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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

DANIEL E. DICKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002030

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF CHARLESTON	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 08-GS-10-6743 et al
	)	
Daniel Edward Dickson,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Jury Trial was held on October 21-22, 2008, before The Honorable R. Markley Dennis, Jr. in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Jennifer Shealy, Assistant Solicitor
Michael Sahn, Assistant Solicitor
9TH CIRCUIT SOLICITORS OFFICE
100 Broad Street, 4th Floor
Charleston, South Carolina 29401
Appearing for State of South Carolina

Rodney Davis, Public Defender
Cassie Winslow, Public Defender
Courtney Edwards
CHARLESTON COUNTY PUBLIC DEFENDER
100 Broad Street, 5th Floor
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Appearing for Defendant

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25 This dispute is captioned the State of

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1 South Carolina v. Daniel E. Dickson. Mr.
2 Dickson is seated at the table to my left.
3 Good afternoon, Mr. Dixon. If you would,
4 please stand.

5 DEFENDANT: (Complies).

6 THE COURT: Mr. Dickson is the
7 person in the white shirt, standing in the
8 middle. Thank you.

9 Are there any members of the jury panel
10 who are related by blood or marriage, who have
11 had any business dealings with, who are socially
12 or casually acquainted with Mr. Daniel E.
13 Dickson? If so, please stand. (No response).
14 Thank you, there appear to be none.

15 Mr. Dickson is represented by Mr.
16 Davis. If you would, please identify yourself
17 and anyone who would be assisting you, Mr.
18 Davis.

19 MR. DAVIS: Good afternoon, Ladies
20 and Gentlemen. I am Rodney Davis, a public
21 defender with the 9th Judicial Circuit here in
22 Charleston. Assisting me will be Cassie Winslow
23 and there will be another attorney that will be
24 here with us.

25 THE COURT: Thank you. Is there any

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1 member of the jury panel who is related by blood
2 or marriage or who has ever had any business
3 dealings, socially or casually acquainted with
4 Ms. Winslow, Mr. Edwards, Mr. Davis or who has
5 ever been represented by Ms. Winslow or Mr.
6 Davis? If so, please stand. Yes?

7 JUROR NUMBER 1: He represented me.

8 THE COURT: I'm sorry?

9 JUROR NUMBER 1: He's represented me.

10 THE COURT: He has represented you in
11 the past?

12 JUROR NUMBER 1: (Affirmative nod).

13 THE COURT: Is he representing you
14 now?

15 JUROR NUMBER 1: No.

16 THE COURT: The fact that he has
17 represented you in the past, would that affect
18 or influence you in this dispute?

19 JUROR NUMBER 1: No.

20 THE COURT: Would you base your
21 decision on the evidence and the law and would
22 that decision be fair to both sides?

23 JUROR NUMBER 1: Yes.

24 THE COURT: Your name and number,
25 sir?

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1 JUROR NUMBER 1: Damien Adams,
2 Number 1.

3 THE COURT: Thank you, sir. Yes?

4 JUROR NUMBER 265: Hi, I know Mr.
5 Edwards.

6 THE COURT: The fact that you know
7 Mr. Edwards, would that affect or influence you
8 in this case?

9 JUROR NUMBER 265: No.

10 THE COURT: Would you base your
11 decision on the evidence and the law and would
12 that decision be fair to both sides?

13 JUROR NUMBER 265: Yes.

14 THE COURT: And your number, again?

15 JUROR NUMBER 265: 265.

16 THE COURT: Any others? (No
17 response). Thank you, there appear to be none.
18 Are there any members of the jury panel related
19 by blood or marriage, have any business dealings
20 with, socially or casually acquainted with, or
21 ever been represented by anyone in the public
22 defender's office for the 9th Circuit, which has
23 offices in Berkeley and Charleston County. If
24 so, please stand; other than those that have
25 already responded. (No response). Thank you.

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1 There appear to be none.

2 Are there any members of the jury panel
3 related by blood or marriage, have any business
4 dealings with, who are socially or casually
5 acquainted with or who had ever been represented
6 by anyone in the 9th Circuit Solicitor's Office?
7 Or by Scarlet Wilson, who is the Solicitor for
8 the 9th Circuit? If so, please stand. (No
9 response). There are none.

10 Are there any members of the jury panel
11 who are related by blood or marriage, have any
12 business dealings with or are socially or
13 casually acquainted with or had any business
14 dealings with anyone employed in the Solicitor's
15 Office for the 9th Circuit, which has offices in
16 Berkeley and Charleston County? If so, please
17 stand. (No response). Thank you, there appear
18 to be none.

19 The State is represented in this matter
20 by Ms. Sahn. If you would, identify yourself
21 and anyone that will be assisting you, sir.

22 MR. SAHN: Good afternoon. My name
23 is Michael Sahn. I am an assistant solicitor in
24 the 9th Circuit. Assisting me in this trial is
25 Jennifer Shealy, an Assistant Solicitor in the

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1 9th circuit and, as well, Julia Niles (phonetic),
2 a paralegal in our office.

3 THE COURT: What is Julia's last
4 name?

5 MR. SAHN: Niles (phonetic).

6 THE COURT: Are there any members of
7 the jury panel who are related blood or
8 marriage, socially or casually connected with
9 Mr. Sahn, Ms. Shealy, Ms. Niles, or who has ever
10 been represented by Mr. Sahn or Ms. Shealy? If
11 so, please stand. (No response). Thank you,
12 there appear to be none.

13 I am going to identify a number of
14 persons and if you are related by blood or
15 marriage to any of these persons, have any
16 business dealings with them or if you're closely
17 or casually acquainted with any of them, you
18 need to stand and share that information,
19 please.

20 Pearl Jones,

21 Jennifer Gillentine,

22 Officer Mark Selenky with the

23 Charleston Police Department,

24 Officer M. Edwards, also with the

25 Charleston Police Department,

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1 Joseph Lalima, who works with the
2 Charleston Police Department,
3 Bob Boyd, also with the Charleston
4 Police Department, and
5 Angela East, likewise with the
6 Charleston Police Department.

7 Any of those? If so, please stand.
8 (No response). Thank you, there appear to be
9 none.

10 The dispute, Ladies and Gentlemen, is
11 set forth in these documents that I am holding
12 in my hand. As some of you know, these are
13 called indictments. They are really what they
14 appear to you to be, pieces of paper. They are
15 formal charging documents. They are not
16 evidence but they frame the dispute, the
17 parameters of the dispute. By these documents,
18 Mr. Dickson has been accused of two criminal
19 offenses. One offense is kidnaping, the other
20 is the offense of attempted armed robbery.

21 It is alleged that Mr. Dickson did,
22 on June the 29th, 2008, in Charleston County
23 unlawfully seized, confined, inveigled, decoyed,
24 kidnaped or did carry away Pearl Jones without
25 authority and in violation of the Code of Laws

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1 of this state which set forth the offense of
2 kidnaping.

3 Further, that on date and in that
4 place, in Charleston County, he did by use of
5 force, threats or intimidation while armed with
6 a deadly weapon, namely a screwdriver, attempt
7 to take and carry away goods and/or monies from
8 the person or immediate presence of Pearl Jones
9 with the intent to deprive her of possession;
10 which is further alleged to be a violation of
11 our Code of Laws which sets forth the offense of
12 attempted armed robbery.

13 I share that with you -- of course, it
14 is not evidence -- so that I may ask you certain
15 questions.

16 Are there any members of the jury panel
17 that have heard anything, read anything, have
18 any prior knowledge of this dispute? If so,
19 please stand. (No response). Thank you, there
20 appear to be none.

21 Is there anything about the nature of
22 this dispute or the allegations contained in
23 this dispute that you, because of some
24 philosophy you have, something that may have
25 happened to you, a family member or some close

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1 personal friend that would influence your
2 ability to fairly and impartially consider the
3 evidence and decide what you believe to the
4 truth and that decision be fair to both the
5 State and to Mr. Dickson. If you feel that
6 you would have difficulty because of some
7 philosophy, something that may have happened to
8 you or to someone in your life, please stand.
9 (No response). Thank you, there are none.

10 Are there any members of the jury panel
11 who have been the victim of or been involved in
12 any way, either accused of or testified for or
13 against someone who was accused of committing a
14 violent offense in the last five years. If so,
15 please stand. (No response). Thank you, there
16 are none.

17 Are there any members of the jury panel
18 who now or formerly, or member of your immediate
19 family who now or formerly was involved in law
20 enforcement in any capacity? If so, please
21 stand. Yes, ma'am?

22 JUROR NUMBER 224: My brother-in-
23 law was -- he just recently -- he's not now but
24 he was with the Charleston County Sheriff's
25 Office.

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1 THE COURT: Charleston County
2 Sheriff's Office?
3 JUROR NUMBER 224: Yes, sir.
4 THE COURT: He's not now employed?
5 JUROR NUMBER 224: No, sir.
6 THE COURT: Would that affect or
7 influence you in this dispute?
8 JUROR NUMBER 224: No, sir.
9 THE COURT: Your name and number?
10 JUROR NUMBER 224: Amanda Ware,
11 Number 224.
12 THE COURT: Thank you, Ms. Ware.
13 Yes, sir?
14 JUROR NUMBER 131: Carlton Lyons,
15 Number 131. My nephew is a deputy sheriff.
16 THE COURT: For Charleston ---
17 JUROR NUMBER 131: (Affirmative
18 nod), for Charleston.
19 THE COURT: Would that affect or
20 influence you, Mr. Lyons?
21 JUROR NUMBER 131: No, sir.
22 THE COURT: Thank you, sir.
23 JUROR NUMBER 118: Brother was
24 detention officer.
25 THE COURT: He is not now?

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1 JUROR NUMBER 118: No, sir.

2 THE COURT: Mr. Kramer, would that
3 affect or influence you in this matter, sir?

4 JUROR NUMBER 118: No, it wouldn't.

5 THE COURT: Your name and number?

6 JUROR NUMBER 118: Stanley Kramer,
7 Number 118.

8 THE COURT: Yes, ma'am?

9 JUROR NUMBER 142: Melody Martin,
10 Number 142. My cousin is on the City Police
11 Department.

12 THE COURT: Would that affect or
13 influence in this matter?

14 JUROR NUMBER 142: No, sir.

15 THE COURT: Thank you, ma'am. You
16 may be seated. Are there any members of the
17 jury panel who are members of or contribute to
18 any civic group dealing with various types of
19 crime and criminal activities such as Mothers
20 Against Drunk Driving, known as MADD; People
21 Against Rape, known as PAR; Citizens Advocating
22 Decency and Return to Ethics, known as CADRE; or
23 Parents Empowered to Save Teens, known as PESTS;
24 or similar organizations? If so, please stand.
25 Yes, ma'am?

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1 JUROR NUMBER 262: I contribute to
2 Mothers Against Drunk Driving.

3 THE COURT: The fact that you make
4 that contribution to Mothers Against Drunk
5 Driving, would that affect or influence you in
6 this matter?

7 JUROR NUMBER 262: No, sir.

8 THE COURT: Your name and number
9 again?

10 JUROR NUMBER 262: Althia Jeffrey,
11 Number 262.

12 THE COURT: Thank you, Ms. Jeffrey.
13 Are there any others? (No response). Thank
14 you, there appear to be none.

15 Are there any members of the jury panel
16 or member of your immediate family that has ever
17 been involved in a dispute involving a law
18 enforcement officer, any type of dispute? If
19 so, please stand. Okay, I will ask you to come
20 forward, please, ma'am. Attorneys may approach,
21 as well.

22 BENCH CONFERENCE:

23 THE COURT: Your name and
24 number?

25 JUROR NUMBER 268: Jill

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1 Neumann, Number 268.

2 THE COURT: And your situation?

3 JUROR NUMBER 268: This was in
4 Beaufort county. My brother was -- it was a
5 case of physical harm of the officer on my
6 brother, and I think it was an unlawful arrest.

7 THE COURT: Were you involved in
8 that directly?

9 JUROR NUMBER 268: No, sir, I
10 was not involved.

11 THE COURT: Would that influence
12 or affect you in this matter?

13 JUROR NUMBER 268: It would
14 not.

15 THE COURT: You would base your
16 decision on the evidence and the law in this
17 case?

18 JUROR NUMBER 268: Yes, sir.

19 THE COURT: And that decision
20 would be fair to both the State and to Mr.
21 Dickson?

22 JUROR NUMBER 268: Yes, sir.

23 THE COURT: Thank you, you may
24 take your seat.

25 (BENCH CONFERENCE CONCLUDED)

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1 THE COURT: Are there any others?

2 Yes, ma'am, please come forward.

3 BENCH CONFERENCE:

4 THE COURT: Good afternoon, your
5 name and number?

6 JUROR NUMBER 222: Number 222,
7 Latonya Vasquez.

8 THE COURT: And your situation?

9 JUROR NUMBER 222: Yes, sir.

10 It was my sister, Lakeisha Duncan, in
11 Summerville. There was a shooting and the
12 police got shot, one of the suspects ran into
13 her home and she was charged with -- it was not
14 with aiding and abetting but something else.
15 She's out on bond now.

16 THE COURT: Would that affect or
17 influence you in this matter?

18 JUROR NUMBER 222: No, sir.

19 THE COURT: You would base your
20 decision on the evidence presented in this case
21 and the law that I give to you, and your
22 decision would be fair and impartial to both the
23 State and Mr. Dickson?

24 JUROR NUMBER 222: Yes, sir.

25 THE COURT: You would be fair to

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1 both sides?

2 JUROR NUMBER 222: I would.

3 Yes, sir.

4 THE COURT: Thank you. You may
5 take your seat. What is your number again?

6 JUROR NUMBER 222: Two twenty-
7 two.

8 (BENCH CONFERENCE CONCLUDED)

9 THE COURT: Are there any others?

10 (No response). Thank you, there appear to be
11 none.

12 Many of you heard this yesterday and,
13 that it is the law in this state and every
14 state, as far as I know, that persons accused of
15 any criminal offense are never required to come
16 in and prove anything, disprove anything or
17 explain anything. The law says that persons who
18 are accused of committing any offense are
19 presumed innocent. That is an active
20 presumption and that presumption remains until
21 and unless the State can remove it by presenting
22 evidence that proves beyond a reasonable doubt
23 that the person is guilty. That means that
24 they've presented evidence beyond a reasonable
25 doubt on each element of the offense charged.

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1 If they don't, then the presumption of innocence
2 is sufficient to carry the day and the accused
3 person must be found not guilty. That is the
4 law.

5 Again, the evidence must be established
6 beyond a reasonable doubt, and I will define
7 that term for you and give you further law
8 concerning that.

9 Is there anything about your personal
10 philosophy, some strong feelings that you have
11 that would give you any trouble in honoring that
12 law and applying that law fairly and impartially
13 to the facts and evidence presented in this
14 case? Anything? (No response).

15 Any additional questions from the
16 State?

17 MR. SAHN: No, sir.

18 THE COURT: From the defendant?

19 MR. DAVIS: No, Your Honor.

20 THE COURT: The last question that I
21 ask is if each of you who are selected, and you
22 will take an oath much as I did when I took this
23 job to decide this case based on the evidence
24 and the law and by applying your commonsense,
25 your sense of logic and reasoning, at the

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1 appropriate time, fairly and impartially in
2 analyzing the evidence and decide what you
3 believe to be the truth, then take the law as I
4 give it to you and apply that law fairly and
5 impartially. If you feel that you would have
6 difficulty making that commitment to the court
7 and to the parties, for any reason, please
8 stand. (No response). Thank you, there are
9 none.

10 In just a moment, Mr. Wilson will start
11 calling names. As your name is called, you will
12 come forward -- some of you may have already
13 engaged in this process this week. You will
14 come forward -- bring with you when you come
15 your personal effects because if you're selected
16 you will be seated in the jury box.

17 Come forward and stand where I am
18 standing. First the State will have the
19 opportunity to say 'seat the juror', 'swear the
20 juror' or 'excuse the juror'. If they say to
21 seat the juror, then Mr. Davis will have an
22 opportunity to do the same thing. If he says
23 'seat the juror', then you'll take a seat in the
24 jury box. If one of them says 'excuse the
25 juror', you will return to your seat in the

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1 audience.

2 Please understand that if you are
3 excused that you're not to infer anything from
4 that. That's just part of the process and there
5 be any kind of reasons why you might be excused,
6 it is not personal. If you are excused, you
7 have to return to the audience.

8 The State has five strikes, the
9 Defendant will have ten and we will continue
10 that process until we select our twelve jurors
11 and then we will select an alternate. Strikes
12 for the alternate will be one and two. Mr.
13 Wilson, I will turn it over to you.

14 CLERK: Juror Number 63, Gloria
15 Dunlap.

16 (JUROR COMES FORWARD)

17 CLERK: What says the State?

18 MR. SAHN: Please seat the juror.

19 CLERK: What say you for the defense?

20 MR. DAVIS: (Upon sidebar with
21 Defendant), -- please seat the juror.

22 CLERK: Ma'am, you have been selected
23 for the trial of this case. Please have a seat
24 in the jury box.

25 (JUROR NUMBER 63 SEATED)

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1 CLERK: Juror Number 112, Therese
2 Jenkins.

3 (JUROR COMES FORWARD)

4 CLERK: What says the State?

5 MR. SAHN: Please excuse this juror.

6 CLERK: Ma'am, you've been excused
7 from the trial in this case. Please have a seat
8 back in the audience.

9 (JUROR NUMBER 112 EXCUSED)

10 CLERK: Juror Number 123, Heather
11 Lempert.

12 (JUROR COMES FORWARD)

13 CLERK: What says the State?

14 MR. SAHN: Please seat the juror.

15 CLERK: What say you for the defense?

16 MR. DAVIS: (Upon sidebar with
17 Defendant), -- please seat the juror.

18 CLERK: Ma'am, you have been selected
19 for the trial of this case. Please have a seat
20 in the jury box.

21 (JUROR NUMBER 123 SEATED)

22 CLERK: Juror Number 217, Michael
23 Tilly.

24 (JUROR COMES FORWARD)

25 CLERK: What says the State?

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1 MR. SAHN: Please seat the juror.

2 CLERK: What say you for the defense?

3 MR. DAVIS: (Upon sidebar with
4 Defendant), -- please seat the juror.

5 CLERK: Sir, you have been selected
6 for the trial of this case. Please have a seat
7 in the jury box.

8 (JUROR NUMBER 217 SEATED)

9 CLERK: Juror Number 232, Alfred
10 White.

11 (JUROR COMES FORWARD)

12 CLERK: What says the State?

13 MR. SAHN: Please seat the juror.

14 CLERK: What say you for the defense?

15 MR. DAVIS: (Upon sidebar with
16 Defendant), -- please seat the juror.

17 CLERK: Sir, you have been selected
18 for the trial of this case. Please have a seat
19 in the jury box.

20 (JUROR NUMBER 232 SEATED)

21 CLERK: Juror Number 255, Catherine
22 Clifton.

23 (JUROR COMES FORWARD)

24 CLERK: What says the State?

25 MR. SAHN: Please excuse this juror.

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1 CLERK: Ma'am, you've been excused
2 from the trial in this case. Please have a seat
3 back in the audience.

4 (JUROR NUMBER 255 EXCUSED)

5 CLERK: Juror Number 13, Raymond
6 Barteet.

7 (JUROR COMES FORWARD)

8 CLERK: What say you for the State?

9 MR. SAHN: Please seat the juror.

10 CLERK: What say you for the
11 defendant?

12 MR. DAVIS: Please excuse Mr.
13 Barteet.

14 CLERK: Sir, you have been excused
15 from the trial of this case. Please have a seat
16 back in the audience.

17 (JUROR NUMBER 13 EXCUSED)

18 CLERK: Juror Number 152, Lucille
19 Miles.

20 (JUROR COMES FORWARD)

21 CLERK: What say you for the State?

22 MR. SAHN: Please excuse the juror.

23 CLERK: Ma'am, you have been excused
24 from the trial of this case. Please have a seat
25 back in the audience.

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1 (JUROR NUMBER 152 EXCUSED)

2 CLERK: Juror Number 174, Florence
3 Peters.

4 (JUROR COMES FORWARD)

5 CLERK: What say you for the State?

6 MR. SAHN: Please seat this juror.

7 CLERK: What say you for the
8 defendant?

9 MR. DAVIS: (Upon sidebar with
10 defendant) -- please seat Ms. Peters.

11 CLERK: Ma'am, please have a seat in
12 the jury box. You've been selected for the
13 trial of this case.

14 (JUROR NUMBER 174 SEATED)

15 CLERK: Juror Number 182, Harriet
16 Reavis.

17 (JUROR COMES FORWARD)

18 CLERK: What says the State?

19 MR. SAHN: Please seat the juror.

20 CLERK: What say you for the defense?

21 MR. DAVIS: (Upon sidebar with
22 Defendant), -- please seat Ms. Reavis.

23 CLERK: Ma'am, you have been selected
24 for the trial of this case. Please have a seat
25 in the jury box.

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1 (JUROR NUMBER 182 SEATED)

2 CLERK: Juror Number 177, James
3 Pierce.

4 (JUROR COMES FORWARD)

5 CLERK: What say you for the State?

6 MR. SAHN: Excuse the juror.

7 THE COURT: Sir, you have been
8 excused from the trial in this case. Please
9 have a seat back in the audience.

10 (JUROR NUMBER 177 EXCUSED)

11 CLERK: State has one strike
12 remaining. Juror Number 264, Harold Kohler.

13 (JUROR COMES FORWARD)

14 CLERK: What says the State?

15 MR. SAHN: Please seat the juror.

16 CLERK: What say you for the defense?

17 MR. DAVIS: (Upon sidebar with
18 Defendant), -- please seat Mr. Kohler.

19 CLERK: Sir, you have been selected
20 for the trial of this case. Please have a seat
21 in the jury box.

22 (JUROR NUMBER 264 SEATED)

23 CLERK: Juror Number 47, Irene Coley.

24 (JUROR COMES FORWARD)

25 CLERK: What say you for the State?

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1 MR. SAHN: Please seat the juror.

2 CLERK: What say you for the
3 Defendant).

4 MR. DAVIS: (Upon sidebar with
5 Defendant) -- please excuse this juror.

6 CLERK: Ma'am, you have been excused
7 from the trial in this case. Please have a seat
8 back in the audience.

9 (JUROR NUMBER 47 EXCUSED)

10 CLERK: Juror Number 143, Jackie
11 McDaniel.

12 (JUROR COMES FORWARD)

13 CLERK: What says the State?

14 MR. SAHN: Please seat the juror.

15 CLERK: What say you for the defense?

16 MR. DAVIS: (Upon sidebar with
17 Defendant), -- please seat the juror.

18 CLERK: Ma'am, you have been selected
19 for the trial of this case. Please have a seat
20 in the jury box.

21 (JUROR NUMBER 143 SEATED)

22 CLERK: Juror Number 170, Judy Palmer.

23 (JUROR COMES FORWARD)

24 CLERK: What says the State?

25 MR. SAHN: Please seat the juror.

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1 CLERK: What says the defense?

2 MR. DAVIS: (Upon sidebar with
3 Defendant) -- please excuse Ms. Palmer.

4 CLERK: Ma'am, you have been excused
5 from the trial of this case. Please have a seat
6 back in the audience.

7 (JUROR NUMBER 170 EXCUSED)

8 CLERK: Juror Number 272, Steven
9 Wakser.

10 (JUROR COMES FORWARD)

11 CLERK: What say you for the State?

12 MR. SAHN: Please seat this juror.

13 CLERK: What say you for the
14 defendant?

15 MR. DAVIS: (Upon sidebar bar with
16 defendant) -- please excuse Mr. Nelson.

17 CLERK: Sir, please have a seat back
18 in the audience. You've been excused from the
19 trial in this case.

20 (JUROR NUMBER 272 EXCUSED)

21 CLERK: Juror Number 62, Virginia
22 Dubose. What say you for the State?

23 MR. SAHN: Please seat the juror.

24 CLERK: What say you for the
25 defendant?

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1 MR. DAVIS: (Upon sidebar with
2 defendant) -- please seat Ms. Dubose.

3 CLERK: Please have a seat in the jury
4 box. You've been selected as juror in this
5 case.

6 (JUROR NUMBER 62 SEATED)

7 CLERK: Juror Number 258, Barbara
8 Ditmore.

9 (JUROR COMES FORWARD)

10 CLERK: What say you for the State?

11 MR. SAHN: Please seat this juror.

12 CLERK: What say you for the defense?

13 MR. DAVIS: (Upon sidebar with
14 defendant) -- please excuse ms. Ditmore.

15 CLERK: Ma'am, please have a seat back
16 in the audience, you've been excused from the
17 trial in this case.

18 (JUROR NUMBER 258 EXCUSED)

19 CLERK: Juror Number 95, Wilhelmina
20 Hamilton.

21 (JUROR COMES FORWARD)

22 CLERK: What say you for the State?

23 MR. SAHN: Please seat the juror.

24 CLERK: What say you for the
25 Defendant?

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1 MR. DAVIS: (Upon sidebar with
2 defendant) -- please seat the juror.

3 CLERK: Please have a seat in the
4 jury box. You've been selected as a juror in
5 this case.

6 (JUROR NUMBER 95 SEATED)

7 CLERK: Juror Number 110, Damien
8 Adams.

9 (JUROR COMES FORWARD)

10 CLERK: What say you for the State?

11 MR. SAHN: Please excuse this
12 juror.

13 CLERK: Please have a seat back in
14 the audience. You've been excused from the
15 trial in this case. The State has exhausted
16 its strikes.

17 (JUROR NUMBER 1 EXCUSED)

18 CLERK: Juror Number 70, Clifton
19 Ferguson.

20 (JUROR COMES FORWARD)

21 CLERK: Any challenge from the State?

22 MR. SAHN: No.

23 CLERK: What say you for the
24 Defendant?

25 MR. DAVIS: (Upon sidebar with

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1 defendant) -- please seat Mr. Ferguson.

2 CLERK: Please have a seat in the
3 jury box. You've been selected as a juror in
4 this case.

5 (JUROR NUMBER 70 SEATED)

6 CLERK: Juror Number 227, Latonya
7 Vasquez.

8 (JUROR COMES FORWARD)

9 CLERK: Any challenge from the State?

10 MR. SAHN: Please seat this juror.

11 CLERK: What say you for the
12 Defendant?

13 MR. DAVIS: (Upon sidebar with
14 defendant) -- please seat the juror.

15 CLERK: Please have a seat in the
16 jury box. You've been selected as a juror in
17 this case.

18 (JUROR NUMBER 227 SEATED)

19 CLERK: Those are our twelve jurors.

20 THE COURT: Select one alternate.

21 Strikes will be one and two.

22 CLERK: Juror Number 262, Althia
23 Jeffery.

24 (JUROR COMES FORWARD)

25 CLERK: What say you for the State?

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1 MR. SAHN: Please seat the juror.

2 CLERK: What say you for the

3 Defendant?

4 MR. DAVIS: (Upon sidebar with
5 defendant) -- please excuse Ms. Jeffery.

6 (JUROR NUMBER 262 EXCUSED)

7 CLERK: Juror Number 271, Charles
8 Schuyler.

9 (JUROR COMES FORWARD)

10 CLERK: What say you for the State?

11 MR. SAHN: Please seat the juror.

12 CLERK: What say you for the
13 defendant?

14 MR. DAVIS: Please seat the juror.

15 CLERK: Please have a seat in the
16 jury box. You've been selected as a juror in
17 this case.

18 (JUROR NUMBER 271 SEATED)

19 CLERK: Your Honor, the jury is
20 seated.

21 THE COURT: Any Motions from the
22 State regarding the selection, please?

23 MR. SAHN: No, Your Honor.

24 THE COURT: Any Motions from the
25 Defendant?

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1 MR. DAVIS: May I have a moment,
2 Your Honor?

3 THE COURT: Certainly.

4 MR. DAVIS: (Sidebar with defendant)
5 -- may we approach?

6 BENCH CONFERENCE:

7 MR. DAVIS: Judge, of the
8 strikes they had two that did have records.
9 Juror 177 did not have a record but, Judge, of
10 the strikes that they had, there are ---

11 THE COURT: Based on what?

12 MR. DAVIS: Based on our concern
13 that he is a white male of the same age.

14 THE COURT: So a gender reason?

15 MR. DAVIS: Of the same age.

16 THE COURT: What was your reason
17 for striking him?

18 MR. SAHN: He is a pastor, a
19 Lutheran pastor.

20 THE COURT: What is the reason
21 why you struck him?

22 MR. SAHN: Because he is a
23 Lutheran pastor.

24 THE COURT: I don't know why
25 you'd want to strike a pastor but I find that

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1 it is not a pretense or not pretextual. I
2 don't know why you would strike a pastor, but
3 that's neither here nor there.

4 MR. DAVIS: I will make the
5 argument that because she worked at the church
6 that ---

7 THE COURT: But that is not
8 gender or racial, that's not protected.

9 MR. DAVIS: I am not sure that
10 it is protected. I would like to make that
11 objection on the record.

12 THE COURT: I don't think it is
13 pretextual.

14 (BENCH CONFERENCE CONCLUDED).

15 THE COURT: Thank you very much, the
16 jury has been selected.

17 Ladies and Gentlemen, the jury that
18 has been deliberating on the first case has
19 advised that they have a verdict. I need to
20 excuse you, ask you to go to your jury room.
21 We will be with you as quickly as we can.

22 Don't discuss the case, you've heard
23 nothing about it. Don't speculate. We will be
24 with you as quickly as we can.

25 (JURY OUT)

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1 (JURY PANEL EXCUSED)

2 (RECESS)

3 THE COURT: Let the record reflect
4 that Mr. Dickson is present.

5 (DEFENDANT PRESENT)

6 THE COURT: Is there anything before
7 we bring the jury in?

8 MR. DAVIS: I am not sure how you
9 want to handle this but, Judge, first of all,
10 I need to put on the record that there was an
11 evaluation conducted, a mental evaluation of my
12 client, Thursday of last week.

13 The finding was that there is no
14 competency problems, no competency issues, no
15 issue of criminal responsibility, no issues as
16 to -- we had all three of those checked out,
17 it's not an issue but was checked out.

18 THE COURT: Based on your obser-
19 vations and your dealings, do you agree with
20 the findings?

21 MR. DAVIS: I cannot dispute them.
22 There are certainly indications and that's why
23 I asked that they be done but ---

24 THE COURT: I understand but he has
25 assisted you and indicated to you an awareness

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1 of the proceedings and the nature and roles of
2 all the parties?

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: Of the persons involved?

5 MR. DAVIS: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. DAVIS: We -- I am not real sure
8 how to handle this, but I think that I need for
9 my client's benefit put it on the record. We
10 are in a posture here today where he is going
11 forward on attempted armed robbery and
12 kidnaping. Those are the two indictments that
13 the State has, and the State has served notice
14 they are seeking Life without the possibility
15 of parole. They served that notice on myself
16 and on my client.

17 We talked in chambers prior to having
18 the defendant brought out and I'd just like to
19 put this on the record for my client. This
20 case was originally being prosecuted by Nathan
21 Williams of the Solicitor's Office. He is one
22 of the team leaders for their office.

23 Mr. Dickson was arrested on the
24 incident date of June 9th, 2007, and has been
25 incarcerated ever since that date.

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1 While I've represented Mr. Dickson, in
2 March of 2008 we began discussions because he
3 had been incarcerated with Mr. Joseph Whitt,
4 who was charged with murder. Subject to that
5 conversation with my client, he had some
6 information about Mr. Whitt based on the
7 conversations they'd had in the jail.

8 I contacted Peter McCoy, Burns Wetmore
9 and Keith Haire, solicitors at the Solicitor's
10 Office, and we met for approximately forty-five
11 minutes to an hour at the jail with Mr.
12 Dickson. They debriefed him of any information
13 that he had and he is willing to appear and
14 testify on the State's behalf. This case
15 lingered. They didn't offer anything for his
16 debriefing and what we thought would be
17 subsequent testimony, uh, they on separate
18 occasions met with my client's consent, me not
19 being there, and they debriefed him further.

20 Your Honor is aware of this case
21 because there was some issue about phone calls
22 from jail that caused Your Honor to refer to
23 the case to the Attorney General's Office for
24 prosecution. That caused a further delay in
25 Mr. Dickson's case and in Mr. Whitt's case.

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1 At some point, and I don't recall
2 exactly when but at some point Mr. Williams
3 reassigned this case to Mr. Sahn, who is in
4 court today prosecuting this case, and then
5 subsequent to that Mr. Sahn filed a Life
6 without the possibility of parole notice.

7 I can't say it any more bluntly, this
8 was never a trial but with the serving of that
9 notice it became a trial. Certainly I've seen
10 the certified copy of his prior assault and
11 battery with intent to kill back in 1989.
12 Judge, on behalf of my client, it concerns me,
13 the timeline that brings us before the court
14 today as a trial.

15 I appreciate, as to the timeframe,
16 being able to put that on the record. For
17 court purposes, certainty zero to twenty and
18 zero to thirty, and there was actually also a
19 carjacking that was in the arrest warrant which
20 I understand the State will *null pross* once we
21 are done with this trial, I -- I just wanted to
22 inform the court that my client is willing to
23 plead to the charges today if the life-without-
24 parole is off the table. We are prepared to do
25 that.

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1 We understand the State's position.
2 We are concerned that this is Mr. Sahn's first
3 trial. Certainly -- with Life without the
4 possibility of parole, it requires a trial.

5 THE COURT: I understand.

6 MR. DAVIS: I appreciate the court
7 letting me -- that's nothing personal against
8 Mr. Shan, but it's something that I wanted to
9 put on the record.

10 THE COURT: Let me ask you a
11 question, was there ever any indication that if
12 he talked that he would be -- that there would
13 be some plea arrangement concerning these
14 charges?

15 MR. DAVIS: Specifically, Judge, we
16 did not get into details of that because Mr.
17 Sanders (phonetic) would not be able to
18 question about that.

19 THE COURT: Correct.

20 MR. DAVIS: The only -- I hate to
21 use this term but the only "gentleman's
22 agreement" was that there was no offer but that
23 if testified they would have informed the court
24 that he testified, that he cooperated. That
25 was the extent of anything that the State was

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1 willing to do on his behalf. But with the Life
2 notice, you don't need anyone saying that he
3 cooperated. That would have been the only
4 thing that I knew we were going to get, was Mr.
5 Sahn saying at a plea that he helped. As far
6 as what he would plead to, what charges, what
7 the range would be, there was no discussion or
8 promises whatsoever.

9 THE COURT: Well, obviously there
10 had to be something or there would have been a
11 plea. He -- I mean, he would never plea to
12 life without parole, would he?

13 MR. DAVIS: Correct, Judge, but at
14 that time that wasn't the ---

15 THE COURT: I understand that it
16 wasn't even on the table at that time.

17 MR. DAVIS: Right. At that time we
18 were facing -- in fact, I don't think a direct
19 indictment for the carjacking was -- I think he
20 subsequently was directly indicted and the Life
21 without the possibility of parole notice was
22 served.

23 In fact, I don't believe that there
24 was a trial. I don't know what the deal was
25 but I believe that Mr. Whitt pled guilty and

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1 there was no trial, pled last month, so -- I
2 don't know what the deal was. Although, the
3 Attorney General did briefly speak with him
4 prior to the plea but, again, there was no ---

5 THE COURT: Well, nobody knows
6 whether that had an influence or not had any
7 influence on the plea.

8 MR. DAVIS: Correct. I just ---

9 THE COURT: But it was known to Mr.
10 Sanders and the defendant, Mr. Whitt, that your
11 client had made statements to the police?

12 MR. DAVIS: Judge, yes, Mr. ---

13 THE COURT: Or to the Solicitor's
14 Office?

15 MR. DAVIS: --- Whitt knows. Yes,
16 there was a rumor at the jail that if my client
17 went to jail that there was a death contract.
18 Yes, he was well aware of it.

19 THE COURT: All right. Anything
20 else?

21 MR. DAVIS: Judge, we would move
22 to ---

23 THE COURT: Hold on, let's do them
24 one at a time. Mr. Sahn, does the State wish
25 to respond to what -- whatever it is? Ms.

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1 Shealy?

2 MS. SHEALY: Your Honor, after our
3 conference in chambers, I went over to the
4 office and tried to find out the historical
5 nature of this.

6 Just to clarify the record, it is my
7 understanding that defendant initiated interest
8 in testifying for the State. The State never
9 elicited his help.

10 Secondly, the State never committed to
11 -- never decided that they would even use him.
12 He was a jailhouse snitch, he had an awful
13 record, had only been out of prison for three
14 months when this event occurred that he is
15 being tried for. The State had not made a
16 decision that they would use him and,
17 unequivocally, it never offered anything to
18 him. I just wanted to state that to clarify
19 the ---

20 THE COURT: But you would agree with
21 me, just from the standpoint of being a lawyer,
22 just plain lawyering here, if you don't serve
23 notice without parole -- Life without the
24 possibility of parole -- then that opens that
25 door. If he is served with a Life without the

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1 possibility of parole notice, he probably
2 doesn't open his mouth to anybody. There would
3 be no reason to. Do you agree with that? I
4 mean, why would anybody ever say 'I want to
5 cooperate' -- cooperating doesn't help him at
6 all.

7 MS. SHEALY: Unless there was some
8 kind of agreement to ---

9 THE COURT: All I am saying to you
10 is that by not serving it, by waiting until all
11 of that was done kind of has the appearance of
12 it. Nothing that I can do -- there is not a
13 thing that I can do. It speaks for itself, to
14 be honest with you.

15 MS. SHEALY: I think what ---

16 THE COURT: It just speaks for
17 itself as to what it is. Thank you very much,
18 Ms. Shealy.

19 MS. SHEALY: Yes, sir.

20 THE COURT: There is nothing that
21 the court can do. It's on the record. Thank
22 you.

23 MR. DAVIS: Judge, we would also
24 move -- there are -- I don't know if the State
25 intends to try to introduce it but there was a

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1 9-1-1 call recording and we would content that
2 anything on there would be hearsay. It is
3 mostly dispatch conversation. There is a call
4 from an eyewitness and I believe that they
5 intend to call that witness, and we would argue
6 that we believe the 9-1-1 tape should be
7 suppressed on grounds of hearsay, primarily
8 hearsay because there will be a live witness to
9 testify.

10 THE COURT: I will have to deal with
11 that as it comes up.

12 MR. DAVIS: Yes, sir.

13 THE COURT: I can't rule on that
14 now.

15 MR. DAVIS: Yes, sir. There are
16 also -- seized by the police, among a few items
17 is a knife. There is no -- I don't believe
18 that there will be any testimony that would
19 indicate that my client ever had or used a
20 knife, certainly not -- I believe that the
21 indictment specifically recited a screwdriver,
22 and I would argue that it would be prejudicial
23 for the knife to be spoken about in the trial
24 or certainly for it to be exhibited to the jury
25 since there is no evidence that the State has

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1 to indicate that knife was used.

2 THE COURT: What is the State's
3 position concerning the knife?

4 MR. SAHN: Your Honor, the State's
5 position is that the knife was actually a box
6 cutter that police recovered off of the
7 defendant when he was arrested. Therefore, the
8 State's position is that it could come in.

9 THE COURT: For what purpose?
10 What's the relevancy? Because your indictment
11 alleges a screwdriver.

12 MR. SAHN: I guess as a backup
13 weapon to the screwdriver.

14 THE COURT: You didn't allege it was
15 a backup weapon. You wouldn't have alleged a
16 screwdriver if he had a box cutter, would you?
17 I mean, be fair here if you can. Please. What
18 is the purpose of that other than to inflame
19 the jury?

20 MR. SAHN: (No response).

21 THE COURT: It has no purpose
22 relating to the charge. If you would agree
23 with me, -- and I didn't draw the indictment
24 but the indictment says, and I quote, "...armed
25 with a deadly weapon, a screwdriver..." -- so I

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1 would -- unless there is some other way that it
2 would come in, and I don't know because I
3 haven't heard how the case is going forward but
4 I would agree that at least in opening
5 statements you can't -- if it comes during the
6 trial proper, then if you need to you'd have an
7 opportunity in closing argument to address
8 that. I certainly understand your position and
9 understand your desire to have it but I just
10 don't think that it would be proper to allow it
11 at this stage of the game. Thank you, sir.

12 MR. DAVIS: Your Honor, another
13 matter we would like to address now would
14 clearly be a triggering mechanism is his
15 conviction in 1989 for assault and battery with
16 intent to kill. He has two prior -- Judge,
17 I've seen a certified copy of, uh, ---

18 THE COURT: Well, I'm putting the
19 cart before the horse here because he hasn't
20 been convicted yet.

21 MR. DAVIS: I understand. If it is
22 not ripe then I can ---

23 THE COURT: I don't think that I can
24 -- I don't think that I have a basis to deal
25 with it.

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1 MR. DAVIS: Okay.

2 THE COURT: To be honest with you,
3 I don't think it's an issue until he has been
4 convicted of a crime that would support Life
5 without parole. You are certainly free to
6 challenge it if that should ---

7 MR. DAVIS: Yes, sir. Thank you.
8 One last thing, Your Honor, if I might have a
9 moment with ---

10 THE COURT: Yes, sir.

11 MR. DAVIS: Thank you, Your Honor.
12 The last matter is that at some point, and I
13 can get the exact date, my client did send to
14 the Clerk of Court and I believe to the
15 Solicitor's Office a handwritten request to go
16 *pro se*. We have discussed that and he wants to
17 withdraw that Motion and for me to continue on.
18 It is a part of the court's records and I
19 wanted to address that.

20 THE COURT: I agree. Mr. Dickson,
21 you have heard your lawyer, Mr. Davis, indicate
22 that you filed a document. It's a hybrid
23 document because you still have a lawyer. You
24 were asking and requesting, apparently, and I
25 haven't seen it, permission to proceed *pro se*.

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1 Is that correct?

2 DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: Is that our desire here
4 today -- you can remain seated. Thank you. Is
5 that your desire here today, sir, to proceed
6 *pro se*?

7 DEFENDANT: No, sir. Mr. Davis can
8 represent me.

9 THE COURT: You want Mr. Davis to
10 continue to represent you?

11 DEFENDANT: (Affirmative nod), yes,
12 sir.

13 THE COURT: Mr. Davis, are you
14 prepared -- that hasn't stopped you in your
15 preparation?

16 MR. DAVIS: No, sir, Your Honor.

17 THE COURT: Okay.

18 MR. DAVIS: And, Judge, finally,
19 along with that Motion there were various
20 Motions that he'd filed. I don't believe that
21 I need to get into details other than to say
22 that any Motions that he has filed ---

23 THE COURT: Are withdrawn?

24 MR. DAVIS: --- that on his behalf
25 they are withdrawn.

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1 THE COURT: As I stated, the Supreme
2 Court has been clear that any hybrid Motions
3 really aren't a Motion unless you choose to
4 bring it up for whatever reason. The court
5 finds that those are hybrid Motions. He has
6 already indicated that he wants you to continue
7 and, therefore, all Motion are moot -- all
8 Motions are moot and denied as being untimely
9 filed.

10 MR. DAVIS: Okay.

11 THE COURT: Is that agreeable with
12 you, Mr. Dickson?

13 DEFENDANT: Yes, sir.

14 THE COURT: Okay.

15 MR. DAVIS: Thank you, Your Honor.
16 That's all that we have pre-trial.

17 THE COURT: Okay. Anything from the
18 State before we bring the jury in?

19 MR. SAHN: No, sir.

20 THE COURT: Bring the jury in.

21 CLERK: Judge, I've contacted Don
22 Michele about the workers (referring to
23 construction sounds heard in the courtroom) and
24 he's going to see what he can do about it.

25 THE COURT: Thank you.

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1 MR. DAVIS: Judge, one other thing.
2 We understand who has a right to remain in the
3 courtroom but we would ask that all other
4 witnesses be sequestered.

5 THE COURT: All right. The victim
6 certainly has a right to be present.

7 MR. DAVIS: Yes, sir.

8 THE COURT: Anyone else who is a
9 witness for the State, I need for you to leave
10 until they are brought in. Of course the
11 victim can remain at all times.

12 All right, let's bring in our jury.
13 What we will do is opening statements and then
14 probably just recess for the afternoon. I
15 don't see any need to start with witness -- how
16 many witnesses, Mr. Sahn, do you anticipate
17 calling?

18 MR. SAHN: At this time we
19 anticipate three witnesses, Your Honor, but
20 that could change.

21 THE COURT: Certainly, I realize
22 that could change and I am not holding you to
23 that. Are they lengthy witnesses?

24 MR. SAHN: Two of the three are
25 relative lengthy, Your Honor.

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1 THE COURT: Okay, not a problem.

2 COURT REPORTER: We have premarked
3 State's Exhibits 1 through 13.

4 THE COURT: Any objection to State's
5 1 through 13?

6 MR. DAVIS: No, sir, not at this
7 time.

8 THE COURT: Thank you.

9 (JURY IN @ 4:25 P.M.)

10 THE COURT: Thank you, Ladies and
11 Gentlemen. I am sure that you probably thought
12 that we had forgotten about you. I apologize
13 to you. We ended up having to hear a verdict
14 -- the jury verdict on the prior case resulted
15 in my having to impose a sentence and rather
16 than bring everybody back, I needed to go ahead
17 and do that in that particular case.

18 And then we have been hearing some
19 matters that were necessary to be heard before
20 we started the trial in this case.

21 I don't know whether you'all could
22 hear it back there or not but we had to try to
23 get the hammering stopped because it is right
24 over our heads and I wasn't going to subject
25 you to trying to sit here and listen through

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1 that noise. I apologize. I know that Mrs.
2 Armstrong apologizes. It is necessary, it has
3 to be done and we are just trying to work
4 through it. If at any point you cannot hear,
5 just raise your hand and I will be happy to try
6 to assist you to the extent that we can.
7 Sometimes we don't have the power to do much
8 about it, but we do the best that we can.

9 Let me talk about the seating. Mr.
10 Schuyler, you have been selected as the
11 alternate juror. That term really does not
12 have any significance at this point. Because
13 you are the alternate juror, you may sit in
14 either one of those two seats, sir. Ladies and
15 Gentlemen, please do not sit in those seats,
16 they belong to Mr. Schuyler. At the end of
17 this trial if the first twelve are able to
18 continue in the case, in final deliberations,
19 then you would not participate in those
20 deliberations. But neither you nor I know the
21 status of those persons at this point and you
22 are very much a part of this jury.

23 The rest of you, I would ask that you
24 not occupy either of those two seats. It just
25 helps us to know that everyone is here.

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1 The only other designated seat, this
2 gentleman on the first row is occupying it. He
3 is eligible too, as are any of the first twelve
4 of you, to serve as the presiding juror. That
5 person is also known as the foreperson, fore-
6 lady, foreman. I call them "presiding juror"
7 because that is what you do. Someone has to be
8 responsible for receiving exhibits that you
9 might receive during the trial, signing the
10 verdict form on behalf of the jury and when the
11 jury has completed its deliberations returning
12 those exhibits to the court.

13 The only person not eligible to serve
14 is Mr. Schuyler, while he is the alternate
15 juror.

16 The statute permits me to appoint the
17 presiding juror but I let the jury select their
18 presiding juror. So if at some point you would
19 take care of that, I would appreciate it. If
20 you will -- and it does not have to be done
21 right away, but if you will just select your
22 presiding juror and once you have then I would
23 simply ask that individual to occupy that seat
24 during the balance of the trial.

25 But until that person is identified

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1 please feel free to seat in any other seat that
2 you want to as you come into the courtroom.
3 The presiding juror, as I mentioned, really
4 what you do -- over the years, it has occurred
5 to me that the presiding juror is someone, and
6 some are better at this than others and that
7 is why I let the jury select their presiding
8 juror, some people are better facilitators than
9 others. That is really what a presiding juror
10 does, is they help to facilitate the
11 discussions, not control but facilitate. You
12 select your presiding juror and once that
13 person has been identified, just let us know
14 and that person will then occupy that seat.

15 Please give your attention now to Mr.
16 Wilson as he administers your oath.

17 (WHEREUPON JURY SWORN)

18 THE COURT: Thank you, Ladies and
19 Gentlemen. Now you have become a judge with
20 me and together we will work to resolve this
21 dispute. You probably are tired of hearing me
22 asking over and over, 'Will that influence your
23 decision? Will you base your decision on the
24 evidence and the law?' Each question that I
25 asked, that was your response, each juror

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1 indicated that they would.

2 If you think about it, the last
3 question I asked you was 'Is there anything
4 about this case that will give you any concern
5 about your ability to make a commitment to be
6 fair and impartial to both the State and Mr.
7 Dickson, and make your decision based on the
8 evidence and the law?' None of you said that
9 there was, so you basically confirmed what you
10 promised during the process of selecting a
11 jury.

12 As a judge, you have accepted now by
13 virtue of that oath the responsibility of being
14 the sole judge of the facts in this dispute.
15 In fact, no one in this process has that
16 responsibility but you. You promised that
17 you're going to make your decision based on the
18 evidence and the law.

19 You don't have anything to do with the
20 law. That's my responsibility.

21 I don't have anything to do with the
22 evidence, that's -- I may have something to do
23 with the evidence in the sense that I may rule
24 on the admissibility of certain evidence. From
25 time to time you may hear an attorney say that.

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1 they object. What they're saying is that they
2 object as a matter of law concerning some
3 particular question or some answer that may be
4 given. Sometimes I may sustain the objection.
5 If I do, that means that you are not going to
6 hear that evidence. I have some control in
7 that respect -- not personally but because it's
8 part of the rules that apply to this process.
9 But I don't -- after that, I have nothing -- in
10 fact, probably the best example that I can give
11 you of how we work together is that if they
12 make an objection and I rule as a matter of law
13 that you're not going to hear that particular
14 answer or that I'm not going to allow that
15 question, you are not going to hear it but you
16 shouldn't think about that. That's just --
17 that doesn't have anything to do with your job,
18 that's my responsibility.

19 But if I allow it to be -- if I allow
20 you to hear it, if I permit the answer and/or
21 the question, then please understand that
22 doesn't mean anything other than I've said as a
23 matter of law that question is proper or that
24 the answer is proper. Then it shifts to you
25 and you make the decision whether you believe

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1 it or not and then, of course, how strongly you
2 believe it. It does demonstrate how we work
3 together. You decide whether -- once it comes
4 to you whether you believe that it is in fact
5 or whether you believe it is true and, if you
6 do, how strongly you believe it.

7 The system works well. As I told you
8 when we qualified you Monday, you bring into
9 this process everything that you need. There
10 is nobody better qualified or more equipped
11 than you to perform the task that you have
12 undertaken. You've brought with you your
13 life's experiences, your common sense, your
14 sense of logic and reasoning. That is really
15 the basis for who you are as a person, what
16 you've relied on every day. That is what you
17 will do when you decide this case. You will
18 apply that, in analyzing the evidence you will
19 apply that to what you believe to be true.
20 Once you make that decision, then you will take
21 the law and apply it to it.

22 That's a process that I suggest that
23 you use every day in making decisions. Most of
24 the time it probably is more subconsciously
25 than a conscious decision on your part, but we

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1 have that process. We hear something, we read
2 something, we decide if we believe it or not.

3 You also brought something else that I
4 think is equally important. I wouldn't put one
5 above the other. You brought an open mind.
6 Each one of you in responding to the questions
7 said that you knew nothing about the dispute
8 and that there was nothing that would cause you
9 to predetermine anything. If you predetermine
10 something, then obviously you can't be a fair
11 and impartial juror in trying a case. So
12 you've said that you have an open mind. I
13 would urge you, for a number of reasons, that
14 you maintain that open mind until the court
15 gives you an instruction to begin your
16 deliberations.

17 One of the reasons is, based on the
18 oath you've said that you will base your
19 decision on the evidence and the law. Part of
20 the law is when you may start deliberations.
21 Obviously if you do so before -- and
22 "deliberation" is an interesting term. When I
23 first started this job, this part of it, I had
24 a mindset of what deliberations meant or what
25 deliberation was. But I've come to realize

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1 that it is more than just twelve people sitting
2 around a table talking about. It's also when
3 an individual starts deliberating, when you
4 start deciding facts and that deliberation can
5 start on an individual basis. It's very
6 important that you keep an open mind until you
7 are instructed to begin your deliberations
8 collectively in this process, and I say process
9 because there are four distinct phases to this
10 process or this proceeding. Each phase or each
11 part is important, each one is essential to you
12 honoring your commitment and is essential that
13 you participate in each part of it before you
14 make decisions.

15 The last thing that you will hear is
16 when I give you the law and I will talk with
17 you about some of the legal principles that are
18 involved. I will define for you the crimes
19 charged; that is, kidnaping and attempted armed
20 robbery. I will itemize for you the various
21 elements of each offense.

22 In this process, what you will be
23 doing is that you will then consider the
24 evidence to determine whether or not you're
25 convinced that the standard that applies in

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1 this proceeding, that is proof -- burden of
2 proof beyond a reasonable doubt, is a civil
3 (sic) standard and it doesn't (sic) have any
4 applicable in this proceeding as that is a
5 probability standard. The standard that you
6 are to apply is beyond a reasonable doubt --
7 I said the same thing twice.

8 The preponderance of the evidence is
9 a probability standard, a civil standard.

10 Beyond a reasonable doubt is the
11 standard that applies in criminal cases, and is
12 the highest standard that we have of proof that
13 applies in our courts.

14 What is beyond a reasonable doubt? A
15 reasonable doubt is a doubt that would make a
16 conscientious juror searching for the truth in
17 a case to hesitate to take some action.
18 That's the standard that you will apply.

19 When you get to that point, you will
20 be going through the evidence and asking
21 yourself, 'Am I convinced under that standard
22 that this particular element is present?'

23 You will go through each element and
24 if you're convinced that the State has met its
25 burden of proof, then it is entitled to a

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1 verdict of Guilty on that particular charge.

2 If on the other hand you conclude that
3 you don't think so as to one or more elements,
4 then the State has not met its burden of proof
5 and you must return a verdict of Not Guilty.

6 That is what a verdict in this court
7 means -- Guilty means that the State has met
8 its burden of proof, Not Guilty means that the
9 State has failed to meet the standard of
10 proving each element beyond a reasonable doubt.

11 That is what this will be about,
12 whether or not the State has the evidence and
13 can set forth evidence that convinces you of
14 the defendant's guilt in this particular case.

15 Please remember something. The State
16 is the only party that has any burden of proof.
17 The Defendant, Mr. Dickson, has absolutely
18 nothing to prove. As I mentioned to you
19 yesterday when I qualified you, the defendant
20 does not have to say anything, he does not have
21 to present anything, explain anything, justify
22 anything, he has no responsibility whatsoever,
23 with regard to presenting evidence or anything
24 at all, because that burden rests solely on the
25 State. If you look to him for anything, then

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1 you will have violated that oath that you took.

2 Because the State has the burden of
3 proof, the State will go first, you will hear
4 the State's evidence first. At the conclusion
5 of that then, and only then, while Mr. Dickson
6 doesn't have to present anything he will still
7 have the right, if he so chooses, to present
8 evidence. He doesn't have to but if he chose
9 to, he could. You would not hear that until
10 you have heard the State's evidence. So please
11 remember something, you have to hear it all and
12 maintain an open mind.

13 Now, another very important reason is
14 because there will be two opportunities during
15 this process for the attorneys to address you:
16 one in just a moment when they make their
17 opening statements, wherein they will discuss
18 on a broad basis what they expect you to hear,
19 give you an overview of what they expect the
20 evidence to entail. It will be helpful to you
21 as we go through the trial, gives you basically
22 a road map of the dispute. Then after you've
23 heard the evidence they will talk with you
24 again in what we call closing arguments and at
25 that time, unlike in opening statements, you

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1 will have heard the evidence and they will have
2 an opportunity to discuss with you reasonable
3 inferences that you may draw from that
4 evidence. That is very important and it will
5 be helpful to you when you begin the process
6 of deciding this case, both in analyzing the
7 evidence and in applying the law.

8 As I mentioned to you on Monday when
9 we qualified you, they are officers of this
10 court, they have a very important
11 responsibility in this process and you should
12 give them your attention.

13 Please remember something. We talked
14 about four parts yet only in one do you hear
15 evidence. The attorney's remarks and my
16 remarks should never be construed or inter-
17 preted by you as evidence. Evidence will come
18 from the testimony of witnesses and exhibits
19 that might be introduced during and through
20 that testimony, and that is what you will
21 ultimately analyze to decide this case.

22 The last phase of course is when I
23 give you the charge on the law. It would be
24 hard to decide something until you've heard
25 the law. So for all those reasons, please

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1 keep that open mind and make no decision on
2 any issue.

3 Now, having said that, let me also
4 point something else out to you. You shouldn't
5 decide conclusively whether you believe certain
6 testimony or not, but everyone expects that you
7 should do what humans do, what we all do. If
8 we see something about a person's -- the way,
9 for instances, somebody testifies or their
10 testimony just seems to be totally inconsistent
11 or illogical, we want to make note of that so
12 that during deliberations you can talk about
13 why you feel that way, but don't reach any
14 conclusions. Everyone expects you to make
15 those mental notes that will help you when you
16 do begin this process but don't go to the next
17 step of taking it and reaching further
18 deduction based on what you observed, but
19 please make those observations because that is
20 very important for you to do during the trial.

21 I look forward to trying this case
22 with you. It's an honor to serve with each one
23 of you. I ask you now to give your attention
24 to the solicitor as he gives his opening
25 statement, to be followed by opening statements

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1 for the defense. Mr. Sahn.

2 MR. SAHN: Thank you, Your Honor,
3 may it please the court?

4 THE COURT: Yes, sir.

5 MR. SAHN: This is a case about
6 courage, the courage of an eyewitness to a
7 crime, Jennifer Gillentine, whose brave actions
8 and quick thinking upon witnessing that crime.

9 But is also a case about cowardice.
10 Cowardice of a defendant who carefully selects
11 his victim, a 49-year-old grandmother, kidnaps
12 her and attempts to rob her with a deadly
13 weapon. These cowardly acts in this case were
14 committed by this defendant, Daniel Dickson.

15 The victim in this case is a hard-
16 working woman named Pearl Jones. She works two
17 jobs. She works over at the Saint Andrews
18 weekday school on Wappoo Road in Charleston
19 County. She and her husband also own their own
20 business, a retail store. You will hear from
21 Mrs. Jones during this trial.

22 The evidence will show that on the
23 morning of Friday, June 29th, 2007, that Mrs.
24 Jones went to work at the church. As she was
25 leaving work that morning and as she was

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1 leaving work that morning, that is the first
2 time that she saw the defendant, the first time
3 she'd ever saw him in her whole life.

4 He stepped in front of her silver Ford
5 Explorer as she was exiting the church parking
6 lot. Now, being the woman that she is, she
7 rolled down the window, the driver's side
8 window on her SUV, she was going to apologize
9 to the man because she hadn't seen him until
10 she came right up on him.

11 It was at this time that the Defendant
12 selected Mrs. Jones as his victim. He punched
13 Mrs. Jones in her face through that open
14 driver's side window; he then forced his way
15 into Mrs. Jones' car through that driver's side
16 window, crawled across her and into the
17 passenger seat area of that car. Next, with
18 his left arm he put Mrs. Jones in a headlock
19 and with his right arm he pulled out an eight
20 inch screwdriver and he held that screwdriver
21 to Mrs. Jones' throat. He then demanded that
22 she drive or "I'll kill you." "Drive, or I'll
23 kill you."

24 As a reasonable person would do in
25 that situation, she became compliant and tried

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1 to drive. You will hear that the route that
2 they took that day was the vehicle entered on
3 Wappoo Road through the Kerr Drug parking lot
4 onto Highway 17, down Highway 17, ultimately
5 turning left into the Holiday Inn Express on
6 Highway 17.

7 Let's go back for a moment to the very
8 beginning of this whole ordeal. I mentioned
9 this courageous lady named Jennifer Gillentine.
10 She is the Good Samaritan in this case, thank
11 God for her. She was driving home from work
12 that same morning, Friday, June 29th, 2007. As
13 she turned left off of Highway 17 onto Wappoo
14 Road, she saw the Defendant. He was halfway
15 into Mrs. Jones' car when she saw him. His
16 legs were dangling out of the driver's window.

17 She along with two other people
18 attempted to block him in at the scene so that
19 they couldn't leave that scene. This proves to
20 be unsuccessful. However, Jennifer didn't stop
21 there. She turned her car around and began
22 following the Defendant and Mrs. Jones as they
23 were heading away from the scene. She also had
24 the presence of mind to pull out her cell phone
25 and dial 9-1-1 as she was followed behind them.

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1 It was this call that alerted police to the
2 location of Mrs. Jones and the Defendant as
3 they were behind the Holiday Inn Express. As
4 they drove in front of the Holiday Inn Express
5 -- excuse me, let me go back for just one
6 second.

7 They were behind the Holiday Inn
8 Express and at this time the Defendant starts
9 demanding money from Mrs. Jones. First he
10 demands cash. Mrs. Jones didn't have any cash
11 on her that day. Did the Defendant take her
12 word for it? No, he didn't. He grabbed her
13 purse, started rummaging through it and soon
14 discovered that she indeed had no cash. He
15 then demanded that she go to an ATM. Mrs.
16 Jones had no ATM card on her either. She
17 assured him that she would drive him to her
18 bank, she would go inside and withdraw money
19 the old-fashioned way. Now is the time that
20 the Defendant tells her to start driving again.

21 Then he tells her to pull behind the
22 Ruby Tuesday restaurant. That 9-1-1 call
23 Jennifer Gillentine had made alerted the police
24 to the location of the car as it was going
25 behind Ruby Tuesday. This allowed two police

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1 officers to arrive at the scene and block Mrs.
2 Jones and the Defendant in. They were able to
3 get Mrs. Jones out of the car and to arrest the
4 Defendant inside of Mrs. Jones' vehicle.

5 What else did the police find inside
6 Mrs. Jones' vehicle, right where the Defendant
7 was sitting? That eight-inch screwdriver that
8 he had been holding to Mrs. Jones' throat just
9 moments before.

10 Now, at the end of this trial, Judge
11 Dennis will instruct you on the law of the
12 case. We defer to the instruction that law but
13 I did want to briefly introduce to you those
14 two charges that the Defendant is facing as the
15 result of his actions:

16 First, the Defendant is charged
17 with kidnaping. A person is guilty of
18 kidnaping if they unlawfully seize, confines,
19 inveigles, decoys, kidnaps, abducts or carries
20 away any other person by any means whatsoever
21 without authority of law.

22 I realize that statute is quite a
23 mouthful, a lot of words up there (PowerPoint
24 display on screen), so I'd like to make a few
25 comments that might clarify it a little bit.

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1 This word "unlawfully", what that
2 means is against the law, willful, basically
3 that it was not done by accident. That is
4 underlined here.

5 You must find the Defendant did any
6 one of those things, not all of those but any
7 one of those things is enough.

8 In order to constitute kidnaping in
9 South Carolina a single second is long enough.
10 A person has to be held against their will for
11 a single second. In this case, Mrs. Jones was
12 held against her will for a good ten to fifteen
13 minutes.

14 The second charge that the Defendant
15 faces is attempted armed robbery. Attempted
16 armed robbery is the attempted taking and
17 carrying away of the personal property of
18 another with the intent to deprive that person
19 of possession by use of force, threats or
20 intimidation while armed with a deadly weapon.
21 The only reason that the Defendant is not
22 facing the even more serious charge of armed
23 robbery is because the police stopped him
24 before Mrs. Jones was forced to drive to the
25 bank and take out money so that he could take

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1 that money away from her.

2 Ladies and Gentlemen, at the end of
3 this trial, we will have one more opportunity
4 to address you. At that time we will ask that
5 you hold the Defendant accountable for his
6 actions, find him Guilty of kidnaping and
7 attempted armed robbery. Thank you.

8 THE COURT: Thank you, Mr. Sahn.
9 Mr. Davis?

10 MR. DAVIS: This is going to be a
11 case about the facts, not about emotions.
12 It is natural to be emotional about this but
13 we're here at trial for two charges which the
14 Solicitor's Office has levied against Mr.
15 Dickson.

16 What we are going to be arguing about
17 is both of those charges, that is what we are
18 going to be arguing about. There is a lot in
19 this trial that may be agreed on but from the
20 very beginning we argue with the State as to
21 what they are charging. We have no argument
22 with Mrs. Jones, that is not the argument.

23 It is very important, as the judge
24 told you earlier, that he will instruct you
25 about what the law is -- not what I think it is

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1 or you think the law may be or even what you
2 want it to be. Judge Dennis is going to tell
3 you what the law is at the end of this case.

4 The Solicitor's Office has brought two
5 charges for the events that happened on June
6 29th, 2007. They have charged the Defendant
7 with kidnaping and attempted armed robbery.
8 They are going to have to prove and/or justify
9 those two charges.

10 Now, I will tell you right now that I
11 don't know if you're going to have any other
12 options than Guilty or Not Guilty on those two
13 charges. We dispute what he is on trial for
14 today. Carjacking, kidnaping, attempted armed
15 robbery, false imprisonment, -- what is it?
16 That is our dispute. Now, I bet you didn't
17 expect a defense attorney to say that in
18 opening statement.

19 Now, I am going to beg you not to zone
20 out. This is a very important case. We will
21 probably be done by lunch time tomorrow, maybe
22 a little after, I expect it to be a short
23 trial. But it is very important that we get
24 this right because it will be in your hands not
25 long from now, and it is important that you get

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1 this right.

2 I appreciate you using your common
3 sense, this is a logical thing and not an
4 emotional thing. Logically you have to turn
5 to the State -- on the charges that they have
6 chosen to bring -- for proof of every element
7 beyond a reasonable doubt. We submit that they
8 will not be able to do that. I appreciate your
9 open minds as that is the key to the entire
10 trial.

11 THE COURT: Thank you. We will
12 take our recess for the evening at this time.
13 Tomorrow we will start with the testimony.

14 Please -- you've heard no evidence,
15 obviously, because as I told you, my remarks
16 and the attorney's remarks are not evidence.
17 But human nature being what it is, we have a
18 tendency sometimes to kind of anticipate and
19 let's don't do that. Let's don't anticipate,
20 don't think about it, don't speculate, don't
21 talk about this case among yourselves and don't
22 permit anyone to talk with you about it outside
23 the courtroom. That would include anyone at
24 home. You can talk about that you've been
25 selected on a jury and just leave it at that.

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1 When you finish your assignment, when you've
2 resolved the dispute and have returned your
3 verdict, then you will be free to talk about it
4 if you wish. Until then, please talk about
5 something else.

6 We'll see you in the morning. I will
7 ask that you please come to your jury room by
8 9:30 -- excuse me, I beg your pardon. There's
9 something that I've got scheduled that I have
10 to do and I don't want you sitting in your jury
11 room, so come at 10:00. We will get a little
12 later start tomorrow but we'll still finish
13 tomorrow, I am confident of that.

14 We'll see you at 10:00 in the morning.
15 Have a good evening.

16 (JURY OUT @ 5:00 P.M.)

17 THE COURT: Anything from the State
18 before we recess?

19 MR. SAHN: No, Your Honor.

20 THE COURT: Anything from the
21 Defendant before we recess?

22 MR. DAVIS: Nothing, Your Honor.

23 THE COURT: Thank you. You'all
24 think about it -- is 3-A a courtroom that we
25 can use? Can we use it with prisoners?

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1 CLERK: It's the same size, Your
2 Honor, and I have to tell you that we have been
3 having problems with the electronics in 3-A.

4 THE COURT: Do we have -- we need
5 the electronics? Well, you've already used
6 them.

7 MR. SAHN: Yes, sir.

8 THE COURT: No problem, we'll stay
9 here. Thank you. We will try to work around
10 the demolition. Thank you all very much, see
11 you all tomorrow, have a good evening.

12 (COURT IN RECESS)

13 (TRANSCRIPT CONTINUED NEXT PAGE)

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2

21 THE COURT: Okay. We will make
22 those collectively Court's Exhibit 1. They are
23 e-mails that -- I guess that I need to look at
24 them if I am going to have them be a part of my
25 ruling.

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1 MR. DAVIS: Yes, sir, (tenders).

2 THE COURT: (Upon review), these two
3 -- two pages are copies of e-mails. Seeing
4 that you were unable to play basketball, I am
5 going to have to change my ruling -- seriously,
6 my ruling will stand.

7 MR. DAVIS: Thank you, Your Honor.
8 Nothing else, we are ready to go.

9 THE COURT: Thank you. As I read
10 those, there was never any specific offer made.
11 I understand the discussion that we had
12 yesterday and that was confirmatory of that,
13 that there was never any plea offer from the
14 State, nothing that I think is enforceable from
15 the court's perspective.

16 MR. DAVIS: Thank you, Your Honor.

17 THE COURT: Thank you. Anything
18 else from Mr. Dickson before we bring out the
19 jury?

20 MR. SAHN: Nothing from the State,
21 Your Honor.

22 MR. DAVIS: (Upon sidebar with
23 Defendant) -- no, sir.

24 THE COURT: All right, let's bring
25 in our jury, please.

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1 (SO ENTERED AS COURT'S EXHIBIT 1)

2 (JURY IN @ 10:18 A.M.)

3 THE COURT: Good morning, Ladies and
4 Gentlemen. Sorry to keep you waiting, we were
5 taking care of a couple of matters of law
6 before we brought you out. I hope you had a
7 restful evening. We are ready now to resume
8 the matter that we started yesterday. Please
9 give your attention to the first witness. Mr.
10 Sahn, the State may proceed. Call your first
11 witness, please.

12 MR. SAHN: Thank you, Your Honor.
13 The State calls Pearl Jones.

14 (WITNESS TAKES STAND)

15 PEARL JONES, being duly sworn to
16 tell the truth, the whole truth and nothing but
17 the truth, testified, as follows:

18 DIRECT EXAMINATION

19 BY MR. SAHN:

20 Q. Good morning, Mrs. Jones.

21 A. Good morning.

22 Q. Where do you live?

23 A. I live on James Island.

24 Q. How long have you lived there?

25 A. Twenty-eight years.

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1 Q. Does anyone live there with you?

2 A. My husband and my mother.

3 Q. You've lived in the Charleston area for how
4 long?

5 A. About thirty-five years.

6 Q. Do you have any children or grandchildren,
7 Mrs. Jones?

8 A. I have three children and one grandson and
9 one granddaughter on the way.

10 Q. What are their ages?

11 A. Children?

12 Q. Children and grandchildren?

13 A. Children 31, 28 and 27. I have a two-and-
14 half-year-old grandson and a granddaughter due
15 in January.

16 Q. Do you work outside the home?

17 A. I do.

18 Q. Where do you work?

19 A. St. Andrews Presbyterian Church.

20 Q. Where is that located?

21 A. 712 Wappoo Road in West Ashley.

22 Q. How long have you worked there, Mrs. Jones?

23 A. Six years.

24 Q. What kinds of things are you responsible
25 for in that job?

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1 A. I am the Director of Christian Education,
2 I do Bible studies and Sunday School and Chapel
3 for preschool.

4 Q. Are you involved in any other jobs or
5 businesses?

6 A. My husband and I own a Christian gift and
7 bookstore at the Tanger Outlet Center.

8 Q. I would like to turn your attention to the
9 morning of June 29th. Did you go to work that
10 morning?

11 A. Yes, sir, I did.

12 Q. That was at the church?

13 A. Yes, sir.

14 Q. Located on Wappoo Road?

15 A. Yes, sir.

16 Q. Is that located in Charleston County?

17 A. Yes, sir.

18 Q. Do you normally go into work at the church
19 on Fridays?

20 A. I do not.

21 Q. Why did you go to work that particular
22 Friday morning?

23 A. I didn't have my newsletter stuff finished,
24 so I had to go finish it.

25 Q. Okay. Could you just tell the jury a

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1 little bit about that area if they're not
2 familiar with it, the layout? Is it mostly
3 residential, some businesses, or a mix of the
4 two?

5 A. A mix of the two. There is a school across
6 the street, Limehouse Produce is right in -- if
7 you're standing in front of the church, to the
8 right of the church, Kerr Drug is on the corner
9 of 17 and Wappoo, and further down Wappoo there
10 are other businesses and residences as well.

11 Q. As for Wappoo Road itself, do you know if
12 that is one-lane or two-lane road?

13 A. It's a two-lane road.

14 Q. Do you know if it connects any major roads
15 or highways?

16 A. Highway 17 and Highway 61.

17 Q. About what time was it that morning when
18 you finished what you needed to do at the
19 church?

20 A. 10:00.

21 Q. Did you leave after that?

22 A. I did, I walked out to the parking lot.

23 Q. And what happened as you were leaving the
24 building?

25 A. As I was leaving the building a woman who

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1 normally walks her dogs around the church
2 stopped me, we had a short conversation and
3 then I told her that I needed to go because I
4 was on my way to go to a tennis tournament with
5 some friends.

6 Q. And was your car parked in the parking lot?

7 A. Yes.

8 Q. What car was that?

9 A. That was my Ford Explorer Sport, silver
10 Ford Explorer Sport.

11 Q. Do you remember what the license plate was
12 on that car?

13 A. WHODAAT, W-H-O-D-A-T-T.

14 Q. What happened next?

15 A. Was I got in my car to leave, I was driving
16 down the driveway from the parking lot at the
17 church to Wappoo Road, I looked up and there
18 was a man that'd stepped in front of my car.

19 Q. Had you ever seen this man before?

20 A. No, sir.

21 Q. Would you please describe what he looked
22 like?

23 A. He was a white male, he had on jeans, a
24 t-shirt and a ball cap and -- (pause) -- that's
25 about it.

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1 Q. Was there anything on his arms or hands, if
2 you remember?

3 A. I didn't notice anything at that time, no.

4 Q. Okay.

5 MR. SAHN: Your Honor, may I
6 approach?

7 THE COURT: You may.

8 MR. SAHN: Please have this marked
9 as State's Exhibit 13 for identification
10 purpose -- or 14, I believe, for ID purposes.

11 COURT REPORTER: State's Exhibit 14.

12 DIRECT EXAMINATION CONTINUED

13 BY MR. SAHN:

14 Q. Mrs. Jones, I am handing you what has been
15 marked as State's Exhibit 14 for ID purposes.
16 Do you recognize what that item is?

17 A. Pardon me?

18 Q. Do you recognize what that item is?

19 A. Yes, sir, that's the hat that he had on.

20 Q. Is that hat in about the same condition now
21 as it was when you saw him wearing it that day?

22 A. Yes, sir.

23 MR. SAHN: Your Honor, we would
24 offer State's Exhibit 14 into evidence.

25 THE COURT: Any objection?

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1 MR. DAVIS: To the chain, yes.

2 THE COURT: I would sustain the
3 objection at this point. It is for ID at this
4 point.

5 MR. SAHN: All right.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. SAHN:

8 Q. Mrs. Jones, what happened after you saw
9 the man standing in front of your car?

10 A. Well, I stopped my car and I rolled my
11 window down to tell him that I -- I thought I
12 was going to hit him because he stepped
13 directly out in front of my car. So I rolled
14 my window down to say 'sorry about that, I
15 didn't see you'. He walked around to the
16 driver side door.

17 Q. How far did you roll your window down?

18 A. All the way. It's an automatic window, so
19 when you hit the button it goes all the way
20 down.

21 Q. Did he say anything to you at that point?

22 A. He asked me a question about the lady that
23 I had been talking to in the parking lot. He
24 asked me her name.

25 Q. And what did you reply to that?

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1 A. I didn't reply. I turned to say something
2 to him -- the question kind of caught me off-
3 guard, it didn't make sense to me. So when I
4 turned to answer him that's when he punched me
5 in the face.

6 Q. What was the impact on you of his punch?

7 A. I would have to say that it stunned me to
8 the point that I didn't even realize that I had
9 been hit. I sat there trying to think what had
10 just happened and the next thing I knew he was
11 climbing across me into my car.

12 Q. Did you attempt to roll up the window of
13 the car?

14 A. I did attempt to roll up the window and it
15 didn't move, I realized that it was because he
16 was leaning across it.

17 Q. In the moments after he punched you in the
18 face, could you feel anything going on?

19 A. Just that -- I was just stunned. I was
20 just stunned.

21 Q. What did the man do next?

22 A. He climbed across me and as I felt him
23 climbing, I started pushing him away from me.
24 But I was pushing him into the steering wheel
25 and that wasn't very productive. The next

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1 thing I knew he was sitting beside me in the
2 passenger seat.

3 MR. SAHN: May I approach, Your
4 Honor?

5 THE COURT: Yes, you may.

6 MR. SAHN: Please mark this State's
7 Exhibit 15 for ID purposes.

8 COURT REPORTER: State's Exhibit 15
9 for identification.

10 DIRECT EXAMINATION CONTINUED

11 BY MR. SAHN:

12 Q. Mrs. Jones, I am handing you what has been
13 marked as State's Exhibit 15 for ID purposes.
14 Would you take a look at it, please?

15 A. (Complies/reviewing).

16 Q. Do you recognize that item?

17 A. Yes.

18 Q. What do you recognize it to be?

19 A. The screwdriver that he held to my throat.

20 Q. Let's go back for a second. You said that
21 he was in the car, in the passenger seat. What
22 happened next?

23 A. He put me in a headlock and he held the
24 screwdriver to my throat and said, "Don't make
25 me have to kill you. Drive."

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1 Q. Does that screwdriver appear to be in the
2 same condition now as when he held it to your
3 throat?

4 A. Yes, sir.

5 Q. Did you get a good look at it that day?

6 A. Yes, sir.

7 Q. How do you know that it is the same
8 screwdriver, Mrs. Jones?

9 A. The handle, the yellow part of the handle,
10 I could see that the entire time that he had it
11 at my throat.

12 MR. SAHN: Your Honor, we offer
13 State's Exhibit 15 into evidence.

14 THE COURT: Any objection?

15 MR. DAVIS: Chain objection, Your
16 Honor.

17 THE COURT: Sustained.

18 DIRECT EXAMINATION CONTINUED

19 BY MR. SAHN:

20 Q. Mrs. Jones, could I have you stand down
21 from the stand for a few moments to show the
22 jury ---

23 THE COURT: She may.

24 THE WITNESS: (Complies).

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. SAHN:

2 Q. Mrs. Jones, if you would, please show the
3 jury what happened -- I am going to have you
4 play the part of the Defendant, in the
5 passenger seat, and I will be you in the
6 driver's seat. Please tell the jury what
7 happened.

8 A. He climbed across me and said -- put me in
9 a headlock and said, "Don't make me have to
10 kill you. Drive."

11 Q. You can take your seat back.

12 A. Okay -- (returns to witness stand).

13 Q. What was going through your mind as the
14 Defendant had you in a headlock and had that
15 screwdriver at your throat?

16 A. That is exactly what he was going to do
17 if I didn't drive, that he would kill me.

18 Q. Did you believe that screwdriver was a
19 deadly weapon?

20 A. Yes, sir.

21 MR. DAVIS: Objection, Your Honor,
22 calls for a legal conclusion.

23 THE COURT: I overrule that, will
24 allow it.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. SAHN:

2 Q. Did he say anything at this point, Mrs.

3 Jones?

4 A. He kept telling me to drive.

5 Q. Did you drive as the man commanded you to
6 do?

7 A. Yes.

8 Q. At this point where was your car, do you
9 remember?

10 A. We'd pulled across out of the drive across
11 Wappoo Road.

12 Q. What did the man do when you stopped at
13 Wappoo?

14 A. He said, uh, he said, "I can't get caught.
15 I can't get caught. Drive. Drive." There was
16 no place for us to go, I was looking at a
17 house. I said, "Where do you want me to go?"

18 Q. And did he reply to that?

19 A. He said, "Fine I'll drive." He put his leg
20 over the console, grabbed the steering wheel
21 and floored the gas.

22 Q. Were there other cars in the Wappoo Road
23 area at this time?

24 A. Yes, traffic was stopped on both sides and
25 a couple of people had gotten out.

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1 Q. Did anyone try to help you?

2 A. Yes, sir. A gentleman yelled, "Are you
3 okay?" My window was still down and I heard my
4 -- I thought I was saying "No." But apparently
5 I didn't say anything because he screamed
6 again, "Are you okay?" I said "No." He
7 started yelling, "Somebody call the police."
8 And my passenger said, "No, no, no, don't call
9 the police. Don't call the police."

10 Q. By your passenger, you mean?

11 A. Mr. Dickson.

12 Q. Were any other people trying to help you
13 besides the two men in the church that you
14 described?

15 A. There was another gentleman that was trying
16 to block -- get the cars to move across Wappoo
17 Road so that we couldn't go anywhere.

18 Q. Did that work?

19 A. No, sir, it did not because they were in a
20 line of traffic and they really had no place to
21 go.

22 Q. During the time when the people were trying
23 to help you at the scene, did the man say
24 anything to you at this point?

25 A. He told me again to drive.

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1 Q. Did you in fact drive?

2 A. No, sir, he did.

3 Q. He did?

4 A. (Affirmative nod).

5 Q. Can you explain that a little bit?

6 A. He put his leg over the console, he floored
7 it and -- he floored the gas, he spun the
8 steering wheel around, we were heading in this
9 direction and then we were going in the other
10 direction.

11 Q. What were you headed towards at that point?

12 A. Limehouse Produce, the parking lot of
13 Limehouse Produce right next door to the
14 church.

15 Q. And did you make it all the way to
16 Limehouse Produce?

17 A. We did. I slammed on the brakes before we
18 slammed into three cars. Then he floored it
19 again, we went back across Wappoo Road, through
20 the Kerr Drug parking lot, and out onto Highway
21 17.

22 Q. Now you're on Highway 17, where was the
23 screwdriver at this point?

24 A. Still in his hands and he still had me in
25 a headlock.

1 Q. During this time, Mrs. Jones, that the man
2 was holding you against your will, did you get
3 a closeup look at him?

4 A. Yes, sir.

5 Q. Did you in fact get multiple closeup looks
6 at him?

7 A. Yes, sir.

8 Q. The man who punched you, climbed into your
9 car, put you into a headlock, put a screwdriver
10 to your throat and forced you to drive, do you
11 see him in the courtroom today?

12 A. Yes, sir.

13 Q. Would you please point to him and describe
14 what he is wearing?

15 A. What he is wearing now?

16 Q. Yes.

17 A. (Indicating Defendant who stands with
18 counsel, Mr. Davis) -- white shirt, blue tie,
19 khaki pants.

20 Q. Is there any doubt in your mind that the
21 man that you just pointed to is the man who
22 attacked you?

23 A. No, sir.

24 MR. SAHN: Your Honor, may the
25 record reflect that the witness pointed to

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1 and identified Daniel Dickson?

2 THE COURT: The record so reflects.

3 MR. DAVIS: And, Your Honor, that we
4 rose for identification.

5 THE COURT: Yes, you did.

6 DIRECT EXAMINATION CONTINUED

7 BY MR. SAHN:

8 Q. So Mrs. Jones, where did the Defendant tell
9 you to drive as you were heading down Highway
10 17?

11 A. He told me to pull into the Holiday Inn
12 parking lot.

13 Q. The front of the parking lot.

14 A. No, sir. He said "Pull in here and drive"
15 -- we drove to the back of the parking lot.

16 Q. When you got to the back of the parking
17 lot, did he say anything to you at that time?

18 A. He said, "You've got to have some money.
19 Give me some money."

20 Q. Did you give him some money?

21 A. No, sir, I didn't have any. I reached for
22 my purse to show that I didn't have it, and he
23 grabbed it back from me and said, "Don't be
24 thinking about getting a cell phone."

25 Q. How did the Defendant react when you told

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1 him or when you told him that you had no cash?

2 A. He got my purse and he said, "You've got
3 to have some money."

4 Q. After he found out that you didn't have
5 money, what happened then?

6 A. He said, "Well, you've got to have -- we
7 can go to an ATM." I told him that I didn't
8 have an ATM card.

9 Q. Did you say anything after that?

10 A. I said, "But I can go to the bank, my bank
11 is right up the street." He said okay.

12 Q. Did you drive to that bank?

13 A. No, sir. We were driving between the Ruby
14 Tuesday and the Holiday Inn Express, the
15 driveway that goes between them and instead of
16 going back out onto Highway 17, He told me to
17 turn and go towards the Ruby Tuesday parking
18 lot.

19 Q. If you would, tell the jury where the Ruby
20 Tuesday is compared to the Holiday Inn Express.

21 A. It is right next door to the Holiday Inn
22 Express on Highway 17.

23 Q. What happened as you were driving to the
24 back of Ruby Tuesday's parking lot?

25 A. When we pulled to the back of the parking

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1 lot, a police cruiser pulled in front of us and
2 I stopped. Then I realized that there was one
3 behind us as well because somebody behind us
4 yelled, "Get out of the car."

5 Q. So how many police cars were there at that
6 time, do you remember?

7 A. Two.

8 Q. What did the police officer do as they
9 pulled up?

10 A. The one behind us yelled, "Get out of the
11 car." I sat there, because I couldn't move.
12 So he yelled again, "Driver, ---"

13 Q. Why couldn't you move, Mrs. Jones?

14 A. Because I was so scared. Because when we
15 pulled back there, I realized that it was 10:15
16 in the morning -- (emotional) -- sorry.

17 Q. Take your time.

18 A. There were no other cars back there. So
19 I thought, 'well, something big is going to
20 happen now.' Even though the police car was
21 there, which was a huge relief for me, I didn't
22 think that may be the end of it because he had
23 nothing to lose. So the police officer, the
24 one in the back, yelled "Driver, get out of the
25 car." At the same time, the officer from the

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1 front had come around to the passenger door,
2 opened the passenger door and pulled Mr.
3 Dickson out of my car.

4 Q. Did they arrest the Defendant at that time?

5 A. I believe so. Yes, sir.

6 Q. Did he have any objects on him when the
7 police pulled him out of that vehicle?

8 A. He had taken the screwdriver that was in
9 his hand and stuffed it between the passenger
10 seat and the console of the car. He threw his
11 ball cap on the floorboard of the passenger
12 side. At that point, I realized that he had a
13 towel around his arm and he threw it across me,
14 out the driver's side window.

15 Q. Thank you. These items that you just
16 described, were any of those items in your
17 car before the Defendant got in your car?

18 A. No, sir. No, sir.

19 Q. After you got out of the car, the police
20 had gotten you to safety at that time, how did
21 you feel at that moment?

22 A. Pretty shaky. I was terrified, realizing
23 what had just happened.

24 Q. Were you crying at all?

25 A. Absolutely. Absolutely.

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1 Q. Could you speak?

2 A. Not in full sentences, no. They asked me
3 questions and I couldn't -- I couldn't really
4 answer. I couldn't speak at all.

5 Q. During that time did you give a statement
6 to police at all?

7 A. Yes, sir.

8 Q. Was that a written statement?

9 A. Yes, sir.

10 Q. Do you remember if EMS was called to the
11 scene?

12 A. They were.

13 Q. Do you remember if you spoke to anyone at
14 the scene besides EMS and police officers?

15 A. There was a young lady that came and stood
16 beside me at my car -- I was sitting in the
17 driver's seat, facing out the door, writing the
18 statement and she walked up and said, "Are you
19 okay?" I didn't know who she was at that
20 point. I continued writing my statement. She
21 said, "Well, I'm glad you're okay." Then she
22 walked away.

23 Q. What did she look like?

24 A. She -- I didn't even look up and look at
25 her face at that point, I didn't see her.

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1 Q. How long would you estimate the whole
2 ordeal took from the moment that you first saw
3 the Defendant until the police were able to get
4 you out of that car?

5 A. Fifteen to twenty minutes.

6 MR. SAHN: Permission to approach,
7 Your Honor.

8 THE COURT: Yes, sir.

9 MR. SAHN: Please mark this as
10 State's Exhibit 16 for identification.

11 COURT REPORTER: State's Exhibit 16
12 for identification.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. SAHN:

15 Q. Mrs. Jones, and ask that you take a look
16 at that. Do you recognize what that is?

17 A. (Upon review), yes, sir.

18 Q. Can you tell us what that is?

19 A. It's an aerial view of Wappoo Road and
20 Highway 17.

21 Q. Is that the area where this incident
22 occurred?

23 A. Yes, sir.

24 MR. SAHN: Your Honor, we would
25 like to move this map into evidence.

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1 THE COURT: Any objection?

2 MR. DAVIS: No, Your Honor.

3 THE COURT: Without objection,
4 State's Exhibit 16 is admitted.

5 (SO ENTERED AS STATE'S EXHIBIT 16)

6 MR. SAHN: May I show it to the
7 jury, Your Honor?

8 THE COURT: You may.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. SAHN:

11 Q. Mrs. Jones, if you would step down one more
12 time, please.

13 A. (Complies).

14 Q. If you would, first start off acclimating
15 the jury to the map a little bit. Can you show
16 them Highway 17?

17 A. This is Highway 17.

18 Q And where is Wappoo Road on that map?

19 A. Right here (indicating).

20 Q. And if you would, what about the church you
21 were working at that day?

22 A. This is the church, this is Limehouse
23 Produce.

24 Q. If you would, trace on the map the route
25 that you'all took that day, starting with the

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1 church.

2 A. All right. This is the parking lot where
3 my car was. This is the driveway that I came
4 down. Wappoo Road. We exited the parking lot
5 right here, we spun around and came back across
6 Wappoo Road into the Kerr Drug parking lot
7 right here, came around here and out this
8 driveway onto Highway 17. Down 17 to the
9 Holiday Inn -- and I believe this is the
10 Holiday Inn. We turned in this parking lot,
11 came around here, back here, up to the front
12 of Ruby Tuesday, then back at this point to
13 the rear parking lot. Actually this may be
14 the Holiday Inn and this the Ruby Tuesday.
15 It was in here, around here and back down here
16 -- (indicating).

17 MR. DAVIS: Your Honor, may we
18 approach?

19 THE COURT: Yes, sir.

20 (OFF RECORD BENCH CONFERENCE)

21 THE COURT: Have they been marked?

22 COURT REPORTER: They were premarked,
23 Your Honor, as State's Exhibit 1 through 13.

24 THE COURT: Skip over 5 and 6. You
25 can -- the ones that you are going to show, if

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1 you will just let me have those.

2 MR. SAHN: (Tenders)

3 THE COURT: State's Exhibits 1, 2,
4 3, 4, 7, 8, 9, 10, 11, 12 and 13 are admitted
5 without objection.

6 MR. DAVIS: Correct, Your Honor.

7 THE COURT: Thank you, Mr. Sahn.
8 Sorry to interrupt you.

9 MR. SAHN: Not a problem, Your
10 Honor.

11 (SO ENTERED AS STATE'S EXHIBITS 1-4
12 & STATE'S EXHIBITS 7-13)

13 DIRECT EXAMINATION CONTINUED

14 BY MR. SAHN:

15 Q. Mrs. Jones, I am handing you what has been
16 marked as State's Exhibits 1 through 4 and
17 State's Exhibit 7 through 13. Please take a
18 look at those.

19 A. (Reviewing).

20 Q. Do you recognize what these are photographs
21 of?

22 A. Yes, sir.

23 Q. Do these photographs fairly and accurately
24 represent the area where the incident occurred?

25 A. Yes, sir.

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1 Q. To the best of your knowledge have those
2 photographs been altered in any way?

3 A. No, sir.

4 MR. SAHN: Your Honor, we offer
5 State's Exhibits 1 through 4 and ---

6 THE COURT: Thank you, sir. They
7 have been admitted.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. SAHN:

10 Q. Mrs. Jones, I am going to ask you to turn
11 around and face the jury that way. Please tell
12 the jury what that is a photo of?

13 A. That's the St. Andrews church where I work.
14 That's the preschool of the church.

15 That's the driveway that leads from the
16 parking lot to Wappoo Road.

17 Q. Let me stop you there. Is that the
18 location where you first saw the Defendant?

19 THE COURT: Solicitor, if we could,
20 so that the record will reflect, we need to
21 know what the number of the exhibit is. You
22 can take the photos yourself and announce which
23 one that we're looking at. If you would, it
24 would help the record. Thank you, sir. Sorry
25 to interrupt you.

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1 MR. SAHN: This is State's Exhibit
2 Number 3.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. SAHN:

5 Q. Continue, Mrs. Jones, is that the location
6 where you saw the man?

7 A. Yes, sir.

8 Q. Putting up State's Exhibit 4, what is that
9 a photo of?

10 A. That's the driveway. That's the parking
11 lot of the church and this is the driveway
12 where -- that leads out to Wappoo Road.

13 Q. What road is that car on there?

14 A. Oh, I'm sorry. This is at Wappoo Road,
15 this is not the parking lot, that is at Wappoo
16 Road.

17 Q. This is State's Exhibit 7, which way were
18 you headed on Wappoo Road?

19 A. Straight across here when we first came out
20 onto Wappoo road.

21 Q. Let me put up State's Exhibit 8. What does
22 this show?

23 A. This is the parking lot of Limehouse
24 Produce which we drove through -- not through
25 but into that parking lot.

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1 Q. State's Exhibit 9, what street is this?

2 A. Highway 17.

3 Q. Which way were you headed down Highway 17?

4 A. This way (indicating south).

5 Q. And where was Wappoo Road?

6 A. (No response).

7 Q. Where does it intersect?

8 A. That would be right over there. This is

9 the Kerr Drug -- Kerr Drug would be on this
10 side and Wappoo Road would be here.

11 Q. This is State's Exhibit 10, what does this
12 photograph show?

13 A. The Holiday Inn parking lot where we drove
14 in and to the back.

15 Q. What happened at the back of the Holiday
16 Inn?

17 A. That's where he asked me to give him money.

18 Q. And after you told him that you didn't have
19 money, what happened?

20 A. He dumped my purse to make sure that I
21 didn't have any, then asked me to go to an ATM
22 and I told him that I didn't have a card.

23 Q. State's Exhibit 11, do you recognize that,
24 Mrs. Jones?

25 A. I believe that it is the back of the Ruby

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1 Tuesday parking lot. Looking at it from this
2 angle, I am not really sure which parking lot
3 this is, because we came in from the other
4 side.

5 Q. What does this show?

6 A. The front of Ruby Tuesday.

7 Q. Does that -- is that the location where the
8 police arrived?

9 A. No, sir. We had gone in front of Ruby
10 Tuesday and down the other side and they
11 arrived in the back of the Ruby Tuesday parking
12 lot.

13 Q. Showing you State's Exhibit 13, ---

14 A. Yes, sir, that's the back of the Ruby
15 Tuesday parking lot.

16 MR. SAHN: Beg the court's
17 indulgence.

18 THE COURT: Yes, sir.

19 MR. SAHN: Mrs. Jones, you can turn
20 back around.

21 THE WITNESS: (Complies).

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SAHN:

24 Q. When the Defendant got into your car that
25 day, did you feel like you could leave the car?

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1 Q. That was after you had given a statement to
2 the police; is that right?

3 A. No, it was before.

4 Q. So EMS arrived, treated you, said 'she's
5 okay' and the police asked that you give them a
6 statement and you gave a written statement?

7 A. Yes, sir.

8 Q. After you gave the written statement to the
9 police, you left?

10 A. Yes, sir.

11 Q. I think you were going to meet a friend at
12 the mall, is that right?

13 A. Pardon me?

14 Q. I think you were going to meet a friend at
15 the mall?

16 A. No, sir, I went to our store at the Tanger
17 Outlet Center to tell my husband what had
18 happened.

19 Q. Merle?

20 A. That's correct.

21 Q. I am skipping around, please forgive me.
22 Before any of this incident happened, you had
23 finished up your work, newsletter, went out to
24 your vehicle, there was a lady that you spoke
25 to before getting into your vehicle?

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1 A. Yes, sir.

2 Q. Did you know this lady?

3 A. She -- I don't know her name but she is
4 around the church a good bit. She walks two
5 dogs.

6 Q. You see her a lot there?

7 A. Yes.

8 Q. You spoke briefly?

9 A.. Um-humm.

10 Q. She walks a couple of dogs?

11 A. Yes.

12 Q. You get in your vehicle and pull out onto
13 -- there is a driveway and there's a sidewalk
14 there?

15 A. Yes, sir.

16 Q. Is that the driveway -- is there actually a
17 sidewalk there or just where people drive?

18 A. Just a driveway.

19 Q. You pulled up and then Mr. Dickson was kind
20 of -- forgive me -- he was in front of your
21 vehicle?

22 A. He'd stepped in front of my car.

23 Q. I'm sorry, is there a sidewalk there or do
24 people just walk ---

25 A. No, just grass. There is a sidewalk at

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1 Wappoo Road but he wasn't on the sidewalk.

2 THE COURT: Hold on just one second.

3 Do we a favor.

4 THE WITNESS: Yes, sir?

5 THE COURT: Just to facilitate the
6 record. If you will wait until he finishes
7 asking the question because the court reporter,
8 every time that you speak -- when you'all are
9 speaking together, she is having to bounce back
10 and forth ---

11 THE WITNESS: Sorry.

12 THE COURT: Not your fault but that
13 would just help with the record.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you. Thank you,
16 Mr. Davis.

17 MR. DAVIS: Yes, Your Honor.

18 CROSS EXAMINATION CONTINUED

19 BY MR. DAVIS:

20 Q. Pretty quickly after that moment is when he
21 climbed through the window, correct?

22 A. After the moment that he stepped in front
23 of my car?

24 Q. (Affirmative nod).

25 A. Yes, sir.

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1 Q. I believe you described it that it stunned
2 you to the point that you didn't realize that
3 you had been hit?

4 A. Yes, sir.

5 Q. Pretty quickly after that, he climbed
6 through the window?

7 A. Yes.

8 Q. Through your driver's side window?

9 A. Yes, sir.

10 Q. This was an SUV?

11 A. Yes, sir.

12 Q. A Ford, is that right?

13 A. Yes, sir, Ford Explorer Sport.

14 Q. Shocking moment, what was going on; right?

15 A. Yes, sir.

16 Q. You pulled out into traffic and -- it was
17 so chaotic that you basically are stopped in
18 traffic; is that right?

19 A. Yes

20 Q. You have written out another statement
21 since this incident, for the Solicitor's
22 office; correct?

23 A. Yes.

24 Q. Do you recall saying, "Still not able to
25 fully comprehend what was going on, from

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1 disbelief, terror and confusion." That was
2 kind of the state that you were in at that
3 moment; is that correct

4 A. Yes, sir.

5 Q. And it seemed to you that it was about
6 fifteen or twenty minutes until the whole thing
7 was over, right?

8 A. Yes.

9 Q. In fact, when you got out of the vehicle,
10 for a while there I believe that you said that
11 you couldn't speak in full sentences? Is that
12 right? When you first tried to talk to the
13 police?

14 A. For about a minute or so, yes.

15 Q. Again, I think you indicated your mind was
16 racing and you just couldn't speak at that
17 point?

18 A. Yes, sir.

19 Q. But fortunately EMS saw you before you even
20 gave your statement, right?

21 A. Yes, sir.

22 Q. Certainly to check you out, and there were
23 no broken bones; correct?

24 A. Correct.

25 Q. No open wounds?

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1 A. No.

2 Q. Any bruising?

3 A. Yes, sir.

4 Q. You made a statement earlier when the State
5 was talking to you that while in the vehicle,
6 Mr. Dickson said "don't be thinking about using
7 your cell phone" as you were looking through
8 your purse?

9 A. Yes.

10 Q. That isn't anything that you'd written down
11 previously, right?

12 A. No, sir.

13 Q. You talked previously that you'd offered
14 "just take the car" and he said no, and that
15 wasn't in your previous statement, was it?

16 A. I believe it was in the second statement
17 that I wrote.

18 Q. I believe you testified that he grabbed you
19 -- what did he say to you when you -- after he
20 got you in the headlock?

21 A. He told me again, "Don't make me have to
22 kill you. Drive."

23 Q. Are you sure that's what he said?

24 A. Yes, sir..

25 Q. Do you remember in your statement, "He told

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1 me to drive. He told me that he didn't want to
2 kill me but I needed to drive."

3 A. Yes.

4 Q. And he kept repeating that, "Drive, just
5 drive."

6 A. Yes.

7 Q. Mrs. Jones, give me one second, that may
8 be all.

9 MR. DAVIS: (Upon sidebar with
10 Defendant), -- thank you, nothing further.

11 THE COURT: Redirect, Mr. Sahn?

12 MR. SAHN: Just briefly, Your
13 Honor.

14 REDIRECT EXAMINATION

15 BY MR. SAHN:

16 Q. Mrs. Jones, at the scene when the police
17 arrived, why could you not speak in complete
18 sentences?

19 A. Because I was still so scared after what
20 had just happened to me.

21 Q. Back to the injuries on your face, your
22 face was bruised?

23 A. Yes, sir. My face and neck.

24 Q. What about your jaw, any injuries? Was it
25 sore?

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1 A. Sore, it was very sore. It was very sore
2 and it hurt, -- the bruising covered the middle
3 of my -- from my check over to and down my
4 neck.

5 Q. Tell me again what the Defendant threatened
6 you with in the car. What were his words
7 inside the car?

8 A. "Don't make me have to kill you. Drive."

9 Q. What did that mean to you, Mrs. Jones?

10 A. That if I didn't drive that he would kill
11 me.

12 MR. SAHN: Thank you. Nothing
13 further.

14 THE COURT: Recross?

15 MR. DAVIS: May I have this marked?

16 THE COURT: Sure.

17 COURT REPORTER: Defendant's Exhibit
18 1 for identification.

19 MR. DAVIS: May I approach the
20 witness, Your Honor?

21 THE COURT: Yes, you may.

22 RECROSS EXAMINATION

23 BY MR. DAVIS:

24 Q. Mrs. Jones, I am going to show you what has
25 been marked as Defendant's Exhibit 1 and ask

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1 you to take a second and look at it. When you
2 have had enough time to look at it, let me know
3 and then I will ask you a couple of quick
4 questions.

5 A. (Upon review), okay.

6 Q. Do you recognize that?

7 A. Yes, sir.

8 Q. What is the second statement that you gave?

9 THE COURT: Mr. Davis, could you do
10 me a favor? I've got this noise that's coming
11 -- and I'm having difficulty hearing you, and
12 some others are as well. If you could
13 keep your voice raised, I would appreciate it.

14 MR. DAVIS: Sure.

15 THE COURT: Sorry to interrupt you,
16 sir.

17 MR. DAVIS: That's okay.

18 CROSS EXAMINATION CONTINUED

19 BY MR. DAVIS:

20 Q. That is the second statement that you wrote
21 in this case?

22 A. Yes, sir.

23 Q. Now, I'd like for you to take a minute --
24 I know that you've glanced at it briefly but I
25 would ask you to see -- you indicated just a

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1 moment ago that you'd offered the vehicle to
2 Mr. Dickson and he refused the vehicle. Could
3 you take just a minute, I know it's a couple of
4 pages, and see if that is in there or not?

5 A. (Upon review), no, sir, it is not in this
6 one. It may be in my first one.

7 MR. DAVIS: (Tenders document to be
8 marked as exhibit).

9 COURT REPORTER: Defendant's Exhibit
10 2 for identification.

11 CROSS EXAMINATION CONTINUED

12 BY MR. DAVIS:

13 Q. Again, take a look at Defendant's Exhibit
14 2. Can you identify that?

15 A. I can't read the second page.

16 MR. DAVIS: Your Honor, I have a
17 cleaner copy. If the State has no objection
18 to my ---

19 THE COURT: Any objection?

20 MR. SAHN: No objection.

21 THE COURT: Very well. We can
22 substitute that.

23 CROSS EXAMINATION CONTINUED

24 BY MR. DAVIS:

25 Q. This is a cleaner copy, (tendering).

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1 Have you had a chance to look at that?

2 A. Yes.

3 Q. Can you identify what that is?

4 A. Yes, sir.

5 Q. Is that the statement that you gave police
6 the morning ---

7 A. At the scene, (affirmative nod).

8 Q. There is no where in that statement where
9 it mentions that you offered him the car and he
10 refused?

11 A. No, sir.

12 Q. Final question. Nothing like this had ever
13 happened to you before?

14 A. Correct.

15 MR. DAVIS: Thank you.

16 THE COURT: All right. You may come
17 down.

18 (WITNESS STEPS DOWN)

19 MS. SHEALY: Your Honor, may we
20 approach for a moment?

21 THE COURT: Sure.

22 (OFF RECORD BENCH CONFERENCE)

23 THE COURT: Please call your next
24 witness.

25 MS. SHEALY: The State calls Mark

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1 Selenky.

2 (WITNESS TAKES STAND)

3 MARK SELENKY, being duly
4 sworn to tell the truth, the whole truth and
5 nothing but the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MS. SHEALY:

8 Q. Officer Selenky, if you would, please tell
9 the jury how old you are.

10 A. I am 40 years old.

11 Q. Where do you live?

12 A. I live in Goose Creek.

13 Q. Are you married?

14 A. No.

15 Q. Where are you currently employed?

16 A. City of Charleston Police Department,
17 Canine Unit.

18 Q. Where were you employed on June 29th of
19 2007?

20 A. City of Charleston Police Department,
21 Team 4, the West Ashley area.

22 Q. What is mean by the canine unit?

23 A. I have a canine, a patrol dog that is
24 trained in narcotics and apprehension.

25 Q. On this date of this incident, you were

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1 not yet in that unit; correct?

2 A. Correct, I was not.

3 Q. What were your duties at that time?

4 A. I was a normal patrol officer in the West
5 Ashley area.

6 Q. And as a patrol officer, if you would,
7 please describe to the jury how it is that
8 you're called to a scene.

9 A. You're called to the scene by a dispatcher
10 who radios you over your car radio and tells
11 you to respond to certain areas, to whatever
12 situation that may be happening.

13 Q. Okay. On that day of June 29th, were you
14 radioed to report to the area of Ruby Tuesday
15 off of Highway 17?

16 A. Initially I was dispatched to respond to
17 the area of Wappoo Road and 17, that's where
18 the initial incident happened. While en route
19 to that area, our dispatchers told us that a
20 witness was following the vehicle that we were
21 looking for and that the vehicle was near the
22 Holiday Inn Express, which is right next door
23 to Ruby Tuesday.

24 Q. So instead of going to the area of Wappoo
25 and Savannah Highway, you went to the Ruby

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1 Tuesday, Holiday Inn area?

2 A. Correct.

3 Q. If you would, describe for the jury what
4 you came upon. What did you see?

5 A. I was traveling south on Highway 17 and
6 near the Holiday Inn Express I saw the vehicle
7 that we were looking for, which was a Ford
8 Explorer. It was in -- the parking lot for the
9 Holiday Inn Express and Ruby Tuesday, they
10 adjoin each other, and the vehicle was
11 traveling in front of Ruby Tuesday, away from
12 the Holiday Inn Express, basically parallel to
13 17-South. In front of Ruby Tuesday's, that's
14 when I caught the first glimpse of it.

15 Q. Did you indicate that the car was still
16 moving at that point?

17 A. Correct. It was still moving and headed
18 towards the south side or the right side of
19 Ruby Tuesday and then it made a left turn to
20 go towards the back of the business.

21 Q. At some point do you notice another officer
22 reporting to that area?

23 A. Correct. My sergeant, Sergeant Edwards,
24 was actually in front of me just prior to us
25 coming up to that area, then turning into the

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1 Ruby Tuesday area. He was in front and I was
2 behind him.

3 Q. What did you do and what did your sergeant
4 do as it relates to the Ford Explorer?

5 A. The Ford Explorer continued in front of the
6 Ruby Tuesday, then made a left like it was
7 going to the back of Ruby Tuesday's. My
8 sergeant was behind the vehicle and he
9 continued to follow behind the vehicle. I
10 decided to make the -- to go to the left side
11 of Ruby Tuesday, to get around to the back side
12 and see if I could basically cut that vehicle
13 off, get in front of it.

14 Q. Were you successful in cutting off the
15 vehicle?

16 A. Yes. We encountered the vehicle in the
17 back parking lot of Ruby Tuesday. I pulled in
18 front of the vehicle and my sergeant pulled in
19 back of the vehicle, so as to keep it from
20 leaving.

21 Q. Could you tell the sex of the two people in
22 the vehicle?

23 A. Yes.

24 Q. Who was driving?

25 A. The victim, a female was driving, a white

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1 female.

2 Q. And you saw a male in the passenger seat?

3 A. Yes.

4 Q. What did you then do after blocking that
5 vehicle in?

6 A. I got out of my vehicle, I drew my service
7 weapon, and I ordered the passenger to
8 basically show me his hands and not move. I
9 walked around the side of my vehicle, towards
10 the passenger side. I went up to the passenger
11 side, opened the passenger door, reholstered my
12 weapon and grabbed the male out of the vehicle,
13 escorted him around to the back of that
14 vehicle, of the Explorer, put him against the
15 vehicle, then put him in handcuffs.

16 Q. You indicated that you actually drew your
17 gun when you approached the vehicle, is that
18 right?

19 A. When I initially got out of my vehicle, I
20 drew my weapon.

21 Q. Is that something that you do all the time
22 or was there something that you had been told
23 on the phone (sic) by dispatch that encouraged
24 you to do that?

25 A. The information that we had from dispatch

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1 was that a male and female were in some sort of
2 fight or altercation and the male party had
3 what they thought was a knife in his hand.
4 Because the male party had a weapon, that's why
5 I drew my revolver.

6 Q. You told us that you then put the weapon up
7 once you were able to get him out of the car?

8 A. Right. When I opened the passenger door
9 and grabbed him, I'd put my weapon up just
10 before that.

11 Q. After handcuffing him at the back of the
12 Ford Explorer, what did you then do with him?

13 A. I moved him from the -- probably two feet
14 over to a curb and sat him down.

15 Q. Did he at that time say anything to you?

16 A. Yeah, he said that he was trying to get a
17 ride from the woman in the Explorer because he
18 wanted to go after a woman who was walking her
19 dog, her dog in the area, that had tried to
20 bite him.

21 Q. That lady's dog had tried to bit him?

22 A. Right. That's why he was getting a ride
23 from this woman.

24 Q. When you were taking the Defendant out of
25 the vehicle, where was the driver?

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1 A. She was still inside the vehicle.

2 Q. Did you have an occasion to see her at the
3 scene after you'd gotten him handcuffed and he
4 was sitting on the curb?

5 A. I did after -- I put him on the curb and
6 then a few minutes later I put him in the back
7 of my patrol vehicle and then I went over to
8 talk to her, to talk to the woman in the
9 vehicle.

10 Q. Would you describe to the jury how her
11 demeanor was at that time?

12 A. Well, initially when I pulled up and I saw
13 both of them in the vehicle, as I was getting
14 out of my vehicle, she was clutching the
15 steering wheel and just kind of looking
16 straight ahead. She looked very, very, very --
17 you could tell that she was -- she had a very
18 scared look on her face. Then when I talked
19 to her after I had secured the subject in my
20 vehicle, I saw that she was visibly shaking,
21 very upset, visibly shaking.

22 Q. While you and Sergeant Edwards were at the
23 scene, did someone else approach the scene?

24 A. A witness did.

25 Q. Do you happen to remember her name?

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1 A. I don't remember her name but I could look
2 at my report.

3 Q. Yes. What do you have with you, your
4 incident report?

5 A. The incident report that I prepared
6 immediately after the situation was over.
7 (Upon review), -- Jennifer Gillentine.

8 Q. Did you have an occasion to talk to her
9 or did Sergeant Edwards talk to her?

10 A. I talked to her after the suspect was
11 secured in my vehicle. I went over and talked
12 to her and she explained to me what she saw
13 happen.

14 Q. Without telling us what she said, did you
15 learn that she was the person who had followed
16 the vehicle?

17 A. Yes, I did.

18 Q. Now, after securing the Defendant and
19 putting him in your parole car, did you go and
20 look inside the Explorer?

21 A. Yes, I did. I went over and looked in the
22 passenger side.

23 Q. Were there items of evidence that you
24 actually took with you to take down to the
25 evidence room at the City?

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1 A. There was a screwdriver and ---

2 Q. Let me ask you this way.

3 A. Okay.

4 Q. Showing you what has been previously marked
5 as State's Exhibit 15, could you indicate
6 whether or not you recognize this? This was
7 marked for purposes of ID.

8 A. Yes, that's the screwdriver that was
9 located on the floorboard on the passenger side
10 of the Ford Explorer.

11 Q. Okay. And after taking it from the Ford
12 Explorer, if you would, please tell the jury
13 how you go about preserving it.

14 A. When I take any kind of evidence, I will
15 put it in a plastic bag or a paper bag, which
16 I usually have in my trunk. I put the item in
17 that bag and then secure it in my trunk until I
18 can get to the station. Once I get to the
19 police station, I take that evidence into the
20 station, there are some forms to fill out and
21 tags that you fill out, which are then stapled
22 to that bag and then the bag is placed into a
23 secure locker or evidence locker.

24 The Evidence person will come later and take it
25 to ---

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1 Q. Is that in fact what you did in this case,
2 as it relates to the screwdriver?

3 A. Yes.

4 MS. SHEALY: Your Honor, at
5 this time we would offer the screwdriver into
6 evidence.

7 THE COURT: Any objection?

8 MR. DAVIS: Judge, again objection
9 to the chain.

10 THE COURT: You -- subject to the
11 objection, it is admitted.

12 (SO ENTERED AS STATE'S EXHIBIT 15)

13 DIRECT EXAMINATION CONTINUED

14 BY MS. SHEALY:

15 Q. Showing you what has been previously marked
16 as State's Exhibit 14 for ID purposes, let me
17 ask if you recognize this?

18 A. Yes. That's a baseball cap which was
19 secured from the, I believe, the vehicle.

20 Q. Similar to the screwdriver, did you take it
21 into custody that evening?

22 A. Yes.

23 Q. And you've described the plastic bag or the
24 bag, the cards that you fill out and ---

25 A. Right.

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1 Q. Did you do that with this item?

2 A. Yes.

3 MS. SHEALY: Your Honor, similarly I
4 move the baseball cap into evidence.

5 MR. DAVIS: Same objection.

6 THE COURT: Subject to objection the
7 defendant (sic) is admitted.

8 (SO ENTERED AS STATE'S EXHIBIT 14)

9 DIRECT EXAMINATION CONTINUED

10 BY MS. SHEALY:

11 Q. So State's Exhibit 15 is the screwdriver
12 that you found ---

13 A. --- in the car, on the floorboard on the
14 passenger side.

15 Q. Okay, and State's Exhibit 14 is the cap,
16 baseball cap that was also found in the
17 vehicle?

18 A. Yes, ma'am.

19 Q. Did you have occasion to talk to the victim
20 about either of those items?

21 A. I did not.

22 Q. That's fine. How long were you'all out at
23 the scene that night -- or that day, do you
24 remember?

25 A. It was probably thirty or forty minutes.

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1 Q. As part of a crime like this, do you often
2 ask witnesses to give written statements?

3 A. Yes.

4 Q. And were you a participant in that with
5 both Ms. Gillentine or Mrs. Jones?

6 A. I was with Ms. Gillentine, I was with the
7 witness and I gave her the paperwork to fill
8 out as far as her name and information for
9 contact. Then she wrote the statement.

10 Q. Very good.

11 MS. SHEALY: I beg the court's
12 indulgence just a moment.

13 THE COURT: Certainly.

14 MS. SHEALY: I have no further
15 questions. Please answer any that the defense
16 may have.

17 THE COURT: You may cross-examine.

18 MR. DAVIS: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. DAVIS:

21 Q. You said that you were on the scene about
22 thirty to forty minutes; is that right?

23 A. (Affirmative nod), I believe so.

24 Q. And that would have been to collect any
25 evidence and take any statements?

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- 1 A. Yes, sir.
- 2 Q. Was it ultimately referred to a detective
3 or not?
- 4 A. A detective did respond, Sergeant Hall.
- 5 Q. Okay. Are you aware whether any
6 investigation occurred after the time you left
7 the scene?
- 8 A. I don't know.
- 9 Q. You were dispatched to the scene on June
10 29th, 2007, at 10:13; is that correct?
- 11 A. (Affirmative nod).
- 12 Q. Do you recall?
- 13 A. Yes.
- 14 Q. That was 10:13 in the morning?
- 15 A. Correct.
- 16 Q. And the estimated time of the offense was
17 10:10, three minutes earlier; right?
- 18 A. Correct.
- 19 Q. You arrived there at 10:15, is that correct
- 20 A. Yes.
- 21 Q. And the arrest was made at 10:20?
- 22 A. Right.
- 23 Q. So from the estimate time of the offense to
24 the arrest is ten minutes?
- 25 A. Yes.

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1 Q. Typically when -- you get the call, you're
2 on scene and have a suspect in custody five
3 minutes after that?

4 A. Right.

5 Q. Obviously when you arrived on the scene one
6 of your primary concerns was the safety of the
7 participant and yourself, is that right?

8 A. Correct.

9 Q. And I understand that when you arrived on
10 the scene that one of your primary concerns was
11 the safety of the victim and yourself; correct?

12 A. Yes, sir.

13 Q. Basically, based on what you'd heard from
14 dispatch you unholstered your service weapon
15 and approached the vehicle from the front;
16 correct?

17 A. Yes.

18 Q. You were telling the passenger "show me
19 your hands", correct?

20 A. Yes.

21 Q. He didn't?

22 A. He didn't.

23 Q. No weapons? You didn't see a weapon in his
24 hand?

25 A. I didn't see a weapon.

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1 Q. You holstered your weapon, got him out of
2 the vehicle and detained him. Correct?

3 A. Yes.

4 Q. He was taken to the back of the vehicle
5 first?

6 A. (No response).

7 Q. Of Mrs. Jones' vehicle?

8 A. Of the Explorer, yes.

9 Q. That's when you asked him, "what are
10 doing?" Right?

11 A. Well, I asked him what was going on.

12 Q. And he told you that he was trying to get
13 a ride with the woman because of a woman with a
14 dog; or something to that effect?

15 A. Something to that effect.

16 Q. That sounded odd? Confused? Didn't make
17 sense?

18 A. I didn't understand what he meant.

19 Q. Regardless of that he'd been detained and
20 put in the patrol car?

21 A. Yes.

22 Q. He was under arrest?

23 A. Yeah.

24 Q. Arrest for kidnaping and carjacking?

25 A. That's what we have on our report, right.

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1 Q. Then you wanted to make sure that you
2 secured the area for the safety of everyone
3 there.

4 A. Yes.

5 Q. So you go back to the Explorer, you look
6 inside and inside, on the passenger side
7 floorboard, is where you find the cap and the
8 screwdriver?

9 A. Yes.

10 Q. You are actually the officer that retrieved
11 those?

12 A. Yes.

13 Q. And I think that we have already talked
14 about that you would then relay them to another
15 officer who would maintain custody ---

16 A. Well, I didn't hand it to anyone
17 personally. I put it in a secure evidence
18 locker and then the Evidence clerk will come
19 in, he picks it up and secures it, makes sure
20 it gets to where it needs to go.

21 Q. But you would have secured them to make
22 sure that they were kept safely for someone
23 else to pick up and deliver?

24 A. Right.

25 Q. Other than the passenger side floorboard,

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1 no other search of the area was made?

2 A. I didn't search any other parts of the
3 vehicle.

4 Q. The Charleston City Police Department has
5 a, and I will just use the term generically,
6 crime lab?

7 A. Correct.

8 Q. They process evidence?

9 A. Correct.

10 Q. You don't work in that particular
11 department?

12 A. Correct, I do not.

13 Q. But you are familiar with it?

14 A. Yes, sir.

15 Q. If you requested that an item be checked
16 for fingerprints, they would do that?

17 A. If they feel that they could get
18 fingerprints off of it, sure.

19 Q. If you requested that they test an item
20 for blood stains, they would do that?

21 A. Sure.

22 Q. Or DNA evidence?

23 A. Sure.

24 Q. Your agency has the capability of doing
25 those types of tests?

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1 A. Yes.

2 Q. Are you aware whether that happened with
3 the cap that was recovered?

4 A. No, I am not.

5 Q. You didn't request that?

6 A. I didn't request that.

7 Q. Do you know whether or not the screwdriver
8 was processed for any type of fingerprints or
9 DNA or ---

10 A. I am not aware.

11 Q. You did not request that?

12 A. I did not.

13 MR. DAVIS: If I could have one
14 second, please.

15 THE COURT: Sure.

16 MR. DAVIS: (Sidebar with
17 Defendant), -- thank you, no other questions.

18 THE COURT: Redirect?

19 MS. SHEALY: Just briefly, Your
20 Honor.

21 REDIRECT EXAMINATION

22 BY MS. SHEALY:

23 Q. Officer Zelensky, I think you just
24 testified that on the incident date itself that
25 you arrested him for kidnaping and carjacking.

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1 Is that correct?

2 A. Correct.

3 Q. Are you aware that when you make a charge,
4 that is not necessarily the charge that the
5 Solicitor's office will go forward with; is
6 that right?

7 A. Yes.

8 Q. What is your understanding of what -- never
9 mind that. You understand that he is charged
10 with attempted armed robbery and kidnaping?

11 A. Right.

12 MS. SHEALY: I have no other
13 questions.

14 THE COURT: Recross?

15 MR. DAVIS: No, Your Honor. Thank
16 you.

17 THE COURT: You may come down, sir.

18 (WITNESS STEPS DOWN)

19 THE COURT: Call your next witness
20 -- well, why don't we do this? Given that it
21 is 11:30, let's take a break at this point.
22 Ladies and Gentlemen, don't discuss the case,
23 don't begin your deliberations. We will be
24 with you in about ten minutes or so.

25 (JURY OUT @ 11:29 A.M.)

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1 MR. SAHN: Judge?

2 THE COURT: Yes, sir?

3 MR. SAHN: Just a heads-up. The
4 next witness that we are going to call involves
5 the 9-1-1 tape. I don't know if you want to
6 take up that issue -- I believe that there is
7 going to be an objection. Do you want to take
8 up that issue now or ---

9 THE COURT: What is the objection?

10 MR. DAVIS: Judge, I did go through
11 them. On Exhibit B, the only thing that I
12 recall hearing on dispatch that could be
13 hearsay is what the officer testified to. Then
14 the other thing would be that this particular
15 witness on the 9-1-1 call would be hearsay,
16 irrelevant, ---

17 THE COURT: Who is on the 9-1-1
18 call?

19 MR. SAHN: Jennifer Gillentine, the
20 eyewitness to the crime.

21 THE COURT: Is she doing to testify
22 in this matter?

23 MR. SAHN: She is. Our position is
24 that its her words on the tape and it's an
25 unique opportunity for the jury to hear it at

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1 the time as the crime is unfolding. As far as
2 being hearsay, it's an excited utterance
3 exception, I believe.

4 THE COURT: That's fine. But if she
5 is going to testify, you eliminate all of -- if
6 she is here to testify, the order of presenta-
7 tion takes away the issue. Just thinking along
8 the lines of somewhere else than this
9 courtroom, it might be prudent to switch those.
10 Put her up, let her testify, let her say that
11 she called 9-1-1 and then play the 9-1-1 tape.

12 MR. SAHN: That is what we plan to
13 do, Your Honor.

14 THE COURT: Okay. All right. I'm
15 sorry, I thought you said the next person would
16 be the 9-1-1 tape.

17 MR. SAHN: No, sir. I misspoke.

18 THE COURT: Okay. Once you do that,
19 you place it right squarely in the rules and I
20 can rule on it objectively.

21 MR. SAHN: Thank you, sir.

22 MR. DAVIS: Judge, just one thing
23 for the record. I have talked with my client
24 about the statement that he gave to the
25 officers. Just on the record, we did discuss

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1 that.

2 THE COURT: That's fine. As I
3 understood, we had a sidebar in which you said
4 that you did not desire to have a Jackson v
5 Denno hearing.

6 MR. DAVIS: Correct. Thank you.

7 THE COURT: Given the way that it
8 was stated, I don't know that there was any
9 real interrogation in the first place. He
10 wasn't in custody at that point.

11 MR.. DAVIS: Thank you.

12 THE COURT: Yes, sir, thank you.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: All right, let the
16 record reflect that Mr. Dickson is present.
17 Is the State ready to continue?

18 MR. SAHN: Yes, Your Honor.

19 THE COURT: And I had a conversation
20 -- because wen I walked back, I thought 'wait a
21 minute.' You are not going to require them to
22 bring in the person to introduce what is the
23 tape, are you?

24 MR. DAVIS: If she can identify her
25 voice, then ---

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1 THE COURT: I mean, you've -- you've
2 heard it, we've seen it, ---

3 MR. DAVIS: Yes, sir.

4 THE COURT: So we don't really --
5 that's -- it is what it is.

6 MR. DAVIS: Yes, sir.

7 THE COURT: So I was thinking -- we
8 don't need to have a witness come in and say,
9 'Here is the tape.' Just so long as we're not
10 on that line of ---

11 MR. DAVIS: No, sir.

12 THE COURT: Okay, then that's fine.
13 She is going to testify that she called and
14 then you are going to introduce the tape.
15 There is not going to be an objection to
16 authenticity of that document?

17 MR. DAVIS: Correct.

18 THE COURT: Of that item?

19 MR. DAVIS: True.

20 THE COURT: All right. Now we're on
21 the same page. Thank you so much, sir. Let's
22 bring in our jury. Forgive me. I appreciate
23 your patience with me.

24 (JURY IN @ 11:51 A.M.)

25 THE COURT: Thank you very much,

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1 Ladies and Gentlemen. MR. White, I note that
2 this is the second time that you have occupied
3 that chair. I assume that you have been
4 selected as the presiding juror -- either that
5 or you're a tough banker. Have you been
6 selected as the presiding juror?

7 PRESIDING JUROR: Yes, sir.

8 THE COURT: Thank you very much,
9 Ladies and Gentlemen. I appreciate your -- I
10 appreciate it. Of course that will be your
11 seat for the balance of the trial.

12 Please give your attention to the next
13 witness. The State may call its next witness.

14 MR. SAHN: The State calls Jennifer
15 Gillentine.

16 (WITNESS TAKES STAND)

17 JENNIFER GILLENTINE,
18 being duly sworn to tell the truth, the whole
19 truth and nothing but the truth, testified, as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. SAHN:

23 Q. Good morning.

24 A. Good morning.

25 Q. Jennifer, how old are you?

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1 A. Twenty-two.

2 Q. Where do you live?

3 A. [REDACTED].

4 Q. How long have you lived at [REDACTED] ?

5 A. Two years.

6 Q. Are you married?

7 A. I am -- I have a fiancé.

8 Q. You are engaged?

9 A. Yeah.

10 Q. Any children?

11 A. No.

12 Q. Are you employed?

13 A. Yes.

14 Q. Where do you currently work?

15 A. At the Charleston International Airport.

16 Q. Okay. Is that located in Charleston
17 county?

18 A. Yes.

19 Q. How long have you worked there?

20 A. About a year and four months or so.

21 Q. What are your duties there at the
22 Charleston Airport?

23 A. I clean.

24 Q. Jennifer, turning your attention now to
25 the morning of Friday, June 29th, 2007, what

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1 were you doing that morning? Right after work?

2 A. I was on my way home.

3 Q. On your way home from where?

4 A. Dropping my fiancé off at work.

5 Q. Where were you heading to?

6 A. Home, on Mulberry Street.

7 Q. What car were you in that morning?

8 A. A 2000 Chevy Blazer.

9 Q. Were you by yourself in the car?

10 A. Yes.

11 Q. What roads were you on on the way home?

12 A. Highway 17.

13 Q. Did you make any turns off of Highway 17?

14 A. I took a left onto Wappoo Road.

15 Q. As you made that left on Wappoo Road, did
16 anything grab your attention?

17 A. Yes.

18 Q. What was that?

19 A. The vehicle in front of me slammed on the
20 brakes really fast.

21 Q. Could you tell why the vehicle in front of
22 you slammed on the brakes?

23 A. There was a silver Ford Explorer with
24 someone's legs and backside hanging out of the
25 driver's side window.

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1 Q. At this time could you see everything
2 clearly?

3 A. No.

4 Q. Why could you not see everything clearly?

5 A. Because they were in front of the vehicle
6 in front of me and he was bigger than I was.

7 Q. Who was bigger than you?

8 A. The vehicle in front of me.

9 Q. Can you describe to the jurors what you saw
10 next?

11 A. The fellow who was in the truck in front of
12 me got out, they were on the cell phone to call
13 9-1-1 and they walked around and asked me if I
14 could pull ---

15 MR. DAVIS: I object.

16 THE COURT: I will overrule that.

17 It's not offered for the truth of the matter
18 asserted at this point. You may continue.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. SAHN:

21 Q. You said that you saw a man hanging out
22 of the Ford Explorer SUV?

23 A. Yes.

24 Q. Was anybody trying to help the driver of
25 the SUV at that time?

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1 A. Yes.

2 Q. Who was trying to help her?

3 A. The two fellows that had asked me to block
4 the road.

5 Q. What were all the other cars doing, besides
6 those two?

7 A. I don't know.

8 Q. Without telling us what the guys in the
9 truck said to you, what did you do at that
10 time?

11 A. I pulled my truck into the ongoing traffic
12 lane and tried to block them from passing.

13 Q. Jennifer, at this time I would like to
14 point your attention to the blackboard behind
15 you.

16 MR. SAHN: May I approach, Your
17 Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION CONTINUED

20 BY MR. SAHN:

21 Q. I am just going to ask you to draw a
22 diagram of that scene, so that we can show the
23 jury -- if you'd just kind of stand over to the
24 side there. As you go along, explain to the
25 jury what was going on.

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1 A. Okay.

2 Q. Appreciate it.

3 A. (Sketching) -- this is Wappoo Road.

4 There is a church here and a school right
5 beside it, this is the truck in front of me and
6 then I am here. What I did was I took my truck
7 and pulled in sideways in this lane, trying to
8 block them from coming through. When I did
9 that, they were able to squeeze between the
10 back part of my vehicle which was here and that
11 part of the vehicle that was there -- they were
12 able to squeeze in that gap and get out.

13 Q. If you would, draw Highway 17.

14 A. (Complies).

15 Q. Where did the car go after it went in
16 between the two trucks?

17 A. There is a packing shed parking lot here,
18 then there is a Kerr Drug parking lot here. I
19 did not actually see them drive into the Kerr
20 Drug parking lot but as I turned around I saw
21 them come out. When they did that, they shot
22 straight back across Wappoo and straight into
23 the Kerr Drug parking lot.

24 Q. How was that Ford Explorer being driven at
25 that time?

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- 1 A. Very erratically.
- 2 Q. Erratically?
- 3 A. (Affirmative nod).
- 4 Q. Thank you, you may take your seat.
- 5 A. (Returns to witness stand).
- 6 Q. You told us a few moments ago when you saw
- 7 the man hanging out of the driver's window, ---
- 8 A. Right.
- 9 Q. Once they started driving, could you tell
- 10 where the man was?
- 11 A. He was in the passenger seat.
- 12 Q. Did you see what his man looked like?
- 13 A. Yes.
- 14 Q. Can you please describe him?
- 15 A. He had facial hair, he was slender and he
- 16 had either really, really light brown hair.
- 17 Q. What did they do next after they drove out
- 18 of there?
- 19 A. They drove in and out of a couple of lanes,
- 20 back and forth, and then took a left turn into
- 21 the ---
- 22 Q. I'm sorry. What did you do when they
- 23 turned onto Highway 17?
- 24 A. I followed them.
- 25 Q. You followed them?

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- 1 A. Yes.
- 2 Q. What road were you on when you were
3 following them, ma'am?
- 4 A. Highway 17.
- 5 Q. And at that time when you were following
6 them on Highway 17, how would you describe that
7 Ford Explorer being driven?
- 8 A. Very erratically.
- 9 Q. Were there a bunch of other cars on the
10 road or were you'all the only vehicles?
- 11 A. There were other cars but not a whole lot.
- 12 Q. Were you able to stay behind that car all
13 the time it was on Highway 17?
- 14 A. Yes.
- 15 Q. Were you able to get close enough to that
16 Ford Explorer that you could read the license
17 tag?
- 18 A. Yes, sir.
- 19 Q. Do you remember what that license plate
20 was?
- 21 A. Yes, I do.
- 22 Q. And what was it?
- 23 A. WHODATT.
- 24 Q. During the time that you were following
25 them on Highway 17, did the Ford Explorer make

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1 any turns?

2 A. Yes.

3 Q. Where did it turn?

4 A. They took a left into the Holiday Inn
5 Express parking lot.

6 Q. Did you follow them into the Holiday Inn
7 Express parking lot at that time?

8 A. No, I didn't.

9 Q. Why not?

10 A. Because I didn't want to put myself in any
11 more danger than I was already in.

12 Q. At this time, did you see the police?

13 A. Not at that time.

14 Q. Did you shortly after that?

15 A. Yes.

16 Q. Do you remember what direction that they
17 were coming from?

18 A. From behind me.

19 Q. From behind you?

20 A. Yes.

21 Q. On Highway 17?

22 A. No, sir. On Citadel Street when I went
23 down and turned around.

24 Q. Did you see where the police were going to?

25 A. They took a left off of Highway 17.

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1 Q. After they took a left off of Highway 17,
2 could you see where they were?

3 A. I didn't actually see them turning.

4 Q. During the time you were following this
5 Ford Explorer, did you have your cell phone
6 with you?

7 A. Yes, I did.

8 Q. Did you make any calls on that cell phone?

9 A. I did.

10 Q. Who did you call on that cell phone?

11 A. 9-1-1.

12 Q. Did you have a conversation with the 9-1-1
13 dispatcher at that time?

14 A. Yes, sir.

15 MR. SAHN: Your Honor, may I
16 approach?

17 THE COURT: You may.

18 MR. SAHN: (Tenders document to be
19 marked as exhibit).

20 COURT REPORTER: State's Exhibit 17
21 for identification.

22 DIRECT EXAMINATION CONTINUED

23 BY MR. SAHN:

24 Q. Ms. Gillentine, I am showing you what has
25 been marked as State's Exhibit 17 for ID

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1 purposes. Do you recognize that?

2 A. Yes, I do.

3 Q. What do you recognize that to be?

4 A. The tape of my call.

5 Q. Have you seen that tape before?

6 A. Yes, sir.

7 Q. Have you listened to the contents of that
8 recording?

9 A. Yes, sir.

10 Q. What is that a recording of?

11 A. Of my 9-1-1 call.

12 Q. When was that that you listened to that
13 tape?

14 A. About two months ago.

15 MR. SAHN: Your Honor, at this time
16 we would ask that this exhibit be admitted into
17 evidence.

18 MR. DAVIS: May we approach, Your
19 Honor?

20 THE COURT: Certainly.

21 (BENCH CONFERENCE)

22 THE COURT: State's Exhibit 17 is
23 admitted subject to the objection previously
24 argued.

25 (SO ENTERED AS STATE'S EXHIBIT 17)

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1 MR. SAHN: Your Honor, at this
2 time we would request that the recording of
3 the 9-1-1 be played to the jury.

4 THE COURT: You may do so.

5 (WHEREUPON 9-1-1 TAPE PLAYED BEFORE JURY)

6 DIRECT EXAMINATION CONTINUED

7 BY MR. SAHN:

8 Q. Jennifer, after the police arrived at the
9 Holiday Inn Express, Ruby Tuesday, did you
10 drive over there?

11 A. Yes, I did.

12 Q. What happened when you got over there?

13 A. When I got there he was already in
14 handcuffs, in custody in the back of the car.

15 Q. Did you talk to the officers?

16 A. Yes.

17 Q. Did you fill out a statement?

18 A. Yes.

19 Q. Was that a written statement?

20 A. Yes, sir.

21 Q. Did you see the victim, Ms. Jones, on the
22 scene at that time?

23 A. Yes, I did.

24 Q. How did she appear to be at that time?

25 A. She was very upset, she was crying, and she

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1 had a red swollen mark on the side of her face.

2 Q. Did you speak to her?

3 A. Yes, I did.

4 Q. What did you say to her?

5 A. I just asked her if she was okay.

6 Q. And do you see the man who jumped into Ms.
7 Jones' car in the courtroom that day?

8 A. Yes.

9 Q. Would you please point to him and describe
10 what he is wearing?

11 A. He is in the khakis with the blue-and-white
12 shirt.

13 Q. Is there any doubt in your mind that's the
14 man that you saw get into Mrs. Jones' car that
15 day?

16 A. No, sir.

17 MR. SAHN: Your Honor, please let
18 the record reflect that the witness pointed to
19 and identified the Defendant, Daniel Dickson.

20 THE COURT: It so reflects.

21 MR. DAVIS: And we rose for the
22 identification.

23 THE COURT: Thank you.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. SAHN:

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1 Q. Jennifer, at any time when you were
2 following them did you see him holding anything
3 inside the car?

4 A. No, sir.

5 MR. SAHN: I beg the court's
6 indulgence.

7 THE COURT: Certainly.

8 MR. SAHN: Please answer any
9 questions defense counsel may have for you.

10 THE COURT: Cross examine.

11 CROSS EXAMINATION

12 BY MR. DAVIS:

13 Q. When you first saw this incident, I want
14 to get this right in my mind's eye, were you
15 perpendicular to the vehicle? To the right?

16 A. When they first pulled out to the street?

17 Q. (Affirmative nod).

18 A. Yes, they came from my left.

19 Q. So you were viewing the passenger side of
20 the vehicle, right?

21 A. (No response).

22 Q. I'm sorry -- the driver's side of the
23 vehicle?

24 A. Yes, sir.

25 Q. And they go in front of you, squeeze in

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1 front of you and you began following them after
2 that?

3 A. No, sir, they squeezed by behind me.

4 Q. Behind you?

5 A. (Affirmative nod).

6 Q. You are also in some type of SUV, right?

7 A. Yes.

8 Q. By yourself, right?

9 A. Yes.

10 Q. They squeeze by behind you, you see where
11 they drive off to and you begin following them;
12 is that right?

13 A. Yes.

14 Q. When they end up in the parking lot behind
15 the building, you don't go back there at first?

16 A. No, sir.

17 Q. It's not until the police arrive on the
18 scene that you go back there; right?

19 A. Yes.

20 Q. And despite what we just heard on that
21 tape, you never saw the person in the vehicle
22 holding anything?

23 A. No.

24 Q. You never saw a knife?

25 A. No.

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1 MR. DAVIS: Thank you, that's all
2 the questions that I have.

3 THE COURT: Redirect?

4 MR. SAHN: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. SAHN:

7 Q. Jennifer, on the tape you described that
8 you saw a knife in the car. What made you say
9 that you saw a knife?

10 A. Because the fellows that were in the
11 vehicle in front of me told me that he had a
12 knife.

13 MR. DAVIS: Objection.

14 THE COURT: Sustained as to what
15 they said. The jury is to disregard the last
16 question and response.

17 MR. SAHN: No further questions.
18 Thank you.

19 THE COURT: Thank you. Anything
20 further?

21 MR. DAVIS: No, sir.

22 THE COURT: Thank you. You may step
23 down.

24 (WITNESS STEPS DOWN)

25 THE COURT: Call your next witness,

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1 please, sir.

2 MR. SAHN: Your Honor, the State
3 rests.

4 THE COURT: Ladies and Gentlemen, at
5 this point there are some matters of law that I
6 need to take up out of your presence. Please
7 retire to your jury room. Do not discuss the
8 case, do not begin your deliberations. We will
9 be with you very shortly.

10 (JURY OUT @ 12:00 P.M.)

11 THE COURT: Anything from the State
12 at this point, Mr. Sahn?

13 MR. SAHN: No, Your Honor.

14 THE COURT: Mr. Davis?

15 MR. DAVIS: Thank you very much,
16 Your Honor. Obviously at this point we would
17 be asking Your Honor for a directed verdict.

18 Just a summary of our argument, Your
19 Honor, first of all out of an abundance of
20 caution I would argue that while Ms. Gillentine
21 talked about where she worked and the county
22 that she lives in, I am not sure that they
23 identified the incident location as being in
24 Charleston County and I would raise that as a
25 jurisdictional issue.

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1 And, Judge, I would certainly argue
2 that even with the testimony of Mrs. Jones, Ms.
3 Gillentine and Officer Zelensky that it is only
4 inference of evidence that would raise a
5 suspicion of guilt and does rise to the level
6 of facts for the jury to deliberate on.

7 THE COURT: Thank you, sir. My
8 recollection is that the first witness, Mrs.
9 Jones, answered 'where is it that you work' and
10 she said Charleston. Then the question was,
11 'is that Charleston County?' Her response was
12 'yes.' So I would respectfully deny the Motion
13 as to any jurisdictional issue.

14 As to the issue of whether or not the
15 State has failed, I feel that viewing the
16 evidence in the life most favorable to the
17 State, as I am required to do at this point, it
18 is clear that the testimony is that this person
19 was held against her will even for a very short
20 period of time. Whether or not there was a
21 knife or not is important for maybe the robbery
22 issue but it has nothing to do with the
23 kidnaping issue. Clearly -- I feel in the
24 light most favorable to the State that that the
25 State has met its burden and would respectfully

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1 deny your Motion.

2 At this point do you anticipate
3 calling any witnesses, Mr. Davis?

4 MR. DAVIS: Judge, the only witness
5 might be my client. We've had discussion about
6 that. Obviously now that we've rested, if I
7 could have just a brief period to talk with him
8 about ---

9 THE COURT: I am going to give you
10 just a little bit longer than that. Given the
11 hour, I am going to let the jury go to lunch.
12 Rather than have them in deliberations, I am
13 going to let them go out. That saves the
14 County having to buy their lunch, as well.

15 I will give you an opportunity to do
16 that. If he chooses not to, then you will be
17 resting; is that correct?

18 MR. DAVIS: That's correct, Your
19 Honor.

20 THE COURT: Okay. We mentioned
21 something -- and now having heard the
22 testimony, the Court knew that there would have
23 be some reason but now it's been heard, the
24 reason. You stated that you've had your client
25 evaluated for competency and whether or not the

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1 McNaughton test has been reached, is that --
2 whether or not he passes that test, as well;
3 understanding what he was doing at that time?

4 MR. DAVIS: That's correct, Judge.

5 THE COURT: Do you have a report of
6 that?

7 MR. DAVIS: Judge, what I have is --
8 we hired an expert on our own. I did not ask
9 for a court order. I had a letter faxed to us
10 summarizing the findings.

11 THE COURT: That's all right, that's
12 fine. But she found that he was both competent
13 and that he met the standard, that he under-
14 stood what he was doing, understood that what
15 he was doing was wrong and had the capacity to
16 change it if he'd wanted to?

17 MR. DAVIS: Yes. I'll be happy to
18 make it a court's exhibit.

19 THE COURT: That would be fine. I
20 think that's -- or you can just state now for
21 the record what it is that they found.

22 MR. DAVIS: Yes, sir. This is Dr.
23 Honnivich (phonetic) at MUSC as to -- as to
24 competency, he understood the nature of the
25 proceedings and had an accurate understanding

1 of the charges he was facing, the consequence,
2 that he was able to focus his opinions and make
3 appropriate evaluations. In short, I do not
4 see anything that could be termed that he was
5 not competent for trial.

6 THE COURT: Okay.

7 MR. DAVIS: Skipping down in the
8 report -- (reading): "I did not see any
9 evidence to support the guilt of the
10 defendant", then "I did not see anything to
11 indicate a lack of criminal responsibility for
12 the alleged event."

13 THE COURT: Okay.

14 MR. DAVIS: That's ---

15 THE COURT: So she evaluated him
16 both for guilty-but-mentally-ill and the lack
17 of capacity to commit the offense?

18 MR. DAVIS: Yes.

19 THE COURT: And you've found nothing
20 since that report to change any of that or to
21 cause you any concern, that would require you
22 to present any evidence in the form of expert
23 testimony concerning insanity.

24 MR. DAVIS: No, sir. That was the
25 last -- that was sent to me on the 16th. It was

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1 either that day or the day before that the
2 evaluation was done and I've seen nothing
3 subsequent to that.

4 THE COURT: And you've talked to
5 your client?

6 MR. DAVIS: Yes, sir.

7 THE COURT: He's had the benefit of
8 having an opportunity to talk to you about the
9 results of the evaluation?

10 MR. DAVIS: Yes, sir.

11 THE COURT: We will be in recess --
12 let's bring in the jury. I'm going to recess
13 until 1:45 -- why don't we just say 2:00
14 o'clock, just to give them a little more time?
15 I'd suggest we be ready to argue -- to go ahead
16 with your final arguments. Mr. Davis, if you
17 would, just as a courtesy, let Mr. Sahn know
18 when you talk to him whether or not you intend
19 to put up witnesses.

20 MR. DAVIS: Certainly, (affirmative
21 nod).

22 THE COURT: Thank you.

23 (JURY IN @ 12:15 P.M.)

24 THE COURT: Thank you, Ladies and
25 Gentlemen. I brought you out because there are

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1 some matters that we need a little more time.
2 Nothing abnormal -- rather than let you sit in
3 that room and then bring you back in, I'm going
4 to go ahead and take a recess at this point for
5 lunch. Please do not begin your deliberations.
6 Of course, do not discuss the case among
7 yourselves. Do not permit anyone to talk about
8 this case in your presence or talk about your
9 service on this jury. I am going to ask that
10 you return to your jury room by 2:00 o'clock
11 and we will resume the trial at that time.
12 Have a good lunch.

13 (JURY OUT @ 12:20 P.M.)

14 THE COURT: Anything from the State
15 before recessing?

16 MR. SAHN: No, sir, Your Honor.

17 THE COURT: Anything from Mr.
18 Dickson?

19 MR. DAVIS: No, sir.

20 THE COURT: Thank you. We will be
21 in recess until 2:00 o'clock.

22 (LUNCH RECESS)

23 (DEFENDANT PRESENT)

24 THE COURT: Mr. Davis, have you had
25 an opportunity to talk with your client?

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1 MR. DAVIS: Yes, sir.

2 THE COURT: Do you need any more
3 time to talk with him?

4 MR. DAVIS: No, sir.

5 THE COURT: Does he choose to
6 testify or not to testify?

7 MR. DAVIS: He will not testify.

8 THE COURT: Mr. Dickson, is that
9 correct?

10 DEFENDANT: Yes, sir.

11 THE COURT: And you have had a
12 chance to reflect on your decision?

13 DEFENDANT: Yes, sir.

14 THE COURT: And your decision,
15 according to your lawyer, is not to testify;
16 is that true?

17 DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that
19 it would be your right to testify should you
20 choose to?

21 DEFENDANT: Yes, sir.

22 THE COURT: But that you don't have
23 to?

24 DEFENDANT: (Affirmative nod).

25 THE COURT: And you've heard me, in

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1 opening statements, tell the jury that you have
2 absolutely nothing to prove in this case. Do
3 you understand that?

4 DEFENDANT: Yes, sir.

5 THE COURT: And that is consistent
6 with what your lawyer has advised you?

7 DEFENDANT: Yes, sir.

8 THE COURT: I am sure that he has
9 also told you that by your choice not to
10 testify that I will instruct the jury that they
11 cannot consider that, they can't talk about it,
12 that if they do that they violate their oath.
13 Do you understand that?

14 DEFENDANT: Yes, sir.

15 THE COURT: Of course, again, you
16 have the right to testify. You would be
17 subject to cross-examination. You realize
18 that?

19 DEFENDANT: Yes, sir.

20 THE COURT: Are you under the
21 influence of any alcohol or any medication here
22 today?

23 DEFENDANT: I am under my
24 medication.

25 THE COURT: What is that medication,

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1 sir?

2 DEFENDANT: Haldol and Cogentia.

3 THE COURT: How long have you been
4 taking those drugs?

5 DEFENDANT: I'd been taking it for
6 a while, then I got off of it and I got on it
7 about two weeks or -- something like that.

8 MR. DAVIS: Ten to fourteen days,
9 Your Honor, he's been back on his medication.

10 THE COURT: All right. What is the
11 difference when you're off than when you are
12 on, is it more -- is your thought process
13 clearer when you are taking it than when you're
14 not taking it?

15 DEFENDANT: Yes, sir.

16 THE COURT: So you have more clarity
17 today than you had two weeks ago when ---

18 DEFENDANT: (Affirmative nod), when
19 I wasn't on it. Yes, sir.

20 THE COURT: You have been taking it
21 long enough to have thought about the decision
22 that you are making here today?

23 DEFENDANT: Yes, sir.

24 THE COURT: You haven't taken any
25 other medication other than that which is

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1 described?

2 DEFENDANT: No, sir.

3 THE COURT: And you have not
4 consumed any alcohol in the last twenty-four
5 hours?

6 DEFENDANT: No, sir.

7 THE COURT: Do you know of anything
8 that you could tell me that would affect your
9 ability to make a decision of this nature?
10 That is, to testify or not testify?

11 DEFENDANT: No, sir. I see
12 nothing, Your Honor.

13 THE COURT: And you've had a chance
14 to talk with your lawyer during the trial.
15 I've observed that. You've had no problems in
16 communicating with him ---

17 DEFENDANT: No, sir.

18 THE COURT: --- or him with you, is
19 that correct?

20 DEFENDANT: Yes, sir.

21 THE COURT: Are you satisfied with
22 your lawyers and the way that they have
23 represented you, sir?

24 DEFENDANT: Yes, sir.

25 THE COURT: All right. Thank you

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1 very much, Mr. Dickson. You may take your
2 seat. Let me just tell you this, I am going
3 to find first of all that you have had the
4 benefit of competent counsel in this matter and
5 you've had an opportunity to talk with them
6 concerning this proceeding, these charges, and
7 you've also discussed with them specifically
8 your right to testify or not to testify. You
9 have demonstrated by your responses here today
10 that you fully understand what you're doing and
11 that you've made a conscious decision for
12 yourself, and that is not to testify. I find
13 that decision to be one that you make freely,
14 voluntarily, knowingly and intelligently.

15 I may add also that from my
16 observations thus far that everything that I've
17 observed about Mr. Dickson -- his demeanor in
18 the courtroom, his participation, his
19 communication with the lawyer would confirm the
20 findings that were stated into the record, that
21 were the result of the examination by your
22 expert. Was it a psychiatrist or a
23 psychologist or both, do you know?

24 MR. DAVIS: Judge, I believe that it
25 was by a psychiatrist.

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1 THE COURT: All right, by your
2 psychiatrist. I find nothing that would place
3 the court on notice of any problems, nor does
4 the court find anything about your demeanor
5 here today to suggest that you are not fully
6 aware here today. You have responded to my
7 questions and clearly demonstrated an under-
8 standing of your rights. I find, therefore,
9 as stated, that you've made the decision
10 knowingly, freely, voluntarily and
11 intelligently.

12 I would add this, though, Mr. Dickson.
13 If from this moment until the point when Mr.
14 Davis says, "Your Honor, we rest", should you
15 change your mind, just make that known to him.
16 I'll excuse the jury and we can have further
17 conversation. Okay?

18 DEFENDANT: Yes, sir.

19 THE COURT: If I don't hear from
20 you, I am going to assume that you are
21 comfortable with the decision that you have --
22 that you've stated on the record in this case
23 and will proceed accordingly. Is that fair?

24 DEFENDANT: Yes, sir.

25 THE COURT: Thank you very much.

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1 As I understand, Mr. Davis, you do not intend
2 to offer any testimony?

3 MR. DAVIS: That's correct, Your
4 Honor.

5 THE COURT: So formally at this
6 point you would rest -- we will do it for the
7 jury's benefit when they come it. That would
8 then create another Motion state. Do you have
9 any Motions at this point?

10 MR. DAVIS: We would rest now, Your
11 Honor. There are no new Motions. I would
12 renew all my previous Motions. We do not wish
13 to present any evidence.

14 THE COURT: Thank you so much. And
15 all the reasons stated, all the objections
16 incorporated, are included -- including those
17 made prior to trial, all Motions made by the
18 Defendant. As I stated earlier, based on the
19 evidence which has been presented that I find,
20 in the light most favorable to the State, that
21 there is sufficient evidence to support a
22 verdict for both charges and, therefore,
23 respectfully deny that.

24 For the record -- for purposes of
25 review, I will not excuse the jury again just

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1 to go through the mechanics of that. The
2 Motion is preserved, it has been timely made
3 and properly -- the fact that we are going to
4 rest in front of the jury is simply for their
5 benefit and to keep the continuity of the trial
6 so that they feel a part of everything and no
7 possible prejudice can arise to the defendant
8 for proceeding without going through the
9 formality of resting. Any objection, Mr.
10 Davis, to proceeding in that ---

11 MR. DAVIS: Not at all.

12 THE COURT: Any objection from the
13 State?

14 MR. SAHN: No, sir, Your Honor.

15 THE COURT: We have all our jurors,
16 let's bring them in.

17 (JURY IN @ 2:07 P.M.)

18 THE COURT: Thank you, Ladies and
19 Gentlemen. I hope that you had a good lunch.
20 We are ready now to resume the matter which we
21 recessed for lunch. At that point the State
22 had rested. Now, Mr. Davis, consistent with
23 the discussion that I told the jury, not that
24 Mr. Dickson has to do anything, but does Mr.
25 Dickson wish to present any witnesses at this

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1 time.

2 MR. DAVIS: No, Your Honor. The
3 defense rests.

4 THE COURT: Thank you. That, Ladies
5 and Gentlemen, concludes the evidentiary
6 portion of this proceeding.

7 We now move into the third and fourth
8 stages -- the third stage of course is when the
9 lawyers have their second opportunity to speak
10 to you. Unlike the opening statement, you've
11 heard the evidence now. I am confident that
12 you will find their remarks very helpful to you
13 when you begin the process of resolving this
14 case; that is, deciding the true facts from the
15 evidence.

16 Following their closing arguments, I
17 then will give you the instruction on the law.

18 Please remember also that these are
19 two important parts of the dispute resolution
20 but you will not hear any additional evidence
21 during either of them. Okay.

22 As I understand, the State waives its
23 opening, Mr. Sahn, or do you wish to open? I
24 beg your pardon, I misspoke. I'm sorry about
25 that, Mr. Davis. The State may proceed.

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1 MR. SAHN: Thank you, Your Honor,
2 may it please the court?

3 THE COURT: Yes, sir.

4 MR. SAHN: Being the victim of a
5 random act of violence is everyone's worst
6 nightmare. Fortunately for most of us it is
7 only a nightmare. But for Pearl Jones it was a
8 nightmare that became a reality on the morning
9 of Friday, June 29th, 2007.

10 What is this case all about? It's
11 very simple, really. That Defendant
12 (indicating Mr. Dickson) intentionally and
13 without provocation from anyone kidnaped and
14 attempted to rob Pearl Jones with a deadly
15 weapon. The answer, that Defendant did
16 precisely that and that's why he is guilty of
17 kidnaping and that is why he is guilty of
18 attempted armed robbery; those are the
19 appropriate charges.

20 Now, it hasn't been that long since
21 I addressed you in my opening statement and I
22 told you what the evidence would be in this
23 case. Now that you've heard the evidence, I
24 would like to take a few moments to go over the
25 testimony that you've heard and the physical

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1 evidence that has been introduced during the
2 trial.

3 First, we heard from the victim
4 herself, Pearl Jones. The evidence is that
5 this hardworking mother and grandmother went
6 to work at the church that morning, on Wappoo
7 Road, and as she was leaving, the Defendant, a
8 complete stranger to her, stepped in front of
9 her car. At that moment, the Defendant decided
10 that Mrs. Jones would make the perfect victim
11 -- a woman, almost fifty years old, alone in
12 her car, no one else in the parking lot. That
13 is when the nightmare began for Mrs. Jones.

14 She rolled down the window to
15 apologize to the man because she hadn't seen
16 him. He returned that friendly gesture by
17 punching her in the face. He then forced his
18 way into her car, into the passenger seat.

19 Remember what happened then. The
20 people on the street, they see the danger and
21 they try to help, they try to block them in.
22 They are trying to stop the Defendant in the
23 middle of his kidnaping her. But they were not
24 successful.

25 What was Daniel Dickson doing inside

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1 her car? He was putting Mrs. Jones in a head-
2 lock, and he is pulling out this screwdriver
3 and he was holding this screwdriver to her
4 throat. Remember, Mrs. Jones showed you
5 exactly how he did this to her. She
6 demonstrated it for you right here.

7 And, remember that the Defendant
8 demanded of Mrs. Jones -- once he was inside
9 her vehicle he told her "Drive. I don't want
10 to have to kill you." "I don't want to have
11 to kill you."

12 What motive did he have for doing
13 this? Money. He had money on his mind that
14 day. He wanted cash, he wanted Pearl Jones'
15 cash. The evidence has shown that he demanded
16 money from Mrs. Jones several times during when
17 he was in her car. And during these demands,
18 he was holding that screwdriver the whole time.

19 You also heard from Officer Mark
20 Zelensky with the Charleston Police Department,
21 who was the arresting officer in this case.
22 The evidence will show that he pulled the
23 Defendant out of Mrs. Jones' car to arrest him.
24 Daniel Dickson was caught in the act. I assure
25 you that it is not every day that the defendant

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1 is caught red-handed in the middle of a crime,
2 but this is one of those rare cases.

3 Remember, Officer Zelensky also told
4 you that he found that screwdriver inside Mrs.
5 Jones' vehicle in the exact location where the
6 Defendant was sitting in the Ford Explorer.

7 What else did he find? He found the
8 ball cap that Daniel Dickson was wearing, just
9 like Pearl Jones described to you.

10 Lastly, you heard from Jennifer
11 Gillentine, who was the brave young lady who
12 put herself in danger that day by following a
13 man she'd just seen kidnap somebody. Every
14 single important detail that she told you
15 matches up with what Pearl Jones told you and
16 what Officer Zelensky told you. She described
17 for you the exact route that they took that day
18 from Wappoo Road to the Kerr Drug parking lot,
19 down Highway 17, through the Holiday Inn
20 Express parking lot.

21 You also got to hear her exact words
22 on the day of the crime, describing that crime
23 as it was occurring. You heard the 9-1-1 call
24 of that day. She gave a description of the SUV
25 on that date as well as the correct license

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1 plate: WHODATT.

2 Jennifer told you that she didn't see
3 an object in the Defendant's hand as she was
4 following them. Why would she not be able to
5 see an object in the Defendant's hand? Because
6 she was viewing him from behind their car,
7 outside the car. It would be hard for her to
8 -- in fact, impossible -- see a screwdriver
9 being held to the front of Mrs. Jones' throat,
10 viewing it from behind them, outside the
11 vehicle.

12 But what does she see? She sees the
13 Defendant forcing Mrs. Jones to drive, and that
14 driving was erratic. The evidence has also
15 shown that when Jennifer sees Mrs. Jones at
16 Ruby Tuesday, when the police arrested the
17 Defendant, his face -- excuse me, her face.
18 Her face was red and puffy, just like it would
19 be after someone gets punched in the face.

20 Now, Ladies and Gentlemen, in a few
21 moments Judge Dennis is going to instruct you
22 as to the law in this case. It is your job as
23 judges of the facts to apply the facts to the
24 law that the judge gives you. I have no doubt
25 that when you do that that the only logical

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1 conclusion to be drawn is that the Defendant
2 is guilty of kidnaping and guilty of attempted
3 armed robbery.

4 Now, our kidnaping statute in South
5 Carolina encompasses more than just abduction
6 at random. Remember, I put up our statute on
7 the board to show you our statute word for
8 word. Remember, our statute applies when
9 someone has been seized. When they have been
10 seized, when they have been taken hold of
11 forcibly or suddenly and the Defendant has
12 proven that the Defendant took hold of Mrs.
13 Jones, both suddenly and forcibly, when he
14 punched her, forced his way into her car, held
15 her against her will and forced her to drive.

16 Our kidnaping statute also applies
17 when someone has been confined. Confined means
18 to limit, restrict, impose within bounds,
19 imprison, shut in or keep in. No doubt the
20 evidence has shown that Mrs. Jones was confined
21 by the Defendant.

22 Remember -- and I hate to sound
23 redundant here but this is very important, he
24 punched her, forced his way into her car, put
25 her in a headlock, held a screwdriver to her

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1 throat, forced her to drive and threatened to
2 kill her. He is the boss in this scenario.
3 She was never free to leave. From the moment
4 that he punched her until the moment that she
5 was taken out of the car by the police, she was
6 never free to leave that car.

7 Remember, she tells him "take the
8 car", "here, take it", but he won't let her out
9 even then. In other words, she was confined
10 within her own car. Mrs. Jones was kidnaped by
11 Daniel Dickson. He is the kidnaper in this
12 case. In fact, what we have in this case is a
13 classic case of kidnaping.

14 Now, when Judge Dennis explains to you
15 what attempted armed robbery means, he will
16 explain what is meant by the term "attempt".
17 That definition really only calls on your
18 common sense, an attempt is to accomplish a
19 crime but not succeed. Armed robbery was
20 Daniel Dickson's goal that day. But because he
21 was not able to get Mrs. Jones' money before
22 arrested, he only attempted armed robbery
23 rather than armed robbery. The defendant's act
24 fell short of the intended goal only because
25 the police showed up in time, before he could

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1 take Mrs. Jones to her bank to get money.

2 So essentially "attempt" means that
3 you tried to commit the crime, you didn't get a
4 chance to complete it. But make no mistake,
5 the goal of the Defendant was armed robbery
6 that day.

7 Now, we've talked about intent. Armed
8 robbery. What was the Defendant intending to
9 do? The judge will tell you that armed robbery
10 is when a person armed with a deadly weapon
11 takes away the property of another by the use
12 of force, threats, or intimidation. Again,
13 what was the Defendant doing that day? He was
14 trying his best, while armed with a eight-inch
15 screwdriver, to take Mrs. Jones' money. He
16 demanded cash out of her purse, he demanded
17 that they go to an ATM, and he wanted her to
18 take him to her bank. You could say that he
19 was hell-bent on robbery that day. Nothing was
20 going to stop him. It was an attempted armed
21 robbery because he had that screwdriver to her
22 throat and that screwdriver is a deadly weapon.
23 He committed this crime by using force, threats
24 or intimidation because he threatened to kill
25 her. That is pretty much the ultimate threat,

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1 in my book. He certainly had the means to
2 follow through with that threat.

3 Ladies and Gentlemen, we have proven
4 beyond a reasonable doubt through credible,
5 convincing and consistent witnesses that the
6 Defendant, Daniel Dickson, kidnaped and
7 attempted to rob Pearl Jones with a deadly
8 weapon. We ask that you return the only
9 appropriate verdict in this case, a verdict of
10 Guilty of kidnaping and Guilty of attempted
11 armed robbery. Thank you.

12 THE COURT: Thank you, Mr. Sahn.
13 Mr. Davis?

14 MR. DAVIS: Thank you. There may
15 not be anything that we ask our citizens to do
16 that is more difficult than to sit in judgment.
17 But now that we are done with all the
18 testimony, that's what you are asked to do.
19 The judge will tell you in a moment that -- and
20 he has already told you in his opening remarks
21 -- that it is important that you each
22 individually consider the evidence, take as
23 long as you need. You will recall the evidence
24 that you've heard, there are exhibits for you
25 to look at. I told you in the very beginning

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1 that this was really about getting it right,
2 to do justice, to make sure the right result
3 happens.

4 The only officer that the State chose
5 to call was Officer Zelensky. You will recall
6 that he asked Mr. Dickson, 'What are you
7 doing?' Right? 'What are you doing?' And you
8 will recall the response, a confusing response,
9 'I was trying to get a ride to get to the lady
10 whose dog almost bit me.' That sounds silly,
11 it sounds odd, it sounds confusing, but what
12 does that mean? That's all that we have. We
13 know that there was a lady walking dogs out
14 there, that Mrs. Jones would meet from time to
15 time, that she would speak or talk to from time
16 to time. It doesn't make a whole lot of sense
17 but it corroborates the fact that he could --
18 that something like that could have happened.
19 Why would Mr. Dickson -- why if he is running
20 from a dog that is trying to bite him, why he
21 is jumping through a car window. Why does he
22 say "drive, drive, drive." A robber doesn't --
23 there is a lot that doesn't make sense but
24 there's a lot that is not disputed; and, I told
25 you that in the beginning.

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1 The Solicitor used a couple of terms
2 that I want to comment on. He told you that
3 they've proved their case, that the evidence
4 shows that this was intentionally done. This,
5 again, is where you the jury needs to get it
6 right. That is a key word, "intentional",
7 intentionally. I am not going to try to define
8 that for you because Judge Dennis will do that
9 in his charge on the law when he gives you the
10 jury instruction.

11 Listen to the instructions, because
12 otherwise it would be easy to jump to
13 conclusions.

14 There is a lot, as I said, that is not
15 in dispute. That's true. The two charges that
16 you will have before you -- the two charges
17 that the State brought to bring and present
18 evidence on are the only two options that you
19 have. Either that have proven that the conduct
20 was intentional, which we strongly dispute
21 that, or Mr. Dickson -- as the judge has
22 already told you, and I submit that the judge
23 will tell you again, that the Defendant, Mr.
24 Dickson, doesn't have to prove anything. It
25 just so happens under our rules that if we

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1 don't present evidence that I get to be the
2 last lawyer to talk to you. We like that,
3 for me to be the last person to talk to you.
4 That's important.

5 Intentional. What is intentional?
6 Are the charges before you the appropriate
7 charges? The only charges that you have are
8 attempted armed robbery and kidnaping. The
9 judge, the court, the State and Mr. Dickson are
10 asking that you find him guilty or not guilty.
11 We ask that you find him Not Guilty of both
12 charges.

13 The State is not even sure about what
14 the charge(s) should be. The morning of the
15 arrest, the morning of the arrest officers on
16 the scene put him in cuffs and arrested him for
17 carjacking and kidnaping. Ms. Shealy -- you
18 know that the charges changed and today the
19 charges come from Ms. Shealy, attempted armed
20 robbery and kidnaping.

21 It's about getting it right. It
22 really is about justice, making sure that you
23 get it right.

24 I told you in the beginning that
25 there were some things about which there is no

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1 dispute. I am sure what happened in that car
2 that morning were chaotic. Nothing like this
3 had ever happened to her before, and hopefully
4 never will again. I'm sure that it was chaotic
5 but I'm not sure that she knew what was
6 happening. You heard from the State that she
7 was upset. What happened in that car matters
8 so much, though. What was done in that car
9 matters so much, though.

10 The State will have the screwdriver
11 and you will have it back there to look at.
12 There is no doubt that that screwdriver came
13 from outside of her car, that it was taken
14 from her car by the police, that the officer
15 retrieved it from the passenger side floor-
16 board. Mrs. Jones said that she was eyeballing
17 it the whole time and that's how she knew
18 exactly what it was, but that then Mr. Dickson
19 stuffed it between the seats.

20 It matters where they found that
21 screwdriver, it matters because the State has
22 suggested to you that it was attempted armed
23 robbery. For attempted armed robbery, there
24 has to have been a weapon, a deadly weapon.
25 There is the screwdriver. You have to decide

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1 whether that was used by Mr. Dickson as a
2 deadly weapon or not. There is nothing
3 forensically leading you to it: nothing
4 forensic, no fingerprints, no DNA, nothing.

5 It matters what happened in that car.
6 The State has suggested to you that they have
7 a weapon, a deadly weapon. There is a screw-
8 driver, was it used by Mr. Dickson or not? You
9 have to believe that he attempted armed robbery
10 with that screwdriver.

11 Was Mrs. Jones scared? I am sure that
12 she was. There was some redening and bruises
13 and maybe -- if there was contact and shoving,
14 maybe that is assault and battery of a high and
15 aggravated nature. Maybe -- (pause).

16 MR. SAHN: Your Honor, may we
17 approach?

18 THE COURT: Yes, sir.

19 (BENCH CONFERENCE)

20 THE COURT: You may continue, Mr.
21 Davis.

22 MR. DAVIS: Thank you, Your Honor.
23 Maybe -- there is another crime in South
24 Carolina, strong-arm robbery -- and you can
25 read it, but the difference being whether there

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1 was a weapon or not, whether there was a deadly
2 weapon or not. It matters that we get this
3 right.

4 Now, there is kidnaping. The
5 Solicitor mentioned that earlier and the judge
6 will tell you about the law here in a minute.
7 But what if it was not an intentional
8 restraint? Intent.

9 The State -- Mr. Dickson was arrested
10 for carjacking, that is not kidnaping. The
11 State has forced to make a determination on two
12 charges: attempted armed robbery and kidnaping.

13 We are nearly done, but it's important.
14 that we get this right. You can only decide on
15 what is presented to you here in this court
16 when you get back to the jury room. If your
17 only options are guilty or not guilty on
18 attempted armed robbery and kidnaping, then
19 it's got to be not guilty.

20 If you have other options and you
21 believe that is what it is, then find him
22 guilty. But it is just so important that it
23 is not just accepting what the State has
24 suggested.

25 Finally, I want to thank you for your

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1 time, your attention, the commonsense that you
2 bring with you into this courtroom. I ask that
3 just because some of the scenario is not in
4 dispute that that doesn't mean the minor things
5 don't matter a whole lot. I appreciate your
6 discussion and consideration of all the facts
7 and on making the right decision in this case.
8 The right decision is not guilty on attempted
9 armed robbery and kidnaping. Thank you.

10 THE COURT: Thank you very much.
11 Ladies and Gentlemen, now it becomes my
12 responsibility to, of course, as judge of the
13 law to give you what we call the charge portion
14 of the law which you are expected that you will
15 at the appropriate time -- that is when you
16 begin your deliberations in this case, decide
17 the true facts of this dispute, you will take
18 this law and apply it fairly and impartially to
19 those facts which you will ultimately determine
20 very shortly.

21 I will respectfully suggest and submit
22 that when you have conscientiously considered
23 and evaluated the evidence in this case, decide
24 the true facts and apply the law, and report
25 your decision that you will at that time have

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1 fulfilled your responsibility and honored the
2 commitment that you made to the State and to
3 Mr. Dickson and to this court when we started
4 this proceeding.

5 During this instruction you may from
6 time to time hear me use the word "Defendant".
7 You may have heard that term already during
8 this trial. It is simply a term to refer to
9 Mr. Dickson, the person against whom claims are
10 made in this process of dispute resolution.
11 That is a term used to designate that person,
12 nothing else. It's just synonymous with Mr.
13 Dickson.

14 When we started -- when we qualified
15 you, I told you that Mr. Dickson was charged or
16 accused in these two documents that frame the
17 issue for this trial. One is a document
18 accusing him of committing the offense of
19 kidnaping and the other attempted armed
20 robbery. We will talk about those two charges
21 in just a moment. But to these indictments,
22 Mr. Dickson has rendered a plea of not guilty,
23 which places then upon the State the burden of
24 proving its guilt beyond a reasonable doubt.

25 Because, as I mentioned to you, it is

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1 the law of this state and of every state in
2 this country, as far as I know, that persons
3 who are accused of criminal offenses are
4 presumed innocent and that presumption remains
5 throughout the time from the charge is brought
6 until a jury, such as yourself, hears the
7 evidence and decides, is convinced, that the
8 State has persuaded each of them beyond a
9 reasonable doubt of his guilt of these crimes.
10 That is that they have established each element
11 required. Each of you is required under that
12 element and your oath to actively presume that
13 Mr. Dickson is not guilty. As I stated, that
14 remains until you have decided otherwise.

15 I further remind you that persons such
16 as Mr. Dickson who are accused of committing
17 criminal offenses are never required to come in
18 and prove or disprove anything at all, because
19 that burden, as I stated throughout rests
20 solely on the State.

21 Therefore, the fact that persons who
22 are accused of committing a criminal offense do
23 not testify in a proceeding against them, our
24 law is such that that cannot be considered
25 against that person. A person accused of an

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1 offense has the Constitutional right to remain
2 silent and the assertion of that right cannot
3 be considered against that person at any time,
4 certainly not during a jury's deliberations.

5 Therefore, under your oath you are not
6 to reach any inference or draw any conclusion
7 whatsoever from the fact that Mr. Dickson in
8 this case did not testify. His failure to
9 testify shouldn't even be discussed in the jury
10 room. If you do, then you would have violated
11 the oath that you took.

12 The burden of proof rests solely on
13 the State to prove its case and a defendant's
14 failure to testify, to not testify, is not a
15 matter for your consideration; nor should you
16 give any weight or inference to it whatsoever.

17 The State has to prove each element
18 beyond a reasonable doubt. What is that? A
19 reasonable doubt is a doubt, as I mentioned
20 when we started, that would make a sincere,
21 conscientious juror in search of the truth in
22 a case to hesitate to act. Proof beyond a
23 reasonable doubt is proof that leaves you
24 firmly convinced of the Defendant's guilt.

25 I would tell you and instruct you that

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1 there are very few things that we know in this
2 world with absolute certainty. In criminal
3 disputes such as this, the law does not require
4 proof that overcomes every possible doubt.

5 If based upon your consideration of
6 the evidence you're firmly convinced that Mr.
7 Dickson is guilty of one or more of these
8 crimes, then you must return a verdict of
9 guilty.

10 If on the other hand you think that
11 there is a real possibility that he is not
12 guilty, then you must give him the benefit of
13 that doubt and return a verdict of not guilty.

14 Reasonable doubt, Ladies and Gentle-
15 men, may arise from evidence in a case or the
16 lack or absence of evidence in a case. It's up
17 to you to determine whether or not a reasonable
18 doubt exists as to the guilt of this defendant.
19 I charge you that he is entitled to every
20 reasonable doubt arising in the whole case.
21 That means simply this. If upon any issue of
22 fact which is essential to a verdict of guilty,
23 that is a conviction, if as to any of those
24 issues you should have a doubt as to how that
25 should be resolved, then I would instruct you

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1 that that doubt must be resolved in his favor
2 and therefore the verdict would be Not Guilty.

3 Now, the evidence which you are
4 considering, will consider, consists of the
5 testimony of the witnesses and the exhibits
6 that have been offered and received during the
7 trial; that is, through their testimony. That
8 is the sole source of the evidence.

9 My rulings on objections -- again, as
10 I told you when we started, that was for me to
11 determine, that was my responsibility, you have
12 absolutely nothing to do with that. The charge
13 is not a suggestion, nor should you consider it
14 a suggestion as to how you must resolve or how
15 you should resolve a factual issue because
16 nothing that I've said or nothing that I say
17 should be considered by you as a statement of
18 fact or an indication of a factual issue.

19 Likewise, the remarks of the attorneys
20 be considered as evidence. Nor should their
21 remarks -- if they differ from what I tell you
22 that the law is, you must disregard their
23 remarks and take the law as I give it to you
24 because for purposes of this proceeding I am
25 the sole judge of the law and you must take it

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1 as I give it to you.

2 Likewise, if they give a statement of
3 what a witness said or didn't say during the
4 trial differs from your collective
5 recollection, then you must disregard that
6 remark. Why? Because you are the sole judges
7 of the facts of this case. That is your
8 responsibility, yours alone.

9 Now, Ladies and Gentlemen, in these
10 types of disputes there are two types of
11 evidence and it is not unusual to deal with
12 both of them. One is called direct evidence
13 and the other indirect, but the more popular
14 name is circumstantial evidence.

15 Direct evidence, as that term would
16 imply, generally deals with one's sensory
17 perceptions: 'I saw something', 'I heard
18 something', 'I felt something', or the like.
19 If you are firmly convinced of that testimony,
20 then that of course would establish that
21 particular fact.

22 Circumstantial evidence is when one
23 testifies to a number of circumstances or facts
24 and you are firmly convinced as to each of
25 those, as to the truth and reliability of

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1 those, those link -- or you can deduct or infer
2 some other fact from that, then that would be
3 circumstantial factor that you may also rely
4 on. As I stated, it is not uncommon for both
5 of those types of evidence to be used. Our law
6 makes absolutely no distinction between the
7 weight or the value to be given to direct
8 evidence or circumstantial evidence, nor is
9 there any greater degree of certainty required
10 of circumstantial evidence than direct
11 evidence. You are expected to weigh all the
12 evidence in the case and make a decision on
13 what you find to be credible and believable.

14 I would instruct you, however, that
15 the mere fact that circumstances brought out in
16 a case are strongly suspicious of guilt or that
17 guilty is probable, that is not enough. You
18 will remember that I told you in a civil
19 proceeding there is a probability standard and
20 that is where that applies. But beyond a
21 reasonable doubt is greater than someone being
22 probably guilty or suspected of guilt. It is
23 proof that convinced you beyond a reasonable
24 doubt that he is guilty of one or more of these
25 offenses.

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1 Now, how do you decide what you find
2 to be credible and believable? How do you
3 decide the facts? Well, obviously you have
4 to evaluate the testimony. You evaluate the
5 testimony of all the witnesses. Why? Because
6 the fact that the testimony or position of a
7 statement is not contradicted directly would
8 not necessarily render it undisputed. I say
9 that because, as we know, there always remains
10 the inherent credibility, believability of what
11 one says and you have to assess that and make
12 that determination.

13 There are many, many factors that one
14 may use to assist them in making this type of
15 decision. I am going to discuss some of those
16 factors now but if you've relied on a factor or
17 method in your life and you've found it very
18 trustworthy and reliable for you, that has been
19 beneficial, please use that and consider that
20 when you evaluate the evidence in this case:

21 You may want to consider also to
22 assist you in these types of decisions the
23 witness' demeanor. How did they appear to you?
24 Straightforward or hesitant in answering
25 questions?

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1 Was the testimony of a witness
2 consistent or inconsistent?

3 How did the witness come to know
4 the facts that he or she testified to and what
5 was the ability of that witness to know these
6 facts and circumstances.

7 Is there a reason that a witness
8 would have to give testimony which would be
9 helpful to one side or the other, or which may
10 be detrimental to one side or the other? In
11 other words, was the witness biased or
12 prejudiced in some fashion?

13 In making these decisions on
14 credibility and believability, our law gives
15 you very broad discretions. For, see, you have
16 the right to believe many witnesses against
17 one, one witness against many. You have the
18 right to believe all of a witnesses testimony,
19 parts of a witnesses testimony or none of a
20 witness' testimony.

21 Now, of course, you don't make these
22 decisions arbitrarily but if there is a reason
23 in the record in this case, that is the
24 evidence in this case, you have a reason for
25 taking that position you have that prerogative,

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1 because your objective throughout this is to
2 determine the truth regardless of the source
3 of the evidence.

4 Now, of course, while you have very
5 broad latitude or wide latitude in determining
6 the facts, remember that you don't enjoy the
7 same when it comes to the law. You promise to
8 take the law as I give it to you and apply that
9 law fairly and impartially to the facts. That
10 would include any area of the law or any
11 principle of law with which you may differ.

12 I respect your right to have a
13 different opinion about what the law is or
14 should be. We live in a great country where we
15 can take those positions. But for the purposes
16 of this proceeding you have promised the Court,
17 you have promised the State and you've promised
18 Mr. Dickson that you will set aside those
19 feelings and take the law and apply that law
20 fairly and impartially, notwithstanding your
21 own personal opinions. I am confident that
22 each one of you will do that.

23 Please, also, the order of my
24 instruction means nothing. I had to put it in
25 some order. Don't rely on any one portion as

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1 opposed to any other. You're expected to
2 consider the charge as a whole.

3 Let's look at the two charges that you
4 have, that you will decide in just a few
5 moments. As I mentioned, he is charged in one
6 of these indictments -- and, by the way, the
7 indictments, of course -- you see them but they
8 will not accompany you to the jury room because
9 they are not evidence.

10 It accuses in this indictment that he
11 did, on June 29th, 2007, unlawful seized,
12 confined, inveigled, decoyed, kidnaped,
13 abducted or carried away Pearl Jones;
14 allegedly, in violation of our law that
15 describes the conduct known as kidnaping.

16 In order to obtain a conviction for
17 this charge, the State must prove beyond a
18 reasonable doubt that Mr. Dickson knowingly and
19 unlawfully seized, confined, inveigled,
20 decoyed, kidnaped, abducted or carried away
21 another person without authority of law.

22 To do a thing unlawfully is to do it
23 willfully against the law.

24 "Knowingly" means with knowledge,
25 consciously, not accidentally.

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1 To "seize" means to take hold of
2 forcibly.

3 To "confine" means to limit, restrict
4 or enclose within bounds, imprison, or shut or
5 keep in.

6 "Inveigle" means to lure, entice or
7 lead astray by false representations, promises
8 or other deceitful means.

9 "Decoy" means to lure or as if by
10 decoy -- a decoy is something that entices a
11 person into a trap.

12 "Kidnap" is to remove a person against
13 his or her will by unlawful force or by fraud.

14 "Abduct" means to carry off secretly
15 or by force for an illegal purpose.

16 To "carry away" means to remove.

17 Now, the State does not have to prove
18 that the defendant did all of these things.
19 Instead, if you find beyond a reasonable doubt
20 that he did any of these things, you may find
21 the Defendant guilty of kidnaping.

22 Something done without authority of
23 law is something which the law does not
24 sanction, permit, allow, condone or provide
25 justification for.

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1 The kidnaping, or the act, does not
2 have to be for any personal or monetary gain or
3 for any illegal purpose but may be for any
4 reason whatsoever. The essence of the offense
5 of kidnaping is some form of compulsion. The
6 law says that the requisite force for
7 compulsion need not consist of the use of
8 actual physical force or violence or by express
9 threat. The offense of kidnaping commences
10 when one is wrongfully or unlawfully deprived
11 of her freedom, and that offense would continue
12 until her freedom has been restored.

13 Now let's look at the second
14 indictment that you have, which charges --
15 concerns the charge of attempted armed robbery.
16 In that it alleges that Mr. Dickson did, on
17 June 29th, 2007, by use of force, threats or
18 intimidation and while armed with a deadly
19 weapon; to-wit, a screwdriver, did attempt to
20 take and carry away goods and/or monies from
21 the person or immediate presence of Pearl
22 Jones, with the intent to deprive her of her
23 possession, which was contrary to the
24 provisions of Section 16-11-330(b) of our Code
25 of Laws.

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1 That section provides, Ladies and
2 Gentlemen, in part that if a person who commits
3 an attempted robbery while armed with a deadly
4 weapon or while alleging, either by actions or
5 words, that he is armed or while using a
6 representation of a deadly weapon or any object
7 which a person present during the commission of
8 a robbery reasonably believes to be a deadly
9 weapon, would be guilty of this offense.

10 Now, in order to prove this offense,
11 the State must prove beyond a reasonable doubt
12 that the defendant attempted to take personal
13 property from the person or presence of another
14 while armed with a deadly weapon.

15 An "attempt" is an effort to
16 accomplish a crime which does not succeed.
17 An attempt includes a specific intent to do
18 a particular criminal act along with an act
19 falling short of the act intended. The State
20 must show more than mere preparation and
21 intent, there must be some overt act committed
22 in an effort to commit the crime.

23 "Intent" means intending the result
24 which actually occurs, meaning that it is not
25 accidental or involuntary.

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1 "Intent" means -- intent may be shown
2 by acts and conduct of the defendant and other
3 circumstances from which you may naturally and
4 reasonably infer intent.

5 Now, the term "property in the
6 presence of" is defined -- property is in the
7 presence of a person if it is within the
8 person's reach, inspection, observation or
9 control so that the person could, if not
10 overcome with violence or threat of violence,
11 be prevented -- would have been able to keep
12 possession of the property. The State must
13 prove, beyond a reasonable doubt, that a
14 defendant intended to carry away the property
15 with the intent to permanently deprive the
16 owner of the right to keep the property, and
17 that he intended to keep it for his own use.

18 I would also instruct you that -- of
19 course, an additional element, if it is -- if
20 it is not carried out, it would -- the
21 slightest removal would be sufficient to
22 constitute the offense of taking away or
23 carrying away.

24 Also the threat to take and carry away
25 the property must have been done with violence

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1 or by putting the owner of the property in fear
2 of violence.

3 Finally, the State must prove beyond a
4 reasonable doubt that the defendant at the time
5 of the attempted robbery was armed with a
6 deadly weapon. A deadly weapon, Ladies and
7 Gentlemen, is any article, instrument or
8 substance which is likely to cause death or
9 great bodily harm. Whether an instrument has
10 been used as a deadly weapon depends on the
11 facts and circumstances of each case. In that
12 regard, ordinary objects may become deadly
13 weapons when the facts show that they have been
14 used in a fashion that could result in the
15 infliction of serious bodily harm and/or death.

16 Now, in charging the defendant with
17 attempted armed robbery, that charge also
18 carries with it a lesser-included offense.
19 That would be in a situation where you would
20 find that the Defendant -- that the State
21 proved the robbery but failed to convince you
22 beyond a reasonable doubt that the Defendant
23 was at the time armed with a deadly weapon.
24 The lesser-included offense is called robbery
25 or strong-arm robbery, as it is sometimes

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1 referred to. In order to prove robbery, the
2 State must prove beyond a reasonable doubt all
3 the elements that I just explained except that
4 the Defendant was armed with a deadly weapon.
5 In order to prove robbery, the State must prove
6 that the Defendant intended to take personal
7 property from the person or another without
8 that person's consent and to carry it away.
9 Again, property -- the term "property in the
10 presence of another" is the same as that which
11 I've previously defined for you, and that the
12 person would have had the right to keep it if
13 they had not been overcome by fear or prevented
14 -- prevented by fear or overcome by the threat
15 of violence.

16 The State must prove that he intended
17 to carry away the property if he could have
18 retained possession of it and that the carrying
19 away must have been accomplished -- or that the
20 intent to carry away must have been
21 accomplished with violence or by putting the
22 owner of the property in fear of violence.
23 That would be the essence of the offense of
24 robbery. That is a lesser-included offense as
25 raised by the charge. We will talk about that

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1 when we go over the verdict forms in just a
2 moment.

3 As I stated, criminal intent is a
4 necessary element of the crimes that have been
5 charged in that criminal intent has to be
6 established beyond a reasonable doubt. It is
7 always a matter that a jury has to determine
8 from the circumstances surrounding the
9 situation. So the law, as I stated, provides
10 that criminal intent may be inferred from the
11 circumstances that have been shown to have
12 existed.

13 Criminal intent, Ladies and Gentlemen,
14 is a state of mind that operates jointly with
15 the act and commission of a crime. Intent
16 would include those consequences which
17 represent the very purpose for which an act is
18 done or are known to be substantially certain
19 to result regardless of one's desire. Criminal
20 intent is a mental state of -- a mental state
21 of conscious wrongdoing. So it's up to you to
22 determine whether or not the defendant, what
23 the defendant intended to do based on the
24 circumstances which have been shown to have
25 existed.

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1 I tell you that the State must prove
2 criminal intent as any other element that I've
3 discussed, beyond a reasonable doubt.

4 Now, Ladies and Gentlemen, in this
5 case you and I have been selected as judges.
6 As judges, we don't have any friends to reward,
7 nor do we have any enemies to punish. In fact,
8 we are not advocates or partisans for either
9 side. We are expected to use our knowledge and
10 sense of logic and reasoning fairly and
11 impartially that we accepted when we undertook
12 this task.

13 I would suggest to you that that means
14 that we've promised also to set aside all human
15 emotions, because it has no place whatsoever in
16 this process. Sympathy, anger, none of that.
17 Why? Because that would destroy the essence of
18 what we are seeking; that is, a fair, just and
19 reasonable determination.

20 You promised that you will, very
21 shortly, apply that sense of logic and
22 reasoning that has served you so well; that you
23 will analyze the evidence and decide the true
24 facts; and, once you decide those facts you
25 will take the law as I give it to you and will

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1 apply that law to the facts and report your
2 decision.

3 Mr. Presiding Juror, to assist you in
4 that, I will be sending back two verdict forms.
5 There will be one for the kidnaping charge and
6 one for the attempted armed robbery. They will
7 look very similar but on the one for attempted
8 armed robbery there will be three choices
9 instead of two; on the one for kidnaping there
10 will be two choices. Let me talk to you about
11 the choices. The order in which they appear on
12 this form means nothing, Ladies and Gentlemen.
13 You will note that it is captioned and that's
14 just to facilitate the filing of the document.

15 Basically it states that you, by
16 unanimous consent, and that term means probably
17 what you already know and that is that all
18 twelve of you have to agree. Eleven to one is
19 not sufficient. Twelve to zero has to be the
20 total.

21 As to the kidnaping, there are two
22 choices: Guilty or Not Guilty. If your answer
23 is Guilty, then all twelve of you agree that
24 the State has convinced you beyond a reasonable
25 doubt as to each of those elements required,

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1 and I have discussed those with you. If you
2 are firmly convinced of his guilt as to that
3 charge, then you report a verdict of Guilty.
4 There will be a line that precedes each choice
5 and I would ask you to place a check or a cross
6 mark on that line and then circle your choice
7 as well. You will underneath a place to sign
8 as presiding juror. If you would, just sign
9 your name on that line and that will complete
10 that form.

11 If you select Not Guilty, you will be
12 saying that in analyzing the evidence that you
13 are not firmly convinced as to each element and
14 -- as I instructed you earlier, the State has
15 to prove each element. If they fail on one,
16 then you must return a verdict of Not Guilty.
17 Again, that decision must be unanimous.

18 The second verdict form is for the
19 charge of attempted armed robbery. The choices
20 will be that you find him Guilty of attempted
21 armed robbery, or you find him Guilty of the
22 lesser-included offense of robbery, or Not
23 Guilty. Let's talk about those choices.

24 The first one, obviously for the
25 charge I mentioned the elements of robbery plus

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1 you found that he was armed with a deadly
2 weapon. If all of those are present and you
3 are firmly convinced of that, the verdict would
4 be Guilty of attempted armed robbery.

5 If you are not convinced of the weapon
6 issue but convinced of all other elements of
7 robbery, because as I mentioned in my charge,
8 the lesser included offense of robbery includes
9 everything in armed robbery with the exception
10 of the use of a deadly weapon. If you are not
11 convinced of a deadly weapon but are convinced
12 of the robbery elements, convinced of that
13 beyond a reasonable doubt, then your verdict
14 would be Guilty of the offense of robbery.

15 The third choice would be Not Guilty
16 and that would mean that you are not convinced
17 of one of the robbery elements, in addition to
18 the armed robbery or that you are not convinced
19 of one of the armed robbery elements because
20 that pertains to each element. That would be
21 a verdict of Not Guilty.

22 Again, all twelve of you -- it must be
23 unanimous, all twelve. Again, there is a place
24 where you'd sign, Mr. Presiding Juror.

25 Once you have completed that form in

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1 that fashion, then you will knock on the door
2 and you will be returned to the courtroom to
3 receive your verdict.

4 I know that you are anxious to get
5 started and you're almost there. I told you
6 that it would be the last thing that I would
7 tell you, is when you may begin your delibera-
8 tion. I am going to excuse you in just a
9 moment. I have to talk about my charge with
10 the attorneys and it might be necessary that I
11 return you to the courtroom for clarification
12 or to give you some instruction. If so, we
13 will bring you back and make that clarifica-
14 tion. If there aren't any additions or
15 clarification to my charge, then we will gather
16 the exhibits and deliver them to you. When you
17 receive the exhibits, then you may begin your
18 deliberations but not before.

19 Once you start deliberations, the only
20 restriction that I place is that if any point
21 any juror has to leave the table, for any
22 reason, you must stop deliberating until all
23 twelve of you are together. Otherwise, you may
24 proceed as you deem fit and proper.

25 Let me ask now of the first twelve of

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1 you selected, do each of you feel that you will
2 be able to continue and complete the job that
3 you've undertaken? (No response). Thank you.
4 Mr. Schuyler (Alternate Juror), it appears at
5 this point that the first twelve will be able
6 to continue. When you exit the courtroom, I
7 ask that you not rejoin the jury. They will
8 take you to another room and I will be in
9 shortly to let you know how long we need for
10 you to remain with us. Should we bring the
11 jury back in for further instructions, we
12 certainly will return you with the jury.

13 Thank you, Ladies and Gentlemen, for
14 your attention. Please retire to the jury room
15 and do not begin your deliberations until you
16 receive the exhibits.

17 (JURY OUT @ 3:04 P.M.)

18 THE COURT: Any objections or
19 exceptions from the State?

20 MR. SAHN: Your Honor, the only
21 thing may be the lesser-included offense charge
22 of attempted armed robbery, would that not be
23 attempted robbery?

24 THE COURT: Attempted robbery.
25 Mr. Davis?

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1 MR. DAVIS: Nothing from the
2 defense.

3 THE COURT: Yes, ma'am?

4 MS. SHEALY: Your Honor, I was just
5 concerned that -- I think that you said strong-
6 arm robbery instead of attempted strong-arm
7 robbery. I just don't want ---

8 THE COURT: What I said in the
9 instruction was attempted and the verdict form
10 says attempted.

11 MS. SHEALY: Thank you.

12 THE COURT: If you want me to bring
13 them back in to tell them that, I ---

14 MS. SHEALY: I just don't want them
15 to be instructed that they have to prove taking
16 ---

17 THE COURT: I haven't instructed
18 them that they have to prove taking. I said
19 attempted, attempted robbery.

20 MS. SHEALY: I recall that it was
21 strong-arm robbery.

22 THE COURT: I didn't say anything
23 about -- but I'll be happy to bring them back
24 and say that.

25 MS. SHEALY: I appreciate that.

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1 THE COURT: Anything else?

2 MR. DAVIS: No, sir.

3 THE COURT: All right, let's bring
4 in the jury and the alternate.

5 (JURY IN @ 3:06 P.M.)

6 THE COURT: Thank you very much,
7 Ladies and Gentlemen. Just to -- I think I
8 probably did say it both ways but so that it is
9 clear, the charge when we define charges we
10 give you all the elements. Sometimes in an
11 attempt situation, those elements would never
12 be present because attempt means just that, it
13 wasn't an armed robbery, it was an attempted
14 armed robbery. So as I said to you, if you so
15 find that he attempted to remove goods from the
16 presence of another.

17 The same is true of robbery. The
18 State has to prove that he attempted -- if you
19 find -- and this is just by way of explanation,
20 I am not suggesting anything by this of how you
21 are resolve anything, I am merely discussing
22 with you -- if you should conclude that you are
23 not convinced beyond a reasonable doubt that
24 the Defendant was armed with a deadly weapon
25 but did attempt to take property from the

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1 presence of another, then the offense is
2 attempted robbery and not armed robbery. The
3 difference is that -- the only difference
4 between those two charges under our law is that
5 in one he was armed with a deadly weapon and in
6 the other he was not armed.

7 Again, they are not required to prove
8 that the robbery was actually consummated.
9 It's attempted robbery. If it is consummated,
10 then it would be the charge itself, just to
11 clarify that -- again, I am not trying to put
12 any more weight or emphasize on any part of it.

13 Again, thank you for your attention.
14 Please return to your jury room and await the
15 exhibits. Mr. Schuyler, you may return to your
16 room also.

17 (JURY OUT @ 3:10 P.M.)

18 THE COURT: Any objections or
19 exceptions from the State?

20 MS. SHEALY: No, sir.

21 THE COURT: From the Defense?

22 MR. DAVIS: No, Your Honor.

23 THE COURT: We'll be in recess until
24 we hear from the jury.

25 COURT REPORTER: Counsel, please

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1 come forward and review the exhibits.

2 (REVIEW OF EXHIBITS)

3 (JURY IN DELIBERATION @ 3:15 P.M.)

4 (JURY IN DELIBERATIONS)

5 (NOTIFIED OF VERDICT @ 3:30 P.M.)

6 (DEFENDANT PRESENT)

7 THE COURT: Let the record reflect
8 that Mr. Dickson is present. I understand that
9 the jury has reached a verdict. Is the State
10 ready to receive the verdict?

11 MR. SAHN: Yes, sir.

12 THE COURT: Defense ready to receive
13 the verdict?

14 MR. DAVIS: Yes, sir.

15 THE COURT: Bring the jury in.

16 (JURY IN @ 3:32 P.M.)

17 THE COURT: Mr. King (sic), I
18 understand that the jury has reached a verdict.

19 FOREMAN: Yes, sir.

20 THE COURT: I said 'Mr. King'. I'm
21 sorry, -- Mr. White. If you would pass the
22 verdict forms to the bailiff.

23 FOREMAN: (Tenders).

24 BAILIFF: (Tenders forms to
25 bench).

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1 THE COURT: The verdict forms have
2 been properly completed. I would ask the
3 Defendant to please rise.

4 DEFENDANT: (Complies).

5 THE COURT: Case Number 07-GS-10-
6 10830, we the just by unanimous consent find
7 the Defendant, Daniel Edward Dickson, guilty of
8 the crime of kidnaping. That is signed by the
9 presiding juror, Mr. Alfred White.

10 Case Number 08-GS-10-6743, the
11 indictment for attempted armed robbery,
12 (reading): "We, the jury, by unanimous consent
13 find the defendant, Daniel Edward Dickson,
14 guilty of attempted armed robbery." That is
15 also signed by Mr. White as the presiding
16 juror.

17 Both are dated October 22nd, 2008.

18 Ladies and Gentlemen, if the court
19 has accurately published your verdict, please
20 indicate that by raising your right hand.
21 (All jurors respond by raising right hand).

22 You may put them down.

23 Let the record reflect that each juror
24 raised their right hand in response to the
25 court's question. Anything further from the

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1 jury from the State?

2 MR. SAHN: No, Your Honor.

3 THE COURT: Anything further for the
4 jury from Mr. Dickson?

5 MR. DAVIS: Respectfully, Your
6 Honor, we would ask that the juror be polled.

7 THE COURT: Very well. Ladies and
8 Gentlemen, in just a moment Mr. Wilson will be
9 calling your names. He will be asking you two
10 questions: One, is that your verdict? Two,
11 is that still your verdict? Just follow his
12 instructions. That's what we call polling the
13 jury. Mr. Wilson, if you would, please, sir.

14 CLERK: Juror Number 232, Alfred
15 White. Are these your verdicts?

16 JUROR NUMBER 232: Yes.

17 CLERK: Are they still your verdicts?

18 JUROR NUMBER 232: Yes.

19 CLERK: Juror 63, Gloria Dunlap, are
20 these your verdicts?

21 JUROR NUMBER 63: Yes.

22 CLERK: And are they still your
23 verdicts?

24 JUROR NUMBER 63: Yes.

25 CLERK: Juror Number 123, Heather

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1 Leopard, are these your verdicts?

2 JUROR NUMBER 123: Yes.

3 CLERK: Are they still your verdicts?

4 JUROR NUMBER 123: Yes.

5 CLERK: Juror Number 217, Michael

6 Tilly, are these your verdicts?

7 JUROR NUMBER 217: Yes.

8 CLERK: And are they still your
9 verdicts?

10 JUROR NUMBER 217: Yes.

11 CLERK: Juror Number 174, Florence

12 Peters, are these your verdicts?

13 JUROR NUMBER 174: Yes, sir.

14 CLERK: Are they still your verdicts?

15 JUROR NUMBER 174: Yes, sir.

16 CLERK: Thank you. Juror Number 182,

17 Harriett Reavis, are these your verdicts?

18 JUROR NUMBER 182: Yes.

19 CLERK: Are they still your verdicts?

20 JUROR NUMBER 182: Yes.

21 CLERK: Juror Number 264, Harold

22 Kohler, are these your verdicts?

23 JUROR NUMBER 264: Yes, sir.

24 CLERK: Are they still your verdicts?

25 JUROR NUMBER 264: Yes, sir.

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1 CLERK: Juror 143, Jackie McDaniel,
2 are these your verdicts?
3 JUROR NUMBER 143: Yes, sir.
4 CLERK: And are they still your
5 verdicts?
6 JUROR NUMBER 143: Yes.
7 CLERK: Thank you. Juror Number 62,
8 Virginia DuBose, are these your verdicts?
9 JUROR NUMBER 62: Yes, sir.
10 CLERK: Are they still your verdicts?
11 JUROR NUMBER 62: Yes, sir.
12 CLERK: Juror Number 95, Wilhelmina
13 Hamilton, are these still your verdicts?
14 JUROR NUMBER 95: Yes.
15 CLERK: Are they still your verdicts?
16 JUROR NUMBER 95: Yes.
17 CLERK: Juror Number 70, Clifton
18 Ferguson, are these your verdicts?
19 JUROR NUMBER 95: Yeah.
20 CLERK: Are they still your verdicts?
21 JUROR NUMBER 95: Yeah.
22 CLERK: Juror Number 222, Latonya
23 Vasquez, are these your verdicts?
24 JUROR NUMBER 222: Yes.
25 THE COURT: Are they still your

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1 verdicts?

2 JUROR NUMBER 222: Yes.

3 CLERK: Thank you. Is there anyone's
4 name who I did not call? (No response). Your
5 Honor, the verdicts stand.

6 THE COURT: Thank you very much.
7 The jury having been polled, the verdicts
8 stand. Anything further from the jury panel at
9 this point?

10 MR. DAVIS: Nothing from the
11 defense?

12 THE COURT: Ladies and Gentlemen,
13 thank you very much for your assistance in
14 resolving this dispute. I appreciate the
15 manner in which you approached your duty as
16 jurors. It's been an honor to serve with each
17 one of you. I am pleased to inform you that
18 this will conclude your services for the week.
19 You do not have to return, you don't have to
20 call the number anymore, you're finished.

21 Please know when you receive your check
22 that that in no way represents the value of
23 what you've meant to this process. I'm not
24 talking about the verdict, I'm talking about
25 your participation in going through the process

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1 and making the sacrifice to help make this
2 process and this system to work. Thank you
3 for that.

4 Thank you for the privilege for being
5 here with you. If I happen to be holding court
6 in the next three years and you are selected to
7 serve again, if you wish to claim that
8 exemption you've earned this week by
9 participating, then I will be privileged and
10 honored to excuse you or to work with you
11 again. Good luck to each one of you. You are
12 now excused.

13 You are also free to talk about this
14 case now, if you wish, if that is your choice.
15 But if you chose not to and someone should
16 persist in asking you questions and you cannot
17 get them to stop, call Ms. Armstrong and she
18 can make that known to me and we will assist
19 you.

20 Having a good evening and a great
21 balance of the week. Thank you.

22 (JURY EXCUSED)

23 THE COURT: Do we have sentencing
24 sheets?

25 MR. SAHN: I do, Your Honor.

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1 THE COURT: If you would, pass those
2 up.

3 MR. SAHN: (Tenders)

4 THE COURT: Are we ready for
5 sentencing? I know that there was a matter
6 that we needed to hear and I will be happy to
7 hear you now. I mentioned to you that we would
8 delay hearing the arguments that you wanted to
9 make concerning the two prior charges -- or
10 ever how many there are. Mr. Davis, I will be
11 delighted to hear from you, sir.

12 MR. DAVIS: Thank you, Judge. The
13 State has provided copies to me of the
14 conviction from 1989, Richland County, of
15 assault and battery with intent to kill. They
16 provided the indictment and a certified copy of
17 the conviction. Therefore, the *prima facie*
18 case has been that, uh, -- I would ask Your
19 Honor to consider the remoteness in time of
20 this. The indictment was in 1988 and the
21 conviction in 1989, now almost a decade ago.

22 We would respectfully ask the court
23 to consider -- it is my understanding that upon
24 that conviction, when counsel at the time of
25 that trial and conviction in '89, we would

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1 allege that the subsequent potential effects
2 of that being a first strike was no fully
3 discussed with him. So analogous to an.
4 enhancement from a magistrate level -- he
5 certainly had counsel, he had a lawyer but we
6 would argue that the lack of knowledge of the
7 potential of life without parole was not
8 explained. We would argue that on one or two
9 or both of those grounds, and ask that you not
10 consider this.

11 I do understand the statute and law
12 but obviously -- and we understand that he
13 recently had another case and I am -- I am
14 making an argument on his behalf to ---

15 THE COURT: I understand, I don't
16 fault that. Do you wish to respond, Mr. Sahn?

17 MR. SAHN: Your Honor, if I could,
18 I would like to make the certified convictions
19 a part of the record. If we could mark ---

20 THE COURT: They will be ---

21 COURT REPORTER: --- Court's Exhibit
22 Number 2.

23 (SO ENTERED AS COURT'S EXHIBIT 2)

24 THE COURT: It appears from Court's
25 Exhibit 2 that this was a trial in which he was

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1 convicted. As stated, he was represented by
2 counsel. I don't know that that changes
3 anything, because I understand that the
4 conviction has not been challenged --
5 apparently it was also appealed, which means
6 that there was a subsequent review. The court
7 would note that clearly, as defined by Section
8 17-25-45, assault and battery with intent to
9 kill is listed as one of those Most Serious
10 offenses. Therefore, there is a prior Most
11 Serious offense. It also appears that either
12 of the charges today are likewise Most Serious
13 offenses and therefore he has the two strikes
14 required by law.

15 As I read the statute requiring life
16 without parole, the only factors that have to
17 be present is convictions. It is not
18 discretionary for the court, the court has no
19 option but to sentence him accordingly.

20 MR. DAVIS: Yes, sir, and we do
21 understand that. There is one matter that he
22 would like to address the court on -- actually
23 two matters if I could with the court's
24 permission ---

25 THE COURT: Certainly. I'd be

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1 delighted to hear from Mr. Dickson.

2 DEFENDANT: (Sidebar with Mr.
3 Davis).

4 MR. DAVIS: Your Honor, one matter
5 that he would like to -- it's a very unusual
6 situation. My client does suffer from
7 Hepatitis C. He is adamantly convinced that
8 it is something that occurred while he was
9 incarcerated at SCDC. He is aware that they
10 currently test for tuberculosis and HIV but
11 they do not for Hepatitis C. That is something
12 that we understand that this court may not have
13 great influence in but it's something that he
14 would like to address the court about.

15 And finally, Judge, he does have
16 concerns, as we mentioned previously that while
17 he did not testify he certainly met with the
18 State and gave information about the Whitt case
19 and he has concerns about his safety in the
20 Department of Corrections.

21 Just those three matters, very
22 briefly, Your Honor.

23 THE COURT: Certainly. I'll be glad
24 to hear from him.

25 DEFENDANT: First of all, I would

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1 like to tell Mrs. Jones that I am truly sorry.

2 Secondly, they got this thing in the
3 Department of Corrections called statewide
4 protective custody. I was on this thing when
5 I got out of prison because I helped the
6 Department of Corrections put a man on death
7 row. He got his death sentence overturned in
8 2007 and he will be going up for parole in
9 2027, and I was on statewide because of that
10 there. He put a contract out on me; and, Mr.
11 Whitt has done the same thing.

12 If I get a recommendation from the
13 judge they will place me back in this program
14 and I'll be housed at Kirkland Correctional
15 Institution.

16 MR. DAVIS: Your Honor, we would ask
17 respectfully if there is any recommendation
18 that Your Honor could make we would ask that
19 you do that. If not, I have assured him that
20 I will make every effort I can through the
21 Department of Corrections to ensure some type
22 of protection for him.

23 THE COURT: Thank you very much.
24 He may well be entitled to it but I believe
25 that it is a departmental matter that -- I'm

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1 confident that if they are concerned about your
2 safety that they will take the necessary steps
3 to do that, to accomplish that. I believe that
4 is a matter that needs to be determined by the
5 Department ---

6 DEFENDANT: Well, they cut me. I
7 got a bunch of stab wounds on ---

8 THE COURT: Sir, I understand that
9 but I'm not -- I am not in a position to tell
10 the Department where they should place you.
11 That is up to them.

12 DEFENDANT: I am just asking for a
13 recommendation, sir.

14 THE COURT: Thank you, sir.

15 MR. DAVIS: Judge, the last matter,
16 and we understand that this may not be in the
17 powers of -- respectfully, it may not be within
18 the powers of Your Honor. But as he has
19 conveyed to me, one of the issues he wanted is
20 that he certainly wanted to apologize to Mrs.
21 Jones. We want Mrs. Jones to know that because
22 of the posture of this case is why this was a
23 trial, the outcome being a life sentence. He
24 certainly had talked to me and we never
25 intended for it to be a trial except for that

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1 reason. He has expressed his remorse to me and
2 wanted to apologize. However, he had consumed
3 some alcohol that morning, he did not know that
4 morning that he suffered from Hepatitis C and
5 his greatest concern, Judge, is that -- and
6 this is one of the reasons that I had him
7 evaluated. His greatest concern, as opposed to
8 himself, was the fact that there would be other
9 people being released from the Department of
10 Corrections that ---

11 DEFENDANT: That they have it.

12 MR. DAVIS: --- may have Hepatitis
13 and not know it, have not been notified.
14 Again, I told him I would do anything that I
15 can to address that with the Department.

16 THE COURT: Anything else?

17 MR. DAVIS: No, sir. Thank you so
18 much.

19 THE COURT: Mr. Dickson, the
20 sentence of the Court on Indictment 07-GS
21 -10-0830 and 08-GS-10-6743 is that you be
22 committed to the South Carolina Department of
23 Corrections for the balance of your life, Life
24 without the possibility of parole, pursuant to
25 Section 17-25-45 of the South Carolina Code of

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1 Laws. Good luck, sir.

2 THE COURT: Anything else from the
3 State?

4 MR. SAHN: No, Your Honor.

5 THE COURT: Anything else from the
6 Defendant?

7 MR. DAVIS: Judge, just out of an
8 abundance of caution, as to any prior Motions,
9 I would renew them at this time to include our
10 Motion for a new trial.

11 THE COURT: Your Motion is noted and
12 denied for a new trial. I think that there was
13 an abundance of evidence to support the jury's
14 decision. I think the jury considered the case
15 deliberately and intentionally and I think
16 their decision comports in every respect with
17 the law and the evidence. All Motions
18 previously made are incorporated in my ruling,
19 and I reiterate and renew all rulings
20 previously given in this proceeding. Thank
21 you.

22 (TRANSCRIPT CONCLUDED)

23

24

25

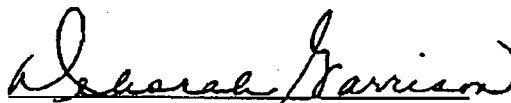
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1 CERTIFICATE OF REPORTER

2
3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9TH Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the jury
8 trial held before The Honorable R. Markley
9 Dennis, Jr., on October 21-22, 2008

10 I do further certify that I am neither kin
11 nor counsel to any of the parties and have no
12 interest in the outcome of this action.

13
14 

15 Deborah Garrison
16 Circuit Court Reporter
17 9th Judicial Circuit
18
19
20
21

22 Charleston, South Carolina
23 December 6, 2008

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED

MAR 12 2009

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DANIEL DICKSON,

APPELLANT

INITIAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT
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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in finding that the state's reason for striking the juror because he was a Lutheran minister was not pretextual when the minister was of the same race, gender and age as appellant and the victim worked at a church?

STATEMENT OF THE CASE

On October 8, 2007, the Charleston County Grand Jury indicted Daniel Edward Dickson on the charge of kidnapping. On August 4, 2008, the Charleston County Grand Jury indicted Dickson on the charge of attempted armed robbery. On October 21-22, 2008, Dickson proceeded to trial before the Honorable R. Markley Dennis, Jr. and a jury. He was represented by Rodney Davis, Esquire, and Cassie Winslow, Esquire. The jury returned verdicts of guilty as indicted. Judge Dennis was required by South Carolina Code Section 17-25-45 to sentence Dickson to life without parole due to Dickson's prior conviction of a most serious offense. Dickson's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in finding that the state's reason for striking the juror because he was a minister was not pretextual when the minister was of the same race, gender and age as appellant and the victim worked at a church.

On June 29, 2007, a 49 year old lady was leaving the parking lot of the church where she worked on Wappoo Road in Charleston. Daniel Dickson allegedly jumped in her car through the driver's window over her to the passenger seat. He allegedly held a screwdriver to her throat and told her to drive or he would kill her. Tr. 67, ll. 5 – 25; Tr. 68, ll. 1 – 25.

As she pulled out onto Highway 17, a witness, Jennifer Gillentine, saw Dickson halfway into the victim's car. She called 911 and then followed the car with Dickson and the victim. Several people became involved and tried to stop the car. Eventually, the car pulled behind the Ruby Tuesday restaurant where the police blocked them. Dickson was arrested. The screwdriver was found in the seat where Dickson had been. Tr. 69, ll. 1- 25; Tr. 70, ll. 1 – 25; Tr. 71, ll. 1 – 9.

Mark Selenky, the police officer involved in the incident, testified on cross that Dickson told him he was trying to get a ride with the woman because of a woman with a dog in the area. Tr. 121, ll. 3 – 25; Tr. 135, ll. 11 – 15.

The victim testified that she worked at St. Andrews Presbyterian Church where she was the Director of Christian Education. She also taught Bible studies and Sunday School. Tr. 80, ll. 15 – 25; Tr. 81, ll. 1 – 25; Tr. 82, ll. 1 – 25. She testified that when she walked out of the church, she saw a lady who walked her dogs around the church and talked to her. Tr. 83, ll. 21 – 25; Tr. 84, ll. 1 – 25. She explained that Dickson stepped in front of her car and that is when it all happened. Tr. 84, ll. 6 – 25.

After jury selection, when the judge asked if there were any motions, defense counsel told the court that the state struck Juror 177 because he was a white male of the same age, race and sex as Dickson. Tr. 34, ll. 21 – 25; Tr. 35, ll. 1 – 15. The judge asked:

Judge: What was your reason for striking him?

State: He is a pastor, a Lutheran pastor.

Judge: What is the reason why you struck him?

State: Because he is a Lutheran pastor.

Judge: I don't know why you'd want to strike a pastor but I find that it is not a pretense or not pretextual. I don't know why you would strike a pastor, but that's neither here nor there.

Defense: I will make the argument that because she worked at the church that...

Judge: But that is not gender or racial, that's not protected.

Defense: I am not sure that it is protected. I would like to make that objection on the record.

Judge: I don't think it is pretextual.

Tr. 35, ll. 16 – 25; Tr. 36, ll. 1 – 13.

Appellate courts are bound by the trial court's factual finding unless they are clearly erroneous. State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007). This standard of review however, is premised on the trial court following the mandated procedure for a *Batson* hearing. State v. Cochran, 369 S.C. 308, 631 S.E.2d 294 (Ct. App. 2006).

In Batson v. Kentucky, 476 U.S. 79 (1986), the United State Supreme Court held that the Equal Protection Clause forbids the State from challenging potential jurors solely on account of their race or gender. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), the Supreme Court ruled that both the State and defendants are prohibited from discriminatorily exercising a peremptory challenge of a prospective juror.

In State v. Rayfield, *id.*, the Supreme Court described the purpose of *Batson* as being to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of the system of justice by seeking to eradicate discrimination in the jury selection process.

In Purkett v. Elem, 514 U.S. 765 (1995), the Supreme Court announced: "Under our *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination." State v. Cochran, *supra*, citing Purkett v. Elem, 514 U.S. 765 (1995). Where the assignment of error is the failure to follow the *Batson* hearing procedure, the Court of Appeals must answer a question of law and the standard of review is plenary. State v. Cochran, *supra*.

At step three of a *Batson* challenge to the use of peremptory challenges, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination. State v. Cochran, 369 S.C. 308, 631 S.E. 2d 294 (Ct. App. 2006); State v. Edwards, 374 S.C. 543, 649 S.E.2d 112 (Ct. App. 2007).

Following a *Batson* challenge to the use of peremptory challenges, unless a discriminatory intent is inherent in the explanation provided by the proponent of the strike, the reason offered will be deemed race neutral and the trial court must proceed to the third step of the *Batson* process and decide whether the opponent of the strike has proved

purposeful racial discrimination. State v. Cochran, *supra*. The opponent of a peremptory strike carries the ultimate burden of showing purposeful discrimination and must demonstrate the pretextual nature of the stated reason or the strike; this burden is generally established by showing similarly situated members of another race were seated on the jury. Id.; State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007).

The trial court in Dickson's case did not follow the *Batson* procedure as outlined by the United States Supreme Court in Purkett and which the South Carolina Court of Appeals followed in State v. Cochran, *supra*. The trial court bypassed an evidentiary requirement that was one of the three steps in the process of a *Batson* issue. The trial court did not allow defense counsel the opportunity to show that the explanation offered by the state was pretextual.

The state should have wanted to have the Lutheran minister as a juror because the victim was employed by a church. The record indicated that defense counsel was trying to make that argument to the trial court but the judge did not allow him to finish. The judge ruled that the reason given by the state was not pretextual before he allowed defense counsel to complete Step Three of the process for *Batson*.

In McCrea v. Gheraibeh, 380 S.C. 183, 669 S.E.2d 333 (2008), the Supreme Court held that the trial court "bypassed an evidentiary requirement that goes to the very heart of a *Batson* inquiry: because the trial court did not first elicit a race-neutral reason for the strike from the Respondent's counsel." The Supreme Court reversed the Court of Appeals and remanded the case for a new trial.

The trial judge in Dickson's case should have held a complete Batson hearing as Dickson was facing life in prison. Defense counsel made the objection on the basis of race and gender and age. The judge was in error when he said that was not protected.

Defense counsel told the court during pretrial that he wanted to put on the record that Dickson was willing to plead guilty that day if the state would take LWOP off the table. Tr. 40, ll. 7 – 25. He explained that initially one of the team leaders for the solicitor's office was prosecuting Dickson's case. There was no mention of LWOP. Dickson cooperated with the state and provided information and was willing to testify in the murder case of Joseph Whitt. Dickson was incarcerated with Whitt. Tr. 38, ll. 7 – 25; Tr. 39, ll. 25.

After Dickson had provided information, a different solicitor took charge of prosecuting Dickson's case. That solicitor filed the notice of LWOP. Defense counsel said this case was never a trial until LWOP was filed. Tr. 40, ll. 1 – 14.

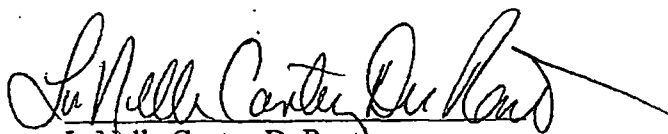
Later, Jennifer Shealy, assistant solicitor, told the judge that the state never committed to use Dickson and never offered anything to him. Tr. 44, ll. 1 – 19. Judge Dennis then told Solicitor Shealy that by waiting to serve the notice of LWOP until after Dickson had talked with the state gave the appearance of it. The judge said that once a person was served with LWOP notice, he had no reason to cooperate. Tr. 44, ll. 20 – 25; Tr. 45, ll. 1 – 10.

There was a reasonable probability that if the state did not deal fairly with Dickson on the LWOP issue, then the state was not dealing fairly on the *Batson* issue with the Lutheran minister.

CONCLUSION

Based on the above, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant", written over a horizontal line.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of March, 2009.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
MAR 12 2009
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DANIEL DICKSON,

APPELLANT

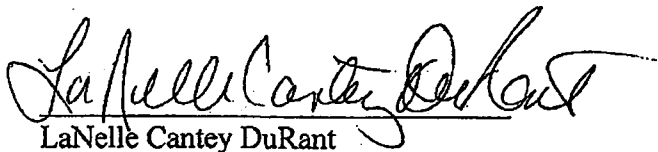
DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL

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

- (1) True-billed indictment(s);
- (2) Trial Transcript Pages 34, 35, 36, 38, 39, 40, 44, 45, 67, 68, 69, 70, 71, 80, 81, 82, 83, 84, 121, 135.

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

March 12th, 2009


LaNelle Cantey DuRant
Appellate Defender

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
MAR 12 2009
SC Court of Appeals

Appeal from Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

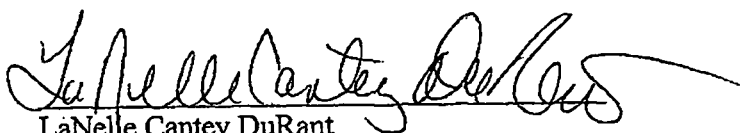
V.

DANIEL DICKSON,

APPELLANT

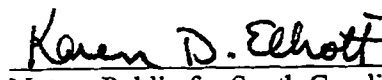
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of March, 2009.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of March, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL DICKSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

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Chief Deputy Attorney General

SALLEY W. ELLIOTT
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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

Are Dickson's assignments of error available for appellate review?

II.

Did the trial judge err by finding the State's decision to strike a juror was not mere pretext?

STATEMENT OF THE CASE

Respondent concurs with the procedural Statement of the Case of Appellant Daniel
Dickson.

ARGUMENT

Dickson's assignments of error are not available for appellate review. The trial judge did not err by finding the State's decision to strike a juror was not mere pretext. (Dickson's Issue; Respondent's Arguments I & II).

During the jury selection, the State struck Juror #177. (Tr. 28). After jury selection, defense counsel objected to the State's strike, because "he is a white male of the same age" as Dickson. (Tr. 35). The following then occurred:

THE COURT: What was your reason for striking him?

[ASSISTANT SOLICITOR:] He is a pastor, a Lutheran pastor.

THE COURT: What is the reason why you struck him?

[ASSISTANT SOLICITOR:] Because he is a Lutheran pastor.

THE COURT: I don't know why you'd want to strike a pastor but I find that it is not a pretense or not pretextual. I don't know why you would strike a pastor, but that's neither here nor there.

[DEFENSE COUNSEL:] I will make the argument that because she worked at the church that - - -

THE COURT: But that is not gender or racial, that's not protected.

[DEFENSE COUNSEL:] I am not sure that it is protected. I would like to make that objection on the record.

THE COURT: I don't think it is pretextual.

(BENCH CONFERENCE CONCLUDED)

(Tr. 35-36).

The Equal Protection Clause of the Fourteenth Amendment to the United States

Constitution prohibits the striking of a venireperson on the basis of race. State v. Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999)[citing Batson v. Kentucky, 476 U.S. 79 (1986)]; Payton v. Kears, 329 S.C. 51, 495 S.E.2d 205 (1998). The purposes of Batson and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process.¹ Haigler, 515 S.E.2d at 90 [citing Powers, 499 U.S. at 404-10, and Batson, 476 U.S. at 85-87].

The trial judge must hold a Batson hearing when members of a cognizable racial group are struck and the opposing party requests a hearing. State v. Tucker, 334 S.C. 1, 512 S.E.2d 99 (1999); State v. Jones, 293 S.C. 54, 358 S.E.2d 701 (1987). Batson requires a hearing to allow a party the opportunity to make a prima facie showing of purposeful discrimination by challenging the other party's use of a peremptory strike, and if such discrimination is found, the proponent of the strike has the opportunity to present a neutral explanation for the strike. Id., 358 S.E.2d at 702-03.

The Supreme Court has set forth the following procedure for a Batson hearing:

After a party objects to a jury strike, the proponent of the

¹As noted in Haigler, "the Batson principles are broadly applied." Haigler, 515 S.E.2d at 90 n.4. A party may not exclude potential jurors on the basis of gender as well as race. J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127 (1994). A criminal defendant may object to race-based peremptory challenges on equal protection grounds regardless of whether the defendant and potential juror share the same race. Powers v. Ohio, 499 U.S. 400 (1991). A prosecutor may challenge a defendant's use of peremptory challenges as an equal protection violation. Georgia v. McCollum, 505 U.S. 42 (1992). The prohibitions on the discriminatory use of peremptory challenges apply in criminal and civil cases. Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991).

strike must offer a facially race-neutral [or gender-neutral] explanation. This explanation is not required to be persuasive or even plausible. Once the proponent states a reason that is race-neutral [or gender-neutral], the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race [or the other gender] were seated on the jury or the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment.

State v. Ford, 334 S.C. 59, 512 S.E.2d 500, 503 (1999); accord State v. Adams, 322 S.C. 114, 470 S.E.2d 366, 372 (1996)[citing Purkett v. Elem, 514 U.S. 765 (1995)].

In his Brief, Dickson argues the trial judge failed to conduct a proper Batson hearing, because he failed to give defense counsel the opportunity to show that the State's explanation for the strike was pretextual.

The preservation of Dickson's assignment of error is dubious. For an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial judge will not be considered on appeal. State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003); Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). A party need not use the exact name of a legal doctrine in order to preserve it, but it must be clear that the argument has been presented on that ground. State v. Russell, 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001). A party may not argue one ground at trial and an alternate ground on appeal. State v. Prioleau, 345 S.C. 404, 548 S.E.2d 213 (2001). "In order for an issue to be properly presented for appeal, the appellant's brief must set forth the issue in the statement of issues on appeal." State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268, 271 (Ct. App. 2008); see also Rule 208(b)(1)(B), SCACR ["Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal"]; State v. Bray, 342

S.C. 23, 535 S.E.2d 636 (2000)[it is error for an appellate court to consider issues not raised to it]. An issue that was not preserved for review cannot be addressed by the appellate court. Dunbar, 587 S.E.2d at 694; Hendrix v. Eastern Distribution, Inc., 320 S.C. 218, 464 S.E.2d 112 (1995).

Dickson's statement of issue on appeal and the heading above the argument contend the trial judge "err[ed] in finding that the State's reason for striking the juror because he was a Lutheran minister was not pretext when the minister was of the same race, gender and age as appellant and the victim worked at the church." (BOA at 3 & 5). In his argument, however, Dickson only asserts the trial judge "bypassed an evidentiary requirement" of the Batson procedure, to wit: he failed to "allow defense counsel an opportunity to show that the explanation offered by the state was pretextual." (BOA at 8-9). Because defense counsel never objected to the Batson procedure used in the present case, this assignment of error is not subject to appellate review. Dunbar, 587 S.E.2d at 694; see State v. Carlson, 363 S.C. 586, 611 S.E.2d 283, 287 (Ct. App. 2005)[holding where the defendant failed to object to the conduct of the hearing on the admissibility of a witness's out-of-court identification conduct, the issue was not preserved for appellate review].²

Instead, this Court is limited to addressing the single issue raised by Dickson in his statement of issue on appeal. Culbreath, 659 S.E.2d at 271. This assignment of error is not argued in Dickson's Brief, however. The issue, therefore, is deemed abandoned and

²In the event this Court determines the trial judge did not follow the Batson procedures outlined above, Dickson is only entitled to a remand for a complete Batson hearing. He is not entitled to a new trial. State v. McCray, 332 S.C. 536, 506 S.E.2d 301 (1998); State v. Chapman, 317 S.C. 302, 454 S.E.2d 317 (1995).

precludes consideration on appeal. Rule 208(b)(1)(D), SCACR; Video Gaming Consultants, Inc. v. South Carolina Dep't of Revenue, 342 S.C. 34, 535 S.E.2d 642 (2000); Fields v. Fields, 342 S.C. 182, 536 S.E.2d 684 (Ct. App. 2000); State v. Black, 319 S.C. 515, 462 S.E.2d 311 (Ct. App. 1995).

The record further demonstrates that, although defense counsel objected to the State's strike, he failed to object to the trial judge's finding that the State's decision to strike the juror was not pretextual.³ Dunbar, 587 S.E.2d at 693-94. Dickson's particular assignment of error on appeal is procedurally barred. Id.; see also State v. Johnston, 327 S.C. 435, 489 S.E.2d 228 (Ct. App. 1997)[holding a failure to object to the dismissal of a juror in violation of Batson constitutes a waiver of the issue on appeal].

In any event, Dickson's contention that the State's strike of Juror #177 violated Batson is without merit. Employment is a well-understood and recognized consideration in the exercise of peremptory challenges. Ford, 512 S.E.2d at 504, Adams, 470 S.E.2d at 372; State v. Williams, 379 S.C. 399, 665 S.E.2d 228 (Ct. App. 2008); see also J.E.B. v. Alabama ex rel. T.B., 511 U.S. 127, 142 n.14 (1994)[noting a peremptory challenge made on the basis of group characteristics such as occupation do not raise the same concerns as those based on race or gender]. The State explained that it struck the juror based on his occupation as a pastor. This was clearly a race-neutral explanation for the strike. There was no error.

³Because defense counsel did not object to the Batson procedure employed in this case, Dickson ultimately failed to meet his burden to show that the race- or gender-neutral explanation given by the State was mere pretext. Adams, 470 S.E.2d at 372.

CONCLUSION

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

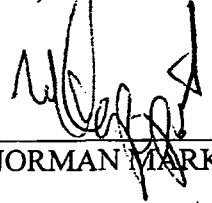
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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Senior Assistant Attorney General

SCARLETT WILSON
Solicitor, Ninth Judicial Circuit

BY:



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ATTORNEYS FOR RESPONDENT

April 27, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL DICKSON,

Appellant.

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

Respondent proposes the following to be included in the Record on Appeal:

1. Tr. 6-50;
2. Tr. 72-159.

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers. Additionally, Respondent notes that personal data identifiers and other sensitive information should be redacted from the transcript or other documents (including the Final Brief) pursuant to the South Carolina Supreme Court Order dated August 13, 2007.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

HENRY DARGAN McMASTER
Attorney General

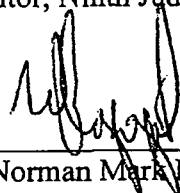
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JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

NORMAN MARK RAPOPORT
Senior Assistant Attorney General

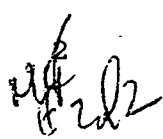
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ATTORNEYS FOR RESPONDENT

April 27, 2009



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

DANIEL DICKSON,

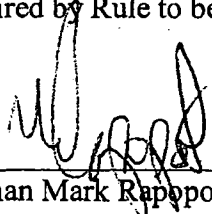
Appellant.

PROOF OF SERVICE

I certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney or record, LaNelle Cantey DuRant, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

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

This 27th day of April, 2009.



Norman Mark Rapoport

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Daniel Dickson,

Appellant.

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-348
Submitted June 1, 2010 – Filed July 6, 2010

AFFIRMED

Appellate Defender Lanelle Cantey Durant, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for Respondent.

PER CURIAM: Daniel Dickson appeals his conviction for attempted armed robbery and kidnapping. On appeal, Dickson argues the trial court erred in finding the State's reason for striking the juror because he was a Lutheran minister was not pretextual even though he was of the same age, gender, and race as Dickson. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Edwards, 384 S.C. 504, 510, 682 S.E.2d 820, 823 (2009) ("Employment is a well-understood and recognized consideration in the exercise of peremptory challenges."); McCrea v. Gheraibeh, 380 S.C. 183, 187 n.2, 669 S.E.2d 333, 335 n.2 (2008) (finding a strike will be deemed racially neutral unless there is an inherent discriminatory intent in the explanation); State v. Evins, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007) ("Once the proponent states a reason that is race-neutral, the burden is on the party challenging the strike to show the explanation is mere pretext, either by showing similarly situated members of another race were seated on the jury or that the reason given for the strike is so fundamentally implausible as to constitute mere pretext despite a lack of disparate treatment.").

AFFIRMED.

SHORT, KONDUROS, and GEATHERS, JJ., concur.

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

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Full name and prison number (if any) of Applicant.

DANIEL EDWARD DICKSON 105841

v.

State of South Carolina

2011-CP-10-4505

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2011 JUN 27 PM 12:07
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

KIRKLAND CORRECTIONAL INST. STATEWIDE P.K. DORM D-19.

1. Place of detention 4344 BROAD RIVER RD
COLUMBIA, SOUTH CAROLINA 29202
2. Name and location of Court which imposed sentence GENERAL SESSIONS COURT
CHARLESTON, SOUTH CAROLINA 29401-2256
3. Name(s) of co-defendant(s) (if any) 0

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) # NO. 08-GS-10-6743 ~~08-10-0550~~, 07-GS-10-0550
KIDNAPPING + attempted armed robbery

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) OCT. 22ND 2008(b) LIFE WITHOUT PAROLE

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ JURY TRIAL
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
~~Indicate result of conviction~~ YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA STATE COURT OF APPEALS
- ii. ~~SCOTLAND COUNTY COURT~~
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED THE CONVICTION
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JULY 6, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE. PER CURIAM OPINION (UNPUBLISHED OP. 2010-UP-348)
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHED EXHIBIT A.

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): See attached Exhibit B.
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- 7 (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. LAWELLE CONTEY DURANT; DIVISION OF APPELLATE DEFENSE,
P.O. Box 11589, Columbia, S.C. 29211-1589
- ii. RODNEY DAVIS; Cassie Winslow + Courtney Edwards; Office of
Charleston Co. Public Defender, 100 Broad Street, 5th Floor
Charleston, S.C. 29401
- (b) the proceedings at which each such attorney represented you:
- i. Durant - appeal
- ii. Davis, Winslow + Edwards - trial
- iii. _____

19. State clearly the relief you seek in filing this application: (1) A finding that my trial attorneys were ineffective in their representation of me; (2) vacation of my sentence; (3) a finding that the agreement set forth in # 10 + 11 above had, in fact,
20. Are you now under sentence from any other court that you have not challenged?

No

been reached that the state is bound by the terms of that agreement; + (4) an Order that upon any resentencing the Applicant should be sentenced in accordance with the above-mentioned agreement.

STATE OF SOUTH CAROLINA)

County of ~~Richland~~ Richland)

VERIFICATION

I, Daniel Edward Dickson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Daniel E. Dickson

SWORN to and subscribed before me this 21st
day of June, 2011.

[Signature] (L.S.)
Notary Public

My Commission Expires: October 28, 2014

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Daniel E. Dickson
Applicant

SWORN or affirmed to and subscribed before me this
21st day of June, 2011.

[Signature]
Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

10.

EXHIBIT "A"

(A)

Ineffective Assistance
of the trial Counsel.

(B)

Failure of the State to
abide by the terms of a
agreement regarding my
sentence. That it had
earlier reached with me.

Instead (Contrary) to
the agreement, And acting
in bad faith seeked a
sentence of life without
parole.

(C)

ex parte communications
that occurred in the Judges
Chambers Between the
solicitors, And one or more

(1)

of my listed defence attorneys. This happened immediately prior to my trial. And at a time when I had filed some outstanding motions to represent myself pro se. Also numerous of other outstanding motions

This ex parte of the communications that happen in the privacy of the judges chambers disposed of my ability to have these motions "effectively" presented. My Attorney told me he discussed these motions in chambers with the judge, who was not going to allow them at trial. That they had also discussed the Whitt case. And because I had nothing in writing, the state had no obligation to keep any agreements verbally made with me by the solicitors.

office. Thus giving me the feeling of nullity.

II.

EXHIBIT "B"

Please note that some of the facts set forth in (A) below are applicable to one or any of the other grounds set forth in #10 above.

(A) Ineffective assistance of counsel. On March 16th 2007, I was released from the South Carolina Department of Corrections "S.C.D.C."

I'd been incarcerated for approximately 27 years! I'd been on mental health medications all my life. I was kicked out of prison after all these years into a world I knew nothing about.

Released with no medication
and no knowledge of how
to get any. I'd become a
alcoholic in prison drinking
homemade wine every chance
I got. The last few years in
prison, I'd become sick. And
everytime I signed up for
sick call I was either told
nothing was wrong. If I
raised cane they would take
blood to see what was wrong
but a few days later I
would be transferred to a
another prison. I was at Evans
Correctional Institution where
I was stabbed by a inmate
and rushed to Marlboro County
Hospital. I was released from
the hospital and returned to
Evans where I said I was
sick. The doctor said I was
ok it was just pain from
the operation And I was

Transferred To Lee County
Correctional Institution
only to have blood taken
after I said I was sick
and transferred to Allendale
Correctional Institution

Please delete the word
Allendale at this time and
replace it with Ridgeland
Correctional Institution.
Thank You.

At Ridgeland, I hurt so
bad that I was drinking
homemade cutgut wine at
least 4 to 5 times a week.
"to kill the pain". My liver
shut down. I couldn't secrete
bile. And I was in very
excruciating pain. I was
rushed to Hardeeville Regional
Hospital where I was cut open
again and operated on.

In the 27 years I was incarcerated, I was rushed to Richland Memorial Hospital. I was stabbed (4) times while handcuffed behind my back. At Central Correctional Inst. I was stabbed (1) time and rushed to Baptist Hospital while at Central Corr. Inst. in Columbia, S.C.

After I was released from the hospital in Hardeeville and returned to Ridgeland Correctional Institution, I was informed that Anthony Gene Cooper or Gene Anthony Cooper was released from the South Carolina Death Row after 17 years and placed into the general population at Lee County Correctional Institution.

The prison system in S.C.

is set up that if any inmate is transferred from any institution or has to go on a medical run they are all shipped to a bus terminal and placed in a lockdown cage together till there bus is called and you are transferred to your final destination. So because of this I was placed on statewide protective custody. I was sick and only had a short time left. I gave information that put me "Cooper on death row" for the "Killing of Kimberly Quinn" in Lexington S.C. 1989. So I'm in the system as a (PI) Prison Informant. If (SLED) South Carolina Law Enforcement Division is asked or Internal Affairs (S.C.D.C.) South Carolina Department of Corrections is notified. They will verify this, in there

Computer systems.

As I stated above I was released from (S.K.A.) March 16th 2007 with no mental Health medications or ever being told why I was so sick.

I found employment for a company that among other things performed electrical work for various Banks in Charleston S.C and other part of our state. This company had a contract to work for every S.C. Federal Credit Union plus every Heritage Trust Banks in South Carolina.

I went to work the second day after I was released on Supervised Furlough. I had a leg monitor placed on my ankle by the South Carolina Probation and Parole Service. I had to wear this monitor for 6 months. And to report

Every week to the S.C. Probation and Parole Service with my pay check and 40 dollars to pay for the Monitoring and Supervision Fees. My agent was Ms. Daniella Fairman.

My muscles and bones hurt so bad just like in prison those last few years. And I felt like I was going to die. I was living with my father who was living on a fixxed income. My father had medical bills of his own. I was so scared, I'd lose my job, are get locked up if I got sick and couldn't work. So I started drinking straight alcohol upon my release, so I could work. But I kept getting sicker and sicker a lot sicker than I felt in prison.

a friend gave me some
oxycodone pills illegally
and some Xanax. No matter
what I did I couldn't
stop hurting.

I owed the probation and
parole service 6 months moni-
toring and supervision fee which
totaled to 960 dollars. I did
not want to return to prison
for not being able to work or
pay my bills. So I saved
money and I payed them
the whole amount. It took
about 60 days to do so.

Then the unthinkable happen
on June 29th 2007 I was arrested.
I didn't know how or why it
happened. And I'd only been out about
90 days. ALL I know is "I scared
the crap out of some good lady
who did nothing wrong." I was
charged with Kidnapping and Carjacking.
The Carjacking charge was dropped.

(b)

And another charge attempted armed robbery was supposedly served. I later found out that indeed a warrant for armed robbery was served only it was served to and signed for by a inmate in the County jail by the name of Eric Dickerson.

I informed my attorney of this matter and I ask him to have Eric Dickerson, And those responsible for serving the warrant to the wrong person subpoenaed. At trial he told me he did not subpoena Eric Dickerson because this did not matter. Nor did he subpoena anyone I asked him to at my trial.

This is ineffective assistance of counsel. And one of many errors my public defender Mr. Rodney Davis Esquire, made in

this case. I also informed Mr. Davis Esquire about the over crowded situation at the Charleston County Jail, where inmates were sleeping on floors under and on top of tables sleeping by urinals, and toilets, in or near human waste areas.

I asked Mr. Davis, Because the Post and Courier news paper was doing a story about this problem, dated Nov 18th 2007. A full section about the jail. And that I was in this article speaking of my alcohol problem and my disease, also of the new programs the jail was implementing into the procedures at the county jail.

That I needed this story for trial first to prove I was sick, and to show the jail was indeed way over crowded. Whereas a warrant could be served to the

wrong inmate Mr. Davis made no attempt to obtain this Post and Courier newspaper article.

Attached here to and incorporated here in Exhibit (1) a copy of the Post and Courier dated Nov. 18th 2007. And again, I'd like to state for the record that this once again shows the errors and ineffectiveness of Mr. Davis Esquire towards his assistance as my trial counsel.

I was placed in a cell with inmate Joseph Whitt who was in the Charleston County Jail for the murder of his father. He'd been in jail about a year. When he found out I'd been locked up for 27 years, he became fascinated with all I knew about prison also the little about law I knew. When he started bragging about

how and why he killed his father. And when Whitt told me who the solicitor was I wrote him a letter and I stated I had information about the murder. As soon as I received a letter from Mr. Rodney Davis Esquire stating he was my public defender I also wrote him and said I'd write the solicitors office and told him about Whitt and was this O.K. to do. Because Whitt was bragging he killed his father, But also stated he'd kill some more of his fathers family if he ever got out. And he showed no remorse for what he did. I also told Mr. Davis I felt sick and needed help.

As I stated above, I was sick. I signed up for sickcall all most every day. Finally I was tested by MS Burns who

took my blood and sent it to DHEC laboratory for testing. Mrs. Burn, later confirmed that I was indeed positive with Hepatitis "C". She told me when I was stabbed at Central Corr. Inst. The hosp. at Richland Memorial gave me a blood transfusion & that's one way to get the virus Hepatitis "C". Tattoos & unprotected sex or sharing intravenous needles or others. But back then hosp. also did not check the blood for the hepatitis virus. More than (4) Four Million Americans have been infected with the Hepatitis "C" virus. And it is responsible for 8,000-10,000 death annually!

Alcohol consumption with anyone who has the hepatitis "C" virus speeds up the

chances of cirrhosis of the liver. And most cases cirrhosis causes the lack of an active enzyme that metabolizes (acetaldehyde) a toxic chemical derived from ethanol - So when you drink alcohol, "You can become very ill." Especially if ones had the hepatitis "C" virus for years and years and years and consumes lots of alcohol.

I went from drinking a gallon of homemade putout wine (Buck) with a very low percentage of alcohol, to drinking 90 proof alcohol straight. Not knowing that the alcohol was poisoning my liver or that I had the hepatitis "C" virus in the first place. My muscles + bones literally hurt + ached.

all the time as they do now because of the hepatitis "C" virus. And I was only drinking to cover up the pain so I could work and hold down steady employment. And my boss wouldn't realize that I was sick.

And as I stated above every time I wrote Mr. Davis or the solicitors office with information about the Whitt case, I always told them I was sick. And to prove this point. The same thing that happen to me at Ridgeland Corr. Inst. with my liver shutting down happened again in the Charleston Co. jail. My liver shut down & I could not secrete bile properly. I started throwing up bile, and was rushed to MUSC hospital in

Charleston. where I was once again cut open and operated on, with my intestines having to be moved around and scar tissue cut away because pressure from my swollen liver caused the scar tissue from all the operations I've had to collapsed the intestines.

I informed Mr Davis of this and asked him to get my MUSK medical records to present as evidences along with all S.C.D.K medical records and the Charleston County Jail medical records. I also sent him and the sol.c.tors office with a copy of the DHEC Laboratory report stating I was indeed sick with the hepatitis "C" virus and that I still hurt

and needed help. This was late Dec. 2007 I was sent to MUSK. JAN 2008 I asked Mr. Davis to subpoena these records He sat around and did nothing.

Attached hereto and incorporated herein Exhibit (2.) a copy of the DHEC Laboratory Report where I was tested on 8/31/07 by DHEC and the antibody to Hepatitis "C" confirmed by RIBA while I was a inmate in the Charleston Co. Jail. RNA QUANTITATION - ANTIBODYS TOTALING 7,826,131 Sample Confirmed for HCV is 100.56

The fact that Mr. Davis made mention of my bizarre actions during

this crime and the fact that my actions needed to be "intentional" for me to be found guilty. Yet once again he did nothing at the trial to develop this issue. Again rendering his assistance ineffective.

I only saw Mr. Davis 2 times by via video conference. And both times I told him, I had to see someone from the solicitors office, that I had this information about Mr. Whitt concerning the murder of his Father. I also ask was it O.K. to keep writing the solicitors office And himself about the Whitt case. He told me yes, that was O.K. to do. I also informed Mr. Davis that I was sick and I needed help. All this was before I was

rushed to MUSK for my liver shutting down. And I did continue to write the solicitors office and Mr. Davis with information and asking to see someone from the solicitors office also I'd asked Mr. Davis about why I was hurting so much. That I really was sick and needed help. As I stated above I told him of all the operations I'd had

EXHIBIT "A" (B)

Finally Mr. Davis shows up to see me in person, He's real happy to see me. He says some assistance solicitors want to see me about the WH. H case. That they would be here in a few minutes. He just wanted to touch base with me. Said just tell them the truth about what I knew, "Everything was going to be O.K from now

On "That they were here to help me! They entered the visiting booth and introduced themselves as assistant Solicitors from the Charleston County Solicitor's office. Mr. Peter McCoy Burns Wetmore, and Keith Haire. Also present were a investigator and a sheriff's officer.

I started off by Thanking them for coming. Mr. Peter McCoy took charge. He said they had received my letter and were very interested in what I knew about the Whit case. I showed them the scar and told them, like I did in my letters, that I had just got out of MUSK and why. I explained everything just like I've stated above. And I said I knew that my charges carried the possibility of a lengthy prison term. That I was willing to testify for the solicitor's office.

against Joseph Whitt. I explained to each of those individuals that I was expecting to receive some substantial help with my sentence. I showed MR McCoy a letter dated Dec 24, 2007 whereas I was accepted into the STRONG program after a face to face interview Dec 4, 2007. This program is based on the Delancey Street process And STRONG stands for, Sustaining, Teaching, Rebuilding our new Generation. Its run by MR John P. Glemser who was accepted into the Delancey Street program in New York City. He graduated from this program and implemented the STRONG program in North Charleston, S.C. They where on the old Navy base, rebuilding the officer houses MR McCoy had my copy of the STRONG program I'd mailed to the solicitors office. I'd also

mailed one to MR. Davis, my public defender. Who never even showed it at my trial. Nor did he even mention it.

Attached hereto and incorporated herein Exhibit (3) a copy of the South Carolina STRONG program.

I flat out told MR. McCoy that I could not plead to any charge that made me look like I was some kind of sexual predator! Kidnapping under the law in South Carolina, states anyone convicted of this crime would have to register as a sex offender and I was no pervert!

MR McCoy, told me this was no problem. That charges would be reduced and others dropped if need be. One of the other

men asked Did and what was said by Mr Whitt about this other murder? I told them Mr Whitt had a news paper clipping in his legal papers and letters from home. He showed it to me after Mr Sanders came and visited him. Well he said his lawyer just came and told him they were looking into this case. He told me they think he did it. I told Whitt this was very serious. Now hes looking at two murders. He said F That. He told me point blank "yea he killed him" too! And showed me this news paper clipping. The Sheriff said, I knew it! That Whitt was responsible for it. I said to them, he told me that him and this fellow had words at this bar and almost came to

blows the fellow was a friend of his father's. And Whitt did not like him at all. Whitt said he conned the man into coming to the boat landing something about money and drugs. Whitt said he beat the man choked him till he thought he was dead. put him in his truck, and pushed the truck into the water. Whitt watched it sink and left. He said he took the money and mumbled something again about drugs. And went to buy crack cocaine. Whitt said the boat landing was less than a mile from his father's house. Where he killed him to.

I told Mr. McCoy why would Whitt be holding onto this News paper clipping of the man's death, if it didn't have some sentimental reason for holding on to it

I assured Mr. McCoy that I could and would bury Whitt at his trial. Everyone was very please that I knew all about this second murder.

But I also told them all the things I could remember Whitt saying about his father's death. And I reminded them, "that I was the one who told them that Whitt's family (Mother) hired attorney Sanders." I also told them the defence Whitt + his attorney were planning to use at his trial. Whitt wanted to claim his father beat and molested him. attorney Sanders told Whitt that he could either go that way or the battered wife Syndrome or even have Whitt play like he lost his mind and was totally crazy and shoot for the mental hospital instead.

of prison. Like he was not responsible for his actions.

I even reassured them that all 3 of those claims were lies made up by Joseph Whitt and his attorney MR. Sanders Esquire

I told MR McCay That Whitt told me it happened over the up coming holiday weekend that he'd already made his mind up, and was going to kill his father. That his Dad had it set up, so Whitt couldn't even get his own paychecks. That Whitt's Boss handed the checks straight to Whitt's father. Whitt said he always partied and would smoke the money away on girls and getting high. That his father made him buy a truck and his father made

sure wh. It didnt get the checks so he could pay the truck bills.

That he hide a pipe bending tool that he got out from behind h.s fathers home and put it where he could get it as soon as he came back home to K. H. his father that he came up with a way because of the up coming holiday to get the check from his boss and he was going to party hardy get some more crack that he had started smoking and he wanted money for more crack. He said he broke into a neighbors home he knew where away on a trip or something so he'd have a safe place to smoke his crack said he stole a shotgun and some rings and gold items

he sold or tried to sell for more crack cocaine. He told me as soon as the money from his check was gone that he snuck back into his father's home picked up the pipe bending tool, went into his father's bedroom who was asleep at the time but woke up as Whitt hit him in the head with the tool. Whitt showed me no remorse as he said he beat his father to death, stole his father's money, some other stuff, took his father's SUV and drove away to buy more crack.

Whitt told me he had rented his truck to some dope dealers for crack and it was broke down at some bar. I'm not sure but this was another bar if I'm not mistaking were

Whitt and this other man got into a argument. The same man whitt lured to the boat landing Beat and robbed & choked this man to death and pushed him and the truck into the water.

Whitt said he bought more crack and drove over to Mrs Valentines house where the next day he was arrested for the murder of his father

MR McCay said he was going to send a few more people to talk with me another detective and a investigator about this other murder whitt bragged about doing my attorney MR. Davis said he had to be in court all week long and that it was O.K for me to talk with anyone Peter McCay sent to talk

with me. MR McCay Thanked me for my help, Him and the rest of the Solicitors assured me again that I would get there assistance

MR McCay told me I was now on their team That as soon as he left He would have to turn over my statement to Whitt's attorney Mr. Sanders I told him that Whitt was in the same block as me He also said that as soon as he left he'd have Whitt moved to another cell block in the jail I told MR. McCay that as soon as Whitt's attorney gave Whitt my statement He would try to have me killed in the jail. that he would put a contract on me. I told him I was still sick and I'd just got out of MUSC

that I was real sore but
I'd be O.K. As everyone
was piling out of the 1. He
visiting room - booth I
again told Mr. McCoy that
I needed and expected his
help in a major reduction
on my sentence. He agreed
to help me with this and
to look into the strong
program and it was agreed
that I would not plead
to any sentence that made
me look like some pervert.
As soon as they all left
my attorney, Mr. Davis came
back into the booth. He was
extremely happy. He said I
did the right thing and that
he would make sure our
agreement was taking care of
He told ^{ME} Mr. McCoy was a good
man and he would stick to
his word as long as I stuck

to mine and continued to work with them. I again ask Mr. Davis was it O.K. to speak with these people Mr. McCary was sending to talk with me. Mr. Davis said absolutely. tell them everything I could remember Whitt saying. I also asked should I write Mr. McCary and him if I remember anything else. He again assured me this was indeed O.K. to do. I told Mr. Davis I felt good about the solicitor's office helping me. And if he (Mr. Davis) said Mr. McCary would abide by our agreement that was good enough for me.

The next day I got a visit from a investigator. I was debriefed and ask to repeat what I knew about the second murder Whitt had.

bragged about. My attorney was not present at this meeting nor was he ever present when I met with them. Investigators; Detectives & Solicitors to go over the Wh. H case. I was always told a reduction in my sentence was being worked on by the Charleston County Solicitors office

my attorney Mr. Davis show up one day and says the worst thing that could of happened had happened. I ask what are you talking about?

He said the Wh. H case was turned over to the States

Attorney Generals office That the Charleston Solicitors office

was not handling the case any more. I told him to call the attorney generals office and have someone come see me A.S.A.P

and was it o.k to write them about the Whitt case and the two murders. He said yes do that. He left and I wrote a couple letters to the attorney generals office Mr. Henry McMaster and asked him to send someone to talk to me concerning the Whitt case. I told what I knew about the two murders.

Finally Ms Jennifer Evans Chief prosecutor for the states grand jury. And shes head of the attorney generals criminal section comes to see me along with a Mr Dale Scott assistance solicitor for the attorney generals office. After introductions I'm asked about the Whitt case. Mr. Scott holds up a copy of the South Carolina STRONG program and Ms Evans asked me was I promised.

anything for my information about the Whitt case. I told her that I knew if I was asked by Whitt's attorney to say no. She smiled and said the attorney general's office would talk to a judge in my behalf to the solicitors and that her weight carried a lot of pull. I was debriefed about the Whitt case. She said they had to see another inmate but would see me again about 10 minutes later. Mrs. Evans walks back by I call her into the visiting booth and tell her I will bury Whitt on stand for them that I really needed her help with a significantly lower sentence than I was facing that I not only had information about Whitt killing his father but I had the information about the other murder he bragged about

doing I was willing to playball with the attorney generals office if they would play with me. She stated if I helped her she would see I was helped for my information. She said she needed to go right now but she would see me again soon. I asked could I write her at the attorney generals office and she said yes Mrs Evans was at the jail again to see someone And we talked concerning Mr. Whitt on that occasion also. We spoke very specifically about what assistance she would give me. She advised me that she worked very well with Solicitors throughout the State and that she would make certain that I was able to plead guilty to one crime only regarding the incident that lead to my arrest and that her office would make certain that the

penalty for such an offense would not exceed Ten (10) years. She did not promise me a specific number of years just that it would be no more than Ten (10). We continued to speak about me with on this occasion. And I also handed her a subsequent letter I'd write to her informing her of all I knew and about the Hepatitis "C" and the alcohol. And about my being sick all the time.

Ms Evans took my information and told Mr. Whitt that she would put me on the stand and would seek the death penalty on him for two murders if he did not plead guilty to killing his father.

Thereafter Mr. Whitt decided to and did plead guilty to killing his father. He also told everyone at the jail what happened. And he again said he would pay

Anyone to Kill me That I had talked to the Charleston County Solicitors office and the Attorney Generals office about his case. As soon as this plea arrangement was made, my case was turned over to the solicitors office to Michael Sahn and Jennifer Sheehy both of whom were ass. start Solicitors On Aug. 22nd/2008 MR Sahn had me served with a notification to seek life without parole on me.

Upon the receipt of this notice I panicked and was in shock. Neither MR Davis nor anyone of my so called lawyers were spending time with me to prepare my case. Therefore I filed certain motions pro se. Copies of all these motions were stamped and clocked dated by the respectful Ms Julie Armstrong clerk of court and were served upon the Solicitor And Forwarded

to Mr. Davis.

Copies of these motions are attached hereto and incorporated here in Exhibit (4.)

My attorney Mr. Davis was also ineffective at this stage of his representation of me.

Specifically, even after receiving copies of the above mentioned motions, Mr. Davis never came to talk with me about why I felt the need to file motions pro se nor to talk about the efficiency of the motions themselves.

Furthermore Mr. Davis shows up 2 weeks before my trial date and is so unprepared to represent me. I got mad and asked him why I was being done like this? And there was no way to prepare for a jury trial where someone is facing life without parole in just

2 weeks I asked him to at least subpoena Peter McCoy and the other solicitors also to subpoena Ms Evan, my probation and parole agent Ms Farmer, my Boss, Mr. Sanders and Mr. Whitt as hostile witnesses. He got mad and said he would have me mentally evaluated and stormed off.

Another reason I feel why my attorney was ineffective in his assistance as counsel is I was served the notice to seek life without parole on Aug 22, 2008. My trial began on Oct 21, 2008. At trial Mr. Davis stated this was never a trial but with the serving of that notice it became a trial (page 40, lines 7-9) of my transcript. That's 60 days to prepare for a jury trial where I'm facing life without parole. Not even a great lawyer like

MR. Andy Savage could adequately prepare and honest defence in 60 days to represent someone facing life without parole. "Nor would he try to."

Our constitution states that all men are created equal. Would our courts allow and attorney to prepare a defence for a man or woman facing the death sentence in 60 days or less? The state was seeking life without parole. There is no easy way to say it, That life without parole means you die in prison. let no small stone go unturned in the preparations of a just and honest defence for any persons facing such a grave sentence!

EXHIBIT "A" (C)

ex parte communications in the judges chambers did

Violate the defendants constitutional right to represent himself pro se at trial. Where terms of a agreement made to the defendant by the solicitors office And another outside agency, The states Attorney generals office were discussed Hence denying the defendant the opportunity to counter the oppositions claims of what was said and agreed to in the presents of the defendant. By parties not even in attendance in the judges chambers. Mr. Davis states at trial. He was not present at a number of these debriefings. I also know that assistant solicitors, Shealy and Sahn were never present at any of the meetings where agreements were made for the defendants information

and promise to testify if needed at Whitt's trial. Even Judge Dennis States at trial pg 44 Lines 20 - 6 pg 45

But you would agree with me just from the standpoint of being a lawyer, just plain lawyering here, if you don't serve notice without parole - life without parole - Then that opens the door. If he is served with a life without the possibility of parole notice. He probably doesn't open his mouth to anybody. There would be no reason to. Do you agree with that? I mean, why would anybody ever say I want to cooperate - cooperating doesn't help him at all. Also pg 45 Q-12 Judge Dennis again says - All I'm saying to you is that by not serving it, By waiting until all of that was

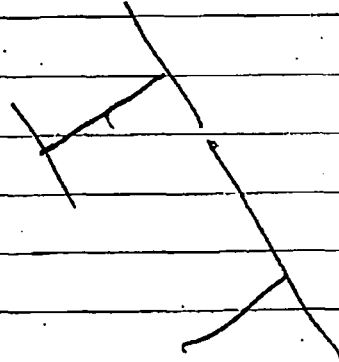
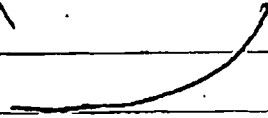
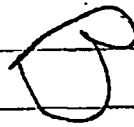
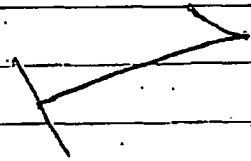
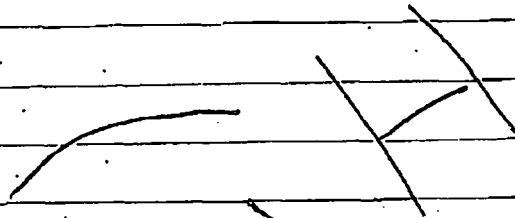
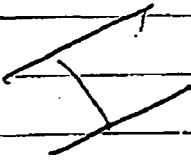
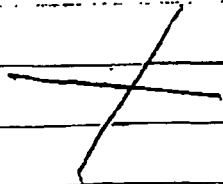
done kind of has the appearance of it. Also before my trial still in the judges chambers my attorney Mr Davis told me my motions were discussed and that the judge would not allow them. Whereas I felt I was being railroaded by the judge, my public defender and the solicitors office also the attorney generals office. I had a right to represent myself at trial pro se. And I also felt I had a right to be present in the judges chambers when all this was going on and being talked about without me.

This ex parte communications in the Judges chambers did violate my constitutional right to represent myself pro se. And to discuss my motions and the terms of my agreement with

assistant solicitor Peter McCay
of the Charleston Solicitors Office
and assistant attorney general
Ms Evans And to bring into
question why Mr. Davis did
not subpoena Mr McCay or
Ms Evans like I asked him to.
nor any of the other people
I asked him to subpoena.
For Mr. Davis who was at
the very first meetings To
say it was only a gentlemen's
agreement is totally off base.
And agreement is an agreement
whereas all parties present were
under the same understanding
That for my information and
testimony if need be I would
received the help of the solicitors
office. Mr. Davis knew this as
fact And he lied in the judges
chambers and he lied at trial.

Signed Daniel E. Dickson

(47)



The Post and Courier

THE SOUTH'S OLDEST DAILY NEWSPAPER

November 18, 2007 • Charleston • North Charleston, S.C.

SUNDAY

Founded 1803 • \$1.50

Briefly



Religious leaders
ok at faith, modernity
dignous leaders to the community
and this question: How do you
live with the conflict between religious
faith and modern society? It's a
question they say, 111 and 111.

Charleston airport
aszes runway funding.
The local officials think a longer
runway at Charleston International
to help the region land more acro-
ss manufacturers. Rebuilding and
adding the runway could cost more
\$400 million. 11

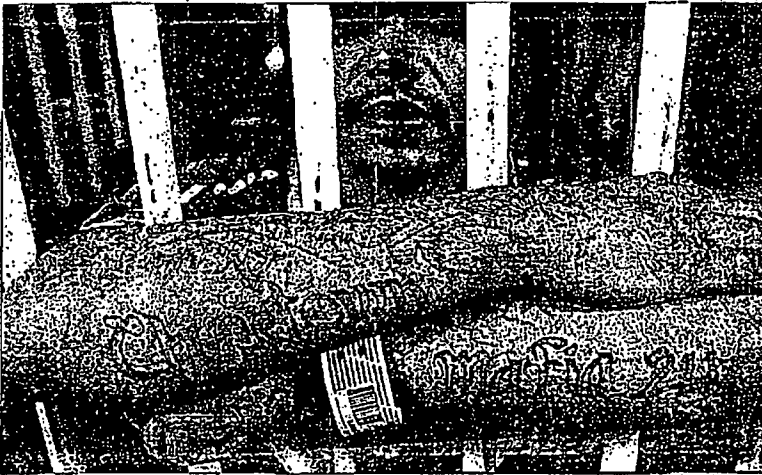


Native hitting it big
country music scene
A native, a 28-year-old from rural
S.C., has come up with quite a
hit. Traditional country music.
Now, he has a firstball of a hit
"Hickory" 2A



LOCKED DOWN

INSIDE THE CHARLESTON COUNTY JAIL

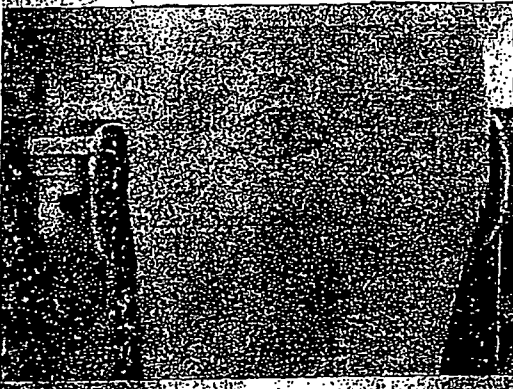


Clarence Pugh, 26, of North Charleston, is seen through the bars in Southside, one of the oldest parts of the Charleston County jail. Built in the 1960s, the Southside cell block routinely houses 50 men in cells designed for about 20.





40 inmates compete for space in booking area holding cells designed to house people. Some have been here for more than 12 hours, waiting for detention officers to provide permanent accommodations for them inside the overcrowded jail.



with eyes tattooed on the back of his head after replacement surgery shortly before his arrest charges. He is housed in a dormitory-style unit at the jail with medical and psychiatric problems.

help amplify a small cooling sodas in the cusing rolls of toilet makeshift curtains to the light of day. Little do to make the course.

Gadsden takes in the hard brown eyes drift inmate to the next. As the sale and pepper meat turns beneath the tarp that covers his my share of time in a police car," he says, wing. "They say 'Once always an addict. Once ways a thief. Well, I'm rove to you that is a

The inmates sit in rows as Gadsden and another former addict preach messages of change, of hope for a new life. It's a common theme here. This wing is devoted to inmates struggling to overcome addictions of one type or another. The jail is full of such people.

Daniel Dickson became an alcoholic during a 27-year prison stay where he guzzled homemade wine known as "buck." He returned to the streets this year. He lasted just 105 days before he was jailed on a carjacking charge.

"It's all because of the alcohol," he says. "The people in here opened my eyes to my disease. It's a whole new world to me."

The people who run the jail are trying to break these cycles.

A new program teaches inmates welding and classes help them earn high school equivalency diplomas. The theory is simple: Help them improve and maybe they'll stop coming back.

Inmate Frank Smith is serving seven months on a probation violation. The judge told him to get clean and enroll in a GED program. He didn't have anything else to do in jail, so he signed up.

"It does give you something to look forward to. This might be the first time I leave jail and feel like I accomplished something."

Filling up on blow up

The inmate stares at her dinner: two slices of bread, a piece of something resembling meat, some form of vegetable, two cookies and a chunky orangey-brown substance reminiscent of candied yams.

The verdict comes quick. "This is crap."

The food is produced with assembly-line efficiency in an industrial-sized kitchen staffed by inmates. Five thousand meals a day. The results are universally panned. The jail's budget allows the kitchen to spend just 72 cents per inmate for each meal. That means cut-rate ingredients, no meat and little fruit.

A starchy, soy-based powder serves as a staple. It meets minimum nutritional guidelines and

Please see JAIL, Page 9A

Classmate
These st
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life

Off
un

SUNDAY, NOV 11



Officers with the jail's elite Tactical Action Control Team surround an unruly inmate in a restraining chair as Officer E. Rivas unholsters a Taser stun gun. The inmate has undergone a strip search and the team is trying to convince him that he must behave if they are to let him use the bathroom, as he has requested.

Life on the inside

These stories are slices of life of inmates and jailers, and how they deal with the overcrowding:

Classmates and friends



Officer D. Sallers talks about a good friend who is in jail.

Detention Officer Donald Sallers glances across the housing unit at a wiry inmate with dreadlocks making his way up the stairs. Sallers folds his burly arms and turns away.

"See that guy," he says, with a subtle tilt of his head. "He's my best friend. We grew up together. I've known him 20 years."

They took different paths after high school, but Sallers doesn't judge his friend. People just make different choices in life. They still chat when they see

each other on the street. But not in here. The other inmates would talk, think his friend was a snitch.

"He's been here three weeks. I haven't said anything to him. I'm trying to help him save face," Sallers says.

Four years ago, Sallers served on a committee organizing the 10-year reunion of his high school class. He looked down the list of graduates. So many people he still saw daily — astronauts.

"I was like, 'He's not going to make it. He's not going to make it. He's doing federal time.' It was sad."

A change of socks

A young man shuffles to the booking counter. He has a disability of some sort. His arms and legs twitch and bend at odd angles as he walks. He has been picked up on a bench warrant for missing a court date.

Sgt. R.E. Hamill tells the man to take off his shoes. The man smiles and kicks off his sneakers. A stench like rotting meat fills the cramped booking area.

Hamill steps back, his eyes watering. Other inmates gag. Officers fan the air with loose paper.

The man's athletic socks are covered in an oily brown sheen the color of mud. Wherever he steps, he leaves a brown footprint behind on the floor. Hamill reaches down and helps him remove the socks, which peel away like a second layer of skin. The man's feet are mottled, his toes black with decay.

"Buddy, when was the last time you changed your socks?" Hamill asks. The man looks away as if he has not heard the question.

A safe job

A.M. Conner was alone, leaving her job at Sonix in Mount Pleasant when three men carjacked her. She doesn't like to talk about it.

Conner searched online for a job in law enforcement and saw that the detention center had openings. She signed up less than a month after the incident.

Now, she keeps 150-plus inmates in check at the county jail. Those same guys who carjacked her about a year ago are now incarcerated at her workplace. She hasn't seen them, and she hopes she won't.

Asked what she would do if she did, she says, "I have no idea. I'm not ever going to think about that."

At work, "I just watch my back a lot more."

Unruly

TACT officers Caswell and Poole stride into unit 1D to pick up an inmate for court. She's one of three unruly women segregated from the general population in a disciplinary cell. White pieces of paper and cardboard cover the cell window. They communicate through a metal slot in the door. It's also where food is passed.

"Hey Johnson, you're going to court," Poole shouts as he bangs on the cell door.

A woman steps out from her cell clad in a bright yellow jumpsuit. Shackles bind her feet and hands. As she shuffles toward the salty port, sandwiched between the officers in black, she turns to her fellow inmates and utters, "Pray for me."

The door slams behind them. She lowers her head.



On the Web

MORE INMATE AND OFFICER STORIES: Go to charleston.net/jail to read more exclusive stories about the lives of inmates and jailers, as well as how they deal with the overcrowding.

'The time doesn't kill It's not being in contr

ILL From Page 7A

It's more than just munchies. This is hard currency behind bars. Canteen items are traded for haircuts, used to settle debts or swapped for an extra tray of food at dinner. It's serious business, and fights can break out when inmates get jacked on sugar rushes or don't take up on items they owe.

They complain bitterly about the prices they are charged. Then they place another order. It's the only game in town.

Making do, killing time

Time is the enemy on the inside. It can eat an inmate up, play with his mind, roll his emotions. To survive, he must adapt, find ways to fill hours.

"It's not the place that stresses you out. It's missing family," Lennie Mickey, a 31-year-old accused of murder, says. "The time doesn't kill you. It's not being in control. If a man can't control his own destiny, he falls into it."

Edwin Wilson slides a worn writing tablet from his bunk. The pages crinkle as he runs an ebony finger along the neatly printed words.

"Life would be easy if we never did anything we regretted. But that doesn't happen, one passage reads. 'I know I'm not where I wanted to be at this stage of my life. I must stay strong to better myself.'"

Day after day, Wilson commits his thoughts to paper. Poems. Plans. Words this 37-year-old truck driver would share with his girlfriend if he weren't locked up on a probation violation. This keeps him centered as the hours march slowly by.

The newer wings were designed to give inmates more freedom to move, with common areas and rec yards. Overcrowding nixed that plan. Most days, inmates spend all but about six hours confined to their cramped rooms.

"Being in jail is like being on Ritalin," says Antonio Laseane, of North Charleston. "Your body just slows down."

"All around you is concrete and steel. Concrete and steel drain your energy."

Some sleep away the days. Others read, draw on walls or exercise if they can. Pushups keep the pecs in shape. Dips off the bunks are good for upper arms. Or work on biceps by curling six packs of water bottles wrapped in a bedroll.

They're all part of the tricks inmates learn. Like using a rolled-up magazine cover as a mega-



More than 40 inmates compete for space in booking area holding cells, about 10 people. Some have been here for more than 12 hours, waiting to find more permanent accommodations for them inside the overcrowd



An inmate with eyes tattooed on the back of his head underwent hip replacement surgery shortly before his arrest on drug charges. He is housed in a dormitory-style unit at the jail for people with medical and psychiatric problems.

phone to help amplify a small radio. Or cooling sodas in the toilet. Or using rolls of toilet paper as makeshift curtains to block out the light of day. Little tricks to make do, to make the time bearable.

Changing course

Edward Gadsden takes in the room; his hard, brown eyes drift from one inmate to the next. As he strokes his salt-and-pepper beard, his brow furrows beneath the knit skull cap that covers his head.

"I've spent my share of time in the back of a police car," he says, eyes narrowing. "They say Once an addict, always an addict. Once a thief, always a thief. Well, I'm here to prove to you that is a lie."

The inmates sit in rows as Gadsden and another former addict preach messages of change, of hope for a new life. It's a common theme here. This wing is devoted to inmates struggling to overcome addictions of one type or another. The jail is full of such people.

Daniel Dickson became an alcoholic during a 27-year prison stay where he guzzled home-made wine known as "buck." He returned to the streets this year. He lasted just 105 days before he was jailed on a carjacking charge.

"It's all because of the alcohol," he says. "The people in here opened my eyes to my disease. It's a whole new world to me."

The people who run the jail are trying to break these cycles. Plea

A new welder can't diplo! Help! they! Im ing a thia him t GED anyth signe "It's to be th feel li thing Filli The ner: t of soc some cook brow cand The ls are The sent durg inms day. pass the k per i mea mea day. A: serv runu Plea

typical, the courtroom cell block north of the main building is lined for about 30.



Inmate Damon Washington (bottom right) tries to get some sleep while handcuffed among bunks and other inmates on the floor in Southside, an old cell block, first opened out of need for cell space.



An inmate peers through a slot in the door to her cell in Unit 1A, the jail's disciplinary wing.



An inmate changes television channels in Southside.

You've heard it before. The Charleston County jail is overcrowded. But what does overcrowded really mean? During the past seven months, reporters Glenn Smith, Terisha Waldo and Schuyler Kropf and photographer Mic Smith for The Post and Courier spent time in the Charleston County Detention Center, trying to answer that question. See what they found on **Pages 6-9A**.



LOCKED DOWN: Expanded coverage online

MULTIMEDIA: Go to charleston.com for an expanded photo slideshow and video of the jail, as well as an interview with reporter Glenn Smith, co-author of the project.

MORE INMATE AND JAILER STORIES: Go to charleston.com to read more exclusive stories about the lives of inmates and jailers, as well as how they deal with the overcrowding.

Former Gov. McNair dead at age 83

BY SCHUYLER KROPP

The Post and Courier

Gov. Robert Erskine McNair, a pro-business, two-term Democrat who presided over the state's recovery from the devastation of the "Orangeburg Massacre" and promoted South Carolina as a business and tourism destination, died early Saturday in Charleston. He was 83.

Inside

More on former Gov. McNair, 1984-1994

McNair, who grew up in Berkeley County, was badly wounded during the 1964 riot, doctor diagnosed a brain tumor as part of a routine checkup. He left the Medical University of South Carolina but stayed in local living as a friend's apartment.

He was in USC for the past six weeks. McNair passed away around 7:30 a.m., his family by his side.

He was an outstanding personal friend, "followed governor and former U.S. Sen. Fritz Hollings said Saturday. McNair served as governor from 1984-94. Widely seen as a moderate, McNair



Former South Carolina Gov. Robert McNair on July 13, 2004.

Picture by McNair, Page 12A

est the muffled curtain, listening the ceiling above

er man sits on a stool near

met tries to sleep. Mat-

he comes or are pushed

tebels of others. Weights

to hang to dry across the

huddling, waiting to the air

Outside, recreation time

ut a few days each week

shall William sleep be-

ren on the second floor,

to fast from a feeding fol-

hower stall. He swears

ing still from the cold,

pin in his lungs. He's 31

ired with assault. "It's

an the dugger in here.

made in every regard."

ust leave. Others quickly

place. Friends, enemies,

a Randy's another human

with his arm's reach. "You

riding. Ammonio Hou-

"There's no choice."

the grimaces as the scum

a reflection, set beyond the

th two seconds we'd get

his reach, he adds sit

A detention officer scans the long

rope of cells, lining both floors

of the housing unit. Faces peer

against door windows. Watching.

Waiting.

"You ready for the next?" an officer

asks a colleague.

"Sure," the other replies. He flips

a switch and leads him a micro-

phone. "All right. Come out for me."

More along. Pull your pants out of

your socks. And no running."

Lamatis explodes from the room

where they are confined. 19 hours

a day. Accused murderers, rap-

ists, robbers. They huddle and wait,

locking for position as they

flood the common area and head

for telephones, shower stalls, seats

in front of the television.

The two officers are suddenly

surrounded. They have little pro-

tection. They carry no weapons.

They are outnumbered 64 to one.

The officers shove it off and go

about their business. They offer

direction, hand out forms, remind

inmates of the rules. It's just an-

other day on the block.

Even when the jail is at full effi-

ciency, inmates gradually outnumber the

keepers. But dozens of positions

are vacant. That means more work

for the few who remain.

Street down. A black soldier

Stevens down. A black soldier

Stevens down. A black soldier

Stevens down. A black soldier

Stevens down. A black soldier

Stevens down. A black soldier

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Stevens down. A black soldier

Stevens down. A black soldier

Stevens down. A black soldier

inmate security disciplinary unit

He flips down a metal plate on a

cell door and slides a tray of food

through to an inmate.

Lamatis pounds their fists on

their cell doors, greeting Laque

with screams, obscenities and

swears. Laque ignores the

noise. The noise grows louder.

Lamatis who behave and con-

duct to occasional more night-

ly. The noise grows louder.

Lamatis who behave and con-

duct to occasional more night-

ly. The noise grows louder.

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duct to occasional more night-

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duct to occasional more night-

ly. The noise grows louder.

Lamatis who behave and con-

duct to occasional more night-

ly. The noise grows louder.

Lamatis who behave and con-

This is carter day, the high

point of an inmate's week.

Lamatis ten older up to 1100

worth of snacks, medical tablets,

reading materials and other com-

forts from some 500 pre-approved

items, but no cigarettes.

They depend on family and

friends to put money in their ac-

counts for the purchases.

If you don't have family on the

outside, it's like a set of being

dead, one inmate groans.

The meals consist of a corn-

meal, a pork food light to sugar

and salt. Portland, Ore., inmate

of Paul. One inmate groans.

Some use waste to their meals.

observed during the jailhouse

food. "Ketchup are perfect and

passed on.

Alan Thomas, a pudgy, motherly

figure, is known for excellent cre-

ations like the "squid." Sitting

in his way on a stool near, the

crabbers come up to him, the

boile to him. He'll smile. She

can't stand from marked bar-

Gathering the sto.

These notes could not have

been produced without the

cooperation and assistance of

Corrections Officer Sherry O-

and his staff at the Lewis Area

Corrections Center. Sheriff Al

Carson and Chief Deputy Mike

Lucas, the jail's administrators,

agreed to provide. The Post

and Courier with full access

to the facility. Its inmates and

staff had no say in the

well-implemented story

coverage.

It was reported the public to be

have been oversteering the

impacted the jail by officers

and the inmates. His direction

officers report largely outside

the public eye. A door cracked

and working long hours under

difficult conditions, inmates

many with substance abuse

and mental health issues, were

housed in cells, sleeping alone

at top of one another, 19 hours

a day for months on end. Digni-

ty of the inmates for which

the jail is famous.

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Jail vocabulary

SHOOTING A KITE: Tossing a secret written message to another inmate, or trying to hide contraband by throwing it into another cell during a sweep.

SHAKING THE SPOON: Getting half a serving in the chow line.

BLOW UP: Soy-based ingredient found in the watery, hash-like stew commonly on the menu.

VIKING: An inmate who never washes or showers, or who will take half-eaten food off someone else's plate.

MIKEYS: Inmates who eat anything and everything.

CELL SOLDIERS: Inmates who are peaceful during break times but become rowdy and loud toward guards once their cell doors are locked for the night.

BUCK: Homemade alcohol that officers say rarely gets past the initial fermentation stage before being detected.

SKYWRITING: From their caged-in recreation yard, female inmates will squat down and motion letters in the air to the male inmates below in the Southside unit, oftentimes

establishing pen pals for when they get out.

MIDNIGHTERS: Pre-sentenced inmates who know exactly when they will be released. They are set free around 12:01 a.m., though sometimes it takes much longer or doesn't happen at all, especially if they have other warrants on file.

JIM JONES: Sweet red punch distributed at meal times.

SALSA: A fiery concoction made from Cheetos, hot sausage, hot fries, jalapeno poppers and hot pickle juice.

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Inmates creative behind

JAIL From Page 8A

lands heavy in the gut. The inmates call it "blow up" because it expands in the stomach.

Creativity rises to the surface. When the main course is a lumpy white stew, some take neatly folded bags from their shirt pockets. They reach inside and remove a fine orange dust, the remnants of nacho and barbecue chips.

This they sprinkle on the food to add a bit of flavor, a hint of spice to their bland meals.

A bright red stain on the floor marks a fruit punch spill. It's the inmates' dinner drink. They call it "Jim Jones," after the cult leader who served toxic punch at the infamous Guyana mass suicide.

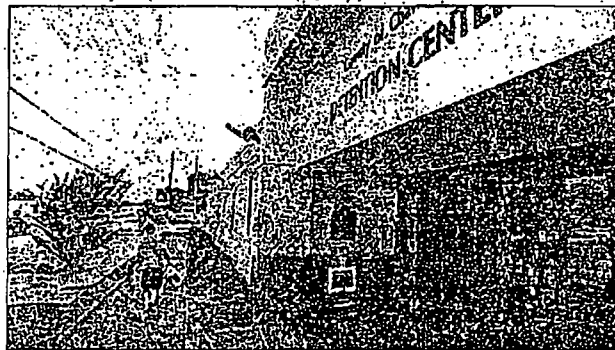
One man shakes his head and spits. "If the Jim Jones can do that to the floor, imagine what it does to your insides."

Lights out

A female detention officer flips open a rusted door along the wall in Northside and grabs hold of a large iron hand crank. As she wrestles the circular crank through one revolution after another, the barred cell doors slowly slide shut with a grinding squeal. It is 11:30 p.m.

An inmate lies behind bars on the floor outside his cell, a pillow bunched under his head. The floor is hard, but he prefers the extra space away from his cellmates.

"I just want to stay out here," he



Denise Holman, of North Charleston walks away from the Charleston County jail after being released.

Conversations continue in the darkness. Someone tells a dirty joke. Laughter and cursing echo off the walls.

In the women's wing, Officer A.M. Conner announces on the intercom system recreational time is over. The TVs are turned off, and the inmates clear the dayroom.

One inmate crouches behind a phone pod so the officers can't see her and hurries her conversation.

The inmate clean-up crew vacuums, picks up trash and props the plastic chairs on the tables. They flip the phones upside down to show that they were cleaned.

The unit quiets down but only for a brief moment.

A raspy voice hollers through the receiver at the officers' station. The inmate can't stand her roommate anymore. She wants out.

"This is what happens," Officer G.L. King says and walks to the

"Her stinkin' butt."

Her roommate sits up from the top bunk. "I wish you would get rid of her," the portly woman tiffs. "We've had nothing but trouble since she moved in here."

King tells them both to quiet down and sends Brown up to the front desk.

Brown threatens her roommate and marches off. "I'll never get out of here looking at that," she gripes along the way. The lights go out.

Toilets flush.

Sweet release

Sunlight seeps through in a slit in the wall of Denise Holman's cell as she opens her Bible and prays. When the call comes, it takes her by surprise. You are free to go, the detention officer tells her.

"I am? Oh ... snap!" Holman gasps.

Holman bounces around the cell

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These stories are slices of life of inmates and jailers and how they deal with the overcrowding:

Criminal or mental?

Boston centric into a ball in his cell. He told his black-pink tongue and licks it thin, spidery arms.

A detention officer opens the small metal jail in the door and slides in a bag of corn bread and patty stew. Boston grabs at the food hungrily and jams it into his mouth. Then he splits and lets the marinated meat pour from his lips onto the plate, spilling some through the hole for good measure.

The accident was, apparently, not serious. As the doctors said, "You're still young, you're still strong, you're still healthy." But Boston had the cold to himself. Tom, suffering from his mother's jaundice, the toads, French excitement, topped the Boston pile. No one is sure what's up with Boston, or whether he got the nickname. Some know him from the street and say he has always been a little hard to understand. But not like this. He needs to be in a mental hospital, they say. Boston drinks and rolls his smoking white eyes. He rides his tongue through the sea and slides it along the City street, rolling for yellow umbrellas to spit out.

Motherhood

here just learned she's going to be a mother again. She got the news during a lull in her medical searching after her stint for cocaine possession. She's innocent, she says.

Years ago, Irene became a crack junkie. It developed into a \$300-a-day habit, and she paid the bill any way she could: selling her body, trading things, running errands for drug dealers. Two of her kids were born addicted to crack. She turned 19½ prodded.

After 15 years, she's now the matriarch. That was three months ago. She put her faith in the land. Decided to make a new start, "blessed to be good mother to her [her dad, and the one on the way]."

At 33, she's a slight woman with rough, spock-matted hair and thick, flat, her most noticeable (feature) is a pocket scar on her arm from a hot-cubing lion.

Her boyfriend doesn't know he's going to be a daddy. He will soon. "The just got started yesterday, so we're both in there together."

A family affair

Raymond Scott deals himself a hand of cards from a homemade deck. The suits and numbers are scratched in pencil on the back of old juke box panels. He calls the game "Solitary."

He's alone here in the cell, swotting his transfer to state prison. He's been convicted of six counts of armed robbery. The sentence: 10 years. He just turned 18 a month ago in jail.

Scott's father is in a cell on the floor above him, charged with a ruling of cigarette burglarize. His twin brother is across the hall in another cell, awaiting trial on a drug charge. He doesn't get to see them, but he and his father sometimes talk by shouting through the air vents at night.

He smiles a lot and shrugs at the idea of going to prison. With any luck, he will be out by 2014. Maybe he can pick up a trade or a craft along the way, he says.



Raymond Scott, 18, plays solitaire with homemade cards made out of juice boxes in his cell in 1A.

Packed into world

In jail, space is precious, freedoms are few and time drags on and on

STORIES BY GLENN SMITH.
TENNIS WALDO AND SCHUYLER KROPP

PHOTOGRAPHS BY MIC SMITH
The Fox and Country

A group of friends in a cramped, old hotel floor at a cheaply furnished table. Their bodies bend at odd angles as they fight to claim space. Street-seekers their clothes and faces no city flume on the life-

tain boats. The inmates call them "cabin" because of their dark, color, and bony contour. Skinny little

the cavernous room, fed with a polyphony of facts, a place to where

house bodies until space organ-

One, instead of the three that people, reading two rolls of toilet paper, find in a roll, there are only two. As a fellow Aardbe, tall and muscular, I walk the floor calling about the problem, while the rest of the system, the bulkheads of the bunkers, remain silent. A group of men ignore his rant and they ply cards in a corner.

A young Asian man who had been treated and boozed, smell a more to permanent quarters. They barn bulldog in 12 hours. The overboarded fall has nowhere to put them.

bonds of perspiration that bubble

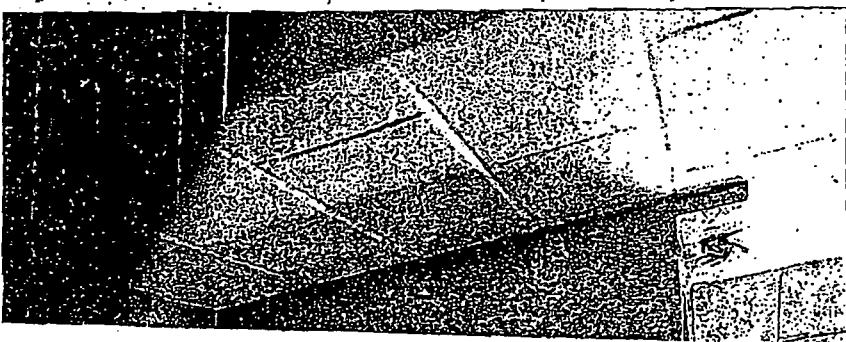
Across the room, David Schick climbed to his feet and rub his forehead. He was sweating. He was shaking. He was shaking.

Barrowe stands. Half-moons of sweat ring his lips, but his crime sounds like a shiny badge.

"I am a federal prisoner," he blazes to heavily-accented English. "I am concerned to be morally right with my friends. I am a simple man."

A man on the floor rolls over, scratches his head and grins. "Glad that's over and under you. You're the

entering the beast
Producers get service up to 100 miles
Charleston County jail now.



Boston, an inmate with mental health problems of the jail's population takes psychiatric drugs.

On the Web

MULTIMEDIA: Go to character
exclusive audio slideshow and video

concrete, steel and stench



and his indignation and waves a cellmate in a communal cell known as "the bullpen," are 22 men occupy a space built

Blowers. The men laugh as Blowers and take lead the police on a car chase through Chicago.

his wife three days. He had food, guard down, thrown at him. But he has no thought of quitting.

And never forget inmates are not your friends. Officer Matt Laquea unlocks a

cell to clean. Like clock work, at 6:35 a.m., the breakfast tray arrives. Officer D. Breakers calls for the bottom floor inmates to eat first. Most rush to the line with bundles of soiled linen tucked under their arms. Today is laundry day.

The women line up single-file and wait for Breakers to check their color-coded ID bracelets. Inmate charged with lower offenses wear green wristbands. Blowers for moderate offenses. Red is reserved for serious crimes.

In the "Yellow Forward" rule, inmates wear a yellow band for the first 24 hours of their stay. After that, they are assigned to a specific unit based on their offense. Breakers, a 30-year-old African American, is a "Yellow Forward" inmate. He is a "Yellow Forward" inmate.

Cellmates are subject to harassment and being as they're wheeled through the narrow corridors to the Northside cell block. Inmates line up, their backs against the bars as they wait for their names to be called.

Chicago's total inmate population, including work release prisoners and juveniles, topped out at 13,744 Thursday. A planned expansion project would add 27 additional dormitory-style housing units and 1,344 new beds.

Why is the county jail so crowded?

Continued negligence by trustees leaves the crime - Street law also together enforcement have led to it arrests.

Backlogs in court-ordered sentences from going to full trial and inmates in state prisons.

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping

How the jail is coping



Officers with the jail's elite Tactical Action Control Team surround an unruly inmate in a restraining chair as Officer E. Rivas unholsters a Taser stun gun. The inmate has refused to undergo a strip search and the team is trying to convince him that he must behave if they are to let him use the bathroom, as he has requested.

Life on the inside

These stories are slices of life of inmates and jailers, and how they deal with the overcrowding:

Classmates and friends



Officer Di Salter talks about a good friend who is in jail.

Detention Officer Donald Salter glances across the housing unit at a wiry inmate with dreadlocks making his way up the stairs. Salter folds his burly arms and turns away. "See that guy," he says, with a subtle tilt of his head. "He's my best friend. We grew up together. I've known him 20 years."

They took different paths after high school, but Salter doesn't judge his friend. People just make different choices in life. They still chat when they see

each other on the street. But not in here. The other inmates would talk, think his friend was a snitch.

"He's been here three weeks. I haven't said anything to him. I'm trying to help him save face," Salter says.

Four years ago, Salter served on a committee organizing the 10-year reunion of his high school class. He looked down the list of graduates. So many people he still saw daily — as inmates.

"I was like 'He's not going to make it. She's not going to make it. He's doing federal time.' It was sad."

A change of socks

A young man shuffles to the booking counter. He has a disability of some sort. His arms and legs twitch and bend at odd angles as he walks. He has been picked up on a bench warrant for missing a court date.

Sgt. R.E. Hamill tells the man to take off his shoes. The man smiles and kicks off his sneakers. A stench like rotting meat fills the cramped booking area.

Hamill steps back, his eyes watering. Other inmates gag. Officers fan the air with loose paper.

The man's athletic socks are covered in an oily brown sheen the color of mud. Whenever he steps, he leaves a brown footprint behind on the floor. Hamill reaches down and helps him remove the socks, which peel away like a second layer of skin. The man's feet are mottled, his toes black with decay.

"Buddy, when was the last time you changed your socks?" Hamill asks. The man looks away as if he has not heard the question.

A safe job

A.M. Conner was alone, leaving her job at Sonic in Mount Pleasant when three men carjacked her. She doesn't like to talk about it.

Conner searched online for a job in law enforcement and saw that the detention center had openings. She signed up less than a month

'The time doesn't kill y It's not being in control'

JAIL From Page 7A

It's more than just munchies. This is hard currency behind bars. Canteen items are traded for haircuts, used to settle debts or swapped for an extra tray of food at dinner. It's serious business, and fights can break out when inmates get jacked on sugar rushes or don't ante up on items they owe.

They complain bitterly about the prices they are charged. Then they place another order. It's the only game in town.

Making do, killing time

Time is the enemy on the inside. It can eat an inmate up, play with his mind, roll his emotions. To survive, he must adapt, find ways to fill hours.

"It's not the place that stresses you out, it's missing family," Lennie Mickey, a 31-year-old accused of murder, says. "The time doesn't kill you. It's not being in control. If a man can't control his own destiny, he falls into it."

Edwin Wilson slides a worn writing tablet from his bunk. The pages crinkle as he runs an ebony finger along the neatly printed words.

"Life would be easy if we never did anything we regretted. But that doesn't happen," one passage reads. "I know I'm not where I wanted to be at this stage of my life. I must stay strong to better myself."

Day after day, Wilson commits his thoughts to paper. Poems. Plans. Words this 37-year-old truck driver would share with



More than 40 inmates compute for space in booking area holding cells designed for about 10 people. Some have been here for more than 12 hours, waiting for det to find more permanent accommodations for them inside the overcrowded jail.



A new program welding and earn high school diplomas. The Help them in they'll stop on Inmate Frasier seven motion violator him to get the GED program anything else signed up. "It does give to look forward to."

SUNDAY, NOVEMBER 18, 2007.9A

IE CHARLESTON COUNTY JAIL

is: A high-calorie mash of
ers, cookies and other
ts jammed between large
y buns.

AS: The name given to
ill's tactical team that
the disciplinary wing
sent to deal with unruly
tes, so named for their
uniforms.

A-THUG: What some
ers call a special wing
helps inmates overcome
ance abuse through
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l bars

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the is her belongings, leav-
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An officer sprays disinfect-
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next occupant.
lial!" someone yells. Three
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theaded, knee-length shorts,
white tube socks poke out
ripped sandals.

tosses her trash, another
spots a beef stick at the
of Holman's rubber bin.
have that?" the inmate
olman hands it over.

an sits, her belongings in
She can't stop smiling.
igns lots of papers and
that she is released on a
l recognizance bond.

20 minutes later Holman
ut the front door of the
jail.

ian, fresh air," she whis-
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itates, not sure what to
."What to do? I can't be-
out here."

an walks down Leeds Av-
med Dorchester Road.

Life on the inside

These stories are slices of life of inmates and jailers,
and how they deal with the overcrowding:

Recovery

A young inmate leans against a walker, his husky frame sagging
to one side. He underwent hip replacement surgery two weeks ago
to repair damage from a car accident. A drug bust landed him in jail
before he had a chance to recover.

He munches Motrin for the pain that slices through his side as he tries
to get comfortable on the steel bed.

The man has a tattoo of eerie green eyes on the back of his bald head.
His mama once told him that she knew everything he did because she
had eyes in the back of her head. He figured he could use a set, too.

"Didn't help me much," he says, shaking his head. "Cops still snuck up
on me."



Cynthia Hunt

Memories

Cynthia Hunt scratches off days on a hand-drawn calendar that she
stuck to the wall with toothpaste. "It's like my journal," she says. She
sleeps on the top bunk with plenty of wall space to decorate. She put
up a picture of her dog, Tipper, and various sayings she's copied from
books she's read while incarcerated.

Hunt keeps letters from her mom, husband and lawyer folded up in
a Doritos bag stored in her jail-issued rubber bin. She tore off the top
of her sock to make the band that is wrapped around her bent deck of
cards. Sometimes, she uses rolled up pieces of toilet paper as curlers
to gussy up for visitors. "But if you get caught with it, it's a contraband
and you'll get locked down for that," Hunt quickly adds.

Just messin' around

An alarm sounds as a pool of rusty brown water slowly creeps across
the floor of unit 1C.

An inmate has knocked the head off a fire sprinkler jet in his cell.
Hundreds of gallons gush from the wall. The torrent drenches the
room and pours into the common area.

A voice booms over the loudspeaker. "Everyone back to their cells.
Now!"

Inmates shuffle off, grumbling about losing 20 minutes of rec time. A
few stay to help clean. Filthy water spills over their sandal-clad feet as
they squegee the liquid into an outdoor rec area.

The inmate who caused the commotion insists he just bumped
the sprinkler. His cellmate tells officers the real story: The man kept
hanging his shirt from the sprinkler, playing with the end.

"I told him to quit messin' with it," the cellmate explains. "But he
wouldn't listen. Then it just did what it was supposed to do."

THIRTY

CONFIDENTIAL
CLIA #42-D0658606

LABORATORY REPORT
BUREAU OF LABORATORIES - DHEC

CONFIDENTIAL
(803) 896-0800

C10007
NAME: DICKSON, DANIEL DHEC ID: [REDACTED]
BIRTH: [REDACTED] SEX: M RACE: W PRINT DATE: 09/05/07

SPEC NO: W097129 PGM: 111
LOC ID: 1011
SPEC TYP: BLOOD
COLL-DT: 08/29/07
RECV-DT: 08/30/07

CPT NO --- TEST NAME --- RESULT
86803 HEP C TOTAL ANTIBODY
87522 HCV RNA QUANTITATION
HCV RNA COPIES/ML = 7,826,131 , IU/ML = 1,505,030

DHEC Laboratory, 8231 Parklane Rd., Columbia, SC.

9/6/07
8-5-07

CONFIDENTIAL
CLIA #42-D0658606

LABORATORY REPORT
BUREAU OF LABORATORIES - DHEC

CONFIDENTIAL
(803) 896-0800

C10007
NAME: DICKSON, DANIEL DHEC ID: [REDACTED]
BIRTH: [REDACTED] SEX: M RACE: W PRINT DATE: 08/31/07

SPEC NO: W097129 PGM: 111
LOC ID: 1011
SPEC TYP: BLOOD
COLL-DT: 08/29/07
RECV-DT: 08/30/07

CPT NO --- TEST NAME --- RESULT
86803 HEP C TOTAL ANTIBODY
ANTI-HCV IS POSITIVE BY EIA, SAMPLE TO CUTOFF RATIO 99.56

86804 HCV RIBA
ANTIBODY TO HEPATITIS C CONFIRMED POSITIVE BY RIBA

ADDITIONAL SPECIMEN INFORMATION FOLLOWS:
COMM : SPECIMEN NUMBER W097129 S/CO FOR HCV IS 100.56

DHEC Laboratory, 8231 Parklane Rd., Columbia, SC.

9/4/07
8-31-07

555-0121676

DICKSON, DANIEL
9/5/08

CONFIDENTIAL
CLIA #42-D0658606

LABORATORY REPORT
BUREAU OF LABORATORIES - DHEC

CONFIDENTIAL
(803) 896-0800

C10007

NAME: DICKSON, DANIEL DHEC ID: [REDACTED]

BIRTH: [REDACTED] SEX: M RACE: W

PRINT DATE: 08/30/07

SPEC NO: W097129 PGM: 111

LOC ID: 1011

SPEC TYP: BLOOD

COLL-DT: 08/29/07

RECV-DT: 08/30/07

CPT NO ---- TEST NAME ---- RESULT
86592 SYPHILIS AB - RPR NON-REACTIVE

86701 HIV ANTIBODY

86701 HIV - EIA

NON-REACTIVE

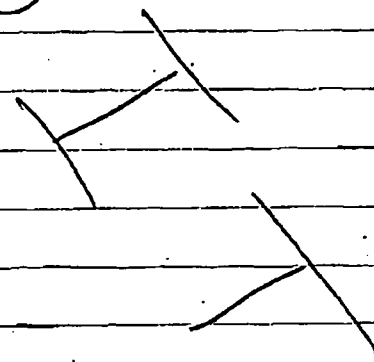
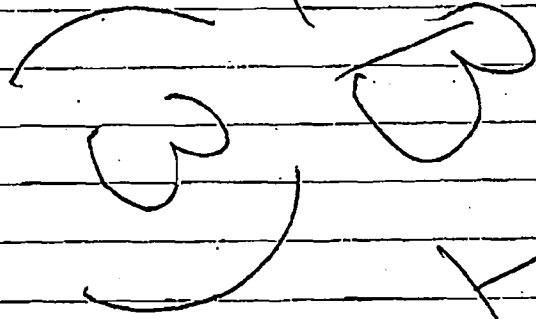
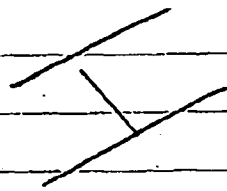
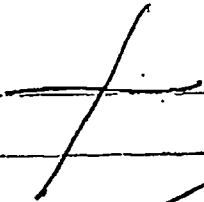
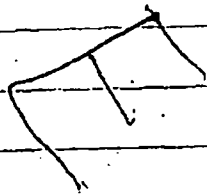
DHEC Laboratory, 8231 Parklane Rd., Columbia, SC.

456-0421076

DICKSON, DANIEL

9/6/2008

9/4/08
8-30-07
DP





South Carolina STRONG

Sustaining, Teaching, Rebuilding Our New Generation

2510 N. Hobson Avenue, North Charleston, South Carolina 29405 – 843.554.5100 – 843.554.5182 (FAX)

October 24, 2007

Mr. Daniel Dickson #1289063
Charleston County Detention Center
3841 Leeds Avenue
Charleston, SC. 29405

Dear Daniel,

South Carolina STRONG is now providing a much needed opportunity for South Carolinians willing to make a minimum two year commitment to change their lives. Through the proven Delancey Street process, residents come to understand the consequences of negative thoughts and behaviors by them being held accountable for their actions. Continued individual effort, peer support, and a family environment will allow these negatives to be replaced with a renewed sense of self worth, as well a realization of the importance of a positive attitude, hard work, being responsible and, most importantly, helping others while helping themselves.

After speaking with you during our December 4, 2007 interview, we have decided that you have expressed enough of a sincere desire to change your life that we are willing to work with you toward that end. The two-year commitment required for this is made by both you and our family and should not be taken half-heartedly. Should you be given the option of completing our program by the courts, parole board, or probation office, we will work with you and the courts to coordinate you entering **South Carolina STRONG** once your legal matters are resolved. If you should be put on probation or parole, we currently work with Charleston County Probation and Parole making sure we are in compliance with there office for all of our residents appointments.

Sincerely,

John P. Glemser
Facility Director

EXHIBIT
B
H

Respectful Julie Armstrong
 Clerk of Court
 100 Broad Street
 Charleston, SC 29401

FILED

2008 SEP -9 PM 12:41

JULIE S. ARMSTRONG
 CLERK OF COURT

Please file with the clerk ~~these~~
 papers, clock them and send copies
 back if possible ???

- ① Notice of intent to represent myself
 (pro se)
- ② Notice of indigent status
- ③ Discovery motion
- ④ Notice to intention to Supenia blood test
 done by DHEC laboratory

Thank You

Samuel E. Dickson

8-25-08

STATE OF SOUTH CAROLINA
 CHARLESTON
 COUNTY OF SOUTH CAROLINA

ED NOTICE OF INDEGENT STATUS
 IN THE COURT OF GENERAL SESSIONS

2008 SEP -9 PM 12:40

STATE of South Carolina ^{JULIE ARMSTRONG} Clerk of Court Direct Indictment

- VERSUS -

BY

Warrant No(s): K-222799

K-222798

DANIEL EDWARD DICKSON

Defendant

To: Assistant Solicitor Michael C. Sahn, Clerk of Court
 Julia Armstrong, Public Defender Rodney Davis,
 And Assigned Judge

Defendant wishes to let the court know that he is
 indigent. That he has no money nor has he had
 any money deposited into his account since he has
 been housed at the Charleston County Detention Center
 June 29, 2007

Also he respectfully ask the court since he has
 petitioned the court to let him represent himself
 (pro se) that the Clerk of Court Mrs Julie Armstrong
 assist in his copy/copies if possible when the
 defendant cannot get copies to the court, solicitor
 and mail copies back to the defendant stamped and
 numbered received by the court & dated.

please have Mrs Armstrong keep a tally of all court
 cost. I honestly plan to pay all fees, costs, and
 monies back as soon as I'm exonerated of
 said charges

Daniel E. Dickson 8-25-08

STATE OF SOUTH CAROLINA
 CHARLESTON
 COUNTY OF SOUTH CAROLINA

2007 GS 10829, 10830
 NOTICE OF INTENTION TO
 REPRESENT HIMSELF (PRO SE)
 IN COURT 2008 GS 6743

2008 SEP -9 PM 12:40

STATE OF SOUTH CAROLINA

JULIE J. ARMSTRONG
 CLERK OF COURT

Warrant No(s): K222799

- VERSUS -

BY MMR

K222798

DANIEL EDWARD DICKSON

Direct Indictment

Defendant

IN THE COURT OF GENERAL SESSIONS

I understand there is a old saying... A person who represents himself, Has a fool for a client.

With all do respect... I ask the court to let me represent myself (pro se) and so I dont look to foolish. I respectfully ask the court to let me keep my public defender MR. Rodney Davis on hand to assist me pertinent.

I promise to conduct myself in accordance with the laws of our state following all the rules and procedures; I also hope this notice of intention will help the court preconceive. I'm not a totally foolish client like the old saying states!

I will not waste my time, your time, the states time on babbling chatter and trifling talk.

Sincerely

Daniel E. Dickson

Defendent 8-25-08

STATE OF SOUTH CAROLINA
CHARLESTON
COUNTY OF SOUTH CAROLINA

2007 GS 10829, 10830
DISCOVERY MOTION

Pursuant to Discovery Rule(S)

STATE OF SOUTH CAROLINA 2008 SEP -9) PM 12:41

2008 GS 6743

JULIE J. ARNOLD
CLERK OF COURT

-VERSUS-

BY

Warrant No(S) K-222799

DANIEL EDWARD DICKSON

K-222798

Defendant

IN THE COURT OF GENERAL SESSIONS

Defendant respectfully request any and all statements, Hospital reports, Detectives statements, all supplementary reports, witnesses statements, Any and all facts pertaining to the defendant case.

All incident reports any and all supplementary reports being law enforcement or outside agency be obtained Also any and all editorial articles in newspapers with any knowledge of defendants case plus any and all jail employees statements be it officers, workers, caseworkers, Doctors nurses, or any and all jail house informants pursuant to this case be obtained.

Any and all evidence copies of evidence, photos, tape recordings telephone tape recordings of defendants conversations or any other conversation pertaining to the defendants case to be used as evidence by the solicitors office sheriff offices any other law enforcement agency to be handed over pursuant to discovery Rule(S) South Carolina statute

Defendant respectfully request a (N.C.I.C.)

STATE of SOUTH CAROLINA
COUNTY of CHARLESTON

2007 GS-10829, 10830
NOTICE of INTENTION TO SUPREMA

Woodwork Blood samples tested
by DHEC Laboratory 8231

STATE of SOUTH CAROLINA 2008 SEP -9 PM 12:11 Parklane Rd Columbia S.C.

FILE J. ARDIS IRONG
CLERK OF COURT

2008 GS 6743

- Versus -

BY MAA

Direct indictment

warrant No(s)

DANIEL EDWARD DICKSON

K-222799

K-222798

Defendant

in THE COURT OF GENERAL SESSIONS

Defendant respectfully request any and all information on blood taken by Mrs Alina Burns for testing by DHEC Laboratory 8231 Parklane Road Columbia S.C while a inmate at (C.C.D.C.) Charleston County Detention Center

DHEC ID # 550421676 any and all information concerning test performed on blood species number W097129 any and all information on who tested said blood? What test where performed on species? Dates and times of test All information concerning HIV Test and test perform (said performer) test for Hepatitis "C" Hepatitis A and B. all information Partial to the defendant

Any and all information concerning HIV, HCV, RIBA TEST, HVC RNA QUANTITATION COPIES/ML TOTAL ANTIBODY INFORMATION TEST PERFORMED SYPHILIS A AND B TEST PERSONS PERFORMING TESTS, TIMES OF TESTS, TIMES BETWEEN WHEN Blood was taken and times when test where performed, who did test? What procedures where followed and took All information on blood test not taken and why?

ALL POSITIVE BY EIA And any and all num:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2008 SEP 15 AM 9:44

2008/09/10824, 10836
MOTION REQUESTING
(90) NINETY DAYS
CONTINUE

- VERSUS -

JULIE J. ARMSTRONG
CLERK OF COURT

BY [Signature] DIRECT INDICTMENT

DANIEL EDWARD DICKSON

WARRENT NO(S)

K 222799

K 222798

DEFENDENT

Defendent respectfully request a (90) ninety day continuance to adequately prepare a proper defence.

I have to date, not received a rule (5) motions and I will need time to go over all the evidence against me.

I have also been seen by the Attorney Generals office and my testimony maybe needed in a up coming trial of another inmate housed here at (C.C.D.C) Charleston County detention Center this November

And I would appreciate the time to prepare for that trial as I will be a witness for the State

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

NOTICE OF SUPLENIA

DEFENDENT REQUEST ALL MEDICAL
RECORDS, MENTAL RECORDS FROM
THE SOUTH CAROLINA DEPARTMENT
OF CORRECTIONS on the defendant

versus -

2008 SEP 23 PM 2:00

DANIEL EDWARD DICKSON Direct indictment 2007

BY

1 2007 GS 10829, 10830

Defendant

2 2008 GS 6743

3 warrant No(s) K-222799

K-222798

Defendant respectfully request (S.C.D.C.) THE
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS TO turn
over to the defendant and his Lawyer Attorney
Rodney Davis all medical records, mental records
health records on the defendant.

Also request a list of all medications dispensed
to him while incarcerated inside (S.C.D.C.) A
list of Doctors names, physicians who prescribed
said medications.

Plus a list of all medical procedures performed
on him while he was incarcerated inside (S.C.D.C.)
A list of all operations performed The hospital
that performed said operations Names of Doctors
Physicians who performed operations

Defendant also respectfully request a list of
psychologist, psychiatrist who have treated defendant
while incarcerated a list of prescribed medications
procedures performed on him why procedures
were performed Dates and times of procedures

all information on any outside agencies who might have performed any test & electrical shock treatments or other wise information on doctors who performed tests and why. All information on special test performed by (S.C.D.C.) on the defendant special medications prescribed and why.

Any and all special precautions took in the handling of the defendant and why these precautions where took while test where performed.

FILED

2008 SEP 23 PM 2:14

JULIE J. ARMSTRONG
CLERK OF COURT

BY

Samuel E. Dickson
9-12-08

Respectful Julie J. Armstrong
 Clerk of Court
 100 Broad Street
 Charleston, S.C. 29401-2258

9-12-08

BY

JULIE J. ARMSTRONG
 CLERK OF COURT

2008 SEP 23 PM 2:13

FILED

Please file these motions with the court clock them and send copies back to me for my file. I ask the court to let me represent myself (pro se)

① motion requesting (S.C.D.C) South Carolina Dept. of Corrections to turn over all medical and mental records

② motion requesting (C.C.D.C) Charleston County Detention Center to turn over all medical and mental records

③ Notice to Superior Bond Judge Mrs. Priscilla B. Baldwin or the video of the defendants bond hearing and the 6 other inmates who she set bonds on June 30, 2007 10:05AM thru 10:49AM

STATE OF SOUTH CAROLINA
 COUNTY OF SOUTH CAROLINA
) Motion Requesting (C.C.D.C.)
) Charleston County Detention Center
) to turn over all information

2008 SEP 23 PM 2:34
 STATE OF SOUTH CAROLINA
) want to defendant stay

VERSUS -
 BY...) Direct indictment
) Warrent No(s)

DANIEL EDWARD DICKSON) K-222799
) 2007 K-222798

GS 10829, 10830 2008 6743

Defendant) IN THE COURT OF GENERAL SESSIONS

Defendent respectfully request any and all information on medical records all medications dispensed? A list of Doctors and PHYSICIANS who examined the defendant while inside (C.C.D.C.) A list of when defendant was a patient in (C.C.D.C.) hospital How long defendant was kept in hospital What was the Reason for his stay in the hospital How many times was he a patient in the hospital? How many times was he seen on sick call and what for?

Also a list of blood taken? Why blood was taken? Who took blood? Where blood was stored? Who conducted blood test? Why? Any information on outside hospital's defendant might have been a patient in while still a inmate in (C.C.D.C.) custody Why defendant was placed in house hospital or outside hospital a list of operations performed on inmate and why who performed operations and why? How long was the defendant a patient and why?

Any and all psychological test performed Why and who performed said test Names of Doctors, Nurses, Staff who performed any test on defendant and why and who

ordered test A list on all dental work done who did work and why a list of medicine dispensed

Plus a list of visitors who have visited defendant while a inmate inside (CCDC)

Attorney visits who visited dates & times

A list of phone conversations when said conversation where turn over to jail investigator how long where said tapes in the hands of investigator, Detectives Solicitors. A print out of said conversations

Any information on mental illness? test performed who did test Names of Doctors who visited defendant and why if any a list of Doctors defendant saw outside of C.C.D.C. while still a inmate in custody and why.

FILED

2008 SEP 23 PM 2:14

JULIE W. ARISTRONG
CLERK OF COURT

BY

Daniel E. Dickson
9-12-09

STATE OF SOUTH CAROLINA
 COUNTY OF SOUTH CAROLINA

NOTICE of SUPLENIA

IN THE COURT OF GENERAL SESSIONS

2008 SEP 23 PM 2:13

STATE of South Carolina vs. Daniel Edward Dickson

CLERK OF COURT

-versus-

BY [Signature] Warrants No(s)

K-222799

DANIEL EDWARD DICKSON

K-222798

Defendant

2007 GS 10829, 10830

2008 GS 6743

Defendant ask the court to suplenia Bond Court Judge Mrs. Baldwin and asked her to turn over all Vidio of his and the other 6 inmates who she conducted Bond hearing on June 30, 2007 between the hours of 10:05 AM thru 10:49 AM plus names of all 6 inmates.

Defendant understands Judge Baldwin is a very busy individual so if Judge Baldwin turns over the Vidio of the Bond hearings June 30, 2007 between the hours of 10:05 AM thru 10:49 AM and a list of all the inmates who names are needed as Valid the defendant will take her statements as true and fact.

Therefore she would not be needed at trial

Bond Judge

Mrs. Priscilla B. Baldwin 843-529-7482

Charleston County Detention Center

Respectful Julie J. Armstrong
 Clerk of Court Charleston County
 100 Broad Street
 Charleston, S.C. 29401

2808 OCT -2 PM 1:55
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

Please copy motions and file
 and stamped motions clock &
 date them and have copies sent
 to the Solicitors, judge and
 public defender Mr. Rodney Davis
 also a copy for my file as
 I am representing myself Pro-se
 at trial with the help of my
 public defender

Thank you sincerely

Donald C. Dickson

9-28-08

① Motion requesting pretrial hearing

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) MOTION REQUESTING A
) PRE-TRIAL HEARING TO
) GO OVER ALL DOCUMENTS,
) MOTIONS AND EVIDENCE
) TO BE PRESENTED AT
) DEFENDANT JURY TRIAL

- VERSUS -

DANIEL EDWARD DICKSON

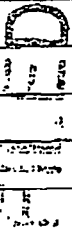
Defendant

2007 GS 10829 2007 GS 10830

K-222798 K-222799

Defendant respectfully request a
pre trial hearing to go over all
evidence, Documents, Statements,
and motions to be presented at
the defendants jury trial. By the
solicitors office, and the defendant
(pro-se) and his public defender
Mr. Rodney Davis

9-28-08



2008 OCT -2 PM 1:55

JULIE J. ARNOLD
CLERK OF COURT

BY

Respectful Julie J. Armstrong
Clerk of Court CP + GS
Charleston County

Inclosed is my P&R.
Please date/stamp and
return a copy to me

Thank You Sincerely
Daniel E. Dickson

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2011-CP-10-4505
	)	
Daniel E. Dickson, #105841,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for post-conviction relief filed June 27, 2011, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the October 2007 and August 2008 terms of the Charleston County Grand Jury for kidnapping (2007-GS-10-10830) and attempted armed robbery (2008-GS-10-6743). Rodney Davis, Esquire, and Cassandra Winslow, Esquire, represented the Applicant. The Applicant proceeded to trial on October 21-22, 2008, after which a jury found him guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced him to confinement for life without parole (LWOP) for each offense.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Lanelle Cantey Durant, Esquire, of the South Carolina Commission on Defense, represented Applicant on appeal. Following full briefing, the South Carolina Court of Appeals affirmed the

conviction and sentence. State v. Dickson, Op. No. 2010-UP-348 (S.C. Ct. App. filed July 6, 2010). The Remittitur was issued on July 22, 2010.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the trial transcript, the Final Brief of Appellant, the Final Brief of Respondent, the Court of Appeals' opinion affirming the conviction and sentence, and the Remittitur dated July 22, 2010.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that counsel
 - a. Failed to subpoena Eric Dickerson or any other witnesses for trial.
 - b. Failed to subpoena Applicant's medical records from MUSC.
2. Failure of State to abide by terms of an agreement regarding Applicant's sentence.
3. Ex parte communications that occurred in the judge's chambers between the solicitors and one or more of Applicant's listed defense attorneys.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant alleges that the State failed to abide by the terms of an agreement regarding Applicant's sentence. Specifically, Applicant alleges that he was willing to provide the solicitor with information about another inmate in exchange for a reduction in his charges. Respondent submits that Applicant's allegation is without merit. Ultimately, the other inmate was prosecuted by the Attorney General's office and pled guilty. There is nothing to indicate that a plea agreement between Applicant and the Solicitor's Office or the Attorney General's Office was in

place. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

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

Dec. 16, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2011-CP-10-4505

DANIEL E. DICKSON

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Joseph Yates, Esquire
PO Box 571
Charleston, SC 29402

DATED this 16th day of December 2011


Anne R. Henley, Legal Assistant
For Respondent

COURT OF COMMON PLEAS
2011-CP-10-04505

Plaintiff

V.

Defendant.

TRANSCRIPT OF RECORD

July 25, 2012
Charleston, South Carolina

B E F O R E:

THE HONORABLE STEPHANIE P. McDONALD, JUDGE

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

Ms. Ashleigh Wilson, Asst. Attorney General
Representing the State

Mr. J. Howard Yates, Jr., Esquire
Representing the Applicant

Anne Bouley Meyer, RPR
Circuit Court Reporter

I N D E X

WITNESSES

	Page
All Witnesses:	
DANIEL DICKSON	
Direct Examination by MR. YATES	36:18
Cross-Examination by MS. WILSON	19:13
Redirect Examination by MR. YATES	22:19
PETER MCCOY	
Direct Examination by MR. YATES	25:17
Cross-Examination by MS. WILSON	36:18
RODNEY DAVIS	
Direct Examination by MR. YATES	42:7
Cross-Examination by MS. WILSON	51:3
Redirect Examination by MR. YATES	62:6
SAM WHITT	
Direct Examination by MR. YATES	74:5
Closing Argument by MR. YATES	77:16
Closing Argument by MS. WILSON	81:14

1 MS. WILSON: May it please the Court, Ashleigh
2 Wilson for the State.

3 The next case is Daniel Dickson versus State.
4 Docket number 2011-CP-10-4505. Mr. Dickson was
5 originally indicted for attempted armed robbery and
6 kidnapping. The applicant proceeded to trial, and the
7 State provided notice of a contingency to life without
8 the possibility of parole.

9 The applicant was found guilty of all charges.
10 And he was sentenced confinement for life without the
11 possibility of parole.

12 Your Honor, the applicant has put forth a very
13 lengthy application. So I would just ask that Mr.
14 Yates enumerate the allegations that the applicant is
15 going to go forward on today. And I will just pass it
16 over to Mr. Yates.

17 THE COURT: Okay. And just so you all know, I
18 have read the full application and the transcripts.
19 But I'm happy to hear you put whatever you'd like on
20 the record.

21 MR. YATES: Your Honor, I just wondered if I
22 could give a brief statement?

23 THE COURT: Yes, sir.

24 MR. YATES: And what I intend to prove.

25 I represent Daniel Dickson, who is an inmate at

1 the Kirkland Correctional Institute. And this case
2 involved the application of the 3 strike law.

3 On June 29, 2007, Daniel Dickson was arrested
4 and ultimately charged with kidnapping and attempted
5 armed robbery.

6 while in the county jail, Daniel Dickson met Mr.
7 Joseph Sam Whitt, who had been arrested and charged
8 with the murder of his father. While they were in the
9 same cellblock in the Charleston County jail, Mr. Whitt
10 described to Mr. Dickson in detail how he killed his
11 father, and how he allegedly killed his father's
12 friend.

13 Mr. Dickson notified the solicitor in writing
14 that he had pertinent information concerning the Whitt
15 murder case. The solicitor's office expressed
16 interest. And Mr. Dickson was interviewed on several
17 occasions by members of the solicitor's office, among
18 them Mr. Peter McCoy, Burns Wetmore, as well as
19 Jennifer Evans, who she is deceased now, but she was
20 with the Attorney General's office, on several
21 occasions.

22 Mr. Dickson's lawyer, Rodney Davis, was not
23 present at the interviews. And no proffer was
24 requested by Mr. Dickson's lawyer in return for this
25 information.

1 Mr. Dickson prepared a written report of the
2 events in the Whitt murder. He gave it to the
3 prosecutor and offered to testify against Mr. Whitt.
4 When Mr. Whitt became aware of this, he threatened to
5 have Mr. Dickson punished. Ultimately, Mr. Whitt did
6 not go to trial, but he pled guilty to murdering his
7 father.

8 Shortly before Daniel Dickson's trial, this is
9 after Mr. Whitt pled guilty, the solicitors, Michael
10 Sahn and Jennifer Shealy notified Mr. Dickson and his
11 attorney, Mr. Davis, that the solicitor was seeking
12 life without parole.

13 And through Rodney Davis, who will be one of my
14 witnesses, I will show that the Dickson case was not
15 going to be tried at all, but it was going to be pled.
16 And when the solicitor brought the life without parole
17 request, there was no choice but a trial.

18 I will show that the solicitor used the
19 information that Mr. Dickson had granted and they
20 benefited, the solicitor benefited from this
21 information. And then after this information was
22 given, the solicitor's office pulled the rug from
23 underneath Mr. Dickson, and he is right in jail now in
24 a life without parole.

25 I will show that Mr. Dickson's legal

1 representation was deficient, and there is a reasonable
2 probability that but for the errors in his
3 representation, the result would have been different.

4 And, Your Honor, that's essentially what I plan
5 to show in the statement of my case.

6 THE COURT: Okay.

7 MR. YATES: I have one first witness that I'd
8 like to call is Daniel Dickson, my client.

9 THE COURT: Yes, sir.

10 Mr. Dickson, if you'll come forward and be
11 sworn.

12 DANIEL DICKSON,
13 after having first been sworn to tell the truth, the
14 whole truth and nothing but the truth testified on her
15 oath as follows:

16 DIRECT EXAMINATION

17 BY MR. YATES:

18 Q Mr. Dickson, where do you live?

19 A Right now?

20 Q Yes.

21 A In Charleston?

22 Q No, in --

23 A Kirkland Correctional Institution.

24 Q I see. And what were you convicted of?

25 A Kidnapping and armed robbery.

1 Q Was it armed robbery --

2 A I was charged but I never seen -- never, never
3 looked at any warrant for armed robbery. They gave
4 that warrant, served it to another inmate named Dickson
5 in the county jail.

6 Now, I never seen it. I brung it up a couple
7 times and Mr. Davis said it didn't matter after
8 everything was turned over to the Attorney General's
9 office. Everything blowed up. Everybody started
10 running different directions. Hung me out to dry.

11 Q Let me ask you. Were you convicted of armed
12 robbery or possibly attempted armed robbery?

13 A Attempted armed robbery.

14 Q Attempted armed robbery. And did you, when you
15 were in the Charleston County jail, did you speak to
16 Mr. Sam Whitt?

17 A Yes, sir.

18 Q And was he in the same block with you?

19 A Moving into his cellblock, his cell. There were
20 three of us in a cell.

21 Q Yeah. And did he tell you about killing his
22 father?

23 A Yes, sir. He started bragging about killing his
24 father for crack cocaine.

25 Q And what did he say he used as a murder weapon?

1 A A pipe bender tool behind the house. Whitt said
2 he had got there he had already made up his mind he was
3 going to kill his father. And he carried it upstairs
4 so when he did come in he wouldn't have to go behind
5 the house and get it, it was already there.

6 And his father was sleeping. He bragged about
7 going in there and hit his father while his father was
8 in bed sleeping.

9 Q Yeah. And did you discuss this, or notify the
10 solicitor's office that you had this information?

11 A Yes, sir, a number of times.

12 Q How many times do you think?

13 A I probably wrote 12 letters. Each time when
14 Whitt would come in and tell me something, I'd try to
15 write it down.

16 It's hard when you are in the cell with somebody
17 to write the solicitor and let them know without him
18 knowing because we were locked in the cell together,
19 little teeny cell together.

20 Q Yeah. And who came in to see you when you were
21 in jail?

22 A Mr. Peter McCoy came and saw me. Mr. Burns
23 Wetmore. And another attorney, and another solicitor I
24 mean.

25 Q And how many times did they come by to see you?

1 A The next day they sent an investigator who came
2 to talk to me about the other murder that Whitt had
3 bragged about doing.

4 Q So there were two murders that he told you
5 about?

6 A Yes, sir.

7 Q And how many times did lawyers come to your cell
8 to talk to you?

9 A They never came to the cell. They have to pull
10 you out.

11 Q In a waiting area or speaking area?

12 A Yeah. Mr. Davis, I saw Mr. Davis a couple times
13 via video camera visit. He came to see me a couple
14 more times after that there.

15 Q Yeah. Now, did Mr. Peter McCoy or anyone from
16 the solicitor's office come by to see you on several
17 occasions?

18 A Yes, sir.

19 Q How many times did they come by to see you?

20 A I think twice. I think twice.

21 Q And also did you talk to a lady from the
22 Attorney General's office?

23 A Yes, sir, I did.

24 Q And how many times did you talk to her?

25 A I saw her twice.

1 Q All right. And did you tell them that you
2 wanted them to work with you?

3 A Yes, sir. I told them I had information I could
4 bury him with. And he started talking about the other
5 murder.

6 But then Mr. Sanders came and saw Whitt, and we
7 was all in the drug program together upstairs. And
8 they call Whitt for a visit. He went up to see Mr.
9 Sanders and when he came back he told me, he said that
10 Mr. Sanders told him that somebody was talking to the
11 solicitor's office and that they also mentioned the
12 other murder.

13 And I was trying to tell Whitt, I played it on
14 off, and I said, Whitt, that's some very serious
15 charges you are facing. Not just one killing, that's
16 twice. I said, they'll put you on the death row for
17 that.

18 And then he started all happy-go-lucky that he
19 didn't care. And every time he'd come back he'd say
20 one thing and then he'd say another. And I was always
21 trying to write it down, but it's hard.

22 Q Now, you gave a written report to the
23 solicitor's office, or several written reports about
24 the information that you received?

25 A Yes, sir.

1 Q And did you offer to testify in court against
2 Mr. Whitt based on this information?

3 A Yes, sir.

4 Q And you told the people at the solicitor's
5 office that you were going to give this information to
6 them in response for their assistance to help you with
7 the --

8 A Yes. I -- they have a thing called a Strong
9 Program. And I interviewed for that there and they
10 accepted me. And they were willing to come to court
11 and talk for me too.

12 But when Mr. Peter McCoy came, and I told him
13 everything and everything, he told me that I was on his
14 team. He said, now as soon as he left me I could get
15 Whitt's attorney my statement, was that okay. I said I
16 had no problem with that.

17 I said, but Mr. Whitt's in the cellblock with me
18 here now. I said, as soon as his attorney turns it
19 over there is going to be trouble. And I was already
20 sick and got rushed to MUSC, had to get operated on. I
21 still had the stitches in me.

22 He said he would take care of it, and he had Mr.
23 Whitt moved that day.

24 Q You said that Mr. McCoy told you that you were
25 on his team?

1 A Yes, sir.

2 Q Do you remember more specifically the -- why he
3 was saying that? Was it because of your cooperation?

4 A Yes, sir.

5 Q Did he tell you at any time that they were going
6 to, the solicitor's office was going to ask for life
7 without parole?

8 A No, sir. No.

9 Q And Mr. McCoy was prosecuting the Whitt case; is
10 that correct?

11 Do you recall if he was the prosecutor in the
12 Joseph Whitt case?

13 A Who, Mr. McCoy?

14 Q Mr. McCoy.

15 A Yeah. At that time, yes, he was. Yes, sir. He
16 said he was the head leader.

17 Q All right. And do you recall the time that Mr.
18 Whitt received copies of your letters, or your reports
19 to the solicitor?

20 A Yes, sir. When Mr. McCoy came and saw me he
21 said he had to turn it over to T.O. Sanders.

22 Apparently he gave it to T.O. Sanders and got it to
23 Whitt real quick because two days later he was banging
24 on the cellblock showing everybody, showing them the
25 statement that I told on him.

1 Q Did you feel that your life was in danger?

2 A Yeah, he made it -- there's a couple options for
3 us to work at the county jail. And Mr. Johnson, he had
4 told me that Whitt bragged about he was going to have
5 me killed when I got to prison.

6 Q Okay. Did you talk to Jennifer Evans, who was
7 the lady with the Attorney General's office?

8 A Yes, sir.

9 Q And she ultimately prosecuted the Whitt case?

10 A Yes, sir. I assume that's why she came and saw
11 me. She said she was the one handling it.

12 Q Do you recall why Mr. McCoy was removed and the
13 solicitor was then substituted with the Attorney
14 General?

15 A The way I seen it is Mr. Davis, my attorney,
16 come and see me. Called me one night and said, the
17 worst thing has happened that could have happened. I
18 said what? And he said that T.O. had the case turned
19 over to the Attorney General's office and they were
20 handling it.

21 I said, well, I am still willing to testify to
22 what I know. I said, is it okay for me to write them?
23 He said yes. So I sent a couple letters to Mr.
24 McMasters. And once Jennifer Evans came and saw me, I
25 got her name, I sent her a couple.

1 Q Did Mr. Davis talk to you about using the word a
2 proffer, talk to you about a proffer from the
3 solicitor's office or from the Attorney General?

4 A We all talked while we were in the little room.
5 And Mr. McCoy said that the charges that I was serving
6 could be dropped down to different charges.

7 I assumed once they hit me with the armed
8 robbery charge, that I thought that might have been
9 where that came from, they were going to break
10 attempted armed robbery down to strong armed robbery or
11 something like that. I wasn't sure.

12 Q When you spoke to Ms. Evans, did Ms. Evans
13 indicate that she was pleased with your assistance and
14 that she may use you?

15 A Yes, sir. She asked me, she asked me about the
16 other murder I told her about that. And then she said
17 they had to talk to somebody else so they stepped out.

18 And I called her back in to the thing and I told
19 her, I said, I did a lot of time in the department of
20 corrections. I said, there is a lot of gang activity
21 going around all over the state of South Carolina.

22 And I was always a stand up guy in prison. And
23 I got plenty of respect from most all the inmates. I
24 know the dude here in Charleston right now, he was the
25 head man of the God Bodies (phonetic). I know Bloods,

1 Crips, all of them.

2 I told her I could help her out. Because all of
3 them used to talk about what they do and how they do
4 it; steel guns here in South Carolina and take them up
5 and trade them for dope in New York and stuff like that
6 there. And I could help them out a lot.

7 She told me one of her main things was
8 prosecuting the gangs and stuff like that right there.
9 Drugs and trafficking and stuff like that.

10 Q Did she indicate that she may want to have you
11 assist her --

12 A Yes.

13 Q -- on some other stuff. Did she give you any
14 reason to believe that the solicitor's office in
15 Charleston would seek a life without parole --

16 A No, sir, never.

17 Q Did she ever even mention it to you?

18 A No, sir.

19 Q And had you known that these people were going
20 to seek a life without parole sentence, would you have
21 put yourself at risk by giving this information?

22 A No, sir.

23 Q Were you satisfied with your lawyer --

24 A No, sir.

25 Q -- Mr. Davis?

1 A No, sir.

2 Q Could you tell me why?

3 A I'm not going to put all the blame. I believe
4 just had such a heavy caseload that he couldn't
5 properly represent me. He said it himself during my
6 trial that this was never a hearing. And it's like 60
7 days when they served me life without parole he made t
8 seem like he didn't do nothing for my case or to study
9 about it because it was never going to be a trial, it
10 was going to be a plea.

11 So I assumed -- and then the way I -- I thought
12 it was a big conspiracy by the solicitor's office.
13 T.O. used to work for the solicitor's office. Mr.
14 Davis used to work for the solicitor's office, he was
15 the head man at one time.

16 I got to wondering, how are you going to be the
17 head man in the solicitor's office and then be a public
18 defender? I thought it was some kind of conspiracy
19 against me just to get a conviction because the
20 Attorney General's office had the thing. And they were
21 trying to cover up this and cover up that.

22 Q Now, Mr. Dickson, did Mr. Davis allow you to
23 speak to Mr. McCoy and to the investigators and to the
24 lady from the Attorney General's office without him
25 being present?

1 A Yes, sir. He told me it was all right to do
2 that because I asked him.

3 Q Did he say that you could trust Mr. McCoy?

4 A Yes, sir. I got the feeling when I talked to
5 him that he was real good people, a real stand-up guy.

6 Q And how often did Mr. McCoy -- excuse me, how
7 often did Mr. Davis attend these meetings with you and
8 with these investigators --

9 A One time. The first time Mr. McCoy and the
10 other solicitors come to see me, I think there was two
11 investigators in there too, and Mr. Davis. And when I
12 mentioned about the other killing they were all happy,
13 they knew who had done it.

14 Q And so Mr. Davis only attended one meeting with
15 you and with the counsel for the solicitor's office?

16 A Yes, sir.

17 Q And how many times, would you say four times
18 that you spoke with the investigators?

19 A A few times, yes, sir.

20 Q But he was not with you at those times?

21 A No, sir. He said he had court to do or
22 something like that, and it would be okay for me to
23 talk to whoever Mr. McCoy sent to talk to me.

24 Q And do you know if he had any limitations on
25 what those people could ask you?

1 A No, sir. I just assumed they were going to ask
2 me what Whitt said or what I knew.

3 Q Was it your opinion that by giving this
4 information and cooperating with them they were going
5 to assist you in your sentence?

6 A Yes, sir.

7 Q And if you had known that they were not going to
8 do this, would you have put yourself at risk?

9 A No, sir.

10 Q Where are you right now? Are you in a special
11 unit at the --

12 A Yes. I'm in protective custody inside the
13 department of corrections. They have got a special
14 unit for inmates that are on protective custody. Some
15 of them are cops that do something dirty. They put
16 them in the same block.

17 Q Now, are your freedoms the same as anyone in the
18 general population?

19 A We are supposed to get the same, but we are so
20 understaffed we don't get it. I get like two hours of
21 recreation five days a week, and a shower. And that's
22 the only time I get to come out of my cell.

23 Q And you are in the cell by yourself; is that
24 right?

25 A Yes, sir. Right now Mr. Whitt has more

1 privileges than I do.

2 Q And do you know what Mr. Whitt's term is for his
3 guilty plea?

4 A 30 years I believe.

5 Q 30 years?

6 A Yes, sir.

7 MR. YATES: Your Honor, I have no more
8 questions.

9 THE COURT: Thank you, sir.

10 Cross-examination?

11 MS. WILSON: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. WILSON:

14 Q Mr. Dickson, did Mr. Davis ever indicate that
15 you would benefit somehow from this thing?

16 Did he ever show you, you know, an offer or
17 something from the State saying that you would benefit
18 from the statements that you gave?

19 A No. I seen him one time, it was a gentlemen's
20 agreement with me and Mr. -- Mr. McCoy actually asked
21 me did he need to go get a letter typed up telling me
22 this is everything that we were going to do. I said,
23 your word is good enough for me.

24 And then I asked Mr. Davis again about that
25 after they all left, he stepped back in talked to me

1 about it. And he said that Mr. McCoy was a stand-up
2 guy. I could take him at his word.

3 Q So you never saw anything in writing?

4 A Never had anything in writing. It was verbal.
5 Everything was verbal.

6 Q Do you have in your prior criminal history an
7 assault and battery with intent to kill from 1989?

8 A Yes, ma'am.

9 Q And you understand that it's that charge that
10 would make you eligible for life without the
11 possibility of parole?

12 A Not that charge there.

13 Q Okay.

14 A I got convicted of another charge, ended up most
15 serious offense, yes. But I assumed, like he said,
16 they said the charges could be broke down. Like
17 attempted armed robbery was dropped to strong armed
18 robbery then I would not be able to be hit with a life
19 without parole sentence.

20 Q Okay. You were convicted and you were sentenced
21 to life without the possibility of parole?

22 A All the charges that I had, you are seeing right
23 now, I caught an inmate at the central correctional
24 institution. It was a rough, raw place back then. A
25 number of stabbings every week.

1 Q Okay. And so do you remember getting any
2 statements from Jennifer Evans, that you spoke to from
3 the Attorney General's office, saying that the State
4 would provide some benefit for your statement?

5 A No, ma'am. She said she would be back to see
6 me. She was real interested in what I had to say.

7 She was more interested in what I could do with
8 the gang activity down on the street. I told her I
9 could help people get into the situation where they
10 could, you know.

11 Q Okay. Do you recall Mr. Davis bringing up the
12 issue of your corporation with the State during your
13 trial to the judge?

14 Do you remember Mr. Davis having a conversation
15 with the trial judge at your trial about your
16 statements?

17 A What I understood that they all met in the
18 judge's chambers before I actually went to trial that
19 day. I don't know what was said, but another
20 solicitor, Jennifer, said she had to run back across
21 the street to verify this and verify that.

22 I don't know exactly what she was talking about
23 verifying. I thought maybe she went to see Mr. McCoy
24 or something.

25 Q So you don't recall a conversation that took

1 place during the trial proceedings about this?

2 A I didn't.

3 Q I'm sorry? So you don't remember when you were
4 at your trial whether they discussed it in the
5 courtroom with the judge?

6 A No, ma'am. No, ma'am, I don't.

7 THE COURT: I recall it, if you want to lead him
8 a little bit, that's fine.

9 Q Okay.

10 I will pinpoint it for you.

11 A I know they mentioned about the meeting, yes,
12 ma'am.

13 Q Okay. You do recall that?

14 A Yes, ma'am.

15 Q Okay, that's all I wanted to know.

16 MS. WILSON: No further questions, Your Honor.

17 THE COURT: Okay. Redirect.

18 REDIRECT EXAMINATION

19 BY MR. YATES:

20 Q Mr. Dickson, you mentioned -- Ms. Wilson
21 mentioned a gentlemen's agreement. Could you define
22 what the gentlemen's agreement was in your opinion?

23 A That the charges that I was charged with, one
24 would get dropped, another would get broke down so that
25 I could plead to something that -- first of all, I told

1 him on the rip I wasn't going to plead to any kind of
2 charges that where I was going to have to be put into
3 some system like I'm a pervert or something.

4 One of those kidnapping -- one of those under
5 our statute makes you where you have got to sign out
6 like you're a sexual predator or something like that,
7 and that ain't my thing.

8 I got most of my charges at CCI for stabbing
9 people and beating people up. Weren't for messing with
10 kids or raping women. I don't play that.

11 Q When you were talking about a gentlemen's
12 agreement, was the import of this that you would not
13 get a life without parole sentence --

14 A It was never mentioned that life without parole
15 was going to be served on me. I didn't know it was
16 going to be served until they served it.

17 We talked about my charges being bad charges,
18 you know, rough charges. And I tried to tell them what
19 had happened. I didn't know I was sick. You know,
20 right before I got out of the department of corrections
21 I got sick and they had to rush me to the hospital.
22 And it's my liver.

23 At the time I didn't know my liver, I had
24 Hepatitis C, swelled up from the stab wound. And I
25 have been stabbed like 5 times. Like I said, CCI was a

1 rough place back then.

2 And the skin grows up under it, the injury. The
3 Liver pressed to that and it made one of my intestines
4 collapse. I had to be rushed to the hospital and
5 operated again.

6 Then when I got locked up in Charleston County
7 Jail it happened again and I had to be rushed to MUSC.

8 THE COURT: Okay, sir, could you repeat your
9 question?

10 I need you to make sure you answer your
11 attorney's questions, okay?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Thank you.

14 Q (By Mr. Yates) I believe my question was, when
15 you were talking about the gentlemen's agreement, there
16 was no indication that they were going to seek life
17 without parole?

18 A No, sir.

19 Q And this gentlemen's agreement is that they
20 would --

21 A Help me break down --

22 Q -- reduce the charges, and they wouldn't label
23 you a perverted individual or anything that would put
24 you on a bad list in the prison system?

25 A That's right.

1 Q And did anyone ever mention to you during this
2 whole time before you were served that the solicitor
3 was going to seek life without parole?

4 A No, sir. No, sir.

5 MR. YATES: No further questions.

6 THE COURT: Thank you, sir.

7 Sir, you may step down.

8 MR. YATES: Your Honor, my I call Mr. Peter
9 McCoy?

10 THE COURT: Yes, sir.

11 Mr. McCoy, please come forward and be sworn:

12 PETER MCCOY,

13 after having first been sworn to tell the truth, the
14 whole truth and nothing but the truth testified on her
15 oath as follows:

16 DIRECT EXAMINATION

17 BY MR. YATES:

18 Q Mr. McCoy, you are an attorney in private
19 practice in Charleston right now; is that correct?

20 A That's correct.

21 Q And your practice is limited to personal injury
22 and some criminal defense; is that right?

23 A That's correct.

24 Q In June of 2007 were you a solicitor with the
25 9th Circuit Judicial Circuit in the solicitor's office?

1 A I was, yes, sir.

2 Q And were you prosecuting the Joseph Sam Whitt
3 case?

4 A I was.

5 Q And you were not prosecuting it from the
6 beginning to end because of what occurred that caused
7 the solicitor to be removed and the Attorney General to
8 be put in as the prosecutor?

9 A The Attorney General was brought into the case
10 because of a motion that was filed by T.O. Sanders, who
11 was representing Sam Whitt at the time. And the motion
12 basically dealt with some tapes that our investigator
13 had that weren't turned over in a timely fashion.

14 And the Judge that ruled on that hearing was
15 Judge Dennis. He found that there was no major issue,
16 but out of an abundance of caution he wanted to remove
17 it from the solicitor's office and let the AG handle
18 it.

19 Q I see. And these telephone messages were
20 messages from Mr. Whitt to his attorney and --

21 A That is my understanding, yes, sir.

22 Q And so therefore when Mr. Dickson said the worst
23 possible thing could have happened, that would have
24 been you -- I think what he was referring to -- you
25 being removed from the Whitt case and then having

1 somebody new come in to this case.

2 Did you talk to Mr. Dickson?

3 A I did, yes, sir.

4 Q And did you find him to be cooperative?

5 A I did find him to be cooperative.

6 Q And do you remember what he had told you?

7 A I do.

8 Q And did his information appear to be accurate?

9 A His information did appear to be accurate
10 because in the Whitt case there was some issue as to
11 whether this was a self-defense case, or whether the
12 father, who was actually killed by his son Sam Whitt,
13 was lying in his bed.

14 Was there an issue of mutual combat, or was
15 there an issue of just Sam Whitt killing his father in
16 the bed.

17 Q And did Mr. Dickson tell you about the murder
18 weapon?

19 A He did, yes, sir.

20 Q And what was that?

21 A It was a pipe wrench that was approximately, I
22 would say, two-and-a-half to three feet long.

23 Q And that indeed was the murder weapon; is that
24 correct?

25 A That's correct.

1 Q And as you mentioned, did you recall his
2 assistance as being helpful in this case, in the Whitt
3 case?

4 A His assistant was helpful. We had a blood
5 spatter expert that would confirm that the blood
6 spatter that was on the wall was left there, and the
7 father basically was in the same position before he was
8 stuck with the murder weapon.

9 So he was under the covers and in the bed. And
10 what Mr. Dickson told us did corroborate that.

11 Q And did you think that the information he had
12 concerning another murder might be helpful too? Or did
13 the solicitor's office investigate that as well?

14 A When Mr. Dickson told us about the possibility
15 of Sam Whitt being involved in another murder, that's
16 kind of where -- when I go see Mr. Dickson I had Burns
17 Wetmore with me. And then I also had an investigator
18 that was my investigator on the case, Keith Hare.

19 I think that sparked Keith Hare's interest. And
20 I think Keith did try to pursue other avenues from
21 there.

22 Q Mr. McCoy, Mr. Dickson said something to the
23 effect that you had mentioned that he was on your team.
24 Do you recall anything like that that you may have said
25 to him that gave him the impression that he was -- you

1 all were working together?

2 A I don't know if I would have ever used the
3 phrase, you are on our team. I probably would have
4 told him he was now on our witness list.

5 If that means on our team, it would be a
6 potential witnesses that could be called at trial.

7 Q And did he indicate to you that in order for him
8 to assist you that he wanted the solicitor to assist
9 him in the charges?

10 A I don't know if he ever came out and said, I
11 want something for my testimony. But it's kind of
12 practice, and I happen to do it a lot, I would go to
13 the jail and I would talk to different witnesses.

14 I never promised anybody anything. I think it
15 makes them a less credible witness on the stand if I
16 were to make him a promise on pending charges or a
17 promise for anything else down the road because that
18 would just come out on cross-examination and make my
19 case weaker and make him look like a weaker witness.

20 Q Now, did you get any information on a direction
21 from Rodney Davis as to what would occur as a result of
22 his testimony?

23 Excuse me, let me ask you another way. Did he
24 ask for a proffer from the solicitor's office?

25 A I don't remember Rodney ever specifically asking

1 me for a proffer. When I spoke to -- when I spoke to
2 Mr. Dickson I realize that he was represented by
3 Rodney, and Rodney and I had a good working
4 relationship because we had numerous cases together.

5 And I know Rodney was okay with me going and
6 talking to Mr. Dickson. I think Rodney was there the
7 first time we did but not the second time. I don't
8 remember there be any sort of talk about a proffer.

9 It's different when you are a solicitor, let's
10 say, and I'm prosecuting a murder case and Mr. Dickson
11 comes in, and I'm actually the solicitor handling his
12 charges as well. Usually there may be a proffer that's
13 lined up there.

14 But I was not the solicitor handling Mr.
15 Dickson's charges so I have no say either way on those
16 charges.

17 Q I see. Do you think that, if you were
18 representing Mr. Dickson, would you have your client
19 give information to the solicitor's office and put
20 himself at risk for a hit being made out on him without
21 some type of proffer or without some type of agreement?
22 Especially where he is facing 3 strikes?

23 MS. WILSON: Objection, Your Honor, calls for
24 speculation.

25 THE COURT: Overruled.

1 A In what Mr. Dickson was facing was serious
2 charges, and then the actual defendant in this case,
3 Sam Whitt, was facing serious charges.

4 Me personally, I would always have -- I would
5 encourage my clients to corporate with the authorities
6 or with prosecutors if they had useful information.

7 I would probably now get that on paper.

8 Q (By Mr. Yates) Do you think it looks bad for
9 the solicitor's office to get this information and not
10 mention anything about life in prison without parole
11 until the very end after Mr. Whitt has pled guilty?

12 A I don't think it looks bad on the solicitor's
13 office. Again I will go back to I didn't have Mr.
14 Dickson's charges.

15 I knew that because of his prior record he would
16 have been a witness that would have been up for a
17 little bit of an attack on cross-examination because of
18 his prior, prior acts and prior record.

19 I don't think it looks bad for the solicitor's
20 office, no.

21 Q Does the solicitor do this often?

22 A Do they do what often?

23 Q Do they get as much information out of people
24 and then pull the rug from underneath them like this
25 case did?

1 A I would say absolutely not that they don't do
2 that.

3 Q This is the first time that they do what they
4 did with Mr. Dickson often?

5 A No, they do not.

6 Q How many times have you heard of a similar
7 situation to Mr. Dickson's?

8 A How many times have I heard of a similar
9 situation to where --

10 Q Where the solicitor had all of the sudden gotten
11 this information, and then after they had gotten this
12 information and Mr. Whitt had pled guilty, then Mr.
13 Dickson is served with life without parole? Or
14 something similar to that. Does that happen often?

15 A Again it's hard for me to tell you if that's
16 happened often on cases that are handled by two
17 different solicitors.

18 On cases where I have multiple codefendants, or
19 I have people come forward and I'm handling both the
20 charges, it doesn't happen.

21 Q It does not?

22 A I mean I was prepared if the case had remained
23 with me, if Sam Whitt's case had remained with me, I
24 was prepared to go -- and I had these conversations
25 with Rodney, whenever Mr. Dickson would plead guilty,

1 or whenever he would go to court, I was going to go as
2 well and indicate to a judge his cooperation and what
3 he had done for us.

4 Q And unless there was going to be a reduction in
5 the charges, it wouldn't have made any difference if he
6 were -- if you said, well, he's helped us. If he's got
7 the 3 strikes, the fact that you were going to say,
8 yeah, he helped us, he'd still get life without parole
9 without some reduction in charge; is that correct?

10 A Well, just depends on if he was going to
11 actually be served with the life without parole. With
12 the kidnapping and with the attempted armed robbery
13 charge, those carry mandatory -- actually, they don't.
14 They have a zero bottom. So he could have had a range
15 if he had just walked into court and pled straight up.

16 The thing that hurt him was having the service
17 of life without parole notice.

18 Q And in order for you to say something good on
19 his behalf, would indicate that life without the
20 possibility of parole wouldn't be on the table?

21 A It would be not much good of me going in and
22 indicating anything that he had cooperated with us if
23 he had been served with life without parole, that's
24 correct.

25 Q So there would have been, by implication, there

1 would been something less onerous before Mr. Dickson
2 that would not imply that he is going to face life
3 without parole.

4 That is, the sentence or the charges would be
5 reduced to some degree so that the life without parole
6 would not be something he would be staring at; is that
7 right?

8 A Again, even if he had gone and pled straight up
9 to his actual indicted charges, it would have been a
10 help for me to have gone and said this, even without a
11 reduction in charges.

12 The thing that hurt him was having the life
13 without parole notice served on him.

14 Q Yeah. And were you asked by Mr. Davis to
15 intercede and talk to Michael Sahn, who was one of the
16 prosecutors, and Jennifer Shealy to tell them that, you
17 all got it wrong. This should not be a trial, it was
18 going to be a plea.

19 Did you talk to them?

20 A Rodney Davis did ask me to intervene on Mr.
21 Dickson's behalf. I had no problem intervening on Mr.
22 Dickson's because he did step out and give us this
23 information.

24 He wanted me to relay how important it was that
25 Mr. Dickson had come out and given us this information.

1 He didn't indicate to me whether we should pull or not
2 pull a life without parole notice because frankly that
3 was the first I heard of it when Mr. Davis had
4 contacted me.

5 Q Were you surprised when you heard that?

6 Knowing all of the contributions and the
7 assistance that he had given, then to learn that he was
8 going to get live without parole kind of makes it a
9 nullity.

10 A Well, it's a little bit of a trick question what
11 you are asking me. Was I surprised? Yes and no. And
12 I will tell you the answers to that. Let me explain
13 myself.

14 I'm surprised, yes, that he was served with life
15 without parole after I indicated that he had helped me.
16 But on the flip side of that as well, he provided
17 information but we never used that information. He was
18 never called as a witness.

19 The investigation of the other homicide he
20 indicated Sam Whitt had committed led nowhere and he
21 was not used in my limited time of prosecuting this
22 case. And he was not used by Jennifer Davis when she
23 prosecuted this case at the AG's office.

24 Q Do you recall him saying that he was -- or
25 Jennifer, excuse me, Mrs. Evans that she might use him

1 in any drug our gang activity investigations or
2 anything like that?

3 A Once the case was removed from our office, we
4 were very hesitant to give the AG any information other
5 than the actual file.

6 Out of an abundance of caution I didn't want to
7 assist or even sit in court or be a part of that trial
8 just for fear of another overturning of a conviction.

9 So I have no information about that.

10 MR. YATES: Thank you. Just give me a moment,
11 Your Honor, I'm almost finished.

12 THE COURT: Yes, sir. Okay.

13 MR. YATES: Your Honor, I have no more
14 questions.

15 THE COURT: Thank you, sir.

16 Yes, ma'am.

17 CROSS-EXAMINATION

18 BY MS. WILSON:

19 Q Mr. McCoy, you testified today that you were not
20 the prosecutor on Mr. Dickson's case.

21 That is correct, right?

22 A That is correct.

23 Q Okay. And as a result you didn't have any say
24 in the outcome of the charges that were pending against
25 Mr. Dickson?

1 A That's correct.

2 Q And it's also your testimony that you never
3 promised Mr. Dickson that you would -- that the State
4 would give upon him any benefit as a result of the
5 statements that he gave; is that correct?

6 A That's correct.

7 Q And you also testified that all that you were
8 willing to do was to indicate to the judge that he
9 cooperated if he were to plead guilty?

10 A I don't even know if I went as far as to
11 indicate that in our talks. That is just something
12 that I like to do after a case has been handled and
13 dealt with.

14 I think it's important for a judge, or for any
15 other prosecutor, to know that somebody did provide
16 information that could have been used in a prosecution.
17 Because a lot of times we find out people won't talk
18 and they won't help. And when you find somebody who
19 does, it's very important that you let a judge no and
20 other people know of their involvement.

21 Q So you didn't offer Mr. Dickson anything in
22 exchange for his statements basically?

23 A Again, I think it makes him a less credible
24 witness when they're on the stand. And on
25 cross-examination I think it hurts them when you are

1 trying to convince a jury that he is providing good
2 information.

3 Q Is it your general practice that whenever you
4 get any type of agreements you make with defendants
5 that you put it in writing?

6 A Is it my general practice?

7 Q Yes.

8 A No. I say it's not my general practice. I
9 think that we talk to so many different folks who
10 provide so much information that unless we have a
11 sit-down proffer, we put -- generally put those in
12 writing, yes.

13 MS. WILSON: Thank you. No further questions.

14 REDIRECT EXAMINATION

15 BY MR. YATES:

16 Q Mr. McCoy, let's take the position of the
17 average convict or inmate. And what would be the
18 reasonable expectations of the general convict --

19 MS. WILSON: Objection, Your Honor. Outside the
20 scope of the cross-examination.

21 THE COURT: It is outside the scope.

22 Please rephrase your question. Objection
23 sustained.

24 Q (By Mr. Yates) You were talking that there was
25 no written agreement between Mr. Dickson and the

1 solicitor. My question to you is if -- can you imply
2 that there was an agreement from the standpoint of the
3 educational level of this individual, Mr. Dickson, as
4 to what he has been doing talking to you, telling you
5 and your investigators?

6 You might not have a written agreement, but
7 let's see if -- do you think that there is sufficient
8 evidence to take this out of the statute of frauds, and
9 we can have par performance to take a contract out of
10 the statute of frauds to show that there was an
11 agreement.

12 Do you think that there was, based on your
13 discussions and the investigator's multiple discussions
14 with Mr. Dickson, and your discussions with Mr. Davis,
15 that there was no evidence to take this out of the
16 statute of frauds, which of course statute of frauds
17 requires in writing, that there is no evidence to
18 support any argument that there was an agreement to
19 help Mr. Dickson?

20 A Again, I go back to my initial statement to you.
21 Anytime I met with somebody who had information for me,
22 I would have made them -- first of all, I wouldn't have
23 threatened them for their testimony, and I wouldn't
24 make them any promises for their testimony.

25 I think it makes them not as credible on the

1 witness stand if they are promised something in
2 advance.

3 In my limited time after I left the solicitor's
4 office and being on the defense side, do I think that
5 there are -- do I think that people who do cooperate
6 and help, are they thinking in their own minds, even if
7 they have been promised nothing, that they're going to
8 receive assistance? Probably so.

9 I mean why else would they talk?

10 Q Would you have -- do you think that Mr. Rodney
11 Davis should have been there at the times that you
12 had --

13 MS. WILSON: Objection, Your Honor.

14 THE COURT: Overruled.

15 Q (By Mr. Yates) Do you think Mr. Rodney Davis
16 should have been there in person taking notes, talking
17 to you at the time that you -- well, I think you and
18 Rodney were there one time, but there were other
19 occasions when investigators and solicitors talked to
20 Mr. Dickson and Mr. Rodney Davis wasn't there.

21 Do you think he should have been there?

22 A As I stated earlier too in testimony, Rodney
23 Davis and I had a very good working relationship as I
24 did with a lot of the public defenders at the time.

25 I think it was important for Rodney to have been

1 there for the initial meeting and sit-down. I think
2 it's important for him to relate to his client and also
3 show to his client that he has trust with me as a
4 prosecutor and that it's okay for him to talk.

5 That initial meeting, I think it's very
6 important for Rodney to be there. And Rodney knew,
7 even after I went to meet with Mr. Dickson after the
8 first time, Rodney knew that I was not going to be
9 asking him anything outside of the scope of what we
10 were doing in this investigation.

11 And I think that's why he was okay with me not
12 being there.

13 Q Is it often that lawyers, excuse me, that
14 defendants talk to people in the solicitor's office
15 without their lawyer being present?

16 A I have seen it happen a bunch, yes, sir.

17 MR. YATES: No further questions, Your Honor.

18 THE COURT: Thank you, sir.

19 MS. WILSON: Nothing from the State, Your Honor.

20 THE COURT: Okay. Sir, you may step down.

21 THE WITNESS: Thank you, Judge.

22 MR. YATES: Your Honor, I'd like to call Mr.
23 Rodney Davis.

24 THE COURT: Okay.

25 Mr. Davis, if you would please come forward and

1 be sworn.

2 RODNEY DAVIS,
3 after having first been sworn to tell the truth, the
4 whole truth and nothing but the truth testified on her
5 oath as follows:

6 DIRECT EXAMINATION

7 BY MR. YATES:

8 Q Mr. Davis, you were Daniel Dickson's attorney in
9 this case; is that correct?

10 A Yes, sir.

11 Q Did you believe that the case would resolve in a
12 plea agreement rather than a trial?

13 A We certainly hoped to resolve it through
14 negotiation, yes.

15 Q And why did you think that would occur? That it
16 would be resolved by a plea instead of a trial?

17 A A variety of reasons. Ultimately it comes down
18 to my client's wishes, though, knowing that each of the
19 charges he was accused of had an open range starting at
20 zero.

21 We had discussed that if we could get a
22 favorable judge and a favorable opportunity we thought
23 our chances for a sentence were better trying to
24 negotiate it through a guilty plea.

25 Q Did -- in the transcript there is a discussion

1 in Judge Dennis's chambers when you talked about a
2 gentlemen's agreement. Can you define what you thought
3 to be a gentlemen's agreement in that case?

4 A I'm going to use something from your questioning
5 of Mr. McCoy. I think you all tried to handle a better
6 term than what I used back then.

7 I think rather than a gentlemen's agreement an
8 implied understanding is probably better. I think
9 that's the term you all used.

10 You all had some question about the fact that if
11 the State was in fact going to tell the solicitor
12 handling Mr. Dickson's case, tell the judge handling
13 any type of a plea that he had cooperated, well it's
14 implied then that some type of conviction is going to
15 happen, and it's implied that with those -- however it
16 was going to be phrased by Mr. McCoy or some other
17 representative from the office, that that is to let the
18 judge know of the cooperation in the hopes of some
19 leniency.

20 And that was certainly implied. And I have been
21 sitting back there looking through notes while
22 testimony has been going on. If I may I'm going to
23 represent an email from Mr. Sahn when he initially took
24 over the case. This was originally Nathan Williams,
25 who was with the solicitor's office at the time.

1 It was originally his from the time of arrest,
2 which was June 29th, '07, until sometime in January
3 because I have got an email from January 22nd, 2008
4 from Mr. Sahn indicating that he recently took over the
5 case. I'm paraphrasing.

6 He mentions Mr. Dickson's two charges because he
7 has not been directly indicted at that point, and Mr.
8 Sahn was the one that ultimately did that. And he
9 says, given the facts I cannot reduce the charges or
10 make any recommendations. If he wants to plead guilty,
11 let me know and I will put him on the docket. Second
12 appearance is February 8th.

13 And so even in that email in late January there
14 is implied understanding that while they're not going
15 to reduce charges or remove charges, we had at that
16 time the carjacking and the kidnapping, zero to 20,
17 zero to 30, even the solicitor ultimately took this to
18 trial was suggesting that if you want to plead, let me
19 know I will schedule it.

20 And then we certainly would hope that we could
21 get the -- the State would ultimately cooperate whether
22 he testified or not in the Whitt case.

23 Q Would both of those, or either one of those two
24 charges, carjacking or the kidnapping, be a sufficient
25 charge to get another strike?

1 A That's a good question. I don't believe the
2 carjacking would. I believe the kidnapping would. I
3 believe the kidnapping, in addition to his prior, would
4 have.

5 Q So the kidnapping would have been two strikes.

6 A That's why I always go to the statute on this
7 but I believe it would.

8 I believe kidnapping is either a serious or most
9 serious.

10 Q When you were talking with Peter McCoy, did you
11 have a reasonable belief that he was going to help you,
12 and that life without parole was not something that he
13 was going to be facing?

14 A Yes. But those are two separate issues if I
15 may. Again Peter just testified. He had no direct
16 control over Mr. Dickson's prosecution. He was an
17 assistant solicitor handling other cases.

18 I will reiterate what Mr. McCoy said. And Peter
19 and I have had a good working relationship. I remember
20 when he was in school interning with the solicitor's
21 office when I first met him.

22 He's always been very amicable, a man of his
23 word. We had a good working relationship because of
24 that. You can trust what he tells you.

25 So I did trust that ultimately if and when Mr.

1 Dickson's case resolved itself that Mr. McCoy would
2 have let the solicitor prosecuting and the judge know
3 that Mr. Dickson had cooperated to whatever extent that
4 was.

5 Separately, whether it was Mr. Williams who had
6 it for I guess about six months, Mr. Dickson's case, or
7 whether it was Mr. Sahn who came on, again sometime
8 probable in January of '08, from this very email -- and
9 this email likely, you will correct me if I'm wrong,
10 likely predates the discussions that Mr. McCoy had with
11 Mr. Dickson. But even at that early stage there is no
12 indication of the State having any interest in seeking
13 life. And none of us had any knowledge of that until
14 August of '08. I guess late July of '08.

15 Q And when was trial? Do you recall when the
16 trial was on Mr. Dickson's trial?

17 A I am looking at the transcript here. The jury
18 trial was held on October 21st and 22nd of 2008.

19 Q So this was at the end August, end of July,
20 early August of 2008 that you get the life without
21 parole and he was served with that.

22 And prior to that, on the timeline, Mr. Dickson
23 had given this information, and I believe that Mr.
24 Whitt had pled guilty?

25 A Mr. Dickson had certainly spoken with the State.

1 I don't believe, I don't believe Mr. Whitt had -- I'm
2 not sure. My recollection is that Mr. Whitt had not
3 resolved his case at that point. That's my
4 recollection.

5 Q Knowing what you know now with the life in
6 prison without parole, would you have allowed Mr.
7 Dickson to talk to the solicitor?

8 A Yes. Ultimately it's my client's decision. He
9 contacted them initially. But even had we known that
10 they were thinking about the potential for life without
11 the possibility of parole, even more reason to try.
12 You have nothing to lose.

13 So we didn't know until late July. But
14 certainly then the only card that we had, win the trial
15 or cooperate so much that they backed off.

16 Q What did you think about a proffer?

17 A Bluntly, the 9th Circuit solicitor's office
18 proffer offers no benefits to defendants. It is a
19 one-sided document. The only benefit, and I have
20 spoken with the solicitor about this, Ms. Wilson, I
21 believe it's a carryover from her days with the U.S.
22 Attorney's office.

23 It is very much a pro State. The only benefit a
24 client can receive from it is use immunity. But what
25 they say at that interview, that conversation won't be

1 used back against them. If they remain truthful, pass
2 a polygraph, don't change their story, willing to
3 testify, whether they testify or not is the State's
4 decision.

5 But if the State at any time determines that
6 they have changed their story or not telling the truth,
7 then they pull the offer. Well what was the offer in
8 the proffer? To not use your words against you.

9 When I prosecuted in the 7th Circuit and here in
10 the 9th Circuit, I don't know that we used a document
11 like that. When I was handling drug cases we certainly
12 had plea agreements. You are charged with a certain
13 drug charge. If you go make X amount of buys that
14 result in arrests, you will get an offer of probation
15 when you plead guilty to this lower charge.

16 It was laid out where it was a true quid pro
17 quo. There is no such document that I'm aware exists.
18 I was in the public defender's office for 10 years,
19 private practice 2 dealing with Ms. Wilson's office.

20 So the proffer -- the only document that they
21 offer I don't believe benefits my clients. Have I done
22 them in the past? I have. I can think of two times
23 where the client, because they ultimately changed
24 stories, ended off worse off for themselves.

25 I'm not a proponent of the proffer that this

1 circuit provides. I don't think it would provide any
2 benefit to Mr. Dickson or any other client.

3 Q Did you feel that Mr. Dickson had been wronged
4 when you got the notice of life without parole?

5 A Wronged is subjective term. The State was
6 within its authority, statutory authority to do what
7 they did.

8 I have prosecuted. My theory on prosecution is
9 we, when I did it and certainly those now, it's a hire
10 standard than just winning. It's not just what you
11 could do, it's what you should do.

12 And in this case I didn't believe they should do
13 it. Of course I was Mr. Dickson's attorney. I have a
14 vested interest in the outcome of his particular case.
15 But I was very surprised. I thought it was
16 unwarranted. Fought to try to get it removed.

17 I don't know the date I sat in Ms. Wilson's
18 office with Mr. Sahn. And I believe Mr. Durant was
19 maybe second chair on this trial, I'd have to look at
20 the transcript. But I went as far as to sitting down
21 on the eve, close to the beginning of this trial, with
22 Ms. Wilson and try to convince her to order her
23 assistant to pull back the LWOP notice.

24 This is -- I have had at least 5,000 cases in
25 the 10 years I have been in the public defender's

1 office. This is one that I didn't have to do a whole
2 lot of research to remember this case.

3 Q And did you strenuously bring this to the
4 attention of Judge Dennis in chambers?

5 A We spoke in chambers. And the only thing I will
6 say on that is basically what is contained in the
7 transcript, I haven't had -- pages 38 to 48, I was
8 reviewing that earlier this morning.

9 That is basically, in a much lengthier detail,
10 what's in that record is what was discussed in
11 chambers. It was a unique situation to me at the time
12 I guess I had been practicing over a decade. But it
13 was a unique situation and I wanted to make the Judge
14 aware that this was going to be an issue and I felt I
15 was compelled to put it on the record.

16 Q Did you observe any reaction from Judge Dennis
17 when you all were in chambers as to this circumstance?

18 A Nothing specific. Again I will just reference
19 to the transcript which I think speaks for itself, and
20 his discussions with -- I believe it was with Ms.
21 Shealy who took up this issue for the State.

22 There is nothing that I saw that differed from
23 what we had discussed in chambers.

24 MR. YATES: No further questions, Your Honor.

25 THE COURT: Thank you, sir.

1 Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MS. WILSON:

4 Q Mr. Davis, approximately how many times did you
5 meet with the applicant prior to this case going to
6 trial?

7 A If you'll give me a moment. I'm looking at
8 notes in my original file. There are at least 10 times
9 listed, and there are a couple court appearances where
10 he likely would have been present as well.

11 To be clear, those would include times we met
12 through the video conferencing equipment.

13 THE COURT: Excuse me?

14 THE WITNESS: Video conferencing equipment.

15 Q (By Ms. Wilson) And did you also discuss with
16 Mr. Dickson the elements of the crimes that he was
17 charged with and what the State had to prove at trial?

18 A Yes.

19 Q Did you also discuss with him the evidence that
20 was -- that the State had against him?

21 A Yes.

22 Q And it is your testimony that you never received
23 any written statement of any type of offer from the
24 solicitor's office?

25 A No. I think Mr. McCoy talked about that. And I

1 know I talked with Mr. Dickson about it. But again,
2 this particular solicitor's office -- I understand
3 their position. I don't always agree with it.

4 But if they would put an actual offer, not a
5 proffer, not a proffer agreement, but an actual promise
6 in writing, since this office's concern I believe is
7 that if and when that witness testified then a good
8 defense attorney of course would question about it.

9 As a former solicitor, that wouldn't bother me.
10 Yeah, they promised me a deal and I'm till telling the
11 truth. But the position of this solicitor's office is
12 to not do that.

13 I can also though tell the Court that the only
14 discussions that Mr. McCoy and I would have had, which
15 was already testified by him, is simply that the most
16 he would commit would be telling the solicitor
17 prosecuting Mr. Dickson's case and the judge at the
18 resolution that he cooperated, and the extent of the
19 cooperation.

20 And that is likely the best that a defense
21 attorney in this setting is going to get from the
22 State.

23 THE COURT: Well, I have a few questions
24 actually. And they are, quite frankly, the same
25 concerns Judge Dennis had in the transcript. None of

1 that does any good if he served with an LWOP notice.

2 THE WITNESS: That's correct.

3 THE COURT: And the question I'm going to have
4 to look at is whether there was detrimental reliance
5 based on the conversations that Mr. Dickson had with
6 members of the solicitor's office without his attorney
7 present. And what is detrimental reliance?

8 And there is South Carolina law on that. And
9 that's what I'm having trouble getting my head around.

10 If some of you all could address that for me,
11 that would help me immensely.

12 MS. WILSON: Your Honor, I just have one more
13 question.

14 Q (By Ms. Wilson) After you received the notice
15 of the LWOP, did you review the applicant's rap sheet
16 to make sure he was actually eligible to be LWOP'ed by
17 the solicitor's office?

18 A Yes.

19 Q And you found that he was?

20 A I found in the rap sheet that there was a prior
21 that would qualify. There are even notes that I have
22 though to make sure that they provide the appropriate
23 documents in court if and when there is a conviction.

24 And I'd have to look at the transcript to see
25 about that. But I did review the rap sheet. His rap

1 sheet indicated he was eligible.

2 THE COURT: Okay. Well since there hasn't yet
3 been followed up there, it might be on redirect, as to
4 what I need to know.

5 I don't think that the error here, to the extent
6 that there is one, I'm just analyzing out loud, which
7 is probably not smart but that's what I'm going to do,
8 there is no error with Mr. McCoy.

9 What I'm concerned is what happened after the
10 case was transferred to the AG, came back to Michael
11 Sahn who made what decision. And apparently you met
12 with solicitor Wilson.

13 Some of that is what I want to know about. Why
14 this happened when it came back down the pipeline.

15 THE WITNESS: Your Honor, if I may. First of
16 all the case was sent to the AG was Mr. Whitt's trial,
17 which was the other defendant.

18 THE COURT: Okay.

19 THE WITNESS: So this was always -- Mr.
20 Dickson's case remained here with 9 Circuit with either
21 Mr. Williams, Nathan Williams, or Michael Sahn. It was
22 Michael Sahn who made the decision for the LWOP
23 ultimately. He is the one that signed it.

24 THE COURT: And that's what I'm trying to figure
25 out. So Mr. Whitt's case goes to Jennifer Evans and

1 work itself out in a plea based on whatever information
2 they did or did not use from Mr. Dickson, because we
3 have yet to really have any information on that.

4 I'm trying to figure out what happened, did Mr.
5 Williams go with Mr. McCoy to these meetings? I guess
6 he's the solicitor in Mr. Dickson's case.

7 What authority did Mr. McCoy, who had a whole
8 different case, even have to offer him anything?
9 That's my trouble.

10 THE WITNESS: And correct, Your Honor. And
11 Certainly I will testify that I knew that Mr. McCoy
12 could not control another assistant solicitor in his
13 office.

14 But as demonstrated by the initial email from
15 Mr. Sahn when he received the case, I cannot reduce the
16 charges or make a recommendation. If he wants to plead
17 guilty let me know.

18 That would have been straight up zero to 20
19 years, zero to thirty.

20 THE COURT: But no LWOP notice?

21 THE WITNESS: No LWOP notice.

22 In that one, always trying to make a better
23 offer for my client, I use my -- said this hundreds of
24 time, especially to new solicitors.

25 I understand you cannot make an offer in the

1 case -- and this is an email in response to that on
2 January 22nd, '08 -- I understand you cannot make an
3 offer in the case, but understand that without any
4 incentives it's generally not likely that a client will
5 plea. I'm not likely to advise a client to give up
6 their right.

7 No discussion of LWOP has taken place yet. Of
8 course that's a game-changer. If I may, Your Honor, I
9 will -- because I do think this timeline is important
10 enough I actually got some notes on it.

11 I think it's important to know that the two
12 charge we were dealing with then are carjacking and
13 kidnapping which were date of arrest of June 29, '07.
14 This email was January of '08 so Mr. Sahn is now on the
15 case, that's who is going to ultimately decide what to
16 offer, if anything, or whether to serve the LWOP.

17 In February of that year Mr. Dickson, on his own
18 volition, had contacted SC Strong, been accepted into
19 the program. I provided that information to Mr. Sahn
20 on February 5th, a lengthy email explaining his medical
21 condition, explaining some mitigating factors as to
22 this incident.

23 Not admitting guilt, but explaining some
24 mitigating factors to this particular incident,
25 reminding him that SC Strong is a very difficult

1 program to get into; indicating that this could be a
2 difficult trial given my client's blackouts during the
3 time of the incident.

4 And he is -- my last sentence -- but he is
5 willing to plea he just wants to go to SC Strong. He
6 even wrote to Judge Houston to show he was accepted.

7 A few days -- I'm sorry, the same day, February
8 5th, '08 Mr. Sahn at my request talked to Amy Harrell
9 in the solicitor's office about the program. Ms.
10 Harrell had good things about -- I'm paraphrasing --
11 Ms. Harrell had good things to say about SC Strong. I
12 just can't do probation on this case. And he puts in
13 parenthesis, two violent charges. Numerically, two
14 violence charges.

15 If you'd like to meet in person to discuss this
16 more, let me know. The next day, I understand your
17 concern. Let me get more information about his medical
18 condition. Pretty sure he was blacked out when
19 apprehended.

20 Again mitigation to try to -- we are still only
21 talking about two charge which start at zero and run
22 up. There were -- I'm sure there were discussions back
23 and forth. The next important email that I spotted in
24 my file was June 2nd, '08. So from February to June,
25 little back and forth, both sides making sure we had

1 the discovery, that kind of thing.

2 June 2nd, 2008 I get an email from Michael Sahn.
3 Rodney, just a heads up, may be putting him on the
4 trial docket for June 23rd.

5 I said, okay, why don't we work it out. Plus,
6 he is the guy -- now this postdates any, at least an
7 initial meeting -- plus he's the guy who's helping
8 Peter and Burn's murder trial as a witness, Mr. McCoy
9 and Mr. Wetmore on the Whitt case.

10 So this would have been after an initial
11 meeting. And to be clear, I didn't want to testify Mr.
12 McCoy contact me after Mr. Dickson contacted the State
13 that he had some information. Mr. McCoy contacted me,
14 would it be all right if we spoke to your client?

15 As -- as Mr. McCoy would have done. That's the
16 right thing to do, he would have done it. I met with
17 them. We met in a visitor booth at the jail. It was
18 myself, Mr. McCoy, Mr. Wetmore, and Keith Hare, who is
19 an investigator with the solicitor's office.

20 We spoke for about 45 minutes, an initial
21 meeting. I don't remember whether it was at that
22 meeting, I do know they left, I stepped back in and
23 spoke to Mr. Dickson some.

24 I don't know if it was that meeting or another
25 communication, but they certainly wanted to speak with

1 him some more. There was a discussion about whether I
2 could or should be present. I spoke with Mr. Dickson.
3 I told him that -- my recollection is that I told him
4 that if he was comfortable with it, I was comfortable
5 with me not being there.

6 In a perfect world I should have been there at
7 every meeting. Knowing that he had been used as a
8 witness before, so I was experiencing that. And
9 trusting that Mr. McCoy and Mr. Wetmore or Mr. Hare
10 were only going to be talking about the Whitt case, I
11 felt comfortable saying, if you are all right with it,
12 I'm all right with it.

13 Again, in a perfect world I would have been at
14 every meeting. And I do want to get it on the record,
15 if I could -- I could have been there, I should have
16 been. That's the situation.

17 So that's from June 3rd of '08 where I am -- the
18 State is now intending to try him on these charges, the
19 two charges. And I'm reminding them that he is
20 cooperating, letting Mr. Sahn know not only does he
21 have all the issues with the case, not only does he
22 have all the issues with my client's health, but you
23 also have an issue where he is helping you all, let's
24 keep that in mind.

25 Then on June 6th, so three days later, I email

1 Mr. McCoy, please get with Michael Sahn. He has put
2 Dickson on a trial docket. This needs to be some sort
3 of a plea. Mr. McCoy responds, yes, I will get with
4 him and talk. I spoke with him and told him about
5 Dickson's cooperation with us before the trial.

6 I also told him the AG's office would probably
7 want to use him as well. I tried to put him in touch
8 with the AG who is handling the case. I will talk to
9 him. Meaning Mr. McCoy would talk to Mr. Sahn.

10 And then on June 10th I received the letter that
11 gave me written notice that it has been placed on a
12 trial docket for June 23rd of '08.

13 THE COURT: Okay.

14 THE WITNESS: July 21st -- so it did not get
15 tried. And I don't have notes as to why it was not
16 tried in June. July 21st, '08, this is from me to
17 Michael Sahn.

18 I spoke with him recently, meaning Mr. Dickson.
19 Before he is placed on another trial docket let's try a
20 plea with Hughston, meaning Judge Hughston, the week of
21 August 25th pleas. Again we are talking about
22 carjacking and kidnapping.

23 I'm sorry, give me one second, Your Honor.

24 THE COURT: That's okay. Thank you, this is
25 helpful. I appreciate it.

1 THE WITNESS: We are talking those two charges.
2 July 21st, the same day, Mr. Sahn responds, this is an
3 LWOP so it's going to be a trial.

4 THE COURT: Okay. And what I am trying to
5 figure out, and it would help me, and those witnesses
6 may not be here, and we may have to hold this open at
7 some point so that I can hear them, is what happened
8 between your letting Mr. Sahn know that he is
9 cooperating with Peter McCoy either before, and with
10 the Attorney General's office quite frankly, and then
11 getting the LWOP notice.

12 Something happened in the office to make that
13 come across. So I throw that out, that's what I want
14 an answer to, the question.

15 Redirect? You might want to follow up on that.
16 Thank you, Mr. Davis. That's very helpful.

17 THE WITNESS: Yes, Your Honor. One last thing,
18 I'm sorry, Judge.

19 THE COURT: No. No.

20 THE WITNESS: And then on August 4th was when
21 the attempted armed robbery was indicted. It was -- I
22 just know from prior practices with the assistant
23 solicitor, it would have had to have been prepared some
24 time prior to that to have been filed, to have the
25 document prepared, all that, that the grand jury

1 indicted on attempted armed robbery on August 4th, '08.

2 THE COURT: Okay. Thank you.

3 MR. YATES: Can I ask?

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. YATES:

7 Q Mr. Davis, we were talking -- Your Honor was
8 talking about detrimental reliance. And I'm a real
9 estate lawyer. I don't do any criminal work. But we
10 use the term equitable estoppel in a lot of civil
11 matters.

12 And since we are under the civil realm, when
13 someone is estopped, would you describe what that
14 means?

15 A Well, Mr. Yates, it's exactly opposite for me.
16 I'm a criminal lawyer. My firm now, I'm in private
17 practice since the very end of last year. My partners
18 do some personal injury work now, but I'm unfamiliar.

19 I remember it from law school and the bar exam,
20 but beyond that I would not be able to answer that
21 intelligently. I apologize. I would defer to someone
22 like you.

23 Q Well, if we were to define detrimental reliance,
24 could you define that?

25 A I have had that come up on occasions with plea

1 negotiations. If I may, I will create a scenario.

2 Q Yes, sir.

3 A If there was some indication from the State that
4 they might be interested in lowering a charge or
5 offering a better deal or even dismissing a charge, and
6 a client of mine, for example, based on that
7 anticipated benefit went out and enrolled themselves
8 voluntarily into substance abuse counseling and random
9 drug testing in the hopes that, in the belief that, in
10 the belief that when we provide negative tests and the
11 completion of a program that the State will then either
12 dismiss, make recommendation or reduce the charge,
13 whatever.

14 And then provided with that information the
15 state balks at what we believe was promised, I would
16 certainly go into court and try to have that enforced.
17 We relied, to my client's detriment in this case, time
18 and money enrolling in substance abuse treatment,
19 paying for testing, paying for the counseling.

20 My client is detrimentally relying on your
21 promise of some sort of a deal. Solicitor -- and most
22 of the time the solicitor would agree, yes, we gave you
23 reason to believe that and we will now go forward with
24 enforcing the agreement that we had.

25 But if not, then I would certainly come to the

1 court and say, Your Honor, my client to their detriment
2 relied on what the State had made a promise of. And,
3 Judge, we are going to ask you to enforce that.

4 Q Mr. Davis, if we want to take the definition
5 that you've just given about detrimental reliance and
6 apply that definition to the facts that we have just
7 talked about with the LWOP and such, participation and
8 assistance, when you apply the definition of equitable
9 estoppel or detrimental reliance to the facts, would
10 you give me your analysis and your opinion as to
11 whether there was detrimental reliance in your case
12 with Mr. Dickson?

13 A As I don't think anyone can object to the fact
14 that the only way Mr. McCoy is telling us, an assistant
15 solicitor before a judge, of Mr. Dickson's corporation,
16 the only way that provides him any benefit is if life
17 without parole is not possible.

18 You know, I used some double negatives there..
19 Even if we add in the direct indictment that was added
20 late just before trial, even the attempted armed
21 robbery is zero to 20.

22 And there is an email somewhere here where I
23 even said, bring him in, it's a zero to 50, so it was
24 prior to the indictment, you ask for 50. You all ask
25 for 50, let me talk about the cooperation he provided

1 and let's be done with it. So don't change the
2 charges. You all stand over here at the podium, ask
3 for the maximum.

4 The only way his, Mr. Dickson's, cooperation and
5 the acknowledgment by the State provides him any
6 benefit is if it's a plea to the charges without life
7 without parole notice.

8 And so in that sense that would be -- the
9 reliance is at worst we are looking at the maximum of
10 each three charges, that's the worst we are looking at,
11 running consecutively.

12 But the best we would be looking at is time
13 served. Unlikely, but possible. And so the reliance
14 is life without parole is not even on the radar.

15 Now, that's my analysis of it. Obviously the
16 only person that knows whether that was relied on to
17 that extent is Mr. Dickson.

18 Q Well, do you feel that there was evidence of
19 detrimental reliance?

20 A The argument I just made I think this is
21 certainly circumstantial evidence of relying on the
22 fact that the most that Mr. Dickson would be facing
23 would be the maximum as to each individual charge.

24 And if my opinion matters, again I have already
25 testified the fact that they served life without parole

1 was shocking to me. I don't think -- I did what I
2 thought was appropriate in talking to Mr. McCoy. I
3 even got emails to the A -- Attorney General, just for
4 the record, the Attorney General that I spoke to and
5 emailed was C, the first initial C. Dale Scott. That's
6 who I had communications with.

7 But and the solicitor, Ms. Wilson, Mr. Sahn, the
8 judge, Judge Dennis. Anyone I could cry out to I
9 attempted to.

10 I don't know what more I could do but, boy, I
11 wish there was something that I could have done. And
12 if there is something that I should have that I didn't,
13 again this is one of the handful of cases that
14 certainly sticks with me that I believe while the State
15 may have been authorized in what they did, I certainly
16 thought it was inappropriate.

17 Q Mr. Davis, yes or no answer, do you think that
18 Mr. Dickson is the victim of detrimental reliance?

19 A Yes.

20 MR. YATES: No further questions, Your Honor.

21 THE COURT: Thank you, sir.

22 Anything further?

23 MS. WILSON: No, Your Honor.

24 THE COURT: Okay. Thank you, Mr. Davis, you may
25 step down.

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Let me ask you all this question. I
3 see that Mr. Sanders is here. Do we need Mr. Whitt's
4 testimony?

5 MR. YATES: Your Honor, I will tell you what I
6 was going to ask Mr. Whitt generally is if the
7 information that I -- we obtained had some effect in
8 his guilty plea. And if the information that Mr.
9 Dickson gave to the solicitor was accurate.

10 And I think that Mr. McCoy has admitted to that.
11 And I may ask him if he has threatened to harm Mr. --
12 he may not answer that, but that's why we have Mr.
13 Sanders here.

14 THE COURT: Do you want to call him now since
15 Mr. Sanders is here?

16 MR. YATES: Yes. He's my last witness.

17 THE COURT: Okay. And good morning. Thank you
18 for being here.

19 MR. SANDERS: Sure.

20 THE COURT: We just need some information. You
21 can come on up if you want to so you can hear.

22 MR. SANDERS: Sure. I don't represent Sam
23 Whitt, and I haven't represented him since December of
24 '08.

25 THE COURT: Did you represent him in the guilty

1 plea?

2 MR. SANDERS: I did. However, my fee agreement
3 specifically states that my representation ended after
4 the plea. And I attempted to initiate a discussion
5 with the Court about that by email.

6 THE COURT: With me? I didn't get anything.

7 MR. SANDER: Yes, ma'am, here's a copy to you
8 and to Judge Jefferson.

9 It is my understanding that Judge Jefferson
10 wanted me to be here but that you were going to be the
11 judge.

12 THE COURT: Okay, that's not my email address,
13 wherever you sent it to, because it did not come.

14 MR. SANDERS: Okay. But I don't represent him.
15 I don't plan on offering any legal advice to him. But
16 I'm here because it is my understanding you told me to
17 be here.

18 THE COURT: Okay, well thank you.

19 You might want to check your address book when
20 you get back.

21 MR. SANDERS: Okay.

22 I don't know anything about any of this. I
23 haven't spoken to Mr. Whitt since December of '08.

24 So he's just going to be on the phone then?

25 THE COURT: And it will be extremely brief

1 because I think that I have heard from Mr. McCoy the
2 same --, what you are going to illicit from him.

3 (Whereupon, Inmate Joseph Whitt is attempted to
4 be reached by phone.)

5 THE VOICE: Yes. The inmate was pulled per the
6 memo that I got at 10:30, and he was put up at 11:00.

7 THE COURT: Why is that? This is Judge
8 McDonald.

9 THE VOICE: I don't know. The memo said 10:30
10 and we pulled him. I can have him pulled again.

11 THE COURT: Pull him fast.

12 THE VOICE: All right. Hold on one second.

13 Ma'am, it's going to take about two or three
14 minutes for us to pull him because we have so many
15 restraints to put on him.

16 THE COURT: Sure, I appreciate that. Thank you.

17 THE VOICE: They're at his door right now.

18 THE COURT: Wonderful, thank you.

19 THE VOICE: He also said that when we had him
20 out here that he didn't want to participate in this.
21 So I'm assuming he doesn't have a choice.

22 THE COURT: He doesn't have a choice, but he can
23 say so when his questioning starts. And this will not
24 take long, just so you know.

25 THE VOICE: Okay. That's fine. I mean he can

1 take as long as he wants to. The memo said 10:30 and
2 we waited for about 30 and then we went ahead and put
3 him back.

4 THE COURT: I appreciate it. Thank you.

5 MR. WHITT: This is Sam Whitt, III.

6 THE COURT: Thank you, sir. This is judge
7 McDonald. We're down here in court in a post
8 conviction relief --

9 MR. WHITT: Can you hold on one second? Can you
10 shut the door so I can hear?

11 All right. Go ahead, ma'am.

12 THE COURT: Sir, can you hear me?

13 MR. WHITT: Yes. Hello.

14 THE COURT: Just one second.

15 MR. WHITT: Yes, ma'am.

16 THE COURT: Good morning, Mr. Whitt.

17 MR. WHITT: Yes, ma'am.

18 THE COURT: This is Judge McDonald. We're down
19 here in court in Charleston in a post conviction relief
20 action for Mr. Daniel Dickson.

21 MR. WHITT: Yes.

22 THE COURT: Mr. Dickson's lawyer wants to ask
23 you a few questions, okay?

24 MR. WHITT: Can I ask you a question?

25 THE COURT: Sure.

1 MR. WHITT: Should I be talking to somebody
2 before I be speaking?

3 THE COURT: Well, your attorney from your
4 criminal action, Mr. T.O. Sanders here.

5 MR. WHITT: Yes.

6 THE COURT: You certainly have the right to
7 consult an attorney, and you have the right to not
8 answer any question that you think might incriminate
9 you in any way.

10 You have got a Fifth Amendment right. And you
11 do not have to say anything that you think would
12 incriminate you. Okay, sir?

13 MR. WHITT: Yes, ma'am.

14 THE COURT: But his attorney has a few
15 questions, I think just five or six. And if you want
16 to respond that way, that you prefer not to answer,
17 that is certainly your right to do so. Okay?

18 MR. WHITT: Yes, ma'am.

19 MR. SANDERS: Sam, I'm here. This is T.O.

20 MR. WHITT: Hey, how are you doing?

21 MR. SANDERS: Good. How are you doing?

22 MR. WHITT: All right.

23 MR. SANDERS: They just want to ask you some
24 questions about Daniel Dickson.

25 Solicitor McCoy testified. Daniel's public

1 defender testified. And now Daniel's lawyer, Mr.
2 Yates, wants to ask you a few questions about
3 conversations you had with him.

4 I don't know about anything about conversations
5 that you had with him, so.

6 MR. WHITT: Can I ask you a question, T.O.?

7 MR. SANDERS: Yeah.

8 MR. WHITT: I'm confused as to why they'd want
9 me to be present in this when this man wrote all them
10 statements against me.

11 MR. SANDERS: Yeah. Well, I don't know if you'd
12 want to help him or not. That would be up to you. I
13 don't think your position is going to help your
14 situation in any way.

15 But, you know, it's totally up to you as to
16 whether you want to help Daniel. I mean that's what it
17 boils down to.

18 MR. WHITT: So I mean I will hear the questions.

19 THE COURT: Thank you, sir. We appreciate that.

20 MR. WHITT: Yes, ma'am.

21 MR. YATES: Mr. Whitt, my name is Howard Yates.
22 I'm the court-appointed lawyer from the Daniel Dickson
23 in this PCR, post-conviction rulings hearing.

24 I just wanted to ask you just a few questions.
25 First question, did you talk to Daniel Dickson in the

1 Charleston County Jail about your father's death?

2 MR. WHITT: No. I mean, no.

3 MR. YATES: You didn't have any conversations at
4 all with Mr. Dickson?

5 MR. WHITT: Not about my father's death.

6 MR. YATES: Did you talk to him about you
7 killing him?

8 MR. WHITT: No. Listen --

9 THE COURT: Let's not --

10 MR. WHITT: You all getting into my case.

11 THE COURT: Right. Mr. Whitt, I'm getting ready
12 to put a stop to that, okay?

13 MR. WHITT: All right. Thank you.

14 THE COURT: I don't need to know that. What I
15 need to know is if he knows anything about what they
16 said they he had on him that encouraged him to plead,
17 okay, and if any of it had anything to do with Mr.
18 Dickson.

19 But I don't want him to say anything that might
20 incriminate him in any way.

21 And we are not going to go into that okay, Mr.
22 Whitt?

23 MR. WHITT: Thank you, ma'am.

24 THE COURT: All right. And knowing that, I'm
25 going to ask you to do this for me. Do you swear to

1 tell the truth, the whole truth and nothing but the
2 truth this morning so help you God?

3 MR. WHITT: Yes, ma'am.

4 THE COURT: Thank you, sir.

5 MR. SANDERS: Sam, if you undertake to answer a
6 question, you need to be sure to tell the truth. If
7 you choose not to answer a question you need to tell
8 them that.

9 MR. WHITT: Yes, sir.

10 THE COURT: Thank you, sir.

11 MR. WHITT: Okay.

12 MR. YATES: Mr. Whitt, did you know that Daniel
13 Dickson had offered to testify against you in your
14 trial?

15 MR. WHITT: Yes.

16 MR. YATES: And did you know what he was going
17 to say?

18 MR. WHITT: I mean, I read, I think it was five
19 to seven three to five page statements that the man
20 wrote to the Charleston solicitor Bruce Durant. My
21 lawyer showed it to me.

22 MR. YATES: And did that, the fact that he was
23 going to testify against you and he had this
24 information, did that impact your decision in any, even
25 in the slightest way, to plead guilty?

1 MR. WHITT: No.

2 MR. YATES: Why?

3 MR. WHITT: What do you mean why? Because what
4 he was saying was a bunch of false statements what he
5 was writing. What ultimately led me to pleading out
6 was talking to my lawyer, my grandfather and my mother.
7 Had nothing to do with him.

8 MR. YATES: Was the -- was it accurate to
9 reflect that the murder weapon was a pipe bending tool?

10 MR. WHITT: I don't understand what that has got
11 to do. I don't want to answer that. That's
12 irrelevant.

13 THE COURT: Okay, sir, that's fine. You put
14 your plea on the record and we all know that.

15 MR. WHITT: Yes.

16 THE COURT: Anything further?

17 MR. YATES: No, Your Honor.

18 THE COURT: Okay. Nothing further, sir.
19 Anything from the Attorney General?

20 MS. WILSON: No, Your Honor.

21 THE COURT: Okay. Mr. Whitt, thank you for your
22 time. There are no further questions. I will let Mr.
23 Sanders tell you good-bye and then I appreciate your
24 cooperation. Okay?

25 MR. WHITT: Yes, ma'am.

1 THE COURT: Thank you.

2 MR. SANDERS: Thank you, Sam.

3 MR. WHITT: T.O., can I ask you a question?

4 MR. SANDERS: Yes, sir, go ahead.

5 MR. WHITT: I don't understand what that was all
6 about. Why are they questioning me about my case?

7 MR. SANDERS: You know, I don't know that your
8 case was relevant. I think what Attorney Yates was
9 trying to figure out was whether you had given any
10 information about your case to Mr. Dickson that would
11 help Mr. Dickson get out from under his life without
12 parole sentence based on discussions that they had had
13 with the solicitors office.

14 That's all it was about. It doesn't have
15 anything to do with you or your sentence or anything
16 like that.

17 MR. WHITT: I understand. I appreciate that, T.
18 O.

19 MR. SANDERS: Is your mom getting up to see you
20 any?

21 MR. WHITT: No, sir.

22 I'm in lockup right now. I think they about to
23 transfer me down to Leiber.

24 MR. SANDERS: Oh, that would be good.

25 MR. WHITT: Yes, sir.

1 MR. SANDERS: Well, I'm thinking about you and
2 hope you are doing okay.

3 MR. WHITT: Thank you, Mr. Sanders.

4 MR. SANDERS: Any time.

5 (Whereupon, the phone conversation was ended.)

6 MR. YATES: Your Honor, that's all of my
7 witnesses. If I might be able to give a closing
8 statement.

9 THE COURT: Well, let me see if the AG has
10 anything first.

11 Do you have anything to put up?

12 MS. WILSON: No, Your Honor. The State doesn't
13 have any witnesses to put up.

14 THE COURT: Okay. I'm happy to hear from you,
15 sir.

16 MR. YATES: Your Honor, in my opinion that page
17 39 through I think 48 in the transcript is really
18 reflective of the whole issue that we are talking about
19 today; that there was offer; there was acceptance;
20 there was consideration; there was some gallant subject
21 matter.

22 We are looking at a reasonably prudent, or
23 reasonably intelligent prisoner who believes that based
24 on what he is doing he is helping them and they are
25 going to help him. And he has put his, from what he

1 believes his life was in danger after he got this
2 material. He gave this information.

3 He -- his attorney feels that there is
4 detrimental reliance. There is equitable estoppel. He
5 did this and now they're pulling the rug from under him
6 and he's now facing more time in jail than this
7 gentleman who just pled guilty to murdering his father.

8 THE DEFENDANT: And someone else.

9 THE COURT: Thank you, sir. Let your lawyer
10 talk for you.

11 MR. YATES: So I believe that we do have an
12 implied contract. And I just recently received some
13 information that when you were talking about what was
14 happening at the solicitor's office, and how did this
15 thing go from a plea to a trial, the solicitor's office
16 keeps detailed statistics. And at least they used to.

17 And this was in connection with performance
18 appraisals. And the stats would be referenced as to
19 who went to trial, who had a conviction, et cetera.
20 Michael Sahn had never had a trial. This was his first
21 trial. In fact, it's in the transcript.

22 And with the use of the application of the life
23 without parole, it implicitly made it a trial. So that
24 there was one where there would not have been one
25 before. For whatever that is worth, that's information

1 I just recently received concerning that matter.

2 But I do believe that he has detrimentally
3 relied. He is in protective custody. He did this with
4 the expectation that he would not be sentenced to life
5 without parole.

6 And perhaps had Mr. Davis had a proffer or just
7 said, no, you're not going to speak to these people
8 because it's not going to help you, these people are
9 going to go for life without parole. If that had been
10 the case possibly he would have had zero to 20 or zero
11 to 30.

12 And, Your Honor, based on all of these matters I
13 just don't think that Mr. Dickson got a proper sentence
14 on this. And I would like the Court to consider
15 vacating this sentence of life without parole and have
16 this reexamined and retried. Or he needs some type of
17 relief other than life without parole.

18 THE COURT: I have looked at the -- well, I have
19 read the transcript in detail. It looked like the jury
20 was out for about 30 minutes in this one. It was not a
21 long time.

22 would the relief be a new trial or remand for
23 resentencing? what are you all seeking?

24 I mean I know you want me to find ineffective
25 assistance, and that it substantially prejudiced his

1 rights. I don't know that there is enough there. I am
2 kind of in the same boat Judge Dennis was in at trial.
3 I don't like the way this went down, but I'm not sure
4 that there is a remedy for it.

5 And, quite frankly, I'm going to take this under
6 advisement because I have read a bunch of law trying to
7 get ready for today and I want to look at some more.
8 But does he seek a new trial or is it the resentencing
9 in conjunction with something other than a life without
10 parole, or is that even a possible remedy that you can
11 ask for?

12 MR. YATES: I think he was -- a new trial will
13 come back with a guilty verdict, very clear. If I
14 could speak to him for about 5 minutes.

15 THE COURT: Yes, please. And if you need a
16 break we can take a few minutes. You want to talk
17 briefly?

18 MR. YATES: I would like to speak to him for
19 about five minutes.

20 THE COURT: Sure, that would be great. You all
21 do that and we will be at ease for five minutes.

22 And just so you all understand, I'm not
23 suggesting that's what I'm going to do. This is just
24 my thought process. I'm trying to wrestle with this.

25 (Whereupon, a recess was taken.)

1 MR. YATES: Your Honor, just to complete my
2 presentation. After discussing the situation with Mr.
3 Dickson, I would -- first of all, I would like to have
4 -- I would request that Mr. Dickson's sentence be
5 vacated and he be resentenced with life without parole
6 off of the table, not an option. That would be my
7 first request.

8 Secondly, that the -- if that cannot be done or
9 if the solicitor objects that we just have the thing
10 retried. But I would like to have him resentenced and
11 life without parole not be an issue.

12 THE COURT: Okay. Thank you, sir.

13 Happy to hear from the State.

14 MS. WILSON: Briefly, Your Honor, may it please
15 the Court. It's the State's position that Mr.
16 Dickson's post-conviction relief application should be
17 denied.

18 On the issue of detrimental reliance, it's the
19 State's position that it's not really an issue here
20 because the first step is determining detrimental
21 reliance is the existence of an agreement. And the
22 record reflects that there was no agreement between the
23 State and Mr. Dickson.

24 And no evidence of such agreement was found or
25 was discussed by Mr. McCoy who was the person who

1 actually discussed and heard the statements from Mr.
2 Dickson.

3 Also, Your Honor, it's in the solicitor's
4 discretion to pursue LWOP if the statutory requirements
5 are met. And the record reflects that those
6 requirement were met.

7 The trial judge was apprised of Mr. Dickson's
8 cooperation. And Mr. McCoy testified that he didn't
9 promise him anything.

10 Also, Your Honor, trial counsel wasn't deficient
11 because he fought hard as you can see, we heard from
12 his testimony, to get LWOP taken off the table.

13 And for purposes of prejudice, there was
14 overwhelming evidence of guilt in this. I'm sure you
15 read the trial transcript and heard all the -- or read
16 all the testimony from the witnesses that were present.
17 The applicant was apprehended at the scene in the
18 victim's car.

19 It's the State's position that the remedy, if
20 you were to grant post-conviction relief, would solely
21 be vacation for a new trial. And in the alternative,
22 Your Honor, if you would like to leave the record open
23 to get an affidavit or testimony from Mr. Sahn, the
24 State's applicable to that happening.

25 I tried to contact Mr. Sahn to learn that he was

1 no longer with the solicitor's office, and hadn't heard
2 back. If I recall, I called him at his new office and
3 I haven't gotten anything back from him. So that's the
4 State's position, Your Honor.

5 THE COURT: Okay.

6 Anything further from the petitioner?

7 MR. YATES: Your Honor, as the State just
8 mentioned that there was no written agreement, there
9 was an implied agreement by conduct which established
10 the agreement which took it out of the statute of
11 frauds. And that is my response to the issue of the
12 agreement.

13 THE COURT: And I will just --

14 MR. YATES: That's all I have to say.

15 THE COURT: -- just to be candid with you all
16 about how I am thinking about this, in Reed versus
17 Becka they looked at the issue of the solicitor's
18 discretion to withdraw a plea agreement and when that
19 might be done. And there is a discussion about
20 detrimental reliance.

21 The sentence that jumps out to me is, absent a
22 plea of guilt, a defendant may only enforce an oral
23 plea agreement upon a showing of detrimental reliance.
24 But counsel for the State is correct, that I have got
25 to have the oral plea agreement as a step first before

1 we can get to the next part of the analysis.

2 I think what I heard Mr. Davis say was that
3 there was an implied understanding, as he thought, that
4 they would help, that they would somehow be helped.
5 And that he was caught off guard with the life without
6 parole notice.

7 So I would like to leave this open if we can. I
8 need to read a few more things and then maybe we can
9 hear from Mr. Sahn.

10 But I am going to take this under advisement and
11 I'm going to let you all know about contacting Mr.
12 Sahn.

13 But, you know, she is correct. I only get to
14 the detrimental reliance analysis if we can find that
15 there was some kind of oral plea offer or oral plea
16 agreement. And that's what I'm struggling with.

17 So there is no question about it, he helped
18 them, he assisted them. I think he can certainly
19 interpret the actions of Mr. McCoy, Mr. Wetmore, Mr.
20 Hare coming to meet with him as they're offering
21 something.

22 Or otherwise why would he participate other than
23 from the goodness of his heart. But I don't know if
24 that gets me there. Because as you know the State has
25 great deference to make plea offers. There is no

1 constitutional right to one. And they can withdraw
2 them absent detrimental reliance and other
3 circumstances.

4 So that's where we are. I will take it under
5 advisement.

6 MR. YATES: Your Honor, can you give me that
7 cite on that case?

8 THE COURT: Sure, it's Reed v Becka, the cite is
9 333 S.C. 676, 511 S.E.2d 396. It's a Court of Appeals
10 case from 1999. I found it through an ARL annotation,
11 you all may want to look at 16 ARL-4 1089 which deals
12 with the right of a solicitor to withdraw from a plea
13 bargain prior to the entry of a plea.

14 Here I think the question I'm going to have to
15 figure out, or part of it, is whether there was any
16 kind of plea bargain in place or underway. I think
17 everybody assumed that something would have been done,
18 but I don't know if that gets me there. Okay?

19 MR. YATES: Yes, Your Honor.

20 THE COURT: Thank you all.

21 MS. WILSON: Thank you, Your Honor.

22 THE COURT: And I'm happy for you all to send me
23 anything else that you might find.

24 (Whereupon, the proceedings in this matter
25 before the Court were adjourned.)

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
PARTIAL transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

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

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Daniel E. Dickson, #105841,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

RECEIVED
2014-CP-10-4505

SEP 23 2014

S.C. SUPREME COURT

ORDER OF DISMISSAL

FILED
2014 AUG 28 AM 8:56
JULIE J. HESTRONG
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

The Honorable Stephanie P. McDonald
J. Howard Yates, Jr., Esquire
Ashleigh R. Wilson, Esquire
Rodney Davis, Esquire
July 25, 2012
Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated June 27, 2011. The Respondent made its return on December 16, 2011. An evidentiary hearing on the matter was convened on July 25, 2012, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by J. Howard Yates, Jr., Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

Present and testifying were Rodney Davis, Esquire, and Peter McCoy, Esquire. Joseph Samuel Whitt, who is in the custody of the South Carolina Department of Corrections, testified by telephone. This Court had before it the trial transcript, the Charleston County Clerk of Court's records, the Applicant's records from the South Carolina Department of Corrections, Applicant's

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application, Respondent's return, the appellate record, and the transcript from the post-conviction relief hearing.

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PROCEDURAL HISTORY**S.C. SUPREME COURT**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the August 2008 term of the Charleston County Grand Jury for attempted armed robbery (2008-GS-10-6743) and at the October 2007 term for kidnapping (2007-GS-10-0830). He was represented by Rodney Davis, Esquire.

The Applicant proceeded to trial and was found guilty on November 22, 2008. The Applicant was sentenced by the Honorable R. Markley Dennis, Jr., to life without the possibility of parole on both charges after being served with a timely notice of the State's intention to seek life prior to trial.

A timely Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Lanelle DuRant, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences. State v. Dickson, Op. No. 2010-UP-348 (S.C. Ct. App. filed July 6, 2010).

ALLEGATIONS

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to subpoena Eric Dickerson or any other witness at trial.
 - b. Failure to subpoena Applicant's medical records from MUSC.

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2. Failure of State to abide by terms of an agreement regarding Applicant's sentence.
3. Ex parte communication that occurred in the judge's chambers between the solicitors and one or more of Applicant's listed defense attorneys.

At the hearing, Applicant proceeded solely on the allegations of the State's failure to abide by the terms of a purported agreement regarding his sentence. This Court finds that the Applicant failed to present any testimony or evidence in support of the remaining allegations. Therefore, this Court finds all remaining allegations were abandoned by the Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

The Applicant was present at the evidentiary hearing and testified that while in jail, Joseph Whitt admitted to him that he committed murder. (PCR T. 7:14-8:9). Applicant testified that he wrote the Solicitor's office about the information and that Peter McCoy, Burns Wetmore, and a third attorney from the Solicitor's office came to see him at the jail. (PCR T. 8:9-24). He testified that he offered to testify against Whitt in court and that the State was willing to come to court to speak for the Applicant in his own case. (PCR T. 11:1-3, 8-23). The Applicant testified that one of the Assistant Solicitors said that his charge would be dropped to a different charge. (PCR T. 14:4-6). The Applicant also testified that he spoke with Jennifer Evans from the

Attorney General's Office (who ultimately prosecuted Whitt's case) about assisting her with other cases. (PCR T. 13:6-11, 15:10-12).

The Applicant further testified that he had no indication that the Solicitor would seek life without parole and that he would not have put himself at risk and volunteered to provide information if he had known the State would seek this sentence. (PCR T. 14:13-22). It was Applicant's understanding that by volunteering to provide information, the State would assist him in his own case. (PCR T. 18:3-9). The Applicant testified that he was never shown a written offer from either Mr. McCoy or Ms. Evans stating that the State would provide him any benefit for his statement. (PCR T. 19:14-23, 21:5-10). Lastly, the Applicant testified that it was his belief that he had a "gentleman's agreement" with the State that one of his charges would get dropped and that the other would get "broke[n] down" so that he could plead to some lesser offense. (PCR T. 22:20-25).

Peter McCoy, Esquire, also testified at the evidentiary hearing. McCoy, who worked as a 9th Circuit assistant solicitor in June 2007, testified that he prosecuted Joseph Whitt's case until it was turned over to the Attorney General's Office. (PCR T. 25:24- 26:18). McCoy testified that he spoke with the Applicant about the case, that the Applicant was cooperative, and that the Applicant gave information which appeared to be accurate. (PCR T. 27:2-16). McCoy confirmed that he probably told the Applicant that he would be a potential witness who could be called at Whitt's trial, but that he never promised Applicant anything because to do so makes witnesses less credible on the witness stand. (PCR T. 29:2-19). McCoy testified that he did not recall talking with Attorney Davis (Applicant's trial counsel) about a proffer and that it would have been unusual for him to have done so since he was not the solicitor handling the Applicant's

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case. (PCR T. 30:5-16).¹ McCoy testified that he had no say in the outcome of the charges against the Applicant because the Attorney General's office was handling Applicant's prosecution. (PCR T. 36:23-37:1). McCoy testified that he was surprised that the Applicant was served with a notice that the State intended to seek life without parole (LWOP notice) after McCoy notified the prosecutor that Applicant had volunteered to be helpful. As Whitt eventually pled guilty, the information provided by the Applicant was never used, and the Applicant was never called as a witness. (PCR T. 35:10-23).

McCoy testified further that if the case had remained his, he was prepared to go to court to inform the judge of the Applicant's cooperation (if the Applicant pled guilty). (PCR T. 32:22-33:3). He testified that he did not recall if he indicated to Davis that he would speak on the Applicant's behalf, but that this was something that he would usually do. (PCR T. 37:7-20). McCoy testified that information about the Applicant's cooperation would not have been helpful once the Applicant was served with the LWOP notice. (PCR T. 33:21-24).² Lastly, McCoy testified that he never promised the Applicant that the State would give him any benefit as a result of his statement. (PCR T. 37:2-6). McCoy explained that it is not uncommon for individuals to cooperate with the State while thinking that they will receive assistance when no such promises have been made. (PCR T. 40:3-9).

Rodney Davis, Esquire, was also present and testified that both he and the Applicant had an implied understanding with the State that information about Applicant's cooperation would be provided in hopes of leniency. (PCR T. 43:10-19). Davis testified that he had a reasonable belief that the Solicitor's Office would help, but that McCoy had no direct control over the Applicant's

¹ Michal Sahn, Esquire, was the solicitor assigned to prosecute Applicant's case.

² Under the LWOP statute, § 17-25-45, once the proper notice has been served, if the defendant has been convicted of an eligible offense, he "must be sentenced to a term of imprisonment for life without the possibility of parole...".

case. (PCR T. 45:10-17). Davis testified that if the case resolved, he believed that McCoy would let both the solicitor handling the case and the plea judge know that the Applicant had cooperated with the State. (PCR T. 46:1-4).

Davis testified that there was no indication that the State would seek life without parole during the early stages of the Applicant's prosecution. (PCR T. 46:5-14). He further testified that it is ultimately the defendant's decision to cooperate with the State and that he still would have allowed the Applicant to cooperate even if he had known they were seeking life without parole. (PCR T. 47:5-15). Davis testified that he is not a proponent of proffers with the 9th Circuit solicitor's office and that a proffer would not have provided the Applicant any benefit in this situation. (PCR T. 48:16-49:2). Davis testified ultimately that the State was within its authority to seek life without parole and that he tried, repeatedly, to get the Solicitor to remove the life without parole notice. (PCR T. 49:3-7, 17-23).

Davis testified that he never received any written statement or offer from the Solicitor's Office, and that the best they could get from the State would be for McCoy to tell the prosecutor and the judge about the Applicant's cooperation. (PCR T. 51:22-52:22). He testified that he reviewed the Applicant's rap sheet and that the Applicant was indeed eligible for a life without parole sentence. (PCR T. 53:14). Davis confirmed that he knew that McCoy had no control over how the Applicant's case was prosecuted, but that the Applicant's cooperation only provided a benefit if the Applicant pled to charges not prosecuted under an LWOP notice. (PCR T. 55:10-13, 65:4-23).

Lastly, Joseph Samuel Whitt testified by phone from the South Carolina Department of Corrections. Whitt testified that he did not speak with the Applicant about his father's death. (PCR T. 72:2). He testified that he knew that the Applicant had offered to testify against him at

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trial, but that the Applicant's testimony did not affect Whitt's decision to plead guilty. (PCR T. 74:22-75:7).

This Court finds credible the testimony of both Rodney Davis and Peter McCoy. Here, the Applicant has failed to carry his burden of proving that the State failed to abide by the terms of any agreement regarding the Applicant's sentence as no such agreement with the State ever existed with regard to the Applicant. It was within the State's discretion to seek a sentence of life without the possibility of parole.

A criminal defendant has "no right to be offered a plea." Lafler v. Cooper, 132 S. Ct. 1376, 1387, 182 L. Ed. 2d 398 (2012). The decision whether to offer a plea bargain is within the solicitor's discretion. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 686 (1996) (citing State v. Chisolm, 312 S.C. 235, 439 S.E.2d 850 (1996)). Our Supreme Court has recognized that plea agreements rest on contractual premises. State v. Gates, 299 S.C. 92, 94-95, 382 S.E.2d 886-87 (1989). Unless intended by both parties, terms and conditions should not be read into a plea agreement. State v. Compton, 366 S.C. 671, 678, 623 S.E.2d 661, 665 (Ct. App. 2005). Even in case involving an actual agreement, parties are free to withdraw offers until performance occurs. Reed v. Becka, 333 S.C. 676, 687, 511 S.E.2d 396, 402 (Ct. App. 1999). A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. Id. at 668, 511 S.E.2d at 403.

Until formal acceptance has occurred, the plea is not binding on the defendant, the State, or the Court. Id. This general rule is subject to a detrimental reliance exception. Custodio v. State, 373 S.C. 4, 11, 644 S.E.2d 36, 39 (2007); Reed, 333 S.C. at 688, 511 S.E.2d at 403. Absent a plea of guilt, a defendant may enforce an oral plea agreement upon a showing of detrimental reliance. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 44, 454 (2007). State

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prosecutors are obligated to fulfill the promises that they make to defendants when those promises serve as inducements to defendants to plead guilty or otherwise act to their detriment. Santobello v. New York, 404 U.S. 257, 262 (1971). However, a defendant may not attempt to create a firm commitment out of mere plea negotiations. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 687 (1996). The State is not bound to accept a defendant's terms simply because a defendant reveals otherwise undiscoverable facts in the hope of securing a favorable plea agreement. State v. Miller, 375 S.C. 370, 389, 652 S.E.2d 444, 454 (2007).³

The testimony and record in this case reflect that no promises or plea offers were made to the Applicant with regard to either his charges or resulting potential sentences. Peter McCoy provided credible testimony that the State never made any promise of a plea offer (or other beneficial action) to the Applicant in exchange for his cooperation in Whitt's prosecution or any other matter. (PCR T. 37:2-6). The record reflects that McCoy informed the prosecutor of Applicant's offers to cooperate. (PCR T. 35:14-18). Rodney Davis provided credible testimony that the most the Applicant could have expected was for McCoy to inform the prosecutor and plea judge about the Applicant's cooperation. (PCR T. 51:22-52:22). There were no discussions with the State nor any promises made regarding a specific plea offer, recommendation, or sentencing range. (Trial T. 42:1-8). The trial transcript reflects that after being informed of the Applicant's cooperation in the Whitt prosecution, Applicant's trial judge concluded prior to the

³ See also Whipple, 324 S.C. at 48, 476 S.E.2d at 686 (though solicitor agreed to consider a plea agreement if Whipple provided substantial mitigation evidence, he never promised a life sentence nor was a plea agreement ever reached); State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), *cert. denied*, 456 U.S. 938, 102 S.Ct. 1996, 72 L.Ed.2d 458 (1982) (that solicitor's plea negotiations involved considering a life sentence did not prevent State from seeking death penalty) *overruled in part on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

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trial that there had been no specific plea offer made by the State and that there was no enforceable agreement. (Trial T. 79:12-80:16).

This Court finds that, at best, the Applicant hoped to receive a benefit from the State for his cooperation in Whitt's case, but that he was never promised any benefit in exchange for his cooperation with the State. Significantly, the State did not approach the Applicant in an effort to obtain his cooperation; the Applicant reached out to the State in hopes that he could obtain some favorable consideration in his prosecution for kidnapping and attempted armed robbery.

This Court also finds that Applicant has failed to carry his burden of proving detrimental reliance. Here, although the Applicant initiated certain discussions and the State participated in them, the State made no offer or agreement upon which the Applicant could have actually relied.

While it appears that the Applicant hoped his cooperation with the State might secure a beneficial plea offer with McCoy's help, ultimately, as McCoy was not the solicitor prosecuting the Applicant's case, he had no control over the resolution of this case. Further, under the facts of this case, the Court cannot find improper the prosecutor's decision to proceed to trial under an LWOP notice. South Carolina Code §17-25-45(G) states that "the decision to invoke sentencing under this section [the LWOP statute] is in the discretion of the solicitor." The record reflects the absence of any agreement between the Applicant and the State precluding the prosecuting solicitor from seeking life without the possibility of parole. It further reflects that the Applicant was eligible for life without parole based on his prior convictions. Thus, Applicant has failed to carry his burden of proving that the State failed to abide by the terms of an agreement with regard to his sentence.

All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds that Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds that the Applicant has abandoned any such allegations, and they are hereby denied and dismissed.

CONCLUSION

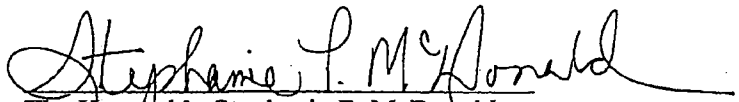
Applicant has not established any constitutional violation or deprivation either before or during his trial and sentencing proceedings. Counsel was not deficient, and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a Notice of Intent to Appeal within thirty (30) days from the receipt of this Order if he wishes to secure appropriate appellate review. Applicant's attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow once a Notice of Intent to Appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice;
and
2. That the Applicant remain in the custody of the Respondent State of South Carolina.

AND IT IS SO ORDERED this 25th day of August, 2014


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

August 25, 2014
Charleston, South Carolina

MCS20070708481

WITNESSES

MARC ZELINSKY

Charleston City Police Department

AGENCY CASE NUMBER

0712815

ARREST WARRANT NUMBER

DIRIND0286

DATE OF ARREST

June 29, 2007

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 04 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1006743

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2008

THE STATE

vs.

DANIEL EDWARD DICKSON

DOB:

W/M

Indictment for

Attempted Armed Robbery

FILED
 2008 AUG 12 PM 3:58
 CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

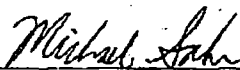
INDICTMENT

At a Court of General Sessions, convened on August 4, 2008 the Grand Jurors of Charleston County present upon their oath:

Attempted Armed Robbery

That on or about June 29, 2007, in Charleston County, South Carolina, the Defendant, DANIEL EDWARD DICKSON, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a screwdriver, did attempt to take and carry away goods and/or monies from the person or immediate presence of Pearl Jones with the intent to permanently deprive her of possession thereof, in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976 as amended.

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


MICHAEL SAHN
ASSISTANT SOLICITOR

NSW20070708481

WITNESSES

MARC ZELINSKY

Charleston City Police Department

AGENCY CASE NUMBER

0712815

ARREST WARRANT NUMBER

K222799

DATE OF ARREST

2007-06-29

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: *MAK (Parker)*

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1010830

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2007

THE STATE

vs.

DANIEL EDWARD DICKSON

Indictment for

Kidnapping

FILED

2007 OCT 15 PM 3:17

JUL
CLEAR OF COURTBY *D*

07-4108(2)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

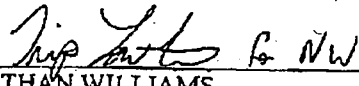
INDICTMENT

At a Court of General Sessions, convened on October 8, 2007 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about June 29, 2007, the Defendant, DANIEL EDWARD DICKSON, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Pearl Jones, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina (1976) as amended.

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


NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.DANIEL DICKSON

AKA: _____

Race: W Sex: M Age: 45

DOB: _____ SS#: _____

Address: _____

DL#: _____ SID#: _____

INDICTMENT/CASE#: 2008GS1006743A/W#: DIRIND0286Date of Offense: 6/29/2007S.C. Code §: 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Attenuated Armed Robberyin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Michael Sahn
Sahn, Michael

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1.5 years without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.75

Clerk of Court/ Deputy Clerk

Court Reporter: D. Garrison

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

lik sentence pursuant
to §17-25-45☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE R. M. [Signature]Judge Code: 2 10 1 6 10Sentence Date: 10/22/08

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.DANIEL DICKSON

AKA: _____

Race: W Sex: M Age: 45

DOB: _____ SS#: _____

Address: _____

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1010830A/W#: K222799Date of Offense: 6/29/2007S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Kidnappingin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Michael Sahn

Sahn, Michael

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is convicted to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 35.13 (Public Def/Prob)

\$500

\$

§ 73.3, 1B TP (Law Enforce. Funding)

\$25

\$

§ 33.7, 1B TP (Drug Court Surcharge)

\$100

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

3% to County (if paid in installments)

\$

\$

§ 90.11 TP (SCCJA Surcharge)

\$5

\$

TOTAL

\$

\$

Clerk of Court/ Deputy Clerk

Court Reporter: D. GarrisonPRESIDING JUDGE R. J. [Signature]Judge Code: 2Sentence Date: 10/22/08

SCCA/217 (07/2008)