

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
R. Markley Dennis, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD COULTER,

APPELLANT

APPELLATE CASE NO. 2013-002379

RECORD ON APPEAL

RONALD COULTER
#300410, Pro-se

Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

ORIGINAL

RECEIVED

FEB 12 2016

SC Court of Appeals

INDEX

INDEX	i
INDICTMENT AND SENTENCING SHEET	1
APPLICATION FOR POST-CONVICTION RELIEF	4
RESPONDENT'S RETURN TO APPLICATION FOR POST-CONVICTION RELIEF DATED JUNE 23, 2005	18
APPELLANT'S BRIEF OF AMENDED ISSUES	24
FORM ORDER DENYING POST-CONVICTION RELIEF DATED JUNE 2, 2006.....	35
ORDER OF DISMISSAL DATED NOVEMBER 1, 2006	36
TRIAL TRANSCRIPT VOL. I DATED FEB. 23, 2004.....	56
MOTION TO QUASH THE INDICTMENT.....	52
RULING BY THE COURT	62
VOIR DIRE	78
JACKSON V. DENNO	
ALAN RICHARD KRAMITZ	
Direct Examination by Mr. Durant	203
Cross Examination by Mr. Smiley	220
Redirect Examination by Mr. Durant.....	232
CYNTHIA MCCANTS	
Direct Examination by Mr. Durant	233
Cross Examination by Mr. Smiley	236
IVORY CROKER	
Direct Examination by Mr. Smiley	243
Cross Examination by Mr. Durant	259
Redirect Examination by Mr. Smiley.....	281

NEAL V. BIGGERS

ALAN RICHARD KRAMITZ

Direct Examination by Mr. Durant	301
Cross Examination by Ms. Shealy	312
Cross Examination by Mr. Smiley	324
Recross Examination by Ms. Shealy.....	338

THOMAS SCOTT DECKARD

Direct Examination by Mr. Smiley	343

TRIAL TRANSCRIPT VOL. II DATED FEB. 24, 2004	385

PRE-TRIAL MOTIONS	389

JUDGE'S OPENING REMARKS	459

OPENING STATEMENT BY MS. WILSON	477

OPENING STATEMENT BY MR. DAVIS	496

OPENING STATEMENT BY MR. SMILEY	501

TESTIMONY

ORLANDO WATKINS, JR.

Direct Examination by Ms. Wilson.....	507
Cross Examination by Mr. Davis	529

MARGARET CONWAY SHORT

Direct Examination by Mr. Durant	532

DAISY DENHAM

Direct Examination by Ms. Wilson.....	551
Cross Examination by Mr. Davis	564

CONNIE KNIGHT

Direct Examination by Ms. Wilson.....	571

LENORA THOMAS

Direct Examination by Ms. Wilson.....	592
Cross Examination by Mr. Davis	609
Cross Examination by Mr. Smiley	615
Redirect Examination by Ms. Wilson	616

ANN MARIE ALBRIGHT	
Direct Examination by Ms. Wilson.....	618
Cross Examination by Mr. Davis	628
Cross Examination by Mr. Smiley	630
TRIAL TRANSCRIPT VOL. III DATED FEB. 25, 2004	639
DEFENDANT CROKER'S GUILTY PLEA.....	651
MOTION FOR MISTRIAL	686
DEFENDANT COULTER'S GUILTY PLEA	719
SENTENCING	750
GUILTY PLEA TRANSCRIPT DATED FEB. 25, 2004.....	759
NOTICE OF APPEAL FROM DENIAL OF POST-CONVICTION RELIEF DATED NOVEMBER 8, 2006.....	795
<u>JOHNSON</u> PETITION FOR WRIT OF CERTIORARI.....	796
APPELLANT'S <i>PRO SE</i> RESPONSE TO THE <u>JOHNSON</u> PETITION	804
COURT OF APPEALS ORDER DENYING CERTIORARI DATED MAY 19, 2008	821
REMITTITUR ISSUED JUNE 4, 2008.....	823
FEDERAL PETITION FOR WRIT OF HABEAS CORPUS FILED AUGUST 22, 2008	824
RESPONDENT'S RETURN AND MEMORANDA OF LAW IN SUPPORT OF SUMMARY JUDGMENT DATED DECEMBER 31, 2008	884
REPORT AND RECOMMENDATION DATED AUGUST 3, 2009	906
ORDER GRANTING THE RESPONDENT'S MOTION FOR SUMMARY JUDGMENT DATED SEPTEMBER 17, 2009.....	918
ORDER DENYING APPEALABILITY TO THE 4 TH CIRCUIT COURT OF APPEALS.....	935
UNITED STATES SUPREME COURT ORDER DENYING CERTIORARI.....	938
STATE PETITION FOR WRIT OF HABEAS CORPUS FILED APRIL 11, 2013	939

TRANSCRIPT OF STATE HABEAS HEARING HELD AUGUST 9, 2013	964
ORDER DISMISSING APPELLANT'S STATE HABEAS PETITION FILED AUGUST 22, 2013	969
APPELLANT'S MOTION TO ALTER OR AMEND DATED SEPTEMBER 11, 2013.....	970
ORDER DENYING THE APPELLANT'S MOTION TO ALTER OR AMEND FILED SEPTEMBER 30, 2013	972
CERTIFICATE OF COUNSEL.....	973

SAW 2002-01-00357

WITNESSES

JOHN BURNETT AND/OR

KEITH HAIR

GRAMITZ, NCPD

OCA#: 2001015862

ARREST WARRANT NUMBER

H098010

January 16, 2002

ACTION OF GRAND JURY

MAY 14 2002

TRUE BILL

Judy Cavanaugh
representing of Grand Jury

VERDICT

on of Petit Jury

Date:

DOCKET NO. 2002-GS-10-2443

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2002

THE STATE

v.

RONALD COULTER

Indictment for

KIDNAPPING

02-267

FILED
2002 MAY -6 AM 11:09
JULIE A. BROWN
CLERK OF COURT
BY *[Signature]*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on May 13, 2002, the Grand Jurors of Charleston County present upon their oath:

That in Charleston County on or about April 21, 2001, Ronald Coulter unlawfully did seize, kidnap, abduct, confine, or carry away Edwina Sims, without the authority of law. This in violation of Section 16-3-910 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.



CHIEF DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

STATE

Ronald VS Coulter

AKA:

Race: B Sex: M Age:

DOB: SS#:

Address:

City, State, Zip

DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2002 -GS- 10 - 2443

AW#:

H098010

Date of Offense:

4.21.01

S.C. Code §:

16-3-910

CDR Code #:

0101915

☐ CASE RESTORED

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Kidnapping

in violation of 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0101915

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Scotney Wilson

Solicitor

Ronald Coulter

Defendant

Rodney

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$	
§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

A. R. Pepper

01111212

2-25-04

Clerk of Court/ Deputy Clerk

Court Reporter:

Gayle Burn

STATE OF SOUTH CAROLINA

County of CHARLESTONDH-CP-10-2999
IN THE COURT OF COMMON PLEASRONALD COULTER, #300410

Full name and prison number (if any) of Applicant

v.

State of South Carolina

HENRY D. MCMASTER, ATT'Y GEN;

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2021 JUL 16 AM 11:08
CLERK OF COURT**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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORRECTIONAL INSTITUTION 4460
BROAD RIVER ROAD COLUMBIA, SOUTH CAROLINA 29210
2. Name and location of Court which imposed sentence CHARLESTON COUNTY
GENERAL SESSIONS COURT; CHARLESTON SOUTH CAROLINA 29401-23 58
3. Name(s) of co-defendant(s) (if any) IVORY CROKER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2002-GS-10-2443, KIDNAPPING

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) FEBRUARY 25, 2004, (30) YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty YES
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NONE
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NONE
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NONE
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NONE
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) MY COUNSEL FAILED TO EXPLAIN THE APPEAL PROCEDURE TO ME AND I WAS NOT AWARE OF THE APPEAL PROCEDURE.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, DUE PROCESS
- (b) VIOLATION OF LAW, INVOLUNTARY AND UNKNOWNLY GUILTY
- (c) PLEA, VIOLATION OF SUBJECT MATTER JURISDICTION ALSO
SEE ATTACHMENT (6 PAGES)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) INDICTMENT INSUFFICIENT (DEFECTIVE) AND; COUNSEL
- (b) FAILURE TO WITHDRAW GUILTY PLEA BASED UPON NEWLY
DISCOVERED EVIDENCE. COUNSEL FAILED TO ADEQUATELY
- (c) OBJECT TO THE SUFFICIENCY OF THE INDICTMENT
PRESENTED, ALSO, SEE ATTACHMENT (6 PAGES)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NONE
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NONE
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NONE
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NONE
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NONE
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. **NONE** _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. **NONE** _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. **NONE** _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NONE

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. **NONE** _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. **NONE** _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) NONE
- (b) _____
- (c) _____
17. 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? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NONE
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. RODNEY DAVIS, ESQUIRE PUBLIC DEFENDER OFFICE,
5th FLOOR O.T. WALLACE OFFICE BLDC. 101 MEETING
STREET CHARLESTON, S.C. 29401
- ii. LOFTON & LOFTON, P.C. LIONEL S. LOFTON, ESQUIRE
174 EAST BAY STREET SUITE 302 CHARLESTON, S.C.
29401
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. LIONEL LOFTON, ESQUIRE (PRELIMINARY HEARING
RODNEY DAVIS, ESQUIRE PUBLIC DEFENDER (TRIAL COUNSEL
- ii. _____
- iii. _____

19

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, RONALD COULTER, #300410, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Ronald Coulter

Applicant

SWORN or affirmed to and subscribed before me this

13th day of July, 2004.

Elizabeth L. Smith
Notary Public

My Commission Expires:

July 29, 2007

19. State clearly the relief you seek in filing this application:

MY CONVICTION VACATED.

20. Are you now under sentence from any other court that you have not challenged?

NONE

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, RONALD COULTER, #300410, 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.

Ronald Coulter

SWORN to and subscribed before me this 13th
day of July 2007.

Elizabeth W. C. (L.S.)
Notary Public

My Commission Expires: July 29, 2007

Applicant ^{has} ~~been~~ _{re} suffered a miscarriage of Justice and his conviction only stands due to denial of due process and equal protection in the state court, in multiple and gross violation of the United States Supreme court precedents and the United States constitution, that constitutes an outrage of mockery of Justice that the Federal courts who sworn to uphold the United States constitution should not tolerate.

The proper standard for attorney performance is that of reasonable effective assistance. Sosebee v. Leeks, 293 S.C. 531, 362 S.E. 2d 22 (1987). Citing Strickland v. Washington, 466 U.S. 668 (1984). See also Butler v. State, 286 S.C. 441, 334 S.E. 2d 813 (1985). Under this evidence, petitioner had no defense prepared at all and received ineffective assistance of counsel. Martinez v. State, Supra, Frett v. State, 298 S.C. 54, 378 S.E. 2d 249 (1988). Under these circumstances, he is entitled to relief. When it is clear that where even a single error on the part of defense counsel which affected the right of petitioner is shown to be the product of neglect ^{or} ~~an~~ _{re} ignorance, a denial of effective assistance of counsel has been established. Sallie v. North Carolina, 587 F. 2d 636 (4th cir. 1978).

If the attorney makes a serious mistake which could effect the verdict, reversal is required even if the attorney was generally competent. Trombly v. Anderson, 439 F. supp. 1250, 1256 (1977). aff'd 584 F. 2d 807 (6th cir. 1978); Hyman v. Aiken, 824 F. 2d 1405 (4th cir. 1987).

Johnson v. Zerbst, 304 U.S. 458, 464-65, 58 S.C. 1019, 82 L. Ed. 1461 (19) (must have understanding of charge if plea is to be an intelligent admission of guilty); Henderson v. Morgan, 426 U.S. 645, 647, 96 S. Ct. 2253, 49 L. Ed. 2d 108 (1976). Id. (quoting from McCarthy v. United States, 394 U.S. 459, 89 S.Ct. 1166,

1171, 22 L. Ed. 2d 418 (1969). See also United v. States v. Punch, 709 F. 2d 889 (5th cir. 1983) (court paraphrasing of charges, without advising defendant of elements of knowingly and intentionally, resulted in plea being set aside). The applicant alleges that he did not plead guilty freely and voluntarily. The state submits this allegation has no merit. To be knowing and voluntary a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969). Dover v. State, 304 S.C. 433, 405 S.E. 2d 391 (1991).

Pleading guilty under North Carolina v. Alford, 400 U.S. 25, 31 (1970). This was error^{ec} by trial counsel and the applicant had no intention of ever pleading guilty, but to stand trial before a Jury; a fact that applicant made known to trial counsel time and time again, trial counsel was ineffective in forcing and persuading applicant to even plead guilty under Alford, when trial counsel knew applicant was proclaiming innocence. Roscoe v. State, 546 S.E. 2d 417 (S. C. 2001). See also Al-Shabazz v. State, 527 S.E. 2d 742 (1999); Richardson v. State, 426 S.E. 2d 795 (1993). Without a shadow of a doubt, applicant's plea of guilty was involuntarily, unknowingly, unwillingly, and unintelligently, entered.

Equal protection of the Laws the fourteenth amendment forbids a state to deny any person within its Jurisdiction the equal protection of the Laws. The fifth amendment requires the Federal Government to obey the same equal protection standard as the state.

Ineffective assistance of counsel in violation of the fourteenth and sixth amendment of the United States constitution and article 1, section 3, and 14 of the South Carolina constitution. Under Strickland v. Washington, 466 U.S. 668 (1984).

Where a state obtains a criminal conviction in a trial in which the accused is deprived of the effective assistance of counsel, the state Unconstitutionally deprives the defendant of his Liberty, Cuyler, 446 U.S. at 343, 100 S.Ct. at 1175. The right to the effective assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial. United States v. Cronin, 466 U.S. 648, 658, 104 S.Ct. 2039, 2046 (1984).

A necessary result of the seriousness with which court treat pleas of guilty, however is that courts have a ~~responsibility~~^{Re} responsibility to assure that defendants who plead guilty do so voluntarily and knowingly. Although applicant counsel need not be a fortune teller, he must be a reasonable competent Legal historian. Though he need not see into the future, he must reasonably recall (or at Least research) the past; the counsel's function of representing applicant is to assist him and owe him his Loyalty, and also a duty to avoid conflicts of interest. Furthermore applicant contends counsel function as his assistance should derive the overarching duty to advocate applicant in his case; and a more particular duty to consult with applicant on important decisions; also to keep him informed of important developments in course of the prosecution. Now its a fact that applicant asserts its his attorney's duty to make reasonable investigations and decisions that make particular investigations unnecessary. Ineffective assistance is based on Law and facts. Clearly Erroneous Rule, rule 52, F. P. civ. P. (see) Farmer v. Beto, 5th cir. 1971, 444 F. 2d 696; Busby v. Holman, 5th cir. 1966, 356 F. 2d 75.

The defendant would Like to challenge the sufficiency of the body of the indictment. Tate v. State, 549 S.E. 2d 601, 345 S.C. 577, S.C. 1981. Accused must be given sufficient notice of crime for which he is charge so that defendant may adequately prepare his defense, court may know what Judgment to pronounce, and acquittal or conviction may be effectively placed in bar to subsequent conviction. State v. Hiott, 276 S.E. 2d 163, 276 S.C. 72.

14 Guilty should never be found, except on a rationally support able state of near certitude. Evans-Smith v. Taylor, 19 F. 3d. 899, 906 (4th cir. 1994) (citations and emphasis omitted). The evidence in appellant's case fell short of that degree of substantiality required for fair and Logical inference of guilty. State v. Littlejohn, Supra.

The rule against hearsay prohibits the admission of evidence of an out-of court statement to prove the truth of the matter asserted at trial. Simpkins v. State, 303 S.C. 364, 401 S.E. 2d 142 (1991).

In Roscoe v. State, 345 S.C. 16, 20, 546 S.E. 2d 417, 419 (2001), this court held a defendant who enters a plea on the advise of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors the defendant would not have plea guilty but would have insisted on going to trial.

The defendant did not understand the ramifications of pleading guilty moreover, there is no evidence he knowingly voluntarily, and intelligently waived his right to a direct appeal of the proceedings. See e. g., Wilson v. State, 348 S.C. 215, 559 S.E. 2d 518 (2002) ("A defendant has the procedural right to one fair bite at the apple). That is, every defendant has a right to file and direct appeal and one PCR application. Applying these principles of Law, it is clear counsel's performance was deficient because defendant did not understand his right to a direct appeal. Petitioner was prejudiced by the deficient performance because, but for counsel's unprofessional errors, he would have insisted on going ^{on with} trial.

^{was}
Conviction^a obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea. Conviction ^{was} obtained by the unconstitutional failure of the prosecution to disclosed to the defendant evidence favorable to the defendant,

denial of effective assistance of counsel. Brady v. Maryland, 373 U.S. 83 (1963), prohibits the state from withholding evidence that is material and exculpatory of an accused. Where a specific request for exculpatory evidence is made, reversal is required if the evidence might have affected the outcome of the trial. United States v. Agurs, 427 U.S. 97 (1976).

The court was in error when co-defendant change his statement after the State promises and threats to the witness in exchange for his testimony, ^{this} relates directly to the credibility of the witness, State v. Hinson, 293 S.C. 406, 361 S.E. 2d 120 (1987). State v. Osborne, 289 S.C. 142 345 S.E. 2d 353 Ct. app. for this reason the Supreme court has held that a prosecutor has a duty to disclose evidence of any such promises made by the state to a witness. Giglio v. U.S., 405 U.S. 150 (1972). This is especially true when the testimony of the witness is essential to the state's case. See Harber v. Wainwright, 776 F. 2d 1520, 1523 (11th cir. 1985).

If the co-defendant make false testimony at the state request, conviction must be set aside if false testimony could have affected the Judgment of the trial. Hernandez v. Estelle, 624 F. 2d 313 (5th cir. 1983). Especially if it was due to actions of the prosecutor, and the prosecutor withheld any promise to Ivory Croker, see Brady v. Maryland, 373 U.S. 83 S.Ct. 1194. Moore v. ILL, 408 U.S. 783 92 S.Ct. 2562. This is the duty of trial counsel to bring out these things by putting the state's case to the proper adversary test. An accused is entitled to be assisted by an attorney, whether appointed, who plays the role necessary to ensure the trial is fair, Avery v. Alabama, 60 S.Ct. 321, see also Strickland v. Washington, 104 S.Ct. 2052.

16

THE APPLICANT ALLEGES THAT HE IS BEING HELD IN CUSTODY UNLAWFULLY
FOR THE FOLLOWING REASONS:

- (1) Counsel failed to adequately object to the sufficiency of the indictment^s presented.
- (2) Counsel failed to investigate an alibi ~~re~~^{re} defense.
- (3) Counsel failed to object to the short intervention between the reception of discovery and the actual trial.
- (4) Counsel failed to explain the Law regarding the consequences of a guilty plea.
- (5) Counsel failed to adequately file a direct appeal.
- (6) Counsel failed to file motion to obtain exculpatory discovery material.
- (7) Counsel failed to object to trial court's Jurisdiction, subject matter Jurisdiction, to accept guilty plea.
- (8) Counsel failed to raise meritorious issues preserved for appeal.

FOR THESE REASONS, APPELLANT RESPECTFULLY ASKS THIS HONORABLE
COURT TO VACATE^{re} ~~THE~~ CONVICTION.

THIS

17
MR. RONALD COULTER, #300410
BROAD RIVER CORRECTIONAL INSTITUTION
MURRAY UNIT, RM. B-138
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

JULY 12, 2004

JULIE J. ARMSTRONG, CLERK OF COURT, P.C. & G.S.
9th JUDICIAL CIRCUIT CHARLESTON COUNTY
100 BROAD STREET, SUITE 106
CHARLESTON, SOUTH CAROLINA 29401-2358

Dear Clerk,

Enclosed please find the original copy of an application
for post-conviction relief action for filing with the court
and (6) ^{Pages} ~~copies~~ _{Re} of grounds raise attached. Please file the
original and return a copy of same to me with file date stamped
thereof.

THANK YOU FOR YOUR TIME, EFFORT AND CONSIDERATION IN THIS MATTER.

s/ Ronald Coulter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2004-CP-10-2999

Ronald Coulter, # 300410,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 16, 2004, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2002 term of the Charleston County Grand Jury for kidnapping (2002-GS-10-2443). He was represented by Rodney Davis, Esquire. On February 25, 2004, the Applicant pled guilty to kidnapping. He was sentenced by the Honorable Deadra L. Jefferson to confinement for thirty years (30) years. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

19

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Counsel failed to adequately object to the sufficiency of the indictments presented;"
2. "Counsel failed to investigate an alibi re defense;"
3. "Counsel failed to object to the short intervention between the reception of discovery and the actual trial;"
4. "Counsel failed to explain the Law regarding the consequences of a guilty plea;"
5. "Counsel failed to adequately file a direct appeal;"
6. "Counsel failed to file motion to obtain exculpatory discovery material;"
7. "Counsel failed to object to trial court's Jurisdiction, subject matter Jurisdiction, to accept guilty plea;" and
8. "Counsel failed to raise meritorious issues preserved for appeal.

III.

The Applicant asserts he received ineffective assistance of trial counsel for the reasons set forth above. Respondents submits the allegations are without merit. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so

undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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. at 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 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, 466 U.S. at 668. 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. A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). 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).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve the issues. 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, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549

Columbia, SC 29211
Telephone: (803) 734-3737

June 23, 2005.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
) IN THE COURT OF COMMON PLEAS

2004-CP-10-2999

Ronald Coulter,

Applicant,

vs

State of South Carolina,

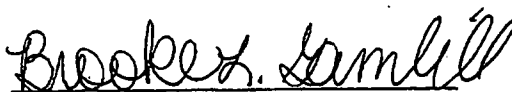
Respondent.

)
)
)
) AFFIDAVIT OF SERVICE BY MAIL
)
)
)
)

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 and attachments in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lea B. Kerrison, Esquire
Young Clement Rivers, LLP
P.O. Box 993
Charleston, SC 29402

DATED this 23rd day of June, 2005.


Brooke L. Gambill, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AMENDED ISSUES
OF
APPLICATION FOR
POST-CONVICTION RELIEF

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2006 MAY 26 AM 9:42

FILED

CIVIL ACTION NUMBER: 04-CP-10-2999

Ronald Coulter, #300410

Petitioner,

vs.

State of South Carolina,

Respondent.

BRIEF OF AMENDED ISSUES

Ronald Coulter, #300410
BRCI Murray #120
4460 Broad River Road
Columbia, SC 29210

TABLE OF CONTENTS

Statement of Amended Issues		2
Statement of the Case		2
Statement of the Facts		3
Argument #1		4
Argument #2		6
Argument #3		9
Conclusion		10

STATEMENT OF AMENDED ISSUES

1. Plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel advised petitioner to accept the plea agreement, in part, because counsel was unwilling to continue trial proceedings in light of co-defendant's confession and plea agreement.
2. Plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel failed to inform petitioner of the laws in relation to the facts, while making a recommendation to accept plea agreement.
3. Plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel further advised petitioner that if the trial judge does not grant the Motion for Mistrial, the only available option is to accept the plea agreement.

STATEMENT OF THE CASE

On February 23, 2004, jury trial proceedings began for petitioner, Ronald Coulter, on the charges of kidnapping (2002-GS-10-2443), conspiracy (2002-GS-10-2444), and murder (2003-GS-10-4454). The petitioner was tried jointly, with co-defendant Ivory Croker (2002-GS-10-2440; 2002-GS-10-2441; and 2003-GS-10-4686), before the Honorable Judge Deadra Jefferson in the Charleston County Court of General Sessions.

On February 25, 2004, the petitioner pled guilty to kidnapping, as part of a negotiated plea agreement with the State. The petitioner was sentenced to thirty (30) years of confinement. The charges of conspiracy and murder were dismissed with prejudice.

A timely appeal was not perfected.

On July 16, 2004, the petitioner filed an application for Post-Conviction Relief.

On June 23, 2005, the State filed a Return requesting an evidentiary hearing to resolve the Post-Conviction Relief issues.

On July 25, 2005, a continuance was granted for the petitioner's Post-Conviction Relief evidentiary hearing.

This action follows:

STATEMENT OF THE FACTS

The petitioner was on trial with co-defendant Ivory Croker. On February 25, 2004, co-defendant Croker, in the midst of jury trial proceedings, pled guilty to misprision of a felony, as part of a negotiated plea agreement with the State. The State recommended that all charges against co-defendant Croker be dismissed and a sentence of probation for the misprision charge, both contingent upon the co-defendant's testimony against the petitioner, as a witness for the State. The Court accepted the co-defendant's plea and the terms of his plea agreement, as recommended by the State.

The petitioner was not present during co-defendant Croker's plea hearing. The petitioner was represented by Mr. Rodney Davis, of the Public Defender's Office (Charleston County). Mr. Davis was assisted by Ms. Jennifer Shealy, also with the Charleston County Public Defender's Office.

Immediately following the plea hearing for co-defendant Croker, the State entered into plea negotiations with the petitioner's appointed counsel; offering the petitioner thirty years for the charge of kidnapping, dismissing the charges related to conspiracy and murder, with prejudice.

Mr. Rodney Davis expressed an unwillingness, as well as an unpreparedness, in continuing the petitioner's trial proceeding, in light of co-defendant Croker's plea agreement. The petitioner, after being advised by Mr. Davis, pled guilty to kidnapping on February 25, 2004, as part of a negotiated plea agreement with the State.

ARGUMENT

1. PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL ADVISED PETITIONER TO ACCEPT THE PLEA AGREEMENT, IN PART, BECAUSE COUNSEL WAS UNWILLING TO CONTINUE TRIAL PROCEEDINGS IN LIGHT OF CO-DEFENDANT'S CONFESSION AND PLEA AGREEMENT.

DISCUSSION

On the third (3rd) day of the petitioner's jury trial proceeding, counsel informed the petitioner that: a) co-defendant was no longer on trial, as a result of a negotiated plea agreement; b) co-defendant provided a confession that incriminates the petitioner; c) co-defendant was going to testify against petitioner; d) counsel was unprepared to defend petitioner under the circumstances; and e) the best thing petitioner could do is plead guilty to the kidnapping charge, as offered by the State.

Evidence On Record; Transcript of Trial (tt.)

- * Co-defendant's "conditional" plea agreement (tt., p.616, ln.5 - p.617, ln.25);
- * Co-defendant's confession (tt., p.633, ln.22 - p.638, ln.6);
- * Counsel's concern with his personal credibility (tt., p.647, ln.1-21);
- * Counsel admits he cannot cross-examine upcoming witnesses (tt., p.648, ln.8-12);
- * Counsel's confusion regarding co-defendant's plea agreement (tt., p.649, ln.6 - p.650, ln.20);
- * Counsel admits concerns in preparing and presenting an effective defense (tt., p.656, ln.10-14);
- * Court's response to counsel's unpreparedness (tt., p.657, ln.3 - p.659, ln.20);
- * Court's assessment of case at critical point of trial, co-defendant's plea agreement (tt., p.658, ln.3-24);
- * Co-counsel admits unwillingness to proceed, and inadequate advice to petitioner (tt., p.665, ln.3-18).

"An ineffective assistance claim asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, so finality concerns are somewhat weaker and the appropriate standard of prejudice should be somewhat lower." See Strickland v. Washington, 104 S.Ct. 2052, 2068.

"The right to confront and cross-examine adverse witnesses contributes to the establishment of a system of criminal justice in which the perception as well as the reality of fairness prevails.... The right to confront and to cross-examine witnesses is primarily a functional right that promotes reliability in criminal trials." See Lee v. Illinois, 106 S.Ct. 2056, 2062; State v. Staten, 610 S.E.2d 823 (2005).

"And probably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth in the trial of a criminal case.... Moreover, the decision of this Court and other courts throughout the years have constantly emphasized the necessity for cross-examination as a protection for defendants in criminal cases." See Pointer v. Texas, 85 S.Ct. 1065, 1068 [footnotes omitted].

"The right of confrontation and cross-examination is a fundamental safeguard essential to a fair trial in criminal prosecution." See Pointer, supra, 85 S.Ct. at 1068.

Counsel's unwillingness to continue trial proceedings deprived the petitioner of the opportunity to confront and cross-examine the co-defendant, whose "presumptively unreliable" confession was the basis of counsel's recommendation to accept the plea agreement. On more than one occasion, the United States Supreme Court has stated that "prejudice ensues from the denial of the opportunity to place the witness in his proper setting and put the weight of his testimony and his credibility to a test, without which the jury cannot fairly appraise them...". See Smith v. Illinois, 88 S.Ct. 748, quoting Alford v. U.S., 51 S.Ct. 218.

"... The court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." See Strickland, supra, 104 S.Ct. at 2066.

Counsel's conduct, in not protecting the petitioner's right to confrontation and cross-examination, "undermined the proper functioning of the adversarial process", thereby, depriving the petitioner of "the fundamental right to a fair trial".

The petitioner declares that he never sought, or expected to enter into any plea negotiations, during the course of the trial. The petitioner pled guilty solely on the advice of counsel, as the petitioner was unaware of any other course of action. It was the petitioner's understanding, as explained by trial counsel, that the plea agreement was the only option, as counsel was unwilling to continue trial proceedings under the circumstances. The petitioner declares that he would have never pled guilty, except for counsel's deficient performance and incompetent advice.

2. PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL FAILED TO INFORM PETITIONER OF THE LAWS IN RELATION TO THE FACTS, WHILE MAKING A RECOMMENDATION TO ACCEPT PLEA AGREEMENT.

Discussion

Counsel's recommendation to accept the plea agreement was based on the following facts: a) co-defendant reached a plea agreement and was no longer on trial; b) co-defendant provided a confession that incriminated the petitioner in the commission of a felony; c) co-defendant was going to testify against the petitioner; and d) counsel was unwilling and unprepared to continue trial proceedings.

Counsel failed to inform petitioner of the laws regarding the constitutional right to confrontation and cross-examination. See the following:

Sixth Amendment, Fourteenth Amendment, United States Constitution;

Article 1, Section 14, South Carolina Constitution;

S.C. Code Ann. Section 17-23-60;

Pointer v. Texas, 85 S.Ct. 1065; and

Lee v. Illinois, 106 S.Ct. 2056.

"In California v. Green, 399 U.S. 149, 158 (1970), we identified how the mechanisms of confrontation and cross-examination advance the pursuit of truth in criminal trials. Confrontation, we noted,

'(1) insures that the witness will give his statement under oath -- thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the greatest legal engine ever invented for the discovery of truth; (3) permits the jury that is to decide the defendant's

fate to observe the demeanor of the witness making his statement, thus aiding the jury in assessing his credibility' (footnote omitted)." See Lee v. Illinois, supra, 106 S.Ct. at 2062.

Counsel failed to inform petitioner that the law states that an accomplice's confession that incriminates a defendant is "presumptively unreliable" and must be subjected to the scrutiny of cross-examination. See the following:

Thompson v. State of South Carolina, 672 F.Supp. 896;
State v. Dinkins, 529 S.E.2d 557; and
Lee v. Illinois, 106 S.Ct. 2056.

Evidence On Record

* Co-defendant's confession (tt., p.633, ln.22 - p.638, ln.6).

Counsel failed to inform petitioner that the law states that when the credibility of a witness is in issue, the very starting point in "exposing falsehood and bringing out the truth" is through cross-examination. See Smith v. Illinois, 88 S.Ct. 748.

Evidence On Record

* Counsel acknowledged that the co-defendant's credibility is at issue (tt., p.648, ln.14-18).

Counsel failed to inform petitioner that Rule 607, S.C. Rules of Evidence allows for the defense to impeach the credibility of a witness.

Counsel failed to inform petitioner that Rule 608, S.C. Rules of Evidence allows for evidence of character, bias, prejudice, or motive to misrepresent, to be used to impeach a witness.

Evidence On Record

* Co-defendant's "conditional" plea agreement (tt., p.616, ln.5 - p.617, ln.25);

* Co-defendant's admitted recent drug abuse treatment (tt., p.613, ln.19 - p.614, ln.11).

Counsel failed to inform petitioner that Rule 609, S.C. Rules of Evidence

allows for evidence of a crime of dishonesty, or false statements, to be used to impeach the credibility of a witness, regardless of the punishment.

Evidence On Record

- * Co-defendant's plea to misprision of a felony (tt., p.615, ln.12-19);
- * Court's acceptance of co-defendant's plea (tt., p.633, ln.8-21).

Counsel failed to inform petitioner that Rule 611, S.C. Rules of Evidence allows for cross-examination of a witness, on any relevant issue, including credibility.

Counsel failed to inform petitioner that Rule 613, S.C. Rules of Evidence allows for cross-examination of a witness concerning prior statements made by the witness.

Evidence On Record

- * Record of co-defendant's prior statement; State's exhibit #2 (tt., pp.166-172);
- * Co-defendant's prior statement admitted (tt., p.243, ln.13-17).

"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issues or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence." Powell v. Alabama, 53 S.Ct. 55, 64.

It is the responsibility of trial counsel to provide an understanding of the laws in relation to the facts of a criminal proceeding. See the following:

McCarthy v. United States, 89 S.Ct. 1166;
Walker v. Caldwell, 476 F.2d 213;

Gideon v. Wainwright, 83 S.Ct. 792; and
Von Moltke v. Gillies, 68 S.Ct. 316.

Petitioner declares that he was prejudiced by the lack of understanding of the laws related to his right to confront and cross-examine adverse witnesses, such as the co-defendant. Petitioner declares that had counsel explained the laws as it pertained to the circumstances of the trial, at that critical stage (co-defendant's confession and plea agreement), the petitioner would not have pled guilty, but insisted that the trial continue.

3. PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL FURTHER ADVISED PETITIONER THAT IF THE TRIAL JUDGE DOES NOT GRANT THE MOTION FOR MISTRIAL, THE ONLY AVAILABLE OPTION IS TO ACCEPT THE PLEA AGREEMENT.

Discussion

Evidence On Record

- * Court's opinion of Motion for Mistrial (tt., p.666, ln.9-18);
- * Counsel's state of mind; unpreparedness (tt., p.666, ln.19-23; p.667, ln.15-21);
- * Counsel's continued unwillingness to continue with trial proceedings (tt., p.669, ln.15 - p.670, ln.2);
- * Solicitor's and Court's response to counsel's concerns (tt., p.670, ln.3-25).

"The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel's skill and knowledge is necessary to accord defendants the 'ample opportunity to meet the case of the prosecution' to which they are entitled" [quotes omitted]. See Strickland v. Washington, 104 S.Ct. 2052, 2063.

Counsel failed to provide any evaluation of petitioner's chances had the petitioner continued with the trial proceedings.

Counsel failed to provide any assessment of the relative advantages of pleading guilty.

Counsel's advice, as it related to the Motion for Mistrial, was not within the range of competence demanded of attorneys in criminal cases.

Petitioner was extremely prejudiced by counsel's failure to advocate the petitioner's cause at a critical stage of trial proceedings. The petitioner pled guilty solely on the advice of counsel, as the petitioner was unaware of any other course of action.

"The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." See Gustine v. State, 480 S.E.2d 444; Hill v. Lockhart, 106 S.Ct. 366.

Petitioner firmly believed that the State's case against him was weak, at best. Counsel failed to render "adequate legal assistance", thereby, depriving the petitioner of the right to effective assistance of counsel. The petitioner declares that he would have never pled guilty, except for counsel's deficient performance and incompetent advice.

CONCLUSION

In accordance with the standards established in Strickland v. Washington, 104 S.Ct. 2052 (1984), and the rulings of Hill v. Lockhart, 106 S.Ct. 366, and Thompson v. State, 531 S.E.2d 294, the petitioner asserts that he has demonstrated sufficient facts that prove that "counsel failed to render reasonably effective assistance under prevailing professional norms". The petitioner further asserts that he has also demonstrated, sufficiently, that counsel's "constitutionally ineffective performance affected the outcome of the plea process". In other words, the petitioner asserts that there is a reasonable probability that, but for counsel's errors, the petitioner would not have pleaded guilty and continued with the jury trial proceedings.

Therefore, the petitioner respectfully asks that this Honorable Court grants relief in this Post-Conviction Relief action.

Ronald Carl B
5-25-06

AT
SOL
GS

STATE OF SOUTH CAROLINA

County of ☒ Charleston ☐ BerkeleyRonald Coulter

Applicant / Petitioner

vs.

State of South Carolina,

Respondent.

COURT OF COMMON PLEAS

Case No. 2004 - CP - 10-2988

ORDER

BY
JULIE J. ARMSTRONG
CLERK OF COURT
JUN -2 PM 2:40
FILED

This post-conviction relief case came before the court for a hearing. Having now heard this matter, the court orders as indicated herein.

1. The application for post-conviction relief is hereby: ☒ denied ☐ granted ☐ under advisement; A formal order will be filed (see below - No.6)

2. Motion(s) was/were heard in this case and the court orders:
The motion to dismiss and/or for summary judgment is hereby ☐ granted ☐ denied ☐ under advisement, based upon the ☐ statute of limitations and/or ☐ the successive nature of the application or ☐ other reason as follows:

3. A conditional order of dismissal was previously filed in this case. Upon review of the matter, the court finds:

☐ Good cause as to why the case should not be dismissed has been shown in response to the order of dismissal; therefore, a hearing on the merits of the application shall be scheduled.

☐ The court has considered the response to the conditional order of dismissal and finds that good cause has not been shown or ☐ no response has been filed to the conditional order of dismissal; therefore, the application is hereby dismissed.

4. The application was freely, voluntarily, and intelligently withdrawn as indicated on the record; Therefore, this case is dismissed ☐ with prejudice ☐ without prejudice.

5. Other: THE APPLICANT'S TESTIMONY ~~COMPLETELY~~ COMPLETELY LACKED CREDIBILITY. HE HAS DONE EXTENSIVE LEGAL RESEARCH, BUT DOES NOT HAVE THE CORRECT APPLICATION OF THE LAW TO THE PROCEEDINGS AND

6. The court further orders: REQUIREMENTS.

☒ The ☒ Attorney General ☐ Applicant's counsel is directed to submit to the court a proposed order and to serve the order on opposing counsel within 30 days.

☐ Both sides are directed to submit proposed orders to the court and to serve the orders on each other within days.

☐ The court does not request proposed orders.

IT IS SO ORDERED.

Date: 6/12/2006
Charleston, S.C.

Court Reporter: Gayle Burns

Attorney for Plaintiff: Lea Kerrison

Attorney for Defendant: Colleen Dixon

William P. Haskins
Presiding Judge

LC
#36
3DL
4T
3S

9 CD

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)
) IN THE COURT OF COMMON PLEAS
)

2004-CP-10-2999

Ronald Coulter, 300410,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

BY _____
JULIA A. HARRINGTON
CLERK OF COURT
2006 NOV -6 PM 2:41
FILED

PROCEDURAL HISTORY

WAL
#1

This matter comes before the Court by way of an Application for Post-Conviction Relief filed July 16, 2004. The Respondent made its Return on June 23, 2005. An evidentiary hearing into the matter was convened on June 2, 2006, at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Lea Kerrison, Esquire. The Respondent was represented by Colleen Dixon of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Rodney Davis, Esquire and Scarlett Wilson of the Solicitor's Office. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Charleston County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2002 term of the Charleston County Grand Jury for kidnapping (2002-GS-10-2443), conspiracy to commit kidnapping (2002-

RECEIVED
SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
FBI

GS-10-4454), and murder (2003-GS-10-4454). He was represented by Rodney Davis, Esquire. The Applicant proceeded to trial with his co-defendant on February 23, 2005. Two days into trial, on February 25, 2005, the co-defendant decided to plea guilty and testify for the State against the Applicant. The Applicant pled guilty later that day to kidnapping. The other charges were nol prossed. He was sentenced by the Honorable Deadra L. Jefferson to confinement for thirty (30) years. The Applicant did not appeal his conviction or sentence.

In his application for PCR, the Applicant alleges:

- WPA
#2
1. Involuntary guilty plea;
 2. Ineffective assistance of counsel:
 - a. Failure to adequately object to the sufficiency of the indictments presented;
 - b. Failure to investigate an alibi defense;
 - c. Failure to object to the short intervention between the reception of discovery and the actual trial;
 - d. Failure to explain the Law regarding the consequence of a guilty plea;
 - e. Failure to adequately file a direct appeal;
 - f. Failure to object to subject matter jurisdiction to accept guilty plea;
 - g. Failure to raise meritorious issues preserved for appeal;
 3. Brady violation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their

testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

During the hearing, the Applicant claimed that he had no knowledge of the crime and denied any involvement with the kidnapping and murder. He testified that his trial attorney, Rodney Davis, was unwilling and unprepared to go forward with a trial after the co-defendant plead^{ed} guilty. He also testified that he was not informed of his right to cross-examine or impeach his co-defendant.

WAL #3 Trial counsel testified that he met with the Applicant numerous times and spent a large amount of time in preparation for the trial. Davis testified that he filed motions for continuance and mistrial after the co-defendant plead guilty. He further testified that, after the co-defendant pled guilty, the Applicant spent over an hour telling him about the planning and commission of the kidnapping. Davis advised the Applicant to plead to kidnapping, and informed the Applicant that it carried a maximum sentence of 30 years.

Davis noted that while specific rules of evidence and impeachment were not brought up in these conversations, the principles were discussed. The rules of confrontation and cross examination were discussed. Although trial counsel advised the Applicant of the advantages of pleading he testified that it was ultimately the Applicant's decision to plead. Davis testified he would have gone forward with the trial had the Applicant elected to do so, and was in fact already preparing to do so in the event that his motions for continuance or mistrial were denied.

Solicitor Scarlett Wilson testified at the hearing that the co-defendant admitted to helping the Applicant put the victim's body in the trunk of a car, but denied knowledge of what occurred after the Applicant left with the body. The body of the victim was found two to three days after the plea of both the co-defendant and the Applicant. After his plea, the Applicant agreed to speak

with the State. Wilson further testified the Applicant admitted the kidnapping was planned. After a reexamination of the co-defendant based on the Applicant's statement, the co-defendant admitted that he helped dispose of the body after the Applicant had murdered the victim.

The Applicant was recalled after this testimony by the solicitor, and he claimed that both trial counsel Davis and Solicitor Wilson were lying about the confession regarding the extent of his involvement.

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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).

The Applicant raised the following allegations in his PCR application and the subsequent evidentiary hearing:

A. Involuntary Guilty Plea.

WPA #5
The allegation that the guilty plea was involuntary is without merit. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999). A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). This claim will therefore be addressed as ineffective assistance of counsel.

B. Ineffective Assistance of Counsel.

1. Failure to adequately object to the sufficiency of the indictments presented.

The Applicant claimed that trial counsel did not adequately object to the sufficiency of the indictments presented. However, the Applicant did not specifically address this allegation during the hearing. He has therefore waived this allegation and failed to meet his burden of proof regarding any alleged deficiency on the part of counsel or prejudice resulting therefrom.

Therefore, this allegation is denied and dismissed with prejudice.

2. Failure to investigate an alibi defense.

The Applicant claimed that trial counsel did not adequately investigate an alibi defense. However, the Applicant did not address this issue at his hearing, nor did he present any witnesses to support an alibi. He has therefore waived this allegation and failed to meet his burden of proof regarding any deficiency by counsel or prejudice resulting therefrom. Therefore, this allegation is denied and dismissed with prejudice.

3. Failure to object to the short ^{PER 120}intervention between the receipt of discovery materials and the beginning of trial.

WAC #6
The Applicant further claimed that trial counsel was not prepared for trial because he had not had enough time to review the discovery materials. The Applicant testified that Mr. Davis should have asked for a continuance before proceeding to trial. Trial counsel's testimony, however, indicates that the defense was prepared for trial. Mr. Davis further testified there was no need to file a continuance. This Court finds that trial counsel's testimony is credible.

To show prejudice stemming from the lack of a continuance motion, the Applicant would have to demonstrate that trial counsel could have been better prepared or discovered some evidence had he made a motion for a continuance. Given the absence of such evidence, the Applicant has failed to demonstrate he was prejudiced by counsel's failure to request a continuance. The Applicant has failed to meet his burden of proof to show that counsel was ineffective or that he was prejudiced by such deficiency. Therefore, this allegation is denied and dismissed with prejudice.

4. Failure to explain the law regarding the consequence of a guilty plea.

The Applicant claimed that trial counsel did not explain the law regarding the consequences of a guilty plea. Trial counsel testified at the hearing that he advised the Applicant

to plead guilty to kidnapping and fully explained the consequences and sentence possibilities. This Court finds that the trial counsel's testimony is credible. The Applicant has failed to meet his burden to show that counsel was ineffective or was prejudiced by such deficiency. Therefore, this allegation is expressly denied and dismissed with prejudice.

5. Failure to adequately file a direct appeal.

The Applicant claims that trial counsel did not adequately file a direct appeal. However, the Applicant did not specifically address this allegation during the hearing. He has therefore waived this allegation and failed to meet his burden of proof regarding any deficiency on the part of counsel or prejudice resulting therefrom. Therefore, this allegation is denied and dismissed with prejudice.

6. Failure to object to subject matter jurisdiction to accept guilty plea.

Wm
#7
The Applicant claims that trial counsel failed to object to the subject matter jurisdiction to accept the Applicant's guilty plea. However, the Applicant did not specifically address this allegation during the hearing. He has therefore waived this allegation and failed to meet his burden of proof regarding any deficiency on the part of counsel or prejudice resulting therefrom. Therefore, this allegation is denied and dismissed with prejudice.

7. Failure to raise meritorious issues preserved for appeal.

The Applicant claims that trial counsel did not raise meritorious issues preserved. However, the Applicant did not specifically address this allegation during the hearing. He has therefore waived this allegation and failed to meet his burden of proof regarding any deficiency on the part of counsel or prejudice resulting therefrom. Therefore, this allegation is denied and dismissed with prejudice.

8. Counsel was not willing to proceed to trial after co-defendant plead guilty.

AND IT IS SO ORDERED this 1st day of Nov., 2006.

William P. Keesley

William P. Keesley
Presiding Judge
Ninth Judicial Circuit

Edgefield, South Carolina.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By *Julie J. Armstrong* (SEAL)
DEPUTY CLERK

ERK

#10

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 2002-GS-10-2243/44/40/41 &
2003-GS-10-4454/4686

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS
(Volume I, p. 1 - 340)

VS.

February 23, 2004
Charleston, South Carolina

RONALD COULTER and
IVORY COKER, a/k/a IVORY CROKER,

Defendants.

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge, and a jury.

APPEARANCES:

SCARLETT WILSON, ESQ.
DEPUTY SOLICITOR

- and -

D. BRUCE DURANT, ESQ.
SENIOR ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

JAMES WATSON SMILEY, IV, ESQ.
ATTORNEY FOR DEFENDANT CROKER

JENNIFER KNEECE SHEALY, ESQ.
CHARLESTON COUNTY PUBLIC DEFENDER

- and -

RODNEY D. DAVIS, ESQ.
ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDER COULTER

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

THIS PAGE INADVERTENTLY LEFT BLANK

MASTER INDEX

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

JACKSON VS. DENNO HEARING**Alan Richard Kramitz**

by Mr. Durant	159		188	
by Mr. Smiley		176		

Cynthia Mc Cants

by Mr. Durant	189			
by Mr. Smiley		192		

Ivory Croker

by Mr. Smiley	199		237	
by Mr. Durant		215		

NEAL VS. BIGGERS HEARING**Alan Richard Kramitz**

by Mr. Durant	257			
by Ms. Shealy		268		294
by Mr. Smiley		280		

Thomas Scott Deckard

by Mr. Smiley	299			

TRIAL TESTIMONY

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
O.J.				
by Ms. Wilson	463			
by Mr. Davis		485		
Margaret Conway Short				
by Mr. Durant	488			
Daisy Denham				
by Ms. Wilson	507			
by Mr. Davis		520		
Connie Knight				
by Ms. Wilson	527			
Lenora Thomas				
by Ms. Wilson	548		572	
by Mr. Davis		565		
by Mr. Smiley		571		
Ann Marie Albright				
by Ms. Wilson	574			
by Mr. Davis		584		
by Mr. Smiley		586		

EXHIBITS

		<u>For Ident.</u>	<u>In Evid.</u>
State's 1	Miranda rights form	162	
State's 2	Mr. Croker's statement	171	
State's 3	Lineup form	258	
State's 4	Photographic lineup	258	
State's 5	Photographic lineup	264	
State's 6	Lineup form	264	
State's 7	Group of photographs	468	483
State's 8	Group of photographs	468	483
State's 9	Calendar	532	535
Defendant Croker's 1	Composite drawing	320	
Court's 1-A	Letter from juror		600
Court's 1-B	Envelope		601

Pretrial Motions	pages 345 - 411
Judge's Opening Remarks	pages 411 - 431
State's Opening Statement	pages 431 - 452
Mr. Davis' Opening Statement	pages 452 - 456
Mr. Smiley's Opening Statement	pages 456 - 462
Defendant Croker's plea	page 606
Defendant Coulter's plea	page 674

INDEX**DIRECT****CROSS****REDIRECT****RECROSS****JACKSON VS. DENNO HEARING****Alan Richard Kramitz**

by Mr. Durant	159		188
by Mr. Smiley		176	

Cynthia Mc Cants

by Mr. Durant	189	
by Mr. Smiley		192

Ivory Croker

by Mr. Smiley	199		237
by Mr. Durant		215	

NEAL VS. BIGGERS HEARING**Alan Richard Kramitz**

by Mr. Durant	257		
by Ms. Shealy		268	294
by Mr. Smiley		280	

Thomas Scott Deckard

by Mr. Smiley	299

EXHIBITS

		<u>For Ident.</u>	<u>In Evid.</u>
State's 1	Miranda rights form	162	
State's 2	Mr. Croker's statement	171	
State's 3	Lineup form	258	
State's 4	Photographic lineup	258	
State's 5	Photographic lineup	264	
State's 6	Lineup form	264	
Defendant Croker's 1	Composite drawing	320	

1 THE COURT: Are we ready
2 with the motion to quash the
3 indictment?

4 MR. DAVIS: Yes, your
5 Honor.

6 THE COURT: The bailiffs
7 assured me that the only members
8 of the part of the gallery are
9 not jurors in this case, jurors
10 of the general panel.

11 All right. Let's
12 proceed.

13 MR. DAVIS: Your Honor,
14 may I approach?

15 THE COURT: Yes, sir.

16 MR. DAVIS: This is a memo
17 I prepared, your Honor. It is
18 for the motion. I'll cut to the
19 heart of the argument, your
20 Honor. The State in the
21 indictment for murder against Mr.
22 Coulter, my client, which is
23 indictment 2003-GS-10-4454, in
24 the body of the indictment that
25 in Charleston County on or about

1 April twenty-first, 2001 while
2 acting in concert with another
3 and with malice aforethought
4 Ronald Coulter did and kill and
5 murder Edwina Simms with a manner
6 and means unknown and that Edwina
7 Simms did die in Charleston
8 County as a proximate result
9 thereof on April twenty-first,
10 2001. And then they cite the
11 code section for murder.

12 We begin our argument
13 with the code section 17-19-30,
14 listing allegations sufficient
15 for the indictment for murder.
16 That statute provides the manner
17 in which the death of the
18 deceased was caused must be
19 alleged. That was not done in
20 this indictment. It is defective
21 for that reason and must be
22 quashed.

23 The only cite contrary
24 to that argument comes from a
25 case, State V. Owens and in that

1 case they indicate that the
2 manner or instrumentality of
3 death may be listed or by manner
4 or means unknown. That language
5 comes directly from an 1867 case.

6 The 1867 case is
7 distinguished from the current
8 case in two respects. Factually,
9 and I'll go into that in detail
10 if the Court requires, but more
11 appropriately procedurally.
12 They're under pleading rules,
13 rules of pleading in 1866 and
14 1867 when the appeal was heard.

15 Now we have a specific
16 statute dealing with that. The
17 statute requires a listing of the
18 manner or instrumentality of
19 death. The State listed nothing.
20 There are cases indicating,
21 allowing an indictment listing
22 alternative manners of death is
23 sufficient. That's not the case
24 here, because the State failed to
25 allege a manner or

1 instrumentality of death this
2 indictment has failed and must be
3 quashed.

4 THE COURT: Thank you.

5 Mr. Smiley, would you
6 also like to --

7 MR. SMILEY: First of all,
8 your Honor, I'd like to join in
9 the motion to quash and with the
10 arguments that Mr. Davis made
11 with respect to his client with
12 respect to Mr. Ivory Croker whom
13 I represent in this case. And
14 I'm not going to be redundant,
15 your Honor, so I certainly
16 support the position that he is
17 proposing and don't disagree in
18 any manner.

19 The only thing I'd like
20 to add to this is the two cases
21 that are relied upon State V.
22 Owens from 1987 and State V.
23 Jenkins from 1867, and they're
24 distinguished in this case and I
25 think he mentioned it to the

1 Court, and in the decision 867
2 case they had alternative means
3 of death. They talk about the
4 casting of stones and bricks. We
5 knew the manner there. The
6 manner there was distinguished in
7 that they couldn't attach it to a
8 particular defendant. And the
9 1987 case there were several
10 alternative means of death
11 listed.

12 In both those cases
13 there's a difference, too, your
14 Honor. In the 1867 case they had
15 a body. In the 1987 case they
16 had lots of indicia to show the
17 death. They had blood. They had
18 some evidence at the scene, some
19 forensic evidence. They had
20 ransom notes. They had ransom
21 money received. They had a
22 partial confession. So the
23 defendant in each of those cases
24 had an argument, there was an
25 argument that they knew what they

1 must answer.

2 In this case we have no
3 clue on what we must answer as
4 far as the murder indictment
5 goes, your Honor, and cannot
6 properly prepare our defense not
7 knowing what they allege.

8 MS. WILSON: Your Honor,
9 as to Mr. Smiley's additional
10 arguments, I think that goes to a
11 directed verdict motion more than
12 any sort of motion to quash the
13 indictment. I don't want to
14 belabor this point.

15 The language from the
16 indictment comes basically from
17 State V. Owens. I'm sure the
18 state Supreme Court was aware of
19 the different methods of
20 pleadings back in the eighteen
21 hundreds and chose to still rely
22 on that case and to inform the
23 State as to how to proceed in a
24 situation such as, such as this,
25 and that's exactly what we did.

1 I think the indictment
2 should stand and any matters
3 regarding the evidence in this
4 case could be taken up at the
5 directed verdict stage.

6 MR. DAVIS: May it please
7 the Court, your Honor.

8 THE COURT: Pardon me?

9 MR. DAVIS: May it please
10 the Court, can I respond?

11 In '87, 1987 when the
12 Court references the language
13 from 1867, the, the difference is
14 that in those cases there were,
15 there was other language in the
16 indictment. There were other
17 options to choose from. It was
18 not unknown by itself.

19 THE COURT: Well, that's
20 not what the case says, though,
21 does it?

22 MR. DAVIS: Pardon me?

23 THE COURT: The plain
24 reading of the case doesn't say
25 that. It doesn't make that, it

1 doesn't make that distinction
2 when you read the case.

3 MR. DAVIS: The plain
4 reading of the indictment says.

5 THE COURT: Well, that's
6 not what the Supremes dealt with.
7 I'm not going to try to add, add
8 distinctions to an opinion that
9 the Supreme Court wrote. They're
10 very clear about what they meant.
11 I don't think there's anything
12 vague in the language of how that
13 opinion is written and I've read
14 it several times to see if that
15 was in fact what they were
16 saying, that where there are
17 indictments that allege several
18 options, that it is okay to
19 allege means unknown. And that's
20 not what the Supreme Court said.

21 Thank you very much. I
22 have considered the motion. I
23 had the benefit of having the
24 motion in advance and having done
25 a great deal of research myself

1 on the issue, and have had the
2 ability to read the indictments.

3 The indictments both
4 allege that in Charleston County
5 on or about April twenty-first,
6 2001, and I'm not going to read
7 both indictments. I'm just going
8 read -- well, actually I think I
9 have both. Before I say that,
10 let me look.

11 Mr. Coulter's indictment
12 alleges as follows: That in
13 Charleston County on or about
14 April twenty-first, 2001 while
15 acting in concert with another
16 and with malice aforethought,
17 Ronald Coulter did kill and
18 murder Edwina Simms with manner
19 and means unknown and that Edwina
20 Simms did die in Charleston
21 County as a proximate result
22 thereof on April twenty-first,
23 2001, alleging a violation of
24 section 16-3-10 of the South
25 Carolina Code of Laws as amended.

1 The indictment for
2 Mr. Croker alleges the same
3 language with the exception, of
4 course, of inserting his name
5 instead of that of Mr. Coulter.

6 The defendants allege
7 that the indictment does not
8 satisfy code section 17-19-30
9 because the indictments do not
10 allege the manner of death. The
11 Court would find that this
12 argument is without merit. State
13 versus Owens found at 293 South
14 Carolina 161 and 359 Southeast
15 2nd 275, which is a 1987 opinion,
16 is clearly on point with the
17 facts and circumstances as well
18 as the arguments that have been
19 made and were made in this Court,
20 and our Supreme Court has been
21 very clear that an indictment is
22 sufficient if the offense is
23 stated with sufficient certainty
24 and particularity to enable the
25 Court to know what judgment to

1 pronounce, the defendant to know
2 what he is called upon to answer,
3 and if an acquittal or conviction
4 thereupon may be pleaded as a bar
5 to any subsequent prosecution,
6 stating, of course, State versus
7 Hardee, H-a-r-d-e-e.

8 Allegations may state in
9 the alternative the manner and
10 instrumentality of death. Citing
11 State versus King. Or may state
12 that death was caused by means or
13 instrumentality unknown. Citing
14 State versus Jenkins.

15 Based on that precedent
16 the Court would find that the
17 motion is without merit and the
18 motion to quash is denied.

19 Is there anything
20 further for the record?

21 **MS. WILSON:** Nothing from
22 the State, your Honor.

23 **THE COURT:** Anything
24 further from the defense as
25 regards the motion to quash?

1 MR. DAVIS: Your Honor,
2 the only other matter I would
3 make is the Court records in, in
4 its holding that the final issue
5 is that this would bar -- that
6 this indictment would be
7 sufficient to bar subsequent
8 prosecutions, while you're
9 reading that I'm looking at my
10 memo again.

11 THE COURT: Why do you
12 need to reargue the motion?

13 MR. DAVIS: Yes.
14 Regarding -- a memo regarding
15 this motion. I would ask the
16 Court to consider, and I didn't
17 state this previously and I
18 apologize. Consider also the
19 fact that Simms -- the fact that
20 if this case were to go forward
21 and if the jury were to acquit as
22 to this charge, without arguing
23 the facts of the case which are
24 not before the Court at this
25 point, however if subsequently

1 Miss Simms were discovered
2 deceased with specific injuries,
3 then the State could argue
4 they're not barred because the
5 language of this indictment were
6 so vague that they could allege a
7 specific manner of death, and
8 therefore allowing them to come
9 forward again.

10 THE COURT: I think that
11 it's sufficiently sufficient to
12 bar that and I think that's an
13 issue that would have to be dealt
14 if -- dealt with if the matter
15 would come up. I can't speculate
16 about what may happen and might
17 happen.

18 MR. DAVIS: Thank you,
19 your Honor.

20 THE COURT: You're
21 welcome.

22 MR. DAVIS: Nothing
23 further other than that.

24 MR. SMILEY: Nothing
25 further from Mr. Croker other

1 than just except to note our
2 objection --

3 THE COURT: Certainly.

4 MR. SMILEY: -- of course
5 and preserve it on the record.

6 THE COURT: It is noted
7 and preserved for the record.

8 Now, what we're going to
9 do is I'm going to have the
10 bailiffs bring the panel up.
11 Those of you who are seated in
12 the gallery, I need you all to
13 the best of your ability to
14 occupy the very last bench
15 because we have a large number of
16 jurors and I need them to be
17 seated in these first rows. If
18 you all could accommodate me, I
19 would greatly appreciate it.

20 You need all of them?
21 Wow. Okay.

22 We may well need that
23 last bench. I'm so sorry. If
24 you all could just follow the
25 instructions of the bailiff and

1 accommodate us, I would greatly
2 appreciate it.

3 MS. WILSON: Out of an
4 abundance of caution, may I
5 approach?

6 THE COURT: Sure.

7 (Whereupon, there was an
8 off-the-record bench conference.)

9 MR. SMILEY: After
10 speaking with Judge Jefferson I
11 wanted to put the following on
12 the record. While I represent
13 Mr. Ivory Croker and Mr. Davis
14 represents Mr. Ronald Coulter,
15 for purposes of judicial
16 efficiency I will be joining in
17 any motions made by Mr. Davis on
18 behalf of his client unless I
19 specifically state otherwise.

20 MR. DAVIS: And that will
21 be reciprocal as well. I will be
22 joining in any motions made by
23 Mr. Smiley on behalf of
24 Mr. Croker unless I specifically
25 state otherwise.

1 (Whereupon, the jury
2 panel enters the courtroom.)

3 THE COURT: Ladies and
4 gentlemen of the panel, we
5 appreciate your time and your
6 patience. There are some matters
7 of law that I needed to deal with
8 before we got started and as I've
9 already explained to you, many of
10 those matters have to be done
11 outside of your presence, because
12 as the fact finders the Court has
13 to make sure that you remain fair
14 and impartial and that you are in
15 no way influenced by anything
16 that the Court may say or do in
17 connection with the facts of this
18 case.

19 Madam Solicitor. If you
20 would call the case.

21 MS. WILSON: Thank you,
22 your Honor. This is the State of
23 South Carolina versus Ronald
24 Coulter, indictment number
25 2002-GS-10-2444, indictment for

1 conspiracy to commit kidnapping.

2 Indictment

3 2002-GS-10-2443, State versus
4 Ronald Coulter, indictment for
5 kidnapping.

6 Indictment

7 2003-GS-10-4454, State versus
8 Ronald Coulter, indictment for
9 murder.

10 Indictment

11 2003-GS-10-2441, the State versus
12 Ivory Coker a/k/a Ivory Croker,
13 indictment for conspiracy to
14 commit kidnapping.

15 Indictment

16 2002-GS-10-2440, the State versus
17 Ivory Coker a/k/a Ivory Croker,
18 indictment for kidnapping.

19 Indictment

20 2003-GS-10-4686, the State versus
21 Ivory Coker a/k/a Ivory Croker,
22 indictment for murder.

23 THE COURT: Thank you.

24 Does Mr. Coulter wish to
25 have a formal arraignment?

1 MR. DAVIS: Yes, your
2 Honor.

3 THE COURT: Sir, if you
4 would stand.

5 Mr. Clerk, you may
6 proceed.

7 CLERK OF COURT: Yes, your
8 Honor. Case number
9 2002-GS-10-2444, State of South
10 Carolina versus Ronald Coulter
11 indictment for conspiracy to
12 commit kidnapping. If you answer
13 to that name please raise your
14 right hand.

15 (Whereupon, Ronald
16 Coulter raises his right hand.)

17 CLERK OF COURT: You may
18 put it down.

19 You stand indicted by
20 the name Ronald Coulter. At a
21 Court of General Sessions
22 convened on May thirteenth, 2002
23 the grand jurors of Charleston
24 County present upon their oath
25 that in Charleston County on or

1 about April twenty-first, 2001
2 Ronald Coulter knowingly and
3 unlawfully did combine, conspire,
4 confederate, and agree and have
5 tacit understanding with others
6 to commit the kidnapping of
7 Edwina Simms. This is in
8 violation of section 16-17-410 of
9 the South Carolina Code of Laws
10 1976, as amended.

11 How say you? Are you
12 guilty or not guilty?

13 DEFENDANT COULTER: Not
14 guilty.

15 THE COURT: How will you
16 be tried?

17 DEFENDANT COULTER: By a
18 jury.

19 CLERK OF COURT: May they
20 send you a true deliverance.

21 Are you ready for trial?

22 DEFENDANT COULTER: Yes.

23 CLERK OF COURT: Case
24 number 2002-GS-10-2443, the State
25 of South Carolina versus Ronald

1 Coulter, indictment for
2 kidnapping. If you answer to
3 that name, please raise your
4 right hand.

5 (Whereupon, Ronald
6 Coulter raises his right hand.)

7 CLERK OF COURT: You may
8 put it down.

9 You stand indicted by
10 the name Ronald Coulter. At a
11 Court of General Sessions
12 convened on May thirteenth, 2002
13 the grand jurors of Charleston
14 County present upon their oath
15 that in Charleston County on or
16 about April twenty-first, 2001
17 Ronald Coulter unlawfully did
18 seize, kidnap, abduct, confine,
19 or carry away Edwina Simms
20 without the authority of law.
21 This is in violation of section
22 16-3-910 of the South Carolina
23 Code of Laws, 1976 as amended.

24 How say you? Are you
25 guilty or not guilty?

1 **DEFENDANT COULTER:** Not
2 guilty.

3 **CLERK OF COURT:** How will
4 you be tried?

5 **DEFENDANT COULTER:** By a
6 jury.

7 **CLERK OF COURT:** They may
8 they send you a true deliverance.

9 Are you ready for trial?

10 **DEFENDANT COULTER:** Yes.

11 **CLERK OF COURT:** Case
12 number 2003-GS-10-4454, the State
13 of South Carolina versus Ronald
14 Coulter, indictment for murder.
15 If you answer to that name,
16 please raise your right hand.

17 (Whereupon, Ronald
18 Coulter raises his right hand.)

19 **CLERK OF COURT:** You may
20 put it down.

21 You stand indicted by
22 the name Ronald Coulter. At a
23 Court of General Sessions
24 convened on July eighth, 2003 the
25 grand jurors of Charleston County

1 present upon their oath that in
2 Charleston County on or about
3 April twenty-first, 2001 while
4 acting in concert with another
5 and with malice aforethought,
6 Ronald Coulter did kill and
7 murder Edwina Simms by a manner
8 or means unknown and that Edwina
9 Simms did die in Charleston
10 County as a proximate result
11 thereof on April twenty-first,
12 2001. This is in violation
13 section 16-3-10 of the South
14 Carolina Code of Laws 1976, as
15 amended.

16 How say you? Are you
17 guilty or not guilty?

18 DEFENDANT COULTER: Not
19 guilty.

20 CLERK OF COURT: How will
21 you be tried?

22 DEFENDANT COULTER: By a
23 jury.

24 CLERK OF COURT: May they
25 send you a true deliverance.

1 Are you ready for trial?

2 DEFENDANT COULTER: Yes.

3 CLERK OF COURT: Thank
4 you.

5 THE COURT: You may be
6 seated.

7 Does Mr. Croker wish to
8 have a formal arraignment?

9 MR. SMILEY: We waive
10 formal arraignment, your Honor.

11 THE COURT: Thank you, Mr.
12 Smiley.

13 Ladies and gentlemen,
14 we're going to select a jury for
15 the cases of the State versus
16 Ronald Coulter and the State
17 versus Ivory Coker a/k/a Ivory
18 Croker.

19 The indictments are as
20 follows: As to 2003-GS-10-4452,
21 the State versus Ronald Coulter,
22 an indictment for murder. That
23 indictment alleges that in
24 Charleston County on or about
25 April twenty-first, 2001 while

1 acting in concert with another
2 and with malice aforethought
3 Ronald Coulter did kill and
4 murder Edwina Simms by a manner
5 or means unknown and that Edwina
6 Simms did die in Charleston
7 County as a proximate result
8 thereon on April twenty-first,
9 2001. Alleging a violation of
10 code section 16-3-10 of the South
11 Carolina Code of Laws as amended.

12 In indictment
13 2002-GS-10-2443, the State versus
14 Ronald Coulter, an indictment for
15 kidnapping. That indictment
16 alleges that in Charleston County
17 on or about April twenty-first,
18 2001 Ronald Coulter unlawfully
19 did seize, kidnap, abduct,
20 confine, or carry away Edwina
21 Simms without the authority of
22 law, alleging a violation of code
23 section 16-3-910 of the South
24 Carolina Code of Laws as amended.

25 In indictment

1 Edwina Simms without the
2 authority of law. Alleging a
3 violation code section 16-3-910
4 of the South Carolina Code of
5 Laws as amended.

6 In indictment
7 2002-GS-10-2441, the State versus
8 Ivory Coker a/k/a Ivory Croker,
9 an indictment for conspiracy to
10 commit kidnapping. And that
11 indictment alleges that in
12 Charleston County on or about
13 April twenty-first, 2001 Ivory
14 Coker a/k/a Ivory Croker
15 knowingly and unlawfully did
16 combine, conspire, confederate,
17 and agree to have -- and have
18 tacit understanding with others
19 to commit the kidnapping of
20 Edwina Simms. Alleging a
21 violation of code section
22 16-17-410 of the South Carolina
23 Code of Laws as amended.

24 And indictment
25 2003-GS-10-4686, the State versus

1 Ivory Coker a/k/a Ivory Croker,
2 an indictment for murder. And
3 that indictment alleges that in
4 Charleston County on or about
5 April twenty-first, 2001 while
6 acting in concert with another
7 and with malice aforethought,
8 Ivory Coker a/k/a Ivory Croker
9 did kill and murder Edwina Simms
10 by manner or means unknown and
11 the Edwina Simms did die in
12 Charleston County as a proximate
13 result thereof on April
14 twenty-first, 2001. Alleging a
15 violation of code section 16-3-10
16 of the South Carolina Code of
17 Laws as amended.

18 Ladies and gentlemen, we
19 are -- we are going to select a
20 jury for these cases. We will
21 follow the following procedure.
22 There are certain questions that
23 we ask as a part of the jury
24 selection process. This is
25 called the voir dire process.

1 Some of these questions may be
2 intensely personal and if you do
3 not want to answer these
4 questions in the presence of your
5 fellow jurors, I would ask that
6 make me aware of it so that I
7 might speak with you privately at
8 the bench with the court reporter
9 and with the attorneys.

10 It is absolutely
11 essential that we have accurate
12 information from you as a part of
13 this selection process.

14 Is there any member of
15 the jury panel that is related by
16 blood or marriage to Ivory Coker
17 a/k/a Ivory Croker, Ronald
18 Coulter, or Edwina Simms?

19 If so, I would ask that
20 you stand at this time.

21 (There is no response.)

22 Is there any member of
23 the panel that has a close
24 personal, social, or business
25 relationship with Ivory Coker

1 impartial and render a fair and
2 impartial decision in this case
3 based solely on the evidence as
4 it will be presented and on the
5 law as the Court will charge? A
6 yes or no answer.

7 A JUROR: No.

8 THE COURT: No is your
9 answer? I can't hear you.

10 A JUROR: No, ma'am.

11 THE COURT: Thank you,
12 sir. You may be seated. You
13 will be excused from this case
14 only. If you will remain with
15 us.

16 The following are a list
17 of potential witnesses in this
18 case. I need you all to listen
19 very carefully. The witness
20 lists are fairly lengthy. Please
21 do not allow your thoughts to
22 wander because if you have any
23 association with any of these
24 persons, I need to know.

25 The list, this is the

1 following list of potential
2 witnesses in this case:

3 Claudia Bruening,
4 Sergeant Linda Jenkins, Mike
5 Lyczany, Anderson Coulter, Helen
6 Coulter, Cynthia Judge, Nancy
7 Weatherspoon, Marlesha Heyward,
8 Barbara Shannon, Carolyn Knight,
9 Asia Fowler, Salvadore Rivas,
10 Charles Miles, Pasquale Tirico,
11 Eric Evan, David McCutcheon,
12 Cynthia McCants of the Federal
13 Bureau of Investigation, Jerry
14 Jellico of the North Charleston
15 Police Department, Margaret
16 Short, Connie Knight, Daisy
17 Denham, Lori Clark, Daniel Eitle,
18 Elaine Finley, Joann Jamerson,
19 Detective Hollie Connelly of the
20 Charleston Police Department,
21 James Hackler, Charles Hardin of
22 the North Charleston Police
23 Department, W. Taylor of the
24 North Charleston Police
25 Department, Michael Bush, Rosalee

1 Hackler, Lieutenant Ken Haggee of
 2 the North Charleston Police
 3 Department, Lenora Thomas, Lynne
 4 Fleming, Kathryn Sims, Susie
 5 Terell, Edward Sims, Tim Sims,
 6 Rick Mills, Salvador Rivas,
 7 Daneesh Patel, Allen Kramitz,
 8 Scott Wyant of the North
 9 Charleston Police Department,
 10 Leila Gibson of the Guaranty
 11 Bank, George Nicholson of Bell
 12 South, Sally Berzell of Nextel,
 13 Michele Waring of Arch Wireless,
 14 Dominique Milton of Verizon,
 15 Detective Scott Deckard of the
 16 North Charleston Police
 17 Department, Orlando Watkins,
 18 Senior, Mora Sims, Larry Smoak of
 19 the Charleston County Sheriff's
 20 Office, Todd Greenway, O.J.
 21 O.J., Junior, Erica Mazyck,
 22 Penny Parrish, Corporal Robert
 23 Beck, Michael O'Brien Bush,
 24 Daniel Raymond Bruenig, Becky
 25 Lemay, Renee Blakey, Ann

1 Albright, Gena Harris, David
2 Nave, Sherry Diggs, Michael
3 Neubauer of the Federal Bureau of
4 Investigation, Ed Gardner of the
5 Charleston Police Department, and
6 Detective Alan Williams of the
7 North Charleston Police
8 Department, Jerome Ballard, Becky
9 Bergeron, Anderson Coulter, Helen
10 Coulter, Sylvia Garcia, Gracie
11 Horn, Cynthia Judge, Ray
12 Marshall, Bernetha McCannick,
13 Gwenn Croker, Pat Shay, Officer
14 C. Joliff, Charleston Police
15 Department, Susan Chewning,
16 Charleston County Coroner, Anna
17 Mack, Erica Mazyck, Mattie
18 Hutchinson, Michelle Taylor,
19 Beulah Palmer, Gwen Croker, Steve
20 Gerber, Shirley Alexander,
21 Clementine Ellis, Gloria Deveaux,
22 Alberta Hart, Don last name
23 unknown, Detective Allen Kramitz,
24 North Charleston Police
25 Department, Charlie Hardin, North

1 Charleston Police Department,
2 Scott Deckard, North Charleston
3 Police Department, Michael
4 Poulos, North Charleston Police
5 Department, Scott Wyant, North
6 Charleston Police Department,
7 Detective Allen Williams, North
8 Charleston Police Department,
9 Holly Connolly, Charleston Police
10 Department, Officer Ed Gardner,
11 Charleston Police Department,
12 Mike Lyczany, Charleston Police
13 Department, Corporal Joliff,
14 Charleston Police Department,
15 Sergeant Choice, Charleston
16 Police Department, Larry Smoke,
17 Charleston County Sheriff's
18 Office, Todd Greenway, Charleston
19 County sheriff's Office, Cynthia
20 McCants, F. B. I., Asia Fowler,
21 Sylvia Garcia, Charlie Miles,
22 Captain Tillman, North
23 Charlestown Police Department,
24 Sergeant Daugherty, Charleston
25 County Detention Center, and

1 Doctor Edmund S. Higgins, M. D.

2 Is there any member of
3 the panel that is related by
4 blood or marriage to any of the
5 people I've just listed, or does
6 anyone have a close, personal,
7 social, or business relationship
8 with any of these people?

9 If so, I would ask that
10 you stand at this time.

11 Sir, if you would tell
12 me your name and your juror
13 number and which witness.

14 A JUROR: Edward Fennell,
15 juror number fifty-three.

16 THE COURT: Yes, sir.

17 A JUROR: I'm a reporter
18 for the Post and Courier, your
19 Honor, and over the years I have
20 interviewed a number of police
21 officers that you named Haggee,
22 Jellico, Connelly.

23 THE COURT: Okay.

24 A JUROR: And that's my
25 only relationship with them has

1 been, you know, on the job.

2 **THE COURT:** Sir, as a
3 result these facts do you feel
4 that you can remain fair and
5 impartial and render a fair and
6 impartial decision in this case
7 based solely on the evidence as
8 it will be presented and on the
9 law as the Court will charge at
10 the conclusion of the case?

11 **A JUROR:** I do.

12 **THE COURT:** Thank you;
13 sir. You may be seated.

14 **A JUROR:** Your Honor.

15 **THE COURT:** Yes, sir. If
16 you would tell me your name and
17 juror number.

18 **A JUROR:** Michael Smith,
19 one six seven.

20 **THE COURT:** Yes, sir.

21 **A JUROR:** I have worked
22 previously with Susan Chewning in
23 the past.

24 **THE COURT:** How long ago
25 was that, sir?

1 A JUROR: Two or three
2 years now.

3 THE COURT: Sir, as a
4 result of this contact do you
5 feel that you can remain fair and
6 impartial and render a fair and
7 impartial decision in this case
8 based solely on the evidence as
9 it will be presented and on the
10 law as the Court will charge?

11 A JUROR: Yes, ma'am.

12 THE COURT: Thank you,
13 sir. You may be seated.

14 Yes, sir?

15 A JUROR: James Littkey.
16 Doctor Edmond Higgins is a
17 colleague and I have referred
18 patients to him. I worked with
19 him a number of years ago.

20 THE BAILIFF: Two oh
21 eight.

22 THE COURT: Number two oh
23 eight. Yes, sir. You said in
24 the past?

25 A JUROR: In the past.

1 THE COURT: Sir, as a
2 result - - - how long ago?

3 A JUROR: It was probably
4 five years ago.

5 THE COURT: As a result of
6 this, contact do you feel that
7 you can remain fair and impartial
8 and render a fair and impartial
9 decision in this case based
10 solely on the evidence as it will
11 be presented and on the law as
12 the Court will charge?

13 A JUROR: Yes, ma'am.

14 THE COURT: Thank you,
15 sir. You may be seated.

16 I would ask the
17 attorneys and I apologize that I
18 did not do this earlier. In our
19 haste I neglected to do it. I
20 would ask for the attorneys for
21 Mr. Croker, if you would stand
22 and introduce yourselves to the
23 panel as well as - -

24 Yes, sir?

25 A JUROR: What was the

1 doctor's name?

2 THE COURT: Doctor Edmond
3 Higgins.

4 A JUROR: A psychiatrist?

5 THE COURT: Yes.

6 A JUROR: He is working
7 with my wife.

8 THE COURT: Currently?

9 A JUROR: Yes.

10 THE COURT: And, sir,
11 where is your wife employed?

12 A JUROR: She's a
13 self-employed psychologist with
14 Behavioral Associates. She's in
15 the same practice that Higgins is
16 in.

17 THE COURT: Okay, sir. As
18 a result this contact do you feel
19 that you can remain fair and
20 impartial and render a fair and
21 impartial decision in this case
22 based solely on the evidence as
23 it will be presented and on the
24 law as the Court will charge?

25 A JUROR: I do.

1 THE COURT: And, sir,
2 could you tell me your name and
3 your juror number.

4 A JUROR: Mike Reineke,
5 one five zero.

6 THE COURT: Thank you,
7 sir. You may be seated.

8 Mr. Smiley.

9 MR. SMILEY: My name is
10 Jim Smiley. I'm first chair or
11 the main person that will be
12 representing my client, Ivory
13 Croker who is standing up, and
14 Miss Laura Knobeloch, she will be
15 my second chair and assisting us
16 in this case.

17 Both of us,
18 Miss Knobeloch and myself, are in
19 private practice in the
20 Charleston County Bar. Primarily
21 we are in court on a daily basis.

22 And just so everybody
23 gets a good look at my client who
24 I have the honor of representing,
25 Mr. Ivory Croker.

1 THE COURT: Miss Shealy
2 and Mr. Davis, if you would do
3 the same, and also tell us the
4 members of your office.

5 MR. DAVIS: Thank you,
6 your Honor. Ladies and
7 gentlemen, I'm Rodney Davis. I'm
8 assisting in the case with
9 Miss Jennifer Kneece Shealy.

10 I'll try to remember all
11 the members of our office.
12 Mr. Rhett Dunaway, Miss Martha
13 Dicus, Kelly Kassis, Douglas
14 Swift, Lori Proctor, Beatty
15 Butler, Maryann Renkin, Mary
16 Hancock, Harry Worth, Boyd Young,
17 Mark Moore, Danny Prenner, David
18 Holton, Ted Smith. We have two
19 new hires. Miss Janell Ferrara
20 and Miss Melissa Inzareello.
21 Forgive me for mispronouncing
22 that name. And we represent Mr.
23 Coulter.

24 THE COURT: Ms. Wilson, if
25 you could do the same.

1 MS. WILSON: Thank you,
2 your Honor. I'm Scarlett Wilson.
3 I'm the Chief Deputy Solicitor
4 here in the ninth circuit.

5 This is Bruce Durant.
6 He's a senior prosecutor in our
7 office and he'll be presenting
8 the State's case.

9 Seated at our table also
10 is Joann Gould, who's a paralegal
11 with us. Cynthia McCants with
12 the F. B. I. Allan Kramitz who
13 used to be with the North
14 Charleston Police Department.
15 And also Terry Purcell who's our
16 victim/witness coordinator.

17 As far as attorneys in
18 our office, the solicitor in this
19 circuit is Ralph Hoisington. We
20 also have as attorneys Caroline
21 Bernard, Mark Bourdon, Jennifer
22 Birney, Sarah Todd, Damon Cook,
23 Shaw Goodrich, Elizabeth Gordon,
24 Amy Harrell, Ed Kniesley, Debbie
25 Herring Lash, Henry Leventis,

1 Amie Meyers, Doug Novack, Bentley
2 Price, Joy Sanders, Ravi Sanyal,
3 Melissa Seabrook, Paul Thurmond,
4 Abigail Walsh, and Berns Wetmore.

5 THE COURT: Thank you very
6 much.

7 Has any member of the
8 jury panel ever been represented
9 by any of the attorneys involved
10 in this case or by anyone with
11 whom they practice law? If so, I
12 would ask that you stand at this
13 time.

14 (Whereupon, no juror
15 stands.)

16 Is there any member of
17 the panel that is related by
18 blood or marriage to or have a
19 close personal, social, or
20 business relationship with any of
21 the attorneys involved in this
22 case or with anyone with whom
23 they practice law? If so, please
24 stand at this time.

25 Yes, sir.

1 A JUROR: Richard Kerr,
2 two oh six.

3 THE COURT: Yes, sir.

4 A JUROR: Joann's husband
5 and I grew up together.

6 THE COURT: Okay.

7 A JUROR: And we are very
8 close friends, close buddies.

9 THE COURT: You said very
10 close buddies? Then or now?

11 A JUROR: Then and now.

12 THE COURT: Sir, as a
13 result of this relationship, do
14 you feel that you can remain fair
15 and impartial and render a fair
16 and impartial decision in this
17 case based solely on the evidence
18 as it will be presented and on
19 the law as the Court will charge?

20 A JUROR: I do.

21 THE COURT: Thank you,
22 sir. You may be seated.

23 Has any member of the
24 jury panel formed or expressed an
25 opinion about any issue or matter

1 involved in this case? If so,
2 please stand at this time.

3 (Whereupon, no juror
4 stands.)

5 Is there any member of
6 the panel aware of any bias or
7 prejudice toward either the State
8 or the defense in this case? If
9 so, please stand at this time.

10 (Whereupon, no juror
11 stands.)

12 Is there any member of
13 the jury panel who is a member of
14 the Charleston County Grand Jury
15 which issued the indictments in
16 this case? If so, please stand
17 at this time.

18 (Whereupon, no juror
19 stands.)

20 Is there any member of
21 the jury panel who is a member of
22 or contributor to any group which
23 has as its primary concern the
24 promotion of law enforcement or
25 of victims' rights?

1 These groups would
2 include but are not limited to:
3 Mothers Against Drunk Driving,
4 Students Against Drunk Driving,
5 Citizens Against Violent Crime,
6 People Against Rape, Persons
7 Empowered to Save Teens, or any
8 other community or
9 neighborhood-type watch program?
10 If so, please stand at this time.

11 Yes, ma'am.

12 A JUROR: I'm Madeline
13 Frampton. I'm juror sixty.

14 THE COURT: Yes, ma'am.

15 A JUROR: I do contribute
16 to Mothers Against Drunk Driving.

17 THE COURT: Okay. Ma'am,
18 as a result of that affiliation
19 do you feel that you can remain
20 fair and impartial and render a
21 fair and impartial decision in
22 this case based solely on the
23 evidence as it will be presented
24 and on the law as the Court will
25 charge?

1 A JUROR: Yes, ma'am.

2 THE COURT: Thank you,
3 ma'am. You may be seated.

4 Is there any member of
5 the panel that is now or was
6 formerly a member of any law
7 enforcement agency? If so,
8 please stand at this time.

9 Yes, sir. If you would
10 tell me your name and your juror
11 number.

12 A JUROR: My name is
13 Michael Reineke, number one five
14 oh. I work at the Navy Brig.

15 THE COURT: Okay. Sir, as
16 a result of your employment do
17 you feel that you can remain fair
18 and impartial and render a fair
19 and impartial decision in this
20 case based solely on the evidence
21 as it will be presented and on
22 the law as the Court will charge?

23 A JUROR: I do.

24 THE COURT: Thank you,
25 sir. You may be seated.

1 Is there any member of
2 the panel who has members of your
3 family who are presently or were
4 formerly employed by law
5 enforcement agencies? If so,
6 please stand at this time.

7 Yes, ma'am. If you
8 would tell me your name and your
9 juror number and the relationship
10 and what agency.

11 A JUROR: Angela Prince,
12 juror number one forty-six. My
13 brother Andrew is a state
14 constable, was formerly a reserve
15 officer with the City of
16 Charleston and was employed by
17 the City of Charleston --

18 THE COURT: Okay.

19 A JUROR: -- as a
20 dispatcher.

21 THE COURT: If you would
22 remain standing for me.

23 Yes, ma'am.

24 A JUROR: Jennifer Wertz,
25 number one ninety-one. My

1 brother-in-law is a Charleston
2 County police officer.

3 THE COURT: Your
4 brother-in-law --

5 A JUROR: Yes.

6 THE COURT: -- is a
7 Charleston County police officer?

8 A JUROR: Yes.

9 THE COURT: As a result of
10 these relationships, do you all
11 feel that you can remain fair and
12 impartial and render a fair and
13 impartial decision in this case
14 based solely on the evidence as
15 it will be presented and on the
16 law as the Court will charge?

17 A JUROR: Yes/

18 THE COURT: And number one
19 forty-six?

20 A JUROR: Yes.

21 THE COURT: And number one
22 ninety-one?

23 A JUROR: Yes.

24 THE COURT: You may be
25 seated. Thank you.

1 Is there any member of
2 the panel had an immediate family
3 member arrested for any charge
4 involving assault or violence?
5 If so, please stand at this time.

6 Yes, sir. If you would
7 tell me your name and your juror
8 number.

9 A JUROR: Frank Gadson,
10 juror number sixty-four.

11 THE COURT: Yes, sir.

12 A JUROR: My son was put
13 in jail for shooting a guy with a
14 shotgun.

15 THE COURT: Is he
16 currently serving time?

17 A JUROR: Yes, ma'am.

18 THE COURT: Sir, as a
19 result of this experience, do you
20 feel that you can remain fair and
21 impartial and render a fair and
22 impartial decision in this case
23 based solely on the evidence as
24 it will be presented and on the
25 law as the Court will charge?

1 A JUROR: Yes, ma'am.

2 THE COURT: Sir, and I
3 appreciate your candor. You, may
4 be seated.

5 Is there any member of
6 the panel or a member of your
7 family ever been the victim of a
8 violent crime? If so, I would
9 ask that you stand at this time.

10 Yes, ma'am.

11 A JUROR: Madeline
12 Frampton, juror number sixty, and
13 my grandmother was murdered.

14 THE COURT: Okay. Ma'am,
15 as a result of this experience --
16 oh, I apologize. Yes, ma'am. If
17 you could remain standing for me.

18 Yes, ma'am. Yes, ma'am.

19 A JUROR: Juror number
20 twelve.

21 THE COURT: Number twelve?

22 A JUROR: Yes. Rita
23 Austera. My niece was stabbed to
24 death.

25 THE COURT: If you could

1 remain standing for me.

2 Yes, sir.

3 A JUROR: Doyle Burlison,
4 juror number twenty-seven. My
5 step-father's brother murdered
6 his brother-in-law.

7 THE COURT: As a result of
8 these experiences, do you all
9 feel that you can remain fair and
10 impartial and render a fair and
11 impartial decision in this case
12 based solely on the evidence as
13 it will be presented and on the
14 law as the Court will charge?

15 Number sixty?

16 A JUROR: Yes, ma'am.

17 THE COURT: You may be
18 seated. Thank you.

19 Number twelve.

20 A JUROR: Yes, ma'am.

21 THE COURT: Thank you,
22 ma'am. You may be seated.

23 And number twenty-seven?

24 A JUROR: Yes, your Honor.

25 THE COURT: Thank you,

1 sir. You may be seated. And
2 again I appreciate your candor.
3 I know how difficult that must
4 have been to answer in the
5 presence of your fellow jurors.

6 Does any member of the
7 panel know of any reason
8 whatsoever why he or she should
9 not be serve -- should not serve
10 as a juror in this case, with
11 particular emphasis being placed
12 on your ability to be fair and
13 impartial to both the State and
14 the defense? If you feel this
15 question applies to you, I would
16 ask that you stand at this time.

17 Well, ma'am, if you
18 would tell me your name and your
19 juror number, ma'am.

20 **A JUROR:** Carolyn Rueda,
21 number one fifty-four. I don't
22 believe in someone using drugs.

23 **THE COURT:** Yes, ma'am.
24 Ma'am, that is not an issue in
25 this case, but I will ask if you

1 can stand again for me, please.

2 Ma'am, as a result of
3 those beliefs, do you feel that
4 you can remain fair and impartial
5 and render a fair and impartial
6 decision in this case based
7 solely on the evidence as it will
8 be presented and on the law as
9 the Court will charge?

10 A JUROR: Yes.

11 THE COURT: I can't hear
12 you. I'm sorry.

13 A JUROR: Yes.

14 THE COURT: Thank you,
15 ma'am. You may be seated.

16 Now, ladies and
17 gentlemen, there's one additional
18 question that I need to ask and
19 it regards media coverage of this
20 particular case. I'm going to
21 ask, however, that if you stand
22 in response to this question,
23 please do not begin to
24 extemporaneously tell me what you
25 have read, seen, or listened to,

1 because I need to speak with each
2 of you individually.

3 Is there any member of
4 the panel that has read, listened
5 to, or watched any news reports
6 regarding the substance of this
7 case? If so, I would ask that
8 you stand at this time.

9 I'm going to ask each of
10 you to make your way to aisle,
11 whichever aisle is closest to
12 you.

13 **THE BAILIFF:** One
14 sixty-five, Mr. Smith.

15 (The following took
16 place at the bench, in the
17 presence of the attorneys.)

18 **THE COURT:** Yes, sir.
19 Tell me your name and your juror
20 number.

21 **A JUROR:** Donald Smith,
22 one six five.

23 **THE COURT:** Yes, sir.
24 Tell me what you read or listened
25 to.

1 A JUROR: There was a big
2 article in the Post and Courier
3 yesterday or the day before. I
4 did read that.

5 THE COURT: Sir, as a
6 result of reading that article do
7 you feel that you've formed a
8 fixed opinion regarding the facts
9 and circumstances of this case?

10 A JUROR: No.

11 THE COURT: Sir, do you
12 feel that you can remain fair and
13 impartial and render a fair and
14 impartial decision in this case
15 based solely on the evidence as
16 it will be presented and on the
17 law as the Court will charge?

18 A JUROR: Yes, your Honor.

19 THE COURT: Thank you,
20 sir. You may take your seat.

21 THE BAILIFF: Eighty-two.

22 THE COURT: Wait one
23 second.

24 MR. SMILEY: Maybe we can
25 inquire about what he remembers

1 about that article.

2 **THE COURT:** The case law
3 says I'm only required to ask if
4 he has formed a fixed opinion as
5 a result of what he's read and
6 whether he can remain fair and
7 impartial. And he read the paper
8 yesterday and there was an
9 article he said he read, which
10 leads me to the conclusion that
11 he read the entire article.

12 **MS. SHEALY:** Your Honor,
13 just so our record is preserved,
14 I would inquire into what he
15 recalls.

16 **THE COURT:** The case law
17 does not require going into that.
18 The case law requires me to
19 determine whether he's fair and
20 impartial or has a fixed opinion
21 regarding what he read or saw or
22 listened to.

23 **MR. SMILEY:** If I can
24 place something on the record at
25 this point. If your Honor --

1 since they're the finders of the
2 facts and they should only base
3 their decision on what has
4 occurred in the courtroom,
5 reading that article was
6 something that did not occur in
7 the courtroom.

8 THE COURT: That's not
9 what I asked. I asked if he has
10 a fixed opinion. He has not
11 formed a determination of guilt
12 or innocence that he wouldn't
13 have obtained otherwise,
14 therefore I think he can be a
15 fair and impartial juror based
16 on information provided in this
17 case.

18 State have any
19 questions?

20 MS. WILSON: Your Honor,
21 I think you handled the question
22 correctly. Just because somebody
23 read the article, you asked them
24 specifically, Judge, if they can
25 render a verdict based on the

1 evidence and then if they say
2 they can, that's what the cases
3 require, otherwise --

4 MR. SMILEY: This case is
5 different. It is the headline of
6 the paper the day before our
7 trial.

8 THE COURT: That's no
9 different than any other case in
10 the media. I'll note your
11 exception for the record.

12 There are -- based on my
13 knowledge of the case law there
14 are no cases that would require
15 him to be excluded. You
16 certainly can use a strike for
17 that purpose if you deem it's
18 proper.

19 MS. SHEALY: Your Honor,
20 for the record, we would also
21 join in the comments made by
22 Mr. Smiley, but it's sort of a
23 two-way analysis. One would be
24 whether or not he should be
25 struck and, second, whether or

1 not we intend to offer a strike
2 against him, it would be our
3 position we cannot without
4 knowing what he recalls from the
5 facts.

6 THE COURT: Well, the fact
7 that he read the article, we all
8 know the substance of it. The
9 case is very clear. Actually I
10 only have to ask if he's formed a
11 fixed opinion. I don't have to
12 ask him any more questions if his
13 answer is no, so I think that I'm
14 following the dictates of the
15 Supreme Court and I'm not
16 required to ask or inquire into
17 it any further.

18 MR. SMILEY: If you will
19 just note my exception in that
20 regard.

21 THE COURT: Yes.

22 THE BAILIFF: Eighty-two,
23 Mr. Harvey.

24 (The following took
25 place at the bench, in the

1 presence of the attorneys.)

2 THE COURT: Hello, sir.

3 How are you? Sir, can you tell
4 me what you have seen or read in
5 the newspapers?

6 A JUROR: I've seen the
7 media, kept up with it in the
8 newspapers and I've followed this
9 case I guess from its onset.

10 THE COURT: So you've read
11 all the articles?

12 A JUROR: Yes, I have.

13 THE COURT: Have you
14 watched anything on the news?

15 A JUROR: Yes, I have.

16 THE COURT: And have you
17 listened to anything on the
18 radio?

19 A JUROR: No. Not the
20 radio.

21 THE COURT: Okay. Sir, as
22 a result of what you have
23 observed, do you feel that you
24 have formed a fixed opinion about
25 the facts and circumstances of

1 this case?

2 A JUROR: I don't want to
3 lie to you, Judge.

4 THE COURT: I just need
5 you to be honest with me.

6 A JUROR: I think I have.

7 THE COURT: Okay. Then,
8 your answer would be that you
9 can't remain fair and
10 impartial --

11 A JUROR: That's what I'm
12 saying.

13 THE COURT: -- about a
14 decision in this case?

15 A JUROR: I'm concerned
16 about that.

17 THE COURT: Okay. Then
18 your answer would be that no, you
19 can't remain fair and impartial?

20 A JUROR: Yes. I think I
21 feel -- that's the way I feel.

22 THE COURT: Sir, I would
23 then exclude you from this panel.
24 I appreciate your candor.

25 A JUROR: Thank you.

1 THE COURT: Number
2 eighty-two is excluded from this
3 panel only. And actually, come
4 closer. If I were to follow the
5 defense's logic regarding a
6 person simply reading an article
7 that really is contrary to the
8 case law, particularly the
9 precedents that have been
10 established by our courts,
11 because if that were the logic
12 and I would ask someone about
13 reading or listening, even a
14 question because they would be
15 automatically excluded. I didn't
16 say that -- I meant to make that
17 note when we were talking earlier
18 and I just wanted to say that.

19 MS. SHEALY: May I respond
20 to that?

21 THE COURT: No, ma'am. It
22 wasn't made to elicit a comment.

23 Please call the next
24 juror.

25 THE BAILIFF: Number forty

1 is the next juror.

2 (The following took
3 place at the bench, in the
4 presence of the attorneys.)

5 THE COURT: Yes, sir.

6 A JUROR: I watch the news
7 once or twice a day, generally in
8 the morning and again in the
9 evening and --

10 THE COURT: Okay. And,
11 sir, you have watched and read
12 news reports regarding this case?

13 A JUROR: Yes, ma'am.

14 THE COURT: Sir, as a
15 result of what you have read or
16 watched, do you feel that you've
17 formed a fixed opinion about the
18 facts and circumstances of this
19 case.

20 A JUROR: No, ma'am.

21 THE COURT: Sir, do you
22 feel that you can remain fair and
23 impartial and make fair and
24 impartial decisions based solely
25 on the evidence as it will be

1 presented and on the law as the
2 Court will charge?

3 A JUROR: Yes.

4 THE COURT: Thank you,
5 sir. You may return to your
6 seat.

7 MS. SHEALY: Our continued
8 objection.

9 THE COURT: It is noted
10 for the record.

11 THE BAILIFF: Number
12 forty-six, Mr. Donehue.

13 (The following took
14 place at the bench, in the
15 presence of the attorneys.)

16 THE COURT: How are you?

17 A JUROR: Very well, thank
18 you.

19 THE COURT: Yes, sir. If
20 you could tell me your name and
21 your juror number, please.

22 A JUROR: My name is
23 Douglas Donehue, number
24 forty-six.

25 THE COURT: Yes, sir. If

1 you would you tell me what you
2 have been exposed to.

3 A JUROR: Beg your pardon?

4 THE COURT: If you would
5 tell me what you've been exposed
6 to. If you've read an article or
7 watched the news.

8 A JUROR: I read the paper
9 every day. I'm a life-long
10 newspaper man.

11 THE COURT: And have you
12 watched any news reports
13 regarding the case?

14 A JUROR: I don't pay that
15 much attention to television.

16 THE COURT: Okay. Sir, as
17 a result of what you have read,
18 do you feel that you have formed
19 a fixed opinion about the facts
20 and circumstances of this case?

21 A JUROR: No.

22 THE COURT: Your answer is
23 no?

24 A JUROR: No.

25 THE COURT: Sir, as a

1 result do you feel that you can
2 remain fair and impartial and
3 render a fair and impartial
4 decision in this case --

5 A JUROR: Positively.

6 THE COURT: -- based
7 solely on the evidence as it will
8 be presented and on the law as
9 the Court will charge?

10 A JUROR: Yes.

11 THE COURT: Thank you,
12 sir. You may take your seat.

13 THE BAILIFF: Twenty-nine,
14 Miss Burnison.

15 (The following took
16 place at the bench, in the
17 presence of the attorneys.)

18 THE COURT: Can you give
19 me your juror number?

20 A JUROR: Twenty-nine.

21 THE COURT: Can you tell
22 me what you have read or heard
23 regarding this case?

24 A JUROR: There was an
25 article I read in Sunday's paper.

1 THE COURT: Ma'am, as a
2 result of reading the article on
3 Sunday do you feel that you have
4 formed a fixed opinion about the
5 facts and circumstances in this
6 case?

7 A JUROR: No.

8 THE COURT: Do you feel
9 that you can remain fair and
10 impartial and render a fair and
11 impartial decision in this case
12 based solely on the evidence as
13 it will be presented and on the
14 law as the Court will charge?

15 A JUROR: Yes.

16 THE COURT: Thank you,
17 ma'am. You can return to your
18 seat.

19 THE BAILIFF: Two oh
20 seven, Candice Davis.

21 (The following took
22 place at the bench, in the
23 presence of the attorneys.)

24 THE COURT: Yes, ma'am.
25 Can you tell me if you have read

1 or heard anything concerning this
2 case?

3 A JUROR: I read the
4 article in yesterday's paper.

5 THE COURT: And as a
6 result of reading that article,
7 have you formed a fixed opinion
8 about the facts and circumstances
9 of this case?

10 A JUROR: Yes, ma'am.

11 THE COURT: So I assume
12 your answer then is you do not
13 feel that you could be fair and
14 impartial?

15 A JUROR: No. I don't
16 think I would be.

17 THE COURT: I need you to
18 remain with me, but I will excuse
19 you from the trial of this case
20 but I need you to remain.

21 Number two oh seven is
22 excused from this panel only.

23 THE BAILIFF: Juror number
24 twenty, Katherine Bible.

25 (The following took

1 place at the bench, in the
2 presence of the attorneys.)

3 THE COURT: Ma'am, if you
4 would tell me your name and your
5 juror number, please.

6 A JUROR: My name is
7 Katherine Bible, number twenty.

8 THE COURT: Miss Bible,
9 could you tell me what you read?

10 A JUROR: Just the article
11 in the paper yesterday and I
12 don't recall the facts of the
13 article, but I did skim it.

14 THE COURT: Have you
15 watched or listened to any
16 reports regarding the case?

17 A JUROR: No.

18 THE COURT: As a result of
19 what you read, have you formed
20 any fixed opinions regarding the
21 facts of this case?

22 A JUROR: No.

23 THE COURT: And do you
24 feel that you can remain fair and
25 impartial and render a fair and

1 impartial decision in this case
2 based solely on the evidence as
3 it will be presented and on the
4 law as the Court will charge?

5 A JUROR: Yes.

6 THE COURT: Thank you,
7 ma'am. You may return to your
8 seat.

9 THE BAILIFF: One
10 fifty-four, Miss Rueda.

11 (The following took
12 place at the bench, in the
13 presence of the attorneys.)

14 THE COURT: Could you give
15 me your name and your juror
16 number, please.

17 A JUROR: One fifty-four,
18 Carolina Rueda.

19 THE COURT: Yes, ma'am.

20 A JUROR: I saw it on
21 T. V.

22 THE COURT: Okay. When
23 was that?

24 A JUROR: From the time it
25 happened.

1 THE COURT: So you've been
2 following it on T. V.

3 A JUROR: Uh-huh.

4 THE COURT: Have you read
5 anything in the newspapers?

6 A JUROR: Un-un.

7 THE COURT: Have you
8 listened to anything on the
9 radio?

10 A JUROR: Un-un.

11 THE COURT: As a result of
12 what you've watched on T. V. do
13 you feel that you've formed a
14 fixed opinion on this case?

15 A JUROR: No.

16 THE COURT: No, you do not
17 feel that you --

18 A JUROR: No.

19 THE COURT: Well, what is
20 your answer? Was it yes or no?

21 A JUROR: No.

22 THE COURT: Okay. Do you
23 feel you can remain fair and
24 impartial in this case?

25 A JUROR: Uh-huh.

1 THE COURT: Do you feel
2 that you can base a decision only
3 on the facts and circumstances
4 that are presented in this case
5 and on the law as the Court will
6 charge?

7 A JUROR: Yes.

8 THE COURT: Ma'am, could
9 you clarify for me earlier when
10 you said yes, then when I asked
11 you again you told me no.

12 A JUROR: Based on the
13 death penalty. I don't believe
14 in the death penalty. That's it.

15 THE COURT: Okay. But
16 you're now telling me that you
17 can remain fair and impartial?

18 A JUROR: Uh-huh.

19 THE COURT: Thank you,
20 ma'am. You may take your seat.

21 I guess I was a little
22 perplexed initially because she
23 answered yes and then she
24 answered no, but if you want to
25 use a strike, you can. She

1 answered my questions
2 appropriately.

3 THE BAILIFF: Seventy-nine
4 , Mr. Hammerstedt.

5 (The following took
6 place at the bench, in the
7 presence of the attorneys.)

8 THE COURT: Hello, sir.
9 Could you give me your name and
10 your juror number, please.

11 A JUROR: Juror number
12 seventy-nine, Mark Hammerstedt.

13 THE COURT: Okay, sir.
14 Tell me what you've heard about
15 this case.

16 A JUROR: I watch the news
17 and I read the paper every day
18 and watch the news every evening
19 on the television stations. I've
20 seen numerous articles regarding
21 this case.

22 THE COURT: As a result of
23 what you have seen and read, do
24 you feel that you have formed a
25 fixed opinion about the facts and

1 circumstances of this case?

2 A JUROR: No, ma'am.

3 THE COURT: Do you feel
4 that you can remain fair and
5 impartial and render a fair and
6 impartial decision in this case
7 based solely on the evidence as
8 it will be presented and on the
9 law as the Court will charge?

10 A JUROR: Yes.

11 THE COURT: Thank you,
12 sir. You may return to your
13 seat.

14 THE BAILIFF: Seventy-two,
15 Mr. Givens.

16 (The following took
17 place at the bench, in the
18 presence of the attorneys.)

19 THE COURT: Sir, if you
20 could give me your name and juror
21 number, please.

22 A JUROR: Taharqa Givens,
23 number seventy-two.

24 THE COURT: Sir, if you
25 can tell me what you read.

1 A JUROR: Just read it the
2 other day, the fact about them
3 not being able to find the body.

4 THE COURT: Okay. Sir, as
5 a result of what you have read,
6 do you feel that you have formed
7 a fixed opinion about this case?

8 A JUROR: No.

9 THE COURT: Sir, do you
10 feel that you can remain fair and
11 impartial and render a fair and
12 impartial decision in this case
13 based solely on the evidence as
14 it will be presented and on the
15 law as the Court will charge?

16 A JUROR: Yes.

17 THE COURT: Thank you.
18 Okay, sir. Thank you. You may
19 take your seat.

20 THE BAILIFF: One
21 ninety-nine, Renee Young.

22 (The following took
23 place at the bench, in the
24 presence of the attorneys.)

25 THE COURT: Yes, ma'am.

1 Could you give me your name and
2 juror number, please.

3 A JUROR: Renee Young,
4 juror number one ninety-nine.

5 THE COURT: Yes, ma'am.

6 A JUROR: The reason why I
7 did not want to say this in front
8 of everyone, the question about
9 the family or friend that was a
10 victim of a violent crime, that
11 sort of question, I had a very
12 good friend that was murdered,
13 so --

14 THE COURT: So that's why
15 you came forward?

16 A JUROR: Yes.

17 THE COURT: Okay. Have
18 you seen any media reports about
19 this case?

20 A JUROR: No.

21 THE COURT: Ma'am, as a
22 result of your friend being
23 murdered, do you feel that you
24 can remain fair and impartial and
25 render a fair and impartial.

1 decision in this case based
2 solely on the evidence as it will
3 be presented and on the law as
4 the Court will charge?

5 A JUROR: Yes.

6 THE COURT: Okay. You may
7 take your seat.

8 THE BAILIFF: One twelve,
9 Miss Lefter.

10 (The following took
11 place at the bench, in the
12 presence of the attorneys.)

13 THE COURT: Yes, ma'am.

14 A JUROR: I just wanted to
15 mention -- this is going back to
16 another question.

17 THE COURT: You're juror
18 number one twelve. Right?

19 A JUROR: Yes.

20 THE COURT: Miss Lefter.
21 I apologize.

22 A JUROR: I think I worked
23 for his mom. Betsy Smiley, is
24 that your mother?

25 MR. SMILEY: Yes, ma'am,

1 she is, for the record.

2 THE COURT: Ma'am, how
3 long did you work with
4 Mr. Smiley's mother?

5 A JUROR: Five years.
6 She's retired now.

7 THE COURT: As a result of
8 that, do you feel that you can
9 remain fair and impartial and
10 render a fair and impartial
11 decision in this case based
12 solely on the evidence as it will
13 be presented and on the law as
14 the Court will charge?

15 A JUROR: Yes.

16 THE COURT: Okay. Thank
17 you, ma'am. You may take your
18 seat. We appreciate your candor.

19 A JUROR: I'm sorry I
20 didn't say that earlier.

21 MR. SMILEY: Well, they
22 didn't ask the question.

23 THE COURT: Don't
24 apologize. It's not a problem.

25 MR. DAVIS: Your Honor,

1 number sixty-four indicated that
2 he had a family member that was
3 incarcerated. I believe he is my
4 client, his son.

5 THE COURT: I would
6 imagine that would go to your
7 benefit.

8 MR. DAVIS: But I needed
9 to tell the Court.

10 THE COURT: Yeah. I think
11 it's kind of neutralized.

12 Okay. I appreciate your
13 bringing that to our attention.

14 For the record the
15 strikes are ten, ten, and ten.
16 Correct?

17 (Whereupon, all
18 attorneys respond in the
19 affirmative.)

20 THE COURT: You all have
21 been sitting for approximately an
22 hour. I'm going to give you a
23 very brief recess, to go to the
24 restroom if any of you need to,
25 or to stretch or refresh

1 themselves. I'll give you the
2 opportunity to do it. We'll take
3 about five minutes.

4 Please return promptly
5 to the courtroom. Please don't
6 interact with anyone. We'll be
7 at ease for five minutes.

8 (Whereupon, a recess was
9 called at 12:56 p. m.)

10 (The Judge enters the
11 courtroom at 1:08 p. m.)

12 **THE COURT:** But I have
13 thought about it some more. I'm
14 going to ask the jurors who did
15 not specify what they read or
16 listened, to tell us. There
17 really is no case law on point,
18 but I figure no harm, no foul.

19 Many of them said what
20 they read or listened to and the
21 other ones that I asked, I was
22 going to have one sixty-five --
23 actually what I didn't -- excuse
24 I'm just going to have them line
25 back up and tell me what they

1 watched or listened to. Then I'm
2 not going to -- I don't think I
3 have to reask every question.
4 Just them.

5 MR. DAVIS: Perhaps you
6 can ask if that has changed the
7 previous response.

8 THE COURT: Any exception
9 to handling it that way, if their
10 opinions have changed since?

11 MR. SMILEY: No, ma'am.

12 MS. WILSON: No, ma'am.

13 THE COURT: No. What I'm
14 saying is basically he's saying I
15 would ask them has your answer to
16 my question changed as a result
17 of this new question. I really
18 should have. I was just feeling
19 compressed for time and just
20 wanted to move things along.

21 Would the following
22 jurors line up in the aisle for
23 me, with the bailiffs.

24 Number one sixty-five,
25 number forty, number forty-six,

1 number twenty-nine, number
2 twenty, number one fifty-four,
3 number seventy-two.

4 Number one sixty-five,
5 if you would come forward.

6 (The following took
7 place at the bench, in the
8 presence of the attorneys.)

9 **THE COURT:** Sir, I
10 apologize. We appreciate your
11 patience. You indicated that you
12 had read an article in
13 yesterday's paper.

14 **A JUROR:** Yesterday or two
15 days ago. In the last --

16 **THE COURT:** Can you tell
17 me what you recall that you read.
18 If you could talk low for me.

19 **A JUROR:** There was a
20 young lady in the area from
21 Virginia, I don't remember all
22 the details, and one defendant
23 that was accused was her
24 boyfriend or something like that,
25 and his friend. They're accused

1 of abducting her and the body has
2 not been found. That's the gist
3 of what I read.

4 THE COURT: Have you
5 formed a fixed opinion as a
6 result of what you've read?

7 A JUROR: No.

8 THE COURT: Do you feel
9 you can remain fair and
10 impartial?

11 A JUROR: Yes, I do.

12 THE COURT: Thank you,
13 sir. You can take your seat.

14 MR. SMILEY: Your Honor,
15 even though you didn't ask it, I
16 wouldn't have any further
17 questions as a result of your
18 questions. I don't think I need
19 to do that, but I think I've
20 covered it as far as Mr. Croker
21 is concerned.

22 THE COURT: I understand.

23 MR. SMILEY: You know what
24 I'm saying.

25 THE COURT: Yes, sir.

1 That means you have no objection.

2 MR. SMILEY: Thank you,
3 your Honor.

4 THE COURT: Number forty.

5 (The following took
6 place at the bench, in the
7 presence of the attorneys.)

8 THE COURT: Sir, I
9 apologize that I asked you to
10 come forward again. You
11 indicated that you had read, that
12 you read the daily news. Now did
13 you read the daily news every day
14 and you watched both news
15 reports?

16 A JUROR: Yes, ma'am.

17 THE COURT: Can you tell
18 me what you recall that you read
19 or listened to?

20 A JUROR: I know that
21 there -- obviously there's no
22 body, and that there's a fair
23 amount of enough evidence for it
24 to come to court but beyond that,
25 I mean, I skimmed it, the

1 newspaper articles, but that's
2 kind of my recollection.

3 THE COURT: Okay, sir. Do
4 you feel you formed a fixed
5 opinion based upon what you
6 watched and read?

7 A JUROR: The State's got
8 a hard road with no body.

9 THE COURT: Well, my
10 question is do you feel that you
11 have formed a fixed opinion about
12 the facts and circumstances of
13 this case?

14 A JUROR: No, other than
15 that.

16 THE COURT: Do you feel
17 that you can remain fair and
18 impartial and render a fair and
19 impartial decision in this case
20 based solely on the evidence as
21 it will be presented and on the
22 law as the Court will charge?

23 A JUROR: Yes, ma'am.

24 THE COURT: Okay. Thank
25 you, sir. You may take your

1 seat.

2 MR. DURANT: What was his
3 number?

4 THE COURT: Number forty.

5 (The following took
6 place at the bench, in the
7 presence of the attorneys.)

8 THE COURT: Number
9 forty-six. Sir, we appreciate
10 your indulgence. I just need to
11 ask -- you're number forty-six.
12 Correct?

13 A JUROR: That's right.

14 THE COURT: And, sir, your
15 last name.

16 A JUROR: Donehue.

17 THE COURT: Okay.

18 Mr. Donehue, do you recall what
19 you read regarding the facts and
20 circumstances of this case?

21 A JUROR: I couldn't
22 recite them to you, no.

23 THE COURT: Okay. And
24 you've indicated that you don't
25 watch T. V. very much. Is that

1 also correct?

2 A JUROR: Not very much.

3 THE COURT: Okay. You're
4 in good company.

5 Sir, as a result of what
6 you have read, have you formed a
7 fixed opinion about the case?

8 A JUROR: No.

9 THE COURT: Can you
10 continue to remain fair and
11 impartial?

12 A JUROR: Of course.

13 THE COURT: I appreciate
14 you indulging us further. Thank
15 you, sir. You may take your
16 seat.

17 Number twenty-nine.

18 (The following took
19 place at the bench, in the
20 presence of the attorneys.)

21 THE COURT: Ma'am, we
22 appreciate your patience. We
23 know it's been a long morning.
24 You indicated that you had read
25 the article in Sunday's paper.

1 Is that correct?

2 A JUROR: Uh-huh.

3 THE COURT: Can you tell
4 me what you recall that you read?

5 A JUROR: There was no
6 body found.

7 THE COURT: Okay. Other
8 than that, do you feel
9 anything --

10 A JUROR: I stopped
11 reading after about two
12 paragraphs.

13 THE COURT: Okay. As a
14 result of what you read, do you
15 feel you formed a fixed opinion
16 about the case?

17 A JUROR: No, I haven't.

18 THE COURT: And do you
19 feel you can remain fair and
20 impartial?

21 A JUROR: Yes.

22 THE COURT: Thank you,
23 ma'am. You may take your seat.
24 Again we appreciate your
25 indulging us.

1 Number twenty.

2 (The following took
3 place at the bench, in the
4 presence of the attorneys.)

5 MR. DAVIS: What number
6 was that last lady?

7 THE COURT: Number
8 twenty-nine.

9 MR. DAVIS: Thank you.

10 THE COURT: This is number
11 twenty.

12 Ma'am, if you could
13 state your name for us again,
14 please.

15 A JUROR: Katherine Bible.

16 THE COURT: And, Miss
17 Bible, you indicated that you
18 read the article in yesterday's
19 paper. Well, you skimmed it is
20 what you indicated. Is that
21 correct?

22 A JUROR: Yes. I do
23 recall that the victim was from
24 Virginia, that the two pictures
25 in the paper were of the

1 gentlemen here today and the
2 victim, but other than that I
3 couldn't tell you the details.

4 THE COURT: Okay. Do you
5 feel that you have formed a fixed
6 opinion about the facts and
7 circumstances of this case?

8 A JUROR: No.

9 THE COURT: And do you
10 feel that you can remain fair and
11 impartial and render a fair and
12 impartial decision in this case
13 based solely on the evidence as
14 it will be presented and on the
15 law as the Court will charge?

16 A JUROR: Yes.

17 THE COURT: Thank you,
18 ma'am. You may take your seat.
19 Again we appreciate your
20 indulging us.

21 Number one fifty-four.

22 (The following took
23 place at the bench, in the
24 presence of the attorneys.)
25

1 THE COURT: Ma'am, we
2 appreciate your indulgence. Can
3 you tell me what you recall
4 reading or watching on T. V. or
5 in the newspaper? You said that
6 you saw it on T. V.

7 A JUROR: No. Radio.

8 THE COURT: Okay. If you
9 can tell me what you recall.

10 A JUROR: That there two
11 guys had killed the girl and they
12 couldn't find a body.

13 THE COURT: As a result of
14 what you heard, ma'am, do you
15 feel you formed a fixed opinion
16 about the facts and circumstances
17 of this case?

18 A JUROR: No. I just
19 wondered if -- I can't base it on
20 that, but I don't believe in the
21 death penalty.

22 THE COURT: Ma'am, do you
23 feel you can remain fair and
24 impartial in this case?

25 A JUROR: Uh-huh.

1 THE COURT: And do you
2 feel that you can remain fair and
3 impartial and render a fair and
4 impartial decision in this case
5 based solely on the evidence as
6 it will be presented and on the
7 law as the Court will charge?

8 A JUROR: Yes.

9 THE COURT: Thank you,
10 ma'am. You may take your seat
11 again. I appreciate your
12 indulgences.

13 Number seventy-two.

14 You don't have to bring
15 your jacket. You can leave it
16 there if you want. Oh, okay.
17 Yeah. You got to wear the badge.

18 (The following took
19 place at the bench, in the
20 presence of the attorneys.)

21 THE COURT: Sir, I
22 appreciate your indulgence. You
23 indicated you had read about this
24 case in the Post and Courier
25 yesterday. Is that correct?

1 A JUROR: Yes.

2 THE COURT: Sir, do you
3 recall what you read?

4 A JUROR: They just
5 couldn't find the body. That's
6 all I got to read.

7 THE COURT: Okay. As a
8 result of what you read do you
9 feel you formed a fixed opinion
10 about this facts and
11 circumstances of this case?

12 A JUROR: No, ma'am.

13 THE COURT: Do you feel
14 that you could remain fair and
15 impartial?

16 A JUROR: Yes, ma'am.

17 THE COURT: And do you
18 feel that you can render a
19 verdict based solely on the
20 evidence and the law as the Court
21 will charge?

22 A JUROR: Yes, ma'am.

23 THE COURT: Okay. Thank
24 you, sir. You may take your
25 seat.

1 Ten, ten, ten. Is that
2 correct? Ladies and gentlemen,
3 you agree the strikes are ten,
4 ten and ten. Is that correct?

5 MS. WILSON: Yes, ma'am.

6 (The following took
7 place in open court.)

8 THE COURT: Ladies and
9 gentlemen, we appreciate your
10 patience. We appreciate your
11 bearing with us this morning.

12 If your name is called
13 please bring all of your
14 belongings, come forward, and
15 please stand directly in front of
16 where the podium is situated,
17 somewhere between counsel table
18 and turn, facing the attorneys.

19 We will try to go
20 through this process as quickly
21 as possible, and again we
22 appreciate your patience bearing
23 with us this morning.

24 MS. WILSON: Judge, may I
25 approach?

1 THE COURT: Yes.

2 (Whereupon, there was an
3 off-the-record bench conference.)

4 THE COURT: Mr. Clerk, you
5 may proceed.

6 CLERK OF COURT: Ladies
7 and gentlemen, as I call your
8 name please come forward to the
9 podium, turn and face the
10 parties.

11 Also please watch your
12 step. There's an electrical cord
13 on the floor.

14 Juror number two oh two,
15 Clifton Carley.

16 What say you for the
17 State?

18 MS. WILSON: I'm sorry.

19 CLERK OF COURT: That's
20 okay.

21 MS. WILSON: Please
22 present the juror.

23 CLERK OF COURT: What say
24 you for the defendant Coulter?

25 MR. DAVIS: Please present

1 the juror.

2 CLERK OF COURT: What say
3 you for defendant Croker?

4 MR. SMILEY: Please seat
5 the juror.

6 CLERK OF COURT: Mr.
7 Carley, please have a seat in the
8 jury box. You've been selected
9 as a juror in this case.

10 Juror number one
11 thirty-one, Sandra Murrow.

12 What say you for the
13 State?

14 MS. WILSON: Please
15 present Miss Murrow.

16 CLERK OF COURT: What say
17 you for defendant Coulter?

18 MR. DAVIS: Your Honor,
19 please excuse the juror from this
20 case.

21 CLERK OF COURT: Miss
22 Murrow, please have a seat back
23 in the audience. You've been
24 excused from trial of this case.

25 Juror number one

1 twenty-seven, George Meise.

2 What say you for the
3 State?

4 MS. WILSON: Your Honor,
5 please present Mr. Meise.

6 CLERK OF COURT: What say
7 you for the defendant Coulter?

8 MR. DAVIS: Please excuse
9 this juror from the trial of this
10 case.

11 CLERK OF COURT: Mr.
12 Meise, please have a seat back in
13 the audience. You've been
14 excused from the trial of this
15 case.

16 Juror number two oh six,
17 Richard Kerr.

18 What say you for the
19 State?

20 MS. WILSON: Your Honor,
21 please present Mr. Kerr.

22 CLERK OF COURT: What say
23 you for defendant Coulter?

24 MR. DAVIS: Please excuse
25 the juror from this case.

1 CLERK OF COURT: Mr. Kerr,
2 please have a seat back in the
3 audience. You've been excused
4 from the trial of this case.

5 Juror number forty-six,
6 John Donehue.

7 What say you for the
8 State?

9 MS. WILSON: Please
10 present Mr. Donehue.

11 CLERK OF COURT: What say
12 you for defendant Coulter?

13 MR. DAVIS: Please present
14 this juror.

15 CLERK OF COURT: What say
16 you for defendant Croker?

17 MR. SMILEY: Please excuse
18 this juror from the trial of this
19 case.

20 CLERK OF COURT: Mr.
21 Donehue, please have a seat back
22 in the audience. You've been
23 excused from the trial of this
24 case.

25 Juror number two oh

1 four, John Parker Ford.

2 What say you for the
3 State?

4 MS. WILSON: Please excuse
5 Mr. Ford.

6 CLERK OF COURT: Mr. Ford,
7 please have a seat back in the
8 audience. You've been excused
9 from the trial of this case.

10 Juror number one
11 ninety-seven, Carolyn Woody.

12 What say you for the
13 State?

14 MS. WILSON: Please
15 present Miss Woody.

16 CLERK OF COURT: What say
17 you for defendant Coulter?

18 MR. DAVIS: Please excuse
19 the juror from this case.

20 CLERK OF COURT: Miss
21 Woody, please have a seat back
22 in the audience. You've been
23 excused from the trial of this
24 case.

25 Juror number one

1 ninety-nine, Renee Young.

2 What say you for the
3 State?

4 MS. WILSON: Please
5 present Miss Young.

6 CLERK OF COURT: What say
7 you for defendant Coulter?

8 MR. DAVIS: Please present
9 the juror.

10 CLERK OF COURT: What say
11 you for defendant Croker?

12 MR. SMILEY: Please seat
13 the juror.

14 CLERK OF COURT: Miss
15 Young, please have a seat in the
16 jury box. You've been selected
17 as a juror in this case.

18 Juror number one oh
19 five, William Kline.

20 What say you for the
21 State?

22 MS. WILSON: Please
23 present Mr. Kline.

24 CLERK OF COURT: What say
25 you for defendant Coulter?

1 MR. DAVIS: Please present
2 the juror.

3 CLERK OF COURT: What say
4 you for defendant Croker?

5 MR. SMILEY: Please excuse
6 the juror.

7 CLERK OF COURT: Mr. Kline
8 , please have a seat back in the
9 audience. You've been excused
10 from trial of this case.

11 Juror number one
12 ninety, Douglas Weeks.

13 What say you for the
14 State?

15 MS. WILSON: Please
16 present Mr. Weeks.

17 CLERK OF COURT: What say
18 you for defendant Coulter?

19 MR. DAVIS: Please excuse
20 this juror from this case.

21 CLERK OF COURT: Mr. Weeks
22 , please have a seat back in the
23 audience. You've been excused
24 from the trial of this case.

25 Juror number eighteen,

1 Gladys Bell.

2 What say you for the
3 State?

4 MS. WILSON: Please excuse
5 Miss Bell.

6 CLERK OF COURT: Miss Bell
7 , please have a seat back in the
8 audience. You've been excused
9 from the trial of this case.

10 Juror number
11 fifty-three, Edward Fennell.

12 What say you for the
13 State?

14 MS. WILSON: Please
15 present Mr. Fennell.

16 CLERK OF COURT: What say
17 you for defendant Coulter?

18 MR. DAVIS: Please present
19 the juror.

20 CLERK OF COURT: What say
21 you for defendant Croker?

22 MR. SMILEY: Please seat
23 the juror.

24 CLERK OF COURT: Mr.
25 Fennell, please have a seat in

1 the jury box. You've been
2 selected as a juror in this case.

3 Juror number two twelve,
4 David Yarborough.

5 What say you for the
6 State?

7 MS. WILSON: Please excuse
8 the juror.

9 CLERK OF COURT: Mr.
10 Yarborough, please have a seat
11 back in the audience. You've
12 been excused from the trial of
13 this case.

14 Juror number eighty-six,
15 Jo Henderson.

16 What say you for the
17 State?

18 MS. WILSON: Please
19 present Miss Henderson.

20 CLERK OF COURT: What say
21 you for defendant Coulter?

22 MR. DAVIS: Please present
23 the juror.

24 CLERK OF COURT: What say
25 you for defendant Croker?

1 MR. SMILEY: Please excuse
2 the juror.

3 CLERK OF COURT: Miss
4 Henderson, please have a seat
5 back in the audience. You've
6 been excused from the trial of
7 this case.

8 Juror number one fifty,
9 Michael Reineke.

10 What say you for the
11 State?

12 MS. WILSON: Please
13 present Mr. Reineke.

14 CLERK OF COURT: What say
15 you for defendant Coulter?

16 MR. DAVIS: Please present
17 the juror.

18 CLERK OF COURT: What say
19 you for defendant Croker?

20 MR. SMILEY: Please
21 present the juror.

22 CLERK OF COURT: Mr.
23 Reineke, please have a seat in
24 the jury box. You've been
25 selected as a juror in this case.

1 Juror number one oh six,
2 John Knox.

3 What say you for the
4 State?

5 MS. WILSON: Please excuse
6 Mr. Knox.

7 CLERK OF COURT: Mr. Knox,
8 please have a seat back in the
9 audience. You've been excused
10 from the trial of this case.

11 Juror number two oh
12 eight, James Lefkey.

13 What say you for the
14 State?

15 MR. DAVIS: Please present
16 the juror.

17 CLERK OF COURT: We're
18 still on the State.

19 MS. WILSON: We agree.

20 CLERK OF COURT: So then I
21 can ask, what say you for
22 defendant Croker?

23 MR. SMILEY: I'll make it
24 a consensus.

25 CLERK OF COURT: Mr.

1 Lefkey, please have a seat in the
2 jury box. You've been selected
3 as a juror in this case.

4 Juror number one
5 forty-one, Sandra Pitzer.

6 What say you for the
7 State?

8 MS. WILSON: Please seat
9 Miss Pitzer.

10 CLERK OF COURT: What say
11 you for defendant Coulter?

12 MR. DAVIS: Please present
13 the juror.

14 CLERK OF COURT: What say
15 you for defendant Croker?

16 MR. SMILEY: Please seat
17 the juror.

18 CLERK OF COURT: Miss
19 Pitzer, please have a seat in the
20 jury box. You've been selected
21 as a juror in this case.

22 Juror number nineteen,
23 Anne Bergin.

24 What say you for the
25 State?

1 MS. WILSON: Please
2 present Miss Bergin.

3 CLERK OF COURT: What say
4 you for defendant Coulter?

5 MR. DAVIS: Please excuse
6 the juror from this case.

7 CLERK OF COURT: Miss
8 Bergin, please have a seat back
9 in the audience. You've been
10 excused from the trial of this
11 case.

12 Juror number twenty,
13 Kathryn Bible.

14 What say you for the
15 State?

16 MS. WILSON: Please
17 present Miss Bible.

18 CLERK OF COURT: What say
19 you for defendant Coulter?

20 MR. DAVIS: Please present
21 the juror.

22 CLERK OF COURT: What say
23 you for defendant Croker?

24 MR. SMILEY: Please excuse
25 the juror.

1 CLERK OF COURT: Miss
2 Bible, please have a seat back in
3 the audience. You've been
4 excused from the trial of this
5 case.

6 Juror number one oh
7 nine, Lashanna Lance.

8 What say you for the
9 State?

10 MS. WILSON: Please excuse
11 the juror.

12 CLERK OF COURT: Miss
13 Lance, please have a seat back in
14 the audience. You've been
15 excused from the trial of this
16 case.

17 Juror number one none,
18 Jennifer Wertz.

19 What say you for the
20 State?

21 MS. WILSON: Please
22 present Miss Wertz.

23 CLERK OF COURT: What say
24 you for defendant Coulter?

25 MR. DAVIS: Please present

1 the juror.

2 CLERK OF COURT: What say
3 you for defendant Croker?

4 MR. SMILEY: Please excuse
5 the juror.

6 CLERK OF COURT: Miss
7 Wertz, please have a seat back in
8 the audience. You've been
9 excused as a juror from the trial
10 in this case.

11 Juror number two oh
12 five, David Hill.

13 What say you for the
14 State?

15 MS. WILSON: Please
16 present Mr. Hill.

17 CLERK OF COURT: What say
18 you for defendant Coulter?

19 MR. DAVIS: Please present
20 the juror.

21 CLERK OF COURT: What say
22 you for defendant Croker?

23 MR. SMILEY: Please excuse
24 the juror.

25 CLERK OF COURT: Mr. Hill,

1 please have a seat back in the
2 audience. You've been excused
3 from the trial of this case.

4 Juror number two oh
5 three, Leonard Delsario.

6 What say you for the
7 State?

8 MS. WILSON: Please
9 present Doctor Delsario.

10 CLERK OF COURT: What say
11 you for defendant Coulter?

12 MR. DAVIS: Please present
13 the juror.

14 CLERK OF COURT: What say
15 you for defendant Croker?

16 MR. SMILEY: Please seat
17 the juror.

18 CLERK OF COURT: Mr.
19 Delsario, please have a seat in
20 the jury box. You've been
21 selected as a juror in this case.

22 Juror number fifty-nine,
23 John Foster.

24 What say you for the
25 State?

1 MS. WILSON: Please
2 present Mr. Foster.

3 CLERK OF COURT: What say
4 you for defendant Coulter?

5 MR. DAVIS: Please present
6 the juror.

7 CLERK OF COURT: What say
8 you for defendant Croker?

9 MR. SMILEY: Please excuse
10 the juror.

11 CLERK OF COURT: Mr.
12 Foster, please have a seat back
13 in the audience. You've been
14 excused from the trial of this
15 case.

16 Juror number one twelve,
17 Joy Lefter.

18 What say you for the
19 State?

20 MS. WILSON: Please excuse
21 Miss Lefter.

22 CLERK OF COURT: Miss
23 Lefter, please have a seat back
24 in the audience. You've been
25 excused from the trial of this

1 case.

2 Juror number one
3 seventy-eight, Mary Terry.

4 What say you for the
5 State?

6 MS. WILSON: Please
7 present Miss Terry.

8 CLERK OF COURT: What say
9 you for defendant Coulter?

10 MR. DAVIS: Please excuse
11 the juror from the trial of this
12 case.

13 CLERK OF COURT: Miss
14 Terry, please have a seat back in
15 the audience. You've been
16 excused as a juror from the trial
17 of this case.

18 Juror number
19 seventy-two, Taharqa Givens.

20 What say you for the
21 State?

22 MS. WILSON: Please excuse
23 this juror.

24 CLERK OF COURT: Mr.
25 Givens, please have a seat back

1 in the audience. You've been
2 excused as a juror from the trial
3 of this case.

4 Juror number one
5 nineteen, Paul Mastrangelo.

6 What say you for the
7 State?

8 MS. WILSON: Please
9 present Mr. Mastrangelo.

10 CLERK OF COURT: What say
11 you for defendant Coulter?

12 MR. DAVIS: Please present
13 the juror.

14 CLERK OF COURT: What say
15 you for defendant Croker?

16 MR. SMILEY: Please excuse
17 the juror.

18 CLERK OF COURT: Mr.
19 Mastrangelo, please have a seat
20 back in the audience. You've
21 been excused as a juror from the
22 trial of this case.

23 MR. SMILEY: Mr. Clerk, if
24 I could just check strikes. If I
25 understand correctly, I've

1 exercised eight on behalf of
2 Mr. Croker. Mr. Coulter has
3 exercised seven. And the State
4 has exercised seven. Is that
5 correct?

6 CLERK OF COURT: Correct.
7 Juror number one oh two,
8 James Kerr.

9 What say you for the
10 State?

11 MS. WILSON: Please
12 present Mr. Kerr.

13 CLERK OF COURT: What say
14 you for defendant Coulter?

15 MR. DAVIS: Please excuse
16 the juror from this case.

17 CLERK OF COURT: Mr. Kerr,
18 please have a seat back in the
19 audience. You've been excused as
20 a juror from the trial of this
21 case.

22 It's now eight strikes
23 for defendant Coulter.

24 Juror number two oh
25 nine, Todd Peppin.

1 What say you for the
2 State?

3 MS. WILSON: Please
4 present Mr. Peppin.

5 CLERK OF COURT: What say
6 you for defendant Coulter?

7 MR. DAVIS: Please present
8 this juror.

9 CLERK OF COURT: What say
10 you for defendant Croker?

11 MR. SMILEY: Please seat
12 the juror.

13 CLERK OF COURT: Mr.
14 Peppin, please have a seat in the
15 jury box. You've been selected
16 as juror in this case.

17 Juror number one
18 eighteen, Anna Martine.

19 What say you for the
20 State?

21 MS. WILSON: Please
22 present Miss Martine.

23 CLERK OF COURT: What say
24 you for defendant Coulter?

25 MR. DAVIS: Please present

1 this juror.

2 CLERK OF COURT: What say
3 you for defendant Croker?

4 MR. SMILEY: Please seat
5 the juror.

6 CLERK OF COURT: Miss
7 Martine, please have a seat in
8 the jury box. You've been
9 selected as a juror in the trial
10 of this case.

11 Juror number seven, John
12 Anderson.

13 What say you for the
14 State?

15 MS. WILSON: Please
16 present Mr. Anderson.

17 CLERK OF COURT: What say
18 you for defendant Coulter?

19 MR. DAVIS: Please excuse
20 this juror from this case.

21 CLERK OF COURT: Mr.
22 Anderson, please have a seat back
23 in the audience. You've been
24 excused as a juror from the trial
25 of this case.

1 It's nine strikes for
2 defendant Coulter.

3 Juror number thirty,
4 Patsy Butler.

5 What say you for the
6 State?

7 MS. WILSON: Please
8 present Miss Butler.

9 CLERK OF COURT: What say
10 you for defendant Coulter?

11 MR. DAVIS: Please seat
12 the juror.

13 CLERK OF COURT: What say
14 you for defendant Croker?

15 MR. SMILEY: Please seat
16 the juror.

17 CLERK OF COURT: Miss
18 Butler, please have a seat in the
19 jury box. You've been selected
20 as a juror in the trial of this
21 case.

22 Juror number one
23 seventy-two, Joyce Stone.

24 What say you for the
25 State?

1 MS. WILSON: Please
2 present Miss Stone.

3 CLERK OF COURT: What say
4 you for defendant Coulter?

5 MR. DAVIS: Please present
6 th juror.

7 CLERK OF COURT: What say
8 you for defendant Croker?

9 MR. SMILEY: Please seat
10 the juror.

11 CLERK OF COURT: Miss
12 Stone, please have a seat in the
13 jury box. You've been selected
14 as a juror in this case.

15 Juror number one
16 sixty-four, Rhondette Smiley.

17 What say you for the
18 State?

19 MR. SMILEY: For the
20 Court's information, there is no
21 relationship.

22 CLERK OF COURT: What say
23 you for the State?

24 MS. WILSON: Please
25 present Miss Smiley.

1 CLERK OF COURT: What say
2 you for defendant Coulter?

3 MR. DAVIS: Please present
4 the juror.

5 CLERK OF COURT: What say
6 you for defendant Croker?

7 MR. SMILEY: Beg the
8 Court's indulgence.

9 Please excuse the juror.

10 CLERK OF COURT: Miss
11 Smiley, please have a seat back
12 in the audience. You've been
13 excused as a juror from the trial
14 of this case.

15 That's nine strikes for
16 defendant Croker.

17 Juror number one
18 seventy, Willie Staggers.

19 What say you for the
20 State?

21 MS. WILSON: Please excuse
22 Mr. Staggers.

23 CLERK OF COURT: Mr.
24 Staggers, please have a seat back
25 in the audience. You've been

1 excused as a juror from the trial
2 of this case.

3 Eight strikes for the
4 State.

5 Juror number
6 twenty-seven, Doyle Burlison.

7 What say you for the
8 State?

9 MS. WILSON: Please
10 present Mr. Burlison.

11 CLERK OF COURT: What say
12 you for defendant Coulter?

13 MR. DAVIS: Please excuse
14 the juror from this case.

15 CLERK OF COURT: Mr.
16 Burlison, please have a seat back
17 in the audience. You've been
18 excused from the trial of this
19 case.

20 That's ten strikes for
21 defendant Coulter.

22 Juror number
23 fifty-seven, Jodi Fogle.

24 What say you for the
25 State?

1 MS. WILSON: Please
2 present Miss Fogle.

3 CLERK OF COURT: Any
4 challenge from defendant Coulter?

5 MR. DAVIS: No challenge.

6 CLERK OF COURT: What say
7 you for defendant Croker?

8 MR. SMILEY: Please seat
9 the juror.

10 CLERK OF COURT: Miss
11 Fogle, please have a seat in the
12 jury box. You've been selected
13 as a juror in the trial of this
14 case.

15 Alternates, two or
16 three?

17 THE COURT: Three.

18 CLERK OF COURT: Now
19 picking for alternates. Strikes
20 are one, two, and two.

21 First alternate is juror
22 number one hundred, Jack Kemp.

23 What say you for the
24 State?

25 MS. WILSON: Please

1 present Mr. Kemp.

2 CLERK OF COURT: What say
3 you for defendant Coulter?

4 MR. DAVIS: Please excuse
5 the juror from this case.

6 CLERK OF COURT: Mr. Kemp,
7 please have a seat back in the
8 audience. You've been excused as
9 a juror from the trial of this
10 case.

11 Juror number
12 twenty-four, Richardine Britt.
13 What say you for the
14 State?

15 MS. WILSON: Please
16 present Miss Britt.

17 CLERK OF COURT: What say
18 you for defendant Coulter?

19 MR. DAVIS: Please present
20 the juror.

21 CLERK OF COURT: What say
22 you for defendant Croker?

23 MR. SMILEY: Please seat
24 the juror.

25 CLERK OF COURT: Miss

1 Britt, please have a seat in the
2 jury box. You've been selected
3 as a juror in the trial of this
4 case.

5 Now picking for the
6 second alternate.

7 Juror number
8 twenty-eight, Robert Burnell.

9 What say you for the
10 State?

11 MS. WILSON: Please excuse
12 Mr. Burnell.

13 CLERK OF COURT: Mr.
14 Burnell, please have a seat back
15 in the audience. You've been
16 excused as a juror from the trial
17 of this case.

18 Juror number one
19 ninety-five, Wilma Wilson.

20 Any challenge from the
21 State?

22 MS. WILSON: No, sir.

23 THE COURT: What say you
24 for defendant Coulter?

25 MR. DAVIS: Please present

1 the juror.

2 CLERK OF COURT: What say
3 you for the defendant Croker?

4 MR. SMILEY: Please excuse
5 the juror.

6 CLERK OF COURT: Miss
7 Wilson, please have a seat back
8 in the audience. You've been
9 excused from the trial of this
10 case.

11 Juror number sixty-four,
12 Frank Gadson.

13 Any challenge from the
14 State?

15 MS. WILSON: No, sir.

16 CLERK OF COURT: What say
17 you for defendant Coulter?

18 MR. DAVIS: Please present
19 the juror.

20 CLERK OF COURT: What say
21 you for defendant Croker?

22 MR. SMILEY: Please seat
23 the juror.

24 CLERK OF COURT: Mr.
25 Gadson, please have a seat in the

1 jury box. You've been selected
2 as a juror in this case.

3 Picking for third
4 alternate.

5 Juror number forty,
6 Matthew Compton.

7 What say you for the
8 State?

9 MS. WILSON: Please
10 present the juror.

11 CLERK OF COURT: What say
12 you for defendant Coulter?

13 MR. DAVIS: Please present
14 the juror.

15 CLERK OF COURT: What say
16 you for defendant Croker?

17 MR. SMILEY: Please seat
18 the juror.

19 CLERK OF COURT: Mr.
20 Compton, please have a seat in
21 the jury box. You've been
22 selected as a juror in this case.

23 Your Honor, the jury has
24 been select and are seated.

25 THE COURT: Any motions

1 regarding selection of the jury?

2 From the State?

3 **MS. WILSON:** No, ma'am.

4 **THE COURT:** Any from the
5 defendant Coulter?

6 **MR. DAVIS:** Just one
7 moment, your Honor.

8 No motions at this time,
9 your Honor.

10 **THE COURT:** Mr. Smiley?

11 **MR. SMILEY:** None from
12 Mr. Croker, your Honor.

13 **THE COURT:** Ladies and
14 gentlemen, the remaining members
15 of the panel, we appreciate your
16 patience and your time. Today it
17 has taken a lot longer than it
18 would normally take. Generally
19 we are done by about noon.

20 We appreciate your
21 patience. We know that we've
22 probably worn on it a little bit
23 today. You all are excused for
24 the remainder of the day.

25 I suspect that Judge

1 Hughston will be picking a civil
2 jury in the morning and that you
3 all will probably have to return
4 in the morning. Many of the
5 judges had to attend the funeral
6 of Judge Connor who unfortunately
7 left us this weekend.

8 Please call the jury
9 information line after six
10 o'clock this evening and it will
11 have all of the instructions that
12 are necessary for you.

13 Again we appreciate your
14 patience, and I hope you have a
15 great day. You're excused.

16 (Whereupon, the members
17 of the jury panel not selected
18 for the trial of this matter are
19 excused from the courtroom.)

20 MS. WILSON: Your Honor,
21 may we approach?

22 THE COURT: Yes.

23 (Whereupon, there was an
24 off-the-record bench conference.)

25 THE COURT: Ladies and

1 gentlemen, as I indicated, you
2 all have been selected to serve
3 on the jury of the State versus
4 Ronald Coulter and the State
5 versus Ivory Coker a/k/a Ivory
6 Croker.

7 I'm going to dismiss you
8 at this time for the remainder of
9 the day. There are some matters
10 of law that I need to take up
11 with the attorneys. We
12 anticipate that these matters
13 will take us until 11:30
14 tomorrow.

15 I'm going to ask that
16 you return to your jury room at
17 11:30 tomorrow. The bailiffs are
18 going to show you how to gain
19 entry into the building and to
20 come directly to your jury room.

21 During this break, and I
22 emphasize this very clearly and I
23 hope that you all listen to me
24 very clearly, I emphasize and I
25 instruct you that you're to have

1 no discussion about this case
2 among yourselves or with anyone
3 else.

4 In addition, you're not
5 to read, listen to, or watch any
6 media reports about this case.
7 That includes the newspaper,
8 television, or radio. And I
9 anticipate based on the previous
10 coverage that there will be
11 coverage in all of those media
12 outlets.

13 In addition, you are not
14 to read anything or watch any
15 media reports on the Internet,
16 nor are you to do any independent
17 research about any issue or
18 matter involved in this case on
19 the Internet. The Court takes
20 this instruction very seriously
21 and the Court will take
22 appropriate action if it is not
23 followed.

24 If any of you become
25 aware of anyone not following

1 those instructions, you are to
2 report it to the Court
3 immediately.

4 In addition, when you
5 return to the courthouse in the
6 morning, please have no contact
7 with anyone in or about the
8 courthouse. Again, as I told you
9 earlier, an innocent conversation
10 could be observed by a third
11 party and very easily
12 misconstrued.

13 I hope that you all have
14 a wonderful day and we'll see you
15 tomorrow at 11:30. If you would
16 go with the bailiffs, they're
17 going to show you what you need
18 to do.

19 (Whereupon, the jury
20 leaves the courtroom at
21 2:14 p. m.)

22 THE COURT: Okay. The
23 jurors are excused.

24 All right. I would
25 imagine that we're all hungry. I

1 know that I'm hungry.

2 I would imagine,
3 however, that you all could
4 initially agree upon on the
5 motion to sequester the
6 witnesses.

7 MS. WILSON: Your Honor --

8 THE COURT: That's
9 Mr. Smiley's motion.

10 MS. WILSON: Your Honor,
11 the issue I have is with my
12 victim's family, I believe under
13 the victims' rights --

14 THE COURT: Well, I think
15 under the statute they can't be
16 excluded. Anybody else I guess
17 you all would agree that --

18 MR. DURANT: Is there
19 anybody in particular he's
20 interested in because a lot of
21 this really has nothing to do
22 with the core facts. A lot of
23 these people are, you know,
24 co-workers of the, the victim in
25 Virginia.

1 MR. SMILEY: I don't know
2 what they're going to testify to,
3 your Honor. It's just as a
4 general rule in the case that's
5 going to have a great deal of lay
6 testimony and some conflicting
7 police testimony, I make the
8 motion to sequester.

9 I think out of an
10 abundance of caution. Once it's
11 out of the bag it's impossible to
12 get it back. I would ask that
13 the witnesses be sequestered.

14 THE COURT: I don't have a
15 problem with the sequestration
16 except to the extent that the
17 victim statute is applicable. I
18 don't think they can be excluded.

19 MS. WILSON: Your Honor, I
20 believe we also should be
21 entitled to have investigators
22 who -- we had two primary
23 agencies involved in this, North
24 Charleston and the F. B. I.

25 And I'd ask that each of

1 those be allowed. In the past we
2 have allowed our office
3 investigators to be in and out,
4 I'm sure the Public Defenders'
5 investigators need to be in and
6 out. I'm not sure if Mr. Smiley
7 has one.

8 MR. SMILEY: I don't
9 anticipate calling an
10 investigator to the stand, your
11 Honor, as a witness, it's not
12 listed on my witness list as I
13 didn't see theirs listed. But I
14 have no problem with the
15 investigator with the office
16 coming back and forth, but we
17 have one case agent in this case
18 or two?

19 THE COURT: They have two
20 based on --

21 MS. WILSON: We have two.

22 MR. SMILEY: So we can --
23 I've got three and four, there's
24 going to be testimony between the
25 two.

1 THE COURT: Well, Miss
2 Wilson has indicated that those
3 are her two primary case agents.
4 I think she's entitled to have
5 them also.

6 MS. WILSON: Your Honor,
7 we would also ask that that
8 sequestration be reciprocal for
9 both defendants Coulter and
10 Croker.

11 THE COURT: I assumed that
12 it was.

13 MS. WILSON: And that
14 would include their, their family
15 members who are witnesses.

16 THE COURT: I assumed that
17 it was.

18 MR. SMILEY: I would ask
19 his wife to remain in the hall.

20 THE COURT: All right. We
21 will break for lunch until --
22 what time does that clock over
23 there say?

24 MS. WILSON: 2:20.

25 THE COURT: We'll break

1 until 3:20 for lunch.

2 MS. WILSON: Thank you
3 very much.

4 THE COURT: Oh, we have to
5 deal with the issue of bond. I
6 completely forgot.

7 MS. WILSON: Your Honor,
8 at this time the State would move
9 to have the defendants taken into
10 custody. I believe under the
11 bond statutes the bondsmen are
12 required to have the defendants
13 present at trial and are not
14 responsible once they appear, and
15 we would ask that they be taken
16 into custody.

17 THE COURT: Mr. Davis.

18 MR. DAVIS: Your Honor, in
19 anticipation of this we have
20 spoken with Mr. Friertag who is
21 on the bond for Mr. Coulter.

22 We first of all ask the
23 Court to allow him to remain out
24 on bond. He has appeared every
25 time for court. We've been in

1 court on many occasions, both for
2 bond matters, for the notice of
3 the direct indictments. He's
4 appeared here today.

5 He was originally
6 working in Mexico at one point.
7 He avails himself for this Court
8 and intends to be here for court.

9 We first of all ask you
10 to allow him to remain at home
11 with his family. If the Court is
12 not inclined to do so, we have
13 made contact with his bondsman
14 who agrees that he would stay on
15 any type of bond the Court would
16 subsequently order.

17 He will make himself
18 present to the Court at the time
19 that that is appropriate. He is
20 not here this morning to sit
21 through this entire jury process,
22 but he's available, he's on phone
23 stand-by, and I'd ask the Court
24 to allow a hearing if you're not
25 inclined at this point to allow

1 my client to remain --

2 THE COURT: On what bias
3 would I be required to have a
4 hearing about his bond? What
5 statutory provision are you
6 relying on or case law?

7 MR. DAVIS: Your Honor,
8 I'm simply stating this. That
9 he's availed himself to the Court
10 at every opportunity and that if
11 the Court has concerns about him
12 being present or being a danger
13 to the community, those are
14 addressed in a previous bond
15 which we would consent to
16 continue on as well as the
17 bondsman would consent to
18 continue on.

19 He's not here today.
20 I'm representing now on his
21 behalf. I'm saying that he would
22 be present and appear before the
23 Court, should that be necessary.

24 We'd ask that if you're
25 not inclined to simply allow

1 Mr. Coulter to return on his own
2 recognisance as he has several
3 times, at least a half a dozen
4 times, we'd ask for that time so
5 that the bondsman could indicate
6 to the Court that he would be
7 responsible for his appearance,
8 this afternoon, tomorrow, and
9 during the rest of the time
10 during the pendency of this
11 trial.

12 THE COURT: Mr. Smiley.

13 MR. SMILEY: I join with
14 Mr. Davis, your Honor. If
15 nothing else, I would ask that
16 they be left out until the jury's
17 been sworn and jeopardy attaches
18 in this case.

19 THE COURT: That's an
20 interesting issue.

21 MR. SMILEY: I understand,
22 you made it clear your position
23 at our status conference that if
24 the State opposed that you had an
25 inclination not to leave one out

1 on bond and I'm not going to -- I
2 understand the judge's -- your
3 Honor's position.

4 THE COURT: Well, then
5 I'll tell you the, the, my
6 concern. Generally I have taken
7 the position that folk can remain
8 out on bond and I took that
9 position until a list of recent
10 experiences where I lost
11 confidence in that process.

12 And the problem that I
13 have is that my main concern is
14 the defendants appearing for
15 trial, and the problem and the
16 concern and the whole logistical
17 problem that I've run into in the
18 past and most recent path -- most
19 recent past is that after a few
20 days of trial a person doesn't
21 show up and then I'm left with
22 trying the rest of the case in
23 someone's absence.

24 And I don't think that
25 that is in anyone's best

1 interests, least of all the
2 system's best interest and it
3 working as it should.

4 So basically of late
5 I've taken the position that
6 unless the State consents to it
7 that the general procedure will
8 be followed because that's the
9 only way I can assure a
10 defendant's presence at court,
11 because everybody that didn't
12 show back up had a history of
13 coming to every proceeding prior
14 to that. And when the trial
15 potentially took on an air that
16 they were not happy with or for
17 whatever reason, got afraid or
18 fear set in, they just didn't
19 come back.

20 And I just think that
21 once you invest -- it's just not
22 in the court systems's best
23 interest I guess for a lack of a
24 way of putting it, and in the
25 best of our own recourses that we

1 do at trial to prevent for
2 someone not to come back and then
3 us having wasted a substantial
4 amount of time on a trial.

5 And even though the
6 bondsman may have indicated that
7 they will stay on the bond, they
8 can't, they don't live with this
9 person. They can't guaranty for
10 me that they will be here, and
11 the only thing that I'm left with
12 then is forfeiting their bond and
13 that doesn't help me at all.

14 MR. SMILEY: Your Honor,
15 my client understands and is
16 prepared to go into custody. I
17 would just ask that he do that
18 once the jury is sworn and this
19 trial is going forward.

20 MS. WILSON: Judge, the
21 case has been called to trial.
22 The bondsman's duties are over as
23 of now. For that to be changed
24 they have to re-undertake, they
25 have to undertake this once again

1 in writing.

2 Our office has consulted
3 with both bondsmen and they tell
4 us unless the State consents that
5 they aren't willing to go on.

6 Now I don't know why
7 there's a difference in what's
8 been represented, but this case
9 has been called for trial.

10 MR. SMILEY: Be careful
11 about what I've represented at
12 that point. I said if your Honor
13 would entertain it I would bring
14 the bonds man forward to see what
15 his response would be at that
16 time.

17 THE COURT: Well, if you
18 all --

19 MS. WILSON: That -- I'm
20 not sure --

21 THE COURT: If you all
22 want to do that later, you can.
23 But the Court is going to follow
24 the procedure that its always
25 followed. It's nothing personal

1 I guess for lack of a way of
2 putting it to Mr. Croker, I
3 apologize, or to Mr. Coulter.

4 MR. DAVIS: Your Honor --

5 THE COURT: It's just that
6 it really is in their best
7 interests also that -- sometimes,
8 you know, folks don't come back
9 and they get acquitted.

10 MR. SMILEY: Your Honor,
11 if we could just address the
12 Ivory Coker a/k/a Croker, I don't
13 know where the Coker ever came
14 from.

15 My client has always --
16 I've known him for a long time
17 and he's always been known as
18 Croker --

19 THE COURT: Okay.

20 MR. SMILEY: So it's a
21 typo, and on behalf of --

22 MS. WILSON: And, your
23 Honor, we'd move to amend the
24 indictment to strike --

25 MR. SMILEY: Exactly.

1 MS. WILSON: Ivory Coker.

2 THE COURT: It's granted
3 without objection.

4 MR. SMILEY: Thank you
5 very much.

6 THE COURT: You're
7 welcome. And from now on we'll
8 refer to Mr. Croker as Ivory
9 Croker.

10 MR. SMILEY: Thank you.

11 THE COURT: I'll see you
12 all at 3:30.

13 (The Judge leaves the
14 courtroom at 2:27 p. m.)

15

16

17

18

19 AFTERNOON SESSION

20 (The Judge enters the
21 courtroom at 3:32 p. m.)

22 THE COURT: Ready to
23 proceed?

24 MS. WILSON: Your Honor,
25 our officers had to walk around

1 to get here. They should be here
2 shortly.

3 THE COURT: Okay. Does
4 the State plan to introduce any
5 prior convictions of Mr. Croker?

6 MR. DURANT: Pardon me,
7 your Honor?

8 THE COURT: I said does
9 the State plan to introduce any
10 prior convictions of Mr. Croker?

11 MR. DURANT: I'll defer to
12 Ms. Wilson.

13 MS. WILSON: Any prior
14 convictions?

15 THE COURT: Uh-huh.

16 MS. WILSON: You mean if
17 he testifies?

18 THE COURT: I'm referring
19 to the motion in limine to
20 determine the admissibility of
21 the defendant's prior
22 convictions.

23 I'm trying to determine
24 if you all plan to seek to admit
25 any so I that can determine if

1 this motion is viable.

2 **MS. WILSON:** Your Honor,
3 the defendant I believe has a
4 1998 conviction looks like, based
5 on the rap sheet, for either
6 possession with intent to
7 distribute or distribution of
8 cocaine, for which he received a
9 ten-year sentence, suspended on
10 probation for five years. It was
11 reduced from trafficking, looks
12 like to me.

13 Based on the rest of his
14 record, I think that would be the
15 only one that we would attempt,
16 attempt to use to impeach him
17 with.

18 **MR. SMILEY:** So one
19 conviction.

20 **THE COURT:** Uh-huh.

21 **MR. SMILEY:** Is that
22 intent to distribute cocaine in
23 1998?

24 **THE COURT:** In '98.

25 **MS. WILSON:** '98.

1 MR. SMILEY: I don't have
2 any objection about that.

3 THE COURT: Okay. Are
4 there going to be any Lyle issues
5 and that is in reference to the
6 motion to exclude testimony of
7 prior bad acts?

8 MS. WILSON: I don't
9 believe there's any evidence that
10 we would consider Lyle.

11 MR. SMILEY: Then that
12 takes care of that one for me.

13 THE COURT: Pardon me?

14 MR. SMILEY: Then that
15 takes care of that one for me.

16 MR. DURANT: May I speak
17 to co-counsel?

18 THE COURT: Certainly.

19 (Whereupon, Mr. Durant
20 and Ms. Wilson have a private,
21 off-the-record conversation.)

22 MR. DURANT: Your Honor,
23 just, just with regard to that
24 particular issue, what we do in
25 the Jackson V. Denno here in a

1 second, it will become apparent
2 when you see the defendant's
3 statement that there's some, some
4 language in there concerning him
5 making runs and selling heroin
6 and things like that. It's more
7 in terms of an alibi as to where
8 he was on the night in question.

9 To the extent that could
10 be construed as Lyle evidence
11 then, yes, we would intend to put
12 that into evidence, but anything
13 unrelated to that, I'm not aware
14 of anything other than that.

15 THE COURT: Okay.

16 MR. SMILEY: And, your
17 Honor --

18 THE COURT: You're all
19 going to have speak up a little
20 bit more. This room is really
21 large and at some point your
22 voices start to trail off and I'm
23 not certain the court reporter
24 got the last part of what
25 Mr. Durant said in here.

1 THE COURT REPORTER: Yes,
2 ma'am, I did.

3 THE COURT: Okay.

4 MR. SMILEY: And I think I
5 can make that area real clear,
6 and it's a tactical decision on
7 my behalf in speaking with my
8 client as the statement in
9 Jackson V. Denno, assuming it was
10 voluntary and all of that
11 contains bad acts and that he
12 makes admissions to going to the
13 foot of the Cooper River Bridge
14 for the purpose of selling
15 cocaine, he admits to smoking
16 marijuana, and he stepped out of
17 where he was to smoke marijuana,
18 tactically, I've discussed that
19 with my client, and we are not
20 moving to redact or have that
21 part of his statement taken out
22 because I think it defeats his
23 statement of where he was.

24 So taking it off the
25 State and putting it on me, very

1 clearly I am not making a motion
2 as to that in his statement. I
3 was talking about any other bad
4 acts.

5 MR. DAVIS: Your Honor, I
6 feel compelled at this time to
7 talk to the Court about potential
8 Lyle issues. The State indicates
9 they would intend to get in what
10 they feel would be Lyle material.

11 There was another, a
12 second conversation between
13 Mr. Croker, Mr. Smiley's client,
14 to law enforcement in which he
15 indicated that he in fact sold a
16 quantity of cocaine to my client.

17 Now the State has
18 indicated there's no Lyle -- no
19 question that they intend to get
20 into, but I'd just like that to
21 be clear now so that it will be
22 clear where --

23 MR. SMILEY: I would
24 like -- that's not part of
25 placing my person somewhere else.

1 That's a separate issue, your
2 Honor, that, if they intended to
3 introduce that, I would suggest
4 that it's Lyle.

5 THE COURT: Madam
6 solicitor.

7 MS. WILSON: Your Honor,
8 regarding an oral statement that
9 the -- the -- Mr. Croker made at
10 the time he was giving his
11 written statement, I believe he
12 admitted to selling Mr. Croker
13 cocaine during the weekend in
14 question.

15 We would agree not to go
16 into that portion of the
17 statement. So that it's not
18 admissible against Mr. Coulter.
19 And of course we'll redact that
20 part or won't ask that part.

21 MR. DURANT: I don't
22 believe that part is --

23 MS. WILSON: I don't
24 believe --

25 MR. DURANT: -- in the

1 written statement at all.

2 MR. SMILEY: It's not.

3 It's in the notes from the

4 F. B. I. agent when --

5 MR. DURANT: It's in the

6 notes from, from when the

7 statement was taken.

8 THE COURT: Okay.

9 MR. SMILEY: That solves

10 that.

11 THE COURT: Okay. Now as
12 regarding the motion to suppress
13 statements, Jackson versus Denno,
14 are we ready to proceed?

15 MR. DURANT: Yes, your
16 Honor.

17 THE COURT: You may call
18 your first witness.

19 MR. DURANT: State would
20 call Alan Kramitz.

21

22

23

24

25

Kramitz -- Direct by Mr. Durant

1 A L A N R I C H A R D
2 K R A M I T Z, having been called
3 as a witness, is duly sworn and
4 testifies as follows:

5 THE COURT: You may
6 proceed, Mr. Durant.

7 MR. DURANT: Thank you,
8 your Honor.

9 THE COURT: You're
10 welcome.

11

12

13

14 DIRECT EXAMINATION BY

15 MR. DURANT:

16 Q Where are you currently
17 employed?

18 A York County
19 Sheriff's Office.

20 Q How long have you been
21 with York County?

22 A About fourteen months.

23 Q And before that where
24 were you employed?

25 A In the North Charleston

Kramitz -- Direct by Mr. Duran

1 Police Department.

2 Q And in what capacity
3 were you employed by the North
4 Charleston Police Department?

5 A Worked in the person's
6 crime unit, the detective unit.

7 Q You were in the
8 detective division?

9 A Yes, sir.

10 Q And were you in the
11 detective division on January
12 sixteenth of 2002?

13 A Yes, I was.

14 Q Were you involved in the
15 investigation of the disappearance of
16 Edwina Simms?

17 A Yes.

18 Q Now on that occasion, on
19 January sixteenth of 2002, did you
20 have an opportunity to talk to the
21 defendant Ivory Croker?

22 A Yes, I did.

23 Q And where did that
24 conversation take place?

25 A At the North Charleston

Kramitz -- Direct by Mr. Durant

1 Police Department, detective
2 division.

3 Q And where exactly at in
4 the police department?

5 A The interview room.

6 Q Okay. And do you recall
7 who was with you on that day?

8 A Yes. Agent Mc Cants of
9 the F. B. I.

10 Q And this would be Miss
11 Mc Cants over here, seated in the
12 back of the courtroom. Is that
13 correct?

14 A Yes, sir.

15 Q And I believe at this
16 time the defendant had already been
17 taken into custody. Is that correct?

18 A That's correct.

19 Q Now, did you have an
20 opportunity to read him his rights
21 under the Miranda decision?

22 A Yes, I did.

23 Q And how did you go about
24 doing that?

25 A North Charleston has a

Kramitz -- Direct by Mr. Duran

1 standard form which is used and I
2 read it right from the form.

3 Q Okay.

4 (At this time the
5 Miranda Rights form previously
6 referred to, is received and
7 marked as State's Exhibit No. 1
8 for identification.)

9 Q Detective Kramitz, I
10 hand you what's now been marked as
11 State's exhibit number one for
12 identification and ask if you
13 recognize that document?

14 A Yes, I do.

15 Q And what is that, sir?

16 A It's an advice of
17 constitutional rights that I read to
18 Mr. Coulter -- correction. Mr.
19 Croker.

20 Q And that is the original
21 document that you used that night?

22 A Yes, it is.

23 Q And if you would, just
24 demonstrate to the judge how you went
25 about advising him of his rights

Kramitz --- Direct by Mr. Durant

1 under Miranda.

2 A I explained each and
3 every one. There's, there's five
4 advice of rights. You want me to
5 read each one?

6 Q Yes. Well, let me then
7 you ask this.

8 Did you read him all of
9 his rights first and then ask
10 maybe -- how, how do you,
11 mechanically do you go about it?

12 A I read each one
13 individually to himself. I read each
14 one to him and then I ask him does he
15 understand number one. He would say
16 yeah, he did say yes, and he
17 initialled beside number one.

18 And I continued, number
19 two, three, four, and five.

20 Q Okay. And you did that
21 for each and every one. Is that
22 correct?

23 A Each and every one
24 separately.

25 Q And you read him those

Kramitz -- Direct by Mr. Duran

1 rights exactly as they are printed on
2 that form?

3 A Exactly.

4 Q Did he appear to
5 understand what you were telling him?

6 A Yes.

7 Q Did you promise him
8 anything in order to get him to talk
9 to you?

10 A No, sir.

11 Q Did you threaten him in
12 any way to get him to talk to you?

13 A No, sir.

14 Q Did you make any threats
15 to his family in order to get him to
16 talk to you?

17 A No, sir.

18 Q Did he appear to
19 understand what you were saying?

20 A Yes, sir.

21 Q Did he appear to be
22 under the influence of alcohol or
23 drugs?

24 A No, sir.

25 Q Was he cooperative?

Kramitz -- Direct by Mr. Durant

1 A Yes, sir.

2 Q And did he exhibit any
3 confusion at all during this process?

4 A No, sir.

5 Q At any time did he ask
6 for a lawyer?

7 A No, sir.

8 Q Now, once you advised
9 him of his rights, did you get him to
10 sign anything?

11 A Yes, I did, sir.

12 Q And that is set forth on
13 State's exhibit number one?

14 A Yes, sir, it is.

15 Q What does it say above
16 his signature?

17 A It says: "I fully
18 understand each of these rights
19 explained to me."

20 Q And underneath that
21 there is a signature line. Who
22 signed there?

23 A Ivory Croker.

24 Q And there are places for
25 two witnesses. Who witnessed that?

Kramitz -- Direct by Mr. Duran

1 A Myself and Agent Mc
2 Cants.

3 Q And when were those
4 rights -- when was he advised of
5 those rights?

6 A On January first --
7 sorry. January sixteenth, 2002 at
8 seventeen twenty in the evening.

9 Q Okay. That's what?

10 A 5:20.

11 Q 5:20 in the evening.

12 Now, once he was advised
13 of his constitutional rights under
14 Miranda, did he indicate a
15 willingness to speak with you and
16 Miss Mc Cants?

17 A Yes, he did.

18 Q And did you all in fact
19 have a conversation after that?

20 A Yes, we did.

21 Q And eventually did that
22 conversation result in you obtaining
23 a written statement from the
24 defendant Ivory Croker?

25 A Yes, sir.

Kramitz -- Direct by Mr. Durant

1 Q Prior to taking any
2 written statement from him, did you,
3 did you ask him if he wanted to waive
4 his rights under Miranda and give you
5 a statement?

6 A Yes, sir.

7 Q And is that also
8 reflected on State's exhibit number
9 one?

10 A That's correct.

11 Q And what does it say
12 there?

13 A "Having these rights in
14 mind I wish to waive these rights and
15 answer questions concerning the
16 charge of kidnapping. No threats,
17 forces, or promises of any kind have
18 been made to me by anyone to cause me
19 to waive these rights and/or answer
20 questions."

21 Q And once again is there
22 a signature line under that?

23 A Yes, there is.

24 Q And whose signature
25 appears there?

Kramitz -- Direct by Mr. Duran

1 A Ivory Croker.

2 Q Was that signature
3 witnessed as well?

4 A Yes. By myself and
5 Agent Mc Cants.

6 Q Okay. Thank you, sir.
7 Now once you obtained,
8 advised him of his rights and he
9 signed the written waiver, how did
10 the interview proceed from that
11 point?

12 A We -- myself and Agent
13 Mc Cants explained practically the
14 entire case of the investigation to
15 Ivory, and in light of explaining our
16 side of it, wanted him to give us a
17 statement of what his recollection of
18 that night had occurred.

19 Q Okay. And I believe
20 that eventually -- your conversation
21 was eventually reduced to a written
22 statement. Is that correct?

23 A That's correct.

24 Q Do you recall how many
25 pages that written statement was?

Kramitz -- Direct by Mr. Durant

1 A Two, I believe.

2 Q Now does that statement
3 contain the substance of everything
4 you discussed with Mr. Coker --
5 Croker that evening?

6 A No, sir, it doesn't.

7 Q And what does the actual
8 written statement concern itself?

9 A Just what he did that
10 night, from being out with his wife
11 until later on that day.

12 Q Is that the night of
13 April twenty-one of 2001. Is that
14 correct?

15 A Yes, sir. Yes, sir.

16 Q But it's fair to say
17 that you discussed other things with
18 him other than that one particular
19 night. Is that correct?

20 A Yes.

21 Q Now, you did obtain a
22 written statement from him on that
23 occasion?

24 A Yes, sir.

25 Q And how did you go about

Kramitz -- Direct by Mr. Duran

1 obtaining the written statement?

2 A When Ivory agreed to
3 make the statement, I asked him if he
4 wanted to write the statement himself
5 as he remembered it and knew the
6 incident, or if he wanted me to write
7 it, if he was comfortable with me
8 writing the statement also.

9 Q And what did he indicate
10 to you?

11 A He wanted me to write
12 the statement for him.

13 Q And did you in fact
14 write the statement from him?

15 A Yes, I did.

16 Q And so from that point
17 he would just tell you what had gone
18 on that night and you would put it
19 down in writing. Is that correct?

20 A Correct. I would stop
21 him sometimes so I could catch up
22 with writing. When he would talk I
23 would slow him down a little bit.
24 That's it, though.

25 Q Okay. And once you had

Kramitz -- Direct by Mr. Durant

1 taken the written statement was he
2 given an opportunity to read it?

3 A Yes.

4 Q Or was it read to him?

5 A I read it back to him.

6 Q Okay.

7 A And asked him if that
8 was correct, and he said yes, it was.

9 Q Was he given an
10 opportunity to make any changes that
11 he may have wanted to make?

12 A Yes, sir.

13 Q Did he indicate,
14 indicate to you that he wanted to
15 make any changes?

16 A No, sir.

17 Q Did you have him sign
18 the written statement itself?

19 A Yes, sir.

20 Q And was he given a copy
21 of the statement?

22 A Yes, sir.

23 (At this time Mr.

24 Croker's statement previously
25 referred to, is received and

Kramitz -- Direct by Mr. Duran

1 marked as State's exhibit No. 2
2 for identification.)

3 Q And I hand to you now
4 what's been marked as State's exhibit
5 number two for identification and ask
6 if you recognize that document?

7 A Yes, I do.

8 Q And what is it?

9 A This is, is the
10 statement that Ivory gave me that
11 night with also Agent Mc Cants.

12 Q Okay. And I notice that
13 there are signatures on that. Who
14 all signed it?

15 A Ivory Croker signed it,
16 myself, and Agent Mc Cants witnessed
17 it.

18 Q And did Mr. Croker sign
19 it on both pages?

20 A Yes, sir.

21 Q And was it witnessed on
22 both pages by Agent Mc Cants?

23 A Yes, sir.

24 Q Once again at any time
25 during this evening did you or Ms. Mc

Kramitz -- Direct by Mr. Durant

1 Cants promise him anything?

2 A No, sir.

3 Q Or did you threaten him
4 in any way?

5 A No, sir.

6 Q Court's indulgence.

7 And I believe we already
8 went over this. The written
9 statement just involved where
10 Mr. Croker told he was on the evening
11 of April twenty-first. Is that
12 correct?

13 A Yes, sir.

14 Q The evening of April
15 twenty-first?

16 A Yes, sir.

17 Q Do you recall having a
18 conversation with him concerning
19 obtaining hotel rooms for the
20 codefendant Ron Coulter?

21 A Yes, sir.

22 Q What do you recall him
23 saying about that?

24 A He was trying help Ron
25 get a hotel room.

Kramitz -- Direct by Mr. Duran

1 Q Okay. Did he indicate
2 to you what hotel rooms he was
3 hoping -- what hotels he was seeking
4 to get rooms for Ron?

5 A Yes. I believe it was
6 the Suburban and also for the Budget
7 in reference to coming down.

8 Q And the Suburban Inn
9 would be on Zeke Street and the other
10 one is on Fain Road. Is that
11 correct?

12 A Yes, sir.

13 Q Do you recall in your
14 discussions with Mr. Croker whether
15 he indicated he had seen Mr.
16 Mr. Coulter when Mr. Coulter was down
17 in that, on that trip in April?

18 A Yes, sir.

19 Q Do you recall when he
20 said he had seen Mr. Coulter?

21 A At his, at Ron Coulter's
22 mom's house, mother and father's
23 house.

24 Q And do you recall which
25 day that was?

Kramitz -- Direct by Mr. Durant

1 A No, sir.

2 Q Okay. Was it the night
3 of the twenty-first or another?

4 A I believe it was the
5 night of the twenty-first, sir. I'm
6 not sure.

7 Q You don't remember
8 exactly what day he told you that
9 was?

10 A No, sir.

11 Q And one last thing. Do
12 you recall, do you recall Mr. Croker
13 saying anything to you and Miss Mc
14 Cants in passing as you all were
15 completing this, completing this
16 statement?

17 A Yes, sir. We explained
18 to him we hadn't found Edwina and he
19 made the statement, he made the
20 statement himself that he was afraid
21 of blood and he was afraid of dead
22 bodies.

23 Q Would you please answer
24 any questions defense counsel might
25 have for you.

Kramitz -- Direct by Mr. Duran

1 A Yes, sir.

2 THE COURT: Mr. Smiley,
3 you may proceed.

4 MR. SMILEY: If it please
5 the Court.

6

7

8

9

10

11

12

CROSS-EXAMINATION BY MR.

13

SMILEY:

14

Q

Detective Kramitz, do

15

you have any notes about that

16

interview?

17

A

Not with me, no.

18

Q

And did you take notes?

19

A

Agent Mc Cants did.

20

Q

Agent Mc Cants took the

21

notes of that interview?

22

A

Yes, sir.

23

Q

Where did you arrest

24

Mr. Croker?

25

A

At the Charleston County

Kramitz -- Cross by Mr. Smiley

1 Probation Offices.

2 Q Okay. Do you know what
3 time that was?

4 A No. It was earlier in
5 the afternoon. I'm not sure the
6 exact time.

7 Q Okay. It would have
8 been before five o'clock?

9 A Yes, sir.

10 Q And when he came in to
11 probation to see his agent, I believe
12 that was Katrina Pounds was his agent
13 at that time?

14 A Yes, sir.

15 Q You all were waiting on
16 him?

17 A Yes, sir.

18 Q And you informed him he
19 was under arrest for kidnapping?

20 A Yes, sir.

21 Q And you put him in cuffs
22 at that point?

23 A Yes, sir.

24 Q Did you ask him any
25 questions at that point in time?

Kramitz -- Cross by Mr. Smiley

1 A No, sir.

2 Q Did you ask him who Ron
3 Coulter was or anything to that
4 effect?

5 A Not to my memory, no,
6 sir.

7 Q And you took him out of
8 the probation office and took down to
9 your detective's division?

10 A Yes, sir.

11 Q Okay. Did you read him
12 his rights at probation?

13 A No, sir, we didn't. I
14 wouldn't ask the questions yet so I
15 didn't read him his rights yet.

16 Q Okay. At that point in
17 time he didn't tell you that he had
18 an attorney, Jim Smiley?

19 A No, sir.

20 Q Did he ask you to take
21 him directly to the Charleston County
22 jail?

23 A No, sir.

24 Q And he was driven by
25 yourself with Agent Mc Cants in the

Kramitz -- Cross by Mr. Smiley

1 car from the probation office to the
2 North Charleston Police Department?

3 A Yes, sir.

4 Q Was there anybody else
5 present in the car?

6 A No, sir.

7 Q Upon arrival at the
8 third floor there at the detective's
9 division --

10 A Yes, sir.

11 Q -- where was he placed?

12 A He was placed into a
13 room we'd been using for like a
14 staging room for, for purpose of our
15 investigation.

16 Q Okay. So that room had
17 a whole bunch of stuff to do with the
18 case in it?

19 A Yes, sir.

20 Q How long did he stay in
21 that room?

22 A Five minutes.

23 Q Was he there in that
24 room by himself?

25 A Yes, sir.

Kramitz -- Cross by Mr. Smiley

1 Q When he was in that room
2 had he been read his rights at that
3 point in time?

4 A No, sir.

5 Q Then he was moved from
6 that room to where?

7 A To the interview room.

8 Q Can you describe the
9 interview room?

10 A It's a regular-sized
11 room. I'm not sure the diameters.
12 It's got a table, three chairs I
13 believe and a two-way mirror on the
14 other side.

15 Q Who all was present in
16 the interview room?

17 A Myself and Agent Mc
18 Cants.

19 Q And was anybody watching
20 from the other side of the two-way
21 glass?

22 A Not, not to my
23 knowledge.

24 Q Do you have audio-video
25 capabilities at the North Charleston

Kramitz -- Cross by Mr. Smiley

1 Police Department?

2 A No, sir.

3 Q So you do not have the
4 ability to record the statement or
5 conversation that you have with the
6 defendant. Is that your testimony?

7 A Correct. Yes, sir.

8 Q Okay. Upon entering the
9 interview room, the very first thing
10 you did was bring out the written
11 copy of advisement of rights?

12 A I believe Mr. Croker was
13 sat down, unhandcuffed. I had the
14 package, case file, and, and in the
15 case file I had the Miranda.

16 Q So the very first thing
17 you did was pull that out?

18 A Yes, sir.

19 Q And at no point did he
20 mention who his attorney is and that
21 he wants him?

22 A No, sir.

23 Q Did you tell him that if
24 you tell me where you were that you
25 could go home?

Kramitz -- Cross by Mr. Smiley

1 A No, sir.

2 Q All right. So you go
3 through the Miranda rights one-by-one
4 and he indicates that he wishes to
5 give a statement?

6 A Yes, sir.

7 Q At that point in time
8 did you all have a discussion before
9 anything was written down?

10 A Yes, sir.

11 Q Okay. So you all
12 discussed where he was and what was
13 going on?

14 A No, sir. What we
15 discussed was we explained to him our
16 side of the case, the investigation
17 part of it. We explained the entire
18 investigation we had done coming up
19 to his arrest.

20 Q Okay. And that was
21 after you had advised him of his
22 rights and he said he wanted to
23 cooperate?

24 A Yes.

25 Q Okay. But at that point

Kramitz -- Cross by Mr. Smiley

1 in time you'd gone through his rights
2 one-by-one and he's initialled on
3 each one of those?

4 A Yes, sir.

5 Q And you dated and timed
6 it?

7 A Yes, sir.

8 Q And then you further
9 talked to him about making a
10 statement?

11 A Yes, sir.

12 Q And dated and timed it?

13 A Yes, sir.

14 Q And then at that point
15 you had your case file and you laid
16 out your case for him?

17 A Didn't have the case
18 file. We explained what we --

19 Q Yes. I misunderstood.

20 A Okay.

21 Q You went through what
22 you believed your case to be in a nut
23 shell. Is that it?

24 A Yes, sir.

25 Q And then after that he

Kramitz. -- Cross by Mr. Smiley

1 told you where he had been?

2 A Yes, sir.

3 Q And after he told that,
4 at that point in time you got out a
5 statement to record it, to take it
6 down?

7 A No, sir. I mean I
8 was -- when he was telling me I was
9 writing it down and I was asking him
10 to slow down on certain areas so I
11 could write everything he said.
12 Well, everything pertaining to the
13 statement.

14 MR. SMILEY: Your Honor,
15 so I'm operating off the original
16 could I have State's exhibit two?
17 Thank you.

18 THE COURT: You're
19 welcome.

20 Q So of course at the time
21 that you started to take the
22 statement you filled out the top?

23 A Yes, sir.

24 Q Then you started that
25 interview I believe at -- I can't do

Kramitz -- Cross by Mr. Smiley

1 military time -- 7:25. Let me show
2 you State's exhibit two if that will
3 help you.

4 So that was filled out
5 at the very beginning?

6 A It says here nineteen
7 twenty-five, which is 7:25.

8 Q Okay.

9 A Like I explained before,
10 we explained our entire situation to
11 Ivory. It took quite a while
12 explaining what we had.

13 MR. SMILEY: If I could
14 again use State's exhibit number
15 one.

16 THE COURT: I gave them
17 both to you.

18 MR. SMILEY: Sorry, your
19 Honor.

20 THE COURT: It's okay.

21 Q So according to State's
22 exhibit number one, he waived his
23 rights and agreed to give a statement
24 at about 5:22?

25 A Yes, sir.

Kramitz -- Cross by Mr. Smiley

1 Q And then you sat there
2 and explained your case to him for
3 two hours?

4 A Yes, sir.

5 Q No time during that time
6 did he request an attorney or say he
7 needed his attorney present or
8 anything to that effect?

9 A No, sir. He was very
10 cooperative.

11 Q And at no time did you
12 say just tell us where you were and
13 we'll let you go home?

14 A No, sir.

15 Q And after that
16 recitation of your case you asked him
17 if he agreed to provide you with a
18 statement?

19 A Yes, sir.

20 Q And approximately 7:25
21 you began to record his statement?

22 A Yes, sir.

23 Q And as he would tell you
24 something you would record it.
25 Correct?

Kramitz -- Cross by Mr. Smiley

1 A Yes, sir.

2 Q And you tried to do it
3 as accurately as possible?

4 A Yes, sir.

5 Q At no time during the
6 two hours did he ask for a break or
7 anything like that?

8 A No, sir.

9 Q And at the end of that
10 he was given an opportunity to read
11 this statement?

12 A Yes, sir. And I read it
13 back to him.

14 Q And then he signed it?

15 A Yes, sir, and I asked
16 him if this is correct and he said
17 yes, that's the way it is.

18 MR. SMILEY: No further
19 questions.

20 THE COURT: Any redirect?

21 MR. DURANT: Just one.

22

23

24

25

Kramitz -- Redirect by Mr. Durant

1 REDIRECT EXAMINATION BY

2 MR. DURANT:

3 Q When you say North
4 Charleston doesn't have any video
5 equipment you are talking about in
6 the interview room there?

7 A That's correct, sir.

8 Q And so the North
9 Charleston Police Department or the
10 city probably has some video
11 equipment some where but you just
12 don't have it in the interview room?

13 A Not that. They have it
14 in their cars and, and like that but,
15 no, not in the interview room.

16 MR. DURANT: Okay. I have
17 nothing else of Detective
18 Kramitz.

19 THE COURT: Sir, you may
20 step down.

21 You may call your next
22 witness.

23 MR. DURANT: Cynthia Mc
24 Cants.

25

Mc Cants -- Direct by Mr. Durant

1 C Y N T H I A

2 M C C A N T S, having been called
3 as a witness, is duly sworn and
4 testifies as follows:

5 THE COURT: You may
6 proceed.

7 MR. DURANT: Thank you,
8 your Honor.

9 THE COURT: You're
10 welcome.

11

12

13

14

15

16 DIRECT EXAMINATION BY

17 MR. DURANT:

18 Q Where are you employed,
19 Miss Mc Cants?

20 A I'm employed by the
21 Federal Bureau of Investigation.

22 Q And were you so employed
23 on January sixteenth of 2002?

24 A Yes, I was.

25 Q Did you have an

Mc Cants -- Direct by Mr. Duran

1 opportunity to participate in the
2 interview of the defendant Ivory
3 Croker with Detective Kramitz?

4 A Yes, sir, I did.

5 Q And did you in fact take
6 notes during that interview process?

7 A Yes, I did take notes.

8 Q Your notes reflect
9 that -- of course during this
10 interview did you all discuss things
11 with Mr. Croker other than where he
12 was on just that one night of April
13 the twenty-first?

14 A Yes, sir, we did. We,
15 we explained what we had against him,
16 why he was arrested, and asked him
17 some questions so it was kind of a
18 give and take, back and forth. We
19 asked him questions, he answered.
20 Culminating, of course, in his
21 statement concerning what he did that
22 night.

23 Q Okay. Did he indicate
24 to you in your presence that he had
25 seen the codefendant Ron Coulter that

Mc Cants -- Direct by Mr. Durant

1 weekend?

2 A Yes, sir, he did.

3 Q How many times?

4 A He claimed that he had
5 seen him once.

6 Q And do you recall when
7 he had said he had seen Ron Coulter?

8 A He stated that he and
9 his wife had gone to the Coulters'
10 house on Thursday, the Thursday night
11 that they arrived and they had, they
12 had visited for a short time there.

13 Q And that would be April
14 nineteenth of 2001?

15 A Yes, sir.

16 Q Would you please answer
17 any questions defense counsel may
18 have.

19 THE COURT: Mr. Smiley.

20

21

22

23

24

25

Mc Cants -- Cross-examination by Mr.

1

2

CROSS-EXAMINATION BY MR.

3

SMILEY:

4

5

Q Agent Mc Cants, were you
present at the probation office?

6

A Pardon?

7

8

9

Q Were you present at the
probation office when Mr. Croker was
arrested?

10

A Yes, I was.

11

12

13

14

Q And you all had directed
his agent to call him in so that you
could affect the arrest. Is that
correct?

15

A That's correct.

16

17

Q At the probation office
was he ever asked any questions?

18

A No, he was not.

19

20

21

Q And he was told what he
was under arrest for at that point in
time?

22

A Yes.

23

Q And he was cuffed?

24

A Yes, sir.

25

Q Okay. And he was placed

Mc Cants -- Cross-examination by Mr. Sr

1 in the car with yourself and
2 Detective Kramitz?

3 A That's correct.

4 Q And there was no one
5 else present?

6 A No.

7 Q In the car there were no
8 questions asked whatsoever?

9 A There was no questions
10 asked.

11 Q And at no point did he
12 request his attorney or asked to be
13 taken directly to Charleston County
14 Correct -- Jail?

15 A No, he did not.

16 Q Were you present when he
17 was read his Miranda rights?

18 A Yes, I was.

19 Q And that took place
20 where?

21 A That took place in the
22 interview room at the North
23 Charleston Police Department.

24 Q Did you all purposely
25 put him in the other room first?

Mc Cants -- Cross-examination by Mr.

1 A Yes, we did. Actually
2 we didn't do it. When we arrived
3 some other detectives brought him up
4 for us.

5 Q What detectives would
6 that have been?

7 A That was some detectives
8 that were there at the police
9 department.

10 Q So you weren't in
11 exclusive contact from the moment
12 that he was arrested until his
13 interview?

14 A No.

15 Q Some other --

16 A Just a few, just a few
17 minutes while we got our things
18 together.

19 Q Some other detectives
20 took him from the car to that
21 interview room?

22 A Took him upstairs to
23 that interview room.

24 Q And what detectives were
25 they?

Mc Cants -- Cross-examination by Mr. Si

1 A I don't recall.

2 Q And how long was he out
3 of your present?

4 A Just a few minutes.

5 Q And they were
6 detectives?

7 A Yes.

8 Q Do you know if they
9 asked him any questions? You weren't
10 present?

11 A I wasn't present so -- I
12 don't think they did, but I wasn't
13 present. He was only, he was only
14 gone for a few minutes.

15 Q Okay. But during those
16 few minutes you don't know if he made
17 a request for his attorney?

18 A They didn't -- he did
19 not tell us that he did when he
20 signed his, when he waived his rights
21 and talked with us for a couple of
22 hours after that so --

23 Q But my question was you
24 weren't present with the other
25 detective and you don't know who

Mc Cants -- Cross-examination by Mr.

1 those detectives were?

2 A I don't recall their
3 names.

4 Q At any point did you
5 tell, tell Mr. Croker that if you
6 will explain where you were, we can
7 let you go home?

8 A No, I did not.

9 Q When you were explaining
10 your case to him -- beg the Court's
11 indulgence.

12 When you were explaining
13 your case to him, did you tell him
14 that you had information you believed
15 that the body had been put in a bag
16 and put in the trunk of his car, of a
17 car?

18 A We told him that someone
19 had identified him as being involved
20 in, in putting a body --

21 Q A body in the trunk of
22 the car?

23 A Uh-huh.

24 Q And this entire give and
25 take that you've talked about was

Mc Cants -- Cross-examination by Mr. S

1 after he had filled out his Mirandas
2 and signed off?

3 A Yes. That was done
4 immediately upon placing him --

5 Q And at no point in this
6 process did he request his attorney?

7 A No, did not.

8 Q If I had some
9 typewritten notes that were provided,
10 I'm sorry. Typewritten notes that
11 were provided to me in discovery. Do
12 you have the original notes you took
13 that night?

14 A I don't have them with
15 me, no.

16 Q Are they still in
17 existence?

18 A Yes, they are.

19 MR. SMILEY: No further
20 questions, your Honor.

21 THE COURT: Any redirect?

22 MR. DURANT: No, your
23 Honor.

24 THE COURT: Ma'am, you may
25 step down.

1 Does the State have any
2 further witnesses?

3 MR. DURANT: No, ma'am.

4 THE COURT: Does the
5 defense have any witnesses?

6 MR. SMILEY: Just out of
7 an abundance of caution, I would
8 like to call my client but I want
9 to make sure that this is for the
10 purpose of this hearing only and
11 that he's not waiving his rights
12 as far as at trial whether to
13 testify or not to testify.

14 I'm making it only to
15 put on the record you Honor's
16 opinion of that. My experience
17 in the past is they can testify
18 in relation to a Jackson/Denno
19 without --

20 THE COURT: That is my
21 understanding of the law and I am
22 not aware of the law changing any
23 time.

24 MR. SMILEY: I don't want
25 to get --

1 THE COURT: I understand.

2 MR. SMILEY: I call Ivory
3 Croker to the stand.

4

5

6

7

8

9 I V O R Y C R O K E R,
10 having been called as a witness,
11 is duly sworn and testifies as
12 follows:

13 THE COURT: You may
14 proceed.

15 DIRECT EXAMINATION BY
16 MR. SMILEY:

17 Q Ivory, I'm going to turn
18 your attention to January the
19 sixteenth. On January the sixteenth,
20 did you have an occasion to be
21 arrested?

22 A Pardon me?

23 Q On January the sixteenth
24 did you have an occasion to be
25 arrested?

1 A Yeah. I was arrested.

2 Q Okay. Where were you
3 arrested?

4 A At my probation
5 officers's.

6 Q Will you tell the Court
7 how that came about.

8 A Somewhat about, about
9 two o'clock my probation officer
10 called and asked me to come in, which
11 I just took my last urine test to be
12 signed off, so that's what I thought
13 it was for. She did not tell me
14 anything else.

15 Q Okay. So when you say
16 "signed off", you thought you were
17 being called in to be let off
18 probation?

19 A Right, because I'd
20 already --

21 Q Okay. When you arrived
22 at probation what time was it?

23 A It would have to have
24 been after four. It would have been
25 like 4:30.

1 Q Okay.

2 A 4:30, something to five.

3 Q When you arrived tell
4 the Court what happened next.

5 A Well, I arrived, I
6 signed, signed in on the paper, sat
7 down, and about five minutes Katrina
8 Pound came out and got me and she
9 walked me to the back, and she
10 usually makes a left she decides to
11 make a right today.

12 Q Katrina Pound --

13 A Pound.

14 Q -- Pound was your
15 probation agent?

16 A She, she was.

17 Q Was, at that point in
18 time?

19 A Right.

20 Q Okay. So you took a
21 right. Then what happened?

22 A And she told me this
23 room right here, and as soon as I
24 walked in the room Officer Kramitz
25 and Mc Cants were sitting in the

1 room.

2 Q Okay. Very slowly tell
3 the Court what happened next.

4 A Officer Kramitz asked me
5 did I know Ron Coulter.

6 Q That's the first thing
7 out of his mouth?

8 A First thing out of his
9 mouth. He said do you know Ron
10 Coulter.

11 Q And your response was?

12 A I was like, yes.

13 Q And then what happened
14 next?

15 A And then he said do you
16 know Edwina Simmons -- Simms? I said
17 no. I said I believe that's Ronald's
18 girl friend, but I don't know her.

19 Q What happened next?

20 A And after that he told
21 me well, you're being arrested for
22 kidnapping of Edwina Simms.

23 Q Okay. Then what
24 happened?

25 A Then he put the

1 handcuffs on me and put me in the
2 car.

3 Q Okay. At any point in
4 time had he read you your rights?

5 A No, sir.

6 Q Okay. He put the
7 handcuffs on you and put you in the
8 car. And tell us what happened next.

9 A Then --

10 Q Well, let me ask you
11 this. Who's in the car?

12 A Kramitz is driving and
13 Mc Cants is in the back seat with me.

14 Q In the back seat with
15 you. Okay.

16 And then what happened?

17 A He asked me about a
18 prior case that I had and asked me
19 how I got out of it and I told him I
20 wasn't the person who --

21 Q You're talking about an
22 arrest in Mount Pleasant that dealt
23 with a drug sale that was
24 successfully dismissed?

25 A Yes, sir.

1 Q And so he asked you
2 about that?

3 A Yes, sir.

4 Q Okay. Now you got out
5 of that. Then what happened?

6 A And then he, he
7 proceeded on to get on the "I". He
8 made a left out of the probation
9 office and went around and got --

10 Q When you were talking
11 about that arrest did you mention
12 your attorney?

13 A Yes. Of course.

14 Q And who --

15 A Because he asked.
16 Because at that time he asked me who
17 was my attorney.

18 Q And what did you tell
19 him?

20 A James Smiley.

21 Q Okay. What happened
22 next?

23 A After that we, we went
24 on and they rode me on to North
25 Charleston Police Department.

1 Q Okay.

2 A And after that, we got
3 there, and I asked him why wasn't --
4 where was I going? And they said
5 well, they was going to ask me some
6 questions pertaining what was, what
7 was going on, because I --

8 Q What was your response?

9 A I said okay. What kind
10 of questions? They was like well,
11 we'll ask when we get upstairs. So
12 we got upstairs.

13 Q Okay.

14 A And --

15 Q Who took you upstairs?
16 Do you remember?

17 A It was a -- no, no
18 racial or anything, but it was a
19 black police officer.

20 Q Okay.

21 A About five, five six.
22 Eye glasses on. I don't remember his
23 name.

24 Q Did you have any
25 discussion with him?

1 A No. All he did is took
2 me and sat me in this good-sized
3 room.

4 Q Okay. When you were
5 sitting in that good-sized room were
6 you with anyone?

7 A Yes. He stood in the
8 room with me.

9 Q Okay. Tell, describe
10 this room to the Court.

11 A About a normal size
12 office with a white bulletin board on
13 the board, I mean on the wall and it
14 had maybe two or three chairs in it.

15 Q Okay. Was there any
16 particular information on this
17 bulletin board?

18 A Yeah. It had some of --
19 well, it had all of my friends' phone
20 number on the bulletin board.

21 Q Okay. And anything else
22 in the room?

23 A A pair of blue, light
24 blue latex gloves.

25 Q Okay.

1 A At least they looked
2 like latex. They were in a paper
3 bag.

4 Q Okay. What happened
5 next?

6 A I heard someone yell
7 out: "you got him in the wrong room.
8 I don't want him in that room. Put
9 him in the other room."

10 And then they took me
11 out there and put me in the little
12 small room which was as he says the
13 interview room.

14 Q Okay. What happened
15 next?

16 A After that we sat down.

17 Q Who's "we"?

18 A Me, well, it was just
19 for -- good little while it was just
20 me and Mc Cants in the room.

21 Q Okay. Did you all have
22 a discussion?

23 A Yeah. We kind of talked
24 back and forth.

25 Q About this case?

1 A Yes.

2 Q Okay. Can you remember
3 the substance of that, was she asking
4 you questions?

5 A Yes. She asked me did I
6 know Edwina Simms and I said no. And
7 she asked me, I told her, I said I
8 have never even met the young lady
9 because she came down with Ronald and
10 I had a big weekend that weekend, so
11 I didn't have time to really get
12 around with them that much.

13 Q Okay. Had you been read
14 your rights at that point?

15 A No, sir.

16 Q Then what happened?

17 A And then Kramitz came
18 back in the room and said that
19 evidently, if I can recall well, that
20 he was, he had called downtown to the
21 city police department and in the
22 process the city police department
23 had went by Mr. Coulter's residence,
24 his mother and father's residence,
25 and the car, his car, Mr. Coulter's

1 car was not there, only the family
2 car.

3 Q Okay. He told you that?

4 A Yeah. Well, he didn't
5 tell me, but I heard him saying it to
6 her.

7 Q Okay. What happened
8 next?

9 A After that we sat down
10 and started talking. And then I said
11 to him, I said, well--

12 Q Let me -- when you
13 started talking, what are you talking
14 about?

15 A Okay. First of all he
16 said to me, well, just, just, I said,
17 well, he said well, just explain to
18 me where you was, what were you doing
19 that night? And I'm like I was with
20 my wife at a function, between
21 functions, back and forth because I
22 don't stay in any one place too long.

23 So I said I was back and
24 forth and then that's when I
25 explained to him what I done that

1 weekend.

2 Q Okay. Had he read you
3 your rights then?

4 A No.

5 Q What happened next?

6 A After that he asked me
7 did I help, did I, that they had me,
8 a witness I. D. that I had put help
9 put a body in the back of a car.

10 And I said to him then,
11 wrong person. I don't get down with
12 bodies and like that.

13 Q Okay. At what point did
14 he read you your rights?

15 A Somewhere right, right
16 just before he took my statement.

17 Q Okay. At any point did
18 you request an attorney?

19 A I'd been asking for you
20 from the start, because she, Officer
21 Mc Cants even asked me again, she
22 even said oh, I know James Smiley.

23 Q Okay. And at any point
24 did they give you a telephone to call
25 your attorney?

1 A No. Only person that
2 they allowed me to call was my wife
3 and that was about eleven o'clock.
4 Had to have been like ten o'clock at
5 night.

6 Q And you'd all just given
7 your statement at that point?

8 A Yeah.

9 Q At some point they get
10 around to reading your rights to you?

11 A Yes, sir.

12 Q Okay. And you waived
13 those rights?

14 A Because he said to me
15 just explain to me where you was,
16 what you were doing, and that was it.
17 Then I asked him at the end of
18 everything, I said well, what's,
19 what's going to happen to me now?

20 Well, we going to take
21 you over to Leeds Avenue and book
22 you. And I said to him, I said well,
23 I thought you stated the fact that if
24 I explained to you what I was doing,
25 I didn't have anything to do with

1 this, and then that's when he took me
2 on over to Leeds Avenue and booked
3 me.

4 Q You were under the
5 impression if you would say where you
6 were that he was going to let you go?

7 A Yes, sir.

8 Q Did he say that
9 explicitly or did you just take that
10 from the context of his conversation?

11 A From, from the way the
12 conversation even started out from
13 the first beginning.

14 Q Okay.

15 A Because I was not
16 initially put under arrest as he
17 said, and he said he arrested me at
18 the probation office, brought me over
19 to North Charleston. When I got
20 there, from the, from the attitude
21 that each one of them had, I assumed
22 well, okay, it was like well, just
23 explain to us where you was and what
24 you were doing.

25 After I gave my

1 statement, and then this is when he
2 said to me, well, now we're going to,
3 I asked him, I said well, what's
4 going to happen to me now? He said
5 well, we're going to take you over
6 and have you booked and processed.

7 I said what am I being
8 charged with? He said you're being
9 charged with kidnapping.

10 Q Okay.

11 A Well, he said, first he
12 said conspiracy to kidnap and then
13 kidnapping.

14 Q At any point were you --
15 at that -- make sure I ask this.

16 At the probation office
17 did he tell you you were under arrest
18 for kidnapping? Yes or no?

19 A No. He said, he said to
20 me, the exact words was we are
21 placing you under arrest for the, for
22 the missing person's report that's
23 filed for Edwina Simmons.

24 Q Okay. So he did tell
25 you you were under arrest?

1 A Uh-huh.

2 Q Make sure we're clear.

3 He said you're under arrest but you
4 took it to believe that --

5 A Well, after we got to --
6 to the North Charleston --

7 Q Explain that to the
8 judge.

9 A After we got to North
10 Charleston Police Department, he
11 loosed the handcuffs on me, off me,
12 took me and, and started talking to
13 me and then after that he said well,
14 you seem to be a pretty good guy. I
15 said well, I am. I say I just
16 don't -- I have never -- I don't
17 kidnap people and I don't hurt people
18 and I said I've never hurt anyone.

19 And we talked briefly
20 for a quick moment and then as that,
21 as we was on the elevator going up.
22 So then we got sitting down, he said
23 to me well, okay, explain to me what
24 you were doing that night. So right
25 then automatically I'm saying well,

1 okay, I tell you what I was doing
2 which didn't have anything to do with
3 Mr. Coulter at all. I figured okay,
4 I'm done.

5 MR. SMILEY: Beg the
6 Court's indulgence.

7 THE COURT: Uh-huh.

8 MR. SMILEY: Answer any
9 questions the prosecution might
10 have.

11 THE COURT: Mr. Durant or
12 Miss Wilson?

13

14

15

16

17

18

19

20 CROSS-EXAMINATION BY MR.

21 DURANT:

22 Q So you said you reported
23 to your probation office. Is that
24 correct?

25 A Yes, sir.

Croker -- Cross by Mr. Durant

1 Q And that was about 4:30
2 in the afternoon?

3 A It had would have to
4 have been after that because my wife
5 didn't off until 4:30 when she took
6 me.

7 Q Okay. So probably -- so
8 she gets off at 4:30?

9 A Right. And I came --

10 Q She came home.

11 A I called her, and I
12 called her in the process and I told
13 her that I wanted her to ride with me
14 up the road, so I would be right
15 there to pick her up.

16 Q So she came -- did she
17 come --

18 A I went --

19 Q She came to your house
20 first?

21 A I went and got her.

22 Q Okay. You went and got
23 her. Where does she, where does she
24 work?

25 A At M. U. S. C.

Croker -- Cross by Mr. Durant

1 Q Okay. And where were
2 you living at the time?

3 A Hamlin Beach, Mount
4 Pleasant.

5 Q Okay. So you had at
6 4:30 --

7 A I was already downtown
8 at this time.

9 Q Okay. You were
10 downtown. So you go by and pick her
11 up?

12 A Right.

13 Q And she rides over to
14 the probation office with you.

15 A Yes, sir.

16 Q Is that correct?

17 A Yes, sir.

18 Q And how long did that
19 take in downtown traffic, 4:30 in the
20 afternoon?

21 A A few minutes. I mean
22 it don't take me long.

23 Q Fifteen minutes?

24 A Maybe not even that. I
25 mean it doesn't take me that long.

Croker -- Cross by Mr. Durant

1 Q Okay. Ten, fifteen
2 minutes?

3 A Come off the King Street
4 extension.

5 Q Then you get out of the
6 car. Right?

7 A Yes, sir.

8 Q Go into the probation
9 office. Correct?

10 A Uh-huh.

11 Q And you signed in?

12 A Yeah. You signed in on,
13 under, under each individual
14 probation officer's name.

15 Q And your probation
16 officer didn't come out there
17 immediately, did she?

18 A Pardon me?

19 Q Your probation officer
20 didn't come out immediately. You had
21 to sit there and wait for a while?

22 A Well, about five minutes
23 because she didn't know I was out
24 there.

25 Q Okay. And then she

Croker -- Cross by Mr. Durant

1 takes you in the back and --

2 A No. She came, she came
3 to the door. And she said come on.

4 Q Come on back.

5 A Right.

6 Q Takes you back and
7 instead of going left, you go right?

8 A Exactly.

9 Q Okay. And these two
10 folks were in the room when you got
11 there?

12 A Right. Well, I made the
13 right down the hallway and I made it
14 into another cubical.

15 Q Okay.

16 A As soon as I turn into
17 the cubical Kramitz were standing on
18 the wall and Mc Cants was sitting in
19 the chair.

20 Q Okay. And he said asked
21 you if you knew Ron Coulter?

22 A Uh-huh.

23 Q And she -- and who asked
24 you if you knew Edwina Simms?

25 A Mc Cants did.

Croker -- Cross by Mr. Durant

1 Q Okay. And you weren't
2 under arrest then, were you?

3 A Pardon me?

4 Q You weren't under arrest
5 then, were you? You hadn't been
6 arrested?

7 A Yeah. He had already
8 said that then.

9 Q Oh, okay. Well on
10 direct examination you said you came
11 in --

12 A But he turned around, he
13 said to me --

14 Q And what I'm asking
15 you -- well, let me finish.

16 A Okay.

17 Q One of them asked you
18 one thing and one of them asked you
19 another thing and then they said
20 you're under arrest is what you said
21 in your direct.

22 A Right.

23 Q Is that the way it
24 happened?

25 A Right.

Crocker -- Cross by Mr. Durant

1 Q Okay. So no question
2 you weren't under arrest when they
3 asked you those two questions?

4 A No. Not at that time.

5 Q Okay. Nor were you in
6 custody?

7 A Pardon me?

8 Q You didn't have
9 handcuffs on or anything like that?

10 A No. No, sir.

11 Q And you're not stupid,
12 are you?

13 A No, sir.

14 Q You can read and write?

15 A Yes, sir.

16 Q How far did you go in
17 school?

18 A I graduated high school.

19 Q You weren't high, were
20 you?

21 A No, sir.

22 Q Certainly wouldn't go to
23 your probation agent high?

24 A I just had took a
25 urinalysis analysis test --

Croker -- Cross by Mr. Durant

1 Q Okay.

2 A -- two weeks prior and I
3 passed it.

4 Q Weren't under the
5 influence of alcohol, were you?

6 A No, sir.

7 Q And you'd been arrested
8 a number of times before. You know
9 the drill, don't you?

10 A Yes, sir. But always
11 something of my doing. Not of anyone
12 else's.

13 Q And then they said right
14 there that you were under arrest?

15 A Uh-huh.

16 Q And that's all they
17 said. They didn't tell you what you
18 were under arrest for?

19 A Yeah.

20 Q What?

21 A He said that I'm under
22 arrest for suspicion of kidnapping or
23 conspiracy to kidnap.

24 Q Okay. That was down at
25 the probation office.

Crocker -- Cross by Mr. Durant

1 A Right. Probation
2 office.
3 Q Right. The probation
4 office.
5 A Yes.
6 Q And at that time they
7 did put cuffs on you?
8 A Yeah.
9 Q Right?
10 A Yes, sir. He told me to
11 turn around.
12 Q Okay.
13 A And he put the cuffs on
14 me and then he asked Katrina Pound
15 what door could he go out of.
16 Q And -- okay. And
17 where's the probation office?
18 A Off of Leeds Avenue. I
19 don't know what the name of the
20 street is.
21 Q Okay. And so it only
22 took you ten, ten minutes to get to
23 Leeds from downtown?
24 A Took a few minutes.
25 Q At 4:30 in the

Croker -- Cross by Mr. Durant

1 afternoon?

2 A It don't take me long.

3 Q And so how long were you
4 in that room with them at that --

5 A We stayed there all of
6 ten minutes, if that.

7 Q Okay. So this is at the
8 probation office?

9 A At the probation office.

10 Q At the probation office.
11 Okay.

12 And then they arrest you
13 and they put you in a car and they
14 take you over to North Charleston.
15 Is that right?

16 A Yes, sir. Uh-huh.

17 Q Okay. And how far is it
18 to North Charleston Police
19 Department?

20 A Now that I couldn't tell
21 you.

22 Q How long did it take you
23 to get there?

24 A That I couldn't really
25 tell you because I was in the back

Croker -- Cross by Mr. Durant

1 seat.

2 Q I mean it wasn't right
3 next door?

4 A No.

5 Q Okay. You had to drive
6 for some period of time to get there?

7 A From Leeds to Montague.

8 Q Let's say five minutes,
9 ten minutes, fifteen minutes?

10 A Let's say ten minutes.

11 Q Okay.

12 A Ten, fifteen minutes, I
13 mean.

14 Q And then, then you
15 got -- and another officer, a black
16 officer came down and took you --

17 A Met us at the door.

18 Uh-huh.

19 Q And put you in a room?

20 A Yes, sir.

21 Q And Mc Cants and Kramitz
22 weren't around then?

23 A No.

24 Q And that officer stayed
25 in the room?

Croker -- Cross by Mr. Durant

1 A Yes, sir.

2 Q And how long were you in
3 that room?

4 A Two or three minutes.
5 It wasn't that long.

6 Q Okay. And then they
7 came and started talking to you?

8 A After they took me into
9 the room.

10 Q And I hand you now
11 what's been previously marked as
12 State's exhibit number one for
13 identification and ask if you
14 recognize that signature?

15 A That's mine.

16 Q And how about that
17 signature?

18 A That's mine.

19 Q Okay. And how about
20 these initials down here?

21 A Mine.

22 Q And they read you your
23 rights?

24 A Uh-huh.

25 Q That's your name?

Croker -- Cross by Mr. Durant

1 A Yes, sir.

2 Q That's how old you were
3 and how far you'd gone in school.
4 Right?

5 A Yes, sir.

6 Q And your date of birth?

7 A Uh-huh.

8 Q And Detective Kramitz
9 had asked you those rights and asked
10 you -- he'd read you one and asked if
11 you understood it. Is that correct?

12 A He said --

13 Q He'd read you like he
14 said, like number one --

15 A Yeah.

16 Q I have the absolute
17 right to remain silent and do not
18 have to answer any questions or give
19 a statement and this fact cannot be
20 used against me. Did he read that to
21 you?

22 A Yes, sir.

23 Q Did he ask you if you
24 understood?

25 A Yes.

Croker -- Cross by Mr. Durant

1 Q And you understood?

2 A Yes, sir.

3 Q And you put your
4 initials under it?

5 A Yes, sir.

6 Q Okay. And then he asked
7 you, and said if I do answer
8 questions or give a statement,
9 anything I say can and will be used
10 against me in a court of law. And he
11 asked you if you understood that?

12 A Yes, sir.

13 Q And you said yes, I do,
14 and then you put your initials there?

15 A Yes, sir.

16 Q Okay. And then he said
17 you have a right to consult with an
18 attorney or lawyer of your choice
19 before you answer questions or give a
20 statement and also have him present
21 while you're being questioned. He
22 said that to you. Right?

23 A Uh-huh.

24 Q You said you understood.

25 A And I'd asked for -- and

Croker -- Cross by Mr. Durant

1 I'd already asked for my lawyer twice
2 before.

3 Q Okay. And then you put
4 your initials there. Is that
5 correct?

6 A Uh-huh.

7 Q And he told you if you
8 were unable to hire a lawyer one
9 would be appointed for you?

10 A Uh-huh.

11 Q You understood that?

12 A Uh-huh.

13 Q Okay. And you put your
14 initials there?

15 A Yeah.

16 Q And then he asked you,
17 if I decide, if I decide to answer
18 questions or give a statement without
19 having a lawyer present representing
20 me I have an absolute right during
21 the interview to stop answering
22 questions and remain silent. He read
23 that to you. Is that correct?

24 A Yes, sir.

25 Q Okay. And you

Croker -- Cross by Mr. Durant

1 understood it?

2 A Yes, sir.

3 Q And he asked you to
4 initial it and you did?

5 A Yes. I was trying to be
6 as cooperative as I could.

7 Q Okay. You were being
8 cooperative, weren't you?

9 A I mean for me. Not
10 anyone else.

11 Q Okay. Well, I
12 understand that. But I mean, I mean
13 you weren't being belligerent or
14 trying to give them a hard time --

15 A No.

16 Q -- or anything like
17 that?

18 A No.

19 Q That's your signature,
20 that's your signature underneath where
21 it says I fully understand each of
22 these rights explained to me. Right?

23 A Yes.

24 Q And that's your
25 signature where it says having these

Crocker -- Cross by Mr. Durant

1 rights in mind, I wish to waive these
2 rights and answer questions
3 concerning the charge of kidnapping.
4 Is that correct?

5 A Uh-huh.

6 Q And that's your
7 signature?

8 A Yes.

9 Q Okay. Now, on, in your
10 direct testimony you stated that you
11 go there to -- we've already been
12 through it, to the police department,
13 and you all go through this big long
14 conversation, they're asking you
15 where you were, or how you knew Ron
16 Coulter or how you knew Edwina Simms,
17 all that, and they never read you
18 your rights or anything like that.
19 Is that correct?

20 A Exactly.

21 Q Okay. And then they
22 actually read you those rights right
23 there, right before you gave the
24 written statement?

25 A Yes.

Croker -- Cross by Mr. Durant

1 Q Is that correct?

2 A Yes.

3 Q So those were done like
4 boom, boom?

5 A Exactly.

6 Q Right?

7 A Yes.

8 Q And so, just so the
9 Court will understand, your testimony
10 is that you picked your wife up at
11 4:30 --

12 A A little after --

13 Q Correct. Or a little
14 after?

15 A Little before 4:30.

16 Yes.

17 Q You go to North
18 Charleston, to the probation office.

19 A Uh-huh.

20 Q Got to the probation
21 office, went in, signed in, waited
22 for about five minutes.

23 A Uh-huh.

24 Q For the probation
25 officer to come out.

Croker -- Cross by Mr. Durant

1 A Yes.

2 Q She came and got you,
3 took you in the back, the room where
4 these, where these two folks were --

5 A Uh-huh.

6 Q -- and you were back
7 there about ten more minutes. And
8 then they put in the car and drive
9 you to North Charleston Police
10 Department where you're taken out of
11 the car and taken upstairs and put in
12 another room for a few minutes?

13 A Yes.

14 Q And can you explain,
15 sir, how all that was done in fifty
16 minutes?

17 A Pardon me?

18 Q How that was all done in
19 fifty minutes?

20 A I didn't --

21 Q Fifty minutes.

22 A Fifty minutes?

23 Q Yeah.

24 A Well, this wasn't done
25 until right before my statement, so I

Croker -- Cross by Mr. Durant

1 don't know what --

2 Q What, what time does
3 that say?

4 A Seventeen twenty, but
5 that that's not the right time.

6 Q Oh, so they, they forged
7 the time. Are you in the habit of
8 signing a blank document, sir?

9 A Pardon me, sir?

10 Q You can -- you're no
11 cherry, are you?

12 A Pardon me?

13 Q You're no cherry? I
14 mean you've been through arrests
15 before, haven't you?

16 A Yeah. I've been through
17 arrests before.

18 Q Okay. You're not going
19 to sign any blank statement for the
20 police, are you?

21 A Just when he told me to
22 put my signature on it, that time was
23 not on there.

24 Q Okay. So you just, you
25 know, you'll just sign anything --

Crocker - - Cross by Mr. Durant

1 A When I signed it that
2 time was not on there.

3 Q Okay. So he'll tell you
4 to sign, you know, Mr. Crocker, you
5 just sign right down here and we'll
6 put all the rest of it in.

7 A Sir, excuse me. There
8 was not a time right here.
9 Everything else was filled out.

10 Q And just to go back to
11 one other thing. You said that on
12 the way over to the police department
13 that Miss Mc Cants was in the back
14 and somebody'd asked you a question
15 about the last charge?

16 A Yes, sir.

17 Q And that wasn't about
18 this case, was it?

19 A No.

20 Q Okay. And they asked
21 you who your lawyer was in that case
22 that he'd asked you about. Right?

23 A He asked me who my
24 lawyer was, period.

25 Q Okay.

Croker -- Cross by Mr. Durant

1 A Because --

2 Q When you were talking
3 about the other case. Right?

4 A The one that I wasn't
5 charged with.

6 Q Right.

7 A Yeah.

8 Q Right.

9 A The one I didn't do.

10 Yes, sir.

11 Q Right. Right. Okay.

12 But I mean that was the context of
13 the conversation, right, is who
14 represented you when you had that
15 charge. Right?

16 A Well, Mr. Smiley's been
17 my lawyer for nine years, so --

18 Q You need a good lawyer,
19 don't you?

20 A No.

21 MR. SMILEY: Objection,
22 your Honor.

23 THE COURT: Basis.

24 MR. SMILEY: The way the
25 question was asked presumed.

Croker -- Redirect by Mr. Smiley

1 certain things.

2 THE COURT: You may
3 proceed. Are there any further
4 questions for the witness?

5 MR. DURANT: No, ma'am.

6 THE COURT: Any redirect?

7

8

9

10

11

12 REDIRECT EXAMINATION BY

13 MR. SMILEY:

14 Q I've been your lawyer
15 for nine years. On that day was
16 there any clue, any question about
17 who your lawyer was?

18 A No.

19 Q And you told them who
20 your lawyer was as you were going on
21 your way --

22 A Yes.

23 Q -- over to N. C. P. D.?

24 A Yes, sir.

25 Q And they told you you

1 didn't need your lawyer?

2 A At that time, no.

3 MR. SMILEY: Okay.

4 Nothing further.

5 THE COURT: Sir, you may
6 step down.

7 Do you have any further
8 witnesses, Mr. Smiley?

9 MR. SMILEY: No, your
10 Honor..

11 THE COURT: Anything
12 further from the State?

13 MR. DURANT: No, ma'am.

14 THE COURT: Be glad to
15 hear argument.

16 MR. SMILEY: Your Honor,
17 in a nut shell from the evidence
18 that's been produced in this
19 case, my client testified that he
20 requested his attorney from the
21 very beginning, that he wasn't
22 given his attorney in violation
23 of Miranda. Further, that he had
24 an expectation that was given by
25 the police officers in exchange

1 of for his statement that he
2 could go home.

3 Under the totality of
4 the circumstances, I would ask
5 your Honor to suppress the
6 statement as not being free and
7 voluntary in this case.

8 THE COURT: State like to
9 respond?

10 MR. DURANT: Just briefly,
11 your Honor. I think the
12 preponderance of the evidence
13 definitely shows the defendant
14 was advised of his rights in
15 terms of the documentary evidence
16 and the times thereon in relation
17 to -- we have the officers'
18 testify how this went on. It
19 certainly corroborates their
20 version of what went, what went
21 on that day.

22 There's no indication
23 that he ever requested a lawyer.
24 The defendant admitted that he
25 understood his rights, he signed

1 on the -- the form before he
2 gave, he gave his statement.

3 Even if you believe the
4 rest of his fairy tale, there's
5 no question but that's what's in
6 the written statement he gave,
7 knowing his rights, knowing the
8 right to an attorney, and that he
9 gave freely and voluntarily.

10 I believe the
11 preponderance of the evidence is
12 to the effect that he was advised
13 of his rights, he understood his
14 rights, and he freely and
15 voluntarily waived his rights and
16 agreed to talk to the police
17 officer.

18 THE COURT: The State has
19 the burden to prove by a
20 preponderance of the evidence
21 that Miranda was complied with in
22 order for a statement to be
23 admissible. I think that it is
24 uncontradicted that the statement
25 wouldn't be admissible if Miranda

1 wasn't complied with.

2 I've listened intently
3 to the testimony of Cynthia Mc
4 Cants, an agent with the Federal
5 Bureau of Investigation, as well
6 as Alan Kramitz, who at the time
7 was employed with the North
8 Charleston Police Department in
9 its detective division, as well
10 as the testimony of Mr. Croker as
11 to the events as they transpired
12 on the evening the statement was
13 given.

14 The Court would find
15 that by a preponderance of the
16 evidence the State has proven
17 that the Miranda warnings in the
18 Miranda decision were complied
19 with. It is clear from the
20 written advisement of
21 constitutional rights that
22 Mr. Croker was present, that he
23 was advised of his Miranda
24 rights, both, it is
25 uncontradicted that each right

1 was read to him and after each
2 question he was asked if he
3 understood and he acknowledges
4 that he initialled each
5 advisement as well as having
6 signed the form both
7 acknowledging that he fully
8 understood the rights that had
9 been rights that had been
10 explained to him as well as
11 waiving those rights and answered
12 questions concerning the charge
13 of kidnapping.

14 It is also
15 uncontradicted that he was not
16 suffering from any mental
17 disability or under the influence
18 of any drugs or alcohol, and even
19 if I were to believe -- and I'm
20 not saying that I don't
21 necessarily believe Mr. Croker's
22 version that the police promised
23 him something, it really just
24 doesn't line up with the timeline
25 that he initially testified to as

1 well as what the officers
2 testified to regarding when the
3 statement was given and when the
4 advisement of rights were given.

5 It is apparent to the
6 Court that once having been
7 arrested, that he clearly waived
8 his constitutional rights after
9 having them explained to him and
10 that he, pursuant to his own
11 testimony, willingly complied
12 with and cooperated with the
13 police; therefore, the statement
14 is be admissible. Of course it
15 will be up to the jury to
16 determine the voluntariness of
17 the statement.

18 Is there anything
19 further for the record?

20 MR. DURANT: No. Not
21 issuing from us, your Honor.

22 THE COURT: Okay. We need
23 to deal with the Neal versus
24 Biggers. Is that correct?

25 MR. DURANT: Yes, ma'am.

1 THE COURT: How many
2 witnesses do we have on that?

3 MR. DURANT: I was only
4 intending to call one, maybe two
5 at the most.

6 THE COURT: And how
7 lengthy will each of those
8 witnesses be?

9 MR. DURANT: Pardon?

10 THE COURT: How lengthy
11 will each of those witnesses be?

12 MR. DURANT: My direct
13 probably shouldn't take any more
14 than ten minutes.

15 THE COURT: Okay. Why
16 don't we try to do at least one
17 of those witnesses and then
18 recess and do the other in the
19 morning.

20 MS. WILSON: Judge, if I
21 could step out briefly --

22 THE COURT: Sure.

23 MS. WILSON: -- I can go
24 down and --

25 MR. DAVIS: Your Honor --

1 THE COURT: Yes, sir.

2 MR. DAVIS: Before this
3 witness steps out, may I offer an
4 alternative? There are three
5 that I have that I believe the
6 Court will deal with right off
7 the bat which would take very
8 little time.

9 I don't want to
10 interrupt what the Court chooses
11 to do as far as beginning that,
12 but that could be lengthy and
13 that would go into tomorrow and I
14 believe these can be addressed
15 now and maybe finish the
16 remainder of the day.

17 THE COURT: I'm still
18 going to have to start it today
19 because I don't want to run into
20 any possibility that we won't be
21 ready to start at 11:30 with the
22 jury.

23 Yes, sir.

24 MR. SMILEY: I guess I'll
25 just wait and see. That's --

1 they've got the preponderance to
2 put it up there, so I don't see
3 how they can do it with two
4 people, but that's their call.

5 THE COURT: Mr. Durant.

6 MR. DAVIS: Should I go
7 forward then, your Honor?

8 THE COURT: What motions
9 do you have, Mr. Davis?

10 MR. DAVIS: I've got --

11 THE COURT: These are not
12 filed. Correct?

13 MR. DAVIS: That's
14 correct, your Honor. I would
15 have Biggers as well. I just
16 want to make sure, I don't
17 believe there's any statements
18 that would allow me to make a
19 Denno motion on behalf of my
20 client. I'm not aware of any and
21 I'd like the State to indicate in
22 whether there be some. I'm not
23 aware of any.

24 MS. WILSON: I don't
25 believe there were any --

1 MR. DAVIS: Or if --

2 MS. WILSON: I don't
3 believe there are any statements
4 that were made to law enforcement
5 from other than the two that were
6 made over the telephone that was
7 to Detective Lyczany and to
8 Sergeant Jenkins. Those were the
9 two statements to law
10 enforcement, and I believe it's
11 my understanding from Mr. Davis
12 that he doesn't intend to have a
13 Denno hearing regarding those
14 statements.

15 MR. DAVIS: I don't think
16 it would qualify for a Denno
17 hearing, your Honor. There, if
18 those are the only two statements
19 they intend to introduce.

20 MS. WILSON: Those are not
21 the only two statements we intend
22 to introduce. Those are the only
23 two law enforcement.

24 The defendant made
25 statements to other people. He

1 made phone calls to members of
2 the Simms family. He also
3 testified at a custody hearing,
4 and we intend to introduce those
5 statements.

6 **MR. DAVIS:** Well, we're
7 aware of those phone calls to
8 family members, your Honor. We
9 were not aware of the transcript
10 from the Virginia Court and we'd
11 ask that that be given to us at
12 this point. We've never seen
13 that, never had opportunity to
14 view them.

15 **MS. WILSON:** They're not
16 entitled to that, your Honor. If
17 they wanted to get it, they could
18 that. But under the rules --

19 **THE COURT:** Yeah. And I
20 don't think she can give you a
21 copy of the transcript, can you?
22 I mean you have to order it.
23 That's -- yeah. I don't think
24 that she can give it to you.

25 **MR. DAVIS:** We're arguing

1 that Rule Five applies here, your
2 Honor.

3 THE COURT: Well, I don't
4 think Rule Five complies with
5 the --

6 MR. DAVIS: They have it.

7 THE COURT: With a
8 transcript? No, sir. You have
9 to order transcripts.

10 MS. WILSON: Judge, under
11 Five --

12 THE COURT: And if it's
13 exculpatory. That's really the
14 guiding principle, if it's
15 exculpatory.

16 MS. WILSON: Exactly, your
17 Honor. It's not exculpatory.
18 Under Rule Five the rule plainly
19 states regarding statements to
20 the defendant, statements of the
21 defendant, if I could just -- it
22 says that we are required to turn
23 over the substance of any oral
24 statement or written statement
25 that we, that we intend to offer

1 at trial made by the defendant
2 before or after arrest in
3 response to interrogation by any
4 person then known to the
5 defendant to be a prosecution
6 agent.

7 These statements at this
8 custody hearing were made not to
9 law enforcement. The defendant
10 had not been arrested at that
11 time. He certainly was aware of
12 his statements and has been aware
13 of the custody hearing since it
14 happened. He knew about what was
15 said way before we did.

16 THE COURT: You had the
17 ability to --

18 MR. DAVIS: Your Honor,
19 the basic --

20 THE COURT: You had the
21 burden to order the transcript as
22 well as they did --

23 MR. DAVIS: That's
24 correct, your Honor.

25 THE COURT: And if they

1 represent -- is it -- is there
2 any portion of the transcript
3 that is exculpatory?

4 MS. WILSON: No, sir. No,
5 ma'am. I'm sorry.

6 THE COURT: That's okay.
7 I'm used to it.

8 MR. DAVIS: Your Honor,
9 two things. First of all the
10 order at that hearing was that he
11 was to have custody of the child.
12 I would argue it had to be
13 something exculpatory in there
14 for the Court to award custody to
15 my client considering that he was
16 facing these charges, first of
17 all.

18 Second of all, under
19 subsection C of the -- of Rule
20 Five dealing with documents and
21 tangible objects, paper and
22 documents, et cetera in custody
23 or control of the prosecution,
24 which are material to the
25 preparation of this defense, or

1 are intended for use by the
2 prosecution as evidence into the
3 trial, or were obtained from or
4 belonged to the defendant. Any
5 of those:

6 MS. WILSON: I don't
7 intend to offer the transcript.

8 MR. DAVIS: But they're
9 necessary, they're material to
10 the preparation of the defense,
11 and they're in the custody and
12 control of the State.

13 THE COURT: I'm sorry,
14 Miss Wilson? You said?

15 MS. WILSON: I don't
16 intend to offer the, the actual
17 transcript in, in my case in
18 chief. There were several of the
19 victim's family who were present
20 who can testify as to what the
21 defendant said, so therefore
22 under that prong I'm not, I'm not
23 required to turn it over.

24 As to the materiality
25 language of that, the Court said,

1 they interpreted that materiality
2 to mean exculpatory and down that
3 line. Obviously anything that we
4 would have in preparation or
5 witness interviews, whatever,
6 could be deemed by them as
7 material because it would help
8 them to know exactly what we're
9 doing. That would -- if that
10 were the standard, we would have
11 to give them everything we have
12 ever done or thought about doing.

13 The rule, in the first
14 part of the rule, speaks
15 specifically to defendant's
16 statements. I don't believe the
17 second part that they're
18 referring undoes the first part
19 of Rule Five (A) I believe it is.

20 I don't -- this is not a
21 novel issue. I think this is
22 something that is extremely
23 common and something that they've
24 known about as far as the hearing
25 goes. That's where we are.

1 THE COURT: Check your
2 transcript and see what it is.

3 MR. DAVIS: Your Honor,
4 I'll be blunt with the Court. We
5 contacted the Virginia Court and
6 were told that they did not have
7 one. We attempted to find out
8 who the court reporter was. They
9 told us that the clerk sits in.
10 Once the judge rules, an order is
11 prepared. Twice we checked on
12 that, your Honor.

13 MS. WILSON: I'd be happy
14 to tell him who the -- I don't
15 know off the top of my head, but
16 I'd be happy to look and see who
17 the court reporter is and if they
18 can get, they can get it.

19 MR. DAVIS: But, your
20 Honor, the situation is there is,
21 there is another subsection of
22 the rule, (A) (2) that
23 information not subject to
24 disclosure. We're entitled to
25 the papers that's in the --

1 that's in the control of the
2 State, they're turned over to the
3 defense, unless it's excepted
4 under subsection --

5 THE COURT: You told me
6 that your motions were not
7 contested and I'm in the middle
8 of --

9 MR. DAVIS: I'm sorry?

10 THE COURT: I said you
11 told me your motions were not
12 contested, and I'm in the middle
13 of motions with Mr. Smiley's
14 client and I'd like to finish
15 them.

16 MR. DAVIS: I understand
17 that. Well, that's -- today is
18 the first that we have found that
19 they have the transcript, so
20 that's basically where we are,
21 and I apologize.

22 THE COURT: That's okay.

23 All right. Mr. Durant,
24 are you ready to proceed?

25 MR. DURANT: Yes, ma'am.

1 THE COURT: Call your
2 witness.

3 MR. DURANT: We call
4 Detective Kramitz again.

5 MS. SHEALY: Your Honor,
6 one quick question. Regarding
7 the Biggers hearing, Mr. Davis
8 also has a motion regarding the
9 identification process. We
10 intend to query this officer on
11 behalf of Mr. Coulter.

12 THE COURT: I assumed
13 that.

14 MS. SHEALY: Okay.

15 THE COURT: Thank you.

16 You may proceed, Mr.
17 Durant. Well, actually the
18 witness has already been sworn.

19 Sir, I'll still -- I'll
20 remind you you're still under
21 oath.

22

23

24

25

Kramitz -- Direct by Mr. Durant

1

2

3

A L A N R I C H A R D

4

K R A M I T Z, previously sworn

5

as a witness, resumes the stand

6

and testifies as follows:

7

DIRECT EXAMINATION BY

8

MR. DURANT:

9

THE COURT: You may

10

proceed.

11

MR. DURANT: Thank you,

12

your Honor.

13

THE COURT: You're

14

welcome.

15

Q Now, Detective Kramitz,

16

in your capacity as, as, being the

17

case agent in this matter for North

18

Charleston, did you have an

19

opportunity to meet with a witness, a

20

Mr. Hackler, on June the first of

21

2001 for purposes of seeing if he

22

could, if he could identify a

23

suspect?

24

A Yes, sir.

25

Q And do you recall where

Kramitz -- Direct by Mr. Duran

1 you met the witness?

2 A At his residence.

3 Q And would be in Ladson?

4 A Yes, sir.

5 Q And who was with you?

6 A Agent Mc Cants.

7 Q And you went to, you
8 went to Mr. Hackler's home. Is that
9 correct?

10 A Yes, sir.

11 Q And was else was at his
12 house?

13 A His wife.

14 (Whereupon, photographic
15 lineup form was received and
16 marked as State's Exhibit No. 3
17 for identification.)

18 (Whereupon, a
19 photographic lineup was received
20 and marked as State's Exhibit No.
21 4 for identification.)

22 Q And you recall if this
23 way day time, night time, what time
24 of day was it?

25 A I'm not really sure of

Kramitz -- Direct by Mr. Durant

1 the time, sir. I believe it was
2 mid-afternoon.

3 Q And did you have
4 photographic -- a group of
5 photographs or a photographic lineup
6 with you when you went there?

7 A Yes, sir, I did.

8 Q And who prepared that
9 lineup?

10 A Agent Connolly. I'm
11 sorry. Detective Connolly from the
12 City of Charleston Police Department.

13 Q And if you would could
14 you tell the Court or Judge Jefferson
15 how you went about showing the
16 witness the lineup? Did you have any
17 conversation with him first?

18 A Yes, sir, I did. My
19 conversation was, I had the lineup in
20 a closed manila envelope. And I
21 explained to Mr. Hackler the person
22 in this lineup may or may not be the
23 one that we spoke of in the -- at the
24 incident, the Suburban Lodge. I
25 explained to him that to take his

Kramitz -- Direct by Mr. Durant

1 time and to review the photos in the
2 lineup.

3 Q Okay. And once you did
4 that, what did you do?

5 A I removed the, the
6 lineup that was facedown, I removed
7 the lineup from the envelope and I
8 placed it on a table in his
9 residence. It was a well-lit table.

10 Q And what did he do when
11 you placed it on the kitchen table?

12 A He immediately picked
13 out Mr -- Mr. Coulter.

14 Q And I hand what's
15 previously been marked as State's
16 exhibit number four for
17 identification, and ask if you can
18 identify that document?

19 A Yes, sir.

20 Q And what is that?

21 A This is the lineup that
22 was provided by Officer -- Detective
23 Connolly from the City of Charleston
24 of Ronald Coulter.

25 Q Okay. And I see that

Kramitz -- Direct by Mr. Durant

1 there's some writing on that
2 document. What did you do after he
3 picked out picture number four?

4 A I instructed Mr.
5 Hackler to circle it and initial it,
6 the one he picked.

7 Q Okay. And did he do so?

8 A Yes, sir, he did.

9 Q And now I hand you
10 what's been previously marked as
11 State's Exhibit number three and ask
12 if you can identify that document?

13 A Yes, sir.

14 Q And what is that?

15 A This is, the -- a photo
16 lineup form from North Charleston
17 Police Department and it explains, it
18 says that: "I have viewed the
19 photographs and have selected number
20 four as the person being in question.
21 This lineup is in reference to" --
22 and it gives the case number and
23 there's a brief statement made by,
24 made by Mr. Hackler in his writing.
25 Q And what, what did Mr.

Kramitz -- Direct by Mr. Duran

1 Hackler put down on here?

2 A "I, James Hackler,
3 picked number four as the person I
4 saw out my window, putting a large
5 trash bag in the trunk."

6 Q And what is the day of
7 that?

8 A 6/1/2001.

9 Q And what is, what is the
10 time?

11 A Fifteen twenty, which is
12 3:20 in the afternoon.

13 Q Now when you put the
14 lineup out there, did he exhibit any
15 uncertainty when he went to picture
16 number four?

17 A There was no hesitation
18 at all. He immediately went to
19 number four.

20 Q And did he appear to be
21 certain of his identification?

22 A Yes, sir.

23 Q Did you at any time
24 suggest to him who he should pick
25 out?

Kramitz -- Direct by Mr. Durant

1 A No, sir. I handed it to
2 him. Like I said, it was face-down.
3 I handed it to him straight out.

4 Q Okay. Did you point to
5 anybody?

6 A No, sir.

7 Q Did you suggest that the
8 person that or the person or the
9 suspect in, in this case was even in
10 that group of photographs?

11 A No, sir, I did not. I
12 told him that he may or may not be in
13 here.

14 Q Did you suggest by body
15 language or anything of that nature
16 who he should pick out?

17 A No, sir.

18 Q Now, moving on to July
19 seventeenth of 2001, did you have an
20 occasion to return to Mr. Hackler's
21 home?

22 A Yes, sir.

23 Q And who were you with on
24 that occasion?

25 A Agent Mc Cants.

Kramitz -- Direct by Mr. Duran

1 MR. SMILEY: May I see it?

2 I haven't seen it.

3 MR. DURANT: I'm sorry.

4 (Whereupon, a
5 photographic lineup is received
6 and marked as State's Exhibit No.
7 5 for identification.)

8 (Whereupon, a lineup
9 form is received and marked as
10 State's Exhibit No. 6 for
11 identification.)

12 Q And when you went out
13 there on the seventeenth, who were
14 you with?

15 A Agent Mc Cants.

16 Q And where did you go?

17 A To Mr. Hackler's
18 residence.

19 Q And that was in Ladson?

20 A Yes, sir.

21 Q And once again how did
22 you go about showing him the
23 photographs on that?

24 A It was the same way as I
25 did before with a photo lineup. I

Kramitz -- Direct by Mr. Durant

1 explained to him that the person may
2 or may not be in the photo lineup.
3 Take his time and review the photos.

4 Q Okay. I hand you now
5 what's been marked as State's exhibit
6 number five and ask if you can
7 identify that document.

8 A This is the lineup that
9 I gave Mr. Hacker.

10 Q And once you gave him
11 the verbal admonition, what did you
12 do with that particular lineup?

13 A I went to the kitchen
14 area again. Showed the photo lineup
15 in the manila envelope the same way I
16 did before. Photos face-down.
17 Turned it over, placed it on the
18 kitchen table, and he immediately
19 picked number three.

20 Q And once again did you
21 in any way by action or word suggest
22 that photo --

23 MR. SMILEY: Objection.

24 Leading, your Honor.

25 MR. DURANT: Excuse me.

Kramitz -- Direct by Mr. Duran

1 THE COURT: Sustained.

2 Rephrase.

3 Q What suggestions did you
4 make to him concerning him picking
5 anyone in that lineup?

6 A None at all.

7 Q What conduct or body
8 language or anything of that nature
9 did you go through in order to get
10 him to pick --

11 A No body language at all.

12 Q How certain was he of
13 his identification of that particular
14 picture?

15 A Very certain. He
16 immediately picked number three.

17 Q And -- okay. And what
18 did you do when he picked out number
19 three?

20 A I had him circle it
21 again and had him initial it.

22 Q And now I hand you
23 what's been marked as State's exhibit
24 number six, and ask if you can
25 identify that document?

Kramitz -- Direct by Mr. Durant

1 A This the same form as
2 the one previously that I had used,
3 generic form, the generic photo
4 lineup form, and it says, I have
5 viewed photographs and I selected
6 number three as the person being the
7 question of the lineup, with
8 reference to the case number, and
9 made some comments. And it says: "I
10 picked photo number three as being
11 the person I saw put the large black
12 plastic bag into the trunk of a
13 car -- of the car, and punch the bag
14 twice when the bag moved."

15 Q And that's Mr. Hackler's
16 statement?

17 A Yes. I wrote it for
18 him, but that's what his words were.

19 Q Then he signed it?

20 A Yes. He signed it.

21 Q And when was that? What
22 was the date and time on that?

23 A 7/17/2001, 11:35 in the
24 morning.

25 MR. DURANT: Okay. I have

Kramitz -- Cross by Ms. Sheal

1 nothing further of this witness
2 at this time, your Honor.

3 Could you please answer
4 any questions as defense counsel
5 may have for you have?

6 MS. SHEALY: May it please
7 the Court.

8 THE COURT: Yes, ma'am.
9 You may proceed.

10

11

12

13

14

15 CROSS-EXAMINATION BY MS.

16 SHEALY:

17 Q Just a few questions.

18 You indicated that this lineup was
19 shown to Mr. Hackler as it related to
20 Mr. Coulter in June. Is that
21 correct?

22 A Yes, ma'am.

23 Q Do you recall whether or
24 not either you or Detective or
25 Investigator Mc Cants had ever shown

Kramitz -- Cross by Ms. Shealy

1 any lineup to Mr. Hackler prior to
2 that occasion?

3 A No, we had not.

4 Q And what in fact spurred
5 your showing it to him on, in June?
6 Had something occurred that made you
7 show it to him then?

8 A We got the lineup from
9 Detective Connolly. I was unable to
10 make a lineup of Mr. Coulter because
11 Charleston -- he had never been
12 arrested in Charleston County.
13 Charleston County does not use
14 photographs, does not take pictures
15 of people with their glasses on.

16 Q Okay. So who was it in
17 fact that directed Connolly to
18 compile the lineup?

19 A I don't know.

20 Q You don't know who
21 directed that?

22 A No.

23 Q And you don't know
24 whether an event spurred her putting
25 it all together?

Kramitz -- Cross by Ms. Shealy

1 A No.

2 Q And do you know how it
3 was then that, that Connolly got a
4 picture of Mr. Coulter since he had
5 not been arrested?

6 A I believe he got it --
7 she got it from a, a driver's
8 license.

9 Q From a driver's license.
10 Are you aware of whether
11 or not the other five photographs in
12 what has been marked previously as
13 State's Exhibit number four were
14 taken from drivers' licenses or from
15 mug shots?

16 A I don't know.

17 Q You don't know?

18 A No.

19 Q Do you have a copy of it
20 in front of you or is it -- I'll get
21 it for you.

22 A Double check.

23 Q In showing you what's
24 been marked as State's exhibit number
25 four, would you agree that the

Kramitz -- Cross by Ms. Shealy

1 photograph of Mr. Coulter, that the
2 background is a bit different than
3 most of the other photographs? It
4 had the darker background.

5 A Number one is dark also.

6 Q But as it compares to
7 the other four gentlemen in the
8 picture, you would agree that it has
9 a darker background?

10 A Number five is also
11 dark. But two, three, and six are
12 not.

13 Q Okay. And would you
14 also agree that when looking at those
15 gentleman with the glasses on, that
16 when you immediately look at the
17 lineup it is the picture of Mr.
18 Coulter that jumps out at you with
19 the glasses? Is that correct?

20 A No, ma'am.

21 Q You, you disagree with
22 that?

23 A Yes, ma'am.

24 Q You disagree that
25 Mr. Coulter's glasses are more vivid

Kramitz -- Cross by Ms. Sheal

1 and stand out more than the other
2 pictures?

3 A I disagree with you.

4 Q Okay. You had no other
5 lineup to show him that day?

6 A No, ma'am.

7 Q Now, you've indicated
8 that you did nothing to suggest who
9 to chose, but you only came out there
10 with one lineup. Is that correct?

11 A Yes.

12 Q Did he ask you how you
13 had come up with this one lineup?

14 A No.

15 Q You did not tell him he
16 had three to choose between -- he
17 would be looking at three different
18 sets of lineups, did you?

19 A No, ma'am.

20 Q Okay. And you also did
21 not chose to show him the photographs
22 individually and ask if he could
23 identify someone. Is that correct?

24 A That's correct.

25 Q When you asked him to

Kramitz -- Cross by Ms. Shealy

1 look at the lineup, did you ask him
2 to identify one of the two suspects,
3 did you tell him which one you wanted
4 him to identify?

5 A No. And my exact words
6 were, the person involved in this may
7 or may not be in this lineup.

8 Q The person?

9 A Yes.

10 Q Okay. So in other words
11 you did not question him at all as to
12 that person's individual role in what
13 he had reported previously?

14 A That's correct.

15 Q And you told us that you
16 actually went out to his house to
17 accomplish this. Is that correct?

18 A Yes, ma'am.

19 Q Why did you not have him
20 come to the police station?

21 A I just didn't do it.

22 Q So why is that? Don't
23 you generally have someone come to
24 the police station to do a lineup?

25 A No. I can go -- I like

Kramitz -- Cross by Ms. Shealy

1 to go to people's houses to do
2 lineups because it's work. Make it
3 convenient for them.

4 Q So you were making it
5 easy for him?

6 A Yes. Well, I make it
7 convenient for everyone involved.

8 Q Did you alert him that
9 you would be coming out there before
10 you went?

11 A Yes.

12 Q Okay. And you did that
13 by phone?

14 A Yes.

15 Q Okay. And he was not
16 then staying at the Suburban. He was
17 staying in an actual house?

18 A Yes, ma'am.

19 Q Okay. And I think you
20 told us this his wife was present?

21 A Yes, ma'am.

22 Q And was she present in
23 the kitchen when this was done?

24 A No, ma'am.

25 Q Where was she when the

Kramitz -- Cross by Ms. Shealy

1 lineup was shown?

2 A Living room.

3 Q Okay. And how, how is
4 that area set up? Where is the
5 living room in comparison to the
6 kitchen?

7 A I believe the living
8 room joins the kitchen. It's kind of
9 a common room. But the living room,
10 then goes into a smaller, you know,
11 hallway, and then goes, or doorway
12 into the kitchen area.

13 Q Okay. And was she
14 communicating with her husband at all
15 during this process?

16 A No.

17 Q And was he communicating
18 with her?

19 A No.

20 Q Where were you and
21 F. B. I. Agent Mc Cants in comparison
22 to where Mr. Hacker was when this
23 occurred? Were you all sitting at
24 the table?

25 A I believe we were

Kramitz -- Cross by Ms. Shealy

1 standing behind him.

2 Q You all were standing
3 behind him?

4 A Yes.

5 Q And he was sitting at
6 the table?

7 A I don't recall if he was
8 sitting at the table.

9 Q And you don't know who
10 else participated in the compiling of
11 this lineup with Detective Connolly?

12 A No, ma'am.

13 Q Did you have any
14 conversation with Mr. Hackler as to
15 whether or not he had seen either of
16 the two suspects that he had
17 previously described since that
18 incident?

19 A No.

20 Q You had no discussion
21 with him regarding that?

22 A Right.

23 Q You did not ask him
24 whether he'd seen anyone since then?

25 A No.

Kramitz -- Cross by Ms. Shealy

1 Q And did you question him
2 as to whether or not he had seen a
3 photograph of either of the two
4 people since describing the events
5 earlier?

6 A No.

7 Q You made no questioning
8 of that?

9 A No, I didn't.

10 MS. SHEALY: I beg the
11 Court's indulgence just one
12 moment.

13 Q What was your
14 participation in this lineup
15 procedure as compared to Mc Cants's.

16 A Just because I was the
17 case agent assigned to this case.
18 Agent -- Detective Connolly gave me
19 this lineups because this was my
20 case.

21 Q Okay. Well, when you
22 all actually went to the Hacklers'
23 residence, what did you do as
24 compared to what Mc Cants did?

25 A I'm the one who had

Kramitz -- Cross by Ms. Shealy

1 control of the photo lineup. I'm the
2 one who explained to Mr. Hackler the
3 procedures of how I'd show the
4 lineup, and I'm the one who showed
5 the lineup to, to Hackler, Mr.
6 Hackler. Agent Mc Cants --

7 Q Did you do anything
8 else -- I'm sorry.

9 A Agent Mc Cants, since we
10 worked together on this case, I
11 confided in her certain things that
12 well, I was going to do something.
13 She wanted to be present when I did
14 those things.

15 Q Did she have any active
16 participation in this procedure?

17 A No. None at all.

18 Q Did she discuss anything
19 with Mr. Hackler?

20 A No.

21 Q Did you all take the
22 opportunity to discuss anything
23 further with Mr. Hackler after
24 showing him the lineup?

25 A No.

Kramitz -- Cross by Ms. Shealy

1 Q How long would you say
2 you all were over at his house?

3 A Very briefly. I -- ten
4 minutes maybe, at the most.

5 Q And what was his
6 demeanor like while you were there?

7 A He was calm. Well, I
8 believe he was watching T. V. when we
9 got there.

10 Q Did you inquire as to
11 whether or not he'd had anything
12 alcoholic to drink or been involved
13 in taking drugs?

14 A No, I did not.

15 Q You did not ask him
16 that?

17 A No, I didn't.

18 Q Now did you ask him
19 anything else about his medical
20 well-being?

21 A No.

22 Q So you were there ten
23 minutes and you discussed nothing
24 further with Mr. Hackler other than
25 showing him the lineup?

Kramitz -- Cross by Ms. Shealy

1 A I believe it was ten
2 minutes. I'm not sure of the exact
3 time, but, but basically it was
4 showing him the lineup and got his
5 statement.

6 MS. SHEALY: That's all I
7 have. Thank you.

8 THE COURT: Mr. Smiley.

9

10

11

12

13

14 CROSS-EXAMINATION BY MR.

15 SMILEY:

16 Q Did you make the lineup
17 in Mr. Croker's case?

18 A I did.

19 Q Okay. How did you do
20 that?

21 A North Charleston Police
22 Department has a, volumes of books.
23 Compared Mr. Croker's picture to
24 people in this book, in these books,
25 excuse me, and picked ones that I

Kramitz -- Cross by Mr. Smiley

1 believed resembled Mr. Croker.

2 Q Okay. So there was no
3 random process. You actually picked
4 out the photographs that you were
5 going to show that time?

6 A Well, what I did was I
7 went through all these volumes of
8 books, picked the ones that I thought
9 resembled Mr. Croker, put it in the
10 lineup. I picked some of the
11 pictures. Some I would take out,
12 some I would put back in and to make
13 the lineups as fair as I possibly
14 could.

15 Q Did you record the names
16 of the other photographs?

17 A No, I did not.

18 Q Did you keep those --
19 those photographs that you were
20 looking through, were they color or
21 black and white?

22 A Black and white.

23 Q So all the photographs
24 you were looking through were black
25 and white?

Kramitz -- Cross by Mr. Smile

1 A Yes. Now I believe on
2 the -- from my memory, I believe when
3 you look at the computer system
4 itself they come up as colored
5 pictures but they're printed black
6 and white.

7 Q Okay. And those six
8 photographs weren't saved?

9 A They may be saved in the
10 computer system. I don't know, sir.

11 Q Mr. Hackler had made his
12 preliminary, his alleged observations
13 back on April the twenty-first. Is
14 that correct?

15 A Yes, sir.

16 Q Okay. And he had
17 provided a, a general description at
18 that time?

19 A Yes.

20 Q And that being of a
21 black male, mid-thirties, five seven,
22 heavy set, about two hundred pounds?

23 A I believe that's right,
24 sir.

25 Q And I believe that was

Kramitz -- Cross by Mr. Smiley

1 the, as far as the characteristics of
2 the person, the extent of that
3 description. Correct?

4 A Well, there was a
5 composite drawing, too.

6 Q Let's talk about the
7 composite drawing and we'll get back
8 to this. So he had attempted to
9 describe the person again?

10 A Yes.

11 Q And he had done that on
12 the same day that he gave the
13 statement to Detective Connolly on
14 May the ninth. Correct?

15 A I believe so.

16 Q And that composite
17 drawing was done where?

18 A The North Charleston
19 Police Department.

20 Q Okay. How was that
21 procedure set up?

22 A I don't know, sir. I
23 didn't do the composite.

24 Q Were you present?

25 A No, sir.

Kramitz -- Cross by Mr. Smile

1 Q Who, who conducted that?

2 A At the time it was
3 Detective Corporal Scott Deckard.

4 Q Okay. The gentlemen
5 that you chose in this lineup, what
6 were their ages?

7 A I don't know, sir. I
8 tried to get it, the pictures for
9 their facial features as close as I
10 could to Mr. Croker.

11 Q Okay. Well, one of the
12 things that, one of the few
13 descriptions of the person himself
14 that Mr. Hackler gave was
15 mid-thirties. Correct?

16 A Yes, sir.

17 Q But you didn't use that
18 as a basis of picking out pictures,
19 age?

20 A I don't recall that,
21 sir.

22 Q What were the weights of
23 these gentlemen in these pictures?

24 A I didn't see the
25 weights. All it was was a picture,

Kramitz -- Cross by Mr. Smiley

1 and it gives the name. That's all it
2 does.

3 Q Okay.

4 A I'm not sure if there's
5 a birth date on there or not, sir.

6 Q Okay. So you don't --
7 didn't use the age or the weight and
8 those are two of the descriptions
9 that he had used. What about height?

10 A It's not on the photo.

11 Q Okay. So --

12 A I tried to get facial
13 features, sir.

14 Q Okay. However
15 Mr. Hackler had not given you a
16 description of facial features, had
17 he?

18 A That's correct, sir.

19 Q When he was interviewed
20 by Corporal Deckard on May the ninth,
21 were -- was there any additional
22 description given of the second
23 gentleman, that Mr. Hackler believed
24 he saw?

25 A Not to my knowledge.

Kramitz -- Cross by Mr. Smile

1 Q Was any report made of
2 that?

3 A What?

4 Q On May ninth, of the
5 composite drawing?

6 A Just in my notes were
7 Mr. Hackler came in to do the
8 composite drawing.

9 Q And just to make sure
10 I'm clear, when he came in on May
11 ninth and did a composite drawing,
12 that was to be of the second guy he
13 saw out there. Correct? The shorter
14 fellow.

15 A Yes. The shorter
16 fellow. Yes, sir.

17 Q The one that you all
18 have alleged as Mr. Croker?

19 A Yes, sir.

20 Q So this composite
21 drawing is allegedly to be that of
22 Mr. Croker?

23 A Yes, sir.

24 Q So he had already seen a
25 lineup back on June the first of the

Kramitz -- Cross by Mr. Smiley

1 other -- of the alleged other
2 gentleman. Correct?

3 A Yes, sir.

4 Q And you'd already told
5 him he had picked out that person?

6 A No, sir. I never told
7 him he was correct.

8 Q When you on July the
9 seventeenth --

10 A Yes, sir.

11 Q -- you told him you were
12 bring the photo lineup of the other
13 guy, though. Right?

14 A Yes, sir.

15 Q Okay. So you indicated
16 to him that this was going to be
17 about the shorter gentleman?

18 A Yes, sir. And I also
19 told him he may or may not be in it.

20 Q Right. But you have
21 already focussed his attention to the
22 second gentleman before you showed
23 him the photo lineup?

24 A Yes, sir.

25 Q And you got there on the

Kramitz -- Cross by Mr. Smile

1 seventeenth about what time?

2 A I don't recall the time,
3 sir. I can look.

4 Q I'll help you in just a
5 second.

6 A Thank you, sir.

7 Q If I could, your Honor.
8 I'm going to show you State's exhibit
9 number six.

10 A Yes, sir.

11 Q Would that refresh your
12 memory about the time you got there?

13 A Yes, sir.

14 Q About what time did you
15 get there?

16 A Around 11:35.

17 Q Okay. And when you
18 first got there you say his wife was
19 present also?

20 A I don't recall if she
21 was there or not. I don't remember,
22 sir.

23 Q Okay. On your direct
24 you said she was but you don't
25 specifically recall whether she was

Kramitz -- Cross by Mr. Smiley

1 present or not?

2 A For the other one.

3 Q Okay.

4 A But not this one.

5 Q Okay. What was he doing
6 when you arrived?

7 A I believe watching T. V.

8 Q When you explained the
9 identification procedures, did you do
10 it again this time?

11 A Yes, sir.

12 Q For the Court's
13 edification and mine, exactly what
14 did you explain to him?

15 A I explained to him that
16 I had another photo lineup and that
17 the other person may or may not be in
18 this lineup. Take his time. Be
19 certain. If the person was in it,
20 let me know.

21 Q And that after you
22 explained that to him you took him to
23 the kitchen?

24 A Yes, sir.

25 Q And you placed this

Kramitz -- Cross by Mr. Smile

1 lineup face-down?

2 A Face-down. I had it in
3 an envelope --

4 Q Right.

5 A -- face-down, turned it
6 over, and he immediately picked Mr.
7 Croker.

8 Q Okay. Looking at the
9 lineup that's been marked State's
10 exhibit number seven, looking at the
11 pictures, wouldn't you readily agree
12 that Mr. Croker is by far the oldest
13 gentleman in that photograph?

14 A No, sir.

15 Q You know the ages of the
16 others?

17 A No, sir, I don't.

18 Q Would you readily agree
19 that Mr. Croker has the lightest skin
20 color of any of the gentlemen there?

21 A No, sir.

22 Q Would you readily agree
23 that his hair line is receding much
24 more than any of the others?

25 A No, sir.

Kramitz -- Cross by Mr. Smiley

1 Q Would you readily agree
2 that his jowls are much larger than
3 any of the others there had around
4 their face?

5 A No, sir.

6 Q But these are pictures
7 that you picked out yourself.

8 A Yes, sir.

9 Q Right?

10 A Right.

11 Q You didn't avail
12 yourself of the Charleston County
13 Jail process which they can randomly
14 generate pictures?

15 A Yes, sir. I did it
16 myself.

17 Q Was there any talk about
18 the composite drawing at the time of
19 the photo lineup?

20 A No, sir.

21 Q The pictures that you
22 picked out, how were they saved on
23 the computer?

24 A If they were saved, sir,
25 there'd be a save button or something

Kramitz -- Cross by Mr. Smiley

1 like that, but if it was saved it
2 would be the only six pictures right
3 there. The other ones weren't used
4 and they wouldn't be saved.

5 Q Okay.

6 A They'd still be in their
7 folders.

8 Q Did you inquire as to
9 whether Mr. Hackler had had consumed
10 any alcohol before looking at that
11 lineup?

12 A No, sir, I didn't.

13 Q Did you ask him if he
14 was under the influence of any drugs?

15 A No, sir.

16 Q Had he been shown any
17 other lineups containing Mr. Croker?

18 A No, sir.

19 Q Other than that photo,
20 that composite drawing that he had
21 done before?

22 A Yes, sir.

23 Q All right. Was there
24 any discussion about how you would
25 obtain a lineup about the other

Kramitz -- Cross by Mr. Smiley

1 person?

2 A No, sir.

3 Q Is there any discussion
4 with Mr. Hackler about the connection
5 that you had found between Mr.
6 Coulter and Mr. Croker?

7 A No, sir.

8 Q Did Miss Mc Cants speak
9 at all while you were in that home?

10 A No. Not to my
11 knowledge.

12 MR. SMILEY: Your Honor, I
13 don't have any further questions
14 of this witness at this time.

15 THE COURT: Any redirect?

16 MR. DURANT: No, your
17 Honor.

18 THE COURT: Sir, may step
19 down.

20 MS. SHEALY: Your Honor, I
21 actually have a couple of --

22 THE COURT: Oh, okay.

23 MS. SHEALY: -- follow-up
24 questions if that's okay.

25

Kramitz -- Recross by Ms. Shea

1 I think it's in your
2 discretion, your Honor.

3 THE COURT: I'll allow you
4 the latitude about it.

5 MS. SHEALY: They'll be
6 very brief and I apologize.

7

8

9

10

11

12 RECROSS-EXAMINATION BY

13 MS. SHEALY:

14 Q Regarding the composite,
15 did you ask that the composite
16 process take place? Were you the one
17 who directed that that occur?

18 A I don't recall, ma'am.
19 I apologize.

20 Q Okay.

21 A I don't.

22 Q Well, tell me this. Who
23 was calling the shots in this
24 investigation? Was it your case or
25 was it Miss Mc Cants' case or was it

Kramitz - - Recross by Ms. Shealy

1 a joint effort or what?

2 A Myself and Cynthia Mc
3 Cants.

4 Q Okay. So one of the two
5 of you would have had to participate
6 in the composite?

7 A I don't believe Cynthia
8 would have, but I don't recall who
9 did.

10 Q Okay.

11 A It may have been
12 Lieutenant Haggee.

13 Q Haggee?

14 A I apologize. It may
15 have been, but I don't remember.

16 Q Okay. And during that
17 process, and I apologize if - - I had
18 a hard time hearing this - - were - -
19 did you all ask him to do a composite
20 of one of the suspects and not the
21 other?

22 A Yes.

23 Q And how did you describe
24 to him which one to do it of?

25 A I don't remember, ma'am.

Kramitz -- Recross by Ms. Shea

1 I apologize.

2 Q Well --

3 A I don't remember. I
4 apologize.

5 Q Well, who was it that
6 you were seeking to have a composite
7 done of?

8 A Of the -- the shorter
9 one, I guess. I don't remember,
10 ma'am.

11 Q You don't remember?

12 A No.

13 Q And when you were
14 dealing with Mr. Hackler as it
15 relates to Mr. Croker, was there any
16 discussion about Mr. Coulter?

17 A No.

18 Q No discussion
19 whatsoever?

20 A No.

21 MS. SHEALY: That's all,
22 your Honor.

23 A Ma'am, I apologize but I
24 believe the reason why one wasn't
25 done on -- on Mr. Coulter was because

Kramitz -- Recross by Ms. Shealy

1 he made -- Mr. Hackler made reference
2 to Mr. Coulter resembling somebody on
3 T. V. That's why we didn't do one
4 like that.

5 Q And do you recall when
6 it was that he said he resembled that
7 person?

8 A I believe it's in his
9 statement. I'm not -- I don't
10 remember, though.

11 MS. SHEALY: Okay. Thank
12 you.

13 THE COURT: Any redirect?

14 MR. DURANT: No, ma'am.

15 THE COURT: Thank you,
16 sir. You may step down.

17 How many other witnesses
18 does the State have.

19 MR. DURANT: Your Honor,
20 in the absence of a finding by
21 the Court that the photographic
22 lineups were suggestive or
23 administered in a suggestive
24 manner, I have no other
25 witnesses.

1 THE COURT: Does the
2 defense have any witnesses?

3 MS. SHEALY: Your Honor,
4 it would be our position that the
5 State would need to call
6 Mr. Hackler. That just because
7 an officer indicates --

8 THE COURT: I don't think
9 you can direct who they're
10 supposed to call.

11 MS. SHEALY: Well, then
12 without that it be a failing
13 to -- if you can't the him to
14 question --

15 THE COURT: Well, my
16 question is very simple.

17 MS. SHEALY: No, but I'd
18 like to --

19 THE COURT: I'll let you
20 argue, but I need you to answer
21 my question.

22 MS. SHEALY: No.

23 THE COURT: Okay. You may
24 be seated.

25 Do you have any

1 witnesses, Mr. Smiley?

2 MR. SMILEY: Yes, ma'am.

3 He should be sequestered.

4 Corporal, Detective Corporal

5 Deckard. Scott Deckard.

6

7

8

9

10

11

12

13

14 T H O M A S S C O T T

15 D E C K A R D, having been called

16 as a witness, is duly sworn and

17 testifies as follows:

18 DIRECT EXAMINATION BY

19 MR. SMILEY:

20 Q Detective, forgive me.

21 What's your rank right now?

22 A Sergeant.

23 Q Sergeant. Since the

24 last time I last dealt with you.

25 Congratulations.

Deckard -- Direct by Mr. Smiley

1 On May ninth, 2001, did
2 you have an opportunity to come in
3 contact with Mr. James Hackler?

4 A Yes, I did.

5 Q Can you explain to the
6 Court how that came about?

7 A I was asked to sit with
8 Mr. Hackler while he did a composite
9 sketch.

10 Q Who asked you?

11 A I believe it was
12 Detective Kramitz.

13 Q Detective Kramitz?

14 A I believe so.

15 Q Do you have any idea
16 what time this was?

17 A No, I don't. I don't
18 recall.

19 Q Could you explain to the
20 Court how you all go about putting
21 together a composite sketch?

22 A The composite sketch
23 that -- program that we use is by
24 Sergey Industries. It's a com-photo
25 fit plus program. What it is, it's a

Deckard -- Direct by Mr. Smiley

1 computer program that has foreheads,
2 eyes, nose, mouth, chins, and hair
3 styles and facial hair in a program
4 and as the person that you are
5 speaking to or the person who's a
6 witness to something, describing
7 someone, picks out certain features
8 and then it gets transposed on to the
9 composite machine itself.

10 Q Do you have a report
11 from collecting the description from
12 Mr. Hackler from that day?

13 A No. I don't.

14 Q All right. To the best
15 of your recollection you said there's
16 four heads to pick from?

17 A Yes, sir.

18 Q Can you tell me which
19 one of the heads that he described?

20 A The foreheads are
21 contained in a booklet. There are
22 booklets that go with this thing,
23 with the program, and the witness is
24 provided with the booklet and as he
25 goes through them he selects which

Deckard -- Direct by Mr. Smiley

1 forehead.

2 Q Which one did he pick?

3 A I don't know.

4 Q Did you have any record
5 of which one he picked?

6 A It would be on the
7 composite sketch.

8 Q The record is? As
9 I'm --

10 A The forehead that he
11 picked would be the one that's on the
12 composite sketch.

13 Q Would it be fair to say
14 that four heads are different shapes?

15 A Yes.

16 Q So of the four shapes,
17 which shape did he choose? A round
18 one? A long one? A square one?

19 A I don't --

20 Q A triangle one?

21 A I don't --

22 The one on the composite
23 sketch. I don't know what number it
24 is, but he picked that one.

25 Q Okay. After he picked

Deckard -- Direct by Mr. Smiley

1 the size of the head or the shape of
2 the head what is the next feature
3 that he chooses?

4 A The eyes.

5 Q And how many different
6 sets of eyes are there to chose from?

7 A I don't know. I would
8 estimate over fifty. Between fifty
9 and seventy-five.

10 Q Okay. And you can't
11 tell us which ones he even chose
12 besides the ones that are on the
13 composite sketch?

14 A Correct.

15 Q But they're identified
16 as these are the eyes in the photo?

17 A They're identified when
18 he picks them out.

19 Q But it's not recorded?

20 A No.

21 Q Besides picking --

22 A No. Besides on the
23 sketch. No, it's not recorded.

24 Q After he picks out the
25 eyes, what does he pick next?

Deckard -- Direct by Mr. Smiley

1 A The nose.

2 Q Okay. And how many
3 noses are there to pick from?

4 A Again, it would be
5 probably between fifty to
6 seventy-five.

7 Q Okay. And there's no
8 record of which nose other than the
9 one that appears in the sketch? You
10 can't tell me which nose he picked
11 out of the book?

12 A Correct.

13 Q After he picks out the
14 face, the shape of the face, the
15 eyes, the nose, what does he pick out
16 next?

17 A I believe it's the
18 mouth.

19 Q And same thing is,
20 there's a multitude of mouths to pick
21 to from. He chose the one that's now
22 recorded in the composite.

23 A That's correct.

24 Q After he chooses the
25 mouth, what does he chose next?

Deckard -- Direct by Mr. Smiley

1 A Chins.

2 Q Chins. And there are

3 how many chins to pick from?

4 A Again it's --

5 Q And again it's not

6 recorded anywhere --

7 A -- between fifty and

8 seventy-five.

9 Q -- besides the overall

10 sketch?

11 A That's correct.

12 Q All right. And after he

13 picks the chin, what does he chose?

14 A I believe it's between

15 facial hair or ears. I'm not sure

16 what the --

17 Q So he's --

18 A I mean he adds features,

19 facial hair, glasses, hats, et

20 cetera.

21 Q Okay. So he's giving

22 you additional descriptions as he

23 picks these out, more than what he

24 had given to Detective Connelly when

25 she took the original statement, of

Deckard -- Direct by Mr. Smiley

1 course?

2 A But he's actually
3 looking at features.

4 Q Okay.

5 A And picking them out.

6 Q And as the end result of
7 this you create a sketch. Is that
8 right?

9 A That's correct.

10 Q Would it be fair to say
11 that this is the sketch that was
12 produced or a copy, a reproduction
13 thereof of the sketch that you
14 produced that day?

15 A It appears to be. Yes,
16 sir.

17 Q Okay. And he was
18 directed to create a sketch of the
19 shorter fellow. Correct?

20 A I don't recall which
21 one.

22 Q Okay.

23 A Which of the persons it
24 was.

25 Q And so he was shown this

Deckard -- Direct by Mr. Smiley

1 composite at the end. Right?

2 A He developed that
3 composite.

4 Q Okay.

5 A And he was viewing it
6 the whole time as --

7 Q So this is the guy he
8 said was the second guy?

9 A That's correct.

10 Q Was anyone else present
11 other than yourself and Mr. Hackler
12 during that procedure?

13 A If there was anybody
14 else they would have been behind me,
15 outside the room. The room is a
16 small room so there's only room for
17 myself and the person, the witness.
18 So I don't recall if there was
19 anybody behind me because I'm looking
20 at the screen, speaking to the
21 witness.

22 Q Okay. And this was done
23 on May the ninth?

24 A I wonder about that day.
25 I'm not -- I don't recall exactly

Deckard -- Direct by Mr. Smiley

1 what day it was.

2 Q Well, if you don't mind,
3 if I could have the original. I'm
4 going to show you the original and
5 see if it would refresh your memory
6 about that date.

7 A May ninth.

8 Q And so if you signed and
9 dated that and he dated that -- he
10 signed that also, and it's May the
11 ninth. Correct?

12 A That's correct.

13 MR. SMILEY: All right. I
14 have no further questions.

15 MR. DURANT: I have no
16 cross, your Honor.

17 THE COURT: Any questions
18 from Ms. Shealy?

19 MS. SHEALY: No, your
20 Honor.

21 THE COURT: Any objection
22 to the witness being excused from
23 this hearing?

24 MR. DURANT: Not from us,
25 your Honor.

1 MS. SHEALY: No, ma'am.

2 THE COURT: Sir, you're
3 excused.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Not in
6 general, but just for this
7 hearing.

8 THE WITNESS: Thank you.

9 THE COURT: You're
10 welcome.

11 Mr. Smiley, anything
12 further?

13 MR. SMILEY: Beg the
14 Court's indulgence.

15 At this point in the
16 argument I don't have any further
17 witnesses.

18 THE COURT: All right.
19 I'll be glad to hear arguments.
20 Originally it was Mr. Smiley's
21 motion joined in by Mr. Davis.

22 The State has the burden
23 of proof. I assume the State
24 would want to argue first.

25 MR. DURANT: Your Honor,

1 in accordance with the case law
2 we've handed up, it is clear in
3 the State, in Neal V. Biggers
4 that in order to go any further
5 in this proceeding there needs to
6 be some finding by the Court that
7 the identification procedure was
8 suggestive or was administered in
9 a suggestive manner.

10 There's been absolutely
11 no testimony before your Honor
12 indicating that this, this, these
13 lineups were administered in a
14 suggestive manner.

15 With regard to the
16 lineups themselves, your Honor,
17 the lineups speak for themselves.
18 We have the same lineups that
19 the -- that were observed by the
20 witnesses in this case. I would
21 argue that there are -- they're
22 as good as any two lineups you'll
23 see. I don't think there's
24 anything about either one of
25 these lineups that would suggest

1 who to pick out. Hair style's
2 the same, facial style's the same
3 as Mr. Croker. One of the
4 individuals is a little bit
5 thinner than Mr. Croker. The
6 backgrounds are similar. The
7 hair styles are similar.

8 With regard to
9 Mr. Coulter's, once again I think
10 it's a remarkable lineup. All of
11 them glasses, all of them similar
12 facial hair, all of them the same
13 hair style. I just don't think
14 there's anything about these
15 lineups that suggest the
16 individuals that were picked out
17 and say in the absence of some
18 ruling by the Court that they
19 are, we would -- we would have
20 nothing else at this time.

21 THE COURT: Mr. Davis or
22 Miss Shealy.

23 MS. SHEALY: May it please
24 the Court, your Honor, our motion
25 would be based on Neal versus

1 Biggers and the South Carolina
2 cases that follow. And our
3 assertion is that the defendant's
4 rights to due process would be
5 violated by any testimony
6 regarding this lineup procedure
7 or any in-court identification
8 made by the witness Mr. Hackler.

9 If -- do you have these?

10 THE COURT: No. I've seen
11 them all.

12 MS. SHEALY: Okay. Your
13 Honor, it would be our position
14 regarding the lineup relating to
15 Mr. Coulter that if you take a
16 look at it and the first thing
17 that jumps out at you is Mr.
18 Coulter's picture because of the
19 darkness of the background behind
20 it and because of the glasses
21 that he has on, that immediately
22 the eye is attracted to that
23 photograph.

24 But more importantly,
25 your Honor, in order to establish

1 whether or not there's been
2 anything suggestive about this
3 lineup process, we cannot rely on
4 the testimony of the officer.

5 The question would be
6 whether or not Mr. Hackler
7 believed that anything was
8 suggestive. Just because the
9 officer has testified that he
10 made no gestures, et cetera, and
11 that nothing about the lineup was
12 suggestive to him, the only
13 person who, who is relevant to
14 the suggestiveness of the lineup
15 procedure is Mr. Hackler and
16 there has been a failing by the
17 State to produce him as a
18 witness.

19 It would --

20 THE COURT: Isn't the --

21 MS. SHEALY: -- also be
22 our --

23 THE COURT: Isn't the,
24 isn't the relevant standard the
25 preponderance of the evidence?

1 It's not beyond a reasonable
2 doubt. I only have to determine
3 by a preponderance of the
4 evidence if they, if the State
5 has proven by a preponderance
6 that the I. D. was not suggestive
7 which really goes to the way the
8 I. D. was prepared and the way it
9 was administered.

10 I don't know whether
11 they met that burden really is a
12 question for the Court, and I
13 don't know that they need
14 Mr. Hackler to prove that. It's
15 a very low standard of proof.

16 All they have to do is
17 tip it a little in their
18 direction. Really the veracity
19 of the lineup and whether
20 Mr. Hackler correctly identified
21 or didn't identify really are
22 jury issues, aren't they?

23 MS. SHEALY: I would
24 disagree, your Honor. I'd have
25 to -- I looked that over,

1 participating a Biggers hearing
2 where the witness himself did not
3 testify. This is a very unusual
4 situation. I think but for the
5 fact that the witness was not
6 here to explain this morning,
7 they would have called the
8 witness to the stand.

9 But what --

10 THE COURT: I've had it
11 done both way. I've had it done
12 where they only called the
13 officer and I've had it done
14 where they would call the
15 witness, so it's not that unusual
16 to me. I would say it's about
17 fifty-fifty.

18 MS. SHEALY: Well,
19 actually --

20 THE COURT: I think more
21 so than not the witness is not
22 called and there's never been an
23 objection to me about it.

24 MS. SHEALY: Well, that is
25 completely foreign to me, your

1 Honor, but certainly I understand
2 your position.

3 But I don't understand
4 how the Court could even examine
5 the potential tipping of the
6 scales if the person to whom the
7 lineup is presented has not
8 testified as to whether or not
9 when he looked at this lineup his
10 eyes immediately go to the
11 glasses, or when he looked at
12 this lineup his eyes did not
13 immediately go to the graininess,
14 or whether when F. B. I. Agent Mc
15 Cants and Detective Kramitz were
16 standing behind him, if that in
17 any way made him feel
18 intimidated, or whether or not
19 there was any nuance that they
20 made, or complete out-right
21 suggestions as to who to pick, to
22 point to.

23 All we have in the
24 record right now is the officer's
25 assertions, and I think that the

1 appropriate query would have been
2 from Mr. Hackler, the questioning
3 of Mr. Hackler as to how he
4 reacted to the lineup and the
5 lineup procedures.

6 And, your Honor, without
7 Mr. Hackler here, looking at the
8 totality of the circumstances and
9 his ability to examine what
10 happened the night --

11 THE COURT: I don't get to
12 totality unless I find there's
13 suggestiveness.

14 MS. SHEALY: I understand,
15 your Honor. But our position
16 would be that we can't even get
17 to the second prong without Mr.
18 Hackler --

19 THE COURT: You don't get
20 to the second prong unless I find
21 it's suggestive under State
22 versus Moore.

23 MS. SHEALY: That's
24 correct.

25 THE COURT: I only have to

1 determine whether it was
2 suggestive, and if it was and it
3 was suggestive, then looking at
4 the totality of the circumstances
5 was it still, was it, the process
6 in and of itself, still such that
7 a valid I. D. could have been
8 made?

9 I don't even get to the
10 second prong unless I make, you
11 know, unless I find it was
12 suggestive.

13 MS. SHEALY: Yes, ma'am.
14 And my position, though, is again
15 I don't know how we can, can get
16 past the first prong to get, to
17 go into the second prong because
18 you have not had enough
19 information presented to you as
20 to whether or not the witness
21 found the procedure suggestive
22 and whether there was anything
23 about the lineup itself that was
24 suggested to the witness.

25 Detective Kramitz's

1 opinion regarding the lineup I
2 think is completely irrelevant.

3 THE COURT: Okay.

4 Mr. Smiley.

5 MR. SMILEY: I don't
6 disagree with co-counsel on the
7 points she's brought up, your
8 Honor.

9 However there's a couple
10 of things that are different in
11 Mr. Croker's situation.
12 Mr. Croker's situation was
13 developed out of the general
14 description given on May the
15 ninth. That same day a composite
16 drawing was done that you've seen
17 a copy of it, your Honor.

18 THE COURT: Well, did you
19 admit that or mark that for
20 I. D.?

21 MR. SMILEY: I have not
22 but would be glad to.

23 THE COURT: Because there
24 was mention of it, but it's
25 not -- I guess it would be in the

1 record at some point.

2 MR. SMILEY: For
3 identification purposes and
4 purposes of this hearing only,
5 your Honor.

6 (Whereupon, the
7 composite drawing is received and
8 marked as Defendant Croker's
9 Exhibit No. 1 for identification
10 for purposes of this hearing
11 only.)

12 MR. SMILEY: And based on
13 that further description, you
14 have a composite done. That's
15 made up on May ninth of what they
16 believe to be the second -- he
17 believed the second person to be.

18 Based on that and
19 information Detective Kramitz
20 developed, he himself puts
21 together a lineup and he could
22 have gotten it put together
23 randomly. He chose to pick out
24 his own pictures.

25 THE COURT: Is that the

1 testimony? I thought he said
2 they didn't have that -- didn't
3 have it available or maybe I
4 misunderstood his testimony.

5 MR. SMILEY: I don't want
6 to mischaracterize his testimony,
7 but I asked him if he availed
8 himself of the Charleston County
9 system which would create a
10 lineup made of random pictures
11 and the same general description,
12 and he said no, he put it
13 together himself.

14 And I don't want to
15 mischaracterize, but I'm pretty
16 confident that's what he said.

17 THE COURT: You may
18 continue.

19 MR. SMILEY: Anyway, he
20 put this lineup together himself.
21 It becomes apparent to the
22 novice, which I will call myself,
23 your Honor, that Mr. Croker by
24 far is the oldest gentleman in
25 there and the person that they

1 describe as in his mid-thirties.
2 I know for a fact, I know who
3 number five is, and that he's
4 twenty-three years old just
5 because he happens to be a client
6 from a different case.

7 But there's no record
8 for which you can judge whether
9 that is a fair lineup, because
10 they don't put the ages of the
11 other fellows, they don't put
12 down their weight, their height.
13 They could have collected that
14 information and provided the
15 Court to show it's a fair and
16 accurate lineup.

17 His skin color is by far
18 the lightest in this thing and
19 the other gentlemen are very
20 dark, for the most part.

21 As to the age. My
22 client is much heavier than
23 anybody else in that. And from
24 the pictures he stands out, your
25 Honor. And I would suggest to

1 you that based on the fact that
2 he told them who they should look
3 for, looking for the shorter guy,
4 and they brought him out the
5 lineup, they put it in front of
6 him. It's a lineup that has my
7 client that stands out, that it
8 is suggestive and I agree we need
9 to hear from Mr. Hackler and his
10 perspective further on that.

11 And I would suggest,
12 your Honor, we also need to get
13 further into whether it's
14 reliable because I believe it is
15 suggestive to the second prong.

16 THE COURT: Well, you
17 don't get to the second prong
18 unless the Court determines that
19 it was suggestive, so I don't --
20 we don't get to that second prong
21 until I determine that.

22 MR. SMILEY: And,
23 additionally, your Honor, is, is
24 when they put the composite
25 together there was more

1 description gathered at that
2 point that's lost, that we don't
3 know how fair it is because we
4 don't get that information.

5 You can look at what
6 they were looking for on May
7 ninth and what they say he
8 quickly picked out on July
9 seventeenth and that period of
10 time that goes by.

11 I would you suggest
12 that, I would suggest that the
13 process, the way the lineup was
14 put together, it could have been
15 put together in a fair and
16 impartial manner. It's not. And
17 that, for that purpose I would
18 ask that the hearing go to the
19 second prong.

20 Nothing further.

21 THE COURT: When will Mr.
22 Hackler be here?

23 MR. DURANT: Late
24 Wednesday, your Honor.

25 THE COURT: No way to get

1 him here sooner?

2 MR. DURANT: I'm sorry but
3 I can't do that, because we have,
4 physically have to go to pick him
5 up and his, and his wife.

6 But I mean the issue
7 really won't come up until he
8 testifies any way. I mean if you
9 feel like the --

10 THE COURT: Well, that --
11 if you take that position then
12 that means you wouldn't be able
13 to talk about it in opening
14 statement, you wouldn't be able
15 to argue it at all now until such
16 time and then I can take the
17 matter under advisement and
18 conclude the Neal versus Biggers
19 hearing when he appears.

20 MS. WILSON: Have you made
21 a finding as to the first prong?

22 THE COURT: Well, I am
23 going to think about it over
24 night, but I'm not certain that I
25 can without. . .

1 MS. WILSON: Judge --

2 THE COURT: A

3 preponderance is really a very
4 low standard and you're asking me
5 to make a decision based only on
6 Detective Kramitz's testimony and
7 how he administered the test --

8 MR. DURANT: Your Honor,
9 I'm asking --

10 THE COURT: -- and it's
11 been done both ways. I mean
12 there are times --

13 MR. DURANT: Yes.

14 THE COURT: There are
15 times when you all call both
16 witnesses, called everyone at the
17 time, and then times when you
18 have not.

19 MR. DURANT: We're asking
20 you to make a determination based
21 upon the evidence you heard in
22 this courtroom, and the evidence
23 you heard in this courtroom is
24 there's been no evidence of any
25 kind of suggestive manner that

1 the lineup was shown. None. Not
2 from any witness they called, not
3 from any witness we called.

4 There's been no evidence
5 before this Court that the lineup
6 was administered in a suggestive
7 manner.

8 That leaves us with is
9 the lineup itself suggestive, and
10 the lineup itself, I mean, even
11 you know, Mr. Smiley can sit
12 there and tell you why he thinks
13 one stands out and Miss Shealy
14 can stand there, sit there and
15 tell you why she thinks her guy
16 stands out, but it's up to you,
17 your Honor, as to whether or not
18 those people stand out in those
19 lineups.

20 I would submit to you
21 that they do not and I would
22 submit that there is no evidence
23 before this Court showing that
24 they were administered in a
25 suggestive manner.

1 MS. WILSON: Judge, if I
2 could just comment on one thing.

3 THE COURT: Certainly.

4 MS. WILSON: That I'm not
5 sure which attorney it was that
6 said it but they, they talked
7 about whether or not the
8 officers's opinion as to what was
9 suggestive and what wasn't
10 suggestive matter, or what the
11 officer's thoughts about each
12 picture was, and whether or not
13 that mattered, and I would submit
14 that as to the first prong of the
15 test, they're right. His opinion
16 doesn't matter. It's an
17 objective looking at the lineup
18 that the Court has to do.

19 Frankly, Mr. Hackler's
20 opinion as to how close these
21 guys look or how different they
22 look or what age they look is not
23 relevant for the first prong.

24 What's, what's -- the
25 only thing that's relevant is

1 when the Court looks at the
2 lineups on their face as a matter
3 of law whether or not they are
4 suggestive. That, coupled with
5 the testimony regarding the
6 manner in which the lineup was
7 displayed to the witnesses, is
8 all that we have to do.

9 You're right. It is a
10 threshold. It's a very low
11 threshold. And once we pass that
12 threshold, we don't have to keep
13 going.

14 I mean it's almost like
15 they want to say yeah, nothing
16 you've shown us so far indicates
17 that anything's suggestive, but
18 keep on going.

19 MR. SMILEY: Your Honor, I
20 don't want to belabor it, but I'm
21 sure Detective Kramitz is not
22 going to come up and say oh,
23 yeah, it's suggestive. I
24 purposely put together a
25 suggestive lineup.

1 That's why we got to
2 look at it from the other
3 perspective.

4 MS. WILSON: Again, your
5 Honor, I don't know that
6 Mr. Kramitz, Officer Kramitz's
7 intentions are what's relevant.

8 It's what the final
9 product is. What does the final
10 product look like? The Court has
11 the original lineups. You can
12 look at them. I think as
13 Mr. Durant says, these are about
14 as good as they get as far as
15 lineups go.

16 And on their face, and
17 I'm under the first prong of the
18 test, there's no question that
19 the lineups, that those aren't
20 suggestive and there's absolutely
21 no evidence that there was any
22 sort of suggestive manner in
23 which it was presented.

24 That's our threshold.
25 Anything beyond that goes to the

1 further weight, and it's a jury
2 question as the Court stated
3 initially.

4 THE COURT: That's
5 assuming, of course, that
6 Mr. Hackler will say that the
7 officer said to him exactly what
8 was said when the lineups were
9 presented.

10 MS. WILSON: Right. And
11 if, if he, if he did not say
12 that, that would be matter for
13 the jury to weigh. You've made
14 the threshold finding. The jury
15 takes it from there.

16 THE COURT: You're telling
17 me that that would not go to
18 whether it was presented in a
19 suggestive manner?

20 MS. WILSON: I'm telling
21 you that once you have that
22 threshold finding as you, I
23 believe -- I don't want to say
24 should, but I think you can based
25 on the evidence that has been

1 presented.

2 I think we have shown
3 that beyond a preponderance of
4 the evidence. At that point it's
5 almost like a statement. At that
6 point it's now for the jury to
7 decide.

8 Yeah, the jury might
9 decide I don't care what
10 Detective Kramitz and Cindy Mc
11 Cants say. But I think they
12 coached the guy. If they want to
13 think that, they can think that.

14 But once we've met that
15 threshold, as we have here today,
16 anything beyond that goes to the
17 weight of the identification
18 through the lineup.

19 Not this -- not its
20 initial admissibility.

21 THE COURT: I'll take the
22 matter under advisement. See you
23 all in the morning at 9:30.

24 We're at ease.

25 MS. WILSON: Thank you,

1 your Honor.

2 MR. DAVIS: Thank you,
3 your Honor.

4 MS. SHEALY: Thank you,
5 your Honor.

6 THE COURT: Also if you
7 all could instruct your clients'
8 relatives to bring their clothes
9 earlier, and I'm also directing
10 the Sheriff's Office to make sure
11 they're here early enough in time
12 to be dressed so that the
13 proceedings not be delayed.

14 MS. WILSON: Your Honor,
15 if I could just add one thing to
16 make sure I was clear on this.
17 You say that we have to have
18 Mr. Hackler here for the
19 threshold finding is once again
20 another person's subjective
21 opinion as to how this looks when
22 the standard is what the Court's
23 objective legal opinion is as to
24 the lineup.

25 THE COURT: Let me just

1 say so that you all can be clear.
2 I've looked at the lineups.
3 Quite frankly as it regards Mr.
4 Croker I find that people who
5 are -- it is striking to me how
6 similar they were able to match
7 his face. Usually they aren't
8 that good. So I really have no
9 concern about the way the lineup
10 was put together.

11 I do not find in any way
12 that it was suggestive. He does
13 not stand out to me in those six
14 gentlemen.

15 Nor does, and I say six,
16 including him. Nor does Mr.
17 Coulter's lineup concern me at
18 all.

19 I think on your copy,
20 Miss Shealy, that your background
21 may be darker, but on that
22 original that is not how it
23 looked to me. Again they're
24 strikingly similar, even in terms
25 of the style of their glasses,

1 which they are very unusual
2 because normally they are not,
3 they're not done in that manner.

4 Also I think the drawing
5 or I forget the word that I'm
6 looking for.

7 MS. WILSON: Composite.

8 MR. DURANT: Composite.

9 THE COURT: The composite
10 that was done of Mr. Croker looks
11 a lot like him also, which again
12 is not -- in terms of his facial
13 features, I mean it's cut and
14 paste, you can tell. But I was
15 surprised when I saw it.

16 But nevertheless, having
17 made that observation, my only
18 concern at this point is what was
19 actually -- see, this is the
20 situation I'm in and I find
21 myself in. I don't want
22 Mr. Hackler to come here and
23 testify and say something else
24 happened during that lineup when
25 it was explained to him, other

1 than what has been represented to
2 the Court. And, and I need to
3 toss that over in my mind a
4 little bit and see if the State
5 is -- I just don't know that the
6 State is required -- I don't know
7 that we can direct who they are
8 to call as witnesses to meet that
9 threshold.

10 And the other thing that
11 I'm torn about is I'm just not
12 certain and you all don't want
13 access to Mr. Hackler because he
14 would not speak with you all
15 prior to trial. And I don't --
16 and if, even if I were to -- even
17 if they were to call him as a
18 witness, it would just be a very
19 limited inquiry.

20 MS. WILSON: I appreciate
21 that.

22 THE COURT: And I don't
23 want to get us into discovery
24 issues that really have nothing
25 to do with the Neal versus

1 Biggers.

2 MS. SHEALY: I completely
3 understand that, your Honor. I
4 can state as an officer of the
5 Court that is not why I'm making
6 this an issue.

7 THE COURT: No. I
8 understand that. But I've got to
9 look at --

10 MS. SHEALY: Oh, I
11 understand. But I just want to
12 make sure that's clear. That has
13 very -- there is a very complete
14 absence of that issue.

15 THE COURT: Well, no. I'm
16 not -- I'm not saying that you
17 would have -- that that would be
18 improper notice. I'm not finding
19 any motives to it. I'm just
20 saying that I, I need to roll it
21 over -- I'm tired. It's six
22 o'clock. We've been going for a
23 long time and I don't want to
24 think about it with a fatigued
25 mind.

1 I don't think that's
2 fair to anybody. And I'd like
3 some time to research it. I'd
4 like a little bit of time to read
5 my notes and I'll make my
6 decision.

7 MS. SHEALY: Your Honor,
8 may I respond --

9 THE COURT: Certainly.

10 MS. SHEALY: -- just to
11 one thing?

12 THE COURT: Certainly.

13 MS. SHEALY: It is not our
14 position that this argument is
15 trying to direct who the State
16 should call. But it is to
17 address who they have called --

18 THE COURT: And they --

19 MS. SHEALY: -- and who
20 they failed to call.

21 THE COURT: And I agree.
22 I understand.

23 MS. SHEALY: Thank you.

24 MS. WILSON: Judge, I
25 think based on what the Court

1 said would happened, should that
2 happen with Mr. Hackler is they
3 stand up in front of the jury say
4 ah-ha, now you get it. That
5 would be their whole argument
6 because it would go to the
7 weight.

8 THE COURT: Yeah. You're
9 right.

10 I'll give all an answer
11 in the morning.

12 MR. DURANT: What time do
13 you want us back in the morning?

14 THE COURT: I have two
15 motions at 9:15. They should be
16 I'm hoping short. I am really
17 hopeful that we'll be able to
18 start at 9:30.

19 (Whereupon, the matter
20 was adjourned at 6:02 p.m.)

21

22

23

24

25

340

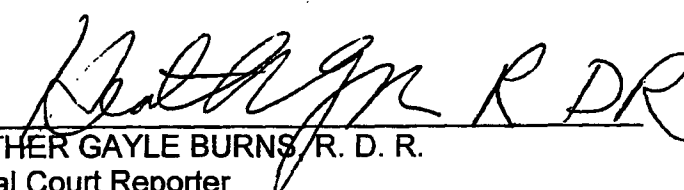
CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 23rd day of February, 2004.

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

DATED: _____

March 9, 2006



HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

341

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 2002-GS-10-2243/44/40/41 &
2003-GS-10-4454/4686

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS
(Volume II, p. 341-594)

VS.

February 24, 2004
Charleston, South Carolina

RONALD COULTER and
IVORY COKER, a/k/a IVORY CROKER,

Defendants.

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge, and a jury.

APPEARANCES:

SCARLETT WILSON, ESQ.
DEPUTY SOLICITOR

- and -

D. BRUCE DURANT, ESQ.
SENIOR ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

JAMES WATSON SMILEY, IV, ESQ.
ATTORNEY FOR DEFENDANT CROKER

JENNIFER KNEECE SHEALY, ESQ.
CHARLESTON COUNTY PUBLIC DEFENDER

- and -

RODNEY D. DAVIS, ESQ.
ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDER COULTER

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

342

INDEX

Pretrial Motions	pages 345 - 411
Judge's Opening Remarks	pages 411 - 431
State's Opening Statement	pages 431 - 452
Mr. Davis' Opening Statement	pages 452 - 456
Mr. Smiley's Opening Statement	pages 456 - 462

WITNESSES

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
O.J.				
by Ms. Wilson	463			
by Mr. Davis		485		
Margaret Conway Short				
by Mr. Durant	488			
Daisy Denham				
by Ms. Wilson	507			
by Mr. Davis		520		
Connie Knight				
by Ms. Wilson	527			

343

WITNESSES

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Lenora Thomas				
by Ms. Wilson	548		572	
by Mr. Davis		565		
by Mr. Smiley		571		
Ann Marie Albright				
by Ms. Wilson	574			
by Mr. Davis		584		
by Mr. Smiley		586		

344

/nadvertently blank.

1 (The Judge enters the
2 courtroom at 10:17 a. m.)

3 THE COURT: State ready to
4 proceed?

5 MS. WILSON: Yes, ma'am.

6 THE COURT: Mr. Davis,
7 Miss Shealy?

8 MR. DAVIS: Yes, ma'am.

9 THE COURT: Mr. Smiley,
10 Ms. Knobeloch?

11 MR. SMILEY: Yes, ma'am.

12 THE COURT: We concluded
13 the Neal versus Biggers hearing
14 last night and I indicated that I
15 wanted to take the matter under
16 advisement and to give it some
17 thought. You all have to excuse
18 me. I'm terribly out of shape
19 from running upstairs, mainly
20 because I was tired and I think
21 all of us were tired. We had a
22 very long day yesterday and I
23 needed time to reflect and to
24 review the exhibits, which are
25 respectively State's for I. D.

1 three, four, five, and six.

2 State also offered in
3 testimony and I can't make this
4 out. Is that defendant's 1 for
5 I. D.?

6 THE COURT REPORTER: Yes,
7 ma'am.

8 THE COURT: For I. D.
9 which is the composite drawing.
10 Based on what has been presented
11 to the Court as well as ample
12 precedents, I'm referring to
13 State versus Moore as well as its
14 progeny and Neal versus Biggers,
15 the Court is required to hold a
16 hearing whenever identification
17 has taken place.

18 The Court acts as a
19 gate-keeper basically to
20 determine, one, whether the
21 identification process was unduly
22 suggestive and if the Court finds
23 that it was unduly suggestive the
24 next step would be to determine
25 whether the out of state, out of

1 court I. D. was nevertheless so
2 reliable that no substantial
3 likelihood of misidentification
4 existed.

5 I think we're well aware
6 that the first prong of that test
7 is was the I. D. suggestive and
8 only if the I. D. procedure was
9 suggestive may the Court consider
10 the second question, which is was
11 there a substantial likelihood of
12 misidentification.

13 And I thought through
14 the issue last night after having
15 heard the arguments of counsel
16 and I thought about this. The
17 defendant Coulter's argument
18 regarding the fact that
19 Mr. Hackler had not testified as
20 a part of the identification, as
21 part of the State's case in terms
22 of the identification procedure.
23 I don't know that that is
24 necessary nor am I aware of any
25 procedure that would require that

1 would allow me to require the
2 State to call another witness.

3 The issue for the Court
4 is was the identification
5 procedure suggestive. And the
6 Court needs to look at that based
7 on the standard which is a
8 preponderance of the evidence.
9 And in order to determine that,
10 I'm only required to look at the
11 evidence that is before me, which
12 is the testimony of
13 Detective Kramitz.

14 Based upon what has been
15 presented to the Court which is,
16 as I've already indicated, the
17 exhibits that have been marked
18 for I. D., and based on the
19 observations I've already made
20 yesterday, which I'm not going to
21 be redundant regarding the
22 lineups themselves, the Court
23 would find that based on that
24 testimony, the way the lineups
25 were done, there's been no proof

1 that they were suggestively done
2 nor that they were improperly
3 done.

4 As I've already
5 indicated on last night before we
6 adjourned court the lineups to me
7 are strikingly similar and more
8 so than most lineups that you
9 normally see in these type
10 proceedings. The indication
11 based on the testimony is that
12 the procedure was done
13 appropriately, that the lineups
14 were conducted in a way to make
15 sure that each individual in the
16 lineup had the same similarities
17 in terms of their features, their
18 hair, the glasses in particular
19 for Mr. Coulter, as well as face
20 shape and hair type for
21 Mr. Croker, and that the witness
22 upon seeing the lineups
23 immediately picked in the first
24 instance number four, which was
25 Mr. Coulter, and in the second

1 instance number three, which was
2 Mr. Croker.

3 In addition, that the
4 officer explained the general
5 statement to the witness which
6 was this person may or may not
7 been in the lineup. The Court
8 would find that there has been no
9 indication that any, anything
10 improper took place during those
11 lineups based on the testimony of
12 Detective Kramitz, and the Court
13 has found that the State has met
14 their burden by a preponderance
15 of the evidence and finds that
16 the identification is admissible.

17 That then disposes of
18 all of Mr. Smiley's motions and
19 the joint Neal versus Biggers
20 motion of Mr. Davis. Is that
21 correct?

22 MR. SMILEY: Yes, your
23 Honor. I do have one oral motion
24 that's come up from last night
25 that I need to make some points

1 before we start.

2 THE COURT: What is that
3 oral motion?

4 MR. SMILEY: I'm not
5 asking for a continuance. I'm
6 asking for a period of time to
7 view some information that I was
8 only able to get ahold of at the
9 end of last night. It was
10 provided to me last week. I need
11 to see it and have some time to
12 sit down and see it.

13 I believe on Wednesday
14 of last week, if I'm correct, I
15 received from the solicitor a
16 C. D. of the notes of Miss Edwina
17 Simms' computer that was obtained
18 in Virginia. They had used an
19 F. B. I. expert to extract her
20 data files from that computer.

21 I was provided the disc
22 without any information on how to
23 access the filings. I wasn't
24 involved. I tried to access them
25 and could not. At that point I

1 called my computer expert and on
2 Thursday he came and looked and
3 said I can't read these. You
4 need the extraction program used
5 by the F. B. I.

6 I spoke with Mr. Davis.
7 He concurred. He was the
8 attempting to reach the F. B. I.
9 agent who was unavailable and I
10 believe that's Agent Knevell.

11 MR. DAVIS: Knevell.

12 THE COURT: Was he --

13 MR. SMILEY: -- was
14 unavailable, so at that point I
15 gave the disc to my computer
16 expert and asked them if they
17 would try to extract it, and my
18 computer expert worked over the
19 weekend. I got a call about
20 11:30 last night. He had finally
21 obtained and was actually able to
22 get into the files. I then have
23 to drive about an hour and a half
24 just to get the disc and quite
25 frankly, your Honor, when I got

1 home at two o'clock last night.
2 I was in no condition to look at
3 anything.

4 THE COURT: How much time
5 you are looking for?

6 MR. SMILEY: About an hour
7 and a half. There's a lot of
8 information I need to look at.
9 My computer expert doesn't know
10 what I am looking for but he has
11 put in a file what he thought I
12 would be interested in.

13 There's a bunch of
14 deleted e-mails. There's another
15 e-mail account, a hot mail
16 account that he says he's got to
17 set aside, that he hasn't been
18 able to sort and separate for me,
19 so it may not be exculpatory. He
20 tended to give me the indication
21 he thought there was, but he
22 doesn't know. He's not a lawyer.

23 I'm trying to defend my
24 client and at the same time
25 I'm -- in the same time I'm in

1 the process of processing
2 information. I need extended
3 time to do that, so I would need
4 an hour and a half, two hours
5 somewhere to go over the
6 information without jumping at
7 twenty-five other things, so I
8 can come back and tell you yes, I
9 need to explore this further or
10 no, I'm ready to go.

11 So I don't know. I may
12 come back and say this requires
13 further investigation. I need a
14 continuance. I don't know that
15 to be the case but I've done --
16 I've exercised due diligence to
17 do everything I can do once I
18 received the information to get
19 it to, to access it.

20 I finally have been able
21 to do that. I need to have the
22 time to digest it, to go through
23 it.

24 I have an indication
25 from them if I may comment, that

1 he believes it is, but he does
2 not know. He's not a lawyer. So
3 that's my motion. I'm asking for
4 time in lieu of this.

5 THE COURT: Time when?

6 MR. SMILEY: Today
7 sometime.

8 THE COURT: Well, you're
9 not talking before opening
10 arguments, are you?

11 MR. SMILEY: No, ma'am. I
12 think we could do opening
13 arguments before we get to the
14 meat of the case. I don't know.

15 THE COURT: Well, what I
16 anticipated today was to finish
17 the motions and do opening
18 arguments and break for lunch and
19 then come back.

20 MR. SMILEY: Then the only
21 reason that I don't know, is
22 before we do opening arguments,
23 you're going to swear the jury,
24 is if in fact there is something
25 on there that's exculpatory that

1 requires further investigation, I
2 would then have to ask for a
3 continuance and jeopardy would
4 have attached. That's the only
5 reason. I'm just looking at
6 it --

7 THE COURT: I can tell you
8 after the time that I've invested
9 at this point it's not likely
10 that I'm going to grant you a
11 continuance. It is likely that I
12 will give you additional time to
13 do what is necessary.

14 MR. SMILEY: All I'm doing
15 is being a good defense lawyer.

16 THE COURT: I agree that's
17 what you're doing.

18 MR. SMILEY: I'm doing
19 what I -- if I don't, in fact my
20 client would have every reason to
21 look at me and say why didn't you
22 make a motion.

23 THE COURT: I agree. But
24 I think we have other options.

25 MR. SMILEY: And that's

1 what I'm asking is intermediary
2 actions to give me the time to
3 tell the Court, to tell you if
4 anything further is needed or
5 yes, I've looked at it and yes,
6 at this point I am competent and
7 prepared to go forward, and
8 that's what I'm asking for first
9 at this time.

10 THE COURT: And when you
11 did originally get the disc?

12 MR. SMILEY: I believe
13 Wednesday.

14 THE COURT: Last week?

15 MR. SMILEY: Wednesday or
16 Thursday of last week.

17 MS. WILSON: Judge, it was
18 sometime last week. The disc --
19 what happened was after these
20 events occurred the F. B. I.
21 obtained Miss Simms's home
22 computer and took the information
23 off the computer and returned the
24 computer to her son who needed it
25 for school work.

1 They didn't download the
2 operating systems. In other
3 words, they didn't download
4 Windows and things like that that
5 were on it. Just the data
6 information.

7 That disc has been with
8 the F. B. I. since then for quite
9 some time. When both defendants
10 asked me for a copy of it, I had
11 a copy made and gave it to them.

12 MR. SMILEY: I certainly
13 don't allege any wrong-doing on
14 the part of the prosecutor. It's
15 just a matter of logistics and
16 actually to make it clear, it
17 wasn't just data files that were
18 on there. There were
19 encryptions -- I don't need to
20 use the word encryptions because
21 that's a specialized form, a form
22 when it was in, when it was taken
23 off in the -- a program used by
24 the F. B. I. and you could not
25 just use the operating system

1 such as Word Perfect or Windows,
2 you had to reconvert it back and
3 that was the problem. We didn't
4 have that program.

5 Luckily I had access to
6 someone who had worked with the
7 government and recognized the
8 program and had spent the weekend
9 tracking down the program to be
10 able to get to it and of course
11 I'll have it available if you
12 need to ever ask me any
13 questions.

14 THE COURT: No. I don't
15 doubt your representations as an
16 officer of the court. I'm just
17 saying there are other avenues we
18 have absent a continuance?

19 MR. SMILEY: At this
20 point, your Honor, I'm making it
21 very clear I'm not asking for a
22 continuance. I'm asking for an
23 opportunity in the middle of a
24 trial. It's hard to sit down,
25 focus on that, when you got all

1 the other issues.

2 If you would give me
3 permission at this point I'm
4 asking for an hour and a half,
5 two hours delay to have an
6 opportunity to sit down, go
7 through it, and come back and
8 report to the Court one of two
9 things. Your Honor, I'm ready to
10 go or in fact I need a
11 continuance. At that time point
12 I understand your position, but I
13 would still have to ask.

14 THE COURT: Certainly.

15 Mr. Davis, your motions.

16 MR. DAVIS: Thank you,
17 your Honor. First of all, just a
18 brief comment if I could put on
19 the Biggers. Because of the
20 Court's ruling we renew the
21 motion we had made before
22 concerning the fact that without
23 that information --

24 THE COURT: I think your
25 position has been well stated for

1 the record. It's preserved and
2 I'm not inclined to hear any
3 additional argument on that.

4 MR. DAVIS: There are no
5 arguments. I just wanted to
6 state that, your Honor.

7 THE COURT: You're
8 welcome. It's preserved for the
9 record.

10 MR. SMILEY: And I join
11 in.

12 MS. WILSON: And, Judge, I
13 think Mr. Smiley has
14 Mr. Hackler's --

15 MR. SMILEY: I was given
16 it on Friday. I didn't know
17 that. That was when he was in
18 another state and I didn't have
19 ample opportunity to track him
20 down.

21 THE COURT: It was my
22 understanding based on the status
23 conference they were made
24 available to you and that they
25 had already spoken with

1 Mr. Davis. Mr. Hacker indicated
2 he did not have the desire to
3 speak with you or Mr. Davis, but
4 that his wife did speak to you,
5 you had wanted an opportunity to
6 speak to her for whatever reason
7 and that you all were going to
8 make an additional attempt to do
9 that.

10 But it was my
11 understanding that Mr. Hackler
12 was still not going to be
13 inclined to speak with you all.
14 He's under no legal obligation to
15 do so. He is certainly free to
16 talk with you or not talk with
17 you. The Court takes no position
18 one way or the other.

19 But I don't think having
20 his address based on what was
21 represented to me at the status
22 conference really would have made
23 a difference one way or the
24 other. He was not inclined to
25 speak with you. I don't think

1 having his address was going to
2 make a difference one way or the
3 other.

4 Certainly if you all
5 want to, when he arrives, ask him
6 again if he'd like to speak with
7 you, that's fine. If he says he
8 doesn't want to, but I'll leave
9 that up to you all.

10 **MR. SMILEY:** I would like
11 that opportunity without the
12 presence of the F. B. I. and the
13 investigator from the solicitor
14 and the both solicitors involved
15 in this case just to get his
16 answer. If he says no, I
17 understand.

18 **THE COURT:** If he's
19 inclined to do that, that's fine.
20 But if he's not, I'm not going to
21 force him to do that. That's his
22 prerogative.

23 **MR. DAVIS:** Your Honor,
24 just to be clear. It was not
25 access to speak with him and get

1 his response, which we did have.
2 It was the subpoena because based
3 on the Court's ruling now since
4 he wasn't called --

5 THE COURT: I'm sorry.
6 Say that again. I misunderstood.

7 MR. DAVIS: If -- the
8 Court stated the Court has no
9 ability or obligation to order
10 the State to require any
11 witnesses for the hearing but our
12 inability to subpoena him for
13 this hearing we'd renew our
14 objection for not having that
15 ability previously.

16 THE COURT: Your objection
17 is noted for the record.

18 MR. DAVIS: Thank you,
19 ma'am.

20 Just forgive me, your
21 Honor. I believe we talked about
22 this yesterday, but we've
23 discussed it. There was a Denno
24 motion on behalf of Mr. Croker.
25 We do not have a Denno motion but

1 I don't believe there were any
2 statements that were custodial in
3 nature that would require that on
4 behalf of my client, Mr. Coulter.
5 I would --

6 THE COURT: That's
7 correct.

8 MR. DAVIS: I would pick
9 up where Mr. Smiley left off.
10 Again I'm not asking --
11 Mr. Coulter is here and I want to
12 say this before we begin this
13 trial so I'm not asking the trial
14 be continued, however there are
15 some matters, I discussed this
16 with Ms. Wilson, there are some
17 matters that do remain unanswered
18 from the State that we do want to
19 put on the record and we ask for
20 the record that they were
21 available.

22 We had made attempts
23 also to look at any of the
24 information and the disks that
25 was provided to us and we made

1 very little headway in obtaining
2 that information and basically
3 come to a stand-still and were
4 unable to get that disk.

5 MR. SMILEY: I'll be glad
6 to share it.

7 MR. DAVIS: Thank you.

8 Also there were video
9 tapes mentioned in -- during the
10 investigation that were obtained
11 by law enforcement. We did not
12 have access to those. The
13 indication is they know longer
14 are available. That's what --
15 it's now been provided to us and
16 that they're no longer --

17 THE COURT: You're saying
18 they --

19 MR. DAVIS: The
20 information they are no longer
21 available has been given to us.

22 MS. WILSON: In other
23 words they're lost.

24 THE COURT: And what they
25 reportedly were was what?

1 **MR. DAVIS:** Your Honor,
2 the video tapes that were
3 obtained from the Suburban Lodge.
4 Upon receiving the video tapes
5 both Detective Connolly and
6 Detective Kramitz viewed the
7 tapes and found that they were
8 blank. It was their
9 understanding from the Suburban
10 Lodge that the video equipment in
11 the lobby area was malfunctioning
12 and so nothing was recorded.

13 **THE COURT:** So then they
14 weren't preserved by the company?

15 **MS. WILSON:** They weren't
16 put into evidence. They weren't
17 logged into evidence.

18 **THE COURT:** Because they
19 were blank?

20 **MS. WILSON:** Yes.

21 **THE COURT:** Okay.

22 Mr. Davis.

23 **MR. DAVIS:** Your Honor,
24 there was a camera with film
25 obtained from a search warrant of

1 my client's parents' house. It
2 was a camera he had and there was
3 film on that. We have seen it.
4 One of the photos, there was an
5 indication some of the photos, a
6 handful had already been taken
7 and that law enforcement finished
8 out the roll.

9 Talked with Miss Wilson
10 here this morning. We've seen
11 one of those photos. She
12 describes what the remaining
13 photos were but until, until --

14 THE COURT: Are you asking
15 for the photos or sort of -- you
16 lost me.

17 MR. DAVIS: I would ask
18 for access to any and all photos
19 they retrieved from that film.

20 THE COURT: Do you all
21 have any of those?

22 MS. WILSON: Yes, ma'am.
23 They're -- the notice I got
24 regarding that were all pictures
25 of Miss Simms' daughter in a

1 carrier, in a carrier on the
2 floor. And that was -- I have
3 one of those photos. I can get
4 the other ones, they're in the
5 office, but they're basically of
6 the same scene.

7 THE COURT: Okay. And
8 that is the extent of all the
9 photos?

10 MS. WILSON: That's all
11 I've been given and that's all
12 that I understand there were.

13 MR. DAVIS: There were a
14 couple of canine officers from
15 the County Sheriff's Department
16 that were involved in a
17 particular search. While they're
18 listed, they're also listed on
19 the State's witness list and been
20 provided from particular reports
21 from those officers based on that
22 search.

23 MS. WILSON: I don't have
24 any. I don't know that any were
25 made. I can ask. I thought I

1 had everything they had.

2 MR. DAVIS: Also received
3 a three-page document last
4 Wednesday at the pretrial
5 conference. In that document
6 were three individuals listed
7 that all were either at or worked
8 at the Master's Inn on Rivers
9 Avenue. We have received since a
10 statement from one of those
11 witnesses, from any reports or
12 statements from those witnesses
13 in possession of the State. We
14 would request any and all records
15 obtained from the Masters Inn --

16 THE COURT: You keep
17 saying the Masters Inn. Do you
18 mean the Suburban Lodge?

19 MR. DAVIS: The Masters
20 Inn on Rivers Avenue.

21 Through our discussion
22 with one of the witnesses it's
23 indicated that someone from law
24 enforcement was at the Master's
25 Inn reviewing records, reviewing

1 documents, reports, or anything
2 that resulted from that. We'd
3 ask to see that.

4 MS. WILSON: We don't have
5 anything.

6 THE COURT: Anything
7 further, Mr. Davis?

8 MR. DAVIS: Two more
9 items, your Honor. We have
10 information that F. B. I. agents
11 obtained evidence through search
12 warrants. We have the results of
13 the testing of some of that
14 evidence but to connect the dots,
15 we don't have the complete chain
16 on that. I will be forthright.
17 Miss Wilson and I discussed this
18 earlier. She indicates that the
19 evidence I wish to present, that
20 she'll not have an objection to,
21 is simply is we cannot complete
22 the chain at this point and so if
23 they objected to that, we don't
24 have the ability because we
25 were --

1 THE COURT: It is my
2 understanding that they are not
3 going to object to the chain. Is
4 that correct?

5 MS. WILSON: That's
6 correct, your Honor. There may
7 be some relevance issues or
8 something like that, but no chain
9 of custody issues.

10 MR. DAVIS: And then
11 finally, your Honor, again I
12 would, again I would ask the
13 Court to consider the transcript
14 from the Virginia custody hearing
15 and we just renewed the argument
16 yesterday that it is paperwork
17 that's material to our defense in
18 the custody of the State. Those
19 are the only issues for any type
20 of continuance, your Honor.

21 THE COURT: Well, now you
22 lost me just now. It was my
23 understanding that you were
24 speaking to separate issues.

25 MR. DAVIS: Yes, your

1 Honor. We would ask for
2 additional time to review any of
3 that that we have not seen.

4 THE COURT: Well, it is my
5 understanding that the only thing
6 you have asked for that is not
7 available is the e-mail.

8 MR. DAVIS: I'm sorry. Is
9 the?

10 THE COURT: The e-mail,
11 the computer stuff from
12 Miss Simms's computer. That
13 everything else doesn't exist,
14 so --

15 MR. DAVIS: I would argue
16 with the Court, forgive me, that
17 the film, while the State
18 indicates it's just some more
19 pictures of the same thing, the
20 film, the e-mail, and the
21 transcript are available.

22 MR. SMILEY: Mr. Croker
23 joins in Mr. Coulter's motion,
24 your Honor. Your Honor, if I
25 could be heard specifically about

1 the tape, the videotape.

2 THE COURT: Yes.

3 MR. SMILEY: The videotape
4 in this case was collected by
5 police officers for the City of
6 Charleston Police Department,
7 David Connolly. She did no
8 report but alleges she looked at
9 this tape and then it was blank,
10 but she didn't fill out any kind
11 of report and say I've looked at
12 a time tape, it's so many minutes
13 long, there's nothing on it.

14 She gave it to Detective
15 Kramitz signed for it. He signed
16 on this date I took possession of
17 the video tapes. That allegedly
18 he looked at it and there wasn't
19 anything on it. And he didn't
20 fill out a report either.

21 And now the last person
22 to have it that we know of is
23 Detective Kramitz. He doesn't
24 know where they are at this
25 point, but if there was nothing

1 on it that may be exculpatory for
2 us and that's being -- I don't
3 know where that evidence is, but
4 it's certainly denying us an
5 opportunity to --

6 THE COURT: Well, tell me.
7 Are the tapes lost and they can't
8 find it? What's the solution? I
9 can't fabricate them. I can't
10 make them exist. Those are
11 things you need to say to the
12 jury, that there were these tapes
13 and there was nothing on that and
14 they're lost.

15 MR. SMILEY: It starts a
16 slippery slope, your Honor, when
17 something they have, they have
18 something that didn't help the
19 State gets lost and I don't have
20 any recommendations.

21 THE COURT: I guess you're
22 asking me for a remedy and as far
23 as I know based on the rules
24 there is no remedy. If the
25 State, if Miss Wilson as an

1 officer of the Court --

2 MR. SMILEY: She never saw
3 the tapes.

4 THE COURT: Well, as an
5 officer of the court she
6 represented to me that the tapes
7 are lost, that they don't exist.
8 I -- what remedy is there for the
9 Court other than for you all as
10 advocates to cross-examine the
11 witness?

12 MR. SMILEY: One remedy
13 would be to exclude
14 Detective Kramitz's testimony
15 since he's lost evidence.

16 THE COURT: No, that's
17 not.

18 MR. SMILEY: Well, you're
19 asking. It certainly starts a
20 slippery slope when there's no
21 recommendations.

22 THE COURT: Well, I mean,
23 you're, the issues are preserved
24 for the record and I guess the
25 question becomes if you're

1 arguing to me that the tapes, if,
2 if it has been represented to the
3 Court that the tapes no longer
4 exist, there is no remedy for the
5 Court.

6 The remedy is, of
7 course, for you as an advocate to
8 argue that to the jury. That is
9 certainly adverse to the State
10 because if the tapes were to
11 their benefit the tapes would
12 exist and obviously there's a
13 negative inference because they
14 say the tapes don't exist.

15 MR. SMILEY: Well, I think
16 they're misstates they don't know
17 where the tapes are. Nobody
18 ever --

19 THE COURT: The tapes all
20 lost or do you all not know?

21 MR. DURANT: Your Honor --
22 go ahead.

23 MS. WILSON: Your Honor,
24 it seems to me it's the same
25 thing. We don't know where they

1 are so I assume they're lost. I
2 can't say that they don't exist
3 because I don't know if they were
4 destroyed, but I know that I have
5 asked, I had people search here,
6 there, and yonder and they don't
7 have them.

8 I would like to see them
9 as well, but there's nothing I
10 can do about it.

11 **MR. SMILEY:** Lastly and
12 I'll sit down, your Honor, but
13 they certainly are important in
14 this case. This case lodges on
15 the identification about one
16 individual at the Suburban Lodge
17 where these tapes could have been
18 taken on that night in question,
19 so it is very important if those
20 tapes contain nothing but looking
21 at a lobby or looking at a
22 parking lot I don't know exactly
23 what was purported to look at and
24 have times on it and my guy
25 doesn't pass through it, it

1 certainly would help my case.
2 The fact that they have nothing
3 on them could be helpful is what
4 I'm saying. Now that they're
5 gone and this is the linchpin
6 it's not a harmless issue because
7 it goes to the identification on
8 that night is where this case
9 start and ends for the most part.

10 The fact that we don't
11 have them isn't just "oh, well."
12 It's important. I don't know
13 what the remedy is either, your
14 Honor. I wish I did. I mean I
15 would ask you to dismiss the
16 charges but I know better than
17 that, your Honor, so I'm trying
18 to find out where we go from
19 here.

20 I didn't lose them. The
21 State had them in their
22 possession. They have a process
23 in which to record evidence and
24 to put them into evidence and
25 keep the evidence, to bring it to

1 court so we can then find out
2 what is relevant and not
3 relevant, what is admissible and
4 not admissible.

5 And these two tapes
6 which could be important are not
7 here and that's all I have to
8 say, your Honor.

9 MR. DURANT: Your Honor,
10 because I've discussed this issue
11 with Detective Kramitz, basically
12 what he tells me is he received
13 the tape. He reviewed them.
14 There was nothing to show, no
15 dates, no images at all, just
16 plain snow. For that reason he
17 didn't feel that the tape had any
18 evidentiary value and didn't put
19 the tape into evidence.

20 Now quite frankly he
21 can't remember where the tape
22 went. He doesn't know if he
23 threw it away. He doesn't know
24 if he left it on the desk at the
25 police department, whatever. But

1 the tape didn't have any
2 evidentiary value so he had no
3 reason to put it into evidence.

4 Just like my pen. If
5 you know it doesn't have, you
6 know, any evidentiary value to
7 the case I wouldn't put it into
8 evidence, and I'm sure all that
9 will come out on
10 cross-examination.

11 MR. SMILEY: Well, if that
12 pen came from the parking lot and
13 it did have a fingerprint on it,
14 they wouldn't throw it in the
15 trash. They would put it in
16 evidence.

17 THE COURT: Well, the
18 argument remains, the tapes
19 don't -- they are only required
20 to turn over to you what is in
21 their possession. It is not in
22 their possession.

23 As an advocate there are
24 avenues that you can take, that
25 you can effectively argue to your

1 client. I'm not going to tell
2 you what they are because I'm not
3 an advocate. I'm merely a
4 gate-keeper and I'm certainly not
5 going to tell you how to try your
6 case.

7 I think you know me well
8 enough. I take a hands off
9 approach and if there is no
10 remedy and both Miss Wilson and
11 Mr. Durant tell me as officers of
12 the Court that the tape doesn't
13 exist, I can't make them exist.
14 I can't fabricate them.

15 As I indicated, you can
16 follow where the tapes were, who
17 had them. You can call the
18 person who was in charge of them
19 at the hotel and question them
20 about it. I don't know what the
21 results of that would be, but
22 nevertheless the rules require
23 them to turn over what is in
24 their possession. It is not in
25 their possession, therefore they

1 really technically have no duty
2 to turn it over.

3 Now if you want to argue
4 an adverse inference to that,
5 that's certainly up to you and I
6 imagine that you will.

7 Now, as regards the
8 transcript of the Virginia
9 custody hearing, which rule were
10 you relying on, Mr. Davis?

11 MR. DAVIS: Five and it's
12 the subsection dealing with
13 documents and I believe it's C,
14 your Honor. And, your Honor, for
15 the record we would join in the
16 motion just made by Mr. Croker.

17 THE COURT: I'm sorry. I
18 didn't hear you.

19 MR. DAVIS: For the
20 motion, we would join in the
21 motion, the argument just made by
22 Mr. Croker's counsel. 5 (A)
23 (1-C), your Honor, documents
24 intangible objects.

25 THE COURT: How lengthy a

1 transcript are we talking about,
2 Miss Wilson?

3 MS. WILSON: I beg the
4 Court's indulgence.

5 THE COURT: Was it
6 actually a court proceeding or a
7 mediation or some kind of
8 arbitration, because their system
9 works very different than ours.

10 MS. WILSON: I know that
11 there was a judge there, a family
12 court type judge. If I can beg
13 the Court's indulgence just one
14 second.

15 Your Honor, we'll give
16 them the transcript. I was about
17 to say the rule, really there two
18 parts to it. This -- I've looked
19 at this. I did some research
20 last night. The only case on
21 point and really not even on
22 point factually that deals with
23 this is State versus Lyle that
24 even address -- which is a
25 Supreme Court 1997 opinion. That

1 deals with that subsection of the
2 rule and it, really it's not on
3 point. It only addresses whether
4 the prosecution has the material
5 in their possession or not.

6 THE COURT: It does not
7 address the materiality issue or
8 whether the language for use by
9 the prosecution as evidence in
10 chief, in chief at the trial and
11 I believe pursuant to the rule
12 they're entitled to a copy of it.

13 MR. SMILEY: May I have a
14 copy also, your Honor?

15 MS. WILSON: I don't have
16 a problem giving him a copy.

17 MR. SMILEY: Okay.

18 THE COURT: All right.

19 MR. DAVIS: Two small
20 items, your Honor. I don't
21 believe the State intends to
22 introduce any testimony about an
23 alleged drug transaction between
24 the defendant. I think they said
25 yesterday they don't intend to do

1 that. Is that correct?

2 **MS. WILSON:** From Mr --
3 between these two defendants.
4 That's correct.

5 **MR. DAVIS:** Finally, your
6 Honor, just out of the -- an
7 abundance of caution we had a
8 discussion at the pretrial
9 conference about the written
10 motion. I'd a made a specific
11 Brady motion. In specifics,
12 Mr. Hackler, and the Court,
13 myself, and Miss Wilson had the
14 conversation on the phone. I
15 know we discussed that and since
16 it wasn't in Court but I'm not
17 sure what was --

18 **THE COURT:** Actually you
19 all waived the record when you
20 called me and asked me to handle
21 it by telephone. But my
22 recollection is when you called
23 me on the telephone you waived
24 having a record because you know
25 I would have a court reporter.

1 You all called me, said
2 there was a written motion filed
3 and you all were at odds about
4 whether you had access. Actually
5 you had filed a motion. You all
6 worked out everything except one
7 issue which was as to Mr. Hackler
8 and basically you all explained
9 to me the situation, and I
10 explained to you I would split
11 the baby. That you would have
12 access to Mr. Hackler and of
13 course it was subject to what he
14 wanted to do. If he wanted to
15 talk to you and pursuant to what
16 we know as well established
17 precedents, we need to set the
18 parameters of that contact.

19 It is my understanding
20 subsequently at a status
21 conference, as far as I was
22 concerned it was resolved and you
23 all had worked that out.
24 Subsequently at a status
25 conference I was advised, I

1 thought they were in town I
2 didn't know they were out of
3 town, but subsequently realized
4 they were out of town and that
5 the conference was being
6 conducted via telephone.

7 It was my understanding
8 Mrs. Hackler agreed to speak with
9 you and that Mr. Hackler
10 indicated he did not want to. It
11 is also my understanding that
12 there was some concern. I would
13 assume you all were in the room
14 with conference speakers.

15 MS. WILSON: Yes, your
16 Honor.

17 THE COURT: That you were
18 present, the solicitor was
19 present, Miss Shealy was present
20 also.

21 MR. DAVIS: Yes.

22 THE COURT: Help me out.
23 Who else was present?

24 MS. WILSON: I don't
25 remember, Judge. Some people

1 from our office.

2 MR. DAVIS: Agent Mc
3 Cants. That was it.

4 THE COURT: Okay. And
5 it's my understanding that
6 Miss Hackler agreed to speak with
7 you, but wanted representatives
8 of the Solicitor's Office
9 present, that you all objected to
10 that procedure -- well, I don't
11 know.

12 MR. DAVIS: Yeah.

13 THE COURT: My
14 understanding is that's how it
15 happened.

16 MR. DAVIS: There was no
17 discussion about whether they
18 should remain or not. They
19 simply were in the room.

20 THE COURT: And I, of
21 course, was not privy to any of
22 that. I did not know it was going
23 to take place and how it was
24 going to unfold. My assumption
25 was that they were coming to

1 Charleston and you would have had
2 access to them. Subsequently you
3 all -- I really don't have any
4 intimate knowledge of it, but in
5 any event, subject to the status
6 conference, I gave you all the
7 opportunity to speak with her
8 privately if that were her
9 desire, and I don't know what
10 happened after the status
11 conference.

12 Is that a correct
13 recollection, summarized version
14 of what took place?

15 MR. DAVIS: Yes, your
16 Honor.

17 THE COURT: And it is my
18 understanding Miss Wilson, based
19 on the status conference, that
20 Miss Hackler decided to have
21 representatives of your office
22 present.

23 MS. WILSON: That's
24 correct, your Honor. We
25 didn't -- the day it happened I

1 just asked her if she was willing
2 to talk to him. She said she
3 was. We were on a speaker phone.

4 They came in and began
5 to talk. Then after that, I
6 can't remember if it was before
7 or after that, then Mr. Hackler
8 got back on the phone. They
9 asked and he said he didn't want
10 to talk.

11 THE COURT: Okay.
12 Pursuant to the status conference
13 I indicated that if they desired
14 to speak with Mr. Davis and
15 Mr. Smiley without you all being
16 present, that that opportunity
17 should be granted. That is my
18 recollection.

19 MR. DAVIS: Thank you,
20 your Honor.

21 MR. SMILEY: Your Honor, I
22 would like to say some things. I
23 don't know that I need to say it
24 now, so I'll keep my mouth shut.

25 THE COURT: Again I think

1 they should be given that
2 opportunity. If they want to
3 speak with them privately they
4 should be given that opportunity,
5 if they're amenable to that.

6 Okay. Mr. Davis, do you
7 have any other motions?

8 **MR. DAVIS:** That's it,
9 your Honor.

10 **THE COURT:** Does the State
11 have any motions?

12 **MS. WILSON:** Your Honor, I
13 filed a motion to -- I guess to
14 suppress defendant Croker's
15 introduction of evidence of alibi
16 based on his notice for alibi
17 being insufficient under the
18 rule.

19 I assume that Mr. Smiley
20 intends to get into that in
21 opening statement. I don't think
22 he has complied with the rule and
23 we would ask that you suppress
24 his mention or introduction of
25 evidence regarding any alibi.

1 **THE COURT:** Would you all
2 bear with me just one second.

3 Miss Wilson, when did
4 you file the motion?

5 **MS. WILSON:** I filed it
6 last Friday. It's a bare bones
7 information

8 **THE COURT:** Okay. It
9 hadn't made it to the file.
10 That's why I was asking.

11 **MR. SMILEY:** I hadn't seen
12 a copy of it.

13 **MS. WILSON:** I faxed a
14 copy of it to Mr. Smiley as well.
15 All my motion said was we filed
16 this motion and basically I cited
17 a rule which is Rule 5 (E-1).

18 In that rule, your
19 Honor, it states that a notice,
20 the defendant as notice of alibi
21 shall state the specific place or
22 places at which the defendant
23 claims to have been at the time
24 of the alleged events.
25 Mr. Smiley filed his notice. He

1 gave us the names and addressing
2 of the witnesses as required
3 under five E. He did not tell us
4 the specific place or places
5 where the defendants claimed to
6 have been. He basically says
7 defendant responding to the
8 request for alibi says the
9 defendant offers an alibi defense
10 and that the defendant was where
11 the, where his statement says he
12 was, and that's just not that
13 doesn't comply with the rule.
14 His statement is very vague.
15 It's very general and I think
16 under the rule he is required to
17 be specific about where his
18 witnesses say he was.

19 **MR. SMILEY:** On January
20 sixteenth of 2002, your Honor, my
21 client gave a two page statement
22 that was very specific about
23 where he was that night. Other
24 than restating that I referenced
25 it as that is his alibi and it

1 would be consistent with his
2 statement given on January the
3 sixteenth, 2002 and then listed
4 the witnesses.

5 THE COURT: Are you
6 referring to the statement that
7 he gave to the police?

8 MR. SMILEY: Detective
9 Kramitz. Of course trying to
10 figure out when this alleged
11 disappearance and kidnapping and
12 murder from reading the
13 indictment makes it difficult to
14 find out exactly when they were,
15 but that our attempt -- I don't
16 think you could be more specific
17 than the two pages that he gave
18 on January sixteenth, 2002.

19 I didn't see any reason
20 I had to reiterate it word for
21 word. I clearly referenced it.
22 I didn't. . . .

23 MS. WILSON: Judge, I
24 think it's clear from his
25 statement that he talks about

1 leaving this Elks party and being
2 basically all over town. I don't
3 believe that Mr. Smiley is saying
4 that Steve Garber was at the Elks
5 party. There were some other
6 witnesses on here that I don't
7 believe were the Elks party.

8 Under the rule he has to
9 tell us specifically where the
10 defendant was.

11 **THE COURT:** If this party
12 were more specific, Mr. Smiley, I
13 would agree with you but
14 basically it kind of says I just,
15 you know, I was here at this
16 time, I ran a few errands, then I
17 was here.

18 I think that you have to
19 comply with the rule and I'll
20 give you time to do that. I'm
21 not going to grant the motion to
22 suppress but I do think you need
23 to tell them exactly where
24 pursuant to the rule you were,
25 too, and provide the rules'

1 notice which says shall state the
2 specific place or places at which
3 the defendant claims to have been
4 at the time of the alleged
5 offense, the names and addresses
6 of the witnesses upon whom he
7 intends to rely to establish such
8 alibi and each of these witnesses
9 that you listed and correlate
10 them with the time period listed
11 in the statement. It must be
12 more specific and must be
13 provided. You don't understand
14 what I'm talking about?

15 MR. SMILEY: No.

16 THE COURT: The rule
17 speaks for itself. It sets out
18 the explanation.

19 MR. SMILEY: What time are
20 they saying this allegedly took
21 place because from reading the
22 indictment we don't know the --

23 THE COURT: Well, based on
24 the indictment, it's April
25 twenty-first.

1 MS. WILSON: Your Honor,
2 and if he wants more specifics
3 between ten and twelve p. m. on
4 April twenty-first. And as I
5 recall before Mr. Smiley, before
6 Mr. Smiley filed this motion he
7 either called me or ran into me
8 and asked me that question about
9 times.

10 MR. SMILEY: I asked you
11 about what time you were looking
12 for.

13 MS. WILSON: Right.

14 MR. SMILEY: And I said
15 eleven? Eleven thirty? I said
16 midnight? So I'm trying to --

17 THE COURT: Well it's a
18 very short time frame. I think
19 you should be able to say which
20 witnesses say where he was
21 between ten p. m. and twelve.

22 MR. SMILEY: Let me make
23 sure I'm clear, your Honor. I
24 would be glad to file as soon as
25 possible for me to sit down and

1 type it up between the time of
2 ten o'clock and midnight where we
3 will have our witnesses propose
4 that Mr. Croker was.

5 THE COURT: I don't think
6 you need to type it out, unless
7 you just want to do that.

8 MR. SMILEY: I think we
9 have to file it.

10 MS. WILSON: I don't have
11 a problem with that. I'm not
12 trying to be technical about
13 this. I think he just needs to
14 give us specifics. If he needs
15 to give us that orally and I have
16 to write that down, I'd be happy
17 to do that.

18 THE COURT: I don't think
19 you need to go to the trouble to
20 type it up.

21 MR. SMILEY: Well, when I
22 get a chance to sit down and I
23 got computers and I'm writing --
24 I just got to have the actual
25 time to think it through.

1 MS. WILSON: We had asked
2 for that by tomorrow morning at
3 the latest. Supposed to give it
4 to me ten days in advance.

5 MR. SMILEY: And I haven't
6 seen your motion yet. I just
7 heard the motion, your Honor.

8 MS. WILSON: Even if I
9 filed the motion right this
10 minute it won't change anything.

11 MR. SMILEY: Well, except
12 that we've already started the
13 trial and now she's -- I filed
14 two days in advance as the rules
15 say and this is the first I've
16 heard that argument.

17 THE COURT: Well
18 technically I could grant her
19 motion to suppress and I'm not --
20 I'm trying again to split the
21 baby and be fair to everyone
22 because I think that's an extreme
23 remedy and I'm not inclined to
24 grant it because he's entitled to
25 his alibi defense. This is his

1 life, and that he should be able
2 to present every defense that he
3 has available.

4 MR. SMILEY: And, your
5 Honor, between defending my
6 client on a kidnapping murder
7 trial and looking at the evidence
8 they continue to give me when I
9 get an opportunity, I will sit
10 down and do that as soon as we
11 can.

12 THE COURT: We are going
13 to have a thirty minute break if
14 there are no other motions
15 because the jury is not going to
16 be here until eleven thirty, so
17 and I -- she -- she -- I was
18 going to ask where are we with
19 our ability to look at what Mr.
20 Smiley's computer expert found.
21 When are we going to do that?
22 After? After opening arguments I
23 suspect, we'll have a little
24 extended lunch break and we can
25 look at it. Right?

1 MR. SMILEY: I have one
2 motion that doesn't need to be
3 heard unless Miss Wilson intends
4 to introduce anything from the
5 search at Campbell Road. If
6 she's going to get into that
7 search in her opening argument
8 then I guess we're going to have
9 to start that motion.

10 MS. WILSON: I haven't
11 made a decision yet on whether we
12 intend to introduce anything from
13 that search or not, but I do not
14 intend to mention that search.

15 MR. SMILEY: Just so you
16 didn't say --

17 THE COURT: You don't need
18 to make that motion, Mr. Smiley.
19 I don't think that we need to
20 have it heard.

21 MR. SMILEY: I'm just
22 telling you if she intended to
23 say anything about that I want my
24 motion to be heard.

25 THE COURT: We'll cross

1 that bridge when we come it to.
2 She's indicated they're not going
3 to talk about it in opening.

4 Okay. We'll take a
5 break so you all can get
6 organized.

7 MS. WILSON: Your Honor,
8 regarding sequestration, we
9 looked at the victim's billing of
10 rights this morning and it
11 appears that to qualify as a
12 victim --

13 THE COURT: You have to be
14 immediate family.

15 MS. WILSON: It's got to
16 be a parent, a child, or a
17 spouse. The victim's brother is
18 here and would like to remain in
19 the courtroom. It also provides
20 for a personal representative of
21 the victim. He had acted in that
22 capacity for Edwina Simms.

23 THE COURT: I think you
24 have to be appointed by the
25 Court.

1 MS. WILSON: He has not
2 been appointed by a court so if
3 the defense would like him to be
4 sequestered and would not allow
5 him to remain --

6 MR. DAVIS: Your Honor, it
7 was a mutual reciprocal order
8 so --

9 MR. SMILEY: My guys's
10 wife is outside and she'd like to
11 be in here, too.

12 THE COURT: He doesn't
13 come within the statute, you
14 know. I think we'll have to feed
15 everybody out of the same spoon.

16 MS. WILSON: Thank you.

17 THE COURT: You're
18 welcome. Now just as matter of
19 housekeeping, most of you have
20 tried cases with me so you
21 already know this, but just to
22 sort of remind everyone, I don't
23 entertain speaking objections
24 except to the extent that when
25 you make an objection you need to

1 state the ground for the
2 objection. If I need further
3 argument I will elicit it. If
4 not I don't expect any argument.
5 I know that this is a, you know,
6 I know this may be logical for me
7 but I was once an advocate and I
8 know how wound up you can get in
9 a case because I used to, but --
10 and I know that this will be a
11 hard fought trial, but I would
12 ask you all to just sort of keep
13 that in the forefront of your
14 minds. I have no doubt, I've had
15 trials with all of you. You all
16 are extremely amicable and I
17 assume you would be amicable with
18 one another, but in the heat of
19 battle please don't make any
20 extraneous comments in the
21 presence of the jury. I'm
22 putting you on notice I'll
23 instruct that they disregard it.
24 Generally I'm very liberal. You
25 know juries really look to a

1 judge. They try to see your
2 face. They try to look at your
3 body language to see if you have
4 some feeling about the case. And
5 I have a pretty clear poker face
6 because I am here, I spent five
7 years as a fact-finder and it is
8 not my job any more. It is the
9 jury's job and I don't like
10 having to give lawyers
11 instructions in the presence of
12 a jury. As much as I would like
13 to believe it doesn't affect you
14 I believe to some degree it does,
15 so I'm just telling you all at
16 the outset if anybody steps over
17 the line I'm going to handle it,
18 so I hope --

19 MR. SMILEY: I'm all
20 right, Judge.

21 THE COURT: You all can
22 stay in that area and get along
23 well.

24 MS. SHEALY: Your Honor,
25 can I ask you for clarification?

1 As I understand what you wish for
2 us to do if we have an objection
3 is to state the --

4 THE COURT: Hearsay.
5 Leading.

6 MS. SHEALY: And only if
7 you ask to be heard further.
8 What if we want to put something
9 further on the record?

10 THE COURT: I don't
11 believe it's your option. Under
12 the rules I think as long as you
13 state your ground it is preserved
14 and once I rule it's preserved.
15 And that is exactly what I'm not,
16 because once I've ruled that's
17 it. Right, wrong or indifferent,
18 it's preserved for the record.

19 Now if it's a lengthy
20 evidentiary matter we are going
21 to do that outside the jury's
22 presence anyway and we are going
23 to have a full argument on it, so
24 if your objection is hearsay,
25 leading, you know, foundation,

1 either I'm going to sustain the
2 objection or overrule it. I'm
3 going to give the lawyer the
4 instruction to rephrase the
5 question or otherwise.

6 But if I need any
7 further argument to rule on it,
8 it's preserved for the record.

9 MR. SMILEY: Respectfully,
10 your Honor, I don't know that our
11 Supreme Court will tell us that
12 if we want to perfect it and I
13 want to make it clear --

14 THE COURT: If you made an
15 objection and you stated the
16 ground for that objection.

17 MR. SMILEY: There may be
18 multiple grounds and arguments
19 need to be heard.

20 THE COURT: Well, if there
21 are multiple grounds you can
22 state them for the record without
23 giving me argument on it. You
24 should be able to state your
25 ground for the objection.

1 MR. SMILEY: I can't
2 think --

3 THE COURT: And the rules
4 are very clear on that. I just
5 don't want any argument in the
6 presence of the jury.

7 MR. SMILEY: I completely
8 understand.

9 THE COURT: All righty.
10 All righty. And actually I'm
11 referring to rule eighteen. It
12 says argument after ruling. No
13 argument shall be made on
14 objection to the admissibility of
15 evidence or conduct of the trial
16 unless specifically requested by
17 the Court. All righty.

18 Now we have a class with
19 us today. I'm going to give you
20 all time to get ready. We have a
21 class from Burke High School.
22 Their business law class is with
23 us. Would you all like to stand
24 up for me. Wonderful. We're
25 happy to have you. Let me turn

1 on my mike so you can hear me.

2 (Whereupon, the Judge
3 has an off-the-record discussion
4 with the class.)

5 (The Judge enters the
6 courtroom at 11:51 a. m.)

7 **THE COURT:** After some
8 thought, I have thought more
9 about the outstanding discovery
10 and I think it would probably be
11 a more efficient use of our time
12 to go ahead and break before
13 lunch, give you all an
14 opportunity to review those
15 documents and to try to go
16 through the e-mails and other
17 things and before we swear the
18 jury, just out of an abundance of
19 caution. So what we'll do then
20 is we'll break for lunch until
21 2:15, and I'm going to bring the
22 jury in and tell them we have
23 some matters of law we need to
24 dispose of and they're going to
25 have an extended luncheon recess.

1 Any objection to
2 proceeding in that manner, from
3 the State?

4 MS. WILSON: No, ma'am.

5 THE COURT: Mr. Davis?

6 MR. DAVIS: No, ma'am.

7 MR. SMILEY: No, Judge.

8 THE COURT: By the way we
9 just got our last juror a minute
10 ago, so that's why we were
11 waiting. He just arrived shortly
12 before now.

13 (The jury enters the
14 courtroom at 11:55 a. m.)

15 THE COURT: Ladies and
16 gentlemen, we appreciate your
17 time and your patience. There
18 were some matters of law that
19 have come up this morning that
20 we've been working on all
21 morning. As a matter of fact I
22 started court at nine fifteen
23 this morning and we worked
24 continuously since then. I have
25 found it necessary, however, to

Court's Opening Instructions

1 extend the break because we have
2 other matters of law which we
3 need to deal with which I
4 anticipate will take us well into
5 the luncheon break. So I am
6 going to excuse you until 2:15.
7 I think it's a more better use of
8 your time to allow you to go take
9 care of whatever matters you need
10 to take care of until that time,
11 instead of having you here
12 waiting.

13 During this break I
14 would ask that you abide by my
15 earlier instructions. Please
16 have no discussions about the
17 case with anyone. Don't
18 speculate about what you think
19 the case may be about. Please
20 have no contact with anyone in or
21 about the courthouse. And please
22 don't read any media reports
23 about the case.

24 Sometimes I know the
25 system is a lot of hurry up and

Court's Opening Instructions

1 wait but believe it or not we
2 have been working this morning on
3 things that will help things run
4 more smoothly and that is why we
5 do this, so that once we get
6 started we will have to take less
7 breaks.

8 We appreciate your
9 patience and I say that on behalf
10 of the State as well as on behalf
11 of both defense counsel. We know
12 what an inconvenience jury
13 service is to your personal lives
14 and sometimes quite frankly thank
15 you seems so very inadequate when
16 I say it, but I want you to know
17 that we truly appreciate your
18 sacrifice.

19 I hope that you all have
20 a good lunch and I'll see you at
21 2:15. If you will go with the
22 bailiffs. I think you all are
23 veterans now on getting in and
24 out of the building. You're
25 excused.

Court's Opening Instructions

1 (The jury leaves the
2 courtroom at 11:58 a. m.)

3 THE COURT: All right.
4 Anything further before we break
5 for lunch?

6 MR. SMILEY: The wife
7 cannot be in this room. They
8 won't let her in without a
9 judge's permission.

10 THE COURT: You have my
11 permission. Okee-dokee. We'll
12 stand at ease until 2:15.

13 (Whereupon, a luncheon
14 recess was taken at 11:59 a. m.)

15

16

17

18

19

20

21 AFTERNOON SESSION

22 THE COURT: All right.
23 Ladies and gentlemen, are we
24 ready to proceed?

25 MS. WILSON: State is

Court's Opening Instructions

1 ready.

2 MR. DAVIS: Yes.

3 THE COURT: Mr. Smiley, is
4 the defense ready?

5 MR. SMILEY: Yes, ma'am.

6 THE COURT: All right.

7 Please bring in the jury. If the
8 clerk would please be prepared to
9 swear in the jury.

10 CLERK OF COURT: Yes,
11 ma'am.

12 (The jury enters the
13 courtroom at 2:26 p. m.)

14 THE COURT: Thank you,
15 ladies and gentlemen I hope you
16 may be seated I hope that you had
17 a wonderful lunch I would ask
18 that you stand and raise your
19 right hand so that you may be
20 sworn by the clerk.

21 (Whereupon, the jury is
22 sworn.)

23 THE COURT: Ladies and
24 gentlemen, the mike was off. I
25 apologize. We are now at the

Court's Opening Instructions

1 stage where we're prepared to
2 begin the trial of this case.
3 Before we begin the trial of the
4 case I'm going appoint your
5 foreperson and the Court is
6 appointing number two oh eight.
7 Sir, if you could take your seat
8 in the front row. The foreperson
9 is your spokesperson here in the
10 courtroom. They don't have any
11 greater voice or vote than you.
12 It is simply an administrative
13 function. The foreperson
14 presides during jury
15 deliberations and is your vehicle
16 or means that communicates with
17 the Court. In other words if the
18 jury has a question or otherwise
19 it will be your responsibility to
20 communicate those items and
21 issues to the Court during
22 deliberations is what I'm
23 referring to. Again the
24 foreperson does not have any
25 greater vote or voice than anyone

Court's Opening Instructions

1 else does. It is simply an
2 administrative function.
3 Everyone else is allowed to sit,
4 other than the alternates of
5 course, who always sit on the
6 last row. The other jurors of
7 course can sit in any place in
8 the first two rows. The
9 foreperson of course always
10 retains the same seat during the
11 entire course of the trial.

12 During this trial you
13 will be given the opportunity to
14 take notes and Mike, the clerk,
15 is going to place those pads on
16 the edge of the bannister.

17 I'm going to give you
18 some preliminary instructions.
19 During this trial you will be
20 given the opportunity to take
21 notes of course as I've
22 indicated. The clerk is passing
23 out pens and pads for you. I
24 would ask that you open up the
25 pad to the first page and write

Court's Opening Instructions

1 your juror number on that page so
2 that you will be able to identify
3 which notes belong to you. I
4 need to advise you that when we
5 have breaks or otherwise, your
6 notes will be collected as well
7 as for the evening recesses and
8 for luncheon recesses, and they
9 will be kept secured during those
10 breaks. You can rest assured
11 that no one will read them or
12 otherwise, so that we keep them
13 secured. We keep them under lock
14 and key during recesses.

15 I would also advise you
16 that please do not feel required
17 that you have to take notes. The
18 notetaking is a privilege that
19 you may choose to exercise or
20 choose not to exercise. It is
21 certainly your option. Also I
22 would ask that if you should
23 decide to take notes please do
24 not try to record everything that
25 is said. As you heard me say

Court's Opening Instructions

1 during jury qualification, the
2 only person that's really
3 qualified to take down everything
4 is the court reporter and that is
5 because she uses a specialized
6 form of shorthand.

7 As the fact finders, and
8 you will hear me give you more
9 instructions regarding that
10 during these opening
11 instructions, it is your duty to
12 judge the credibility and
13 believability of witnesses. And
14 you cannot do that if you are
15 distracted by trying to take down
16 everything that is said. Your
17 powers of observation are
18 essential and they are part and
19 parcel of your responsibility as
20 jurors.

21 So again if you should
22 decide to take notes, don't try
23 to take down everything that is
24 said and please do not allow
25 yourself to become distracted in

Court's Opening Instructions

1 notetaking such that you miss
2 testimony and that you're not
3 able to adequately and completely
4 observe all of the witnesses and
5 the evidence as it is being
6 presented.

7 It might be helpful and
8 it may be helpful for you to keep
9 an outline of those things that
10 are said. Once you have been
11 sent to your jury room to
12 deliberate you may want to take a
13 few minutes to review your notes
14 and this review may serve to
15 refresh your memory of the trial
16 arguments and the general
17 evidence that was presented to
18 you. I would remind you that
19 you, your notes are for your
20 specific and individual purposes.
21 Please use them only for the
22 purpose of refreshing your own
23 recollections. You are
24 instructed that you're not to
25 share your notes with your fellow

Court's Opening Instructions

1 jurors. Your notes should not be
2 given any greater weight than the
3 recollections of other jurors.
4 The recollections of individual
5 jurors should be considered just
6 as reliable as notes taken by
7 other jurors.

8 Ladies and gentlemen of
9 the jury, the case that we're
10 about to try, the cases, I
11 apologize, that we're about to
12 try is the State versus Ronald
13 Coulter and the State versus
14 Ivory Croker, the defendants.
15 What I will now say to you is
16 intended to serve as an
17 introduction to the trial of this
18 case. These remarks not a charge
19 on the law of this case. These
20 remarks -- I will instruct you on
21 the law applicable to this case
22 at the end of the trial before
23 you retire to consider your
24 verdict. This is merely an
25 explanation of the procedure that

Court's Opening Instructions

1 we will follow in the trial of
2 this case so that you may better
3 understand what may be happening.

4 The defendants are
5 charged by indictments filed with
6 this Court with the crimes of
7 kidnapping, conspiracy to commit
8 kidnapping, and murder, the
9 elements of which will be
10 explained to you at the
11 conclusion of this trial. The
12 indictments are simply the charge
13 by which these cases are brought
14 into court and they are not in
15 any sense evidence of any of the
16 allegations they contain. The
17 defendants have pled not guilty
18 to the indictments. The State of
19 therefore has the burden of
20 proving each of the elements of
21 the indictments beyond a
22 reasonable doubt. And it will be
23 your duty, ladies and gentlemen,
24 to decide whether the State has
25 met that burden. Your purpose as

Court's Opening Instructions

1 jurors to find and determine the
2 facts.

3 You are the sole judges
4 of the facts in this case. If at
5 any time I make any comment
6 regarding the facts, you must
7 disregard it. You are to
8 determine the facts from the
9 evidence you hear and the other
10 evidence introduced in this
11 court. It is up to you to
12 determine the inferences which
13 you feel may be properly drawn
14 from the evidence. It is
15 essentially important that you
16 perform your duty of determining
17 the facts diligently and
18 conscientiously because
19 ordinarily there is no way to
20 correct an erroneous
21 determination of facts made by a
22 trial jury. On the other hand,
23 and with equal emphasis, the same
24 law that makes you the judges of
25 the facts makes me the judge of

Court's Opening Instructions

1 the law. The law that is given
2 by the Court is the only law you
3 may consider. You must accept
4 the law and follow it even though
5 you may disagree with it. I
6 cannot tell you what the facts
7 are and you cannot disagree with
8 me about what the law is or what
9 the law should be.

10 Your job is to take the
11 law as I give it to you and apply
12 it to the facts as you find them
13 from the testimony of the
14 witnesses and other evidence that
15 is introduced during the course
16 of this trial. After doing that,
17 you will render your verdict. A
18 true and just verdict, under the
19 solemn oath that you have just
20 taken as jurors. Until I advise
21 you to begin your deliberations
22 you must not discuss this case
23 with anyone. That includes your
24 fellow jurors, your friends,
25 family members, and anyone

Court's Opening Instructions

1 involved in this case. After the
2 case is submitted to you you must
3 discuss it only in your jury room
4 among your fellow jurors. The
5 attorneys and the parties in this
6 case have been advised that
7 they're not to talk to you at
8 all, so if you should see them in
9 the lobby or at local restaurants
10 or in other places and they do
11 not speak to you, please do not
12 think that they are being unkind
13 or discourteous. They are simply
14 following the Court's
15 instructions.

16 During the trial you're
17 instructed that you're not to
18 read, listen to, or watch any
19 news reports about this case.
20 This includes anything that may
21 be in the newspapers or on the
22 Internet, radio, or television.
23 In addition, you are not to do
24 any independent research about
25 any issue or matter involved in

Court's Opening Instructions

1 this case. That includes doing
2 any type of independent research
3 on the Internet. You must not
4 consider anything that you may
5 have read or heard about this
6 case outside the courtroom,
7 either before or during the trial
8 of this case. It is important
9 and essential that you keep an
10 open mind and not decide any
11 issue in the case until all of
12 the evidence has been presented,
13 the parties have made their
14 closing arguments, and I have
15 instructed you on the law
16 applicable to this case. It is
17 your solemn responsibility to
18 determine the guilt or innocence
19 of the defendants and your
20 verdict must be based solely on
21 the evidence as it is presented
22 to you in this trial and on the
23 law as I will instruct you during
24 the course of and at the close of
25 evidence in this case.

Court's Opening Instructions

1 In just a moment the
2 solicitor will make what is
3 called an opening statement in
4 which the solicitor will explain
5 to you the issues in this case or
6 at least what the solicitor
7 thinks the issues are in this
8 case. The attorney for -- the
9 attorneys for the defendants may
10 also make an opening statement,
11 although they are not required to
12 do so. What the attorneys tell
13 you during their opening
14 statements is not evidence in
15 this case. It is only their
16 contention as to what the issues
17 are. The evidence in this case
18 will be presented to you by the
19 testimony of sworn witnesses from
20 the witness stand and/or by
21 exhibits that may be introduced
22 into evidence.

23 From time-to-time during
24 the trial you may hear one of the
25 lawyers say something like, your

Court's Opening Instructions

1 Honor, we have a matter of law or
2 a question of law that we want to
3 discuss with you or your Honor.
4 May we approach the bench. Or I
5 myself might find it necessary to
6 ask the attorneys approach the
7 bench or to excuse you from the
8 courtroom for a short while so
9 that the attorneys and I can
10 discuss a matter of law. The
11 reason for this is because you
12 are the judges of the facts in
13 this case and sometimes when I'm
14 discussing matters of law with
15 the attorneys it might be
16 necessary for me to make some
17 comment about the facts in
18 connection with ruling whether or
19 not a particular rule of law
20 applies. I'm not supposed to
21 tell you what I think the facts
22 are, so I will excuse you from
23 the courtroom while these
24 discussions take place so that
25 you in no way will be influenced

Court's Opening Instructions

1 by anything that I might say or
2 do in connection with the facts
3 of this case.

4 In addition, from time
5 to time you may hear one of the
6 attorneys say I object. Just as
7 in sports or any other structured
8 activity, there certain rules of
9 evidence that we must all abide
10 by in a rules of court, and an
11 objection is a procedure by which
12 an attorney brings a possible
13 infraction of those rules to my
14 attention as the Court. For this
15 reason please do not hold an
16 objection against an attorney nor
17 should you conclude from the
18 Court's ruling that I favor one
19 side or the other. In
20 determining what the true facts
21 are in this case, you must decide
22 whether or not the testimony of
23 witnesses are believable. It
24 will be my responsibility to rule
25 as a matter of law as to whether

Court's Opening Instructions

1 certain testimony is admissible
2 at all or not. But once the
3 testimony is admitted whether or
4 not you believe it is solely for
5 you to determine.

6 In deciding whether to
7 believe a witness you have the
8 right to consider the interest of
9 any witness. The bias of any
10 witness. The prejudice of any
11 witness. The opportunity for the
12 witness to have seen the matters
13 and things about which the
14 witness may testify. And the way
15 the witness acts on the witness
16 stand. You have a right to
17 consider anything that is in the
18 record that will help you
19 evaluate the testimony of the
20 witnesses. That means that it is
21 your duty to pay close attention
22 to the witnesses, to observe
23 them, to listen to them, and pay
24 close attention to the attorneys
25 and to the Court. Although we

Court's Opening Instructions

1 know it is difficult sometimes,
2 please not allow your thoughts to
3 wander but give strict attention
4 to the testimony in this case so
5 that at the end of all of the
6 testimony, after the closing
7 arguments of counsel and the
8 charge on the law by the Court,
9 you will then be in a position to
10 determine what the true facts are
11 and to apply the law to those
12 facts and thus render a true and
13 just verdict in this case.

14 And as I've indicated,
15 it is your added duty, Madam
16 Foreman -- I'm so used to saying
17 Madam. I apologize.
18 Mr. Foreman, for you to preside
19 in the jury room and to be the
20 jury spokesperson here in the
21 court. It will also be your duty
22 to write the verdict, but I will
23 give you additional instructions
24 regarding that at the close of
25 the jury's instructions.

State's Opening Statements

1 In order to preserve
2 everyone's rights I will give the
3 parties an opportunity to object
4 to anything that has been said in
5 the Court's opening instructions.
6 Are there any exceptions from the
7 State?

8 MS. WILSON: No, ma'am.

9 THE COURT: From the
10 defense, Mr. Davis?

11 MR. DAVIS: No, ma'am.

12 THE COURT: Any from the
13 defense, Mr. Smiley?

14 MR. SMILEY: No, ma'am.

15 THE COURT: Is the State
16 ready to proceed?

17 MS. WILSON: Yes, ma'am.

18 THE COURT: You may
19 proceed.

20 MS. WILSON: May it please
21 the Court.

22 THE COURT: Yes, ma'am.

23 MS. WILSON: Thank you,
24 your Honor.

25 THE COURT: You're

State's Opening Statements

1 welcome.

2 MS. WILSON: It was April
3 the twenty-fourth, 2001. O.J.
4 [REDACTED], Junior was twelve years
5 old and he was supposed to be at
6 home with his mother that Monday.
7 But like many Americans who have
8 divorce in their families he was
9 supposed to have made the switch
10 the Sunday night before. See he
11 lived in Charlottesville,
12 Virginia. He lived with his
13 mother but he had spent that
14 weekend with his dad. His mom
15 was supposed to pick him up from
16 his dad's that Sunday night at
17 eight o'clock. She didn't. And
18 that next morning O.J.'s
19 father took him to the bus stop
20 right by the apartment that
21 [REDACTED] or O. J. as his family
22 called him, that O. J. shared
23 with his mother.

24 He could see his momma's
25 car. Went into the apartment.

State's Opening Statements

1 Checked all the rooms. Looked
2 for his mom. Looking for are a
3 six month old little sister. No
4 momma. No sister. Nobody.
5 O. J. got on the bus and
6 he went to school and, and
7 worried the whole day. Took the
8 bus home. Back into the
9 apartment and checked all the
10 rooms. No momma, no sister. He
11 curled up on the couch and his
12 heart began to race.
13 Ladies and gentlemen,
14 the charges in this case are
15 conspiracy to kidnap, kidnapping,
16 and murder. Many of you through
17 jury selection mentioned that you
18 had seen reports of this case,
19 heard about this case. To those
20 of you who haven't seen or heard
21 anything, we don't have the body
22 of O. J.'s mother. We are not
23 going to be able to show you how
24 she died. But what we do have is
25 solid evidence that Ronald

State's Opening Statements

1 Coulter, this man right here, and
2 his sidekick, Ivory Croker,
3 killed her and disposed of her
4 body. What we do have is the
5 rule of law that doesn't reward
6 criminals for doing a good job.

7 I'm going to go over the
8 indictments in this case so that
9 you'll know what you're looking
10 for, what elements that the State
11 has to prove to you. First of
12 all, with regards to conspiracy,
13 that is very simply an agreement
14 between two people for the
15 purposes of accomplishing
16 something unlawful. In this case
17 that something is kidnapping. As
18 you can imagine in criminal
19 matters these conspiracies, these
20 agreements aren't formalized in
21 writing, but it's a meeting of
22 the minds between two people to
23 do no good. Kidnapping is not
24 always what you see in the movies
25 as far as ransom. You see people

State's Opening Statements

1 being bound and gagged.
2 Kidnapping basically means that
3 someone is held against their
4 will. That's what it means.
5 There's no time requirement.
6 There's no requirement that they
7 ask someone for ransom, anything
8 like that. All that we have to
9 show you is that these defendants
10 unlawfully took O. J.'s mother,
11 that they didn't have the
12 authority of the law. It doesn't
13 matter how they took her. It
14 doesn't matter how they killed
15 her. Just that they did that
16 against her will and without
17 authority of law.
18 Murder is the killing of
19 another person with malice
20 aforethought. Don't let the
21 aforethought part bother you.
22 All that means is that malice
23 wasn't an afterthought. That the
24 person doing the killing had
25 malice in their heart before they

State's Opening Statements

1 did this actual killing. And
2 malice is defined as an act that
3 is committed with no just cause
4 or excuse. It's committed by a
5 heart fatally bent on mischief.
6 We have to show you these things
7 beyond a reasonable doubt. Not
8 beyond the shadow of a doubt.
9 Not beyond all doubt. But beyond
10 a reasonable doubt. In other
11 words, the evidence that we
12 present to you has to leave you
13 firmly convinced that these
14 defendants are guilty. Firmly
15 convinced.

16 Ladies and gentlemen,
17 you will hear testimony. You
18 will see exhibits. And they come
19 in two forms. Direct evidence
20 and circumstantial evidence.
21 Direct evidence. That's what
22 somebody sees. That's what they
23 hear. That's what they feel.
24 Circumstantial evidence. That
25 arises when there's a chain of

State's Opening Statements

1 circumstances, a chain of facts
2 that lead to a conclusion and try
3 as they might they cannot show
4 you that circumstantial evidence
5 is a four letter word.
6 Circumstantial evidence is
7 perfectly good evidence. That
8 when you use your common sense,
9 when you use your intelligence,
10 you use your gut, and you're
11 firmly convinced of the
12 conclusion from the
13 circumstances, from the facts,
14 it's just as good as any other
15 kind of evidence that you can
16 have.

17 You remember that. You
18 remember that when you're looking
19 and listening to the facts in
20 this case because facts in this
21 case are going to come out very
22 slowly, but very surely, because
23 you're going to learn that it
24 wasn't just O. J.'s mamma. She
25 had a name and she had a life.

State's Opening Statements

1 Her name was Edwina Simms. She
2 was in her mid-thirties. She had
3 been married to O. J.'s daddy.
4 They were married for some time
5 and then they were divorced.
6 They all lived in
7 Charlottesville, Virginia and she
8 stayed there most of the time
9 until she met Ron Coulter and
10 they began a relationship
11 together.

12 Ron moved to Ohio. She
13 and O. J. moved to Ohio for a
14 while with him. Things didn't
15 work out so well. Edwina and
16 O. J. moved back to Virginia and
17 continued about their lives.
18 Edwina continued to date Ron.
19 Continued to see him. And in the
20 fall, summer/fall of 2000, she
21 became pregnant with their child.
22 [REDACTED] was born in
23 October, 2000. She was born very
24 early and it was very stressful
25 as you might imagine for Edwina

State's Opening Statements

1 to have a child who was born
2 prematurely, but they made it
3 through that process and they
4 made it through the intensive
5 care unit, the sleepless nights
6 of being sick with worry about
7 such a young child, being born
8 prematurely.

9 Edwinna's relationship
10 with Ron was rocky. After [REDACTED]
11 was born they were on and off.
12 You will hear testimony from
13 Edwinna's friends about the things
14 she was doing at work, the things
15 that she liked, her relationships
16 with her family, the rest of her
17 family, her mamma, her daddy, her
18 brother. And you'll hear that
19 she understood that although her
20 relationship with Ron wasn't
21 going anywhere, that she
22 respected the fact that he was
23 [REDACTED]'s father and that as
24 [REDACTED]'s father he had a right to
25 have his family be a part of

State's Opening Statements

1 ██████'s life, to be a part of
2 the baby's life.

3 How many times do we
4 hear that? How many times do we
5 hear about how you've got to suck
6 it up because that's your child's
7 parent, that's your child's
8 mamma, that's your child's daddy.
9 You got to do the right thing,
10 build that relationship. And
11 that's what she was trying to do.
12 That's what she was trying to do
13 when she agreed to have come down
14 to Charleston with Ron. What
15 unfolded from there was not good.
16 They came to Charleston on April
17 the nineteenth, 2001. That was a
18 Thursday. The plan was for them
19 to spend the weekend. She was to
20 return to Virginia as I mentioned
21 earlier Sunday night, pick up
22 O. J., go to work the next day,
23 had a doctor's appointment, had
24 many things in her life to do,
25 many things in her life to look

State's Opening Statements

1 forward to, to continue with.

2 As I mentioned on Sunday
3 there was no Edwina in
4 Charlottesville and it wasn't
5 just O. J. and his dad who were
6 worried. It was Edwina's
7 neighbors, Lenora and Ann. And
8 Monday morning it was Edwina's
9 co-workers at the health care
10 place where she worked. They
11 knew something was wrong because
12 Edwina was not the type just to
13 not show. Her grandmother knew
14 that she was going to bring the
15 baby by to see her because her
16 grandmother kept the baby every
17 day because Edwina had that
18 doctor's appointment and the
19 grandmother was going to be
20 keeping the baby. Edwina had
21 told her I'll bring you by to see
22 her so you won't miss her for
23 that many days in a row. All of
24 those things never happened.

25 Finally, the family,

State's Opening Statements

1 Edwina's family, starts trying to
2 track down Ron, trying to figure
3 out what is going on and where is
4 she? Wasn't easy what they did.
5 He was not gone. He told them
6 that they'd come down to
7 Charleston to stay with his
8 parents and then Edwina wanted to
9 stay in a hotel Edwina had moved
10 into a hotel They had gotten
11 into an argument. That's one
12 version, there was an argument,
13 the other version was there was
14 no argument.

15 At any rate Edwina sends
16 him off with her six month old
17 child to spend time alone with
18 her while she hangs out at this
19 hotel in North Charleston, the
20 same child she wouldn't let
21 hardly anybody in Charlottesville
22 keep except for her grandmother
23 because of all that she had been
24 through and because of her, how
25 protective she was, and because

State's Opening Statements

1 she had acid reflux.

2 According to Ron, he
3 takes the baby back. He said
4 they all went and had a nice
5 time. He comes back to the
6 motel. Edwina's gone. All her
7 things are gone. No sign of
8 Edwina. That was on that
9 Saturday.

10 Sunday comes around.
11 Still no Edwina. He tells the
12 family I need to be -- get back
13 to Ohio. I just figured she had
14 left. Just figured she had left.
15 She had no credit cards, very
16 little if any money, no cell
17 phone. She just took off and
18 left. Figured she went home. It
19 took a while but fortunately
20 Edwina's family was able to get
21 the police involved and to start
22 an investigation. The days went
23 by and as you can imagine they
24 had the police in Virginia, they
25 had the North Charleston Police

State's Opening Statements

1 Department and they had the
2 Charleston Police Department
3 working, trying to figure out
4 what had happened and who had
5 jurisdiction. They started the
6 process. They started looking at
7 the motel where Ron said they had
8 been, trying to find out if
9 anybody had seen Edwina. Where
10 could she be? They didn't find
11 anybody who had seen Edwina.

12 But after a couple of
13 weeks they got a call because
14 after they had taken that picture
15 of Edwina around someone that
16 they talked to called them back
17 and said I, I didn't see her but
18 was it a few weeks ago, a couple
19 weeks ago that she went missing?
20 They said yeah. And this man,
21 James Hackler, proceeded to tell
22 them what he saw and it blew them
23 away. He was living at the time
24 at the Suburban Lodge in North
25 Charleston. He didn't know Ron

State's Opening Statements

1 Coulter. He didn't know Edwina
2 Simms. He was just an old guy
3 living with his wife in a motel
4 for a few months.

5 One night he heard a
6 noise outside. That Saturday
7 night. Same Saturday night that
8 Ron says Edwina wants to stay in
9 the motel. He hears the noise.
10 Sounds strange to him. He was
11 watching T. V. He goes to the
12 window, and backed up about five
13 to ten feet from his window. He
14 sees a car. The trunk is open.
15 He sees two black males, a tall
16 one and a short one. They have
17 on light blue playtex gloves and
18 they have a huge bag, a huge
19 garbage bag that they are taking.
20 He can tell that it's heavy
21 because of the way they're
22 holding it, and they're getting
23 it into the trunk of this car.
24 When it gets into the trunk that
25 bag starts moving and the shorter

State's Opening Statements

1 of the two fellows starts
2 punching the bag. They can't get
3 the trunk closed. One of them
4 gets in the driver's seat. The
5 other one holds the trunk as they
6 pull away. They go out of sight.
7 It scares him to death. He tells
8 them what he saw. He tells law
9 enforcement. He tells them also
10 his wife was across the way at a
11 station. He called her up and
12 said lock up. Lock up.
13 Something is going on. And he
14 tells her what happened. He also
15 called the security guard and the
16 security guard thought it was a
17 joke. He couldn't really hear
18 him that well. He thought it was
19 some old drunk guy. Security
20 guard after he hung up walked out
21 in the parking lot, sees a car,
22 doesn't know who owns that car.
23 Didn't see anything else and did
24 nothing else.

25 And they interviewed

State's Opening Statements

1 Mr. Hackler. He described those
2 two men. Taller one. The
3 shorter one. He said that the
4 taller one looked like this guy
5 Tommy or Timmy from the Martin
6 Lawrence show. If you don't know
7 what that character looks like,
8 you will. The agents knew what
9 that character looked like and
10 they prepared a photo line up
11 with Ron Coulter's picture in it
12 and sure enough, Mr. Hackler
13 picked out the picture of Ron
14 Coulter as the person he saw, one
15 of the people he saw with the
16 light blue gloves pushing what he
17 thought was a body in the back of
18 the trunk and moving the body.
19 He also gave a license tag
20 number. And although he did not
21 match every digit to the rental
22 car that Ron Coulter had, the
23 last four digits happened to
24 match Ron Coulter's rental car
25 for the weekend.

State's Opening Statements

1 That wasn't all that he
2 told them obviously, because he
3 described another man, a shorter
4 man, plumper man. Based on that
5 information the officers started
6 getting phone records. They
7 started trying to figure out who
8 Ron Coulter had in his life and
9 they found that he had calls to
10 and from Ivory Croker. They also
11 realized after getting the
12 description from Mr. Hackler that
13 Ivory Croker fit that
14 description. They put his
15 picture along with a picture of
16 six, five other men who fit that
17 description, and guess what?
18 Mr. Hackler recognized Ivory
19 Croker's photograph as the
20 photograph of the other man who
21 was helping Ron Coulter shove
22 that body in the trunk.

23 Now, as you can tell
24 from what I've outlined to you
25 before, we don't have evidence

State's Opening Statements

1 that Ivory Croker knew Edwina
2 Simms. We don't have evidence
3 that he was angry with her or
4 that he had a bone to pick with
5 her. But what we will show you
6 is evidence that the two of them
7 were life-long buddies. There
8 will be evidence that the two of
9 them were talking on the
10 telephone on and off all during
11 that weekend. And there will be
12 the evidence from Mr. Hackler who
13 saw Ivory Croker punching the
14 moving body in the back of that
15 trunk.

16 You think about that
17 when you think about the rule of
18 law that says the hand of one is
19 the hand of all. When two people
20 undertake to commit a crime, it
21 doesn't matter who does what.
22 When they are in it together, the
23 hand of one is the hand of all.
24 The act of one is the act of all.
25 When you see the evidence you

State's Opening Statements

1 will see that once Mr. Coulter
2 decided to do away with Edwina
3 Simms so that he could have that
4 baby, and he does have that baby,
5 and his friend decided to join
6 in, he became every bit as guilty
7 as Ron Coulter.

8 As I mentioned to you,
9 the evidence in this case is not
10 going to come quick. It's going
11 to come slow, like that sick
12 feeling O. J. had that Monday
13 morning; that it is going to be
14 undeniable when you see it and
15 you'll feel it. We ask at the
16 close of this case, after you
17 hear everything, you be smart and
18 that you be thorough and that you
19 listen to the details and you
20 gather together to deliberate.
21 We ask you to do one thing and
22 that is give a verdict that
23 speaks the truth. And the truth
24 in this case is that Ron Coulter
25 and Ivory Croker conspired to

State's Opening Statements

1 kidnap Edwina Simms, and they
2 kidnapped and murdered her.

3 THE COURT: Mr. Davis.

4 MR. DAVIS: Thank you,
5 your Honor.

6 THE COURT: You may
7 proceed.

8 MR. DAVIS: You all are a
9 little nervous? Probably. I am.
10 Maybe this is the first time that
11 many of you all are standing and
12 sitting in judgment of someone
13 charged with a murder. Well, I
14 represent Ron Coulter and he's
15 charged with abducting and
16 killing the mother of his six
17 month old baby girl. What makes
18 me doubly nervous in this case is
19 that Mrs. Shealy, the other
20 attorney for Mr. Coulter, our
21 combined years of experience,
22 over twenty-five years of
23 experience, we have never seen a
24 case like this. We don't have a
25 body. We don't have any physical

Mr. Davis's Opening Statement

1 evidence. And we don't have a
2 confession.

3 Well, Ron's already told
4 you, you heard him say he's not
5 guilty. That's not a confession.
6 What that leaves is a lot of
7 unanswered questions. And it's
8 emotional. It's going to be an
9 emotional case, and that's
10 understandable. And because of
11 that emotion you are probably
12 going to try to search and find
13 those answers. You are going to
14 want to try to fix things.
15 Assign blame. And feel sympathy.
16 All of that is natural. We all
17 feel that.

18 But as much as we want
19 them to, emotions don't lead us
20 to the answers. Not in here.
21 Now out there, suspicion and
22 gossip and rumor and speculation,
23 they're substitutes for answers.
24 But in here it's different. It
25 has to be different. In here we

Mr. Davis's Opening Statement

1 require more. Out there, gossip,
2 opinion, rumor, and suspicion and
3 speculation, they can ruin a
4 person's reputation even if
5 they're untrue. In here, they're
6 just not evidence.

7 Now, I'm going to be
8 brief because the evidence in
9 this case is going to come from
10 one place. This witness stand.
11 Now you've just -- you took an
12 oath just a moment ago and you
13 swore to. The clerk said that
14 you have, you swear that you will
15 truly try and a true deliverance
16 make between the State of South
17 Carolina and the defendant at the
18 bar, Mr. Coulter, whom you shall
19 have in charge and a true verdict
20 render according to the evidence
21 and the laws. Evidence and laws.
22 You swore to that.

23 You also taken your oath
24 to hold the State to its burden
25 of proving the case through the

Mr. Davis's Opening Statement

1 evidence beyond a reasonable
2 doubt. Beyond a reasonable
3 doubt. You have to be convinced
4 of it. You also look at
5 Mr. Coulter under the presumption
6 of innocence. You presume he is
7 innocent. He's told you not
8 guilty. He's presumed innocent
9 until and unless the State proves
10 through evidence that is
11 sufficient to convince you, all
12 of you, otherwise.

13 Now when this evidence
14 is presented, all of the
15 attorneys may from time-to-time
16 object, and the judge has already
17 mentioned that. Please
18 understand that what we're trying
19 to attempt to do there is prevent
20 what's not evidence from being in
21 your consideration. What I
22 expect is there's going to be
23 testimony from people who know
24 and love Edwina Simms and they're
25 probably going to be emotional

Mr. Davis's Opening Statement

1 too, but all they're really going
2 to be able to tell you is that
3 she hasn't be seen since April
4 the twenty-fourth when she
5 visited Charleston and they don't
6 know where she's at.

7 There'll be a lot of
8 testimony and evidence by several
9 groups in law enforcement.
10 Local, here in Charleston,
11 Virginia, the F. B. I. in several
12 states, and will talk to you
13 about an extensive investigation.
14 They don't know what happened to
15 Edwina or where she is now.
16 Someday we may have the answers
17 to those questions. But there's
18 no one that's going to testify
19 and present evidence that has
20 answers to those questions and,
21 most importantly, Ron Coulter
22 doesn't have answers to those
23 questions. Thank you.

24 THE COURT: Mr. Smiley.

25 MR. SMILEY: May it please