. KENNEDY AS YOU STAND HERE BEFORE ME YOU'RE PRESUMED
6 INNOCENT OF THESE CHARGES. SO, I DON'T CONSIDER -- AND I
7 REALIZE THAT YOU STOOD HERE AND YOU'VE HEARD YOUR LAWYERS
8 TALK ABOUT ALLEGATIONS, YOU'VE HEARD VICTIMS TALK OF
9 YOU'VE DONE IT, AND THAT'S UNDERSTANDABLE, BUT AS YOU
10 STAND BEFORE ME YOU'RE PRESUMED INNOCENT AND THAT'S WHAT I
11 CONSIDER.

12 ONE OF THE THINGS THAT THE SOLICITOR MENTIONED,
13 THOUGH, AND LET ME SAY SOME JUDGE OTHER THAN MYSELF
14 CONSIDERED FLIGHT RISK AND THREAT TO THE COMMUNITY WHEN
15 THAT JUDGE SET YOUR BOND TO BEGIN WITH. TYPICALLY, WHAT
16 OCCURS IS THAT'S THE BOND UNLESS THERE IS SOME SHOWING OF
17 A CHANGE OF CIRCUMSTANCES ON WHY THAT BOND SHOULD BE
18 REDUCED. I AM GOING TO ASSUME AND IT WAS MR. WALTERS
19 MENTIONED IT AND I THINK MR. BROWN AS WELL AND IT MAY NOT
20 BE A CHANGE OF CIRCUMSTANCES, BUT I ASSUME THAT THEIR
21 POSITION IS THAT IT IS JUST FINANCIALLY NOT A BOND THAT
22 YOU CAN MEET SO THAT ESSENTIALLY IT'S EQUIVALENT TO
23 DENYING THE BOND, BUT -- AND DON'T GET ME WRONG. I
24 CERTAINLY APPRECIATE EVERYONE HERE AND ALL OF YOUR
25 COMMENTS, BUT HEARING NOTHING FROM THE VICTIM'S SIDE AND

1 LOOKING AT THESE CHARGES -- ARMED ROBBERY, ASSAULT AND
2 BATTERY WITH INTENT TO KILL, AND CRIMINAL CONSPIRACY --
3 THE COURT IS CONCERNED THAT REASONABLE BONDS ARE SET; THAT
4 EVERYONE THAT APPEARS BEFORE THE COURT IS ENTITLED TO A
5 REASONABLE BOND AND I JUST -- I'VE GOT TO TELL YOU. IF
6 THIS CASE HAD COME BEFORE ME FOR BOND I WOULD NOT HAVE
7 CONSIDERED A \$55,000 BOND ON THESE CHARGES, AND THAT'S NOT
8 KNOWING ANYTHING OTHER THAN THE SERIOUSNESS OF THESE
9 CHARGES JUST WARRANTS A BOND HIGHER THAN THAT, AND, SO, IT
10 WOULD BE IMPOSSIBLE FOR ME TO CHANGE THESE BONDS BASED ON
11 THE FACT THAT THEY'RE NOT REASONABLE. I THINK THEY'RE
12 MORE THAN REASONABLE FOR THE CHARGES THAT ARE BEING FACED.

13 I AM GOING TO ALTER THE BONDS TO THIS EXTENT, THOUGH,
14 THAT WHEN THEY WERE SET THERE WAS NO RESTRAINING ORDER
15 ATTACHED TO THAT. WHAT I AM GOING TO DO IS I AM GOING TO
16 LEAVE THE BONDS AS THEY ARE AS FAR AS THE AMOUNT, BUT I'M
17 GOING TO ATTACH A CONDITION THAT IF EITHER ONE OF YOU
18 GENTLEMEN MAKE BOND THAT THERE IS GOING TO BE A
19 RESTRAINING ORDER IN PLACE THAT THERE BE NO CONTACT WITH
20 THE VICTIM OR ANY MEMBER OF THE VICTIM'S FAMILY AND THAT
21 NO CONTACT MEANS NO CONTACT BY YOU OR ANYONE ON YOUR
22 BEHALF WHETHER IT BE A FACE-TO-FACE, TELEPHONIC, E-MAIL,
23 WHATEVER COMMUNICATIONS -- THAT THERE ARE TO BE NO
24 COMMUNICATIONS SO THAT IF YOU ARE TO MAKE THE BOND THAT'S
25 BEEN SET THAT THAT RESTRAINING ORDER IS GOING TO BE IN

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

19

1 PLACE AND A VIOLATION OF THAT RESTRAINING ORDER WOULD BE A
2 VIOLATION OF THAT BOND AND YOU'LL BE PUT BACK IN JAIL. DO
3 YOU UNDERSTAND THAT?

4 THE BOND THAT IS SET ON THESE CHARGES IS A REASONABLE
5 BOND, AND I DON'T FIND ANY REASON TO ALTER THAT.

6 MR. WALTERS: THANK YOU, YOUR HONOR.

7 MR. BROWN: THANK YOU, YOUR HONOR.

8 MR. PEEPLES: WHILE IT'S UP TO THE STATE AND THE
9 SOLICITOR TO CALL THESE CASES, IF MR. RICHARDSON IS ABLE
10 AND THEY WANT TO GO TO TRIAL THIS WEEK OR ANY OTHER THING,
11 WE'LL TRY IT AND HAVE MR. RICHARDSON HERE.

12 THE COURT: MY UNDERSTANDING IS THAT WE'RE GOING TO
13 HAVE TO JURY PANEL THAT'S GOING TO BE HERE IN THE MORNING
14 AND WHATEVER THE STATE -- WE'LL CERTAINLY ENTERTAIN ANY
15 TRIALS YOU HAVE.

16 MR. PEEPLES: JULY 8 IS THE NEXT TERM.

17 (WHEREUPON, A BREAK WAS TAKEN.)

18 MICHAEL C. KENNEDY AND LUGENE TOOKS, AFTER BEING
19 DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE COURT: ALL RIGHT. SOLICITOR?

21 MR. MOORE: THANK YOU, YOUR HONOR. IF IT PLEASES THE
22 COURT, I HAVE BEFORE YOU ONCE AGAIN MICHAEL KENNEDY AND
23 LUGENE TOOKS. BOTH DEFENDANTS ARE INDICTED FOR ARMED
24 ROBBERY, ASSAULT AND BATTERY WITH INTENT TO KILL, AND
25 CRIMINAL CONSPIRACY. THEY'RE BOTH ENTERING PLEAS TO ARMED

1 ROBBERY AND ASSAULT AND BATTERY WITH INTENT TO KILL. THE
2 STATE IS NOW PROSECUTING THE CRIMINAL CONSPIRACY CHARGE AND
3 MR. TOOKS IS REPRESENTED BY MR. WALTERS AND MR. KENNEDY IS
4 REPRESENTED BY MR. BROWN.

5 THE COURT: ALL RIGHT, SIR. ALL RIGHT. LET ME SEE
6 NOW. SIR, YOU'RE MR. TOOKS; IS THAT CORRECT? AND
7 MR. KENNEDY? GENTLEMEN, LET ME AT THIS TIME ADDRESS BOTH
8 OF YOU BECAUSE YOU'RE CHARGED WITH THE SAME CHARGE.

9 MR. TOOKS, YOU ARE CHARGED UNDER INDICTMENT 07-181
10 WITH THE CHARGE OF ARMED ROBBERY AND THE SENTENCING SHEET
11 INDICATES 0 TO 30. THAT'S ACTUALLY 10 TO 30.

12 MR. MOORE: TEN TO 30; YES, SIR.

13 THE COURT: MR. TOOKS, DO YOU UNDERSTAND THAT THE
14 CHARGE OF ARMED ROBBERY CARRIES A MANDATORY MINIMUM
15 SENTENCE OF NOT LESS THAN 10 YEARS AND A MAXIMUM SENTENCE
16 OF NOT MORE THAN 30 YEARS? DO YOU UNDERSTAND THAT, SIR?

17 THE DEFENDANT MR. TOOKS: YES, SIR.

18 THE COURT: AND UNDER INDICTMENT 07-182 THAT IS AN
19 INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL.
20 THAT CHARGE, SIR, CARRIES A MAXIMUM PENALTY OF UP TO 20
21 YEARS; DO YOU UNDERSTAND THAT?

22 THE DEFENDANT MR. TOOKS: YES, SIR.

23 THE COURT: BOTH OF THESE, SIR, ARE CONSIDERED
24 VIOLENT OFFENSES UNDER OUR LAW AND UNDER OUR STATUTES
25 WOULD BE CONSIDERED MOST SERIOUS. DO YOU UNDERSTAND THAT?

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

21

1 THE DEFENDANT MR. TOOKS: YES, SIR.

2 THE COURT: DO YOU UNDERSTAND THAT IF THOSE CHARGES
3 WERE RUN CONSECUTIVELY THAT WOULD BE EXPOSURE OF UP TO 50
4 YEARS? DO YOU UNDERSTAND THAT?

5 THE DEFENDANT MR. TOOKS: YES, SIR.

6 THE COURT: UNDERSTANDING THESE THINGS, SIR, AND
7 UNDERSTANDING THE NATURE OF THE CHARGES AGAINST YOU AS
8 WELL AS THE POSSIBLE PUNISHMENT, HOW DO YOU PLEAD TO THESE
9 TWO CHARGES, GUILTY OR NOT GUILTY?

10 THE DEFENDANT MR. TOOKS: GUILTY.

11 THE COURT: MR. KENNEDY, SIR, YOU ON SEPARATE
12 INDICTMENT UNDER INDICTMENT 2007-144 ARE CHARGED WITH
13 ARMED ROBBERY WHICH CARRIES A MANDATORY MINIMUM SENTENCE
14 OF NOT LESS THAN 10 YEARS AND A MAXIMUM SENTENCE OF UP TO
15 30 YEARS. DO YOU UNDERSTAND THAT, SIR?

16 THE DEFENDANT MR. KENNEDY: YES, SIR.

17 THE COURT: AND THE THE INDICTMENT 07-145 IS AN
18 INDICTMENT FOR ASSAULT AND BATTERY WITH INTENT TO KILL
19 WHICH CARRIES A MAXIMUM PENALTY OF UP TO 20 YEARS. DO YOU
20 UNDERSTAND THAT?

21 THE DEFENDANT MR. KENNEDY: YES, SIR.

22 THE COURT: AND AS WELL, SIR, BOTH FOR YOU AS WELL AS
23 MR. TOOKS BOTH OF THESE CHARGES ARE CONSIDERED CLASSIFIED
24 AS VIOLENT OFFENSES AND MOST SERIOUS OFFENSES UNDER OUR
25 LAWS. DO YOU UNDERSTAND, SIR?

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

22

1 THE DEFENDANT MR. KENNEDY: YES, SIR.

2 THE COURT: NOW, UNDERSTANDING THE NATURE OF THE
3 CHARGES AGAINST YOU AS WELL AS THE POSSIBLE PUNISHMENTS
4 HOW DO YOU PLEAD GUILTY OR NOT GUILTY?

5 THE DEFENDANT MR. KENNEDY: GUILTY.

6 THE COURT: NOW, GENTLEMEN, LET ME TELL YOU BOTH
7 MYSELF NOR YOUR ATTORNEYS CAN EXPLAIN TO YOU OR TELL YOU
8 HOW MUCH TIME ANYONE HAS TO SERVE WITH THE DEPARTMENT OF
9 CORRECTIONS WHEN THEY ARE SENTENCED THROUGH THE DEPARTMENT
10 OF CORRECTIONS, BUT WHAT I CAN TELL YOU IS THAT ACCORDING
11 TO OUR STATUTES THESE CHARGES REQUIRE THAT -- THESE ARE
12 WHAT WE CALL 85 PERCENT CRIMES. WHATEVER SENTENCE YOU
13 RECEIVE THE LAW SAYS THAT YOU WOULD HAVE TO SERVE 85
14 PERCENT OF THE SENTENCE THAT YOU RECEIVED BEFORE YOU WOULD
15 BE ELIGIBLE FOR RELEASE. DO YOU UNDERSTAND THAT? DO YOU
16 UNDERSTAND THAT, SIR?

17 THE DEFENDANT MR. TOOKS: YES, SIR.

18 THE COURT: MR. KENNEDY, DO YOU UNDERSTAND THAT?

19 THE DEFENDANT MR. KENNEDY: YES, SIR.

20 THE COURT: ALL RIGHT. NOW, ALSO, GENTLEMEN, AS I
21 INDICATED THESE CHARGES ARE CONSIDERED MOST SERIOUS UNDER
22 OUR CLASSIFICATION IN SOUTH CAROLINA WHICH -- HAVE YOU
23 TALKED TO YOUR ATTORNEYS ABOUT WHAT IS TYPICALLY REFERRED
24 TO AS THE TWO OR THREE STRIKE RULE?

25 MR. TOOKS, DO YOU UNDERSTAND THAT?

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

23

1 THE DEFENDANT MR. TOOKS: YES, SIR.

2 THE COURT: MR. KENNEDY?

3 THE DEFENDANT MR. KENNEDY: YES, SIR.

4 THE COURT: ALL RIGHT. GENTLEMAN, ESSENTIALLY BOTH
5 OF YOU -- AND IT IS MY UNDERSTANDING THIS WOULD BE A FIRST
6 OFFENSE OF EITHER VIOLENT -- EXCUSE ME; SERIOUS OR MOST
7 SERIOUS; IS THAT CORRECT?

8 MR. MOORE: THAT IS CORRECT.

9 THE COURT: SIR, MR. TOOKS AND MR. KENNEDY, BY
10 PLEADING GUILTY TO THESE CHARGES, THAT IS -- WILL END UP
11 BEING A STRIKE ON YOUR RECORD SO THAT IF EITHER ONE OF YOU
12 IN THE FUTURE WERE TO COMMIT ANOTHER MOST SERIOUS CRIME
13 THE STATE COULD THEN NOTICE YOU AND SEEK LIFE WITHOUT
14 PAROLE.

15 DO YOU UNDERSTAND THAT, MR. TOOKS?

16 THE DEFENDANT MR. TOOKS: YES, SIR.

17 THE COURT: MR. KENNEDY?

18 THE DEFENDANT MR. KENNEDY: YES, SIR.

19 THE COURT: ALSO, IT COUNTS AS A STRIKE SO THAT IF IN
20 THE FUTURE IF YOU WERE TO COMMIT TWO OTHER CRIMES THAT ARE
21 CLASSIFIED AS SERIOUS THEY COULD ALSO SEEK LIFE WITHOUT
22 PAROLE.

23 DO YOU UNDERSTAND THAT, MR. TOOKS?

24 THE DEFENDANT MR. TOOKS: YES, SIR.

25 THE COURT: AND MR. KENNEDY?

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

24

1 THE DEFENDANT MR. KENNEDY: YES, SIR.

2 THE COURT: NOW, MR. WALTERS, YOU REPRESENT

3 MR. TOOKS; IS THAT CORRECT?

4 MR. WALTERS: THAT'S IS CORRECT, YOUR HONOR.

5 THE COURT: HAVE YOU DISCUSSED WITH HIM THE NATURE OF
6 THE CHARGES HE IS PLEADING TO AND HIS CONSTITUTIONAL
7 RIGHTS TO A TRIAL?

8 MR. WALTERS: THAT IS CORRECT.

9 THE COURT: HAVE YOU ALSO DISCUSSED WITH HIM THE
10 STRIKE RULE THAT I JUST WENT OVER?

11 MR. WALTERS: YES, SIR.

12 THE COURT: ALL RIGHT, SIR. AND, MR. BROWN, YOU
13 REPRESENT MR. KENNEDY?

14 MR. BROWN: I DO.

15 THE COURT: HAVE YOU DISCUSSED WITH HIM AS WELL, SIR,
16 THE NATURE OF THE CHARGES HE'S PLEADING TO AND HIS
17 CONSTITUTIONAL RIGHTS TO A TRIAL?

18 MR. BROWN: YES, I HAVE.

19 THE COURT: AS WELL AS THE STRIKE RULE THAT WE
20 DISCUSSED?

21 MR. BROWN: YES, I HAVE.

22 THE COURT: ALL RIGHT, SIR. MR. TOOKS, HOW OLD ARE
23 YOU, SIR?

24 THE DEFENDANT MR. TOOKS: SEVENTEEN.

25 THE COURT: AND MR. KENNEDY?

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

25

1 THE DEFENDANT MR. KENNEDY: NINETEEN.

2 THE COURT: HOW FAR DID YOU GO IN SCHOOL, MR. TOOKS?

3 THE DEFENDANT MR. TOOKS: NINTH GRADE.

4 THE COURT: DID YOU EVER COMPLETE YOUR EDUCATION?

5 THE DEFENDANT MR. TOOKS: I WAS ABOUT TO. I WENT TO
6 JOB CORPS. I NEVER HAD A CHANCE TO GO TO IT.

7 THE COURT: ALL RIGHT. MR. KENNEDY, DID HOW FAR DID
8 YOU GO IN SCHOOL, SIR?

9 THE DEFENDANT MR. KENNEDY: TWELFTH.

10 THE COURT: DID YOU GRADUATE?

11 THE DEFENDANT MR. KENNEDY: NO, SIR.

12 THE COURT: DID YOU COMPLETE THE G.E.D. PROGRAM OR
13 ANYTHING?

14 THE DEFENDANT MR. KENNEDY: I WAS IN THE G.E.D.
15 PROGRAM.

16 THE COURT: ALL RIGHT. DID YOU WORK ANYWHERE, MR.
17 TOOKS?

18 THE DEFENDANT MR. TOOKS: NO, SIR.

19 THE COURT: DID YOU WORK ANYWHERE, MR. KENNEDY?

20 THE DEFENDANT MR. KENNEDY: NO, SIR.

21 THE COURT: GENTLEMAN, I AM GOING TO GO OVER WITH YOU
22 YOUR CONSTITUTIONAL RIGHTS, AND I KNOW THAT YOU'VE
23 REVIEWED THEM WITH YOUR ATTORNEYS. I WANT YOU TO LISTEN
24 CAREFULLY. IF AT ANY TIME DURING MY CONVERSATION WITH YOU
25 YOU NEED TO STOP AND TALK TO YOUR LAWYER, IF YOU'LL LET ME

1 KNOW I'LL STOP AND I'LL GIVE YOU THAT OPPORTUNITY.

2 DO YOU UNDERSTAND, MR. TOOKS?

3 THE DEFENDANT MR. TOOKS: YES, SIR.

4 THE COURT: AND MR. KENNEDY?

5 THE DEFENDANT MR. KENNEDY: YES, SIR.

6 THE COURT: ALL RIGHT. GENTLEMEN, BOTH OF YOU HAVE
7 THE RIGHT TO A JURY TRIAL. YOU HAVE THE RIGHT TO REMAIN
8 SILENT. WHEN YOU PLEAD GUILTY YOU GIVE UP YOUR RIGHTS TO
9 REMAIN SILENT AND YOUR RIGHTS TO A JURY TRIAL.

10 DO YOU UNDERSTAND, MR. TOOKS?

11 THE DEFENDANT MR. TOOKS: YES, SIR.

12 THE COURT: AND MR. KENNEDY?

13 THE DEFENDANT MR. KENNEDY: YES, SIR.

14 THE COURT: NOW, GENTLEMEN, IF YOU WERE TO HAVE A
15 JURY TRIAL THERE ARE OTHER RIGHTS THAT YOU HAVE THAT ARE
16 ASSOCIATED WITH THAT RIGHT TO A JURY TRIAL. FOR EXAMPLE,
17 WERE YOU TO HAVE A JURY TRIAL THE STATE WOULD BE REQUIRED
18 TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT. YOU WOULD
19 BE PRESUMED INNOCENT OF THESE CHARGES. THE WAY THE STATE
20 WOULD GO ABOUT ATTEMPTING TO PROVE YOUR GUILT IS THEY
21 WOULD BRING WITNESSES INTO COURT. THOSE WITNESSES WOULD
22 TAKE THE WITNESS STAND AND TESTIFY AGAINST YOU.

23 THE CONSTITUTION PROVIDES THAT YOU HAVE THE RIGHT
24 DURING A TRIAL TO CONFRONT THE STATE'S WITNESSES OR TO
25 QUESTION THOSE WITNESSES. THROUGH YOUR ATTORNEYS YOU

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27

1 WOULD HAVE THE RIGHT TO QUESTION THE STATE'S WITNESSES,
2 BUT WHEN YOU PLEAD GUILTY BECAUSE YOU GIVE UP THAT RIGHT
3 TO A JURY TRIAL YOU GIVE UP ALL OF THE RIGHTS ASSOCIATED.
4 FOR EXAMPLE, YOU GIVE UP YOUR PRESUMPTION OF INNOCENCE.
5 YOU RELIEVE THE STATE OF THE BURDEN OF HAVING TO PROVE
6 YOUR GUILT. THEREFORE, THEY'RE NOT REQUIRED TO BRING
7 THEIR WITNESSES IN COURT. YOU GIVE UP THE RIGHT TO
8 CONFRONT THE WITHINNESS AGAINST YOU.

9 DO YOU UNDERSTAND THAT, MR. TOOKS?

10 THE DEFENDANT MR. TOOKS: YES, SIR.

11 THE COURT: AND MR. KENNEDY?

12 THE DEFENDANT MR. KENNEDY: YES, SIR.

13 THE COURT: NOW, GENTLEMAN, IF YOU CHOSE TO DO SO YOU
14 COULD BRING WITNESSES IN COURT TO TESTIFY ON YOUR OWN
15 BEHALF OR YOU YOURSELF COULD TESTIFY ON YOUR OWN BEHALF,
16 BUT YOU'RE NOT REQUIRED TO DO THAT. IN THIS COUNTRY NO
17 PERSON CHARGED WITH A CRIMINAL OFFENSE IS EVER REQUIRED TO
18 PROVE THEMSELVES INNOCENT. THE STATE CARRIES THE BURDEN
19 OF PROOF. THEREFORE, DURING THE COURSE OF A TRIAL YOU
20 COULD CHOOSE TO REMAIN SILENT, AND IF YOU DID THAT I WOULD
21 EXPLAIN TO THE MEMBERS OF THE JURY THAT THAT IS YOUR
22 CONSTITUTIONAL RIGHT. YOU HAVE NOTHING TO PROVE. THE
23 STATE CARRIES THE BURDEN OF PROOF AND THAT IF YOU CHOSE TO
24 REMAIN SILENT THEY COULD NOT HOLD THAT AGAINST YOU IN ANY
25 WAY. IT WOULD BE IMPROPER FOR THEM TO EVEN DISCUSS IT IN

1 THEIR DELIBERATIONS AND I WOULD INSTRUCT THEM TO THIS.

2 DO YOU UNDERSTAND THAT, MR. TOOKS?

3 THE DEFENDANT MR. TOOKS: YES, SIR.

4 THE COURT: AND MR. KENNEDY?

5 THE DEFENDANT MR. KENNEDY: YES, SIR.

6 THE COURT: ALL RIGHT. AS I INDICATED TO YOU THE
7 STATE CARRIES THE BURDEN OF PROOF AND THEY MUST CARRY THAT
8 BURDEN TO A UNANIMOUS VERDICT. IN OTHER WORDS, GENTLEMEN,
9 ALL 12 MEMBERS OF THE JURY WOULD HAVE TO AGREE THAT YOU
10 WERE GUILTY OF THESE CHARGES OR THEY COULD NOT CONVICT YOU
11 OF THESE CHARGES.

12 DO YOU UNDERSTAND THAT, MR. TOOKS?

13 THE DEFENDANT MR. TOOKS: YES, SIR.

14 THE COURT: AND MR. KENNEDY?

15 THE DEFENDANT MR. KENNEDY: YES, SIR.

16 THE COURT: NOW, IF YOU WERE TO GO THROUGH A JURY
17 TRIAL AND YOU WERE TO BE CONVICTED YOU COULD APPEAL THAT
18 CONVICTION TO A HIGHER COURT IF YOU FELT THAT THAT WAS
19 APPROPRIATE.

20 DO YOU UNDERSTAND THAT, MR. TOOKS?

21 THE DEFENDANT MR. TOOKS: YES, SIR.

22 THE COURT: AND MR. KENNEDY?

23 THE DEFENDANT MR. KENNEDY: YES, SIR.

24 THE COURT: ALL RIGHT. GENTLEMAN, THESE ARE YOUR
25 CONSTITUTIONAL RIGHTS THAT YOU HAVE WHEN YOU COME INTO

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

29

1 COURT, BUT WHEN YOU PLEAD GUILTY YOU WAIVE OR YOU GIVE UP
2 THESE RIGHTS. YOU WILL NOT HAVE A JURY TRIAL, AND YOUR
3 CASE WILL BE RESOLVED TODAY.

4 DO YOU UNDERSTAND THAT, MR. TOOKS?

5 THE DEFENDANT MR. TOOKS: YES, SIR.

6 THE COURT: DO YOU UNDERSTAND THAT, MR. KENNEDY?

7 THE DEFENDANT MR. KENNEDY: YES, SIR.

8 THE COURT: UNDERSTANDING THAT, UNDERSTANDING THAT
9 YOU GIVE UP THESE RIGHTS OR YOU WAIVE THEM WITH REGARDS TO
10 THESE CHARGES, DO YOU STILL WISH TO GO FORWARD, MR. TOOKS,
11 WITH YOUR PLEA?

12 THE DEFENDANT MR. TOOKS: YES, SIR.

13 THE COURT: DO YOU STILL WISH TO GO FORWARD,
14 MR. KENNEDY, WITH YOUR PLEA?

15 THE DEFENDANT MR. KENNEDY: YES, SIR.

16 THE COURT: ALL RIGHT. NOW, WITH REGARDS TO THIS
17 CASE, MR. TOOKS, HAS ANYONE PROMISED YOU ANYTHING, HELD
18 OUT ANY HOPE OF REWARD, OR THREATENED YOU IN ANY WAY TO
19 GET YOU TO PLEAD GUILTY?

20 THE DEFENDANT MR. TOOKS: NO, SIR.

21 THE COURT: MR. KENNEDY, HAS ANYONE PROMISED YOU
22 ANYTHING, HELD OUT ANY HOPE OF REWARD, OR THREATENED YOU
23 IN ANY WAY TO GET YOU TO PLEAD GUILTY?

24 THE DEFENDANT MR. KENNEDY: NO, SIR.

25 THE COURT: MR. TOOKS, ARE YOU SATISFIED WITH THE WAY

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30

1 IN WHICH MR. WALTERS HAS REPRESENTED YOU AND ADVISED YOU?

2 THE DEFENDANT MR. TOOKS: YES, SIR.

3 THE COURT: DO YOU HAVE ANY COMPLAINTS AGAINST HIM OR
4 AGAINST ANY MEMBER OF HIS OFFICE OR HIS STAFF?

5 THE DEFENDANT MR. TOOKS: NO, SIR.

6 THE COURT: HAVE YOU TOLD HIM EVERYTHING YOU KNOW
7 ABOUT THESE CHARGES SO HE COULD FULLY EXPLORE ANY POSSIBLE
8 DEFENSES YOU MAY HAVE, TALK TO ANY WITNESSES YOU MAY HAVE?
9 HAVE YOU TOLD HIM EVERYTHING THAT YOU KNOW SO THAT HE
10 COULD FULLY AND ADEQUATELY REPRESENT YOUR INTEREST?

11 THE DEFENDANT MR. TOOKS: YES, SIR.

12 THE COURT: ALL RIGHT. MR. KENNEDY, HAVE YOU ALSO
13 SHARED WITH MR. BROWN EVERYTHING YOU KNOW ABOUT THESE
14 CHARGES?

15 THE DEFENDANT MR. KENNEDY: YES, SIR.

16 THE COURT: HAVE YOU TOLD HIM ABOUT ANY POSSIBLE
17 WITNESSES, EVERYTHING THAT YOU KNOW SO THAT HE COULD FULLY
18 EXPLORE AND LOOK INTO ANY POSSIBLE DEFENSES YOU MAY HAVE,
19 SIR?

20 THE DEFENDANT MR. KENNEDY: YES, SIR.

21 THE COURT: HAS ANYONE PROMISED YOU ANYTHING, HELD
22 OUT ANY HOPE OF REWARD OR THREATENED YOU IN ANY WAY TO GET
23 YOU TO PLEAD GUILTY?

24 THE DEFENDANT MR. KENNEDY: NO, SIR.

25 THE COURT: ARE YOU SATISFIED WITH THE WAY MR. BROWN

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31

1 HAS REPRESENTED YOU AND ADVISED YOU?

2 THE DEFENDANT MR. KENNEDY: YES, SIR.

3 THE COURT: ANY COMPLAINTS AGAINST HIM OR ANY MEMBER
4 OF HIS OFFICE OR HIS STAFF?

5 THE DEFENDANT MR. KENNEDY: NO.

6 THE COURT: HAS HE DONE EVERYTHING THAT YOU BELIEVE
7 HE COULD DO TO HELP YOU AND ASSIST YOU IN THIS CASE?

8 THE DEFENDANT MR. KENNEDY: YES, SIR.

9 THE COURT: HOW ABOUT, MR. TOOKS, HAS MR. WALTERS
10 DONE EVERYTHING THAT YOU BELIEVE HE COULD DO TO ASSIST YOU
11 AND HELP YOU IN THIS MATTER?

12 THE DEFENDANT MR. TOOKS: YES, SIR.

13 THE COURT: ARE YOU TODAY, SIR, UNDER THE INFLUENCE
14 OF ANY SUBSTANCE THAT WOULD AFFECT YOUR ABILITY TO
15 UNDERSTAND WHAT YOU'RE DOING?

16 THE DEFENDANT MR. TOOKS: NO, SIR.

17 THE COURT: ALL RIGHT. YOU NEED TO SPEAK UP, NOW.
18 THIS YOUNG LADY HAS TO TAKE DOWN EVERYTHING THAT WE'RE
19 SAYING. SO, SHE NEEDS TO BE ABLE TO HEAR YOU. OKAY?

20 THE DEFENDANT MR. TOOKS: YES, SIR.

21 THE COURT: ALL RIGHT. ARE YOU UNDER THE INFLUENCE
22 OF ANYTHING THAT WOULD AFFECT -- ANY SUBSTANCE THAT WOULD
23 AFFECT YOUR ABILITY TO UNDERSTAND WHAT YOU'RE DOING?

24 THE DEFENDANT MR. TOOKS: NO, SIR.

25 THE COURT: MR. KENNEDY, ARE YOU UNDER THE INFLUENCE

1 OF ANY SUBSTANCE THAT WOULD AFFECT YOUR ABILITY TO
2 UNDERSTAND WHAT YOU'RE DOING?

3 THE DEFENDANT MR. KENNEDY: NO, SIR.

4 THE COURT: MR. TOOKS, ARE YOU AWARE OF OR DO YOU
5 HAVE ANY PHYSICAL EMOTIONAL, MENTAL, OR NERVOUS CONDITION
6 THAT WOULD AFFECT YOUR ABILITY TO UNDERSTAND WHAT YOU'RE
7 DOING?

8 THE DEFENDANT MR. TOOKS: NO, SIR.

9 THE COURT: MR. KENNEDY, DO YOU HAVE ANY PHYSICAL,
10 EMOTIONAL, NERVOUS CONDITION, OR ANYTHING THAT WOULD
11 AFFECT YOUR ABILITY TO UNDERSTAND WHAT YOU'RE DOING?

12 THE DEFENDANT MR. KENNEDY: NO, SIR.

13 THE COURT: HAVE YOU -- DO YOU HAVE ANY COMPLAINTS
14 AGAINST LAW ENFORCEMENT, THE SOLICITOR'S OFFICE, OR ANY
15 MEMBER OF THE DETENTION CENTER, MR. TOOKS?

16 THE DEFENDANT MR. TOOKS: NO, SIR.

17 THE COURT: MR. KENNEDY?

18 THE DEFENDANT MR. KENNEDY: NO, SIR.

19 THE COURT: MR. TOOKS, THE QUESTIONS THAT I HAVE
20 ASKED YOU, THE ANSWERS THAT YOU HAVE GIVEN ME, HAVE THEY
21 BEEN YOUR ANSWERS OR WHAT SOMEONE ELSE TOLD YOU TO TELL
22 ME?

23 THE DEFENDANT MR. TOOKS: MY ANSWERS.

24 THE COURT: HAVE THEY BEEN TRUTHFUL?

25 THE DEFENDANT MR. TOOKS: YES, SIR.

(MICHAEL C. KENNEDY AND LUGENE TOOKS-BY THE COURT)

33

1 THE COURT: HAVE YOU UNDERSTOOD THE QUESTIONS THAT
2 I'VE ASKED YOU?

3 THE DEFENDANT MR. TOOKS: YES, SIR.

4 THE COURT: MR. KENNEDY, THE ANSWERS THAT YOU'VE
5 GIVEN ME TO MY QUESTIONS, HAVE THEY BEEN TRUTHFUL?

6 THE DEFENDANT MR. KENNEDY: YES, SIR.

7 THE COURT: HAVE THEY BEEN YOUR ANSWERS OR WHAT
8 SOMEONE ELSE TOLD YOU TO TELL ME?

9 THE DEFENDANT MR. KENNEDY: MINE.

10 THE COURT: AND YOU'VE UNDERSTOOD THE QUESTIONS I'VE
11 ASKED YOU?

12 THE DEFENDANT MR. KENNEDY: YES, SIR.

13 THE COURT: MR. TOOKS, ARE YOU PLEADING GUILTY OF
14 YOUR OWN FREE WILL, SIR?

15 THE DEFENDANT MR. TOOKS: YES, SIR.

16 THE COURT: ARE YOU GUILTY OF THESE CHARGES?

17 THE DEFENDANT MR. TOOKS: YES, SIR.

18 THE COURT: MR. KENNEDY, ARE YOU PLEADING GUILTY OF
19 YOUR OWN FREE WILL?

20 THE DEFENDANT MR. KENNEDY: YES, SIR.

21 THE COURT: ARE YOU GUILTY OF THESE CHARGES?

22 THE DEFENDANT MR. KENNEDY: YES, SIR.

23 THE COURT: ALL RIGHT. GENTLEMEN, I AM GOING TO LOOK
24 TO THE SOLICITOR TO GIVE ME THE FACTS. PLEASE LISTEN
25 CAREFULLY AND I'LL BE BACK WITH YOU IN JUST A MINUTE.

1 SOLICITOR?

2 MR. MOORE: THANK YOU, YOUR HONOR. MAY IT PLEASE THE
3 COURT, AS WE PREVIOUSLY WENT THROUGH, THIS HAPPENED
4 JANUARY 8 OF THIS YEAR. MR. TOOKS AND MR. KENNEDY WENT TO
5 MR. TOMMY RICHARDSON'S HOME WHICH IS RIGHT OFF OF THE
6 CIRCLE ACROSS FROM THE BARNWELL POLICE DEPARTMENT PROBABLY
7 A COUPLE OF HUNDRED YARDS FROM WHERE WE ARE RIGHT NOW.
8 MR. TOOKS CAME UP TO HIM AT HIS BACK PORCH, BASICALLY
9 ASKED HIM SOMETHING, GOT HIS ATTENTION, AND AT THAT POINT
10 MR. KENNEDY HIT HIM OVER THE HEAD WITH THE WINE BOTTLE.
11 THE WINE BOTTLE WAS --

12 MR. BROWN: NOT MR. KENNEDY. MR. TOOKS.

13 MR. PEEPLES: HE SAID MR. TOOKS HIT HIM OVER THE HEAD
14 WITH A WINE BOTTLE.

15 MR. BROWN: HE SAID KENNEDY.

16 THE COURT: HE SAID KENNEDY. IT WAS MR. TOOKS?

17 MR. PEEPLES: HE STANDS CORRECTED. IT WAS TOOKS.

18 MR. BROWN: THANK YOU.

19 MR. PEEPLES: YOU'RE WELCOME.

20 THE COURT: AT THAT POINT HE WAS HIT OVER THE HEAD
21 WITH A WINE BOTTLE. A SCUFFLE ENSUED. MR. RICHARDSON
22 ENDED UP SCUFFLING WITH MR. TOOKS. THEN MR. KENNEDY CAME
23 IN AND AIDED HIM. THIS IS AT THE POINT WHERE HE WAS
24 THROWN OFF HIS PORCH OR AS WAS PUT EARLIER BODY-SLAMMED
25 OFF OF HIS PORCH WHICH CAUSED THE INJURIES TO HIS HIP. AT

(STATEMENT BY MR. MOORE)

35

1 THIS POINT THEY RIPPED THE MONEY OUT OF HIS BACK POCKET.
2 IT WAS A WALLET AND THEY ACTUALLY RIPPED THE BACK POCKET
3 IN THE PROCESS OF TAKING IT AWAY.

4 THEY FLED THE SCENE, AND THE BARNWELL POLICE
5 DEPARTMENT BECAME INVOLVED AT THAT POINT. THIS
6 INVESTIGATION STARTED JANUARY 8. THEY WEREN'T ARRESTED
7 UNTIL FEBRUARY 1 AND FEBRUARY 2. DURING THAT TIME A
8 REWARD WAS PUT OUT. A PERSON DID COME FORWARD AND SAY
9 THAT MR. KENNEDY TOLD HIM THAT HE COMMITTED THE ROBBERY;
10 THAT THEY TOOK \$500 AWAY FROM HIM AND ALSO THAT
11 MR. KENNEDY SAID THAT THE ROBBERY WAS COMMITTED WITH
12 MR. TOOKS' HELP. THIS LED TO MR. TOOKS BEING INTERVIEWED.

13 THE WINE BOTTLE IN QUESTION WAS A UNIQUE WINE BOTTLE.
14 IT'S NOT EVEN SOLD IN THIS COUNTY. THE POLICE DEPARTMENT
15 WAS ABLE TO LINK IT TO MR. TOOKS' FAMILY. THEY ACTUALLY
16 INTERVIEWED SOME OF THE LIQUOR STORES AROUND BECAUSE SOME
17 OF THE FAMILY HAD WENT TRYING TO PURCHASE THIS KIND OF
18 WINE AGAIN AND WERE UNABLE TO DO SO, BUT THEY WERE ABLE TO
19 TRACK THE WINE BOTTLE WAS WITH MR. TOOKS' FAMILY OVER THE
20 HOLIDAYS.

21 MR. TOOKS WAS INTERVIEWED. HE DID ADMIT HIS
22 INVOLVEMENT AND THAT HIM AND MR. KENNEDY COMMITTED THIS
23 CRIME. HE ADMITTED THAT HE WAS THE ONE THAT KNEW
24 MR. RICHARDSON AND KNEW THAT HE HAD MONEY AND REALLY
25 CONCEIVED THIS IDEA. AT THIS POINT HE WAS ARRESTED.

1 MR. KENNEDY WAS LOCATED THE NEXT DAY. HE WAS IN AIKEN
2 COUNTY, AND AT THAT POINT THEY WERE BOTH UNDER ARREST.

3 I WOULD LIKE TO COMPLIMENT THE JOB THAT THE BARNWELL
4 POLICE DEPARTMENT DID AND ALSO THE BARNWELL SHERIFF'S
5 OFFICE. THEY REALLY WORKED TOGETHER HARD ON THIS TO SOLVE
6 IT. I KNOW THERE ARE SEVERAL PEOPLE WHO WOULD LIKE TO
7 SPEAK AT THE APPROPRIATE TIME.

8 THE COURT: ALL RIGHT. THANK YOU. ANY PRIOR
9 HISTORY?

10 MR. MOORE: THERE IS NO PRIOR HISTORY.

11 THE COURT: I WILL HEAR FROM ANYONE ON BEHALF OF THE
12 STATE IN JUST A LITTLE BIT.

13 MR. TOOKS, THE FACTS THAT THE SOLICITOR SHARED WITH
14 THE COURT, ARE THOSE FACTS ESSENTIALLY CORRECT AS TO THE
15 FACTS ON THESE CHARGES?

16 THE DEFENDANT MR. TOOKS: YES, SIR.

17 THE COURT: MR. KENNEDY, ARE THOSE FACTS CORRECT
18 INVOLVING YOUR INVOLVEMENT WITH IN THESE CHARGES?

19 THE DEFENDANT MR. KENNEDY: YES, SIR.

20 THE COURT: ALL RIGHT. I FIND THAT THE STATE HAS
21 PROVIDED A SUBSTANTIAL FACTUAL BASIS TO SUPPORT THE
22 CHARGES CONTAINED IN THESE FOUR INDICTMENTS AGAINST BOTH
23 MR. TOOKS AND MR. KENNEDY. I FIND THAT BOTH GENTLEMAN
24 HAVE ENTERED INTO THESE PLEAS FREELY AND VOLUNTARILY AND
25 INTELLIGENTLY. MR. TOOKS HAS HAD THE BENEFIT OF AN

(STATEMENT BY MR. BROWN)

37

1 OUTSTANDING LAWYER MR. WALTERS. MR. KENNEDY HAS HAD THE
2 BENEFIT OF AN EQUALLY OUTSTANDING LAWYER MR. BROWN, AND
3 BOTH MR. TOOKS AND MR. KENNEDY HAVE INDICATED THAT THEY'RE
4 SATISFIED WITH THEIR LAWYERS AND THE ADVICE AND
5 INSTRUCTION AND THE COUNSEL THAT THEY HAVE RECEIVED FROM
6 THEIR ATTORNEYS AND I WILL ACCEPT THEIR PLEA.

7 I AM GOING TO HEAR FROM THE DEFENSE, AND THEN I'LL
8 COME BACK AND HEAR FROM THE STATE. EITHER MR. WALTERS OR
9 MR. BROWN, WHOEVER WANTS TO GO FIRST, I'LL BE HAPPY TO
10 HEAR FROM YOU.

11 MR. BROWN: IT DOESN'T MATTER.

12 MR. WALTERS: GO AHEAD.

13 MR. BROWN: YOUR HONOR, THANK YOU FOR THE
14 OPPORTUNITY. FIRST, ALLOW ME TO SAY TO THE VICTIMS AND
15 THE FAMILY WE'RE GENUINELY SORRY ABOUT WHAT HAPPENED. HOW
16 ARE YOU DOING, MR. RICHARDSON? I DIDN'T SEE HIM BACK
17 THERE. THESE ARE TRAUMATIC SITUATIONS, AND MY HEART GOES
18 OUT TO THEM, AND MY SYMPATHIES GOES OUT TO THEM BECAUSE HE
19 SHOULD NOT HAVE HAD TO HAVE ENDURED WHAT HE DID. I
20 UNDERSTAND HE IS A VERY FINE GENTLEMAN AND OUTSTANDING
21 CITIZEN IN THIS COMMUNITY, AND HE DESERVES BETTER THAN
22 WHAT HE ENDURED.

23 JUDGE, I HAVE BEEN PRACTICING LAW A LONG TIME. I
24 HAVE TO ADD IT UP. I GUESS IT IS OVER 35 OR SO YEARS, AND
25 I HATE TO SEE THESE KIND OF CASES COME IN THE DOOR. I

1 FEEL, HOWEVER, AN OBLIGATION TO DO EVERYTHING I CAN FOR
2 ANYONE IN NEED, AND, OBVIOUSLY, MY CLIENT MR. MICHAEL
3 KENNEDY CERTAINLY HAS A NEED. HIS MOTHER CAME TO SEE ME
4 IN COLUMBIA, AND THE RESOURCES OF THE FAMILY WERE NOT
5 SUFFICIENT TO ADEQUATELY RETAIN ME, BUT I WANTED TO MAKE
6 SURE THAT THE YOUNG MAN GOT AT LEAST NO MORE -- AT THAT
7 TIME I DIDN'T KNOW THAT HE MAY BE GETTING TIME. I HAD NOT
8 INTERVIEWED HIM, BUT I WANTED TO MAKE SURE THAT HE GOT THE
9 FAIREST TREATMENT HE COULD POSSIBLY GET. I THINK THOSE OF
10 US WHO TAKE THAT OATH AS WE ARE LAWYERS TO MAKE SURE THAT
11 OUR CLIENTS GET A FAIR BREAK UNDER ALL OF THE FACTS AND
12 CIRCUMSTANCES WHICH MAY BE APPLICABLE IN THAT PARTICULAR
13 CASE.

14 WHILE I WENT OVER -- CAME DOWN HERE AND WENT TO THE
15 BARNWELL COUNTY DETENTION CENTER TO MEET WITH MY CLIENT
16 AND HE ADMITTED TO ME THAT HE HAD COMMITTED THE OFFENSE AS
17 ALL OF THE DISCOVERY INDICATED THAT HE HAD. I KNEW THEN
18 HE WAS VERY SORRY FOR WHAT HE HAD DONE. BASICALLY, HE HAD
19 NEVER BEEN IN ANY TROUBLE BEFORE IN HIS LIFE. NEVER.
20 JUST NEVER DONE ANYTHING WRONG. HE HAD ENROLLED INTO A
21 G.E.D. PROGRAM IN AIKEN. THAT'S WHY HE WAS ARRESTED IN
22 AIKEN BECAUSE HE WAS IN SCHOOL FULL TIME TO GET HIS G.E.D.
23 DEGREE TO MOVE ON WITH HIS LIFE.

24 THERE WAS NO DRUGS INVOLVED HERE. THEY WERE NOT OUT
25 TO GET ANY MONEY TO PURCHASE ANY DRUGS. THEY WERE NOT

(STATEMENT BY MR. BROWN)

39

1 UNDER THE INFLUENCE OF DRUGS. I GUESS YOU CAN SAY THE
2 DEVIL JUST GOT A HOLD ONTO HIM, AND THEY DID SOMETHING
3 SUPER STUPID, AND THERE IS NO WAY FOR THEM TO GIVE ANY
4 PLAUSIBLE ACCEPTABLE EXCUSE. I CERTAINLY CAN'T DO IT, AND
5 THEIR MAMA WHO IS PRESENT HERE TODAY WITH HIS FATHER, THEY
6 CAN'T DO IT.

7 ALL I CAN SAY IS THAT IT'S SOMETHING THAT THEY TRULY
8 -- MY CLIENT TRULY REGRETS. THERE IS NO WAY TO TURN THE
9 CLOCK AROUND AND GO BACK TO THAT NIGHT AND LET THEM WALK
10 BY MR. RICHARDSON'S HOUSE AND NOT DO WHAT THEY DID. IT'S
11 TOO LATE. I THINK MY CLIENT'S CONSCIENCE WAS BOTHERING
12 HIM IS THE REASON WHY HE TOLD THE GENTLEMAN THAT HE HAD
13 DONE IT. IT WAS KILLING HIM ON THE INSIDE. HE IS
14 GENUINELY REMORSEFUL FOR THIS.

15 MY CLIENT WAS 18 AT THE TIME. HE'S NOW TURNED, AS OF
16 MARCH, 19. HE STANDS BEFORE YOU TODAY AND HAS ENTERED A
17 PLEA TO THESE TWO SERIOUS OFFENSES KNOWING THAT AT A
18 MINIMUM HE HAS TO GET AT LEAST 10 YEARS AND UNDER OUR
19 STATUTE AT LEAST 85 PERCENT MUST BE SERVED. SO, AS
20 GRACIOUS AS THIS WORLD MIGHT BE, FOR THE NEXT EIGHT AND A
21 HALF YEARS HE IS GOING TO BE IN PRISON SOMEWHERE IN THIS
22 STATE. LIKE I SAID, HE WAS ONLY 18 AT THE TIME. HE IS
23 NOW 19. SO, EVEN IF YOU GAVE HIM A MINIMUM OF 10 YEARS,
24 HAVING TO DO 85 PERCENT HE'LL BE 27 AND A HALF OR SO YEARS
25 OLD, PUSHING 28 YEARS OLD, IF YOU WERE KIND ENOUGH TO GIVE

1 HIM THE 10 YEARS.

2 BECAUSE HE HAS NO PRIOR RECORD, BECAUSE HE DOES COME
3 FROM GOOD FAMILY THAT DID NOT RAISE HIM THIS WAY, AND
4 BECAUSE HE'S A FIRST OFFENDER I AM ASKING TO CONSIDER 10
5 YEARS. I THINK FOR THE TWO REASONS I JUST MENTIONED THAT
6 THAT IS A VERY, VERY SERIOUS SENTENCE. LIKE I SAID, THERE
7 IS NOTHING WE CAN DO TO TURN THE CLOCK AROUND. THERE IS
8 NOTHING WE CAN DO TO REPAIR THE DAMAGE OR THE INJURY
9 THAT'S DONE TO MR. RICHARDSON AND TO THE TRAUMA THAT
10 IMPOSED ITSELF ON THE RICHARDSON FAMILY AND THE COMMUNITY
11 OF BARNWELL. I THINK, THOUGH, BASED ON MY EXPERIENCE
12 PRACTICING LAW IN THESE KIND OF CASES, I REALLY THINK THAT
13 THE 10 YEARS IS A LOT OF TIME. IT'S A LOT OF TIME. IT IS
14 A LOT OF TIME.

15 I JUST ASK YOU TO PLEASE CONSIDER THAT -- THE 10
16 YEARS AND MAKE THE SENTENCES CONCURRENT.

17 THE COURT: THANK YOU, MR. BROWN. MR. WALTERS?

18 MR. WALTERS: MAY IT PLEASE THE COURT.

19 THE COURT: YES, SIR.

20 MR. WALTERS: YOUR HONOR, MY FATHER WOULD OFTEN SAY
21 TO ME, LIFE IS SHORT, BUT IF YOU MAKE THE WRONG DECISIONS
22 IT CAN BE VERY LONG AND PAINFUL. IN THIS PARTICULAR CASE
23 WHEN WE LOOK AT LUGENE TOOKS IT IS A TYPICAL PATTERN OF
24 WHAT YOU SEE EVERYDAY. HE IS STANDING BEFORE THE COURT.
25 HIS MOTHER IS HERE. HIS FATHER HAS NEVER HAD ANY

(STATEMENT BY MR. WALTERS)

41

1 INVOLVEMENT WITH HIM. HE'S GOT ALL THE FACTORS THAT BEING
2 BORN IN THIS COUNTY WITHOUT HIS FATHER AND HIS MOTHER NOT
3 HAVING SUFFICIENT FUNDS TO TAKE CARE OF HIM JUST BY BEING
4 BORN HERE, ULTIMATELY, IF YOU HAD TO BET THE MAJORITY OF
5 THE KIDS IN HIS SITUATION END UP RIGHT HERE IN FRONT OF
6 THIS PODIUM. IT IS SAD, BUT IT IS A FACT OF LIFE.

7 IT DOES NOT JUSTIFY HIS BEHAVIOR TOWARDS
8 MR. RICHARDSON. I'M SURE MR. RICHARDSON -- I HAVE NEVER
9 MET HIM BEFORE, BUT I CAN GUARANTEE YOU HE PROBABLY GAVE
10 EVERYBODY A BREAK, TRIED TO HELP PEOPLE OUT IN THE
11 COMMUNITY, A NICE GUY, WORKED HARD, PAID HIS TAXES AND HIS
12 DUES, PUT HIS TIME IN ON THE JOB, AND HE CERTAINLY DIDN'T
13 DESERVE WHAT HAPPENED TO HIM ON THAT PARTICULAR DAY.
14 UNDER THE CIRCUMSTANCES NO ONE DESERVES THAT.

15 OF COURSE, LIVING IN THIS COMMUNITY WE ALL WANT GOOD
16 SCHOOLS. WE ALL WANT TO BE ABLE TO WALK AROUND OUR
17 NEIGHBORHOOD. WE WANT TO BE ABLE TO OFFER A KID A JOB IF
18 HE NEEDS A BREAK AND GIVE HIM A JOB. WE CERTAINLY WANT TO
19 TRUST PEOPLE. WE DON'T WANT TO JUDGE THEM BASED ON THEIR
20 RACE, THEIR COLOR, THEIR ECONOMIC BACKGROUND. I'M SURE
21 THAT MR. RICHARDSON IN THIS PARTICULAR CASE WAS THAT TYPE
22 OF PERSON. FROM ALL WE'VE HEARD ABOUT HIM HE'S PROBABLY
23 THE TYPE OF GUY TO GIVE YOU HIS RIGHT ARM JUST TO MAKE
24 SURE YOU WERE OKAY.

25 WE WERE COMING IN AND HIS WIFE WAS GETTING ON THE

1 ELEVATOR, AND SHE SAID, COME ON, YOU RIDE WITH US. SHE
2 WAS VERY TALKATIVE AND VERY NICE. SOMETIMES AS A DEFENSE
3 LAWYER YOU DON'T LIKE TO GO NEAR THE VICTIM. YOU DON'T
4 LIKE TO SAY ANYTHING TO THEM, AND IF THEY SEE YOU, YOU
5 TURN YOUR HEAD AND YOU WALK AWAY BECAUSE I AM WALKING IN
6 HERE AND I GOT A 17-YEAR-OLD KID, DOESN'T KNOW HIS HEAD
7 FROM A HOLE IN THE GROUND. HIS DADDY IS NOT STANDING
8 HERE. THERE'S BEEN NO GUIDANCE WITH REGARDS TO THOSE
9 ISSUES IN THE HOUSE ON WHAT'S RIGHT AND WHAT'S WRONG, AND
10 IN A SPLIT SECOND HE MAKES A DECISION THAT HAS A
11 MONUMENTAL CATASTROPHIC EVENT IN FRONT OF HIM. HE'S
12 ULTIMATELY HURT A FAMILY THAT DIDN'T DESERVE THIS.
13 MOREOVER, HE'S ULTIMATELY PUT HIMSELF IN A POSITION WHERE
14 HE IS FACING CLOSE TO 50 YEARS IN JAIL.

15 YOUR HONOR, HOW DO YOU BALANCE THE EQUITIES? THE
16 FAMILY IS HERE. FORMER JUDGE PEEPLES IS HERE. THIS
17 FAMILY SUFFERED A GREAT LOSS, AND I'VE GOT A 17-YEAR-OLD
18 KID THAT'S NEVER COMMITTED A CRIME, NEVER DONE ANYTHING
19 WRONG, BUT THE ODD THING IS THAT IF WE SAT DOWN AND SAID
20 LOOK AT THE FACTORS WITHIN THIS HOME, EVEN THOUGH HE
21 HASN'T COMMITTED A CRIME, IF WE HAD TO BET MONEY HE WOULD
22 PROBABLY END UP HERE. THAT'S THE SAD REALITY OF THE
23 SOCIETY THAT WE LIVE IN.

24 WHAT I CAN ASK FOR TODAY IS THAT THERE BE SOME
25 BALANCING OF THE EQUITIES. THE POSITION THAT EVERYONE IN

(STATEMENT BY MR. WALTERS)

43

1 THIS COURTROOM WANTS TO TAKE IS LET'S THROW AWAY THE KEY.
2 I THINK THERE IS STILL SOME GOOD IN MR. TOOKS, BUT
3 MR. TOOKS TODAY HAS TO ASSUME RESPONSIBILITY FOR WHAT HE
4 HAS DONE, AND THAT'S WHAT WE'RE DOING AT THIS TIME. LIFE
5 IS SHORT. IF YOU MAKE BAD DECISIONS, IT CAN BE VERY LONG
6 AND VERY PAINFUL.

7 UNDER THE CIRCUMSTANCES THE ONLY GOOD WE CAN PLACE
8 BEFORE THIS COURT IS THE FACT THAT HE'S NEVER COMMITTED A
9 CRIME. HE'S HERE WITH HIS MOTHER, BUT THAT'S ALL THE
10 FAMILY HE HAS. UNDER THE CIRCUMSTANCES ALL WE CAN ASK FOR
11 IS MERCY FROM THE COURT.

12 MR. RICHARDSON, HIS FAMILY, ALL WE CAN SIMPLY SAY IS
13 THAT WE'RE SORRY, BUT SORRY DOESN'T CHANGE WHAT'S HAPPENED
14 IN HIS LIFE AND THE CHANGES THAT EVERYBODY ELSE IN HIS
15 LIFE HAS HAD TO MAKE BECAUSE OF WHAT OCCURRED ON THAT
16 PARTICULAR DAY.

17 IN LIGHT OF HIS YOUTH AND HIS STUPIDITY AND HE MADE A
18 DECISION THAT UNDER THE CIRCUMSTANCES THAT, ULTIMATELY,
19 MAY LEAD TO HIS DESTRUCTION WE WOULD ASK THAT THE COURT
20 TAKE INTO CONSIDERATION HIS YOUTH, THE FACT THAT HE'S
21 NEVER COMMITTED A CRIME, AND WE WOULD ASK THAT YOU GIVE
22 HIM A SENTENCE THAT IS REASONABLE TO TEACH A LESSON.
23 MAYBE HE COULD RECEIVE EDUCATION. MAYBE HE COULD COME OUT
24 OF THIS AND YOU CAN STILL HAVE SOME FRAGMENT OF HIS LIFE
25 LEFT WHERE HE CAN DO SOMETHING PRODUCTIVE. THE SAD PART

1 IS THAT IN THE STATE OF SOUTH CAROLINA IF WE HAD TO SIT
2 DOWN AND PREDICT WHERE HE'LL BE 20 YEARS FROM NOW OR 30
3 YEARS FROM NOW WE HOPE HE WOULD NOT BE HERE, BUT UNDER THE
4 CIRCUMSTANCES AND THE WORLD THAT WE LIVE IN YOU PROBABLY
5 BETTER GUESS THAT.

6 SO, YOUR HONOR, IT'S IN YOUR HANDS. THIS IS THE SAME
7 KID THAT YOU'VE SEEN 100 TIMES IN FRONT OF YOU. I'M
8 SAYING THAT THERE IS STILL SOME GOOD IN HIM AND THERE IS
9 STILL SOME OPPORTUNITY TO DO SOMETHING PRODUCTIVE WITH HIS
10 LIFE. WE WOULD ASK FOR A REASONABLE SENTENCE UNDER THE
11 CIRCUMSTANCES. I WANT YOU TO SATISFY THESE PEOPLE OVER
12 HERE BECAUSE THEY DIDN'T DESERVE WHAT THEY GOT, BUT ON THE
13 OTHER SIDE OF THE COIN I WOULD ASK YOU TO TAKE INTO
14 CONSIDERATION HIS STUPIDITY, HIS YOUTH, THE INABILITY TO
15 DISCERN AND MAKE A WISE DECISION, BUT WITHOUT THE PROPER
16 COUNSEL YOU ESSENTIALLY GOT SOMEONE THAT'S OUT THERE
17 STEERING A SHIP AND THEY DON'T HAVE A RUDDER.

18 WHERE DOES THIS LEAD TO? WHAT DOES IT LEAD TO? THE
19 ROAD HE IS HEADED DOWN, HE IS ESSENTIALLY GOING TO TRAVEL
20 THAT ROAD BY HIMSELF. HIS MOTHER IS HERE, BUT,
21 ESSENTIALLY, HE IS GOING BY HIMSELF AT 17 YEARS OLD. I
22 DON'T KNOW WHAT THE FUTURE HOLDS FOR HIM. ALL I CAN
23 SIMPLY ASK OF THE COURT IS THAT THE COURT IN BALANCING THE
24 EQUITIES CONSIDER SOMETHING REASONABLE UNDER THE
25 CIRCUMSTANCES. THANK YOU.

(STATEMENT BY DFT. TOOKS, DFT. KENNEDY, MICHELLE TOOKS)

45

1 THE COURT: THANK YOU. DOES ANYONE WISH TO SPEAK?

2 MR. WALTERS: WELL, MR. TOOKS WOULD FIRST LIKE TO
3 MAKE A STATEMENT AND HIS MOTHER.

4 THE COURT: I'LL BE HAPPY TO HEAR FROM YOU.

5 THE DEFENDANT MR. TOOKS: I WANTED TO SAY THAT I MADE
6 A TERRIBLE MISTAKE AND I'M SORRY TO THE VICTIM THAT I
7 HURT. I JUST MADE A STUPID MISTAKE.

8 THE COURT: THANK YOU.

9 MR. WALTERS: YOUR HONOR, MRS. MICHELLE TOOKS IS ALSO
10 PRESENT BEFORE THE COURT.

11 MS. MICHELLE TOOKS: I AM LUGENE TOOKS' MOTHER AND I
12 AM SORRY FOR WHAT HAPPENED. HE WAS AT THE WRONG TIME AT
13 THE WRONG PLACE. I ASK YOU TO GIVE MERCY AT HIM. GIVE
14 HIM LESS TIME. THAT'S MY BABY. I KNOW THAT HE DID WRONG.
15 I'M SORRY.

16 THE COURT: THANK YOU, MA'AM.

17 MR. BROWN: MRS. SHERRY FELDER IS MY CLIENT'S MOTHER.
18 EARLIER SHE TOLD ME SHE DID NOT WANT TO SAY ANYTHING. DID
19 YOU CHANGE YOUR MIND? THIS IS ARTHUR FELDER. WOULD YOU
20 LIKE TO SAY ANYTHING?

21 MR. FELDER: NO, SIR.

22 MR. BROWN: OKAY. MICHAEL?

23 THE DEFENDANT MR. KENNEDY: I JUST WANT TO SAY I'M
24 SORRY TO MR. RICHARDSON AND HIS FAMILY AND THE COMMUNITY
25 OF BARNWELL. SOMETIMES YOU GET CAUGHT UP IN THE WRONG

1 PLACE AT THE WRONG TIME. YOU GOT TO PAY THE CONSEQUENCES
2 TO GET YOUR LIFE RIGHT, AND I WANT TO SAY AGAIN I AM VERY,
3 VERY SORRY FOR WHAT I HAVE COMMITTED.

4 MR. BROWN: THAT COMPLETES OUR CASE, YOUR HONOR.

5 THE COURT: I THINK DID SHE DID --

6 MR. BROWN: YOU CHANGED YOUR MIND?

7 THE COURT: -- WANT TO SAY SOMETHING.

8 MR. BROWN: OH, I'M SORRY, MRS. FELDER.

9 THE COURT: THAT'S OKAY. IF I CAN GET YOUR NAME FOR
10 THE RECORD.

11 MRS. SHERRY FELDER: MY NAME IS SHERRY FELDER, AND I
12 WANTED TO SAY TO THE RICHARDSON FAMILY I HAVE BEEN KNOWING
13 THEM ALL MY LIFE AND I'M SO SORRY WHAT MY SON DID BECAUSE
14 THEY ARE SOME GOOD PEOPLE. MY MAMA USED TO WORK FOR THEM
15 FOR YEARS AND I'M SO SORRY.

16 THE COURT: THANK YOU, MA'AM.

17 MR. MOORE: YOUR HONOR, AT THIS TIME I KNOW I THINK
18 SOME OF THE VICTIMS WOULD LIKE TO SPEAK.

19 THE COURT: I'LL BE HAPPY TO HEAR FROM ANYONE.

20 MRS. JEANETTE PRICE: I DON'T THINK WE HAVE ANY MORE
21 TO SAY, BUT I WOULD SAY THAT THERE COMES A TIME WHEN
22 PEOPLE SHOULD KNOW THE DIFFERENCE BETWEEN RIGHT AND WRONG,
23 AND I THINK EVEN AT THEIR AGE THEY SHOULD KNOW THAT, AND
24 SOME OF THE REASONS THAT THEY GAVE FOR GIVING A VERY LIGHT
25 SENTENCE TO THEM SOUND LIKE REASONS TO ME THAT THEY SHOULD

(STATEMENT BY MR. PEEPLES)

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1 BE IN JAIL LONGER BECAUSE THEY ARE YOUNG AND IF THEY GET
2 OUT WHEN THEY'RE STILL YOUNG THAT'S JUST GOING TO LEAD TO
3 MORE CRIME. HOPEFULLY NOT, BUT WE'LL JUST LEAVE IT AT
4 THAT.

5 THE COURT: THANK YOU, MA'AM.

6 MR. PEEPLES: YOUR HONOR, PLEASE, AS I MENTIONED
7 EARLIER TODAY THANK YOU FOR ALLOWING ME THE OPPORTUNITY TO
8 APPEAR BEFORE YOU. I DO NOT PRACTICE CRIMINAL LAW AND
9 WOULD NOT. I RETIRED SOME THREE YEARS AGO, AND THERE
10 ISN'T ENOUGH MONEY TO PAY ME TO REPRESENT ANYBODY FOR ANY
11 CRIME THEY MAY COMMIT. I SPOKE WHAT I FELT AS A JUDGE. I
12 DON'T APOLOGIZE FOR ANY SENTENCE I EVER GAVE. A LOT OF
13 PEOPLE DISAGREED WITH IT, BUT THEY'RE ENTITLED TO THEIR
14 OPINION, AND IF YOUR HONOR PLEASE WHEN I FOR 30 YEARS ON
15 THE BENCH -- IF I WERE IN WALHALLA, FLORENCE, EDGEFIELD,
16 WHEREVER I WAS, I TRIED TO IMPOSE A SENTENCE THAT I
17 THOUGHT WAS FAIR AND THE SAME TYPE OF SENTENCE THAT I
18 WOULD IMPOSE IN BARNWELL COUNTY.

19 EVERY DEFENDANT WAS PRESUMED INNOCENT, BUT WHEN THEY
20 ADMIT THEIR GUILT TO SUCH A HORRENDOUS CRIME AS THIS IT
21 DESERVES A LOT LONGER PUNISHMENT IN MY VIEW, AND AS YOU
22 KNOW WE HAVE NOT -- MR. RICHARDSON AND HIS FAMILY DECLINED
23 THE PLEA BARGAIN. WE SAID THROW OUT THE CONSPIRACY FOR
24 FIVE YEARS, BUT IT IS 0 TO 50 OR 10 TO 50 AND THAT IS UP
25 TO YOU, BUT LET ME TELL YOU, UNCLE TOMMY AS I LIKE TO CALL

1 HIM BECAUSE HE -- BRETT RICHARDSON, JACK RICHARDSON'S SON
2 AND WE'D WALK AROUND THE CIRCLE AND HE WOULD GIVE HIM
3 NICKLES AND DIMES TO PUT IN THE FOUNTAIN. EVERY FUNERAL I
4 HAVE EVER BEEN TO I SEE TOMMY.

5 HE AND HIS FAMILY ARE JUST SUCH GOOD PEOPLE. I
6 BELIEVE THEY COULD RUN AGAINST SENATOR BROWN AND MR. BLATT
7 AND GET ELECTED. THEY'RE REALLY SOME WELL THOUGHT OF AND
8 TOMMY HAS DONE MORE FOR POOR PEOPLE. A LOT OF PEOPLE
9 DON'T KNOW ABOUT IT, BUT YOU HAVE, TOMMY, AND I KNOW ABOUT
10 IT. WHITE OR BLACK, RICH OR POOR, HE'S HELPED. IT JUST
11 ISN'T RIGHT, YOUR HONOR. YOU KNOW YOU CAN'T BUY AND SELL
12 PIECE OF MIND, BUT IT CAN BE STOLEN FROM YOU, AND THAT'S
13 WHAT HAPPENED IN THIS CASE.

14 HERE IS A MAN THAT'S CARING FOR HIS WIFE, HAS A SHOT
15 IN THE EYES EVERY THREE MONTHS, AND CAN'T SEE FOR 30 DAYS
16 AFTER. SHE CANNOT DRIVE. SHE CANNOT GO TO THE GROCERY
17 STORE. SHE CAN'T GO TO CHURCH, AND THIS GENTLEMAN TOOK
18 CARE OF HIS WIFE, AND THEN ON JANUARY 8 -- MY BIRTHDAY --
19 THESE PEOPLE KNEW WHAT THEY WERE GOING TO HIS HOUSE FOR.
20 IT WAS PRECONCEIVED, PREMEDITATED. TOOKS ONE TIME HAD
21 RAKED THE YARD SIX OR EIGHT MONTHS AGO, AND YOU KNOW THE
22 WINTER SOLSTICE IS THE SHORTEST DAY OF THE YEAR,
23 DECEMBER 20, 21. THIS WAS JANUARY 8. YOU KNOW AT 7:30 IT
24 IS DARK, AND THEY WENT TO THE BACKDOOR AND RANG THE
25 DOORBELL, AND HE CAME TO THE DOOR, AND THEY HAD HOODS OVER

(STATEMENT BY MR. PEEPLES)

49

1 THEIR HEAD. WHY? I DON'T THINK IT WAS FREEZING COLD.
2 BECAUSE THEY DIDN'T WANT ANYBODY TO IDENTIFY THEM AND THEN
3 THEY ASKED HIM IF HE'S GOT ANY WORK. HE SAYS, NO, AND HE
4 TURNED AROUND, AND THEN ALL OF A SUDDEN TOOKS WITH A QUART
5 WINE BOTTLE BASHES HIM IN THE FRONT OF THE HEAD, AND BLOOD
6 IS JUST SPEWING OUT DOWN HIS FACE.

7 BUT HE IS A MAN. HE WAS. HE IS NOT IN AS GOOD A
8 SHAPE NOW AS HE WAS, BUT HE WAS DOING ALL RIGHT WITH
9 TOOKS, BUT THEN MR. KENNEDY -- HE HAD TO PICK TOMMY
10 RICHARDSON'S BODY UP AND BODY-SLAMMED HIM TO A BRICK
11 STAIRWAY IN THE CONCRETE STOOP WE'LL CALL IT AND DID
12 IRREPARABLE HARM TO HIS COCCYX, TO HIS HIP, HIS PELVIS --
13 IT WAS BROKEN. I WENT TO SEE HIM AND HE SUFFERED. HE IS
14 A GENTLEMAN. HE ALWAYS WOULD COME TO THE DOOR, BUT NOT
15 FOR TWO OR THREE MONTHS BECAUSE HE WAS NOT ABLE TO GET OUT
16 OF A CHAIR HE WAS HURTING SO BAD, AND HIS DAUGHTER
17 JEANETTE -- THE ONLY DAUGHTER -- WONDERFUL LADY. I WISH
18 SHE LIVED IN BARNWELL, BUT SHE HAS LIVED IN BARNWELL THE
19 LAST 90 DAYS. SHE'S BEEN HERE TAKING CARE OF HER MOTHER
20 AND DADDY.

21 IT JUST ISN'T RIGHT, YOUR HONOR, AND I KNOW YOU WILL
22 DO WHAT YOU FEEL IS RIGHT, BUT THESE PEOPLE HAVE NOT BEEN
23 ABLE TO SLEEP AT NIGHT. THEY HAVE SUFFERED MENTALLY.
24 THEY SUFFERED PHYSICALLY, AND SOMEWHERE ALONG THE LINE WE
25 GOT TO SEND A MESSAGE TO PEOPLE. WHAT KIND OF COMMUNITY

1 DO WE HAVE HERE IF PEOPLE CAN'T HAVE TRANQUILITY AND PEACE
2 IN THEIR OWN HOME? WHAT KIND OF COMMUNITY DO WE LIVE IN
3 WHERE THINGS LIKE THIS HAPPEN?

4 I WOULD ENCOURAGE YOUR HONOR, PLEASE, TO GIVE HIM AS
5 MUCH TIME AS YOU FEEL IN YOUR HEART IS THE RIGHT AND FAIR
6 AMOUNT TO GIVE TO THEM, AND THE FINAL THING IS, YOUR
7 HONOR, PLEASE, WE WOULD ASK FOR RESTITUTION. JEANETTE HAD
8 GIVEN HER DADDY A PAIR OF NEW PANTS FOR CHRISTMAS. WHAT
9 KIND WERE THEY? THEY HAD TO RIP THE POCKET OFF TO GET TO
10 HIS WALLET. THEY KNEW WHAT THEY WERE LOOKING FOR. HE'S
11 GOT IN EXCESS OF \$5,000 IN BILLS. I DON'T KNOW IF THE
12 VICTIM IMPACT STATEMENT WILL REFLECT THAT, BUT I WOULD ASK
13 YOU GIVE US 30 DAYS WITHIN WHICH TO SUBMIT THE AMOUNT OF
14 THE MEDICAL BILLS TO HIS ATTORNEYS AND THE STATE AND LET
15 THEM AGREE UPON WHAT THE AMOUNT OF THE MEDICAL -- HE'S GOT
16 OVER 25,000 INCLUDING THIS LAST BOUT, BUT WE CANNOT --
17 WE'RE BEYOND ANY CERTAIN TO SAY THAT HIS PROSTRATE
18 TROUBLES THAT HE'S HAD, THE RECENT SURGERY HE HAD JUST
19 SATURDAY MORNING.

20 HE JUST LEFT THE HOSPITAL TODAY AT 12 O'CLOCK, BUT HE
21 IS UP HERE. THAT'S WHAT IT MEANS TO THIS MAN AND TO HIS
22 WIFE TO BE UP HERE AND LISTEN TO WHAT'S BEING SAID AND LET
23 YOU KNOW THEY DON'T WANT PEOPLE LIKE THIS ON THE STREETS
24 OF BARNWELL COUNTY, AND IF YOU HAVE TO SPLIT OR YO-YO THE
25 SENTENCES -- AND I AM NOT GOING TO TELL YOU HOW MUCH TIME

(STATEMENT AND SENTENCE OF THE COURT)

51

1 TO GIVE THEM. THAT'S UP TO YOU, BUT YOU CAN GIVE THEM "X"
2 ON THE ARMED ROBBERY AND "Y" AND SUSPEND PART OF IT AND AS
3 A CONDITION OF PROBATION THEY PAY RESTITUTION BECAUSE
4 PEOPLE LIKE THIS SHOULD BE MADE TO PAY, AND I DON'T KNOW
5 IF TOMMY AND JEANETTE WILL BE AROUND TO RECEIVE IT, BUT IF
6 THEY OWE THE BARNWELL HOSPITAL -- MR. RICHARDON, HE'LL PAY
7 HIS BILLS, BUT THE PEOPLE WHO CAUSES THE WRONG, THEY'RE
8 THE PEOPLE THAT SHOULD PAY.

9 ACCOUNTABILITY BREEDS RESPONSIBILITY AND YOU'VE GOT
10 TO HAVE SOME ACCOUNTABILITY IN THE CITY OF BARNWELL, THE
11 COUNTY OF BARNWELL, AND THE STATE, AND, WAYNE MARTIN,
12 THANK YOU SO MUCH. HE WAS OVER THERE EVERYDAY, I'M
13 TELLING YOU, AND CAPTAIN -- CHIEF TODD GANTT, THANK YOU
14 FOR WHAT THE CITY OF BARNWELL HAS DONE, AND SHERIFF ED
15 CARROLL AND ALL YOUR PEOPLE, WE THANK YOU. IT HAS HELPED
16 MAKE IT A LOT EASIER ON THESE PEOPLE THE HARD WORK THAT
17 Y'ALL DID, AND WE JUST HOPE JUSTICE WILL BE SERVED, YOUR
18 HONOR, PLEASE. THANK YOU.

19 THE COURT: THANK YOU. ANYTHING ELSE?

20 MR. MOORE: NO, SIR.

21 THE COURT: WELL, LET ME JUST SAY I AGREE WITH
22 MR. BROWN WHAT YOU SAID EARLIER. THIS IS -- I HATE TO SEE
23 THESE CASES COME INTO COURT. I HATE TO SEE WHAT YOUNG
24 PEOPLE ARE DOING TO THEMSELVES, DOING TO OTHERS. THIS IS
25 BY FAR THE WORST PART OF THIS JOB. SOME PEOPLE SAID BE

1 CAREFUL OF WHAT YOU ASK FOR BECAUSE YOU'RE LIABLE TO GET
2 IT, AND WHEN I ASKED THE LEGISLATURE TO ENTRUST ME WITH
3 THIS POSITION SOMETIMES YOU DON'T REALIZE WHAT YOU'RE
4 ASKING FOR.

5 I'LL TELL YOU WHAT I TELL OTHERS. I DON'T -- I AM
6 NOT GOING TO SIT HERE AND TELL YOU THAT WHAT I DECIDE
7 TODAY IS GOING TO BE RIGHT BECAUSE I DON'T KNOW WHAT
8 WHAT'S RIGHT. WHAT'S RIGHT IN ONE PERSON'S EYES IS WRONG
9 IN ANOTHER'S. WHAT'S WRONG IN ONE PERSON'S EYES IS RIGHT
10 IN ANOTHER'S. I CAN JUST TELL YOU THAT WHAT JUDGE PEEPLES
11 ASKED ME TO DO IS WHAT I HAVE TO DO AND THAT IS DO WHAT I
12 BELIEVE IS RIGHT --

13 MR. BROWN: UH-HUH.

14 THE COURT: -- FOR THE COMMUNITY, FOR THE INDIVIDUALS
15 WHO ARE STANDING BEFORE ME, AND JUST, YOU KNOW, HOPE AND
16 PRAY THAT THAT ENDS UP BEING RIGHT. I DON'T KNOW THAT
17 THERE IS A RIGHT OR WRONG IN ALL HONESTY, BUT THINGS THAT
18 WEIGH ON ME ON THIS CASE IS YOU MENTIONED THAT THERE WERE
19 NO DRUGS INVOLVED AND THAT THEY WEREN'T ON DRUGS WHEN THIS
20 HAPPENED OR WHATEVER, AND IT'S ALMOST MORE UNDERSTANDABLE
21 IF THEY WERE BECAUSE WHAT LEADS ME OR WHAT -- WHERE IT
22 LEAVES ME IS THAT THEY'RE JUST MEAN. I'M NOT MAKING AN
23 EXCUSE FOR PEOPLE WHO COMMIT CRIMES WHILE THEY'RE UNDER
24 INTOXICATION. THERE IS NO EXCUSE FOR THAT, BUT THERE IS
25 ALMOST SOMETHING ABOUT IT THAT YOU CAN ALMOST UNDERSTAND.

(STATEMENT AND SENTENCE OF THE COURT)

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1 SOMETIMES PEOPLE DON'T ACT THE THE WAY THEY NORMALLY WOULD
2 ACT.

3 ONE OF THE THINGS THAT AND I THINK MR. WALTERS
4 MENTIONED IT IS THAT, YOU KNOW, IN THIS CASE SPEAKING ON
5 MR. TOOKS' BEHALF THAT IN A SPLIT SECOND HE MAKES THIS BAD
6 DECISION THAT COULD ALTER HIS LIFE -- WILL ALTER HIS LIFE
7 FOR YEARS TO COME AND THAT'S ANOTHER THING. THIS WASN'T A
8 SPLIT-SECOND DECISION. THIS WAS CALCULATED. THIS WAS
9 MR. RICHARDSON HAS MONEY, I'VE SEEN IT, WE'RE GOING TO GO
10 GET IT. SO, WHEN YOU LOOK AT THESE -- AND I DON'T KNOW
11 WHAT -- YOU KNOW, YOU HAVE JUDGES THAT HAVE SERVED FOR 30
12 PLUS YEARS. YOU HAVE JUDGES LIKE MYSELF WHO HAVE ONLY
13 BEEN DOING IT A COUPLE OF YEARS AND EVERYONE IN BETWEEN,
14 AND I DON'T KNOW WHAT -- UNFORTUNATELY OR MAYBE
15 FORTUNATELY, I DON'T KNOW -- THERE IS NOT A FORMULA.
16 THERE'S NOT A -- WE DON'T HAVE SENTENCING GUIDELINES OTHER
17 THAN WHAT THE LEGISLATURE SETS FOR THE EXPOSURE TO THESE
18 CRIMES, BUT, YOU KNOW, I LOOK AT THESE CASES AND I KIND OF
19 -- I TRY TO START WITH WHAT'S THE RANGE AND THEN LOOK AT
20 MITIGATING FACTORS AND AGGRAVATING FACTORS AND TRY TO
21 START MAKING SOME SENSE OUT OF IT, AND HERE I'M HAVING A
22 HARD TIME MAKING SOME SENSE OUT OF WHY THESE TWO YOUNG MEN
23 COMMITTED THIS CRIME AND THEN WHAT MAKES IT EVEN MORE
24 EGREGIOUS IS THAT IT'S DONE AGAINST ANOTHER INDIVIDUAL WHO
25 AS FAR AS I CAN TELL AND FROM EVERYTHING I'VE HEARD JUST

1 HASN'T DONE ANYTHING TO HURT ANYBODY.

2 YOU KNOW, MR. RICHARDSON FROM WHAT -- I DON'T KNOW
3 MR. RICHARDSON, BUT FROM EVERYTHING I'VE HEARD HE'S NOT
4 LIKE MR. ANDERSON WHO I GREW UP AROUND WHO WE ALL AT ONE
5 TIME OR ANOTHER WANTED TO TAKE A BOTTLE TO HIS HEAD. THAT
6 DOESN'T SEEM TO BE THE CASE HERE. WE'VE GOT A GENTLEMEN
7 THAT'S DONE NOTHING BUT BENEFITTED THOSE AROUND HIM. SO,
8 YOU KNOW, AND THEN I LOOK AT THE CRIME ITSELF. I DON'T
9 KNOW THIS BECAUSE I KNOW MR. RICHARDSON EVEN THOUGH HE MAY
10 BE IN HIS 80'S IS STILL A VERY SUBSTANTIAL GENTLEMEN, BUT
11 YOU WOULD THINK TWO YOUNG MEN COULD TAKE WHAT THEY WANTED
12 WITHOUT LEADING WITH AN ASSAULT AND THAT'S THE PROBLEM --
13 THAT'S ONE OF THE THINGS THAT GOES BACK TO THE NATURE OF
14 THESE YOUNG MEN. THEY'RE NOT ON DRUGS. THEY'RE NOT ON
15 ALCOHOL. I MEAN, THEY'RE OF THEIR OWN MIND AND THEIR OWN
16 SENSES, AND THEY KNOCK ON THE DOOR, THE GENTLEMAN COMES TO
17 THE DOOR, AND THEN THEY ASSAULT HIM WITH A DEADLY WEAPON.

18 YOU KNOW, MY THINKING -- MY THOUGHT PROCESS IS WHY
19 DON'T YOU JUST TAKE HIS MONEY AND GO, YOU KNOW? I DON'T
20 ADVOCATE THIS, BUT WHY NOT, YOU KNOW, THREATEN HIM WITH
21 THE WEAPON AND TELL HIM TO GIVE YOU HIS MONEY AND HOPE HE
22 GIVES IT TO YOU AND LEAVE? BUT BEFORE YOU EVEN GIVE HIM
23 AN OPPORTUNITY -- AS A MATTER OF FACT IN THIS CASE THEY
24 DIDN'T EVEN ASK HIM FOR ANY MONEY. THEY JUST GOT HIS
25 ATTENTION DISTRACTED ENOUGH TO WHERE THEY COULD CLUB HIM

(STATEMENT AND SENTENCE OF THE COURT)

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1 WITH A BOTTLE. AND, AGAIN, ANOTHER SITUATION. HOW DO YOU
2 KNOW IF YOU DIDN'T JUST TELL HIM YOU WANTED HIS MONEY THAT
3 HE WOULDN'T GIVE IT TO YOU? YOU DON'T KNOW BECAUSE YOU
4 LED WITH A BOTTLE. THEN, OF COURSE, AGAIN, I GO BACK TO
5 WHERE I COULD UNDERSTAND IT IF YOU TRIED TO TAKE HIS MONEY
6 AND THEN HE FOUGHT YOU AND YOU PULLED OUT A BOTTLE, BUT
7 YOU DIDN'T DO THAT. YOU LEAD WITH A BOTTLE, AND THERE IS
8 JUST -- I DON'T UNDERSTAND.

9 MR. RICHARDSON AND HIS FAMILY HAVE HAD THEIR LIVES
10 CHANGED FOREVER. YOU CAN'T PUT BACK PEACE OF MIND. YOU
11 CAN'T RESTORE THAT. THE PEOPLE OF BARNWELL COUNTY DON'T
12 DESERVE TO LIVE IN A COMMUNITY LIKE THAT, AND BARNWELL IS
13 A GOOD COMMUNITY. I GREW UP IN EDGEFIELD. IT IS SIMILAR
14 TO BARNWELL. IT IS JUST THE KIND OF PLACE YOU LOVE TO
15 RAISE YOUR FAMILY. WE USED TO NEVER LOCK OUR HOUSE IN
16 EDGEFIELD. NOW WE HAVE TO.

17 MITIGATING THINGS? IN ALL CANDOR WITH YOU, I DON'T
18 SEE A LOT OF MITIGATING FACTORS HERE. NO PRIOR RECORD. I
19 APPRECIATE THAT, BUT I ALSO APPRECIATE THE FACT THAT THEY
20 HAVEN'T EVEN HAD TIME TO BEGIN ONE. MR. TOOKS IS 17 YEARS
21 OF AGE, AND HE'S JUST DOVE INTO THE DEEP END OF POOL FROM
22 THE TIME HE WAS WHAT WE CONSIDER UNDER THE LAW AN ADULT,
23 AND MR. KENNEDY IS ONLY TWO YEARS OLDER. SO, NO PRIOR
24 RECORD IN THIS SITUATION. I'M THANKFUL TO HEAR THAT, BUT,
25 YET, I DON'T -- IT'S NOT THAT MITIGATING. AND, AGAIN,

(STATEMENT AND SENTENCE OF THE COURT)

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1 THIS DOESN'T FOLLOW THE PATTERN OF WHAT I SEE EVERYDAY.

2 MR. WALTERS, YOU SAID I SEE YOUNG MEN LIKE THIS
3 EVERYDAY, AND I DO SEE THEM VERY OFTEN, BUT USUALLY IT IS
4 A SITUATION WHERE THEY'RE EITHER STEALING FROM A DRUG
5 DEALER OR THEY'RE STEALING TO GET DRUGS OR THEY'RE
6 STEALING TO BUY DRUGS OR TO SUPPORT A HABIT, AND IN THIS
7 CASE THEY'RE STEALING AND I DON'T KNOW WHAT THE REASON IS.
8 I DON'T KNOW WHY THEY'RE STEALING.

9 AS I THOUGHT ABOUT THIS AND THEN I THOUGHT ABOUT
10 WHETHER TO TREAT THEM DIFFERENTLY OR THE SAME BASED ON THE
11 FACT THAT ONE HAS CONFESSED AND ASSISTED AND GIVEN
12 INFORMATION TO MAKE THIS CASE PROSECUTEABLE, BUT THEN
13 THAT'S THE PERSON THAT ACTUALLY PLANNED IT AND SET IT UP.
14 SO, IT WAS LIKE A WASH. SO, THESE SENTENCES ARE -- THESE
15 SENTENCES ARE -- I AM GOING TO GIVE THE SENTENCE ON THE
16 CHARGES AND THEY'RE THE SAME SENTENCE FOR BOTH MR. TOOKS
17 AND MR. KENNEDY.

18 ON INDICTMENTS 07-181 FOR MR. TOOKS AND 07-144 FOR
19 MR. KENNEDY THE SENTENCE OF THE COURT IS THAT YOU BE
20 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
21 PERIOD OF 30 YEARS. WITH REGARDS TO INDICTMENTS 07-182
22 AND 07-145 THE SENTENCE OF THE COURT IS THAT YOU BE
23 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
24 PERIOD OF 20 YEARS, HOWEVER, PROVIDED UPON THE SERVICE OF
25 90 DAYS THE BALANCE OF THAT SENTENCE IS SUSPENDED AND YOU

(STATEMENT AND SENTENCE OF THE COURT)

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1 YOU'RE BASED ON PROBATION FOR THREE YEARS. THAT IS TO RUN
2 CONSECUTIVE TO THE ARMED ROBBERY CHARGE.

3 I AM GOING TO ALLOW FOR RESTITUTION. I WILL ORDER
4 RESTITUTION TO BE PAID TO THE VICTIMS IN THIS CASE AND
5 ALLOW AND GIVE 30 DAYS FOR THAT AMOUNT TO BE EITHER
6 CONSENTED TO OR WE'LL DO A HEARING TO DETERMINE WHAT THAT
7 -- WHAT THAT AMOUNT IS. THAT IS THE -- ASSAULT AND
8 BATTERY WITH INTENT TO KILL SENTENCE IS TO RUN CONSECUTIVE
9 TO THE ARMED ROBBERY CASE.

10 MR. WALTERS: THANK YOU, YOUR HONOR.

11 THE COURT: GOOD LUCK TO YOU.

12 (END OF TRANSCRIPT OF RECORD.)
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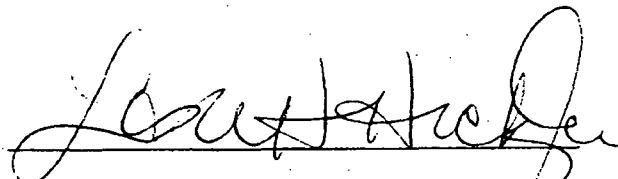
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
BARNWELL COUNTY, SOUTH CAROLINA, ON THE 7TH DAY OF MAY,
2007.

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

AUGUST 31, 2007



LISA H. HICKLIN, COURT REPORTER

copy
11/14/07

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL C. KENNEDY,

APPELLANT

INITIAL ANDERS BRIEF OF APPELLANT

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

I. Is appellant's sentence of thirty years and a consecutive sentence of twenty years incarceration unconstitutionally disproportionate?

TABLE OF AUTHORITIES

Cases

<u>Hart v. Coiner</u> , 483 F. 2d 136 (4th Cir. 1973)	8
<u>State v. Kimbrough</u> , 212 S.C. 348, 46 S.E.2D 273 (1948)	8, 9
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STATEMENT OF THE CASE

Appellant was indicted by the Barnwell County Grand Jury during its May 2007 term for armed robbery and assault and battery with intent to kill. On May 7, 2007, appellant, appeared before the Honorable Judge Thomas A. Russo for a bond reduction hearing. Shortly after the bond reduction motion was denied, the assistant solicitor informed Judge Russo that appellant was before him to plead guilty.

The solicitor indicated that appellant and his co-defendant, Took, were both entering pleas of guilty to armed robbery and assault and battery with intent to kill. The solicitor indicated that the State was not prossing the charge of criminal conspiracy. (Tr. pp. 19-20). Judge Russo sentenced appellant to incarceration for thirty years for armed robbery (2007-GS-06-144) and to incarceration for twenty years consecutive for assault and battery (2007-GS-06-145). However, the judge provided that upon service of ninety (90) days, the balance of the twenty-year sentence was suspended with probation for three years. On May 11, 2007, counsel for appellant filed a motion to reconsider the sentence which was denied by Judge Russo on June 26, 2007. This appeal follows.

ARGUMENT

- I. Appellant's sentence of thirty years and a consecutive sentence of twenty years incarceration are unconstitutionally so disproportionate as to require reversal.

Judge Russo informed appellant that he was charged with armed robbery which carried a mandatory minimum sentence of not less than ten years with a maximum sentence of up to thirty years and also with assault and battery with intent to kill which carried a maximum penalty of up to twenty years. The judge explained that these charges were classified as "most serious" violent offenses. Appellant indicated that he understood the nature of the charges against him as well as the possible punishments and that he was entering a plea of guilty to both charges. (Tr. pp. 21-22). The trial judge explained that the statute required that he would have to serve 85% of any sentence imposed on the basis of these charges. Appellant indicated that he understood that he would have to serve 85% of whatever sentence he received before he would be eligible for release. (Tr. p. 22, lines 6-19).

The trial judge further explained the application of the two or three strikes rule. The judge indicated that this would be a first most serious conviction for appellant and that by pleading guilty to these charges, if in the future he were to commit another most serious crime or two other serious crimes, the State could seek a penalty of life without the possibility of parole. Appellant indicated that he understood the application of the two and three strikes rule. (Tr. p. 23, line 4- p. 24, line 1).

Judge Russo explained that appellant would have a right to a jury trial during which he had the right to remain silent and that he waived his rights to a jury trial and to remain silent by pleading guilty. (Tr. p. 26, lines 6-13). The judge explained that if he proceeded to

~~a jury trial, appellant would be presumed innocent and the State would be required to prove~~

~~his guilt beyond a reasonable doubt. Appellant indicated that he understood that he would~~

have the right during trial to confront and question the State's witnesses and that he was waiving that right by pleading guilty. (Tr. p. 27, line 14-p. 27, line 8). The judge explained to appellant that if he went to trial he could call witnesses to testify on his behalf and that he could testify on his own behalf if he chose to do so. Appellant indicated that he understood that the State had the burden of proof and that any jury verdict would have to be unanimous. Finally, appellant indicated that he understood that if he was convicted he could appeal his conviction to a higher court. (Tr. p. 28, lines 6-23).

Appellant testified that no one had promised him anything or threatened him in any way to persuade him to testify. (Tr. p. 29, lines 21-24; p. 30, lines 21-24). Appellant indicated that he had told his attorney about any possible witnesses and everything he knew about the charges so that he could investigate possible defenses. (Tr. p. 30, lines 12-20). Appellant indicated that his answers were his own and that he was pleading guilty of his own free will.

The assistant solicitor indicated that on January 8, 2007, the appellant, who was eighteen years old, and a co-defendant, Eugene Tooks, went to the home of Mr. Tommy Richardson which is located right off of the circle across from the Barnwell Police Department. The solicitor indicated that Tooks went up to Mr. Perkins on his back porch and got his attention and then hit him over the head with a wine bottle. The assistant solicitor indicated that at that point a scuffle ensued between eighty-three (83) year old Mr. Perkins and Tooks but that appellant came to Tooks' aid. The solicitor indicated that when appellant joined in the altercation, Mr. Perkins was thrown off his porch, or "body-slammed" off of his porch, receiving injuries to his hip. The solicitor indicated, "At this

point, they ripped the money out of his back pocket. It was a wallet and they actually ripped the back pocket in the process of taking it away." (Tr. p. 34-35).

The solicitor indicated that after taking the wallet, appellant and Tooks fled the scene. He indicated that appellant and Tooks were arrested on February 1, and February 2, 2007. (Tr. p. 35, lines 4-7). The solicitor explained that a person came forward to report that appellant had said that he committed the robbery, that they took \$500 from the victim, and that Mr. Tooks committed the robbery with him. The solicitor indicated that it was as a result of this information that Tooks was interviewed. (Tr. p. 35, lines 8-12). The solicitor indicated that upon being interviewed, Tooks admitted that he and appellant had committed the crime. Tooks admitted that he and appellant had committed the crime against Mr. Richardson, that Tooks was the person who knew the victim and that he had money, and that it was Tooks's idea to commit this crime. (Tr. p. 35, lines 21-25). Appellant agreed that the facts as recited by the solicitor were correct. (Tr. p. 36, lines 17-19).

Counsel for appellant indicated that appellant was very sorry for his actions, that he had never been in trouble before, and that the case did not involve drugs. (Tr. p. 38, lines 14-25). Counsel asked the judge to sentence appellant to no more than ten years and to run the sentences concurrent. (Tr. p. 30, lines 2-16). Appellant stated, "I just want to say I'm sorry to Mr. Richardson and his family and the community of Barnwell. Sometime you get caught up in the wrong place at the wrong time. You got to pay the consequences to get your life right. And I want to say again I am very, very sorry for what I have committed." (Tr. p. 45, line 23-p. 46, line 3). Sherry Felder, appellant's mother, stated, "I wanted to say

to the Richardson family I have been knowing them all my life and I'm so sorry what my son did because they are some good people. My mama used to work for them for years and

I'm so sorry." (Tr. p. 46, lines 11-15). Appellant was eighteen years old at the time of the alleged crime and nineteen years old at the time of sentencing. (Tr. p. 7, lines 22-24; p. 25, line 1). Appellant completed the twelfth grade but he did not graduate or complete the G.E.D. program. (Tr. p. 25, lines 7-15). Appellant had no prior criminal record. Appellant had never been in trouble before this alleged incident. At the time of his arrest, in an effort to improve himself, appellant had voluntarily enrolled himself in a structured high school setting similar to a military academy. (Tr. p. 8, lines 15-23).

Judge Russo sentenced appellant to incarceration for thirty years for armed robbery (2007-GS-06-144) and to incarceration for twenty years consecutive for assault and battery (2007-GS-06-145). However, the judge provided that upon service of ninety (90) days, the balance of the twenty-year sentence was suspended with probation for three years. Judge Russo further ordered, "I am going to allow for restitution. I will order restitution to be paid to the victims in this case and allow and give 30 days for that amount to be either consented to or we'll do a hearing to determine what that - - what that amount is. That is the assault and battery with intent to kill sentence is to run consecutive to the armed robbery case." (Tr. p. 57, lines 3-9).

The sentence imposed upon appellant was so severe in duration as to constitute cruel and unusual punishment. Generally, a sentence that falls within the limits fixed by statute is not "cruel and unusual." State v. Kimbrough, 212 S.C. 348, 46 S.E.2D 273 (1948). However, even if it is not cruel or unusual "in kind," a particular sentence may be so severe in duration that it violates the constitutional prohibitions against cruel and unusual punishment. Id., construing S.C. Const. art I, § 19; see also Hart v. Coiner, 483 F. 2d 136 (4th Cir. 1973). The Court refused to apply Kimbrough in Stockton v. Lecke, 269 S.C. 459,

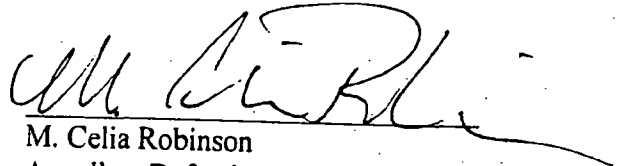
237 S.E. 2d 896 (1977), where it held that a ten-year minimum sentence for possession of burglary tools was not unconstitutional. However, Stockton affirmed Kimbrough's general premise regarding severity of duration. Id. In light of appellant's extreme youth and given that appellant had no criminal record, that he was following along with Took's, and that he intended no harm from this first and only incident of violent behavior, the sentencing judge erred in ordering that appellant be incarcerated for what could amount to a fifty year prison sentence.¹

¹ But see Kelly v. State, 274 S.C. 613, 266 S.E.2d 417 (1980) (guilty plea waives all non-jurisdictional claims); accord Brown v. Maryland, 618 F.2d 1057 (4th Cir. 1980); State v. Karen Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999) (excessive sentence is not jurisdictional).

CONCLUSION

Appellant's convictions and sentences should be vacated and the matter remanded for trial.

Respectfully submitted,



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL C. KENNEDY,

APPELLANT

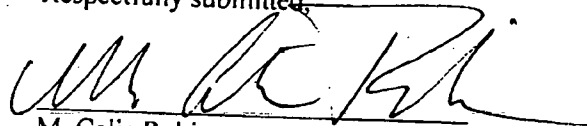
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Michael C. Kennedy states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Thomas A. Russo, which was held on May 7, 2007, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Michael C. Kennedy.

Respectfully submitted,



M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of March, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Barnwell County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL C. KENNEDY,

APPELLANT

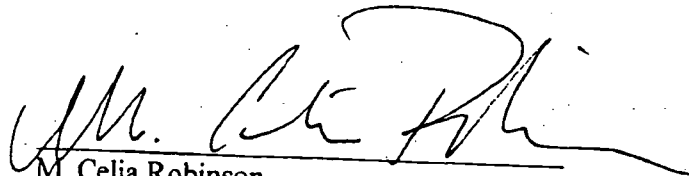
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Guilty plea transcript;
- (3) Motion to reconsider sentence.

I certify that this designation contains no matter which is irrelevant to this appeal.

March 5, 2008



M. Celia Robinson
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

72
STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

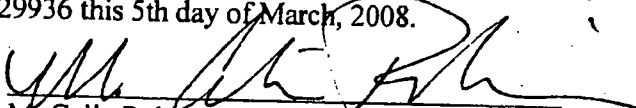
V.

MICHAEL C. KENNEDY,

APPELLANT

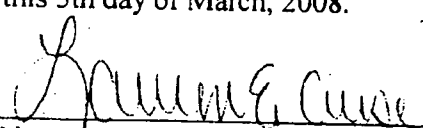
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201; and on Michael C. Kennedy, # 296992 at Ridgeland Correctional Institution, Post Office Box 2039, Ridgeland, South Carolina 29936 this 5th day of March, 2008.


M. Celia Robinson
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of March, 2008.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Michael C. Kennedy, Appellant.

Appeal From Barnwell County
Thomas A. Russo, Circuit Court Judge

Unpublished Opinion No. 2011-UP-028
Submitted January 1, 2011- Filed January 25, 2011

APPEAL DISMISSED

Appellate Defender M. Celia Robinson, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, all of Columbia; and Solicitor
Barbara R. Morgan, of Aiken, for Respondent.

PER CURIAM: Michael C. Kennedy pled guilty to armed robbery and assault and battery with the intent to kill. He appeals his corresponding sentences, arguing they constitute cruel and unusual punishment because they were consecutive. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss^[1] the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

THOMAS, PIEPER, and GEATHERS, JJ., concur.

^[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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pg 544g.

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)
Michael C. Kennedy,)
Applicant.)
vs.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

088
11-CP-06-****

APPLICATION
FOR POST-CONVICTION RELIEF

2011 FEB 22 PM 4:04
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

1. Place of Detention Applicant is confined at the Broad River Correctional Facility located at 4460 Broad River Rd., Columbia, S.C. 29210.
2. Name and Location of Court which imposed sentence Barnwell County Court of General Sessions, 141 Main Street, Barnwell, S.C. 29812.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed: Armed Robbery and Assault and Battery with Intent to Kill (07-GS-06-144, 145, 181, 182). Clerk's note: not Michael Kennedy's indictments 2/23/11 Cbm
4. The date upon which sentence was imposed and terms of the sentence: May 7, 2007, for a term of thirty years and twenty years, suspended upon service of ninety days with three years probation, to run consecutively, plus restitution.
5. A finding of guilty was made after a plea of guilty.
6. The judgment of conviction was appealed.
7. The Conviction and Sentence was appealed to the South Carolina Court of Appeals, dismissed January 25, 2011, 2011-UP-028.
8. N/A.

9/10. The facts in support of Applicant's claim for relief are as follows:
Applicant was denied effective assistance of counsel due to trial counsel's failure to
adequately prepare for Applicant's guilty plea and failed to present any witnesses who
could have testified in mitigation of punishment during the sentencing proceeding.
U.S.Const. Amend. V, VI, XIV; Strickland v. Washington, 466 U.S. 668 (1984).
Counsel's failure to present any of the available mitigation testimony was deficient, as
numerous family members and friends of the Applicant were available and willing to
testify on his behalf. Though Applicant had no prior record, the victim in this case was a
prominent elderly person and, thus, it was incumbent upon defense counsel to make a
strong showing of proof as to the rehabilitative capacity of the defendant, his previously
unblemished reputation within the community, and strong base of family support. Given
the ready availability of mitigation evidence and the gravity of the offenses charged,
Counsel's behavior was unreasonable and prejudicial to Applicant

11. Prior to this application, and with respect to this conviction, Applicant has
not filed (a) any petition in a State Court under South Carolina Law, nor (b) any petitions
in state or Federal Courts for habeas corpus or post-conviction relief, nor (c) any petitions
in the United States Supreme Court for certiorari other than petitions, if any, already
specified in (7), nor any other petitions, motions or applications in this or any other Court.

12. Not applicable.

13. No ground set forth in (9) has been previously presented to this or any
other Court, State or Federal, in any petition, motion or application which you have filed.

14. Not applicable.

15. The grounds set forth in (9) were not previously raised because they were

either unknown until recently and/or cognizable only in a post-conviction relief proceeding.

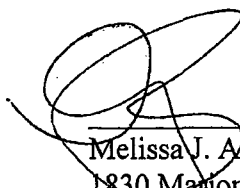
16. Applicant was represented by an attorney during his arraignment, trial, and sentencing.

17. Franchot Brown, Esquire, of Columbia, South Carolina, represented the Applicant during his plea and sentencing.

18. Applicant seeks a reversal of his conviction, and vacation of his sentence.

19. Applicant is not now under sentence from any other court.

Respectfully Submitted:



Melissa J. Armstrong, Esquire
1830 Marion Street
Columbia, S.C. 29201
(803) 765-2796.

This 7th day of February, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2011-CP-06-0088

Michael C. Kennedy, #321820,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

FILED FOR RECORD
2011 AUG -5 PM 3:04
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

In response to the post-conviction relief application filed February 22, 2011, the Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Barnwell County Clerk of Court's orders of commitment. The Barnwell County Grand Jury indicted the Applicant at the May 2007 term of General Sessions for Armed Robbery (2007-GS-06-0144) and Assault and Battery with Intent to Kill (2007-GS-06-0145). Franchot A. Brown, Esquire represented the Applicant. On May 7, 2007, the Applicant pled guilty as indicted and was sentenced by The Honorable Thomas A. Russo to thirty (30) years imprisonment for Armed Robbery and twenty (20) years imprisonment, suspended to three (3) years probation upon the service of ninety (90) days imprisonment for Assault and Battery with Intent to Kill. All sentences were to run consecutively.

A notice of appeal was filed at the South Carolina Court of Appeals. M. Celia Robinson, Esquire perfected the appeal in the form of an Anders¹ brief. The Court of Appeals dismissed the Applicant's appeal by Order dated January 25, 2011. The remittitur was sent on February 10, 2011.

Attached herewith and incorporated herein by reference are the records of the Barnwell County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Trial counsel failed to adequately prepare for Applicant's guilty plea.
 - b. Trial counsel failed to present any witnesses to testify on Applicant's behalf at the guilty plea.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests

an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ROBERT D. CORNEY
Staff Attorney

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 4, 2011.

1 State of South Carolina)

In the Court
Of Common Pleas

2 County of Barnwell)

3 Docket No. 2011-CP-06-0088

4
5
6 Michael C. Kennedy)
Applicant,)

7
8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent.)

11
12 July 9, 2013
13 Aiken, South Carolina

14
15 B E F O R E:

16 The Honorable R. Ferrell Cothran, Jr., Judge.

17
18 A P P E A R A N C E S:

19 Melissa J. Armstrong, Esquire
20 Attorney for the Applicant

21 David Spencer, Assistant Attorney General
22 Attorney for the Respondent

23
24 Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

I N D E X

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 POST-CONVICTION RELIEF HEARING

2 MR. SPENCER: Michael Kennedy, whenever you're
3 ready, Your Honor.

4 THE COURT: I'm ready.

5 MR. SPENCER: Your Honor, this is the case of
6 Michael Kennedy versus South Carolina. This is
7 2011-CP-06-088. For the record, my name the Dave Spencer
8 with the Attorney General's Office.

9 Applicant has filed a PCR application in February
10 of 2011, and he was indicted in May of 2007 for armed
11 robbery, assault and battery -- assault and battery with
12 intent to kill; and although the return doesn't reflect it,
13 he was indicted for conspiracy.

14 He was represented by Mr. Franchot Brown, who is
15 here today -- he pled guilty to the armed robbery, ABWIK
16 charge May 7 of 2007, before Judge Russo and Judge Russo
17 sentenced Mr. Kennedy to thirty years for armed robbery and
18 a consecutive twenty years for the assault and battery with
19 intent to kill charge, suspended to ninety days
20 imprisonment and three years probation.

21 He did appeal his conviction and sentence. That
22 was dismissed pursuant to Anders v. California. He's
23 represented here today by Melissa Armstrong. I would also
24 note what is also is not reflected in the return is that
25 there was a sentencing hearing on June 26 of 2007 -- excuse

1 me, not a sentencing hearing, but a motion for
2 reconsideration and, Your Honor, you should have both
3 transcripts in your packet. There's going to be one that
4 the front page is the June 26th date and the other
5 transcript is actually the entire record on appeal pursuant
6 to Anders from pages of record page (verbatim).

7 Your Honor, as I mentioned before, he's represented
8 here today by Ms. Lisa Armstrong and I would just ask that
9 Ms. Armstrong set out her allegations for the record.

10 THE COURT: Okay.

11 MS. ARMSTRONG: Thank you, Your Honor. May it
12 please the Court. Let me just also note for the record
13 that when this case originally was filed, I was in a law
14 partnership with Terry Taggart. She was the initial
15 attorney on this case. Ms. Taggart, unfortunately is now
16 deceased, so any reference to her, obviously, she has
17 passed and is not associated with the case any longer;
18 however, if you see her name, that is where that comes
19 from. She may have filed things in the course of the early
20 litigation of this case. I've inherited it and had it
21 solely in preparing for today's hearing.

22 Your Honor, we've raised two allegations, both of
23 which are based on ineffective assistance of counsel. The
24 first is on page 2 of the amended final application to You
25 Honor, as well as to the attorney general, and this

1 application will be filed in Barnwell. I apologize, I sent
2 it by .pdf format. The attorney general was kind enough to
3 accept that while I was on vacation. I'll send a stamped
4 copy, Your Honor, as soon as that's completed.

5 There are two issues being raised. Both of them
6 are ineffective assistance of counsel. Page 2, Your Honor,
7 A, the applicant believes he was denied effective
8 assistance and because -- basically lack of preparedness
9 for the plea itself. May 7th was intended to be a bond
10 reduction hearing. That's why he was brought over.
11 Somehow that ended up metamorphosing into a guilty plea for
12 which there was no negotiation on sentence or really
13 anything of the like.

14 There is one correction I want to make and that
15 is -- after I got the transcript -- which I did not believe
16 existed and fortunately, the attorney general's office was
17 able to get the transcript for June 26th. There was the
18 motion for reconsideration hearing. But in it is a
19 reference to the conspiracy charge that was dismissed. So
20 we did not plead straight up to all of the charges. There
21 was one that was dismissed; however, I guess that part of
22 our allegation change as far as to the lack of negotiations
23 for sentencing is concerned.

24 Mr. Kennedy had no prior record and was very young
25 at the time and we think that that was ineffective for

1 failing to properly negotiate something rather than have
2 him plead straight up.

3 The second claim is based on trial counsel's
4 failure to object to certain comments that were made during
5 the course of the sentencing. I'm sure after Your Honor
6 has an opportunity to read both the transcript and read the
7 brief's it will be obvious that it was a very emotional
8 case and had very bad facts. There was an elderly
9 gentleman who was severely injured and we believe that in
10 the course of the sentencing arguments that were made that
11 certain comments were made that were prejudicial to
12 Mr. Kennedy; and, in fact, the judge commented during the
13 reconsideration hearing that his sentence perhaps would
14 stop the somebody else from doing anything new and the
15 consequences -- and we just think that the arguments that
16 were made were overly -- I guess you could say inflammatory
17 and prejudicial to Mr. Kennedy as far as the sentencing is
18 concerned. We think that at a minimum, there should have
19 been an objection to and that's part of the argument that
20 should have been made.

21 And those are -- essentially, those are our
22 complaints, Your Honor, ineffective assistance with two
23 different prongs. And I believe that spells it out for you
24 right now.

25 THE COURT: Okay. You want to call your first

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 witness?

2 MS. ARMSTRONG: Yes, Your Honor, the applicant
3 calls Mr. Franchot Brown.

4 FRANCHOT BROWN,
5 having been duly sworn, testified as follows:

6 THE CLERK: Please be seated in the witness box and
7 state your full name for the Court.

8 THE WITNESS: Good morning, Your Honor. Franchot
9 A. Brown.

10 DIRECT EXAMINATION

11 BY MS. ARMSTRONG:

12 Q Good morning, Mr. Brown, how are you?

13 A Oh, I'm fine, how are you?

14 Q Good. Mr. Brown, what do you do for a living?

15 A I practice law.

16 Q How long have you done that.

17 A Since 1969.

18 Q Okay. And about what percentage of your practice
19 is in -- deals with criminal defense, if any?

20 A Oh gosh, I would say about 25 to 35 percent.

21 Q Okay. All right. So about one out of four or more
22 clients are criminal defense?

23 A Yeah.

24 Q Okay. In that capacity, did you come to represent
25 Michael Kennedy?

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 A Yes.

2 Q Okay. Do you recall when you were first retained
3 on this case on behalf of Mr. Kennedy?

4 MR. RODNEY PEOPLES: Excuse me, could you cut the
5 sound up a little bit. We're having difficulty hearing
6 him.

7 MS. ARMSTRONG: I'm sorry. I'll speak louder too.

8 (WHEREUPON the witness was looking through his
9 records.)

10 THE WITNESS: I'm sorry.

11 BY MS. ARMSTRONG:

12 Q That's all right.

13 A I didn't know you were going to ask me that
14 question.

15 Q I'm sorry.

16 A Good grief. February 9, 2007.

17 Q February 9, 2007. Was that a call from the family
18 about representing Michael? Or would that have been when
19 you first met Michael?

20 A No, the family came to my house -- my office and I
21 had a long conversation about the -- about the case.

22 Q Okay.

23 A And retained me that day.

24 Q All right. And do you recall conversations about
25 possibly getting a bond reduction for Mr. Kennedy?

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 A Correct.

2 Q Okay. Did you file any motions asking for a bond
3 reduction?

4 A Yes.

5 Q Okay. All right. And as a result of filing those
6 motions, was a hearing date set?

7 A Yes.

8 Q Okay. Do you recall what the date was?

9 A No, I don't.

10 Q Would that have been the date of the actual guilty
11 plea?

12 A I think so.

13 Q Okay. So does May 7th, 2007, sound correct to you?

14 A I'd have to say I really don't know.

15 Q Okay. The transcript reflected that May 7 --

16 A Okay.

17 Q -- that would be correct?

18 A Okay. I trust the transcript.

19 Q Okay. Can you tell me what happened at -- you
20 scheduled a bond reduction and then it ended up becoming a
21 guilty plea. Did you have certain conversations with the
22 solicitor's office that caused it to go from one to the
23 other?

24 A First thing I contacted the solicitor's office
25 prior to even going to visit with Michael. I always like

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 to get the solicitor's side of the case.

2 Q Yes, sir.

3 A And I had to get the discovery and I talked with
4 the, I think it was Ben Moore from the solicitor's office.
5 I tried to meet with him in person, but I missed him when I
6 was at the jail visiting with Michael. I missed him that
7 day.

8 Q Okay.

9 A But I did have a long conversation with him
10 regarding the case. And I wrote a letter to my client and
11 explained to him my findings as a result of that
12 conversation and I explained to him that, number 1, the
13 victim was -- alleged victim was 86 years old, very well
14 known in the community, that he'd been hit across the head
15 with a bottle. The bottle had a fingerprint on it. There
16 was a footprint in the area of the crime, and it was
17 thought that that footprint belonged to him, my client,
18 Michael Kennedy.

19 Q Was there ever any forensic documentation as to who
20 these prints belonged to? Anything from SLED or any
21 independent source?

22 A I can't remember. I cannot remember that.

23 Q But the solicitor believed they belonged to --

24 A I think the fingerprint was that of Mr. Toots.

25 Q Mr. Toots?

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 A Mr. Toots is I believe his name.

2 Q Okay. So the print -- the fingerprint belonged to
3 the codefendant who gave the statement.

4 A Correct. And he'd already -- he'd already
5 confessed to the crime.

6 Q That, meaning Mr. Toots?

7 A Mr. Toots. And he named Mr. Michael Kennedy as
8 being his codefendant.

9 Q Yes, sir.

10 A Well, when they came to -- when the family came to
11 my office, all of that was already passed.

12 Q Yes, sir.

13 A Okay.

14 Q Mr. Kennedy was arrested, in other words, based on
15 the statement of Mr. Toots?

16 A He was in jail when they came to see me.

17 Q Yes, sir.

18 A That's why I did a motion to get a bond reduction
19 because bond was set for \$55 thousand if I'm not mistaken.
20 I did a motion to reduce the bond to get him out.

21 Q Yes, sir.

22 A And both defendants were in court on that day. I
23 recall that. And both lawyers were present.

24 Q Yes, sir. And it became a joint guilty plea; is
25 that correct?

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 A A joint guilty plea, but there was a -- that one
2 came about late in the afternoon or maybe early afternoon,
3 I should say. We got there early that morning and we did a
4 lot of conversating and a lot of negotiating -- attempt to
5 negotiate with the solicitor. Which that process, I'd
6 already begun.

7 Q Yes, sir.

8 A I started that over the telephone and perhaps maybe
9 in person prior to that date. So a lot had taken place.
10 It wasn't like we went there on a bond reduction and boom,
11 did a plea. A lot of work had gone into it. In fact, I
12 wrote Michael a very lengthy letter --

13 Q Do you have that with you?

14 A I do -- I can give you a copy of it, but I have the
15 original. If you don't mind I'll give you a copy if you
16 don't mind.

17 Q And when was the letter dated?

18 A February 21st, 2007.

19 Q February 21st?

20 A Yes, ma'am.

21 Q Okay. So -- okay. You were hired on the 9th and
22 then on February 21st wrote a letter to Mr. Kennedy?

23 A Right.

24 Q And you just want to summarize what you told
25 Mr. Kennedy on that date?

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 A Well, do you mind if I just read it?

2 Q Oh, certainly.

3 A Okay.

4 Q As long as there's no objection from the attorney
5 general?

6 MR. SPENCER: No objection to him reading it --
7 publishing the letter.

8 BY MS. ARMSTRONG:

9 Q All right.

10 A Dear Michael, on this week I had an opportunity to
11 have a conversation with the Assistant Solicitor, Ben
12 Moore, assigned to your case. Mr. Moore confirmed most of
13 what your mother, sister and brother told me here at the
14 office when they initially visited with me and retained me
15 to represent you. He has indicated to me that the victim
16 in your case was in fact 86 years old, was well known in
17 the community and popular to most people. He does have
18 family members who are intrenched in the Barnwell community
19 and he has a lot of support. Several persons chipped in on
20 the reward money to find the persons who assaulted him.

21 The codefendant in your case, Eugene Toots has
22 apparently made a confession in writing and has admitted to
23 committing the crime and indicated further that you were
24 the codefendant involved in the matter with him. There is
25 also a thumbprint found on a bottle which was the bottle

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 used to strike the alleged victim and the thumbprint is
2 being analyzed by the Aiken County Sheriff's Department.

3 Shoe prints were also found at the scene and a cast
4 was made of the print and was sent to SLED to be analyzed.
5 It is believed that the shoe print from the -- it is
6 believed that your shoe print -- that it is your shoe print
7 from the incident date.

8 I have made a request for discovery as you are
9 aware and as soon as I receive the first batch of
10 discovery, I shall set an appointment to come see you to
11 review the discovery and for you to get to know -- and for
12 you and I to get to know each other.

13 The analysis from SLED will take longer and I will
14 not hold up my visiting with you until I receive that
15 discovery; however, Attorney Ben Moore feels that within a
16 week and a half he should be able to get me about
17 everything and I will come to see you shortly after I
18 receive that.

19 This letter is really to bring you up to date and
20 by way of a copy to your mother, I am advising her of the
21 contents of this letter.

22 Sincerely yours, Franchot A. Brown.

23 Q Okay. Great. Did you ever -- do you recall ever
24 getting the SLED information about the boot print?

25 A I got the discovery.

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 (WHEREUPON there was a pause in the proceedings.)

2 Q By any chance, is there a cover letter indicating
3 when you would have received the discovery?

4 A No -- from the solicitor's office, you mean?

5 Q Yes, sir. Yes, sir.

6 A I don't recall that.

7 Q All right.

8 A I know I went to visit with him and went over this
9 discovery page by page with him.

10 Q All right.

11 A And I do have the fingerprint. I gave all this
12 stuff to you, I thought.

13 Q I'm just trying to get a timeline from you.

14 A Okay.

15 Q So it would have been before the May 7th --

16 A Oh, yeah.

17 Q -- hearing?

18 A Oh, yeah.

19 Q Okay. All right. So you got discovery?

20 A We went over all this -- yeah, prior to.

21 Q Okay. All right. And as part of your negotiations
22 with the solicitor's office, be it on the phone or by
23 letter or e-mail or in person, do you ever recall
24 discussing the possible sentences?

25 A Yes.

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 Q Okay.

2 A That's normal and typical and I did it in this
3 particular case. The solicitor wouldn't budge off of the
4 assault and battery with intent to kill nor would he budge
5 off of the armed robbery.

6 Q Yes, sir. Okay.

7 A The only thing he would agree to, and I got him to
8 do that, would be to drop the conspiracy charge.

9 Q All right.

10 A I also tried to put a cap on the sentence so that
11 we wouldn't have to worry about going over a certain number
12 of years. They refused that. In other words, let's put it
13 this way, I did everything that a defense lawyer is
14 supposed to do in attempting to negotiate a plea and it was
15 just falling on deaf ears.

16 Q Okay. So the solicitor would not budge?

17 A No.

18 Q Okay. All right. And you don't recall if the boot
19 print was ever matched or not?

20 A Oh, I forgot about that.

21 (WHEREUPON there was a pause in the proceedings.)

22 BY MS. ARMSTRONG:

23 Q Mr. Brown, let me ask it this way. Maybe this will
24 sort of shorten this a little bit.

25 The existence of the boot print, would you say that

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 was significant or not significant as far as your advice to
2 Mr. Kennedy to do a guilty plea?

3 A I don't think it was significant as you might think
4 it was.

5 Q Okay. What would you say the most significant
6 factor was in your judgment?

7 A Well, the investigation that took place in the case
8 revealed the -- I think it was -- Toots' aunt had sent them
9 out to get a bottle of wine and the wine was traced back to
10 the store I think it was purchased from. There was a call
11 in -- call in to the -- I guess the sheriff's department,
12 whoever it was, law enforcement to reveal the whole thing
13 that the defendant, the main defendant standing good with
14 the story and named him as a defendant, codefendant --

15 Q Did you know much about Mr. Toots?

16 A No. Other than my interview about with my client.

17 Q Okay.

18 A I interviewed my client and he told me they were
19 good friends; they'd been going -- they had been good
20 friends for years. He was a year younger than my client.
21 He was 16 and my client was 18. But they had been friends
22 for the longest. And of course, I mean, my client admitted
23 to everything, but I don't think that was important to me
24 because the State, you know, I didn't reveal that to --
25 well, obviously, my client was involved and it was

Franchot A. Brown - Direct Examination by Ms. Armstrong

- 1 provable. Okay? That --
- 2 Q By the statement or something else?
- 3 A No, by the evidence in the case.
- 4 Q Which would be the statement of Mr. Toots and we
- 5 know the print on the bottle belonged to Mr. Toots and we
- 6 think the print, the shoe print -- the boot print belonged
- 7 to Mr. Kennedy?
- 8 A That's what the State felt.
- 9 Q Okay. But you can't recall specifically whether or
- 10 not that was confirmed?
- 11 A I really can't.
- 12 Q Okay. All right. But putting aside the boot
- 13 print --
- 14 A Okay.
- 15 Q -- you think the case would have been one where you
- 16 would have advised Mr. Kennedy to plead?
- 17 A Oh, yeah, I do.
- 18 Q And that would have been based on the --
- 19 A It was based on my research of the law, my
- 20 research -- my -- also, we had an a relatively new judge.
- 21 Judge Russo was rather new to the bench.
- 22 Q Yes, sir.
- 23 A I did research on Judge Russo --
- 24 Q And he was a former prosecutor?
- 25 A Also a public defender as well.

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 Q Okay.

2 A He had both sides going for him and a positive
3 reputation for being fair.

4 Q Okay.

5 A And I did all my research on him and I was very
6 pleased with the research.

7 Q Okay.

8 A I thought that he would -- obviously, I thought the
9 sentence was way out of line with the facts of the case.

10 Q Yes, sir.

11 A Obviously, I wouldn't have -- on my own expense, I
12 did the motion to reconsidering.

13 Q Yes, sir.

14 A I wasn't getting paid to do that. I did it because
15 I felt that strongly about it.

16 Q Okay.

17 A I thought the sentence -- it doesn't matter about
18 the sentence -- I thought the sentence should be about ten,
19 no more than fifteen -- ten to twelve years no more than
20 fifteen years. I said that to him and I say it now.

21 Q Yes, sir.

22 A I think it was --

23 Q And let's talk a little bit about the motion for
24 reconsideration.

25 A Okay.

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 Q Were the witnesses who testified at the motion for
2 reconsideration, were they available on the day of May 7th
3 at the bond reduction and it became a plea?

4 A Everybody was aware of the hearing because they had
5 hired me to have a hearing. So they were all present, but
6 they did not -- some of them were not there, okay? If you
7 see from the transcript of the -- that you have from my
8 motion to reconsider --

9 Q Yes, sir.

10 A -- I stated in the transcript that they were not
11 available on that day, but they were aware of the hearing.
12 All of them were aware.

13 Q Right. They just didn't know it was going to be a
14 plea, they thought it was going to be a bond reduction; is
15 that correct?

16 A No, I think they knew that they were expected to be
17 in court that day.

18 Q For a bond reduction versus a plea. I guess that's
19 my question. Did they think there was going to be a plea or a
20 bond?

21 A I don't know. I can't tell you what they thought,
22 except that I --

23 Q What you told them, I guess.

24 A I told them that they needed to be in court that
25 day.

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 Q For a bond reduction or a plea?

2 A Well, I can't really say with honesty, you know. I
3 know that they paid me to go to court that day.

4 Q Yes, sir.

5 A And they were to be there with me in court that
6 day. And I know that they were there and I know that they
7 were consulted.

8 Q Okay. Did you -- did you have a chance to speak to
9 them before May the 7th about testifying in mitigation --
10 for mitigation purposes?

11 A That's standard and normal, but if I told you
12 specifically yes, that wouldn't be very honest. That's
13 been several years ago and I can't recall that.

14 Q All right.

15 A But that -- you know, I sort of do this in every
16 case and I've been doing it for so many years until -- it's
17 sort of standard procedure, but -- and I call on every
18 witness that's available. When I interviewed them in my
19 office on that particular day, I took all down all of their
20 information, the brother's name, the sister's names, all of
21 the addresses.

22 Q Yes, sir.

23 A There were two sisters names and the brothers and
24 all of that and the purpose is to allow to have some
25 opportunity to express themselves regarding the --

Franchot A. Brown - Direct Examination by Ms. Armstrong

1 Q Well, that was my question for asking -- that was
2 the purpose for asking did they know it was a bond
3 reduction or did they think it was possibly a guilty plea;
4 because my understanding was that the purpose of the
5 hearing as it was designated for May 7th was that you were
6 going for a bond reduction.

7 A Okay.

8 Q And if I'm wrong, I just wanted to make sure that
9 you corrected me on that?

10 A I don't want to lie on the stand. I can't -- you
11 don't make notes on everything. All I know is they were
12 expected to be there that date and most of them were there.

13 And --

14 Q Okay. Well, let me ask you this, once the plea got
15 started, did you ever think that the -- some of the
16 arguments made about the sort of -- and I'm sure you've
17 seen the application, send a message to the community --
18 did you ever consider objecting to that sort of argument
19 based on the case law in South Carolina that says those
20 aren't the source of arguments that need to be considered
21 in determining a sentence? Did you ever consider objecting
22 to any --

23 A The statements by the State or by, rather, Judge
24 Peoples?

25 Q Yes, sir.

Franchot A. Brown - Cross-Examination by Mr. Spencer

1 A Yeah, yeah. Yeah.

2 Q You did consider it? Or did consider objecting?

3 I'm sorry.

4 A Well, I was greatly concerned about some comments
5 made and I did not object.

6 Q Okay. If you had to do it again, do you think you
7 might object --

8 MR. SPENCER: Your Honor, I object. This is not a
9 hindsight --

10 MS. ARMSTRONG: Okay. Withdrawn, withdrawn. Okay.
11 I think those are all the questions I have. Thank
12 you.

13 THE WITNESS: I'm shocked.

14 CROSS-EXAMINATION

15 BY MR. SPENCER:

16 Q Mr. Brown, thank you for being here.

17 A No, problem. I'm sorry for Mr. Kennedy and I'm
18 happy to be here because I did not like the sentence, so
19 I'm glad to get the opportunity to hopefully get this
20 straight.

21 Q And I understand that you're disappointment with
22 the final sentence. Is it fair to say that you were hoping
23 to get -- find a judge that would be favorable to the facts
24 of your case?

25 A I thought I had the judge that would be favorable

Franchot A. Brown - Cross-Examination by Mr. Spencer

1 to the facts of my case. I did all the research and
2 everybody -- I mean, I did a lot of looking into Judge
3 Russo and he might have been a new judge on the bench, but
4 from the standpoint of both being a prosecuting attorney as
5 well as a public defender lawyer, and from his record of
6 being on the bench at that time, I really thought that we
7 were in the hands of someone who would have been a little
8 lighter on that sentence.

9 In fact, I had another case with him at the same
10 time in another County. And in that case he was very nice.

11 Q In that case it was much more favorable to y'all.

12 A Yeah, very favorable.

13 Q What I wanted to ask you about is the question as
14 to whether you should have objected to certain comments by
15 Judge Peoples during the hearing. Is it -- was your
16 approach to this plea hearing for it to be a contentious
17 hearing or you were seeking to basically show the judge
18 that your client was somebody who deserved some leniency or
19 deserves some mitigation?

20 A Exactly.

21 Q And certainly by objecting to Judge Peoples
22 comments that opened the potential for making the hearing a
23 little more --

24 A You know, I don't know whether that would have
25 helped this situation to be honest with you. You know

Franchot A. Brown -- Cross-Examination by Mr. Spencer

1 hindsight's always 20/20. I --

2 Q Let me ask you this, given your analysis of Judge
3 Russo and the fact that he's a fair judge and the fact that
4 he had a lot of experience in the courtroom on both sides
5 of the -- and had been in front of judges himself, do you
6 think he had the ability to sort out what should be
7 relevant and what should not be relevant to the sentence?

8 A Oh, yes. I mean -- oh, yes.

9 Q All right.

10 A I mean I -- he's qualified.

11 Q And so would you have felt it necessary for him to
12 point out what might be improper consideration by way of an
13 objection?

14 A He mentioned in the transcript in my motion to
15 reconsider, he mentioned that himself. Actually see, he
16 brought up Judge Peoples in that transcript. And he said
17 that it had no bearing on his sentence. That's what he
18 said. He -- and I didn't bring that up. He brought it up.
19 So that let me know that he was fully aware that there was
20 some concerns about the comments made by Rodney Peoples and
21 his presentation. As I did too.

22 Q And now, there was a plea on May 7th, then you did
23 a motion to reconsider and that was heard in June; and at
24 that hearing, you presented some -- you presented both
25 Mr. Kennedy's brother and an individual by the name of

Franchot A. Brown - Cross-Examination by Mr. Spencer

1 Kelvin Isaac who indicated he was an elected official from
2 Blackville; do you recall that?

3 A Oh, yes, yes, sir.

4 Q And so you did present some additional witnesses at
5 the motion for reconsideration?

6 A Correct.

7 Q And Judge Russo actually spoke to the comment --
8 spoke to the issue as to whether or not it affected his
9 decision as to how many witnesses had been there?

10 A He did. He did.

11 Q And just --

12 MR. SPENCER: Your Honor that would be on page 36
13 of the transcript. It discusses the number of witnesses.

14 BY MR. SPENCER:

15 Q And actually, both Mr. Kennedy's mother and father
16 were present at the guilty plea; is that right?

17 A They were there.

18 Q And they were both given an opportunity to speak?

19 A Oh, yes.

20 Q And the mother did actually speak, didn't she?

21 A I don't remember and I don't have that transcript.

22 I never got it. I just can't go back four years, five
23 years.

24 Q Certainly.

25 A I never got that transcript.

Franchot A. Brown - Cross-Examination by Mr. Spencer

1 Q Certainly, and I didn't realize you didn't receive
2 that.

3 A And I didn't either, until I was preparing for
4 today and I realized I never got that?

5 Q Certainly. If the record reflects that the mother
6 spoke at the guilty plea hearing, would you dispute that?

7 A No, no, no.

8 MR. SPENCER: And, Your Honor, that's on page 46 of
9 the guilty plea transcript.

10 THE COURT: Okay.

11 MR. SPENCER: Beg the Court's indulgence.

12 (WHEREUPON there was a pause in the proceedings.)

13 BY MR. SPENCER:

14 Q And I think you made mention of it, but Mr. Kennedy
15 admitted he was involved in this robbery; is that correct?

16 A Correct.

17 Q And certainly that doesn't mean he could have made
18 the State -- he couldn't make the State prove their case;
19 but -- but you were aware that he was guilty?

20 A The State was aware I think -- I think from my
21 comments and my going over discovery with Mr. Kennedy --
22 when I go over discovery, I probably spent the bulk of a
23 day with him. I go -- I read in case he can't read well.

24 I read it to him. I go page by page by page and you see
25 this took practically all day. I wanted to make sure I

Franchot A. Brown - Cross-Examination by Mr. Spencer

1 didn't miss anything and make sure he understood
2 everything; make sure that he had an opportunity to express
3 himself on anything -- I would tell him don't wait until I
4 get way past a point to stop me. The minute I read
5 something that's not correct, you stop me right then and
6 discuss it with me and I made notes.

7 So we went over all of this and at the conclusion
8 of that hearing, I mean that meeting -- yeah -- he -- he
9 admitted that he was the codefendant. In fact, his
10 involvement and that sort of thing.

11 Q And so he -- he would be well aware of the
12 strengths or the weaknesses of the State's case were?

13 A Correct, oh, yes. Oh yes, absolutely.

14 Q And whose decision was it to plead guilty?

15 A His.

16 Q And if he had wanted a trial, were you prepared for
17 trial?

18 A Yes.

19 Q And it is fair to say that you were preparing for a
20 trial?

21 A I would not have done a trial that day. I don't
22 think the Court was even prepared for a trial that day, but
23 we would have certainly come back for a trial.

24 MR. SPENCER: Beg the Court's indulgence.

25 THE COURT: Okay.

Franchot A. Brown - Cross-Examination by Mr. Spencer

1 (WHEREUPON there was a pause in the proceedings.)

2 BY MR. SPENCER:

3 Q And in terms of presenting mitigation for the
4 guilty plea, what was your strategy on that?

5 A Well, I always discuss the fact that this -- as the
6 counsel mentioned, he's a first offender. He was --
7 although he was a year older than his codefendant, the
8 codefendant was really the main person involved and I don't
9 think there's any doubt about that. There's no doubt on
10 the facts or the basis for that. And of course, well, it's
11 really -- it's all in the transcript if I could just say it
12 like that.

13 Q Certainly.

14 A I think I made many points as I read my notes. I
15 read the transcript from my comments to the judge --

16 Q And you emphasized his youth?

17 A Oh, absolutely, first offender -- when he was
18 arrested he was allegedly in a military school in Aiken
19 somewhere. I don't know, but family background, pointing
20 out the family in the audience -- the courtroom.

21 Q And --

22 A And certain witnesses speak on his behalf about
23 what a good person he was and he deserved a second chance.

24 Q And you mentioned during the guilty plea he was not
25 on drugs at the time of the crime?

Franchot A. Brown - Redirect Examination by Ms. Armstrong

1 A That's correct.

2 MR. SPENCER: Beg the Court's indulgence.

3 (WHEREUPON there was a pause in the proceedings.)

4 MR. SPENCER: Your Honor, I have no further
5 questions.

6 THE COURT: Okay.

7 MS. ARMSTRONG: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. ARMSTRONG:

10 Q One thing I forgot to ask you, Mr. Brown, do you
11 recall during the course of the guilty plea that you had
12 mentioned that Michael was in a military camp facility?

13 A I thought that's what I recalled.

14 Q Yes, sir. I'm -- the record would reflect it.

15 And do you also recall from the record that -- the
16 comments that -- basically saying that that couldn't be
17 true, there was no --

18 A Judge Peoples said that.

19 Q Okay.

20 A He said he knew of no military school in Aiken.

21 Q Okay. Were you aware that Camp Long Academy, in
22 fact, does exist and it's in Aiken and that's actually
23 where Mr. Kennedy was, in fact, enrolled?

24 A I didn't know where he was, but I knew I could
25 trust his word he was in -- because that's the way I --

Franchot A. Brown - Redirect Examination by Ms. Armstrong

1 that's where he was when he was arrested.

2 Q Yes, sir. Did it -- did you ever think about
3 objecting and supplementing the record with information
4 that there were some made up statements, in fact, true --
5 here's the name of it and this is where it's at?

6 A Well, personally, I don't think --

7 MR. SPENCER: Your Honor, I think that's a whole
8 new issue.

9 MS. ARMSTRONG: It's about mitigation. There was a
10 question about what theory of mitigation was and so I'm
11 following up on that.

12 MR. SPENCER: And that fact could have been in the
13 application which requires setting out the facts within the
14 applicant's knowledge.

15 MS. ARMSTRONG: A lack of preparedness includes
16 knowing --

17 THE COURT: I'll allow it, go ahead.

18 MR. SPENCER: Thank you, Your Honor.

19 THE WITNESS: I don't think Judge Peoples' word in
20 the courtroom should be given anymore respect than my word.
21 I said he was in the military academy and Judge Peoples did
22 not dispute that. So if Judge Russo heard me as he did,
23 then I should have been given the same amount of respect as
24 Rodney Peoples was.

25 Q Thank you very much.

Franchot A. Brown - Recross-Examination by Mr. Spencer

1 THE COURT: Okay. Anything else from the State?

2 RECROSS EXAMINATION

3 BY MR. SPENCER:

4 Q Do you recall during the sentencing proceeding
5 Judge Russo said -- I believe he said something -- I'm
6 going to paraphrase it, that he certainly respects Judge
7 Peoples for a long time --

8 A Correct.

9 Q -- and respects you too?

10 A Correct.

11 MR. SPENCER: I have no further questions.

12 THE COURT: Okay. You can step down. Thank you,
13 sir.

14 THE WITNESS: May I be excused, Your Honor.

15 THE COURT: Any objection to him being excused?

16 MR. SPENCER: Your Honor, I hate to -- I know
17 Mr. Brown has come a long way but given the fact that the
18 applicant hasn't testified yet, I would just ask that
19 Mr. Brown --

20 THE COURT: Uh-uh, just hang out just a little bit
21 longer, please.

22 MR. SPENCER: I apologize, Mr. Brown.

23 THE WITNESS: No problem. Just one minute, let me
24 pack up.

25 (WHEREUPON there was a pause in the proceedings.)

Michael C. Kennedy - Direct Examination by Ms. Armstrong

1 MS. ARMSTRONG: Your Honor, the applicant calls
2 Mr. Kennedy, Michael Kennedy.

3 MICHAEL C. KENNEDY,
4 having been duly sworn, testified as follows:

5 THE CLERK: Please have a seat in the witness box
6 and state your full name for the record.

7 THE WITNESS: My name is Michael C. Kennedy.

8 DIRECT EXAMINATION

9 BY MS. ARMSTRONG:

10 Q Good morning, Mr. Kennedy. How are you?

11 A I'm fine, how you doing?

12 Q I'm fine.

13 Mr. Kennedy, where do you currently reside?

14 A At Lieber Correctional Institution.

15 Q Okay. How long have you lived in Lieber?

16 A Two years.

17 Q Are you there as part of your sentence?

18 A Correct.

19 Q Okay. And your sentence is thirty years with
20 twenty consecutive suspended to ninety days and three years
21 probation?

22 A Correct.

23 Q Okay. And that would be the sentence that we've
24 been talking about in the -- the facts we've been talking
25 about here today in the courtroom. Have you been present

Michael C. Kennedy - Direct Examination by Ms. Armstrong

1 the entire time?

2 A Correct.

3 Q Okay. You've heard everything that's been
4 testified to?

5 A Correct.

6 Q Okay. Including the grounds of your application;
7 is that correct?

8 A Correct.

9 Q Okay. As we discussed, and I believe I've already
10 mentioned it to the judge as well as the attorney general,
11 I just need it put on the record that when you challenge
12 your guilty plea and sentence that you got, if in fact,
13 you're successful, the result in South Carolina would be
14 either all or nothing. In other words, you either go back
15 to square one where you would face all of the original
16 charges, including the conspiracy that was not prosed,
17 which means not prosecuted.

18 You would face all those charges again and would
19 have to make a decision again to either go to trial or
20 plead guilty and if you ended up in that position, you
21 could face more time that you have right now?

22 A Correct.

23 Q And you understand that a judge could -- I'm not
24 saying that would, but it's certainly an option -- that
25 they could sentence you to thirty plus twenty plus five and

Michael C. Kennedy - Direct Examination by Ms. Armstrong

1 make it consecutive?

2 A Correct.

3 Q Okay. Knowing all of that and that that is a
4 possibility -- I'm not saying it would happen, but that it
5 is a possibility, you still want to go forward?

6 A Correct.

7 Q Okay. Thank you. Do you remember meeting with
8 your counsel prior to trial, Mr. Brown?

9 A Correct.

10 Q Okay. And you were discussing discovery and the
11 information that the State had provided?

12 A Correct.

13 Q Okay. Do you recall going to court on May 7th?

14 A Correct.

15 Q Okay. And what was your understanding of that
16 particular hearing?

17 A My understanding provided by Mr. Brown -- my
18 understanding, I was going for a bond reduction.

19 Q Okay. And your original bond was set at \$55,000?

20 A Correct.

21 Q And that would have been a really high bond for you
22 to make at that time and your family to make at that time?

23 A Correct.

24 Q Okay. So you thought for a bond reduction?

25 A Correct.

Michael C. Kennedy - Direct Examination by Ms. Armstrong

1 Q Okay. Do you recall ever discussing going to court
2 prior to May 7th that you would be going there for a plea?

3 A Never discussed that.

4 Q Okay. And let me ask you this: When you went to
5 court and you decided to plead guilty, would you have
6 pleaded guilty on that date had you known that, you know,
7 certain people would not have been there?

8 A No, I never would have pled guilty if it wasn't for
9 my counsel's advice.

10 Q Okay. Well, essentially, to the best of your
11 recollection what was his advice to you on that particular
12 day?

13 A He told me to go ahead and plead guilty. That's
14 what my counsel told me. He's representing me, so I wanted
15 to do what my counsel told me. I thought -- he thought
16 that was the best for me, so that's what I went ahead and
17 did.

18 Q Okay. And after the sentence came down and it
19 turned out to be what it is, which is thirty years and
20 twenty suspended to ninety days and three years probation,
21 did you speak to your attorney and ask him to file
22 something to ask the judge to reconsider your sentence? Do
23 you recall that?

24 A Correct.

25 Q Let me ask you this: Do you recall going to that

Michael C. Kennedy - Direct Examination by Ms. Armstrong

1 hearing?

2 A Correct.

3 Q And at that time people testified on your behalf?

4 A Correct.

5 Q Yes, sir. Okay. And both the May 7th and the June
6 hearing, were you relying on your lawyer to object to any
7 comments or procedures that were not favorable to you?

8 A Correct.

9 Q Okay. And if you had known your counsel wasn't
10 going to do everything that he should have done or could
11 have done, would you plead guilty?

12 A I would never have pled guilty.

13 Q Okay. So you would have insisted on going to
14 trial?

15 A Correct.

16 Q Okay. Is there -- do you -- let me just back up
17 one second here.

18 When you were discussing your discovery with your
19 counsel, do you remember the -- ever seeing any information
20 about a boot print?

21 A No.

22 Q You recall being told there was one?

23 A Correct.

24 Q Okay. All right. So you were aware that the State
25 had some evidence that Mr. Brown believed could put you

Michael C. Kennedy - Direct Examination by Ms. Armstrong

1 there?

2 A Correct.

3 Q Even without you having given a statement. You
4 understand that there was some evidence?

5 A Correct.

6 Q Okay. Including Mr. Toots, who was your friend?

7 A Correct.

8 Q Okay. Let's see --

9 MS. ARMSTRONG: Beg the Court's indulgence.

10 (WHEREUPON there was a pause in the proceedings.)

11 BY MS. ARMSTRONG:

12 Q Just finally, are you asking this court to reverse
13 your guilty plea conviction and award you -- basically a
14 new trial? In other words, asking the Court to overturn
15 what happened on May 7th and then in June of 2007 and
16 essentially put you back in the place that you were before
17 you pled guilty to the three charges?

18 A Yes, I am.

19 Q And you understand the hazards of doing that?

20 A Correct.

21 Q And you still want to go forward?

22 A Correct.

23 Q Please answer any questions the attorney general
24 may have.

25 ///

Michael C. Kennedy - Cross-Examination by Mr. Spencer

CROSS-EXAMINATION

BY MR. SPENCER:

Q Mr. Kennedy, as I understand it the purpose of the May 7th hearing was for a bond reduction; is that correct?

A Correct.

Q And then at some point there is discussion about pleading guilty that day?

A Correct.

Q And so you listened to your attorney's advice?

A Correct.

Q All right. And then you decided to plead guilty?

A For more counsel's advice. My counsel advised me to plead guilty, so I was going on what my counsel counseled me what to do. So I did what my counsel told me to do and plead guilty. He said that was the best thing for me to do, so that's why I did it.

Q All right. Do you recall Judge Russo asking whether or not you wanted to plead guilty?

A Correct.

Q And you told him you did?

A Correct.

Q And basically, is it fair to say you pled guilty in hopes of avoiding a harsher punishment?

A No, I pled guilty because my counsel's advice.

Q Did you tell your -- did you tell counsel you

Michael C. Kennedy - Cross-Examination by Mr. Spencer

- 1 wanted a trial?
- 2 A He never discussed a trial.
- 3 Q He never discussed a trial with you?
- 4 A No, sir.
- 5 Q Is that your testimony?
- 6 A Yes, sir.
- 7 Q All right. Do you recall Judge Russo advising you
- 8 that you had a right to trial?
- 9 A Correct.
- 10 Q And you told Judge Russo you understood it, right?
- 11 A Yes, sir.
- 12 Q And Judge Russo told you how much time you were
- 13 facing?
- 14 A Correct.
- 15 Q And he told you you were facing between ten to
- 16 thirty years in armed robbery?
- 17 A Correct.
- 18 Q And twenty years on assault and battery with intent
- 19 to kill?
- 20 A Correct.
- 21 Q So you understood you were facing up to fifty
- 22 years?
- 23 A Correct.
- 24 Q And you told Judge Russo you wanted to plead
- 25 guilty?

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 A Yeah, per my counsel's advice to plead guilty,
2 correct.

3 Q But whose decision was it?

4 A For my counsel's advice, my counsel advised me to
5 plead guilty.

6 Q At what point did you tell Judge Russo that the
7 only reason you were pleading guilty was because your
8 attorney told you to?

9 A I never told him that.

10 Q You told Judge Russo it was your decision to plead
11 guilty?

12 A That was my counsel's advice to tell the judge to
13 plead guilty, so I proceeded.

14 Q Are you saying Mr. Brown told you how the answer
15 the questions?

16 A Correct.

17 Q Now, who's going to be doing the prison sentence at
18 the end of this plea was that you or Mr. Brown?

19 A Me, Mr. Kennedy.

20 Q You're the one who's going to get the time?

21 A Correct.

22 Q At what point did you tell Judge Russo you don't
23 want to plead guilty?

24 A I never told him that.

25 Q What point did you tell Judge Russo you were not

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 satisfied with Mr. Brown's help?

2 A I never told him that.

3 Q You told him the very opposite, right? You told
4 Judge Russo you were satisfied with your attorney?

5 A That was my counsel's advice to agree on everything
6 that he was saying.

7 Q So was that a lie to Judge Russo?

8 A What you mean was it a lie.

9 Q Were you happy -- when you were pleading guilty
10 this day, May 7th, when you were pleading guilty you were
11 about to go to prison because you were pleading guilty, did
12 you tell Judge Russo, I'm not happy with Mr. Brown?

13 A No, sir, I never did.

14 Q Were you happy with Mr. Brown when you were
15 pleading guilty?

16 A I mean per my counsel's advise, I thought he was
17 doing his job as an attorney to get me a fair sentence.

18 Q So -- so what you're saying, at the time when you
19 were answering Judge Russo's questions that's -- that was
20 the truth. You were satisfied with Mr. Brown's services?

21 A Correct.

22 Q Okay. Thank you. And you apologized to the Court;
23 is that correct?

24 A Correct.

25 Q And I believe the sense of your apology was, you

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 said you were in the wrong place at the wrong time?

2 A Correct.

3 Q You said that again during the reconsideration
4 hearing?

5 A Correct.

6 Q And as a matter of fact, you had told Mr. Brown
7 prior -- you had told Mr. Brown that you, in fact, did
8 commit the robbery?

9 A I never told him that.

10 Q You never told him that?

11 A I never told him that.

12 Q So when Mr. Brown says during the guilty plea
13 hearing in front of Judge Russo as an officer of the Court,
14 when he says that you admitted the crime to him that would
15 be false?

16 A False.

17 Q What about the apology then? What were you
18 apologizing for?

19 A I never told him I was at the place of the crime.
20 I never told him that.

21 Q What does wrong place, wrong time mean?

22 A I never told him that I -- I never told him that.

23 Q You never told Judge Russo --

24 A Yes, correct, I told Judge Russo, but I never told
25 my attorney that.

Michael C. Kennedy - Cross-Examination by Mr. Spencer

- 1 Q Okay. So you didn't tell that to Mr. Brown, but
2 you told that to Judge Russo?
- 3 A Correct.
- 4 Q Were you -- were you there for that robbery?
- 5 A Correct. I was.
- 6 Q You were there for that robbery?
- 7 A Correct.
- 8 Q That you and Mr. Toots committed?
- 9 A Correct.
- 10 Q You committed the robbery?
- 11 A Correct.
- 12 Q And, of course, Mr. -- excuse me, Judge Russo told
13 you, you had a right to trial and you could make the State
14 prove their case, right?
- 15 A Correct.
- 16 Q And you told him you want to plead guilty?
- 17 A Correct.
- 18 Q Why didn't you tell him, Well, if that's the case,
19 I want to make the State prove it?
- 20 A Because of my counsel's advice I pled. When my
21 counsel told my to pled guilty, that's what I did.
- 22 Q Right, because counsel was hoping to get you a
23 light sentence too?
- 24 A Correct.
- 25 Q I mean, Mr. Brown and you had the same goal, right?

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 To get as low a sentence as possible?

2 A I mean from my counsel's advice to plead guilty, he
3 said that was in my best interest, so that's what I did.

4 MR. SPENCER: Beg the Court's indulgence.

5 THE COURT: Okay.

6 (WHEREUPON there was a pause in the proceedings.)

7 BY MR. SPENCER:

8 Q Do you remember the solicitor going over the facts
9 of the case?

10 A Somewhat.

11 Q Have you had a chance to read the plea transcript
12 since you filed your application?

13 A Correct.

14 Q And do you recall that you agreed with the facts as
15 related by the solicitor?

16 A Say again?

17 Q Do you recall during that guilty plea that you
18 agreed with the facts as stated by the solicitor?

19 A What facts?

20 Q The facts of the case. You remember the solicitor
21 gave the facts of the case to Judge Russo?

22 A Correct.

23 Q And do you remember that you told Judge Russo you
24 agreed with those facts?

25 A I don't recall.

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 Q I would just turn to page 36 of the guilty plea
2 transcript. And Mr. Kennedy are you able to read?

3 A Correct, yes, sir.

4 Q Okay. Very good. If you can, read on page 26,
5 line 17 through 19 to yourself and just tell me when your
6 done?

7 (WHEREUPON there was a pause in the proceedings.)

8 THE WITNESS: Done.

9 BY MR. SPENCER:

10 Q All right. So you told Judge Russo you agreed with
11 the facts of the case?

12 A Correct.

13 Q And the facts as the solicitor stated was -- was
14 that you and Mr. Toots went to commit the armed robbery on
15 Mr. Richardson?

16 A Correct.

17 Q Mr. Toots is -- knew Mr. Richardson because
18 Mr. Toots had done some work for Mr. Richardson; is that
19 correct?

20 A That's what he said, yes, that's correct.

21 Q And Mr. Toots hit Mr. Richardson over the head with
22 a bottle; is that correct?

23 A Correct.

24 Q A wine bottle?

25 A Correct.

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 Q And then you pulled Mr. Richardson down the stairs?

2 A That's not correct.

3 Q You didn't tell Judge Russo that wasn't correct,
4 though, did you?

5 A I didn't.

6 Q Why didn't you?

7 A Because of my counsel's advising.

8 Q Are you saying that Mr. Brown told you to just
9 agree with whatever they say?

10 A Correct.

11 Q Then you took that wallet from Mr. Richardson,
12 right?

13 A Correct.

14 Q You ripped his pants pocket in the process of doing
15 so?

16 A Correct.

17 Q Whether or not he was thrown down the stairs or
18 fell down the stairs, Mr. Richardson fell down the stairs;
19 is that right?

20 A Correct.

21 Q You helped Mr. Toots commit that armed robbery,
22 right?

23 A Correct.

24 Q You guys didn't ask him for his money first, you
25 just went ahead and assaulted him off the bat; is that

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 correct?

2 A Correct.

3 Q And you were -- were you 18 or 19 at the time of

4 the crime?

5 A 18.

6 Q You were 18. Okay.

7 Were you working at the time?

8 A No, I was in school.

9 Q Were you in school full time?

10 A Yes, sir.

11 Q And Mr. Richardson, I believe, was 86 at the time,

12 right?

13 A Correct. I believe so.

14 Q How tall are you?

15 A I'm 6'1".

16 Q 6'1". About how tall you were back when you

17 committed this armed robbery?

18 A Correct.

19 Q About how heavy would you have been at this time?

20 A I was about 185, 190.

21 Q 185, 190?

22 A Correct.

23 Q So you and Mr. Toots took it upon yourselves to rob

24 this 86-year-old man, hit him over the head with a wine

25 bottle. He gets -- even under your version of facts, he

Michael C. Kennedy - Cross-Examination by Mr. Spencer

1 gets pushed down or falls down a set of stairs. You guys
2 don't even bother to ask him for his money, you just go
3 ahead and assault him?

4 MS. ARMSTRONG: Your Honor, I'm sorry, I've let
5 this go on, but I don't understand the relevance of this.
6 The transcript speaks for itself. The facts are clearly
7 laid out. There's not really a question here. I'm going
8 to object to relevance.

9 MR. SPENCER: It is completely relevant. There's
10 two reasons why it's relevant. One, is first the decision
11 to plead guilty because this was a heinous crime; and
12 second of all, we're talking about mitigation and the flip
13 coin of mitigation, the aggravated circumstances that ended
14 up as a result of this.

15 THE COURT: I'll allow it. Go ahead.

16 MR. SPENCER: Thank you, Your Honor.

17 BY MR. SPENCER:

18 Q So basically, you and Mr. Toots assault and then
19 rob Mr. Richardson, right?

20 A I didn't assault Mr. Richardson.

21 Q Mr. Toots did, right?

22 A Correct.

23 Q And you went there with him to commit that armed
24 robbery, right?

25 A Correct.

Michael C. Kennedy - Cross-Examination by Mr. Spencer

- 1 Q Did you stop Mr. Toots?
- 2 A No, I didn't.
- 3 Q Did you at any point in time say it was a bad idea?
- 4 A Yeah, I did.
- 5 Q What point was that?
- 6 A That was before.
- 7 Q You went ahead and did it anyway though, didn't
- 8 you?
- 9 A Correct.
- 10 Q Mr. Toots was a little bit younger than you, right?
- 11 A Correct.
- 12 Q You were 18, right?
- 13 A Correct.
- 14 Q That's a man, right?
- 15 A Correct.
- 16 Q You weren't no boy, you're a man?
- 17 A Correct.
- 18 Q And quite frankly, you were a mean man because you
- 19 picked on an 86 year old man and threw him down the stairs.
- 20 You took his wallet. You ganged up on him. It was two on
- 21 one. What's mitigating about that?
- 22 A I didn't throw him down the stairs.
- 23 Q What's mitigating about that armed robbery that you
- 24 committed on an 86-year-old man? There is none, is there?
- 25 MR. SPENCER: Your Honor, I withdraw that question

1 based after about -- I'd say four or five seconds of
2 silence. I have no further questions.

3 THE COURT: Okay. Anything further?

4 MS. ARMSTRONG: No, Your Honor.

5 THE COURT: You can step down.

6 Anything else?

7 MS. ARMSTRONG: Nothing for us.

8 MR. SPENCER: Nothing further from the State, Your
9 Honor.

10 THE COURT: Okay. All right. I'm going to take a
11 five minute break. I want to see both counsel in chambers.

12 MR. FRANCHOT BROWN: May I be excused?

13 THE COURT: Any objection to him being excused?

14 MR. SPENCER: No objection, Your Honor.

15 MS. ARMSTRONG: No objection, Your Honor.

16 MR. FRANCHOT BROWN: Thank y'all, I appreciate it.

17 (WHEREUPON a recess was observed.)

18 THE COURT: Okay. I have at least reviewed part of
19 this file. I will read the rest of the file and let y'all
20 know my decision. My understanding from our conversation
21 in chambers is that you would like thirty days to admit any
22 additional briefs of the law.

23 MS. ARMSTRONG: Yes, Your Honor, I'd appreciate
24 that.

25 THE COURT: I'll give you the same to respond.

1 MR. SPENCER: Thank you, Your Honor.

2 THE COURT: I'll let y'all know.

3 MR. SPENCER: Thank you.

4 MS. ARMSTRONG: Thank you, Your Honor.

5 * * * * * END OF TRANSCRIPT * * * * *

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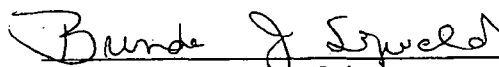
1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 9th
11 day of July, 2013.

12 I FURTHER CERTIFY that the 53 foregoing pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 5th day of March, 2014.

19
20
21
22 

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Michael C. Kennedy, #321820,
Applicant,

v.

State of South Carolina,
Respondent.

2011-CP-06-0088

ORDER OF DISMISSAL

FILED FOR RECORD
2013 AUG 23 AM 11:24
RHONDA D. McELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed February 22, 2011. The State made its return on August 4, 2011. A hearing into the matter was convened at the Aiken County Courthouse on July 8, 2013. Applicant was present and represented by Melissa J. Armstrong, Esquire. The State was represented by David Spencer of the Office of the South Carolina Attorney General.

Applicant testified on his own behalf. Also testifying was his plea counsel, Franchot A. Brown, Esquire. This Court also had before it the pleadings of both parties, the Clerk of Court's records regarding the subject convictions, the appellate records, and the transcripts of the bond reduction proceeding, guilty plea proceeding, and the hearing for the motion for reconsideration.

PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Barnwell County Clerk of Court's orders of commitment. The Barnwell County Grand Jury indicted the Applicant at the May 2007 term of General Sessions for Armed Robbery (2007-GS-06-0144), Assault and Battery with Intent to Kill (ABWIK) (2007-GS-06-0145), and Conspiracy (2007-GS-06-146). Franchot A. Brown, Esquire represented the Applicant. On May 7, 2007, the Applicant pled guilty to Armed Robbery and ABWIK. Pursuant to agreement, the

Conspiracy charge was dismissed. Applicant was sentenced by the Honorable Thomas A. Russo to thirty years imprisonment for Armed Robbery and a consecutive sentence of twenty years imprisonment, suspended to three years probation upon the service of ninety days imprisonment for ABWIK.

A notice of appeal was filed at the South Carolina Court of Appeals. M. Celia Robinson, Esquire submitted a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals dismissed the Applicant's appeal by Order dated January 25, 2011. The remittitur was issued on February 10, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1985).

Ineffective Assistance of Counsel and Involuntary Plea

Applicant alleges ineffective assistance of counsel rendered his plea was involuntary. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRCP.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for

counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985); Stalk v. State, 383 S.C. 559, 681 S.E.2d 592 (2009); Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Applicant alleges plea counsel was unprepared for the sentencing phase of the guilty plea proceeding and failed to present sufficient mitigation testimony during the sentencing proceeding. The victim (Victim) in this case was an eighty-six year-old man who was a well-respected member of the community. The prosecution alleged Applicant and his co-defendant, Lugene Took, robbed Victim on Victim's front porch. Took had done some yard work for Victim and was aware that he carried significant amounts of cash. Took lured Victim out of the house and hit him over the head with a wine bottle. Took and Victim wrestled on the porch. The prosecution alleges Applicant then came out of the bushes and picked Victim up from the stairs and slammed him to the ground. Applicant then ripped the back pocket off Victim's pants as he took Victim's wallet. Applicant

agreed with the prosecution's statement of facts at the guilty plea hearing. Guilty plea transcript pp. 34-36. Applicant alleged at the PCR hearing that he did not throw Victim down the stairs, instead Victim fell.

However, Applicant confirms the other facts and admitted his involvement in the robbery when he testified at the PCR hearing. He testified he was 6'1" and would have weighed about 190 pounds at the time of the plea. He admitted planning the robbery with Tooks. He admitted that when they committed the robbery, they did not ask Victim for his money first, but resorted to an assault immediately. Applicant admits that he and Tooks ganged up on Victim. Applicant admitted ripping Victim's pants pocket to take the wallet. Applicant alleges that it was Tooks' idea to commit the robbery and that he expressed reservations to Tooks about the robbery, but still ended up participating in the robbery. He admitted he was eighteen years old at the time and was older than Tooks. Applicant admitted it was mean to rob such an elderly man the way he and Tooks did.

Counsel testified he considered whether Judge Russo would be a good judge to hear Applicant's guilty plea. Judge Russo was a relatively new judge at the time of the plea. Counsel did a diligent review, discussing Judge Russo's practice with several other attorneys who indicated that Judge Russo was a fair judge. Judge Russo had experience as a prosecutor, public defender, and private attorney. Counsel's review disclosed that Judge Russo appeared to be a favorable judge for the guilty plea.

Counsel testified that he notified all of the potential mitigation witnesses of the court date and advised them that they should be present. Counsel's recollection was that most came, although some might not have been present. The transcript of the guilty plea indicates Applicant's parents were present on his behalf at the guilty plea hearing and his mother spoke. Tr. p. 39; pp. 45-46. Additionally, Counsel presented several additional witnesses at the motion for reconsideration. See

Motion hearing tr. pp. 4-6 (listing people present on behalf of Applicant including his brother, Keith Kennedy, and Kelvin Isaac, an elected official from Blackville, SC). Applicant did not present any witnesses at the PCR hearing other than himself and Mr. Brown. See Bannister v. State 333 S.C. 298, 509 S.E.2d 807 (1998) (finding that when an applicant alleges ineffective assistance for failure to call a witness, the applicant must present the testimony of the favorable witness or present other acceptable evidence to establish prejudice from the alleged deficiency of counsel).

This Court finds Applicant has not met his burden of proof. Counsel made a well-presented plea for mitigation to Judge Russo, emphasizing Applicant's strong family background, his youth, his remorse, and his lack of a prior record. Counsel, as he testified, then made a motion for reconsideration, free of charge, when he was disappointed with the sentence. Counsel made an impassioned argument for sentence reduction, including reference to proposed sentencing guidelines and a comparison of the sentence in the present case to the sentence in a murder case that occurred in Columbia. Counsel presented several additional witnesses at the sentencing hearing, including an elected official who spoke of Applicant highly.

However, the simple matter is Judge Russo found the very nature of the crime particularly mean and brutal. This Court has to agree on that point. More importantly, counsel's conduct did not fall below professional norms, nor has Applicant demonstrated to this Court additional witnesses or evidence sufficient to prove prejudice from Counsel's alleged deficiency.

Additionally, Applicant alleges Counsel was ineffective for failing to object to comments made by the victim's attorney, retired Judge Rodney A. Peeples, asking Judge Russo to send a message to the community with his sentence. Counsel testified that he did not think objecting to those comments would be productive. First, he wanted to avoid a confrontational tone at the plea hearing, as his strategy was to emphasize Applicant's remorse. Second, given Judge Russo's

extensive experience as a prosecutor and public defender, he considered Judge Russo capable of sorting out any inappropriate considerations in determining a just sentence. This Court finds counsel's strategy reasonable and finds counsel's performance was not deficient. This Court agrees that Judge Russo would be capable of sorting out inappropriate considerations in fashioning an appropriate sentence and does not believe Applicant was prejudiced by the lack of an objection to Judge Peebles' comments. *See generally, State v. Cain*, 2979 S.C. 497, 508-09, 377 S.E.2d 556, 562 (1988) (finding solicitor's argument to the jury to "send a message to surrounding counties" during the sentencing phase of a death penalty trial "did not rise to the level of arousing juror passion or prejudice"). Accordingly, this allegation is denied.

This Court finds Applicant has not met his burden of proof and denies this application with prejudice.

CONCLUSION

Based on the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this Application for Post-Conviction Relief must be denied and dismissed with prejudice.

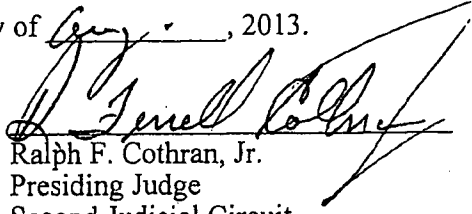
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. *State v. Bray*, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must

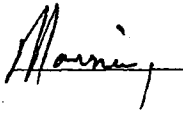
serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Aug, 2013.


Ralph F. Cothran, Jr.
Presiding Judge
Second Judicial Circuit

, South Carolina

WITNESSES

Martin-B.P.D.

DOCKET NO. 2007-GS-06-144

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

MAY 7, TERM 2007

ARREST WARRANT NUMBER

H780956

THE STATE
vs.

MICHAEL C. KENNEDY

ACTION OF GRAND JURY

True Bill

Mike Stahl
Foreperson of Grand Jury
Date: May 3, 2007

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)

CDR Code: 0139

Class FEL-A(V)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

INDICTMENT

At a Court of General Sessions, convened on May 7, 2007 the Grand Jurors of Barnwell County present upon their oath:

ARMED ROBBERY

That MICHAEL C. KENNEDY did, with another, in Barnwell County on or about January 8, 2007, while armed with a deadly weapon, feloniously take from the person or presence of Thomas Richardson, by means of force or intimidation goods or monies of said Thomas Richardson, all in violation of §16-11-330, *Code of Laws of South Carolina*, (1976), as amended.

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


BARBARA R. MORGAN, SOLICITOR

FOR

143

WITNESSES

Martin-B.P.D.

DOCKET NO. 2007-GS-06-145

The State of South Carolina

County of Barnwell

COURT OF GENERAL SESSIONS

MAY 7, TERM 2007

ARREST WARRANT NUMBER

H780957

THE STATE

vs.

MICHAEL C. KENNEDY

ACTION OF GRAND JURY

True BILL

Bill Stl
Foreperson of Grand Jury
Date: May 3, 2007

VERDICT

Indictment for

**ASSAULT AND BATTERY WITH
INTENT TO KILL**

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF BARNWELL)

INDICTMENT

At a Court of General Sessions, convened on May 7, 2007 the Grand Jurors of Barnwell County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That MICHAEL C. KENNEDY did, with another, in Barnwell County on or about January 8, 2007, with malice aforethought commit an assault and battery upon one Thomas Richardson with intent to kill the said victim. All in violation of §16-03-620 of the *Code of Laws of South Carolina*, (1976), as amended.

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


BARBARA R. MORGAN, SOLICITOR

For