

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Barnwell County

R. Ferrell Cothran, Jr., Circuit Court Judge

---

RECEIVED

SEP 10 2014

S.C. Supreme Court

MICHAEL KENNEDY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002334

---

SUPPLEMENTAL APPENDIX

---

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

DANIEL GOURLEY  
Assistant Attorney General

P. O. Box 11549  
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....i  
SENTENCING RECONSIDERATION HEARING TRANSCRIPT DATED JUNE 26, 2007 ..... 1

State of South Carolina	}	Court of General Sessions 07-GS-06-144,145
County of Barnwell	}	

The State of South Carolina	}	Transcript of Record
Plaintiff	}	
vs.	}	
Michael C. Kennedy	}	
Defendant	}	

June 26, 2007  
Aiken, 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

Rodney A. Peeples, Esq.  
Attorney for the victim

Lisa H. Davenport  
Official Court Reporter

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X   O F   W I T N E S S E S

Statement by Mr. Moore..... 3, 22  
Statement by Mr. Brown..... 3, 11  
Statement by Mr. Kennedy..... 5  
Statement by Mr. Isaac..... 8  
Statement by Mr. Peoples..... 19,24

E X H I B I T S

NO.                      DESCRIPTION                      ID    EV

(None offered)

1 (Whereupon, on June 26, 2007 the following  
2 proceedings were held:)

3 THE COURT: Mr. Moore?

4 MR. MOORE: Your honor, our first case is the motion  
5 to reconsider the sentence on Michael Kennedy. It's  
6 indictments 2007-GS-06-144 and 145. If we could have  
7 Mr. Kennedy come forward. Your honor, I do have the  
8 original sentence sheets.

9 THE COURT: All right, sir. Thank you.

10 THE CLERK: Would you like for him to be sworn?

11 THE COURT: Yea.

12 MICHAEL C. KENNEDY, after being duly sworn,  
13 testified as follows:

14 THE CLERK: He is sworn, Your Honor.

15 THE COURT: All right. This is in the matter of  
16 indictment 07-GS-06-144 and 2007-GS-06-145. This is State  
17 versus Michael Kennedy.

18 Mr. Brown, this is your motion; is that correct, sir?

19 MR. BROWN: That's correct, Your Honor.

20 THE COURT: I'll be happy to hear from you.

21 MR. BROWN: First thing, allow me to thank the Court  
22 for allowing me this opportunity to reappear on behalf of  
23 my client Mr. Michael Kennedy and to discuss with you some  
24 additional information and some facts that I think the  
25 court should be aware of and to introduce to you some

1 witnesses on his behalf all in an effort to hopefully get  
2 you to reconsider the 30-year sentence you gave him in  
3 Barnwell, South Carolina.

4 THE COURT: All right. Sir.

5 MR. BROWN: We have two witnesses who are going to  
6 address the court. That's Keith Kennedy and Calvin Isaac.  
7 I am going to ask them to come up for a minute, please.

8 Judge, if you don't mind I'd like to introduce the  
9 other persons who are here on his behalf and have them  
10 just stand up and introduce themselves to the court.

11 THE COURT: That is fine.

12 MR. BROWN: Would the rest of you who are here for  
13 Mr. Michael Kennedy, would you stand up? As loud as you  
14 can would you please introduce yourself and your  
15 relationship with Mr. Michael Kennedy.

16 (Whereupon, the following speakers stood in the  
17 audience and spoke as follows. Portions are  
18 inaudible because of the distance from the Court  
19 Reporter.)

20 MS. ISAAC: My name is (inaudible) Isaac and I am a  
21 friend of Michael.

22 MS. JOANNE PERRY: My name is Joanne Perry and I am  
23 Michael's aunt.

24 MS. SHERRY FELDER: My name is Sherry Felder and I am  
25 Michael's mother.

1 MS. NATASHA KINNEY: My name is Natasha Kinney. I am  
2 Michael's sister.

3 MS. CHARMAINE KENNEDY: My name is Charmaine Kennedy  
4 and I'm Michael's sister.

5 MR. ROBERT KENNEDY: My name is Robert Kennedy. I'm  
6 his uncle.

7 MR. CLARENCE FELDER: My name is Clarence Felder.  
8 I'm his uncle.

9 MR. JERMAINE MOORE: My name is Jermaine Moore. I am  
10 his cousin.

11 MR. ARTHUR FELDER: My name is Arthur Felder. I am  
12 his father.

13 UNKNOWN SPEAKER: My name is John (inaudible  
14 portion.)

15 MR. BROWN: I just wanted them to introduce  
16 themselves to see the kind of support he has. A lot of  
17 these people were not able to appear at the last hearing.  
18 Naturally, his mother is here and I'm sure that you recall  
19 that.

20 THE COURT: Yes.

21 MR. BROWN: And his father was there. I really  
22 wanted so you can see that we got good family support.  
23 The brother Keith Kennedy is from North Carolina. What  
24 part of North Carolina?

25 MR. KEITH KENNEDY: I live in Gastonia.

1 MR. BROWN: Gastonia, North Carolina. He is here,  
2 Your Honor, and I'd like for him to address the court  
3 first.

4 THE CLERK: Would you like for me to swear him in?

5 MR. BROWN: You may as well swear both of them.

6 KEITH KENNEDY AND KELVIN ISAAC, after being duly  
7 sworn, testified as follows:

8 THE CLERK: Both sworn, Your Honor.

9 THE COURT: All right.

10 MR. BROWN: Mr. Keith Kennedy, I understand that  
11 you're the brother. Would you please tell the court...

12 MR. KEITH KENNEDY: Yes, sir. In fact, I wanted,  
13 first of all, start off by saying thank you, Your Honor,  
14 for letting me say these words to you, and when I first  
15 heard about the sentence that you gave -- and I know you  
16 have all the power to do that. You know, that's your  
17 right. I was upset because that's my baby brother, my  
18 only brother. As a man I was upset, and I can understand  
19 the way this family felt when they found out about it and  
20 I just wanted to apologize to you, Mr. Richardson. Hattie  
21 Sue Grimes is my grandmother. She worked with you and I  
22 just want to say you know that's the not the way our  
23 family was raised and brought up.

24 And I thought about it and I prayed about it and I  
25 asked God what is the best way I could come before you and

1 make you reconsider on behalf of my brother, and I went  
2 over back and forth with myself and I said, Well, you must  
3 have failed as a big brother. You tried to -- I tried my  
4 best to teach him right from wrong, but I guess you have  
5 to learn on your own. So, I thought the best way I could  
6 do it is tell a -- my story.

7 Twelve years ago I was 18 years old. Me and some  
8 buddies were out riding and they decided that it was best  
9 to go and take some property that didn't belong to them.  
10 In my heart I knew it was wrong and I told them, I said,  
11 This is wrong, y'all. We shouldn't do this. We got no  
12 business doing this, but I waited on the side of the  
13 house. Now, Sheriff Joey Zorn came in and he talked to me  
14 and he said, I am going to give you a chance because  
15 you're a baby and you don't know nothing, and, Your Honor,  
16 that's been over 12 years. I haven't done anything since.  
17 I'm a team leader on my job. I go to parent night at my  
18 son's school, and I'm a member of the masonic lodge. I do  
19 good things in the community. I am a football coach.

20 So, what I am trying to say is when you're a young  
21 man sometimes you hang out with the wrong people and they  
22 influence you and you can do the wrong things, but I just  
23 ask you to reconsider and give him a chance so maybe one  
24 day he can have some kids and feel -- when I think about  
25 if somebody was to do that to my family how I would feel,

1 I would feel bad, and I feel bad about the things that  
2 I've done. I asked God to forgive me numerous times.

3 So, I just ask that you would just please reconsider  
4 and show my brother some mercy.

5 THE COURT: All right. Thank you, sir.

6 MR. BROWN: Thank you, Mr. Kennedy.

7 Mr. Isaac, state your name and your position.

8 MR. KELVIN ISAAC: My name is Kelvin Isaac. I am an  
9 elected official within the town of Blackville, Barnwell  
10 County.

11 THE COURT: Yes, sir.

12 MR. KELVIN ISAAC: I prepared just a brief  
13 presentation, if you don't mind. Etymology, the study of  
14 history of word, reveals to us that from Hebrews the name  
15 Michael was meant who is like God. This is the name of  
16 one of several Archangels in Hebrews tradition and the  
17 only one identified in as an Archangel in the Bible. In  
18 the book of Revelations in the New Testament he is  
19 portrayed as the leader of Heaven's armies and thus is  
20 considered the Patron Saint of Soldiers. This was the  
21 name of nine Byzantine emperors and a czar of Russia. One  
22 more modern bearer of this name included the 19th century  
23 chemist physician Michael Faraday and basketball player  
24 Michael Jordan.

25 I was compelled to write a letter to Mr. Brown

1 regarding Michael C. Kennedy. Dear Mr. Brown, I hope this  
2 letter finds all well. I was surprised to learn that  
3 Michael had gotten himself into trouble and more surprised  
4 to learn that his actions had warranted such an extensive  
5 sentencing. When I saw his picture on the front page of  
6 the People's Sentinel Newspaper I uttered uncontrollably,  
7 Oh, no, not Mike.

8 I am a city official within the town of Blackville  
9 for three consecutive terms and Michael dated my one and  
10 only daughter whom I treasure with all my heart. She  
11 never indicated nor did I notice that Michael was the  
12 caliber of fellow that would display the kind of behavior  
13 that would deserve 30 years in jail. Michael and my  
14 14-year-old son got along well discussing and playing  
15 video games. I can recall seeing Michael walk to school  
16 with boys a lot younger than he was. He displayed a  
17 boyish mischief behavior and designed to be a sailor in  
18 the United States Navy. I can also recall helping him  
19 crank his old Chevrolet in my driveway because he is much  
20 too young to understand the concept of patting the  
21 accelerator several times, holding the accelerator to the  
22 floor, and then turning the key.

23 I feel that Michael would benefit more from the  
24 probation status rather than the sentence that was handed  
25 down to him in Barnwell County. We all realize what he

1 did was wrong and my family and I and many others are  
2 truly sorry that this moral evil has affected the  
3 Richardson and Kennedy family. I sincerely hope that the  
4 Richardsons can find in their hearts to forgive him.

5 The sooner rather than later that Michael is  
6 rehabilitated, the better person he will be for our  
7 society and nation. I understand that what he -- I  
8 understand that he was arrested while attending military  
9 school. This should serve as a clear indicator that he  
10 was on his way to becoming a significant contributor to  
11 our world. I like Michael C. Kennedy as a person and was  
12 compelled to write this letter in support of getting his  
13 sentence reduced to a probation status so that he can  
14 fulfill his dream of being a sailor and so that the  
15 Richardsons can find closure knowing that Michael is not a  
16 cold-hearted criminal but just a mischief teenager that  
17 got caught up in the moment.

18 The second chance is all he needs. If I could be of  
19 further assistance, don't hesitate to contact me. With  
20 many kinds regards I remain sincerely truly yours, yours  
21 truly, the Honorable Kelvin Arthur Isaac, elected  
22 official, Town of Blackville, South Carolina, Barnwell  
23 County.

24 Approximately two weeks after Michael had received  
25 sentence from the state the People's Sentinel Newspaper

1 released the crimes and convictions of individuals that  
2 had appeared in general sessions court in Barnwell County.  
3 I read where third and fourth offenders were given 5, 10,  
4 15 years for the crimes they had committed reduced to one  
5 to two years probation, given credit for time served, pay  
6 restitution, if any.

7 As for Michael it won't take three or four offenses  
8 to know that he has done wrong. It would only take once.  
9 May this court have mercy on him. Thank you.

10 THE COURT: Thank you, Mr. Isaac.

11 MR. BROWN: Your Honor, let me say that I did not  
12 know Mr. Isaac. I really received this letter from him.  
13 I don't even think he knew at that time, Your Honor, that  
14 we were coming back before you. So, I got the letter just  
15 in enough time for me to -- In fact, I started to write  
16 him a letter. I said, well, you better get on the phone  
17 and call him because by the time you get a letter to him  
18 it may be too late. So, he truly wrote me this letter out  
19 of his concern for Michael after he read about the  
20 sentencing in the newspaper and then I called him and told  
21 him about the hearing today and asked would he appear on  
22 his behalf and he had no hesitation whatsoever in showing  
23 up today.

24 Your Honor, obviously, this is the gentleman who I  
25 represent, Mr. Michael Kennedy, and I'd like for Michael

1 to address the court, address the family again. I think  
2 we did it once in Barnwell. I'd like for him to do it  
3 again.

4 Michael?

5 THE DEFENDANT: How are you doing, Judge Russo?

6 THE COURT: All right..

7 THE DEFENDANT: I just want to say again that I'm  
8 sorry to the Richardson family. I am sorry that I was  
9 with the wrong person at the wrong place at the wrong  
10 time. I am very sorry and I asked Jesus to forgive me for  
11 my sin that I have committed. That's all I want to say.

12 Since I have been incarcerated God has made me a  
13 better and stronger man. I ask you to reconsider my  
14 sentence. I also want to say that I'm sorry to my family  
15 for letting y'all down. That's all I want to say.

16 THE COURT: Thank you, Mr. Kennedy.

17 MR. BROWN: Your Honor, again, I would thank you in  
18 allowing me to appear before you today and hope that we  
19 can have an effect on you and have you to change this  
20 sentence to a lesser sentence, and before I get into my  
21 presentation again I would like to say as I said in  
22 Barnwell to the Richardson family as the attorney for  
23 Mr. Kennedy I'm sorry that this event took place. I'm  
24 hoping that you can find it in your heart to forgive him  
25 and I hope that you can find in your heart if you feel

1 like this sentence is not in keeping with what it ought to  
2 be. I think it's excessive. I hope that you would find  
3 in your heart as Christians to do that.

4 Your Honor, as was just mentioned to you by  
5 Mr. Isaac, Michael was in a military school high school  
6 situation when he was arrested for this offense. The  
7 offense was one I am not that proud of. Mr. Tooks who is  
8 the co-defendant in this situation had worked for  
9 Mr. Richardson --

10 MR. PEEPLES: I'm sorry. Could you speak in the  
11 microphone? I can't hear you. There's a microphone. Tap  
12 it on there. Excuse me for interrupting, Your Honor,  
13 please.

14 MR. BROWN: Oh, okay.

15 MR. PEEPLES: I can't hear you with your back turned.

16 THE COURT: I think that --

17 MR. BROWN: Okay. I didn't see it.

18 MR. PEEPLES: Thank you. Tap it. It'll talk to you.

19 MR. BROWN: It'll talk back to me? All right.

20 Your honor, my client was in high school -- in  
21 military high school when he was arrested for this  
22 offense. He is 19 years old as he appears before you  
23 today and he's never been in any trouble -- any trouble  
24 whatsoever before this incident. He's a first offender  
25 before this court. Okay?

1           His co-defendant Mr. Tooks is the gentleman who had  
2 done some work for Mr. Richardson, cut some grass for him,  
3 and whatever and had noticed -- My client had nothing to  
4 do with that -- noticed that he had money in his pocket  
5 and told my client that he always kept money in his  
6 pocket.

7           On that evening when this event took place it was  
8 Mr. Tooks' suggestion to my client that they attempt to  
9 rob Mr. Richardson -- told him about the situation. It  
10 was Mr. Tooks who went to the house because my client  
11 didn't know where Mr. Richardson lived. It was Mr. Tooks  
12 who knocked on the door. It was Mr. Tooks who engaged  
13 Mr. Richardson in conversation asking him if there was  
14 something he could do for him and whatever wherein  
15 Mr. Richardson indicated that, no, it was too late at  
16 night, whatever. It was Mr. Tooks who then grabbed  
17 Mr. Richardson and hit him across the head with the  
18 bottle. Mr. Tooks did that. Then things are a little  
19 fuzzy because as by Mr. Rodney Peeples' own admission  
20 Mr. Tooks -- I mean, Mr. Richardson stood his ground and  
21 resisted which I would certainly do the same at which time  
22 he fell down the steps -- I understand two or three  
23 steps -- and out on to the ground.

24           Now, there was some mention in Barnwell that my  
25 client pulled him down the steps. I take strong exception

1 to that, but my client did take the wallet out of  
2 Mr. Richardson's pocket. In the process he did tear his  
3 pants. He did do that.

4 When my client was charged, Your Honor, with the  
5 offense he was charged with assault and battery with the  
6 intent to kill and armed robbery. Now, when I talked to  
7 the state and when this charge first came to my attention  
8 I talked to the state as I do in all the other cases that  
9 I handle like this and my first effort is to talk about a  
10 reduction of the charge from assault and battery with  
11 intent to kill to assault and battery of a high and  
12 aggravated nature and from armed robbery down to maybe  
13 common law robbery or something.

14 Well, the state refused to reduce the charges which  
15 would have been a substantial difference in the maximum  
16 sentence we received. We were guilty and so there wasn't  
17 much I could do about that, but I was trying to negotiate  
18 a lesser sentence which is what I always do and generally  
19 I must say that I generally am successful with that, but I  
20 was not successful with this case and I don't think it had  
21 a thing to do with the facts of the case as much as it was  
22 the personalities involved. Obviously, there are people  
23 involved here who have stature in the community in  
24 Barnwell and I respect that.

25 But not having gotten a reduction in the charge, the

1 next thing was to decide we were going to plead to those  
2 charges. In making that decision, Your Honor, we -- as  
3 you might know, I have another case which will be coming  
4 before you -- in fact, part of that case has already been  
5 before you and in the process -- and it's an attorney  
6 general's case. In the process I was given high praises  
7 and high marks for you as a jurist by the attorney  
8 general's office who gave me six or eight references on  
9 you for me to check to show that not only were you a great  
10 public defender as a private attorney, as an attorney,  
11 you've also been on the solicitor's side. You could see  
12 things from both angles; that you would be a good jurist  
13 to hear that case. Everyone I talked to about you gave  
14 you very high marks in terms of being fair and in terms of  
15 being able to see things from both angles and  
16 understanding that young people can do some crazy things,  
17 some silly things, and make great mistakes which  
18 regardless of what sentence you impose it is going to  
19 severely impact his life for the rest of his life.

20 Even if you gave the minimum sentence of 10 years,  
21 he's got to do 8.5 years. He is only 19 now which means  
22 if you gave him that sentence 8.5 plus 19 is 27 and a half  
23 years when he comes out of prison. So, any sentence you  
24 gave him is going to so severely impact his life it's  
25 going to be a lesson to him. I believe that a 19-year-old

1 with no prior record can be rehabilitated. I do believe  
2 that our system believes and operates on the assumption  
3 that rehabilitation is possible for a 19-year-old who has  
4 not proven to us that they are a troublemaker. They did  
5 one thing, did it wrong, one big thing -- 86-year-old man  
6 in his house with his wife minding his own business had no  
7 right being disturbed, had no right being hit up side the  
8 head with the bottle or with anything, had no right having  
9 money taken from him. All of that's true. But, of  
10 course, I can't turn the clock around. I wish I could. I  
11 can't turn the clock back. So, all I can do is tell you  
12 that those are the aggravating circumstances surrounding  
13 this case.

14       You mentioned and let me just deal with the -- just  
15 the name of the offense of assault and battery with the  
16 intent to kill. That charge concerns me because I don't  
17 think that my client intended to kill anyone. I think if  
18 he had intended on killing someone they would be dead. I  
19 mean, the name bothers me -- assault and battery with the  
20 intent to kill. I think if you look at this case based on  
21 the real facts presented there was no effort to kill  
22 Mr. Richardson -- just to rob him. It's bad enough, but  
23 not to kill him.

24       I am mindful of a case that recently occurred in  
25 Richland County and I'm sure you are as well involving one

1 of our colleagues who -- a white lawyer about my age,  
2 Dwain Herring, who went to a nightclub in Columbia and was  
3 asked to leave for conduct purposes and in the process  
4 took a pistol with him and was when he was leaving the  
5 club I think the video showed he backed up and came back  
6 up in front of the club and shot in the door and killed  
7 the manager of the club who happened to be black. He had  
8 a full trial which lasted approximately a week. The jury  
9 took two hours to find him guilty and he received the same  
10 sentence that you gave my client who confessed, came  
11 forward, plead guilty, did not put the state through the  
12 expense of a trial, further investigation. He was  
13 sentenced to 30 years. That was premeditated murder.

14 I bring that to your attention because you indicated  
15 to us in Barnwell that South Carolina has no sentencing  
16 guidelines and you're right. We don't have sentencing  
17 guidelines, but there are examples that we can look at,  
18 examples that you encountered from both the standpoint of  
19 a prosecutor as well as a public defender that could give  
20 us some feeling of what's fair when it comes down to the  
21 facts and circumstances of a particular case before us.

22 I contacted Katherine Hudgins who works for the  
23 indigency office -- I think you know her -- and I  
24 discussed this case with her and my concerns and I had --  
25 I pulled the proposed South Carolina sentencing guidelines

1 by the commission that was set up to look into the  
2 possibility of having sentencing guidelines in South  
3 Carolina. I pulled up this.

4 MR. PEEPLES: Your honor, please, I don't want to  
5 interrupt this gentleman, but I need to know what year  
6 this was. There was a sentencing guideline commission  
7 which I was on in 1976. There was another one in 1982.  
8 There have been three or four since. To begin with, this  
9 is hearsay and I don't see the relevancy of what some  
10 people suggested for sentencing guidelines because it  
11 depends on whose ox is getting gored. If you're a victim,  
12 obviously, you want the defendant to go to jail. If  
13 you're a brother or sister of the defendant, obviously,  
14 you want them be back on the street. It is up to Your  
15 Honor, please, as to how much of this to listen to, but I  
16 submit this is highly inappropriate and irrelevant.

17 MR. BROWN: Your Honor, this is --

18 THE COURT: I am looking. It appears this is a July  
19 of 2001 --

20 MR. BROWN: Correct.

21 THE COURT: -- form.

22 MR. BROWN: Your Honor, for whatever weight you want  
23 to give it. I'm not trying to --

24 THE COURT: Oh, I understand. Go ahead.

25 MR. BROWN: Yea. And I thought I would try to give

1 some basis for a sentence because on this grid as you see  
2 from column one, column one is for a first offender.  
3 Okay? And it includes a felony A and a felony C. Felony  
4 A would be the armed robbery. Felony C would be the  
5 assault and battery with intent to kill. Total 50 years.  
6 The recommended sentence according to these guidelines was  
7 9 to 11 years, but we know there is a minimum of 10 years  
8 here and then the second sentence -- that's always based  
9 on the primary sentence, the most, the biggest sentence  
10 which would here would be the armed robbery. Then the  
11 second sentence would run concurrent with that. That  
12 would be the felony C on this grid.

13 Now, of course, you still make the decision as the  
14 judge. It's just a reference that we can use just because  
15 you sort of mentioned in Barnwell we have no sentencing  
16 guidelines. So, this is the closest thing I could find to  
17 help you make your decision. That's why I brought it  
18 today. So, the sentence could be 10 years or it may be up  
19 to 14 years by my calculations.

20 I appreciate your dilemma here. You want to be fair  
21 and you want to do what's right and I know you want to  
22 live with yourself like I have to live with myself. No  
23 one is saying my client should not be punished. No one is  
24 saying he shouldn't be sentenced. Well, when you look at  
25 the federal guidelines, the kind of things they look for,

1 and you look at the number of offenses -- here it's the  
2 first time he's ever been in trouble. They look to see  
3 does he show remorsefulness? He's apologized to the  
4 family over and over again. Did he come forward and admit his  
5 guilt to save the state money, the prosecution, et cetera?  
6 Yes, he did. He came forward and plead guilty.

7 The system encourages guilty pleas if you know you're  
8 guilty. Generally, it gives you some credit for pleading  
9 guilty. If you plead guilty and come forward and get the  
10 maximum sentence that would be a discouraging sentence to  
11 the next person because why come forward if you're going  
12 to end up in the same thing after a trial? Dwain Herring  
13 had a trial and with the combination of a full-week trial  
14 he got 30 years for premeditated murder. We came forward  
15 but we plead guilty, confessed, apologized, and showed our  
16 sorrow for what we did and that's why I think we should  
17 not have that same sentence.

18 You're like lady justice, Your Honor. You sit in the  
19 middle and you're supposed to see both sides of things,  
20 but there is so many ways as much as possible to be  
21 blindfolded. You should really look at objective things.  
22 I want you to do that today because I've had -- I've been  
23 practicing law since 1969 and this is the first client I  
24 have ever had to get the maximum sentence ever in my  
25 professional career. It is, basically, when we came

1 forward and contacted the solicitor's office we did what  
2 we thought was the right thing.

3 Let me just conclude by saying that I respect Rodney  
4 Peeples and I understand he represents the family free of  
5 charge and I'm sorry for what happened to Mr. Richardson.  
6 I just don't think that a 30-year sentence is in keeping  
7 with the facts and circumstances and the -- in this  
8 particular Defendant before the bar. I just don't think  
9 so, Your Honor. I really open my heart up and ask you to  
10 please reduce your sentence. I think it should be -- You  
11 can take this grid on these guidelines for whatever it's  
12 worth, but it's just some index of what some leading  
13 jurists in our state and leading lawyers in our state  
14 thought that should apply under these facts and  
15 circumstances. That's all. And it's something to look at  
16 since you said there were no guidelines. I do think that  
17 this gives you some perimeters here that you can look at.

18 Your Honor, thank you very much. I appreciate the  
19 opportunity to be before you.

20 THE COURT: Thank you. Anything from the state?

21 MR. MOORE: Your Honor, just very briefly, I think  
22 the facts that you considered in Barnwell when you made  
23 this sentence are still the same. I think the things that  
24 aggravate this crime in particular are still the same --  
25 that he went to Mr. Richardson's home. They clearly had a

1 plan. Mr. Richardson's age of 86 years old is still  
2 there. No matter who you are in the community I think the  
3 fact that it's a crime on the elderly is an aggravating  
4 circumstance. Clearly, they had the intention to hit him  
5 with this liquor bottle -- not to do like our typical  
6 armed robbery where you pull the weapon, give the victim a  
7 chance to comply, and then you won't be hurt.  
8 Mr. Richardson was not given that opportunity.

9       Clearly, as far as assault and battery with intent to  
10 kill you had a situation where he's hit across the head  
11 with a liquor bottle. If that is not malice, clearly,  
12 nothing is. There's analogies made to other situations,  
13 but I don't think it should be looked entirely upon the  
14 result. I've done a lot of cases that have involved a  
15 homicide -- someone being killed -- and in most of these  
16 cases -- not all -- the victim did some things to bring  
17 themselves in the situation where they were being in the  
18 wrong place at the wrong time, having some kind of feud  
19 with the defendant, something, but here we truly have what  
20 we rarely have a totally innocent victim who is totally  
21 minding his own business who, in fact, the only thing that  
22 he has done is something positive, something good giving  
23 the young person work paying them for yard work -- just  
24 clearly nothing that he did to bring this upon himself and  
25 not even an unwise decision of some sort to be in the

1 wrong place at the wrong time.

2 Your Honor, all of these circumstances are still  
3 here. The state believes that the sentence was  
4 appropriate. He could have gotten more. He didn't get  
5 the maximum of what was on the table. There was a  
6 conspiracy charge that was not prosed and we believe the  
7 sentence is appropriate and there isn't a change of  
8 circumstances today that merits changing this sentence.

9 There was an issue of restitution. We have checked  
10 with the Barnwell Hospital and they tell us that the  
11 Medicaid paid the bill in full, gave us a statement. We  
12 have a zero balance there. I know that was an issue that  
13 was brought up before. I'm sure the victims would like to  
14 speak as well.

15 THE COURT: I'll be more than happy to hear from  
16 anyone on behalf of the victims.

17 MR. PEEPLES: If Your Honor please, I thank you for  
18 the opportunity to appear here today. This is only the  
19 second appearance for me in general sessions court since I  
20 retired April 30, 2004, the other appearance being on May  
21 7 in Barnwell before you on behalf of clients. You have  
22 met Mr. Tommy Richardson here. He'll be 87 years old in  
23 November -- his wife Mrs. Jeanette Richardson who has to  
24 walk with her walker and has vision problems and has to  
25 have shots in her eyes. She can't drive. She can't cook.

1 Mr. Richardson is and has been her caregiver for several  
2 years now. They have one child Jeanette Richardson Price  
3 we call Little Jeanette, her husband Bill Price of  
4 Florence who is a fraternity brother of mine for many  
5 years and Tommy's granddaughter Kathy who when she was in  
6 Columbia College beat my daughter's class both years in  
7 Ludy Bowl football. Of course, Wayne Martin,  
8 Investigator, is here.

9 If Your Honor please, we could fill this courtroom up  
10 today with the friends of Richardsons and I appreciate the  
11 family of Mr. Kennedy being here and speaking on his  
12 behalf. You would be less of a family if you didn't try  
13 to help a family member when they're in trouble and I  
14 understand that. In 30 years as a circuit judge I had one  
15 hearing from Aiken in Barnwell and I realize that we're  
16 appropriately here today because you have jurisdiction and  
17 we'd rather you do more work over here rather than to  
18 waste time for you and the reporter to drive back and  
19 forth.

20 Redwing Rollerway Derby got sued by the First Baptist  
21 Church wanting to close the road in North Augusta and  
22 lawyer Frank Beattie -- I knew he was going to load the  
23 courtroom up over here so I moved the hearing to Barnwell.  
24 One time in thirty years and, sure enough, he had three  
25 bus loads of people from the First Baptist Church in North

1 Augusta, and I am a Baptist, but I did the right thing. I  
2 left that road open for Redwing Roller Derby which I have  
3 never been to. I am a Baptist, but I didn't let the fact  
4 that I was a Baptist influence what was right from wrong  
5 in that particular case.

6 How many times have I told lawyers that please be  
7 brief? Not many souls are saved after 15 minutes of  
8 preaching. Mr. Opposing Counsel here had 35 minutes, but  
9 I am only going to take a few minutes. Just bear with me  
10 I ask you, please.

11 I have never precisely calculated the exact number of  
12 sentences I imposed as a circuit judge. I do know this.  
13 Other than being away from your home and your young  
14 children -- mine were 5 and 8 when I went on the bench --  
15 being away from your family and your home, sentencing is  
16 the more difficult of anything a judge has to do. You can  
17 stand in criticism and ridicule and many other things that  
18 a judge has to go through, but it's not easy looking  
19 somebody in the eyes and they're realizing for the first  
20 time I won't be able to go watch my son at a soccer match,  
21 I can't drink a Pepsi Cola when I want to, I can't go to a  
22 Citadel, Furman, or Clemson Carolina game. People don't  
23 appreciate freedom until they're about to lose it, but I  
24 tell you this. In 30 years I know I handled more than  
25 1500 sentences a year. Some weeks I have handled 200 at

1 the time. I have lined 50 people across the courtroom.  
2 Maybe I shouldn't have. They claimed that was  
3 conveyer-belt injustice rather than justice, but I know  
4 I've handled more than 50,000 sentences, but I can tell  
5 you this.

6 On two occasions -- once in the courtroom where the  
7 clerk of court's office is lawyer Al Dufour who is  
8 deceased now and you know Millie probably and his son  
9 Ray -- I changed the sentence in a drug case for Al Dufour  
10 and I only gave probation twice in drug cases and I did in  
11 that case. I gave him time. Then I reflected on it and I  
12 changed the sentence and I changed one sentence in Saluda.  
13 That doesn't mean I was always right, Your Honor, please.  
14 It means this -- that I felt that I gave the appropriate  
15 consideration and considered all aspects of the case, the  
16 victim, the nature of the crime, the defendant, his age,  
17 his propensity, the involvement, the violence in the case,  
18 and I realize that he was only 19 years old and his lawyer  
19 stands before this court and says a 17-year-old younger  
20 than he and maybe half his size influenced him to do this  
21 atrocious crime which I am only going to briefly allude  
22 to, but I tell you what.

23 In October of 1975 as a circuit judge I presided over  
24 the case of state versus Billy Ray Smith. He was 13 years  
25 old in McClellanville. He was getting a ride home with

1 this man's wife who was a storekeeper and beat her with a  
2 lug wrench and he raped her and he killed her and that  
3 13-year-old got convicted of murder. So, the fact that  
4 you're only 19 years old, that doesn't make it less of an  
5 offense in and the Supreme Court affirmed that case which  
6 was a life imprisonment. It was a two-week long trial.

7 Many times I found it necessary to give the maximum  
8 sentence and not one time of many appeals that our South  
9 Carolina Supreme Court ever reversed a sentence for being  
10 the maximum sentence, albeit this fellow was facing 57 --  
11 excuse me, 50 -- 30 for armed robbery, 20 for assault and  
12 battery with intent to kill, and 5 for the conspiracy. Is  
13 it more than that?

14 THE COURT: Five?

15 MR. PEEPLES: That's 55 years. He got 30 out of 55  
16 years, and the victim -- on behalf of the victim we agreed  
17 to dismiss the conspiracy charge. If Your Honor please,  
18 you well know the law is that the only difference in  
19 murder -- the intentional unlawful killing of another with  
20 malice aforethought, intentional premeditated -- and  
21 ABWIK, assault and battery with intent to kill, is that  
22 the victim did not die. That's the only difference in  
23 ABWIK and we get on our knees and thank the Lord that  
24 Tommy Richardson is still with us.

25 They can talk they hit him up side the head. Huh-uh.

1 They had a wine bottle. It wasn't -- Mr. Kennedy, it  
2 wasn't your mother's wine bottle, was it? It was  
3 Mr. Tooks' mother's wine bottle. They were finally able  
4 to identify it right in the center of the forehead where  
5 Mr. Richardson had eight stitches and blood just gushing  
6 out of his forehead on his back steps of his home at 7:30  
7 at night on my birthday January 8 and city counsel is  
8 meeting 70 yards up Burr Street right at the police  
9 station. Where in Barnwell County does an 86-year-old  
10 good man and woman have the right and opportunity to peace  
11 and serenity in their home that the State and Federal  
12 Constitution guarantees which this fellow and his cohort  
13 in crime Mr. Tooks denied?

14 Now, Your Honor please, they say he fell down the  
15 steps and I'll only briefly tell you that Mr. Richardson  
16 was sitting there in his house where he and his wife  
17 Jeanette lived a block and a half from the courthouse not  
18 bothering a soul. They knock on the door at dark on  
19 January 8. You know December 21 is winter solstice. It  
20 is the longest day of the year. Nobody cuts grass in  
21 January because there ain't no grass. Nobody rakes leaves  
22 at 7:30 at night. Everybody within hearing distance of  
23 this courtroom knows that it's completely dark at 7:30 on  
24 January 8 as it was this year.

25 So, his friend Tooks knocks on the door.

1 Mr. Richardson gets up and goes to the back door, cuts the  
2 little back stoop light on. He said we want to do some  
3 work. I'm sorry, son, I don't have any work for you to do  
4 and he starts to turn around and Tooks taps him on the  
5 shoulder and just like swinging a baseball bat or billy  
6 stick he just hits him right in the forehead, busts his  
7 head open. He is bleeding. Let me tell you Mr. Tommy  
8 Richardson has a 1948 Farm-All tractor and he's got a  
9 garden and rakes his own yard and cuts his grass and he  
10 was strong.

11 He was getting the best of Tooks and then what  
12 happened? Mr. Kennedy. He comes out of the bushes and he  
13 didn't push him to the ground. He picked him up and he  
14 body-slammed him and I defy anyone to contradict the  
15 evidence in that and that's when they broke his hip and  
16 messed up his coccyx, messed up his back.

17 Mr. Richardson -- how many times would I go to his  
18 house and see him sitting in that chair? He couldn't get  
19 up. He couldn't walk. He suffered. His wife suffered.  
20 His only daughter lives in Sumter, coming down and staying  
21 with them for weeks at the time. He's lost 21 pounds. No  
22 one can quantify. You cannot measure one, two, three how  
23 many years of this man's life has this man taken, and I  
24 repeat to you ABWIK is a violent crime whereas ABHAN which  
25 is a violent crime supposedly, violent nature, but

1 ABWIK -- the only difference in what this man did is  
2 Mr. Richardson, praise the Lord, did not die and his  
3 grandmother used to work for the Richardsons.

4 I am not going to say anything about his juvenile  
5 record. I don't know if he had one, but I can tell you  
6 what. I'll bet you my grandchildren's savings account the  
7 reason those two fellows went to Mr. Richardson's house  
8 that night was to get money to buy drugs. He talks about  
9 he's in a military school in Aiken. I want anybody in  
10 this courthouse to stand up and tell me where the military  
11 school is in Aiken. Has anybody ever heard of that? I  
12 have never heard of it. What year did he drop out of  
13 school or did he get kicked out of school?

14 This man is not an angel. People in Barnwell have a  
15 right to be safe and secure in their homes and the  
16 sentence that you gave, Your Honor, please, obviously, I  
17 agree with it or I wouldn't be up here free of charge. I  
18 never -- this fellow the day I got out of the hospital he  
19 is at my house with fresh sweet corn. He is just a good  
20 family member. His mother who died in '93, she made my  
21 daughters -- knitted things for them. I tell you this man  
22 has done so many good deeds. Poor old Millie Dubose. For  
23 eight years she lived rent free. She was nobody. She was  
24 just a lady that didn't have a family, didn't have any  
25 money. He didn't charge them rent. He's given away more

1 vegetables than anybody in Aiken County -- just the  
2 goodness of his heart, the things that they have done for  
3 people in the community not ever wanting any credit for  
4 anything and any write-ups in the paper. They are very  
5 private people, but just Sunday a week ago -- his  
6 granddaughter Meg isn't here today, but Kathy is -- Meg  
7 had a little son and named him Tommy after Mr. Richardson.

8 In any event, Your Honor, it is absolutely wrong.  
9 You intend the consequences of your act. For somebody  
10 knowing Mr. Richardson collected rent around the first of  
11 the month and then go to his home and rob him of the money  
12 and this fellow didn't -- He just happened to be standing  
13 in the bushes and all he did was push him to the ground?  
14 Happy horse manure. Excuse the expression. That just  
15 ain't so.

16 This man deserves to be in a jail. I feel very  
17 strongly about this as does the Richardson family has  
18 forgiven him, but we have not forgotten for a minute what  
19 he premeditatedly did. He planned what he did and he took  
20 away this man's life. You cannot buy good health. You  
21 cannot buy happiness. Why? Because you have people like  
22 Mr. Kennedy -- and I don't know where his family was ten  
23 years ago or five years ago, but they're willing to help  
24 now and I hope that he does have a Pauline conversion on  
25 the road to Damascus. I hope he does see the light and

1 recognizes the wrongness of his ways, but you send a  
2 message and it resonates in Barnwell County don't go to  
3 somebody's back door and beat hell out of them and steal  
4 money. Tore the pants pocket off of him to get five or  
5 six hundred dollars. Why? Why? Because he's mean. He's  
6 mean.

7 He intended ill will and he did ill will and, Your  
8 Honor, please, it's entirely in your discretion, but I am  
9 satisfied of your good judgment and that you will exercise  
10 the discretion and leave the sentence as it is because you  
11 sent a message to the people in Barnwell County -- the  
12 good people -- to feel better about going to sleep at  
13 night in their homes and not loading the guns and the bad  
14 people that if you commit a crime like this in Barnwell  
15 County you might wind up in the state penitentiary for 25  
16 years and six months because that's what the guidelines  
17 provide for. On behalf of the Richardson family, may I  
18 thank you.

19 MR. BROWN: Your Honor, may I just have a brief  
20 response? I know you've heard everything.

21 THE COURT: I am not going to let this be --

22 MR. BROWN: All right. That's fine, Your Honor. No  
23 worry. That's fine. That's fine.

24 THE COURT: Here is the thing, gentlemen, and  
25 everyone involved. I want everyone to have their say. I

1 want to hear from everyone. I want everyone to understand  
2 this. There are not -- there is not a perfect system in  
3 place. Any system of justice or the way we go about  
4 electing or appointing our judges -- states do it  
5 differently. There is no perfect way because every system  
6 in the country is formed -- is developed by man and so  
7 it's going to be flawed. I think we do it as well as  
8 anybody does it in South Carolina because we don't -- we  
9 don't popularly elect our judges. Our judges are  
10 appointed by the legislature.

11 The reason that I find that being a comforting way of  
12 doing it is that there are no special interest groups that  
13 can influence effectively our judiciary once our judiciary  
14 is in place. If this was a situation where you are  
15 popularly elected, then you have the concerns that this  
16 family is influential, that family is influential, this  
17 company is influential. Then you can't do your job  
18 comfortably and fairly and impartially. I have the  
19 comfort and I have the peace of knowing that regardless of  
20 who the Kennedy family is, regardless of who the  
21 Richardson family is, none of that is going to have any  
22 effect on whether or not I am able to do my job. I don't  
23 have to be concerned about appeasing any special interest  
24 group and it allows me to do what I do in an attempt to be  
25 fair and impartial.

1           This is no disrespect to the Kennedy family, nor to  
2 the Richardson family. These are the people involved in  
3 this case, but for me it doesn't matter. It doesn't  
4 matter who they are. It could just as well have been the  
5 Jones family and the Stevens family. There is nothing I  
6 can ever do to stop what people will say. People will say  
7 this is a black man and a white family and it's a white  
8 judge. There is no justice here. People will say that.

9           You may not say that, Mr. Brown. I may not say that.  
10 Mr. Kennedy may not say that. It'll be said. Trust me.  
11 Because that's the nature of the society that we live in.  
12 It would be the same thing if it was a black judge, a  
13 white defendant, and a black victim. You would have the  
14 same thing, unfortunately.

15           Now, I have said -- I think I said this when I was in  
16 Barnwell. If I didn't, you need to hear it. If I did,  
17 then I'll just repeat it. I grew up down the road in  
18 Edgefield County. I challenge anybody to go to that  
19 county in that community and find anybody that would ever  
20 tell you that Tommy Russo is prejudiced or biased  
21 racially. I'm not. I am prejudiced and I am biased, but  
22 it's against people who do wrong, people who do wrong  
23 things. Now, so that -- I understand that's going to be  
24 said and I accept it as being in this position.

25           There is no question that it's going to be said that

1 because the Honorable Rodney A. Peeples is appearing on  
2 behalf of the family that that is done to affect the  
3 judgment of the court. It's going to be said. It's not  
4 true. It has nothing to do with anything. I respect  
5 Judge Peeples. I have for years, but I respect Franchot  
6 Brown.

7 MR. BROWN: Thank you, Your Honor.

8 THE COURT: I have known you for years.

9 MR. BROWN: Thank you, Your Honor.

10 THE COURT: What you need to understand, ladies and  
11 gentlemen, is you can bring in -- you know, you made the  
12 comment that many of these people were not able to attend  
13 earlier. I certainly understand that. We hold court,  
14 obviously, during business hours and people have to work  
15 and so when people aren't there or they don't show up, I  
16 don't look at that as a reflection that this young man  
17 doesn't have family support; he is not loved. I look at  
18 it is for what it is. These people also have lives and  
19 responsibilities and commitments. Same thing over here  
20 with the Richardson family. So, I don't base the decision  
21 counting the number of witnesses or the number of people  
22 that show up in support.

23 Mr. Kennedy's brother stated earlier that when he was  
24 looking at this thing -- and I understand his feelings --  
25 that somehow he must have failed as a big brother. You

1 didn't, Mr. Kennedy, because your little brother makes  
2 decisions regardless of what you've tried to do to help  
3 him be an influence in his life. I have a family member  
4 who grew up in the same home I grew up in who had the same  
5 influences on his life that I had on mine and he made  
6 other choices. Bad choices. People make bad choices.  
7 And you can't take responsibility.

8 I have heard this phrase several times during the  
9 course of this hearing: Wrong place at the wrong time.  
10 That is so misused.

11 Mr. Kennedy, you were not in the wrong place at the  
12 wrong time. You put yourself in that place. You did it  
13 voluntarily. You did it on your own. You weren't forced  
14 to do it. I heard how Mr. Tooks was the one who set it  
15 up. Mr. Tooks was the one who planned it. Mr. Tooks was  
16 the one who knew Mr. Richardson. Mr. Tooks was the one  
17 who hit him. I heard all of these things, and, yet,  
18 Mr. Kennedy -- Mr. Tooks -- what I have never heard and I  
19 haven't heard it because I don't believe it to be true,  
20 Mr. Tooks never threatened you and made you do this. You  
21 were on your own. You made your own decision. You  
22 decided you wanted to participate and do this, and, so, if  
23 the phrase the wrong place at the wrong time applies and I  
24 don't believe it does because Mr. Richardson was in the  
25 right place. He was in his home. It was the wrong time

1 because it was the time when two young men decided that  
2 they were going to take him out and steal his money.

3 My point in much of this is that I cannot stop what  
4 people are going to say. There's nothing that I can do  
5 where everyone will walk out of this courtroom happy. One  
6 side or the other is going to be very displeased with what  
7 I do, but I can't do this job and do it the way I was  
8 entrusted to with the thought process of having to try to  
9 please everybody.

10 Judge Peoples is right. There is nothing harder --  
11 other than being away from my family this week, there is  
12 nothing harder that I do than having to sentence and I'm  
13 not going to sit here and tell you that my sentence is  
14 correct. I don't know what correct is. I just have to go  
15 based on my sense of what is just.

16 Now, I have heard several references to Mr. Herring  
17 that killed the man over there in Columbia. That's not  
18 fair and it's not fair for this reason. I wasn't the  
19 judge that presided over that case. I wasn't the judge  
20 who sentenced Mr. Herron. I don't know what I would have  
21 done if I had been placed in that position because I don't  
22 know all of the facts. I didn't hear the case, but I do  
23 know that I can't make decisions in my courtroom based on  
24 what some -- on what some other judge across the state  
25 decided to do. We have some judges that in all candor

1 they're good men and women but they see things differently  
2 than I do and that doesn't make them right and me wrong or  
3 me wrong or them right. I don't even recall the judge who  
4 presided over the Herring trial but whatever -- whatever  
5 reason he or she decided that 30 years was appropriate and  
6 I don't know what the thought process was. Maybe the  
7 thought process was I can give him life or I can give him  
8 30 but it doesn't matter because at his age it's a life  
9 sentence anyway. I don't know, but that's not relevant to  
10 this case.

11 It's been said quite often that I gave Mr. Kennedy  
12 the maximum. I didn't give him the maximum. Fifty-five  
13 years was the maximum, but, ladies and gentlemen, what --  
14 and don't get me wrong. I understand it. If I am  
15 Mr. Kennedy's relative, I'm sitting right where those  
16 people are and I'm feeling the exact same way they are,  
17 but that's one of the things about our system that works  
18 is that I'm not related to or involved in and so I can't  
19 allow myself to be driven by emotion.

20 I heard two outstanding lawyers argue their sides and  
21 do it with passion and with just great empathy and  
22 concern, but I have to sit impartially and I can't allow  
23 emotion to rule and judge what I do. Murder is probably  
24 the worst crime there can be -- taking the life of  
25 another, but I got to tell you right close to that is what

1 happened in this case where a man is in his home and  
2 somebody comes into his home. Mr. Moore mentioned it and  
3 it's one of the things about this case that I find so  
4 aggravating and that is they didn't even give  
5 Mr. Richardson the opportunity to comply. If you stopped  
6 me out in this parking lot and you held a gun to me or a  
7 knife or whatever and told me to give you my wallet, I  
8 would give you my wallet and I hope that would save me  
9 from being shot or stabbed. I don't know what  
10 Mr. Richardson would have done if he would have been given  
11 the opportunity to comply. Maybe there wouldn't have been  
12 no difference. Maybe he would have fought them just as  
13 hard as he fought them when he got hit by the bottle, but  
14 the point is he wasn't given that opportunity. He was  
15 just lured to the door and then assaulted in his own home.  
16 If you can't be safe in your home, where can you be safe?  
17 Where? Somebody tell me. Everyone sitting on this side  
18 of the courtroom, somebody tell me where you can feel  
19 comfortable and safe if you can't be safe in your home.

20 What I am trying to get everybody to understand is I  
21 am not trying to look at this driven by emotion that this  
22 is my family member and, Judge, you've got to be more  
23 lenient or this is my family member and he's a victim and,  
24 Judge, you got to stand your ground and do this. I'm  
25 looking at this crime. I'm looking at the facts and

1 circumstances that surrounded this crime.

2 I think I said it before and I say it again. This  
3 would have been a different story if these two young men  
4 would have given this gentleman an opportunity to comply.  
5 There is some level of coldness and a depraved heart when  
6 you go to a man's house with the intent, not just on  
7 robbing him because they didn't try to just rob him. The  
8 assault came first and then after they had beaten him down  
9 they took his money. It's cowardly.

10 It's -- I just can't express how horrible this armed  
11 robbery was and I see them all the time. Many of you  
12 don't. Many of you only hear about things and you read  
13 about things. I see it all the time and I will tell you  
14 in the short time that I've been on the bench this is the  
15 most horrendous armed robbery I have ever witnessed. I  
16 have had them before where guns have been stuck in  
17 people's faces, but the person was given the opportunity  
18 to comply. They complied and the person left. Were they  
19 damaged? Yes. I have never had a gun stuck in my face,  
20 but I hear from people who have that it changed them.  
21 This gentleman was beaten down for no reason and had his  
22 money stolen.

23 I appreciate the kind words from you, Mr. Brown,  
24 regarding my fairness and I realize that in some people's  
25 eyes what I do is fair and in other people's eyes it is

1 unfair. I do know and I will tell you that I try to do  
2 this job everyday and be fair and impartial, but my take  
3 on fairness is not necessarily what someone else's is.  
4 Again, I don't know all of the facts and circumstances  
5 because I wasn't the presiding judge, but at first blush  
6 to hear that Mr. Herring got a sentence of 30 years rather  
7 than just a straight life sentence it seems to me to not  
8 quite be fair. I don't make that criticism because as I  
9 said I didn't hear the facts. I didn't hear anything on  
10 the case other than the things I've read in the paper, but  
11 my point is that I do try to do this job fairly and  
12 impartially.

13       When you filed your motion for reconsideration I  
14 spent -- I have spent many an evening remembering this  
15 case and thinking about it and trying to reflect and see  
16 if my sentence was what in my opinion is fair based on the  
17 circumstances involved and then came in here to keep an  
18 open mind because I wanted to hear what was being offered  
19 and I've heard nothing today that is any different than  
20 what I heard in Barnwell when I took this plea.

21       When I entered this sentence based on this crime  
22 considering the aggravating circumstances and mitigating  
23 circumstances I did what I thought was appropriate. I  
24 watch everyday young men and young women coming into this  
25 courtroom and in courtrooms all over this state committing

1 these crimes and all I hear in my own county -- We've got  
2 a meeting when I get back. We're supposed to go and  
3 address the jail overcrowding situation that we've got and  
4 I've had to battle one of my colleagues over wanting to go  
5 out to the jail and just give PR bonds to a bunch of  
6 people just because we need to reduce the jail population.

7         Somebody mentioned that you have to live with  
8 yourself. I have reflected on this sentence. I have  
9 reflected on this situation, and, yes, there would be  
10 judges that would give less. There would be judges that  
11 would give more.

12         I mentioned the sentencing guidelines and I  
13 appreciate your bringing those, Mr. Brown, but having  
14 reflected over the last several weeks, keeping an open  
15 mind because if I heard something today that was something  
16 that was different that I had not heard before I wanted to  
17 be open to that, but I hope that you people understand and  
18 you know that when the sentence was first entered into in  
19 Barnwell there were not that many people on behalf of  
20 Mr. Kennedy and Mr. Tooks there, but there were several  
21 people there on behalf of the Richardson family. That  
22 wasn't what swayed my decision. That wasn't what tipped  
23 the balance for me. So then on the reconsideration we  
24 have more people here for Mr. Kennedy and have less people  
25 for Mr. Richardson. I don't do my job by counting the

1 number of people who are there or who is there.

2 I hear so many times during the course of these two  
3 proceedings that the Richardson family and their stature  
4 in the community in Barnwell. I know they're proud of  
5 that. I am not from Barnwell. I don't know them. That  
6 didn't affect my decision. If this would have been a  
7 reverse situation and one of Mr. Richardson's younger  
8 members of his family would have done this task to  
9 Mr. Kennedy's father, he would have gotten the same thing  
10 because it's this crime that happened, not the color of  
11 the people involved, not the stature in the community of  
12 the people involved. It's the fact that two young men  
13 went into a man's home and without even giving him an  
14 opportunity to comply beat him down and took his property.  
15 That's what this sentence is reflecting -- that -- and  
16 that is this: Whether it's in Barnwell County or Aiken  
17 County or Florence County, that is absolutely unacceptable  
18 behavior. It absolutely will not be tolerated and there  
19 is severe penalties for doing it.

20 People are going to be comfortable and safe in their  
21 own home to the extent that we can make it. We can't,  
22 obviously, make it because we can make laws that say you  
23 go to prison for a long time and it's 85 percent and it's  
24 no parole if you do it. If that doesn't stop this man  
25 from doing that to that gentleman right there and it

1 didn't stop Mr. Tooks from doing it to that gentleman  
2 right there, now maybe it'll stop somebody else from doing  
3 it if they know that this is the consequence of doing  
4 this. You cannot live in a society that allows this type  
5 of activity to go on.

6 I appreciate everyone's presence here, but I have  
7 heard nothing today that would cause me to reconsider what  
8 I did back in May. I have the same facts before me. I  
9 have the same circumstances before me. I don't believe  
10 that my decision back in May was based on emotion and  
11 based on passion and being riled up one way or the other.  
12 I took my time and tried to evaluate the situation the  
13 best I could. I have done it since then and I'm here  
14 today doing the same thing.

15 I am not hearing anything that would cause me to  
16 change the sentence that was imposed back in May and I am  
17 going to respectfully deny the request to reconsider. The  
18 sentence will remain as is.

19 (End of Transcript of Record.)  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

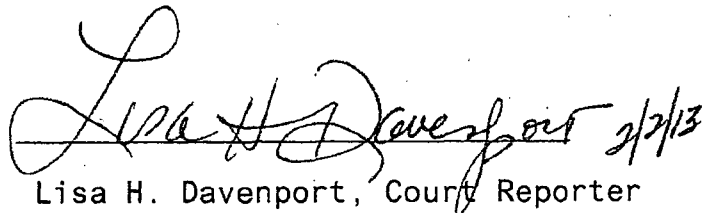
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

State of South Carolina     )  
  )  
County of Aiken                )

I, Lisa H. Davenport, 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 26th day of June,  
2007.

I do further certify that I am neither of kin,  
counsel nor interest to any party hereto.

May 5, 2010

  
Lisa H. Davenport, Court Reporter