

ORIGINAL

VOLUME II OF II

22943

STATE OF SOUTH CAROLINA
In The Court of Appeals

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

Ronald Coulter #300410,

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SC Court of Appeals

APPELLANT,

V.

State of South Carolina,

RESPONDENT.

APPELLATE CASE NO. 2013-002379

RECORD ON APPEAL

RONALD COULTER
#300410, Pro-se

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Mr. Smiley's Opening Statement

1 the Court.

2 THE COURT: Yes, sir. You
3 may proceed.

4 MR. SMILEY: Friendship.
5 I'm a pretty quiet person. In my
6 life there's a few people I would
7 consider life-long friends. I
8 say it's important, friendship, I
9 would say it is important because
10 the State is going to want you to
11 believe in this case that if a
12 friend called you and said I need
13 to you come help kidnap and
14 murder the mother of my daughter
15 that you would just go along with
16 it.

17 Ivory Coulter -- excuse
18 me. Ivory Croker. We don't have
19 a dog in this fight. We're
20 sitting over here in this
21 courtroom. He never met Edwina
22 Simms. He grew up with Ron, in
23 the same area of town. They kept
24 in touch. Ron was in his life.
25 He's lived in Ohio. They spoke

Mr. Smiley's Opening Statement

1 from time-to-time the evidence
2 will show. This is why we're in
3 this courtroom.

4 They have a witness or
5 alleged witness, a fifty-two year
6 old unemployed man living in the
7 Suburban Lodge with his wife who
8 says he saw something first out
9 of his peep hole and then a
10 window. He gives a very general
11 description two and a half weeks
12 later. If he saw what he said
13 saw, why didn't he call the
14 police that night? Why wouldn't
15 the police make contact with him,
16 at least talk to him if he calls
17 them back. Those are questions
18 for you all to ask and answer in
19 this case.

20 The charge is
21 kidnapping, conspiracy to kidnap.
22 What evidence will they show that
23 Ivory Croker had anything to do
24 with a kidnapping or a plan too
25 kidnap? When do they show you

Mr. Smiley's Opening Statement

1 any evidence? I'm posing these
2 questions. They're questions
3 that must be answered.

4 Ivory was never with
5 Edwina Simms. They have an
6 indictment for murder that says
7 on or about April the
8 twenty-first while acting in
9 concert with another, with malice
10 aforethought, my client,
11 Mr. Croker, did kill and murder
12 Edwina Simms by a manner or means
13 unknown, and that Edwina Simms
14 did die in Charleston County as a
15 proximate result thereof on April
16 the twenty-first, 2001.

17 Now that's what they
18 have got to prove to you.
19 They've got to show that Ivory
20 was somehow involved in killing
21 Edwina and they aren't going to
22 be able to tell you how she died.
23 They don't know she's dead.
24 She's missing. People go missing
25 unfortunately in this country and

Mr. Smiley's Opening Statement

1 I think it's terrible that she's
2 not been found. That certainly
3 doesn't lead all the way to
4 murder. The witness will not
5 testify, that we have in this
6 case, that Ivory Croker had
7 anything to do with anyone being
8 murdered or kidnapped. This is
9 about facts. Facts that are
10 going to be placed in front of
11 you all. This isn't about
12 suspicion. Guesses. This is
13 about facts.

14 They will not produce
15 evidence to show Ivory was
16 involved in the death, death
17 of -- that was my co-counsel --
18 death of Edwina Simms. Certainly
19 will not ever show you any
20 connection to Edwina Simms.

21 So what Ron and Edwina
22 had going on was their business.
23 I want to be real clear. I don't
24 represent Mr. Coulter. I don't
25 know their plan. This is what I

Mr. Smiley's Opening Statement

1 do know. They will not present
2 any evidence to show that this
3 man had anything to do with a
4 plan to kidnap, a kidnapping, or
5 a murder. Ask yourselves motive,
6 friendship?

7 You know, I do a lot of
8 things for a friend. A lot of
9 things. Most anybody would do a
10 lot of things for a friend. But
11 the suggestion that Ivory would
12 just up and go help kidnap and
13 kill somebody is fairly
14 farfetched in this case. This
15 case, the reason Ivory is in this
16 courtroom is because a fifty-two
17 year old unemployed white man in
18 a Suburban Lodge looked out the
19 peep hole in a window, thought he
20 saw a bag being put into a trunk
21 by a -- by two black males, with
22 one black male, short, heavy, two
23 hundred thirty pounds. That
24 describes half of the black males
25 in the United States.

Mr. Smiley's Opening Statement

1 Look at the process and
2 the procedure and the timing that
3 brings them to Ivory Croker. How
4 what he described and where they
5 end up. How they got there.
6 That's the only reason we're in
7 this courtroom. And what did he
8 really see. Not what we guess he
9 saw. What did he really see. He
10 didn't see Ivory Croker.

11 Friendship. I don't buy
12 it. The evidence isn't going to
13 support it. We got no dog in
14 this fight. I will not call Mr.
15 Hackler a liar. That's not what
16 I'm saying. The evidence will
17 support he's just wrong. Just
18 wrong. Thank you very much.

19 THE COURT: State ready to
20 call its first witness?

21 MS. WILSON: Yes, ma'am.
22 The State will call [REDACTED] O.J.
23 [REDACTED] O.J. , [REDACTED].

24
25

O.J.

-- Direct

1

O.J.

2

O.J.

3

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25

O.J. ., having been
called as a witness, is duly
sworn and testifies as follows:

DIRECT EXAMINATION BY
MS. WILSON:

Q I just want you to step
down. I want to see how tall you
are. How tall are you?

A Five nine.

Q Five nine. And how old
are you?

A Fifteen.

Q Okay. All right. You
can have a seat. How long have you
been five nine?

A For about a year and a
half.

Q Okay. You grown a lot
in the past three years?

A Yes.

Q You said you were
fifteen now.

A Yes.

Q Let's go back to April

O.J.

-- Direct

1 of 2001. You would have been twelve?

2 A Yes.

3 Q And who was your mamma?

4 A Edwina Simms.

5 Q At any time in your life
6 was your mother married to your
7 father?

8 A Yes.

9 Q And what's your father's
10 name?

11 A [REDACTED] [REDACTED] [REDACTED].

12 Q Did the three of you all
13 live together for a while?

14 A Yes.

15 Q Okay. And where did you
16 live?

17 A Esmot, Virginia.

18 Q Where is that in
19 relation to Charlottesville?

20 A It's close. I don't
21 know.

22 Q Are they close together?

23 A Yes.

24 Q Okay. Could you tell me
25 how many miles they are apart?

O.J.

-- Direct

1 A About twenty miles.

2 Q Do you remember what age
3 you were when your mom and dad got a
4 divorce?

5 A I think I was in the
6 third grade.

7 Q And after that where did
8 you live?

9 A With my mom during the
10 week and my dad during the weekend.

11 Q So you lived with your
12 mom during the week and your dad on
13 the weekends?

14 A Yes.

15 Q Now, after your parents
16 got divorced, as far as you knew or
17 could see, did they still get along?

18 A Yes.

19 Q And were there any
20 problems about you visiting your dad?

21 A No.

22 Q And tell the jury what
23 kind of things that you and your
24 mother would do when you all were
25 living together after the divorce.

O.J.

-- Direct

1 A We used to like to take
2 rides around Virginia, play games.
3 Do all sort of stuff.

4 Q When you say games, what
5 kind of games?

6 A Board games, card games.
7 A lot of stuff.

8 Q Do you remember what
9 kind, what her favorites were?

10 A Her favorite was
11 checker.

12 Q Could you beat her?

13 A No.

14 Q She never let you beat
15 her?

16 A Un-un.

17 Q Okay. How often did you
18 all do that sort of thing, play
19 games, cards, or whatever?

20 A Almost every night.

21 Q And let me ask you this.
22 I don't want to embarrass you, but
23 did you consider yourself a mamma's
24 boy?

25 A Yes.

O.J.

-- Direct

1 Q And were you all -- did
2 you all have a close relationship?

3 A Yes.

4 MR. SMILEY: May we
5 approach, your Honor?

6 THE COURT: Yes.

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

9 THE COURT: The objection
10 is overruled. You may proceed.

11 Q O. J. at some point
12 while you all were living in
13 Charlottesville, do you remember your
14 mother dating Ron Coulter?

15 A Yes.

16 Q And do you see Ron here
17 today in the courtroom?

18 A Yes.

19 Q And where is he?

20 A Right there.

21 Q In the glasses?

22 A Yes.

23 MS. WILSON: Your Honor,
24 please let the record reflect
25 he's identified the defendant

O.J.

-- Direct

1 Coulter.

2 THE COURT: Let the record
3 so indicate. You may proceed.

4 (Whereupon, photographs
5 are received and marked as
6 State's Exhibit Nos. 7 and 8 for
7 identification.)

8 Q Did you all you, you and
9 your mother all live with Ron?

10 A Yes.

11 Q And where did you all
12 live with Ron?

13 A In Charlottesville.

14 Q Did you stay in
15 Charlottesville the whole time?

16 A No.

17 Q Where did you go from
18 there?

19 A Cashocatin, Ohio.

20 Q And do you remember
21 about how old you were or what, what
22 grade you were when you moved to
23 Cashocatin, Ohio?

24 A I was in the fifth
25 grade.

O.J.

-- Direct

1 Q And how long did you all
2 stay there?

3 A For about a year.

4 Q And do you remember why
5 it was that you all left there?

6 A Things weren't working
7 out between the two.

8 Q With whom?

9 A Ron and my mother.

10 Q How were things working
11 out with you and Ron?

12 A They were okay.

13 Q Okay. After you and
14 your mom got back to Charlottesville,
15 did she work?

16 A Yes.

17 Q Had she worked while you
18 were in Cashocatin?

19 A Yes.

20 Q All right. Where did
21 she work when she got back to
22 Charlottesville?

23 A I don't remember.

24 Q Okay. That's okay.
25 After you all moved back to

O.J.

-- Direct

1 Charlottesville from Ohio, did your
2 mother continue to see Ron or to date
3 Ron?

4 A Yes.

5 Q And do you recall a time
6 when your mom became pregnant with
7 your baby sister?

8 A Yes.

9 Q And were you excited
10 about that at first?

11 A I -- well not at first.

12 Q Why weren't you excited
13 at first?

14 A I kind of didn't like
15 the idea of having another baby.

16 Q And then at some point
17 did you get past that?

18 A Yes.

19 Q And how long did it take
20 you to get past the fact that your
21 mamma was going to have another baby?

22 A Not long at all.

23 Q And do you remember when
24 [REDACTED] was born?

25 A Yes.

O.J. -- Direct

1 Q And was she able to come
2 straight home from the hospital after
3 she was born?

4 A No.

5 Q Where was she?

6 A At the hospital.

7 Q Okay. She stayed in the
8 hospital a while?

9 A Yes.

10 Q And during that time
11 that she stayed in the hospital, was
12 your mamma still in the hospital as a
13 patient?

14 A No.

15 Q Okay. She was able to
16 come home?

17 A Uh-huh.

18 Q Okay. And do you know
19 if while [REDACTED] was still in the
20 hospital your mom ever visited her?

21 A Yes.

22 Q How often did she visit
23 [REDACTED] ?

24 A Every day.

25 Q And how about you? Did

O.J.

-- Direct

1 you ever go see [REDACTED]?

2 A Yes.

3 Q How often did you go see
4 her?

5 A About every other day.

6 Q And who would take you
7 up there to see [REDACTED]?

8 A Mamma.

9 Q Edwina, your mother?

10 A Yes.

11 Q Now, after [REDACTED], do
12 you remember when it was that [REDACTED]
13 was able to leave the hospital and
14 come live with you and your mother?

15 A No.

16 Q At some point though
17 [REDACTED] did come home?

18 A Yes.

19 Q And did your mother go
20 back to work after that?

21 A Yes.

22 Q And do you remember
23 where she worked at that point?

24 A Continuum-Home Health
25 Care.

O.J.

-- Direct

1 Q During that time do you
2 know who kept [REDACTED] during the
3 daytime while your mamma would work?

4 A My great grandmother.

5 Q And you mentioned your
6 great grandmama. What is her name?

7 A Susie B. Terrell.

8 Q All right. And did your
9 mother have any other family that
10 lived there in Charlottesville?

11 A Yes.

12 Q Okay. Can you tell me
13 who some of those people were or are?

14 A Her mom and her brother.

15 Q Can't hear you.

16 A Her mom and her brother.

17 Q What's her mother's
18 name?

19 A Kathryn May Simms.

20 Q And what's her brother's
21 name?

22 A Tim Simms.

23 Q How about her daddy?

24 Where did he live?

25 A He lived in Scottsville.

O.J.

-- Direct

1 Q Is that very close
2 Charlottesville also?

3 A Yeah.

4 Q Did you all have any
5 friends who lived in the area?

6 A Yes.

7 Q Okay. Do you know who
8 Lenora is?

9 A Yes.

10 Q Who is that?

11 A One of my mom's close
12 friends.

13 Q Okay. How about Ann
14 Albright?

15 A Yes.

16 Q Did Ann have any
17 children?

18 A Yes.

19 Q What were their names?

20 A [REDACTED] and

21 [REDACTED]

22 Q And did you and your
23 mother ever do anything with Ann and
24 Lenora?

25 A Yes.

O.J. -- Direct

1 Q And what types of things
2 would you all do with them?

3 A We'd take rides like
4 just around Virginia and stuff like
5 that.

6 Q Okay. Now, after,
7 during the time -- let me back up --
8 that your mother was pregnant with
9 [REDACTED], did you see Ron very often?

10 A No.

11 Q How about after [REDACTED]
12 was born? Did you see Ron very
13 often?

14 A Yes.

15 Q How often would you see
16 him? Do you remember?

17 A Maybe like every other
18 weekend. I'm not exactly sure.

19 Q Okay. And when he came
20 during that period of time to see
21 [REDACTED], where would he stay?

22 A From what I remember, in
23 a hotel.

24 Q Okay. Do you remember a
25 time that your mom was going to take

O.J. -- Direct

1 a trip to Charleston?

2 A Yes.

3 Q And was she going to
4 take [REDACTED] with her?

5 A Yes.

6 Q Do you remember why it
7 is she was bringing [REDACTED] to
8 Charleston and who she was going
9 with?

10 A I thought she was just
11 going to show [REDACTED] to her
12 grandparents and she went with Ron.

13 Q Okay. And do you
14 remember how long your mamma was
15 supposed to be gone on that trip?

16 A She was supposed to be
17 back on Sunday.

18 Q Okay. And when was
19 [REDACTED] supposed to be back?

20 A On Sunday.

21 Q Okay. Do you remember
22 what day it was they left before that
23 Sunday?

24 A I don't.

25 Q And you were twelve at

O.J.

-- Direct

1 the time. Is that right?

2 A Yes.

3 Q Now if your mom and

4 [REDACTED] were going to come down to
5 Charleston with Ron, where were you
6 going to be?

7 A At my father's house.

8 Q And is that what
9 happened?

10 A Yes.

11 Q Well, what happened that
12 Sunday?

13 A Well, my dad was
14 supposed to take me back to my mom's
15 apartment, but we called and she
16 wasn't there.

17 Q At that time what was
18 your daddy's phone number?

19 A [REDACTED]
20 [REDACTED].

21 Q Okay. Do you remember
22 what your phone number was in the
23 apartment where you lived with your
24 mom?

25 A I don't.

O.J.

- - Direct

1 Q Okay. So you say that
2 your dad called the apartment?

3 A Yes.

4 Q Do you know if he got
5 any answer?

6 A He didn't.

7 Q What did you do that
8 night?

9 A I stayed at his house
10 until the next morning.

11 Q Had you talked with your
12 mother any over the weekend?

13 A No.

14 Q Was that unusual?

15 A Yes.

16 Q What did you do on
17 Monday morning?

18 A My dad dropped me off at
19 the apartment and I caught the school
20 bus.

21 Q Okay. Before you got on
22 the bus, did you go in the apartment?

23 A Yes.

24 Q What did you find?

25 A Nothing. Everything was

O.J.

-- Direct

1 still in the same place.

2 Q Was your mamma there?

3 A No.

4 Q Was [REDACTED] there?

5 A No.

6 Q Did that seem unusual to
7 you?

8 A Yes.

9 Q You went on to school,
10 though?

11 A Yes.

12 Q Did you think about it
13 any while you were at school?

14 A The whole day.

15 Q About what time do you
16 remember getting out of school?

17 A At about four.

18 Q And how did you usually
19 get home from school?

20 A I caught the school bus.

21 Q What happened when you
22 got off the bus that afternoon?

23 A I went into the
24 apartment. She still isn't there.

25 Q Did you look around for

O.J. - - Direct

1 her?

2 A Yes.

3 Q What did you do when you
4 realized that she wasn't there?

5 A I dropped my bags and I
6 laid on the couch and started to cry.

7 Q How long did you stay at
8 the apartment by yourself?

9 A For about a half hour.

10 Q And what did you do
11 next?

12 A I called my dad's to
13 come pick me up.

14 Q Did he do that?

15 A Yes.

16 Q During all of this time
17 do you know where your mother's car
18 was?

19 A It was at the apartment.

20 Q It was there at the
21 apartment?

22 A Yes.

23 Q Since - - let me ask you
24 this. When was the last time that
25 you saw your mother?

O.J.

- - Direct

1 A The day that she left.

2 The morning, I think.

3 Q Okay. And have you
4 heard from her since?

5 A No.

6 Q Have you gotten any
7 phone calls?

8 A No.

9 Q Any e-mail?

10 A No.

11 Q Any letters?

12 A No.

13 Q Based on the life that
14 you and your mother had been living,
15 is it unusual to you that she would
16 have just left you?

17 A Yes.

18 Q Since this happened have
19 you remained in contact with her
20 family?

21 A Yes.

22 Q Do you still have
23 contact with her brother and her
24 parents?

25 A Yes.

O.J.

-- Direct

1 Q Let me ask you this.
2 Since the time when your mom
3 disappeared, have you talked to Ron
4 Coulter?

5 A No.

6 Q He's never called you?

7 A No.

8 Q I'm going to show you
9 what's been marked State's exhibits
10 seven and eight.

11 MR. DAVIS: Your Honor,
12 are we allowed to see the
13 exhibits?

14 THE COURT: If you would
15 show it to opposing counsel.

16 MS. WILSON: I will.

17 Q Now O. J., State's
18 exhibit seven and eight, do you
19 recognize the people in these
20 pictures?

21 A Yes.

22 Q And are these pictures
23 fair and accurate representations of
24 those people?

25 A Yes.

O.J.

-- Direct

1 MS. WILSON: Your Honor,
2 at this time we'd offer State's
3 exhibit seven and eight.

4 THE COURT: Any
5 objections?

6 MR. DAVIS: Yes, your
7 Honor. To one. May we approach?

8 THE COURT: Uh-huh.

9 (Whereupon, there was an
10 off-the-record bench conference.)

11 THE COURT: The, the
12 objection is overruled. The
13 objection is relevance.
14 Overruled. You may proceed.

15 MS. WILSON: Thank you,
16 Judge.

17 THE COURT: Documents are
18 admitted.

19 (Whereupon, State's
20 Exhibit Nos. 7 and 8,
21 photographs, were marked in
22 evidence.)

23 Q And State's exhibit
24 seven?

25 MR. SMILEY: I don't have

O.J.

-- Direct

1 an objection.

2 THE COURT: Okay.

3 Q Who is that in that
4 picture?

5 A My mom and my
6 grandmother.

7 Q Okay. And which
8 grandmom is that? Is that your
9 mama's mamma?

10 A Yes.

11 Q And then State's exhibit
12 eight. Who is that?

13 A My mom and my baby
14 sister.

15 Q Okay. Since your mamma
16 and [REDACTED] came down to Charleston
17 that weekend have you seen [REDACTED]
18 again?

19 A No.

20 MS. WILSON: Judge, may I
21 publish these to the jury?

22 THE COURT: You may
23 proceed.

24 (Whereupon, the jury
25 views State's Exhibit Nos. 7 and

O.J.

-- Direct

1 8 in evidence.)

2 MS. WILSON: That's all I
3 have at this time, your Honor.

4 O. J., if you would
5 please answer any questions the
6 defense attorneys may have.

7 THE WITNESS: Okay.

8 THE COURT: Proceed.

9

10

11

12

13 CROSS-EXAMINATION BY MR.

14 DAVIS:

15 Q O. J. Is that right?

16 A Yes.

17 Q Actually April 2001,

18 that wasn't the first time your

19 mother had come to Charleston to

20 visit?

21 A No.

22 Q She'd come here before?

23 A Yes.

24 Q Before [REDACTED] was born?

25 A Yes.

O.J.

-- Cross by Mr. Davis

1 Q And [REDACTED] was born
2 October twenty-seventh of 2000?

3 A Yes.

4 Q And I think you said
5 this but that was a difficult
6 pregnancy for your mother?

7 A Yes.

8 Q In fact she stayed in
9 the hospital for a little period of
10 time after that. Right?

11 A Yes.

12 Q In fact while she's in
13 the hospital, Ron came down to stay
14 there in Charlottesville as well
15 while she was in I. C. U. Do you
16 know?

17 A I honestly don't know.

18 Q It's been three years
19 ago?

20 A Yes.

21 Q Now, when your mom and
22 [REDACTED] came down to Charleston in
23 April of 2001, they would bring just
24 [REDACTED] because she -- [REDACTED] hadn't
25 met Ron's -- her grandparents.

O.J.

-- Cross by Mr. Davis

1 Right?

2 A Right.

3 Q So that's why you didn't
4 come down. It was for [REDACTED] to come
5 down for the grandparents to get to
6 see her?

7 A Yes.

8 MR. DAVIS: O. J., thank
9 you. That's all I have.

10 THE COURT: Mr. Smiley.

11 MR. SMILEY: I don't have
12 any questions of this witness.

13 THE COURT: Any redirect?

14 MS. WILSON: None.

15 THE COURT: Any objection
16 to the witness being excused from
17 the courtroom?

18 MS. WILSON: No, ma'am.

19 MR. DAVIS: No, ma'am.

20 THE COURT: Mr. Smiley?

21 MR. SMILEY: No, ma'am.

22 THE COURT: Thank you very
23 much. You may step down. You're
24 excused.

25 You may call your next

O.J.

-- Cross by Mr. Davis

1 witness.

2 MS. WILSON: Your Honor,
3 the State would call Maggie
4 Short.

5
6
7
8
9 M A R G A R E T
10 C O N W A Y S H O R T, having
11 been called as a witness, is duly
12 sworn and testifies as follows:

13 DIRECT EXAMINATION BY
14 MR. DURANT:

15 THE COURT: Mr. Durant,
16 you may proceed.

17 Q Good afternoon,
18 Miss Short.

19 A Good afternoon.

20 Q Could you please tell
21 the jury where you live.

22 A I live in
23 Charlottesville, Virginia.

24 Q And are you currently
25 employed?

Short -- Direct

1 A Yes, I am.

2 Q And where are you
3 employed?

4 A University of Virginia
5 Medical Center.

6 Q What are your current
7 duties at the University of Virginia
8 Medical Center?

9 A I'm a hospital
10 administrator there.

11 Q And do you also have an
12 affiliation with a Continuum Home
13 Health Care?

14 A Yes. Continuum Home
15 Health is one of the departments of
16 the medical center that I'm
17 administratively responsible for.

18 Q And in April of 2001,
19 were you primarily responsible for
20 Continuum Home Health Care?

21 A Yes. I was the agency
22 director there.

23 Q In your capacity as the
24 director of the Continuum Home Health
25 Care, did you have the occasion to

Short -- Direct

1 know Edwina Simms?

2 A Absolutely.

3 Q And how did you come to
4 know her?

5 A I hired her.

6 Q She was an employee of
7 yours?

8 A Uh-huh.

9 Q Do you recall when it
10 was you hired her?

11 A We hired her initially
12 in August of '99 actually as a temp
13 employee at that time.

14 Q And prior to hiring her,
15 did you check her records and
16 references?

17 A Yes. We check
18 references on new hirers.

19 Q Did you learn anything
20 concerning her dependability with
21 checking her references?

22 A That's always a primary
23 reason obviously for checking
24 references and important things that
25 we learned about Edwina that prompted

Short -- Direct

1 her hire was her dependability, her
2 attendance record. She was an
3 excellent employee according to both
4 references and both communicated that
5 they had hated to lose her.

6 Q And she began working
7 for you in August of 1999. Is that
8 correct?

9 A Correct.

10 Q And I believe you stated
11 that as a temporary employee. Is
12 that correct?

13 A Right.

14 Q Did her position become
15 permanent?

16 A It became permanent
17 probably about seven months after
18 hiring her. We had initially hired
19 her because we thought we had a
20 temporary need. That ended up being
21 long-term and she was an excellent
22 employee and so we created a
23 permanent benefitted position for her
24 and moved that in -- moved her into
25 that position early in 2000.

Short -- Direct

1 Q And what position was
2 that, what exactly was she doing for
3 you all?

4 A She was in an
5 administrative assistant position,
6 which is really a support staff
7 position. She had a number of
8 different responsibilities. We have
9 a small, relatively small support
10 staff and they cross-cover each
11 other, so she did charge entry,
12 reception, a lot of data entry work
13 for us.

14 Q And how long did she
15 work for Continuum prior to her
16 disappearance in April of 2001?

17 A Well, she worked
18 consistently for us full-time from
19 August of '99 until April.

20 Q And during that period
21 of time did you have an opportunity
22 to observe her work habits?

23 A Uh-huh.

24 Q And how would you
25 describe her work habits?

Short -- Direct

1 A She was very committed.
2 She was dependable. She would do
3 absolutely anything we needed her to
4 do. She learned many, many new
5 responsibilities while she was there
6 so that she could cross-cover. She
7 would do anything we asked her to do.
8 She always went above and beyond.

9 Q Did you ever have any
10 problems with absenteeism?

11 A Never. If she was going
12 to be five minutes late, she would
13 call.

14 Q In your experience with
15 her, did she appear to be happy at
16 her job?

17 A Very much so.

18 Q Were you aware of any
19 problems that she was having at work?

20 A No. None at work.

21 Q Were you aware of any
22 problems that she may have been --
23 had with any of her co-workers or
24 colleagues at work?

25 A No. Edwina was a very

Short -- Direct

1 social being. Everybody really loved
2 her. She made sure that when she
3 came to work, she talked to everybody
4 at some point during the day. I mean
5 she would always show up in my
6 office. And other staff really loved
7 her.

8 Q Was Edwina working at
9 Continuum when she became pregnant?

10 A Yes, she was.

11 Q And did you have an
12 occasion to talk to her concerning
13 her pregnancy?

14 A Yeah. I think I was
15 probably one of the first people she
16 came and told, actually.

17 Q And how did she react to
18 her pregnancy?

19 A She was excited. I had,
20 I wasn't very sure if she was or she
21 wasn't, so I asked her how she felt
22 about it, and she was very excited.
23 She was hoping that she was going to
24 have a little girl and seemed very
25 happy about it.

Short -- Direct

1 Q Were you aware of who
2 the father of the child was?

3 A Yes.

4 Q And who was that?

5 A Ron Coulter.

6 Q Had you ever met Ron
7 Coulter personally?

8 A No, I had not.

9 Q Do you know what the
10 status of he and Edwina's
11 relationship was at the time that
12 [REDACTED] was born?

13 A According to Edwina he
14 was no longer a boyfriend. Her --
15 she considered him an ex-boyfriend.

16 Q Do you know whether or
17 not she was receiving child support?

18 A Absolutely not.

19 Q Had she ever discussed
20 that prospect with you?

21 A She had mentioned on one
22 occasion to me that it was something
23 that she was broaching with him. She
24 as a single parent obviously now had
25 two children. The baby was -- had

Short -- Direct

1 been premature and administrative
2 support staff don't make a tremendous
3 amount of money, so I know she was
4 concerned about her financial
5 situation and had mentioned that it
6 was something that she had planned on
7 discussing with Ron.

8 Q Now you were -- were you
9 aware if Edwina had any family around
10 in the --

11 A Oh, yes.

12 Q -- Charlottesville area?

13 A Oh, yes.

14 Q Do you know what her
15 relationship was with her family?

16 A It was wonderful. She
17 talked about her family all the time.
18 Her, her kids were everything. She
19 was very close to her parents and her
20 brother. Her grandmother kept
21 [REDACTED]. So I mean her whole her
22 whole life really revolved around her
23 family and kids.

24 Q Was it usual for her
25 family to come by, somebody from her

Short -- Direct

1 family to come by and visit her at
2 work or anything of that nature?

3 A Yeah. I mean different
4 ones would come by at different
5 times. O. J. would sometimes come by
6 work.

7 Q Did you meet any of her
8 family?

9 A Pardon?

10 Q Did you meet any of her
11 family?

12 A Uh-huh.

13 Q How would you describe
14 her relationship with her children?

15 A I mean the kids were
16 really her life. Her work station
17 was plastered with pictures of her
18 kids and her family. [REDACTED]'s
19 picture was on her computer screen
20 saver. I mean the kids were the
21 primary source of discussion that she
22 would routinely share with us.

23 Q Based upon your personal
24 observations and dealings with
25 Edwina, did she appear to be a

Short -- Direct

1 protective mother to you?

2 A Very. We would -- a
3 number of different staff would
4 volunteer to baby-sit for [REDACTED] so
5 she could have a break. It just
6 wasn't going to happen. She wouldn't
7 leave the baby with anyone except I
8 think her grandparents and maybe her
9 parents. Very protective.

10 Q Now as her employer,
11 were you aware of the trip that she
12 was taking to Charleston in April of
13 2001?

14 A Yes, I was.

15 Q And did you know where
16 she was going?

17 A Yes.

18 Q And when, when was she
19 supposed to return to work?

20 A She was due back on
21 Monday. She had requested leave time
22 for Thursday and Friday and was due
23 back at work on Monday.

24 Q And that would have
25 been -- Thursday and Friday were the

Short -- Direct

1 eighteenth and nineteenth I believe,
2 or nineteenth and twentieth?

3 A Nineteenth and
4 twentieth.

5 Q Of April, 2001.

6 A Correct.

7 Q Did she show up on
8 Monday?

9 A No, she did not.

10 Q What did you all do at
11 the Continuum when she didn't show
12 up?

13 A Well, everybody started
14 saying where's Edwina? Because we
15 thought she was, we were expecting
16 her at work and she would always call
17 even if she was going to be just a
18 couple minutes late. And so there
19 was no phone call. We didn't know
20 where she was.

21 Q Did you -- did she ever
22 call in that day?

23 A She did not call in that
24 day.

25 Q Did you make, did you

Short -- Direct

1 make any efforts to try to get in
2 touch with her?

3 A We did not that day
4 because it was so unusual that we all
5 started questioning, well, maybe she
6 really wasn't due back today, maybe
7 she was due back Tuesday. And she
8 had had some dialogue with one of her
9 co-workers about the potential of
10 getting back really late on Sunday
11 night and had made sure that some of
12 her early morning pieces were covered
13 in the event that she was late, so we
14 thought well, maybe she really wasn't
15 due back until Tuesday because she
16 always called if she was going to be
17 late.

18 Q And what happened when
19 she didn't show up on Tuesday?

20 A Well, we pulled her
21 leave request and it was clear from
22 her request that she had only
23 requested off Thursday and Friday.
24 We called her apartment and left
25 messages because she just, you know,

Short -- Direct

1 wasn't someone who would not show up
2 at work or not call.

3 Q And which kind of led to
4 my next question. I mean based upon
5 your personal knowledge of her work
6 habits, was her failure to return to
7 work characteristic of her?

8 A Absolutely not.

9 Q Was she owed money at
10 the time of her disappearance?

11 A We had all gotten paid
12 on that Friday actually when she
13 would have been down here, so she had
14 a check waiting for her.

15 Q Her pay check was
16 waiting for her at the, at the
17 office?

18 A (The witness nods head.)

19 Q Any word whatsoever from
20 Edwina Simms since then?

21 A No.

22 Q Have you all had any
23 memorial for her at the office?

24 A Actually we have done a
25 number of things that are actually

Short -- Direct

1 still on going. That Christmas after
2 she disappeared we did, we -- the
3 university has what's called a tree
4 of lights ever Christmas and the
5 staff bought a light which we
6 continue to do. Additionally, one of
7 the things Edwina did when she came
8 back from maternity leave was she had
9 asked if we could start doing what's
10 called blue jeans Friday. We don't
11 see patients on site. We're a home
12 health agency and so on Friday for
13 the office staff who weren't going to
14 be dealing with the general public,
15 she had asked whether or not staff
16 could wear blue jeans and in return
17 for doing that, donate a dollar
18 towards the children's medical
19 center, because obviously they had
20 taken care of [REDACTED] and that's still
21 something we did.

22 MR. DURANT: And Court's
23 indulgence just one moment.

24 THE COURT: Uh-huh.

25 Q Just a couple other

Short -- Direct

1 questions. Did Edwina have access to
2 a computer at her work?

3 A Yes. She had her own
4 work station.

5 Q And did her work station
6 computer have a password to get
7 e-mail?

8 A Oh, absolutely.

9 Q Did you check her e-mail
10 subsequent to her disappearance?

11 A I did.

12 Q What did you find?

13 A I knew that she
14 frequently did in the past get
15 e-mails from Ron, and so I did get
16 security access to go into her e-mail
17 and there, there were no, no messages
18 there. It was just, you know, trash
19 mail.

20 MR. DURANT: Would you
21 please answer any questions
22 defense counsel may have for you.

23 THE COURT: Mr. Davis.

24 MR. DAVIS: Miss Short, I
25 don't have any questions for you.

1 Thank you, ma'am.

2 THE COURT: Mr. Smiley?

3 MR. SMILEY: I don't have
4 any questions for this witness,
5 your Honor.

6 THE COURT: Any objection
7 to the witness being excused from
8 the State?

9 MS. WILSON: No, ma'am.

10 THE COURT: From the
11 defendants?

12 MR. DAVIS: No, your
13 Honor.

14 MR. SMILEY: No, your
15 Honor.

16 THE COURT: Thank you very
17 much, ma'am. You're excused.

18 Mr. Foreman, ladies and
19 gentlemen, you all have been
20 sitting about an hour and a half.
21 I'm going to give you a very
22 brief break so that you have the
23 opportunity to refresh
24 yourselves. Please leave your
25 notebooks in your seats. Please

1 have no discussion about the case
2 during this break. We should be
3 out about ten minutes.

4 If you need anything let
5 the bailiffs know.

6 Everyone remain seated
7 as the panel is excused.

8 (The jury leaves the
9 courtroom at 3:56 p. m.)

10 THE COURT: Is there
11 anything before we take a break?

12 MS. WILSON: Not from the
13 State.

14 MR. DAVIS: And, your
15 Honor, I respect your Honor. I
16 just want to make sure that
17 the --

18 THE COURT: Just out of an
19 abundance of caution that's why I
20 stated for the record what the
21 objection was and the Court's
22 ruling on the objection.

23 MR. DAVIS: I would also,
24 your Honor, argue not only
25 relevance but further the

1 probative value versus
2 prejudicial effect. Thank you.

3 THE COURT: Court finds
4 that the photos have probative
5 value. The objection is
6 overruled.

7 Anything before we take
8 a break?

9 MR. DAVIS: No, ma'am.

10 MS. WILSON: How long will
11 you take this afternoon, your
12 Honor?

13 THE COURT: Ten minutes.

14 (Whereupon, a recess is
15 taken at 3:57 p. m.)

16 (The Judge enters the
17 courtroom at 4:17 p. m.)

18 (The jury enters the
19 courtroom at 4:18 p. m.)

20 THE COURT: I hope that
21 you all enjoyed your break.
22 We'll now resume the testimony.

23 Miss Wilson, you may
24 call your next witness.

25 MS. WILSON: Daisy Denim.

1 D A I S Y D E N H A M,
2 having been called as a witness,
3 is duly sworn and testifies as
4 follows:

5 DIRECT EXAMINATION BY
6 MS. WILSON:

7 THE COURT: You may
8 proceed.

9 MS. WILSON: Thank you,
10 Judge.

11 THE COURT: You're
12 welcome.

13 Q Miss Denham, make sure
14 you pull that microphone down a
15 little bit. It's a little bit hard
16 to hear in here. Where do you live,
17 Miss Denham?

18 A I live at [REDACTED] [REDACTED] [REDACTED]
19 [REDACTED] [REDACTED], Charlottesville,
20 Virginia, two two nine zero two.

21 Q Okay. How long have you
22 lived there?

23 A Since October sixteen of
24 1986.

25 Q Where do you work?

Denham -- Direct

1 A I work at the University
2 of Virginia Health System.

3 Q What part?

4 A I work at the home care.

5 Q And how long have you
6 done that?

7 A Since December of 1999.

8 Q While you were working
9 for Continuum did you come to know
10 Edwina Simms?

11 A Yes, I did.

12 Q And can you tell the
13 what your role at Continuum was in
14 relation to Edwina's?

15 A I'm a nurse and I'm the
16 coordinator for compliance. I, I
17 have, I work with Edwina, Edwina
18 being at that time enter transactions
19 for our billing.

20 Q Did you have any
21 supervisory roles over her?

22 A Yes. Because of her
23 main responsibility being transaction
24 entry.

25 Q So you said that you

Denham -- Direct

1 started work at Continuum in 1999 and
2 did you work there until Edwina's
3 disappearance and thereafter?

4 A Yes, I did. And I'm
5 still working at Continuum.

6 Q Okay. Can you tell the
7 jury a little bit about Edwina's work
8 habits?

9 A Edwina is very dedicated
10 with her work. When she is asking
11 for time off she makes sure that she
12 had coverage for all of the major
13 responsibilities that she had at that
14 time. She worked well with her
15 peers. She was a very loving mother.

16 Q Can you tell the jury
17 about how she approached being
18 absent? If she was absent very
19 often?

20 A All of us had the
21 benefits of taking time off and
22 because there are some
23 responsibilities that are time
24 sensitive so she will work with her
25 peers and make sure that those major

Denham - - Direct

1 responsibilities with deadlines she
2 had coverage and made sure that
3 they're doing it the right way.

4 Q And if Edwina were going
5 to be absent or late for work, would
6 you ever know that in advance?

7 A Yes, I would. We are
8 expected to call work and tell our
9 immediate supervisor two hours before
10 the start of our workday so --

11 Q Did she do that?

12 A And Edwina was always
13 consistent in leaving a voice mail if
14 she's sick or not able to come to
15 work.

16 Q Okay. Now we've heard
17 some testimony about your blue jeans
18 Friday. Were you involved in making
19 that happen?

20 A Yes. Edwina asked me
21 first if we could wear blue jeans on
22 Friday because she was really -- when
23 she delivered prematurely, delivered
24 [REDACTED] prematurely the neonatal
25 intensive care unit as well as the

Denham -- Direct

1 transitional nursery really helped
2 [REDACTED], you know, become well and be
3 able to go home. So because she
4 wanted to make sure that in return
5 she's able to help the unit, she
6 wanted us to wear blue jeans on
7 Friday and pay a dollar. And I said
8 I did not have the authority to allow
9 that, so she needed to go to our
10 agency director, and our agency
11 director after, you know, she made
12 the decision and agreed that we could
13 wear blue jeans on Friday as long as
14 we paid a dollar to be donated to the
15 children's medical center. She came
16 down said it's approved, and so
17 immediately we started wearing blue
18 jeans on Friday and would pay a
19 dollar. Up to this day we continue
20 to do that in honor of Edwina.

21 Q When Edwina got the news
22 from I think it was Miss Short that
23 you all were going to be able to do
24 the blue jeans Friday, how did she
25 react when she came to tell you that?

Denham -- Direct

1 A She was running
2 downstairs because Miss Short's
3 office was upstairs. She was running
4 downstairs. She -- I don't even
5 think she took the elevator. She
6 took the road running. It's
7 approved, it's approved, and we can
8 wear. I almost went home just to
9 prove to her that I'm really
10 interested in doing this thing.

11 Q Okay. Do you recall the
12 time in the fall, summer and fall of
13 2000 when Edwina became pregnant?

14 A Yes.

15 Q Okay. And do you recall
16 discussing with her her pregnancy at
17 all?

18 A No.

19 Q If you didn't, that's
20 fine.

21 A No.

22 Q Okay. Do you recall
23 when [REDACTED] was born, whether or not
24 she went straight home to the
25 hospital -- from the hospital. I'm

Denham -- Direct

1 sorry.

2 A When -- say --

3 Q When [REDACTED] was born did
4 she go straight home?

5 A No, she did not.

6 Q Okay.

7 A [REDACTED] was born
8 prematurely.

9 Q Okay. And because
10 you're a nurse did you have any
11 conversations with Edwina about
12 [REDACTED]'s condition or about the
13 hospital where she was or anything
14 like that?

15 A When [REDACTED] was born
16 Edwina did give me permission to talk
17 to some of the doctors in the
18 hospital. I used to manage that area
19 in the hospital. That's why I knew
20 some of the people. And she just
21 wanted to make sure that, you know,
22 if she needed help I could go over
23 there and help her. That's really --

24 Q And did they agree to
25 that?

Denham -- Direct

1 A Yes.

2 Q Now, in your discussions
3 with Edwina at work, did you know who
4 the father of [REDACTED] was, his name?

5 A Yes. Edwina told me
6 that the father was Ron.

7 Q Okay. Had you ever met
8 Ron?

9 A No. I never did.

10 Q All right. After [REDACTED]
11 was born, at some point Edwina came
12 back to work. Is that right?

13 A Yes, she did.

14 Q Okay. And during March
15 or April do you recall Edwina
16 expecting a package?

17 A Oh, yes. Definitely.

18 Q Okay.

19 A Sometime --

20 MR. DAVIS: Your Honor,
21 I'm going to object.

22 THE COURT: Basis.

23 MR. DAVIS: Relevance,
24 your Honor.

25 THE COURT: Overruled.

Denham -- Direct

1 You may proceed.

2 Ma'am, you may answer
3 the question.

4 A Edwina told me, she
5 asked permission to use her lunch
6 break to pick up a package from U. P.
7 S.

8 Q Well, how was she acting
9 when she requested that?

10 A Oh, she was so excited.
11 She said this is the, this is the
12 first time [REDACTED]'s father sent
13 [REDACTED] a present. So we were --

14 Q Did she know what it
15 was?

16 A Oh, she did not know.

17 Q Okay.

18 A I did not know. I mean
19 she was just too excited and she said
20 Daisy, may I use my lunch break to go
21 to U. P. S. and pick up this package?
22 And I said yes, great. So she used
23 her lunch break, came back with a
24 package, and well, I was hovering
25 over her and I was excited myself,

Denham -- Direct

1 and she opened the package and it was
2 just a big disappointment. There was
3 an emergency pack of diapers,
4 something that you buy at the
5 convenience store. And she looked at
6 me crying and I said -- and she was
7 asked me why, and I said I don't
8 understand either.

9 Q She thought it would be
10 something more personal?

11 A I mean personal for
12 [REDACTED], you know, a dress or a toy or
13 something. Not a pack of ten
14 diapers.

15 Q Okay. And you said she
16 got emotional?

17 A Oh, she was crying. It
18 was just a big disappointment. I
19 mean I felt like I was so
20 disappointed to see that and I -- all
21 I could say, I don't understand this.

22 Q Okay. Now, do you know
23 when in relation to Edwina's trip to
24 Charleston that incident was? Can
25 you tell the jury about how far, how

Denham -- Direct

1 long before Edwina's trip the package
2 incident was?

3 A Well, this was very
4 close. I don't remember the exact
5 date, but it was very close to her
6 trip to Charleston.

7 Q But you were familiar
8 with the fact that she was going to
9 take a trip to Charleston?

10 A Right.

11 Q And when did you expect
12 her to return from that trip?

13 A I expected her to return
14 from that trip, I mean report in to
15 work Monday.

16 Q Okay. And when Monday
17 came around, did Edwina show up?

18 A When, when I didn't see
19 Edwina I asked one of her peers and
20 her peer said oh, Edwina is not
21 coming till Tuesday. As a matter of
22 fact she has asked me to cover for
23 all of the responsibilities that she
24 has to be done today.

25 Q Did you know anything

Denham -- Direct

1 about Edwina and her doctor's
2 appointments, anything like that?

3 A Oh, yes. Edwina has a
4 calendar for [REDACTED]'s doctor's
5 appointments. She was very specific.
6 She has a calendar right on her
7 cubby, and, you know, with all the
8 doctors, pediatricians that she
9 needed to see.

10 Q Okay. And Edwina did
11 not show up that Monday or that
12 Tuesday, did she?

13 A She did not show up that
14 Tuesday and that's when I truly got
15 alarmed because of it's, it's, I was,
16 I first went into my mailbox, voice
17 mail, and there was no message from
18 Edwina. I checked with everyone who
19 was present at work and they haven't
20 heard from Edwina. And that's when I
21 alerted, at that time there was a
22 director for clinical services and
23 director for clinical services went
24 to Maggie Short who is our agency
25 director and they took it from there,

Denham -- Direct

1 and we never heard anything.

2 Q Based on the two years
3 or more that you worked with Edwina
4 is it unusual that she just didn't
5 show up for work and never called or
6 anything?

7 A It was out of character.
8 It was so unusual to not hear, to not
9 get a voice mail, to not hearing from
10 her is not her usual way of, not her
11 habit anyway.

12 Q Did she seem to get
13 along with the other women at work?

14 A Oh, yes. Oh, yes.

15 MS. WILSON: Beg the
16 Court's indulgence.

17 That's all I have,
18 Miss Denham. If you'll answer
19 any questions the defense has.

20 THE COURT: Mr. Davis.

21 MR. DAVIS: Thank you,
22 your Honor.

23 THE COURT: You're
24 welcome.

25

Denham -- Cross by Mr. Davis

1 CROSS-EXAMINATION BY MR.

2 DAVIS:

3 Q You're familiar with her
4 desk area there at work? Edwina's?

5 A I'm familiar with Edwina
6 at work, yes.

7 Q You talked about the
8 calendar that you saw at her desk and
9 where she had different dates
10 scheduled on there. Is that right?
11 You'd seen different, different dates
12 scheduled on that calendar. Is that
13 right?

14 A Yeah. I've seen
15 [REDACTED]'s medical appointments on that
16 calendar.

17 Q And I believe that was a
18 May fourth pediatric appointment. Is
19 that right?

20 A Pediatric appointment.

21 Q That was on May fourth
22 of 2001?

23 A I can't remember.

24 Q And in that area she
25 kept personal items?

Denham -- Cross by Mr. Davis

1 A I saw [REDACTED]'s pictures.

2 Q And you remember seeing
3 pictures of Ron there as well?

4 A I don't remember.

5 Q Okay. You do remember
6 talking to at some point an F. B. I.
7 agent about this, about Edwina not
8 showing back up to work. Right?

9 A Yes.

10 Q They asked you about the
11 calendar and the dates. Do you
12 remember that?

13 A I, I remember.

14 Q And they asked you about
15 photos there at her desk, at her work
16 station?

17 A That I do not remember.

18 Q Okay. So you're not,
19 you don't recall whether you told
20 them about the pediatric appointment
21 being on May fourth? You just
22 don't --

23 A Yeah. I remember.

24 Q Okay.

25 A I remember that.

Denham - - Cross by Mr. Davis

1 Q Okay. And so then the
2 only other things, do you recall
3 mentioning to them about Ron's
4 pictures also being there at her
5 desk?

6 A No, I do not.

7 Q Okay. Now, you talked a
8 little bit about the package that she
9 received that you're a little
10 disappointed about, what she
11 received. That was at work? She
12 received that package at work?

13 A She asked permission to
14 use her lunch break to pick it up
15 from U. P. S.

16 Q Okay. But did she bring
17 it back to work? Did you see it?

18 A Yes, she did.

19 Q Okay. Now, were you
20 aware that Ron would visit more than
21 once a month to see Edwina and
22 [REDACTED]? You weren't aware of that?

23 A No, I do not.

24 Q Were you aware that,
25 that little baby [REDACTED] had some

Denham -- Cross by Mr. Davis

1 medical problems after the birth?

2 She was premature. Right?

3 A She was premature.

4 Q And she had some medical
5 problems after birth. She in fact
6 stayed in the hospital for a while,
7 didn't she?

8 A That's correct.

9 Q And did you know that
10 because of that she had, she required
11 special baby formula?

12 A I do not know that.

13 Q Okay. So you wouldn't
14 be aware whether Ron frequently
15 bought that special baby formula for
16 [REDACTED]?

17 A I do not know that.

18 Q Did you know that
19 frequently when he would be visiting
20 he'd buy clothing and diapers and
21 formula and other items for [REDACTED]
22 when he visited?

23 A I do not know that.

24 Q Were you aware that
25 frequently when he visited he would

Denham -- Cross by Mr. Davis

1 leave some money with Edwina to help
2 out with [REDACTED]?

3 A I do not know that.

4 Q Did you know that [REDACTED]
5 was covered under Ron's insurance
6 policy?

7 A I do not know that.

8 Q Did you know that Ron
9 was down and visited and stayed there
10 in Virginia while [REDACTED] was in the
11 hospital?

12 A I do not know that.

13 Q Miss Denham, just a
14 couple more questions. It's accurate
15 then to tell the jury that the
16 information that you knew about what
17 Ron did for Edwina and [REDACTED] came
18 through what Edwina told you at work?

19 A I witnessed that
20 particular incident.

21 Q That one package you
22 saw?

23 A That's correct.

24 Q Other than that, the
25 bits and pieces you had about what

Denham -- Cross by Mr. Davis

1 she received or not was what she had
2 told you?

3 A I only am knowledgeable
4 about that package.

5 Q Okay, ma'am. The last
6 thing, about talking with the
7 F. B. I., do you know speaking with
8 Special Agent Cynthia Mc Cants by
9 telephone August twenty-seventh of
10 2001? Do you remember that
11 conversation with Agent Mc Cants?

12 A I remember the
13 conversation. I do not remember the
14 date.

15 Q Okay. Do you remember
16 during that conversation then talking
17 about the fact that Edwina had
18 pictures of [REDACTED] and her family at
19 her desk and a picture of Ron and
20 [REDACTED] from the hospital?

21 A I cannot remember.

22 MR. DAVIS: Okay.

23 Miss Denham, thank you. No other
24 questions.

25 THE COURT: Mr. Smiley?

1 MR. SMILEY: I have no
2 questions for Miss Denham.

3 THE COURT: Any redirect?

4 MS. WILSON: No, ma'am.

5 THE COURT: Any objection
6 to the witness being excused?
7 From the State?

8 MS. WILSON: No, ma'am.

9 THE COURT: From the
10 defense?

11 MR. DAVIS: No, your
12 Honor.

13 MR. SMILEY: No, ma'am.

14 THE COURT: Ma'am, you're
15 excused. Thank you very much.
16 You may call your next witness.

17 MS. WILSON: Connie
18 Knight.

19

20

21

22

23

24

25

Knight -- Direct

1 C O N N I E

2 K N I G H T, having been called
3 as a witness, was duly sworn and
4 testified as follows:

5 DIRECT EXAMINATION BY

6 MS. WILSON:

7 Q Miss Knight, where are
8 you from?

9 A From Scottsville,
10 Virginia, which is outside of
11 Charlottesville, Virginia.

12 Q How long have you been
13 in that area?

14 A All my life.

15 Q And where do you work?

16 A For Continuum Home
17 Health Care.

18 Q What do you do there?

19 A I'm a home service
20 representative for the pharmacy of
21 Continuum.

22 Q What does that mean?

23 A That means I work with
24 patients. It's a off-site. We
25 provide home infusion products for

Knight -- Direct

1 patients. I take care of their
2 records and call the patients and
3 contacting them about the supply
4 needs that they have.

5 Q How long have you been
6 doing that?

7 A For this particular,
8 it's still with U. V. A. but I've
9 been there since 1995.

10 Q Okay. When you say
11 still with U. V. A. Continuum is a
12 part of the university?

13 A Yes, ma'am.

14 Q Okay.

15 A And I've been there
16 since 1990.

17 Q Did you know Edwina
18 Simms?

19 A Yes, ma'am, I did.

20 Q And how -- what was your
21 position at Continuum in relation to
22 hers?

23 A We just worked for the
24 same company. She worked on the same
25 floor I did after they hired her.

Knight -- Direct

1 Q All right.

2 A She started out as a
3 temp and then they gave her full time
4 benefits position and she came
5 downstairs to work in the pharmacy.
6 We have two floors. The first floor
7 is the home care and then we have the
8 pharmacy. And she was still with the
9 home care but her desk was
10 downstairs.

11 Q How close was your work
12 station to hers?

13 A There was a door at the
14 entrance that separated us. I mean,
15 I'd say maybe fifteen feet.

16 Q Okay. And did you have
17 to pass her desk or did she have to
18 pass your desk to go anywhere?

19 A She was right at the
20 receptionist's desk, so we had to
21 come in and out the front door.

22 Q Can you describe for the
23 jury what you saw in Edwina's
24 personality at work.

25 A The best way that I know

Knight -- Direct

1 how to describe it, Edwina, she was
2 the kind of person that if you ever
3 met her you wouldn't forget her
4 because she smiled all the time.
5 Even if she wasn't having a good day
6 she'd still smile. She'd just kind
7 of grin from ear to ear.

8 If I was having a bad
9 day, I didn't have to really
10 interact, but if I heard her laugh
11 because she had this laugh that just
12 went over the whole office and you
13 couldn't help but have your spirits
14 lifted up.

15 Q Did she have a strong
16 personality?

17 A She was strong in, in
18 the sense that if things bothered her
19 you didn't always know because she
20 still smiled.

21 Q Okay. And so at work
22 she was happy most all the time?

23 A That we knew of. Yeah.
24 She was.

25 Q Or seemed that way?

Knight -- Direct

1 A Right.

2 Q And can you tell the
3 jury about her working relationship
4 with the other women at work? Did
5 she get along with them?

6 A She got along with
7 everybody.

8 Q Okay. And were there
9 any problems with Edwina and her
10 missing too much work or, or shirking
11 her responsibilities?

12 A No, ma'am.

13 Q You think you would have
14 been aware of that if that were
15 happening?

16 A Right. Because we work,
17 where I work at in a pharmacy there's
18 about four -- well, there's fourteen
19 people that work in, in the pharmacy.
20 We have billing. We have the home
21 care. And then we have my pharmacy
22 department. And so we just kind of
23 close-knit. You know, we usually all
24 eat lunch together, order lunch
25 together. We just all kind of

Knight -- Direct

1 interacted.

2 Q Can you describe how
3 Edwina had her work space decorated?

4 A She had -- I'm sorry.
5 (Witness is crying.)

6 Q Did she have a cubical
7 or a desk?

8 A She had a cubical.

9 Q Okay.

10 A She had [REDACTED]'s picture
11 on her computer. She had O. J.'s
12 picture. She had her family album.

13 Q What kind of family
14 album?

15 A She had pictures of her
16 and the baby and O. J.

17 Q And --

18 A Yeah. Calendar.

19 (Whereupon, a calendar
20 is received and marked as State's
21 Exhibit No. 9 for identification.)

22 Q I'm going to show you
23 what has been marked and introduced
24 as State's exhibit eight. Do you
25 recognize that?

Knight -- Direct

1 A Yes, ma'am, I do.

2 Q And did you actually
3 scan these photos?

4 A One of her other
5 co-workers who's no longer there, she
6 scanned them for her.

7 Q Okay. And where did you
8 all get these photos?

9 A From her photo album
10 that she had at her desk.

11 Q Was that after she
12 disappeared?

13 A That's after she
14 disappeared.

15 Q You mentioned her
16 calendar?

17 A Yes, ma'am.

18 Q I show you State's
19 exhibit nine.

20 A That's hers.

21 Q And do you -- where was
22 this calendar?

23 A She had it on her
24 cubical that we could see but when
25 patients came in they couldn't see

Knight -- Direct

1 it. You know, it wasn't in public
2 view.

3 Q All right. And do you
4 recognize her handwriting on certain
5 days on the calendar?

6 A Yes, ma'am.

7 Q Okay. And this was her
8 calendar when she left to go to
9 Charleston?

10 A Yes, ma'am.

11 MS. WILSON: Your Honor,
12 at this time we'd offer State's
13 exhibit nine?

14 THE COURT: Any objection?

15 MR. DAVIS: May we see it?

16 THE COURT: Yes.

17 MR. DAVIS: Without
18 objection from Mr. Coulter.

19 THE COURT: Any objection,
20 Mr. Smiley?

21 MR. SMILEY: Your Honor,
22 I'm sorry. This is the first
23 time I've seen it.

24 No objection, your
25 Honor.

Knight -- Direct

1 THE COURT: Marked and
2 admitted without objection.

3 (Whereupon, the calendar
4 previously referred to is
5 received and marked as State's
6 Exhibit No. 9 in evidence.)

7 THE COURT: You may
8 proceed.

9 Q Now this is a calendar
10 of nice looking men?

11 A Yeah.

12 Q I'm going to look at a
13 few dates. First of all, April
14 fifteenth. Was that Easter Sunday?
15 Can you recall?

16 A Yes, ma'am. That's what
17 it said.

18 Q And do you recall Edwina
19 planning anything for O. J. for
20 Easter?

21 A She had like ordered
22 this, I think it was Beanie Baby race
23 cars to go in his Easter basket from
24 a company called A. B. C.
25 Distributing Company.

Knight -- Direct

1 Q Now we've seen O. J.

2 Was he that big back then?

3 A No.

4 Q Okay. And were you --

5 did you have an opportunity to

6 observe Edwina with O. J. or hear the

7 things that she talked about O. J.?

8 A Yes, ma'am.

9 Q And did they have a good
10 relationship?

11 A Oh, yes, ma'am.

12 Q Okay. On April the
13 twenty-third, do you recognize whose
14 handwriting that is?

15 A That's Edwina's.

16 Q Okay. And do you know
17 what that says?

18 A Depo.

19 Q Do you know what that
20 was for?

21 A That was her birth
22 control shot.

23 Q And do you know where
24 she got that?

25 A I think she got her

Knight -- Direct

1 shots from the doctor's office.

2 Q Okay. How about April
3 thirtieth? Whose handwriting is
4 that?

5 A It's Edwina's.

6 Q And what does that say?

7 A It says Doctor Hyder.

8 Q Now, on May the third,
9 do you recognize that handwriting?

10 A Yes, ma'am.

11 Q And what does that say?

12 A It says [REDACTED], three
13 o'clock, Doctor Periello.

14 Q Okay. And what about
15 below that?

16 A Three thirty, ear
17 piercing. She was going to get
18 [REDACTED]'s ears pierced.

19 Q And Doctor Periello? Is
20 that how you say it?

21 A Uh-huh. I think that's
22 how they pronounce it. He works for
23 Pediatric Associates in
24 Charlottesville.

25 Q Was that [REDACTED]'s

Knight -- Direct

1 doctor?

2 A Yes, ma'am.

3 Q Okay. And had Edwina
4 talked to you about the ear piercing?

5 A Yeah, because my
6 daughter had gotten her ears pierced
7 in January and she was wondering how
8 do you go about getting them pierced.
9 As a matter of fact, the day that my
10 daughter got her ears pierced, Edwina
11 was there with [REDACTED].

12 Q Okay. Were you going to
13 go with [REDACTED]?

14 A No. She had called me
15 that day and said -- she was teasing
16 me because she got to see my daughter
17 with her ears pierced before I did.

18 Q Oh, okay. So the doctor
19 would pierce ears sometimes?

20 A Yes, ma'am. They do.

21 Q Now before Edwina --
22 were you aware that she was going on
23 a trip to Charleston, April
24 nineteenth?

25 A Yes, ma'am.

Knight -- Direct

1 Q Before that had you had
2 an opportunity to talk with Edwina
3 about child support?

4 A Yes, ma'am.

5 Q And can you tell the
6 jury the context of that conversation
7 and what you advised her about that.

8 A The reason that I
9 suggested child support to her,
10 Edwina had expected a package. She
11 was expecting, she was hoping for
12 clothes, dresses, because [REDACTED] had
13 out-grown her premie clothes and this
14 particular day she got a package from
15 Ron. She had problems getting it
16 from U. P. S. so she had brought the
17 package back to work because she had
18 to pick it up that day or next day.
19 After she called U. P. S. they told
20 her to pick it up at lunch time, so
21 she picked it up and brought it back
22 to work.

23 And it was a package of
24 small diapers. And occasionally in
25 the morning we'd have a chance to

Knight -- Direct

1 talk and my conversation with her is
2 if that's the kind of support that
3 you're going to get, you really need
4 to take him for child support because
5 I don't feel that any man should have
6 to go without taking care of their
7 child. And I say that because I was
8 in that same situation years ago with
9 my first child.

10 Q Did you know that, that
11 [REDACTED] was on Ron's insurance?

12 A No, ma'am.

13 Q Okay. Do you know if he
14 provided any other financial support?

15 A Just from what she told
16 me. She didn't get any.

17 Q Okay. She got none at
18 all or she got little or --

19 A I believe she didn't get
20 any at all.

21 Q Okay. Now, do you know
22 whether or not Edwina was close with
23 her family?

24 A Yes, ma'am.

25 Q Do you know what family

Knight -- Direct

1 of hers lived in that area?

2 A Her grandmother, her
3 mother, her father.

4 Q And do you know -- you
5 mentioned that you had met or you
6 knew O. J. Did she talk about him
7 much and the things he would do for
8 her?

9 A Yes, ma'am. She would
10 brag about him. This one particular
11 day she came to work and she was like
12 Connie, you're not going to believe
13 this. She said I went home last
14 night and he ran me a bath water and
15 lit candles for me and he says mom,
16 why don't you go get a bath and relax
17 and I'll take care of [REDACTED].

18 Q Okay.

19 A And she just thought
20 that was so mature for a boy who was
21 eleven years old.

22 Q At sometime the summer
23 before Edwina disappeared --

24 A Yes, ma'am.

25 Q -- do you recall someone

Knight -- Direct

1 in your office losing a child?

2 A One of our co-workers
3 that July.

4 MR. DAVIS: Your Honor,
5 I'm going to object again.

6 THE COURT: Basis.

7 MR. DAVIS: Relevance.

8 THE COURT: Overruled.

9 You may answer the question.

10 A That July of 2000 a
11 co-worker, her eleven year old son
12 drowned. And that re-emphasized to
13 Edwina the importance of just really
14 loving your kids and spending every
15 moment with them because you never
16 know if you're going to lose them or
17 not.

18 Q Did she talk about O. J.
19 and where O. J. slept or anything
20 like that?

21 A She mentioned that he
22 still liked to snuggle and I told
23 her -- this is before our friend had
24 lost her child, I told her --

25 Q What was she -- why was

Knight -- Direct

1 she telling you about he liked to
2 snuggle?

3 A Because she was like,
4 what am I going to do. Eleven years
5 old, he still likes to snuggle. And
6 I said well, you know, Edwina,
7 tomorrow is never a promise and you
8 just never know what tomorrow brings,
9 so you love them and snuggle with
10 them as long as they want to snuggle
11 because they're going to grow up and,
12 you know, go off to college or
13 whatever. But then it was shortly
14 thereafter that our friend lost her
15 eleven year old son.

16 Q Now was that friend
17 Tracy?

18 A Tracy. Yes, ma'am.

19 Q During the spring that
20 when Edwina disappeared, was anything
21 happening with Tracy that was a good
22 thing?

23 A Yes, ma'am. She was
24 going to get married that August of
25 2001 and Edwina and I had talked to

Knight -- Direct

1 Tracy about helping her with her
2 wedding mand that was one of the
3 things that Edwina said that she was
4 looking forward to after her trip to
5 South Carolina. She would come back
6 and we would start helping Tracy make
7 wedding arrangements and plans.

8 Q Well, was that a
9 positive thing for Edwina or a chore
10 that she had to do to help a friend?

11 A No. That was a positive
12 thing because she -- it hurt her so
13 much that Tracy had lost her son and
14 we wanted to make something really
15 special happen for Tracy because
16 Tracy had been through a hard time.

17 Q And when were you all
18 going to get started on that?

19 A When she came back from
20 South Carolina.

21 Q And when had you
22 expected her to come back?

23 A That Monday.

24 Q Did she come back?

25 A No, ma'am.

Knight -- Direct

1 Q Okay. Did you have
2 occasion to check her voice mail to
3 see if maybe she'd call her voice
4 mail or someone else had called?

5 A I did, later that week
6 when she didn't show up.

7 Q When?

8 A Later that week.

9 Q Okay. And when you
10 checked your voice mail at Continuum
11 are you able -- do you have to use a
12 code or anything?

13 A Yes, ma'am.

14 Q How did you know what
15 her code was?

16 A Because when we first
17 started there they gave us our code
18 as being your extension and I just
19 took the chance.

20 Q So you didn't know if
21 that was it or not?

22 A No, ma'am.

23 Q Was that the code?

24 A That was the code.

25 Q And can you tell the

Knight -- Direct

1 jury what kind of messages were on
2 the voice mail?

3 A Twenty-five messages and
4 they were all business related.

5 Q No personal messages?

6 A No personal messages,
7 no, ma'am. And I had a co-worker
8 listen with me.

9 Q Connie, based on your
10 personal knowledge of Edwina, her
11 work habits and your relationship
12 with her at work, is it
13 characteristic of her to not have
14 showed back up that week for work?

15 A Not characteristic, no.

16 Q Would it be
17 characteristic of what you observed
18 regarding her relationship with her
19 children for her to abandon one in
20 another state and another one at
21 home?

22 A She would never have
23 done that. Never.

24 MS. WILSON: That's all I
25 have for this witness, your

1 Honor.

2 THE COURT: Mr. Davis, do
3 you have any questions?

4 MR. DAVIS: May I have
5 just one moment?

6 THE COURT: Uh-huh.

7 MR. DAVIS: Miss Knight,
8 we have no questions. Thank you.

9 THE COURT: Mr. Smiley, do
10 you have any questions?

11 MR. SMILEY: I don't have
12 any questions for Miss Knight.

13 THE COURT: Any objection
14 to the witness being excused?
15 From the State?

16 MS. WILSON: No, ma'am.

17 THE COURT: Or the
18 defense?

19 MR. DAVIS: No, your
20 Honor.

21 MR. SMILEY: No, your
22 Honor.

23 THE COURT: Thank you very
24 much, ma'am. You're excused.

25 You may call your next

1 witness.

2

3

4

5

L E N O R A

6

T H O M A S, having been called
7 as a witness, is duly sworn and
8 testifies as follows:

9

DIRECT EXAMINATION BY

10

MS. WILSON:

11

12

MS. WILSON: Thank you,
13 your Honor.

14

15

THE COURT: You're
16 welcome.

17

18

Q Miss Thomas, you don't
19 work at Continuum, do you?

20

21

A No, ma'am, I don't.

22

23

Q Okay. Where are you
24 from?

25

A Charlottesville,

26

Virginia.

27

Q And how long have you
28 been in that area?

29

30

A Pretty much all my life,
31 which is about thirty-six years.

32

Thomas - - DIRECT

1 Q You're thirty-six?
2 A Yes, ma'am.
3 Q And do you have any
4 children?
5 A Yes, ma'am, I do.
6 Q How many children do you
7 have?
8 A I have two.
9 Q How old are they?
10 A Thirteen and fifteen.
11 Q Now, are you working
12 now?
13 A Yes, ma'am.
14 Q What kind of work do you
15 do?
16 A I'm a night auditor,
17 guest service agent.
18 Q I'm sorry.
19 A Night auditor. Guest
20 service agent at a hotel.
21 Q Okay. And did you know
22 a woman by the name of Edwina Simms?
23 A Yes, ma'am.
24 Q Can you tell jury how it
25 was you came to know Edwina?

Thomas -- DIRECT

1 A I had previously known
2 Edwina before 1999 which we, we met
3 again in 1999. We went to community
4 college together and then we just
5 recon, reconciled our friendship and
6 very close. She was like a sister I
7 never had.

8 Q Okay. You said all went
9 to community college together in '99?

10 A Yes, ma'am.

11 Q Did you all take the
12 same classes together?

13 A We took one class. It
14 was like a microcomputers class.

15 Q Okay. Did you all do
16 okay in that class?

17 A Yes, ma'am. We did. We
18 passed.

19 Q All right. And
20 eventually you said -- at that time
21 when you were taking the class, did
22 you and Edwina live near each other?

23 A No, we didn't.

24 Q And at some point did
25 you all live closer together?

Thomas -- DIRECT

1 A Yes. That following
2 year, February of 2000 she moved into
3 the apartment building which I was
4 living at the time.

5 Q And is that when you all
6 became closer friends?

7 A Yes.

8 Q Okay. How much did you
9 see Edwina?

10 A When she moved into the
11 Villa in which I lived, we saw each
12 other every day.

13 Q All right. Now who is
14 Ann Albright?

15 A She was a neighbor. It
16 was like all of us lived right next
17 door to each other.

18 Q I don't want to insult
19 you, but you -- Tim has used the
20 phrase "three stooges."

21 A Yeah. We were called
22 the three stooges, golden girls, and
23 designing women.

24 Q All rolled into one?

25 A Yes.

Thomas -- DIRECT

1 Q Now, did your -- how old
2 did you tell me your children were
3 again?

4 A They're now thirteen and
5 fifteen.

6 Q Okay. So a little bit
7 younger than O. J.?

8 A Yes.

9 Q Can you describe
10 Edwina's personality for the jury.

11 A She was very giving and
12 very warm. She would help anyone
13 that came, that she came in contact
14 with if she could. And you wouldn't
15 forget her if you met her.

16 Q Did she have a strong
17 personality?

18 A Yes, she did.

19 Q Could she be moody?

20 A On occasion.

21 Q If she needed to be?

22 A Yes.

23 Q Did you have an occasion
24 or have experience with seeing Edwina
25 with her family?

Thomas -- DIRECT

1 A Yes, I have.

2 Q And did you get to know
3 any of her family?

4 A Yes, I did.

5 Q Which ones did you come
6 to know besides, besides O. J. and
7 [REDACTED] who lived there.

8 A I met her father, her
9 mother, her stepmother, her brother,
10 some of her aunts and uncles, her
11 grandmother. I even went to northern
12 Virginia to meet some of her family
13 with her.

14 Q Because she had family
15 in northern Virginia?

16 A Yes, ma'am.

17 Q And did you know Ron
18 Coulter?

19 A I met him through her,
20 while she was living in the area in
21 which I lived.

22 Q And do you know the
23 status of her relationship at the
24 time of [REDACTED]'s birth?

25 A They communicated but

Thomas -- DIRECT

1 not every day and he didn't come to
2 visit her very often when she was
3 pregnant with [REDACTED].

4 Q And then after [REDACTED]
5 was born did he come to
6 Charlottesville more often?

7 A He came like maybe twice
8 a month, every other weekend.

9 Q And how did she feel
10 about her relationship with Ron
11 during the spring of 2001, after
12 [REDACTED] was born?

13 A She was trying to work
14 it out with him so that they could
15 have a nice relationship for [REDACTED],
16 taking -- trying to just work things
17 out.

18 Q Okay. When you say work
19 things out, do you mean get back
20 together and be a couple with him?

21 A With that being a
22 possibility.

23 Q Okay. Did she tell you
24 about her plans to go to Charleston?

25 A Yes, she did.

Thomas - - DIRECT

1 Q And did she tell you how
2 she felt about that trip?

3 A She was very leary about
4 going.

5 Q Now, why would she have
6 been leary if she was having a good
7 relationship with Ron?

8 A Well, she had known that
9 his family had raised his sister's
10 child.

11 MR. DAVIS: Your Honor,
12 I'm going to object.

13 THE COURT: Basis.

14 MR. DAVIS: Hearsay, your
15 Honor. Speculation.

16 THE COURT: Please
17 approach.

18 (Whereupon, there was an
19 off-the-record bench conference.)

20 THE COURT: The objection
21 is hearsay. It's overruled. It
22 will not be admitted for the
23 truth of the matter asserted.

24 You may proceed.

25 Q Lenora, you were telling

Thomas -- DIRECT

1 the jury about why Edwina was leary
2 about coming to Charleston.

3 A She felt that Ron was
4 going to take her child from her.

5 Q Okay. And did she talk
6 about that with you?

7 A Yes. She had mentioned
8 it to me.

9 Q And what did you tell
10 her?

11 A I told her she didn't
12 need to worry about that because she
13 was a very good mother.

14 Q And that was before the
15 trip?

16 A Yes, ma'am.

17 Q Now, you mentioned that
18 Edwina was close to her family. Do
19 you know if she had a relationship at
20 all with O. J.'s dad?

21 A They, they got along
22 very well. They helped each other
23 when they could with different
24 situations.

25 Q And, and do you know how

Thomas -- DIRECT

1 long Edwina planned being in
2 Charleston?

3 A She left on the
4 nineteenth, which was a Thursday, and
5 she was due to come back on that
6 Sunday, which was the twenty-third.

7 Q Did you see her at all
8 the night before that she left?

9 A Yes. I saw her on the
10 eighteenth because I did her hair for
11 her.

12 Q Okay. What did you do
13 to her hair?

14 A I put a hair extension
15 piece on to her hair.

16 Q How did you -- you just
17 knew how to do that?

18 A Yes, ma'am.

19 Q Okay. And you did that
20 the night before?

21 A Yes, ma'am.

22 Q All right. Were you
23 there when she was packing her
24 clothes?

25 A No, ma'am, I wasn't.

Thomas -- DIRECT

1 Q Okay. Did you at any
2 point see her suitcases or see what
3 she had packed?

4 A No, ma'am.

5 Q Now, you said you were
6 expecting [REDACTED], I mean Edwina to
7 return on Sunday. When were you
8 expecting [REDACTED] to return?

9 A On Sunday with her.

10 Q Do you know or did you
11 have an opportunity to witness
12 Edwina's willingness to have
13 babysitters for [REDACTED]

14 A She didn't leave [REDACTED]
15 very often with anyone.

16 Q With anyone?

17 A No.

18 Q Okay. How about for
19 work?

20 A Well, her grandmother
21 babysat for her, for work.

22 Q Okay. But outside work?

23 A No.

24 Q Do you know if Edwina
25 had ever allowed Ron's parents to

Thomas -- DIRECT

1 keep [REDACTED]?

2 A No, I don't. I don't
3 recall that at all.

4 Q Okay. Do you know where
5 Ron's parents lived?

6 A I knew they lived in
7 South Carolina but I didn't know what
8 city.

9 Q Do you remember any
10 other trips that Edwina made to South
11 Carolina besides this last one?

12 A No, ma'am, I don't.

13 Q Since [REDACTED] was born
14 anyway?

15 A No.

16 Q Do you know if [REDACTED]
17 had ever travelled anywhere that far
18 away?

19 A No, she hadn't.

20 Q When did you realize
21 that Edwina had not made it home?

22 A On Monday her brother
23 called me and asked me if I had heard
24 from her, and I hadn't. And he asked
25 if I'd seen her and I told him no, I

Thomas - - DIRECT

1 hadn't.

2 Q And since that time have
3 you heard from Edwina at all?

4 A No, I haven't.

5 Q Have you seen any
6 letters or anything like that from
7 Edwina?

8 A No, I haven't.

9 Q Based on the years that
10 you've known her and been close
11 friends with her, do you find it
12 unusual or uncharacteristic of her to
13 be gone for this long?

14 A Yes, I do.

15 Q Do you find it unusual
16 that she would have left [REDACTED] in
17 South Carolina?

18 A Yes, I do.

19 Q Do you find it unusual
20 that she would have left O. J. never
21 to return?

22 A Yes, I do.

23 Q Do you know if Edwina
24 had any health problems, any health
25 issues since [REDACTED] was born?

Thomas - - DIRECT

1 A Do I know if she --
2 excuse me. Repeat that, please.

3 Q Do you know if Edwina
4 had any health issues after [REDACTED]
5 was born?

6 A She had told me that she
7 was diagnosed with irritable bowel
8 syndrome.

9 Q And was that a result of
10 her pregnancy?

11 A I'm not sure.

12 Q Okay. Do you remember
13 when it was that she told you that?

14 A It was probably February
15 or March of 2001.

16 Q Was that an
17 uncomfortable thing for her?

18 A Yes, it was.

19 Q At -- when Edwina, when
20 you said you fixed her hair, can you
21 kind of explain to the jury what you
22 did to it.

23 A I just --

24 Q What did she have at
25 that point? What was her hair like?

Thomas -- DIRECT

1 A Her hair was, was not
2 very long but it was long enough to
3 put it up in a pony tail --

4 Q Okay.

5 A -- and put a hair piece
6 on it. It was just like a little
7 piece that you would just clamp on
8 and it would just hang down in the
9 back.

10 Q So I'm going to show you
11 what's been already introduced as
12 State's exhibit seven. Do you see
13 Edwina in that picture?

14 A Yes, I do.

15 Q Okay. And when she left
16 to go to South Carolina was her hair
17 longer than that?

18 A It was, yeah. It was a
19 little bit longer than that.

20 Q Just a little bit longer
21 than that. Okay. Did it hang on her
22 shoulders?

23 A No.

24 Q How about in State's
25 exhibit eight. Do you recognize

Thomas -- DIRECT

1 this?

2 A Yes, I do.

3 Q Was her hair, was her
4 hair style similar to those in
5 State's exhibit eight?

6 A The hair style that I
7 did?

8 Q Well, before you put the
9 hair piece on.

10 A The length that she had?

11 Q Yeah.

12 A It was longer than that
13 actually.

14 Q Okay. A little bit
15 longer than that?

16 A Uh-huh. It was just
17 above her shoulders.

18 Q Okay. Do you know if,
19 if Ron had ever wanted to take [REDACTED]
20 to South Carolina before this trip in
21 April?

22 A Yes, I do.

23 Q Okay. And did Edwina
24 allow that?

25 A No, she didn't.

Thomas - - DIRECT

1 Q Do you know why not?

2 A Because [REDACTED] had, she
3 had acid reflux real bad and if he
4 wasn't careful with her she would
5 choke and she didn't trust the fact
6 of her being gone out of her care for
7 too long.

8 MS. WILSON: That's all I
9 have, your Honor.

10 THE COURT: Mr. Davis, do
11 you have any questions for the
12 witness?

13 MR. DAVIS: Yes, your
14 Honor.

15 THE COURT: You may
16 proceed.

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

19 THE COURT: You're
20 welcome.

21

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Thomas -- Cross by Mr. Davis

1 CROSS-EXAMINATION BY MR.

2 DAVIS:

3 Q Miss Thomas.

4 A Yes.

5 Q Just a few questions,
6 ma'am. I believe you already
7 indicated to the jury that Ron would
8 come down and visit Edwina there in
9 Charlottesville a couple times a
10 month.

11 A Correct.

12 Q And he'd stay over the
13 weekend?

14 A Correct.

15 Q And do you remember -- I
16 don't -- I apologize. I don't think
17 you testified about this yet. He'd
18 also provided some money for Edwina
19 and [REDACTED]?

20 A Correct.

21 Q And you were just
22 talking about some health issues that
23 [REDACTED] had when she was born. In
24 fact it was a premature delivery.
25 Correct?

Thomas -- Cross by Mr. Davis

1 A Correct.

2 Q Okay. And she stayed in
3 the hospital a little while after she
4 was born?

5 A Correct.

6 Q And then later you were
7 saying that she had the acid reflux
8 problem as well?

9 A Correct.

10 Q Now, Edwina, she had to
11 stay in the hospital a little bit
12 after the birth as well?

13 A I don't recall. I don't
14 think so.

15 Q But she did have some,
16 some heart medication that she was on
17 as well?

18 A Yes, she was.

19 Q Now, talking about
20 coming down to visit Ron's parents
21 in April, 2001, Edwina indicated to
22 you that they were probably going to
23 stay in a hotel or motel when they
24 came down here. Right?

25 A She didn't specify where

Thomas -- Cross by Mr. Davis

1 they were going to stay.

2 Q Okay. You remember
3 talking to an F. B. I. agent at some
4 point about Edwina not showing back
5 up to work?

6 A Yes. I talked to
7 several people.

8 Q I'm sorry?

9 A I've talked to several
10 people.

11 Q Okay. Well, do you
12 remember talking to a Special Agent
13 Cynthia Mc Cants on the telephone
14 back on May seventh of 2001?

15 A Vaguely.

16 Q You remember talking to
17 her about Edwina and working with
18 her?

19 A Yes.

20 Q And how she's a good
21 mom?

22 A Yes.

23 Q And, and about you knew
24 that she was coming down with [REDACTED]
25 and Ron to visit his parents?

Thomas -- Cross by Mr. Davis

1 A Correct.

2 Q You don't remember
3 telling her, this is Special Agent Mc
4 Cants, that Edwina had told you that
5 she was going to stay in a motel in
6 Charleston?

7 A I don't recall. I'm not
8 saying I didn't say that, but. . .

9 Q It's been a while?

10 A Correct.

11 Q Okay. Now, you were
12 just talking about how Edwina, she
13 was concerned about [REDACTED] when she
14 was little with the acid reflux.

15 Right?

16 A Yes.

17 Q She was protective of
18 her?

19 A Correct.

20 Q And you made some
21 comment about being leary about
22 coming down to Ron's parents. Right?

23 A Yes.

24 Q This is the first time
25 that [REDACTED] and Edwina were coming

Thomas -- Cross by Mr. Davis

1 down to visit [REDACTED]'s grandparents?

2 A Yes. That's since
3 [REDACTED] had been born, that I can
4 recall.

5 Q I'm sorry.

6 A Since [REDACTED] had been
7 born that I --

8 Q Right. It was the first
9 time that [REDACTED] was coming down to
10 visit her grandparents and these,
11 she's, she was premature birth --

12 A Uh-huh.

13 Q And she's having some
14 medical problems, this acid reflux.

15 A Correct.

16 Q But now Edwina had come
17 down previously before [REDACTED] was
18 born to visit, do you know?

19 A I don't recall. I don't
20 know.

21 Q Okay. So this may have
22 been a first time that, that they
23 came down and visited his parents?

24 A It may have been.

25 Q Okay. Give me just one

Thomas -- Cross by Mr. Davis

1 moment, ma'am, okay?

2 Not belabor the point,
3 but one more question, ma'am, about
4 that. I apologize.

5 In talking again with
6 Special Agent Mc Cants over the phone
7 on May the seventh, 2001, you don't
8 recall whether you told -- whether
9 Edwina had told you about staying in
10 a motel?

11 A I don't recall but I
12 mean she probably did, but I can't
13 recall.

14 Q Okay. Do you recall her
15 indicating that she didn't want to
16 stay at Ron's parents' house because
17 she did not feel comfortable around
18 them. Do you recall that?

19 A I recall that, yes.

20 Q All right. Would that
21 have been the same phone call with
22 Agent Mc Cants on May the seventh,
23 2001?

24 A Yes, because I think
25 that's the only time I spoke with

Thomas -- Cross by Mr. Davis

1 her.

2 MR. DAVIS: Okay. Thank
3 you, ma'am. I appreciate it.

4 THE COURT: Mr. Smiley.

5

6

7

8

9 CROSS-EXAMINATION BY MR.

10 SMILEY:

11 Q Miss Thomas, I represent
12 Ivory Croker. Okay? Just got a
13 couple questions. You were Miss
14 Simms, one of her closest friends?

15 A Yes, sir.

16 Q Okay. And in the course
17 of your conversations with
18 Miss Simms, at any point did she ever
19 mention Mr. Ivory Croker?

20 A No, she didn't.

21 Q And you have no
22 indication that she had ever met
23 Mr. Croker?

24 A No, I didn't.

25 MR. SMILEY: No further

1 questions.

2 THE COURT: Any redirect?

3

4

5

6

7

REDIRECT EXAMINATION BY

8

MS. WILSON:

9

Q You mentioned that you

10 couldn't recall whether or not Edwina

11 said anything about staying in a

12 motel and that she wasn't comfortable

13 with the parents. How did she feel

14 about the parents of Ron?

15

A

She felt that they would

16 eventually try and take [REDACTED] from

17 her.

18

MS. WILSON: That's all I

19

have, your Honor.

20

THE COURT: Any objection

21

to the witness being excused?

22

From the State?

23

MS. WILSON: No, ma'am.

24

THE COURT: Mr. Davis?

25

MR. DAVIS: No, ma'am.

1 THE COURT: Mr. Smiley?

2 MR. SMILEY: No, ma'am.

3 THE COURT: Ma'am, you're
4 excused. Have a good afternoon.

5 You may call your next
6 witness.

7 MS. WILSON: Ann Albright.

8 MR. SMILEY: Your Honor,
9 I'm going step out real briefly.

10 THE COURT: Okay.

11 MS. WILSON: Judge, may we
12 approach while the witness is
13 coming in?

14 THE COURT: Uh-huh.

15 (Whereupon, there was an
16 off-the-record bench conference.)

17

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Albright -- Direct

1 A N N M A R I E

2 A L B R I G H T, having been
3 called as a witness, is duly
4 sworn and testifies as follows:

5 DIRECT EXAMINATION BY

6 MS. WILSON:

7 Q Ann, how old are you?

8 A I'm thirty-three.

9 Thirty-three.

10 Q I'm sorry. This is
11 background. And where do you live?

12 A Charlottesville,
13 Virginia.

14 Q How long have you lived
15 up there?

16 A Seven years.

17 Q And do you have any
18 children?

19 A Yes, I do.

20 Q And how old are your
21 children?

22 A One will be sixteen in
23 May and the one is fourteen.

24 MS. WILSON: Beg the
25 Court's indulgence.

Albright -- Direct

1 Q And -- I'm sorry. I
2 lost my train of thought. You said
3 that you're thirty-three and your
4 children are how old?

5 A One will be -- one is
6 fifteen and fourteen.

7 Q Okay. And at some point
8 did you come to meet a woman named
9 Edwina Simms?

10 A Yes, I did.

11 Q How did you come to know
12 her?

13 A She moved right next
14 door to me.

15 Q And when she -- let me
16 ask you this. Whose phone number was

17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED]?

19 A Mine.

20 Q Okay. And that was when
21 you lived next door to Edwina?

22 A Yes.

23 Q Okay. And when was it
24 that Edwina moved to be your
25 neighbor?

Albright -- Direct

1 A I don't know the exact
2 date.

3 Q Okay. That's all right.
4 Now you know Lenora also?

5 A Yes, I do.

6 Q Okay. And were you one
7 of the three stooges?

8 A Yes, I was.

9 Q And how often did you
10 see Edwina?

11 A Every night.

12 Q Every night?

13 A Yep. Every night.

14 Q Okay. And did you all
15 have some sort of routine?

16 A Yep.

17 Q And what was that?

18 A We would all come home,
19 get, you know, our kids settled, and
20 we'd go to Edwina's house.

21 Q Why Edwina's house?

22 A That's where we just
23 gather at.

24 Q Okay. Was she the only
25 one with an infant?

Albright -- Direct

1 A Yes.

2 Q Okay. Now did your
3 children -- were they friends with
4 O. J.?

5 A Yes.

6 Q All right. And can you
7 describe just a little bit for the
8 jury what you saw of Edwina's
9 personality.

10 A If you would see her,
11 she would -- you would remember her.
12 She was the type of person, she would
13 do anything for you. She would go
14 out of her way to do anything for
15 you. Her smile, you would remember
16 her smile. (The witness begins to
17 cry.)

18 Q That's okay. You need
19 some water? Well, let me ask you
20 this. Do you remember if, if after
21 [REDACTED] was born if Edwina had any
22 health issues?

23 A She had a heart problem.

24 Q Okay. And do you know
25 if she had that before [REDACTED] --

Albright -- Direct

1 A Yes.

2 Q -- was born or after?

3 A Yes. She had that
4 before.

5 Q Okay. How about
6 anything that arose after [REDACTED] was
7 born? Do you remember?

8 A A bowel syndrome she had
9 after she was born.

10 Q Do you know what the
11 status of her relationship was with
12 her family?

13 A Very close.

14 Q And did she have a
15 routine that she would follow --

16 A Yes.

17 Q -- every night regarding
18 her family?

19 A Yes.

20 Q And what was that?

21 A That she would call her
22 grandmother, her mother, and her dad.
23 And if O. J. her son wasn't with him
24 she would call him at his dad's house
25 and say good night to everybody.

Albright -- Direct

1 Q Every night?

2 A Every night.

3 Q Do you know what the
4 status of her relationship was with
5 Ron Coulter?

6 A To my understanding it
7 was friends.

8 Q Okay. Did you know who
9 [REDACTED]'s father was?

10 A Yes.

11 Q And who was that?

12 A Ron.

13 Q All right. And during
14 Edwina's pregnancy did Ron visit
15 Edwina very often?

16 A Not that often.

17 Q Now after [REDACTED] was
18 born did Ron come to visit?

19 A About a couple weeks
20 every month. Like weekends.

21 Q All right. And do you
22 know shortly before Edwina's trip how
23 she was feeling about her
24 relationship with Ron?

25 A She would be friends.

Albright -- Direct

1 She said she wanted to be friends
2 because of [REDACTED]. She wanted, you
3 know, to respect him because he was
4 [REDACTED]'s father.

5 Q Okay. And do you know
6 how she felt about [REDACTED] meeting
7 Ron's parents?

8 A Very uneasy.

9 Q She was uneasy?

10 A Uneasy.

11 Q Okay. And did she talk
12 with you about her trip to
13 Charleston?

14 A Yes.

15 Q And did she have any
16 fears about that trip?

17 A She was uneasy about
18 coming. She had second thoughts
19 about it.

20 Q Why?

21 A She just said she had a
22 funny feeling and she was just, you
23 know, scared to come down here.

24 Q What was she afraid of?

25 A That they would probably

Albright -- Direct

1 take [REDACTED] from her. Try to take

2 [REDACTED] from her.

3 Q She discussed that with
4 you?

5 A Yes.

6 Q Do you know if she
7 discussed that with Lenora?

8 A Yes.

9 Q Do you know whether or
10 not Ron had a key to Edwina's
11 apartment?

12 A I don't think he did.

13 Q Do you recall when
14 Edwina said she would be back from
15 her trip to Charleston?

16 A That Sunday night.

17 Q Okay. Well, when did
18 you see her before she left to come
19 to Charleston?

20 A I think it was the
21 Wednesday night we was all over her
22 house.

23 Q Okay.

24 A And Lenora was doing her
25 hair for her.

Albright -- Direct

1 Q Did you see her
2 suitcases or anything like that?

3 A No. No.

4 Q When she said she would
5 be back Sunday night, when was [REDACTED]
6 coming back?

7 A Sunday night with her.

8 Q Do you remember the last
9 thing that Edwina said to you before
10 you, before you left or the last time
11 that you saw her?

12 A She said we'll see you
13 guys Sunday.

14 Q Have you heard from her
15 since that Wednesday?

16 A No.

17 Q Okay. Do you know if
18 she called your house any over that
19 weekend?

20 A She called my son
21 Saturday. She called my house that
22 Saturday.

23 Q Did you get to talk to
24 her?

25 A No, I did not.

Albright -- Direct

1 Q Do you know how long
2 they talked?

3 A No, I do not.

4 Q And how old was your
5 son?

6 A He was thirteen at the
7 time.

8 Q And other than -- well,
9 you didn't get that call, so since
10 that Wednesday that, before Edwina
11 left to come to Charleston, have you
12 gotten any other phone calls from
13 her?

14 A No.

15 Q Have you gotten any mail
16 from her?

17 A No.

18 Q Have you seen her?

19 A No.

20 Q Well, based on what you
21 know of Edwina and her relationship
22 with her family, is it unusual that
23 she wouldn't come back to them?

24 A Very unusual.

25 Q Had you ever known

Albright -- Direct

1 Edwina to let people she didn't know
2 very well babysit [REDACTED]?

3 A No. She would not let
4 anybody babysit she didn't know very
5 well.

6 Q Based on what you saw
7 and how Edwina treated O. J. and
8 [REDACTED], is it characteristic of her
9 to have abandoned him?

10 A No.

11 MS. WILSON: That's all I
12 have, your Honor.

13 THE COURT: Mr. Davis.

14 MR. DAVIS: Your Honor,
15 beg the Court's indulgence just
16 one moment.

17 THE COURT: Yes, sir.

18

19

20

21

22 CROSS-EXAMINATION BY MR.

23 DAVIS:

24 Q Miss Albright, just a
25 few questions. You were very close

Albright -- Cross by Mr. Davis

1 with Edwina Simms. Right?

2 A Yes.

3 Q I think you said you
4 went over there every night?

5 A Yes.

6 Q To her apartment?

7 A Yes.

8 Q Were you aware that she
9 was up-dating her resume, looking
10 for another job?

11 A No, I wasn't.

12 Q Now, you also talked
13 about that Edwina had indicated to
14 you that she had an uneasy feeling
15 about coming down to Charleston?

16 A Yes.

17 Q That she, I think you
18 said she was afraid something bad was
19 going to happen?

20 A Yes.

21 Q You knew she liked to
22 have tarot cards read?

23 A No.

24 Q You knew that she liked
25 to have psychic readings?

Albright -- Cross by Mr. Davis

1 A No.

2 Q And how long was it that
3 you had worked with her and known
4 her?

5 A I didn't work with her.
6 I knew her a year, since she'd lived
7 there.

8 Q And so that would have
9 been from 2002, spring of 2000 -- I'm
10 sorry. Spring of 2000?

11 A Yes.

12 MR. DAVIS: And just one
13 moment. Miss Albright, no other
14 questions. Thank you.

15 THE COURT: Mr. Smiley,
16 any questions for the witness?

17

18

19

20

21

22 CROSS-EXAMINATION BY MR.

23 SMILEY:

24 Q So you were pretty good
25 friends of Miss Simms?

Albright -- Cross by Mr. Smiley

1 A Yes.

2 Q She ever mention to
3 her -- to you that she'd ever met a
4 gentleman by the name of Ivory
5 Croker?

6 A No.

7 Q And you went to her
8 apartment on a regular basis. Right?

9 A Yes.

10 Q You never saw any
11 pictures of my client, Mr. Croker, in
12 that apartment?

13 A No.

14 MR. SMILEY: No further
15 questions.

16 THE COURT: Any redirect?

17 MS. WILSON: No, ma'am.

18 THE COURT: Any objection
19 to the witness being excused?
20 From the State?

21 MS. WILSON: No, ma'am.

22 THE COURT: Defense?

23 MR. DAVIS: No, your

24 Honor.

25 MR. SMILEY: No, your

1 Honor.

2 THE COURT: Thank you,
3 ma'am. You're excused.

4 Mr. Foreman, ladies and
5 gentlemen, we're going to take
6 advantage of this break in
7 testimony to take our evening
8 recess. As you leave the
9 courtroom please leave your pads
10 on the edge of the banister. We
11 will secure -- put your pens in
12 the spine so that you'll have
13 pens tomorrow. We will secure
14 them during the evening recess.

15 During this break please
16 have no discussion about the case
17 among yourselves or with anyone
18 else. Please do not read any
19 media reports about the case or
20 do any independent research on
21 the internet.

22 In the morning please
23 come directly to your jury room.
24 We will begin, resume testimony
25 at 9:30. And the reason we start

1 at 9:30 is because I'm the chief
2 judge of the General Sessions
3 Court and I hear other matters
4 between the hours of nine and
5 9:30, so that is why we don't
6 start until 9:30, so that I can
7 dispose of other business before
8 we get started, because as I'm
9 sure you all are aware, once we
10 get started with this there's no
11 time to work in any other
12 matters, so I appreciate you
13 indulging us as we dispose of
14 those other cases.

15 Can't think of any other
16 instruction I need to give you
17 except to have a good evening and
18 we'll see you in the morning at
19 9:30.

20 (The jury leaves the
21 courtroom at 5:35 p. m.)

22 THE COURT: Is there
23 anything before we break for the
24 evening?

25 MS. WILSON: No, ma'am.

1 MR. DAVIS: Your Honor, I
2 don't believe it would apply to
3 any of those witnesses, but we've
4 not received records of any
5 witnesses at this point from the
6 State of --

7 MS. WILSON: It did not
8 apply to them. I have had them
9 here. We're making copies. I
10 will -- they can pick it up at
11 our office right now if they want
12 them for tomorrow.

13 THE COURT: Okay.

14 MS. WILSON: I'll have
15 them now.

16 THE COURT: All right.

17 MR. DAVIS: Thank you.

18 MR. SMILEY: And, your
19 Honor, I haven't forgotten about
20 my obligation to be more specific
21 about my alibi. I just have not
22 had time.

23 THE COURT: I understand.
24 We're all tired.

25 MS. WILSON: I'll be

1 interested to see that.

2 THE COURT: And also just
3 for purposes of the record, there
4 was an objection that I had made
5 a note to myself. I just didn't
6 want to stop the testimony.
7 There was an objection made by
8 Mr. Davis to Miss Thomas's
9 testimony regarding her
10 responding that she was afraid
11 that Mr. Coulter's parents would
12 take her child because she had
13 taken another child and raised
14 it.

15 It turns out that the
16 answer that was elicited was not
17 the basis of the objection, so my
18 original ruling regarding the
19 objection would stand to the
20 extent I dealt with it on a
21 hearsay objection but it really
22 goes to her state of mind.

23 All right. Is there
24 anything else we need to take
25 care of before we break? State?

1 MS. WILSON: No, ma'am.
2 What time did you tell us to be
3 back?

4 THE COURT: 9:30. I
5 actually have two pleas scheduled
6 in the morning and a motion for
7 reconsideration, but I'm going to
8 see if Judge Young can hear those
9 pleas for me so that we can on
10 time.

11 MS. WILSON: Just so you
12 know, I think we've called off --
13 you know, we've lost some time
14 this morning and all that. I
15 still have no idea when we'll
16 finish but we aren't suffering
17 yet because of scheduling
18 matters.

19 THE COURT: We have a term
20 of General Sessions next week so
21 if it, you know -- I'm not going
22 to try to kill us this week. It
23 doesn't do anybody any good. If
24 you're tired nobody works
25 optimally, so we'll just have to

1 take it as it comes and figure it
2 out just day-by-day.

3 MR. SMILEY: Justice is
4 never swift.

5 THE COURT: That's
6 correct. In any court that I'm
7 aware of.

8 MR. DAVIS: Thank you,
9 your Honor. We'll see you
10 tomorrow.

11 THE COURT: Thank you.
12 See you all tomorrow. Have a
13 good night. We'll stand in
14 recess.

15 (Whereupon, the matter
16 was adjourned.)

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CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 24th day of February, 2004.

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

DATED: March 9, 2006

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS
(Volume III, p. 595-713)

VS.

February 25, 2004
Charleston, South Carolina

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

Defendants.

BEFORE:

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

APPEARANCES:

SCARLETT WILSON, ESQ.
DEPUTY SOLICITOR

- and -

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

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

JENNIFER KNEECE SHEALY, ESQ.
CHARLESTON COUNTY PUBLIC DEFENDER

- and -

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

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

595-A

Inadvertently blank

596

EXHIBITS

	<u>For Ident.</u>	<u>In Evid.</u>
Court's 1-A	Letter from juror	600
Court's 1-B	Envelope	601

Defendant Croker's plea **page 606**

Defendant Coulter's plea **page 674**

597 thru 598

Inadvertently blank.

1 (Whereupon, the Judge
2 enters the courtroom at
3 9:35 a. m.)

4 THE COURT: We have a note
5 from juror two oh eight,
6 Mr. Lipke.

7 "Your Honor, I regret to
8 inform you of an error I've made.
9 Lori Proctor, an attorney with
10 the Public Defender's office is a
11 neighbor of mine. Her name must
12 have been read aloud on Monday by
13 the Public Defender. I am at a
14 loss as to why I did not
15 recognize it then. I realized my
16 error on Tuesday when I noticed
17 her in the audience. My
18 relationship to her is one of a
19 neighbor whom I've seen
20 occasionally. My family and I
21 known her simply as Lori. I have
22 not spoken to her regarding any
23 issues related to this trial
24 before or since it began. I have
25 no contact with Miss Proctor. I

1 have had no contact with Miss
2 Proctor since the start of the
3 trial. I still feel that I can
4 continue to be an impartial
5 member of this jury and help it
6 render a fair verdict when asked.
7 My relationship to Miss Proctor
8 is -- in my mind does not
9 compromise my ability to remain a
10 fair and impartial member of this
11 jury. I regret any inconvenience
12 that may arise as a result of my
13 error. With sincerest apologies,
14 James Lipke, juror number two oh
15 eight."

16 This will be marked as a
17 Court's exhibit and marked into
18 evidence, one A and one B, the
19 envelope which reads: "Judge
20 Jefferson, please read ASAP."

21 It was given to me this
22 morning by the bailiff.

23 (Whereupon, the note
24 previously referred to is
25 received and marked as Court's

1 Exhibit No. 1-A and the envelope
2 is marked as Court's Exhibit No.
3 1-B for purposes of the record.)

4 THE COURT: Is there any
5 exception -- well, actually I
6 guess the way we should handle it
7 is I should call Mr. Lipke out,

8 ask him in fact is this his note,
9 ask him as a result of this
10 relationship does he feel can
11 remain fair and impartial and the
12 usual questions and then --

13 MS. SHEALY: Your Honor,
14 is one of your usual questions to
15 ask him if he discussed this with
16 anybody else on the jury? And if
17 not I'd ask that you do that.

18 THE COURT: Is there any
19 exception to that question?

20 MS. WILSON: No, ma'am.

21 THE COURT: Please get
22 number two oh eight, Mr. Lipke.
23 If you all could stand this way
24 for me.

25 (Whereupon, Mr. Lipke,

1 juror number 208, enters the
2 courtroom at 9:42 a. m.)

3 THE COURT: Doctor Lipke,
4 how are you? You can stand right
5 here for me. Did this you write
6 this note for me this morning?

7 MR. LIPKE: Last night.

8 THE COURT: But you had it
9 delivered to me this morning by
10 the bailiff?

11 MR. LIPKE: Yes, ma'am.

12 THE COURT: There are
13 several questions I need to ask
14 you as a result of your
15 acquaintance or being a neighbor
16 of Miss Proctor's. Do you feel
17 that in any way affects your
18 ability to remain a fair and
19 impartial juror?

20 MR. LIPKE: No, it does
21 not.

22 THE COURT: Do you feel
23 that you can still remain fair
24 and impartial and render a fair
25 and impartial verdict in this

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

5 MR. LIPKE: Yes, I do.

6 THE COURT: Have you in
7 any way discussed this case with
8 Miss Proctor?

9 MR. LIPKE: No, I have
10 not.

11 THE COURT: And have you
12 in any way discussed the contents
13 of your note with any of your
14 fellow jurors?

15 MR. LIPKE: No, ma'am. I
16 have not.

17 THE COURT: Thank you,
18 Doctor. If you would step back
19 with Mr. Robinson. Just remain
20 in the hallway. Don't go back in
21 the jury room yet.

22 Mr. Robinson, if you
23 would just stand with him outside
24 the door. Okay.

25 (Whereupon, Mr. Lipke

1 leaves the courtroom at 9:47
2 a. m.)

3 THE COURT: Does the State
4 have any exception to the juror
5 remaining?

6 MS. WILSON: No, ma'am.

7 THE COURT: Does the
8 defense have any exception to the
9 juror remaining?

10 MR. SMILEY: Certainly
11 not.

12 MR. DAVIS: Your Honor has
13 noted we would make an exception
14 based on the fact that the names
15 were read but I don't know that
16 it was ever explicitly stated
17 that Miss Shealy and I were from
18 the Public Defender's Office,
19 with him knowing Miss Proctor who
20 does work for the Public
21 Defender's Office, his opinion of
22 that office and the clients that
23 we represent may be at issue and
24 we would just like to voice our
25 objection.

1 THE COURT: The objection
2 is noted for the record. It is
3 my recollection that during voir
4 dire it was during the voir dire
5 process when I asked everyone to
6 introduce themselves, and we can
7 go back and check this in the
8 record, that it is my
9 recollection that you did state
10 you were members of the Public
11 Defender's Office and you did
12 read the names of your office,
13 because I always ask that.

14 If I'm incorrect, I
15 stand corrected. But I really
16 don't know that that makes that
17 big a difference. I know that I
18 asked you to state the members of
19 your office. But even
20 irregardless of that, I've asked
21 Mr -- Doctor Lipke, if he can
22 remain fair and impartial and if
23 he in any way has discussed this
24 with the rest of the panel and if
25 he has discussed it with Miss

1 Proctor.

2 The Court has no
3 objective or subjective basis to
4 remove the juror. He has
5 indicated that he can remain fair
6 and impartial and render a fair
7 and impartial verdict in this
8 case based solely on the evidence
9 and the law as the Court will
10 charge. He will remain.

11 I'll note your exception
12 for the record.

13 MR. DAVIS: Thank you very
14 much.

15 (Whereupon, a recess was
16 called at 9:59 a. m.)

17 (The Judge enters the
18 courtroom at 10:08 a. m.)

19 THE COURT: Please be
20 seated. Is the State ready to
21 proceed?

22 MS. WILSON: Yes, your
23 Honor.

24 THE COURT: Mr. Davis?

25 MS. SHEALY: We're ready,

1 your Honor.

2 MR. DAVIS: Yes, your
3 Honor.

4 THE COURT: Mr. Smiley,
5 ready to proceed?

6 MR. SMILEY: Yes.

7 MS. WILSON: Your Honor, I
8 would like to inform the Court
9 for the record that we have
10 entered into a plea agreement
11 with the defendant Ivory Croker.
12 And the defendant I think is
13 filling it out right now. Your
14 Honor, for the record -- Judge,
15 can we approach?

16 THE COURT: Yes.

17 (Whereupon, there was an
18 off-the-record bench conference.)

19 THE COURT: Madam
20 solicitor, you may proceed.

21 MS. WILSON: Your Honor, I
22 was going to give the Court for
23 the record -- this will be a
24 waiver of indictment. The number
25 would be 2004-GS-10-1883W, State

1 versus Ivory Coker a/k/a Ivory
2 Croker.

3 THE COURT: Would you read
4 that number for me again? I
5 apologize.

6 MS. WILSON: 2004-GS-10-18
7 83W. And I will hand up to the
8 Court the sentencing sheet which
9 has been signed by the defendant
10 and me. There are
11 recommendations in this plea
12 agreement and I just checked that
13 off. That wasn't checked.
14 Negotiation, your Honor. And I
15 checked that off just now.

16 THE COURT: Would you come
17 forward and stand right here.

18 Mr. Smiley. Is it
19 correct that you represent Ivory
20 Croker?

21 MR. SMILEY: Croker. Yes,
22 ma'am.

23 THE COURT: Have you
24 explained to Mr. Croker the
25 charges contained in the

1 indictment, the possible
2 punishment, and his
3 Constitutional rights?

4 MR. SMILEY: I have, your
5 Honor.

6 THE COURT: Do you believe
7 he understands the charge, the
8 punishment, and his rights?

9 MR. SMILEY: Perfectly.

10 THE COURT: And have you
11 explained to him his right to
12 have this indictment presented to
13 the grand jury of Charleston
14 County?

15 MR. SMILEY: I have, your
16 Honor.

17 THE COURT: And does he
18 wish to waive that right?

19 MR. SMILEY: He does.

20 THE COURT: Your client is
21 indicted by indictment
22 2004-GS-10-1883W with the charge
23 of misprision of a felony. Is
24 that correct?

25 MR. SMILEY: That's

1 correct, your Honor.

2 THE COURT: And how does
3 your client plead?

4 MR. SMILEY: Guilty.

5 THE COURT: Do you agree
6 with that decision?

7 MR. SMILEY: I do, your
8 Honor.

9 THE COURT: To your
10 knowledge has your client ever
11 had to be evaluated to determine
12 his competency?

13 MR. SMILEY: He has not.

14 THE COURT: Sir, I need
15 you to raise your right hand for
16 me to be sworn.

17 (Whereupon, Ivory Croker
18 is sworn.)

19 THE COURT: If you could
20 speak up a little bit more for me
21 so that the court reporter can
22 take down everything we say.
23 Okay?

24 THE DEFENDANT: Yes,
25 ma'am.

1 THE COURT: Mr. Smiley,
2 why don't you pull that mike a
3 little closer to him.

4 MR. SMILEY: I've got it
5 about as close as I can.

6 THE COURT: Okay. Yeah.
7 They are a little restricted. I
8 apologize.

9 Sir, state your full
10 name for the record.

11 THE DEFENDANT: Ivory
12 Croker.

13 THE COURT: And, sir, how
14 old are you?

15 THE DEFENDANT: Thirty-nine
16 e.

17 THE COURT: How far have
18 you gone in school?

19 THE DEFENDANT: I
20 graduated high school and
21 college.

22 THE COURT: High school
23 and college?

24 THE DEFENDANT: Two years
25 technical school. Yes, ma'am.

1 THE COURT: What type work
2 do you do for a living?

3 THE DEFENDANT: I'm a
4 cook.

5 THE COURT: And where are
6 you employed?

7 THE DEFENDANT: In Mount
8 Pleasant, Waters Edge.

9 THE COURT: How long have
10 you been there?

11 THE DEFENDANT: Three
12 years.

13 THE COURT: Are you
14 married?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: How long have
18 you been married?

19 THE DEFENDANT: Thirteen
20 years.

21 THE COURT: Do you have
22 any children?

23 THE DEFENDANT: Yes,
24 ma'am.

25 THE COURT: How many and

1 their ages.

2 THE DEFENDANT: Three.

3 Sixteen -- sixteen, thirteen, and
4 twelve.

5 THE COURT: And do your
6 children live with you?

7 THE DEFENDANT: Yes,

8 ma'am.

9 THE COURT: Sir, are you
10 currently on probation or parole?

11 THE DEFENDANT: Probation,
12 ma'am.

13 THE COURT: And, sir, do
14 you understand that as a result
15 of this plea your probation could
16 be revoked?

17 THE DEFENDANT: Yes,

18 ma'am.

19 THE COURT: Sir, have you
20 ever been treated for the abuse
21 of alcohol, drugs, or mental
22 illness?

23 THE DEFENDANT: I went to
24 drug treatment.

25 THE COURT: When was that?

1 THE DEFENDANT: Last year.

2 THE COURT: And did you
3 complete that program?

4 THE DEFENDANT: Successful
5 ly, ma'am.

6 THE COURT: Where'd you
7 go? Charleston Center? Phoenix?

8 THE DEFENDANT: Phoenix.

9 THE COURT: Are you in any
10 after care?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you had
13 any drugs, alcohol, or medication
14 in the last seventy-two hours?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Are you aware
17 of any physical, emotional, or
18 nervous problem that would keep
19 you from understanding where you
20 are or what you're doing?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Has your
23 lawyer explained to you your
24 right to have this indictment
25 presented to the grand jury of

1 Charleston County?

2 THE DEFENDANT: Yes,

3 ma'am. He --

4 THE COURT: I'm sorry.

5 THE DEFENDANT: I said

6 yes, ma'am, he explained

7 everything.

8 THE COURT: And do you

9 wish to waive that right?

10 THE DEFENDANT: Yes,

11 ma'am.

12 THE COURT: Sir, you are

13 charged with misprision of a

14 felony. Is that correct?

15 THE DEFENDANT: Yes,

16 ma'am.

17 THE COURT: And, sir, how

18 do you plead?

19 THE DEFENDANT: Guilty.

20 THE COURT: Sir, do you

21 understand that that charge

22 carries a maximum penalty of ten

23 years and/or a fine in the

24 discretion of the Court?

25 THE DEFENDANT: Yes,

1 ma'am.

2 THE COURT: And is it
3 correct, Miss Wilson, that the
4 recommendation is for probation?

5 MS. WILSON: Your Honor,
6 there are several things that I
7 need to put on the record
8 regarding our negotiations.

9 THE COURT: If you would
10 proceed.

11 MS. WILSON: Okay. Thank
12 you, your Honor.

13 THE COURT: You're
14 welcome.

15 MS. WILSON: First of all,
16 your Honor, regarding the charges
17 for which we are at trial, the
18 defendant has agreed to a
19 mistrial in that case upon the
20 taking of his plea. After
21 completing his truthful
22 cooperation, which would include
23 testimony with the State, the
24 State has agreed to dismiss all
25 pending charges against

1 Mr. Croker. We have agreed to a
2 negotiated sentence of probation,
3 concurrent with the probation
4 which he is currently on.

5 We also have agreed that
6 the sentence in this case will be
7 deferred upon and he'll be
8 sentenced upon completion of his
9 truthful cooperation. We've
10 agreed to recommend to the Court
11 a PR bond on the charges which
12 will remain pending until his
13 cooperation is complete. We also
14 have assured the defendant that
15 we have spoken with the federal
16 authorities and that they do not
17 intend and will not seek any
18 charges against or any
19 prosecution against Mr. Croker
20 for any events regarding the
21 kidnapping and murder of Edwina
22 Simms or any prosecution
23 regarding any items that were
24 recovered in a search of
25 Mr. Croker's residence.

1 THE COURT: Okay. And it
2 is my understanding that the --
3 that law enforcement as well as
4 the victim's family are in
5 agreement with this negotiated
6 plea?

7 MS. WILSON: Yes, ma'am,
8 your Honor. The victim's family
9 as you have seen has been very
10 involved and actually got this
11 investigation started. They have
12 worked very closely with our
13 office. I have traveled to
14 Virginia, they have traveled here
15 to be here this week and have
16 been very supportive of our
17 efforts. We have met with them
18 extensively and even before the
19 trial started and discussed this
20 possibility with them. We
21 discussed it again yesterday and
22 talked with them again this
23 morning. They are one hundred
24 per cent behind this negotiation.
25 And as well we have discussed

1 this with the F. B. I. Cindy
2 McCants, who is heavily involved
3 in this case as well as Detective
4 Kramitz, who's with the North
5 Charleston Police Department, and
6 I also discussed it with
7 Detective Holly Connolly who was
8 initially involved in this case,
9 and they are all very supportive
10 of this agreement.

11 THE COURT: Okay. And
12 this is a negotiated plea.
13 Correct?

14 MS. WILSON: That's
15 correct, your Honor.

16 THE COURT: Sir, is it --
17 is there anything more to the
18 negotiations other than what has
19 just been published for the
20 record?

21 THE DEFENDANT: No.

22 THE COURT: Sir, I will
23 advise you that if the Court
24 cannot accept the negotiated plea
25 I will allow you to withdraw your

1 plea. Do you understand?

2 THE DEFENDANT: Yes,
3 ma'am.

4 THE COURT: Sir, when you
5 plead guilty you give up certain
6 important Constitutional rights.
7 I want you to listen very
8 carefully to those rights.

9 You have the right to a
10 jury trial. During a jury trial
11 the State would have the burden
12 of proving beyond a reasonable
13 doubt each and every element of
14 the offenses that you have been
15 charged with. You would have the
16 right to confront and
17 cross-examine their witnesses and
18 call witnesses in your own
19 defense. You would also have the
20 right to present any defenses
21 that you may have. If you've
22 made any confessions or other
23 incriminating statements you
24 would have the right to challenge
25 those statements. You would also

1 have the right to remain silent
2 and if you exercised that right
3 the Court would instruct the jury
4 your silence could not be used
5 against you.

6 Sir, do you understand
7 all of these rights as I've
8 explained them to you?

9 THE DEFENDANT: Yes,
10 ma'am.

11 THE COURT: And do you
12 understand that you're giving up
13 each and every one of those
14 rights?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: And, Mr.
18 Croker, it's correct, you've
19 already participated in many of
20 those rights that I've explained
21 to you. Is that correct?

22 THE DEFENDANT: Ma'am?

23 THE COURT: Do you
24 understand that you have
25 participated in many of those

1 rights that I've already
2 explained to you? In other words
3 we have already selected a jury.
4 We've sworn and empaneled a jury.
5 And your lawyer has already
6 engaged in the confrontation
7 process. In other words, being
8 able to cross-examine the State's
9 witnesses --

10 THE DEFENDANT: Yes,
11 ma'am.

12 THE COURT: -- in
13 presenting defenses on your
14 behalf. Is that correct?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: Sir, do you
18 understand that you're waiving
19 that?

20 THE DEFENDANT: Yes,
21 ma'am.

22 THE COURT: And do you
23 understand that if you were to
24 desire a trial, that the Court
25 stands ready to continue with

1 this trial and to provide that
2 right to you?

3 THE DEFENDANT: Yes,
4 ma'am.

5 THE COURT: And knowing
6 all that, do you still wish to go
7 forward with this plea?

8 THE DEFENDANT: Yes,
9 ma'am.

10 THE COURT: Sir, have you
11 been satisfied with your lawyer's
12 services?

13 THE DEFENDANT: Yes,
14 ma'am.

15 THE COURT: Has he
16 answered all of your questions?

17 THE DEFENDANT: Yes,
18 ma'am.

19 THE COURT: Has he done
20 everything you've asked or
21 expected in representing you?

22 THE DEFENDANT: Yes,
23 ma'am.

24 THE COURT: Is there
25 anything more you'd have him do

1 today that he's not already done
2 on your behalf?

3 THE DEFENDANT: No.

4 THE COURT: Have you
5 understood your talks with him?

6 THE DEFENDANT: Ma'am?

7 THE COURT: Have you
8 understood your talks with him?

9 THE DEFENDANT: Yes,
10 ma'am.

11 THE COURT: And have you
12 spoken with him for as long as
13 you have felt is necessary to
14 represent you?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: Do you have
18 any complaints about his
19 services?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: Sir, has
22 anyone promised you anything or
23 held out any hope of reward to
24 cause you to plead guilty, other
25 than the negotiations?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Has anyone
3 used threats, coercion, force,
4 pressure, or intimidation to
5 cause you to plead guilty?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: Have you had
8 enough time to make up your mind
9 about pleading guilty?

10 THE DEFENDANT: Yes,
11 ma'am.

12 THE COURT: And are you
13 pleading guilty freely and
14 voluntarily and of your own will?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: Does
18 Mr. Croker have any record?

19 MS. WILSON: Your Honor,
20 he does.

21 MR. SMILEY: We went over
22 that in pretrial, your Honor. He
23 is currently on probation for
24 possession with intent to
25 distribute cocaine. He received

1 a fifteen-year sentence suspended
2 on the service of five years'
3 probation, concurrent with I
4 believe -- that's all he's on
5 probation for, your Honor. I
6 think that's truly the extent of
7 his convictions. He's had some
8 other arrests that were
9 dismissed.

10 MS. WILSON: He has -- he
11 just has a 1986 D. U. S. driving
12 under suspension second. And a
13 '98 drug charge which Mr. Smiley
14 just mentioned.

15 MR. SMILEY: It's
16 dismissed. And the one he's on
17 probation for.

18 THE COURT: Okay. Sir, do
19 you agree or disagree that this
20 is your record?

21 THE DEFENDANT: Yes,
22 ma'am.

23 THE COURT: Sir, have you
24 understood my questions?

25 THE DEFENDANT: Yes,

1 ma'am.

2 THE COURT: Do you need to
3 ask me about anything that we've
4 been over?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Have you been
7 absolutely truthful in each and
8 every answer that you've given to
9 the Court?

10 THE DEFENDANT: Yes,
11 ma'am.

12 THE COURT: Sir, do you
13 understand that you have the
14 right to appeal this guilty plea
15 and sentence and any sentence of
16 the Court, but that you must do
17 so in writing within ten days of
18 each of those proceedings?

19 THE DEFENDANT: Yes,
20 ma'am.

21 THE COURT: Do you
22 understand that if you cannot
23 afford an attorney for that
24 process, that one will be
25 appointed to you at no cost?

1 THE DEFENDANT: Yes,
2 ma'am.

3 THE COURT: And actually I
4 would assume that you also need
5 to state the facts --

6 MS. WILSON: Yes, your
7 Honor.

8 THE COURT: -- so that I
9 can have him elocute to those.
10 You may proceed.

11 MS. WILSON: Your Honor, I
12 know that the Court is intimately
13 aware of the facts based on our
14 pretrial conferences and also the
15 opening statements and the
16 evidence you've heard. For the
17 record, however, I would tell the
18 Court that if we had proceeded to
19 trial what we would have
20 presented was that the defendant
21 Crocker was boyhood friends with
22 the defendant Coulter. They grew
23 up together from about the second
24 grade. Even after Mr. Coulter
25 moved away they remained friends.

1 As to the weekend in
2 question, we were able to obtain
3 phone records which showed the
4 contact between the two
5 defendants over that weekend.

6 As we mentioned, after
7 Miss Simms did not return home as
8 planned and her family began
9 pushing for an investigation
10 regarding her being missing, law
11 enforcement began canvassing the
12 area and one of the locations
13 that they canvassed was the
14 Suburban Lodge and that was based
15 on the fact that the phone number
16 for the Suburban Lodge had shown
17 up on a caller I. D. in Virginia.
18 We since learned that Miss Simms
19 used her calling card to call
20 home from the Suburban Lodge, so
21 we knew that she had been to the
22 Suburban.

23 Law enforcement took her
24 photograph around trying to find
25 if anybody had seen her and did

1 not have any luck. After this
2 case was broadcast to the media
3 they received a call from a James
4 Hackler who subsequently was
5 interviewed and he stated that he
6 had never seen Miss Simms but he
7 asked when she went missing. And
8 then he explained that a couple
9 of weeks before, which would have
10 been the time frame that we're
11 talking to, on this Saturday
12 night, the twenty-first, that he
13 saw two men putting what looked
14 like a large trash bag or bag of
15 some type into the back of a
16 trunk, that he felt like it was a
17 body. It alarmed him. He felt
18 like he knew who it was in the
19 bag. Not Miss Simms, but another
20 woman who often got herself into
21 trouble.

22 He became alarmed. He
23 called his wife across the street
24 who was working at the station so
25 that she would lock up. He

1 called the security guard and let
2 them know that he thought they
3 were putting a body in the trunk.

4 As I mentioned in
5 opening statement he described
6 one of the men as looking like a
7 character on the Martin Lawrence
8 show. The investigators were
9 familiar with that character and
10 he does bear a striking
11 resemblance to Ronald Coulter.
12 Based on that, the lineups were
13 prepared. Mr. Hackler identified
14 Mr. Coulter from that lineup.

15 Again, once that was
16 done and the phone records
17 started coming in and
18 Mr. Croker's records indicated
19 that they had been in contact at
20 the time, he fit the general
21 description that Mr. Hackler had
22 given of the shorter man who was
23 with the Martin Lawrence
24 character. Again his description
25 fit Mr. Croker.

1 They prepared a
2 six-person photo lineup which the
3 Court has seen. And as the Court
4 noted, it was a very good lineup
5 in that the six people looked
6 very similar and had very similar
7 characteristics. Despite that,
8 Mr. Hackler picked Mr. Croker out
9 of the lineup as having been one
10 of the men helping to put this
11 bag that he believed was a body
12 into the trunk.

13 THE COURT: Sir, do you
14 agree or disagree with the facts?

15 MS. WILSON: I need to add
16 one more thing.

17 THE COURT: Oh, I
18 apologize.

19 MS. WILSON: After that,
20 your Honor, the defendant gave a
21 statement to law enforcement
22 which indicated that he wasn't
23 aware of any of those events that
24 I described.

25 THE COURT: Okay. Sir, do

1 you agree or disagree with the
2 facts?

3 THE DEFENDANT: Yes,
4 ma'am.

5 THE COURT: Agree or
6 disagree?

7 THE DEFENDANT: I agree.

8 THE COURT: Okay. I find
9 there's a substantial factual
10 basis for this plea. I also find
11 the defendant's decision to enter
12 this plea is made freely,
13 voluntarily, knowingly, and
14 intelligently, that he has had
15 the advice and assistance of
16 counsel with whom he has
17 indicated to the Court he is
18 satisfied, and I will accept the
19 plea. Sentencing will be
20 deferred pursuant to the
21 negotiated plea.

22 MS. WILSON: Your Honor,
23 we need to obtain some testimony
24 from Mr. Croker.

25 THE COURT: Certainly.

1 You may proceed. Mr. Croker, I
2 would remind you that you're
3 still under oath.

4 Madam solicitor, you may
5 proceed.

6 MS. WILSON: Mr. Croker,
7 did you know or do you know the
8 defendant Ronald Coulter?

9 THE DEFENDANT: Yes,
10 ma'am.

11 MS. WILSON: How long have
12 you known him?

13 THE DEFENDANT: Since
14 about second grade.

15 MS. WILSON: Have you all
16 been friends all that time?

17 THE DEFENDANT: Yes,
18 ma'am.

19 MS. WILSON: On the
20 evening of April twenty-first,
21 2001 sometime after dark, were
22 you at the Suburban Lodge?

23 THE DEFENDANT: Yes,
24 ma'am.

25 MS. WILSON: And did you

1 go there at the request of
2 Mr. Coulter?

3 THE DEFENDANT: Yes,
4 ma'am.

5 MS. WILSON: Did he tell
6 you he needed some help?

7 THE DEFENDANT: No. He
8 just called and told me to come
9 there.

10 MS. WILSON: Okay. And
11 when you got there, did you help
12 him with anything?

13 THE DEFENDANT: Yes,
14 ma'am.

15 MS. WILSON: And did you
16 in fact help him pick up a very
17 heavy bag and load it into the
18 trunk?

19 THE DEFENDANT: Yes,
20 ma'am.

21 MS. WILSON: And when you
22 picked up that bag you knew that
23 you had feet in your hands?

24 THE DEFENDANT: Yes,
25 ma'am.

1 MS. WILSON: And you knew
2 that it was a body?

3 THE DEFENDANT: I kind of
4 gathered that.

5 MS. WILSON: Okay. And
6 you gathered that based on what
7 you felt from picking up that
8 bag?

9 THE DEFENDANT: Yes,
10 ma'am.

11 MS. WILSON: Can you tell
12 the Court or for the record
13 indicate about how much you felt
14 like your end of the bag weighed?

15 THE DEFENDANT: At least,
16 I would have to say it felt like
17 almost a hundred pounds.

18 MS. WILSON: And when you
19 realized that there was a body in
20 the bag, did you have any sort of
21 reaction?

22 THE DEFENDANT: Yes,
23 ma'am.

24 MS. WILSON: And what was
25 that?

1 THE DEFENDANT: I got very
2 nervous and upset.

3 MS. WILSON: And did you
4 leave the premises after that?

5 THE DEFENDANT: Immediately.
6

7 MS. WILSON: And do you
8 know where Ron Coulter went with
9 the body?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Okay. Is
12 there anything further?

13 MS. WILSON: Beg the
14 Court's indulgence.

15 MR. SMILEY: What is the
16 procedure of executing a PR bond
17 on the charges that will be
18 pending? I guess I will get a
19 form prepared for your Honor so
20 we can --

21 THE COURT: I think you
22 can probably do it at the clerk's
23 office.

24 MS. WILSON: I have just
25 one other question. You

1 indicated that you picked up the
2 bag with Mr. Coulter. You also
3 helped him put that bag in the
4 trunk, did you not?

5 THE DEFENDANT: Yes,
6 ma'am.

7 MR. SMILEY: Your Honor, I
8 would ask you that now that my
9 client has entered his plea and
10 is no longer part of this trial,
11 that you direct the Sheriff's
12 Department to take him back to
13 jail as soon as possible so we
14 can process him out.

15 MR. DURANT: May we
16 approach just one moment?

17 THE COURT: Certainly.

18 (Whereupon, there was an
19 off-the-record bench conference.)

20 THE COURT: We will stand
21 at ease. I want to give the jury
22 a break so that Mr. Davis and
23 Miss Shealy will have an
24 opportunity to talk with their
25 client. If you can bring in the

1 jury for me.

2 THE BAILIFF: Yes, ma'am.

3 (The jury enters the
4 courtroom at 10:28 a. m.)

5 THE COURT: Mr. Foreman,
6 ladies and gentlemen, we have
7 some matters of law we needed to

8 deal with this morning. It has
9 taken us longer than we had
10 anticipated. Instead of having
11 you sitting in the room -- I
12 don't know about you all, but I
13 don't have a fondness for closed
14 spaces -- I am going to allow you
15 all, I'll give you the option to
16 stay in the jury room if you
17 like. Many people like to walk
18 around downtown, and I'll also
19 give you that option.

20 We're going to take
21 break for you until 11:30. We
22 are all going to be working so
23 that again, we will not be
24 wasting your time, for lack of a
25 way of putting it. I just don't

1 think you all should be sitting
2 while we're working on those
3 matters. I imagine you all have
4 some other things during this
5 break that you wish to do.

6 Please, no discussion
7 about this case among yourselves
8 or anyone else. Please do not
9 read any media reports, listen to
10 any media reports, or watch any
11 media reports about this case.
12 That is very important.

13 If it comes to your
14 attention that someone has,
15 please report it to the Court
16 immediately and also it is even
17 more important that you have no
18 contact with anyone in or about
19 the courthouse. I hope you enjoy
20 your break and if you could
21 return to your jury room at 11:30
22 we will then proceed and resume
23 the trial of the case. Thank
24 you.

25 Everyone remain seated

1 as the panel is excused.

2 (The jury leaves the
3 courtroom at 10:32 a. m.)

4 MS. WILSON: Judge, I'd
5 ask that you -- I don't know what
6 your plans are, but I would ask
7 that you keep the courtroom open.

8 We have some work that we'll be
9 doing.

10 THE COURT: That's fine.
11 Not a problem we'll be at ease
12 until 11:30.

13 MR. DAVIS: Thank you,
14 your Honor.

15 THE COURT: You're
16 welcome.

17 (Whereupon, a recess is
18 taken at 10:34 a. m.)

19 (Whereupon, the Judge
20 enters the courtroom at
21 11:37 a. m.)

22 THE COURT: Yes, sir,
23 Mr. Davis.

24 MR. DAVIS: I was going to
25 ask to approach, your Honor.

1 THE COURT: Yes.

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

4 THE COURT: Are we ready
5 to proceed?

6 MR. DAVIS: One motion.
7 Yes, your Honor.

8 THE COURT: You may
9 proceed.

10 MR. DAVIS: Your Honor, at
11 this time we're going to ask for
12 a mistrial since the jury has
13 been sworn in this case. We have
14 several reasons for that request.
15 Some of them I will list
16 specifically and in detail in
17 open court. There have been some
18 matters that go to privilege and
19 trial strategy that I will not
20 want to discuss in open court.

21 So if the Court would
22 like to hear several of them now
23 in open court, that's fine. On
24 the other hand, I can tell the
25 Court there are several that are

1 not --

2 THE COURT: Okay. I
3 certainly would not want to
4 compromise your client's
5 strategy.

6 MR. DAVIS: Your Honor,
7 obviously such a request is at
8 your discretion to grant or not,
9 since a jury has been sworn.
10 It's the only appropriate remedy
11 that I see is a mistrial in the
12 case. We feel you have that
13 discretion to do that and in this
14 case not only should you, we feel
15 you must.

16 First of all we will
17 indicate that the jury as
18 selected is basically a
19 compromise jury, your Honor.
20 There were nine strikes of jurors
21 which would have been seated but
22 for co-defendant Croker and his
23 attorney utilizing a peremptory
24 strike, nine of the twelve of
25 them would be different had we

1 been the sole defendant in the
2 courtroom. There are jurors not
3 on this panel that our client
4 wished to be on the panel and
5 would have been. Also the State
6 would have received only five
7 strikes as opposed to the ten
8 they exercised, were able to
9 exercise in the empaneling of the
10 jury.

11 Your Honor, as you can
12 see, the layout of the courtroom
13 is now vastly different than it
14 was when we began this trial.
15 We're missing a table, we're
16 missing a defendant, we're
17 missing counsel. Certainly when
18 the jury returns that is an
19 obvious fact. There's no remedy
20 for the, for the taint that that
21 will cause to this jury.

22 As I argued in opening
23 statement and as the Court
24 instructed them on the
25 presumption of innocence as to

1 every defendant at the bar, but
2 now things have drastically
3 changed. Visibly changed. For
4 them to see and then learn that a
5 co-defendant who was prepared and
6 ready and argued to go to trial
7 is no longer in the courtroom,

8 because of his entering a plea --

9 THE COURT: Well, I don't
10 know.

11 MR. DAVIS: That taints
12 our --

13 THE COURT: I don't know
14 that they will know that, so I
15 guess I'm --

16 MR. DAVIS: They're going
17 to know he's not here any longer
18 and you have ordered them to
19 couch the client, my client,
20 in -- with the presumption of
21 innocence, but first of all
22 they're going to see that the
23 co-defendant is not here and
24 they're going to wonder and
25 they're going to worry and

1 they're going to concern
2 themselves. As we all know, this
3 is an emotional case anyway.
4 Their emotions are going to
5 wander as to why he's not here
6 and we feel the presumption
7 against Mr. Coulter has been
8 adversely affected and then
9 certainly, your Honor, at the
10 time that Mr. Croker would plea,
11 they're going to have those same
12 issues.

13 Additionally, your
14 Honor, the -- Mr. Croker's
15 attorney's demeanor in court,
16 certainly he took the trial
17 strategy that his client was in
18 no way involved. He didn't have
19 a dog in this fight. Didn't know
20 Edwina Simms. He wasn't a party
21 of this. That would also affect
22 the jury's ability to maintain,
23 as they're required to, a
24 presumption of innocence with
25 respect to Mr. Coulter.

1 That goes further as to
2 my credibility in front of the
3 jury. I stood up, I gave an
4 opening argument, opening
5 statement, based on our strategy
6 at the time. I made
7 representations to the jury.

8 Again the fact that they'll come
9 out, there'll no longer be a
10 third table, a co-defendant, and
11 a counsel, is another irreparable
12 taint upon my credibility for the
13 further proceedings.

14 And also then
15 Mr. Croker's attorney's arguments
16 in front of the jury which are
17 now obviously not accurate will
18 affect my credibility in any
19 arguments, any questioning, any
20 address I have to the jury beyond
21 this point. In fact, your Honor,
22 the argument would have been
23 different. My opening would have
24 been different were things
25 started in the manner that they

1 are now. I cannot go back and
2 make, renew, renew that argument.
3 Cross-examination, without
4 getting specific, of witnesses
5 that have already testified, have
6 already been before the jury and
7 have been released by the Court,
8 would have been different. We
9 cannot at this point prepare a
10 proper cross-examination for the
11 upcoming witnesses, including law
12 enforcement. I can go into that
13 further at a later time as well.

14 Now, your Honor, with
15 the situation of the case, the
16 co-defendant's credibility is
17 essential to the determination of
18 this case. And because of the
19 current posture of the case,
20 we've had a chance to talk to our
21 client and with the Court's
22 permission he's talked to his
23 father and we appreciate that,
24 but as he entered the courtroom
25 there are additional matters that

1 he, he brought to my attention
2 when he walked in the court. He
3 needs to talk to me about some
4 more things about this case which
5 causes irreparable harm.

6 We do not know at this
7 point the entirety of the plea
8 agreement between the State and
9 the co-defendant. Without that,
10 that could affect any aspect of
11 the --

12 THE COURT: Well, I don't
13 think that argument has any
14 merit. The entirety of the plea
15 negotiation has been stated for
16 the record in your presence.
17 There's nothing more to it to my
18 knowledge other than the
19 substance of the negotiated plea.

20 MR. DAVIS: Well, your
21 Honor, he put the facts on the
22 record to support the entering of
23 the plea to misprision of a
24 felony, did not put facts on the
25 record, that he was not aware of

1 what else he will provide the
2 State and what if anything is
3 being offered for that.

4 MS. WILSON: And under the
5 rules they won't be provided
6 that.

7 THE COURT: If it's not
8 exculpatory you're not entitled
9 to it, are you? He doesn't have
10 to talk to you.

11 MR. DAVIS: I understand,
12 your Honor. But I think we,
13 we're entitled to the terms of
14 any plea agreement.

15 MS. WILSON: And we stated
16 those for the record, your Honor.

17 MR. DAVIS: Finally --
18 that's, that's all I can state on
19 the record, your Honor, at this
20 time.

21 THE COURT: Okay.
22 Miss Wilson, would you like to
23 respond?

24 MS. WILSON: Your Honor,
25 in anticipation of this last

1 night we did as much research as
2 we could and were able not able
3 to find any cases in South
4 Carolina precisely on point.
5 There were some cases in South
6 Carolina where co-defendants had
7 disappeared at trial due to a
8 plea and I think as long as the
9 Court gives an instruction about
10 not about the plea but about the
11 fact that they aren't to consider
12 that the defendant's gone, all of
13 that line of instructions.
14 But we do anticipate
15 that the co-defendant will
16 testify. There were at least
17 three cases that we found from
18 the federal courts. One is a
19 Third Circuit case, U. S. versus
20 Gambino, 926 F. 2nd 1355. I only
21 have one copy. I'll be happy to
22 hand it up to the Court. Also U.
23 S. versus Pierro, 32 F. 3rd 611.
24 And finally United States versus
25 Mahaya, and I just have -- this

1 may be some sort of slip opinion
2 from 1996 from the eleventh
3 circuit. But basically, your
4 Honor, in these cases what
5 happened was exactly what
6 happened here. The defendant was
7 proceeding to trial with
8 co-defendants and in the midst of
9 trial, I think in one of these
10 cases they had been in trial
11 eighteen days and on the
12 eighteenth day one of the
13 co-defendants negotiated a plea
14 with the government. He pled
15 guilty and turned around and
16 testified thereafter.

17 The Courts in these
18 case, granted they were federal
19 cases, went through the analysis
20 of what courts are to look at
21 when determining whether or not a
22 mistrial should be granted and
23 they also outline the type of
24 review appellate courts do, and
25 again that is federal court. But

1 I think it's clear that in any
2 court that a mistrial is very
3 strong medicine and that it's,
4 it's not necessary to this case I
5 don't think and it is in any case
6 a disruption to the efficiency of
7 the Court and to the docket
8 situation that we have in this
9 county as far as the back log
10 that we do have.

11 One of these cases,
12 Pierro, notes that a mistrial is
13 not required. I think it does
14 depend on the circumstances of
15 each case, but the defense has
16 certainly not made out any valid
17 grounds for a mistrial in this
18 situation.

19 We -- Mr. Smiley did
20 give an opening statement. He
21 was very careful in his opening
22 statement. We had hoped to work
23 out a plea before opening
24 statements. We weren't able to
25 do that. I think Mr. Smiley

1 obviously had that in mind when
2 he gave his opening statement
3 because it was fairly generic and
4 I don't believe that it was
5 inapposite of what our plea
6 agreement was and the testimony
7 that his client will give. I
8 think that it, it really fits
9 with the testimony that we
10 anticipate the client giving.

11 It's the State's
12 position that if the Court gives
13 the proper instruction regarding
14 the lack of the co-defendant's
15 presence, there would be no need
16 for a mistrial. These cases that
17 I've cited cite other cases where
18 this situation has arisen. This
19 is an emotional case in some
20 regards but murder cases
21 unfortunately are tried every
22 day. The testimony here so far
23 has had nothing to do with Ivory
24 Croker. Has had very little to
25 do with anything that happened

1 here in Charleston. The --
2 ninety-nine per cent of the
3 testimony I'd say at this point
4 has to do with the background and
5 history of the victim in this
6 case.

7 I don't think that there
8 is any showing of prejudice at
9 this point. I don't believe that
10 just because this is something
11 that is a surprise or is
12 unexpected to Mr. Davis and
13 Miss Shealy, that those are
14 grounds for a mistrial. I just
15 don't, I don't think that that's
16 the standard.

17 Obviously the State is
18 surprised as well and I think
19 that based on the -- where we are
20 in this case, how much evidence
21 has come out, the rather benign
22 nature of the opening statements,
23 which as the Court instructs
24 aren't evidence anyway, I don't
25 think there's any danger of any

1 undue prejudice to the defendant.

2 And I'll hand these
3 cases up if you'd like.

4 THE COURT: I would like
5 to see those.

6 MR. DAVIS: Your Honor,
7 would you care to hear a
8 response?

9 THE COURT: Very briefly.

10 MR. DAVIS: Your Honor,
11 the concern is the effect on the
12 jury and on the defense's ability
13 to be prepared and to present an
14 effective defense. The State has
15 had the benefit of preparing this
16 as they presented cases from last
17 night. We have not. They
18 cannot, they cannot claim
19 surprise on something they've
20 been a party to. As they
21 indicated, the opening argument,
22 the fact of co-defendant's
23 counsel was intended not to cross
24 a line that they were aware of.

25 We, we are prejudiced

1 and I'll need to address certain
2 things out --

3 THE COURT: And certainly
4 I'll allow you to do that, but I
5 think that for the Court to
6 accept or to believe that the
7 possibility or that it was in the
8 realm of possibility that
9 Mr. Coulter's co-defendant would
10 testify against him I just think
11 would not be credible. I think
12 that whenever you have
13 co-defendants tried together as
14 an astute litigator and advocate,
15 there's always that possibility,
16 and I think to say never, that
17 that is never a possibility is
18 unrealistic.

19 I just think that when
20 you have two co-defendants tried
21 together there's always that
22 possibility, as well as that
23 possibility having been there for
24 Mr. Smiley's client, that
25 Mr. Coulter may well have decided

1 to testify against him based on
2 what the facts and circumstances
3 of this case -- although we have
4 a very small picture right now as
5 to what the facts and
6 circumstances are because we
7 really have not gotten into the
8 merits, the true merits of the
9 case at this point. We really,
10 based on the witnesses that we've
11 heard thus far only heard the
12 background information regarding
13 Miss Simms and her preparation to
14 travel to South Carolina, and
15 much of the testimony really goes
16 to I would assume the State
17 trying to show that she just
18 didn't simply disappear or walk
19 away.

20 So at this point that is
21 all the testimony that we've
22 heard. We really have not really
23 gotten into what I would call the
24 meat of the case. I certainly
25 will give you the opportunity to

1 speak with me and the court
2 reporter, if there's no exception
3 from the State regarding those
4 matters regarding trial strategy
5 that you do not want to publish
6 for the record, but I don't know
7 that I've ever followed that
8 policy, that procedure. I guess
9 this is novel in a way. But I
10 would imagine that you wouldn't
11 want to disclose your trial
12 strategy for the record. I don't
13 know that it's not sufficient
14 that you just indicated that you
15 feel prejudiced because it alters
16 your trial strategy. The trial
17 strategy alters all during a
18 trial because you really don't
19 know what a witness is going to
20 say. I don't care --

21 MR. DAVIS: Your Honor,
22 I --

23 THE COURT: -- how many
24 interviews you've taken, it is
25 rare that a witness ever says

1 precisely what they have
2 previously indicated they're
3 going to say.

4 And I guess the issue
5 that I have been rolling around
6 in my head, much of this argument
7 is would there really have been
8 any difference if we had gone
9 through an entire trial and
10 Mr. Croker decided to get on the
11 stand and testify differently
12 than you all expected? I, I, you
13 know, these are just the ups and
14 downs that you have on a trial
15 and I don't know that these are
16 things that are not anticipated
17 or that you would not have
18 contemplated. That always had to
19 be a possibility I would imagine
20 because nothing in life is
21 certain.

22 MR. DAVIS: I would like
23 to make some more remarks to the
24 Court.

25 THE COURT: Certainly.

1 Certainly.

2 MR. DAVIS: When it
3 becomes, when the time is
4 appropriate.

5 THE COURT: Does the State
6 take any exception to that
7 request?

8 MR. DURANT: Your Honor, I
9 believe we'd have to leave it to
10 your discretion. I would say for
11 the record that the only time
12 I've allowed that to happen it
13 did not bode well for me and for
14 that reason we are a bit hesitant
15 to go on the record and say we
16 agree to it.

17 THE COURT: My only
18 concern about that is how then
19 does the State have a meaningful
20 opportunity to respond to your
21 request, which I think they're
22 certainly entitled to. That just
23 concerns me.

24 MR. DURANT: It concerns
25 us as well, your Honor.

1 THE COURT: Because then I
2 have to consider it on a
3 one-sided argument and I don't
4 know that that is fair or
5 appropriate.

6 MS. SHEALY: May I respond
7 to that, your Honor?

8 THE COURT: Yes, ma'am.

9 MS. SHEALY: It would
10 certainly be our position that
11 the solicitors have articulated
12 their position regarding our
13 mistrial request. This is one
14 time they don't get to weight in
15 on something. When it involves
16 trial strategy of the defense,
17 they are not to be a party of it.

18 THE COURT: Well, I guess
19 my concern is why do you need to
20 tell me anything more than it --

21 MS. SHEALY: Because it --

22 THE COURT: -- this
23 affects yours trial strategy?

24 MS. SHEALY: Because I
25 think you need to understand why

1 and we cannot articulate that in
2 an open courtroom. We need to
3 explain to you how this changes
4 our strategy in our case and what
5 is now upon us to do to
6 appropriately and effectively
7 represent our client, and we
8 cannot do that unless we explain
9 it to you.

10 It would not suffice
11 just to say oh, we've got new
12 strategy. That minimizes greatly
13 the effect that this has had on
14 our case. And I don't know how
15 anyone would ever be able to
16 review our request for a mistrial
17 unless they had articulated for
18 the record all the various
19 reasons that we believe that our
20 trial strategy now has been
21 affected.

22 THE COURT: I'm going to
23 take the matter under advisement
24 and think about it a little bit
25 as we move forward in the case.

1 My jury has been waiting
2 since 9:30. It is now ten after
3 twelve. I think I've been very
4 liberal in the time that I've
5 granted and in the time that I've
6 had them waiting.

7 I don't think taking the
8 next witness in any way -- who's
9 the State's next witness?

10 MS. WILSON: Your Honor, I
11 have a records custodian
12 regarding Miss Simm's bank
13 records. I also have the
14 victim's grandmother who must
15 testify today. And then after
16 that we are putting up other
17 members of the victim's family
18 and also the defendant's father
19 and sister, if she is still
20 present. It was my understanding
21 that defendant's sister had left.
22 We have her under subpoena and
23 she is not present. We'd ask
24 that the deputies be asked to --

25 MS. SHEALY: I guess

1 retrieve her from the hospital.
2 She left by E. M. S.

3 And, your Honor, I don't
4 believe that we can go forward at
5 all in front of the jury until
6 we've have an opportunity, we've,
7 as you allowed us, an opportunity
8 to talk to our client. That was
9 regarding a different issue. We
10 have not had an opportunity at
11 all to discuss with our client
12 the way in which this would
13 change our going forward if we
14 are forced to go forward.

15 So we really need some
16 time with our client to readjust
17 how we intend to proceed with
18 this trial.

19 THE COURT: We're talking
20 about a records custodian. I
21 don't see at all how your
22 questioning would be different.

23 MS. SHEALY: Well, it may
24 be, your Honor. It may be.

25 THE COURT: Well, I'll

1 give you a few minutes to discuss
2 that, but we're going to do the
3 records custodian before we break
4 for lunch, and then we're going
5 to break for lunch and I'm going
6 to give you an extended time to
7 discuss matters with your client.

8 MS. SHEALY: Okay.

9 THE COURT: At which, and
10 after lunch I'm going to rule on
11 the motion for a mistrial. I
12 suspect, however, that we will be
13 going forward. And I'm going to
14 contemplate whether I'm going to
15 have that conversation with you
16 outside of the presence of the
17 State. I need some time to think
18 about that.

19 MR. DAVIS: Your Honor,
20 the last thing, your Honor, I
21 must therefore say is it's not
22 simply being overwhelmed by some
23 change. I can tell you --

24 THE COURT: Well, I assume
25 you have very specific reasons

1 for -- and I didn't mean to in
2 any way minimize -- when you say
3 trial strategy I think that in
4 and of itself speaks for itself.
5 I don't know that, that -- trial
6 strategy is a very encompassing
7 word and I don't see that as a
8 minimal word when you're talking
9 about trying a case. That is
10 your overall picture or
11 perception of how you're going to
12 proceed and I, I don't think
13 saying trial strategy minimizes
14 that in any way.

15 MR. DAVIS: Thank you,
16 your Honor. I simply cannot
17 imagine being, through no fault
18 of my own, more unprepared,
19 more -- perhaps not this next
20 witness, but the next witnesses
21 that will follow.

22 THE COURT: Pardon me?
23 Say that one more time. Not the
24 next witness, but --

25 MR. DAVIS: Any witnesses

1 they may call. Certainly a
2 records custodian --

3 THE COURT: Well, we're
4 not going to have time to do any
5 other witnesses other than the
6 records custodian. What I would
7 like to do is my jury has been
8 sitting since 9:30. I gave them
9 an hour break. They have now
10 been sitting since 11:30. It is
11 12:10.

12 I think that it is an
13 efficient use of our time to go
14 ahead and do the trial
15 custodian -- the records
16 custodian and then break for
17 lunch, and then that way we have
18 more flexibility to determine how
19 we will be proceeding. But I'm
20 not inclined to have them waiting
21 in the jury room any longer.
22 Now, what -- however. . .

23 Would you all prefer,
24 and there's been some indication
25 that the Court should give some

1 form of curative instruction
2 regarding Mr. Croker's absence,
3 whether it would be appropriate
4 to do that now or to wait until
5 after we hear the records
6 custodian. You all have
7 additional time to discuss what
8 ~~you need to discuss and the Court~~
9 rules to give that instruction.
10 I'll leave it up to you.

11 I will also leave -- I
12 also would like some input from
13 you all regarding the wording of
14 that instruction.

15 MR. DAVIS: You know,
16 respectfully, we can't imagine
17 how a curative instruction can
18 cure the situation. Again we
19 don't feel that we can go forward
20 and we will certainly during the
21 break attempt to, in light of
22 the -- but again, in that
23 position we can't imagine
24 language we can come up with. We
25 do not believe any language would

1 be effective in curing the
2 situation.

3 MS. WILSON: Judge, I'm
4 not positive, but I think one of
5 the cases that I handed up had an
6 excerpt from an instruction and I
7 believe the South Carolina cases
8 that deal with where a
9 co-defendant disappeared from the
10 courtroom and the Court
11 instructed the jury, I believe
12 that those cases would have
13 excerpts from the instructions.

14 Again at this point we
15 don't have the co-defendant's
16 testimony and who knows what will
17 happen between now and the time
18 he's supposed to testify, so that
19 doesn't need to be addressed at
20 all --

21 THE COURT: Exactly.

22 MS. WILSON: -- right now.
23 It's just his absence from the
24 courtroom.

25 THE COURT: Exactly.

1 MS. SHEALY: Your Honor,
2 may I step out for just a second?

3 THE COURT: Sure. We'll
4 be at ease for a few moments.

5 (Whereupon, a recess is
6 taken at 12:25 p. m.)

7 (The Judge enters the
8 courtroom at 12:50 p. m.)

9 THE COURT: Counsel,
10 approach, please.

11 (Whereupon, there was an
12 off-the-record bench conference.)

13 THE COURT: For the
14 record, we've all agreed everyone
15 will leave the courtroom. I will
16 dismiss the jury for lunch. That
17 is correct?

18 MR. DURANT: Yes, your
19 Honor.

20 MR. DAVIS: Yes, your
21 Honor.

22 MR. DURANT: Three
23 o'clock, your Honor?

24 THE COURT: Three o'clock.
25 Please bring in the

1 jury.

2 (The jury enters the
3 courtroom at 1:04 p. m.)

4 THE COURT: Mr. Foreman,
5 ladies and gentlemen, I have good
6 news and good news I guess. I'm
7 going to excuse you for your
8 luncheon break. We will be down
9 until three o'clock. We really
10 have been working very diligently
11 on some matters of law.

12 Often times I wish that
13 you could hear what we're doing.
14 Unfortunately if you hear what
15 we're doing you could no longer
16 be impartial and you could no
17 longer be judges of the facts as
18 you're supposed to be, because
19 you would certainly be influenced
20 by the, by hearing what the Court
21 is doing and what the lawyers are
22 advocating.

23 We're going to take an
24 extended break for lunch today
25 until three o'clock. At that

1 time I am hopeful that we will
2 be -- we will have concluded all
3 of those matters.

4 Please rest assured that
5 we do not take your time for
6 granted. I've just, I encourage
7 you, if you have an opportunity

8 after your jury service is
9 completed, to come back some days
10 and watch what we do while you're
11 absent from the courtroom,
12 although I know many people don't
13 have that luxury. But I just
14 want you to know and I emphasize
15 that we don't take your time for
16 granted. We, we value it.

17 And so I hope you enjoy
18 your lunch. It's raining
19 outside. I hope you have some
20 umbrellas, but if you could
21 return to your jury room at
22 three. Please abide by my
23 instructions regarding discussion
24 of the case and interaction with
25 those about the courthouse. I

1 would hate for an innocent
2 conversation to be misconstrued.
3 I hope you enjoy your lunch and
4 we'll see you at three. You're
5 excused.

6 (Whereupon, a luncheon
7 recess is taken at 1:12 p. m.)
8
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11

12

AFTERNOON SESSION

13

14

15

16

(Whereupon, the Judge
enters the courtroom at
3:35 p. m.)

17

18

THE COURT: Are we ready
to proceed?

19

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25

MS. WILSON: Yes, ma'am.

THE COURT: Are we ready
to proceed?

MS. WILSON: The State is
ready, your Honor.

THE COURT: Is the defense
ready to proceed?

1 MR. DAVIS: Yes, your
2 Honor.

3 THE COURT: It is my
4 understanding that Mr. Coulter
5 now wishes to change his plea on
6 Indictment 2443 from not guilty
7 to guilty. Is that correct?

8 MR. DAVIS: Yes, your
9 Honor.

10 THE COURT: Have there
11 been any negotiations or
12 recommendations regarding Mr.
13 Coulter's change in plea?

14 MS. WILSON: Your Honor,
15 the State has agreed to allow the
16 defendant to plead guilty to
17 kidnapping for a negotiated
18 sentence of thirty years. In
19 exchange for that plea we are
20 dismissing the remaining charges
21 against Mr. Coulter.

22 Mr. Davis and Miss
23 Shealy, is that your
24 understanding of the negotiated
25 plea?

1 MR. DAVIS: Yes, your
2 Honor.

3 MS. SHEALY: Yes, ma'am.

4 THE COURT: Mr. Coulter,
5 if you would stand, raise your
6 right hand to be sworn.

7 (Whereupon, Ronald
8 Coulter is sworn.)

9 THE COURT: Mr. Davis and
10 Miss Shealy, have you explained
11 to your client the charges
12 contained in the indictment, the
13 possible punishment, and his
14 constitutional rights?

15 MS. SHEALY & MR. DAVIS:
16 Yes, your Honor.

17 THE COURT: Do you believe
18 he understands the charges, the
19 punishment, and his rights?

20 MS. SHEALY & MR. DAVIS:
21 Yes.

22 THE COURT: And does he
23 wish to plead guilty or not
24 guilty?

25 MR. DAVIS: He wishes to

1 plead guilty, your Honor.

2 MS. SHEALY: That's
3 correct.

4 THE COURT: And do you
5 agree with that decision?

6 MR. DAVIS: Yes, your
7 Honor.

8 MS. SHEALY: I do.

9 THE COURT: To your
10 knowledge has your client ever
11 been evaluated to determine his
12 competency?

13 MR. DAVIS: No, ma'am.

14 MS. SHEALY: No, ma'am.

15 THE COURT: Mr. Coulter,
16 state your full name.

17 THE DEFENDANT: Ronald
18 Coulter.

19 THE COURT: And, sir, how
20 old are you?

21 THE DEFENDANT: Thirty-
22 nine.

23 THE COURT: How far have
24 you gone in school?

25 THE DEFENDANT: Two years

1 of college.

2 THE COURT: Did you
3 receive a degree as a result of
4 that attendance?

5 THE DEFENDANT: Yes.
6 Electrical engineer.

7 THE COURT: And where did
8 you attend college?

9 THE DEFENDANT: South
10 Florida.

11 THE COURT: What type work
12 do you generally do?

13 THE DEFENDANT: Electrical
14 engineering.

15 THE COURT: And how long
16 have you been employed in that
17 field?

18 THE DEFENDANT: About
19 sixteen years.

20 THE COURT: Are you
21 married?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: And other than
24 the child that you have with
25 Miss Simms, do you have any other

1 children?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: And what is
4 the age of that child?

5 THE DEFENDANT: Three.

6 THE COURT: Are you
7 currently on probation or parole?

8 THE DEFENDANT: No.

9 THE COURT: Sir, have you
10 ever been treated for the abuse
11 of alcohol, drugs, or mental
12 illness?

13 THE DEFENDANT: No, I
14 haven't.

15 THE COURT: Have you had
16 any drugs, alcohol, or medication
17 in the last seventy-two hours?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Are you aware
20 of any physical, emotional or
21 nervous problem that might keep
22 you from understanding where you
23 are or what you're doing?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Sir, you are

1 charged with Indictment 2443,
2 which is kidnapping. Is that
3 correct?

4 THE DEFENDANT: Yes,
5 ma'am.

6 THE COURT: Sir, how do
7 you plead to that charge, guilty
8 or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: Sir, I want
11 you to listen very carefully to
12 the facts.

13 Madam solicitor.

14 MS. WILSON: Thank you,
15 your Honor.

16 THE COURT: Yes, sir.
17 Yes, ma'am. I'm sorry.

18 MS. WILSON: Again, your
19 Honor, I know that the Court is
20 very familiar with the facts in
21 this case as we've been going
22 through the trial and also based
23 on the plea of the codefendant
24 earlier today.

25 If we had continued with

1 the trial we would have continued
2 to present evidence of the
3 history of Edwina Simms. I think
4 the Court has been aware of her
5 family who's been devoted to her
6 and who really made this case.
7 They did not give up and they

8 began this investigation process.

9 The facts that we would
10 have presented would have shown
11 that Edwina Simms was -- went
12 missing from Charleston after a
13 trip from Charlottesville,
14 Virginia. She was expected back
15 that Sunday night.

16 Her family and friends
17 immediately knew something was
18 awry because she did not return
19 from the trip here.

20 What compounded there
21 concern is the fact that this
22 defendant did nothing. He
23 finally got in contact with them
24 about two days later, and then
25 nonchalantly told them that

1 Edwina had left the hotel where
2 they'd been staying and that he
3 just assumed that she came to --
4 went back to Charlottesville.
5 All the while he knew and they
6 knew that she had no cash, no
7 credit cards, and no cell phone.

8 Even more than that,
9 what her family and friends knew
10 is that she would not have left
11 that baby [REDACTED] in the custody
12 of someone else. So they, they
13 knew that.

14 When she didn't return
15 after some time, they also knew
16 that she would not have left her
17 son O. J. They have a very
18 close relationship. You saw some
19 of the evidence that was admitted
20 at trial but there was even more
21 evidence of cards that were sent
22 between them talking about things
23 that they had done together, and
24 the close relationship.

25 I think one thing that's

1 remarkable about this family,
2 too, and one of the things that
3 would come out in trial is that
4 Edwina felt like that Ron didn't
5 think she and her family were
6 good enough for [REDACTED] and that
7 that was one of the motives in
8 all of this. But I think what's
9 remarkable about this family is
10 although they do have divorce in
11 their family, Edwina was
12 divorced, she had a great
13 relationship with her former
14 husband. Edwina's parents who
15 are Kathryn and Edward Simms, who
16 are here, were divorced. They
17 had a good relationship and they
18 continued to keep in contact. I
19 don't know if it was because they
20 wanted to but because they had
21 children and they knew they
22 needed to.

23 It was a very close-knit
24 family and the fact that Edwina
25 never returned, they knew that

1 she was dead. They knew that.

2 That, we would have
3 continued with that testimony.
4 Then we would have presented
5 Mr. Hackler who is here in
6 Charleston and who would have
7 testified again that on the night
8 of April twenty-first, 2001 when
9 he was looking, when he was in
10 his suite at the Suburban Lodge,
11 that he heard a rustling sound.
12 He didn't know what it was. He
13 went to the peep hole. He looked
14 out. He saw two men -- a taller,
15 thinner one; a shorter stocky
16 one -- carrying a bag that he
17 believed was a body.

18 He could not see what
19 was in the bag, but it concerned
20 him enough that he thought he
21 knew who was in the bag. He
22 thought it was a friend of his
23 who bothered people and got into
24 trouble who had finally taken it
25 one step too far, and he became

1 alarmed. He then moved from the
2 peep hole to his window where
3 he's seeing these men no further
4 from me to the jury box, under
5 lights.

6 As I mentioned earlier
7 today, he identified one of them
8 as looking like the character
9 Tommy in the Martin Lawrence Show
10 and the agents knew who that was.
11 We've since gotten pictures of
12 this character Tommy and as I
13 mentioned earlier today he looks
14 strikingly similar to the
15 defendant.

16 He described the
17 shorter, stockier man and based
18 on the phone records the agents
19 were able to determine that some
20 of the calls that had been made
21 by this defendant were to a man
22 named Ivory Croker and when they
23 pulled the driver's license
24 pictures of him and, and I
25 believe even the mug shots of him

1 and other friends of Mr. Coulter,
2 they had someone who fit the
3 description, they put him in the
4 six-person photo lineup. And
5 what do you know? He picked --
6 Mr. Hackler picks out Mr. Croker.

7 Mr. Hackler says that
8 when the object that he believes
9 was a body went into the trunk,
10 that it did move on its own. In
11 other words not just because they
12 were shoving it in but that it
13 did make a motion and that's what
14 one of the things that made him
15 realize that it was in fact a
16 body.

17 Based on Mr. Hackler's
18 identification, based on Edwina's
19 history, and her character, we
20 would have presented more
21 evidence as to her being
22 kidnapped and murdered.

23 That coupled with this
24 defendant's behavior again after
25 the crime, his not even picking

1 the telephone to talk with O. J.
2 after his mother is gone, and
3 after he was the last person with
4 his mother, I think said a whole
5 lot to the jury. And I think his
6 behavior with the Simms family
7 and his evasiveness with them and
8 with law enforcement would have
9 resulted in a guilty plea.

10 That said, I think the
11 Court knows the difficulty in
12 murder cases when you have no
13 body, you have no blood, and you
14 have no physical evidence.

15 As I mentioned earlier
16 today, the family has been
17 working very closely with our
18 office and with law enforcement
19 we have met extensively since
20 this morning regarding this plea.
21 They are in full support of the
22 plea.

23 And we also have talked
24 with law enforcement regarding
25 this resolution, with the appeals

1 process, with the risks that we
2 face at trial regarding appeal
3 regarding witnesses and regarding
4 juries.

5 We felt like a
6 thirty-year resolution was a, a
7 positive resolution.

8 Those would have been
9 the facts of the case and that's
10 why we entered into this plea.

11 THE COURT: Thank you very
12 much.

13 Mr. Coulter, do you
14 agree or disagree with the facts?

15 THE DEFENDANT: I
16 understand.

17 THE COURT: Do you agree
18 or disagree with the facts
19 regarding the elements of
20 kidnapping? Do you agree or
21 disagree?

22 THE DEFENDANT: Yes, sir.

23 MS. WILSON: Your Honor,
24 if he could answer if he agrees
25 or disagrees for the record.

1 THE COURT: He did. He
2 said I agree.

3 MS. WILSON: He did?

4 THE COURT: As I recall,
5 at least.

6 Well, my other question
7 was do you agree as to the

8 elements of kidnapping and his
9 answer was yes. Is that --

10 THE DEFENDANT: Yes.

11 THE COURT: -- correct?

12 MS. WILSON: Thank you.
13 I'm sorry, Judge.

14 THE COURT: That's okay.
15 You don't have to apologize.

16 Sir, do you understand
17 that on the charge of kidnapping
18 that there's a maximum penalty of
19 thirty years?

20 THE DEFENDANT: Yes,
21 ma'am.

22 THE COURT: And do you
23 understand that that charge is
24 also classified as violent?

25 THE DEFENDANT: Yes,

1 ma'am.

2 THE COURT: And you do
3 also understand that under South
4 Carolina law it is also
5 classified as most serious?

6 THE DEFENDANT: Yes,
7 ma'am.

8 THE COURT: Do you
9 understand that because of both
10 of these classifications that it
11 has an impact on how your
12 sentence will be served?

13 THE DEFENDANT: Yes,
14 ma'am.

15 THE COURT: Do you also
16 understand that as a result of
17 the sentencing scheme in South
18 Carolina, in other words because
19 this offense is classified as
20 most serious, that if you were to
21 receive another most serious
22 offense that you would be facing
23 life without the possibility of
24 parole. Do you understand?

25 THE DEFENDANT: Yes,

1 ma'am.

2 THE COURT: Sir, I would
3 advise you that you may have
4 discussed parole or parole
5 eligibility with your lawyer or
6 with other people, but until you
7 are sentenced no one can tell you
8 when if ever you will be eligible
9 for parole or under what
10 conditions.

11 You should assume that
12 you will serve the entire time in
13 jail that you are sentenced to
14 today. Do you understand?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: And, sir, are
18 you pleading guilty because you
19 are in fact guilty?

20 THE DEFENDANT: Yes,
21 ma'am.

22 THE COURT: Sir, when you
23 plead guilty you give up certain
24 important constitutional rights.
25 Those rights include your right

1 to a jury trial. During a jury
2 trial you're entitled to a
3 presumption that you're innocent.

4 The State has the burden
5 of proving beyond a reasonable
6 doubt that you've committed each
7 and every element of this
8 offense. You would have the
9 right to remain silent and if you
10 exercised that right I would
11 instruct the jury that your
12 silence could not be used against
13 you.

14 You would have the right
15 to present any defenses that you
16 may have. You would have the
17 right to confront and
18 cross-examine the State's
19 witnesses and call witnesses in
20 your own defense and if you've
21 made any confessions or other
22 incriminating statements, you
23 would have the right to challenge
24 those statements.

25 Do you understand each

1 and every one of those rights as
2 I've just explained them to you?

3 THE DEFENDANT: Yes,
4 ma'am.

5 THE COURT: Do you
6 understand that you're giving up
7 each and every one of those
8 rights?

9 THE DEFENDANT: Yes,
10 ma'am.

11 THE COURT: Sir, you are
12 fully acquainted with the trial
13 process at this point. Is that
14 correct?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: We have
18 already gone through jury
19 selection as well as opening
20 arguments and we've already begun
21 the calling of witnesses. Is
22 that correct?

23 THE DEFENDANT: Yes,
24 ma'am.

25 THE COURT: Sir, do you

1 understand that if you were to
2 desire to continue this trial
3 that the Court stands ready to
4 accommodate that request?

5 (There is no response.)

6 THE COURT: In other words
7 if you still want a trial, do you
8 understand that the Court stands
9 ready to proceed and continue
10 with the trial?

11 THE DEFENDANT: Yes,
12 ma'am.

13 THE COURT: And knowing
14 that, do you still wish to enter
15 this plea of guilty?

16 THE DEFENDANT: Yes,
17 ma'am.

18 THE COURT: Sir, other
19 than what has been stated for the
20 record as part of the negotiated
21 plea, have there been any other
22 negotiations made on your behalf?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Sir, have you
25 been satisfied with your lawyers'

1 services?

2 THE DEFENDANT: Yes, ma'am
3 have.

4 THE COURT: Have they
5 answered all of your questions?

6 THE DEFENDANT: Yes.

7 THE COURT: Have they done
8 everything you've asked or
9 expected in representing you?

10 A

11 THE DEFENDANT: Yes.

12 THE COURT: Is there
13 anything more you would have them
14 do today that they have not
15 already done on your behalf?

16 THE DEFENDANT: I guess
17 not.

18 THE COURT: Well, it's --

19 THE DEFENDANT: I guess
20 they've done everything.

21 THE COURT: Okay. Have
22 you understood your talks with
23 them?

24 THE DEFENDANT: Yes.

25 THE COURT: And have you

1 spoken with them for as long and
2 as often as you felt is necessary
3 to represent you?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you have
6 any complaints about their
7 services?

8 THE DEFENDANT: No.

9 THE COURT: Sir, has
10 anyone promised you anything or
11 held out any hope of a reward to
12 cause you to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Has anyone
15 used threats, coercion, force,
16 pressure, or intimidation to
17 cause you to plead guilty?

18 THE DEFENDANT: No.

19 THE COURT: Are you
20 pleading guilty freely and
21 voluntarily and of your own will?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you believe
24 you've had enough time to make up
25 your mind about pleading guilty?

1 THE DEFENDANT: Yes.

2 THE COURT: Does
3 Mr. Coulter have any record?

4 MS. WILSON: No, ma'am,
5 your Honor.

6 THE COURT: Sir, do you
7 agree that you have no record?

8 THE DEFENDANT: Yes,
9 ma'am.

10 THE COURT: Sir, have you
11 understood my questions?

12 THE DEFENDANT: Yes, I
13 have.

14 THE COURT: Is there
15 anything you need to ask me about
16 what we've been over?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Has anyone
19 suggested to you how to answer my
20 questions?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Have you been
23 absolutely truthful in each and
24 every answer that you've given to
25 the Court?

1 THE DEFENDANT: Yes,
2 ma'am.

3 THE COURT: Sir, do you
4 understand that you have the
5 right to appeal this guilty plea
6 and sentence of the Court, but
7 that you must do so in writing
8 within ten days of today?

9 THE DEFENDANT: Yes,
10 ma'am.

11 THE COURT: Do you
12 understand that if you cannot
13 afford an attorney for that
14 process, that one will be
15 appointed to you at no cost?

16 THE DEFENDANT: Yes,
17 ma'am.

18 THE COURT: Is there
19 anything further from the State
20 as regards the plea?

21 MS. WILSON: No, ma'am,
22 your Honor. As I mentioned the
23 victim's family is here and I
24 believe --

25 THE COURT: Do they wish

1 to --

2 MS. WILSON: One of them
3 would like to address the Court.

4 THE COURT: Certainly.
5 I'll be glad to hear from them.

6 MS. WILSON: Your Honor,
7 this is Tim Simms, who was the

8 victim's brother. Tim has, as I
9 said, worked closely with our
10 office, and has really been a
11 spokesperson for the family.

12 As I mentioned earlier I
13 went up to Virginia to interview
14 witnesses and things like that,
15 and Tim escorted me around and we
16 got to know each other pretty
17 well then, and I believe he'd
18 like to address the Court.

19 THE COURT: Certainly.
20 Mr. Simms, I would be glad to
21 hear from you. If you would
22 state your name for the record.

23 EDWARD SIMMS: Edward
24 Franklin Simms, Jr., also known
25 as Tim.

1 THE COURT: Yes, sir. You
2 may proceed.

3 EDWARD SIMMS: We, the
4 Simms family, would like to
5 express our deepest and most
6 heart-felt thanks to you, Judge
7 Jefferson, for presiding over
8 this trial; to the State for
9 representing us as well as they
10 did and for bringing us to this
11 point in our case.

12 There are many more
13 thanks to the detectives, the
14 F. B. I., and the other
15 investigators involved in this
16 case and we will do that
17 individually with them.

18 To express in just a few
19 words what we've experienced for
20 the last few years would be very
21 difficult. We've lost a daughter,
22 we've lost a sister, and a very
23 devoted mother, and to all we've
24 lost a friend.

25 Through the difficulty

1 of this, and through the many
2 tears shed, Edwina will live on
3 in our spirits. She will
4 continue to enrich our lives.

5 Mr. Coulter and
6 Mr. Croker may have taken her
7 from us physically, but
8 spiritually she will always be
9 with us.

10 We, the Simms family,
11 are very happy with the outcome
12 of this case so far. We would
13 love more than anything to know
14 where Edwina is and we would love
15 more than anything to return to
16 Charlottesville with her.
17 However, we are satisfied that
18 justice does exist and has
19 existed in this particular case
20 on our side.

21 Thanks to all of you for
22 your sweat, your tears, your
23 dedication to my sister Edwina
24 Roselle Simms. She is watching
25 over us and she is very proud of

1 us. Thank you.

2 THE COURT: Thank you very
3 much, Mr. Simms.

4 Is there anything
5 further from the State?

6 MS. WILSON: No, ma'am.

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

9 THE COURT: Yes, sir.

10 MR. DAVIS: Your Honor, my
11 client, Mr. Coulter, comes from a
12 very upstanding, caring family
13 here in Charleston. Currently in
14 the courtroom is his father.
15 Earlier today his mother and his
16 sister were also in the
17 courtroom.

18 They, they because of
19 the emotional nature of this case
20 they're not with us right now.

21 His father's retired
22 military. His mother works in
23 the church across the street,
24 known in the community to all the
25 people, all the children. She

1 takes care of many of them.

2 This entire situation is
3 just beyond comprehension almost.
4 My client is pleading to the
5 kidnapping charge. We'd ask the
6 Court to accept the negotiated
7 sentence. He understands the
8 repercussions of this plea. He's
9 entering it freely and
10 voluntarily.

11 And on behalf of Miss
12 Shealy we agree in his decision
13 and we respectfully ask the Court
14 to accept the negotiated plea.
15 And I would, however, ask that on
16 the record the other two charges,
17 my understanding on the other two
18 indictments are not pressed with
19 prejudice. The State does not
20 intend to go forward with them.

21 THE COURT: It is my
22 understanding that that was
23 stated as a part of the
24 negotiated plea.

25 MS. WILSON: That's

1 correct, your Honor.

2 THE COURT: Okay. Mr.
3 Coulter, is there anything you'd
4 like to state for the record?

5 THE DEFENDANT: I'd like
6 to say first of all to the Simms
7 family from the bottom of my
8 heart I really apologize for, for
9 anything that's, that's taken
10 place up to this point.

11 There are so many
12 circumstances around this case
13 that were beyond my control and
14 it's irrelevant but I just want
15 to let them know that from the
16 bottom of my heart I'm really
17 sorry and I apologize. Things
18 are not what they seem, and I do,
19 I do care about them and wish
20 them well.

21 THE COURT: Anything
22 further, Miss Shealy?

23 MS. SHEALY: Nothing
24 further, thank you.

25 THE COURT: Mr. Davis?

1 MR. DAVIS: No, ma'am.

2 THE COURT: I find there's
3 a substantial factual basis for
4 this plea. That the defendant's
5 decision to enter this plea is
6 made freely, voluntarily,
7 knowingly, and intelligently;

8 that he has had the advice and
9 assistance of counsel with whom
10 he has indicated to the Court he
11 is satisfied, and the Court will
12 accept the plea.

13 I would say for the
14 record, based on my involvement
15 with the case as well as being
16 peripherally I guess involved in,
17 you know, as a judge is whenever
18 there are negotiations taking
19 place, the judge really isn't
20 involved but sort of on the
21 periphery of those events as they
22 evolve. I will say based for the
23 record based on what had been
24 presented to me by the State as
25 well as the defense and the Simms

1 family most of all, that the
2 Court finds this an appropriate
3 resolution of the matter.

4 There are many different
5 factors that weigh in in such
6 matters. Many -- there -- I
7 guess basically what I'm trying
8 to say is that sometimes closure
9 is the best resolution and for
10 the Simms family I think that
11 this is an appropriate
12 resolution.

13 Mr. Tim Simms, you are
14 an articulate advocate for your
15 family. The Court appreciates
16 your candor and your heartfelt
17 words the regarding the loss of
18 your sister and your loved one.

19 The Court finds it
20 appropriate, Mr. Coulter, that
21 you be committed to the State
22 Department of Corrections for a
23 period of thirty years. I would
24 imagine that he would be entitled
25 to any credits applicable

1 pursuant to 24-13-40.

2 And, Mr. Coulter,
3 without making any comments
4 regarding the facts of this case
5 because I do not think it would
6 be appropriate, however I think I
7 would be remiss as an officer of
8 this Court as well as an officer
9 of this community, if you have
10 any idea as to where Miss Simms's
11 body is located and if you have
12 any regard for the Simms' family
13 as you've indicated, and I take
14 you at your word when you say to
15 me that you care for them and
16 that you love them, that if you
17 have any indication as to where
18 that body is located, that you
19 advise them of that.

20 You certainly are not in
21 any jeopardy by doing that. The
22 charges have been dismissed with
23 prejudice. And if you have a
24 modicum of feelings for them I
25 would think that you would want

1 to give them peace in knowing
2 that.

3 We'll stand in recess.

4 (Whereupon, a recess is
5 called at 4:28 p. m.)

6 (Whereupon, the Judge
7 enters the courtroom at
8 4:43 p. m.)

9 (Whereupon, the jury
10 enters the courtroom at
11 4:44 p. m.)

12 THE COURT: Mr. Foreman,
13 ladies and gentlemen, I have good
14 news and good news. The good
15 news is that you're excused for
16 the rest of the term. I am going
17 to excuse you as jurors. You
18 will be able to go back to your
19 responsibilities beginning this
20 evening.

21 We had this matter set
22 for trial. The reason you all
23 have had to wait the amount of
24 time that you have is that
25 Mr. Croker as well as Mr. Coulter

1 have changed their pleas from not
2 guilty to guilty, and the reason
3 you've had to do a lot of waiting
4 is because we have been working
5 out those -- well, not we. I say
6 we collectively. Solicitor's
7 Office and defense counsel have
8 been working out those plea
9 arrangements. I've already taken
10 Mr. Coulter's guilty plea and
11 just a few moments ago sentenced
12 him to thirty years. Mr. Croker
13 will be sentenced sometime this
14 week. I took his plea pending
15 his cooperation during the trial
16 of this case and testifying
17 against his co-defendant.

18 Again I wish, there was
19 so much of this process that you
20 could see, but you could not
21 because if the process had broken
22 down, we would have had to
23 proceed with the trial, which
24 means as the fact-finder you
25 still would have had to have

1 remained fair and impartial and
2 uninfluenced by anything that
3 took place in this courtroom that
4 was outside of the evidence
5 presented in this case.

6 We appreciate your
7 patience. You all have been far
8 more patient than should have
9 ever been expected of you, and we
10 appreciate it. We do not take
11 your time for granted. I just
12 always wish I could convey to
13 jurors how very important your
14 service is to your state. The
15 system could not work without
16 your sacrifice. We simply could
17 not do it. So as a reward --
18 we're picking juries in the
19 morning, but you all will not
20 have to come. I'm going to
21 excuse you so that you can go
22 about your activities. I think
23 you have paid your penance.

24 So we're going to excuse
25 you so that you can go about your

1 activities. If you have any
2 questions, if you need work
3 excuses, the clerks's office
4 probably will prepare your checks
5 either this afternoon or
6 tomorrow. They will be mailed at
7 that time and they will also be
8 accompanied by work excuses that
9 will have the clerks's seal if
10 you need those for your employer.

11 You are of course free
12 to discuss this case if you would
13 like to. However I would ask
14 that you wait until the end of
15 the week until we have concluded
16 all of the trials for the week.
17 By the same token, if you do not
18 want to discuss the case, do not
19 feel compelled to do so. And if
20 someone should persist in trying
21 to speak with you, please make
22 the Court aware of it so that I
23 can take appropriate corrective
24 action.

25 I hope that you all have

1 a wonderful day. Hopefully it's
2 stopped raining. And you're
3 excused. We're in recess.

4 (Whereupon, the matter
5 was concluded.)
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CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 25th day of February, 2004.

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

DATED: March 9, 2006

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
INDICTMENT NO. 2002-GS-10-2443

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PLEA AND SENTENCE

Vs.

FEBRUARY 25, 2004

RONALD COULTER,

Charleston, South Carolina

Defendant

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge

APPEARANCES:

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DEPUTY SOLICITOR

ATTORNEY FOR STATE

JENNIFER KNEECE SHEALY, ESQ.

CHARLESTON COUNTY PUBLIC DEFENDER

-- and --

RODNEY D. DAVIS, ESQ.

ASST. PUBLIC DEFENDER

ATTORNEYS FOR DEFENDANT

HEATHER GAYLE BURNS, RDR

OFFICIAL COURT REPORTER

9TH JUDICIAL CIRCUIT

COPY

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

1 THE COURT: Ready to
2 proceed?

3 MS. WILSON: Yes, ma'am.

4 THE COURT: Are we ready
5 to proceed?

6 MS. WILSON: State's
7 ready, your Honor.

8 THE COURT: Is the defense
9 ready?

10 MR. DAVIS: Yes, your
11 Honor.

12 THE COURT: It is my
13 understanding that Mr. Coulter
14 now wishes to change his plea on
15 Indictment 2443 from not guilty
16 to guilty. Is that correct?

17 MR. SMILEY: Yes, your
18 Honor.

19 THE COURT: Have there
20 been any negotiations or
21 recommendations regarding Mr.
22 Coulter's change in plea?

23 MS. WILSON: Your Honor,
24 the State has agreed to allow the
25 defendant to plead guilty to

1 kidnapping for a negotiated
2 sentence of thirty years. In
3 exchange for that plea we are
4 dismissing the remaining charges
5 against Mr. Coulter.

6 Mr. Davis and Miss
7 Shealy, is that your
8 understanding of the negotiated
9 plea?

10 MR. DAVIS: Yes, your
11 Honor.

12 MS. SHEALY: Yes, ma'am.

13 THE COURT: Mr. Coulter,
14 if you would stand, raise your
15 right hand to be sworn.

16 (Whereupon, Ronald
17 Coulter is sworn.)

18 THE COURT: Mr. Davis and
19 Miss Shealy, have you explained
20 to your client the charges
21 contained in the indictment, the
22 possible punishment, and his
23 constitutional rights?

24 MS. SHEALY & MR. DAVIS:
25 Yes, your Honor.

1 THE COURT: Do you believe
2 he understands the charges, the
3 punishment, and his rights?

4 MS. SHEALY & MR. DAVIS:

5 Yes.

6 THE COURT: And does he
7 wish to plead guilty or not
8 guilty?

9 MR. DAVIS: He wishes to
10 plead guilty, your Honor.

11 MS. SHEALY: That's
12 correct.

13 THE COURT: And do you
14 agree with that decision?

15 MR. DAVIS: Yes, your
16 Honor.

17 MS. SHEALY: I do.

18 THE COURT: To your
19 knowledge has your client ever
20 been evaluated to determine his
21 competency?

22 MR. DAVIS: No, ma'am.

23 MS. SHEALY: No, ma'am.

24 THE COURT: Mr. Coulter,
25 state your full name.

1 THE DEFENDANT: Ronald
2 Coulter.

3 THE COURT: And, sir, how
4 old are you?

5 THE DEFENDANT: Thirty-
6 nine.

7 THE COURT: How far have
8 you gone in school?

9 THE DEFENDANT: Two years
10 of college.

11 THE COURT: Did you
12 receive a degree as a result of
13 that attendance?

14 THE DEFENDANT: Yes.
15 Electrical engineer.

16 THE COURT: And where did
17 you attend college?

18 THE DEFENDANT: South
19 Florida.

20 THE COURT: What type work
21 do you generally do?

22 THE DEFENDANT: Electrical
23 engineering.

24 THE COURT: And how long
25 have you been employed in that

1 field?

2 THE DEFENDANT: About
3 sixteen years.

4 THE COURT: Are you
5 married?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: And other than
8 the child that you have with
9 Miss Simms, do you have any other
10 children?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: And what is
13 the age of that child?

14 THE DEFENDANT: Three.

15 THE COURT: Are you
16 currently on probation or parole?

17 THE DEFENDANT: No.

18 THE COURT: Sir, have you
19 ever been treated for the abuse
20 of alcohol, drugs, or mental
21 illness?

22 THE DEFENDANT: No, I
23 haven't.

24 THE COURT: Have you had
25 any drugs, alcohol, or medication

1 in the last seventy-two hours?

2 THE DEFENDANT: No, ma'am.

3 THE COURT: Are you aware
4 of any physical, emotional or
5 nervous problem that might keep
6 you from understanding where you
7 are or what you're doing?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Sir, you are
10 charged with Indictment 2443,
11 which is kidnapping. Is that
12 correct?

13 THE DEFENDANT: Yes,
14 ma'am.

15 THE COURT: Sir, how do
16 you plead to that charge, guilty
17 or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Sir, I want
20 you to listen very carefully to
21 the facts.

22 Madam solicitor.

23 MS. WILSON: Thank you,
24 your Honor.

25 THE COURT: Yes, sir.

1 Yes, ma'am. I'm sorry.

2 MS. WILSON: Again, your
3 Honor, I know that the Court is
4 very familiar with the facts in
5 this case as we've been going
6 through the trial and also based
7 on the plea of the codefendant
8 earlier today.

9 If we had continued with
10 the trial we would have continued
11 to present evidence of the
12 history of Edwina Simms. I think
13 the Court has been aware of her
14 family who's been devoted to her
15 and who really made this case.
16 They did not give up and they
17 began this investigation process.

18 The facts that we would
19 have presented would have shown
20 that Edwina Simms was -- went
21 missing from Charleston after a
22 trip from Charlottesville,
23 Virginia. She was expected back
24 that Sunday night.

25 Her family and friends

1 immediately knew something was
2 awry because she did not return
3 from the trip here.

4 What compounded there
5 concern is the fact that this
6 defendant did nothing. He
7 finally got in contact with them
8 about two days later, and then
9 nonchalantly told them that
10 Edwina had left the hotel where
11 they'd been staying and that he
12 just assumed that she came to --
13 went back to Charlottesville.
14 All the while he knew and they
15 knew that she had no cash, no
16 credit cards, and no cell phone.

17 Even more than that,
18 what her family and friends knew
19 is that she would not have left
20 that baby [REDACTED] in the custody
21 of someone else. So they, they
22 knew that.

23 When she didn't return
24 after some time, they also knew
25 that she would not have left her

1 son O. J. They have a very
2 close relationship. You saw some
3 of the evidence that was admitted
4 at trial but there was even more
5 evidence of cards that were sent
6 between them talking about things
7 that they had done together, and
8 the close relationship.

9 I think one thing that's
10 remarkable about this family,
11 too, and one of the things that
12 would come out in trial is that
13 Edwina felt like that Ron didn't
14 think she and her family were
15 good enough for [REDACTED] and that
16 that was one of the motives in
17 all of this. But I think what's
18 remarkable about this family is
19 although they do have divorce in
20 their family, Edwina was
21 divorced, she had a great
22 relationship with her former
23 husband. Edwina's parents who
24 are Kathryn and Edward Simms, who
25 are here, were divorced. They

1 had a good relationship and they
2 continued to keep in contact. I
3 don't know if it was because they
4 wanted to but because they had
5 children and they knew they
6 needed to.

7 It was a very close-knit
8 family and the fact that Edwina
9 never returned, they knew that
10 she was dead. They knew that.

11 That, we would have
12 continued with that testimony.
13 Then we would have presented
14 Mr. Hackler who is here in
15 Charleston and who would have
16 testified again that on the night
17 of April twenty-first, 2001 when
18 he was looking, when he was in
19 his suite at the Suburban Lodge,
20 that he heard a rustling sound.
21 He didn't know what it was. He
22 went to the peep hole. He looked
23 out. He saw two men -- a taller,
24 thinner one; a shorter stocky
25 one -- carrying a bag that he

1 believed was a body.

2 He could not see what
3 was in the bag, but it concerned
4 him enough that he thought he
5 knew who was in the bag. He
6 thought it was a friend of his
7 who bothered people and got into
8 trouble who had finally taken it
9 one step too far, and he became
10 alarmed. He then moved from the
11 peep hole to his window where
12 he's seeing these men no further
13 from me to the jury box, under
14 lights.

15 As I mentioned earlier
16 today, he identified one of them
17 as looking like the character
18 Tommy in the Martin Lawrence Show
19 and the agents knew who that was.
20 We've since gotten pictures of
21 this character Tommy and as I
22 mentioned earlier today he looks
23 strikingly similar to the
24 defendant.

25 He described the

1 shorter, stockier man and based
2 on the phone records the agents
3 were able to determine that some
4 of the calls that had been made
5 by this defendant were to a man
6 named Ivory Croker and when they
7 pulled the driver's license
8 pictures of him and, and I
9 believe even the mug shots of him
10 and other friends of Mr. Coulter,
11 they had someone who fit the
12 description, they put him in the
13 six-person photo lineup. And
14 what do you know? He picked --
15 Mr. Hackler picks out Mr. Croker.
16 Mr. Hackler says that
17 when the object that he believes
18 was a body went into the trunk,
19 that it did move on its own. In
20 other words not just because they
21 were shoving it in but that it
22 did make a motion and that's what
23 one of the things that made him
24 realize that it was in fact a
25 body.

1 Based on Mr. Hackler's
2 identification, based on Edwina's
3 history, and her character, we
4 would have presented more
5 evidence as to her being
6 kidnapped and murdered.

7 That coupled with this
8 defendant's behavior again after
9 the crime, his not even picking
10 the telephone to talk with O. J.
11 after his mother is gone, and
12 after he was the last person with
13 his mother, I think said a whole
14 lot to the jury. And I think his
15 behavior with the Simms family
16 and his evasiveness with them and
17 with law enforcement would have
18 resulted in a guilty plea.

19 That said, I think the
20 Court knows the difficulty in
21 murder cases when you have no
22 body, you have no blood, and you
23 have no physical evidence.

24 As I mentioned earlier
25 today, the family has been

1 working very closely with our
2 office and with law enforcement
3 we have met extensively since
4 this morning regarding this plea.
5 They are in full support of the
6 plea.

7 And we also have talked
8 with law enforcement regarding
9 this resolution, with the appeals
10 process, with the risks that we
11 face at trial regarding appeal
12 regarding witnesses and regarding
13 juries.

14 We felt like a
15 thirty-year resolution was a, a
16 positive resolution.

17 Those would have been
18 the facts of the case and that's
19 why we entered into this plea.

20 THE COURT: Thank you very
21 much.

22 Mr. Coulter, do you
23 agree or disagree with the facts?

24 THE DEFENDANT: I
25 understand.

1 THE COURT: Do you agree
2 or disagree with the facts
3 regarding the elements of
4 kidnapping? Do you agree or
5 disagree?

6 THE DEFENDANT: Yes, sir.

7 MS. WILSON: Your Honor,
8 if he could answer if he agrees
9 or disagrees for the record.

10 THE COURT: He did. He
11 said I agree.

12 MS. WILSON: He did?

13 THE COURT: As I recall,
14 at least.

15 Well, my other question
16 was do you agree as to the
17 elements of kidnapping and his
18 answer was yes. Is that --

19 THE DEFENDANT: Yes.

20 THE COURT: -- correct?

21 MS. WILSON: Thank you.
22 I'm sorry, Judge.

23 THE COURT: That's okay.
24 You don't have to apologize.

25 Sir, do you understand

1 that on the charge of kidnapping
2 that there's a maximum penalty of
3 thirty years?

4 THE DEFENDANT: Yes,
5 ma'am.

6 THE COURT: And do you
7 understand that that charge is
8 also classified as violent?

9 THE DEFENDANT: Yes,
10 ma'am.

11 THE COURT: And you do
12 also understand that under South
13 Carolina law it is also
14 classified as most serious?

15 THE DEFENDANT: Yes,
16 ma'am.

17 THE COURT: Do you
18 understand that because of both
19 of these classifications that it
20 has an impact on how your
21 sentence will be served?

22 THE DEFENDANT: Yes,
23 ma'am.

24 THE COURT: Do you also
25 understand that as a result of

1 the sentencing scheme in South
2 Carolina, in other words because
3 this offense is classified as
4 most serious, that if you were to
5 receive another most serious
6 offense that you would be facing
7 life without the possibility of
8 parole. Do you understand?

9 THE DEFENDANT: Yes,
10 ma'am.

11 THE COURT: Sir, I would
12 advise you that you may have
13 discussed parole or parole
14 eligibility with your lawyer or
15 with other people, but until you
16 are sentenced no one can tell you
17 when if ever you will be eligible
18 for parole or under what
19 conditions.

20 You should assume that
21 you will serve the entire time in
22 jail that you are sentenced to
23 today. Do you understand?

24 THE DEFENDANT: Yes,
25 ma'am.

1 THE COURT: And, sir, are
2 you pleading guilty because you
3 are in fact guilty?

4 THE DEFENDANT: Yes,
5 ma'am.

6 THE COURT: Sir, when you
7 plead guilty you give up certain
8 important constitutional rights.
9 Those rights include your right
10 to a jury trial. During a jury
11 trial you're entitled to a
12 presumption that you're innocent.

13 The State has the burden
14 of proving beyond a reasonable
15 doubt that you've committed each
16 and every element of this
17 offense. You would have the
18 right to remain silent and if you
19 exercised that right I would
20 instruct the jury that your
21 silence could not be used against
22 you.

23 You would have the right
24 to present any defenses that you
25 may have. You would have the

1 right to confront and
2 cross-examine the State's
3 witnesses and call witnesses in
4 your own defense and if you've
5 made any confessions or other
6 incriminating statements, you
7 would have the right to challenge
8 those statements.

9 Do you understand each
10 and every one of those rights as
11 I've just explained them to you?

12 THE DEFENDANT: Yes,
13 ma'am.

14 THE COURT: Do you
15 understand that you're giving up
16 each and every one of those
17 rights?

18 THE DEFENDANT: Yes,
19 ma'am.

20 THE COURT: Sir, you are
21 fully acquainted with the trial
22 process at this point. Is that
23 correct?

24 THE DEFENDANT: Yes,
25 ma'am.

1 THE COURT: We have
2 already gone through jury
3 selection as well as opening
4 arguments and we've already begun
5 the calling of witnesses. Is
6 that correct?

7 THE DEFENDANT: Yes,
8 ma'am.

9 THE COURT: Sir, do you
10 understand that if you were to
11 desire to continue this trial
12 that the Court stands ready to
13 accommodate that request?

14 (There is no response.)

15 THE COURT: In other words
16 if you still want a trial, do you
17 understand that the Court stands
18 ready to proceed and continue
19 with the trial?

20 THE DEFENDANT: Yes,
21 ma'am.

22 THE COURT: And knowing
23 that, do you still wish to enter
24 this plea of guilty?

25 THE DEFENDANT: Yes,

1 ma'am.

2 THE COURT: Sir, other
3 than what has been stated for the
4 record as part of the negotiated
5 plea, have there been any other
6 negotiations made on your behalf?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Sir, have you
9 been satisfied with your lawyers'
10 services?

11 THE DEFENDANT: Yes, ma'am
12 have.

13 THE COURT: Have they
14 answered all of your questions?

15 THE DEFENDANT: Yes.

16 THE COURT: Have they done
17 everything you've asked or
18 expected in representing you?

19 A

20 THE DEFENDANT: Yes.

21 THE COURT: Is there
22 anything more you would have them
23 do today that they have not
24 already done on your behalf?

25 THE DEFENDANT: I guess

1 not.

2 THE COURT: Well, it's --

3 THE DEFENDANT: I guess
4 they've done everything.

5 THE COURT: Okay. Have
6 you understood your talks with
7 them?

8 THE DEFENDANT: Yes.

9 THE COURT: And have you
10 spoken with them for as long and
11 as often as you felt is necessary
12 to represent you?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you have
15 any complaints about their
16 services?

17 THE DEFENDANT: No.

18 THE COURT: Sir, has
19 anyone promised you anything or
20 held out any hope of a reward to
21 cause you to plead guilty?

22 THE DEFENDANT: No.

23 THE COURT: Has anyone
24 used threats, coercion, force,
25 pressure, or intimidation to

1 cause you to plead guilty?

2 THE DEFENDANT: No.

3 THE COURT: Are you
4 pleading guilty freely and
5 voluntarily and of your own will?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you believe
8 you've had enough time to make up
9 your mind about pleading guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: Does
12 Mr. Coulter have any record?

13 MS. WILSON: No, ma'am,
14 your Honor.

15 THE COURT: Sir, do you
16 agree that you have no record?

17 THE DEFENDANT: Yes,
18 ma'am.

19 THE COURT: Sir, have you
20 understood my questions?

21 THE DEFENDANT: Yes, I
22 have.

23 THE COURT: Is there
24 anything you need to ask me about
25 what we've been over?

1 THE DEFENDANT: No, ma'am.

2 THE COURT: Has anyone
3 suggested to you how to answer my
4 questions?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Have you been
7 absolutely truthful in each and
8 every answer that you've given to
9 the Court?

10 THE DEFENDANT: Yes,
11 ma'am.

12 THE COURT: Sir, do you
13 understand that you have the
14 right to appeal this guilty plea
15 and sentence of the Court, but
16 that you must do so in writing
17 within ten days of today?

18 THE DEFENDANT: Yes,
19 ma'am.

20 THE COURT: Do you
21 understand that if you cannot
22 afford an attorney for that
23 process, that one will be
24 appointed to you at no cost?

25 THE DEFENDANT: Yes,

1 ma'am.

2 THE COURT: Is there
3 anything further from the State
4 as regards the plea?

5 MS. WILSON: No, ma'am,
6 your Honor. As I mentioned the
7 victim's family is here and I
8 believe --

9 THE COURT: Do they wish
10 to --

11 MS. WILSON: One of them
12 would like to address the Court.

13 THE COURT: Certainly.
14 I'll be glad to hear from them.

15 MS. WILSON: Your Honor,
16 this is Tim Simms, who was the
17 victim's brother. Tim has, as I
18 said, worked closely with our
19 office, and has really been a
20 spokesperson for the family.

21 As I mentioned earlier I
22 went up to Virginia to interview
23 witnesses and things like that,
24 and Tim escorted me around and we
25 got to know each other pretty

1 well then, and I believe he'd
2 like to address the Court.

3 THE COURT: Certainly.
4 Mr. Simms, I would be glad to
5 hear from you. If you would
6 state your name for the record.

7 EDWARD SIMMS: Edward
8 Franklin Simms, Jr., also known
9 as Tim.

10 THE COURT: Yes, sir. You
11 may proceed.

12 EDWARD SIMMS: We, the
13 Simms family, would like to
14 express our deepest and most
15 heart-felt thanks to you, Judge
16 Jefferson, for presiding over
17 this trial; to the State for
18 representing us as well as they
19 did and for bringing us to this
20 point in our case.

21 There are many more
22 thanks to the detectives, the
23 F. B. I., and the other
24 investigators involved in this
25 case and we will do that

1 individually with them.

2 To express in just a few
3 words what we've experienced for
4 the last few years would be very
5 difficult. We've lost a daughter,
6 we've lost a sister, and a very
7 devoted mother, and to all we've
8 lost a friend.

9 Through the difficulty
10 of this, and through the many
11 tears shed, Edwina will live on
12 in our spirits. She will
13 continue to enrich our lives.

14 Mr. Coulter and
15 Mr. Croker may have taken her
16 from us physically, but
17 spiritually she will always be
18 with us.

19 We, the Simms family,
20 are very happy with the outcome
21 of this case so far. We would
22 love more than anything to know
23 where Edwina is and we would love
24 more than anything to return to
25 Charlottesville with her.

1 However, we are satisfied that
2 justice does exist and has
3 existed in this particular case
4 on our side.

5 Thanks to all of you for
6 your sweat, your tears, your
7 dedication to my sister Edwina
8 Roselle Simms. She is watching
9 over us and she is very proud of
10 us. Thank you.

11 THE COURT: Thank you very
12 much, Mr. Simms.

13 Is there anything
14 further from the State?

15 MS. WILSON: No, ma'am.

16 MR. DAVIS: May it please
17 the Court, your Honor.

18 THE COURT: Yes, sir.

19 MR. DAVIS: Your Honor, my
20 client, Mr. Coulter, comes from a
21 very upstanding, caring family
22 here in Charleston. Currently in
23 the courtroom is his father.
24 Earlier today his mother and his
25 sister were also in the

1 courtroom.

2 They, they because of
3 the emotional nature of this case
4 they're not with us right now.

5 His father's retired
6 military. His mother works in
7 the church across the street,
8 known in the community to all the
9 people, all the children. She
10 takes care of many of them.

11 This entire situation is
12 just beyond comprehension almost.
13 My client is pleading to the
14 kidnapping charge. We'd ask the
15 Court to accept the negotiated
16 sentence. He understands the
17 repercussions of this plea. He's
18 entering it freely and
19 voluntarily.

20 And on behalf of Miss
21 Shealy we agree in his decision
22 and we respectfully ask the Court
23 to accept the negotiated plea.
24 And I would, however, ask that on
25 the record the other two charges,

1 my understanding on the other two
2 indictments are not pressed with
3 prejudice. The State does not
4 intend to go forward with them.

5 THE COURT: It is my
6 understanding that that was
7 stated as a part of the
8 negotiated plea.

9 MS. WILSON: That's
10 correct, your Honor.

11 THE COURT: Okay. Mr.
12 Coulter, is there anything you'd
13 like to state for the record?

14 THE DEFENDANT: I'd like
15 to say first of all to the Simms
16 family from the bottom of my
17 heart I really apologize for, for
18 anything that's, that's taken
19 place up to this point.

20 There are so many
21 circumstances around this case
22 that were beyond my control and
23 it's irrelevant but I just want
24 to let them know that from the
25 bottom of my heart I'm really

1 sorry and I apologize. Things
2 are not what they seem, and I do,
3 I do care about them and wish
4 them well.

5 THE COURT: Anything
6 further, Miss Shealy?

7 MS. SHEALY: Nothing
8 further, thank you.

9 THE COURT: Mr. Davis?

10 MR. DAVIS: No, ma'am.

11 THE COURT: I find there's
12 a substantial factual basis for
13 this plea. That the defendant's
14 decision to enter this plea is
15 made freely, voluntarily,
16 knowingly, and intelligently;
17 that he has had the advice and
18 assistance of counsel with whom
19 he has indicated to the Court he
20 is satisfied, and the Court will
21 accept the plea.

22 I would say for the
23 record, based on my involvement
24 with the case as well as being
25 peripherally I guess involved in,

1 you know, as a judge is whenever
2 there are negotiations taking
3 place, the judge really isn't
4 involved but sort of on the
5 periphery of those events as they
6 evolve. I will say based for the
7 record based on what had been
8 presented to me by the State as
9 well as the defense and the Simms
10 family most of all, that the
11 Court finds this an appropriate
12 resolution of the matter.

13 There are many different
14 factors that weigh in in such
15 matters. Many -- there -- I
16 guess basically what I'm trying
17 to say is that sometimes closure
18 is the best resolution and for
19 the Simms family I think that
20 this is an appropriate
21 resolution.

22 Mr. Tim Simms, you are
23 an articulate advocate for your
24 family. The Court appreciates
25 your candor and your heartfelt

1 words the regarding the loss of
2 your sister and your loved one.

3 The Court finds it
4 appropriate, Mr. Coulter, that
5 you be committed to the State
6 Department of Corrections for a
7 period of thirty years. I would
8 imagine that he would be entitled
9 to any credits applicable
10 pursuant to 24-13-40.

11 And, Mr. Coulter,
12 without making any comments
13 regarding the facts of this case
14 because I do not think it would
15 be appropriate, however I think I
16 would be remiss as an officer of
17 this Court as well as an officer
18 of this community, if you have
19 any idea as to where Miss Simms's
20 body is located and if you have
21 any regard for the Simms' family
22 as you've indicated, and I take
23 you at your word when you say to
24 me that you care for them and
25 that you love them, that if you

1 have any indication as to where
2 that body is located, that you
3 advise them of that.

4 You certainly are not in
5 any jeopardy by doing that. The
6 charges have been dismissed with
7 prejudice. And if you have a
8 modicum of feelings for them I
9 would think that you would want
10 to give them peace in knowing
11 that.

12 We'll stand in recess.

13 (Whereupon, the matter
14 was completed.)

15

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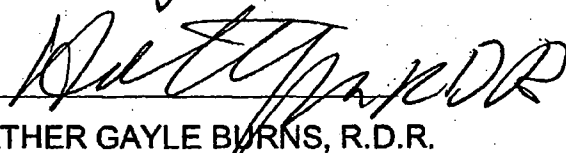
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CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter
for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify
that the forgoing is a true, accurate, and complete transcript of the proceedings
in the captioned case, relative to appeal, heard in the Court of General Sessions
for Charleston County, South Carolina on the 25th day of February, 2004.

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

Dated: May 15, 2005
HEATHER GAYLE BURNS, R.D.R.

Official Court Reporter

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court Of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2004-CP-10-2999

Ronald Coulter, #300410,

Appellant,

v.

State of South Carolina,

Respondent.

NOTICE OF APPEAL

Ronald Coulter appeals the following orders of the Honorable William P. Keesley: 1) Order dated and filed June 2, 2006, denying Mr. Coulter's application for post-conviction relief, and 2) Order of Dismissal filed November 6, 2006 and received by our office on November 8, 2006. Copies of the orders are attached hereto.

November 8, 2006



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Charleston, SC 29401
(843) 724-6640
Attorney for Ronald Coulter

Other Counsel of Record:

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P.O. Box 11549
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(803) 734-3737
Attorney for Respondent

COPY

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY

WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

RECEIVED

JUN - 8 2007

S.C. SUPREME COURT

RONALD COULTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

JOHNSON PETITION FOR WRIT OF CERTIORARIWANDA H. CARTER
Deputy Chief AttorneySouth Carolina Commission on Indigent Defense
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ATTORNEY FOR PETITIONER.

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ISSUE PRESENTED

Trial counsel erred in failing to explain to petitioner that a guilty plea would waive his right to confront his accusers and his privilege against self-incrimination.

STATEMENT

Petitioner Ronald Coulter pled guilty to kidnapping during the February 2004 term of the Charleston County General Sessions Court before the Honorable Deadra L. Jefferson, Judge, and was sentenced to imprisonment for a period of thirty years. App. pp. 114 – 731. Petitioner did not appeal his guilty plea or sentence.

On July 16, 2004, petitioner filed a PCR application with the Charleston County Office of the Clerk of Court. App. pp. 732 – 745. The respondent filed a return dated June 23, 2005. App. pp. 746 – 762.

A hearing was convened on June 2, 2006, at the Charleston County Courthouse before the Honorable William P. Keesley, Judge. App. pp. 775 – 888. On November 1, 2006, Judge Keesley issued an order of dismissal in the case. App. pp. 763 – 772. Petitioner appealed. This petition follows.

ARGUMENT

Trial counsel erred in failing to explain to petitioner that a guilty plea would waive his rights to confront his accusers and his privilege against self-incrimination.

During the PCR hearing, petitioner testified that he did not understand the “the full extent” regarding how a plea waives the privilege against self incrimination and the right to confront his accusers. App. p. 830, line1 – p. 831, line 17. Petitioner stated that counsel “didn’t explain [this] to me prior to” the plea.

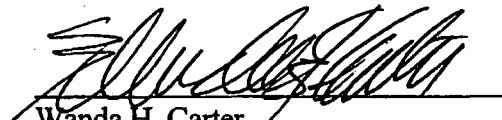
A guilty plea is valid only if given voluntarily and intelligently. Boykin v. Alabama, 395 U.S. 238, 90 S.Ct. 1709, 23 L.Ed.2d 274 (1969). A defendant must understand that several constitutional rights and privileges are waived (privilege against self-incrimination, and rights to a jury trial and to confront one’s accusers) when pleading guilty. See, Boykin v. Alabama, *supra*. Hence, petitioner's plea was not given voluntarily and intelligently in violation of the fifth, sixth, and fourteenth amendments to the United States Constitution and article I, §12 and §14 of the South Carolina State Constitution.

Trial counsel erred in failing to explain to petitioner that a plea would waive his rights to confront his accusers and his privilege against self-incrimination in violation of Hill v. Lockhart, 484 U.S. 52 (1985), and the sixth and fourteenth amendments to the United States Constitution and article 1 §14 of the South Carolina State Constitution.

CONCLUSION

By reason of the foregoing argument, petitioner's writ of certiorari should be granted in order to allow full briefing on the issue.

Respectfully submitted,


Wanda H. Carter
Deputy Chief Attorney

ATTORNEY FOR PETITIONER

This 8th day of June, 2007.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

RONALD COULTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

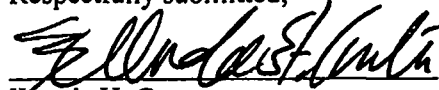
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Ronald Coulter states:

1. She is Deputy Chief Attorney for the South Carolina Office of Appellate Defense and was appointed to represent petitioner.
2. She has reviewed the records and transcript of petitioner's post-conviction relief hearing which was held on June 2, 2006. In her opinion seeking certiorari from the order of dismissal is without merit.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed the one arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Ronald Coulter.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Attorney

ATTORNEY FOR PETITIONER

This 8th day of June, 2007

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO CHARLESTON COUNTY
WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

RONALD COULTER,

PETITIONER,

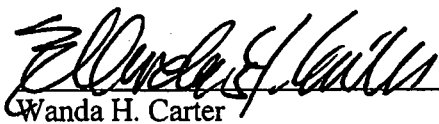
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

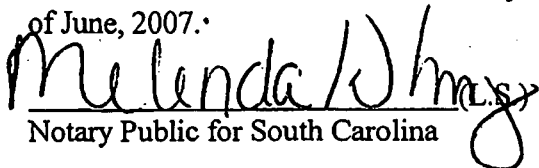
I certify that a true copy of the Johnson petition for writ of certiorari and a copy of the appendix in this case have been served on Colleen Dixon, Esquire, and Ronald Coulter, #300410, Broad River Correctional Institution, this 8th day of June, 2007.


Wanda H. Carter

Deputy Chief Attorney

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 8th day
of June, 2007.


Melinda Whaley
Notary Public for South Carolina

My Commission Expires: November 16, 2008.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

Case Number: 2004-CP-10-2999

Ronald Coulter, #300410,

Petitioner,

V.

State of South Carolina,

Respondent

PRO SE RESPONSE TO JOHNSON PETITION
FOR WRIT OF CERTIORARI

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

RECEIVED

JUL 16 2007

S.C. SUPREME COURT

PRO SE PETITIONER

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QUESTIONS PRESENTED

1. Did the PCR judge err in failing to find Petitioner's trial counsel was ineffective for being unwilling to continue with trial and advising the Petitioner to accept a plea agreement, after the Petitioner's co-defendant agreed to testify against the Petitioner?
2. Was Petitioner's trial counsel ineffective for failing to explain the laws of confrontation and Fifth Amendment privilege against self-incrimination to the Petitioner while advising the Petitioner to accept a plea agreement?

STATEMENT OF THE CASE

On February 23, 2004, jury trial proceedings began for petitioner, Ronald Coulter, on the charges of kidnapping (2002-GS-10-2443), conspiracy (2002-GS-10-2444), and murder (2003-GS-10-4454). The petitioner was tried jointly, with codefendant Ivory Croker (2002-GS-10-2440; 2002-GS-10-2441; and 2003-GS-10-4686), before the Honorable Judge Deadra Jefferson in the Charleston County Court of General Sessions. App. pp. 414-674.

On February 25, 2004, the petitioner pled guilty to kidnapping, as part of a negotiated plea agreement with the State. The petitioner was sentenced to thirty (30) years of confinement. The charges of conspiracy and murder were dismissed with prejudice. App. pp. 674-713.

A timely appeal was not perfected.

On July 16, 2004, the petitioner filed a PCR application with the Charleston County Clerk of Court. App. pp. 732-745.

On June 23, 2005, the Respondent filed a return requesting an evidentiary hearing. App. pp. 746-~~751~~.

On May 26, 2006, the petitioner filed an Amended Brief to his PCR application. App. pp. 752-762.

On June 2, 2006, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable William P. Keesley, Judge. App. pp. 775-888.

On June 2, 2006, Judge Keesley issued a Form Order denying the petitioner's application for PCR. (See Attachment)

On November 1, 2006, Judge Keesley issued an Order of Dismissal in the case. App. pp. 763-772. Petitioner appealed.

On June 8, 2007, the attorney for the petitioner filed a Johnson Petition.

This petition follows:

ARGUMENTS

1. DID THE PCR JUDGE ERR IN FAILING TO FIND PETITIONER'S TRIAL COUNSEL WAS INEFFECTIVE FOR BEING UNWILLING TO CONTINUE WITH TRIAL AND ADVISING THE PETITIONER TO ACCEPT A PLEA AGREEMENT, AFTER THE PETITIONER'S CO-DEFENDANT AGREED TO TESTIFY AGAINST THE PETITIONER?

Discussion

During the PCR hearing, the Petitioner testified that his trial counsel advised him to accept a plea agreement, in part, because counsel was unwilling to continue trial proceedings in light of the codefendant's confession and plea agreement. App. p. 793, ln. 8 - 17. Petitioner also testified that trial counsel further advised him that if the trial judge does not grant the motion for mistrial, the only available option is to accept the plea agreement. App. p. 813, ln. 12 - 19.

Trial counsel testified during the PCR hearing that after the codefendant entered a plea, he (counsel) filed a motion for continuance, listing all reasons necessary, not to stop the trial, but to allow for adequate time to prepare, in light of the codefendant's unexpected plea agreement. App. p. 839, ln. 7 - 22. Trial counsel repeatedly testified during PCR hearing that he was requesting more time, not a request to stop the trial. App. p. 846, ln. 8 - 12, ln. 20 - 22; App. p. 849, ln. 3 - 6.

The trial record reflects evidence contrary to counsel's PCR testimony. After the court accepted the codefendant's plea (App. p. 633), there is no record of a motion for continuance, as trial counsel testified to. The record shows that counsel, in fact, entered a motion to stop the trial, contrary to counsel's PCR testimony. App. p. 642. In fact, counsel stated to the court that a mistrial is the only remedy, and must be granted. App. p. 643, ln. 6-15.

Counsel put forth the following reasons to support his mistrial request:

1. The selected jury has been compromised. App. p.643, ln. 16 - p. 644, ln. 10.
2. The courtroom layout has changed. App. p. 644, ln. 11 - p. 646, ln. 12.
3. Counsel's credibility has been tainted. App. p. 647, ln. 1-13.
4. Counsel lacks knowledge of codefendant's plea agreement. App. p. 649, ln. 6 - p. 650, ln. 16.
5. Counsel's inability to prepare and present an effective defense. App. p. 656, ln. 10-17.

However, the trial judge dismissed the merits of counsel's argument for a mistrial. App. p. 645, ln. 9-15; App. p. 649, ln. 12-19; App.p. 657, ln. 3 - p. 659, ln. 20; App. p. 666, ln. 9-13.

In response, counsel admitted to the trial judge that he was overwhelmed and unprepared at that point, and continued to express an unwillingness to continue with trial. App. p. 666, ln. 19-23; App. p. 667, ln. 15-21; App. p. 669, ln. 15 - p. 670, ln. 2.

Furthermore, trial counsel confirmed at the PCR hearing that he admitted to the trial court that he was unprepared to proceed; however, he was requesting more time. App. p. 849, ln. 3-6.

The trial record reveals that counsel's PCR testimony regarding his request for more time (continuance) was specious. At no point during the trial did counsel request additional time to prepare for any trial-related matters.

Trial counsel then testified during the PCR hearing that after he filed a motion for continuance, he talked with the Petitioner about the change in circumstances in the trial and also talked to the Deputy Solicitor about options to resolve the case short of continuing forward with all charges. App.p.840,ln.4-12.

"Thus, the adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of advocate'. Anders v. California, 87 S.Ct. 1396, 1399 (1967). The right to effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing... But if the process loses it's character as a confrontation between adversaries, the constitutional guarantee is violated." U.S. v. Cronin, 446 U.S. 648, 656, 104 S.Ct. 2039, 2045, 80 L.Ed.2d 657 (1984).

"When a criminal proceeding 'loses it's character as a confrontation between adversaries', the harm done a defendant is as certain as it is difficult to define." Lockhart v. Fretwell, 506 U.S. 364, 380, 113 S.Ct. 838, 848, 122 L.Ed.2d 180 (Justice Stevens) (in dissent) (1993).

Trial counsel's initiation of plea negotiations signified a breakdown in the adversarial process.

Trial counsel ultimately testified that although the State's case was circumstantial, and that the credibility of the witnesses was the issue, he advised the Petitioner to plead guilty to kidnapping because it was his opinion that the Petitioner would have been found guilty of all charges, if the trial had continued, now that the codefendant was going to testify. App. p. 856, ln. 12 - p. 857, ln. 18.

Counsel's contention that the Petitioner would have been found guilty reflects counsel's failure to protect the Petitioner's right to a fair trial; by not allowing the jury to assess the credibility of the codefendant's testimony.

"From counsel's function as assistant to the defendant derive the over-

arching duty to advocate the defendant's cause... Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." See Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052, 2065, 80 L.Ed.2d 674 (1984).

"Absent competent counsel, ready and able to subject the prosecution's case to the crucible of meaningful adversarial testing, there can be no guarantee that the adversarial system will function properly to produce just and reliable results." U.S. v. Cronin, supra, 466 U.S. @ 656, 104 S.Ct. @ 2045.

The Petitioner testified during the PCR hearing that he believed that the State's case against him was weak. App. p. 818, ln. 4-6. The trial record reflects that the State's evidence in the Petitioner's case was purely circumstantial and testimonial. App. p. 434-453; App. p. 458, ln. 4-19.

"A fact which can be primarily established only by witnesses cannot be proved against an accused... except by witnesses who confront him at the trial, upon whom he can look while being tried, whom he is he is entitled to cross-examine, and whose testimony he may impeach in every mode authorized by the established rules governing the trial or conduct of criminal cases." Coy v. Iowa, 487 U.S. 1012, 1017, 108 S.Ct. 2798, 2801, 101 L.Ed.2d 857 (1988).

Trial counsel's conduct, in not protecting the Petitioner's rights to confrontation and cross-examination, undermined the proper functioning of the adversarial process; thereby depriving the Petitioner of a fundamental right to a fair trial. The codefendant's testimony was critical and there was a real possibility that pursuit of a line of impeachment evidence could have done serious damage to the strength of the State's case. The trial record

shows that the codefendant provided prior inconsistent statements as it relates to his plea hearing testimony. App. pp. 155-56; App. p. 633, ln. 22 - p. 638, ln. 6. The record shows that the codefendant admitted to drug abuse treatment. App. p. 613, ln. 19 - p. 614, ln. 11. The record shows that the codefendant pleaded guilty to a crime of dishonesty. App. p. 615, ln. 12-19. The record shows that the codefendant was required to testify against the Petitioner in order to have several charges dropped against him, as part of a negotiated plea agreement. App. p. 616, ln. 5 - p. 617, ln. 25.

Indeed, the main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination. See Delaware v. Van Arsdall, 106 S.Ct. 1431, 1435 (1986). (Quotes omitted).

The centrality of cross-examination to the fact-finding process makes it particularly difficult for trial counsel to conclude beyond a reasonable doubt that no impeachable evidence or that no evidence exculpatory to the Petitioner could have emerged from a genuinely adversarial testing of the codefendant. A reasonable jury might have received a significantly different impression of the codefendant's credibility had trial counsel been willing and prepared to pursue a line of cross-examination, such as permitted by S.C. Rules of evidence.

"Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive, for it affects his ability to assert any other rights he may have." Kimmelman v. Morrison, 477 U.S. 365, 377, 106 S.Ct. 2574, 2584, 91 L.Ed.2d 305 (1986). See U.S. v. Cronin, supra, 466 U.S. @ 654, 104 S.Ct. @ 2044.

On direct examination at the PCR hearing, trial counsel was asked, did he talk to the Petitioner about how to proceed with trial in light of the codefendant's plea agreement? Trial counsel responded by testifying that the multiple issues listed in his motion for continuance goes to the fact that he was ready and prepared to proceed, although he preferred more time to prepare. In addition, counsel testified that the sole purpose of requesting information about the codefendant's plea agreement, in his motion for continuance, was for cross-examination purposes. App. p. 847, ln. 7 - p. 849, ln. 2.

Again, trial counsel offered false testimony regarding a motion for continuance, that did not exist, in an attempt to defend the allegation of unwillingness to continue trial proceedings. Furthermore, the trial record shows that counsel raised the issue of the codefendant's plea agreement in an attempt to establish prejudice as grounds for a mistrial. App. p. 649, ln. 12 - p. 659, ln. 20.

The PCR judge found that trial counsel's testimony, that he was willing to continue trial proceedings, was credible. App. p. 769, ln. 23 - p. 770, ln. 7. No evidence exists to support the PCR judge's finding that trial counsel was willing to continue with trial proceedings, in light of the codefendant's plea agreement.

A PCR judge's findings should not be upheld if there is no probative evidence to support them. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

"The benchmark for judging any claim of ineffectiveness must be whether

counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984).

"Indeed, the existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous advocacy of the defendant's cause. Moreover, the purpose of the effective assistance guarantee of the Sixth Amendment is ... simply to ensure that criminal defendants receive a fair trial." Strickland v. Washington, *supra*, 466 U.S. @ 689, 104 S.Ct. @ 2065. Thus, a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. *Id.* Strickland, at 2063.

"... The defendant must overcome the presumption that, under the circumstances, the challenged actions might be considered sound trial strategy." *Id.* Strickland, at 2065.

"A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Id.* Strickland, at 2066.

The Petitioner presented probative evidence from the trial record to support his allegations and to show that counsel's unwillingness to continue trial appeared to stem from a lack of preparation rather than trial strategy, and the outcome of the trial was dependent upon the credibility of State witnesses yet to testify. App. p. 794, ln. 12 - p. 796, ln. 7; App. p. 813, ln. 20 - p. 814, ln. 14. The Petitioner identified specific omissions of counsel that deprived the Petitioner of a specific constitutional right designed to guarantee a fair trial. App. p. 797, ln. 21 - p. 798, ln. 12; App. p. 800, ln. 10-18. In addition, the Petitioner provided testimony to demonstrate how counsel's deficient performance prejudiced the outcome of the proceeding. App. p. 802, ln. 24 - p. 803, ln. 10; App. p. 817, ln. 1-16; App. p. 818, ln. 4-12.

The evidence presented at the PCR hearing revealed that trial counsel did not "make the adversarial testing process work" in the Petitioner's case. Therefore, the PCR judge erred in failing to find that the Petitioner's trial counsel was ineffective.

2. WAS PETITIONER'S TRIAL COUNSEL INEFFECTIVE FOR FAILING TO EXPLAIN THE LAWS OF CONFRONTATION AND FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION TO THE PETITIONER WHILE ADVISING THE PETITIONER TO ACCEPT A PLEA AGREEMENT?

Discussion

During the PCR hearing, the Petitioner testified that trial counsel failed to inform him of the laws and rules that govern the right of confrontation and cross-examination. App. p. 804, ln. 21 - p. 810, ln. 2.

Trial counsel testified during the PCR hearing to the following:

1. He did not need to discuss specific rules of evidence with the Petitioner. App. p. 847, ln. 25 - p. 848, ln. 2.
2. He did not explain to the Petitioner that the codefendant's plea hearing was considered out-of-court testimony and therefore hearsay by court rules. App. p. 849, ln. 13 - 18.
3. He did not explain to the Petitioner that the codefendant's confession, during his plea hearing, was inadmissible at trial against the Petitioner. App. p. 849, ln. 19 - 23.
4. He was uncertain as to whether the codefendant was required to testify as part of his negotiated plea agreement. App. p. 849, ln. 24 - p. 850, ln. 10. However, the trial record reflects evidence to the contrary on this point. App. p. 649, ln. 12 - 19.
5. He was aware of prior inconsistent statements of the codefendant. App. p. 850, ln. 11 - 16.
6. He did not explain to the Petitioner that the codefendant's motivation in testifying could be exposed during cross-examination. App. p. 850, ln. 17 - p. 851, ln. 6.
7. The credibility of the witnessess was the issue in this case. App. p. 851, ln. 11-16.

8. He engaged in a routine discussion of the rights of confrontation and cross-examination with the Petitioner in a fashion similar to what a Court does during a plea. App. p. 851, ln. 17 - p. 852, ln. 4.

Trial counsel also testified that the sole purpose of requesting information about the codefendant's plea agreement, in his motion for continuance, was for cross-examination purposes. App. p. 848, ln. 12 - p. 849, ln. 2. As stated previously, trial counsel's testimony was specious. Trial counsel never filed a motion for continuance. The trial record shows that counsel raised the issue of the codefendant's plea agreement in an attempt to establish prejudice as grounds for a mistrial. App. p. 649, ln. 12 - p. 659, ln. 20.

Trial counsel's PCR testimony confirms that he failed to inform the Petitioner of the consequences of exercising the right to confront and cross-examine witnesses under the relevant circumstances of the Petitioner's trial proceedings.

Failure to inform a client of his Sixth Amendment right to confrontation and the consequences of exercise and waiver of those rights falls below an objective standard of reasonable representation. See Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000).

The Petitioner also testified at the PCR hearing that trial counsel failed to explain the law regarding the Fifth Amendment privilege against self-incrimination. App.p. 810, ln. 3 - 6. Petitioner further testified that he did not understand that the right to remain silent was the same as the Fifth Amendment privilege against self-incrimination. App. p. 830, ln. 13-24.

"... That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he is shielded by the Fifth Amendment from being compelled to do so - hence the minimum requirement that his plea be the voluntary expression of his own choice." Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 1468 (1970).

Trial counsel testified during the PCR hearing that he explained to the Petitioner that his constitutional privilege against self-incrimination, with regards to a plea, means that the judge is going to ask questions and the Petitioner has to answer them. App. p. 858, ln. 8 - p. 859, ln. 10. Trial counsel also confirmed that he did not explain to the Petitioner that the right to remain silent was the same as the right against self-incrimination. App. p. 858, ln. 25 - p. 859, ln. 6.

Failure to inform a client of his Fifth Amendment rights and the consequences of exercise and waiver of those rights falls below an objective standard of reasonable representation. Brown v. State, supra, 533 S.E.2d @ 310.

The PCR judge found that the rules of confrontation and cross-examination were discussed, as well as the principles of impeachment. App. p. 765, ln. 14 - 16. No evidence exists to support the PCR judge's findings that those rules and principles were discussed.

The PCR judge also found that trial counsel's PCR testimony, that he

advised the Petitioner to plead guilty to kidnapping and fully explained the consequences and sentence possibilities, was credible. App. p. 768, ln. 23 - p. 769, ln. 2. No evidence exists to support the PCR judge's finding that trial counsel explained the consequences of a guilty plea.

A PCR judge's findings should not be upheld if there is no probative evidence to support them. Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

The Petitioner provided additional testimony at the PCR hearing to demonstrate how counsel's ineffective performance affected the outcome of the proceedings. App. p. 811, ln. 25 - p. 813, ln. 8.

"Thus, the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor." U.S. v. Cronin, 466 U.S. 648, 654, 104 S.Ct. 2039, 2044, 80 L.Ed.2d 657 (1984) (quotes omitted).

The Petitioner's trial counsel failed to provide "reasonably competent advice" to the Petitioner at a critical stage of the proceedings, thereby depriving the Petitioner of the right to effective assistance of counsel.

CONCLUSION

Based on the foregoing arguments, the petitioner's Writ of Certiorari should be granted in order to allow counsel for the petitioner to fully brief the merits of each question presented.

Respectfully submitted,

Ronald Coulter

Ronald Coulter, #300410

Pro Se Petitioner

This 12th day of July, 2007.

The South Carolina Court of Appeals

Ronald Coulter,

Petitioner

v.

State of South Carolina,

Respondent

ORDER

This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner filed a pro se response.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

Thomas E. Huff, J. Huff

John Kittredge, J. Kittredge

H. Bruce Sloan, J. Williams

Columbia, South Carolina

May 19, 2008

FILED

May 19, 2008



closed
06-1025
0668-08

The South Carolina Court of Appeals

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June 4, 2008

REMITTITUR

The Honorable Julie J. Armstrong
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Re: Coulter, Ronald v. The State
2004-CP-10-02999

Dear Ms. Armstrong:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

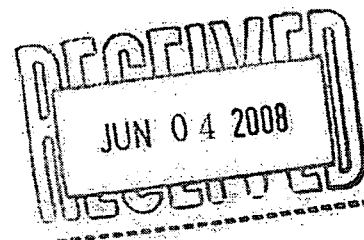
Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/lm

cc: Deputy Chief Attorney Wanda H. Carter
Ronald Coulter #300410
Assistant Attorney General Jeanette Van Ginhoven



UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ronald Coulter,
a/k/a Ronald James Coulter,

Petitioner,

vs.

Robert M. Stevenson, III., Warden BRCI,

Respondent.

) C/A No. 9:08-2762-PMD-GCK

) ATTORNEY GENERAL'S OFFICE

) RECEIVED 8-22-08

) ADMINISTRATIVE INSTRUCTIONS

) FILE NEW CASES END

) ORDER COPIES MADE

) ROUTE TO

) ORDER TRANSCRIPT

) OPEN RECORDS CLERK RECORDS

) OTHER

This is an action seeking habeas corpus relief under 28 U.S.C. § 2254. The Petitioner is a prisoner. Therefore, in the event that a limitations issue arises, the Petitioner shall have the benefit of the holding in *Houston v. Lack*, 487 U.S. 266 (1988) (prisoner's pleading was filed at the moment of delivery to prison authorities for forwarding to District Court). Under Local Rule 73.02(B)(2), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

The Petitioner has paid the full filing fee (Receipt No. SCX300025132).

TO THE CLERK OF COURT:

The Clerk of Court shall serve the 28 U.S.C. § 2254 petition and this Order upon the Respondent. Rule 4 of the Rules Governing Section 2254 Cases also requires service on "the attorney general or other appropriate officer of the state." The Attorney General of the State of South Carolina and the General Counsel of the South Carolina Department of Corrections shall each receive a copy of this Order and a copy of the 28 U.S.C. § 2254 petition through the Electronic Case Filing System.

The Office of the Clerk of Court shall not enter any change of address submitted by the Petitioner which directs that mail be sent to a person other than the Petitioner unless that person is an attorney admitted to practice before this Court who has entered a formal appearance.

TO THE RESPONDENT:

The Respondent shall file an answer or other response to the petition as soon as reasonably possible but no later than fifty (50) days from the date of service. *See, e.g., Kramer v. Jenkins*, 108 F.R.D. 429, 430-33 (N.D. Ill. 1985) (court has discretionary authority to fix time for response to habeas corpus). The Respondent shall file all dispositive motions no later than forty-five (45) days after the answer is filed. With respect to dispositive motions by the Respondent, this Order shall serve as a scheduling order. *See Forstmann v. Culp*, 114 F.R.D. 83 (M.D.N.C. 1987).

TO THE PETITIONER:

Pursuant to Rule 5 of the Federal Rules of Civil Procedure, any documents filed subsequent to the initial pleading must be served on parties. Unless otherwise ordered, service of subsequently filed documents on a Respondent represented by an attorney is made on the attorney. Service on attorneys who have made an appearance in this Court is effected by the Court's Electronic Case Filing system through a computer generated notice of electronic filing. However, prior to the Respondent's attorney making an appearance in this Court, the Petitioner must serve the Respondent with any documents the Petitioner files subsequent to the initial pleading and file a certificate of service that states who was served, what document was served, and how the document was served.

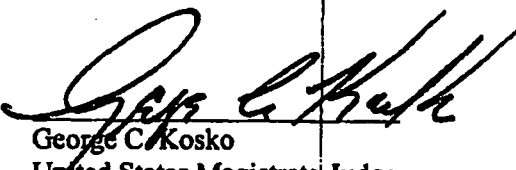
The Petitioner must place the Civil Action Number (C/A No. 9:08-2762-PMD-GCK) listed above on any document filed in this case. Any future filings in this case must be sent to the address below. All documents requiring the Petitioner's signature shall be signed with the Petitioner's full legal name written in the Petitioner's own handwriting. *Pro se* litigants shall *not* use the "s/typed name" format used in the Electronic Case Filing System. In all future filings with this Court, the Petitioner is directed to use letter-sized (8½ inches x 11 inches) paper only, to write or type text on one side of a sheet of paper only and not to write or type on both sides of any sheet of paper. The Petitioner is further instructed not to write to the edge of the paper, but to maintain one inch margins on the top, bottom and sides of each paper submitted.

The Petitioner is a *pro se* litigant. The Petitioner's attention is directed to the following important notice:

You are ordered to always keep the Clerk of Court advised in writing (Post Office Box 835, Charleston, South Carolina 29402) if your address changes for any reason, so as to assure that orders or other matters that specify deadlines for you to meet will be received by you. If as a result of your failure to comply with this Order, you fail to meet a deadline set by this Court, your case may be dismissed for violating this Order. Therefore, if you have a change of address before this case is ended, you must comply with this Order by immediately advising the Clerk of Court in writing of such change of address and providing the Court with the docket number of all pending cases you have filed with this Court. Your failure to do so will not be excused by the Court. Put this Order with your own record of this case so that you will not overlook your duty. If your address changes in the future, you must provide the Court with your *own* new address.

IT IS SO ORDERED.

August 22, 2008
Charleston, South Carolina


George C. Kosko
United States Magistrate Judge

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Page 2

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District SOUTH CAROLINA
Name (under which you were convicted): RONALD COULTER		Docket or Case No.: 9:08-cv-2762-PMD-GCK
Place of Confinement: BROAD RIVER CORRECTIONAL INSTITUTION		Prisoner No.: 300410
Petitioner (include the name under which you were convicted) RONALD COULTER		Respondent (authorized person having custody of petitioner) v. ROBERT M. STEVENSON, III WARDEN, BRCI
The Attorney General of the State of		SOUTH CAROLINA

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:
CHARLESTON COUNTY GENERAL SESSIONS COURT, CHARLESTON, SC 29401
- (b) Criminal docket or case number (if you know): 2002-GS-10-2443
2. (a) Date of the judgment of conviction (if you know): FEBRUARY 25, 2004
- (b) Date of sentencing: FEBRUARY 25, 2004
3. Length of sentence: THIRTY (30) YEARS
4. In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
5. Identify all crimes of which you were convicted and sentenced in this case: KIDNAPPING
6. (a) What was your plea? (Check one)
- (1) Not guilty ☐ (3) Nolo contendere (no contest) ☐
- (2) Guilty ☒ (4) Insanity plea ☐
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

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(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☒ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? Yes ☐ No ☐

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

(4) Date of result (if you know): _____

(5) Citation to the case (if you know): _____

(6) Grounds raised: _____

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: CHARLESTON COUNTY COURT OF COMMON PLEAS

(2) Docket or case number (if you know): 2004-CP-10-2999

(3) Date of filing (if you know): JULY 16, 2004

(4) Nature of the proceeding: POST-CONVICTION RELIEF

(5) Grounds raised: 1) PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL ADVISED PETITIONER TO ACCEPT PLEA, BECAUSE COUNSEL WAS UNWILLING TO CONTINUE TRIAL IN LIGHT CODEFENDANT'S PLEA AGREEMENT: 2) PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL FAILED TO INFORM PETITIONER OF THE LAWS IN RELATION TO THE FACTS, WHILE MAKING A RECOMMENDATION TO ACCEPT PLEA AGREEMENT: 3) PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL ADVISED THAT PLEA WAS ONLY OPTION; IF MISTRIAL WAS DENIED.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☒ No ☐

(7) Result: APPLICATION FOR POST-CONVICTION RELIEF DENIED.

(8) Date of result (if you know): NOVEMBER 1, 2006

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: N/A

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☐ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:
N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: SEE ATTACHED MEMORANDUM FOR GROUND ONE.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE ATTACHED MEMORANDUM FOR SUPPORTING FACTS.

- (b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: TIMELY APPEAL
NOT PERFECTED.

(d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POST-CONVICTION RELIEF MOTION

Name and location of the court where the motion or petition was filed: CHARLESTON COUNTY
COURT OF COMMON PLEAS, CHARLESTON, SC 29401

Page 7

Docket or case number (if you know): 2004-CP-10-2999Date of the court's decision: NOVEMBER 1, 2006Result (attach a copy of the court's opinion or order, if available): POST-CONVICTION RELIEF
MOTION DENIED.

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SOUTH CAROLINA SUPREME COURT,
COLUMBIA, SC 29211Docket or case number (if you know): 2004-CP-10-2999Date of the court's decision: MAY 19, 2008Result (attach a copy of the court's opinion or order, if available): CASE TRANSFERRED TO
SC COURT OF APPEALS, PURSUANT TO RULE 227(1), APPELLATE COURT RULES:
PETITION FOR WRIT OF CERTIORARI DENIED.(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: NONEGROUND TWO: SEE ATTACHED MEMORANDUM FOR GROUND TWO.(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
SEE ATTACHED MEMORANDUM FOR SUPPORTING FACTS.

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: TIMELY APPEAL
NOT PERFECTED.

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: POST-CONVICTION RELIEF MOTION

Name and location of the court where the motion or petition was filed: CHARLESTON COUNTY
COURT OF COMMON PLEAS, CHARLESTON, SC 29401

Docket or case number (if you know): 2004-CP-10-2999

Date of the court's decision: NOVEMBER 1, 2006

Result (attach a copy of the court's opinion or order, if available): POST-CONVICTION RELIEF
MOTION DENIED.

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: SOUTH CAROLINA SUPREME COURT,
COLUMBIA, SC 29211

Page 9

Docket or case number (if you know): 2004-CP-10-2999Date of the court's decision: MAY 19, 2008

Result (attach a copy of the court's opinion or order, if available): CASE TRANSFERED TO
SC COURT OF APPEALS, PURSUANT TO RULE 227(1), APPELLATE COURT RULES:
PETITION FOR WRIT OF CERTIORARI DENIED.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: NONE

GROUND THREE: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. N/A

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: LIONEL LOFTON; LOFTON & LOFTON, PC; 174 EAST BAY STREET; SUITE 302; CHARLESTON, SC 29401

(b) At arraignment and plea: RODNEY DAVIS; PUBLIC DEFENDER'S OFFICE; 5th FLOOR; 101 MEETING STREET; CHARLESTON, SC 29401

(c) At trial: RODNEY DAVIS; PUBLIC DEFENDER'S OFFICE; same info as 16(b).

(d) At sentencing: RODNEY DAVIS; PUBLIC DEFENDER'S OFFICE; same as 16(b).

(e) On appeal: N/A

(f) In any post-conviction proceeding: LEA B. KERRISON; YOUNG, CLEMENT, & RIVERS LLP; 28 BROAD STREET; CHARLESTON, SC 29402

(g) On appeal from any ruling against you in a post-conviction proceeding: WANDA H. CARTER; S.C. COMMISSION ON INDIGENT DEFENSE; PO BOX 11589; COLUMBIA, SC 29211

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. * N/A

bar your petition.* N/A

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

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Therefore, petitioner asks that the Court grant the following relief: VACATE PETITIONER'S
CONVICTION; ORDER STATE COURT TO RETRY PETITIONER WITHIN 180 DAYS, OR
RELEASE HIM;

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on
AUGUST 5, 2008 (month, date, year).

Executed (signed) on 8/5/08 (date).

Ronald Cook
Signature of Petitioner

*(...continued)

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. N/A

IN FORMA PAUPERIS DECLARATION

[Insert appropriate court]

RECEIVED
USDC, CLERK, CHARLESTON, SCUNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ronald Coulter, #300410,

Petitioner,

V.

Robert M. Stevenson, III

Warden, Broad River Correctional Institution,

State of South Carolina,

Respondent

MEMORANDUM IN SUPPORT OF PETITION UNDER
28 U.S.C. § 2254 FOR A WRIT OF
HABEAS CORPUS

Ronald Coulter, #300410

BRCI Monticello #216

4460 Broad River Road

Columbia, SC 29210

PETITIONERRECEIVED
USDC CLERK, COLUMBIA, SC
2008 AUG -5 PM 12:49

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GROUND PRESENTED

1. GUILTY PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL ADVISED PETITIONER TO ACCEPT PLEA AGREEMENT BECAUSE COUNSEL WAS UNWILLING TO CONTINUE TRIAL PROCEEDINGS IN LIGHT OF CODEFENDANT'S CONFESSION AND PLEA AGREEMENT.

2. GUILTY PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL FAILED TO EXPLAIN THE LAWS OF CONFRONTATION AND FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION TO THE PETITIONER WHILE ADVISING THE PETITIONER TO ACCEPT A PLEA AGREEMENT.

STATEMENT OF THE CASE

On February 23, 2004, jury trial proceedings began for petitioner, Ronald Coulter, on the charges of kidnapping, conspiracy, and murder. The petitioner was tried jointly, with codefendant Ivory Croker, before the Honorable Judge Deadra Jefferson in the Charleston County Court of General Sessions. App. p.414-674.

On February 25, 2004, the petitioner pled guilty to kidnapping, as part of a negotiated plea agreement with the State. The petitioner was sentenced to thirty (30) years of confinement. The charges of conspiracy and murder were dismissed with prejudice. App. p.674-713.

A timely appeal was not perfected.

On July 16, 2004, the petitioner filed a Post-Conviction Relief (PCR) application with the Charleston County Clerk of Court. App. p.732-745.

On June 23, 2005, the respondent filed a return requesting an evidentiary hearing. App. p.746-751.

On May 26, 2006, the petitioner filed an Amended Brief to his PCR application. App. p.752-762.

On June 2, 2006, an evidentiary hearing was held at the Charleston County Courthouse before the Honorable Judge William P. Keesley. App. p.775-888.

On November 1, 2006, Judge Keesley issued an Order of Dismissal in the petitioner's case. App. p.763-772. Petitioner appealed.

On June 8, 2007, the attorney for the petitioner filed a Petition for Writ of Certiorari pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988).

On July 19, 2007, the petitioner submitted a pro se response to the Johnson petition for Writ of Certiorari filed by the petitioner's attorney.

On May 19, 2008, the Petition for Writ of Certiorari was denied.

This petition follows:

STATEMENT OF THE FACTS

The petitioner was on trial with codefendant Ivory Croker. On February 25, 2004, codefendant Croker, in the midst of jury trial proceedings, pled guilty to misprision of a felony, as part of a negotiated plea agreement with the State. The State recommended that all charges against codefendant Croker be dismissed and a sentence of probation for the misprision charge, both contingent upon codefendant Croker's testimony against the petitioner, as a witness for the State. The Court accepted the codefendant Croker's plea and the terms of his plea agreement, as recommended by the State. App. pp.607-638.

The petitioner was represented by Mr. Rodney Davis, of the Public Defender's Office of Charleston County. Mr. Davis was assisted by Ms. Jennifer Shealy, also with the Charleston County Public Defender's Office. App. p.46.

Immediately following the plea hearing for codefendant Croker, Mr. Davis motioned the Court for a mistrial. App. p.642, ln.10-13. The trial court judge indicated that the mistrial motion will likely be denied. App. p.666, ln.9-13. Mr. Davis expressed an unwillingness, as well as an unpreparedness, in continuing the petitioner's trial proceeding, after the Court's opinion of the mistrial motion. App. p.666, ln.19-23; p.667, ln.15-21; p.669, ln.15 - p.670, ln.2. On February 25, 2004, the petitioner pled guilty to kidnapping, as part of a negotiated plea agreement with the State; in which the charges of conspiracy and murder were dismissed with prejudice. App. p.675.

At the State Post-Conviction Relief (PCR) hearing, Mr. Davis testified that his advice to the petitioner to plead guilty to kidnapping was based on the required testimony of codefendant Croker. App. p.856, ln.12 - p.857, ln.25.

ARGUMENT

1. GUILTY PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL ADVISED PETITIONER TO ACCEPT PLEA AGREEMENT BECAUSE COUNSEL WAS UNWILLING TO CONTINUE TRIAL PROCEEDINGS IN LIGHT OF CODEFENDANT'S CONFESSION AND PLEA AGREEMENT.

DISCUSSION

"An ineffective assistance claim asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, so finality concerns are somewhat weaker and the appropriate standard of prejudice should be somewhat lower." Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 2068, 80 L.Ed.2d 674 (1984). "The right to confront and cross-examine adverse witnesses contributes to the establishment of a system of criminal justice in which the perception as well as the reality of fairness prevails... The right to confront and cross-examine witnesses is primarily a functional right that promotes reliability in criminal trials." Lee v. Illinois, 476 U.S. 530, 540, 106 S.Ct. 2056, 2062, 90 L.Ed.2d 514, 525-26. In Lee, the United States Supreme Court identified a basic understanding that "when one person accuses another of a crime under circumstances in which the declarant stands to gain by inculcating another, the accusation is presumptively suspect and must be subjected to the scrutiny of cross-examination". 476 U.S. @ 541, 106 S.Ct. @ 2062. "It cannot seriously be doubted at this late date that the right of cross-examination is included in the right of an accused in a criminal case to confront the witnesses against him. And probably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth of a criminal case... Moreover, the decision of this Court and other courts throughout the years have constantly emphasized the necessity for cross-examination as a protection for defendants in criminal cases." Pointer v. Texas, 380 U.S. 400, 404, 85 S.Ct. 1065, 1068, 13 L.Ed.2d 923, 926 [footnotes omitted].

"Of all the rights that an accused person has, the right to be represented by counsel is by far most pervasive, for it affects his ability to assert any other rights he may have." Kimmelman v. Morrison, 477 U.S. 365, 377, 106 S.Ct. 2574, 2584, 91 L.Ed.2d 305 (1986). Also see U.S. v. Cronin, 446 U.S. 648, 654, 104 S.Ct. 2039, 2044, 80 L.Ed.2d 657 (1984).

The petitioner was denied his constitutionally guaranteed right to effective assistance of counsel when: 1) trial counsel was unwilling to continue trial proceedings after codefendant's mid-trial plea agreement, which required codefendant to testify against the petitioner; 2) trial counsel advised petitioner to accept plea agreement on the basis of codefendant's "presumptively-unreliable" confession, and required testimony; and 3) trial counsel failed to protect the petitioner's procedural right to confrontation and cross-examination to which the law entitled him.

At the State Post-Conviction Relief (PCR) hearing, the petitioner testified that his trial counsel advised him to accept a plea agreement because counsel was unwilling and unprepared to continue trial proceedings in light of the codefendant's confession and plea agreement. App. p.784, ln.23 - p.785, ln.6; App. p.793, ln.8 - p.794, ln.11. The petitioner also testified that trial counsel further advised him that if the trial judge does not grant the motion for mistrial, the only available option is to accept the plea agreement. App. p.813, ln.12 - 19.

The State PCR court correctly identified Strickland, supra, as the governing federal principle for adjudicating the petitioner's claim of ineffective-assistance of counsel. App. p.766, ln.9 - p.767, ln.4. The State PCR court found as a fact that trial counsel provided credible testimony that he was

willing and preparing to continue with trial proceedings in light of the co-defendant's plea agreement. App. p.765, ln.17 - 19; App. p.769, ln.23 - p.770, ln.7. In applying Strickland, the State PCR court concluded that petitioner failed to show any deficiency on counsel's part or any prejudice resulting therefrom; thereby dismissing petitioner's allegation that trial counsel was unwilling to continue trial proceedings after the codefendant pleaded guilty. App. p.770, ln.7 - 9.

Pursuant to 28 U.S.C. §2254(e)(1), the petitioner can rebut the presumption of correctness of the State PCR court by producing clear and convincing evidence that the State PCR court's finding was wrong. At the State PCR hearing, trial counsel gave perjured testimony regarding his willingness to continue trial proceedings. Counsel testified that after the codefendant entered a plea, he (counsel) filed a motion for continuance, listing all reasons necessary, not to stop the trial, but to allow for adequate time to prepare, in light of the co-defendant's unexpected plea agreement. App. p.839, ln.7 - 22. Trial counsel repeatedly testified that he was requesting more time, and not a request to stop the trial. App. p.846, ln.8 - 12, ln.20 - 22; App. p.849, ln.3 - 6.

The trial record clearly provides evidence contrary to counsel's PCR testimony. After the trial court accepted the codefendant's plea (App. p.633), there is no record of a motion for continuance, as counsel testified to. The record shows that counsel, in fact, entered a motion to stop the trial, contrary to counsel's PCR testimony. App. p.642. In fact, counsel stated to the trial court that a mistrial is the only remedy, and must be granted. App. p.643, ln. 6 - 15. Counsel put forth the following reasons to support his mistrial request:

1. The selected jury has been compromised. App. p.643, ln.16 - p.644, ln.10.
2. The courtroom layout has changed. App. p.644, ln.11 - p.646, ln.12.
3. Counsel's credibility has been tainted. App. p.647, ln.1 - 13.

4. Counsel lacks knowledge of codefendant's plea agreement. App. p.649, ln.6 - p.650, ln.16.
5. Counsel's inability to prepare and present an effective defense. App.p.656, ln.10 - 17.

However, the trial judge dismissed the merits of all of counsel's arguments for a mistrial. App. p.645, ln.9-15; App. p.649, ln.12-19; App. p.657, ln.3 - p.659, ln.20. The trial judge then indicated that the motion for mistrial would likely be denied. App. p.666, ln.9-13. In response, counsel admitted to the Court that he was overwhelmed and unprepared at that point; and continued to express an unwillingness to continue with trial after the judge suggested a curative instruction to the jury explaining the codefendant's absence. App.p.666, ln.19-23; App. p.667, ln.15-21; App. p.669, ln.15 - p.670, ln.2. Trial counsel confirmed at the State PCR hearing that he admitted to the Court that he was unprepared to proceed; however, he was requesting more time. App. p.849, ln.3-6. Again, trial counsel offered false testimony. The trial record clearly shows that counsel was admitting to the Court that he was unprepared, with regards to future witnesses; and not requesting additional time, as counsel testified to. App.p.667, ln.15-21

Trial counsel also gave perjured testimony regarding his trial strategy for continuing trial in light of codefendant's plea agreement. On direct examination at the State PCR hearing, trial counsel was asked, did he talk to the petitioner about how to proceed with trial in light of the codefendant's plea agreement? Trial counsel responded by testifying the the multiple issues listed in his motion for continuance goes to the fact that he was ready and prepared to proceed, although he preferred more time to prepare. In addition, counsel testified that the sole purpose of requesting information about the codefendant's plea agreement, in his motion for continuance, was for cross-examination purposes. App. p.847, ln.7 - p.849, ln.2. Again, the trial record provides evidence to the

contrary of counsel's PCR testimony. Trial counsel used a motion for continuance, that did not exist, to establish that he was prepared to go forward with trial. Furthermore, the trial record clearly shows that counsel raised the issue of the codefendant's plea agreement in an attempt to establish prejudice as grounds for a mistrial, and not for future cross-examination purposes, as counsel testified to. App. p.649, ln.12 - p.659, ln.20.

The State PCR court stated in its findings of fact and conclusion of law that it had the opportunity to review the record in its entirety and weighed the credibility of the witnesses that testified at the State PCR hearing accordingly. App. p.764, ln.19 - p.765, ln.1. The very evidence the State PCR court considered demonstrates that its factual finding, that counsel provided credible testimony that he was willing and preparing to continue trial proceedings, was wrong. The petitioner asserts that the trial record provides "clear and convincing" evidence, as required by 28 U.S.C. §2254(e)(1), to rebut the presumption of correctness of the State PCR court that counsel provided credible testimony with regards to his willingness to continue trial after the codefendant pleaded guilty.

28 U.S.C. §2254(e)(1) must also be reconciled with 28 U.S.C. §2254(d)(2). A state court decision fails the test established by the "unreasonable determination" clause in §2254(d)(2) if the adjudication of the claim is "based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding". The State PCR court misapprehended the underlying facts of the petitioner's claim that counsel was unwilling to continue trial, and reached an unreliable decision on the merits of that claim. The State PCR court finding, of counsel's willingness to continue trial, cannot be considered a reasonable determination of the facts in light of the evidence, where the evidence was clear that counsel was not willing to go forward after the codefen-

dant pleaded guilty. The State PCR court failed to carefully consider, and reasonably analyze, the petitioner's ineffective-assistance claim under the Strickland standard.

"The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland, supra, 466 U.S. @ 686, 104 S.Ct. @ 2064. "... The defendant must overcome the presumption that, under the circumstances, the challenged actions might be considered sound trial strategy." Id. 104 S.Ct. @ 2065. "A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Id. 104 S.Ct. @ 2066.

The petitioner presented probative evidence from the trial record to support his allegations and to show that counsel's unwillingness to continue trial appeared to stem from a lack of preparation, rather than trial strategy, and the outcome of the trial was dependent upon the credibility of State witnesses yet to testify. App. p.794, ln.12 - p.796, ln.7; App. p.813, ln.20 - p. 814, ln.14. The petitioner identified specific acts or omissions of counsel that deprived the petitioner of a specific constitutional right designed to guarantee a fair trial. App. p.797, ln.21 - p.798, ln.12; App. p.800, ln.10-18. In addition, the petitioner provided testimony to demonstrate a reasonable probability that counsel's deficient performance prejudiced the outcome of the proceeding. App. p.802, ln.24 -

p.803, ln.10; App. p.817, ln.1-16; App. p.818, ln.4-12.

At the State PCR hearing, counsel testified that he filed a motion for continuance, after the codefendant pled guilty. Afterwards, he talked to the petitioner about the changes in circumstances of the trial, and also talked to the Deputy Solicitor about options to resolve the case short of continuing forward with all charges. App. p.839, ln.7 - p.840, ln.12.

"Thus, the adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of advocate'. Anders v. California, 87 S.Ct. 1396, 1399 (1967). The right to effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing... But if the process loses its character as a confrontation between adversaries, the constitutional guarantee is violated." U.S. v. Cronin, supra, 446 U.S. @ 656, 104 S.Ct. @ 2045.

"When a criminal proceeding 'loses its character as a confrontation between adversaries', the harm done a defendant is as certain as it is difficult to define." Lockhart v. Fretwell, 506 U.S. 364, 380, 113 S.Ct. 838, 848, 122 L.Ed.2d 180 (Justice Stevens) (in dissent) (1993).

Trial counsel ultimately testified that although the State's case was circumstantial, and that the credibility of the witnesses was the issue, he advised the petitioner to plead guilty to kidnapping because it was his opinion that the petitioner would have been found guilty of all charges, if the trial had continued, now that the codefendant was going to testify. App. p.856, ln.12 - p.857, ln.18.

Trial counsel's reasoning did not reflect a strategic decision, but rather an abdication of advocacy, and that abdication undermined the proper functioning of the adversarial process, thereby rendering the trial proceeding unreliable.

"Indeed, the existence of detailed guidelines for representation could

distract counsel from the overriding mission of vigorous advocacy of the defendant's cause. Moreover, the purpose of the effective assistance guarantee of the Sixth Amendment is ... simply to ensure that criminal defendants receive a fair trial." Strickland, supra, 466 U.S. @ 689, 104 S.Ct. @ 2065. Thus, a fair trial is one in which the evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. Id. 104 S.Ct. @ 2063.

"Absent competent counsel, ready and able to subject the prosecution's case to the crucible of meaningful adversarial testing, there can be no guarantee that the adversarial system will function properly to produce just and reliable results." U.S. v Cronin, supra, 466 U.S. @ 656, 104 S.Ct. @ 2045.

The codefendant's testimony was critical and there was a real possibility that pursuit of a line of impeachment evidence could have done serious damage to the strength of the State's case. The trial record shows that the codefendant provided inconsistent statements as it relates to his plea hearing testimony. App. p.155-56; App. p.633, ln.22 - p.638, ln.6. The record shows that the codefendant admitted to drug abuse treatment. App. p.613, ln.19 - p.614, ln.11. The record shows that the codefendant pleaded guilty to a crime of dishonesty. App. p.615, ln.12-19. The record shows that the codefendant was required to testify against the petitioner in order to have several charges dropped against him, as part of a negotiated plea agreement. App. p.616, ln.5 - p.617, ln.25.

"The exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Delaware v. Van Arsdall, 106 S.Ct. 1431, 1435 (quoting Davis v. Alaska, 94 S.Ct. @ 1110 (citing Greene v. McElroy, 79 S.Ct. 1400, 1413)).

The centrality of cross-examination to the fact-finding process makes it

particularly difficult for trial counsel to conclude beyond a reasonable doubt that no impeachable evidence or that no evidence exculpatory to the petitioner could have emerged from a genuinely adversarial testing of the codefendant. Counsel's failure to elicit testimony from, or cross-examine the codefendant concerning his bias in testifying may have deprived the petitioner of his best opportunity to expose, to the jury, genuine flaws in the prosecution's case - flaws that the cold record will not reveal to a reviewing court. A reasonable jury might have received a significantly different impression of the codefendant's credibility had trial counsel been willing and prepared to pursue a line of cross-examination, such as permitted by S.C. Rules of Evidence. "Indeed, the main and essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." Delaware v. Van Arsdall, supra, 106 S.Ct. @ 1435 (Quotes omitted).

The petitioner testified during the State PCR hearing that he believed that the State's case against him was weak. App. p.818, ln.4-6. The trial record shows that the State's evidence in the petitioner's case was purely circumstantial and testimonial. App. p.434-453; App. p.458, ln.4-19.

"A fact which can be primarily established only by witnesses cannot be proved against an accused... except by witnesses who confront him at trial, upon whom he can look while being tried, whom he is entitled to cross-examine, and whose testimony he may impeach in every mode authorized by the established rules governing the trial or conduct of criminal cases." Coy v. Iowa, 487 U.S. 1012, 1017, 108 S.Ct. 2798, 2801, 101 L.Ed.2d 857 (1988).

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

"From counsel's function as assistant to the defendant derive the over-

arching duty to advocate the defendant's cause... Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process." Strickland, supra, 466 U.S. @ 688, 104 S.Ct. @ 2065.

"Unless a defendant charged with a serious offense has counsel able to invoke the procedural and substantive safeguards that distinguish our system of justice, a serious risk of injustice infects the trial itself." Cuyler v. Sullivan, 446 U.S. 335, 343, 100 S.Ct. 1708, 1715, 64 L.Ed.2d 333. (Quotes omitted).

"The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Strickland, supra, 466 U.S. @ 688, 104 S.Ct. @ 2065. "In every case the court should be concerned with whether, despite the strong presumption of reliability, the result of the particular proceeding is unreliable because of a breakdown in the adversarial process that our system counts on to produce just results." Id., 466 U.S. @ 696, 104 S.Ct. @ 2069.

The evidence adduced at the State PCR hearing, including the trial record, contemplates that: 1) trial counsel did not "make the adversarial testing process work" in the petitioner's case; 2) trial counsel lied, under oath, in an attempt to defend allegations of ineffectiveness; and 3) trial counsel's abdication of advocacy prejudiced the defense so as to deprive the petitioner of the opportunity of confrontation and cross-examination of adverse witnesses.

Unreliability or unfairness does not result if the ineffectiveness of counsel does not deprive the defendant of any substantive or procedural right to which the law entitles him. The petitioner had a constitutionally protected right to confront his codefendant, to secure the opportunity of cross-examination; to provide the jury with impeachable evidence that trial counsel was unwilling to offer.

The petitioner asserts that trial counsel's performance was constitutionally deficient; and that deficient performance prejudiced the defense so as to deprive the petitioner of a fair trial. Errors that undermine confidence in the fundamental

fairness of the state adjudication certainly justify the issuance of the federal writ. "Since fundamental fairness is the central concern of the writ of habeas corpus, no special standards ought to apply to ineffectiveness claims made in habeas proceedings." Strickland, supra, 466 U.S. @ 697-98, 104 S.Ct. @ 2070. (citations omitted).

2. GUILTY PLEA WAS INVOLUNTARY AND UNINTELLIGENT AS A RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL. COUNSEL FAILED TO EXPLAIN THE LAWS OF CONFRONTATION AND FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION TO THE PETITIONER WHILE ADVISING THE PETITIONER TO ACCEPT A PLEA AGREEMENT.

DISCUSSION

The purpose of the constitutional guarantee of right to counsel is to protect an accused from conviction resulting from his own ignorance of his legal and constitutional rights.

"A defendant who enters such a plea simultaneously waives several constitutional rights, including his privilege against self-incrimination, his right to trial by jury, and his right to confront his accusers. For this waiver to be valid under the Due Process Clause, it must be 'an intentional relinquishment or abandonment of a known right or privilege'. Consequently, if a defendant's guilty plea is not equally voluntary and knowing, it has been obtained in violation of due process and is therefore void." McCarthy v. United States, 394 U.S. 459, 466, 89 S.Ct. 1166, 1171. (footnotes omitted) (citing omitted).

The petitioner testified at the State PCR hearing that trial counsel failed to fully inform him of the laws and rules that govern the right of confrontation and cross-examination. App. p.804, ln.21 - p.810, ln.2. The petitioner also

testified that trial counsel failed to explain the law regarding the Fifth Amendment privilege against self-incrimination. App. p.810, ln.3-6. The petitioner further testified that he did not understand that the right to remain silent was the same as the Fifth Amendment privilege against self-incrimination. App. p.830, ln.13-24.

At the State PCR hearing, counsel testified to, or affirmed the following:

1. He did not need to discuss specific rules of evidence with the petitioner. App. p.847, ln.25 - p.848, ln.2.
2. He did not explain to the petitioner that the codefendant's plea hearing was considered out-of-court testimony and therefore hearsay by court rules. App. p.849, ln.13-18.
3. He did not explain to the petitioner that the codefendant's confession, during his plea hearing, was inadmissible at trial against the petitioner. App. p.849, ln.19-23.
4. He was aware of prior inconsistent statements of the codefendant. App. p.850, ln.11-16.
5. He did not explain to the petitioner that the codefendant's motivation in testifying could be exposed to the jury during cross-examination. App. p.850, ln.17 - p.851, ln.6.
6. The credibility of the witnesses was the issue in this case. App.p.851, ln.11-16.
7. He engaged in a routine discussion of the rights of confrontation and cross-examination with the petitioner in a fashion similar to what a court does during a plea. App. p.851, ln.17 - p.852, ln.4.

Trial counsel further testified that he explained to the petitioner that his constitutional privilege against self-incrimination, with regards to a plea, means that the judge is going to ask questions and the petitioner has to answer them. App. p.858, ln.8 - p.859, ln.10. Trial counsel also confirmed that he did not

explain to the petitioner that the right to remain silent was the same as the right against self-incrimination. App. p.858, ln.25 - p.859, ln.6.

"... That a guilty plea is a grave and solemn act to be accepted only with care and discernment has long been recognized. Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment. He thus stands as a witness against himself and he shielded by the Fifth Amendment from being compelled to do so - hence the minimum requirement that his plea be the voluntary expression of his own choice." Brady v. United States, 397 U.S. 742, 748, 90 S.Ct. 1463, 1468 (1970).

The State PCR court found as a fact that: 1) the petitioner (applicant) claimed that trial counsel did not explain the law regarding the consequences of a guilty plea; 2) trial counsel testified at the hearing that he advised the petitioner to plead guilty to kidnapping and fully explained the consequences and sentence possibilities; and 3) trial counsel's testimony was credible.

The State PCR court concluded that the petitioner failed to meet his burden to show that counsel was ineffective or was prejudiced by such deficiency; thereby dismissing the petitioner's allegation that trial counsel failed to explain the laws of confrontation and Fifth Amendment privilege against self-incrimination, direct consequences of a guilty plea. App. p.768, ln.20 - p.769, ln.4.

Although Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969) specifically addresses the waiver of the privilege against self-incrimination, the right to trial by jury, and the right to confront one's accusers, its primary requirement is that the defendant have a "full understanding of what the plea connotes and of its consequences". 395 U.S. @ 244, 89 S.Ct. @ 1709. Under Brady v.

United States, supra, a plea is voluntary only if entered "by one fully aware of the direct consequences". 397 U.S. @ 755, 90 S.Ct. @ 1472. When a defendant alleges, on collateral attack, that he was denied the right to exercise one of his constitutional rights, the sole inquiry should be whether he was informed of that right, and if so, whether he validly waived it.

The evidence adduced at the State PCR hearing contemplates that: 1) counsel did not fully explain to the petitioner his right to confrontation and cross-examination, including the impeachment of witnesses' credibility; 2) counsel did not fully understand what the Fifth Amendment privilege against self-incrimination connotes; and 3) counsel clearly failed to properly advise the petitioner of what his Fifth Amendment privilege entailed.

A claim under 28 U.S.C. § 2254 requires the federal habeas court to ensure that the state criminal conviction was not achieved at the expense of the petitioner's constitutional rights. The petitioner's claim of ineffective assistance of counsel in his plea should be considered under the standards of Strickland. "In the context of guilty pleas, the first half of the Strickland v. Washington test is nothing more than a restatement of the standard of attorney competence already set forth in Tollett v. Henderson, supra, and McMann v. Richardson, supra. The second, or "prejudice", requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203 (1985).

As to the State PCR court finding that the petitioner had been fully advised of the consequences of his plea, the petitioner asserts that the State PCR court's decision cannot be considered a reasonable determination of the facts in light of

the evidence, where the evidence was clear that the petitioner was not fully advised of the consequences of his plea. Where counsel has recommended a plea of guilty without fully understanding, much less explaining to the petitioner, the Fifth Amendment privilege against self-incrimination, there can be no question that his performance was deficient. Counsel's failure to fully explain the consequences of exercising the right of confrontation and cross-examination to the petitioner cannot be considered adequate representation.

South Carolina's jurisprudence has clearly established that, in accordance with Strickland's standards, the failure to inform a client of a constitutionally protected right and the consequences of exercise and waiver of those rights falls below an objective standard of reasonable representation. See Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000).

Again, the State PCR court failed to carefully consider, and reasonably analyze, the petitioner's ineffective-assistance claim under the Strickland standard.

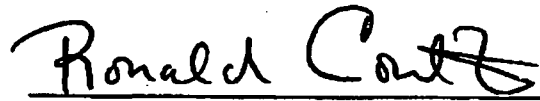
The petitioner provided additional testimony at the State PCR hearing to demonstrate a reasonable probability that counsel's ineffective performance did affect the outcome of the proceedings. The petitioner indicated that he did not understand that witnesses could be impeached to attack credibility. The petitioner also indicated that he did not understand his Fifth Amendment privilege against self-incrimination. The petitioner concluded that had counsel explained those rights, he would have invoked those rights by not pleading, and insisting that witnesses testify and subject themselves to cross-examination.

"Thus, the core purpose of the counsel guarantee was to assure 'Assistance' at trial, when the accused was confronted with both the intricacies of the law and the advocacy of the public prosecutor." Cronic, supra, 466 U.S. @ 654.

CONCLUSION

By reason of the foregoing argument, the petitioner asks that the Court vacate the petitioner's conviction, and order the State court to retry the petitioner within 180 days or release him. The Court should also grant any other relief to which the petitioner may be entitled.

Respectfully submitted,

A handwritten signature in black ink that reads "Ronald Coulter". The signature is written in a cursive style with a large, stylized "C" at the end.

Ronald Coulter, #300410

Petitioner

This 5th day of August, 2008.

cc.
AG
SOL
AT
BSSTATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
)

2004-CP-10-2999

Ronald Coulter, 300410,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2006 NOV -6 PM 2:41

FILED

PROCEDURAL HISTORY

WAL #1

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

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

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

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

In his application for PCR, the Applicant alleges:

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

WAL #4
In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."

Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

A. Involuntary Guilty Plea.

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

B. Ineffective Assistance of Counsel.

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

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

Therefore, this allegation is denied and dismissed with prejudice.

2. Failure to investigate an alibi defense.

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

3. Failure to object to the short ~~intervention~~ ^{per. wa.} between the receipt of discovery materials and the beginning of trial.

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

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

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

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

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

5. Failure to adequately file a direct appeal.

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

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

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

7. Failure to raise meritorious issues preserved for appeal.

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

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

The Applicant claims that trial counsel was not willing to proceed to trial after co-defendant plead^{ed} guilty. However, at the hearing, trial counsel testified that although that the co-defendant's plea with the State changed his trial strategy, he was still willing to continue with the trial if the defendant has chosen to proceed. Trial counsel further testified that the defense had filed motions for a mistrial or in the alternative for a continuance, and although both were likely to be denied, the Applicant pled guilty before the Court could rule on either motion. This Court finds that trial counsel's testimony is credible. The Applicant has failed to show any deficiency on the part of counsel or prejudice resulting therefrom, and therefore this allegation is expressly denied and dismissed with prejudice.

C. Brady Violation.

WFL #8
The Applicant alleges that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963), in that the State did not inform him that the co-defendant had told the Solicitor where the body of the victim was located. Applicant claims that had he been informed of this evidence, he would not have plead^{ed} guilty and instead would have proceeded to trial and attempted to impeach the co-defendant's testimony.

In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988).

At the evidentiary hearing, the Solicitor testified that the State had no knowledge of the location of the victim's body at the time of the Applicant's plea. The co-defendant did not inform the solicitor that he knew where the body of the victim was located until two to three days after the plea of both defendants. Without knowledge of the location of the body at the time of the

Applicant's plea, the State could not have withheld such evidence from the Applicant. This court finds the testimony of the Solicitor to be credible. Therefore, this allegation is expressly denied and dismissed with prejudice.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Will #9
~~This Court advises~~ Applicant that ~~he~~ must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

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



William P. Keesley
Presiding Judge
Ninth Judicial Circuit

Edgefield, South Carolina.

#10

The South Carolina Court of Appeals

Ronald Coulter,

Petitioner

v.

State of South Carolina,

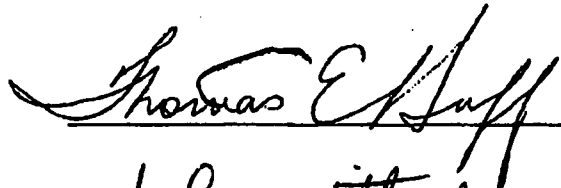
Respondent

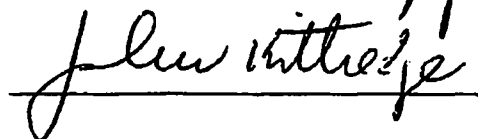
ORDER

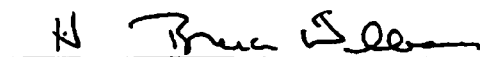
This matter is before the court on a petition for a writ of certiorari following the denial of Petitioner's application for post-conviction relief.

Petitioner's counsel asserts that the petition is without merit and requests permission to withdraw from further representation. Petitioner filed a pro se response.

After careful consideration of the entire record as required by Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), we deny the petition and grant counsel's request to withdraw.

 , J. Huff

 , J. Kittredge

 , J. Williams

Columbia, South Carolina

May 19, 2008

FILED

May 19, 2008

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Joseph L. Savitz, III, Chief Appellate Defender
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May 29, 2008

Mr. Ronald Coulter #300410
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Dear Mr. Coulter:

Enclosed please find a copy of the order of the South Carolina Court of Appeals denying your petition for writ of certiorari. This means that the lower court's decision in your case stands and you have exhausted your state remedies. Note the time limits for filing future actions based on the date of the denial of this PCR appeal action via the federal habeas statute of limitations.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Wanda H. Carter
Deputy Chief Appellate Defender

WHC/mwl

Enclosure



The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
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January 18, 2008

Ronald Coulter #300410
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

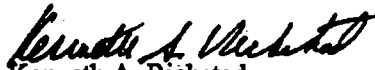
Re: Coulter, Ronald v. The State
2004-CP-10-2999

Dear Mr. Coulter:

I have received your letter dated January 14, 2008, requesting an update on the above mentioned case.

Your case has been transferred to the South Carolina Court of Appeals. Furthermore, the Court of Appeals has approximately one hundred and fifty PCR cases that are being processed within the Court. Therefore I am unable to give you a time frame as to when your case will be reviewed, only that it will be reviewed in due course.

Sincerely,


Kenneth A. Richstad
Clerk of Court

KAR/lf

cc: Deputy Chief Attorney Wanda H. Carter
Assistant Attorney General Jeanette Van Ginhoven

RONALD COULTER #300410
BRCI MONTICELLO 216
4460 BROAD RIVER RD.
COLUMBIA, SC 29210

ITEM X-RAYED
BY U.S.



RECEIVED

AUG 04 2008

UNIT
DIST.
901
COLUN

ATTN: CLERK OF COURT

216

2 RD

210

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE**CERTIFIED MAIL**

7006 2150 0003 5223 2396



UNITED STATES
DISTRICT COURT
901 RICHLAND STREET
COLUMBIA, SC 29201



THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

WARDEN
BROAD RIVER CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

90 (Clasp 19 x 12)

RECEIVED
USDC CLERK, CHARLESTON, SC August 4, 2008

2008 AUG -8 A

Clerk of Court
United States District Court
District of South Carolina
901 Richland Street
Columbia, SC 29201

RECEIVED
USDC CLERK, COLUMBIA, SC
2008 AUG -5 PM 4:49

Dear Clerk,

Enclosed please find the following:

- 1) Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus;
- 2) Supplemental Memorandum in support of petition for Habeas Corpus;
- 3) Copy of Court Order (dated November 1, 2006) in response to question 12(d)(2); and
- 4) Copy of Court Order (dated: May 19, 2008) in response to question 12(d)(6).

A check request for the \$5.00 processing fee has been initiated through the institution's financial system. It is my understanding that a check will be disbursed in 7-10 days.

If this is unacceptable, or the processing fee is not received in a timely fashion, please contact me immediately.

Thank you for your attention to this matter.

Sincerely,



Ronald Coulter
Petitioner

Lonnie Brawley - Activity in Case 9:08-cv-02762-PMD-GCK Coulter v. Stevenson Order 2254

From: <SCDEfilingstat@scd.uscourts.gov>
To: <scd_ecf_nef@scd.uscourts.gov>
Date: 8/22/2008 1:34 PM
Subject: Activity in Case 9:08-cv-02762-PMD-GCK Coulter v. Stevenson Order 2254

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court

District of South Carolina

Notice of Electronic Filing

The following transaction was entered on 8/22/2008 at 1:33 PM EDT and filed on 8/22/2008

Case Name: Coulter v. Stevenson

Case Number: 9:08-cv-2762

Filer:

Document Number: 6

Docket Text:

ORDER authorizing service of process by clerk, apprising the respondents of deadline for filing dispositive motions, and directing petitioners to notify the clerk in writing of any change of address. Return and Memorandum due by 10/14/2008.. Signed by Magistrate Judge George C Kosko on 8/22/08. (Attachments: # (1) 2254 Petition, # (2) Memo in Support, # (3) State Court Documents, # (4) Envelope and Cover Letter). (rpol,)

9:08-cv-2762 Notice has been electronically mailed to:

9:08-cv-2762 Notice will not be electronically mailed to:

Ronald Coulter
300410
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=8/22/2008] [FileNumber=2618305-0]
] [667270953b2b12c863e647b2c13dc0032308a7b6f1a32527bb0ca8a0841ecc263fe
 38e8d9668a9d67522ea2c13e404d58ea1149f49e49586d43d1804fb67b629]]

Document description: 2254 Petition

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=8/22/2008] [FileNumber=2618305-1]
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Document description:Memo in Support

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=8/22/2008] [FileNumber=2618305-2]
] [978132c5b55253fa007e06978c16394723474f8dce296bafa56f8233b3b9b3f3a62
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Document description:State Court Documents

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=8/22/2008] [FileNumber=2618305-3]
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Document description:Envelope and Cover Letter

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1091130295 [Date=8/22/2008] [FileNumber=2618305-4]
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ronald Coulter, #300410,
a/k/a Ronald James Coulter,

Petitioner,

vs.

Robert M. Stevenson, III, Warden BRCI,

Respondent.

) C/A No. 9:08-2762-PMD-PJG

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MOTION FOR SUMMARY JUDGMENT

The Respondents, above-named, by and through the undersigned attorneys, would respectfully move this Court, pursuant to Rule 12(b) and Rule 56(b) F.R.C.P., for summary judgment based on the pleadings.

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
ID No. 4425

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
I. D. No. 3710

P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By: s/William Edgar Salter, III
ATTORNEYS FOR RESPONDENTS

December 31, 2008.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

**Ronald Coulter, #300410,
a/k/a Ronald James Coulter,**

Petitioner,

vs.

Robert M. Stevenson, III, Warden BRCI,

Respondent.

C/A No. 9:08-2762-PMD-PJG

RETURN AND MEMORANDUM
OF LAW IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT

Respondent hereby makes Return to the August 22, 2008 Rule to Show Cause filed by the Honorable George C. Kosko, United States Magistrate Judge, and responds to the allegations in the *pro se* Petition for Writ of Habeas Corpus. Respondent submits that he is entitled to summary judgment for the following reasons:

I. PROCEDURAL HISTORY

Petitioner (Coulter) is presently confined in the Broad River Correctional Institution, of the South Carolina Department of Corrections (SCDC), as the result of his Charleston County kidnapping conviction and sentence. The Charleston County Grand Jury indicted Coulter at the 2002 term of court for kidnapping (2002-GS-10-2443), conspiracy to commit kidnapping (2002-GS-10-4454), and murder (2003-GS-10-4454). **App. pp. 890-91.** Rodney Davis, Esquire, represented him on these charges.

Coulter proceeded to a jury trial with his co-defendant, before the Honorable Deadra L. Jefferson, on February 23, 2004. Two days into trial, on February 25, 2004, the co-defendant agreed to plea guilty and testify for the State against Coulter. **App. 5-674.** On February 25, 2005, Coulter

also entered a negotiated guilty plea to kidnapping, in which the other charges were nolle prossed and Judge Jefferson sentenced him to the negotiated sentence of thirty years imprisonment. *App. v.* pp. 674-731.¹

Petitioner did not appeal his conviction or sentence. However, he filed a *pro se* Post-Conviction Relief (PCR) Application (04-CP-10-2999) on July 16, 2004. *Gary v. State*, 347 S.C. 627, 557 S.E.2d 662 (2001) (mailing of a PCR application does not constitute filing, for state limitations purposes. Rather, application is filed when received by the Clerk of Court). He set forth the following grounds for relief in his Application:

1. Involuntary guilty plea;
2. Ineffective assistance of counsel:
 - a. Failure to adequately object to the sufficiency of the indictments presented;
 - b. Failure to investigate an alibi defense;
 - c. Failure to object to the short intervention between the reception of discovery and the actual trial;
 - d. Failure to explain the Law regarding the consequence of a guilty

¹ Although Coulter and Coker were indicted for murdering Edwina Simms, Coulter was permitted to plead to kidnapping and the other charges were dismissed, at least in large part, because the prosecution could not locate the victim's body and did not have physical evidence tying Petitioner to the murder. *App. 687-88*. Therefore, Coulter received a sweetheart deal. See *State v. Owens*, 293 S.C. 161, 359 S.E.2d 275 (1987) (death sentence affirmed where defendant was convicted of murder in the commission of kidnapping and sentenced to death, despite fact victim's body was never found), *cert. denied*, 484 U.S. 982 (1987); see also *State v. Howard*, 295 S.C. 462, 369 S.E.2d 132 (1988) (defendant's death sentence affirmed where defendant was convicted of murder in the commission of kidnapping; and Court rejected argument that circumstantial evidence did not prove the corpus delicti of both murder and kidnapping, even though victim's naked body was discovered, several weeks following her disappearance, under kudzu vines near a road in an isolated area of Greenville County. The body was partially decomposed and the exact cause of death could not be determined).

plea;

e. Failure to adequately file a direct appeal;

f. Failure to object to subject matter jurisdiction to accept guilty plea;

g. Failure to raise meritorious issues preserved for appeal;

3. *Brady* violation.

App. pp. 732-45. The State filed its Return on June 23, 2005. **App. pp. 746-50.**

On May 26, 2006, Petitioner filed an amendment to his Application; and his “Brief Amended Issues” presented three claims:

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

JA. 752-62.

The Honorable William P. Keesley held an evidentiary hearing into the matter on June 2, 2006, at the Charleston County Courthouse. Petitioner was present at the hearing; and Lea B. Kerrison, Esquire, represented him. Assistant Attorney General Colleen represented the State. Petitioner testified on his own behalf, while the State presented the testimony of trial counsel, Mr. Davis and Scarlett Wilson of the Ninth Circuit Solicitor’s Office. **App. pp. 775-888.**

On November 6, 2006, Judge Keesley filed an Order of Dismissal, in which he denied relief

and dismissed the Application with prejudice. The Order of Dismissal addressed Petitioner's claims that his guilty plea was involuntary; that there was a *Brady v. Maryland*, 373 U.S. 83 (1963), violation; and that trial counsel was ineffective because he failed to (1) adequately object to the sufficiency of the indictments presented; (2) investigate an alibi defense; (3) object to the short period between the reception of discovery and the actual trial; (4) explain the law regarding the consequence of a guilty plea; (5) file a direct appeal; (6) object to subject matter; (7) accept guilty plea; (7) raise meritorious issues preserved for appeal; and (8) proceed to trial after defendant plead guilty. **App. pp. 763-72.**

Petitioner timely served and filed a notice of appeal. Deputy Chief Attorney Wanda H. Carter, of the South Carolina Commission on Indigent Defense - Division of Appellate Defense, represented him in collateral appellate proceedings. On June 8, 2007, Ms. Carter filed a *Johnson* Petition for Writ of Certiorari² on Petitioner's behalf and petitioned to be relieved as counsel. The only Question Presented in the *Johnson* Petition was stated as follows:

Trial counsel erred in failing to explain to petitioner that a guilty plea would waive his right to confront his accusers and his privilege against self-incrimination?

***Johnson* Petition for Writ of Certiorari at p. 2.** Petitioner filed a "Pro Se Response to *Johnson* Petition," on July 12, 2007, in which he raised two issues:

1. Did the PCR judge err in failing to find Petitioner's trial counsel was ineffective for being unwilling to continue with trial and advising the

² See *Johnson v. State*, 294 S.C. 310, 364 S.E.2d 201 (1988). *Johnson* sets forth the procedures for counsel to follow when filing meritless appeals in state PCR cases pursuant to *Anders v. California*, 386 U.S. 738 (1967). *Contra Pennsylvania v. Finley*, 481 U.S. 551 (1987) (prisoner, who had no equal protection or due process right to appointed counsel in post-conviction proceedings, also had no right to insist on *Anders* procedures for withdrawal of appointed counsel when collateral counsel determined direct appeal was frivolous).

Petitioner to accept a plea agreement after the Petitioner's co-defendant agreed to testify against the Petitioner?

2. Was Petitioner's trial counsel ineffective for failing to explain the laws of confrontation and Fifth Amendment privilege against self-incrimination to the Petitioner while advising the Petitioner to accept a plea agreement?

Pro Se Response, p. 2.

The South Carolina Court of Appeals filed an Order on May 19, 2008, in which it denied certiorari and granted counsel's petition to be relieved. It sent the Remittitur to the Charleston County Clerk of Court on June 4, 2008.

Respondent attaches the following documents to this Return and incorporate these documents by reference:

1. Appendix, Volumes I & II, the Honorable William P. Keesley, Circuit Court Judge;
2. Notice of Appeal dated November 8, 2006;
3. *Johnson* Petition for Writ of Certiorari dated June 8, 2007;
4. *Pro Se* Response to Johnson Petition dated July 12, 2007;
5. South Carolina Court of Appeals Order dated May 19, 2008 denying certiorari and granting counsel's petition to be relieved;
6. Remittitur dated June 4, 2008.

II. HABEAS ALLEGATIONS

Petitioner only raises two allegations in his *pro se* Petition for Writ of Habeas Corpus:

GROUND ONE:

Guilty plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel advised petitioner to accept plea agreement because counsel was unwilling to continue trial proceedings in light of co-defendant's confession and plea agreement.

GROUND TWO:

Guilty plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel failed to explain the laws of confrontation and Fifth Amendment privilege against self-incrimination to the petitioner while advising the petitioner to accept a plea agreement.

III. DISCUSSION

Respondent is entitled to summary judgment. The present habeas corpus petition was filed after the effective date of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Accordingly, the provisions of the AEDPA apply to this case. *Lindh v. Murphy*, 521 U.S. 320 (1997).

"Before a federal court may grant habeas relief to a state prisoner, the prisoner must exhaust his remedies in state court." *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). "The exhaustion doctrine ... is now codified at 28 U.S.C. § 2254(b)(1)." *Id.* (internal citations omitted). "The exhaustion requirement ... serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981). "An exception is made only if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief." *Id.* See also *Matthews v. Evatt*, 105 F.3d 907, 911 (4th Cir. 1997) (recognizing that, although not jurisdictional, the exhaustion requirement is strictly enforced; and that failure to exhaust remedies will be excused only where exhaustion requirement is expressly waived by the state or petitioner has technically complied therewith). The exhaustion requirement is met only if the federal claim has been "fairly presented" to the state courts, *Picard v. Connor*, 404 U.S. 270, 275 (1971), or no state remedy remains available. *Matthews*, 105

F.3d at 911. To fairly present a claim, a petitioner must "include reference to a specific federal constitutional guarantee, as well as a statement of facts that entitle the petitioner to relief." *Gray v. Netherland*, 518 U.S. 152, 162-63 (1996) (citing *Picard*, 404 U.S. at 271).

Here, **Ground One** is that counsel was ineffective for advising Coulter to accept the negotiated plea because counsel was unwilling to continue trial proceedings in light of co-defendant's confession and plea agreement to testify against Coulter. In **Ground Two**, however, that counsel was ineffective for advising Coulter to accept the negotiated plea while failing to explain the laws of confrontation and Fifth Amendment privilege against self-incrimination to him. However, only **Ground Two** was raised in the *Johnson* Petition for Writ of Certiorari. *Johnson Petition for Writ of Certiorari* at p. 2. Further, the inclusion of **Ground One** in the Pro Se response to the *Johnson* Petition does not satisfy the exhaustion requirement. In particular, Coulter cannot find sanctuary in the South Carolina Supreme Court's opinion in *State v. McKennedy*, 348 S.C. 270, 559 S.E.2d 850 (2002). In *McKennedy*, there was a presentation of the claim in the *Anders* brief. *McKennedy* holds that this presentation satisfied its appellate round when *Anders* was applied and did not require further presentation by rehearing or certiorari for that same claim to be preserved. *Id* at 854. What it cannot and should not be deemed to stand for is that the absence of any presentation before the state appellate court may somehow satisfy a fair presentation responsibility.

As *McKennedy* expressly states, in rejecting the claim by the State that articulation of a claim in an *Anders* brief (as opposed to no articulation as in the present case) did not satisfy exhaustion:

B. *Anders* Brief

The State argues that articulating an issue in an *Anders* brief does not constitute "fair presentation" of that issue to the appellate court necessary to support habeas review. We disagree.

In *Anders v. California*, the United States Supreme Court announced the procedure an appointed attorney should follow if that attorney believes the client's appeal is frivolous and without merit. 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The Supreme Court held the attorney could petition for permission to withdraw from the case, but that the petition for withdrawal must be accompanied by a brief "referring to anything in the record that might arguably support the appeal." *Id.* at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498. Under *Anders*, the defendant must be given time to respond and to raise any additional points after his attorney submits the *Anders* brief. *Id.* The court then is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." *Id.* According to *Anders*, if the reviewing court finds the appeal is frivolous, "it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires." *Id.* at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498 (emphasis added).

The State argues that a dismissal by the Court of Appeals does not qualify as a decision on the merits for purposes of federal habeas review, insisting that the dismissal is based on a finding of frivolousness. [FN3] The State asserts that arguments presented in an *Anders* brief are not raised for consideration on the merits and are raised merely so the reviewing court may determine if the attorney properly reviewed the case before concluding the appeal was frivolous.

FN3. While this Court cannot determine what constitutes a decision "on the merits" under federal law, this Court can determine, for the purposes of state law, whether or not a dismissal pursuant to an *Anders* brief is a "decision on the merits."

In this particular case, it is clear the Court of Appeals reached the merits in its dismissal. As discussed, according to *Anders*, the reviewing court is obligated to make a full examination of the proceedings on its own. *Anders*. After such an examination, if the reviewing court agrees with the attorney, it may dismiss the appeal or proceed to a decision on the merits. *Id.* On the other hand, if the court disagrees with the attorney's analysis of the appeal, it must afford the defendant "the assistance of counsel to argue the appeal." *Id.* at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498. ***The purpose of filing a brief under Anders is to ensure the merits of the appeal are not overlooked.*** The court has to conclude independently, regardless of counsel's conclusion, whether or not the appeal has merit before it can dismiss the appeal.

In the case at hand, Appellant's counsel filed an *Anders* brief with the Court of Appeals and the Appellant filed a *pro se* response, ***raising the issues he considered important.*** In the *Anders* brief, Appellant's counsel argued the trial court committed reversible error by denying Appellant's motion for a continuance under the standard articulated by this Court in *State v. Williams*, 305 S.C. 116, 406 S.E.2d

357 (1991). After reviewing both documents and the record as a whole, the Court of Appeals dismissed the appeal pursuant to *Anders* and *Williams*. *The Court of Appeals' citation to Williams indicates, at the very least, that it reviewed the merits of the argument Appellant's counsel put forth in the Anders brief: whether the trial court erred in denying Appellant's motion for a continuance.*

As Appellant has not yet filed any federal habeas petition, we do not know what arguments he will choose to raise. The federal court ultimately will determine whether any issues raised to the Court of Appeals were properly presented for purposes of granting federal habeas relief. **To guide them, however, and for purposes of state law, we find the Court of Appeals' dismissal in this case was on the merits.**

McKennedy. 559 S.E.2d at 854. Clearly, and unlike Coulter, McKennedy made a presentation of the same claim to the court within the *Anders* brief which the court concluded was a ruling "on the merits." The same cannot be said for the claim asserted by Coulter in **Ground One**.

However, Coulter does not have any state court remedies available to him because any PCR application would be barred as successive under S.C. Code Ann. § 17-27-90 (1985); *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991), and any future PCR application would be untimely under the one-year statute of limitations which governs the filing of PCR actions. S.C. Code Ann. § 17-27-45(A) (Supp. 2008). Therefore, Coulter has technically satisfied the exhaustion requirement.

Coulter's technical compliance with the exhaustion requirement, however, does not entitle him to relief. Under the AEDPA, the standard of review to be applied in habeas is "quite deferential to the rulings of the state courts." *Burch v. Corcoran*, 273 F.3d 577 (4th Cir. Nov. 28, 2001). The Fourth Circuit Court of Appeals explained in *Lawrence v. Branker*, 517 F.3d 700, 707-08 (4th Cir. 2008), that pursuant to the standards promulgated in 28 U.S.C. § 2254, a federal habeas Court may

grant a petition with respect to any claim adjudicated on the merits in state court only if the state-court decision was either contrary to, or an unreasonable application of, clearly established federal law as determined by the Supreme Court. 28 U.S.C.A. § 2254(d)(1).

A decision of a state court is contrary to clearly established federal law "if the state court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or if the state court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 413 (2000). A state-court adjudication is an unreasonable application of federal law when the state court "correctly identifies the governing legal rule [from the Supreme Court's cases] but applies it unreasonably to the facts of a particular ... case," *id.* at 407-08, or "applies a precedent in a context different from the one in which the precedent was decided and one to which extension of the legal principle of the precedent is not reasonable [or] fails to apply the principle of a precedent in a context where such failure is unreasonable," *Robinson [v. Polk]*, 438 F.3d [350,] 355 [(2006)] (internal quotation marks omitted). The state court's application of clearly established federal law must be "objectively unreasonable," for a "federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Williams v. Taylor*, 529 U.S. at 409, 411. The phrase "clearly established federal law" refers "to the holdings, as opposed to the *dicta*, of [the Supreme] Court's decisions as of the time of the relevant state-court decision." *Id.* at 412.

In deciding whether a petitioner has demonstrated the deficiency of the state-court adjudication under § 2254(d), we must presume state court findings of fact to be correct unless the petitioner rebuts that presumption by clear and convincing evidence. 28 U.S.C.A. § 2254(e)(1).

Thus, "a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be "unreasonable" for habeas relief to be granted. This is "a substantially higher threshold." *Id.* at 410; *Schriro v. Landrigan*, 550 U.S. 465, ___, 127 S.Ct. 1933, 1939-40 (2007).³

³ If the United States Supreme Court has never addressed the claim presented to the state court, then, the state court decision cannot be said to have "unreasonabl[y] appli[ed] clearly

GROUND ONE

Coulter's first allegation is that trial counsel was ineffective for advising Coulter to accept the negotiated plea because the advice was predicated upon counsel's unwillingness to continue with a jury trial after Coulter's co-defendant pled guilty and agreed to testify against Coulter. Respondent submits that Petitioner procedurally defaulted on this allegation because, although Coulter did obtain a ruling on this allegation from the PCR court (App. 769-70) and it was raised in his Pro se Response to *Johnson* Petition, it was not raised in the *Johnson* Petition. See *Coleman v. Thompson*, 501 U.S. 722, 729-30 (1991). See also *Kornahrens v. Evatt*, 66 F.3d 1359, 1362 (4th Cir. 1995) (Even under *in favorem vitae* review an inmate's claim is procedurally barred unless specifically raised to the state supreme court).

"[A]s a general matter, the burden is on the petitioner to raise his federal claim in the state courts at a time when state procedural law permits its consideration on the merits, even if the state court could have identified and addressed the federal question without its having been raised." *Bell v. Cone*, 543 U.S. 447, 451 n. 3 (2005) (citing *Baldwin v. Reese*, 541 U.S. 27, 30-32 (2004)). Much like the abuse of writ doctrine, the procedural default doctrine "refers to a complex and evolving body of equitable principles informed and controlled by historical usage, statutory developments, and judicial decisions." *McCleskey v. Zant*, 499 U.S. 467, 489 (1991). "Out of respect for finality, comity, and the orderly administration of justice, a federal court will not entertain a procedurally defaulted constitutional claim in a petition for habeas corpus absent a showing of cause and prejudice."

established Federal law' [under § 2254(d)(1)]." *Carey v. Musladin*, 549 U.S. 70, 74-77 (2007) (Ninth Circuit Court of Appeals erred by holding the state court of appeal's decision was contrary to or an unreasonable application of clearly established federal law as determined by the Supreme Court, where the state court decision was contrary to Ninth Circuit precedent but the Supreme Court had never decided the issue).

to excuse the default." *Dretke v. Haley*, 541 U.S. 386, 388 (2004). This is a corollary to the rule that "federal courts will not disturb state court judgments based on adequate and independent state law procedural grounds." *Id.* at 392.

The procedural default can only be excused if a habeas petitioner can demonstrate both cause for the procedural default and prejudice as a result of the alleged constitutional violation, or if he can demonstrate that failure to review the constitutional claim will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 749-50. The cause and prejudice requirement shows due regard for the States' finality and comity interests while ensuring that "fundamental fairness [remains] the central concern of the writ of habeas corpus." *Strickland v. Washington*, 466 U.S. 668, 697 (1984). ... a prisoner may establish a fundamental miscarriage of justice by showing that a constitutional error probably resulted in the conviction of one who is actually innocent. *See, e.g., Deitz v. Money*, 391 F.3d 804, 808 (6th Cir.2004). In order to raise a claim of actual innocence, a prisoner "must present[] evidence of innocence so strong that a court cannot have confidence in the outcome of the trial unless the court is also satisfied that the trial was free of nonharmless constitutional error." *Schlup v. Delo*, 513 U.S. 298, 316 (1995). This standard applies when a prisoner presents a valid claim of constitutional error. *Id.* at 316.

In the present case, Coulter cannot demonstrate cause for the procedural default and prejudice as a result of the alleged constitutional violation, or that failure to review the constitutional claim will result in a fundamental miscarriage of justice. *Coleman*, 501 U.S. at 749-50.⁴ The record reflects

⁴ Alternatively, Respondent submits that the state courts' rejection of Coulter's claim was not "contrary to" and did not involve an "unreasonable application of" clearly established United States Supreme Court precedent. § 2254(d)(1).

that Coulter's co-defendant, Ivory Crocker, entered a negotiated guilty plea to misprision of a felony⁵ after the trial had begun, in which Crocker received a probationary sentence concurrent to a probationary sentence he was then serving, in exchange for his cooperation and agreement to testify against Coulter.⁶ During the plea, Crocker outlined Coulter's involvement in the murder and kidnapping of the victim. **App. 607-41.**

Coulter's trial counsel moved for a mistrial after the trial court had accepted Crocker's guilty plea based upon trial strategy changes caused by the plea and the fact the jury had been sworn. In instance, the jury composition would have been different if Crocker had not exercised the right to remove jurors Coulter wanted on his jury, and counsel's opening statement would have been different. Also, Coulter would be prejudiced in front of the jury because Crocker would no longer be seated at counsel table; and the prior trial strategy of Crocker, in which he denied involvement in the offenses would adversely impact both the jury's ability to follow Coulter's presumption of innocence and trial counsel's credibility. Further, counsel unsuccessfully requested to discuss trial strategy matters ex parte with the trial court. The trial court took the motion under advisement. **App. 641-64.**

The trial court offered to give a curative instruction about Crocker's absence, but trial counsel declined the offer because he did not believe that a curative charge would remedy the prejudice caused by the guilty plea. **App. 664-70.** When trial resumed that afternoon, Coulter entered his guilty plea. **App. 674-31.** Coulter was sworn before he entered his guilty plea. **App. 676.**

⁵ Crocker waived presentment of the indictment to the Grand Jury for the misprision charge. **App. 609.**

⁶ The sentence was to be imposed after his truthful trial testimony. **App. 617.**

In the course of the guilty plea, Coulter admitted that he was thirty-nine years old; that he had attended two years of college and had obtained a degree in electrical engineering; that he had been employed for sixteen years as an electrical engineer; that he was not married and his three year old child with the victim was his only child; that he had never been treated for mental illness or the abuse of drugs or alcohol; that he had not taken any drugs, alcohol or medicine in the seventy-two hours before his plea; that he was not aware of any physical, emotional or nervous problem that might keep him from understanding the proceedings; and that he was entering a guilty plea to indictment 2002 GS-10-2443, charging him with kidnapping. He then listened to the State's proffer of facts in support of his plea; and he both understood and agreed with the State's proffer. Further, he swore that he understood that the maximum penalty for kidnapping was thirty years imprisonment; that the offense of kidnapping was classified under South Carolina law as both a "violent crime" and "a most serious" offense, and that these classifications would impact how his sentence would be served; that if was convicted of another "most serious" offense, then, he would be facing a sentence of life without parole if convicted; that no one could predict what his parole eligibility would be and that he should assume that he would serve his entire sentence; and that he was pleading guilty because he was guilty. App. 676-91.

Coulter further swore that he understood that, by entering his guilty plea, he was waiving certain constitutional rights, including his right to a jury trial and the rights associated with a jury trial. App. 691-93. Of particular importance to the current allegation, he stated that he understood that "if you still want a jury trial, ... the Court stands ready to proceed and continue with the trial." App. 694 (emphasis added).

Although he understood the rights he was waiving, he still wanted to plead guilty. Coulter

likewise swore that no other negotiations had been made on his behalf other than what was stated on the record; that he was satisfied with his attorneys services; that they had answered all of his questions; that they had done everything that he had asked or expected them to do in representing him; that there was nothing more that he would have them do that they had not done; that he understood his conversations with counsel; that he had met with them for as often and as long as necessary for them to represent him; and that **he did not have "any complaints about their services."** Also, no one had promised him anything in exchange for his plea; and no one had held out any hope of reward, or used threats, coercion, force or intimidation to cause him to plead guilty. Rather, he was pleading guilty freely and voluntarily; and he had received enough time to make up his mind about his guilty plea. Finally, Coulter swore that he did not need to ask the trial court anything about anything that she had covered; that no one had suggested to him how he should answer her questions; and that he had "been absolutely truthful in each and every answer" that he had given to her. **App. 694-98.**

Trial counsel testified at the PCR hearing that this was one of the most intriguing cases of his career. **App. 838.** After the first day of testimony Coulter's co-defendant, Crocker, unexpectedly pled guilty and agreed to testify against Coulter. Crocker's plea with the State changed his trial strategy. However, he was still willing to continue with the trial if Coulter had wanted to do so. Further, counsel had filed motions for a mistrial or in the alternative for a continuance, based upon "this bombshell." **App. 838-39.**

Following the motions, counsel and the Public Defender Jennifer K. Shealy, spoke to Coulter. Counsel also spoke to then-Deputy Solicitor Wilson. At first, Coulter "was in disbelief" that "his ... long-term friend had agreed to testify against him." After Coulter met privately with his father for

"[p]robably a half-hour or so," counsel and Mrs. Shealy spoke to him. "[O]nce he understood the ramifications of his best friend now working out a plea with the State," Coulter spent "over an hour" telling counsel what he had done. **App. 839-41.**

Coulter told counsel that he and Crocker had planned the kidnapping. This, in itself, changed counsel's trial strategy because the strategy had been based on Coulter's claim that he did not know anything about the victim's disappearance. **App. 839-44.** Based upon the evidence that the State had already presented, Crocker's decision to testify as a prosecution witness against Coulter. After counsel's conversation with Coulter, counsel advised him that he should accept the plea that the State was offering: in exchange for a guilty plea to kidnapping and a thirty year sentence, the remaining charges would be *nolle prossed*.⁷ Counsel explained Coulter's constitutional rights; the advantages of pleading to the offer; the likelihood of a conviction with the co-defendant's testimony; counsel's belief that the trial judge would impose the maximum sentence if he was convicted, so that he would die in prison; and the details of the plea to Coulter. Coulter understood each of these matters. He was aware that he would not face the maximum punishment that he would if he did not accept the offer. Counsel also explained the trial strategy to Coulter if he elected to go forward. **App. 844; 847-59.**

The State was interested in finding the victim's remains on her family's behalf. After counsel's lengthy conversations with Coulter and the plea, Coulter met with representatives of the Solicitor's Office "for many more hours." Once the State had spoken to both defendants, the victim's remains were located. **App. 845.** Although both of the motions counsel had filed were likely to be denied, Coulter pled guilty before the trial judge could rule on either motion. Counsel was prepared

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to go forward if Coulter had decided not to plead guilty. App. 859-60.

The PCR court found that trial counsel's testimony in this regard was credible. App. 770. The PCR court further found that Coulter had "failed to show any deficiency on the part of counsel or prejudice resulting therefrom, and therefore this allegation is expressly denied and dismissed with prejudice." App. 770.

Coulter is not entitled to relief. The United States Supreme Court addressed the presumption of verity to be given the plea proceeding record when the plea is subsequently challenged in a collateral proceeding in *Blackledge v. Allison*, 431 U.S. 63 (1977). While noting that the defendant's representations at the time of his guilty plea are not "invariably insurmountable" when challenging the voluntariness of his plea, the Court stated that, nonetheless, the defendant's representations, as well as any findings made by the judge accepting the plea, "constitute a formidable barrier Solemn declarations in open court carry a strong presumption of verity." 431 U.S. at 73-74. The Court concluded that a subsequent presentation of conclusory allegations and contentions that are wholly incredible in the face of the record are subject to summary dismissal. *Id* at 74. See also *Crawford v. United States*, 519 F.2d 317 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976). In this case, Coulter has not met his burden of overcoming the presumption that his sworn responses to the trial court at the time of his guilty plea were truthful.

Moreover, "[w]here, as here, a defendant is represented by counsel during the plea process and enters his plea upon the advice of counsel, the voluntariness of the plea depends on whether counsel's advice 'was within the range of competence demanded of attorneys in criminal cases.'" *Hill v. Lockhart*, 474 U.S. 52, 56 (1986); see also *See also Yarborough v. Gentry*, 540 U.S. 1 (2003) ("[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment

guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight"); *Knox v. State*, 530 S.E.2d 887, 889 (S.C. 2000).

While the Court in *Hill* adopted the *Strickland* standard for allegations that trial counsel was ineffective in representation at a plea, "[t]he *Strickland* ineffective assistance of counsel standard is somewhat different in the context of a guilty plea. In the context of a guilty plea, the petitioner must demonstrate that his trial counsel's performance fell below an objective standard of reasonableness and 'that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.' *Hill v. Lockhart*, 474 U.S. 52, 59, 106 S. 88 L.Ed.2d 203 (1985)." *Burket v. Angelone*, 208 F.3d 172, 189 (4th Cir. 2000). Further, in assessing counsel's performance, a reviewing court must presume his conduct falls within the wide range of reasonable professional assistance. *See Strickland*, 466 U.S. at 688-89. The reviewing court also must be highly deferential in scrutinizing counsel's performance and must filter the distorting effects of hindsight from our analysis. *See id.*; *see also Reid v. True*, 349 F.3d 788, 798 (4th Cir. 2003); *Burket*, 208 F.3d at 189; *Bunch v. Thompson*, 949 F.2d 1354, 1363 (4th Cir.1991).

This Court may not grant relief based upon his factual findings unless they are objectively unreasonable. § 2254(d)(2). Further, his findings are entitled to a presumption of correctness, which Petitioner must rebut by clear and convincing evidence. § 2254(e)(1). *See also Roberts v. State*, 361 S.C. 1, 602 S.E.2d 768 (2004); *Drayton v. Evatt*, 312 S.C. 4, 430 S.E.2d 517 (1993) (noting that great deference is given to the PCR court's findings when matters of credibility are involved because this Court lacks the opportunity to directly observe the witnesses). Coulter simply cannot meet his burden. In the present case, trial counsel's testimony supports the PCR court's ruling that counsel was willing to proceed with a jury trial if Coulter desired. Therefore, Coulter's allegation lacks merit.

GROUND TWO

In **Ground Two**, Coulter alleges that counsel was ineffective for advising Coulter to accept the negotiated plea while failing to explain the laws of confrontation and Fifth Amendment privilege against self-incrimination to him. The PCR court found that "Tr[ia]l counsel testified at the hearing that he advised the Applicant to plead guilty to kidnapping and fully explained the consequences and sentence possibilities." **App. 7668-69**. The PCR court further found "that the trial counsel's testimony is credible. The Applicant has failed to meet his burden to show that counsel was ineffective or was prejudiced by such deficiency." **App. 769**. Based upon those portions of the transcript of the guilty plea and trial counsel's PCR testimony, Respondent submits that the state courts' rejection of Coulter's claim was not "contrary to" and did not involve an "unreasonable application of" clearly established United States Supreme Court precedent. § 2254(d)(1).

IV.

Each and every allegation contained within the Petition not hereinbefore either expressly admitted, qualified or explained is hereby denied.

CONCLUSION

WHEREFORE, having made Return, Respondent requests that the Petition be denied and dismissed.

Respectfully submitted,

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December 31, 2008.

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Ronald Coulter, #300410,
a/k/a Ronald James Coulter,

Petitioner,

vs.

Robert M. Stevenson, III, Warden BRCI,

Respondent.

C/A No. 9:08-2762-PMD-PJG

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, do hereby certify that on this date, I served the Motion for Summary Judgment and Return and Memorandum of Law in Support of Motion for Summary Judgment, in the foregoing action on counsel for the Petitioner by depositing one copy of the same in the United States mail, first- class postage prepaid, and addressed as follows:

Ronald Coulter, #300410
a/k/a Ronald James Coulter
4460 Broad River Road
Columbia, SC 29210

This 31ST day of December, 2008.

By: s/William Edgar Salter, III
ATTORNEYS FOR RESPONDENTS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Ronald Coulter, #300410,	)	
	)	
Petitioner,	)	C/A No. 0:08-2762-PMD-PJG
	)	
vs.	)	
	)	REPORT AND RECOMMENDATION
Robert M. Stevenson, Warden BRCI,	)	
	)	
Respondent.	)	
	)	

This habeas corpus matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC on the parties' cross-motions for summary judgment (Docket Entries 28 & 34). The petitioner, Ronald Coulter ("Coulter"), a self-represented state prisoner, filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The respondent filed a motion for summary judgment. (Docket Entry 28.) Pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised the petitioner of the summary judgment and dismissal procedures and the possible consequences if he failed to respond adequately to the respondent's motion. (Docket Entry 30.) Coulter filed a response in opposition to the respondent's motion for summary judgment (Docket Entry 33) followed by a cross-motion for summary judgment (Docket Entry 34). These motions are now before the court for a Report and Recommendation.

BACKGROUND

Coulter was indicted in May 2002 in Charleston County for kidnapping, conspiracy to commit kidnapping, and murder (02-GS-10-2443). (App. at 20-21, 890-91, Docket Entry 29-2 at 20-21 & Docket Entry 29-8 at 96-97.) Coulter was represented by Jennifer K. Shealy, Esquire, Charleston County Public Defender, and Rodney D. Davis, Esquire, Assistant Public Defender, and

on February 23-25, 2004, was jointly tried with his co-defendant.¹ Two days into the trial, Coulter pled guilty pursuant to a negotiated plea agreement to the charge of kidnapping. (App. at 675-80, Docket Entry 29-7 at 31-36.) The circuit court sentenced Coulter to thirty years' imprisonment. (App. at 706, Docket Entry 29-7 at 62.) Coulter did not file a direct appeal.

On July 16, 2004, Coulter filed an application for post-conviction relief ("PCR"). (Coulter v. State of South Carolina, 04-CP-10-2999, App. at 732-45, Docket Entry 29-7 at 88-101.) Coulter raised the following issues in his PCR application:

1. Ineffective assistance of trial counsel
 - a) Counsel failed to adequately object to the sufficiency of the indictments presented.
 - b) Counsel failed to investigate an alibi re: defense.
 - c) Counsel failed to object to the short intervention between the reception of discovery and the actual trial.
 - d) Counsel failed to explain the law regarding the consequences of a guilty plea.
 - e) Counsel failed to adequately file a direct appeal.
 - f) Counsel failed to file motion to obtain exculpatory discovery material.
 - g) Counsel failed to object to trial court's jurisdiction, subject matter jurisdiction, to accept guilty plea.
 - h) Counsel failed to raise meritorious issues preserved for appeal.
2. Involuntary guilty plea
3. Brady² violation

¹Ivory Coker ("Coker"), also known as Ivory Croker, was Coulter's co-defendant. Coker was indicted and tried on identical charges stemming from the same incident that occurred on or about April 21, 2001. On February 25, 2004, two days into the trial, Coker agreed to plead guilty pursuant to a negotiated plea agreement and testify for the State against Coulter.

²Brady v. Maryland, 373 U.S. 83, 87 (1963) (holding that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution"). The Fourth Circuit has identified three "essential components" of a Brady violation: "(1) the evidence at issue must be favorable to the defendant, whether directly exculpatory or of impeachment value; (2) it must have been suppressed by the state, whether willfully or inadvertently; and (3) it must be material." Spicer v. Roxbury Corr. Inst., 194 F.3d 547, 555 (4th Cir. 1999).

(Id.) The State filed a Return on June 23, 2005. (App. at 746-51, Docket Entry 29-7 at 102-07.) On May 26, 2006, Coulter filed an amendment to his application in which he raised the following issues:

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

(App. at 752, Docket Entry 29-7 at 110.) On June 2, 2006, the PCR court held an evidentiary hearing at which Coulter appeared and testified and was represented by Lea B. Kerrison, Esquire. (App. at 775-889, Docket Entry 29-7 at 131-50 through Docket Entry 29-8 at 1-95.) The PCR judge denied Coulter's PCR application by order filed November 6, 2006. (App. at 763-72, Docket Entry 29-7 at 119-28.)

Coulter timely filed a Notice of Appeal. On appeal, Coulter was represented by Wanda H. Carter, Esquire, Deputy Chief Attorney of the South Carolina Commission on Indigent Defense, Division of Appellate Defense. On June 8, 2007, counsel for Coulter filed a Johnson³ Petition for Writ of Certiorari and Petition to be Relieved as Counsel, in which she raised the following issue:

³Johnson v. State, 364 S.E.2d 201 (S.C. 1988) (applying the factors in Anders v. California, 386 U.S. 738 (1967) to post-conviction appeals). Anders requires that counsel who seeks to withdraw after finding the "case to be wholly frivolous" following a "conscientious examination" must submit a brief referencing anything in the record that arguably could support an appeal; furnish a copy of that brief to the defendant; and after providing the defendant with an opportunity to respond, the reviewing court must conduct a full examination of the proceedings to determine if further review is merited. Anders, 386 U.S. at 744.

Trial counsel erred in failing to explain to petitioner that a guilty plea would waive his right to confront his accusers and his privilege against self-incrimination.

(Docket Entry 29-10 at 3.) Coulter filed a *pro se* response to the Johnson petition on July 12, 2007, in which he raised the following issues:

1. Did the PCR judge err in failing to find Petitioner's trial counsel was ineffective for being unwilling to continue with trial and advising the Petitioner to accept a plea agreement, after the Petitioner's co-defendant agreed to testify against the Petitioner?
2. Was Petitioner's trial counsel ineffective for failing to explain the laws of confrontation to the Petitioner while advising the Petitioner to accept a plea agreement?

(Docket Entry 29-11 at 3.) The South Carolina Court of Appeals denied Coulter's petition for a writ of certiorari in an order dated May 19, 2008. (Docket Entry 29-12.) The remittitur was issued on June 4, 2008. (Docket Entry 29-13.)

Coulter's federal petition for a writ of habeas corpus raises the following allegations:

Ground One: Guilty plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel advised Petitioner to accept plea agreement because counsel was unwilling to continue trial proceedings in light of codefendant's confession and plea agreement.

Ground Two: Guilty plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel failed to explain the law of confrontation and fifth amendment privilege against self-incrimination to the Petitioner while advising the Petitioner to accept a plea agreement.

(See Pet., Docket Entry 1-2 at 5.)

DISCUSSION

A. Summary Judgment Standard

Summary judgment is appropriate only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter

of law.” Fed. R. Civ. P. 56(c). Rule 56(c) mandates entry of summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case.” Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

In deciding whether there is a genuine issue of material fact, the evidence of the non-moving party is to be believed and all justifiable inferences must be drawn in favor of the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). However, “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted.” Id. at 248.

The moving party has the burden of proving that summary judgment is appropriate. Once the moving party makes this showing, however, the opposing party may not rest upon mere allegations or denials, but rather must, by affidavits or other means permitted by the Rule, set forth specific facts showing that there is a genuine issue for trial. See Fed. R. Civ. P. 56(e). Further, while the federal court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the development of a potentially meritorious case, see, e.g., Cruz v. Beto, 405 U.S. 319 (1972), the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts which set forth a federal claim, nor can the court assume the existence of a genuine issue of material fact where none exists. Weller v. Dep’t of Soc. Servs., 901 F.2d 387 (4th Cir. 1990).

B. Habeas Corpus Standard of Review

1. Generally

In accordance with § 2254, claims adjudicated on the merits in a state court proceeding cannot be a basis for federal habeas corpus relief unless the decision was “contrary to, or involved

an unreasonable application of clearly established federal law as decided by the Supreme Court of the United States,” or the decision “was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.” 28 U.S.C. § 2254(d)(1), (2). When reviewing a state court’s application of federal law, “a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.” Williams v. Taylor, 529 U.S. 362, 410 (2000); see also Humphries v. Ozmint, 397 F.3d 206 (4th Cir. 2005); McHone v. Polk, 392 F.3d 691 (4th Cir. 2004). Moreover, state court factual determinations are presumed to be correct and the petitioner has the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

2. Exhaustion Requirement

A habeas corpus petitioner may obtain relief in federal court only after he has exhausted his state court remedies. 28 U.S.C. § 2254(b)(1)(A). “To satisfy the exhaustion requirement, a habeas petitioner must present his claims to the state’s highest court.” Matthews v. Evatt, 105 F.3d 907, 911 (4th Cir. 1997). Thus, a federal court may consider only those issues which have been properly presented to the highest state courts with jurisdiction to decide them. Generally, a federal habeas court should not review the merits of claims that would be found to be procedurally defaulted (or barred) under independent and adequate state procedural rules. Lawrence v. Branker, 517 F.3d 700, 714 (4th Cir. 2008); Longworth v. Ozmint, 377 F.3d 437 (4th Cir. 2004); see also Coleman v. Thompson, 501 U.S. 722 (1991). For a procedurally defaulted claim to be properly considered by a federal habeas court, the petitioner must “demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.” Coleman, 501 U.S. at 750.

C. Coulter's Habeas Grounds

1. Ground One

In Ground One of the instant Petition, Coulter asserts that trial counsel was ineffective for being unwilling to continue with trial and advising him to accept a plea agreement after Coulter's co-defendant agreed to testify against him. The Respondent contends that this ground is procedurally barred under South Carolina law, as Coulter failed to raise this issue in his Johnson petition for a writ of certiorari following the circuit court's denial of his PCR application, although he included the argument in his *pro se* response to the Johnson petition.

The requirement of exhaustion of state remedies requires that a federal claim be "fairly presented" to the state court. See Picard v. Connor, 404 U.S. 270, 275 (1971) (requiring a federal claim to be "fairly presented" to the state courts). To be fairly presented, a claim must "include reference to a specific federal constitutional guarantee, as well as a statement of facts that entitle the petitioner to relief." Gray v. Netherland, 518 U.S. 152, 162-63 (1996). In State v. McKennedy, 559 S.E.2d 850 (2002), the South Carolina Supreme Court held that articulating an issue in an Anders brief constitutes fair presentation of that claim to the appellate court. Id. at 854. In finding that the Court of Appeals' Anders review constituted a decision on the merits for purposes of state law, the Supreme Court noted that McKennedy's counsel had filed an Anders brief with the Court of Appeals and McKennedy filed a *pro se response, raising the issues he considered important*. McKennedy, 559 S.E.2d at 855. The Supreme Court observed that the Court of Appeals, pursuant to Anders, then reviewed the merits of the argument. Id. Here, Coulter raised the issue contained in Ground One to the Court of Appeals in his *pro se Johnson* brief. Accordingly, although the issue was not contained in the actual Johnson petition, this court cannot say that it has not been fairly presented to the South Carolina appellate courts.

Having determined that Ground One is not procedurally barred under South Carolina law, the court turns to the merits of Coulter's Petition.

A defendant has a constitutional right to the effective assistance of counsel. Williams v. Florida, 465 U.S. 1109, 1111 n.5 (1984). To demonstrate ineffective assistance of counsel, Coulter must show, pursuant to the two-prong test enunciated in Strickland v. Washington, 466 U.S. 668 (1984), that (1) his counsel was deficient in his representation and (2) he was prejudiced as a result. Id. at 687; see also Williams v. Taylor, 529 U.S. 362, 391 (2000) (stating that "the Strickland test provides sufficient guidance for resolving virtually all ineffective-assistance-of-counsel claims").

To satisfy the first prong of Strickland, Coulter must show that trial counsel's errors were so serious that his performance was below the objective standard of reasonableness guaranteed by the Sixth Amendment to the United States Constitution. With regard to the second prong of Strickland, Coulter "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. Prejudice may be presumed when (1) a defendant is completely denied counsel at a critical stage of his trial, (2) counsel "entirely fails to subject the prosecution's case to a meaningful adversarial testing," or (3) "although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." United States v. Cronin, 466 U.S. 648, 659 (1984).

To prevail on a claim of ineffective assistance of counsel in connection with a guilty plea, a petitioner must show that "trial counsel's performance fell below an objective standard of reasonableness and 'that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" Burket v. Angelone, 208 F.3d 172,

189 (4th Cir. 2000) (quoting Hill v. Lockhart, 474 U.S. 52, 59 (1985)) (discussing the Strickland v. Washington standard to establish ineffectiveness of counsel in the context of a guilty plea).

In response to the respondent's summary judgment motion, Coulter contends that the PCR court's factual determination that counsel was willing to go forward with the trial following Coulter's co-defendant's decision to testify against Coulter was unreasonable pursuant to 28 U.S.C. § 2254(d)(2) in light of the evidence presented. The court disagrees. As noted above, a court cannot set aside the factual findings of the state court unless they are objectively unreasonable. § 2254(d)(2). The state court's findings are entitled to a presumption of correctness, and a petitioner must rebut that presumption by clear and convincing evidence. § 2254(e)(1). At the PCR hearing, Coulter's trial counsel testified that he was willing to proceed with a jury trial if Coulter so desired. The PCR's reliance on that testimony was not objectively unreasonable. Furthermore, Coulter testified at his guilty plea that he was pleading guilty because he was guilty, he understood the maximum penalties associated with his charges, he was satisfied with the services of his counsel, and he understood that, by entering his guilty plea, he was waiving certain constitutional rights including his right to a jury trial. (App. at 691-95, Docket Entry 29-7 at 47-51.) Additionally, when informed by the trial judge that "if [Coulter] still want[s] a trial, . . . the Court stands ready to proceed and continue with the trial," Coulter testified that he still wished to enter his guilty plea. (App. at 694, Docket Entry 29-7 at 50.) Although Coulter claims that he can "clearly" demonstrate that the state PCR court's fact-finding [] of trial counsel's willingness to continue trial [] is not supported by the state court record," he offers absolutely no basis in the record for this conclusory statement. (Petr.'s Mem. Opp'n Mot. Summ. J. at 4, Docket Entry 33 at 4.) Accordingly, Coulter cannot meet the standard enunciated under Strickland and Burket. Strickland, 466 U.S. at 687; Burket v. Angelone, 208 F.3d at 189.

2. Ground Two

In Ground Two of his Petition, Coulter contends that his trial counsel was ineffective for failing to advise him of his rights to confront witnesses and against self-incrimination. The PCR court found credible trial counsel's testimony that he fully explained the consequences and sentence possibilities if Coulter pled guilty. (App. 768-69, Docket Entry 29-7 at 124-25.) Although Coulter emphasizes in his response that he challenges the PCR court's finding pursuant to § 2254(d)(2)'s standard with regard to fact-finding, he offers no basis in the record that would even remotely suggest that the PCR's finding as to the credibility of trial counsel on this point was unreasonable. (Petr.'s Mem. Opp'n Mot. Summ. J. at 5, Docket Entry 33 at 5.)

Coulter also addresses Ground Two in his own motion for summary judgment.⁴ (Docket Entry 34.) However, although Coulter again asserts that the PCR court's finding was contrary to the record, he again points to nothing in the record to support that contention other than his own self-serving statement that counsel did not explain these rights. (See generally Petr.'s Mot. Summ. J., Docket Entry 34.) The PCR court was well within the bounds of reasonableness to accept the testimony of trial counsel as credible.

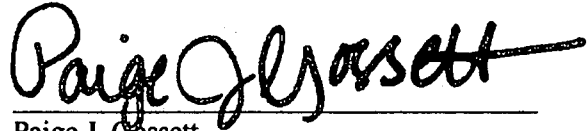
Having fully reviewed the record, the court finds that the PCR court's determination on this issue was reasonable. See 28 U.S.C. § 2254(d)(2). Further, the court finds nothing to indicate that the PCR court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States" under § 2254(d)(1).

⁴The court observes that to the extent that Coulter's motion attempts to unilaterally extend Coulter's time to respond to the respondent's motion for summary judgment with regard to Ground Two, it is in actuality a belated response that should not be considered by the court. Out of an abundance of caution, however, the court has considered Coulter's "motion" (Docket Entry 34).

RECOMMENDATION

For the foregoing reasons, Coulter is not entitled to a writ of habeas corpus. Accordingly, the court recommends that the respondent's motion for summary judgment (Docket Entry 28) be granted and the petitioner's motion for summary judgment (Docket Entry 34) be denied.

August 3, 2009
Columbia, South Carolina


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the district judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).

UNITED STATES DISTRICT COURT

for the

District of South CarolinaRonald Coulter*Petitioner*

v.

Robert M. Stevenson, Warden BRCI*Respondent*

Civil Action No. 0:08-2762-PMD

JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

- ☐ the plaintiff (name) _____ recover from the
defendant (name) _____ the amount of
_____ dollars (\$ _____), which includes prejudgment
interest at the rate of _____ %, plus postjudgment interest at the rate of _____ %, along with costs.
- ☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) _____
recover costs from the plaintiff (name) _____

☒ other: Summary judgment is hereby entered for the respondent, Robert M. Stevenson, Warden BRCI.
The petitioner, Ronald Coulter, shall take nothing of the respondent from his petition filed pursuant to
28 U.S.C. 2254, and this action is dismissed with prejudice.

This action was (check one):

- ☐ tried by a jury with Judge _____ presiding, and the jury has
rendered a verdict.
- ☐ tried by Judge _____ without a jury and the above decision
was reached.

☒ Decision by the Honorable Patrick Michael Duffy, United States District Judge, presiding, adopting the Report and
Recommendations set forth by the Honorable Paige J. Gossett, United States Magistrate Judge which granted the
respondent's motion for summary judgment.

Date: September 17, 2009

CLERK OF COURT

s/Jennifer Peterson

Signature of Clerk or Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Ronald Coulter, #300410

Petitioner,

v.

Robert M. Stevenson, Warden BRCI,

Respondent.

C.A. No.: 0:08-cv-02762-PMD-PJG

ORDER

This matter is before the court on Petitioner Ronald Coulter's *pro se* application for writ of habeas corpus filed in this court pursuant to 28 U.S.C. § 2254 on August 4, 2008.¹ On December 31, 2008, Respondent filed a motion for summary judgment. Petitioner filed a response in opposition to Respondent's motion for summary judgment and filed a cross-motion for summary judgment. On August 3, 2009, in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, the Magistrate Judge entered a Report and Recommendation ("R&R") recommending that Respondent's motion for summary judgment be granted and Petitioner's habeas corpus petition be dismissed. Petitioner filed an Objection to the R&R on August 13, 2009. Having reviewed the entire record, including Petitioner's Objections, the court finds the Magistrate Judge fairly and accurately summarized the facts and applied the correct principles of law. Accordingly, the court adopts the R&R and fully incorporates it into this Order.

BACKGROUND

Petitioner is currently confined at the Broad River Correctional Institution of the South Carolina Department of Corrections ("SCDC"). Petitioner was indicted in 2002 in Charleston County for kidnapping, conspiracy to commit kidnapping, and murder. Petitioner was

¹ Filing date per *Houston v. Lack*, 487 U.S. 266, 270-276 (1988).

represented by Jennifer K. Shealy, Esquire, Charleston County Public Defender, and Rodney D. Davis, Esquire, Assistant Public Defender, and on February 23-25, 2004, was jointly tried with his co-defendant. On February 25, 2004, Petitioner's co-defendant agreed to plead guilty and to testify for the State against Petitioner. Later that same day, Petitioner pled guilty to kidnapping pursuant to a negotiated plea. (R. pp. 675-80). Pursuant to the plea negotiations, the trial judge sentenced Petitioner to a term of imprisonment of thirty (30) years. (R. pp. 706). Petitioner did not appeal his conviction or sentence.

On July 16, 2004, Petitioner filed an application for post-conviction relief ("APCR") in state circuit court. *Coulter v. State of South Carolina*, No. 04-CP-10-2999; (R. pp. 732-45). Specifically, the Petitioner listed several grounds for relief, which are listed as follows:

1. Ineffective assistance of trial counsel;
 - a) Counsel failed to adequately object to the sufficiency of the indictments presented.
 - b) Counsel failed to investigate an alibi re: defense.
 - c) Counsel failed to object to the short intervention between the reception of discovery and the actual trial.
 - d) Counsel failed to explain the law regarding the consequences of a guilty plea.
 - e) Counsel failed to adequately file a direct appeal.
 - f) Counsel failed to file motion to obtain exculpatory discovery material.
 - g) Counsel failed to object to trial court's jurisdiction, subject matter jurisdiction, to accept guilty plea.
 - h) Counsel failed to raise meritorious issues preserved for appeal.
2. Involuntary guilty plea; and,
3. Brady² violation.

(*Id.*).

Petitioner thereafter amended his PCR on May 26, 2006, to assert the following issues:

1. Plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel advised Petitioner to accept the plea agreement, in

² *Brady v. Maryland*, 373 U.S. 83 (1963).

part, because counsel was unwilling to continue trial proceedings in light of co-defendant's confession and plea agreement.

2. Plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel failed to inform petitioner of the laws in relation to the facts, while making a recommendation to accept plea agreement.
3. Plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel further advised petitioner that if the trial judge does not grant the Motion for Mistrial, the only available option is to accept the plea agreement.

(R. p. 752).

Petitioner was represented in his PCR by Lea B. Kerrison, Esquire, and an evidentiary hearing was held on Petitioner's application on June 2, 2006. (R. pp. 775-889). In an Order filed November 6, 2006, the PCR judge denied Petitioner's APCR in its entirety. (R. pp. 763-72).

Petitioner timely filed a notice of appeal. Petitioner was represented by Wanda H. Carter, Esquire, Deputy Chief Attorney for the South Carolina Commission on Indigent Defense, who filed a *Johnson*³ Petition requesting to be relieved from the case and raising the issue of whether trial counsel erred in failing to explain to petitioner that a guilty plea would waive his right to confront his accusers and his privilege against self-incrimination. Pursuant to state procedure, Petitioner also filed a *pro se* brief in support of his appeal in which he raised the following issues:

1. Did the PCR judge err in failing to find Petitioner's trial counsel was ineffective for being unwilling to continue with trial and advising the Petitioner to accept a plea agreement, after the Petitioner's co-defendant agreed to testify against the Petitioner?
2. Was Petitioner's trial counsel ineffective for failing to explain the laws of confrontation to the Petitioner while advising the Petitioner to accept a plea agreement?

³ *Johnson v. State*, 364 S.E.2d 201 (S.C. 1998); see also *Anders v. California*, 368 U.S. 738, 744 (1967).

On May 19, 2008, the South Carolina Supreme Court granted counsel's request to be relieved, denied the petition, and issued the Remittitur on June 4, 2008.

Petitioner filed his *pro se* habeas petition on August 4, 2008, which asserted the following grounds for relief:

1. Guilty plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel advised Petitioner to accept plea agreement because counsel was unwilling to continue trial proceedings in light of codefendant's confession and plea agreement.
2. Guilty plea was involuntary and unintelligent as a result of ineffective assistance of counsel. Counsel failed to explain the law of confrontation and Fifth Amendment privilege against self-incrimination to the Petitioner while advising the Petitioner to accept a plea agreement.

Respondent moved for Summary Judgment on December 31, 2008. Petitioner filed a cross-motion for Summary Judgment. The Magistrate Judge recommended to this Court that Respondents' Motion for Summary Judgment be granted and Petitioner's Habeas Corpus Petition be dismissed.

STANDARD OF REVIEW

A. Legal Standard for Summary Judgment

To grant a motion for summary judgment, the court must find that "there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The judge is not to weigh the evidence, but rather to determine if there is a genuine issue of fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). If no material factual disputes remain, then summary judgment should be granted against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party bears the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,

322 (1986). All evidence should be viewed in the light most favorable to the non-moving party. *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121, 123–24 (4th Cir. 1990).

B. Magistrate Judge's R&R

The Magistrate Judge made his review in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge only makes a recommendation to the court. It has no presumptive weight, and the responsibility for making a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). Parties are allowed to make a written objection to a Magistrate Judge's report within ten days after being served a copy of the report. 28 U.S.C. § 636(b)(1). From the objections, the court reviews *de novo* those portions of the R&R that have been specifically objected to, and the court is allowed to accept, reject, or modify the R&R in whole or in part. *Id.* Additionally, the court may recommit the matter to the Magistrate Judge with instructions. *Id.*

ANALYSIS

I. Section 2254 Petitions

The court may grant habeas relief with respect to a claim adjudicated on the merits in state court proceedings only where such adjudication “resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States,” 28 U.S.C. § 2254(d)(1), or “resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding,” *id.* § 2254(d)(2). As “a determination of a factual issue made by a State court shall be presumed to be correct,” Petitioner has “the burden of rebutting the presumption of correctness by clear and convincing evidence.” 28 U.S.C. § 2254(e)(1). With respect to reviewing the state court's application of federal law, “a federal habeas court may grant the writ

if the state court identifies the correct governing legal principle from [the Supreme] Court's decisions but unreasonably applies that principle to the facts of the prisoner's case." *Williams v. Taylor*, 529 U.S. 362 (2000).

II. Petitioner's Claims of Ineffective Assistance of Counsel and Involuntary Plea

Petitioner claims that trial counsel's unwillingness to continue trial proceedings in light of co-defendant's confession and plea agreement and trial counsel's failure to explain the law of confrontation and Fifth Amendment privilege against self-incrimination resulted in Petitioner involuntarily entering a guilty plea.

In order to successfully challenge a conviction or sentence on the basis of ineffective assistance of counsel, Petitioner must demonstrate that his counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced by his counsel's deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984). With respect to the first prong, there is "a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* at 689. In order to satisfy the second prong, a petitioner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. In the context of a guilty plea, a petitioner must show "that there is a reasonable probability that, but for counsel's errors, he would not have plead guilty and would have insisted on going to trial." *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Generally, guilty pleas are valid if they are voluntary and intelligent. *Brady v. U.S.*, 397 U.S. 742, 747 (1970). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the

PCR hearing. *Pittman v. State*, 524 S.E.2d 623, 624 (S.C. 1999) (citing *Harres v. Leeke*, 282 S.C. 131, 318 S.E.2d 360 (1984)).

Petitioner previously raised the issue of ineffective assistance of counsel and resulting involuntary guilty plea in his APCR, where he had the burden of proving the allegations of ineffective assistance of counsel. *Butler v. State*, 334 S.E.2d 813, 814 (S.C. 1985), *cert. denied*, 474 U.S. 1094 (1986). The PCR court rejected these claims, making relevant findings of fact and conclusions of law. (R. pp. 763-72). As Petitioner's ineffective assistance of counsel claim was adjudicated on the merits by the South Carolina state court, this Court's review is limited by the deferential standard of review set forth in 28 U.S.C. § 2254(d), as interpreted by the Supreme Court in *Williams v. Taylor*, 120 S.Ct. 1495 (2000).

The Magistrate Judge recommends granting the Respondent's motion for summary judgment because Petitioner has not met his burden of showing trial counsel was constitutionally ineffective. After reviewing the entirety of the record, the court agrees with the Magistrate's R&R and finds that Petitioner has failed to carry his burden of showing that trial counsel was ineffective under the *Strickland* standard.

A. Ground One

In Ground One of his Petition, Petitioner asserts that trial counsel was ineffective in being unwilling to continue with trial and in advising Petitioner to accept a plea agreement after Petitioner's co-defendant agreed to testify against him. Because Respondent argued that Ground One is procedurally barred as an unexhausted claim, the Magistrate Judge first addressed this issue in the R&R and concluded that Petitioner had properly raised Ground One in his *pro se* response to the *Johnson* petition. Petitioner does not object to the Magistrate's conclusion on

this issue, and the court adopts the R&R's analysis of this issue and incorporates that analysis into this Order.

Having determined that Ground One is not procedurally barred under South Carolina law, the R&R then analyzes the merits of Petitioner's claim. The R&R concludes that the PCR court's factual determination that counsel was willing to go forward with the trial following Petitioner's co-defendant's decision to testify against Petitioner was not objectively unreasonable. The Magistrate Judge found that Petitioner offered no basis in the record to support his claim that trial counsel was unwilling to go to trial. Furthermore, the Magistrate notes that Petitioner testified at his guilty plea that he was pleading guilty because he was guilty; he understood the maximum penalties associated with his charges; that he was satisfied with the services of his counsel; and that he understood that, by entering his guilty plea, he was waiving certain constitutional rights including his right to a jury trial. (R. pp. 691-95). Additionally, when informed by the trial judge that "if [Petitioner] still want[s] a trial, . . . the Court stands ready to proceed and continue with the trial," Petitioner testified that he still wished to enter his guilty plea. (R. p. 694). Based on these findings, the Magistrate Judge concluded that Petitioner cannot meet the standard set forth under *Strickland* and that Petitioner's Ground One claim is therefore meritless.

In response to the Magistrate Judge's findings with respect to Petitioner's Ground One claim, Petitioner makes a number of objections. First, Petitioner objects generally to the Magistrate Judge's recommendation that Respondent's motion for summary judgment be granted. In this objection, Petitioner argues that the Magistrate Judge did not apply the appropriate standard for summary judgment to Petitioner's claims because the question of trial counsel's unwillingness to continue to trial is a genuine issue as to a material fact. Second,

Petitioner objects to the Magistrate's conclusion that Petitioner cannot meet the standard under *Strickland*. In this objection, Petitioner argues that the Magistrate Judge makes no determination of whether or not the Petitioner satisfied the two-prong *Strickland* test. Finally, with respect to the R&R's analysis of Ground One, Petitioner objects to the Magistrate's conclusion that the PCR's reliance on counsel's testimony that he was willing to continue to trial was not objectively unreasonable. In this objection, Petitioner argues that the trial transcript contradicts trial counsel's PCR testimony.

Petitioner claims that his counsel was unwilling to proceed with trial after learning of the co-defendant's guilty plea and agreement to testify for the State against Petitioner. To support this claim, Petitioner points to the trial record and the statements of trial counsel before Petitioner's guilty plea. After Petitioner's counsel learned of the co-defendant's guilty plea, he moved for a mistrial based on arguments that the jury had been compromised, the courtroom layout had changed, counsel's credibility had been tainted, counsel was unaware of the terms of the co-defendant's plea agreement, and Petitioner's case had been prejudiced by the effect of the co-defendant's guilty plea on counsel's ability to be prepared and to present an effective defense. (R. pp. 642-70). The trial court took the motion for a mistrial under advisement and suggested that it would most likely be denied but that maybe a curative instruction could be given to the jury. (R. pp. 663-69). The trial judge then determined that the court would go forward with the testimony of a records custodian witness before breaking for lunch and considering the motion for a mistrial. (R. pp. 664-64). At this point, Petitioner's counsel, Mr. Davis, stated that he "simply cannot imagine being, through no fault of my own, more unprepared, more—perhaps not this next witness, but the next witnesses that will follow." (R. p. 667). In addition, Mr. Davis stated that he "can't imagine how a curative instruction can cure the situation. Again we

don't feel that we can go forward. . . . We do not believe any language would be effective in curing the situation." (R. pp. 669-70). Before the trial court could rule on the motion for mistrial, Petitioner pled guilty to kidnapping.

Petitioner points to the statements quoted above to establish that his trial counsel was unwilling to go forward with the trial and that, therefore, his guilty plea was involuntary. Petitioner presented his counsel's statements at his PCR trial. During the PCR hearing, trial counsel testified that although the co-defendant's guilty plea with the State changed his trial strategy, he was still willing to continue with the trial if the defendant had chosen to proceed. (R. pp. 846-47). Further, trial counsel testified that during the recess and while awaiting the trial judge's ruling on the mistrial motion, he and Ms. Shealy spoke to Petitioner about "the change in circumstances, how it will affect the trial." (R. p. 840). Counsel testified that "once [Petitioner] finally understood the ramifications of his best friend [the co-defendant] now working out a plea with the State, we . . . basically listened and he spent over an hour talking to us about what he had done." (R. p. 841). According to trial counsel's testimony, Petitioner told his counsel that he and his co-defendant had planned the kidnapping. (*Id.*). Counsel testified that Petitioner's sudden admission to him changed counsel's entire strategy because his past defense strategy was premised on the basis that Petitioner did not know anything about the victim's disappearance. (*Id.*). Based on this admission plus the evidence the State already had, counsel advised Petitioner that he ought to accept the plea the State was offering which was to *nolle prosequere* the conspiracy and murder charges in exchange for a guilty plea to a negotiated sentence of thirty years for the kidnapping. (R. p. 844). In addition, trial counsel testified that he talked to Petitioner about what their strategy would be if they went forward with trial. (R. p. 848).

The PCR court found that trial counsel's testimony was credible and that Petitioner failed to show any deficiency on the part of counsel or prejudice resulting therefrom. (R. p. 770). Petitioner in his petition for habeas, in his memorandum in support of his petition, in his reply to Respondent's motion for summary judgment, and in his objection to the R&R essentially makes the same claims and presents the same evidence as Petitioner did in his PCR trial. Given the deferential standard that must be applied to the PCR court's findings, this court is unable to ascertain clear and convincing evidence that Petitioner's attorney fell below an objective standard of reasonableness.

Specifically, as to the first prong of deficient performance, the PCR court found that counsel was willing to go forward with Petitioner's trial, and that, therefore, counsel was not deficient in his performance. Petitioner has not presented clear and convincing evidence that his counsel was unwilling to go forward with trial if Petitioner had not plead guilty. While Petitioner points to statements made by his counsel before his plea was entered, those statements were in the context of trial counsel's arguments for why the case had been prejudiced by the co-defendant's plea agreement and for why the case should be declared a mistrial. The court finds that those statements alone do not provide clear and convincing evidence sufficient to overturn the PCR court's finding of fact that trial counsel was willing to proceed with the trial. In addition, the court finds that counsel's advice to accept the plea agreement in light of the State's evidence against Petitioner and in light of Petitioner's admission to counsel of his involvement in the kidnapping was not outside the wide range of professionally competent assistance. See *Strickland*, 466 U.S. at 690. Thus, Petitioner has failed to establish the first prong of his inefficient assistance of counsel claim under *Strickland*.

In addition, Petitioner has failed to prove that prejudice was caused by counsel's alleged deficient performance. Specifically, Petitioner has failed to show that there is a reasonable probability that, but for counsel's errors, he would not have plead guilty and would have insisted on going to trial. *See Hill v. Lockhart*, 474 U.S. 52, 59 (1985). As the Magistrate Judge noted, Petitioner testified at his guilty plea that he was pleading guilty because he was guilty, he understood the maximum penalties associated with his charges, he was satisfied with the services of his counsel, and he understood that, by entering his guilty plea, he was waiving certain constitutional rights including his right to a jury trial. (R. pp. 691-95). Additionally, when informed by the trial judge that "if [Petitioner] still want[s] a trial, . . . the Court stands ready to proceed and continue with the trial," Petitioner testified that he still wished to enter his guilty plea. (R. p. 694).

Thus, for the reasons described above, the court finds that Petitioner's trial counsel was not ineffective for being unwilling to continue with trial and for advising Petitioner to accept the plea agreement after Petitioner's co-defendant agreed to testify against him.

B. Ground Two

In Ground Two of his Petition, Petitioner contends that his trial counsel was ineffective for failing to advise him of his right to confront witnesses and his right against self-incrimination. The PCR court found credible trial counsel's testimony that he fully explained the consequences and sentence possibilities of pleading guilty. (R. pp. 768-69). The Magistrate Judge found that, "although [Petitioner] asserts that the PCR court's finding was contrary to the record, [Petitioner] points to nothing in the record to support that contention other than his own self-serving statement that counsel did not explain these rights." The Magistrate Judge found

that the PCR court's determination on this issue was reasonable. Accordingly, the Magistrate Judge found Ground Two of Petitioner's habeas claim to be meritless.

In response to the Magistrate Judge's findings with respect to Petitioner's Ground Two claim, Petitioner makes a number of objections. First, Petitioner objects generally to the Magistrate's recommendation that the Respondent's motion for summary judgment be granted. In this objection, Petitioner argues that the Magistrate Judge did not apply the appropriate standard for summary judgment to Petitioner's claims because the question of whether trial counsel fully explained the consequences of a plea is a genuine issue as to a material fact. Second, Petitioner objects to the Magistrate's finding that the PCR court's determination that trial counsel provided credible testimony that he fully explained the consequences of a guilty plea was reasonable. Third, Petitioner objects to the Magistrate's conclusion that, "... the court finds nothing to indicate that the PCR court's decision was 'contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States' under § 2254(d)(1)."

Petitioner claims that his counsel failed to explain the laws of confrontation and the Fifth Amendment privilege against self-incrimination to the Petitioner when advising the Petitioner to accept the plea agreement. To support this claim, Petitioner points to trial counsel's testimony at the PCR hearing. Specifically, Petitioner points to the following statements made by trial counsel during the PCR hearing:

1. That counsel did not discuss specific rules of evidence with the petitioner. (R. p. 848).
2. That counsel did not explain to the petitioner that the codefendant's plea hearing was considered out-of-court testimony and therefore hearsay by court rules. (R. p. 849).

3. That counsel did not explain to the petitioner that the codefendant's confession, during his plea hearing, was inadmissible at trial against the petitioner. (R. p. 849).

4. That counsel did not explain to the petitioner the specific questions that he would have cross-examined the co-defendant about. (R. pp. 850-51).

5. That counsel *did* engage in a routine discussion of the rights of confrontation and cross-examination with the Petitioner similar to the questions that the Court went over with Petitioner on the record during his plea. (R. p. 852).

6. That counsel explained to the Petitioner that his constitutional privilege against self-incrimination, with regards to a plea, means that the judge is going to ask questions and the petitioner has to answer them. (R. pp. 858-59).

7. That counsel did not explain to Petitioner that the right to remain silent was the same as the right against self-incrimination. (*Id.*).

However, trial counsel testified at the PCR hearing that he *did* engage in a routine discussion of the rights of confrontation and cross-examination with the Petitioner similar to the questions that the Court went over with Petitioner on the record during his plea. (R. p. 852). In addition, trial counsel testified that he discussed the privilege against self-incrimination in two respects—one, on whether at trial Petitioner would have testified or not, and two, if Petitioner entered a guilty plea, the “judge is going to have questions for you and you’re going to have to answer those.” (R. p. 856). The PCR court found that trial counsel’s testimony was credible and that Petitioner failed to show any deficiency on the part of counsel or prejudice resulting therefrom. (R. p. 770).

Additionally, during Petitioner’s guilty plea, the trial judge asked trial counsel if they had explained to Petitioner the charges contained in the indictment, the possible punishment, and his

constitutional rights, and their reply was "yes." (R. p. 676). Before Petitioner pled guilty, the trial court also explained to Petitioner that he was giving up certain constitutional rights by pleading guilty. (R. pp. 691-93). Specifically, the trial judge explained to Petitioner the following:

Sir, when you plead guilty you give up certain important constitutional rights. Those rights include your right to a jury trial. During a jury trial you're entitled to a presumption that you're innocent.

The State has the burden of proving beyond a reasonable doubt that you've committed each and every element of this offense. You would have the right to remain silent and if you exercised that right I would instruct the jury that your silence could not be used against you.

You would have the right to present any defense that you may have. You would have the right to confront and cross-examine the State's witnesses and call witnesses in your own defense and if you've made any confessions or other incriminating statements, you would have the right to challenge those statements. Do you understand each and every one of those rights as I've just explained them to you?

(*Id.*).

In response to the trial judge's question, Petitioner responded "yes." (*Id.*). Petitioner also stated that he was satisfied with his lawyer's services, that they answered all of his questions, and that they had done everything Petitioner had asked and expected in representing him. (*Id.*) Petitioner stated that he was pleading guilty freely and voluntarily and of his own will. (R. p. 696).

The PCR court held that Petitioner failed to prove that counsel was deficient in explaining Petitioner's constitutional rights or that prejudice was caused by counsel's alleged deficiency. Based on the evidence as discussed above and given the deferential standard that must be applied to the PCR court's findings, the court is unable to ascertain clear and convincing evidence that Petitioner's attorney fell below an objective standard of reasonableness. Thus, Petitioner's ineffective assistance of counsel claim is of no merit.

The guilty plea transcript indicates Petitioner fully understood the plea that he was making and the rights he was waiving by doing so. Petitioner repeatedly acknowledged that his plea was voluntary and that nobody was coercing him into pleading guilty. Petitioner understood the charges he was facing and the facts of the case as presented by the solicitor. Petitioner admitted his guilt and indicated that he was satisfied with his attorney's handling of the case. In addressing the court and the victim's families, Petitioner apologized for his actions.

Therefore, the court finds that there was a substantial factual basis for the plea and that Petitioner has not provided the Court with any evidence that he did not intend to plead guilty to the charges, under oath to the presiding judge, without objection in open court. Statements of the accused that facially demonstrate the plea's validity are conclusive absent compelling reasons why they should not be, such as ineffective assistance of counsel. *Via v. Superintendent, Powhatan Correctional Center*, 643 F.2d 167, 171 (4th Cir. 1981). In this case, Petitioner has failed to prove ineffective assistance of counsel in his case. In addition, Petitioner has failed to present any other compelling reasons to overcome the conclusive nature of the statements that Petitioner made at his plea hearing which facially demonstrate the plea's validity.

CONCLUSION

For the foregoing reasons, the court agrees with the Magistrate Judge's Report and Recommendation that Respondent's Motion for Summary Judgment be **GRANTED** and that Petitioner Ronald Coulter's Motion for Summary Judgment be **DENIED**.

AND IT IS SO ORDERED.


PATRICK MICHAEL DUFFY
United States District Judge

September 16, 2009
Charleston, SC

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 09-7849

RONALD COULTER,

Petitioner - Appellant,

v.

ROBERT M. STEVENSON, Warden, BRCI,

Respondent - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Rock Hill. Patrick Michael Duffy, District Judge. (0:08-cv-02762-PMD)

Submitted: July 19, 2010

Decided: August 10, 2010

Before WILKINSON and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Ronald Coulter, Appellant Pro se. Donald John Zelenka, Deputy Assistant Attorney General, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Ronald Coulter seeks to appeal the district court's order denying relief on his 28 U.S.C. § 2254 (2006) petition. The order is not appealable unless a circuit justice or judge issues a certificate of appealability. See 28 U.S.C. § 2253(c)(1) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2006). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the petition states a debatable claim of the denial of a constitutional right. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Coulter has not made the requisite showing. Accordingly, we deny a certificate of appealability, deny leave to proceed in forma pauperis, and dismiss the appeal. We dispense with oral argument because the facts and legal

contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED

Oct. 1, 2012.

133 S.Ct. 410
Supreme Court of the United States

Case below, 456 Fed.Appx. 222.

Ronald COULTER, petitioner,
v.
UNITED STATES DISTRICT COURT FOR
the DISTRICT OF SOUTH CAROLINA.

Opinion

Petition for writ of certiorari to the United States Court of
Appeals for the Fourth Circuit denied.

No. 11-10174.

All Citations

133 S.Ct. 410 (Mem), 184 L.Ed.2d 61, 81 USLW 3162

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13-CP-40-2113

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

RONALD COULTER,
Petitioner,
v.
STATE OF SOUTH CAROLINA,
Respondent.

FILED
2013 APR 11 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PETITION FOR WRIT OF STATE HABEAS CORPUS

Ronald Coulter, #300410
BRCI Wateree 216
4460 Broad River Road
Columbia, S.C. 29210

Petitioner, Pro Se

QUESTIONS PRESENTED

1. Whether the petitioner's constitutional rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution were violated by the state post-conviction relief (PCR) court's failure to follow the mandate of federal law based on the Fourteenth Amendment; where, the state PCR court, in its wholesale adoption of the prevailing party's fact-finding and legal conclusion, sanctioned a novel standard of judging the petitioner's Sixth Amendment right to counsel claims exclusively on the basis of counsel's PCR testimony, rather than assessing the reasonableness of counsel's challenged conduct under the totality of the evidence, as pronounced by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984).

2. Whether the petitioner was denied effective assistance of counsel in the first-tier collateral review of a Sixth Amendment right to counsel claim, as an equitable matter, under the Due Process Clause of the Fourteenth Amendment of the United States Constitution, by the appointed attorney's failure to assist the petitioner with the correct application of law to the procedures and requirement for raising such ineffectiveness claims, where the State has procedurally moved such ineffectiveness claims outside the direct-appeal process where counsel is constitutionally guaranteed, thereby, making the first-tier collateral review the one and only appeal as of right to the Sixth Amendment right to counsel claim.

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Other:

IN THE COURT OF COMMON PLEAS

PETITION FOR WRIT OF STATE HABEAS CORPUS

Petitioner respectfully prays that a writ of state habeas corpus issue to review the judgment below.

OPINIONS BELOW

The opinion of the state post-conviction relief court appears at Appendix A to the petition and is unpublished. The preliminary Form 4 Order of the state post-conviction relief court appears at Appendix B.

JURISDICTION TO REVIEW

The date of the order and judgment of the state PCR court sought to be reviewed is November 6, 2006.

This Court has the power under Article V, Section 20 of the South Carolina Constitution to issue writs of habeas corpus.

The following decisions sustain the power and jurisdiction of this Court to review the order and judgment review of which is herewith sought:

Gibson v. State, 495 S.E.2d 426 (S.C.1998).

Simpson v. State, 495 S.E.2d 429 (S.C.1998).

CONSTITUTIONAL PROVISIONS INVOLVED

The Supremacy Clause of the Constitution provides in relevant part: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, ... shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. U.S. CONST. art. VI, cl. 2.

The Sixth Amendment to the Constitution of the United States provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him ... and to have the Assistance of Counsel for his defense."

The Fourteenth Amendment to the Constitution of the United States provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law."

STATEMENT

This case raises important questions relating to a defendant's due process rights under the Fourteenth Amendment, in criminal appeals, and the adequacy of state-appointed attorneys representing indigent defendants in first-tier reviews of Sixth Amendment right to effective assistance of counsel claims.

It is well-established that state judiciaries are bound, by the Supremacy Clause of the U.S. Constitution, to federal law when that federal law is made applicable to the States by the Fourteenth Amendment of the U.S. Constitution. The United States Supreme Court, in Strickland v. Washington, 466 U.S. 668, (1984), established the proper standard for lower courts to adjudicate claims of ineffective assistance of counsel pursuant to the Sixth and Fourteenth Amendments. In the case below, the state PCR court completely failed to follow the dictates of the United States Supreme Court's rule for adjudicating Sixth Amendment claims of ineffective assistance of counsel.

Moreover, the lower state court's wholesale adoption of the prevailing party's fact-findings and conclusions of law of the petitioner's Sixth Amendment claims, underscored the egregious nature of the lower state court's failure to follow the mandate of a federal rule. By allowing the prevailing party to draft the final order in the case below, the lower state court abandoned its constitutional duty to enforce national law made in pursuance of the United States Constitution.

In addition, the U.S. Supreme Court has recognized that state collateral proceedings which provide the first opportunity for a prisoner to present a challenge to his conviction on the grounds of ineffective assistance of counsel are the equivalent of that prisoner's direct appeal as to that ineffectiveness claim. When a State has procedurally moved Sixth Amendment ineffectiveness claims outside of the direct-appeal process, where the effective assistance of counsel is constitutionally guaranteed, the State has significantly diminished a prisoner's ability to adequately present such ineffectiveness claims. It is within the context of this state procedural framework that the U.S. Supreme Court has acknowledged, as an equitable matter, that prisoners likely need an effective attorney in such first-tier collateral proceedings, to ensure that proper consideration has been given to a substantial ineffective assistance of counsel claim.

In the case below, the petitioner was represented by a state-appointed attorney who did not provide reasonably adequate skills to assist the petitioner to obtain a fair decision on the merits of his ineffectiveness claims, in the state-collateral proceeding.

The petitioner further seeks the jurisdiction of this Court based on the fact that all other state and federal remedies have been exhausted, any further post-conviction actions would be procedurally barred, and the issues raised in the instant petition could not have been raised in the previous post-conviction relief application.

The above issues merit further review.

A. The State-Court Proceedings

On February 23, 2004, the petitioner, Ronald Coulter, went on trial, along with his codefendant, Ivory Croker, in Charleston County General Sessions Court on the charges of murder, kidnapping, and conspiracy. Coulter was represented by Rodney Davis and Jennifer Shealy, both, of the Charleston County Public Defender's Office. Croker was represented by James Smiley, Esquire.

As a preliminary trial matter, Mr. Smiley filed a notice of alibi defense on behalf of codefendant Croker. The trial court also admitted Croker's alibi statement into evidence. In Croker's statement, marked as exhibit #2, he indicated that he did not see the petitioner on the day in question.

During opening remarks, the prosecution informed the jury that the State did not have a body, nor would they be able to show a manner of death. The defense informed the jury that there was no physical evidence. The defense added that the State had an alleged witness who came forward 2-1/2 weeks after the day in question.

After two days of testimony by character witnesses, the State informed the court that it had reached a plea agreement with the petitioner's codefendant. Croker pled guilty to misprision of a felony. The State agreed to dismiss all pending charges against Croker, upon the completion of his cooperation, which included testimony as a State's witness. The State also agreed to a negotiated sentence of probation, which would be deferred until after the completion of Croker's cooperation. The State added that it

assured Croker that federal authorities will not seek any charges or prosecution against him, in this case; nor, any prosecution in regards to the items recovered in an earlier search of his home.

The State further indicated that Croker gave a [prior] statement to law enforcement which was contrary to the factual events recited as the basis for his plea. At the conclusion of his plea hearing, Croker was released on an agreed upon PR bond and was no longer on trial.

Immediately following Croker's plea hearing, Davis motioned the court for a mistrial in the petitioner's case; stating that it is the only remedy and must be granted. Davis argued, inter alia, that he could not prepare a proper cross-examination for any upcoming witnesses; and, that the codefendant's credibility was essential to the determination of the case. In rejecting the merits of Davis' argument, the trial court reasoned that there was a very small picture as to the true merit of the case at that moment in time; and therefore, it was insufficient to indicate prejudice because trial strategy had been altered. In response to the court's rejection of the argument for mistrial, Ms. Shealy, co-counsel for the defense, made a request to the court for some additional time to allow counsel to discuss with Coulter how to go forward with trial if, "we are forced to go forward".

The trial court granted the request, but indicated that the trial will likely go forward. Davis then acknowledged, in open court, that he cannot imagine, through no fault of his own, being more unprepared for future witnesses. In response to the court's suggestion that a curative instruction be given to the jury with

regards to codefendant Croker's absence, Davis indicated, to the court, that he did not believe that any curative instruction to the jury would cure the situation; and, "again we don't feel that we can go forward". When court resumed after the recess, Coulter pled guilty to kidnapping and was sentenced to thirty years as a part of a negotiated plea agreement in which the charges of murder and conspiracy were dismissed.

Coulter then filed an application for post-conviction relief in state court attacking his guilty plea on the grounds of ineffective assistance of counsel. Pursuant to S.C. Rule Civ. Proc. 71.1(d), Mr. Lea Kerrison was appointed by the State to represent the petitioner, Coulter, at the evidentiary hearing.

At the initial evidentiary hearing, held on July 27, 2005, a continuance was granted on the grounds that the trial portion of the record was not made available for the proceeding. The hearing was rescheduled for June 2, 2006. At the rescheduled hearing, Mr. Kerrison elicited testimony from the petitioner and the trial and plea counsel, Rodney Davis.

The petitioner asserted specific acts and omissions made by Davis in alleging that Davis failed to protect his constitutional rights to confrontation and cross-examination. The petitioner contended that had Davis explained that witnesses could be cross-examined to impeach their credibility or to show bias in testifying, or that accomplices' confessions that incriminate defendants are presumptively unreliable and must be subjected to the scrutiny of cross-examination, he would not have pled guilty, but would have insisted that the jury assess the credibility of the

codefendant's testimony, as the trial continued.

The petitioner's trial counsel, Rodney Davis, testified that he did not explain to the petitioner that witnesses can be cross-examined to attack credibility, or to show bias or motivation in testifying. Davis added that his motion for continuance, not mistrial, demonstrated that he was preparing to continue with trial; after the codefendant agreed to testify against the petitioner. Davis stated that his decision to advise the petitioner to plead guilty was based on the petitioner's admission of his involvement in the kidnapping, the evidence the State had in the case against the petitioner, and the fact that the codefendant had agreed to testify as a State's witness. Davis added that he fully explained to the petitioner the consequences of a guilty plea. Davis ultimately testified that although the petitioner's case was purely circumstantial, it would have come down to the credibility of the witnesses, more importantly, codefendant Croker.

In his closing argument, Mr. Kerrison summarized portions of the petitioner's factual claims, and concluded, with a general statement, that Davis' failure to explore the options set forth by the petitioner undermined confidence in what the outcome of the trial would have been.

On the same day of the rescheduled evidentiary hearing, the PCR judge, the Honorable William P. Keesley, signed a preliminary Form 4 Order dismissing the petitioner's PCR application and directing the State to submit a proposed final order in the case. The preliminary Form 4 dismissal indicated that the petitioner's testimony lacked credibility because he did not have the correct

application of the law to the procedures and requirement.

On November 6, 2006, the State's proposed order was issued as the final order dismissing the petitioner's PCR claims. The final order concluded that Davis provided credible testimony that he was willing to continue with trial and fully explained the consequences associated with the plea; and as a result of Davis' credible testimony, the petitioner failed to show any deficiency on the part of counsel, or any prejudice resulting therefrom.

After the South Carolina Supreme Court transferred the appeal to the S.C. Court of Appeals, the petitioner's request for a writ of certiorari was denied, without opinion, on May 19, 2008. The petitioner sought federal habeas corpus relief after exhausting his state remedies pursuant to *In Re Exhaustion*, 471 S.E.2d 454 (1990).

B. The Federal-Court Proceedings

On August 4, 2008, the petitioner filed a petition for writ of habeas corpus in the Federal District Court of South Carolina. The Honorable Patrick M. Duffy denied the petition and the petitioner appealed. The U.S. Court of Appeals for the Fourth Circuit denied leave to appeal on August 10, 2010. After a timely request for rehearing was denied, the petitioner sought relief by way of writ of mandamus. On December 1, 2011, the Fourth Circuit denied the petitioner's request for mandamus relief. The petitioner's writ of certiorari in the United States Supreme Court was denied on October 1, 2012. A rehearing was denied on November 13, 2012.

REASONS FOR GRANTING THE PETITION

This case presents a telling example of the way an indigent defendant, faced with a myriad of challenges and unschooled in the intricacies of civil procedure and the substantive details of federal constitutional law, has been deprived of substantial due process in a state collateral proceeding challenging his criminal conviction under the federal constitution.

In Keeler v. Mauney, 500 S.E.2d 123, 125 (S.C.App.1998), the South Carolina Court of Appeals recognized that the due process clause of the Fourteenth Amendment to the Constitution of the United States protects citizens against state action. When the United States Supreme Court enunciates a rule based upon the Fourteenth Amendment, that rule is binding upon state courts through the Supremacy Clause. (Citings omitted) (Quotes omitted).

The proper standard for judging whether an attorney provided the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments was articulated by the U.S. Supreme Court in Strickland v. Washington, 466 U.S. 668 (1984). Under the Fourteenth Amendment, the petitioner was entitled to have his Sixth Amendment right to effective counsel claims adjudicated by the state PCR court in the manner prescribed by federal law made in pursuance of the United States Constitution.

Unfortunately, by allowing the prevailing party to draft the proposed, and subsequent, final order in the PCR case below, the lower state court abdicated its constitutional duty to employ the rigorous standards erected by the Strickland Court aimed towards

ensuring that every criminal defendant has received the effective assistance of counsel guaranteed by the Sixth Amendment.

Moreover, in Evitts v. Lucey, 469 U.S. 387 (1985), the United States Supreme Court held that the Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the effective assistance of counsel on his first appeal as of right. To prosecute this first-tier collateral review of his Sixth Amendment ineffectiveness claims, as of right, the petitioner faced an adversary proceeding that, like a trial, was governed by intricate rules that to a layperson would be hopelessly forbidding. In the case below, the state-appointed attorney failed to zealously assert the petitioner's position under the rules of the adversary system, and was unable to assist the petitioner to obtain a fair decision on the merits of his ineffectiveness claims.

Under S.C. law, the petitioner is procedurally barred from filing any subsequent PCR applications, and has no other state remedy available. Similarly, under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the petitioner is also procedurally barred from seeking any further federal relief from his criminal conviction. Furthermore, the questions raised in the instant petition stem from actions that occurred during or after the collateral proceeding below, and could not have been raised nor recognized in the prior PCR application.

I. The PCR Proceeding Designated To Test The Constitutionality Of A State-Court Conviction Was Not Adjudicated In Accordance With Due Process Of The Law

The proper standard for judging whether an attorney provided the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments was articulated by the U.S. Supreme Court in Strickland, supra. The Strickland Court held that "the benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result". Id., 466 U.S., at 686.

"Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Id., at 690. "In making the determination whether counsel's specified errors resulted in prejudice, ... a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury." Id., at 695. "A court making the prejudice inquiry must ask if the defendant has met the burden of showing that the decision reached would reasonably likely have been different absent the errors." Id., at 696.

It is clearly evident from the final order of the PCR court below that, the lower state court did neither "judge the reasonableness of counsel's challenged conduct on the facts of the particular case", nor assess whether the petitioner demonstrated a "reasonable probability ... sufficient to undermine confidence in the outcome". Instead, the PCR court, in fully adopting the final order proposed by the State, concluded, without providing any facts or evidence to support its decision, that based on the credible testimony made by counsel at the PCR evidentiary hearing,

the petitioner failed to demonstrate any deficient performance on the part of counsel or any prejudice resulting therefrom.

In the federal system, the U.S. Supreme Court has repeatedly cautioned lower courts as to the imprudence of wholesale adoption of a party's position even in making findings of fact after the court's decision has been announced:

District judges should avoid as far as they possibly can simply signing what some lawyer puts under their noses. These lawyers, and properly so, in their zeal and advocacy and their enthusiasm are going to state the case for their side in these findings as strongly as they possibly can. When these findings get to the courts of appeals they won't be worth the paper they are written on as far as assisting the court of appeals in determining why the judge decided the case.

U.S. v. El Paso Natural Gas Co., 376 U.S. 651, 657 n. 4, 84 S.Ct. 1044, 12 L.Ed.2d 12 (1964) (citation omitted). See also; Miranda v. Bennett, 322 F.3d 171, 177 (2nd Cir.2003) (We view the "potential for overreaching and exaggeration on the part of attorneys", frequently exhibited when they are preparing findings of fact after learning that the judge has decided in their favor.) (quoting Anderson v. Bessemer City, 470 U.S. 564, 572, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985)).

The federal rule of Strickland, for judging any claim of ineffective assistance of counsel, was binding upon the state PCR court through the Supremacy Clause of the U.S. Constitution. By wholly adopting the State's fact-findings and legal conclusion, the state PCR court sanctioned a novel standard - based solely on a credibility determination - for judging Sixth Amendment right to effective counsel claims; which appears to abridge the proper standard articulated by the United States Supreme Court.

II. The State Failed To Provide The Indigent Petitioner With The Type Of Assistance Necessary To Render The First-Tier Review Of A Sixth Amendment Right To Effective Counsel Claim A Substantially Equal And Fair Process

The State's appointment of an attorney, unfamiliar with the legal procedure and methods associated with vindicating a Sixth Amendment right to effective counsel claim, to represent an indigent defendant raising such a claim in a state collateral attack, appears to "constitute a denial of fundamental fairness shocking to the universal sense of justice".

This Court needs to look no further than the PCR court's preliminary order of dismissal as evidence of the state-appointed attorney's failure to provide adequate representation for the indigent petitioner, in the case below. Immediately following the rescheduled evidentiary hearing, held on June 2, 2006, the PCR judge, the Honorable William P. Keesley, issued a Form 4 Order denying the petitioner's PCR application and directing the State, as the prevailing party, to draft a proposed final order within thirty (30) days. Within this Form 4 Order, Judge Keesley stated the following in support of his denial: "The applicant's testimony completely lacked credibility. He has done extensive legal research, but does not have the correct application of the law to the procedures and requirement". It appeared from the PCR court's preliminary ruling that Mr. Kerrison, though present in name, failed to assist the petitioner in complying with the State's procedures and obtaining an adjudication on the merits of his

Sixth Amendment ineffectiveness claims.

Mr. Kerrison failed to demonstrate the thoroughness, preparation, and advocacy reasonably necessary to represent a defendant seeking relief from his criminal conviction under the federal constitution. Competent representation includes inquiring into, and analyzing, the factual and legal aspects of a case. From the onset, Mr. Kerrison misapprehended the fact that the record of trial transcript could have been utilized to ascertain historical facts relevant to the petitioner's allegations. At the initial evidentiary hearing, Mr. Kerrison motioned the court, at the petitioner's behest, for a continuance on the grounds that the trial transcript was relevant and not made available for the proceeding. The PCR court granted the motion and directed the State to provide the trial record. Even upon receipt of the trial transcript, with less than three (3) months before the rescheduled evidentiary hearing, Mr. Kerrison still questioned the relevancy of the trial record to the petitioner's cause.

Claims of ineffective assistance of counsel most often require investigation into the historical facts and an understanding of trial strategy. Mr. Kerrison apparently misapprehended how the trial record could have provided historical facts of the petitioner's case, particularly, at the time of counsel's challenged conduct, which is a relevant factor of an ineffectiveness claim.

Competent representation also includes the lawful and ethical use of methods and procedures meeting the litigating standards. Less than two (2) months before the rescheduled evidentiary hearing, Mr. Kerrison advised the petitioner that the elements of a

successful PCR challenge are 1) showing that a fact existed about which the petitioner was unaware, and 2) had a reasonable man known that fact, he would not have pled guilty. And based on this standard, Mr. Kerrison asserted that the petitioner should set forth the following argument before the PCR court: The fact that the petitioner did not know was that the petitioner's codefendant knew the location of the victim's body; and, had the petitioner known that the codefendant was involved in the disappearance of the victim, the petitioner would have not pled guilty and would have been able to defend his case by implicating the codefendant. Mr. Kerrison clearly misapprehended the jurisdiction of the PCR court under S.C. Code Ann. § 17-27-30.

Perhaps the most fundamental legal skill of any lawyer is determining what kind of legal problems a situation may involve. A Strickland ineffective assistance of counsel claim, pursuant to the Sixth Amendment, is a constitutional "mixed" question of law and fact. The ultimate conclusion as to whether counsel rendered effective assistance flows from an application of legal standards and constitutional principles to the facts of the case. It is therefore impossible for a lawyer to advocate a substantial claim of ineffective assistance of counsel on behalf of a client without presenting any basis in law for such a claim. During the re-scheduled evidentiary hearing, Mr. Kerrison failed to advance any argument on behalf of the petitioner regarding the petitioner's trial and plea counsel's challenged conduct in terms of prevailing professional norms, which involves professional decisions based on informed legal choices.

Furthermore, one of the imperative standards of conduct for lawyers in the state of South Carolina requires that "a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law". Rule 3.1, RPC, Rule 407, SCACR. The record of the PCR proceeding, below, clearly shows that Mr. Kerrison never advanced a good faith argument in support of the petitioner's ineffectiveness claims. In addition, Mr. Kerrison never informed the court that he was unable either to make a good faith argument on the merits of the petitioner's claims or support the PCR action by a good faith argument. Mr. Kerrison's abdication of duty under Rule 3.1, RPC, Rule 407, SCACR, is evidence of breach of the applicable standard of conduct, and supports the petitioner's contention that Mr. Kerrison rendered nominal representation in the PCR action below.

In Martinez v. Ryan, 132 S.Ct. 1309 (2012), the U.S. Supreme Court recently addressed whether ineffective assistance in an initial review collateral proceeding on a claim of ineffective assistance at trial may provide cause for a procedural default in a federal habeas proceeding. In reaching its decision, the Court acknowledged, as an equitable matter, that to present a claim of ineffective assistance at trial, in such a collateral proceeding, in accordance with the State's procedures, a prisoner likely needs an effective attorney. *Id.*, at 1317. The Court reasoned that "defendants pursuing first-tier review ... are ill-equipped

to represent themselves ... moreover, a prisoner asserting an ineffective assistance of trial counsel claim in an initial review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim". Id.

The Martinez Court added that a prisoner, "while confined to prison ... is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record. A prisoner's inability to present a claim of trial error is of particular concern when the claim is one of ineffective assistance of counsel". Id.

To represent the petitioner and fail to assist with the law, both procedurally and substantively, according to the deciding court, constituted nominal representation by Mr. Kerrison in this federal constitutional challenge to the petitioner's conviction. It appeared that Mr. Kerrison did not employ the reasonable knowledge and skill associated with raising a Sixth Amendment right to effective counsel claim in the state collateral proceeding. With Mr. Kerrison's representation, the petitioner was in no better position than a party who had no representation at all.

III. All Other Remedies, Including PCR, Have Been Exhausted, And The Current Questions Could Not Have Been Raised In The Previous PCR Application

The judgment of the petitioner's conviction was entered on February 25, 2004. The petitioner filed his original PCR application on July 16, 2004. Pursuant to S.C. Code Ann. § 17-27-45 (a),

the statute of limitation for filing any subsequent PCR application on behalf of the petitioner expired on February, 25, 2005. Therefore, PCR is no longer an available remedy to the petitioner. Furthermore, based on the fact that the questions now raised are neither a result of newly discovered evidence, nor, of any decision made retroactive by a higher court, any subsequent filing of a PCR application would also be considered successive, and thus, procedurally barred, under S.C. Code Ann. § 17-27-90.

The petitioner filed his original federal habeas corpus application on August 4, 2008, which was denied on September 16, 2009. As a result, the petitioner's conviction has been previously challenged on federal habeas corpus and is procedurally barred from any subsequent actions under 28 U.S.C. § 2244 (a). Although the questions raised in the instant petition were not presented in the previous federal habeas corpus application, the petitioner cannot satisfy the exceptions permitted by § 2244 (b)(2) which allow the filing of a second or successive federal habeas corpus application. Thus, the petitioner has exhausted the available federal remedy related to his conviction.

The petitioner had exhausted his state remedies prior to the filing of his federal habeas corpus application. Consequently, the petitioner has exhausted all available remedies related to his criminal conviction.

Finally, the questions now raised could not have been realized at the onset of the very PCR proceeding that is being challenged; and therefore, could not have been raised in the original PCR application. The current claims address the fundamentally unfair,

inadequate, and ineffective manner in which the state proceeding, designed to test the legality of a state-court conviction under Federal and State Constitutions, was carried out. A state court's clear deviation from the usual, and well-established, judicial course of adjudicating Sixth Amendment right to counsel claims undermines the Supremacy Clause of the U.S. Constitution. Also, a bar-certified lawyer's failure "to present an appeal in a form suitable for appellate consideration on the merits" in an adversarial challenge based on the Constitution is implausible under the prevailing professional norms.

Where the merits of the one and only appeal an indigent has as of right are decided without the benefit of (1) the applicable federal law and (2) the adequate assistance of counsel, there has been an unconstitutional line drawn between substantial equality and fair process.

CONCLUSION

The petition for a writ of state habeas corpus should be granted.

Respectfully submitted,

Ronald Coulter

Date: March 27, 2013.

March 27, 2013

Clerk of Court
9th Judicial Circuit Charleston County
100 Broad St., Suite 106
Charleston, SC 29401-2358

Dear Clerk:

Please find the enclosed Petition for Writ of State Habeas Corpus and Application To Proceed Without Payment of Fees. Our prison law library provides very little procedural information on the filing of such petitions, so if there are any additional documents, or filings, necessary to ensure procedural compliance, please inform me as soon as possible.

I am also enclosing a copy of the cover page to be "filed stamped" and returned in the also included SASE.

Thank you for your attention to this filing.

Respectfully submitted,

Ronald Coulter

Ronald Coulter, #300410
BRCI Wateree 216
4460 Broad River Rd.
Columbia, SC 29210

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF CHARLESTON)

Ronald Coulter,)
)
 v.) Case No. 13-CP-10-2113
)
 State of South Carolina,)
)
 Defendant)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on August 9, 2013, before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Ronald Coulter
 Petitioner

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ATTORNEY GENERAL'S OFFICE

RECEIVED 7/31/14

ADMINISTRATIVE INSTRUCTIONS

FILE _____HAVE _____INVEST _____ORDER _____OPEN RECORDS _____OTHER _____

Ronald Coulter v State of South Carolina

2

Case No. 13-CP-10-2113

Hearing of August 9, 2013

Before The Honorable R. Markley Dennis

1 THE COURT: You are Ronald Coulter?

2 DEFENDANT: Yes, sir.

3 THE COURT: Mr. Coulter, good
4 afternoon, sir.

5 DEFENDANT: How are you?

6 THE COURT: I'm well. Thank you, sir.
7 I have and I've reviewed your file of what
8 appears to be an application -- excuse me, --
9 a petition for habeas corpus. I've reviewed
10 the documentation and the brief that you
11 submitted.

12 It's apparent that you're challenging the
13 adequacy of your lawyer at the PCR Hearing.
14 That's what it appears to be. Okay?

15 DEFENDANT: Yes, sir.

16 THE COURT: And that is not -- I do not
17 believe that is a subject matter for habeas
18 corpus. That's -- the one thing that you
19 can't file a PCR against for is against a PCR
20 attorney -- an indirect way of doing that.

21 Thank you very much. Your Motion -- now
22 you can appeal that to the Supreme Court and
23 they will make a determination.

24 DEFENDANT: Okay. I had two claims,
25 sir.

Ronald Coulter v State of South Carolina

3

Case No. 13-CP-10-2113

Hearing of August 9, 2013

Before The Honorable R. Markley Dennis

1 THE COURT: What's the other one?

2 DEFENDANT: I had two claims, one about
3 the State court failing to follow the man-
4 dates of Federal law ---

5 THE COURT: Your Motions -- your Motion
6 is denied in full. I don't believe that
7 they're properly heard under a habeas corpus
8 proceeding. Thank you, sir.

9 (HEARING CONCLUDED)

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Ronald Coulter v State of South Carolina

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Case No. 13-CP-10-2113

Hearing of August 9, 2013

Before The Honorable R. Markley Dennis

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on August 9th, 2013 before The Honorable R. Markley Dennis, Jr.;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
July 23, 2014

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-2113

Ronald Coulter
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Liantant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: Court denied Plaintiff's Motion/Petition for Writ of Habeas Corpus.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

R. Malley
Circuit Court Judge

2060
Judge Code

8/20/13
Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Ronald Coulter, 300410,
Plaintiff,

v.

State of South Carolina,
Defendant.

2013-CP-10-2113
IN THE COURT OF COMMON PLEAS

C/A No. 2013-CP-10-2113

MOTION TO ALTER OR AMEND

A JUDGMENT

2013 SEP 13 AM 11:56
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

sub

The plaintiff, Ronald Coulter, now moves this Court, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, to alter or amend the judgment in the above-referenced case, which was received by the plaintiff on September 4, 2013.

The plaintiff's motion/petition for a writ of state habeas corpus was initially denied by this Court at a Notice of Motions Hearing held on August 9, 2013. The subsequent Form 4 Order, which was filed on August 22, 2013, provided no indication as to why the plaintiff's motion/petition was denied.

An aggrieved party is entitled to have explicit findings of fact upon which the conclusion of the court was based. Such findings are obviously necessary to the intelligent and orderly presentation and proper disposition of an appeal, if taken. Specification by the court of its findings of fact and conclusion of law informs the losing litigant of the reason for the court's ruling and the principle questions that he must address if he appeals.

The instant Form 4 Order is too cryptic to inform the plaintiff of the Court's reasons for its disposition of his motion/petition for state habeas corpus. Therefore, the plaintiff requests that this Motion to Alter or Amend Judgment be granted.

Respectfully submitted,

Ronald Coulter

Ronald Coulter, #300410

BRCI Wateree 216
4460 Broad River Rd.
Columbia, SC 29210

Plaintiff, Pro Se

September 11, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Ronald Coulter #300410,

Plaintiffs,

vs.

State of South Carolina,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-2113

ORDER

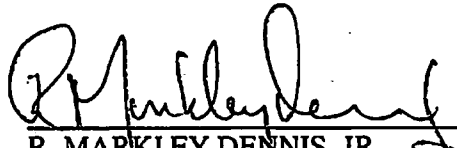
2013 SEP 30 PM 12:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED

This matter comes before me upon a Motion to Reconsider pursuant to Rule 59, SCRCF filed by the plaintiff on September 11, 2013. The Court denied Plaintiff's Writ of Habeas Corpus on August 20, 2013 pursuant to Rule 4(g), SCRCF and a Form 4 was filed on August 22, 2013.

After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is respectfully DENIED;

AND IT IS SO ORDERED!


 R. MARKLEY DENNIS, JR.
 Presiding Judge, Ninth Judicial Circuit

Moncks Corner, South Carolina

Dated: September 26, 2013

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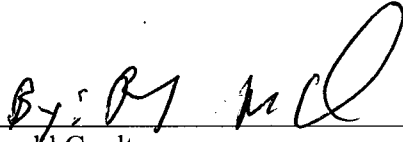
FEB 12 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

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

February 12th, 2016



Ronald Coulter
#300410, Pro-se

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

ATTORNEY FOR APPELLANT