

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

RANDOLPH ASHFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002509

APPENDIX

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INDEX

INDEX.....	i
PRE-TRIAL TRANSCRIPT DATED SEPTEMBER 24-26, 2008.....	1
PRE-TRIAL TRANSCRIPT DATED MARCH 30, 2009.....	35
TRIAL TRANSCRIPT DATED MARCH 31- April 3, 2009.....	153
POST-TRIAL TRANSCRIPT DATED APRIL 3, 2009.....	1106
FINAL ANDERS BRIEF OF APPELLANT	1133
<u>STATE V. ASHFORD</u> , Unpublished Opinion No. 2012-UP-035 (S.C. Ct. App. Jan 25, 2012)	1146
APPLICATION FOR POST-CONVICTION RELIEF	1148
RETURN	1157
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 31, 2015.....	1165
PLAINTIFF'S EXHIBIT # 1 (STATEMENT).....	1360
PLAINTIFF'S EXHIBIT # 2 (NOTE)	1364
PLAINTIFF'S EXHIBIT # 3 (TRIAL BRIEF).....	1365
ORDER OF DISMISSAL	1392
INDICTMENTS	1406

- 1 **A** I did sign it.
- 2 **Q** And did he go over it with you before you signed it?
- 3 **A** I don't think so. Because if he had, I would not
- 4 have signed it.
- 5 **Q** And you told him that night -- and you don't remember
- 6 Investigator Thomas being there -- you told him the
- 7 same thing you told this jury?
- 8 **A** The investigator right there?
- 9 **Q** Yeah.
- 10 **A** I don't remember him being there. It was another
- 11 investigator came sometime later. But to say that
- 12 that was him, I don't remember.
- 13 **Q** That's fine. Did you tell them what you just told
- 14 this jury today?
- 15 **A** Did I tell who?
- 16 **Q** Sergeant Barnes.
- 17 **A** Uh-huh (affirmative).
- 18 **Q** Did you tell him what you told this jury today?
- 19 **A** That's correct.
- 20 **Q** So you didn't tell him anything -- and he went
- 21 through some of this with you about the first five or
- 22 six lines which are partially correct but 90 percent
- 23 of this is wrong?
- 24 **A** That's correct.
- 25 **Q** So you didn't tell him that Roberta had taken your

1 \$4,000?

2 **A** I did not.

3 **Q** And do you know how they would have known you'd just
4 gotten a \$4,000 settlement?

5 **A** Yes. Because I told them that when I talked to
6 Roberta that Saturday morning. When she did talk to
7 me, I told her -- I asked her was she coming home. I
8 said, "Roberta," I said, "You know, I've got to pay
9 \$4,000 back by May", you know, trying to talk to her
10 and let her know that, you know, she needed to come
11 on home and stuff like that and to also let her know
12 that I had to pay \$4,000 back. And I didn't get but
13 3,000, you know, by May. If not, it's going to go on
14 up to -- I'd have to pay more. So how they got it
15 that I told them that she took \$4,000 from me, I do
16 not know.

17 **Q** It just happened to be the amount you had received?

18 **A** No. That's not the amount I received.

19 **Q** And other than the first four or five lines of this,
20 the rest of this you didn't say?

21 **A** That's correct.

22 **Q** And you never told them about going in the church?

23 **A** I did not.

24 **Q** You never told them about that they wouldn't give you
25 the keys so you went back outside?

- 1 **A** I never said anything like that.
- 2 **Q** You told them about the Blue Ribbon?
- 3 **A** Yes, I did.
- 4 **Q** Did you tell them he may have seen a gun in your
- 5 pocket?
- 6 **A** No, I did not.
- 7 **Q** You told them about driving to Debbie Ann's trailer?
- 8 **A** Yes, I did.
- 9 **Q** That you went through the house looking for Roberta?
- 10 **A** Yes, I did.
- 11 **Q** Do you remember -- you don't remember because you
- 12 weren't in your right mind?
- 13 **A** No, I did not.
- 14 **Q** That you knew the police were coming. You saw one
- 15 police officer and knew you couldn't leave?
- 16 **A** No, I did not tell him that.
- 17 **Q** Do you remember asking them why Debbie Ann couldn't
- 18 leave?
- 19 **A** Asking me why Debbie Ann couldn't leave? No. They
- 20 didn't ask me why she couldn't leave.
- 21 **Q** Do you remember them asking about the gun and firing
- 22 it and the misfires?
- 23 **A** Let me see. Yes. Yes, they did. They did ask me
- 24 about that.
- 25 **Q** Do you remember telling them about the specific sex

1 acts, talking about again how well endowed you were?

2 A Repeat the question?

3 Q It's in the statement.

4 A Repeat the question?

5 Q When they asked you about why Debbie Ann would be
6 naked, do you remember what you told them?

7 A Yeah.

8 Q What did you tell them?

9 A I told them what I told the jury just now.

10 Q But what you told the jury, she wasn't naked. Or is
11 she naked now?

12 A Huh?

13 Q When you --

14 A I told the jury what happened. I told the jury what
15 happened. That's what I told them, the
16 investigators.

17 Q Your testimony here to this jury today is that you
18 have no memory of what happened up to the point you
19 got to the Wash World, it's somewhat vague up until
20 you saw the Blue Ribbon, and then you have a very
21 specific memory of what happened while you were being
22 held hostage in that trailer?

23 A Repeat the question? Repeat it?

24 Q You don't have much memory of what happened on
25 Oakland. You have no memory?

1 **A** Oakland?

2 **Q** Oakland Street. You know where that is?

3 **A** No, I do not.

4 **Q** Do you live in that neighborhood, Muir Avenue?

5 **A** That's correct.

6 **Q** Do you know where Oakland Avenue is?

7 **A** No, I do not.

8 **Q** Okay. And you have some memory of what happened at

9 the Wash World?

10 **A** Some memory?

11 **Q** Mm-hmm (affirmative).

12 **A** I have the memory there that I explained to the jury

13 just now about what happened at the Wash World.

14 **Q** And then you remember wrecking the car?

15 **A** That's correct.

16 **Q** And then you remember being in the street when the

17 Blue Ribbon cab came?

18 **A** That's correct.

19 **Q** And then you remember specifically everything that

20 happened while y'all were in that house, that

21 trailer?

22 **A** That's correct.

23 **Q** And you mentioned that you were confused and

24 delirious. But when you talked to the officers that

25 night you told them the same thing you told this

1 jury. Is that correct?

2 A Yes. I -- yes, I did.

3 Q You did or you didn't?

4 A I did.

5 Q So you talked to them voluntarily?

6 A Well, yes. They was asking me questions and I talked
7 to them.

8 Q And you mentioned that your eyes were swollen and
9 they hurt. Couldn't see I believe is your words?

10 A Yes. That's correct.

11 Q So you didn't know what you were signing?

12 A I couldn't see it. I couldn't see what I was
13 signing.

14 Q Do you remember them taking a photograph of you that
15 night?

16 A I'm going not -- you know, I'm not sure. I don't
17 remember them taking a photo of me.

18 Q And after you got arrested for this, you weren't on
19 any more pain medication, were you? You didn't have
20 you any more pain medication since then, that pain
21 medication you don't know the name of?

22 A Oh, no. No, no.

23 Q And you reason, you're blaming the medicine for what
24 you did?

25 A No, ma'am, I'm not.

1 Q Thank you.

2 MR. O'NEIL: Briefly, Your Honor.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. O'NEIL

6 Q Randolph, do you remember going over your medical
7 records before your trial?

8 A Yes, I do.

9 Q Do you remember being seen by Ortho Carolina in
10 Huntsville, North Carolina, for your arm?

11 A Yes, I do.

12 Q Do you remember going to the Ellis Physical Therapy
13 Association for your arm as well?

14 A Yes, I do.

15 Q That's here in Columbia?

16 A That's in Columbia.

17 Q Do you remember going over your medical records since
18 February 2007 up to today?

19 A Since --

20 Q February of 2007 'til today.

21 A Going over my medical record?

22 Q Yeah.

23 A Yes, I do.

24 Q Would the name of the drug Selexir, would that have
25 been one of the drugs you would have took?

1 **A** That's correct.

2 **Q** What about Bapham (phonetic)? Do you remember taking
3 that in April of 2007?

4 **A** I can't positively identify it by the name.

5 **Q** You were on several drugs back then?

6 **A** That's correct. That's correct.

7 **Q** Do you remember them putting you on Prosac as well?

8 **A** That's right. I remember Prosac.

9 **MR. O'NEIL:** No further questions, Your Honor.

10 **THE COURT:** Recross?

11 **MS. CAMPBELL:** Just one question.

12 RECROSS EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** Prosac and Selexir, those are treatments for slight
15 depression. They aren't for any kind of pain
16 medication? Or do you know?

17 **A** I think for depression.

18 **Q** And none of that medicine had ever affected any of
19 your behavior prior to February 24th of 2007?

20 **A** I wasn't taking that medicine then.

21 **Q** Okay. Thanks.

22 **THE COURT:** You may come down, sir. Thank you
23 very much. Next witness.

24 **MR. O'NEIL:** Your Honor, at this time the
25 defense rests.

1 **THE COURT:** Any reply?

2 **MS. CAMPBELL:** Your Honor, can I consult?

3 (Pause)

4 **MS. CAMPBELL:** Nothing from the State, Your
5 Honor.

6 **THE COURT:** All right, ladies and gentlemen.
7 That will conclude the presentation of the testimony
8 in this case. The remaining portion of the trial
9 will consist of the final arguments of counsel and my
10 instructions to you on the law of the case as it
11 applies in South Carolina.

12 Now, it's 1:15. What I have done, and I hope
13 it's waiting for you, is ordered lunch for you
14 because this process will take a little bit of time.
15 And I think the most efficient use of our time, of
16 course you can make phone calls if you need to make
17 phone calls, there should be lunch waiting for you in
18 the jury room.

19 And again, I'm going to ask you not to discuss
20 the case over the lunch, maybe half hour. We're just
21 running on a tight schedule. So I'll ask you to just
22 relax and have your lunch. And, say, in about 30
23 minutes or so we'll call you back and conclude the
24 trial. So again, don't discuss the case while you're
25 in the -- hold on a minute. Hold on. Hold on. Hold

1 on. Well, it's come. It's on the way. It's in the
2 mail. I thought it had already arrived. So it
3 should be there very shortly. So just relax for a
4 few minutes, and we're going to feed you and then
5 we'll conclude the trial following that. Thank you
6 very much.

7 (Jury out at 1:18 p.m.)

8 **THE COURT:** Let's stand at ease. Counsel, I
9 will furnish you a set of instructions in the next
10 half hour. Any motions?

11 **MS. SINGLETARY:** Yes, Your Honor. At this time
12 the defense would respectfully make a motion for a
13 mistrial based on due process violations and 403,
14 Your Honor. It would be our argument that
15 inappropriate behavior of individuals in the gallery
16 that consisted of loud noises that were made while my
17 client was actually testifying, there were actually
18 loud gasps that were made by individuals in the
19 gallery and seated behind the Solicitor's Office.

20 Your Honor, also there were actual people who
21 actually were laughing and actually covered their
22 face in this manner while they were laughing or just
23 laughed, like in front of the jury. Your Honor,
24 there was patting of the feet. There were
25 inappropriate facial expressions. There were rolling

1 of the eyes. Your Honor, it was constant laughing,
2 laughing and chattering and blowing hard, Your Honor.

3 Because of these inappropriate behaviors that
4 were actually displayed, we feel that this actually
5 infected my client's right to a fair jury trial.
6 Your Honor, at no point throughout the duration of
7 this trial when individuals were on that stand that
8 my client actually conducted himself in this manner
9 at all. We feel that this actually has infected the
10 jury as it relates to my client's right to a fair
11 trial, Your Honor.

12 The behavior was so blatant and flagrant that I
13 actually had to take off my watch at one point
14 because the foreman for about five minutes -- and I
15 timed him; and there were other individuals in the
16 jury who actually did this, too -- for five minutes
17 they turned around and they looked out in the gallery
18 and did not pay attention to any testimony that was
19 elicited by our client, Your Honor.

20 And this happened throughout the duration of his
21 testimony. And this behavior is not acceptable in
22 courtrooms, Your Honor. Based on that, I feel that
23 this jury has been affected and that it actually --
24 this behavior violates my client's Fourth Amendment
25 right to a fair trial. And it was so prejudicial,

1 Your Honor, I think it just extends beyond 403, Your
2 Honor.

3 **THE COURT:** All right. State's position.

4 **MS. CAMPBELL:** Your Honor, I'm not aware of what
5 she is talking about. However, if it did become so
6 offensive, I would have thought she would have
7 brought it to the Court's attention. It was not
8 brought to the Court's attention. I am not aware of
9 any of this behavior she is talking about. Whether
10 or not the -- I mean, I just don't know, Your Honor.
11 I mean, I wasn't privy to it. I understand her
12 rendition of it.

13 **THE COURT:** All right. Ms. Singletary, I did
14 not witness the same behavior that you apparently
15 witnessed. And I certainly respect your position on
16 that. You are sitting a lot closer to the gallery
17 than I am, and that may have been the reason why you
18 may have overheard some things that I didn't
19 overhear. I did not think that the behavior -- and
20 I'm always acutely aware of -- try to be acutely of
21 aware of what's going on in the courtroom.

22 I know the victim from time to time has in any
23 case had emotional reactions to testimony. And maybe
24 there was a -- I think a minimal amount of that. But
25 I think it is the responsibility of counsel when you

1 observe something like that to inform the Court so
2 the Court can make a ruling and can correct that
3 behavior.

4 I have all the -- I have plenty of authority to
5 do that. And I could have cleared the courtroom, as
6 you know, if things become so disruptive that it
7 interferes with the failure with a fair trial for
8 your client. I do not think it rises to the level of
9 a mistrial. But as I said, I certainly would have
10 respected your wishes had you called it to my
11 attention at a previous time. So I respectfully deny
12 your motion.

13 **MS. SINGLETARY:** And, Your Honor, may I --

14 **THE COURT:** It's on the record.

15 **MS. SINGLETARY:** Yes, Your Honor. I wanted to
16 put just one last -- a couple of last things on the
17 record. Your Honor, the reason for me not actually
18 bringing it to the Court's attention at that time, I
19 didn't myself want it to interrupt the testimony at
20 that point.

21 **THE COURT:** Well, then you live with it.

22 **MS. SINGLETARY:** Yes, Your Honor. And I wanted
23 to make sure that I was actually seeing this type of
24 behavior. But we would ask that you caution
25 individuals in the gallery as a whole that this

1 behavior is not accepted in a court of law.

2 **THE COURT:** I'll be glad to do it. However, at
3 the present time we're going to take about a -- we're
4 going to take that break. And, Jackie, how about
5 checking? Mr. Dye. Or Mr. Broome.

6 **THE BAILIFF:** No, sir.

7 **THE COURT:** Not here yet? All right. We'll
8 stand at ease 'til 2:00, at which time -- or I'll try
9 to get that set of instructions to you before then.
10 But let's try to resume at 2:00.

11 **MR. O'NEIL:** Yes, sir.

12 **MS. SINGLETARY:** Thank you, Your Honor.

13 (Whereupon, a lunch break is taken)

14 **THE COURT:** Anything further with respect to the
15 jury charges?

16 **MS. CAMPBELL:** Yes, Your Honor.

17 **THE COURT:** All right.

18 **MS. CAMPBELL:** Ms. McDuffie has come in here.
19 She researched this. I would just refer to the State
20 vs. Cherry.

21 **THE COURT:** What about it?

22 **MS. CAMPBELL:** In State vs. Cherry the Supreme
23 Court in 2005 addressed the language from the Edwards
24 case --

25 **THE COURT:** That's correct.

1 **MS. CAMPBELL:** -- which is included. In that
2 case I believe the holding was that: "We hold that
3 Grippon is the sole remaining charge to be utilized
4 by the courts of this state" --

5 **THE COURT:** That's correct.

6 **MS. CAMPBELL:** -"in instructing jurors relying
7 in whole or in part on circumstantial evidence."

8 **THE COURT:** That's correct.

9 **MS. CAMPBELL:** "Accordingly, we hold that the
10 recommended language in Grippon is the sole and
11 exclusive charge to be given in circumstantial
12 evidence cases in this state", along with a proper
13 reasonable doubt instruction.

14 **THE COURT:** I understand that. What's the
15 problem?

16 **MS. CAMPBELL:** The charge you submitted me is
17 not the language. It includes language from Edwards.

18 **THE COURT:** It's language from Grippon.

19 **MS. CAMPBELL:** Beg the Court's indulgence. Let
20 me review Grippon. It was my understanding in that
21 case appellate requested the language that was added
22 and it was denied and they said that was proper.

23 **THE COURT:** The language in Grippon is: "The
24 law makes absolutely no distinction between the
25 weight or value to be given to either direct or

1 circumstantial evidence, nor is a greater degree of
2 certainty required."

3 The language that precedes that, the paragraph,
4 two paragraphs before that, are the language
5 requested by the Defendant. I elected to add that
6 language. It does not change Grippon. The last
7 paragraph is a Grippon charge. It just maybe
8 clarifies that circumstantial evidence, like any
9 other evidence, has to be proven beyond a reasonable
10 doubt.

11 **MS. CAMPBELL:** Your Honor, I thought that was
12 the language that they requested and it was denied
13 and then they said the proper instruction was what
14 was quoted.

15 **THE COURT:** No. I'm talking about the Defendant
16 in this case.

17 **MS. CAMPBELL:** Requested that language.

18 **THE COURT:** The first two paragraphs. That's
19 right.

20 **MS. CAMPBELL:** Which was expressly overturned by
21 Grippon and Cherry.

22 **THE COURT:** It's not, ma'am. It is not. The
23 language in Grippon overruled the exclusion of every
24 other reasonable hypothesis or theory. That's the
25 language from Edwards that was offensive to both

1 Grippon and Cherry. And that is not included in this
2 charge.

3 **MS. CAMPBELL:** And they said that a proper
4 charge was that which was cited in Cherry.

5 **THE COURT:** I understand. This is the charge
6 I'm going to give. Anything else?

7 **MS. CAMPBELL:** The only other thing we would
8 request, Your Honor, is we handed up a Mouzon malice
9 request.

10 **THE COURT:** All right.

11 **MS. CAMPBELL:** And we just request that be part
12 of your malice charge.

13 **THE COURT:** Is it not part of the malice charge?

14 **MS. CAMPBELL:** No, sir. I don't believe so.
15 But I've been skimming these as quickly as possible.

16 **THE COURT:** Well, I'll look at that while you
17 are --

18 **MS. CAMPBELL:** I'm going to argue it, you know.

19 **THE COURT:** I understand. Forget it. This is
20 on the AWIK?

21 **MS. CAMPBELL:** Yes, sir.

22 **THE COURT:** You like that fatally bent on
23 mischief language, don't you?

24 **MS. CAMPBELL:** I'm sorry, Your Honor?

25 **THE COURT:** I said you like that fatally bent on

1 mischief.

2 **MS. CAMPBELL:** I love fatally bent on mischief.

3 **THE COURT:** You love it.

4 **MS. CAMPBELL:** That's all I would request in
5 addition, Your Honor.

6 **THE COURT:** I probably will do that.

7 **MS. CAMPBELL:** Thank you.

8 **MS. SINGLETARY:** We have no objection, Your
9 Honor.

10 **THE COURT:** All right. Fine.

11 **MR. O'NEIL:** Just one other matter. I failed at
12 the close of the defense case to renew my directed
13 verdict motions. I'll renew my previous direct
14 verdict motions.

15 **THE COURT:** And when Ms. Singletary rose, I
16 thought that's what she was going to do, but she took
17 off on a completely different tack.

18 **MS. SINGLETARY:** Yes, Your Honor.

19 **THE COURT:** Respectfully, it's denied. Thank
20 you very much.

21 **MR. O'NEIL:** Thank you, Your Honor.

22 **THE COURT:** Ready for the jury?

23 **MS. CAMPBELL:** Yes, Your Honor. We would open
24 and close.

25 **THE COURT:** Good.

1 **MS. CAMPBELL:** Thank you.

2 **THE COURT:** Bring the jury.

3 (Jury in at 2:20 p.m.)

4 **THE BAILIFF:** Your Honor, the jury is present.

5 **THE COURT:** Thank you very much. All right,
6 ladies and gentlemen of the jury. We're about to
7 conclude the trial with the closing arguments and my
8 charge to you on the law of the state of South
9 Carolina as it applies to this case. Let me just
10 take a minute to explain one thing to you that are
11 you going to hear in the arguments of counsel, and
12 that is something under our law called a
13 lesser-included offense.

14 Now, in this case the charge of criminal sexual
15 conduct in the first degree is one that is required
16 to be proven by the State. But I will instruct you,
17 and these attorneys are going to tell you, that if
18 you do not feel the State proved that charge beyond a
19 reasonable doubt, then you could find a
20 lesser-included offense.

21 Now, for example, I know if you watch
22 television, these cop shows and court shows, they
23 always talk about murder in the first degree, murder
24 in the second degree, murder in the third degree.
25 Well, we don't have it specifically named that way in

1 South Carolina, but it's the same concept. That is,
2 that if certain elements are not proven of the main
3 charge, the indicted charge, then you could consider
4 a lesser charge or what we call a lesser-included
5 charge.

6 And in this case the lesser-included charge of
7 criminal sexual conduct in the first degree is
8 assault and battery of a high and aggravated nature.
9 Now, because that's a mouthful, we just typically
10 refer to that as ABHAN. As a matter of fact, when
11 one of the witnesses was testifying, there was
12 something to you spoken about an ABHAN. That's
13 assault and battery of a high and aggravated nature.

14 So, keep that in mind, that the attorneys are
15 probably going to talk to you about that. I will
16 talk to you about that. And that is the only charge
17 that has a lesser-included offense. And it's my
18 decision to allow that lesser-included charge to go
19 to the jury as well as the primary indicted charge.
20 All right, counsel. You may begin with your
21 summations.

22 **MS. CAMPBELL:** May it please the Court?

23 **THE COURT:** Yes, ma'am.

24 **MS. CAMPBELL:** Good afternoon. The first thing
25 I want to do on behalf of the State of South

1 Carolina, on behalf of victims in this case is to
2 thank you for your service in this case. There has
3 been a lot of up and down. There's been a lot of
4 waiting around on y'all's part. It's not something
5 you've asked for. When you walked in here on Monday
6 you don't imagine that you would be having to sit and
7 listen to facts such as have been brought before you,
8 graphic, unpleasant, criminal acts of which normally
9 no one wishes to speak.

10 And in this courtroom it is has not only been
11 thrown before you, but it has been characterized and
12 it's just been somewhat unpleasant. So thank you for
13 being here to serve. Because as you have come to
14 understand, I would say, over the last several days
15 your attendance is vital to our criminal system.

16 Now, I'm going to get up here and talk a little
17 bit at first about the law in this case. And then
18 I'm going to sit down. And then after me you're
19 going to hear from Mr. O'Neil, the defense attorney.
20 And he is going to talk to you about -- and this is
21 closing argument. And then I'm going to have the
22 opportunity -- the burden of proof is on us -- to
23 talk to you a little bit about the facts.

24 And I want to say right know the judge is the
25 ultimate person who is going to give you or charge

1 you after we're both through on the law in this case.
2 If I say anything different about the law than what
3 the judge gives you, it's not intentional. You take
4 the law as the judge gives it to you. And in that
5 same vein, if anyone gets up here and states a fact
6 different from what you recall, you hold them
7 responsible.

8 Because, ladies and gentlemen, the roles in this
9 courtroom are very well defined. The State's role is
10 to produce all the relevant; admissible evidence.
11 The defense role is to defend their client. The
12 Judge's role is to decide what is admissible, what
13 you're allowed to hear and what the law should be
14 that you're allowed to consider once you have heard
15 all the testimony.

16 But the most important role in this courtroom,
17 ladies and gentlemen, it is undisputed, is yours.
18 Each of you individually and then ultimately
19 collectively, because you have to determine what the
20 credible, believable evidence is about what Randolph
21 Ashford did back on February the 24th of 2007.

22 And you've heard all the evidence you can
23 consider in this case. And what is evidence? It's
24 the testimony; it's the physical evidence, the
25 photographs, the gun, that have been placed into

1 evidence that will ultimately go back with you into
2 the jury room. Evidence is not questions, innuendo,
3 conjecture, speculation or just plain a fishing
4 expedition. The questions are not evidence. The
5 answers are. And in this case the evidence that you
6 have heard from the State and from the Defendant do
7 not match. They don't come close. So you must
8 decide which evidence, which witnesses are credible.

9 I want to apologize if over the course of the
10 last several days if we have done anything to offend
11 anyone. Sometimes we get caught up in legal
12 wrangling. I know at times I speak quickly. I am so
13 anxious to get the evidence before you that perhaps
14 my question wasn't phrased correctly and I have to
15 rephrase it and things of that nature. There have
16 been times you have been sent back there and told
17 you'll be out just a little while and it's not just a
18 little while. Please, I apologize if we have done
19 anything to offend you. Please don't hold that
20 against the citizens of Richland County, against the
21 victims in this case. It was not intentional.

22 Now, a criminal case is somewhat unique. As you
23 have heard over the last several days, people have
24 come before you. You've heard references to
25 witnesses's statements over and over. You've heard

1 references to perhaps reports, say the DNA analyst
2 and other reports. You've had a ballistics guy and
3 everything. Statements and reports, you may wonder
4 why they aren't admissible. You've not seen any
5 videotaped depositions, audio taped depositions.
6 And, very simply, ladies and gentlemen, that's to
7 protect the Defendant's rights. Because the
8 Defendant has a right under our Constitution, as he
9 should, to confront each and every witness that comes
10 before him and gives evidence.

11 He has the right to cross examine that person in
12 your presence so that you can judge their
13 credibility; you can judge their believability. And
14 that's why you've heard references to other reports.
15 Like with the SANE nurse, that she came in here and
16 gave you live testimony, so you can judge her
17 credibility.

18 Also you have heard about that out there that
19 day there were a lot of police officers. And you
20 haven't heard from everyone. And the reason is very
21 simple. We can only bring forth people that have
22 something else to add or are important on a certain
23 point. We can't bring the same people, like the
24 entire SRT Team in here, to say the same thing over
25 and over and over. At some point it becomes

1 cumulative. We aren't allowed by the rules of
2 evidence to do that. So that is why you've heard
3 reference to other officers, such as Officer Okinaga
4 who is now retired, who was there; other officers,
5 that they don't have something new and different to
6 bring forth.

7 You heard about the other children that were
8 actually in the car that day when he approached the
9 white Tahoe. We can't bring forth all six just to
10 keep saying the same thing over.

11 Now, the burden of proof is on the State of
12 South Carolina to prove this Defendant guilty beyond
13 a reasonable doubt. And as Ms. Singletary said in
14 her opening, sometimes we say that's a burden we
15 welcome. Ladies and gentlemen, I submit in this
16 case, in this courtroom, it is not only a burden the
17 State has welcomed, it is a burden that the State has
18 exceeded. We don't have to prove the Defendant
19 guilty beyond each and every doubt on this universe.
20 We have to prove him guilty beyond a reasonable
21 doubt.

22 Now, the judge is going to charge you, what is a
23 reasonable doubt? The easiest definition I can think
24 of is very simple. A reasonable doubt is the type of
25 doubt that causes a reasonable person to hesitate to

1 act. That's rather simplistic. The law, the courts
2 in our state have gone a little bit further in
3 talking about what is reasonable doubt. And very
4 simply, reasonable doubt has been defined, and the
5 judge will charge you, proof beyond a reasonable
6 doubt is proof that leaves you firmly convinced of
7 the Defendant's guilt.

8 There are very few things in this world that we
9 know with absolute certainty; and in criminal cases
10 such as this, the law does not require proof that
11 overcomes every possible doubt. If, based on your
12 consideration of the evidence, you are firmly
13 convinced that the Defendant is guilty of the crime
14 charged, you must find him guilty. If, on the other
15 hand, you think there is a real possibility, a real
16 possibility he is not guilty, then find him not
17 guilty. Proof that leaves you firmly convinced, that
18 is the level that the law recognizes and understands.

19 Ladies and gentlemen, I submit in this case,
20 with the testimony that you've heard, it's overcome
21 all doubt. We don't have to reach that, but the
22 evidence in this case is overwhelming. And I'll talk
23 to you a little bit about why that is.

24 Now, you are going to have nine indictments.
25 The judge will charge you, when have you multiple

1 indictments you must decide each and every one of
2 those indictments on its own. Each charge is
3 separate from each other. It's not an all or nothing
4 situation. You must consider each indictment
5 separately, because the indictments or the charges
6 themselves have different elements. This is what we
7 call a continuing offense. There were a number of
8 crimes that took place over the course of February
9 the 24th by Randolph Ashford. That's why you have
10 nine different indictments with about four or five
11 different charges. We must prove in each indictment
12 each and every element, as we should, of the
13 indictment.

14 So the indictments that are going to go back
15 before you are nine of them. And I tried to put them
16 kind of chronologically as to what you are going to
17 consider. The first charge and/or indictment that
18 happened chronologically on that day was the
19 carjacking of Barry Taylor. The next one, within
20 just minutes, was the carjacking of Pearl and Olin
21 Kelly. She was the one actually in the car. That's
22 why her name is on the indictment. It was from Mr.
23 and Ms. Kelly when they were at the Wash World.

24 The third set of charges was at the church. And
25 that happened right there on Cushman. And that's

1 when the kidnapping of Evelyn worthy -- and I'll
2 explain kidnapping in a minute -- and then the
3 carjacking of Mr. James when his Blue Ribbon cab was
4 stopped and he got out at gunpoint.

5 Finally at Booth Street, which was his ultimate
6 goal of where to get, you have the victim of Debbie
7 Ann Simmons. She is the victim of the burglary in
8 the first degree; and I'll get back to what the
9 definition of that is, of a kidnapping and of a
10 criminal sexual conduct in the first degree.

11 And finally Deputy White and Unger are the
12 victims of assault with intent to kill which is
13 different from assault and battery with intent to
14 kill. There was no actual touching in this case.
15 So, therefore, it's assault with intent to kill, the
16 bullet whiz.

17 Those are the charges. As the judge just told
18 you, sometimes in certain cases, based on testimony,
19 in this case by the Defendant, there may be a
20 lesser-included that can be considered by you. And
21 the only lesser-included you need to consider in this
22 case would be aggravated assault. Assault and
23 battery of a high and aggravated nature is a
24 lesser-included.

25 If you find that the State did not meet the

1 elements of criminal sexual conduct in the first
2 degree, and I'll get to those in a minute, then you
3 can consider assault and battery of a high and
4 aggravated nature. And then there's always not
5 guilty as to every indictment. Those are the
6 charges. And I just tried to organize those a little
7 bit because there was a lot going on that day.

8 The first charge I want to address, and I'm
9 trying to take these kind of chronologically, is
10 carjacking. Under our Code of Laws, in 16-310-75,
11 the South Carolina Code of Laws, carjacking has a
12 very simple definition. A person is guilty of
13 carjacking who takes or attempts to take -- he
14 doesn't even have to complete the thing at this
15 point; and we went with our strongest charges in this
16 case; we went with ones that he actually completed --
17 a motor vehicle from another person by force or
18 violence -- and I submit nobody is going to get up
19 here and argue that these weren't carjackings -- or
20 by intimidation while the person is operating the
21 vehicle or while the person is in the vehicle. So he
22 doesn't have to actually be driving the vehicle,
23 although in two these cases he was. Ms. Kelly was
24 sitting in the vehicle. Those are the elements.
25 Number one, he takes a motor vehicle by force,

1 violence or intimidation while they are operating the
2 vehicle. And I submit, ladies and gentlemen, no one
3 will get up here and argue that the elements of
4 carjacking have not been met.

5 Then you also -- and there are three counts of
6 that, the first being at Oakland, the second being at
7 the Wash World, and the third being the Blue Ribbon
8 cab right there at the church which ultimately gets
9 him to Booth Street.

10 The second charge I want to talk about is
11 kidnapping. You have two separate charges of
12 kidnapping. And what is kidnapping in our State?
13 The definition is a kidnapping occurs, and the law
14 says, when one unlawfully seizes, confines,
15 inveigles, decoys, kidnaps, abducts or carries away
16 any other person by any means whatsoever without
17 authority of law.

18 Now, the victims of the kidnapping are Evelyn
19 Worthy and Deborah Ann Simmons, is her name. We do
20 not have to prove that he did every one of these
21 things. We don't have to -- and kidnapping
22 traditionally you think of, okay, somebody puts
23 somebody in a trunk, drives them across states lines
24 and then sends a ransom note. That's not what did
25 kidnapping is in our state, nor in most states.

1 Kidnapping simply occurs when one's freedom -- a
2 kidnapping commences when one is wrongfully deprived
3 of his freedom and continues until freedom is
4 restored. Listen carefully to the judge. He's not
5 going to say that Ms. Worthy had to be abducted for
6 at least an hour for it to be a kidnapping, at least
7 30 minutes, at least five minutes.

8 The very moment that he walked up and put his
9 hand over her head, phone, and showed her that gun
10 and then, remember, nudged her out the door and said,
11 we're going to get a car, you're going to help me --
12 and I'm paraphrasing; that's not exactly what she
13 said -- but at that point the kidnapping is complete.
14 It continues until -- and remember her testimony --
15 she was able -- and she noticed he wasn't right next
16 to her and she ran away.

17 A person can be kidnapped for a matter of a
18 second, a matter of minutes, hours, weeks, months or
19 years. It is a continuing offense. And that is the
20 definition of kidnapping.

21 Now, all of these words do not apply in any
22 case. You cannot seize, confine, inveigle and decoy
23 and kidnap. But what are the definitions of some of
24 those words that may help? To carry away any other
25 person by any means whatsoever. He basically forced

1 Ms. Worthy out of the church and made her go down so
2 she could help him flag down a car because he was
3 going to get to Booth Street no matter what that day.
4 That is a kidnapping.

5 What happened with Deborah Ann Simmons over that
6 six-hour or plus period was also kidnapping. Very
7 simply, if one just seizes, means to take hold of
8 suddenly or forcibly, and deprives a person of their
9 freedom for any amount of time, it is a completed
10 kidnapping. Now, if they try to seize them for that
11 purpose and don't get them, then it would be an
12 attempted kidnapping. In this case both of these are
13 kidnappings.

14 To confine means to limit, restrict or enclose
15 within bounds, imprison or shut or keep in. And I
16 submit, ladies and gentlemen, there's not a more
17 classic kidnapping than barricading someone in their
18 home while the police surround the place and refusing
19 to come out for six hours.

20 To kidnap is to remove a person against his will
21 by unlawful force or fraud. Does that describe what
22 happened to Ms. Worthy who was there to water the
23 plants minding her own business when he made it his
24 business to use her? The fact that he tells her, no,
25 I won't hurt you, doesn't negate his criminal intent

1 or responsibility. He used the gun, he displayed the
2 gun for a purpose, because people cooperate against
3 their will when faced with possible death or injury.
4 Those are the kidnappings.

5 Now, you also have two counts of assault with
6 intent to kill. And the judge is going to charge
7 you -- and his charge may be a little bit different;
8 this is language I found; this is out of one
9 statute -- an unlawful attempt to offer or commit a
10 violent injury to the person of another with malice
11 aforethought and with the present ability to complete
12 the attempted injury.

13 Now, what does all that mean? Very simply,
14 ladies and gentlemen, the only way I know to do it is
15 to walk through it. The lesser-included's of assault
16 with intent to kill are assault of a high and
17 aggravated nature and simple assault. If I walk up
18 to another person and I want to punch them in the
19 shoulder and I do so and I miss, that is an assault.
20 The battery would be the actual touching if I
21 connected, no matter what the injury, because I'm
22 offering to do violence to the person of another.

23 Assault of a high and aggravated nature goes a
24 step further. It's the same thing; the assault,
25 offer to do violence to another person. But in this

1 case there's an aggravating circumstance, be it
2 indecent liberties, which I'll get back to in a
3 minute, with another person. There are many ways you
4 can have an aggravating circumstance. But what
5 raises it to the level, as the charges in this case,
6 of assault with intent to kill is malice. Because
7 it's the offer to do violence to another, but you
8 have malice aforethought. And what does that term
9 mean? And the judge will define it for you.

10 Malice is a term of art. And the easiest way I
11 know to think about it is, it's what the word
12 "malicious" comes from. Is the person acting
13 maliciously when they offer to do violence to
14 another? And no one, I don't think, is going to get
15 up here and say that it is not a malicious act to
16 shoot at someone or to shoot into a crowd to whatever
17 extent.

18 The law recognizes that even though malice is
19 ill will, the judge will tell you and he'll instruct
20 you on this; we don't have to show a specific intent
21 to kill either Deputy Unger, either of the deputies
22 that day. We just have to show that he's acting with
23 malice.

24 Malice does not necessarily impart ill will
25 towards the individual injured -- in this case

1 there's no battery, so there was no injury, but the
2 offer to do injury -- but signifies rather a general
3 malignant recklessness of the lives and safety of
4 others or a condition of mind which shows a heart
5 regardless of social duty and fatally bent on
6 mischief.

7 And I ask you, was Randolph Ashford on that
8 day -- he was going to find Roberta or somebody was
9 going to pay. Is that a heart regardless of social
10 duty and fatally bent on mischief? And somebody did
11 pay for it. That's what we have to show.

12 The judge will also tell you that in finding
13 malice you can just infer from the use of a deadly
14 weapon the inference of malice is there. And no one
15 is going to get up here and argue that a pistol, no
16 matter if it misfires or not -- and you heard from
17 David Collins, when this gun fires, it fires for
18 real -- that a gun is not a deadly weapon. The use
19 of a deadly weapon alone is enough to infer malice.

20 The next charge is going to be burglary in the
21 first degree. And our law says, in our Code of Laws
22 it says that burglary in the first degree, if a
23 person enters a dwelling -- and a trailer or even a
24 motel room can be a dwelling in this case; it's
25 obviously a dwelling where people lived -- without

1 consent -- and you're heard the testimony -- with
2 intent to commit a crime in the dwelling and when in
3 effecting entry or while in the dwelling or in
4 immediate flight, he or another participant -- in
5 this case he is the only participant; there are no
6 co-defendants -- is armed with a deadly weapon or
7 explosive causes physical injury to a person who is
8 not a participant in the crime -- in this case it's
9 the victim -- uses or threatens the use of a
10 dangerous instrument -- it doesn't even have to be
11 necessarily what's normally a deadly weapon, but in
12 this case you have a deadly weapon -- or displays
13 what appears to be a knife or pistol -- in this case
14 a revolver.

15 We don't have to prove all four of those
16 aggravating circumstances. We have to prove one.
17 The entry into a dwelling without consent and with
18 intent to commit a crime. And when he went in there
19 and barricaded everybody in, somebody was paying that
20 day; he was committing crimes. Those are the
21 elements of burglary. And any one of these
22 aggravating circumstances is enough for it to be
23 burglary in the first degree. You see it says "or",
24 not "and".

25 Criminal sexual conduct in the first degree.

1 And again, I apologize for getting explicit. The
2 actor -- and this is going to be the Defendant --
3 engages in sexual battery with the victim, and if one
4 of the following circumstances are proven; that the
5 actor uses aggravated force to accomplish sexual
6 battery. And the judge will define for you
7 aggravated force is the threat of the use of a deadly
8 weapon. That alone is aggravated force. Or -- we
9 don't have to prove both of these again -- the victim
10 submits to a sexual battery -- and that's very -- and
11 I'll get to sexual battery in a minute; but basically
12 a sexual act -- under circumstances where the victim
13 is also the victim of forcible confinement,
14 kidnapping, robbery, extortion, burglary, housing
15 breaking or any other similar offense.

16 That means if she is the victim of kidnapping
17 and/or a burglary which apply, we don't have to prove
18 all of those; just one or two, but we have two here,
19 then it's criminal sexual conduct in the first
20 degree.

21 Now, what is sexual battery? Sexual battery
22 means sexual intercourse, cunnilingus, fellatio, anal
23 intercourse, or any intrusion, however slight. And
24 in this case the testimony, it's been graphic, that
25 he started but he couldn't finish but that there was

1 penetration -- and I'm sorry to use this verbiage --
2 into the genital or anal openings of another person's
3 body except when such intrusion is accomplished for
4 medically recognized treatment or diagnostic
5 purposes.

6 And, ladies and gentlemen, this is a classic
7 rape: At gunpoint in a hostage taking situation
8 where she feared for her life. All we have to prove
9 is that he either threatened the use of a deadly
10 weapon or she was also the victim. Any one of those
11 three is enough to raise it. We have three here.
12 It's above and beyond.

13 Very simply, the Defendant testified that the
14 only sex acts that happened that day weren't of a
15 penetrating nature. He even puts in his -- and I'm
16 not going through it; you'll have the exact
17 language -- about how she wanted it. If you find
18 that it was just an assault and battery of a lewd act
19 and that there was no actual penetration, and it
20 doesn't mean -- and you don't see anywhere in here
21 where he had to ejaculate. Listen to the judge. If
22 you find that, in fact, he didn't penetrate her, then
23 it could be an ABHAN. And the judge will instruct
24 you on the elements of ABHAN. Those are the two
25 there that you can consider.

1 Now, the judge will also instruct you, and
2 listen carefully, in criminal sexual conduct cases,
3 rape cases, under our Code of Laws, 16-3-657, the
4 testimony of a victim in a criminal sexual conduct
5 case need not be corroborated. Although I submit,
6 ladies and gentlemen, in this case everything
7 Randolph Ashford did that day was corroborated. Her
8 testimony alone is enough to prove it beyond a
9 reasonable doubt if you believe her. And I will talk
10 to you a little bit about credibility.

11 Now, the judge is also going to tell you there
12 are two types of evidence in the case. And he will
13 charge you, among other things, on the definition of
14 evidence. There are direct evidence and
15 circumstantial evidence. And in cases in our court,
16 in State vs. Cherry and State vs. Grippon, they have
17 said the following about what is the two types of
18 evidence.

19 What is direct evidence? Very simply, Ladies
20 and Gentlemen, eye witness testimony is the greatest
21 way to do it. Direct evidence is the evidence you
22 perceive through your senses: Touch, feel, see,
23 hear, things of that nature. That's direct evidence.
24 The law also recognizes that there is a second type
25 of evidence, evidence where there is a series of

1 events that can point to the conclusion of another
2 fact.

3 In this case, by far, the majority of the
4 evidence is direct evidence. You heard from 14 or 15
5 witnesses to what Randolph Ashford did on that day.
6 That's all direct testimony. Indirect testimony from
7 which you can conclude something is, say, where his
8 jacket was found in that bedroom on the end where the
9 bay window was next to the van. That's
10 circumstantial evidence that he was in that room. It
11 was his jacket. We can put him in there. No one
12 actually testified that they saw him go in that room,
13 but his jacket being left there is circumstantial
14 evidence.

15 The easiest way as an example, if I go to bed
16 tonight and I look outside and the ground is bare and
17 the grass is green and I go to sleep and I'm asleep
18 for six or seven hours and I wake up and the next
19 morning there's snow everywhere, as far as you can
20 see, that is circumstantial evidence that while I was
21 asleep it snowed.

22 Now, the defense may get up here and say no, no,
23 no, no, no; I could have hired like, you know,
24 somebody from North Carolina to come in and bring in
25 a snow blower. Ladies and gentlemen, that's not

1 reasonable. So reasonable people.

2 Circumstantial evidence is the proof of a chain
3 of facts and circumstances indicating the existence
4 of a fact. The law makes absolutely no distinction
5 between the weight or value to be given either direct
6 or circumstantial evidence, nor is a greater degree
7 of certainty required of circumstantial evidence than
8 of direct evidence.

9 You should weigh all the evidence in the case.
10 After weighing all of the evidence, if you are not
11 convinced of the guilt of the Defendant beyond a
12 reasonable doubt, you must find the Defendant not
13 guilty. If, on the other hand, you are convinced of
14 the Defendant's guilt beyond a reasonable doubt, then
15 you must find him guilty.

16 That will be some of the verbiage you hear from
17 the judge. There is no greater degree of certainty.
18 And in this case, ladies and gentlemen, the vast
19 majority; in fact, almost all, the evidence in the
20 case is direct. But in almost every case there is
21 some circumstantial evidence. But those are the
22 types of evidence. No greater degree of certainty
23 for one than the other.

24 Circumstantial evidence: They went in. They
25 caught the Defendant. Oh, excuse me. You heard

1 Marcus Brown testify. He heard a -- how did he put
2 it? Some type of thud. Then they found the gun on
3 the floor. That would be circumstantial evidence
4 that while they had him cornered back there in the
5 laundry room he dropped the gun. That's
6 circumstantial evidence.

7 Now, you're also going to have the judge
8 instruct you that there are different -- well,
9 there's expert testimony. You heard at times people
10 get called qualified as an expert witness. Very
11 simply, ladies and gentlemen, sometimes the law
12 recognizes as a lay person, such as me, I have no
13 expertise. Therefore, I can't come in and give an
14 opinion. But certain people, because of their
15 training and their qualifications, are allowed to
16 come to court and give opinions about areas of
17 expertise in which they have got training.

18 You heard from Jamine Leslie. You heard from
19 David Collins. Jamine Leslie, she's a therapist.
20 You heard from David Collins. He does ballistics.
21 They were able to give you opinions after doing
22 testing or after interviewing the victim as far as in
23 their expert field. And that's why they're able to
24 give opinions that; but, say, if I were to testify, I
25 have no expertise and, therefore, I can just talk

1 about facts. That's kind of the difference between
2 an expert witness and a lay witness. The judge will
3 tell you you consider expert testimony the exact same
4 way you do any person's testimony. It's all about
5 credibility.

6 Now, in this case, too, you will also hear
7 how -- or you've heard about the Defendant's
8 statement, how on that night he was advised of his
9 rights and then he gives a statement to Sergeant
10 Barnes and Investigator Thomas. The judge will tell
11 you many things you can consider, whether or not a
12 Defendant has given a statement.

13 Basically, you know, his educational background,
14 his ability to articulate, things of that nature.
15 And he'll go through a list of things you can
16 consider. But the most important thing you need to
17 consider and the most important part is protecting
18 his rights, whether or not he was advised of what his
19 rights were that night, whether or not he wanted to
20 talk to police. And you must base that on credible
21 evidence, observations by the police that night when
22 they were there, credible evidence.

23 Was he advised, the Defendant, of his or her
24 Constitutional rights; including, but not limited to,
25 the right to remain silent, that any statement can be

1 used against him or her in a court of law, the right
2 to have a lawyer present; if he could not afford a
3 lawyer, a lawyer would be appointed to represent him
4 or her without any cost, and that he could stop
5 making the statement at any point.

6 This Defendant was read his rights twice, a
7 third time on the top of his statement when they went
8 over it. He understood his rights. And once you
9 find that his statement is voluntary, even if he
10 doesn't like it any more, then you can consider the
11 statement in whatever manner you think appropriate in
12 determining guilt, the statement he gave that night
13 when he was advised of his rights.

14 In every case we must prove criminal intent.
15 And what is criminal intent? The easiest definition
16 I know to say is a conscious wrongdoing. Nothing
17 more than that. In other words, it's not an
18 accident. It's an intended act in order to gain
19 something or to do something. It's not an accidental
20 act from which there is no intent.

21 And I submit, ladies and gentlemen, this case,
22 there is no question of what his intent was back on
23 February 24th. Not today. Back on February 24th of
24 2007. The judge will instruct you we can't look into
25 a person's mind, dissect it open, try to figure out

1 to a mathematical certainty what his intent was. So
2 what you have to do is look back at his actions and
3 what he did in the time period right around the time
4 he was committing the crimes. And, ladies and
5 gentlemen, I submit there is no question in this case
6 that this Defendant was fatally bent on mischief and
7 had criminal intent on that day.

8 The judge will also instruct you on
9 identification. I'm about through talking about the
10 law. I'm sorry. There are so many indictments. In
11 determining identification, you consider whether a
12 person had an opportunity to observe, whether the
13 lighting was good. That's why I asked those
14 questions. Whether they were paying attention,
15 things of that nature. Whether or not when they made
16 the identification it was close in time -- within a
17 day here -- of the actual crime here.

18 You can even consider whether they've seen him
19 before. Was their identification supported by the
20 facts and the other evidence in the case? I don't
21 think anybody is going to get up here and say that
22 the identifications in this case have anything wrong
23 with them.

24 The final thing I want to talk about is
25 credibility. In this case, ladies and gentlemen, it

1 boils down to it. The judge will tell you can
2 believe part of a witness, all of a witness or none
3 of a witness; one against many, many against one.

4 When determining credibility, and the reason we
5 bring these witnesses in, because you have to
6 determine, and using your reason, is whether or not
7 they're telling the truth. Does it make sense? Is
8 that testimony corroborated by the other testimony?
9 It is corroborated by the evidence? That's
10 credibility.

11 In this case they may get up here and argue,
12 well, you can't believe any of these witnesses
13 because their clothing descriptions don't match.
14 They're height is off by two inches, things of that
15 nature. Ladies and gentlemen, that's what makes them
16 so credible. I stake this case on each and every
17 witness, victim that came before you.

18 If they had all gotten up here and said, yeah,
19 he's five-foot-eleven wearing a black jacket with
20 purplish taupe jeans and different things, then there
21 is something wrong. Because this is real life.
22 That's what makes them credible. It's like when two
23 people are standing at different corners of a stop
24 light and a wreck occurs; and one person says it's a
25 tan car and the other person says it's a brown car;

1 no one is trying to lie. It's their perception at
2 the time.

3 Credibility. I beg you to judge these people.
4 What did Barry Taylor have to gain? What did Mr. and
5 Ms. Kelly have to gain? The people at the church,
6 Mr. Fleming, Ms. Gilliard? And finally, the victim,
7 Deborah Ann Simmons. She led her life in her
8 neighborhood where everyone was tight. She stayed
9 out of trouble and she didn't ask for this.

10 She endured a horrific hostage taking situation.
11 And you heard about details about that, how it went
12 on for six hours. They begged him to give her up.
13 They even brought in Roberta. And yet today he is
14 the victim? Credibility? I beg you to judge these
15 people.

16 Because, ladies and gentlemen, if you consider
17 all the evidence in this case, it all points to what
18 he did. He was a one-man crime spree. He was going
19 to get Roberta. And I think in a statement he put it
20 best. He just needed to talk to her but if he found
21 her with a man, he didn't know what would happen.
22 That was his frame of mind. And he didn't care who
23 the casualties were on the way to getting her. He
24 didn't care whose face he had to put a gun in and he
25 didn't care whose property and whose soul he crushed

1 to get what he wanted. Thank you.

2 **THE COURT:** Mr. O'Neil.

3 **MR. O'NEIL:** Thank you, Your Honor. May it
4 please the Court.

5 **MS. CAMPBELL:** Would you like me to move the
6 evidence?

7 **MR. O'NEIL:** Appreciate it. This ain't
8 Pakistan. This ain't Pakistan. When I first became
9 a lawyer and I joined the Richland County Public
10 Defenders Office, one of my co-workers would always
11 repeat that phrase. This ain't Pakistan. I never
12 quite understood what he meant by that until I had
13 the opportunity to try a case like this in front of
14 you guys.

15 He informed me that Pakistan, their criminal
16 system isn't like ours here in America. They don't
17 have certain guarantees and rights. They don't have
18 it where Defendants are presumed innocent throughout
19 their trial and until the State can remove that
20 burden. They don't have impartial jurors like the 14
21 of you who are willing to come in here, listen to the
22 evidence and decide the evidence on the facts and not
23 emotions. And they don't hold the State, the
24 prosecuting agency, to the highest burden of proof
25 beyond a reasonable doubt.

1 This is what makes America what America is.
2 This system we have is the best system there is in
3 determining cases. It's great because we have people
4 like you who are willing to come in and serve. It's
5 often been said this system we have is the best
6 system to settle disputes between citizens and
7 citizens and the government. Today we have a dispute
8 between citizens of Richland County and Randolph
9 Ashford.

10 Now, you guys have a job to do today. I have a
11 job, the State has a job, and the judge has a job.
12 Now, I've had training to do my job and the judge has
13 had training to do his job. But you 14 people, you
14 get the least amount of training there is. You come
15 in here today with just your life experiences. The
16 judge gives you a few minutes of instructions and
17 then tell you to have at it.

18 Basically your job is to decide this case on the
19 evidence and the law; not on emotions, not on
20 sympathy, not on passion, not on fear, not on anger.
21 You have to set all of that aside and make your
22 decision. And what I usually tell jurors, I get a
23 box like this. I know there's been a lot of emotion
24 in this trial this week, a lot of tears, a lot of
25 anger, a lot of frustration. And I tell jurors take

1 all that emotion you have, all that sympathy you may
2 have for victims, all the anger you may have for
3 Defendants, all the passion that the State may try to
4 raise up in you and put it in this box. Place all of
5 this emotion, all this sympathy, place it in this
6 box.

7 And you know what? You close it and set it over
8 here. Because that emotion, that sympathy, that
9 passion, that anger, that frustration, it can't go
10 back with you in the jury room. When you go back
11 there, you have to decide this case on the evidence
12 and the law. Now, emotions, anger, passion, they
13 tend to be intense and loud. I want you to separate
14 all that out so you can hear the quiet voice of the
15 evidence and the law.

16 Now, there no accident that you 14 people are
17 here. You were picked over out of the 200 people
18 that was here for jury duty. And when you swore an
19 oath, the law, I'm going to talk to you at that
20 point, the law demands that you do a couple of
21 things. The minute that you promise to presume Mr.
22 Ashford innocent until the State can move him guilty
23 beyond a reasonable doubt. That means that the
24 default setting, that man Randolph Ashford, is
25 innocent until they can prove him guilty beyond a

1 reasonable doubt.

2 And that's their job. That's their burden. And
3 don't let this table fool you. Don't let the paper
4 on this table fool you. On this table rests all the
5 resources and the powers of the State of South
6 Carolina. They brought in the Sheriff of Richland
7 County to testify in this case this week. This is a
8 man who has singlehandedly rid this county of all
9 Olympic swimmers. They found the power. This table
10 has.

11 They have a job to do. They have a job to do.
12 They have to prove to you their case beyond a
13 reasonable doubt. That's the highest burden we have
14 here in the criminal system. I'll talk to you a
15 little bit about that a little bit later on. But I'm
16 going to ask you to fulfill those promises, the
17 promises that the law demands, not for me, not for
18 Randolph Ashford, but because of the system, because
19 of the integrity of the system. Because when you
20 fulfill those promises, you do what the law demands,
21 that's what separates us from the Pakistans of the
22 world.

23 Now, the other day when I was coming back in
24 from court I got an email. I was trying to check my
25 email. This one particular email caught my eye. It

1 said it had one question, IQ test, to see if you're a
2 genius. And I thought to myself, hey, I'm pretty
3 smart. I went to law school. Maybe I might be a
4 genius. Let me open this test up and see if I'm a
5 genius or not.

6 So I opened the email up and it had one question
7 on it and one question alone. It said: "How many
8 months have 28 days?" And I thought to myself, man,
9 that's easy. I am a genius. I know the answer.
10 There's only one easy answer. The answer to that is
11 February. I'm a genius. Yes!

12 So then I scrolled down to the bottom of the
13 email and it said, "If you picked February, you said
14 one month, that is incorrect." That's the easy
15 answer. You see, the right answer is 12 months. All
16 months have 28 days. Some just have more. I learned
17 two lessons that day. One, I'm not a genius; and,
18 two, most times the easy answer isn't the right
19 answer.

20 Now, I'm not going to spend the next 30 plus
21 minutes here talking to you about the law or going
22 over every single witness that came up here. The
23 judge can tell you about the law and you were here
24 during this week; you remember what was said. But I
25 just wanted to hit some highlights for you to have

1 something to focus on when you go back in the jury
2 room.

3 The first thing you need to consider is the
4 carjacking. Think about the carjacking of Barry
5 Taylor. The first point Ms. Singletary brought home
6 to you during opening and I'll bring it home to you
7 today. Look at the location of that carjacking. The
8 State, they put all these maps in, all these pictures
9 in. Look at this map right here. Look where Mr.
10 Ashford stayed at. [REDACTED]. Look where the
11 first carjacking occurred at, the corner of Oakland
12 and Randall. Look where Ms. Simmons's trailer is
13 located, over here on [REDACTED].

14 If Mr. Ashford was so bent on going over here to
15 find Roberta Neil, why would he have went out of his
16 way a half a mile this way to Oakland Street to
17 carjack a car only to come back over here to Main
18 Street to carjack another car, then to finally get
19 over here to Booth Street? This first carjacking was
20 all out the way.

21 And Mr. Ashford testified to you himself that he
22 has no memory of that carjacking. Why would he have
23 taken the cars of Ms. Kelly and Mr. James and not the
24 first one? There's no forensics of that. There's no
25 fingerprints linking Mr. Ashford to that car, no DNA,

1 none of his belongings. Mr. Taylor himself got on
2 the stand. He couldn't even tell you that Mr.
3 Ashford was the person who carjacked his car. He
4 only gave a description that day of a man either six
5 foot or six-foot-one that had old clothes on. You'll
6 have Mr. Ashford's clothes when you go back there.
7 Look to see if his clothes fit the description Mr.
8 Taylor gave.

9 Then you have the carjackings of the Kellys and
10 Mr. James. And the only thing you've really got to
11 consider on those two indictments are whether or not
12 Mr. Ashford had the intent or whether or not he used
13 any force to get especially Mr. James's cab. You
14 heard Mr. James and his granddaughter testify on the
15 stand. Remember if they told you whether or not Mr.
16 Ashford used any force to get their vehicle. If he
17 didn't use any force, any intimidation, he is not
18 guilty of that carjacking.

19 After you consider that carjacking, the next
20 thing you need to consider is kidnapping of Evelyn
21 Worthy. And the State, they showed you all these
22 boards about kidnapping and told you what kidnapping
23 was, what it wasn't. It's defined, inveigle,
24 confine, all these things for you.

25 Basically it boils down this. Ms. Worthy didn't

1 see the person who came up behind her. The person
2 who reached over her shoulder to hang the phone up,
3 she never saw that person. She never said that
4 person used any kind of force to get her to move.
5 She merely said that she saw a weapon. She didn't
6 say somebody told her to move. She didn't say
7 somebody told her to stay. She just decided to walk
8 out.

9 And remember what she. She said somebody told
10 her, "You're going to help me get some keys." Not
11 anything about somebody saying, you're going to go
12 help me get any cars. The person that came up to Ms.
13 Worthy made no kind of demands, and when Ms. Worthy
14 got to the street, she ran off on her own. Decide
15 for yourself whether or not Randolph Ashford deprived
16 Ms. Worthy of her freedom.

17 Then you have the burglary first at the Booth
18 Street address. Basically all you need to consider
19 here is whether or not when Randolph Ashford entered
20 that home, he told you he had entered her home,
21 whether he entered it with the intent to commit a
22 crime. If he didn't, he's not guilty of that. No
23 matter what he did on the inside, if he didn't enter
24 that threshold with the intent to commit a crime,
25 he's not guilty. If there's nothing been stolen from

1 the residence, anything like that, if he didn't enter
2 that threshold with the intent to commit a crime, he
3 is not guilty of burglary first, no matter what else
4 may or may not have happened inside the home.

5 Next you have the assault with intent to kill as
6 it relates to both the deputies, both Deputy Unger
7 and Deputy White. Now, what's amazing about this;
8 think about this, neither Deputy White nor Deputy
9 Unger got on that stand and said they saw Randolph
10 Ashford shoot at them. The only testimony that you
11 heard was that Deputy White said he heard something
12 whiz by him in the woods.

13 And you'll have all the pictures back there to
14 look at it. They were not in front of the van but
15 behind the van in the wood line. Look at the
16 pictures of the windows when you get back there. See
17 if you see any window with any bullet hole. You
18 won't find that there.

19 Ms. Simmons says she saw Mr. Ashford shooting
20 out the front of the house. Once again, look at the
21 pictures. Look at where the front of the house is
22 facing. Look for yourself to see if it's possible
23 for Randolph Ashford to have shot any one of those
24 deputies who were by the light blue van if you're
25 shooting out the front of the window.

1 Mr. Ashford told you the only time he was
2 shooting, he shot once in the floor and once in the
3 chair. And there is pictures of the shot in the
4 chair. They only found two shell casings in that
5 house that day. You'll have the firearm back there
6 with you as well. The firearm can only hold six
7 projectiles. Three projectiles were still found in
8 the firearm; one live round on the floor. That only
9 leaves two. You just have to chase down one in the
10 floor and one in the chair.

11 And, first of all, you had the guy from SLED who
12 told you he looked at the gun. He said when he test
13 fired the gun it only fired correctly five out of the
14 20 times he tried to fire it. I'll let you decide
15 whether or not that gun was going to shoot at one of
16 the deputies.

17 Investigator Reed-Enzor, she went to where they
18 said they got shot at by the van, looked for the van,
19 found no bullet holes in the van, no projectiles, no
20 projectiles anywhere in the woods, no evidence that
21 Randolph Ashford shot at these deputies. No gunshot
22 residue anywhere in the house, anywhere around the
23 windows, anything like that. If quiet voice of the
24 law demands you find him not guilty of assault with
25 intent to kill.

1 And the last thing you have to consider is the
2 CSC and the kidnapping of Ms. Deborah Ann.
3 Basically, just as the State says, this is a
4 credibility issue. And one thing you have to look at
5 is the testimony that they had, their demeanor that
6 they had on the stand. Ms. Deborah Ann said that
7 Randolph Ashford called the house all night long.
8 And then she looked at the phone records and she saw
9 that there was no calling all night long.

10 She said that he used the mops to clean up some
11 water that was on the kitchen. He mopped up all the
12 water that was in the kitchen. Investigator
13 Reed-Enzor looked at the mops and the mops appeared
14 dry. Your job is to evaluate the credibility of the
15 witnesses.

16 There has been no physical evidence of a rape.
17 She went to see the SANE nurse. No tearing, no
18 bruising, no semen, no bruises on her arms at all, no
19 physical evidence of a rape. The quiet voice of the
20 law demands you find him not guilty.

21 And all of this, you have to consider the
22 standard you're going to be using. You're going to
23 be using the standard of beyond a reasonable doubt.
24 Now, beyond a reasonable doubt is the highest burden
25 that we have in our system. It's higher than the

1 civil side because much more is at stake on this
2 side. I often tell people if you want to imagine
3 what reasonable doubt is, imagine that you woke up
4 one morning and you found one of your significant
5 others, their picture was in the newspaper, and they
6 had been accused of committing a horrendous crime.
7 What would be the level convincing you to believe
8 that person, your significant other was guilty of
9 that crime? That's the same level of commitment and
10 convincing you have to have to find Randolph Ashford
11 guilty beyond all reasonable doubt.

12 If you get back there and you think, oh, he must
13 have done it, "must have" does not equal "beyond a
14 reasonable doubt". And if you think he did any one
15 of these nine crimes, that's not enough. You have to
16 be firmly convinced. You have to be firmly convinced
17 not only of each and every one of the crimes but of
18 the ID's as well. You've got to be firmly convinced
19 of the statement he gave, whether or not he freely
20 and voluntarily waived his rights.

21 Consider his personal attributes. Consider his
22 education. Consider his medication. Consider his
23 condition, the tear gas that he was under, whether or
24 not you think he could have voluntarily waived his
25 rights to not have counsel there and to freely talk

1 with law enforcement.

2 You have to find beyond a reasonable doubt on
3 every single one of these indictments separately.
4 The quiet voice of the law demands you separately
5 address each and every one of these indictments.

6 Now, this is usually the time of my closing
7 arguments that I ask the jury to find in favor of my
8 client. I'm not going to do that here today. I'm
9 not going to ask y'all to find in favor of Randolph
10 Ashford. I'm going to ask you 14 people to find in
11 favor of the law, to uphold the integrity of the
12 system, to do as the quiet voice of the law requires
13 you to do. Don't do it because I'm a nice person.
14 Don't do it because Randolph Ashford is a good person
15 or you like Randolph Ashford. Do it because you are
16 good people. You swore an oath to uphold the law.
17 That's what I know you will do.

18 Dr. Martin Luther King, Jr. once said: "The
19 true test of a man is not where he stands at the
20 times of comfort and convenience but at times of
21 challenge and in times of controversy." When you get
22 back to that jury room, it's going to be comfortable,
23 it's going to be easy to say, yeah, he was arrested,
24 they have all these indictments, all these boards,
25 all these pictures, I feel sympathy for the victim;

1 let's find him guilty of everything.

2 But it won't be correct. Because you'll have
3 taken away all that sympathy. You don't have that
4 sympathy and that anger back there with you. You
5 have to listen to the quiet voice of the law. I know
6 once you listen to the quiet voice of the law, you
7 will realize the law demands that you find him not
8 guilty, that this is America; this isn't Pakistan.
9 Thank you.

10 **THE COURT:** Ms. Campbell.

11 **MS. CAMPBELL:** Thank you, sir. In every case
12 you try to anticipate prior to trial what the defense
13 is going to be. In some cases it can be a simple
14 case of identification; simply it's the wrong guy.
15 In some cases it can be simply there is no crime that
16 was actually committed; it was a drug deal gone bad.

17 In this case as I listened to opening arguments
18 and have listened to cross examination and over the
19 last several days, it is kind of the oldest defense
20 in the book; just simply try to harp on an
21 inconsistency. Is it a green jacket or a brown
22 jacket? Attack the police. Say they didn't do their
23 job -- and in this case, ladies and gentlemen, they
24 did -- and go with that.

25 But this case goes a little further than that.

1 Because the defense has absolutely no burden to prove
2 anything. That is their right under the
3 Constitution, as it should be. However, ladies and
4 gentlemen, once they chose to put up a defense and to
5 testify, you judge that the same way you do every
6 other witness in this case. Because their theory is,
7 is that Deborah Ann Simmons -- and I submit, ladies
8 and gentlemen, judge her. What you see is what you
9 get. She was at home in her living room with three
10 small children and her brother's wife minding her own
11 business when her cousin's friend, common law
12 husband, chose to commit a series of acts, heinous,
13 despicable acts against innocent citizens, just as
14 she was, in order to get at Roberta. Because
15 Roberta -- and you'll have his statement -- wasn't
16 there and he couldn't find her and he was going to
17 get her.

18 And I think he summed it up best. I didn't know
19 what would happen if I found that man with Roberta.
20 That's what was on his mind. The theory in this case
21 is that Deborah Ann Simmons brilliantly was able to
22 realize that this was the perfect time to take him
23 hostage, that he had committed these series of events
24 to get to her house, these series of crimes and came
25 with a gun so that she could hold him hostage, so

1 that then, under their theory, the police could come
2 and she would tell them to leave; and then when they
3 threw things in her house, she could sue them and
4 then go to the hospital and just say, as he told her
5 to, that this was a rape. This was just her lucky
6 day, according to the Defendant.

7 And it is amazing that Deborah Simmons was
8 brilliant enough to take advantage of the opportunity
9 that this young, innocent man afforded her. That's
10 the defense theory. I submit, ladies and gentlemen,
11 this case is not about reasonable doubt, because you
12 have two different stories; one inbetween the
13 statement, and then you have the story from the 15 or
14 so fact witnesses who have no bias, no prejudice,
15 nothing to gain or lose. They didn't want to come
16 here to be able to tell you how somebody stuck a gun
17 in their face. That didn't make their week, their
18 month, their year.

19 They didn't want to see their car get totaled.
20 They didn't want to come in here and get cross
21 examined for the fun of it. Are they credible? I
22 beg you, I submit in no case are they more credible
23 than this. Because either you believe them because
24 they all corroborate each other; or, I submit, ladies
25 and gentlemen, if you believe what he testified to

1 here today, then cut him loose.

2 Then they don't want you -- they're desperate
3 for you not to consider the statement. It wasn't
4 voluntary. He had tear gas. And why is that? It
5 crushes him. That night he thought as fast as he
6 could on his feet. And I submit they say he doesn't
7 have enough education to understand. He sure
8 corrected me every time I asked him a question. He
9 made sure he didn't just let anything slide by. I
10 don't care what anyone's education was; he knows what
11 he's doing.

12 They don't want you to consider that statement
13 because the statement kills him. Either Mr. Taylor,
14 the Kellys, Ms. Worthy, Mr. James, Ms. Simmons,
15 either they're all victims, or he is innocent.

16 As I listened to opening argument, Ms.
17 Singletary got up here and she talked about what our
18 case would show. And again, you remember it as you
19 heard it. She talked about how when he woke up, he
20 did unspeakable acts for no reason. Listen carefully
21 to the judge. We don't have to prove to you that he
22 was acting reasonably in his jealous haze. We just
23 have to prove that the acts occurred.

24 They got up there and said he woke up, did
25 unspeakable acts for no reason, all over \$4,000,

1 which they're now denying. We aren't alleging that,
2 ladies and gentlemen. But we don't have to prove
3 motive. We don't have to prove that his criminal
4 acts were reasonable. No criminal act; murder, rape,
5 burglary, robbery, is reasonable. That no one,
6 someone in their right mind would not commit these
7 acts. That the burden of proof is on the state, we
8 agree with that. It should be and it is.

9 But he took the first car. Why did he take the
10 second? Well, ladies and gentlemen, we don't have to
11 prove why he took it. We have to prove that he did
12 take it with criminal intent. And when one pulls out
13 a gun and points it at Mr. Kelly and Ms. Kelly is
14 inside the car, that's criminal intent. Did he like
15 that car better? It was nicer. Was he having
16 trouble making the other car run? You heard about
17 how Mr. Taylor had problems with it.

18 He was on a mission. Oh. And why was he over
19 on Oakland Street if he lives over here on Muir
20 Street? I don't know. Was he hanging out with those
21 two guys in the roadway? What was he doing over
22 there? We don't have to prove what he was doing
23 there. All we have to prove is that he took the car.

24 They say you can't believe he did the carjacking
25 because Mr. Taylor didn't identify him. And that's

1 what makes him credible. He didn't get up in his
2 face. But guess who did? Mr. Kelly. There is no
3 doubt about his identification. And he admits that's
4 right.

5 The issues, squeamish, it's about sex. He
6 wouldn't do this because it was his girlfriend's
7 cousin. Listen to the nurse. There is no physical
8 evidence. They are right about that. And there
9 shouldn't be in this case, because no one here says
10 that he deposited any DNA in her. That the ABIK
11 isn't an ABIK because he shot indoors. That the gun
12 is a six-shooter, two shell casings and four live
13 rounds. And I submit, ladies and gentlemen, in his
14 own statement, the one they don't want you to
15 consider, he says he reloaded. Remember? He says he
16 had bullets in his pocket, he took out a couple and
17 put them back in. He didn't know what he did with
18 the expended shells. He thought they should be at
19 the thing.

20 And then she added he did not commit the CSC; he
21 did not commit the assault with intent to kills.
22 That was the opening argument. And don't get me
23 wrong. Mr. O'Neil is exactly right. We need to
24 prove each and every element of each and every
25 offense. But I submit, ladies and gentlemen, with

1 the evidence we brought forth in this case, we have
2 proven each and every element for each offense, and
3 it's not a lesser-included.

4 Now, you've heard from a number of witnesses.
5 And he says he's not going to talk about these
6 witnesses. And I don't blame him. I want to talk
7 about what these witnesses told you. Barry Taylor,
8 he is down there on Oakland Avenue. He's going down
9 the street. He sees two crackheads in the street and
10 the Defendant. The Defendant is the one with the
11 gun. He approaches him.

12 And this is what he doesn't remember. At that
13 point he doesn't say, have a nice day; or, oh,
14 please, would you give me a car. He said, "Get out
15 of the car." He goes back towards Main Street which
16 would be the correct way to go to get to where he
17 wanted to go.

18 What was he doing over there? I don't know.
19 Was he looking for the gun? He claims this wasn't
20 his gun. He had no find it somewhere. Was he over
21 there looking for Roberta? Maybe he realized she
22 wasn't over at some other friend's house, so he
23 needed to get a car to get over to Debbie Ann's. We
24 don't have to prove why he was there. We have to
25 prove that he was there. And I submit, ladies and

1 gentlemen, the evidence of the carjacking is
2 overwhelming.

3 Olin Kelly and Pearl Kelly, what did they tell
4 you? They're there doing their laundry on a
5 Saturday. Mr. Kelly has worked 37 years at the same
6 job. They're there in their nice car. And he sees
7 it. And, whoa, how nice. So what does he do? And
8 he admits this. He goes up to them. He puts a gun,
9 get out of the car. Tell your wife to get out of the
10 car. Are these the acts of a coherent man? And even
11 he admits the pills, even though that's an inference,
12 didn't make him do any of this.

13 He takes their car. He is on a mission. He is
14 going so fast that when he goes over those railroad
15 tracks he loses control. He wrecks the car. Oops.
16 He needs another one. He doesn't hesitate. He gets
17 out of the car. He's still got the gun. And what
18 does he do? He goes up to Mr. Fleming, Ms. Gilliard.
19 Goes up to them. He doesn't say, have a nice day.
20 He says, "Get out of the car." They drive off. He
21 still needs a car.

22 He then goes over to the Tahoe where the girls
23 are, children. One was six, scares them off, still
24 doesn't have a car that he can run. So he goes
25 inside the church where he's just seen all the

1 children run. And then there's Ms. Worthy. She is
2 there watering the flowers. She's a deaconess. She
3 is doing what people should do on a Saturday morning.
4 Not him. They're saying this isn't a kidnapping
5 because he didn't force her to do anything? It
6 wasn't her idea to go out and flag down cars. She
7 wasn't the one with the gun. He had the gun. He
8 says, "I need your keys." They said he didn't make
9 any demands of her? "I want your keys. Okay. Not
10 your keys. You're helping me get some."

11 And he nudges her forward. She testified. And
12 I beg you to judge her. She didn't want to go out in
13 the road for the fun of it. You know. And Mr.
14 Fleming saw the man with the gun to her head. She
15 didn't even know the gun was to her head because she
16 was so scared, she wouldn't look up. Again, what
17 makes them credible? He said she goes to the edge of
18 the road. She goes all the way into the road.
19 That's credible. Both Ms. Gilliard and Mr. Fleming
20 identify him. Mr. Fleming has seen him before.

21 At that point she testifies the only time she
22 gets away from him is when she realizes he's not just
23 right behind her. That's kidnapping, ladies and
24 gentlemen. Listen to the judge.

25 So he's in the middle of the street. Cars are

1 honking by. He finally stops Mr. James. And they
2 said Mr. James -- or remember Shana said she wasn't
3 that scared? So that makes this not a carjacking?
4 Mr. James didn't give up his taxi cab that he'd been
5 driving for 30 something years because he was in a
6 generous mood that morning. He gave up his taxi cab
7 for the exact same reason Mr. Taylor gave up his car,
8 that Mr. Kelly and Ms. Kelly gave up their car;
9 because he had a gun and he pointed it at them and he
10 told them to get out.

11 That's a crime. That's carjacking. And then he
12 drives down the street. And that's when this whole
13 conspiracy starts and he becomes the victim of
14 Deborah Ann Simmons, according to him. He even in
15 his statement; and you'll have it, he says she was so
16 scared she wouldn't get out of her chair and she
17 couldn't move the other one.

18 You heard from Malasia, the ten-year-old that
19 was there that day. It's not that he went around and
20 magnanimously let the children out. You remember?
21 She said her auntie begging him to let them go and he
22 did. He had what he needed with Deborah Ann Simmons
23 because if he wasn't going to find Roberta, he had
24 found her.

25 And then what's interesting is he testifies that

1 he is there. Remember how he kept saying he was too
2 scared to come out because the police might hurt him
3 because he had a gun? But then at the same time he
4 says, oh, well, I had to shoot the gun twice so the
5 police would know I had a gun. Does it make sense?
6 Is it credible?

7 Why change from his statement he gave back the
8 night this happened? Because that statement wasn't
9 good enough. He sat here for two years. He sat here
10 in the court. And he got up and testified, trying to
11 put together a scenario where he is just simply
12 misunderstood, a victim of all these horrible people
13 who have intentionally framed him of these awful
14 crimes. And if you believe that, ladies and
15 gentlemen, then you should set him free. I beg you,
16 judge their credibility.

17 You've heard from the SANE nurse and the EMS
18 people. Oh, and then my favorite part is when he
19 told Deborah Ann because she was getting a little
20 irritated because the police kept throwing, you know,
21 tear gas in and she was -- it was destroying the
22 place. At least the windows; that's for sure. So
23 she needed to sue. And then his advice was to, oh,
24 you should say we had sex so you'll win your lawsuit?
25 Is that credible?

1 You heard from the police officers that
2 responded. You heard from the EMS, from Linda
3 Morphis. She told you about her demeanor when she
4 came in contact with her that night. She told you
5 about how Ms. Simmons is 51 years old, that she
6 wouldn't expect to find any vaginal tearing, that her
7 findings were consistent with what she reported.

8 You heard from Deputy Unger and Nathan White.
9 And they got up here and were honest with you. They
10 were in the woods and somebody shot at them. And,
11 ladies and gentlemen, I submit there weren't any
12 random shooters out there that day. The only person
13 who was shooting a gun that day was this Defendant.
14 He wants to say you can't convict him because he
15 didn't shoot out of a window? That's their defense?

16 And remember. That shooting occurred shortly
17 after the whole hostage taking began, within the
18 first hour or so. And we know he was shooting
19 because we got where he shot inside. And he admits
20 he was shooting inside. You heard from John Barron
21 and David Collins, Shana Sorrells, Mr. Barron. He
22 didn't ejaculate; you wouldn't expect to find any
23 DNA. It's consistent. David Collins, the gun
24 misfires when it shoots; and when it shoots, it
25 shoots for real. Shana Sorrells, she didn't have any

1 alcohol or anything in her system.

2 And, finally, ladies and gentlemen, you heard
3 from Eric Barnes and Investigator Thomas.
4 Credibility. Because either you believe those two
5 men would put their careers on the line to frame this
6 poor man or you believe the Defendant.

7 And look at the statement when you get back
8 there. Look at the gist of his statement. There are
9 details in there that they don't have any access to,
10 that they don't know about. They wouldn't know that
11 he'd gotten some settlement from some wreck or
12 injury. They wouldn't know what had been going on
13 with he and Roberta. On the argument, remember the
14 verdict argument which he can't remember the gist of
15 it any more? How would they know that?

16 And if they're going to frame him, why would
17 they put in there his excuses for what happened? Why
18 not just say, yeah, I did this intentionally? The
19 way it's written as it is is because that's the
20 information he gave them. Remember initially when
21 confronted with any sex acts, until he thought
22 someone was peering in with satellite or something,
23 he denied any sex. And he went, oh, yeah. And the
24 only thing he's consistent on is talking about his
25 own personal genitalia. And then conveniently today,

1 there's no sex act. Is he trying to get out of the
2 CSC, only get convicted of an ABHAN?

3 In his first statement, it is self-serving. He
4 minimizes his criminal culpability. And then today,
5 ladies and gentlemen, he became the victim. It's an
6 amazing transgression.

7 You've heard from the negotiations from the SWAT
8 Team. Oh, even today. Remember? I was getting
9 ready to come out and they just came in before I
10 could get out the door. This is after six plus
11 hours. Again, a victim. The negotiations went on
12 for hours. They kept saying come out and he wouldn't
13 come out. The negotiations were with Debbie Ann
14 Simmons.

15 All that police force, all that personnel wasn't
16 out there because Debbie Ann Simmons was calling,
17 saying, go away, go away from my house, I don't want
18 you all coming around my house. And even he wouldn't
19 say that's what was told to him. Remember Sheriff
20 Lott? He made threats. He said he'd come out.
21 Finally, he was just jerking us around. It wasn't
22 that -- and it just boggles the mind. Debbie Ann
23 Simmons barricades herself in her own house with this
24 man and then offers him a beer and they smoke
25 cigarettes and talk?

1 This case is classic. On Friday night Randolph
2 Ashford, by his own testimony, got into a verbal
3 argument. She didn't stay home that night for
4 whatever reason. He became angry. He got a call at
5 1:35. He told investigators there were sex sounds.
6 He thought she might have taken his \$4,000. Where
7 did they make that up from?

8 This is the oldest motive in the book. Because
9 he went over there that day and he was going to do
10 anything and everything he had to do to get there,
11 and he didn't care who he hurt or who he threatened
12 to do it. And on the way he took down Barry Taylor,
13 he took down the Kellys, he took down Mr. James. He
14 interrupted Ms. Worthy's life. And it didn't matter.
15 He went into a church with a gun where children had
16 just run because he was going to get Roberta and that
17 man. That's what was in his head.

18 And when he got over there, he didn't think
19 about it. The police were there before he knew it,
20 and at that point he had Deborah Ann Simmons. You
21 remember the first thing he did was make her call
22 her? Get Roberta here. The police even went so far
23 as to bring Roberta down there to talk to him to try
24 to talk him out. He made offers to exchange Roberta
25 because he wanted to kill her and kill himself. That

1 was his frame of mind, because no woman was going to
2 make him look that bad and not pay for it. And if he
3 couldn't get to Roberta, he had Deborah Ann Simmons
4 and she'd do for now. And he showed her.

5 We aren't asking you, no one would ask you to
6 base a verdict on emotion, on anger. All we ask is
7 that you do follow up with the law. And I did go
8 through the law because it's important.

9 He counted on the fact that Deborah Ann Simmons
10 would never have the courage and the strength to come
11 forward. And he counted on the fact that she would
12 just be too demoralized and too humiliated to ever
13 come before you and tell you what happened to her and
14 in graphic, ugly terms.

15 And he counted on the fact that even if she did
16 tell anybody; oh, the police were never going to
17 believe Deborah Ann Simmons. And he counted on the
18 fact that even if she came forward, he could just
19 simply confuse the jury and make it go away.

20 All we ask, ladies and gentlemen, is you hold
21 him responsible for what he did do and for the crimes
22 for which he is charged. We didn't stack the
23 charges. Charge him with the attempted's or anything
24 else, just the crimes that he did commit. And I
25 submit, ladies and gentlemen, when you go back there

1 and you consider the evidence in this case, you will
2 reach a verdict that does speak the truth. It comes
3 from the Latin phrase "veredicto", to speak the
4 truth; and that you will find him guilty of each of
5 these indictments individually, guilty as charged.
6 Thank you.

7 **THE COURT:** All right, ladies and gentlemen. It
8 now becomes my responsibility to explain to you the
9 law of the State of South Carolina as it applies to
10 this case. But before I do that, let me ask; this
11 will take about 30 minutes, would you like to take a
12 short break? I've got a lot of yesses. Let's take
13 about five minutes. Well, I don't know if every --
14 you know --

15 **FOREPERSON:** There's two restrooms in there.
16 We're all right.

17 **THE COURT:** I've always had a problem figuring
18 out how long it would take 14 people to relax. I'll
19 tell you what. You knock on the door when you're
20 ready and we'll be ready. Don't discuss the case
21 among yourselves while you're in the jury room.

22 (Jury out at 3:45 p.m.)

23 **THE COURT:** Counsel, this is the verdict form on
24 the CSC first. I'll have you take a look at it and
25 see if you have any objections. We'll stand at ease

1 for five or so minutes.

2 (Whereupon, a break is taken)

3 **THE COURT:** Any objection to the jury form?

4 **MR. O'NEIL:** No, Your Honor.

5 **MS. CAMPBELL:** No, sir.

6 **THE COURT:** Bring the jury.

7 (Jury in at 4:02 p.m.)

8 **THE BAILIFF:** Your Honor, the jury is present.

9 **THE COURT:** All right. Thank you, ladies and
10 gentlemen. All right, ladies and gentlemen. Now
11 you've heard all the testimony in this case. You'll
12 take with you to the jury room all of the evidence
13 that there is in the case that's been introduced.
14 You've heard everything there is to see and hear.
15 You've heard the arguments of both the State and the
16 Defendant, and I'll now explain the law to you as it
17 applies to this case.

18 Now, I'll remind you that under our Constitution
19 and Code of Laws only the jury can make findings of
20 fact in this case. I am not permitted to indicate to
21 you how I might feel about the facts. So if I've
22 said or done anything in this case which would
23 indicate to you that I have an opinion concerning the
24 facts of this case, you must disregard that. This
25 jury must independently weigh the evidence presented

1 in this trial and render a verdict based solely on
2 that evidence.

3 The same Constitution and laws which designate
4 and make you the finders of the fact also makes me
5 the instructor of the law. If you have some idea as
6 to what the law is or what the law ought to be and it
7 does not agree with what I now tell you the law is,
8 you are now obligated under your oath which you have
9 taken to abandon that preconception on your part and
10 accept and apply the law precisely as I now state it
11 to you.

12 The Defendant in this case has been charged with
13 nine indictments alleging carjacking, first degree
14 criminal sexual conduct, burglary first degree,
15 kidnappings and assault and battery with intent to
16 kill. I remind you that the fact that the Defendant
17 has been arrested and charged and indicted in this
18 case is not evidence in this case, cannot be
19 considered by you as evidence in this case. Nor does
20 it create any presumption or inference of guilt of
21 the Defendant. These documents are simply the formal
22 written instruments which contain the charges made
23 against the Defendant. They are the formal documents
24 by which the case is brought into court.

25 This Defendant has pled not guilty to each of

1 these indictments, and that plea puts the burden on
2 the State of South Carolina to prove the Defendant
3 guilty. A person charged with committing a criminal
4 offense in South Carolina is never required to prove
5 himself or herself innocent.

6 I charge you this is an important rule of law,
7 that the Defendant in a criminal case, no matter what
8 the seriousness of the charge may be, will always be
9 presumed to be innocent of the crime for which the
10 indictment was issued unless guilt has been proven by
11 evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 This presumption of innocence does not end when
14 you begin your deliberations, but it accompanies the
15 Defendant through the trial until you reach a verdict
16 of guilt based on evidence satisfying you of that
17 guilt beyond a reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It's not just a legal phrase. It is a
20 substantial right to which every Defendant is
21 entitled unless you, the jury, are satisfied from the
22 evidence of the Defendant's guilt beyond a reasonable
23 doubt.

24 Well, what is a reasonable doubt in the law? A
25 reasonable doubt is the kind of doubt that would

1 cause a reasonable person to hesitate to act. Let me
2 repeat that. A reasonable doubt is the kind of doubt
3 that would cause a reasonable person to hesitate to
4 act. The State has the burden of proving the
5 Defendant guilty beyond that reasonable doubt.

6 Some of you may have served as jurors in civil
7 cases where you were told it is only necessary to
8 prove that a fact is more likely true than not true,
9 such as by the greater weight or preponderance of the
10 evidence. In criminal cases, however, the State's
11 proof must be more powerful than that. It must be
12 beyond a reasonable doubt.

13 Proof beyond a reasonable doubt is proof that
14 leaves you firmly convinced of the Defendant's guilt.
15 The State must meet its burden as to each of the
16 elements charged. There are very few things in this
17 world we know with absolute certainty, and in
18 criminal cases the law does not require proof that
19 overcomes every possible doubt.

20 If, based on your consideration of the evidence,
21 you are firmly convinced that the Defendant is guilty
22 of the crimes charged, you must find the Defendant
23 guilty. On the other hand, if you think there is a
24 real possibility that the Defendant is not guilty,
25 then you must give the Defendant the benefit of the

1 doubt and find him not guilty.

2 Now, generally there are two types of evidence
3 which has been described to you that are generally
4 presented during a trial, direct evidence and
5 circumstantial evidence. Direct evidence -- and we
6 probably had both in this case. Direct evidence is
7 the testimony of a person who claims to have actual
8 knowledge of a fact, such as an eye witness. It is
9 evidence which immediately establishes the main fact
10 to be proved.

11 Circumstantial evidence, on the other hand, is
12 proof of a series or chain of facts and circumstances
13 indicating the existence of some fact. It is
14 evidence which immediately establishes collateral
15 facts from which the main fact may be inferred.
16 Circumstantial evidence is based on inference and not
17 on personal knowledge or personal observation.

18 Circumstantial evidence is permissible provided
19 to the extent that the state relies upon
20 circumstantial evidence to prove the elements of the
21 crime, it must prove all of the circumstances relied
22 upon beyond a reasonable doubt. They must be wholly
23 and in every particular perfectly consistent with one
24 another and they must point conclusively and beyond a
25 reasonable doubt to the guilt of the accused.

1 Every circumstance that is relied on by the
2 State as material must be brought to the test of
3 strict proof and satisfy the burden of showing guilt
4 beyond a reasonable doubt. All of the facts proved
5 must be consistent and taken as a whole should be of
6 a conclusive nature and a tendency producing a
7 certainty beyond a reasonable doubt that the
8 Defendant committed the offense charged.

9 But the law makes absolutely no distinction
10 between the weight or value to be given to either
11 direct or circumstantial evidence, nor is a greater
12 degree of certainty require of circumstantial
13 evidence than of direct evidence.

14 You should weigh all the evidence in the case;
15 and after weighing all of the evidence, if you are
16 not convinced of the guilt of the Defendant beyond a
17 reasonable doubt, you must find the defendant not
18 guilty.

19 Now, necessarily you must determine the
20 credibility of witnesses who have testified in this
21 case. Credibility simply means believability. It
22 becomes your duty as jurors to analyze and evaluate
23 the evidence and determine which evidence convinces
24 you of its truth.

25 In determining the believability of witnesses

1 who have testified in this case, you may believe one
2 witness over several witnesses or several witnesses
3 over one witness. You may believe part of the
4 testimony of a witness and reject the remaining part
5 of the testimony of the same witness. You may
6 believe the testimony of a witness in its entirety or
7 you may reject the testimony of a witness in its
8 entirety.

9 You may consider whether any witness has
10 exhibited to you any interest in the case, bias,
11 prejudice or other motive in this case. You may also
12 consider the appearance and manner of the witness
13 while on the witness stand.

14 Now, ladies and gentlemen, during this trial
15 you've heard the testimony from a child. When a
16 child testifies, you must determine, as with any
17 witness, whether that testimony is believable. In
18 deciding believability, you may consider not only
19 matters I have already discussed with you, but you
20 must also consider the age of the child, the child's
21 ability to observe and remember facts and the child's
22 ability to understand and answer questions.

23 Because young children may not fully understand
24 what's happening here, it's up to you decide whether
25 the child understands the seriousness of appearing as

1 a witness in a criminal trial and whether the child
2 understood the questions, whether the child exhibited
3 to you a good memory and whether the child understood
4 the difference between lying and the truth. In
5 addition, young children may be influenced by the way
6 questions are asked. It's up to you to decide
7 whether or not the child understood the questions
8 asked.

9 And by the same token, we had an expert witness
10 in this case, or several expert witnesses. Normally
11 a person cannot give opinion testimony. That is,
12 normally a person who testifies, they must testify as
13 to what they saw or heard or sensed by smell or
14 something of that nature.

15 However, there is an exception in our law. When
16 someone is called by education or experience, experts
17 are permitted to testify as to their opinions in
18 certain areas if the Court qualifies them in that
19 way. That does not mean you must accept that
20 opinion. It's evidence for you to use any way you
21 see fit.

22 You've heard evidence that the Defendant was
23 convicted of a crime in this case other than the one
24 for which the Defendant is now on trial. This
25 evidence may be considered by you, if you conclude

1 that it's true, only in deciding whether the
2 Defendant's testimony is believable and for no other
3 purpose. You must not consider the Defendant's prior
4 record as any evidence of the Defendant's guilt to
5 the charge we're trying here today.

6 Now, in order to establish criminal liability,
7 criminal intent is required. For example, the mental
8 state required to be proved by the State for some
9 particular crime might be a specific purpose or a
10 specific intent, knowledge of certain facts or
11 recklessness. Criminal intent must be proven by the
12 State beyond a reasonable doubt.

13 Criminal intent is always a matter that must be
14 determined by the jury from the circumstances
15 surrounding the situation. There is no way to prove
16 intent to a mathematical certainty. There is no way
17 medical science can dissect a person's brain and
18 determine what the person had in mind. So the law
19 says that criminal intent may be inferred from the
20 circumstances shown to have existed at the time and
21 place. This is how you make the determination of
22 whether or not the element requiring intent was
23 present.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. It's up to you to determine what the

1 Defendant intended to do based on the circumstances
2 shown to have existed.

3 An issue in this case is the identification of
4 the Defendant as the person who committed the crimes
5 charged. The State has the burden of proving
6 identity beyond a reasonable doubt. You must be
7 satisfied beyond a reasonable doubt of the accuracy
8 of the identification of the Defendant before you may
9 convict the Defendant.

10 Identification testimony is an expression of
11 belief or impression by a witness. You must
12 determine the accuracy of the identification of the
13 Defendant. You must consider the believability of
14 each identification witness in the same way as any
15 other witness. You may consider whether the witness
16 had an adequate opportunity to observe the offender
17 at the time of the offense. This would be effected
18 by things like how long or short a time was
19 available, how far or close the witness was, the
20 lighting conditions and whether the witness had a
21 chance to see or know the person in the past.

22 Once again, I instruct you the burden of proof
23 is on the State, and that extends to every element of
24 the crime charged. And this specifically includes
25 the burden of proving beyond a reasonable doubt the

1 identity of the Defendant as the person who committed
2 the crime. If after examining the testimony you have
3 a reasonable doubt as to the accuracy of the
4 identification, you must find the Defendant not
5 guilty.

6 Now, in this case a statement is alleged to have
7 been made by the Defendant and has been admitted into
8 evidence in this case. While the Court has
9 determined that the statement is admissible, I
10 instruct you that you make the ultimate decision of
11 whether or not the Defendant made the statement. If
12 the Defendant did make the statement, you must
13 determine whether the statement was made by the
14 Defendant voluntarily and of his own free will.

15 This means that the statement was not caused by
16 pressure, force, fear, threats, coercion or
17 intimidation or by hope or promise of leniency or a
18 reward of any kind. In determining whether the
19 statement was voluntary, you should consider both the
20 characteristics of the Defendant and the details of
21 the questioning.

22 Some of the factors you may consider are the age
23 of the Defendant, the Defendant's education or lack
24 of education, the Defendant's mental ability or
25 capacity, the Defendant's IQ or intelligence, the

1 Defendant's background and environment, the place and
2 length of the detention, the nature of questioning,
3 the advice or lack thereof to the Defendant of his
4 Constitutional rights; including, but not limited to,
5 the right to remain silent, that any statement could
6 be used against him in a court of law, the right to
7 have a lawyer present, that if he could not afford an
8 attorney, a lawyer would be appointed to represent
9 him without any cost, that he could stop making a
10 statement at any time.

11 You must consider carefully all of the
12 surrounding circumstances before you give any weight
13 to the alleged statement. The State has the burden
14 of proving beyond a reasonable doubt that the alleged
15 statement was voluntary. If you determine it was,
16 you may give the statement any further consideration
17 you deem proper. You must decide what weight, if
18 any, should be given to the alleged statement. If
19 you determine the alleged statement was not the free
20 and voluntary statement of the Defendant, you should
21 not consider the statement at all.

22 Now, I told you what the nine indictments in
23 this case charge. Carjacking of Barry Taylor;
24 carjacking of the Kellys; kidnapping of Pearl Kelly;
25 burglary in the first degree, kidnapping of Deborah

1 Ann Simmons, criminal sexual conduct of Deborah Ann
2 Simmons; assault with intent to kill of Deputy David
3 Unger and assault with intent to kill of Deputy David
4 White.

5 Each indictment charges a separate and distinct
6 offense. You must decide each indictment separately
7 on the evidence and the law applicable to it
8 uninfluenced by your decision as to any other
9 indictment.

10 As I instructed you earlier, the State must
11 prove every element of each of these charges beyond a
12 reasonable doubt. The Defendant may be convicted or
13 acquitted on any or all of the charges, offenses
14 charged. You will be asked to write a separate
15 verdict of guilty or not guilty on each indictment.

16 Carjacking. The Defendant is charged with three
17 counts of carjacking. To prove each charge of
18 carjacking the State must prove beyond a reasonable
19 doubt that the Defendant took or attempted to take a
20 motor vehicle from another person by force and
21 violence or by intimidation while the person was
22 operating the vehicle or while the person was in the
23 vehicle.

24 Kidnapping. The Defendant is also charged with
25 two counts of kidnapping. In order to prove the

1 Defendant guilty of these charges the State must
2 prove beyond a reasonable doubt the Defendant
3 knowingly and unlawfully seized, confined, inveigled,
4 decoyed, captured or kidnapped, abducted or carried
5 away another person without the authority of law.

6 To do a thing unlawfully is to do it willfully
7 against the law. Knowingly means with knowledge,
8 conscientiously and not accidentally. To seize means
9 to take hold of suddenly or forcibly confine.
10 Confine means to limit, restrict or close within
11 bounds, imprison or shut or keep in. Inveigle means
12 to lure, entice or lead astray by false
13 representations, promises or other deceitful means.
14 Decoy means to lure as if by a decoy. Decoy is
15 something to entice a person into a trap. Kidnap
16 means to remove a person against his will by unlawful
17 force or by fraud. Abduct means to carry off
18 secretly or by force for an illegal purpose. And
19 carry away means to remove.

20 The State does not have to prove that the
21 Defendant did all of these things. Instead, if you
22 find beyond a reasonable doubt the Defendant did any
23 of these things, you may find the Defendant guilty of
24 kidnapping. Something done without authority of law
25 is something which the law does not sanction, permit,

1 allow, condone or provide justification for. The
2 kidnapping does not have to be for any personal or
3 monetary gain or for any illegal purpose, but it may
4 be for any reason whatsoever. Kidnapping is a
5 continuous offense that commences when one is
6 wrongfully deprived of freedom and continues until
7 that freedom is restored.

8 The Defendant is also charged with the offense
9 of first degree burglary. In order to prove the
10 Defendant guilty of this crime the State must prove
11 beyond a reasonable doubt that the Defendant entered
12 a dwelling without consent with the intent to commit
13 a crime and an aggravating circumstance exists. This
14 means the State must prove beyond a reasonable doubt
15 the Defendant entered a dwelling without consent.

16 A dwelling means any house, apartment, building,
17 or shed in which there sleeps a proprietor or tenant
18 or a person who lodges there with a view to the
19 protection of the property as well as the living
20 quarters of a building which is used or normally used
21 for sleeping, living or lodging by a person. In
22 order to be a dwelling, someone must sleep or reside
23 in the building or have the intent to return and
24 continue to sleep in the building.

25 Entering a building without consent means to

1 enter a dwelling without consent of the person in
2 lawful possession or to enter a dwelling by using
3 deception, artifice, trick or misrepresentation to
4 get consent to enter the residence of the person in
5 lawful possession.

6 In order to prove that the Defendant entered the
7 dwelling without consent, the State does not have to
8 prove that the Defendant's entire body entered the
9 dwelling, but the smallest entry is sufficient. In
10 addition, the State does not have to prove that force
11 was used to gain entry.

12 Next the State must prove beyond a reasonable
13 doubt that the Defendant intended to commit a crime,
14 either a felony or a misdemeanor, at the time of
15 entry. The mere entry into a building without
16 consent is not burglary. If the intent to commit a
17 crime is formed after the entry, it is not a
18 burglary. On the other hand, if the Defendant
19 entered to commit a crime at the time of the entry,
20 it is a burglary even if that intent was abandoned
21 after the entry. It does not matter that the
22 intended crime was not completed. Intent may be
23 shown by acts and conduct of the Defendant and any
24 other circumstances from which you may naturally and
25 reasonably infer intent.

1 And finally, the State must prove beyond a
2 reasonable doubt that when effecting entry or while
3 in the dwelling or in immediate flight from the
4 building the Defendant was armed with a deadly weapon
5 or explosive or caused physical injury to a person
6 who was not a participant in the crime or used or
7 threatened the use of a dangerous instrument or
8 displayed what was or appeared to be a knife, pistol,
9 revolver or rifle. A deadly weapon is any article,
10 instrument or substance which is likely to cause
11 death or great bodily harm.

12 Criminal sexual conduct, first degree criminal
13 sexual conduct. Finally the Defendant is -- not
14 finally. The Defendant is charged with criminal
15 sexual conduct in the first degree. In order to
16 prove the Defendant guilty of this offense the State
17 must prove two things beyond a reasonable doubt.

18 First the State must prove beyond a reasonable
19 doubt that the Defendant engaged in sexual battery
20 with the victim. A sexual battery is sexual
21 intercourse, anal intercourse or any intrusion,
22 however slight, of any part of a person's body or of
23 any object into the genital or anal openings of
24 another person's body.

25 If you find the State has not shown beyond a

1 reasonable doubt that a sexual battery occurred, you
2 must stop deliberating, and your verdict on this
3 charge would have to be not guilty. However, if you
4 find that a sexual battery did occur, you must then
5 decide whether the State has proven beyond a
6 reasonable doubt that either the Defendant used
7 aggravated force to accomplish the sexual battery or
8 the victim submitted to sexual battery while the
9 victim was also the victim of a forcible confinement,
10 kidnapping, robbery, extortion, burglary,
11 housebreaking or any other similar act or offense.

12 Aggravated force means the use of physical force
13 or physical violence of a high and aggravated nature
14 to overcome the victim. This includes the threat of
15 using a deadly weapon. The law of our state does not
16 require that the testimony of a victim be
17 corroborated where the Defendant has been charged
18 with criminal sexual conduct in the first degree.

19 Now, I was talking to you earlier about the
20 lesser-included offense. If you find the State has
21 failed to prove the Defendant guilty beyond a
22 reasonable doubt of first degree criminal sexual
23 conduct, you may then consider whether the State has
24 proven the Defendant guilty beyond a reasonable doubt
25 of the lesser-included offense of assault and battery

1 of a high and aggravated nature.

2 Assault and battery of a high and aggravated
3 nature is an unlawful act of violent injury to a
4 person accompanied by circumstances of aggravation.
5 Assault occurs when a person unlawfully attempts or
6 offers to commit a violent injury upon another person
7 and has the present ability to complete the attempted
8 injury. An assault is the intentional creation of a
9 reasonable fear of immediate bodily harm.

10 It is not necessary that the attempted injury or
11 harm actually take place. For example, if I walk up
12 to you and when we are within arm's reach I draw back
13 to hit you, that's an assault. Battery is the
14 unlawful touching of another person by a person who
15 has committed the assault. Unlawful touching can be
16 used by a part of the accused's body or by any object
17 the accused puts in motion.

18 A battery is the completion of the assault by
19 using or applying force to another person, however
20 slight, in a rude, angry or resentful manner without
21 legal justification for doing so. Using my earlier
22 example, if I carry through the assault by hitting
23 you, then that is the battery.

24 The State must also prove a circumstance of
25 aggravation. Circumstances of aggravation include

1 the use of a deadly weapon, the intent to commit a
2 felony, the infliction of serious bodily injury, a
3 great disparity between the ages or physical
4 conditions of the parties, a difference in the
5 genders of the parties, taking indecent liberties or
6 familiarities with a female through the use of force,
7 the purposeful infliction of shame and disgrace, and
8 the resistance of lawful authorities. These are only
9 some examples of circumstances of aggravation.

10 If you have a reasonable doubt as to whether a
11 battery or an aggravating circumstance exists, then
12 you must resolve that doubt in the defendant's favor
13 by finding him not guilty of the lesser-included
14 offense of assault and battery of a high and
15 aggravated nature.

16 The Defendant is also charged with two counts of
17 assault with intent to kill. In order to prove
18 assault with intent to kill the State must prove
19 beyond a reasonable doubt that the Defendant with
20 malice aforethought unlawfully attempted or offered
21 to commit a violent injury upon another person and
22 had the present ability to complete the attempted
23 injury.

24 An assault is the intentional creation of
25 reasonable fear of immediate bodily harm. It's not

1 necessary for the attempted injury or harm to
2 actually take place. For example, as I said earlier,
3 if I walk up to you and when we are within arm's
4 reach I draw back to hit you, that is the assault.

5 Malice is hatred or ill will or hostility
6 towards another person. It is the intentional doing
7 of a wrongful act without just cause or excuse and
8 with an intent to inflict an injury or under
9 circumstances that the law will infer an evil intent.

10 Malice aforethought does not require that malice
11 exist for any particular time before the act is
12 committed, but malice must exist in the mind of the
13 Defendant just before and at the time the act is
14 committed. Therefore, there must be a combination of
15 the previous evil intent and the act.

16 Malice aforethought may be express or inferred.
17 These terms "express" and "inferred" do not mean
18 different types of malice but merely the manner in
19 which the malice may be shown to exist; that is,
20 either by direct evidence or by inference from the
21 facts and circumstances which are proved.

22 Express malice is shown when a person speaks
23 words which express hatred or ill will for another or
24 when the person prepared beforehand to do the act
25 which was later accomplished. For example, lying in

1 wait for a person or any other acts of preparation
2 going to show that the deed was within the
3 Defendant's mind would be express malice.

4 Implied malice may arise from the willful,
5 deliberate and intentional doing of an unlawful act
6 without just cause or excuse or from the use of a
7 deadly weapon. A deadly weapon is any article,
8 instrument or substance which is likely to cause
9 death or great bodily harm. The following are
10 examples of deadly weapons: Pistols, shotguns,
11 rifles, those types of things. A gun may be used as
12 a deadly weapon even if it's not operating.

13 If facts are proved beyond a reasonable doubt
14 sufficient to raise an inference of malice to your
15 satisfaction, this inference would be simply an
16 evidentiary fact to be considered by you, the jury,
17 along with other evidence in the case, and you may
18 give it the weight you decide it should receive.

19 intention means the result which actually
20 occurs, not accidentally or involuntarily. Evidence
21 of the character of the assault, the character of the
22 instrument used, the manner it was used, the purpose
23 to be accomplished and the resulting wounds or
24 injuries may be considered in determining the intent
25 with which the assault was committed.

1 Intent may also be inferred when it's
2 demonstrated that the Defendant voluntarily and
3 willfully committed the acts, the natural tendency of
4 which is to destroy another's life.

5 Malice does not necessarily impart ill will
6 toward the individual injured but signifies rather a
7 general malignant recklessness of the lives and
8 safety of others or a condition of mind which shows a
9 heart regardless of social duty and fatally bent on
10 mischief.

11 Now, ladies and gentlemen, I am required to
12 declare the law as I have just done through these
13 instructions to help and guide you just to a just and
14 lawful verdict. Whether some of these instructions
15 will apply will depend on what you find to be the
16 facts. The fact that I have instructed on various
17 subjects in this case must not be taken by you as
18 indicating an opinion of this Court as to what you
19 should find to be the facts or as to which party is
20 entitled to your verdict.

21 Your verdict must represent the considered
22 judgment of each juror. In order to return a
23 verdict, it is necessary that each juror agree. Your
24 verdict must be unanimous in other words. All 12 of
25 you must agree on the verdict. Your verdict cannot

1 be based on sympathy, passion, prejudice, emotion or
2 any other consideration that's not in evidence in
3 this case. Remember at all times that you are not
4 partisans favoring one party over another. You are
5 judges, judges of the facts. Your sole interest is
6 to seek the truth from the evidence in this case.

7 Now, Mr. Foreman, I'm going to ask you to retire
8 to the jury room in just a minute. But I'll explain
9 the form of verdicts. I'm going to send with you to
10 the jury room all the indictments. On the face of
11 the indictments in the bottom left-hand corner is a
12 box entitled "verdict". As you go through these
13 indictments and decide on each indictment, fill in
14 that box either not guilty or guilty, sign your name
15 and date it.

16 When you have accomplished that as to all nine
17 indictments, knock on the jury room door and we will
18 send the -- the bailiffs will bring you back and we
19 will receive the verdict.

20 As to the criminal sexual conduct, because it
21 has a lesser-included offense, I have prepared a
22 special jury verdict form for that indictment. This
23 verdict form reads: We, the jury, by unanimous
24 consent on the charge of first degree criminal sexual
25 conduct find the Defendant, Randolph Ashford, guilty

1 or not guilty. If you find the defendant not guilty
2 of first degree criminal sexual conduct, then you may
3 consider whether the Defendant is guilty of the
4 lesser-included offense of assault and battery of a
5 high and aggravated nature.

6 And if you do not find the Defendant guilty of
7 first degree criminal domestic violence, go to the
8 second portion of this verdict form which reads: We,
9 the jury, by unanimous consent on the lesser-included
10 offense of assault and battery of a high and
11 aggravated nature find the Defendant, Randolph
12 Ashford, guilty or not guilty. Again, sign the form,
13 date it and knock on the jury room door when you've
14 completed your work.

15 Now, I'm going to ask you to retire to the jury
16 room but do not begin your deliberations until you
17 have received all of the evidence and the verdict --
18 I mean the indictments for you to consider. It's
19 going to take a few minutes to round up the evidence
20 and bring it to you. Once you have received all the
21 evidence you can begin your deliberations. If you
22 have any questions, just write them down and let me
23 know. Thank you very much.

24 (Jury out at 4:32 p.m.)

25 **THE COURT:** Any objections to the charge? From

1 the State?

2 **MS. CAMPBELL:** No, sir.

3 **THE COURT:** From the defense?

4 **MR. O'NEIL:** No, Your Honor.

5 **THE COURT:** Thank you very much. Let's check
6 the evidence, please. Any objection to dismissing
7 the alternates?

8 **MR. O'NEIL:** No, Your Honor.

9 **MS. SINGLETARY:** No, Your Honor.

10 **THE COURT:** Got one no, one maybe. Keep them
11 sitting in the hall for five minutes. All right.
12 Has everything gone to the jury?

13 **THE BAILIFF:** The alternate is in the hallway.

14 **THE COURT:** I said has everything gone to the
15 jury?

16 **THE BAILIFF:** Yes, sir.

17 **THE COURT:** Go ahead and tell them they can
18 start deliberating. We got 12 in there?

19 **THE BAILIFF:** Yes, sir.

20 (Jury deliberating at 4:40 p.m.)

21 **THE COURT:** All right. Just give me a minute.
22 I want to bring the alternates in, but I've got to
23 figure out who they are.

24 (Pause)

25 **THE COURT:** All right. Bring them in. Order in

1 the court. I'm going to dismiss the alternates.

2 (Whereupon, the alternates are dismissed from
3 the trial of the case)

4 (Whereupon, a break is taken)

5 (Court Reporter Carol Thueme takes the verdict)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 31st day of March, 1st, 2nd and 3rd days of April, 2009.

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

June 15, 2009

Jenny H. Williams

Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	)	2007-GS-40-1938
		2007-GS-40-1939
		2007-GS-40-1940
		2007-GS-40-1941
		2007-GS-40-2000
		2007-GS-40-2001
		2007-GS-40-2002
		2007-GS-40-2003
		2007-GS-40-2048

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RANDOLPH ASHFORD	)	
DEFENDANT	)	

April 3, 2009
Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE; and a jury.

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

KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
WILL BRYANT, ASSISTANT SOLICITOR
Attorneys for the State

DEON O'NEILL, ASSISTANT PUBLIC DEFENDER
NICOLE SINGLETARY, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

Verdict of the Jury	7
Sentence of the Court	23
Certificate of Reporter	27

EXHIBITS

COURT'S EXHIBITS

		ID	EVD.
EXH.-1 and 2	Jury notes	6	
EXH.-3	Jury note	7	

1 THE COURT: Let's bring in the foreman.

2 (The jury foreman came into open court at
3 approximately 5:24 p.m. and deliberations were
4 suspended.)

5 THE COURT: Mr. Foreman, I have the note of the
6 jury that they'd like to, I guess, hear the testimony of
7 Deborah Simmons and Linda Morphis.

8 THE JURY FOREMAN: Or just read it, I think.

9 THE COURT: Well, there's no way to read it.

10 THE JURY FOREMAN: Okay.

11 THE COURT: We're just not that technologically
12 advanced so that we can print it out immediately.

13 THE JURY FOREMAN: Right.

14 THE COURT: We've looked at the tape. It looks
15 like it's about two hours: About an hour for Deborah
16 Simmons and 45 minutes for Linda Morphis.

17 THE JURY FOREMAN: Right.

18 THE COURT: Now, we can play that. If the jury
19 would like to hear it, we'll bring the full jury back in
20 and just start the tape.

21 You also asked for a copy of the law on --

22 THE JURY FOREMAN: What you read us about the
23 criminal sexual.

24 THE COURT: I can read that again or I can give
25 it to you. It's in printed form.

1 THE JURY FOREMAN: The printed form will be
2 fine.

3 THE COURT: But I'd like for you to go back and
4 just ask the jury what they would prefer to do since the
5 only way we can do it is to replay the testimony off the
6 tape.

7 THE JURY FOREMAN: All right.

8 THE COURT: And just tell them what the time
9 limits are.

10 Sometimes jury's want to hear a portion of the
11 testimony. Now, that's not real easy to do, but at least
12 we can start it and you could stop it at some point in
13 time, say the jurors said they heard what they wanted to
14 hear, that sort of thing.

15 So if you'll inquire of the jury how they would
16 like to proceed, we will accommodate you.

17 THE JURY FOREMAN: Okay.

18 THE COURT: Thank you.

19 (The jury foreman left open court at
20 approximately 5:26 p.m. and deliberations resumed.)

21 THE COURT: Counsel, what's your thoughts about
22 sending the written instruction back as opposed to
23 re-reading it to them? Any objection to sending the
24 written form back?

25 MS. CAMPBELL: No, Your Honor.

1 MR. O'NEILL: No, Your Honor.

2 THE COURT: All right. Good.

3 MS. CAMPBELL: Can I just review it?

4 THE COURT: Sorry?

5 MS. CAMPBELL: Can I just look at your form one
6 more time? I don't have mine with me.

7 THE COURT: This is just the CSC.

8 MS. CAMPBELL: Yes, sir. That's all I want to
9 look at.

10 That's fine. Thank you.

11 (The jury foreman came into open court at
12 approximately 5:27 p.m.)

13 THE COURT: Yes, sir.

14 THE FOREMAN: If we could just get a printed
15 copy of the --

16 THE COURT: The charge?

17 THE FOREMAN: The law on the criminal sexual,
18 what you read to us this week.

19 THE COURT: All right. If you need anything
20 else, just let me know.

21 THE FOREMAN: Okay.

22 THE COURT: Thank you.

23 (The jury foreman left open court at
24 approximately 5:32 p.m. and deliberations resumed.)

25

1 (WHEREUPON, The Court's Exhibits Nos. 1 and 2
2 were marked for purposes of the record.)

3 THE COURT: We have a note from the jury.
4 Any objection?

5 MR. O'NEILL: No objection from this side.

6 MS. CAMPBELL: No, Your Honor.

7 THE COURT: No objection from the State or the
8 defendant.

9 MS. SINGLETARY: The CSC, did that include the
10 lesser-included of ABHAN?

11 THE COURT: No, they didn't ask for it.

12 MS. SINGLETARY: Your Honor, we just want to put
13 it on the record that we object to the fact that the
14 lesser-included of ABHAN didn't go back with the CSC in
15 the first degree.

16 THE COURT: Well, as I said, the note's right
17 there. You can read it. I believe you did read it. It
18 said we'd like to see the definition of criminal sexual
19 conduct.

20 MS. SINGLETARY: Well, then, Your Honor, we
21 would object to the additional definition of malice to go
22 back.

23 THE COURT: Well, I'm going to give them what I
24 read to them. I'll either bring them back in and read it
25 to them or I'll send it back to them.

1 (WHEREUPON, The Court's Exhibit No. 3 was marked
2 for purposes of the record.)

3 THE COURT: We'll stand at ease.

4 (A break was taken.)

5 THE COURT: All right. The bailiffs have
6 indicated the jury has reached a verdict. Are you ready
7 to receive the verdict?

8 MS. CAMPBELL: Yes, Your Honor.

9 MR. O'NEILL: Yes, Your Honor.

10 THE COURT: Bring the jury in, please.

11 (The jury came into open court at approximately
12 6:41 p.m.)

13 THE BAILIFF: Your Honor, the jury is present.

14 THE COURT: Thank you very much.

15 Mr. Foreman, has the jury reached a verdict?

16 THE JURY FOREMAN: Yes, Your Honor, we have.

17 THE COURT: On all indictments?

18 THE JURY FOREMAN: Yes, sir, we have.

19 THE COURT: All right. Would you hand them to
20 the bailiff, please.

21 Madam Clerk, you may publish the verdict,
22 please.

23 THE CLERK: Indictment No. 2007-GS-40-1941, the
24 State of South Carolina versus Randolph Ashford. This is
25 an indictment for assault with intent to kill. We, the

1 jury, find the defendant guilty. This is signed
2 Foreperson, Juror No. 1.

3 Indictment No. 2007-GS-40-1939, the State of
4 South Carolina versus Randolph Ashford. It's an
5 indictment for assault with intent to kill. We, the jury,
6 find the defendant guilty. This is signed Foreperson,
7 Juror No. 1.

8 Indictment No. 2007-GS-40-1940, the State of
9 South Carolina versus Randolph Ashford. We, the jury, by
10 unanimous consent on the lesser-included offense of
11 assault and battery of a high and aggravated nature find
12 the defendant, Randolph Ashford, guilty. This is signed
13 Foreperson, Juror No. 1.

14 Indictment No. 2007-GS-40-2048, the State of
15 South Carolina versus Randolph Ashford. It's an
16 indictment for burglary first. We, the jury, find the
17 defendant guilty. This is signed Foreperson, Juror No. 1.

18 Indictment No. 2007-GS-40-1938, the State of
19 South Carolina versus Randolph Ashford. It's an
20 indictment for kidnapping. We, the jury, find the
21 defendant guilty. This is signed Foreperson, Juror No. 1.

22 Indictment No. 2007-GS-40-2000, the State of
23 South Carolina versus Randolph Ashford. It's an
24 indictment for carjacking. We, the jury, find the
25 defendant guilty. This is signed Foreperson, Juror No. 1.

1 Indictment No. 2007-GS-40-2003, the State of
2 South Carolina versus Randolph Ashford. It's an
3 indictment for kidnapping. We, the jury, find the
4 defendant guilty. This is signed Foreperson, Juror No. 1.

5 Indictment No. 2007-GS-40-2001, the State of
6 South Carolina versus Randolph Ashford. It's an
7 indictment for carjacking. We, the jury, find the
8 defendant guilty. This is signed Foreperson, Juror No. 1.

9 Indictment No. 2007-GS-40-2002, the State of
10 South Carolina versus Randolph Ashford. It's an
11 indictment for carjacking. We, the jury, find the
12 defendant guilty. This is signed Foreperson, Juror No. 1.

13 Mr. Foreman, are these your verdicts and the
14 verdicts of the entire jury?

15 THE JURY FOREMAN: Yes, they are.

16 THE COURT: Any desire to poll the jury?

17 MR. O'NEILL: Yes, Your Honor.

18 THE COURT: Please poll the jury, Madam Clerk.

19 THE CLERK: Ladies and gentlemen of the jury,
20 I'm going to ask you two questions regarding your verdict.
21 If you'd just answer yes or no to both questions.

22 Juror No. 1, were these your verdicts?

23 THE FOREMAN: Yes.

24 THE CLERK: Are they still your verdicts?

25 THE JURY FOREMAN: Yes.

1 THE CLERK: Juror No. 199, were these your
2 verdicts?

3 THE JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes.

6 THE CLERK: Juror No. 208, were these your
7 verdicts?

8 THE JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 172, were these your
12 verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 240, were these your
17 verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 174, were these your
22 verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes.

1 THE CLERK: Juror No. 293, were these your
2 verdicts?

3 THE JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes.

6 THE CLERK: Juror No. 250, were these your
7 verdicts?

8 THE JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 286, were these your
12 verdicts?

13 THE JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 200, were these your
17 verdicts?

18 THE JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 134, were these your
22 verdicts?

23 THE JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 THE JUROR: Yes.

1 THE CLERK: Juror No. 127, were these your
2 verdicts?

3 THE JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 THE JUROR: Yes.

6 THE CLERK: The jurors have been polled, Your
7 Honor.

8 THE COURT: Thank you very much.

9 Any motions?

10 MR. O'NEILL: Not at this time, Your Honor.

11 THE COURT: All right. Ladies and gentlemen of
12 the jury, thank you very much. I know this was a lengthy
13 and sort of up and down case in terms of starting and
14 stopping, but I appreciate your service and everybody in
15 this room appreciates your service.

16 The remaining portion of this trial, and let me
17 just explain. We're not quite as -- we don't have the
18 ability that they have on Law and Order to sentence at a
19 later time.

20 The practice in South Carolina, particularly in
21 this county, because we're so busy is to sentence
22 immediately following a jury verdict, unless there's some
23 unusual reason not to do so. So I anticipate that the
24 sentencing process, which is about a 15 or 20-minute
25 process or could be as much as a half an hour, depending

1 on who speaks, that the sentencing process will take place
2 in a few minutes. There's some paperwork that has to be
3 done prior to that.

4 What I'm leading up to is to suggest to you, if
5 you wish, you may stay. You're going to be dismissed in
6 just a minute from further service obviously, but I find
7 that jurors frequently would like to stay and watch the
8 sentencing process just to sort of come to some kind of
9 closure with the case and understand what your verdict
10 means to the defendant.

11 Now, because there are nine charges, each of
12 which carry a substantial penalty, some of which carry a
13 minimum penalty, I'll have to go through the sentences one
14 by one and Ms. Pendergrass has already starting filling
15 out some paperwork. As I say, the paperwork process will
16 take about ten minutes.

17 If you wish to leave, you may do so. If you
18 wish to stay, you also may do so. And if you'd like to, I
19 see a couple of your fellow jurors have waited around to
20 see what the decision was. You may want to walk back up
21 there. The bailiffs will take you to the back part of the
22 courtroom if you wish to stay and witness the sentencing.

23 But before I left you go one way or the other, I
24 do want to thank you. I want to thank you on behalf of
25 myself, the judiciary, these attorneys, and the entire

1 court staff here in the Richland County Courthouse.

2 I tell jurors all the time, this system can work
3 without me, it can work without these attorneys, but it
4 can't work without you. You're such an important part of
5 the judicial system here in our county and our state and
6 this nation that the founding founders wrote your role
7 into the Constitution of the United States. That's how
8 important what you do is to our system.

9 I hope by participating in the system, I hope
10 you've gained some insight as to what goes on up here. I
11 can't say I would anticipate that you would have enjoyed
12 your week, but I hope it has been somewhat educational,
13 and if you're called to come back on jury duty, that
14 you'll have a favorable impression and that you'll be
15 willing to come back and serve again.

16 So thank you very much for your service. You're
17 now dismissed. And as I say, the bailiffs are going to
18 assist if you wish to stay for sentencing.

19 Thank you very much, ladies and gentlemen. Your
20 service is now concluded.

21 (The jury was excused and left open court at
22 approximately 6:51 p.m.)

23 THE COURT: Mr. O'Neill, do you have something?

24 MR. O'NEILL: Yes, Your Honor.

25 THE COURT: Okay. I didn't know if you wanted

1 to do it in front of the jury or not in front of the jury.
2 Go ahead.

3 MR. O'NEILL: Yes, Your Honor.

4 Your Honor, at this time I would like to renew
5 all our previous objections and motions specifically but
6 not limited to my directed verdict motion as relates to
7 the ABWIKs, the kidnapping, and the carjacking. And I
8 also at this time would make a motion for a new trial
9 based on the due process violations dealing with the
10 outburst during jury selection and also the outburst --

11 THE COURT: During jury selection?

12 MR. O'NEILL: Yes, Your Honor.

13 THE COURT: Nothing's on the record about that.

14 MR. O'NEILL: We made it. It's on the record
15 about the outburst during jury selection. I think Your
16 Honor say you didn't audibly hear the outburst.

17 THE COURT: Okay. All right.

18 MR. O'NEILL: And also the outburst during Mr.
19 Ashford's testimony, Your Honor, and also based on our
20 directed verdict motion, I would ask for a new trial.

21 THE COURT: All right. Anything from the State?

22 MR. O'NEILL: One additional ground, Your Honor.

23 THE COURT: I'm sorry. I thought you were
24 finished.

25 MR. O'NEILL: Also on the grounds of the jury's

1 inability to come to a verdict on the CSC in the first
2 degree and finding a guilty verdict on the lesser-included
3 of ABHAN.

4 THE COURT: Let me see. Let me just have that
5 verdict form.

6 The Clerk didn't announce it, but they did
7 find -- they found a not guilty verdict. You're certainly
8 welcome to see it.

9 They found not guilty on the CSC first and
10 guilty on the ABHAN.

11 MR. O'NEILL: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 Anything from the State?

14 MS. CAMPBELL: No, sir.

15 THE COURT: All right. Mr. O'Neill, I think the
16 case was well tried by you and the State and I
17 respectfully deny your motions.

18 All right. Let's stand at ease for a few
19 minutes until we get the paperwork signed up.

20 (A break was taken.)

21 THE COURT: All right. Solicitor.

22 MS. CAMPBELL: May it please the Court, Your
23 Honor.

24 THE COURT: Yes, ma'am.

25 MS. CAMPBELL: As far as his prior record goes,

1 Your Honor, it starts back in 1988 with disorderly
2 conduct. 1994, his first criminal domestic violence. In
3 1994, it looks like a PWID marijuana. In 1996, a driving
4 under suspension. In 1996, it looks like his probation
5 was revoked and he was committed on a PWID marijuana.

6 In 1998, Your Honor, he's actually convicted in
7 1999. He was originally charged with assault and battery
8 with intent to kill and it was pled down to assault and
9 battery of a high and aggravated nature for which he
10 received a ten-year sentence.

11 In 2004, driving under suspension --

12 THE COURT: That was an active ten years?

13 MS. CAMPBELL: An active ten, yes, sir. A
14 straight ten-year sentence.

15 He's showing up with numerous criminal domestic
16 violences under another name of Fred Shettalls. I don't
17 know if that's him.

18 In 2005, he has a resisting arrest conviction,
19 another simple assault conviction. He also had the
20 accompanying resisting arrest on that charge. I'm not
21 sure what happened to that one.

22 In 2005, he was charged with another criminal
23 domestic violence which apparently is still pending from
24 Judge Keyes' office. In our office from January 29th of
25 2007, the victim being Roberta Neil, he was charged with

1 criminal domestic violence some three weeks before this
2 occurred. It's still pending in our office.

3 Your Honor, I have spoken to the victims in the
4 case. I don't think -- I think this case, of any I've
5 ever tried, the facts pretty much speak for themselves.

6 I would note that Ms. Worthy wanted me to let
7 you know that she's listening to defense counsel
8 afterwards and she just wanted to make sure that Your
9 Honor understood that she really didn't go there because
10 she wanted to. She was just a little upset because of
11 some stuff that was said during court.

12 THE COURT: Didn't go what?

13 MS. CAMPBELL: She was kidnapped.

14 THE COURT: I know that.

15 MS. CAMPBELL: She just was worried that because
16 of arguments by defense counsel that --

17 THE COURT: That I would think she was not --

18 MS. CAMPBELL: She's upset.

19 THE COURT: Okay. Well, the jury found him
20 guilty of kidnapping.

21 MS. CAMPBELL: Yes, sir, and I told her that. I
22 just told her I would mention that to you.

23 THE COURT: All right.

24 MS. CAMPBELL: Ms. Simmons is here. She doesn't
25 wish to address the Court.

1 I have talked to the other victims that are
2 still here, Your Honor. As Your Honor knows in this case
3 he did shoot several times in the place. He also shot at
4 police officers during a hostage situation which took over
5 six hours. To say that this was an extreme situation is
6 an understatement. He put at risk several people which is
7 prior to even getting over to Booth Street and we would
8 respectfully request your discretion in a substantial
9 sentence.

10 THE COURT: All right. Anything else from the
11 State?

12 MS. CAMPBELL: No, sir.

13 THE COURT: Mr. O'Neill, Ms. Singletary?

14 MR. O'NEILL: Thank you, Your Honor. May it
15 please the Court.

16 I've known Randolph now for a few months and I
17 can say that in our conversations and our interactions at
18 the jail, he's exhibited a character that's different from
19 the one that was exhibited on the night or the day of
20 February 24th, 2007. He's always been, with me, very
21 involved in this case. In my interactions he's been very
22 articulate and very study-full when it comes to working on
23 this case and trying to help me and assist with his
24 defense.

25 As Your Honor already realizes, he's 43 years

1 old at this time. He's turning 44 in May.

2 He has a limited, somewhat limited criminal
3 record, Your Honor. He has some medical health concerns
4 that Your Honor is aware of, the injury he had to his arm.
5 He also had, I think, a scare of lung cancer a couple of
6 years back.

7 Your Honor, he does have a supportive family who
8 has been here through this whole entire week and has been
9 in constant contact. They find some redeemable qualities
10 and they've spoken highly of him in our conversations with
11 them, Your Honor.

12 What I would ask for the Court is for the Court
13 to consider a sentence that would allow him to prove to
14 society that he can once again become a member of society
15 in a productive fashion. I think he's worked for the
16 majority of the last 20-some years and so he can be a
17 productive citizen in that regard, Your Honor.

18 I know Ms. Singletary would like to address the
19 Court on his behalf as well.

20 THE COURT: Yes, ma'am.

21 MS. SINGLETARY: Thank you, Your Honor.

22 If it pleases the Court, firstly, I would ask
23 for the judge to respectfully make a consideration, a
24 determination on the record as it relates to the
25 kidnapping charges, Your Honor. You know that we, as the

1 defense, have to ask the Court to make a determination on
2 whether or not our client should be on the registry.

3 THE COURT: Oh. No, I think the statute says he
4 automatically goes on register unless the Court finds
5 otherwise.

6 MS. SINGLETARY: Yes, Your Honor. And that's
7 what I'm arguing, Your Honor, at this time. I'm arguing
8 that Your Honor consider not placing my client on the
9 registry. I think that the jury has spoken, Your Honor,
10 and the jury found -- did not find him guilty of the
11 higher charge but found him guilty of the lesser charge,
12 Your Honor. And, as you know, that with the charge of
13 ABHAN, it would be in the discretion of the judge.

14 THE COURT: Is it within the discretion of the
15 judge for kidnapping that involves a sexual offense?

16 MS. SINGLETARY: Yes, Your Honor, it is.

17 THE COURT: It is?

18 MS. CAMPBELL: Not if it's a sexual offense.

19 THE COURT: I think you get on it for either
20 one.

21 MS. SINGLETARY: Yes, Your Honor.

22 THE COURT: And kidnapping, even though there's
23 an ABHAN on the CSC, the kidnapping would automatically
24 put him on it if it was sexually related, and there's no
25 question that in this case it's sexually related whether

1 it's the lesser or the -- but I'll consider it. I
2 understand your point.

3 MS. SINGLETARY: And, Your Honor, and that's the
4 argument that I was making, the fact that the jury did
5 convict him of the lesser and we were respectfully asking
6 for you to consider that when you make your determination
7 as to whether or not he should be on the registry. And
8 maybe I articulated it improperly.

9 THE COURT: No, you're right. I wanted to point
10 out that it comes in either under -- on either offense.

11 MS. SINGLETARY: Your Honor, I would like to
12 just echo some of the sentiments that were made by
13 Mr. O'Neill.

14 I can truly say that in working on Mr. Ashford's
15 case, I have both grown professionally and personally in
16 assisting in this case, Your Honor.

17 Mr. Ashford does have a supportive family. Ever
18 since I've actually been involved with this case, I've
19 spoken to both of his sisters, spoken to Ms. Neil, and you
20 saw them here in support of him throughout the duration of
21 the trial, Your Honor.

22 I feel that he does have redeemable
23 characteristics, Your Honor, and I just echo what
24 Mr. O'Neill stated about giving him an opportunity,
25 tailoring a sentence that gives him an opportunity to show

1 to society that he can be a productive citizen, Your
2 Honor.

3 THE COURT: Mr. Ashford, anything you would like
4 to say?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Counsel, I'm going to
7 ask you just to take a seat at the counsel table. There
8 are nine indictments here. I've got a lot of writing to
9 do and just have a seat at the counsel table.

10 MS. SINGLETARY: Thank you, Your Honor.

11 THE COURT: The date of arrest was
12 February 24th, 2007?

13 MR. O'NEILL: Yes, Your Honor.

14 THE COURT: All right. Mr. Ashford, it's the
15 sentence of the Court on these charges is as follows: On
16 Indictment 2007-40-2002, an indictment for carjacking, the
17 sentence of the Court is that you be committed to the
18 State Department of Corrections for a period of ten years.

19 Indictment 2007-GS-40-2000, an indictment for
20 carjacking, the sentence of the Court is that you be
21 committed to the State Department of Corrections for a
22 period of ten years.

23 Indictment 2007-40-2001, an indictment for
24 carjacking, it's the sentence of the Court that you be
25 committed to the State Department of Corrections for a

1 period of ten years.

2 2007-40-1939, an indictment for assault with
3 intent to kill, it's the sentence of the Court is that you
4 be committed to the State Department of Corrections for a
5 period of ten years.

6 On your assault with intent to kill,
7 2007-40-1941, it's the sentence of the Court that you be
8 committed to the State Department of Corrections for ten
9 years.

10 Indictment No. 2007-40-1940, an indictment for
11 criminal sexual conduct with a finding of guilty of
12 assault and battery of a high and aggravated nature, it's
13 the sentence of the Court that you be committed to the
14 State Department of Corrections for a period of ten years.

15 All of those sentences, those six sentences, are
16 to run concurrent.

17 As to your kidnapping charges, Indictment
18 2007-40-1938, the charge of kidnapping, an indictment for
19 kidnapping, the sentence of the Court is you be committed
20 to the State Department of Corrections for a period of 20
21 years.

22 Your Indictment No. 2000-40-2003, an indictment
23 for kidnapping, the sentence of the Court is you be
24 committed to the State Department of Corrections for a
25 period of 20 years.

1 Both of these kidnapping charges are to run
2 concurrent with each other. With each other.

3 And on your burglary first charge, that is
4 2000-40-2048, burglary in the first degree, the sentence
5 of the Court is that you be committed to the State
6 Department of Corrections for a period of 20 years.

7 This sentence is to run consecutive to the --
8 either way -- to the two kidnapping concurrent sentences
9 or -- it doesn't make any difference whether the
10 kidnappings run consecutive to the burglary or the
11 burglary runs consecutive to the kidnapping.

12 And I also am ordering that your name be added
13 to the sexual offender registry.

14 Any questions about that sentence?

15 MR. O'NEILL: Your Honor, do the kidnappings run
16 concurrent? I know they run concurrent with each other.
17 Do they run concurrent with the ABWIKs and the carjacking
18 as well?

19 THE COURT: Yes, sir.

20 We've got two consecutive 20-year sentences.
21 Everything else runs concurrent.

22 MR. O'NEILL: The kidnapping and the burglary
23 run concurrent with each other?

24 THE COURT: But consecutive to the burglary.

25 MR. O'NEILL: Yes, sir.

1 THE COURT: All right. Any questions?

2 MS. CAMPBELL: No, sir.

3 THE COURT: All right. Thank you very much.

4 This court is adjourned.

5 MS. SINGLETARY: Thank you, Your Honor.

6 MS. CAMPBELL: Thank you, Your Honor.

7 (The proceedings were concluded.)

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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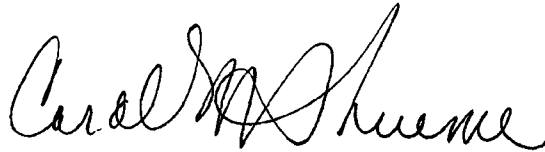
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3
4 CERTIFICATE OF REPORTER5 STATE OF SOUTH CAROLINA)
6)
7 COUNTY OF RICHLAND)8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Richland County, South Carolina, on the 3rd day of
15 April, 2009.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
1819
20 April 25, 201021
22 23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDOLPH F. ASHFORD,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	9
PETITION TO BE RELIEVED AS COUNSEL	10

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Virginia</u> , 443 U.S. 307 (1979).....	9
<u>State v. Mims</u> , 286 S.C. 553, 335 S.E.2d 237 (1985)	8
<u>State v. Sutton</u> , 340 S.C. 393, 532 S.E.2d 283 (2000)	8
<u>State v. Walsh</u> , 300 S.C. 427, 388 S.E.2d 777 (1990).....	7

Constitutional Provisions

S.C. Const. art. 1 § 3	9
U.S. Const. Amend. XIV	9

STATEMENT OF ISSUE ON APPEAL

The lower court erred in denying appellant's directed verdict motions on the two charges of assault with intent to kill because the one single gunshot that was allegedly fired by appellant in the path of two police officers, who were camped outside the residence where appellant was housed, did not support the two assault charges.

STATEMENT OF THE CASE

Appellant Randolph Ashford was convicted per jury trial of assault and battery of a high and aggravated nature, first degree burglary, two counts of kidnapping, three counts of carjacking, and two counts of assault with intent to kill during the March/April 2009 term of the Richland County General Sessions Court before the Honorable G. Thomas Cooper, Judge. Appellant was sentenced to imprisonment for a period of forty years.

Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in denying appellant's directed verdict motions on the two charges of assault with intent to kill because the one single gunshot that was allegedly fired by appellant in the path of two police officers, who were camped outside the residence where appellant was housed, did not support the two assault charges.

The state presented evidence of a series of events that began in Richland County on February 24, 2007, when appellant allegedly committed a carjacking on Oakland Avenue, and then another alleged car jacking on North Main Street, and yet another alleged carjacking (cab) on Cushman Drive, where a kidnapping allegedly occurred at that time also. Ultimately, appellant ended up at the residence of a woman whom the state alleged was kidnapped and raped by appellant while they were inside the residence. Additionally, the state alleged that appellant fired a gunshot in the path of two police officers who were camped outside the residence while other officers prepared to enter the residence.

Oakland Avenue

Barry Taylor testified that on the morning of February 24, 2007, he was driving on Oakland Avenue in Columbia when a male holding a .32/.38 weapon stopped him and ordered him out of his (Taylor's) Oldsmobile (88 Delta). Taylor stated that he exited out of his car and watched the perpetrator drive off in his car. Taylor learned later that his vehicle was located at Wash World on North Main Street. R. p. 159, l. 19 – p. 169, l.6.

North Main Street

Olin Kelly testified that he and his wife were inside their car (Lincoln Town Car) in the parking lot of Wash World on North Main Street in Columbia on the morning of February 24, 2007, when a male pulled up in a vehicle and stopped at their vehicle. The

male pointed a gun and said he was going take their Lincoln Town Car After Kelly got out of their car (Kelly was already out of the vehicle), the male perpetrator got in their car and drove off. Later, when shown a photographic lay-out containing possible suspects in the case, Kelly selected appellant's picture and identified him as the perpetrator. R. 173, l. 18 – p. 195, l. 13.

Cushman Drive

Gregory Fleming and Kimberly Galliard testified that they were on Cushman Drive in Columbia on the morning of February 24, 2007, when they saw the driver of a Lincoln Town Car crash into a pole. Then, they saw the driver get out and approach them, but they drove off. However, Fleming and Galliard went back to the area to observe the driver's subsequent actions. They saw the perpetrator approach several females who were standing outside Gill Street Church,¹ and then they saw the male enter the church and come out holding a woman by the name of Evelyn Worthy,² whom he later released after he hailed a Blue Ribbon Cab³ that was in the area outside the church. Both Fleming and Galliard later identified the male driver and perpetrator as appellant after having viewed a photographic lay-out shown to them by police. R. 206, l. 14 – p. 219, l. 20; R. 228, l. 14 – p. 236, l. 24.

¹ Kelli McQueen testified that she and her friends were listening to music inside her mother's white Tahoe parked in front of the Gill Street Church on February 24, 2007, when a male whom she identified as appellant approached with a gun. Kelli McQueen and the other girls then ran inside the church. R. p. 241, line 19 – p. 261, line 20.

² Evelyn Worthy testified that she was inside the Gill Street church when she heard Kelli McQueen scream call 911. Worthy stated that she was dialing 911 when a male approached, took the phone, and shepherded her outside the church, wherein after he ultimately released her and got into a cab. R. p. 276, line 22 – p. 294, line 18.

Deborah Ann Simmons

Ms. Simmons testified that she was inside her residence on February 24, 2007, when she saw a blue cab pull up in her yard. Simmons stated that minutes later, appellant, whom she knew as her relative Roberta's boyfriend, came bursting through her front door holding a gun and asking about Roberta's whereabouts. Simmons added that during the time appellant was inside her home with her, he (appellant) fired a gunshot through the window⁴ and also forced her to have sex with him on the kitchen floor. Simon testified that she was freed when police officers entered and took her and appellant out of the residence.⁵ R. p. 341, l. 22 – p. 364, l. 2.

At the close of the state's case in chief, the defense moved for directed verdicts of acquittals on the two charges of assault with intent to kill two police officers because there was insufficient evidence establishing proof on those two assault charges. R. p. 756, line 16 – p. 762, line 18.

In State v. Walsh, 300 S.C. 427, 388 S.E.2d 777 (1990), the court held that where the defendant fired a single shot at the victim there was no error with respect to the charges of assault with intent to kill and pointing a firearm because the two offenses were separated and distinct as both offenses contained different elements. In Walsh, the Court held that "a defendant may be severally indicted and punished for separate offenses without being

³ Cab driver Malachi Jones testified that he was on Cushman Drive when a man holding a gun approached asked him and his passenger to step out, and then off in the cab. R. 294, line 2 – p. 299, line 12.

⁴ Deputy Unger and Deputy White testified they were establishing boundary parameters around Simmons' residence and were between the van and trailer when a shot was fired and they both dropped to the ground. R. p. 431, line 9 – p. 449, line 3; R. p. 4; R. p. 459, line 17 – p. 566, line 24.

placed in double jeopardy where a single act consists of two distinct offenses. This begs the question in the instant case of whether a single act of the alleged firing of one single gunshot would constitute two counts of the same offense (that offense being assault with intent to kill). Police officers Unger and White testified they both dropped to the ground when a single gunshot from Simmons' trailer came whizzing by them in their direction where they were camped outside Simmons' residence. Clearly, one gunshot could not possibly have constituted two counts of assault with intent to kill both Officer Unger and Officer White. An election of one officer for one assault charge to correspond with the one gunshot should have been made in the case.

One is guilty of assault with intent to kill if a person attempts to cause bodily injury to another (that another being a single being). State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000). Assault is defined as placing another (that being a single being) in apprehension of harm. State v. Sutton, *supra*. All definitions of assault and assault with intent to kill speak in terms of a single act against a single person. In State v. Mims, 286 S.C. 553, 335 S.E.2d 237 (1985), the court defined assault as "an unlawful attempt or offer to commit a violent injury upon the person of another, (that another being a single being) coupled with a present ability to complete the attempt. Again, the definition refers to one single person acting singularly against another single victim. Also, in Sutton, assault is defined as a single act of placing another (single being) in apprehension of harm. Again, the assault theory is singular, i.e., one person putting another person in apprehension of harm. Apparently, assault cases are singularly oriented.

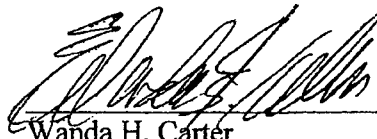
⁵ Police Officers Marcus Brown and James Abraham testified that they entered Simmons' residence after throwing flash bangs (tear gas grenade) into the house and then pulled Simmons and appellant out. R. p. 516, line 1 – p. 537, line 17; R. p. 550.

In the case at bar, one singular gunshot allegedly fired by appellant could only constitute one act of assault with intent to kill either Officer Unger or Officer White, but not two counts of assault with intent to kill both Officer Unger and Officer White. Had two gunshots been fired at two persons (i.e. both officers), then there would have been arguably grounds to raise two allegations of two counts of assault with intent to kill. The state must prove beyond a reasonable doubt all elements of the offense charged in order to obtain a conviction. Jackson v. Virginia, 443 U.S. 307 (1979). The trial judge violated the due process clause of the Fourteenth Amendment and article 1 §3 of the South Carolina Constitution in denying appellant's directed verdict motions on the two assault charges in the case.

CONCLUSION

Based on the following argument, appellant's two assault convictions and sentences should be reversed.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

September 2, 2010

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDOLPH F. ASHFORD,

APPELLANT

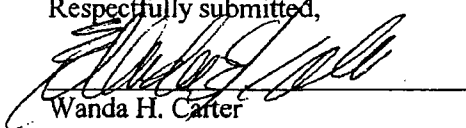
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randolph F. Ashford states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge G. Thomas Cooper, which was held on April 3, 2009, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Randolph F. Ashford.

Respectfully submitted,



Wanda H. Carter

Deputy Chief Appellate Defender

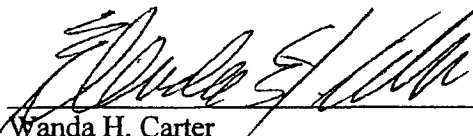
ATTORNEY FOR APPELLANT

September 2, 2010

CERTIFICATE OF COUNSEL

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

September 2, 2010


Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

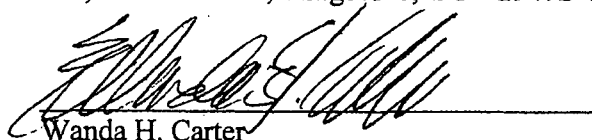
V.

RANDOLPH F. ASHFORD,

APPELLANT

CERTIFICATE OF SERVICE

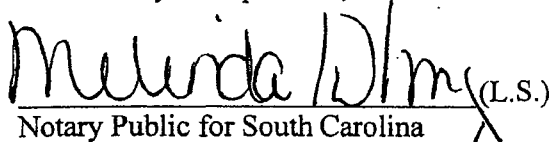
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and a Final Anders Brief of Appellant and Record on Appeal have been served upon Randolph F. Ashford, #256638 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472 this 2nd day of September, 2010.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of September, 2010.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2018.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Randolph F. Ashford,

Appellant.

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

Unpublished Opinion No. 2012-UP-035
Submitted January 3, 2012 – Filed January 25, 2012

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia; and Randolph F. Ashford, pro se, for
Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and

Solicitor Daniel E. Johnson, of Columbia, for
Respondent.

PER CURIAM: Randolph F. Ashford appeals his convictions for three counts of carjacking, two counts of assault with intent to kill, two counts of kidnapping, a count of first-degree criminal sexual conduct, and a count of first-degree burglary. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STHRC

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Richland)**2012 CP 400 1053**Randolph Ashford # 256638)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2012 FEB -6 PM 12:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

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

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

1. Place of detention Lee Correctional Institution 990
Wisacky Highway, Columbia Bishopville, South Carolina, 29010
2. Name and location of Court which imposed sentence Richland County Court of
General Sessions 1701 Main Street Columbia, SC. 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2007-GS-40-1939-41; 2000-2003; 2048
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 3, 2009. (See Attachment-0-).
 - (b) _____
 - (c) _____

4. This Court intended that Mr. Ashford's sentence should be a total of forty (40) years.¹

AND IT IS SO ORDERED!

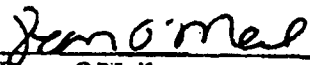

G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

4-14-09

Columbia, South Carolina

This 9 day of April, 2009

ON MOTION OF:


Deon O'Neil
Assistant Public Defender
Attorney for the Defendant

(ATTACHMENT - 0 -)

¹ If correction of the Sentencing Sheet is necessary for clarification of this sentence, please advise.

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty _____ ✓

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____ Yes _____

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. The South Carolina Court of Appeals.

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. unpublished opinion NO. 2012-UP-035

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted January 3, 2012 - Filed January 25, 2012

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. unknowned

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____ N/A

(b) _____ N/A

(c) _____ N/A

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of trial counsel,

(b) Ineffective assistance of Appellant Counsel,

(c) Prosecutorial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) I Randolph Ashford received Ineffective Assistance of Counsel prior and during the trial that's in violation of my right's pursuant to the sixth and fourteenth Amendment to the U.S. const-

(b) I Randolph Ashford received Ineffective Assistance of Appellant counsel that's in violation of my right's pursuant to the fifth, Sixth, and Fourteenth, Amendment to the United -

(c) I Randolph Ashford received Prosecutorial Misconduct during closing argument and or
(See Attachment Of Page-3, 10.(a) (b) (c))

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

(NO).

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(NO).

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/a

(d) any other petitions, motions or applications in this or any other Court?

N/a

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(ATTACHMENT TO PAGE 3, (a) (b) (c)).

(a). itution.

(a). Defense counsel failed to object to the Court Improper jury instruction by the court.

(a). Defense counsel failed to make a through examination of the evidence prior to trial.

(a). Defense counsel failed to impeach any of the State witnesses

(a). Defense counsel failed to pursue obvious leads provided by defendant prior / during the trial.

(b). States Constitution.

(b). Appellate counsel fail to make a sufficient record for review on direct appeal.

(b). Appellate Counsel fail to Present the Solicitor withheld evidence that the defendant requested.

(b). Appellate Counsel fail to obtain the defendant. Rule 5. Motion of Discovery from the Trial Counsel and or the (911) Tape. before file a record to the Appeal Court

(c). trial that's in violation of my rights pursuant to the 6th and 14th Amendment of the United States Constitution.

(c). Solicitor withheld evidence, favorable to the defendants defense..

(c). Solicitor vouch for the credibility of the states witnesses.

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? N/A

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) N/A
- (c) N/A

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea?
- (b) your trial, if any? (Yes)
- (c) your sentencing? (Yes)
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
(Yes)
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. DEON O'NEILL, ASSISTANCE PUBLIC Defender / NICOLE

ii. SINGLETARY, ASSISTANCE PUBLIC DEFENDER

iii. ~~Wanda H. Carter~~ WANDA H. CARTER / APPELLANT DEFENSE

(b) the proceedings at which each such attorney represented you:

i. TRIAL

ii. TRAIL

iii. SCCID DIVISION OF APPELLATE Defense / APPEALS COURT

18. State clearly the relief you seek in filing this application.

New Trial,

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

(NO).

(See ATTACHMENT TO PAGE -(5) Continued Answers
TO 17. (a).).

ATTACHMENT TO PAGE-(5). 17. (a).

17. (a). Nicole Singletary / Deon O'Neil, Assistance Public Defender. 1701 main Street Columbia S.C. 29202

i Deon Oneil/Nicole Singletary / Assistance Public Defender
Richland County Public Defender Office 1701 Main Street Columbia,
South Carolina- 29202

iii Wanda H. Carter / Appellant Defense, P.O. box 11589 Columbia,
South Carolina-29211

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) VERIFICATION

I, RANDOLPH ASHFORD # 256638, 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.

Randolph Ashford

Sworn to and subscribed before me

This 1 day of Feb, 2012

Debra Suris L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

RICHLAND COUNTY
FILED
2012 FEB -6 PM 12:05
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

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

I, RANDOLPH ASHFORD # 256638, 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 or perjury that the following facts are true:

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

Randolph Ashford
Applicant

Sworn to and subscribed before me

This 1 day of Feb, 2012

Debra Suris L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
ASHFORD Randolph -	)	2012CP4001053
# 00256638,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 6, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the April and May 2007 terms of the Richland Grand Jury for AWIK (3 counts), CSC 1st Degree, Carjacking (3 counts), Kidnaping and Burglary (After 6/20/85) 1st Degree - (07-GS-40-1939-41;2000-03:).² He was represented by Deon O'Neil, Esquire, and Nicole Singletary, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable G. Thomas Cooper, Jr. On April 3, 2009, the Applicant was found guilty and sentenced to ten (10) years

¹

<http://www4.rcgov.us/publicindex/PCaseDetails.aspx?County=40+&Casenum=2012CP4001053&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00256638>

imprisonment for each count of AWIK, sixteen (16) years imprisonment for one count of Carjacking, and ten (10) years imprisonment for the second two counts of Carjacking all to run concurrently to each other, followed consecutively by concurrent twenty (20) year terms of imprisonment for Kidnapping and Burglary – First Degree. By Order dated April 9, 2009, Judge Cooper clarified the sentence to reflect the Court's intention of imposing a forty (40) year aggregate sentence on the charges.

Direct Appeal

A Notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf by the South Carolina Office of Appellate Defense. The Court of Appeals dismissed the appeal by order dated January 25, 2012. State v. Ashford, 2012-UP-035 (S.C. Ct. App. filed January 25, 2012). The Remittitur was issued February 15, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective assistance of trial counsel,
- (b) Ineffective assistance of Appellant Counsel,
- (c) Prosecutorial Misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) I Randolph Ashford received Ineffective Assistance of Counsel prior and during the trial that's in violation of my right's pursuant to the sixth and fourteenth Amendment to the U.S. const-

(b) I Randolph Ashford received Ineffective Assistance of Appellant counsel that's in viol-
ation of my right's pursuant to the fifth, Sixth, and Fourteenth, Amendment to the United -

(c) I Randolph Ashford received Prosecutorial Misconduct during closing argument and or
(See Attachment Of Page-3, 10.(a) (b) (c)

(a). itution.

(a). Defense counsel failed to object to the Court Improper jury instruction by the court.

(a). Defense counsel failed to make a through examination of the evidence prior to trial.

(a). Defense counsel failed to impeach any of the State witnesses

(a). Defense counsel failed to pursue obvious leads provided by defendant prior / during the trial.

(b). States Constitution.

(b). States Constitution.

(b). Appellate counsel fail to make a sufficient record for review on direct appeal.

(b). Appellate Counsel fail to Present the Solicitor withheld evidence that the defendant requested.

(b). Appellate Counsel fail to obtain the defendant Rule 5 Motion of Discovery from the Trial Counsel and or the (911) Tape. before file a record to the Appeal Court

(c). trial that's in violation of my rights pursuant to the 6th and 14th Amendment of the United States Constitution.

(c). Solicitor withheld evidence, favorable to the defendants defense.

(c). Solicitor vouch for the credibility of the states witnesses.

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability

is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, TBT, Esquire regarding when the hearing should be set.⁴

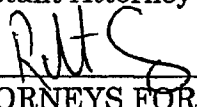
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

April 30, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
ASHFORD Randolph - State's Return - (2012CP4001053)
Page 7 of 7

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

ASHFORD Randolph -
00256638,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

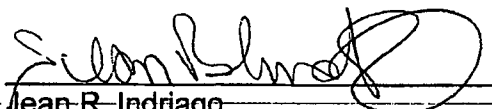
2012CP4001053

CERTIFICATE OF SERVICE

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 a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

**ASHFORD Randolph, 256638 - Lee Correctional Institution, 990 Wisacky
Highway, Bishopville, SC 29010**

DATED April 30, 2012.



Jean R. Indriago
Legal Assistant

State of South Carolina)	In the Court of Common Pleas
County of Richland)	Fifth Judicial Circuit
	2012-CP-40-1053

Randolph Ashford,	)	
	)	
Applicant,	)	
	)	
vs.	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

March 31, 2015
Columbia, South Carolina

B E F O R E:

The Honorable Brooks P. Goldsmith, Judge

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

David E. Belding, Esquire
Attorney for Applicant

J. Clayton Mitchell, III, Esquire
Attorney for Respondent

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

1		
2		
3	Proceedings	4
4	Randolph Ashford,	
5	Direct Examination by Mr. Belding	26
6	Cross-Examination by Mr. Mitchell	87
7	Redirect Examination by Mr. Belding	101
8	Deon O'Neil, Esq.,	
9	Direct Examination by Mr. Belding	107
10	Cross-Examination by Mr. Mitchell	142
11	Redirect Examination by Mr. Belding	150
12	Nicole Singletary, Esq.,	
13	Direct Examination by Mr. Belding	157
14	Cross-Examination by Mr. Mitchell	177
15	Redirect Examination by Mr. Belding	179
16	Randolph Ashford,	
17	Direct Examination by Mr. Belding	187
18	Certificate Page	195
19		
20		
21		
22		
23		
24		
25		

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
P-1	Statement		49
P-2	Note		61
P-3	Trial Brief		86

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:19 a.m.)

THE COURT: Attorney general, are y'all ready?

MR. MITCHELL: Yes, sir.

THE COURT: Which case are you -- we got today?

MR. MITCHELL: Your Honor, this is *Randolph Ashford v. the State of South Carolina*. It is Case No. 2012-CP-40-01053. Mr. Ashford was indicted in April and May of 2007 for three counts of ABWIK, CSC-first, three counts of carjacking, kidnaping, first-degree burglary -- and first-degree burglary. He was represented on these charges by Mr. Deon O'Neil and Ms. Nicole Singletary.

He proceeded to trial before the Honorable G. Thomas Cooper. He was found guilty on April 3rd of 2009, where he was sentenced to 10 years on each count of ABWIK; 16 years on carjacking; 10 years on the two -- on the other two counts of carjacking, all to run concurrently. And then, that was followed by a consecutive 20-year sentence for kidnapping and burglary.

Judge Cooper clarified that sentence by an order of April 9th, 2009, where he reflected his intention of imposing a 40-year aggregate term at that point. He did file a direct appeal on this case and *Anders* brief was submitted. The South Carolina Court of Appeals dismissed his -- dismissed this appeal.

1 Mr. Ashford filed this application for postconviction
2 relief May 22nd of 2012. We also had some other things
3 filed in this case, Your Honor. Applicant filed an
4 application for a forensic DNA testing on May 22nd of 2012.
5 Mr. Belding was thereafter appointed counsel -- or
6 substituted as counsel in June of 2012.

7 We -- the state filed a motion to sever the two
8 actions, the PCR and the application for DNA testing.
9 Because DNA testing -- it was our position that DNA testing
10 application was supposed to be filed in the Court of
11 General Sessions and be given their -- a new case number at
12 that point.

13 So Judge Lee agreed with that and signed an order
14 April 4th of 2013, where she severed the two actions. And
15 she also then held the PCR case in abeyance while the --
16 while the DNA application was pending in general sessions.

17 We had this -- we had this case on the roster in
18 December of this past year, where we -- where I moved to
19 vacate the order staying the proceedings. I think
20 thereafter that -- Mr. Ashford had his hearing on his
21 general-sessions DNA application. And I believe that was
22 either subsequently denied or withdrawn. I think Mr.
23 Belding can speak more to that.

24 But we're here today and ready to go forward. I note
25 Mr. Ashford is present and represented by counsel, Mr.

1 Belding. And I'll turn it over to him at this time.

2 THE COURT: And, Mr. Belding?

3 MR. BELDING: Your Honor, Dave Belding for Mr.
4 Ashford. Mr. Ashford has informed me that he would like to
5 request a continuance of this hearing -- this evidentiary
6 hearing. And he is eloquent, and I would ask the Court's
7 indulgence to allow him to address his reasons for
8 requesting a continuance.

9 THE COURT: All right. I'll be glad to hear from you.
10 Yes, sir ---

11 MR. BELDING: Okay.

12 THE COURT: --- Mr. Ashford.

13 THE APPLICANT: Yes, sir. Your Honor, I filed several
14 motions with the solicitor's office, requesting the grand-
15 jury-impanelment documents. We went before Judge Manning.
16 Judge Manning indicated that they needed to turn the grand-
17 jury-impanelment documents over before -- prior to this PCR
18 hearing. That's been a year ago. I haven't received them
19 yet.

20 There's another thing: Mr. Belding's here -- here. I
21 told him that my trial attorney came to see me twice. But
22 in the record, they -- they -- they put they came to see me
23 five times. And they did not.

24 And it's very important to me because I feel that they
25 -- the times that they came, they only stayed a hour. And

1 the magnitude of this trial, with nine charges carrying
2 life sentences, they -- they -- you know, they was -- they
3 was not prepared to defend me, I mean, within two hours of
4 talking to me and then off to trial. And I wanted to show
5 at the PCR hearing that where they're saying five times,
6 the record will show that it wasn't. It was only two time.

7 And -- and another thing, when they come in, they have
8 to sign. And when they leave out, I think they have to
9 sign too. And it would show that the amount of time that
10 they stayed there with me, preparing me for this -- for the
11 trial that -- that I been found of guilty of these charges
12 with. So that's why I asked Mr. Belding. And he's saying
13 that he subpoenaed the Richland County Detention Center and
14 -- last week. And he haven't gotten a response from them
15 on -- on those documents.

16 MR. BELDING: Yes. I met with Mr. Ashford last week
17 at Lee Correctional Institution Wednesday a week ago, and
18 this is something he brought up. I -- I go down to the
19 Richland County Detention Center, the Alvin S. Glenn. And
20 -- and I don't actually sign anything. But I think they
21 keep a log of when I'm there.

22 I don't know what the log looks like, whether it says
23 exactly who you talked to. Sometimes you're there for
24 multiple people. But I have asked for that. You know,
25 it's only been seven days. They have not sent me anything

1 on that point.

2 There are a number of issues in this case, Your Honor.
3 And that's obviously lack of preparation, which would lead
4 to ineffective -- this is one of them that Mr. Ashford is
5 concerned about. I do not oppose his motion. I leave it
6 to the Court.

7 I think that there are -- are -- are more important
8 issues. But that is certainly one of them, is he feels
9 that they were unprepared. I don't know if you've had a
10 chance to read -- this is a fairly extensive trial
11 transcript. They actually had colloquies with the Court
12 about there was actually a -- a motion to relieve counsel
13 in the middle of the trial. So there were a lot of not
14 only issues about lack of preparation, but -- but some
15 serious issues about defense strategy going on in that --
16 in that in -- within the actual -- the criminal trial.

17 And the other thing is -- is that this -- Mr. Ashford
18 has had -- I think he had seven attorneys up through the
19 time of trial. All of them but one of them were members of
20 the Richland County Public Defender's Office.

21 In the middle at some point, the Court actually
22 appointed Jonathan Milling, who I believe, at that time,
23 was a member of the private bar.

24 THE APPLICANT: He -- he was.

25 MR. BELDING: And then it -- it moved on from there.

1 During the entire time that he was represented by the --
2 the public defender's office, there -- there are copies
3 I've seen -- Mr. Ashford was requesting that they get
4 certain types of evidence, which, by the time the two
5 attorneys who actually tried the case who are here today,
6 Mr. O'Neil and Ms. Singletary, actually were ready to try
7 the case, those pieces of evidence, including the DNA, the
8 test subject that we were -- Mr. Mitchell was just talking
9 about -- were no longer available. The 911 calls, records
10 of those were no longer available because it'd been two
11 years later. So that's all part of the ineffectiveness
12 claim that we have before you today.

13 Mr. -- Mr. Ashford has indicated to me that he wants
14 to see those records from the jail to impeach the
15 credibility of the two trial attorneys that are here. And
16 I -- I -- I understand that's his right. I -- I didn't
17 realize that was going to be important until last week,
18 when I saw him at Lee Correctional. So I have not been
19 able to get those yet.

20 (To the applicant) Is there anything else you'd like
21 to say? Because this is your day, you know.

22 THE COURT: And -- and -- and one question: The ---

23 MR. BELDING: Sure.

24 THE COURT: --- the order, was it Judge Manning, you
25 said, ordered -- what was it -- to be produced?

1 MR. BELDING: Oh, Judge Manning. Go ahead.

2 THE APPLICANT: Judge Manning, he had ordered that we
3 -- that the solicitor's office turn over the grand-jury-
4 impanelment documents. And he ---

5 THE COURT: Impanelment documents?

6 THE APPLICANT: Right. Because we have some issues
7 with -- with the indictments.

8 (Whereupon, Mr. Belding and the applicant conferred.)

9 MR. BELDING: One of the things, Your Honor, that --
10 in camera before the hearing I mentioned to you is that I
11 wanted Mr. Ashford to address his concerns about the
12 viability of the indictments.

13 THE COURT: Right.

14 MR. BELDING: He has, in fact, written his own brief
15 that I would like the Court to consider when we go forward.
16 I -- I think that I see his point. It -- it -- I -- I, of
17 course, am not the one that would make the decision on
18 whether or not the indictments are -- are -- should have
19 been quashed. There was no -- I understand, from the -- in
20 the trial, there was no motion by anybody to quash the
21 indictments.

22 But Mr. Ashford has done a lot of research on it and
23 believes that he has -- can show the Court, from the
24 documents, that the indictments were issued not during a
25 term of general-sessions court, which would -- should then

1 make them subject to challenge as not being issued properly
2 under the -- under the statute.

3 Yes. That's all in here ---

4 THE APPLICANT: Okay.

5 MR. BELDING: All that's in here. So what I know
6 about today is that Mr. Ashford would like to have one more
7 chance to get this impeachment evidence against the two
8 trial attorneys, Ms. Singletary and Mr. O'Neil. We've been
9 here several times, Your Honor. But through no fault of
10 Mr. Ashford's, a lot of those times were when this DNA
11 question was still pending.

12 And ultimately, when Judge Hood ordered that -- that
13 the DNA test could proceed if we could assure him that the
14 evidence was still available, we've got -- I mean, I've got
15 -- I've got the affidavits. They were -- they were not
16 actually maintained. Okay?

17 And neither the sheriff's department nor the Court has
18 the jacket that they claim Mr. Ashford was wearing during
19 the commission of the crime that he asked, from the very
20 beginning, from the very first public defender who had his
21 case, "Get that jacket and let's get a DNA test on it
22 because I wasn't wearing and never touched it. And this
23 would show that."

24 But they never did that. So by the time, you know,
25 Ms. Singletary and Mr. O'Neil got involved, it was

1 obviously long gone because the state didn't even introduce
2 that jacket into evidence. They introduced a photograph of
3 it. Can't do DNA on a photograph.

4 So we -- it -- it took a long time to ferret through
5 all that and -- and ask everybody involved. It's been a --
6 a pretty involved PCR for all concerned.

7 But I just wanted you to understand where we were.
8 I'm -- Mr. Ashford -- I do not oppose his motion. I mean,
9 I'm ready to go forward on what we have. But he feels it
10 would be very important to get that information from the
11 Richland County -- Alvin S. Glenn Detention Center, unless,
12 of course, I suppose Mr. O'Neil and Ms. Singletary are
13 willing to stipulate that they only saw him twice. But I
14 haven't asked them that.

15 THE COURT: All right. Anything else on the motion to
16 continue?

17 THE APPLICANT: No, sir, Your Honor. That -- that
18 would take care of it, unless, like Mr. Belding said, they
19 would stipulate to the -- to two times and a hour each time
20 that they came to see me at the -- at the county jail. We
21 could possibly move forward with it. I mean, I -- Mr.
22 Belding say he's ready to move forward with it. And I
23 would just, you know -- wouldn't want to hold that up or
24 either waste the Court time, I mean, in that aspect.

25 But the principle of it is, you know, these facts here

1 that -- you know, it -- it don't look good. I mean, you --
2 you say one thing, but you don't -- you -- you know -- you
3 know, they didn't do it. And -- and it -- it make it look
4 like I was represented properly, and I wasn't. You know,
5 and ---

6 THE COURT: All right. Well, let me hear from the
7 attorney general.

8 MR. MITCHELL: Your Honor, we would oppose a
9 continuance. I think this is the third- or fourth-oldest
10 case in the fifth circuit. It's been pending a long time.
11 It was stayed for two years for this DNA application to go
12 forward. You know, I -- I consider that just completely
13 meritless because the DNA of the jacket really didn't have
14 anything to do with the trial. I mean, he -- he was -- you
15 know, Mr. Ashford's very stuck up on this jacket.

16 But he was -- you know, it's -- it's different aspect
17 -- the different witnesses said different things about the
18 jacket: whether it was brown, whether it was green. And
19 then, he claims he wasn't wearing the jacket when, you
20 know, he gets pulled out of this trailer surrounded by the
21 SWAT team and the jacket's in the trailer; it doesn't
22 belong to anybody there. The witnesses all say that he was
23 wearing it and he brought it in there.

24 So I think, you know, the DNA test held this thing up
25 for a long time. We're ready to go today. There's no --

1 there's been no order filed in this case about grand-jury-
2 impanelment dockets -- documents.

3 So that wouldn't hold anything up here. I've never
4 seen any order like that. I don't know anything about any
5 kind of order from Judge Manning.

6 I've also never seen this subpoena for anything at the
7 Alvin S. Glenn -- at the jail or at Department of
8 Corrections with regards to whether counsel met with
9 applicant the appropriate amount of times. I mean, I think
10 if that's his issue, he can get up there and testify that
11 they met with me two times. I mean, that's -- if he thinks
12 that's, you know, correct and he wants to put that on --
13 before the Court, then that's fine.

14 You know, I mean, I don't -- I don't know if these --
15 if these records may help him there or hurt him there. I
16 don't -- but I think we can go forward without that --
17 without those records and just go on his testimony and
18 counsel's testimony as well.

19 So we do definitely oppose the motion for continuance.

20 THE COURT: All right. Mr. Belding, anything else
21 from Mr. Ashford?

22 MR. BELDING: Well, I would offer this: If -- if --
23 if the Court was of a mind to go forward with this, we --
24 we may ask at the end if the Court would allow us a short
25 period of time to supplement the record with anything we

1 get from the Alvin S. Glenn Detention Center which may
2 contradict the testimony of the attorneys.

3 THE COURT: All right.

4 MR. BELDING: Could we leave the record open for a
5 short period of time for that?

6 (Whereupon, Mr. Belding and the applicant conferred.)

7 MR. MITCHELL: Your Honor, we'd be opposed to that. I
8 think the -- this -- this case has been going on for three-
9 plus years now. We're ready to get it tried and heard and
10 finished. You know, if this -- if this subpoena request
11 takes six months to go, it's just going to add another six
12 months to when this gets heard. And -- and I just think
13 that, you know, as -- we would be prejudiced leaving this
14 thing open and continuing it further than it already has
15 been.

16 THE COURT: I -- I just went through the file. I
17 can't find an order ---

18 MR. BELDING: I'm trying to remember.

19 THE COURT: --- from ---

20 MR. BELDING: It may ---

21 THE COURT: --- Judge ---

22 MR. BELDING: --- have been ---

23 THE COURT: --- Manning or ---

24 MR. BELDING: --- I don't know ---

25 THE COURT: --- Judge ---

1 MR. BELDING: --- that it was ---

2 THE COURT: Was it ---

3 MR. BELDING: --- reduced ---

4 THE COURT: --- Manning or Cooper? I've forgotten
5 which ---

6 MR. BELDING: Yeah.

7 THE COURT: --- one you said.

8 (Whereupon, Mr. Belding and the applicant conferred.)

9 MR. BELDING: We've had a -- we've been here a few
10 times, Judge.

11 THE COURT: Okay. All right. We'll leave -- I'll
12 agree, then. We'll leave the record open to permit the
13 applicant's attorney to submit to the Court -- to -- to
14 file with the Court and copy attorney general and me with
15 the results of this subpoena to Alvin S. Glenn.

16 MR. BELDING: Okay.

17 THE COURT: If the attorney general wishes to present
18 evidence to the contrary, we'd have to reconvene court.
19 Otherwise, we'll just accept it for what it's worth. I --
20 I -- I don't know. The attorney general may wish to submit
21 further evidence on the issue. I don't -- but I'm not
22 going to just let you submit it and him be barred from ---

23 MR. BELDING: Understand.

24 THE COURT: --- contradicting it.

25 MR. BELDING: No. That wouldn't be fair.

1 THE COURT: So ---

2 MR. BELDING: I agree.

3 MR. MITCHELL: I'll agree about that. Yes, sir.

4 THE COURT: Ten days. That ought to be enough time,
5 sir.

6 MR. BELDING: Ought to be enough time.

7 THE COURT: You -- you -- you've had the subpoena out
8 there ---

9 MR. BELDING: I better go ---

10 THE COURT: --- for a week ---

11 MR. BELDING: --- get it ---

12 THE COURT: --- or so ---

13 MR. BELDING: Yeah. I mean, usually, people wait 30
14 days. I better go get it this week, because I'm out of
15 town all next week. But if you'll give me till just the
16 beginning of the week after the, like, 15th of April, that
17 should be plenty of time.

18 THE COURT: April 15th to supplement the record.

19 MR. BELDING: I don't think I'm doing anything else
20 that day.

21 THE COURT: To supplement the record relating to the
22 Alvin S. Glenn subpoena ---

23 MR. BELDING: Okay.

24 THE COURT: --- not anything ---

25 MR. BELDING: Okay. And Mr. Ashford had always -- or

1 also, he just reminded me, he had asked about getting the
2 grand-jury-impanelment documents. Would you leave it open
3 for the same -- for -- till the same period of time for
4 those, if, in fact -- well, and I would get him to address
5 what he thinks the problem is, of course, about the grand
6 jury and the indictments. But ---

7 THE COURT: Attorney general is objecting to that on
8 the grounds that it hadn't been mentioned before?

9 MR. MITCHELL: I'm not aware of any request for grand-
10 jury-impanelment documents ---

11 MR. BELDING: Well ---

12 MR. MITCHELL: --- in this case.

13 MR. BELDING: I -- I think he -- I think -- I think
14 there was something about -- and -- and -- and believe it
15 or not, Mr. Mitchell, I think you're the third ---

16 MR. MITCHELL: Yeah.

17 MR. BELDING: --- assistant attorney general ---

18 MR. MITCHELL: That's correct.

19 MR. BELDING: --- on this case. There was -- and I
20 can't remember -- I can't remember if it was Manning or
21 Judge Kinard. But we had a discussion about what kind of
22 discovery he sent off asking for. And I think there was a
23 statement that yes, you have ---

24 THE COURT: Well ---

25 MR. BELDING: --- then, you ---

1 THE COURT: --- does ---

2 MR. BELDING: --- you get that.

3 THE COURT: --- does the application or amended
4 application reference a defect in ---

5 MR. BELDING: --- the indictments?

6 THE COURT: --- the indictment?

7 MR. BELDING: Well ---

8 THE COURT: Otherwise, it wouldn't be proper for us to
9 be going into all that and, particularly, keeping the --
10 the record open. Somebody help me. Amended application --
11 let me see. Here you go.

12 (Off the record briefly.)

13 THE COURT: All right. I'm looking at the -- I'm --
14 I'm reviewing the amended application for postconviction
15 relief, dated January the 8th, 2004. Is there another one?

16 MR. BELDING: Oh, gosh. 2004? Yeah. That's -- that
17 -- that was for a previous ---

18 MR. MITCHELL: That was the ---

19 MR. BELDING: --- offense.

20 MR. MITCHELL: --- previous PCR, I believe.

21 MR. BELDING: Yeah. Yeah. He had one back . . .

22 (Whereupon, Mr. Mitchell and Mr. Belding conferred.)

23 THE COURT: All right. Now I'm looking at something
24 called an amended -- well, let me take that back.

25 MR. MITCHELL: You might -- may want to check the case

1 numbers on there. I think there might be some older --
2 like a 2004 in there.

3 THE COURT: All right. I'm looking at the attorney
4 general's May 25th, 2012, amended return. Is there another
5 return?

6 MR. MITCHELL: No. That's the last return filed in
7 the case.

8 THE COURT: Uh-huh.

9 (Whereupon, Mr. Mitchell and Mr. Belding conferred.)

10 THE COURT: Let me see what the attorney general
11 refers to: ineffective assistance of counsel, ineffective
12 assistance of appellate counsel, prosecutorial misconduct,
13 misconduct during closing arguments, failed to object to
14 improper jury instructions, failure to examine all the
15 evidence prior to trial, failure to impeach state
16 witnesses, failure to pursue leads provided by the
17 defendant prior and during the trial.

18 Then, there's a reference to appellate counsel's
19 failure to present the -- the solicitor with withheld
20 evidence that the defendant requested and that appellate
21 counsel failed to obtain discovery of the 911 tape;
22 solicitor withheld evidence favorable to the defendant's
23 defense; solicitor vouched for the credibility of the
24 state's witnesses; green jacket DNA that y'all have been
25 talking about.

1 I don't see anything there. Have y'all found
2 something?

3 MR. MITCHELL: No, Your Honor.

4 THE COURT: All right. Then, we'll leave the record
5 open till April 15th to supplement the -- regarding the
6 subpoena from the records of Alvin S. Glenn Detention
7 Center. So ---

8 MR. BELDING: Then -- then -- Clay, I think he wants
9 to talk to you.

10 MR. MITCHELL: Oh, I'm sorry.

11 THE COURT: Are we ready?

12 MR. MITCHELL: Yes, sir. I think so.

13 MR. BELDING: And, Your Honor, let me ask this, just
14 so -- because yes. Then, I -- that would put Mr. Ashford
15 on the stand. Earlier, I had asked if -- if I would be
16 allowed to let him discuss the issue of the improper
17 indictment. Is that now still proper before this Court? I
18 -- I thought ---

19 THE COURT: Let me ask the attorney general.

20 MR. MITCHELL: Your Honor, I was going off this last
21 amended trial brief that was provided to me by Mr. Belding.
22 These are the allegations that I'm on notice for going
23 forward. I don't think there's anything else mentioned
24 here about an indictment. It may have been some -- he's
25 written numerous -- numerous letters and numerous other

1 filings as well. But I was prepared to go forward on this
2 most recent amended -- or applicant's trial brief, as it's
3 captioned. And I don't think there's any mention of any
4 allegations of a faulty indictment or anything in that.

5 THE COURT: Now, then, does that mean that you object
6 ---

7 MR. MITCHELL: Yes, sir.

8 THE COURT: --- to ---

9 MR. MITCHELL: I ---

10 THE COURT: --- to that?

11 MR. MITCHELL: --- so I would object to ---

12 THE COURT: All right.

13 MR. MITCHELL: --- the allegation of ineffective
14 assistance for failing to quash the indictment.

15 (Whereupon, Mr. Belding and the applicant conferred.)

16 THE COURT: Well, if the -- the form application, of
17 course, asked for details as to what complaints are being
18 made against the attorneys. And I don't see any reference
19 to a failure to quash the indictments. So therefore, I
20 find it's not properly before the Court.

21 (Whereupon, Mr. Belding and the applicant conferred.)

22 MR. BELDING: Your Honor, Mr. Ashford would like to
23 move to amend his application, probably under Rule 15, to
24 let the evidence conform to the -- the -- the pleadings
25 conform to the evidence here. This is -- this is an issue,

1 I think, that could always have been brought up. I mean,
2 the efficacy of indictments are always an issue. There's
3 kind of a general notice provision to the attorney general
4 of that.

5 And I think that since he's gone to the trouble of --
6 of creating his own -- own brief on the matter, I think it
7 should be heard. I don't think it would take long. He's
8 -- it's pretty to the point. And I think it's something
9 that Mr. Mitchell could respond to without having to do a
10 lot of -- I don't think it takes a lot of research. I
11 think that you'd be able to respond to it appropriately.
12 If -- if not, then the Court will let us know that.

13 MR. MITCHELL: My position on that is just that, you
14 know, we -- you have to plead these things out front and we
15 don't just get to the hearing and then amend our
16 allegations to just include, you know, any number of
17 things. So my -- my only objection to that is just that it
18 should've been pled earlier on. I mean, this thing has
19 been pending for three years nearly now. And it's the
20 first I've heard of an allegation towards the proper -- how
21 proper the indictment is.

22 THE COURT: The -- the question I have about it is
23 this: I -- I -- I agree with Mr. Belding's statement about
24 Rule 15 to conform to the evidence. But is there going to
25 be any evidence? What -- what -- from -- from what I

1 understand, you want to leave the record open to get
2 evidence.

3 MR. BELDING: Well, there's -- there's some that would
4 -- is contained in the -- in the brief Mr. Ashford put
5 together. I mean, we're doing this on the documents. The
6 only thing he doesn't have are the impanelment documents,
7 which I've never seen either in this case.

8 And -- and that is something I might be able to amend.
9 All it would be doing was supplementing what he would hand
10 up anyway, which are the actual indictments, the terms of
11 court. Mr. Ashford's position is that this indictment came
12 out during a time when court was not in session to do that
13 properly. And -- oh. It -- and -- and that the actual
14 warrants were not processed properly, leading to the
15 indictments.

16 (Whereupon, Mr. Belding and the applicant conferred.)

17 MR. BELDING: And therefore, it's unconstitutional.

18 THE COURT: The -- you're -- you're talking about the
19 warrants now, or you talking about the indictment?

20 MR. BELDING: The -- yeah. If the indictments are
21 invalid, that violates his constitutional rights.

22 MR. MITCHELL: I just think he's had three years to
23 plead this. I mean, it's the first we're hearing this. I
24 think, you know, we're -- we have a right to be on notice
25 of what we're going forward on. I mean, I understand if

1 you do allow it. But just note our objection that this is
2 something that could've been pled, you know, anytime from
3 when this was filed to, you know, last week.

4 THE COURT: All right. I'll allow whatever evidence
5 there is to be presented today on that issue of indictments
6 and warrants ---

7 MR. BELDING: Okay.

8 THE COURT: --- as stated a moment ago by Mr. Belding.
9 Now, where are we?

10 (Whereupon, Mr. Belding and the applicant conferred.)

11 MR. BELDING: Getting ready to call a witness, I
12 think, Your Honor.

13 THE COURT: Call your first witness.

14 MR. BELDING: Okay. Your Honor, I'd like to call Mr.
15 Randolph Ashford to the stand.

16 (Whereupon, the witness came forward.)

17 MR. BELDING: May I approach and ---

18 THE COURT: Yes, sir.

19 MR. BELDING: --- hand up the brief that Mr. Mitchell
20 was referring to and also the brief from Mr. Ashford about
21 the indictment issue.

22 RANDOLPH ASHFORD, having been first duly sworn,
23 testified as follows:

24 MR. BELDING: Thank you, Your Honor. May it please
25 the Court?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 26

1 THE COURT: Certainly.

2 DIRECT EXAMINATION

3 BY MR. BELDING:

4 Q Please state your full name for the record.

5 A Randolph Ashford.

6 Q No middle name?

7 A No.

8 Q Mr. Ashford, where are you incarcerated right now?

9 A Lee Correctional Institution.

10 Q And what are you serving time for?

11 A Kidnapping, burglary.

12 Q And was the -- the recitation of your record by Mr.
13 Mitchell essentially correct: that you're doing a total
14 aggregate sentence of 40 years right now?

15 A That part is correct.

16 Q Well, did he -- did he accidentally misstate how much
17 time you received on the carjackings?

18 A (Nodded head up and down.)

19 Q Okay. What'd you get on carjacking?

20 A I can't remember.

21 Q Okay.

22 A I think ---

23 Q I -- I -- I think the Court can take notice of what
24 the sentences are. I think you got 10 on each of the
25 carjackings.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 27

1 A Right.

2 Q Does that sound right?

3 A Something like that.

4 Q Okay. Now, did you go to trial on these issues?

5 A Yes, I did.

6 Q All right. Were you -- who represented you at these
7 -- at the trial?

8 A Deon -- I had -- well, who represent me? Deon O'Neil
9 and Nicole Singletary.

10 Q Okay. Were they the first attorneys that you had in
11 this case?

12 A No, they was not.

13 Q Okay. How long were you in jail prior to trial?

14 A Two years.

15 Q Okay.

16 A Somewhere along in there.

17 Q All right. What was the date of the alleged crimes?

18 A 2007 February 24th.

19 Q And when did you actually go to trial on the -- on
20 these issues?

21 A 2009.

22 Q Late in -- late March and April?

23 A Right.

24 Q Okay. Now, how many public defenders did you have
25 during the course of your being in jail?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 28

1 A About seven.

2 Q Okay. Do you remember their names?

3 A Not all of them.

4 Q Okay. Did you meet with all of them?

5 A I think each one came and visit me, except about two

6 ---

7 Q Okay.

8 A --- for ---

9 Q Was the first Douglas Strickler?

10 A Right.

11 Q Was he the chief public defender at the time?

12 A Correct.

13 Q Okay. How long did you get a chance to talk to Mr.
14 Strickler?

15 A About five minutes.

16 Q Okay. Did you tell him what kind of evidence and, you
17 know, discovery you would need to prepare for the defense
18 of yours -- of your case?

19 A No, I did not, because he didn't stay long enough.

20 Q What did you -- did -- did he just basically introduce
21 himself?

22 A Right. He never came to the jail. I met him at the
23 Richland County holding tank about this. He said it was
24 going to be a hearing, some sort of hearing. That's all I
25 remember. And ---

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 29

1 Q Okay. Do you know whether or not Mr. Strickler ever
2 put in a request for discovery to the solicitor's office?

3 A No. I don't have no knowledge of that.

4 Q Okay. Was the next public defender Danielle Payne?

5 A I'm not absolutely sure.

6 Q Okay.

7 A But I do remember her being assigned to me at some
8 point in there.

9 Q Okay. Did Ms. Payne come to see you?

10 A I'm not absolutely sure. It'd been ---

11 Q Okay.

12 A --- too long.

13 Q After that you had Ms. Kristy Grafton. Do you recall
14 her being your attorney?

15 A Right.

16 Q Okay. Did you meet with her?

17 A Yes, I did.

18 Q Okay. Did she request some discovery for you?

19 A She did.

20 Q Okay. And after that Carolyn Gripp, did she represent
21 you for a period of time?

22 A She did.

23 Q Okay. Did she come to meet you at the detention
24 center?

25 A I think she did.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 30

1 Q Okay. And then at some point, a member of the private
2 bar, Jonathan Milling, was appointed to represent you for a
3 period of time. What -- what was Mr. Milling doing to --
4 to help you with your defense?

5 A Well, Mr. Milling, he -- he actually was with me at
6 the evaluation -- mental health evaluation. To help me
7 with my defense? I don't know. Because Mr. Milling didn't
8 stay very long. He -- he was with me like -- I would say
9 like about a month. And next thing I know, they was
10 appointing me back to the public defender's office.

11 Q Okay. He -- he came while you were evaluated ---

12 A Right.

13 Q --- correct?

14 A Right.

15 Q All right. What was the result of that evaluation?

16 A That I was found -- I was -- I was found competent to
17 stand trial.

18 Q You ---

19 A And ---

20 Q Go ahead.

21 A I was found competent to stand trial and that -- that
22 it was recommended that I continue seeking mental health
23 treatment.

24 Q Okay. I'm going to show you what's included in the
25 trial brief under Tab No. 2. It's a evaluation and a

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 31

1 report done by a Jason Buckland, director -- D.O., doctor
2 of orthopathy [sic].

3 A Right.

4 Q Is -- is -- and the second examiner is the Tia Taylor,
5 who's a licensed social worker. Is this the report you're
6 referring to?

7 A That's correct.

8 Q Have you read this report before?

9 A Yes, I have.

10 Q Okay. And you said it -- it found that they -- that
11 you were competent to stand trial, correct?

12 A Correct.

13 Q All right. But it -- but it recommended that you
14 receive further mental health ---

15 A --- treatment.

16 Q --- treatment?

17 A Right.

18 Q Okay. Treatment for what?

19 A It didn't say.

20 Q Okay. Tell us briefly: What was your mental state on
21 the day of the alleged crimes?

22 A I didn't know what I was doing.

23 Q Okay. Why didn't you know what you were doing?

24 A I have no idea. I mean -- I mean, I guess my mind had
25 done skipped off somewhere else. I mean, I didn't know

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 32

1 what I was doing. So I -- I -- I can't say, I mean.

2 Q Okay. Do you -- how much do you remember of -- of the
3 events of that day?

4 A I remember being at the -- at the trailer. I -- I
5 remember being at the trailer. And I remember talking to
6 Debbie Anne on the phone before I left home at some point.
7 I remember talking to her on the phone.

8 Q And Deborah -- is this -- is that Deborah Anne
9 Simmons?

10 A Right.

11 Q Okay. And is she the alleged victim of the kidnapping
12 and the burglary and original charge, the criminal sexual
13 conduct?

14 A That's correct.

15 Q Okay. Was it her trailer that you went to?

16 A That's correct.

17 Q Okay. And was this after the carjackings?

18 A That's correct.

19 Q Okay. Do you have any recollection of the
20 carjackings?

21 A No. Nothing but the -- the -- the -- the -- the
22 second and third car.

23 Q There was three in all, correct?

24 A Correct.

25 Q Okay. What do you remember about the second and third

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 33

1 car -- car?

2 A That the alleged victim hopped out the car, I guess,
3 and was fearing or somehow of me and -- and I got in. And
4 apparently, I drove off and car got loose and -- and I got
5 out of that car, and a taxicab stopped in the -- in the
6 middle of the road in front of me and he got out and I got
7 in that one.

8 Q All right. Now, after the five public defenders that
9 you had gone through, including Carolyn Gripp and then
10 Jonathan Milling, were you then appointed Ms. Singletary
11 and Mr. O'Neil or just one or how did that work? Do you
12 recall?

13 A I think O'Neil came with another attorney first.

14 Q Okay.

15 A He was relieved. And Ms. Singletary came back with
16 O'Neil the second time. The first time Mr. O'Neil came by,
17 him and another attorney.

18 Q Okay.

19 A And that didn't go very well, so . . .

20 Q Tell me -- tell me your recollection of what you and
21 Mr. O'Neil talked about the first time he met with you.

22 A Mostly nothing. Mr. O'Neil didn't talk about nothing
23 concerning my trial, my defense, or anything like that.
24 He'd sit there and look at me, you know, as -- as he's lost
25 in space. When he came back the second time, only thing he

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 34

1 talked about was pleading to 20 -- 30 years -- 30 years or
2 something like that.

3 Q Okay.

4 A And that was it.

5 Q Okay. Now, was this second visit the time that Ms.
6 Singletary came with him?

7 A Right.

8 Q Okay. How long did they spend with you?

9 A About a hour.

10 Q Okay. And did you talk about what kind of things you
11 needed to get to help you with your defense?

12 A Well, I tried. I tried. But, I mean, you know, it
13 was like they wasn't really listening at that. They had
14 they own way of doing things. And so it -- it really
15 didn't matter, you know, I mean, saying anything to them,
16 because they wasn't trying to hear it anyway. So I -- I
17 mostly sit there and looked at them, you know. And at some
18 point I think I got up and got ready to walk -- walked out.
19 I did. Yeah. I walked out.

20 Q Okay.

21 A Because they wasn't there to assist me and help me.
22 You know, they wasn't ---

23 Q Were you able to discuss with them the fact that you
24 had had requests for discovery done by some of your
25 previous attorneys?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 35

1 A Yes. I did mention all of that.

2 Q Okay. Let me show you what is behind Tab 3 in the --
3 in the brief. The first page, I will represent to you,
4 looks to be a e-mail from a Kristy Grafton. That was one
5 of your attorneys, correct?

6 A Right.

7 Q And it's to Luck Campbell. Do you know who Duck --
8 Luck Campbell?

9 A Right. The solicitor.

10 Q Okay. And this is in May 5th of 2008, correct?

11 A That's correct. That's ---

12 Q Okay.

13 A --- what it say. I can't see it.

14 Q Okay. And this is over a year after you -- you been
15 in jail a year already?

16 A (Nodded head up and down.)

17 Q More than that?

18 A (Nodded head up and down.)

19 Q Okay.

20 A Uh-huh.

21 Q And -- and did you get a copy of this -- did you have
22 a copy of this e-mail in your files?

23 A Now?

24 Q Yes.

25 A No, I do not.

1 Q Okay. Is that because you gave it to me?

2 A Right.

3 Q Okay. I understand. All right. But you did get a
4 copy of this through ---

5 A I -- I did.

6 Q Okay.

7 A And during discovery.

8 Q All right. And what was it that Ms. Grafton was
9 asking, amongst other things? There were two things ---

10 A Uh-huh.

11 Q --- in particular that she asked to have. One was
12 records of the 911 calls, correct?

13 A That's correct.

14 Q And records of the -- have DNA testing of the clothes
15 ---

16 A Right..

17 Q --- correct?

18 A Right.

19 Q Okay. Were either of those done, to your knowledge?

20 A No.

21 Q Okay. Still behind Tab 3, the next paper is a letter
22 in June of 2008, again, from Kristy Grafton with the public
23 defender's office to Ms. Campbell, the solicitor, again,
24 reiterating she -- she wanted these items, correct?

25 A That's correct.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 37

1 Q Okay. And then, the last page behind Tab 3 is a copy
2 of a letter to Mr. O'Neil from an investigator, from
3 something called Info, Inc., and you had a copy of this
4 too?

5 A That's right.

6 Q Okay. And do you recall what this short memo was
7 about?

8 A The 911 tape.

9 Q Okay. What did they find out?

10 A According to that, the -- Jennifer Blair never called
11 back -- never called O'Neil back and provided the
12 information that he was trying to obtain. And instead, she
13 -- she -- she mentioned I think it was about Sharon
14 VanHook, who -- something -- something to that -- yeah.

15 Q Okay. During -- during the course of the time that
16 you were coming up, you were sitting in jail and waiting
17 for trial, did you feel like you had a conflict with your
18 own attorneys?

19 A I did with the whole public defender's office.

20 Q Okay. I -- I want you to explain to Judge Goldsmith
21 what kind of conflicts you were having.

22 A Because number one, evidence that I needed to defend
23 myself in trial, it was known to the prosecution or the --
24 the solicitor's office and the chief public defender's
25 office that those items should have been act upon

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 38

1 immediately to retrieve them.

2 Q Those items being?

3 A The 911 tape.

4 Q Okay.

5 A The testing of the green jacket or -- or either
6 collect the green jacket or either collect my jacket that I
7 actually had on, which was a brown, leather coat -- coat.

8 Q Okay.

9 A None of those things was -- was ever -- was ever acted
10 upon by the solicitor or -- or the public defender.

11 Q Okay.

12 A From that point Ms. Strickland [sic] was first. And
13 he let it ride for a year. Then he appoint me to someone
14 else. Two months later, before I could even talk to them,
15 they write me a letter and tell me I been assigned to
16 someone else.

17 And it went on down the -- the line till about six or
18 -- six of the attorneys. So it's -- this is another year
19 done passed by.

20 Q Uh-huh.

21 A Right at another year. And then finally, Ms. Kristy
22 Grafton, I think, she was the one that, when she was
23 assigned to it, got an investigator. By that time all the
24 evidence proclaimed to be there is no 911 tape.

25 Q Right.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 39

1 A Okay. Apparently, there is no jacket. I mean, you
2 know, and all this is behind this -- the public defender's
3 office. I mean, you know, I -- Richland County Public
4 Defender Office. They prejudice me in that aspect, I mean,
5 because, you know, I -- I was facing serious charges, all
6 them carrying pretty much 20/30 years. And nobody lifted a
7 finger to do anything in my defense. And ---

8 Q So your -- is -- is this correct that your -- part of
9 your complaint is that the entire Richland County Public
10 Defender's Office, of whom your trial attorneys were a part
11 ---

12 A Were a part.

13 Q --- didn't get this discovery until it was no longer
14 available?

15 A That's ---

16 Q Is that right?

17 A Didn't even -- yeah.

18 Q Okay.

19 A I mean ---

20 Q And, in fact ---

21 A --- they ---

22 Q --- let me -- let me go back. The last part of --
23 behind Tab 3 is this letter from Info, Inc., to Mr. O'Neil
24 from an investigator named Lee Conley, it appears to be.
25 And what's the date on it?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 40

1 A March 27th, 2009.

2 Q What was going on, on March 27th, 2009?

3 A Two days before my trial.

4 Q Right.

5 A That's what was going on.

6 Q Right.

7 A But they had been on the case almost two months. Why
8 wait two days before the trial to -- to try and obtain
9 evidence? Ineffective assistance of counsel.

10 Q Okay. And I'm going to come back to the 911 in a
11 little while. But let me -- let me -- what else were you
12 having conflict with your attorneys about?

13 A Trial -- the trial preparation.

14 Q Okay.

15 A I mean ---

16 Q What were -- what were they doing?

17 A Nothing.

18 Q What were they asking you to do?

19 A Plead guilty to 30 years. And once the trial started,
20 I -- I informed the judge that -- you know, tried to inform
21 the judge that I was under a lot of -- of medication. I
22 was taking mental health medication. And I wasn't too --
23 thinking too well. I still take mental health medication.
24 Sometime I get confused; some stuff I be saying that
25 doesn't happen.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 41

1 I informed the judge that -- you know, that we needed
2 a continuance due to the fact that, you know, they -- they
3 wasn't ready. And they hadn't talked to me. I mean, they
4 didn't prepare me for trial.

5 But he determined that it -- it -- no, it was okay,
6 you know ---

7 Q Okay.

8 A --- to move on.

9 Q Well, let -- let's set the -- the crime scene briefly
10 real quick. On the day this happened -- because you said,
11 apparently, there were three consecutive carjackings while
12 you were getting cars to drive, correct? That -- that was
13 the evidence adduced at trial ---

14 A Right.

15 Q --- whether you remember it or not ---

16 A Right.

17 Q --- right?

18 A Right.

19 Q Okay. Now, then you end up at a trailer owned by
20 Deborah Anne Simmons, correct?

21 A That's correct.

22 Q Okay. Who was Deborah Anne Simmons to you?

23 A She was my girlfriend cousin.

24 Q Okay. And who was your girlfriend?

25 A Roberts S. Neil.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 42

1 Q Okay. And were you going there to find Roberta?

2 A No, not exactly. I -- I went there because Debbie
3 Anne -- we had talked on the phone that morning. She --
4 she told me to come over, you know, with her a little
5 while. I had been going over there periodically, helping
6 her husband, which is my cousin, work on cars.

7 So I didn't think much of it on that Saturday. I
8 mean, you know, Roberta was coming home when she come home,
9 you know, far as I was concerned. But the fact of the
10 matter is that, you know, once I got there and walked in
11 the house, it all turned around to something different as
12 to I burglarized the house, kidnaped her, and -- and those
13 things that never happened. I mean, and the fact that --
14 the matter, the 911 tape would have cleared me of those
15 charges because Debbie Anne called 911 once I was there.
16 And I was standing right there side her. And she -- and I
17 heard what was asked on the phone.

18 Q What -- what was asked?

19 A She -- whoever was on the phone, they asked her was I
20 holding her hostage? And she said no. And she said, "All
21 I want y'all to do is just leave out from round my house."
22 That's why the 911 tape was important. I never -- I -- I
23 never burglarized the house; I never kidnaped her. I mean,
24 I was -- I talked on the phone to her. She told me to come
25 over.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 43

1 Q Okay.

2 A That was that.

3 Q Well, so we didn't really have an -- at -- at the
4 actual crime scene -- alleged crime scene ---

5 A Right.

6 Q --- we really didn't have an identification issue as
7 far as who came out of the trailer, correct?

8 A No.

9 Q The --- the -- who came out of the trailer at the end
10 of this?

11 A It was me.

12 Q And -- and Ms. Simmons?

13 A That's correct.

14 Q Okay. And some other people had been in there,
15 Kenyatta Wilson with her kids, but they got out?

16 A Yeah. They left ---

17 Q Okay.

18 A --- I mean.

19 Q And you didn't try to stop them?

20 A No, I didn't try ---

21 Q Okay.

22 A --- to stop them ---

23 Q All right.

24 A --- you know.

25 Q And who is Ms. -- okay. Wait a minute. The -- the --

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 44

1 the husband, his name is Ari or -- or Ali or ---

2 A No. Ali is Debbie Anne brother.

3 Q Brother? Okay.

4 Did he live there too?

5 A No.

6 Q Okay. Is that the -- when they turned the crime scene
7 over?

8 A That's correct.

9 Q We'll get back to that too. Now, all right. So
10 basically, you were not contesting at trial that you
11 weren't there; you were contesting that you didn't
12 burglarize/kidnap/rape?

13 A That's correct.

14 Q Okay. Did you also contest whether or not you fired
15 back at these Richland County sheriff's deputy, which was
16 the assault-with-intent-to-kill charge?

17 A Well -- well, yes, I did contest that, because I
18 didn't do that. And the fact that Solicitor Luck Campbell
19 presented to the jury that, with a photo -- with a photo,
20 that I had on a green jacket and she could put me in that
21 room that they believed that I was in to shoot at the
22 officers, and that wasn't my jacket.

23 And -- you know, and I had wanted it tested because,
24 you know, the -- she made the jury believe that I'm
25 shooting at the officers. Well, pretty much, anybody will

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 45

1 say, "Well, if he shooting at the officer, well, yeah, he
2 did all the other things. Well, he raped her." That --
3 that came to be not true. "Well, he -- well, burglary."
4 Well, okay. So, you know, it was -- that's not ---

5 Q Did your attorneys -- and -- and when I'm saying that,
6 from here on out, I'm going to be talking about your trial
7 attorneys, okay, Mr. O'Neil ---

8 A Uh-huh.

9 Q --- and Ms. Singletary.

10 A Uh-huh.

11 Q Did they know your account of what happened before you
12 went to trial?

13 A Well, I would think they -- they -- they knew what my
14 statement -- alleged statement said. But even that wasn't
15 true. But as to what actually happened, I -- you know, I
16 -- I -- I -- I -- I -- I did, I think, at one -- one -- one
17 time they visit, I did go into trying to explain to them as
18 best -- as best I could as to what had took place, I mean.

19 You know, I don't know if I ever got a chance to
20 actually give them -- the whole scenario of what I knew and
21 what I -- what I had done. And, you know, I don't think
22 they did.

23 Q Were you able to remember enough from what happened
24 that day to have assisted them in your defense?

25 A Well, yeah, little bits and pieces. That -- yeah, to

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 46

1 assist them that day. I -- I -- yeah, I could remember a
2 little bit. But, you know, I can -- I -- I remember more
3 now, I mean, since I done been on this medication for a
4 long time and kind of got me settled down a little bit.

5 And -- but, you know, I'm pretty much still having
6 some problems, you know, with remembering and -- and stuff
7 like that. But it's better than it were.

8 Q Okay.

9 A As to assist them, I did all I could. And the little
10 bit I did do, it -- it was ignored.

11 Q Okay. So a year and a half after the crime -- the
12 alleged crime, when you get evaluated by the mental health
13 professionals, they say you're competent. Were you in a
14 better state of mind a year and a half later?

15 A Somewhat. I was somewhat a little bit better.

16 Q Okay. And -- and how were -- how did you become
17 better, Mr. Ashford?

18 A By taking the medication.

19 Q Okay. Were you on the medication the day of the
20 alleged crime?

21 A No.

22 Q Okay. And why weren't you on the medication?

23 A I didn't follow up my appointment with the mental
24 health.

25 Q So had you run out of it?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 47

1 A Right.

2 Q Okay.

3 A Right.

4 Q Now, do you recall there being a -- actually, in the
5 -- early in the trial, that there was a oral motion to
6 relieve counsel, Mr. O'Neil and Ms. Singletary?

7 A That -- that's correct.

8 Q Okay. Was that fully heard by Judge Cooper?

9 A It was heard. I mean -- I mean, to say fully heard?
10 I mean, apparently not because he disregarded what I was
11 trying to tell him about the continuance and the fact that
12 we didn't have everything that I had, you know, needed for
13 the trial and the lack of time spent with me with my
14 attorney.

15 Q Okay.

16 A He didn't pay any of that any attention.

17 Q And -- and I'm going through the trial transcript,
18 starting on -- on page 132. And it goes on for about 20
19 pages. Did you let the Court know that they had not
20 obtained telephone records from your workers' comp case?

21 A Well, no. It wasn't telephone records. It was
22 records to where I have borrowed \$3,000. And sometime that
23 February and May, I had to pay -- if I hadn't paid it back
24 before May or something, I had to pay \$4,000 back. And
25 that was an issue because ---

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 48

1 Q Okay.

2 A --- in my statement ---

3 Q All right.

4 A --- the -- my alleged statement, the investigator
5 crossed it up and said that I was mad at Roberta about
6 taking my \$4,000. And I -- and I had -- you know, I hadn't
7 -- I never told him that.

8 MR. BELDING: Beg the Court's indulgence?

9 THE COURT: All right, sir.

10 (Whereupon, Mr. Mitchell and Mr. Belding conferred.)

11 Q Mr. Ashford, I'm going to hand you a document and ask
12 if you recognize what that is.

13 A This is my alleged statement.

14 Q Okay. Did you sign it? Is there a signature of yours
15 on there?

16 A Yes, it is.

17 Q Okay. Was this brought up in the trial?

18 A As to what?

19 Q Well, did -- did they talk about the fact that you
20 signed a statement with the Richland County Sheriff's
21 Department on the evening of the alleged crime?

22 A Yes. I think that was ---

23 Q Okay.

24 A --- talked about.

25 MR. BELDING: Your Honor, I'd like to admit this -- it

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 49

1 -- I'm going to ask that all these be admitted at some
2 point. I need to get a -- two more copies, one for the
3 Court and one -- I thought I had we had two copies that I
4 can't find right at this moment.

5 THE COURT: Okay.

6 MR. BELDING: We'll get those to you.

7 THE COURT: All right. Admitted without objection?

8 MR. MITCHELL: No objection on that.

9 (Whereupon, Plaintiff's Exhibit 1 was marked and
10 entered into evidence.)

11 MR. BELDING: Thank you, Your Honor. May it please
12 the Court.

13 Q So, Mr. Ashford, what has been marked as Plaintiff's
14 Exhibit 1 to this evidentiary hearing is a copy of the
15 statement to the Richland County Sheriff's Department,
16 dated February 24th, 2007, the date of the alleged crime,
17 correct?

18 A Correct.

19 Q Okay. Now, you stated that the -- did you type this
20 up?

21 A No, I did not.

22 Q Okay. Did they ask you these questions -- do you
23 recall them asking you these questions from which these
24 answers were derived?

25 A A -- a couple of them.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 50

1 Q Okay. And the -- the second one --

2 MR. BELDING: And I apologize again for not having
3 this in front of Your Honor.

4 Q --- there's a question about -- actually, it says:
5 "Tell me what happened today." And there's a long
6 narrative. Again, you didn't type this up. But it -- it's
7 -- it talks about this \$4,000. It -- what -- what of the
8 statement was not right about this \$4,000?

9 A The investigator said that I told them that Roberta
10 had took \$4,000 from me and this was the reason why I was
11 looking for her. And that's incorrect. Roberta hadn't
12 took nary a dime from me.

13 Q Okay.

14 A I borrowed \$3,000 from this loan company. I called
15 Roberta and was talking to her, letting her know that I had
16 to pay \$4,000 back by May. And I told them this.

17 Q Okay.

18 A But to make it look like I'm at fault and done
19 committed these crimes, they redid it and re -- being that
20 I couldn't see it, because I had tear gas in my eyes and I
21 never was treated by EMS. So all I just did what they ask
22 me to do, was sign it, just like Mr. Malachi James.

23 Q Okay. Wait ---

24 A He's ---

25 Q --- a minute. Let me -- I understand what you're

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 51

1 saying. I'm not going to forget about that.

2 A Uh-huh.

3 Q Let -- let me show you what is behind Tab 7 to your
4 brief and ask if you recognize these couple of pieces of
5 paper here.

6 A Yeah. That's correct.

7 Q What -- what -- okay. What -- what's correct about --
8 what is that?

9 A The -- this is a -- a -- a settlement that I got later
10 on. I mean, this -- this has -- this -- this part of it --
11 this part of it, it -- it -- it has no bearing on what the
12 issue I was talking about, the \$4,000. There is another
13 part of it that you should have.

14 Q Okay. This -- this shows that you got the amount of
15 money that you were talking about ---

16 A Right.

17 Q --- correct?

18 A Right. That ---

19 Q The \$3,110?

20 A That's right.

21 Q Okay. Wasn't 4,000?

22 A That's right.

23 Q All right. And -- and -- and I'm sorry.

24 A That ---

25 Q There is a third page.

1 A That was the page I was talking about.

2 Q Okay. The third page, it says "Schedule A." What is
3 that all about?

4 A Schedule A? Where you see that at?

5 Q Right there.

6 A Okay. Okay. That's -- that's the -- the payment
7 plan.

8 Q Okay.

9 A Yeah. On or before 2007, in May sometime, I had to
10 pay \$4,026.43 back.

11 Q Okay. All right. And somehow they managed to get
12 that wrong when they wrote up your statement; is that
13 right?

14 A That's correct.

15 Q Okay. Did your attorneys understand -- your trial
16 attorneys, did they understand what the issue was with this
17 \$4,000?

18 A No.

19 Q Did you try to explain it to them?

20 A Yes.

21 Q Had you given them copies of theses documents at that
22 time?

23 A No. They gave it to me that morning of trial.

24 Q That -- who gave it to you?

25 A Nicole.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 53

1 Q The -- Ms. ---

2 A Oh. No. I think it was Deon.

3 Q Okay. But in trial they brought up your statement as
4 if everything in there that you -- and you signed it -- is
5 that everything was true, correct?

6 A That's correct.

7 Q Okay. Were your attorneys prepared to cross-examine
8 them on that point?

9 A No.

10 Q Okay.

11 A At least they didn't.

12 Q Now, let me make sure I -- I -- I -- a couple things.
13 I think we covered it. The -- you -- there was a couple
14 things you kept specifically asking for: the DNA test and
15 the 911 calls. The 911 calls were important to show what?

16 A That I was -- that I hadn't committed the kidnapping
17 and the burglary. I mean ---

18 Q Okay.

19 A --- yeah.

20 Q Because of why? What -- what was your statement about
21 what would've been made? What -- what -- what would they
22 have found if they had had those 911 calls?

23 A That tape would've shown that when she called 911, the
24 question that was asked was were I holding her hostage.
25 She said no and that all she had wanted them to do was get

1 out from around her house.

2 Q Okay. Those tapes weren't available for trial?

3 A No.

4 Q And they were not available right before trial,
5 correct?

6 A That's correct.

7 Q Right.

8 A At least that's what I was told.

9 Q All right. So that would have shown that you were not
10 holding her against her will, correct?

11 A That's correct.

12 Q All right. Also, back to the DNA test -- all right.
13 The green jacket -- famous green jacket -- what kind of a
14 coat were you wearing that day?

15 A Brown, leather jacket.

16 Q Okay. And, in fact, Deborah Anne Simmons -- and right
17 now I'm referring to -- it's in the trial transcript at
18 page 362, right in the middle of lines 13 to 15 -- says in
19 her testimony that you were wearing a brown, leather
20 jacket, correct?

21 A That's correct.

22 Q Okay. Where was the green jacket?

23 A All I know is a picture was taken of a -- a green
24 jacket laying on a bed in that trailer. I -- you know, I
25 -- that's all I know. I mean, I don't know if it was all

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 55

1 -- there all the time, if he -- if Ali Harrison, which
2 Patricia Enzor claimed to have had the scene ---

3 Q Well, the -- I -- I know where you're going with that.
4 But let -- let's do this a step at a time, because ---

5 A Oh.

6 Q --- it's -- it's ---

7 A Oh.

8 Q --- it's -- it's complicated.

9 A Okay.

10 Q This -- this green jacket, to the best of your
11 knowledge, where was it in the trailer?

12 A It was laying -- laying across a bed.

13 Q Okay. Back in a bedroom?

14 A That's what it shows on the picture.

15 Q Okay. And originally in her testimony, Deborah Anne
16 Simmons, the main alleged victim, stated that you were
17 wearing a brown, leather jacket, correct?

18 A That's correct.

19 Q Okay. And then, on redirect Luck Campbell showed Ms.
20 Simmons a copy of this photograph, which had been
21 introduced without objection as State's 102. Do you recall
22 that?

23 A I do.

24 Q Okay. And that's on page -- page 380, again, in the
25 middle, in lines 13 and 15. And she asked her, Deborah

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 56

1 Anne Simmons, is this the jacket that you were wearing.

2 And she replied yes, even though it's a green jacket. And
3 she had already testified that you were wearing a brown
4 jacket; isn't that right?

5 A That's correct.

6 Q Okay. At that time the cross-examination was being
7 done by Ms. Nicole Singletary. Did Ms. Nicole Singletary
8 cross -- recross-examine Deborah Anne Simmons about this
9 discrepancy?

10 A I don't think so.

11 Q Okay. No recross?

12 A Nope.

13 Q Now, also during this trial there was a man named Olin
14 Kelly. Do you remember who that -- Olin King Kelly -- do
15 you remember who that is?

16 A By name, that's correct.

17 Q Okay.

18 A I -- I ---

19 Q Was he one of the carjacking victims?

20 A That -- that's correct.

21 Q Okay. Now, there was an in-camera -- you know what
22 that means?

23 A I'm -- I know.

24 Q Okay. Outside the presence of the jury.

25 A Right.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 57

1 Q There was an in-camera hearing about what is
2 identification testimony might be. Do you recall that?

3 A Yeah.

4 Q Okay. Where Mr. Kelly talked about the man wearing a
5 green jacket. Do you recall that?

6 A That's correct.

7 Q Okay. When he actually testified before the jury, he
8 left it out; he didn't say green. He said he was wearing a
9 jacket. Do you recall that?

10 A I think so.

11 Q Okay. The -- the -- the -- the reason -- what was the
12 reason you asked your attorneys from the very beginning get
13 a DNA test on that green jacket? Why?

14 A Because the jacket indicated I had been in that room,
15 shooting at the officers, which I did not.

16 Q Uh-huh.

17 A And to persuade the jury that I had shot at these
18 officers, it made it look bad for me as to the other part
19 of the crimes that I had allegedly committed.

20 Q Okay.

21 A And just like it was the criminal sexual conduct, if
22 -- I was found not guilty of that because that never
23 happened. If I had been found not guilty of shooting at
24 the officers, maybe the burglary wouldn't have been --
25 wouldn't have happened and found guilty of it. So that --

1 that jacket, it made a difference ---

2 Q Okay.

3 A --- with the jury.

4 Q Now, finish -- let me finish up on this issue about
5 your trial attorneys. Not only, it's your testimony, that
6 they saw you a couple of times, do you know how much time
7 they had been practicing criminal defense before your
8 trial?

9 A No. I did not at the time.

10 Q Okay. Were you able to find out later?

11 A Yes, I ---

12 Q Let me ---

13 A --- were.

14 Q Let me just show you what's behind Tab 4 and ask: Is
15 that a letter from the Supreme Court that was sent to you
16 about Ms. Singletary?

17 A That's correct.

18 Q And when does it say she was approved to ---

19 A January 27th ---

20 Q Of what ---

21 A --- 2006.

22 Q Okay. A little over two years before your -- what was
23 your trial ---

24 A Three year -- three years.

25 Q Three years?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 59

- 1 A Uh-huh.
- 2 Q Okay.
- 3 A It was three years.
- 4 Q A little over three years before your trial?
- 5 A Right.
- 6 Q And the other letter behind Tab 4 is from the Supreme
- 7 Court, and it's about Mr. O'Neil. And when was he
- 8 qualified?
- 9 A November 16th, 2006, a little ---
- 10 Q Okay.
- 11 A --- over 2 1/2 years.
- 12 Q Okay. Did you feel that your trial attorneys had
- 13 enough experience to do a case of this magnitude?
- 14 A No.
- 15 Q Did they show during the course of the trial to you
- 16 that they knew enough about criminal defense to effectively
- 17 represent you in this case?
- 18 A Well, Deon O'Neil was the lead attorney ---
- 19 Q Okay.
- 20 A --- which had less experience than Nicole. Nicole
- 21 showed that she pretty much, with the help of someone her
- 22 equal, probably could have made a difference in the trial
- 23 at ---
- 24 Q All right.
- 25 A --- some point, while Deon sit there sleeping ---

1 Q Okay.

2 A --- during the trial. And I pointed that out to
3 Nicole several times; said, "He's sleeping." I said, you
4 know, "Why won't he object and" ---

5 Q Okay.

6 A --- and ---

7 Q Did you actually write her a note?

8 A No. I -- no. I -- I -- I wrote her several notes. I
9 asked her why he wouldn't object and -- you know, and ---

10 Q Let me ask you if -- if you recognize this piece of
11 paper here.

12 A I do.

13 Q What is this?

14 A Well, that's a note that I wrote to Nicole, because
15 Deon was sleep. And I asked Nicole: "Why do he sit there
16 and don't object?"

17 Q Okay. Is that your handwriting?

18 A That's my ---

19 Q Okay.

20 A --- handwriting.

21 Q Whose handwriting is below that?

22 A Nicole.

23 Q Okay. Is this something you had from the trial of
24 your case ---

25 A That's ---

DIRECT EXAMINATION BY MR. BELDING -- RANDOLPH ASHFORD 61

1 Q --- in your possession?

2 A That's right. A note ---

3 Q Okay.

4 A --- all the notes.

5 MR. BELDING: Your Honor, I'd like to have this
6 admitted as Plaintiff -- Applicant's Exhibit No. 2.

7 THE COURT: Admitted without objection?

8 MR. MITCHELL: No objection.

9 (Whereupon, Plaintiff's Exhibit No. 2 was marked and
10 entered into evidence.)

11 MR. BELDING: Thank you.

12 Q Showing you again what's now been marked and admitted
13 into evidence as Petitioner's Exhibit No. 2, what does Ms.
14 Singletary write back to you?

15 A Well, she -- she didn't -- actually didn't -- she
16 said: "He probably does not write to -- want to highlight
17 the issue. Sometimes we have to make that decision because
18 the jury do not interpret it the same way we did. And if
19 we saw something, if highlighted, it -- and the jury is
20 like they did not want us to hear it."

21 Q Understand. Was this written while you thought Mr.
22 O'Neil was asleep during the trial?

23 A Right. He was asleep when she wrote that.

24 Q Okay.

25 A I -- I thought she was going to actually do something

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 62

1 about him sleeping. I -- I was writing something about him
2 sleeping. But she didn't -- that's what she wrote.

3 Q All right. Now, let me ask you something. Do you
4 recall during the state's -- still during the state's case
5 against you, that with the jury out of the room, Mr. O'Neil
6 brought up an issue about possible juror misconduct?

7 A Yes, he did.

8 Q Okay.

9 MR. BELDING: Your Honor, I'm -- I'm on -- in the
10 transcript of page 665, starting at the beginning, lines --
11 starting with line 1.

12 Q Do you recall Mr. O'Neil informing Judge Cooper that
13 it'd been made aware that a Richland County sheriff's
14 deputy had overheard a juror stating, "I've heard all I
15 need to hear"?

16 A That's correct.

17 Q Okay. If -- if, in fact, that was the case, that the
18 juror was evidencing that her mind was already made up and
19 stated that in front of other jurors, would that be juror
20 misconduct, as you understand it?

21 A It would.

22 Q Okay. Would that have prejudiced your case?

23 A It would.

24 Q Had you even been able to get up and give a defense
25 yet?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 63

1 A No.

2 Q Okay. What did the Court do about this report?

3 A They did -- the -- the Court did some sort of in-
4 camera hearing, I think, on the issue. And Mr. O'Neil
5 indicated that it was three jurors ---

6 Q Okay.

7 A --- black jurors.

8 Q Okay. What was the description from the -- Deputy
9 White, I believe his name was. What was the description of
10 the person -- the juror he overheard?

11 A It was a black female ---

12 Q Black ---

13 A --- he heard.

14 Q --- female. Okay.

15 Now, how many black females were on your jury?

16 A Well, from the record -- and I -- and I remember --
17 three of them. But there was actually four of them.

18 Q Okay. And wasn't one of the alternates a black
19 female?

20 A That's correct.

21 Q So actually, sitting in the jury box and in the jury
22 room during the trial, there were five black females ---

23 A That's ---

24 Q --- correct?

25 A That's correct.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 64

1 Q Okay. And I had pointed this out in our brief ---

2 MR. BELDING: And the places in the transcript, Your
3 Honor, where they actually were seated.

4 Q --- that these were Jurors 208, 172, 286, 134, and the
5 alternate juror -- the second alternate juror, who was
6 Juror No. 58, were all black females, correct?

7 A That's correct.

8 Q All right. So we have a report that a deputy
9 overheard what sounded to be juror misconduct. What did
10 Mr. O'Neil ask the Court to do to find out, you know, what
11 needed to be done about this?

12 A He asked the Court to -- to question all the -- all
13 the jurors. And that was the extent of that. The -- the
14 Court itself, it -- it -- they -- they -- they called in a
15 white female juror.

16 Q Is -- is -- isn't it true that -- that -- that only,
17 of the five jurors that were examined by the Court in-
18 camera, as you said, that only two of them were black
19 females?

20 A That was -- repeat that.

21 Q Okay. Isn't it true that of the five jurors that were
22 brought in for the judge to question about whether they had
23 said anything ---

24 A That's correct.

25 Q --- that only two of the five were actually black

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 65

1 females?

2 A That's correct.

3 Q Okay. At the -- do you recall, at the end of this
4 decision with the judge the next day, your attorney, Mr.
5 O'Neil, stating, "Well, I guess I would ask for a
6 mistrial"?

7 A That's correct.

8 Q Was that granted?

9 A No.

10 Q Okay.

11 A The judge only actually questioned one of the -- the
12 black jurors, I mean, and a white female. I mean, the
13 other two or three that possibly could have said they had
14 heard all they could -- had needed to hear never was
15 questioned or anything. It was just skipped over.

16 Q Okay. Now, let me go to another issue, something
17 you've pointed out a minute ago. Do you recall a Richland
18 County sheriff's deputy, a crime-scene investigator named
19 Patricia Reed-Enzor?

20 A That's correct.

21 Q Do you remember her testimony at the -- at the trial?

22 A I do.

23 Q Okay. Did you recall her testifying that she took
24 command of the crime scene?

25 A Yes. That -- that was in one of her bench notes ---

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 66

1 Q Okay.

2 A --- at the crime scene and -- and ---

3 MR. BELDING: And I have the -- the transcript
4 notations in my brief, Your Honor, so you can follow along.

5 Q That was a -- a quote: She took command of the crime
6 scene. And then in -- later on, she testified that she had
7 the scene secured overnight. Do you recall her saying that
8 under oath?

9 A I do.

10 Q Okay. Have you seen her own bench notes?

11 A Yes, I -- yes, I have.

12 Q Okay. Let me -- let me ask you if you recognize what
13 is behind Tab 5 as a crime-scene-analysis report from
14 Patricia Reed-Enzor.

15 A Okay.

16 Q How did you get a copy of this?

17 A It -- it was in my discovery.

18 Q Okay. And behind that one page are the actual bench
19 notes, also signed by Ms. -- Ms. Reed-Enzor. And did you
20 get these notes the same way?

21 A The same way.

22 Q Okay. And in the actual report, didn't Investigator
23 Reed-Enzor say that the crime scene was secured and a
24 rotation started and, the investigating officer being her,
25 returned the scene over to Deputy Benson, correct?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 67

1 A That's correct.

2 Q Okay. But in the bench notes, Ms. Reed-Enzor states
3 that it was turned over to Ali Harrison, a resident,
4 apparently, the person -- p-r-e -- who took possession of
5 the residence. Do you recall that?

6 A I recall that.

7 Q Okay. Now, the photographs -- there was a lot of
8 photographs introduced in this trial. Do you remember
9 that?

10 A That's correct.

11 Q In fact, the green jacket itself that you wanted the
12 DNA test on, the green jacket itself was never introduced
13 into evidence, was it?

14 A Yes, it was.

15 Q No. The actual ---

16 A Oh, no.

17 Q --- green ---

18 A Oh.

19 Q --- jacket.

20 A Oh. No, it wasn't.

21 Q Okay.

22 A It was the photo entered.

23 Q A photo?

24 A Right.

25 Q And according to the testimony of Ms. Reed-Enzor, when

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 68

1 were those photos taken?

2 A The next day after she had turned the crime scene over
3 to of the residents' brother.

4 Q Okay. Did your attorneys question Ms. Reed-Enzor
5 about possible contamination of the crime scene?

6 A No.

7 Q Okay. And, in fact, State's Exhibit 102 was a picture
8 taken the next day after people that weren't law
9 enforcement were in the trailer?

10 A That's correct.

11 Q Okay. Now, do you know who Malachi James is?

12 A Yes, I do.

13 Q Who is he?

14 A He's the older man that got out of the taxicab.

15 Q Okay. It was just the third carjacking ---

16 A The third ---

17 Q --- that they were talking about ---

18 A The third ---

19 Q Okay. The last carjacking?

20 A The last carjacking.

21 Q Is that the -- is -- is -- wasn't it a blue taxicab
22 you ended up driving over to Deborah Anne Simmons' trailer?

23 A That's correct.

24 Q Okay. Now, Mr. -- Mr. James testified briefly at the
25 trial, correct?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 69

1 A That's correct.

2 Q All right. Do you recall that he testified that there
3 was something written on his statement form that he didn't
4 say?

5 A Yes. He -- during the -- the solicitor's cross-
6 examination, I think, of ---

7 Q Okay.

8 A --- of -- of him, he told her that, you know, he
9 signed the statement but that statement, he didn't -- he
10 didn't tell the officers that ---

11 Q Okay.

12 A --- the -- the investigator that.

13 Q And I'm referring to the transcript on page 298,
14 starting at line 2. Did -- did this statement form -- you
15 recognize this?

16 A Yes, I do.

17 Q And is that a statement from Malachi James?

18 A Well, he said that he didn't give him that statement,
19 but he had signed it. But that wasn't what he had told
20 him.

21 Q Okay. And that was in your trial?

22 A That was in my trial.

23 Q All right. Now, you remember me showing you Exhibit
24 1, which was your statement?

25 A That's correct.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 70

1 Q Okay. Did your attorneys, in defending you, point out
2 to the jury that one of the state's own witnesses, Malachi
3 James, had -- had testified that stuff was written down he
4 didn't say?

5 A No, they did not.

6 Q Did they do anything to try to dissuade the jury that
7 this statement of yours was not full of truthful
8 information?

9 A No, they did not.

10 Q Do you recall, during the trial at any point, Mr.
11 Ashford, that people in the gallery were laughing, patting
12 their feet, rolling their eyes, or making inappropriate
13 facial expressions?

14 A Yes. I was aware of all that.

15 Q Did you actually turn around and see them doing that?

16 A Yeah, I saw it.

17 Q Okay.

18 A I mean, I was sitting right there, just like I'm here.
19 And they was -- they was there and -- there and I was -- I
20 was looking at them. And I look at the judge and I looked
21 at the court reporter and I looked at my attorney. And --
22 and nobody seemed to even care. And it -- it got so bad at
23 one point, I had -- I just didn't say anything until they
24 calmed down a little bit.

25 Q Okay. And ---

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 71

1 A And then ---

2 Q --- now, were these people ---

3 A Yeah.

4 Q --- in sight of the jury? Could the jury see these
5 people?

6 A Yeah. Well ---

7 Q All right.

8 A --- the ones that wasn't sleep.

9 Q Okay. Did you express to your trial attorneys that
10 you didn't think that was fair or should be allowed?

11 A Well, no. I was on the stand when all this was taking
12 ---

13 Q Okay.

14 A --- place. But when ---

15 Q That's right.

16 A When I got off the stand and got to the table, I was
17 going to mention it to Nicole. But at that time, she was
18 really mad about it.

19 Q Okay.

20 A I mean, she -- I -- I -- you know, I could see
21 something was going on. And so I didn't a chance to say
22 anything before she up and told the judge that all this was
23 going on and, you know, asked for a mistrial.

24 Q Okay.

25 A Yeah.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 72

1 Q Did she -- do you recall her making a statement on the
2 record that she didn't object to this activity while it was
3 going on because, quote, she didn't want to interrupt the
4 testimony at that point?

5 A Yes. Yes. I -- I -- she made that statement.

6 Q Okay. So when -- in the transcript under -- on page
7 858 -- and then Judge Cooper responded: "Well, then, you
8 have to live with it."

9 A That's correct.

10 Q Okay. So your attorneys failed to protect you from
11 these possible shenanigans going on in the peanut gallery?

12 A That's correct. Ineffective ---

13 Q Okay.

14 A --- assistance of counsel.

15 Q Now, do you recall Luck Campbell's closing argument?

16 A A lot of it.

17 Q Okay. Do you recall her talking about two of the
18 witnesses that the state had put up, a Deputy Unger and a
19 Deputy Nathan White?

20 A I recall.

21 Q Okay. Do you recall -- this is on the transcript on
22 page 920 at lines 8 and 9. Do you recall Ms. Campbell
23 stating to the jury, "You heard from Deputy Unger and
24 Nathan White, and they got up here and were honest with
25 you"?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 73

1 A Yes, I recall that.

2 Q Okay.

3 A She said it.

4 Q Okay. Did your attorneys object to that?

5 A No, they did not, which they should have.

6 Q Okay. Why should they have objected to that?

7 A Because the -- the prosecutor -- solicitor was
8 vouching for the credibility of the state witnesses. And
9 that could have been part of that note I was writing to
10 Nicole, you know: Why doesn't he object?

11 Q All right. I got you. Okay.

12 A Right.

13 Q And you, through your own research now, I understand,
14 that there's state law that says that that's prosecutorial
15 misconduct in some cases, correct?

16 A That's correct.

17 Q Okay. Do you recall Ms. Campbell also saying that the
18 jury had heard from Eric Barnes and Investigator Thomas
19 credibility, because either you believe those two men would
20 put their careers on the line to frame this poor man or you
21 believe the defendant? Do you recall that?

22 A I recall it.

23 Q Okay. And isn't that a form of vouching for the
24 state's witnesses?

25 A That's correct.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 74

1 Q Okay. Now, Judge Cooper gave a jury charge at the end
2 after everybody had rested, right?

3 A (Nodded head up and down.)

4 Q And ---

5 A That's correct.

6 Q --- on page 930 of the transcript, Judge Cooper was
7 trying to explain to the jury the two types of evidence
8 they would've heard during the trial. Do you remember
9 that?

10 A I remember.

11 Q Okay. And you -- do you remember what the two types
12 of evidence are?

13 A Circumstantial evidence and -- and -- I can't remember
14 the other one.

15 Q Okay. Well, I'm just testing you. Direct evidence.

16 A Direct evidence.

17 Q Okay. All right. Now -- and do you recall the judge
18 adding the statement "And we probably had both in this
19 case"?

20 A Yes. He did. And he ---

21 Q Okay.

22 A --- he made that statement. And there was no
23 objection to that statement.

24 Q Okay.

25 A Because at some point in the record, he said that he

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 75

1 was not allowed to -- to give the jury any opinion as to
2 what the evidence may be in this case or indicate to them
3 any kind of way one way or the other whether or not he had
4 chosen a side, you know. And there was no objection. I
5 mean, so ---

6 Q Okay. I want to ask you if you recall -- we're here
7 looking at words printed on a piece of paper. That doesn't
8 always tell you the way somebody said something. It's just
9 the words.

10 A That's right.

11 Q To your recollection, did Judge Cooper say that in a
12 way that the jury could've understood him to mean we got
13 all evidence in this case?

14 A I think he did.

15 Q Okay. Is that the way you understood ---

16 A That's the way ---

17 Q --- at that time?

18 A That's the way I understood it.

19 Q Did you ask your attorneys to object to that?

20 A Yes, I did.

21 Q Did they?

22 A Nope.

23 Q Okay. All right. Do you recall, in the closing
24 argument, your, I guess, lead trial counsel, Deon O'Neil,
25 stating something about how Leon Lott had gotten rid of all

1 the Olympic swimmers in the county?

2 A Yes, I do remember him saying that in his closing
3 argument.

4 Q It was on page 899. What -- what did that -- what did
5 that refer to?

6 A Well, it -- to me, it referred to Deon O'Neil had
7 indicated to the jury that Leon Lott was -- and -- and his
8 team was correct in whatever they did, to me. And it --
9 and it -- and it -- it made it look like as if I was guilty
10 of -- of what I was accused of. You know, for -- that Leon
11 Lott has all the power, you know, and -- you know, it -- it
12 gave the state, you know, something to -- more to, you
13 know, persuade the jury that I was guilty, I mean, by him
14 making that -- that -- that statement. That's what I -- I
15 implied.

16 Q Okay. I'm going to ask you one more thing here, and I
17 want to make sure. I'm going to show you what is behind
18 Tab No. 8 attached to the brief. Do you recognize this
19 letter?

20 A That's correct.

21 Q Who wrote it?

22 A I did.

23 Q What's the date?

24 A September 15, 2010.

25 Q You remember -- who did you address it to?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 77

1 A To solicitor ---

2 Q Okay.

3 A --- solicitor's office.

4 Q Okay. Is it Mr. Warren B. Giese at that time? He was

5 ---

6 A That ---

7 Q --- the solicitor?

8 A That's correct.

9 Q Okay. What were you asking for?

10 A I was asking for the 93 calls, the 911 tape, the
11 closed incident report, and -- and -- and phone calls from
12 the Richland County Sheriff's Department.

13 Q Okay.

14 A Uh-huh.

15 Q Now, tell me about the 93 phone calls.

16 A Well, I don't know very much about them, because I
17 never received that -- that -- that information. I mean,
18 in my discovery that -- that along with the rest of it, I
19 never -- never received that.

20 Q Okay.

21 A It was mentioned in the -- in the trial transcript of
22 the 93 calls. And it was also said to -- did -- did they
23 want to hear it or rehear it, the 93 calls, or -- or
24 something to that effect. Well, I never heard it the first
25 time, I mean.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 78

1 Q And -- and were these calls between Richland County
2 Sheriff's Department people and people inside the trailer?

3 A I would think so.

4 Q Okay.

5 A I mean, I really don't know because I -- I don't have
6 the actual document ---

7 Q I understand.

8 A --- to show what's ---

9 Q Did you participate in any of those phone calls?

10 A Well, yes. I ---

11 Q Okay.

12 A --- I did.

13 Q What -- the phone must've been ringing a lot.

14 A Oh, it ---

15 Q Was it?

16 A Oh, it was. It was ringing a lot.

17 Q Okay. And none -- did anyone ever produce these 93
18 phone calls?

19 A No.

20 Q Okay. No transcripts of them?

21 A Not -- no. I don't have them.

22 Q If -- if they had had a transcript, what would've been
23 on there, Mr. Ashford?

24 A Well, I would think it would been on there the
25 questions that was asked, I mean, of me while I was in the

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 79

1 -- in the -- in the house. And -- and then, to that
2 effect, I -- I believe, at some point in there, it would
3 show that I didn't -- I told them -- you know, they asked
4 me was I holding a hostage, and I said no. And it -- you
5 know, it is quite possible, I guess, that maybe they had --
6 they could have heard something she said while I was on the
7 phone. Because she said a lot of things about Richland
8 County Sheriff Department ---

9 Q Okay.

10 A --- that, you know, she despised them and she didn't
11 like them and they had done been to her house one time for
12 some -- searching her house for some dope or some -- some
13 stuff like that. You know, and it was like she was playing
14 a game with them.

15 She -- you know, she -- she would tell me, you know,
16 while I was on the phone, "Don't -- you know, just tell
17 them this; tell them that." And so I -- I'm pretty sure
18 that they probably -- it probably would've been recorded.
19 It -- they probably heard it because she said it loud
20 enough, you know, just like I was talking on the phone. So
21 ---

22 Q I see. Was it your position at trial as the defendant
23 that you might've carjacked these three cars; we're a
24 little hazy on that.

25 A Well, yeah. Because I did not carjack the three cars.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 80

1 Q Okay.

2 A I -- I didn't actually carjack none of the cars.

3 Q Okay.

4 A The thing it was -- I -- I hadn't lose my memory -- I
5 mean, my mind so -- I'm going to say it like that. I ended
6 up with the gun. And I don't -- and I -- I -- you know, I
7 know I'm a felon; I ain't supposed to have a gun. And I
8 think what it was, I was trying to go to the -- the -- the
9 guy and present this here to him so he could get the police
10 and give it to them or get the police or however.

11 But he panicked. And I was already mixed up in the
12 head.

13 Q Yeah.

14 A And that -- I panicked.

15 Q Okay. But -- but going through the big charges
16 against you ---

17 A Right.

18 Q --- did you go to Deborah Anne Simmons' trailer with
19 the intent of breaking in and committing a crime therein?

20 A No. Because I had no need to. I know Debbie Anne;
21 talked to her on the morning -- talked to her on the phone
22 that morning several time. Phone records show that.

23 Q Okay.

24 A She called me back. I called her. And then, you
25 know, she tell me to come over ---

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 81

1 Q Did you ---

2 A --- you know, and ---

3 Q --- prevent her from leaving?

4 A No.

5 Q In fact, Kenyatta Wilson was there before with three
6 kids. You let them leave, didn't you?

7 A I didn't -- didn't tell them not to go; didn't tell
8 them to stay.

9 Q Okay.

10 A I had nothing to do with it.

11 Q And, in fact, didn't Deborah Anne Simmons testify in
12 her testimony that you were going around the trailer,
13 looking for Roberta?

14 A Yes. She said that I was -- yeah -- in -- in the
15 trailer -- yeah -- looking for -- asking was Roberta in the
16 room and stuff.

17 Q And during that time she could've walked out the door,
18 couldn't she?

19 A Pretty much.

20 Q Okay. And you were charged with criminal sexual
21 conduct in the first degree and the jury didn't even find
22 that, did they?

23 A No, they did not. And I ---

24 Q Okay.

25 A --- was charged -- the charge was dropped down to a

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 82

1 lesser-included offense, ABHAN. And from my understanding,
2 the ABHAN carries a injury; someone have to be injured.

3 Well ---

4 Q Battery.

5 A Battery. Yeah.

6 Q Okay.

7 A And Debbie Anne was never injured in any way.

8 Q Okay.

9 A No abrasion, no bruises, no nothing. But I was still
10 found guilty of it.

11 Q Okay. So it's not -- and -- and -- and this is the
12 thing that everyone kept arguing. The DNA isn't about
13 mistaken identity. You were the one that came out. It's
14 that you weren't committing any crimes in there?

15 A That's correct.

16 Q Okay. No further questions, Mr. Ashford.

17 MR. BELDING: At this time, Your Honor, I would move
18 to have all of the tabbed exhibits on our brief admitted
19 into evidence.

20 A Oh. Oh. One more thing, Mr. Belding.

21 Q Well, go -- let -- let me finish that.

22 MR. BELDING: Could I move that these be admitted into
23 evidence?

24 THE COURT: And let's hear from the attorney general.
25 Any objection?

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 83

1 MR. MITCHELL: One second, Your Honor. I think the
2 only thing I would have an objection to is the mental
3 health notes. I don't think he has any personal knowledge
4 of what's written in here. I mean, this is an evaluation
5 done by a ---

6 THE COURT: Okay.

7 MR. MITCHELL: Well, I'm not sure who it's done by.
8 But, I mean, he doesn't have personal knowledge of what's
9 written in here and he can't authenticate everything in
10 here. I mean, I think, you know, the record speaks for
11 itself on the mental health stuff. I think that was -- he
12 was found competent on that, so ---

13 MR. BELDING: Well, he was -- these were copies he
14 gave to me, of course. And it was provided to him during
15 discovery. And it -- it -- it -- it's interesting that a
16 year and a half later, someone finds him competent to stand
17 trial, but that doesn't address whether or not he was in
18 his right mind on the day -- for *M'Naghten* purposes, on the
19 day of the crime. And then, in the end it says he should
20 continue to receive mental health services during his
21 incarceration, which would certainly tend to imply that
22 there's something that needs some help there. That is the
23 purpose I wanted to introduce that.

24 And I think that, you know, he -- it -- the record
25 speaks for itself. He was found competent to stand trial.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 84

1 So this doesn't buttress that at all. That's -- that's in
2 the record.

3 THE COURT: Well, but there has -- there has been no
4 authentication of the records from the custodian. And
5 don't the -- the records apparently contain conclusions
6 about medical conditions. And there -- for those reasons I
7 -- I sustain the objection to -- I guess it's Tab 1 that --
8 what -- what the attorney general is referring to.

9 MR. BELDING: It might be Tab 2; 2 is the report. Is
10 that the one you're talking about, Mr. Mitchell?

11 MR. MITCHELL: Yeah. I guess I was referencing 1 and
12 2.

13 THE COURT: Well, now, 2, I'm assuming, is already
14 part of the Court record. But I don't ---

15 MR. MITCHELL: Yeah. That ---

16 THE COURT: --- know that.

17 MR. MITCHELL: I think that would be part of the
18 record, actually.

19 MR. BELDING: I think ---

20 THE COURT: Right.

21 MR. MITCHELL: So just ---

22 MR. BELDING: --- 2 is -- it -- 1 ---

23 MR. MITCHELL: --- to 1, then.

24 MR. BELDING: --- 1 are the notes from nurses at the
25 detention center and Correct Care Solutions that, you know,

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 85

1 were basically provided to him as part of his defense. You
2 know, I would have no way of establishing the chain of
3 custody of that because, at this point, that should've been
4 done at trial.

5 THE COURT: But nevertheless, I find, for the reasons
6 previously stated, that -- that I'm sustaining the state's
7 objection to Tab 1.

8 MR. BELDING: Fair enough. And Tab 2, though, is in
9 the record already.

10 THE COURT: And I think -- I -- I ---

11 MR. BELDING: I think so.

12 THE COURT: --- I don't think the attorney general is
13 objecting to Tab 2; is that right?

14 MR. MITCHELL: That's right, Your Honor. That
15 would've ---

16 MR. BELDING: Okay.

17 MR. MITCHELL: --- been in -- in counsel's file, I'm
18 sure.

19 THE COURT: Any -- any objection to any of the other
20 tabs?

21 MR. MITCHELL: No further objections. Thank you.

22 THE COURT: All right. They're ---

23 MR. BELDING: In?

24 THE COURT: They -- they are admitted, then, with the
25 exception of Tab 1.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 86

1 MR. BELDING: Fair enough. I -- I -- Your Honor, with
2 the Court's indulgence ---

3 Q Mr. Ashford, I do get a chance to come back on what we
4 call redirect and ask you some more questions, but is --
5 understanding that today is your day in court, is there
6 something you'd like to tell Judge Goldsmith in addition to
7 what he's already heard?

8 A No.

9 Q Oh, okay. I'm sorry. I thought you wanted to say
10 something.

11 MR. BELDING: Thank you, Your Honor. No further
12 questions at this time.

13 THE COURT: All right. We'll be in recess till two
14 o'clock.

15 MR. MITCHELL: That's good. Thank you.

16 (Whereupon, a recess was taken from 12:56 p.m. until
17 2:08 p.m.)

18 (Whereupon, Plaintiff's Exhibit 3 was marked and
19 entered into evidence while off the record.)

20 THE COURT: All right. We ready for cross-
21 examination?

22 MR. MITCHELL: Yes, sir.

23 THE COURT REPORTER: Your Honor, as a housekeeping
24 matter, I did mark this after we went off the record with
25 the documents from Tab 1 removed.

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 87

(Off the record briefly.)

THE COURT: All right. Cross-examination?

CROSS-EXAMINATION

BY MR. MITCHELL:

Q Good afternoon, Mr. Ashford.

A Good afternoon, sir.

Q One second. All right, Mr. Ashford. Now, you gave a statement after this incident; isn't that right?

A Yes, I did.

Q Okay. And you testified at trial as well; is that correct?

A That's correct.

Q Okay. In that statement to Sgt. Barnes ---

MR. MITCHELL: And, Your Honor, that begins on page 6 -- about 680 or so where they start going over the statement.

Q In your ---

THE COURT: Say that number again. It was what?

MR. MITCHELL: I'm sorry. 680.

THE COURT: 680?

MR. MITCHELL: Yes, sir. 680.

Q And in that statement there, you admitted that you had a gun that day; isn't that right?

A I can't recall if I ---

Q Okay.

1 A --- if I did or not.

2 Q Yeah. I understand it was a long time ago. So you
3 gave your side of the story to Sgt. Barnes right after the
4 incident; isn't that correct? I mean, that's what you --
5 in your statement you gave your story, right?

6 A Told him what happened.

7 Q Okay. And in that statement you admitted that you had
8 a gun that day, right?

9 A No. I don't think I did.

10 Q Okay. But you admitted going into the trailer; is
11 that right?

12 A That's correct.

13 Q Do you admit going and carjacking the cab?

14 A No, I did not.

15 Q Okay. So you admitted to getting the kids out of the
16 trailer?

17 A No, I did not.

18 Q Well, they -- they ran out when you came in; is that
19 right?

20 A I think that's the way it happened.

21 Q And you had the gun in your hand at that time?

22 A I can't remember if I did or not.

23 Q Okay. So your concerns here were really with Roberta,
24 though; isn't that right? Isn't the -- what the -- isn't
25 that what started this whole thing?

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 89

- 1 A No.
- 2 Q That's not? That's not what started it?
- 3 A No, that's not -- that's not what started it.
- 4 Q Isn't that ---
- 5 A That's ---
- 6 Q --- what you told Sgt. Barnes ---
- 7 A No, that's not ---
- 8 Q --- in your ---
- 9 A --- what I told Sgt. Bern [sic].
- 10 Q What did you tell Sgt. Barnes?
- 11 A I told Sgt. Brown [sic] what I said in my statement:
- 12 the first part of it, that me and Roberta had been watching
- 13 off TV and scratching off tickets. And as to all the rest
- 14 of it, it was made up by him. And I -- and I accidentally
- 15 signed it because I couldn't see what I was signing. And I
- 16 never had received any treatment from the EMS.
- 17 Q Okay. So you agreed to the part about the lottery
- 18 tickets. And then, everything else ---
- 19 A That's correct.
- 20 Q --- you allege that Officer Barnes made up himself; is
- 21 that right?
- 22 A That's right.
- 23 Q Okay. And then you testified at trial, though; is
- 24 that -- that's correct, though?
- 25 A That's correct.

1 Q Okay. And at trial you admitted to shooting that gun
2 into a floor, didn't you?

3 A I did.

4 Q Okay. So you -- you didn't dispute that you shot the
5 gun; you just disputed that you were not firing at the
6 deputies; isn't that correct?

7 A No. I didn't dispute I shot the gun in the floor.
8 No, I did not.

9 Q Okay. So you shot it -- was it a chair or the floor?

10 A Floor and the chair.

11 Q And you tried to shoot the gun multiple times; isn't
12 that right?

13 A Not really. No.

14 Q I mean, it was more than -- I mean, it misfired a few
15 times; isn't that right?

16 A Well, it -- it could have, unless in the -- a bullet
17 wasn't in -- in the position to where it would fire. I
18 have no idea. But it didn't shoot at the time one time at
19 least.

20 Q One time?

21 A Yeah.

22 Q All right. Going back to your lawyers who represented
23 you throughout your case, Ms. Kristy Grafton, she requested
24 your discovery; is that correct?

25 A I think so.

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 91

1 Q Okay. And then, Mr. Milling had you evaluated to see
2 whether you were competent; isn't that right?

3 A Judge Child did. That's correct.

4 Q And then you were appointed Mr. O'Neil and Ms.
5 Singletary; is that -- that right?

6 A Somewhere down the line.

7 Q And in that first meeting you -- Mr. O'Neil and Ms.
8 Singletary, they didn't ask you any questions about what
9 was going on in your case or what had happened before?

10 A Repeat the question.

11 Q I'm sorry. In your first meeting with Mr. O'Neil and
12 Ms. Singletary, you testified earlier that they didn't say
13 anything to you and that you did not discuss the case.

14 A (Nodded head up and down.)

15 Q So you didn't discuss the case when they came to talk
16 to you?

17 A That's correct.

18 Q What did y'all talk about?

19 A Well ---

20 Q Did you -- did you ---

21 A --- the first ---

22 Q --- refuse to talk to them?

23 A The first visit I received was from Deon and another
24 attorney.

25 Q Okay.

1 A Nicole wasn't there.

2 Q Okay. So that was the second meeting, correct?

3 A The second time, right.

4 Q And then, in the second meeting, did you go over some
5 more about the charges and discovery and whatnot?

6 A Nope, not exactly. We didn't go over anything. It
7 was just about whether I was going plead guilty to the 30
8 years and if I didn't, I was facing 120 years.

9 Q So they were apprising you of the -- what you -- the
10 possible sentence; isn't that right?

11 A That's right.

12 Q Okay. Well, let's go on to these 911 tapes. Now,
13 these 911 tapes would've been the calls from the trailer to
14 911? Or from Ms. Simmons's home; is that correct?

15 A It would've been from Ms. Simmons. The 911 call
16 would've been from her.

17 Q Okay. So she would've called 911?

18 A She did.

19 Q Okay. And you think those tapes would've been helpful
20 to you?

21 A Sir, I wouldn't be in prison today if it -- those tape
22 had've been produced, because it'll prove my innocence.

23 Q So Ms. Simmons would've -- the testimony -- the tapes
24 would've said what, that she ---

25 A She -- when she called 911, I was standing by. I

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 93

1 heard a -- I heard -- the 911 asked was she being held a
2 hostage. She said no. And she told them that all she had
3 wanted them to do was just have the officers get out from
4 in front of -- around her house.

5 Q Okay. So that's -- that's what the 911 tapes would
6 have said?

7 A That's what it would ---

8 Q Okay.

9 A --- have said.

10 Q But that's contrary to what she testified to at trial

11 ---

12 A That's correct.

13 Q --- correct?

14 A That's correct.

15 Q Okay. So you were taking medication at the time of
16 this incident?

17 A Yes, I was.

18 Q Or were you not taking medication at the time?

19 A I was taking medication.

20 Q You were taking ---

21 A Yes, I ---

22 Q --- medication?

23 A --- was.

24 Q You testified earlier today that you were not taking
25 medication.

1 A Mental health medication, I wasn't.

2 Q Were you ---

3 A I was ---

4 Q --- taking pain medication or were you taking ---

5 A That's ---

6 Q --- mental health ---

7 A I -- I was taking pain medications. I wasn't taking
8 mental health medication.

9 Q So you were only taking pain at that point, right?

10 A At the time of this incident, that's correct.

11 Q Okay. And that was covered in the trial?

12 A That, along with I had ---

13 Q Okay.

14 A --- went to the hospital and -- and then received the
15 shot the night prior to this Saturday morning of the
16 incident. Yes.

17 Q Okay. And your attorneys questioned witnesses -- the
18 investigators, specifically -- on whether they knew you
19 were on medication or whether they knew that you had some
20 mental health issues; is that correct?

21 A Repeat the question.

22 Q Your attorneys at the trial questioned different
23 witnesses about your mental health and whether they knew
24 you had any problems. Do you recall that?

25 A I -- I -- I think -- I can't remember exactly did they

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 95

1 had -- well, whether they had questioned witnesses or not.

2 But I -- I do recall that she asked, I think, Investigator
3 Burns did -- did I tell him that I was, you know, out of my
4 head or anything like that or something -- something to
5 that -- that effect. I do remember recalling something
6 like that.

7 Q Okay. So your statement -- let me go back to the
8 statement for a second. Your statement to law enforcement
9 after this incident, your lawyers challenged that at trial,
10 correct?

11 A I think they did to some effect. I don't -- I -- I
12 really don't know.

13 Q And the judge let it in; the judge let it be read into
14 ---

15 A Oh.

16 Q --- the record and all that?

17 A Right.

18 Q Okay.

19 A Right. So yeah.

20 Q And then, you chose to testify at that point; is that
21 correct?

22 A Well, I chose to testify. As -- as to that point or
23 not, I don't know or -- if it was then or sometime later.
24 It -- but I did testify.

25 Q Okay. Okay. Now, on the -- let's talk about the

1 green or brown jacket. It's your position that you were
2 wearing a brown, leather jacket; is that correct?

3 A Yes, I was.

4 Q Okay. And there -- other witnesses said they saw you
5 in a green jacket; is that correct?

6 A Well, I can't remember the testimony of the witnesses,
7 but there were some statements written. And they had
8 incident that I had on a green jacket by several of the
9 witnesses' statement. But as to whether they testify I had
10 on a green or brown jacket, I can't remember that right at
11 this time.

12 Q Okay. But the jacket doesn't really matter, though,
13 does it ---

14 A Yes, it ---

15 Q --- because ---

16 A --- does.

17 Q Because they knew -- well, it -- it doesn't matter up
18 until the point where your at Ms. Simmons' house; is that
19 correct?

20 A No. It -- it -- it makes a big difference because the
21 alleged number-one carjacking, I think that guy said I had
22 on something similar to a green jacket or -- or -- or to
23 that effect. So I never had a green jacket on, so how
24 could I have carjacked the first car or -- that they ---

25 Q So in -- but in your statement you admitted to the

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 97

1 carjackings, essentially; isn't that right?

2 A Well, I admitted to -- not the carjackings; that -- to
3 me going up to the -- the people in the cars and they panic
4 and it caused me to panic. I didn't admit to carjacking
5 anything.

6 Q Okay.

7 A Because ---

8 Q But you admitted going up to the car and then driving
9 away with it ---

10 A That's ---

11 Q --- right?

12 A That's correct.

13 Q So it wasn't an identification case because ---

14 A Yes. Yes. It should have been. Because even the --
15 one of the victims said that I had a green jacket on. And
16 it -- and I had a brown jacket on at ---

17 Q Right. But you don't dispute that it was you at that
18 point, right?

19 A At the -- at the -- no, I do not.

20 Q Okay. And the other part about the jacket, you were
21 in the trailer -- or in Ms. Simmons's house, right? And it
22 -- the investigators -- the testimony was that there were
23 shots fired of -- what was -- the kitchen window?

24 A It was out of a window. I think it was a bay window.
25 I don't know if it was ---

1 Q Was it ---

2 A --- a kitchen window or a bay window. It was ---

3 Q Okay.

4 A --- a bay window in the ---

5 Q And that ---

6 A --- kitchen.

7 Q And that was where the jacket was found?

8 A Yes. In the bay window, somewhere near a bay window
9 or something.

10 Q So it's your testimony that you never went into the
11 kitchen while you were there, right?

12 A No. I -- I don't recall my testimony being that. I
13 never went into the -- the room where the bay window was at
14 ---

15 Q Okay.

16 A --- at all. Yeah.

17 Q So you never went into the room where they allege that
18 the shots came out from?

19 A That's correct.

20 Q Okay. And that's where the green jacket was -- or one
21 of the jackets was found, correct?

22 A Well, I -- I don't know if it was found there or not.
23 I mean, after the investigator allowed the -- the scene to
24 be tampered with -- or -- or tampered with -- with -- with
25 other people, I don't know if it was found there, put

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 99

1 there, or however it got there. It -- it's -- it just was
2 -- they took a picture of it and presented it to the jury
3 as to me having it on in that room, shooting out at the
4 polices ---

5 Q Okay.

6 A --- to -- to build this case against me.

7 Q But you admitted to shooting the gun, right, just not
8 at the police?

9 A Yes, I did admit to firing a gun.

10 Q Okay.

11 MR. MITCHELL: One second, Your Honor. I'm sorry.

12 THE COURT: Certainly.

13 Q And you testified at trial that you said you wanted
14 the police to know you had a gun so they wouldn't kill you;
15 is that correct?

16 A That's correct.

17 Q Okay. So you shot the gun as -- kind of like as a
18 warning?

19 A No -- yes, to let ---

20 Q Okay.

21 A --- them know that I had a gun so -- because I was
22 actually going go out. But by her telling me that the
23 police was going kill me if I stepped outside the door, it
24 kind of put more fear in me and confused me. And that's
25 why I didn't -- I didn't never, you know, walk out.

CROSS-EXAMINATION BY MR. MITCHELL - RANDALL ASHFORD 100

1 Q So you shot the gun because you didn't want the police
2 to come in there because Ms. Simmons told you to do that?

3 A No. I shot the gun because I wanted to warn the
4 police to let the police know that I had a gun and that I
5 didn't want them to, you know, come in there and then see
6 me with a gun and automatically kill me and then ---

7 Q So then ---

8 A --- shoot me.

9 Q --- shoot you down? Okay.

10 A Right.

11 Q So it was also your testimony in trial that you -- Ms.
12 Simmons was telling you what to do and you were just kind
13 of taking orders from her; isn't that about right?

14 A Pretty much.

15 Q So you were just what ---

16 A She -- she was -- she was -- she was telling me things
17 and -- and, you know, suggesting that I do, and that's what
18 I did.

19 Q Okay. So you came in to her house with a gun and then
20 she's telling you what to do at this point?

21 A That's right. She ---

22 Q She ---

23 A She indicated what I should do and what I should not
24 do. That's right.

25 Q Okay.

REDIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 101

1 MR. MITCHELL: Your Honor, that's all the questions I
2 have. Thank you.

3 THE COURT: Redirect?

4 THE APPLICANT: Uh-huh.

5 MR. BELDING: Brief redirect. Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 (Whereupon, Mr. Mitchell and Mr. Belding conferred.)

8 REDIRECT EXAMINATION

9 BY MR. BELDING:

10 Q Mr. Ashford, you said that the 911 tapes would prove
11 your innocence, correct?

12 A That's correct.

13 Q Now, is it your understanding that if the state has
14 something on that 911 tape that's incriminating, they
15 always have it to use in the prosecution, don't they?

16 A They should.

17 Q Uh-huh. But in this case there wasn't anything on
18 that 911 tape that the state wanted to use in the
19 prosecution, was there?

20 A No, it was not.

21 Q Okay.

22 A Because it probably would have freed me.

23 Q So they didn't request the 911 tapes; they certainly
24 didn't turn them over to your attorneys, correct?

25 A Well, I -- I don't know if they requested the 911 tape

REDIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 102

1 or not, got it, found out what was on it, withheld it, and
2 it wasn't nothing to help me, so no, they wouldn't turn it
3 over to my attorney. I could just answer that way, because
4 I ---

5 Q Okay.

6 A --- I -- I can't say one way or the other whether they
7 ever got it or not.

8 Q Okay.

9 A Looked like they would have because it would've --
10 that tape probably -- they probably could've say, Well,
11 okay; might've been something we could use to convict him
12 of these crimes. Why wouldn't you get it?

13 Q Exactly.

14 A I mean, why -- you -- well, you would use a jacket
15 that I didn't have on or present to the jury to convict me.
16 So why wouldn't you get a 911 tape to help convict me of
17 this crime?

18 Q Right.

19 A Yeah.

20 Q And you did have a gun with you. Did -- did you ever
21 explain how you got a gun ---

22 A No ---

23 Q --- that day?

24 A --- I did not explain how I got gun because I don't
25 know myself.

REDIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 103

1 Q Okay.

2 A I -- I mean, you know, I -- apparently, I -- I must've
3 picked it up or found it or something because I was out of
4 ---

5 Q Okay.

6 A --- my mind.

7 Q Okay.

8 A I -- I don't know where the gun came from ---

9 Q As a ---

10 A --- so ---

11 Q --- formerly convicted felon, you're not supposed to
12 have a ---

13 A That's ---

14 Q --- gun, correct?

15 A --- right. As -- yeah, that's right. And as ---

16 Q Okay.

17 A --- of today, I -- I still don't know, really, where
18 that gun came from.

19 Q Uh-huh.

20 A But ---

21 Q Can you have a gun, though ---

22 A No.

23 Q --- and -- well, let me -- let me -- let me ask it
24 like this, then: Is it possible that you could have a gun
25 but not commit any other crime?

REDIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 104

1 A Well, I think that would be a chance you would be
2 taking to incriminate yourself if they caught you with it.

3 Q Okay.

4 A And -- and me, I didn't think that was the right thing
5 to do because, you know, I was trying to do pretty good out
6 there, I mean, you know. I was trying to get my driving
7 license back and -- you know, and live. I mean, I worked
8 all my life, so, I mean, I -- I never had a real serious
9 charge or nothing, far as being a menace to society. Well,
10 I got drunk a few times in the street. But hey. I served
11 my time for that ---

12 Q Yeah.

13 A --- and learned a lesson. So, you know ---

14 Q Did you -- did you -- did you -- if you recall, did
15 you have a gun in order to kidnap anybody?

16 A No.

17 Q Did you have a gun -- gun to commit a burglary?

18 A To rob nobody neither. I had a gun to do none of
19 those things.

20 Q Okay. And I believe there was testimony at the trial
21 that -- that you held a gun to Ms. Simmons' head while you
22 raped her, and the jury didn't find you guilty of that, did
23 they?

24 A Oh, yeah. That's -- that's correct.

25 Q Okay.

REDIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 105

1 A They also said that -- Ms. Simmons said herself that I
2 -- I hit her with the gun, you know, and stuff like that.
3 But that was -- there was no bruises, no abrasion, no
4 scratches, or nothing. So how could I hit her? The -- you
5 know, so I -- I don't -- I don't -- I don't understand how
6 ---

7 Q To the best of your knowledge, when Ms. Simmons was
8 treated by EMS -- and I think I believe I read that she was
9 taken to the hospital -- do you know what she was treated
10 for, besides tear gas?

11 A A elevated heart rate, I think. It was a elevated
12 heart rate. Her heart was elevated due to the tear gas
13 that we had been in the house with three or four hours.
14 And -- but I never was treated. EMS never did see me.

15 Several of the investigators and officers claimed that
16 EMS checked me out and I was fine. But, you know, at the
17 same time, if -- me and Ms. Simmons was in that -- in the
18 trailer together, I mean. She had a elevated heart rate.
19 And I imagine the tear gas, it was in our eyes. I guess it
20 cleared it out somehow.

21 But none of that was ever done to me, I mean. I mean,
22 I -- I actually couldn't see; couldn't really breathe
23 right; stuff running out my nose. But, you know, I never
24 got no medical treatment.

25 Q I understand.

REDIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 106

1 A And the -- and the state didn't provide no report from
2 EMS saying that I did get any-type medical treatment. They
3 just let the officer say that I was treated. And my
4 counsels, they didn't follow up on ---

5 Q Didn't follow ---

6 A --- what ---

7 Q --- up?

8 A Yeah.

9 Q Okay. Thank you, Mr. Ashford.

10 MR. BELDING: Nothing further, Your Honor..

11 THE APPLICANT: Uh-huh. Thank you.

12 THE COURT: Anything else?

13 MR. MITCHELL: No further questions.

14 THE COURT: All right. Thank you, sir. You may step
15 down.

16 (Whereupon, the witness exited the witness stand.)

17 MR. BELDING: Your Honor, I'd like to call Mr. Deon
18 O'Neil to the stand.

19 THE COURT: Okay.

20 (Off the record briefly.)

21 (Whereupon, the witness came forward.)

22 DEON O'NEIL, having been first duly sworn,
23 testified as follows:

24 (Off the record briefly.)

25 MR. BELDING: Please the Court, Your Honor?

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 107

1 THE COURT: Certainly.

2 MR. BELDING: Thank you.

3 DIRECT EXAMINATION

4 BY MR. BELDING:

5 Q Please state your full name for the record.

6 A Deon O'Neil.

7 Q And, Mr. O'Neil, what do you do?

8 A I'm an attorney.

9 Q How long have you been an attorney?

10 A Since November of 2006.

11 Q Okay. And is that when you were also at the same time
12 court-trial-qualified?

13 A Yes.

14 Q Okay. And that was 2 1/2 years before the trial of
15 Randolph Ashford?

16 A Approximately, yeah.

17 Q Approximately?

18 A (Nodded head up and down.)

19 Q Okay. Now, when you got out, what was your first job
20 or did you start with the public defender's office?

21 A Started with the public defender's office.

22 Q Okay. How long did -- did you end -- end up working
23 there?

24 A From November 2006 all the way to July 2010.

25 Q Okay. And now you're out in private criminal-defense

1 practice?

2 A That's correct.

3 Q Okay. Have I ever, ever had a PCR with you?

4 A I think we have.

5 Q Okay.

6 A Yeah.

7 Q Okay. Well, I have a couple questions. Now, this --
8 you heard the testimony -- you were here for most of the
9 testimony of Mr. Ashford, weren't you?

10 A That's correct.

11 Q Mr. Ashford says he only saw you two times prior to
12 going to trial. Does that square with your recollection?

13 A No.

14 Q Okay. How many times do you think you saw him?

15 A Well, I actually have the notes here from the time
16 that I saw Mr. Ashford here, if you don't mind me reading
17 from them. Let's see. Went to see Mr. Ashford first on
18 January 14th, 2009; says: "Went to see client with Jim May
19 of our office." That's the other ---

20 Q Jim May, yeah.

21 A That's the other attorney, Mr. -- Mr. Ashford's
22 referring to. Client would not talk to us after we
23 introduced ourselves. Client went back to see -- went back
24 to cell. Then I told a deputy -- at that time, would've
25 been Fielding Pringle -- that would've been on January

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 109

1 14th, 2009. Let's see.

2 Q So I want to make sure. Well, you didn't actually get
3 to talk to him that day. You went to see him, but he
4 wouldn't talk to you?

5 A Yeah. We -- he came out and wouldn't talk to us. And
6 then so I didn't talk with him that day.

7 Q Okay.

8 A It looks like January 16th, 2009, called the
9 prosecutor, Luck, to get client brought over Tuesday to get
10 client in front of a judge. That was January 16th, 2009.

11 Looks like January 23rd, 2009, me and Nicole went to
12 see client. Talked to client for two hours; went over his
13 discovery: medical records, eval report, and Investigator
14 Lee investigation. Client wants motion to exclude media
15 and wants to see Investigator Lee file -- or the victim
16 file lawsuit against the police. Client admits to two
17 carjackings, but that's it. Talk was productive. January
18 23rd, 2009.

19 February 28th, 2009, went -- did talk to client again.
20 Told client I have a murder trial coming up, but I will --
21 will be back to see him in a week. Gave client medical
22 records to look over.

23 March 7th, 2009, went to see client in jail.
24 Investigator Connelly is working on getting 911 tapes and
25 drug information.

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 110

1 March 16th, 2009, went over crime scene pictures with
2 client. Will bring my notebook down, and we will go over
3 everything I have.

4 March 17th, 2009, gave a client a copy of all extra
5 discovery. Went over testimony for about a hour.

6 March 20th, 2009, met with client today. Client wants
7 to -- me to call sister to get glasses and clothes for
8 trial. Told client we should get updates on what
9 Investigator Lee had done by next week.

10 March 25th, 2009, went over next-week activity with
11 client. Went over lawsuit information and phone records.

12 March 28th, 2009, client says he wants Roberta phone
13 records and proof he actually paid money back to lawsuit.
14 Me and Nicole saw the defendant for about a hour at jail.
15 I called Investigator Lee and asked her to follow up on
16 these things.

17 And then, March 30th, 2009, the trial starts.

18 Q Now, the dates that you've given us, Mr. O'Neil, some
19 of these -- were some of these phone calls or were they
20 actually just very brief -- some of them were just brief
21 interactions saying "I'm doing this" or "we'll see you next
22 week" or something like that?

23 A No. They were not brief interactions. They were not
24 phone calls. They were all -- he was at the Alvin S. Glenn
25 Detention Center. There's no phone -- I can't call him on

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 111

1 ---

2 Q Got you.

3 A --- the phone. Have to actually go down there and ---

4 Q So, like, for example, on February the 28th when you
5 said you were there briefly, was this to tell him that you
6 had a, you know, big trial coming up and that you'd be back
7 to see him?

8 A That was the only time that would've been a brief
9 encounter ---

10 Q Okay.

11 A --- with him.

12 Q What about on 3/20, March the 20th? How long were you
13 with him then?

14 A I don't have it noted here. All it says, I met with
15 him that day; he wanted me to call his -- call his sister;
16 get his glasses and clothes for trial. I told him we'll
17 get some updates of the work that -- that Investigator Lee
18 had been doing and, hopefully, that would be done by next
19 week.

20 Q Okay. What did you find out about the 911 tapes?

21 A As it -- same as I expected, when he first mentioned
22 them, that there would be no actual 911 tapes from that
23 incident. I -- we -- we had subpoenaed them -- the people
24 from 911. There was no closed incident reports from that
25 -- from the phone number Mr. Ashford wanted for and there

1 were no tapes.

2 Q Okay. And you actually got confirmation of that on
3 March the 27th, the day before trial?

4 A No. I think there was actually a -- I received
5 investigation that was after that. I think Mr. -- I have
6 -- I have that one. But I -- we received further
7 investigation after that date. He actually -- during the
8 trial that was -- to confirm what we all -- what we already
9 thought here.

10 March 31st, 2009, my investigator sent me a report.
11 It says: Additionally, I called to speak with Jennifer
12 Blair at Richland County 911 this morning and was informed
13 that she would not be in the office today. So I spoke with
14 Lisa and explained the situation. She said that she would
15 work something up today on their letterhead and get that
16 over to me.

17 I explained to her that we had the report from Sharon
18 Navack called 911 on the date of the incident but we were
19 looking for any calls to and from Deborah Simmons' house.
20 I provided her telephone number and any calls concerning
21 Mr. Simmons' residence. I provided that address.

22 Then Mike King contacted me and informed me that there
23 is not -- it is not their policy to put that they have been
24 unable to locate records in writing. If we need someone to
25 come to court and say that, he said they would need a

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 113

1 subpoena -- we would need to subpoena Jennifer Blair.

2 And this the investigator speaking to me. She said:
3 Please let me know what you want me to do. I don't think
4 it would be a good idea because she's going to say the only
5 911 report was that of Ms. VanHook and that there were no
6 calls to or from 911 from Deborah Simmons' residence.
7 Besides, we already have Ms. Simmons' phone records,
8 showing the same -- meaning showing that there were no
9 phone calls to or from 911 on that date.

10 This is my investigator sent me this on March 31st,
11 2009.

12 Q Okay. The trial was already going on, right?

13 A Yes.

14 Q Okay. So the telephone records from that Booth Street
15 address, according to your investigator, showed no 911
16 emergency calls?

17 A They do not. And -- and I -- and -- and I -- I have
18 the records from the Booth Street address, and they do not
19 show any calls from 911.

20 Q Did you share that with -- with Mr. Ashford?

21 A I -- I told him that orally before the -- before the
22 trial started, that there were -- there were no phone calls
23 to or from 911 from Ms. Booth's residence -- from the Booth
24 Street residence.

25 Q Were you the one at the -- the Richland County Public

1 Defender's Office that finally determined there weren't any
2 911 tapes available?

3 A I'm looking -- I'm looking back the prior notes with
4 -- because some of the other attorneys worked on this as
5 well. I don't see a notation in here that anybody else
6 told Mr. Ashford that. So I -- I couldn't speak for
7 whether ---

8 Q I understand.

9 A --- they told him that or not.

10 Q Have you seen in the file the -- there's a couple
11 letters from Ms. Grafton to Luck Campbell, asking for a
12 list of discovery. Are those in the notes too?

13 A I don't have the -- I don't have Ms. Grafton notes.
14 The notes I have are Ms. Gripp's -- Ms. Sutherland's --
15 Carolyn Gripp or/Sutherland -- she's gotten married since
16 then. I have her notes.

17 I have the notes from when Mr. Ashford was first
18 represented by Mr. Strickler. I have his paralegal notes
19 in here. And I have Ms. Danielle Payne's notes in here.

20 Q Okay. Do any of those reference a request for 911
21 tapes?

22 A Ms. Grafton notes do. Ms. Grafton's notes ---

23 Q But she's the one that wrote the two letters that we
24 have?

25 A She notes that on March 9th, 2008, she went up to see

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 115

1 the -- see Mr. Ashford, went over discovery with him, and
2 went over things that were missing. And she notes that
3 they were missing 911 records, pictures, CSI reports,
4 ballistics, medical records, and any evidence regarding the
5 carjacking was -- is what her notes would indicate.

6 Q Okay. Bottom line is nobody in the public defender's
7 office ever got anything from 911 ---

8 A No.

9 Q --- at all?

10 A No.

11 Q Okay. What about the -- the DNA? When do you first
12 recall Mr. Ashford asking you about a DNA test on this
13 jacket?

14 A He never mentioned to me anything about a DNA test.
15 We couldn't -- because that -- the jacket wasn't the issue
16 in any sort of pretrial discussions that -- that we had
17 here.

18 Q Did it come up during the trial?

19 A It didn't come up during the trial either.

20 Q He -- so through the whole trial, I mean, he never
21 said a word to you about DNA?

22 A No.

23 Q It's not in any notes of -- with any other people?

24 A No.

25 Q Okay. Did -- there was testimony about a green -- a

1 gentleman wearing a green jacket from Mr. Olin King Kelly,
2 who, I think, was the first carjacking victim.

3 A Correct.

4 Q But that was in an in-camera hearing ---

5 A Yes.

6 Q --- that was about his identification?

7 A Yes.

8 Q Okay. Then, when he testified, he didn't actually
9 mention -- he didn't say the word "green." He just said
10 the guy was wearing a jacket.

11 A Correct.

12 Q Okay. Ms. Simmons, though, testified that -- and I'm
13 trying to remember. You were not the one who cross-
14 examined Ms. Deborah Anne Simmons, were you?

15 A I did not.

16 Q Okay. That was Nicole?

17 A (Nodded head up and down.)

18 Q All right. Well, then, I'm going to save this
19 question for her. Just a couple little things I just
20 wanted to ask you that I had written down in Mr. Ashford's
21 testimony: Did you -- do you -- do you ever doze off
22 during trial?

23 A No.

24 Q Have you ever seen the state's exhibit where -- where
25 he wrote her a note and she wrote back and said -- he says:

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 117

1 "Why isn't he doing -- why isn't he objecting to anything?"
2 and she says: "Well, he doesn't want to highlight these
3 things for the jury"?

4 A I have not seen that note. No.

5 Q Okay. Let me let you take a look at that. I
6 understand that -- that is not in your handwriting. This
7 -- I'm referring to Plaintiff's Exhibit 2.

8 A Yeah. I -- it would've been my standard practice I --
9 I think Mr. Ashford has a folder here. It went -- it was
10 my standard practice, whenever I have a trial, to give a
11 client a notepad and say, "If you -- if you see something
12 going on, I -- I can't listen to you and listen to what's
13 going on at the same time; write it down, and then I will
14 get back with you over here." So I didn't -- I never seen
15 this right here, though.

16 Q Okay. That's fine. When Mr. Malachi James was
17 testifying -- he was the third carjack victim, okay? He
18 testified that there were things written down on his
19 written statement by the Richland County sheriff's deputies
20 that he didn't tell them but he signed it anyway. Do you
21 recall that?

22 A Correct.

23 Q Okay. When you were objecting to the introduction of
24 Mr. Ashford's written statement, why didn't you bring that
25 up?

1 A Because that -- the ---

2 Q Wouldn't ---

3 A --- when you ---

4 Q --- it have tended to show that yes, things that can
5 get on there that the person didn't say?

6 A That wouldn't have been an objectionable -- it
7 wouldn't have been a basis for objection because the
8 statement only comes in when that is knowingly and
9 voluntarily made and would not -- his *Miranda* warnings are
10 waived. That -- whether or not they misconstrued what he
11 said is not a basis to not allow the statement in. It
12 becomes a jury question as to whether or not he says that
13 he didn't say this and they say that he did say that. He
14 said -- it's not an objectionable basis. It's a jury
15 question for the jury to determine whether or not ---

16 Q Okay.

17 A --- who is ---

18 Q And ---

19 A --- telling the truth ---

20 Q And -- and ---

21 A --- about what ---

22 Q --- that's my -- that leads me to the next question.
23 I didn't mean to cut you off. I'm sorry. But did you
24 bring that up when -- when you were talking about the
25 statement of Mr. Ashford?

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 119

1 A When it comes to the -- when it came to the point of
2 closings, Mr. Ashford had took the stand at point here,
3 sir. My position was his statement is immaterial at -- at
4 that point because he took the stand and told the jury his
5 version of what happened here on that day.

6 Q Did -- let me -- take me through -- I -- I was very
7 concerned about this juror-misconduct issue. How did you
8 find out that a black, female juror allegedly said, "I
9 heard all I need to hear"?

10 A I honestly do not remember the specifics about it. I
11 don't know -- I think the -- the deputy came up to -- to --
12 to counsel -- me and Ms. Singletary and told us that ---

13 Q Okay.

14 A --- is my recollection at this point. I didn't -- I
15 didn't physically hear it. A deputy -- I think the deputy
16 heard it.

17 Q Right.

18 A And it ---

19 Q And then relayed it to you?

20 A Yes.

21 Q Do you recall -- I just want to make sure we don't
22 have any confusion here. There was a master deputy --
23 Richland County Sheriff's Department master deputy named
24 Nathan White who testified at the trial. Was this a
25 different Deputy White?

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 120

1 A Yeah. It would've been one of the courtroom deputies

2 ---

3 Q Okay.

4 A --- that -- that ---

5 Q Right.

6 A --- overheard it.

7 Q Court-security people?

8 A Yeah.

9 Q All right. And best of your recollection, he told you
10 about that? Did he tell the prosecution about it?

11 A I don't know whether -- I don't know whether he told
12 them or we told them. I couldn't -- we -- I honestly can't
13 remember that.

14 Q Okay. And your understanding was it was a black,
15 female juror that he overheard?

16 A Yes.

17 Q Did you have any reason to disbelieve him?

18 A No.

19 Q In fact, doesn't the state always get up in closing
20 and talk about how these police officers, you know, have no
21 reason to lie?

22 A Yeah.

23 Q Okay. So what did you do after that?

24 A Brought it to the Court's attention.

25 Q Okay. And what did the Court do?

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 121

1 A The Court did some partial in-camera questioning of
2 the jurors, if I remember correctly.

3 Q Okay. Now, you know that Deputy White has identified
4 the juror as a black female?

5 A Yes.

6 Q My understanding, from -- from the transcript, is that
7 the judge talked to five jurors, two of which were black
8 females?

9 A Yeah. Yes.

10 Q Okay.

11 A That ---

12 Q And we've got four black females on the jury, and one
13 of the two alternates is a black female?

14 A Yes.

15 Q Okay. Why didn't you ask the Court to interview all
16 of the black females in the jury box?

17 A I think there's -- and I can -- looking at the
18 transcript, I think that there's a request after that that
19 I asked -- the judge to -- to question three additional
20 people. I can -- I can't remember exactly the wording in
21 that. But I think I -- I requested the judge to interview
22 three additional people after that back-and-forth exchange
23 between us and the judge at -- at that point here.

24 MR. BELDING: One second, Your Honor.

25 (Whereupon, Mr. Belding and the applicant conferred.)

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 122

1 Q And this, by the way, was -- to the best of your
2 recollection, wasn't this while the prosecution's case was
3 still going on?

4 A Correct.

5 Q Okay. Friday, April the 3rd -- well, no. So this
6 would've been Thursday, April the 2nd, at the end of the
7 day? It's the last couple things that happened. It starts
8 on page 665 of the transcript. You bring it to the Court's
9 attention that on yesterday, one of their deputies, a
10 Deputy White from the Richland County Sheriff's Department,
11 may have overheard -- "I think it was what turned out to be
12 Juror No. 134, during lunch, saying something to the effect
13 that "I've heard all I need to hear." How did you
14 determine it was Juror No. 134?

15 A I -- I honestly do not remember at this point ---

16 Q Okay.

17 A --- here.

18 Q Do you -- do you -- you've done a lot of trials. Do
19 you ---

20 A Yeah.

21 Q --- remember the composition of that jury?

22 A Not off the top of my head. No.

23 Q Okay. If I were to represent to you that I've gone
24 through the transcript and identified -- because it says in
25 there who's what, that you've got four black females and

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 123

1 one alternate that's a black female.

2 A Be fair enough.

3 Q Fair enough?

4 A Yeah.

5 Q Okay. And I -- I only say that because at one point
6 you say: "Well, I think -- I think there was" -- now at
7 the bottom of 667, a couple pages later -- "Deputy White's
8 description of the individual who he heard make that
9 statement was a black female -- a younger, black female. I
10 think -- and there are only three black females on the
11 jury." Turns out there was four. But there was Juror No.
12 172 and Juror No. 134. You questioned both. And out of a
13 -- and abundance of caution, I think we requested three
14 additional jurors. It doesn't say -- the three additional
15 jurors that were pulled up were all white. Why would that
16 have been?

17 A I don't -- I -- I don't know why -- why he would've
18 did that. What would -- I think we would've known by the
19 younger -- and I don't have the -- the -- to have the jury
20 -- the jury records in my file. But I think by -- I think
21 we would've known by the younger which black female it was.
22 Because I think the two other black females probably were
23 older. So that's why we were able to pinpoint which one of
24 the ones we suspected it -- it to be here.

25 Q Okay.

1 A So -- because it ---

2 Q And then, at one point -- and -- and I'm not really
3 trying to pick at you too much, Deon, because you said --
4 and your -- and this is on page 666, interestingly enough,
5 at line 8: "And, Your Honor, based on that, I guess I
6 would ask for a mistrial." Is that -- was that supposed to
7 be a motion?

8 A It -- I probably didn't say it that way.

9 Q Okay.

10 A You got -- you're kind of getting the -- you're
11 getting the dry version of it here.

12 Q Okay.

13 A But I -- I requested a mistrial.

14 Q Okay. I -- the way you stated it just on paper,
15 doesn't sound like you pushed it ---

16 A Yeah.

17 Q --- that hard.

18 A It -- it probably -- it doesn't sound that way, but it
19 -- it probably -- it didn't come up -- it came up
20 differently live hearing it.

21 Q Okay. You think that you were able to protect the
22 defendant from juror misconduct?

23 A I think so.

24 Q The -- do you think that if -- if it -- if it had
25 turned out that, in fact, someone had said, in the middle

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 125

1 of the prosecution's case, "I've heard all I need to
2 heard," [sic] in the presence of other jurors, would you
3 consider that to be juror misconduct?

4 A I would.

5 Q Would you think that would prejudice the jury?

6 A Yes.

7 Q Okay. How -- I just want to make sure I understand
8 your answer. How do you think that you were able to
9 protect the defendant, Mr. Ashford, by only talking to two
10 black females out of potentially five?

11 A Which two of the black females did we -- what numbers
12 did we pull up?

13 Q What -- they pulled 130, 172, and 134. We had Juror
14 208, 172, 286, 134, and 58 were all black females. Doesn't
15 say how old they are in the transcript.

16 A Yeah. How ---

17 Q That would have to be on the -- you know, the jury
18 information sheet. In addition, there was one -- the
19 second -- the final alternate juror seated was Juror 58,
20 and she was also described as a black female. That's all
21 they say, is they just give that bare, you know,
22 biographical/demographic information.

23 A Give me those numbers again. I'm sorry.

24 Q Okay. 208 -- oh, you've got the ---

25 A I ---

1 Q --- stuff.

2 A --- I have it.

3 Q Okay. All right.

4 A 208 would have been a 47-year-old white female.

5 Q Some people consider that young. I'm starting to
6 myself.

7 All right. Well, what -- are -- are you telling me
8 you didn't consider that to be a young, black female?

9 A Not in comparison to the other ones. But keep going.

10 Q Okay. Well -- and we'll go back to that. What about
11 172?

12 A 172 would have been -- 172 is a 37-year-old black
13 female.

14 Q Is that an old -- is that an old person too ---

15 A No.

16 Q --- Deon?

17 Okay. All right. What about 286?

18 A 286 would've been a 63-year-old black female.

19 Q Okay. I might even call that one not young.

20 How about 134?

21 A 134 would've been the 38-year-old black female.

22 Q Okay. And 58?

23 A 58 would've been a 49-year-old black female.

24 Q What about our alternate, number -- oh, I did 58.

25 Wait a minute. I missed somebody. 208, 172, 286, 134 --

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 127

1 oh. No. That's right. And 58. Did we -- we did all
2 five. Okay. That's right.

3 Did -- but do you recall whether you asked Deputy
4 White -- I mean, this seems like a pretty important point
5 in the middle of the trial. Did you ask him if he had a
6 clear identification of who said it? Did he see them
7 saying it? Did he overhear them? What do you recall?

8 A I think I recall it -- it being overheard while they
9 were getting in the elevator and that the only -- the only
10 description he would've had, which is a young, black
11 female, the description I would've gave.

12 Q And -- and how would he have given such a description?

13 A I don't -- I mean, I can't -- I can't tell you. I --
14 how you -- I can only tell you what he told me.

15 Q Well -- and here's what I'm getting at. I mean, did
16 he hear this voice and assume that it sounded like a black
17 person talking?

18 A I'm assuming he was behind them when he -- when he --
19 he heard it. I'm assuming he actually heard them say it,
20 but either heard it with their back turned or something to
21 that effect. I can't -- I mean, I didn't -- I didn't ask
22 him how he heard it. I asked him could he describe who it
23 was. He said only thing he could give me was a young,
24 black female.

25 Q And depending on what you mean by "young," I mean, 37,

1 at that time, might not have even seemed -- that's the
2 youngest person in this group, a 37-year-old.

3 A Yes.

4 Q So did you think that -- why wouldn't you have asked
5 Judge Cooper to bring in all the black females and -- and
6 -- and question them about whether or not they -- they said
7 anything that might've prejudiced this trial? This guy is
8 on trial for his life.

9 A And I don't know whether -- because we talked about it
10 in chambers before we came out here. I don't know whether
11 -- whether we said that in chambers. But for some reason
12 we -- we -- we -- we had a -- we had a idea of who it was.
13 So if you back up in that, I think -- I think I pretty -- I
14 was certain that it was 134, essentially.

15 Q Well -- and on page 667 -- I'm going to go back there.
16 Hold on one second. This is the way you stated it: "Your
17 Honor, I think it came to the state's attention on
18 yesterday that one of the deputies, a Deputy White from the
19 Richland County Sheriff's Department, may have overheard --
20 I think it was what turned out to be Juror No. 134, during
21 lunch, saying something to the effect that, 'I've heard all
22 I need to hear.'"

23 A Yeah. I -- if I -- if I said that, then pretty much
24 we -- I had some reason to believe that -- to believe it
25 was 134 and that nobody else needed to be investigated

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 129

1 here, other than 134.

2 Q Okay.

3 A And -- and -- and my recollection of that is that the
4 judge -- the judge didn't want to single out 134 so the
5 judge called some additional jurors beside -- besides 134
6 so that -- so that -- so 134 wouldn't think we were just
7 singling her out ---

8 Q Now ---

9 A --- is my recollection of ---

10 Q Let me ---

11 A --- why we did it that way.

12 Q I kind of assumed that. But here's my question: Did
13 you think the judge adequately questioned her as to whether
14 or not she might've said that?

15 A I mean, I don't know what -- I mean, all the judge can
16 -- can ask is, you know -- is "Did you say it or didn't you
17 say it" to you.

18 Q Did he ask any of the other jurors if they heard
19 something like that?

20 A I don't think so. No.

21 Q See, I'm -- that's -- from what I see, I don't think
22 you asked him that. Why didn't you ask if -- see, because,
23 to me, it's one thing that one of the jurors might have
24 already made up their mind improperly. But she may have
25 conveyed this opinion to others in the jury box ---

1 A Okay.

2 Q --- or others in the jury room or on the elevator that
3 may have an influence on them. Wouldn't it have been
4 appropriate to ask those other jurors, "Did you hear
5 anything like that"?

6 A And I -- I'm not sure. The record can -- can see what
7 the -- what exactly Judge Cooper asked. I'm not exactly
8 sure what he -- what all he asked in that question.

9 Q Okay.

10 A If he didn't ask that, I think it would be appropriate
11 for him to ask -- ask that -- those follow-up questions.

12 Q But you were there?

13 A Yes.

14 Q Okay. And did you ask him to ask any additional
15 questions of these jurors?

16 A I can't tell you what -- what's in the -- you got a
17 transcript. If I didn't say it in the transcript, then I
18 -- then I didn't say it.

19 Q Okay. Mr. Ashford also said that during the closing
20 argument, you made a statement about the fact that Leon
21 Lott had run all the Olympic swimmers out of Richland
22 County.

23 A Correct.

24 Q Well, it -- I'm glad you say it's correct. As a
25 matter of fact, I just found it. In his closing argument,

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 131

1 you're talking about the burden of proof. On this table --
2 apparently, you were by the prosecution table. I'm reading
3 on 899 from line 4, starting: "On this table rests all the
4 resources and the powers of the state of South Carolina.
5 They brought in the sheriff of Richland County to testify
6 in this week -- in this case this week. This is a man who
7 has singlehandedly rid this county of all Olympic swimmers.
8 They found the power, this table has."

9 I have no idea what that means.

10 A Yeah.

11 Q What does that mean?

12 A That -- the point of that -- and -- and I done used
13 that a couple times. The point of that is so if they have
14 the ability to bring it all -- to do what -- they have the
15 power to subpoena, bring in whoever they want to bring into
16 the Court here, and they -- to prove their -- their burden.
17 Because it's their job to -- to prove the defendant's
18 guilty, not the other way around.

19 Q Okay.

20 A Because they have this power, all these resources
21 here. They didn't bring in -- if you -- if you -- if -- if
22 you look -- if you read further into the closing, I will
23 tell you all the things that they didn't do. Nobody --
24 they didn't bring anybody here that saw Mr. Ashford shoot
25 out any sort of window. They didn't get any sort of

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 132

1 gunshot residue to prove he shot out -- shot at any -- any
2 deputies here. Did -- there -- there wasn't any forensics
3 that -- that -- that truly tied him to shooting out any
4 windows at -- at these law enforcement people.

5 So that -- point of that closing to say they have all
6 this authority; they can do what they want. They can --
7 they have the power to do all this stuff and prove all this
8 stuff. But they didn't do it in his case.

9 Q Well, let me ask it this way: Are -- are -- are --
10 were you saying that -- I mean, let's face it. The sheriff
11 of Richland County doesn't come testify in every case.

12 A Correct.

13 Q Matter of fact, it's kind of rare, isn't it?

14 A Yeah.

15 Q Is that what you were trying to say: that the fact
16 that the sheriff -- I mean, the sheriff came in here to
17 this trial -- shows the power?

18 A Yes.

19 Q Okay. Did you think that was burden-shifting in some
20 way?

21 A No. It -- it was -- it was meant to say that they
22 have -- they have all this power, but they didn't use a lot
23 of it to -- to bring any evidence that proved Mr. Ashford
24 guilty -- guilty of anything.

25 Q So they brought in some star power?

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 133

1 A Not -- not that. It -- it was -- it's meant to say
2 that they have the ability to utilize whatever resources
3 they have to prove their case, but they didn't prove their
4 case in -- in Mr. Ashford's particular case, despite all
5 the authority that they have here.

6 Q Okay. And -- and -- and what -- what was the thing
7 about the Olympic swimmers again? I just don't know if I
8 even understand what that meant.

9 A This -- this -- Mr. Ashford case was right after
10 Michael Phelps had got charged in ---

11 Q Oh, okay. With the marijuana?

12 A Marijuana.

13 Q Okay.

14 A With the -- it was a ---

15 Q Single -- now -- mystery solved. Okay.

16 A Right -- it was right after that.

17 Q All right. Singlehandedly rid this county of all
18 Olympic swimmers.

19 A Yes, sir.

20 Q Okay. Have you seen the dispatch reports of this
21 incident? Did you look at any of those prior to ---

22 A The cab ---

23 Q --- the trial?

24 A The cab?

25 Q Yeah.

1 A Yes.

2 Q Yeah. At one point at -- on that day at 1339 hours,
3 which would've been 7:39 -- doesn't that sound right? No.
4 It'd be 1:39 in the afternoon.

5 It says: "Possible family member trying to escape.
6 CPD out with family member near the wood line. Just
7 received the 911 call from residence."

8 A Yes.

9 Q Well, I thought you said there weren't any 911 calls
10 from the residence.

11 A That -- that's maybe what the cab report says, but it
12 -- we contacted 911. They said they had no 911 calls from
13 that residence here. And we pulled the record from the
14 cell phone and the residence. We couldn't find any 911
15 calls from there.

16 Q So the sheriff's department is wrong about that?

17 A I don't know what residence they're referring -- I
18 don't -- I don't know whether they're referring to the
19 incident location or a different residence. But there were
20 -- when we called -- contacted 911, there were no 911 calls
21 from that residence or Ms. Simmons' cell phone.

22 Q Okay. Now, do you remember -- you did the cross-
23 examination, I believe, of this crime scene investigator,
24 Patricia Reed-Enzor?

25 A I'm assuming -- I can't tell ---

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 135

1 Q Okay.

2 A --- you off top of my head.

3 Q All right. And she -- did you -- did you know, at the
4 time of the trial, that she had turned the scene over to a
5 private citizen overnight?

6 A Probably not at the time of trial. No. Probably when
7 she said it, I probably realized at that point.

8 Q I -- I -- I didn't think that you -- did you point out
9 the inconsistent statement, I mean, in what's been admitted
10 into evidence, the -- under Tab 5? I don't know if you saw
11 this. In a crime scene analysis report, Ms. Enzor says:
12 "The crime scene was secured and a rotation started.
13 Investigating officer, IO, turned over the scene to Deputy
14 Benson."

15 And then, the next page is her bench notes, where she
16 said: "Collected crime scene log. Released scene. Ali
17 Harrison, 743-9914, took possession of residence."

18 How -- how was she able to secure the scene by turning
19 it over to a private citizen?

20 A She's not.

21 Q Did -- you didn't push her on that, though, I -- I'd
22 ---

23 A No. Because -- and this -- this is the struggle and
24 Mr. Ashford had during the entirety of the representation
25 here. He would get -- he would get caught up on small

1 details that would be inconsistent with his theory of
2 innocence.

3 Q Okay.

4 A He would want to push those small details -- like the
5 green jacket over the brown jacket -- push those details
6 that would draw attention away from the stronger points he
7 had in his case.

8 Q What were the strong points in his case?

9 A The strong points of -- you can't -- you can't tell
10 from the dry reading of the -- of the ---

11 Q --- transcript.

12 A --- transcript. But Ms. Simmons did not come off as a
13 credible witness, some of the reason why the -- the CSC
14 with -- against her was -- was a not guilty here. When it
15 come to -- when it came to the act of assault with -- with
16 intent to kill when it relates to the officer here, nobody
17 saw him shoot. There was no forensic evidence that he --
18 he -- he shot those -- those places.

19 When it came to the burglary, there was no -- no signs
20 of forced entry into the home that would indicate that he
21 actually kicked the door in or went in there with the
22 intent to commit any sort of crime. And a -- at least one
23 of the -- one of the carjacking victims did -- couldn't
24 identify him. One of the -- the married couple, the -- the
25 ---

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 137

1 Q Right.

2 A --- the wife couldn't and the -- the lady at the
3 church stated that she wasn't able to even to turn even and
4 saw Mr. Ashford. So there were strong issues -- legal
5 issues for his case here. What we were trying to do is
6 have Mr. Ashford come off as likable so the jury would not
7 overlook those legal holes that they had in this case here
8 and not harp on small details that wasn't important but try
9 to accentuate the details that were important that could
10 actually get the jury to -- to find him not guilty on some
11 of the charges.

12 Because as you -- if you read the testimony, he -- he
13 admits to coming up to two of these carjacking individuals
14 here and essentially they're getting scared and giving him
15 his -- their keys here. So we were trying to minimize the
16 damage for Mr. Ashford here.

17 Q Okay. So -- so you're saying this is trial strategy?

18 A Yes.

19 Q Okay. Now, Mr. Ashford looks at these things as if
20 you keep -- do you understand that his point was if you
21 keep showing that their testimony is inconsistent or wrong,
22 eventually this house -- house of cards is going to
23 collapse.

24 A It would be -- that would've been -- if he -- if he
25 wouldn't testify then -- to put himself at these places,

1 then it -- the -- the jury was not relying on the -- the
2 victims' testimony when it comes to ID. He's inside of the
3 house when the police get in there. He's -- he -- him and
4 the lady are in the house when the police shoot the tear
5 gas in there.

6 So we don't need to spend two hours trying to
7 determine whether or not the green jacket is his or not.
8 He's in the house. The question is what happened in the
9 house.

10 Q Right.

11 A So we -- I didn't want to focus on this green jacket
12 when we focus on the fact that there was so much stuff that
13 happened in the house that would prove that he didn't shoot
14 at the officer or sexually assault the victim while he was
15 in the house. And we talked about that from day one.

16 It -- it wasn't surprise at the court when it came to
17 what the strategy was. That -- that strategy for -- was
18 told to Mr. Ashford from day we -- we met him. And he --
19 he complained about that strategy for the two months that I
20 represented him on.

21 Q Well, obviously, there was some conflict because you
22 actually did a motion to relieve in the middle of the
23 trial?

24 A Yes.

25 Q Okay. Did -- did you have a plea offer for -- for Mr.

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 139

1 Ashford -- from the state for Mr. Ashford?

2 A I did.

3 Q What was it?

4 A The -- the initial plea offer -- let me -- was, I
5 think, 30 years. On the second day of trial, Judge Cooper,
6 when he asked could we resolve this as a trial, which said
7 he would've gave Mr. Ashford a range of 20 to 30 on a plea.
8 Mr. Ashford wanted a cap of 20. They would not give him a
9 cap of 20. So the -- the trial kept going here.

10 Q All right. Did you remember Ms. Campbell in her
11 closing vouching for the credibility of two Richland County
12 sheriff's deputies?

13 A I remember when I read the transcript. I don't
14 remember it contemporaneously ---

15 Q Okay.

16 A --- hearing it here.

17 Q And I'm not trying -- I'm trying to make certain. You
18 weren't asleep or ---

19 A No.

20 Q --- anything?

21 Okay. But sometimes things can get by you ---

22 A Yes.

23 Q --- in a trial? Okay.

24 So you might've been thinking about your own closing
25 or something.

1 A I wouldn't say -- I didn't -- I didn't object to it.
2 And I -- I -- I read it in the transcript, but I didn't
3 object to it.

4 Q You did not object?

5 A No.

6 Q Okay. Did you -- do you think that Ms. Campbell
7 stating, you know, quote, You heard from Deputy Unger and
8 Nathan White and they got up here and were honest with you
9 and you heard from Eric Barnes and Investigator Thomas --
10 credibility -- because either you believe those two men
11 would put their careers on the line to frame this poor man
12 or you believe the ---

13 A Yeah.

14 Q --- defendant?

15 A I agree that that's -- those are technically vouching
16 statements.

17 Q Yeah.

18 A Yes.

19 Q Okay. Not worth objecting to?

20 A I ---

21 Q Make her look bad?

22 A I -- I wouldn't say -- I wouldn't say they're worth
23 object to. I would say I didn't object to them.

24 Q Okay. Finally, Mr. -- Mr. Ashford has -- has pointed
25 out to me -- because you made the point that sometimes

DIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 141

1 things don't come across on the printed page the way they
2 really were in court. Do you recall Judge Cooper's
3 instruction about the two types of evidence?

4 A I do.

5 Q Okay. He made -- he was talking -- you know, and
6 judges read the charges and every once in a while, they'll
7 look up and -- and just kind of throw something in there at
8 -- to flesh it out a little bit. That's the way that this
9 might've been.

10 But he said -- you know, the -- the judge was talking
11 about the two types of evidence: direct and
12 circumstantial. And then, he said: "And we probably had
13 both in this case."

14 A Yes. I remember that.

15 Q Okay. How did you take those words at the time?

16 A I took it to mean that he was essentially saying that
17 the prosecutor probably presented both direct and
18 circumstantial evidence in this case.

19 Q Okay. Do you think any of the jurors might have
20 inferred that he was saying "We had all the evidence in
21 this case"?

22 A I can't say what they -- I didn't take it that way. I
23 can't say how they would've ---

24 Q Okay.

25 A --- taken it.

CROSS-EXAMINATION BY MR. MITCHELL - DEON O'NEIL 142

1 Q And you didn't see any reason to object to his charge?

2 A No. Because I didn't -- because I didn't take it that
3 way.

4 Q Okay. Thank you, Mr. O'Neil.

5 MR. BELDING: No further questions, Your Honor.

6 THE COURT: Thank you, sir. Cross-examination?

7 MR. MITCHELL: Yes, sir.

8 (Off the record briefly.)

9 CROSS-EXAMINATION

10 BY MR. MITCHELL:

11 Q All right. Good afternoon ---

12 A Good afternoon.

13 Q --- Mr. O'Neil. Let's start off -- you met with Mr.
14 Ashford two -- over a dozen times before trial; is that
15 correct?

16 A That's -- that -- that number sounds correct.

17 Q And that's what your notes reflected in direct; is
18 that correct?

19 A That's correct.

20 Q Okay. So in those meetings, you went over the charges
21 that he was facing and the possible sentences?

22 A We did.

23 Q And you would've reviewed the discovery with him as
24 well?

25 A Yes.

CROSS-EXAMINATION BY MR. MITCHELL - DEON O'NEIL 143

1 Q Okay.

2 A I think at that point he probably had -- he -- I think
3 he had a copy of the discovery. I didn't have to bring him
4 discovery. From the former attorney, he actually had a
5 copy of his discovery ---

6 Q So he would've ---

7 A --- in the ---

8 Q --- had his own copy of discovery?

9 A Yes.

10 Q Okay. All right. All right. Going back to these 911
11 calls, there ended up being no 911 calls ---

12 A Correct.

13 Q --- according to your investigator; is that right?

14 A Correct.

15 Q Now, there was -- there was multiple calls into the
16 house from the investigators outside; is that correct?

17 A Correct.

18 Q And that was coming from hostage negotiators and him
19 trying to talk?

20 A Yes.

21 Q Okay. And those records were not recorded -- those
22 phone conversations were not recorded, were they?

23 A According to the state, they were not recorded.

24 Q Yeah. And that's something you cross-examined these
25 investigators on, isn't it?

1 A And I think -- yeah. And I think we brought it up in
2 pretrial and pretrial motions as well.

3 Q And speaking of the statements, you also pointed out
4 that Richland County has a policy of not recording
5 interviews; is that ---

6 A Correct.

7 Q --- correct?

8 And is that something that you focused on?

9 A Yes. In -- in this -- at that date and time, yes.

10 Q All right. To the juror issue, so all this happened
11 off the record. It's not reflected in the transcript. So
12 what you were -- what you were putting on the record that
13 was on the record at that point was just rehashing of what
14 happened before -- I guess it was in chambers; is ---

15 A Yes.

16 Q --- that correct?

17 A (Nodded head up and down.)

18 Q Okay. So Deputy White thought he heard someone say
19 something about having their mind made up; is that right?

20 A Correct.

21 Q And then brought it to your attention?

22 A Yes.

23 Q And you brought it to the Court's and the state's
24 attention?

25 A Correct.

CROSS-EXAMINATION BY MR. MITCHELL - DEON O'NEIL 145

1 Q And then you urged the Court to call Deputy White
2 first, I believe; is that right?

3 A That sounds right.

4 Q And you would've called Deputy White first to see
5 which juror and narrow down who he was talking about. And
6 I think Judge Cooper did not allow that. So I think he
7 went ahead and said we'll call a number of jurors to see
8 what they say about it. Is ---

9 A Yes.

10 Q --- that -- okay.

11 A Sounds -- that sounds right.

12 Q Okay. And then you would've called five jurors that
13 Mr. Belding; is that right?

14 A Yes.

15 Q Okay. And it seemed in the transcript that it was
16 Juror 134 that you had narrowed it down to. You thought it
17 was her; is that about right?

18 A That -- yeah. Looking at -- looking back at the
19 transcript, I would've had -- have to have some reason to
20 think it was 134, as opposed to anybody else ---

21 Q Okay.

22 A --- and to be pretty sure about it being 134.

23 Q And she was 38 years old; is that -- I think that
24 counts as young.

25 A (No audible response.)

1 Q So Judge Cooper heard all this and then denied your
2 motion for a mistrial; is that ---

3 A Yes.

4 Q --- how it went?

5 A (No audible response.)

6 Q So he listened to all these jurors testify and he said
7 that everyone categorically denied hearing -- or saying
8 that; is that correct?

9 A Yes.

10 Q Okay. And you also said that you -- when you're going
11 back and recounting what happened before you had requested
12 three additional jurors be interviewed or questioned?

13 A Yes.

14 Q And I guess the judge denied that; it that ---

15 A I think ---

16 Q --- right?

17 A --- at -- at -- have to rely on the transcript, but I
18 think so.

19 Q Okay. As far as the closing, to be -- well, I guess
20 what you testified on direct was that it was your strategy
21 to show the state has an abundance of resources where they
22 can do all type of tests and all types of power of the
23 subpoena, but they still hadn't proven that he was guilty
24 with direct evidence. Is that kind of where you were going
25 ---

CROSS-EXAMINATION BY MR. MITCHELL - DEON O'NEIL 147

1 A Yeah.

2 Q --- with that?

3 Can you expound a bit on how you said that you thought
4 Ms. Simmons was not a credible witness at the trial? You
5 thought that her testimony may not have hurt Mr. Ashford as
6 much as just reading it off the transcript maybe.

7 A It's -- and it's kind of hard to explain. But she --
8 she didn't -- I been doing trial for long enough. She did
9 not come off as believable. I don't know it -- I don't
10 know whether it's her demeanor -- probably her demeanor was
11 part -- was the majority of it. But she did not come off
12 as credible.

13 Q Okay. And do you attribute that to why he was
14 convicted of ABHAN and not CSC?

15 A Yes. I don't think -- and that puts it at -- there --
16 there was no physical evidence of a CSC either here.

17 Q Okay. All right. So back to the jacket one more
18 time, did you consider this an ID case?

19 A No.

20 Q When it was Mr. Ashford that went up to these cars
21 with a gun, drove off with these cars, went -- went into
22 this house, and then was pulled out of the house by the
23 SWAT team; is ---

24 A Yes.

25 Q --- that correct?

1 A Correct.

2 Q So it wasn't that "well, I didn't do it"; it was just
3 maybe the state can't prove it or other strategies involved
4 in that; is that ---

5 A It was more -- he had a different version of what
6 happened ---

7 Q Uh-huh.

8 A --- that day. It wasn't -- it wasn't a question about
9 whether or not he was involved in the activities that
10 occurred that day. He just had a different explanation as
11 to how things occurred that day than the witnesses
12 individually.

13 Q Right. Well, can you describe the motion to have you
14 relieved? I think that happened after the *Biggers* hearing.
15 He says he wants the telephone records and the 911 calls at
16 that point, and then Judge Cooper addresses that. Is that
17 how you recall it?

18 A If -- I mean, I think he probably told us that he --
19 he wanting to -- me and Ms. Singletary wanted -- that he
20 wanted us relieved probably at some point that morning so
21 he brought it to the Court's attention here some things
22 that he wanted he was -- we still working on. I think one
23 of the -- it was a set -- it was a different set of phone
24 records that he wanted. Because I think he -- he just
25 brought up that morning that he wanted -- and I had my

1 investigator to go get.

2 And that's what -- he -- his point was that he had --
3 he had brought that to the attention of other attorneys
4 previous to me and that I should've known that it should've
5 been in the file. I told the judge that I didn't know
6 that, since he communicated with me that -- that this --
7 this -- that very morning that we were having my
8 investigator go get those things that he -- that he wanted
9 here.

10 Q Did you not challenge the amount of money, whether it
11 was 4,000 or 3100 because it just wasn't pertinent to
12 anything in the case?

13 A Yeah. We -- it's just another example of kind of the
14 -- the dispute we -- me and Mr. Ashford always had. He --
15 he -- he was hung up on -- on the amount of money for this
16 workers' compensation claim, which was immaterial to
17 whether or not he was actually guilty or -- or innocent.
18 It -- it may be a discrepancy, but it didn't -- it wasn't a
19 discrepancy that was going to prove his innocence.

20 Q Okay.

21 MR. MITCHELL: One second, Your Honor.

22 Q And you challenged the voluntariness of Mr. Ashford's
23 statement; isn't that correct?

24 A Correct. I think Mr. Ashford actually testified in
25 pretrial, if I ---

REDIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 150

1 Q He did.

2 A --- remember correctly.

3 Q So there was a *Denno* hearing?

4 A Correct.

5 Q And the judge would've allowed that to come in?

6 A Yes. The -- the judge ultimately allowed the
7 statement to come in.

8 Q Uh-huh.

9 MR. MITCHELL: All right. That's all, Your Honor. No
10 further questions.

11 MR. BELDING: Brief redirect, Your Honor?

12 THE COURT: Certainly.

13 REDIRECT EXAMINATION

14 BY MR. BELDING:

15 Q I just want to -- I just want to clarify a couple
16 things I want to make understand I understand that Mr.
17 Mitchell brought up. When -- when he was asking you about
18 this -- this juror -- by the way, I think you -- you
19 actually said that Juror 208 was the white female, but she
20 was a black female. You understand that, right?

21 A 208?

22 Q Yeah.

23 A What I have says -- I'm not -- sorry. I'm not -- not
24 going to give the juror name. It says white female. I can
25 show it to you if you want to look at it. I don't want to

REDIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 151

1 say the -- the juror's name.

2 (Whereupon, Mr. Belding and the applicant conferred.)

3 A Yeah. I have two notations, both on my strike sheet
4 and on the attorney list that she's a white female.

5 (Whereupon, Mr. Belding and the applicant conferred.)

6 MR. BELDING: Judge, I'm looking for page 988 of the
7 transcript, but it shouldn't be hard to find, although I
8 think you've noticed that the way I got this transcript is
9 not chronological. Ah, here we go. Okay. I got it in
10 three different parts, and it jumps all over the place.

11 THE COURT: Yeah.

12 Q All right. Now, this is was I was provided, Mr.
13 O'Neil, by the attorney general's office.

14 A Okay.

15 Q It is part of the record on appeal. But it is the
16 transcript of the trial in three different parts. I'm
17 going to hand you what's my Volume 2 of 3. It is -- in the
18 transcript, I believe, it's on page 35. In the record on
19 appeal, it's on page 988. That was kind of messing me up.
20 Can you see where it describes they pull 208?

21 A I -- I do.

22 Q And what does -- what did the court reporter think the
23 lady was?

24 A Court reporter says "black female." I'm looking at
25 what's -- I'm looking at the -- the -- the jury attorney

REDIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 152

1 list that the provide for the Court here. 208 has name,
2 date -- date of birth, has white female. And on my random
3 strike list, Ms. Singletary -- when we -- we circle the
4 people who were selected, she was Juror No. 8. Ms.
5 Singletary also ---

6 Q Put down white female.

7 A Put white down -- put down white female and age.

8 Q So you think the court reporter was wrong?

9 A I can't ---.

10 Q Could've been?

11 A I can only assume that. But that's ---

12 Q Okay.

13 A --- what we have here. And -- and what's the
14 employment that you -- that 208 said? I think she said
15 self-employed?

16 Q Self-employed.

17 A Okay.

18 Q Number 208: "And I'm self-employed." That's all ---

19 A And I think ---

20 Q --- she said.

21 A --- that, according to both these records, it says
22 she's a network engineer.

23 Q Hmm.

24 A At Palmetto IT Solutions. And on our strike list, it
25 says she's a network engineer.

REDIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 153

1 Q That might explain, quite frankly, why you only
2 thought there were three black females on the jury, when
3 it's -- looks like four.

4 A Yeah. Because ---

5 Q Okay.

6 A --- I would look at my -- my list. It have one, two,
7 three -- I have three black females on my -- on my circled
8 list. One would be Juror No. 286 ---

9 Q Correct.

10 A --- Juror No. 134 ---

11 Q Correct.

12 A --- and Juror No. 172.

13 Q That's right. And then, of course, 58 ---

14 A Would've been ---

15 Q --- was the ---

16 A --- the alternate.

17 Q Okay.

18 A Yeah.

19 Q Since the report of the potential juror misconduct
20 came from Deputy White, why didn't we put him up on the
21 stand?

22 A I think we asked. I think the judge had said no, I
23 think.

24 Q I mean, I don't see that in the record. Is that your
25 recollection, that you asked ---

1 A That's not ---

2 Q --- that?

3 A --- in -- that's not -- that's -- that's what --
4 that's my recollection. It's not in the transcript that we
5 requested it?

6 Q I don't see that. Okay.

7 A I'm not -- that's my recollection. I thought that was
8 in the transcript. I'm not going to say that it is if --
9 if it's not here, but ---

10 Q Okay. And the other question I had for you, following
11 up on Mr. Mitchell's, is -- well, did he -- do you tend to
12 get these incident reports -- these closed incident reports
13 from Richland County Sheriff's Department? Is that
14 something y'all get in your ---

15 A Yes.

16 Q --- normal course of discovery?

17 A Yes.

18 Q Well, on the one that -- that Mr. Ashford had -- and
19 it may be one you supplied him -- I'm just going to show
20 you -- it lists the incident location. Someone said, you
21 know, shots. "Suspect greenish jacket and khaki pants" --
22 turn to the next page, if you don't mind.

23 A (Complied.)

24 Q Again, just heard two shots. Next page.

25 A (Complied.)

REDIRECT EXAMINATION BY MR. BELDING - DEON O'NEIL 155

1 Q But -- look at this -- well, I mean, that's not -- now
2 it says "black male in a brown coat." But -- but on the
3 last page, it talks about "just received a 911 call from
4 the residence."

5 A I -- I don't see where -- something is whited out
6 there. I -- I don't know what's -- why that's whited out,
7 but ---

8 Q Oh. Yeah. Okay. Well, just received a 911 call from
9 somewhere?

10 A Yeah.

11 Q Okay. But you're saying that your investigation
12 concluded that there weren't any 911 calls from that Booth
13 Street location, right?

14 A Yes. I -- I can give you the report from my
15 investigator that -- that said that.

16 Q Ah. Info, Inc. Well, actually, now -- I'm reading
17 this. And this is a report of Info, Inc., Investigations,
18 from Lee T. Connelly; he's your investigator. And it's
19 dated March 31st, 2009, in the middle of the trial.

20 And he's talking about Mike King. And it was your
21 understanding Mike King was someone who worked for the
22 Richland County 911 too, wasn't ---

23 A Yes.

24 Q --- it?

25 It says: "Then Mike" -- okay, that there were --

1 well, before that he had talked to Jennifer Blair with
2 Richland County 911. Let me see. Explained the situation
3 -- middle of trial.

4 (As read): "I explained that we had the report from
5 Sharon VanHook's call to 911 on the day of the incident,
6 but we are looking for any calls to and from Deborah
7 Simmons' house. And I provided her the telephone number.
8 And any calls concerning Ms. Simmons' residence, I provided
9 them the address. Then Mike King contacted me and informed
10 me that it is not their policy to put that they have been
11 unable to locate records in writing."

12 A Yes..

13 Q Okay. Well, I mean, nobody wants to admit a mistake,
14 particularly in writing. But what -- it doesn't say that
15 none were there. It says that they couldn't find -- they
16 couldn't locate any and didn't want to put that in writing.
17 Isn't that what that letter says?

18 A It -- the -- it says that. The -- the gist of that is
19 that they -- that they couldn't find any and they -- it's
20 not their policy to put that they can't find any in
21 writing.

22 Q Okay. And -- and the thing is: What we don't know is
23 not that there weren't any 911 calls from that number, but
24 they couldn't locate any and part of the problem is it'd
25 been 2 1/2 years ---

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 157

1 A Yes.

2 Q --- and they didn't keep it?

3 A Yes.

4 Q Okay. Thank you, Mr. O'Neil. I appreciate it.

5 MR. BELDING: Nothing further, Your Honor.

6 MR. MITCHELL: Nothing further.

7 THE COURT: All right. Thank you, sir. You may step
8 down.

9 (Whereupon, the witness exited the witness stand.)

10 (Off the record briefly.)

11 MR. BELDING: Your Honor, at this time I'd like to
12 call Ms. Nicole Singletary.

13 (Whereupon, the witness came forward.)

14 NICOLE SINGLETARY, having been first duly sworn,
15 testified as follows:

16 MR. BELDING: Okay. Please the Court, Your Honor?

17 THE COURT: Certainly.

18 DIRECT EXAMINATION

19 BY MR. BELDING:

20 Q And please state your full name for the record.

21 A Nicole Latonya Singletary.

22 Q Okay. And what are you doing these days for a living,
23 Ms. Singletary?

24 A I am a private attorney here in Columbia, South
25 Carolina.

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 158

1 Q Okay. Okay. Did you start off working with the
2 public defender's office?

3 A Yes, I did. I worked there from August the 8th of
4 2005 until April the 9th of 2010.

5 Q And when did you become certified to do trials in
6 South Carolina?

7 A It should've been like January the 4th or 5th of 2006.

8 Q I'm not going to hold you -- 27th close enough?

9 A Oh, that's fine.

10 Q January ---

11 A Yes.

12 Q --- 2006.

13 A Okay.

14 Q So you had been certified for three years before this
15 trial?

16 A Yes.

17 Q Okay. Had you done some trials in that time?

18 A Yes.

19 Q Okay. Now, you were -- as I understand it, you were
20 second chair to Mr. O'Neil at this trial?

21 A I was.

22 Q Why was that?

23 A Well, me and Attorney O'Neil used to do a lot of
24 trials together. So -- because we kind of meshed together,
25 our different techniques and our different styles. So even

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 159

1 in private practice, since we've been in private practice,
2 we've done trials together, even though we're in different
3 firms.

4 Q Different firms, right.

5 A Uh-huh.

6 Q Because he's with Anna and Victor, right?

7 A Yes.

8 Q Okay. And -- and, of course, you were -- actually,
9 you had been certified at -- trial-certified longer than he
10 had?

11 A Yes.

12 Q But by agreement, he was lead counsel?

13 A Yes.

14 Q Okay. You did handle some of the witnesses in the
15 case, though?

16 A I did.

17 Q Right. Do you recall -- just to cut -- cut this kind
18 of short ---

19 A Uh-huh.

20 Q --- you heard Mr. O'Neil's testimony.

21 A Uh-huh. Yes, sir.

22 Q Does his recollection of how many times he talked to
23 Mr. Ashford sound about right to you?

24 A Yes, it does.

25 Q Okay. Did -- is his description of the conversations

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 160

1 they'd had about defense and what they should do and pleas,
2 does that sound -- square with your recollection?

3 A Yes. And I will -- like to add that we actually did
4 mock cross-examinations and directs with Mr. Ashford.
5 Because of the fact that we knew that the solicitor we was
6 going up against was Luck Campbell and because we have
7 actually done so many other trials with her. So, in
8 essence, we played good-cop/bad-cop at the jail with Mr.
9 Ashford.

10 Q Okay. And which one were you?

11 A I was the bad cop.

12 Q Okay.

13 A As always.

14 Q What -- what -- when the -- during the middle of the
15 trial when there was a motion by Mr. O'Neil maybe to
16 relieve counsel, was that -- was he speaking for you too?
17 We you also asking to be relieved?

18 A Yes.

19 Q Okay. And what was the reason?

20 A Well, I will tell you that with Mr. Ashford, we kind
21 of had some, like, ups and downs. One day that we would go
22 and talk to him, he would be fine. And he would, like, go
23 along with, I guess, like, the mock cross-examinations. He
24 would be courteous and everything. And then, other days it
25 would be kind of -- we would spend at least 20 minutes of

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 161

1 him saying how we were doing a bad job preparing for trial.
2 So we would have to let him vent. And once he finished
3 venting, then we could get into actually doing all the
4 trial strategy and coming up with the defenses.

5 So it -- it was -- it was -- kind of with Mr. Ashford,
6 you -- the -- it depend on what day you caught him and what
7 mood you caught him in.

8 Q Okay.

9 A Uh-huh.

10 Q Interesting description, not -- I understand there was
11 some ups and downs. Did you think he might have any mental
12 condition?

13 A No, I did not ---

14 Q And I understand ---

15 A --- actually ---

16 Q --- you're not a psychologist ---

17 A Uh-huh.

18 Q --- or psychiatrist. But just as an attorney did you
19 -- do you think he seemed, you know, mentally normal?

20 A Yeah. I -- I -- and matter of fact, I -- I talked
21 about this at lunch. And I never thought that he had any
22 mental illnesses. And I will you tell you, part of being a
23 second chair is I went and I reviewed his entire file. And
24 I actually saw how, when Doug Strickler actually
25 represented Mr. Ashford, his paralegal at the time spent

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 162

1 months and months going and -- and retrieving all kind of
2 medical records for Mr. Ashford -- not just mental health
3 records, but also, like, just any medical procedure.
4 Because at one point, he had a procedure done on his lungs.

5 Q Yeah.

6 A So they received all of his information. And one
7 thing that I would clear up, too, is that while we're
8 talking about medical records, back on April the 23rd of
9 2008, when Danielle Payne represented Mr. Ashford, he was
10 actually -- that was his first mental eval. So Jonathan
11 Milling's was not the first mental eval that Mr. Ashford
12 had.

13 Our office, at the time, did a interview on April the
14 23rd, 2008, with Dr. Martin. When Dr. Martin actually
15 performed the evaluation of Mr. Ashford -- Ashford on April
16 18, 2008, at the detention center for criminal
17 responsibility and competency, Dr. Martin found that Mr.
18 Ashford was competent, criminally responsible, and had the
19 capability to conform.

20 He said -- and Dr. Martin told Ms. Payne that he will
21 not be preparing a formal report. And she just says please
22 see her notes for more details.

23 Q That explains that. Not -- you know, it doesn't --
24 Dr. Martin rarely prepares a report if ---

25 A Uh-huh.

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 163

1 Q --- it's not going to help?

2 A Yes. Exactly.

3 Q Okay.

4 A That is correct.

5 Q And I -- I talked to him too.

6 A Yes.

7 Q Did you think it was odd that everybody kept having
8 mental evaluations of Mr. Ashford, though?

9 A Well, you know what? I ---

10 Q Why do people keep having mental evaluations if there
11 isn't something going on?

12 A Well, what I think it was, just actually looking
13 through all the notes and everything, like, Mr. Ashford had
14 some issues down at the jail. And then Mr. Ashford -- it
15 -- it appears that Mr. Ashford made a point of asking a --
16 or -- I don't know how he did it; I'm just speculating --
17 but made a point to Mr. Strickler that they needed to
18 actually get his mental health records because I'm looking
19 at -- I mean, when Doug Strickler had this case -- I mean,
20 they painstakingly -- if -- if they moved Mr. Ashford from
21 one dorm to the next, they notated that.

22 All the phone calls from Mr. Ashford at that time back
23 in 2007 -- because at that time we did accept jail phone
24 calls. So -- so when Mr. Ashford would call the office,
25 they'd notated all of that. And -- and it's -- it appears

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 164

1 that, you know, Mr. Ashford wanted the office to actually
2 get the records and do a mental eval.

3 And I think that's why Danielle Payne actually did the
4 mental eval. Because I'm looking, and it took them with --
5 of the expansive records that they needed, it took them a
6 long -- it -- a long time. It took them from -- they
7 started trying to get the records and sending out subpoenas
8 -- let's see. I'll see if there's anything.

9 They -- they started on March the 15th, 2007, getting
10 the records. And only thing that I could actually
11 speculate is that they got a letter from Mr. Ashford on
12 March 14th, 2007. Then that next day, they said they
13 request that Michelle, who was the paralegal at the office
14 at that time, contact Alvin S. Glenn medical on defendant's
15 status, as he is asking to be hospitalized.

16 So based on the -- the defendant saying that he wanted
17 to be hospitalized and that letter that they got on March
18 the 14th, 2007, from that date all the way until March the
19 18th, 2008, we have notes of the office getting medical
20 records from various different facilities, as well as the
21 jail.

22 Q Did you find Mr. Ashford to be capable of assisting
23 you in his defense?

24 A Yes. And one thing I would bring up is, like Mr.
25 Ashford said, with the one note that he sent to me, Mr.

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 165

1 Ashford literally, throughout the entire trial, he wrote
2 me. There should be pages and pages ---

3 Q Yes. This is page 4. Even Mr. O'Neil pointed that
4 out. But do you -- do you remember that during the trial,
5 that one note?

6 A Uh-huh.

7 Q Did you -- did you ever notice Mr. O'Neil -- does he
8 have a -- he may not be asleep, but does he ever look like
9 he's resting his eyes or anything in the -- in the middle
10 of a trial?

11 A No. And I would like to explain that note.
12 Throughout the trial -- and if you look at a lot of the
13 notes that Mr. Ashford and I passed, he had a issue -- he
14 wanted Mr. O'Neil to be more aggressive.

15 Q Right.

16 A But as I told him, that a lot of times, you don't --
17 the jury doesn't hear everything. The -- sometimes the
18 jury is daydreaming or doing whatever. And sometimes if
19 you highlight on that issue, then the jury is, like, Okay.
20 Well, now I need to pay attention.

21 And so what I was telling Mr. Ashford was, look, the
22 jury may not have even gotten what you're thinking in your
23 mind, so we don't want to highlight that because everybody
24 knows if we were to highlight that, Luck Campbell would've
25 went back up there and she would've said it over and over

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 166

1 and over again. And the jury would get the -- it -- it
2 would have negatively affect Mr. Ashford. I'll say it that
3 way.

4 Q Okay. That was your opinion at the time?

5 A Yes.

6 Q Is it still your opinion today?

7 A Yes.

8 Q Do you -- do you agree with Mr. O'Neil about -- rather
9 than rehash all of since you were second chair -- but, for
10 example, his explanation of why they didn't push the 911-
11 call issue too much, even though apparently there was at
12 least one ---

13 A Yeah.

14 Q --- and the DNA of the jacket and the \$4,000 from the
15 workers' comp settlement loan? Did you agree with Mr.
16 O'Neil that they were things that you thought distracted
17 from where you were trying to go -- what your trial
18 strategy was?

19 A I agree. And I would like to bring up that when
20 Carolyn Gripp had the file, she actually requested the 911
21 tapes back on September the 22nd of 2008. And at that
22 time, if I may read, she said: "Told the defendant the
23 state wants to call his case early next month. Defendant
24 is not happy. Wants to be evaluated for criminal
25 responsibility by DMH."

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 167

1 Well, at this time he had already been evaluated
2 twice. But he asked for a third evaluation.

3 "Defendant also asked why hadn't gotten the audio 911
4 tapes. I was told by the state that they did not exist. I
5 will try again, but the state is supposed to request the
6 tapes within 90 days. If that doesn't happen, 911 destroys
7 the tapes. Defendant believes that his entire defense is
8 on that tape."

9 "Defendant was very upset. Says that he's been" --
10 and I don't want to use that word, but it begins with a "d"
11 and ends in "ed" -- "around by the public defender's
12 office, who just keeps handing off his case to other
13 attorneys. Defendant is not satisfied with our
14 representation and would like for me to file a motion to
15 relieve counsel.

16 "I told defendant that I would try to get that done as
17 quickly as possible, since the trial is quickly
18 approaching."

19 So as early as -- I -- well, in September 2008, Mr.
20 Ashford knew that that -- those 911 tapes were not in
21 existence. So when he asked Mr. O'Neil, he had already
22 been previously told by Carolyn Gripp that there were no
23 911 tapes.

24 Q So if they're not requested within 90 days, they're
25 destroyed?

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 168

1 A That is the policy. And ---

2 Q Okay.

3 A --- and what I will tell you is that what happened is
4 when -- while all of us were at -- me and Attorney O'Neil
5 was at the public defender's office and Mark Schnee was
6 there, he actually -- I don't want to say sued, but he
7 actually subpoenaed Jennifer Blair, who was the director of
8 911 communications, and had her subpoenaed to come in to --
9 and I believe that motion may have been in front of Judge
10 Cooper at the time -- saying that their policy was
11 unconstitutional.

12 Well, that caused a big stink. But it -- it didn't
13 change the policy. It's still after 90 days, they destroy
14 them.

15 Q Okay. So the thing is the state can move a lot
16 quicker than you can, because they've already got people
17 working on it?

18 A Exactly.

19 Q If the 911 tapes help their case, they get them?

20 A Yes.

21 Q But if it doesn't, then -- then it's up to you all.
22 So the -- the public defender's office has to move mighty
23 fast ---

24 A Exactly.

25 Q --- to get these things or they're destroyed?

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 169

1 A Exactly.

2 Q Okay. So the point is, what Mr. Ashford testified to
3 may be true; there's just no documentary evidence to
4 support it?

5 A That's correct.

6 Q Okay. Did you agree with Mr. O'Neil -- and I'm sorry
7 -- about the DNA of the jacket and the \$4,000 worker comp
8 thing? Did you find those to be distracting in your trial
9 strategy or what?

10 A The workers' comp? Yeah. We found that to be
11 distracting. But as Mr. O'Neil said, we were never -- he
12 never brought up to me and Mr. O'Neil. He never did.

13 Q Okay. Now, you didn't argue the juror-misconduct
14 motion?

15 A Unh-unh.

16 Q Okay. Did you and Mr. O'Neil have discussions about
17 what should request of the Court about this potentially
18 serious issue?

19 A Yes.

20 Q Okay. What were the substance of your discussions?

21 A My recollection is on board with what Attorney Deon
22 O'Neil said. I remember us going back into chambers and
23 talking to the judge about the issue. And I remember us
24 narrowing it down to specific what juror that we believe
25 actually made the statement.

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 170

1 Also, as Mr. O'Neil said, I do remember Judge Cooper
2 saying, "Well, if I just pull one juror out, then the other
3 jurors are going to be kind of suspicious. So let's just
4 get a collective group, even though we all assume that 134
5 is the person who made the comment."

6 Q Did -- did -- was Deputy White the court officer --
7 was Deputy White in that in-chambers discussion?

8 A I can't remember whether or not Deputy White was
9 there. I -- I would think, knowing Judge Cooper, Judge
10 Cooper would've wanted to hear from him.

11 Q Okay.

12 A Yes.

13 Q All right. Well, I found that kind of odd. So it's
14 ---

15 A Uh-huh.

16 Q --- possible that Judge Cooper actually asked him,
17 "Tell me what you heard"?

18 A Uh-huh.

19 Q Okay. I mean ---

20 A Yes. I'm sorry.

21 Q If a statement like that was made, you'd -- you'd
22 agree that that could be pretty -- pretty prejudicial to a
23 defendant?

24 A Yes.

25 Q Okay. Did -- did you think that -- and -- and people

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 171

1 are reticent to admit when they've made a mistake?

2 A Uh-huh. Exactly.

3 Q Did you all consider asking -- or did the judge ask
4 any of the other witnesses [sic], the whites ones he called
5 in that would -- were not even under suspicion, if they
6 heard anything like that? Did he ask them that question?

7 A I can't tell you specifically what the judge said.
8 But if I remember correctly, he didn't use those terms but
9 that was the essence of what he was asking the other
10 individuals: have they heard anyone say anything about the
11 defendant's guilt or anything about the case when they were
12 not inside the courtroom.

13 Q Okay. And nobody owned up to that?

14 A No one did.

15 Q Okay.

16 A Which the -- I mean, in essence, they're not going to.
17 I mean, you wouldn't expect for them to.

18 Q Did you all consider putting Deputy White on the stand
19 to ask him exactly what he heard?

20 A I believe Attorney O'Neil did ask. But I -- I'm --
21 but I think that Judge Cooper said that it wasn't
22 necessary. And that's why I think that Deputy White did
23 come back in chambers with us.

24 Q Okay. You were the one that noticed that the gallery
25 was misbehaving ---

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 172

1 A Yes.

2 Q --- was my understanding. Tell Judge Goldsmith what
3 you observed.

4 A Your Honor, basically, there was snickering.

5 Q And by the way, this is at what point in the trial?

6 A Mr. Ashford is on the witness stand.

7 Q Exactly. Okay.

8 A There -- people were rolling their eyes. They were
9 snickering. They were, like, kind of making, like -- like,
10 comments, like -- I mean, the -- it -- it got to the point
11 -- and this is how I realized what was going on, was
12 because I could -- I could not concentrate on Mr. Ashford's
13 testimony and -- and write notes for Attorney O'Neil
14 because I could hear them.

15 And so as a result, I turn around. And I looked at
16 them to kind of say, you know, you're in court; you know,
17 contain yourself. And so at the earliest possibility --
18 well, I won't say at the earliest -- well, when I felt that
19 it was convenient and not to kind of -- I didn't want to
20 interrupt the flow of the testimony that Attorney O'Neil
21 and Mr. Ashford had. So when there was a break, I said,
22 Okay. I need to bring this to the judge's attention.

23 Q Okay. I actually stated it like this: "Finally, Ms.
24 Singleton [sic] made a motion for a mistrial."

25 A Uh-huh.

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 173

1 Q But it did seem to go on for a while. And I -- I
2 mean, how do you protect the defendant because the jurors
3 can see the people in the -- in the gallery. And they can
4 be influenced by what these ---

5 A Right.

6 Q --- people are doing. I mean, you obviously thought
7 it was prejudicial.

8 A Uh-huh. Yes. I -- I obviously did. So what I would
9 do is, like, while he was testifying, I kind of motioned
10 to, like, the sheriff deputy in there to be, like, okay,
11 like, give them a look, like, tell -- tell them to, you
12 know, stop.

13 Q Do you -- let me ask you this. And ---

14 A Uh-huh.

15 Q --- you know, I -- I've known you for a while and you
16 understand that -- you know, where we are.

17 A Uh-huh.

18 Q That we could probably all do things better the second
19 time around.

20 A Uh-huh.

21 Q Okay.

22 A Yes.

23 Q So I don't want to think I'm unnecessarily picking on
24 you. But let me read you this part out of the transcript.
25 When you made a motion for a mistrial, you admitted that

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 174

1 you had not made a contemporaneous objection because "I
2 didn't want to interrupt the testimony at that point."

3 Do you recall what Judge Cooper said?

4 A I don't.

5 Q He responded: "Well, then, you live with it."

6 A That sounds like Judge Cooper.

7 Q It does ---

8 A Yeah.

9 Q --- doesn't it?

10 But, you know, I -- and -- and, you know, that -- that
11 may have been a correct ruling under the rules of evidence,
12 I mean. Do you think, going back, that a -- a more
13 contemporaneous would've been advisable?

14 A I probably should've objected earlier. But I -- I --
15 I would have to say that ultimately, I don't think that
16 that's what led to the jury finding Mr. Ashford guilty.

17 Q I understand what you're saying. And ---

18 A Yeah.

19 Q --- and again, as I pointed out to Mr. -- with Mr.
20 O'Neil, the problem here is we got this house of cards --
21 that's the way -- being built. And, you know, if you ---

22 A Uh-huh.

23 Q --- pull out enough of the cards, you might be able to
24 collapse the whole thing. And that's what Mr. Ashford's
25 position was. If you attack his written statement and show

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 175

1 that Malachi James's statement also had something written
2 on that the state's witness testified, I didn't say that.
3 They wrote it down, and I signed it..

4 Things like that, eventually, you might be able to
5 chip away at enough to where the jury said, We can't find
6 this beyond a reasonable doubt. I mean, isn't that
7 possible?

8 A Well, I -- I would like to say that we talked to the
9 jury members afterwards -- like, immediately after the
10 trial. And all the jury members that we talked to said
11 that they felt that Mr. Ashford was guilty of the
12 carjackings and everything.

13 And -- and more specifically, as to relates to -- and
14 he brought up the fact that the CSC was reduced to an
15 ABHAN. The jury members said that the alleged victim acts
16 so erratic -- and -- and -- and I -- I -- I don't think
17 that you can tell accurately from the transcript how
18 erratic she acted -- that they just couldn't see -- like,
19 they couldn't believe her testimony about that, but they
20 believed everything else that everybody else said.

21 Because I remember me and -- I think it was like a 15-
22 minute or a 20-minute break from sentencing and the
23 verdict. And so we met -- me and Mr. O'Neil met outside
24 with some of the jury members and just asked them what they
25 felt about our job; what did they think about certain

DIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 176

1 witnesses.

2 And I -- I -- I just ultimately -- like, I don't think
3 that you could chip away enough to, like, change the
4 verdict in that case.

5 Q Could you have had 12 different people who saw it a
6 different way?

7 A I -- I can't say yes or no to that.

8 Q Okay. During the closing arguments ---

9 A Uh-huh.

10 Q --- was it essentially Mr. O'Neil's responsibility to
11 object to anything that he thought might be objectionable,
12 either in what the prosecutor said or what the judge
13 charged?

14 A Yes. That's correct.

15 Q Okay. So you heard me ask him about Luck Campbell's
16 vouching for a couple of sheriff's deputies?

17 A Yes.

18 Q Okay. Did you pass him a note or anything during that
19 time?

20 A I may have. I'm not sure.

21 Q Okay. And ---

22 A I -- yeah.

23 Q Did you -- did you -- do you recall Judge Cooper's
24 charge about the two types of evidence ---

25 A Yes.

CROSS-EXAMINATION BY MR. MITCHELL - NICOLE SINGLETARY 177

1 Q --- and -- okay.

2 And he made the statement that -- and I -- "and we had
3 both in this case." Did you take that as -- with any kind
4 of inflection that he meant there was a lot of evidence in
5 this case?

6 A No, not ---

7 Q Or just ---

8 A --- at all.

9 Q --- that he -- there happened to be both direct and
10 circumstantial?

11 A No, not at all. Because I've done a -- so many trials
12 in front of Judge Cooper. And, I mean, every time he gives
13 a charge, I mean, there is no inflection; there's no
14 emphasis; there's no nothing. He just reads the charges to
15 the jury.

16 Q Okay. Thank you, Ms. Singletary.

17 MR. BELDING: No further questions, Your Honor.

18 THE COURT: Cross-examination?

19 MR. MITCHELL: Very briefly.

20 THE WITNESS: Okay.

21 CROSS-EXAMINATION

22 BY MR. MITCHELL:

23 Q Good afternoon, Ms. Singletary.

24 A Good afternoon.

25 Q All right. You talked about the conflict between --

CROSS-EXAMINATION BY MR. MITCHELL - NICOLE SINGLETARY 178

1 in your representation with Mr. Ashford -- y'all's conflict
2 a little bit.

3 A Yes.

4 Q And that was -- would you categorize that as just
5 difference of opinion in the trial strategy at that point?

6 A Yes. I will say that. And then, I just think that he
7 -- he was kind of frustrated because he had had so many
8 lawyers previously. So I -- I think that -- I mean, it --
9 I think it's accurate what Ms. Gripp said on September
10 22nd, 2008, when he said that, you know, he felt that he
11 kept getting handed -- his case kept getting handed off.
12 So I think he was just frustrated. Yeah.

13 Q But you think a lot of the problems he had that -- you
14 know, he wanted to control y'all's strategy? You think
15 that's part of it?

16 A Yes. That's -- that's -- that's definitely part of
17 it.

18 Q All right. No further questions. Thank you.

19 A Okay.

20 THE COURT: All right. Thank you, ma'am. You may
21 step down.

22 MR. BELDING: I -- do you mind if I ---

23 THE COURT: Oh, I'm ---

24 MR. BELDING: --- redirect one question?

25 THE COURT: No. I'm sorry.

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 179

1 MR. BELDING: Thank you.

2 THE COURT: I thought you were moving onto something
3 else. Go ahead.

4 (Whereupon, Mr. Belding and the applicant conferred.)

5 MR. BELDING: Please the Court, Your Honor, the -- the
6 applicant had a couple of follow-up questions from what we
7 just heard.

8 REDIRECT EXAMINATION

9 BY MR. BELDING:

10 Q Ms. Singletary, when -- going back to that part about
11 when you moved for the mistrial on the grounds of the
12 gallery ---

13 A Yes.

14 Q --- acting out ---

15 A Yes.

16 Q --- you actually cited Rule 403 in there.

17 A Yes.

18 Q Do you recall that?

19 A Yes.

20 Q What ---

21 A Prejudicial.

22 Q Yeah.

23 A Uh-huh.

24 Q What -- what -- what were you -- what was your point
25 in -- in bringing that up?

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 180

1 A My point was that it was -- to me, it was highly
2 prejudicial towards my client, Mr. Ashford, because of the
3 fact that, as you've stated earlier, the jury could see
4 what they -- their -- their facial expressions and what
5 they were doing.

6 Q You made a motion -- this is on page 858 of the trial
7 transcript. You made a motion for mistrial based on "due
8 process violations and 403, Your Honor."

9 A Uh-huh.

10 Q Then you go ---

11 A Yes.

12 Q (As read): "And it's our argument that inappropriate
13 behavior of individuals in the gallery that consisted of
14 loud noises that were made while my client was actually
15 testifying -- there were actually loud gasps that were made
16 by individuals in the gallery and seated behind the
17 solicitor's office, people actually laughing and actually
18 covered their face in this manner. And because of these"
19 -- and I'm skipping just a little bit ---

20 A No. That's ---

21 Q --- "because of these inappropriate behaviors that
22 were actually displayed, we feel that this is actually
23 affected my client's right to a fair trial."

24 And again, I just want to ask you -- I want to make
25 sure I understand. Looking back at it now, do you agree

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 181

1 that -- especially given Judge Cooper's ruling in saying
2 you have to live with it, do you think you should've made
3 that more contemporaneously, that objection to stop it
4 before waiting until it was, as you say, convenient?

5 A Yes.

6 Q Okay. Appreciate that. Did you -- I -- I want to
7 make sure I understand one thing too. The -- the jury was
8 dismissed.

9 A Uh-huh.

10 Q The judge took a break; is that correct?

11 A Yes. Because ---

12 Q Okay.

13 A --- we -- normally, what happens here in Richland
14 County, once the person has been convicted, then the judge
15 will actually tell the jury that you can actually -- if you
16 want to see the sentencing, you can, but we're going to
17 take, like -- it takes about 15 to 20 minutes to actually
18 do all the paperwork.

19 Q Uh-huh.

20 A And so the judge typically takes a 15 ---

21 Q Uh-huh.

22 A --- 20-minute break so that we can do the paperwork
23 and they release the jury. So while we were waiting for
24 that -- and what you have to realize is I think the jury
25 didn't come back until, like -- we were still at that

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 182

1 courthouse -- we probably left here at like eight o'clock
2 that night on ---

3 Q Uh-huh.

4 A --- Friday and -- and so forth. So, like, we -- all
5 of us were locked in. The -- you couldn't go anywhere
6 anyway unless a deputy took you downstairs for the jury
7 members.

8 But I was standing outside the courtroom. And we
9 talked to them briefly.

10 Q Okay. So you knew -- and particularly, when there
11 were so many charges, it would take a while to do that many
12 sentencing sheets. Is ---

13 A Yes.

14 Q --- that how you knew you had time to go out and look
15 for these jurors?

16 A Yes. And then, one of those things that I actually
17 will tell you that I worried about, I worried that I was
18 too tough on the alleged victim of the sexual assault.
19 Because when I was actually cross-examining her, at one
20 point we had to take a break because she act like she
21 wanted to cry.

22 Q Right. I ---

23 A But then ---

24 Q --- remember that.

25 A --- at one point she would be erratic and she would,

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 183

1 like, lift up her shirt and say his black belly and -- and
2 everything. And so I kept looking at the jurors, because I
3 didn't want to alienate our defense from saying that she is
4 being this hard on a rape victim -- like, alleged rape
5 victim.

6 So one of my first questions to them was: How do you
7 think I did with the victim of the rape?

8 And -- and I'm not going to lie to you. Like, a
9 couple of the -- I think about two of the jury members
10 said, "You were too soft."

11 Q Hmm.

12 A And I told them -- I said, "I -- I -- I thought I was
13 being very, very rude, very, very mean."

14 So, like, I mean, I vividly -- I -- because I think
15 that was my -- that may have been my first time cross-
16 examining a rape victim of that age. Because she was a
17 older woman. So I worried about how the jury would
18 perceive that.

19 So I wanted to see, you know, how did I do and -- and
20 how -- whether or not it would affect Mr. Ashford on that
21 case. And apparently, like, the jury -- on that charge
22 they came back with ABHAN ---

23 Q Right.

24 A --- instead of the CSC.

25 Q Yeah. So obviously, one thing is it worked ---

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 184

1 A Exactly.

2 Q --- on that charge?

3 A On that charge, yes.

4 Q Be -- if you had cross-examined her a little harder on
5 the kidnapping and burglary -- I mean, it sounds like,
6 given the input you got from the jurors, have you -- do you
7 make yourself now -- are you harder in cross-examination on
8 alleged victim -- victims?

9 A I'm not, because it's a fine line. Because you never
10 know what those 12 people are going to think. And -- and
11 one thing that I would say with the burglary and
12 kidnapping, one thing that we have to look at is a --
13 according to the record, Mr. Ashford went to that house at
14 one o'clock in the afternoon.

15 Q Okay.

16 A Apparently, the standoff with Richland County was for
17 eight to nine hours. So I don't know how I could be harder
18 on the victim to say that, you know, they were stuck in the
19 -- they were in the home for eight to nine hours and she
20 couldn't leave and that she didn't want him there. And it
21 was clear on her testimony that she did not want him at her
22 home, as it relates to the burglary.

23 Q All right. And I understand what you're saying. Let
24 me ask you one -- one final thing: Who -- I'm -- I'm
25 trusting -- no. No. Wait a minute. Do you recall who was

REDIRECT EXAMINATION BY MR. BELDING - NICOLE SINGLETARY 185

1 supposed to cross-examine Patricia Reed-Enzor?

2 A I will tell you -- and if you notice, based on the
3 transcript, me and Mr. O'Neil, we either -- depending on
4 who's the first chair, this is how we divide our witnesses:
5 We will say Ms. -- like, he will say, "Nicole, you get all
6 the lay witnesses; and then, I'll get all the law
7 enforcement." Or either it'll be I get all law enforcement
8 and he gets all of the lay witnesses. So that always
9 worked ---

10 Q Okay.

11 A --- for us so that we can get our theme across with
12 one person doing all the lay witnesses or all of the law
13 enforcement.

14 Q And I think I just found -- just a little bit -- I
15 think Mr. O'Neil cross-examined that officer, that crime
16 scene investigator.

17 A Yes.

18 Q Okay. So he had the law enforcement that day?

19 A Yes, he had law enforcement.

20 Q Okay.

21 A Yes.

22 Q Thank you.

23 MR. BELDING: Nothing further, Your Honor.

24 MR. MITCHELL: Nothing further from the state.

25 THE COURT: Thank you, ma'am. You may step down.

1 THE WITNESS: Thank you, Your Honor.

2 (Whereupon, the witness exited the witness stand.)

3 (Whereupon, Mr. Belding and the applicant conferred.)

4 MR. BELDING: Your Honor, may I put the applicant back
5 on the stand to clarify one thing in rebuttal?

6 THE COURT: You may.

7 MR. BELDING: Thank you.

8 MR. MITCHELL: Your Honor, do you want to go ahead --
9 I rest, so he can go for rebuttal.

10 THE COURT: Well, he's ---

11 MR. BELDING: He -- he got that out awful quick, you
12 know. I can always bring rebuttal after you rest. You
13 know ---

14 MR. MITCHELL: Yeah.

15 MR. BELDING: --- if you ---

16 MR. MITCHELL: Right.

17 MR. BELDING: --- put up a witness and ---

18 MR. MITCHELL: Uh-huh.

19 MR. BELDING: --- say, you know -- I can bring up a
20 rebuttal witness.

21 MR. MITCHELL: Yeah.

22 MR. BELDING: Yeah.

23 MR. MITCHELL: Okay.

24 MR. BELDING: Yeah. You almost had me there.

25 THE COURT: You're -- you're still under oath.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 187

1 MR. BELDING: Thirty years -- thirty years later,
2 trial ed.

3 (Whereupon, the applicant entered the witness stand.)

4 DIRECT EXAMINATION

5 BY MR. BELDING:

6 Q Mr. Ashford, you're still under oath. Do you -- you
7 heard the testimony of Ms. Singletary, correct?

8 A Correct.

9 Q Now, you heard her state that it was her understanding
10 that this hostage standoff there on Booth Road lasted eight
11 or nine hours.

12 A Well, and she specifically said it lasted that long.
13 It -- it did not last that long. And she know it don't
14 last that long because if she was my trial attorney, if
15 she'd look at the record, she could see it was only like
16 six or seven hours. And she should have known that.

17 Q Okay. Well, approximately what time did it start?

18 A It started around 12:30.

19 Q Okay. And ---

20 A And it ---

21 Q --- approximately ---

22 A --- end -- end ---

23 Q --- what time did it end?

24 A Six-thirty ---

25 Q Okay.

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 188

1 A --- seven.

2 Q All right. So at the most, seven hours?

3 A Do -- at the most ---

4 Q Okay.

5 A --- 6 1/2 hours.

6 Q All right. Do you think that she ---

7 A But ---

8 Q --- just doesn't remember how ---

9 A No.

10 Q --- long it ---

11 A I think ---

12 Q --- really lasted ---

13 A --- she's just trying to be who she is, is ineffective
14 representation of -- of counsel, like she was with me
15 during the time of my trial and she trying to make it look
16 as if, you know, I done a bad thing, even today.

17 Q Okay. Do you recall being on the stand in that trial?

18 A I do.

19 Q Do you recall people in the gallery laughing and
20 making faces and things like that?

21 A Yeah. Of course I do. I looked at her. And she ---

22 Q I mean, you were -- yeah. You were looking ---

23 A I -- I ---

24 Q --- directly out there ---

25 A --- I -- I -- I looked ---

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 189

1 Q --- weren't you?

2 A --- at her, hoping she would do something. She
3 wouldn't do anything.

4 Q Okay. How long did that go on?

5 A That went on the whole -- my whole testimony.

6 Q Well, and how long was that?

7 A Well, I'm -- I -- I imagine my -- it last about a
8 whole hour.

9 Q Okay.

10 A And the -- the jury was asleep. And I'm looking at
11 her, looking at the jury that's asleep, and she still
12 wouldn't do anything. I looked at the judge. Nobody would
13 do anything.

14 Q Okay. Ultimately, she made a motion for a mistrial
15 and the judge denied it on the grounds that she hadn't made
16 it contemporaneously enough; is that your recollection?

17 A That's correct.

18 Q Okay. Is there anything with Ms. Singletary's
19 testimony that you take particular disagreement with?

20 A Yes. The -- she's at -- her and Deon O'Neil were
21 ineffective. And it prejudiced my case, and I -- you know,
22 and it denied me the right to a fair trial. And she even
23 say that. It's on the record.

24 She said, you know, it was prejudicial. But, I mean,
25 if it's prejudicial, then it mean you don't object to

DIRECT EXAMINATION BY MR. BELDING - RANDOLPH ASHFORD 190

1 nothing. I mean, you -- you even making it worse. So, you
2 know, I was denied the right to a fair trial ---

3 Q Okay.

4 A --- by those two attorneys.

5 Q Great. Thank you, Mr. Ashford.

6 MR. BELDING: Thank you, Your Honor.

7 A Uh-huh. Thank you.

8 MR. MITCHELL: No questions.

9 THE COURT: Thank you, sir. You may step back down.

10 (Whereupon, the witness exited the witness stand.)

11 MR. BELDING: Your Honor ---

12 THE COURT: Call ---

13 MR. BELDING: --- understanding ---

14 THE COURT: Call your ---

15 MR. BELDING: --- that you have already issued a
16 ruling that you're giving me a short period of time to come
17 up with something that might be impeachment kind of
18 documents from the -- the jail, would -- would you like us
19 to prepare proposed orders or -- or how would you like to
20 proceed?

21 THE COURT: Well, we can do it a couple of different
22 ways. Let's see what the attorney general's proposing.

23 MR. MITCHELL: Your Honor, I'm -- I'm okay with
24 submitting proposed orders. Maybe a little more ---

25 THE COURT: All right.

1 MR. MITCHELL: --- than ten days?

2 THE COURT: But -- now, wait a minute. We're going to
3 have to wait the 15 day-period.

4 MR. BELDING: Okay. And ---

5 THE COURT: Right?

6 MR. BELDING: --- and -- and whatever I get, I will
7 submit to Mr. Mitchell. At -- at that point, then, the
8 clock would start running and ---

9 THE COURT: Right.

10 MR. BELDING: And I would think that by -- on a -- how
11 much -- how -- you got any more PCR terms coming up? What
12 ---

13 MR. MITCHELL: May.

14 MR. BELDING: Well, you want to get it done before
15 then ---

16 MR. MITCHELL: Yeah.

17 MR. BELDING: --- right?

18 MR. MITCHELL: For sure.

19 MR. BELDING: Okay. Well, whenever you feel it is
20 appropriate, Judge, I can put together a proposed order
21 within a week after that and you just -- whatever you think
22 is ---

23 THE COURT: Right.

24 MR. BELDING: --- appropriate. You know what I would
25 always do? I guess that's -- that's bad to have judges

1 tell you what they used to always do. Because my memory
2 was so bad, when I'd get in this situation, I'd go ahead
3 and start preparing the proposed order ---

4 MR. BELDING: Yeah.

5 THE COURT: --- that I was going to have to do later.

6 MR. BELDING: Right.

7 THE COURT: And then, at the last -- whatever came in,
8 you'd be able to fill in the blank.

9 You -- you let him know if you're going to try and
10 bring in -- if -- if -- if you want to try to do anything
11 different after you receive any documents, submit it. Let
12 him know right away one way or the other.

13 MR. MITCHELL: Uh-huh.

14 THE COURT: And -- and -- and so that'll really kind
15 of be the clue as to what we're talking about.

16 MR. BELDING: Okay.

17 THE COURT: In other words, it may be you get the --
18 you get it; he gets it two days later; and two days later,
19 he tells you that I -- I'm fine.

20 MR. MITCHELL: Yeah. I don't anticipate submitting
21 any more evidence ---

22 THE COURT: I wouldn't ---

23 MR. MITCHELL: --- at this ---

24 THE COURT: --- think so.

25 MR. MITCHELL: --- point.

1 THE COURT: But I think ---

2 MR. MITCHELL: But ---

3 THE COURT: --- you -- you ought to have that right
4 ---

5 MR. MITCHELL: Uh-huh.

6 THE COURT: --- to do it ---

7 MR. MITCHELL: Yes, sir.

8 THE COURT: --- in the event something comes up that
9 you aren't anticipating.

10 MR. MITCHELL: Uh-huh.

11 THE COURT: That's why I say you got to let the other
12 side know.

13 MR. BELDING: Okay. It ---

14 THE COURT: Okay.

15 MR. BELDING: And then, at that point, do you want a
16 proposed order?

17 THE COURT: Yes.

18 MR. BELDING: Okay. Within, you know ---

19 THE COURT: Ten.

20 MR. BELDING: --- ten days. Okay. Where -- where do
21 you want that sent? Can we e-mail it to you?

22 THE COURT: It's a lot of paper.

23 MR. BELDING: Only because, you know, the -- the
24 family court judges won't let you e-mail them anything, but
25 the circuit court will. Sometimes they like it better. It

1 just depends on your preference.

2 THE COURT: Oh, I didn't know that. Family court
3 judges won't let you ---

4 MR. BELDING: They will ---

5 THE COURT: --- do that?

6 MR. BELDING: --- not let you e-mail it. It is odd.
7 They are ---

8 THE COURT: I can't ---

9 MR. BELDING: --- under some kind of order.

10 THE COURT: I get e-mails all the time.

11 MR. BELDING: Exactly, you know. And ---

12 THE COURT: But my post office box is 895, Edisto
13 Island 29438. It's on the Web site.

14 MR. MITCHELL: Okay.

15 MR. BELDING: Now, that's not the restaurant post
16 office on Edisto? That's the post office, right?

17 THE COURT: That's United States Post Office.

18 MR. BELDING: Okay.

19 MR. MITCHELL: There we go.

20 MR. BELDING: I've been there.

21 THE COURT: The current United States Post Office.
22 Okay. I guess that concludes today's hearing.

23 (Whereupon, the proceeding was concluded at 4:07 p.m.)

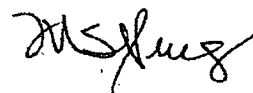
24 --- END OF TRANSCRIPT OF RECORD ---

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 31ST
DAY OF MARCH, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

APRIL 16, 2016

Statement of

Randolph AshfordColumbia, SC 29203

Made at

Columbia, South Carolina, this 24 day of Feb, 2007, at 2000 hours, in the presence of Sgt. Eric Barnes of the Richland County Sheriff's Department.

I, Randolph Ashford, understand that I have the right to remain silent. Anything I say can be used against me in court. I have the right to talk to a lawyer for advice before you ask me any questions, and to have a lawyer with me during any questioning. If I cannot afford a lawyer, one will be appointed for me before any questioning, if I wish. If I decide to answer questions now, without a lawyer present, I still have the right to stop answering at any time. I also have the right to stop answering at any time until I talk to a lawyer.

Do make the following statement:

Q. Tell me about what happened today:

A. It started last night about 9:15 p.m. Roberta and I were sitting around the house. We had just watched the Smackdown. Roberta was scratching off the lottery tickets. I told her that I was going to run up to the store and get some more before the store closed. I got on my bicycle and went up to the store and came right back. When I got back the door was cracked and there was no sign of Roberta. I got scared and thought she had been kidnapped. I called 911 and had a car come out to take a missing person report. The officer came over and said that Roberta was alright and that she had gone over to her cousin's house. He also said to give him a call if she did not come back in the morning. At some point, after the officer left, I realized she had taken my \$4000. She actually called me at 1:35 a.m. and all I heard was what sounded like sex noises. I called her phone all night long (803-786-4773 is my home number, her cell number is 803-381-3849). I didn't go to sleep at all. At some point she called me this morning and talked a bunch of nonsense about I wasn't her momma or daddy and she was a grown woman. It wasn't really a conversation, and it seemed like she was trying to agitate me. She said she just wanted me "to go." I asked her about the \$4000, but she wouldn't talk about it and she hung up the phone. I hoped she would call back, but she didn't. I called the cell phone again and he answered and said he would talk to me in a minute. That pushed me over the edge. Then she called back and I tried

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: [Signature]

Signed: Randolph Ashford

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 24 day of Feb, 2007

Sworn to and subscribed before me

This 24 day of Feb, 2007

Signed: Randolph Ashford

Notary Public for South Carolina

My commission expires 8-25-2011

Page 1



to ask her about that and she wouldn't talk to me. Then I walked up to the store and I had my gun in my pocket. It was the Citgo on North Main. I saw this big, middle aged lady in a big car. There was a man on the outside of it, he was a pretty big man. I went up to the car and yelled, "get out of the car." He looked at me. She got out of the car and I jumped in. I never pulled my gun on them. I drove straight to Cushman Rd. because I figured she was over at her cousin's house, Debbie Anne Simmons. The car got loose on the curve by the church on Cushman Rd. It hit a telephone pole or a tree or something. I got out and briefly went into the church and told somebody to give me the keys to their cars. Nobody gave me the keys so I went back outside. I stopped a Blue Ribbon Cab in the middle of the road. I stood in front of it and told the driver to get out. I believe he may have seen my gun in my pocket, but I never took it out. I got in and drove straight to Debbie Anne's trailer. I pulled up in the yard. I pulled out my gun, but I did not point it at anyone. I walked up in the house and sent the children out of the house. I went through the house looking for Roberta. I actually expected to find the man there. I don't know what would have happened if I had seen that man because I was not in my right mind. I asked Debbie Anne to call Roberta. I knew the police were coming and then I saw one police officer and then I knew I couldn't leave.

Q. Why would you not let Debbie Anne leave?

A. She was scared. She couldn't move the chair that I had out up against the door and I wasn't thinking about moving the chair.

Q. Did you shoot at the officers when they were coming around the house?

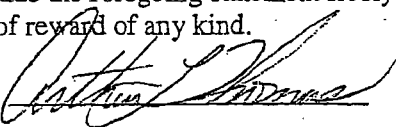
A. No sir. I shot in the house and let them know that I did have a gun. I shot into a black chair twice. I had four bullets in the gun at first and three more in my pocket. After I shot the first time I loaded the gun the with the rest of the bullets.

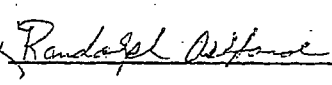
Q. Were there any misfires?

A. Yes. I tried to wipe off the bullets a little, and actually some of the bullets may still be in the house.

Q. Did you shoot outside the house at all?

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

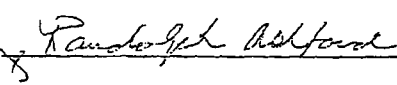
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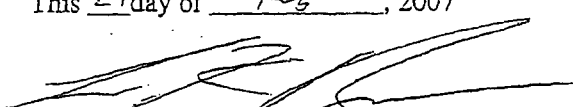
Signed: 

Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 24 day of Feb, 2007

Sworn to and subscribed before me
This 24 day of Feb, 2007

Signed: 


Notary Public for South Carolina

My commission expires 8-25-2015

A. No. I wasn't mad at the police, I was mad at her.

Q. When you went into the house who did you first see?

A. Debbie Anne and the children. I told the children to get out. Then I tapped Debbie Anne on the arm and asked her where Roberta was at. I followed her into the bedrooms and saw the other kids. I told them to get out. I knew the police were coming and I didn't want them to get me before I talked to Roberta. I pushed the freezer up to the backdoor and the chair up against the front. I wasn't trying to hold her hostage, but I was trying to get her to help me talk to Roberta. Debbie Anne even said that what Roberta did to me was wrong.

Q. Can you explain why Debbie Anne may have been naked in the house during this time?

A. She and I had relations (sex) on the living room floor. She was saying that Roberta had commented how big I was and she always wanted to know. So we tried, but I couldn't get hard enough to do it. She tried to help me by trying to pack it in, but it didn't happen. It only lasted about a second, because I couldn't get it up. She tried several positions, but I couldn't because my mind wasn't there.

Q. Where was the gun while you two were on the floor?

A. It was laying on the floor by us.

Q. How did all of this end?

A. I gave up.

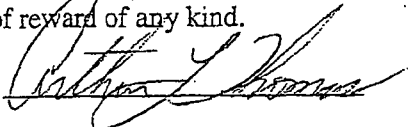
Q. Did you hit Debbie Anne at all?

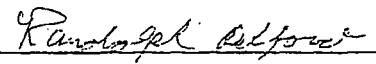
A. No

Q. Do you remember taking a first vehicle off of Oakland Ave. before you took the big car that you actually talked about earlier?

A. I don't remember

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness: 

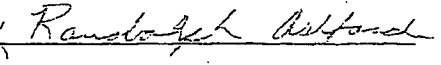
Signed: 

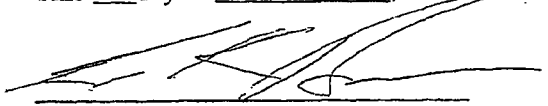
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 7 pages and a true copy has been given to me this 24 day of Feb, 2007

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This 24 day of Feb, 2007

Signed: 


Notary Public for South Carolina

My commission expires 8-25-2015

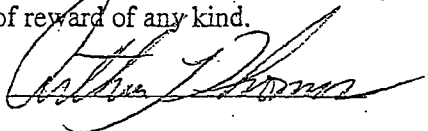
Page 3

Q. Did you try and take a vehicle out of the church parking lot off of Cushman Rd. or grabbing anyone and forcing them outside of the church?

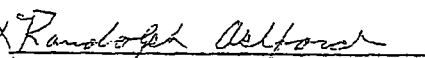
A. No I don't remember doing any of that.

I have made the foregoing statement freely and voluntarily without fear, threat, promise or reward or hope of reward of any kind.

Witness:



Signed:



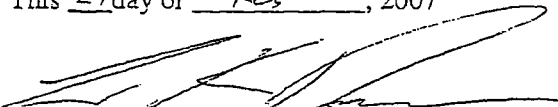
Witness: _____

This is to certify that I have read or have read to me the foregoing statement consisting of 4 pages and a true copy has been given to me this 28 day of Feb, 2007

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This 24 day of Feb, 2007

Signed:



Notary Public for South Carolina

My commission expires 8-25-2015

Page 4

4

Over 21
why do he sit there and don't object
He probably does not want to highlight
the issue:

Sometimes we have to make that decision
b/c maybe the jury did not interpret
it the same way we did and if we
saw something in highlights it and
the jury is like Oh, they did not
want us to hear it.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Randolph Ashford, #256638,	)	C/A No.: 2012-CP-40-1053
	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on February 6, 2012, with an *Amended Application* filed on May 22, 2012, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by Order of the Honorable James R. Barber, III, on June 5, 2012. The State filed its *Amended Return* on May 31, 2012.

B. Applicant is seeking relief from the sentences imposed by Judge G. Thomas Cooper, Jr., on April 3, 2009, following his conviction for these offenses:

- *Carjacking (Indictment No.: 2007-GS-40-2002) – ten (10) years;
- *Carjacking (Indictment No.: 2007-GS-40-2000) – ten (10) years;
- *Carjacking (Indictment No.: 2007-GS-40-2001) – ten (10) years;
- *Assault with Intent to Kill (Indictment No.: 2007-GS-40-1939) – ten (10) years;
- *Assault with Intent to Kill (Indictment No.: 2007-GS-40-1941) – ten (10) years;
- *ABHAN (lesser-included offense of Criminal Sexual Conduct, Indictment No.: 2007-GS-40-1940) – ten (10) years; all of these six (6) sentences to run concurrently.



*Kidnapping (Indictment No.: 2007-GS-40-1938) – twenty (20) years;

*Kidnapping (Indictment No.: 2007-GS-40-2003) – twenty (20) years, with both kidnapping sentences to run concurrently.

*Burglary 1st Degree (Indictment No.: 2007-GS-40-2048) – twenty (20) years, to run consecutive to the two kidnapping sentences.

This renders the aggregate sentence as forty (40) years.

C. The Applicant was represented by Deon O'Neil, Esquire, and Nicole Singletary, Esquire of the Richland County Public Defenders Office. Prior to these appointed attorneys, Applicant had been represented by five (5) previous court-appointed attorneys: Douglas Strickler, Esq., Danielle Payne, Esq., Kristy Grafton, Esq., Carolyn Gripp, Esq., (all of the Public Defenders Office) and Jonathan Milling, Esq., appointed from the private bar.

D. Applicant was tried by jury from Monday, March 30, 2009, to Friday, April 3, 2009, resulting in guilty verdicts on the above-referenced charges.

E. The Applicant contends that his trial attorneys failed to properly prepare for a trial defense which resulted in ineffective representation. Applicant points to the following facts in support of this contention:

1. The attorneys failed to properly prepare the Applicant to testify at trial. The Applicant had a history of mental health issues, as evidenced by the "Mental Health Progress Notes" prepared at the Alvin S. Glenn Detention Center (copy attached as Tab 1). The concern about the Applicant's mental capacity was significant enough that his interim private attorney, Jonathan Milling, obtained a Court order for a forensic evaluation. The evaluation report was conducted by SCDMH and dated November 13, 2008 (copy attached as Tab 2). Although the Court found the Applicant competent to stand trial, the *McNaughton* standard is different from having a client who can assist in his defense and capably testify in his own defense.

2. There was obvious conflict between Applicant and his attorneys, as evidenced by the oral motions to relieve counsel and for a continuance made by Mr. O'Neil during the trial (*Transcript* pg. 132 line 3 thru pg. 155 line 18). Applicant's attorneys

had not obtained telephone records from Applicant's Workers Comp civil case which would have buttressed Applicant's defense; nor had they obtained 911 records to buttress Applicant's testimony about 911 calls made by the "victim", Deborah Simmons, during the standoff (*Transcript* pg. 844 line 19 thru pg. 845 line 10), instead providing Applicant only a report that the 911 records could not be obtained (copy attached as Tab 3); nor had they obtained telephone records to substantiate the ninety-three (93) calls Applicant participated in with law enforcement during the standoff; nor had they sought or obtained DNA testing of the "green jacket" (State's Exhibit #102) identified in court as being worn by the Applicant during the standoff, which would have buttressed Applicant's testimony that he did not have or wear a green jacket on the date in question [in fact, State's witness Deborah A. Simmons testified that the Applicant wore a "brown leather coat" with "black stuff in the middle" during the standoff at her house (*Transcript* pg. 362 lines 11-15)].

Clearly, Applicant and his attorneys had conflict about his defense strategy (*Transcript* pg. 147 lines 7-25). Applicant asserts that his trial attorneys only saw him two (2) times at the detention center prior to his transportation to court on March 30, 2009. Both times, the only discussion was about whether or not to plead guilty and receive a sentence of thirty (30) years. There was no discussion of trial strategy or defense evidence. The Applicant submits that this ineffective representation was due to the inexperience of counsel – Mr. O'Neil had only been trial experience certified since November 16, 2006, just two and one-half (2½) years prior to trial; and Ms. Singletary was trial certified on January 27, 2006, just three (3) years prior to trial (copies attached as Tab 4).

3. Applicant further points to a number of other specific instances of attorney ineffectiveness at trial, as follows:
 - a. Mr. O'Neil had been made aware during the trial that Richland County Sheriff's Deputy White had reported overhearing a juror stating "I've heard all I need to hear" (*Transcript* pg. 665 lines 1-7). Obviously, if true, this would have constituted juror misconduct and would have

justified the Court granting a mistrial. Mr. O'Neil pointed out to the Court that Deputy White described the juror in question as a "black female" (*Transcript* pg. 667 line 24) and Mr. O'Neil stated that there were "...only three black females on the jury" (*Transcript* pg. 667 line 21 through pg. 668 line 1). This was patently incorrect. There were *four* (4) black females on the jury *and* one (1) black female alternate juror. [Juror 208, seated *Transcript* pg. 988 lines 16-22; Juror 172, seated *Transcript* pg. 989 lines 7-14; Juror 286, seated *Transcript* pg. 992 lines 20-25; Juror 134, seated *Transcript* pg. 993 lines 9-15; plus Alternate Juror #2, Juror 58, seated *Transcript* pg. 995 lines 11-17]. All of these jurors fit Deputy White's description; however, Applicant's counsel consented to the Court's calling five (5) jurors for an *in camera* examination, only two (2) of whom fit the Deputy's description. In response, trial counsel merely stated "...I guess I would ask for a mistrial" (*Transcript* pg. 666 lines 8-9).

- b. Mr. O'Neil failed to point out for the jury the inconsistent statements of Crime Scene Investigation expert Patricia Reed-Enzor, who initially testified that she "took command of the crime scene" (*Transcript* pg. 617 lines 8-12); then that she "had the [crime] scene secured overnight" (*Transcript* pg. 618 lines 13-18); then that she processed the crime scene, including photographs, the next morning (*Transcript* pg. 619 lines 7-9); but finally admitted that, on the night of the crime she had "...released the scene to a Mr. Ali Harrison...one of the residents of that location." (*Transcript* pg. 634 line 23 thru pg. 635 line 2). This contradicted this witness's own *Bench Notes* which stated that the scene was turned over to Deputy Benson (copy attached as Tab 5).
- c. Ms. Singletary failed to point out for the jury that State's witness Malachi James testified on direct examination that the written statement he signed (copy attached as Tab 6) contained a description of the

perpetrator (allegedly Applicant) that Mr. James did not provide to the police (*Transcript* pg. 298 line 2 thru line 21). This was critically important on the later subject of the admissibility of the Applicant's written "Statement Form".

- d. Trial counsel did not understand that Mr. Ashford did not have \$4,000.00 he had gotten from a Workers Comp settlement; that, in fact, he only had \$3,110.00 (copy attached as Tab 7), thus failing to clarify this point for the jury (*Transcript* pg. 849 line 25 thru pg. 850 line 18).
- e. Trial counsel allowed individuals in the gallery to laugh, pat their feet, roll their eyes and make inappropriate facial expressions in front of the jury. Finally, Ms. Singletary made a motion for a mistrial, admitting that she had not made a contemporaneous objection because she "didn't want to interrupt the testimony at that point". Judge Cooper responded that "well, then you live with it", a correct ruling under the *Rules of Evidence*. (*Transcript* pg. 858 line 11 thru pg. 861 line 21).
- f. Trial counsel failed to follow up on Applicant's discovery request dated September 15, 2010 (copy attached as Tab 8) requesting transcripts of the 911 calls and the ninety-three (93) calls from the incident location which would have buttressed Applicant's testimony that the "victim" was not being held against her will (as to Kidnapping), and that all she wanted was for the police to go away (as to the Burglary charge).
- g. Trial counsel failed to object to State's attorney Luck Campbell vouching for State's witness credibility in her closing argument. Ms. Campbell stated that "you heard from Deputy Unger and Nathan White. And they got up here and were honest with you" (*Transcript* pg. 920 lines 8-9). Ms. Campbell also vouched for two more RCSD officers, stating "...you heard from Eric Barnes and Investigator Thomas. Credibility. Because either you believe those two men would put their

careers on the line to frame this poor man or you believe the Defendant" (*Transcript* pg. 921 lines 2-6).

- h. Trial counsel failed to object to the judge's jury charge about the "two types of evidence" (direct and circumstantial), in which the judge added the statement "and we probably had both in this case" (*Transcript* pg. 930 lines 5-6). This statement indicated to the jury that trial presented all of the types of possible evidence against the Applicant.

All of these instances of ineffective representation prejudiced the Applicant's case.

II. Legal Issues

Plea counsel was deficient in representing Applicant and, but for such errors, there is a reasonable probability that the outcome would have been different, to-wit:

A. The credibility of evidence at trial is a matter reserved solely for determination by the jury. *State v. Kelly*, 343 S.C. 350, 369, 540 S.E. 2d 851, 861 (2001). For this reason, it is improper for the State to vouch for a witness' truthfulness, or otherwise express an opinion on the subject of witness credibility. *State v. Shuler*, 344 S.C. 604, 545 S.E. 2d 805 (2001). Vouching occurs when "...the prosecution places the government's prestige behind a witness by making explicit assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." *Shuler*, 344 S.C. at 630. In *Gilchrist v. State*, 350 S.C. 221, 565 S.E. 2d 281 (2002), the South Carolina Supreme Court held that trial counsel was ineffective for failure to object to improper vouching. See also *Matthews v. State*, 350 S.C. 272, 565 S.E.2d 766 (2002)

Further, it is ineffective for trial counsel to fail to object to evidence violative of the *South Carolina Rules of Evidence*.

B. Applicant submits that his attorneys failed to adequately prepare to defend Applicant and failed to represent him effectively in violation of Applicant's Sixth Amendment rights.

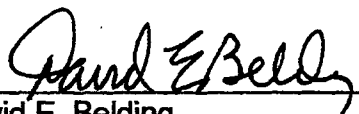
III. Legal Authority

For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Brown v. State*, 340 S.C. 590, 533 S.E.2d 308 (2000). Applicant believes his counsel's performance fell below the professional norms and believes the record supports this contention.

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. *Strickland v. Washington*, 466 U.S. at 687. The Applicant's convictions clearly show the prejudice he suffered.

PRAYER FOR RELIEF

Based on the foregoing, Applicant prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to Richland County Court of General Sessions.



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Email: beldinglawsc@gmail.com
ATTORNEY FOR APPLICANT

March 31, 2015

1372

CRIMINAL RESPONSIBILITY AND CAPACITY TO CONFORM EVALUATION

DATES OF EVALUATION: October 29, 2008 and November 13, 2008

PRESIDING: J. Jason Buckland, D.O., Fellow in Forensic Psychiatry,
University of South Carolina School of Medicine

SECOND EXAMINER: Tia Taylor, LISW-CP,
South Carolina Department of Mental Health

OTHERS PRESENT: Jonathan Milling, Esq. (November 13, 2008)

DIAGNOSES: AXIS I: Cocaine Abuse.
 Alcohol Abuse.
 Major Depression, by History.
 AXIS II: No Diagnosis.
 AXIS III: History of Crush Injury to Right Arm.

CRIMINAL RESPONSIBILITY: Yes.

CAPACITY TO CONFORM: Yes.

DISPOSITION: Mr. Ashford was returned to the Richland County Detention Center where he is awaiting disposition of his charges.

REFERRAL INFORMATION: Mr. Ashford is a 43-year-old African American male who was referred to the Forensic Evaluation Service pursuant to a court order from the Richland County Court of General Sessions. This court order requests an evaluation of his criminal responsibility and his capacity to conform his conduct to the requirements of the law on or about February 25, 2007 pursuant to S.C. Code Ann. §17-24-10 (1976). The date of the alleged offenses was February 24, 2007. Mr. Ashford is currently charged with Assault with Intent to Kill (two counts), Kidnapping (two counts), Carjacking (three counts), Criminal Sexual Assault, and Burglary, first degree.

STATEMENT OF NONCONFIDENTIALITY: Prior to the evaluations, Mr. Ashford was informed about the limitations of confidentiality. He was informed that what he told us during the evaluations could go into a report that would be submitted to his attorney. He was informed that the reports may also be submitted to the judge and the solicitor. Mr. Ashford was informed that we may be called to testify about our report. Mr. Ashford expressed understanding and agreed to proceed with the evaluations.

ASHFORD, RANDOLPH
940-0656

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 1 18109

SOURCES OF INFORMATION:

1. The court order requesting the evaluation.
2. Arrest warrant #J-556199 for Criminal Sexual Conduct dated February 25, 2007.
3. Arrest warrant #J-556198 for Burglary, first degree dated February 25, 2007.
4. Arrest warrant #K-195899 for Kidnapping dated February 24, 2007.
5. Arrest warrant #J-556197 for Kidnapping dated February 25, 2007.
6. Arrest warrant #J-556194 for Assault with Intent to Kill dated February 24, 2007.
7. Arrest warrant #J-556196 for Assault with Intent to Kill dated February 24, 2007.
8. Arrest warrant #K-195896 for Carjacking dated February 24, 2007.
9. Arrest warrant #K-195897 for Carjacking dated February 24, 2007.
10. Arrest warrant #K-195898 for Carjacking dated February 24, 2007.
11. Incident report related to the above offenses.
12. The supplemental incident reports related to the above offenses.
13. Voluntary statement by Joyce Brewer.
14. Voluntary statement by Jasmine Prince.
15. Voluntary statement by Barry Taylor.
16. Voluntary statement by Kelli McQueen.
17. Voluntary statement by Shanta Martin.
18. Voluntary statement by Deborah Simmons.
19. Voluntary statement by Kenyatta Wilson.
20. Voluntary statement by Deputy David Unger.
21. Voluntary statement by Mae White.
22. Voluntary statement by the defendant, Randolph Ashford, dated February 24, 2008.
23. Voluntary statement by Gregory Fleming.
24. Voluntary statement by Evelyn Worthly.
25. Voluntary statement by Malachi James.
26. Voluntary statement by Pearl Kelly.
27. Voluntary statement by Owen Kelly.
28. Records from Columbia Area Mental Health Center dated June 11, 1994.
29. Records from Bryan Psychiatric Hospital dated June 11, 1994 through June 15, 1994.
30. A social history provided by the defendant's sister, Dorothy Nelson.
31. Records from Alvin S. Glenn Detention Center dated January 3, 2007 through October 1, 2008.
32. Records from Palmetto Health Richland dated February 21, 2007, February 22, 2006, June 10, 2006, January 14, 2006, January 26, 2006, November 16, 2000, June 11, 1994 and February 27, 1984.
33. Records from Palmetto Health Baptist dated August 7, 2005 and September 7, 2005.
34. Records from Carolinas Medical Center dated January 14, 2006 through January 18, 2006.
35. Records from Ellis Physical Therapy Associates dated January 31, 2007 through February 22, 2007.
36. Records from South Carolina Department of Corrections dated June 1996 through July 2003.

KKlm4
ASHFORD, RANDOLPH

940-0656

OUTPATIENT EVALUATION

37. A thirty minute phone conversation with Roberta Neal, the defendant's girlfriend, on November 13, 2008.
38. A two hour and ten minute clinical forensic interview on October 29, 2008 and a one hour clinical forensic interview on November 13, 2008.

CLINICAL HISTORY: Mr. Ashford has a history of one admission to a Department of Mental Health facility. He was admitted to Bryan Psychiatric Hospital in 1994 after making threatening statements to his sister. He was evaluated at Columbia Area Mental health center the day of his admission. Mr. Ashford was hospitalized for four days and diagnosed with Alcohol Abuse. The records indicate that there was no evidence of other mental illness at the time of his admission. Mr. Ashford denied other mental health services prior to his current incarceration.

Mr. Ashford is followed by Columbia Area Mental Health services within the Alvin S. Glenn Detention Center. Mr. Ashford was evaluated because of depressive symptoms. He has been diagnosed with Major Depression and is prescribed the antidepressant medication, citalopram (Celexa®). Mr. Ashford reported that he believes the medication has been a benefit to him. He stated that he does not feel "bad all the time" like he did prior to taking the medication.

Mr. Ashford reported a long history of alcohol use beginning at a "very early age." Palmetto Health Richland records indicate that in 1984, at age 19, he was brought in to the emergency room and had the "smell of alcohol." Mr. Ashford reported a history of heavy daily alcohol use but he denied heavy drinking prior to his incarceration. He reported using only a couple of beers a few times per week. He denied a history of tolerance to the effects of alcohol or withdrawal symptoms. He denied a history of alcoholic blackouts. He reported a history of arrests for "Public Drunk." The records from Palmetto Health Richland report that Mr. Ashford has been intoxicated on visits to the emergency room, including one where he was seen for a work injury. Mr. Ashford meets diagnostic criteria for Alcohol Abuse. Mr. Ashford also reported a history of crack cocaine use. He stated that he was using prior to his current incarceration. He stated that he used "every now and then." He reported spending approximately \$20 a week on crack cocaine. He denied frequent use or an increased use of cocaine. He denied having social or occupational problems because of his cocaine use. According to medical records, Mr. Ashford had a positive urine drug screen for cocaine when examined for a work injury. Mr. Ashford meets diagnostic criteria for Cocaine Abuse. Mr. Ashford reported a past history of marijuana use, but stated that he had not used in approximately twenty years. He has a past arrest for Possession with Intent to Distribute Marijuana.

Mr. Ashford did not report significant symptoms of a mental illness at the time of this evaluation. He was receiving mental health services at the detention center and prescribed an antidepressant medication. There was no evidence of a psychotic illness or history of prior significant mood symptoms before his incarceration.

PERSONAL HISTORY: Mr. Ashford was born and raised in Richland County, South Carolina. He was raised by his mother and father. He is the youngest of five children. He stated that his childhood was "normal" and that his basic needs were met. He denied a history of abuse. He denied

KK/ma
ASHFORD, RANDOLPH

940-0656

OUTPATIENT EVALUATION

a history of major trouble as a child. He denied running away from home, setting fires, or cruelty to animals (behaviors associated with a childhood Conduct Disorder).

He attended school until the 7th grade when he quit school to work for his uncle. He stated that prior to quitting school, he was required to repeat two school years. He was in regular classes, but he reported that he had difficulty reading throughout school. He denied suspensions or expulsions from school.

Mr. Ashford's has been employed in construction work for the majority of his life. He stated that he has worked for several companies in the construction field. His longest periods of employment were five to seven years. He stated that he had little problems at work. He does not have a history of military service.

Mr. Ashford is not married; however, he reported that he has been in a relationship for three years. He stated that they are still together. He does not have children. Prior to his current girlfriend, he reported that his longest relationship lasted approximately thirteen years. He stated that this relationship ended because they "both got tired of it."

Mr. Ashford's past legal history is significant for an Assault and Battery of a High and Aggravated Nature charge for which he served five years. He also served eleven months for a Probation Violation on the charge of Possession with Intent to Distribute Marijuana. Mr. Ashford reported that he had been arrested "quite a few times" in the past. He stated that this was at least "ten to fifteen" arrests and that he was often arrested for Public Drunk, Disorderly Conduct, and Domestic Violence.

Mr. Ashford's medical history is significant for a crush injury to his right arm in 2007 which required surgery. This injury occurred while working on machinery at a job site. He had surgery of his right ankle for a fracture. He denied other significant medical illnesses. He denied a history of head injury or loss of consciousness.

Mr. Ashford's family history is not significant for major medical illnesses. He reported that he has a sister who has "a problem with alcohol." He reported that his mother has a "mental problem" but he was not aware of her a diagnosis.

MENTAL STATUS EXAMINATION: On October 29, 2008, Mr. Ashford was dressed in jail attire. He had appropriate grooming and hygiene. He was cooperative with the evaluation. His speech was of normal rate and tone. He made good eye contact. There was no psychomotor agitation or retardation (symptoms often observed in psychotic and mood disorders). He was alert and oriented to the date, situation, and location. He was aware of current events. He was able to name the current President and the most recent past President. On a test of memory, he was able to immediately recall three of three objects and he recalled one of three objects ten minutes later. He was able to recall a second object with a prompt. He was unable to recall the third object. He was able to perform serial calculations of 7's without difficulty. He was able to spell his last name *Ashford* both forward and backward without difficulty. Mr. Ashford had difficulty spelling simple words such as

KKMA
ASHFORD, RANDOLPH

940-0656

OUTPATIENT EVALUATION

OUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
ORENSIC EVALUATION SERVICE 4 18109

house or world. He reported having trouble with both spelling and reading. His reading difficulties were observed when he attempted to read an information sheet provided to him. He was able to read the information, however, his rate of reading was slow. His fund of knowledge was average. He showed ability for abstract thinking with his interpretation of proverbs and his ability to give similarities between pairs of objects. He reported his mood as "alright" and his affect was full and appropriate. His thought processes were goal directed. There was no evidence of delusional ideation. He was not reacting to internal stimuli. He denied current suicidal ideation. He has had past thoughts of wanting to harm himself, but he did not have a current plan or express intent to harm himself. He denied homicidal ideation. His judgment was intact to a hypothetical situation.

On November 13, 2008, there were no significant differences in Mr. Ashford's performance on the mental status examination. There was no evidence of psychotic thought processes. He denied current suicidal or homicidal ideation.

Mr. Ashford performed satisfactory on a screening of his competency to stand trial.

CONCLUSION REGARDING CRIMINAL RESPONSIBILITY: On October 29, 2008, Mr. Ashford reported that he did not want to discuss the day of the alleged charges. He stated that he had "been over this multiple times and did not feel like going over it again." He gave an account of the time leading up to the alleged offenses. He was living with his girlfriend, Roberta, and was functioning okay except for his sleep. He reported having difficulty with his sleep in the week prior to the alleged offenses. He stated that he had been awake for "three days straight" and went to the emergency room for help. According to the records from Palmetto Health Richland, Mr. Ashford was evaluated in the emergency room on February 21, 2007 at 4:20pm. The records indicate that he presented with the chief complaint of chest pain. During the evaluation he became upset with the staff and wanted to leave the ER. The records report that he was agitated and violent with staff. He required treatment for his agitation with the antipsychotic medication haloperidol (Haldol®) and the anti-anxiety medication lorazepam, (Ativan®) (this medication combination is often used to treat acute agitation). Mr. Ashford was found to have an elevated blood alcohol level and a positive urine drug screen for cocaine. After receiving the medication, Mr. Ashford was cooperative with staff and he was discharged from the emergency room at 11:30pm on February 21, 2007. Mr. Ashford reported that he returned home and slept for that night and much of the next day. Mr. Ashford was also attending physical therapy for his right arm during this time. According to physical therapy notes from February 22, 2008, no problems were reported and Mr. Ashford was feeling better.

Mr. Ashford requested that his attorney be present before he discussed the alleged offenses further. His attorney, Jonathan Milling, was contacted on October 29, 2008 about the evaluation. The evaluation was rescheduled so Mr. Milling could attend.

When Mr. Ashford was seen on November 13, 2008, his attorney, Jonathan Milling, was present. Mr. Ashford provided an account of the day of the alleged offenses and the day preceding the alleged offenses. Mr. Ashford stated that there were periods of February 24, 2007 that he "doesn't

ASHFORD, RANDOLPH

940-0656

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 5 18109

remember." Mr. Ashford was not able to provide details for much of February 24, 2007 because of the reported memory loss.

Mr. Ashford stated that on the night of February 23, 2007 he and Roberta had a "disagreement of words" and the Police were sent to their home by Roberta's cousin. Mr. Ashford stated that after the police left he went to the local store to buy lottery tickets for Roberta, but when he returned home she was not there. He stated that he called the police and was told that Roberta had gone to a friend's house. He stated that he attempted to call her but was not able to talk with her that night. Mr. Ashford stated he stayed up most of the night and had used alcohol. He reported drinking a few "short cans of 211 beer" during the night. Mr. Ashford stated that the next morning he talked with Roberta but she did not tell him where she was. He reported remembering going to the store for cigarettes that morning (February 24, 2007) but he does not recall all the details of his day after that activity. The remainder of Mr. Ashford's account of February 24, 2007 was self protective. Mr. Ashford did not report delusional ideation or psychotic symptoms occurring on the day of the alleged offenses. There was no evidence that Mr. Ashford was experiencing significant symptoms of a mental illness on the day of his alleged offenses. Mr. Ashford was using alcohol on the day of the alleged offenses and he had used cocaine within the week of the alleged offenses.

Information from Mr. Ashford's girlfriend, Roberta Neal, indicated that the week prior to the offense was not out of the ordinary. Ms. Neal described Mr. Ashford as attending to his daily routines and she did not report a significant change in his behavior. She stated that he had always had a temper and would get mad if anyone else talks with her. She described him as "good as can be sometimes" and then "he will show out sometimes." She reported that the showing out was in reference to his displaying his anger. Ms. Neal stated that Mr. Ashford was attending physical therapy as scheduled and he was taking a pain medication for his arm. She could not recall the medication but reported that he had been taking it for 6-7 months (Mr. Ashford could not remember that name of his prescription but stated that he received it from the Carolinas Medical Center. The records from Carolinas Medical Center reported that Mr. Ashford was prescribed the pain medication acetaminophen/hydrocodone (Lortab®). Ms. Neal stated that on February 23, 2007, she and Mr. Ashford had stayed at home most of the day "cooking and cleaning." She stated that he was acting "normal" and nothing out of the ordinary had happened. She stated that Mr. Ashford went to the store that evening and when he came back he was "acting foolish." She described his behavior as being paranoid about someone being in the house with her while he was gone and that he was very angry. Ms. Neal stated that her cousin called the police on Mr. Ashford because Ms. Neal told her he was "acting out." She stated that Mr. Ashford cooperated when the police came to the house, but he became angry again when the police left. She stated that she left the house when he made another trip to the store that night. She reported that she next spoke with Mr. Ashford on the morning of February 24, 2007 when he asked her if she was coming home.

There is no evidence that Mr. Ashford was experiencing symptoms of a mental illness on February 24, 2007 that would have impaired his ability to distinguish moral or legal right from moral or legal wrong or to recognize that the particular acts charged as morally or legally wrong. Therefore, it is our

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ASHFORD, RANDOLPH

940-0656

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 6 18109

1378

opinion that Mr. Ashford would have been criminally responsible pursuant to S.C. Code Ann. §17-24-10 (1976).

CONCLUSION REGARDING CAPACITY TO CONFORM: Mr. Ashford did not report significant symptoms of a major mental illness on February 24, 2007 and he does not have a history of a significant mental illness. Mr. Ashford was using alcohol on the date of the alleged offenses and had used cocaine at least three days prior to the alleged offenses. Mr. Ashford was not experiencing psychotic symptoms or delusional beliefs at the time of his alleged offenses. Therefore, it is our opinion that Mr. Ashford had the capacity to conform his conduct to the requirements of the law.

RECOMMENDATIONS: It is recommended that Mr. Ashford continue to receive mental health services during his incarceration.



J. Jason Buckland, D.O.
Fellow in Forensic Psychiatry
University of South Carolina School of Medicine

JJB/cj

D: 11/13/08
RT/EM 11/14/08
F/EM: (JJB, RLF 11/21/08)

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ASHFORD, RANDOLPH

940-0656

OUTPATIENT EVALUATION

SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE 7 18109

Kristy Grafton

From: Kristy Grafton
Sent: Monday, May 05, 2008 9:27 AM
To: LUCK CAMPBELL; DANA OUTEN
Subject: Randolph Ashford

This case has been transferred to me. After a brief review of the file here are the items that I believe I am missing at this time, there may be more items that I am overlooking. Please forward these things to me when they become available.

Thanks!

- Recordings of phone calls with police and defendant/victim during hostage negotiations
- Photographs of the van that was outside
- Photographs of the trailer door.
- Photographs of Debbie Ann's injuries
- 911 calls
- 911 call made by Debbie Ann from the previous night
- Photos of residence
- DNA testing of V's clothes, Kitchen floor, SANE kit, fingernail scrapings, etc ~
- ~~Medical records & EMS reports of Dontay Hobbs~~ Do not apply to this case.
- Medical records & EMS reports of Debbie Ann
- CSI report - notes
- Ballistics report if bullets were found at scene.

Kristy M. Grafton
Assistant Public Defender
1701 Main Street
Columbia, SC 29201
(803) 765-2592

RICHLAND COUNTY PUBLIC DEFENDER

1701 MAIN STREET
POST OFFICE BOX 192
COLUMBIA, SC 29201

PHONE (803) 765-2692
FAX (803) 748-5018

June 23, 2008

VIA HAND DELIVERY

Assistant Solicitor Luck Campbell
Office of the Fifth Circuit Solicitor
1701 Main Street
Columbia, South Carolina 29201

Re: State vs. Randolph Ashford
Warrant No. J556195, J556196, J556197, J556198, J556199
Charge: Kidnapping, 1st Degree Burglary, AWIK, AWIK, CSC

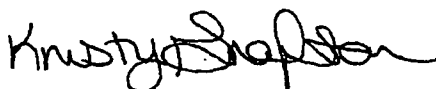
Dear Ms. Campbell:

Please be advised that I have been appointed to represent Randolph Ashford on his pending charges. On February 27, 2007, a discovery request from our office was filed in the Clerk of Court's office, a copy of which was served upon you. To this date, I have not received the following discovery materials and am formally requesting them at this time:

- Photographs of the incident location including the residence van, trailer door
- Photographs of the victim's injuries
- 911 information – closed incident reports and audio from the incident
- 911 information – closed incident reports and audio from the previous night
- DNA and other testing of the victim's clothes
- SANE Kit information including fingernail scrapings
- DNA and other testing done of the kitchen floor
- ~~Medical records and EMS reports of Dontay Hobbs~~
- Medical records and EMS reports for Deborah Ann Simmons
- Any and all CSI reports
- Ballistic reports for any bullets found at scene

Please forward Mr. Ashford's discovery to my office at your earliest possible convenience. Mr. Ashford is in jail facing serious charges and I cannot possibly advise him without her discovery.

Sincerely,



Kristy Grafton
Assistant Public Defender

**INFO, INC.
Investigations**

*Post Office Box 5415
Columbia, SC 29250
phone (803) 331-1968
fax (803) 781-8597*

TO: Deon O'Neil, Esquire

FACSIMILE NUMBER: (803) 748-5018

FROM: Lee T. Connelly

DATE: March 27, 2009

PAGE NOS.: 1

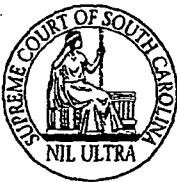
RE: Randolph Ashford

Dear Deon:

This morning, I spoke with Jennifer Blair at Richland Co. 911. I informed her that we had received the Reports from the call Sharon Vanhook made to 911 between 8:00 A.M. on February 23, 2007, through 8:00 A.M. on February 25, 2007, but what we are looking for are any calls to 911 from [REDACTED], Deborah Simmons' residence, 803-754-0950. She said that when she put the information in, all that came out was that call from Sharon Vanhook. She is to be faxing me a letter stating same.

Lee

This transmission is intended for the sole use of the individual and entity to whom it is addressed and may contain privileged and/or confidential information, exempt from disclosure under applicable law. Duplication of this transmission by someone other than the addressee is strictly prohibited.



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

April 12, 2011

Mr. Randolph Ashford, # 256638
Lieber Correctional Institution
P.O. Box 205, SB-60
Ridgeville, South Carolina 29472

RE: Trial Experiences of Nicole Singletary, Esquire

Dear Mr. Ashford:

This responds to your letter dated April 8, 2011. Our records reflect that the trial experiences, under Rule 403, SCACR, of Nicole Singletary, Esquire, were approved on January 27, 2006.

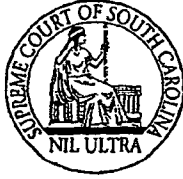
Yours truly,

Gayle B. Watts

Deputy Clerk for Bar Admissions

GBW/sm

cc: Nicole Singletary, Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

April 4, 2011

Mr. Randolph Ashford, # 256638
Lieber Correctional Institution
P.O. Box 205, SB-60
Ridgeville, South Carolina 29472

RE: Trial Experiences of Earnest Deon O'Neil, Esquire

Dear Mr. Ashford:

This responds to your letter dated March 30, 2011. Our records reflect that the trial experiences, under Rule 403, SCACR, of Earnest Deon O'Neil, Esquire, were approved on November 16, 2006.

Yours truly,

Gayle B. Watts

Deputy Clerk for Bar Admissions

GBW/sm

cc: Earnest Deon O'Neil, Esquire



**Richland County Sheriffs Department
Crime Scene Investigation
Analysis Report**

Case #: 0702200424

Crime Scene Analyst: P. Reed-Enzor

Date: 02/24/2007

Incident Type: Kidnapping

Call receive time: 1221

Arrive: 1236

Complete: 2030

Status: incomplete

Weather: clear Received by: radio

Scene Officer / Investigator: Reed-Enzor

Status: at scene

Incident Location: 4014 Booth St

Subjects:

Type: suspect Name: Ashford, Randolph DOB: 05/12/1965 Sex: M Race: B

Type: Name: DOB: Sex: Race:

Type: Name: DOB: Sex: Race:

POE: Method:

Vehicles:

TAG: YEAR: MAKE: MODEL: COLOR: VIN:

TAG: YEAR: MAKE: MODEL: COLOR: VIN:

Photos: #Taken: Type:

Narrative / Conclusions

I/O responded to I/L to assist CPD and RCSD units involved in a hostage situation. I/O acted as Incident Commander until relieved by Sgt. Tanner. I/O remained on scene and assisted I/C Okinaga. I/O maintained radio communications and acted as a liaison with Hostage Negotiators. Once the situation had been resolved I/O was requested to process/photograph the I/L. I/O was unable to process the scene at that time due to the electricity had been cutoff and tear gas had been deployed during the incident. The crime scene was secured and a rotation started. I/O turned over the scene to Deputy Benson.

These examinations and/or conclusions were conducted by P. Reed-Enzor, Crime Scene Analyst with the Richland County Sheriffs Department.

P. Reed-Enzor
P. Reed-Enzor
Crime Scene Analyst

Analyst Initials: PRE

Case #: 0702200424

This is an official report of the RCSD Forensic Sciences Laboratory. The contents of this report are confidential and may not be reproduced, except in full, without the approval of the laboratory.

RCSD Forensic Form # LAT 013, April 2006



Richland County Sheriffs Department
Crime Scene Investigation
Bench Notes

Scene secure/crime scene log maintained upon arrival

I/L still contaminated w/ gas. I/O photographed the interior/exterior of Z/L. observed a gunshot hole in black chair in livingroom - unable to locate projectile in chair. It did not appear any furniture had been moved (couch, chair) in the livingroom. A chest freezer was partially blocking the back door. Both mops in the "wash room" area were dry and did not appear to have been used recently.

I/O did not locate any ~~p~~^{PPE} rounds, shell casings or projectiles while processing.

→ collected crime scene log, released scene.

Ollie Harrison (743-9914) ~~accepted~~ ^{com PPE} took possession of residence.

0702 200424

Case #

P. Reed-Engou

Crime Scene Analyst

Analyst Initials

PRE

Page 2 of 2

Victim #7

RANDOLPH AT DEATH STREET 12:30 PM 1387

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT FORM

Page ____ of ____

Date: 2/24/2007 Time: 1:45 pm Place: Cushman Rd / Gill Creek Baptist ch.

I am MALACHI JAMES My birthday is 6/21/1934

My address and phone number are: 4622 GRAND ST. COL. SC. 29203 786-7804

I am giving this statement concerning Hijacking

to _____ who has identified himself as _____

X I was driving taxi on Cushman DR.
MAN STANDING IN STREET WITH A PISTOL AND TOLD ME: PASSENGER
TO GET OUT OF THE CAB AND HE TOOK THE CAB. AND DROVE OFF.

DESCRIPTION - BROWNSKINNED about 5'6" NO HAIR CUT BROWNISH TAN
JACKET LIGHT COLORED SHIRT

Sworn and subscribed to me this
____ day of _____

ISI Malachi James

NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

ISI _____

____ received a copy of this statement consisting of ____ pages

from _____ ISI _____

213882008 03:10 PM

PAGE. 2/ 9

03/26/2009 12:34

(FAX)8032521248

P.002/009

FEB 06 2007 16:22 FR

TO 18032521248

P.02/08



NATIONAL LAWSUIT FUNDING, L.L.C.

333 NAAMANS ROAD • SUITE 15A • CLAYMONT, DE 19703

302-792-1400 • 1-888-322-2400 • FAX: 302-792-1800

www.nationallawsuitfunding.com

February 6, 2007

Joseph Dasta
1807 Hampton St.
Columbia SC 29201
Phone #: 803-252-5522

Dear Joseph Dasta:

Your client, Randolph Ashford, has successfully completed our application process. We have agreed to fund Mr. Ashford, \$3,110.00, based on his future settlement.

Please review and sign the attached Sale of Contingent Proceeds Agreement and fax it back to us at your earliest convenience.

Thank You,

James Hill

National Lawsuit Funding L.L.C

Whirter, Bellinger & Associates, P.A.
Final Settlement Statement - Workers' Compensation

Page 1 of 2

Client's Name: Randolph Ashford
File Number: 08-C-038

Gross Settlement Amount \$ 14,520.66

Less

Attorney's Fee \$ 4,840.00 \$ 4,840.00

Total Litigation Expense - See Attached \$ 383.15

Medical Expenses

Medical	Account Numbers	Amount

Total Medical Expenses \$ -

Note: All outstanding medical bills or liens are the responsibility of the client.

Client Initials X

Miscellaneous Expenses

National Lawsuit Funding	\$ 4,388.41

Total Miscellaneous Expense \$ 4,388.41

Total Deductions \$ 9,591.58

Balance Due Client \$ 4,929.10

Total \$ 14,520.66

291390008 03:12 PM
03/26/2008 12:36

(FAX)8032521248

PAGE. 8/ 9
P.008/009

FEB 05 2007 15:23 FR

TO 18732521248 P.008/008

SCHEDULE A

Investment in Contingent Proceeds For Randolph Ashford:

Funding Date: 2/6/2007

Growth Factor: 8.99 %

Advance Amount:	\$3,110.00
Less Underwriting Fee:	(\$250.00)
Less Origination Fee:	(\$260.00)
Net Advance to Seller:	\$2,600.00

The following payment schedule reflects the first twelve months of the amount to be paid by Seller(s) to release Purchaser's interest in the Proceeds. After the period shown below, the purchaser's ownership interest increases up to a twenty four month period, by the monthly growth factor,

On or Before:	5-06-2007	\$4,026.43
On or Before:	6-06-2007	\$4,388.41
On or Before:	7-06-2007	\$4,782.93
On or Before:	8-06-2007	\$5,212.92
On or Before:	9-06-2007	\$5,681.56
On or Before:	10-06-2007	\$6,192.33
On or Before:	11-06-2007	\$6,749.02
On or Before:	12-06-2007	\$7,355.76
On or Before:	1-06-2008 13-06-2007	\$8,017.04
On or Before:	2-06-2008	\$8,737.77

After the period shown above, please call (1-888-322-2400), for the purchaser's ownership interest, which continues to increase up to a twenty-four month period, by the monthly growth factor,

All payments should be made payable to National Lawsuit Funding LLC and mailed to 333 Naamans Road Suite 15A Claymont Delaware 19703

Randolph Ashford
Randolph Ashford

2-6-07
Date

Joseph Dasta

Date

James Hill
James Hill

2/6/07
Date

SOLICITOR'S OFFICE
1701 main Street
P.O. Box 192
COLUMBIA SC. 29202

SEPTEMBER 15, 2010.

RE: STATE V. RANDOLPH ASHFORD
MOTION OF DISCOVERY

DEAR, MR. WARREN B. GIESE;

Apparently your office inadvertently left out discovery material that your office provided to the Richland County Public defender's office on or about 03-19-2007/ 08-08-08 and 07-09-2010 concerning the warrant's / Indictment's 2007-GS-40-1940, 1941, 1939, 1938, 2048, 2000, 2001, 2002, 2003,.

However at this time my request is that you provide me with the discovery material of the following.

(Complete Copy of Closed Incident Report of L-439 Richland County Sheriff Department dated 2/24/2007.

(Complete Copy of Closed Incident Report of Incident L-437 Columbia Police Department dated 2/24/2007.

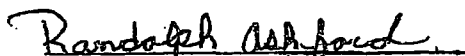
(Complete Transcript of the (93) Phone calls from the Richland County Sheriff Department/ Columbia Police Department on 2/24/2007. to the residents of [REDACTED].

Complete Transcript of the 911 calls from the residents of [REDACTED] [REDACTED], on 2/24/2007.

Please forward the discovery to me at your earliest.

Thank you very much.

SINCERELY,


Randolph Ashford # 256638

CC:

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Randolph Ashford, #256638,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2012-CP-40-01053

ORDER OF DISMISSAL

2015 NOV 19
JEANETTE M. MCBRIDE
Clerk of Court

RI

COUNTY

28

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 6, 2012. Respondent made its Return on May 7, 2012, requesting an evidentiary hearing be convened. Applicant filed a *pro se* amended application on May 22, 2012. An application for forensic DNA testing was also filed on May 22, 2012. David E. Belding, Esquire, was substituted as counsel by Order filed June 6, 2012. Applicant then filed a "Motion for Leave to Conduct Discovery" on December 21, 2012. Respondent filed a Return to Motion for Discovery on January 7, 2013, objecting to the generalization and breadth of the request. Respondent filed a Motion to Sever on February 27, 2013, requesting the Court order the application for forensic DNA testing be severed from the current PCR matter as it was improperly filed as a pleading related to the common pleas PCR action. Respondent requested the Court to order the matter re-filed by the Richland County Clerk of Court as prescribed by statute and assign the application a new general sessions docket number. This Court, by order filed March 4, 2013, entered an Order consistent with Respondent's motion. On March 11, 2013, the Honorable Alison R. Lee issued a Form 4 Order ruling which stayed Applicant's current PCR case. The application for DNA testing was denied by order filed April 29, 2015.

An evidentiary hearing was held on March 31, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Belding. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's counsel, Deon S. O'Neil, Esquire, and Nicole Singletary, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April and May 2007 terms of the Court of General Sessions for Richland County for a number of charges. Applicant was represented by Counsel O'Neil and Counsel Singletary. The cases were called for trial on March 31, 2009, before the Honorable G. Thomas Cooper, Jr. Applicant was indicted and convicted as follows:

GJ Term	Indictment	Charge	Sentence
April 2007	2007-GS-40-1938	Kidnapping	20 years
April 2007	2007-GS-40-1939	Assault and battery with intent to kill (ABWIK)	10 years
April 2007	2007-GS-40-1940	Assault and battery of a high and aggravated nature (ABHAN), lesser included of criminal sexual conduct, 1 st degree	10 years
April 2007	2007-GS-40-1941	ABWIK	10 years
April 2007	2007-GS-40-2048	Burglary, first degree	20 years consecutive to - 2003, -1938
May 2007	2007-GS-40-2000	Carjacking	10 years
May 2007	2007-GS-40-2001	Carjacking	10 years
May 2007	2007-GS-40-2002	Carjacking	10 years
May 2007	2007-GS-40-2003	Kidnapping	20 years

Judge Cooper ordered indictments -2003, -2001, -2000, -2040, -1939, -1941 to be run concurrently. Indictment -2003 was ordered to be run consecutively to indictment -2048. Indictment -2048 was to be run consecutively to -2003, -1938. The aggregate sentence is forty (40) years' imprisonment.

A Notice of Appeal was filed and an Anders brief was submitted on Applicant's behalf by the South Carolina Office of Appellate Defense. The Court of Appeals dismissed the appeal by order dated January 25, 2012. State v. Ashford, 2012-UP-035 (S.C. Ct. App. filed January 25, 2012). The Remittitur was issued February 15, 2012.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in
 - a. Failing to properly prepare Applicant for trial;
 - b. Failing to investigate:
 - i. 911 calls,
 - ii. Phone call records between Applicant and law enforcement during the hostage situation, and
 - iii. The jacket Applicant was allegedly wearing.
 - c. Failing to move for a mistrial:
 - i. Where a juror allegedly stated, "I've heard all I need to hear."
 - ii. Where individuals in the gallery allegedly laughed, patted their feet, rolled their eyes, and make facial expression in the presence of the jury.
 - d. Failing to effectively cross examine crime scene investigator Patricia Reed-Enzor;
 - e. Failing to object during the solicitor's closing argument where she allegedly vouched for a State's witness;
 - f. Failing to object to Judge Cooper's remark when instructing the jury.

II. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application

alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, appellate records, records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the



attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below. As an initial matter, Applicant waived any challenge to appellate counsel's performance and made his intentions clear that he wished to go forward with Counsel Thomas.

Ineffective Assistance of Trial Counsel

Failure to properly prepare Applicant for trial

Applicant alleges Counsel were ineffective for failing to prepare Applicant for trial. Specifically, he argues that Counsel was ineffective in allowing Applicant to testify in his defense due to his alleged mental health issues. Under the United States and South Carolina Constitutions, a criminal defendant has a right to remain silent and to not testify during his trial. U.S. Const. amend. V; S.C. Const. art. I, § 12. It is clear that a defendant in a criminal trial has a constitutional right to testify on his own behalf. Rock v. Arkansas, 483 U.S. 44, 51, 107 S.Ct. 2704, 2709, 97 L.Ed.2d 37 (1987). Further, it is the defendant who retains the ultimate authority to decide whether or not to testify. Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 3312, 77 L.Ed.2d 987 (1983).

This Court finds this allegation is without merit. Applicant was fully advised of his right to remain silent and of the risks of testifying by Judge Cooper. (Trial Tr. p. 773, line 5 – p. 775, line 16). The record reflects Applicant made the decision to testify on his own. Counsel Singletary's testimony as to her interactions with Applicant is credible. She testified that she did



not believe Applicant had any mental issues that would affect his understanding of the proceedings or his ability to assist in his defense. This was supported by the evaluation Applicant underwent prior to trial where he was found competent and criminally responsible. Counsel Singletary testified Applicant was very capable of assisting in his defense and that he wrote notes throughout the trial that were passed back and forth between him and Counsel. This Court finds Applicant was capable of assisting in his defense and that he had active communications with Counsel during trial. This allegation is denied and dismissed with prejudice.

Failure to investigate

Applicant further alleges that Counsel were ineffective for failing to investigate and present to the jury the 911 calls made by the victim, Deborah Simmons, during the standoff with law enforcement. Applicant argues the 911 calls would have supported his defense. He also alleges that Counsel was ineffective in failing to obtain the telephone records to challenge the State's evidence that dozens of calls were made during the standoff between Applicant and law enforcement. He further argues Counsel was ineffective for failing to obtain DNA testing on the jacket allegedly worn by Applicant during the incident. Counsel testified he and Applicant's previous attorneys attempted to obtain the 911 call but were told they were not available for production. Counsel Singletary credibly testified that the 911 tapes were not requested in time and that it was her belief that the calls are only kept for a certain period of time. Applicant testified that the 911 tapes would have cleared him of wrongdoing. He testified the 911 recordings would have showed that the victim, Simmons, was not being held hostage and against her will and that he was in fact being held hostage by Simmons. He testified that he was wearing a brown jacket and not a green jacket as the State alleged. He alleges that his DNA would not have been found on the jacket recovered at the crime scene. Counsel O'Neil testified that the



jacket was not an issue he planned to present to the jury because it was irrelevant to the defense. Applicant was arrested at the scene after a lengthy standoff with law enforcement, so there was no issue as to identity. He also testified that Applicant would get caught up on small details that Counsel O'Neil believed were irrelevant. Counsel Singletary testified she agreed with Counsel O'Neil's testimony on these points.

This Court finds this allegation without merit. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court finds Counsel O'Neil and Singletary's testimony on this issue credible and persuasive. Applicant's testimony is not credible. This Court finds that since Applicant failed to produce any of this evidence it is impossible to thoroughly judge the merits of these claims. From the evidence before the Court it is clear that the 911 calls, DNA testing of the jacket, and the phone records to support the State's position that dozens of calls took place between law enforcement and Applicant during the standoff were not pertinent to Applicant's defense. This Court finds Applicant's testimony that the 911 calls would have bolstered his position that he did not hold the victim hostage to be far-fetched and not credible. As to the phone records, this Court finds that the calls very likely would have further incriminated Applicant in the incidents. There was testimony from numerous law enforcement personnel detailing their involvement in the hostage negotiations and situation which directly contradicted Applicant's assertions. This Court finds persuasive Counsel O'Neil's testimony that the jacket was irrelevant to Applicant's defense. Counsel O'Neil noted that there was no issue of identification because Applicant was arrested on



the scene after the residence was breached. This Court finds Applicant has failed to meet his burden in proving Counsel was ineffective in any regard for failing to procure these records.

In any case, this allegation rests entirely on speculation because no records were produced at the hearing. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). Applicant failed to present any evidence to this Court as to how this investigation could have changed the result of the trial.

Failure to Move for a Mistrial

Applicant alleges that Counsel were ineffective for failing to move for a mistrial when a juror allegedly said something along the lines of, “I’ve heard all I need to hear,” and when individuals in the gallery allegedly laughed, patted their feet, rolled their eyes, and made facial expressions in the presence of the jury during Applicant’s trial testimony. The Court will address each allegation in turn.

Applicant alleges that although Counsel O’Neil did move a mistrial on the grounds that a juror was not impartial, he was mistaken about which juror possibly made the remark. Applicant argues there were four (4) black females on the jury, not three (3) as Counsel O’Neil stated to Judge Cooper. The record reflects that Counsel O’Neil asked Judge Cooper to bring in the jurors suspected of making the remark to question them on their impartiality. (Trial Tr. p. 665-67). Counsel O’Neil alleged that a deputy overheard juror number 134 say, “I’ve heard all I need to hear.” The deputy described the juror as a younger black female. Judge Cooper brought five jurors in to question them off the record on whether they had formed any opinions regarding the



ultimate issues in the case. Judge Cooper found all jurors categorically denied making any such statement and denied the motion for a mistrial.

Counsel O'Neil testified that the courtroom deputy brought this issue to his attention. Counsel O'Neil recounted that he made a motion for mistrial, but Judge Cooper denied the motion and found no evidence of any juror misconduct. He credibly testified that he was certain the juror the deputy was referring to was juror number 134 who was questioned by Judge Cooper. Counsel Singletary echoed this recollection and also believed the deputy to be describing juror number 134.

A defendant has a constitutional right to be tried by competent jurors, which implies a tribunal both impartial and mentally competent to afford a hearing. U.S.C.A. Const.Amend. 6. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007). A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial court, and such decision will not be reversed on appeal absent an abuse of discretion. Id at 147, 894. This Court finds Applicant failed to prove Counsel was ineffective in moving for a mistrial on the grounds of juror impartiality. Counsel O'Neil aptly brought the issue to Judge Cooper's attention and asked him to inquire into the alleged statement. Counsel O'Neil also properly made a motion for a mistrial which preserved the issue for appellate review as well. This Court further finds Judge Cooper acted within his discretion in finding the juror could be fair and impartial. See State v. Mercer, 381 S.C. 149, 158, 672 S.E.2d 556, 560-61 (2009) (describing the trial judge's broad discretion to determine whether a juror is qualified). This allegation is denied and dismissed with prejudice.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a cursive representation of a name.

Applicant further alleges that Counsel were ineffective in failing to object in a timely matter when individuals in the gallery allegedly laughed, patted their feet, rolled their eyes, and made facial expression in the presence of the jury during Applicant's testimony.

The record reflects Counsel Singletary moved for a mistrial on the grounds that individuals displayed inappropriate behavior that affected the jury. Counsel Singletary testified that the gallery was misbehaving during Counsel O'Neil's direct examination of Applicant. She testified she did not object contemporaneously because she did not want to interrupt Applicant's testimony. She testified that she probably should have objected while the individuals were misbehaving.

This Court finds that while the objection was not made contemporaneously to the allegedly misbehavior, Judge Cooper found that the behavior did not rise to the level to where a mistrial should be granted. (Trial Tr. p. 860, line 13 – p. 861, line 12). Judge Cooper stated that he did not witness the same behavior as Counsel Singletary described. This Court finds that Counsel Singletary made the appropriate objection. Counsel Singletary acted reasonably in arguing for a mistrial based on her observations of individuals in the gallery. Applicant has failed to prove any deficiency. Even though the State argued that the objection was not timely made, Judge Cooper still denied the objection on its merits. Furthermore, Applicant has failed to prove any resulting prejudice from this alleged misbehavior.

Failure to effectively cross examine crime scene investigator Patricia Reed-Enzor

Applicant alleges Counsel were ineffective in failing to highlight inconsistent statements made by crime scene investigation expert Patricia Reed-Enzor. Specifically, Applicant argues Reed-Enzor's statement that she secured the scene overnight and processed the scene the next morning was inconsistent with her testimony that she released the scene to Ali Harrison, a



resident in the area. Counsel O'Neil testified that this was an example of a small detail that Applicant would get caught up on that was not pertinent to his defense.

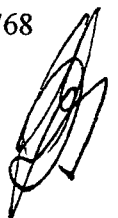
This Court finds this allegation without merit. The manner and extent of cross-examination should not be second-guessed. See Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Marzullo not intended to promote judicial second-guessing on questions of strategy as basic as handling of a witness); United States v. Nersesian, 824 F.2d 1294, 3121 (2d Cir. 1987) ("decisions whether to engage in cross-examination and if so to what extent and in what manner, are . . . strategic in nature" and will not support an ineffective assistance claim).

This Court finds this inconsistent statement is not helpful or material to Applicant's case and, therefore, Counsel cannot be held to be ineffective for failing to highlight this minor inconsistency. Applicant has failed to meet his burden of proof in regards to this allegation.

Failure to object during the solicitor's closing argument where she allegedly vouched for a State's witness

Next, Applicant alleges Counsel were ineffective in failing to object to remarks made by the solicitor during closing arguments. Applicant argues the solicitor vouched for the credibility of two Richland County Sheriff Deputies. The relevant remarks are as follows: "You heard from Deputy Unger and Nathan White. And they got up here and were honest with you." (Trial Tr. p. 920, lines 8-9).

This Court finds Counsel were not ineffective for failing to object because the remarks do not rise to the level of improper vouching. A solicitor may argue the credibility of the State's witnesses if the argument is based on the record and its reasonable inferences. Matthews v. State, 350 S.C. 272, 275, 565 S.E.2d 766, 768 (2002). However, "[a] solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record." Smith at 523, 654 S.E.2d at 531-32 (quoting Matthews at 276, 565 S.E.2d at 768



(2002)). “The appellate court will view the alleged impropriety of the solicitor’s argument in the context of the entire record.” Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). Counsel O’Neil testified that he did not object to the comment and did not think the remark merited an objection in the middle of the State’s closing. Additionally, this Court finds that Applicant has failed to establish any resulting prejudice because when looking at the entire record the remark was harmless and in no way affected the outcome of the trial. Applicant has failed to meet his requisite burden of proof in regards to this allegation. Therefore, this allegation must be denied and dismissed with prejudice.

Failing to object to Judge Cooper’s comment when instructing the jury

Finally, Applicant alleges Counsel were ineffective in failing to object to Judge Cooper’s jury instruction on direct and circumstantial evidence. Specifically, Applicant points to the following:

Now, generally there are two types of evidence which has been described to you that are generally presented during a trial, direct evidence and circumstantial evidence. Direct evidence – and we probably had both in this case. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness.

(Trial Tr. p. 930, lines 2-8).

When reviewing jury instructions for error, the reviewing court must consider the trial court’s charge as a whole in light of the evidence and issues presented at trial. State v. Miller, 397 S.C. 630, 635, 725 S.E.2d 724, 727 (Ct. App. 2012) (citing State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct., Ap. 2003)). “Errors, including erroneous jury instructions, are subject to a harmless error analysis.” Miller, 397 S.C. at 639, 725 S.E.2d at 729. A judge’s charge to a jury is sufficient if, as a whole, it is substantially correct and covers the law applicable to the case. State v. Burton, 302 S.C. 494, 397 S.E.2d 90 (1990).

This Court finds this allegation is without merit. The remark was not a comment on the facts of the case. There was clearly both direct and circumstantial evidence presented as thirty-eight (38) witnesses testified and over one hundred ten (110) exhibits were admitted. Judge Cooper did not say that the jury was to give more weight to one type of evidence over the other. Taking the charge as a whole, it is not objectionable. Furthermore, Applicant cannot prove that the remark had any bearing on the result of the trial.

Overwhelming Evidence of Guilt

This Court finds Applicant can show no prejudice in regards to any of the allegations of ineffectiveness because there is clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt). Notably, Applicant was forcefully removed from Simmons's residence after a standoff where hostage negotiations took place. Applicant attempted to explain his actions at the PCR hearing by testifying that he did not have specific recollections from the day in question. This Court finds that testimony not credible. Applicant cannot meet his burden to prove prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.



IV. CONCLUSION

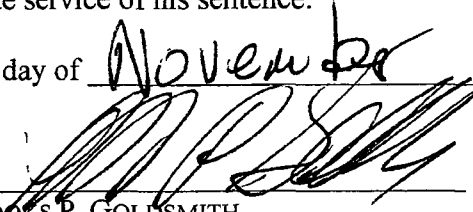
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 9 day of November, 2015.


BROOKS P. GOLDSMITH
Presiding Judge


_____, South Carolina

1099

WITNESSES

(S) Thomas Croxton - RCSD

ARREST WARRANT NUMBER

J556197

ACTION OF GRAND JURY

TRUE BILL

TRUE BILL

Foreperson of Grand Jury
Date: **AUG 15 2008**

VERDICT

Guilty

Foreperson of Petit Jury
Date: **4/13/09**

DOCKET NO. 2007-GS-40-1938

AMENDED

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2007

42

THE STATE
vs.

RANDOLPH ASHFORD

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095
Class FEL/A(V)

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

Defendant

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

Defendant

Witness:

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

1406

1100

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

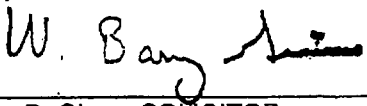
INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That RANDOLPH ASHFORD did in Richland County on or about February 24, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Debbie Anne Simmons, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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



Warren B. Giese, SOLICITOR

1101

WITNESSES

(S) Thomas Croxton - RCSD

ARREST WARRANT NUMBER

J556196

ACTION OF GRAND JURY

TRUE BILL

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-1939

AMENDED

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2007

42

THE STATE
vs.

RANDOLPH ASHFORD

Indictment for

ASSAULT WITH
INTENT TO KILL

SC Code: 17-25-30

CDR Code: 768

Class MIS-UNC

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

Defendant

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

Defendant

Witness:

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

1408

1102

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

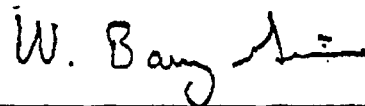
INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

ASSAULT WITH INTENT TO KILL

That RANDOLPH ASHFORD, did in Richland County on or about February 24, 2007, with malice aforethought commit an assault with intent to kill upon one Deputy Unger. All in violation of Section 17-25-30 C/L, Code of Laws of South Carolina, (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

1103

WITNESSES

(S) Thomas Croxton - RCSD

Em Barn RCSD

ARREST WARRANT NUMBER

J-556199

ACTION OF GRAND JURY

TRUE BILL

Jay Allen
Foreperson of Grand Jury
Date:

APR 19 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-1940

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2007

42

THE STATE
vs.

~~RANDALL ASHFORD~~
RANDOLPH

Indictment for

CRIMINAL SEXUAL CONDUCT
1ST DEGREE

SC Code: 16-3-652
CDR Code: 0160
Class FEL/A(V)

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

Defendant

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

Defendant

Witness:

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

1410

1104

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

CRIMINAL SEXUAL CONDUCT - 1ST DEGREE

Randolph
That RANDALL ASHFORD did in Richland County on or about February 24, 2007, engage in sexual battery with the victim, Debbie Anne Simmons, without her consent. The defendant, Randall Ashford, used aggravated force to accomplish the sexual battery, to wit: defendant threatened the use of a pistol, and/or the victim, Debbie Anne Simmons, submitted to sexual battery by Randall Ashford under circumstances where the victim is also a victim of forcible confinement, kidnapping, robbery, burglary, or housebreaking committed by the defendant, Randall Ashford. All in violation of SC Code of Laws § 16-3-652.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

1105

WITNESSES

(S) Thomas Croxton - RCSD

ARREST WARRANT NUMBER

J556194

ACTION OF GRAND JURY

TRUE BILL

TRUE BILLForeperson of Grand Jury
Date:

AUG 15 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-1941

AMENDED

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2007

42

THE STATE
vs.

RANDOLPH ASHFORD

Indictment for

ASSAULT WITH
INTENT TO KILL

SC Code: 17-25-30

CDR Code: 768

Class MIS-UNC

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

Defendant

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

Defendant

Witness:

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

1412

1106

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

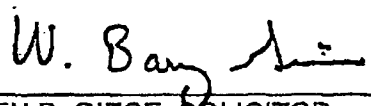
INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

ASSAULT WITH INTENT TO KILL

That RANDOLPH ASHFORD, did in Richland County on or about February 24, 2007, with malice aforethought commit an assault with intent to kill upon one Deputy Nate White. All in violation of Section 17-25-30 C/L, Code of Laws of South Carolina, (1976, as amended).

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


WARREN B. GIESE, SOLICITOR

1107

WITNESSES

(S) AL THOMAS - CPD

ARREST WARRANT NUMBER

K195896

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: MAY 12 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40- 02000

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2007

42

THE STATE
vs.

RANDOLPH ASHFORD

Indictment for
CARJACKING

SC Code: 16-3-1075(B)(1)
CDR Code: 2599
Class FEL/C

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

Defendant

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

Defendant

Witness:

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

1414

1108

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 23, 2007, the Grand Jurors of Richland County present upon their oath:

CARJACKING

That RANDOLPH ASHFORD did in Richland County on or about February 24, 2007, take or attempt to take a motor vehicle from the victim, Evelin Worthy, by force and violence or by intimidation, while the person, Evelin Worthy, is operating the vehicle or while the person is in the vehicle. All in violation of § 16-3-1075.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

1109

WITNESSES

(S) AL THOMAS - CPD

ARREST WARRANT NUMBER

K195897

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date:

MAY 28 2007

VERDICT

[Signature]
Foreperson of Petit Jury

Date:

4/3/09

DOCKET NO. 2007-GS-40-02001

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2007

42

THE STATE

vs.

RANDOLPH ASHFORD

Indictment for
CARJACKING

SC Code: 16-3-1075(B)(1)

CDR Code: 2599

Class FEL/C

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

Defendant

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

Defendant

Witness:

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

1416

1110

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 23, 2007, the Grand Jurors of Richland County present upon their oath:

CARJACKING

That RANDOLPH ASHFORD did in Richland County on or about February 24, 2007, take or attempt to take a motor vehicle from the victims, Pearl Kelly ~~and Kelly~~, by force and violence or by intimidation, while the persons, Pearl Kelly ~~and Kelly~~, are operating the vehicle or while the persons are in the vehicle. All in violation of § 16-3-1075.

Amended by Agreement 5-30-09.

G. R. [Signature]

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

1111

WITNESSES

(S) AL THOMAS - CPD

ARREST WARRANT NUMBER

K195898

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAY 23 2007

VERDICT

Guilty

Foreperson of Petit Jury
Date:

4/3/09

DOCKET NO. 2007-GS-40- 02002

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2007

42

THE STATE
vs.

RANDOLPH ASHFORD

Indictment for
CARJACKING

SC Code: 16-3-1075(B)(1)
CDR Code: 2699
Class FEL/C

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

Defendant

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

Defendant

Witness:

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

1418

1112

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 23, 2007, the Grand Jurors of Richland County present upon their oath:

CARJACKING

That RANDOLPH ASHFORD did in Richland County on or about February 24, 2007, take or attempt to take a motor vehicle from the victim, Barry Taylor, by force and violence or by intimidation, while the person, Barry Taylor, is operating the vehicle or while the person is in the vehicle. All in violation of § 16-3-1075.

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

Warren B. Giese
WARREN B. GIESE, SOLICITOR

1113

WITNESSES

(S) AL THOMAS - RCSD

ARREST WARRANT NUMBER

K-195899

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAY 23 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40- 02003

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MAY TERM 2007

42

**THE STATE
vs.**

RANDOLPH ASHFORD

Indictment for

KIDNAPPING

SC Code: 16-3-910
CDR Code:0095
Class FEL/A(V)

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

Defendant

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

Defendant

Witness:

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

1420

1114

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on May 23, 2007, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That RANDOLPH ASHFORD did in Richland County on or about February 24, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Evelin Worthy, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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

Warren B. Giese
Warren B. Giese, SOLICITOR

1115

WITNESSES

(S) Thomas Croxton - RCSD

ARREST WARRANT NUMBER

J556198

ACTION OF GRAND JURY

TRUE BILL

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 15 2008.

VERDICT

Guilty

Foreperson of Petit Jury

Date:

4/13/09

DOCKET NO. 2007-GS-40-2048

AMENDED

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2007

42

THE STATE

vs.

RANDOLPH ASHFORD

Indictment for

BURGLARY/(AFTER 6/20/85)

1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

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

Defendant

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

Defendant

Witness:

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

1422

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

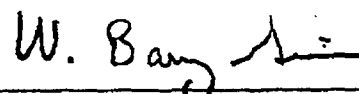
INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG

That RANDOLPH ASHFORD did in Richland County on or about February 24, 2007, willfully and unlawfully enter the dwelling of Debbie Anne Simmons, without consent and with the intent to commit a crime therein and the defendant entered during the hours of darkness and/or was armed with a deadly weapon while therein and/or caused physical injury to the victim, Debbie Anne Simmons, and/or used or threatened to use a dangerous instrument and/or displayed what was or appeared to be a handgun, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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



Warren B. Giese, SOLICITOR