

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

FORREST KELLY SAMPLES,

APPELLANT

APPELLATE CASE NO. 2012-212342

RECORD ON APPEAL

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State of South Carolina

Court of General Sessions

County of Richland

2012-GS-40-00363

The State of South Carolina

:

-VS-

:

TRANSCRIPT OF RECORD

:

Forrest Kelly Samples

:

June 18 - 19, 2012

Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Judge, and
jury.

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

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Austin Jackson, Esquire
Attorneys for the State

Anastasia Walker, Esquire
Clarke Newton, Esquire
Attorneys for the Defendant

Daphne D. Helms
Circuit Court Reporter

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County: Richland
 Date: 6-18-12

VOIR DIRE

Case No: 2012-65-40-363

Judge: Thomas Cooper

Pl. / State: State

State/Pl's. Atty: Hans Pauling

Austin Jackson

Defendant: Forest K. Samples

Defense Atty: Anastasia Walker
Clarke Newton

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
91	Anthony Duncan	M	B		✓		
82	Harold Derrick	M	W				✓
231	Tiffani Roberts	F	B				✓
41	Patrick Bryant	F	B				✓
303	Kathryn Dilworth	F	W				✓
10	Anna attar	M	A			✓	
57	Karen Coleman	F	W			✓	
175	Nancy Lewis	F	W				✓
161	Thomas Kassebert	M	W				✓
20	Barton Beckham	M	W				✓
87	Brandon Doty	M	W				✓
214	Zachary Perry	M	W				✓
205	Sarah Newton	F	W				✓
30	Cathleen Brennan	F	W			✓	
73	Kelvin Davis	M	B		✓		
84	Robert Dill	M	W				✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."

C-Court, P-Plaintiff, D-Defense

Case No: 2012-6540-363 VO

IRE
Judge: Thomas Cooper

Pl. / State: State

State/Pl's. Atty: Hans Paulsen

Austin Jackson

Defendant: Forest K. Samples

Defense Atty: Anastasia Walper

Clarke Newton

[illegible]

* For the Court column, indicate who made the motion to strike the jurors "for cause."

C-Court, P-Plaintiff, D-Defense

1 **The Court:** Be seated. Thank you. All right.
2 Solicitor?

3 **Mr. Pauling:** Thank you very much, Your Honor. May it
4 please the Court, Your Honor? The State will be calling the
5 case of The State versus Forrest Samples. That's true-bill
6 indictment 2012-GS-40-0363 on a charge of escape, Your Honor.
7 I believe all parties are present in the courtroom.

8 **The Court:** All right. State ready to proceed?

9 **Mr. Pauling:** Yes, sir, Your Honor.

10 **The Court:** Defense ready to proceed?

11 **Ms. Walker:** Yes, Your Honor.

12 **The Court:** Anything of a pretrial nature before we
13 bring the jury?

14 **Mr. Pauling:** Not from the State, Your Honor.

15 **Ms. Walker:** Your Honor, just two issues just before we
16 bring the jury in. I have our normal pretrial, if you'll
17 allow me to do that at 2:00, Your Honor. I didn't bring
18 my---

19 **The Court:** That will be fine.

20 **Ms. Walker:** Thank you, Judge. Your Honor, I would ask
21 the Court, if you're so inclined, to have my client's hands
22 released as part of the -- during the course of the trial,
23 Your Honor.

24 **The Court:** Uh-huh.

25 **Ms. Walker:** He is allowed to assist in his defense,

1 Your Honor, and given the opportunity to take notes and
2 things of that nature. I just ask that Your Honor consider
3 that and release his hands during the course of the trial.

4 **The Court:** All right. What -- is the State -- what's
5 the State's position?

6 **Mr. Pauling:** Your Honor, we would prefer that the Court
7 follow the procedures set forth by the department of
8 corrections regarding inmates in custody.

9 **The Court:** What is the defendant -- the defendant is
10 being tried for escape. What is his prior record? What's
11 the prior record?

12 **Mr. Pauling:** Your Honor, his prior record -- he's
13 currently in the department of corrections on a homicide or a
14 murder charge, and our understanding is also, Your Honor,
15 that he has had six escape attempts that were handled, I
16 believe, internally by the department of corrections. I
17 think there was only one attempted escape listed on his rap
18 sheet, Your Honor.

19 **The Court:** All right. Well, I mean, what is he --
20 what's his present sentence?

21 **Mr. Pauling:** Your Honor, he's currently serving a life
22 sentence plus additional time.

23 **The Court:** On? On?

24 **Mr. Pauling:** On murder.

25 **The Court:** Murder charge.

1 **Mr. Pauling:** Yes, Your Honor.

2 **The Court:** Life without parole?

3 **Mr. Pauling:** I believe it was a life sentence, Your
4 Honor, and with an additional 70 years.

5 **The Court:** Well, life -- depends on when it was.

6 **Ms. Walker:** Your Honor, this was back in -- this is a
7 true life sentence.

8 **The Court:** The statute changed depending -- depending
9 on when he was convicted. Life used to mean---

10 **Ms. Walker:** 1998, Your Honor.

11 **The Court:** Okay. I think that's after the statute
12 changed. All right. And, Mr. Pauling, has the department of
13 corrections indicated what their procedure or recommendation
14 would be?

15 **Mr. Pauling:** Your Honor, I believe the department has
16 expressed to the State that they would prefer to keep him in
17 full shackles, Your Honor, which includes leg irons, hand
18 irons, along with attachment to his waist and belly chains,
19 Your Honor.

20 **The Court:** For security purposes?

21 **Mr. Pauling:** For security purposes. They are present,
22 Your Honor, and---

23 **The Court:** I said for security.

24 **Mr. Pauling:** I'm sorry, Your Honor.

25 **The Court:** For security purposes?

1 **Mr. Pauling:** Yes, sir.

2 **The Court:** All right.

3 **Ms. Walker:** If I may respond briefly, Judge.

4 **The Court:** Sure.

5 **Ms. Walker:** Your Honor, I'm unaware of any internal
6 escapes. I'm only aware of the one that's on his prior
7 record. Also, I'm unaware of any indication that he's unruly
8 in the courtroom or anything of that nature. So I would just
9 bring that to the Court's attention and leave it in Your
10 Honor's discretion.

11 **The Court:** Well, the fact that he is not dressed in
12 civilian clothes -- I mean, if there's an issue of prejudice
13 -- there's certainly, I think, a minimum amount of prejudice,
14 additional prejudice. There may be prejudice because of the
15 way he's dressed out. I respectfully deny your request. I'm
16 going to leave him in a secure condition as recommended by
17 the State and by the department of corrections.

18 **Ms. Walker:** Thank you, Your Honor.

19 **The Court:** Anything else before we bring the jury?

20 **Ms. Walker:** Your Honor, I just have a brief scheduling
21 issue that---

22 **The Court:** Go ahead.

23 **Ms. Walker:** ---the Court may or may not care... I have
24 an appointment at 5:30 is all, Your Honor. I don't know if
25 that will be an issue. It may not be.

1 exhibits. It is your duty to listen openly and honestly to
2 the evidence. Keep an open mind. Do not form any
3 conclusions or judgments until you have received and
4 considered all the evidence in this case, the arguments of
5 the attorneys, and my final instructions to you on the law.

6 If you cannot hear a particular witness or myself or one
7 of the attorneys, please let us know so we can speak up more
8 clearly. If the view of some exhibit is obstructed for any
9 reason, please let me know and we can correct that also.

10 All right, ladies and gentlemen. Thank you for your
11 kind attention. I trust you'll give the same kind and
12 undivided attention to the attorneys and the parties in this
13 case. We'll now begin with the opening statements.
14 Solicitor?

15 **Mr. Jackson:** Thank you, Your Honor. May it please the
16 Court? Hi, everyone. Thank y'all for being here. A prison
17 break, that is why you all are -- you all are here today
18 because on August the 14th, 2007, two inmates broke out of
19 Broad River Correctional Institution. One of those inmates
20 is Forrest Samples sitting right there.

21 Let me take you back to that day. The two inmates are
22 working in a factory that makes flooring for resale to the
23 general public. They have the opportunity to hide because at
24 the end of the day around 3:30 when their workday ends, not
25 always do the guards count them out properly.

1 So when the time hits that it's just right, they decide
2 that they're going to make a break for it. Now, how are they
3 going to do that? They've got two fences to get over. So
4 they're -- working in a flooring factory, they have the
5 opportunity to use the flooring that they make to create a
6 fence, a homemade fence -- I mean, I'm sorry, a homemade
7 ladder to get over the fence. The second ladder they stole
8 from inside the facility. It was an A-Frame ladder.

9 So around 6:30 to 6:45 in the evening when they knew the
10 shift change was about to come, the evidence will show that
11 they ran out to the first fence, put up their homemade
12 ladder. One goes up, throws over the second ladder which is
13 the A-Frame ladder into the area that separates the first
14 fence from the second fence.

15 They get caught up a little bit in the razor wire at the
16 top, and then once they get over that, they put up the
17 A-Frame ladder, and then they scurry up that one, and then
18 they fall over. They're free. It's about 300 yards down to
19 the Broad River. Now, I don't know if y'all are familiar
20 with Broad River Correctional Institution, but it's just, you
21 know, five or six miles from here up Broad River Road.

22 Now, we're going to put up some witnesses, and they're
23 going to talk to you that -- some witnesses that work inside
24 the prison. They're going to tell you they were watching
25 them; they were there. Other witnesses are going to be the

1 ones that actually caught them.

2 Finally, we're going to have somebody that will come and
3 is a records keeper and she is important because she will
4 tell you that there's a record of this person being
5 incarcerated. And why that's important is because all the
6 law requires of us in this case is to prove that Mr. Samples
7 was inside the prison, was supposed to be there, and he was
8 found outside the prison.

9 Now, as I said, we're going to go way beyond that and
10 we're going to explain to you how this all took place, but
11 what's important to keep in mind here is that they were
12 supposed to be inside and they were found outside. The rest
13 is just sort of bells and whistles at this point.

14 So, going forward, we're going to have to prove this to
15 you, as the judge said, beyond a reasonable doubt. Now, that
16 doesn't mean we have to prove it to you beyond all doubt. It
17 just means that when all the evidence is put up in front of
18 you, you should leave this room firmly convinced that Mr.
19 Samples is guilty of escape.

20 Now, like I said, when I will -- when you leave here, I
21 will come back or just before then and I'll ask you for that
22 guilty verdict, and the State will prove to you that that is
23 the verdict that you should have because that is the verdict
24 that the evidence supports. Thank you.

25 **The Court:** Yes.

1 **Mr. Newton:** May it please the Court? Good afternoon,
2 ladies and gentlemen. My name is Clarke Newton. I work for
3 the Richland County Public Defender's Office. I met y'all
4 earlier. This is my co-counsel, Anastasia Walker, and we
5 represent Mr. Forrest Samples. Mr. Samples is accused of
6 escaping from the Broad River Correctional Institute.

7 I want to thank y'all very much for serving. This is a
8 constitutional duty that we have. We need these -- we need
9 this as a civic duty and we appreciate it, and I know on
10 behalf of the solicitor's office that they appreciate it, but
11 we appreciate it as well.

12 You're going to hear a fascinating story. It's going to
13 be really interesting. I hope y'all can just sit and listen
14 and pay very close attention. This is not exactly what it
15 seems. The State came up here and gave you a very succinct
16 story. Got a ladder. Got over the fence. Found outside.
17 And that's how they're going to try to do that. They're
18 going to put people up that can just do that. But in doing
19 so, they completely neglect a lot of things. Okay? And
20 that's what I wanted to kind of introduce to you now so we
21 could talk about it now and we can look at this and think and
22 ask questions: Why didn't these people get introduced? Why
23 didn't we find out about any of this type of evidence?

24 I'm just going to write up on the board a couple of
25 things I want you to think about. No investigators are going

1 to be called. Okay? I've got a book over here of discovery
2 and evidence from them -- well, it's a folder. Okay?
3 There's folders all over here. No investigators are on the
4 witness list. When they told you this morning if y'all know
5 any of these witnesses, none of them are investigators. None
6 of the people that did the dirty work to figure out why this
7 happened and how this happened, they're not going to be
8 brought up. Okay?

9 That seems a little peculiar. That seems a little odd;
10 right? The people that investigated this to determine how it
11 happened and why it happened are not going to actually take
12 the stand, so that's a question that you need to have and
13 that's what -- where we talk about reasonable doubt. Why
14 aren't these people being introduced?

15 They're the State of South Carolina; okay? Don't let
16 them fool you about saving taxpayer money and time and trying
17 to be efficient. They're the State; they can bring anybody
18 to court. Okay? So why are these people not going to be
19 there? And why is -- what you'll find out is there was a
20 little comity of error going on at the prison.

21 He talked to you briefly and kind of passed by it that
22 they didn't do a head count out of this Prison Industries
23 building. There's a group of prisoners that get an
24 opportunity to go build stuff in a workshop basically, and
25 they don't do a head count and they didn't do a head count

1 because there was no officer on duty. They had some program
2 assistants out there, but other than that, they didn't have
3 an officer out on duty. They didn't do a head count. They
4 didn't really care, so it was kind of odd.

5 You'll find out that during the time of the alleged
6 escape, nobody was watching the video camera. Nobody was
7 watching the monitor. There was a shift change. They just
8 weren't really paying attention.

9 Further, they don't record that. At least we don't have
10 a video of this escape which seems kind of odd since this is
11 a prison; right? So, again, no investigators. Now we have
12 no camera. Okay?

13 Another quick little piece of evidence -- and this is a
14 very simple and quick case, but it's important. It's
15 important because although Mr. Samples sits there -- and,
16 ladies and gentlemen, he can't be punished for this.
17 Whatever the outcome of this, he cannot be punished for this.
18 But that doesn't stop his constitutional right to a jury
19 trial, so it's very, very important. As quick and simple as
20 it might look, it is extremely, extremely important, and
21 understand that when they don't adhere to certain discovery
22 issues and they don't present you with enough evidence, that
23 is failing to reach their burden. It's their burden to prove
24 it. Okay?

25 So we've got no investigators. We've got no camera.

1 There's no printout of the alarm going off so that they can
2 then relay some more information. So, again, pay attention
3 to this again comity of errors, this keystone cops, maybe a
4 little Benny Hill running around.

5 But it's frustrating because they have that information
6 and they can give that to you and they're not, and what
7 you're going to hear, ladies and gentlemen, their sole piece
8 of strong evidence as to was this a voluntary escape or not,
9 how did this happen, is from the other person that was
10 arrested in this, the other person who is serving time, the
11 other person that is going to benefit by getting on this
12 stand. He's going to stand right here. He's going to sit
13 right here and he's going to say I didn't have anything -- I
14 didn't know -- I don't know what happened. I don't know what
15 happened. He's trying to get a deal by doing that. That's
16 why he's coming to do this. He's locked up. He wants all
17 the help he can get. So that's their big piece of evidence;
18 okay? And that's where you'll hear it.

19 So, again, thank you very much for serving on this jury,
20 and I implore you to pay attention. Pay very close attention
21 and enjoy a very interesting story. Thank you very much.

22 **The Court:** All right. Solicitor, call your first
23 witness.

24 **Mr. Pauling:** Thank you very much, Your Honor. Your
25 Honor, the State is going to call Nina Staley.

1 Nina W. Staley, after being duly sworn, testified
2 as follows:

3 **The Clerk:** Have a seat in the witness stand, please.
4 State your name for the record.

5 **The Witness:** My name is Nina Walker Staley.

6 Direct Examination

7 By Mr. Pauling:

8 Q. Thank you, Ms. Staley. Can you tell the jury where you
9 work?

10 A. I work at the South Carolina Department of Corrections
11 at Kirkland Correctional Institution.

12 Q. What is your current position?

13 A. Associate Warden of Programs.

14 Q. How long have you been there?

15 A. I've been at Kirkland for four years.

16 Q. And prior to your service at Kirkland, were you employed
17 at the department of corrections?

18 A. Yes.

19 Q. Okay. What did you do before you were at Kirkland?

20 A. I was the program coordinator at Broad River
21 Correctional Institution.

22 Q. Okay. Do you remember if you were at Broad River in
23 2007?

24 A. I was.

25 **Mr. Pauling:** Your Honor, may I approach the witness,

1 please?

2 **The Court:** Yes.

3 By Mr. Pauling:

4 Q. I'm going to ask you some questions. Ms. Staley, in
5 your position at Broad River, did you have an opportunity to
6 either keep track of records or view records in the
7 institution?

8 A. Yes.

9 Q. And were those records often compiled over a time during
10 the incarceration of a particular inmate?

11 A. Yes.

12 Q. And are those records made by personnel at the
13 department with knowledge of the facts that are entered into
14 those records?

15 A. Yes.

16 Q. And do you remember if the records are actually made at
17 or near the time of any particular incident or transfer?

18 A. Say it again, sir.

19 Q. Are the records actually updated when someone is
20 transferred or moved?

21 A. Yes.

22 Q. Okay. And are those records kept during the regular
23 course of business practices?

24 A. Yes.

25 Q. And are they kept -- I'm sorry. That was a combination

1 question. I'm sorry. Your Honor, at this time the State
2 would actually like to move to introduce State's Exhibit 14.

3 **Mr. Newton:** Your Honor, we have no objections.

4 **The Court:** Without objection.

5 **Mr. Pauling:** Thank you, Your Honor. Your Honor, it's
6 been previously marked.

7 (State's Exhibit 14 was received in evidence.)

8 By Mr. Pauling:

9 Q. Ms. Staley, can you tell this jury whether or not
10 Forrest Samples was an inmate at the department of
11 corrections in August 2007?

12 A. He was.

13 Q. Okay. And was he an inmate prior to 2007?

14 A. He was.

15 Q. Thank you.

16 **Mr. Pauling:** Your Honor, do I have permission to
17 publish to the jury or would you like me to wait until the
18 end of the trial?

19 **The Court:** Go ahead.

20 **Mr. Pauling:** Thank you. Your Honor, I have no further
21 questions for Ms. Staley.

22 **The Court:** Cross-examination?

23 **Mr. Newton:** Your Honor, we have no questions for the
24 witness.

25 **The Court:** All right, ma'am. You may come down. Can

1 this witness be excused? Without objection?

2 **Mr. Newton:** We have no objection from the defense.

3 **Mr. Pauling:** Thank you, Your Honor.

4 **The Court:** Next witness.

5 **Mr. Pauling:** Thank you, Your Honor. The State calls
6 Eddie O'Cain.

7 Eddie O'Cain, after being duly sworn, testified as
8 follows:

9 **The Clerk:** Have a seat in the witness stand, please.
10 State your name for the record.

11 **The Witness:** Eddie O'Cain.

12 Direct Examination

13 By Mr. Pauling:

14 Q. Mr. O'Cain, where do you currently work?

15 A. I'm a state investigator with the Humane Society.

16 Q. All right. Where did you work prior to your employment
17 there?

18 A. I was chief of Special Operations Investigations for the
19 South Carolina Department of Corrections.

20 Q. And how long were you with the department of corrections
21 in that role?

22 A. A little over 13 years.

23 Q. Do you remember August 14th, 2007?

24 A. Yes, sir.

25 **Mr. Pauling:** Your Honor, may I approach the witness,

1 please?

2 **The Court:** Yes, sir.

3 **Mr. Pauling:** Thank you, Your Honor.

4 By Mr. Pauling:

5 Q. Now, Mr. O'Cain, I have handed you a diagram of sorts;
6 correct?

7 A. Yes, sir.

8 Q. Did you help to create that diagram?

9 A. Yes, sir.

10 Q. And is it your opinion that that will assist you in
11 explaining your testimony to the jury here today?

12 A. Yes, sir.

13 **Mr. Pauling:** Your Honor, if it's all right, I'd like to
14 ask the witness to step off of the witness stand, please.

15 **The Court:** All right. You may step down.

16 By Mr. Pauling:

17 Q. Mr. O'Cain, what exactly is your role when there's an
18 escape?

19 A. At that time the chief of -- of what I was doing, the
20 chief of Special Investigations, I had 13 people that worked
21 for me at that time, mostly investigators. We were
22 responsible for all escapes. If an escape would happen at
23 the institution, the institution was responsible once they
24 knew they had an escape, which it would go out from them. It
25 would go E.A.C. which is basically the department of

1 corrections dispatch center. From the dispatch center
2 E.A.C., it then -- along with a lot of other things they did,
3 it would go to the beeper system, and the beeper system would
4 automatically -- I would be one of the first ones notified
5 because I have to be on the way where -- from wherever I'm
6 at, I have to start a motion of things to be in place.

7 Then -- also that beeper system is notifying all others
8 in personnel which is the director, operations directors. A
9 lot of people are being notified at the department of
10 corrections because a lot of people have to be involved, and
11 you're going to hear some other testimony about things that
12 happened at the institution. So everything up to people who
13 work on fences and do a lot of things because things have to
14 be corrected at that institution to put it back together.

15 Setting up the command center---

16 Q. Mr. O'Cain, let me stop you right there, if you'll hold
17 still for a minute. Mr. O'Cain, I need to ask you two
18 questions about this item I just put up here. Do you know
19 what that item is?

20 A. It looks like an aerial view of one of the prisons. It
21 looks like an aerial view of Broad River Correctional
22 Institution.

23 Q. Okay. And to the best of your knowledge, would this
24 aerial view look the same as at the time it was initially
25 created?

1 A. Initially created...

2 Q. Like whether it was taken yesterday or four or five
3 years ago?

4 A. It's -- it looks like the day of the incident, as far as
5 I remember.

6 **Mr. Pauling:** Okay. And, Your Honor, at this time the
7 State would move to introduce State's Exhibit 3 into
8 evidence.

9 **The Court:** Any objection?

10 **Ms. Walker:** Beg the Court's indulgence. No objection,
11 Your Honor.

12 **The Court:** All right.

13 (State's Exhibit 3 received in evidence.)

14 **Mr. Pauling:** Thank you, Your Honor.

15 **The Court:** You may proceed.

16 By Mr. Pauling:

17 Q. Mr. O'Cain, I'm just going to hold this up to help you
18 as you go through your testimony. You were talking about the
19 command center; correct?

20 A. Right. The command center is one of the vital things
21 that as I'm en route to wherever the emergency is happening,
22 there's a lot of things that I'm doing in the vehicle,
23 especially depending on how far away I am. E.A.C. is giving
24 me a lot of information. They've given me information over
25 the beeper as to the institution or prison that the emergency

1 has happened at, how many inmates are involved, names and
2 SCDC number and anything else that will help me because after
3 I get that, I'm going to be calling them and sometimes it may
4 take a few minutes to get into them because everybody else on
5 that emergency list is going to be checking in to let them
6 know they received that beeper announcement. But I'm going
7 to be calling in to find out as much more information as I
8 can because I then am turning around -- if it has been proven
9 that they are gone and how many, I then make a decision on
10 who else is going to be called and that's where it comes into
11 other law enforcement.

12 I then, based on the institution -- this is a level
13 three institution, and at the department of corrections
14 there's three levels. There's a level one which is an open
15 camp, has no fences around it. A level two will have one or
16 two -- one, sometimes two fences, and a level three will have
17 two fences around it and even the dorms will have a fence
18 around it or the prison -- the housing areas. So even if
19 they get out of the dorm, they still have a fence they have
20 to cross before they can cross the fences to get out of
21 there.

22 So depending on the institution or prison, that tells me
23 how much of extra people I've got to get involved in this.
24 So as I'm en route, I'm calling other folks. So this
25 particular night I'm on the phone trying to get other people

1 involved.

2 Q. Okay. Let me stop you there for a moment. I'm showing
3 you State's Exhibit 2, Mr. O'Cain. Let me just ask you a few
4 questions. Do you know what that item is?

5 A. It looks like an expanded version of an aerial view
6 showing even more territory.

7 Q. All right. And to the best of your knowledge, has there
8 been any topographical changes to that region since this
9 photograph has been created?

10 A. Not knowing -- I don't see a date on there, so I
11 wouldn't -- I mean, it could be the same as that date. I
12 don't...

13 **Mr. Pauling:** And, Your Honor, at this time the State
14 would move to introduce State's Exhibit 2 into evidence.

15 **Ms. Walker:** Without objection.

16 **The Court:** Without objection.

17 (State's Exhibit 2 was received in evidence.)

18 By Mr. Pauling:

19 Q. Getting down to your set-up perimeter on your chart
20 there, would that State's exhibit that we just introduced,
21 would that kind of give you some guidelines as to what type
22 of perimeter you need to set up?

23 A. Yes, and I want to back up just a second to setting up
24 the command center. Once I get to the site - and I'm going
25 to go back to this one - when I get -- when I got to the site

1 that day, I was the first one there, other than the personnel
2 at the institution which is kind of rare, but I was in
3 Columbia that day. I set up the command center right here at
4 the entrance to the prison so -- which is very fortunate.
5 When we have a prison of this degree, this is one of our --
6 and I'll say our because I was working there at that time.
7 This is a maximum security prison. This is where inmates at
8 the department of corrections -- this is one of the most
9 strictest prisons as far as security levels in South
10 Carolina.

11 So automatically when the call comes out, my mind is
12 saying we have a secure -- or a very severe situation. I've
13 got to get there. And if it's true we have inmates gone,
14 then this is telling me we have a very bad situation. I've
15 got to get involved.

16 The command center is set up here. So what I'm doing is
17 setting up and I'm getting people in motion, not only who is
18 going in the institution from that point on but who I'm
19 setting up around the institution for where they got out, but
20 that is where this comes into play on what I'm setting up out
21 here. And I'm going to use - and this may not be appropriate
22 - the movie *The Fugitive*. If you'll remember that where the
23 plane crashes, he's looking at a map on top of the car and
24 he's telling the troopers to set up so many miles away and
25 comparing it to how far a person can move on foot or running.

1 Well, I'm also looking at that, but I'm also waiting on
2 the people inside to come up with some kind of idea of how
3 long they may have been gone. So there's a lot of things in
4 motion here. But I'm also -- from past history on, people
5 who have left this compound -- and there's seven prisons on
6 this compound. We're going by what we know of people who
7 have left that compound before what the normal is.

8 Broad River -- this is the Broad River. They normally
9 will hit that Broad River and they will go toward I-20. So
10 we know to put people down that way normally, but we also
11 will put people on up toward Monticello Road, put people at
12 Broad River Road. There is a set perimeter because we've had
13 -- we have history with this.

14 Q. Now, Mr. O'Cain, let me ask you: Having just addressed
15 the speed and the time frame regarding inmates that have gone
16 over the fence, do you -- what do you do as far as, you know,
17 the scene itself, you know, when you actually go into the
18 prison? How do you determine where they escaped and what
19 type of people do you bring in there to determine what
20 evidence to collect?

21 A. The agency has in-house investigators. There is an
22 investigator assigned to each of the major institutions and
23 then there will be what's referred to as local investigators.
24 There is several investigators, because headquarters is on
25 that same property, who work several of the institutions

1 there. So as I'm setting up the command center, I'm also
2 calling for investigators to work the inside of this. So
3 I'll have investigators working the outside, helping to find
4 them, but I've also got investigators inside finding out
5 what's going on. So I've got people inside.

6 I've also asked for S.L.E.D. to come in, and they're
7 doing everything from D.N.A. traces to whatever because there
8 was a ladder used, a homemade ladder, for them to get out
9 through the fence. So I've got people working the fence on
10 the inside. I've got people on the outside of the fence.

11 I've also got folks inside who are doing -- part of that
12 investigation will be that we're talking to the control
13 center inside: When did the alarm go off? They will be
14 looking at every phase of this. When did the institution
15 know that something triggered that fence? Because there's
16 alarms on the first fence, and that alarm is there to let
17 them know something is going on with the first fence, not the
18 second fence. So that gives them time for -- there's a
19 rover. There's a person in a vehicle that's constantly going
20 around that institution, and if there's an alarm going off,
21 that should give them enough time to get to where that alarm
22 point is before they hit the second fence. So there's always
23 something happening.

24 Q. Now, I notice on your diagram you've got both
25 helicopters and dogs. Were these things used during this

1 particular incident?

2 A. Yes.

3 Q. Okay.

4 A. As part of me on the way, in this particular case this
5 was because I was so close, this would have been called for
6 as soon as I got there. It's a major institution. We have a
7 river right behind that institution. We have major highways.
8 We've got I-26. We've got I-20. We've got a railroad track
9 on the other side of the river. I'm calling in, and because
10 this is a major institution, we have serious inmates at this
11 institution.

12 I'm calling in. I'm calling in and I'm asking S.L.E.D.
13 for their dog teams. I'm asking for the helicopters.
14 Because of the time of day, we need their help. Helicopters
15 are cleared since they're night-looking infrared. Because
16 the river is back there, I need D.N.R.'s boats, so we're
17 calling in specialty equipment. I need some jon boats. I
18 need some -- their airboat, if they'll let me have it,
19 anything. Let's go up and down the river. So I'm calling in
20 any equipment that I can get as help.

21 In the meantime, E.A.C. is putting this out on N.C.I.C.
22 to all law enforcement. We're already getting their
23 information out on who they are, their information: Birth
24 dates, where they're from. What information do we have in
25 the system as far as where they committed their crimes? What

1 their home is, where they came from, everything. We're
2 letting that local law enforcement know. If they get away
3 from us, usually they're going toward home. So we're also --
4 as we're getting in down lower as time is going on, we're
5 notifying local law enforcement as we get our information
6 together. And as part of my team, my admins and my help is
7 coming into my office and they're pulling everything that we
8 can get off our computer system and getting fliers and
9 everything else together in case we have to leave that
10 perimeter area.

11 Q. All right. And that gets to my next item here. This is
12 State's Exhibit 1. And, Mr. O'Cain, you can see 2 and 3 and
13 this is sort of an even more expanded version---

14 A. Uh-huh.

15 Q. ---of the campus you were talking about earlier.

16 A. Right.

17 Q. Does this image look similar to the Broad River and the
18 correctional campuses at that time?

19 A. Yes, sir.

20 Q. Okay.

21 A. Yes, sir.

22 **Mr. Pauling:** Your Honor, the State would move for
23 State's Exhibit 1 to be entered into evidence as well.

24 **Ms. Walker:** Without objection, Your Honor.

25 **The Court:** Without objection.

1 **Mr. Pauling:** Thank you, Your Honor.

2 (State's Exhibit 1 was received in evidence.)

3 By Mr. Pauling:

4 Q. All right. Now, Mr. O'Cain, I have one more question I
5 want to ask you about, very important. This third item from
6 the bottom, it says new count. What is a new count and why
7 is that important?

8 A. The new count is once the forensics teams have gotten
9 everything off the fences, they've checked to make sure that
10 there's blood on the fence, blood on the ground, they have
11 finished doing what they need to do for evidence, then the
12 institution is doing a new inmate count and they're doing all
13 this in a very quick amount of time. That is very important.
14 I need to know exactly how many inmates are missing. Is
15 there two or is there four? Because that is very important
16 to the outside. And keep in mind here the -- the orders or
17 the -- what I am under from the governor's office, S.L.E.D.,
18 and everybody else is to get these inmates back as fast as
19 possible. This is an issue for the safety of the community
20 and everybody in this area and for the state is to get these
21 inmates back as fast as possible. So I need to know exactly
22 how many are gone.

23 So that institution is going to do a new count as soon
24 as possible. And I have been a part of escapes before where
25 we thought one or two was gone, and a new count later on --

1 there was four gone. So this is very important. And so that
2 is part of the command center, making sure that things are
3 going on, and in the meantime management is also going to
4 that institution to relieve up the warden or whoever so that
5 they can be out in the institution making sure these people
6 are doing exactly what they need to be doing because they're
7 going to be low staffed until they can get more staff in
8 there.

9 Q. And, Mr. O'Cain, these last two items, Andrew Storey and
10 Forrest Samples, do you remember, based on your diagram
11 there, when they were actually recovered or within the time
12 frame from their actual escape?

13 A. Yes, sir. The first night we were sometime after
14 midnight up to 1 or 2:00; I can't be exactly in there. It
15 would have been the railroad tracks on the other side of the
16 river behind the institution, and I want to say it was up --
17 the railroad tracks on Monticello Road up toward the fire
18 academy, somewhere in that area. He had been able to cross
19 the river.

20 Q. Mr. O'Cain, this image here, does this look
21 approximately like the area where Mr. Storey may have been
22 recovered, the railroad tracks here?

23 A. Yes, sir.

24 Q. Okay.

25 A. Yes, sir.

1 **Mr. Pauling:** And, Your Honor, at this time the State
2 would move to introduce State's Exhibit 4.

3 **Ms. Walker:** Without objection, Judge.

4 **The Court:** Without objection.

5 **Mr. Pauling:** Thank you, Your Honor.

6 (State's Exhibit 4 was received in evidence.)

7 By Mr. Pauling:

8 Q. And then moving down to Mr. Samples the next day...

9 A. Yes, sir. It would have been the -- I think the early
10 afternoon, middle afternoon of the next day. We're on the
11 second day. He would have been recovered in the river, and I
12 believe he was hiding in the embankment or maybe like a --
13 not a cave but an indention area in the river area where one
14 of the D.N.R. boats, S.L.E.D. agent, D.N.R. agent -- don't
15 hold me to that. I'm trying to remember back. But agents in
16 a boat actually saw him on the bank area and was able to see
17 him, and they were able to get him and brought him up on the
18 banks where we were able to get him into an ambulance. But,
19 yes, he was still on the river.

20 Q. All right.

21 A. But he was on up past I think the fire academy and we
22 were able to come in on some dirt roads to get to where they
23 were.

24 Q. And, Mr. O'Cain, you can return to the witness stand
25 there. Mr. O'Cain, I do have one more question for you

1 because -- do you actually know or could you identify Forrest
2 Samples?

3 A. This many years later it would be difficult.

4 Q. Right. So you can't say if Forrest Samples is actually
5 in the courtroom now.

6 A. I see an inmate in a uniform, but I -- no, sir.

7 **Mr. Pauling:** Thank you. That's all I need to ask. No
8 further questions, Your Honor.

9 **Ms. Walker:** Thank you, Your Honor. May it please the
10 Court?

11 **The Court:** Yes, ma'am.

12 Cross-Examination

13 By Ms. Walker:

14 Q. Good afternoon, Mr. O'Cain. How long -- and forgive me
15 if I get your title mixed up. It's a lot of words. Chief
16 special investigator of operations; is that correct?

17 A. I'm basically the branch chief of Special
18 Investigations.

19 Q. Okay. And how long were you in that position?

20 A. Right at five years.

21 Q. Five years?

22 A. But I was an investigator, special -- I covered a lot of
23 titles up to that prior to it over 13 plus years.

24 Q. 13 plus years as---

25 A. In the department of corrections.

1 Q. In the department of corrections.

2 A. Yes, ma'am.

3 Q. And as part of your job as chief special investigator,
4 did you receive any training?

5 A. Yes, ma'am.

6 Q. You did receive special training, because when people
7 escape obviously that's a huge deal.

8 A. Yes, ma'am.

9 Q. It's not something that happens every day.

10 A. There was years where it did; yes, ma'am.

11 Q. Okay. And as part -- as part of your job, I mean -- I
12 noticed by this diagram -- I mean, you have a lot that you
13 have to do. I mean, this is a lot of steps that you have to
14 do, and you have to organize a lot of people.

15 A. Yes, ma'am.

16 Q. Certainly. And this was an event that happened over
17 five years ago at this point, I believe?

18 A. Yes, ma'am.

19 Q. Did you take any reports?

20 A. Yes, ma'am.

21 Q. You did take reports. Did you bring those reports with
22 you today?

23 A. No, ma'am.

24 Q. Did you review those reports prior to coming to court?

25 A. No, ma'am.

1 Q. And your job is only involved with recovering the
2 inmate; is that correct?

3 A. Yes, ma'am.

4 Q. So your job is -- as soon as you are notified about the
5 escape, your job is solely to get that person back on the
6 inside.

7 A. Yes, ma'am.

8 Q. Okay. And do you recall the time approximately that you
9 received notice that somebody had escaped?

10 A. Without looking at my reports -- my reports are part of
11 SCDC or the department of corrections, and I do not have
12 privy to them because I don't work there anymore.

13 Q. Certainly.

14 A. I want to say it was sometime late in the afternoon or
15 early evening when the call came out.

16 Q. And if I told you that they are alleging the time that
17 Mr. Storey was recovered was about 7:30 p.m. the next day,
18 would you disagree?

19 A. No, ma'am.

20 Q. 7:30. So Mr. Storey is alleged to have escaped the
21 custody of the department of corrections for almost 24 hours.
22 Is that true?

23 A. Yes, ma'am.

24 **Ms. Walker:** Okay. Thank you. I have no further
25 questions at this time.

1 **The Court:** Redirect?

2 **Mr. Pauling:** Yes, Your Honor, just very briefly.

3 Redirect Examination

4 By Mr. Pauling:

5 Q. Mr. O'Cain, it's five years ago this happened; correct?

6 A. Yes, sir.

7 Q. And the defense just asked you if Andrew Storey, the
8 gentleman caught on the railroad tracks, was missing for
9 24 hours; correct? She just asked you if he was picked up at
10 7:30 in the evening or something like that?

11 A. She did; yes, sir.

12 Q. All right. And Andrew Storey was caught on the railroad
13 tracks. Was that a full day later or later that same day,
14 like in the evening at night?

15 A. My remembrance is it was that same day.

16 Q. Right, but was it dark or was it light? Do you
17 remember? In August.

18 A. It was dark.

19 Q. Right. And you weren't there when he got picked up
20 anyway, were you?

21 A. No, I wasn't. I was still---

22 Q. Thank you.

23 A. I was still on the other side of the river coordinating
24 everything.

25 Q. Right. Someone -- someone else picked him up.

1 A. Right.

2 Mr. Pauling: Correct. No further questions, Your
3 Honor.

4 The Court: You may---

5 Ms. Walker: Your Honor, very briefly.

6 Recross Examination

7 By Ms. Walker:

8 Q. Just to correct one statement, I believe we were talking
9 about Mr. Storey. When I asked you if he was recovered at
10 7:30 the next day, I was referring to Mr. Samples. Was Mr.
11 Samples -- if I said that he was recovered at 7:30 the next
12 day allegedly, would you disagree?

13 A. Which inmate are we talking about?

14 Q. Mr. Samples, the one that's here on trial today.

15 A. Yes.

16 Q. 7:30. And that is Forrest Samples, not Andrew Storey,
17 his co-defendant.

18 A. Right. It was the next day; yes, ma'am.

19 Ms. Walker: Thank you.

20 The Court: You may come down.

21 Mr. Pauling: Thank you, Your Honor. May he be excused?

22 The Court: Without objection.

23 Ms. Walker: No objection, Judge.

24 Mr. Pauling: Thank you, Your Honor.

25 The Court: You're free to go. Thank you very much.

1 Next witness.

2 **Mr. Jackson:** Thank you, Your Honor. The State calls
3 Sybil Millhouse.

4 **Ms. Walker:** Your Honor, may we approach?

5 **The Court:** Certainly.

6 (Whereupon, a bench conference was held.)

7 Sybil Millhouse, after being duly sworn, testified
8 as follows:

9 **The Clerk:** Have a seat in the witness stand, please.

10 **Bailiff:** State your name for the record.

11 **The Witness:** Sybil Millhouse.

12 Direct Examination

13 By Mr. Jackson:

14 Q. Thank you, Ms. Millhouse. How are you today?

15 A. Good.

16 Q. Thank you for being here. Do you need to spell your
17 name for the record? Can you spell your name for the record,
18 please?

19 A. Sybil, S-Y-B-I-L. Millhouse, M-I-L-L-H-O-U-S-E.

20 Q. Thank you, Ms. Millhouse. And where do you work?

21 A. Broad River Department of Corrections.

22 Q. And how long have you worked there?

23 A. Twelve years.

24 Q. Okay. What are your duties there?

25 A. I'm a correctional officer.

1 Q. Okay. Were you employed there in 2007?

2 A. Yes.

3 Q. And what were your duties then?

4 A. I was a control room officer.

5 Q. All right. And can you describe that a little bit, like
6 what were your hours and kind of what that means for the
7 jury?

8 A. 7:00 a.m. to 7:00 p.m., 12-hour shift.

9 Q. Okay. When you say control room officer, I envision a
10 room like NASA with a lot of stuff to look at?

11 A. Yes.

12 Q. Is that correct?

13 A. Several different cameras, several telephones, pass out
14 equipment, receive equipment, training office of the staff.

15 Q. Okay. And were you working on August 14th, 2007?

16 A. Yes.

17 Q. Do you recall anything that happened that day?

18 A. Well, around about between 6:30 and a quarter 'til 7,
19 Zone 9, I think, was activated, and I called eleven
20 ninety-eight which was Ms. Isaacs during the time on the
21 rover to let them know -- let her know that the zone was
22 activated.

23 Q. Okay. Can you kind of describe what you mean by a zone
24 alarm going off?

25 A. A zone alarm going off, something have hit the fence or

1 someone hit the fence and activate the fence, and when the
2 fence be activated, you call eleven ninety-eight who was on
3 rover patrol in the perimeter. And you are to act to that
4 zone being activated at all time like someone are escaping
5 (verbatim).

6 Q. Okay. Can other things set off these alarms?

7 A. Yes.

8 Q. Okay. So wind, for instance?

9 A. Wind, rain.

10 Q. Okay.

11 A. Lightning.

12 Q. And when you say -- when you say zone, I assume we have
13 a perimeter, so we're talking about there are specific parts
14 of the fence that are each zoned; is that correct?

15 A. Yes.

16 Q. So a zone alarm went off at a specific area, so what did
17 you -- you called -- can you describe that one more time?

18 A. I said, "Eleven ninety-eight, be advised Zone 9 have
19 been activated."

20 Q. Okay. Beg the Court's indulgence. I'm going to show
21 you State's Exhibit 3. Can you show me roughly what -- can
22 you show the jury, more importantly, roughly where this alarm
23 went off?

24 A. You got two steps. Can I stand?

25 **Mr. Jackson:** Your Honor, can she get out of the jury

1 (verbatim) box? Thank you.

2 **The Court:** She can step down.

3 By Mr. Jackson:

4 Q. Stand right here and tell the jury sort of where the
5 alarm went off.

6 A. This is P.I. 2 where all -- this area---

7 **Court Reporter:** Can you speak up, please?

8 **The Witness:** This is P.I. 2. This is Zone 9 behind
9 P.I. 2. That's where it went off at.

10 By Mr. Jackson:

11 Q. Okay. And you---

12 A. It's the location.

13 Q. And you said you called a rover. What does that mean?

14 A. The rover is the one that parole -- parole -- parole the
15 institution or perimeter---

16 Q. Okay.

17 A. ---to check when a zone be activated or when a zone is
18 not activated, but when a zone is activated, they are to go
19 to that zone immediately, you know---

20 Q. Okay.

21 A. ---like if there's a possibility there is an escape.

22 Q. Right. So this is a person that is constantly driving
23 around the perimeter?

24 A. Constantly driving around the perimeter.

25 Q. Okay.

1 A. 24/7.

2 Q. Okay. So you called the rover, and she responded?

3 A. Yes, she responded. When she got there, she say it was
4 a -- an escape ladder was on the fence, and I zoomed in and
5 there was the ladders on the fence.

6 Q. Okay. Thank you very much.

7 A. You're welcome.

8 Q. You can take your seat back in the jury box or the
9 witness box. This happened, you said, around 7:00?

10 A. Between 6:45 and 7, somewhere along in there.

11 Q. What happens during that rough hour of the day?

12 A. Well, you have the shift changing, you know, people
13 coming in, turning in -- receiving equipment, passing out
14 equipment, and taking in equipment at that time because
15 they're getting ready for a shift change between that time.
16 Briefing starts at 10 'til 7.

17 Q. Okay. So this is a chaotic time?

18 A. It's a chaotic time during that time of the day.

19 Q. So this is a chaotic time of day?

20 A. Yes.

21 Q. Nothing further. Please answer any questions from
22 defense counsel.

23 A. Okay.

24 **Ms. Walker:** May it please the Court?

25 **The Court:** Yes, ma'am.

Cross-Examination

By Ms. Walker:

Q. Forgive me if I call you Ms. Steverson because I've been reading reports with Ms. Steverson. You're now Ms.

Millhouse---

A. Yes.

Q. Is that correct?

A. Correct.

Q. Okay. I'll do my best. And you've been working for the correctional facility for 12 years? Is that correct?

A. Yes.

Q. And you -- at the time of this incident, you were a control room officer; is that correct?

A. Yes.

Q. And what were your duties again as a control room officer?

A. As a parole -- patrol room officer, it's to monitor the camera and the radio, telephone, pass out equipment, and receiving equipment and training.

Q. Okay. And what do you mean when you say monitoring the telephone? What---

A. Answer the telephone.

Q. And these are just specific calls---

A. Yeah.

Q. ---to the control room.

1 A. Right.

2 Q. Okay. And in the control room there's cameras that
3 you're able to observe?

4 A. Yes.

5 Q. All of the cameras?

6 A. Yes. Uh-huh.

7 Q. Okay. And you think the alarm went off somewhere
8 between 6:45 and 7:00?

9 A. Yes.

10 Q. Are you able to say exactly when the alarm went off?

11 A. That been five year (verbatim). No, I can't.

12 Q. You can't.

13 A. No.

14 Q. As the control room officer, are you the first person
15 that gets an alert when the alarm goes off on the fence?

16 A. Yes.

17 Q. You are the first person that gets... Okay. And as a
18 course of recalling these events, did you -- were you
19 interviewed by an investigator subsequent to this event?

20 A. I can't -- I think I was. I can't recall any names at
21 the time.

22 Q. But you think you spoke to somebody regarding this
23 event---

24 A. Yes.

25 Q. ---and what happened.

1 A. Yes.

2 Q. Okay. And at the time do you recall being with another
3 individual?

4 A. Yes.

5 Q. And was that individual a Ms. Highler (phonetic)?

6 A. Being in the control room.

7 Q. Yes.

8 A. She was the control -- yes.

9 Q. So it wasn't just you in the control room.

10 A. Right.

11 Q. Okay.

12 A. She was -- she was in training.

13 Q. Okay. And the cameras, you said, show all of the
14 campus; right?

15 A. Yes.

16 Q. And they show all the fences; is that correct?

17 A. Yeah, they zoom in different areas where it's going off
18 at.

19 Q. And are these only surveillance cameras or do they
20 record the events? Are you aware of that?

21 A. They record the events.

22 Q. They do record the events. Okay. And this particular
23 day you recall the alarm going off.

24 A. Yes.

25 Q. But you do not recall seeing the escapees go over the

1 fence.

2 A. No, I did not.

3 Q. Two escapees going over two fences, you do not recall
4 seeing that.

5 A. No.

6 Q. You don't recall seeing two individuals place ladders on
7 the fence and going over.

8 A. No.

9 Q. And as part of your duties in the control room, is there
10 a printer involved, some sort of printer, that prints out
11 what's going on?

12 A. Yes.

13 Q. There is. And do you recall if the printer was
14 operational that day?

15 A. No, I don't recall.

16 Q. You don't recall.

17 A. No.

18 Q. But if it was operational, it would record things---

19 A. Yes.

20 Q. ---like the alarm---

21 A. Yes.

22 Q. ---when it went off and things of that nature.

23 A. Yes.

24 Q. Do you recall reporting that the alarm was going off to
25 somebody?

1 A. Yes.

2 **Ms. Walker:** Beg the Court's indulgence. Thank you,
3 Your Honor. No further questions at this time.

4 **Mr. Jackson:** Nothing further from the State, Your
5 Honor.

6 **The Court:** You may come down, ma'am. Thank you very
7 much.

8 **Mr. Jackson:** Your Honor, we ask that she be excused.

9 **The Court:** Witness be excused?

10 **Ms. Walker:** No objection, Judge.

11 **The Court:** Without objection.

12 **Mr. Jackson:** Your Honor, the State calls Dominique
13 Pagano.

14 Dominique J. Pagano, after being duly sworn,
15 testified as follows:

16 **The Clerk:** Have a seat in the witness stand, please.
17 State your name for the record.

18 **The Witness:** Dominique Joseph Pagano.

19 Direct Examination

20 By Mr. Jackson:

21 Q. Good afternoon, Mr. Pagano. Where do you work?

22 A. Richland County Sheriff's Department.

23 Q. And how long have you worked there?

24 A. All in all about nine and a half years.

25 Q. Okay. What did you do before you were employed with

1 Richland County?

2 A. I was actually a reserve officer with Richland County
3 while I was working as the fitness director for Gold's Gym
4 and I was also in the state guard, and then before that I
5 served in the United States Army.

6 Q. And what are your duties currently with Richland County?

7 A. I'm the full-time training instructor.

8 Q. Okay. What exactly does that mean, just briefly?

9 A. My job and my responsibilities are to recertify the
10 officers through their daily activities. That's for the
11 academy, so that would be driving, firearms, defensive
12 tactics, those sorts of things.

13 Q. And you just stated that you have been employed with
14 them for quite awhile, so you were employed with them in
15 2007?

16 A. Yes, sir.

17 Q. And were your duties the same then?

18 A. Yes, sir.

19 Q. Okay. Were you -- so you were doing the exact same
20 training stuff.

21 A. Yes, sir.

22 Q. Were you working on August 15th, 2007?

23 A. Yes, sir.

24 Q. Can you tell us what happened that day?

25 A. I received a -- I was actually at home. I received a

1 call from the front desk from the desk sergeant asking me to
2 go unlock and search the range.

3 Q. Okay. Why?

4 A. I got a call. They basically said that there was a
5 possibility of some escaped inmates and that they thought
6 they were in the area of our firing range and that we needed
7 to get back there and search that area.

8 Mr. Jackson: Okay. Your Honor, may I approach the
9 witness?

10 The Court: Yes, sir.

11 By Mr. Jackson:

12 Q. I might get you to step down just for a second to point
13 out a few things as to where the range is on some of these
14 maps. I tell you what. Here. If you'll stand right there,
15 I'll come over here. All right. This is State's Exhibit -
16 let's see here - 1. Do you recognize what this is?

17 A. Yes.

18 Q. What is it?

19 A. This is an overhead view of our area where our range
20 meets and this is Monticello Road which our range is off
21 Monticello Road.

22 Q. Can you point out where Broad River prison is?

23 A. Broad River correctional facility would be right on this
24 side right here.

25 Q. Right. And do you sort of see where the range is

1 located opposite?

2 A. Yeah. You come up Monticello Road. I'm trying to see
3 how this overhead... It should be up in here.

4 Q. Right. Okay. All right.

5 A. Right there.

6 Q. So this right here -- this is State's Exhibit 4, a
7 little bit more of a zoom-in. You can see the river, and the
8 prison would be down here. So where is the range on this
9 map?

10 A. Our range is actually here. Here is Harmon Road. Our
11 range is up the railroad tracks. It's right in this area
12 back here.

13 Q. And is this the range from a more aerial view?

14 A. Yes.

15 Q. Okay.

16 A. That's correct.

17 Q. Thank you. You can take a seat back.

18 A. Yes, sir.

19 Q. So you got a call about an escape. When you were told
20 to go search the range, you cleared it?

21 A. Yes, sir.

22 Q. Okay. What does that mean?

23 A. We have buildings out there that we use for teaching
24 classrooms. We also have the building out there where we
25 secure sometimes sensitive items, and we checked all those

1 areas to make sure that there was one out there that wasn't
2 supposed to be out there.

3 Q. Right. And after you cleared the range, what then did
4 you do?

5 A. We actually stayed on site as a security element as the
6 rest of the units that were on the perimeter searching, they
7 headed out. So there was two of us that stayed.

8 Q. So you just, gut instinct, decided to stay.

9 A. Exactly.

10 Q. You weren't told to stay.

11 A. No.

12 Q. Okay. And when you say that you stayed -- this is sort
13 of a zoom-in. Where kind of were you when you say you
14 stayed?

15 A. Actually right -- right where you're at.

16 Q. Right there?

17 A. Right there where the intersection meets right there and
18 the crossover for the railroad tracks right there. That's
19 correct.

20 Q. And how dark was it and what time of year and roughly
21 what time of day it was or night?

22 A. It was nighttime. It was dark. There was a little bit
23 of lume (verbatim) because we have a security light right at
24 our range gate. If you go up to the top, it's the -- exactly
25 right there. There's a big security light there that goes on

1 automatically at night, so we did have some lume (verbatim)
2 on that area but it was pretty dark.

3 Q. Okay. So you were sitting here in a patrol car or...

4 A. We were actually outside of our patrol cars. The patrol
5 cars were turned off. There was two vehicles there, myself
6 and the D.N.R. officers, and we were blacked out.

7 Q. Okay. So you waited, and then what did you see?

8 A. At that point we waited. We heard a noise, and as we
9 looked over in the area, I told the D.N.R. officer to be
10 quiet. We noticed that an individual come up on top of the
11 railroad tracks, and we can see from the reflection from the
12 light that he was backlit.

13 Q. Sort of in this region here?

14 A. Yes, sir.

15 Q. Keep on. Sorry. I didn't mean to cut you off.

16 A. No, that's fine. That was backlit and he started to
17 walk down the tracks heading back towards Monticello Road.

18 Q. So up that way?

19 A. The other direction.

20 Q. Down this way.

21 A. Yes.

22 Q. Okay. So he's actually coming towards you.

23 A. Yes.

24 Q. Okay. What did you do then?

25 A. At that time we let him walk down the tracks a little

1 bit more. We circled in behind him, and we identified
2 ourselves as law enforcement officers.

3 Q. Okay. Did he respond?

4 A. Yes, he did.

5 Q. Do you remember what he said?

6 A. I asked him specifically -- I said, you know, let me --
7 normal law enforcement response: "Let me see your hands.
8 Who are you?" At that time he said, "You know who I am."
9 And I -- of course, I knew who he is. You could tell by his
10 dress and his attire. I said, "That's right. I know who you
11 are." And then we secured him at that point.

12 Q. Okay. Did he say anything else?

13 A. Yes. After I secured him, I asked him once again, "For
14 documentation, I need to know your full name." And he told
15 me that his name was Frank Storey.

16 Q. Was who?

17 A. Storey. Mr. Storey.

18 Q. Okay. Did you notice any injuries on him?

19 A. Yes, he was -- his tores -- his clothes were torn up and
20 he had a lot of blood on him.

21 Q. Uh-huh. So you're under the understanding that you're
22 looking for two inmates; correct?

23 A. That is correct.

24 Q. Okay. And he identifies himself as?

25 A. Mr. Storey.

1 Q. Okay. So at that point you knew that you had found one
2 of them.

3 A. That is correct.

4 Q. Okay. What happened after that?

5 A. After that point, we secured him. We moved him off of
6 the railroad tracks. We called in to headquarters. At that
7 point we had other additional units show up to that site to
8 take control of the situation.

9 Q. Okay. I have nothing further for you. Please answer
10 any questions that the defense may have.

11 A. Sure.

12 **Mr. Newton:** May it please the Court?

13 Cross-Examination

14 By Mr. Newton:

15 Q. Officer Pagano? Is that right? Officer Pagano?

16 A. That's fine.

17 Q. Did you write a report about this?

18 A. No.

19 Q. No? So it's just an off-the-top-of-your-head
20 recollection?

21 A. Yes.

22 Q. Did you ever have to speak to any supervisors, any
23 investigators about this?

24 A. Just the ones that were at the scene. That was it.

25 Q. Okay. Do you know if they recorded this in any written

1 documentation?

2 A. I have no clue.

3 Q. Okay. You don't work for the department of corrections
4 at all, do you?

5 A. No.

6 Q. Okay. And the person that you found, they gave you the
7 name of Andrew Storey? Frank Storey?

8 A. Yes, I do definitely -- the last name was Storey.

9 Mr. Newton: Okay. No further questions.

10 The Court: All right. Anything further?

11 Mr. Jackson: Nothing, Your Honor.

12 The Court: You may come down.

13 Mr. Jackson: Your Honor, we request that he be excused.

14 The Court: Come on. You're free to go.

15 Mr. Jackson: Thank you.

16 The Court: Without objection. All right. Ladies and
17 gentlemen of the jury, we're going to take a 10-minute break
18 at this time. I'm going to ask you to go to the jury room
19 and just relax for a few minutes, and we'll call you when
20 we're ready. It will just be a short afternoon break. Thank
21 you very much. Don't discuss the case among yourselves while
22 you're in the jury room.

23 (Whereupon, the jury was excused from open court at
24 3:32 p.m.)

25 The Court: All right. We'll stand at ease for about 10

1 minutes.

2 **Mr. Pauling:** Your Honor, may I approach real quick?

3 **The Court:** Sure.

4 (Whereupon, a bench conference was held. State's
5 Exhibit 15 was marked for identification only. Whereupon, a
6 short break was taken.)

7 **The Court:** All right. Be seated. State ready to
8 proceed?

9 **Mr. Jackson:** Yes, Your Honor.

10 **The Court:** Defense ready to proceed?

11 **Ms. Walker:** Yes, Your Honor.

12 **The Court:** Bring the jury, please.

13 (Whereupon, the jury was brought into open court at
14 3:50 p.m.)

15 **The Court:** Solicitor, call your next witness.

16 **Mr. Jackson:** Your Honor, the State calls Andrew Storey.

17 **The Court:** All right, Mr. Storey.

18 Andrew Storey, after being duly sworn, testified as
19 follows:

20 **The Clerk:** State your name for the record, please.

21 **The Witness:** Andrew Storey.

22 **Mr. Jackson:** Thank you, Your Honor. May it please the
23 Court?

24

25

1 Direct Examination

2 By Mr. Jackson:

3 Q. Mr. Storey, is Broad River Correctional Institution in
4 Richland County?

5 A. Yeah.

6 Q. Okay. And where do you currently reside?

7 A. McCormick.

8 Q. Okay. Why do you live there?

9 A. I got moved from Broad River to there.

10 Q. But you were -- are you incarcerated at McCormick?

11 A. Yeah, I'm incarcerated. Yeah.

12 Q. Okay. How long have you been incarcerated?

13 A. Probably about 11 years, 10 years.

14 Q. Okay. And do you know the defendant, Mr. Forrest
15 Samples?

16 A. Yeah.

17 Q. Okay. And how long have you known him?

18 A. It's been awhile.

19 Q. Eight years?

20 A. Probably about---

21 Q. Ten years?

22 A. ---seven, six, seven.

23 Q. Okay. Were you friends with him?

24 A. Yeah.

25 Q. Can you describe your relationship?

1 A. Like brothers really, brother relationship.

2 Q. Okay. How did y'all get to know each other?

3 A. Playing paddle ball, just chilling on the rec field
4 mostly.

5 Q. Inside Broad River prison?

6 A. Yeah.

7 Q. Okay. And what happened on August 14th, 2007?

8 A. August 14th? 14th?

9 Q. Yes, sir.

10 A. That's the day we escaped?

11 Q. Is that the day that you escaped with Mr. Samples?

12 A. I thought it would have been the 15th or the 16th.

13 Q. Okay. Is it your recollection that on one of those days
14 somewhere in August of 2007 you were with Mr. Samples during
15 an escape?

16 A. Yes, sir.

17 Q. Okay. Can you tell me how you became involved in this?

18 A. Probably about three or four months before, four or
19 five months before, I -- it was about five -- four or five,
20 six months before.

21 Q. Right. What do you mean by that? Did he come to you or
22 did you go to him?

23 A. Yeah, he came to me.

24 Q. Okay. And what did he come to you -- he approached you
25 with a plan to escape?

1 **Mr. Newton:** Objection, Your Honor. Leading.

2 **The Court:** Rephrase your question.

3 **Mr. Jackson:** Thank you.

4 By Mr. Jackson:

5 Q. Did he -- four or five months, what did he approach you
6 about?

7 A. He just approached me and asked me if I -- if I would be
8 willing to get on through.

9 Q. What do you mean get on through?

10 A. Hey...

11 Q. Withdraw the question. Why do you think he approached
12 you about getting through?

13 A. Because we'd become pretty close. We was pretty close.
14 We was pretty close so...

15 Q. Okay. And how much of the plan had been formulated when
16 he asked you to join him?

17 A. Oh, I have no -- I don't even know, man.

18 Q. Well, was a large portion of the escape plan in place
19 before he came to you? It was his idea---

20 **Mr. Newton:** Objection, Your Honor.

21 **The Court:** Sustained.

22 **Mr. Newton:** It's leading.

23 By Mr. Jackson:

24 Q. Mr. Storey, what I'm asking is is how -- how much had he
25 planned this before he came to you?

1 A. It was probably good and established sort of. I'm
2 saying it wasn't all the way.

3 Q. All right. Can you tell the jury what the general plan
4 was?

5 A. Really just to get out, just to get out of the prison.

6 Q. Right. But how exactly were you planning to do that?

7 A. With the ladder we constructed.

8 Q. Okay. When you say -- beg the Court's indulgence. Mr.
9 Storey, do you know what this is?

10 A. Looks familiar.

11 Q. It does? Do you recognize it? Can you see it now?

12 A. Yeah, I guess it's the -- it's the ladder we put
13 together, I guess.

14 Q. Do you remember what this looked like back in 2007?

15 A. Yeah, I got a pretty good memory of it.

16 Q. All right. And is it in the same rough condition as it
17 was on that date before you put it together?

18 A. I don't even know, man. I couldn't even---

19 Q. I mean, are those the pieces of wood that you used to
20 put it together?

21 A. It looks -- it looks like it.

22 **Mr. Jackson:** Okay. Your Honor, we'd like to move these
23 pieces of wood, State's Exhibit 13, into evidence.

24 **Mr. Newton:** Your Honor, we object. The witness just
25 said he thinks it's the wood. They have not established

1 these are a chain of custody to this whatsoever.

2 **The Court:** Sustained.

3 **Mr. Jackson:** Thank you, Your Honor.

4 **The Court:** Mark it for identification.

5 (State's Exhibit 13 was marked for identification only.)

6 By Mr. Jackson:

7 Q. So y'all had -- y'all -- what were your jobs? Y'all
8 worked in Prison Industries II; correct?

9 A. Yeah.

10 Q. What was your job there?

11 A. I was -- I scraped wood.

12 Q. Okay. And what was Mr. Samples' job?

13 A. He sharpened tools.

14 Q. Okay. So y'all had access to flooring---

15 **Mr. Newton:** Objection, Your Honor.

16 **The Court:** Overruled. Go ahead.

17 By Mr. Jackson:

18 Q. Okay. What did y'all make in Prison Industries II?

19 A. Hardwood floor.

20 Q. Like that -- like that flooring right there?

21 A. No.

22 Q. Not like that flooring right there?

23 A. No.

24 Q. What's different about the flooring that you made and
25 the flooring that's right there?

1 A. That ain't floor.

2 Q. Okay. Can you -- so that -- did y'all make that wood in
3 Prison Industries II?

4 A. Oh, I don't know where the wood came from. I didn't
5 know nothing about the wood until---

6 Q. Okay.

7 A. ---until the time.

8 Q. All right. So the wood that is right there in front of
9 us, Mr. Samples was -- is responsible for fabricating that
10 wood?

11 **Mr. Newton:** Objection, Your Honor.

12 **The Witness:** Yeah.

13 **The Court:** Sustained.

14 By Mr. Jackson:

15 Q. What time were you supposed to get off work roughly when
16 you worked in the building?

17 A. 4:00.

18 Q. Okay. And had -- what was the guard situation like?
19 Were there a lot of guards? Were there not a lot of guards?

20 A. Wasn't really no guards there.

21 Q. Okay. So how did they clear the building at around this
22 time when the shift ended and you went back to the dorms?

23 A. They just wait 'til they think it's empty and then they
24 scream in the building, "Is the building clear?" and leave,
25 lock the building.

1 Q. Let me show you a couple of pictures. May I approach,
2 Your Honor? This is State's Exhibit 8 and Exhibit 9. Do you
3 recognize this?

4 A. Yeah, that's the building we worked in.

5 Q. Okay. Is that a fair and accurate representation of
6 what it looked like when you were there in 2007?

7 A. Yeah.

8 **Mr. Jackson:** Okay. Your Honor, I'd like to move
9 State's Exhibits 8 and 9 into evidence.

10 **Mr. Newton:** Can I take a look at these real quick?
11 Your Honor, the first time we saw these was this morning, but
12 we have no objection to having these entered.

13 **The Court:** All right.

14 **Mr. Jackson:** Your Honor, I would like to publish these
15 to the jury.

16 **The Court:** Go right ahead.

17 (State's Exhibits 8 and 9 were received in evidence.)

18 By Mr. Jackson:

19 Q. So you just stated that the guards yell, "Building
20 clear." On the day that y'all escaped, when they yelled,
21 "Clear," what did you and Mr. Samples do?

22 A. We just stayed in the plant.

23 Q. Okay. You hid?

24 A. Pretty much.

25 Q. Okay. At that point after you stayed in the building

1 and hid, what did you do then?

2 A. We just waited.

3 Q. Did you construct a ladder?

4 A. Yeah, after we came out.

5 Q. And -- beg the Court's indulgence. Did you find another
6 ladder?

7 A. Yeah. When the -- when the second one broke, messed up,
8 we had to get another one.

9 Q. Okay. So how did you get another one?

10 A. We cut the chain on it.

11 Q. Okay. I'm going to show you three pictures marked
12 State's Exhibits 5, 6, and 7. Your Honor, may I approach?

13 **The Court:** Yes.

14 By Mr. Jackson:

15 Q. Are these three pictures pictures of the A-Frame ladder
16 that you and Mr. Samples used to get over the second fence?

17 A. It looks like it.

18 Q. Is that how -- is that a fairer representation of when
19 y'all escaped that night?

20 A. Yeah, it's an A-Frame ladder.

21 Q. Okay. Up against the fence with the razor wire?

22 A. Yeah.

23 **Mr. Jackson:** Your Honor, I'd like to move these three
24 pictures, State's Exhibits 5, 6 and 7, into evidence.

25 **Mr. Newton:** Your Honor, again we saw these just this

1 morning, but we have no objection.

2 **The Court:** No objection.

3 **Mr. Jackson:** Request to publish these to the jury.

4 **The Court:** Go ahead.

5 **Mr. Jackson:** Thanks.

6 (State's Exhibits 5 through 7 were received in
7 evidence.)

8 By Mr. Jackson:

9 Q. Did you get injured going over the fences?

10 A. We got cut in a couple of different places, but it
11 wasn't really nothing that---

12 Q. Right.

13 A. ---slowed me down or hurt me or nothing like that.

14 Q. What about Mr. Samples?

15 **Mr. Newton:** Objection, Your Honor. Any statement
16 coming from this would be hearsay.

17 **The Court:** He can say what he saw.

18 **Mr. Jackson:** That's what I'm asking for, Your Honor.

19 **The Court:** Then ask him that -- then ask him that
20 question.

21 By Mr. Jackson:

22 Q. Did you see whether or not Mr. Samples got injured on
23 the razor wire or when---

24 A. I really didn't -- I really didn't know until after the
25 matter.

1 Q. Okay. Who was the first person to get over the second
2 fence?

3 A. Get over the second fence? I went over the second --
4 over both of them.

5 Q. I'm sorry?

6 A. I went over the second -- both of them. I was the last
7 one over both.

8 Q. I got it. So where was the last place you saw Mr.
9 Samples?

10 A. That's the last place.

11 Q. After he went over the second fence?

12 A. Yeah. I never seen him again.

13 Q. Okay. Is he present in the courtroom today?

14 A. Yes, sir.

15 Q. Can you identify him for us?

16 A. Yes, sir.

17 **Mr. Jackson:** Nothing further, Your Honor. Please
18 answer any questions the defense may have.

19 Cross-Examination

20 By Mr. Newton:

21 Q. Good afternoon, Mr. Storey. You are in the department
22 of corrections on a 25-year sentence for burglary; correct?

23 A. Yes, sir.

24 Q. Okay. You'd love to get out of prison; is that correct?

25 A. Yes, sir, I would.

1 Q. You'd do anything to get out of prison, wouldn't you?

2 A. I don't know about anything.

3 Q. You'd try to escape; right?

4 A. Yeah.

5 Q. You're testifying today in hopes to get a reward out of
6 this; correct?

7 A. I wouldn't say that. I'm hoping, but that ain't...

8 **Mr. Newton:** Beg the Court's indulgence. No further
9 questions.

10 Redirect Examination

11 By Mr. Jackson:

12 Q. Mr. Storey, can you point out Mr. Samples?

13 A. Yes, sir.

14 Q. Can you point -- your hands are...

15 **The Court:** Ask him what he's wearing.

16 By Mr. Jackson:

17 Q. Can you -- can you tell us what he's wearing?

18 A. The same thing I'm wearing.

19 **The Court:** Let the record indicate he's identified the
20 defendant.

21 **Mr. Jackson:** No further questions, Your Honor. Can we
22 have Mr. Storey excused?

23 **The Court:** Normally with witnesses I say you're free to
24 go, but I can't do that. You're free to leave the courtroom.

25 (Mr. Storey leaves the courtroom.)

1 **The Court:** Next witness.

2 **Mr. Jackson:** Your Honor, the State calls Chip Steppe.

3 Claude "Chip" Steppe, after being duly sworn,
4 testified as follows:

5 **The Clerk:** Have a seat in the witness box. State your
6 full name for the record, please.

7 **The Witness:** My name is Claude Aaron Steppe, IV. I go
8 by Chip.

9 Direct Examination

10 By Mr. Jackson:

11 Q. Good afternoon, Mr. Steppe. How are you doing?

12 A. Good.

13 Q. Thank you for being here. Where do you work currently?

14 A. I'm with the South Carolina Law Enforcement Division.

15 Q. Okay. And what do you do there?

16 A. I am on the tracking team and part of a Special
17 Operations S.W.A.T. team.

18 Q. Okay. Can you sort of just describe for the jury what
19 that means?

20 A. At S.L.E.D. we have something called Special Operations
21 which houses aviation, tracking, tech services, and the
22 S.W.A.T. team, and there are seven of us that do full-time
23 dogs and S.W.A.T. and I am one of those guys.

24 Q. Okay. So you worked there for -- you said 19 years?

25 A. I have been a police officer for 19 and a half years. I

1 have been with the State Law Enforcement Division for -- this
2 is my 12th year. October will be 12 years.

3 Q. Right. Were you employed with S.L.E.D. in 2007?

4 A. Yes, I was.

5 Q. Okay. And what were your duties then?

6 A. At the time I was part of a fugitive unit. We were
7 actually under the umbrella of the Special Operations at the
8 time, and also on the side I was doing tracking duties on the
9 side.

10 Q. Okay. What were your hours, if you can recall?

11 A. You know, it varied. Monday through Friday, 8 to 5,
12 but, you know, a lot of times I was out all times of day and
13 night.

14 Q. Okay. Were you working on August 14th, 2007?

15 A. Yes, sir.

16 Q. Okay. What happened that day?

17 A. I believe I was at headquarters at the time, and the
18 tracking team contacted us and said they had an escapee at
19 one of the SCDC institutions. Generally when we get an
20 escapee, generally a fugitive agent and some trackers go
21 there to assist and see what we can do to help SCDC out.
22 Generally there's two trackers and at least one of our or two
23 of our investigators. At the time I was an investigator. I
24 responded with the tracking team to the location and was
25 assisting them to start with.

1 Q. Okay. So when you arrived at the prison -- you started
2 at the prison?

3 A. Yes, sir, the institution.

4 Q. Okay. And the prison is in which county?

5 A. Richland County.

6 Q. Okay. And so you arrived at the prison. What was the
7 first thing that you did?

8 A. We arrived at the institution. We generally talk to
9 SCDC officers and they advised what they had, and they
10 advised they had two individuals that escaped the custody of
11 the institution. They took us to the location they believed
12 they escaped, and at that location we -- I think we noticed a
13 ladder or two or something like that that crossed the
14 Constantine fence because I believe there are two layers of
15 fences right there at the institution.

16 And then what we did from there was we worked from there
17 outside of the institution, trying to pick up any tracks or
18 trails leading from the institution into the wood line, and
19 that's one of the reasons I was there. I had done this for a
20 period of time, so I was pretty proficient at that. So I
21 looked for tracks and tried to get a trail with the dog away
22 from the institution.

23 Q. So you used the dog to pick up scent, and then you also
24 looked for physical tracks?

25 A. That's right. We track with a bloodhound, Redbone mix.

1 It's just a crossbreed dog is what we use. And we also train
2 our guys on man-tracking, just visually look for signs that
3 are other than animal signs, anything that can be human:

4 Foot tracks, leaves turned over, any kind of disturbance like
5 that that's abnormal that you wouldn't normally see in a wood
6 line or anywhere, especially areas where they go through
7 briars or push through.

8 Q. Mr. Steppe, I'm going to show you a couple of pictures
9 that are marked Defense (verbatim) Exhibits 5 through 7.

10 When you arrived at the scene, were these -- does this fairly
11 depict the scene of the ladders that you saw?

12 A. Yes, sir.

13 Q. Okay. What do you see there?

14 A. They laid one ladder into the fence and tried to cross
15 that Constantine...

16 Q. What's -- what do you mean by Constantine?

17 A. Constantine is not like -- you know, you have -- a lot
18 of times we'll talk about the barbed wire they use on like
19 cattle fences and stuff like that. Constantine is a wire
20 that wraps the top of the fence, and on the edges of that
21 wire it looks like razors and it literally will cut you like
22 a razor. So a lot of times when -- and I've chased a lot of
23 inmates like this. A lot of times when they go over the
24 Constantine, they generally cut themselves. So that
25 Constantine is there to prevent them from crossing that fence

1 because they're going to get cut unless they put something
2 over it to block it or push it down in some way to get across
3 it.

4 Q. Right. And these are exhibits 8 and 9. Is this the
5 building that was right next to where you saw the ladders on
6 the fence?

7 A. Yes, sir, I believe so.

8 Q. Okay. All right. Thank you. So when you got to the --
9 got to the fence, you started -- you started out with the
10 dogs?

11 A. I did.

12 Q. Okay. Which direction did you head?

13 A. Away from the institution. If I could look at that map,
14 I'll show you.

15 Q. Yeah. I'll just hold it up right here. Here is sort of
16 a -- this is Defense Exhibit -- I mean, State's Exhibit 2 and
17 here is the prison, and there's sort of where they were.

18 A. Yeah. We worked this patch of woods. I remember that
19 because it was very thick, and then we kind of worked in a --
20 I believe, if I remember right -- this has been five years
21 ago, but I believe we worked to the right and started working
22 down toward the wood line.

23 Q. Okay.

24 A. And I know we worked through here a little bit because
25 what happens is -- depends on how old the trail is, how quick

1 a dog will strike it. I mean, if it's -- if it's pretty hot,
2 it will be fast. The dog will strike it pretty good, but our
3 dogs are generally---

4 Q. What do you mean by strike it? Just pick up on the
5 scent?

6 A. Pick up on the scent and go with the trail.

7 Q. Uh-huh.

8 A. You know, you could -- what you -- what we're looking
9 for here is when we come out here and we find that somebody
10 has escaped, we're going to cut -- we're going to cut from
11 Point A. to Point B. until we pick up the trail. It'll start
12 in close to the fence, and then it will work out. And if we
13 get out here and we get it, then the dog will -- our dogs
14 generally bark - bark, strike - then we move on from there.
15 Then we work on here.

16 I believe we came through here, worked down through
17 here, and I know we came through the steel to an extent
18 because I remember seeing something. We had -- I know we had
19 some kind of sign, footwear or something. I can't tell you
20 what it was exactly, but I know we had it. Came through
21 here, went down, and then we went through a bunch of thick
22 debris. I remember seeing that and I remember coming down.
23 Then we started working down here.

24 Now, we got deeper in this wood line, and we ended up
25 coming off the trail. What happens is, you know, you work

1 for a period of time. The dog will get on it. He'll work it
2 for awhile; sometimes he'll come off of it. And it's up to
3 the handlers to either man-track it out or cross the trail
4 again with the dog and then pick it right back up. So we
5 lost it for a period of time. We started cutting is what we
6 call it, so we began looking for it again.

7 Q. So cutting means looking for it again?

8 A. That's right. We're cutting -- we're cutting -- we're
9 trying to work it out, trying to figure out where the trail
10 went.

11 Q. Okay.

12 A. And, you know, a lot of times we'll find a sign. You
13 know, there's not going to be a lot of foot traffic back in
14 there behind the institution, so we're going to find
15 something that's abnormal and fresh. And a lot of stuff
16 that's fresh will be -- the ground will be softer. It won't
17 be hard and crusted over.

18 Q. Did you make it down to the river?

19 A. I did.

20 Q. Okay. Do you remember anything about that?

21 A. Well, I worked both sides of the bank down there, and I
22 was on the ground working from team to team, trying to help
23 the guys, trying to figure out what was going on, and I think
24 two -- two of our guys and another guy were down below or in
25 and they were working the edge of the riverbank and they

1 noticed some kind of abnormal signs going in toward the river
2 and---

3 Q. What do you mean abnormal signs?

4 A. It wasn't animal. A lot of times you'll see deer
5 tracks. A lot of people know deer tracks. You'll see a
6 little bit of disturbance, but this was more of a larger
7 disturbance, kind of a slide going down the bank. One of my
8 guys called me and said, "Hey, we got disturbance on this
9 side of the river. Do you think we need to check the river?"
10 And I said, "Absolutely." I also was a game warden for five
11 and a half years, so I had contacts with the wildlife guys
12 and I called them to come help me out.

13 Q. Wildlife guys? You mean D.N.R.?

14 A. Yes, sir. South Carolina Department of Natural
15 Resources.

16 Q. Okay.

17 A. Yes, sir.

18 Q. So when you called D.N.R., take us from there.

19 A. Okay. What I was looking for was I was looking for a
20 boat to get in the river because, I mean, the water wasn't
21 deep at that time. It was fairly shallow because it was kind
22 of dry, but I wanted a boat so I could get kind of in the
23 middle of the river and check both sides of the bank all the
24 way down the river because if you're going to cross that
25 river, you're going to cross a creek, you're going to cross a

1 stream, and you're going to leave something behind. You're
2 going to either leave it coming down or you're going to
3 either leave it coming up, and a lot times when people cross
4 creeks, rivers, and streams they'll leave good slide marks up
5 and down the banks and then they'll leave water on the bushes
6 and limbs and stuff crossing into the wood line.

7 Q. I'm showing you Defense Exhibits -- I mean, State's
8 Exhibit 1 and will you -- here is the prison. Which way did
9 you start heading? Were you going north or south?

10 A. You know, I know it was a power line. So if that's a
11 power line above, yeah. I know it was that way up there
12 toward the power line, and I know when we got into the river
13 we were working down the river. I remember a shack of some
14 sort on the other side of the river that was kind of just --
15 you know, there's not a lot of -- there's not a lot of stuff
16 out there. There's no houses, no property or nothing, so
17 you've kind of got to look for stuff that's structured that
18 you can go by. But I remember there was a house and
19 something, but I know we got near that power line and crossed
20 down near that power line.

21 Q. Okay. What time of -- what time of day was this? Was
22 this the night that the escape happened or was this the next
23 day?

24 A. I think it was the next day. We had been out since it
25 originally occurred.

1 Q. Okay. So do you remember -- I know it was a long time
2 ago. Do you remember what time you started---

3 A. No.

4 Q. ---on the boat?

5 A. I'll be honest with you. I can't -- we'd been on the
6 ground for a long period of time, and that's kind of normal
7 with this.

8 Q. Can you tell me after you got out in the boat what
9 you -- you know, sort of what happened and what you---

10 A. Sure. Sure. Well, when I got -- when I called the
11 S.C.D.N.R. to get me a boat over there, they brought two game
12 wardens and me and then I got another one of our trackers to
13 come with me. And we put in a landing which is right above
14 S.C.D.C. We put in the boat. We were working the river,
15 both sides. I'm looking for signs. I had my other guy in
16 there with me. He could help me, pretty good tracker. He
17 looked for signs, too.

18 As we were going down the river, I noticed there was
19 this large stump, dead tree or something, that kind of bended
20 (verbatim) out in the river and kind of bent back, and there
21 was a bottle sitting upright on the stump and, you know,
22 stuff -- stuff floods up, but stuff don't generally sit
23 upright. It looked clean; it looked fresh.

24 Q. Let me stop you. What do you mean by a bottle?

25 A. A bottle of water.

1 Q. Okay.

2 A. A bottle of water. I'm sorry. A bottle of water
3 sitting upright on the stump. And then once we got a little
4 closer, what I told the guys was just: Let's get a little
5 closer to that because that's abnormal. That's not something
6 you'd normally see. Something doesn't sit straight upright
7 like that on a stump.

8 We got a little closer. As we got a little closer, I
9 believe we saw some kind of crackers, some kind of food items
10 sitting on top of the stump also which was abnormal. You
11 don't generally see that. You know, like I said, floodwaters
12 come in and they're going to push stuff around. There's
13 going to be mud on it and debris on it and stuff like that,
14 so abnormal -- we saw that.

15 And as we saw that, I remember telling my buddy -- I
16 said, "I'm getting out." It wasn't deep. It was fairly
17 shallow; it wasn't no higher than my waist. I jumped out,
18 started working myself toward that stump, and as I remember
19 getting toward that stump, I remember seeing like a tan
20 uniform or some kind of skin on the side of the stump. When
21 I come around, that's when I located Mr. Samples.

22 Q. So the person you saw hiding in the water was Mr.
23 Samples?

24 A. Yes, sir.

25 Q. He's in the courtroom today?

1 A. Yes, sir.

2 Q. Okay. And can you point him out?

3 A. (The witness points.)

4 **Mr. Jackson:** Let the record show he's pointed to the
5 defendant.

6 **The Court:** The witness identified the defendant.

7 By Mr. Jackson:

8 Q. Okay. Was he injured?

9 A. Yeah. When I -- when I -- when I got him to clear his
10 hands and put his hands out, I remember grabbing one of his
11 arms and I'm thinking it was his -- I'm thinking it was his
12 right arm; I can't recall. It's been five years ago. But I
13 grabbed his arm, went to pull him out from behind the stump.
14 I noticed he had a big gash of some sort on his arm somewhere
15 amongst the tattoos on him that was just big and -- big and
16 -- big and nasty. You could tell it had been in the water
17 for a period of time because it had dried out white. So it
18 had been there for awhile.

19 Q. Did he resist you when you were trying to detain him?

20 A. I mean, passive resistance mainly, just not wanting to
21 clear his hands.

22 Q. Okay. And after that, what did you do?

23 A. We pulled him up. We ended up getting handcuffs on him.
24 I walked him up to the bank because I -- we couldn't put him
25 back in the boat. And some officers from the bank came down

1 and got him up the bank and took him in custody.

2 **Mr. Jackson:** Thank you, Your Honor. Nothing further.
3 If you would answer any questions the defense counsel has.

4 **Mr. Newton:** May it please the Court?

5 Cross-Examination

6 By Mr. Newton:

7 Q. Mr. Steppe?

8 A. Uh-huh.

9 Q. You do not work for the department of corrections?

10 A. I do not.

11 Q. So you would not know him at -- you didn't know him
12 until you met him at the log?

13 A. That is correct.

14 **Mr. Newton:** Beg the Court's indulgence. No further
15 questions.

16 **Mr. Jackson:** Nothing further, Your Honor.

17 **The Court:** All right. You may come down. May this
18 witness be excused? Without objection. You're free to go,
19 sir.

20 **The Witness:** Thank you.

21 **The Court:** Next witness?

22 **Mr. Pauling:** Your Honor, the State rests.

23 **The Court:** All right. All right. Ladies and
24 gentlemen, that's all the evidence that's going to be
25 presented to you from the State. Now, as I told you earlier,

1 **Mr. Pauling:** Yes, sir, Your Honor.

2 **The Court:** Defense ready to proceed?

3 **Ms. Walker:** Yes, Your Honor.

4 **The Court:** All right. At this time I'd like to ask Mr.
5 Samples if he plans to offer testimony.

6 **Ms. Walker:** Judge, at this time I believe my client
7 does not wish to testify.

8 **The Court:** Is that correct, sir?

9 **Mr. Samples:** That's correct.

10 **The Court:** All right. Any other witnesses for the
11 defense?

12 **Ms. Walker:** No, Your Honor. At this time the defense
13 would rest.

14 **The Court:** All right. Any motions?

15 **Ms. Walker:** Your Honor, just to renew all objections
16 and motions at this time, Your Honor.

17 **The Court:** All right. Well, I don't feel any
18 differently about the evidence than I did at the directed
19 verdict stage of the proceedings and, therefore, I
20 respectfully deny your motion.

21 **Ms. Walker:** Thank you, Your Honor.

22 **The Court:** Any requests to charge from the State?

23 **Mr. Pauling:** Your Honor, I believe that your standard
24 charge in this will probably be totally adequate for us.

25 **The Court:** All right.

1 and arrived at a unanimous verdict, please indicate your --
2 on the indictment either guilty or not guilty. Sign your
3 name and date it today and we will knock on -- knock on the
4 jury room door and we'll accept your verdict.

5 I'm going to ask you to retire to the jury room now.
6 Don't begin your deliberations until you receive this piece
7 of paper, the indictment, and the evidence that's been
8 introduced during the course of the trial. All right, ladies
9 and gentlemen. You may now retire to the jury room. Just
10 relax for a minute, and the bailiff will bring to you the
11 evidence and the indictment. Thank you very much.

12 (Whereupon, the jury was excused from open court at
13 10:12 a.m.)

14 **The Court:** Any exceptions to the charge from the State?

15 **Mr. Pauling:** No, sir, Your Honor.

16 **The Court:** From the defense?

17 **Ms. Walker:** No, Your Honor.

18 **The Court:** All right. Let's review the evidence with
19 the court reporter, and we'll send it to the jury.

20 **Mr. Pauling:** Thank you, Your Honor.

21 **The Court:** Bring the alternates back out.

22 (Whereupon, the alternate jurors were excused from the
23 trial. The jury began deliberating at 10:16 a.m.)

24 **The Court:** Be seated. The bailiff has informed the
25 Court the jury has reached a verdict. Is the State ready to

1 receive the verdict?

2 **Mr. Pauling:** Yes, Your Honor.

3 **The Court:** Is the defense ready to receive the verdict?

4 **Ms. Walker:** Yes, Judge.

5 **The Court:** Bring the jury.

6 (Whereupon, the jury returned to open court with a
7 verdict at 10:35 a.m.)

8 **The Court:** Mr. Foreman, has the jury reached a verdict?

9 **Foreman:** Yes, sir, we have.

10 **The Court:** Will you hand it to the bailiff, please?

11 Madam Clerk, will you publish the verdict?

12 **The Clerk:** Yes, Your Honor. State of South Carolina,
13 the County of Richland, in the matter of The State versus
14 Forrest Kelly Samples. On indictment number 2012-GS-40-0036,
15 an indictment for escape, the jury finds the defendant
16 guilty, signed by the foreperson, dated June 19th, 2012. Mr.
17 Foreman, is this your verdict and the verdict of the entire
18 jury?

19 **Foreman:** Yes, it is.

20 **The Clerk:** Thank you.

21 **The Court:** Any desire to poll the jury?

22 **Ms. Walker:** Yes, Your Honor, please.

23 **The Court:** Madam Clerk, poll the jury.

24 **The Clerk:** Ladies and gentlemen of the jury, Mr.

25 Foreman, I'm going to ask each of you two questions. Please

1 (Whereupon, the jury was excused from the trial.)

2 **The Court:** All right. Solicitors, if you'll...

3 **Mr. Pauling:** Your Honor, I have the sentencing sheet
4 prepared, and I can do the fine sheet fairly quickly if you
5 like.

6 **The Court:** Go ahead.

7 **Ms. Walker:** Your Honor, I would just -- I just have
8 some matters to put on the record.

9 **The Court:** Yes. Go ahead.

10 **Ms. Walker:** Thank you, Your Honor. May it please the
11 Court? Your Honor, at this time I would again renew all
12 motions and objections that were previously overruled, Judge.
13 Furthermore, I renew my directed verdict motion, specifically
14 the grounds regarding insufficient evidence to go to the jury
15 for intent, Judge. Your Honor, I would also move for a new
16 trial at this time especially on the grounds of a short
17 deliberation time of the jury.

18 **The Court:** All right. Overruled. Thank you very much.

19 **Ms. Walker:** Thank you, Judge.

20 **The Court:** All right. I will give the jury a chance to
21 decide what they want to do. Did you talk to them, Becky?

22 **The Clerk:** Yes, sir.

23 **The Court:** Are they going to come back?

24 **The Clerk:** I told them if they wanted to come in and
25 sit in the gallery...

1 (Pause in proceedings.)

2 **The Court:** All right. Be seated. Ready, solicitor?

3 **Mr. Jackson:** Yes, Your Honor.

4 **The Court:** All right. Bring -- Ms. Walker, bring your
5 client around. All right, Solicitor.

6 **Mr. Jackson:** Your Honor, all we have now is just the
7 defendant's rap. In 1988 he was convicted of a breach of
8 peace for which he had a bond forfeiture.

9 **The Court:** Speak up.

10 **Mr. Jackson:** I'm sorry. In 1988 he then had a petit
11 larceny; he got 30 days. '88, a shoplifting, 30 days. In
12 1991 an ABHAN for which he got five years suspended on two
13 years---

14 **The Court:** Assault and battery of a high and aggravated
15 nature.

16 **Mr. Jackson:** Yes, sir.

17 **The Court:** Five years.

18 **Mr. Jackson:** Five years suspended on two years
19 probation.

20 **The Court:** Okay. What year was that?

21 **Mr. Jackson:** That was in '91.

22 **The Court:** Okay.

23 **Mr. Jackson:** 1992 he had an escape for which he
24 received one year suspended on probation. In 1993 a grand
25 larceny for which he received seven years suspended on two

1 years confinement and five years probation, and in 1998 he
2 was convicted of murder for which he received life
3 imprisonment, kidnapping for which he received a 30-year
4 consecutive sentence, armed robbery which he received a
5 30-year consecutive sentence, grand larceny - a 10-year
6 consecutive sentence, and a possession of firearm, violent
7 crime, for which he received a five-year consecutive sentence
8 adding up to life plus 75 years.

9 **The Court:** Okay. Long time. Ms. Walker?

10 **Ms. Walker:** Thank you, Your Honor. May it please the
11 Court? Very briefly, Your Honor, I'll just tell you that Mr.
12 Samples was a pleasure to represent. He's not a demanding
13 client. He's very patient, and I enjoyed representing him.

14 Your Honor, he's doing a life plus 75 years. He's done
15 -- I believe he's entitled to credit for 1308 days up 'til
16 today's date, Your Honor, and from when the warrant was
17 served a year after the event occurred. I would just ask
18 that you impose a time-served sentence.

19 **The Court:** All right. Mr. Samples, do you have
20 anything you want to say?

21 **Mr. Samples:** No, sir.

22 **The Court:** All right. What county was your murder
23 conviction in?

24 **Mr. Samples:** Laurens County.

25 **The Court:** Laurens County? Who was the presiding judge

1 in that case?

2 **Mr. Samples:** Victor Pyle.

3 **The Court:** Victor Pyle?

4 **Mr. Samples:** (Nodded head up and down.)

5 **Ms. Walker:** And, Your Honor, I believe he's already
6 been punished within the prison system and is currently
7 dealing with that as we speak.

8 **The Court:** 1308 days?

9 **Ms. Walker:** Yes, Your Honor.

10 **The Court:** Do you have any problem with that?

11 **Mr. Jackson:** No, Your Honor.

12 **The Court:** All right. Mr. Samples, sentence of the
13 Court is you be committed to the State department of
14 corrections for a period of five years, consecutive to your
15 present sentence. Given credit for 1308 days. Good luck to
16 you, sir.

17 **Ms. Walker:** Thank you.

18 (Whereupon, the proceedings were concluded.)
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JANUARY 18, 2012,
the Grand Jurors of Richland County present upon their oath:

ESCAPE

CDR: 2527 24-13-0410

That FORREST KELLY SAMPLES did in Richland County, on or about
AUGUST 14, 2007, while lawfully confined in prison or upon the public works of
a county, or while in the custody of a superintendent, guard or officer, escape [or
attempt to escape, or did have in his or her possession tools or weapons which may
be used to facilitate an escape,] in violation of Section 24-13-0410, S. C. Code of
Laws, 1976, as amended.

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


DAN JOHNSON, SOLICITOR

01

WITNESSES

D. Hurt
(S) LARRY ESTES - SCDC

ARREST WARRANT NUMBER

1907168

ACTION OF GRAND JURY

TRUE BILL

Margaret A. Dickerson
Foreperson of Grand Jury

Date: *JAN 20 2012*

VERDICT

Guilty

David S. Dennis
Foreperson of Petit Jury

Date: *1/19/12*

DOCKET NO. 2012GS40 00363

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

007

THE STATE
vs.

FORREST KELLY SAMPLES

Indictment for
ESCAPE WHILE IN CUSTODY

SC Code: 24-13-0410

CDR Code: 2527

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 8th, 2013



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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in requiring Appellant to remain in shackles where he was on trial for escape and had a prior escape conviction, and further, Appellant's shackles did not contribute to the verdict

STATEMENT OF THE CASE

Appellant was convicted for escape following a jury trial on June 18-19, 2012. The Honorable G. Thomas Cooper, Jr., sentenced Appellant to five years' imprisonment with credit for time served. The sentence runs consecutive to Appellant's present sentence of life plus seventy years' imprisonment.

STATEMENT OF FACTS

Appellant Samples escaped with co-defendant Andrew Storey. Storey was friends with Samples. They started to plan the escape four to five months before the prison break. Samples sharpened tools and Storey scraped wood at their jobs with Prison Industries II where they made hardwood flooring. Samples and Storey made a ladder from the flooring. When the plant closed, Samples and Storey hid in the plant and then put their plan in motion. They used the ladder they constructed and took another one from the plant to climb over two different fences. Storey did not see Samples again after they went over the second fence. ROA. pp. 59-61.

Storey was found on the railroad tracks near the prison. ROA. p. 38.

Agent Claude "Chip" Steppe of the Law Enforcement Division Fugitive Unit found Samples in the river.¹ Steppe focused his search on the riverbank when one of the

¹ The river was the nearby Broad River. See ROA. pp. 28-31 (describing aerial map and the surrounding geography by the Broad River Institute).

other members of the unit noticed a disturbance on the riverbank too large to be merely deer tracks. Agent Steppe contacted the Department of Natural Resources (DNR) to provide a boat so he could stand in the middle of the river and check out the bank from both sides. Agent Steppe testified that "a lot of times when people cross creeks, rivers, and streams they'll leave good slide marks up and down the banks and then they'll leave water on the bushes and limbs and stuff crossing into the wood line." App. pp. 107- 110 (direct quote p. 109, lines 3-6).

Agent Steppe, two DNR wardens, and another tracker headed by boat down river from the landing. Steppe noticed a dead tree bent over the river with a bottle sitting on the stump. It looked fresh and was upright, not like a bottle that merely washed up on the stump. Some crackers also were sitting on the stump. Agent Steppe hopped out of the boat. Waist-deep, he waded towards the stump to discover Samples hiding in the water. App. pp. 110-112. Samples had a big gash on his arm, white from being in the water. App. p. 112. In all likelihood, he cut it going over the Constantine wire sitting atop the fencing at the prison. App. p. 98; p. 104 (Agent Steppe testified that Constantine wire is not like barbed wire that is used on cattle fencing; instead "Constantine is a wire that wraps the top of the fence, and on the edges of that wire it looks like razors and it literally will cut you like a razor.").

ARGUMENT

The trial court did not err in requiring Appellant to remain in shackles where he was on trial for escape and had a prior escape conviction, and further, Appellant's shackles did not contribute to the verdict.

Appellant Samples alleges the trial court erred in allowing Samples to remain in shackles during trial. Samples wore, without objection or explanation, his prison uniform. Samples was serving a life sentence for murder, plus an additional seventy years' imprisonment. He was on trial for escape and already had a prior escape conviction. The prosecution reported he had six other escape attempts that were handled internally by the Department of Corrections. Samples' conviction was a foregone conclusion in light of overwhelming evidence presented at trial. The trial court did not err in requiring Samples to remain shackled, and further, the fact that Samples was shackled did not contribute to the verdict, so the conviction and sentence should be affirmed.

In Deck v. Missouri, 544 U.S. 622 (2005), the United States Supreme Court found routine use of shackles violates an accused's due process rights. Deck holds the following:

[W]here a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.

Id. at 635.

In the instant case, the shackling was justified based on the fact that Samples was

already serving a life sentence for murder and already had an escape conviction. Samples had six prior escape attempts handled internally by the Department of Corrections. ROA. p. 8; p. 87. Further, the trial court was not prohibited from taking into consideration the fact that the present charge was also for escape. Given the escape history, the trial court did not abuse its discretion. State v. Tucker, 320 S.C. 206, 464 S.E.2d 105 (1995) (finding no abuse of discretion to require defendant remain in shackles based on two prior convictions for escape and a prior conviction for attempted escape, plus an assault while resisting officers in North Carolina. Apparently the shackles were not visible to the jury.).

Finally, even assuming the trial court's ruling was insufficient to justify Samples remaining in shackles, the evidence was so overwhelming that the shackling was harmless beyond a reasonable doubt as it could not have contributed to the verdict. Deck. Samples was an inmate who was found hiding in the Broad River outside the confines of his prison. His co-defendant gave some details of their plan and all evidence indicates that he was an escapee. The guilty verdict was a forgone conclusion.

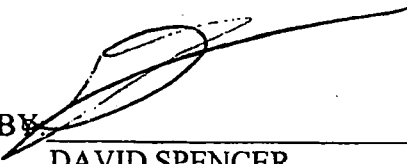
CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 26, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

FORREST KELLY SAMPLES

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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November 26, 2013

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

FORREST KELLY SAMPLES,

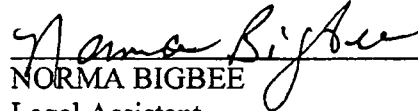
APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Carmen V. Ganjehsani, Appellate Defender, SC Commission on Indigent Defense, P.O. Box 11589, Columbia, SC 29211-1589.

I further certify that all parties required by Rule to be served have been served.

This 26th day of November, 2013



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S.C. Supreme Court

STATE OF SOUTH CAROLINA
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Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

FORREST KELLY SAMPLES,

APPELLANT

APPELLATE CASE NO. 2012-212342

FINAL BRIEF OF APPELLANT

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1. the Trial Court failed to engage in a case-by-case determination of the necessity for shackles and simply deferred to the Department of Corrections' preference that Appellant be kept in shackles; and
2. the full shackling of Appellant was not specifically justified by the circumstances.

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STATEMENT OF ISSUE ON APPEAL

The Trial Court violated Appellant's due process rights by requiring Appellant to remain restrained in full shackles visible to the jury for the entire trial where:

1. the Trial Court failed to engage in a case-by-case determination of the necessity for shackles and simply deferred to the Department of Corrections' preference that Appellant be kept in shackles; and
2. the full shackling of Appellant was not specifically justified by the circumstances.

STATEMENT OF THE CASE

On January 18, 2012, Appellant Forrest Kelly Samples was indicted by the Richland County Grand Jury for escape while lawfully confined in a prison in violation of S.C. CODE ANN. § 24-13-410. R. 90.

A trial was held before the Honorable G. Thomas Cooper and a jury on June 18-19, 2012. R. 1. Samples was represented by Anastasia Walker and Clarke Newton. Id. The State was represented by Assistant Solicitors Hans Pauling and Austin Jackson. Id.

On June 19, 2012, the jury found Samples guilty of escape. R. 85, ll. 12-18. Judge Cooper sentenced Samples to a period of five years with credit for 1308 days. This sentence runs consecutive to Samples' present sentence of life plus seventy-five years for previous convictions. R. 88, ll. 1-18; 89, ll. 12-16.

Samples timely filed and served his Notice of Appeal on June 21, 2012.

ARGUMENT

The Trial Court violated Appellant's due process rights by requiring Appellant to remain restrained in full shackles visible to the jury for the entire trial where:

- 1. the Trial Court failed to engage in a case-by-case determination of the necessity for shackles and simply deferred to the Department of Corrections' preference that Appellant be kept in shackles; and**
- 2. the full shackling of Appellant was not specifically justified by the circumstances.**

During pre-trial motions, defense counsel for Appellant Samples moved to have his "hands released" during the course of the trial. R. 7, l. 20 – 8, l. 3.

The State argued in response that it would prefer that the court "follow the procedures set forth by the department of corrections regarding inmates in custody." R. 8, ll. 6-8.

The following discourse occurred between the Trial Court, the solicitor, and defense counsel with regard to whether Samples should have to remain in full shackles during the entire trial before the jury:

The Court: What is the defendant - - the defendant is being tried for escape. What is his prior record? What's the prior record?

Solicitor Pauling: Your Honor, his prior record - - he's currently in the department of corrections on a homicide or a murder charge, and our understanding is also, Your Honor, that he has had six escape attempts that were handled, I believe internally by the department of corrections. I think there was only one attempted escape listed on his rap sheet, Your Honor.

The Court: All right. Well, I mean, what is he - - what's his present sentence?

Solicitor Pauling: Your Honor, he's currently serving a life sentence plus additional time.

The Court: On? On?

Solicitor Pauling: On murder.

The Court: Murder charge.

...

The Court: And Mr. Pauling, has the department of corrections indicated what their procedure or recommendations would be?

Solicitor Pauling: Your Honor, I believe the department has expressed to the State that they would prefer to keep him in full shackles, Your Honor, which includes leg irons, hand irons, along with attachment to his waist and belly chains, Your Honor.

The Court: For security purposes?

Solicitor Pauling: For security purposes. They are present, Your Honor, and - -

The Court: I said for security.

Solicitor Pauling: I'm sorry, Your Honor.

The Court: For security purposes?

Solicitor Pauling: Yes, sir.

The Court: All right.

Defense Counsel: If I may respond briefly, Judge.

The Court: Sure.

Defense Counsel: Your Honor, I'm unaware of any internal escapes. I'm only aware of the one that's on his prior record. Also, I'm unaware of any indication that he's unruly in the courtroom or anything of that nature. So I would just bring that to the Court's attention and leave it in Your Honor's discretion.

The Court: Well, the fact that he is not dressed in civilian clothes - - I mean, if there's an issue of prejudice - - there's certainly, I think, a minimum amount of prejudice, additional prejudice. There may be prejudice because of the way he's dressed out. I respectfully deny your request. I'm going to leave him in a secure condition as recommended by the State and the department of corrections.

R. 8, l. 9 - 10, l. 17.

The Supreme Court of the United States has emphatically declared that “[t]he law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need.” Deck v. Missouri, 544 U.S. 622, 626 (2005); see also Holbrook v. Flynn, 475 U.S. 560, 568-69 (1986) (observing that shackling is an “inherently prejudicial practice” that “should be permitted only where justified by an essential state interest specific to each trial”). The defendant may only be restrained in shackles in “extreme and exceptional” cases where “the safe custody of the prisoner and the peace of the tribunal imperatively demand” the use of shackles. Deck, 544 U.S. at 626-27. The “basic rule embodying notions of fundamental fairness” mandate that a trial court may not shackle a defendant as a matter of routine, but only if there is a “particular reason to do so.” Id. at 627. “[N]o person should be tried while shackled . . . except as a *last resort*.” Illinois v. Allen, 397 U.S. 337, 345 (1970) (emphasis added).

Accordingly, the United States Supreme Court held “the Fifth and Fourteenth Amendments prohibit the use of physical restraints visible to the jury absent a trial court determination, in the exercise of its discretion, that they are justified by a state interest specific to a particular trial.” Deck, 544 U.S. at 629.

Judicial hostility to shackling reflects the importance of giving effect to three fundamental legal principles. “First, the criminal process presumes that the defendant is innocent until proven guilty.” Visible shackling undermines the presumption of innocence and the “related fairness of the fact finding process.” Id. at 630. A defendant is ordinarily entitled to be relieved of handcuffs or other unusual restraints in the presence of a jury “so as not to mark him as an obviously bad man or to suggest that the fact of his

guilt is a foregone conclusion.” United States v. Samuels, 431 F.2d 610, 614-15 (4th Cir. 1970).

Second, the Constitution provides the defendant with a right to counsel in order to help the accused achieve a meaningful defense. The use of physical restraints diminishes the right to counsel and interferes with the accused’s ability to communicate with his attorney. Shackles can further interfere with an accused’s ability to participate in his own defense, “by freely choosing whether to take the witness stand on his own behalf.” Deck, 544 U.S. at 631.

Finally, trial court judges “must seek to maintain a judicial process that is a dignified process.” “The courtroom’s formal dignity, which includes the respectful treatment of defendants, reflects the importance of the matter at issue, guilt or innocence, and the gravity with which Americans consider any deprivation of an individual’s liberty through criminal punishment. And it reflects a seriousness of purpose that helps to explain the judicial system’s power to inspire the confidence and to affect the behavior of a general public whose demands for justice our courts seek to serve.” The routine use of shackles in the presence of the jury undermines these objectives and affronts the dignity and decorum of judicial proceedings. Id. at 631-32.

There are of course cases where the “perils of shackles” are unavoidable. Id. at 632. Factors that a trial court may take into consideration are physical security, the need to restrain dangerous defendants to prevent courtroom attacks, courtroom decorum, and the risk of escape at trial. Id. at 628-29, 632. Any such determination by the trial court must be case specific; “that is to say, it should reflect the particular concerns, say, special security needs or escape risks, related to the defendant on trial.” Id. at 633. If the trial

court does not take account of the circumstances of the particular case, an accused's due process rights are violated by the use of visible restraints given their manifest prejudicial effect. Id. at 632.

In the pending case, the Trial Court erred in requiring Samples to remain in full shackles, including leg irons, hand irons with attachments to his waist, and belly chains, for his entire jury trial. There is no question in this case that these physical restraints were visible to the jury, especially where even his hands were restrained.

The record establishes that the Trial Court did not use its discretion in determining whether Samples should remain in full shackles for the trial's entirety. The Trial Court made absolutely no findings of its own in denying Samples' motion to remove the shackles. R. 10, ll. 15-17. See Cel Prods., LLC v. Rozelle, 357 S.C. 125, 130, 591 S.E.2d 643, 645 (Ct. App. 2004) ("When a trial judge is vested with discretion but his ruling reveals no discretion was in fact exercised, an error of law has occurred.").

Rather, the Trial Court relied upon the recommendations by the State and the Department of Corrections to leave Samples in a secure condition. R. 10, ll. 15-17. The United States Court of Appeals for the Fourth Circuit has stressed that the "discretion is that of the [trial] judge" and the trial judge may not "delegate that discretion to the Marshal." Samuel, 431 F.2d at 615.

The United State Court of Appeals for the Sixth Circuit also held that a trial court cannot simply defer to a correction officer's request:

Although a trial court might find a correction officer's opinion highly relevant to answering the ultimate inquiry as to whether shackling is necessary in a particular case, an individualized determination under the due process clause requires more than rubber stamping that request. A correction officer's preference does not excuse the district court from conducting the appropriate inquiry.

Lakin v. Stine, 431 F.3d 959, 964 (6th Cir. 2005).

Here, the Trial Court did not state for the record the reasons why it was requiring the extraordinary measure of full shackles for the entire trial and simply deferred to the preference of the Department of Corrections. Samuel, 431 F.2d at 615.

In addition, the Trial Court did not explain in its ruling why shackles were needed - whether there was any risk to courtroom security or risk of escape during the trial – and the Trial Court did not explain why less intrusive procedures, such as restraints not visible to the jury or the use of guards, could have been used to protect courtroom security and prevent any risk of escape. See Deck, 544 U.S. at 634-35; Kennedy v. Cardwell, 487 F.2d 101, 108-09 (6th Cir. 1973) (expressing a preference for the use of plain-clothed guards to provide courtroom security instead of the highly prejudicial use of shackles); see also Allison, 397 U.S. at 345 (emphasizing shackles are a last resort measure).

Moreover, the record itself does not make clear that there were indisputably good reasons for restraining Samples in full shackles in front of the jury. See Deck, 544 U.S. at 635. The very fact that Samples was charged with the offense of escape cannot, alone, provide justification for the shackling. Miller v. State, 852 So.2d 904, 906 (Fla. Ct. App. 2003) (“[A]llowing the charges . . . for which [defendant] was on trial to justify the use of restraint devices is circular reasoning that offends the presumption of innocence, and [defendant’s] right to a fair trial.”).

The court must still consider whether there are any special security needs or escape risks related to the particular defendant while he in on trial. See Lakin, 431 F.3d at 964-65; McKenney v. State, 225 S.E.2d 512, 514 (Ga. Ct. App. 1976) (holding even

though defendant was on trial for escape, the State showed no circumstances which would dictate the use of handcuffs during the trial); State v. Borman, 529 S.W.2d 192, 195-96 (Mo. Ct. App. 1975) (determining the trial court abused its discretion in ordering defendant who was being tried for breaking jail and escaping to be kept in visible handcuffs and leg irons during trial where defendant had neither engaged in nor threatened disruptive conduct during the trial).

There is also no evidence in the record that Samples posed a physical security risk during the trial or presented a risk of escaping from the trial. While the record shows that Samples had a prior conviction for escape in 1992 for which he received one year suspended on probation, this remote conviction alone does not warrant the use of full shackles. R. 8, ll. 17-18; 87, ll. 23-24. See State v. Hogetvedt, 488 N.W.2d 487, 490 (Minn. Ct. App. 1992) (holding use of leg restraints visible to jury during trial violated defendant's right to a fair trial when the only evidence that defendant may have posed a threat to courtroom security was a nonviolent escape from a prison five years earlier).

The State also alleged Samples had six attempted escapes that were handled internally by the Department of Corrections, although this claim was never substantiated and defense counsel was not aware of any such attempted escapes. R. 8, ll. 12-16; 10, ll. 5-7. In Mendoza v. State, the Texas Court of Appeals reversed the trial court's order requiring the defendant to remain restrained by shackles during the trial. The trial court, in ordering the defendant to remain physically restrained, noted that the defendant "had attempted to escape several times in the past, and indeed, had been convicted of escape." The appellate court, however, observed that "beyond [that] statement, there [was] no factual basis contained in the record to support the use of restraints" 1 S.W.3d 829,

831 (Tex. Ct. App. 1999). The Texas Court of Appeals also recognized that “generalized concerns about the nature of defendant’s prior sentences [are] insufficient to support restraint.” Id.

That is the most the State provided in this case in their argument to require Samples to remain in full shackles throughout the course of the trial – generalized concerns about his one prior escape conviction and his alleged attempted escapes which were never confirmed to have even occurred. There is absolutely no other evidence in the record supporting the Trial Court’s decision to restrain Samples for the entire trial.

There is no indication from the record that Samples’ prior escape and alleged attempted escapes were violent or that the escape for which he was on trial involved violence. The evidence offered by the State with respect to his current escape charge was that he and another inmate were working in a section of the prison that made hardwood flooring where there were hardly any guards supervising the inmates’ activities. R. 63, l. 7 – 64, l. 20. At the end of the work shift, guards would clear the building by waiting until they thought it was empty and would then scream in the building, “Is the building clear?” R. 64, ll. 21-25. If there was no response, the guards would leave and lock the building. R. 64, ll. 24-25. On the day of the alleged escape, Samples and the other inmate allegedly stayed and hid in the plant when the guards yelled “Clear.” R. 65, ll. 19-24. Samples and the other inmate then allegedly left the building and made their way over two fences. R. 65, l. 25 – 68, l. 12.

There is no indication from the record that Samples has ever been unruly in court, has ever had courtroom outbursts, or has tried to escape while being transported to court proceedings or during court proceedings. There is no indication in the record that

Samples has ever threatened the security of the courtroom. Cf. Hellum v. Warden, 28 F.3d 903, 905, 907-09 (8th Cir. 1994) (affirming trial court's use of physical restraints, including handcuffs and leg irons, where (1) defendant had five prior attempted escapes, three which were successful, including an escape where he managed to obtain a gun while being escorted to a medical appointment despite being in full shackles and another attempted escape only days before the trial; (2) defendant had made statements that his best chance to escape would be at trial; and (3) defendant spoke of killing sheriff deputies and taking hostages during the trial); Stewart v. Corbin, 850 F.2d 492, 498 (9th Cir. 1988) (holding shackling of defendant during trial was supported by the evidence where (1) he had escaped from immediate physical custody of law enforcement, once while handcuffed; (2) he had previously physically assaulted officers in the courtroom, threatened a judge and an attorney, and tore off and took part of an exhibit; and (3) officers testified that defendant could not be controlled by a leg brace alone); Commonwealth v. Conley, 959 S.W.2d 77, 77-79 (Ky. 1998) (concluding defendant who had fled courtroom and escaped during his arraignment could be ordered to wear leg shackles during the trial); State v. Johnson, 499 S.W2d 371, 374 (Mo. 1973) (finding defendant was properly handcuffed for remainder of trial where during a court recess, defendant broke loose and escaped from the sheriff).

The visible shackling of a defendant during a jury trial is "inherently prejudicial." Deck, 544 U.S. at 635. "Thus, where a court, without adequate justification, orders the defendant to wear shackles that will be seen by the jury, the defendant need not demonstrate actual prejudice to make out a due process violation. The State must prove

beyond a reasonable doubt that the shackling error complained of did not contribute to the verdict obtained.” Id. (internal citations omitted).

In this case, where the jury took a mere nineteen minutes to reach a verdict, it cannot be said beyond a reasonable doubt that the shackling of Samples had absolutely no effect upon the jury and their guilty verdict. R. 84, l. 22 – 85, l. 7; 86, ll. 15-17. The State had the burden of proving that Samples escaped while lawfully confined in a prison or local detention facility, and certainly, the shackles on Samples assisted the State with their burden of proof. S.C. CODE ANN. § 24-13-410.

Based upon the foregoing arguments, the Trial Court erred in requiring Samples to remain restrained in full shackles which were visible to the jury for the entire trial.

CONCLUSION

For the reasons set forth herein, Appellant Forrest Kelley Samples respectfully requests that this Court reverse his conviction for escape and remand to the trial court for a new trial.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 13th, 2013



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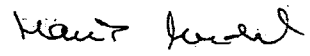
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 13th day of November, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of June, 2013.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.