

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

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S.C. Supreme Court

CURTIS SCHOCLET,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002124

APPENDIX

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State of South Carolina

Court of General Sessions

County of Richland

2011-GS-40-00599

2011-GS-40-00560

2011-GS-40-00561

The State of South Carolina

:

:

-VS-

:

TRANSCRIPT OF RECORD

:

Curtis Schoclet

:

February 11 - 12, 2013

Columbia, South Carolina

B E F O R E:

The Honorable Diane S. Goodstein, Judge, and
jury.

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

Dolly J. Garfield, Esquire

Margaret Bodman, Esquire

Attorneys for the State

Courtney Gibbes, Esquire

Mark Sawyer, Esquire

Patrick Sharpe, Esquire

Attorneys for the Defendant

Daphne D. Helms

Circuit Court Reporter

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County: Richland
Date: 2-1-13

Case No: 2011-65-40-599, 560, 561 Judge: Goodstein

Pl. / State: State State/Pl's. Atty: Dolly Garfield
Margaret Bodman

Defendant: Curtis Schocket Defense Atty: Courtney Gibbes
Mark Sawyer

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
186	Emilee Moses	F	W				✓
105	Kenneth Gunder	M	B		✓		
54	Lewis Cornelius	M	B		✓		
122	Jane Holst	M	W			✓	
145	Gloria Jones	F	B				✓
279	Jacqueline Wayner	F	B				✓
218	Monica Riles	F	W			✓	
166	Shenise McQueen	F	B				✓
272	Remondor Tyler	F	B			✓	
51	Gloria Coleman	F	B			✓	
97	Al Goodwin	M	B				✓
39	Valerie Capers	F	B			✓	
20	Watson Bolton	M	W			✓	
120	Kathy Hill	F	W				✓
177	Janne Middleton	F	B				✓
132	Robbi Jacks-Tajucik	F	W				✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."
C-Court, P-Plaintiff, D-Defense

County: Richland
 Date: 2-11-13

Case No: 2011-65-40-599, 560, 561 ^{VOIR DIRE} Judge: Goodstein
 Pl. / State: State State/Pl's. Atty: Garfield

Defendant: Curtis Schochet Defense Atty: Badman
Gibbs
Sawyer

Court Reporter: Daphne Helms

Juror No.	Name	Sex	Race	*Court	Strikes Plaintiff	Defense	Accept
44	Benjamin Caughman	M	B		✓		
67	Andrew Desilet	M	W				✓
57	Rachel Cross	F	W			✓	
304	Vicki Withamison	F	W			✓	
293	Holly Wilking	F	W				✓
179	Anna Mills	F	W			✓	
221	Eric Roth	M	W				✓
103	Brandon Yuffin	M	B				✓
	- Alternates -						
292	Rozell Wilkins	M	B				✓
102	Damon Gregory	M	B		✓		
155	Ashleigh Leitch	F	W				✓

* For the Court column, indicate who made the motion to strike the jurors "for cause."
 C-Court, P-Plaintiff, D-Defense

1 **The Court:** Thank you so much, everyone. Please be
2 seated. Thank you so much.

3 **Ms. Garfield:** Judge, may I approach with the witness
4 list?

5 **The Court:** Sure.

6 **Ms. Garfield:** And a list of the attorneys in our
7 office?

8 **The Court:** Have you got this list?

9 **Ms. Gibbes:** Yes, Your Honor. This is our witness list.

10 **The Court:** All right. Oh, and did I get -- yes, I did.
11 Got it. Got it. Got it. And would you please pronounce the
12 defendant's name for me?

13 **Ms. Gibbes:** Curtis Schoclet.

14 **The Court:** Schoclet?

15 **Ms. Gibbes:** Schoclet, yes.

16 **Ms. Garfield:** Oh, it is Schoclet? Renee told me
17 Schoclet (different pronunciation).

18 **Ms. Gibbes:** Schoclet.

19 **Ms. Garfield:** Schoclet.

20 **The Court:** All right. I don't want my Dillon roots
21 showing. Schoclet. Okay. All right. Anything from the
22 State before we invite our jury up?

23 **Ms. Garfield:** Your Honor, just to make a clean record,
24 I'd like to put on the record that the State and the defense
25 were in previous negotiations. The State did make an offer

1 to Mr. Schoclet back in December, the last week of court that
2 we had in December, to plead guilty to a negotiated sentence
3 of 15. In exchange, we would obviously not seek the life-
4 without-parole sentence.

5 We gave him 'til January 14th to accept that offer. On
6 January 14th I transported the defendant over to the
7 courthouse, and at that time he instructed -- he informed me
8 through his attorney that he wished to reject that offer. I
9 brought him over again -- I don't believe we had a judge
10 available that day, so I brought him over a subsequent day to
11 serve him with -- no, I did not have the L-WOP notice
12 prepared that day, so I brought him over a subsequent day to
13 serve on him. On that we did not have a judge; the judge was
14 in trial.

15 I brought him over the next day and officially did serve
16 him, so he had ample opportunities to take advantage of the
17 15 negotiated sentence and he did reject that. As Your Honor
18 is aware, just to put on the record, we were in negotiations
19 this morning, and an offer of 25 to 30 negotiated sentence
20 was made, and the defendant has chosen to reject that as
21 well. I just want to put all this on the record for the
22 future of any P.C.R. hearings.

23 **The Court:** Thank you. Thank you very much. All right.
24 Anything from the defense at this point?

25 **Ms. Gibbs:** No, Your Honor.

1 **The Court:** Very well. All right. All right. Let's
2 have our jury panel.

3 **The Clerk:** Yes, Your Honor.

4 **The Court:** Thank you so much.

5 **The Clerk:** You're welcome.

6 **Ms. Garfield:** Your Honor, my victims are on their way
7 down.

8 (Whereupon, the jury panel was brought into the
9 courtroom.)

10 **The Court:** Thank you so much. Ladies and gentlemen,
11 good afternoon. I want to thank each and every one of you
12 for being here today. I know that you have already heard
13 from one of my colleagues this morning during your general
14 qualification. You ought to be thanked, you should be
15 thanked often for being here this morning and this afternoon
16 because, quite frankly, if you all were not here, there would
17 be no reason for any of us to be here. We are a citizen-
18 based judicial system here in the United States, and you are
19 the essential part of that system. So I am so grateful to
20 you for every single solitary tick of the clock that you are
21 here with us.

22 Ladies and gentlemen, let me begin by introducing
23 myself. I'm Diane Goodstein, and I'm one of the two resident
24 judges from the First Judicial Circuit. You don't live in
25 the First Judicial Circuit. You live in the Fifth Judicial

1 Circuit. The First Judicial Circuit -- I feel like we're
2 having a civics lesson. There won't be a test later. But
3 the First Judicial Circuit is Dorchester County, Orangeburg
4 County, and Calhoun County. But you live in the Fifth
5 Judicial Circuit which is Richland County and Kershaw County.

6 Now, ladies and gentlemen, so what in the world am I
7 doing? Did I get lost on 26 and find my way here this
8 morning? Nope. We are circuit judges, and not only do we
9 have the opportunity to rotate within our own circuits, but
10 we also have the opportunity to rotate around the state, and
11 our chief justice, Chief Justice Toal, has assigned me the
12 absolute wonderful privilege of being here with you this week
13 in Richland County which is truly a treat.

14 So, ladies and gentlemen, because I am a circuit judge,
15 I ride the circuit. A long time ago they'd get in the
16 buckboard and they'd get the clerk of court and the sheriff
17 and everybody would get up on the buckboard and they'd ride
18 the circuit. Well, they still talk about us doing that, but
19 we had the chance to be able to rotate within our own circuit
20 as well as throughout the state and it is a treat.

21 Now, ladies and gentlemen, let me -- I know that you've
22 been through the general qualification. We're going to shift
23 on you a little bit and we're going to -- I'm now going to
24 qualify you with regards to a particular case, but before I
25 do that, ladies and gentlemen, I'm going to ask you to please

1 stand and raise your right hands with me. Do you solemnly
2 swear or affirm that you will provide truthful and complete
3 answers and responses during this jury qualification process?
4 If you accept the oath, please indicate by saying, "I do,"
5 and by being seated at this time.

6 (The jurors respond.)

7 **The Court:** Wonderful. Thank you. Now, ladies and
8 gentlemen, let me give you an overview of how we're going to
9 be going about our jury qualification. In just a few moments
10 I am going to be -- I'm going to call on the assistant
11 solicitor to call the first case for trial this week, and
12 then I am going to read to you some of the allegations in the
13 indictment, and I'm going to tell you what an indictment is
14 and what it is not. Then I'm going to have the opportunity
15 to introduce you to some folks, and then I'm going to ask you
16 some questions which are -- I know you've been asked a fair
17 number of questions already, but I'm going to ask you some
18 questions that are a little more tailored to the matter to be
19 tried and then we're going to select our jury.

20 Once our jury is selected, ladies and gentlemen, I will
21 have -- I'm going to give you some instruction because we're
22 actually going to begin the trial in the morning. There's
23 some matters that I must attend to this afternoon to get
24 ready for the trial, and we're actually going to start the
25 matter in the morning. So that gives you an overview of how

1 we're going to be proceeding this afternoon.

2 Now, ladies and gentlemen, at this time I am going to
3 call on Assistant Solicitor Garfield and I'm going to ask her
4 to please call our first case for trial.

5 Ms. Garfield: Thank you, Your Honor. May it please the
6 Court?

7 The Court: Yes.

8 Ms. Garfield: At this time I call the case of the State
9 of South Carolina versus Curtis Schoclet for one count of
10 armed robbery and two counts of kidnapping, indictment number
11 2011-GS-40-559, 560, and 561. Thank you, Your Honor.

12 The Court: Thank you so much. Now, let me tell you
13 what has happened. Ladies and gentlemen, Solicitor Garfield
14 has just called our first case to trial this week. I wanted
15 to tell you what -- what is a solicitor? Well, we are the
16 only state in the country that calls our prosecutors
17 solicitors. It is a holdover from England. Solicitors from
18 England, there are barristers and there are solicitors. And
19 in South Carolina our prosecutors are called solicitors.

20 If you watch court T.V., particularly if you watch Nancy
21 Grace, you're used to hearing about district attorneys.
22 Well, most -- and in all other states I think they're called
23 district attorneys, but here in South Carolina we call our
24 prosecuting attorneys solicitors.

25 Now, my dear daddy paid for four years of college for me

1 to take English History, and I have just had advantage of
2 that four years of my college education because I majored in
3 English History. There you have it.

4 Now, ladies and gentlemen, now I want to talk to you a
5 moment about what an indictment is and what an indictment is
6 not because, as you will recall, Solicitor Garfield just
7 said: I call your attention to three indictments, and she
8 gave some numbers. Well, let's talk about what an indictment
9 is and what it is not.

10 An indictment, first of all, is a piece of paper, and
11 what this piece of paper does is it notifies a citizen that
12 the State is alleging that that citizen has violated one or
13 perhaps more of the criminal laws of the State of South
14 Carolina. It is just a notice document is what it is. It
15 isn't evidence of any of the allegations that it contains.
16 It just lets a citizen know that the State maintains that
17 that citizen has violated one or more of the criminal laws of
18 South Carolina.

19 Now, I want to hasten and tell you: To each, to every
20 one of these indictments, Mr. Schoclet has pled not guilty,
21 and that places upon the State the burden of proving each and
22 every allegation of each of these indictments. They have the
23 burden to prove him guilty beyond a reasonable doubt, and
24 each of these indictments will stand independent and we'll
25 talk about that more later. But I did want you to know

1 immediately that to each of these indictments Mr. Schoclet --
2 Schoclet has pled not guilty.

3 Now, so why would we talk about the indictment at this
4 point? Well, ladies and gentlemen, in just a moment I am
5 going to read to you some of the allegations of each of these
6 indictments. One of these indictments is an indictment for
7 armed robbery, and then there are two indictments, each of
8 which is for kidnapping.

9 The reason that I'm going to be reading to you some of
10 the allegations of the indictments is simply: To find out
11 whether or not any of you know or think you may know or have
12 you heard or think you may have heard, to include today,
13 anything about these allegations. That's the reason that I'm
14 going to be reading to you some of the allegations of these
15 indictments.

16 Now, ladies and gentlemen, as I do that, remember on the
17 -- what do they say? On the other side of me reading to you
18 some of these allegations, I'm going to be asking you: Do
19 any of you know or think you know or have you heard or think
20 you may have heard anything about these allegations?

21 So, ladies and gentlemen, I will tell you that
22 indictment number 2011-GS -- 05? Is that -- because I'm cut
23 off in the middle. What is the middle? G-S?

24 Ms. Garfield: 40.

25 The Court: 40. Thank you. 559 which is an indictment

1 alleging armed robbery, alleges as follows: That Curtis
2 Schoclet did in Richland County on or about July the 26th,
3 2010, commit a robbery by feloniously taking from the person
4 or presence of Palmetto Citizens by means of force or
5 intimidation goods or monies belonging to Palmetto Citizens
6 with the intent to deprive the owner permanently of said
7 property, to wit, U.S. currency, while armed with a pistol,
8 rifle, dirk, slingshot, metal knuckles, razor or other deadly
9 weapon or while engage -- alleging either by actions or words
10 that he was armed while using a representation of a deadly
11 weapon or any object which a person present during the
12 commission of the robbery reasonably believed to be a deadly
13 weapon, all in violation -- and it cites a code of laws of
14 South Carolina.

15 Now, ladies and gentlemen, that -- these are the
16 allegations, as I've just mentioned, of 2011-GS-40-559, and I
17 remind you that to each and every allegation of that
18 indictment Mr. Schoclet has pled not guilty.

19 Now, ladies and gentlemen, I'll next read to you some of
20 the allegations of indictment 2011-GS-40-560 which alleges in
21 part that Curtis Schoclet did in Richland County on or about
22 July the 26th, 2010, unlawfully seize, confine, inveigle,
23 decoy, kidnap, abduct, or carry away the victim, Kerry
24 Robinson, by any means whatsoever without the authority of
25 law, all in violation -- and, again, the code section is

1 given there. And, again, to these allegations, each and
2 every one, Mr. Schoclet has pled not guilty.

3 Finally, ladies and gentlemen, indictment 2011-GS-40-561
4 alleges in part that Curtis Schoclet did in Richland County
5 on or about July the 26th, 2010, unlawfully seize, confine,
6 inveigle, decoy, kidnap, abduct, or carry away the victim,
7 Brandy -- is it Manack or Manack (different pronunciation)?
8 Libertini by means whatsoever without authority of law, all
9 in violation -- again, the code section is there cited.
10 Ladies and gentlemen, to these allegations Mr. Schoclet has
11 pled not guilty.

12 Ladies and gentlemen, now I ask: Do any of you know or
13 think you may know or have you heard or think you may have
14 heard anything about any of these allegations? If so, please
15 stand at this time. And I find no one standing.

16 Now, ladies and gentlemen, I call your attention and I'm
17 going to introduce you to Ms. Dolly Justice Garfield, and
18 she's going to introduce the solicitors who are going to work
19 with her in the trial of this case and she's going to
20 introduce you to the folks in her office.

21 Ladies and gentlemen, my question on the other side of
22 that is going to be: Are you related by blood or marriage or
23 acquainted with obviously Ms. Garfield and the other folks
24 that she's going to talk to you about, but do let me quickly
25 identify what I mean when I use the term, "Are you acquainted

1 with?" I am trying to find out if you have any connection
2 with these people at all.

3 Let me give you an example. It may be that you went to
4 school with one of these folks that she will be mentioning.
5 Can't say 20 years ago with Ms. Garfield standing there.
6 I'll say 10 years ago and it might be grammar school and,
7 ladies and gentlemen, you may not have seen someone that I'll
8 ask you about -- you haven't seen them. You haven't thought
9 about them in 10 years since you were in school with them.
10 However, you do know you went to school with that person.
11 Well, believe it or not, that relationship, as old and
12 limited as it is, would be encompassed within my definition
13 of acquainted with and you need to stand and tell me that.

14 It may be that you have a limited amount of
15 acquaintanceship with somebody. Maybe you work at the same
16 location and you'll occasionally wave at each other across
17 the parking lot. Believe it or not, that relationship, as
18 limited as it is, would be encompassed within my definition
19 of acquainted with, so you would simply stand and tell me
20 that.

21 With that in mind, ladies and gentlemen, I -- again, let
22 me introduce you to Ms. Dolly Justice Garfield, and she is
23 going to introduce, first of all, the assistant solicitors
24 who will be working with her in this case and then the folks
25 in her office.

1 **Ms. Garfield:** Thank you, Your Honor. May it please the
2 Court? Good afternoon. I'm Dolly Justice Garfield. I am an
3 assistant solicitor here in Richland County. Helping me with
4 this case this week will be Assistant Solicitor Margaret
5 Bodman and also assisting us will be Assistant Solicitor
6 Jennifer McKellar. Seated behind us is Andrea Trapp; she's
7 my paralegal. And the law enforcement officers that will be
8 assisting us in the lead investigations on the case before
9 you is Lieutenant Scott McDonald. He is with the Richland
10 County Sheriff's Department and Investigator Josh Mauldin
11 formerly with the Richland County Sheriff's Department. He's
12 currently now an instructor at the Criminal Justice Academy.
13 Oh, I'm sorry. And back here also you'll see in and out of
14 the courtroom is Victoria Loftis. She is a victim advocate
15 with our office as well.

16 **The Court:** And then the other folks in your office --
17 have I got the only list?

18 **Ms. Garfield:** Yes, ma'am. I was going to say we'll
19 have to borrow that list from you, if you don't mind.

20 **The Court:** I will read it. How about that?

21 **Ms. Garfield:** Okay.

22 **The Court:** Ladies and gentlemen, I'm now about to read
23 to you the list of solicitors who are in the office here. My
24 question as to each and every one of these folks is: Are you
25 related by blood or marriage or acquainted with any of these

1 folks? Britton All, Brent Arant, Kathryn Cavanaugh Ashton,
2 Kristen Bales, William Bilton. Ms. Bodman has already been
3 introduced to you. Luck Campbell, Richard Cathcart, Daniel
4 Coble, John Conrad, Kendall Corley, Rich Donaldson, Vance
5 Eaton, Paulette Edwards, Jessica Godwin, Dan Goldberg who is
6 your -- let me get this right now. Don't let me mess up
7 Johnson -- Dan Johnson is your elected solicitor, so I
8 probably should have introduced him first. Dan Johnson is
9 your elected solicitor, but Dan Goldberg, Josh Golson. Is it
10 Rhea Hirsch?

11 **Ms. Garfield:** Rhea Hirsch.

12 **The Court:** Rhea. Thank you so much. Rhea Hirsch.
13 Curtis Hutchinson, Ivy Justice, Foster Mathews, Sheila Mims,
14 Joanna Spector McDuffie, Jennifer Harris McKellar whom we've
15 just met. Hans Pauling, Brett Perry, Carter Potts, April
16 Sampson, Jeremiah Shellenberg, Joseph Shenkar, Nicole
17 Simpson, Anne Spears, John Steadman, Saquisha Goodwin Tobin,
18 Sandra -- I'm from Dillon; y'all got me good now. Vriesinga?
19 Meghan Walker and Justin Williams.

20 Are you related by blood or marriage or acquainted with
21 any of those individuals and the individuals mentioned by Ms.
22 Justice Garfield? If so, please stand at this time. Very
23 well. We'll start right here. Tell me your number.

24 **Juror 179:** Mine?

25 **The Court:** Yes.

1 Juror 179: 179.

2 The Court: Now, here is what I need you to do.

3 Juror 179: Okay.

4 The Court: I need you just to answer just what I'm
5 asking. Okay?

6 Juror 179: Okay.

7 The Court: Tell me who you know.

8 Juror 179: Brent Arant.

9 The Court: And do you visit in each others' homes?

10 Juror 179: No, ma'am.

11 The Court: Would you describe your relationship as one
12 that is more personal or professional?

13 Juror 179: Personal.

14 The Court: And would you describe that more as a
15 friendship or acquaintanceship?

16 Juror 179: Friendship.

17 The Court: All right. Now, as a result of the fact
18 that -- and tell me who again.

19 Juror 179: Brent Arant.

20 The Court: Got that. In that this person works in the
21 office, as I understand will -- will be involved? Will not
22 be involved?

23 Ms. Garfield: No, ma'am.

24 The Court: Will not be involved in this case for your
25 informational purposes. Do you believe that you can set that

1 relationship aside and make up your mind based upon what you
2 hear in court while court is in session, being completely
3 unaffected by that relationship and being completely fair and
4 impartial both to the State as well as to Mr. Schoclet?

5 Juror 179: Yes, ma'am.

6 The Court: Very well. Please stay with us. Tell me
7 your number.

8 Juror 213: 213.

9 The Court: Who do you know?

10 Juror 213: I know Foster Mathews. I grew up and went
11 to church with him and his family.

12 The Court: Okay. And do you visit in each others'
13 homes?

14 Juror 213: No, ma'am.

15 The Court: Would you describe that as more of an
16 acquaintanceship?

17 Juror 213: Yes, ma'am.

18 The Court: As a result of that acquaintanceship, do you
19 believe that that might or that could interfere with your
20 ability to be completely fair and impartial both to the State
21 as well as to Mr. Schoclet?

22 Juror 213: I'm not certain, Your Honor. This is my
23 first time being a juror.

24 The Court: All right. And let me tell you what that
25 means. That means that you must set that relationship

1 completely aside and make up your mind based solely on what
2 you hear in court while court is in session, being completely
3 unaffected by that relationship. In other words, if you
4 thought that he might or she might have a side and you were
5 going against that side that it wouldn't bother you one bit
6 in this world. With that in your mind, do you believe that
7 you can set that relationship aside and make up your mind
8 based upon what you hear in court while court is in session?

9 Juror 213: Yes, ma'am.

10 The Court: All right. And do you believe that you can
11 do that -- set it -- completely set the relationship aside as
12 you have described it?

13 Juror 213: Yes, ma'am.

14 The Court: Very well. Please stay with us. Now,
15 anyone else? Anybody need me to read the list again? Very
16 well. Now, ladies and gentlemen, please allow me to
17 introduce you to Mr. Curtis Schoclet. If you would stand and
18 face our jury panel. Thank you, Mr. Schoclet. And this is
19 Mr. Curtis Schoclet. Now, everybody stood. Mr. Schoclet has
20 got the khaki shirt on. Thank you so much, Mr. Schoclet.
21 You may be seated and thank you.

22 Ladies and gentlemen, are you related by blood or
23 marriage or acquainted with Mr. Curtis Schoclet? If so,
24 please stand at this time. And I find no one standing.

25 Now, ladies and gentlemen, Mr. Schoclet is represented

1 by Ms. Courtney Gibbes, and this is Ms. Gibbes. Mr. Mark
2 Sawyer. Mr. Patrick Sharpe. Thank you all so very much, and
3 you all may be seated.

4 Now, ladies and gentlemen, I'm now going to read you the
5 names of the attorneys in their office. All right. Taylor
6 Bell, Jacqueline Bambach, Joseph Bias, Bridget Brown, Mitzi
7 Campbell-Williams, Greg Collins, Joanna Delaney, Court --
8 well, you met Courtney. Alicia Dyar Goode, Lucas Hawks, Kris
9 Hines, Stephen -- who wants to help me?

10 **Ms. Gibbes:** Krzyston.

11 **The Court:** Krzyston. Jeremy MacNealy, Clarke Newton.
12 You got Mr. Sawyer, met Mr. Sharpe. Brian Shealey, Rebecca
13 Williams, Jay Cooper, Jessamine Grice, Tracy Pinnock, Dino
14 Pournaras, Luke Shealey, Tamika Thompson, and Anna Walker.
15 Are you related by blood or marriage or acquainted with any
16 of those attorneys? If so, please stand at this time. Juror
17 213, tell me who you know.

18 **Juror 213:** Attorney Jay Cooper.

19 **The Court:** Jay Cooper? And now would you describe --
20 well, let me ask it this way: Do you visit in each others'
21 homes?

22 **Juror 213:** We have before.

23 **The Court:** Say?

24 **Juror 213:** We have before.

25 **The Court:** You have before? How long ago?

1 **Juror 213:** Most recently about a year.

2 **The Court:** About a year ago? All right. So would you
3 describe your relationship as one as an acquaintanceship or a
4 friendship?

5 **Juror 213:** Friendship.

6 **The Court:** And do you believe that that friendship
7 might or could in any regard, in any regard, interfere with
8 your ability to be completely fair and impartial both to the
9 State as well as to Mr. Schoclet?

10 **Juror 213:** I think it would.

11 **The Court:** Very well. I'm going to ask you to sit this
12 one out. Have a seat because I've got some more instruction
13 to give to you. Pat, did you get that? You got that?

14 **The Clerk:** I'm sorry, Your Honor?

15 **The Court:** You got it?

16 **The Clerk:** Yes, ma'am.

17 **The Court:** All right. Now, ladies and gentlemen, I
18 have a list of potential witnesses that I want to read to
19 you. With regards to each and every one of these folks, my
20 question is: Are you related by blood or marriage or
21 acquainted with any of the following individuals? Oh, and if
22 you happen to be in the courtroom - they don't have to be
23 here at this point - but if you happen to be in the
24 courtroom, I'm going to ask you to please stand because, you
25 know, ladies and gentlemen, it's so much easier to put a face

1 with a name than just the name, so I'm going to ask that.
2 All right. Brandy Broughton, and there's Ms. Broughton.
3 Thank you so much, and you may be seated. Kerry Robinson.
4 And, Mr. Robinson, thank you so much. Josh Mauldin. Oh,
5 yes, he's already been introduced. I'm going to do it again.
6 This is Mr. Mauldin. Thank you so much. Gary Hun -- is it
7 Hunsaker or Hunsaker (different pronunciation)? Hunsaker.

8 **Mr. Hunsaker:** You did that real good the first time.

9 **The Court:** All right. Thank you kindly. You may be
10 seated. Randy Perry. There he is in the back. Thank you.
11 Scott McDonald. Here is Mr. McDonald. Melissa Hall.

12 **Ms. Garfield:** She's not here today.

13 **The Court:** Anthony Branham. Melanie May. Yeah, there
14 she is. Thank you. Andrew Caldwell. Valerie Reese. Kevin
15 Isenhoward. Don Robinson. Rachel Grant. Patricia, paren,
16 Patty, Weed. Stephen Griffey. William Cedarstaff. Robert
17 Walters. Brian Metz. Tamika Pressley, and Kathy -- oh,
18 there's Ms. Pressley. Thank you. You may be seated. And
19 Kathy Rhoden. Are you related by blood or marriage or
20 acquainted with any of those individuals? If so, please
21 stand. And I find no one standing.

22 Now, ladies and gentlemen, I now have some additional
23 questions to ask of you, and we'll begin that process now.
24 Ladies and gentlemen, are you or any member of your immediate
25 family someone who is or has been in the past employed by any

1 local, state, federal, or military law enforcement agency
2 including, but not limited to, the City of Columbia Police
3 Department, the Richland County Sheriff's Department, the
4 State Law Enforcement Division or S.L.E.D. or the Federal
5 Bureau of Investigation or F.B.I. or any other law
6 enforcement agency? If so -- or military law enforcement
7 agency? I guess that's the military police. If so, please
8 stand at this time.

9 Juror 251: You said a public school teacher?

10 The Court: Okay. Tell me your number.

11 Juror 251: 251.

12 The Court: 251. And who -- and say it again.

13 Juror 251: Richland County, public school teacher.

14 The Court: I didn't understand. Can you say it again?

15 Juror 251: I'm a public school teacher.

16 The Court: You're a public school teacher. And what do
17 you teach?

18 Juror 251: Math.

19 The Court: And you teach math. Very well. Thank you.
20 I don't -- I thank you, but I don't think that would---

21 Juror 251: Okay.

22 The Court: ---apply, but thank you so much. In other
23 words, we get to keep you. Now, ladies and gentlemen, are
24 you a member of or a contributor to, meaning you give money
25 to, groups whose primary concern is either the promotion of

1 law enforcement, the promotion of victims' rights or the
2 promotion of rights of those charged with offenses or perhaps
3 incarcerated, any of those types of groups? Some examples --
4 some examples would be DARE, CAVE, CADRE, MADD, SADD, and
5 there are a number of other groups. I don't want to say that
6 they're limited because there are many other groups. Those
7 are simply given to you as examples. If so, please stand at
8 this time. And I find no one standing.

9 Oh, are you or any member of your immediate family or
10 close personal friend -- now, this close personal friend is
11 so close to you that you really cannot tell the difference
12 between a family member and this close personal friend. In
13 fact, you have a sibling that you actually like less than you
14 like this close personal friend. That's how close this
15 friend is.

16 Now, are you related by blood or marriage or -- are you
17 related by blood or marriage or do you have a close personal
18 friend who is employed by or have you now or in the past ever
19 been employed by the Attorney General, obviously the Fifth
20 Circuit Solicitor's Office or any prosecuting attorney's
21 office? If so, please stand. Was that -- do I need to ask
22 that again? Was that clear? Does anybody want me to ask?
23 Don't be shy.

24 Okay. I'll ask it again. Have you ever been or a
25 member of your immediate family ever been or a close personal

1 friend, to your knowledge, ever been employed either
2 currently or in the past by the Attorney General, the Fifth
3 Circuit Solicitor's Office or any prosecuting attorney's
4 office or I should say a defense or a lawyer's office who
5 primarily does criminal defense? Just to cover both sides.
6 If so, please stand. And I find no one standing.

7 **Juror 186:** Well, in Richland County or does it matter?

8 **The Court:** Like anywhere. Oh, you've got to tell me
9 your number.

10 **Juror 186:** I can't read it. 386.

11 **The Court:** You have to read it upside-down. With the 3
12 and an 8, that's not exactly -- and a 6, that's not exactly
13 easy.

14 **Juror 186:** 186.

15 **The Court:** 186. We got you.

16 **Juror 186:** 186.

17 **The Court:** Tell me who your -- was it you or a member
18 of your family?

19 **Juror 186:** A member of my family.

20 **The Court:** A member of your family. And what office?

21 **Juror 186:** Well, you mentioned criminal defendant.

22 **The Court:** Sure.

23 **Juror 186:** It's in York County.

24 **The Court:** In York County. Very well. And what is --
25 okay. And would that have an effect on your ability to be

1 completely fair and impartial both to the State as well as to
2 Mr. Schoclet?

3 Juror 186: No.

4 The Court: Can you set that relationship aside and make
5 up your mind based on what you hear in court while court is
6 in session?

7 Juror 186: Yes.

8 The Court: Thank you. Please stay with us. Have you
9 or any member of your immediate family or that close personal
10 friend ever been employed by the Richland County Public
11 Defender's Office or any public defender's office? If so,
12 please stand. And I find no one standing.

13 Now, have you or any member of your immediate family or
14 that close personal friend, to your knowledge -- employed now
15 or ever been employed at Palmetto Citizens Bank? Palmetto
16 Citizens Bank. If so, please stand. And I find no one
17 standing.

18 Has any member of our jury panel read or heard anything
19 about this case today or before today other than what I've
20 been saying earlier today? All right. I'm going to ask you
21 to come forward with me and, counsel, you may approach as
22 well. While you're coming forward, you can just tell me your
23 number.

24 Juror 93: 93.

25 The Court: Come on forward.

1 (The following colloquy took place in the hearing of the
2 Court, Juror 93, the attorneys, and the court reporter.)

3 **The Court:** All right. I need for my court reporter to
4 be able to hear you, but keep your voice low so the jury
5 panel doesn't hear any of this. Okay. Tell me what you know
6 and what you've heard.

7 **Juror 93:** I just heard on the news about the robbery.
8 I am a member -- long-time member of the Palmetto Citizens.

9 **The Court:** You're a customer?

10 **Juror 93:** Yes, ma'am.

11 **The Court:** And did you hear that on the news?

12 **Juror 93:** I don't remember. I just remember hearing of
13 the case.

14 **The Court:** In the past?

15 **Juror 93:** Where one of the branches was robbed.

16 **The Court:** Okay. With that knowledge and your
17 patronage to them, do you believe that either one or both of
18 those items together may or could influence or interfere with
19 your ability to be completely fair and impartial both to the
20 State as well as to Mr. Schoclet?

21 **Juror 93:** I'm not sure.

22 **The Court:** You're not sure?

23 **Juror 93:** I'm not sure.

24 **The Court:** Very well. And what you're going to hear me
25 say is: Well, do you have any concern about your ability to

1 set those -- set that aside and make up your mind with what
2 you hear in court?

3 Juror 93: I don't think that I can.

4 The Court: Very well. I understand that. I'm going to
5 ask you -- I do this in abundance of caution. Please do not
6 discuss this matter with your fellow jurors.

7 Juror 93: No.

8 The Court: And we'll have you sit this one out.

9 (Juror 93 leaves the bench conference.)

10 The Court: Okay. She's excused. Did you get that
11 she's excused?

12 (The bench conference concludes.)

13 The Court: Ladies and gentlemen, can you hear me if I
14 stand right here? Oh, wonderful. I actually need the
15 exercise going up and down the steps. But now... Ladies and
16 gentlemen, I am going to ask you three questions together and
17 I really don't want you to respond to any of these questions
18 until I've asked all three, and if you need to respond, I'm
19 going to ask you to come forward. The question is this: Is
20 there anything -- is there anything about the nature of the
21 allegations in this case which would cause you any concern
22 sitting as an impartial juror in this matter? First one.

23 The second one is: Have you or any member of your
24 immediate family ever been the victim of a crime or ever been
25 charged or convicted of a crime? And, finally -- and this is

1 general; I really do mean it to be general. Do you know any
2 reason why you ought not, should not, could not be a juror in
3 this case, being ready, willing, and able to listen to the
4 evidence and make up your mind based solely on what you hear
5 in court while court is in session, being completely
6 unaffected by matters extraneous, matters outside the court,
7 in other words anything -- meaning anything other than what
8 you hear in court while court is in session? And that could
9 be anything. That sounds very general; it's intended to
10 sound very general.

11 It might be that you were shy downstairs earlier today,
12 but now you've warmed up and you really wanted to tell the
13 judge something this morning and you were shy, but now you
14 feel much more comfortable because you've been here awhile.
15 It could be that. It could really be anything. It could be
16 that someone called you during your lunch and said you've got
17 to rush home because we've got balloons and flowers and
18 they've got this big covered board and it looks like one of
19 those ten-foot checks and all of a sudden your mind is like
20 you can't think about what you're doing. It really could be
21 anything.

22 And this is a true story. We've reached this far in
23 Dorchester -- I hate to say Dorchester County because y'all
24 are going to think people in Dorchester County are kind of
25 different if I say this, but I'm going to tell you anyway.

1 We had reached this point and this adorable young man raised
2 his hand and he came forward. He said, "Judge," he said, "My
3 wife's in labor down at Trident Hospital with our first
4 child. Can I go and be with her?" And I'm like, "Whoa." So
5 is anybody in labor? Anybody's family member in labor?
6 Okay. Very well. If you need to respond to any one of those
7 three questions, please come forward.

8 (The follow colloquy took place in the presence of the
9 Court, each juror individually who approached the bench, the
10 attorneys, and the court reporter.)

11 **The Court:** And your number?

12 **Juror 217:** Juror 217.

13 **The Court:** Great. Just stand right there for a minute.
14 Okay. Perfect. Hi. Yes, sir. I just need enough volume
15 for our court reporter to be able to hear.

16 **Juror 217:** Okay. The potential of the consequence is
17 something I'm not very comfortable with, the potential
18 effects of a guilty verdict. And regarding family, if he's
19 got kids, if he's got other people who are dependent upon
20 him... A felony conviction, you know, I don't even think
21 he'll be able to get a job even at McDonald's if it goes that
22 way, and that's something that weighs heavily on my mind.

23 **The Court:** Okay. Do you think it could have an effect
24 on you if you got on the jury?

25 **Juror 217:** In this specific instance or of anything of

1 this violent nature or felony related, I'm not sure---

2 The Court: Okay. All right.

3 Juror 217: I'm not sure I could find him guilty.

4 The Court: Here's what I'm going to ask you to do. I'm
5 going to ask you to sit this one out and stay with me. Okay?

6 Juror 217: No problem.

7 The Court: Very well. Thank you.

8 Juror 217: Thank you, Your Honor.

9 The Court: Got that?

10 (Juror 217 leaves the bench conference.)

11 Bailiff: Number 121.

12 (Juror 121 approaches the bench.)

13 The Court: Hi. Yes, ma'am. Just enough volume for our
14 court reporter to hear you. Gather around.

15 Juror 121: I've got two things. First, my husband just
16 finished five months in Williamsburg for mortgage fraud.

17 Court Reporter: I can't hear you.

18 Juror 121: I said my husband just completed five months
19 in Williamsburg for mortgage fraud, so I think that would
20 count.

21 The Court: Okay.

22 Juror 121: And then my dorm room at Wake Forest was
23 broken into by a guy. He tried to attack me in my room.

24 The Court: Okay.

25 Juror 121: You said any violent crime.

1 **The Court:** That's right. That's right.

2 **Juror 121:** I think -- I only have two, not three.

3 **The Court:** Absolutely. As a result of either of those
4 or both of those experiences together---

5 **Juror 121:** Just the break-in.

6 **The Court:** ---do you believe that it might or they
7 might interfere in any respect with your ability to be
8 completely fair and impartial both to the State as well as to
9 the defendant?

10 **Juror 121:** Just the break-in.

11 **The Court:** Okay. And you believe it could?

12 **Juror 121:** Well, yeah.

13 **The Court:** Okay. All right. Very well.

14 **Juror 121:** I don't see how it couldn't.

15 **The Court:** Okay. I understand completely.

16 **Juror 121:** Okay.

17 **The Court:** I'm going to ask you to sit this one out,
18 please.

19 **Juror 121:** Okay. All right.

20 (Juror 121 leaves the bench conference.)

21 **Bailiff:** 224.

22 (Juror 224 approaches the bench.)

23 **The Court:** Hi. I just need enough volume -- come up
24 closer so the court reporter can hear what you have to say.

25 **Juror 224:** Okay. I just wanted to make sure you said

1 if anyone -- a family member or anyone had been convicted of
2 a crime.

3 The Court: Yes.

4 Juror 224: Does a D.U.I. count?

5 The Court: Sure.

6 Juror 224: Okay. My brother has been arrested twice
7 for D.U.I.

8 The Court: Okay. As a result of that experience of
9 your brother, could that have an effect, might that have an
10 effect on your ability to be fair and impartial?

11 Juror 224: No.

12 The Court: Can you set his experiences aside and make
13 up your mind---

14 Juror 224: (Nodded head up and down.)

15 The Court: ---based on what you hear in court while
16 court is in session?

17 Juror 224: Yes, I can.

18 The Court: Thank you. You're 224?

19 Juror 224: 224.

20 The Court: Thank you. Please stay with us.

21 (Juror 224 leaves the bench conference.)

22 Bailiff: 304.

23 (Juror 304 approaches the bench.)

24 The Court: I just need enough volume for our court
25 reporter - come on forward - to hear us. Gather around.

1 Yes.

2 Juror 304: Our family was the victim of a home robbery
3 in the year 2000.

4 The Court: Okay.

5 Juror 304: We were not home.

6 The Court: Okay.

7 Juror 304: So I'm okay, but I just wanted you to be
8 aware.

9 The Court: As a result of that experience, might that,
10 could that interfere with your ability to be fair -- to be
11 completely fair and impartial both to the State as well as to
12 the defendant?

13 Juror 304: I don't think it would affect it.

14 The Court: Can you set that experience aside and make
15 up your mind based upon what you hear in court while court is
16 in session?

17 Juror 304: Yes.

18 The Court: Very well. Thank you. Please stay with us.
19 (The bench conferences concluded.)

20 The Court: Okay? Anyone else? Okay. Thank goodness
21 no one's in labor. Oh, I should stay down here. Ladies and
22 gentlemen, let me tell you what happens next. In just a
23 moment I'm going to turn this over to our esteemed clerk, and
24 she's going to take the matters over and she will call names
25 which will be randomly called and randomly selected. And on

1 behalf of the State, do you waive the selection of the jury
2 by a small child or by a blind person? Small child or blind
3 person. That's the old law. That's before we got
4 computerized and we had the chief justice---

5 **Ms. Garfield:** Oh, yeah.

6 **The Court:** ---give an administrative order saying we
7 could do it by computer.

8 **Ms. Garfield:** Yes, ma'am.

9 **The Court:** But I always feel compelled to ask.

10 **Ms. Garfield:** Yes, ma'am.

11 **The Court:** Very well. On behalf of the defense?

12 **Mr. Sawyer:** I'm sorry?

13 **The Court:** That was new, different. Y'all are making
14 me feel old.

15 **Ms. Garfield:** I remember.

16 **The Court:** Do you waive the selection of the jury by a
17 small child or a blind person?

18 **Ms. Gibbes:** Oh, sure, Your Honor.

19 **The Court:** Oh, very well. Very well. All right.
20 Well, I would harken and call your attention to the chief
21 justice's administrative order that says that the jury could
22 be picked by someone - actually it's a statute - by someone
23 with whom the clerk has confidence. We have our clerk here
24 and the chief justice's order that allows the computer to
25 assist in that regard. Very well. And the computer assisted

1 in that regard; is that correct?

2 **The Clerk:** That's right, Your Honor.

3 **The Court:** And it is a random selection?

4 **The Clerk:** Yes, Your Honor.

5 **The Court:** Very well. And you did that yourself?

6 **The Clerk:** Our clerk downstairs did---

7 **The Court:** The clerk downstairs did that who is your
8 jury coordinator.

9 **The Clerk:** That's correct.

10 **The Court:** Very well. Whose name is?

11 **The Clerk:** Sheila Williams.

12 **The Court:** Thank you. Now, ladies and gentlemen, if
13 your name is called, if you brought an umbrella with you or a
14 pocketbook or whatever, bring it with you and then just make
15 your way to the end and come stand. I don't know. Oh, y'all
16 like them to stand behind here. Here. And don't launch into
17 like -- what is it? "My Way" that Frank Sinatra sang? Just
18 stand here.

19 And I would like to tell you that about 20 years in
20 Dorchester County I sat like you're sitting and my name was
21 called, and the only thing I can remember is I didn't know
22 what to do with my hands. I wish I could have left them at
23 my seat. Bring your hands with you when you come and just
24 stand here.

25 You are first going to hear from the State and you're

1 going to hear one of two things. You're going to hear
2 either, "Present the juror," and you'll continue to stand
3 here or, "Excuse the juror." If you hear, "Excuse the
4 juror," please just take your seat back out in the audience.

5 Let me hasten though to tell you that if you are
6 excused, I want you to know that these lawyers mean you no
7 embarrassment whatsoever. There are like two million
8 instantaneous decision-making things that go into their
9 decision-making, and I promise you one of the things that
10 doesn't go into the decision-making promise (sic) or process
11 is to embarrass you. They mean you no embarrassment
12 whatsoever.

13 So if you are -- if you hear, "Present the juror,"
14 you'll continue to stand here, and then you'll hear from one
15 of the attorneys for the defense who will then either say,
16 "Excuse the juror," and if they say that, please again know
17 they mean you no embarrassment. Take your seat back out in
18 the audience. Or, "Seat the juror," and you'll come over
19 here and take your seat.

20 Now, five strikes for the State and ten for the defense,
21 and do you think we need one or two alternates? Two?

22 **Ms. Garfield:** Two.

23 **The Court:** Two alternates. Very well then. The State,
24 one, and the defense two for each alternate, and I'm going to
25 get out of your way. Thank you, ma'am.

1 **The Clerk:** Thank you, Your Honor. Ladies and gentlemen
2 of the jury panel, as I call your number, please come to the
3 microphone, bringing any personal belongings with you.
4 Number 186. What says the State?

5 **Ms. Garfield:** Please present the juror.

6 **The Clerk:** What says the defense?

7 **Ms. Gibbes:** Please seat this juror.

8 **The Clerk:** Please have a seat in the jury box. Number
9 105. What says the State?

10 **Ms. Garfield:** Please excuse the juror.

11 **The Clerk:** Please have a seat in the back of the
12 courtroom. Number 54. Number 54. What says the State?

13 **Ms. Garfield:** Please excuse the juror.

14 **The Clerk:** Please have a seat in the back of the
15 courtroom. Number 122. What says the State?

16 **Ms. Garfield:** Please present the juror.

17 **The Clerk:** What says the defense?

18 **Ms. Gibbes:** Please excuse this juror.

19 **The Clerk:** Please have a seat in the back of the
20 courtroom. Number 145. What says the State?

21 **Ms. Garfield:** Please present the juror.

22 **The Clerk:** What says the defense?

23 **Ms. Gibbes:** Please seat this juror.

24 **The Clerk:** Please have a seat in the jury box. Number
25 279. What says the State?

1 **Ms. Garfield:** Please present the juror.

2 **The Clerk:** What says the defense?

3 **Ms. Gibbes:** Please seat this juror.

4 **The Clerk:** Please have a seat in the jury box. Number
5 218. What says the State?

6 **Ms. Garfield:** Please present the juror.

7 **The Clerk:** What says the defense?

8 **Ms. Gibbes:** Please excuse this juror.

9 **The Clerk:** Please have a seat in the back of the
10 courtroom. Number 166. What says the State?

11 **Ms. Garfield:** Please present the juror.

12 **The Clerk:** What says the defense?

13 **Ms. Gibbes:** Please seat this juror.

14 **The Clerk:** Please have a seat in the jury box. Number
15 272. What says the State?

16 **Ms. Garfield:** Please present the juror.

17 **The Clerk:** What says the defense?

18 **Ms. Gibbes:** Please excuse this juror.

19 **The Clerk:** Please have a seat in the back of the
20 courtroom. Number 51. What says the State?

21 **Ms. Garfield:** Please present the juror.

22 **The Clerk:** What says the defense?

23 **Ms. Gibbes:** Please excuse this juror.

24 **The Clerk:** Please have a seat in the back of the
25 courtroom. Number 97. What says the State?

1 **Ms. Garfield:** Please present the juror.

2 **The Clerk:** What says the defense?

3 **Ms. Gibbes:** Please seat this juror.

4 **The Clerk:** Please have a seat in the jury box. Number

5 39. What says the State?

6 **Ms. Garfield:** Please present the juror.

7 **The Clerk:** What says the defense?

8 **Ms. Gibbes:** Please excuse this juror.

9 **The Clerk:** Please have a seat in the back of the

10 courtroom. Number 20. What says the State?

11 **Ms. Garfield:** Please present the juror.

12 **The Clerk:** What says the defense?

13 **Ms. Gibbes:** Please excuse this juror.

14 **The Clerk:** Please have a seat in the back of the

15 courtroom. Number 120. What says the State?

16 **Ms. Garfield:** Please present the juror.

17 **The Clerk:** What says the defense?

18 **Ms. Gibbes:** Please seat this juror.

19 **The Clerk:** Please have a seat in the jury box. Number

20 177. What says the State?

21 **Ms. Garfield:** Please present the juror.

22 **The Clerk:** What says the defense?

23 **Ms. Gibbes:** Please seat this juror.

24 **The Clerk:** Please have a seat in the jury box. Number

25 132. What says the State?

1 Ms. Garfield: Please present the juror.

2 The Clerk: What says the defense?

3 Ms. Gibbes: Please seat this juror.

4 The Clerk: Please have a seat in the jury box. Number
5 44. What says the State?

6 Ms. Garfield: Please excuse this juror.

7 The Clerk: Please have a seat in the back of the
8 courtroom. Number 67. What says the State?

9 Ms. Garfield: Please present the juror.

10 The Clerk: What says the defense?

11 Ms. Gibbes: Please present this juror.

12 The Clerk: Please have a seat in the jury box. Number
13 57. What says the State?

14 Ms. Garfield: Please present the juror.

15 The Clerk: What says the defense?

16 Ms. Gibbes: Please excuse this juror.

17 The Clerk: Please have a seat in the back of the
18 courtroom. Number 304. What says the State?

19 Ms. Garfield: Please present the juror.

20 The Clerk: What says the defense?

21 Ms. Gibbes: Please excuse this juror.

22 The Clerk: Please have a seat in the back of the
23 courtroom. Number 293. What says the State?

24 Ms. Garfield: Please present the juror.

25 The Clerk: What says the defense?

1 **Ms. Gibbs:** Please seat this juror.

2 **The Clerk:** Please have a seat in the jury box. Number
3 179. What says the State?

4 **Ms. Garfield:** Please present the juror.

5 **The Clerk:** What says the defense?

6 **Ms. Gibbs:** Please excuse this juror.

7 **The Clerk:** Please have a seat in the back of the
8 courtroom. Strike count is three for the State and nine for
9 the defense. Number 221. What says the State?

10 **Ms. Garfield:** Please present the juror.

11 **The Clerk:** What says the defense?

12 **Ms. Gibbs:** Please seat this juror.

13 **The Clerk:** Please have a seat in the jury box. Number
14 103. What says the State?

15 **Ms. Garfield:** Please present the juror.

16 **The Clerk:** What says the defense?

17 **Ms. Gibbs:** Please seat this juror.

18 **The Clerk:** Please have a seat in the jury box. Please
19 proceed to strike alternates. Number 292. What says the
20 State?

21 **Ms. Garfield:** Please present the juror.

22 **The Clerk:** What says the defense?

23 **Ms. Gibbs:** Please seat this juror.

24 **The Clerk:** Please have a seat in the jury box. Number
25 102. What says the State?

1 **Ms. Garfield:** Please excuse this juror.

2 **The Clerk:** Please have a seat in the back of the
3 courtroom. Number 155. Does the State challenge for cause?

4 **Ms. Garfield:** No, ma'am.

5 **The Court:** What says the defense?

6 **Ms. Gibbes:** Please seat this juror.

7 **The Clerk:** Please have a seat in the jury box.

8 (Whereupon, the jury was impaneled at 2:57 p.m. The
9 jurors who were not impaneled were excused from the
10 courtroom.)

11 **The Court:** Ladies and gentlemen, I need to give you
12 just a little bit of instruction, and I'm going to do that
13 now. First of all, Mr. Rozell?

14 **Juror Williams:** Yes, ma'am.

15 **The Court:** Hi, Mr. Rozell. You are one of our two
16 alternates, along with Ms. -- I'm going to mess this up.
17 Tell me.

18 **Juror Leitch:** Leitch.

19 **The Court:** Leitch. You are our alternates. I'm going
20 to ask you to do this for me if you'd be so kind: If you all
21 will keep those seats for me right there. Now, if y'all want
22 to switch and have a little ol' -- you don't have to. You
23 don't have to right now, but if you get bored and y'all talk
24 about it and y'all want to switch just because you're bored,
25 switch right on up, but I need you to keep those two seats

1 literally so that I can keep up with you as our alternates.
2 So if you would do that for me, I would be so grateful to you
3 for that.

4 Now, ladies and gentlemen, our law provides that there
5 should be one of your number who serves as the presiding
6 juror, serves as the presiding juror, and the presiding juror
7 has three additional tasks of the juror. First of all, the
8 presiding juror will actually take possession of the verdict
9 form, and once the deliberations of the jury have concluded,
10 the presiding juror will simply write the verdict of the jury
11 on the verdict form.

12 Secondly, the presiding juror presides in the jury room
13 during the deliberations, and I promise you there will be no
14 question in your minds when that time has come because I will
15 tell you: Now it is time for you to deliberate. There will
16 be no question. But at that point the presiding juror will
17 preside in the jury room just to be sure that everybody has a
18 chance to talk. And finally, finally, the presiding juror is
19 the jury spokesperson here in court. In other words, if the
20 jury needs to communicate with me for whatever reason, the
21 presiding juror would take that down in writing, give it
22 probably to one of our bailiffs who will, in turn, give that
23 to me. Those are the additional tasks of the presiding
24 juror.

25 Ladies and gentlemen, I'm going to ask you during one of

1 our breaks to select your own presiding juror. When that
2 person has been selected, you can -- I want you to take this
3 seat right here closest to the corner so I can keep an eye on
4 you as the presiding juror. Unfortunately for you, one of
5 the preeminent qualifications for the presiding juror is that
6 you got the seat, but I'm going to leave that up to y'all.

7 Now, when you have been selected to serve, you can give
8 me a little note that says, "I have been selected to serve as
9 the presiding juror," or you can just tell me when you walk
10 in or tell our bailiff who will, in turn, tell me or you can
11 just keep the same seat and see if I figure it out. Any one
12 of those three methods is perfectly fine. I just need to
13 know who our presiding juror is prior to the conclusion of
14 the trial.

15 Now, ladies and gentlemen, in just a moment I am going
16 to be dismissing you for the evening, but I do need to give
17 you some instruction. The first thing that I want to ask is:
18 Does anyone work at night? Does anybody think they're going
19 to be leaving now and going to work? What are your hours?

20 Juror: 4:30 to 10.

21 The Court: Not tonight.

22 Juror: Not tonight?

23 The Court: Not tonight. I need you rested. I need you
24 rested. Now, if you -- when you call your employer, if they
25 are the least bit concerned, if you'll give me a name and

1 phone number I'd be happy to have a conversation in the
2 morning.

3 **Juror:** Yeah, I'm going to have to do that.

4 **The Court:** It is not going to be a problem. You just
5 tell them that Judge Goodstein has told you that you are to
6 rest tonight, and the reason is is if folks who work during
7 the day -- they miss their employment, but they rest at
8 night. I need you to rest tonight so that you are able to be
9 attentive and not be tired, particularly tomorrow afternoon,
10 to be honest. So I need you crisp and sharp tomorrow, so I
11 need you to rest this evening. And, again, if you'll get a
12 name and number for me, I'll be happy to make a phone call
13 for you in the morning, if that's necessary.

14 Now -- now, ladies and gentlemen, I'm going to give you
15 this instruction: Do not discuss this matter or allow anyone
16 to discuss it with you. I give you that instruction now, and
17 you would at this point probably wonder: Why would I do that
18 now? Well, I've introduced you to some folks. I've read you
19 some of the allegations contained in the indictment. You've
20 got a little bit of information, and because of that
21 information I must instruct you: Do not discuss this matter
22 or allow anyone to discuss it with you.

23 Now, please do not do any investigations either now or
24 throughout this trial. You must, you must, receive all of
25 the information from which you will make up your mind here in

1 court while court is in session. No Columbo. Do not go to
2 the internet. Do not do any research. Do not go to any
3 particular locations that you think might have some
4 relevance. Again, you must make up your mind based solely on
5 what you hear in court while court is in session.

6 Now, do not blog. Do not tweet. Do not go to Facebook.
7 Do not Link In. Do not have any kind of social media with
8 regards to this case. You must not discuss this matter with
9 anyone or allow anyone to discuss it with you, and that means
10 those, you know, unknown people out in social networking
11 land; that is included as well.

12 Your family or someone who may be curious about -- when
13 you go home about what you have been up to today -- it is
14 perfectly fine to say, "I reported for my jury service. I
15 have been selected to serve." And the next question is: Is
16 it a civil case or a criminal case? It's perfectly fine to
17 say that it is a criminal case that you are serving on, but
18 beyond that you must not, you must not, discuss this matter
19 or allow anyone to discuss it with you.

20 However, I don't want anybody upset with you. So you be
21 sure you put it on the judge, and you tell whomever is
22 curious that the judge has told you that. Don't you take any
23 upset. You just be sure you put it on the judge.

24 Now, ladies and gentlemen, when you have been dismissed
25 from your service on this jury -- and, again, there will be

1 no question in your minds when that time has come because
2 we'll talk about it. You will be able to discuss this case
3 then if you want to, if you choose to, but until you have
4 been so instructed by me, you must not discuss this matter or
5 allow anyone to discuss it with you.

6 In fact, should anyone try to discuss this matter with
7 you, I want you to get their name or a description and report
8 that to me immediately upon your return to court and I will
9 deal with that individual. It is imperative that no one
10 communicate with you about this case.

11 And why would that be so? Why would that be so? Let me
12 tell you: Here is what we've learned about ourselves over
13 200-plus years of trying cases. We now know that when we
14 begin to talk about a case, to talk about an issue, to talk
15 about a matter, anything, we begin to have opinions about it.
16 Ladies and gentlemen, tomorrow morning you're going to be
17 sworn in as the jury in this case, and it is going to be
18 absolutely critical that you are able to listen open-mindedly
19 to all the evidence that is presented to you and that you not
20 make up your mind about anything until you have heard all of
21 the evidence, the arguments of counsel, and my charge on the
22 law. The reason that I give to you the instruction not to
23 discuss the matter or allow anyone to discuss it with you is
24 to support your ability to listen open-mindedly to all the
25 evidence, so that's the reason that I wanted that

1 instruction.

2 Now, please do not bring with you to court tomorrow a
3 cell phone, a Kindle, an iPad, or any other communication
4 device. Please do not. I don't mind sharing with you why.
5 Several years ago we had a jury in Charleston and they were
6 deliberating and that jury reached a -- just reached a
7 discussion point. One of the jurors says, "Oh, I got this.
8 I've got a friend who knows all about it. I got this."
9 Pulled out the cell phone, made the phone call, called up the
10 friend, and the complete trial had to be scrapped and started
11 over because there was information that was injected into the
12 jury that wasn't received in court while court was in
13 session. Now we ask our jurors to be sure that they leave
14 all of their communication devices away from the courthouse.

15 Now, having said that, we are all tethered to our cell
16 phones. We just don't -- and we're getting about to where
17 we're tethered either to a laptop or a Kindle or an iPad. If
18 you forget, if you forget, please just turn over the session
19 of your communication device, your cell phone or whatever, to
20 one of our bailiffs and they will take good care of it until
21 either our morning break when you can take it to your car or
22 perhaps the lunch break when you can take it to your car or
23 other safekeeping place. You must not -- you must not serve
24 on the jury with your cell phone or other communication
25 device.

1 Now, if you think you're going to turn that puppy off
2 and put it in your pocketbook or your pocket, I promise you:
3 You know it will turn itself back on and it will ring; you
4 just know it will. So don't put yourself in that position.
5 If you forget, and we're all human, just please come and give
6 your cell phone to our bailiffs and they will keep good care
7 of it for you until you can take it either home or take it to
8 your automobile or otherwise.

9 Now, do not listen to anything. Do not read anything
10 about this particular case. I don't know if there will be
11 any publicity about this matter. I don't have a clue at this
12 point. But in an abundance of precaution, I'm going to tell
13 you: Don't not read anything about this matter. Do not
14 listen to anything about this matter, and that means the
15 radio, the television, the newspaper or the internet. Or the
16 internet. You must again -- and finally, hopefully, you must
17 receive all of the information in which you'll make up your
18 mind here in court while court is in session and not from the
19 internet, not from the television, and not from the
20 newspaper.

21 Now, I think that will conclude my comments for you
22 today. Ladies and gentlemen, is there anyone that would be
23 overly burdened if we started in the morning at 9:00? Could
24 you be here ready to go at 9? Wonderful. We're going to
25 start in the morning at 9:00.

1 Ladies and gentlemen, what I do want our wonderful
2 bailiffs to do for you is now just to take you and show you
3 your jury room, and then they're going to show you how to
4 come and go from your jury room. Without further ado, ladies
5 and gentlemen, have a very pleasant evening, and I look
6 forward to seeing you in the morning at 9:00. Thank you so
7 much.

8 (Whereupon, the jury was excused from open court for the
9 day at 3:11 p.m.)

10 The Court: All right. And you all know that we're
11 going to be able to continue on Thursday. Everybody knows
12 that.

13 Ms. Gibbes: Yes.

14 The Court: I just want to be sure that it's noted. All
15 right. Great. Okay. Are y'all ready to -- I believe we
16 have some pretrial matters. Y'all ready?

17 Ms. Bodman: Judge, just before we proceed, we just want
18 to put on the record that we have no objection to the jury
19 selection process or---

20 The Court: Thank you kindly.

21 Ms. Bodman: ---or the panel.

22 The Court: Thank you. Yes. And how about for the
23 defense? Are there any matters?

24 Mr. Sawyer: Judge, I never actually ran into this
25 before, but I think we have to make a Batson objection.

1 **The Court:** No problem at all. Thank you kindly. If we
2 need to retrieve the jury, we certainly can do that. That is
3 not a problem. We can do the panel in the morning if we need
4 to. I should have asked -- actually, this is the first time
5 in 15 years I failed to do that before now, but it's not a
6 problem. We can certainly summon our jury in the morning.
7 That is absolutely not a problem, if we need to. And let me
8 hear from you, please, sir.

9 **Mr. Sawyer:** Judge, again, I've been doing this five and
10 a half years. I've never run into this honestly. All four
11 of the jurors that were struck by the State were all black
12 males about 50 years old or so. I think that's the concern
13 that's in Batson that if there's all one race that's struck,
14 then the State is required at that point to give race-neutral
15 reasons at least to say why it wasn't based on this.

16 **The Court:** All right. Let's see. Let me get there.
17 All right. Let me hear from the State. We will begin with
18 -- is it Guider? Juror Number 105.

19 **Ms. Garfield:** Yes, Your Honor. Juror Number 105 had a
20 disorderly conduct where he actually went to trial and it
21 came back not guilty. Since he had been through the trial
22 process, I didn't want to put him on our jury.

23 **The Court:** Very well.

24 **Ms. Garfield:** The next juror, Juror Number 54, has a
25 seventh grade education. That caused me some reservations,

1 especially considering there will be testimony concerning
2 D.N.A. Not to insult him, but I did have a hesitation.

3 Juror -- I believe the next one was Juror Number 44. He
4 has a conviction for prostitution as well as I observed him
5 all during your qualifications to be sleeping.

6 The Court: I'm sorry. And juror number?

7 Ms. Garfield: 44.

8 The Court: Where is he on the list?

9 Ms. Garfield: He is---

10 The Court: I got it. Yes. Okay.

11 Ms. Garfield: And lastly, Juror Number 102, he's
12 19 years of age. I just thought he was too young.

13 The Court: All right. Yes?

14 Mr. Sawyer: Your Honor, I mean, that's just -- I still
15 maintain my objection that it was all based on race.

16 The Court: In other words, you believe that the -- just
17 the general statement that it's based on -- that the strikes
18 were, in fact, based on race.

19 Mr. Sawyer: Correct.

20 The Court: Very well. I would respectfully deny your
21 motion for this reason. Of course, the burden remains with
22 you to show that the strikes were pretextual, and as we know
23 from Payton versus Kearsse, the way to show that, if you will,
24 is that there were similarly-situated jurors who were of a
25 different race, since race was the issue that you raised, who

1 are similarly situated as the individuals who were struck.
2 So I would respectfully deny your motion, noting your
3 exception thereto.

4 Mr. Sawyer: Thank you, Your Honor.

5 The Court: Very well. All right. All right. Now are
6 you ready?

7 Ms. Garfield: Yes, ma'am.

8 The Court: Great.

9 Ms. Bodman: The State would call Melanie May.

10 Ms. Gibbs: Your Honor, I would -- I hate to do this.
11 We haven't passed out our motions list, and I would object
12 and ask that these witnesses be sequestered since we're going
13 to do testimony before we get to any other issues.

14 The Court: Oh, very well. Well -- very well, except as
15 to the law enforcement case officer. I gather the victims;
16 is that right?

17 Ms. Gibbs: Yes, Your Honor.

18 The Court: Okay. What about that?

19 Ms. Gibbs: I would object to the victim as well, Your
20 Honor. I'm fine with law enforcement. I don't have a
21 problem with the lead investigator, one or two of them, but I
22 would object to the victims.

23 The Court: Okay.

24 Ms. Garfield: And they have a right under the victims'
25 bill of right to be present for all proceedings.

1 **The Court:** I concur. Very well. All right. Is anyone
2 in the courtroom who would be testifying other than the case
3 agent and, of course, the victims?

4 **Ms. Bodman:** Yes, Your Honor. Ms. Pressley.

5 **Ms. Garfield:** You mean testifying for pretrial or...

6 **The Court:** Pretrial.

7 **Ms. Garfield:** Pretrial?

8 **The Court:** Well, I think -- Dolly, I think -- actually
9 I think in the trial at all. I think they need to be
10 dismissed.

11 (Pause in proceedings while the witnesses were
12 sequestered.)

13 Melanie May, after being duly sworn, testified as
14 follows in camera:

15 **The Clerk:** Please have a seat in the witness stand, and
16 state your full name for the record. Please spell your first
17 name.

18 **The Witness:** Melanie Player May. M-E-L-A-N-I-E.

19 **The Court:** All right. Yes. Your witness.

20 Direct Examination

21 By Ms. Bodman:

22 Q. Ms. May, where do you work?

23 A. Nationwide Insurance, the Clark Farley Agency.

24 Q. And how long have you worked there?

25 A. Since '99.

1 Q. Okay. And did you have occasion back in July of 2010 to
2 sit down and speak with Investigator Josh Mauldin?

3 A. Yes.

4 Q. Okay. Where was your business located at this time in
5 July of 2010?

6 A. 8313 Two Notch Road.

7 Q. And in relations to Palmetto Citizens Bank, how far away
8 is that?

9 A. About two buildings away.

10 Q. Okay. And did you eventually -- or at some point did
11 you become aware of a robbery that had occurred at that bank?

12 A. Yes.

13 Q. Okay. And you may not know the exact date that you sat
14 down with Investigator Mauldin, but in relation to when the
15 robbery occurred, when did you meet with Mauldin?

16 A. One or two days later.

17 Q. Okay. The morning of the robbery at the bank, what, if
18 any, information did you have possibly related to that
19 robbery?

20 A. Well, I had a gentleman try to come -- my office was
21 locked; we weren't open yet. And a gentleman tried to come
22 and get water. The door was locked and I motioned him to the
23 side where we had a water spigot. And so I watched him walk
24 up to the door, and I told him we were closed and he could
25 get water on the side of the building and then watched him

1 walk from my office.

2 Q. Okay. And so what time of day was this when it
3 occurred?

4 A. Right around 8:30 in the morning.

5 Q. Okay. And do you recall what the lighting conditions or
6 the weather was like that day?

7 A. It was hot. I mean, it was summer, South Carolina. It
8 was -- you know, I mean, the sun was already up and it was,
9 you know, totally light outside and warm.

10 Q. Okay. And did you actually speak face to face or did
11 you have some kind of barrier between the two of y'all when
12 you spoke?

13 A. There's a paned-door window. I mean, the glass goes
14 from top to bottom, but it does have panes in it.

15 Q. Okay. Clear glass or frosted glass---

16 A. Yeah, clear glass.

17 Q. Okay. And how long do you think that your interaction
18 with this person was that morning?

19 A. Less than ten seconds.

20 Q. Okay. But about -- even with the door, about how close
21 to him were you?

22 A. About as far as you and I are away from each other.

23 Q. Okay. So that next day---

24 **The Court:** Could you have her just estimate that for
25 our record?

1 **The Witness:** Less than ten yards. I know football.

2 By Ms. Bodman:

3 Q. When you sat down with Investigator Mauldin, did you
4 give him a statement or the information that you had?

5 A. Yes.

6 Q. Okay. And do you recall also looking at some
7 photographs to see if you could identify that person that you
8 saw?

9 A. Yes.

10 (State's Exhibit 1 was marked for identification only.)

11 By Ms. Bodman:

12 Q. I'm going to show you what we have marked as State's
13 Exhibit Number 1, and just take a look at that and see -- do
14 you recognize that?

15 A. Yes. Those are my initials.

16 Q. Okay. So is your handwriting on this State's Exhibit
17 Number 1?

18 A. Yes.

19 Q. Okay.

20 A. My signature and initials.

21 Q. And initials. Okay. And can you tell us what you
22 remember about being presented those photographs, what you
23 were asked or told---

24 A. Yeah.

25 Q. ---and what you did?

1 A. He just said he was going to show me some pictures and
2 if any of the -- I needed to just let him know if any of them
3 looked like the person that I saw that had come by my office
4 that morning, and he just put the pictures in front of me and
5 I looked at them and pointed at the one.

6 Q. Okay. And you said that you pointed at the one, and
7 what did you indicate about that one?

8 A. Well, I mean, as soon as I saw the face, it was -- I
9 mean, it was the same face. It looked the same to me as the
10 person that I had seen come by my office.

11 Q. Okay. And so then how did you document on State's
12 Exhibit Number 1 the person that you saw at your office?

13 A. I circled and put my initials.

14 Q. Okay. And then did you also sign I guess---

15 A. Yes.

16 Q. ---at the bottom?

17 A. Yes, signed and put my address and phone number.

18 **Ms. Bodman:** Okay. I have no further questions at this
19 time. I'll hand the State's Exhibit Number 1 to defense
20 counsel.

21 **The Court:** All right. Cross-examination.

22 **Mr. Sawyer:** Thank you, Your Honor.

23 **The Court:** Yes.
24
25

Cross-Examination

By Mr. Sawyer:

Q. Ms. May, were you aware the robbery had occurred that same day that it occurred?

A. Later in the day, yes, sir. Well, I mean, we heard the police sirens go by because we're on the same street as the bank, so we were aware that something happened, and then I found out a few hours later that there was a robbery at the bank.

Q. How did you find out about that?

A. I think my boss walked down just to make sure that everything was okay down there, and he came back and let us know.

Q. And you said you think it was about two days after the robbery occurred that you talked to Investigator Mauldin?

A. Yes, sir.

Q. Okay. Did you see any video of this bank robbery prior to you talking to Investigator Mauldin? I believe there was a crime -- it was on the news that night.

A. No.

Q. No? Okay. Did you talk to any of the bank personnel that had been involved prior to talking to Investigator Mauldin?

A. No.

Q. Investigator Mauldin, when he showed you that six-pack,

1 was he sitting -- this line-up -- was he sitting next to you
2 at the time?

3 A. Across the desk.

4 Q. Okay.

5 A. No. Let me remember. No. We were across the desk from
6 each other.

7 Q. Okay. Did he say anything along the lines of there
8 being a gentleman that might have been there in the six-pack
9 that day?

10 A. No. He just asked me if any of those people resemble --
11 I don't know the exact wordage but looked like the guy that I
12 had seen that day.

13 Q. Did he tell you that one of those people were involved
14 in the robbery that day?

15 A. I mean, I don't remem -- I think at that point I had
16 essentially put that together. I don't remember him saying
17 that, no.

18 Q. Okay. And it was just these six pictures that were
19 shown to you all in that same form and fashion like you see
20 right here?

21 A. I mean, I remember where his picture was. To be honest,
22 I couldn't for sure say the other five were in the same exact
23 spot.

24 Mr. Sawyer: Okay. Thank you. Nothing further, Judge.

25 The Court: Any redirect?

1 Ms. Bodman: No, Your Honor.

2 The Court: All right. Thank you so much. You can come
3 down. And is she free to leave for the day or do you wish
4 her to stay?

5 Ms. Bodman: Yes, if she could be excused for the day.

6 Ms. Gibbes: No objection.

7 The Court: All right. Thank you so much. Call your
8 next witness.

9 Ms. Garfield: The State calls Kerry Robinson.

10 Kerry N. Robinson, after being duly sworn,
11 testified as follows in camera:

12 The Clerk: Please have a seat in the witness stand.
13 State your full name for the record, and please spell your
14 first name.

15 The Witness: Kerry Nathan Robinson. K-E-R-R-Y.

16 Direct Examination

17 By Ms. Garfield:

18 Q. Mr. Robinson, back in July of 2010 where were you
19 employed?

20 A. Palmetto Citizens.

21 Q. And is that a bank?

22 A. Credit union.

23 Q. Can you tell us for the record where that bank is
24 located?

25 A. I believe it's 114 Atrium Way.

Kerry Robinson (in camera) - direct exam by Ms. Garfield 65

1 Q. And what area of the county is that located?

2 A. Richland.

3 Q. Mr. Robinson, can you recall specifically being involved
4 in a crime on July 26th, 2010?

5 A. Yes, I can.

6 Q. And where were you when this crime occurred?

7 A. I was, if you're walking into the credit union, the
8 first teller station to your left.

9 Q. And you were working at the teller station?

10 A. Yes, ma'am.

11 Q. And what were your duties at the bank at that time?

12 A. Member service representative or bank teller.

13 Q. Just share with the judge - she doesn't know the facts
14 of the case - what happened to you that day.

15 A. Well, we're taught when somebody comes into the door to
16 greet them and let them know that, hey, I can assist you.
17 And when this person walked in, he was letting me know --
18 well, he walked in and then I greeted him and said, you know,
19 "Come on up; I can help you." And that's when he attempted
20 to rob me. He came in with gloves and, of course, a bag and
21 he pointed the gun to me and told me to give him his -- give
22 me -- give him the money and so, of course, that's what I
23 did. And afterwards he left.

24 Q. What time of day did this occur?

25 A. This was early in the morning.

1 Q. Was there good lighting in the bank?

2 A. Yes, ma'am.

3 Q. And how close was the defendant to you -- the person
4 that robbed you to you when the robbery occurred?

5 A. The teller station is about like this, so he was about
6 as close as like right here.

7 Q. If you can explain for the record, because she's writing
8 all this down, the approximate lengths that you just
9 described.

10 A. About a foot and a half away from me.

11 Q. Did you look at the person robbing you?

12 A. I did.

13 Q. Did you get a good look at him?

14 A. Yes, ma'am.

15 Q. Subsequently the next day, did Investigator Mauldin come
16 and talk to you?

17 A. Yes, ma'am.

18 Q. And did he show you a variety of pictures?

19 A. Yes.

20 Q. Can you explain to the judge how the pictures looked?

21 A. It was six -- it was about six or eight pictures of
22 different people, and he asked me if I recognized any of
23 those, and I told him that I did and I circled it.

24 Ms. Garfield: Beg the Court's indulgence.

25 (State's Exhibit 2 was marked for identification only.)

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1 By Ms. Garfield:

2 Q. And I'm sorry; I said Investigator Mauldin. I meant
3 Lieutenant McDonald. A law enforcement officer came and
4 talked to you; is that correct?

5 A. Correct.

6 Q. I'm going to show you what's been marked as State's
7 Exhibit Number 2. Do you recognize this exhibit?

8 A. Yes, ma'am, I do.

9 Q. And can you explain to the judge what that document
10 represents?

11 A. It represents I guess a line-up of who may have been
12 there that day, and he asked me if I recognized anybody that
13 was -- that was in here or if I recognized the person that
14 was here that robbed me that day and I told him that I did
15 and I circled it and put my initials there.

16 Q. And which number picture did you circle?

17 A. Photo number two.

18 Q. And do you recognize your initials on that document?

19 A. Yes, ma'am, I do.

20 Q. As well as do you recognize your signature?

21 A. Yes, ma'am.

22 Q. And what did you mean when you recognized number two as
23 being the person that did what?

24 A. That came in and robbed me and held me at gunpoint.

25 Q. How long did it take you to recognize that picture?

1 A. Instantly. It had just happened yesterday.

2 Q. And did the law enforcement officer that showed you
3 that, did he suggest to you in any way the person to pick?

4 A. No, ma'am.

5 Q. Did he give you any hints?

6 A. No, ma'am.

7 Q. Did he tell you that the person that robbed you is
8 definitely in those pictures?

9 A. No, ma'am.

10 Q. Anybody help you pick out that photograph?

11 A. No, ma'am.

12 Q. Thank you, Mr. Robinson. Please answer any questions
13 defense counsel may have.

14 The Court: Cross-examination.

15 Mr. Sawyer: Thank you, Your Honor. Briefly.

16 Cross-Examination

17 By Mr. Sawyer:

18 Q. Mr. Robinson, similar questions. Did you happen to view
19 a video from the bank before you sat down with Investigator
20 McDonald and looked at those pictures?

21 A. You mean the cameras?

22 Q. Uh-huh.

23 A. I believe I -- I can't recall doing that. I can't
24 recall looking at videos.

25 Q. Okay. Do you remember seeing at all any video that

Brandy Broughton (in camera) - direct exam by Ms. Bodman 69

1 evening on the news?

2 A. I definitely didn't on the news.

3 Mr. Sawyer: Okay. Nothing further, Judge.

4 The Court: Okay. Redirect?

5 Ms. Garfield: No, ma'am.

6 The Court: All right. This gentleman -- I'm sure he
7 wishes some instruction, too. Does he need to remain?

8 Ms. Garfield: I'll talk to him.

9 The Court: Okay. Very well. If you will just remain,
10 they'll let you know. All right. Call your next witness,
11 please.

12 Ms. Bodman: The State calls Brandy Broughton.

13 Brandy L. Broughton, after being duly sworn,
14 testified as follows in camera:

15 The Clerk: Please have a seat in the witness stand, and
16 state your full name for the record and please spell your
17 first name.

18 The Witness: Brandy Lee Broughton. B-R-A-N-D-Y.

19 Direct Examination

20 By Ms. Bodman:

21 Q. And, Ms. Broughton, what was your name at the time,
22 July 26th of 2010?

23 A. It was Brandy Lee Manack-Libertini.

24 Q. Okay.

25 Court Reporter: Can you spell that?

1 **The Witness:** Yes. It is B-R-A-N-D-Y and then the last
2 name is M-A-N-A-C-K hyphen L-I-B-E-R-T-I-N-I.

3 By Ms. Bodman:

4 Q. And where were you working July 26th of 2010?

5 A. Palmetto Citizens Federal Credit Union.

6 Q. Okay. In the early morning hours who were you standing
7 next to? Where were you working in the bank?

8 A. I was actually standing right next to Kerry. Say this
9 is the teller station just as he described. There was -- say
10 we split this in half. Kerry was over here; Tamika Pressley
11 was over here. There's a cash machine that sits in the
12 center. I was a little to the left, but pretty much I was in
13 the same cubicle as Kerry.

14 Q. Okay. And were you standing there when an individual
15 came in and robbed -- robbed Kerry and yourself?

16 A. Yes, ma'am.

17 Q. Okay. Tell us about what you recall about the lighting
18 in the bank that morning.

19 A. It was very bright. All the lights were working, as
20 Kerry stated. When somebody enters into the credit union, as
21 the supervisor I'm instructed to let everybody know: Look
22 up; heads up. Seven-up is what we call it. So, of course,
23 being the supervisor, I looked up, as did Kerry. The
24 lighting was fine; it was early morning.

25 Q. Okay. And when you looked up, did you see the

1 individual entering the bank or at what point did your eyes
2 go to this individual?

3 A. As soon as he walked in the door.

4 Q. Okay. And tell us how long you watched him, how long
5 you were looking at this person.

6 A. From the time that he entered the door until he left.

7 Q. Okay.

8 A. Uh-huh.

9 Q. Okay.

10 A. I didn't stare at him the whole time. I stared at him
11 when he walked in. When I was instructed not to move, I kind
12 of paid more attention to the gun than to him.

13 Q. Okay. And as we've been doing kind of with distances
14 is: How far away do you think you were from the person that
15 came in and robbed the bank? And tell me -- I guess maybe I
16 could either get closer or back up. You'll be standing, you
17 know, at the teller where you were and I could be him.

18 A. Say an arm-and-a-half length.

19 Q. Okay. Would you want me to get closer?

20 A. Closer.

21 Q. Okay. And tell me when to stop.

22 A. You can back up just a little bit. Right there.

23 Q. Okay. And so approximately how much distance can you
24 estimate this is?

25 A. Say I was standing, because that's kind of easier to do

1 it that way. The height is about that, so an arm-and-a-half
2 length.

3 Q. Okay.

4 A. If I could have, I could have reached over and have
5 actually touched the gun.

6 Q. Okay. And then you said that you essentially watched
7 him until he turned and left the bank?

8 A. I watched him walk out the door because we're always
9 told to observe the way that they leave.

10 Q. Okay.

11 A. And in my mind I was just trying to get everything that
12 I could remember of him.

13 Q. Okay. Okay. And after he left the bank, did you --
14 kind of what were your procedures at that point, all the
15 people that were involved in this, in the robbery?

16 A. We have very strict robbery procedures. Immediately I
17 yelled out, "Lock the doors. We've been robbed." At that
18 point I do not recall who locked the doors, and then I asked
19 if everybody was okay. They were. And then we were
20 instructed -- I instructed everybody to go and fill out
21 IDenticards.

22 Q. Okay.

23 A. And we do that separately.

24 Q. Okay. And so were you with anybody else -- I guess
25 Kerry or -- who was the other individual that was standing

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1 with you?

2 A. Tamika Pressley.

3 Q. Were you with either Kerry or Tamika when you filled out
4 these IDenticards?

5 A. No, we were separate.

6 Q. Okay. And did you subsequently have occasion to meet
7 with an investigator, I guess, and give a statement but also
8 look at some photographs?

9 A. Yes, ma'am.

10 Q. Okay.

11 (State's Exhibit 3 was marked for identification only.)

12 By Ms. Bodman:

13 Q. I'm going to show you State's Exhibit 3. Just take a
14 look at that and see if you recognize that.

15 A. I do.

16 Q. Okay. And what is this?

17 A. That is a line-up that was shown to me. Simply, I was
18 sitting across the desk from the investigator, and he said,
19 "Can you take a look at this and see if you recognize anybody
20 that may have come into the bank?"

21 Q. Okay. And did you recognize someone in this line-up?

22 A. Instantly photo number two and circled it and initialed
23 it.

24 Q. Okay. So that is your handwriting?

25 A. Yes, ma'am, it is.

1 Q. Okay. You said that you were with the investigator.
2 Was anybody else in the bank that worked with you in the bank
3 or anybody else present while you looked at this photo
4 line-up?

5 A. No, ma'am.

6 Q. Okay. Prior to meeting with the investigator, did you
7 know anything about whether anybody else had identified
8 anybody in a line-up or looked at any line-ups?

9 A. No. Huh-uh.

10 **Ms. Bodman:** No further questions at this time.

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

12 **Mr. Sawyer:** Thank you, Your Honor.

13 Cross-Examination

14 By Mr. Sawyer:

15 Q. Thank you, Ms. Broughton. Again, just briefly. Being
16 the supervisor, did you have access to the video at all?

17 A. I did not.

18 Q. Did you have the opportunity to review the video either
19 that evening or with Investigator Mauldin prior to this line-
20 up?

21 A. No, sir.

22 Q. And you didn't talk with anyone else about what -- you
23 didn't compare notes essentially with Mr. Robinson after this
24 event happened?

25 A. No, sir.

1 **Mr. Sawyer:** Thank you.

2 **The Court:** Redirect?

3 **Ms. Bodman:** No further questions.

4 **The Court:** Very well. You may come down. Thank you.

5 **The Witness:** Thank you.

6 **The Court:** All right. Call your next witness, please.

7 **Ms. Bodman:** Lieutenant McDonald.

8 Scott McDonald, after being duly sworn, testified
9 as follows in camera:

10 **The Clerk:** Please have a seat in the witness stand, and
11 state your full name for the record.

12 **The Witness:** Scott McDonald.

13 Direct Examination

14 By Ms. Bodman:

15 Q. And with whom are you employed?

16 A. The Richland County Sheriff's Department.

17 Q. Okay. How was it that you came -- became involved in
18 this armed robbery of the Palmetto Citizens Bank?

19 A. On July 26th, 2010, about 11:30 that morning a Deputy
20 Perry arrived at headquarters, had a copy of the video, some
21 questionnaires that were done, and informed myself and
22 Sergeant Isenhoward that there had been an armed robbery at
23 the bank that morning on Atrium Way.

24 Q. Okay.

25 A. This was our first notification of this incident. We

1 sat down with Deputy Perry, went over the information and the
2 incident report that he had, and began working on the case.

3 Q. Okay. So at that point you have a video of the actual
4 robbery.

5 A. That's correct.

6 Q. Okay. And was the visual of the robber's face -- how
7 would you, I guess, describe the quality of that video?

8 A. It was a good quality, and that was our main concern
9 which at that point, after viewing it and getting some still-
10 shots of the defendant, we asked our press information
11 officer to run it on the news that night in order to help
12 generate some tips.

13 Q. Okay. And so did you develop the defendant, Curtis
14 Schoclet, as a possible suspect as the person that committed
15 this robbery?

16 A. Yes, we did. Upon my arrival the next morning at work,
17 there were several Crimestoppers tips and tips that had been
18 called in to our desk sergeant identifying the defendant as
19 the suspect in this incident.

20 Q. Okay. So then what, if any, was your involvement in
21 putting photo line-ups together or a photo line-up together?

22 A. I did further background on the defendant, criminal
23 histories, and trying to get further information: Residences
24 and things like that. I then constructed a photo line-up, to
25 place him in that photo line-up to show to the witnesses at

1 the bank.

2 Q. Okay. And I'll go ahead and show you, I guess, all
3 three, 1, 2, and 3. Do you recognize these?

4 A. Yes. This -- this is all the same photo line-up and I
5 just printed three copies of it, but it's the line-up I
6 constructed July 27th.

7 Q. Okay. And were you involved in presenting a copy of
8 this photo line-up or one of these line-ups to one of the
9 witnesses?

10 A. I met with Mr. Robinson at the bank that morning.
11 Investigator Mauldin and myself responded to the bank to
12 speak with the witnesses and to present photo line-ups.

13 Q. Okay. And can you tell the judge about your meeting
14 with Kerry Robinson and presenting that photo line-up, how it
15 went, what you said to him and what happened?

16 A. I sat down with him and we went over what happened, took
17 a written statement on that. I then told him I had some
18 pictures I'd like for him to look at. I presented the photo
19 line-up to him, asked him if he saw anyone in the photo line-
20 up that could be involved in the robbery the previous
21 morning. He did study the line-up and literally within
22 seconds went right to position number two and indicated that
23 was the person that robbed the bank the previous morning.

24 Q. Okay. And who is in position number two?

25 A. Mr. Schoclet? Mr. Schoclet (different pronunciation).

1 I'm sorry.

2 Q. Okay. Do you see the person in photo number two sitting
3 in the courtroom today?

4 A. I do. He's sitting at the defense table with the khaki
5 shirt on.

6 Ms. Bodman: Okay. May the record reflect the witness
7 has identified the defendant?

8 The Court: Very well.

9 Ms. Bodman: No further questions at this time.

10 The Court: Cross-examination?

11 Mr. Sawyer: Thank you, Your Honor.

12 Cross-Examination

13 By Mr. Sawyer:

14 Q. Investigator McDonald, you go through regular training
15 such as we have to do as attorneys just to kind of learn how
16 to better do your job; correct?

17 A. That's correct.

18 Q. Have you ever been trained or received additional
19 methods on doing photo line-ups?

20 A. On-the-job training since I became an investigator back
21 in '94. I don't know of any formal classes or training on
22 photo line-ups that I'm aware of.

23 Q. Have you ever been trained on the ideas such as a
24 double-blind photo line-up, a single-blind photo line-up,
25 using singular pictures in stacks and anything along those

1 lines?

2 A. I'm aware that that is done in some places around the
3 country, yes.

4 Q. Do you know why that's done in some places around the
5 country?

6 A. I don't -- personal preference. I don't know why
7 certain jurisdictions may use that. I know it's our policy
8 at the sheriff's department to show a six-pack line-up.

9 Q. Do you know how long you've been using the six-pack
10 line-up at the sheriff's department?

11 A. Long before I came there.

12 **Mr. Sawyer:** All right. Nothing further, Judge.

13 **The Court:** All right. Redirect?

14 **Ms. Bodman:** Nothing further.

15 **The Court:** Thank you. Very well. Thank you. Your
16 next witness, please.

17 **Ms. Garfield:** Thank you, Your Honor. The State calls
18 Investigator Josh Mauldin.

19 Joshua Mauldin, after being duly sworn, testified
20 as follows in camera:

21 **The Clerk:** Please have a seat in the witness stand, and
22 state your full name for the record and please spell your
23 last name.

24 **The Witness:** Joshua Mauldin, Richland County Sheriff's
25 Department. I'm sorry. I'm now with the South Carolina

1 Criminal Justice Academy. That's M-A-U-L-D-I-N.

2 Direct Examination

3 By Ms. Garfield:

4 Q. Investigator Mauldin, you were working at the sheriff's
5 department in July of 2010?

6 A. Yes.

7 Q. And can you -- explain to the judge how you became
8 involved in the investigation of this armed robbery at the
9 Palmetto Citizens Federal Credit Union.

10 A. I believe on the morning of the 27th I was contacted by
11 Lieutenant McDonald and asked to respond to a residence on
12 Morninglo Drive and able to -- or in an effort to view a
13 house and see if a certain vehicle was there in reference to
14 a robbery that had ostensibly occurred I believe the day
15 before at Palmetto Citizens. Upon my return to headquarters,
16 I was informed that I was lucky enough to be assigned the
17 said robbery and that's how I became involved at that time.

18 Q. And after you got your assignment, did you go to the
19 credit union to talk with any of the employees or witnesses?

20 A. Yes, that day.

21 Q. And specifically did you have an opportunity to
22 interview Kerry Robinson?

23 A. Not Kerry Robinson.

24 Q. I'm sorry. I'm sorry. Brandy who is now Brandy
25 Broughton.

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1 A. Yes.

2 Q. And did you have an opportunity to show her a
3 photographic line-up?

4 A. Yes, I did.

5 Q. And who -- who compiled this photographic line-up?

6 A. Lieutenant McDonald created the line-up.

7 Q. And explain to the judge -- when you met with Ms.
8 Broughton, were you with anybody else?

9 A. We were in an office alone.

10 Q. So she wasn't around any other employees.

11 A. That's correct.

12 Q. And did you -- I'm going to show you State's Exhibit
13 Number 3. Do you recognize this document?

14 A. Yes, I do.

15 Q. And can you explain to the judge what that represents?

16 A. This is six-pack photo line-up that I showed Ms.
17 Libertini or Ms. Broughton.

18 Q. Now Ms. Broughton.

19 A. Yes.

20 Q. And can you explain to the judge what you said to Ms.
21 Broughton when you showed her the photographic line-up?

22 A. I said to Ms. Broughton, as I do when I present a photo
23 line-up, that I'm about to show her a photo or a photo
24 line-up containing six people and it is in reference to the
25 previous robbery. The person responsible may or may not be

1 present on here. I told her if she sees someone that she
2 recognizes to identify that person but do not guess. Be
3 certain.

4 Q. Investigator Mauldin, was she able to pick someone that
5 she recognized?

6 A. She was immediately able to pick photo number two.

7 Q. And who is photo number two?

8 A. Mr. Curtis Schoclet.

9 Q. And is that the defendant in this case?

10 A. It is.

11 Q. And did you witness her sign that document?

12 A. I did, yes.

13 Q. As well as did you witness her circle the picture that
14 she picked?

15 A. Yes.

16 Q. Did she initial that as well?

17 A. She did.

18 Q. In part of your investigation, did you also interview
19 another witness involved by the name of Melanie May?

20 A. I did, yes.

21 Q. And explain to the judge how you learned of Ms. May's
22 involvement as a potential witness.

23 A. I was contacted or I was informed by, I believe,
24 Investigator Anthony Branham -- his wife apparently works at
25 that Nationwide location and she informed I believe -- she

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1 informed her husband who, in turn, informed me that she
2 worked with a -- or had a coworker, Ms. May, who had run into
3 an individual that morning and felt that it was suspicious
4 and subsequent to the robbery felt that she needed to contact
5 us and apprise us of that information.

6 Q. And where does Ms. -- where did Ms. May have her
7 involvement with the potential suspect?

8 A. At her office which is the Clark Farley Nationwide
9 Insurance Office. It's a hundred yards or less from the
10 Palmetto Citizens Bank.

11 Q. And did you have an opportunity to meet with Ms. May?

12 A. I did meet with her, yes.

13 Q. Was anyone with you during this meeting with Ms. May?

14 A. There were other people in the office itself, but Ms.
15 May and I were alone or away from any other individuals.

16 Q. Were you able to obtain a statement from Ms. May?

17 A. I did, yes.

18 Q. Did you have an opportunity to also present her a
19 six-pack photographic line-up?

20 A. I showed her -- yes, I showed her a photo line-up as
21 well.

22 Q. And I'm going to show you what's been marked as State's
23 Exhibit Number 1. Do you recognize that document?

24 A. Yes. This is the photo line-up I showed Ms. May.

25 Q. Are the photo line-ups that were used all the same photo

1 line-ups?

2 A. Yes, they are identical.

3 Q. And did you show that photographic line-up to Ms. May?

4 A. I did.

5 Q. And please explain to the judge what you told Ms. May
6 when presenting her that photographic line-up.

7 A. Again, I explained to her I was going to show her six
8 people. The difference is -- again, I told her that this was
9 in reference to the person she saw at her office, not the
10 robbery itself, and that the person she observed may or may
11 not be present and to be certain not to guess.

12 Q. And did she have an opportunity to view that
13 photographic line-up?

14 A. She did.

15 Q. Did she find anyone in the photographic line-up that she
16 thought was the person that she ran into?

17 A. Yes. Almost immediately she picked photo number two.

18 Q. And did she initial that?

19 A. She did.

20 Q. Did you witness her initial that?

21 A. I did.

22 Q. And did she sign that?

23 A. She did, yes.

24 Q. And as well did you observe her sign that as well?

25 A. Yes.

1 Q. And you also on that -- both State's Exhibit Number 1
2 and State's Exhibit Number 3, did you two -- did you also
3 sign these documents?

4 A. Yes.

5 Q. Okay. And did you at any time with Ms. May suggest who
6 she should pick out of the photographic line-up?

7 A. No.

8 Q. Did you at any time with Ms. Broughton suggest who she
9 should pick out of the photographic line-up?

10 A. No.

11 Q. Did you point to them in any way?

12 A. No.

13 Q. Did you give any hints?

14 A. No.

15 Q. To either Ms. Broughton or Ms. May?

16 A. No.

17 **Ms. Garfield:** Thank you, Investigator Mauldin. Please
18 answer any questions defense counsel may have.

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

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

21 Cross-Examination

22 By Mr. Sawyer:

23 Q. Investigator Mauldin, you're with the South Carolina
24 Criminal Justice Academy right now? Is that correct?

25 A. That's correct.

1 Q. Have you - again, similar to what I asked Investigator
2 McDonald - received any newer or additional updated training
3 on how to do photo line-ups?

4 A. No.

5 Q. So you haven't learned of any other new types of methods
6 that other police departments use, the efficacy of other
7 different methods?

8 A. No. Again, I'm aware that they exist, but, no.

9 Q. Okay. And you used the same photo line-up for both
10 individuals; correct?

11 A. That's correct.

12 Q. Have you ever given a photo line-up without the person
13 who you think committed the crime in it to an individual for
14 identification?

15 A. Have I ever given one where I know ahead of time that
16 the person is not in there?

17 Q. Correct. In other words, have you ever given a photo
18 line-up that didn't have the person that you suspect having
19 committed the crime to someone for identification?

20 A. No.

21 Q. Okay. So every time the person you suspect has always
22 been in the photo line-up that you used.

23 A. Someone I suspect, yes.

24 **Mr. Sawyer:** Okay. All right. No further questions.

25 **The Court:** All right. Redirect?

1 **Ms. Garfield:** No, ma'am.

2 **The Court:** All right. If you would come down, please.

3 **The Witness:** Thank you.

4 **Ms. Garfield:** Your Honor, that's the conclusion of
5 witnesses for Neil versus Biggers. Investigator Mauldin
6 would be our next witness for State v. Denno -- Jackson v.
7 Denno. Either I can straighten it out or...

8 **The Court:** I understand. Are there any motions?

9 **Mr. Sawyer:** Your Honor, we just move to exclude the
10 photo line-up. We believe the methods used were unduly
11 suggestive. In all cases it was the exact same photo
12 line-up. It doesn't used any single-blind or a double-blind
13 measures. It doesn't use more than six people involved in
14 the photo line-up. In every photo line-up Mr. Schoclet was
15 in there. They were never shown a photo line-up that did not
16 have Mr. Schoclet in it. As such, I believe all these photo
17 line-ups are unduly suggestive.

18 **The Court:** All right. Can I see the photos, please?

19 **Ms. Garfield:** For the record, Your Honor, I'm showing
20 you State's Exhibits 1, 2, and 3, representing the
21 photographic line-ups.

22 **The Court:** Thank you.

23 **Ms. Garfield:** Uh-huh.

24 (Pause in proceedings while the Court looks at the
25 exhibits.)

1 **The Court:** All right. Under Neil versus Biggers I
2 would not exclude these photographic line-ups or their
3 identification, and the factors -- of course, it's to
4 determine the reliability of the witness's opportunity to
5 view the person at the time of the crime, the witness's
6 degree of attention, the accuracy of the witness's prior
7 description of the person, the witness's level of certainty
8 at the confrontation, and the time between the event and the
9 confrontation.

10 The opportunity to view the person at the time of the
11 event was I think a very strong factor, particularly with the
12 folks in the bank. They were extremely close to the
13 individual. And while one of the witnesses said it was about
14 an arm and a half's length, that's about -- it's kind of hard
15 to describe what that was, but it certainly was I would say
16 two to three feet but very close. And the witness's degree
17 of attention -- I think they were both very clear that they
18 were very attentive because of the gun, and particularly the
19 supervisor talked about her training as both to -- for -- I
20 guess for customer relations to watch people as they come in,
21 but when there's a robbery, their training is to watch the
22 person as they leave.

23 So her degree of attention was -- it was substantial,
24 both prior to the events and as the gentleman left, and that
25 was really echoed by the gentleman victim who testified. I

1 believe that was Ms. Broughton and the gentleman was?

2 **Ms. Bodman:** Mr. Robinson.

3 **The Court:** Yes. The level of certainty, I think that
4 both the witnesses as well as law enforcement said that they
5 knew instantly who the individual they believed to be, and
6 the time between the event and the confrontation meaning the
7 time between photo line-up and the events was no more than
8 two days. It was a day.

9 With regards to the witness who testified about seeing
10 the individual at her place of employment, while the distance
11 was slightly greater, likewise she instantaneously was able
12 to make an identification. It's 8:30 the in the morning;
13 it's summertime. They're talking about how bright and light
14 it is as well. So I certainly think that the reliability is
15 substantial.

16 And I looked at the photos, and while sometimes you're
17 concerned about the suggestiveness, particularly when you're
18 dealing with people of color, sometimes you're concerned when
19 you see shades where there are five people who are very light
20 in color, then someone who is much darker. You get concerned
21 about things like that. As I look at it, I don't have any
22 concerns about the suggestiveness in that regard.

23 Law enforcement has testified, as have the individuals.
24 They've testified that law enforcement didn't tell them that
25 the individual was in the photo line-up. They, quite to the

1 contrary, said they may or may not be in the line-up, so I'm
2 not concerned about the suggestiveness of it. But even if it
3 was determined to be suggestive, there is -- appears to me to
4 be a great reliability and it's admissible to the Court. All
5 right? On to the Jackson v. Denno, noting the exception of
6 the defense thereto.

7 Mr. Sawyer: No, Your Honor.

8 The Court: Very well.

9 Ms. Garfield: Thank you, Your Honor. The State calls
10 -- recalls Investigator Mauldin.

11 The Court: All right. Yes.

12 Ms. Garfield: May it please the Court, Your Honor?

13 The Court: Yes, ma'am.

14 Joshua Mauldin, having been previously sworn and
15 remaining under oath, testified as follows in camera:

16 Direct Examination

17 By Ms. Garfield:

18 Q. Investigator Mauldin, as you continued with your
19 investigation of the armed robbery at hand, did you have an
20 opportunity to make contact with the defendant, Curtis
21 Schoclet?

22 A. Yes, I did.

23 Q. And can you explain to the judge the nature and the
24 circumstances of that encounter?

25 A. I was -- I was notified and I believe maybe the

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1 following day by Sergeant Drew Caldwell who was over our
2 Fugitive Apprehension Team that he was at Mr. Schoclet's
3 residence on Morninglo Drive and had apparently made contact
4 with members of Mr. Schoclet's family and Mr. Schoclet
5 himself who had agreed to return to the home and turn himself
6 in to law enforcement. I responded there myself and awaited
7 Mr. Schoclet's arrival. He pulled up and he was taken into
8 custody at that time without incident, at which time I
9 took -- I took Mr. Schoclet into my custody. I placed him in
10 my vehicle, and I drove him to Richland County headquarters
11 at that time.

12 Q. On Two Notch Road?

13 A. Yes.

14 Q. And at that time did you have an opportunity to
15 interview Mr. Schoclet?

16 A. Yes, I did.

17 Q. And can you explain to the judge where that interview
18 took place?

19 A. Yes. I initially would talk to Mr. Schoclet in my
20 vehicle. After just making small talk, some rapport-
21 building, I would apprise Mr. Schoclet, even though he
22 already had been it is my understanding by Mr. Caldwell, that
23 he was under arrest and what the charges were at that time.
24 I would then read his Miranda warning to him from a card I
25 keep in my wallet. Mr. Schoclet did agree to waive his

1 rights and speak with me regarding the incident.

2 Q. And the card that you keep in your wallet, does it list
3 the Miranda rights?

4 A. It does.

5 Ms. Garfield: Beg the Court's indulgence.

6 The Court: Sure.

7 (State's Exhibits 4 and 5 were marked for identification
8 only.)

9 By Ms. Garfield:

10 Q. Investigator Mauldin, I'm going to hand you what's been
11 marked as State's Exhibit 4. Do you recognize that document?

12 A. Yes. This is a written waiver of rights that we use at
13 the Richland County Sheriff's Department and this was -- I
14 presented this to Mr. Schoclet prior to taking a written
15 statement from him at Richland County headquarters.

16 Q. Did you read those rights to him?

17 A. Yes, I read his rights initially in my vehicle, and then
18 again I read them to him from this -- this document.

19 Q. And can you just read the document into the record?

20 A. Yes. Mr. Schoclet placed his -- or I placed Mr.
21 Schoclet's name and our location at the Richland County
22 Sheriff's Department on the form as well as my name, the
23 date, and the time of the waiver. And the waiver states:
24 "Before we ask you any questions, you must understand your
25 rights. You have the right to remain silent. Anything you

1 say can be used against you in court. You have the right to
2 talk to a lawyer for advice before we ask you any questions
3 and to have a lawyer with you during any questioning. If you
4 cannot afford a lawyer, one will be appointed for you before
5 any questioning if you wish. If you decide to answer
6 questions now without a lawyer present, you still have the
7 right to stop answering at any time. You also have the right
8 to stop answering at any time until you talk to a lawyer."

9 At that time I would stop and ask Mr. Schoclet if he was
10 certain that he understood each of those points at which time
11 I asked him to read each section to himself, place his
12 initials beside it indicating that he had read it and he
13 understood and that if he agreed or if he did understand each
14 of his rights, to sign that section.

15 Q. And did he document each section with his initials?

16 A. Yes. Mr. Schoclet placed his initials beside each line,
17 and he would sign indicating that he understood the section
18 outlining his individual rights.

19 Q. And did he waive his rights?

20 A. Yes. The second section is the waiver of rights. After
21 signing the initial section, I read the following: "I have
22 read this statement of my rights, and I understand what my
23 rights are. I am willing to talk and answer questions, and I
24 understand and know what I am doing. No promises have been
25 made to me, and no pressure or coercion of any kind has been

1 used against me."

2 Again, I asked Mr. Schoclet if he understood. I then
3 elaborated on the pressure and coercion issue and asked him
4 to sign if he agreed to waive his rights, which he did at
5 that time.

6 Q. Did he appear to understand you, Investigator Mauldin?

7 A. Yes, absolutely. I think he indicated that he had had
8 some issues with law enforcement in the past, and he
9 certainly nodded in the affirmative and indicated that he
10 understood his rights.

11 Q. And did he appear to be under the influence of any drugs
12 or alcohol?

13 A. No. He appeared to be very lucid and clear.

14 Q. Did he request anything from you like food or anything?

15 A. He did not, and the interview was very short.

16 Q. Had he requested any food or drink, you would have
17 provided that for him?

18 A. Yes, absolutely, and I can't say that I did not. Food
19 definitely, but I don't know about drinks. But, yes, had he
20 requested food, drinks, bathroom, all those things would have
21 been provided.

22 Ms. Garfield: Your Honor, I'd like to introduce this at
23 this time for purposes of this hearing.

24 The Court: All right. Any objection?

25 Ms. Gibbs: No objection.

1 **The Court:** Very well.

2 By Ms. Garfield:

3 Q. After Mr. Schoclet waived his rights, did you, in fact,
4 conduct an interview with Mr. Schoclet?

5 A. Yes, I did.

6 Q. And would it be helpful for you to look at that
7 statement?

8 A. Yes.

9 Q. I'll hand you what's been marked as State's
10 Exhibit Number 5. Can you identify State's Exhibit 5 for the
11 record?

12 A. Yes. This is the statement given to me by Mr. Schoclet.

13 Q. And did he freely give you that statement?

14 A. He did.

15 Q. How do you conduct your statements? Does the defendant
16 write them or do you write them? How does that work?

17 A. At the Richland County Sheriff's Department, in order to
18 I guess -- everybody does not have the same kind of
19 intellectual and cognitive ability that we deal with. In
20 order to be fair to everyone, it is often easier if we write
21 their statements as they talk to us, and we will allow them
22 to read over those statements as many times as necessary and
23 make any changes that they may need to make prior to signing
24 and agreeing that those are their words.

25 Q. And so you're the -- you're the one writing everything

1 down.

2 A. Yes.

3 Q. Are you writing it or are you typing it?

4 A. I'm typing it.

5 Q. And do you type it at the same time as they're talking?

6 A. I will -- we will go -- I -- we go through the story. I
7 ask questions, and those questions are answered. And then I
8 will come back and then type the statement. We'll go through
9 it a second time.

10 Q. In a question-and-answer form?

11 A. Yes.

12 Q. And did you do so with Mr. Schoclet on July 27th, 2010?

13 A. Yes.

14 Q. And can you just read the statement that Mr. Schoclet
15 gave you into the record?

16 A. Yes. Question: "Did you enter the Atrium Way branch of
17 Palmetto Citizens Bank yesterday and demand money from two
18 tellers there at gunpoint?" The response was, "Yes." My
19 question: "Can you describe that event to me?" The
20 response: "I just walked in and I pulled a fake gun that I
21 had made out of my pocket, and I pulled a bag out of my pants
22 to cover the gun. I sat the gun on the counter with the bag
23 over it so that just the end was sticking out. If you really
24 looked at it, you could tell it was fake. I asked them for
25 the money. The guy gave me some money. He tried to give me

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1 more and I told him no. I wasn't trying to get rich; I was
2 just trying to get by."

3 My question: "Can you describe the gun that you say was
4 fake?" The response: "It small and block-like. I made it
5 out of wood and wrapped it in black electrical tape. I've
6 had it for awhile." Question: "What did you do with the gun
7 after the robbery?" Response: "I threw it in a pond down
8 off of Chatsworth." Question: "What did you do with the
9 clothing that you had on during the robbery?" The response:
10 "I threw the clothes in the dumpster outside of the house
11 yesterday. The trash man already came and picked it up."

12 Question: "What did you do with the money?" The
13 response: "I used it to pay all of the bills. I paid
14 everything." Question: "How much money did you get from the
15 bank?" The response: "I think it was like 37 or \$3800. It
16 was something around there."

17 Question: "Can you tell me why you robbed the Palmetto
18 Citizens Bank?" The response: "I knew I was going to be
19 late with the rent, so I called the landlady. She said that
20 she had to pay bills, too. She told me to hurry up and get
21 the money or she was going to start the eviction process. I
22 was late with the power bill, and they were getting ready to
23 turn that off. We didn't have anything but a pack of chicken
24 to eat. I got laid off from my job at Steel Fabrication
25 earlier this month, and there wasn't any work."

1 Question: "Is there anything else that you would like
2 to add to this statement?" The response: "I've never felt
3 any pressure like this before. I didn't mean any harm to
4 these people. I know that they were just working."

5 Question: "Do you promise the statement that you have just
6 given has been true and correct?" The response was, "Yes."

7 Q. After you reduced this to typed -- question-and-answer
8 form, did you provide an opportunity for Mr. Schoclet to
9 review the statement?

10 A. Yes.

11 Q. And did he, in fact, review it?

12 A. He did read the statement, yes.

13 Q. Did he appear to understand what he was reading?

14 A. Yes.

15 Q. And did he sign the copy that he was provided?

16 A. He did, yes.

17 Q. Is that the copy before you---

18 A. It is.

19 Q. ---Investigator Mauldin?

20 A. Yes.

21 Q. Did you coerce him in any way into giving this
22 statement?

23 A. No.

24 Q. Did you make him any promises?

25 A. No.

1 Q. Did you promise any actions of leniency?

2 A. No.

3 Ms. Garfield: Your Honor, at this time I'd like to
4 introduce State's Exhibit Number 5 for purposes of this
5 hearing.

6 The Court: All right.

7 Ms. Gibbs: No objection.

8 The Court: Very well.

9 By Ms. Garfield:

10 Q. After you concluded taking Mr. Schoclet's statement and
11 he signed it, what did you do?

12 A. After Mr. Schoclet signed the statement?

13 Q. Yes, sir.

14 A. Mr. Schoclet was at that time, if I'm not mistaken,
15 transported to the Alvin S. Glenn Detention Center where he
16 subsequently stayed.

17 Ms. Garfield: Thank you, Investigator Mauldin. Please
18 answer any questions defense counsel has for you.

19 The Court: All right. Cross-examination?

20 Ms. Gibbs: May it please the Court, Your Honor?

21 The Court: Yes.

22 Cross-Examination

23 By Ms. Gibbs:

24 Q. Investigator, when you -- when you arrived at Mr.
25 Schoclet's home, was Mr. Schoclet already there?

1 A. He was not.

2 Q. He was not? How long were you there until he arrived
3 there?

4 A. I cannot recall, but I do not believe it was very long
5 at all.

6 Q. And you spoke to family members that were there?

7 A. I had not. I simply waited until Mr. Schoclet arrived.
8 I spoke to some members of our fugitive team.

9 Q. Investigator McDonald was there already?

10 A. Again, I know that a search warrant was going to be
11 executed, and I do not remember if investigator or if
12 Lieutenant McDonald was present or if any other investigators
13 were present. They may have showed up after Mr. Schoclet and
14 I left that location.

15 Q. Okay. And so you actually saw Curtis Schoclet drive up
16 in a car.

17 A. Yes.

18 Q. And he immediately surrendered to you?

19 A. Yes. Yes.

20 Q. Did he make any statements at that time?

21 A. No, not at that time or not that I'm privy to. I
22 wasn't -- I was far enough away where I would not have been
23 able to hear anything he said.

24 Q. To your knowledge, did he speak to any other
25 investigators at that time?

1 A. No, I don't believe so.

2 Q. Okay. And when he arrived, did you immediately put him
3 in handcuffs?

4 A. I believe Sergeant Caldwell did or one of the people
5 working for him, but moments thereafter I would have changed
6 out the handcuffs and taken Mr. Schoclet with me.

7 Q. And he made no statements at that time.

8 A. Mr. Schoclet?

9 Q. Mr. Schoclet.

10 A. He made statements to me, yes.

11 Q. What did he say?

12 A. We spoke in the vehicle on the way. He was Mirandized
13 in the vehicle, and then he provided a story very similar to
14 the one that he provided in a written form at headquarters.

15 Q. About how long did it take -- about what was the
16 timeline between him turning himself in at the home and
17 getting put into the back of your car?

18 A. Three to five minutes, if that.

19 Q. Did Mr. Schoclet talk to any of his family members
20 before he got in the car with you?

21 A. No.

22 Q. And if you wouldn't mind telling me what y'all spoke
23 about in the back in the car.

24 A. Again, just some rapport-building, talking to Mr.
25 Schoclet about, you know, what he -- what he did for a

1 living. I think we discussed steel fabrication a little bit.
2 I explained to him what the charges were in the event that he
3 was not aware. I apprised him that I wanted to speak to him
4 further about that particular incident. Before I did so, I
5 had to provide him with his Miranda warning at which time I
6 would have read that prior to us departing.

7 Q. Miranda was read before he got in the car.

8 A. No, he was in the car but before we left. You can't do
9 it driving.

10 Q. And when you got to Two Notch, you immediately took him
11 into headquarters?

12 A. Yes.

13 Q. Is there an interview room that---

14 A. No, he sat in my cubicle.

15 Q. Nobody else was present?

16 A. No.

17 Q. And that is when you went through the written waiver of
18 rights.

19 A. That's correct.

20 Q. And you read through every single -- it looks like you
21 read through, as you stated, every single right and then he
22 initialed it.

23 A. Yes.

24 Q. And you read it -- you actually read it aloud to him as
25 he initialed it?

1 A. Yes.

2 Q. Okay. And then after that -- about how long had he been
3 sitting in there at this point?

4 A. It was immediate. We went right to my cube and began.

5 Q. Okay.

6 A. Only as long as it took me to print out a waiver of
7 rights form.

8 Q. And you testified that the policy -- the general policy
9 of the Richland County Sheriff's Department is to type
10 statements?

11 A. Yes.

12 Q. And that's due to different educational backgrounds of
13 the officers or the people you interview?

14 A. The people we interview.

15 Q. Okay. So your policy is every single officer types up
16 statements.

17 A. Yes, that we -- that the statements are dictated by the
18 person giving a statement, even victims, and that we write
19 the question and answer.

20 Q. And you didn't ask him whether he could read?

21 A. Yes.

22 Q. And you asked him if he could write?

23 A. Yes.

24 Q. Okay. He said that he could?

25 A. As far as I remember, yes.

1 Q. Okay. And it's the policy you never record -- audio-
2 record statements?

3 A. We do not audio-record statements.

4 Q. Do you have the equipment to do that?

5 A. No.

6 Q. You don't have a cell phone that could record a
7 statement?

8 A. I have a cell phone. I don't remember if I had a cell
9 phone that could record anything at the time.

10 Q. Okay. What about video statements? Do y'all ever take
11 video statements?

12 A. We don't. I don't have the equipment to do that either.

13 Q. Okay. So when you typed out the statement, you started
14 out saying, "Did you enter the Atrium Way branch of Palmetto
15 Citizens Bank yesterday and demand money from---

16 **The Court:** Whoa, whoa, whoa, whoa, whoa.

17 **Ms. Gibbs:** I apologize.

18 **The Court:** That's okay.

19 By Ms. Gibbs:

20 Q. When you started typing -- you basically typed the first
21 sentence and asked him to answer yes or no.

22 A. Yes.

23 Q. Did he suggest anything that you typed or did you type
24 it?

25 A. I'm sorry. I don't follow.

1 Q. I apologize. When you're typing the statements, is he
2 suggesting what questions to ask him or you're---

3 A. No, I ask my own questions.

4 Q. Okay. So you're using the terms gunpoint, armed. Those
5 are your language.

6 A. Yes.

7 Q. Okay. And he told you that there is a fake gun.

8 A. He did.

9 Q. Did you ever go look for this gun?

10 A. No, I believe he said he threw it---

11 Q. The alleged fake gun.

12 A. ---in a pond. No, I did not. We did look for the gun,
13 yes, in terms of executing a search warrant at his home, but
14 we did not search the pond off of Chatsworth for the gun, no.

15 Q. And at any point prior to this, did he tell you that he
16 did not want to make a statement?

17 A. No, he did not.

18 Q. And you did discuss the charges with him as far as
19 you're charged with armed robbery and kidnapping?

20 A. Aside from apprising him of what the charges were, no.

21 Q. And you didn't offer any insight into why he was being
22 charged with kidnapping in any way?

23 A. No.

24 Q. And you didn't make any promises as far as, "If you
25 cooperate, it will help you out"?

1 A. No. No.

2 Ms. Gibbs: Beg the Court's indulgence.

3 The Court: All right.

4 Ms. Gibbs: I have no further questions.

5 The Court: All right. Redirect?

6 Ms. Garfield: Just briefly.

7 The Court: All right.

8 Redirect Examination

9 By Ms. Garfield:

10 Q. I'm sorry, Investigator Mauldin. I think I just got
11 confused. Is every single statement taken from witnesses
12 typewritten?

13 A. No. No. Some are handwritten.

14 Q. And that's because you're not always taking statements
15 at the sheriff's department.

16 A. That's correct.

17 Ms. Garfield: Thank you. Nothing further.

18 The Court: All right. Recross?

19 Ms. Gibbs: No, Your Honor.

20 The Court: Very well. All right. You can come down.

21 All right. Do you have any additional witnesses?

22 Ms. Garfield: No, ma'am.

23 The Court: Very well. Any motions?

24 Ms. Gibbs: Your Honor, I would make a motion to
25 suppress the statement. I would argue that this is not

1 Curtis Schoclet's statement. This is Investigator Mauldin's
2 statement. In this day and age, as important as a statement
3 is, they should be audio-recording. It's an easy thing to
4 do; it would be easy to prove. Video recording. I would
5 argue that this was not Curtis Schoclet's statement. It was
6 not freely and voluntarily given.

7 At certain times, you know, I think it's his wording
8 that is being answered. Very clearly, he went through the
9 waiver of rights talking about every single thing: Do you
10 understand? Do you understand? In this statement this is
11 very clearly a typewritten statement and not the words of
12 Curtis Schoclet.

13 The Court: All right. As you all know, it is
14 ultimately for this jury to determine whether or not the
15 statement is one which was -- which is one that ought to be
16 considered. I am to make a determination by the
17 preponderance of the evidence whether or not, A., Miranda was
18 given and was it -- was the Miranda waived voluntarily and
19 the statement given? Ultimately it's for the jury to make
20 that determination, and I do believe that, A., that Miranda
21 was given and, B., that Miranda was freely and voluntarily
22 waived and a statement given.

23 With regards to the interrogation technique, it is --
24 actually the interrogation technique is addressed early on in
25 the cases involving the giving of Miranda rights, and the

1 Court talks about the fact that it is -- this interrogation
2 also that requires that Miranda be given. And it says the
3 interrogation is either express questioning or its functional
4 equivalent. So clearly this type of interrogation is
5 contemplated by the case law in terms of Miranda and the
6 giving of Miranda rights and the admissibility of these types
7 of statements. So I would respectfully deny your motion,
8 noting your exception thereto.

9 Ms. Gibbs: Thank you, Judge.

10 The Court: All right. Anything further from the State?

11 Ms. Garfield: We don't have anything, but I don't know
12 if y'all have any motions.

13 Ms. Gibbs: We do have motions, and we just actually
14 haven't even given over our motions list. We just haven't
15 even done that yet so... There are two included that we have
16 already -- well, three. As far as sequestering the
17 witnesses---

18 The Court: Yeah.

19 Ms. Gibbs: ---as well as Jackson v. Denno and Neil v.
20 Biggers and we just completed that.

21 The Court: Okay.

22 Ms. Gibbs: But there are some other issues and I
23 apologize. I thought we were going to do that beforehand.

24 The Court: Great. You want to renew your Rule 5 and
25 your Brady motions.

1 **Ms. Gibbes:** Yes, Your Honor. I would renew Rule 5 and
2 Brady. I have -- I spoke to the solicitor prior to trial,
3 and I believe that that is complied with. I just would like
4 to put that on the record to make sure that we've received
5 everything, and I assume that we have.

6 **The Court:** Okay. I just ask whether or not there has
7 been any information, Ms. Garfield, that you have received
8 very, very recently perhaps that the defense has not received
9 or has any information come to your attention or to anyone's
10 attention that you're working with on this case that you have
11 the slightest concern that may not have made its way to the
12 defense?

13 **Ms. Garfield:** Judge, I do not believe so. I met with
14 Mr. Sawyer and Ms. Gibbes last week. We went through my
15 trial notebook to make sure they had everything as well as
16 that they had videos. They've had the opportunity to review
17 the photographs. There's also been a new - I say new -
18 video. It's an enhanced video because the original one has
19 multi-screens and we have -- there's a continuous sequence of
20 events. I've given them a copy of that.

21 The only thing I can think of is I did meet with one
22 witness last night. Nothing has changed, but I would like to
23 just -- if they would like to meet with me and ask me any
24 questions about that... I met with Valerie Reese last night
25 or yesterday afternoon.

1 **The Court:** Okay. Valerie Reese?

2 **Ms. Garfield:** Yes, ma'am.

3 **The Court:** Okay.

4 **Ms. Garfield:** And I can't think of anything else.

5 **The Court:** Okay.

6 **Ms. Gibbs:** Okay. And yes, Your Honor, and that would
7 be under Riddle as well, Riddle v. State, anything materially
8 different that's going to be received in evidence. Again, we
9 met with Ms. Garfield earlier and she -- we spoke about this,
10 so I believe that has been complied with as well and we
11 will---

12 **The Court:** Okay.

13 **Ms. Gibbs:** ---we will speak to her about Ms. Reese.

14 **The Court:** All right.

15 **Ms. Garfield:** I do have the original swabs now. You
16 haven't seen it.

17 **Ms. Gibbs:** That's fine.

18 **The Court:** Okay.

19 **Ms. Gibbs:** Judge, before obviously the motion to
20 settle the record - that's number eight - I would just ask,
21 you know, before any witnesses testify if they have any prior
22 record that we know about... Obviously we can address Mr.
23 Schoclet's prior record before he testifies, if he does
24 decide to testify. Besides that, I would have two motions
25 that deal with life without parole.

1 **The Court:** All right. I'm listening to you.

2 **Ms. Gibbs:** Okay. If I may, I'll start with the first
3 one. This is a motion to determine the eligibility of
4 whether or not Mr. Schoclet is eligible for life without
5 parole. I will -- the case of Marcus Robinson that I will be
6 using as well as -- and I believe that the solicitor's office
7 has the text of the penal code, but I will provide them a
8 copy as well.

9 **The Court:** Okay.

10 **Ms. Gibbs:** If I may approach, Judge.

11 **The Court:** Thank you. Yes, you may. Thanks so much.

12 **Ms. Gibbs:** Thank you. Judge, as you're aware, Mr.
13 Schoclet has been served with notice of life without parole.
14 Due to a conviction out of Texas back -- this was a
15 conviction of aggravated robbery. He was convicted back in
16 1995, and he received a sentence of ten years.

17 Judge, my argument -- and this is referring to Marcus D.
18 Robinson is this case is a case about a simple possession of
19 marijuana post-conviction relief where Mr. Robinson had an
20 uncounseled plea to simple possession of marijuana. He was
21 not informed of any collateral consequences, of any in the
22 future convictions for drug offenses, and he actually pled
23 guilty to a trafficking. They enhanced it to a second
24 offense, and he received 20 years.

25 I believe, Judge, this applies to a greater extent in

1 Mr. Schoclet's case as this obviously involves life without
2 parole. If you look at the Texas penal code -- and I know
3 when he pled guilty this was back in 1995.

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

5 **Ms. Gibbs:** And it's out of state, so I know it is
6 remote, Judge, but we -- it is clear that he was advised of
7 his rights to go to trial. We were provided with that, that
8 he was advised of his rights, but he was never advised -- my
9 argument is he never could have been advised of the
10 collateral consequences of a guilty conviction to aggravated
11 robbery. In this case and in Texas, the judiciary -- the
12 statutes allow for judicial sentencing as far as -- because
13 aggravated robbery -- the first degree robbery in the statute
14 provides for no less than 15 years, up to 99 years or life.

15 Now, it's my understanding that in exchange for his plea
16 they dropped an enhancement provision which I believe in this
17 case I think -- I think it was up to 20. He received 10. He
18 obviously received less than 15. There is a punishment
19 section of the judicial code, and that's towards the back.
20 That is Section 12.43 which is penalties repeat and habitual
21 offenders.

22 **The Court:** Hold on.

23 **Ms. Gibbs:** I'm sorry. That might not be the right
24 one.

25 **The Court:** I just saw 5.1 to 2 and then 3.

1 **Ms. Gibbs:** Keep going.

2 **The Court:** 4.3, penalties repeat, habitual -- that's
3 misdemeanor. That wouldn't be...

4 **Ms. Gibbs:** I know and I apologize.

5 **The Court:** That's okay.

6 **Ms. Gibbs:** I should be a little bit more -- 12.42---

7 **The Court:** Okay.

8 **Ms. Gibbs:** ---I believe is it.

9 **The Court:** All right. 12.42.

10 **Ms. Gibbs:** And basically this is the section that
11 provides if you have a prior conviction -- you can enhance
12 and serve a life without parole for -- if you have these
13 prior convictions. And in these cases, Judge, all of the
14 statutes that are enhanced, if you're convicted or if you
15 pled, that you could be served with life without parole or --
16 they all involve sexual offenses, Judge. I believe it
17 provides for 43.25 to 26 which is -- involves sexual -- it's
18 human trafficking that involves sexual performance of a
19 child, child pornography, child trafficking involving sex,
20 sex abuse, burglary with intent to commit rape. These are
21 the offenses that are enumerated in the statute that says:
22 If you have a prior conviction of this, then -- if you're a
23 habitual offender, you can be served with life without
24 parole.

25 In this case, Judge, he obviously didn't -- he was not

1 convicted of any of those offenses. His -- the sentence for
2 the charge he was convicted of was provided in the statute.
3 Originally it was 15 to 99 up to -- or life. So the judge
4 could have served him with life if they had not removed the
5 enhancement, but that would have been up to the judge's
6 discretion. It would not be like here where the legislature
7 is requiring life without parole for certain situations.

8 So I'm arguing, Judge, that at this time there's no
9 possible way that he was advised of the collateral
10 consequences of: 20 years later in 2013 he's now here for
11 trial, served with life without parole, and I think that is a
12 violation of due process under the Fifth Amendment and
13 Fourteenth Amendment. And, again, I say -- I cite Marcus
14 Robinson v. State where the P.C.R. was overturned based on
15 the fact -- it was much smaller: Simple possession of
16 marijuana.

17 He was not counseled of the collateral consequences, and
18 the P.C.R. was granted and ordered for a resentencing because
19 he had no idea what the effect would be down the road because
20 he was not counseled. So I would argue he is not eligible --
21 Mr. Schoclet is not eligible for life without parole because
22 it was an out-of-state conviction back in 1995.

23 **The Court:** Let me ask you a couple of questions. First
24 of all, what is the section under which he was sentenced that
25 you have passed up?

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1 **Ms. Gibbs:** What I passed up is actually the
2 punishment. I can provide you with the aggravated robbery.

3 **The Court:** Okay.

4 **Ms. Gibbs:** This is the Texas penal code, Chapter 29 --
5 29.03.

6 (Ms. Gibbs gives a document to the Court.)

7 **The Court:** So he -- tell me: Did he go to trial or did
8 he plead in Texas?

9 **Ms. Gibbs:** It's my understanding they called the case
10 to trial and he pled guilty, and it's my understanding from
11 talking to Mr. Schoclet because he was originally -- the
12 charge was aggravated robbery, a first degree felony. If you
13 look at the statute, that is a -- that carries a certain
14 amount. He obviously got less than that amount. He says
15 that the enhancement was removed.

16 So it was not a -- it was an aggravated robbery, but the
17 enhancement was removed. So that's why he received 10 and
18 not the required 15.

19 **The Court:** Oh, okay. So if you look at his rap
20 sheet -- have you seen his rap sheet?

21 **Ms. Gibbs:** I have, Your Honor.

22 **The Court:** What is reflected on his rap sheet that he
23 pled to?

24 **Ms. Gibbs:** Aggravated robbery.

25 **The Court:** Okay. Okay.

1 **Ms. Gibbs:** And just -- and I'm not sure if I'm being
2 clear. He was convicted of aggravated robbery. I believe he
3 was originally -- in Texas you can be bumped up due to a
4 prior felony that's unrelated. In this case it was an auto
5 robbery. It's my understanding he was convicted of
6 aggravated robbery, but in order -- in exchange for his plea,
7 they removed the enhancement.

8 My argument is aggravated robbery in itself in Texas is
9 not an offense that is eligible for an -- it's not one of the
10 enhance-able offenses that if you're convicted of that in the
11 future, you could be served with life without parole. Like I
12 stated, those offenses in Texas are sexual-in-nature offenses
13 and those are ones that say, you know, you can be enhanced if
14 you have a prior conviction for that.

15 So in this case he just -- there's no way we're not --
16 we're not arguing that the lawyer did not do their job. This
17 is clearly just a case where there's no way he could have
18 been advised of the collateral consequences in the future.
19 And if I may, Judge, I do have the judgment plea of guilty
20 before the Court. It might explain it a little bit better.
21 It shows the rights, and the solicitor provided this to me.

22 **The Court:** Okay.

23 **Ms. Gibbs:** If I may approach.

24 **The Court:** Sure.

25 **Ms. Gibbs:** It shows all the rights that they went

1 through with Mr. Schoclet.

2 **The Court:** Okay.

3 **Ms. Gibbs:** And I understand it's not a transcript, but
4 it does go very clearly kind of like we do in South Carolina:
5 Your right to go to trial, everything you're giving up, and
6 nowhere does it mention collateral consequences.

7 **The Court:** Okay. I think we ought to make this a
8 Court's exhibit---

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

10 **The Court:** ---since I have reviewed it. Do you see any
11 difference in the -- in the Robinson case? Because obviously
12 the Robinson case is concerned with defendants who plead in
13 the magistrate's court to simple possession and they don't
14 have counsel with them and they literally are without counsel
15 at all and the circumstance where, as opposed to this
16 circumstance, where this defendant had the benefit of counsel
17 in Texas and moves to a place where this particular offense
18 that he was convicted of in Texas is a crime that does, in
19 fact, carry an enhancement.

20 **Ms. Gibbs:** Well, Judge, I would argue that in a way he
21 did have -- he did have counsel as far as the plea and going
22 through that, but the fact that -- the biggest issue here is
23 the life without parole down the road. Here, when somebody
24 pleads guilty or is convicted of a strike, they are made
25 aware that it is a strike. In a case back in 1995 when this

1 didn't even exist before this charge, I think that is -- that
2 equals being uncounseled to that extent for something as
3 serious as you could face life without parole down the road.

4 I think -- I'm not arguing that counsel did anything
5 wrong. He didn't -- you know, he didn't advise him of
6 things. I think he did things appropriately that he could,
7 but to an extent where aggravated robbery is not an
8 enhance-able offense then, it was -- is in the codes
9 "judicial discretion" as far as sentencing. I think he was
10 the equivalent of being uncounseled for---

11 **The Court:** Let me ask you this question: Do you think
12 that this is -- this circumstance would be a circumstance
13 that would be akin to individuals in South Carolina who had
14 lawyers and pled to offenses prior to 17-25-45 being passed
15 and prior to the two-strike/three-strike rule who had, in
16 fact, committed offenses earlier that were strikes and then
17 later committing additional offenses and the Court
18 considering the earlier offense as a strike?

19 **Ms. Gibbs:** I would submit there is a similar cir -- I
20 think the problem in this case is that the -- in Texas the
21 statute never had anything like the life-without-parole
22 statute for this charge, not then, not now. So it's hard to
23 argue that we should apply it retroactively.

24 As far as somebody from South Carolina who, you know,
25 maybe in 1994 pled to something that now is a strike, I can

1 tell you if I get -- if I get a client, in my own opinion, I
2 mean, or my own job, we advise them: Look, this is a strike;
3 it doesn't matter. So they have the ability to be counseled
4 of life without parole before anything happens.

5 In this case Curtis never had any opportunity. There
6 was no way for him to have any opportunity back in 1994 that
7 this could happen in the future, and I just think it's not
8 fair to apply that retroactively for something there's no
9 possible way for him to have been advised of.

10 **The Court:** Okay. I got it. Yes?

11 **Ms. Bodman:** Your Honor, there is no legal requirement
12 that the defendant be specifically admonished about the use
13 of this prior conviction when he pled. The waiver -- the
14 judgment, a plea of guilty, and the waiver of jury trial
15 clearly shows that he was represented by an attorney. The
16 Texas penal code clearly, while they call it aggravated
17 robbery, it completely follows our armed robbery statute
18 which is a most serious offense. 17-25-45(a)(2) clearly says
19 out-of-state convictions for an offense that would be
20 classified as a most serious offense under this section...
21 So that qualifies under their aggravated robbery, the
22 statute, and the reason that there is no requirement that a
23 defendant be admonished as to the many possibilities that
24 this conviction could be used against him is because even if
25 there wasn't an L-WOP statute, you know attorneys are saying:

1 The more crimes you commit, they will consider this the next
2 time you come in here. You know, a defendant comes in with
3 one conviction. Another one comes in with two. Another
4 comes in with ten, and judges can take those prior
5 convictions into consideration and the L-WOP statute, you
6 know, is just that. If you have a prior for something that
7 is most serious or that we would consider to be a most
8 serious, then you are eligible for life without the
9 possibility of parole. And then to put on this requirement
10 that we're going to require attorneys in all 50 states to
11 know all the laws in the other 49 states, plus all the
12 separate countries is just, you know, one that could not ever
13 be---

14 **The Court:** Well, the lawyer in Texas -- I can presume
15 that because I've been told -- I haven't been told he was
16 licensed to practice law in South Carolina. He can practice
17 law in South Carolina. He actually couldn't advise his
18 client regarding the law in South Carolina if he's not
19 licensed to practice in South Carolina---

20 **Ms. Bodman:** Correct.

21 **The Court:** ---anymore than he can look it up on the
22 internet.

23 **Ms. Bodman:** I mean, the list of -- the list of possible
24 consequences to pleading to that aggravated robbery in Texas
25 would be, you know, astronomical.

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1 **The Court:** Isn't it true that for the cases in South
2 Carolina that where individuals received convictions for
3 serious or most serious offenses prior to the passage of
4 17-25-45 and then commit a new -- that -- that it hasn't been
5 considered -- the enhancement has still been allowed. Isn't
6 that correct?

7 **Ms. Bodman:** Correct. Correct. So there's -- there's
8 no requirement that he have known any of the possible
9 consequences of that, and it clearly fits under... And it
10 actually -- if the document that the defense put in was the
11 judgment on plea of guilty before the Court/waiver of jury
12 trial, it actually shows he pled to three aggravated
13 robberies, so he has three most serious convictions. He pled
14 to -- there were three counts: Count one, count two, and
15 count three involving a firearm. So he has three prior most
16 serious aggravated robberies.

17 **Ms. Gibbs:** And, Judge, these were three arising out of
18 the same incident.

19 **The Court:** I understand.

20 **Ms. Gibbs:** And I understand, you know, the need to
21 clarify things. In all the time, in all the future, in all
22 the past maybe it's impossible to know what's going to happen
23 in the future, but I think when you're talking about life
24 without parole, something as serious as taking life away from
25 a human being, it is important to think about what are the

1 consequences when back in 1994 this out-of-state conviction
2 he was not -- there was no way he could have been counseled
3 what the future -- what the future would hold if he was
4 convicted in 20 years in South Carolina.

5 Judge, I would point out in the Supreme Court -- the
6 Padilla case, Padilla versus Kentucky. This is a case where
7 counsel was deemed ineffective for his failure to correctly
8 advise the defendant of the deportation consequences of his
9 guilty plea. This amounted to constitutionally deficient
10 assistance under -- you know, this is a situation where
11 counsel is deemed ineffective for not advising his client of
12 collateral consequences.

13 This is a case that Mr. Schoclet couldn't have been
14 advised of his collateral consequences, and I think
15 considering it's life without parole, there needs to be a way
16 that the statute needs to be changed or the laws need to look
17 at how they cannot just lackadaisically apply these laws to
18 Texas back in 1994 without -- he could not have been advised
19 of the collateral consequences.

20 **The Court:** Much the same this would happen to
21 individuals in South Carolina. They couldn't be advised of
22 the consequences of their acts prior to the statute either.
23 I mean, that's -- that's the concern that I have. In other
24 words, those individuals in South Carolina that committed
25 serious and most serious offenses before they were

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1 categorized as serious and most serious offenses, they are
2 still charged with the notice that they had committed serious
3 or most serious offenses and if they then committed a serious
4 or most serious offense that they get a free pass on that
5 one, that they had to be -- that they were on notice.

6 **Ms. Gibbes:** Yes, Your Honor.

7 **The Court:** And he likewise is on the same notice at the
8 time that he comes to South Carolina.

9 **Ms. Gibbes:** And if you don't mind, Judge, I would just
10 reiterate that these -- the charges in Texas that he pled
11 guilty to were not under the statute in a way that it was a
12 most serious charge. There's nothing in the statute that
13 says that's what it was so he would know to apply that here.

14 **The Court:** Got it.

15 **Ms. Gibbes:** Thank you, Judge.

16 **The Court:** Good argument. Excellent argument.

17 **Ms. Bodman:** Could we make the Texas penal code statute
18 part of the record as well as the three counts of the
19 aggravated robbery that he pled to?

20 **The Court:** Sure.

21 **Ms. Bodman:** And that then reflects that also it was a
22 first degree felony which at that time -- I don't know what
23 it is now but at that time carried five to -- five years to
24 99 years or life in Texas.

25 **Ms. Gibbes:** No objection, Judge.

1 **The Court:** All right. Did you do both the -- did you
2 do the offenses against Chapter 29, Robbery, and the
3 punishments section?

4 **Ms. Bodman:** Yes, I started with the 29.01 definitions.

5 **The Court:** I'm going to let y'all work that out because
6 I've got the whole... I've got Texas law.

7 **Ms. Bodman:** Okay. We'll just put it right over here
8 and---

9 **The Court:** All right. Ms. Gibbes, would you take a
10 look at what's going in and just be sure that you can concur
11 that what's being made a part of the record is appropriate
12 for me, please?

13 (Court's Exhibits 1 through 3 were marked for
14 identification only.)

15 **The Court:** There were two motions involving life
16 without the possibility of parole. I think we've dealt with
17 number three, the motion to---

18 **Ms. Gibbes:** Yes, Your Honor.

19 **The Court:** ---determine the eligibility. Now the
20 motion to withdraw.

21 **Ms. Gibbes:** Yes, Your Honor, and for this motion I will
22 be referring to State v. Broadnax.

23 **Court Reporter:** Will you spell that, please?

24 **Ms. Gibbes:** Broadnax? B-R-O-A-D-N-A-X.

25 **The Court:** Yes.

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1 **Ms. Gibbs:** And, Judge, this is a very recent case that
2 came out of Richland County, South Carolina, from one of
3 these courtrooms. Judge Cooper was the judge. This came out
4 of the Court of Appeals it looks like as recently as
5 January 9th of this year, Judge. As you know, 17-25-45, the
6 statute provides mandatory life sentence for certain offenses
7 that are considered most serious, and as you also know,
8 Judge, there is a provision or I believe G. that gives -- I
9 believe the statute is in conflict -- in conflict with itself
10 because it also in G. gives the solicitor the ability -- the
11 discretion to basically decide when to serve life without
12 parole, Judge.

13 In Broadnax this was a case where the argument is: The
14 way that the L-WOP statute is applied by, in this case,
15 Richland County -- and in this case we'll be arguing Richland
16 County is so arbitrary and so capricious that there's no --
17 there's no way to know how it's going to be served in any
18 way. I believe that this case right here is the perfect
19 example for the arbitrariness that the solicitor's office
20 decides to serve life without parole because Mr. Schoclet has
21 been in jail for three years and this three years that he's
22 been in jail he has served -- seen this life without parole
23 applied in so many ways. I think the only thing we know --
24 the only thing that we know on a regular basis is the
25 solicitor's office uses it as a way to force a plea and

1 punish our clients for exercising their constitutional right
2 to trial.

3 In this case, Judge, when I first got this case in
4 December - I believe it was December of 2011 - it's my
5 understanding the offer in this case was he could plead
6 straight up or -- and if he didn't want to plead straight up,
7 he'd get served with life. When I first started as a public
8 defender, I learned very early that your client has two --
9 they have two decisions they can make: Whether to plead or
10 go to trial or if they want to testify.

11 I think in a case where the decision is plead straight
12 up or life without parole, that is punishing my client's
13 constitutional right to go to trial, and I think the way that
14 it is applied in Richland County and all over the state at
15 the discretion of the solicitor's office clearly violates my
16 client's Fifth Amendment right and Fourteenth Amendment right
17 to due process as well as the equal protection clause under
18 the law because there's no way to know -- depending on the
19 solicitor, depending on the case, it is applied differently
20 in every way.

21 In this case, Judge, about -- let's see, December 18th,
22 2012 -- let's see. He was arrested July 27th, 2010; I'll
23 back up. He has been in jail 930 days today. When I
24 received this case in December of 2011, as I said, the offer
25 is he can plead straight up or go to trial. To me that's

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1 saying you're punished if you don't take this plea offer.
2 Again, December 18th, a year later after that, the
3 solicitor's office said they believed a negotiated 15-year
4 range was the appropriate sentence. This was December 18th.

5 He was brought over. He -- you know, we went back and
6 forth. He was served life without parole because he did not
7 want that offer. He wanted -- he chose to exercise his
8 constitutional right to trial, and my argument, Judge, is how
9 could -- that is so arbitrary, that December 18th -- the
10 appropriate offer is 15 and now that we're at trial it's
11 life? He's being served with life.

12 I think this is an infringement from the -- I think
13 clearly, Judge, the legislature when they did this statute,
14 this is not how they intended it to be carried out. I think
15 this is clearly a violation, and if you look at Broadnax this
16 is ripe in the Court of Appeals. Judge Cooper said this is a
17 good appellate issue and did not -- he did not rule on it,
18 but in this case, Judge, I think this is a clear violation
19 and it's unconstitutional as it's taking away the judiciary's
20 right to sentence, and in this case he's at trial facing life
21 and it's just -- there's no way to know. This is a perfect
22 example of him being punished for going to trial because he's
23 being served with life without parole, and I would argue that
24 this is unconstitutional.

25 I would also argue, as this is life, this is a violation

1 of the Eighth Amendment, cruel and unusual punishment, and
2 like I said, the Fifth and Fourteenth amendment right of due
3 process as well as separation of powers when it's taking away
4 all discretion from the judiciary as far as sentencing in
5 this case, and so I would argue that this is an
6 unconstitutional statute, absolutely needs to be changed, and
7 I make a motion to withdraw and I'd like to up...

8 **The Court:** All right. There's really two issues I
9 think that you're addressing. One has to do with whether or
10 not the use of the notice of life without the possibility of
11 parole is arbitrary and capricious. You have to offer up a
12 case for that; you can't just argue that. There's got to be
13 underlying evidence of that. In other words, you need some
14 -- as I understand that type of argument, I think that you
15 need to have some statistics or otherwise to show that. And
16 so I'm concerned about the argument without any statistical
17 or otherwise evidence with regards to that issue.

18 There's nothing -- there's nothing -- there's no
19 evidence upon which I can base whether or not it is
20 arbitrary. It is -- both that it is arbitrarily and
21 capriciously... Secondly, I think that your argument is
22 whether or not the statute in causing life without the
23 possibility of parole to be mandatory if the solicitor serves
24 the notice when there have been the appropriate number of
25 prior strikes -- in other words, if it's three strikes,

1 they've got the two serious offenses or one most serious and
2 one serious offense and they stand accused of a serious
3 offense or if they have a conviction for two serious offenses
4 and they're standing charged with that third serious offense
5 or they're convicted of one most serious offense and are
6 charged with a second most serious offense, under those
7 circumstances it's your position that when -- if a defendant
8 is served with a notice and then convicted that the mandatory
9 nature of that sentence is an infringement on the separation
10 of powers between the legislature and the judiciary?

11 **Ms. Gibbes:** Well, I just believe that the way that---

12 **The Court:** If you were the executive -- I don't know.
13 The legislature might be executive since it has the
14 solicitor, the executive and the judicial branch. Is that
15 your argument?

16 **Ms. Gibbes:** I just think, one, we've got a statute that
17 contradicts itself which, you know, you've got one part of it
18 that says it's mandatory in these cases, and then the other
19 part says that it's up to the solicitor's discretion.
20 Besides that, there's no other guidelines as to when it is --
21 as far as specific statistics, if that would make a
22 difference, I would request a continuance to go do research
23 and get data from everybody all over the state to see how
24 this is applied.

25 I know personally in Richland County and from speaking

1 to Mr. Schoclet, there are cases that are -- you'll have
2 cases that are certainly eligible for L-WOP, and that's never
3 mentioned. You'll have cases where, you know, it's
4 threatened that says: I will serve you with this if you
5 choose to get -- if you don't take this plea, I will serve
6 you with life without parole, and to me that's a direct
7 punishment for exercising saying you want to go to trial.

8 You -- you're facing life. I think it messes with the
9 process, the right of due process, under the Constitution,
10 and I just -- there's no guidelines to guide the solicitor's
11 office. It's completely at their discretion. They can serve
12 somebody with life without parole and take it away.

13 That's what Mr. Schoclet -- in his case he sits in the
14 jail and sees people receive this piece of paper that says
15 you're going to get life without parole. You can plead or go
16 to trial, and it gets taken away and they get a better offer.
17 And so the guidelines have made -- the lack of guidelines has
18 made this process so arbitrary that nobody knows how it
19 works. There's no timeline. There's no, you know, if you --
20 you know, and maybe I'm arguing something that, you know,
21 might hurt my clients in the future because, you know, the
22 legislature says it is mandatory, but the solicitor has the
23 discretion. So there's just no way to know how it's going to
24 be applied in any case.

25 In this -- you know, in this case we started out: Plead

1 straight up or you're served with life. You can plead to 15.
2 If you don't plead to 15, we're going to serve him with life.
3 Once somebody is served with life, it's going to be my job to
4 do anything to, regardless of whether he wants to go to
5 trial, to see if I can get an offer back on the table.

6 As of this morning, we were still trying to get some
7 sort of offer back that was reasonable. I think this
8 interferes with the process, the judicial process. He cannot
9 exercise his right to go to trial on the merits of the case.
10 He has to consider whether, well, you know, maybe I'm too
11 scared to go to trial because I'm faced with life without
12 parole or he's offered a plea. If he doesn't take that plea,
13 he's going to get punished and served with life.

14 I just think the way that it is applied by the
15 solicitor's office is so arbitrary and so capricious that --
16 can I give you specific data? I can only speak from
17 experience. I would, if possible, request more time to go
18 get this data, but I just -- there's no way -- there's no way
19 -- it's never applied the same way in every case and that's
20 -- this is a perfect example to the way it's applied as we're
21 here today. He's been in here three years. The first
22 900 days this wasn't an issue. Now it's, you know, oh, well,
23 he's not taking my plea offer; we're going to serve him with
24 life. And this has happened in the past two weeks, and then
25 that's my argument, Judge.

1 **The Court:** Got it. Thank you. All right. Yes.

2 **Ms. Garfield:** Your Honor, with all due respect, I feel
3 like we're just throwing a bunch of wet noodles up against
4 the wall and seeing if any of them stick. Ms. Gibbes is
5 trying to argue two things at the same time.

6 First of all, yes, I made the offer of pleading straight
7 up or seeking life without parole. He is life-without-parole
8 eligible. In our courthouse and among many of our judges,
9 Mr. Schoclet could possibly receive a much lesser sentence
10 than 15 years if he pled straight up. Time passed. Changed
11 lawyers.

12 I then made my offer back in December, negotiated 15 or
13 I was going to serve him with life without parole, and I
14 think I might have a pretty reasonable reputation in this
15 courthouse to making pretty reasonable offers. Mr. Schoclet,
16 a grown man, 40 something years old, made the decision in
17 January when I had him transported January 14th and informed
18 his lawyer who conveyed it to me that if he was going to have
19 to do 15, I might as well serve him with the paper.

20 Judge, to me that takes it as rejection of my offer. I
21 brought him over two more times with the opportunity once
22 again to take my plea offer and he rejected it. I then
23 served him on January -- it was filed January 28th. I
24 believe I actually served him on January 29th with the life-
25 without-parole notice.

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1 Judge Benjamin went over it with him, explained to him
2 what it was, asked him if he understood. He understood.
3 This morning his counsel came to me and asked me to use my
4 discretion to take life without parole off the table, and as
5 Your Honor is aware, we went around and around in
6 negotiations and once again Mr. Schoclet doesn't like the
7 punishment. He doesn't like the number. He doesn't like
8 what we've offered. Nothing is going to make him happy. And
9 you know, Judge, it's just like, hey, burglary first. If he
10 pleads guilty, I'll, you know, recommend 20, but if we go to
11 trial and conviction, I'm going to ask for life.

12 That's where our discretion comes in. That's what makes
13 the judicial process work, and I would like to see the
14 statistics as well specifically relating to me and my service
15 of life without parole and taking it off the table. I would
16 ask you to deny this motion.

17 And, Judge, as reference to Broadnax, Broadnax does not
18 apply here. I'm familiar with that case. If memory serves
19 me correctly, the public defender made the same motion
20 pretrial regarding equal protection, and Judge Cooper denied
21 it at that time. It was part of their appellate process.
22 Justice Beatty, when reviewing the case, made the decision
23 the case should be reversed because the defendant, having an
24 armed robbery, indicating there was no balancing test needed,
25 relying on Al-Amin -- Justice Beatty interprets it that they

1 should have relied on State versus Bryant which I believe
2 required a balancing test for a prior conviction. I believe
3 it's when Solicitor Pascoe had cross-examined the defendant
4 on a gun charge, if my memory serves me correctly. That's
5 when Solicitor Pascoe was an assistant here in Richland
6 County. And Justice Beatty felt we should rely on Bryant as
7 opposed to Al-Amin which I disagree with. I'm curious to see
8 how the Supreme Court reacts to that case once it makes it
9 their way.

10 Your Honor, I ask you to deny this. It's our
11 discretion, that they were originally asking us for -- the
12 law recently changed. It went from must seek life without
13 parole to shall, and he can't have it all -- both ways.

14 **Ms. Gibbes:** Judge, I apologize. I would just argue
15 this is a much broader -- this is a much bigger animal than
16 just pointing out Ms. Garfield, you know -- you know,
17 obviously we get along. I think this is a much broader
18 sentence because all solicitors across all the state have
19 discretion at their discretion. There's no rhyme or reason
20 to what they're going to do, and I think I would argue this
21 is unconstitutional. It violates the equal protection clause
22 of the Fourteenth Amendment.

23 There's no standard statewide as to when the solicitor
24 should seek life without parole. I would cite Bush v. Bore
25 (phonetic) which tells when fundamental rights are involved

1 as life, the equal protection clause of the Fourteenth
2 Amendment requires that there be uniform and specific
3 standards to prevent the arbitrary and disparate treatment of
4 similarly situated people, and I think it's clear that across
5 the state this life without parole is not being applied
6 across the board the same way every time because it is at the
7 discretion -- depending on what solicitor you get at
8 different times.

9 If they have a better case -- if they feel like they
10 have a better case, they might not offer life without parole.
11 You know, it just depends on the facts. Everything is
12 different, and it's arbitrarily applied across the state and
13 I think it's a big problem. I think it -- as I would just
14 like to restate, this is completely in violation of
15 separation of powers, my client's Fifth and Fourteenth rights
16 to due process as well as equal protection under the law,
17 Judge.

18 **The Court:** Okay. I got it. I don't need to make the
19 decision right now in any event. I've got some time to
20 consider it, and I'll let you know. The truth is: Is there
21 a life -- I should ask the question: Is there any reason why
22 the decision has got to be made prior to the -- prior to the
23 event? He might be found -- he certainly may be found not
24 guilty. At this point I can't presume he's going to be found
25 guilty. He's presumed innocent at this moment. And so is

1 there any reason at this point at this moment that a
2 determination must be made prior to any time of sentencing
3 which may never occur?

4 **Ms. Gibbs:** No, Your Honor. I do believe that the
5 sentencing issue -- but I believe that we need -- this needs
6 to be addressed because it's obviously an issue that---

7 **The Court:** Oh, I'm delighted you raised it now but --
8 because it -- I'm going to give it some thought.

9 **Ms. Gibbs:** Thank you, Judge.

10 **The Court:** Uh-huh. Yes, ma'am.

11 **Ms. Garfield:** Judge, one of her motions was to settle
12 the records. While we've been arguing this issue, Ms. Trapp
13 has run rap sheets on all our witnesses. I believe she gave
14 me... Here's the remaining. I don't believe any witness has
15 anything. Our position is they don't have anything that we
16 need to bring up to the jury.

17 **The Court:** Any of the witnesses that you would offer.

18 **Ms. Garfield:** That's right.

19 **The Court:** Okay. All right. Very, very, very well.
20 Can I ask you a question? And this is just curious. This is
21 just my own curiousness. Did you print the screen that says
22 they didn't have any record?

23 **Ms. Garfield:** Yes, ma'am.

24 **The Court:** That just was like -- it was an exciting
25 moment last week where this wonderful, wonderful lady in your

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1 office said I would have printed it if there was anything
2 there. So I wondered if y'all would change that -- would you
3 have printed it if it wasn't there? That was sort of an
4 interesting thing. Very well. All right. Anything
5 further---

6 **Ms. Gibbs:** No, Your Honor.

7 **The Court:** ---for this evening?

8 **Ms. Gibbs:** No, Your Honor.

9 **The Court:** All right. Thank you so much. I will see
10 you all in the morning.

11 (State's Exhibits 6 through 15 were marked for
12 identification only. Whereupon, the trial concluded for the
13 day at 5:10 p.m. and resumed the following day, February 12,
14 2013, as follows.)

15 **The Court:** Thank you so much, everybody, and please be
16 seated. Now we're going to be at ease. We're just going to
17 be at ease for a little bit.

18 (Pause in proceedings.)

19 Curtis R. Schoclet, after being duly sworn,
20 testified as follows:

21 Examination by the Court

22 Q. You are Curtis Ray Schoclet?

23 A. Yes, ma'am.

24 Q. All right. And you're represented by Ms. Courtney
25 Gibbs?

1 A. Yes, ma'am.

2 Q. And Mr. Mark Sawyer?

3 A. Yes, ma'am.

4 Q. Very well. And Mr. Patrick Sharpe?

5 A. Yes, ma'am.

6 Q. All right. And I'm going to direct -- I'll direct these
7 questions, if that's all right, to you, Ms. Gibbs, if that's
8 okay.

9 Ms. Gibbs: Yes, Your Honor.

10 The Court: Because I believe you are lead counsel.

11 Ms. Gibbs: Yes, Your Honor.

12 The Court: Very well. Ms. Gibbs, have you advised
13 your client regarding the nature of these offenses, the
14 maximum possible penalty and consequences, and his
15 constitutional rights, including his right to a jury trial?

16 Ms. Gibbs: I have, Your Honor.

17 The Court: And in your opinion, does he understand the
18 nature of these offenses, the maximum possible penalty and
19 his rights?

20 Ms. Gibbs: He does, Your Honor.

21 The Court: Tell me how your client wishes to plead.

22 Ms. Gibbs: Guilty.

23 The Court: And do you concur with his decision?

24 Ms. Gibbs: I do, Your Honor.

25 The Court: With regards to each of these offenses?

1 **Ms. Gibbs:** Yes, Your Honor.

2 **The Court:** All right. From your investigation of the
3 facts and circumstances of your client's case, do you believe
4 that the State could produce sufficient evidence to convict
5 and establish your client's guilt beyond a reasonable doubt?

6 **Ms. Gibbs:** Yes, Your Honor.

7 **The Court:** And if he was to stand trial, do you believe
8 that your client would be found guilty?

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

10 **The Court:** All right. And do you have any questions or
11 concerns regarding Mr. Schoclet's competency?

12 **Ms. Gibbs:** No, Your Honor.

13 **The Court:** Very well. Has he had any sort of
14 psychological evaluation?

15 **Ms. Gibbs:** No, Your Honor.

16 **The Court:** Very well.

17 By the Court:

18 Q. Mr. Schoclet, I have many questions to ask of you. The
19 reason that I am asking these questions is to be sure that
20 you're entering into these proceedings freely, voluntarily,
21 knowingly, and intelligently. If at any point in time you do
22 not understand my question, do not answer it but do let me
23 know that you understand -- that you do not understand my
24 question.

25 You know, Mr. Schoclet, there are many ways to explain

1 any one thing. So if you answer a question, I'll think that
2 you understood it. So if you don't understand the question,
3 just stop and let me know. Okay?

4 A. Yes, ma'am.

5 Q. Very well. If you need to stop and talk to Ms. Gibbes
6 during this process, do not hesitate to do that. She's not
7 going anywhere; she's right here. And she is here to advise
8 you through this process as well. Do you understand that?

9 A. Yes, ma'am.

10 Q. Having said that she's here to advise you, of course,
11 she cannot give you your answers. Those answers must be your
12 answers, but if you have a question or a concern as we go
13 through this process, obviously you can ask me, but you can
14 certainly ask her. She's representing you and continues to
15 do that. All right?

16 A. Yes, ma'am.

17 Q. I wouldn't be able to give you advice, but if you're
18 asking me -- if you need to ask a question with regards to
19 the topic that we are discussing, I want you to feel free to
20 do that, too. Okay?

21 A. Yes, ma'am.

22 Q. Okay. Now, Mr. Schoclet, I keep wanting you to be --
23 and I apologize, Mr. Schoclet. You're answering with your
24 voice with yes or no and I appreciate that because we're
25 going to be having a bit of a conversation, so I wanted to

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1 tell you thank you for doing that because obviously our court
2 reporter must take down what you're saying. So thank you for
3 answering with your voice.

4 A. You're welcome.

5 Q. Very well. Tell me how old you are.

6 A. Forty-two.

7 Q. Tell me how far you went in school.

8 A. Tenth grade.

9 Q. Do you have your G.E.D.?

10 A. Yes, ma'am.

11 Q. Do you remember when you got your G.E.D.? You've had it
12 for years?

13 A. '96.

14 Q. Okay. Tell me this, Mr. Schoclet: I understand you
15 have been locked up a long time. I think 900 and---

16 **Ms. Gibbs:** 931 days since July 27th, 2010.

17 By the Court:

18 Q. July 27th, 2010. Does that sound right?

19 A. Yes, ma'am.

20 Q. All right. And before you were locked up, Mr. Schoclet,
21 tell me where you worked.

22 A. Metal Equipment Fabricators.

23 Q. How long had you worked there?

24 A. I was there about -- about three months.

25 Q. Okay. Now, have you ever been treated for alcohol or

1 drug abuse?

2 A. No, ma'am.

3 Q. Have you ever been treated for any sort of mental health
4 challenges?

5 A. No, ma'am.

6 Q. In the last 72 hours have you had any drugs or any
7 alcohol?

8 A. No, ma'am.

9 Q. Have you had any medication at all to include Tylenol?

10 A. No, ma'am.

11 Q. Are you aware of any issues or challenges or problems
12 that you have? For example, a physical challenge or a mental
13 challenge, a drug or alcohol problem, a nervous problem, any
14 problem that you can think of that might or that could
15 interfere with or keep you from knowing exactly what you are
16 doing here today?

17 A. No, ma'am.

18 Q. Very well. Now, are you married?

19 A. Yes, ma'am.

20 Q. Do you have kids?

21 A. Yes, ma'am.

22 Q. How many?

23 A. Five.

24 Q. Okay. Now, Mr. Schoclet, we're going to talk about your
25 charges, and I'll ask you this: At this time, at this time,

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1 are you on probation or parole?

2 A. No, ma'am.

3 Q. All right. Very well. All right. Now, Mr. Schoclet,
4 you are charged with three offenses. Do you understand that?

5 A. Yes, ma'am.

6 Q. All right. I'm going to talk to you about them. I'm
7 going to start with armed robbery. Now, first of all, I'd
8 ask if you understand that armed robbery is punishable by
9 imprisonment for a maximum of 30 years?

10 A. Yes, ma'am.

11 Q. Do you understand that there is a minimum sentence for
12 armed robbery and that minimum sentence is 10 years?

13 A. Yes, ma'am.

14 Q. In other words, do you understand that I cannot give you
15 less than 10 years in prison for the offense of armed
16 robbery?

17 A. Yes, ma'am.

18 Q. And a maximum of up to 30 years in prison.

19 A. Yes, ma'am.

20 Q. Now, do you also understand that armed robbery is a
21 violent offense?

22 A. Yes, ma'am.

23 Q. All right. And a most serious offense?

24 A. Yes, ma'am.

25 Q. All right. All of these three offenses, they are all

1 violent offenses and most serious offenses, so I'm going to
2 talk about those with you at the conclusion of going through
3 the maximum amount of prison time that you would be exposed
4 to, so then we'll talk about the fact that each of these
5 offenses is violent and most serious. So I'm going to move
6 on to kidnapping. Do you understand that you are charged
7 with two -- in two indictments? Each of them have one
8 offense of kidnapping.

9 A. Yes, ma'am.

10 Q. Therefore, do you understand that you are charged with
11 two crimes of kidnapping?

12 A. Yes, ma'am.

13 Q. Two charges for kidnapping, if you will.

14 A. Yes, ma'am.

15 Q. All right. Do you understand that kidnapping carries a
16 penalty of up to 30 years---

17 A. Yes, ma'am.

18 Q. ---in prison? Do you understand that your exposure here
19 today, if you will, is 90 years in prison?

20 A. Yes, ma'am.

21 Q. All right. Now, Mr. Schoclet, I want to talk about the
22 fact that each of these offenses is a violent offense and,
23 first of all, I'll ask you if you understand that.

24 A. Yes, ma'am.

25 Q. All right. Because each of these offenses are a violent

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1 offense and given the penalties of these offenses, do you
2 understand that these offenses are called non-parolable
3 offenses which means that you will not be -- you will not be
4 eligible for parole?

5 A. Yes, ma'am.

6 Q. All right, sir. Now, what that means is whatever
7 sentence I give you, you need to count on serving that
8 sentence.

9 A. Yes, ma'am.

10 Q. All right. Now, do you also understand that because
11 these are violent offenses that that will also -- it really
12 pervades a number of issues. For example, it will dictate
13 what facilities you would be housed in in the department of
14 corrections. Do you understand that?

15 A. Yes, ma'am.

16 Q. Do you understand that it will pervade your
17 classification and even at the time that -- when you are
18 released, there will be certain types of employment that you
19 will not be eligible for, for example?

20 A. Yes, ma'am.

21 Q. All right. In other words, the fact that these are
22 violent offenses it really is -- it's -- it has a number of
23 different consequences. Do you understand that?

24 A. Yes, ma'am.

25 Q. All right. Now, do you understand that each of these

1 offenses is a most serious offense?

2 A. Yes, ma'am.

3 Q. All right. And I'm going to talk to you a little bit
4 about that because the statutory provision that I'm speaking
5 of is 17-25-45. It's the recidivism statute. It's also
6 known as the two-strike/three-strike rule, and what the
7 two-strike/three-strike rule means is that if over the course
8 of someone's life they are convicted of one most serious
9 offense, if they stand charged with a second most serious
10 offense and the State serves notice of the State's intention
11 to seek life without the possibility of parole and the person
12 is then convicted, then it is mandatory, as the law is now,
13 it is mandatory that that person receive a sentence of life
14 imprisonment without the possibility of parole. Do you
15 understand that?

16 A. Yes, ma'am.

17 Q. Tell me what that means to you: Life without the
18 possibility of parole.

19 A. Not getting out.

20 Q. Right. You go out horizontally in a box. Do you
21 understand that?

22 A. Yes.

23 Q. You die in prison. Do you understand that?

24 A. Yes, ma'am.

25 Q. Now, there's another consequence that I want to talk to

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1 you about and it's this: If, over the course of your
2 lifetime, a person is convicted of three serious offenses or,
3 or, one or two -- well, I should say in your particular
4 circumstance when you get out of prison, if you were to be
5 convicted of a serious offense, not convicted, but I should
6 say charged with a serious offense which is another
7 classification of crimes, but if you were to be charged with
8 a serious offense, because you will have convictions on your
9 record for most serious offenses, one in Texas, one in South
10 Carolina -- well, three in South Carolina, but they are
11 happening at the same time and you're then charged with a
12 serious offense, I believe that you could most likely - and I
13 want you to think about it in terms of you would be - you
14 could be served then with notice of intent to seek life
15 without the possibility of parole because I believe that the
16 sentence in Texas would be a strike even though here it would
17 be a most serious strike. These would be strike, most
18 serious, but if you had a serious strike, that would be the
19 three strikes because typically it's three serious offenses
20 and you can again be served with a notice of an intention to
21 seek life without the possibility of parole. It could also
22 be two serious offenses and a most serious offense. That
23 would be the third strike under that scenario.

24 I believe, given your unique circumstance, given the
25 offense in Texas and given these offenses, if you were to be

1 charged in the future with a serious offense, meaning a crime
2 classified as a serious offense, that again the State could
3 serve you with notice of intention to seek life without the
4 possibility of parole, and if you were then convicted of a
5 serious offense, then it would be mandatory that you would
6 spend the rest of your life in prison without the possibility
7 of parole. Do you understand that?

8 A. Yes, ma'am.

9 Q. Do you have any questions about that? Because, you
10 know, that's a little bit complicated.

11 A. No, ma'am.

12 Q. Okay. Very well. Now, I want to put on the record just
13 so there's no question about your status after today -- okay?
14 I want everybody to be very clear. It is my understanding
15 that your record from Texas has the aggravated robbery that
16 we talked about yesterday, and I'm kind of looking -- there
17 you are. Given his record, do you think that on his record
18 that there are any other offenses that would qualify as
19 either serious or most serious?

20 Ms. Garfield: I'm going to defer to Ms. Bodman, Judge.

21 The Court: Okay.

22 Ms. Garfield: She's going to address the prior record.

23 The Court: Sure.

24 Ms. Garfield: Especially with her knowledge of the
25 Texas law.

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1 **The Court:** Thank you. Thank you. Absolutely, Ms.
2 Garfield. Yes.

3 **Ms. Bodman:** There is a -- it looks like a burglary of a
4 habitation, so that potentially would be our burglary first
5 statute.

6 **The Court:** Yes. Yes.

7 **Ms. Bodman:** And so that potentially is...

8 **The Court:** Another.

9 **Ms. Bodman:** Another.

10 **The Court:** Most serious offense.

11 **Ms. Bodman:** Most serious offense, yes.

12 **The Court:** Okay. Very well. And just so you know
13 that. I think it's important that you understand that
14 potentially there is another most serious offense on your
15 record coming out of Texas and that would be the -- what's it
16 called? Robbery of a habitation?

17 **Ms. Bodman:** Burglary of a habitation.

18 **The Court:** Burglary of a habitation which could be our
19 burglary in the first degree.

20 **By the Court:**

21 **Q.** I just share these things with you because I don't want
22 you to have any question about the consequences for you going
23 forward. Do you understand?

24 **A.** Yes, ma'am.

25 **Q.** Okay. Very well. Now, I want to say this as much as

1 anything to remind everyone that I don't do this, but unless
2 the Court -- unless the Court makes a finding that this
3 particular kidnapping was not a kidnapping that was -- had
4 some sexual motivation, I need to put that on here so that
5 when you are released, you do not have to register as a sex
6 offender. Based on what I understand from yesterday, I
7 should do that. I should put on your sentencing sheet the
8 kidnapping -- that this is not a sexually-motivated
9 kidnapping, and you should not be required to register as a
10 sex offender. Do you understand what I'm talking about?

11 A. Yes, ma'am.

12 **The Court:** Do y'all understand -- y'all got to make
13 sure that I do that.

14 **Ms. Garfield:** Yes, ma'am. We're in agreement.

15 **Ms. Gibbs:** Yes, ma'am.

16 By the Court:

17 Q. Because the Court has to affirmatively say it's not
18 sexually-motivated. Otherwise, you have to register as a sex
19 offender, and that's caused some problems with some folks
20 going forward that clearly there were kidnappings and they
21 weren't sexually motivated, yet they have to register as a
22 sex offender. It would be my intention -- and these lawyers
23 are going to help me remember to put that on the sentencing
24 sheet. Okay?

25 A. Yes, ma'am.

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1 Q. All right. Very well. Now, Mr. Schoclet, I want to
2 pause for just a moment because here is what you have told
3 me: That you understand the nature of these three offenses,
4 they're most serious, they're violent, that you understand
5 the maximum possible prison time which is 90 years in prison.
6 You have told me that you understand these matters. You're
7 not on probation or parole. Keeping these matters in your
8 mind, in the absolute forefront of your mind, I want you to
9 tell me, Mr. Schoclet: How do you plead to indictment
10 2011-GS-40-559 which is armed robbery?

11 A. Guilty.

12 Q. How do you plead, sir, to 2011-GS-40-560 which is the
13 indictment for kidnapping and it is the kidnapping involving
14 Mr. Robinson?

15 A. Guilty.

16 Q. How do you plead to 2011-GS-40-561 which is the
17 indictment which involves the kidnapping of Ms. Libertini?

18 A. Guilty.

19 Q. She has -- I know she has a new name, but I believe it's
20 Libertini, if that's okay. Very well. Now, do you
21 understand, Mr. Schoclet, that when you plead guilty that you
22 give up certain very important constitutional rights?

23 A. Yes, ma'am.

24 Q. All right. You give up -- let me look here now. You
25 give up -- first of all, you give up your right to remain

1 silent because when you say you're guilty, obviously you're
2 no longer silent. It makes sense, doesn't it?

3 A. Yes, ma'am.

4 Q. You give up your right against self-incrimination,
5 meaning words that point towards your own guilt. Obviously
6 when you tell me you're guilty, there is -- what is more
7 self-incriminating than telling me that? Do you understand?

8 A. Yes, ma'am.

9 Q. Obviously that's a constitutional right that you give
10 up. You give up your right to require the State to prove you
11 guilty beyond a reasonable doubt, every allegation of each of
12 these three indictments which, of course, they must prove
13 beyond a reasonable doubt. You give up that right. Do you
14 understand?

15 A. Yes, ma'am.

16 Q. You give up your right to have your lawyer or your
17 lawyers cross-examine witnesses who would testify against
18 you. Do you understand?

19 A. Yes, ma'am.

20 Q. You give up your right to have your lawyers subpoena
21 witnesses to come testify in your defense. Do you
22 understand?

23 A. Yes, ma'am.

24 Q. Do you understand that you give up your right to present
25 defenses?

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1 A. Yes, ma'am.

2 Q. You give up your right to have your lawyer challenge --
3 in fact, they did yesterday challenge any incriminating
4 statements that you may have made in your case. In fact,
5 that happened yesterday in the Jackson v. Denno hearing. Do
6 you understand that?

7 A. Yes, ma'am.

8 Q. You give up your right to have your lawyers challenge
9 any stops or searches or seizures that you think were not
10 appropriate. Do you understand that?

11 A. Yes, ma'am.

12 Q. All right. And, of course, you give up your right to a
13 jury trial. Do you understand?

14 A. Yes, ma'am.

15 Q. Do you understand, Mr. Schoclet, that if you wanted to
16 have a trial, obviously you would have a trial? The jury is
17 here; they're impaneled. Do you understand?

18 A. Yes, ma'am.

19 Q. Do you understand that at this trial that was about to
20 begin that it would be your decision and your decision solely
21 -- you could consult with your lawyers, family or friends or
22 people with whom you have confidence, but at the end of the
23 day it would be your decision and your decision only to
24 decide whether you wanted to testify or not testify?

25 A. Yes, ma'am.

1 Q. Do you understand that if you proceed to trial and you
2 decide not to testify that I will tell this jury that they
3 cannot consider your decision not to testify on the issue of
4 whether you were guilty or not guilty? Do you understand I
5 would tell this jury that?

6 A. Yes, ma'am.

7 Q. Do you understand that I would tell this jury that they
8 could not even discuss the fact that you chose not to testify
9 -- in the event that you chose not to testify that I would
10 tell this jury they couldn't even discuss it in the jury
11 room?

12 A. Yes, ma'am.

13 Q. I would tell this jury that it is the exercise of your
14 Fifth Amendment right; you don't have to prove anything. I
15 would tell the jury that. Do you understand that?

16 A. Yes, ma'am.

17 Q. That I would tell this jury that the burden is and
18 remains on the State to prove guilt beyond a reasonable
19 doubt. Do you understand I would tell the jury that?

20 A. Yes, ma'am.

21 Q. And that you didn't have anything to prove. Do you
22 understand?

23 A. Yes, ma'am.

24 Q. All right. That that burden remains on the State. Do
25 you understand?

1 A. Yes, ma'am.

2 Q. I would tell this jury that you are presumed innocent.

3 Do you understand that?

4 A. Yes, ma'am.

5 Q. Very well. Now -- now, Mr. Schoclet, we have not, of
6 course, discussed all of your constitutional rights, but I
7 know that you've had an opportunity to have conversations
8 with your attorneys. Do you believe that you do understand
9 your constitutional rights?

10 A. Yes, ma'am.

11 Q. Okay. And understanding those constitutional rights, do
12 you understand that they are preserved for you at trial?

13 A. Yes, ma'am.

14 Q. And do you understand that you waive them when you plead
15 guilty?

16 A. Yes, ma'am.

17 Q. Is that what you want to do?

18 A. Yes, ma'am.

19 Q. All right. And do you understand that when you plead
20 guilty that you give up your right to have this jury
21 determine if you are guilty or not guilty?

22 A. Yes, ma'am.

23 Q. And do you know that if I accept your plea I am going to
24 sentence you?

25 A. Yes, ma'am.

1 Q. Okay. Now, I will pause here again because I want to go
2 over what you've told me. You've told me that you understand
3 these offenses. They're violent, most serious. You've told
4 me that you understand the maximum possible penalty of
5 90 years in prison, 90 years in prison, and you've told me
6 you understand they are no-parole offenses. You've told me
7 now that you understand your constitutional rights. And,
8 again, I want to ask you, keeping these matters, all of these
9 matters, in the forefront of your mind, do you still want to
10 continue with your plea of guilty to each of these two
11 charges or indictments of kidnapping and the third indictment
12 and charge for armed robbery?

13 A. Yes, ma'am.

14 Q. All right. Now, let me tell you what happens next. Mr.
15 Schoclet, every plea has to be supported by a factual basis,
16 and so I'm going to call on the solicitor, of course, who is
17 handling your case. There are three solicitors that are
18 involved, but Ms. Garfield is lead counsel and I'm going to
19 call on Ms. Garfield to go over the facts with me. It's
20 going to be based on her investigation and, of course, that
21 of law enforcement. And when she is finished, I'm going to
22 ask you: Is that what happened? We're going to do it for
23 each one of these indictments.

24 So what I need you to do is listen very, very carefully
25 to what she tells me because I'm going to ask you: Is that

1 what happened? I need you to correct anything that needs
2 correcting to be sure that I have an accurate picture of what
3 occurred. Okay?

4 A. Yes, ma'am.

5 Q. Do you understand how I'm going to be proceeding?

6 A. Yes, ma'am.

7 **The Court:** All right. I'm listening to you.

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

10 **The Court:** Yes.

11 **Ms. Garfield:** This incident began the early morning of
12 July 26th, 2010. I'll first begin with Melanie May who you
13 heard yesterday. She arrived at work. She worked at
14 Nationwide Insurance on the corner of Atrium Way and Two
15 Notch Road. She got there a little before 8:30. She's
16 always the first to arrive, and she went into her business
17 and locked the door behind her because it was not open to the
18 public as of yet.

19 Shortly thereafter, she heard someone at the back door
20 and saw what she later identified to be the defendant, Curtis
21 Schoclet. She found this unusual. He was in an area in the
22 back of the business where there are other businesses that
23 were not open yet, and he was knocking on the door and he was
24 asking for some water. She did not like this and told him
25 that there was a faucet around back and he was more than

1 welcome to go and help himself to some water there.

2 She then watched him proceed to walk towards the back of
3 the build -- towards the back of the lot towards other
4 businesses which is where Palmetto Citizens Federal Credit
5 Union is located at 114 Atrium Way. This is a credit union
6 that is supported and owned by the members of the credit
7 union, their customers.

8 Shortly thereafter, within about a half-hour, Gary
9 Hunsaker, who is a member of the credit union, went there to
10 do some business. He does lots of business with this credit
11 union, making almost daily transaction. He went there
12 through for his normal course of activity. He's very
13 familiar with all the members of the -- all the workers of
14 the credit union and he went in to do his business.

15 And as he was leaving, the defendant, who we later
16 identified as Curtis Schoclet, was entering the business.
17 Gary Hunsaker just actually held the door open for him to
18 walk in, and at that moment Mr. Hunsaker began to be
19 skeptical because he noticed that the defendant had his arm
20 behind his back and was wearing work gloves, dirty work
21 gloves. Obviously hand behind the back and dirty work gloves
22 to be worn in the middle of a very hot July morning he found
23 -- he was very concerned. He walked to his truck and sat in
24 his truck, contemplating what to do and proceeded to just
25 watch the door because he was worried that something bad was

1 happening inside.

2 Mr. Schoclet continued towards the tellers. There were
3 several tellers working, one of which was Kerry Robinson.
4 Brandy Broughton was his supervisor who was also standing
5 there and Tamika Pressley was also a teller. Ms. Broughton
6 had just gone and gotten money from the vault and was
7 distributing it to the tellers. Tamika Pressley began to
8 count the money to make sure that she had the exact amounts
9 and had her back sort of turned. And Kerry Robinson saw the
10 defendant walk in, and as he's trained, he greeted his
11 customer and let him know that he was open for business.

12 At that time, with Brandy Broughton standing right
13 beside him, Curtis Schoclet approached the teller. He
14 presented what appeared to them to be a handgun. They both
15 thought it was a gun. They were both extremely fearful, and
16 he presented a bank bag and said, "Give me the money."

17 Brandy Broughton was very concerned because she had the
18 cash drawer open right below it where thousands of dollars
19 were stored. She began to try to close that door (verbatim)
20 at which point the defendant instructed the two of them not
21 to move, with the gun in plain sight.

22 Kerry Robinson began to fill the bag. He filled the bag
23 with approximately \$4,000 at which point the defendant told
24 him to stop. He took the bag of money and exited the store.
25 At that time Ms. Broughton yelled out that they had just been

1 robbed. They immediately locked the doors and began to call
2 9-1-1.

3 Mr. Hunsaker is in his car watching the defendant leave,
4 and the defendant left very calmly and walking slowly. Mr.
5 Hunsaker at that time began to think that perhaps this was
6 legitimate, I shouldn't act upon this, and then sees the
7 defendant take off running. Mr. Hunsaker actually tried to
8 track him down, was able to do so. He went back to the bank.
9 The doors were locked. They informed him they had just been
10 robbed, at which time they let Mr. Hunsaker in and as bank
11 protocol, they began to fill out identification cards, and
12 it's a form they have at the bank for their employees, anyone
13 that sees a suspect, to begin to fill out such as: What hand
14 was the gun in? What's the height? What's their physical
15 appearance? And they all gave a physical description of a
16 man between 5'7" and 5'10", dark complexion, armed with a
17 pistol.

18 Law enforcement arrived. Deputy Perry with the Richland
19 County Sheriff's Department got there. He obtained the video
20 of the bank robbery, and he took it back to Lieutenant Scott
21 McDonald at the sheriff's department. Lieutenant McDonald
22 shared this video with the media. It was later shown to the
23 media that evening on the news.

24 By the next morning, multiple tips came in through
25 Crimestoppers tips indicating that the defendant in the video

1 was Curtis Schoclet. There was also -- part of the tip was
2 that Curtis Schoclet drove a particular car, and off the top
3 of my head I forget. I think it was a green car. But at any
4 rate, gave a description of the car.

5 Lieutenant McDonald contacted Investigator Mauldin,
6 asked him to go by the address that was associated with
7 Curtis Schoclet to see if such car was there to corroborate
8 the tip and it was so. At that time they developed a --
9 Lieutenant McDonald developed a photographic line-up that you
10 heard lots of testimony about yesterday and they went --
11 Lieutenant McDonald and Investigator Mauldin went to the bank
12 and showed the video -- showed the line-ups individually and
13 privately to Brandy Broughton and Kerry Robinson, which both
14 individuals picked out the defendant as being the one that
15 robbed them at gunpoint. A photographic line-up was later
16 shown to Melanie May, and she also picked out the person as
17 Curtis Schoclet that came to her place of business shortly
18 before that.

19 The defendant at the time was living with a lady named
20 Valerie Reese, and Valerie Reese on the night of the armed
21 robbery saw the video on the news or pictures on the news and
22 felt that the person in the video was Curtis Schoclet. She
23 then went to the W.L.T.X. website and looked at them again
24 and felt it to be Curtis Schoclet. When she got home that
25 night, she saw the defendant's car there and she became

1 apprehensive and actually went and stayed with a friend
2 because she was scared.

3 The next morning she spoke with Mr. Schoclet, and Mr.
4 Schoclet denied the robbery. She told him to go turn himself
5 in. Eventually the defendant did turn himself in without
6 incident. Investigator Mauldin did Mirandize him. He waived
7 his rights, and he did confess to robbing the Palmetto
8 Citizens Credit Union.

9 Your Honor, I believe that's the extent of the facts.
10 The State has exercised its discretion in withdrawing our
11 motion to seek life without parole. We have entered into
12 negotiations with defense counsel for a sentence -- a
13 negotiated sentence to range from 25 to 30 years. Ms. Bodman
14 will address the prior record, and at the appropriate time
15 the victims and the witnesses would like to address the
16 Court.

17 The Court: Very well. Let me -- two things I want to
18 establish. This happened -- this address where these events
19 occurred was in Richland County. Yes?

20 Ms. Garfield: Yes, ma'am.

21 The Court: All right. And finally, you have referred
22 to Ms. Broughton, but I gather that Ms. Broughton---

23 Ms. Garfield: Has married. Yes, ma'am.

24 The Court: ---has had a name change.

25 Ms. Garfield: Yes, ma'am, and it's -- quite frankly,

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1 Broughton is easier to say.

2 **The Court:** I handled -- I didn't do so good on the
3 first part of her hyphenated name, but just for our record, so
4 that our record is very clear, Ms. Broughton was -- is it
5 Manack or Manach?

6 **Ms. Broughton:** Manack-Libertini.

7 **The Court:** Manack-Libertini. See how easy that is.
8 Manack-Libertini is now Broughton.

9 **Ms. Broughton:** Yes, ma'am.

10 **The Court:** Very well. Very well. Thank you. I would
11 only make those two---

12 **Ms. Garfield:** Yes, ma'am.

13 **The Court:** ---changes.

14 By The Court:

15 Q. Now, let me -- let me ask -- first of all, let me ask
16 Mr. Schoclet: Mr. Schoclet, with regards to these events,
17 obviously there are -- there are facts which have been talked
18 about that you would not know about. For example, you would
19 not know that Ms. Mays (verbatim) is the first person that
20 arrives every day at the Nationwide location and locks the
21 door. You would not know that.

22 A. No.

23 Q. But with regards to the facts that establish these
24 offenses, did you enter the bank -- let me get it right. Let
25 me get the right names in the indictment, if you will. Here

1 it is. Did you enter the Palmetto Citizens Bank?

2 A. Yes, ma'am.

3 Q. Did you enter that bank with either a pistol or armed
4 while using a representation of a pistol?

5 A. (No response.)

6 Ms. Gibbes: Beg the Court's indulgence.

7 The Court: Sure.

8 (Mr. Schoclet talks off the record with Ms. Gibbes.)

9 Mr. Schoclet: Yes, ma'am.

10 By The Court:

11 Q. Okay. Meaning, as I understand some of the
12 conversations I've had with counsel, you would say it wasn't
13 a real gun, but you went there. It had -- as I understand
14 it, you showed a portion of what you had, but you would say
15 it was not a real -- while it wasn't a real pistol, it
16 certainly looked like a real pistol, what you showed to the
17 folks. Yes?

18 A. Yes, ma'am.

19 Q. And that you intended for that. You intended for them
20 to think it was a pistol.

21 A. Yes, ma'am. Yes, ma'am.

22 Q. Okay. Very well. And did you -- just as Ms. Garfield
23 has told me, did you tell Ms. Broughton not to move?

24 A. Yes, ma'am.

25 Q. All right. And did you direct Mr. Robinson what to do?

1 Did you direct him to give you money?

2 A. Yes, ma'am.

3 Q. All right. All right. Now -- and, of course, the other
4 facts that you have knowledge of, the facts that have been
5 given to me by Ms. Garfield, are they accurate?

6 A. Yes, ma'am.

7 Q. Very well. Now, I know that there have been plea
8 negotiations. Ms. Garfield has just put that on the record,
9 and the negotiations are really twofold. Number one, the
10 State has now withdrawn its request for life without the
11 possibility of parole and that there is an agreement, plea
12 negotiations, that a sentence would be set between 25 and
13 30 years in prison. First of all, do you understand those
14 negotiations?

15 A. Yes, ma'am.

16 Q. Are those the negotiations?

17 A. Yes, ma'am.

18 Q. All right. Now, my next question that I'm going to ask
19 you is -- doesn't involve those negotiations. It's this:
20 Has anyone promised you anything or held out any hope of any
21 kind of a reward to get you to plead guilty?

22 A. No, ma'am.

23 Q. Has anyone tried to force you or threaten you to get you
24 to plead guilty?

25 A. No, ma'am.

1 Q. Has anybody tried to intimidate you to get you to plead
2 guilty?

3 A. No, ma'am.

4 Q. Has anyone tried to overcome your free will in having
5 you plead guilty?

6 A. No, ma'am.

7 Q. Are you pleading guilty here today to these three
8 offenses freely and voluntarily?

9 A. Yes, ma'am.

10 Q. Have you had enough time to make up your mind that this
11 is what you want to do?

12 A. Yes, ma'am.

13 Q. All right. Now, are you pleading guilty because you
14 are, in fact, guilty?

15 A. Yes, ma'am.

16 Q. Now, I want to talk about your lawyers. First of all,
17 are you satisfied with the services of your attorneys? And
18 I'm talking about Ms. Gibbes, Mr. Sawyer, and Mr. Sharpe.

19 A. Yes, ma'am.

20 Q. All right. Have you spoken with your lawyers for as
21 many times, as multiple times, as many times as you believe
22 appropriate?

23 A. Yes, ma'am.

24 Q. Have you spoken with your attorneys for as long a period
25 on each of those occasions as you believe appropriate?

1 A. Yes, ma'am.

2 Q. Have you spoken with your lawyers about these particular
3 charges and the elements of each of these charges?

4 A. Yes, ma'am.

5 Q. I don't know whether or not you asked your lawyers to
6 speak to specific witnesses. I don't know that, but if you
7 did, did they? Meaning: If you asked your attorneys to
8 speak to certain witnesses, did they speak to those
9 witnesses? In other words, I don't know that you did---

10 A. No, I didn't ask them that, to speak with---

11 Q. You didn't ask them to. Okay. Now, did your lawyers do
12 any investigation that you may have asked them to do? I
13 don't -- again, I don't know that you asked them to do a
14 particular investigation, but if you asked them to do that,
15 did they do that investigation?

16 A. Yes, ma'am.

17 Q. All right. And have your lawyers done everything for
18 you in your case that you believe that they could have done
19 or should have done to properly represent you?

20 A. Yes, ma'am.

21 Q. Did they do anything or have they done anything in their
22 representation of you that you think they should not have
23 done?

24 A. No, ma'am.

25 Q. Now, I don't know that you asked for copies of the

1 discovery, meaning, you know, the statements, the tapes and
2 the things. I don't know that you asked for copies of that
3 information, but if you did ask for copies of that
4 information from the State, the discovery, did you receive
5 copies of it?

6 A. Yes, ma'am.

7 Q. All right. Have you been over each and every item that
8 the State has available to present at trial for the purpose
9 of proving you guilty?

10 A. Yes, ma'am.

11 Q. And have you been over that evidence with your lawyers?

12 A. Yes, ma'am.

13 Q. All right. Have you understood it?

14 A. Yes, ma'am.

15 Q. Have your lawyers answered all of your questions?

16 A. Yes, ma'am.

17 Q. Have you understood what your lawyers have had to tell
18 you?

19 A. Yes, ma'am.

20 Q. Do you have any lingering questions of the lawyers?

21 A. No, ma'am.

22 Q. Do you need any more time to speak with your lawyers at
23 this time?

24 A. No, ma'am.

25 Q. And finally, Mr. Schoclet, are you completely satisfied

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1 with the services of your attorneys?

2 A. Yes, ma'am.

3 Q. Now, has anyone associated with your case - and by that
4 I mean prosecutor, your lawyer, solicitor, the solicitor, any
5 of the officers involved in your arrest or any of the folks
6 at the detention facility where you have been - has anyone
7 associated with your case mistreated you in any way?

8 A. No, ma'am.

9 Q. Have you understood my questions?

10 A. Yes, ma'am.

11 Q. Do you -- and do you have any questions of me about what
12 we have just been over?

13 A. No, ma'am.

14 Q. Do you understand that you have a right to appeal your
15 guilty plea and any sentence that I impose? Do you
16 understand that?

17 A. Yes, ma'am.

18 Q. Do you understand that if you wish to appeal, you or an
19 attorney on your behalf must appeal within ten days?

20 A. Yes, ma'am.

21 Q. Do you understand that if you wish your attorneys to
22 appeal your plea, you need to let them know pretty quickly?

23 A. Yes, ma'am.

24 Q. And I will just tell you it's in your best interest if
25 you can keep a copy of that to do that, but you need to get

- 1 that to them pretty quick. Do you understand?
- 2 A. Yes, ma'am.
- 3 Q. Because they're bound by the same ten days as you would
- 4 be.
- 5 A. Yes, ma'am.
- 6 Q. In other words, you've only got ten days from today and
- 7 you wouldn't count today. You would be counting -- tomorrow
- 8 would be the first day, but you only have ten days to do
- 9 that. Do you understand?
- 10 A. Yes, ma'am.
- 11 Q. All right. Do you have any questions about that?
- 12 A. No, ma'am.
- 13 Q. All right. Now, Mr. Schoclet, with regards to each and
- 14 with regards to every answer that you have given me here
- 15 today, have you been absolutely - and I mean 100 percent -
- 16 truthful with me?
- 17 A. Yes, ma'am.
- 18 Q. Have your answers been your own answers?
- 19 A. Yes, ma'am.
- 20 Q. Now, Mr. Schoclet, has anybody told you how to answer my
- 21 questions?
- 22 A. No, ma'am.
- 23 Q. Whose answers have you given me here today?
- 24 A. My answers.
- 25 Q. Are you sure?

1 A. Yes, ma'am.

2 Q. No one has told you how to answer my questions.

3 A. No, ma'am.

4 Q. Very well. As I -- I'm about to accept this plea, Mr.
5 Schoclet. So is there -- do you have any questions of me or
6 your lawyer at this point?

7 A. No, ma'am.

8 Q. Do you wish to withdraw your plea at this point?

9 A. No, ma'am.

10 **The Court:** I find that there is a substantial factual
11 basis to each of these pleas. I find that the decision of
12 Mr. Schoclet to plead guilty -- that his decision to plead
13 guilty to each of these charges is freely, voluntarily,
14 knowingly, and intelligently made, as he has had the advice
15 of counsel with whom he tells me he is satisfied and I'll
16 accept the plea. Now his record.

17 **Ms. Bodman:** In South Carolina he's got a possession of
18 marijuana charge, and that's the extent of his South Carolina
19 record. In Texas he has a burglary of a vehicle conviction.
20 It looks like he originally got a probation, but then later
21 it looks like he was -- his probation was revoked. Then he
22 has a conviction for burglary of a habitation and three
23 counts of aggravated robbery, and he got 10-year sentences on
24 those charges.

25 We had put in - I think they're labeled Court's exhibits

1 - the indictments, copies of the indictments of the
2 aggravated robberies from Texas as well as the judgment on
3 the plea of guilty, and it does appear that there were three
4 separate victims and he used a firearm. There's an
5 affirmative finding of a firearm, that he used a firearm in
6 order to take money from those three individuals, and that is
7 the extent of his record.

8 **The Court:** Thank you. Thank you so much, Ms. Bodman.
9 All right. At this time I would be happy to hear from them.

10 **Ms. Garfield:** Who wants to go first?

11 **Mr. Robinson:** I just want to say that when this
12 happened, I thought I was going to lose my life. So I'm
13 thankful that I didn't, but it was definitely the scariest
14 time of my life.

15 **Ms. Garfield:** For the record, that's Kerry Robinson.

16 **The Court:** Thank you, Mr. Robinson.

17 **Ms. Broughton:** I'm Brandy Broughton. I was the
18 supervisor at the time that Mr. Schoclet came there. That
19 day when he walked in, I had a three-year-old little girl
20 that I thought I would never see again.

21 **The Court:** Changed the world for you, didn't it?

22 **Ms. Broughton:** It did.

23 **The Court:** To this moment.

24 **Ms. Broughton:** I'm so sorry, but I can't even work on a
25 frontline anymore. My whole life has changed. I had to go

1 to the back office. He not only changed me that day, but
2 he's changed me forever, and for that I hope he gets
3 everything that he can get. Thank you.

4 **Ms. Garfield:** Judge, if I can just address -- both
5 Kerry and Brandy no longer work on the teller line. Mr.
6 Robinson left banking altogether, went to work with his
7 father-in-law in a pest control company. Ms. Broughton now
8 works at a call center because she cannot work face to face
9 with any customers for fear that this may happen again, and
10 Ms. Broughton has also had to seek medication and suffers
11 depression from what occurred. I mean, I don't like to put
12 it all out there, but I think Your Honor should be aware of
13 that for purposes of sentencing.

14 And I believe Mr. Hunsaker, being a member of the bank,
15 would like to address the Court as well. Do you want to say
16 something?

17 **Mr. Hunsaker:** Your Honor---

18 **The Court:** And would you just -- I'm going to ask you
19 just for our record, so that we're clear, if you would spell
20 your last name for us.

21 **Mr. Hunsaker:** The name is Hunsaker. H-U-N-S-A-K-E-R.

22 **The Court:** I got it.

23 **Mr. Hunsaker:** Brother, I feel for you. I wish you had
24 taken another road. A lot of people I grew up with ended up
25 on the same road. I should have; I changed my mind. I hope

1 you can learn something when you get out and do something
2 else. That's all I got to say.

3 **The Court:** Thank you. It's remarkable that you noticed
4 and that you remained. That really speaks so well of the
5 public in general, and I want to thank you so much for doing
6 that. You know, so many people would have just said, "Oh,
7 I'm sure it's nothing," and walked away and you didn't. In
8 terms of our citizenry, you're a wonderful example. I want
9 to thank you for that, sir. All right. Yes. Anyone else?

10 **Ms. Garfield:** That's all, Judge.

11 **The Court:** Very well. All right. And I guess the only
12 thing that I would say is, Ms. May, you've got a good gut.

13 **Ms. May:** I felt guilty. I called my husband that
14 morning because I felt guilty for not letting the person in
15 the door, so...

16 **The Court:** And he said, "What? Are you crazy?"

17 **Ms. May:** He said, "Did you cuss at him and tell him to
18 go away?" I said, "No, I told him there was water on the
19 side." He said, "Well, then you did the right thing."

20 **The Court:** I do understand. I do understand.
21 Absolutely. All right. And -- all right. I am listening to
22 you, Mr. Schoclet. I'm going to listen to you, and I'm going
23 to listen to your lawyer. You all take all the time you
24 need.

25 **Ms. Gibbes:** Thank you, Judge. May it please the Court?

1 Truly I would like to, on behalf of Curtis, apologize to the
2 victims. I know -- he, in my representation of him, has been
3 very mild-mannered and very -- I know he is sorry for what he
4 did, and he knows the pain he has caused the victims will
5 last forever and he is very apologetic about that.

6 When this happened, Curtis had hit rock bottom. He had
7 moved here from Michigan. He had been working with welding
8 and he had been laid off and said that he'd tried to go to
9 the chicken farm and that was a short stint just due to the
10 dangerous conditions at the chicken farm. And he would go to
11 different temp agencies and he had been laid off about a week
12 and a half when this happened.

13 His significant other, Valerie, who he lived with, along
14 with his stepchildren, her children -- some of them are
15 older, in college; some are younger. They basically had one
16 -- they were about to be evicted. They had been served with
17 notice. All those bills needed to be paid.

18 Valerie was asking whether she should go be a stripper,
19 and he just -- he obviously did not want her to do that, and
20 he was absolutely desperate. He had sent his four-year-old
21 little boy to Michigan to live with his mother because he
22 could not afford to pay for him anymore and I just -- I think
23 this was an act of desperation.

24 He had -- in his statement, the weapon was a piece of
25 wood wrapped in duct tape. This happened very quickly. I

1 know he went in there with no intent to cause harm, but
2 obviously I understand that to them this was a very scary and
3 traumatic situation, but I know in his mind he did not mean
4 to do this. He immediately -- he got about \$4,000. He
5 immediately paid his rent in full, paid SCE&G, paid his water
6 bill. He paid everything up to date and then he turned
7 himself in.

8 He was cooperative with the investigation, turned
9 himself in, and I know he regrets this with all his heart. I
10 know he does. He's been in jail 931 days.

11 His record is old. I mean, I think it was 1995 when the
12 first offenses happened. Respectfully, Judge, I would ask
13 for the minimum of 25. And, Your Honor, if appropriate, Mr.
14 Schoclet would like to speak.

15 **The Court:** Absolutely.

16 **Mr. Schoclet:** First of all, I'd like to apologize to
17 Kerry and Ms. Manack. I never knew now that y'all went
18 through -- what y'all went through until I just heard it.
19 You know what I'm saying? I know what I did was wrong. I
20 was desperate, and I made the wrong choice. And I'm sorry
21 that y'all no longer work or can't work like you used to
22 because I understand; I worked. And I apologize for scaring
23 y'all and traumatizing y'all.

24 **Ms. Gibbes:** And, Judge, I don't believe I can say it
25 any better than that. I would just -- he is up here taking

1 responsibility, facing a lot of time, 25 to 30 years.

2 Respectfully, I would ask for the 25, Judge.

3 **The Court:** Okay. All right. Anyone have anything
4 further before I pass sentence on Mr. Schoclet?

5 **Ms. Garfield:** Not from the State.

6 **Ms. Gibbes:** No, Your Honor.

7 **The Court:** Very well. All right. With regards to
8 2011-GS-40-561, Mr. Schoclet, I'm going to commit you to the
9 State Department of Corrections for a period of 25 years.

10 With regards to 2011-GS-40-559 which is the armed
11 robbery convic -- charge, I'm going to commit you to the
12 State Department of Corrections for a period of 25 years.

13 And with regards to 2011-GS-40-560 which is kidnapping,
14 I'm going to commit you to the State Department of
15 Corrections for a period of 25 years.

16 With regards to the two kidnappings, because these
17 kidnappings are not kidnappings of a sexual motive, there
18 would be no sex offender registry required upon your
19 completion of this sentence. These sentences will run
20 concurrent, and you're to be given credit for the time that
21 you have served which I have beginning 7/27/2010. Good luck
22 to you, sir.

23 **Ms. Gibbes:** Thank you, Your Honor.

24 **Ms. Garfield:** Thank you, Your Honor.

25 **The Court:** Very well. Just for those of you that

1 wonder, this 25 years is a real 25 years. It used to be that
2 life in South Carolina 20 years ago was 20 years. It wasn't
3 life. Now life is real life. This is -- just so you all
4 know, this is a real 25 years, day for day. Thank you so
5 much for y'all's patience this morning.

6 (Pause in proceedings.)

7 **The Court:** Bring them in. Let me have that jury.

8 (Whereupon, the jury was brought into open court at
9 10:55 a.m. and was excused from further service in the trial
10 of the case. Court's Exhibits 1 through 3 were marked for
11 identification only. The proceedings were concluded.)

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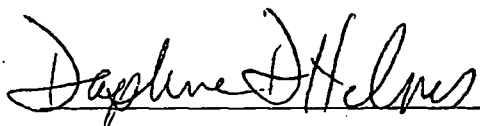
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25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 11th and 12th of February, 2013.

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

December 28, 2013

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter

2013 CP4003674

In the Court of Common Pleas

STATE OF SOUTH CAROLINA)

County of Richland)Curtis Schoolet #354333)

Full name and prison number, if any, of applicant.)

v.)

South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
 FILED
 2013 JUN 24 AM 11:39
 JEANETTE W. MOSENBROOK
 C.C.P. & G.S.

INSTRUCTIONS - 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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 applicant was convicted.

1. Place of detention Lee Correction Institution
2. Name and location of Court which imposed sentence. General Sessions Richland County
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2011-GS-40-559
 - (b) 2011-GS-40-560
 - (c) 2011-GS-40-561
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2-12-13
 - (b) 2-12-13
 - (c) 2-12-13

5. Check whether a finding of guilty was made

(a) after a plea of guilty ✓

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? NO

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) NO Direct appeal issue

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistant of council

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Erroneous advice of council to plead guilty to a crime

I did not commit.

(b) Failed to investigate if TX crime ~~to~~ could be used against me to inhance my sentence.

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

no

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) no

(d) any other petitions, motions or applications in this or any other Court?

no

12. If you answered "yes" to any part of (11), 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. _____

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

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Not available for direct appeal
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (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?
N/A
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Courtney Gibbs, 1701 Main Street, Columbia SC 29201

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. A + C above

ii. _____

iii. _____

18. State clearly the relief you seek in filing this application.

Reverse conviction and Remand for new trial

19. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Richland) VERIFICATION

I, Curtis Schoelett, 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.

Curtis Schoelett

Sworn to and subscribed before me
 This 14 day of June, 2013

Debra Suran L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

RICHLAND COUNTY
 FILED
 2013 JUN 24 AM 11:39
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
 OF COSTS AND AFFIDAVIT
 IN SUPPORT THEREOF**

I, Curtis Schoelett, 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 proceeding or give security therefor.

Curtis Schoelett

Applicant

Sworn to and subscribed before me
 This 14 day of June, 2013

Debra Suran L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Curtis Schoolet, #354333,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-6811

RETURN

Respondent, making its Return to the Application for post-conviction relief filed June 24, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the January 2011 term of the Richland County Grand Jury for Armed Robbery (2011-GS-40-0599) and two counts of Kidnapping (2011-GS-40-0560, -561). Applicant was represented by Courtney A. Gibbes, Esquire. On February 11-12, 2013, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. During his trial, Applicant elected to abandon his trial and plead guilty to Armed Robbery pursuant to negotiations with the State for a sentence of twenty-five years imprisonment and the dismissal of the two related kidnapping charges.¹ Pursuant to these negotiations, Judge Goodstein sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty pleas or sentences.²

¹ The State had previously served Applicant with its Notice to Seek Life Without Parole pursuant to S.C. Code Ann. § 17-25-45 based on prior convictions from the State of Texas.

² In his Application for post-conviction relief, Applicant concedes that he had "no direct appeal issue" that could have been raised.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the transcript from Applicant's trial and guilty plea proceeding. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully based on an allegation of ineffective assistance of counsel, specifically asserting that "erroneous advice of council [sic] to plead guilty to a crime that I did not commit" and "failed to investigate if TX crime could be used against me to inhance [sic] my sentence."

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

III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's 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 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

Respondent submits that 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, 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.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: *Megan E. Harrigan*
ATTORNEY'S FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

February 24, 2014.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2013-CP-40-3674

CURTIS SCHOOLET, #354333

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

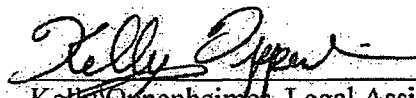
STATE OF SOUTH CAROLINA,

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:

Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

DATED this 24th day of February, 2014.


Kelly Oppenheimer, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2013-CP-40-3674
	)	
CURTIS SCHOCLET,	)	
	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT,	)	

September 2, 2014
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

ANNA GOOD, ESQ.
Attorney for the Applicant

CROOM HUNTER, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

KAREN AMBROZIAK
Official Court Reporter

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PLAINTIFF'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	Letter	13	14

1 THE COURT: All right. We're on the record
2 in 2013-CP-3674, Curtis Schoclet.

3 Did I say it right this time --

4 THE APPLICANT: Yes, sir.

5 THE COURT: All right -- versus the State of South
6 Carolina. Mr. Schoclet is present, is represented by
7 Ms. Good, and the State is represented by Mr. Hunter.

8 All right. Mr. Hunter, let's get it started.

9 MR. HUNTER: All right. Your Honor, Mr. Schoclet was
10 indicted during the January 2011 term of Richland County
11 grand jury for armed robbery. That indictment number
12 is 2011-GS-40-599, as well as two counts of kidnapping.
13 Those are indictment numbers 2011-GS-40-560 and 561. He
14 was represented by Courtney Gibbes, Esq. on February 11th,
15 2013.

16 Mr. Schoclet received a new jury trial before the
17 Honorable Diane Goodstein. During his trial, he elected
18 to abandon his trial and plead guilty to armed robbery
19 pursuant to negotiations by the State for a sentence of 25
20 years imprisonment and the dismissal of the two related
21 kidnapping charges.

22 Pursuant to these negotiations, Judge Goodstein
23 sentenced the applicant to 25 years imprisonment. He did
24 not appeal his guilty plea or his sentence. This
25 application for Post Conviction Relief was filed on

1 June 24th, 2013, and he is represented here today by
2 Ms. Good.

3 THE COURT: All right. Ms. Good.

4 MS. GOOD: Thank you, Your Honor. At this time I'd
5 call my client, Curtis Schoclet.

6 THE COURT: Schoclet.

7 MS. GOOD: Schoclet.

8 THE COURT: All right. Come on up, Mr. Schoclet. Do
9 you have the paperwork that you need?

10 THE APPLICANT: Yes, sir.

11 THE COURT: Okay. I'll swear him in right there.

12 THE BAILIFF: Okay.

13 CURTIS SCHOCLET, after being duly
14 sworn, testified as follows:

15 THE COURT: All right. Ready?

16 MS. GOOD: Yes.

17 DIRECT EXAMINATION:

18 BY MS. GOOD:

19 Q Mr. Schoclet, you just heard Mr. Hunter state that
20 you pled on February 12th, 2013 to armed robbery. In
21 addition, it was also two counts of kidnapping, correct?

22 A Yes, ma'am.

23 Q Those were not dismissed?

24 A Yes, ma'am.

25 Q Okay. And you received a negotiated 25 years?

1 A Yes, ma'am.

2 Q All right. For that plea, who was your attorney?

3 A It was Ms. Courtney Gibbes.

4 Q Okay. And how long had she been your attorney?

5 A She was assigned to me in 2011.

6 Q Okay. And you had several before then. However, she
7 was with you for the majority of your case?

8 A Yes, ma'am.

9 Q Okay. About how many times did you meet with her
10 before you got a plea offer?

11 A About -- maybe about three or four times.

12 Q Okay.

13 A And it was just -- it was plea as charged.

14 Q Okay. And then eventually did you discuss the case
15 with her during those meetings?

16 A Yes.

17 Q And what were your discussions regarding what you
18 wanted to do and the discovery in your case?

19 A I was on -- we talked about the LWOP.

20 Q Okay.

21 A The life without parole, and I was -- basically, we
22 was going back and forth with the -- about the LWOP saying
23 that if there was a way to get around it, I was telling
24 her that my attorney beforehand, Kris Hines, said in order
25 for them to do it, we would have to have a hearing and go

1 before a judge.

2 Q Okay.

3 A And she --

4 Q Do you remember why there needed to be a hearing on
5 it, for what reason?

6 A Because it was a conviction they were using from
7 Texas.

8 Q Okay.

9 A She said it was like a balancing test to see if the
10 two charges were similar.

11 Q Okay. So you discussed that, and then eventually
12 some plea offers were given to you. But you deny those
13 and were served with LWOP, correct?

14 A Yes, ma'am.

15 Q And once you were served with LWOP, what happened
16 from that point?

17 A We -- Courtney Gibbes and another lawyer, Sawyer,
18 came to see me to prepare for trial.

19 Q Okay.

20 A And at the time...

21 Q At any point, did you talk about the elements of
22 kidnapping and how it related to a DVD of the potential
23 armed robbery that was involved in this case?

24 A No, ma'am. We never talked about the elements of
25 kidnapping.

1 Q Okay. Did you see the DVD?

2 A Yes, ma'am.

3 Q Okay. And during that time, you had no idea what the
4 elements of kidnapping were?

5 A No, ma'am.

6 Q Okay. And one week before trial, did you change your
7 mind about what you wanted to do?

8 A Yes, ma'am. I was basically -- I wanted to go to
9 trial but attorney -- Ms. Gibbes kept telling me I was
10 going to get life without parole.

11 Q Okay.

12 A And I figured -- I thought from what I seen that I
13 had a good chance of getting a lesser-included offense.

14 Q Okay. And did y'all discuss what your strategy was
15 going to be at your trial?

16 A Well, she -- she said she was going to attack the
17 enhancement.

18 Q Okay. And what enhancement was that?

19 A From the conviction.

20 Q The LWOP enhancement?

21 A Yes, ma'am.

22 Q But she didn't discuss anything regarding strategy of
23 how you were going to defend against the armed robbery and
24 kidnapping charges?

25 A No, ma'am.

1 Q Okay. Before the trial, did y'all have any pretrial
2 motions?

3 A We --

4 Q In addition to the LWOP motion.

5 A Oh, there was one on the -- to suppress the statement
6 of the investigator.

7 Q And did you discuss your statement -- the
8 investigator testified about your statement.

9 A Yes, ma'am.

10 Q Okay. So you're talking about the Jackson v. Denno
11 hearing. Did you discuss this pretrial hearing with her
12 and whether you were going to testify?

13 A We talked about it. She said that -- she asked me if
14 I wanted to testify. I said yes, I will testify.

15 Q Okay.

16 A And as the motion was going on and after the
17 investigator got off the stand, I thought I was going to
18 testify, and then she never called me up to testify?

19 Q Did she speak with you --

20 THE COURT: You're talking about in the Denno
21 hearing, in the pretrial hearing?

22 THE APPLICANT: Yes.

23 THE COURT: I'm sorry. I wanted to make sure I was
24 following you.

25

1 BY MS. GOOD:

2 Q So after the investigator testified, did she ever
3 turn to you and inquire again as to whether you wanted to
4 testify in this particular hearing?

5 A No, ma'am.

6 Q Okay. If she had asked you, would you have
7 testified?

8 A Yes, ma'am.

9 Q Okay. The LWOP motion that was heard as a pretrial
10 hearing, did you discuss this motion with her and when she
11 was going to make this motion?

12 A We didn't discuss it. You know, I had seen it -- I
13 didn't know she was going to do that until we was at the
14 pretrial. I didn't know all the motions she was going to
15 file.

16 Q So I guess the LWOP motion hearing went through, and
17 Judge Goodstein decided to think about it overnight,
18 correct?

19 A Yes, ma'am.

20 Q So your trial was to continue the next day. Did you
21 speak with Ms. Gibbes overnight?

22 A No, ma'am.

23 Q Okay. The next morning, did she come down to the
24 holding cell and discuss something with you?

25 A Yes, ma'am. She said that they had an open plea, and

1 would I accept an open plea, and when I told her -- I told
2 her yes.

3 Q Okay.

4 A And then she came back like 30, 45 minutes later
5 saying that there is no open plea.

6 Q Okay. What did she tell you at that time?

7 A That the offer is -- I think it was like 30 or 40
8 years, so I said, "Let's go to trial".

9 Q Okay. And what did she tell you once you said you
10 wanted to go to trial?

11 A She told me -- she was basically saying that she
12 didn't want to see me get life without parole because I
13 was going to lose the trial. She said that -- excuse me,
14 let me back up. The day before, she said the 30 to 40, so
15 that morning, she came with the 25 to 30.

16 Q Okay.

17 A And then she said -- she told me, she said if, -- "I
18 don't want to see you get life without parole." She said
19 because if you go to trial, you're going to get it. She
20 then said, "If you plead to 25 years," she said, "I'll
21 testify on your behalf at PCR."

22 Q And when you were discussing this 25, did you feel
23 like she was going to defend you properly at a trial based
24 on her statements?

25 A No.

1 Q Did you feel forced to take the 25-year plea because
2 that's how you felt regarding her comments?

3 A Yes. And, you know, the life without parole, and she
4 just didn't -- she wasn't prepared. She didn't show me
5 she was ready to fight.

6 Q Okay. And when you went over -- we kind of mentioned
7 this earlier about the elements of kidnapping. When you
8 went over your sentencing and plea paperwork for this
9 plea, did she again go over your kidnapping elements with
10 you?

11 A No, ma'am.

12 Q All right. Did you meet with Ms. Gibbes after the
13 plea?

14 A Yes, ma'am.

15 Q And did she go over your rights to appeal and motion
16 to reconsider?

17 A Yes, ma'am.

18 Q And at that time, what did you tell her about it?

19 A I told her no.

20 Q Okay.

21 A And she said that she would -- she would come -- and
22 like a couple of -- give it a couple of days, and she
23 would come visit me. It was a holiday that Monday, so I
24 knew I was going to leave that Tuesday morning. So I
25 wrote a letter --

1 Q Okay.

2 A -- telling her how I'd like to exercise that right to
3 the appeal --

4 Q Okay.

5 A -- motion to reconsider. I sent the letter to the
6 Clerk of Court so it could be stamped.

7 Q Okay.

8 A And that was --

9 Q Did she ever file this motion to reconsider?

10 A No, ma'am.

11 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
12 identification only.)

13 BY MS. GOOD:

14 Q Let me show you what is marked as Applicant
15 Exhibit No. 1. Do you recognize this?

16 A Yes, ma'am.

17 Q What is that?

18 A That's the letter I wrote.

19 Q Does it accurately represent the letter you wrote?

20 A Yes, ma'am.

21 Q At this time, we move to enter into evidence
22 Applicant Exhibit No. 1.

23 MR. HUNTER: No objection.

24 THE COURT: All right. Applicant's 1 without
25 objection. Okay.

1 MS. GOOD: And in that letter --

2 THE COURT: Hold on.

3 (Pause).

4 (WHEREUPON, Applicant's Exhibit No. 1 was admitted
5 into evidence.)

6 BY MS. GOOD:

7 Q Okay. That in that letter you sent that to Jeanette
8 McBride, the Clerk of Court, correct?

9 A Yes, ma'am.

10 Q And had it clocked?

11 A Yes, ma'am.

12 Q You also requested that be sent to Courtney Gibbes,
13 correct?

14 A Yes, ma'am.

15 Q Did you ever hear from Ms. Gibbes again?

16 A No, ma'am.

17 Q Okay. As a result of all these issues, did you plead
18 guilty based on the information and statements you were
19 getting from Ms. Gibbes regarding you were going to lose
20 at trial?

21 A Yes, ma'am.

22 Q Were you -- did you feel as if you were forced to
23 plead?

24 A Yes, ma'am.

25 Q Okay. Did she file a motion to reconsider for you?

1 A No, ma'am.

2 Q Is there anything else you would like to tell the
3 court that we may have missed or skipped over?

4 A Yes. During the time in Lee County in the law
5 library, I was looking up, you know, cases. I came across
6 State vs. Johnson, and I feel that Ms. Gibbes, if she was
7 going to attack the enhancement, this is one that -- this
8 is something she should have found. It was in Rule
9 609(b).

10 Q Okay.

11 A You know, by her not -- you know what I'm saying. By
12 -- I just feel I wasn't represented. I feel like she was
13 ineffective, and had I known about this case and Rule
14 609(b), I would have went to trial.

15 MS. GOOD: Okay. No further questions. Please
16 answer any questions that Mr. Hunter has for you.

17 THE WITNESS: All right.

18 CROSS-EXAMINATION:

19 BY MR. HUNTER:

20 Q Good morning, Mr. Schoclet. Let's start with your
21 plea. Do you recall the judge -- when you went to plead,
22 do you recall the judge asking you if anyone had forced
23 you or promised you anything in order to get you to plead
24 guilty?

25 A Yes, sir.

1 Q Okay. Do you remember what you told the judge?

2 A Yeah.

3 Q Okay. What did you tell the judge?

4 A I told the judge no.

5 Q Okay. And do you recall the judge asking you if you
6 were pleading freely and voluntarily and it was your own
7 decision?

8 A Yes, sir.

9 Q Okay. And what did you tell the judge at that time?

10 A I pled guilty on the erroneous advice of my attorney.
11 I felt -- I was forced. It was --

12 Q Mr. Schoclet, that's not what I asked you. What
13 did -- what did you tell the judge?

14 A I told her no.

15 Q Okay. Let's see. Do you recall the judge going over
16 the fact that your plea to armed robbery would carry ten
17 to 30 years in prison?

18 A Yes, sir.

19 Q Okay. Do you recall the judge telling you that you
20 couldn't get less than ten years?

21 A Yes, sir.

22 Q Okay. Now, you said that Ms. Gibbes didn't go over
23 the kidnapping charge with you; is that correct?

24 A No, sir.

25 Q Okay. Well, do you remember the judge going over the

1 kidnapping charge with you?

2 A Vaguely.

3 Q Okay. Do you remember the judge telling you that the
4 two counts of kidnapping also carried 30 years in prison?

5 A Yes, sir.

6 Q Okay. Do you remember the judge telling you that you
7 needed to count on serving the sentence? Do you recall
8 that?

9 A Excuse me?

10 Q Do you recall the judge telling you whatever he
11 sentenced to, you needed to count on serving that time?

12 A Yes, sir.

13 Q Okay. Do you recall the judge telling you that due
14 to your plea, you would be eligible for LWOP, life without
15 parole?

16 A Due to my plea?

17 Q Yes, sir.

18 A No. She said it was negotiated.

19 MR. HUNTER: Okay. Beg the Court's indulgence for
20 just a moment, Your Honor.

21 (Pause.)

22 BY MR. HUNTER:

23 Q Now, Judge, this is on 146 of the transcript.

24 Mr. Schoclet, do you recall the judge telling you
25 about the two strike, three-strike rule?

1 A Yes; yes, sir.

2 Q Okay. And the fact that if you went to trial and got
3 convicted of two most serious offenses, you would get life
4 without parole?

5 A Yes, sir.

6 Q Okay. Do you recall the judge asking you -- the
7 judge said, "Tell me what that means to you." You said
8 "Not getting out"?

9 A Yes, sir.

10 Q She said, "You die in prison. Do you understand
11 that?"

12 A Yes, sir.

13 Q Okay. And you told her, "Yes, ma'am". Okay.

14 Now, do you recall the judge telling you -- let's
15 move back a little bit. You did give a confession to the
16 police; is that correct?

17 A I gave a statement, yes.

18 Q You gave a statement. Okay. Now, do you recall the
19 judge telling you that by pleading guilty, you were giving
20 up the right to challenge that evidence, to challenge that
21 statement?

22 A Man, I really don't -- I don't remember that.

23 MR. HUNTER: Okay. Your Honor, just for your
24 information, that's on page 153 of the record.

25 THE COURT: All right.

1 BY MR. HUNTER:

2 Q All right. So you're basically saying that you pled
3 guilty because you felt forced to on the advice of your
4 counsel?

5 A And --

6 Q Based on what she told you, you felt like you had to
7 plea?

8 A Yes and the threat of the LWOP.

9 Q Well, do you understand that she -- you know, if this
10 Texas charge came in and you were eligible for LWOP,
11 she -- you know, if you went to trial and got convicted,
12 do you understand that she couldn't do anything to keep
13 you from getting life without parole?

14 A Yes, sir.

15 Q Okay. Do you recall the judge asking if you were
16 satisfied with your attorney?

17 A Yes, sir.

18 Q Okay. And do you recall the judge asking if you
19 spoke with your attorney for as long as you needed to?

20 A Yes, sir.

21 MR. HUNTER: Okay. Beg the Court's indulgence just
22 one moment, Your Honor.

23 (Pause.)

24 Your Honor, that's all the questions I have for
25 Mr. Schoclet.

1 THE COURT: Redirect.

2 MS. GOOD: Yes, sir, very briefly.

3 REDIRECT EXAMINATION:

4 BY MS. GOOD:

5 Q You heard Mr. Hunter go over the Judge asked you
6 about the sentencing aspects of the kidnapping element,
7 correct?

8 A Yes, ma'am.

9 Q But the judge didn't go over with you what the actual
10 elements of kidnapping were, did she?

11 A No, ma'am.

12 Q In fact, on -- this is for your reference, Your
13 Honor, on page 144, that verifies that she only went over
14 the sentencing not the elements, correct?

15 A Yes, ma'am.

16 Q And then Mr. Hunter also asked you regarding the
17 statement that the judge advised you if you pled guilty,
18 you give up your right to object to the statement,
19 correct?

20 A Yes, ma'am.

21 Q And, in fact, on page 92 at the beginning of the
22 pretrial, you did object to the statement. Y'all were
23 having a Jackson vs. Denno hearing about it, correct?

24 A Yes, ma'am.

25 Q And you wanted to testify in that hearing, but your

1 attorney did not let you, correct?

2 A Yes, ma'am.

3 Q And she never even asked you if you wanted to during
4 the hearing, correct?

5 A Yes, ma'am.

6 MS. GOOD: No further questions, Your Honor.

7 RECROSS-EXAMINATION:

8 BY MR. HUNTER:

9 Q Just one follow up. Did you tell your attorney at
10 the Denno hearing, did you tell Ms. Gibbes that you wanted
11 to testify at that point? Did you say, "Hey, put me in.
12 Let me testify"?

13 A She said that she was -- I was going to go contest
14 it. She asked me if I wanted to testify.

15 Q At that time, at that hearing she asked you that?

16 A Before the hearing, she said, "Did you want to
17 testify?" I said yes. She said, "Good. That will give
18 you practice before we go to trial for you to be up on the
19 stand."

20 Q Okay. But at the hearing, you didn't say, "Hey, hold
21 on. I want to testify before this is over"?

22 A No.

23 MR. HUNTER: Okay. Nothing further, Your Honor.

24 THE COURT: All right. Have a nice -- go grab a
25 seat. Thank you.

1 All right. Call your next witness.

2 MS. GOOD: I have no further witnesses, Your Honor.

3 MR. HUNTER: Your Honor, the State would call
4 Mr. Walker.

5 THE COURT: You mean Ms. Gibbes?

6 MR. HUNTER: Or excuse me. Ms. Gibbes. I'm sorry.
7 I was looking at the wrong sheet.

8 THE COURT: All right. Please come forward and be
9 sworn, Ms. Gibbes.

10 COURTNEY GIBBES, after being duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION:

13 BY MR. HUNTER:

14 Q Good morning, Ms. Gibbes.

15 A Good morning.

16 Q Just a little background first. How long have you
17 been practicing law?

18 A About seven years.

19 Q Okay. And in that seven years, how much of your
20 practice has been devoted to criminal law?

21 A Probably about 90 percent.

22 Q Okay. Now, were you appointed or retained on this
23 case?

24 A I was at the Public Defender's Office. I was
25 appointed.

1 Q Okay. Do you recall how many times you met with
2 Mr. Schoclet?

3 A Probably I mean, double digits, ten or 12. I was the
4 third attorney. I believe, when he was arrested
5 July 2010, I got the case in December of 2011. He had two
6 prior attorneys during that time.

7 Q Okay. And did you -- did you file a Rule 5 and Brady
8 motions in this case?

9 A Our office did, yes.

10 Q All right. Did you have any trouble getting
11 discovery?

12 A No.

13 Q Okay. Did you go over that discovery with
14 Mr. Schoclet?

15 A I did and also the attorneys before. I believe Kris
16 Hines was the attorney who actually gave him the copy of
17 his evidence.

18 Q Okay. Now, Ms. Schoclet is claiming that you never
19 went over the elements of kidnapping with him. Do you
20 recall if you did that or not?

21 A I did. We talked about just how it was just a very
22 broad -- how broad the statute was. I think his concern
23 was why are there two charges of kidnapping when there's
24 only one victim, and we did talk about the elements of
25 kidnapping.

1 Q Okay. Did you talk about Mr. Schoclet about his
2 version of the facts, what happened?

3 A Yes.

4 Q Any defenses he may have had?

5 A Yes.

6 Q Can you kind of just go over that for the Court, for
7 the record?

8 A I believe -- it was on video. We never -- he -- it
9 wasn't an issue about whether he was there. He made
10 statement to that effect. The issue was whether or not he
11 had a gun or not.

12 I believe his statement said that it was not a real
13 gun. There is an issue -- because on the video you could
14 not see the gun. You could clearly see that it was him.
15 Something was going on, but you could not clearly see the
16 gun on the video.

17 Q Did you discuss with him that, you know, it didn't
18 really matter if the gun was real or not?

19 A The issue wasn't -- after we started the trial, it
20 was whether the witnesses -- what they testified to as to
21 the bank tellers and whether or not they saw a gun or not.
22 That's what we talked about. They say in the video
23 that's -- what we're saying at trial is your defense, that
24 it was strong arm, but we also have the testimony of the
25 other witnesses that may -- that were there and may

1 testify to what you can't see on the video.

2 Q And did you -- what -- you might have briefly covered
3 this, but if you go over what possible defenses or
4 possible trial strategy you planned to use at the trial?

5 A I believe the biggest one was to try to get strong
6 armed robbery instead of armed robbery. That would be --
7 the defense was that it was not -- there was not a gun, or
8 it was not used to -- it -- I mean, that was the defense
9 for strong arm robbery.

10 Q There was a Denno -- y'all had a Denno hearing to,
11 you know, try to suppress Mr. Schoclet's statement; is
12 that right?

13 A We did. We did do that.

14 Q Okay. And that was unsuccessful?

15 A Yes.

16 Q Okay. Now, did you tell -- he has made some claims
17 about what you may have presented to him regarding, you
18 know, LWOP and his Texas charge that was going to be used
19 to enhance. Did you kind of explain what was going on
20 with that?

21 A Right. Like I said, by the time I got the case, the
22 -- we had copies of the certified convictions from Texas.
23 What we kind of talked about is what -- the issues we put
24 forth at trial was one, basically how the solicitors were
25 using the LWOP, the service of LWOP to force people to

1 plea.

2 It was very arbitrarily -- you know, some case would
3 be LWOP or you'd get an LWOP served, and then the next day
4 it would go away. For somebody like Mr. Schoclet who had
5 been in jail for three years, he did not -- there were a
6 lot of instances where life without parole was served or
7 used as a way to plea but was not really actually served,
8 and you get a life without parole.

9 Q Now, was he actually served with LWOP?

10 A He was.

11 Q Okay. Now, he -- he said earlier that he told you
12 that he wanted to testify at the Denno hearing, and you
13 didn't let him. Did you kind of -- did he ever ask you?

14 A We did. We talked about it before the hearing. We
15 talked about testifying, and then honestly, it was just
16 kind of a split-second decision for him not to testify.
17 Whether it was right or not, you know, I probably should
18 have let him testify. I didn't -- it was just a
19 split-second decision.

20 Q Prior to his plea, did you review all of his
21 constitutional rights that he was waiving, you know,
22 challenge the evidence and all that type of stuff?

23 A Yes.

24 Q Okay. Did he appear to understand what was going on?

25 A He did.

1 Q Okay. Did you ever feel the need to have him
2 evaluated for his mental competency?

3 A No.

4 Q And so initially, y'all did go to trial. How far
5 into the trial did you get?

6 A Just pretrial.

7 Q Okay. And whose decision was it to plead guilty?

8 A It was Mr. Schoclet's, but we -- I mean, we talked
9 about it a lot.

10 Q Okay. But then again, when he decided to plead
11 guilty, you went over everything with him, all the
12 consequences to that plea, the fact that he was giving up
13 the right to challenge the evidence and all of that stuff?

14 A Right; yes, sir.

15 Q Did you promise him anything?

16 A No.

17 Q That he would receive a certain sentence, anything
18 like that?

19 A No, no.

20 Q Now, Ms. -- Mr. Schoclet has put into evidence a
21 letter that he claims to have sent you asking you to file
22 a motion for reconsideration. Do you recall ever
23 receiving that letter?

24 A No. I've been looking, and the only letter I got
25 from him was in reference to sending him his file which I

1 did get that, and I did send him his file. I did not
2 ever -- unfortunately, I did not get that letter from him.

3 Q Okay. Did he ever ask you, you know, verbally to
4 file a motion for reconsideration?

5 A He did not.

6 Q Did he ever ask you to file a Notice of Appeal?

7 A No.

8 Q Okay. If he had, would you have done it?

9 A Yes.

10 MR. HUNTER: I think that's all I have, Your Honor.

11 THE COURT: Cross?

12 MS. GOOD: Thank you, Your Honor.

13 CROSS-EXAMINATION:

14 BY MS. GOOD:

15 Q You mentioned Mr. Schoclet had two prior attorneys.

16 He did not relieve those attorneys, correct?

17 A No. I believe Renee Lipson was the first attorney.

18 I believe she left the office, and then Ms. Hines had it.

19 Then I believe she got sick and things got switched

20 around. That's when I got his case.

21 Q When you got his case, Ms. Hines had already done a

22 brief and memorandum regarding the LWOP situation,

23 correct?

24 A Yes, correct.

25 Q Okay. And that's something you relied upon during

1 the trial in the pretrial motion for the LWOP hearing?

2 A Yes.

3 Q And do you recall what Judge Goodstein had said about
4 this motion that you had made?

5 A Not specifically.

6 Q Do you have copy of the transcript?

7 A I do.

8 Q Let me ask you this: Did she make a decision that
9 day?

10 A I thought she had, but then I heard you mention that
11 she did not. So she -- I just remember it was -- we did
12 the pretrial, and then there was a break because I think
13 she was doing another plea. So I don't believe she did
14 make a decision that day.

15 Q And did she, in fact, tell you that it was a very
16 good argument?

17 A She did.

18 Q So there was a possibility that she could have ruled
19 in your favor, correct?

20 A Yes, because we had two motions besides the
21 arbitrariness of the LWOP statute. We also were
22 challenging his -- the collateral consequences of his
23 prior convictions, whether he was -- his prior attorney
24 made him aware of the possibilities of the collateral
25 consequences of pleading to armed robbery and aggravated

1 robbery and burglary.

2 Q And when making the decision with Mr. Schoclet as
3 whether to plead on that day, did you discuss the
4 possibility that the judge may rule in your favor on the
5 LWOP decision?

6 A I don't recall. I thought we already had a decision
7 on that when we -- but I do not remember.

8 Q You mentioned you said you did go over the kidnapping
9 elements with Mr. Schoclet; that they were very broad. Do
10 you recall when you went over those? Do you have notes
11 reflecting that?

12 A I definitely remember when we were watching the video
13 which was prior -- now, exact dates, I would have to kind
14 of look through.

15 (Pause).

16 I'm just not.

17 Q That's okay. We can move on.

18 A I'm sorry.

19 Q Regarding the Jackson vs. Denno hearing, it was
20 unsuccessful. You say you did speak with Mr. Schoclet
21 about testifying at this hearing before, correct?

22 A Yes.

23 Q At that time, what did he tell you?

24 A We talked about testifying.

25 Q And he wanted to testify.

1 A He did.

2 Q He did?

3 A Uh-huh.

4 Q And during the hearing, you said it was split-second
5 decision for him not to testify. Whose decision was that?

6 A It was mine in the middle of it, basically.

7 Q And did you ask him whether he wanted to testify in
8 that hearing at that time?

9 A I did not.

10 Q Okay. And if he had testified, could it have changed
11 the direction of the judge's decision?

12 A It's possible, yes.

13 Q And could that -- would that have changed the trial
14 drastically if the statement had been suppressed?

15 A Yes.

16 Q Okay.

17 A Well, yeah. There's the video but yes, without the
18 statement --

19 THE COURT: I thought he was on video.

20 THE WITNESS: He was on video, yes.

21 THE COURT: Okay.

22 BY MS. GOOD:

23 Q Regarding the motion to reconsider, you said -- I'm
24 going to show you --

25 THE COURT: I've got it.

1 BY MS. GOOD:

2 Q Applicant's Exhibit 1. Have you ever seen this piece
3 of paper?

4 A I have not.

5 Q All right.

6 A I don't understand why I did not. Like I said, I
7 have one letter from him regarding his file, and then I
8 have the letter showing I wrote him back. I sent him the
9 file, but I did not, unfortunately, receive that letter.

10 Q And did you ever go visit with him after his plea to
11 follow up with him about whether he wanted to reconsider?

12 A No. We spoke in holding afterwards. We talked about
13 it, but that -- I did not speak to him after that.

14 Q And finally, when you were discussing the plea with
15 Mr. Schoclet, what were you telling him regarding what the
16 plea offer was and whether you could get a better one or
17 not?

18 A This case was really hard because when I first got
19 the case, his offer from the solicitor was he could either
20 plead straight up to armed robbery, or he could get served
21 with life without parole.

22 I got it to a point where the offer was he could
23 plead to 15 or the solicitor would not serve him with life
24 without parole. So we -- you know, we talked about taking
25 that, and that was part of the pretrial motion was

1 Mr. Schoclet didn't want it.

2 He said he wanted ten. "You know, go ahead and serve
3 me with that paper because it doesn't mean anything." At
4 that point, I think the mindset in the jail was it did not
5 mean anything.

6 Q Okay.

7 A Sitting there for three years, he just -- he saw
8 other people get served with life without parole, and it
9 didn't mean anything. So we talked about that. I talked
10 to him about taking the 15.

11 He did not take it. Then he got served with life
12 without parole. Then as it started, I mean, there was
13 some back and forth with the solicitor and I once he
14 decided he did not -- he did not want to go to trial
15 without a life without parole. He wanted a plea.

16 I kept asking for Dolly to take it, get an offer
17 back. She was saying maybe 30 or 40. You know, during
18 the trial, at one point she did say he can plead straight
19 up. That was day of trial. I went down to him. He said
20 yes, and then she said, "Oh no, I never would have said
21 that."

22 I do think we had a difference of opinion on what the
23 offer was, the solicitor and I. Then just as the trial
24 started, it just -- the victims were very good on the
25 stand. It was just a difficult pretrial.

1 Then we got the 25 to 30 offer, and I mean, it did --
2 I did say, "Look, you know, if you get convicted, it's
3 life without parole." I did tell him I thought the
4 likelihood of him getting convicted was very good. That's
5 why he took -- he ended up getting 25 on a negotiated 25
6 to 30.

7 Q And he took the 25 after you made the comments about
8 you thought he was going to be found guilty?

9 A Yes. I mean, I don't remember. I mean, I never say,
10 "Yes, you're going to," but I did tell him likely the way
11 things were going, he would get convicted.

12 MS. GOOD: No further questions, Your Honor.

13 MR. HUNTER: Brief follow up, Your Honor.

14 THE COURT: Brief.

15 RE CROSS-EXAMINATION:

16 BY MR. HUNTER:

17 Q Just to clarify, your decision not to have
18 Mr. Schoclet testify at the Denno hearing, that was a
19 strategic decision; is that correct?

20 A I mean, it was in the heat of trial.

21 Q Okay.

22 A Obviously, it was a split second. I thought, you
23 know, maybe it's better for him not to testify, but in
24 hindsight, I'm not sure if that was the right decision or
25 not.

1 Q At that point it was.

2 A Yes. At that point it was, yes.

3 Q Okay. And he was on video committing the crime,
4 correct?

5 A Yes.

6 MR. HUNTER: Okay. Nothing further, Your Honor.

7 THE COURT: Anything else?

8 MS. GOOD: No, sir.

9 THE COURT: All right. Have a nice day.

10 Do you have any more today, Ms. Gibbes?

11 THE WITNESS: I do not.

12 THE COURT: All right. Call your next witness.

13 MR. HUNTER: Your Honor, the State has no further
14 witnesses.

15 THE COURT: All right. Anything in reply?

16 MS. GOOD: No, sir.

17 THE COURT: Okay. I'm happy to hear from you all,
18 whoever wants to go first.

19 MS. GOOD: Your Honor, very briefly, I think one of
20 the main issues here that I believe the Post Conviction
21 Relief application should be granted on is that Ms. Gibbes
22 testified, as well as Mr. Schoclet that during the Jackson
23 v. Denno hearing he wanted to testify.

24 She was aware he wanted to testify, and then during
25 the actual hearing, she made the decision herself not to

1 let him testify. I believe he has a right to testify.
2 Even -- it may not be an actual trial. He has a right to
3 testify in the pretrial hearing, and that should have been
4 a decision that he should have been able to make, Your
5 Honor.

6 Her not allowing him to do so, it could have changed
7 drastically whether the statement came in, whether it put
8 him there, whether he agreed he had a gun or not, and I
9 believe that is something that he should have been able to
10 make a decision on.

11 THE COURT: All right. Mr. Hunter?

12 MR. HUNTER: Your Honor, I just note that, you know,
13 she testified that it was a strategic decision at that
14 point of the hearing. At that time, she thought it would
15 be better for her client not to testify.

16 Mr. Schoclet also testified today that he at that
17 point in time did not say, you know, "Ms. Gibbes, please
18 put me on the stand. I want to testify" after she made
19 that decision. So I don't -- the State does not think
20 that the Applicant has met his burden of proof here.

21 THE COURT: All right. Any reply, Ms. Good?

22 MS. GOOD: No, sir.

23 THE COURT: All right. Thank you very much. I'll
24 let y'all know within the next ten days.

25 MS. GOOD: Thank you, Your Honor.

1 THE COURT: All right. Thank you, Mr. Schoclet.

2 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 2nd day of
September, 2014.

December 10, 2014

/Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

Exhibit A

Jeannette W. McBride

I am Curtis Ray Schoeliet and I was sentenced to 25 years on a guilty plea on 2-12-13. My lawyer is Courtney Gibbs, I was told that I have 10 days to exercise my right to file a motion to reconsider. I would like to exercise that right. I was told to write you so that this would be certified and ask that would you please send a copy to Courtney Gibbs as soon as possible. What ever there is that you can do to help I would greatly appreciate it, Thank you

Curtis Schoeliet

2/18/13



JEANNETTE W. MCBRIDE
C.C.P. & G.S.

2013 MAR -7 AM 11:38

FILED

HIGHLAND COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Curtis Schoclet, #354333,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-3674

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2014 SEP 24 PM 12:20
JENNIFER M. HERNANDEZ
CLERK OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on June 24, 2013 and amended on March 21, 2014. Respondent made its return on February 24, 2014. An evidentiary hearing into the matter was convened on September 2, 2014, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Anna R. Good, Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the January 2011 term of the Richland County Grand Jury for Armed Robbery (2011-GS-40-0599) and two counts of Kidnapping (2011-GS-40-0560, -561). Applicant was represented by Courtney A. Gibbes, Esquire. On February 11-12, 2013, Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. During his trial, Applicant elected to abandon his trial and plead guilty to Armed Robbery pursuant to negotiations with the State for a sentence of twenty-

five years imprisonment. Pursuant to these negations, Judge Goodstein sentenced Applicant to twenty-five years imprisonment. Applicant did not appeal his guilty pleas or sentences.

ALLEGATIONS

In his application for post-conviction relief, and in an Amendment to the application filed on July 9, 2014, Applicant alleges that he is being held in custody unlawfully based on the following grounds:

1. Ineffective assistance of counsel – Trial counsel failed to file a motion to reconsider.
2. Ineffective assistance of trial counsel – Trial counsel failed to discuss and present testimony from Applicant on behalf of the defense during the Jackson v. Denno hearing.
3. Ineffective assistance of counsel – Trial counsel gave erroneous advice regarding the elements of kidnapping and the corresponding video with the case.
4. Ineffective assistance of counsel – trial counsel prepared to have a hearing regarding life without parole prior to the trial date.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Courtney A. Gibbes, Esquire (Counsel). This Court also had before it a copy of the plea transcript, the Richland County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and an exhibit presented by Applicant.

During the evidentiary hearing, Applicant testified that he was represented at his plea by Courtney A. Gibbes, Esquire. Applicant testified he pled guilty to kidnapping and armed robbery. Applicant testified he met with counsel three or four times prior to his plea. Applicant testified he and Counsel discussed his case and talked about Applicant being served with notice of LWOP. Applicant testified the attorney who represented him prior to Gibbes told him he would need to have a hearing to see if he was eligible for LWOP. Applicant testified he received

some plea offers from the solicitor, but he rejected them. Applicant further testified that Counsel never discussed the elements of kidnapping with him. Applicant testified Counsel told him he would get LWOP if convicted, and that Counsel's strategy was to try and attack the LWOP enhancement. Applicant testified he and Counsel never discussed trial strategy. Applicant testified that prior to his decision to plead guilty, Counsel held a motion to suppress the statement he gave to police. Applicant testified that Counsel asked him if he wanted to testify, and he told her did want to testify, but Counsel never called him to the stand. Applicant testified he would have testified at the hearing if Counsel had called him to the stand. Applicant testified he did not know all the motions Counsel was planning to present. Applicant testified that on the second morning of the trial, Counsel told him the solicitor offered an open plea, but then Counsel told him there was no offer. Applicant testified Counsel told him he would be convicted if he proceeded to trial. Applicant testified Counsel told him if he pled to twenty-five (25) years, Counsel would testify on his behalf at the PCR hearing. Applicant testified he felt forced to take the plea because of Counsel's comments regarding his likelihood of success at trial and the possibility of receiving LWOP. Applicant testified that after his plea, Counsel never filed a motion to reconsider. Applicant testified he sent a letter to Counsel requesting she file a motion to reconsider, and he presented this letter to the Court as an exhibit.

On cross-examination, Applicant testified he recalled the plea judge asking him if he understood that armed robbery and kidnapping carry up to thirty (30) years imprisonment. Applicant testified he recalled the plea judge telling him he could not receive less than ten (10) years imprisonment. Applicant testified he recalled the plea judge telling him he needed to count on serving whatever sentence he received due to the non-parolable nature of the charges. Applicant testified he recalled the plea judge going over the Two strike/Three strike law with

him. Applicant testified he recalled the plea judge telling him that if he received LWOP, he would die in prison. Applicant testified he recalled the plea judge advising him that he was giving up his constitutional rights to trial by jury and his ability to challenge the evidence against him by pleading guilty. Applicant testified he recalled telling the plea judge that he still wished to plead guilty. Applicant testified he recalled telling the plea judge no one had promised or threatened him in order to force him to plead guilty. Applicant testified he recalled telling the plea judge that he understood he was pleading to a negotiated sentence of twenty-five (25) years imprisonment in exchange for the solicitor dropping the threat of LWOP. Applicant testified he gave a statement to the police. Applicant testified he did not disagree with the solicitor's version of the facts at his plea. Applicant testified he recalled telling the plea judge he was entering his plea freely and voluntarily. Applicant testified he did not tell Counsel at the Denno hearing that he wanted to testify.

Following Applicant's testimony, Courtney A. Gibbes, Esquire (Counsel) was called to testify. Counsel testified she has been practicing for seven (7) years and was with the Public Defender's office when she was appointed to this case. Counsel testified that 90% of her practice consists of criminal law. Counsel testified she met with Applicant between ten and twelve times. Counsel testified she was Applicant's third attorney on these charges. Counsel testified her office filed the appropriate Rule 5 and Brady motions. She testified she received the discovery and went over it with Applicant. Counsel testified she discussed with Applicant the elements of the charges he was facing, including the kidnapping charges. Counsel testified she decided not to have Applicant testify at the Denno hearing because she felt that was the best strategy at the time. Counsel testified that in hindsight, perhaps she should have put Applicant on the stand. Counsel testified Applicant was on videotape committing the crimes. Counsel testified Applicant

claimed he did not use a real gun. Counsel testified she discussed with Applicant the fact that whether or not the gun actually was real was immaterial; rather, all that mattered was if the victims believed the gun was real. Counsel testified she argued a motion before the trial judge to determine whether Applicant was eligible for LWOP enhancement based on his aggravated robbery conviction from Texas; however, Applicant decided to plead guilty before the judge made a ruling. Counsel testified Applicant was not overly concerned with the threat of LWOP because he had been in jail for three (3) years leading up to his plea, and Applicant did not think the solicitor was serious. Counsel testified the solicitor's office routinely uses the threat of LWOP to force suspects to plead guilty. Counsel testified Applicant did not ask her to file a motion for reconsideration or to appeal his plea. Counsel testified she never received a letter from Applicant asking her to do so.

On cross-examination, Counsel testified the plea judge did tell her that her argument against the sentence enhancement for LWOP was a good argument. Counsel testified she did not recall whether she discussed the judge's comment with Applicant prior to his decision to plead guilty. Counsel testified Applicant wanted to testify, but she made a decision not to put him on the stand. Counsel testified it is possible the outcome of the hearing could have been different if Applicant testified. Counsel testified she spoke with Applicant in the holding cell after he pled guilty. Counsel testified Applicant was initially offered a deal to plead straight up, but he rejected that offer. Counsel testified Applicant did not receive any further plea offers after that. Counsel testified she had a difference of opinion with the solicitor as to what the offer actually was. Counsel testified Applicant finally received another offer of a negotiated plea to a range between twenty-five (25) and thirty (30) years, which he chose to accept rather than going forward with a jury trial. Counsel testified Applicant was caught on video. Counsel testified

Applicant did not ask her at the time of the Denno hearing to put him on the stand.

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds that Counsel met with Applicant multiple times prior to the guilty plea. This Court finds Applicant understood he was pleading pursuant to a negotiated sentence. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court finds that Counsel did go over the elements of armed robbery and kidnapping with Applicant. This Court finds Applicant has failed to show trial counsel gave any erroneous advice, particularly concerning the elements of kidnapping. This Court finds Counsel explained to Applicant the terms of his plea and the fact that if he went to trial he was facing life in prison. This Court finds Counsel's decision not to put Applicant on the stand to testify at the Denno hearing was reasonable strategic decision at the time. As such, this Court finds Counsel's testimony that putting Applicant on the stand may have changed the outcome of the hearing is irrelevant to whether the decision was a reasonable strategic decision at the time. See Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel). This Court further finds Counsel presented competent and well-reasoned arguments to the plea court regarding the solicitor's ability to use Applicant's prior Texas conviction as a sentence enhancement for LWOP. This Court finds Counsel's testimony that she did not receive Applicant's letter requesting a motion for reconsideration credible. Accordingly, this Court finds Counsel was under no duty to file a motion for reconsideration where she was unaware of Applicant's wishes. This Court further finds that Applicant pleaded guilty pursuant to a

negotiated sentence, and a motion for reconsideration would not have benefitted Applicant. This Court finds that the evidence against Applicant was overwhelming, and Counsel did everything she could reasonably have done to obtain a favorable outcome for Applicant.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

INVOLUNTARY GUILTY PLEA

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

This Court finds Applicant has failed to demonstrate that his guilty plea was entered involuntarily.

This Court finds Applicant was aware of the nature of the charges he was facing and the possible penalties. This Court finds Applicant did not disagree with the solicitor's recitation of the facts at his plea. This Court further finds that Applicant told the plea judge that he was guilty, and he was pleading guilty freely and voluntarily. This Court finds Applicant told the plea judge he was satisfied with his attorney and did not need any more time. This Court finds Applicant was made well-aware of the constitutional rights he was waiving prior to his guilty plea. Accordingly, this Court finds Applicant was well aware that by pleading guilty he was waiving his ability to challenge the evidence against him, as well as any possible defenses, particularly the outcome of the Denno hearing, as well as the argument against the sentence enhancement for LWOP. This Court further finds that Applicant knew he was pleading to a negotiated sentence of between twenty-five (25) and thirty (30) years in prison, and that he pled guilty voluntarily. This Court finds Applicant made an intelligent decision to plead guilty because he did not want to face LWOP if convicted at trial. This Court finds nothing improper in Counsel's advice or the solicitor's attempt to use Applicant's prior Texas conviction as a sentence enhancement for LWOP. Thus, this Court finds Applicant's decision to plead guilty was his choice, and he did not enter his plea involuntarily.

Accordingly, this Court finds Applicant's guilty plea was knowingly and voluntarily

entered. This Court finds that the evidence presented at the evidentiary hearing as well as contained within the guilty plea transcript clearly supports a finding that the guilty plea was not coerced or involuntary; rather, it was freely, knowingly, and voluntarily entered. This Court finds Applicant was informed of the nature and elements of the offenses with which he was charged and to which he pled guilty. This Court further finds that Applicant was fully apprised of the rights he was forfeiting in order to plead guilty and that Applicant decided to go forward with his guilty plea.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Plea counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.

Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 22 day of Sept, 2014.

Re Hard

ROBERT E. HOOD
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

WITNESSES

(s) JOSH MAULDIN - RCSD

DOCKET NO. 2011-GS-40-560

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

87

ARREST WARRANT NUMBER

901289

THE STATE
vs.

CURTIS SCHOCLET

ACTION OF GRAND JURY

FILED

Mena Anderson

Foreperson of Grand Jury
Date: JAN 20 2011

VERDICT

Foreperson of Petit Jury
Date:

240

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

Defendant

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

RICHLAND COUNTY
SOUTH CAROLINA

Defendant

Witness:

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

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095
Class FEL(A)(V)

241

WITNESSES

(S) JOSH MAULDIN - RCSD

DOCKET NO. 2011-GS-40-561

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

87

ARREST WARRANT NUMBER

901288

Defendant

Witness:

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

ACTION OF GRAND JURY

FILED

Theresa Gardner

Foreperson of Grand Jury JAN 20 2011
Date:

VERDICT

Indictment for

KIDNAPPING

SC Code: 16-3-910

CDR Code:0095

Class FEL(A)(V)

Foreperson of Petit Jury

Date:

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

Defendant

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

DOCKET NO. 2011-G 1-559

WITNESSES

(S) JOSH MAULDIN - RCSD

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

87

THE STATE

VS.

CURTIS SCHOCLET

ARREST WARRANT NUMBER

1290

ACTION OF GRAND JURY

TRUE BILL

Mena Gardiner
person of Grand Jury JAN 20 2011

VERDICT

person of Petit Jury

242

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

Defendant

Curtis Schochet
hereby appear in my own proper person and plead guilty to the within indictment of to

Curtis Schochet
Defendant

Witness: [Signature]
C.C.C. PLS. AND G.S.

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)