

**ANDERS**

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VOLUME TWO OF TWO  
ANDERS RESPONSE BRIEF

STATE OF SOUTH CAROLINA **No Respondent's Brief Filed**  
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In The Court of Appeals

JAN 30 2015

APPEAL FROM COLLETON COUNTY

**SC Court of Appeals**

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MACK WASHINGTON, JR.

APPELLANT

APPELLATE CASE NO. 2014-000667

RECORD ON APPEAL

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1 that the defendant in this case has been arrested, that the  
2 defendant has been charged, the fact that the defendant has  
3 been indicted in this case is not evidence in this case, nor  
4 does it create any presumption or inference of guilt. These  
5 indictments, these documents that I've referred to, which I  
6 have called indictments, are simply the formal written  
7 instruments which contain the charges made against the  
8 defendant. The indictments are the formal documents by  
9 which the case is brought into this court for trial. I've  
10 handed the indictments to my law clerk who will ask you, Mr.  
11 Foreman, to sign your name and date on the indictments.

12 Now to those five indictments, the defendant has pled  
13 not guilty. And that plea of not guilty to each of the five  
14 indictments puts the burden on the State of South Carolina  
15 to prove the defendant guilty beyond a reasonable doubt. A  
16 person charged with committing a criminal offense in South  
17 Carolina is never required to prove himself, or herself,  
18 innocent.

19 I charge you, ladies and gentlemen of the jury, that it  
20 is an important rule of the law that the defendant in a  
21 criminal trial, no matter what the seriousness of the charge  
22 may be, will always be presumed to be innocent of the crime  
23 for which the indictment was issued, unless guilt has been  
24 proven by evidence, satisfying you of that guilt beyond a  
25 reasonable doubt.

1           This presumption of innocence, ladies and gentlemen of  
2 the jury, does not end when you begin your deliberations,  
3 but it accompanies the defendant throughout the trial until  
4 you, as a jury, reach a verdict guilty based on evidence,  
5 satisfying you of that guilt beyond a reasonable doubt.

6           The presumption of innocence is not a mere legal  
7 theory. It is not just a legal phrase. It is a substantial  
8 right to which every defendant in criminal court is entitled  
9 unless you, the jury, are satisfied from the evidence of the  
10 defendant's guilt beyond a reasonable doubt.

11           What is a reasonable doubt in the law? A reasonable  
12 doubt is the kind of doubt that would cause a reasonable  
13 person to hesitate to act.

14           The State has the burden of proving the defendant  
15 guilty beyond a reasonable doubt. Some of you on the jury  
16 today may have served as jurors in the past in a civil case,  
17 where you were told by the judge that it was only necessary  
18 to prove that a fact is more likely true than not true. We  
19 call that, in a civil case, the burden of by the greater  
20 weight, or the preponderance of the evidence. In a criminal  
21 case, such as the case here today, the State's proof must be  
22 more than that. It must be beyond a reasonable doubt.

23           Now, proof beyond a reasonable doubt is proof that  
24 leaves you firmly convinced of the defendant's guilt. There  
25 are very few things in this world that we know with absolute

1 certainty. And in criminal cases, the law does not require  
2 proof that overcomes every possible doubt. If, based on  
3 your consideration of the evidence, you are firmly convinced  
4 that the defendant is guilty of the crime, or crimes  
5 charged, you must find the defendant guilty. On the other  
6 hand, if you think there's a real possibility that the  
7 defendant is not guilty, you must give the defendant the  
8 benefit of the doubt and find the defendant not guilty.

9 I remind you, ladies and gentlemen, that throughout  
10 this trial, you and I have had certain duties to perform.  
11 As a trial judge, it has been my responsibility to preside  
12 over the trial of the case, and I also have the duty to rule  
13 on the admissibility of evidence offered during the trial of  
14 the case.

15 I remind you that you are to consider only the  
16 competent evidence offered during the trial. If there was  
17 any testimony ordered stricken from the record by me during  
18 this trial, you must disregard that testimony and not use it  
19 as a basis of your decision. You are to consider only the  
20 testimony which was presented from the witness stand by the  
21 sworn witnesses, any exhibits which have been introduced  
22 into evidence during the trial of the case, and if there  
23 were any, any stipulations of counsel.

24 Now, I also, as the presiding judge, have the  
25 additional duty to charge you the law that applies to this

1 case. As the presiding judge, I told you that I am the sole  
2 judge of the law in this case, and it is your duty as  
3 jurors, under that oath you took at the beginning of this  
4 trial, it's your duty to accept and to apply the law as I  
5 now state it to you.

6 So if any of you on this jury already have any idea as  
7 to what you think the law is, or even what you feel the law  
8 ought to be, and it does not agree with what I now tell you  
9 the law is, you must abandon any of your preconceived ideas  
10 or any of your preconceived opinions, because each of you  
11 took an oath from the Clerk of Court. And in that oath, you  
12 swore or affirmed that you would accept the law as given to  
13 you, and apply the law exactly as I now state it to you.

14 In every case tried in this Court before a jury, the  
15 jury becomes the sole and the exclusive judges of the facts  
16 in the case. A trial judge, such as myself, cannot  
17 intimate, comment on, or make any type of statement to a  
18 trial jury, such as you, about the facts in a case.

19 Since you, the jury, are the sole judges of the facts  
20 in this case, you are not to infer from what I have said  
21 during the progress of this trial in ruling upon the  
22 admissibility of evidence or otherwise, or anything that I  
23 say now during the course of this instruction to you, that I  
24 have any opinion whatsoever about the facts in this case.

25 The law does not allow me to have an opinion about the

1 facts in this case. This is a matter solely for you, the  
2 jury, to determine. As jurors, then, it is your duty to  
3 determine the effect, the value, the weight and the truth of  
4 the evidence that's been presented during the trial of this  
5 case.

6 Now, ladies and gentlemen, there are two types of  
7 evidence that are generally presented during a trial. And  
8 like many things in the law, we have names for those general  
9 types of evidence. The two types of evidence presented  
10 during a trial are called direct evidence and circumstantial  
11 evidence.

12 Direct evidence, ladies and gentlemen, is testimony of  
13 a person who claims to have actual knowledge of a fact, such  
14 as an eyewitness to an event. Direct evidence is evidence  
15 which immediately establishes the main fact to be proved.

16 Circumstantial evidence, as contrasted with direct  
17 evidence, is proof of a chain of facts and circumstances,  
18 indicating the existence of a fact. Circumstantial evidence  
19 is evidence which immediately establishes a collateral fact  
20 from which the main fact may or may not be inferred.  
21 Circumstantial evidence is based on inference and not on  
22 personal knowledge or personal observation.

23 The law makes absolutely no distinction whatsoever  
24 between the weight or the value to be given to either direct  
25 evidence or to circumstantial evidence. Nor is a greater

1 degree of certainty required of circumstantial evidence than  
2 of direct evidence.

3 Ladies and gentlemen of the jury, you should weigh all  
4 of the evidence in this case. You should consider all the  
5 evidence in this case, both direct and circumstantial  
6 evidence. After weighing and considering all the evidence  
7 in this case, if you're not convinced of the guilt of the  
8 defendant beyond a reasonable doubt, you must find the  
9 defendant not guilty.

10 On the other hand, after weighing and hearing and  
11 considering all the evidence in this case, if you're  
12 convinced of the guilt of the defendant beyond a reasonable  
13 doubt, you must find the defendant guilty.

14 Necessarily, ladies and gentlemen, you must determine  
15 the credibility, meaning the believability, of the witnesses  
16 who have testified during the trial of this case. It  
17 becomes your duty as a juror to analyze. It becomes your  
18 duty as a juror to evaluate the evidence and determine which  
19 evidence convinces you of its truth.

20 In determining the believability or credibility of the  
21 witnesses who have testified in this case, you may believe  
22 one witness over several witnesses. You may believe several  
23 witnesses over one witness. You may believe a part of the  
24 testimony of a witness and reject the remaining part of the  
25 testimony of that same witness. You may believe the

1 testimony of a witness in its entirety, or you may reject  
2 the testimony of a witness in its entirety.

3       You may consider whether any witness has exhibited to  
4 you any interest, any bias, any prejudice or other motive in  
5 this case. You may also consider the appearance and manner  
6 of the witness while the witness is on the witness stand.  
7 We call it the demeanor of the witness in judging the  
8 believability of the witnesses who have testified in the  
9 trial of the case.

10       I instruct you, ladies and gentlemen, that the fact  
11 that the defendant did not testify in this case is not a  
12 factor to be considered by you in any way in your  
13 deliberations and in your consideration on the question of  
14 guilt or innocence by the defendant. It must not be  
15 considered by you in any manner whatsoever in your jury  
16 room. Every defendant has the constitutional right to  
17 remain silent and the assertion of this right must not be  
18 considered by you in your deliberations. You are to draw no  
19 conclusion whatsoever from the fact that the defendant in  
20 this case did not testify. In fact, the fact that the  
21 defendant did not testify should not even be discussed in  
22 your jury room. The burden of proof, as I have stated to  
23 you, is on the State of South Carolina. The defendant is  
24 not required to prove his innocence. The burden of proof  
25 remains on the State to prove guilt by evidence, satisfying

1 you of that guilt beyond a reasonable doubt.

2 I charge you, ladies and gentlemen, that a person who  
3 has a past criminal record is competent to testify during a  
4 trial. In other words, because you have a past record for  
5 convictions does not affect the ability of the witness to  
6 testify. The past record may only be considered by you as a  
7 jury, if at all, in determining the witness's believability  
8 or credibility.

9 I remind you, ladies and gentlemen of the jury, that  
10 you are the sole judges of the facts and of the  
11 believability of any and all of the witnesses.

12 I charge you, ladies and gentlemen, that if there's  
13 been evidence presented that witnesses have made prior  
14 statements which are not consistent with the witness's  
15 present testimony in the courtroom, you may, if you so  
16 desire to find, you may use this evidence to decide whether  
17 to believe a witness. You may also use evidence of an  
18 earlier contradictory statement to determine the truth of  
19 the statement. It is up to you to decide whether to believe  
20 earlier statements or testimony given at trial.

21 If a witness has shown to have testified untruthfully  
22 concerning any material matter, you may consider this in  
23 determining whether to trust a witness's testimony or the  
24 witness's credibility. You may reject all testimony of the  
25 witness or give it all or part of the testimony the weight

1 you think it deserves.

2 Now, ladies and gentlemen, there is a doctrine in the  
3 law called, "the hand of one is the hand of all." If a  
4 crime is committed by two or more people who are acting  
5 together in committing a crime, the act of one is the act of  
6 all. A person who joins with another to commit an unlawful  
7 act is criminally responsible for everything done by the  
8 other person which happens as a probable or natural  
9 consequence of the acts done in carrying out the common plan  
10 or common purpose.

11 For example, two people can be guilty of killing  
12 another person when only one of the two people had a gun.  
13 There was only one bullet in the gun, and only one of the  
14 two people fired the shot that caused the death. If two or  
15 more people are together, acting together, assisting each  
16 other in committing the offense, the act of one is the act  
17 of all or, as it is sometimes said, "The hand of one is the  
18 hand of all."

19 Prior knowledge that a crime is going to be committed,  
20 without more, is not sufficient to make a person guilty of  
21 that crime. Mere knowledge that another person is going to  
22 commit a crime, even if the defendant is present when the  
23 crime is committed, is not sufficient to convict the  
24 defendant as a principal. Guilt, as a principal, is shown  
25 by actual or constructive presence at the scene, as a result

1 of prior arrangement.

2       Therefore, a finding of a prior arranged plan, or  
3 common scheme, is necessary for a finding of guilt as a  
4 principal. The State must prove beyond a reasonable doubt  
5 by competent evidence the theory of the hand of one is the  
6 hand of all.

7       A principal in a crime is one who either actually  
8 commits the crime or who is present, aiding and abetting, or  
9 assisting in committing the crime. When a person does an  
10 act in the presence of and with the assistance of another,  
11 the act is done by both. When two or more, acting with a  
12 common plan, a common intent, are present at the commission  
13 of a crime, it does not matter who actually commits the  
14 crime. All are guilty. The hand of one is the hand of all.

15       Present at the commission of a crime mean to be  
16 sufficiently near to aid and abet and assist in the  
17 commission of the crime. However, mere presence at the  
18 scene of a crime is not sufficient to convict one as a  
19 principal on the theory of aiding and abetting.

20       Intent is also a necessary element. For there must  
21 have been a common design or common intent to commit the  
22 crime, and the crime must have been committed pursuant  
23 thereto with the person aiding and abetting by some type of  
24 overt act.

25       Intent means intending the result which actually

1 occurs, not accidentally or involuntarily. Intent may be  
2 shown by acts and conduct of the defendant and other  
3 circumstances from which you may naturally and reasonably  
4 infer intent. The State must prove these elements beyond a  
5 reasonable doubt.

6 As I told you, ladies and gentlemen, even though we  
7 have the theory of the hand of one is the hand of all, in  
8 the law in South Carolina mere presence at the scene of a  
9 crime is not sufficient to prove someone guilty of a crime.

10 The defendant's presence where a crime is being  
11 committed or mere association with a person who commits a  
12 crime does not make a defendant an accomplice or an aider  
13 and abettor to the person committing the crime. The burden  
14 is on the State to prove every element of the crime charged.

15 If you find, after reviewing all of the evidence, that  
16 the State has proved that the defendant was only present at  
17 the scene of the crime and they have not proved beyond a  
18 reasonable doubt any other participation in the crime, you  
19 must find the defendant not guilty. The law is proof that  
20 at the scene of the crime or mere presence is not sufficient  
21 alone to find a person guilty.

22 Whether a consent to search was voluntary or the  
23 product of duress or coercion, express or implied, words  
24 spoken or actions implying, is a question for the jury.  
25 It's a question of fact to be determined by you from the

1 evidence from what we call the totality of the circumstances  
2 based on evidence introduced during the trial of this case.

3       The burden of proving a voluntary search is on the  
4 State to show beyond a reasonable doubt that the alleged  
5 consent to the search was voluntary and if you determine  
6 that the alleged consent to search was freely and  
7 voluntarily given, you may give the evidence obtained in the  
8 search any further consideration you as a jury deem proper.  
9 If you determine the alleged consent and search was not  
10 freely and voluntarily given, you should not consider the  
11 evidence obtained from that search.

12       In order to establish criminal liability, I charge you,  
13 ladies and gentlemen, that criminal intent is required. For  
14 example, and these are examples of other cases, we're  
15 talking about the mental state that may be required to be  
16 proven by the State for a particular crime; and I'm going to  
17 give you examples of criminal intent. It might be purpose.  
18 It might be intent. It might be knowledge. It might be  
19 recklessness. It might even be criminal negligence. Those  
20 are examples of criminal intent. Criminal intent must be  
21 proven by the State beyond a reasonable doubt. Criminal  
22 intent is always a matter that must be determined by the  
23 jury from the circumstances surrounding the situation based  
24 on the evidence introduced during the trial of the case.

25       Now, ladies and gentlemen, there is no way to prove

1 intent to a mathematical certainty. There is no way that  
2 medical science can dissect a person's brain and determine  
3 what that person had in mind. So the law says, ladies and  
4 gentlemen, that criminal intent may be inferred from the  
5 circumstances shown to have existed, based on the evidence  
6 introduced during the trial the case.

7 This, ladies and gentlemen, is how you, as a jury, make  
8 the determination of whether or not any element in any crime  
9 requiring a certain intent was present. It is not necessary  
10 to establish intent by direct evidence, but intent may be  
11 established by inference, in the same way as any other fact,  
12 by taking into consideration the acts of the parties, and  
13 all the facts and consideration and circumstances of the  
14 case, based on evidence introduced during the trial of the  
15 case.

16 Criminal intent is a mental state. It is a conscious  
17 wrongdoing. It is up to you, the jury, from the evidence,  
18 to determine what the defendant intended to do, based on the  
19 circumstances shown to have existed from evidence introduced  
20 during the trial of the case.

21 Criminal intent can arise from an action or even a  
22 failure to act. It may arise from negligence, recklessness,  
23 or an indifference to duty, or to consequences considered by  
24 the law to be the equivalent of criminal intent.

25 Now, I charge you, ladies and gentlemen, in this case

1 the indictments allege different offenses against the  
2 defendant, Mack Washington. As I told you, the charges are  
3 the kidnapping of Joan Klem, the kidnapping of Frank Klem,  
4 armed robbery of Joan Klem, armed robbery of Frank Klem, and  
5 also possession of a weapon during the commission of a  
6 violent crime.

7 Each charge is a separate and a distinct criminal  
8 offense. You must decide each charge as a jury separately on  
9 the evidence and the law that applies to it uninfluenced by  
10 your decision as to any other charge with one exception, if  
11 you find the defendant guilty of kidnapping as to either  
12 Joan or Frank Klem or armed robbery as to either Joan or  
13 Frank Klem, then you may also find the defendant guilty of  
14 possession of a weapon during the commission of a violent  
15 crime.

16 If you find the defendant not guilty of both kidnapping  
17 and armed robbery as to either Joan or Frank Klem, then you  
18 must find the defendant not guilty of possession of a weapon  
19 during the commission of a violent crime. That is because  
20 kidnapping and armed robbery are violent crimes under the  
21 laws of the State of South Carolina and you can only find a  
22 person guilty of possession of a weapon during the  
23 commission of a violent crime if you find a person guilty of  
24 a violent crime.

25 You will be asked to write a separate verdict on each

1 of these indictments of the verdict of either guilty or not  
2 guilty for each charge following the instructions, which I'm  
3 going to give in just a minute. Whatever you write on the  
4 verdict form, you will also write on the indictments which  
5 Wilder is holding in his hand right now.

6 I will now define the offenses for you. Let's start  
7 with kidnapping. The defendant, Mack Washington, is charged  
8 with two indictments of kidnapping. For this offense, the  
9 State must prove beyond a reasonable doubt that the  
10 defendant knowingly and unlawfully seized, confined,  
11 inveigled, decoyed, kidnapped, abducted, or carried away  
12 another person without authority of the law.

13 To do a thing unlawfully is to do it willfully against  
14 the law. Knowingly means with knowledge, consciously; not  
15 accidentally. Seize means to take hold of suddenly or to  
16 take hold of forcibly. Confine means to limit, restrict, or  
17 enclose within bounds, to imprison, or shut, or to keep in.

18 Inveigle means to lure, entice, or lead astray by false  
19 representations, promises, or other deceitful means. Decoy  
20 means to lure, or as if by decoy. A decoy is something to  
21 entice a person into a trap. Kidnap is to remove a person  
22 against his or her will by unlawful force or by fraud.  
23 Abduct means to carry off secretly or by force for an  
24 illegal purpose. Carry away means to remove.

25 The State does not have to prove for the offense of.

1 kidnapping that the defendant did all of these things.  
2 Instead, if you find beyond a reasonable doubt that the  
3 defendant did any of these things, you may find the  
4 defendant guilty of kidnapping. Something that is done  
5 without authority of law is something that which the law  
6 does not sanction, or the law does not permit, allow,  
7 condone, or provide justification for.

8 I charge you now that the kidnapping does not have to  
9 be for any personal or monetary gain for any illegal  
10 purpose, but it may be for any reason whatsoever.

11 So for kidnapping, the State must prove beyond a  
12 reasonable doubt that the defendant knowingly and unlawfully  
13 seized, confined, inveigled, decoyed, kidnapped, abducted,  
14 or carried away another person without authority of the law.

15 I charge you that the defendant is also charged with  
16 the offense of armed robbery. In order to prove this  
17 offense, the State must prove beyond a reasonable doubt that  
18 the defendant took personal property from the person or  
19 presence of another person. The property is in the presence  
20 of a person if it is within a person's reach or inspection  
21 or observation or control so that the person could, if not  
22 overcome with violence or prevented by fear, keep possession  
23 of the property.

24 The State must also prove beyond a reasonable doubt  
25 that the defendant carried the property away intending to

1 permanently deprive the owner of the property and to keep  
2 the property from the defendant's own use. The slightest  
3 removal of the property or the complete possession of the  
4 property, even for an instant by the defendant, is  
5 sufficient to show a taking and carrying away of the  
6 property.

7 The taking and carrying away of the property for armed  
8 robbery must have been done with violence or by putting the  
9 owner of the property in fear of violence.

10 Finally, for armed robbery, the State must prove beyond  
11 a reasonable doubt the defendant was armed with a deadly  
12 weapon during the robbery. A deadly weapon is any article,  
13 instrument, or substance which is likely to cause death or  
14 great bodily harm.

15 Included within the offense of armed robbery is the  
16 lesser included offense of common law robbery. If you find  
17 the State has failed to prove beyond a reasonable doubt that  
18 the defendant committed armed robbery, you may then consider  
19 whether the State has proven beyond a reasonable doubt that  
20 the defendant committed common law robbery, sometimes  
21 referred to as strong arm robbery.

22 In order to prove common law robbery, the State must  
23 prove beyond a reasonable doubt that the defendant took the  
24 personal property from the person or presence from another  
25 person without that person's consent, carried it away. As I

1 charged you, property is in the presence of a person that is  
2 within their reach, their observation, or their control, so  
3 that the person, if not overcome with violence or prevented  
4 by fear, can retain possession of their own property.

5       The State must show for common law robbery that the  
6 defendant carried property away with the intent to  
7 permanently deprive the owner of the property and to convert  
8 the property to the defendant's own use, and the slightest  
9 removal of the property or the complete possession of the  
10 property, even for an instant, by the defendant is  
11 sufficient to show a taking and a carrying away. The taking  
12 and carrying away of the property must have been done with  
13 violence or by putting the owner of the property in fear of  
14 violence.

15       Elements for common law robbery and armed robbery are  
16 the same, except in armed robbery the State must prove  
17 beyond a reasonable doubt was armed with a deadly weapon  
18 during the robbery.

19       Finally, the defendant in this case is charged with  
20 possession of a weapon during the commission of a violent  
21 crime. The State must prove beyond a reasonable doubt that  
22 the defendant was in possession of a weapon during the  
23 commission of or attempt to commit a violent crime.

24       In order to find a defendant guilty of possession of a  
25 weapon during the commission of a violent crime, you must

1 first find the defendant guilty of either committing a  
2 violent crime or attempting to commit a violent crime. I  
3 charge you, ladies and gentlemen of the jury, that under the  
4 laws of the State of South Carolina, kidnapping and armed  
5 robbery are violent crimes under the laws of State of South  
6 Carolina.

7 I charge you, ladies and gentlemen, also, that for  
8 purposes of this offense that a weapon is any article,  
9 instrument, or substance which is likely to cause death or  
10 great bodily harm. The State must prove beyond a reasonable  
11 doubt that the weapon furthered or advanced or helped in the  
12 commission of the crime.

13 All right. Mr. Foreman, I told you I would prepare a  
14 verdict form for you and I've done so. Please do not pay  
15 any attention to the order in which I wrote the form's  
16 verdict. I obviously had to write one before the other and  
17 the order has no significance whatsoever.

18 I've made a caption on your verdict form. Your verdict  
19 form, Mr. Foreman, is three pages. Don't let that scare  
20 you. There's seven questions and I'll explain them to you.  
21 The title says, "State of South Carolina, County of  
22 Colleton." I put "Court of General Sessions," which is  
23 criminal court. I listed all five indictment numbers, and I  
24 listed this case, which is: "The State of South Carolina v.  
25 Mack Washington, Jr., defendant." And I wrote the words

1 "verdict" under the caption.

2 Question number one: we, the jury, by unanimous  
3 consent, find the defendant, Mack Washington, Jr., in  
4 indictment number 2012-GS-15-00560, first form of verdict  
5 under Question 1 is guilty of kidnapping Joan Klem. Mr.  
6 Foreman, if that be your form of verdict, you would check on  
7 the line for the entire jury that verdict.

8 Or under Question one: we, the jury, by unanimous  
9 consent, find the defendant, Mack Washington, Jr., in  
10 indictment number 2012-GS-15-00560, not guilty of kidnapping  
11 Joan Klem. If that be your form of verdict, Mr. Foreman,  
12 you would check on the line for the entire jury by that form  
13 of verdict. You must find one form of verdict or the other.  
14 The jury cannot find both. So it has to be either guilty or  
15 not guilty as to kidnapping Joan Klem.

16 Question two: we, the jury, by unanimous consent, find  
17 the defendant, Mack Washington, Jr., in indictment number  
18 2012-GS-15-00416, first form of verdict under Question 2 is  
19 guilty of kidnapping Frank Klem. Mr. Foreman, if that be  
20 your form of verdict, you would check on the line for the  
21 entire jury that verdict.

22 The second form of verdict under Question 2 is not  
23 guilty of kidnapping Frank Klem. If that be your form of  
24 verdict, you would check on the line beside that form of  
25 verdict. You must find one form of verdict or the other.

1           Question Three: we, the jury, by unanimous consent,  
2 find the defendant, Mack Washington, Jr., in indictment  
3 number 2013-GS-15-00753, guilty of armed robbery of Joan  
4 Klem. If that be your form of verdict, you would check on  
5 the line beside that form of verdict. Or under Question  
6 three, the second form of verdict is not guilty of armed  
7 robbery of Joan Klem. If that be your form of verdict, Mr.  
8 Foreman, you would check on the line beside that form of  
9 verdict for the entire jury.

10           Then, I wrote instructions at the top of the second  
11 page. If you find the defendant guilty of armed robbery of  
12 Joan Klem, you do not need to answer question four, which is  
13 common law robbery, guilty or not guilty. I'm putting that  
14 on your verdict form. If you find the defendant guilty of  
15 armed robbery of Joan Klem, do not answer question number  
16 four. However, if you find the defendant not guilty of  
17 armed robbery of Joan Klem, please answer question number  
18 four, which is the lesser included offense of common law  
19 robbery, we, the jury, by unanimous consent, find the  
20 defendant, Mack Washington, Jr., either guilty or not guilty  
21 of common law robbery of Joan Klem.

22           Question five, we, the jury, by unanimous consent, find  
23 the defendant, Mack Washington, Jr., in indictment number  
24 2012-GS-15-00417, guilty of armed robbery of Frank Klem. If  
25 that be your form of verdict, you would check on the line

1 beside that form of verdict. The second form of verdict  
2 under question five is not guilty of armed robbery of Frank  
3 Klem. If that be your form of verdict, you would check on  
4 the line beside that form of verdict. You must find one  
5 form of verdict or the other.

6 I wrote more instructions after question five. If you  
7 find the defendant guilty of armed robbery of Frank Klem, do  
8 not answer question six, that's the lesser included offense;  
9 that's included within armed robbery. If you find the  
10 defendant not guilty of armed robbery of Frank Klem, then  
11 you would answer question six, which is either guilty or not  
12 guilty of common law robbery of Frank Klem and you would  
13 answer it in accordance with the instructions on the verdict  
14 form.

15 Finally, and this is question seven, and the last  
16 question on your verdict form, and I wrote instructions at  
17 the top. If you find the defendant not guilty of kidnapping  
18 Frank Klem, not guilty of kidnapping Joan Klem, not guilty  
19 of armed robbery of Frank Klem, and not guilty of armed  
20 robbery of Joan Klem, you must find the defendant not guilty  
21 in question number seven, which is possession of a weapon  
22 during the commission of a violent crime.

23 If you find the defendant guilty of kidnapping of Frank  
24 Klem or Joan Klem, or guilty of armed robbery of Frank Klem  
25 or Joan Klem, then you must answer question number seven

1 which states, we, the jury, by unanimous consent, find the  
2 defendant, Mack Washington, Jr., in indictment number 2013  
3 at 754, the first form of verdict is guilty of possession of  
4 a weapon during the commission of a violent crime; and the  
5 second form of verdict is not guilty of possession of a  
6 weapon during the commission of a violent crime.

7       After you've completed your verdict form for the jury,  
8 Mr. Foreman, you would sign your name on the line and then  
9 knock on your jury room door, tell the bailiff you have  
10 reached a verdict, and then we will bring you back into the  
11 courtroom in order to publish the verdict.

12       Now, ladies and gentlemen, your verdict must be  
13 unanimous. That is, it must be the verdict of each and  
14 every one of you; all 12 of you must agree on the verdict.  
15 Now, Mr. Foreman, ladies and gentlemen of the jury, I've now  
16 charged you on the law in order to help guide you to a fair  
17 and a just result in this case.

18       You're the sole judges of the facts in this case based  
19 on the evidence, and based on your determination of the  
20 facts in this case and the law as I've explained it to you,  
21 you're soon going to begin your deliberations. Now, I want  
22 to remind you that each of you were selected as fair and  
23 impartial jurors. You took an oath to fairly and  
24 impartially try and determine the facts in this case. When  
25 you comply with that oath, no one can criticize your

1 verdict.

2       You are to decide this case based solely on the  
3 testimony, the evidence in this case that you heard from the  
4 sworn witnesses who have testified, along with the exhibits  
5 that have been introduced into evidence. And if there were  
6 any stipulations entered into the record and nothing else.

7       You must decide the issues in this case without any  
8 bias and prejudice for either party. You cannot allow  
9 yourselves to be governed by prejudice for or against any  
10 person. You cannot allow yourself when you go back into  
11 that jury room to deliberate to be governed by public  
12 opinion nor can you be allowed to be governed by any other  
13 arbitrary factor, such as emotion.

14       Both the defendant and the State of South Carolina have  
15 the absolute right to expect that each of you on this jury  
16 have carefully and impartially considered all of the  
17 evidence in this case.

18       Now, Mr. Foreman, ladies and gentlemen of the jury, I'm  
19 going to ask you to retire to your jury room. Do not begin  
20 your deliberations yet. Wait until I send the verdict form  
21 into you by the bailiff, along with all of the exhibits  
22 which have been introduced into evidence in the trial of  
23 this case.

24       Now, ladies and gentlemen, there are two discs in  
25 evidence, and obviously, to play those you will have to come

1 back in the courtroom if you want to listen to it again. So  
2 with the exception of those two exhibits, I'll hold those  
3 here, and all you've got to do -- well, I'll send them so  
4 you can see what they are, but you can't use them without  
5 the equipment. Just be aware that we're available if you  
6 want to review those for any reason again.

7 Do not begin your deliberations until I instruct you to  
8 do so by sending the verdict form in, as well as the  
9 exhibits. Then, I will have the bailiff instruct you when  
10 he brings those to you that you may then commence your  
11 deliberations.

12 Now, my alternate jurors, step down to the front row  
13 and remain with me while the jury goes to their jury room.  
14 You may retire to your jury room at this time.

15 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE  
16 FOLLOWING IS HELD ON THE RECORD WITH THE ALTERNATE JURORS  
17 REMAINING IN THE COURTROOM.)

18 THE COURT: First of all, I want to thank you on behalf  
19 of Colleton County. All a judge can ask is that you listen.  
20 I watched all three of you in the trial of this case and you  
21 did that. No one became ill or for some reason could not  
22 continue to serve, so this concludes your service in this  
23 case. You have now completed your jury service and you will  
24 be exempt for three years; you can choose to claim your  
25 exemption. Make sure that all of you have your belongings.

1 Does anybody have anything they've left in the jury room  
2 that they need to get?

3 (NO RESPONSE.)

4 THE COURT: Now, Pat ordered lunch for you. She's  
5 going to have it for you in a to-go container so you can  
6 take that with you or they will provide a room for you if  
7 you would like to stay here and eat. Thank you so much for  
8 your service. I appreciate it so much. We couldn't  
9 function unless we had alternate jurors. You're now excused  
10 for the balance of the week and they will provide your  
11 lunch. You may leave at this time.

12 (THREE ALTERNATE JURORS LEAVE THE COURTROOM.)

13 THE COURT: Any exceptions or additions to the charge,  
14 by the State of South Carolina?

15 ASST. SOL. LEGETTE: None, Your Honor.

16 THE COURT: From the defendant?

17 MR. BENNETT: Yes, we have one, Judge.

18 THE COURT: Yes, sir

19 MR. BENNETT: On the kidnapping charge, we had asked in  
20 our request that you charge that kidnapping is a mens rea  
21 offense and the mens rea of kidnapping.

22 THE COURT: Well, mens rea means criminal intent, Mr.  
23 Bennett, and I charged criminal intent.

24 MR. BENNETT: All right. Well, under State v.  
25 Jefferies, Your Honor, it says that a required mens rea for

1 the crime of kidnapping is knowledge, and the State must  
2 prove beyond a reasonable doubt that mens rea of knowledge  
3 before you can convict a defendant of kidnapping, and it  
4 goes on to say that the person is said to act knowingly if  
5 he is aware of a result of his conduct whatever his desire  
6 may be as to that result. So we ---

7 THE COURT: I charged that the defendant knowingly and  
8 unlawfully had to seize, confine, inveigle, decoy, kidnap,  
9 abduct, or carry away another person without authority of  
10 law, which I believe is the exact definition of kidnapping,  
11 and requires that they knowingly do one of those things  
12 under the statute, Mr. Bennett. So what is it you're  
13 requesting that I charge, now? Because I've charged a  
14 knowing requirement.

15 MR. BENNETT: Well ---

16 THE COURT: And I said knowingly means -- I defined it,  
17 "with knowledge, consciously, not accidentally."

18 MR. BENNETT: Your Honor, I was just under the strict  
19 interpretation of the State v. ---

20 THE COURT: I can't hear you, now. Speak up.

21 MR. BENNETT: Yeah, I mean, you did. I understand you  
22 said knowledge, but you know, the charge was not exactly as  
23 they stated in State v. Jefferies, but I understand your  
24 ruling on it. I just wanted to put that on the record.

25 THE COURT: I understand it. And I respectfully

1 decline to change my charge. I think the charge adequately  
2 covered the law of kidnapping, including the fact that  
3 criminal intent is required and knowledge is required as an  
4 element of criminal intent for the offense of kidnapping.  
5 Because I never got a request that I felt like -- I did get  
6 a request to charge from you, but I didn't get a request to  
7 charge from you that was inconsistent with what I charged is  
8 my point. Anything else?

9 MR. BENNETT: Yes, sir. Your Honor, the only  
10 additional thing, and I felt like, you know, this would be  
11 additional. I would like the charge, and to avoid any  
12 confusion with the jury, is that if you -- and my request to  
13 charge would be that if you find during your deliberation  
14 that the State has not proved beyond a reasonable doubt that  
15 the defendant was not present at the scene of the crime,  
16 then you cannot convict such defendant under the theory of  
17 the hand of one is the hand of all requirement as previously  
18 charged.

19 THE COURT: Actually, Mr. Bennett, the law is even more  
20 favorable to your client. It doesn't have to be not  
21 present. He can be present, and if he was merely present,  
22 that's insufficient, and I charged them that.

23 MR. BENNETT: Okay.

24 THE COURT: I don't think -- I mean, clearly, if you  
25 can be present and not be guilty, then clearly, if you

1 aren't present, you cannot be guilty. I think it's implied  
2 from what I told the jury and I emphasized that to the jury.

3 MR. BENNETT: I understand your ruling, Your Honor. I  
4 just thought that would be a better charge if you said, you  
5 know, if you don't find that they've proven he wasn't  
6 present, you can't convict him under that theory.

7 THE COURT: I think I've sufficiently covered presence  
8 at the scene of the crime for the jury to make them  
9 understand that mere presence is not sufficient. And  
10 obviously, if the jury doesn't even believe that the  
11 defendant is present, I don't think the jury needs a charge  
12 to know that if you're not even present at the scene of a  
13 crime, then you can't be guilty of the crime. I decline to  
14 change my charge. Thank you.

15 MR. BENNETT: Thank you, Your Honor.

16 THE COURT: All right. I'd ask that counsel come  
17 forward and certify on the record that you're satisfied the  
18 court reporter has all the exhibits and that you have no  
19 objection to the Major taking the verdict form which you've  
20 agreed to and the exhibits into the jury and telling the  
21 jury that they may now commence their deliberations.

22 ASST. SOL. LEGETTE: Your Honor, there is one more  
23 matter. I think Mr. Bennett needs to renew his motion for  
24 directed verdict. He did not renew it after he rested.

25 THE COURT: All right. Actually, Mr. Sanders made the

1 motion, as I recall. Mr. Sanders, I will make the record  
2 for the grounds, because it has to be on the same grounds,  
3 as you know.

4 MR. SANDERS: Yes, sir.

5 THE COURT: Let the record reflect, Becky, that we were  
6 in the process of trying to get the jury's food that the  
7 defense counsel has made a motion at the close of all the  
8 evidence, renewed his motion for directed verdict on the  
9 same grounds that counsel for the defendant made in his  
10 motion at the close of the defendant's case, and for the  
11 reasons I enunciated at the close of the State's case, I  
12 decline to change my ruling and the motion at the close of  
13 all the evidence is respectfully denied. Thank you, Mr.  
14 Sanders. Please come forward and take a look at all the  
15 exhibits.

16 (WHEREUPON, COUNSEL IN THE TRIAL OF THE CASE CONFIRM  
17 THAT ALL OF THE EXHIBITS ARE IN EVIDENCE.)

18 THE COURT: Is the State satisfied that we have all the  
19 exhibits?

20 ASST. SOL. LEGETTE: The State is satisfied, Your  
21 Honor.

22 THE COURT: Is the defendant satisfied?

23 MR. BENNETT: Yes, sir.

24 THE COURT: Any objection from the State that the  
25 Major take the verdict form and all of the exhibits into the

1 jury and informing the jury that they may now commence their  
2 deliberations?

3 ASST. SOL. LEGETTE: No objection, Your Honor.

4 THE COURT: How about from the defendant?

5 MR. BENNETT: No objection, Your Honor.

6 THE COURT: All right. Give all of the exhibits to the  
7 Major. Major, if you will take the verdict form and the  
8 exhibits into the jury and tell them they may now commence  
9 their deliberation.

10 (12:15 P.M., WHEREUPON, THE VERDICT FORM AND THE  
11 EXHIBITS ARE TAKEN INTO THE JURY ROOM FOR THE JURY'S  
12 DELIBERATION.)

13 THE COURT: All right. Counsel, as to this case, we  
14 will be in recess until we can all have time to eat our  
15 lunch and turn to other non-jury matters until we hear from  
16 the jury.

17 (2:10 P.M., THE BAILIFF INFORMS THE COURT THAT THE JURY  
18 HAS REACHED A VERDICT. THE DEFENDANT, MACK WASHINGTON, JR.,  
19 IS BROUGHT INTO THE COURTROOM AND SEATED AT THE DEFENSE  
20 TABLE.)

21 THE COURT: All right. Now, ladies and gentlemen, I'm  
22 happy for you to be in the courtroom, but I'm not going to  
23 tolerate any emotional outburst. If you can't control your  
24 emotions, get up and leave right now when this verdict is  
25 published. I'm not going to have this jury subjected to

1 anybody praising or complaining about their verdict. So if  
2 you can't handle it, get up and leave right now; because I  
3 will deal with you in front of this jury if you cannot, and  
4 I'm giving you the opportunity. Nobody in or out once we  
5 bring the jury in.

6 Is the State ready to proceed?

7 ASST. SOL. LEGETTE: Yes, Your Honor.

8 THE COURT: Is the defendant ready to proceed?

9 MR. BENNETT: Yes, Your Honor.

10 THE COURT: Okay. Marcus, bring us the jury, please.

11 (2:15 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM

12 AND THE FOLLOWING IS HELD ON THE RECORD.)

13 MADAME CLERK: Mr. Foreman, have you reached a verdict?

14 FOREMAN: Yes, we have.

15 MADAME CLERK: (RETRIEVES VERDICT FORM AND SHOWS TO THE  
16 COURT.)

17 THE COURT: Will the defendant and counsel please rise?

18 (DEFENDANT AND COUNSEL STAND.)

19 THE COURT: Madame Clerk, would you please publish the  
20 verdict?

21 MADAME CLERK: The State of South Carolina v. Mack  
22 Washington, Jr., indictment 2012-GS-15-0560. We, the jury,  
23 by unanimous consent, find the defendant, Mack Washington,  
24 Jr., in indictment 2012-GS-15-0560, guilty of kidnapping  
25 Joan Klem.

1           We, the jury, by unanimous consent, find the defendant,  
2 Mack Washington, Jr., in indictment 2012-GS-15-0416, guilty  
3 of kidnapping Frank Klem.

4           We, the jury, by unanimous consent, find the defendant,  
5 Mack Washington, Jr., in indictment 2013-753, guilty of  
6 armed robbery of Joan Klem.

7           We, the jury, by unanimous consent, find the defendant,  
8 Mack Washington, Jr., in indictment 2012-GS-15-0417, guilty  
9 of armed robbery of Frank Klem.

10           We, the jury, by unanimous consent, find the defendant,  
11 Mack Washington, Jr., in indictment number 2013-GS-15-754,  
12 guilty of possession of a weapon during the commission of a  
13 violent crime.

14           Signed by Foreperson Kohrnarens. If this is your  
15 verdict, please raise your right hand.

16           THE COURT: Let the record reflect, 12 hands were  
17 raised. Mr. Bennett, is there anything further from the  
18 defendant for this jury before we proceed?

19           MR. BENNETT: Nothing further, Your Honor.

20           THE COURT: All right. Mr. Foreman, ladies and  
21 gentlemen -- please be seated, counsel and Mr. Washington.  
22 Mr. Foreman, ladies and gentlemen of the jury, on behalf of  
23 Colleton County and this Court, I want to thank you for your  
24 service. This concludes your service for the week. I'm  
25 going to return you back to your homes today. Hopefully at

1 a reasonable hour. Now, I want to advise you of a couple of  
2 things. If you want to talk about your verdict, you can.  
3 If you don't want to talk about it, you don't have to. I  
4 don't know whether anybody will inquire about it, whether  
5 you will be asked by the Press about it or some other  
6 individual. If you don't want to talk about, tell them you  
7 don't want to talk about it. If somebody persists, get  
8 their name and give it to me and I'll handle the problem for  
9 you; they won't bother you anymore. That's number one.

10 Number two, we will be mailing you a check for your  
11 jury service. We want to thank you for that very much.

12 Number three, if anybody needs a work excuse, go  
13 downstairs to the General Sessions door, we will be happy to  
14 provide you with a work excuse to show your employer where  
15 you've been this week while serving on the jury.

16 What's going to happen now is sentencing, which is my  
17 province, not yours. I'm going to sentence the defendant  
18 and that's going to happen just as soon as the paperwork  
19 which is being filled out right now is handed to me. So  
20 we're going straight into sentencing. I invite you, if you  
21 would like to stay, you can remain in the jury box and then  
22 leave by the side door after sentencing, if you would like  
23 to stay. If you would like to leave before sentencing, you  
24 may do so and you have my blessings and thanks for your  
25 service. All a judge can do is ask a jury to listen, and

1 each of you did that in this case. I watched you throughout  
2 the trial and I appreciate your service and your willingness  
3 to come.

4 Now, we're going right into sentencing. It's entirely  
5 up to you. Thank you very much. Solicitor, do you have my  
6 paperwork?

7 ASST. SOL. LEGETTE: I do, Your Honor.

8 THE COURT: All right. Mr. Bennett, you and Mr.  
9 Sanders and the defendant come forward. Very well. I've  
10 heard the evidence in this case, Mr. Bennett, and I'm  
11 certainly going to hear some things that weren't in  
12 evidence, which would include, although I think I'm pretty  
13 aware of the defendant's record which the jury was not aware  
14 of; I'll get you to publish it. However, Mr. Bennett, you  
15 tell me, do you have any post-verdict motions that you want  
16 to make?

17 MR. BENNETT: No, sir, I don't have any.

18 THE COURT: I would just like to say that I think there  
19 was ample evidence for the jury to reach the conclusion that  
20 they did in this case. Now, Mr. Bennett, let me hear first  
21 -- Solicitor, I realize that Mr. and Mrs. Klem, who are from  
22 Michigan, are no longer in the courtroom.

23 ASST. SOL. LEGETTE: Yes, sir.

24 THE COURT: I'm assuming that you want to speak about  
25 them or about the defendant's record; is that correct?

1 Before I hear from Mr. Bennett?

2 ASST. SOL. LEGETTE: That's correct, Your Honor.

3 THE COURT: Happy to hear from you.

4 ASST. SOL. LEGETTE: Your Honor, Mr. and Mrs. Klem,  
5 they thank the Walterboro Police Department and all of the  
6 court officials for all that they did. But they felt like  
7 they needed to get home to Michigan, and they did leave  
8 Tuesday afternoon after Mr. Klem testified.

9 With regards to Mr. Washington's prior record, are you  
10 ready for me to give that to you?

11 THE COURT: I am.

12 ASST. SOL. LEGETTE: Mr. Washington, on December 10,  
13 2002, he broke into the home of Willie Jean Seabrook here in  
14 Colleton County. He stole a shotgun and he got three years  
15 suspended to three years' probation. On December 18th,  
16 2002, he broke into another home, he and a co-defendant,  
17 Kristin Jones, and he stole several items from that home.

18 He pled guilty in 2006, the same day as the first one  
19 and he received a three-year sentence suspended to  
20 probation. February 24th, 2003, he broke into another home,  
21 Mr. and Mrs. Elton and he and his co-defendant stole credit  
22 cards and several other items and they used the credit card  
23 to purchase several things that they got from that home. He  
24 pled guilty and got a concurrent sentence to the first two  
25 burglaries.

1           On March 4th, 2003, he also committed another burglary  
2 from another home, Mr. Harold Jackson, and stole a pistol,  
3 or a gun, and he pled guilty on November 13th, 2006, to all  
4 four burglaries at the same time and got the same concurrent  
5 probationary sentence.

6           Then in October of 2003, Mack Washington and co-  
7 defendant, they actually held up two patrons, a Vicky and  
8 Terry Patton at gunpoint at a hotel, the Best Western Hotel,  
9 on Savannah Highway and took cash at gunpoint. He got a  
10 nine year sentence, concurrent with other charges that he  
11 had pending at the time.

12           October 17th, 2003, the same day, he and his co-  
13 defendants went down in Sumter County at a rest area on I-  
14 95, they robbed another patron, he and his co-defendants, at  
15 gunpoint, taking his cash and debit card and pin number.  
16 And he got a 10-year sentence concurrent with the other  
17 charge from October 17th, 2003.

18           The next day, October 18th, 2003, Mr..Washington and  
19 his co-defendants went again to a Knights Inn on Myrtle  
20 Beach Highway and he and his co-defendants, at gunpoint,  
21 robbed a husband and a wife, taking her purse, cash, credit  
22 cards, and checkbook. He got a concurrent 10-year sentence  
23 along with that one.

24           Finally, in 2010, actually it occurred January 14th,  
25 2008, he and a co-defendant, Ophelon Speaks, they robbed a

1 victim of cash money from a register here in Colleton County  
2 and he got a probationary sentence, I think; and Dawn  
3 mentioned to me that he is currently on probation for that  
4 offense. I believe they want to have that matter heard here  
5 today at sentencing, Your Honor.

6 THE COURT: Is that correct, Ms. Farish?

7 AGENT FARISH: Yes, Your Honor. He is on for accessory  
8 before the fact of strong arm robbery. He was sentenced  
9 March 15th, 2010, and received a sentence of five years,  
10 suspended to 18 months and two years' probation.

11 THE COURT: So he's on probation at this time and this  
12 conviction is a violation?

13 AGENT FARISH: Yes, sir.

14 THE COURT: All right. We'll take that up at the  
15 appropriate time, and I'll hear Mr. Bennett in mitigation in  
16 just a moment. Now, how many is that, Solicitor?

17 ASST. SOL. LEGETTE: Your Honor, it's a total of four  
18 burglaries. He pled guilty to each of them at the same  
19 time, getting a concurrent sentence. And then there were  
20 four strong-armed robberies that were pled down from armed  
21 robbery, along with the accessory before the fact to the  
22 strong armed robberies. So a total of, I guess, you would  
23 call it five strong armed robberies or one accessory and  
24 four strong-armed robberies, along with a DUS, probation  
25 violation and the resisting arrest and giving false

1 information.

2 THE COURT: And the burglaries?

3 ASST. SOL. LEGETTE: Yes, Your Honor. Four burglaries,  
4 four strong armed robberies, accessory before the fact, two  
5 strong-armed robberies and the DUS.

6 THE COURT: All right. Anything else you want to tell  
7 me before I hear from Mr. Bennett?

8 ASST. SOL. LEGETTE: Your Honor, I will say this. The  
9 Klems, Mr. Frank, said that when talking to him about this  
10 matter, the sentencing, I told him, "Mr. Frank, I will ask  
11 for as much as you want me to ask for, including the total  
12 number of years he can get, which is 125 years." He said,  
13 "Well, you know, he's a young man. Don't sentence him to  
14 life. Don't give him his whole life."

15 So despite what happened to Mr. and Mrs. Klem, they are  
16 still magnanimous and they're not asking for life for what  
17 happened to them; but I would ask the Court to send a  
18 message and to stop this kind of behavior. Mr. Washington  
19 and his friends have robbed many patrons at hotels over the  
20 years; that's his M.O. That's what he does for a living and  
21 I would ask the Court to sentence him accordingly, Your  
22 Honor. I would ask the Court to stop him. Please, stop  
23 him.

24 THE COURT: Mr. Bennett, I'll be happy to hear from  
25 you.

1           MR. BENNETT: Your Honor, the record, as I know it, as  
2 stated by Ms. Legette, is accurate. We have nothing to  
3 indicate otherwise, Judge.

4           Judge, he is -- Mack is now 31 years old. He went  
5 through the 11th grade at Walterboro High School; he got his  
6 GED. He does have children. He told me he had five  
7 children, ages 4, 10, 2 and 11, and I think he actually has  
8 two aged 4.

9           Mack is from Walterboro and he's lived, to my  
10 knowledge, in Colleton County all of his life. His mother  
11 is Earline Smith. She was here off and on during the trial,  
12 and his sisters, Sharevia and Shakevia Washington, have been  
13 here in support.

14           Judge, he was arrested, from my understanding, on June  
15 8th, 2012. He's been in jail now, incarcerated  
16 continuously, for over 21 months; I don't know the exact  
17 number of days, Judge.

18           THE COURT: And when we began on Monday, Mr. Bennett,  
19 it was 639 days, because I keep a jail list in my office,  
20 which is the reason I wanted this case set for trial, and  
21 the reason I denied your motion in Hampton last week for a  
22 continuance of the matter in part.

23           THE COURT: But we just ask that whatever sentence you  
24 give him, Judge, that of course he get credit for the time  
25 that he's already served, which is pretty extensive. Your

1 Honor, he was previously employed; his occupation was a  
2 painter. His last job before he got arrested was with SAS  
3 Painting, which is owned by Steve Smith on [REDACTED]  
4 here in Walterboro. He's also worked at the Walterboro  
5 Veneer Plant for a good while, and also he's worked other  
6 odd jobs during times -- well, before he got arrested, Your  
7 Honor.

8 Your Honor, we would just ask -- you've heard all of  
9 the facts in the case; you've heard all of the evidence. We  
10 would ask that you give him as low of a sentence or as  
11 minimum of a sentence as possible under the circumstances.  
12 We understand he has a record. We also ask you, Judge, to  
13 run whatever sentence you give him on these charges  
14 concurrent, except for the possession of a weapon; that's a  
15 totally different statute.

16 THE COURT: It has to be consecutive.

17 MR. BENNETT: Yes, sir.

18 THE COURT: Although there is some language in there  
19 that the mandatory five years, unless a longer mandatory  
20 minimum is provided by law for the violent crime. Armed  
21 robbery is no less than 10 years, up to 30 years. So you  
22 would agree, then, that there is a possibility of sentencing  
23 for possession of a weapon during the commission of a  
24 violent crime because the jury found him guilty of armed  
25 robbery, I could give him up to 10 years.

1 MR. BENNETT: Yes, sir.

2 THE COURT: He's looking, then, at 130 years total,  
3 because he could get 30 years, max, consecutive on both  
4 armed robberies; 30 years max on both kidnappings, and 10  
5 years on the possession of a weapon during the commission of  
6 a violent crime, which would be a total of 130 years.

7 MR. BENNETT: But we would ask, Judge, that you  
8 consider sentencing him concurrently on all these charges,  
9 all the crimes that he's been found guilty of, and on the  
10 basis, Your Honor, that this was actually, I think, from the  
11 evidence that I heard and I saw, it was all really one  
12 single incident, you know, that happened at the motel, at  
13 one time, and everything happened all together. It all was  
14 just one set of facts, one set of circumstances. It wasn't  
15 multiple offenses. It all grew out of the same situation  
16 that occurred at that time at the Rice Planters Inn.

17 So on that basis, I think under the law of South  
18 Carolina, Judge, that there is certainly -- there certainly  
19 is grounds for you to give him concurrent sentences rather  
20 than consecutive. I think under the law he would be  
21 entitled to that since it all grew out of one set of  
22 circumstances.

23 The other thing, Your Honor, we would ask on the  
24 kidnapping charge, there is no evidence that the kidnapping  
25 charge involved any kind of sexual misconduct, so we would

1 ask that the Court would find that there were no sexual acts  
2 or no sexual misconduct involved. It was just purely a  
3 robbery with a knife that constituted a kidnapping under the  
4 definition of a kidnapping statute, under 16-39-10. We'd  
5 ask for a specific finding on that, Judge, and also on the  
6 sentencing sheet there is a spot for that I think.

7 THE COURT: There is not.

8 MR. BENNETT: Okay. I thought there was. Okay. We  
9 certainly don't think that even though he has been found  
10 guilty of kidnapping, that he should be required to comply  
11 with any kind of sex offender registry requirements, because  
12 there was no evidence of any kind of sexual conduct or  
13 misconduct being involved in this case, Your Honor.

14 The other thing, Your Honor, on the probation, I don't  
15 have a whole lot of information on that, but I think they  
16 said he was put on probation in 2010 and he was supposed to  
17 serve two years of probation, but I just want to make sure.

18 THE COURT: Dawn, you did say the conviction, it was  
19 the date of the offense or ---

20 AGENT FARISH: The conviction date was 3-15-10. He  
21 was sentenced and got two years' probation.

22 THE COURT: But he had to serve 18 months, first?

23 AGENT FARISH: Yes, sir.

24 MR. BENNETT: Okay.

25 AGENT FARISH: And then his case was extended later on.

1 THE COURT: And then he got an extension of his  
2 probation. So he's still on probation for it.

3 AGENT FARISH: Yes, sir.

4 MR. BENNETT: I just want to make sure ---

5 THE COURT: Does your client understand, Mr. Bennett,  
6 that this conviction constitutes a violation of his  
7 probation?

8 MR. BENNETT: He does, Your Honor. He knows that he  
9 has been found guilty of these crimes, but we would ask that  
10 whatever remaining time he has on his probation that you  
11 also consider running that concurrent with whatever sentence  
12 you give him for the crimes that he's been convicted of by  
13 the jury trial here today.

14 THE COURT: Very well.

15 MR. BENNETT: I think that's all I have, Your Honor.

16 THE COURT: Mr. Washington, is there anything else you  
17 would like to tell the Court prior to sentencing? I'll be  
18 happy to hear from you.

19 MR. WASHINGTON: No, sir.

20 (Brief pause.)

21 MR. WASHINGTON: Your Honor, I would like to thank the  
22 jurors for taking their time to ---

23 THE COURT: You're talking to me, now, Mr. Washington,  
24 not them or anybody else. You're addressing the Court.

25 MR. WASHINGTON: Your Honor, I'd like to thank

1 everybody who showed up today. I would like to apologize to  
2 the victims and the family. I would like to apologize to my  
3 family, also, for taking their time to come up here minding  
4 my foolishness, Your Honor, and I would just ask you, Your  
5 Honor, I know I've been found guilty of these charges, would  
6 you be lenient to me, Your Honor, so I can come back home  
7 and be with my kids, Your Honor? I got one child I haven't  
8 even held, haven't even seen yet, Your Honor. I just ask  
9 the Court to have mercy upon me, Your Honor.

10 THE COURT: Very well. Mr. Washington, you have a  
11 terrible criminal record and there is no other way around  
12 it. Mr. Bennett knows it, you know it, Mr. Sanders knows  
13 it, and you certainly had the right not to testify in this  
14 case. I charged the jury that your failure to testify -- in  
15 fact, I even told you that I rule, which the jury doesn't  
16 know, as a matter of law that I wasn't going to allow them  
17 to impeach you on the fact that you had prior robberies if  
18 you did testify, because I didn't want the jury finding you  
19 guilty because you had a record.

20 I wanted them to decide on the evidence, but you can't  
21 escape the fact that you have four burglaries, you have  
22 robberies, and you cannot evade the fact that the jury heard  
23 clear and convincing evidence of the fact that people that  
24 came to our community to stay in our community were robbed  
25 at knifepoint of their property. They were put in fear, and

1 although you asked me to have mercy on you, I don't know  
2 that a lot of mercy was shown to the Klems. I'm very  
3 thankful that they weren't physically harmed, but I  
4 certainly believed that they were harmed by this incident.  
5 I don't want them judging our community by what occurred to  
6 them when they were here.

7 I could not agree with the jury's verdict anymore than  
8 I possibly could. They listened to the evidence and I  
9 believe it was a correct verdict in this case. I hope my  
10 sentence reflects the same amount of justice that the jury's  
11 verdict reflects in this case.

12 On Indictment 2012-GS-15-00417, the State v. Mack  
13 Washington, Jr., the sentence of the Court is the defendant  
14 is committed to the State Department of Corrections, and  
15 this is armed robbery, for a period of 30 years.

16 On Indictment 2012-GS-15-00416, kidnapping, the  
17 sentence of the Court is defendant is committed to the State  
18 Department of Corrections for a term of 30 years. I  
19 specifically find on the kidnapping that there is no sexual  
20 misbehavior or sexual misconduct in connection with the  
21 kidnapping for purposes of later on, Mr. Bennett; do you  
22 understand?

23 MR. WASHINGTON: Yes, sir.

24 THE COURT: And I'm placing that on the record as to  
25 either kidnapping. On Indictment 2013-GS-15-00753, which is

1 armed robbery, the sentence of the Court is defendant is  
2 committed to the State Department of Corrections for a term  
3 of 30 years.

4 On Indictment 2012-GS-15-00560, kidnapping, the  
5 sentence of the Court is the defendant is committed to the  
6 State Department of Corrections for a term of 30 years.

7 Finally, on Indictment 2013-GS-15-00754, possession of  
8 a weapon during the commission of a violent crime, the  
9 sentence of the Court is defendant is committed to the State  
10 Department of Corrections for a term of five years, and  
11 those five years will run consecutive to the 30 years that  
12 I've given you on the armed robbery and the kidnappings,  
13 totaling 35 years. The other sentences will run concurrent  
14 to each other. The defendant is to be given credit for the  
15 time that he's served in jail, pursuant to 24-13-40. That  
16 is to be calculated and applied by the State Department of  
17 corrections.

18 On the probation, I'm revoking him in full, running it  
19 concurrent. I'm putting the number on the sentence sheet  
20 and running it concurrent. Was it three years or five?

21 AGENT FARISH: Five.

22 THE COURT: Five years; I'm revoking the balance. He  
23 served 18 months. I'm revoking the balance of his five  
24 years and running it concurrent to my 30 year sentence and  
25 terminating his probation.

1           Thank you very much. As to this case, this matter is  
2 now concluded and adjourned. Take the defendant. He is now  
3 in custody.

4           (BRIEF PAUSE IN THE COURTROOM AS THE DEFENDANT IS TAKEN  
5 OUT OF THE COURTROOM.)

6           THE COURT: Mr. Foreman, ladies and gentlemen of the  
7 jury, thank you for your service. You are now excused for  
8 the week and you're exempt from jury service for three  
9 years. You may leave the courtroom at this time.

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF COLLETON )                      CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department 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 in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> days of March in 2014.

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

July 28, 2014

*Rebecca H. Hill*

Rebecca H. Hill,  
Official Court Reporter

550

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Colleton )

INDICTMENT

2012-GS-15-0416

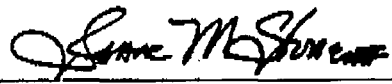
At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Colleton County present upon their oath:

Kidnapping

That in Colleton County, South Carolina, on or about January 7, 2012, the Defendant, Mack Washington Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Frank Klem, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended).

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

CLERK OF COURT



Isaac M. Stone  
Solicitor

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

1-863235

June 8, 2012

ACTION OF GRAND JURY

*[Handwritten Signature]*

Foreperson of Grand Jury

Date: *8/23/12*

VERDICT

**TRUE BILL**

*Guilty*

*[Handwritten Signature]*

Foreperson of Petit Jury

Date: *03/20/2014*

INDICT

DOCKET NO. 2012 15-0416

The State of South Carolina  
County of Colleton

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Mack Washington Jr

Indictment for

Kidnapping

SC Code: 16-03-0910

CDR Code:0095

COLLETON COUNTY  
GENERAL SESSIONS  
2012 AUG 23 PM 1:33

2012 GS 15 0417

STATE OF SOUTH CAROLINA )  
COUNTY OF Colleton )

INDICTMENT

2012-GS-15-0417

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Colleton County present upon their oath:

**Armed Robbery**

That on or about January 7, 2012, in Colleton County, South Carolina, the Defendant, Mack Washington Jr, at 97 Ladson Ln, Room 130, Rice Planters Inn, Walterboro, SC, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a knife, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Frank Klem with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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

10/1/12

Isaac M. Stone  
Solicitor

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

I-863236

June 8, 2012

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 8/23/12

VERDICT

Guilty TRUE BILL

Foreperson of Petit Jury

Date: 03/20/2014

DOCKET NO. 2012-GS-15-0417

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Mack Washington Jr

Indictment for

Armed Robbery

SC Code: 16-11-0330(A)  
CDR Code:0139

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2012 AUG 23 PM 1:33

STATE OF SOUTH CAROLINA )  
COUNTY OF Colleton )

INDICTMENT

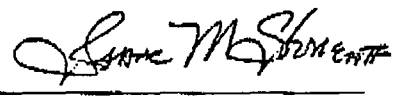
2012-GS-15-0560

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Colleton County present upon their oath:

**Kidnapping**

That in Colleton County, South Carolina, on or about January 7, 2012, the Defendant, Mack Washington Jr, unlawfully did seize, confine, invcigle, decoy, kidnap, abduct or carry away the victim, Joan Klem, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended).

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



Isaac M. Stone  
Solicitor

555

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

2012-GS-15-0560

August 7, 2012

ACTION OF GRAND JURY

TRUE BILL

*Christopher West*

Foreperson of Grand Jury

Date: *8-22-13*

VERDICT

*Guilty*

Foreperson of Petit Jury

Date:

INDICT

*03/20/14*

DOCKET NO. 2012-GS-15-0560

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

Mack Washington Jr

Amended Indictment for

Kidnapping

SC Code: 16-03-0910

CDR Code:0095

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2013 AUG 22 PM 12:06



WITNESSES

Stephanie Budge, WPS

ARREST WARRANT NUMBER

2013GS1500754

August 20, 2013

ACTION OF GRAND JURY

**TRUE BILL**

Christopher West

Foreperson of Grand Jury  
Date: 8-22-13

VERDICT

Guilty

Foreperson of Petit Jury  
Date:

INDICT

03/20/2014

DOCKET NO. 2013-GS-15-00754

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

Mack Washington, Jr.

Indictment for

Weapons / Poss. weapon during violent crime,  
if not also sen

SC Code: 16-23-0490  
CDR Code:0549

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2013 AUG 22 PM 12:06



559

WITNESSES

Stephanie Bridge WPS

ARREST WARRANT NUMBER

2013GS1500753

August 23, 2013

ACTION OF GRAND JURY

**TRUE BILL**

*Christopher West*

Foreperson of Grand Jury

Date: *8-22-13*

VERDICT

*Guilty*

Foreperson of Petit Jury

Date:

INDICT

*03/20/2014*

DOCKET NO. 2013-GS-15-00753

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

Mack Washington, Jr.

Indictment for

Robbery / Armed Robbery, robbery while armed or allegedly armed

SC Code: 16-11-0330(A)


CDR Code:0139

COLLETON COUNTY  
GENERAL SESSIONS COURT  
2013 AUG 22 PM 12:06

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 30, 2015



Tiffany L. Butler  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

**RECEIVED**


JAN 30 2015

**SC Court of Appeals**

## CERTIFICATE OF COUNSEL FOR APPELLANT

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January 30, 2015



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ATTORNEY FOR APPELLANT

**RECEIVED**

JAN 30 2015

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Colleton County

Perry M. Buckner, Circuit Court Judge

**RECEIVED**

JAN 30 2015

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

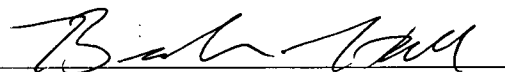
MACK WASHINGTON,

APPELLANT

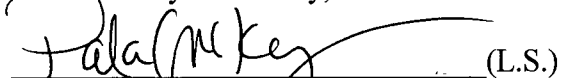
APPELLATE CASE NO. 2014-000667

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 30th day of January, 2015.

  
\_\_\_\_\_  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
This 30th day of January, 2015.

 (L.S.)  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022