

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper Circuit Court Judge

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S.C. SUPREME COURT

ELBERT WALLACE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000057

APPENDIX

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1 he told you is corroborated by the evidence.

2 He is just simply another piece of evidence in
3 the big scheme of things. Their defense is you can't
4 believe it because Damon Scott said it.

5 Well, who else is one murderer going to confide
6 in but another murderer? Remember what his story was?
7 At first, Wallace was walking around telling him that,
8 "Oh, he and his wife just we want over there or his
9 fiancée or somebody after the crime scene tape was up
10 and looked around?" I guess that's when they stole
11 the jewelry? Is that credible? Is that believable?

12 Even Damon Scott --- and he's not the brightest
13 --- even Damon Scott knew that was ridiculous. He
14 told him, "That's never going to hold up." That's
15 when he went down with there was a tussle, minimize it,
16 push it away.

17 Damon Scott, who is before you because he simply
18 corroborates what all the other evidence shows.
19 You've heard from other investigators in the case.

20 You have the video from the pawnshop. Look at it,
21 evaluate it. He was so brazen. He thought he had
22 gotten away from it, with it, but he used his own ID,
23 because who is ever going to notice a little gold ring?
24 He didn't know --- or I guess he did know since he
25 either took it off of her or on top of her jewelry ---

1 that anybody would ever track that down?

2 Before her body was even found, he's pawning her
3 jewelry. What was it, \$32? Combined, \$48. That was
4 the value of life.

5 Timeline, and then I'll be quiet. What does the
6 evidence prove in this case? We know around 1:02 a.m.,
7 Carolyn Webb is beaten and robbed by Elbert Wallace,
8 the same man who cased her earlier in the day, who she
9 had already given money to and would have given it to
10 him again, but that wasn't good enough for him because
11 that wasn't his frame of mind that night.

12 Around 1:30 a.m., the K-9 tracks to the Christ
13 Lutheran church, which was broken into. Guess whose
14 blood is on the door handles where he came in and out
15 after he broke the window? Elbert Wallace, and whose
16 matches happen to be missing after the burglary.

17 Between two a.m. and four a.m., Carolyn Webb's
18 home is broken into again after crime scene leaves for
19 whatever reason you can infer. That's not an element
20 even.

21 Between 1:30 and eight a.m., Linda Derrick is
22 murdered by Elbert Wallace. We know that because her
23 car is taken, and it's found or seen on Apache Drive
24 with two matches and the burned gloves.

25 Why did he burn the gloves? Why are there no

1 fingerprints? Remember the fingerprint evidence in
2 this case? None of it is Elbert Wallace's.

3 The only fingerprints found in the house
4 belonging to anyone are either her friends or Linda
5 Derrick's herself, and only two are found that even
6 match because DNA evidence is easier than fingerprint
7 evidence, quite simple.

8 Did he wear the gloves? Was he trying to destroy
9 the evidence? Was he trying to destroy the car? That
10 doesn't matter. That's not an element of the crime,
11 but that is evidence of guilt that you can consider.
12 Burn them so they couldn't be tested. Burn them for
13 whatever reason.

14 5:40 p.m., Elbert Wallace pawns Linda Derrick's
15 jewelry. You have this back there. The pawn slip,
16 the jewelry, his driver's license taken out of the
17 same pocket that he does on the video, and you'll have
18 all this evidence back there.

19 9:20 p.m., Linda Derrick's body was discovered by
20 Shawn Gunderson. Not until almost 24 hours later is
21 he taken into custody.

22 The purse is never recovered. The weapon is
23 never recovered. His clothes. He messed up on the
24 shoes because he had gotten what he needed. All the
25 State asks is to hold him responsible for his choices,

1 for his actions.

2 Elbert Wallace thought he had gotten away with it.
3 Carolyn Webb would never, ever, be able to identify
4 him. She is just some old lady whose glasses he
5 knocked off.

6 He counted on the fact that even if she was
7 willing and able to come forward, that the police
8 wouldn't do their job. They wouldn't actually process
9 the crime scenes. They wouldn't actually do what they
10 were supposed to do to get in this case the DNA
11 evidence, to get the pawnshop stuff, to do their job
12 like they should and like they did.

13 He counted on the fact that even if the police
14 did some of their job, he could just come into court.
15 The lawyer could get up here talk about what he didn't
16 do, illusions, talk, and about how you can't believe
17 the government. I think that was the gist of the
18 opening statement. "Don't believe the government. Oh
19 my God. It's the government."

20 Well, ladies and gentlemen, we aren't asking you
21 to believe the government. We are asking you to
22 believe the overwhelming evidence.

23 We aren't asking you to speculate or guess. All
24 we're asking you to do is use reasonable inferences
25 from what happened, what the evidence shows, and what

1 we can prove.

2 Ladies and gentlemen, him having the jewelry and
3 pawning it that same day in and of itself is
4 overwhelming, and you have so much more. Hold him
5 responsible. They didn't deserve it.

6 We even have a photo of the necklace she wore
7 every day.

8 Elbert Wallace made choices. All we ask is that
9 you hold him responsible for his brutal, vicious
10 actions on that day.

11 Thank you.

12 MR. SUTHERLAND: May it please the Court, sir.

13 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

14 CLOSING STATEMENT:

15 MR. SUTHERLAND: First --- first and foremost,
16 it's --- it really is an honor to be here before you
17 right here and right now.

18 I cannot tell you the importance, the degree of
19 the importance of what you're doing, the degree of
20 importance it is to me. It's important to all of us,
21 and I truly do thank you for that.

22 Ms. Campbell kept speaking about how overwhelming
23 the evidence was.

24 (There was a disturbance.)

25 THE BAILIFF: Quiet.

1 MR. SUTHERLAND: Ms. Campbell kept referring to
2 my opening statement, and I'm not going to quibble
3 with her about her characterizations of what I was
4 saying.

5 You all heard what I had to say, but what I am
6 going to take issue with are the issues in this case.
7 She speaks of everything being overwhelming.

8 The last thing she said was extraordinary. I
9 understand after everything that you've heard over the
10 past several days with these cases joined together and
11 hearing all of these accusations, and all of these
12 horrible things, I understand where you may be
13 skeptical of anything that I have to say.

14 I'd just remind you, it's your duty to scrutinize
15 their evidence and to be skeptical about what they
16 have to say.

17 It's extraordinary to hear her say that pawning
18 jewelry is overwhelming evidence of guilt of murder.
19 After what you have just heard, you may --- you may be
20 thinking what you've seen over the past few days with
21 these cases all jointed and intertwined and corrupted
22 together, that may have sounded reasonable to you, but
23 it's not.

24 Pawning jewelry is not even a crime unless you
25 know, unless you have knowledge that it's stolen

1 jewelry, then it's receiving stolen goods.

2 I think that statement is indicative of the
3 challenge here to separate all of these --- separate
4 everything out and to be objective, and that's the
5 most important thing. You're not supposed to trust
6 the government. You're not supposed to take the
7 government at its word.

8 MS. CAMPBELL: Objection, Your Honor, to that
9 characterization.

10 MR. SUTHERLAND: I heard it. I'm sorry, sir.

11 THE HONORABLE CLIFTON NEWMAN: Sir?

12 MR. SUTHERLAND: I heard her say that I had said,
13 "Don't trust the government." I said, "You're not
14 supposed to trust the government."

15 THE HONORABLE CLIFTON NEWMAN: All right.

16 MR. SUTHERLAND: Thank you, sir.

17 You're supposed to scrutinize the government and
18 their characterizations of everything. I think the
19 best way to try to start out and to untangle
20 everything and to actually get you all to --- to --- I
21 don't know how you're feeling, but I know if I didn't
22 do this for a living, how I would be feeling if I was
23 --- so I just have that to go on as a guide.

24 Let's try the petit larceny charge. P.L. for
25 petit larceny.

1 The indictment is going to allege --- I believe
2 they said it's Fire Chief matches; that the Fire Chief
3 matches were stolen from the church.

4 If you listened to the witness that testified,
5 she didn't know. She did not see them. She said that
6 she thought some candy was missing.

7 You can review this evidence, but I just am
8 feeling, you know, from the environment that it may
9 come as a revelation that nobody has ever said, other
10 than the police characterizing other people's
11 statements, the statements that are important are the
12 statements that individual people say here on the
13 stand. That's the evidence.

14 Major Smith or Sergeant Isenhoward --- and again
15 not casting aspersions on their character --- they are
16 fine. They are fine people. See it their way.
17 They've got a mission, and it's not a bad mission, but
18 to --- as far as protecting the community.

19 But they have a mindset. They are on a mission,
20 and they will succeed. Sometimes in the case of any
21 human being, that's just going to color your
22 observations about it, evidence. But no one who has
23 any knowledge about this said that matches were stolen.
24 I didn't see them. She said maybe candy was stolen.
25 You all can review the record. But the thing that's

1 significant about that is if no one says that matches
2 were stolen, then there's no evidence that matches
3 were stolen.

4 Someone has to say, "Yes. This was mine, and it
5 was taken from me." You did not hear that.

6 So outside the context of the last four days of
7 400-something exhibits and the confluence of problems
8 that comes with dealing with so many accusations and
9 so many, frankly, accusations that inspire passion in
10 people is to come up here and just point this out.

11 They don't have a case. They don't have a case,
12 and that's the reality of it. You can be mad, and you
13 can have ill feelings towards someone. You can be
14 prejudiced towards someone by the information that
15 you've heard hearing all of these cases together, but
16 it doesn't change the facts.

17 They don't have a case. So her implications
18 about what I was going to say up here that oh, he may
19 say this, he may say that, I'm just pointing out to
20 you the facts.

21 The Court is going to instruct you on the law.
22 The facts that you heard, you did not hear that anyone
23 took matches. So to move a little bit further along,
24 they're alleging burglary of the church.

25 Burglary is entry without consent with the intent

1 to commit a crime therein. That's what a burglary is.
2 What is the crime that they were alleging? Petit
3 larceny.

4 There was no petit larceny. There was no
5 burglary. If they wanted to come up here and charge
6 malicious injury to property for breaking a window or
7 something appropriate under the law, that's fine.
8 There's no larceny. There is no burglary, but they
9 want to say there is everything else.

10 He is a --- the character is that he is a
11 predator who runs around and takes advantage of
12 generous ladies. That's what they're saying his modus
13 operandi is. They are saying without any evidence ---
14 and this is jumping ahead a little bit because it's
15 not even --- it's not a burglary. The cases aren't
16 there. The evidence isn't there.

17 But they do want to say that because of the
18 incident with Ms. Webb, and the only thing that I
19 really, thoroughly outright resent is the implication
20 that, you know, I'm going to come up here and say, "Oh,
21 Ms. Webb is a liar" or something like that. She is a
22 nice lady. We all saw that. I have cross-examined
23 her before.

24 This is --- this is not what I'm up here to do.
25 What I'm up here to do is talk to you about the issues

1 and talk to you about the law.

2 There are constitutional implications from
3 everything, and they are the object of the
4 constitutional limitations. It's their power that the
5 constitution is concerned with.

6 If you come up here and you're prejudiced about
7 petit larceny or you're prejudiced about a burglary
8 because of everything else, I mean, would --- if it
9 was one thing, would you not have been inflamed or
10 it's another thing, I mean, you just have --- you have
11 to reach the point to be objective, because I've seen
12 a lot of skepticism standing here. I understand. I
13 understand it.

14 What I'm trying to communicate is under your oath,
15 it's very important. It's about the most important
16 thing in peacetime as a civilian that you're ever
17 going to do is sit on a jury, because of the
18 constitutional implications and because your decision
19 and scrutiny of government agents and their evidence
20 in the case, again --- as I said in my opening,
21 properly protects everybody, everybody, their modus
22 operandi.

23 The Webb case with Ms. Webb, does the --- do
24 those facts say about the other case what she claims
25 that they say about the other case; that he's a

1 predator; that he goes up, and he takes advantage of
2 generous women.

3 The evidence in Ms. Derrick's case is gruesome,
4 but the evidence is what's the reasonable inference
5 you can draw from someone being struck over their
6 pillow. Do they --- what's the evidence you can draw?
7 Somebody was sleeping.

8 This isn't anything --- there isn't any evidence
9 or anything about anything happening at the door, some
10 rolling struggle through the house.

11 There is no signs of forced entry. She was right
12 I'm going to talk about than, because what does that
13 mean? They're alleging that forced entry at
14 Ms. Webb's house because they're alleging this is how
15 he rolls. This is what a horrible person he is, and
16 this is how he treats elderly ladies in this community.

17 These cases have nothing to do with one another
18 but the fact of the person that they're accusing of
19 doing the crimes.

20 Any individual person charged with any individual
21 crime has a right to be judged on the facts of each
22 individual crime.

23 If they're going to come and they're going to
24 present to you and they're going to submit to you this
25 modus operandi. You should hold them to that rather

1 than being, frankly, disgusted by some of the evidence
2 you're going to see and some of the evidence that
3 you've heard so far.

4 You should actually think to yourself, "Why did
5 she say this is his M.O. if this lady was killed in
6 her bedroom? And nobody broke into her house."

7 How --- why would --- why would that be stated to
8 you in such a fashion that's so easy common sense wise
9 viewing all the forensic evidence to figure out,
10 because they are relying on you to take the sum total
11 of everything and to ball him up and to throw him away.

12 They're relying on the petit larceny. They're
13 relying on the burglary, and speaking of Ms. Webb, on
14 whether or not she made the right pick in the lineup.
15 That's the issue.

16 She seems like a wonderful person. The issue is
17 whether she made the right pick in the lineup. It's
18 not whether she was a liar or something like that.
19 She is clearly not, and what's --- what is the
20 evidence that came from the stand from her in this
21 case?

22 Someone had come by earlier during the day and
23 told her, "My car was broken down on the interstate.
24 My wife and daughter are stuck in the car. Do you
25 have \$13, so I can get a tow or a part?"

1 It changed a little bit from time to time, but
2 basically, that's the effect. That's what the person
3 comes and asks for. A person gives the ID. She looks
4 at the ID, and she notices Truman Street. "You don't
5 live around the corner. That's not in Denny Terrace."

6 "Oh, yes, ma'am, but I do live over there with my
7 sister."

8 Do you just look at the address, or do you look
9 at the picture? The picture is the first thing.
10 You've got to use your experience in life. The
11 picture is the first thing you have to look at.

12 If someone hands you an identification, it's the
13 first thing that you look at and you look up and you
14 look down.

15 You notice the address. They did not call ---
16 speaking of --- speaking of silver dollars, either I'm
17 clairvoyant or I saw it on a model, but they want to
18 talk about silver dollars. I tell you, I think it's
19 demeaning to the profession of the practice of law to
20 say something like that about opposing counsel, but
21 I'll give you a silver dollar right now: Robert Scott.

22 Now why is that a silver dollar? They called
23 Deputy Alexander up to the stand. They asked him to
24 testify about the Webb incident.

25 They don't call Robert Scott. He has never

1. written a report. I have no idea what he might say on
2. the stand, a report with respect to the Webb incident.
3. I have no idea what he might say on the stand.

4. He gets up, and he begins to testify to things
5. that I recognize from Robert Scott's report, and so I
6. asked him, how did you prepare your testimony today?
7. He said, "I read Scott's report."

8. That's the only way that I was able to get this
9. information that she was 80 percent sure that it was
10. the guy that had come earlier in the day.

11. You never would have heard that if --- and I ---
12. some of these things astound me. They really do, but
13. I have to back out of what I know about the system and
14. where I work every day, but it's an eight in ten that
15. it was the guy that had been there earlier.

16. All right. You think to yourself, "Well, 80
17. percent. That's a pretty good number."

18. You do recall my --- I briefly cross-examined her.
19. There's only a couple of things to ask, but I did ask
20. about Robert Scott, and this is why, because this is
21. very important: The accuracy of the eyewitness --- of
22. an eyewitness identification of anybody, of anybody,
23. is a critical piece of evidence.

24. You'll also recall that I --- and my questions
25. are not evidence, and I'm not stating that in any way,

1 shape or form, asked her if she had said certain
2 things to Investigator Travis, if she had spoken with
3 Investigator Travis Holdorf.

4 If she had said --- and again, this is not
5 evidence, to Travis Holdorf that, "I did not recognize
6 the person at the door, so I tried to close it."
7 Ms. Webb didn't remember, and that's fine. This was
8 two-and-a-half years ago, okay..

9 This was at the time, but sitting here testifying,
10 it was two-and-a-half years ago. Well, first, to
11 Scott who is eight in ten and then to Holdorf,
12 according to what I was asking, it's not evidence that
13 the answer would have been that way if they would have
14 put Holdorf up here, but then it's "I didn't recognize
15 the person."

16 Now, why is that important? They kept talking
17 about cumulative. You know, we don't want to put
18 stuff up. We don't call certain people because we
19 don't put up cumulative evidence because it's a waste
20 of everybody's time.

21 All day today I heard cumulative evidence, and
22 I'm sure that you may have thought to yourself, "I am
23 hearing this again and again and again and
24 Investigator X this, Investigator Y, this is exactly
25 the same thing, but I guess this is how they do it,

1 but they don't call these guys to the stand.

2 They call a substitute, who doesn't know anything
3 about the eight in ten. They just don't call this
4 witness, and what he would have testified to I can't
5 say because they didn't call him.

6 But I think it's appropriate that you might
7 wonder, at least, what he might have said. They call
8 these dozen people, put 400 some exhibits in over this
9 period of time, and well, that would have been
10 cumulative. That would have been cumulative.

11 It just doesn't add up, and I'm very fortunate
12 that on at least one of them, I was able to make my
13 point to you.

14 What I'm hoping by going through these things
15 starting particularly with the least serious, that
16 somehow it will sort of bring you out any hatred or
17 ill will or whatever place you might be from
18 everything that you've heard, and at least, you know,
19 argue to you the importance of things like this.

20 If this --- if we were trying this case today,
21 they would never call this case to trial. They would
22 never call this case to trial.

23 MS. CAMPBELL: Objection, Your Honor.

24 MR. SUTHERLAND: It's my opinion, sir.

25 THE HONORABLE CLIFTON NEWMAN: Your...

1 MR. SUTHERLAND: And based on my experience, I
2 guess.

3 MS. CAMPBELL: You can't give ---

4 THE HONORABLE CLIFTON NEWMAN: Your personal
5 opinions are inappropriate.

6 MR. SUTHERLAND: Okay.

7 THE HONORABLE CLIFTON NEWMAN: The objection is
8 sustained.

9 MR. SUTHERLAND: All right. Thank you, sir.
10 They would have an incredibly difficult time
11 proving a case that they can't prove.

12 They talked a lot about crime scene logs, how
13 various --- in a case that is severe, and in a case as
14 important as this, you must have a crime scene log.

15 You must have --- and she is right that I'm going
16 to talk about it. You must have a crime scene log,
17 and you must be very scrupulous about it and so forth.

18 I did point out, because it's something to point
19 out, I said, "You're military. You know that a log ---
20 you know, Bill comes in at eight. Fred comes in at
21 8:15. You don't say Bill comes in at eight. Joe
22 comes in at 10, and then Fred comes in at 8:15,"
23 because that means somebody didn't sign the log or
24 somebody didn't put somebody in when it happened.

25 The point that I'm making about that is exactly

1 that. It's true. You heard --- you heard the
2 testimony, and make of it what you will, but it is
3 evidence for you to consider.

4 That being said, I asked Major Smith when he was
5 testifying to make the point because they were being
6 so --- they were being so minimalist about the
7 significance of the crime scene when they're alleging
8 burglary first degree, as you heard from Damon Scott
9 when he was testifying, 15 years to life in prison;
10 that murder, as you heard from Damon Scott, is 30
11 years to life in prison.

12 They say this burglary, this armed robbery case,
13 this stabbing case, ABWIK, assault and battery with
14 intent to kill case, somehow doesn't merit a crime
15 scene log.

16 Well, that's why I asked him, "Did the person who
17 broke in two hours after the incident sign in on the
18 crime scene log," to point out they did not secure the
19 crime scene in that instance, and we know that.

20 They provided their reasons, and that --- and you
21 judge those reasons. Take --- give them whatever
22 weight you're going to give, but the fact of the
23 matter is they have achieved --- Ms. Campbell, sorry,
24 rolls in front of you feeding off of what Major Smith
25 had testified, "That's my opinion that he must have

1 thought; wait a minute, I should go back there and

2 finish her off." That's what he said up there.

3 That's an opinion. It doesn't make any sense.

4 There's no evidence to support that, but what it

5 does do is it goes along with the general theme of

6 conflation and agitation and irritation.

7 Her house was broken into. The facts, two,

8 two-and-a-half hours after the first incident. What

9 is it, a coincidence?

10 Well, I'll tell you'll what it is. It's proof

11 that somebody burglarized the house two hours after

12 the initial incident. They don't know who did it.

13 They don't have any evidence about it.

14 They're going to say it is the same person based

15 on Major Smith's theory, based --- based on his

16 experience. That doesn't make any sense either.

17 What --- I sat there, and I'm trying to figure

18 out where does that belong in this testimony? Where

19 does that belong in this case?

20 Well, it actually belongs right in the middle of

21 what they're doing here, by bringing these cases to

22 you at the same time and by appealing to you in this

23 way.

24 You have to decide, based on the testimony that

25 you heard from Ms. Webb, and whether or not it was a

1 reliable identification. Here is some information
2 that you have to evaluate in making your decision.
3 Here is some that you do not have.

4 A little more that you do have is she initially
5 --- when Ms. Campbell said is this the lineup that you
6 saw that day, she said "no." Then she says, "Well, I
7 thought that there were four pictures on top or three
8 on the bottom. --- or three pictures on the top," I'm
9 sorry, "and four on the bottom, but I was mistaken
10 about that."

11 It's just something for you to recall. Give it
12 the weight that you want to give it. The length of
13 time studying, studying the lineup. I believe two
14 minutes, maybe isolated two pictures, and then picked
15 one.

16 What that does say is that look, didn't
17 immediately say, "There is the guy." So is it
18 possible that she was wrong about the attacker, and
19 that she was right about the person that came earlier
20 during the day? That's something to think about based
21 on everything that you've heard.

22 Individually, case-by-case, it's a lot easier to
23 deal with. Now, we have to move on to certainly the
24 most tragic --- and the Webb case is certainly tragic.
25 I am well aware of that, but tragic case. It's almost

1 unspeakable with respect to what happened to
2 Ms. Derrick.

3 I think the only conclusion that you can draw is
4 that she was killed in her bed. Although, she was
5 struck in her bed, and that she made it to the
6 bathroom; that she died there, but based on what
7 they're telling you happened here, does that makes any
8 sense?

9 Does it bear any sort of resemblance to the
10 accusations of what Ms. Campbell was driving at up
11 here. Does it bear any sort of resemblance to the
12 implications of what Ms. Campbell was driving at over
13 here.

14 First, he goes and he checks, and then she brings
15 a little bit of money. Then he comes back. He says,
16 "Oh, I didn't cash my check today. I'll pay you back
17 later." Ms. Webb said, "Never mind. Monday is fine."

18 Then a place where there is no forced entry,
19 there is no burglary. There is no couple of hours
20 later, cinderblock on whatever. There is no barging
21 in.

22 They're imminently distinguishable, and if
23 they're going to argue that modus operandi, then you
24 should hold them to that. Because reasonably, if you
25 can pull yourself back, and you can detach from the

1 feeling in your gut looking at the evidence in this
2 case, you will see that it does not make any sense.

3 It does not make any sense. If they are going to
4 argue this is how he rolls, this is what he does, what
5 does one have to do with the other?

6 There is no similarity whatever. They're saying
7 \$16, and, you know, go --- a car. You know, if
8 someone goes into a place without consent and someone
9 takes jewelry from a nightstand, that's called a
10 burglary, that's called a burglary second degree.

11 The evidence from the video from the pawn slip,
12 that's what that is called. Someone --- and they say
13 it's overwhelming evidence. It's not overwhelming.

14 It's cumulative in the sense of evidence from all
15 the cases put together to prove them all at the same
16 time when they are in individual cases. Walking into
17 someone's home is unlawful. Taking jewelry from
18 someone's home is unlawful. Taking someone's car is
19 unlawful.

20 Where is the evidence that he killed Ms. Derrick?
21 For that, they presented Damon Scott. In full
22 disclosure, as you know, I know him.

23 I'm not going to talk about things outside of
24 what took place on the stand here, but his testimony
25 --- it was a little confusing to me, Ms. Campbell's

1 recollection of his testimony, because I thought his
2 testimony was he saw something funny going on at this
3 house.

4 Then he went to the house, and there were two
5 other people there. He was with two other people,
6 then --- and then it --- the reason that it sort of
7 didn't make any sense --- the reason it doesn't jibe
8 with what she said is because at least part or all of
9 what he said is not true.

10 What he said: I was talking to him in the
11 multipurpose room, because that's where they hold
12 Bible study. He's the Bible study leader. What kind
13 of detail was that?

14 She asked him questions about publicity in this
15 case. There were articles in the newspaper two months
16 ago, two-and-a-half years later about this case.

17 MS. CAMPBELL: Objection, Your Honor. Outside
18 the scope of any evidence.

19 THE HONORABLE CLIFTON NEWMAN: Stay within the
20 record, counsel.

21 MR. SUTHERLAND: Thank you. Thank you, Your
22 Honor.

23 But it --- it was shocking to me that no one had
24 heard of the case when being seated for the jury. I
25 will put it that --- that way and leave it there.

1 But what did he tell you that is credible,
2 ultimately, that he's looking at 63 --- three life
3 terms. The murder is 30, 30 years to life day-for-day,
4 and when he answered, "No. I'm just here to tell the
5 truth," I considered impeaching him with an earlier
6 statement, but I didn't.

7 We all know why he's here.

8 MS. CAMPBELL: Objection, Your Honor. He can't
9 talk about his theory on impeachment.

10 THE HONORABLE CLIFTON NEWMAN: All right.
11 Overruled.

12 MR. SUTHERLAND: Thank you, sir.

13 But what I --- what I did in cross-examining him
14 was try and just let you know without being mean to a
15 former client that for him to say this story and then
16 all of the sudden during Bible study, you know what?

17 No, no. I didn't actually see something funny
18 going on up there. I didn't actually see two people
19 in there, and I actually killed a person because you
20 told me that there would have been crime scene tape at
21 the scene at the time that you must think that I went
22 in there.

23 So --- and maybe, you know, the religious
24 environment, you know, Bible study, talking about
25 Jesus, it doesn't make any sense. It doesn't make any

1 sense that Damon Scott is alone in Bible study,
2 because what's Bible study? It's bunch of guys
3 sitting around looking at the Bible.

4 Why didn't they put up anybody else from the
5 Bible study, and say, "Oh yes, by the way, he said he
6 did not do this, and then he turned around and said
7 that he did it."

8 Well, you know, it was during Bible study, and
9 Bible study is not two guys. You don't have a leader
10 of a Bible study when there are two people --- and you
11 may in Bible study, but you can make the logical
12 inferences and implications on what you heard.

13 If he said, "I didn't do it. I did it," there
14 had to be more people there to hear it. You know,
15 he's in there for two --- two weeks, three weeks, and
16 he's picked up on more serious charges.

17 Suddenly, everyone, Julian Whatley, everyone is
18 running to him and saying, "Hey, new guy. Come here.
19 I want to tell you something. I've denied this to
20 everyone, but I really did it, just so you know." It
21 doesn't make any sense, ladies and gentlemen. It does
22 not.

23 I hope this doesn't sound extraordinary to you,
24 but I'm going to tell you exactly what all of this is.
25 I'm sure some of you aren't going to like it, but I

1 observed Ms. Campbell during closing.

2 You've observed the manner in which evidence has
3 been characterized, and in which these cases have been
4 connected with one another.

5 In ancient Greece whenever there was a tempest or
6 there was an earthquake or the Persians were invading
7 from the north, the Greeks in the city states would
8 pick somebody, a cripple, beggar, drive them outside
9 the city and execute them, and hopefully, this would
10 help the natural disaster or cure the ills.

11 It's pushing the ills out of the city state, and
12 hopefully that --- that would not --- that that would
13 appease the gods. That would appease nature, and
14 thankfully, the Israelites used a goat. They put all
15 their sins on the back of a goat and slaughtered it.

16 Elbert Wallace is a scapegoat for all of these
17 offenses. Please, don't think about the silver dollar.
18 Think about each case individually, separately, and
19 make your decision based on what's right
20 constitutionally.

21 What's right, maybe not in your heart, but what
22 you know is right in your mind. They did not prove
23 that Elbert Wallace killed anybody with their zeros,
24 one in one million or one billion, and then if this
25 one doesn't match, oops, zero percent.

1 You go from odds of --- it's a quadrillion to one.
2 It's one person out of however many to zero odds,
3 because you're adding zero to that equation that we
4 went through.

5 Think about it individually. Do the best that
6 you can. I must say, again, I can't tell you how good
7 it feels to have this case away from the government
8 and with the people.

9 I'd like to thank you for your time and thank you
10 for your consideration.

11 THE HONORABLE CLIFTON NEWMAN: All right. Ladies
12 and gentlemen, we'll take a break for about five to
13 ten minutes and come back for further proceedings.
14 Please do not discuss the case.

15 THE BAILLIF: Everybody remain seated.

16 (WHEREUPON, the jury left open court at
17 approximately 4:40 p.m.)

18 THE HONORABLE CLIFTON NEWMAN: All right. It
19 just occurred to me, the defendant did not present any
20 evidence so he gets the closing argument.

21 All right.

22 MS. CAMPBELL: Thank you, sir.

23 THE HONORABLE CLIFTON NEWMAN: What he's still
24 giving ultimately.

25 We'll take about five minutes or so and then come

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1 back for jury charge.

2 (WHEREUPON, a short break was taken.)

3 THE HONORABLE CLIFTON NEWMAN: Okay. Bring the
4 jury.

5 THE BAILIFF: Thank you.

6 (WHEREUPON, the jury came into open court at
7 approximately 5:05 p.m.)

8 THE BAILIFF: The jury is seated, Your Honor..

9 THE HONORABLE CLIFTON NEWMAN: All right. I want
10 the record to show that the --- that one juror was
11 discharged early on, and we've seated the first
12 alternate as the 12th jury [sic] in the case.

13 Any objection from either side as to the current
14 configuration of the jury? Who is the alternate that
15 became the 12th juror? Any objection from either side?

16 MS. McDUFFIE: None from the State.

17 MR. SUTHERLAND: None from the defense, Your
18 Honor.

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20 THE HONORABLE CLIFTON NEWMAN: All right. You
21 are the 12th juror at this point.

22 Mr. Foreman and members of the jury, you have
23 heard the testimony, evidence and arguments of the
24 State and the defendant. I will now explain to you
25 the law that applies to this case.

1 Under the constitution and laws of South Carolina,
2 you are the finders of the facts in this case. I do
3 not have the right to pass upon the facts or even to
4 express any opinion that I might have as to them,
5 because this is a matter solely for you, the jury, to
6 determine.

7 As jurors, then, it is your duty to determine the
8 effect, the value, the weight and the truth of the
9 evidence presented during this trial.

10 You are also the judges, the sole judges, of the
11 credibility, that is, the believability of the
12 witnesses who have testified and of the evidence which
13 has been presented in this case.

14 In passing upon credibility, you may take into
15 consideration many things, such as the demeanor or
16 manner of testifying, whether the witness had reason
17 to be biased or prejudiced, whether a witness's
18 testimony was contradicted on the one hand or
19 supported or corroborated on the other hand.

20 You may believe a small portion of a witness's
21 testimony and disregard the larger or vice versa.

22 You may believe one witness against many or many
23 against one. All these things you will consider,
24 bearing in mind that you should give the defendant the
25 benefit of any reasonable doubt.

1 It become your --- becomes your duty as jurors to
2 analyze and to evaluate the evidence and to determine
3 that evidence which convinces you of its truth.

4 Now, I instruct you and emphasize that the fact
5 that the defendant did not testify in this case is not
6 a factor to be considered by you in any way in your
7 deliberations and in your consideration of the
8 question of the guilt or the innocence of the
9 defendant.

10 It must not be considered by you in any manner
11 whatsoever. A defendant has the constitutional right
12 to remain silent, and the assertion of this right must
13 not be considered by you in your deliberations.

14 I repeat, under your oath, you are to draw no
15 conclusions whatsoever from the fact that the
16 defendant in this case did not testify.

17 The fact that this defendant did not testify
18 should not even be discussed in the jury room. The
19 burden of proof, as I have stated to you, is on the
20 State. The defendant is not required to prove his
21 innocence. The burden of proof remains on the State
22 to prove guilt beyond a reasonable doubt.

23 There are two types of evidence which are
24 generally presented during a trial: Direct evidence
25 and circumstantial evidence.

1 Direct evidence is the testimony of a person who
2 claims to have actual knowledge of a fact, such as an
3 eyewitness. It is evidence which immediately
4 establishes the main fact to be proved.

5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of a
7 fact. It is evidence which immediately establishes
8 collateral facts, from which the main fact may be
9 inferred. Circumstantial evidence is based on
10 inference and not on personal knowledge or observation.

11 The law makes absolutely no distinction between
12 the weight or the value to be given either direct or
13 circumstantial evidence, nor is a greater degree of
14 certainty required of circumstantial evidence than of
15 direct evidence.

16 You should weigh all of the evidence in the case.
17 After weighing all of the evidence, if you are not
18 convinced of the guilt of the defendant beyond a
19 reasonable doubt, you must find the defendant not
20 guilty.

21 As the trial judges, it is our responsibility to
22 preside over the trial of this case and to rule upon
23 or pass upon the admissibility of the evidence offered
24 during this trial.

25 You are to consider only the testimony which has

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1 been presented from this witness stand together with
2 any exhibits which have been made a part of the record.

3 We have the additional duty to charge you the law
4 applicable to this case, and as the presiding judges,
5 we are the sole judges of the law of this case.

6 It is your duty as jurors to accept and apply the
7 law exactly as I now state it to you and then reach
8 your verdict. And, finally, I charge you in this
9 regard: That you should not be concerned about what
10 you think the law ought to be, but what I tell you the
11 law is.

12 The fact that the defendant was arrested, charged
13 and indicted is not evidence in this case and cannot
14 be considered by you as evidence of guilt in this case,
15 nor does it create any presumption or inference of
16 guilt.

17 These indictments are simply the formal written
18 instruments which contain the charges made against the
19 defendant.

20 An indictment is a formal document by which this
21 case is brought into court. The indictments in this
22 case allege several different offenses against the
23 defendant: The charges are murder, assault and
24 battery with intent to kill, two counts of burglary in
25 the first degree, two counts of armed robbery,

1 burglary in the second degree and petit larceny.

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

7 The defendant may be convicted or acquitted on
8 any or all of the offenses charged. You will be asked
9 to write a separate verdict of guilty or not guilty
10 for each indictment.

11 The defendant has pled not guilty to the charges
12 in each indictment, and that plea places the burden on
13 the State to prove the defendant guilty.

14 A person charged with committing a criminal
15 offense in South Carolina is never required to prove
16 himself innocent.

17 I charge you that it is an important rule of the
18 law that the defendant in a criminal trial, no matter
19 what the seriousness of the charge may be, will always
20 be presumed to be not guilty of the crime for which
21 the indictment was issued unless guilt has been proven
22 by evidence satisfying you of that guilt beyond a
23 reasonable doubt.

24 The presumption of innocence --- or this
25 presumption of innocence does not end when you begin

1 your deliberations, but it accompanies the defendant
2 throughout the trial until you reach a verdict of
3 guilt based on evidence satisfying you of that guilt
4 beyond a reasonable doubt.

5 The presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the
7 defendant which remains with the defendant until it
8 has been stripped from the defendant by evidence
9 satisfying you of the defendant's guilt beyond a
10 reasonable doubt.

11 Now, this presumption of innocence is not a mere
12 legal theory. It's not just a legal phrase. It is a
13 substantial right to which every defendant is entitled
14 unless you, the jury, are satisfied from the evidence
15 of the defendant's guilt beyond a reasonable doubt.

16 The State must prove the defendant guilty beyond
17 a reasonable doubt. So what is a reasonable doubt in
18 the law?

19 A reasonable doubt is a doubt which makes an
20 honest, sincere, conscientious juror in search of the
21 truth to hesitate to act.

22 Proof beyond a reasonable doubt must, therefore,
23 be proof of such a convincing character that a
24 reasonable person would not hesitate to act and to
25 rely upon it in the most important of his or her own

1 affairs.

2 Proof beyond a reasonable doubt can also be
3 described as proof that leaves you firmly convinced of
4 the defendant's guilt.

5 Now, there are very few things in this world that
6 we know with absolute certainty, and in criminal cases,
7 the law does not require proof that overcomes every
8 possible doubt.

9 If, based on your consideration of the evidence,
10 you are firmly convinced that the defendant is guilty,
11 then you must find him guilty.

12 If, on the other hand, you think there is a real
13 possibility that you think he is not guilty, you must
14 then give him the benefit of the doubt and find him
15 not guilty.

16 The defendant is charged with the murder of Linda
17 Derrick. The State must prove beyond a reasonable
18 doubt that the defendant killed another person with
19 malice aforethought.

20 Malice is hatred, ill will or hostility towards
21 another person. It is the intentional doing of a
22 wrongful act without just cause or excuse and with an
23 intent to inflict an injury or under the --- under
24 circumstances that the law will infer an evil intent.

25 Malice aforethought does not require that malice

1 exists for any particular time before the act is
2 committed, but malice must exist in the mind of the
3 defendant just before and at the time of the act that
4 the act is committed. Therefore, there must be a
5 combination of the previous evil intent and the act.

6 Malice aforethought may be expressed or inferred.
7 These terms, expressed and inferred, do not mean
8 different kinds of malice, but merely the manner in
9 which malice may be shown to exist; that is, either by
10 direct evidence or by inference from the facts and
11 circumstances which are proved.

12 Expressed malice is shown when a person speaks
13 words which express hatred or ill will for another or
14 when a person prepared beforehand to do the act, which
15 was later accomplished. For example: Lying in wait
16 for a person or any other acts of preparation going to
17 show that the deed was within the defendant's mind
18 would be expressed malice.

19 Malice may be inferred from conduct showing a
20 total disregard for human life. Inferred malice may
21 also arise when the deed is done with a deadly weapon.
22 A deadly weapon is any article, instrument or
23 substance which is likely to cause death or great
24 bodily harm.

25 Whether an instrument has been used as a deadly

1 weapon/depends on the facts and circumstances of each
2 case. A hand or fist is not normally considered a
3 deadly weapon. However, under some circumstances,
4 depending on the manner and the means of its use, the
5 wounds inflicted and other relevant facts, a hand or
6 fist may be considered a deadly weapon. It is for you
7 to decide in this case --- it is for you to decide in
8 this case beyond a reasonable doubt whether or not a
9 hand or a fist is a deadly weapon.

10 Mr. Foreman and members of the jury, if one
11 intentionally kills another during the commission of a
12 felony, the inference of malice may arise.

13 In that regard, burglary and robbery are felonies
14 under our law. If facts are proved beyond a
15 reasonable doubt sufficient to raise an inference of
16 malice to your satisfaction, this inference would
17 simply be an evidentiary fact to be taken into
18 consideration by you, along with all other evidence in
19 this case. You may give it the weight that you decide
20 that it should receive.

21 The defendant has been charged with assault and
22 battery with intent to kill Carolyn Webb. In order to
23 prove assault and battery with intent to kill, the
24 State must prove beyond a reasonable doubt that the
25 defendant committed an unlawful act of violent --- of

1 a violent nature to the person of another with malice
2 aforethought.

3 An assault occurs when a person unlawfully
4 attempts or offers to commit a violent injury upon
5 another person and have the present ability to
6 complete the attempted injury.

7 An assault is the intentional creation of
8 reasonable fear of immediate bodily harm. It is not
9 necessary that the attempted injury or harm actually
10 take place. For example, if I walk up to you and we
11 are within arm's reach and I draw back to hit you,
12 that is an assault.

13 A battery is the unlawful touching of another
14 person by a person who has committed an assault. An
15 unlawful touching can be caused by a part of the
16 accused's body or by any object the accused puts in
17 motion.

18 A battery is the completion of the assault by
19 using or applying force to another person, however
20 slight, in a rude, angry or resentful manner without
21 legal justification for doing so.

22 Using my earlier example, if I carry through the
23 assault by hitting you, then that is a battery. If
24 facts are proved beyond a reasonable doubt sufficient
25 to raise an inference of malice to your satisfaction,

1 this inference would be simply an evidentiary fact to
2 be considered by you, the jury, along with the other
3 evidence in the case. You may give it whatever weight
4 you decide it should receive.

5 A specific intent to kill is not an element of
6 assault with intent to kill, but there must be a
7 general intent to commit serious bodily injury.

8 Intent means intending the result which actually
9 occurs. That is not accidentally or involuntary.
10 Intent may be shown by acts and conduct of the
11 defendant and other circumstances from which you may
12 naturally and reasonably infer intent.

13 Evidence of the character of the assault, the
14 character of the instrument used, the manner in which
15 it was used, the purpose to be accomplished and the
16 resulting wounds or injuries may be considered in
17 determining the intent with which the assault was
18 committed.

19 Intent may also be inferred when it is
20 demonstrated that the defendant voluntarily and
21 willfully commits an act, the natural tendency of
22 which, is to destroy another's life.

23 If you find that the State has not proven that
24 the defendant is guilty of assault and battery with
25 intent to kill Carolyn Webb, you must then consider

1 whether the State has proved that the defendant is
2 guilty of assault and battery of a high and aggravated
3 nature against Carolyn Webb.

4 Assault and battery of a high and aggravated
5 nature includes all of the elements of assault and
6 battery with intent to kill except malice aforethought.
7 In addition, the State must prove beyond a reasonable
8 doubt an aggravating circumstance.

9 Circumstances of aggravation include the use of a
10 deadly weapon, the intent to commit a felony, the
11 infliction of serious bodily injury, a great disparity
12 between the ages or physical conditions of the parties,
13 a difference in the genders of the parties, and the
14 taking of indecent liberties or familiarities with a
15 female through the use of force. These are only
16 examples of circumstances of aggravation.

17 The defendant is charged with the offense of
18 armed robbery of Linda Derrick and the armed robbery
19 of Carolyn Webb.

20 As to each count, in order to prove the defendant
21 guilty of armed robbery, the State must prove beyond a
22 reasonable doubt that the defendant took personal
23 property from the person or presence of another person.

24 Property is in the presence of another person if
25 it is within the person's reach, inspection,

1 observation or control so that the person could, if
2 not overcome with violence or prevented by fear, keep
3 possession of the property.

4 The State must also prove beyond a reasonable
5 doubt that the defendant carried the property away,
6 intending to permanently deprive the owner of the
7 property and to keep the property for the defendant's
8 own use.

9 The taking and carrying away of the property must
10 have been done with violence or by putting the owner
11 of the property in fear of violence. Finally, the
12 State must prove beyond a reasonable doubt that the
13 defendant was armed with a deadly weapon during the
14 robbery.

15 A deadly weapon is any instrument which is likely
16 to cause death or great bodily harm. Whether an
17 instrument has been used as a deadly weapon depends on
18 the facts and circumstances of each case. The
19 following are examples of deadly weapons as
20 instruments which may be deadly weapons: That is a
21 pistol, shotgun and/or a knife.

22 If you find that the State has failed to prove
23 that the defendant was armed with a deadly weapon
24 while allegedly committing the robbery of Linda
25 Derrick, you may then consider whether the State has

1 proved beyond a reasonable doubt that the defendant
2 committed the common law robbery of Linda Derrick.

3 In order to prove common law robbery, the State
4 must prove beyond a reasonable doubt all of the
5 elements that I have just explained except that the
6 defendant was not armed with a deadly weapon.

7 The defendant is charged with first degree
8 burglary of the residence of Linda Derrick and first
9 degree burglary of the residence of Carolyn Webb.

10 As to each count, in order to prove the defendant
11 guilty of first degree burglary, the State must first
12 prove beyond a reasonable doubt that the defendant
13 entered a dwelling without consent. A dwelling is any
14 building or a portion of a building in which a person
15 ordinarily sleeps.

16 In order to prove that the defendant entered the
17 dwelling, the State does not have to show that the
18 defendant's entire body entered the dwelling. The
19 smallest entry is sufficient.

20 In addition, the State does not have to prove
21 that force was used to gain entry. If a person enters
22 a dwelling by using deception, artifice, trick or
23 misrepresentation to get consent to enter, this is an
24 entry without consent.

25 Next, the State must prove beyond a reasonable

1 doubt that the defendant intended to commit a crime,
2 either a felony or a misdemeanor at the time of the
3 entry.

4 The mere entry into a dwelling without consent is
5 not burglary. If the intent to commit a crime is
6 formed after entry, it's not a burglary. On the other
7 hand, if the defendant intended to commit a crime at
8 the time of the entry, it is a burglary, even if the
9 intent was abandoned after entry.

10 It does not matter that the intended crime was
11 not completed. Intent may be shown by acts and
12 conduct of the defendant and other circumstances from
13 which you may naturally and reasonably infer intent.

14 Finally, the State must prove beyond a reasonable
15 doubt that when entering, when in the dwelling or when
16 fleeing, the defendant was armed with a deadly weapon
17 or when entering while in the dwelling or when fleeing,
18 the defendant used or threatened to use a dangerous
19 object or when entering while in the dwelling or when
20 fleeing, the defendant displayed what appeared to be a
21 knife, or the defendant entered or remained in the
22 dwelling in the nighttime.

23 Nighttime is the period between sunset and
24 sunrise during which there is not enough daylight to
25 recognize a person's face except by artificial light

1 or moonlight.

2 If you find that the State has failed to prove
3 beyond a reasonable doubt that the defendant committed
4 first degree burglary on the residence of Linda
5 Derrick, you may consider whether the State has proved
6 beyond a reasonable doubt that the defendant committed
7 second degree burglary on the residence of Linda
8 Derrick.

9 Second degree burglary includes all of the
10 elements of first degree burglary except the
11 circumstances of aggravation, such as the lack of
12 being armed with or using a deadly weapon or a
13 dangerous object, or the offense did not occur during
14 the nighttime.

15 The defendant is charged with burglary in the
16 second degree of Christ Lutheran Church. To prove
17 second degree burglary, the State must prove beyond a
18 reasonable doubt that the defendant entered a building
19 without consent and with the intent to commit a crime
20 in the building. A building is any structure where
21 any person lives or where people assemble for the
22 purpose of business, religion, or public use or where
23 goods are stored.

24 Finally, the State must prove beyond a reasonable
25 doubt that the defendant entered or remained in the

1 building in the nighttime.

2 Nighttime is, as I just indicated earlier, the
3 period between sunset and sunrise during which there
4 is not enough daylight to recognize the person's face
5 except by artificial light or moonlight.

6 And, finally, the defendant is charged with petit
7 larceny of property from Christ Lutheran Church. The
8 State must prove beyond a reasonable doubt that the
9 defendant took and carried away the property of
10 another against the will or without the consent of
11 another person or entity.

12 The slightest removal of the property, or the
13 complete possession of the property, even for an
14 instant by the defendant is enough to show a taking
15 and carrying away of the property.

16 The State must also prove beyond a reasonable
17 doubt that the defendant intended to permanently
18 deprive the owner of the property. Finally, the State
19 must prove that the value of the thing or things taken
20 was \$1,000 or less.

21 Of course, ladies and gentlemen, you cannot find
22 the defendant guilty of any offense unless you are
23 convinced beyond a reasonable doubt that he is guilty
24 as to that particular offense.

25 Mr. Foreman and members of the jury, you have

1 been selected by both the State and the defendant to
2 be fair and impartial jurors.

3 It is your duty then, in your joint deliberations,
4 to determine the truth of this case giving the
5 defendant the benefit of every reasonable doubt on
6 each and every issue.

7 From the facts which you determine to be true,
8 you take and apply the law which I have just given you
9 and thus arrive at a verdict which speaks the truth of
10 this case.

11 I've told you the standards you have to apply to
12 the charges of murder, assault and battery with intent
13 to kill, burglary in the first degree, armed robbery,
14 burglary in the second degree and petit larceny.

15 I will give you a copy of these instructions in
16 written form, and during your deliberations, you may
17 refer to the instructions to guide your decision
18 making.

19 You must consider the instructions as a whole and
20 not follow some and ignore others. Please return the
21 instructions to the Court at the time your verdict is
22 rendered.

23 You've heard the evidence, and now you have heard
24 the law. Whatever your verdict as to each charge,
25 Mr. Foreman, you will indicate it on the verdict form,

1 which is this form.

2 You will then sign and date the verdict form.

3 Remember that although the foreperson is the only
4 juror whose --- writes the verdict, it is not his
5 alone.

6 The verdict has to be a unanimous verdict, and
7 Mr. Foreman, you are not authorized to write the
8 verdict until all of you have agreed as to what the
9 verdict should be.

10 Ladies and gentlemen, I'm going to send you to
11 your jury room in just a moment, but do not begin to
12 discuss the case until you have received a copy of
13 this jury charge, the verdict form, and the exhibits.
14 Once you receive these things, that will be your
15 signal to begin your deliberations.

16 Once you begin your deliberations, you will
17 deliberate until you have reached a verdict, at which
18 time you will knock on the door, advise the bailiff,
19 and we will bring you out to receive your verdict.

20 Now, we have selected 14 jurors at this point,
21 and only 12 can participate in the jury deliberations.
22 Out of the first 12 jurors selected, if you are able
23 to continue with the jury deliberations, please let me
24 know by a showing of --- by raising your right hands,
25 if you can continue with the jury deliberations.

1 (All indicated in the affirmative.)

2 All right. And that means that the --- I'm going
3 to excuse the alternates, and the first 12 of you, all
4 of whom have indicated that you can continue with the
5 deliberations will be the deliberating jury.

6 And when the jury retires to the jury room, the
7 alternates will remain. In addition to the jury
8 charge, you will receive a copy of the indictments and
9 the verdict form.

10 Mr. Foreman, as to the verdict form, it says, "We,
11 the jury, by unanimous consent, find the defendant
12 " --- as to Linda Derrick as to the charge of murder,
13 either not guilty or guilty.

14 And, certainly, there is no significance to the
15 order in which I state those possible verdicts.
16 Simply, one must be put first.

17 As to the charge of burglary in the first degree,
18 either guilty of burglary in the second degree or not
19 guilty.

20 As to the charge of armed robbery, guilty --- or
21 guilty of robbery or not guilty. As to the Carolyn
22 Webb, as to the charge of assault and battery with
23 intent to kill, either guilty, guilty of assault and
24 battery of a high and aggravated nature, or not guilty.

25 As to the charge of burglary in the first degree,

1 either guilty or not guilty, and as to the charge of
2 armed robbery, either guilty or not guilty.

3 As to Christ Lutheran Church as to the charge of
4 burglary in the second degree, either guilty or not
5 guilty.

6 As to the charge of petit larceny, either guilty
7 or not guilty. You will check the appropriate box as
8 to each possible --- as to each verdict the jury has
9 agreed upon, sign and date the verdict form.

10 Mr. Foreman, members of the jury, I certainly
11 understand that it is now 20 minutes until six, and
12 you're getting the case late this afternoon.

13 We've ordered lunch for you, and I've allowed
14 some of you to make phone calls. Hopefully, that
15 makes it convenient for you all to continue with the
16 deliberations.

17 In the event you do not reach a verdict at a
18 reasonable hour, Mr. Foreman, and you decide you want
19 to come back and resume deliberating tomorrow instead
20 of completing the deliberations today, advise the
21 Court and we'll tend to that circumstance.

22 For now, I ask you to go to the jury room and ---
23 all of you except the alternates. Wait for the
24 exhibits, verdict form and jury instructions, and that
25 will be your signal to begin your deliberations.

1 When the food arrives, you can stop and handle
2 that any way you decide you want to handle it, but you
3 can only deliberate with all 12 jurors present and
4 participating.

5 Thank you very much. Please go to the jury room
6 at this time.

7 THE BAILIFF: Your Honor, is it all right for the
8 ones who didn't make a phone call to make a phone call?

9 THE HONORABLE CLIFTON NEWMAN: Yes, sir, before
10 we get going, yes.

11 The two alternates, if you all will just stay put.
12 Just stay put for a moment.

13 (WHEREUPON, the jury left open court at
14 approximately 5:41 p.m.)

15 Do y'all have anything in the jury room?

16 ALTERNATE JUROR: Yes, sir.

17 THE HONORABLE CLIFTON NEWMAN: You have something
18 in the jury room?

19 Mr. Bailiff, if you will get their stuff out of
20 the jury room.

21 THE BAILIFF: Yes, sir.

22 THE HONORABLE CLIFTON NEWMAN: Okay.

23 Are there any additions or exceptions to the
24 charge from the State?

25 MS. CAMPBELL: Your Honor, and I may have just

1 misheard this, but on the armed robbery charge, I just
2 didn't hear the language about they can either be
3 armed robbery with a representation of a deadly weapon
4 since there is some question about the fist versus ---
5 I mean, I didn't know if --- if ---

6 THE HONORABLE CLIFTON NEWMAN: Well, I didn't ---

7 MS. CAMPBELL: I thought the statute itself would
8 be appropriate.

9 THE HONORABLE CLIFTON NEWMAN: I didn't charge
10 them any representation of a deadly weapon, but I told
11 them that a fist can be a deadly weapon.

12 MS. CAMPBELL: Yeah, I know you did that in the
13 second part. I didn't ---

14 THE HONORABLE CLIFTON NEWMAN: It's not a toy gun
15 case or anything of that nature.

16 MS. CAMPBELL: I know it's not, but I'm just
17 saying I didn't --- and maybe I misheard that, but I
18 didn't hear that in conjunction with the armed robbery
19 that a fist may be a deadly weapon.

20 THE HONORABLE CLIFTON NEWMAN: I told them that a
21 fist may be a deadly weapon. I gave them a specific
22 charge that a fist may be a deadly weapon. I didn't
23 repeat the definition of ---

24 MS. CAMPBELL: That's ---

25 (Talking over each other.)

1 THE HONORABLE CLIFTON NEWMAN: --- as to each
2 offense ---

3 MS. CAMPBELL: Different armed robberies ---
4 (Talking over each other.)

5 THE HONORABLE CLIFTON NEWMAN: Once I told them
6 what can be a deadly weapon, I didn't repeat it three
7 or four times as to each charge.

8 MS. CAMPBELL: And I guess I just heard you say
9 that a deadly weapon may be a gun or a knife or
10 something else, and it didn't include that a fist may
11 be a deadly weapon at that part, but I may have
12 misheard.

13 THE HONORABLE CLIFTON NEWMAN: All right.

14 MS. CAMPBELL: That would be ---

15 THE HONORABLE CLIFTON NEWMAN: Yeah, your --- I
16 understand. You're ---

17 MS. CAMPBELL: The only other thing is on the
18 burglary first, Your Honor, I believe one of the
19 aggravated --- and I don't have the indictment in
20 front of me --- is to cause physical injury to a
21 nonparticipant in a crime.

22 THE HONORABLE CLIFTON NEWMAN: Such has who?

23 MS. CAMPBELL: And I don't care about --- such as
24 Ms. Derrick and Ms. Webb. It's an act.

25 THE HONORABLE CLIFTON NEWMAN: Well, they are the

1 victims. So ---

2 MS. CAMPBELL: That's the purpose, I believe, of
3 that aggravating circumstance on burglary first.

4 THE HONORABLE CLIFTON NEWMAN: I understand. I
5 think it's clear with the --- I think the law was
6 clearly given on that point.

7 MS. CAMPBELL: Okay. The only other thing we
8 would request, Your Honor, is a possible --- I didn't
9 know if you would send the indictments back with the
10 verdict form so they could match them up so there
11 would be no confusion on that.

12 THE HONORABLE CLIFTON NEWMAN: There would be no
13 confusion because we have on the caption as to each
14 particular person what the finding is.

15 MS. CAMPBELL: The only other thing we'd ask is
16 that possibly that language be added in --- if you are
17 going to send it back in with them any way, I think,
18 if we could just add the --- where you have the --- a
19 deadly weapon is in relation to the armed robbery. If
20 you can just add in the language about the fist. We
21 don't think they need to be recharged.

22 THE HONORABLE CLIFTON NEWMAN: All right.
23 Yes, sir.

24 MR. SUTHERLAND: Your Honor, I'm fine with
25 everything as charged. No exceptions, Your Honor.

1 THE HONORABLE CLIFTON NEWMAN: All right. All
2 right. I think once the jury is given a definition of
3 a deadly weapon, that they don't need to have it
4 repeated every time there's a separate offense.

5 I don't believe --- I don't --- I don't --- I
6 give them credit for more intelligence than that.

7 MS. CAMPBELL: And I understand. It's just I
8 think that was in conjunction with murder. The only
9 reason I even brought it up is because I think you
10 defined deadly weapon or gave examples or deadly
11 weapon in the armed robbery that didn't include fist.
12 That was my only concern, and I could be wrong about
13 that.

14 THE HONORABLE CLIFTON NEWMAN: Well, you're right.

15 MS. CAMPBELL: It was a lot of law.

16 THE HONORABLE CLIFTON NEWMAN: You're right. I
17 didn't tell them that an example of a deadly weapon is
18 a fist. I told them an example is a knife, but I
19 didn't --- I didn't give them every possible deadly
20 weapon --- every possible...

21 MS. CAMPBELL: And I'm sure ---

22 THE HONORABLE CLIFTON NEWMAN: Everything in the
23 world that can be used as a deadly weapon, because I
24 told them a hand or a fist is not normally considered
25 a deadly weapon, but under certain circumstances, it

1 may be depending upon the --- its means or its use,
2 the wounds inflicted and other relevant facts, a hand
3 or a fist may be considered a deadly weapon. "It's
4 for you to decide in this case beyond a reasonable
5 doubt whether or not a hand or a fist is a deadly
6 weapon."

7 They only decided one case, so I don't --- yeah.
8 I go for less rather than more. I see you all here in
9 Richland go for more rather than less.

10 MS. CAMPBELL: We go for so much. I know we do,
11 Judge. It's just we have difficulty with ---

12 THE HONORABLE CLIFTON NEWMAN: You all overload
13 them with any and everything you can find, and I don't
14 think --- I don't --- I try not to do that because I
15 could be reading for a couple ---

16 MS. CAMPBELL: I agree, Your Honor.

17 THE HONORABLE CLIFTON NEWMAN: --- a couple of
18 hours.

19 All right. Anything else?

20 MR. SUTHERLAND: Nothing from the defense, sir.

21 THE HONORABLE CLIFTON NEWMAN: All right. Well,
22 I think the charge is --- is adequate on all of those
23 things. I've defined deadly weapon, including the
24 fist, so I don't --- I don't know how many different
25 times I need to tell them that.

1 All right. The alternates, thank you all. We
2 picked enough so that, we have to have 12, and
3 everyone made it through, which is a --- which is a
4 great thing.

5 I don't know if it's great for you all or not,
6 but you cannot participate in deliberating. We can
7 only use 12 to deliberate, and based on the luck of
8 the draw, the first 12 is who will deliberate. So you
9 all are through with this case. You all are through
10 with jury duty.

11 Do we have a clerk in here? She is not here?

12 THE BAILLIF: No, sir.

13 THE HONORABLE CLIFTON NEWMAN: All right. So if
14 you need any excuses for your jobs or anything of that
15 nature, you can stick around, and they --- someone
16 from the clerk's office can give you one.

17 Otherwise, I just request that you not disclose
18 or discuss with anyone what you think the verdict
19 should be until you get word that the jury has reached
20 a verdict.

21 Thank you all. You all are free to go. If you
22 want to wait around for your Lizard's Thicket, you are
23 welcome to do that, too

24 (Whereupon, the alternates left the courtroom.)

25 THE HONORABLE CLIFTON NEWMAN: All right.

1 Anything? Well, I guess you all have to check the
2 exhibits and all.

3 All that is ready for the jury?

4 THE COURT REPORTER: For the most part, yes. We
5 need to go through one final time.

6 THE HONORABLE CLIFTON NEWMAN: All right. You
7 all do that one final time, and then we'll...

8 (Indicating)

9 THE COURT REPORTER: Well, I just want to make
10 sure because during the closing argument, some things
11 were moved over there. I put them back here. When I
12 picked them up, the photos fell. So I mean, I just
13 want to double check. I have everything pretty much
14 in order. It won't take me long.

15 THE HONORABLE CLIFTON NEWMAN: Yeah. Well, the
16 jury will be waiting for the case.

17 So we delayed coming in because you all were
18 going through it. We delayed coming in from lunch
19 because you all were going through it. We delayed
20 four times because you were going through it, so one
21 final go through and hopefully it won't delay them too
22 long before they can start deliberating.

23 MR. SUTHERLAND: Mr. Wallace is having more
24 issues with his spider bite. Is there anyone that
25 might be able to take a look at it?

1 THE HONORABLE CLIFTON NEWMAN: Well, I don't know.
2 You've had all kinds of doctors on the stand.

3 MR. SUTHERLAND: I missed the opportunity.

4 THE HONORABLE CLIFTON NEWMAN: Do you have a
5 medical examiner?

6 MR. SUTHERLAND: You better watch out for that.

7 THE HONORABLE CLIFTON NEWMAN: You have a lot of
8 folks, but they're all gone. I don't know.

9 Is a doctor in the house?

10 (There was no response.)

11 No one says so.

12 (WHEREUPON, the jury began their deliberations at
13 5:53 p.m.)

14 (WHEREUPON, Court's Exhibit No. 3 was marked for
15 identification only.)

16 THE HONORABLE CLIFTON NEWMAN: I understand that
17 there is a verdict. It goes without saying that order
18 must be kept in court at all time --- all times.

19 Any outbursts or any other type of conduct that
20 doesn't comport with that will be subject to a person
21 being held in contempt.

22 I'm glad to see we've got a good show of force.
23 That's two, four, six, eight, ten --- countless
24 numbers of deputies here to say make sure that it
25 works that way.

1 Let's bring the jury.

2 (WHEREUPON, the jury came into open court at
3 approximately 7:29 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE HONORABLE CLIFTON NEWMAN: All right. Thank
6 you, sir.

7 Mr. Foreman, if you'll stand for me.

8 THE FOREMAN: Yes, sir.

9 VERDICT

10 THE HONORABLE CLIFTON NEWMAN: Have you reached a
11 verdict?

12 THE FOREMAN: Yes, sir, we have.

13 THE HONORABLE CLIFTON NEWMAN: Is it unanimous?

14 THE FOREMAN: It is.

15 THE HONORABLE CLIFTON NEWMAN: All right. If
16 you'll pass it on.

17 If the defendant will rise.

18 (Complies.)

19 You may publish the verdict.

20 THE CLERK: The State of South Carolina vs Elbert
21 Wallace, indictments 2010-GS-40-1230, 2010-GS-40-1229,
22 2009-GS-40-0988, 2009-GS-40-0989, 2009-GS-40-0997,
23 2009-GS-40-1225, 2009-GS-40-1228 and 2009-GS-40-1229.

24 We, the jury, by unanimous consent, find the
25 defendant, Elbert Wallace --- this is as to Linda

VERDICT

1061

1 Derrick as to the charge of murder, guilty.

2 As to the charge of burglary in the first degree,
3 guilty.

4 As to the charge of armed robbery, guilty.

5 As to Carolyn Webb, as to the charge of assault
6 and battery with intent to kill, guilty.

7 As to the charge of burglary in the first degree,
8 guilty.

9 As to the charge of armed robbery, guilty.

10 As to Christ Lutheran Church, as to the charge of
11 burglary in the second degree, guilty.

12 As to the charge of petit larceny, not guilty,
13 signed by the foreperson number 111 on July 21st, 2011.

14 Mr. Foreman, is this your verdict and the verdict
15 of the entire jury?

16 THE FOREMAN: It is.

17 THE CLERK: Thank you.

18 THE HONORABLE CLIFTON NEWMAN: Any additional
19 polling requested?

20 MR. SUTHERLAND: If Your Honor could poll the
21 juror, sir.

22 THE HONORABLE CLIFTON NEWMAN: All right. Madam
23 clerk, if you will poll the jurors individually.

24 THE CLERK: Ladies and gentlemen of the jury, I'm
25 going to ask you two questions. When I call your

1 number, please answer yes or no to both questions.

2 Number 111, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Number 107, was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Number 297, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: 140, was this your verdict?

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes.

18 THE CLERK: Number 195, was this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: 196, was this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 JUROR: Yes.

1 THE CLERK: 302, was this your verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: 187, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: 67, was this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: 124, was this your verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: 170, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: 53, was this your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: The jury has been polled, Your Honor.

1 THE HONORABLE CLIFTON NEWMAN: All right. Thank
2 you.

3 The verdict appears to be a unanimous verdict of
4 the jury.

5 Any post-trial motions?

6 MR. SUTHERLAND: If I may, sir. I'd like to
7 incorporate at the close of evidence my motion at that
8 time with respect to my previous motions and
9 objections into a motion for a new trial, sir. It was
10 with respect to the juror issue, the jury issue, the
11 list that I had submitted to the Court at that time,
12 sir.

13 THE HONORABLE CLIFTON NEWMAN: And all of those
14 motions are respectfully denied.

15 The defendant has had the benefit of a fair trial
16 before a jury of his peers who listened to the
17 evidence, who weighed the evidence and decided beyond
18 a reasonable doubt that he is guilty of each and every
19 offense that he has been found guilty of. So I deny
20 post-trial motions.

21 MR. SUTHERLAND: Thank you, sir.

22 THE HONORABLE CLIFTON NEWMAN: Ladies and
23 gentlemen, your job is done. You didn't volunteer for
24 the service, you were summoned, and you responded to
25 that summons. I want to thank you for your services

1 on behalf of the citizens of this county.

2 Throughout course of the week, I've given you the
3 admonition that you're not to discuss the case with
4 anyone. You are free from that restraint. You can
5 discuss the case with anyone you would like to, but
6 you're not required to discuss the case with anyone.

7 Should anyone attempt to bother you about that,
8 please let the Court know, and we'll deal with that
9 accordingly. Although, I do not expect you to be
10 bothered in any way by anyone.

11 When a jury finds a person guilty, then it
12 becomes my responsibility. This week I'm sitting with
13 Judge McDonald, so it's our responsibility to impose a
14 sentence. And we'll move to that phase of the
15 proceeding now.

16 If the State is ready to proceed with sentencing.

17 MS. McDUFFIE: The State is ready, Your Honor.

18 THE HONORABLE CLIFTON NEWMAN: The defense is
19 ready?

20 MR. SUTHERLAND: The defense is ready.

21 THE HONORABLE CLIFTON NEWMAN: All right.

22 Ms. McDuffie.

23 MS. McDUFFIE: Thank you, Your Honor. May it
24 please the Court. Standing before you is Elbert
25 Wallace after being found guilty at trial for murder,

1 two counts of burglary in the first degree, two counts
2 of armed robbery, one count of burglary in the second
3 degree violent and one count of assault and battery
4 with intent to kill.

5 Your Honor, the State, on two prior occasions has
6 served Mr. Wallace with notice of intent to seek a
7 sentence of life without parole, one being on
8 November 10th, 2011. If I may approach and hand that
9 up with a copy of the indictment for his prior offense,
10 which was an attempted armed robbery, for which he
11 received a ten-year sentence, Your Honor.

12 Most recently, four weeks ago, I personally
13 served Mr. Wallace in the presence of counsel with
14 another intent to seek a sentence of life without
15 parole due to the fact that Mr. Wallace had a
16 different attorney on that occasion, Your Honor.

17 Mr. Sutherland did represent him of --- when we
18 served him about four weeks ago, Your Honor.

19 Your Honor, the victims are present in the
20 courtroom and would like to address the Court at the
21 appropriate time.

22 THE HONORABLE CLIFTON NEWMAN: All right. And
23 the offense of attempted armed robbery is classified
24 as a most serious?

25 MS. McDUFFIE: It is, Your Honor.

1 THE HONORABLE CLIFTON NEWMAN: Under the State's
2 two strikes law, he is subject to life without the
3 possibility of parole?

4 MS. McDUFFIE: Yes, Your Honor, he is.

5 THE HONORABLE CLIFTON NEWMAN: That's a mandatory
6 sentence?

7 MS. McDUFFIE: Yes, it is, Your Honor.

8 THE HONORABLE CLIFTON NEWMAN: All right.

9 MS. McDUFFIE: Your Honor, he does have an
10 extensive prior record. Other than that, if you would
11 like to hear it.

12 THE HONORABLE CLIFTON NEWMAN: Absolutely.

13 MS. McDUFFIE: Your Honor, he was convicted in
14 1988 of attempted armed robbery and sentenced to ten
15 years in jail.

16 In 1991, contempt of court; 1996, possession of
17 crack cocaine; 1998, assault and battery; 1998,
18 assault and battery of a high and aggravated nature,
19 ten years suspended. Your Honor, he was taken into
20 custody in 2000 on that on a probation revocation.

21 Then in 2008, fraudulent checks at the magistrate
22 level, Your Honor. Your Honor, then in 2009, he had
23 more fraudulent checks, 11 counts, and was sentenced
24 to 30 days consecutive on each charge.

25 THE HONORABLE CLIFTON NEWMAN: Are there any

1 other pending indictments?

2 MS. McDUFFIE: No, sir, Your Honor. However,
3 uncharged, but Mr. Wallace was a suspect in were seven
4 other burglaries in the Denny Terrace area, all of
5 which Mr. Wallace was connected to through DNA.

6 The State did not charge those at this point. We
7 chose to proceed on these indictments, Your Honor. At
8 this point, we do not anticipate that we will be
9 charging those.

10 THE HONORABLE CLIFTON NEWMAN: His DNA was
11 present at the scene of all those burglaries?

12 MS. McDUFFIE: Yes, Your Honor, he was suspected
13 in --- and law enforcement can help me with this --- I
14 believe it was 12 to 15, but his DNA was present at
15 seven of those, Your Honor.

16 THE HONORABLE CLIFTON NEWMAN: All right.

17 MS. McDUFFIE: And, Your Honor, the victims would
18 like to address the Court at that time appropriate
19 time.

20 THE HONORABLE CLIFTON NEWMAN: Absolutely. I'm
21 happy to hear from the victims.

22 VICTIM'S SISTER: Your Honor, my name is Susan
23 Port.

24 THE HONORABLE CLIFTON NEWMAN: Yes, ma'am.

25 VICTIM'S SISTER: I am the sister of Linda

1 Derrick, and this statement is on behalf of myself,
2 Linda Derrick's daughter, Denise Derrick Gunderson,
3 granddaughters Ashley, Vanessa and Taylor, her sister,
4 Sandra Dickert, brother Tom Counts, family, and
5 friends.

6 "In the days leading up to January 31st, Linda
7 was giddy with excitement. She was beginning a new
8 chapter in her life with a recent retirement. She
9 received her first Social Security and retirement
10 checks and was making a list of things she wanted to
11 do the day before Mr. Wallace decided to end her life.

12 "The hours before he brutally murdered her, she
13 enjoyed a meal with friends and talked with her
14 daughter about a meeting the following day.

15 "Her last words to Denise were familiar: 'I'll
16 talk to you tomorrow. I love you.'.

17 "Then he entered her home and chose to beat her
18 until there was no more life in her. Linda was full
19 of life. She was full of joy. She loved her daughter,
20 Denise, and delighted in those three granddaughters.

21 "She was a sister, a friend, an aunt, a cousin, a
22 neighbor, a mentor, a leader and a Christian with
23 unwavering faith.

24 "Even now, over two-and-a-half years since her
25 death, her smile, her laughter, and her zeal for life

1 are etched in all of our minds. We all miss that so
2 much. Her smile was freely given, warm, and welcoming,
3 and the laugh was always contagious.

4 "Those memories bring smiles and joy to us, but
5 then we remember the tragic way her life ended. In
6 our minds, we choose to believe that the first few
7 hits that were delivered were severe enough to put her
8 in shock so that she didn't feel the pain that was
9 inflicted on her after that.

10 "The testimony we have heard doesn't indicate
11 that to be the case, but it does help those who loved
12 her to live with the consequences of Mr. Wallace's
13 actions.

14 "They were his actions, but we're the ones that
15 must cope with them every day. There is nothing that
16 can be done to bring our loved one back, but we go
17 through every day thinking about how much she would
18 love to be doing things with us.

19 "We often pick up the phone to tell her about the
20 days' events only to remember that he took her away.

21 "Mr. Wallace still has the opportunity to talk to
22 his family. We don't have that opportunity with Linda.

23 "Denise distinctly remembers that last I love you.
24 Mr. Wallace has taken away the most important person
25 in her life and in the life of her daughter.

1 "Linda supported Denise unconditionally, and
2 without her, Denise feels truly lost. Not a day goes
3 back that she does not replay that night over her mind
4 and wonder the what ifs.

5 "What if she had found her mom earlier? Would
6 she then still be alive? But at the end of every day
7 when it's time for that last telephone call and the
8 familiar, 'I'll talk to you tomorrow. I love you,'
9 she must face the harsh reality that her mother is
10 dead.

11 "After the murder, Denise was unable to
12 concentrate and was dismissed from her job. She has
13 not been able to secure permanent employment since
14 that time.

15 "Linda was very involved in the lives of her
16 granddaughters who also have been devastated by her
17 loss. She has missed out on Ashley's first prom and
18 graduation; Vanessa's driver's license that they were
19 eagerly looking forward to; Taylor's fifth grade
20 graduation, and that list goes on.

21 "Taylor, the youngest granddaughter, is hesitant
22 to leave or to be left by Denise, afraid that
23 something will happen to her mother like it did to her
24 grandmother. Ashley and Vanessa wrestled with the
25 fact that their Granny helped so many people.

1 "She shared her time, talents and money. Yet,
2 she was beaten to death by a man that showed cowardess
3 preying on older women that lived alone, stealing
4 instead of working.

5 "They just can't understand how someone who does
6 that can live with themself. Ashley, Vanessa, and
7 Taylor need their Granny. Denise needs her mother,
8 but Elbert Wallace took those away.

9 "We do not get to choose life or death for him.
10 Yet, he felt he had the right to choose death for
11 Linda. We can and do ask that Mr. Wallace remain in
12 prison every day for the remainder of his life with
13 absolutely no opportunity for parole or freedom so
14 that he does not have the chance to inflict his pain
15 on anyone else."

16 Thank you, sir.

17 THE HONORABLE CLIFTON NEWMAN: Thank you.

18 MS. McDUFFIE: Beg the Court's indulgence.

19 MS. CAMPBELL: Your Honor, Ms. Webb wishes to
20 speak, but can she speak from over here? It's just
21 difficult for her to move around.

22 THE HONORABLE CLIFTON NEWMAN: Sure.

23 VICTIM WEBB: I would like to thank the judge and
24 the Court, the law enforcement division, and others
25 involved. I have long since forgiven Elbert Wallace

1 for his actions toward me.

2 My prayer is that the death of Linda Derrick is
3 not wasted. I do not wish to present a sermon, but I
4 quote Jeremiah 29:11 which says, "I know the plans I
5 have for you, declares the Lord. Plans to prosper you
6 and not to harm you. Plans to give you hope and a
7 future," hope and a future.

8 Mr. Wallace has talents and gifts, which I see
9 being wasted. I hope that the results of this trial
10 will be the turning point for him to begin turning his
11 life around and the other lives around him.

12 Please inform him I have been praying for him and
13 will continue to do so.

14 Thank you, Your Honor.

15 THE HONORABLE CLIFTON NEWMAN: Thank you.

16 MS. McDUFFIE: Thank you, Your Honor.

17 THE HONORABLE CLIFTON NEWMAN: Anything else from
18 the State?

19 MS. McDUFFIE: Not at this time.

20 THE HONORABLE CLIFTON NEWMAN: Okay. Counsel?

21 MR. SUTHERLAND: May it please the Court, sir.

22 With --- with respect to mitigation, this is a life
23 without parole case. All that I would offer is that
24 Mr. Wallace has maintained his innocence throughout,
25 and that he would like to address the Court, sir.

1 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

2 THE DEFENDANT: Ladies and gentlemen, so I'll
3 be --- I'll be very brief.

4 First, I want to thank God for being my Lord and
5 my Savior. Like Ms. Webb said, Jeremiah 29:11, that
6 is the scripture that I stand on.

7 Since all this happened, I have turned my life
8 around. I am the Bible study instructor at Alvin S.
9 Glenn. I've led a lot of people to the Lord. A lot
10 of guys turned their life around, and a lot of them
11 have written me back from home telling me, "Thank
12 you."

13 I always respond and tell them, "Give God the
14 glory, not me."

15 I want to say to my family, keep your head up. I
16 love you. Y'all know the truth. You know what I did.

17 I want to say to the Courts, you gave me every
18 opportunity to present this case. I used to look at
19 the court as being unfair, talking at a certain people,
20 but I was wrong and I apologize.

21 You guys was more than fair. Everybody was ---
22 was --- was just great. You were very sympathetic to
23 my pain in my knee, sir, and I thank you.

24 Ms. Luck Campbell, I would like to say you need
25 to change your name from Luck because you got skills.

1 You're very good at what you do. You got two warriors
2 with you.

3 Lastly, my attorney, Mr. Tivis Sutherland, and
4 his assistant, I want to thank them very much for
5 representing me, as far as his --- as far as his
6 ability to do so. I was very pleased at your service.

7 Last, but not least, I want to address the
8 Gunderson family, if I may.

9 Three years ago when I was at home looking at the
10 six o'clock news, I saw a young man standing in the
11 courtroom reading off a piece of paper after he had
12 been found guilty of what he done.

13 I said I never wish I would be --- I wish I will
14 never be in those shoes, as I was eating my dinner
15 looking at the news. Here it is three years later.
16 I'm standing before you, but I don't have a piece of
17 paper.

18 What I got to say to the family, I got it in my
19 heart. I asked God to lead me in --- in case I get a
20 guilty verdict, to lead me to say the right thing.

21 I want to say to the family, I'm sorry for your
22 loss. I never met Ms. Derrick, but I read about her
23 in my motion of discovery and the wonderful things
24 that she had done.

25 Even though the Bible said to be absent from the

1 body is to be present with the Lord, her spirit lives
2 on forever.

3 Every time I read my motion, I read about her and
4 the wonderful things she did for the kids and the
5 community and the church. That gave me the drive.
6 That gave me the drive to keep on reading my Bible and
7 seeking God and helping other people.

8 I just want to say to the Gunderson family that I
9 will never let Ms. Derrick down, and --- and to
10 Ms. Webb, thank you for praying for me.

11 I'm sorry about the unfortunate tragedy that you
12 had. I pray that God also will be with me, and I pray
13 that God would place it in their heart, the hearts of
14 the victim, to please forgive me, in Jesus name.

15 THE HONORABLE CLIFTON NEWMAN: All right. Anyone
16 else who would like to say anything on Mr. Wallace's
17 behalf?

18 MR. SUTHERLAND: I believe his family is present.
19 There is one young man who would like to speak, sir.

20 THE HONORABLE CLIFTON NEWMAN: All right. Yes,
21 sir.

22 Yes, sir. Tell us your name first, please.

23 STEPSON: My name is Edward Kitt.

24 THE HONORABLE CLIFTON NEWMAN: Gilbert?

25 STEPSON: That's my stepfather.

1 THE HONORABLE CLIFTON NEWMAN: Gilbert Kitt?
2 Kitt?

3 STEPSON: Edward, Edward.

4 THE HONORABLE CLIFTON NEWMAN: Elbert?

5 UNIDENTIFIED WOMAN: Edward.

6 THE HONORABLE CLIFTON NEWMAN: Kitt?

7 STEPSON: Yes, sir.

8 THE HONORABLE CLIFTON NEWMAN: All right.
9 Mr. Kitt. Yes, sir.

10 STEPSON: I've known this man before he was even
11 married to my mom when I was a little boy, and he sat
12 down with me and talked to me.

13 He didn't know me from a can of paint, but when
14 --- when he sat down and talked to me when I was a
15 young boy growing up, all the stuff that I went
16 through in life, he sat here and talked with me, told
17 me what was right and what was wrong in life as in me,
18 growing, I aged, get older.

19 This man helped me out a whole lot, you know.
20 There wasn't no --- if I was wrong, as in doing
21 anything things, man was here to take care of me and
22 make sure everything was straight, Your Honor.

23 Today, I'm on the right path because this man
24 here. The man helped me out time after time.

25 (Unidentified woman crying.)

1 I mean, I'm sitting there talking, but I knew
2 this man. I knew him and --- and what was going on
3 today. That ain't never happened, and all I'm asking
4 is just as you sit down there and think about a lot of
5 stuff that you've got to think about at the beginning
6 at the verdict or whatever, don't --- don't put him
7 behind bars for the rest all of his life like that,
8 man, because I know. I know what he's capable of.

9 This is a smart, intelligent man, you know, and
10 that's --- that's my opinion of what's going on.
11 That's why I'm up here to speak for him, because I
12 know he would stand up for me, too, right or wrong.

13 You know, if I'm wrong, he will tell me I'm wrong.
14 You know, it ain't no helping out, no shortcuts or
15 nothing, you know. What I said to him, you know,
16 that's all. Thank you.

17 THE HONORABLE CLIFTON NEWMAN: All right. Thank
18 you.

19 Yes, ma'am?

20 MRS. WALLACE: I just want --- I'm --- my name is
21 Deborah Wallace. I'm Elbert Wallace's wife, and I
22 just want to say in behalf of the bereaved family, I'm
23 sorry for your loss.

24 I thank everybody for how they have came together
25 in my husband's defense.

1 Mr. Sutherland, I just want to --- I just want to
2 encourage you to keep on doing what you're doing.

3 MR. SUTHERLAND: Thank you, ma'am.

4 MRS. WALLACE: God has got great things for you
5 in store.

6 And I want to say to my husband, the best has yet
7 to begun. Where man said no, God says yes.

8 God always gets the last soul in everybody's life.
9 Don't think that it's over with yet, because God is a
10 God of all judges. He sits high, and He looks low.
11 He knows all things. He knows every man's heart. He
12 knows whether you're guilty or whether you're not
13 guilty, so I'm going to encourage you, it ain't going
14 to change my love for you --- and I'll be there for
15 you in spite of --- but I just want to say I give God
16 the honor and the glory because sometimes, God has to
17 put us in the wilderness to make us and bring --- in
18 the house to bring us out of every situation.

19 I just want to thank everybody, and the bereaved
20 family, I'm sorry for y'all's loss. I pray that God
21 will continue to strengthen y'all and give y'all the
22 courage to go on and be what He wants y'all to be,
23 especially the daughter, you know.

24 I never been in that predicament before, but God
25 knows all things. He will comfort your heart, and I

1 just want to say thank you for giving me this
2 opportunity to talk on my husband's behalf. Thank you.

3 THE HONORABLE CLIFTON NEWMAN: All right. Thank
4 you.

5 DEFENDANT'S MOTHER: Your Honor, I just want to
6 say a couple of words.

7 THE DEPUTY: Ma'am, ma'am, this way, ma'am.

8 DEFENDANT'S MOTHER: I'm his mother. My name is
9 Loretta Wallace. I just have a few things I want to
10 let y'all know.

11 I really don't believe that I borne a murderer.
12 I borne him in the world, and I raised him up. I know
13 Elbert is not a murderer. I really believe in my
14 heart that he's not.

15 I'm sorry for what happened, for whoever did it.
16 I really don't believe he did all of that. I really
17 don't believe all of that.

18 THE HONORABLE CLIFTON NEWMAN: All right.

19 DEFENDANT'S DAUGHTER: Your Honor, my name is
20 Angel Sutton, and I'm Elbert's littlest daughter.

21 If you ask any one of my friends, family, one
22 thing about my dad, they're all going to say he's
23 funny. My dad has always been the life of the party.
24 He's always been there to make someone laugh.

25 You can have the hardest day, and he always knows

1 the exact right words to say. He's raised two
2 successful daughters. My sister is now 11 years in
3 the Air Force. I'm going to nursing school. I'm now
4 a med-tech at my assisted-living home that I work at,
5 and my dad is a wonderful father.

6 He has grandkids who ask about him all the time.
7 I have a six and a three year old. My three year old
8 doesn't really know him because she was just turning a
9 year. She turned a year on the 20th of January. My
10 nieces, my nephew, my other sister's kids, they love
11 their grandfather. I mean, he is the life of our
12 family.

13 Your Honor, you know, the things that we've heard
14 in Court, we're not going along with that. We know of
15 our dad being loving and there for his family.

16 All the other things, you know --- all the other
17 things, that's not our dad, the people they described.
18 That's not our dad. That's not the dad I know, and
19 I'm 27 and has never seen an evil or a forceful side
20 of my daddy.

21 When I acted up, it was always, "Well, let's talk
22 about what you've done and see how you can do it
23 better next time." It was never a punishment.

24 So, Your Honor, I just pray that when you do your
25 sentencing, Your Honor, that you think about it. This

1 is someone else's life who has a family, who has
2 grandkids, who have kids who love him dearly.

3 We're just here to support you, Daddy, and I love
4 you so much.

5 THE DEFENDANT: I love you, too.

6 DEFENDANT'S DAUGHTER: In my heart, I know. I
7 know. I love you.

8 THE DEFENDANT: I love you, too.

9 DEFENDANT'S DAUGHTER: Thank you, Your Honor.

10 THE HONORABLE CLIFTON NEWMAN: Yes, ma'am.

11 Okay. The last person.

12 DAUGHTER KITT: My name is Darlene Kitt, and I'm
13 Elbert Wallace's daughter, and I love you, Daddy.

14 THE DEFENDANT: I love you, too, baby.

15 DAUGHTER KITT: And when I talked to --- spoke to
16 the investigator, like I told him, he didn't talk to
17 my mother. He talked to me. He came to the house.

18 When I spoke to him, I told him I know my daddy
19 would not do nothing like that. He's not a bad person.
20 If anything, he always encouraged us to do better and
21 to better our lives.

22 I have nothing to say, but I love you, Daddy.

23 THE DEFENDANT: I love you, too. Take care of
24 yourself.

25 THE HONORABLE CLIFTON NEWMAN: All right. This

1 is the last, the last person.

2 Come on in.

3 DAUGHTER ANDERSON: For the record, my name is
4 I'm Leona Kitt-Anderson, and I'm the baby daughter
5 from Elbert Wallace, and I just want my daddy to know
6 that I love you. And you raised me to be a good
7 daughter, and I am what I am today probably because of
8 you.

9 I always thought of you as a good man, and
10 nothing will ever change that.

11 I'm sorry for the loss of the family members.

12 THE HONORABLE CLIFTON NEWMAN: All right.
13 Anything else, Counselor?

14 MR. SUTHERLAND: I believe Mr. Wallace has just
15 one more thing to add, sir.

16 THE HONORABLE CLIFTON NEWMAN: Yes, sir.

17 THE DEFENDANT: Family, don't let this get you
18 down. Y'all know the God we serve.

19 I appreciate your support. Two years-and-a-half
20 I've been at Alvin S. Glenn, and you were always there.
21 I know you'll be there.

22 Remember Ephesians 3:20, God is able to do
23 exceedingly abundantly of all we can ask or think. No
24 matter what transpires, no matter what the judge gives
25 me today, I speak those things into existence. I will

1 not do all this time.

2 God is going to bring me out. Y'all are going to
3 see the power of God.

4 UNIDENTIFIED WOMAN: That's good.

5 THE DEFENDANT: But I want to say to --- I forgot
6 two other people that I wanted to talk with: Captain
7 Smith, Major Smith, and Mr. Isenhoward, on
8 February 1st, you guys arrested me. I was a bit rude.

9 That person who y'all arrested, he's long gone.
10 He's dead, never again to resurrect. If I had
11 offended you that night, I apologize.

12 First, one thing, in Mr. Smith's report, he said
13 that I had a flippant attitude; that I didn't care.
14 But, sir, I got to say, he was wrong. I do care, and
15 I do have a heart.

16 I want to thank you for treating me like I was a
17 human being that night, and I thank you for treating
18 me like I was a human being.

19 That's all I got to say, man. I --- thank y'all
20 for helping me change my life. Amen.

21 MR. SUTHERLAND: Nothing further from the defense,
22 Your Honor.

23 THE HONORABLE CLIFTON NEWMAN: Any reply by the
24 State?

25 MS. McDUFFIE: No, Your Honor.

1 SENTENCING

2 THE HONORABLE CLIFTON NEWMAN: Mr. Wallace, it's
3 good thing, obviously, that you have seemingly seen
4 the light, but that is of little consolation for the
5 victims.

6 THE DEFENDANT: I understand.

7 THE HONORABLE CLIFTON NEWMAN: Little consolation
8 to the family of Ms. Derrick, who you took away.
9 Perhaps some consolation to Ms. Webb, despite the pain
10 that you inflicted upon her.

11 There are many things that we don't understand,
12 and certainly don't understand why some people can be
13 as your family has described you to be while you're
14 with them, and then you turn into a demon under the
15 cover of darkness and during other times. Whether
16 it's drugs, whatever other thing that had you
17 possessed, it's certainly unfortunate, That's why we
18 are all here today, because of that.

19 Of course, listening to the history that the
20 solicitor cited, including the previous conviction of
21 a most serious offense, that being the attempted armed
22 robbery that you were convicted of previously, the
23 sentence that you will receive today is a mandatory
24 sentence under the provision of 17-25-45 of the Code
25 of Laws.

1 It says that a person must be sentenced to a term
2 of imprisonment for life without the possibility of
3 parole if the person has a prior conviction for a most
4 serious offense, and the law goes on to define
5 attempted armed robbery as a most serious offense.

6 So that alone mandates that you be sentenced to
7 prison for life without the possibility of parole;
8 that aside, even, the conviction of murder --- how old
9 are you now?

10 THE DEFENDANT: I'm 47, sir. I just turned 47.

11 THE HONORABLE CLIFTON NEWMAN: Forty-seven. The
12 conviction for murder requires a minimum sentence of
13 30 years and a maximum sentence of life. So the
14 conviction of murder itself for you is a life sentence
15 unless you have some hope or expectation of a 30-year
16 sentence or somehow or another you plan to live until
17 you get to 90 or 100 years old, but it is what it is.
18 We're left with the consequences of your actions on
19 that night.

20 The jury found you not guilty of stealing the
21 matches, so that goes by the wayside. Of course, that
22 alone is fairly insignificant, but you were found
23 guilty of burglary second degree of the church.

24 The sentence on that offense is 15 years. As to
25 Ms. Webb, you were convicted of assault and battery

1 with intent to kill. That carries up to 20 years in
2 prison. That's a no-parole offense. The sentence is
3 20 years.

4 The burglary first degree carries a sentence of
5 15 years to life imprisonment. The sentence for first
6 degree burglary on --- as to Ms. Webb's home is 30
7 years.

8 As to the offense of armed robbery, which carries
9 up to 30 years imprisonment, the sentence is 30 years.

10 As to burglary first degree of Ms. Derrick's home,
11 which carries 15 years to life, the sentence is life.
12 As to armed robbery under the two strikes law, that's
13 a mandatory life sentence, which carries up to 30
14 years. The sentence is life. And as to the sentence
15 of murder, the sentence is life without the
16 possibility of parole.

17 All of these various sentences will, I guess, be
18 combined into one sentence, since it's a mandatory
19 sentence of life without the possibility of parole
20 under the statute --- I don't know if that even makes
21 a difference, 15 years here, 30 years there. The
22 sentence is life without the possibility of parole.
23 That's mandated under the law.

24 And what's your understanding of that, Solicitor,
25 as to these various offenses? You get one sentence of

1 life without the possibility of parole or life without
2 the possibility of parole on everything or what?

3 MS. McDUFFIE: Your Honor, my understanding is
4 that it's in your discretion whether you give life
5 without the possibility of parole or --- and decide to
6 run the charges consecutive or concurrent.

7 THE HONORABLE CLIFTON NEWMAN: All right. Well,
8 as to the sentences that are life sentences, per the
9 statute, those are most serious offenses on the
10 conviction and the sentence.

11 The sentences are --- as to each one of those,
12 life without the possibility of parole. That complies
13 with --- comports with the mandatory statute.

14 Mr. Wallace, it's amazing, every time you talk,
15 you sound like a perfectly soft spoken, reasonable,
16 understandable human being, one that I can see how
17 Ms. Webb and others might, you know, have allowed you
18 in their home or accepted you to try to do you a favor.

19 It seems like the kind of person I run into every
20 day who comes up to me trying to get --- not every day
21 but every so often who says they were broken down on
22 the side of the road. Give them \$10, and they'll be
23 sure and pay me back, all that stuff.

24 But for you to have turned into that demon with
25 those people on that occasion, that --- that's ---

1 it's, you know. I guess you have to hold on to the
2 good book for whatever it provides you. It's a very
3 unfortunate thing that you decided to get into to what
4 has caused us to be here today, but best wishes to you.

5 THE DEFENDANT: Thank you, sir.

6 MR. SUTHERLAND: Thank you, sir.

7 THE HONORABLE CLIFTON NEWMAN: All right.

8 MS. McDUFFIE: Thank you, Your Honor.

9 MS. SIMPSON: Thank you, Your Honor.

10 THE HONORABLE CLIFTON NEWMAN: And ladies and
11 gentlemen, I want to thank you for your services.
12 Many times, it comes up towards the end of the day.

13 We don't, you know, want to let the jury go and
14 let them have a fresh start the next day and all of
15 that, but my experience in dealing with juries is that
16 if they can get through a case and be through with it,
17 they'd rather be through with it rather than have to
18 come back on the next day when they can be through
19 with it on this day. So I gave you all an opportunity
20 to do that. You pioneered and took care of the case
21 today.

22 We never know what you might face in court from
23 week to week to week. We see many terrible things,
24 and this ranks up to be one of the worst, also, and
25 one of the most perplexing for him to be as he is with

1 his family and to be just the opposite with everyone
2 else that he encountered on that day. It's truly
3 amazing, but it is what it is.

4 So you all are free to go. Thank you very much.
5 If you all will go back, I would like to --- I
6 reviewed the verdict form.

7 I think I want the foreperson to sign each
8 indictment individually, so if you'll stay back there
9 for a little while until we get back there.

10 Yes, sir. Thank you very much.

11 THE HONORABLE CLIFTON NEWMAN: All right. I want
12 to thank everyone for their cooperation. We're
13 through for this day.

14 MR. SUTHERLAND: Thank you, Your Honor.

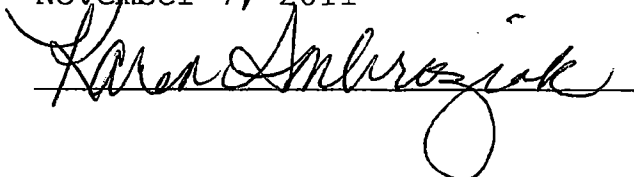
15 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 18th - 21st of July, 2011.

November 7, 2011

A handwritten signature in cursive script, reading "Karen Ambroziak", written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ELBERT WALLACE,

APPELLANT

Appellate Case No. 2011-196746

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court's refusal to grant Appellant's motion for a mistrial where individuals, whom the jurors perceived to be associated with Appellant, made threatening and intimidating remarks to at least three jurors violate Appellant's state and federal right to a fair and impartial jury?

STATEMENT OF THE CASE

A Richland County Grand Jury indicted Appellant for murder, two counts of burglary in the first degree, two counts of armed robbery, assault and battery with intent to kill, burglary second, and petit larceny. R. 695; R. 2 lines 4-7. On July 18, 2011, the prosecution, represented by Luck Campbell, Joanna McDuffie, and Nicole Simpson, called the case to trial before the Honorable Clifton Newman and the Honorable Stephanie McDonald. R. 1; R. 2 lines 1-7. Tivis Sutherland represented Appellant. R. 1. The jury returned its verdict finding Appellant guilty of all counts as charged except the jury found Appellant not guilty of petit larceny. R. 677 line 20 – R. 678 line 16.

After the verdicts, the prosecution informed the court that it had served Appellant on two prior occasions with its intent to seek a sentence of life without parole. R. 683 lines 5-18. The prosecution based this notice upon Appellant's prior conviction for attempted armed robbery. R. 683 lines 8-11. The judge sentenced Appellant to fifteen years on the burglary second degree conviction, R. 690 lines 22-24, and twenty years on the assault and battery with intent to kill conviction, R. 690 line 25 – R. 691 line 3. For one count of burglary in the first degree, the judge sentenced Appellant to thirty years. R. 691 lines 5-7. On the second count of burglary in the first degree, the judge sentenced Appellant to life imprisonment. R. 691 lines 10-11. Judge Newman sentenced Appellant to thirty years imprisonment on one count of armed robbery. R. 691 lines 8-9. On the remaining armed robbery conviction, Judge Newman sentenced Appellant to a mandatory life sentence under the two strikes law. R. 691 lines 12-14. Finally, concerning the murder conviction, the judge sentenced Appellant to life without parole. R. 691 lines 15-16.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

I. The trial court's refusal to grant Appellant's motion for a mistrial where individuals, whom the jurors perceived to be associated with Appellant, made threatening and intimidating remarks to at least three jurors violated Appellant's state and federal right to a fair and impartial jury.

Relevant facts

On the morning of the third day of trial, the judge received a note from the jury. The note read "There's some members of the jury, females, were harassed yesterday leaving the courtroom." The note was from Juror #53. R. 202 lines 12-16. Appellant asked the trial court to explore the specifics of the note to determine what happened and what impact, if any, the events may have had on the jurors. R. 202 lines 18-20; R. 202 lines 23-25; R. 203 lines 3-8; R. 203 lines 18-20.

Juror #195

In chambers, the judge first interviewed Juror #195. R. 206 lines 4-5. When asked if anyone attempted to contact the juror or bother the juror in any way, Juror #195 responded affirmatively. R. 206 lines 12-15. When asked to explain what happened, Juror #195 stated: "I don't know who it was. They [were] just yelling stuff about stuff that he didn't do, and he would never do something to somebody, or he would never kill somebody or something." R. 206 lines 18-21. Juror #195 explained that Juror #18, the alternate, and another juror were with her at the time. R. 207 lines 7-20. Juror #195 did not recall what the people who were yelling looked like. R. 207 line 25 – R. 208 line 1. The judge inquired if the event affected her ability to be a fair and impartial juror in the case, and she responded it did not. R. 208 lines 2-5. When the judge asked for a description of the people, Juror

#195 responded that a young lady who sat at the defense table walked out with the group. R. 209 lines 7-10. Juror #195 recalled the young lady spoke to a police officer about a suit. R. 209 lines 11-13. Upon further inquiry, Juror #195 replied that the people were black. R. 211 lines 13-14.

Juror #187

Next, the judge interviewed Juror #187 in chambers. R. 212 line 15. Juror #187 stated that she went to the general assembly room to use the phone. R. 212 lines 24-25. Then, people who were with a lady sitting at the defense table made comments like "he's innocent" and yelled things as the jurors were walking out. R. 213 lines 4-6; R. 213 lines 8-10. The judge asked if that influenced her in any way. R. 213 11-13. The juror responded it did not. R. 213 line 14. When asked if she felt intimidated, she responded she did not feel intimidated, but was "concerned like if we're leaving and they're right behind us, I mean - - you know, if we were walking out alone." R. 213 lines 17-20. The trial judge then assured Juror #187 that security would walk out with the jury. R. 213 lines 21-23. The judge then asked if "that influence[d] [her] ability in any way to continue serving as a fair and impartial juror." R. 213 lines 24-25. The juror responded "no." R. 214 line 1. When asked to describe the other jurors with her, she described a white female with longer gray hair and glasses who was the alternate juror. R. 214 line 10; R. 214 line 13; R. 214 line 17; R. 214 line 23.

Juror #170

Next, the judge interviewed Juror #170. R. 217 line 1. The judge informed Juror #170 that he had been informed that some members of the jury were harassed. R. 217 lines 3-4. Juror #170 responded "It was not me. I walked with some of the other men the other

way that the other females went.” R. 217 lines 6-8. She responded that none of this bothered her and had not affected her ability to continue as a fair and impartial juror. R. 217 lines 12-18.

Juror #18

Additionally, the judge interviewed Juror #18, who was the alternate. R. 220 line 16. The judge informed Juror #18 of the note indicating some jurors were harassed while leaving the courthouse. R. 220 line 24 – R. 221 line 1. Juror #18 responded affirmatively when asked if she were among those harassed. R. 221 lines 3-5. Juror #18 explained that several jurors accompanied another juror to the jury room to use the phone. R. 221 lines 8-12. Then, two young African American females with long hair with a lady who sat next to Appellant were standing near the jurors. R. 221 lines 11-12; R. 221 line 16; R. 221 lines 20-21. Juror #18 explained that another lady, who was an older woman, also entered the area. R. 221 lines 24-25. The individuals said: “How dare they say he murdered somebody? He’s innocent, he’s innocent. He wouldn’t hurt a fly. [Appellant] is innocent.” R. 222 lines 306. Juror #18 and her fellow jurors held hands “and took off and went around the corner.” R. 222 lines 7-8. When asked if the event influenced her in any way or affected her ability to be fair and impartial, she responded negatively. R. 222 lines 10-16. The other jurors with Juror #18 were the two other black females on the jury. R. 222 line 23 – R. 223 line 6.

Juror #53

Finally, the judge interviewed Juror #53, who drafted and signed the note to the judge regarding the harassment. R. 226 line 18. Juror #53 explained that as the jury walked out of the jury room, “[t]hey were talking about people yelling at them yesterday.” R. 227 lines 6-8. A female behind a glass partition asked Juror #53 the name of the presiding

judge, and Juror #53 confirmed the judge's name. R. 227 lines 9-11. The female then responded she would take care of it. R. 227 lines 11-12. Juror #53 then "asked them questions." R. 227 line 13. According to Juror #53, "They said people were speaking to them when they were leaving, you know, saying 'He's not guilty.'" R. 227 lines 13-16. Juror #53 described the jurors as "visibly shaken" and "upset." R. 227 lines 16-17. Juror #53 asked the bailiff what to do and was told to write a note. R. 227 lines 19-21. He responded that he was not influenced in any way. R. 227 lines 22-25. However, Juror #53 stated the other jurors were upset. R. 228 lines 3-4. He then requested an escort for the jurors to make them feel safer. R. 228 lines 6-8. When Appellant inquired of Juror #53 if any other jurors witnessed his discussion with the jurors who were harassed, Juror #53 responded he did not think anyone else heard the conversation. R. 229 lines 2-7. He further explained that the harassed jurors were discussing the event amongst themselves and he overheard their discussion. R. 229 lines 10-14.

Brie Rust

In addition, the trial judge interviewed Brie Rust, a student at the Charleston School of Law, who was assisting Appellant. R. 232 lines 12-22. Rust explained that she walked out to retrieve suits for Appellant. R. 232 line 25 – R. 233 line 2. According to Rust, Appellant's family members did not encounter anyone and had no contact with anyone other than Rust. R. 233 lines 1-10. Rust remained at the door to hold it open because the front doors had been locked. R. 233 lines 17-19. One of the daughters remained with Rust, while the other three retrieved Appellant's suits from the car. R. 233 lines 20-24.

Upon further inquiry by the judge, Rust explained that one of the daughters spoke to her on the way down the stairs saying Appellant was never mean and never spanked. R. 234

lines 11-14. The comments were directed to Rust. R. 234 line 15. Upon questioning by the prosecutor, Rust responded that she did not hear anyone use raised voices or yell "he's innocent." R. 235 lines 8-14.

Mistrial motion

After the judge interviewed Juror #187, Appellant explained that ultimately he would make a motion for a mistrial. After the judge interviewed Juror #170, Appellant and the prosecutor remarked that other jurors witnessed the interaction between the jurors and the audience members or were at the very least aware of the interaction. R. 218 lines 7-10; R. 218 lines 13-15. Additionally, after the interview of Juror #18, Appellant explained that other jurors were likely exposed to the event and requested the court determine which jurors were aware of the event. R. 225 lines 4-9. The judge refused. R. 225 lines 10-14; R. 225 lines 16-17. However, at the prosecutor's suggestion, the judge agreed to interview the juror who penned the initial note to the judge. R. 225 lines 18-20.

The prosecutor explained she wanted the individuals accused of harassing the jurors to be held in contempt after the judge interviewed Juror #53. R. 229 lines 21-22. She went on to explain that she needed to discuss the matter with the Solicitor because the jurors had been threatened by members of Appellant's family. R. 230 lines 4-6; R. 230 lines 8-9. She reiterated that the jury had been threatened when she asked the judge to minimize "any exposure by those people." R. 230 lines 20-24. When the judge noted that the jurors did not say they were threatened, the prosecutor corrected herself to say the jurors were "harassed" and noted "but obviously, according to everyone, it had an affect on them." R. 231 lines 1-5. She further noted the jurors suffered intimidation. R. 231 line 7. The trial judge noted

that each juror said it did not have an effect upon the juror's ability to be fair and impartial. R. 231 lines 8-10; R. 231 line 12; R. 231 lines 16-17.

After additional discussion, the prosecutor argued that it would be proper to hold the individuals in contempt or to impose a sanction for the conduct to keep "from further intimidating or causing any concern for this jury." R. 240 lines 1-4. She explained she was concerned that despite the jurors' statements that they could be fair and impartial, the jurors felt their safety "may have been compromised." R. 240 lines 7-10. The prosecutor argued that the individuals' continued presence in the courtroom was an "implicit intimidation factor, threat." R. 240 lines 13-17. The prosecutor put Appellant on notice that she intended to make a motion for some type of sanction and/or prohibitive action against the family members. R. 242 lines 2-5; R. 242 line 15.

Appellant contended that additional jurors were exposed to the discussion of the harassed jurors based upon the information provided by Juror #53. R. 238 lines 6-8. The trial judge agreed that the jurors were gathered in the jury room. R. 238 lines 9-10; R. 238 lines 12-13. Appellant argued the contamination of the jury was evident. R. 238 lines 14-15. The trial judge agreed that the jurors who were harassed mentioned the event to the other jurors and that prompted Juror #53 to send the note. R. 239 lines 3-6. The judge explained that the next step would be to inquire of the jurors as a group as to whether the event impacted their ability to be fair and impartial. R. 238 lines 22 – R. 239 line 2; R. 239 lines 9-13. Appellant responded that the matter was "too much of a mess" for the inquiry to serve any useful purpose. R. 239 lines 14-15.

After the in-chambers interviews, all parties returned to open court. Appellant moved for a mistrial remarking that it was not possible to receive a fair trial because the jury

had been compromised. R. 244 lines 10-18. Appellant relayed some of the information gleaned from the juror interviews. R. 244 line 21 – R. 245 line 15. Appellant relied upon Juror #53's observation that the other jurors' appeared "visibly shaken." R. 245 lines 7-9. The prosecutor argued against the motion. R. 245 line 20 – R. 246 line 6. Additionally, the prosecutor argued it would be unjust to grant Appellant's motion because the "intimidation and/or threats" came from Appellant's family members. R. 246 lines 7-10. Appellant countered he would derive no benefit as the case would be tried again. R. 246 lines 11-22.

The trial judge held the conduct complained of by the jurors was clearly improper and contemptuous. R. 247 lines 1-17. He described the conduct as someone from the public deliberately attempting to bother or harass or intimidate the jury. R. 247 lines 14-17. Despite the nature of the conduct, the trial judge relied upon the jurors' responses that they could remain fair and impartial. R. 247 lines 18-23. The judge then denied Appellant's motion. R. 248 lines 1-4; R. 248 lines 14-15.

The prosecutor then asked the court to craft a remedy to ensure that the jury is free from any undue influence by any members of Appellant's family and to hold the family accountable for their actions up to that point. The prosecutor argued the family's continued presence in front of the jury would be some type of intimidation or threat to the jury. R. 249 lines 2-16. In response, the judge admonished the gallery that any inappropriate conduct would be contemptuous conduct and he would sentence the offender to jail for six months. R. 249 line 21 – R. 250 line 21. He further admonished that an offender would face five years for obstruction of justice and obstructing the court. R. 250 lines 22-23. The judge then moved "the folks associated with" Appellant to the back two rows and instructed them not to come any closer during the trial. R. 251 lines 2-5.

When the jury returned to the courtroom, the judge explained that some members of the jury were exposed to some comments by people not associated with the case and those comments may or may not have been discussed with other jurors. He then asked the jurors to raise a hand if any of the circumstances he described affected any juror's ability to continue as fair and impartial jurors or if any had been influenced by the comments. R.252 line 24 – R. 253 line 9. No jurors responded. R. 253 line 10. The judge then asked the jurors to raise a hand if he/she could continue as fair and impartial jurors despite what occurred. All jurors responded affirmatively. R. 253 lines 12-17.

The judge then instructed the jury to decide the case based solely on the evidence presented during the course of the trial and not to be influenced by anything that may occur outside of the courtroom. R. 253 line 21 – R. 254 line 11.

At the close of the case, Appellant renewed his motion for mistrial. R. 661 lines 3-9. After the jury returned its verdict, Appellant incorporated all of his previous motions into a motion for new trial. R. 681 lines 6-12. The judge denied the motion. R. 681 lines 14-20.

Relevant law and discussion

According to the South Carolina Supreme Court, “[t]he less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public’s interest in a fair trial designated to end in just judgment.” State v. Prince, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). “The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law.” State v. Ferguson, 376 S.C. 615, 618, 658 S.E.2d 101, 103 (Ct. App 2008) (citing State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007)).

This Court has held a “mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial.” State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010). Thus, to warrant reversal, “the errors must adversely affect [the defendant’s] right to a fair trial.” State v. Johnson, 334 S.C. 78, 93, 512 S.E.2d 795, 803 (1999).

“The Sixth and Fourteenth Amendments of the United States Constitution guarantee a criminal defendant a fair trial by a panel of impartial and indifferent jurors. Estelle v. Williams, 425 U.S. 501 (1976); Irvin v. Dowd, 366 U.S. 717 (1961); see also S.C. Const. art. I, §§ 3 & 14. A jury must “render its verdict free from outside influences of whatever kind and nature” and make its decision based solely on the evidence admitted during the trial. State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993); see also State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999), State v. Bantan, 387 S.C. 412, 422, 692 S.E.2d 201, 206 (Ct. App. 2010). The South Carolina Supreme Court held “[i]n a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences.” State v. Kelly, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998). Conduct that affects the jury’s impartiality will affect the verdict. Id.

As an initial matter, the trial court must make a factual determination as to whether juror misconduct occurred. Bantan, 387 S.C. at 423, 692 S.E.2d at 206 (quoting State v. Zeigler, 364 S.C. 94, 109, 610 S.E.2d 859, 867 (Ct. App. 2005)). If misconduct occurred, then the trial court must determine whether the misconduct improperly influenced the jury. Id. The Court explained that the “[r]elevant factors to be considered in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the

evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice.” Kelly, 331 S.C. at 141-142, 502 S.E.2d at 104.

The trial judge abused his discretion in denying Appellant’s motion for mistrial. Here, the jurors were exposed to threatening and intimidating conduct by individuals the jurors viewed as aligned with Appellant. According to the prosecutor and a fellow juror, these jurors were visibly upset and shaken by the conduct. Three jurors were the direct target of the misconduct as revealed through the individual questioning, and at least one other juror had knowledge of the conduct. Thus, at least four of the jurors were exposed to the conduct.

There is little likelihood that curative measures taken by the trial judge were effective in light of the prosecutor’s continued desire for the alleged culprits to receive punishment and the trial judge’s decision to remove the alleged culprits to a different seat in the gallery. This decision actually enhanced the misconduct by showing that the judge agreed the alleged culprits were dangerous and posed a serious threat to the jury. The trial judge’s curative instruction to the jury to base its decision only on the evidence introduced did little to remove the taint caused by the misconduct.

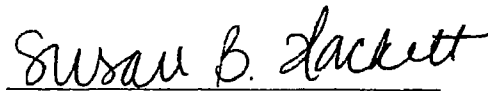
At first blush, the weight of the evidence properly before the jury appeared great. However, Appellant challenged the credibility and reliability of the prosecution’s evidence. Appellant challenged the identification made by one witness by noting that in one statement to police she said she was only eighty percent sure of her identification and that her glasses were damaged beyond repair during the encounter. R. 60 lines 7-19. None of the fingerprints recovered from the crime scenes matched Appellant. R. 327 lines 18-21. The primary evidence against Appellant was the video of him taking the victim’s jewelry to a

pawn shop, Appellant's DNA at two of the crime scenes, and one of the victim's blood on Appellant's shoe. R. 449 line 2 – R. 450 line 10; R. 451 lines 14-17; R. 537 lines 14-24; R. 539 lines 9-11; R. 540 lines 18-22; R. 541 lines 6-10; R. 541 lines 17-23; R. 541 line 25 – R. 542 line 8; R. 542 lines 16-17; R. 543 line 25 – R. 544 line 4; R. 545 line 25 – R. 546 line 2; R. 547 lines 20-23; R. 550 lines 15-23; R. 553 lines 6-7. Therefore, a proper analysis of the relevant factors reveals the trial court abused his discretion when he denied Appellant's motion for mistrial.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

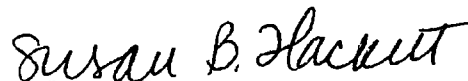
ATTORNEY FOR APPELLANT

This 3rd day of December, 2012.

CERTIFICATE OF COUNSEL

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

December 3rd, 2012

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ELBERT WALLACE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of December, 2012.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 3rd day of December, 2012.

Emily Bruyer (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2022.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Judge John Richmond Cowley
The Honorable Chief Justice Newman, Circuit Court Judge

Appellate Case No. 2011-195746

THE STATE

Respondent

ELBERT WALLACE

Appellant

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Did the trial court's refusal to grant Appellant's motion for a mistrial where individuals, whom the jurors perceived to be associated with Appellant, made threatening and intimidating remarks to at least three jurors violate Appellant's state and federal right to a fair and impartial jury?

STATEMENT OF THE CASE

On January 31, 2009, appellant, Elbert Wallace, burglarized the home of Carolyn Webb, stabbed her, and robbed her of a quantity of cash, burglarized Christ Lutheran Church, burglarized the home of Linda Derrick, murdered her, and robbed her of jewelry and her car. All of these crimes occurred in Richland County. Wallace was arrested for the crimes against Webb the following day. Several days later Wallace was arrested for the crimes against Ms. Derrick and Christ Lutheran Church. The Richland County grand jury indicted Wallace for murder (Derrick), assault and battery with intent to kill (Webb), armed robbery (2 counts)(Webb & Derrick), burglary in the 1st degree (2 counts)(Webb & Derrick), burglary in the 2nd degree and petit larceny (Christ Lutheran Church)(Ind. Nos. 2009-GS-40-0988, 0989, 0997, 1225, 1228-30). Wallace proceeded to trial from January 18-21, 2011 before the Honorable Clifton Newman, the Honorable Stephanie McDonald, and a jury. Tivis Sutherland represented Wallace. The case was prosecuted by Assistant Solicitors Luck Campbell, Joanna McDuffie, and Nicole Simpson. At the trial's conclusion, the jury convicted Wallace of all charges except petit larceny. Judge Newman sentenced Wallace to life imprisonment for murder, life imprisonment for burglary 1st degree, life imprisonment for armed robbery, thirty (30) years for burglary 1st degree, thirty (30) years for armed robbery and fifteen (15) years for burglary 2nd degree.¹ (R. pp. 17-154, 155-201, 254-287, 288-328, 329-426, 427-484, 487-575, 578-656, 657-59, 665, 677-685, 686-88, 689-694). This appeal followed.

¹Because of his 1988 conviction for attempted armed robbery, Wallace was subject to a mandatory sentence of life without parole (LWOP). Apparently, the State only served the LWOP notice on the Derrick' indictments. At sentencing, the remainder of Wallace's record was provided to the court. Wallace had also been convicted in 1998 of possession of crack cocaine, assault and battery, and ABHAN, in 2008 of fraudulent checks, in 2009 of 11 fraudulent checks, in 1991 of contempt of court, and in 2000 of a probation violation. At the time of sentencing, Wallace had been tied to seven (7) other burglaries through DNA. (R. pp. 684-85).

RESPONDENT'S STATEMENT OF FACTS

On January 31, 2009, after midnight, sixty-six (66) year old Carolyn Webb was at home alone here in Richland County. Ms. Webb was a retired guidance counselor from Lexington High School and lived at *Winyah Drive* in the *Denny Terrace* subdivision located off Monticello Road. At that time, she heard a knock at her door and thought it was a man who did yard work for her who routinely came by at odd hours. When she opened the door, she forgot she had not locked her screen door, and appellant Elbert Wallace ("Wallace") punched her in the forehead and forced his way into her home. He continued to punch her eventually forcing her down on a couch. Wallace then pulled out a long knife and stabbed Ms. Webb several times. Eventually, Ms. Webb told Wallace she would give him whatever he wanted. Wallace told her he wanted money, and Ms. Webb retrieved her glasses, that had fallen off in the attack, and her purse and gave Wallace \$16.00 in cash. When she handed the money to Wallace, she recognized him as the same man who had come by her home earlier the previous day (January 30th) asking for money, which she gave him at the time. She also recognized Wallace as the same man who had returned to her home later that afternoon (January 30th) and told her he could not repay her for the earlier money she had given him because he had been unable to cash his check, but he would repay her when he received the proceeds of his paycheck.²

²Wallace had shown Ms. Webb his I.D. on the 30th and told her he lived in the area. She remembered his first name was similar to Albert and his last name began with the letter W. She also remembered remarking the address on the I.D. was *Truman Street*, which was not in her neighborhood. Wallace responded it was his old address. Mrs. Modell Blizzard confirmed that on the 30th she was at Webb's home assisting her in packing Webb's mothers' things. Webb's mother had died. A man came to the back door and asked Webb for \$13.00 stating his family was stranded on the interstate. Webb handed her \$15.00 which she handed to the man, who would not look at her directly, and the man told Webb he would return later, after getting his paycheck at 4:00 p.m., and repay her. After she left Webb's home around 5:00 p.m., Blizzard called Webb later, and Webb told her the man had returned but did not repay her because he could not get his check cashed, but he told her he would come back later. Blizzard also

After Wallace attacked Ms. Webb after midnight on January 31st, and left her home with the \$16.00 in cash, Ms. Webb called 911 using her house phone.³ She was taken to the hospital by ambulance and treated for her injuries. Police responded to Ms. Webb's home with a K-9 unit.⁴ (R. pp. 17-75, 120-134, 587-594, 618-19, 623).

The K-9 tracked Wallace's scent to nearby Christ Lutheran Church where police found the church had been broken into. The dog led police to a window which was broken. This window was located in the kitchen of the church, and broken glass was found inside and outside the window. It had not been broken the day before. Wallace had injured his hand either in the attack on Ms. Webb or while breaking into the church and bled inside this crime scene. Blood was observed in the kitchen, in the center of the recreational hall, down the hall going to the restroom, and a bloody paper towel was found in the pastor's desk drawer in the pastor's office. Wallace' DNA was found on the interior of one of the church doors.⁵ Police also discovered a box of matches was missing from Christ Lutheran Church.⁶ After police discovered the break in to Christ Lutheran Church, the K-9 lost

confirmed that while she was present at Webb's home the man showed Webb his I.D. (R. pp. 17-75, 636-37).

³Wallace broke her cell phone during the attack when he realized she was trying to call 911.

⁴Ms. Webb identified Wallace from a photo line-up the following day and identified him at trial.

⁵On the night in question, after discovering the break-in to the church, police could not locate a contact person for the church. The following morning, still on the 31st, church members or staff cleaned up most of the blood stains inside the church before police could process this crime scene. Police still processed the scene and found Wallace's DNA on the interior of a church door.

⁶The box of matches was kept by the church to light candles. Burnt wooden match sticks were also found on the floor of the recreational hall of the church. These burnt wooden match

Wallace's scent. (R. pp. 71-75, 85-93, 401-06, 600, 604-06, 609, 611, 640-41, 663).

That same night, Wallace burglarized the home of sixty-three (63) year old Linda Derrick, who like Ms. Webb, lived alone. Ms. Derrick lived at *Winyah Drive*, also in the *Denny Terrace* subdivision, and in close proximity to Ms. Webb's home and Christ Lutheran Church. Wallace beat Ms. Derrick to death and stole jewelry belonging to her and also her automobile. Ms. Derrick's body was discovered by her son-in-law the following evening, still on the 31st, when Ms. Derrick did not appear for a church meeting and did not answer phone calls from her daughter. Blood and blood stains were found throughout the interior of Ms. Derrick's home. Blood drops were found in the front room, the dining room, and in the hallway. Blood spatter and blood was found in the master bedroom and the bathroom. Ms. Derrick expired in the bathroom. Some of the blood drops or spatter inside Ms. Derrick's home contained Ms. Derrick's DNA; however, some contained Wallace's DNA. (R. pp. 75-79, 94-99, 100-110, 111-19, 134-154, 155-58, 164-201, 254-279, 282-87, 288-302, 306-311, 320, 332-340, 347-399, 419-426, 442-43, 487-500, 503-553, 600-612, 614-15, 616, 624, 647-49).

Ms. Derrick's car was recovered not far from her residence, and Wallace had attempted to burn this automobile. The abandoned car was first spotted around 9:00 a.m. on January 31st. Burnt wooden match sticks, similar to those found in Christ Lutheran Church, were also found inside Ms. Derrick's vehicle and a partially burned glove. Wallace' D.N.A. was also found inside Ms. Derrick's car on the door panel and the steering wheel. (R. pp. 107-110, 111-19, 134-154, 155-58, 197-201, 254-279, 320, 399, 503-553, 582-83, 603-06, 622, 627-630).

Wallace pawned Ms. Derrick's jewelry later the same day, January 31, 2009, here in

sticks were the same as those used by the church to light candles. (R. pp. 90-92).

Columbia at Fast Cash Pawn Shop. This transaction occurred before Ms. Derrick's body was discovered by her son-in-law and police. This transaction was captured on video-tape and played for the jury. Wallace also signed a receipt for the pawn transaction and provided an I.D. to the pawn shop employee at the time of the transaction. His address was listed on the pawn receipt as *Truman Street*, Columbia S.C. Ms. Derrick's family later identified the gold sweet sixteen (16) ring and neckless (with a cross), that Wallace pawned, as the victim's. (R. pp. 94-99, 100-03, 400, 429-454, 576-77, 579-598, 603, 608-612, 643-45, 650).

When Wallace was arrested, his clothes were seized by police. Police also found in Wallace's residence the jacket Wallace was wearing when he pawned Ms. Derrick's jewelry. At the time of the murder and burglaries, Wallace no longer resided on *Truman Street*. Police discovered Wallace was living in a garage apartment belonging to his sister, which was located approximately two (2) blocks from Ms. Derrick's residence, and not far from Ms. Webb's residence. Wallace's S.C. driver's license, which was in his possession when arrested, contained his name but a different address than the one at which he lived at the time of the murder and other crimes, *Truman Street*. Match sticks similar to those found inside Christ Lutheran Church and in Ms. Derrick's vehicle were also found in Wallace's garage apartment. Wallace was also found to have a bandaged cut on his hand, which was photographed. Forensic testing found Ms. Derrick's D.N.A. on Wallace's shoes. (R. pp. 358-364, 408-411, 717, 725-728, 730-735, 774-824, 850-869, 871-73, 877, 881-882, 894-95, 898-901, 907-13, 920-21, 954).

ARGUMENT

This ground is not preserved for appellate review, and Judge Newman did not err in declining to grant Wallace's mistrial motion where the jurors who overheard statements made by appellant's friend(s) or family member(s) outside the courtroom testified they would not consider what they heard and would decide the case based solely on the evidence presented in the courtroom, and the jurors testified the fact that appellant's friend(s) or family member(s) said something which they overheard would not affect their ability to be fair and impartial in the case, all twelve (12) jurors affirmed that they remained fair and impartial, and Judge Newman gave a further curative instruction to disregard the improper contact and decide the case solely on the evidence presented in court and the law as he instructed.

What Occurred Below

During Wallace's trial, Judge Newman received a note from a juror that some female jurors had been harassed on leaving the Richland County Courthouse the previous evening. Judge Newman conducted an *in camera* hearing where he questioned each of the three (3) jurors involved and the juror who wrote the note.⁷ The three (3) jurors, one (1) of whom was an alternate, testified that some *ladies*, who sat behind the defense table during the trial, yelled out to them or stated in their presence that the defendant was innocent and could not have committed the crime because he was not a violent person.⁸ Defense counsel's assistant, a law student, who worked for the Public

⁷Judge Newman also questioned another juror; however, she explained she was with the majority of the panel who left the courthouse a different way and was not exposed to what occurred. (R.p. 217).

⁸The three (3) jurors involved did not leave the courthouse with the majority of the panel because one (1) of these jurors needed to use the phone in the jury assembly room. It appears the two (2) jurors who accompanied the one (1) juror did so in order that the one (1) juror would not be alone, or they were just leaving the courthouse together. While these jurors were in a common or lobby area of the courthouse, the alleged harassment or extraneous comments took place. (R. pp. 206-16, 220-24, 226-29, 232-36). When the extraneous comments were made, the three (3) jurors immediately walked away and out of the courthouse and had no further contact with these ladies. This was in keeping with Judge Newman's preliminary instructions to the jury before and shortly after they were selected for this case. (See R. pp. 3, 4-5, 14-16, 12-13).

Defender, testified she was with these *ladies* as they left the courthouse, and while one (1) of them made similar statements out loud, the statements were directed to her, the law student, not to jurors. She also testified the other *ladies* with her may have been speaking out loud amongst themselves.⁹

Each of the jurors involved testified that the incident would not affect their ability to be fair and impartial jurors in the trial of the case. The juror who wrote the note to Judge Newman testified similarly. The juror whom Judge Newman questioned who was not exposed to the extraneous comments also stated knowing the incident occurred would not affect her impartiality. Each of these jurors were directed not to discuss the incident with other jurors. (R. pp. 202-229, 231, 232-36).

Subsequent to the *in camera* individual voir dire of each juror involved, in open court, Wallace moved for a mistrial, contending his right to a fair and impartial trial was compromised by the comments of his family member(s) or friend(s) to the three (3) jurors and by the knowledge of other jurors the incident had taken place. Judge Newman found each juror questioned by the Court indicated they were not influenced by the comments in any way, and the incident did not affect their ability to be fair and impartial; they simply requested that they not be annoyed or bothered further by anyone. Judge Newman found, based on his inquiry of the jurors, there was no indication that the defendant could not get a fair trial or that the State could not get a fair trial. Therefore, Judge

⁹The juror who wrote the note overheard the three (3) jurors involved early the following morning, after the incident, talking amongst themselves about what had occurred the preceding evening. This juror immediately reported the incident to Judge Newman by the note and also reported it to two (2) court employees before Judge Newman. While he testified the three (3) jurors appeared “shaken” or “upset” about the incident, he also testified if the court made sure the jurors were escorted in the future, this would help solve the three (3) jurors’ concern. (R. pp. 202, 226-29). The record shows the jurors’ main concern was that anyone was able to approach or come near to them as they were leaving the courthouse, and that it not occur again. (R. pp. 206-217, 220-24, 228, 231). Judge Newman stated for the remainder of the trial the jurors would be escorted to their vehicles by court personnel, and he would make sure no one had contact with the jurors as they were leaving the courthouse. (R. pp. 213, 251, 341-42, 484-86, 666).

Newman denied the motion. (R. pp. 243-48). Judge Newman also stated when the entire jury panel was brought into the courtroom, he would inquire of them, as a whole, whether or not any contact or comments by anyone to any juror affected any juror's ability to be fair and impartial, and if so, that juror would be taken off the case. If the jurors indicated that they could continue to be fair and impartial, then they would do so. (R. p. 248).

When the jury was brought in to resume the trial, Judge Newman questioned the jury collectively whether the fact that these particular jurors may have overheard comments or been harassed by someone outside the courtroom affected their ability to be fair and impartial. All twelve (12) jurors and the alternates affirmed that it had not. Judge Newman also asked each juror who could remain fair and impartial regarding the case to raise their hands. All twelve (12) jurors and the alternates raised their hands indicating that they remained fair and impartial and would not allow what had occurred to influence them one way or the other. (R. pp. 248, 252-54).

Judge Newman then gave a cautionary or curative instruction to the jury that they could only decide the case based on the evidence introduced in the courtroom and the law as the Court instructed them. Judge Newman further instructed the jury that they could not allow anything that occurred outside the courtroom, whether news media, or contact by some person outside the courtroom, to affect or influence their decision. There was no objection to the curative instruction. The trial then resumed. (R. pp. 252-54).

In his charge on the law at the close of the case, Judge Newman again instructed the jury that in reaching a verdict they could only consider the testimony presented in the courtroom and the exhibits introduced into evidence. (R. pp. 669-70). He also instructed them the defendant was presumed innocent, and that presumption remained with the defendant until they reached a

unanimous verdict that the State had proved to them beyond a reasonable doubt by evidence introduced in the case, that the defendant was guilty. (R. pp. 671-72). And, he instructed them, that they (the jury) had been selected by both the State and the defendant to be fair and impartial jurors, and it was their duty to determine the truth of this case giving the defendant the benefit of every reasonable doubt on each and every issue, and from the facts which they determined to be true [from the evidence], to apply the law which the court had instructed them and arrive at a verdict which speaks the truth of this case. (R. pp. 673-74).¹⁰

Failure to Preserve the Issue

This issue is not preserved for appellate review. Wallace did not object to the trial court's curative instruction or its sufficiency. As a result, this issue is not preserved and this appeal must be dismissed. State v. McEachern, 399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012); State v. Brown, 389 S.C. 84, 95, 697 S.E.2d 622, 628 (Ct. App. 2010)(failure to object to the sufficiency of the curative instruction results in waiver of issue and issue is not preserved for appeal).¹¹

The Lack of Merit of Wallace's Appellate Issue

Standard of Review

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Culbreath, 377 S.C. 326, 659 S.E.2d 268 (Ct. App. 2008); State v. Edwards, 373 S.C. 230, 236,

¹⁰Judge Newman had also instructed the jury pre-trial that their decision could be based only on the evidence introduced in the courtroom and not on anything that occurred outside the courtroom. The jury was also sworn to truly try the facts of the case and render a verdict according to the law and the evidence. (R. pp. 3, 4-5, 14-16, 12-13).

¹¹But see State v. Wilson, 389 S.C. 579, 698 S.E.2d 862 (Ct. App. 2010).

644 S.E.2d 66, 69 (Ct. App. 2007); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005); State v. Rowlands, 343 S.C. 454, 458, 539 S.E.2d 717 (Ct. App. 2000). Granting a mistrial is a serious and extreme measure which should be taken only where an incident is so grievous that the prejudice can be removed no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999); State v. Moore, 377 S.C. 299, 659 S.E.2d 256 (Ct. App. 2008); Stanley, 365 S.C. at 34, 615 S.E.2d at 460. A mistrial should not be granted except in cases of manifest necessity and ought not to be granted lightly and only with great caution for very plain and obvious reasons. State v. Prince, 279 S.C. 30, 301 S.E.2d 471 (1983). A mistrial should be declared only when absolutely necessary. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-28 (2000); State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). "This Court favors the exercise of wide discretion of the trial court in determining the merits of [a mistrial] motion in each individual case." State v. Ferguson, 376 S.C. 615, 618, 658 S.E.2d 101, 103 (Ct. App. 2008), *citing* State v. Patterson, 337 S.C. 217, 226, 522 S.E.2d 845, 851 (Ct. App. 1999). The burden is upon the movant to demonstrate not only error, but resulting prejudice in order to justify a mistrial. Wilson, 389 S.C. 585-86, 698 S.E.2d at 865; State v. Meggett, 398 S.C. 516, 728 S.E.2d 492 (Ct. App. 2012); State v. Tuckness, 257 S.C. 295, 185 S.E.2d 607 (1971). The "[g]ranting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. Generally, a curative instruction to disregard the evidence is deemed to have cured any alleged error." Edwards, 373 S.C. at 236, 644 S.E.2d at 69.

The determination of whether any person has a coercive effect on a jury for any reason is a matter addressed to the sound discretion of a trial judge. Parker v. Evening Post Pub. Co., 317 S.C. 236, 247, 452 S.E.2d 640, 647 (Ct. App. 1994). Generally, the determination of whether extraneous

information or material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998). Additionally, the trial judge is in the best position to determine the credibility of the jurors; therefore, this Court will grant him broad deference on this issue. Id., citing State v. Johnson, 248 S.C. 153, 149 S.E.2d 348 (1966)(the question of the impartiality of the juror is addressed to the discretion of the trial judge), and State v. Loftis, 232 S.C. 35, 100 S.E.2d 671 (1957)(refusing to interfere with the discretion of a trial judge in matters involving the jury because the trial judge has the opportunity to consider the credibility of the jurors); State v. Elgin, 398 S.C. 39, 726 S.E.2d (Ct. App. 2012). See State v. Bantan, 387 S.C. 412, 423, 692 S.E.2d 201, 206 (Ct. App. 2010)(similar). The circuit court may exercise broad discretion in assessing the prejudicial effect of an allegation of juror misconduct due to an external influence. Harris, 340 S.C. at 63, 530 S.E.2d at 627.

The Issue

A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by a panel of impartial and indifferent jurors. Estelle v. Williams, 425 U.S. 501, 96 S.Ct. 1691 (1976); Irvin v. Dowd, 366 U.S. 717, 81 S.Ct. 1639 (1961); see also S.C. Const. art. 1. Sections 3 & 14. In order to fully safeguard this basic protection, it is required that the jury render its verdict free from outside influences. State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979); State v. Cameron, 311 S.C. 204, 207, 428 S.E.2d 10, 12 (Ct. App. 1993). In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). However, “[u]nless the misconduct affects the jury’s impartiality, it is not such misconduct as will affect the verdict.” Id. “The general test for evaluating alleged juror misconduct is whether or not there was in fact misconduct and, if so, whether any harm resulted to the defendant

as a consequence.” State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005). “A defeated party is not entitled to a new trial for every act of misconduct by or affecting the jury, as such misconduct ...does not *ipso facto* justify the grant of a new trial, but in order that a new trial may be granted on such ground the misconduct of the jury must relate to a material matter in dispute and must be such as to indicate an influence of bias or prejudice in the minds of the jurors.” Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, 447, 682 S.E.2d 489, 493 (2009)(*quoting* C.J.S. New Trial Section 54 (1988)). The determination of whether any person has a coercive effect on a jury for any reason is a matter addressed to the sound discretion of a trial judge, and the test is whether there is reason to believe outside influences affected the jury’s verdict. Parker, 317 S.C. at 247, 452 S.E.2d at 647. The determination of whether extraneous material received by a juror during a trial is prejudicial is a matter for the determination of the trial court. Kelly, *supra*.

Appellant Wallace has failed to establish error and prejudice. Wilson; Culbreath. Judge Newman, acting within his discretion, and based on his credibility determination of the jurors, determined the extraneous comment and the fact that it occurred, did not affect any juror’s impartiality. Further, Judge Newman’s curative instruction cured any alleged improper comment by appellant’s family or friend(s). Moore, *supra*; Edwards, *supra*; Patterson, 337 S.C. at 227-28, 522 S.E.2d at 851 (holding the trial court did not err in denying motion for mistrial because an extensive curative instruction “cured any possible error and eliminated any conceivable prejudice”). *See also* Ferguson, *supra* (holding trial judge properly exercised his discretion in deciding to give curative instruction rather than granting a mistrial and finding curative instruction cured any potential prejudice).

The facts of this case are similar to those in State v. Harris, 212 S.C. 124, 46 S.E.2d 682 (1948)(in murder prosecution for double homicide, where spectator in courtroom stated within hearing of the jury, "They shouldn't try a son-of-a-bitch like that," the immediate jailing of the spectator and instruction by the trial judge to the jury to disregard the remark, and to base their verdict on the evidence, cured any prejudice, and did not warrant a mistrial)¹² and State v. Koon, 278 S.C. 528, 532, 298 S.E.2d 769, 771 (1982)(trial judge took proper precautions to determine the court's integrity was not obstructed pursuant to State v. Stewart, 278 S.C. 296, 295 S.E.2d 627 (1982) in questioning each juror and ruling they were not affected by comment from spectator who approached them and stated defendant should receive the death penalty).¹³ In the present case, there was no jury misconduct. The three (3) jurors were minding their own business, trying to leave the courthouse, and simply overheard a comment by a person or persons who was not a witness and either the comment was directed at them or at a third (3rd) party. Id. The record shows the jurors did not willingly receive this information, but immediately walked away together hurriedly in an attempt to avoid any further contact in keeping with Judge Newman's preliminary instructions to them. See Kelly, supra(case for improper influence is strongest when jurors receive information willingly) Finney, CJ, and Toal, J. Dissenting, citing State v. Rowell, 75 S.C. 494, 511, 56 S.E. 23, 29 (1906). The juror who overheard the three (3) jurors discussing what had occurred the evening before, immediately upon receiving notice of what had occurred asked the bailiff what to do, and the bailiff instructed him to write a note to Judge Newman, which the juror did. (R. pp. 226-29, 202). Wallace

¹²*Reversed on other grounds, Harris v. South Carolina*, 338 U.S. 68, 69 S.Ct. 1354 (1949)

¹³*Overruled on other grounds State v. Mathews*, 291 S.C. 339, 353 S.E.2d 444 (1986).

has shown no *juror* misconduct.

Judge Newman then specifically questioned each juror who heard the extraneous comments and the juror who sent him the note. Each juror testified they would not consider the contact or comments and each affirmed they remained fair and impartial.¹⁴ Judge Newman then specifically instructed the entire jury that the contact by the persons involved [not the jurors] was improper and could not be considered by the jury in reaching its verdict. Judge Newman also informed the jurors he had dealt with the matter and was going to deal with the improper conduct by those persons.¹⁵ Judge Newman also specifically instructed the jury that they could not consider what was said to them outside the courtroom, but only the evidence presented in the courtroom and the law as he instructed them. Each juror affirmed they remained fair and impartial, and each juror affirmed that what they heard outside the courtroom would not affect their decision in this case. As a result, this appeal has no merit. Harris; Koon; Cf State v. Pittman, 373 S.C. 527, 555, 647 S.E.2d 144, 159 (2007)(Misconduct that does not affect the jury's impartiality will not undermine the verdict).¹⁶

¹⁴The record shows the jurors did not really consider the extraneous comment, knowing it was improper from the Judge's preliminary instructions, but were concerned that anyone would be able to approach them as they were leaving the courthouse and that it not occur in the future. (R. pp. 206-211, 212-16, 217, 220-24, 228, 231). Judge Newman stated for the remainder of the trial the jury would be escorted to their vehicles by court personnel, and he would make sure noone had contact with the jurors as they were leaving the courthouse. (R. pp. 213, 251, 341-42, 484-86, 666).

¹⁵Before the jury entered the courtroom, Judge Newman had removed the individuals he believed were involved from being seated directly behind appellant and moved them to the rear of the courtroom. They were not allowed to move forward during the trial. They were also warned that any further misconduct would result in their being held in contempt, and not allowed to view the remainder of the trial.

¹⁶Our appellate courts have refused to grant a mistrial where there is no prejudice to the defendant from contact with an external source. See State v. Jackson, 260 S.C. 30, 194 S.E.2d 181 (1973)(trial judge did not err in refusing to grant mistrial, where jurors had read newspaper

The circuit court may exercise broad discretion in assessing the prejudicial effect of an allegation of juror misconduct due to an external influence. Harris, 340 S.C. at 63, 530 S.E.2d at 627. “[V]erdicts should not be set aside by an appellate court for misconduct in a trial, unless the evidence is **clear and convincing** that extraneous influences so interfered with the conduct of the trial, or so pressed upon the jury, as to become factors in the result.” Stewart, 278 S.C. at 303, 295 S.E.2d at 631, *quoting* State v. Weldon, 91 S.C. 29, 74 S.E.43 (1912); State v. Gens, 107 S.C. 448, 93 S.E.139 (1917)(emphasis added). The right to a fair trial does not require a perfect trial, the very heart of a “fair trial” embodies a disciplined courtroom wherein an accused’s fate is determined solely through the exercise of calm and informed judgment. Stewart, 278 S.C. at 303, 295 S.E.2d at 631. Wallace received a fair trial where the courtroom was disciplined and his fate was determined through the exercise of calm and informed judgment. The evidence *is not* clear and convincing that the extraneous comments so interfered with the conduct of the trial or so pressed upon the jury as to become factors in the result. Stewart. *Compare* Weldon. In fact, the record shows the extraneous comments were not factors in the result but only the overwhelming evidence

article about case, but trial judge gave strong admonishment to disregard article); State v. Carrigan, 284 S.C. 610, 328 S.E.2d 1999 (Ct. App. 1985)(trial judge did not err in refusing to grant mistrial, where jurors spoke with State witness, but denied that it related to trial or influenced his view of the trial); State v. Goodwin, 250 S.C. 403, 158 S.E.2d 195 (1967)(fact that a conversation occurs between a juror and a witness for the State does not necessarily prejudice a defendant); State v. Rogers, 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004)(where during the course of the trial, it came to the court’s attention that a newspaper article about the ongoing trial was in the jury room, it was not error for the trial judge to not declare a mistrial, where five of the six jurors had very limited exposure to the article, and all testified it had not caused them to form any opinions; and the final juror was dismissed because she had read most of the article); State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989)(trial judge did not err in refusing to grant mistrial, where two jurors had read newspaper article, but had not discussed the article with other jurors before voting on a verdict). State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999)(trial judge did not err in refusing to grant mistrial, where juror had waived to, and briefly spoke with a spectator in the courtroom, where no improper influence was shown).

of Wallace's guilt. Stewart.

In Kelly, *supra* the S.C. Supreme Court set forth the test for whether a mistrial should be granted when jurors are exposed to an extraneous outside influence. This Court has followed Kelly and recognized it should consider the following factors: (1) number of jurors exposed; (2) the weight of the evidence properly before the jury; and (3) the likelihood that curative measures were effective in reducing the prejudice. Id.; State v. Hill, 394 S.C. 312, 714 S.E.2d 879 (Ct. App. 2011); State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004). *See also* State v. Covington, 343 S.C. 157, 164, 539 S.E.2d 67, 70 (Ct. App. 2000).

The number of jurors exposed

The number of jurors exposed was small. Only three (3) of the twelve (12) jurors were actually exposed to the extraneous comments outside the courtroom. One (1) of these jurors was an alternate who did not serve on the final jury or participate in deliberations. (R. pp. 6-11, 207, 220-25, 667, 675, 676, 679-80). Therefore, only 1/6th or 16.5 % of the jury who actually deliberated was actually exposed to the extraneous comments. The one (1) juror who wrote the note was also exposed, but only to a generalization about what had occurred, that three (3) jurors were harassed leaving the courthouse, and he immediately reported it to Judge Newman. All of the jurors testified they would not consider it and remained fair and impartial. The remainder of the jury was only informed of the harassment or improper contact by a third (3rd) party or parties, they all affirmed they would not consider it and remained fair and impartial, and they were thoroughly instructed they could only decide the case base on the evidence introduced in the courtroom. The number of jurors exposed to the extraneous comments was minimal.

The Weight of the Evidence Properly Before the Jury

The evidence of Wallace's guilt was overwhelming. Wallace was identified by Ms. Webb as the person who forced his way into her home on January 31st, beat her, stabbed her, and robbed her. Ms. Webb had seen Wallace two (2) times earlier the preceding day. The first (1st) time Wallace had provided Ms. Webb with identification, and Ms. Webb later remembered that Wallace first name was something similar to Albert and his last name began with a W. She also remembered that Wallace told her at that time that he lived in the neighborhood, but his I.D. stated he lived somewhere else, *Truman Street*. Wallace explained to her at that time that *Truman Street* was his old address. This encounter was confirmed by another witness who was present. The second (2nd) time Ms. Webb saw Wallace was around 6:00 p.m. when he returned to her residence and informed her he could not pay her back because he had not cashed his check yet. This 2nd encounter was also corroborated by the same independent witness. Ms. Webb testified that when Wallace forced his way into her home after midnight, the lights were on in her home, because she was a "night owl," and when she put on her glasses and handed him the \$16.00 dollars from her purse, she recognized Wallace as the same man who had come by two (2) times earlier the preceding day. Ms. Webb identified Wallace from a photo-lineup the day after her attack and positively identified him at trial. (R. pp. 17-75, 120-134, 587-594, 618-190, 623).

Ms. Webb lived at *Winyah Drive* in the Denny Terrace subdivision. In close proximity to Ms. Webb's home is Christ Lutheran Church. A police K-9 unit tracked Ms. Webb's attacker to Christ Lutheran Church, where it was discovered the church had been broken into. A window pane to the church was found broken. Inside the church were blood drops. The person who entered the church lit match sticks and went into the pastor's office and in the pastor's desk drawer. DNA

testing determined blood on the inside of the church was Wallace's blood. (R. pp. 71-75, 85-93, 401-06, 600, 604-06, 609, 621, 640-41, 663).

On the same night, Linda Derrick was brutally beaten and murdered in her own home, and her jewelry and car were stolen. Blood and blood stains were found throughout her home. Some of the blood was Ms. Derrick's; however, some of it was not. DNA testing determined several of the blood stains in Ms. Derrick's home contained Wallace's blood. (R. pp. 75-79, 94-99, 100-10, 111-19, 134-154, 155-58, 164-201, 254-279, 282-87, 288-302, 306-311, 334-340, 347-399, 419-426, 442-43, 487-500, 503-553, 600-612, 614-16, 624, 647-49).

Ms. Derrick lived at *Winyah Drive*, also in the *Denny Terrace* Community, the same neighborhood in which Ms. Webb lived. Ms. Derrick's home was also located near Christ Lutheran Church. (R. pp. 73-77).

Ms. Derrick's car was observed parked or abandoned on the side of Apache Road around 8:30 a.m. to 9:00 a.m. on the same morning, *January 31, 2009*. Apache Road is also located in the *Denny Terrace* Community. Police later recovered blood stains from the door panel and the steering wheel of Ms. Derrick's car. DNA testing determined the blood was Wallace's. Police also found burned match sticks in Ms. Derrick's car and a burned glove. The match sticks were similar to those found in Christ Lutheran Church. (R. pp. 107-110, 111-19, 134-154, 155-58, 197-201, 252-279, 319, 399, 503-553, 582-84, 603-06, 624, 627-630).

On the afternoon after Ms. Derrick's murder, Wallace pawned Ms. Derrick's gold ring and necklace. This transaction occurred before Ms. Derrick's body was discovered by her son-in-law and police. Wallace was recorded on video pawning Ms. Derrick's ring and the necklace. This video-tape was played for the jury. Wallace also signed a pawn receipt while at the pawn shop and

provided his identification to a pawn shop employee showing *Truman Street* as his listed address. Ms. Derrick's family identified the jewelry that Wallace pawned as that of their mother, which was missing after her murder. (R. pp.94-99, 100-03, 400, 429-454, 576-77, 579-598, 603, 608-612, 643-45, 650).

When Wallace was arrested, his shoes were confiscated by police. Found on his shoes was a blood stain containing Ms. Derrick's DNA. Wallace also had a bandaged cut on one finger, which was photographed by police, explaining how his blood was left inside Christ Lutheran Church and inside the home of Ms. Derrick during her murder. (R. pp. 148-154, 155-58, 446, 453-57, 459-464, 503-553, 579-598, 600-02, 606, 610-11, 623-24, 627-630, 636-642, 649-50, 663).

Wallace lived at the corner of Winyah and *Denny Road*. Wallace's residence was approximately two (2) blocks from Ms. Derrick's residence, and very close to Ms. Webb's home and Christ Lutheran Church. Found in Wallace's residence was the jacket he was wearing when he pawned Ms. Derrick's jewelry and also match sticks similar to those found in Christ Lutheran Church and in Ms. Derrick's abandoned car. Wallace I.D. also showed his first name was Elbert, similar to Albert, and his last name began with the letter W., just as Ms. Webb had testified. And his driver's license, confiscated from his person during his arrest, showed *Truman Street* as his former residence. (R. pp. 148-154, 155-58, 446, 454-57, 459-464, 503-553, 579-598, 600-02, 606, 610-11, 623-24, 627-630, 636-642, 649-50, 663). As previously stated, the evidence of Wallace's guilt of each of these crimes, which was before the jury, was overwhelming.¹⁷

"Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." Wilson, 389 S.C. at 586, 698 S.E.2d at 865-66,

¹⁷At trial, Wallace offered no evidence.

quoting State v. White, 371 S.C. 439, 447-48, 639 S.E.2d 160, 164 (Ct. App. 2006). “The determination of prejudice must be based on the entire record and the result will generally turn on the facts of each case.” Id., quoting White, 371 S.C. at 447, 639 S.E.2d at 164.

The likelihood that curative measures were effective in reducing the prejudice

It is clear that the curative measures employed by Judge Newman were effective in eliminating any prejudice. Each of the three (3) female jurors who overheard the comments were questioned individually and informed the court that they would not consider what was said to them in reaching a verdict or the fact that something was said to them in reaching a verdict. They each informed the court that they remained fair and impartial. (R. pp. 208, 210, 213-14, 217, 220-02). The juror who wrote the note to Judge Newman testified similarly. (479-482). “[T]he trial court is in the best position to determine the credibility of the jurors; therefore, this Court should grant it broad deference on this issue. Kelly, 331 S.C. at 142, 502 S.E.2d at 104; Bantan, 387 S.C. at 423, 692 S.E.2d at 206. *See also* Loftis, 232 S.C. at 45, 100 S.E.2d at 675, (declining to interfere with trial judge’s discretion in matter concerning jury because trial judge is in best position to judge credibility of jurors). Then, out of an abundance of caution, the learned trial judge questioned the jurors collectively in the courtroom. They all affirmed that they would not consider what had occurred in reaching their verdict. They all affirmed that they remained fair and impartial. (R. pp. 252-53). Id.; Wasson, 299 S.C. at 511, 386 S.E.2d at 257, (affirming denial of mistrial motion after trial judge was assured the jury was impartial and verdict was free from any outside influence). Finally, Judge Newman gave the entire jury a curative instruction that they could not consider what had occurred outside the courtroom in reaching their verdict, and they could only consider the evidence and the

law as the court instructed them. (R. pp. 253-54). See White, 371 S.C. at 455, 639 S.E.2d at 163, (A curative instruction to disregard incompetent evidence and disregard it is deemed to have cured any error);¹⁸ State v. Reese, 370 S.C. 31, 38, 633 S.E.2d 898, 901 (2006)(“Jurors are sworn to be governed by the evidence, and it is their duty to consider the facts of the case impartially.”); State v. Daniels, Shearhouse Advance Sheets, Opinion No. 27180 (October 10, 2012)(similar).¹⁹ Further, jurors are also presumed to follow a trial court’s instructions. See CSX Transp., Inc. v. Hensley, 129 S.Ct. 2139, 2141 (2009); United States v. Olano, 507 U.S. 725, 740 (1993); Penry v. Johnson, 532 U.S. 782, 789 (2001); Greer v. Miller, 483 U.S. 756, 766 n. 8 (1987); Northcutt, 372 S.C. at 228 (“Our jurisprudence unwaveringly provides that we are to presume juries follow their instructions ...”)(*Toal, C.J., dissenting*). There was no objection to Judge Newman’s curative instruction. And, Wallace has not shown the sworn testimony of the jurors was false. The jurors each swore to the Court that they remained fair and impartial. As a result, this ground has no merit. Bantan (trial court did not abuse discretion in declining to grant mistrial after insuring jury remained fair and impartial and decided case based solely on the evidence presented in the courtroom and not extraneous information); State v. Grovenstein, 335 S.C. 347, 352, 517 S.E.2d 216, 218 (1999)(holding that

¹⁸See also State v. Harris, 382 S.C. 107, 119, 674 S.E.2d 532, 538 (Ct. App. 2009), *cert. denied* (“It is well known ‘[a] curative instruction to disregard incompetent evidence and not consider it during deliberation is deemed to have cured any error in its admission.’”); State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct. App. 2005)(similar) and State v. Moyd, 321 S.C. 256, 263, 468 S.E.2d 7, 11 (Ct. App. 1996)(holding a trial court should exhaust other available methods to cure prejudice before aborting a trial, and where the prejudicial effect is minimal, a mistrial need not be granted in every case where incompetent evidence is received and later stricken and a curative instruction given); State v. McEachern, 399 S.C. 125, 731 S.E.2d 604 (Ct. App. 2012)(finding trial court’s explicit curative instruction cured any error and mistrial was not warranted).

¹⁹*Overruled on other grounds* State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009)

misconduct does not entitle a party to a mistrial unless it affects the verdict); Elgin, *supra* (trial court did not abuse its discretion in finding jury's verdict was not influenced by one juror's contact with mother who told her the defendant was innocent); Harris, *supra*.

Further, in his final instructions, Judge Newman instructed the jury in reaching a verdict they could only consider "the testimony which has been presented from this witness stand together with any exhibits which have been made part of the record." (R. pp. 669-70). *See also* R. p. 668. ll. 1-3). Judge Newman instructed the jury that appellant was presumed innocent, and this presumption remained with appellant unless guilt was proven *by evidence* satisfying the jury of his guilt beyond a reasonable doubt and it reached a verdict based on *the evidence* satisfying them of his guilt beyond a reasonable doubt. (R. pp. 671-72). And, that they, the jury, had been selected by both the State and the defendant to be fair and impartial jurors, and it was their duty to determine the truth of this case giving the defendant the benefit of every reasonable doubt on each and every issue, and from the facts which they determined to be true [from the evidence], to apply the law which the court had instructed them and arrive at a verdict which speaks the truth of this case. (R. pp. 669-70, 673-74). *See Elgin*, (finding no prejudice from juror's outside contact with mother because of several factors including overwhelming evidence of guilt and the fact the Court instructed the jury Elgin's guilt or innocence was to be determined from evidence presented at trial).²⁰

²⁰Further, Judge Newman's final instructions to the jury were consistent with his instructions to the jury before the trial began. At that time, he instructed the jury that Wallace was presumed innocent and "could not be found guilty unless the State presents evidence which convinces a jury of his guilt beyond a reasonable doubt, and that is the purpose of a trial, to determine whether the State can meet their burden of proof." (R. p. 3, *See also* R. p. 13). The jury could only decide the case based on the evidence introduced in the courtroom. (R. pp. 4-5). And, he instructed the jury they were to determine the facts of this case "from the testimony you hear from this witness stand, as well as the other evidence that is presented during the course of the trial." (R. p. 14). "Your job is to take the law as we give it to you and apply it to the facts as

Weighing of the factors set forth in Kelly; Covington; and Hill, reveals there is no merit to this ground. Judge Newman did not abuse his discretion in denying Wallace's mistrial motion.²¹

CONCLUSION

For the above stated reasons, the appeal of Wallace must be dismissed and his convictions and sentences for murder, burglary 1st degree, armed robbery, burglary 1st degree, armed robbery, ABWIK, and burglary 2nd degree affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

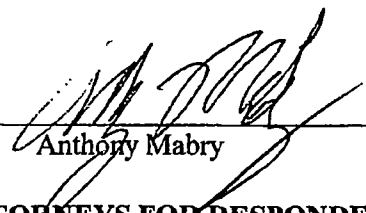
you find them from the testimony of the witnesses and other evidence and to make your determination by deliberating and rendering a true and just verdict under the solemn oath that you took." (R.p. 15). Finally, Judge Newman instructed the jury: "It is important that during any time that we are not in court in session that you avoid contact with any person that may have anything to do with this case, including any witnesses, family members or anyone, lawyers or anyone connected with this case. It is your solemn duty to determine the guilt or innocence of the defendant with respect to the charges that he is facing, and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as you will be instructed at the close of the trial." (R. p. 16). And, the jury was sworn to truly try the facts of the case according to the law and evidence. (R. p. 12-13).

²¹At his sentencing, without any prompting, Wallace conceded that he received a fair trial and asked for Ms. Derrick's family's forgiveness. (R. pp. 686-88).

ANTHONY MABRY
Assistant Attorney General

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

By: _____


Anthony Mabry

ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, SC 29211

November 21, 2012

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Richland County
The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2011-196746

THE STATE,

Respondent,

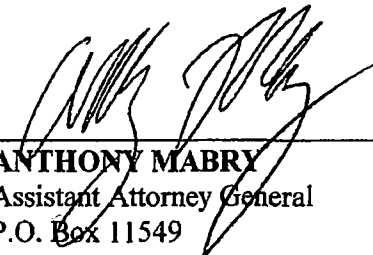
v.

ELBERT WALLACE,

Appellant.

CERTIFICATE OF COMPLIANCE

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

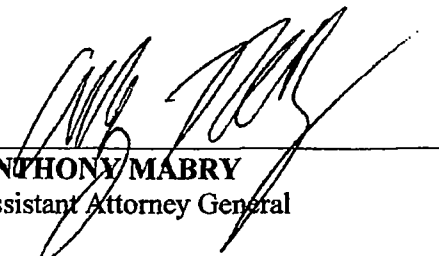


ANTHONY MABRY
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-6305

November 21, 2012

CERTIFICATE OF SERVICE

I, **Anthony Mabry**, hereby certify that I have served the *Final Brief of Respondent* in the foregoing action by depositing copies in the Interagency Mail to Susan B. Hackett, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 21st day of November, 2012.



ANTHONY MABRY
Assistant Attorney General

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

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

The State, Respondent,

v.

Elbert Wallace, Appellant.

Appellate Case No. 2011-196746

Appeal From Richland County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2013-UP-165
Submitted March 1, 2013 – Filed April 24, 2013

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Assistant
Attorney General J. Anthony Mabry and Solicitor Daniel
Edward Johnson, all of Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Harris*, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009) ("The decision to grant or deny a mistrial is within the sound discretion of the trial court."); *id.* ("The trial court's decision will not be overturned on appeal absent an abuse of discretion amounting to an error of law."); *id.* ("A mistrial should only be granted when absolutely necessary, and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial."); *State v. Kelly*, 331 S.C. 132, 141, 502 S.E.2d 99, 104 (1998) ("In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences."); *id.* ("Unless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict."); *id.* ("The trial court has broad discretion in assessing allegations of juror misconduct."); *id.* at 141-42, 502 S.E.2d at 104 ("Relevant factors to be considered in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice."); *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005) ("Generally, a curative instruction is deemed to have cured any alleged error."); *State v. Bantan*, 387 S.C. 412, 421-23, 692 S.E.2d 201, 205-07 (Ct. App. 2010) (holding no abuse of discretion when a trial court asked each juror if they could disavow an improper remark "then reminded the jury of its obligation to deliberate based solely on the evidence presented . . .").

AFFIRMED.¹

SHORT, THOMAS, and PIEPER, JJ., concur.

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

FORM 5

2013 CP 400 7559

STATE OF SOUTH CAROLINA

COUNTY OF RichlandElbert Wallace 264322
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence _____
3. Name(s) of co-defendant(s) (if any) No Co-defendant
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (ABWTK-2009 GS400999) (Burg 2nd) (2010 GS401229) (2009 GS401229) Murder
 - (b) (2009 GS400989) (2009 GS401225) (2009 GS400989) Armed Robbery Burg 1st Burg 1st
 - (c) (2009 GS401228 - Armed Robbery)
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 21st 2011
 - (b) Life without the possibilities of Parole

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Direct Appeal Court _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Sentence was Affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 24th 2013 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance Counsel
 (b) Denial Due Process
 (c) Denied my 5th, 6th, and 14th Amendments.

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

- (a) My trial Attorney represented the states key witnesses:
 (b) I will amend later.
 (c) I will amend later

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

iv. _____

(d) the date of each such disposition:

i. N/A

ii. ↓

iii. ↓

iv. _____

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

i. N/A

ii. ↓

iii. ↓

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

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

(a) which grounds have been presented:

i. N/A

ii. ↓

iii. ↓

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

i. N/A

ii. ↓

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Direct Appeal

(b) _____

(c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
- i. Public defenders office (Richland County)
 - ii. Tavis Sutherland 1811 Pickens St. Columbia, S.C. 29201
 - iii. Susan B. Blackett 1300 Lady St Suite 401 Columbia, S.C.
- (b) the proceedings at which each such attorney represented you:
- i. Arraignment
 - ii. Trial
 - iii. Direct Appeal

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

New Trial

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

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Albert Wallace

SWORN to and subscribed before me this 13th
day of September, 2013.

Judith Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2015

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

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

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

Albert Wallace
Applicant

SWORN or affirmed to and subscribed before me this
13th day of September, 2013.

Ludreen Bryant
Notary Public

My Commission Expires: May 26, 2020

2013 DEC 16 PM 14:31
CLERK OF COURT
CLERK OF COURT

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

ELBERT WALLACE)
 SCDC # 264322,)

Applicant,)

vs.)

STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-7559

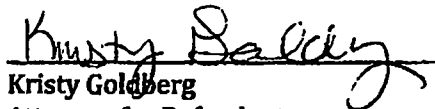
AMENDED APPLICATION
 FOR POST CONVICTION RELIEF

RICHLAND COUNTY
 FILED
 2015 JUN -9 AM 11:43
 JEANETTE D. HARRIS
 C.C.P. & G.

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- a) Ineffective assistance of counsel - Trial counsel failed to object when the jurors were allowed to discuss their experiences with violent crime, including murder and burglary, in front of the other potential jurors.
- b) Ineffective assistance of counsel - Trial counsel failed to assert a Batson motion.
- c) Ineffective assistance of counsel - Trial counsel failed to object when evidence of a K-9 track was offered by the State without the proper foundation.
- d) Ineffective assistance of appellate counsel - Appellate counsel failed to argue that the autopsy report was inadmissible hearsay and should not have been admitted as evidence and presented to the jurors.
- e) Ineffective assistance of appellate counsel - Appellate counsel failed to argue improper joinder during Applicant's Appeal.


 Kristy Goldberg
 Attorney for Defendant

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 1720 Main Street, Suite 303
 Columbia, SC 29201
 803-667-6633
 803-799-4059 (fax)
 kristy@kristygoldberglaw.com

Columbia, South Carolina
This 2th day of June, 2015

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

ELBERT WALLACE)
 SCDC # 264322,)

Applicant,)

vs.)

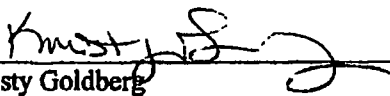
STATE OF SOUTH CAROLINA,)
Defendant.)

IN THE COURT OF COMMON PLEAS
 2013-CP-40-7559

CERTIFICATE OF SERVICE

2015 JUN -9 AM 11:43
 JEANETTE M. HARRIS
 C.C.P. & G.S.
 RICHLAND COUNTY
 CLERK

I certify that on this date I served the Amended Application for Post-Conviction Relief in this case on The State of South Carolina by delivering a copy of this application to the Office of the Attorney General via U.S. mail at Post Office Box 11549, Columbia, South Carolina 29211-1549.


 Kristy Goldberg
 Attorney for Defendant

Kristy Goldberg
 Law Office of Kristy Goldberg, LLC.
 1720 Main Street, Suite 303
 Columbia, SC 29201
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 kristy@kristygoldberglaw.com

Columbia, South Carolina

This 8th day of June 2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
2013-CP-40-7559

ELBERT WALLACE)
SCDC # 264322,)

Applicant,)

vs.)

SECOND AMENDED APPLICATION
FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,)
Defendant.)

2015 JUL -6 PM 9:45
RECEIVED

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- a) Ineffective assistance of counsel – Trial counsel failed to object when the jurors were allowed to discuss their experiences with violent crime, including murder and burglary, in front of the other potential jurors.
- b) Ineffective assistance of counsel – Trial counsel failed to properly preserve the record and request a mistrial when a juror who knew the victim's family was allowed to serve on the jury panel for this case.
- c) Ineffective assistance of counsel – Trial counsel failed to assert a Batson motion.
- d) Ineffective assistance of counsel – Trial counsel failed to object when evidence of a K-9 track was offered by the State without the proper foundation.
- e) Ineffective assistance of counsel – Trial counsel failed to call witnesses.
- f) Ineffective assistance of appellate counsel – Appellate counsel failed to argue that the autopsy report was inadmissible hearsay and should not have been admitted as evidence and presented to the jurors.
- g) Ineffective assistance of appellate counsel – Appellate counsel failed to argue improper joinder during Applicant's Appeal.



Kristy Goldberg
Attorney for Defendant

Kristy Goldberg
Law Office of Kristy Goldberg, LLC.

1156

Columbia, South Carolina
This 1st day of July, 2015

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kristy@kristygoldberglaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
2013-CP-40-7559

ELBERT WALLACE)
SCDC # 264322,)

Applicant,)

vs.)

**THIRD AMENDED APPLICATION
FOR POST CONVICTION RELIEF**

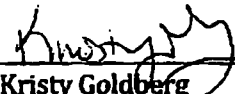
STATE OF SOUTH CAROLINA,)
Defendant.)

RICHLAND COUNTY
FILED
2015 JUL 15 AM 9:42
JEANETTE W. MCBRIDE
C.C.P. & G.S.

Based upon further investigation and research, the Post-Conviction Relief Application filed on behalf of the above named Applicant is hereby Amended as follows:

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

- a) Ineffective assistance of counsel – Trial counsel failed to object when the jurors were allowed to discuss their experiences with violent crime, including murder and burglary, in front of the other potential jurors.
- b) Ineffective assistance of counsel – Trial counsel failed to properly preserve the record and request a mistrial when a juror who knew the victim's family was allowed to serve on the jury panel for this case. Further, trial counsel failed to properly preserve and use his preemptory challenges.
- c) Ineffective assistance of counsel – Trial counsel failed to assert a Batson motion.
- d) Ineffective assistance of counsel – Trial counsel failed to object when evidence of a K-9 track was offered by the State without the proper foundation.
- e) Ineffective assistance of counsel – Trial counsel failed to call witnesses.
- f) Ineffective assistance of appellate counsel – Appellate counsel failed to argue that the autopsy report was inadmissible hearsay and should not have been admitted as evidence and presented to the jurors.
- g) Ineffective assistance of appellate counsel – Appellate counsel failed to argue improper joinder during Applicant's Appeal.



Kristy Goldberg
Attorney for Defendant

Law Office of Kristy Goldberg, LLC.

Columbia, South Carolina
This 5th day of July, 2015

1720 Main Street, Suite 303
Columbia, SC 29201
803-667-6633
803-799-4059 (fax)
kristy@kristygoldberglaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Elbert Wallace, #264322,	)	
	)	2013-CP-40-07559
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for post-conviction relief filed December 16, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during the March 2009 term of the Richland County Grand Jury for Burglary in the First Degree (2009-GS-40-0988), Armed Robbery (2009-GS-40-0989), Assault and Battery with Intent to Kill (2009-GS-40-0997), Burglary in the First Degree (2009-GS-40-1225), Armed Robbery (2009-GS-40-1228), and Murder (2009-GS-40-1229), and during the April 2010 term of the Richland County Grand Jury for Burglary in the Second Degree (2010-GS-40-1229). Applicant was represented by Tivis Sutherland, Esquire. On July 18-21, 2011, Applicant proceeded to jury trial before the Honorable Clifton B. Newman, where he was convicted as indicted. Judge Newman sentenced Applicant to an aggregate term of life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected by Appellate Defender Susan B. Hackett. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. The Remittitur was sent on May 31, 2013.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's Appellate records, and Applicant's trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- Denial of Due Process
- Ineffective Assistance of Counsel
 - Trial attorney represented the State's key witness

Any claims not specifically enumerated in the application or amendments filed by counsel of record will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCR.

III.

Applicant alleges that he was denied due process of law. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "...specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50. In an application for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing

for post-conviction relief, it is incumbent upon Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make any such showing regarding his Due Process claim, Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

IV.

Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

Wherefore, having made its Return, Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

March 25, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2013-CP-40-7559
ELBERT WALLACE, #264322	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kristy G. Goldberg, Esquire
Law Office of Kristy Goldberg, LLC
1720 Main Street, Suite 301
Columbia, South Carolina 29201

DATED this 25th day of March, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Elbert Wallace, #264322,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket Number: 2013-CP-40-7559

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 16, 2013. Respondent made its Return on April 7, 2014, requesting an evidentiary hearing be convened. Kristy G. Goldberg, Esquire, was appointed by the Richland County Clerk of Court. Application filed an amended application on June 9, 2015, a second on July 6, 2015, and a third on July 15, 2015. An evidentiary hearing was held of July 15, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Goldberg. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Richland County Assistant Solicitor Joanna A. McDuffie, Applicant's trial counsel Tivis C. Sutherland, IV, Esquire, Grover Derrick, Sr., and Vernell Wallace. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was indicted during

SCANNED

the March 2009 term of the Richland County Grand Jury for Burglary in the First Degree (2009-GS-40-0988), Armed Robbery (2009-GS-40-0989), Assault and Battery with Intent to Kill (2009-GS-40-0997), Burglary in the First Degree (2009-GS-40-1225), Armed Robbery (2009-GS-40-1228), and Murder (2009-GS-40-1229). He was also indicted during the April 2010 term for Burglary in the Second Degree (2010-GS-40-1229). Applicant was represented by Counsel Sutherland. On July 18-21, 2011, Applicant proceeded to jury trial before the Honorable Clifton B. Newman, where he was convicted as indicted. Judge Newman sentenced Applicant to life without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected by Appellate Defender Susan B. Hackett. Following briefing, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences. The Remittitur was sent on May 31, 2013

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failure to object to jurors' answers during jury qualifications;
 - b. Failure to request a mistrial when a juror who knew the victim's family was allowed to serve on the jury, failure to properly preserve the argument for appeal, and failure to properly preserve and use his peremptory challenges;
 - c. Failure to assert a Batson motion;
 - d. Failure to object to testimony regarding a K-9 track;
 - e. Failure to call witnesses;
2. Ineffective assistance of appellate counsel:
 - a. Failure to challenge Judge Newman's ruling that the victim's autopsy report was admissible; and
 - b. Failure to raise the issue of improper joinder.

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

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application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced 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." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal

GS 3

arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. This Court also finds Vernell Wallace's testimony to be not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Overwhelming Evidence of Guilt

This Court finds Applicant can show no prejudice in regards to any of the allegations of ineffectiveness because there is clear overwhelming evidence of his guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001), cert. denied, 535 U.S. 1114, 122 S.Ct. 2332, 153 L.Ed.2d 162 (2002) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of the defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt); cf. Ford v. State, 314 S.C. 245, 248, 442 S.E.2d 604, 606 (1994) (holding respondent failed to prove prejudice from trial counsel's failure to request an alibi charge where there was overwhelming evidence of guilt). "There must be a substantial likelihood of a different result." Harrington v. Richter, 562 U.S. 86, 90, 131 S. Ct. 770, 779 (2011). This Court also finds that a harmless error analysis would apply to the determination of whether Applicant could meet his burden in proving appellate counsel was ineffective.

Notably, Applicant was identified by Carolyn Webb as the person who forced his way into her home, beat her, stabbed her, and robbed her. She had seen Applicant two times earlier the preceding day. She remembered Applicant's name as something similar to Albert and the last name beginning with a W. She recounted that Applicant returned to her residence later that day

around 6:00pm soliciting money. Webb identified Applicant from a photo lineup the day after her attack and positively identified him at trial. Applicant blood was found at the Christ Lutheran Church which is in close proximity to Webb's home. The same night, Linda Derrick was beaten and murdered. Blood and blood stains were found throughout her home. DNA testing concluded that several of the blood stains contained Applicant's blood. Derrick's home was also in close proximity to Webb's home and to Christ Lutheran Church. Derrick's car was found abandoned. DNA testing was conducted on several blood stains found on the car door panel and steering wheel of the car. The DNA testing determined the blood was Applicant's.

The afternoon after Derrick was murdered, Applicant pawned her gold ring and necklace. Applicant was recorded on video. Applicant also signed a pawn receipt while at the shop and provided his identification to the shop employee. Furthermore, a blood stain was found on Applicant's shoes which contained Derrick's DNA. This Court also notes the jury was out for approximately 1 hour 36 minutes. See Dugas v. Coplan, 428 F.3d 317, 335 n.28 (1st Cir. 2005) (The court looked not only to the strength of inculpatory evidence, but also to the brevity of the jury's deliberations). Based on the foregoing, this Court finds there is clear evidence of overwhelming guilt. As a result, Applicant can show no prejudice from any of the allegations raised in his PCR application as no deficiency on behalf of trial counsel could have reasonably changed the outcome of trial

Ineffective Assistance of Trial Counsel

Failure to object to jurors' answers during jury qualifications

Applicant alleges Counsel Sutherland was ineffective in failing to object to jurors' comments during qualification. Judge Newman asked the potential jury panel whether anyone has been the victim of a violent crime. Four (4) jurors answered that they had been victims of

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crimes such as murder, armed robbery, and burglary. (Trial Tr. p. 77-80). Judge Newman then asked the panel whether any family members had been the victim of violent crimes. Three (3) jurors responded that their family had experiences with crimes such as armed robbery, attempted murder, and murder.

This Court finds Applicant has failed to meet his burden. As an initial point, Applicant has failed to provide this Court with any precedent or applicable law to show that conducting jury qualification in this manner is not proper. Nevertheless, Applicant has not proven deficiency. Counsel Sutherland acted within the professional norms in not challenging the manner of jury qualification. Further, Applicant has failed to show how the result of the trial would have been different if jury qualification was conducted a different way. This Court notes that the jurors in this case affirmed and reaffirmed their duties to remain fair and impartial. An issue arose later during the trial where Judge Newman thoroughly questioned the jurors on whether they would remain fair and impartial. All jurors stated that they would remain fair and impartial after Judge Newman's questioning. This allegation is denied and dismissed.

Failure to request a mistrial when a juror who knew the victim's family was allowed to serve on the jury, failure to properly preserve the argument for appeal, and failure to properly preserve and use his peremptory challenges

Applicant next alleges Counsel Sutherland was ineffective in his handling of jury selection. Specifically, Applicant argues Counsel Sutherland should not have allowed a juror who stated that he knew the victim's family to remain on the jury. Juror number 53 responded to Judge Newman's question of whether any jurors knew any potential witnesses that he did know potential witness Grover Derrick¹. (Trial Tr. p. 96, line 9 – p. 97, line 2). Juror 53 was then

¹ Grover Derrick was the victim, Linda Derrick's, former husband. At the hearing, Grover Derrick testified that he worked with Juror 53 at SCE&G for a number of years but that the juror had never met Linda. He also testified that he did not have a personal or social relationship with Juror 53. He testified that he and Linda had been divorced for many years prior to her murder.

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brought before the court during jury selection. Counsel Sutherland challenged the juror for cause. Judge Newman then inquired into Juror 53's ability to be fair and impartial and denied the challenge. At the hearing, Counsel Sutherland testified that he believed Judge Newman would strike Juror 53 for cause because he knew the victim's family.

This Court finds Counsel Sutherland was not ineffective in failing to move for a mistrial when Juror 53 was seated. Applicant also failed to meet his burden in proving Counsel Sutherland was ineffective in failing to properly use his peremptory challenges. A defendant has a constitutional right to be tried by competent jurors, which implies a tribunal both impartial and mentally competent to afford a hearing. U.S.C.A. Const.Amend. 6. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007). "[A] criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury." Palacio v. State, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999). "To protect both parties' right to an impartial jury, the trial judge must ask potential jurors whether they are aware of any bias or prejudice against a party." State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001). A decision on whether to dismiss a juror and replace her with an alternate is within the sound discretion of the trial court, and such decision will not be reversed on appeal absent an abuse of discretion. Id at 147, 894. Granting a mistrial is a serious and extreme measure which should be taken only where an incident is so grievous that the prejudice can be removed no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). This Court finds Applicant failed to meet his burden in proving that Counsel Sutherland was ineffective in any regard. Counsel Sutherland's conduct was within the reasonable professional norms in using his peremptory challenges. He also properly moved to have Juror 53 struck due to his relationship with the victim's family. Judge Newman took note of the argument and allowed the juror to be seated over objection.

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This Court finds a motion for a mistrial would have been unsuccessful because the juror swore that he would remain fair and impartial. Importantly, Applicant has failed to produce any evidence to the contrary. Judge Newman was also careful to remind the jury of its obligation to deliberate solely on the evidence presented. In addition as noted above, there is overwhelming evidence of Applicant's guilt. This allegation is denied and dismissed with prejudice.

Failure to assert a Batson motion

Applicant withdrew this allegation at the hearing.

Failure to object to testimony regarding a K-9 track

Next, Applicant alleges Counsel Sutherland was ineffective in failing to object to Deputy Chris Alexander's testimony regarding a K-9 track. Deputy Alexander testified that he assisted with the K-9 track as a backup unit. (Trial Tr. p. 282, lines 3-5). He testified he observed the K-9 picking up a track and leading them to a nearby church, Christ Lutheran. (Trial Tr. p. 283, lines 5-9). He then testified the K-9 was unable to reestablish the track. (Trial Tr. p. 284, lines 23-24).

This Court finds Applicant failed to meet his burden in proving Counsel Sutherland was deficient. The testimony given by Deputy Alexander was not improper expert testimony as Applicant argues. Deputy Alexander was not offered as an expert witness. The testimony he gave was as to his direct observations of what happened that night. He was not the dog's handler nor was he trained in conducting the track. It is clear from the testimony and record that Counsel Sutherland's strategy in handling Deputy Alexander was to question his knowledge and recollection of his involvement. Counsel Sutherland emphasized on cross examination and in closing argument that Deputy Alexander did not have any personal recollection of what happened that night and was merely reciting what was written in another deputy's report. (Trial Tr. p. 290, line 17-25; p. 1014, line 22 – p. 1015, line 7). Specifically, in closing he argues that



the State did not present the deputy who wrote the report because they did not want the jury to hear Webb's statement that she was 80% sure the assailant was the same man who appeared at her door earlier that day. This is consistent with what Counsel Sutherland testified to at the hearing in that his major focus on his cross examination of Deputy Alexander was to get this confidence assessment before the jury. This was a reasonable strategy.

Applicant has failed to show how he was prejudiced by this alleged deficiency. The State argued Applicant first attacked Carolyn Webb, then went to the Christ Lutheran Church, and then went to Linda Derrick's house where he brutally beat her and murdered her. The dog tracking evidence tied the Webb and church incident together, but the break in at the church would have been discovered inevitably, along with the blood drops that contained Applicant's DNA. This Court also notes that Applicant has not presented the Court with any evidence to show that the dog or its handler would *not* have been qualified to give this challenged testimony. Applicant cannot prove prejudice for a number of reasons including that there exists overwhelming evidence of his guilt.

Failure to call witnesses

Applicant alleges Counsel Sutherland was ineffective in failing to call witnesses in his case in chief. Specifically, Applicant argues Counsel Sutherland was ineffective in failing to call Applicant's sister, Vernell Wallace (Vernell). Counsel Sutherland testified that he decided not to call her as a witness because he did not believe she would be a credible witness. He noted that Vernell was interviewed by his investigator in preparation for the trial. He further testified that Applicant attempted to explain that he cut his pinky the day before and that he wandered into the crime scene. He was also told by Applicant that he took Linda Derrick's car for a joyride. Counsel Sutherland also testified that Vernell said she was sleeping that night.

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At the hearing, Vernell testified that Applicant was living with her at the time of the incidents. Vernell emphasized that she remembered the events of that day vividly because Applicant drove her to pick up her tax return that day. She recalled that she and Applicant returned between 8:30-9:00pm. She testified that she took Nyquil and went to sleep that night. She noted that she woke up through the night and did not notice Applicant leave the house. Applicant testified that he never left Vernell's home that night.

Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). This Court finds Counsel Sutherland's testimony on the issue to be credible and persuasive. This Court finds Vernell's testimony to be not credible and not believable. Applicant has failed to present this Court with any credible evidence of an alibi. Notably, Applicant has given various versions of what happened that night. Applicant's testimony is not credible in the slightest. Furthermore, Vernell's testimony is especially questionable because she stated she took medicine to help her sleep and was unable to provide testimony that would amount to an affirmative alibi. Applicant has also failed to show any resulting prejudice. Therefore, this allegation is denied and dismissed with prejudice.

Ineffective Assistance of Appellate Counsel

Applicant alleges Counsel Hackett was ineffective for failing to raise two issues. Counsel Hackett raised the issue of whether Judge Newman erred in refusing to grant a mistrial when a number of jurors were allegedly harassed. Applicant's appeal was affirmed in a per curiam unpublished opinion. This Court will address each issue in turn.

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Failure to challenge Judge Newman's ruling that the victim's autopsy report was admissible

Applicant alleges Counsel Hackett was ineffective for failing to raise the issue of the admissibility of the victim's autopsy report. Applicant argues if raised, the appellate courts would have likely reversed the conviction and remanded the case for a new trial. This Court finds otherwise and finds Applicant failed to prove Counsel Hackett was deficient or any resulting prejudice. Applicant argues it was error to allow the autopsy report to come in through Coroner Gary Watts. Dr. Clay Nichols, the chief medical examiner for Richland County at the time of the incident, performed and authored the autopsy was not available to testify.

This Court finds the case of State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005) is on point. The court in Cutro held that autopsy reports are not hearsay pursuant to Rule 803(8). The court reasoned that Rule 803 exempts from hearsay records and reports if there is a duty to report.

The court also noted:

subsection (9) of Rule 803 'specifically exempts from hearsay records of vital statistics, including 'reports . . . of . . . death . . . if the report thereof was made to a public office pursuant to requirements of law.' Autopsy reports are required to be kept by the medical examiner's office. S.C. Code Ann. § 17-5-280 (2003). Accordingly, an autopsy report is not inadmissible hearsay.

State v. Cutro, 365 S.C. at 378, 618 S.E.2d at 896.

Applicant argues Judge Newman erred in allowing the coroner to testify concerning the pathologist's autopsy report. Autopsy reports are mandated by statute and kept as a public record. Here, South Carolina Code Ann. § 17-7-10 (1993) requires an autopsy be performed to ascertain the cause of death in cases like this. Section 17-5-280 mandates that the medical examiner keep all autopsy reports. Thus, the autopsy report is not hearsay pursuant to Rule 803(8) and (9). Counsel Hackett cannot be held to be ineffective for failing to raise this issue.

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This Court further finds that the victim's cause of death was never at issue. It was clear the victim was murdered. Even assuming any deficiency with regards to the autopsy report's admission, there is no question that the death certificate was properly admitted. Applicant has failed to show that this issue would have required reversal. This Court finds it is not meritorious. Therefore, Applicant has failed to present the Court with any evidence of prejudice.

Failure to raise the issue of improper joinder

Finally, Applicant alleges Counsel Hackett was ineffective for failing to raise the issue of joinder on appeal. At trial, Counsel Sutherland argued the cases should not be joined and should be severed and trial separately. He argued that they were three separate distinctive cases. Judge Newman ruled that the incidents were "related in kind, place and character involving the closely connected transaction of offenses." (Trial Tr. p. 67, lines 18-25).

"Charges can be joined in the same indictment and tried together where they 1) arise out of a single chain of circumstances; 2) are proved by the same evidence, 3) are of the same general nature; and 4) no real right of the defendant has been prejudiced." State v. Beekman, 405 S.C. 225, 229, 746 S.E.2d 483, 486 (2013). An abuse of discretion standard applies to a trial judge's discretion to deny a motion for severance. State v. Beekman, 405 S.C. at 229, 746 S.E.2d at 487. This Court finds Applicant has failed to prove that Counsel Hackett was deficient. Judge Newman was sure to research the issue before ruling as he quotes the standard from State v. Rice² in making his ruling. This Court concurs with Judge Newman in that the incidents were related in kind, place, and character in a closely connected transaction of offenses because the evidence shows Applicant went from Webb's home to Christ Lutheran Church and then to Derrick's home all within a few hours. This Court finds the cases were all properly joined and tried together.

² 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006).

Applicant cannot show that this issue would have been successful on appeal and therefore cannot prove prejudice.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

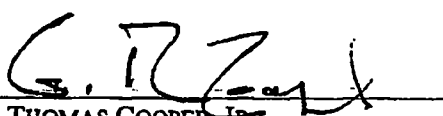
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

Q7 2.3

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 23 day of December, 2015.


G. THOMAS COOPER, JR.
Presiding Judge

Columb, A, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2013-CP-40-07559
	)	
	)	
	)	
Elbert Wallace	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina	)	)
<u>DEFENDANT</u>	)	July 15, 2015

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

KRISTY G. GOLDBERG, ESQ.
Attorney for the Applicant

J. CLAYTON MITCHELL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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JoAnna McDuffie

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Mr. Mitchell 9

Grover Derrick

Ms. Goldberg 13 14

Mr. Mitchell 13

Tivis Sutherland

Ms. Goldberg 15 38

Mr. Mitchell 30

Elbert Wallace

Ms. Goldberg 42

Vernelle Wallace

Ms. Goldberg 51

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Applicant 1	Aerial Map		48

1 MR. MITCHELL: Your Honor, may it please the
2 Court, this is Elbert Wallace vs. State of South Carolina
3 case number 2013-40-7559. Mr. Wallace was indicted March
4 of 2009 for first degree burglary, armed robbery, assault
5 and battery with intent to kill, first degree burglary, a
6 second first degree burglary charge, another armed robbery
7 charge and murder. Then again he was indicted in April of
8 2010 for second degree burglary. He was represented on
9 those charges by Mr. Tivis Sutherland, proceeded to trial
10 July 18 through July 21st of 2011 before Judge Newman. He
11 was convicted as indicted. He was sentenced to life no
12 possibility of parole on an LWOP case, Your Honor.
13 Appeal was taken in this case. The Court of Appeals
14 affirmed the conviction and sentences. Mr. Wallace filed
15 this application for post-conviction relief December 16th
16 2013.

17 Mr. Wallace is represented by Ms. Kristy
18 Goldberg. She has filed a few amended applications. I
19 believe Your Honor has it in front of him the third
20 amended application the allegation we're going forward on
21 today. I just note for the record that we're going to
22 take the witnesses out of order and then go back on the
23 record and complete the hearing. At this time I'll turn
24 it over to Ms. Goldberg.

25 THE COURT: Ms. Goldberg.

1 MS. GOLDBERG: Thank you, Your Honor. May it
2 please the Court, I did provide you with a third amended
3 application that was filed today but that is without
4 objection from attorney general as I understand it. This
5 time we're going to call a witness Joanna McDuffie. This
6 will just be related to allegation B on the amended
7 application. It's short testimony.

8 THE COURT: On the third amended?

9 MS. GOLDBERG: Yes, sir.

10 THE COURT: All right, come around Ms. McDuffie.
11 You solemnly swear or affirm that the testimony you're
12 about to give in this hearing to be the truth, the whole
13 truth, and nothing but the truth so help you God?

14 THE WITNESS: I do.

15 THE COURT: Please have a seat in the witness
16 box and state your full name for the record.

17 THE WITNESS: Joanna McDuffie M-C-D-U-F-F-I-E.
18 WHEREUPON,

19 Joanna McDuffie,
20 after first having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. GOLDBERG:

23 Q Ms. McDuffie, where do you work?

24 A I'm an assistant solicitor with the Fifth Circuit
25 Solicitor's office.

1 Q And what is your relation in regards to Elbert
2 Wallace's conviction?

3 A I was one of the three prosecutors who prosecuted
4 Mr. Wallace.

5 Q Were you involved in preparing for trial and
6 gathering witnesses for trial?

7 A Yes.

8 Q In the transcript, the judge reads out a list of
9 possible witness names to the jury during voir dire and
10 lists the name Grover Derrick as a possible witness. Do
11 you recall that?

12 A Yes, I do.

13 Q Are you familiar with this Grover Derrick, this
14 person who was going to be a possible witness?

15 A Yes, I am.

16 Q What was he going to testify regarding?

17 A When we make a witness list and the witness list that
18 the judge reads out to the jury, that witness list
19 includes the names of every person who is mentioned no
20 matter how slight in the file on the off chance that we
21 may need to call them. We always err on the side of
22 caution and so usually the witness list have, you know,
23 60, 80, a 100 sometimes more than that names on it. When
24 in reality, we only call usually a quarter of those
25 witnesses. Grover Derrick, Jr. was on the witness list.

1 However, we did not intend to call him as a witness in the
2 trial.

3 Q If he had been called, what was your understanding
4 of what he would have been able to testify about?

5 A When Ms. Derrick's body was found, it was found by I
6 believe it was a niece and nephew, but it was some
7 familial relations of hers. They went into her home
8 because they hadn't heard from her and were concerned
9 because of the burglaries that had been going on in the
10 neighborhood and the attack on Ms. Webb. When they
11 entered the home, I believe it was her nephew that found
12 her lying in the bathroom. He then called 9-1-1. During
13 the 9-1-1 call, he went and got the neighbor and the
14 neighbor had to continue talking to 9-1-1 because he was
15 so upset. Grover Derrick, Jr. was -- I believe he may
16 have ridden there with him or come shortly after them. He
17 was outside when that was going on. And he did enter the
18 residence and view Ms. Derrick's body, but that was the
19 extent of what he did in the case.

20 Q Was it your understanding that Grover Derrick, Jr.
21 was related to the victim Linda Derrick?

22 A I believe that he was. I don't know if it was by
23 blood or by marriage, but I believe that the police report
24 may have alleged that he was of some relation. But I
25 could not tell you what, if anything, that was.

1 Q Now, in the transcript -- for the record, it's on
2 page 96, but I believe you'll be familiar with this. One
3 of the potential jurors juror number 53 stated that he
4 recognized someone in the gallery name Grover Derrick. Do
5 you remember who he recognized or what happened?

6 A Yes, he actually recognized Grover Derrick, Sr., who
7 was never a witness in this case. And so he recognized
8 him and said, you know, told the Court and obviously both
9 parties that he knew Mr. Derrick and then he was further
10 voir dired by Judge Newman.

11 Q Grover Derrick is it your understanding that Grover
12 Derrick, Sr. was the father of your potential witness
13 Grover Derrick?

14 A That's my understanding he was.

15 Q So if one was related to Linda Derrick they both
16 would have been?

17 A Again, I don't know if it was blood or marriage. I
18 don't know. I do recall that Grover Derrick, Jr., was not
19 in the courtroom during jury qualifications or to my
20 recollection during the trial at all. Grover Derrick, Sr.
21 was and that's who the juror said that they knew.

22 Q Was there any discussion on the record as to how well
23 this potential juror knew Grover Derrick, Sr. or what the
24 relationship was?

25 A My recollection is that I think he was asked if he

1 knew the Derrick family and he said, no, just Grover
2 Derrick, Sr. and that he could still be fair and
3 impartial. And I don't recall any further discussion.

4 Q Did you have any independent knowledge outside of
5 that of how they knew each other?

6 A No, I had no idea who the juror was.

7 MS. GOLDBERG: No further questions.

8 CROSS-EXAMINATION

9 BY MR. MITCHELL:

10 Q Good afternoon, Ms. McDuffie.

11 A Good afternoon.

12 Q So you have one witness list where it lists everyone
13 almost imaginable as it relates to the case; is that
14 right?

15 A Yeah, they're usually two and three pages. I know
16 judges and court reporters fuss, you know, at us for that,
17 but it's usually a 100 plus names that get read out to the
18 potential panel on the off chance that we may call some of
19 those people.

20 Q And do you recall that judges read the list of people
21 where he go through them individually in this trial?

22 A The judges usually read off the names and then ask
23 people to stand if they know any of the names that they
24 read.

25 Q Now, this juror did not come forward until after he

1 noticed that he thought he recognized some of the gallery;
2 is that correct?

3 A Right. He -- I don't know if the witness list said
4 Grover Derrick, Jr. He didn't recognize the name, but he
5 did stand up and say that he did recognize Mr. Derrick
6 sitting in the gallery.

7 Q And Judge Newman voir dired him on that?

8 A He did.

9 Q And Mr. Sutherland asked that he be struck for cause;
10 is that right?

11 A That's my recollection, yes.

12 Q And that motion to strike was denied?

13 A Correct, after the juror said that they could be fair
14 and impartial.

15 Q Mr. Wallace had other pending charges at the time of
16 this trial; is that right?

17 A He had numerous pending other -- at least burglaries
18 that I recall. There were multiple DNA hits to other
19 burglaries. We elected to go forward on the incident
20 surrounding the death of Ms. Derrick and the assault of
21 Ms. Webb. And then after the trial, we dismissed the
22 other remaining charges. I don't know if the other
23 burglaries were charged or not, but his DNA came back on
24 multiple other burglaries that if they weren't charged
25 they could have been charged. I don't recall.

1 Q You all made the decision to try him on these
2 specifically; is that correct?

3 A Right, the incidents that surrounded the homicide and
4 the assault.

5 Q But there were other incidents that could have been
6 charged down the road?

7 A Right, if they weren't charged, they could have been,
8 yes.

9 Q That was based on DNA matches?

10 A It was.

11 MR. MITCHELL: I thank you no further questions.

12 MS. GOLDBERG: Nothing further.

13 THE COURT: All right. You may come down.

14 May this witness be excused?

15 MR. MITCHELL: Yes, Your Honor.

16 THE COURT: Without objection?

17 MS. GOLDBERG: No objection.

18 (WHEREUPON, the witness leaves the witness

19 stand.)

20 THE COURT: Next witness.

21 MS. GOLDBERG: Your Honor, we're going to stand
22 down. We'll have another case to proceed and we'll come
23 back to this case.

24 THE COURT: That's fine. I thought you just
25 called her out of order in this case.

1 (WHEREUPON, a lunch break was taken.)

2 THE COURT: All right, Mr. Mitchell.

3 MR. MITCHELL: Your Honor, may it please the
4 Court, we're back on the record with Elbert Wallace vs.
5 The State of South Carolina 2013-CP-40-7559. We been
6 through procedure and Ms. Joanna McDuffie has testified.
7 We're back on the record to continue the hearing now.
8 Mr. Wallace is present and with counsel Ms. Goldberg. I
9 will turn it over to her now.

10 THE COURT: Ms. Goldberg.

11 MS. GOLDBERG: Thank you, Your Honor. May it
12 please at this time I would call Grover Derrick to
13 testify.

14 THE COURT: Do you solemnly swear or affirm that
15 the testimony you're about to give in this hearing to be
16 the truth, the whole truth, and nothing but the truth so
17 help you God?

18 THE WITNESS: I do.

19 THE COURT: All right. Have a seat in the
20 witness box and state your full name for the record
21 please.

22 THE WITNESS: Grover Eugene Derrick, Sr.

23 MS. GOLDBERG: Thank you, sir.

24 WHEREUPON,

25 Grover E. Derrick, Sr.

1 after first having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. GOLDBERG:

4 Q Are you relate to Linda Derrick?

5 A I am Linda's ex-husband. We were married for ten
6 years, had one daughter and that's how my relationship is.

7 Q You were present in trial?

8 A I was.

9 Q Do you recall when a potential juror mentioned to the
10 judge he knew you?

11 A I do.

12 Q Do you know that person?

13 A I do. His name was Mike Cheatam. He and I worked
14 together at SCE&G before I retired.

15 Q Do you still have a relationship or know him?

16 A No, I do not.

17 MS. GOLDBERG: Thank you, sir. No further
18 questions.

19 CROSS-EXAMINATION

20 BY MR. MITCHELL:

21 Q Mr. Derrick, very quickly your relationship with that
22 juror, you just worked with him at SCE&G you testified to.
23 Was it a close working relationship or he was just
24 somebody you worked with in the office?

25 A He worked in the same division as I did. And every

1 once in a while, we would talk to each other or whatever.

2 It was no close relationship.

3 Q Would you visit his house? Would your families visit
4 each other houses or ---

5 A No, sir.

6 MR. MITCHELL: No further questions. Thank you.

7 MS. GOLDBERG: Just one follow up based on that.

8 REDIRECT EXAMINATION

9 BY MS. GOLDBERG:

10 Q Mr. Derrick, did Mr. Cheatam know Linda or did he
11 know of Linda through you?

12 A No, because I think we were divorce at the time he
13 came to work at SCE&G.

14 Q You were already divorce?

15 A Yes.

16 Q I understand.

17 MS. GOLDBERG: Thank you, sir. No further
18 questions.

19 THE COURT: Mr. Derrick, I guess you can come
20 down. Thank you.

21 (WHEREUPON, the witness leaves the witness
22 stand.)

23 THE COURT: Next witness.

24 MS. GOLDBERG: At this time, Your Honor,
25 applicant will call Tivis Sutherland.

1 THE COURT: Is Mr. Derrick or any of his ---

2 MS. GOLDBERG: He actually wasn't subpoenaed.
3 He happened to be here and I asked him if he would be
4 willing to testify, so he's free to come and go as he
5 pleases.

6 THE COURT: How about the people with him?

7 MS. GOLDBERG: They are not under subpoena
8 either. They're free to come and go.

9 THE COURT: You understand you're free to go.
10 You're not here under subpoena. If you wish to leave, you
11 can, but this is a public courtroom and you welcome to
12 stay.

13 Come around, Mr. Sutherland. You solemnly swear
14 or affirm the testimony you're about to give in this case
15 will be the truth, the whole truth, and nothing but the
16 truth so help you God?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right, take the witness stand.
19 And I suggest you do not have to spell your first name
20 again.

21 THE WITNESS: My name is Tivis Sutherland.

22 WHEREUPON,

23 Tivis Sutherland,

24 after first having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MS. GOLDBERG:

2 Q Mr. Sutherland, you familiar with Elbert Wallace?

3 A I am familiar with him.

4 Q When did you become involved in his case?

5 A It was I think around February. Maybe, it was four
6 and a half months or so before his trial.

7 Q You were appointed?

8 A I was.

9 Q Was he in jail at the time?

10 A He was in jail.

11 Q Did you go to the jail and meet with him?

12 A I did. And I had actually met him maybe a year
13 before. He was roommates with one of my clients at that
14 time. We probably talk ten, 15 minutes, but I knew him
15 beforehand.

16 Q When you represented him, did you go to the jail to
17 meet with him on more than one occasion?

18 A I did.

19 Q Did you review discovery and evidence with him?

20 A I did.

21 Q And help him prepare for trial?

22 A Yes, I did.

23 Q Were there any plea offers in this case?

24 A There were no plea offers. The way that it was this
25 happens about once a year is I will get appointed to a

1 case that's fixing to pop off and go to trial in a few
2 months, whether it's on the second, third or fourth
3 lawyer was something that was just sort of put there, teed
4 up, ready to work and ready to go. And I don't think they
5 could have offered anything that would have been
6 acceptable to Elbert anyways. I mean, he's just a couple
7 years older than I am. So if they'd offer him 30 or
8 something like that, he'd been 80 years old, 70 something
9 years old coming out of there.

10 Q So from your initial involvement in this case, it
11 always appeared to be a trial?

12 A It did.

13 Q Can you for the Court's convenience kind of summarize
14 the incidents involved here the facts understanding it's
15 just a summary?

16 A Okay. Well, there's Ms. Webb's incident go ahead
17 talk about that one first, that was the one that I was
18 hoping to somehow peel off from the rest, you know,
19 whether it's through a severance or just somehow dealing
20 with Ms. Campbell miracle her into calling that one first
21 because she had said that it was an eight and ten to the
22 responding officer, which is a 20 percent no on the ID.

23 Q And just in case the Court is not familiar with what
24 crimes there were and what happened aside from the ID just
25 generally tell us what happened?

1 A Certainly. Somebody had come up to the house earlier
2 and borrowed some money and showed an ID. She had said
3 that it's an Elbert I think Wallace. Later on, someone
4 came back and sort of force their way into her house and
5 beat her up and stabbed her and took some things.

6 THE COURT: And what was her name?

7 THE WITNESS: Her name was Caroline Webb.

8 BY MS. GOLDBERG:

9 Q And just for the purpose of a timeline here, do you
10 remember about what time of day either of those took
11 place?

12 A This was nighttime. I think they called the cops
13 around one o'clock or something.

14 Q That was the robbery?

15 A Yeah, the home invasion and the stabbing thing.

16 Q And the earlier incident when someone had come by her
17 house, do you remember about what time of day that was?

18 A I would guess maybe morning or maybe morning time. I
19 can't recall off the top of my head, but I'm seeing
20 daylight when I'm trying to answer it.

21 Q That would be the first incident he was charged with,
22 correct?

23 A That's right.

24 Q What's the second?

25 A There's a second one which was the church burglary

1 where someone had like smashed a window or gained access
2 to the church and supposedly stolen some things out of the
3 church as well.

4 Q And the third incident?

5 A And the third was Linda Derrick. It was a home
6 invasion murder thing where she was sort of bludgeoned to
7 death in her bed.

8 Q You argued that these three incidents should not have
9 been joined together in trial; is that correct?

10 A I do. I remember furiously trying to get them
11 separated out.

12 Q Do you remember any particular reasons why you
13 thought joining them was improper?

14 A Well, I could not imagine and I even talked to the
15 jury some. Actually, I talked to the jury a good bit
16 about this about any of these cases not inflaming the
17 other. I mean, even the church burglary, you know,
18 somebody still breaking into a church and around here that
19 doesn't go over well with people. Certainly, the home
20 invasion and the stabbing and then the home invasion and
21 the bludgeoning thing. I could not conceive how these
22 could not inflame one another to the point where it would
23 be impossible to even talk to people on the jury about it.
24 As a matter of fact, when I was talking to the people on
25 the jury, they were looking at me like they were going to

1 shoot fire out of their eyeballs. And what I tried to do
2 was to slow them down a little bit and, you know, took a
3 little small thing and demonstrated how they actually
4 hadn't proved one of the charges and sort of take it from
5 there. It was prejudice fest.

6 Q Was apart of the State's case for Joyner was apart of
7 that K-9 track evidence?

8 A Well, that certainly would have been because that's
9 linking the burglary to Ms. Webb.

10 Q Did you bring the transcript up there with you?

11 A I do have it.

12 Q I'm going to briefly ask you to look at pages 282 to
13 284.

14 MS. GOLDBERG: Your Honor, do you have a
15 transcript?

16 THE COURT: I do. Let me get it out. What
17 page?

18 MS. GOLDBERG: 282 is where we start.

19 THE COURT: All right.

20 BY MS. GOLDBERG:

21 Q You ready?

22 A I'm ready.

23 Q All right. Mr. Sutherland, that is the portion of
24 the testimony where the K-9 track was entered into
25 evidence; is that correct?

1 A It is.

2 Q Al right. And I want to be clear about that. The
3 only -- there are no documents related to the K-9?

4 A Testimony about it.

5 Q Just testimony about it. That individual who
6 testified about it was not even the K-9 handler; is that
7 right?

8 A That's right.

9 Q But he testified about the reactions of the dog?

10 A He did pretty much. Effectively, they were following
11 the dog around. There was no foundation.

12 Q There was no foundation laid as to the experience or
13 training of a handler?

14 A None.

15 Q Any foundation laid as to the experience or training
16 of dog himself?

17 A None.

18 Q The State actually mentioned that this K-9 track in
19 their opening and closing statements; is that right?

20 A I believe so.

21 Q The jury was told in this testimony that you looked
22 at that if the K-9 tracked the person who committed the
23 burglary and this robbery to Ms. Webb to the church is
24 that what the testimony was?

25 A I remember it that way, track going around the back

1 of the house, preceded through the wood line, brought us
2 over out at the church and lost track in the parking lot.

3 Q No one ever explained what scent was used, correct?

4 A That's correct.

5 Q Do you think that that evidence was important in
6 tying those two incidents together?

7 A Certainly.

8 Q The State typically in criminal cases will call a
9 lead investigator as their final witness; is that true?

10 A That's true.

11 Q And typically they do this to sum up all of the
12 evidence that's already been talked about and explain how
13 they tie it up together?

14 A That's it Major Smith.

15 Q If you'll look at page 894. Even the lead
16 investigator mention this K-9 track; is that correct?

17 A Certainly.

18 Q And explained why it was significant in the case?

19 A He did.

20 Q I'm going to switch topics on you. The autopsy
21 report you objected to introduction of the autopsy report
22 in evidence?

23 A I did.

24 Q On hearsay grounds?

25 A I did. It interestingly Clay Nichols ---

1 Q Go ahead and explain that situation.

2 A Certainly. I testified earlier that I was really
3 interested in splitting these things off in trying them
4 one at a time. This is going to sound bad. But it's just
5 this business, it's the way it is. Clay Nichols, the
6 pathologist, had had a stroke three or four weeks before
7 the trial. And I thought here is the opportunity. And I
8 probably even went and spoke with Elbert about this here's
9 the opportunity to split these things off. The only way
10 that I anticipated ever getting a decent offer in those
11 things was beating them on something. And that was the
12 only thing in my view that -- well, certainly that was the
13 case, the Webb case.

14 Q And I guess what you're saying is you believe that
15 Mr. Wallace had a better shot at trial if the incidents
16 were split up?

17 A Yes.

18 Q And if they couldn't go forward on one that would
19 cause them to split them up?

20 A Right.

21 Q The autopsy report was written by the pathologist; is
22 that correct?

23 A It was Clay Nichols, that's right.

24 Q Did Clay Nichols testify in the trial?

25 A He did not. It was Bradley Marcus.

1 Q And over your objection was the autopsy report
2 entered into evidence?

3 A It was.

4 Q Did you hire a private investigator in the four
5 months?

6 A Lee Connely had already worked the case. OID had
7 funded her. I think initially they were looking at this
8 as maybe a DP, a death penalty case. And like I testified
9 before, it was fully up to speed and ready to go when I
10 got it.

11 Q So any investigation would have already been done
12 before you were involved?

13 A That's right.

14 Q Did you have the reports of Lee Connely available to
15 you?

16 A I did.

17 Q Did you review those?

18 A I did.

19 Q Was one of the person who was spoken to by the
20 private investigator a Vernelle Wallace?

21 A That's right.

22 Q Do you remember who that is?

23 A That's Elbert's sister.

24 Q Did you read the statement she gave to the
25 investigator?

1 A I did.

2 Q Why didn't you call her as a witness in trial?

3 A I had reread that. I had to reread it to sort of
4 think back at the time. I just did not -- I didn't
5 believe it would be helpful, that's really the only
6 reason. There were a number of statements and a number of
7 witness statements. And all of them that I went through I
8 thought were either contradictory or maybe there was some
9 credibility issues. I don't think about hers, but so much
10 credibility issue was just respect -- like with respect to
11 the time. And she had said, you know, that she was
12 sleeping that night and so forth. Now, she did mention
13 the car bumper, car accident though.

14 Q And go ahead explain that?

15 A When I first went and I met Elbert, I had had a
16 chance -- initially, I went in and I picked everything up.
17 A couple days later was when I got Lee Connely's report,
18 but when I went down, I talked to Elbert. Having read
19 everything, I pretty much asked him what happened. Elbert
20 told me that he cut his pinky the day before on the fender
21 of his sister's vehicle. And he told me that he wondered
22 up into the crime scene and that he bleed all over the
23 crime scene and that a deputy had made him leave at some
24 point. He further told me that later on that night he was
25 standing out at a bus stop and he was talking to some guy

1 with a thin mustache or something like that. And there
2 was a car sitting there and that he looked in the car and
3 he took jewelry out of that car. And that was
4 Ms. Derrick's car with the DNA in it and the DNA from the
5 house. And I just told Elbert I didn't think, you know,
6 that people would believe that. I mean, he's got a right
7 to testify or not to testify.

8 Q This explanation that he explained to you regarding
9 the cut hand, that would have explained why there may have
10 been his blood at the scene?

11 A I mean, it could have.

12 Q Did Vernelle's Wallace statement corroborate that?

13 A It would have. I mean, just in that she had had a
14 traffic accident, that she didn't report or something.
15 Something about the insurance or something, but that she
16 had been in a traffic accident, so presumably that's the
17 fender.

18 Q During -- switch gears again. During voir dire, do
19 you recall the incident where the juror knew -- stated
20 that he knew Mr. Grover Derrick sitting in the gallery?

21 A I do remember that.

22 Q Did you request any further voir dire on how they
23 knew each other or how well they knew each other?

24 A I remember asking just to strike for cause because he
25 knew -- I think I might have argued it like he was a

1 friend of the family or something to that effect. And
2 Judge Newman said no you should have used your strikes
3 more wisely and I thought, oh, boy.

4 Q It was pretty apparent to you that Mr. Derrick was a
5 family member of Ms. Derrick in some way?

6 A I mean I knew that. I mean by the name. I don't
7 think. You know, I had sort of talked to Grover, Sr., a
8 couple times just out smoking nothing really. I can't say
9 I got to know him over time, but, you know, just a couple
10 fellows out there smoking and spending a little time
11 together. I mean, I felt like I knew him at the end of
12 the trial. He wasn't suppose to be a witness. It was
13 suppose to be his son. His son was suppose to be a
14 witness maybe some involved in like telephone calls or
15 something beforehand.

16 Q The juror that knew Mr. Derrick did he end up being a
17 problem in any particular way during trial?

18 A He certainly did. He passed a note to Judge Newman
19 and the note said that -- started a whole thing really
20 said that my guy, Elbert's family, was harassing the jury.
21 And at that point we just had like a big dust up. I mean,
22 there were individual voir dire of jurors in chambers at
23 that point accused -- I had gotten the clerk, Bree Rust at
24 the public defender's office, to just sort of sit there.
25 You know, I need a pen, you know, something to that

1 effect, good experience for her to sit in a trial working
2 down there. And they -- she was accused of being somehow
3 involved in this. We went back in chambers and Ms.
4 Campbell was talking about it and I just looked at her and
5 I said, ma'am, you realize what you're doing. I'm
6 responsible for her. So you're trying to get me in
7 trouble back here and then it sort of settled down a
8 little bit after that. But it just led to this whole
9 cascade of us sitting back there and I'm just saying, you
10 know, how can this continue under these circumstances.
11 And it was the same dude that earlier I wanted to strike
12 for cause. You know, a little more cause on top of that.

13 Q Did after the judge -- I'll say ask the jurors
14 additional questions about what had happened. Did he find
15 there was any wrongdoing by anyone or was there any
16 conclusion?

17 A He didn't say anything about Bree or anything. I
18 think he cautioned maybe Elbert's family on the record,
19 that's my memory of it. I mean, I haven't read it in
20 there. But he did -- you know, he individually brought
21 them into chambers back there and ask them about it, but
22 then sort of collectively ask them something about it in
23 here on the record as well.

24 Q When you select a jury out of the small qualified
25 jury pool, you have a list of the order that they're going

1 to be called in front of you; is that correct?

2 A At that time, oh, yeah, because they do like a little
3 scramble thing and like print it off. They don't go
4 through like the numbers like that. They'll scramble the
5 people in the order that they're going to be called. And
6 I usually get like when I go in there. Now, before
7 there's that jury list, that you know you get it on a
8 Friday and sort go through and see what, if any,
9 information people have put on those little cards like are
10 they a schoolteacher or a cop or something.

11 Q But when you're actually striking and selecting
12 jurors, you have a list you know what order they're going
13 to be called in?

14 A Yes, that's it.

15 Q And this particular juror we're talking about the
16 reason you would have asked to have him stricken for cause
17 is because you were already had used up your ten strikes?

18 A That's right.

19 Q Is there any particular reason why knowing this
20 information that he knew the family of the victim you
21 didn't save a strike for him?

22 A I'd say no particular reason. I mean, I figured he
23 would be struck for cause if we got to him.

24 Q You just made that assumption?

25 A Sure.

1 MS. GOLDBERG: No further questions.

2 THE COURT: Cross-examination.

3 MR. MITCHELL: One second, Your Honor.

4 (WHEREUPON, a pause in the proceedings.)

5 CROSS-EXAMINATION

6 BY MR. MITCHELL:

7 Q Good afternoon, Mr. Sutherland.

8 A Good afternoon.

9 Q Appreciate you being here today.

10 A Thank you kindly.

11 Q Let's see I'm going to start with a bit of the
12 evidence. How would you characterize the State's case
13 against Mr. Wallace?

14 A It was bad. It was just -- it was a difficult case
15 to defend particularly under circumstances under which
16 they went forward which was joining them all together like
17 that. My view was it was a mess and you just go in there.
18 I remember I tried to go after the DNA during the thing.
19 You just go in there and swing.

20 Q So he was -- so the first incident was Ms. Webb. He
21 was identified by her in a photo lineup and at trial; is
22 that right?

23 A That's right, but interestingly in pretrial during
24 the Neil vs. Biggers hearing, she had mentioned something
25 that wasn't written down. So at sometimes you go to trial

1 and you find good stuff out, it's the only way to find
2 out, that she had kept -- she kept correcting them like,
3 no, I saw one with seven or eight different pictures in
4 it. You know, something to that effect. And so that
5 already had the eight and ten. And then when it happened,
6 I thought man, you know, if only, but it's still tough.

7 Q So you cross examined her on that particular issue.
8 She wasn't sure how many photos were in the lineup, right?

9 A I did. I think she said seven or eight something
10 like that.

11 Q Then after that let's see the K-9 tracked
12 Mr. Wallace's scent to the church. His DNA was found in
13 side the church where some matches was stolen; is that
14 right?

15 A That's right. And frankly with respect to the
16 foundation on the K-9 track, they were trying to sort of
17 scoot around, in my view, the eight and ten in an officers
18 report. They were calling somebody else up there to
19 testify to what he had testified to and I began to notice
20 that. And I was watching him and watching, messing around
21 with this report. I knew he didn't write a report, so I
22 was thinking two things. They're trying to skirt the
23 eight and ten on the ID. Another thing he's looking at
24 that report so I can get that in because he's looking at
25 that report. And really a third thing that it's something

1 to point out, you know, at the end of the case like look
2 they were sort of trying to wiggle around this thing.

3 Q Let's see DNA was then at found Ms. Derrick's house
4 where she was found murdered; is that correct?

5 A That's correct.

6 Q And her car missing at the time and they found a --
7 they found his DNA inside the car door and on the steering
8 wheel; is that right?

9 A That's right.

10 Q And then Mr. Wallace was caught pawning the victim's
11 jewelry later that same day?

12 A It is that afternoon. I know it was daylight in the
13 video.

14 Q There's video evidence of that. There was also DNA
15 evidence of Ms. Derrick's blood on Mr. Wallace's shoes; is
16 that right?

17 A That's right. It was weak, but it was there.

18 Q Move to the Joyner issue, that's something you argued
19 pretty hard; is that right? And you're arguing that these
20 are separate incidents that should be tried separately?

21 A I think may be -- I'd have to look at it. It's on my
22 phone. It's probably may be 15 pages or more of a memo
23 and it's just agonizing because this was the -- this was
24 what -- there were obstacles, that this was in my view was
25 one that like was likely insurmountable having to try all

1 these at the same time.

2 Q So if they were all tried together, it was likely
3 they would get an conviction on all of them?

4 A And, you know, just knowing people, knowing human
5 beings, I haven't always been a lawyer. If I'd been
6 sitting on a jury before I knew the technicalities about
7 stuff, there's just no way I could have been objective and
8 I know that. So I just started doing this when I was 30
9 or something.

10 Q So it's your position that they can't lock down exact
11 time of when these incidents happen, so it shouldn't be
12 considered a continuous course of conduct; is that your
13 argument?

14 A That and the kitchen sink anything.

15 Q As far as the autopsy report, you also wanted to keep
16 that out under hearsay grounds. Mr. Nichols he had a
17 stroke; is that right?

18 A He did. I mean, he's since -- and this just a couple
19 three weeks before the trial and being that this was
20 vexing me greatly. I mean, I saw it for what it was as
21 far as defending the case.

22 Q The State argued that autopsies aren't testimonial,
23 so they wouldn't be subject to hearsay?

24 A Sure.

25 Q Is that about -- do you recall that?

1 A Yeah, and then there was some -- I think there was
2 like a blood test case or something like out of New Mexico
3 or something that had come out from the Supreme Court
4 within the past couple months or so before we did this. I
5 was arguing that and I was arguing cases that Ms. Campbell
6 had tried, but everything I could sure.

7 Q You believe that was preserved for appellate review?

8 A Yeah, I do. I mean, I just can't -- sit there and
9 argue it and renew my objections.

10 Q So you decided not to call Ms. Wallace, Vernelle
11 Wallace because you were concerned with her credibility?

12 A Not so much her. I had when I started looking at
13 this stuff. You know, I looked through everything and
14 then I looked at these witness statements. And I was
15 like, okay, first we went this place. Then we went that
16 place. Then this place, then that place. I just -- it
17 just wasn't feeling right to me and I got to one point in
18 one thing where somebody was like and then he was out in
19 the car for two hours by himself. And it just overall I
20 didn't think that it would be helpful because I've had
21 witnesses go up on the stand and blow up. And it's just
22 worse then not putting them up in the first place. I
23 mean, and it was already a tough sell. I mean, I thought
24 them people was going to kill me or something when I
25 started talking to them.

1 Q So her testimony would have gone somewhat to an alibi
2 that she was with him the day?

3 A Well, it could have gone to the finger thing because
4 there was the car accident. It could have sure.

5 Q That kind of goes into all sets of problems with the
6 credibility of that testimony as well?

7 A Well, I'll just go ahead and put it out this way.
8 This is what should have been said. I think I talk to
9 Elbert about this. When I read through the discovery,
10 there was a lady that says she saw two gang members
11 messing around in that yard or something maybe that day or
12 the day before. If he's walking down the street, the
13 door's open. There's trouble in there. He goes in there,
14 he gets in a fight with these fellows or whatever. He
15 gets cut fighting them, that sort of thing. That's
16 something that I could have worked with. The problem was
17 that's not what I was told, so we couldn't do it. But
18 that's something when you sit here and you start making
19 things complex, you know, it's razor on these things. You
20 know, people up here with a bunch details, Ms. Campbell's
21 going to pick them to pieces on that. Just get up there,
22 keep it short, put it out there and the get story out. We
23 going down the road.

24 Q Moving to the juror issues. I'll start with the one
25 we talked about -- that you talked about on direct. This

1 was where a juror allegedly was causing problems with ---

2 A Well, it wasn't tried, but he was.

3 Q With your -- and approach your law clerk. So Judge
4 Newman brought him in, voir dired him again, so here we
5 go. Does your law clerk -- did she testify at all?

6 A I remember she got called into the back. I don't
7 know if she was put on the stand or not, but I kind of
8 feel like I sort of -- I've known Ms. Campbell a long time
9 and I just sort of said look, you know, you're trying to
10 stick it to me here is what you're doing and please stop.
11 And she kind of did.

12 Q Are you aware that was an issue raised on appeal?

13 A About the juror? I had read it was like an unpub I
14 think. I was aware of that would have like to see the
15 whole Joyner thing.

16 Q Let's move to the initial voir dire where the juror
17 came up and said -- he passed a note up to Judge Newman
18 saying that he knew -- he recognized someone in the
19 courtroom; is that right?

20 A Pretty much. He just said that -- and it turned out
21 as it was testified to earlier that, I guess, he ended up
22 working with Mr. Derrick. I didn't know that degree of
23 it.

24 Q You knew he was that Mr. Grover Derrick, Sr., was
25 related to the victim in some form or fashion?

1 A Certainly. And I think I just characterized it as
2 look, you know, we got a guy who's a friend and to
3 whatever degree of the victim's family in this case how
4 does he get on the jury. I still don't understand that.

5 Q That's what you argued to Judge Newman?

6 A I don't get it, but I'm obviously not a judge.

7 Q As to the K-9 track, that was Mr. Chris Alexander who
8 testified on that?

9 A Yeah, Alexander I can't -- I'm trying to -- I can't
10 remember the name of the guy that was supposed to be up
11 there in his place. The guy whose report he was reading
12 on the stand.

13 Q And you cross examined him on that. It was not his
14 report?

15 A Well, yeah, the whole point of that was just to get
16 it out without eight and ten ID. And also to get it out
17 that they were trying to sort of scoot around on this
18 thing. Then I really think that might have been a bigger
19 issue with people sitting on the jury if we just didn't
20 have all this stuff because in the end I don't know what
21 people cared about other than, you know, maybe being a
22 little angry.

23 MR. MITCHELL: One second, Your Honor.

24 (WHEREUPON, a pause in the proceedings.)

25 MR. MITCHELL: No further questions. Thank you.

1 THE COURT: Redirect.

2 MS. GOLDBERG: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. GOLDBERG:

5 Q Mr. Sutherland, the evidence of Ms. Webb incident was
6 just the identification; is that fair?

7 A Yeah, the ID.

8 Q Tying Mr. Wallace to it?

9 A Right, the whole thing about -- I think there might
10 have been another lady who said she looked at an ID or
11 something earlier, but again that stuff that can be dealt
12 with.

13 Q No physical evidence?

14 A No, not that I recall.

15 Q What tied that incident to the church incident?

16 A Well, the cops walking from there to there as you
17 pointed out earlier.

18 Q The K-9 track?

19 A Yeah, the dog track to the church parking lot.

20 Q Are those two incidents alike in kind or manner in
21 anyway?

22 A They are not.

23 Q And then the Derrick incident was that different in
24 kind and manner from the Ms. Webb incident?

25 A It is different in this respect. There was no

1 testimony about a visit earlier during the day in a return
2 visit and the story about people being my wife's in the
3 car up the street and we're broken down. We got a baby in
4 there whatever it was can you give me \$20. And I'll bring
5 it back to you here's my ID. I'm a good guy. There's no
6 testimony about any of that.

7 Q Was there anything linking the Webb incident to the
8 Derrick incident, any evidence that link the two?

9 A I would say no other than they're accusing the same
10 person of doing those crimes and that was pretty much what
11 the argument was.

12 Q The hand that we talked about, the cut on the hand
13 the State introduced photographs of that cut during trial,
14 correct?

15 A That's right.

16 Q Why was that cut important from the State's
17 perspective?

18 A Well, from the State's perspective, they wanted to
19 explain the blood that was on the floor, the blood that
20 was up in the bedroom, the blood that was at the church,
21 the blood that was in the car. You know, where could this
22 have come from on him and they were saying there.

23 MS. GOLDBERG: No further questions.

24 MR. MITCHELL: No further questions.

25 THE COURT: You didn't call any witnesses, did

1 you?

2 MR. SUTHERLAND: No, sir.

3 THE COURT: You had the last argument?

4 MR. SUTHERLAND: I did, yes, sir.

5 THE COURT: I'm looking in the transcript and
6 maybe one of the attorney's can -- did Judge Newman rule
7 on the severance motion if there was one?

8 MS. GOLDBERG: He did.

9 THE COURT: Can you point that to me?

10 MS. GOLDBERG: I can, Your Honor, and I'm
11 actually going to do some legal argument on that toward
12 the end.

13 THE COURT: This transcript is over a thousand
14 pages.

15 MS. GOLDBERG: Correct.

16 THE COURT: It was just handed to me.

17 MR. MITCHELL: Judge, it was denied on page 67.
18 It was kind of argued on page 29 around there kind of back
19 there. He takes some kind of break where he checks some
20 cases out and then it's denied on 67.

21 THE COURT: Stephanie McDonald was not involved
22 in this trial, was she?

23 MS. GOLDBERG: She was. She sat with Judge
24 Newman and assisted on the ruling on some issues.

25 THE COURT: Oh, really, I wondered why I saw her

1 name in here.

2 MR. SUTHERLAND: She did hear some arguments,
3 Judge.

4 THE COURT: Where did this colloquy about
5 severance start?

6 MR. MITCHELL: I got it marked down as page 29.
7 I'll take a look again. I think it's page 29.

8 THE COURT: But they all take place in one day
9 in 24-hour period.

10 MS. GOLDBERG: Yes, Your Honor, there was some
11 -- they were not exactly sure about the time of the last
12 incident, but they would have definitely been within a 24
13 hour period. I don't think that was ever disputed.

14 THE COURT: I reviewed the warrants and that's
15 what the warrant say. You may come down, Mr. Sutherland.
16 Thank you very much.

17 MR. SUTHERLAND: Judge, may it please the Court,
18 might I be excused for a few minutes to make a motion in
19 another courtroom?

20 THE COURT: I'm not sure you can't be excused
21 permanently.

22 MR. MITCHELL: He has a few other cases, but we
23 can excuse him for the remainder of this.

24 THE COURT: The remainder of this case
25 certainly.

1 MR. SUTHERLAND: Thank you, Judge.

2 (WHEREUPON, the witness leaves the witness
3 stand.)

4 MS. GOLDBERG: Your Honor, at this time I call
5 Elbert Wallace to the stand.

6 THE COURT: Come around, Mr. Wallace. You
7 solemnly swear or affirm the testimony you're about to
8 present in this case will be the truth, the whole truth
9 and nothing but the truth so help you God.

10 THE WITNESS: Yes, sir.

11 THE COURT: Have a seat in the witness box.
12 State your full name for the record.

13 THE WITNESS: Elbert Wallace.

14 WHEREUPON,

15 Elbert Wallace,

16 after first having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. GOLDBERG:

19 Q Mr. Wallace, when were you arrested?

20 A February 1st, 2009.

21 Q After that date, did you remain in jail until your
22 trial?

23 A Yes, ma'am.

24 Q You were never able to bond out?

25 A No, ma'am.

1 Q Who was your first attorney in this case?

2 A Deon O'Neil.

3 Q And what happened with that? When did that end and
4 why?

5 A Well, I can't actually say when it ended, but he was
6 my attorney for about four months. He went into a
7 private.

8 Q He left the office?

9 A Yes, ma'am.

10 Q And who was your attorney after that?

11 A The chief public defender Doug Strickland.

12 Q And what happened with that relationship?

13 A Well, Mr. Strickland I didn't find his service quite
14 satisfied. He was -- so I ask -- I put in a motion to
15 have public defender's ban from my case.

16 Q Did you have a hearing in front of a judge asking him
17 to be relieved?

18 A Yes, ma'am.

19 Q Do you remember what judge it was?

20 A Judge Casey Manning.

21 Q And he relieve Judge (sic) Strickland?

22 A Public defender Strickland, yes, ma'am, he did.

23 Q Did he relieve the whole public defender's office?

24 A Yes, ma'am, he did.

25 Q And then Mr. Sutherland was appointed?

1 A Yes, ma'am.

2 Q Did Mr. Sutherland come to the jail and meet with you
3 while your charges were pending?

4 A Yes, ma'am, he did.

5 Q When he represented you?

6 A Yes, ma'am, he did.

7 Q Did he helped prepare you for trial?

8 A Well, he did the best that he could in the time frame
9 that was given to us.

10 Q Did he review the discovery with you or give you
11 copies or did you understand what the evidence was?

12 A Not clearly because at Alvin S. Glenn you don't have
13 option to go to the law library to look into things
14 yourself.

15 Q Well, that would be the law, but as far as the
16 evidence, the police report, witness statements, did you
17 understand what all was out there in your case?

18 A Not really, not really.

19 Q Do you understand what post-conviction relief is?

20 A Excuse me.

21 Q Do you understand what post-conviction relief is?

22 A Yes, ma'am.

23 Q Okay. You understand that if you are successful in
24 this case that means your charges start over and you'll
25 have to decide whether to have a plea or a trial again?

1 A Yes, ma'am.

2 Q Also if you had any other pending charges at the
3 time, those could be reinstated. Do you understand that?

4 A Yes, ma'am.

5 Q You still want to go forward with your PCR?

6 A Absolutely.

7 Q What sentence are you serving?

8 A Life without the possibility of parole.

9 Q Now, going through the application, one of your
10 allegations is that the jurors were allowed to disclose
11 violent crimes that they've experienced, that's the first
12 allegation. Is there anything factually you need to put
13 to the record or is that just a legal issue?

14 A No, ma'am.

15 Q And then the fact you've also allege that a juror
16 knew the victim's family and shouldn't have been allowed
17 to serve. Do you have anything factually you need to add
18 other than what's already been presented today?

19 A I know by them allowing him to be on the jury caused
20 a lot of problem.

21 Q That you believe it did?

22 A Absolutely.

23 Q You've also asserted in your application that counsel
24 should have argued a Batson motion. Are you withdrawing
25 that allegation today?

1 A Yes, ma'am.

2 Q You've alleged that you believe that counsel should
3 have objected regarding evidence that the K-9 track; is
4 that right?

5 A Yes, ma'am.

6 Q How was that K-9 track evidence used in your case?
7 How was it used against you? Why was it significant?

8 A Well, they was looking for a person, but I was right
9 there. I mean, if the K-9 was looking for me, I mean he
10 only had to go probably about from here to that door and
11 he would have found me.

12 Q And why do you say that? Why do you say you were in
13 the area?

14 A Because the -- from the location from the church to
15 my sister's house it's that close.

16 MS. GOLDBERG: Bet the Court's indulgence.

17 THE COURT: Mr. Dye, behind you with the white
18 shirt on, he keeps talking to that lady. Let's hold it
19 down. I have to listen to this gentleman. I want to hear
20 what he's says and I can't hear when disturbance. It
21 sounds like somebody was talking in the back of this
22 courtroom. I'm not accusing anybody. I saw you
23 whispering to that lady. Now, I'm not going to go any
24 further. If you need to talk, just step outside, okay.
25 Thank you. Go ahead.

1 MS. GOLDBERG: Thank you, Your Honor.

2 BY MS. GOLDBERG:

3 Q Mr. Wallace, I've handed you a copy of or I have
4 handed you Applicant's Exhibit Number 1 in this case. Can
5 you generally tell me what that is?

6 A Well, it's a map of the -- from Ms. Catherine Webb's
7 home to the church to my sister's home.

8 Q It's just a map of the area?

9 A Right.

10 Q Is the church that you're alleged to have burglarized
11 stated on that map is it clear where that church is?

12 A Yes, ma'am.

13 Q And generally where can you describe where your
14 sister's house is at an intersection?

15 A Yes, ma'am.

16 Q And what is the intersection?

17 A Intersection is Winyah Drive and Denny Road.

18 Q And she lives on that intersection?

19 A Right in the middle.

20 MS. GOLDBERG: Beg the Court's indulgence.

21 (WHEREUPON, a pause in the proceedings.)

22 MS. GOLDBERG: At this time I ask that this map
23 be introduced into evidence.

24 THE COURT: Any objection?

25 MR. MITCHELL: Without objection.

1 MS. GOLDBERG: Your Honor, I'll hand this up.

2 (WHEREUPON, Applicant's Exhibit No. 1 was
3 admitted into evidence.)

4 BY MS. GOLDBERG:

5 Q Mr. Wallace, why did you say that the location -- the
6 location of your sister's house at the corner of Denny and
7 Winyah why is that relevant again?

8 A Because I mean I was right there. I mean the church
9 -- from my sister's yard, I can throw a rock and hit the
10 church. I mean, I never left the house. I was right
11 there the whole time.

12 Q You live very close to the church?

13 A Very close.

14 Q And if there had been an accurate K-9 or reliable K-9
15 in the area, there may have been a different result?

16 A Yes, ma'am.

17 Q Do you think the K-9 track evidence hurt your case?

18 A Absolutely.

19 Q You appealed your trial, correct?

20 A Yes, ma'am.

21 Q Who is your appellate attorney?

22 A Ms. Susan Hackette.

23 Q She was your only appellate attorney?

24 A Yes, ma'am.

25 Q Did you ever talk with her or meet with her?

1 A I talked with over the telephone but never met with
2 her.

3 Q Did you have any input on what issues are being
4 appealed?

5 A Excuse me.

6 Q Did you have input as to what issues were being
7 appealed?

8 A Well, no.

9 Q Do you believe she should have appealed the issue
10 regarding the autopsy report?

11 A Yes, ma'am.

12 Q Did you ever mention that to her?

13 A Well, yes, I did, but she said that it wasn't
14 appropriate at this time.

15 Q Did she elaborate on that or explain why?

16 A She never explained it.

17 Q What about the Joyner do you think she should have
18 appealed that?

19 A Yes, ma'am.

20 Q Did you ever mention that to her?

21 A Yes, ma'am, I did.

22 Q And what did she say?

23 A The same answer she don't think it was appropriate at
24 this time. She had other issues to argue.

25 Q Did you ask your lawyer Mr. Sutherland to call any

1 witnesses in your trial?

2 A Yes, ma'am.

3 Q Who?

4 A Well, I asked him to call my sister, Vernelle, my
5 other sister, Loraine, Loraine's daughter Tierica,
6 Vernelle's daughter Courtney, and Vernelle's other
7 daughter Alex -- Alexander.

8 Q Did your lawyer call any witnesses in your trial?

9 A No, ma'am.

10 Q Why did you want him to call -- we're just going to
11 specifically talk about Vernelle Wallace today. Why did
12 you want him to call Ms. Vernelle Wallace?

13 A Because during the time when I pick Vernelle up from
14 work, she knew the time frame from A to B.

15 Q She was with you that day?

16 A Yes, ma'am, from 1:45 until around about three
17 o'clock, 3:15 or something like that.

18 Q Was she with you through portions of that night as
19 well?

20 A Not all the time, but she ask me to run errands and
21 that's when Loraine, Tierica, Alex and Te Te those my
22 nieces, that's when they come into play.

23 Q And did you see Ms. Vernelle Wallace the next morning
24 also?

25 A Yes, ma'am.

1 MS. GOLDBERG: No further questions.

2 THE COURT: Cross-examination.

3 MR. MITCHELL: Your Honor, no questions for this
4 witness.

5 THE COURT: All right. You may come down.

6 (WHEREUPON, the witness leaves the witness
7 stand.)

8 MS. GOLDBERG: Your Honor, at this time our
9 final witness is Vernelle Wallace.

10 THE COURT: Which of these churches is it?

11 MS. GOLDBERG: I can show you.

12 THE COURT: Just tell me? Christ Lutheran or
13 Denny Terrace?

14 MS. GOLDBERG: Christ Lutheran.

15 THE COURT: Okay. You solemnly swear or affirm
16 the testimony you're about to give in this hearing to be
17 the truth, the whole truth, and nothing but the truth so
18 help you God?

19 THE WITNESS: Yes, sir.

20 THE COURT: Have a seat in the witness box and
21 state your full name for the record.

22 THE WITNESS: My name is Vernelle Wallace.

23 WHEREUPON,

24 Vernelle Wallace,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. GOLDBERG:

Q Ms. Wallace, how do you know Elbert Wallace?

A He's one of my younger brothers.

Q Are you close with him?

A All of them, yes, ma'am.

Q At any point did he live with you or on your property?

A Yes, ma'am.

Q Where was that, what's your address?

A Denny Road.

Q Is that on an intersection?

A Yes, ma'am.

Q What did that intersect with?

A Winyah and Denny.

Q When did he live there?

A I move there 2002. He came -- he been there about maybe a couple years after that.

Q And did he live in your actual house?

A No, ma'am.

Q Where did he live?

A A little place we call the pit house, so an extension on the back.

Q Is it like over a garage?

A I had a workshop, it's a workshop. It was office and

1 we turned it into a one bedroom for Elbert.

2 Q Were you present in court during Mr. Wallace's
3 criminal trial?

4 A Every day, yes, ma'am.

5 Q Did you understand what he was charge with?

6 A Yes, ma'am.

7 Q So you understand these -- the incident dates that he
8 was alleged to have committed were January 30th and
9 January 31 of 2009?

10 A Yes, ma'am.

11 Q While his charges were pending did you ever speak
12 with Mr. Sutherland?

13 A I can't recall that I ever meet him until I came to
14 court.

15 Q Did you ever talk to a private investigator?

16 A Lee Connely I did spoke with her.

17 Q You understood that she was hired by whatever
18 attorney he had at the time?

19 A Yes.

20 Q At that time when you talk to her were you able to
21 recall the events of January 30th and 31st?

22 A Yes.

23 Q Why were you able to remember what happened on those
24 days versus any other day?

25 A Because that was the day I had got my income tax and

1 we did a lot of shopping that day.

2 Q Okay. Can you tell the Court -- do you still
3 remember that day?

4 A Yes, ma'am.

5 Q Has it become relevant because of these charges?

6 A Because of the charges and the after effect I went
7 through, yes, ma'am.

8 Q What can you tell me about when you did -- when you
9 did or didn't see Mr. Wallace that day just tell me about
10 the day?

11 A That day it was a Friday and Elbert took me to work
12 like he always get my car. There's no big deal. There's
13 nothing about that because that's something happen usually
14 and I went to work. I work for the department. I went to
15 work. And when -- sometime during the day I called my tax
16 people and they said my tax was ready. So I called Elbert
17 I said come on bring my car. We gone get the taxes. And
18 he came it was 12 sometime after 12, after one because it
19 was my lunchtime. And we went to get my check off Two
20 Notch Road National Tax Services and then went to my
21 house.

22 Q And then what?

23 A Then I went and got my children from school.

24 Q So you left Mr. Wallace at your house?

25 A With my sister and her children.

1 Q Do you have an approximate time as to when that would
2 have been?

3 A There had to been -- my children got out of school
4 like three o'clock, so I had to leave the house maybe
5 2:55, three o'clock something like.

6 Q Almost three o'clock?

7 A Yes.

8 Q When did you see Mr. Wallace again?

9 A I saw Mr. Wallace later on that afternoon.

10 THE WITNESS: I'm sorry, Judge, that's my phone.

11 THE COURT: That's your phone?

12 THE WITNESS: Yes, sir. I thought I cut it off.

13 THE COURT: Hand it to that gentleman over
14 there.

15 THE WITNESS: It's over there. I thought I cut
16 it off. My mom is sick, so I thought I cut it off. I'm
17 sorry. It's a new phone I don't really know how to use
18 it. I'm sorry. I apologize about that.

19 BY MS. GOLDBERG:

20 Q I appreciate you being honest about that. Do you
21 want me to find it in case it goes off again?

22 A It's on the second chair.

23 Q Do you know approximately what time later that
24 afternoon you saw him?

25 A Yes, my daughter and I -- picked her up from school.

1 We went shopping. They went to Burlington. I went and
2 got dinner. And by time I picked them up, I was feeling
3 kind of bad because the weather and stuff. And I call my
4 Elder and I told my Elder I wasn't coming to church I was
5 going to stay home. And by that time was in the way
6 afternoon maybe getting dark early 5:30, six o'clock
7 something like that. And I went home and I told Elbert to
8 go to the store and get me something for my headache
9 because I was feeling bad. And he did that and he came
10 right back.

11 Q And then after that what happened next?

12 A Then my Alex oldest daughter at that time she wanted
13 to go spend the night with her friend Shaquil. So I told
14 her you can go, but you got to clean your room up. And
15 Elbert -- after that, sister Lorene asked me can Elbert
16 take her to cash her check. And I said sure, but wait on
17 Alex because y'all going to drop her off first. By that
18 time, I had done got in the bed and Courtney, my baby
19 girl, stayed with me and they left the house. And when
20 they came back, they took a long time to come back. And
21 my sister Lorene she went a lot of places trying to cash
22 her check. So I call my sister Sandra house and they
23 been there, but it took a long time coming back from
24 wherever they was going at.

25 Q What time do you think he got home?

1 A They had to get home maybe about I say probably nine
2 8:30, nine o'clock at night maybe. I'm not sure.

3 Q Did you see him at the house?

4 A Yes, ma'am.

5 Q And then what happened next?

6 A Through the night I would wake up because I'm not a
7 hard hard sleeper. And they was watching TV at one point.
8 Elbert was in the house because he was still fully
9 dressed. And then that next morning I did went to sleep.
10 The next morning I had got up. I had to be at work at
11 eight o'clock in the morning. And I was taking Courtney
12 to get her hair done. And I remember that because this is
13 something I usually do every morning when I drive the car.
14 I bam on the door outside. I'm about to go to work. He
15 came to the door and he say okay, sister, I'll see you
16 later.

17 Q What time was that?

18 A It had to be about 7:30.

19 Q And I think you said and I just want to make sure
20 this is accurate. That over the night while you were
21 sleeping you woke up a couple times ---

22 A And I saw him in the house.

23 Q But you don't know exactly what time?

24 A No.

25 Q At any point in time during all this day, the next

1 morning, do you recall Mr. Wallace cutting his hand or
2 having a wound of any kind?

3 A On my car, I wreck my car myself at -- I think it was
4 Crown Station they got this hard -- brick thing in there.
5 I hit the car, you know, so what it did it took my fender
6 to stick out. It had a cut on my clothes, I'm short, but
7 that's the one time and that was a couple months before
8 that incident happen.

9 Q The car wreck?

10 A Yes.

11 Q Did you see him cut his finger on your car?

12 A No, I wasn't present.

13 Q How do you know he cut his finger?

14 A Because he came in the house he say I'm bleeding,
15 your car cut my head.

16 Q You saw blood?

17 A I saw the blood, yes.

18 MS. GOLDBERG: No further question. Thank you,
19 ma'am.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MR. MITCHELL:

23 Q Good afternoon, Ms. Wallace.

24 A Hi, how are you?

25 Q Good. You testified you went to bed around 8:30,

1 nine o'clock; is that right?

2 A Maybe somewhere around there I'm not sure.

3 Q Somewhere around there?

4 A Uh-huh.

5 Q So these incidents took place between one a.m. and
6 three a.m., two a.m. is what the State alleged at the
7 trial?

8 A Okay.

9 Q But you don't have any knowledge of where Mr. Wallace
10 was during those hours, do you?

11 A I woke up several times during the night and he was
12 in the house. Now, that's all I can tell you.

13 Q But you can't testify that it was between these hours
14 you saw him there?

15 A No, I didn't look at the clock all the time.

16 Q You gave a statement to Ms. Connely as well, right?

17 A Yes.

18 Q And in the statement you testified you stated that
19 you took some NyQuil that night and returned to bed?

20 A Yeah.

21 Q So you probably would have been out then?

22 A No, I don't take a lot of the night medicine, but I
23 took a little bit of NyQuil and a took a BC powder.

24 MR. MITCHELL: No further questions. Thank you.

25 THE COURT: Anything further?

1 MS. GOLDBERG: No questions.

2 THE COURT: All right. You may come down,
3 ma'am. Thank you very much.

4 (WHEREUPON, the witness leaves the witness
5 stand.)

6 THE COURT: Next witness.

7 MS. GOLDBERG: Your Honor, the applicant rest.
8 We have no further testimony or evidence to present. Some
9 of our issues are legal issues, which I can argue to the
10 Court at the conclusion of the case or just conclude in a
11 proposed order, but there's no further testimony or
12 evidence to present.

13 THE COURT: All right. State's position?

14 MR. MITCHELL: Your Honor, the State has no
15 witnesses.

16 THE COURT: All right. Let's do it with
17 proposed orders.

18 MS. GOLDBERG: That's fine, Your Honor.

19 THE COURT: All right, proposed orders within 30
20 days. Thank you very much.

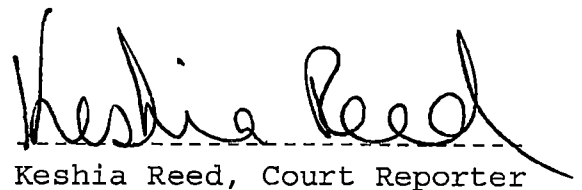
21 END OF REQUESTED TRANSCRIPT
22
23
24
25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 61, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Richland
County, South Carolina, on the 15th day of July, 2015.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 12th
day of May 2016.


Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

Elbert Wallace

(A: _____
Age: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
_____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-40-1229
A/W#: DP10673
Date of Offense: 1-31-09
S.C. Code #: 16-11-0312(B)
CDR Code #: 0086

SENTENCE SHEET

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

violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Kenneth 13009 X DS 6965
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
d/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
\$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and
subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference.

CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

ne	\$	Random Drug/Alcohol Testing	☐
1-206 (Assessments 107.5%)	\$	Fine may be pd. in equal, consecutive weekly/monthly	
1-211(A)(1) (Conv. Surcharge)	\$100	pmts. Of \$ _____ Beginning _____	
1-211(A)(2) (DUI Surcharge)	\$100	\$ _____ paid to Public Defender Fund	
1-5-2995 (DUI Assessment)	\$12		
1-1-286 (DUI Breath Test)	\$25	Other: _____	
1-13 (Public Def/Prob)	\$500		
1-3, 1B TP (Law Enforce. Funding)	\$25		
1-7, 1B TP (Drug Court Surcharge)	\$100		
1-21-114 (BUI Breath Test Fee)	\$50		
1-5-2942(J) (Vehicle Assessment)	\$40/ea		
1-11 TP (SCCJA Surcharge)	\$5		
to County (if paid in installments)			
TAL	\$		

Rank of Court/ Deputy Clerk: Jeanette McBride
Court Reporter: R. Ambrozak

CA/217 (06/2009)

Presiding Judge: J. C. O'P. & G.S.
Judge Code: RICHLAND COUNTY
Sentence Date: 1-31-09
SOUTH CAROLINA

CERTIFIED TRUE COPY
ORIGINAL FILED
Jeanette McBride
J. C. O'P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) ISENHOWARD - RCSD

ARREST WARRANT NUMBER

DP10073

ACTION OF GRAND JURY

TRUE BILL

F. person of Grand Jury
Date:

APR 14 2010

VERDICT

Guilty

Foreperson of Petit Jury
Date:

7-21-11

DOCKET NO. 2010-GS-40-1229

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2010

52

THE STATE
vs.

ELBERT WALLACE

Indictment for
BURGLARY 2ND DEGREE VIOLENT

SC Code: 16-11-0312(B)
CDR Code: 0086
CLASS FEL -D(V)

After being fully advised as to my
legal rights, I hereby waive present
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 13 2011
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

1240

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 14, 2010, the Jurors of Richland County present upon their oath:

BURGLARY, SECOND DEGREE
(VIOLENT)

That ELBERT WALLACE did in Richland County on or about January 31, 2009, enter without consent and with the intent to commit a crime therein, a building CHRIST LUTHERAN CHURCH, and the defendant did enter the building during the hours of darkness, in violation of Section 16-11-0312(B), S. C. Code of Laws, 1976, as amended.

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

W. Bang

WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

Elbert Wallace

A: _____
 ce: B Sex: M Age: _____
 B: _____ SS#: _____
 dress: _____
 y, State, Zip _____
 # _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-40-0988
 A/W#: J564110
 Date of Offense: 1-31-09
 S.C. Code §: 16-11-311
 CDR Code #: 079

SENTENCE SHEET

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

violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)
 plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Kenn C. H. 13089 X Defendant Attorney for Defendant SC Bar #

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and
 subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
 reference.

CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Initial: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____ May serve W/E beginning _____
 Substance Abuse Counseling ☐

ne	\$ _____	Random Drug/Alcohol Testing	☐
1-206 (Assessments 107.5%)	\$ _____	Fine may be pd. in equal, consecutive weekly/monthly	
1-211(A)(1) (Conv. Surcharge)	\$100	prmts. Of \$ _____ Beginning _____	
1-211(A)(2) (DUI Surcharge)	\$100	\$ _____ paid to Public Defender Fund	
5-2995 (DUI Assessment)	\$12		
1-286 (DUI Breath Test)	\$25	Other: _____	
1.13 (Public Def/Prob)	\$500		
1.3, 1B TP (Law Enforce. Funding)	\$25		
1.7, 1B TP (Drug Court Surcharge)	\$100		
21-114 (BUI Breath Test Fee)	\$50		
5-2942(J) (Vehicle Assessment)	\$40/ea		
1.11 TP (SCCJA Surcharge)	\$5		
to County (if paid in installments)			
TAL			

rk of Court/ Deputy Clerk: Jeanette McBride/G
 rt Reporter: K. Ambrozick

CA/217 (06/2009)

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

Presiding Judge: Jeanette McBride
 Judge Code: 17-21-29
 Sentence Date: 2009-02-11
 SOUTH CAROLINA

1243

ARREST WARRANT

J-564110

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Richland Bond Court

THE STATE

RCSD 0901291331

against

Elbert Wallace

Address:

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 10 Weight: 180

DOB: DL #:

Agency ORI #: 04000

Prosecuting Agency: Richland County Sheriff Department

Prosecuting Officer: Kevin Isenhoward - 898

Offense: Burglary 1st Degree

Offense Code: 0079

Code/Ordinance Sec: 16-11-0311

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

D.

RETURN

A copy of this arrest warrant was delivered to

defendant Elbert Wallace

on

2-2-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant Kevin Isenhoward

being duly sworn deposes and says that defendant Elbert Wallace

did within this county and state on or about 01/31/2009

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Burglary 1st Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about January 31, 2009 while at in the Upper Township Magisterial District of Richland County, it is believed that the defendant, Elbert Wallace, did commit the crime of Burglary - First degree because the def. did during the hours of darkness and while armed with a deadly weapon, unlawfully enter the residence of Carolyn Webb. Upon entering the dwelling, the def. did stab the victim with a knife and rob her of \$16.00 US Currency. The def. has been identified by the victim in a photo line up.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road

Columbia, SC 29223-

Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/31/2009 defendant Elbert Wallace

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Burglary 1st Degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 02/02/2009

(L.S.)

Signature of Issuing Judge

Kirby D Shealy Jr

Judge Code: 5019

Judge's Address 1400 Huger Street

Columbia, SC 29202

Judge's Telephone (803)748-4745

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
Attorney General
2002, 2005
SCA 518CERTIFIED TRUE COPY
OF ORIGINAL FILEDJAN 31 2009
C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

JAN 31 2009

2009 FEB - 6 AM 11:52

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

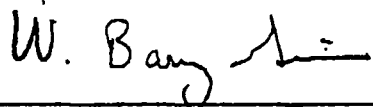
INDICTMENT

At a Court of General Sessions, convened on Mach 11, 2009, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG REE

That ELBERT WALLACE did in Richland County on or about January 31, 2009, willfully and unlawfully enter the dwelling of Carolyn Webb, without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon or explosive and/or caused physical injury to a person who is not a participant in the crime and/or uses or threatens the use of a dangerous instrument and/or the entering or remaining occurs in the nighttime. All in violation of Code Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

Elbert Wallace

A: _____
Sex: B Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
_____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-40-0989
AW#: JS64111
Date of Offense: 1-31-09
S.C. Code §: 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

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

Violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Kan Solicitor SC Bar # 13005 X Defendant 13 Attorney for Defendant 6965 SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and
subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Daily: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____ May serve W/E beginning _____

Substance Abuse Counseling ☐

Fine \$ _____ Random Drug/Alcohol Testing ☐
4-1-206 (Assessments 107.5%) \$ _____ Fine may be pd. in equal, consecutive weekly/monthly
4-1-211(A)(1) (Conv. Surcharge) \$100 \$ _____ pmts. Of \$ _____ Beginning _____
4-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ \$ _____ paid to Public Defender Fund
16-5-2995 (DUI Assessment) \$12 \$ _____
16-1-286 (DUI Breath Test) \$25 \$ _____

Other: _____

15.13 (Public Def/Prob) \$500 \$ _____
3.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
3.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
10-21-114 (BUI Breath Test Fee) \$50 \$ _____
16-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
10.11 TP (SCCJA Surcharge) \$5 \$ _____
% to County (if paid in installments) \$ _____
TOTAL \$ _____

☐ Appointed PD or appointed other counsel
\$35.13 TP, requires \$500 fee paid to Clerk
during probation.

Presiding Judge: Jeanette McBride
Judge Code: RICHLAND COUNTY
Sentence Date: SOUTH CAROLINA

Clerk of Court/ Deputy Clerk: Jeanette McBride
Court Reporter: R. Ambrozick

WITNESSES

✓(S) KEVIN ISENHOWARD, RCSD

ARREST WARRANT NUMBER

J564110

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 11 2009

VERDICT

Guilty

Foreperson of Petit Jury

Date:

7-21-11

DOCKET NO. 2009-GS-40-988

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2009

52

THE STATE

vs.

ELBERT WALLACE

Indictment for

BURGLARY/(AFTER 6/20/85)

1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive my rights to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL
FILED WITH
C.C.C. P&GS.
RICHLAND COUNTY
SOUTH CAROLINA

PRELIMINARY HEARING

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

WITNESSED

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

WITNESSES

/s/ Kevin Isenhoward, RCSD

ARREST WARRANT NUMBER

J564111

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

MAR 11 2009

VERDICT

**CERTIFIED TRUE COPY
OF ORIGINAL FILED
IN THE CLERK'S OFFICE
OF RICHLAND COUNTY
SOUTH CAROLINA
JUL 22 2009**

DOCKET NO. 2009-GS-40-989

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2009

52

**THE STATE
vs.**

ELBERT WALLACE

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

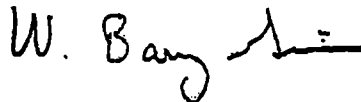
INDICTMENT

At a Court of General Sessions, convened on March 11, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That ELBERT WALLACE did in Richland County on or about January 31, 2009, commit robbery by feloniously taking from the person or presence of Carolyn Webb by means of force or intimidation goods or monies of Carolyn Webb, such goods or monies described as US Currency with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section 16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

IN THE COURT OF GENERAL SESSIONS

Elbert Wallace

INDICTMENT/CASE#: 2009-GS-40-0997

A/W#: J564112

A: _____

Date of Offense: 1-31-09

ce: B Sex: M Age: _____

S.C. Code §: 16-3-620

IB: _____ SS#: _____

CDR Code #: 014

dress: _____

y, State, Zip _____

SENTENCE SHEET

_____ SID# _____

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

violation of § 16-3-620 of the S.C. Code of Laws, bearing CDR Code # 014
NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)

charge is: ☒ As Indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury. _____ (defendant initial)

plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST

[Signature] 13009 X Defendant [Signature] Attorney for Defendant [Signature] SC Bar# _____

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
d/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
\$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and
subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference.

CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

fine	\$ _____	Random Drug/Alcohol Testing	☐
4-1-206 (Assessments 107.5%)	\$ _____	Fine may be pd. in equal, consecutive weekly/monthly	
4-1-211(A)(1) (Conv. Surcharge)	\$100	prmts. Of \$ _____ Beginning _____	
4-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____ paid to Public Defender Fund	
6-5-2995 (DUI Assessment)	\$12		
6-1-286 (DUI Breath Test)	\$25	Other: _____	
5-13 (Public Def/Prob)	\$500		
3-3, 1B TP (Law Enforce. Funding)	\$25		
3-7, 1B TP (Drug Court Surcharge)	\$100		
0-21-114(BUI Breath Test Fee)	\$50		
6-5-2942(J) (Vehicle Assessment)	\$40/ea		
0-11 TP (SCCJA Surcharge)	\$5		
% to County (if paid in installments)	\$ _____		
TOTAL	\$ _____		

clerk of Court/ Deputy Clerk: Jeanette McBride/co
Court Reporter: K. Ambrozak

SCA/217 (06/2009)

Presiding Judge: [Signature]
Judge Code: 2009-0001
Sentence Date: 2/2/2009
SOUTH CAROLINA

ARREST WARRANT

EGT

J-564112

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Richland Bond Court

THE STATE

RCSD 0901291331

against

Elbert Wallace

Address:

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 10 Weight: 180

D. te: DL #:

DOB: Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DepartmentProsecuting Officer: Kevin Isenhoward - 898Offense: Assault and battery with Intent to Kill (ABWIK)Offense Code: 0014Code/Ordinance Sec: 16-03-0620This warrant is CERTIFIED FOR SERVICE in the☐ County/☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

D

RETURN

A copy of this arrest warrant was delivered to

defendant Elbert Wallaceon 2-2-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant Kevin Isenhowardbeing duly sworn deposes and says that defendant Elbert Wallacedid within this county and state on or about 01/31/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

Richland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Assault and battery with Intent to Kill (ABWIK)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about January 31, 2009 while at _____ in the Upper Township Magisterial District of Richland County, it is believed that the defendant, Elbert Wallace, did commit the crime of Assault and battery with Intent to Kill (ABWIK) because he did during the hours of darkness and while armed with a deadly weapon, unlawfully enter the residence of Carolyn Webb. Upon entering the dwelling, the def. did physically assault the victim by punching her about the head and face. The def. also stabbed the victim in the leg with a knife. The def. has been identified by the victim in a photo line up.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch RoadColumbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/31/2009 defendant Elbert Wallace

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Assault and battery with Intent to Kill (ABWIK)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 02/02/2009 (L.S.)

Signature of Issuing Judge

Kirby D Shealy Jr

Judge Code: 5019Judge's Address 1400 Huger StreetColumbia, SC 29202Judge's Telephone (803)748-4745Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED
JAN 31 2009
C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

JEANETTE W. McBRIDE
2009 FEB -6 AM 11:52

1252

Judge _____
on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES

✓(S) KEVIN ISENHOWARD, RCSD

ARREST WARRANT NUMBER

J564112

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: **MAR 11 2009**

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: **7-21-11**

DOCKET NO. 2009-GS-40-997

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2009

52

**THE STATE
vs.**

ELBERT WALLACE

**Indictment for
ASSAULT AND BATTERY
WITH INTENT TO KILL**

**SC Code: 16-3-620
CDR Code: 014
Class FEL-C(V)**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

1254

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 11, 2009 the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That ELBERT WALLACE did in Richland County on or about January 31, 2009, with malice aforethought commit an assault and battery upon one Carolyn Webb, with intent to kill the said victim. All in violation of Section 16-03-620, *Code of Laws of South Carolina*, (1976, as amended).

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

W. B. Giese

Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

Elbert Wallace

CA: _____
Race: F Sex: M Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
_____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS-40-1225
AW#: J564120
Date of Offense: 1-31-09
S.C. Code §: 16-11-311
CDR Code #: 079

SENTENCE SHEET

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

violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 079
NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45
(CSC w/minor 1st or Lewd Act)

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST: Karen Chan 13009 X Defendant RJ Attorney for Defendant 68695 SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
d/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
\$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and
subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference. Life without possibility of parole pursuant to 17-25-45
CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED ☐
Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

fe	\$ _____	Random Drug/Alcohol Testing	☐
I-1-206 (Assessments 107.5%)	\$ _____	Fine may be pd. in equal, consecutive weekly/monthly	
I-1-211(A)(1) (Conv. Surcharge)	\$100	pmts. Of \$ _____ Beginning _____	
I-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____ paid to Public Defender Fund	
I-5-2995 (DUI Assessment)	\$12		
I-1-286 (DUI Breath Test)	\$25	Other: _____	
I-13 (Public Def/Prob)	\$500		
I-3, 1B TP (Law Enforce. Funding)	\$25		
I-7, 1B TP (Drug Court Surcharge)	\$100		
I-21-114(BUI Breath Test Fee)	\$50		
I-5-2942(J) (Vehicle Assessment)	\$40/ea		
I-11 TP (SCCJA Surcharge)	\$5		
to County (if paid in installments)	\$ _____		
TAL	\$ _____		

Rank of Court/ Deputy Clerk: Jeanette McBride
Court Reporter: K. Ambrozak

CA/217 (06/2009)

CERTIFIED TRUE COPY
☐ Appointed PD or appointed attorney, requires \$35.13 TP, requires \$500 be paid to Clerk during probation. Jeanette McBride
G.C.C.P.D.S.
Presiding Judge: Jeanette McBride
Judge Code: RICHLAND COUNTY
Sentence Date: SOUTH CAROLINA

1257

ARREST WARRANT

J-564120

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD0901288531

against

Elbert Wallace

Address:

Phone: SSN:
Sex: M Race: B Height: 5 10 Weight: 180D. # DL # DOB: Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DepartmentProsecuting Officer: Kevin Isenhoward - 898Offense: Burglary 1st DegreeOffense Code: 0079Code/Ordinance Sec: 16-11-0311This warrant is CERTIFIED FOR SERVICE in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

C

RETURN

A copy of this arrest warrant was delivered to
defendant ELBERT WALLACE
on 2/3/19

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant Kevin Isenhowardbeing duly sworn deposes and says that defendant Elbert Wallacedid within this county and state on or about 01/31/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

in the following particulars:

DESCRIPTION OF OFFENSE Burglary 1st Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 01/31/2009 while at in the Upper Township Magisterial District of Richland County, one Elbert Wallace did commit the crime of Burglary 1st Degree / 16-11-311 in that he did unlawfully enter the home of Linda Derrick during the hours of darkness while armed with a deadly weapon. During the crime, the defendant struck the victim in the head with the weapon and the victim died as a result of injuries sustained. After murdering the victim, the defendant stole several items of jewelry, a pocketbook and a car from the victim's person and home. Within hours of the murder, the defendant sold the victim's jewelry to First Cash and Pawn located at 3102 Broad River Road. The defendant has also been identified in a lineup by a victim of a similar crime which happened within hours of the murder. The crimes are extremely similar in nature.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/31/2009 defendant Elbert Wallace

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court) as set forth below:DESCRIPTION OF OFFENSE: Burglary 1st Degree

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 02/02/2009Signature of Issuing Judge T Edmond (L.S.)Judge's Address 201 John Mark Dial Road
Columbia, SC 29209-Judge's Telephone Issuing Court: ☒ Magistrate ☐ Municipal ☐ CircuitJudge Code: 7154

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 2, 1993
SCCA 136CERTIFIED TRUE COPY
OF ORIGINAL FILEDJANET W. MERRITT
C.C.P. & G.S.

FEB - 6 AM 11:52

RICHLAND COUNTY

SOUTH CAROLINA

who

violate the criminal laws of the

Judge _____

on _____

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

_____	_____
_____	_____
_____	_____

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

WITNESSES

✓ (S) KEVIN ISENHOWARD, RCSD

ARREST WARRANT NUMBER

J564120

ACTION OF GRAND JURY

TRUE BILL

H. Ramo
 For person of Grand Jury

Date: MAR 11 2009

VERDICT

Guilty

V. J. Huff
 Foreperson of Petit Jury

Date: 7-21-11

DOCKET NO. 2009-GS-40-01225

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2009

52

THE STATE

vs.

ELBERT WALLACE

Indictment for

BURGLARY/(AFTER 6/20/85)
 1ST DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my legal rights, I hereby waive present and future rights to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 Clerk of Court
 J. C. P. & G. S.
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

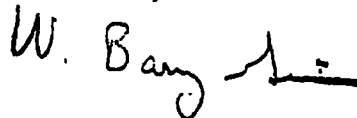
INDICTMENT

At a Court of General Sessions, convened on Mach 11, 2009, the Grand Jurors of Richland County present upon their oath:

BURGLARY/(AFTER 6/20/85) - 1ST DEG^{REE}

That ELBERT WALLACE did in Richland County on or about January 31, 2009, willfully and unlawfully enter the dwelling of Linda Derrick, without consent and with the intent to commit a crime therein and the defendant was armed with a deadly weapon or explosive and/or caused physical injury to a person who is not a participant in the crime and/or uses or threatens the use of a dangerous instrument and/or the entering or remaining occurs in the nighttime. All in violation of Code Section 16-11-311, Code of Laws of South Carolina (1976, as amended).

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



Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

Elbert Wallace

A: _____
ce: B Sex: M Age: _____
B: _____ SS#: _____
dress: _____
y, State, Zip _____
_____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-40-1228
ANW#: JS64121
Date of Offense: 1-31-09
S.C. Code §: 16-11-330 (A)
CDR Code #: 0139

SENTENCE SHEET

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

violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45
(CSC w/minor 1st or Lewd Act)
Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant initial)
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:
Kenneth A. Lee 13089 X 790 69685
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
\$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and
subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference. Life without possibility of parole pursuant to 17-25-45
CONCURRENT or ☐ CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.
The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Costs: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Probation Terms: _____ Obtain GED ☐

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corps. _____

Recipient: _____ May serve W/E beginning _____
Substance Abuse Counseling ☐

le	\$		Random Drug/Alcohol Testing ☐
-1-206 (Assessments 107.5%)	\$		Fine may be pd. in equal, consecutive weekly/monthly
-1-211(A)(1) (Conv. Surcharge)	\$100	\$	pmts. Of \$ _____ Beginning _____
-1-211(A)(2) (DUI Surcharge)	\$100	\$	\$ _____ paid to Public Defender Fund
-5-2995 (DUI Assessment)	\$12	\$	Other: _____
-1-286 (DUI Breath Test)	\$25	\$	
.13 (Public Def/Prob)	\$500	\$	
.3, 1B TP (Law Enforce. Funding)	\$25	\$	
.7, 1B TP (Drug Court Surcharge)	\$100	\$	
-21-114 (BUI Breath Test Fee)	\$50	\$	
-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
.11 TP (SCCJA Surcharge)	\$5	\$	
to County (if paid in installments)		\$	
FAL		\$	

CERTIFIED TRUE COPY

☐ Appointed PD or appointed counsel, requires \$35.13 TP, requires \$500 be paid to Clerk during probation.
C.O.C.P.&G.S.
Presiding Judge: Richland County
Judge Code: 17-25-45
Sentence Date: 1-31-09

Clk of Court/ Deputy Clerk: Jeanette McBride
Court Reporter: K. Ambrozak

WITNESSES

✓ (S) Kevin Isenhoward, RCSD

ARREST WARRANT NUMBER

J564121

ACTION OF GRAND JURY

TRUE BILL

Ben Rame

Foreperson of Grand Jury
Date:

MAR 11 2009

VERDICT

Guilty

Vance Giff
Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-1228

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2009

52

THE STATE
vs.

ELBERT WALLACE

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
March 11 2009
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

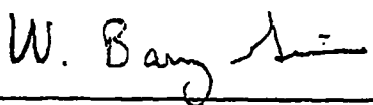
INDICTMENT

At a Court of General Sessions, convened on March 11, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That ELBERT WALLACE did in Richland County on or about January 31, 2009, commit robbery by feloniously taking from the person or presence of Linda Derrick by means of force or intimidation goods or monies of Linda Derrick, such goods or monies described as jewelry and/or pocketbook and/or automobile with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section 16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

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



WARREN B. GIESE, SOLICITOR

ARREST WARRANT
J-564121
STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
Richland Bond Court
THE STATE against RCS00901289531
Elbert Wallace
Address:
Phone: SSN: [REDACTED]
Sex: M Race: B Height: 5 10 Weight: 180
DOB: DL #: [REDACTED]
Agency ORI #: 04000
Prosecuting Agency: Richland County Sheriff Department
Prosecuting Officer: Kevin Isenhoward - 898
Offense: Armed Robbery
Offense Code: 0139
Code/Ordinance Sec: 16-11-0330(A)
This warrant is CERTIFIED FOR SERVICE in the
[] County/ [] Municipality of
The accused is to be arrested and brought before me to be dealt with according to the law.
(L.S.)
Signature of Judge

RETURN
A copy of this arrest warrant was delivered to defendant on ELBERT WALLACE 2/2/09
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
Richland General Sessions
1701 Main Street
P O Box 192
Columbia, SC 29202

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
Richland Bond Court
Personally appeared before me the affiant Kevin Isenhoward
being duly sworn deposes and says that defendant Elbert Wallace
did within this county and state on or about 01/31/2009
State of South Carolina (or ordinance of [X] County/ [] Municipality of Richland Bond Court
in the following particulars:
DESCRIPTION OF OFFENSE Armed Robbery

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
That on or about 01/31/2009 while at in the Upper Township Magisterial District of Richland County, one Elbert Wallace did commit the crime of Armed Robbery / 16-11-330 in that he did unlawfully enter the home of Linda Derrick during the hours of darkness while armed with a deadly weapon. During the crime, the defendant struck the victim in the head with the weapon and the victim died as a result of injuries sustained. After murdering the victim, the defendant stole several items of jewelry, a pocketbook and a car from the victim's person and home. Within hours of the murder, the defendant sold the victim's jewelry to First Cash and Pawn located at 3102 Broad River Road. The defendant has also been identified in a lineup by a victim of a similar crime which happened within hours of the murder. The crimes are extremely similar in nature.

Affiant and others are witness to prove same.
Signature of Affiant
STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
Richland Bond Court
Affiant's Address 5623 Two Notch Road
Columbia, SC 29223-
Affiant's Telephone (803)576-3000

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on or about 1/31/2009 defendant Elbert Wallace
did violate the criminal laws of the State of South Carolina (or ordinance of
[X] County/ [] Municipality of Richland Bond Court) as set forth below:

DESCRIPTION OF OFFENSE: Armed Robbery
Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable
Sworn to and subscribed before me
on 02/02/2009
Signature of Issuing Judge T Edmond (L.S.)
Judge's Address 201 John Mark Dial Road
Columbia, SC 29209-
Judge's Telephone
Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

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ORIGINAL
Form Approved by
C. Attorney General
April 21, 2003
SCCA 5189
CERTIFIED TRUE COPY
OF ORIGINAL FILED
2009 FEB - 6 AM 11:52
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
STATE VS.

CA: Elbert Wallace
age: B Sex: M Age:
DOB: SS#:
Address:
City, State, Zip
SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-40-1229
AW#: J564122
Date of Offense: 1-31-09
S.C. Code §: 16-03-0010
CDR Code #: 0116

SENTENCE SHEET

Disposition of the said indictment comes now, the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

to: Murder

violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (defendant initial)
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Ram C Az 13081
Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar#

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and
subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by
reference. Life without possibility of parole pursuant to 17-25-45

CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Tal: \$ plus 20% fee: \$

 days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Set by SCDPPPS

Attend Voc. Rehab. Or Job Corps.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

Fee

Random Drug/Alcohol Testing ☐

4-1-206 (Assessments 107.5%) \$

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

4-1-211(A)(1) (Conv. Surcharge) \$100 \$

pmts. Of \$ Beginning

4-1-211(A)(2) (DUI Surcharge) \$100 \$

\$ paid to Public Defender Fund

3-5-2995 (DUI Assessment) \$12 \$

3-1-286 (DUI Breath Test) \$25 \$

5.13 (Public Def/Prob) \$500 \$

3.3, 1B TP (Law Enforce. Funding) \$25 \$

3.7, 1B TP (Drug Court Surcharge) \$100 \$

3-21-114 (BUI Breath Test Fee) \$50 \$

3-5-2942(J) (Vehicle Assessment) \$40/ea \$

1.11 TP (SCCJA Surcharge) \$5 \$

to County (if paid in installments) \$

TAL \$

Rank of Court/ Deputy Clerk: Jeanette McBride

Court Reporter: R. Ambrosiak

Presiding Judge: Clifford S. S.

Judge Code:

Sentence Date: 10/21/09

WITNESSES

(S) Isenhoward - Richland County Sheriff

✓ Gwyn

ARREST WARRANT NUMBER

J564122

ACTION OF GRAND JURY

TRUE BILL

Christie H. Fields

Foreperson of Grand Jury

Date:

NOV 04 2010

VERDICT

Guilty

Vandy

Foreperson of Petit Jury

Date:

7-21-11

AMENDED
DOCKET NO. 2009GS401229

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

March TERM 2009

52

THE STATE
vs.

ELBERT WALLACE

Indictment for
MURDER

SC Code: 16-03-0010

CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive my rights
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Shirley W. Broude
C.C.C. P&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

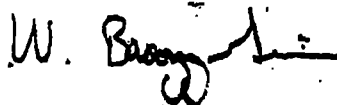
At a Court of General Sessions, convened on March 11, 2009, the Grand
Jurors of Richland County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That ELBERT WALLACE did in Richland County, on or about January 31, 2009, willfully, feloniously, and intentionally kill the victim, LINDA DERRICK, with malice aforethought, either express or implied, by means of blunt force trauma, and the victim did die as a proximate result thereof, all in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

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



WARREN B. GIESE, SOLICITOR

ARREST WARRANT

J-564122

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

THE STATE

RCSD0801288531

against

Elbert Wallace

Address:

Phone: _____ SSN: _____
 Sex: M Race: B Height: 5 10 Weight: 180
 DL #: _____ DL #: _____

DOB: _____ Agency ORI #: 04000Prosecuting Agency: Richland County Sheriff DepartmentProsecuting Officer: Kevin Isenhoward - 898Offense: MurderOffense Code: 0116Code/Ordinance Sec: 16-03-0010, 0020

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
 is to be arrested and brought before me to be
 dealt with according to the law.

(L.S.)

Signature of Judge

D.

RETURN

A copy of this arrest warrant was delivered to
 defendant ELBERT WALLACE
 on 2/2/09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Richland General Sessions
 1701 Main Street
 P O Box 192
 Columbia, SC 29202

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Personally appeared before me the affiant Kevin Isenhowardbeing duly sworn deposes and says that defendant Elbert Wallacedid within this county and state on or about 01/31/2009State of South Carolina (or ordinance of ☒ County/ ☐ Municipality ofRichland Bond Court

in the following particulars:

DESCRIPTION OF OFFENSE Murder

I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

That on or about 01/31/2009 while at _____ in the Upper Township Magisterial District of Richland County, one Elbert
 Wallace did commit the crime of Murder / 16-3-10 in that he did unlawfully enter the home of Linda Derrick during the hours of
 darkness while armed with a deadly weapon. During the crime, the defendant struck the victim in the head with the weapon and the
 victim died as a result of injuries sustained. After murdering the victim, the defendant stole several items of jewelry, a pocketbook
 and a car from the victim's person and home. Within hours of the murder, the defendant sold the victim's jewelry to First Cash and
 Pawn located at 3102 Broad River Road. The defendant has also been identified in a lineup by a victim of a similar crime which
 happened within hours of the murder. The crimes are extremely similar in nature.

Affiant and others are witness to prove same.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Richland Bond Court

Affiant's Address 5623 Two Notch RoadColumbia, SC 29223-Affiant's Telephone (803)576-3000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/31/2009defendant Elbert Wallace

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Richland Bond Court

) as set forth below:

DESCRIPTION OF OFFENSE: Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
 her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
 soon thereafter as is practicable
 Sworn to and subscribed before me

on 02/02/2009

Signature of Issuing Judge

T Edmond

Judge Code: 7154Judge's Address 201 John Mark Dial RoadColumbia, SC 29209-

Judge's Telephone _____

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
Attorney General
21, 2003
CA 518

CERTIFIED TRUE COPY
 OF ORIGINAL FILED
 2009 FEB - 6 AM 11:52
 J. W. McBRIDE
 C.C.P. & G.S.
 RICHLAND COUNTY
 SOUTH CAROLINA

MAIL SET BY

WITNESSES

Judge _____
on _____
Type and Amount: _____
Name of Surety: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Telephone: _____

Name: _____
Address: _____

Decision: _____

Name: _____
Address: _____

Telephone: _____

DISPOSITION before

Judge _____
on _____
by _____

Name: _____

Address: _____

Telephone: _____

(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Name: _____

Address: _____

Sentence: _____

Telephone: _____

JURORS

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS
