

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
Alison Renee Lee, Circuit Court Judge

RECEIVED

DEC 16 2015

S.C. Supreme Court

NICHOLAS NESMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000968

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
JUVENILE TRANSFER HEARING DATED FEBRUARY 24, 2009 (PARTIAL)	1
JUVENILE TRANSFER HEARING DATED FEBRUARY 24, 2009 (PARTIAL)	133
GUILTY PLEA TRANSCRIPT DATED AUGUST 9 & 11, 2010.....	167
APPLICATION FOR POST-CONVICTION RELIEF	261
RETURN	266
AMENDMENT TO APPLICATION FOR POST-CONVICTION RELIEF	273
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MARCH 19, 2014.....	276
PETITIONER'S EXHIBIT # 2 (COMPETENCY EVALUATION)	453
PETITIONER'S EXHIBIT # 3 (WAIVER ORDER)	456
PETITIONER'S EXHIBIT # 4 (LETTER TO JUDGE)	460
PETITIONER'S EXHIBIT # 5 (LETTERS OF MAY 5, 2010)	462
PETITIONER'S EXHIBIT # 6 (LETTER OF JULY 1, 2010)	464
RESPONDENT'S EXHIBIT # 1 (PRE-WAIVER EVALUATION).....	465
ORDER OF DISMISSAL	497
MOTION TO FOR REHEARING AND/OR ALTER OR AMEND.....	525
PROPOSED ORDER GRANTING APPLICATION FOR POST-CONVICTION RELIEF	528
RETURN TO APPLICANT'S MOTION TO RECONSIDER SENTENCE	549
ORDER DENYING MOTION TO RECONSIDER SENTENCE.....	556
INDICTMENTS AND SENTENCE SHEETS	557

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
PETITIONER'S EXHIBIT # 1 (INTERROGATION VIDEO)**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE FAMILY COURT

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)

VERSUS)

NICHOLAS NESMITH,)

DEFENDANT.)

TRANSCRIPT OF RECORD

2008-JU-40-1474

FEBRUARY 24TH, 2009
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER E. HENDERSON

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

L. EDEN HENDRICK, ESQUIRE
 ATTORNEY FOR THE PLAINTIFF

MITZI CAMPBELL-WILLIAMS, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

JOANNA HAYNES, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

SANDRA H. DAVIS
 OFFICIAL COURT REPORTER
 8TH CIRCUIT, AT-LARGE

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

I N D E X

WITNESS NO. 1: CORPORAL DAVID DECHMAN

DIRECT EXAMINATION BY MS. HENDRICK 5

CROSS EXAMINATION BY MS. CAMPBELL-WILLIAMS 22

RE-DIRECT EXAMINATION BY MS. HENDRICK 26

WITNESS NO. 2: DANIELLE BLEW

EXAMINATION BY MS. HENDRICK 28

WITNESS NO. 3: CORPORAL ANDREA GRINSTEAD

DIRECT EXAMINATION BY MS. HENDRICK 36

CROSS EXAMINATION BY MS. CAMPBELL-WILLIAMS. 58

RE-DIRECT EXAMINATION BY MS. HENDRICK 65

WITNESS NO. 4: SERGEANT RYAN J. WILSON

DIRECT EXAMINATION BY MS. HENDRICK. 67

CROSS EXAMINATION BY MS. CAMPBELL-WILLIAMS. 118

RE-DIRECT EXAMINATION BY MS. HENDRICK 128

RE-CROSS EXAMINATION BY MS. CAMPBELL-WILLIAMS . . .129

WITNESS NO. 5: SERGEANT JAMES E. CHURCHILL

DIRECT EXAMINATION BY MS. HAYNES. 113

CROSS EXAMINATION BY MS. HENDRICK 117

CERTIFICATE. 132

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

E X H I B I T S

(Prior to the hearing, the
following plaintiff's exhibits
were marked for identification.)

Plaintiff's Exhibit Number One; Advice of Rights	.85
Plaintiff's Exhibit Number Two; photograph	.30
Plaintiff's Exhibit Number Three; photograph	.30
Plaintiff's Exhibit Number Four; photograph.	.34
Plaintiff's Exhibit Number Five; photograph.	.71
Plaintiff's Exhibit Number Six; photograph	.20
Plaintiff's Exhibit Number Seven; photograph	.72
Plaintiff's Exhibit Number Eight; photograph	.72
Plaintiff's Exhibit Number Nine; photograph.	.74
Plaintiff's Exhibit Number Ten; photo; not introduced. .	
Plaintiff's Exhibit Number Eleven; pre-waiver evaluation	

(Defendant's exhibits marked and
introduced into evidence without
objection.)

Defendant's Exhibit Number One; CD	.129
Defendant's Exhibit Number Two; CD	.131

P R O C E E D I N G S

February 24, 2009

MS. HENDRICK: May it please the Court?

THE COURT: Yes, ma'am.

MS. HENDRICK: Your Honor, we're here today in the interest of Nicholas Nesmith. He is present in the courtroom with his attorney, Mitzi Campbell-Williams and Joanna Haynes with the Public Defender's office. He's also present with his parents, Mr. Victor and Chrise Nesmith.

Your Honor, I'm Eden Hendrick for the State. We are here today for a waiver hearing. He is charged with one count of burglary in the first degree, kidnaping, strong arm robbery, and assault and battery of a high and aggravated nature under docket 2008-JU-40-1474.

The State is ready to proceed with the waiver hearing when the Court is ready.

THE COURT: All right. Ms. Campbell-Williams, are you ready to proceed?

MS. CAMPBELL-WILLIAMS: Ready to proceed, Your Honor.

THE COURT: All right. You may call your first witness.

MS. HENDRICK: The State calls Corporal Dechman with the Irmo Police Department.

THE COURT: Come around, please, sir.

CORPORAL DAVID DECHMAN, after having been duly

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 sworn, testified as follows:

2 CORPORAL DAVID DECHMAN - DIRECT EXAMINATION

3 BY MS. HENDRICK:

4 Q Will you state your full name for the record?

5 A David Wayne Dechman.

6 Q Corporal Dechman, where are you currently employed?

7 A Irmo Police Department.

8 Q And how long have you been employed there?

9 A Since June of '07.

10 Q And what do you do for the Irmo Police Department?

11 A At the time of the incident, I was a patrolman. I'm
12 currently a corporal. I respond to calls for police
13 assistance, enforce the traffic laws, assist citizens
14 and other agencies as needed.

15 Q And on September 14th, 2008, did you have a chance to
16 respond to a call?

17 A Yes, ma'am.

18 Q And what was that call?

19 A It was a report of a home invasion at [REDACTED]
20 [REDACTED] at approximately 10:15 p.m. that night.

21 Q And how did you respond to that call?

22 A By a Code 2, with my lights on. I was -- At the
23 time, I was at the Circle K convenience store and went
24 down Saint Andrews to Woodrow Street, turned onto
25 Royal Tower, then onto Boulters Lock, and arrived at

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 the residence.

2 Q And when you arrived at the residence, what did you
3 observe?

4 A The outside light was on and the garage door going to
5 the residence was up. There -- There was -- I'm not
6 sure if there was a vehicle there or not. I went to
7 the door, rang the doorbell several times. I got no
8 answer, at which time, I think it was a silver SUV,
9 pulled up, and it was the victim, -- an elderly lady -
10 - and her son, and he got out and identified as -- you
11 know, identified himself as the victim's son.

12 Q And did you talk to the victim's son?

13 A Yes. He stated his father was still inside at that
14 time.

15 Q Did he tell you anything of what happened?

16 A Just briefly that two men had come in and assaulted
17 his parents, and believed, at that time, to remove
18 property from the house.

19 Q Okay. What -- what did you do next? Did you enter
20 the home?

21 A Her son and I went to the house to check on his
22 father. He had a -- a bump on his head, at which time
23 I advised dispatch to request EMS arrive -- to
24 dispatch EMS to the scene.

25 Q And did you have any communication with the victim?

1 A No, ma'am. He was on the bed. He's a Alzheimer
2 patient, and at that time we were -- I was there
3 mainly to check on his medical -- his well-being.

4 Q And where was he?

5 A He was lying on his -- He was still in his bed.

6 Q He hadn't moved from the bed?

7 A No ma'am.

8 ~~Q And did you observe any injuries on him?~~

9 A He had a bump on his forehead.

10 Q Okay. And did you meet with the other victim? You
11 said there was a -- a woman?

12 A Yes, ma'am. I went back outside, at which time
13 Officer Grinstead had arrived, and she spoke mainly
14 with the female victim of the home invasion.

15 Q But when you -- You were the first officer on the
16 scene?

17 A Yes, ma'am.

18 Q And when you arrived, what was the condition of the --
19 of the female victim?

20 A She had obvious abrasions. I believe she had a
21 laceration over one of the eyes, -- I'm not sure which
22 one -- and she had marks around her neck, and just
23 abrasions on her face.

24 Q Was she still bleeding when you got there?

25 A Yes, ma'am.

1 Q Did you have any contact with her?

2 A Limited contact. But, yes, ma'am, I did speak with
3 her briefly.

4 Q Okay. And did you stay on the scene until other
5 officers arrived?

6 A Yes, ma'am.

7 Q And were you there when EMS arrived?

8 A Yes, ma'am.

9 Q And what did you do after other officers arrived on
10 the scene?

11 A Once we had the scene secured, EMS was there, the
12 victim was being treated, I went ahead and got in my
13 patrol vehicle and patrolled the area to identify any
14 foot traffic that would be in the area.

15 Q And why would you do that?

16 A Normal law enforcement procedures. You know, crimes
17 like that. There was no indication that the suspects
18 had a vehicle, and most likely, you know, they would
19 be on foot or potentially people who know them may
20 still be on foot in the area.

21 **MS. HENDRICK:** Permission to approach the witness,
22 Your Honor?

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

24 Q I want to show you what's been pre-marked as State's
25 Exhibit Six. Do you recognize this map?

1 A Yes, ma'am. It's an overview of Old Friarsgate
2 neighborhood.

3 Q And can you point out approximately to the Court where
4 the incident location would have been?

5 A Over here, on Boulters Lock, approximately one of
6 these two houses, I believe.

7 Q Okay. And, so, once you left the incident location,
8 where did you go?

9 A Mainly in that area and over here, but, mostly, the
10 Old Friarsgate area, what they call Old Friarsgate in
11 Irmo.

12 Q And did you encounter anyone when you were patrolling
13 for foot traffic?

14 A Yes, ma'am. I --

15 Q Who did you encounter first?

16 A I encountered Victor Nesmith, -- the suspect's older
17 brother -- Shaquan Gay and Quavian Bean [ph]. They
18 were walking down Charing Cross.

19 Q And did you interact with them?

20 A Yes, ma'am. I spoke to them briefly.

21 Q And have -- Did you have any other interaction on
22 this day with these same individuals?

23 A Earlier that day -- I'm not sure if I was -- I don't
24 believe I responded, but I know the Irmo Police
25 Department responded to a fight complaint out in that

1 area on Bridgewater Circle.

2 Q Okay. So, after you spoke to -- Who was it again?

3 A Victor Nesmith, Shaquan Gay and Quavian Bean [ph].

4 Q And where were they approximately on this map?

5 A On Charing Cross. I believe between Bridgewater
6 Circle and Shillingford Road.

7 Q And they said they knew nothing about this incident?

8 A Yes, ma'am.

9 Q And, so, did you let them go?

10 A Yes, ma'am.

11 Q Were they suspects at any point?

12 A No, ma'am.

13 Q Okay.

14 A I mean, there was foot traffic in the area, which is
15 what I was looking for.

16 Q Is it common for people to be walking in this area?
17 Is this a neighborhood or just busy streets?

18 A Not -- It's a neighborhood. It's a residential area.

19 Q Okay. So, after you encountered those people, what
20 did you do?

21 A We had -- I'd been informed that possibly Nicholas
22 Nesmith would be a suspect. There's an abandoned
23 house beside theirs. I believe that house is 160
24 Bridgewater Circle, and that's a house -- We've had
25 previous incidences there, and we went there to see if

1 the residence was secure because nobody lives there,
2 and the residence -- Because we thought the property
3 may be at that house. We didn't know. We went, and
4 the residence was secure, and at which time, Sergeant
5 Wilson contacted us and asked us to stay in that area.

6 Q Okay. Let's back up. You received information from
7 what was going at the crime scene that you have a
8 possible suspect at this point?

9 A Yes, ma'am.

10 Q And you received that through phone calls or through
11 the radio?

12 A Yes, ma'am.

13 Q And that suspect was named --

14 A Nicholas Nesmith.

15 Q And you didn't have a clue how they got that
16 information at that point?

17 A No, ma'am.

18 Q So, you were just going to Nicholas Nesmith's house.
19 Now, using this map, can you show the Court where
20 Nicholas Nesmith's house is?

21 A It's right here on Bridgewater Circle.

22 Q And -- and there's an abandoned house next door to
23 that?

24 A Yes, ma'am.

25 Q And how are you familiar with that location?

1 A We've had previous incidences there.

2 Q Okay. And, so, what happened -- So, you went just to
3 check out his house and see what was going on?

4 A At the -- Yes, ma'am.

5 Q And are you by yourself?

6 A No, ma'am. I was with Patrolman Hare with Irmo Police
7 Department, Corporal Dale, and I believe we had a
8 Richland County and a Lexington County deputy with us.

9 Q Okay. So, you're sitting outside of the house. What,
10 if anything, happened when you were sitting outside of
11 the house?

12 A We were out in the front yard just discussing
13 everything when we heard a noise coming from the
14 backyard of the Nesmith residence.

15 Q And what did that noise sound like?

16 A Somebody going over a chainlink fence.

17 Q Okay. And what then --

18 **THE COURT:** I'm sorry. I didn't hear what he said.

19 **MS. HENDRICK:** Repeat that.

20 **THE WITNESS:** It sounded like somebody going over a
21 chainlink fence, Your Honor.

22 A We heard the first noise, didn't know what it was, but
23 about five to ten seconds later, we heard a second
24 noise, and we realized what it was, somebody jumping
25 over a fence. The rest of the officers proceeded

- 1 behind the house. I went to my patrol car, went
2 around to Shillingford Road.
- 3 Q And where is Shillingford Road?
- 4 A Just off Bridgewater Circle. You go down Charing
5 Cross and turn right on Shillingford.
- 6 Q So, it's basically in back of the Nesmith residence?
- 7 A Yes, ma'am.
- 8 Q Okay. And who did you encounter on Shillingford Road?
- 9 A I observed Nicholas Nesmith walking down Shillingford
10 Road.
- 11 Q An was he walking by himself?
- 12 A Yes, ma'am.
- 13 Q Did he have any items on him or anything?
- 14 A No, ma'am.
- 15 Q And what was -- He's just walking down the road?
- 16 A Yes, ma'am.
- 17 Q Did you make contact with him?
- 18 A Yes, ma'am.
- 19 Q What happened when you made contact with him?
- 20 A When I pulled up, I was, like, you know, "Come here
21 for a minute. I need to talk to you." He walked up.
22 The first thing he said was, "I'm -- I made -- I did
23 a bad thing. I made a bad mistake."
- 24 Q And all you did was ask him to come here --
- 25 A Yes; ma'am.

1 Q -- at this point? And he indicated to you he made a
2 mistake?

3 A Yes, ma'am.

4 Q At that point, --

5 A A bad mistake.

6 Q A bad -- At that point, what did you do?

7 A I immediately pulled out my advising rights card. I
8 advised him of his legal rights at that time.

9 Q And is that a -- a card you carry with you normally?

10 A Yes, ma'am.

11 Q And is that the all -- the full-stated Miranda?

12 A Yes, ma'am.

13 Q All, I think it's, four or five components?

14 A Yes, ma'am.

15 Q And when you read that to him, did he seem to
16 understand those rights?

17 A Yes, ma'am.

18 Q And what did he say to you then?

19 A Once I read the rights to him, I -- "Do you understand
20 these rights as I've explained them to you?" He
21 stated, "Yes." I said, "This -- You want to talk?"
22 And he stated that he was.

23 Q And he -- And he was willing to waive those rights?

24 A Yes, ma'am.

25 Q And then what did he tell you happened?

1 A He just stated that, you know, he'd been at a party
2 previously and a lot of the other people there had
3 much nicer things than he did, and he was just -- you
4 know, he was wanting to make some money. And I asked
5 him what it was that he did, and he stated that, "You
6 know what I did." I'm like, "Well, Nick, I -- I need
7 to know what exactly you did -- you know, that you're
8 saying you did." And he never would fully admit to
9 it, you know. I was talking about that when Corporal
10 Dale arrived on the scene.

11 Q And what happened with Corporal Dale?

12 A He advised me to mirandize him. I said I already had,
13 and -- you know, stated he'd already been mirandized,
14 and at which time we decided to relocate back to his
15 house. And we went back to his house and Corporal
16 Dale began speaking to him, which is on video camera
17 in front of my car. He admitted to going over to the
18 house, to taking the items. He admitted going into
19 the house. At that time, he stated he didn't touch
20 anybody in the house.

21 Q So, he admits to you -- And when he said the house,
22 did he give you an address or did he describe -- How
23 did you know you were talking about the same incident?

24 A He -- he identified a house on Boulters Lock.

25 Q Okay. So, you knew he was talking about the incident

- 1 you had just responded to previous that night?
- 2 A Yes, ma'am.
- 3 Q Okay. And did he give you any other details about
- 4 what happened inside that house?
- 5 A No, ma'am, other than the items that they removed that
- 6 were currently on the property where he resides at.
- 7 Q Let's back up a little bit. You knew that two people
- 8 had been assaulted in that house, correct?
- 9 A Yes, ma'am.
- 10 Q Did he -- But he only admits to you going into that
- 11 house?
- 12 A Yes, ma'am.
- 13 Q So, he did not admit to assaulting anyone at this
- 14 point?
- 15 A No, ma'am.
- 16 Q So, he just says that he went into the house?
- 17 A (Nods head.)
- 18 Q Okay. Once you have him -- You relocated, you said,
- 19 from Shillingford back to his house?
- 20 A Yes, ma'am.
- 21 Q Is he in your -- Is he in your custody? Is he
- 22 handcuffed at this point?
- 23 A He has been detained. He is handcuffed.
- 24 Q And is he in the back of your police car? Corporal
- 25 Dale's car?

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 A When we were talking to him, we were standing in front
2 of my patrol car.

3 Q Okay.

4 A Once he stated where the items were that they had
5 removed from the house, -- excuse me -- we placed him
6 in the backseat of the patrol car. I stayed with him.
7 Corporal Dale and Officer Hare went and retrieved
8 several items.

9 Q And how -- how -- Did he just volunteer that
10 information? Did you ask him where the items were?
11 How did that all come about?

12 A Corporal Dale asked him.

13 Q Okay. And -- and what items -- Did you know in
14 particular what was missing from the house, or did you
15 just ask in general?

16 A I believe at that time Corporal Dale was aware -- or
17 at least they had an idea of what items were missing.
18 There was a flat-screen TV, a DVD or a VCR player and
19 some other items, as well as the victims jewelry was
20 taken.

21 Q Okay. And where did the -- the suspect indicate these
22 items were hidden?

23 A In a dog house behind his house, and the jewelry was
24 located in the attic in his house.

25 Q So, they were not just laying around the property?

- 1 A No, ma'am.
- 2 Q So he indicated to you that he had placed these --
- 3 stolen property in certain locations not to be found?
- 4 A Yes, ma'am.
- 5 Q So, if you had gone and searched the house, you might
- 6 not have located them?
- 7 A Might not have located some of the items, but...
- 8 Q And did he give you permission to enter his house?
- 9 A Yes, ma'am.
- 10 Q And did anyone else give you permission to enter the
- 11 house?
- 12 A I'm not sure if Victor did. His older brother arrived
- 13 on the scene, but he understood what was going on and
- 14 --
- 15 Q Okay. But you had consent from Victor Nesmith, I
- 16 think --
- 17 A From Nick -- From Nicholas, we had consent.
- 18 Q Okay. Who is Victor Nesmith?
- 19 A His older brother.
- 20 Q Okay. And how did he come in -- become involved in
- 21 this?
- 22 A He came up to the house as we were there with Nicholas
- 23 Nesmith. He came up wanting to know what was going
- 24 on.
- 25 Q And Victor Nesmith is the same individual you

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 encountered earlier that night with Shaquavian [sic] -
2 - Shaquan and Quavian Bean [ph]?

3 A Yes, ma'am.

4 Q Okay. Those are the -- And those -- They were not
5 suspects in this case?

6 A No, ma'am.

7 Q Okay, but what happened -- Did Nick and his -- Did
8 you allow Nick and his brother to communicate?

9 A Yes, ma'am. At -- at that time, with there being --
10 with the situation under control, with Nicholas
11 cooperating with us, you know, -- Victor seemed
12 concerned for Nick, and I -- while, you know, them --
13 them being brothers, I allowed Victor to talk to him
14 while Nick remained in my -- the back of my vehicle.

15 Q And did you hear any of this conversation?

16 A Yes, ma'am.

17 Q And what was this conversation about?

18 A Just that he'd cooperate with us, that, you know, Nick
19 could do good things with his life, but he wasn't
20 going to do it acting like this.

21 Q Did Nick admit anything to his brother?

22 A I could mostly hear what Victor was saying, you know,
23 because I didn't want to hover right over the
24 conversation. I was standing behind the patrol car,
25 and I never really could hear what Nicholas was

1 saying, but I heard most of what Victor was saying.

2 Q Okay. And did you ever at any point leave the
3 Bridgewater location?

4 A When I did, it was to transport Nicholas back to the
5 Irmo Police Department.

6 Q And you transported him?

7 A Yes, ma'am.

8 Q Did y'all talk -- Did you talk to him during that
9 transportation?

10 A Nothing particular that I recall.

11 Q Okay. And did you do anything else on this case?

12 A Waited on the police department -- for Investigator
13 Wilson to arrive. He conducted the interview with
14 Nicholas Nesmith, and then I transported him to
15 Richland County.

16 MS. HENDRICK: At this point, the State moves to enter
17 State's Exhibit Six into evidence.

18 MS. CAMPBELL-WILLIAMS: Without objection, Your Honor.

19 THE COURT: All right. Received without objection.

20 (WHEREUPON, PHOTOGRAPH WAS INTRODUCED AND
21 RECEIVED INTO EVIDENCE WITHOUT OBJECTION AS
22 STATE'S EXHIBIT NUMBER SIX.)

23 MS. HENDRICK: Beg the Court's indulgence. .

24 BY MS. HENDRICK: (resuming)

25 Q What time of day did you respond to this call?

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 A Twenty -- 10:15 at night, p.m.

2 Q That's when you responded?

3 A Yes, ma'am.

4 Q And do you know exactly what time the incident
5 occurred?

6 A We believe it was anywhere from a few minutes to maybe
7 15 minutes prior to that.

8 Q And is Friarsgate, this neighborhood, in Richland
9 County?

10 A Yes, ma'am.

11 Q And the individual that you encountered on the street,
12 being Nicholas Nesmith who admitted doing this to you,
13 do you see him in the courtroom?

14 A Yes, ma'am.

15 Q Can you please point him out for the Court?

16 A (Witness complies.) The young man wearing the light
17 blue shirt.

18 Q Okay.

19 MS. HENDRICK: I have no further questions at this time
20 for this witness. Please answer any questions that Ms.
21 Campbell-Williams may have for you.

22 THE COURT: Ms. Campbell-Williams?

23 MS. CAMPBELL-WILLIAMS: Thank you, Your Honor. May I
24 beg the Court's indulgence for -- for a moment, please?

25 THE COURT: Yes, ma'am.

1 **MS. CAMPBELL-WILLIAMS:** Good Morning, Corporal
2 Dechman.

3 Your Honor, may I approach the witness?

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

5 **CORPORAL DAVID DECHMAN - CROSS-EXAMINATION**

6 **BY MS. CAMPBELL-WILLIAMS:**

7 Q I just have a couple of questions. You said that you
8 were the first officer on the scene?

9 A Yes, ma'am.

10 Q Okay. When the other officers arrived, at that point
11 in time, that is when you went on foot patrol in the
12 area?

13 A In my patrol car, yes, ma'am.

14 Q In your -- In your patrol unit. Okay. To see if
15 there were any other individuals?

16 A Yes, ma'am.

17 Q Okay. And you came in contact with three other
18 individuals who were on foot, and that was Quavian,
19 Shaquan, and Victor Nesmith?

20 A Yes, ma'am.

21 Q You said that you were on your way to Nicholas' home.
22 You got that information from another officer, as to
23 why you should go to Nicholas Nesmith's home, that he
24 was a suspect at that -- at that point in time, --

25 A Yes, ma'am.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q -- when you were on your way?

2 A I -- When I -- When I ran into Victor, Shaquan, and
3 Quavian, there I was just patrolling the area. It was
4 after that I was advised that Nicholas Nesmith was a
5 possible suspect.

6 Q Okay. And -- and you were advised through other
7 officers --

8 A Yes, ma'am.

9 Q -- that Nicholas Nesmith was a -- was a suspect, you
10 were on your way to his home?

11 A Yes, ma'am.

12 Q You said you -- you heard noise that sounds like
13 someone was going over a chainlink fence?

14 A After we had arrived -- We went there, we checked the
15 house next to his residence, which is an unoccupied
16 residence, and Investigator Wilson asked us to stay in
17 the area. We were standing in the front yard of the
18 unoccupied residence when we heard noise in the back
19 of the Nesmith residence.

20 Q Okay. And you said you heard a noise again, and then
21 that's when you realized someone was probably going
22 over the fence?

23 A Yes, ma'am.

24 Q Okay. And when you encountered Nicholas, you didn't
25 encounter anyone else?

- 1 A No, ma'am.
- 2 Q Was there a search in the area for another suspect at
- 3 that point?
- 4 A No, ma'am, not that I -- not that I recall. No,
- 5 ma'am.
- 6 Q And when you came in contact with Nicholas at that
- 7 time, he just said I -- I made a bad mistake?
- 8 A Yes, ma'am.
- 9 Q Okay. And he was very cooperative?
- 10 A Yes, ma'am.
- 11 Q He wasn't belligerent?
- 12 A No, ma'am.
- 13 Q And he gave consent for you to search his home?
- 14 A Yes, ma'am.
- 15 Q And he told you where -- where the items were?
- 16 A Yes, ma'am.
- 17 Q Okay. And at that time, Corporal, -- You were a
- 18 patrol officer at the time?
- 19 A Yes, ma'am.
- 20 Q And when you read Nicholas the Miranda rights, at what
- 21 point in time was he actually in the police unit?
- 22 A I advised him of his rights, and he started talking to
- 23 me. I would say probably less than two minutes before
- 24 Corporal Dale, my supervisor at that time, arrived on
- 25 the scene and, you know, inquired as to what was going

1 on. I stated that he was talking to me, that he had -
2 - pretty much, was giving a confession. He said,
3 "Make sure that he's been Mirandized." I said, "He's
4 already been Mirandized." And at that time, we went
5 ahead -- we placed him in the back of my patrol car
6 and went over to in front of his residence where
7 Corporal Dale took over the questioning.

8 Q Okay. And you escorted -- And he was escorted in the
9 police unit back to his residence?

10 A Yes, ma'am.

11 Q And at that time, that's when his brother was there
12 actually talking to him?

13 A His brother arrived later.

14 Q He arrived later. Was there no one else in the
15 residence except Nicholas and his brother?

16 A At the -- There was a D. -- D.J. Mayweather walked
17 up with Victor Nesmith. After Corporal Dale had
18 questioned Nicholas and Nicholas said -- stated that
19 the items were there at the residence, when they were
20 going -- arriving there, getting ready to go get it,
21 is when I believe Victor and D.J. Mayweather walked up
22 and Victor wanted to know what was going on, and we
23 explained it to him the best that we could.

24 Q Okay. And Nicholas is the one who -- who led you to
25 those items?

1 A Yes, ma'am.

2 Q Did you say he appeared to be very remorseful at that
3 time, when he says, "You know what I did. I did a
4 very bad thing."?

5 A Yes, ma'am.

6 MS. CAMPBELL-WILLIAMS: All right. No more questions
7 at this time, Your Honor.

8 THE COURT: Anything --

9 MS. HENDRICK: Very briefly.

10 CORPORAL DAVID DECHMAN - REDIRECT EXAMINATION

11 BY MS. HENDRICK:

12 Q What was the reason Nicholas Nesmith gave you for
13 doing this bad thing?

14 A He was wanting money to buy some nice things for
15 himself.

16 Q And did he seem, at this point, coherent?

17 A Yes, ma'am.

18 Q He didn't seem agitated in any way?

19 A No, ma'am.

20 Q But he was upset about what happened?

21 A Yes, ma'am.

22 Q But he was able to maintain composure?

23 A Yes, ma'am.

24 MS. HENDRICK: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q Oh. Was he placed in the handcuffs and then put in
2 the back of your patrol car after you read him his
3 Miranda rights?

4 A I believe I -- I'm not sure. I believe I -- Once he
5 made the statement he'd done a bad thing, I -- I
6 advised dispatch I had one detained, at which time I
7 placed the handcuffs on him and immediately advised
8 him of his rights.

9 Q Okay. So, you cut off all communications when you
10 advised him of his rights?

11 A Yes, ma'am.

12 Q And he understood those rights?

13 A Yes. To my -- Yes, ma'am.

14 MS. HENDRICK: Okay. No further questions.

15 THE COURT: Ms. Campbell-Williams -- -Williams?

16 MS. CAMPBELL-WILLIAMS: We -- we don't, Your Honor.

17 THE COURT: All right. You can step down.

18 MS. HENDRICK: Your Honor, may this witness be excused?

19 THE COURT: Any objection to this witness being
20 excused?

21 MS. CAMPBELL-WILLIAMS: No objection, Your Honor.

22 THE COURT: All right. You may be excused, sir.

23 Thank you.

24 MS. HENDRICK: The State calls Danielle Lambert.

25 DANIELLE BLEW, after having been duly sworn,

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 testified as follows:

2 THE COURT: Have a seat, please. Speak loudly and
3 clearly.

4 DANIELLE BLEW - EXAMINATION

5 BY MS. HENDRICK:

6 Q I think I called you by your maiden name. Will you
7 state your full name for the record?

8 A ~~It is now Danielle Nichole Blew.~~

9 Q Blew. Okay.

10 THE COURT: Blew?

11 THE WITNESS: B-l-e-w.

12 Q Ms. Blew, where are you currently employed?

13 A At Lexington County Emergency Medical Services.

14 Q And how long have you been employed there?

15 A I have been employee at Lexington County EMS for a
16 little over three years now.

17 Q And were you employed with any other EMS services
18 before then?

19 A Yes. I was employed with Palmetto Ambulance Services
20 for -- for approximately one year.

21 Q So, you've been doing this for about four years?

22 A A little over four years, going on five now.

23 Q Okay. Can you explain to the Court a little bit about
24 your training that you go through to be an EMS
25 responder?

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 A I am -- I am now an EMT intermediate. I have gone
2 through two different certifications. The first one,
3 is approximately six months, where you learn basic
4 medical skills and how to treat different illnesses
5 and injuries. The second one, gives you a little more
6 advanced skills. It allows me to start IVs and to do
7 sudden advance airway skills, --

8 Q Okay.

9 A -- and that's it.

10 Q Did you have an occasion to respond to a call on
11 September 14th, 2008?

12 A I did.

13 Q And how did that call come to you?

14 A It was dispatched through Lexington County emergency
15 dispatch and came across our radio.

16 Q And when you arrived at the incident location, what
17 did you observe?

18 A When we first got there, we noticed several patrol
19 cars on scene, Irmo Police Department. We met with
20 the Irmo police -- police officers outside of the
21 residence where we came -- we saw the first victim, --

22 Q Okay.

23 A -- Ms. Bennett.

24 Q Okay. And the first victim was a female?

25 A Yes.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q Okay. Can you describe her condition to the Court?

2 A She had -- Ms. Bennett had a contusion -- contusion
3 right around her left eye and up into he forehead a
4 little bit, and she was -- I think, at that time, the
5 bleeding had stopped, but she had blood down her face.

6 MS. HENDRICK: Permission to approach the witness, --

7 THE COURT: Yes, ma'am.

8 MS. HENDRICK: -- Your Honor?

9 Q I'm going to show you what's been marked the State's
10 Exhibit Two and Three. Do you recognize these
11 pictures?

12 A Yes.

13 Q And who is this in these pictures?

14 A This is Ms. Hazel Bennett.

15 Q And is this a fair and accurate representation of how
16 she looked on that night?

17 A Yes.

18 Q And is -- Are these taken inside your ambulance?

19 A Yes, it is.

20 MS. HENDRICK: Your Honor, we now move to enter
21 State's Two and Three into evidence.

22 MS. CAMPBELL-WILLIAMS: No objection, Your Honor.

23 THE COURT: All right. Received without objection.

24 (WHEREUPON, PHOTOGRAPHS WERE INTRODUCED AND
25 RECEIVED INTO EVIDENCE WITHOUT OBJECTION AS

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

STATES'S EXHIBIT NUMBER TWO AND THREE.)

BY MS. HENDRICK: (resuming)

Q Using these pictures, can you describe to the Court more in detail her -- her injuries?

A Yes. She has a -- She has a laceration just above her left eye. Also, it looks like she possibly had a small laceration to her lip.

Q Okay. And did she mention to you any other injuries?

A I want to say that she actually complained of left side -- left side pain from where she was drug [sic] out of the bed.

Q That was my next question. Did she indicate to you how these injuries occurred?

A She stated that she was hit in the face and then drug [sic] out of her bed where she fell on her left side, and then -- the patient actually said that she was sat on by the assailant and was hit in the face again.

Q So, she was attacked -- She said she was hit two separate times?

A Yes, ma'am.

Q And did -- What did you do with this patient? Did you clean her up, or what kind of medical procedures did you perform on her?

A Because the bleeding had stopped, we didn't do any bandaging because the -- the hospital's pretty much

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

- 1 just going to take it off as soon as we get there, so
2 she didn't need any bleeding control. So, we pretty
3 much just kept her comfortable, cleaned her up a
4 little bit, not too much, just because we wanted the
5 hospital to be able to see the extent of her injuries,
6 and in case they needed any more pictures for
7 evidence, we didn't want to alter her too much.
- 8 Q But, it was clear to you she'd been assaulted?
- 9 A Yes, ma'am.
- 10 Q But, she was awake?
- 11 A Oh, yeah. She was --
- 12 Q She was coherent?
- 13 A -- fully conscience and alert and oriented.
- 14 Q Okay, she was. And was there another victim?
- 15 A Yes, ma'am.
- 16 Q And who was this other victim?
- 17 A Mr. Charles Bennett.
- 18 Q And what was his condition?
- 19 A Mr. Bennett had a contusion on the left side of his
20 forehead, approximately baseball-sized.
- 21 Q Can you -- you describe it?
- 22 A That was pretty much it. He really wasn't complaining
23 of anything. He -- He had -- He does have
24 Alzheimer's, and he --
- 25 Q How did you know he had Alzheimer's? Did someone

1 inform you of that?

2 A I actually think Ms. Hazel had told us before we went
3 -- we went in, and, also, the -- the patient's son was
4 on scene.

5 Q And when -- And when you arrived on scene, where was
6 Ms. Bennett?

7 A She was outside in a -- in a vehicle.

8 Q And where was Mr. Bennett?

9 A He was inside in his bed.

10 Q So, you actually had to enter the home to get him out
11 of bed?

12 A Yes, ma'am.

13 Q And when you went into the home, did you touch
14 anything?

15 A No, ma'am.

16 Q Okay. And how did you -- Did you put him on a
17 stretcher?

18 A We actually -- Because he insisted that he didn't
19 want to go to the hospital, we escorted him out.

20 Q Okay.

21 A He was able to walk. He just...

22 Q Was he able to tell you anything about what happened?

23 A Not really. He knew that he wanted to go to sleep and
24 that possibly had been hit, but --

25 Q Okay.

1 A -- he wasn't too concerned with his injuries.

2 Q I'm going to show you what's been marked as State's
3 Exhibit Four. Do you recognize this? Well, who is
4 this?

5 A That is Mr. Bennett.

6 Q And are those his injuries right here?

7 A That is.

8 Q Is this a fair and accurate representation of Mr.
9 Bennett's injuries on that day?

10 A Yes.

11 MS. HENDRICK: State moves to enter State's Exhibit
12 Four into evidence.

13 MS. CAMPBELL-WILLIAMS: Without objection, --

14 THE COURT: All right.

15 MS. CAMPBELL-WILLIAMS: -- Your Honor.

16 THE COURT: Received without objection.

17 (WHEREUPON, PHOTOGRAPH WAS INTRODUCED AND
18 RECEIVED INTO EVIDENCE WITHOUT OBJECTION AS
19 STATES'S EXHIBIT NUMBER FOUR.)

20 Q And this picture, you've said -- you've said -- Is
21 this area swollen?

22 A I think it was a little bit, but, surprisingly, not
23 very much at the time. I'm not sure what it was at
24 the hospital.

25 Q Okay. But, these were basically the injuries that

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 these people sustained?

2 A That's all that I had documented that was complained
3 of.

4 Q Okay. And were you aware of any surgeries that Ms.
5 Bennett had? Did she tell you anything?

6 A No, ma'am.

7 MS. HENDRICK: Beg the Court's indulgence.

8 THE COURT: Yes, ma'am.

9 MS. HENDRICK: I have no further questions. Just
10 answer any questions that Ms. Campbell-Williams may have
11 for you.

12 THE COURT: Ms. Campbell-Williams?

13 MS. CAMPBELL-WILLIAMS: Beg the Court's indulgence,
14 just for a moment, Your Honor.

15 No questions of this witness, Your Honor.

16 THE COURT: All right. You can step down. Thank you,
17 ma'am.

18 THE WITNESS: Thank you.

19 MS. HENDRICK: May this witness be excused?

20 THE COURT: Any objection to this witness being
21 excused?

22 MS. CAMPBELL-WILLIAMS: Without objection, Your Honor.

23 THE COURT: You may be excused.

24 THE WITNESS: Thank you.

25 MS. HENDRICK: The State calls Corporal Grinstead.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 CORPORAL ANDREA GRINSTEAD, after having been duly
2 sworn, testified as follows:

3 CORPORAL ANDREA GRINSTEAD - DIRECT EXAMINATION

4 BY MS. HENDRICK:

5 Q Please state your name for the record.

6 A Andrea Ashley Grinstead.

7 Q Where are you currently employed?

8 A Irmo Police Department.

9 Q And how long have you been employed there?

10 A Since December 2006.

11 Q And what do you do for Irmo PD?

12 A I'm just a basic patrol officer responding to calls
13 for service, traffic enforcement, investigating
14 collisions, assisting other agencies, just your normal
15 routine patrol functions.

16 Q Okay. And did you have an occasion to respond to a
17 call on September 14th, 2008?

18 A Yes, ma'am.

19 Q And where -- where was this call?

20 A [REDACTED]

21 Q And what was this call?

22 A It came out as a home invasion.

23 Q And where were you when this call came out?

24 A I was also at the Circle K. We had stopped just to
25 meet up, and that's when it came out. We both

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 happened to be in the same place at the same time.

2 Q And you said, "we," who are you referring --

3 A I'm sorry.

4 Q -- to?

5 A Corporal Dechman --

6 Q Okay.

7 A -- and myself.

8 Q And when you and -- But Corporal Dechman got to the
9 incident location before you?

10 A He did.

11 Q Okay. And when you got there, what did -- what did
12 you observe when you got there?

13 A Well, I took a different way than Corporal Dechman
14 did. I wanted to come in off of the other side of
15 Boulsters Lock to make sure, you know, there wasn't
16 anybody fleeing from the scene. So, of course, he
17 arrived on scene before I did. When I got there, I
18 observed the victim, Ms. Hazel Bennett, sitting in the
19 driver's seat of a silver SUV.

20 Q And did you make contact with Ms. Bennett?

21 A Yes, ma'am. I immediately made contact with Ms.
22 Bennett.

23 Q And it was mainly your role on the scene to find out
24 what happened from her?

25 A Yes, ma'am. Initially, in making contact with her, I

1 wanted to get a physical description of both suspects.
2 That way, we could put that description out over the
3 radio, BOLO it to all agencies that are around us.

4 Q Let me you back up. How did you know there were two
5 suspects?

6 A Oh. I'm sorry. I spoke with Ms. Bennett and she told
7 me there were two suspects.

8 Q And so the first thing you got out from her is the
9 description?

10 A Yes, ma'am.

11 MS. HENDRICK: Permission to approach the witness?

12 THE COURT: Yes, ma'am.

13 Q And can you tell me what was the description she gave
14 you of these two suspects?

15 A The description she gave me was one was a white male,
16 five-ten, --

17 Q Hold on. I'm going to write this down, please.

18 A Okay.

19 Q White male?

20 A Mm-hmm.

21 Q Five- --

22 A Ten. About 165, no shirt, blue jeans and brown hair
23 in a crewcut style.

24 Q Anything else about him?

25 A Yes, ma'am. She stated that he had a bandanna around

1 his mouth.

2 Q And what did the other suspect look like?

3 A She stated he was a black male, that he was shorter
4 than the white male, maybe five-six or five-seven, --

5 Q Mm-hmm.

6 A -- that he was stockier than the white male, and she
7 also stated that he would probably weigh at least as
8 much, if not more, than the white male.

9 Q Okay. Did she give you a clothing --

10 A Yes, ma'am.

11 Q -- description?

12 A That the black male was wearing a grey hoodie and a
13 bandanna, and she stated the bandanna was green with
14 like a black Halloween design on it. That's what she
15 stated at the time.

16 Q And did she remember anything else particularly about
17 the white male suspect?

18 A Yes, ma'am. I was speaking with her, and I -- I was
19 asking her, you know, did she -- did any of the
20 suspects seem familiar to her, if maybe she'd seen
21 them before, and that's when she stated that the
22 reason that she was able to describe the white male so
23 much was because he reminded her of her oldest
24 grandson that lived in Myrtle Beach.

25 Q Okay. And when she gives you the description of what

1 happened to her inside the home, did she refer to them
2 as the white male and the black male?

3 A Yes, ma'am.

4 Q And, so, she makes a clear distinction about who does
5 what in her --

6 A Yes, ma'am.

7 Q -- in her -- her telling you of what happen?

8 A Yes, ma'am.

9 Q And she was clear that they are two separate people
10 and she was able to give a good description of both of
11 them?

12 A Yes, ma'am.

13 Q Okay. And when you were talking to Ms. Bennett, what
14 is her demeanor?

15 A She is very -- She's distraught. You know, it was
16 really hard -- Normally, in situations like this, we
17 would ask our victim to write a statement for us, but
18 with her, the condition that she was in, there was no
19 way that -- I knew I wasn't going to get her to be
20 able to write down anything for me, so that's why we
21 had to do it on a -- on digital recorder.

22 Q She was upset?

23 A Yeah, she was very upset.

24 Q But she was clear in her thinking? She knew --

25 A Yes, ma'am.

1 Q There was no question in her mind about what happened
2 to her?

3 A No, ma'am. She knew exactly what happened to her.

4 Q Okay. So, can you describe to the Court about what
5 she said had happened to her?

6 A She stated that she and her husband had gone to bed,
7 that she was watching TV and reading a book, you know,
8 ~~in between doing both of those things, and her husband~~

9 was -- I believe she stated that he was halfway
10 asleep. And she stated the next thing she knew,
11 someone jumped on top of her and began pounding her in
12 her head and her face. And when I asked her how were
13 they hitting her, she stated it was closed-fist. So,
14 they were punching her on her face and around her
15 head.

16 Q And this is just one person on top of her?

17 A One person on top of her. And -- And then the other
18 one started hitting her husband. So, they attacked
19 them at the same time.

20 Q Was she able to tell you if it was the white male or
21 the black male that attacked her?

22 A The black male, she stated.

23 Q Okay. And after he began -- He jumped -- physically
24 jumped on the bed --

25 A Mm-hmm. Yes, --

1 Q -- and started --
2 A -- ma'am.
3 Q -- punching her?
4 A Yes, ma'am. She stated that she began to scream, --
5 Q Mm-hmm.
6 A -- and she stated that the black male pulled her out
7 the bed and threw her on the floor, and at that point,
8 she stated that the black male just kept hitting her
9 and hitting her and hitting her, and then the white
10 male began to beg the black male to stop hitting her,
11 stop hitting her. And she did state that the white
12 male seemed more sympathetic to her condition because
13 she stated the white male was telling the black guy
14 just please stop hitting her, just stop hitting her,
15 and the white male even said to her, "If he stops
16 hitting you, will you be quiet?" And that's when she
17 told him, "I'll do whatever you want me to do, just
18 please stop hitting me."
19 Q And then what happened?
20 A Well, at that point, they were -- She stated that she
21 tried to move and she noticed that the blood from her
22 -- the wounds that she sustained to her face were
23 dripping down her nightgown, so she wanted to get a
24 towel. She tried to go in the bathroom to get a
25 towel, and the white male asked her, "What are you

1 doing?" She's like -- and she stated, "Well, I just
2 need to go get a towel." Well, he handed her a towel,
3 and that's when she stated that -- you know, that he
4 seemed really sympathetic towards her condition. Then
5 she said that the white male asked her, "Where's your
6 money?" And she told him she really didn't have any.
7 She had \$20 in her wallet in the kitchen, and she was
8 just letting them know -- Because they had kept
9 asking if she had any money, if her husband had any
10 money.

11 Q And she -- Did she -- So, after they commenced
12 basically attacking her, what did -- what did these
13 two individuals do in the house?

14 A They began to go around her house, and she said she
15 could hear them rummaging through the house.

16 Q And did they ask her for anything in particular
17 besides money?

18 A They asked her about jewelry. She stated that they
19 kept going through the house and the black male came
20 in and said, "Do you have any jewelry?" And she told
21 them that she had some costume jewelry and she showed
22 him where the jewelry chest was.

23 Q And was there anything else in the jewelry chest that
24 they found -- they asked her about?

25 A Not in the jewelry chest, but I believe they found

1 some bullets and a magazine to a gun?

2 Q Did they ask her about a gun?

3 A Yes, ma'am. They asked her where the gun was, and she
4 stated that she didn't have a gun, and then they asked
5 her, "Well, why do you have bullets and a clip?" I
6 believe is what they called it, a clip or a magazine
7 to the weapon. And she stated that she told them when

8 her husband was diagnosed with Alzheimer's disease,

9 she had all the guns -- she had her son come in and
10 take -- remove all of the weapons from the house.

11 Q Did she say who was asking about the gun, the white or
12 the black male?

13 A I couldn't -- It --

14 Q Okay.

15 A It doesn't --

16 Q But, clearly, --

17 A -- specify.

18 Q -- they wanted a gun --

19 A Yes.

20 Q -- out of the house?

21 A Yes. Yes, ma'am.

22 Q Okay. And then after they ransacked the house, what
23 did they do? What did she say -- What did she tell
24 you they did?

25 A Well, at first, she was really -- She stated that she

1 was really scared because at one point she thought
2 they killed her dog --

3 Q Okay.

4 A -- because the -- because -- She stated she was
5 really surprised that the dog didn't bark. The dog
6 did not start barking until they actually jumped on
7 both of them and -- and she began screaming. And she
8 ~~stated that when they were in another room, the black~~
9 male asked her, "Is there any way you can get your dog
10 to stop barking?" She was, like, "No. I can't -- I
11 can't make him stop barking." And she stated the dog
12 and the black male were in another room and she heard
13 the dog just suddenly stop barking, and at that point,
14 she was terrified that they had killed her dog.

15 Q But, to your knowledge, that didn't happen?

16 A No, the dog was fine.

17 Q But she was scared?

18 A But she was -- Yeah, she was very --

19 Q Okay.

20 A -- upset.

21 Q After -- I think -- I guess they eventually left the
22 house?

23 A Yes, ma'am.

24 Q And when they -- Where -- where was Ms. Bennett at
25 this point? Was she in her bed?

1 A She was -- She was -- No. She was on the floor and
2 her husband was in the bed.

3 Q Okay. And what happened next?

4 A She stated that she waited for a while, until she
5 didn't hear them anymore, and she didn't -- she wasn't
6 sure if they would come back or not, but she asked her
7 husband to hand her the cordless phone -- or -- or a
8 phone, and the phone didn't work. So, at that point,
9 she wasn't sure whether somebody cut her phone lines
10 or if they did anything to the phone. So, she said --
11 Then she stated that she had to -- and her words
12 exactly were -- she had to scoot on her butt to get
13 into the bathroom. Because she told me that she had
14 knee surgery a few weeks prior to this, so her being
15 thrown all -- you know, drug [sic] out of the bed,
16 thrown on the ground, aggravated her knee surgery.
17 That's why she had to kind of scoot into the bathroom.
18 Well, her cell phone was missing, and at that point,
19 you know, with no way to contact 9-1-1 from her own
20 house, she located the keys to her vehicle and was
21 hoping, she said, that when she got out to the garage
22 that her vehicle wasn't taken. And at that point, she
23 made the decision to leave her husband there at the
24 home while she went to her son's house, Charles
25 Bennett, Jr. He lives at [REDACTED] which is

1 in the New Friarsgate subdivision, which is fairly
2 close. But she went and got her son and had her son
3 call for help, and she brought him back to the
4 location.

5 Q So she left her husband at home really -- not really
6 knowing what was going to --

7 A Yes, ma'am.

8 Q -- happen to him? And she conveyed her fear about
9 that to you?

10 A Yes, ma'am. Yes, ma'am.

11 Q Okay. And -- and you're at the scene and your getting
12 just basically a statement from her, but it's an oral
13 statement?

14 A Yes, ma'am.

15 Q And did you record this?

16 A Yes, ma'am.

17 Q Okay. And how did you record this?

18 A I record -- It was a digital recorder.

19 Q Okay. And so you made sure you got a very detailed
20 account of what happened?

21 A Yes, ma'am.

22 Q And then did you actually take these pictures of --
23 are entered -- entered into evidence?

24 A Yes, ma'am.

25 Q And did you remember anything else about their

1 injuries that are not recorded in these pictures to
2 describe the injuries?

3 A I just remember that she had -- I think you can see
4 it, but -- just the dried blood around her lip, the --
5 the contusion above her left eye, and, like I said,
6 the -- the blood on the nightgown. And, also, -- I
7 don't know if you can tell in her pictures or not, but
8 ~~her left cheek had started to swell, and for about --~~

9 where she was hit. Like, -- I think that's it right
10 there. (Witness points to picture.) Yeah. And --
11 and it started to swell up from the assault, and she
12 said that her left hand felt swollen and stiff.

13 Q Okay. And after you spoke to her, were you -- Did
14 you speak -- Where did you speak to her? Was she in
15 her car or --

16 A Yeah. I let her remain in the vehicle.

17 Q Okay. And then -- Were you there when she was
18 brought into the ambulance?

19 A Yes, ma'am.

20 Q And did you talk to her through all of that?

21 A Well, I -- When -- As soon as the EMS personnel
22 arrived, I went ahead and gave them a brief of what
23 had happened, who are victims were, --

24 Q Okay.

25 A -- and I just -- We -- Because we actually had to go

1 in the house and convince Mr. Bennett to come out into
2 the ambulance because he didn't want to come.

3 Q And did you speak to Mr. Bennett?

4 A Yes, ma'am. I did speak to Mr. Bennett.

5 Q And what did Mr. Bennett tell you?

6 A All he could really tell me was, "They hit me." He
7 just kept stating over that, "They hit me."

8 Q Okay.

9 A That's all he could tell me. Which, with his
10 Alzheimer's condition, I -- we knew, you know, that we
11 probably weren't going to get very much from him.

12 Q And once -- once they had left -- in EMS, were you
13 still on the scene?

14 A Yes, ma'am. My job was to maintain the perimeter, to
15 keep anybody from coming in while Sergeant Wilson was
16 processing the scene.

17 Q And, so, other officers were inside?

18 A Just Sergeant Wilson, because, at that point, we had
19 everybody else on the road.

20 Q And were you communicating with other officers at this
21 point?

22 A They were communicating amongst each other, you know,
23 who was where, who was going to check this place out.

24 Q But, at this point, right after you've interviewed Ms.
25 Bennett, you have no suspects?

1 A No, we just have a description.

2 Q Would you -- You just have this description?

3 A Yes, ma'am. That's all we had.

4 Q Okay. And while you're maintaining the perimeter, did
5 anything else happen?

6 A Yes, ma'am. While standing outside, I believe I was
7 standing with the victim's son, and there were a

8 couple other people, neighbors that were there, a

9 female hysterically approaches. I mean, she comes

10 running up to us, and the best way I can describe it

11 is she is freaking out.

12 Q Okay.

13 A I mean, I hate to use that term, but, I mean, she's,

14 you know -- And -- and she comes up to me, and -- and

15 the first words out of her mouth is, "Is this the

16 house where the old people got beat up and a TV got

17 taken?" And at that point, you know, nobody who does

18 not have first-hand knowledge of what went on in that

19 house is going to know that a TV is missing. And at

20 that point, you know, I -- I asked her, "How do you

21 know that a TV's -- How do you know what happened

22 here?" And that's when she stated -- she started to

23 tell me that she learned from her brother who had

24 committed the crime. So, at that point, we stopped

25 everything. I went ahead and mirandized her and took

1 her and put her in my patrol vehicle so I could speak
2 with her about it. But the female that approached the
3 scene -- I'm sorry -- was Jessica Mayweather.

4 Q Okay. And who is her brother?

5 A Her brother is D.J. Mayweather.

6 Q Okay. And she said she learned from her brother about
7 -- that he did it, or that someone else did it?

8 A That Nick and G-boy, which is Greg Hardy, --

9 Q Okay.

10 A -- committed the crime.

11 Q So, let's -- let's back up. She approaches you
12 hysterically knowing details of what happened inside
13 this house that no one else other than law enforcement
14 would know, --

15 A Right.

16 Q -- other than people involved?

17 A Yes, ma'am.

18 Q At this point, you realize she's got some valuable
19 information?

20 A Yes, ma'am.

21 Q So, you bring her in your car?

22 A Yes, ma'am.

23 Q You mirandize her?

24 A Yes, ma'am.

25 Q And then -- And then you calm her down a little bit,

1 and what valuable information does she give you?

2 A She stated that she and her boyfriend -- which her
3 boyfriend is Victor Nesmith, which is Nick's older
4 brother.

5 Q Who also lives in this house --

6 A Yes.

7 Q -- very close to the incident location?

8 A Yes.

9 Q Okay.

10 A She stated that she and her boyfriend were sitting
11 over at her house and D.J., which is her brother, came
12 over, -- and I guess they saw the ambulance come by to
13 pick up the victims -- and they were -- she and her
14 boyfriend, Victor, were wondering, you know, what
15 happened, and that's when D.J. stated that Nick
16 Nesmith and Greg Hardy robbed an old couple and took a
17 TV from them.

18 Q Okay. So, he just flat out tells them?

19 A Yes.

20 Q And, so, as soon as she learns this information, she
21 runs over to tell y'all?

22 A Well, she said that she thought about it for a little
23 bit because, you know, her boyfriend is his older
24 brother, but at the same time, she felt like she could
25 not go to sleep that night knowing what had happened

1 to these people and knowing who did it and not, you
2 know, saying anything.

3 Q And at any point, did her brother actually come onto
4 the incident location?

5 A Yes, ma'am. He was accompanied by his mother.

6 Q Okay. And what happened with D.J. Merriweather [sic]
7 arrived?

8 A We spoke to D.J., and at first, you know, he -- he was
9 afraid to tell us what happened, but he confirmed what
10 Jessica, his sister, had told us, and that it was all
11 member -- I mean, that the -- Nick and Greg were
12 members of the M.O.B., which is a Blood's -- it's a
13 section of the Blood's gang, and --

14 Q What does M.O.B. stand for?

15 A It's -- If you wouldn't have asked me that, I could
16 have --

17 Q Okay.

18 A -- told you.

19 Q But how do you know --

20 A I'm sorry.

21 Q -- it's a -- it's -- How do you know it relates to
22 the Blood gang?

23 A Because when Jessica was asking D.J. if -- if what
24 happened was true, she said that he put it on the
25 five, which is their sort of -- way of saying I --

1 honest -- I swear -- It's kind of like putting your
2 hand on the bible. To the M.O.B., putting it on the
3 five is that's the God's --

4 Q But you've had --

5 A -- honest truth.

6 Q -- prior training about gangs and things. You --

7 A Absolutely.

8 Q Okay.

9 A We --

10 Q This isn't --

11 A I'm sorry.

12 Q -- the first time you're hearing all of this?

13 A Yes, ma'am. And we knew that all of these people were
14 associated with this gang.

15 Q Okay. So, you -- you knew that --

16 A Yes, ma'am.

17 Q Okay. So, once D.J. basically corroborates the story
18 Jessica says, at this point, do you have a suspect?

19 A Yes, ma'am. Well, as soon as Jessica gave me the two
20 names that she gave me, that's when I -- I can't
21 remember if I got on the radio or my phone, but it was
22 -- I was calling the investigator saying this is who
23 she's saying did it. We put it out to all the other
24 officers that we have information that these two
25 people are going to be our suspects.

- 1 Q And you knew, when she gives you those names, where
2 these individuals lived?
- 3 A We knew where Nick lived. Greg had just -- We just
4 recently started dealing with the other suspect.
- 5 Q And, in fact, had you encountered these individuals
6 earlier that day?
- 7 A Yes, ma'am, we did.
- 8 Q And where did you encounter them?
- 9 A We encountered them on Bridgewater Circle.
- 10 Q And who lives at Bridgewater Circle?
- 11 A The -- Nick Nesmith.
- 12 Q And that would be -- Which house? Can you tell based
13 on these maps?
- 14 A It's one of these --
- 15 Q Okay.
- 16 A -- two houses right --
- 17 Q And that again -- Do the victims have a pool? Are
18 you aware of that? Is that the -- their house --
- 19 A I don't --
- 20 Q -- with a pool?
- 21 A -- believe they have a --
- 22 Q Okay.
- 23 A -- pool.
- 24 Q It's -- it's going to be next to the pool?
- 25 A (No response.)

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q Okay.

2 A It --

3 Q So, explain to the Court why you had responded to the
4 Nesmith residence -- or the abandoned house next to
5 the Nesmith residence earlier that day.

6 A Well, like I said, we are very familiar with the --
7 with the gang activity in that area of Old Friarsgate,
8 and as soon as we received a fight-in-progress call,

9 we -- everybody responded. And when we got there, we
10 IDed Greg Hardy and Nick Nesmith along with several
11 other regulars of the --

12 Q And who are they?

13 A -- M.O.B. gang. I don't have that -- It's in my
14 report.

15 Q You don't remember who -- You don't remember off the
16 top of your head who else was there?

17 A Not off the top of my --

18 Q Okay.

19 A -- head.

20 Q Well, when you responded to that earlier fight call,
21 what was going on?

22 A Well, they stated -- the -- the -- Nick and Greg and
23 their friends stated that they were just horseplaying
24 around in the road. And we -- we asked them, well, if
25 you were just horseplaying, why did a neighbor feel

1 the need to call it in as a fight in progress? And I

2 -- So, -- But, that's all we got from --

3 Q Okay.

4 A -- that.

5 Q So you let that fight go on?

6 A Well, we -- But we did make a document --

7 Q A document.

8 A -- and report of --

9 Q But do you know --

10 A -- the incident.

11 Q Do you know what time that occurred?

12 A It was, maybe, two to three hours prior. It wasn't
13 dark yet. I do remember that. It was -- I believe
14 it was still daylight.

15 Q It was still daylight, with the prior incident, --

16 A Mm-hmm.

17 Q -- less than a mile -- less than --

18 A Less than a block.

19 Q -- less than a block --

20 A It's --

21 Q -- away from --

22 A -- one street over.

23 Q Okay. And the same people were involved in that fight
24 in progress -- were Gregory Hardy and Nick Nesmith?

25 A Yes, ma'am.

1 Q And -- So, you've seen Gregory Hardy and Nick
2 Nesmith? Do you know what they look like?

3 A Yes, ma'am.

4 Q Do they match the description that Ms. Hazel Bennett
5 gave?

6 A Yes, ma'am.

7 Q Okay.

8 MS. HENDRICK: Beg the Court's indulgence.

9 I have no further questions at this time. You can
10 answer any questions that Ms. Campbell-Williams has for
11 you.

12 THE COURT: Ms. Campbell-Williams?

13 MS. CAMPBELL-WILLIAMS: I beg the Court's indulgence
14 just for moment, --

15 THE COURT: Yes, ma'am.

16 MS. CAMPBELL-WILLIAMS: -- Your Honor.

17 Your Honor, may I approach the witness, please?

18 THE COURT: Yes, ma'am.

19 CORPORAL ANDREA GRINSTEAD - CROSS EXAMINATION

20 BY MS. CAMPBELL-WILLIAMS:

21 Q Good morning, Corporal Grinstead. I just have a --
22 just a few questions for you.

23 When you arrived on the scene with the victims, the
24 first person you spoke to -- you said the first person
25 you spoke with was Ms. Bennett?

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

- 1 A Yes, ma'am.
- 2 Q Okay. And you say she was a little distraught, but
3 she could give you a description of the individuals?
- 4 A Yes, ma'am.
- 5 Q Okay. And this is a description here. Based on the
6 information that you have -- the information that you
7 now have, is Gregory a white male or a black male?
- 8 A Gregory is a black male, however, he's very light-
9 skinned.
- 10 Q Okay. And when this incident -- when this incident
11 occurred at the home, did Ms. Bennett tell you who was
12 the first one to leave the room?
- 13 A I don't -- I don't believe so.
- 14 Q And when you said that they said, "Where's your gun?"
15 Wasn't that Gregory who said they --
- 16 A She --
- 17 Q -- where was the gun?
- 18 A I'm sorry.
- 19 Q I'm sorry. Go ahead.
- 20 A She stated -- She couldn't tell me which one had said
21 it. In her statement, she just said they asked where
22 the gun was.
- 23 Q Okay. And in her statement, wasn't Gregory -- was the
24 one who was asking for the bullets?
- 25 A In her statement, she states they asked. She never

1 distinguished which one; it was just they.

2 Q Okay. And in her statement, was it Gregory who was
3 doing all the talking and just kind of took control of
4 -- of the incident, of what was going on in that room
5 at that time?

6 A (No response.)

7 Q Was he the one who was doing all the talking and took
8 control?

9 A It -- I'm not sure, because she really -- There's
10 some things that she could distinguish between who
11 said what, but it just happened so fast and -- and all
12 at one time. The -- the only thing that she could
13 really remember was that Gregory was asking the other
14 one not to keep hitting her, to please stop hitting
15 her.

16 Q Okay. And at the time this -- this incident occurred,
17 the -- the home phone, was it in proper working order?

18 A I'm not -- I'm not sure.

19 Q Okay. So, they -- they --

20 A I believe -- I don't -- I don't think -- I'm not --
21 She just thought that they had cut the phone lines,
22 but her phone wasn't working. She could not dial out
23 on it.

24 Q And at that time, there was -- You said a female
25 approaches, and that was Jessica --

1 A Mayweather.

2 Q -- Merriweather [sic]? Mm-hmm. And I believe you
3 stated that she just started blurting out some
4 information; "Is this the house --

5 A Yes, ma'am.

6 Q -- of where the television was taken?" At the time
7 when this incident occurred and -- and in your
8 investigation, do you know where --

9 MS. CAMPBELL-WILLIAMS: Can I beg the Court's
10 indulgence?

11 THE COURT: Yes, ma'am.

12 Q And in your -- in your -- Had your police briefed you
13 on -- Were you aware of what was going on with the
14 other parties of the investigation?

15 A Yes, ma'am.

16 Q So, you were kind of keeping abreast of all of that?

17 A Yes, ma'am.

18 Q And -- and Corporal Dechman, do you remember where he
19 was in his investigation at that --

20 A Corporal Dechman?

21 Q -- at that -- Yes. Mm-hmm.

22 A I -- I remember that once I gave the information that
23 who we considered -- or who Jessica had identified
24 would be our suspects, they started focusing in on
25 that abandoned house. And I remember hearing Corporal

1 Dechman say that he was out with Nick, that he had
2 stopped Nick.

3 Q Okay. And when Jessica had approached the home, she
4 was alone?

5 A Yes, ma'am.

6 Q And in the video -- Well, you were there. D.J., her
7 brother, didn't come until later?

8 A Yes, ma'am.

9 Q And Jessica was with -- was with Victor, that's her
10 boyfriend, who is Nicholas' brother?

11 A When?

12 Q When they were at home?

13 A Yes, ma'am. At her --

14 Q Mm-hmm.

15 A -- house. Yes, ma'am.

16 Q When they were at home. So, D.J. and the mom comes on
17 the scene. Did they give you any -- any further
18 information as to what happened? When D.J. comes on
19 the scene -- This is what Jessica said that D.J. told
20 her, but when D.J. comes on the scene, does he
21 immediately -- did he -- he gave you -- he gives you
22 further information about Gregory?

23 A He stated that he went over to Nick's house and they
24 were talking about robbing people, and he, Quavian
25 Bean [ph], Shaquan Gay, stayed at Nick's and that's

1 when they saw Greg and Nick coming up with the TV.
2 They brought a TV into the house.

3 Q Okay. And so Gregory -- that's G-boy -- was at the
4 house where they were --

5 A Yes, ma'am.

6 Q -- at that time?

7 A Yes, ma'am.

8 Q ~~Okay. And at the time when Officer Dechman had~~
9 stopped Nicholas, when Nicholas had given him that
10 confession, did he say that they were still in search
11 of Greg?

12 A Yes, ma'am. We were still -- We were -- We had
13 Nicholas in custody, and at that point, we were still
14 looking for Greg Hardy.

15 Q Okay. You all looked for Greg Hardy for quite some
16 time?

17 A What do you mean? That night or...

18 Q Mm-hmm. Continued to search --

19 A Yes, ma'am.

20 Q -- for him? You had to actually search for him?

21 A We continued to remain in the area, and we put that
22 information out to all surrounding agencies that
23 that's who we were looking for.

24 Q Okay. And when you all -- Earlier in the day when
25 you all responded to the Bridgewater Circle, --

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

- 1 A Mm-hmm.
- 2 Q -- it was not at Nicholas' home; it was at that
- 3 abandoned house --
- 4 A Yes, ma'am.
- 5 Q -- and was outside?
- 6 A It was -- Yes, ma'am. It was in --
- 7 Q Outside.
- 8 A -- the roadway, actually.
- 9 Q And you all didn't make any arrests at that time?
- 10 A No, ma'am.
- 11 Q And there were several individuals who were out there
- 12 --
- 13 A Yes, ma'am.
- 14 Q -- at that time?
- 15 A Yes, ma'am. There was a -- a fairly large group of
- 16 them.
- 17 Q Okay. And during -- Earlier today -- Do you know
- 18 that Jessica was a part of that group who was out
- 19 there during that time, or D.J.?
- 20 A (No response.)
- 21 Q Jessica and D.J. was out there at that time?
- 22 A I couldn't -- I couldn't tell you that without
- 23 looking at my report. I just remember that Nick and
- 24 Greg were out there.
- 25 Q Okay.

1 MS. CAMPBELL-WILLIAMS: And I beg the Court's
2 indulgence one moment.

3 THE COURT: Okay.

4 MS. CAMPBELL-WILLIAMS: No further questions, Your
5 Honor.

6 THE COURT: Okay. Anything else, Ms. Hendrick?

7 MS. HENDRICK: Very -- very briefly.

8 CORPORAL ANDREA GRINSTEAD - RE-DIRECT EXAMINATION

9 BY MS. HENDRICK:

10 Q When you started interviewing Ms. Bennett and she gave
11 you the descriptions of the two suspects and she --
12 speaking to her first of all -- she was able to tell
13 you -- differentiate between the two and their
14 actions, just in the very beginning --

15 A Mm-hmm.

16 Q -- of her -- And so she --

17 THE COURT: Say yes or no, please.

18 A Oh. I'm sorry. Yes, ma'am.

19 Q So, she's only able to tell you what the black male
20 and the white male did when they first entered the
21 room?

22 A Yes, ma'am.

23 Q When the black male attacked her, jumped on top of her
24 and threw her on the ground, --

25 A Yes, ma'am.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q -- and then the white male begged him to stop, --

2 A Yes, ma'am.

3 Q -- and the white male got her a towel?

4 A Yes, ma'am.

5 Q And then after that, when you're talking to her and
6 asking her who did what, she's distinctly saying that
7 --

8 MS. CAMPBELL-WILLIAMS: Your Honor, I will just
9 object. It's just too much leading. I know that the rules
10 are a little relaxed, but it's just a little too much
11 leading.

12 THE COURT: Don't -- don't testify completely for her.

13 MS. HENDRICK: Mm-hmm.

14 THE COURT: Okay.

15 BY MS. HENDRICK (resuming):

16 Q When you were asking her later on about what happened
17 in the house, how did she describe the individuals?

18 A She would just state, "They."

19 Q Okay.

20 A "They."

21 Q So, only in the beginning did she --

22 A Yes, ma'am. And then when she stated that the black
23 male went in the room with her dog, she remembered --
24 she could distinguish at that point, but everything
25 else was "They."

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q Okay. And when Jessica Mayweather approached the
2 scene, did y'all go out looking for her?

3 A No, ma'am. It was a complete surprise.

4 Q It was completely --

5 A Yes.

6 Q -- unsolicited?

7 A Yes, ma'am. We --

8 Q ~~She just came running through when you were working~~
9 ~~the perimeter?~~

10 A Yes, ma'am.

11 MS. HENDRICK: Okay. I have no further questions for
12 this witness.

13 THE COURT: Anything else, Ms. Campbell-Williams?

14 MS. CAMPBELL-WILLIAMS: No questions, Your Honor.

15 THE COURT: All right. You can step down. Thank you.

16 MS. HENDRICK: Your Honor, may this witness be
17 excused?

18 MS. CAMPBELL-WILLIAMS: Without objection, Your Honor.

19 THE COURT: All right. You may be excused.

20 MS. HENDRICK: The State calls Sergeant Ryan Wilson.

21 RYAN WILSON, after having been duly sworn,
22 testified as follows:

23 SERGEANT RYAN WILSON - DIRECT EXAMINATION

24 BY MS. HENDRICK:

25 Q Sergeant Wilson, where are you -- State your full

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 name for the record.

2 A Ryan J. Wilson.

3 Q Where are you employed?

4 A The Irmo Police Department.

5 Q And how long have you been employed there?

6 A Since April of 2001.

7 Q And do you have any previous law enforcement
8 experience?

9 A Yes, I've -- I'm in my 12th year now.

10 Q Your 12th year of total enforcement?

11 A Total law enforcement, yes, ma'am.

12 Q What do you do for Irmo Police Department?

13 A I am the sergeant over our criminal investigations
14 unit. I oversee our C.I.D. unit, handle cases myself,
15 as well as assign cases to other investigators within
16 the unit.

17 Q Okay. And did you have an occasion to respond to an
18 incident on September 14th, 2008?

19 A I did. I was on call that night. We rotate our calls
20 out, but I was on call that night. I was notified by
21 then Corporal Dale that they had a home invasion at
22 the Boulders Lock address, and I responded. I was
23 notified probably around 10:45 or so, and I was on the
24 radio at 10: -- 10:50, 10:52, and I was on scene
25 shortly thereafter.

1 Q Okay. And when you arrived at the scene, -- Were you
2 the first person to arrive?

3 A No, ma'am.

4 Q And why -- Why not? Just --

5 A All the uniform patrol that -- were there. There was
6 EMS already on the scene. Mr. -- Ms. Bennett, Mr.
7 Bennett were still on scene. Their son, Charles, was
8 also there, and some neighbors.

9 Q Okay. And when you arrived on scene, what is your
10 role when you get there as the sergeant?

11 A Once -- once the investigator's on scene, it -- I
12 take control of the scene. I was -- I was briefed by
13 Sergeant Dale -- or he was Corporal Dale at the time.
14 I was briefed by Corporal Dale about what had occurred
15 and what they had so far. Spoke briefly with
16 Patrolman Grinstead about what the victims were
17 saying. She was getting the statements, and I
18 actually handed her my camera to take the pictures
19 that we've discussed already, and then I started to
20 look around the scene. Corporal Dale walked me
21 through the house, the residence, and showed me where
22 -- where they -- where they count -- according to --
23 what they count -- they already had -- where things
24 had taken place, and there was obvious -- You could
25 see -- There was obviously -- In the -- in the great

1 -- family room area where there was a TV stand with no
2 TV on it. Then, in the master bedroom, there was a
3 bloody towel on the -- on the bed. There was a -- a
4 phone, a cordless phone, on the bed. There was a pair
5 of glasses on the floor. It was -- Some general
6 disarray in the master bedroom.

7 MS. HENDRICK: Permission to approach the witness?

8 THE COURT: Yes, ma'am.

9 Q And when you arrived on the scene, was it your job,
10 basically, to process the scene?

11 A It is the investigator's job to process. And by
12 process, we're going to be taking photographs, lifting
13 fingerprints, collecting any evidence that may still
14 be there, and I -- and -- and -- logging it in and
15 taking control of it.

16 Q Does Irmo have a separate CSI unit?

17 A The -- the investigator is the CSI unit.

18 Q So you are the CSI unit --

19 A Yes, ma'am.

20 Q -- for the team? Okay. So, when you got into the
21 house, you've described -- Was the first room your
22 walked into the living room?

23 A Well, you walk in through the foyer, there's a -- it's
24 a -- it's an older style house, but it has a formal
25 living room and a -- like a family room. When you

1 walk in through foyer, you go in -- into the -- the
2 family room where the TV was.

3 Q Okay. I'm going to show you what's been marked as
4 State's Exhibit Five. Do you recognize this?

5 A That's the TV stand I spoke of. As you come in the
6 foyer, you can almost see it through the -- through
7 the foyer in the --

8 Q And that's --

9 A -- the family room. You can see the -- the dust ring
10 from where a TV base would have been, and there's an
11 empty slot here where the -- the VHS/DVD player was.

12 Q And is this a fair and accurate representation of this
13 area --

14 A That's a --

15 Q -- of the house --

16 A -- photograph --

17 Q -- that night?

18 A -- I took. Yes, ma'am.

19 MS. HENDRICK: Enter State's Five into evidence?

20 MS. CAMPBELL-WILLIAMS: Without objection, Your Honor.

21 THE COURT: Received without objection.

22 (WHEREUPON, PHOTOGRAPH WAS INTRODUCED AND
23 RECEIVED INTO EVIDENCE WITHOUT OBJECTION AS
24 STATES'S EXHIBIT NUMBER FIVE.)

25 Q Okay. I'm going to show you what's been marked as

1 State's Eight and Seven. Do you recognize these?

2 A Those are pictures of the master bedroom. And what we
3 do is we take overall scene pictures, and this is one
4 of the overall scenes. We do a four-corner approach
5 where we take a picture from each corner. But it does
6 show the master bedroom. The towel is right there,
7 which still had some blood on it, and there was also,
8 in this picture, is a cordless phone charger base,

9 which would be -- in relation to this picture, would
10 be in this area on the far side of the bed.

11 Q And this is basically what the room looked like when
12 you entered the home?

13 A Yes.

14 Q Are these fair and accurate representations --

15 A They are. I took those pictures.

16 Q And you took these yourself?

17 A Yes, ma'am.

18 MS. HENDRICK: Move to enter State's Seven and Eight
19 into evidence.

20 MS. CAMPBELL-WILLIAMS: Without objection, Your Honor.

21 THE COURT: Without objection.

22 (WHEREUPON, PHOTOGRAPHS WERE INTRODUCED AND
23 RECEIVED INTO EVIDENCE WITHOUT OBJECTION AS
24 STATES'S EXHIBIT NUMBERS SEVEN AND EIGHT.)

25 Q So, could you tell from these pictures that you

1 described the home, was the house -- was the -- was
2 the room disheveled or...

3 A It looked -- I mean, that's -- that's very accurate
4 of it. It looked like the -- the -- There were
5 things that were just out of place. Like I said,
6 there was a towel there, there's a phone, that you can
7 kind of see where your thumb is there. There was a
8 pair of glasses on the floor on the far side of the
9 bed. It was just -- It looked like -- General --
10 Not a -- not a very clean -- For -- for the -- the
11 condition of the rest of the house, it was
12 inconsistent with the -- with the over cleanliness of
13 the rest of the house.

14 Q Okay. And did -- did you figure out a point of entry
15 in this case? Where they might have made point of
16 entry, when you were there?

17 A Because there was no obvious signs of forced entry, we
18 -- we assumed that probably there was some entry from
19 the rear door of the house or -- or in that area. The
20 -- the front doors, no -- There was no sign of forced
21 entry on any door, so we just assumed more than
22 likely, not just -- as a general practice, you know,
23 always check the back door, stuff like that.

24 Q And when you checked the back door, what did you see?

25 A The back door was -- was shut. I took a picture of

1 it, and -- and as -- as events developed through the
2 night, we -- I started processing fingerprints, too,
3 because sometimes you will find fingerprints on the
4 door.

5 Q Is this the back door?

6 A That is the back door.

7 Q Fair and accurate representation?

8 A It is.

9 MS. HENDRICK: Move to enter State's Nine into
10 evidence.

11 MS. CAMPBELL-WILLIAMS: Without objection.

12 THE COURT: All right. Without objection.

13 (WHEREUPON, PHOTOGRAPH WAS INTRODUCED AND
14 RECEIVED INTO EVIDENCE WITHOUT OBJECTION AS
15 STATES'S EXHIBIT NUMBER NINE.)

16 Q And so you -- you collected -- What evidence did you
17 actually collect from the crime scene to take with
18 you?

19 A Ultimately, what I -- What I took with me initially
20 was a -- was the cordless phone, which I identified on
21 the picture, and the charger base, which is also in
22 those pictures. I took both of those. And there is a
23 penny roll that we found, just loose on the floor near
24 the closet, if I made myself -- It was somewhere
25 right -- somewhere right in here. There's a different

1 angle that shows it laying on the floor.

2 Q Okay. And did you lift any prints?

3 A I did process for prints on the scene, and, also, once
4 in a more controlled environment, I took the charger
5 base and the phone and actually processed them further
6 and was able to -- and get prints off the phone that I
7 felt were usable to compare to the automated
8 fingerprint identification system.

9 Q Were the prints on the phone or on the charger?

10 A The charger base.

11 Q And what side of the bed was the charger base on?

12 A On -- After putting everything -- After piecing
13 everything together, they were on -- as you face the
14 bed, they were on the right side, which is where Mr.
15 Bennett would have been laying.

16 Q And whose fingerprint was on the side of Mr. Bennett's
17 -- was laying?

18 A The fingerprint on the charger base?

19 Q On the charger base.

20 A It was matched up to Gregory Hardy, --

21 Q Okay.

22 A -- which is the co-defendant.

23 Q And, as far as you know, that's consistent with all
24 the stories and for him to be on that side of --

25 A It is --

1 Q -- of the bed?

2 A As -- as -- As you take in the total information, it
3 is consistent.

4 Q Okay. So, once you were done processing the scene --
5 You're inside the house. Do you know what's going on
6 outside of the house?

7 A Yes. Corporal Grinstead called me and -- and she
8 called me to let me know that she had information

9 develop to her, and, obviously, it was Ms. Mayweather
10 approaching her. I stepped outside briefly just to
11 kind of get a feel for what Ms. Mayweather was telling
12 her. While I was outside, D.J. also walked up and --
13 I listened to his story. I was -- Because --
14 Because we had a description of a white male and a
15 black male. D.J. is also light skinned, mixed race,
16 as is Jessica, they're -- but they're both light
17 skinned, and he looks -- he -- he looks like a white
18 male. So, I was thinking, you know, we need to rule
19 him out as a suspect, too. I took -- As I was
20 talking to him, just watching his demeanor, I actually
21 made -- made a note to look at his hands. He had no
22 obvious injuries to his hands, which, in my
23 experience, is consist with -- If somebody's
24 physically assaulting somebody with their hands,
25 they're going to have some kind of maybe cuts,

1 bruises, contusions, whatever, to their knuckles or
2 anything like that. He showed -- His -- his hands
3 showed no sign of any kind of trauma. But, I listened
4 briefly to his story and kind of got an idea of who we
5 were dealing with, and he -- he identified Nick and G-
6 boy, which was Greg Hardy, as -- as the two suspects.

7 Q And, so, you're immediate thing was that D.J. kind of
8 matched this?

9 A D.J. -- D.J.'s a white male and he's much taller than
10 5'10", but --

11 Q Mm-hmm.

12 A -- D.J. is a white male. He's mixed, but he's...

13 Q So you examined his hands to --

14 A I did.

15 Q -- rule him out?

16 A I did.

17 Q Okay. And, also, is it common for someone who commits
18 a crime to come back to the crime scene?

19 A Not usually. No.

20 Q Okay. So once you get the information from D.J. and
21 Jessica that you're possibly dealing with Nick Nesmith
22 and Gregory Harding, what did you do?

23 A I go back in, because I still had things on scene to
24 do, but I'm thinking as I'm processing that we need --
25 Because -- because of the close proximity of the

- 1 Nesmith residence to our -- to our -- to our incident
2 location that -- and the time frame, I'm thinking
3 about possibly getting a search warrant for the
4 residence because we -- we had some ideas of what
5 we're looking for and -- and I've got to get my
6 processing done because I know that I've got multiple
7 things to do, and we're kind of in a -- not so much in
8 a rush, but we have -- I have more things to do than I
9 have time for.
- 10 Q Let me back you up. You said because of the possible
11 closeness of the Nesmith location, --
- 12 A Yes.
- 13 Q -- the Nesmiths' residence, how did you already know
14 where the Nesmith's lived?
- 15 A I've worked for Irmo for eight years, and I've dealt
16 with Victor, Nick, and Mr. --
- 17 Q Earlier that --
- 18 A -- Mayweather.
- 19 Q -- day, did you respond to the --
- 20 A I was --
- 21 Q -- incident --
- 22 A I just happened to be out still when that fight call
23 that was on -- on the previous testimony -- I had
24 also stepped out with those guys just to -- just to
25 put faces with names again, because -- because I'm not

1 a full-time road guy. Sometimes you get new players
2 in the area that you don't know, and I like to put a
3 name with a face sometime.

4 Q So, who did you observe at that fight call? What time
5 was that fight?

6 A That was about six o'clock, six-thirty on that
7 evening, on the same -- on the incident evening. It
8 was -- Greg and Nick were there, D.J. was there,

9 Quavian Bean [ph], Shaquan Gay, Mike Armour, Vick --
10 Vick the IV was there -- Vick, Nicks' older brother,
11 was there. There were a -- a couple of white females
12 who I wasn't familiar with. One of them was later
13 identified as A.J., but I --

14 Q Okay. Who --

15 A -- I was not familiar with her.

16 Q Again, that's how you knew, when they said Nicholas
17 Nesmith. You knew -- You were familiar with him,
18 where he lived and who he hung out with?

19 A Absolutely.

20 Q Okay.

21 A Yes, ma'am.

22 Q Because not only of that prior incident of that day,
23 but other prior incidences?

24 A Right. Just the nature of working investigations and
25 -- and knowing the gang affiliation of them, it's in

1 my interest to know who all --

2 Q Okay.

3 A -- who they all are.

4 Q So, once you realize that your possible suspect lives
5 a block away from the incident location, what did you
6 do?

7 A I -- I had got on the radio and advised Officer
8 ~~Dechman because I knew that they were around the area,~~
9 because I -- I've heard him sign out with the three
10 identified as of Quavian and -- and -- and -- and
11 Vick, and I knew that he was still around the area.
12 So, I advised him just to go ahead and pull up on
13 Bridgewater and get, what we call, just a eyes-on,
14 just to have a good visual of the Nesmith residence
15 just so we can -- so when -- if I had to get a search
16 warrant, I could at least speak to a judge, we had an
17 officer in the area who can -- who's watching the
18 comings and goings from the house.

19 Q And, meanwhile, you're processing the scene?

20 A While I'm processing the scene, yes.

21 Q Okay. So, what happens while you're processing the
22 scene and Dechman is watching the house?

23 A We get notified that -- that it -- over the air that
24 it sounds like somebody was getting out of the house,
25 and shortly thereafter, I get notified by the radio

1 that Dechman has obtained Nick.

2 Q Okay. And did you -- did you happen to come in --
3 With all the items that were missing, did you ever
4 happen to lay eyes on those items that night?

5 A I did. Yes.

6 Q And how did that come about?

7 A They were recovered because -- because Officer Dale --
8 or Corporal Dale knew what we were looking for, and --
9 and he was much more -- he was more experienced and he
10 was the supervisor on scene. He was making -- He was
11 supervisor on the patrol division, making calls out
12 there away from me. He saw fit to mirandize -- you
13 know, make sure that Nick was mirandized, got consent
14 for the house, talked with him about locations of the
15 items in the house, and -- and -- and Nick told him
16 where they were.

17 Q And they went and got these items?

18 A They -- The officers retrieved them and then brought
19 them back over to where I was, towards the crime
20 scene.

21 Q Okay. So, they brought them back to the --

22 A Yes.

23 Q -- the Bennett's residence?

24 A Correct. Correct.

25 Q And were the Bennetts -- Ms. Bennett and Mr. Bennett

1 were already gone?

2 A They were not there.

3 Q But, who was still there?

4 A Their son was still there.

5 Q Was the son able to recognize some of these items --

6 A He -- He --

7 Q -- at the scene?

8 A Obviously, the TV, the jewelry -- The TV and the --

9 and the VHS/DVD player, he recognized that. The

10 jewelry, because it's jewelry, he -- he said some of

11 it looked like hers, but he couldn't be sure until Ms.

12 Bennett actually looked at all of it.

13 Q But he was able to identify most of the items that
14 were recovered in the Nesmith's residence?

15 A Right. And consistent with what we believe to be --
16 that had been taken.

17 Q Okay. And did you do any processing of these items?

18 A I did attempt to process the -- the -- the DVD -- the
19 DVD unit and the TV, with nothing useful for AFIS.

20 Q Is it difficult, in your experience, to get useful
21 prints?

22 A Sometimes, yes; some -- It's about 50/50. It's --
23 it's -- it's not as easy as TV makes it look.

24 Q Okay. Okay. Where -- What happened after you
25 recovered these items?

1 A I -- The items that -- that I had felt that there
2 were no need -- further need to process, I turned back
3 over to Mr. Bennett.

4 Q Okay.

5 A And then I've -- then I've -- The only things I've
6 took in were what I previously testified to: the
7 charger base and the penny roll and the -- the actual
8 cell phone.

9 Q Okay.

10 A Not the cell phone; the cordless phone that went to
11 the charger base.

12 Q Okay. So, after you were done processing the scene,
13 basically, what then did you do that night?

14 A Because we had had Nick detained at that point and we
15 had recovered the items, Corporal Dechman had
16 transported Nick to the police department, and I -- I
17 met him up there, and I took Nick -- I took Nick into
18 my custody and interviewed him.

19 Q And how did you begin this interview with him?

20 A We -- We have a controlled environment that has a
21 video set up for an interview, and was able -- I was
22 able to record -- video record the statement as well
23 as -- as -- as in the beginning of every statement, I
24 mirandized him.

25 Q And did you have to explain to Nick why he was there?

- 1 A I did. Yes.
- 2 Q Okay. And then when you read him his rights, did you
- 3 explain to him that he didn't have to talk to you?
- 4 A I was -- I'm very clear about that because of, well,
- 5 A; the nature of the crime and just because it's the
- 6 lifeblood of what we do, Mirandas. Obviously, very
- 7 important. So, I -- I walked him through the Miranda
- 8 rights and made sure he understood them. He actually,
- 9 you know, designated on -- by initial on each of them
- 10 that he understood them as I read them to him.
- 11 Q So, did you go over this, Miranda rights?
- 12 A I did.
- 13 Q Do you recognize this sheet of paper?
- 14 A That's the one I handed him.
- 15 Q Is this the copy of the one you handed him?
- 16 A Correct. Correct.
- 17 Q And the -- the places --
- 18 A Irmo Police Department, that was on the 15th at 2:30
- 19 in the morning.
- 20 Q And whose initials are these?
- 21 A Those are N.N., which would be Nick Nesmith.
- 22 Q And whose signature is that or --
- 23 A Mr. Nesmith's.
- 24 Q And whose --
- 25 A That --

1 Q -- witnessing?

2 A -- is mine.

3 Q Okay. And what is this down here, the waiver?

4 A It's -- If I could read it, it says, "I've read this
5 statement and understand my rights." Basically, he's
6 acknowledging that he understands the Miranda rights
7 and he's willing to talk to me and he has full -- he
8 has full knowledge of what he's doing.

9 MS. HENDRICK: Permission -- State moves to enter
10 State's Exhibit One into evidence.

11 MS. CAMPBELL-WILLIAMS: Without objection, Your Honor.

12 THE COURT: Received without objection.

13 (WHEREUPON, ADVICE OF RIGHTS WAS INTRODUCED
14 AND RECEIVED INTO EVIDENCE WITHOUT OBJECTION
15 AS STATES'S EXHIBIT NUMBER ONE.)

16 Q Okay. And once you went over his -- the rights with
17 you, did -- Again, this is all on video?

18 A Correct.

19 MS. HENDRICK: And I think -- Just for purposes of
20 clarification, I think the Court had reviewed the video.

21 THE COURT: The Court has reviewed the video.

22 BY MS. HENDRICK (resuming):

23 Q So, once you began discussing with Nick, at any point,
24 when you were going over his rights, did he ask you
25 any questions about his rights?

1 A As for clarification?

2 Q Mm-hmm.

3 A No, ma'am.

4 Q Did he seemed confused about it?

5 A No, ma'am.

6 Q Did he ask to see his parents?

7 A No, he did not.

8 Q Did he ask for a lawyer?

9 A No, he did not.

10 Q Did you pressure him in any way?

11 A No, ma'am.

12 Q Did you threaten him?

13 A No, ma'am.

14 Q Promise him anything?

15 A No, ma'am.

16 Q Coerce him in any way to get him to give you this

17 statement?

18 A No, ma'am.

19 Q And to your knowledge, this is the third time -- it

20 was third or second time he's been advised of his

21 rights that night?

22 A You have to at least -- From what I had knowledge of,

23 I know he was -- I -- I was told that he was

24 mirandized as soon as he was taken into custody, and

25 then -- and because, you know, just my nature, at the

1 start of the interview, would do it again. So, at
2 least twice. I know I did it, and, like I said, I
3 know that it was at least done once, and it could have
4 possibly been -- just being in -- familiar with it, I
5 mean, -- Either officer could have mirandized him, so
6 it could have been the third time.

7 Q So, he had plenty of opportunity to ask questions
8 about his rights?

9 A Right.

10 Q Ask for a lawyer?

11 A Right.

12 Q Ask for a parent?

13 A Correct.

14 Q Okay. So, once you -- you go over your rights with
15 you -- with him, what then does he tell you?

16 A Well, we had just kind of started because -- we just
17 started talking, just generally speaking, you know.
18 Talking -- What I -- Ultimately, is -- All I'm
19 trying to do is just establish demeanor baseline,
20 behavior, and stuff like that. But, just started
21 talking to him basically about things that happened
22 that day before we really got into it, into the actual
23 incident.

24 Q Okay. But when you got into the actual incident, what
25 did he tell you happened?

- 1 A That -- that he and Greg went into the house on
2 Boulter's Lock and assaulted Mr. and Ms. Bennett. His
3 statement was that they went in there and committed
4 the assault and then took the items out of the house.
- 5 Q Okay. Did he give you any details of what happened?
- 6 A Yes, ma'am. One second.
- 7 Q Specifically, did he explain how he gained -- how they
8 gained entry --
- 9 A Oh.
- 10 Q -- into the house?
- 11 A Yes, ma'am. I'm sorry. He -- They had gained entry
12 through the rear door of the house, which I had
13 photographed. And we discussed how he actually gained
14 entry because he's too large to fit in the door --
15 (Witness reviewing documents.)
16 And I think I actually went past it.
17 But, he actually said what they did was reach in
18 through the doggie door to get to the doorknob there
19 and unlock it.
- 20 Q Okay.
- 21 A So, that would explain the signs of no forced entry
22 that we observed -- or that we did not observe.
- 23 Q And did he describe about any altercation he had with
24 Ms. Bennett or Mr. Bennett in the house?
- 25 A He said that when they got in there, he -- he did

1 assault Ms. Bennett, and, like I said, once that was
2 over with, they left the house, but...

3 Q Now, did he give you any reason for why him and
4 Gregory Hardy committed this crime?

5 A We talked at length about the gang affiliation, which
6 I'd already discussed earlier. They are both --
7 Well, because Greg was new to the area, we were still

8 trying to figure out what his affiliation was to them,
9 but -- but Nick hangs around with a ground who is an
10 M.O.B. crowd, which is a -- was a gang set in our
11 area.

12 Q Do you know what M.O.B. stands for?

13 A It's Money Over Bitches. It's one of the gang sets
14 that Quavian Bean [ph], all of the -- the players that
15 I talked about earlier, are -- are involved in. They
16 were hanging out earlier in the evening at the fight,
17 and -- and as Nick and I were talking about it, he
18 said there was -- they were discussing that him and
19 Greg, because they were less senior members of the --
20 of the -- of the gang, needed to go out and prove
21 themselves. You know, needed to go out and do
22 something to prove that -- you know, that they -- they
23 needed to be -- needed to belong to M.O.B..

24 Q So, was someone telling them to go break in people's
25 houses?

1 A Through the statement from Nick is that Quavian and --
2 was -- was -- and Mike, I think. Mike Armour had come
3 up. But, Quavian -- Quavian was speaking about that
4 they needed to go out and do something, and -- and --
5 then Nick -- And Nick's statement was that Greg was
6 also talking about that -- you really need to go out
7 and go and hit -- and hit a house.

8 Q And hit a house means...

9 A Generally speaking, they say get a lick, is what they
10 actually say -- or what they actually say, get a lick.
11 And a lick -- What I deal with -- When I hear a
12 lick, it's usually a burglary. That's usually the
13 street-term for burglary in our area, and -- and
14 that's what I assumed that he meant when he said they
15 went out and needed to get a lick, and they commit the
16 burglary.

17 Q Okay. And we've talked a lot about gangs now. I'm
18 going to back up. As your involvement in Irmo, have
19 you received any specific training on gangs, gang
20 initiation?

21 A I'm our gang -- I'm our gang liaison for the -- for
22 the Metro Area -- for the Columbia Metro Area Gang
23 Task Force, and it's a loose affiliation of all the
24 local law enforcement agencies. We meet in some
25 capacity at least once a month and discuss gang trans,

- 1 players, who's in jail, who's not in jail.
- 2 Q But you've been educated all --
- 3 A Absolutely, yes, ma'am.
- 4 Q You've received formal training?
- 5 A Yes, ma'am.
- 6 Q And informal training being on the streets?
- 7 A True. Yes, ma'am.
- 8 Q And so that's why you are familiar with M.O.B. and the
- 9 ranking system within M.O.B.?
- 10 A Correct.
- 11 Q And so you knew that the key players were...
- 12 A Quavian -- Quavian Bean [ph] and Mike Armour are two
- 13 of the more senior members of this area. And,
- 14 actually, I had remarked to Quavian -- because we all
- 15 know him on a first-name basis -- but he had actually
- 16 had new gang tattoos that I had not seen him with
- 17 earlier that -- that day -- or at the fight that we
- 18 went to earlier. He'd actually had fresh -- or
- 19 tattoos that he had not had the last time I'd seen him
- 20 that we were gang- --
- 21 Q So when --
- 22 A -- affiliated tattoos.
- 23 Q -- you responded to that fight call earlier, you knew
- 24 -- noticed new tattoos --
- 25 A Yeah.

1 Q -- on him? Okay. And did -- Through your
2 conversations with Nick, did you learn about what
3 actually -- time lines of what happened on the day of
4 the 14th, from that fight that you responded to --

5 A Right. They --

6 Q -- up to that incident?

7 A -- were -- And Greg -- Because -- because -- I had
8 first laid eyes on Greg at that -- that fight call.
9 He was shirtless and had some scratches on his back,
10 and I discussed Nick with that -- Nick -- about the
11 scratches and stuff like that, and -- and Nick was
12 telling me that Greg and Quavian got into a fight, and
13 they were the ones that, I guess, the neighbors called
14 on, who were horseplaying or fighting or whatever, but
15 it was actually Nick and Quavian fighting. After they
16 left there, they went to Dutch Fork Elementary, which
17 is also less than a half mile walking distance from
18 here, and there was another fight. And it's -- And
19 we have been getting a lot of intelligence that a lot
20 of the gang members are doing initiation and basically
21 getting gang members to fight one another to prove
22 their worth or medal, or whatever you want to call it.
23 Q So these fights, it's to your belief, are -- were
24 trying to initiate, basically, Gregory and Nick into
25 the gang?

1 A Correct.

2 Q And so once they've been beat into the gang, they have
3 to commit another act?

4 A And that was the -- that was the -- what Quavian and
5 them were talking about later in the evening.

6 Q Okay. And did this -- Does someone give an order for
7 the hit to go down or something? Was there any --

8 A I don't think there was -- I don't think they held a
9 vote or anything like that, but I do think that there
10 was -- there was some pressure to -- to commit some
11 kind of criminal act.

12 Q And when you're speaking with Nick, he kept mentioning
13 meetings. What are the meetings? He said they have
14 meetings?

15 A Well, just when the -- When a -- When a -- When a,
16 I guess, a group of them get together and they start
17 talking about the goals -- common goals of the group
18 and stuff like that, that would be the meetings, and
19 it would be the -- And to -- And to them, meetings
20 would be, you know, five or six of them hanging out in
21 front of a house or hanging out at the park or
22 whatever.

23 Q Okay. And, now, when you're meeting with Nick, what
24 is -- what is he like in this meeting? Is -- is he
25 real on you? Is he giving you succinct great stories,

1 or what -- what is his demeanor?

2 A He's -- He has a calm demeanor about him. He's very
3 polite. He's yes, sir/no, sir the whole time. He --
4 He talks about the assault and -- and talks about the
5 stupidity of his gang involvement and -- and some --
6 and just talks about how that he was -- he -- he
7 should know better than to do what he did, that
8 there's -- ~~There was clearly some issues there that~~ -

9 - He felt like the gang affiliation was a lot of the
10 reason behind this.

11 Q But he -- he knows what happened?

12 A Yes.

13 Q He is clear-minded enough to --

14 A Yeah. Very -- Very alert. Not -- I mean not
15 incoherent or not not cognizant of what he's saying.

16 Q But you reviewed the video tape --

17 A Yes.

18 Q -- and all? You -- He talks for long periods of time
19 making -- He's jumping subjects?

20 A Right.

21 Q But after reviewing that, were you able to piece
22 together what he's saying?

23 A Right. Right. It's not linear thought, and I can
24 appreciate that because I am much that way -- the same
25 way. But -- But as -- Upon review of -- And if you

1 watch it, yeah, you could tell that he is -- he's
2 jumping topics, but it's not rambling, it's -- it's --
3 he has a coherent thought, and, to me, it makes sense.

4 Q Okay.

5 A To me, -- I understood what he was talking about.

6 Q Okay. So after you finished interviewing Nick, did
7 you get a written statement from him?

8 A No, I did not.

9 Q And why not?

10 A Well, A; we video record what we do and -- and
11 ultimately you're -- you're getting everything there
12 and you're getting a -- in my opinion -- you're
13 getting an accurate reflection of the statement
14 because you're getting it from -- the words from his
15 own mouth. You know, it was -- There was some issues
16 -- You know I thought -- Because I know that --
17 that, you know, -- Writing a statement, to me,
18 seemed, like, redundant, and my thing is, I -- I felt
19 like I had enough information and that he wasn't going
20 to write down anything that he hasn't already told me.
21 And because we had the means to have it recorded, it
22 was just -- it was redundant. I thought it --

23 Q Okay.

24 A -- would be redundant.

25 Q And, again, when you turned the video cameras off, did

1 you pressure him in any way?

2 A No, ma'am.

3 Q Did you promise him anything?

4 A No, ma'am.

5 Q Threaten him? Coerce him?

6 A No, ma'am.

7 Q Nothing. Okay. So after you finished interviewing
8 him, what did you do?

9 A Once we were completed with the interview, he was
10 transported by -- by one of the patrol officers,
11 probably Officer Dechman, to Richland County, to the
12 holding facility at Alvin S. Glenn, the DJJ holding
13 facility.

14 Q Okay.

15 A And then I continued working a little bit through the
16 night trying to figure out who Greg was, because, once
17 again, we -- I was confident Greg was my other
18 suspect. I -- You know, I felt like I had enough to
19 go ahead and secure a warrant for him. Speaking with
20 the officers and kind of getting into the totality of
21 the circumstances, we -- we were pretty much in
22 agreement that the first noise that officer Dechman
23 heard was Greg Hardy jumping the fence, and then Nick
24 following him. We later determined that was actually
25 the case from Greg's statement. But, once I was done

1 with that, it was -- the biggest thing was being able
2 to track down Greg Hardy.

3 Q And was he eventually arrested?

4 A He was.

5 Q And what date was he arrested?

6 A He was arrested the next -- Hold on a second.

7 (Witness reviews documents.) On the 15th. Later --

8 later -- It was the same day that I interviewed Nick,
9 but it was 2:30. He was arrested in the afternoon of
10 the --

11 Q Did he --

12 A -- of the 15th.

13 Q -- turn himself in, or...

14 A He was located by -- Corporal Dennis served the
15 warrants on him.

16 Q Okay. And, so, over the next couple of days, you
17 continued to investigate this case?

18 A I did.

19 Q Did you receive any other physical evidence involving
20 -- relating to this case?

21 A Other than what I'd previously testified to. I was
22 able to process the -- the charger base more
23 thoroughly, and -- and actually did a -- did a --
24 something other than just powdering it, but I did
25 powder it, too, but apart from that -- And then I

1 spoke again with D.J. Mayweather in a controlled
2 setting.

3 Q Did you receive any clothing?

4 A We also did recover a gray hoodie from the Nesmith
5 residence. Corporal Dennis actually recovered that
6 within the -- the next two or three days after the
7 incident.

8 Q So, a gray hoodie was recovered, for the record, at
9 the Nesmith residence?

10 A A gray hoodie was recovered, yes.

11 Q And did you test that for anything?

12 A I actually -- We just -- I -- I -- We bagged that
13 up. We actually submitted that the SLED for DNA --

14 Q Okay. So that --

15 A -- for DNA processing.

16 Q The gray hoodie's currently at SLED?

17 A It is. Correct.

18 Q Okay.

19 A It still is at SLED.

20 Q And you said that you had the occasion to speak again
21 with D.J. Merriweather [sic]?

22 A Mayweather. Yes, ma'am.

23 Q Mayweather. Excuse me. Can you explain to the Court
24 how that interview went?

25 A Because I have dealt with -- with D.J. and his mom and

1 Jessica for other things just in the course of my
2 police work, I had a good rapport with mom, and I just
3 got her to bring D.J. back in to talk with me more at
4 length about the events of that night. And probably -
5 - and more -- more than anything, filling in the gaps
6 from 8:30, when we talked -- or, excuse me, not 8:30 -
7 - 6, 6:30, when we talked to him that afternoon, 'til
8 when we talked to D.J. that evening.

9 Q Okay. And what did you learn when you discussed with
10 D.J.?

11 A D.J. kind of -- A lot of it was reiterating what he
12 had talked about with Corporal Grinstead at the time
13 and talking about after we left them, they went to a -
14 - a -- a gentleman named Doug's house who -- I can't
15 think of his name off the top of my head, but we have
16 identified him since then for other reasons -- for
17 other gang reasons. But they went to his house, and -
18 - and they were walking and -- Them being -- they --
19 D.J., Nick and Greg were all together along with
20 Quavian, Shaquan and Mike Armour. They were all
21 together, in and out with each other, for the next
22 couple of hours between the time we saw them at the
23 fight and the time of the incident, and there was
24 discussion about -- that Greg and Nick needed to do
25 something.

1 Q Okay. And who was this discussion between?

2 A Quavian, Mike Armour, and -- and then Nick and Greg.

3 Q So, D.J. was able to basically corroborate -- or gave
4 you consistent information with what Nick had earlier
5 -- already given you?

6 A More or less, yes. And -- and -- As -- And then
7 when I talked to Greg later, he also filled in a lot
8 of those blanks. And a lot of the -- the stories that
9 Nick and D.J. and Greg -- all were similar in the fact
10 that there was discussion that Greg and Nick needed to
11 -- to do something.

12 Q Okay. So did -- Did D.J. actually see -- Did he
13 convey to you during his statement that he actually
14 saw any individuals with any of these items?

15 A He said that once Greg and Nick left them, he -- him
16 and -- him and -- Give me one second.

17 (Witness reviews documents.)

18 They were -- D.J. was with Shaquan and Quavian in the
19 area of Bridgewater walking around, and they -- they
20 were up at the cul-de-sac -- well, not the cul-de-sac
21 -- where it turns. If I can find the one with the
22 location on it. They were walking up the -- up in
23 front of the Nesmith residence towards the turn here,
24 which is in the backyard. This actually -- The --
25 The Bennetts do have a pool at their house. This is

1 their house with the pool. But the were walking in
2 this area when they were approached by Greg and Nick,
3 and they were carrying the TV essentially from the
4 Boulters Lock residence.

5 Q Okay. So, D.J. actually saw them carrying the TV?

6 A Yes. He said when he saw them, they -- he ran. Him,
7 Shaquan and Quavian, they all ran.

8 Q ~~And did Nick -- Did D.J. say that anyone actually~~
9 confessed to doing this break-in to the home?

10 A Well, other than just the -- having the previous
11 conversations of talking about doing something, and
12 then seeing Nick and Greg walking out with items from
13 a residence, he said that he felt like, you know, they
14 obviously did what they were talking about doing.

15 Q Okay. And did -- did you charge D.J. with anything?

16 A I have not.

17 Q Okay. And -- But -- Because he came forward?

18 A Well, and -- and -- That, and, at this point, because
19 other than -- Mainly, yes, because he came forward
20 unsolicited on our part. We didn't have to go hunt
21 D.J. down, and, you know, just to kind of force his
22 hand on that. But because he came to us unsolicited
23 with information that, you know, it was -- He is --
24 he is a gang member, yes, but he at least had the
25 wherewithal to come forward and, say, this is what I

1 know about this.

2 Q And he confirmed to you that all these people were
3 associated with either M.O.B., or is there another
4 gang?

5 A Well, there's a -- there's a actual -- They -- they --
6 -- They've minimized that M.O.B.'s an actual active
7 gang set, but that's just them minimizing it. There's
8 another set in the area, it's called the B.M.R., which

9 is the Black Militant Riders. They are associated,
10 and there's some -- And because gangs are getting so
11 hybrid and cross-associated, you can be members of
12 multiple sets, and that's kind of -- B.M.R. was, what
13 they call, the more hardcore set of the -- of the
14 Friarsgate gang area, and we have -- just in my
15 previous investigation -- have dealt with B.M.R.
16 members doing burglaries, doing lynchings, doing all
17 kind of violent crime.

18 Q So after you met with D.J., did you met with Gregory
19 Hardy?

20 A I did.

21 Q And how did that interview come about?

22 A I met with Mr. Hardy and -- Greg Hardy and his
23 attorney, Dave Farrell, at the police department again
24 in the same interview room that I interviewed Nick in
25 and D.J. in, video recorded, and talked with him about

1 the -- about the events of that night.

2 Q So, Greg's lawyer was present?

3 A He was present. I also -- I did not read him
4 verbatim Miranda, but I did discuss with him, you
5 know, the -- that he did not have to talk to me, he
6 had his attorney present here, his attorney should
7 have advised him, you know, that he didn't have to
8 ~~make any kind of statement to me.~~

9 Q Okay. Let's back up to Nick, though. Nick didn't
10 have an attorney --

11 A No, --

12 Q -- present?

13 A -- he did not.

14 Q And, again, Nick was arrested how soon -- close to the
15 incident --

16 A How -- how soon? A time frame, or --

17 Q Time frame.

18 A Okay.

19 Q Time frame.

20 A (Witness reviews documents.)

21 If I look at the -- I was on scene at 20 -- at --
22 excuse me -- at 11:20, and I talked to Nick, you know,
23 by the Miranda -- I talked to Nick at 2:30. So,
24 you're talking about three hours.

25 Q So, if he had asked --

1 A And he was probably in custody, you know, a half hour
2 or 45 minutes before I talked to him.

3 Q So, if he had asked for a lawyer at any point, what
4 would have happened?

5 A Well, he was in the presence of an officer from the
6 time he was mirandized through the time I had laid
7 eyes on him. So, if he asked for a lawyer, we
8 wouldn't have talked to him.

9 Q Okay. So it --

10 A Or would have talked to him with a lawyer present.

11 Q Exactly. Okay. So what did you learn when you
12 interviewed Gregory Hardy?

13 A Once again, starting back with trying to fill in the
14 time line from the fight call at eight -- at six
15 o'clock, Greg also gave statements, too, that there
16 was some discussion between other gang members about
17 the need for Greg and Nick to do something. And, once
18 again, none of the -- none of the -- none of the gang
19 members I've talked to ever used the word initiation,
20 but, in my mind, that's what I'm thinking. I'm
21 thinking that that was the -- the whole point of
22 discussion, that they had to prove their worth as gang
23 members, and they had to go and commit some kind of
24 criminal act.

25 Q Okay. Let's -- Let me back you up really quick.

1 What does Gregory Hardy look like?

2 A Greg is light-skinned. He's a black male, but his mom
3 -- he's a -- he's a mixed race. His mom's white.

4 Q Okay.

5 A He -- Because, you know, in our -- I've dealt with a
6 lot of mixed races, and -- and -- To me, you know, I
7 -- I would -- I would describe him as a black male,
8 but he's obviously just mulatto, a light-skinned --

9 Q Okay.

10 A -- a mixed race.

11 Q And how tall -- How tall did you say he was?

12 A Greg is -- Greg is -- is taller.

13 (Witness reviews documents.)

14 We booked him at over six-feet tall, --

15 Q Okay.

16 A -- about 170.

17 Q And right -- While you're on that page, what is
18 Greg's date of birth?

19 A Greg's birthday is

20 Q So how old was Greg when this occurred?

21 A Do my math -- Seventeen.

22 Q And how old -- When -- What is Nick Nesmith's date
23 of birth?

24 A Nick's is

25 Q So, how old was he?

1 A He will be -- He is sixteen now. He will be --

2 MR. NESMITH (Defendant's Father): Fifteen.

3 A He's fifteen now. He'll be sixteen --

4 THE COURT: Don't -- don't say anything.

5 A He'll be -- he'll be sixteen in -- in --

6 Q So, he's fifteen when --

7 A He was fifteen when this occurred, yeah.

8 Q Sorry to interrupt your train of thought. Go ahead
9 and talk to me about what you learned from Gregory
10 Hardy.

11 A Once again, Greg and I, in the presence of Mr.
12 Farrell, we talked about the time line from the fight
13 call that we went to up 'til, you know, when we --
14 when we talked with -- when we -- when we went to the
15 -- the -- I'm sorry -- the invasion call, the
16 incident. And, once again, Greg also talked about
17 that there was discussion between Mike Armour and
18 Quavian and some of the other more senior members of
19 the gang about that -- that -- that Nick and Greg
20 needed to do something. And, once again, that's to --
21 you know, to do some kind of criminal act, or, you
22 know, hit a house, get a lick, but to do some kind of
23 criminal act to prove their -- their membership worth
24 in the gang.

25 Q And who is Mike Armour?

1 A Mike is -- He just actually just turned seventeen,
2 but he is a more senior member to them. He -- He --
3 We've arrested him multiple times for things, but he
4 is the -- one of our more focal problems with children
5 we have in the Irmo area.

6 Q Okay. And how did -- Did Greg tell you that they
7 received some sort of code to go into the house, or

8 how did they know when it's time or something like
9 that? Did he -- Was it that planned out or --

10 A There was -- There was no discussion like that, but -
11 - but there was some -- just some thought on my part,
12 that it was -- they got in the house fairly easy, like
13 -- that -- And we never discussed any kind of pre-
14 planning, but the -- by -- by Nick's statement of
15 reaching in through the doggie door, either they
16 figured that on the scene, or -- or -- you know, or
17 they may have even been there before, cased the house
18 out.

19 Q Okay.

20 A But there was no indication that this was a specific
21 targeted house.

22 Q Okay. So once, you know, they -- you were trying to
23 fill in the time line, did you learn from when they
24 had the fight on the street that you responded to --

25 A Yes.

1 Q And did he -- did he tell you about another fight that
2 occurred?

3 A They went over to Dutch Fork -- Dutch Fork Elementary
4 School, which -- which, once again, is a half a mile
5 from the -- from the -- from the Bridgewater address
6 and the Boulters Lock address, and -- and we had --
7 and then had another fight there, and like I -- and as

8 I said earlier, we had -- we had intelligence saying
9 that that was common for gang members to fight at some
10 of the places that weren't occupied; schools on the
11 weekend, you know, schools at night, you know, is a
12 good place to go have a fight because it's well-lite
13 and nobody's there.

14 Q Okay. And when you're talking with Gregory about what
15 actually occurred at the Bennett residence, what did
16 he tell you happened?

17 A That when he went in, he assaulted Mr. Bennett and --
18 and that Nick was assaulting Ms. Bennett. He had
19 actually stated that -- and -- and corroborating what
20 Ms. Bennett said, that -- which -- which -- which of
21 them was assaulting who, which is what we already had
22 from Ms. Bennett, saying that Nick was assaulting her
23 and he was assaulting Mr. Bennett. And, actually, he
24 said that -- you know, that he had to tell Nick to
25 stop, you know, because the -- the assault was getting

1 so violent that it was making -- I guess making him
2 uncomfortable and he thought that it was enough, that
3 they -- they had -- they had met their -- made their
4 point.

5 Q But Gregory Hardy's version of events matched --

6 A Right. And -- and --

7 Q -- Ms. Bennett's version of events?

8 A And -- and he -- he acknowledged handing her the
9 towel, which is the same thing she told us, you know,
10 giving her the towel for her injuries to -- to help
11 the blood, stuff like that.

12 Q And those are little details that only the victim and
13 the suspect would --

14 A You would have had -- You would have had to have been
15 there to know it.

16 Q Okay. And what else significant did you learn from
17 Gregory Hardy?

18 A That he -- That they -- I'm trying to think. That
19 he'd -- Other than giving the towel and that they had
20 taken the items, and taken them back to Nick's house,
21 he said that he had hung out. And after it was over
22 with, they were there for a little bit, and then
23 seeing the police cars outside, he realized that he
24 needed to leave and he left and actually -- because we
25 didn't catch him that night -- he actually ran and got

1 picked up at a -- at a local convenience store.

2 Q Did he tell you how they hid the items?

3 A He just said they hid them -- hid them at the house.

4 Q And why did they hid them?

5 A Well, they -- A; I guess because Nick's parents would
6 be home. They didn't want them to find them, and, you
7 know, obviously, they wanted to keep them secure from

8 anybody else that might come across them.

9 Q Okay. And, again, he was not caught that night?

10 A He was not, no.

11 Q And why -- Did he say he heard the police, or he just
12 --

13 A Well, he would -- As -- as we talked about earlier,
14 because Officer Deckman's car was sitting out in front
15 of the Bridgewater residence, just in seeing -- I
16 think they had realized that, you know, there was a --
17 just a matter of time before we at least knocked on
18 the door or something. I think he just ultimately
19 wanted to make a run for it before we -- we caught
20 him. And that's -- Like I said, we kind of deduced -
21 - The first noise they heard was Greg jumping the
22 fence and Nick following.

23 Q Okay. And you just basically clarified everything
24 with Greg that you already learned from D.J. and Nick?

25 A Clarified by -- We -- You know, Greg's -- Greg's

1 story and D.J.'s story and -- and Nick's story, the
2 basic facts were all similar. It was the minutia of
3 it that -- You know, there was the -- Just the
4 variation of, you know, the independent telling of the
5 story. The biggest thing I thought was Greg's
6 statements corroborated Ms. Bennett's statements about
7 the nature of the assault, who was assaulting who,

8 and, you know, facts -- as I -- as I said earlier,
9 facts that you had to be in the room to know that that
10 happened. And, like I said, Ms. Bennett was there,
11 obviously, and she -- her and Nick's statements were
12 much more -- excuse me -- her and Greg's statements
13 were much more corroborating than Nick's was.

14 Q So, taken as a whole; the whole investigation, the
15 forensic evidence, the victim's statement, the
16 defendant's statement, it's clear that the black male
17 is who?

18 A Is Nick Nesmith.

19 Q And the black male was the man...

20 A That he -- He committed the assault on Ms. Bennett,
21 yes.

22 Q Okay. And do you see Nick Nesmith in the --

23 A He is.

24 Q -- courtroom? Can you describe him to the Court?

25 A He's sitting, in the blue shirt.

1 Q Is that the person who gave the confession to this --

2 A He is.

3 Q -- incident?

4 A Mm-hmm.

5 MS. HENDRICK: I have no further questions at this
6 time. Please answer any questions Ms. Campbell-Williams
7 has for you.

8 THE COURT: All right. Let's take a short break
9 before we conduct this cross-examination.

10 MS. HENDRICK: All right.

11 THE COURT: Take -- take about five or ten minutes.

12 (SHORT BREAK)

13 MS. HENDRICK: May it please the Court?

14 THE COURT: Yes, ma'am.

15 MS. HENDRICK: Your Honor, I think -- as discussed in
16 Chambers, I think the defense counsel has a witness that's
17 not going to be available after lunch. I'm going to make
18 the decision to go ahead and call him if -- if --

19 MS. HAYNES: Your Honor, if that wouldn't be too
20 inconvenient, then, we'd like to go ahead and call Officer
21 Churchill and resume testimony after him.

22 THE COURT: All right. I don't have a problem.
23 Understand --

24 MS. HENDRICK: I don't have a problem with it either
25 as long -- I mean, just -- I guess Sergeant Wilson can

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 just sit here and promise he won't talk about his
2 testimony.

3 THE COURT: Sergeant Wilson, if you don't mind, if
4 you'll step down, --

5 THE WITNESS: Yes, sir.

6 THE COURT: -- and we'll take this other witness out
7 of order.

8 MS. HAYNES: Thank you, Your Honor. We would call
9 Officer James Churchill.

10 OFFICER JAMES E. CHURCHILL, after having been duly
11 sworn, testified as follows:

12 OFFICER JAMES E. CHURCHILL - DIRECT EXAMINATION

13 BY MS. HAYNES:

14 Q Hey, Officer Churchill. Can you please state your
15 name for the Judge?

16 A My name is James E. Churchill.

17 Q And thank you for being here today. We -- we
18 appreciate it. Where do you work?

19 A I work at the Alvin S. Glenn Detention Center,
20 juvenile section.

21 Q Okay. And what is your position there?

22 A I'm a Detention Center Officer.

23 Q Okay. How long have you -- How long have you been
24 with them?

25 A I've been -- Going on 15 years, and I've been three

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 years with the juvenile section.

2 Q Okay. What -- what is your daily -- Like, what are
3 your daily duties entail?

4 A The responsibility is safety and control of the
5 juveniles. We wake them up in the morning, get them
6 ready for -- for class. They'll go to school from
7 8:15 to 10:30, and they go back to school at 11 to 12,
8 and from one to two, they go to class, and then from
9 two to four -- four o'clock, they're -- rec time.

10 Q And you're supervising them during this?

11 A I'm -- Each officer's responsible for approximately
12 eight juveniles, and I -- responsible at different
13 dorms.

14 Q Okay. And you work full-time, right?

15 A Yes, ma'am.

16 Q Okay. Let's see. How long has Nicholas been in? Do
17 you -- do you know?

18 A I think he's probably been there approximately --
19 maybe four to five months, I think.

20 Q Since -- Would September sound right?

21 A Yes, ma'am.

22 Q Okay. Do you feel like you -- you get to observe him
23 and interact with him pretty frequently?

24 A The times that I work in the unit, yes, ma'am.

25 Q Okay. Do you see him on a daily basis or once a week

- 1 or...
- 2 A Every day of the days that I work.
- 3 Q Okay. Okay. And -- Let's see. You -- Are you --
- 4 You're in class with him, too, right?
- 5 A Yes, ma'am.
- 6 Q Okay. And do you know of any problems with Nicholas
- 7 in class?
-
- 8 A No, ma'am, --
- 9 Q Okay.
- 10 A -- not to my knowledge.
- 11 Q How -- how is he behaved outside of class? Has he
- 12 gotten any disciplinary referrals?
- 13 A No, ma'am, not to my knowledge. He hasn't had any.
- 14 Q Okay. What would you say his personality is like?
- 15 A He's well-mannered, very respectful, as -- when I'm
- 16 working there. I haven't had no major problems with
- 17 him. Just little minor things; just talking through
- 18 the doors or something, but nothing major.
- 19 Q Okay. Do his parents come and visit him?
- 20 A Yes, ma'am.
- 21 Q Pretty regularly?
- 22 A Normally, three times a week.
- 23 Q Okay. And -- and how would you describe Nicholas
- 24 compared to the other kids? Is he quiet or talkative
- 25 or just -- How would you describe --

1 A He's --

2 Q -- him to the Judge?

3 A Mostly, he's quiet sometimes, but he's also talkative.
4 He gets pretty well -- He gets along pretty well with
5 the other juveniles.

6 Q Okay.

7 MS. HAYNES: Beg the Court's indulgence, Your Honor.

8 THE COURT: Yes, ma'am.

9 BY MS. HAYNES (resuming):

10 Q Do you know how he gets along with any of the other
11 staff at the detention center?

12 A I really don't know, because since there's three
13 different shifts -- I haven't heard no major
14 complaints about him.

15 Q Okay.

16 A Just that he's sometimes a bit talkative or he likes
17 to joke around a lot, but nothing major.

18 Q And he's respectable with you? He's --

19 A Yes, ma'am.

20 Q -- not a problem?

21 A He's very respectable. I haven't had no major
22 problems with him.

23 Q Okay. And have you seen him have any problems with
24 the other kids, or does he seem to get along with them
25 pretty well?

1 A Just the normal little problems with juveniles;
2 something that they might say, but nothing major.

3 Q No fights?

4 A No, ma'am. No, ma'am.

5 MS. HAYNES: Just please answer any questions that the
6 solicitor has.

7 THE WITNESS: Yes, ma'am.

8 MS. HAYNES: Thank you.

9 MS. HENDRICK: Very briefly.

10 OFFICER JAMES E. CHURCHILL - CROSS EXAMINATION

11 BY MS. HENDRICK:

12 Q What happens if you misbehave at the detention center?

13 A If he's misbehaving, then he would -- what type of
14 problem he has -- he'll be placed in his room for a
15 few hours. If it's something major, he'll receive a
16 writeup, and then we'll have a hearing officer that
17 would determine what type of punishment he will
18 receive; if it's extra duty, or he'll be restricted to
19 his room, or he loses visits.

20 Q Are juveniles made aware of these consequences?

21 A Yes, ma'am.

22 MS. HENDRICK: I have no further questions.

23 THE COURT: Anything else?

24 MS. HAYNES: Nothing further, Your Honor.

25 THE COURT: All right. You can step down, sir.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 MS. HAYNES: I'd asked that this witness be excused.

2 THE COURT: Any objection?

3 MS. HENDRICK: No, Your Honor.

4 THE COURT: You may be object -- You may be excused,
5 Mr. Churchill.

6 THE WITNESS: Thank you, sir.

7 MS. HENDRICK: I guess, at this point, State will call
8 Sergeant Wilson for cross examination.

9 THE COURT: Sergeant Wilson, if you'll come back up,
10 please, sir.

11 MS. CAMPBELL-WILLIAMS: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 SERGEANT RYAN J. WILSON - CROSS EXAMINATION

15 BY MS. CAMPBELL-WILLIAMS:

16 Q Be real patient with me. I've --

17 Sergeant Wilson, --

18 A Yes, ma'am.

19 Q -- good afternoon. I'm just going to play just a
20 little bit of -- just a little portion, not the whole
21 video tape, of the interview. About how long did you
22 say -- think that interviewed lasted between you and
23 Nick?

24 A A half-hour, 45 minutes, somewhere -- somewhere like
25 that, maybe.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 Q Okay. And at this time -- When the interview was
2 taking place and Nicholas told you in the room -- He
3 -- he is voluntarily giving this information?

4 A Yes, ma'am. Yeah. He's --

5 Q Okay.

6 A He is -- He acknowledges Miranda, and, yes, he's
7 making a voluntary statement, yes, ma'am.

8 Q Okay. And prior -- prior to this time, before he
9 comes into the room, did you have any contact with him
10 before -- prior to this interview?

11 A About this incident?

12 Q Yes, about this incident.

13 A No, ma'am. No, ma'am. I saw him earlier in the
14 evening, but, I mean, as far as any discussion prior
15 to -- other than walking him from where he was sitting
16 in the patrol office to here, you know...

17 MS. CAMPBELL-WILLIAMS: Okay. Our technician had to
18 leave --

19 (Ms. Campbell-Williams plays video-recorded interview)

20 I'm trying to fast-forward this to --

21 Your Honor, this -- this doesn't seem to be working
22 properly. It's just playing -- Can you get this?

23 THE COURT: You may want the sound to be a little bit
24 higher.

25 MS. CAMPBELL-WILLIAMS: And the -- and the sound's

1 muffled.

2 THE COURT: Yeah.

3 MS. CAMPBELL-WILLIAMS: We might have to just -- need
4 to just -- Mm-hmm. And it just -- I was trying to --

5 MS. HENDRICK: Fast forward it. Fast forward it,
6 Mitzi.

7 MS. CAMPBELL-WILLIAMS: Fast forward, yeah. Let me do
8 that.

9 MS. HAYNES: Here we go. This is what --

10 THE WITNESS: One of you just, like, push buttons.

11 MS. HENDRICK: Hit record. I'm not touching that.

12 MS. CAMPBELL-WILLIAMS: Okay.

13 MS. HAYNES: I think we got it working, Your Honor.

14 THE COURT: Yes, ma'am.

15 THE WITNESS: There's a long delay -- It's -- it's
16 working.

17 MS. CAMPBELL-WILLIAMS: I know. That's true. That's
18 fine.

19 THE WITNESS: There it goes.

20 (Viewing video-recorded interview.)

21 BY MS. CAMPBELL-WILLIAMS (resuming):

22 Q And do you recognize this interview?

23 A Yes, ma'am.

24 Q And this is a true and accurate depiction of the
25 interview that happened between you and Nicholas --

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 A Yes, ma'am. That's our --

2 Q -- at the time he -- at the time he gave the
3 information to you regarding this incident that
4 happened on Boulters?

5 A Yes, ma'am.

6 Q Okay. And when you were interviewing Nicholas on --
7 on -- at this time, what was his demeanor like?

8 A He was very calm. He was polite. You know, very
9 calm. You know, just not agitated at all, very -- you
10 know, he's very calm and --

11 Q Very respectful?

12 A Yes.

13 Q And at --

14 A Very polite.

15 Q -- one time on this interview you -- you responded
16 that he was very cooperative?

17 A Right.

18 Q Okay. And that he was very polite, and that you
19 appreciated this --

20 A Right.

21 Q -- on this -- Okay. And he was never at all
22 belligerent. You all didn't have to go chase him --
23 him down, did you?

24 A As -- as Corporal Dechman testified, what he -- upon
25 seeing him, he -- he walked over to him, didn't run

1 from him or anything like that. Other than the --
2 them jumping the fence. But, no officer saw that;
3 that just -- happened to find him on the next street
4 over.

5 Q Okay. Let's go back to the incident. Initially, when
6 you took the DNA, have you -- Do you have the results
7 of that -- the DNA that --

8 A Not to my knowledge. All we did was we took the
9 custody of the -- of the -- the hoodie, the gray
10 hoodie, and we submitted it to SLED. And SLED,
11 through their forensics labs, they -- they -- they try
12 to pull any DNA samples off of it and code that, if
13 they can, and depending on known subjects to match
14 them against, they can -- they can do that. But, at -
15 - at this point, I think SLED is just -- they're just
16 examining for trace and they're coding. I don't think
17 they're actually -- unless they can get a specific
18 request or have known suspect.

19 Q Okay. And the only processed prints that you have are
20 those of Greg Hardy?

21 A The only -- The only -- Well, the only -- Yeah, the
22 only processed prints that we have matched to was to
23 Greg, correct.

24 Q Okay. And the items that you all recovered when you
25 all went to Nicholas' home, you recovered the items

1 that Nick said that were in the home?

2 A Correct.

3 Q And Nicholas is the one who gave you all that
4 information?

5 A Correct.

6 Q And he gave you information as to where -- the
7 whereabouts -- what the items were, and he gave you

8 the information as to where they could be located?

9 A He gave that to the officer that talked -- Not to me
10 specifically, but to the officer that talked to him,
11 yes, ma'am.

12 Q But when he was --

13 A He gave it to the police.

14 Q -- interview -- when you were interviewing him, he was
15 talking about the incident and how --

16 A Correct. Correct.

17 Q -- how it occurred? And this Greg Hardy, who is the -
18 - who is the adult in -- in this particular incident,
19 they call him G-boy?

20 A G-boy is his street name.

21 Q Mm-hmm. That's his street name. And -- But you all
22 had to go looking for him, and you had -- actually had
23 to get a warrant for his arrest?

24 A Yes, ma'am. I secured an arrest warrant.

25 Q And when he came to the police station, he was

1 escorted by -- he was accompanied by an attorney?

2 A No, ma'am. We actually -- We actually -- The
3 interview that we just -- that we had video of is --
4 He was already in custody. He was brought back to the
5 -- from the detention center to the police department
6 with Mr. Farrell there, and we interviewed -- We did
7 not interview him upon custody.

8 Q Okay.

9 A That was an interview a little -- a couple days later
10 when Mr. Farrell could sit in on it, and we brought
11 him back to the police department from the detention
12 center.

13 Q Okay. And you -- Okay. His attorney was present at
14 that time. And Greg -- G-boy, as they said --
15 admitted to -- to beating Mr. Bennett?

16 A Mr. Bennett, yes, that's correct.

17 Q Okay. And he was on the run for quite some time until
18 y'all issued the warrant for his arrest and booking
19 him in?

20 A We were -- We had him in custody within 24 hours.

21 Q Mm-hmm.

22 A The incident occurred, you know, at ten o'clock or
23 ten-thirty on the 14th, and we had him in custody by
24 five or -- five o'clock p.m. on the 15th -- or seven
25 o'clock, somewhere in the evening of the 15th.

1 Q Okay. And, Sergeant Wilson, during this interview
2 with Nicholas, did he express remorse? Did he express
3 remorse as to what had happened?

4 A He -- He discussed that -- that he would not want --
5 he had grandmothers, and Ms. -- you know, he would not
6 want somebody doing this to his -- to his family
7 members.

8 Q That's -- that's correct. And he said at one point in
9 this interview -- And it's kind of deep into the
10 interview, so we'll go there at this time. He said
11 someone -- In the interview, he says, "I actually
12 have a chain hung around my neck because of what I've
13 done."

14 A Without going through the complete transcript, I would
15 -- Without -- without looking at everything verbatim
16 -- He -- I don't recall that he said something
17 specific like that, but in the same --

18 Q But something --

19 A -- in the same --

20 Q -- like -- in the same --

21 A -- in the same vein.

22 Q -- vein as that?

23 A Yes, ma'am. Yes, ma'am.

24 Q Okay. That's what he said. And, Sergeant Wilson, 12
25 years on the -- on the police force at Irmo, have you

1 ever arrested him, -- besides this incident --
2 Nicholas, for any violent offences?

3 A Me, personally, no, ma'am.

4 Q Okay.

5 A I know him on site just because, like I said, I know -
6 - I know --

7 Q And those individuals that he hangs out with?

8 A Yes, ma'am.

9 Q And you mentioned the gangs, the individuals that he -
10 - he -- he hangs out with. Do you know him to be a
11 member of a gang, or that he just affiliates with --
12 with -- with those individuals?

13 A He affiliates with the M.O.B. members. And because
14 they don't carry a -- a card with them once they're a
15 full-time member, it's -- it's -- He's affiliated
16 with them, then we -- we consider him as -- If he
17 hangs around with the gang members and he does things
18 that the gang members are doing, then we -- we -- as
19 law enforcement, I view him as part of a gang. Now,
20 what kind of rites or rituals they have to actually
21 make him a member, and we've discussed some of those
22 that we just have from intelligence, -- But, you
23 know, as far as what I know, you know, he's an
24 affiliate of them, and I would -- I would classify him
25 as a member of that gang.

1 Q Okay. He didn't say through this -- this very candid
2 interview with you that he was a member of the gang?

3 A He did state that he is -- early in the interview --
4 that he's kicking the M.O.B. stuff down the toilet,
5 and that -- and then later on, he discusses that his -
6 - his status -- that he -- he should not have to prove
7 his status to -- to Quavian because some of his other
8 cousins and relatives are in the -- in the same --
9 affiliated with the same gang members.

10 Q He said, at one point in the interview, that he was
11 afraid when he went into that home, and he said that
12 he was going to get beaten?

13 A If he did not do it?

14 Q Yes. Now, I believe one of the other officers -- that
15 briefly mentioned that.

16 A As we -- As we talked about -- Other than this --
17 There was -- there was clearly some implicit decision
18 by ranking members of the gang members that him and
19 Greg had to do something. Now, as for repercussions
20 if he did not, I -- I don't remember him specifically
21 saying he would -- going to be beaten if he did not do
22 it. There was -- I don't know if there was any fear
23 of retribution for him not doing it.

24 Q And you didn't make the arrest of -- of -- of Greg
25 Hardy. He was arrested by Corporal Dennis?

1 A Correct.

2 Q And he was taken to the adult section?

3 A Of Alvin S. Glenn, yes, ma'am.

4 Q Of Alvin S. Glenn.

5 MS. CAMPBELL-WILLIAMS: Okay. No further questions at
6 this time, Your Honor.

7 THE COURT: Any other -- Ms. Hendrick?

8 MS. HENDRICK: Yes, very, very briefly.

9 SERGEANT RYAN J. WILSON - RE-DIRECT EXAMINATION

10 BY MS. HENDRICK:

11 Q Has the case against Gregory Hardy been presented to
12 the Grand Jury?

13 A I do not believe that it has. Without having those
14 case notes in front of me, -- Actually, I have
15 presented --

16 Q You presented it to the Grand Jury?

17 A I -- I couldn't tell you the date off the top of my
18 head, no.

19 Q But it was -- And that was -- Was it true-billed by
20 the Grand Jury?

21 A That, I -- I don't know if it has been or not.

22 MS. HENDRICK: I have no further questions.

23 THE COURT: Anything else, Ms. Campbell-Williams?

24 MS. CAMPBELL-WILLIAMS: Yes, Your Honor.

25 Your Honor, I would just ask that this video be marked

1 as Defense Exhibit Number One, and we move to place this
2 into evidence for you to consider this during your
3 deliberations.

4 MS. HENDRICK: Without objection, Your Honor.

5 THE COURT: All right.

6 (WHEREUPON, CD WAS INTRODUCED AND RECEIVED
7 INTO EVIDENCE WITHOUT OBJECTION AS
8 DEFENDANT'S EXHIBIT NUMBER ONE.)

9 MS. HENDRICK: I would like to say that if she -- She
10 also needs to admit into evidence the other CD into -- I
11 don't know of any other witness she can enter that CD in.

12 MS. CAMPBELL-WILLIAMS: Which?

13 MS. HENDRICK: The one with Gregory Hardy.

14 THE COURT: Mr. Hardy's.

15 MS. HENDRICK: I think the proper -- I think this is
16 the only witness that the proper foundation's been laid for
17 with that. I mean, it's without objection, but I think to
18 keep the record clean, we need to lay the foundation.

19 MS. HAYNES: Judge, I beg the Court's indulgence.

20 THE COURT: Sure.

21 SERGEANT RYAN J. WILSON - RE-CROSS EXAMINATION

22 BY MS. CAMPBELL-WILLIAMS:

23 Q (Viewing video tape.)

24 And just for the record, is -- Do you recognize this
25 interview?

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

1 A That is Mr. Hardy, the co-defendant in this case, and
2 I'm sitting off-camera right there at the bottom.

3 Q Okay. And is this a fair and -- and accurate
4 indication of the interview that occurred between you
5 and co-defendant Gregory Hardy?

6 A Yes, ma'am. The reason no conversation's going on, I
7 was waiting for Mr. Farrell, but this is -- but
8 continue it -- you know, as you would continue it, Mr.
9 Farrell would show up, and we would start the
10 interview.

11 MS. CAMPBELL-WILLIAMS: And, Your Honor, at this time,
12 or just as far as the record, we note that you have already
13 viewed these -- these video tapes, and I would like to make
14 this as part of the record as Defendant's Exhibit Number
15 Two.

16 THE COURT: Ms. Hendrick's already indicated no -- no
17 objection, so this will be Defendant's Number Two.

18 MS. HENDRICK: Your Honor, I have no further -- I
19 don't know if Ms. Campbell-Williams has any further
20 questions for this witness, but...

21 THE COURT: Any other questions of Sergeant Wilson?

22 MS. CAMPBELL-WILLIAMS: No, Your Honor.

23 THE COURT: All right. You can step down, sir.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Thank you.

1 MS. CAMPBELL-WILLIAMS: Your Honor, I'm just having
2 problems with this -- operating this.

3 MS. HENDRICK: I'll get it out.

4 MS. CAMPBELL-WILLIAMS: Just want to -- left it here -

5 -

6 MS. HENDRICK: I'll get it out.

7 MS. CAMPBELL-WILLIAMS: But I know I have to give it

8 to the -- the court reporter, but I was just --

9 (WHEREUPON, CD WAS INTRODUCED AND
10 RECEIVED INTO EVIDENCE WITHOUT
11 OBJECTION AS DEFENDANT'S EXHIBIT NUMBER
12 TWO.)

13 (WHEREUPON, CERTAIN PROCEEDINGS WERE
14 HAD WHICH WERE NOT REQUESTED TO BE
15 TRANSCRIBED.)

16

17

18

19

20

21

22

23

24

25

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

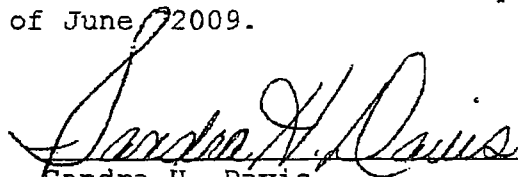
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

CERTIFICATE

Be it known that I, the undersigned Sandra H. Davis, Official Court Reporter for the Eight Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of partial proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Family Court for Richland County, South Carolina, so given on the 24th day of February, 2009, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 21st day of June 2009.



Sandra H. Davis
Official Court Reporter
Notary Public for South Carolina
My commission expires 5/22/2016.

THIS TRANSCRIPT WAS PREPARED FOR MS. L. EDEN HENDRICK, ESQUIRE

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND) IN THE FAMILY COURT

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 VERSUS) TRANSCRIPT OF RECORD
)
 NICHOLAS NESMITH,) 2008-JU-40-1474
)
)
 DEFENDANT.)
 _____)

FEBRUARY 24TH, 2009
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER E. HENDERSON

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

LAUREL EDEN HENDRICK, ESQUIRE
 ATTORNEY FOR THE PLAINTIFF

MITZI CAMPBELL-WILLIAMS, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

JOANNA HAYNES, ESQUIRE
 ATTORNEY FOR THE DEFENDANT

SANDRA H. DAVIS
 OFFICIAL COURT REPORTER
 8TH CIRCUIT, AT-LARGE

THIS TRANSCRIPT WAS PREPARED FOR MS. MEGAN E. HARRIGAN, ESQUIRE

I N D E XDEFENSE WITNESS NO. 1: MARY NEWTON HOUCK

DIRECT EXAMINATION BY MS. HAYNES 3

CROSS-EXAMINATION BY MS. HENDRICK 5

EXAMINATION BY THE COURT 6

DEFENSE WITNESS NO. 2: LINDA POPE JONES

DIRECT EXAMINATION BY MS. HAYNES 7

CROSS-EXAMINATION BY MS. HENDRICK 10

RE-DIRECT-EXAMINATION BY MS. HAYNES 11

CLOSING STATEMENTS:

MS. CAMPBELL-WILLIAM. 13

MS. HENDRICK. 20

RULING 29

CERTIFICATE 34

E X H I B I T S

(NO EXHIBITS WERE MARKED FOR THIS PORTION OF THE HEARING.)

THIS TRANSCRIPT WAS PREPARED FOR MS. MEGAN E. HARRIGAN, ESQUIRE

P R O C E E D I N G S

February 24th, 2009

THE COURT: All right. Ms. Campbell-Williams,
you may proceed.

MS. HAYNES: Your Honor, the defense would call
Ms. Houck to the stand.

THE COURT: Place your left hand on the bible,
raise your right, please.

MARY NEWTON HOUCK, after having been duly sworn,
testified as follows:

THE COURT: Ms. Haynes.

MS. HAYNES: Thank you, Your Honor.

MARY NEWTON HOUCK - DIRECT EXAMINATION

BY MS. HAYNES:

Q Ms. Houck, would you please state your full name for
the record.

A Mary Newton Houck.

Q Houck. Thank you. And would you tell the judge where
you're employed.

A Alvin S. Glenn Detention Center.

Q Okay. And in what capacity?

A I'm a teacher through Richland County School District
One.

Q Okay. How long have you been doing that?

A Fourteen years.

1 Q Okay. And how many kids do you teach in a day?

2 A The capacity is nine per classroom. We have two sets
3 of student classes, so a possible total of 18.

4 Q Okay. And how many times have you been called to
5 testify on behalf of one of those students?

6 A This is the third time.

7 Q Okay. And do you teach Nicholas?

8 A Yes, I do.

9 Q Okay. What kind of student would you say he was?

10 A Nicholas is a very polite, quiet student. He does his
11 work. He'll ask for help, if he needs it.

12 Q Does he seem to get along with the other kids?

13 A I don't see him that much involved with other
14 students. He, more or less, sticks to himself. He
15 does his own work. He's very, very quiet in my class.

16 Q Is he -- Would you say he's respectful to --

17 A Yes.

18 Q -- you in --

19 A He's very respectful. Initially, he refused to come
20 to class. But then I started telling him, "You don't
21 get any credit when you don't come." He'd come and
22 make very good grades, and so he's -- he's been
23 attending regularly.

24 Q And he is -- he is making good grades. He's...

25 A He is. He's been making in the low 80s. I teach

1 biology and math. He's been making low 80s in each
2 one of those.

3 Q And would you say he's making an effort --

4 A Yes. Yes. Hmm-mm.

5 Q -- in class? Do they -- Do they have homework? Do
6 they have to do homework?

7 A Not that often. No. It's hard to enforce it.

8 MS. HAYNES: Beg the Court's indulgence, Your
9 Honor.

10 Ms. Houck, will you just please answer any
11 questions that the solicitor has --

12 THE WITNESS: Okay.

13 MS. HAYNES: -- for you. Thank you.

14 THE WITNESS: Thank you.

15 MS. HENDRICK: Very briefly.

16 MARY NEWTON HOUCK - CROSS-EXAMINATION

17 BY MS. HENDRICK:

18 Q You said he had initially refused to go to class. Can
19 you expand more on that?

20 A No, I can't. The officers would just tell us that he
21 didn't want to come.

22 Q And when was this?

23 A When he initially was admitted to the detention
24 center.

25 Q Was this a one-time occasion, or did this happen --

1 A This happened --

2 Q -- numerous times?

3 A -- numerous times.

4 Q So he was missing days of class.

5 A Yes.

6 Q And -- Because -- And you were just informed that he
7 refused to attend.

8 A Yes. No details, just that he did not come. He did
9 not want to come.

10 Q And then eventually he did start coming --

11 A Yes.

12 Q -- to class.

13 A Hmm-mm.

14 Q But at the very beginning, he refused.

15 A Right.

16 MS. HENDRICK: I have no further questions.

17 THE COURT: Ms. Haynes.

18 MS. HAYNES: Nothing further, Your Honor.

19 MARY NEWTON HOUCK - EXAMINATION

20 BY THE COURT:

21 Q Would you explain to me what you mean by it's hard to
22 enforce homework?

23 A The students are not allowed to use pencils. They can
24 use a pencil in the recreation area, but sometimes the
25 officers don't want to keep track of the pencils. If

1 I -- I also teach GED, and some of those students are
2 allowed to come out into the central area and use the
3 pencils. So, it's difficult to enforce that. They
4 cannot take hardback books back with them, so they're
5 limited in what they can do.

6 **THE COURT:** All right. Thank you, ma'am.

7 **MS. HAYNES:** Thank you. May this witness be
8 excused, Your Honor?

9 **THE COURT:** Any objection?

10 **MS. HENDRICK:** No, Your Honor.

11 **THE COURT:** You may be excused, ma'am. Thank
12 you.

13 **MS. HAYNES:** And, Your Honor, the defense would
14 call Ms. Jones.

15 **THE COURT:** Ms. Jones, if you'll come forward.
16 Place your left hand on the bible, raise your
17 right.

18 **LINDA POPE JONES**, after having been duly sworn,
19 testified as follows:

20 **THE COURT:** Have a seat, please.

21 **LINDA POPE JONES - DIRECT EXAMINATION**

22 **BY MS. HAYNES:**

23 Q Ms. Jones, could you state your full name for the
24 record, please.

25 A Linda Pope Jones.

THIS TRANSCRIPT WAS PREPARED FOR MS. MEGAN E. HARRIGAN, ESQUIRE

- 1 Q Thank you, ma'am, and thank you for being here today.
2 And would you tell the judge where you're employed?
- 3 A I'm employed at the Alvin S. Glenn Juvenile Detention
4 Center.
- 5 Q And what is your job there?
- 6 A I'm a teacher of English, literature, reading, and
7 lower education.
- 8 Q Okay. And how long have you been doing that?
- 9 A I've been teaching for 33 years. At the Alvin S.
10 Glenn Detention Center, 14 years.
- 11 Q Okay. And have you had a chance to work with
12 Nicholas?
- 13 A Yes, I have.
- 14 Q He's one of your students.
- 15 A Yes, he is.
- 16 Q Okay. How many kids do you have in a class? Is it
17 the same as Ms. -- Ms. Houck?
- 18 A Yes. Right now we have a total of 13 students.
- 19 Q Okay. And how many times have you been called to
20 testify on behalf of one in court?
- 21 A Several. Maybe four or five, I guess.
- 22 Q And what kind of student would you say Nicholas is
23 academically?
- 24 A Academically, he's about mid-average. His grades in
25 reading and language arts average about 77.

1 Q Okay.

2 A Somewhere thereabouts.

3 Q And how about on a -- on a more personal level. How
4 would you -- How would you describe his personality?

5 A Very quiet. He doesn't interact a lot with me or with
6 the other students. He answers questions when he's
7 asked. He reads when he's asked. But very quiet and
8 kind of subdued.

9 Q Would you call him one of your problem students?

10 A No, he hasn't given any disciplinary problems, as
11 such. He -- No. Talks when he's, you know, working
12 independently or with a group of students, --

13 Q Hmm-mm.

14 A -- I'll say.

15 Q Is he -- Is he pretty respectful to you and the other
16 staff that you know of?

17 A He has been, as far as I know. He has been with me.

18 Q Do you know of any other -- any -- him getting in any
19 -- any fights in class, or any other problems like
20 that? Any fights with students or... How has he --
21 How has he been, in your experience with him, in
22 class?

23 A He comes to class. He does his assignments. He does
24 his work. He has not given any discipline problems,
25 as -- as far as I know.

1 Q And you see him on a daily basis, --

2 A Every day.

3 Q -- right?

4 A Yes.

5 Q For -- for about how long a day?

6 A 8:15 until two o'clock, and their lunch break's in
7 between that.

8 **MS. HAYNES:** Okay. And, again, I -- I appreciate
9 you -- you coming to testify. And just answer any -- any
10 questions that the solicitor has for you.

11 **THE WITNESS:** Okay.

12 **LINDA POPE JONES - CROSS-EXAMINATION**

13 **BY MS. HENDRICK:**

14 Q Did you have the initial trouble with him not wanting
15 to attend school as the other teacher did?

16 A Yes. Well, we're one in the same. When he comes to
17 one class, he flip -- We flip-flop the students, and
18 he goes to the next class, so they give us the same
19 information.

20 Q And what was your understanding of that situation?

21 A There had been times when we were told that he was not
22 feeling well, and there were times when we were told
23 that he just didn't want to come to class --

24 Q And when --

25 A -- on a given day.

1 Q And when a juvenile does not want to come to class,
2 what happens?

3 A Many times they are allowed to stay in their dormitory
4 rooms but they're restricted in their interactions,
5 social interactions are restricted. They'll take --
6 Certain privileges may be taken from them if they
7 refuse to come to class.

8 Q So given all of this, at the very beginning, he
9 initially refused to come to class.

10 A That's what we were told.

11 Q And do you know how long that period of time lasted?

12 A It may have been a week.

13 Q Okay. And that was at the initial time.

14 A Yes, when he first started. When we first enrolled
15 him.

16 MS. HENDRICK: Okay. I have no further
17 questions.

18 MS. HAYNES: Just a couple more, --

19 THE COURT: Ms. Haynes.

20 MS. HAYNES: -- Your Honor.

21 LINDA POPE JONES - RE-DIRECT EXAMINATION

22 BY MS. HAYNES:

23 Q And -- and he's been there since September, right?

24 A Yes.

25 Q And y'all -- You're -- Never been any problems with

1 him in that regard since very early on, as far as him
2 coming to class.

3 A No. Not that he has refused to come to class. He
4 seems to enjoy coming now that he...

5 Q Not that he's here.

6 A Once he started, he seems to enjoy it, and he comes
7 every day except when he may be ill.

8 MS. HAYNES: Thank you very much.

9 THE WITNESS: Hmm-mm.

10 MS. HENDRICK: I have no further questions.

11 THE COURT: All right.

12 MS. HAYNES: And I would ask this witness be
13 excused, Your Honor.

14 THE COURT: All right.

15 THE WITNESS: Thank you.

16 THE COURT: You may be excused.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you, ma'am.

19 Yes, ma'am.

20 MS. CAMPBELL-WILLIAMS: Your Honor, those are all
21 the witnesses that we have.

22 But I would like to place on the record, Your
23 Honor, we had another witness. Ms. -- Ms. Lewis wanted to
24 be here today.

25 She is under a subpoena to be present, however,

13

1 because -- due to the budget cuts, they were short on staff
2 and the captain at Alvin S. Glenn Detention Center said
3 that they -- they just couldn't afford to -- because of
4 security purposes, allow her to come at this time.

5 I just wanted to place that on the record.

6 And at this time, Your Honor, the defense rests.

7 And I would like to know, Your Honor, if I could
8 just have a very brief closing.

9 THE COURT: Is there anything else from the
10 State, Ms. Hendrick?

11 MS. HENDRICK: Your Honor, if she gives a brief
12 closing, I, of course, would like to do one, too.

13 THE COURT: I will give you equal time, so...

14 But no other witnesses you want to call?

15 MS. HENDRICK: Not -- No, Your Honor.

16 THE COURT: Okay.

17 MS. HENDRICK: I think all of the pieces of
18 evidence are in to evidence.

19 THE COURT: All right. Ms. Campbell-Williams,
20 I'll be glad to hear from you.

21 MS. CAMPBELL-WILLIAMS: Thank you, Your Honor.

22 CLOSING STATEMENT BY MS. CAMPBELL-WILLIAMS

23 First, Your Honor, I would like to go over, just
24 specifically, the factors.

25 Number one is the seriousness of the -- of the

1 offense and whether protection of the community requires
2 waiver.

3 Your Honor, we're here today in this particular
4 matter because in almost all of wavier cases the offense --
5 offense is serious, and almost all of their -- I don't
6 know of many that the offense -- that the offenses have not
7 been serious.

8 But it's the defense's position that the
9 community has been protected if Nicholas stays in and is
10 retained in Family Court; he remains in Family Court.

11 If he's transferred to DJJ on an indeterminate,
12 he gets education. He learns trade skills, and he is less
13 likely to reoffend.

14 If he's transferred to the Department of
15 Corrections, no job skills, no education, and he has a
16 serious criminal record, Your Honor.

17 Whether the offense -- Number two, whether the
18 offense was committed in an aggressive, violent,
19 premeditated or wilful manner.

20 In this particular incidence the facts are -- are
21 what they are, Your Honor.

22 But, in the video tapes that you have, you will
23 see that Nicholas had said that he was afraid of Greg.

24 He told the officers that he was afraid of Greg,
25 that -- and he felt as though he had to do this. And

15

1 earlier that day, they shaved his head and his eyebrows off
2 against his will, and he said he was afraid that if he
3 didn't do that, he would get hurt, as well.

4 And compared to the actions of Greg Hardy, who is
5 the adult co-defendant: Nicholas surrendered, while Greg,
6 who was the adult, ran. Nicholas cooperated with law
7 enforcement, while Greg had to be pursued by law
8 enforcement.

9 So that in and of itself, Your Honor, says that
10 there's some level of -- of remorse involved, and,
11 certainly, there was cooperation, and that's not even an
12 issue in this particular matter.

13 Whether the offense was against persons or
14 property. Yes, it was against individuals in this -- in
15 this case, against persons.

16 But I would like to share with the Court that
17 initially before -- at the time this incident occurred,
18 Nicholas was not on his meds, and initially he had to be
19 placed at -- at Alvin S. Glenn under a brief period of time
20 -- He was under suicide -- suicide watch.

21 Primarily, because of his history and that he was
22 so depressed at times, and he said...

23 And I asked him what was going on with him
24 initially.

25 And that may be one of the reasons why he wasn't

1 attending school, as well, because he was -- he was ill.

2 And I asked him what was going on, and he just
3 said that every night that he was having dreams about what
4 happened. Most of the times he would be -- he would cry
5 himself to sleep at night because he was having dreams
6 about what happened. He was just feeling so remorseful, so
7 badly about what happened.

8 Number Four; The merit of prosecutive the
9 complaint. How will the Grand Jury see Nicholas? I think
10 the Grand Jury will see Nicholas -- Your Honor, the
11 defense's position, that he's a special-needs child who has
12 been terribly influenced by negative elements in his
13 community and that if he was on his meds at the time that
14 this incident occurred, maybe it would not have occurred,
15 and -- and that he was afraid. He said that on many
16 different times; that he was afraid not to go forward and
17 do this.

18 The desirability of trial with disposition of the
19 entire defense in one court when the child's co-defendant
20 is -- is an adult. And we will, Your Honor, -- that Greg
21 Hardy is -- is being held in General Sessions on adult
22 charges.

23 And, in terms of judicial economy, if Nicholas
24 was waived to General Sessions, Your Honor, this whole
25 situation, this whole process would just start all over

1 again. There would be another bond hearing. There would
2 be another bond setting. There would be a preliminary
3 hearing. If there was a change in circumstances, there
4 would be another bond setting. There would be a first
5 appearance. There would be a second appearance. There
6 would be a second second appearance, and if -- if any
7 defendants ask for a trial, there would be waiting period
8 for at least a year to 18 months, and that's the backlog in
9 Richland County at that time.

10 That's the reality. So there will be no judicial
11 economy to waive him up to -- to General Sessions.

12 If Nicholas remains in Family Court, he would
13 move on to the adjudicatory -- adjudicatory stage and he
14 will undergo a complete evaluation and, theoretically, this
15 case could be over with within the next 45 to 55 days, Your
16 Honor, if he's retained in Family Court.

17 The sophistication and maturity of the child as
18 determined by home, environment, emotional attitude, living
19 pattern. We have heard from DJJ, from law enforcement,
20 about the family, about Nicholas, and how cooperative he
21 is; how polite he is. And DJJ was talking about the
22 family; how cooperative the family was and that he comes
23 out of a good home.

24 He -- Nicholas, academically, though he performs
25 way below his academic level, certainly has the ability to

1 do much better. He is emotionally disabled, and that
2 contributed some -- based on Dr. Hartt's assessment, that
3 has contributed some to his maturity level and his ability
4 to make mature decisions at the time that this incident
5 occurred.

6 He was still relying on his -- his peers for a
7 sense of self-identity.

8 Number seven; the child's prior involvement with
9 the juvenile justice system. We know that he has had prior
10 involvement with the juvenile justice system. There has
11 been nothing violent, and he's done well. He's been on
12 probation. He has successfully completed all of his
13 probationary terms, Your Honor.

14 At one part of Dr. Hartt's report it says that he
15 enjoyed therapy and he progressed through the relevant
16 stages.

17 He cooperated with the -- the police and those
18 individuals who are in positions of -- of authority, even
19 on those prior offenses, and which includes, also, the
20 officers at Alvin S. Glenn Detention Center.

21 And eight, prospects of adequate protection of
22 the public and the likelihood of reasonable rehabilitation
23 through Family Court services and facilities. And there's
24 just a plethora of -- of programs and services that are --
25 will be available to Nicholas if he is retained in Family

1 Court, and especially in terms of his special needs, Your
2 Honor.

3 Your Honor, if we all had a crystal ball we would
4 not be here today.

5 I'm reminded of the prodigal son. He decided
6 that he would leave the protection and security and love of
7 his father's home. And despite his father's warnings, he
8 said, "son, be careful of the friends you hang around."

9 Nicholas decided that he would go with his
10 friends on that fateful evening. And like most teenagers,
11 they think their friends know more than their parents; that
12 their friends know more than the wisdom of their aged
13 mentors; that their friends know more than their teachers,
14 their coaches and the clergy.

15 That's the level of immaturity which Nicholas
16 possessed at that time.

17 But in the story of the prodigal son, at the
18 moment that the prodigal son was experiencing some of the
19 greatest pain of his young adult life, he looked around.
20 He didn't see his so-called friends. Nicholas experienced
21 the same thing. There were no friends to be -- to be
22 found.

23 But at the time he -- he encountered that first
24 police -- police officer, he came to himself that very
25 first day.

1 He turned himself in, Your Honor, because he came
2 to himself. He voluntarily gave a video-taped confession.

3 He came to himself, and he fully cooperated with
4 law enforcement because he came to himself.

5 His extreme remorse since this incident has
6 happened is because he came to himself.

7 Your Honor, we implore you today that in this
8 case and for this special-needs child...

9 We understand that this case screams and screams
10 and screams of justice, but we ask you that we would temper
11 justice with mercy and that you retain jurisdiction of this
12 incident in this court.

13 Thank you, Your Honor.

14 **THE COURT:** Ms. Hendrick.

15 **CLOSING ARGUMENT BY MS. HENDRICK**

16 **MS. HENDRICK:** Thank you, Your Honor. May it
17 please the Court.

18 Your Honor, this case is about a fifteen-year-old
19 and a seventeen-year-old breaking into the residence of
20 their neighbors at night and viciously attacking an elderly
21 couple while they got ready for bed, and then taking this
22 couples personal belongings out of their house.

23 Your Honor, the issue before the Court today is
24 to decide whether Nicholas Nesmith faces these charges here
25 in Family Court or a Court in General Sessions.

1 Whether he could face a 36 to 54 month sentence
2 as a juvenile, or a significant amount of time and a
3 permanent adult record.

4 The task before the Court is tremendous. The
5 purpose -- reason for legislature is to develop a process
6 to allow the Court to make this decision only after a full
7 investigation and a hearing.

8 The Court must decide what's in the best interest
9 of the public and in the best interest of the child, to
10 retain jurisdiction over the juvenile, or to force him to
11 be held accountable in adult court.

12 Guiding the Court's decision are the eight Kent
13 factors developed by the out-of-state Supreme Court and
14 adopted here by our South Carolina Supreme Court.

15 The first Kent factor is of course the
16 seriousness of the alleged offense to the community and
17 whether protection of the community requires waiver.

18 Case law in the state of South Carolina is very
19 clear, beginning with State versus Wright in 1977 and as
20 recent as State v. Pittman in 2007, that the serious nature
21 of the offense is one of the major factors in considering
22 whether waiver is appropriate or not.

23 Again, this is not a murder case, however, but I
24 submit to the Court that this a burglary in the first
25 degree, which is a most serious case under our statute and

1 carries a significant sentence in adult court.

2 Also, the charge is kidnaping, strong-arm robbery
3 and assault and battery of a high and aggravated nature.

4 Again, this first factor relates to the
5 seriousness of the offense and the protection of the
6 community.

7 You've heard testimony, Your Honor, that this
8 gang related, that they committed these crimes to gain
9 stature in a gang.

10 I would submit to the Court that because of this
11 gang relation serious protection of the community is
12 necessary, and that could only be accomplished by waiving
13 this individual to adult court.

14 The next factors are whether this was committed
15 in an aggressive, violent, premeditated, wilful manner.

16 The aggressive and violence of this attack is
17 obvious. Ms. Hazel Bennett was asleep in her bed, reading
18 a book, watching TV, getting ready to go to bed, when
19 someone jumped on top of her.

20 And I submit to the Court, you heard testimony,
21 that it is this defendant who jumped on top of her and
22 started beating her, and as she began to scream, he then
23 drug her down on the floor and threw her on the floor.

24 And, at that point, this defendant had to be
25 stopped by the other co-defendant. He begged him to stop

1 hitting Ms. Bennett.

2 Your Honor, you've heard that this -- he was
3 encouraged or he was scared to do this by other people,
4 that he was scared that he would get beat up if he did not
5 commit this crime. And I submit to the Court, you heard
6 the testimony about it, when he was alone in that room the
7 only four people in that room were Mr. Bennett, Ms.
8 Bennett, Nicholas Nesmith and Gregory Hardy.

9 Gregory Hardy is the one who had to beg Nicholas
10 Nesmith to stop beating Ms. Bennett.

11 Quavian Bing, Shaquan Gaye, Meriwether, all of
12 these other people we mentioned, they were not in that room
13 with -- with them. It was just the four of them alone in
14 that room.

15 I also submit to you that this goes to the
16 wilfulness, the premeditation of this crime.

17 Your Honor, the third factor is whether the
18 alleged offense was against persons or property with
19 greater weight being given to offenses against persons
20 especially if personal injury resulted.

21 Your Honor, this is an offense against property.
22 This was a burglary because the items were taken; jewelry,
23 electronics, bullets, they asked for a gun, several things
24 were taken.

25 It's also assault and battery of a high and

1 aggravated nature, a kidnaping, are assaults against
2 persons.

3 Luckily, in this situation, Mr. and Ms. Bennett
4 only were scraped and bruised. Luckily. Ms. Bennett was
5 thrown off the bed. She had just had knee surgery.
6 Several other injuries could have resulted.

7 You heard the testimony of what her injuries were
8 that night, that she was cut up in the beating and had to
9 get towels to -- blood going down her. There are pictures
10 in the -- in the evidence to observe, to see what her
11 actual injuries are.

12 And I submit to the Court, based on this Kent
13 factor, greater weight must be given to this crime because
14 personal injury did result.

15 The fourth is the merit and the prosecuted --
16 prosecuting complaint.

17 Again, you have heard -- The State has presented
18 an enormous amount of evidence in this case. Corroborating
19 statements from witnesses, victims, co-defendants, and even
20 the defendant who gave basically two confessions.

21 First, after he jumped over the fence to avoid
22 cops and ran into Officer Dechman on the street behind his
23 house, as he had dropped over the fence to evade them, ran
24 into Officer Dechman, he says, "I did a bad thing."

25 Officer Dechman stops him, advised him of -- of

1 his rights, sees he -- sees that he wants to speak to him.
2 He immediately confesses.

3 Your Honor, he again gives a complete confession,
4 after being advised of his rights, again to Sergeant
5 Wilson. You have that complete confession into evidence.

6 The forensic evidence -- The stolen property was
7 located in his house. He tried to hide the property. That
8 property was identified by the defendant's son as belonging
9 to him.

10 Your Honor, he was caught near the incident
11 location and caught within hours of the incident.

12 I would submit to the Court that we proven beyond
13 probable cause that this would be submitted to the Grand
14 Jury and the Grand Jury true bill this indictment.

15 To speak a little bit about what Ms. -- what Ms.
16 Mitzi Campbell-Williams referenced how the grand jury would
17 see Nicholas. They -- I mean, the grand jury just hears
18 the facts of the case, decides probable cause.

19 I submit to the Court that there is beyond
20 probable cause to -- to true bill him, and that the co-
21 defendant, Gregory Hardy, has also been sent to the Grand
22 Jury and true billed, though it has been reserved.

23 The desirability of trial and disposition of the
24 entire offense in one court when the child's co-defendants
25 are adult. Greg Hardy is an adult.

1 Gregory Hardy, I think, has been willing and
2 ready to plea since this incident happened. The only hold-
3 up in this case is this -- this waiver hearing.

4 The contention that this judicial economy would
5 submit that he would stay in Family Court is completely
6 false because if he's waived, a plea can be worked out
7 within the next couple of weeks.

8 If there -- this was a trial, we could put it on
9 the trial docket. There is a significant backlog, however,
10 the solicitor's office controls the trial docket. We can
11 move this case up.

12 We would have, of course, go first to a Grand
13 Jury, and then a bond would be set. She's correct in that.
14 However, I don't think a year to 18 months would be --
15 would be the timeline for a trial.

16 Again, like I said, if this is plea where there's
17 such a horrendous amount of evidence...

18 Usually, this case would be a plea, just in terms
19 of working out a plea deal would be. That can be done in
20 the next few weeks.

21 The next of the -- Sophistication and maturity
22 of the child as determined by consideration of the home,
23 environmental situation, emotional attitude and living
24 pattern.

25 Dr. Hartt claims that he does not have the

1 sophistication and maturity to modify his behaviors,
2 however, he successfully completed probation numerous
3 times, which indicates that he has the capacity to conform
4 his behaviors when he needs to.

5 He knows right from wrong. He's been found
6 competent. He knows illegal from legal. He projects blame
7 on others when his behavior results in negative actions.

8 Your Honor, you heard Dr. Hartt talk about the
9 numerous attempts that the school district has made to
10 better his educational problem. Yes, he might have
11 problems in the classroom, and how he's been labeled
12 emotionally disabled, and people have made attempts to work
13 with him.

14 The Department of Juvenile Justice has already
15 made four separate attempts to work with him.

16 That also plays into the next Kent factor, which
17 is factor seven. Although he's had minor offenses of
18 disturbing schools, possession of alcohol by a minor, and
19 little things like that, he's already had the chance to
20 benefit from the juvenile justice system, and did not
21 benefit from the juvenile justice system.

22 Again, the last factor is the prospect for
23 adequate protection of the public, the likelihood of
24 reasonable rehabilitation of the child by the use and
25 services of Family Court..

1 You heard Dr. Hartt talk about how it's important
2 for someone to be empathetic, take responsibility and have
3 remorse. They are just three things that are very
4 important for someone to be rehabilitated.

5 Your Honor, he had difficulty articulating
6 empathy with victims in this case. He was more focused on
7 what would happen with that group of friends; what would
8 happen with him and that group of friends rather than what
9 happened to Mr. and Ms. Bennett, and that's key. You heard
10 Dr. Hartt testify that that's key in being able to
11 rehabilitate somebody.

12 Your Honor, his increasing offenses. The scale
13 of them. How they're escalating, basically, beginning in
14 2003 with threatening schools, and we're here in 2009 with
15 a burglary in the first degree.

16 Your Honor, he's been given numerous
17 opportunities to help him along the way. DJJ tried
18 everything they could with probation. The school system.
19 The family was active in it.

20 Your Honor, I submit to you that we've provided
21 to you with evidence based on his -- of all the Kent
22 factors who -- who he is as a person and the serious nature
23 of the offense. The premeditation. The wilfulness. The
24 violence of this offense, that he be transferred to the
25 Court of General Sessions.

1 I don't think there's anything more the Family
2 Court system could do for this individual, and I think it's
3 time that he be held accountable in adult court.

4 **THE COURT:** Thank you.

5 All right. Let's take a short break. I want
6 somebody to gather the exhibits for me so I can review
7 those, and just everybody stand at ease until I call you
8 back in.

9 (BRIEF RECESS)

10 **RULING BY THE COURT**

11 **THE COURT:** All right. This is a matter that,
12 quite frankly, did not take a lot of deliberation on my
13 part.

14 I did have the benefit of reviewing the
15 interviews last night. Also, I had the opportunity to
16 review the pre-adjudicatory evaluation last night, as well.

17 And after having heard the testimony today and
18 arguments of counsel and reviewing all of the exhibits that
19 were introduced, I have reached my decision.

20 And I will not address all of the eight factors
21 in order as necessary and specifically, Ms. Hendrick, but I
22 will touch on them, and I find that -- that you have --
23 your presentation and your evidence met the criteria set
24 forth with those eight factors.

25 The seriousness of this crime is obvious. That's

1 -- that's a given.

2 When you've got burglary one involved and
3 kidnaping, it doesn't get much worse, and the next most
4 serious thing is murder above burglary one. How much more
5 serious can we get?

6 Thank goodness neither one of these folks were
7 harmed any more than they were because the injuries could
8 have been much more serious.

9 You're lucky, young man, that they weren't any
10 more serious than they were. But, to me, they were as
11 serious as they needed to be.

12 And if there was ever a premeditated crime, this
13 was one, for whatever reason.

14 Quite frankly, I view it as a crime that was done
15 for sport. Whether it was gang initiation, or whatever you
16 want to call it, it was done for absolutely no reason other
17 than your self-satisfaction, yours and Mr. Hardy's.

18 The tape that I viewed, I saw no remorse from
19 you. No true remorse.

20 And we have an older couple in their home, in
21 their bed not bothering a soul. Just trying to live their
22 lives.

23 A lady who has had knee surgery who has trouble
24 getting around. A gentleman who has Alzheimer's, and
25 they're preyed upon by these two young men.

1 If society ever needed protecting by waiving a
2 crime up to the Court of General Sessions, this one cries
3 out for it like I've never seen before.

4 You know, it reaches a point in time we need to
5 send a message to juveniles that want to participate in
6 gang activity and who want to commit serious adult crimes
7 that they're going to be tried as adults.

8 You want to play like an adult. You're going to
9 be tried like an adult. It's that plain and simple.

10 Want to talk about maturity levels, and there's
11 arguments pro and con as to your maturity level, but you've
12 been placed on probation four times. You can conform your
13 behavior when you want to. You went through probation with
14 flying colors every time.

15 It's a good thing you didn't commit this crime in
16 my circuit because you wouldn't have been put on probation
17 four times, and maybe you shouldn't have been here. Maybe
18 if you would have been made to suffer the consequences
19 sooner, you wouldn't have done this.

20 If you would have been sent to DJJ sooner, maybe
21 this could have been avoided. You were let off lightly too
22 many times, and you see where you are today.

23 If anybody ever had a chance to benefit from the
24 Department of Juvenile Justice, it was you.

25 Four occasions placed on probation and given a

1 free pass one other time; diverted on a behavior contract,
2 or whatever it was. Five times given a free pass.

3 We see what that's done for you. We see what
4 that will do for other juveniles who keep getting patted on
5 the back and the hand and sent off and say sin no more;
6 we'll see what you'll do. We see what you did.

7 I don't know if there's any likelihood of
8 rehabilitation in DJJ because you've not benefitted from it
9 on these five occasions in the past, so let's see what the
10 adult system can do for you.

11 And you're going to get the benefit from DJJ
12 anyway. It's been made clear by the testimony. Until
13 you're seventeen.

14 There's definitely a need to protect the
15 community and society as a whole in a situation such as
16 this. I'm going to do my little part, and that is that I'm
17 waiving this matter up to the Court of General Sessions of
18 Richland County.

19 If you'll prepare me an Order, I'd appreciate it,
20 Ms. Hendrick.

21 **MS. HENDRICK:** Thank you, Your Honor. I'll
22 prepare an Order and show it to Ms. Campbell-Williams and
23 get it to you either -- probably tomorrow.

24 **THE COURT:** Thank you, ma'am.

25 **MS. HENDRICK:** Would that be...

1 THE COURT: That will be fine.

2 MS. CAMPBELL-WILLIAMS: Thank you, Your Honor.

3 MS. HAYNES: Thank you, Your Honor.

4 (WHEREUPON, THE HEARING IN THE ABOVE-
5 ENTITLED MATTER WAS CONCLUDED.)

6 (WHEREUPON, CERTAIN PROCEEDINGS WERE
7 HAD WHICH WERE NOT REQUESTED TO BE
8 TRANSCRIBED.)

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY) CERTIFICATE

Be it known that I, the undersigned Sandra H. Davis, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Family Court for Richland County, South Carolina, so given on the 24th day of February, 2009, to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have hereunto set my hand
and seal this 13th day of July, 2013.

Sandra H. Davis
Official Court Reporter
Notary Public for South Carolina
My commission expires 5/22/2016.

THIS TRANSCRIPT WAS PREPARED FOR MS. MEGAN E. HARRIGAN, ESQUIRE

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
County of Richland)	2009-GS-40-1713
)	2009-GS-40-1714
)	2009-GS-40-1715
The State)	2009-GS-40-1707
)	
)	
vs.)	TRANSCRIPT OF RECORD
Nicholas Nesmith)	
)	
Defendant)	

August 9& 11, 2010 and
September 1, 2010
Columbia, South Carolina

BEFORE:

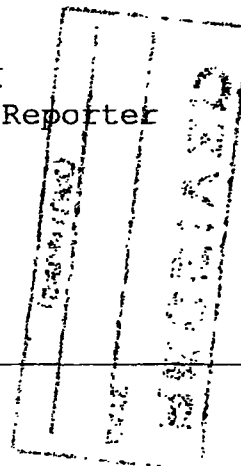
The Honorable G. Thomas Cooper, Jr., Judge

APPEARANCES:

Eden Hendricks, Asst. Solicitor
Luck Campbell, Asst. Solicitor
Joanna McDuffie, Asst. Solicitor
Attorneys for the State

Jerry Finney, Esq.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter



CONTENTS:WITNESSES

(There were no witnesses called)

EXHIBITS:

(There were no exhibits introduced)

MOTION HEARING (August 9, 2010)	3
GUILTY PLEA (August 11, 2010)	20
SENTENCING (September 1, 2010)	29
CERTIFICATE OF REPORTER	94

MOTION HEARING

3

1 (WHEREUPON, the following motion hearing was
2 heard on August 9, 2010.)

3 MS. HENDRICKS: May it please the Court.

4 THE COURT: Yes, sir.

5 MS. HENDRICKS: Standing before you is Ms. --

6 THE COURT: Does Ms. Campbell know?

7 MS. HENDRICKS: She has left. She will be here
8 in a second. Can we go ahead and proceed? She'll be
9 here in just a second.

10 THE COURT: What are we proceeding with?

11 MS. HENDRICKS: I think we're going to call the
12 case for trial. Mr. Finney is making a motion to
13 continue.

14 THE COURT: All right.

15 MS. HENDRICKS: The State calls Nicholas Nesmith
16 for trial under one count of strong armed robbery
17 under docket number 2009-GS-40-1715, one count of
18 kidnapping under docket 2009-GS-40-1714; one count of
19 burglary in the first degree under docket
20 2009-GS-40-1713, and one count of assault and battery
21 of a high and aggravated nature under docket
22 2009-GS-40-1707.

23 Your Honor, the State is ready to proceed with
24 trial. We are prepared, ready to call, pick a jury,
25 so to say.

1 I do believe that before we proceed with that
2 matter, Mr. Finney has a matter he would like the
3 Court to hear.

4 THE COURT: All right. Mr. Finney.

5 MR. FINNEY: May it please the Court, Your Honor.

6 Your Honor, I have been retained to represent
7 Mr. Nesmith. I have appeared in front of this court
8 back in --

9 THE COURT: Back in May.

10 MR. FINNEY: -- May of this year. When Your
11 Honor asked me to appear in this matter, Ms. Campbell
12 was here. We had a hearing.

13 THE COURT: Wait, asked you to appear?

14 MR. FINNEY: Yes, sir. I was contacted by
15 Ms. Campbell's office. She contacted me and asked me
16 to --

17 THE COURT: In May?

18 MR. FINNEY: Yes, sir.

19 THE COURT: Go ahead.

20 MR. FINNEY: All right. To appear at a hearing
21 in front of Your Honor to put on the record that I
22 was retained as his lawyer.

23 Also, at that hearing I put on the record that I
24 had already sent Ms. Campbell a letter of
25 representation and a Rule 5 and Brady.

1 We stated at that hearing that I would receive
2 discovery in a timely fashion from the Solicitor's
3 Office, and Your Honor even told me that if I needed
4 more time after I received discovery, that all I had
5 to do was simply ask for it if I needed more time to
6 get ready.

7 THE COURT: When was the case scheduled for
8 trial?

9 MR. FINNEY: I believe it was scheduled for
10 trial even before my involvement in this case.

11 MS. HENDRICKS: Your Honor, if I may give
12 some --

13 THE COURT: Don't interrupt him, please.

14 MS. HENDRICKS: Sorry, Your Honor.

15 THE COURT: Go ahead.

16 MR. FINNEY: So, Your Honor, I got some
17 information, and when I say information, it's just
18 information about the case by talking to
19 Mr. Nesmith's former counsel.

20 Certainly, I talked to prosecutors about this
21 case after I got retained, and I spoke to my client.
22 After talking to my client, talking to those
23 individuals who were involved in the case, my client
24 had expressed a desire, and my recommendation, with
25 respect to trying to plead this case.

1 I discussed that with him when I visited with
2 him at the Alvin S. Glenn Detention Center. I also
3 discussed that with his parents who retained me to
4 represent him.

5 Your Honor, last week I met with Ms. Campbell at
6 her office, and present at that meeting was
7 Ms. Campbell's legal assistant, Ms. Outen.

8 I indicated to Ms. Outen and to Ms. Campbell
9 that I had yet to receive discovery. Ms. Outen went
10 and confirmed that she, indeed, had received my Rule
11 5 and Brady. She said it was clocked in, whatever,
12 but that it had not been given to me. So it was
13 given to me shortly after that last week, and I now
14 have it.

15 Your Honor, today -- strike that.

16 After I -- well, upon leaving Ms. Campbell's
17 office, Ms. Campbell and I agreed that we needed to
18 schedule this plea for this week.

19 Ms. Campbell's understanding, I believe, is that
20 that would have been today, because the case was on
21 the trial roster. My --

22 THE COURT: When was this case scheduled, two
23 weeks ago, for trial?

24 MS. CAMPBELL: Yes, sir. It was scheduled the
25 same week when we tried that murder case.

MOTION HEARING

7

1 THE COURT: July 30th. The week of July 26th?

2 MS. CAMPBELL: I believe that's correct.

3 THE COURT: All right. Go ahead, just wanted to
4 get the date straight.

5 MR. FINNEY: And Your Honor, I sent -- so I gave
6 my secretary a to do list, and one of the things was
7 to contact the solicitor's office to schedule this
8 plea this week.

9 I sent my associate, Adam Whitsett, over here
10 this morning to cover some appearances. He met with
11 Ms. Campbell about another case that Ms. Campbell and
12 I had together, about scheduling that plea.

13 Mr. Whitsett said to Ms. Campbell, "Why don't we
14 schedule the Nesmith plea and that case
15 simultaneously," to which Ms. Campbell replied,
16 "Mr. Nesmith's plea is scheduled for this afternoon
17 at two o'clock."

18 Ever since then, I've been working all day to
19 try to get in touch with his parents and get
20 everything else who was involved in this case for the
21 guilty plea over here.

22 I was not able to do that, and I've been
23 forthcoming with that information with the
24 Solicitor's Office and with Your Honor, but be that
25 as it may, I went downstairs and spoke with my client

1 about an hour or so ago about the possibility of just
2 entering a plea, but delaying sentencing until
3 another time, to which my client, for the very first
4 time, informed me that he was not interested in
5 pleading guilty.

6 He indicated to me for the very first time that
7 he wanted a trial. I have -- over my objection, and
8 I have -- I was able to, I guess, have -- his former
9 counsel and I met with him, with my permission, and
10 just talked to him.

11 Certainly, his former counsel is not talking
12 with him as a lawyer but just as someone who had been
13 involved in the case, and I talked with him. He,
14 again, has expressed up here that he was not
15 interested in pleading guilty.

16 Your Honor, it's my understanding that my client
17 was treated by Dr. Schwartz-Watts, has been evaluated
18 by her. He was diagnosed with depression, may be
19 diagnosed with P.T.S.D. May be diagnosed with --

20 THE COURT: What do you mean "may"?

21 MR. FINNEY: This is the information that I have
22 received from both my client and from his former
23 counsel. I take it upon good information that he has
24 been treated by Dr. Schwartz-Watts.

25 THE COURT: Do you have the report?

MOTION HEARING

9

1 MR. FINNEY: I don't have the report, but he
2 has -- as an officer of the Court, I submitted to the
3 Court my client has treated by Dr. Schwartz-Watts.

4 THE COURT: According to him.

5 MR. FINNEY: Yes, sir, and has been evaluated.

6 THE COURT: According to him. I mean, do you
7 have any other source for that information other than
8 him?

9 MR. FINNEY: Yes, sir, his former counsel.

10 THE COURT: Okay.

11 MR. FINNEY: Yes, sir.

12 I am checking on the availability of her.
13 I -- from what I understand, I'm having Mr. Whitsett
14 check on her availability with respect to testifying
15 this week.

16 The information I have right now is she is not
17 available, but again, I'm doing just as fast as I can,
18 and the fact this is all coming down today.

19 Your Honor, also, my client's father has been
20 diagnosed with cancer. He --

21 THE COURT: What type?

22 MR. FINNEY: He said it starts with an "M". I'm
23 not sure what type, Your Honor, but the information I
24 have from talking with both Mr. Nesmith and
25 Mrs. Nesmith today on the telephone is that --

1 THE COURT: You talked with him?

2 MR. FINNEY: I talked with both of them.

3 THE COURT: What did he tell you is his medical
4 issue?

5 MR. FINNEY: He told me his medical issue is
6 that he is supposed to be admitted to a hospital here
7 in Columbia tomorrow for more chemotherapy, cancer
8 treatment.

9 THE COURT: But we don't know what --

10 MR. FINNEY: That's what he's telling me.

11 THE COURT: I know.

12 MR. FINNEY: And I can tell you that --

13 THE COURT: You know, there's all sorts of
14 varieties and the extent of cancer. Sometimes it's
15 early stages, sometimes it's late stages, sometimes
16 it's benign, sometimes it's non-life threatening. I
17 know cancer is a scary word, but I also know there's
18 many different forms, as you do.

19 MR. FINNEY: Your Honor, may it please the Court.
20 I know my client's father. I'm not -- I don't know
21 his medical condition to the point where I can tell
22 you exactly what it is, but I can tell you that we go
23 to church together. Yesterday in church, we prayed
24 for his father.

25 I can tell you, Your Honor, that I have seen his

1 father with my own eyes, and I can testify that I
2 have a lot of common sense that he is in the late
3 stages of cancer, and he's not doing well at all.

4 THE COURT: All right. That's fine.

5 MR. FINNEY: I can tell you that right now.

6 THE COURT: That's fine.

7 MR. FINNEY: So, Your Honor, we've got his
8 father's unavailability because he has, in my --

9 THE COURT: Is he going to be a witness in this
10 case?

11 MR. FINNEY: I would assume, yes, sir. Yes, sir,
12 because I would put -- if we were to go to trial, I
13 would anticipate putting his mother and father on the
14 witness stand.

15 THE COURT: For what purpose?

16 MR. FINNEY: For some type of character.

17 THE COURT: And certainly during a plea --

18 MR. FINNEY: Yes, sir.

19 THE COURT: -- they would be essential.

20 MR. FINNEY: And that's why we agree that if we
21 were to go forward on a plea today, we would delay
22 sentencing so that those people could be here.

23 If we were to go to trial, I can definitely tell
24 you one person that is not available, and that's his
25 father. I can tell you I'm doing everything I can do

1 to contact Dr. Schwartz-Watts to find her out her
2 availability so I can relay that information to the
3 Court.

4 I can tell you also, Your Honor, that I believe
5 that there are at least some -- at least two
6 correctional officers or officers that are employed
7 at Alvin S. Glenn Detention Center that I also would
8 be interested in calling as witnesses in this case
9 for a plea or a trial, and I am checking also on
10 their availability.

11 THE COURT: Well, if there were a plea, those
12 are not problems. What we're here to discuss is
13 a -- is a trial, and your motion to continue the
14 trial. Go ahead.

15 MR. FINNEY: So for all of those reasons, Your
16 Honor, the discovery reasons, the unavailability of
17 witness -- witnesses, reasons, I would ask that this
18 court respectfully continue this case for a short
19 term.

20 Your Honor, I understand that things get
21 scheduled, and you have schedules you have to
22 maintain. Your Honor, whether or not it's a good
23 decision for my client to go to trial or not, it's
24 ultimately his decision. Should he exercise that
25 decision, I believe he is looking at a total of

MOTION HEARING

13

1 somewhere north of 40 years.

2 MS. CAMPBELL: Life plus.

3 MS. HENDRICKS: Life plus.

4 MR. FINNEY: Life plus.

5 THE COURT: Life in prison.

6 MR. FINNEY: That's right.

7 THE COURT: If he is found guilty on all counts.

8 MR. FINNEY: Yes, sir.

9 So I would ask this Court -- I apologize for the
10 delay this may cause, if Your Honor is considering
11 granting my motion, but I will tell the Court that I
12 do not need much time to get ready.

13 Based upon those circumstances, I would ask for
14 a continuance.

15 MS. CAMPBELL: Your Honor, I'm sorry, I
16 misconstrued. Because of his age, he would not be
17 eligible for life on the non-homicide offense, so
18 he's not facing life.

19 THE COURT: So we just add them up?

20 MS. CAMPBELL: Just add them up.

21 THE COURT: Okay. I understand.

22 MS. CAMPBELL: I just want that for the record.

23 THE COURT: All right. And you still represent
24 him?

25 MR. FINNEY: Yes, sir, unless he says otherwise,

1 I'm still employed.

2 THE COURT: Ms. Campbell?

3 MS. CAMPBELL: May it please the Court, Your
4 Honor. I would approach at this point and hand up
5 the letter that he was originally noticed for the
6 week of July 26th, 2010, and then the letter that I
7 sent out last -- on August the 3rd, which would have
8 been last Tuesday, notifying him again that this case
9 had been rolled over and was up this week. I'll
10 approach Your Honor and hand those up.

11 THE COURT: Do you have --

12 MR. FINNEY: I don't have any.

13 THE COURT: All right.

14 MS. CAMPBELL: Your Honor, this was a case where
15 Mr. Shealey had represented the defendant the entire
16 time. When it got close to the time we were going to
17 call the case, Mr. Finney showed up.

18 He had been hired by the defendant's parents at
19 that point. It came before you. You then scheduled
20 the date for July 26th.

21 We were prepared to go forward that week. I
22 also had a murder case that week which actually went
23 forward. Mr. Finney had been in contact with me
24 prior to that, Your Honor, about possible
25 negotiations.

1 At no time did I become aware that there was any
2 issue as to discovery until he informed me when he
3 met with me last Wednesday, I believe, that he did
4 not have any discovery in the case.

5 THE COURT: Well, when was the -- all right. Go
6 ahead.

7 MS. CAMPBELL: We never received a discover
8 motion, Your Honor. In most of these cases, when one
9 lawyer -- when the Public Defender is relieved and
10 the other lawyer takes over, they get the file from
11 the Public Defender.

12 There is no dispute the Public Defender had all
13 this discovery in this case. Mr. Finney, in front of
14 Ms. Outen last week, informed us in advance that
15 Mr. Shealey had offered him his file, but he had not
16 taken him up on getting it from him, for whatever
17 reason. He didn't elaborate.

18 At that point, we became aware, and immediately
19 Ms. Outen went out and tried to copy it and got him
20 all the discovery in the case.

21 That would have been last Wednesday or Thursday?

22 MS. OUTEN: I think he picked it up the next day.

23 MS. CAMPBELL: We can double check that date.

24 That was the first time we became aware there was
25 any --

1 THE COURT: In any case, when --

2 MS. CAMPBELL: We don't have a motion for
3 discovery. There is not one filed in the clerk's
4 office. We checked that. So we just -- assuming on
5 our part, without anything further from the defense,
6 that discovery had been provided by the prior defense
7 counsel, is as normal in these cases.

8 THE COURT: Well, even if it weren't, in May,
9 you say he did not even -- did not request it in May
10 when he was hired.

11 MS. CAMPBELL: I'm not aware of any requests
12 that I've received as far as discovery. I mean,
13 that's something that comes to our office and goes to
14 our paralegal. She is not aware of one either, and
15 there is not one filed in the clerk's office. We
16 checked that.

17 MR. FINNEY: May it please the Court, Your Honor.

18 THE COURT: Sure.

19 MR. FINNEY: Your Honor, I'm not trying to push
20 this issue with the Solicitor's Office. I really do
21 think it's important for us to be accurate. We had a
22 hearing right here in front of you.

23 THE COURT: In May.

24 MR. FINNEY: Yes, sir.

25 THE COURT: Three months ago.

MOTION HEARING

17

1 MR. FINNEY: And it was acknowledged that they
2 had received my Rule 5 and Brady. They said they
3 would get discovery to me. Now, there may have been
4 some discussion --

5 THE COURT: Well, I mean, do you not feel some
6 obligation go to the public defender, who has had the
7 case two years, and get the discovery from the public
8 defender?

9 MR. FINNEY: My understanding, Your Honor, is
10 the proper chain of -- the proper channels to receive
11 discovery is from the Solicitor, which is part of my
12 Rule 5 and Brady. That's what I --

13 THE COURT: They say --

14 MR. FINNEY: Well --

15 THE COURT: -- they don't have a file in the
16 case, but --

17 MR. FINNEY: I'm just telling you one way to
18 find out that they had notice of it was to serve it,
19 to go back to that hearing. Also, I believe that it
20 has been suggested that Ms. Outen may have said
21 that -- something about the fact that Mr. Shealey had
22 offered his file. That's not accurate.

23 I believe they asked me, "Well, why didn't you
24 get it from him?"

25 I said, "Well, if you all received it per --

1 that they had received it last week."

2 MS. CAMPBELL: No.

3 MR. FINNEY: But, Judge, again, I'm not trying
4 to push this issue. If -- this is about him wanting
5 a trial. He's standing here. He wants a trial.

6 THE COURT: And we -- the State, is prepared to
7 give him a trial.

8 MR. FINNEY: I just want to have reasonable time
9 to digest the discovery.

10 THE COURT: All right.

11 MR. FINNEY: And the other issues that I laid
12 out for the record, including but not limited to his
13 father and other availability.

14 THE COURT: Well...

15 MR. FINNEY: And the availability of
16 Dr. Schwartz-Watts.

17 THE COURT: Solicitor?

18 MS. CAMPBELL: As far as Dr. Schwartz-Watts, I'm
19 not -- I haven't been noticed of any insanity defense
20 or any kind of incapacity because of mental illness.

21 I don't know how that would be relevant in any
22 way during the trial of the case, as far as her being
23 a witness as to what she could do. I don't think she
24 could address character.

25 As far as putting her up for any kind of mental

MOTION HEARING

19

1 illness, unless he has an affirmative defense in this
2 case, which he has not noticed me of, I don't know
3 how that would be appropriate.

4 THE COURT: How long will it take to try this
5 case?

6 MS. CAMPBELL: Two days, three at the most.

7 THE COURT: All right. Pick a jury tomorrow and
8 start it Wednesday morning.

9 MS. CAMPBELL: Thank you, Your Honor.

10 MR. FINNEY: Your Honor, while we're here.

11 THE COURT: Yes, sir.

12 MR. FINNEY: I would ask you to query my client,
13 please, as to whether or not he wants me to continue
14 to represent him.

15 THE COURT: Well, he has two choices: You or
16 himself.

17 Do you take Mr. Finney?

18 (The defendant nods in the affirmative.)

19 THE COURT: You need to speak. I need to hear
20 you.

21 THE DEFENDANT: Yes.

22 THE COURT: All right. That answers that
23 question. All right. The jury is coming in at 9:30?

24 THE CLERK: I believe so. I can double check.

25 THE COURT: We'll draw the jury in the morning,

1 and I'll give you an extra day this. This case is
2 going forward.

3 MR. FINNEY: Thank you, Your Honor.

4 MS. CAMPBELL: Thank you, Your Honor.

5 THE COURT: All right. We'll pick a jury at
6 9:30 and give Mr. Finney an extra day.

7 MS. CAMPBELL: Thank you, Judge.

8 THE COURT: Start the case Wednesday morning.

9 (WHEREUPON, the following plea was heard on
10 August 11, 2010.)

11 PLEA HEARING

12 (WHEREUPON Nicholas Nesmith was duly sworn.)

13 THE COURT: All right. Solicitor.

14 MS. HENDRICKS: Thank you, Your Honor. May it
15 please the Court. Standing before you is Mr.
16 Nicholas Nesmith. He's represented by Mr. Jerry
17 Finney of the private bar.

18 Your Honor, it's my understanding that Mr.
19 Nesmith is here to enter a guilty plea to one count
20 of kidnapping, strong armed robbery, assault and
21 battery of a high and aggravated nature, and burglary
22 in the first degree.

23 Your Honor, we have negotiated a sentencing
24 range in this case of 20 to 25 years.

25 THE COURT: All right, ma'am.

PLEA HEARING

21

1 Mr. Finney, do you represent Nicholas Nesmith?

2 MR. FINNEY: Yes, sir.

3 THE COURT: Have you advised your client of the
4 charges contained in these indictments and his right
5 to a trial by jury?

6 MR. FINNEY: Yes, sir.

7 THE COURT: How does your client indicate he
8 wishes to plead?

9 MR. FINNEY: Guilty.

10 THE COURT: Mr. Nesmith, you're charged in four
11 different indictments: First, with kidnapping, that
12 charge carries a penalty of up to 30 years in jail.
13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You're charged with assault and
16 battery of a high and aggravated nature. That charge
17 carries a penalty of up to ten years in jail. Do you
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You're charged with strong armed
21 robbery. That charge carries a penalty of up to 15
22 years in jail. Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you're charged with burglary in
25 the first degree. That charge carries a mandatory

1 minimum -- well, it's not a mandatory minimum, but a
2 minimum sentence of 15 years up to an indeterminate
3 amount of years, depending on what the court sees is
4 appropriate. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, it's my understanding that you
7 and your lawyer have talked to the Solicitor's Office
8 and that your plea is to -- that you would not be
9 sentenced to the full extent of all those charges,
10 but that you would be sentenced from a range of 20 to
11 25 years. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Understanding the
14 charges that you face and the punishment you could
15 receive, how do you wish to plead, guilty or not
16 guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: Guilty to all charges?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand by pleading guilty,
21 you're giving up your right to remain silent?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand by pleading guilty,
24 you're giving up your right to a trial by jury?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: If you requested or demanded a trial
2 by jury, the State would give you a trial. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: At that trial, you'd have the right
6 to confront and cross-examine all witnesses against
7 you. You'd have the right to present any witnesses
8 and/or evidence in your own defense. You'd have the
9 right to testify in your own defense, if you wished
10 to do so, but no one could make you testify at your
11 own trial.

12 If you decided to go to trial and not testify,
13 the judge would tell the jury they could not hold
14 your failure to testify against you. In fact, the
15 jury could not even consider your failure to testify
16 in their deliberations on your guilt or innocence.

17 You'd be presumed innocent throughout your trial.
18 The State would have to prove you guilty beyond a
19 reasonable doubt to a jury of 12 people, and all 12
20 people would have to unanimously agree that you were
21 guilty in order for you to be convicted.

22 Even if you were convicted, you still would have
23 the right to appeal that conviction. Do you
24 understand your rights with regard to a trial by jury?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Understanding those rights, do you
2 still want to plead guilty, or do you want me to set
3 your case for trial?

4 THE DEFENDANT: Guilty.

5 THE COURT: Has anyone promised -- other than
6 the sentence that I just spoke about, has anyone
7 promised you anything, held out any hope of reward or
8 threatened you in any manner to make you plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are you satisfied with the manner in
11 which your attorney has advised and represented you
12 in this case?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you and your attorney fully
15 discussed these charges against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Has he done everything you asked him
18 to do in preparation for this plea?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Is this your signature on this
21 Advice of Rights sheet down at the bottom left-hand
22 corner?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Has your attorney been
25 over this with you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. Are you satisfied with
3 his advice?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you under the influence of any
6 alcoholic beverages, drugs, or prescription
7 medications at this time?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you aware of any mental
10 condition that would keep you from understanding what
11 you're doing here today?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Do you clearly
14 understand what you're doing here today?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Are you pleading guilty of your own
17 free will and accord?

18 THE DEFENDANT: Yes, sir.

19 MS. HENDRICKS: Your Honor, for purposes of this
20 hearing, I'm just going to go into a very brief
21 factual recitation. For purposes of sentencing, I
22 just reserve the right to go into a much more
23 detailed version of the facts.

24 The brief version is this happened on September
25 14th, 2008, at , which is

1 located in Irmo, South Carolina.

2 Your Honor, this defendant and another
3 codefendant did enter the home of Mr. and
4 Mrs. Bennett. Your Honor, they were preparing to go
5 to bed.

6 I think at the time, Mrs. Bennett was 70 and her
7 husband was 69. He was probably already asleep. She
8 was reading and getting ready to go to bed. Out of
9 the corner of her eye, she saw two individuals come
10 into her house.

11 At that time, this defendant began physically
12 assaulting Mrs. Bennett, actually dragged her off the
13 bed and beat her several times while the other
14 codefendant was assaulting her husband.

15 At that time, they asked what was in the house
16 they could steal. They rummaged through her jewelry.
17 They rummaged through other things.

18 They first actually took a T.V. and a V.C.R. and
19 some electronics, left the house, and then returned
20 to the house, asked her if she had any weapons. She
21 told them no, there were no weapons in the house.

22 Asked her for some money, she said she might
23 have a few dollars on her. They rummaged through her
24 jewelry, like I said.

25 Again, Your Honor, this is just a very brief

1 recitation of what actually does happen. Your Honor,
2 eventually, they do leave the house.

3 Mrs. Bennett tries to use her cell phone to call
4 for help. She realizes that her cell phone is also
5 stolen. She somehow manages to make it to her car,
6 drive to her son's house, goes to her son's house.

7 They returned to the -- he lives nearby,
8 returned to her house. They called the police. The
9 police respond. Her and her husband are transported
10 by E.M.S. for their injuries.

11 This defendant actually lives in the
12 neighborhood. Irmo is very familiar with him and his
13 family. They immediately think he's a suspect
14 because of some other things.

15 THE COURT: All right. Just hold on.

16 Now, Mr. Nesmith, she says she has given me a
17 brief factual overview of what happened. Is that
18 what happened?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. I find the decision of
21 the defendant, Nicholas Nesmith, to plead guilty to
22 be freely and voluntarily, intelligently made. He's
23 had the representation of a competent attorney in a
24 person in Mr. Finney with whom he says he's satisfied.
25 I find a factual basis for his plea. Therefore, I

1 will accept his plea.

2 Mr. Nesmith, it's my understanding -- well, you
3 need to understand, I'm not going to sentence you
4 here today. Do you understand that?

5 From the time I do sentence you, whenever that
6 occurs, you will have ten days from that date within
7 which to file a Notice of Intent to Appeal, if you
8 choose to appeal this -- either this proceeding or my
9 ruling. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. You may continue.

12 MS. HENDRICKS: Your Honor, I just reserve the
13 right to say everything else at sentencing.

14 I think that was enough on the record to meet
15 the elements of the indictment and just that he gave
16 a full confession to law enforcement.

17 THE COURT: And what?

18 MS. HENDRICKS: Plus he gave a full confession
19 to law enforcement.

20 THE COURT: All right. Mr. Finney?

21 MR. FINNEY: I don't have anything at this time,
22 Your Honor.

23 THE COURT: All right. Now, you said on the
24 record that the defendant's father is -- is either
25 hospitalized or about to be hospitalized. Do you

SENTENCING HEARING

29

1 have any idea when he would be available for further
2 proceedings in this matter?

3 MR. FINNEY: I will find out this evening, and I
4 will notify the Court tomorrow morning.

5 THE COURT: All right. And you also said you
6 perhaps wanted to offer some testimony from
7 Dr. Schwartz-Watts?

8 MR. FINNEY: Yes, sir, also two correctional
9 officers at the Alvin S. Glenn Detention Center.

10 THE COURT: All right. Fine. All right. We'll
11 withhold sentencing, and I'll just -- at this point
12 for an indefinite period not to exceed -- in all
13 probability, not to exceed 30 days.

14 MR. FINNEY: Yes, sir. That's plenty of time,
15 Judge. I'll get in touch with your office and with
16 the solicitor's office to schedule that sentencing.

17 THE COURT: All right.

18 MR. FINNEY: And I'll start working on that
19 tomorrow morning.

20 THE COURT: Thank you very much.

21 MR. FINNEY: Thank you, Your Honor.

22 (WHEREUPON, the following sentencing was heard
23 on September 1, 2010.)

24 SENTENCING HEARING

25 THE COURT: All right. Solicitor.

1 MS. HENDRICKS: May it please the Court, Your
2 Honor.

3 THE COURT: Just remind me of the facts of this
4 case.

5 MS. HENDRICKS: Standing before you today is Mr.
6 Nicholas Nesmith. He is represented by Mr. Jerry
7 Finney of the private bar.

8 Your Honor, we were back before Your Honor a
9 couple of weeks ago when Mr. Nesmith entered a guilty
10 plea to the charge of kidnapping, burglary in the
11 first degree, strong armed robbery, assault and
12 battery of a high and aggravated nature.

13 Your Honor, he entered that guilty plea to the
14 negotiated range of 20 to 25 years. At that time,
15 Your Honor delayed sentencing to give Mr. Finney an
16 opportunity to have some people present to address
17 Your Honor.

18 At that hearing, I gave a very brief overview of
19 the facts. I would like to go over the facts in more
20 detail, go over his prior record.

21 Also present with the State are several officers
22 from the Irmo Police Department, several
23 members -- the victim is actually here, and several
24 members of her family would also like to address the
25 Court.

SENTENCING HEARING

31

1 Before I begin with my facts, Your Honor, I do
2 have a copy of the pre-waiver evaluation -- excuse me,
3 pre-waiver order that waived him from adult -- from
4 Family Court to adult court. Your Honor, he was 15
5 years old when this crime occurred, so he was
6 originally charged as a juvenile.

7 As Your Honor is aware, to have a juvenile
8 charge of assault, you have to go through a pre-
9 waiver evaluation and then have a waiver hearing.

10 We had a two-day waiver hearing before the
11 Honorable Judge Henderson, and Your Honor, he made a
12 finding on the record that this met all of the Kent
13 factors and that he should be waived based on the
14 Kent factors to a Court of General Sessions. I have
15 a copy of that order, and I can address any issues
16 with the pre-waiver and the waiver, if necessary.

17 THE COURT: You've seen this?

18 MR. FINNEY: Yes, sir.

19 MS. HENDRICKS: And, Your Honor, at the
20 appropriate time, I'll go back over the facts.

21 THE COURT: All right. You may proceed.

22 MS. HENDRICKS: Thank you, Your Honor. May it
23 please the Court.

24 Your Honor, this offense happened on
25 September 17th -- September 14th, 2008, your Honor,

1 at approximately 10:15.

2 The victims in this case are a Ms. Hazel Bennett
3 and Mr. Charles Bennett. Ms. Hazel Bennett at the
4 time of the incident was 70 years old, and
5 Mr. Charles Bennett was 69 years old.

6 Your Honor, this was a Sunday night. They were
7 getting ready for bed. Mr. Bennett suffers from
8 Alzheimer's, so he was just watching T.V. preparing
9 for bed. Ms. Bennett was in bed reading a book.

10 They were just going through their normal Sunday
11 night ritual, basically. Out of the corner of her
12 eye, Ms. Bennett saw what she thought was a person,
13 and all of a sudden this individual, this defendant,
14 came to Ms. Bennett and attacked her.

15 He jumped on top of her. She had no clue he was
16 in her house until he jumped on top of her, began
17 beating her with a closed fist about her face. Also
18 present was another individual who came around the
19 bed, and at that point started attacking her husband
20 at the same time he was attacking her.

21 He jumps on top of her, on top of the bed and
22 begins to beat her about the face. She then screams.
23 He becomes even more angry. He pulls her off the bed,
24 throws her on the floor, and she continues to scream.

25 At this point, they have a dog, and the

SENTENCING HEARING

33

1 screaming causes the dog to bark. This individual
2 leaves the room to go get the dog to see what was
3 going on.

4 THE COURT: The defendant?

5 MS. HENDRICKS: Yes, this defendant.

6 At that time, the other individual who was in
7 the room, who is still attacking the husband, asked
8 her to please stop screaming, just be quiet, we'll
9 leave you alone if you're just quiet. Don't move.

10 She asked him at that time, "Could I please have
11 a towel? Could I have something? I'm bleeding all
12 over the place." That individual goes back, gets her
13 a towel, tries to help her clean up, just begs her,
14 "Please don't move again. We won't hurt you
15 anymore."

16 At that point, this individual comes back into
17 the room, asks her if she has any jewelry, any money
18 anything in the house. She tells him yes, where her
19 jewelry is, where some other items are.

20 They go and ransack the house. They eventually
21 steal the T.V., a D.V.D. player, several pieces of
22 jewelry and some cash.

23 While searching for the jewelry, they notice
24 there's some clips or some bullets in her jewelry box.
25 They ask her where her gun is. She explains that the

1 gun has been removed from the house because her
2 husband has Alzheimer's. Her son has removed all
3 weapons from the house. There are no weapons.

4 They're in the house for a significant amount,
5 period of time. Periodically, they come back and
6 make sure she is not moving, tells her not to move
7 while they're running around the house.

8 During the initial attack of her, it's a very
9 violent attack, Your Honor. I can show you the
10 pictures, if I may approach.

11 THE COURT: Yes, ma'am.

12 You've seen these, Mr. Finney?

13 MR. FINNEY: Yes, sir.

14 THE COURT: All right.

15 MS. HENDRICKS: The codefendant actually has to
16 tell him, "Please stop hitting her. We're not here
17 for that purpose," or something to that effect.

18 He begs him to stop, and that's when he leaves
19 to go check on the dog. So, Your Honor, they're
20 rummaging through the house. Like I said, they take
21 a T.V., a V.C.R., a D.V.D. player and several items
22 of jewelry.

23 Also while they were in the house, they ruined
24 the cordless phone that she has. Her phone is not
25 available. They also take her cell phone.

1 Ms. Bennett at this time had just recovered from
2 hip surgery, so she is lying on the floor, basically
3 helpless. She waits -- they tell her to wait here
4 until they come back.

5 She waits on the floor for approximately ten,
6 fifteen minutes and decides it's possibly safe to
7 move around the house; that they're not coming back
8 to attack her anymore.

9 Your Honor, at this point, she wants to use her
10 cell phone to call 911, but as I explained, she is
11 injured. She is recovering from hip surgery, so
12 these are her words.

13 She scoots on her butt into the bathroom to try
14 to find her cell phone to call 911. She realizes her
15 cell phone is missing.

16 Then she goes to try to find a phone to use to
17 call 911. She realizes that the phone does not work
18 because the codefendant used the phone to actually
19 attack her husband.

20 So now she realizes that she is stranded in this
21 house. There is no way to call 911. Somehow she
22 manages to get to her -- find her keys, makes sure
23 her car wasn't stolen, get into the car and drive to
24 her son's house who lives very close by.

25 Her -- she tells her son what happened. They

1 immediately return home and call 911. This is
2 significant because she leaves her husband who is
3 basically helpless, suffering from Alzheimer's, in
4 the house alone, not knowing if they're going to come
5 back or what they're capable of.

6 So she decides, makes that decision, to go get
7 her son. They return home. They call 911.
8 Immediately, the Irmo Police Department responds.
9 E.M.S. is called. I think the first officer is
10 Officer Debnam. He responds to the scene.

11 Mr. Bennett, Charles Bennett, Jr., tells him,
12 "I'm here, this is what happened. My gun is on the
13 dashboard. You know, let's go check on my father."

14 They go inside, check on the father. He is
15 still -- he's fine. He is just bleeding, as you can
16 see from the injuries. He has got a goose egg on his
17 head.

18 E.M.S. is called. Lots of Irmo police officers
19 respond to the scene. They start processing the
20 scene. They to in, they can tell a struggle has
21 happened. There is broken glass everywhere. There
22 are bloody towels in the house. It's clear a
23 struggle took place.

24 Also, the house is completely ransacked. They
25 went through every room, opened drawers, things like

SENTENCING HEARING

37

1 that.

2 Your Honor, once Irmo police comes, they start
3 processing the scene. They take a statement from Ms.
4 Bennett, an oral statement. She is very shaken up.
5 She cannot give a written statement at this point.

6 Irmo has the capability of recording everything
7 in their police cars, so at this point, they've taken
8 a recorded statement from Ms. Bennett, and she gives
9 a detailed account of what happens, basically what I
10 just told you.

11 E.M.S. comes. Like I said, they respond. They
12 make sure everything is okay. They did go to the
13 hospital, but the injuries were severe, lacerations
14 to the head, to the face, things of that nature.

15 Your Honor, at this point, they're trying to
16 figure out who could have possibly done this. Who
17 could have done this in this neighborhood to these
18 people.

19 While they're investigating this scene, and
20 if I -- Mr. Finney can see this, right where this
21 blue mark is, this here in Richland County, Irmo,
22 this is the victim's residence.

23 Over here, you'll see right here, is the
24 defendant's residence. Next door to the defendant's
25 residence is an abandoned house. This is significant

1 because a couple of hours earlier, about six p.m.,
2 Irmo police responded to a fight in progress at this
3 abandoned house next door to the defendant's house.

4 At that fight in progress call, by the time the
5 police got there, there was no more fighting going on.
6 Present was this Mr. Nesmith, his brother, actually
7 several friends, a Gregory Hardy, the codefendant in
8 this case. They were all in the area outside this
9 abandoned house fighting.

10 Your Honor, Irmo police noticed this group of
11 people. They have had several encounters with this
12 group of people. They are suspected gang members.
13 I'll get into that in a minute. They're suspected
14 members of M.O.B., which is Money Over Bitches or
15 Members of Blood.

16 So, Your Honor, Irmo knows that this group of
17 guys is out in this neighborhood this night. So
18 while Irmo police are still at Boulters Lock talking
19 to the victim, securing the crime scene, doing
20 everything like that, an individual named Jessica
21 Mayweather approaches the Irmo police.

22 Jessica Mayweather is actually Victor Nesmith,
23 this individual's older brother's girlfriend at the
24 time. She comes up to the police officer, Officer
25 Grimstead, Corporal Grimstead, and says, "I know what

SENTENCING HEARING

39

1 happened here. I know who did this. It was my
2 brother D.J.," who is actually also friends with
3 these individuals, and D.J. told me that Nicholas
4 Nesmith and G. Hardee did this" to -- for some sort
5 of gang initiation or some sort of gang right.

6 She immediately tells the police that and also
7 present, D.J., her brother -- he's there, too. He is
8 very scared to come forward.

9 His mother is there. The police try to talk to
10 him and try to see if it's him, to see what he has to
11 say. He eventually confirms, yes, I actually saw
12 Mr. Nesmith and Mr. Hardee with the T.V. carrying it
13 back to their house, and they had talked to him about
14 committing this offense.

15 He had been with them earlier that day. He knew
16 that they were going to do something to gang rank in
17 the gang or become higher in the gang, and that he
18 knew they did this.

19 So at this point while Irmo P.D. is right here,
20 they radio out to the officers that are kind of
21 canvassing the area. Several officers are on
22 Bridgewater.

23 They tell them to go kind of stake out the
24 Nesmith house, there might be a search warrant coming.
25 We think that Mr. Nesmith or possibly even Victor

1 Nesmith is involved in this crime.

2 So the officers are coming down the street, and
3 all of the sudden they hear some noise. Actually,
4 what they hear is Nicholas Nesmith jumping over the
5 fence in his back yard.

6 Several of the officers stay in front of the
7 house while several other offices come around this
8 street and find -- end up on Shillingworth where they
9 are approached by Mr. Nesmith.

10 This is, Your Honor, moments afterward all in
11 this neighborhood. Mr. Nesmith immediately comes up
12 to the officers and says, "I've done something
13 wrong."

14 At that point, the officers realize -- they
15 can't say -- advise him of his Miranda. They take
16 him in the car. They bring him back to Bridgewater
17 in front of this house.

18 All of this is actually on audio recording.
19 They advise him of his Miranda, I think two or three
20 times, on audio recording when he starts to tell them
21 what he did. He claims that yes, he did it. He
22 knows where the items are.

23 He tells the officers that several of the items,
24 the bigger items, the T.V., the C.D. player and
25 things like that are actually hidden in the dog house

1 behind his house.

2 All of the jewelry is actually in his attic, so
3 he has had time to go and hide those items. Your
4 Honor, in the meantime, Mr. Charles Bennett comes to
5 this location to identify the items to make sure
6 those are actually his mother's jewelry items, the
7 electronics and things of that nature. And they are.
8 Those are the items that were found in Mr. Nesmith's
9 house, matched what was missing and taken from
10 Boulters Lock.

11 (A cellphone rings.)

12 THE COURT: Hold on a moment.

13 (Pause)

14 Go ahead.

15 MS. HENDRICKS: Okay. Your Honor, like I said,
16 at this time Mr. Nesmith is in the back of the police
17 car. He's been talking to Irmo Police. He's been
18 advised of his rights.

19 He admits that he went into this house. Also
20 present is his brother, Victor Nesmith. They allow
21 Victor to sit in the car and talk to his brother,
22 just tell him, you know, be cooperative with the
23 police. They basically just have a conversation.

24 At that point, investigators take Mr. Nesmith
25 back to the Irmo Police Department, and Irmo actually

1 videotapes all of their statements. So his complete
2 interview with, at that time, Sergeant Brian Wilson
3 is on video. We've provided that to defense counsel.
4 I'm sure he's seen it, as well as I have.

5 He is again advised of his rights, waives his
6 rights, says he understands them and wants to speak
7 to law enforcement officers.

8 At this time, he goes into a detailed confession
9 of why he broke into this house and what happened in
10 this house. He claims that he had to do it because
11 other people were higher up than him and that there
12 would be several meetings if he did not do this.
13 That's what he claims.

14 So he definitely indicates this was gang related.
15 He says he was told to do this by several people, and
16 he gives a statement saying that he came into the
17 house. But he actually claims that the codefendant
18 was the one who attacks this woman, who attacks
19 Ms. Bennett.

20 He gives kind of a minimizing statement at this
21 point. He is cooperative, but he is still not
22 telling the whole truth as we come to find out.

23 Your Honor, he is placed under arrest and
24 detained as a juvenile at that point. Several days
25 later, they eventually catch the codefendant, Gregory

1 Hardee.

2 He, with his lawyer present, also comes in and
3 gives a videotaped -- basically confession of what
4 happened. His version of the facts is much more
5 consistent with Ms. Bennett's version of the facts.

6 It's clear through Mr. Hardee's statement and
7 Ms. Bennett's statement the way she identifies him
8 that he was the attacker and the aggressor, and he
9 was the person who physically attacked Ms. Bennett in
10 this case.

11 THE COURT: The defendant?

12 MS. HENDRICKS: This defendant, yes, Your Honor.

13 It was not the other way around as he tried to
14 say in his statement. Also through Gregory Hardee's
15 statement, they were able to identify and figure out
16 that this was actually an order that came down from
17 someone named Millie, who I think Irmo police
18 identified as a Mike Carter (phonetic), a known gang
19 member.

20 They were ordered through a text message. This
21 is what D.J. -- this went through several other
22 people to actually commit this crime. So it was some
23 sort of gang order to do this.

24 Also, law enforcement managed to talk to D.J.
25 Merriweather and Jessica Merriweather. They learned

1 more information about this gang. This was, in fact,
2 a gang-related crime.

3 Of course, Ms. Bennett and everyone else are not
4 members of a gang, but the reason they committed this
5 crime is because of gangs.

6 Your Honor, also, it was clear through all of
7 the discovery and through everyone else that this was
8 actually planned. Your Honor, they planned to commit
9 this crime.

10 They -- someone in this group had searched out
11 this house. I don't know if it was because it had a
12 pool or they thought this household was wealthy.
13 They planned in to go into this house, maybe because
14 they knew it was an older couple living there.

15 But there's some things to suggest that the
16 phone lines were actually cut. The T.V. was
17 unplugged before they came to the house, little
18 things like that.

19 He also -- even in his statement admits that he
20 goes -- he says how they made entry into the house is
21 he reaches under the door, under the doggie door, and
22 reaches up and unlocks it. Your Honor, that suggests
23 that he possibly had done that before, maybe knew how
24 to break into this house.

25 Your Honor, those are the facts of the case.

1 That's probably more than Your Honor would like to
2 know. Also, there's several forensic evidence
3 linking the codefendant and him to the scene. The
4 codefendant's fingerprints are actually found there.
5 Again, like I said, the codefendant gave a full
6 confession with his lawyer present. He also gave a
7 full confession on video after being advised of his
8 Miranda rights.

9 Your Honor, at the appropriate time, I do want
10 to go over his juvenile history. I think that's
11 significant in this case, and I know that several
12 members of law enforcement from Irmo would like to
13 address the Court, and also several members of the
14 victim's family and the victim herself.

15 THE COURT: You may proceed.

16 MS. HENDRICKS: Your Honor, at this time, I want
17 to go over his prior juvenile record. If I may
18 approach?

19 THE COURT: Yes, ma'am.

20 MS. HENDRICKS: Thank you. I've kind of typed
21 this out for Your Honor to follow along.

22 Juvenile hearings are -- can be somewhat
23 different, so I just want to make sure the court is
24 fully aware of his whole juvenile history.

25 Your Honor, the first incident date where he was

1 brought before the juvenile court was actually in --
2 January 24, 2003, which was a disturbing schools
3 incident. At that point, he was adjudicated
4 delinquent June 11th, 2003, for the disturbing
5 schools here.

6 He was placed on six months' probation. He was
7 ordered to attend school with no unexcused absences,
8 class cuts or tardies or other discipline problems.

9 He was ordered to obey all rules and regulations
10 at the guardian's home, complete 20 hours of
11 community service, cooperate with a tour of D.J.J.,
12 write a letter of apology to the school, write a book
13 report about -- to the principal about fires -- your
14 Honor, he was setting fires to school
15 property -- before a psychological evaluation while
16 on probation, if the probation officer deems
17 necessary.

18 Your Honor, he was violated for that probation.
19 I think they decided to withdraw the violation
20 because there was no actual order of violation. It
21 was just an affidavit.

22 Your Honor, again, there's another disturbing
23 schools, simple assault and battery incident on
24 October 4th, 2004.

25 At that time, the court ordered a competency

1 evaluation. He was found competent. While the
2 disturbing schools and simple assault and battery
3 were still pending, he was -- picked up another
4 charge of unlawful use of a telephone and disturbing
5 schools again in 2000 -- in February and March of
6 2005.

7 In July of 2005, there was an adjudication
8 hearing for the disturbing schools and unlawful use
9 of telephone, the simple assault and battery. One
10 count of disturbing schools was dismissed.

11 At that point, he was ordered to undergo a
12 community evaluation, which meant D.J.J. was going to
13 evaluate him while he was out in the community.

14 Certain conditions of the community evaluation
15 include house arrest, no getting in trouble at
16 school. He was actually violated for his community
17 evaluation because he continued to get in trouble at
18 school.

19 He finally had a disposition hearing on
20 October 26th, 2005, where he had nine months'
21 probation. Again, he was ordered to attend school
22 with no unexcused absences, class cuts, tardies or
23 disciplinary problems, obey all rules and regulations
24 of the guardian's home, cooperate with the referral
25 for anger management counseling, participate in

1 extracurricular activities, 20 hours of community
2 service, continue to cooperate with
3 service -- counseling services, take all medication,
4 write an apology letter and do one hour of homework
5 every day.

6 Your Honor, on October 11th, 2006, he brought a
7 can of beer to school and was charged with minor in
8 possession of beer. Again, he had a competency
9 evaluation. He was found at this time competent and
10 criminally responsible. They did both.

11 At this time, he had an adjudication hearing on
12 April 2nd, 2007. He is again ordered, placed on
13 probation, ordered to go to school, obey the rules at
14 the guardian's home, take another tour of D.J.J. and
15 cooperate with any counseling.

16 Later on in 2007, December 10th, 2007, he was
17 charged with willfully burning the land of another.
18 Your Honor, he was setting fire, again, to school
19 property at this time.

20 At that adjudication hearing, he was ordered to
21 do five days of D.J.J. and then nine months'
22 probation. Conditions of probation were the same,
23 attend schools with no unexcused absences, class cuts,
24 tardies, discipline problems, obey all the rules,
25 regulations of the guardian's home, cooperate with

1 drug and alcohol counseling, refrain from tobacco use,
2 and to include random drug screens and to continue
3 with mental health counseling.

4 THE COURT: Just...

5 MS. HENDRICKS: Sorry.

6 THE COURT: The court reporter is having a hard
7 time. Why don't you just give her a copy.

8 MS. HENDRICKS: Okay. I'll give her a copy, as
9 well.

10 THE COURT REPORTER: Thank you.

11 MS. HENDRICKS: Your Honor, several months later,
12 he picks up a shoplifting charge on September 8th,
13 2008. The next day he also gets in another
14 altercation at school and was charged with disturbing
15 schools. While those two petitions are pending and
16 before they reach the Solicitor's Office, he is
17 arrested on this burglary first, kidnapping, strong
18 armed robbery, and A.B.H.A.N. incident date.

19 Your Honor, so technically the shoplifting and
20 disturbing schools are still pending as family court
21 petitions.

22 Your Honor, as you can see, he has an extensive
23 D.J.J. history, which is probably some of the reasons
24 why he was waived to adult court. That judge found
25 that this met the Kent factors -- I don't know if

1 Your Honor is familiar with those -- that he could
2 not be rehabilitated in family court, and that he
3 needed to face the consequences of his actions as an
4 adult. So that's why we're here before Your Honor.

5 If you have any questions about the juvenile, I
6 have all of his juvenile records here if anyone has
7 any questions. At this time, I believe -- I'd like
8 for you to hear from Chief Buck from Irmo.

9 THE COURT: Yes.

10 CHIEF BUCK: Thank you, Your Honor.

11 THE COURT: I appreciate you -- go ahead, for
12 the record.

13 CHIEF BUCK: My name is Brian Buck with the Irmo
14 Police Department. I want to thank you for the
15 opportunity to speak to the court today about this
16 case.

17 THE COURT: Yes, sir.

18 CHIEF BUCK: Your Honor, it obviously, has great
19 impact for the Bennett family, both Mr. and Ms.
20 Bennett and their children.

21 More importantly, it affected the entire town of
22 Irmo. This was a heinous crime that took place. It
23 victimized some of the most precious members of our
24 community, our senior citizens.

25 It made people feel unsafe anywhere in town.

1 You know, people think their home is their castle and
2 they should be able to dwell there without any
3 interference at all, and what Mr. Nesmith did was
4 took that away from the people in Irmo.

5 We're a small community. We don't have a lot of
6 violent crime. This kind of offense really shocked
7 the conscience of the community.

8 I know that the Irmo Police Department worked
9 very hard. We're very fortunate we were able to
10 catch Mr. Nesmith and his codefendant and bring them
11 before justice, Your Honor.

12 We would just ask that Your Honor considers his
13 extensive record, all attempts that the community at
14 large has made to reintegrate Mr. Nesmith into our
15 community to make him a productive member of our
16 community, that all failed. That's why we're before
17 you today.

18 So again, Your Honor, we would ask that you
19 consider, you know, anything that you might think of
20 that would remove Mr. Nesmith from our community for
21 an extended period of time.

22 THE COURT: This issue of gang activity that the
23 solicitor told me about, is that a recurring problem
24 in the community?

25 CHIEF BUCK: Yes, sir. We have a gang problem

1 in the Irmo community. You know, this is indicative
2 of the worst part of our gang problem.

3 We have young men that are trying to make a name
4 for themselves, trying to show how tough they are to
5 other members of their gang, and it leads to worse
6 and worse offenses, as it has in this particular
7 incidence. Thank you, Your Honor.

8 MS. HENDRICKS: Your Honor, next I think
9 Corporal Grimstead would like to address the Court.

10 CORPORAL GRIMSTEAD: Your Honor, my name is
11 Andrea Grimstead. I'm a Corporal with the Irmo
12 Police Department.

13 THE COURT: Yes, ma'am.

14 CORPORAL GRIMSTEAD: Can I have a second?

15 THE COURT: Sure.

16 (Pause)

17 CORPORAL GRIMSTEAD: Sorry.

18 MS. HENDRICKS: Your Honor, let me explain her
19 role in this case. She was actually the first -- one
20 of the first responders to the scene. She was the
21 person who interviewed Ms. Bennett in this case. She
22 was the first person to talk to Ms. Bennett. She had
23 firsthand knowledge of the actual events of that
24 night.

25 Your Honor, beg the court's indulgence. I'm

SENTENCING HEARING

53

1 sorry.

2 THE COURT: Just have a seat.

3 MS. HENDRICKS: Former Sergeant Wilson of the
4 Irmo Police Department is also present. Do you have
5 anything you want to say?

6 (Pause)

7 Your Honor, he was the actual investigator in
8 the case. He interviewed Mr. Nesmith, spent several
9 hours with him that night.

10 THE COURT: Your name?

11 SERGEANT WILSON: Brian Wilson.

12 THE COURT: Mr. Wilson.

13 SERGEANT WILSON: Yes, sir. At the time, I was
14 a sergeant of investigations. I did respond that
15 night.

16 I'd just like to say that yes, I was also there
17 at the fight that she mentioned earlier. I just
18 happened to see there -- and being familiar with the
19 gang problem and being one of the gang liaisons for
20 our department at the time, I was familiar with all
21 the players involved.

22 There was definitely a gang-related -- you know,
23 there was definitely a gang influence on this crime.
24 I will say that, you know, we -- we -- that -- just
-25 our knowledge of that helped us kind of go down the

1 path quickly.

2 Both the defendants were in custody within 72
3 hours, 48 hours rather, of event, but it was -- as
4 the chief said, it was probably the -- the end result
5 of the worst parts of -- what the gang activity
6 brings, a violent crime against a -- you know, a
7 victim who just, you know, thought they were safe in
8 their own home.

9 To Mr. Nesmith's credit, I think -- you know,
10 during my time with him, he -- you know, he did
11 acknowledge his responsibility for this and did show
12 some remorse at the time that we spoke with him about
13 it.

14 But he -- but he was cooperative the whole time,
15 but like I said, he did -- he did acknowledge that he
16 did something rather reprehensible at the time.
17 That's pretty much it, though.

18 THE COURT: Thank you.

19 MS. HENDRICKS: Your Honor, also present are two
20 other members of the Irmo Police Department who were
21 also involved in this case. I don't think they wish
22 to address the Court. If you'll just...

23 CORPORAL GRIMSTEAD: I'm sorry, Your Honor.

24 THE COURT: That's all right.

25 CORPORAL GRIMSTEAD: People ask me all the time

1 what's the worst case that you've ever had to do,
2 what's the worst call that you've been on. In my law
3 enforcement career, this is it.

4 THE COURT: How long have you been in law
5 enforcement?

6 CORPORAL GRIMSTEAD: I've been with the Irmo
7 Police Department -- I started as an explorer in 2001.
8 I was hired as an officer in 2006, and before that I
9 spent two years as a reserve in the Swansea -- at the
10 Swansea Police Department.

11 But this is pretty much one of the worst things
12 I've seen, if not the most. It may be because I was
13 raised by my grandparents, and the whole time I'm
14 interviewing her, I'm thinking, "What if this were my
15 grandparents?"

16 You know, they're at home in their bed and if
17 someone comes in -- you know, the heinousness of this
18 crime is what was the worse. They didn't even have
19 to say anything. They could have just said, "Lay
20 there in bed."

21 They could have took the phone. I mean, there
22 was no need. It wasn't like Ms. Bennett was going to
23 get up and fight back. I just think this is a
24 really -- the whole thing is just -- you know, nobody
25 wins in this situation.

1 You have a man that -- you have a young man that
2 has pretty much, you know, made one bad decision, and
3 his family is being affected by this. Then you also
4 have the victim's family who has to live with this.

5 I just hate it, the fact that, you know, no
6 matter what happens today, there's no winners.
7 Nobody wins from this, and that's all.

8 THE COURT: I understand.

9 MS. HENDRICKS: Thank you, Your Honor. Next is
10 Ms. Sharon Bell. She is the daughter of Mr. and
11 Ms. Bennett.

12 I don't know -- do you want them to stay there
13 or come here?

14 THE COURT: Name?

15 THE DAUGHTER: Thank you, Your Honor. For two
16 years --

17 THE COURT: What's your name?

18 THE DAUGHTER: Sharon Bell.

19 THE COURT: Sharon?

20 THE DAUGHTER: Daughter of Hazel Bennett. I've
21 been waiting for this for almost two years.

22 I was called that evening. They were taking my
23 parents to the hospital when I got there, and
24 throughout this whole thing, as a mother of three
25 boys, I was thinking how it would be affecting me to

1 have my child in this situation, and then the first
2 time I saw Mr. Nesmith, I realized the size he was
3 which, was larger then, compared to my parents. I
4 just -- all that went away.

5 There was no reason for it. They -- we feel
6 they had been to the house the night before because
7 my parents had -- my mother said the T.V. was undone
8 from the wall.

9 My father has Alzheimer's. You know, I don't
10 think he did something like that. They could have
11 come in, taken the things and walked away. Instead,
12 they beat my parents, beat them and left them.

13 She had no way to get help. She crawled to her
14 car, drove a couple of miles to get my brother, and
15 through this whole process, we -- I felt like we had
16 gone through the hoops of making sure he is taken
17 care of.

18 That's my parents, and I felt like every time
19 we've come this far, it's -- he's had an excuse,
20 which it seems to be for the whole process of his
21 life. "I've done this. I'm not responsible." You
22 know, "Get me out of it."

23 We're just glad to see today is finally here. I
24 just hope that you see the pain that we have gone
25 through as a family.

1 People from the neighborhood are thrilled he's
2 off the streets. I can't tell you how many people
3 have come to my parents' house to say, "I'm sorry
4 this happened to you, but I'm so glad they're gone."
5 I've had people come up to me in different places,
6 "We used to live in that neighborhood. These kids
7 scared us to death."

8 If we could wipe it out, we would be most
9 appreciative. Thank you.

10 MS. HENDRICKS: Your Honor, next is Mr. Charles
11 Bennett, the son in this case.

12 THE SON: My name is Charles Bennett. I was
13 first to respond. My mother pulled up in my front
14 yard, beeped the horn. That was ten o'clock at night.
15 I didn't know what was going on or anything.

16 I go out there, and I see my mom beaten and
17 bloody. As to what went on, she said that two people
18 broke into her house, assaulted her and my father.
19 At that point in time, I went and got my weapon, told
20 my wife, "Call 911," got in the car with her, go back
21 to the house because I was concerned about my father.

22 Okay. When I -- when I got there, the Irmo
23 Police Department was already there. They responded
24 very, very fast, which I appreciate that and
25 everything they've done.

1 This crime was overkill. It's overkill, you
2 know. They could have took anything they wanted in
3 that house. My mom just was out of the hospital two
4 weeks for knee replacement surgery.

5 My dad has Alzheimer's, and you know, his
6 vocabulary is three words. You know, if he gets out
7 of his routine, he's lost, but I believe
8 these -- these -- these gang members or defendants
9 targeted my parents' house because they were easy
10 prey.

11 Since this crime has happened, you know, I do
12 their yard and everything and take care of them.
13 We've gotten a lot of support from the community
14 stating, you know, how is this case going and stuff
15 like that.

16 They're glad they're off the street. You know,
17 it needs to be -- you know, to send a statement to
18 both sides, "Would you do a crime as heinous as this,
19 do your time. You're going to do a lot of time.
20 You're going to miss a lot of your good years."

21 If you -- if you just slap him on the hand, make
22 him write an essay like he's done tons of times
23 before or "I haven't had my medication or anything
24 like that," you know, you're sending a sign that,
25 "Hey, it's okay to beat -- you know, to break into

1 people's houses and assault them and take what they
2 have."

3 You know, as far as me, I've been under a lot of
4 stress. Right now I'm under medical treatment. My
5 sleep habits have changed. I worry about my parents
6 constantly.

7 I try to get them to move in with me and stuff
8 like that. I've installed motion detectors in the
9 backyard. My sister and I, you know, bought them a
10 burglar alarm. We've done everything we can to make
11 sure their life is safe.

12 You know, we just need to send a message to the
13 community gangs and violence are not tolerated. We
14 work hard for what we have, you know.

15 We -- no one gave me my job. I had to work for
16 it. I had to work through the ranks to get my job,
17 and you know, evidently, he's having to work through
18 the ranks to his get his job, but I'd like to see his
19 job terminated.

20 However you see it done, I believe that, you
21 know, he should serve way more time than what we're
22 offering him. This -- you know, it's just hard to
23 comprehend this.

24 I've been to all of his hearings, heard all of
25 his excuses, and you know, if I could get off that

1 easy, then I'd be a career criminal, okay. That's
2 about all I've got to say.

3 THE COURT: Thank you.

4 MS. HENDRICKS: Your Honor, Mr. Charles Bennett,
5 Sr. is, of course, not here due to his illness. I
6 think last you'll hear from Ms. Hazel Bennett. If
7 Your Honor doesn't mind, she -- she can just stand
8 right there.

9 THE COURT: Yes, ma'am. I'll be happy to hear
10 from you.

11 THE VICTIM: I am Hazel Bennett. I am one of
12 the victims. As you heard, we were in bed on that
13 Sunday night, and I was reading. The T.V. was on.
14 It was Sunday night football.

15 My husband has Alzheimer's. He was laying over
16 there asleep. I just glanced over there and saw
17 movement at my bedroom door. By then Mr. Nesmith was
18 on top of me beating me, and I was screaming.

19 He just kept on, and finally his cohort asked
20 him to stop. If not, I don't know what would have
21 happened. He kept going through the house, and the
22 other stayed in the bedroom with us, asked me to
23 please be quiet.

24 I attempted to get up one time, crawl to the
25 bathroom, because I still could not walk.

1 THE COURT: Just hold on.

2 THE VICTIM: And he asked around --

3 THE COURT: Have your client look at this.

4 Ma'am.

5 I want you to see.

6 THE VICTIM: And he went into the bathroom and
7 brought me a towel because the blood was going down
8 my face so badly.

9 I sat on the floor until they all left, and he
10 kept coming in. One time he made the comment to me
11 that he was doing this to buy food for his family.
12 That was after he had taken all my money, which
13 wasn't very much, but it was what I had at the time.

14 And I asked him -- told him that we were on
15 Social Security. For some reason, I was not afraid
16 of him.

17 I stayed there until they left, and I looked on
18 the night stand and the telephone was gone. So I
19 scooted into the bathroom to get the cell phone to
20 call. All I could think of was getting to my son to
21 get help.

22 I got to the bathroom. My cell phone was gone.
23 I managed to get back to my walker. My car keys were
24 there, and I got into my car. I wasn't supposed to
25 drive.

1 I went over to my son's house, and he called the
2 police for me. His wife kept calling and continued
3 talking. By the time we got back home, they were
4 there.

5 My neighbor next door came over, and she was
6 with me. We've been friends for close to 30 years.
7 She accompanied me to the hospital, along with my
8 daughter and my husband.

9 My husband has Alzheimer's. He didn't know what
10 was going on. He just laid back down on the bed and
11 went to sleep. He asked me if they were going to
12 spend the night. I told him I certainly hoped not.

13 After that, I was taken to the hospital and
14 given emergency treatment and brought home. My life
15 has changed since then. I used to go outdoors all
16 the time. I'm an outdoors person. Of course, I
17 cannot walk without a walker now.

18 Since that time, I haven't been able to walk
19 with a cane. I've had to use my walker. I'm afraid
20 to go outside at night. I will not go outside at
21 night, particularly by myself.

22 No matter what goes on in the house, I won't go
23 outside. I'll call my son or neighbor to check it
24 out for me, and I've just become a different person.
25 I don't trust anybody anymore.

1 I used to walk the neighborhood we live and
2 spoke to everybody, and everybody was friends, I
3 thought. I never dreamed anything like this could
4 happen.

5 I just want to see just punishment done. I
6 think he needs help, and I think the only way he is
7 going to get the help that he needs is to be
8 incarcerated where it is court ordered, and it is
9 determined that he gets it.

10 I hate to see a young life wasted. However, I
11 cannot think about them doing the same thing to
12 anybody else again that happened to me.

13 They could easily have killed us. We did not
14 put up a fight, had no weapon. So anything I had, I
15 told them where it was at when he asked, and he took
16 it.

17 THE COURT: Did you know this young man before
18 this event?

19 THE VICTIM: No, sir. I did not know him. I
20 may have seen him walking the streets. They do walk
21 the streets, but I did not personally know him, no.
22 He lives on the street, on the circle directly behind
23 my house.

24 His house is almost within view of mine. If he
25 was let out to go home, I don't think I could live in

1 my home anymore, and I really don't want to give it
2 up. That's home to us, and my husband, at this time,
3 will not -- I can't take him to anybody else's house,
4 not even for ten minutes.

5 I have to bring him home because he just is not
6 comfortable. At the present time, hospice is coming
7 to help us out, and I just hope things get better.

8 THE COURT: Thank you, Ms. Bennett.

9 MS. HENDRICKS: Your Honor, that's all from the
10 State that the time.

11 THE COURT: All right. Mr. Finney?

12 MR. FINNEY: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 MR. FINNEY: Your Honor, as many people know,
15 who know me, know I've wanted to be a lawyer my whole
16 life.

17 In my entire career, which is -- as a licensed
18 attorney, approaching 20 years now, I feel like I've
19 been practicing law since I was five years old.

20 I have never seen a finer presentation by the
21 State in any guilty plea situation or sentencing
22 situation. I was standing here, and with my
23 experience, realizing that they needed to make a
24 great presentation for many reasons. One of the
25 reasons we all just heard from, which is Ms. Bennett.

1 I have never met Ms. Bennett, but I can tell you
2 right now, I know a fine person when I see one, and
3 she is. I can tell you right now without ever having
4 met either of her children that I know they turned
5 out to be good children because of the leadership
6 they had growing up.

7 So the State needed to make a great presentation
8 on their behalf, but it doesn't just stop there. The
9 community needs to be safe.

10 The State represents the community, and my first
11 job coming out of law school, I was a solicitor in
12 Lexington. One of the first people I met was the
13 chief, and I want you to know that I have practiced
14 law all over the State of South Carolina, and the
15 chief is one of the finest men you will ever meet.

16 Maybe one of the reasons why his police
17 department responded so efficiently in this case is a
18 reflection of the leadership of the Irmo Police
19 Department, because I know him to be a very fine man,
20 not a narrow-minded man, as many people who wear a
21 badge can be, because of the job, someone that both a
22 solicitor and a defense lawyer can talk to and
23 effectively communicate with.

24 I think his department reflects his leadership,
25 just like the Bennett children reflect the leadership

1 of that household.

2 There's a lot that leadership in a situation can
3 cause a situation to do good or bad, so I applaud the
4 Solicitor's Office for that very fine presentation
5 that they presented.

6 In their presentation, Your Honor, I never heard
7 one person, not even Mrs. Bennett's son, ask for 25
8 years. I heard everyone give their presentation with
9 respect what was going on in the community.

10 Mrs. Bennett doesn't have to stand here before
11 this court and before this defendant and say that she
12 knew -- knows that he needs help after what she has
13 been through.

14 You can instantly tell these are -- these are
15 people who are compassionate. They are intelligent,
16 and they are not coming in here with just hatred and
17 revenge. They just presented the information to the
18 Court in a very intelligent manner.

19 I hope that as the lawyer for the defendant,
20 that we can also -- Your Honor, we're not going to
21 ask you for 20 years.

22 We want to just present to you, following the
23 lead of the State, Nicholas' story, and we hope that
24 you take from it whatever you will with respect to
25 ordering an appropriate sentence in this case.

1 I'm going to start by saying this, Your Honor:
2 I'm not Nicholas' first attorney in this case. Luke
3 Shealey with the Public Defender's office here was
4 Nicholas' first attorney.

5 And, Your Honor, when I first was retained on
6 this case, which I think was back in May, one of the
7 first people I talked to was Luke Shealey.

8 I can only imagine the volumes of cases that he
9 has handled as a public defender in this courthouse
10 in a sitting such as Columbia.

11 He told me, and it echoes the sentiments of the
12 police officer, female police officer who
13 testified -- I think she was the first on the
14 scene -- that in her entire law enforcement career,
15 this was the worst case she had ever seen. That's
16 the very same thing that Luke Shealey told me when I
17 was talking to him about this case.

18 He says in his entire career as a public
19 defender here, he said this was the saddest case that
20 he had come across.

21 When I got involved in this case, I got involved
22 because his family attends church with me. Several
23 years ago, I thought Sunday school and taught some of
24 their children in class.

25 Your Honor, I got involved in this case to try

1 to see if I could help Nicholas. This -- you don't
2 need to be told this. This case, Nicholas does not
3 deserve any mercy from this Court. He doesn't
4 deserve the mercy that he has been able to get from
5 Mrs. Bennett standing here expressing herself in the
6 very articulate manner that she expressed herself in.
7 He doesn't deserve any of that.

8 I can tell you, Judge, that to recap very
9 quickly, and I'm not going to get into the specific
10 details of what happened out there that night, but I
11 do know this -- and I think we can all agree on
12 this -- he turned himself in on the scene.

13 He immediately confessed to the crime on
14 videotape. He did not -- we did not go to trial on
15 this case. He pled guilty. Your Honor, Nicholas has
16 a problem.

17 The disrespect that he showed to the victims in
18 this case is paramount. I would agree with the Chief
19 when he said, you know, this sent a chill through the
20 community because these were senior citizens, people
21 who worked all their life.

22 They didn't go into other people's houses
23 stealing. They didn't go into other people's houses
24 violating them. They worked hard for what they got,
25 and they deserved at these golden years to be able to

1 relax in their house, be able to go out in their yard,
2 enjoy life, and my heart breaks when I hear
3 Mrs. Bennett say that has changed for her now and she
4 is afraid to do those things. That's not right.
5 That's not fair.

6 Your Honor, I would like for you to know that
7 Nicholas is 17 years old. The Solicitor in their
8 presentation to you talked about his juvenile record,
9 because as he stands before you, he has no adult
10 record.

11 He had some problems. I believe part of his
12 juvenile record talked about fires being set and
13 other problems he had at school.

14 Dr. Schwartz-Watts is here, and I'd like for you
15 to please listen carefully to her as she tells you
16 some of the findings that she has discovered
17 interviewing and treating Nicholas.

18 Nicholas' mother is here. His father is -- is
19 noticeably absent today, Your Honor. His father has
20 cancer and is not doing well at all. His mother has
21 a prepared letter prepared by the father that she
22 would like to read to Your Honor.

23 Our pastor is here, Pastor Dix from Wesley
24 United Methodist church, other church members are
25 here. His brother is here, and there are also some

SENTENCING HEARING

71

1 correctional officers from Alvin S. Glenn here to
2 speak on Nicholas' behalf.

3 Your Honor, again, I would repeat, we're not
4 going to ask you for any type of minimum. We're just
5 going to give you some information. Your Honor, I
6 know that you have, always, a difficult job. I don't
7 envy your job at all on any day of the week, because
8 I know the importance of your job in trying to use
9 your judgment to set the appropriate sentence.

10 I would just ask you, Your Honor, to give these
11 people an opportunity to be heard, and then at the
12 conclusion of their remarks, I will conclude with
13 some brief remarks. We'll ask you to sentence
14 Nicholas appropriately.

15 At this time, Your Honor, I would --

16 THE COURT: Mr. Finney.

17 MR. FINNEY: Yes, sir.

18 THE COURT: Give your client a chair. I think
19 he needs to sit during this presentation. I know we
20 usually stand.

21 MR. FINNEY: Thank you, Your Honor.

22 I'm going to start with the officers with Alvin
23 S. Glenn. If they can come forward. Wherever
24 security wants them, they'll be happy to...

25 THE COURT: All right.

1 MR. FINNEY: Would you give your full name to
2 the Court?

3 MR. CHURCHILL: Yes. My name is James Churchill.
4 I work at the Alvin S. Glenn Detention Center,
5 juvenile section.

6 MR. FINNEY: And Your Honor, I believe he's
7 going to speak for all of the officers.

8 THE COURT: All right.

9 MR. CHURCHILL: Your Honor, and people in the
10 jury box, Mr. Nesmith was with me at the juvenile
11 facility between 12 and 18 months.

12 The whole time that he was there, he was very
13 respectful. We never had no problems out of him. He
14 was very cooperative in the whole time he was with us.
15 Also, during the time that he was there, he was going
16 to school. It was mandatory. He was going to school.

17 He received his G.E.D. while he was there, and
18 that's the main thing I could be able to say, but he
19 hasn't had no problems at the jail since he's been
20 there.

21 THE COURT: No disciplines?

22 MR. CHURCHILL: No disciplines at all while he
23 was with us as a juvenile. He's in the adult side
24 now, and as from what I know of, he doesn't have no
25 disciplinaries at all.

SENTENCING HEARING

73

1 The accomplishment that he had was getting his
2 G.E.D. while he was there as a juvenile at the center.
3 That was his biggest accomplishment he had.

4 THE COURT: Thank you, Mr. Churchill.

5 MR. CHURCHILL: You're welcome, sir.

6 MR. FINNEY: Your Honor, at this time, I
7 recognize Pastor Dix, pastor at Wesley United
8 Methodist church.

9 THE COURT: Yes.

10 PASTOR: Your Honor, I stand before you as one
11 who knows that the sins of the father is passed down
12 readily to siblings, and Your Honor, as the attorney
13 has already said, this young man needs help.

14 I'm not here begging for mercy. I just ask that
15 he could be put in some type situation to help him to
16 be able to return to society and be a productive
17 individual in society.

18 Times like this let us know, as the church, that
19 we need to continue to work hard with our young
20 people to keep them from getting to this point. And
21 I am here to stand with the mother and to offer our
22 prayers and my prayers to you, too, also. Thank you,
23 sir.

24 THE COURT: Thank you, Reverend.

25 MR. FINNEY: Ms. Nesmith. This is Nicholas'

1 mother. And give us your full name.

2 THE MOTHER: My name is Lucretia Nesmith.

3 MR. FINNEY: And Lucretia, could you just very
4 briefly identify who is here supporting you and
5 Nicholas today?

6 THE MOTHER: I have two sisters. One of them is
7 not well herself. This is my other sister, Mary
8 Pressley, and Reverend Dix, our pastor. This is
9 Mr. and Mrs. Law Early (phonetic), which is a church
10 member and friends.

11 These here are friends, Katherine Carnage
12 (phonetic) and Carolyn Ryan (phonetic) and my son and
13 my other son, Victor Nesmith.

14 AUDIENCE MEMBER: Your Honor, can I please say
15 something?

16 THE MOTHER: No.

17 MR. FINNEY: Not at this time.

18 AUDIENCE MEMBER: I just want to want --

19 THE MOTHER: No.

20 AUDIENCE MEMBER: -- to say something real quick
21 off my chest.

22 THE COURT: Talk to your lawyer. If your lawyer
23 wants you to say something, I'll allow you to do it.

24 AUDIENCE MEMBER: Five minutes.

25 THE COURT: Mr. Finney, I'm going to leave that

SENTENCING HEARING

75

1 up to you.

2 MR. FINNEY: No, sir. He -- I don't want him to
3 address the Court.

4 THE COURT: All right.

5 MR. FINNEY: Thank you.

6 THE COURT: Yes, ma'am.

7 THE MOTHER: I myself, I was only going to read
8 what is proper, but we're here today because of my
9 son, and I know you just shook your head because you
10 don't like for me to cry, but you have to remember
11 these are not tears of sorrow.

12 These are tears because I love you, because you
13 are my son, and through this all, he was 15 years old
14 when this occurred. I listened at the story from the
15 beginning to end. Sometimes the story is this way.
16 Sometimes it's that way, but I listened.

17 I listened at his record as it was recalled, and
18 every time I was there for every meeting, and you
19 know what makes it even harder? I'm a nurse. By
20 nature, you like to nurture people.

21 Ms. Bennett talked about her knee surgery, her
22 hip surgery. The ironic thing about it is I think I
23 was your nurse, and I can recall -- recall her
24 daughter, and that hurt to know that my son was
25 involved in that.

1 This is hard. I'm not one to speak out, but I
2 have to say what's in my heart.

3 (Pause)

4 I'm okay. I'm okay. You can see I'm all right.

5 I don't know what happened that night. I only
6 heard what happened. The fears that they feel, I
7 understand that.

8 They are the victims, and I'm the parent of the
9 child who did the action, but I feel what they feel.
10 I can say, because when I drive up in my driveway, it
11 comes to me whether somebody is there. You can't get
12 around it. You can't get around that, but I want the
13 Bennetts to know that he was not raised to do what he
14 did.

15 My mom told me this: "Do unto others as you
16 want them to do unto you," because I can stand here
17 today, and I know that you as a patient, I treated
18 you just like I would anybody else. So he wasn't
19 taught to do the things that he did.

20 He was taught to love everybody. It hurts and
21 I've been through a whole lot of ups and downs with
22 him at school, and even at school, the things that he
23 did, he had the teachers.

24 They still had something about him that they
25 still liked about him. The Irmo police, they know

1 I'm not one to say anything. They are, but like I
2 said, I have to say what's on my heart, and I have to
3 say from what I see and what I heard.

4 Like today, I heard they said a statement where
5 they said they think this was planned the night
6 before. I don't know. That night he was home, but
7 there was a knock on the door, and it was the other
8 codefendant. But I'm not here to bring that up.

9 I don't know what was going on, but anyway,
10 Nicholas was certain to come back into the house.
11 That was the night before.

12 To talk about being productive in the community
13 and getting help -- and I have to say the two years
14 that he's been there, I've seen great changes that
15 was positive.

16 He was a child. If you read his school records,
17 you would know he had problems going into a classroom,
18 going into a crowd.

19 Even when he first came out to Alvin S. Glenn,
20 you know, I would ask the guard or correctional
21 officer about him and they would say, "He's quiet.
22 He sits back and he observes," but over time I saw
23 some of the stuff that was hindering him. I saw him
24 break loose.

25 I don't know whether the fact that he was there,

1 he was breaking away the shame, the chain of bondage
2 or whatever he had going on, because like they say,
3 prior to this week, all this stuff was going on.

4 As a mother, I could tell there was something
5 going on, but I couldn't pinpoint it. But I do, I
6 can say, that while he was there, while he was here,
7 I see the change: The ability that he has to
8 communicate with people; the ability of what he was
9 taught, to be respectful; that he brought that part
10 out.

11 I know that he has learned a great lesson. The
12 fact that he was just taken away, he's never stayed
13 away from home, never.

14 In 15 years of his life, other than at his
15 grandmother's house. I know that has been hard, and
16 like I said, I can see the change, even during the
17 visit when we would go.

18 He would say -- in the middle of conversation he
19 would grab my hand and he would say, "Mama, I want
20 you to forgive me for what I've done." I said, "I've
21 already done that. You have to forgive yourself and
22 ask God to forgive you."

23 This hurts. The only thing I can ask you, Judge,
24 is to have mercy on him. That's all.

25 You know, to everybody's eyes and everything

1 else, he may be number 3336, but to me, he's my son.
2 He's my son, and I'm so glad that something
3 that -- something that he said, "I've done something
4 wrong," but even as an adult, some of us would never
5 admit to what we have done wrong.

6 And I want you, Nick, to keep that spirit.
7 Follow your heart, and I think you've learned how to
8 do that, because even while you were an adolescent
9 part, I knew there were situations with other kids
10 that had come up, but you stayed around and just
11 watched.

12 I don't know what today may bring. The only
13 thing I can say is that I love you, Nick. And yes,
14 Judge, this has an impact, not on just the victim but
15 on everybody.

16 And I want you all to know that I'm very sorry,
17 because if there was something that I could have done
18 to prevent it, I would. He just was not raised up to
19 do the things he was doing.

20 I'll read the letter that his father has, and
21 even though he may sound like a -- just a beast, and
22 he's not home now, I miss him for the little things
23 that he brings. Not so much the little things, even
24 now, even more so.

25 This is a letter that his father wrote.

1 "Your Honor, my name is Victor Nesmith, father
2 of Nicholas Nesmith. First, I would like to
3 apologize for not being present due to my illness. I
4 myself is dealing with an ongoing battle of Stage III
5 throat cancer.

6 "Mr. and Mrs. Bennett, please forgive our family
7 and my son, Nicholas, for the crime of September 14th,
8 2008.

9 "I am so proud that Nicholas turned himself in.
10 I'm proud that with the help of Irmo police, that he
11 helped them to locate the codefendant. I'm asking
12 for mercy and forgiveness.

13 "I will not live 20 or 25 years, and I want to
14 see my son again. Thank you, Mr. Finney, and your
15 staff for all your help.

16 "Please, Judge, have mercy on my son."

17 I love you, Nick. Trust God and say a prayer.
18 Remember, a setback is just a comeback, and through
19 God, you can do all things.

20 MR. FINNEY: Thank you, Your Honor.

21 Your Honor, at this time, I would recognize
22 Dr. Schwartz-Watts.

23 DR. SCHWARTZ-WATTS: Hi, Your Honor.

24 THE COURT: Yes.

25 DR. SCHWARTZ-WATTS: We actually saw Nicholas at

1 the University of South Carolina med school back in
2 April of 2010 when he was represented by Mr. Luke
3 Shealey, and we had -- I think we had come to court.

4 There was a day they were going to have a plea,
5 and it was postponed. So Mr. Finney contacted me
6 last week, and I'm glad to present my findings.

7 There's a few things I need for you to know. He
8 was 15 when this happened. It's interesting that
9 Mrs. Bennett mentioned, he's grown a good bit. He
10 was certainly heavier. I think he was 5'11" when
11 this happened, and I think Mr. Finney is 6'4".

12 He's probably a little bit over 6'2" himself now,
13 but has definitely lost a lot of weight. I think
14 what's most important is to clear up a number of
15 things.

16 Number one, he absolutely was involved in a gang.
17 He admitted that to me. He admitted that to
18 Dr. Campbell and Dr. Salas (phonetic), the three of
19 us who evaluated him. He never denied that.

20 I think you need to know what happened that
21 night. First of all, he is competent to stand trial.
22 He's criminally responsible. He absolutely can
23 conform his conduct to the requirements of the law.
24 No question about that. This is just purely a
25 sentencing issue.

1 That Sunday they were all just watching football.
2 They were all doing things with their own family, and
3 they absolutely got together and started fighting
4 Sunday night.

5 This is -- I was shocked. He had his gang,
6 M.O.B., and that stands for Men Over Bitches -- Money
7 Over Bitches, excuse me, is what he told me that
8 stood for.

9 What they were doing that evening when the Irmo
10 police caught them fighting is -- you have to fight
11 each other in the gang. He was picked that night to
12 fight a family member. If you show mercy when you
13 fight, you get beat.

14 So what happened earlier that evening, he was
15 fighting. I believe it was his cousin or someone
16 that, at that period of time, had known him. It was
17 someone that was very close to him, and he showed
18 mercy on him. And he got beat, and he got beat by
19 someone he knew, including being kicked in the head
20 and that sort of thing.

21 So right before this crime happened, he was told
22 you show mercy, you got beat. Then he tells me that
23 he was told they had to go to the victims' home.

24 The gangs are so violent, Your Honor, and these
25 children are so young, and you put them in a group,

1 and they're incredibly dangerous. They are.

2 There are some things individually you need to
3 know about him. When he was young, he was beaten by
4 his father, saw his mother beaten by his father. His
5 family moved; his father was dealing drugs at some
6 point.

7 His family moved over to the Beltline area, and
8 one night while the family was -- he was in there
9 with his brother and mother and father, they got a
10 knock on the door. It was a pizza delivery man.

11 It turned out to be a robbery of his father, and
12 a gunman broke into their house. He held them all at
13 gunpoint. He watched his father beaten, and that's
14 where some of his anxiety disorder came from.

15 He reports he was hospitalized four times.
16 Somehow, there's no record of that. The mother
17 confirms he was hospitalized two times. He was
18 treated for attention deficit and anxiety disorder,
19 and that was when he was just a little bit younger.
20 He definitely does have symptoms of P.T.S.D.

21 I think everybody deserves to know why he got
22 involved in gangs. What he told me is when they
23 moved to Irmo in 2005, that a rival gang approached
24 him. He was on the school bus.

25 THE COURT: A what now?

1 DR. SCHWARTZ-WATTS: A rival gang.

2 THE COURT: A rival.

3 DR. SCHWARTZ-WATTS: And threatened him, and his
4 house was burned down. He believes to this day that
5 his house was burned down by that other gang because
6 he refused to join.

7 He states he joined the gang he was in as some
8 level of protection. It's certainly no excuse, Your
9 Honor, but I think we need to understand the gangs,
10 why these kids get involved in these horrible,
11 horrible activities where they harm people. So
12 that's his reason why he got involved in the gang.

13 I think the Irmo police are correct. There is
14 some element of remorse in him. Individually, when
15 you take him alone, he is remorseful, and I think
16 there are some things that are definitely worth
17 rehabilitating for him.

18 I would order, if you wouldn't mind, when he is
19 in the Department of Corrections, ask that the court
20 order that he gets psychiatric treatment. He has
21 been on Zoloft, which is an anti-anxiety agent.

22 He has taken that while he's been in the
23 detention center, as well. There are some things
24 that I think while he's in the Department of
25 Corrections, that he does have some illness and could

1 be rehabilitated.

2 Individually, he is remorseful. He admitted
3 everything to us. He is concerned about his family,
4 but I just want to let you know that his illness,
5 though, didn't have anything to do with this, but
6 certainly, his reasons for getting into the gang, a
7 family history of some violence.

8 His I.Q., he has an average a lower than, you
9 know, but he had been wanting to stay in classes
10 earlier and that sort of thing. I would feel just
11 ask the Court that whatever sentence, to make sure
12 that he follows up with psychiatric treatment.

13 THE COURT: All right. Thank you, Doctor.

14 MR. FINNEY: May it please the Court, Your Honor.

15 THE COURT: Yes, sir.

16 MR. FINNEY: Do you mind if I ask my client to
17 stand up now?

18 THE COURT: Sure.

19 MR. FINNEY: Your Honor, in conclusion, I won't
20 dwell on this, but my opinion, Your Honor, for
21 whatever it's worth, is I heard the Chief talking
22 about the fact that they've got a gang problem in
23 Irmo.

24 I think throughout South Carolina, there's a
25 gang problem. I think that would be a fair

1 assessment. Some places are worse than others.

2 I heard -- I believe Mrs. Bennett's son or
3 daughter talk about the fact that she -- well, their
4 parents -- were easy pickings for Nicholas and his
5 codefendant, and that easy pickings kind of struck me
6 and stayed with me, because from what I see in my job
7 dealing with young men involved in gangs and coming
8 into contact with the criminal justice system, I
9 think that these leaders in these gangs see these
10 young men, 15 years old, as easy pickings,
11 particularly ones who may have issues like
12 Dr. Schwartz-Watts talked about with their fathers.

13 It's easy pickings because they're don't
14 have -- they're not afraid of their father or their
15 mother or whoever is raising them.

16 So these easy pickings, young men, go out and
17 join up with a gang who could care less about them.
18 They become easy pickings for them, and you wind up
19 in a situation like Nicholas where you're standing
20 before the Court facing 20, 25 years in prison.

21 Your Honor, what I do know is that if you become
22 a part of something that has real leadership, you
23 have a real chance to make it in life and survive.
24 That's what I know.

25 I know that if you don't have that, the odds are

1 very low that you will survive in life. I know that
2 I feel that I have been very blessed to have been
3 exposed to some very positive leadership.

4 I hope and pray that Nicholas, when he goes to
5 prison, will have the benefit of being exposed to
6 some positive resources that may be available to him
7 so that if he does get out, he will be able to
8 perhaps be about my age and be able to live a
9 positive life.

10 I come back to where I started off with Luke
11 Shealey. I know now why Luke Shealey told me this
12 was one of the saddest cases that he has ever been
13 involved with.

14 Your Honor, I would ask again for your mercy,
15 because everyone has asked you from the defense as
16 you pronounce sentence on Nicholas.

17 Thank you, Your Honor.

18 THE COURT: Does your client wish to say
19 anything?

20 MR. FINNEY: Yes, sir.

21 THE DEFENDANT: I just want to say -- I just
22 want to say that I'm sorry for the pain that I caused
23 you, the pain in the family and my family, everybody
24 else's situation.

25 MS. HENDRICKS: Your Honor.

1 THE COURT: From the State?

2 MS. HENDRICKS: May it please the Court. Just
3 very briefly, as Your Honor is aware, I passed up
4 this long history of his history with the juvenile
5 justice system.

6 His date of birth is . He has
7 been involved with the system since he was ten years
8 old. Your Honor, the Department of Juvenile Justice,
9 the community, everyone has tried to help this
10 individual get over his problems and become a
11 productive citizen of society.

12 He continued to get in trouble at school. He
13 continued to have issues with fires. He continued
14 this delinquent behavior to the point where he did
15 this, Your Honor.

16 Three days -- two or three days before this
17 incident, he shoplifted and got charged with
18 disturbing schools. Your Honor, the system tried,
19 and he was not -- he did not benefit from any of
20 these services D.J.J. provided him. That's one of
21 the main reasons he was waived to a Court of General
22 Sessions where he's here to accept punishment as an
23 adult.

24 Your Honor, a couple of other things I'd like to
25 address from the presentation. I do have some

1 indication that when he first arrived at the Alvin S.
2 Glenn Detention Center, he was not quite a perfect
3 angel.

4 He did get into several fights with other
5 juveniles there. I do -- I can provide records of
6 that, if necessary. Also, the fire starting which is,
7 of course, a very interesting thing to think about is
8 very -- causes the State great concern.

9 Chief Buck is actually the lead investigator on
10 the case where his house burned down. It was
11 actually Irmo's belief that -- I guess you can hear
12 from Chief Buck -- that Mr. Nesmith is actually the
13 one who set that fire to his own house.

14 He was never charged in that. Since they
15 brought it up, I think it's important for the court
16 to be aware that was the Irmo police's belief in that
17 case. You can hear from Chief Buck. He was actually
18 the investigator in the case, the first responder to
19 that actual fire.

20 As you can see, the Irmo police department knows
21 this family. They've been dealing with this family
22 for a long time, not only the family but this group
23 of boys that were in that fight earlier.

24 They know their names. They know where they
25 live. They are the gang problem in Irmo. He is not

1 a product of it. He is the gang problem in Irmo.

2 This action is the gang problem.

3 Innocent victims were attacked because of a gang,
4 were attacked because of him. Your Honor, it's not
5 simply that the gang made him do it. He had his own
6 idea and did this to become better in the gang, Your
7 Honor.

8 Even if this was not gang related, he still
9 decided on his own to go in this house and not only
10 take the items from Mr. and Mrs. Bennett but beat
11 them, beat them for no reason.

12 You heard from her. You saw her condition. She
13 would have given them anything, yet he still chose to
14 beat her. You have the pictures in front of her
15 (sic). You see the injuries.

16 Your Honor, on behalf of the State, the law
17 enforcement agency, the family, we ask for the 25
18 years.

19 THE COURT: Anything further?

20 MR. FINNEY: Nothing else on this, Your Honor.

21 (Pause)

22 THE COURT: Just for the record, I know you
23 attorneys know what I'm talking about, but with
24 reference to the kidnapping charge, the kidnapping
25 carries an automatic registration on the sexual

SENTENCING HEARING

91

1 offender registry. I assume that this is -- I have
2 heard no evidence --

3 MS. CAMPBELL: Right.

4 THE COURT: -- that this is in any way
5 sexually --

6 MS. HENDRICKS: No, Your Honor, none.

7 (Pause)

8 THE COURT: All right. His arrest date was...

9 MS. HENDRICKS: September.

10 THE COURT: September.

11 MS. HENDRICKS: September 14th, 2008.

12 THE COURT: It was on the 14th.

13 MS. HENDRICKS: Or it would have been on the
14 15th.

15 MR. FINNEY: May it please the Court, Your Honor.
16 At the appropriate time, I would like to put one
17 final thing on the record.

18 MS. HENDRICKS: It was the 15th. It was after
19 midnight.

20 THE COURT: Fifteenth?

21 All right, Mr. Finney.

22 MS. HENDRICKS: Your Honor, Mr. Finney just
23 wants me to put on the record that the pending
24 juvenile charges, the shoplifting, the disturbing
25 schools, I will dismiss. The State will dismiss

1 those.

2 THE COURT: All right. Mr. Nesmith, on your
3 assault and battery of a high and aggravated nature
4 charge, the sentence of the Court is you be committed
5 to the State Department of Corrections for a period
6 of ten years.

7 On your strong armed common law robbery charge,
8 the sentence of the Court is you be committed to the
9 State Department of Corrections for a period of
10 fifteen years.

11 And on both of your -- both your kidnapping
12 charge and your burglary in the first degree charge,
13 the sentence of the Court is you be committed to the
14 State Department of Corrections for a period of 22
15 years.

16 You are given credit for time served from
17 September 15th, 2008. I indicated that this is not a
18 sexual offense, and I'm going to order psychiatric
19 counseling while you're in the Department of
20 Corrections. Good luck to you, sir.

21 MR. FINNEY: Thank you, Your Honor.

22 MS. HENDRICKS: Thank you, Your Honor.

23 THE COURT: All right. We'll take a ten-minute
24 break.

25 MS. HENDRICKS: Your Honor, these were

SENTENCING HEARING

93

1 concurrent or consecutive?

2 THE COURT: Concurrent sentences. All sentences
3 to run concurrently.

4 MR. FINNEY: Thank you.

5 (WHEREUPON, the proceedings were concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

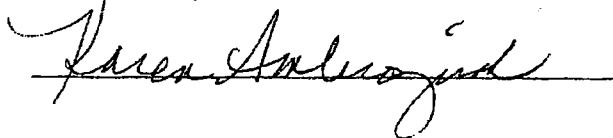
25

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 General Sessions Court for Richland County, South Carolina, on the 9th day of August, 2010 and the 1st day of September, 2010.

March 29, 2010

A handwritten signature in cursive script, appearing to read "Karen Ambroziak", is written over a horizontal line.

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

5720P

2011C P4000423

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

NICHOLAS NESMITH

Full name and prison number (if any) of Applicant,

vs.

STATE OF

Name of Respondent.

South CAROLINA

APPLICATION FOR
POST-CONVICTION RELIEF

2011 JAN 21 PM 2:35
JEANETTE L. MCBRIDE
Clerk, C.S.

RICHLAND COUNTY
FILED

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 it clear to which question any such continued answer refers.

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

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

1. Place of detention S.C.D.C LEE Corr. Inst.
990 Wisacky Hwy. Bishopville, South CAROLINA 29010

2. Name and location of Court which imposed sentence _____

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

- (a) 2009GS401707, 2009GS401714
- (b) 2009GS401715
- (c) 2009GS401713

4. The date upon which sentence was imposed and the terms of the sentence:

- (a) Sept 1, 10 10yrs NON-violent plea NON-VIOLENT
- (b) Sept 1, 10 22yrs violent plea NON-VIOLENT
- (c) Sept 1, 10 22yrs violent plea NON-VIOLENT
- Sept 1, 10 10yrs NON-violent plea NON-VIOLENT

WITNESSE MY HAND & SEAL

5. Check whether a finding of guilty was made ☒

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Trial Counsel failed to file the Appeal

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

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

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

(c) the date of each such result:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) N/A

(b) _____

(c) _____

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

(a) Trial Counsel Performance fell below an objective standard of Reasonableness

(b) Ineffective Assistance of Counsel

(c) Fail to Due Process

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

(a) Counsel failed to file appeal

(b) Counsel failed to function under professional norms

(c) _____

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? First Filing
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?
NO

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

(a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

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

First Filing PCR

(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. _____

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

- (a) first filing PCR
- (b) _____
- (c) _____

16. 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? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

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

- i. JERRY FINNEY
2117 Park Street Columbia, SC 29201
- ii. _____
- iii. _____

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

- i. TRIAL
- ii. Sentencing
- iii. _____

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

Relief this Court deems appropriate

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

NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of Bishopville

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.

Richard H. Smith

SWORN to and subscribed before me this 19day of Jan2011

Debra Swiss

Notary Public

(L.S.)

RICHLAND COUNTY
FILED
2011 JAN 21 PM 2:35
JEANETTE W. MCBRIDE
C.C.P. & G.S.

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
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 therefor.

Richard H. Smith

Applicant

SWORN or affirmed to and subscribed before me this

19 day of Jan, 2011

Debra Swiss

Notary Public

My Commission Expires 11-4-2015

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

NESMITH Nicholas -
00342520,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011CP4000423

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 24, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Jerry Finney, Esquire. On September 1, 2010, the Applicant pled guilty and was sentenced by The Honorable G. Thomas Cooper, Jr.. The Applicant had been indicted and/or pled guilty to the following:

¹
<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4000423&CourtType=G&CaseType=Civil&CourtAgency=40002>

ABHAN, Strong Arm Robbery, Kidnapping and Burglary - (09-GS-40-1707;15;14;13).

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Kidnapping
<u>Sentence Start Date</u>	09/15/2008
<u>Sentence Length</u>	22 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	09/02/2010
<u>Committing County</u>	Richland
<u>Location</u>	Lee
<u>Projected Release Date</u>	05/24/2027
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

2

Direct Appeal

The Applicant did not appeal his conviction and/or sentence .

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?d=00342520&youth=N&type=F>

relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's unspecified allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 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 plea 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, James G. Biel, Esquire regarding when the hearing should be set.³

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

February 15, 2011

³ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>
State's Return - (2011CP4000423) – Applicant: NESMITH, Nicholas
Page 6 of 6

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

NESMITH Nicholas -
00342520,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

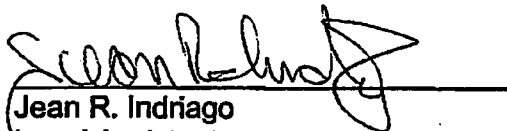
2011CP4000423

CERTIFICATE OF SERVICE

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

James G. Biel
1122 Barnwell Street, Suite B
Columbia, SC 29201

DATED February 15, 2011.


 Jean R. Indriago
 Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Nicholas Nesmith, #342520,	)	2011-CP-40-0423
Applicant,	)	
v.	)	
	)	AMENDMENT TO APPLICATION
State of South Carolina,	)	FOR POST CONVICTION RELIEF
<u>Respondent.</u>	)	

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on January 24, 2011. Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire, would amend his Application by adding Mitzi Campbell-Williams, Esquire and Joanna Haynes, Esquire, to question 17(a), by adding a claim of involuntary guilty plea, and by adding the following specific allegations to his original allegation of ineffective assistance of counsel:

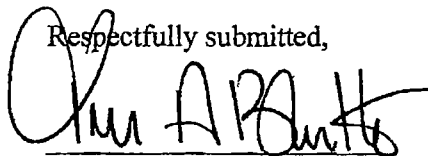
1. As to representation rendered by Mitzi Campbell-Williams, Esquire, and Joanna Haynes, Esquire:

- a. Ineffective assistance of counsel stemming from representation prior to and at Applicant's waiver hearing on February 24, 2009 in front of the Honorable Roger E. Henderson. Specifically, but not limited to: 1) failure to address the legality of Applicant's arrest and voluntariness of Applicant's statement, 2) failure to prepare or utilize Applicant or his parents as witnesses on Applicant's behalf, and 3) failure to make an argument to the court against waiver.

2. As to representation rendered by Jerry Finney, Esquire:
- a. Ineffective assistance of counsel for failure to conduct an independent investigation and properly prepare Applicant for trial, which resulted in an involuntary guilty plea.
 - b. Ineffective assistance of counsel for failure to file pre-trial motions regarding Applicant's arrest, statement and waiver hearing, which resulted in an involuntary guilty plea.
 - c. Ineffective assistance of counsel for advising Applicant to plead guilty, which waived Applicant's ability to raise issues regarding his arrest, statement and waiver hearing on appeal.

April 5, 2013
Columbia, SC

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Nicholas Nesmith, #342520,)
 Applicant,)

2011-CP-40-0423

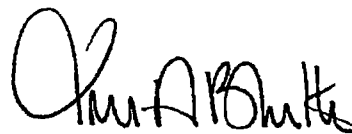
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
 Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail this 5th day of April 2013, a copy of an Amendment to Application for Post Conviction Relief, to Megan Harrigan of the Attorney General's Office, at:

Office of the Attorney General
 Att: Megan Harrigan, Ast. AG
 P.O. Box 11549
 Columbia, SC 29211-1549



Tricia A. Blanchette
 PO Box 12725
 Columbia, SC 29211
 (803) 988-0008
 Attorney for Applicant

April 5, 2013

1 State of South Carolina Court of Common Pleas
2 County of Richland Fifth Judicial Circuit
3

4 Nicholas Nesmith,) Transcript of Record
5)
6 Petitioner/Applicant,) 2011-CP-40-0423
7)
8 vs.)
9)
10 The State of South Carolina,)
11)
12 Respondent.)
13

14 March 19, 2014
15 Columbia, South Carolina

16 B E F O R E:

17 The Honorable Alison Renee Lee, Judge
18

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

20 Tricia A. Blanchette, Appellate Defender
21 Attorney for the Applicant

22 Megan E. Harrigan, Assistant Attorney General
23 Attorney for the State of South Carolina
24

25 Maryann S. Nevers
Circuit Court Reporter

I N D E X

WITNESS	PAGE
Chrise Nesmith	
Direct Examination by Ms. Blanchette	7
Cross-Examination by Ms. Harrigan	19
Nicholas Nesmith	
Direct Examination by Ms. Blanchette	29
Cross-Examination by Ms. Harrigan	62
Redirect Examination by Ms. Blanchette	87
Recross Examination by Ms. Harrigan	90
Mitzi Campbell Williams	
Direct Examination by Ms. Harrigan	92
Cross-Examination by Ms. Blanchette	115
Luke Shealy	
Direct Examination by Ms. Harrigan	125
Cross-Examination by Ms. Blanchette	136
Jerry Finney	
Direct Examination by Ms. Harrigan	139
Cross-Examination by Ms. Blanchette	163
Certificate of Reporter	177

1	<u>E X H I B I T S</u>			
	<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
2				
3	Petitioner's 1	(Interrogation Video)	4	33
4	Petitioner's 2	(Competency Evaluation)	4	37
5	Petitioner's 3	(Waiver Order)	4	45
6	Petitioner's 4	(Letter to Judge)	4	46
7	Petitioner's 5	(Letters of May 5, 2010)	4	175
8	Petitioner's 6	(Letter of July 1, 2010)	4	166
9	Respondent's 1	(Pre-waiver Evaluation)	4	103
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

P R O C E E D I N G S

(The following proceedings were held on March 19, 2014.)

(Petitioner's/Applicant's Exhibit Numbers 1 through 6 were marked for identification.)

(Respondent's Exhibit Number 1 was marked for identification.)

BAILIFF: Court come to order. All rise.

THE COURT: Good afternoon. Be seated, please.

MS. HARRIGAN: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MS. HARRIGAN: May it please the Court?

THE COURT: Yes, ma'am.

MS. HARRIGAN: Your Honor, this is the matter of Nicholas Nesmith versus the State of South Carolina, Docket Number 2011-CP-40-0423. Mr. Nesmith was indicted during the March 2009 term of the Richland County Grand Jury for burglary in the first degree, assault and battery of a high and aggravated nature, strong arm robbery, and kidnapping.

Mr. Nesmith was represented by Mitzi Campbell Williams during the juvenile proceeding and following waiver to general sessions he was represented by Luke Shealy and then Jerry Finney.

On August the 11th, 2010, Mr. Nesmith appeared before

1 the Honorable G. Thomas Cooper, Junior, where he pled
2 guilty as indicted. Sentencing was deferred and on
3 September 1, 2010, Judge Cooper sentenced Mr. Nesmith to
4 twenty-two years for burglary in the first degree, to
5 twenty-two years for kidnapping, to fifteen years for
6 strong arm robbery, and ten years for assault and battery
7 of a high and aggravated nature. Mr. Nesmith did not
8 appeal his guilty pleas or sentences.

9 On January 24, 2011, Mr. Nesmith filed an Application
10 for Post-Conviction Relief alleging ineffective assistance
11 of counsel and due process violations. The State filed
12 its return on February 15th, 2011, requesting an
13 evidentiary hearing be held. Thereafter on April 5th,
14 2013, Mr. Nesmith, through counsel Tricia Blanchette, filed
15 a motion to amend his application, which we've included in
16 Your Honor's packet, and included grounds of ineffective
17 assistance of counsel stemming from representation prior
18 at Applicant's waiver hearing against Ms. Mitzi Campbell
19 Williams on February 24th, 2009, specifically for failure
20 to address the legality of Applicant's arrest and the
21 voluntariness of his statement, failure to prepare or
22 utilize Applicant and his parents as witnesses, and failure
23 to make an argument to the Court against waiver -- excuse
24 me, failure to make an effective argument to the Court
25 against waiver, and ineffective assistance of counsel to --

1 in regards to counsel Jerry Finney for failure to conduct
2 an independent investigation and properly prepare Applicant
3 for trial, failure to file pre-trial motions regarding
4 Applicant's arrest, statement and waiver hearing, and
5 advising Applicant to plead guilty which waived his ability
6 to challenge his statement and waiver hearing on appeal.

7 He's represented in this action by Tricia Blanchette,
8 and I'll turn it over to Ms. Blanchette at this time.

9 THE COURT: Yes, ma'am.

10 MS. BLANCHETTE: Thank you, Your Honor. My name
11 is Tricia Blanchette. I am here today on behalf of
12 Mr. Nesmith. The State was kind enough to include in a
13 verbal amendment that I need to make today. In the written
14 amendment that we filed back in April of 2013, at that time
15 we didn't have the second day or the second part of the
16 juvenile waiver hearing, at that time we did not have the
17 argument put up by counsel, so Number -- Allegation Number
18 1, Subpart A, Number 3, should actually read "failure to
19 make an effective argument" instead of failure to make
20 an argument because there was an argument made now that
21 we have that second page of -- or second day of the
22 transcript.

23 Also, I've already spoken with Ms. Harrigan about
24 the fact that the -- the second allegation that I need
25 to verbally amend to is most likely included in our

1 allegations, but I want it to be clear on the record that
2 we're also alleging ineffective assistance of plea counsel
3 for failure to notify the Applicant and his parents
4 regarding the plea proceeding and to ensure that his plea
5 was free -- freely and voluntarily made.

6 Your Honor, at this time I'm prepared to call my first
7 witness unless the Court has any questions or any further
8 introduction.

9 THE COURT: Yes, ma'am. You may proceed.

10 MS. BLANCHETTE: I will call Chrise Nesmith to the
11 stand.

12 THE COURT: Left -- left hand and raise your right
13 hand.

14 CHRISE NESMITH,
15 having been duly sworn, testified as follows:

16 THE COURT: Thank you. If you'll have a seat and
17 state your full name, please.

18 THE WITNESS: My name is Chrise Nesmith.

19 THE COURT: Chrissy?

20 THE WITNESS: Chrise.

21 THE COURT: Could you spell that?

22 THE WITNESS: C-H-R-I-S-E.

23 THE COURT: Thank you. Yes, ma'am.

24 DIRECT EXAMINATION

25 BY MS. BLANCHETTE:

1 Q. Mrs. Nesmith, what is your relation to Nicholas
2 Nesmith, the Applicant?

3 A. I'm his mother.

4 Q. Okay. And understanding that you're his mother,
5 you're here today to only tell the truth; is that correct?

6 A. Correct.

7 Q. Let me take you back to August 14th, 2008, when your
8 son was arrested in this matter. How old was he at the
9 time?

10 A. He was fifteen.

11 Q. Okay. And he was arrested that evening. When did you
12 first hear from your son?

13 A. We did not hear from Nicholas until like three --
14 around about three in the morning.

15 Q. Okay. And where were you at the time of his arrest?

16 A. I was at work.

17 Q. Okay. And what shift do you typically work and where
18 do you work?

19 A. At that time I was working 7P to 7A, which that's
20 still what I do, but I was at Palmetto Richland and I was
21 on -- on that shift that particular night.

22 Q. Okay. And you received notification that you needed
23 to come home and then the first phone call you got from your
24 son was at 3 AM; is that correct?

25 A. No, the first message I ever got was from our other

1 son and at that time he had informed me that Nicholas was
2 arrested and the officer told him that he was going to
3 Alvin S. Glenn on Bluff Road. From that point I had
4 communicated with my husband and he had called Bluff Road
5 and at the time when he talked with the jail they said they
6 did not have anyone by that name because they said that if
7 he was in booking that they would not have him as of right
8 now, that he would still be in booking. So it wasn't until
9 three that Nicholas had called my husband from the Alvin S.
10 Glenn and had informed him where he was.

11 Q. Okay. And your husband isn't present in the courtroom
12 today. Where is your husband currently?

13 A. At the present time he's in the hospital. He's been
14 sick for the past four years battling different illness,
15 so.

16 Q. So based upon that conversation with -- that he had
17 with your son, what was your understanding you needed to do
18 or what was the next step you needed to take?

19 A. Nicholas had informed him at that time that the
20 investigating officer was Mr. Wilson and that we needed to
21 contact him; that he should be in the office around eight
22 and that we should contact him, and that's what we did.

23 Q. Okay. And you were able to get in touch with Sergeant
24 Wilson the next morning?

25 A. Yes. That next morning between eight and 8:15 I had

1 contacted Mr. Wilson and had talked with him at that time.

2 Q. And did he give you any information about the case at
3 that time?

4 A. Oh, actually he did not really volunteer a
5 conversation. He only answered the question that I would
6 ask him, which I asked him what was Nicholas arrested for
7 and he -- the only information that he informed me was that
8 Nicholas was going to court at that time, that Tuesday, so
9 that's all we knew, he was going to court. And the only
10 thing that he did initiate was -- at that time was he asked
11 me who was the lawyer that we were getting to represent
12 Nicholas.

13 Q. And let's jump forward to that first court appearance.
14 You were able to attend that?

15 A. Yes, I was.

16 Q. Okay. And at that point, was he appointed an attorney
17 to represent him?

18 A. At that time, Ms. Campbell with the Public Defender
19 was appointed to represent Nicholas.

20 Q. Okay. And were you able to communicate with her about
21 your son's case?

22 A. Actually she spoke with me before the case started and
23 she asked me various questions because that was our first
24 encounter, so she -- there were questions that she wanted
25 to know about Nicholas and that was the only time at -- the

1 first time that I talked with her.

2 Q. Okay. Now I'm gonna move forward to the juvenile
3 waiver hearing that was held in February of 2009. Were you
4 able to attend that hearing with Judge Henderson?

5 A. Yes. Yes, we were.

6 Q. Okay. Were you able to talk with Ms. Campbell prior
7 to that hearing and specifically talk about whether or not
8 you would be testifying or offering any information to the
9 Court?

10 A. Yeah, we -- she talked with us about what was taking
11 place and informed us what was going on. Also, the day
12 before I -- she wanted me to bring Nicholas regular
13 clothes, and that's what I did, and she went over some
14 things then. And something I had asked her she said well,
15 you will not be able to ask any questions or talk to this
16 particular case at that time. At no time would me and my
17 husband be able to say anything.

18 Q. Now you were interviewed as part of the waiver
19 process; is that correct?

20 A. Yes.

21 Q. Okay. And you gave information at that time when you
22 were interviewed; is that correct?

23 A. (Nods head.)

24 Q. But you weren't allowed to speak at the actual waiver
25 hearing and you had made a request to do so?

1 A. Uh-huh.

2 Q. And can you just say "yes" or "no" so we get it
3 properly on the record?

4 A. Yes, I was present and, yes, we were told we would not
5 be able to say anything.

6 Q. What would you have wanted to explain to the court or
7 make sure the court knew about your son as a part of that
8 waiver proceeding?

9 A. Well, you know, with everything that was going on in
10 that process, as a parent -- as a mother or as a parent
11 there was -- we wanted to have something to say in our
12 defense and what we could help him because he was -- even
13 though he was fifteen, he just had turned fifteen. He
14 turned fifteen like the eighth and this was September, so
15 he still was like classified as a pre-teen, you know, he's
16 in that adolescent stage, so there would have been a lot
17 that we were going to -- at least in his behalf, you know,
18 as to what we could do to help him.

19 Q. And today is your opportunity to say that, so I'm
20 gonna ask if you can specifically give us some of the
21 things that you would have wanted to say on your son's
22 behalf.

23 A. Yeah, I -- he -- I feel that he should have been in
24 trial as a juvenile because he was only fifteen and looking
25 over the stuff in the waiver case and through all of the

1 evaluation and stuff that they did, I -- and if the
2 juvenile system have positive things to offer, I feel that
3 he could have succeeded in that and be able to help him,
4 you know.

5 Q. Would you have been able to explain to the judge your
6 son's maturity level? Did you find your son to be mature
7 as a fifteen-year-old or did he struggle with maturity?

8 A. I would say he was a -- typical as to how people would
9 say a fifteen-year-old male -- excuse me, all males in
10 here, but males sometime do not develop as quickly as
11 females as far as maturity level. So even though he was
12 fifteen he still had still some of that child-like that can
13 regress back to being a -- just a typical child, a young
14 pre-teen.

15 Q. And being his mother and being involved, did it appear
16 to you that your son understood what was going on and the
17 severity of being possibly treated as an adult or being
18 waived up?

19 A. No. No.

20 Q. Okay. Was there a specific instance during that
21 juvenile hearing that -- that showed that to you; that your
22 son didn't understand what was going on?

23 A. The very first day when we went to court, that
24 Tuesday, once the case had started and Ms. Campbell had
25 presented her side and everybody said what they had to say

1 and it was over with and they said, "Well, take him back".
2 As he was coming back -- the courtroom that it was in, it
3 was much closer -- well, it was just like this. We were
4 sitting right there on the front and when he stand up, he
5 turned back and he looked at me and he said, "What's going
6 on?" So I knew he did not understand what was going on at
7 that time.

8 Q. Now before I move forward to Mr. Finney's
9 representation, is there anything else that you'd like to
10 tell the Court about what went on from his arrest through
11 his waiver up to general sessions?

12 A. I -- well, yes. I feel that when they arrested him
13 that the officer should have contacted us. We are his
14 parents. We're the ones who represent. Don't -- it was
15 eight hours later we were actually asked who we're gonna
16 have for the lawyer. It was almost eight hours before we
17 know where he was. I feel like they should have said we
18 have Nicholas and I would have said -- right then I would
19 have left work because I would not have been able to
20 continue to work. I felt that we should have gotten a
21 phone call, and we did not.

22 Q. And you were asked about an attorney. This was at --
23 the next morning and your son had actually already given a
24 statement by that time; is that correct?

25 A. Correct.

1 Q. And were you aware that your son had been interrogated
2 by the time you talked to Sergeant Wilson?

3 A. No. We were informed by -- a lot of stuff we were
4 informed by Ms. Campbell that this is what had taken place,
5 so it just -- it floored us. We did not know.

6 Q. Now after his case was waived up to general sessions
7 or adult court, he was appointed a public defender, Luke
8 Shealy. Do you recall that?

9 A. Correct.

10 Q. And did you-all make a decision to retain private
11 counsel for your son?

12 A. Yes, we did.

13 Q. Okay. And why did you make that decision or why did
14 you retain private counsel?

15 A. It seemed as if we couldn't come to any type of
16 agreement with Mr. Shealy and his visitation to Nick was
17 minimal.

18 Q. Based upon those concerns, then who did you retain to
19 assist your son?

20 A. We had retained Mr. Jerry Finney.

21 Q. And did you have meetings with Mr. Finney or what was
22 your interaction with Mr. Finney once you retained his
23 services?

24 A. Yes, we did. Once we had obtained, we had a set-down
25 meeting.

1 Q. Okay. And through the course of his representation,
2 was it your understanding that he had all the case
3 documents or was he waiting on discovery?

4 A. He was waiting on discovery.

5 Q. Now I'm gonna jump pretty much to the end of the
6 proceedings, the day your son entered the plea -- or
7 actually the week your son entered the plea. He appeared
8 in court on August 9th and then he reappeared on August
9 11th and entered the plea. Where were you that week?

10 A. We were at the beach.

11 Q. Okay. And did you receive a call from Mr. Finney or
12 from his office regarding your son and the fact that he was
13 going to enter a plea?

14 A. Yes, I had received a call from Mr. Finney himself.

15 Q. Okay. And what were you informed?

16 A. I was informed that they wanted to make a plea bargain
17 with Nick today and he asked me could I get there and I
18 told him -- and at that time I informed him that we was at
19 the beach. I said, "But I'm leaving right now."

20 Q. And what beach were you at? We have a couple of
21 beaches here in South Carolina.

22 A. North Myrtle Beach.

23 Q. Okay. So you were in North Myrtle Beach. At that
24 point, did you get in your car and head back to Richland
25 County?

- 1 A. Yes, I did.
- 2 Q. Were you able to get there in time for your son's
3 plea?
- 4 A. No, I was not.
- 5 Q. And your son had actually pled by the time you got to
6 the courthouse; is that correct?
- 7 A. (Nods head.)
- 8 Q. Okay. And Mr. Finney was able to get sentencing
9 deferred, so you were able to speak at his sentencing
10 hearing; is that correct?
- 11 A. No, we were not there -- wait a minute.
- 12 Q. At his sentencing later in September, he got that
13 pushed back so that you-all could be there; is that
14 correct?
- 15 A. Yes, we were there.
- 16 Q. If you would have had notice, more notice that your
17 son was going to enter that plea that day, would you have
18 made sure that you were present?
- 19 A. Yes.
- 20 Q. Would you have wanted to talk with you son about his
21 decision to enter that plea?
- 22 A. Yeah, we would have sat down and talked again.
- 23 Q. Okay. And did you have concerns about the timing as
24 far as your son's age when he was brought to court finally?
- 25 A. Yes, I -- I did. We was -- but that was out of my

1 control. I mean, you know, when he was brought to court
2 first -- the -- for all of this he was already seventeen,
3 but up until that point, you know, he was sitting there
4 just waiting. And that was one of the problems that I had
5 with Attorney Luke Shealy was, you know, his visit was not
6 regular and when he did come he just basically said that
7 well, you'll soon be going to court. Well, at that time
8 when he was saying that, that's because he soon would be
9 seventeen, but, you know, that was a part that I did not
10 like.

11 Q. Why did you not like it that he was seventeen when he
12 went to court? Could you just explain that a little bit
13 more for me?

14 A. I didn't because he was -- at the time when this
15 occurred, the whole time he was sitting there and he was
16 sitting and waiting on a court date, there wasn't no court
17 date from that time up until then. Then when he turned
18 seventeen, all of a sudden a court date is approaching.

19 MS. BLANCHETTE: Your Honor, if I could beg the
20 Court's indulgence for one moment.

21 BY MS. BLANCHETTE:

22 Q. Ms. Nesmith, is there anything else regarding
23 Mr. Finney's representation that you would like to explain
24 to the Court or any other concerns that you had?

25 A. I'm -- I'm not sure he ever did get the discovery or

1 if he did it was -- by the time he got it, then the next
2 thing he know he was going to court.

3 MS. BLANCHETTE: Your Honor, I have no further
4 questions of this witness.

5 THE COURT: Any cross?

6 MS. HARRIGAN: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. HARRIGAN:

9 Q. Good afternoon, Ms. Nesmith. Your son had prior
10 juvenile offenses, correct?

11 A. Yes, he did.

12 Q. This was his fifth set of juvenile charges, correct?

13 A. I'm not sure. Probably so.

14 Q. Do you recall his first set in June 2003 for
15 disturbing -- disturbing schools?

16 A. Yes.

17 Q. And he was eleven years old at that time?

18 A. Uh-huh.

19 Q. Was he adjudicated delinquent at that time? Was he
20 adjudicated delinquent?

21 A. What do you mean?

22 Q. Did the family court find that -- like a guilty
23 finding, that he -- well, he was adjudicated that he had
24 been running away from school?

25 A. Right. Right. I did not went to court that day

1 because I think around that time I was in a car accident so
2 I was unable to go, so his father had went.

3 Q. Do you recall in December of 2004 charges for assault
4 and battery, disturbing schools, unlawful use of a -- and
5 unlawful use of a pellet gun?

6 A. Right. Yes.

7 Q. And he was twelve at that time, correct?

8 A. Correct.

9 Q. Do you recall if he was adjudicated delinquent at that
10 time?

11 A. Yes.

12 Q. He was?

13 A. He was guilty at that time.

14 Q. Then --

15 A. He was charged guilty, yes.

16 Q. Then when he was thirteen years old in February of
17 2007, he, again, was adjudicated delinquent for unlawful
18 possession of alcohol, correct?

19 A. Correct.

20 Q. Then in March of 2008 when he was fourteen years old,
21 he was adjudicated delinquent for willfully burning the
22 land of another, correct?

23 A. Correct.

24 Q. So this was his fifth set of charges?

25 A. Okay.

1 Q. And were you present -- you said you weren't present
2 at the first set, but your husband was. Were you present
3 at these other three sets?

4 A. Yes, I was.

5 Q. So you were there for the family court hearings?

6 A. Yes.

7 Q. So this was the first time your son -- the State was
8 seeking waiver against your son, correct?

9 A. Correct.

10 Q. You testified before that the first message you
11 received was from your son, Victor, that your other son,
12 Nicholas, had been arrested, correct?

13 A. Correct.

14 Q. What time did you get that call?

15 A. It was probably close to midnight.

16 Q. Do you know --

17 A. I'm not exactly sure, but I know it was after midnight
18 or around midnight.

19 Q. Do you know what time this offense occurred at?

20 A. I don't know the exact time.

21 Q. Was it after -- and you said you were working 7P to 7A
22 at that time?

23 A. Correct.

24 Q. Was it after you left for work?

25 A. Yes, ma'am.

1 Q. So it occurred in the evening, correct?

2 A. Yes.

3 Q. And to the best of your recollection you were called
4 around midnight?

5 A. Right.

6 Q. And that was the first time you knew that your son was
7 in trouble, correct?

8 A. Yes.

9 Q. And I believe you testified before that you were
10 interviewed for your son's pre-waiver hearing evaluation,
11 correct?

12 A. Correct.

13 Q. And you were allowed to give input at that time?

14 A. Yes.

15 Q. You testified that you spoke with Ms. Campbell
16 Williams about being a witness at the waiver hearing,
17 correct?

18 A. Yes -- no.

19 Q. And you said --

20 A. Not a witness. We asked -- we asked would we be able
21 to say anything and she said no, but I guess that's the
22 same thing as being a witness.

23 Q. So did you want to get up and testify on your son's
24 behalf?

25 A. Yeah, we would have had -- yes.

- 1 Q. And you wanted to give some input, correct?
- 2 A. Yes.
- 3 Q. But you were able to give input in the pre-waiver
- 4 hearing evaluation, correct?
- 5 A. If he want to use that, yes. Yeah.
- 6 Q. And do you know if that was used at your son's waiver
- 7 hearing? That was introduced into evidence, correct?
- 8 A. I'm -- I'm not sure. I don't remember.
- 9 Q. Okay. And you said that Ms. Campbell Williams told
- 10 you you couldn't address the court, correct?
- 11 A. Correct.
- 12 Q. What specifically did she say to you?
- 13 A. She said that we would not be able to talk.
- 14 Q. And this was just you wanted to address the court at
- 15 the end of the proceeding?
- 16 A. Uh-huh.
- 17 Q. Did she tell you that court rules wouldn't allow for
- 18 that?
- 19 A. Yeah, she just said that we would not be able and we
- 20 did not question her any further because she was very
- 21 adamant about that we would not be able to talk.
- 22 Q. And you testified before that your son had just turned
- 23 fifteen at the time of the waiver hearing, correct?
- 24 A. Correct.
- 25 Q. The hearing was in February of 2009, correct?

1 A. Correct.

2 Q. And your son's birthday is actually April of 1993,
3 correct?

4 A. Right.

5 Q. So at the time of the waiver hearing, he was just two
6 months shy of sixteen. He hadn't just turned fifteen,
7 correct?

8 A. Yes.

9 Q. Okay. So he was close to sixteen. Closer to sixteen
10 than fifteen?

11 A. Closer to sixteen at the time of the waiver, but at
12 the time of the incident he was just turned fifteen.
13 Actually five months turning fifteen. The incident was in
14 September of 2008, his birthday was in April, so it was
15 like another six months that went by almost before the
16 waiver.

17 Q. You testified that once Luke Shealy was appointed you
18 felt he wasn't -- I believe your words were "you couldn't
19 come to any type of an agreement" and he didn't meet with
20 your son enough, correct?

21 A. Correct.

22 Q. You weren't the client though, correct? It was your
23 son?

24 A. Correct.

25 Q. And your son was incarcerated pre-plea at Alvin S.

1 Glenn Detention Center, correct?

2 A. Correct.

3 Q. So hearing that he wasn't meeting with your son
4 enough, that was coming from your son, correct? You
5 weren't there at the detention center, were you?

6 A. No, at none of the visits we were not, but each time
7 he would visit we would know because --

8 Q. How would you know? Your son would tell you?

9 A. My son would tell us because we saw him weekly.

10 Q. So you were just relying on your son to know that
11 Mr. Shealy wasn't visiting him enough based on your son's
12 opinion?

13 A. Well, it's ours also. It's not just his alone. We
14 even visit Mr. Shealy one time. We've been to the office.

15 Q. You visited Mr. Shealy once?

16 A. Yes, we have. Yeah.

17 Q. Why only once?

18 A. That was after -- when he was coming up to -- in the
19 -- coming close to the court date and --

20 Q. Which court --

21 A. -- trying to make a decision.

22 Q. Which court date, ma'am?

23 A. This was in the spring before we hired Mr. Finney.

24 Q. Do you know what -- you say court date. His plea
25 wasn't until the fall, correct, when he pled guilty to

1 these charges?

2 A. I think it was in August.

3 Q. August and then in September. So what court date in
4 the spring are you referencing?

5 A. I'm referencing to us as visiting him prior to that in
6 the spring.

7 Q. Okay. So you -- you visited Mr. Shealy once in the
8 spring?

9 A. Yes.

10 Q. Okay. Approximately when did you retain Mr. Finney?

11 A. I don't remember the exact time.

12 Q. Do you remember a season or a general month?

13 A. Probably the ending of the spring leading up to the
14 beginning of the summer.

15 Q. Had you previously used Mr. Finney as counsel before?

16 A. No, we have not.

17 Q. Did you know Mr. Finney before?

18 A. You mean have we ever used him to represent Nicholas?

19 Q. No, not Nicholas. Just any -- had any family member
20 ever used him before in a legal capacity?

21 A. Yes.

22 Q. And what experience did you use him in prior?

23 MS. BLANCHETTE: Your Honor, I would object as to
24 relevance; that we don't need to get into other matters
25 that the family retained his services on.

1 BY MS. HARRIGAN:

2 Q. Did you know Mr. Finney before you hired him?

3 THE COURT: Rephrase.

4 A. Yes. Actually, he is a church member as well.

5 Q. So this wasn't your first time meeting with Mr. Finney
6 when you retained him?

7 A. Correct.

8 Q. You testified that your -- you were at the beach the
9 week your son was going to plead guilty and you received a
10 call from Mr. Finney himself, correct?

11 A. Correct.

12 Q. Approximately what time did Mr. Finney call you?

13 A. I don't know the exact time, but it was early morning.

14 Q. What did Mr. Finney tell you when he called you that
15 morning?

16 A. He informed us what was taking place and he said could
17 we come because Nicholas was kind of reluctant and he
18 wanted us there.

19 Q. When you say informed you what was taking place, what
20 do you mean by that?

21 A. That today was the day that they wanted to -- for him
22 to plea bargain with his case.

23 Q. Who -- who wanted him to plea bargain with his case?

24 A. I don't recall.

25 Q. And you testified you got in your car and came back

1 in, but you missed your son's plea hearing by the time you
2 got there?

3 A. Correct.

4 Q. Did Mr. Finney or your son inform you as to whether or
5 not he was gonna be sentenced that day?

6 A. I can't -- I really can't remember. It was -- because
7 I was just so intent in trying to get there.

8 Q. And he wasn't sentenced that day, correct? He was
9 sentenced about --

10 A. Correct.

11 Q. -- three weeks later? Were you present at that
12 sentencing hearing on September 1st?

13 A. Yes, I was.

14 Q. Were you able to speak to the court at that sentencing
15 hearing?

16 A. Yes, I was.

17 MS. HARRIGAN: A moment's indulgence, Your Honor. No
18 further questions, Your Honor.

19 THE COURT: Any redirect?

20 MS. BLANCHETTE: No, Your Honor.

21 THE COURT: You may step down. Thank you.

22 (Witness excused.)

23 MS. BLANCHETTE: Your Honor, I would call my next
24 witness, Nicholas Nesmith.

25 NICHOLAS NESMITH,

1 having been duly sworn, testified as follows:

2 THE COURT: Thank you. Please have a seat and state
3 your full name.

4 THE WITNESS: Nicholas Nesmith.

5 THE COURT: Yes, ma'am.

6 MS. BLANCHETTE: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. BLANCHETTE:

9 Q. Mr. Nesmith, where are you currently incarcerated?

10 A. At Lee Correctional Institute.

11 Q. And you filed the application that we're here about
12 today that was docketed at 2011-CP-40-0423; is that
13 correct?

14 A. Yes, ma'am.

15 Q. Okay. And you heard the State put the allegations on
16 the record. What are you asking this Court to give you?

17 A. A new trial.

18 Q. And, Mr. Nesmith, we have had an opportunity to be
19 preparing this case for quite a while. We even had the
20 opportunity when you appeared in front of Judge Barber
21 before to be given time to discuss this case and going
22 forward with your parents; is that correct?

23 A. Yes, ma'am.

24 Q. And I have advised that by asking the Court for a new
25 trial, you're ask -- if that is granted, you'll be put back

1 in the position you were when you were originally indicted
2 and, most importantly, since you entered a guilty plea that
3 comes with no guarantee of less time. Understanding that
4 risk that you could receive more time, do you still want to
5 go forward today?

6 A. Yes, ma'am.

7 Q. Okay. Now, Mr. Nesmith, the State put the charges
8 that you received on the record, but you're serving an
9 aggregate sentence of twenty-two years; is that correct?

10 A. Yes, ma'am.

11 Q. Okay. Let me take you back to September 14, 2008, the
12 night that you were arrested. How old were you on that
13 date?

14 A. Fifteen.

15 Q. And after this incident occurred approximately around
16 10:15 PM, did you have an encounter with law enforcement?

17 A. Yes, ma'am.

18 Q. And did you first speak -- where did you first speak
19 with law enforcement?

20 A. At the -- after the incident?

21 Q. Right. Did you first speak with them somewhere on the
22 street or at the law enforcement agency or what happened?

23 A. Yes, ma'am, I spoke to him in the street behind my
24 house.

25 Q. Okay. And at that time did you know that you were

1 being videotaped on a car camera?

2 A. No, ma'am.

3 Q. Okay. What happened after you first encountered or
4 spoke with law enforcement? What happens next?

5 A. When I first encountered law enforcement, I had told
6 them I had did something bad and after that he had read me
7 my rights and he put me in the back of the police car and
8 took me and put me in front of -- took me back to my house.

9 Q. Okay. And once back at your house, what did they ask
10 you or what did they do at that point?

11 A. They asked me could they search my home.

12 Q. And at that point were either of your parents home?

13 A. No, ma'am. I was there by myself.

14 Q. And why weren't your parents home?

15 A. They both were at work.

16 Q. Okay. When they asked you if they could search your
17 home, did they ask you about getting in touch with your
18 parents?

19 A. No, ma'am.

20 Q. And did you give them permission to search your home?

21 A. Yes, ma'am.

22 Q. Okay. And after they searched your home, where did
23 they take you?

24 A. To the Irmo Police Department.

25 Q. And once there, did you meet with an investigator?

1 A. Yes, ma'am.

2 Q. Who was that?

3 A. Sergeant Wilson.

4 Q. And did you end up giving a lengthy statement that is
5 on video?

6 A. Yes, ma'am.

7 Q. Okay. And I had intended to play that statement here
8 in court today, but you've indicated you're comfortable,
9 if the Court would like, for her to review it after the
10 hearing today; is that correct?

11 A. Yes, ma'am.

12 MS. BLANCHETTE: Your Honor, at this time I would like
13 to move Applicant's Number 1 that has been pre-marked, it
14 is the video of Mr. Nesmith's interrogation, into the
15 record.

16 THE COURT: Any objection?

17 MS. HARRIGAN: No, Your Honor.

18 MS. BLANCHETTE: And I also have a copy for Your
19 Honor.

20 THE COURT: Thank you. Have you provided the --

21 MS. BLANCHETTE: She has one as well.

22 THE COURT: Thank you.

23 MS. BLANCHETTE: The State has a copy as well, Your
24 Honor.

25 THE COURT: Thank you.

1 (Petitioner's/Applicant's Exhibit Number 1,
2 Interrogation Videotape, was admitted into evidence.)

3 BY MS. BLANCHETTE:

4 Q. Now, Mr. Nesmith, the Court is gonna have the
5 opportunity to review that video as part of your case,
6 but it's my understanding in preparing with you there's a
7 couple of things that you would like to point out.

8 A. Yes, ma'am.

9 Q. Specifically, did you feel that the officer was being
10 very friendly or he was there to help you?

11 A. Yes, ma'am, I felt like he was trying to be very
12 friendly with me to get information.

13 Q. And, specifically, on the video he tells you "It's
14 your time to snitch and no one else would lie for you."
15 What did that lead you to believe you needed to do?

16 A. I believed that -- that had me feeling like I needed
17 to tell him the information that he wanted because he had
18 stated several gangs that -- several friends that I deal
19 with and he was like if they was in my position right now
20 they would be doing the same thing.

21 Q. And were most of those friends older than you?

22 A. Yes, ma'am.

23 Q. And did he ask you about other incidents or other gang
24 activity in the Irmo area besides this incident?

25 A. Yes, ma'am.

1 Q. Now at the end of the interview, which the Court will
2 see, you asked the officer if you get to go home now, if
3 you can be released. Why did you ask that question,
4 Mr. Nesmith?

5 A. I asked him that because I know once my parents would
6 find out, especially my father, they would be upset with
7 me.

8 Q. Did you get to talk to your parents or contact your
9 parents before you gave that interview?

10 A. No, ma'am. While waiting for Investigator Wilson to
11 come, I asked Officer Dechman could I call my parents and
12 let them know. He denied me and said I had to wait for the
13 investigator.

14 Q. But you requested the opportunity to speak with your
15 parents?

16 A. Yes, ma'am, as soon as we approached into Irmo Police
17 Department I asked Officer Dechman, but he denied me.

18 Q. Okay. And they read you the -- your Miranda rights
19 when you were on the scene at your home and then you also
20 were read your Miranda rights on the video; is that
21 correct?

22 A. Yes, ma'am.

23 Q. Okay. And one of those rights was to have an attorney
24 present. You did not pursue that right or you waived that
25 right and decided to talk without an attorney. Was that a

1 decision you felt like you could make without having
2 conferred or talked with your parents first?

3 A. No, ma'am, but I just felt like -- I just felt like
4 that I -- the way how things was going that I needed to do
5 that because I was in trouble.

6 Q. Did you have the opportunity to speak with any adult
7 besides law enforcement before giving that recorded
8 interview?

9 A. No, ma'am.

10 Q. When did you first get to talk to your parents?

11 A. Between 3AM and 4AM once I reached Alvin S. Glenn
12 Detention Center.

13 Q. And what did you tell them at that point?

14 A. I told them that I had been arrested and I told
15 them that the officer that they needed to contact was
16 Investigator Wilson and what time that he would be in and
17 he would be able to tell them where to go from there.

18 Q. Okay. When you reached Alvin S. Glenn Detention
19 Center, did you realize this was not going how you thought
20 it would go?

21 A. Yes, ma'am.

22 Q. And the State's most likely gonna ask you, you'd had
23 prior experience with the juvenile court system; is that
24 correct?

25 A. Yes, ma'am.

1 Q. And based upon that knowledge you had of how your
2 other cases proceeded, did that factor in to why you felt
3 comfortable talking to the officer?

4 A. Yes, ma'am.

5 Q. Okay. And what was your understanding? What was kind
6 of like the misguidance, I guess, you had for lack of a
7 better word?

8 A. My understanding as far as me being a -- a juvenile
9 during the time that I do get in trouble, I do get charged,
10 but at the same time they do notify my parents and they do
11 release me to my parents, in the custody of my parents.

12 Q. And you were wrong; is that correct?

13 A. Yes, ma'am.

14 Q. And was there anyone there to advise you that you were
15 wrong in what you thought would happen?

16 A. No, ma'am.

17 Q. Now I'm going to jump forward to the juvenile waiver
18 hearing that was held on February 24, 2009. You were
19 appointed two attorneys; Ms. Campbell Williams and
20 Ms. Haynes. Did you meet with them prior to that juvenile
21 waiver hearing?

22 A. Yes, ma'am.

23 Q. Did they prepare you to testify or address the court
24 at that juvenile waiver hearing?

25 A. No, ma'am.

1 Q. Now one of the things that you had to do prior to that
2 was a compete -- competency evaluation at William S. Hall
3 Psychiatric Institute. Do you recall that?

4 A. Yes, ma'am.

5 MS. BLANCHETTE: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, ma'am.

8 By MS. BLANCHETTE:

9 Q. Mr. Nesmith, I'm gonna show you what's previously been
10 marked as Applicant's Number 2. Could you just look and
11 see if you can identify what that appears to be for the
12 record?

13 A. Yes, ma'am.

14 Q. And what does that appear to be?

15 A. The evaluation from William S. Hall.

16 Q. Okay.

17 MS. BLANCHETTE: Your Honor, at this time I would move
18 Applicant's Number 2 into the record.

19 THE COURT: Any objection?

20 MS. HARRIGAN: No, Your Honor.

21 THE COURT: It's admitted.

22 (Petitioner's/Applicant's Exhibit Number 2, Competency
23 Evaluation, was admitted into evidence.)

24 MS. BLANCHETTE: Would Your Honor like a copy?

25 THE COURT: Yes, please.

1 MS. BLANCHETTE: (Handing.)

2 THE COURT: Thank you.

3 MS. BLANCHETTE: Uh-huh.

4 BY MS. BLANCHETTE:

5 Q. Mr. Nesmith, I'm not even gonna ask you about the
6 specifics of this evaluation, but it does indicate in here
7 that you waived your right to have your attorneys present.
8 Upon review of the waiver proceedings and the reliance
9 the court placed on this, do you feel that was a proper
10 decision on your part?

11 A. No, ma'am.

12 Q. And did your attorneys explain to you that -- the
13 possible importance of having them present at this
14 evaluation?

15 A. No, ma'am.

16 Q. All right. Did you-all talk about the compete --
17 competency evaluation, the information that would be given
18 to the judge?

19 A. Yes, ma'am.

20 Q. Okay. And what was your understanding of how the
21 judge would make his determination or did you even have
22 one?

23 A. To my understanding, the judge would -- the -- the
24 things that William S. Hall was gonna evaluate me on, the
25 judge was gonna use that to find if I was competent to

1 understand what I had did and the crime -- the way that I
2 would --

3 (Loud conversation outside the courtroom.)

4 THE COURT: I'm -- I'm sorry. I'm totally distracted.
5 If he could -- if he could answer again, please.

6 MS. BLANCHETTE: Would you like me to re-ask the
7 question, Your Honor?

8 THE COURT: Yes, please.

9 MS. BLANCHETTE: Okay.

10 BY MS. BLANCHETTE:

11 Q. Did you have an understanding of what the judge was
12 gonna rely upon in making his decision prior to the waiver
13 hearing?

14 A. Yes, ma'am. I felt like from my opinion that the
15 judge was gonna rely on what William S. Hall had evaluated
16 me on; whether or not that I was competent to know what I
17 had did in that crime that I committed.

18 Q. Now let's look at the -- and you have a copy of it
19 there in front of you, the actual juvenile waiver hearing.
20 On pages 14 through 15 Corporal Dickman testifies about he
21 -- how he Mirandized you and you gave an admission to him
22 at your house about being in the victim's house and the
23 items that were taken. He goes on, pages 16 and page 27
24 {sic} speaking about how he detained you, he handcuffed
25 you, after you admitted doing a very bad thing. And then

1 finally on page 18 he says that he obtained permission to
2 search your home.

3 Now you've reviewed that and that's Corporal Dickman's
4 version of events. Were you able to ever provide to the
5 judge at this point your version of events or the things
6 that you've explained to us today?

7 A. No, ma'am.

8 Q. Do you think that would have mattered or would you
9 have liked to have had that opportunity at the hearing?

10 A. Yes, ma'am, I would've liked the opportunity to speak
11 to the judge.

12 Q. And would you have liked to have explained to him the
13 series of events as you have here today?

14 A. Yes, ma'am.

15 Q. Okay. Then on page 84 Sergeant Wilson picks up
16 about how you got to the police station. You were,
17 again, Mirandized and did the video interview and on
18 page 85 the judge acknowledges that he had reviewed the
19 video interview. Did you have a chance to review the
20 video interview with your attorneys prior to the waiver
21 hearing?

22 A. No, ma'am. I never knew of the video until a week
23 before I had to go to the waiver hearing.

24 Q. Okay. Did you ever have an opportunity to address the
25 interview and put on the record or let the judge or your

1 attorneys know the things that you brought up today about
2 it?

3 A. Can you repeat that question one more time?

4 Q. Were you ever given the opportunity to express to your
5 attorneys or to the judge the concerns that you told us
6 about the interview today?

7 A. No, ma'am.

8 Q. And is that something you would have liked to have the
9 opportunity to do?

10 A. Yes, ma'am.

11 Q. Now if you could look specifically at page 86 on the
12 first day of the waiver hearing and on line 6 -- beginning
13 on line 6 on page 86 he is asked, "Did he ask to see his
14 parents?" Answer, "No, he did not."

15 Then he's asked, "Did he ask for a lawyer?" Answer,
16 "No, he did not."

17 Do you agree with that testimony?

18 A. No, ma'am.

19 Q. And why is that?

20 A. Because as soon as I entered the police -- the Irmo
21 Police Department, the first thing I asked was to speak to
22 my parents so I could let them know what was going on.

23 Q. Now flipping further into the transcript, on page 102
24 and 104, and I'll just summarize, but he explains that he
25 met with your co-defendant and his attorney --

1 A. Uh-huh.

2 Q. -- in an interview room and later explains in the
3 transcript on 108 through 109 that your co-defendant's
4 versions of -- version of events was actually more
5 believable. Were you given the opportunity to have an
6 attorney there with you when you were interviewed?

7 A. No, ma'am.

8 Q. And who was actually interviewed first? You or your
9 co-defendant?

10 A. Me.

11 Q. Okay. Now the second day of the waiver hearing,
12 that's when your case was actually put up and on your
13 behalf your attorneys called Officer Churchill from the
14 Detention Center --

15 MS. HARRIGAN: If I could just briefly correct the
16 record. It was all a one-day proceeding and all was on
17 February 24, 2009. Originally, for whatever reason, not
18 our office -- I actually got this, I believe, from
19 Ms. Blanchette -- only the State's portion had been
20 transcribed, so it was all one continuous hearing. It's
21 just broken up into two different transcripts because they
22 were ordered at two different times.

23 THE COURT: And I understood that when I -- when I
24 read it.

25 MS. BLANCHETTE: And I apologize, Your Honor. Because

1 it was being renumbered, I was just seeing -- it's not two
2 days.

3 THE COURT: No -- no problem.

4 BY MS. BLANCHETTE:

5 Q. In the second portion of the juvenile waiver hearing
6 transcript that we have, that reflects the case that was
7 put up on your behalf; is that correct?

8 A. Yes, ma'am.

9 Q. Okay. And there your attorneys called Officer
10 Churchill from the detention center to essentially say
11 that you had been a good inmate while at Alvin S. Glenn
12 Detention Center.

13 A. Yes, ma'am.

14 Q. And you were not utilized; is that correct? You
15 weren't given the opportunity to either testify or speak to
16 the court?

17 A. No, ma'am.

18 Q. We've gone over some of the kind of specific things
19 such as the interview that you had wanted to point to the
20 court, the series of events versus what the officer said
21 happened, but what else would you have wanted to inform the
22 court as part of your waiver hearing?

23 A. I just wanted the judge to -- if he was gonna waive me
24 up, waive me up on what he would've got from judging me
25 from myself speaking, instead of what he -- the judge was

1 reading off on paper.

2 Q. And you're alleging today that your attorney was
3 ineffective for not giving you that opportunity. So what
4 is it you would have told the judge, Mr. Nesmith?

5 A. I would have told the judge I was fifteen, everybody
6 make mistakes. It's only those who are gonna admit up to
7 them and own up to them, and that's what I did.

8 Q. And would you have had some type of plea to him to
9 actually -- a reason why you should not be treated as an
10 adult?

11 A. Yes, ma'am.

12 Q. And what would that have been?

13 A. I was young. I didn't know no better, but I'm not
14 gonna use that as an excuse, but I still -- I was young. I
15 -- that was an experience that I did that cost me a lot.

16 Q. Now you've reviewed the transcript. There also wasn't
17 a detailed argument presented on your behalf; is that
18 correct?

19 A. Can you repeat that one more time?

20 Q. You've reviewed the transcript. There wasn't a very
21 lengthy argument that your attorneys made on your behalf;
22 is that correct?

23 A. Yes, ma'am.

24 Q. Did at any time they bring up the fact that there
25 was a statute, South Carolina Code Section 63-19-810,

1 Subsection A, that talks about parents being notified? Was
2 that ever brought up in the issue of whether or not your
3 parents were notified?

4 A. No, ma'am.

5 Q. Did you attorneys every argue about the statement
6 and/or the video and whether or not that interrogation was
7 voluntary?

8 A. No, ma'am.

9 Q. Now the judge issued an order; is that correct?

10 A. Yes, ma'am.

11 Q. Okay. And he made the determination that you should
12 be treated as an adult or waive them?

13 A. Yes, ma'am.

14 Q. Okay.

15 MS. BLANCHETTE: And, Your Honor, in the interest of
16 having a complete record, I've premarked this Applicant's
17 Number 3. This is a copy of the order issued.

18 MS. HARRIGAN: No objection from the State.

19 THE COURT: Okay. That will be admitted.

20 (Petitioner's/Applicant's Exhibit Number 3, Waiver
21 Order, was admitted into evidence.)

22 BY MS. BLANCHETTE:

23 Q. Once the judge issued his order, did you have any
24 further discussions with your counsel or did you ever
25 discuss appealing the waiver or transfer to general

1 sessions?

2 A. No, ma'am.

3 Q. Who was the next attorney you came in contact with?

4 A. Luke Shealy.

5 Q. And was he appointed to represent you?

6 A. Yes, ma'am.

7 Q. And during his representation, did he have you
8 evaluated by Dr. Donna Schwartz-Watts?

9 A. Yes, ma'am.

10 Q. Now I'm gonna show you what's previously been marked
11 as Applicant's Number 4. Can you identify this for the
12 record, please, Mr. Nesmith?

13 A. That's a letter I wrote -- wrote the judge about Luke
14 Shealy.

15 Q. Okay.

16 MS. BLANCHETTE: Your Honor, at this time I'd like to
17 move this letter in as Applicant's Number 4.

18 MS. HARRIGAN: No objection.

19 THE COURT: It will be admitted.

20 (Petitioner's/Applicant's Exhibit Number 4, Letter to
21 Judge, was admitted into evidence.)

22 BY MS. BLANCHETTE:

23 Q. Mr. Nesmith, I'm not asking you to read this letter in
24 detail, it's in the record, so the Court will have it to
25 review --

1 A. Uh-huh.

2 Q. -- but in this letter you're raising some serious
3 concerns with your representation by Mr. Shealy.

4 A. Uh-huh.

5 Q. And just kind of explain to me the gist of this letter
6 and where you were at as far as your representation by
7 Mr. Shealy.

8 A. I just felt uncomfortable with Mr. Luke Shealy because
9 we couldn't come to a proper understanding where we wanted
10 to take the case or how we wanted to go about trying to
11 find a better solution to get a better deal or a better
12 plea, so I just felt very uncomfortable with Mr. Luke
13 Shealy.

14 Q. Were you wanting to take this case to trial?

15 A. No, ma'am.

16 Q. Okay. So most of your misunderstanding was you didn't
17 feel that he was pursuing a plea effectively for you?

18 A. Yes, ma'am.

19 Q. Okay. And in this letter that is actually written to
20 the judge -- and do you know which judge you sent this to?

21 A. No -- really, no, ma'am. I just wrote, "Dear Judge".

22 Q. Okay. But it was marked received, so it was received
23 by whomever you sent it to.

24 A. Uh-huh.

25 Q. You actually admit your involvement in this crime; is

1 that correct?

2 A. Yes, ma'am.

3 Q. And then you're exploring the issues that you're
4 having with Mr. Shealy?

5 A. Yes, ma'am.

6 Q. And you're asking the Court to help you out in this
7 matter?

8 A. Yes, ma'am.

9 Q. Now, Mr. Nesmith, we've talked about this. It's not
10 the most ideal situation for a defendant to write to a
11 judge and explain that they're guilty and ask the judge to
12 help them out in that matter.

13 A. Uh-huh.

14 Q. Did you understand that when you were writing this
15 letter? Did you explain kind of the mind frame you had
16 when you wrote this letter?

17 A. I was in the -- I felt like -- I just felt so
18 uncomfortable with Luke -- Mr. Luke Shealy that I needed
19 somebody higher to help me --

20 Q. Okay.

21 A. -- but I really didn't have no understanding of what
22 was going on.

23 Q. Mr. Nesmith, this letter in some way shows that you
24 didn't really understand the court system and that you
25 needed to be communicating solely with your attorney.

- 1 Would you agree with that opinion of this letter?
- 2 A. Yes, ma'am.
- 3 Q. Okay. And how -- you were sitting in Alvin S. Glenn
4 Detention Center at this time; is that correct?
- 5 A. Yes, ma'am.
- 6 Q. Okay. And I believe it says in the letter that you
7 were fifteen years old, but you'd been sitting there for
8 almost nineteen months at the time you write this letter?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Is there anything else regarding this letter
11 that you would like to explain to the Court?
- 12 A. No, ma'am.
- 13 Q. Okay. Now your family later retained an attorney for
14 you; is that correct?
- 15 A. Yes, ma'am.
- 16 Q. And who did they retain on your behalf?
- 17 A. Mr. Jerry Finney.
- 18 Q. Okay. And was that as a result of your concerns
19 regarding Mr. Shealy's representation?
- 20 A. Can you repeat that question one more time?
- 21 Q. Did your family retain you an attorney because of your
22 concerns about Mr. Shealy's representation?
- 23 A. Yes, ma'am.
- 24 Q. Okay. And you said they retained Jerry Finney; is
25 that correct?

1 A. Yes, ma'am.

2 Q. Okay.

3 MS. BLANCHETTE: May I approach the witness, Your
4 Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. BLANCHETTE:

7 Q. There are actually two letters stapled here that have
8 previously been marked as Applicant's Number 5. Could you
9 identify those for the record, please? Just give me the
10 date and who the writer was.

11 A. It's a -- it's a letter from Mr. Finney to Richland
12 County Central Court on May 5th, 2010.

13 Q. Okay. And the second letter?

14 A. It's another letter from Finney -- Mr. Finney to
15 Barney Giese, the solicitor. That's May 5th, 2010.

16 MS. BLANCHETTE: Your Honor, at this time I would
17 introduce these letters as Applicant's Number 5.

18 MS. HARRIGAN: My only objection would be these are
19 not to Mr. Nesmith or written by Mr. Nesmith, so I would
20 prefer they be introduced through Mr. Finney once properly
21 authenticated by him.

22 MS. BLANCHETTE: I'll be happy to do that, Your Honor.
23 I received these copies directly from Mr. Finney's file and
24 provided a copy to the State upon receipt.

25 THE COURT: Okay. So right now they're marked for

1 identification.

2 BY MS. BLANCHETTE:

3 Q. Mr. Nesmith, let me ask you about these letters.

4 They're dated May 5, 2010 --

5 A. Uh-huh.

6 Q. -- and in both these letters Mr. Finney is advising
7 the Central Court and Mr. Barney Giese, the solicitor, that
8 he's been retained to represent you. Is that about the
9 time frame in which you remember him initially taking over
10 your case was May 2010?

11 A. Yes, ma'am.

12 Q. Okay. And in the first letter he's requesting a
13 preliminary hearing in your case. Had the time already
14 passed for you to have a preliminary hearing?

15 A. Yes, ma'am.

16 Q. Did you ever go to a preliminary hearing with
17 Mr. Finney?

18 A. No, ma'am.

19 Q. Okay. Let me take that back from you.

20 A. (Handing.)

21 Q. Now from approximately the beginning of May 2010 until
22 your plea in August, Mr. Finney was the one handling your
23 case; is that correct?

24 A. Yes, ma'am.

25 Q. Do you recall approximately how many times you-all met

1 during that time frame?

2 A. We met one time in June.

3 Q. And what were your discussions in June?

4 A. He was letting me know that my parents had retained
5 him. He had asked me who was there at the scene and he had
6 asked me what we wanted -- what I wanted to do about the
7 upcoming -- I think the -- there was an upcoming court date
8 for me or something. He asked me what did I wanted to do
9 and that we need to prepare for like a plea.

10 Q. Okay. Did you go over the discovery or the evidence
11 against you at that point?

12 A. No, ma'am.

13 Q. Okay.

14 MS. BLANCHETTE: May I approach the witness, Your
15 Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. BLANCHETTE:

18 Q. Mr. Nesmith, I'm gonna show you what's previously been
19 marked for identification as Applicant's Number 6. Could
20 you just give the date and the writer and receiver of this
21 letter for us?

22 A. It's the State of South Carolina, the solicitor;
23 July 1, 2010.

24 Q. And who's it written to?

25 A. It's written to Mr. Finney.

1 MS. BLANCHETTE: Your Honor, at this time I'd move
2 this in as Applicant's Number 6.

3 MS. HARRIGAN: Same objection as before, Your Honor.
4 This is not written by or written to the addressee of
5 Mr. Nesmith. I believe it should be coming through
6 Mr. Finney once he's identified it.

7 THE COURT: I'll sustain that objection since she's
8 challenging authentication.

9 BY MS. BLANCHETTE:

10 Q. Mr. Nesmith, in this letter -- I just want to ask you
11 about it even though it's not in evidence at this time --
12 there's notice being given that your case is gonna be
13 called July 26, 2010.

14 A. Uh-huh.

15 Q. As far as you recall, did you ever receive a copy of
16 this letter or notice that your case was gonna be called
17 July 26, 2010?

18 A. No, ma'am.

19 Q. When was the next time after your meeting in June that
20 you specifically recall meeting with Mr. Finney?

21 A. The next time I remember meeting with Mr. Finney was
22 when I surprisingly had got taken to court sometime in
23 August.

24 Q. And when you say you got taken to court, was that here
25 at Richland County Courthouse?

1 A. Yes, ma'am.

2 Q. Okay. And what happened that morning when you came to
3 Richland County Courthouse?

4 A. That morning -- I didn't really see nobody that
5 morning until later on in the afternoon I had seen
6 Mr. Finney and Mr. Finney was telling me about the plea
7 bargain that was set and did I want to take it or not.

8 Q. And what was the plea bargain that was set?

9 A. Twenty to twenty-five years.

10 Q. Okay. What -- how did that discussion with Mr. Finney
11 go? Did you agree to that or what happened?

12 A. No, ma'am. Really we did not -- we didn't have a good
13 conversation at all. Really it was more arguing than
14 anything because he said that I told him to ask for that
15 when I didn't.

16 Q. At that point when you were in the courthouse arguing
17 with Mr. Finney, did you know if your parents were present?

18 A. No, ma'am. I knew they weren't gonna be present
19 because they -- they always go to the beach around that
20 time yearly.

21 Q. Okay. And did you have any chance to inform your
22 parents that you were going to court that day?

23 A. No, ma'am. They -- they got me early in the morning.
24 I didn't even know I was going to court.

25 Q. Okay. Now if you could look at the copy of the plea

1 transcript that you have there. It's dated August 9th and
2 11th, 2010. On page 6, Mr. Finney explains to Judge Cooper
3 that he had been retained to represent you and he had just
4 gotten discovery and the case had been scheduled for trial
5 originally two weeks ago. Are you saying today that you
6 didn't have notice of that prior court date, the one in
7 July?

8 A. No, ma'am.

9 Q. You did not have notice of that, correct?

10 A. No, ma'am.

11 Q. Okay. Now if you could turn to page 7. And I am
12 summarizing, but I'll rely upon the transcript for the
13 exact language, but he explains that he had an associate
14 over at the courthouse this morning and found out your plea
15 was actually scheduled for 2PM while that associate was
16 discussing another case and he indicated that he could not
17 get in touch with your parents.

18 At that point, were you concerned as to whether or
19 not your attorney was prepared to handle your plea and to
20 represent you in court?

21 A. Yes, ma'am, I was concerned.

22 Q. If you'd turn to pages 11 through 12, he indicates to
23 the court that if you do want to go to trial that he needs
24 to get Dr. Schwartz-Watts and several other witnesses
25 before he can go to trial.

1 A. Uh-huh.

2 Q. Was it your understanding that your attorney was
3 prepared to go to trial at that point?

4 A. No, ma'am, he wasn't.

5 Q. Had he prepared you to go to trial?

6 A. No, ma'am.

7 Q. If you could turn to page 14 and beginning on line 3,
8 Ms. Campbell provides proof that she originally noticed
9 Mr. Finney for trial on July 26th and, then again, for
10 August 3rd. Did you receive notice of either of those
11 court dates?

12 A. No, ma'am.

13 Q. If you could turn to page 15 and look at line 7.
14 There Ms. Campbell indicates that she did not receive a
15 discovery motion from Mr. Finney and didn't know there was
16 a problem with discovery.

17 A. Uh-huh.

18 Q. Were you aware that he hadn't filed for discovery or
19 pursued discovery on your behalf per the solicitor?

20 A. No, ma'am.

21 Q. And then, specifically, if you'd turn to page 16,
22 line 2, she indicates that she's checked the clerk's office
23 and Mr. Finney has not filed for discovery.

24 You're sitting there, Mr. Nesmith. What are you
25 thinking at this point?

1 A. I'm concerned about my well-being and my
2 representation.

3 Q. And who was the only person there on your behalf at
4 that point? Were either of your parents present?

5 A. Nobody was there.

6 Q. Okay. Now as a result of the motion, if you could
7 turn to page 19 and look at line 7 through 8, the judge
8 indicates that a jury's gonna be picked tomorrow and the
9 trial will start at Wednesday and then further down on the
10 page, lines 15 through 16, he gives you two choices. What
11 are those choices as to who's gonna represent you?

12 A. He says I'm gonna represent myself or Mr. Finney.

13 Q. He says you have two choices, but at that point did
14 you feel like you really had a choice, Mr. Nesmith?

15 A. No, ma'am, none at all.

16 Q. Now the transcript picks up on the 11th and you come
17 and you enter a plea. Can you fill me in on what happened
18 in that time frame from when you leave court and are told
19 that you're gonna be picking jury with or without an
20 attorney and then you enter a plea? What happened in
21 between?

22 A. While I was in the holding cell, Mr. Finney and my old
23 lawyer, Luke Shealy, came in the holding cell and they was
24 talking to me and told me not to go to trial because I
25 would get a life sentence, so they said the best thing for

1 me is to take this plea bargain; that it's not gonna get no
2 better than that.

3 Q. Based upon what you heard Mr. Finney tell Judge
4 Cooper, did you feel that he was prepared to go to trial?

5 A. No, ma'am.

6 Q. When they told you essentially that your option was to
7 plea, did you feel like you had any other options?

8 A. No, ma'am.

9 Q. Were you able to speak with your parents before you
10 entered your plea?

11 A. No, ma'am.

12 Q. So the only people that you were able to discuss your
13 options were -- with was your attorney that you had
14 complained about, Mr. Shealy, and then Mr. Finney that had
15 just told the court he wasn't prepared; is that correct?

16 A. Yes, ma'am.

17 Q. Now if you'd turn to pages 20 through 21, that's
18 when the plea hearing picks up on August 11, 2010. No
19 discussion is had about the fact that you were gonna go
20 to trial. You-all just enter into the plea; is that
21 correct?

22 A. Yes, ma'am.

23 Q. And it was a negotiated plea for twenty to twenty-five
24 years and you indicated you understood. Did you understand
25 that; that you were facing twenty to twenty-five years?

1 A. Yes, ma'am.

2 Q. Mr. Nesmith, were you freely and voluntarily there
3 giving your plea that day?

4 A. No, ma'am.

5 Q. You tell the court you did and I'm sure the State's
6 gonna point that out. Could you explain why you said "yes"
7 and "no" to the court's questions and you went along with
8 the plea, Mr. Nesmith?

9 A. I went along with the plea due to the -- the counsel
10 for my representation.

11 Q. And could you explain -- just explain that a little
12 bit more for me.

13 A. I went with the advice of my lawyer.

14 Q. Did you feel that you had any other options that day?

15 A. No, ma'am.

16 Q. Now sentencing is deferred and your parents were able
17 to be there for your sentencing, but you had no opportunity
18 to speak with your parents before you entered that plea
19 that day; is that correct?

20 A. Yes, ma'am.

21 Q. Now at the sentencing on September 1, 2010;
22 specifically, on page 31 of that sentencing hearing,
23 Judge Cooper is provided a pre-waiver order and waiver
24 information that the family court did. Is that something
25 you reviewed with Mr. Finney prior to that being provided

1 to the court?

2 A. No, ma'am.

3 Q. Did you ever review the videos and the evidence
4 specifically and talk about arguments that could be made to
5 suppress those items of evidence with Mr. Finney?

6 A. No, ma'am. Me and Mr. Finney never went over anything
7 like that.

8 Q. Did you ever discuss with him your concerns about the
9 fact that your parents hadn't been notified and that you
10 would have wanted a lawyer before you gave your statement?

11 A. Can you ask that question one more time?

12 Q. Yes. Did you ever discuss with Mr. Finney your
13 concerns about your parents not being notified and that
14 you would have wanted a lawyer there present for your
15 statement?

16 A. Yes, ma'am. I had told him about my mother and father
17 not being there or not being notified.

18 Q. Did you ever discuss with him before you entered your
19 plea, and before all this took place as far as the
20 sentencing, appealing the waiver or the transfer of your
21 case to general sessions?

22 A. No, ma'am. I never knew I could appeal it.

23 Q. Okay. And also another question about appeal. Did he
24 ever talk with you about filing a direct appeal or a motion
25 to reconsider your guilty plea once you entered your guilty

1 plea?

2 A. No, ma'am.

3 Q. And just jumping around a little bit, I'm sorry, but
4 this all goes to direct appeal, did he ever explain to you
5 that when you entered that guilty plea the judge was gonna
6 ask you a number of questions; that essentially you waived
7 a lot of your rights and your ability to raise issues once
8 you entered that guilty plea? Did you understand that
9 completely?

10 A. No, ma'am.

11 Q. Okay.

12 MS. BLANCHETTE: If I could just beg the Court's
13 indulgence one moment.

14 THE COURT: Uh-huh.

15 BY MS. BLANCHETTE:

16 Q. Mr. Nesmith, were you aware of any pretrial motions
17 that Mr. Finney filed in preparation for a trial in your
18 case?

19 A. No, ma'am.

20 Q. Mr. Nesmith, this is your one day in court and it's
21 been a long time coming. I've done my best to ask you
22 questions that I thought were pertinent to the allegations
23 you wanted raised today, but is there anything that I've
24 forgotten to ask you or anything else that you would like
25 the Court to consider in support of your allegations?

1 A. No, ma'am. I feel like we -- we covered everything.

2 MS. BLANCHETTE: Your Honor, I have no further
3 questions at this time.

4 THE COURT: Any cross?

5 MS. HARRIGAN: Yes, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. HARRIGAN:

8 Q. Mr. Nesmith, when was Ms. Campbell Williams appointed
9 to represent you?

10 A. Ms. Mitzi Campbell was appointed like as soon as I had
11 first got arrested.

12 Q. Do you recall how long after? As soon as you got to
13 Alvin S. Glenn was she appointed?

14 A. I got to Alvin S. Glenn Monday morning, so say that
15 following Tuesday.

16 Q. How many times did you meet with Ms. Campbell
17 Williams?

18 A. Several.

19 Q. Did she advise you what the date could be to waive
20 your charges to general sessions before you actually
21 received notice? Did she tell you that was a possibility?

22 A. Yes, ma'am, she told me that when we met downstairs
23 that Tuesday.

24 Q. So you knew that upon the very first date you met with
25 her?

1 A. Yes, ma'am.

2 Q. And during the video which has been admitted as
3 Petitioner's Exhibit Number 1, Captain Wilson of the Irmo
4 -- or Sergeant Wilson with the Irmo Police Department told
5 you that the solicitor's office could try to charge you as
6 an adult when you were interviewed by him, correct? Do you
7 recall that?

8 A. No, ma'am, I don't recall that.

9 Q. You've been charged with juvenile offenses before,
10 correct?

11 A. Yes, ma'am.

12 Q. When you were eleven years old in June of 2003, you
13 were charged with disturbing schools, correct?

14 A. Yes, ma'am.

15 Q. And you were adjudicated delinquent then?

16 A. Yes, ma'am.

17 Q. Then the next year when you were twelve years old in
18 December of 2004 for assault and battery, disturbing
19 schools, and unlawful use of a pellet gun, correct?

20 A. Yes, ma'am.

21 Q. And you were, again, adjudicated delinquent?

22 A. Yes, ma'am.

23 Q. Then in February of 2007 for unlawful possession of
24 alcohol when you were thirteen years old, correct?

25 A. Yes, ma'am.

1 Q. And you were, again, adjudicated delinquent?

2 A. Yes, ma'am.

3 Q. Then in March of 2008 for willfully burning the land
4 of another when you were fourteen, correct?

5 A. Yes, ma'am.

6 Q. And you were also, again, adjudicated delinquent?

7 A. Yes, ma'am.

8 Q. So this is your fifth set of juvenile charges you've
9 received?

10 A. Yes, ma'am.

11 Q. And you testified that your previous crimes, these
12 four other sets, you've been allowed to return home to your
13 parents each time, correct?

14 A. Yes, ma'am.

15 Q. Your previous crimes didn't involve home invasion and
16 assault of an elderly couple, did they?

17 A. No, ma'am.

18 Q. Do you recall on videotape, which has been introduced
19 as Petitioner's Exhibit 1, telling Sergeant Wilson that you
20 were actually currently suspended from school when this
21 incident occurred?

22 A. Yes, ma'am.

23 Q. And that was for fighting another student, correct?

24 A. No, ma'am. No, ma'am. That --

25 Q. What was it for?

1 A. It was for me and the Resource Officer, we got --
2 basically me and the Resource Officer got in an argument.

3 Q. So there was no sort of physical confrontation or
4 anything?

5 A. No, ma'am.

6 Q. And the incident giving rise to these charges that
7 we're here for today on, that was the home invasion of an
8 elderly couple, correct?

9 A. Yes, ma'am.

10 Q. And the male victim actually has Alzheimer's, correct?

11 A. Yes, ma'am.

12 Q. And they were beaten, correct?

13 A. Yes, ma'am.

14 Q. And I believe you testified here today you're not
15 challenging your guilt, correct?

16 A. Can you say that one more time?

17 Q. You're not challenging your guilt. You're admitting
18 that you went into this home, correct?

19 A. Yes, ma'am.

20 Q. And you're admitting that this elderly couple, either
21 by you or your co-defendant, they were beaten, correct?

22 A. Yes, ma'am.

23 Q. You testified prior that you thought you needed to
24 tell law enforcement the truth and that's why you talked to
25 them, correct?

1 A. Yes, ma'am.

2 Q. You were read your rights two times, correct? The
3 first time before you gave a statement in the police
4 cruiser, correct?

5 A. Yes, ma'am.

6 Q. And then you were also read your rights when you were
7 taken back to the Irmo Police Department, correct?

8 A. Yes, ma'am.

9 Q. You testified that you weren't able to speak to any
10 other adult. Did you speak to your brother before then?

11 A. Yeah, I spoke to my brother.

12 Q. How old was your brother at the time?

13 A. My brother was, I'd say, about -- I'd say about
14 eighteen at the time.

15 Q. And when you were being questioned by your attorney
16 before, she brought up that your co-defendant had counsel
17 present when he gave a statement to law enforcement,
18 correct? And I believe your testimony was you weren't
19 given the opportunity to have counsel, right?

20 A. Yes, ma'am.

21 Q. But you were given the opportunity, you just twice
22 waived that right, correct?

23 A. Yes, ma'am. I didn't have really no understanding
24 about the law though.

25 Q. But you did waive your right to have counsel after

1 that was read to you; once in the cop car and then once at
2 law enforcement headquarters where you gave your statement,
3 correct?

4 A. Yeah.

5 Q. When did you first learn from Ms. Campbell Williams
6 that the State was seeking to move your case to general
7 sessions?

8 A. That first -- that first day that we had talked.

9 Q. She told you that was a possibility. When did you
10 learn that the State had actually filed to waive you into
11 general sessions?

12 A. That day they was talking about, that Tuesday.

13 Q. Did you discuss what would happen with her at a waiver
14 hearing?

15 A. Yes, ma'am, we went over some things.

16 Q. What things did you go over?

17 A. That I would be taken to William S. Hall and they
18 would evaluate me to find out if I was competent -- if I
19 was competent to know right or wrong the crime I committed.

20 Q. Did she discuss with you that there would be a
21 pre-waiver evaluation completed and introduced to the
22 court?

23 A. Yes, ma'am. She said it was gonna be certain that --
24 she told me everything that I went through, it would have
25 went through on -- that the court would have seen.

1 MS. HARRIGAN: Your Honor, may I approach?

2 THE COURT: Yes.

3 BY MS. HARRIGAN:

4 Q. I'm handing you what's been pre-marked as Respondent's
5 Exhibit Number 1. Have you ever seen this document before?

6 A. Yes, ma'am.

7 Q. What is this?

8 A. That's the -- that's the South -- that's the South
9 Carolina Department of Juvenile Justice Pre-adjudicatory
10 Transfer Waiver Evaluation.

11 Q. And when did you first see this?

12 A. I had seen that today.

13 Q. You weren't shown this by Ms. Campbell Williams?

14 A. No, ma'am.

15 Q. You testified that you were evaluated a few times to
16 compile that report, correct?

17 A. Yes, ma'am.

18 Q. Was your attorney, Ms. Campbell Williams, present for
19 any of these interviews or evaluations?

20 A. The ones that was -- some of the ones that was during
21 -- or taken place at the detention center, but at William
22 S. Hall, no.

23 Q. How many times were you evaluated at William S. Hall?

24 A. One time.

25 Q. So she was present for the other evaluations, just not

1 that one at William S. Hall?

2 A. Yes, ma'am.

3 Q. Are you aware as to whether or not your mother was
4 allowed to give any input and speak to evaluators?

5 A. Was I aware?

6 Q. Yes.

7 A. I can't recall.

8 Q. You don't remember if Ms. Campbell Williams told you
9 that your mother would --

10 A. All I -- all I -- all I know about was myself. I
11 didn't know about anything else.

12 Q. And you were evaluated, so your input was -- was in
13 that report, correct?

14 A. Yes, ma'am.

15 Q. Did you discuss possible witnesses for a waiver
16 hearing with her?

17 A. No.

18 Q. You testified before that Ms. Campbell Williams did
19 tell you they'd call witnesses on your behalf, correct? So
20 you did know that. You testified on direct that you did
21 know witnesses would be called at the waiver hearing on
22 your behalf.

23 A. The only one that I knew of was Churchill, but I
24 thought -- I thought you was speaking upon like did I know
25 about anybody else like my mother or father could come to

1 be witnesses.

2 Q. No, did she just tell you overall that she would have
3 an opportunity to present witnesses?

4 A. Yes, ma'am, she told me about she was gonna get
5 certain SCDC workers to come -- to come in and speak for me
6 that was working at the detention center.

7 Q. Did she discuss with you calling your parents as
8 witnesses?

9 A. No, ma'am.

10 Q. You don't recall ever telling her that you didn't want
11 your mom to be called as a witness?

12 A. No, ma'am.

13 Q. Did you discuss with her calling yourself as your own
14 witness on your behalf?

15 A. We never even touched that subject.

16 Q. Did you tell her you wanted to be --

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

18 Q. -- have an opportunity to address the court?

19 A. No, ma'am. No, ma'am. I didn't know I could even do
20 that.

21 Q. And I believe you testified before she did call two
22 witnesses on your behalf, correct?

23 A. Yes, ma'am.

24 Q. Do you recall her making an argument on your behalf
25 asking the family court to keep jurisdiction over your case

1 and not to waive it into general sessions?

2 A. If you're talking about at the ending of the whole
3 waiver hearing, yes, ma'am, I remember her saying
4 something.

5 Q. So you do recall her making that argument asking the
6 family court to keep jurisdiction?

7 A. Yes, ma'am.

8 Q. And you testified you weren't told by Ms. Campbell
9 Williams at that time that you could appeal the waiver
10 decision, correct?

11 A. Yes, ma'am.

12 Q. And after your waiver hearing, Mr. Shealy was
13 appointed to represent you, correct?

14 A. Yes, ma'am.

15 Q. How many times did you meet with him?

16 A. I can't recall. He came -- he came through a couple
17 of times though.

18 Q. When you say a couple of times, five?

19 A. He -- he came through about five times. Probably
20 while I was still a juvenile about five times.

21 Q. When you say while you were still a juvenile, this
22 was after it had already been waived up and he was your
23 attorney, correct?

24 A. Yes, ma'am. I'm talking as far as still on the
25 juvenile side of the detention center.

1 Q. And did you remain on the juvenile side of the
2 detention center?

3 A. Until I was seventeen.

4 Q. Did you review discovery with him?

5 A. Say that again.

6 Q. Do you review your discovery with him?

7 A. Yes, ma'am, we went over certain things.

8 Q. When you say went over certain things, what did you go
9 over with him?

10 A. Basically he reviewed -- we would talk about the
11 evidence that was against me.

12 Q. What evidence?

13 A. Like my -- my -- my statement against myself on
14 camera. My co-defendant's statement against myself.
15 Things like that.

16 Q. Did you ever watch the -- you said your statement on
17 camera. Did you ever watch that video with Mr. Shealy?

18 A. No, ma'am, I -- I -- my first time watching that was
19 with Ms. Tricia Blanchette.

20 Q. And you gave multiple statements to law enforcement,
21 correct?

22 A. That one statement on that camera, yes, ma'am.

23 Q. You didn't give a statement in the police cruiser
24 after waiving your rights?

25 A. I didn't know that -- that was even being recorded.

1 Q. But recorded or not, you still gave a statement --

2 A. Yes, ma'am. Yes, ma'am. It was a statement --

3 Q. -- to law enforcement implicating your guilt?

4 A. There was a statement given, but I didn't know it was
5 being recorded.

6 Q. And I believe you -- you testified that when the
7 officer first came up to you, you -- you told him you had
8 done something bad, correct?

9 A. Yes, ma'am.

10 Q. And then you gave that first statement at the police
11 cruiser, correct?

12 A. Yes, ma'am.

13 Q. And you were advised of your rights at that time,
14 correct?

15 A. Yes, ma'am.

16 Q. Do you recall waiving your rights at that time?

17 A. Yes, ma'am.

18 Q. And that included the right to have an attorney
19 present, correct?

20 A. Yes, ma'am.

21 Q. And then you gave a second statement, the one that
22 was recorded, which has been introduced as Petitioner's
23 Exhibit 1, you gave a video-recorded statement at the Irmo
24 Police Department, correct?

25 A. Yes, ma'am.

1 Q. And you were also read the Waiver of Rights and signed
2 the back, correct?

3 A. Yes, ma'am.

4 Q. And I believe you testified before that you wanted to
5 tell the court at your waiver hearing and at your plea --
6 or, excuse me, just at your waiver hearing that you had
7 admitted to your mistake and that's the reason it should
8 have been kept in family court, correct?

9 A. Yes, ma'am.

10 Q. So you wanted to use your confession to your benefit,
11 correct?

12 A. Yes, ma'am.

13 Q. But here today you're saying your confession was
14 improper?

15 A. I felt like really at the time of the confession the
16 only reason why I did the confession was because I knew I
17 did something wrong, I was trying to help myself, but now
18 that's -- what I thought was gonna help myself was used
19 against me.

20 Q. But at the time of the waiver you wanted to use it to
21 your benefit, correct?

22 A. Yes, ma'am, if it was possible to use it for my
23 benefit, yes, ma'am.

24 Q. And one of your allegations here today is that the
25 person who interviewed you, Sergeant Wilson, he was overly

1 friendly to you?

2 A. Yes, ma'am.

3 Q. And he told you several times on that tape that you
4 were in serious trouble, correct?

5 A. Yes, ma'am.

6 Q. And he told you that you wouldn't be coming home,
7 correct?

8 A. Really he didn't -- no, ma'am. He told me that after
9 the whole video was over.

10 Q. But on the video he tells you you're not gonna be able
11 to go home and these are serious charges, correct?

12 A. Yes. Yes, ma'am, at the ending of the video. Not
13 during it, but ending -- at the ending.

14 Q. And when you were being questioned by your attorney,
15 you talked about how Sergeant Wilson was questioning you
16 about other crimes or incidences that were going on in the
17 area, correct?

18 A. Yes, ma'am.

19 Q. There was actually a fight that you were surrounded by
20 when law enforcement came up, correct? There was a fight
21 between some other kids in the neighborhood?

22 A. Early that morning we was wrestling in the road, so
23 they thought we was -- we thought -- they thought we was
24 fighting.

25 Q. Is that what you were talking about when you said that

1 they asked you about other crimes?

2 A. No, ma'am. When I -- when they asked me about other
3 crimes, they was speaking upon asking me was -- certain
4 individuals, were they still out there robbing or doing
5 that and stuff like that.

6 Q. Sergeant Wilson on that tape asks you whether certain
7 individuals that are in the group you hang out with are
8 incarcerated or not, correct?

9 A. No, ma'am, they at -- they're not incarcerated. They
10 was on the street at the time.

11 Q. Okay. But he was asking you whether or not they were
12 on the street or they were incarcerated, correct?

13 A. I can't recall.

14 Q. And your testimony is that you never talked to
15 Mr. Shealy about suppressing your statement?

16 A. No, ma'am, we never talked about that.

17 Q. So he showed you the statement, but he never told you
18 we can try to keep this out of court?

19 A. No, ma'am, we never talked about that.

20 Q. Did you tell him your statement wasn't voluntary?

21 A. Say that again.

22 Q. Did you ever tell Mr. Shealy, your attorney, my
23 statement's not voluntary?

24 A. Can you break down "voluntary"?

25 Q. You gave two statements after signing a Waiver of

1 Rights, correct?

2 A. Yes, ma'am.

3 Q. Did you ever tell him that you were coerced to give
4 the statement?

5 A. No, ma'am. We never -- we never really -- with the
6 statements, we felt like there was nothing we could do
7 about it, so we didn't try to do anything to really remove
8 it or keep it.

9 Q. When you say there's nothing you felt like you could
10 do about it, so you did talk to Mr. Shealy about whether it
11 would be possible to keep that out or not?

12 A. No, ma'am, we never -- what I was telling you, we
13 never discussed it because I felt like we both had an
14 understanding that there was nothing that we could do about
15 it, so we never discussed it. All we was moving forward
16 was to try and get a better plea.

17 Q. And you've testified several times here today you
18 didn't want to go to trial, correct?

19 A. No, ma'am.

20 Q. You wanted the best plea offer available, correct?

21 A. Yes, ma'am.

22 Q. Did Mr. Shealy explain the elements of all the charges
23 you were facing to you?

24 A. Yeah, we went over certain charge -- the charges.

25 Q. Did he advise you of potential sentences?

Nicholas Nesmith - Cross by Ms. Harrigan

1 A. Yes, ma'am.

2 Q. Did he advise you that burglary in the first degree
3 carried the mandatory minimum sentence of fifteen years
4 imprisonment?

5 A. Yes, ma'am.

6 Q. Did he advise you that it carries up to life
7 imprisonment?

8 A. Yes, ma'am.

9 Q. Did Mr. Shealy use an investigator on your behalf?

10 A. I can't recall.

11 Q. Did you give him any leads to investigate or possible
12 witnesses to talk to?

13 A. Not that I think of, no, ma'am.

14 Q. And I believe you testified before when your attorney
15 was questioning you he did have you evaluated by
16 Dr. Schwartz-Watts, correct?

17 A. Yes, ma'am.

18 Q. And you were found to be competent and criminally
19 responsible, correct?

20 A. Yes, ma'am.

21 Q. Did you ask Mr. Shealy to try to negotiate a favorable
22 plea offer from the State?

23 A. No, ma'am. He -- that -- he was gonna try to do that
24 on his own.

25 Q. But -- but you asked him. You told him I want to

1 plead guilty, I don't want to go to trial, correct?

2 A. Yes, ma'am.

3 Q. Do you recall any offers that Mr. Shealy presented to
4 you?

5 A. Mr. Shealy came to me a couple of times -- one time in
6 particular and it was like we can take a fifteen-year open
7 plea.

8 Q. When you say fifteen-year open plea, can you explain
9 what you mean by that?

10 A. Like fifteen years with basically -- he didn't -- he
11 didn't say no limit on it. It was just fifteen years and
12 it would just all -- it would just end it like that or
13 whatever.

14 Q. And you understood that fifteen years was the
15 mandatory minimum sentence for burglary in the first
16 degree, correct?

17 A. Yes, ma'am.

18 Q. So he presented you with essentially go before the
19 court and you can get any sentence from fifteen years up,
20 correct?

21 A. Fifteen or whatever it ends at, yes, ma'am.

22 Q. Well, where was he in it? Did he tell you up to life?

23 A. No, ma'am, he never said no ending. He was just like
24 it start at fifteen.

25 Q. And you retained Mr. Finney in May the year that you

1 pled?

2 A. Yes.

3 Q. 2010?

4 A. Yes, ma'am.

5 Q. Was that your first time ever meeting Mr. Finney or
6 did you know him through some other relationship?

7 A. I knew Mr. Finney personally as a -- as a little boy
8 because we went -- I went -- we goes to the same church.

9 Q. So you were already familiar with Mr. Finney?

10 A. Yes, ma'am.

11 Q. One of your allegations against Mr. Finney is that he
12 did not conduct an independent investigation, correct?

13 A. Yes, ma'am.

14 Q. What other investigation did you want him to do? What
15 else did you want him to do in regards to investigation?

16 A. Really at the time I didn't have -- he -- at the time
17 I didn't have no understanding of the law, so I can -- I
18 couldn't tell you at that point in time.

19 Q. Well, now coming here today, what other investigation
20 did you want him to do?

21 A. Well, I wanted him to look back at that waiver
22 hearing. Since -- since it was possible for me to appeal
23 the decision of the waiver hearing, I wanted him to look at
24 that. Not just that, the juvenile statute, which wasn't --
25 which wasn't conducted as such and now -- and just like --

1 like the effectiveness of the lawyer at my waiver hearing.

2 Q. Do you understand here today that a waiver hearing
3 cannot be instantly appealed after the waiver? You have
4 to wait until either -- your general sessions charges
5 conclude, correct?

6 A. Repeat that one more time.

7 Q. That a waiver hearing is not immediately appealable.
8 You have to wait until the final disposition of your
9 general sessions charges. You understand that, correct?

10 A. Yes, ma'am.

11 Q. Okay. But you wanted him to look and see whether the
12 waiver hearing could be appealed before you even entered a
13 guilty plea?

14 A. Yes, ma'am.

15 Q. Any other investigation you wanted him to do?

16 A. I don't -- no, ma'am. Not really.

17 Q. Did you ever ask him to use a private investigator?

18 A. No, ma'am.

19 Q. And you testified that when you were represented by
20 Mr. Shealy, you let Mr. Shealy know you didn't want to go
21 to trial. Did you also let Mr. Finney know that you were
22 looking for a favorable plea offer?

23 A. No, ma'am, we never talked about nothing like that.

24 Q. He never asked you: Do you want to go to trial? Do
25 you want to take a plea?

1 A. He volunteered on his own and said he felt best -- he
2 said that it would be in my best interest to get a plea --
3 to prepare and get a better plea.

4 Q. So your testimony is that Mr. Finney told you it would
5 be in your best interest to get a plea, but that you never
6 told him well, I don't want to go to trial?

7 A. He told -- Mr. Finney told me it would be in my best
8 interest that we prepare our case and go in front of the
9 right judge and get a better plea.

10 Q. And at that time -- because Mr. Finney represented you
11 after Mr. Shealy. At that time you had already had made
12 your mind up that you wanted a plea, you didn't want to go
13 to trial, correct?

14 A. Yes, ma'am.

15 Q. Do you recall any plea offers that were presented to
16 you by Mr. Finney?

17 A. Only -- only the thing that Mr. Finney ever brought to
18 me was the twenty to twenty-five.

19 Q. And that was for a negotiated sentence within that
20 five-year range?

21 A. Uh-huh. Yes, ma'am.

22 Q. When did he present that to you?

23 A. August 9th, that -- that day I got surprised and
24 taken to court.

25 Q. August 9, 2010, the day he moved for the continuance?

1 A. I think that's about right.

2 Q. So he presented it to you on August 9th and you had
3 two days to think about it?

4 A. Uh-huh.

5 Q. And then you ended up accepting your plea on
6 August 11, 2010?

7 A. Yes, ma'am.

8 Q. Did you discuss it with your parents between
9 August 9th and August 11th when you went to court, that
10 two days between period?

11 A. No, ma'am. In all actuality though, from how I
12 remember it, I didn't leave that courtroom that day when
13 -- when Judge Cooper told me myself or him and I told him
14 that I would take Mr. Finney and -- because we were set for
15 a trial and we left, but that's when that -- the lawyers
16 was talking with me, Finney and Luke, Luke Shealy, and I
17 came back in that same day and plead out to that twenty,
18 twenty-five years.

19 Q. Did you understand that you'd be receiving a sentence
20 between twenty and twenty-five years when you entered that
21 guilty plea?

22 A. Yes, ma'am.

23 Q. Do you remember your guilty plea proceeding?

24 A. Yes, ma'am.

25 Q. Do you recall admitting your guilt to Judge Cooper?

- 1 A. Yes, ma'am.
- 2 Q. And you were under oath during that, correct?
- 3 A. Yes, ma'am.
- 4 Q. And you've already testified here today that you are
- 5 guilty of these crimes, correct?
- 6 A. Yes, ma'am.
- 7 Q. And you testified that you never wanted to go to
- 8 trial, correct?
- 9 A. Yes, ma'am.
- 10 Q. And you knew that day that you'd be getting between
- 11 twenty and twenty-five years, correct?
- 12 A. Yes, ma'am.
- 13 Q. And you did, indeed, get between twenty and
- 14 twenty-five years, correct?
- 15 A. Yes, ma'am.
- 16 Q. You got twenty-two years, correct?
- 17 A. Yes, ma'am.
- 18 Q. Do you recall apologizing to the victims during your
- 19 sentencing proceeding on September 1st?
- 20 A. I remember apologizing to everyone that had something
- 21 to do with that whole situation.
- 22 Q. That would include the victims that were --
- 23 A. Yes, ma'am.
- 24 Q. -- beaten by you and your co-defendant, correct?
- 25 A. Yes, ma'am.

1 Q. You understand that if you're successful in this PCR,
2 you'll be facing all the same charges again, correct?

3 A. Yes, ma'am.

4 Q. And you understand that the sentence -- sentence for
5 burglary in the first degree is up to life imprisonment,
6 correct?

7 A. Yes, ma'am.

8 MS. HARRIGAN: A moment's indulgence, Your Honor.

9 BY MS. HARRIGAN:

10 Q. And, again, your testimony is -- you said that you
11 were not able to testify at the waiver hearing. You wanted
12 an opportunity to tell the court that you were young and
13 had made a mistake, correct?

14 A. Yes, ma'am.

15 Q. But that you'd admitted to your guilt, correct?

16 A. Yes, ma'am.

17 Q. But now your statement -- you're saying the officer
18 was too friendly to you when you made it, correct?

19 A. It's -- it's clear to see that he was too friendly
20 with me.

21 Q. What other challenges do you have to your statement
22 besides that he was too friendly to you?

23 A. Not just that. Basically some of the words that he
24 had used, to anybody a fifteen-year-old boy caught in a
25 situation like that, it would put fear in them because when

1 you're saying that you face -- that you're facing some big
2 boy charges or you're saying that you're in a pile of
3 trouble or anything -- anything -- any -- any intimidating
4 words in a time like that, anybody will crumble.

5 Q. And the Court can have an opportunity to review the
6 tape, but you said it wasn't fair that he told you you were
7 facing big boy charges and you were in a heap of trouble,
8 correct?

9 A. Yes, ma'am. That's what I'm saying.

10 Q. And you were facing large charges. You admitted
11 yourself that although you'd had the four sets of charges
12 before, it had never been anything as serious as a home
13 invasion and the beating of an elderly couple, correct?

14 A. Yes, ma'am.

15 Q. And you testified that you went along with the plea
16 on August 11th because you felt you had no other option,
17 correct?

18 A. Yes, ma'am.

19 Q. That Mr. Finney wasn't prepared for trial and so you
20 had to plead, correct?

21 A. Yes, ma'am.

22 Q. But you testified that all along you never wanted a
23 trial, you wanted to plead guilty, correct?

24 A. Yes, ma'am.

25 Q. And you wanted your attorney to secure a favorable

1 plea offer on your behalf, correct?

2 A. Yes, ma'am.

3 Q. And you understood that the lowest possible sentence
4 for your charges was gonna be fifteen years, correct?

5 A. Yes, ma'am.

6 Q. Up to life imprisonment, correct?

7 A. Yes, ma'am.

8 Q. And you testified that Mr. Finney never told you you
9 could file a direct appeal, correct?

10 A. No, ma'am, he never told me.

11 Q. Do you recall Judge Cooper during your guilty plea
12 telling you that you could appeal and you had ten days to
13 do so?

14 A. I can't recall.

15 Q. You don't recall him saying that?

16 A. (Shakes head.)

17 MS. HARRIGAN: No further questions, Your Honor.

18 THE COURT: Any redirect?

19 MS. BLANCHETTE: Very briefly, Your Honor.

20 THE COURT: Yes, ma'am.

21 REDIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q. Mr. Nesmith, just to clarify, you have made no
24 allegations of ineffective assistance of counsel against
25 Luke Shealy; is that correct?

1 A. No, ma'am, I haven't.

2 Q. And when the court -- or, I'm sorry, Mr. Finney tells
3 the court that he had just received the discovery and he
4 needed more time to prepare for trial, did he ever explain
5 that he was gonna rely upon Mr. Shealy's preparation to get
6 ready for trial?

7 A. No, ma'am.

8 Q. And was Mr. Shealy and his preparation the one that
9 was gonna be representing you at trial? Was he the one
10 that was gonna be handling your case? As far as what he
11 had prepared, that that was gonna be presented to the
12 court?

13 A. The majority of the things that were presented on my
14 behalf with Mr. Finney a lot of them came from Luke Shealy.

15 Q. Okay. And let me ask a better question.. If you
16 would have gone to trial, Mr. Finney was gonna be the one
17 representing you, not Mr. Shealy; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. So did you take into consideration how prepared
20 Mr. Shealy was when you were evaluating if Mr. Finney was
21 prepared to take you to trial?

22 A. Can you repeat that one more time?

23 Q. When you were determining if you should take the
24 guilty plea whether Mr. Finney was prepared or not, did you
25 consider what Mr. Shealy had done? Did that even matter or

1 were you just looking at what Mr. Finney had done in your
2 case?

3 A. I was mostly looking at what Mr. Finney had done.

4 Q. Now you actually during the motion hearing conveyed to
5 Judge Cooper that you want to go to trial because he gives
6 you the option of going to trial --

7 A. Yes, ma'am.

8 Q. -- the following day. And you understand that you've
9 asked the Court today for new trial?

10 A. Yes, ma'am.

11 Q. But repeatedly in your testimony you said you didn't
12 want to go trial. Mr. Nesmith, I just want to be clear.
13 Are you willing to proceed to trial on these charges?

14 A. Yes, ma'am.

15 Q. Okay. And just turning back to the officer's
16 interview interrogation, which the Court will review, based
17 upon the officer's comments, and I'm just summarizing and
18 we'll let the video speak for itself, that it was your time
19 to snitch and that no one else would lie for you, Did you
20 feel like the officer was in a position where he might be
21 able to help you with these big boy charges if you told him
22 what he was asking you?

23 A. Yes, ma'am, I felt like he could help me because he
24 was the one that was handling -- handling the charges.

25 Q. Okay. Is there anything else regarding the interview

1 that you would like to bring up? Any other issues
2 regarding that interview?

3 A. No, ma'am.

4 MS. BLANCHETTE: Your Honor, I have no further
5 questions.

6 MS. HARRIGAN: Very briefly, Your Honor.

7 RECROSS EXAMINATION

8 BY MS. HARRIGAN:

9 Q. Mr. Nesmith, you testified that you now want a trial,
10 correct?

11 A. Yes, ma'am.

12 Q. But at the time when you were in front of Judge Cooper
13 on August 9th and you had told -- did you want a trial at
14 that time or did you want to go --

15 A. The only --

16 Q. -- did you want to plead guilty?

17 A. The reason why I didn't go to trial with Mr. Finney
18 was due to his advice. He told me don't go to trial.

19 Q. But you testified before that you told your attorney
20 Luke Shealy that you didn't want to go to trial, that you
21 wanted him to secure a favorable plea offer on your behalf,
22 correct?

23 A. Yes, ma'am.

24 Q. So at the time you didn't want a trial. You want one
25 now, but you didn't want one back then, correct?

1 A. No, ma'am, but Luke Shealy -- Luke Shealy was
2 preparing something different for me as far as for the
3 plea. That's why I didn't want to go trial.

4 MS. HARRIGAN: No further questions, Your Honor.

5 THE COURT: You may step down. Thank you.

6 (Witness excused.)

7 THE COURT: Let's take a brief break before we
8 continue on.

9 MS. BLANCHETTE: Thank you, Your Honor.

10 (Recess taken.)

11 BAILIFF: Court come to order. All rise.

12 THE COURT: Be seated, please.

13 You may call your next witness.

14 MS. BLANCHETTE: Your Honor, we have no further
15 witnesses. I have provided a legal memorandum in
16 preparation for this case as it deals with juvenile issues
17 that I don't see very often. I had to review about twenty
18 of them, so instead of just providing those cases to the
19 Court what I did was provide -- I think it's an eight-page
20 summary of those cases. I'll go ahead and file the
21 original with the Clerk of Court so that we have that in
22 the record.

23 THE COURT: Okay.

24 MS. BLANCHETTE: And I've provided the State a copy as
25 well.

1 THE COURT: Thank you.

2 MS. BLANCHETTE: And it does not apply the facts to
3 the case. It's just a straight up legal memorandum, Your
4 Honor.

5 THE COURT: All right. Thank you.

6 MS. BLANCHETTE: Uh-huh.

7 THE COURT: On behalf of the State?

8 MS. HARRIGAN: The State would call Mitzi Campbell
9 Williams to the stand.

10 MITZI CAMPBELL WILLIAMS,

11 having been duly sworn, testified as follows:

12 THE COURT: If you'll have a seat and state your full
13 name for me. Spell your first name, too, please.

14 THE WITNESS: Mitzi, M-I-T-Z-I. Mitzi Campbell
15 Williams.

16 DIRECT EXAMINATION

17 BY MS. HARRIGAN:

18 Q. Good afternoon, Ms. Campbell Williams. How long have
19 you been practicing law?

20 A. Fifteen years.

21 Q. At the time you represented Mr. Nesmith, where were
22 you employed?

23 A. Richland County Public Defender.

24 Q. Is there certain kind of offenses that you represented
25 clients on?

1 A. Just family court, so everything from status offenses
2 to murder.

3 Q. When were you appointed to represent Mr. Nesmith?

4 A. That was in September of 2008.

5 Q. Do you recall how long after he was arrested you were
6 appointed?

7 A. I was appointed the Tuesday after he was arrested and
8 interviewed him prior to the hearing on Tuesday.

9 Q. You interviewed him prior to the hearing on Tuesday?

10 A. Yes, here at the courthouse.

11 Q. Did you have an opportunity to meet with his parents?

12 A. No, I didn't have an opportunity to meet with his
13 parents prior to the court hearing.

14 Q. Did you meet with them shortly thereafter?

15 A. Yes, absolutely.

16 Q. How old was Mr. Nesmith when he was arrested?

17 A. He was fifteen.

18 Q. Do you recall how many times you met with Mr. Nesmith?

19 A. Through the entire term of the representation?

20 Q. Yes.

21 A. Oh, maybe about twenty times or more.

22 Q. Did you meet with members of his family as well?

23 A. Yes, I met with his mother, his brother, his father.

24 I did not have very much contact with Mrs. Nesmith because
25 she was working most of the time, so most of my contact was

1 with the father by phone, but I met with him on several
2 different occasions in person.

3 Q. And did your representation cease when he was waived
4 into general sessions court?

5 A. Yes.

6 Q. You've been here for the testimony this afternoon,
7 correct?

8 A. Yes, I have.

9 Q. Were you aware when you were first appointed to
10 represent Mr. Nesmith as to whether or not he'd had any
11 prior DJJ actions or juvenile charges?

12 A. Let me put it like this. In family court, when a
13 child is taken into custody there are certain time frames
14 that the child must be brought to court, and in this
15 particular case, barring the weekends and holidays,
16 Nicholas had to be brought to court within forty-eight
17 hours. It's either twenty-four hours for a status offense,
18 forty-eight hours for criminal offenses and seventy-two
19 hours if I were to show a court order. So he had to be
20 brought to court within forty-eight hours.

21 Within that time period things move very, very quickly
22 in family court and within that time frame the solicitor
23 has to receive the discovery and make copies and do
24 everything that he had to do to prepare for the detention
25 hearing, which was that following Tuesday after he'd been

1 arrested. So within that forty-eight hours I usually or
2 the defense attorney usually receives that discovery on the
3 day of the detention hearing.

4 Q. Did you receive discovery --

5 A. I received that discovery in this matter the day of
6 the detention hearing and I spoke with the solicitor and
7 they hadn't decided that -- at that time whether or not
8 they were going to waive him to general sessions.

9 Q. Do you recall what was in the discovery that you
10 received that Tuesday of the first detention hearing?

11 A. Primarily the incident report, his Form 5, which is
12 his prior record, and that's about it. We did not have
13 the video recording. We did have his Miranda waiver,
14 Waiver of Rights, and the -- the officer sent up a -- had
15 reduced some of -- of the video recordings to -- had
16 reduced it to writing, but that wasn't forthcoming until
17 some months later actually, the video.

18 Q. Did you ever receive a copy of the video?

19 A. Oh, yes, we received a copy of the video.

20 Q. Did you ever watch it with your client, Nicholas?

21 A. Now that -- I cannot remember. I cannot even imagine
22 not going over that video with him, but I don't remember
23 exactly when and it would have been in the detention -- at
24 the detention center. But clearly I looked at my notes and
25 I remember talk -- asking the solicitor about that.

1 Let me go back. In family court when we get a case
2 that might be a waiver, that is one of the most important
3 things that we do, if not the most important action in
4 family court. So when we get a case that might be a
5 waiver, we really, really pay very, very close attention
6 to all the details of that particular case. And this is
7 not my first waiver case. Nicholas's case was not my first
8 waiver case, this is the only case that was waived up to
9 general sessions that I've handled, so I have experience
10 and -- in waiver -- waiver matters, so I know this is very,
11 very, very important because the solicitor already said
12 that we may seek waiver on this case and that is because of
13 the seriousness of the events.

14 Q. When did you first learn from the prosecuting
15 assistant solicitor that she was going to seek waiver?

16 A. At the detention hearing. The solicitor has thirty
17 days to decide from the time the child is taken into
18 custody whether or not they're going to seek waiver and in
19 Richland County they really do very -- a very good job
20 and tell you very early on that they're -- whether or not
21 they're going to seek waiver. And so at the detention
22 hearing on that Tuesday, the solicitor moved the court to
23 have him waived or transfer jurisdiction to general
24 sessions, as well as a pre-waiver evaluation conducted.

25 Q. Did you explain to Nicholas and his parents that the

1 State was seeking waiver at that time?

2 A. Yes.

3 Q. Did you explain what that meant to them?

4 A. Absolutely. In detail.

5 Q. And I believe you testified just a moment ago that at
6 that time the Court will request a pre-waiver evaluation,
7 correct?

8 A. Yes. United States versus Kent.

9 Let -- let me go back to -- to the question you
10 asked me about the pre-waiver evaluation. At that time,
11 at the detention hearing as well, I requested that
12 Nicholas undergo a competency or forensic evaluation.
13 Once the State had moved the court for a waiver or
14 transfer jurisdiction to general sessions, I requested
15 that Nicholas undergo a competency evaluation to determine
16 criminal responsibility; to determine whether or not he
17 understood the nature of the charges against him and
18 whether or not he was criminally responsible. So before
19 they got to even start -- before they even start the
20 waiver process except for the motion, there have to be
21 results from that competency evaluation to say that he's
22 competent. If the psychiatrist had said that Nicholas is
23 not competent, then there would be no waiver. There would
24 be nothing. Everything stops until he's competent.
25 Q. So it's probably logical to conclude that he was found

1 to be competent --

2 A. He was.

3 Q. -- at his first initial evaluation, correct?

4 A. Exactly.

5 Q. And at that point then did the process evolve into a
6 pre-waiver evaluation and a report prepared?

7 A. That's correct.

8 MS. HARRIGAN: May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MS. HARRIGAN:

11 Q. I'm gonna hand you a document -- and actually one's
12 been premarked. I'm gonna hand you what's been premarked
13 as Respondent's Exhibit Number 1 for ID. Do you recognize
14 this document?

15 A. Yes, I do.

16 Q. And can you explain what that is for the Court?

17 A. That's a pre-waiver evaluation. In United States
18 versus Kent, the United States Supreme Court stated that --
19 hold on.

20 Q. Well, before we get to the Kent Doctrine, is that the
21 -- does that appear to be --

22 A. Yes.

23 Q. -- the report that was prepared in Nicholas's case?

24 A. Yes, it was. Absolutely.

25 MS. HARRIGAN: The Respondent would move that in as

1 Exhibit 1 at this time.

2 THE COURT: Any objection?

3 MS. BLANCHETTE: Yes, Your Honor. None of the people
4 that actually prepared this report are here to testify as
5 to authenticity. I would just ask that there be a better
6 foundation laid or that this be limited and not be admitted
7 for the truth of the matter asserted, but this was just
8 merely in her files. I don't think it should be relied
9 upon.

10 MS. HARRIGAN: Your Honor, briefly in response, the
11 same goes for Petitioner's Exhibit Number 2. That was an
12 evaluation and none of those doctors are present and I
13 would just like to note for the record that the State did
14 not make an objection to Alicia Hall or Barbara Christensen
15 being here. This is something that Ms. Campbell Williams
16 had in her report. It was also before the family court in
17 the waiver proceeding and it's mentioned in the waiver
18 order, which has also been introduced as one of
19 Petitioner's exhibits.

20 THE COURT: And so you are just offering it for what
21 purpose?

22 MS. HARRIGAN: I'm offering it to show that these
23 evaluations were completed, that they were before the
24 family court, that Ms. Campbell Williams had an opportunity
25 to review these and as I think she was starting to go into

1 they do go into some of the Kent Doctrine that the court
2 relied upon in waiver, that's the crucial issue here today.
3 And this was also before the family court. It was -- it's
4 referenced in -- I don't know what exhibit. I think it
5 was Petitioner's Exhibit Number 3. They referenced the
6 pre-waiver evaluation that was completed, which is what has
7 been pre-marked as Respondent's Exhibit Number 1. It's
8 mentioned on page 1 of Petitioner's Exhibit Number 3, which
9 is the family court waiver order.

10 THE COURT: And none of those -- none of the persons
11 who examined Mr. Nesmith were present at the hearing before
12 the family court, so the family court accepted it and
13 relied upon it in making its decision on waiver; is that
14 correct?

15 MS. HARRIGAN: I --

16 THE WITNESS: Yes, the evaluation -- the evaluator is
17 required to be present, yes, Your Honor.

18 THE COURT: I'm sorry, the evaluator is?

19 THE WITNESS: Yes, is required to be present and was
20 present at the waiver hearing.

21 MS. HARRIGAN: But this was also introduced as an
22 exhibit as well.

23 THE COURT: He -- he was present at the hearing, but
24 he didn't testify at the hearing?

25 THE WITNESS: Yes, Your Honor.

1 MS. HARRIGAN: Yes, Your Honor, he did not testify.

2 THE COURT: Okay. Yes, he did not testify?

3 MS. HARRIGAN: Did -- did not testify, no. The
4 testimony at the waiver hearing was from --

5 THE COURT: Mostly officers?

6 MS. HARRIGAN: -- officers. Yes. Yes, Your Honor.

7 THE COURT: Okay. All right. It -- I'll -- I'll
8 accept it as -- primarily as information that was provided
9 to the family court for it to be able to make its decision
10 as to the waiver and to the extent that it considered the
11 Kent factors, which were discussed during the course of the
12 family court waiver, as well as in his order.

13 THE WITNESS: Your Honor, the evaluator was present
14 and testimony -- and that was -- that is the biggest part
15 of the waiver process is the testimony of the evaluator.

16 THE COURT: And the evaluator's name was Danielle
17 Blue?

18 THE WITNESS: Oh, no, no, no.

19 MS. BLANCHETTE: No, this Danielle Blue was with
20 Lexington County EMS. The first witness was a Corporal
21 David Dechman from Irmo Police Department. There was
22 testimony from Danielle Blue, Lexington County EMS, who
23 transported the victim, testimony from Corporal Grinstead
24 and Sergeant Ryan Wilson, and then the two witnesses that
25 Ms. Campbell Williams called on Mr. Nesmith's behalf.

1 THE COURT: And Sergeant -- there was a brief
2 testimony from Sergeant Churchill --

3 THE WITNESS: That's from Alvin S. Glenn.

4 THE COURT: And then the -- and then those called by
5 the defense were -- were primarily from Alvin S. Glenn.
6 They were teachers and an officer, I believe.

7 MS. BLANCHETTE: Yes, Your Honor, there were three
8 called.

9 THE COURT: So even though the evaluator was present,
10 the evaluator did not testify at the hearing?

11 MS. HARRIGAN: No, Your Honor. It's my understanding
12 that the court relied on this report in making its
13 determination and it was prepared for the -- not sole
14 purpose, but it was prepared to be used in the court's
15 determination at the waiver proceeding.

16 MS. BLANCHETTE: My main concern, Your Honor, is just
17 specifically there's a page marked Attachment 4, it's
18 number 20, and then there's an order that follows and it
19 just says that this -- any information here shouldn't be
20 relied upon in further -- or in future criminal proceedings
21 because there's statement given by my client and his
22 mother. So that was my concern mostly. It's just that we
23 comply with this court order that limits, you know, how
24 this information can be used and I didn't know the extent
25 that she planned to get into it.

1 THE COURT: Okay.

2 MS. HARRIGAN: I plan to just introduce it to show it
3 was in her file, she relied upon it in the family court,
4 introduced it as well, and I certainly could have had these
5 witnesses available. And this was given to Petitioner's
6 counsel and I had no idea that Petitioner's counsel would
7 have an objection.

8 THE COURT: Okay.

9 MS. BLANCHETTE: And, Your Honor, just to clarify, I
10 received it late yesterday afternoon.

11 MS. HARRIGAN: As did I, so.

12 THE COURT: Okay. All right. And so I'll -- I'll
13 admit it for the reasons I've stated.

14 MS. HARRIGAN: And here's a courtesy copy for Your
15 Honor.

16 (Respondent's Exhibit Number 1, Pre-waiver Evaluation,
17 was admitted into evidence.)

18 BY MS. HARRIGAN:

19 Q. Can you tell the Court the purpose of having a
20 pre-waiver evaluation?

21 A. The purpose of the pre-waiver evaluation is to make
22 sure the United States Supreme Court in Kent was guiding
23 the judges on making a full inves -- investigation and a
24 substantial review of the facts of the case prior to
25 deciding whether or not the child should be waived or trans

1 -- a transfer of jurisdiction, and the -- and the waiver
2 evaluation goes into great detail. The waiver evaluation
3 really is the hearing because the judge must decide based
4 on the eight Kent factors that was -- the eight Kent
5 factors that was delineated in Kent versus United States.
6 It must consider all those factors. And in the waiver
7 hearing they go through a detailed, detailed, detailed
8 evaluation of the child, so school records, school
9 discipline, school grades, family history, great detail,
10 community, individuals, how well he's doing in his present
11 state, what his -- his prior records, so what the court
12 goes through are very detailed. This is just not a report
13 -- just a report that you give to the judge. This is what
14 the judge is basing his decision on on whether or not the
15 child will be waived to general sessions. And then the
16 eight Kent factors the judge doesn't have to say well, this
17 applies, this applies. It doesn't have to go into any
18 detail, the judge just could say as a rule because of the
19 seriousness of the events I've decided that he be waived to
20 general sessions, but the report also goes into very --
21 lots of details in terms of the history of the child.

22 Q. And the history of the child and those other factors,
23 those are part of the Kent factors, the eight factors that
24 the court --

25 A. Absolute --

1 Q. -- considers when deciding whether or not to waive --

2 A. Yes.

3 Q. -- a juvenile, correct?

4 A. Yes.

5 Q. Did you explain that to Mr. Nesmith and the purpose of
6 having the pre-waiver evaluation?

7 A. Yes, I did. And let me just -- just -- just explain
8 this. There may have -- may have been a little bit of
9 confusion about the -- I hope there's no confusion about
10 the initial competency evaluation. It was just a forensic
11 evaluation and the pre-waiver evaluation. The forensic
12 evaluation is not required prior to a pre-waiver
13 evaluation. It is not a requirement. The defense attorney
14 determines whether or not the child is in need of a
15 forensic evaluation and whether I can even go forward on
16 the case, and I made that decision, but it's not a
17 requirement and it's not part of the eight Kent factors.

18 Q. In a pre-waiver evaluation such as this, which has
19 been admitted as Respondent's Number 1, is any input given
20 from other people besides the evaluators? Do they collect
21 information from family members?

22 A. Yes.

23 Q. Do you know whether or not any of Mr. Nesmith's family
24 members were interviewed?

25 A. Yes, both of his parents.

1 Q. And I believe you testified that the evaluators also
2 look at school records and other avenues to see whether
3 or not the juvenile meets the Kent factors for waiver,
4 correct?

5 A. Yes, as well as a psychiatric evaluation.

6 Q. So did Mr. Nesmith have a separate psychiatric
7 evaluation other than the one that you independently sought
8 for him?

9 A. Yes, as a part of the pre-waiver.

10 Q. So he's evaluated twice?

11 A. Yes.

12 Q. Based on your fifteen years experience primarily in
13 the -- defending family court juveniles, would a waiver
14 hearing be the appropriate time to challenge the
15 voluntariness of a statement?

16 A. No, that's not the appropriate time to challenge it.
17 A waiver hearing is not a hearing on the merits and the
18 United States Supreme Court as well as the South Carolina
19 Supreme Court has made that very, very clear that it is not
20 a hearing on the merits. It's a judicial decision as to
21 whether or not the child shall remain in family -- shall
22 remain in family court or be transferred to general
23 sessions.

24 Q. Would you characterize it as jurisdictional in nature?

25 A. Definitely jurisdictional and the Supreme Court -- the

1 South Carolina Supreme Court has said that it is clearly
2 jurisdictional as well as the United States Supreme Court.

3 Q. Is waiver immediately appealable?

4 A. No, it is not as it is not trial on the merits or
5 agreement on the merits of the case. It is not appealable
6 until there has been a final disposition in the trial court
7 and then they have ten days afterward to appeal their
8 decision. I initially explained that to Nicholas. At the
9 time, a lot was going on at the detention hearing, at the
10 -- the pre-waiver. A lot of -- a lot was going on, so all
11 this information I think maybe it will be difficult for a
12 teenager to understand. They might say oh, no, I don't
13 remember that or I don't remember this because there was so
14 much information, but I always have the opportunity to go
15 to the jail, which I've done many, many times. As a matter
16 of fact, the pre-waiver evaluation is hours that I spent.
17 It was almost night when I left the jail going over this
18 pre-waiver evaluation because it was so, so, so important,
19 but I go over it. You know, I am a teacher as well and I
20 go over in detail this is what they said, in detail, every
21 line, as to his pre-waiver evaluation because it is so
22 important.

23 Q. Did you discuss the actual logistics of the waiver
24 hearing with Mr. Nesmith?

25 A. Yes, I did.

1 Q. Did you advise him that you could call witnesses on
2 his behalf?

3 A. Yes. And as a matter of fact, there were some
4 individuals he wanted me to call, and I -- and I can't
5 remember who they were, but they were there in my notes,
6 and at the time we decided not to call them. I talked to
7 him and told him I had conversations with the witness, they
8 were community -- persons in the community, they were
9 persons in his community, but after I'd spoken with a
10 couple of individuals and I said well, you know, Nicholas
11 is having problems, I've heard he was in a gang, et cetera,
12 and I went back to Nicholas and spoke with Nicholas about
13 this and told him and so we decided, of course, it was not
14 in his best interest that we would call this individual.
15 So there were several individuals outside of his parents
16 that -- other than his parents that we -- I'd spoken with
17 to determine if they would make good witnesses for him.

18 Q. Did you discuss with him calling -- him being his own
19 witness on his behalf?

20 A. Absolutely. Initial --

21 Q. And did -- oh, I'm sorry. You can continue.

22 A. Yes. Initially with -- with Nicholas, Nicholas had a
23 mindset as so many children who've come through family
24 court and as he says -- I think what he was saying was
25 something bad has happened, I've done something. At the

1 waiver hearing I asked him once we had taken a little break
2 and it was time for us to put up our witnesses, I asked him
3 if he wanted to testify. What he wanted to testify was to
4 tell the judge that, you know, he'd done wrong, and I said
5 oh, no, no, no, no, no, no, that is not what we want to do
6 is to tell the judge oh, I've done wrong, you know, and I
7 want, you know, to take my punishment, but he wanted to
8 remain in family court. And I said he would have to
9 remember that once you take the stand the solicitor is
10 gonna have the opportunity, and she's not gonna be kind to
11 you, that she's gonna have the opportunity to cross-examine
12 you and it's not gonna be about, you know, these good
13 things, it's going to be about the victims in this
14 particular case, your prior record. All of that comes in
15 once you decide that you're going to testify, everything
16 comes in, so the judge is not only going to know as he
17 says, well, you know, I've done a bad thing, I'm very
18 remorseful and I want to remain in family court. No,
19 everything comes in. So he decided not to testify.

20 Q. Was that his decision to make?

21 A. That was Nicholas -- I never made that decision for
22 my clients. I talked to Nicholas about that. That was
23 Nicholas's decision once I told him the pro and cons of
24 testifying.

25 Q. Did you --

1 A. That was his decision to testify -- not to testify.

2 Q. Did you talk to him about calling either of his
3 parents as witnesses?

4 A. Yes, we talked about that even before, prior to the
5 court hearing. At the time of -- of this waiver hearing,
6 before then, Mr. and Mrs. Nesmith were having lots of
7 problems. There were lots of problems in the home with --
8 between dad and mom I should say and at some point Nicholas
9 was kind of blaming himself because he was adding to that
10 friction that was in the home by not obeying the rules of
11 the home and it was something that Mrs. Nesmith said when
12 they -- before the pre-waiver evaluation is that he was
13 having a lot of problem -- problems at home, so at that
14 point she did not want to -- his dad to testify because of
15 DSS having been called, I believe, in an abuse matter with
16 him, his dad having allegedly been on -- on drugs and have
17 taken Nicholas with him to purchase drugs and things like
18 that that we definitely didn't want to come out in court,
19 so he definitely didn't want his dad to testify at the
20 hearing so we decided that before. He had already decided
21 prior to the hearing.

22 At the hearing his mom -- mom wanted to testify and I
23 talked to Nicholas about his mother testifying. And I know
24 mom says well, she said I can't testify. I didn't say she
25 couldn't testify because she wasn't allowed to testify

1 either. That's not why I told her she couldn't testify.
2 My reason for telling mom she couldn't testify was because
3 Nicholas said that he didn't want her to testify and I
4 represent the client, I represent Nicholas, and it's
5 Nicholas's decision. That's why. She could have testified
6 at the hearing, but Nicholas didn't want her to testify.

7 Q. Why did your client tell you he didn't want his mom to
8 testify?

9 A. Because part of the problem I think with Nicholas is
10 that he was blaming himself for some of the problems that
11 were going on in his home at the time and because his
12 mother -- he felt that his mother was under a lot of stress
13 at that time. He didn't want to add to that stress, so
14 he didn't want his mother to come under attack on the
15 witness stand in his behalf when -- when she was being
16 cross-examined by the solicitor. And then I think
17 something -- at the end she said can I just talk to the
18 judge, she just wanted to talk to the judge, and I said
19 that's -- now that's not permitted, you cannot talk to the
20 judge.

21 Q. And, again, was that your client's decision to make?

22 A. That's my client's decision. I don't make those
23 decisions. Those are my clients' decisions to make.

24 Q. And you did present some witnesses on his behalf,
25 correct?

1 A. Yes, I presented witnesses -- several witnesses at
2 Alvin S. Glenn, and as I said before, there were other
3 witnesses he wanted me to offer that I did contact and I
4 have those names in -- in my notes, but would not make
5 good witnesses for him because at the time he was getting
6 into some -- really getting into some trouble in his
7 neighborhood and it was known around the neighborhood that
8 he -- he was a member of a gang.

9 Q. And once Mr. Nesmith was waived up, someone else in
10 your office took over his representation, correct?

11 A. Yes. The reason why I remember talking to him about
12 the appeals process is because even though we were going
13 through the waiver process, the solicitor can still move
14 the court to withdraw waiver and allow him to plead, and
15 Nicholas wanted me to ask the solicitor that if he pled to
16 the charges he would remain in family court and I asked the
17 solicitor several times because that's what he wanted to
18 do, just let the charges remain in family court and plead
19 to the charges and withdraw the motion to waive, but she
20 said no.

21 Q. And did you convey that to your client?

22 A. Absolutely.

23 MS. HARRIGAN: A moment's indulgence, Your Honor.

24 BY MS. HARRIGAN:

25 Q. I believe you testified prior that you represented

1 many clients on waiver cases, but this was the first case
2 that was waived, correct?

3 A. That's correct.

4 Q. How many prior waiver hearings had you had?

5 A. I had three. Prior to Nicholas it was two and then
6 after Nicholas's case it's one. And the most recent was a
7 couple years. We don't have waivers very often in family
8 court, but when they do they're very, very serious charges.

9 Q. What type of charges were those two prior -- or those
10 two previous, excuse me, waiver hearings where you
11 represented clients?

12 A. One was a -- primarily property. It was forty-five
13 counts of burglary.

14 Q. And you said primarily property, so usually property
15 offenses?

16 A. Well, no, no, no. In this particular matter, it was
17 forty-five counts of burglary and so you can say they're
18 a property offense because the child was accused of
19 burglarizing homes, new homes, so they were not yet
20 occupied and that was -- that case was not waived because
21 it was strictly a property issue with no victims present,
22 and that was very important to the judge. The other one
23 was an assault with intent to kill and that case was never
24 waived because the client pled guilty on some other charges
25 in family court with a waiver, but the solicitor can decide

1 that some cases -- some charge remain in family court and
2 move to waive the other charge, the most serious charge.
3 The most serious charge in this particular matter was
4 assault with intent to kill, so she wanted to waive on that
5 charge. The other charge pled in family court and then at
6 that time he was committed -- committed to the Department
7 of Juvenile Justice and that case was never put back on the
8 -- on the docket since he was sent to the Department of
9 Juvenile Justice for some years on the family court
10 charges.

11 Q. And you recall here speaking to the solicitor asking
12 if she would withdraw the waiver so that Mr. Nesmith could
13 plead guilty and she said no?

14 A. That's correct. And another -- and another point of
15 how family court is, a lot of the processes in family court
16 are not recorded, so when we saw the videotape, it was me,
17 the solicitor, the officer, the judge. That's not on --
18 here on the transcript, but we spent -- that tape was
19 about forty -- a long time and -- but that's not on the
20 transcript and you can see on the transcript the judge says
21 well, we're gonna go off the record or we're not gonna
22 transcribe this, and those were some conversations that
23 were taking place about the case, but it's not on the
24 transcript.

25 Q. Do you recall what was discussed when you were off the

1 record?

2 A. Lots of issues were discussed and the judge at times
3 would tell us, you know, how he was gonna rule or if we
4 called this particular person or how I'm going to rule, and
5 then we'd decide whether or not we were going to call that
6 particular individual.

7 MS. HARRIGAN: No further questions, Your Honor.

8 THE COURT: Any cross?

9 MS. BLANCHETTE: Briefly, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. BLANCHETTE:

12 Q. It's Ms. Campbell Williams; is that correct?

13 A. That's fine.

14 Q. Okay. Earlier today I provided you a copy of the
15 legal memorandum that I provided to the Court, and I have
16 a copy here (handing). I just wanted to ask you briefly
17 about South Carolina Code Annotated 63-19-810. In the
18 first section of that, Section A provides about when you
19 take a child into custody and there's a sentence that
20 reads: When a child is taken into custody, the officer
21 taking the child into custody shall notify the parent,
22 guardian or custodian of the child as soon as possible.

23 Is that something that you looked into in this case
24 and is that an appropriate issue for you to review as part
25 of your representation in family court?

1 A. Absolutely. The problem with that is South Carolina
2 law is not so kind to juveniles and the issue that we
3 always encounter in family court is we ask "Officer, what
4 took you so long from the time he was arrested?" And,
5 really, in this particular situation with Nicholas, that
6 wasn't a very long period of time, but the statute says as
7 soon as possible, but still that statute doesn't give a
8 specific time. The child can be in custody hours before a
9 parent is -- is contacted. In this particular matter
10 though, when he was taken into custody it was his father
11 or his brother that they had initially spoken with, and
12 that's all that's required. It's not required -- the
13 statute does not require that the officer contact the
14 parents. It's not a requirement that they contact the
15 parents immediately. They can talk -- contact the parents,
16 a guardian, the custodian sometimes or other responsible
17 adult and say he's been arrested, especially when they
18 cannot contact -- cannot reach the parents. And the
19 officer said he just couldn't -- he couldn't reach the
20 parents, he took them to -- he took -- the officer had
21 taken Nicholas to his home and the parents weren't present.

22 Q. Okay. If Sergeant Wilson testified though on page 86
23 that Nicholas had made no request for his parents, did you
24 have information from Nicholas to refute that? Did he
25 explain to you as he has explained today that he wanted to

1 contact his parents and wasn't given that opportunity?

2 A. No, not that I can -- not that I can remember. He --
3 he may have, but, no, not that I can remember. And -- and
4 certainly if he had, I would have told him what the nature
5 of the South Carolina law was. I would have explained that
6 to him. I'm very good at explaining things to children.
7 Very, very good at that. So -- so if he had, certainly I
8 would have explained that to him.

9 Q. And I've been reviewing family court provisions and
10 the Juvenile Justice Code. I've already admitted to you
11 it's new to me.

12 A. Uh-huh.

13 Q. But in looking at the statute and then, specifically,
14 Subsection D, it gives very specific requirements for how
15 a juvenile is handled. There in Subsection D it goes
16 through the time frame in which they must be transported to
17 a facility, the people that must be contacted. Did you
18 look into all those specifics in this case regarding the
19 arrest?

20 A. This is when it's non-custodial. This is a situation
21 when you have primarily status offenses. The Subsection D
22 is not -- it's not pertaining to custodial -- custodial
23 interrogation or when a child is taken into custody and
24 there's a difference between a child having been taken into
25 custody. And we don't use arrest because there's a huge,

1 huge difference. Sometimes a child is taken into custody
2 for his protection and then the officer will release the
3 child into the custody of the parents, so the child has
4 technically not been arrested, only taken into custody.
5 And it just depends on why the child was taken into
6 custody.

7 Subsection D does not refer to custodial interrogation
8 or when a child is taken into custody. That's when the
9 officer has contact with the child and he's not taken into
10 custody. For instance, it's when the officer sees a child
11 during school hours and the child -- knows that the child
12 should be in school. The officer makes contact with the
13 child and says, "Why are you not in school? It's 10:00 in
14 the morning, you should be in school. How old are you?"
15 "Oh, well, I'm thirteen." "Well, you should be in school."

16 So that's noncustodial contact and that's what this
17 is referring to. And so, "Well, you know what? I'm gonna
18 call your parents", and the child says "well, I was sick
19 and I came" -- you know, gives the officer some kind of
20 excuse as to why he's not in school or she's not in school
21 and then the officer makes contact. That's what Subsection
22 D is referring to, situations like that, not in a custodial
23 situation.

24 Q. So in this case though, did you go through the
25 specifics of his arrest and initial detention to make

1 sure --

2 A. Oh, absolutely.

3 Q. -- it was complying with the statutes?

4 A. Absolutely. Absolutely.

5 Q. And did you see any arguments that could have been
6 made on his behalf regarding the compliance with those
7 statutes?

8 A. Okay. When you make your reference to arguments that
9 I could have made in compliance with the statute, you say
10 in terms of the judge -- in terms of the merits of the
11 case?

12 Q. Well --

13 A. That wouldn't be an issue that would probably go to
14 the merits of the case, but certainly if I saw anything
15 that was egregious, I would bring that to the -- the
16 attention of the court.

17 Q. Okay. And you've indicated that the waiver proceeding
18 was not the appropriate time since it's not a merits
19 hearing to address the voluntariness of his statements, but
20 the court did indicate that he had reviewed that statement.
21 So are you given an opportunity to express any concerns or
22 point out specific things in that video statement to the
23 judge and, if so, when did you do that?

24 A. Yes. When we -- when we reviewed the videotape in
25 court. When we reviewed the videotape. And at the initial

1 -- at the initial detention -- not at the initial detention
2 hearing because that's when they moved to -- I can't
3 remember if they had any testimony. At some hearing later
4 the officer explained what was going on on the videotape.
5 The judge was present and the solicitor was present and we
6 went over the videotape and I believe on that videotape he
7 did -- the officer asked Nicholas did he want a pres -- did
8 he want an attorney present and he -- he waived his right
9 to an attorney and, of course, I told you at the -- his
10 statement.

11 Q. Were you finished? I'm sorry. I -- just I wasn't
12 sure if you were finished.

13 A. Yes.

14 Q. Okay. And my next question has to do with the waiver
15 evaluation that the State admitted. On page 14 of that, it
16 goes through negative factors and positive factors to be
17 considered.

18 A. Uh-huh.

19 Q. It appears there's five positive factors there.

20 A. Uh-huh.

21 Q. What was your opinion on this? Did you feel good
22 going, you know, with these findings here? Did you feel
23 like there was an argument that could be made on his behalf
24 based upon these positive and negative factors?

25 A. What I'm -- what I'm not understanding in your

1 question is when you use the term "argument". What do you
2 mean when you --

3 Q. Was there an argument at the end of the juvenile
4 waiver hearing when the judge allowed you to give your
5 argument?

6 A. Uh-huh.

7 Q. And prior to that you had reviewed, I assume, page 14
8 where it gives positive and negative factors. Was this
9 something you incorporated into your argument and, if so,
10 how?

11 A. Yes, I incorporated -- this -- this pre-waiver
12 evaluation is -- is given to the judge very early on in
13 the process, so in that process we have meetings with the
14 judge. It's not necessarily the judge who's going to
15 preside over the waiver hearing. Lots of meetings with
16 the solicitor regarding decisions. I have hundreds of
17 pages of notes on back and forth with the psychologist
18 because that's the most important person is the
19 psychologist in this particular matter who would testify
20 as to the negative and positive, so that's really, really
21 important. I went over all of these with -- with Nicholas
22 and certainly I'll incorporate those within my closing
23 arguments. And with the closing arguments, that's not
24 something that's required. The judge will either allow you
25 to have a closing argument or not. It's not anything

1 that's required by law and, as a matter of fact, the judge
2 could just say well, no closing arguments from anyone, and
3 the judges have done that because it's not a requirement,
4 The judge will just allow that you have just a few
5 comments, but I don't want you to comment on these factors
6 that were in the pre-waiver evaluation because I've already
7 gone over that in detail, just something else that you
8 would like to address the court with. And so it's not --
9 because the rules of evidence are not strictly enforced in
10 pre-waiver evaluation hearings and hearsay is allowed in
11 pre-waiver evaluation hearings. All that's allowed during
12 the hearing and the judge will just make decisions just
13 based on how he's feeling about the case at the time.

14 Q. And do you recall in this case if the judge did limit
15 you in any way from going into these factors?

16 A. No, I can't remember if he did or not. And be -- and
17 prior to that time, once the case settles, then the judge
18 talks to the solicitor and he talks to us and that's not
19 something that's -- that's on the record. I don't remember
20 if that happened in this particular matter. As a matter of
21 fact, I can't quite remember in this -- in this issue -- in
22 this case whether or not the judge talked about whether or
23 not he's actually going to waive this case and I remember
24 the judge was very angry, really -- not angry, but a little
25 upset with -- with me in my closing arguments I guess

1 because I used some religious terms and talked about
2 justice and things of that nature.

3 In this particular matter, I'll tell you what the
4 judge had really taken into consideration and what really,
5 really hurt Nicholas in this case is the victims and his
6 size, the fact that they lived in the neighbor -- lived in
7 the neighborhood and the officer said that he had been
8 there before. The victims came to the courtroom. The
9 victim who had Alzheimer's, the male, and his age I
10 couldn't remember, and he was yelling out in the courtroom.
11 He yelled out in the courtroom because he had Alzheimer's
12 and so because we were in that kind of environment you
13 could just tell from seeing the individuals that were in
14 there that this was really going to be very difficult
15 because we were nearing the end when some of these things
16 happened and then the family just took him out and said
17 we're not -- we're not bringing him back because it's too
18 much. He didn't even know where he was, that was the
19 victim, and so I think that was really -- really got to the
20 judge in this, not only the seriousness of the case, but
21 it's really the victim. Even though in his pre-waiver
22 evaluation, and we talked about this in detail, the
23 positive outweigh the negative, but the judge had said to
24 -- at some point in time I remember the judge saying -- he
25 said to look at these victims and look at the seriousness

1 of this charge.

2 Q. Did you agree with the court's decision to waive
3 Mr. Nesmith?

4 A. Absolutely not. I think all children -- all
5 children's cases, the majority of them, should be handled
6 in family court. I think family court is capable of
7 handling all juvenile offenses as well as criminal --
8 status as well as criminal offenses and in juvenile court
9 there really is rehabilitation. There is not -- once he's
10 outside of the purview of juvenile court and he goes to
11 general sessions, there is not rehabilitation and I don't
12 think the Department of Corrections has the ability to
13 rehabilitate a juvenile.

14 Q. Did you ever have the opportunity to speak with
15 Mr. Finney about appealing the waiver or transfer order
16 after the case was finally adjudicated?

17 A. Talk to Mr. Finney about appeals?

18 Q. About appeal of the transfer. You stated on direct
19 that it wasn't immediately appealable. The case had to be
20 -- particularly be adjudicated in general sessions before
21 an appeal could be taken.

22 A. That's correct. Uh-huh.

23 Q. Did you ever speak with Mr. Finney about pursuing that
24 appeal?

25 A. No.

1 MS. BLANCHETTE: If I could beg the Court's indulgence
2 one moment. Your Honor, I have no further questions of
3 this witness.

4 THE COURT: Anything?

5 MS. HARRIGAN: No additional questions of this
6 witness. I'd ask that Ms. Campbell Williams be excused
7 from her subpoena.

8 THE COURT: Any objection?

9 MS. BLANCHETTE: No, Your Honor.

10 THE COURT: Thank you. You may step down. You may be
11 excused.

12 THE WITNESS: Thank you, Your Honor.

13 (Witness excused.)

14 MS. HARRIGAN: The State's next witness is Luke
15 Shealy.

16 LUKE SHEALY,

17 having been duly sworn, testified as follows:

18 THE COURT: Thank you. You may have a seat. State
19 your full name, please.

20 THE WITNESS: Luke Shealy.

21 DIRECT EXAMINATION

22 BY MS. HARRIGAN:

23 Q. Good afternoon, Mr. Shealy. How long have you been
24 practicing law?

25 A. Since 2006.

1 Q. At the time you represented Mr. Nesmith, where were
2 you employed?

3 A. At the Richland County Public Defender's Office.

4 Q. Do you recall when you were appointed to this case
5 approximately?

6 A. No, not specifically. Just so the judge knows, I
7 wasn't subpoenaed to be here today or to bring my file, my
8 whole PD file, just asked to be here to maybe shed light
9 on it, so my memory is based on my recollection, but I
10 remember I was appointed immediately after he -- Nicholas
11 was waived up from family court.

12 Q. And based on that caveat that I know you don't have
13 your file to have reviewed before coming to court today,
14 do you recall approximately how many times you met with
15 Mr. Nesmith?

16 A. I think I represented him maybe for a year and a half
17 or so, so it would have been probably once a month or
18 sometimes more. It just depends. So twelve to fifteen
19 times; maybe more, maybe less.

20 Q. Do you recall ever meeting with his parents?

21 A. Yes, I do recall meeting with his parents when they
22 would come see me in my office.

23 Q. Do you recall how many times you met with his parents?

24 A. I'd have to -- I want to say maybe two or three, maybe
25 three or four.

1 Q. Did you file any Brady or Rule 5 motion on
2 Mr. Nesmith's behalf?

3 A. Yes, that would be the first thing we would have done.
4 Once it was waived to general sessions and I got the case,
5 I would have filed my Rule 5, typical public defender
6 discovery requests and all that.

7 Q. Did you get responses back from the solicitor's
8 office?

9 A. Yes, we did. We got all discovery that I think -- I
10 don't think discovery was really an issue in this case. I
11 think -- my recollection was I was satisfied that we had it
12 all. It was more of a problem with having a tough case and
13 a young -- young client.

14 Q. Do you recall reviewing the videotaped confession or
15 statement?

16 A. Yes.

17 Q. Did you review that with Mr. Nesmith?

18 A. I believe so.

19 Q. Do you recall how many times you reviewed discovery
20 with him?

21 A. No, not specifically. I just know that I would have
22 and, you know, try to answer any questions he had and try
23 to explain exactly where I thought we stood on the case and
24 review the evidence, and I don't remember exactly how many
25 times.

1 Q. What evidence did the State have against Mr. Nesmith?

2 A. Well, they had the statements from the elderly couple,
3 who I think were the victims. I can't remember if the man
4 gave a statement or not due to his mental state, but the
5 videotaped confession, I think. I forget the agency. I
6 think it might have been Irmo, which is somewhat unusual
7 because we usually don't have a lot of videotaped, you
8 know, confessions because Richland County Sheriff's
9 Department doesn't do it, the City of Columbia doesn't do
10 it, so that was -- it's something I always want agencies
11 to do, but in this case it was powerful evidence for the
12 State, so there was that. There was probably a photo
13 lineup, there would have been a statement from the
14 co-defendant, there would have been hospital records, EMS
15 records, his -- you know.

16 Q. When you say powerful evidence for the State, can you
17 expound on that?

18 A. Well, a confession is probably statistically, and --
19 and just in my own personal opinion doing it for a while,
20 the strongest evidence you can have in a case because you
21 have someone who's alleged to do something and if they're
22 admitting to that under circumstances that seem free and
23 voluntary, then it's really powerful evidence. And a lot
24 of times I'll get a case where my client will tell me that
25 he didn't say these things. Like, say, Richland County

1 has typed it up and I'll have a one-page little typed up
2 statement and they'll note they've been interrogated for
3 four or five hours, so I can -- you know, we can make a big
4 issue of that at trial, but here because it was literally
5 videotaped, you just can't really make as much of an issue
6 about that because you can see what the police officers
7 did, at least at the point in time the videotape was turned
8 on.

9 Q. Did he also give an initial statement at the scene or
10 around the scene?

11 A. Yeah, I do recall, I think, after the incident, I
12 think, the couple might have called their son or somebody
13 like that, some family member. The police were called
14 immediately and set up a perimeter and I think they found
15 -- I want to say they found Nicholas like in the
16 neighborhood and there was a dash cam video or some
17 documentation from that responding officer who stopped
18 him, I think, where he was saying, you know, something
19 incriminating like "I did it" or "you got me" or something
20 like that. Something not good at least to a criminal
21 defense perspective.

22 Q. Do you recall whether or not he waived his rights --
23 or was given his rights before making that first initial
24 statement?

25 A. On the scene?

1 Q. Yes.

2 A. I can't recall specifically. I don't think he was. I
3 -- I can't say one way or the other. It wasn't anything
4 written. He might have said something that they would call
5 excited utterance and then might have been talked to a
6 little bit further, but I can't say it for sure without --

7 Q. Do you recall whether or not he was given his rights,
8 including his right to counsel, before the videotaped
9 statement?

10 A. Yes, he was.

11 Q. Did he waive these rights?

12 A. Yes.

13 Q. Did you discuss the possibility of suppression with
14 Mr. Nesmith?

15 A. Yeah, we talked about all the issues in the case in
16 general and the -- what I felt were the problems with it
17 and just I didn't -- in my opinion didn't think we had much
18 of a shot at suppressing that videotaped statement.

19 Q. Why did you not think there was much of a shot of
20 suppression?

21 A. Just because it was on video and the advice of rights
22 was on video and it seemed, in my opinion, something that
23 was very conversational, free, voluntary, you know. I
24 don't think any crazy promises were made or any threats,
25 so it was problematic for us in a case where it was high

1 risk for Mr. Nesmith and really based on that and the
2 sensitivity of the victims. And the -- that confession,
3 that we really never talked a whole lot about trying to
4 push it to trial because it wasn't something that I was
5 advising and it wasn't something that he seemed to want,
6 so we were trying to just get the best possible plea deal
7 possible at that time and really focus on the case in terms
8 of a mitigation standpoint.

9 Q. Did he ever tell you he wanted a trial?

10 A. No.

11 Q. Did he ask you to secure the most favorable plea offer
12 you could from the solicitor's office?

13 A. Yes.

14 Q. Did you explain to him that if he did proceed to trial
15 you would be able to have a suppression hearing to try to
16 suppress his statement?

17 A. Right. We -- we talked about what would happen at
18 trial and in this case, you know, with Luck Campbell, and
19 I've had a lot of experience trying things with her, that
20 -- I mean, if -- even if he had really felt he wanted to
21 challenge that video, you don't just line one up typically
22 in advance of a trial because she's just gonna say "Well,
23 you'll get it at your trial", and I was -- we were trying
24 to fine tune some type of potential plea offer and that
25 offer's gone with Ms. Campbell when you go to trial. So

1 it was never -- we weren't -- we were really trying to
2 mitigate it and get the best possible plea deal possible.

3 Q. Based on your prior experiences with Ms. Campbell,
4 once pre-trial starts, once a Jackson v. Denno or other
5 sort of suppression hearing starts, offers are off the
6 table?

7 A. Yes, unless something comes to light in the middle of
8 a trial where she reevaluates, but she's -- to me this
9 would be -- it would have been a slam dunk for her.

10 Q. Just based on the evidence?

11 A. Yeah. I mean, based on the evidence, it would almost
12 be a slam dunk for anybody that knows what they're doing.

13 Q. Did you explain that to Mr. Nesmith and give your
14 opinion on that?

15 A. I did. You know, it was just always tough and he was
16 so young and we had -- it just was one of these cases
17 where you want something different, you know, you want a
18 different outcome, he wanted a different outcome, but we
19 were kind of here and it was a situation where, you know,
20 all we can do is -- all we can live with is what we've got
21 before us and try to make the best possible outcome, but
22 it was never something where I was advising him to go to
23 trial and he never -- he took my advice as far as I was
24 concerned.

25 Q. Did you advise him of potential punishments for the

1 four charges he was facing?

2 A. Yes.

3 Q. Did you advise him that burglary in the first degree
4 has a mandatory minimum of fifteen years?

5 A. Yes.

6 Q. Up to life imprisonment?

7 A. Right.

8 Q. When you reviewed discovery with him, did you go over
9 his version of the facts?

10 A. Yeah.

11 Q. What did he tell you happened?

12 A. Well, I don't -- unless I'm having a case where I
13 have a client that looks like it's gonna be some extreme
14 self-defense or something, I don't typically ask for his
15 version of the facts early on, maybe never. So we talked
16 a lot about the evidence, what he was facing. Sometimes,
17 you know, hypothetically if there's something vastly
18 different, then I'd ask for a version of the facts that
19 may be different, but if it doesn't appear that there was
20 something forthcoming that, you know, he had to get off his
21 chest that was so different, he had an alibi or something
22 like that, then I don't typically try to hear about more
23 bad facts.

24 Q. Understandable. What kind of investigation did you do
25 in this case? Did you use a private investigator?

1 A. Typically -- I mean, we have that ability at the
2 public defender's office and I would typically investigate
3 any major case like this, but I can't tell you whether I
4 did or not in this case because it wasn't -- it wasn't like
5 -- I mean, there were literally two victims, himself and
6 his co-defendant were the witnesses and I couldn't talk to
7 the co-defendant because he had a lawyer and, you know, the
8 victims wasn't -- I didn't -- I can't remember whether I
9 would have sent an investigator. I mean, it wasn't like we
10 were trying to figure out -- uncover an alibi or uncover
11 something different. We had basically medical records
12 establishing victim injuries, we had their statements
13 already, so I can't tell you whether I actually did it on
14 this case or not because it -- pretty early on it was
15 evident that this probably wasn't gonna be one for trial.
16 So I couldn't tell you without looking at my file, but it's
17 something I usually do.

18 Q. And, again, early on he told you he wanted a plea
19 offer?

20 A. Yes. And we always kind of tried to make it more of
21 a mitigation case. I think we hired a -- a psychiatrist
22 to properly evaluate him and see -- you know, the things
23 I'd be looking for would be whether at his young mental
24 state, you know, yes, he's -- there weren't issues with
25 competence, but it was is he a leader or is he a follower?

1 I think the co-defendant was older. You know, is he prone
2 to acting on impulses? And, you know, we were really
3 trying to mitigate it from that standpoint and I think we
4 might have had someone lined up to do that, but that --
5 that was -- that was what we had done.

6 Q. Did you enter into plea negotiations on Mr. Nesmith's
7 behalf?

8 A. Yes.

9 Q. Do you recall what the offers were?

10 A. I want to say that Luck made us an offer of a
11 negotiated twenty to twenty-five, which is -- you know,
12 it's a hard pill to swallow, especially for someone so
13 young. It was that or go to trial and it never got any
14 better. I think I tried to wear her down over time, but it
15 was not successful.

16 Q. Did you communicate these offers to your client?

17 A. Yes.

18 Q. When did your representation cease?

19 A. I'm not exactly sure. It was whenever Mr. Finney got
20 retained and I knew we were -- I think Luck was starting
21 to make noises about when she wanted to try the case and I
22 think Mr. Finney got retained sometime close to that. I
23 can't exactly say for sure, but --

24 MS. HARRIGAN: A moment's indulgence, Your Honor.

25 BY MS. HARRIGAN:

1 Q. Do you recall any of the videotaped statements?

2 A. I mean, just generally I recall it being kind of an
3 admission to the act.

4 MS. HARRIGAN: No further questions, Your Honor.

5 THE COURT: Any cross?

6 MS. BLANCHETTE: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. BLANCHETTE:

9 Q. Mr. Shealy, approximately how many criminal cases had
10 you -- have you handled over your career?

11 A. Handled? Like represented?

12 Q. How many clients have you represented?

13 A. Maybe five thousand. I don't know.

14 Q. And you admitted that you haven't reviewed your file
15 today, so everything that you're testifying to is just from
16 memory about this one case in the midst of all those cases;
17 is that correct?

18 A. Right.

19 Q. Okay.

20 A. I mean, this one does stand out. This case does stand
21 out to me just because of the unusual facts and, you know,
22 I enjoyed representing Nicholas. I thought, you know, we
23 -- I thought we got along well. I mean, I do remember it,
24 but just not -- I can't tell when Mr. Finney got retained
25 or when I actually got it, but --

1 Q. You know, you talked about reviewing the video and I
2 just want some clarification. Did you sit down and review
3 it with Mr. Nesmith at the detention center or did you
4 review it yourself and then advise him about it?

5 A. Well, I certainly would have reviewed it myself and I
6 can't say without looking at my notes whether I would have
7 taken it down there to him or -- you know, or -- I don't
8 know. I can't say for sure without looking at my notes.

9 Q. You indicated on direct that you evaluated possible
10 arguments or bases for suppression of his statement in this
11 case?

12 A. Uh-huh.

13 Q. In doing so, did you review the law that was
14 applicable to juvenile arrests, detentions and statements?

15 A. I didn't look at any juvenile law. I just dealt with
16 his issue and Jackson v. Denno-type scenarios regarding his
17 statement. I just -- I was dealt the hand of a -- of a guy
18 that had already been waived up, so I was just dealing with
19 the adult side of it.

20 Q. And you would agree that you didn't represent
21 Mr. Nesmith at his plea or trial; is that correct?

22 A. No, not technically, you know. I happened to be there
23 and I remember the plea, but I don't -- I wasn't actually
24 his lawyer -- official court lawyer on it.

25 Q. And would you agree that he would have been solely

1 relying upon Mr. Finney's preparation if he would have
2 proceeded to trial at that point?

3 A. To trial? Yeah, that would have between -- been
4 between Nicholas and Mr. Finney at that point.

5 Q. And during the motion hearing -- you just said you
6 were present for some of the court proceedings. There's a
7 debate between Ms. Campbell and Mr. Finney about whether or
8 not he got discovery. She indicated that you had all of
9 the discovery and he could have gotten it from you. Do you
10 recall if he ever contacted you to get a complete copy of
11 your file or ask for your assistance with this case prior
12 to the plea date?

13 A. I can't recall, but, you know, typ -- typically if --
14 and I knew Jerry and I know Jerry and if -- and if he gets
15 hired on a case and asks me for it, I would make a copy
16 for whoever the new lawyer would be, but I just can't
17 remember, you know, whether he would have asked that. But
18 if he had, I would have given it to him, but I can't say
19 without looking at the file or --

20 MS. BLANCHETTE: I beg the Court's indulgence one
21 moment. Your Honor, I have no further questions of this
22 witness.

23 MS. HARRIGAN: No additional questions for this
24 witness.

25 THE COURT: You may step down. Thank you.

1 THE WITNESS: Thank you, Judge.

2 (Witness excused.)

3 MS. HARRIGAN: The State's final witness is Jerry
4 Finney.

5 JERRY FINNEY,

6 having been duly sworn, testified as follows:

7 THE COURT: Thank you. If you'll have a seat. State
8 your full name, please.

9 THE WITNESS: My name is Jerry Finney.

10 DIRECT EXAMINATION

11 BY MS. HARRIGAN:

12 Q. Good afternoon, Mr. Finney. How long have you been
13 practicing law?

14 A. For twenty long years.

15 Q. And are you in private practice?

16 A. I am.

17 Q. And at the time that you represented Nicholas, were
18 you in private practice?

19 A. Yes, I was.

20 Q. What percentage of your practice is comprised of
21 criminal defense work?

22 A. Most of it. I do a lot of civil work also, which is
23 injury-type work, but most of my practice is criminal.

24 Q. Do you recall when you were retained by Mr. Nesmith
25 or his family?

1 A. If I'm not mistaken, and please correct me if I'm
2 wrong because y'all have got the documents, but I think it
3 was May of 2010.

4 Q. Yes, I -- I believe it was.

5 A. I think it was May of 2010.

6 Q. Did you know Nicholas or his family prior?

7 A. Very well.

8 Q. How did you know them?

9 A. We all go to church. Me and Nichols, his brother, his
10 mom, dad, all attend Wesley United Methodist Church here in
11 Columbia. I've known Nicholas since he was a young boy.

12 Q. How many times did you meet with Nicholas in regards
13 to these charges?

14 A. I definitely remember right after I got retained
15 to represent him I immediately sent out a letter of
16 representation to Nicholas's mom and dad, a letter of
17 rep to the solicitor's office. I think I requested a
18 preliminary hearing. I also sent a Rule 5 and Brady. And
19 I know that -- I've been present in court all day and I
20 was checking my file and I know that there was an issue
21 with respect to the Rule 5 and Brady being filed and I
22 brought with me my certificate -- or the certificate of
23 service from my legal assistant, Brandy Horton, that was
24 sent to the solicitor's in May -- May 5th of 2010
25 requesting the discovery in this case. So I know that

1 doesn't answer your question, but that -- that was what --
2 that's what I do with almost anybody that retains me. I
3 get all those documents out and then I immediately, as
4 Mrs. Nesmith correctly stated, I -- I had a sit-down
5 meeting at my office with her mom and dad -- with his mom
6 and dad and discussed the case and I immediately went and
7 saw Nicholas in jail. If my discovery went out in early
8 May, it would have been sometime in May or June that I went
9 to see him.

10 Oh, and how many times did I go see him? Between May
11 and he pled in August, I would say I went to see him
12 immediately after I was retained definitely and I know that
13 there was a discovery issue out there because I had filed
14 -- you know, requested the discovery, hadn't gotten the
15 discovery, but I had been in conversation with Luke Shealy
16 about everything about this case because he had certainly
17 represented Nicholas for a year and a half, gotten a good
18 idea about what this case was about and what evidence the
19 State had, knew that, you know, Luck Campbell was gonna be
20 prosecuting this case and that this was a major case, and I
21 think that when she first notified me by letter in early
22 July that they were intending to call this case to trial
23 late July, that's when I started really gearing down and
24 going to see Nicholas. I'm sure I saw him a couple of
25 times in July.

1 I received -- I actually -- this case was scheduled
2 for trial on July 26th and I got a letter from Luck
3 Campbell that I shared with Nicholas, his mom and dad, and
4 told them that, you know, we needed to be ready, but that
5 there were some discovery issues. Well, I did receive the
6 discovery on or about middle, late July and once I received
7 it I was able to get the trial date moved to August the
8 9th. So during the time that I had received the discovery,
9 I did go see Nicholas, took my laptop computer, showed him
10 stuff and met with them. So, I mean, all in all probably
11 four times between May and August.

12 Q. Do you recall the motions hearing on August 9th in
13 this case?

14 A. Yes, I do.

15 Q. Do you recall -- so at that time you had discovery and
16 I believe you tell the court that, correct?

17 A. Yes. That -- that -- yes. That was that Monday.

18 Q. And you're talking about the discovery that you
19 received in middle to late July --

20 A. That's right.

21 Q. -- letting the court know you had just recently
22 received it?

23 A. That's right. And then I needed time to digest it
24 and I asked for a continuance because for the first time --
25 and I think your -- your date is August the 9th, I think

1 that's a Monday, and I think that's the date that
2 Mrs. Nesmith was talking about coming back from Myrtle
3 Beach. I asked for a motion for a continuance because that
4 was the first time that Nicholas had indicated to me that
5 he wanted to go to trial and so I was informing the court
6 that I needed time to digest this if, indeed, my client
7 wanted to go to trial.

8 Q. So up until that point your client told you he wanted
9 a plea offer --

10 A. Absolutely.

11 Q. -- he didn't want to go to trial?

12 A. Absolutely.

13 Q. So your primary focus at that time had been
14 negotiating a favorable plea offer?

15 A. Absolutely.

16 Q. Did you receive any discovery materials from
17 Mr. Shealy?

18 A. No, not really. You know, the answer to that -- and
19 let me just explain that to you, please. I wouldn't want
20 to get discovery from Mr. Shealy for at least two reasons,
21 maybe more. One, if I had received discovery from
22 Mr. Shealy and let's say there were some documents that
23 were missing from that discovery, then I would have to
24 represent to Mr. Nesmith that I had received all discovery.
25 I didn't serve Luke Shealy with my Rule 5 and Brady. I

1 served the solicitor's office with my Rule 5 and Brady. I
2 expected to receive discovery from the solicitor's office.
3 In fact, and it's -- it's documented in the transcript in
4 this case, when I first got retained in May, I sent my
5 letter to the solicitor. Everybody's got that. It's in
6 the record. It was on a Friday at my office and I had on
7 shorts and flip flops and I was just being casual on a
8 Friday when I received a call from Judge G. Thomas Cooper.
9 He said we're over here in court. I want you to come over
10 here and put on the record that you represent Mr. Nicholas
11 Nesmith. I said well, that's unusual, Judge, because I
12 sent a letter of representation and a Rule 5 and Brady to
13 the solicitor's office. I am his lawyer, I've been
14 retained. They said well, this -- because lawyers have now
15 been switched from Mr. Shealy to you, we want you to come
16 over and put it on the record for some reason and I said
17 well, I'm not dressed appropriately for court and Judge
18 Cooper said it's okay, we'll take you as you are.

19 Well, I found some slacks and something and I went
20 over to the courthouse and walked in and we put it on the
21 record that I was officially retained as Nicholas's lawyer.
22 Well, while I was there, I thought I'd put on the record
23 that I have filed -- served a Rule 5 and Brady on the
24 solicitor's office and I'm expecting my discovery, which
25 Judge Cooper replied to me "Mr. Finney, you're entitled to

1 your discovery and if you have any problems, contact the
2 court and let me know".

3 Well, that was in early May. May, June, July, I
4 still haven't gotten any discovery and now Luck Campbell
5 is pushing this case for trial and I went back in -- and
6 the transcripts reflects it -- I went back at that point
7 and said I have served them with Rule 5 and Brady. You
8 told me, Judge, that if I didn't get it I could contact
9 you with any problems I'm having, I'm having a problem,
10 and now my client for the first time is indicating he wants
11 a trial, so I need -- you know, I need time to digest this
12 discovery. So that's -- that's kind of how it played out.
13 I hope I answered your question.

14 Q. So to the best of your recollection, it was prior to
15 this motion hearing when you moved for the continuance you
16 did receive discovery before?

17 A. Oh, yes. Oh, yes. Dana Alton, Luck Campbell's
18 paralegal, got it together and got it to me and that's why
19 the trial date switched from July 26th to August the 9th.
20 And -- and please be aware that during this time, I mean,
21 I'm on the phone almost every day with either Victor
22 Nesmith, Chrise Nesmith or going to see Nicholas Nesmith
23 because things were getting hot between late July and early
24 August.

25 Q. Did you convey to your client and his parents that, as

1 you termed it, things were getting hot?

2 A. Yes. Yes. Absolutely. And I conveyed to the -- to
3 his parents that, you know, I can -- I'm gonna ask for a
4 continuance, but that's not a guarantee that I'm gonna get
5 one because the problem was, was that he had been shown his
6 discovery by Luke Shealy, everybody knew that, and so, you
7 know, I'm coming in saying I haven't had time to process it
8 and digest it. But, you know, the judge doesn't have to
9 grant that motion, he could deny it, which Judge Cooper
10 actually, I guess, technically granted the motion for --

11 Q. Two days.

12 A. -- two days.

13 Q. Did Mr. Nesmith's parents know on the 9th that you
14 were going to be appearing in court moving for a
15 continuance on his behalf?

16 A. Absolutely.

17 Q. And you conveyed to them at that time that things were
18 getting hot and the case was nearing a trial, correct?

19 A. Absolutely. Absolutely.

20 Q. Did you know that his parents were electing to go on a
21 vacation despite nearing trial?

22 A. I do recall -- now sitting in court today, I do recall
23 what Ms. -- Mrs. Nesmith testified to about them being down
24 in Myrtle Beach, but, I mean, I told them, look, you know,
25 this is coming -- coming to a head and we better be ready

1 and I'm gonna -- and I told them clearly that I was going
2 to ask for a continuance based on these discovery issues,
3 but -- and I was not guaranteed one.

4 And, in fact, and I know this kind of dovetails into
5 an appeal issue and I know you haven't asked me about that,
6 but at that time I even discussed with them, I said -- you
7 know, once Nicholas had indicated to me on that Monday for
8 the first time, the 9th, that he wanted to go to trial, I
9 had a conversation with them, I guess, at some point once
10 they were back from Myrtle Beach or while they were at
11 Myrtle Beach, but it was on the telephone, I don't recall
12 which, but it was on the telephone. Once he had indicated
13 to me that he wanted a trial on that Monday, you know, I
14 told them, look, if we go to trial and Nicholas is
15 convicted, one of the issues that I could argue -- or your
16 lawyer could argue on appeal would be this denial of my
17 motion for a continuance, but I told them that they would
18 have -- that the only time they could bring that up or, you
19 know, appeal the case would be after sentencing, you know,
20 ten days, and covered all that with them.

21 So there was definitely conversations on the 9th with
22 respect to Nicholas and his mom and dad about the ten-day
23 notice for appeal, when it would be appropriate to do that,
24 and how that would play out if he went to trial and was
25 convicted. But I also told them that if he was to go to

1 trial and get convicted he could probably be sentenced to
2 somewhere around life and that, you know, the only, you
3 know, thing he could hang his hat on would be perhaps an
4 argument for my motion being denied by Judge Cooper for a
5 continuance on the discovery issues.

6 Q. When you say that if convicted at trial he'd probably
7 get near life, had you explained to your client and his
8 parents the maximum sentence for burglary in the first
9 degree?

10 A. Absolutely.

11 Q. Is that what you're basing off of the advice that he'd
12 probably get near life?

13 A. Yes. This was -- Luke was right. I mean, it's the
14 facts of this case. I've worked on a lot of cases and you
15 just don't forget the facts of this case. It's a terrible
16 -- plus the fact that I knew Nicholas ever since a boy, I
17 -- this was a heartbreaking case.

18 Q. Do you recall whether or not there were any statements
19 made by the victim in this case?

20 A. Yes.

21 Q. Do you recall whether the victim could identify the
22 main perpetrator of the physical assault on her and her
23 husband?

24 A. Nicholas.

25 Q. Were there any distinguishing factors between Nicholas

1 and his co-defendant that lended more certainty to her
2 distinguishing between the two of them?

3 A. I think it was that Nicholas's story --

4 Q. Were there any physical differences between Nicholas
5 and his co-defendant?

6 A. Oh.

7 Q. Perhaps a racial difference?

8 A. Oh, wait.

9 Q. You don't recall that?

10 A. I don't recall. I don't recall. I do recall though
11 the difference between -- I think in Nicholas's case the
12 police said that he was not honest up to a point, whereas
13 the co-defendant was consistent with what the victim had
14 said.

15 Q. Did you review his co-defendant's statements with
16 Mr. Nesmith before his trial -- or guilty plea?

17 A. You know, and that's a shame going back I can't
18 remember the race of the co-defendant because I watched the
19 vic -- the video with counsel, but anyway, I digress. Go
20 ahead. I'm sorry, what was your question?

21 Q. That's all right. I'm trying to rephrase now.

22 Did you review the co-defendant's statements with
23 Mr. Nesmith before his guilty plea?

24 A. Yes, everything. All discovery.

25 Q. And he gave multiple statements, correct?

1 A. That's right.

2 Q. Did you review the videotaped statement with him?

3 A. Absolutely. I took my laptop to the -- to Alvin S.
4 Glenn and met with him in the multipurpose room.

5 Q. And was this on the day of the plea or when was this?

6 A. I know it was before the plea and I want to say that
7 on that Monday -- between Monday and Wednesday I went
8 again.

9 Q. Went again and reviewed the tape again with him?

10 A. Yes. Yes, all discovery. Took -- took the whole
11 file.

12 Q. Did you review and discuss the possibility of
13 suppression of his two statements with him?

14 A. Yes.

15 Q. Did you explain what type of hearing or when in the
16 pre-trial process you would move to suppress these
17 statements and the tape?

18 A. Yes, but that would be only if we were going to trial.
19 And you've got to understand that as a criminal defense
20 lawyer with the experience I have, I cannot -- I cannot
21 close my eyes to my experience. In a case of this nature
22 where you've got Luck Campbell and a major case and you've
23 got Chief Buck present for a PCR hearing, this is an
24 important case to law enforcement and an important case to
25 the solicitor's office, and with that being said, you've

1 got -- you can't play -- you can't -- you need to try to
2 keep as many cards close to your vest as possible and not
3 show the other side all of your cards, if possible. And
4 so if you were to, for example, file a motion -- pre-trial
5 motions under Jackson v. Denno, et cetera, the prosecution
6 could take that as an indication that you're not going
7 forward with any kind of plea offer, withdraw the offer,
8 and then Nicholas is looking at life.

9 Q. Had you ever tried cases or had clients who were being
10 prosecuted by Ms. Campbell before?

11 A. Yes, and still do.

12 Q. Is her standard practice to remove all offers once
13 pre-trial begins or you indicate that you're seeking
14 suppression pre-trial?

15 A. Absolutely.

16 Q. Did you explain this to your client?

17 A. Many times.

18 Q. Have you had the opportunity to review the videotaped
19 statement in anticipation of coming to court today?

20 A. Yes.

21 Q. Based on your review, do you think this statement
22 likely would have been suppressed?

23 A. No.

24 Q. Why not?

25 A. The State -- I mean, Nicholas was -- after Nicholas,

- 1 according to the evidence, jumped the fence, I think walked
2 up to the police car, said I'm the one you're looking for,
3 something like that, I did it, something like that, almost
4 immediately read his rights and I think twice on camera is
5 -- gives a full confession, you know, checks off the
6 waiver, is allowed to talk to his brother, is brought back
7 to his house, is not denied anything, I think in the
8 history of confessions that I've reviewed and Jackson v.
9 Denno hearings that I've participated in, I didn't see any
10 grounds for a motion for suppression hearing, and I
11 discussed that with -- with Nicholas and his parents many
12 times. And that's why we never discussed -- there was
13 never a discussion about trial until August the 9th. That
14 was the first time the word trial was mentioned.
- 15 Q. Did you advise him of a likely outcome at trial based
16 on the State's evidence?
- 17 A. Yes.
- 18 Q. Did you -- how would you characterize the State's
19 evidence in this case?
- 20 A. Extremely strong.
- 21 Q. Did you advise his parents of this as well?
- 22 A. Yes, many times.
- 23 Q. And have you been present in the courtroom today?
- 24 A. I have.
- 25 Q. Did you hear Mr. Nesmith freely admit that he is

1 guilty of these crimes?

2 A. Yes.

3 Q. Was that your recollection of your conversations with
4 him?

5 A. Yes.

6 Q. He never denied any involvement in this case?

7 A. That's right.

8 Q. What sort of investigation did you do once you took
9 over the case?

10 A. You know, when I was retained, you know, my retainer
11 sets out that my -- my services are going to court and
12 legal services advice, going to see people and, you know,
13 if my client's in -- locked up, going to see him,
14 et cetera, but it spells out that any investigation that
15 the client wants to make is -- they have to pay for it and
16 there wasn't really any ever discussion about that. Luke
17 Shealy was correct when he testified today. This case
18 wasn't about going and locating a witness that, you know,
19 nobody could find. It wasn't about uncovering some
20 evidence at the scene or anything like that, going and
21 pulling something from some location. And, in fact,
22 Nicholas was right. When Nicholas testified today,
23 Nicholas testified that -- when asked the question about
24 investigation, he said, you know, I wanted Mr. Finney to
25 look back at the waiver and that -- that wouldn't be part

1 of a -- that wouldn't be a private investigator's job, and
2 so there was never a discussion about hiring anybody to do
3 any kind of investigation work. The only thing that we
4 discussed outside of my services was Donna Schwartz-Watts,
5 getting her involved in coming to court, which pursuant to
6 my retainer agreement I believe I've got the receipt.

7 Let's see. Give me a second.

8 Let's see. Chrise Nesmith, we gave her a receipt on
9 August 27th for \$150 that she paid for the cost of
10 subpoenas for people to come to court for the guilty plea.

11 Q. Do you recall who was subpoenaed to come to court for
12 the guilty plea and the sentencing?

13 A. Yes, it was -- I've got it. I can tell you
14 specifically, but -- well, let me go ahead and do that so
15 I don't -- it looks like it was Reverend John Dicks, who
16 was the pastor of our church, Donna Schwartz-Watts, there
17 was an Officer Churchill, Officer Rebecca Lewis, Lee Ruth
18 Bankhead, and that's it.

19 Q. And I believe you were looking for a receipt for a
20 Dr. Donna Schwartz-Watts.

21 A. Oh, yeah. Yeah, I've got that right here.

22 Q. To the best of your recollection, did you have
23 Nicholas evaluated by Dr. Schwartz-Watts or was the
24 evaluation done while Mr. Shealy was still representing
25 him?

1 A. No, I think it was while Mr. Shealy was still
2 representing her {sic} and then I have a receipt here
3 dated -- this is dated August 20th of 2010 for \$600 to
4 Donna Schwartz-Watts Chrise Nesmith paid. And, see, this
5 money I would put in my escrow account. I put this money
6 in my escrow account; the \$600, the \$150 that I testified
7 to earlier, and then we would write a check from our escrow
8 account to cover the costs, but the client would pay these
9 costs.

10 Q. Do you recall what that six hundred dollar fee to
11 Dr. Schwartz-Watts was for?

12 A. I think it was the -- the cost that she charged them
13 for coming to court for the -- you know, for her -- for her
14 testimony in -- in court for the -- for the guilty plea.

15 Q. Do you recall whether or not you did present testimony
16 from her in mitigation?

17 A. I did. It's in the record.

18 Q. And your testimony is that up until the Monday before,
19 Monday the 9th, your client had always insisted he wanted
20 to plead guilty?

21 A. Without a doubt.

22 Q. Did you enter into plea negotiations on Mr. Nesmith's
23 behalf?

24 A. Many times and the answer was always the same from
25 Luck Campbell.

1 Q. What was that answer?

2 A. It ain't gonna change. You either take this deal or
3 we go to trial.

4 Q. What deal are you talking about? Is it the deal that
5 Mr. Shealy testified to prior?

6 A. That's right, and the deal that Nicholas took.

7 Q. So to the best of your recollection, that deal was the
8 same even when you were retained?

9 A. Yes, ma'am. In fact, when I was retained I distinctly
10 remember Victor Nesmith, Nicholas's father, asking me --
11 that he wanted me to -- that basically there was an offer,
12 that they weren't satisfied with the offer, they wanted a
13 better offer, that it wasn't anything personal about Luke,
14 but that they knew me and they wanted me to just kind of
15 review it and if my -- after I reviewed it, if I thought
16 that what Luke had done and the offer was -- you know,
17 that it was the best that we could do, then they would be
18 satisfied with that.

19 Q. Did you communicate this offer to your client?

20 A. Yes.

21 Q. And his parents?

22 A. Yes. And, again, I couldn't agree more with Luke.
23 You know, they didn't like the outcome, you know, they
24 didn't like the twenty to twenty-five years that was --
25 I'm sorry to say it word for word, but Luke is right. I

1 mean, you know, it's -- it was a hard pill for them to
2 swallow because of the age of Nicholas. Like I said,
3 that's -- that's why this is a -- is a sad case and that's
4 why it stands out, because he was so young, and that's a
5 lot of time, but he was facing a lot more.

6 Q. Did Mr. Nesmith understand that if he pled guilty
7 under the State's negotiations he'd get a sentence between
8 twenty and twenty-five years?

9 A. Yes.

10 Q. Did you advise him of the consequences of his guilty
11 plea?

12 A. Absolutely.

13 Q. And I believe you touched on this before, but did you
14 advise him how a guilty plea would impact any appellate
15 rights?

16 A. Oh, yes. Yes.

17 Q. Did you advise him that it would limit or take away
18 his ability to challenge his waiver on appeal?

19 A. I -- I told him that this waiver issue that happened
20 long before, long before, I had gotten involved in the
21 case, but they were talking to me about it once they got
22 me involved in the case, I said, look, you know, that's
23 something that you can take up on appeal and we discussed
24 that and we discussed this motion for the continuance based
25 on the discovery. I cannot emphasize that enough. That

1 was talked about many, many times and I advised him that
2 all of those issues could be taken up on appeal within ten
3 days, but that I was not the appellate lawyer and that,
4 you know, they would need to, you know, hire an appellate
5 lawyer or we could renegotiate a new contract for an
6 appeal, but there was never any contemplation for an appeal
7 once the sentencing took place.

8 Q. You were -- then Nicholas or his parents never
9 requested you file an appeal on his behalf?

10 A. No. They -- they made one more payment on the account
11 that they have with me and -- after the sentencing and they
12 still have an account with me.

13 Q. Besides advising him of the consequences, what else
14 did you tell Nicholas to advise him or to prepare him for
15 his guilty plea?

16 A. I mean, I -- I told Nicholas -- let's see. You know,
17 90 -- better than 90 percent of the guilty pleas that I do,
18 it's usually me and my client. I may have his mom or dad
19 there, but, I mean, it's usually me and my client. This
20 was a big deal to have all of these people there, subpoena
21 them, you know. I mean, we did really put a lot of effort
22 into this and, you know, it wasn't because -- this wasn't
23 a situation where he was looking at zero to life. I mean,
24 this was twenty to twenty-five, and we were very, very,
25 very fortunate to have that negotiated plea and so we

1 wanted to get him the twenty, if we could, you know,
2 instead of the twenty-five and so we put forth a lot of
3 effort to do that and brought everybody. Everybody that
4 Mr. and Mrs. Nesmith and Nicholas wanted was there and we
5 put it up. And so I hope that answers your question. I
6 mean, we -- we -- we -- we put a lot of effort into the
7 presentation at the plea to try to get him on the twenty
8 side. Closer to twenty instead of twenty-five.

9 Q. Did Mr. Nesmith ever ask you if he could speak to the
10 plea court either at the plea hearing or the sentencing?

11 A. Yes.

12 Q. Did you advise him whether or not it would be
13 beneficial to talk to the court?

14 A. Absolutely. In fact, Nicholas wrote a letter, a
15 handwritten letter, when I met with him downstairs in the
16 holding facility right here and showed it to me and it was
17 what he was planning to say to the judge. I advised him
18 not to say what he had written down because I didn't think
19 that it would help and so we talked about what he should
20 say and things like apologizing to the victim, you know,
21 making eye contact with the court, yes, sir, no, sir,
22 speaking clearly, things of that nature, making sure that
23 he understood all the rights that he was waiving, making
24 sure that he understood everything.

25 Q. When you say you advised him of what not to say

1 because it wouldn't help, do you recall what he wanted to
2 tell the plea court?

3 A. Yeah. Nicholas had written some stuff down that
4 basically -- I -- I think he was very angry at that time
5 and, you know, I heard Ms. Williams testify about what was
6 going on in his personal life. Nicholas was very angry at
7 that time. It was a bitter pill to swallow for him to
8 accept that much time and it -- there was some anger that
9 was, I think, articulated in that note and I gave it -- I
10 gave it back to him. I said no, Nicholas, you -- you don't
11 want to do that, you want to -- on a guilty plea you want
12 to talk to the judge and express that you accept
13 responsibility for what you did, you want to show remorse
14 for what you did and you want to show the judge that you
15 are a life worth saving so that you can return to society
16 and be a productive citizen, and that's what we talked
17 about.

18 But he was angry at that time. Nicholas even wrote
19 me a letter, and I have it with me, where Nicholas talked
20 about the fact that he wanted bond. This letter is from --
21 hang on. This letter is dated May 21st of 2010 and this
22 letter articulates basically what Nicholas's thoughts were
23 during that -- during that -- the May to August time
24 period. This letter talks about how he wants me to drag
25 out the case for as long as I can because he wants bond and

1 he wants bond because he wants to have an opportunity to go
2 home and be with his family before he's going to prison.
3 He says in the letter that he knows he's going to prison
4 and that's kind of what we talked about during that time,
5 but I had to continue to remind him that this was not a
6 bond situation. I didn't feel comfortable asking for bond
7 because, again, I thought if I asked for bond I thought
8 Luck Campbell would say fine, plea offer off the table,
9 we're going to trial, you're looking at life.

10 So that was my advice to him; that we didn't need to
11 file for a bond hearing request and we never did. He
12 listened to me. He just wanted to get out of jail. He --
13 he was very upset and -- and -- and very -- just thought
14 that he wanted less time. It was the -- he just didn't
15 like the -- the -- the amount of time that they wanted him
16 to serve, but I know it's -- when somebody gets twenty-two
17 years, it's, you know -- people think, you know, how can
18 you say that that was a good thing for them? But when
19 they're facing life and they're the age that Nicholas is --
20 and then the evidence. Good Lord, the evidence that they
21 had against him, that's a no-brainer.

22 Q. Was it Mr. Nesmith's decision to enter a guilty plea?

23 A. Yes.

24 Q. Did you request deferred sentencing after the guilty
25 plea?

1 A. I did based on the fact that I needed all these people
2 there to fight hard so that Nichols would get closer to
3 twenty instead of twenty-five.

4 Q. And following the guilty plea and sentencing,
5 Mr. Nesmith or his parents never contacted you to request
6 an appeal?

7 A. No. No, we talked about it and I -- I don't know what
8 it was based on, but, I mean, I told them that if they
9 wanted me to do it they would need to take care of the
10 account that they had with me and then we would need to
11 enter into a new agreement for the appeal and I told them
12 that the appeal would be a lot more than what they had paid
13 me to do this because there would be a lot more work, but
14 I told them that they -- you know, they were free to get
15 another lawyer and I told them, listen, they -- they
16 qualified for the public defender, they might qualify for
17 the appellate defend -- defender and talked about all that.
18 But definitely I had that conversation with them because
19 of the motion for discovery -- I mean, the motion for
20 continuance and the discovery issue that was denied and the
21 other issue that we just talked about, the -- I can't think
22 of it.

23 Q. The waiver?

24 A. Yeah, the waiver. Thank you. Thank you.

25 MS. HARRIGAN: A moment's indulgence, Your Honor. No

1 further questions, Your Honor.

2 THE COURT: Any cross?

3 MS. BLANCHETTE: Yes, Your Honor. Briefly.

4 CROSS-EXAMINATION

5 BY MS. BLANCHETTE:

6 Q. Mr. Finney, do you have a copy of the plea transcript
7 up there with you?

8 A. I do.

9 Q. Okay. I was gonna provide you a copy if you need it.
10 I've already got it turned.

11 A. Yeah, give me a copy. I've got a mess up here.

12 Q. (Handing.)

13 A. Thank you. Thank you.

14 Q. I first wanted to ask you about the discovery motion
15 and you indicated that it was properly served upon the
16 solicitor's office. Did you have any proof that it was
17 properly clocked in or filed at the Clerk of Court's
18 Office?

19 A. No, I don't have any -- let me just tell you how.
20 After twenty years of doing this, I'm still doing it the
21 same way. I have not changed my procedure at all in twenty
22 years of doing it. I send my Rule 5 and Brady out with a
23 certificate of service proving with the certificate of
24 service that I deposited it into the U.S. Mail, all right?
25 Now I don't send discovery certified, I don't file it with

1 the Clerk of Court. I send it with the certificate of
2 service and I have -- never on any other case in my whole
3 career have I ever had a problem with it not -- with me not
4 being -- with me not getting discovery pursuant to doing it
5 that way. So that's how I did it in this case.

6 Q. Okay. And on page 16, I have that turned to line 2,
7 Ms. Campbell tells the court, "We don't have a motion for
8 discovery, there's not one filed in the clerk's office and
9 I checked yesterday and didn't see one filed." You
10 wouldn't dispute that, that there wasn't one filed?

11 A. I will not ever -- I will tell you I did not file it
12 with the clerk's office.

13 Q. And if you could turn back in that transcript to
14 page 7, line 5, I just wanted to ask you to clarify some of
15 the things you said today versus what you told Judge Cooper
16 at the motion hearing.

17 A. Okay.

18 Q. Beginning on page 7, line 5, you give an explanation
19 that you had an associate over at the courthouse speaking
20 to Luck Campbell about another case.

21 A. Hold on. Line 5?

22 Q. Yeah. You know, I'll let you review them and I'll ask
23 you.

24 A. Let me see.

25 Q. Page 7, line 5 through the end of the page

1 essentially.

2 A. Okay. Give me a minute.

3 Q. If you could look over that, please.

4 A. Okay.

5 Q. There you essentially tell the judge you didn't know
6 this was scheduled, but on direct it was my understanding
7 that you said you knew this was scheduled for August 9th.
8 I was just hoping you could explain the discrepancy there.

9 A. No, and I -- that's what I was doing before. Do you
10 have a copy of -- okay. I know this is in the record.
11 You've got a copy of Luck Campbell's letter to me dated
12 July 1st?

13 Q. Actually, Mr. Finney, it's not in the record yet, but
14 if you'd like to identify it for the record --

15 A. Okay. There you go.

16 Q. -- then I would like to move it in.

17 A. There you go. That's it.

18 Q. And is this, in fact, the letter that you received
19 from Luck Campbell?

20 A. Yes. Yes.

21 MS. BLANCHETTE: Your Honor, at this time I would
22 introduce Applicant's Number 6.

23 MS. HARRIGAN: No objection from the State.

24 THE COURT: It's admitted.

25 (Petitioner's/Applicant's Exhibit Number 6, Letter of

1 July 1, 2010, was marked and admitted into evidence.)

2 BY MS. BLANCHETTE:

3 Q. And continue. Did you want to refer to the letter in
4 your hand?

5 A. Okay. It -- it says, "Please be advised that this
6 case is subject to being called for trial the week of
7 July 26th." Okay. So that's on the 1st of July, so we're
8 going all the way back to July 1st is these conversations
9 that I'm having with Mr. and Mrs. Nesmith for the month of
10 July in light of this -- me receiving this letter, okay?
11 So we're not talking about, you know, just that day or the
12 day before or the weekend before. I mean, the entire month
13 I've been put on written notice, excuse me, that at the end
14 of the month we're going to trial. Well, I know there are
15 some discovery issues out there, but while I'm talking to
16 them I also know that he has already seen his discovery
17 because I've talked to Luke Shealy, I've talked to him,
18 I've verified this and that, so I'm -- I'm kind of talking
19 like look, I'm gonna get your discovery. You're not going
20 to plead guilty and you're not gonna go to trial without me
21 showing you your discovery, that ain't gonna happen in this
22 country, and so I clearly set that out. So I think -- is
23 it -- correct me if I'm wrong, is this transcript that
24 you've shown me August the 9th?

25 Q. That is the date on the front of the transcript.

1 A. Right.

2 Q. And in your direct I believe you testified that you
3 knew about the plea first thing on August 9th, so I was
4 confused by your comments here that you didn't have notice
5 and you just found out about it because your associate was
6 having a conversation with Luck Campbell about another
7 case.

8 A. No, I -- let me -- let me read this again. I sent my
9 associate -- hold on. I think -- I think that's accurate.
10 I think what -- what I'm saying there to the judge was that
11 I thought we were gonna go forward on the other case on the
12 9th, but Ms. Campbell wanted to do the Nesmith case, but, I
13 mean, I had prepared for both of them.

14 Q. Did you know though that it was, as you tell the
15 judge, "She said it's scheduled for 2:00 this afternoon and
16 ever since then I've been working all day to get in touch
17 with his parents and get everyone else involved." So did
18 you know it was scheduled at 2:00 until that morning?

19 A. Did I know it was scheduled at 2:00? I think I knew
20 -- I think that what my -- I thought my conversation with
21 Ms. Campbell was, was that we were gonna go forward with
22 the other one. This was a long time ago. I'm doing the
23 best I can, but I thought, reading this, that we were gonna
24 go forward with the other one. She wanted to do that 2:00
25 -- I mean, she wanted to do Nesmith at 2:00, so I got --

1 I, you know, switched gears and got into that, but that
2 doesn't mean that I didn't advise his parents and
3 Mr. Nesmith that this was coming up. That's routine. I
4 mean, I'm double-booked right now for stuff coming up and
5 I have to advise both of those sets of clients' families
6 and clients that we have to be ready for that day.
7 Something could fall out and something could take its
8 place, but we have to be ready. And so with respect to
9 this, the -- the issues that we were talking about, if I'm
10 not mistaken now, if I'm not mistaken, on August 9th that's
11 when the judge continued the case to August the 11th,
12 right?

13 Q. So that the trial could begin.

14 A. Correct.

15 Q. You were gonna pick the jury --

16 A. Right.

17 Q. -- the next day and then the trial was to begin then?

18 A. So -- so -- so he didn't plea on August the 9th, he
19 pled on August the 11th, so that would have been two days
20 later.

21 Q. But on August the 9th you do indicate that you're
22 trying to get in touch with his family --

23 A. That's -- that's right.

24 Q. -- and that you had just found out that morning that
25 the hearing was scheduled for 2:00?

1 A. That's what Ms. Campbell said. To be ready.

2 Q. And --

3 A. But -- but -- but, again, I have to refer you back to
4 what you just put into evidence. That letter of July 1st
5 when I was put on written notice, that whole month I am
6 advising his family we have to be ready, we've got -- this
7 is coming up. I might get it continued based on the
8 discovery issues, but we have to be prepared for it not
9 being continued and be ready to plead guilty.

10 Q. And you have characterized this motion hearing as a
11 motion hearing based upon lack of discovery and discovery
12 issues. On page 6 --

13 A. Well -- well, no, let me correct you. I -- I
14 characterize this motion as my motion on -- on the 9th was
15 the first time that Nicholas had ever advised me he wanted
16 a trial. That was the first time. All the month of July
17 is plea, okay? All the month of June is plea. All the
18 month of May is plea. So for the first time on the 9th he
19 advises me it's a trial. When he advises me it's a trial,
20 yeah, I go in there and I make a motion for a continuance
21 because now I have to digest all the discovery for a -- for
22 purposes of a trial and -- you know, and that's why I asked
23 for more time.

24 Q. My question was gonna be did lack of notice also
25 factor into the motion that you were making that day? That

1 Ms.. Campbell -- you had just got notice that morning.

2 A. Well, I kind of thought I was -- in all honesty, I
3 thought I was being jerked around. I mean, they had
4 brought me over to the courthouse in -- you know, on a
5 Friday without any notice to put on the record that I was
6 his lawyer in May. I get there, put it on the record that
7 I'm his lawyer, and I thought very smartly put on the
8 record and, by the way, I've sent discovery to you-all, how
9 about giving me my discovery? And the judge says, you
10 know, yes, let me know if you have any problems with that
11 and then -- and now they want to do the plea and there's
12 still some discovery issues and my client now wants a
13 trial, so I'm like well, can I have -- you said -- judge,
14 you said if I have any problems, let you know, I'm letting
15 you know, and so he continued it until Wednesday.

16 But in that 48-hour period of time between Monday and
17 Wednesday, I had a lot of conversations with his family,
18 a lot of conversations with Nicholas, and Nicholas had
19 clearly stated he had seen his discovery, I've shown him
20 his discovery, he was just upset about the bond issue and
21 he was upset about the amount of time. It was never a
22 conversation about, you know, suppressing things, motions
23 that should have been filed, investigators that should have
24 gone out and investigated, none of that. It was -- it was
25 just he didn't like -- they didn't like the amount of time.

1 Q. When you got that letter dated July 1st about the
2 July court date, did you raise an issue to Judge Cooper or
3 anyone at that point that you still hadn't received the
4 discovery?

5 A. One more time.

6 Q. When you received the letter that we were referring
7 to dated July 1st regarding the July 26th court date, did
8 you ask for a motion hearing or raise the problem with
9 discovery to Judge Cooper or anyone else at that time?

10 A. I think I -- I -- I called Luck Campbell and I said
11 Luck, you know I haven't gotten discovery yet and, you
12 know, I don't know, she just kind of was like -- I think it
13 was -- I was just waiting for her to comply with discovery.
14 I -- I know I called, I was waiting for her to comply, but
15 I'm not -- I do have my experience and along the same time
16 period I was talking to the family saying look, you know,
17 it might get continued, it might not, but we've got to be
18 ready. Y'all have seen the discovery, you know, I'm gonna
19 see the discovery, I'm not gonna plead you, I'm not gonna
20 let you go to trial without showing it to you myself and --
21 and also that's why I went and got Luke and -- and asked
22 Luke to go down to the holding cell with me here to talk
23 to Nicholas before he pled because, you know, I wanted
24 Nicholas, who has known me pretty much all his life, but
25 I've only represented him from May until July or August of

1 2010, to have the benefit of the past lawyer that Nicholas
2 had told me he had no problem with, I got his permission to
3 do that, and brought him down there to have a conversation
4 with him about all things discovery, all things, if he went
5 to trial, what type -- what type of penalties he would be
6 facing, you know, what type of risk he'd be running. It
7 was a very in-depth conversation about his case.

8 Q. Now, Mr. Finney, if you had been preparing the month
9 of July for this plea and you said you had to get a lot of
10 people together and put together the best case possible,
11 why did you need to defer sentencing or more time to get
12 these people together?

13 A. On -- on -- I think it was just a scheduling thing
14 with Luck Campbell. Again, I don't even remember what the
15 other case was, but I know we had another case and it was
16 just my -- I just believed -- I said Luck, I thought we
17 were gonna do the other case and not this one, but I was
18 kind of preparing both of them and when she put me on
19 notice, no, it's 2:00 today we're gonna do this, I went
20 in there, asked for more time, the judge gives me until
21 Wednesday. Well, if you -- if you're me, you stop
22 everything and then it's all about Nicholas Nesmith from
23 the 9th until the 11th, so that's why I did that.

24 Q. But from the 9th to the 11th you weren't able to get
25 these people together. You indicated that you weren't even

1 able to get in touch with Donna Schwartz-Watts and so you
2 had to ask for a deferred sentencing. Wasn't there a risk
3 there that the court had not deferred the sentencing and
4 made you finalize the plea at that point?

5 A. I guess. I guess, but they didn't, so -- I mean, no
6 disrespect, but, I mean, I think that's a moot point
7 because, I mean, it didn't play out that way. I mean, kind
8 of like, I guess, when we went to sentencing Nicholas could
9 have asked the court to withdraw his plea. That didn't
10 happen either.

11 Q. And I guess, Mr. Finney, I'm just confused by the fact
12 that you indicated that you had notice and the family had
13 notice but they chose to go on this vacation anyway, but
14 yet you needed deferred sentencing so it appears you
15 weren't ready to go forward.

16 A. Well, I -- no, I disagree with that. It was
17 scheduling because, see, I've got -- I've got receipts
18 right here that are written to Chrise Nesmith dated August
19 the 27th of 2010 for subpoenas for the guilty plea, so that
20 -- that proves right there that we were getting ready for
21 the guilty plea before August 9th. Here's another one for
22 Donna Schwartz-Watts, a receipt, for -- and this is August
23 the 20th of 2010.

24 Q. Which would be after the guilty plea was entered; is
25 that correct? Since the guilty plea was entered on

1 August 9th -- or, I'm sorry, started on August 9th, the
2 plea was entered on August 11th.

3 A. Right. Right, before sentencing. I'm sorry. Yeah,
4 before sentencing. Yeah.

5 Q. So one -- none of that was done before the actual
6 guilty plea?

7 A. But the conversations about how much stuff would cost
8 was certainly in place before that.

9 Q. Now you indicated and Mr. Shealy's testimony also
10 indicated that the same deal that was extended to him was
11 extended to you and so would you concede that Mr. Nesmith,
12 as far as the deal, was not put in a better position as a
13 result of your representation?

14 A. Or -- or worse.

15 Q. And, Mr. Finney, if I could just have you identify
16 this for the record, please. I believe you referred to it
17 already in your testimony.

18 A. Oh, yeah. Yeah.

19 Q. What do those appear to be?

20 A. You -- both of these are one exhibit?

21 Q. Yes.

22 A. Okay. Yeah, I recognize these.

23 Q. Okay. And are these the letters that you sent out on
24 May 5, 2010, regarding your representation?

25 A. I did.

1 MS. BLANCHETTE: Okay. Your Honor, at this time I'd
2 move this in as Applicant's Number 5.

3 MS. HARRIGAN: No objection from the State.

4 THE COURT: Without objection they're admitted.

5 (Petitioner's/Applicant's Exhibit Number 5, Letters
6 Dated May 5, 2010, were admitted into evidence.)

7 MS. BLANCHETTE: If I could just beg the Court's
8 indulgence one moment. Your Honor, I have no further
9 questions of this witness.

10 MS. HARRIGAN: A moment's indulgence, Your Honor. No
11 further questions of this witness, Your Honor.

12 THE COURT: You may step down. Thank you.

13 MS. HARRIGAN: And I'd ask that Mr. Finney be released
14 from his subpoena.

15 THE COURT: Any objection?

16 MS. BLANCHETTE: None, Your Honor.

17 THE COURT: You may be excused. Thank you very much.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 MS. HARRIGAN: And, Your Honor, that's the State's
21 case. We have no additional witnesses to call.

22 THE COURT: Okay. I'm gonna ask the parties to
23 prepare a proposed order that incorporates all your closing
24 arguments. How about April the 4th? Would that be enough
25 time or do you need some additional time?

1 MS. HARRIGAN: That should be fine, Your Honor.

2 MS. BLANCHETTE: That's perfectly fine, Your Honor.

3 THE COURT: And, again, if you'd send them in
4 electronic format, Word format, please, and send them to
5 my law clerk. And there's no need for any reply or
6 rebuttal and I'll review them in light of the exhibits
7 in the record.

8 MS. HARRIGAN: Thank you, Your Honor.

9 THE COURT: And I only have one Respond --
10 Respondent's exhibit; is that correct?

11 MS. HARRIGAN: Yes, that was all that was introduced
12 by the Respondent.

13 THE COURT: Okay. All right. And that will give me
14 an opportunity to review all of the -- the video and the
15 other documents that have been presented.

16 MS. HARRIGAN: Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 MS. BLANCHETTE: Thank you, Your Honor.

19 (End of proceedings.)
20
21
22
23
24
25

1 CERTIFICATE OF TRANSCRIPTION

2
3 I, the undersigned, Stacy S. Johnson, do hereby
4 certify that I transcribed the proceedings in the captioned
5 case that were reported by Maryann S. Nevers, Circuit Court
6 Reporter for the State of South Carolina, in the Court of
7 Common Pleas in and for the State of South Carolina, on the
8 19th of March, 2014, to the best of my ability.

9 This transcript may contain quoted material. Such
10 material is reproduced as read by the speaker.

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

13
14 July 24, 2015
15
16

17 st Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
20
21
22
23
24
25

2009/FEB/23/MON 01:58 PM

P. 002/004

EVALUATION SERVICE OF FORENSIC DIVISION

DATE OF EVALUATION: February 18, 2009

PRESIDING: Alicia V. Hall, PhD

SECOND EXAMINER: Barbara Christensen, LISW-CP

DIAGNOSES: AXIS I: Major Depression

COMPETENCY TO STAND TRIAL: Yes

DISPOSITION: Return to county to await disposition of his charges.

IDENTIFYING DATA: Nicholas Nesmith presented to William S. Hall Psychiatric Institute pursuant to a court order from the Richland County Family Court. The court order requested an evaluation of his competency to stand trial pursuant to the Blair standard for his actions on or about September 14, 2008. Mr. Nesmith is currently charged with Burglary (First Degree), Strong Armed Robbery, Assault and Battery of a High and Aggravated Nature and Kidnapping.

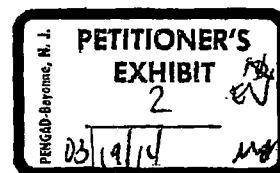
SOURCES OF INFORMATION:

- 1). A 60 minute clinical Forensic evaluation on February 18, 2009
- 2). Notes from Dr. Krebb's office
- 3). School District Richland/Lexington 5 Psychological Evaluation Report
- 4). Dutch Fork High School Discipline Record
- 5). William S. Hall Forensic Records
- 6). Social history prepared by Ms. Barbara Christensen using the defendant's father as the primary informant
- 7). Incident reports of the alleged crime
- 8). Court order requesting the evaluation

PERTINENT STATEMENTS: Nicholas Nesmith is a 15-year-old African-American male who appears his age. Currently, he is being detained at Alvin S. Glenn Center. Prior to being in detention, he resided with his father, mother and sibling. According to the records, his birth and early development were within normal limits. Mr. Nesmith denied physical or sexual abuse.

Mr. Nesmith attended Dutch Fork High School, where he was in the 9th grade. He reported being served in special education since the 4th grade. Mr. Nesmith reported that his special education classification was Emotional Disability. The school records provided confirm his report. Mr. Nesmith has a history of behavioral problems in the

Nesmith, Nicholas
1008-7660
William S. Hall Psychiatric Institute
Forensic Division



school setting. According to the records, he does not follow directions, uses profanity, skips classes, and intimidates other students. He has also left school grounds. Due to his behavior, he has been suspended and expelled from school on multiple occasions. Mr. Nesmith reported he has been suspended 10 -20 times and expelled 5 or 6 times. His most recent evaluation showed his intellectual skills are in the Low Average range (VIQ=90, PIQ=73, FSIQ=80).

Mr. Nesmith has some psychiatric history. He has a history of psychiatric hospitalizations. Mr. Nesmith reported being hospitalized at Palmetto Baptist on 3 occasions, once for suicidal ideation and threats and twice for truancy. He also has received some mental health treatment from Scott Psychiatric Office. Treatment was discontinued due to insurance issues. The treatment records were unavailable at the time the report was written. Mr. Nesmith reported he received support at school from a Dr. S at school. He was unsure of the correct pronunciation of the Dr's name. He recently began seeing Dr. Krebbs. His diagnosis was major depression. The treatment consisted of medication management. He was prescribed Zolof. Mr. Nesmith is complying with the medication regimen. He reported suffering from symptoms of depression if he does not comply with his treatment.

Mr. Nesmith has a previous conviction on the charge of Disturbing School for his actions on October 4, 2004. He was evaluated by the Forensic Services of WSHPI and found to be competent and criminally responsible for his actions. He was given probation for that charge.

MENTAL STATUS EXAM: Mr. Nesmith was dressed in the DJJ green jumpsuit for the evaluation. He was alert and oriented to person, place, time, and situation. He maintained attention and concentration throughout most of the evaluation. Mr. Nesmith was cooperative during the evaluation. His speech was normal in rate, rhythm, and volume. He was able to repeat and recall three objects named after a period of time. He was able to identify several similarities. He was able to answer a number of age appropriate comprehension and information questions. His detail orientation was good. Mr. Nesmith was able to answer simple addition and subtraction problems.

Mr. Nesmith described his current mood as "fine" and his usual mood as "between happy and angry". He acknowledged having an anger problem. His thought processes were logical and goal oriented without evidence of looseness of associations. Mr. Nesmith denied experiencing auditory and/or visual hallucinations. He denied suicidal or homicidal ideation, intent, or plan. However, he reported previous suicidal ideation that resulted in an admission to Palmetto Baptist.

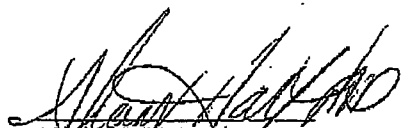
Mr. Nesmith reported involvement in antisocial activities and/or behaviors such as stealing, gang activity, fighting, and cigarette smoking. He began smoking at the age of 13. He denied weapons carrying, cruelty to animals, and vandalism. He reported

Nesmith, Nicholas
1008-7660
William S. Hall Psychiatric Institute
Forensic Division

occasional alcohol use twice month. Mr. Nesmith reported more extensive marijuana use. He stated that prior to detention, he smoked marijuana daily.

CONCLUSION REGARDING COMPETENCY TO STAND TRIAL: Mr. Nesmith was able to read his Miranda Rights. He was advised of who ordered the evaluation and who would receive the report. He was able to report back to the examiners who ordered the evaluation and the three parties that would receive the report. Mr. Nesmith was informed that he could talk to his lawyer prior to the evaluation if he wished, and he elected to proceed with the evaluation. When asked for his lawyer's name, he stated, "Miss Mitzi Campbell". Mr. Nesmith could name the some of the formal charges filed against him. He was educated on the others and benefited from that education. Mr. Nesmith was able to describe the seriousness of his charges in relation to other more serious and less serious charges. He was aware of the possible penalty he could receive if convicted of the charges, and he knew he could ask his lawyer if he wanted to know for sure. He was familiar with the roles of the various court officials including the judge, solicitor and defense attorney. He demonstrated that he understood the adversarial nature of the courtroom situation. For example, he knew the defense attorney was for him and the solicitor was against him. He also understood that he should not talk to the solicitor without his attorney present. When presented with hypothetical situations concerning courtroom behavior, he was aware of the need to maintain a calm demeanor and the consequences for inappropriate behavior. Mr. Nesmith understood the concept of a plea bargain and was able to apply it to a hypothetical situation and his case. He understood the use of evidence and witnesses in a hypothetical court case and in his case.

Mr. Nesmith is functioning at a cognitive level adequate for him to understand his charges and the adversarial nature of the court. He demonstrated a factual and rational understanding of the court process. Therefore it is our opinion, to a reasonable degree of medical certainty, that Mr. Nesmith is competent to stand trial.


Alicia V. Hall, Ph.D.
Licensed Psychologist
Child and Adolescent Psychiatry


Barbara Christensen, LISW-CP
Coordinator of Forensic Services

Nesmith, Nicholas
1008-7660
William S. Hall Psychiatric Institute
Forensic Division

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
)
 IN THE INTEREST OF:)
)
 Nicholas Nesmith)
)
 A Minor Under the Age of)
 Seventeen (17) Years)

RICHLAND COUNTY
 FILED

2009 FEB 25 PM 2:57
 IN THE FAMILY COURT
 FIFTH JUDICIAL CIRCUIT

JEANETTE W. McBRIDE
 CC, CP, GS
 & FAMILY COURT

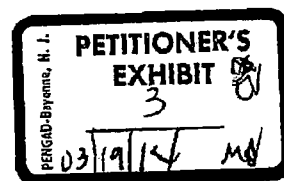
2008JU401474

This matter was before the Court on February 24, 2009 for a waiver hearing.

Present were L. Eden Hendrick, Assistant Solicitor; Nicholas Nesmith, the Respondent; Victor and Christe Nesmith, the Respondent's parents; and the Respondent's attorneys, Mitzi Campbell-Williams, Esquire and Joanna Haynes, Esquire

Based on the testimony presented by Cpl. D. Dechman, Cpl. A. Grinstead and Sgt. R. Wilson all of the Irmo Police Department, Danielle Blue, Lexington County EMS Department of Juvenile Justice Licensed Clinical Psychologist Barbara Hart, Department of Juvenile Justice Community Specialist Maurice Wallace, Department of Juvenile Justice Richland County Director Clarence Harrell, and the pre-waiver evaluation conducted by the Department of Juvenile Justice as well as other evidence; the Court finds and concludes:

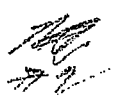
1. The Respondent Nicholas Nesmith was born on April 1, 1993 and is fifteen (15) years old.
2. The Respondent is charged with one count of the following offenses: Burglary First Degree, Strong Arm Robbery, Assault and Battery of a High and Aggravated Nature and Kidnapping.



3. The alleged offenses occurred in Richland County on or about September 14, 2008, when the Respondent was fifteen (15) years old.

(The following findings are based on the criteria listed by the United States Supreme Court in Kent vs. United States, 383 U.S. 541, 86 Supreme Court 1045 (1966).)

4. The crimes for which the Respondent is charged are of a serious nature and if found guilty, would suggest a serious lack of appropriate concern for the welfare and rights of others.
5. The serious nature of the offenses are of such gravity as to require waiver for the protection of the community.
6. The alleged offenses were of a violent and aggressive nature.
7. The alleged offenses were committed in a premeditated and willful manner.
8. The alleged offenses are against a person and resulted in personal injury.
9. There is probable cause to believe the Respondent committed the crimes for which he is charged.
10. There is sufficient merit to warrant the Grand Jury returning a true bill on the charges.
11. The Respondent has one co-defendant who is being prosecuted in the Fifth Judicial Circuit Court and has been indicted by the Grand Jury.
12. The pre-waiver evaluation report and testimony indicated that the Respondent met the standard/expected level of maturity for a 15 year old and was academically and cognitively functions on an average or below average level.



13. The Respondent has had prior referrals to the Department of Juvenile Justice and had previously successfully completed probation four separate times.
14. It is likely to be difficult to rehabilitate the Respondent as evidence and testimony indicates that he did not take advantage of the services provided to him by the Department of Juvenile Justice while on probation and continued to commit new offenses.
15. It is likely to be difficult to rehabilitate the Respondent as evidence and testimony indicates he has difficulty articulating empathy with the victims of his offenses and has trouble exercising internal restraints based on remorse and empathy.

CONCLUSIONS OF LAW

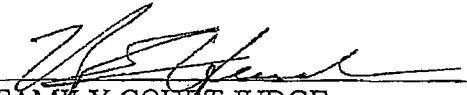
1. The Court has jurisdiction over this matter pursuant to South Carolina Code of Laws, S. C. Code of Laws §63-19-1210 (previously §20-7-7605)
2. Based upon the factors outlined above, the Court concludes that there is little likelihood that Nicholas Nesmith can be rehabilitated in the juvenile justice system.
3. The serious nature of the alleged offenses require waiver to protect the community and society as a whole.
4. It is in the best interest of Nicholas Nesmith that he be waived to the Court of General Sessions for proceedings on the charges alleged in Petition Nos. 2008JU401474.

IT IS THEREFORE ORDERED THAT jurisdiction of this matter shall be transferred to the Court of General Sessions.

[Handwritten signature]
3

IT IS FURTHER ORDERED THAT bail be denied at this time and that bail may be reconsidered by a Circuit Court Judge when the General Sessions indictments are presented to the Defendant.

AND IT IS SO ORDERED.


FAMILY COURT JUDGE

Columbia, South Carolina

February 25, 2009

RECEIVED
APR 21 2010

BY: 168



24 Judge,

Hello my name is Nicholas Nesmith. I'm a inmate in Alvin S. Glenn. Well Judge I'm asking you asking you to help me. Right now I'm in a hard bind and can't get out, and I don't find some help in my situation it's over for me. I'm supposed to go to court May 17, but I don't think my lawyer is ready for it. Your Honor I know I can't talk to you about my case, because then you wouldn't be able to hear it. Judge I need somebody to help me I don't want to spend a good portion of my life in prison. I was just a 15 year old boy trying to fit in to a crowd and trying to fit into a crowd got me in alot of trouble. Your Honor they put me through a liver hearing just so I could get my time. I know I committed a violent crime, but I've learn from my mistakes and I've matured. Right now I've been in for 19 months, and in those 19 months I've ~~gotten~~ got a G.E.D., found a relationship with God, and learned to respect life, because it's too valuable to waste.

Like I said before I was just 15 years old, and didn't know no better. Being in here I've been through alot, I lost alot of people I loved, messed up my only, and messed up my life. Judge I'm scared to think of all the things that can happen to me. The thing is like the monster, I'm not a monster. I'm a person. Since I've been here my mind has been messed up. I don't want to live like this. I don't want to live like a monster. That thing life has messed me up as well as others. I am asking for a chance at life. ~~the way~~ the solicitors want it is for me to be put away for the rest of life. Putting me away for a long time wouldn't rehabilitate me, but mess my mind set on the way I see life. I've changed the way I see life, but putting me away would just make me relapse.

Your Honor I don't want to be put away for a long time. I want to go back to society and show people that I have changed since I've been in here. Your Honor you are the only person that can help me besides my lawyer and God. I know you don't know me to well sir, but I need your help. I can't go out without even giving a chance at hope that somebody in your position will help me. What I said earlier about my public defender is that he can't ~~handle~~ handle my case and to be honest I don't want him as my public defender no more.

My family is trying to come up with some money to get me a good lawyer, but with your help I can save them ~~the~~ the trouble, because money is tight in my household. I'm not asking you to let me go free,

But I am asking you to help me get my charges dropped down back to juvenile, like they should've been. I know you probably only do that for those that read it, but if I could just tell all the things that are going on with me you'll understand why I need this bad. Unlike those that get their charges dropped down to juvenile when they were adult, I wouldn't get into no more trouble. I say this because there are more things to life besides the things I was doing. I just need a chance to prove that I'm ready for society. When I was younger I had other charges, but they weren't like this, but they still ~~was~~ shouldn't have happened.

The reason why I ask that my charges go down back to juvenile is because I was just 15 years old when it happened, led by the wrong crowd, and only wanted to make those around me think I was hard. Those things are childlike things, that is about to help destroy my life. I'll do anything just to be in family court instead of general sessions, because I need that. My public defender told me that I'll be at least his age when I get out. He's 31 years old. That's 14 years I would be missing a lot of my life. I just beg that you'll hear my plea at another chance, because I finally seen that there is more to life than what I was doing.

P.S. - Please write me back, even if it's just to tell me you can't do anything for me.

Sincerely,
Nicholas Nasmith

The Finney Law Firm, Inc.*Attorneys and Counselors at Law***Jerry Leo Finney**

jlfirney@bellsouth.net

Adam L. Whitsett

adamwhitsett@gmail.com

2117 Park Street
 Columbia, South Carolina 29201
 Telephone (803) 254-7408
 Facsimile (803) 254-1941
 www.thefinneylawfirm.com

*Retired Chief Justice
 South Carolina Supreme Court
 Ernest A. Finney, Jr.
 of Counsel*

May 5, 2010

Richland County Central Court
 Attn: Preliminary Hearings
 P.O. Box 192
 Columbia, SC 29202

RE: State of South Carolina v. Nicholas Nesmith
 Warrant Nos.: DP09043, DP09044, DP09045, DP09046

Dear Sir or Madam:

Please be advised that I have been retained to represent Nicholas Nesmith in the above-referenced matter. On behalf of my client, I am respectfully requesting a Preliminary Hearing in this case. I would also appreciate your noting me as attorney of record on this file so that I may receive any future correspondence pertaining thereto.

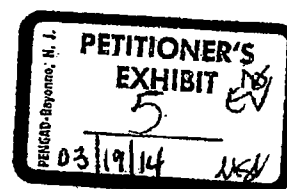
If you should have any questions or comments, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

Jerry L. Finney
 Jerry L. Finney
 Attorney at Law

JLF: bh 1



The Finney Law Firm, Inc.
Attorneys and Counselors at Law



Jerry Leo Finney
jlfinney@bellsouth.net

Adam L. Whitsett
adamwhitsett@gmail.com

2117 Park Street
Columbia, South Carolina 29201
Telephone (803) 254-7408
Facsimile (803) 254-1941
www.thefinneylawfirm.com

*Retired Chief Justice
South Carolina Supreme Court
Ernest A. Finney, Jr.
of Counsel*

May 5, 2010

W. Barney Giese, Solicitor
Fifth Circuit Solicitor's Office
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29202

RE: State of South Carolina v. Nicholas Nesmith
Warrant Nos.: DP09043, DP09044, DP09045, DP09046

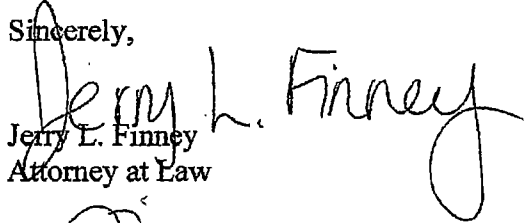
Dear Mr. Giese:

Please be advised that I have been retained to represent Nicholas Nesmith in the above-referenced matter. I would appreciate your noting me as attorney of record on this file so that I may receive any future correspondence pertaining thereto.

If you should have any questions or comments, please do not hesitate to contact me.

With kind regards, I am

Sincerely,


Jerry L. Finney
Attorney at Law

JLF: bh

The State of South Carolina

W. Barney Giese
Solicitor

John P. Meadors
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
Post Office Box 192
1701 Main Street
Columbia, South Carolina 29202

Phone
(803) 576-1800

Fax (803) 576-1718

July 1, 2010

Jerry Finney, Esquire
The Finney Law Firm
2117 Park Street
Columbia, SC 29201

RE: State v. Nichola Nesmith

Warrant Numbers: DP09043, DP09044, DP09045, and DP09046

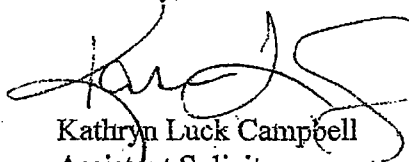
Indictment Numbers: 09-GS-40-1701, 09-GS-40-1713, 09-GS-40-1714, and
09-GS-40-1715

Dear Mr. Finney:

Please be advised that the above-named defendant's case is subject to be called for trial the week of July 26, 2010 at 9:00 a.m. at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina. Please make sure that your client is available for court that week.

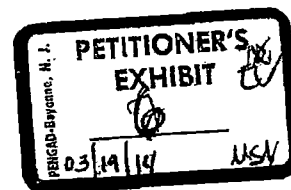
If you have any questions concerning this matter, please feel free to contact me.

Sincerely,



Kathryn Luck Campbell
Assistant Solicitor
Fifth Judicial Circuit

KLC/tby



**SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
PREADJUDICATORY TRANSFER (WAIVER) EVALUATION**

DATE OF REFERRAL:	September 18, 2008
NAME: Nicholas Nesmith	SEX: Male
JJMS NO.: 290148	HEIGHT: 5'11" WEIGHT: 240
DOB:	AGE: 15
DATE OF EVALUATION ORDER:	September 16, 2008
DATE OF EVALUATION REPORT:	December 31, 2008
CHARGES:	Burglary First Degree Strong Arm Robbery Kidnapping Assault and Battery of a High and Aggravated Nature
REGARDING DOCKET NOS.:	2008-JU-40-1474
PAROLE GUIDELINES:	36-54
FORM 5:	Yes (Attachment I)
WAIVER OF RIGHTS FORM:	Yes (Attachment II)
PETITION:	Yes (Attachment III)
FAMILY COURT ORDER	Yes (Attachment IV)
SOCIAL HISTORY:	Yes (Attachment V)



PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

2

I. REFERRAL STATEMENT

Nicholas Nesmith, a 15-year-old Caucasian male, was referred for prewaiver (transfer) evaluation by the Family Court of the Fifth Judicial Circuit, on September 16, 2008. This report has been prepared as part of the Department of Juvenile Justice Waiver Evaluation and is used to report specific findings to the Court regarding sophistication and maturity, protection of the public, and likelihood of rehabilitation in the juvenile justice system.

Prior to the evaluation, Nicholas Nesmith was given information as to what would be requested of him and the fact that information he provided would be used in the transfer (waiver) process. He was informed that the results of this evaluation were not confidential and would be shared with his attorney and with the Solicitor. He was further informed that this information would be shared with a Family Court judge and that DJJ staff may be called upon to testify in a waiver hearing. The Order stated "that any and all oral or written statements made by the minor-Respondent concerning the above charges and communicated to the psychologist in conjunction with this evaluation shall not be admissible as evidence against the minor-Respondent in any criminal trial concerning the charges, excluding impeachment purposes and the waiver hearings pursuant to the South Carolina Supreme Court case of State vs. Hitopoulus 309 SE 2nd 747, 1983. It was further ordered that the defense counsel shall be provided a copy of the pre-waiver evaluation two (2) weeks prior to the waiver hearing and that defense counsel shall be notified of each instance wherein the person conducting the prewaiver evaluation intends to interview, evaluate and/or contact in any way the minor-Respondent and that the defense counsel must have the opportunity to be present during the various interviews, evaluations and/or contacts with the minor-Respondent."

Mitzi Campbell-Williams, Esq., legal counsel for Nicholas Nesmith, was present for all interviews with him. His Rights and Waiver of Rights were read to him on October 23, 2008. His Comprehension of Rights Inventory indicated that he understood his Rights. He agreed to sign the Waiver of Rights form and agreed to participate in the evaluation process. His attorney co-signed the Waiver of Rights form. Psychological interviews and testing were conducted at the Alvin S. Glenn Detention Center in Richland County on 10/23, 10/24, 10/28 and 10/29/2008. Nicholas' mother and father, Victor and Chrise Nesmith, were interviewed at the Richland County Department of Juvenile Justice and provided background information about Nicholas; in addition, Ms. Nesmith completed a developmental history and behavioral assessment form, both on 11/10/08. Additional information was sought and provided by Ms. Nesmith.

II. SOCIAL HISTORY
(See Attachment IV)

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
 Nicholas Andrew Nesmith
 JJMS#290148

3

III. PSYCHOLOGICAL REPORT

A. SOURCES OF PSYCHOLOGICAL INFORMATION

Clinical Interviews – Nicholas Nesmith, juvenile
 Collateral Interviews: Ms. Chrise and Mr. Victor Nesmith, parents of juvenile
 Ms. Hauk and Ms. Jones, teachers at Alvin S. Glenn
 Detention Center
 Comprehension of Rights Inventory
 Mental Status Examination
 Wechsler Intelligence Scale for Children (WISC-IV)
 Wechsler Individual Achievement Test (WIAT)
 Trails A and B, Halstead Reitan Neuropsychological Battery
 Beery-Buktenica Developmental Test of Visual-Motor Integration
 Rotter Incomplete Sentences Blank (RISB)
 Reynolds Adolescent Depression Scale (RADS)
 Multidimensional Anxiety Scale for Children (MASC)
 Beck Youth Inventory (Beck)
 Millon Adolescent Clinical Inventory (MACI)
 Minnesota Multiphasic Personality Inventory – Adolescent (MMPI-A)
 Adolescent Psychopathology Scale – Short Form (APS)
 Substance Abuse Subtle Screening Inventory – Adolescent (SASSI-A2)
 Jesness Inventory (Jesness)
 Behavior Assessment System for Children – (BASC)
 Parent Response Form – (PRS) completed by Ms. Chrise Nesmith, mother.
 Structured Developmental History – completed by Ms. Chrise Nesmith, mother

B. RECORDS REVIEWED

1. DJJ History

DJJ File information indicates that Nicholas Nesmith was first referred to the Department of Juvenile Justice in June 2003 for the offense of Disturbing Schools. He was adjudicated delinquent and placed on probation. He successfully completed probation in December of that year.

He was again before the court in December 2004 and ordered to undergo a competency evaluation, subsequent to being charged with Simple Assault and Battery, Disturbing Schools and Unlawful Use of Telephone. In July 2005, his competency evaluation had been completed, and he was adjudicated delinquent for Disturbing Schools and Unlawful Use of Telephone; he was ordered to undergo a community evaluation. At his Dispositional Hearing in October 2005, he was placed on nine months probation, which he successfully completed in July 2006.

In February 2007, Nicholas was again before the Court for an Adjudicatory Hearing for Unlawful Possession of Alcohol. He underwent another pre-adjudicatory competency evaluation and was found to be competent. In April 2007, he was

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

Nicholas Andrew Nesmith
JJMS#290148

4

adjudicated delinquent for the Possession of Alcohol offense and was again placed on probation, from which he was successfully terminated in September 2007.

In March 2008, Nicholas had an Adjudicatory Hearing for the offense of Willfully Burning the Land of Another. He was adjudicated delinquent and was committed to the Department of Juvenile Justice for a five day determinate period and was placed on probation for nine months.

In September 2008, he was referred for the current charges: Burglary First Degree, Strong Arm Robbery, Assault and Battery of a High and Aggravated Nature, and Kidnapping.

2. Detention Center Records

Incident Reports provided to this examiner by Alvin S. Glenn Detention Center included the following reports:

9/15/08 Medical called to check juvenile after juvenile stated that he thinks about committing suicide. Placed on 5 minute suicide watch

11/3/08 Appeared to be in physical fight with another juvenile; escorted to rooms and Sgt. Notified.

12/1/08 Juvenile along with another juvenile refused to attend school.

12/9/08 Placed on lock down with other juveniles when pencil missing from classroom

Nicholas Nesmith was reported to be performing adequately in his classes "when he attends." It was unclear how frequently he misses classes. He is functioning at the 9th grade academic level with special educational services as an Emotionally Disturbed student. He has an Individualized Education Program (IEP). Recent grades were as follows: Math - 85, Biology -75, English - 74, Reading - 80. Nicholas has just begun Law Education and had a grade of 60; however, it was described as low because of his just beginning the class and his grades are expected to improve. He was described as very quiet and somewhat withdrawn in class. He has not evidenced behavior problems in the detention school.

4. Psychiatric Records

On 10/13/06, Nicholas Nesmith was assessed at Palmetto Health Baptist due to suicidal threats. His admitting diagnoses were Oppositional Defiant Disorder and Depression. A discharge summary, dated November 22, 2006, and dictated by Dr. Kevin Krebs, indicated that the patient was 13-years of age and was admitted for expressing suicidal ideation, though Nicholas reportedly said that he has never actually wanted to hurt himself. He had been taking Zoloft but had not improved with his mood. He reported being depressed watching violent movies. He was admitted to the Adolescent Psychiatric Unit on 10/12/06 and enrolled in normal unit and group activities. He was initially continued on Zoloft and Risperdal. On the next day, Wellbutrin was started, but the patient complained about how he felt and felt that Zoloft was better. He was returned to Zoloft. His mood improved and he continued to deny suicidal ideation. By 10/17/06, he had improved sufficiently to be discharged on that date. His condition on discharge was stable with no thoughts of harm to self or others. He was discharged on Risperdal and Zoloft and was to follow up with Dr.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

5

Krebs. Diagnoses were Major Depression with a contributing factor listed as "violent movies."

5. Psychological Evaluations

Nicholas Nesmith was ordered to undergo a Community Evaluation in July 2005. At that time, he had a history of fluctuating behavior in school. He had been prescribed medication by a psychiatrist but was no longer taking the medication. Recommendations included participation in well-supervised group activities to improve his social skills, continuation of counseling to address impulse control, anger management and social skills training to improve his interpersonal skills, assessment for possible anxiety disorder with treatment if indicated, and parental involvement in therapy to aid them in learning ways to assist Nicholas in developing improved behavioral controls and to understand the importance of complying with medications if prescribed.

A Lexington-Richland School District Five Psychological Report was completed in January 2003, when Nicholas was 9 years 9 months old. It was deemed necessary to address significant emotional and behavioral concerns and escalating behavior problems, in spite of multiple types of school intervention. He had been noncompliant with school rules and had 18 unexcused absences and 103 unexcused tardies by January of that school year. He had been hospitalized and was prescribed medications for Attention Deficit Hyperactivity Disorder, oppositional behavior and anxiety. His significant emotional and behavioral problems at home and school were impacting his educational progress.

6. School Records

School records indicate that Nicholas attended H. E. Corley Elementary School through part of third grade. He exhibited significant anger problems and resisted going to certain places in the school and attending school. He received a psychological evaluation in school at age nine, began special education services in 4th grade, and was placed in a special program. School records indicate extensive attempts at intervening to assist Nicholas in adapting to the school routine. He was moved to Dutch Fork Elementary School through 6th grade, but was relocated to Immo Middle School after he offended against another special education student who was in class with him. He continued to have significant problems in school, even though regular IEP reviews were conducted. Nicholas repeated the 9th grade. His IEP for the last school year indicated poor social skills, low self-esteem and anxiety as creating problems. In 2004, his school behavior was described as "moderate to severe" with extreme in-class problems such as throwing desks and objects, verbal and physical aggression and profanity toward students and staff. It was believed that his aggression was a means of Nicholas being able to withdraw from situations in which he did not wish to participate or in which he felt uncomfortable. A new IEP is in process at the Detention Center.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

6

B. BACKGROUND INFORMATION INTERVIEW RESULTS

Interview with Mr. and Ms. Nesmith, parents, and with Nicholas Nesmith, juvenile, as well as information from the BASC Structured Developmental History form, completed by Ms. Chrise Nesmith.

Records indicate that Ms. Nesmith is 49 years of age and Mr. Nesmith is 51 years old. Both completed college; they married in 1990. Ms. Nesmith is employed as a home healthcare provider. Mr. Nesmith is currently employed as a night auditor at a hotel in Lexington; he previously worked for a car dealer. Nicholas stated that his mother works nights and his father works nights, as well. The family lives in a three-bedroom home in an ethnically diverse neighborhood in Irmo. Nicholas has his own bedroom. Three years ago, the family home burned, and initially law enforcement believed that Nicholas had started the fire; Nicholas reported that two other youth had been in the home, and he claimed that one of those youth admitted it, but was never charged. The family relocated to another home in the same general area in 2005.

Ms. Nesmith described the family as close, though it appeared that Ms. Nesmith tends to take a greater role in dealing with the children, Nicholas and his older brother, Victor. Both parents share in the discipline of the children, though after a neighbor reported Mr. Nesmith to DSS some years ago, he has taken a less active role in discipline. Discipline had been handled by spankings. After Nicholas reported a spanking that left a bruise to a neighbor and DSS was called, Ms. Nesmith reported that Nicholas has "got away with a lot." Discipline has more recently been handled by "talking" and trying to reason with Nicholas. Nicholas reported that he had received no physical discipline since age eleven, when he obtained bruises from "a belt on the butt." Nicholas reported that he has witnessed verbal fights between his parents related to him and his brother, money owed to the paternal grandmother, and about bill-paying.

Nicholas and his older brother, Victor, who is a senior in high school, have had a strained relationship in the past. According to Nicholas, their relationship has improved and they communicate better, but his brother is involved with a girlfriend, so they have less time together. Nicholas stated that his brother "puts his girlfriend before the whole family." Nicholas has met some of his associates through his brother.

Ms. Nesmith reported that her pregnancy with Nicholas was not planned; Nicholas was the second child born to the union of Mr. and Ms. Nesmith; his brother, Victor, is two years older. During her pregnancy, she suffered from hypertension during the final month of her pregnancy. Nicholas was delivered by Cesarean delivery without complications. Nicholas weighed 7 pounds 8 ounces at birth. Both mother and child were in the hospital for four days.

Ms. Nesmith's report of the development of Nicholas indicated only ear infections during early childhood, except for some difficulty separating from parents when left with a babysitter or in daycare. He had chickenpox at age five, but no other early health problems were reported. He has seasonal sinus problems and some problems with acne, though not severe. Ms. Nesmith reported current vision problems, but indicated

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

Nicholas Andrew Nesmith
JJMS#290148

7

that Nicholas does not have glasses and is due an eye examination. The only current medication reported by Ms. Nesmith was Zoloft. In 2008, he was scheduled for counseling and had an appointment scheduled; however, it was cancelled due to his being detained for his offenses. He psychiatrist of record at the time of this evaluation was Dr. Kevin Krebs. In completing the developmental form, Ms. Nesmith did not mention Nicholas' speech problems, for which he received speech services in elementary school. Family history was reported to be positive for diabetes, heart disease, hypertension, and migraines.

Ms. Nesmith stated that Nicholas changed schools in 3rd grade, due to behavior problems and his not wanting to attend school. He was retained in 9th grade for "missing too many days" and has been in special educational services since 4th grade, with an Individualized Education Program for Emotionally Disability. Nicholas has a history of psychiatric treatment since 2002, with two hospitalizations due to threats of self-harm and school issues. Ms. Nesmith described his hospitalizations as related to school problems. He has been diagnosed with Attention Deficit Hyperactivity Disorder, Anxiety Disorder, and Depression. He is currently prescribed Zoloft. He initially was treated by Dr. Tawfik and more recently by Dr. Krebs. Records indicate some noncompliance with medications in the past and during such times, comments were made by family members that Nicholas was once again the "old Nick."

Ms. Nesmith stated that Nicholas' recreational interests include basketball and football, watching the History channel on television and reading historical books. She described his behavior and temperament as including: problems with a short attention span, hiding feelings, sometimes unhappy, discomfort meeting new people, and fearful about "life in general." She stated that he gets angry when "not having things his way." Her responses did not indicate problems in the area of adaptive skills. The family attends a Methodist church, though Nicholas attends sporadically. Nicholas described himself as "religious in my heart" and stated that he has attended Wesley United Methodist Church and Friendship Church in Williamsburg County, where there are family members. Nicholas reported having two close friends, 15 and 16 years of age, one of whom has been a friend since 2nd grade. He reported having a fifteen year old girlfriend, whom he has known since 7th grade. He described her mother as "very strict." He reported having become sexually active at age thirteen with a thirteen year old girlfriend. He reported having used protection and to have never caused a pregnancy; he denied any history of sexually-transmitted diseases.

Nicholas described his strengths as including being able to fix electronic "things" and being able to put computers together; however, he initially stated that he was "good at nothing." When asked what he had done that he was proud of, he responded "nothing." He reported that the family dogs, a Lab/Chow and a Pitbull/Lab "take to me and I spend time with them."

Nicholas denied ever carrying a knife or gun for protection. He admitted using alcohol, (beer and liquor) every two months since age fourteen. He stated that he did not like to get drunk "because I like to know what I'm doing." He denied drinking alone, but drank with other people. He reported having used "weed" along with drinking alcohol.

Nicholas reported having broken his foot when he jumped off the second floor of a hotel to catch up with his brother. He broke bones in his left foot in the fall. He also reported

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

Nicholas Andrew Nesmith
JJMS#290148

8

being pushed off stairs by his brother and hit his head. He denied having any medical assessment following this fall.

Nicholas reported that his plans for the future include "getting past all this stuff." He stated that he wanted to aim high and attend I.T. and get a "tech job" and obtain a "high position in a bank." He reported that he likes math and would like a job that involved mathematics. He believes that he can best accomplish this goal if he "show(s) the judge that this helped me realize what happened." He reported that he would like to change "the trouble I cause." He stated that, in order to accomplish this, he "may have to be alone" and thought that he could do that "at my grandmother's house." If he could change anything about his family, it would be "the way we are separate, apart" but stated that he did not know "how to make that change." He stated that "at my grandmother's" he could "try to get a new system of friends" and then stated "I don't need friends." He reported that his grandmother has given him good advice and he thinks he needs "advice on what things not to do."

If he had three wishes, they would be: "to make this (his current situation) disappear, to get a car, and to have a hundred million dollars."

D. BEHAVIORAL OBSERVATIONS

Nicholas Nesmith is a 15-year-old who appeared his stated age. He stands approximately 5'11" tall and weighs approximately 200 pounds. He was seen for all evaluation sessions at the Alvin S. Glenn Detention Center in Richland County. He was dressed in Detention Center uniforms for all sessions. His attorney was present for all interviews. Nicholas was neatly groomed. He was cooperative throughout the evaluation session and appeared to make adequate efforts on all tasks presented to him. There was no evidence of agitation or excessive motor activity. During the interview portion of the evaluation, he often spoke quite softly. He made adequate eye contact. There was no evidence of visual or motor impairment that would have impacted test results, though he reported vision problems and no corrective lenses. Conditions were such that results are believed to provide an accurate estimate of his functioning at the time of the evaluation.

E. MENTAL STATUS EVALUATION

Nicholas Nesmith was alert and adequately oriented during the evaluation. He was able to understand the nature and purpose of the evaluation. His written responses were all neatly printed. He was forthcoming with information and answered all questions addressed to him. He could recall two of three words in five minutes. He knew the name of the current president of the United States was George Bush but initially stated that it was Barack Obama. He was oriented to person, date and circumstance. He was able to name the months of the year in forward order and backward order without error. He was able to recite the days of the week, both forward and backward without error. He was able to say the words "triangle" and "Massachusetts" correctly, but had difficulty with "Methodist Episcopal." He was able to interpret simple proverbs correctly but had difficulty responding accurately on more complex abstract comparisons. Nicholas reported having had speech therapy in elementary school. He was able to articulate adequately during this evaluation, but exhibited some pronunciation difficulty. He

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

Nicholas Andrew Nesmith
JJMS#290148

9

reported having had some vision problems, but denied that he was having difficulty in completing the tasks associated with this evaluation.

Nicholas' actions and responses during his assessment suggested significant levels of anxiety and depression. He reported thinking about dying when he thinks about his legal problems, though he denied current thoughts about self-harm. He reported interrupted sleep while in detention and nightmares. He endorsed some symptoms of post-traumatic stress. He denied symptoms of psychosis. He reported having felt that others were "going to hurt me" sometimes in certain situations. His mood was variable and serious. He was adequately forthcoming with information and appeared to invest in the evaluation and interview process.

F. REMORSE, EMPATHY, AND RESPONSIBILITY

Nicholas reported regret for his involvement in his offense. He stated that he turned himself in and returned the things stolen during his offense later on the night of the offense. He reported that there was a fight in front of his house on the day of the offense, and law enforcement was called. Law enforcement talked to "us" then. There was an altercation with some of the youth and Nicholas' brother, and a gang fight ensued with three other youth on the date of the offense. While at his home with two of the youth, another youth came into his house, and the group ate together. Nicholas reported being uncomfortable about one of the youth being in his home because there were bad feelings about this youth and his history of altercations with Nicholas' father.

Nicholas stated that later, the group reconvened and he "didn't know what was going to happen." He reported that he participated in the offenses so they "would leave me alone." Later he stated, "I turned myself in and went to the (police) car and told him (law enforcement) everything." He stated that he did so because "I like to live free" and "not be running." He reported that the worst thing about committing a crime is "punishment and being detained." He reported that a person feels "shocked and confused and shocked and numb" if he commits a crime and gets caught. If a person commits a crime and does not get caught, his "head gets big quick" until he learns that "a bigger crime gets bigger time." According to Nicholas, if a person commits a crime and does not get caught, they "be trying to smooth my way from it, drinking." He reported that in the past he had been able to stop himself from stealing. He reported that he stopped himself because he was "caught." He reported that he had stopped himself from some offenses because he knew "people wouldn't trust me" if he committed a crime. He stated that his offenses were wrong because "you shouldn't go in and violate the privacy of people and assault them and take their property." He reported that he will not continue to commit crimes because "I'll remember 9/14, and I'll get a diploma and go to ITT or Midlands Technical College and get more education." He reiterated that he was afraid of getting "a beating" if he did not go along with the group he was with on the night of his offenses.

Nicholas reported remorse for his offenses, though his remorse appeared to be related to his being afraid of the group's consequences, had he not participated, as well as his desire to be a part of the group. He expressed fear of consequences as his reason for ceasing criminal activity, and articulated limited empathy for his victims. He did take some responsibility, stating that he should have "left" the group and that one should not engage in the actions of violating the privacy of people, assaulting them, or taking their property. He reported turning himself in and returning the goods stolen. His remorse

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

10

Nicholas Andrew Nesmith
JJMS#290148

appears to have come when he knew that he would face the consequences of his actions.

G. PSYCHOLOGICAL TEST RESULTS

Nicholas Nesmith was administered the WISC-IV, a measure of intellectual functioning for children, to ascertain his level of cognitive functioning. He was cooperative during the evaluation and results are believed to provide a valid estimate of his intellectual level. Scores were as follows:

Verbal Comprehension	93
Perceptual Reasoning	84
Working Memory	71
Processing Speed	50
Full Scale IQ	71

These scores place Nicholas' overall intellectual functioning in the Borderline range, with verbal comprehension skills in the Average range and perceptual reasoning is in the Low Average range. His very low processing speed score lowered his Full Scale IQ significantly, making the Full Scale score less relevant.

During previous testing in 2005, Nicholas' Verbal IQ was in the Low Average range, and his Performance IQ score was in the Borderline range, yielding a full Scale IQ in the lower end of the Low Average range. A psychoeducational evaluation was completed in 2002. That evaluation resulted in a Verbal IQ score of 90, a Performance IQ of 73, and a Full Scale IQ of 80. Overall, results indicated below average functioning, with significant difference between verbal and performance scores. At that time, his verbal skills were in the Average range and his Performance skills in the Borderline range, a similar pattern to his current test results.

Nicholas was also administered subtests of the WIAT, a measure to assess his academic achievement. His WIAT Standard Scores were as follows:

Mathematics Reasoning	87
Reading Comprehension	81

These scores indicate that Nicholas has low average achievement levels in math; his reading comprehension and written expression have been more problematic in the school environment.

On the VMI, a test of visual-motor integration, Nicholas Nesmith obtained a Standard Score of 67, a score commensurate with his lowered performance scores across multiple evaluations.

The Trails, a part of the Halstead-Reitan Neuropsychological battery, is a brief test to assess for ability to engage in a complex visual-motor task which requires manipulating two types of information simultaneously and engaging in a sequential task as quickly as possible. It is a gross test of neurological functioning. Nicholas' responses to both Trails A and B were within normal limits.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

11

Nicholas Andrew Nesmith
JJMS#290148

The BYI, a self-report measure, contains five scales to assess a child's experience of depression, anxiety, anger, disruptive behavior and self concept. Nicholas' results on this instrument resulted in the following findings. His overall self-concept was lower than average, where his self-report of disruptive behavior was in the mildly elevated range; his reports of depression and anxiety were in the moderately elevated range.

On the RISB, a projective sentence completion task, Nicholas Nesmith's responses indicated that he regrets "commenting (sic) my crime." He completed several sentences that indicated that he feels picked on and verbally abused "in here." He reported that his nerves "are shocked of all these things that have happen." To the stem, "I wish" he responded "I could erase all the bad things that happen." Several sentences were related to fears of his future and of "not seeing home again." He reported a desire to "erase all the bad things that happen." To the stem, "the only trouble" is "my associates" and to "the best" he responded "way to have a better life is to stay away from gangs." He reported that he feels "more safe" at home, that he "hates" "being away from home and that he wants "to get in my bed and room (at home) again." He stated that his greatest worry "is not seeing home again." To the stem "I want to know" he responded "how I can change my ways."

Results of the RADS, an adolescent depression scale, indicated a clinically significant level of depressive symptomatology across internal scales. Similar results were evident on the MMPI-A, an adolescent personality inventory. On the MMPI-A, there were significantly high scores on scales measuring depression and anxiety. He reports numerous somatic symptoms, negative self-opinions, excessive worries, loneliness, pessimism and sleep problems. Passive and dependent in interpersonal relationships, he tends to seek nurturance and support from others, though he may avoid others for fear of being hurt, misunderstood, or unaccepted.

The MACI, an adolescent clinical inventory, also resulted in elevated scores on scales measuring depression and a moderate level of pathology in the overall personality structure of Nicholas. Deficits in scholastic achievement and peer relationships, as well as a tendency to precipitate self-defeating cyclical behaviors were indicated. He reported "lack of confidence" and "family life" as the problems troubling him most. Likely to present as depressed, pessimistic, and irritable, he appears to have conflict between his need for nurturance and angry self-assertion. He may be likely to identify with marginal acting-out types with whom he identifies. He is likely to deal with his intense and contrary emotions in brash and reckless ways. His outbursts and anger may result in disruptive actions, furthering difficulties within family and social authorities (school and community).

The Adolescent Psychopathology Scale was administered. Scales in the Moderate Clinical Range included Major Depression and Interpersonal Problems; scale scores in the Mild Clinical Range included Conduct Disorder, Posttraumatic Stress Disorder, and Self-Concept.

On the MASC, a measure of anxiety, Nicholas' responses were extremely high on scales measuring social anxiety, with fears of humiliation/rejection and performance anxiety. This anxiety may result in avoidance of stressful situations or physical or psychological withdrawal from anxiety-producing situations.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

12

The Jesness, a psychological test normed on a group of juvenile offenders, was administered to obtain more information about Nicholas in comparison with other youth who have offended. His test results yielded a profile of the Neurotic, Anxious type. Having internalized a "bad me" image, anxiety and feelings of inadequacy are prominent. Youth who obtain this profile have more proportionately out-of-home placements than other youth; males have a tendency toward poor rapport with fathers, are easily perturbed, and have a higher than average tendency to "run away" under peer pressure. Assertiveness training may be of some help in establishing better means of handling angry impulses. Treatment that is focused on taking responsibility for one's decisions and actions may increase self-respect.

The SASSI-A2, an adolescent substance abuse screening inventory, was administered. The results indicated that Nicholas has a low probability of having a substance abuse or dependence disorder, though he acknowledged having used both alcohol and marijuana in the past. Nicholas had a diagnosis of Cannabis related issues for which he received services through LRADAC in 2007.

Ms. Chrise Ann Nesmith, mother of Nicholas Nesmith, completed the parent form of the BASC. Results of her form were valid. Several critical items were endorsed, including the following:

- Is in trouble with the police.
- Says, "I want to kill myself."
- Says, "I hate myself."
- Threatens to hurt others.
- Uses medication.
- Says, "I want to die" or "I wish I were dead."
- Has eye problems.

Scales that were in the "At Risk" range were as follows: Conduct Problems, Anxiety, and Leadership. One scale was at the Clinically Significant range: Withdrawal.

H. SUMMARY

Nicholas Nesmith is a 15-year-old of Borderline to Low Average intellectual functioning. His achievement scores are roughly commensurate with his intellectual functioning. He is doing well in the detention center school and attends regularly. He has a history of serious school problems since 3rd grade, when he was identified as requiring special educational services, which began in the 4th grade. His school behavior has been extremely oppositional and aggressive, requiring multiple revisions to his educational plan and alternative academic placements.

Nicholas has had two psychiatric hospitalizations, the first for threats of self-harm; both hospitalizations were related to serious school problems. He has been diagnosed with Attention Deficit Hyperactivity Disorder, Anxiety and Depression. He resided with both parents and an older brother in a residence within a block of the one in which his offenses were perpetrated. Both parents are college graduates, and both have worked nights. Mr. Nesmith has had some health and other problems. Ms. Nesmith has hypertension. Nicholas has had several referrals to DJJ and several probation dispositions, all successfully completed. His offenses have been of increasing severity. Nicholas has had difficulty participating in activities because of his volatility and his withdrawal.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

13

During this evaluation, Nicholas was cooperative and expressed future goals and interests. His history suggests immaturity and lack of empathy. He expressed remorse, though his responses appeared to be based on fears of personal consequences rather than empathy and remorse based on the victims or societal norms.

Nicholas' behavior in detention has been quite positive. He is doing well in school and has had no major infractions there. He expressed future goals and a desire to seek a more stable and supportive location with his grandmother out-of-town; however, his future plans involved attention post-secondary education in the greater Columbia area. Nicholas is a somewhat naïve and immature youth who has limited social skills and significant psychiatric issues. He lacks sophistication. He is dependent and seeks to assert himself by associating with older peers who appear to be a negative influence on his actions.

CONCLUSION

A. LEVEL OF SOPHISTICATION AND MATURITY

Nicholas Nesmith is a 15-year male who is of estimated Borderline to Low average intellectual functioning. He has a long history of disruptive behavior in school and referrals to DJJ since 2003. He has successfully completed probation on several occasions; however, he continued to exhibit behaviors that resulted in further referrals. While he is able to comprehend that his negative behaviors are problematic, he does not have the sophistication and maturity to modify his behaviors. He has been treated for psychiatric problems, including Attention Deficit Hyperactivity Disorder, Anxiety, and Depression, and has been placed on medications. He was hospitalized after making threats of self-harm and has received treatment for aggressive behaviors against peers and staff in school. Although he appears his stated age and has the capacity to understand the impact of his actions on others, he has difficulty modulating his emotional responses, especially when he feels that others are not responding to him positively and in situations from which he wishes to withdraw. Excessive absences from school have been problematic as well.

Nicholas has associated with youth of whom his parents disapprove and has experimented with alcohol and marijuana. The persons with whom he associates may be older persons on whom he depends for direction, suggesting a lack of maturity in decision-making and self-confidence. His lack of sophistication and maturity and his internal conflicts related to dependence on others and his desire for more independence place him at risk for manipulation by more sophisticated youth, who may use his need for social supports to engage him in negative activities. Nicholas knows the difference between right and wrong, and what is legal and illegal. He tends to project blame onto others when his behavior results in consequences. His successful completion of several probations indicates that he has the capacity to conform his behavior to societal expectations when under duress.

B. LIKELIHOOD OF REASONABLE REHABILITATION

The following are positive and negative factors related to the likelihood of reasonable rehabilitation in the juvenile justice system.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

14

The following negative factors should be considered:

1. Nicholas Nesmith is charged with very serious offenses that involved depriving others of their freedom of movement, assaulting, and stealing from his victims. If found guilty of these offenses, this would indicate a very serious lack of concern for human life or for the well-being of others. Persons who commit serious antisocial acts may be less likely to respond to rehabilitation efforts.
2. Nicholas Nesmith has a history of multiple prior offenses, of increasing seriousness, for which he was placed on multiple probations. If found guilty of these offenses with which he has been charged, this may indicate that he did not take seriously the consequences meted out for his prior offenses, suggesting that rehabilitation may be more difficult.
3. Nicholas Nesmith had difficulty articulating empathy with the victims of his offenses or in exercising internal restraints based on remorse and empathy. Persons who are unable to put themselves into the position of victims of offenses may have more difficulty following social norms.
4. In spite of interventions, Nicholas Nesmith has a history of increasingly disruptive behavior in school, resulting in alternative services and placements. Persons who are unable to conform their behavior to a reasonable norm may also have difficulty benefiting from, or participating in, rehabilitative programs.

The following positive factors should also be considered:

1. Nicholas Nesmith was forthcoming during the evaluation process. Persons who are willing to share information may be able to gain more benefit from rehabilitation and the services provided during the rehabilitation process.
2. Nicholas Nesmith has a history of treatment for anxiety, depression, and attention-deficit hyperactivity disorder; however, records indicate lack of compliance with his treatment regimen in the past. He has been able to maintain behavioral controls in Detention while compliant with medication. If consistent with treatment, he is likely to be able to achieve benefit from rehabilitative efforts.
3. Nicholas Nesmith has demonstrated while in detention, that he can benefit from small group, special educational services in a structured setting. His ability to do so may bode well for his capacity to benefit from educational services available through the Department of Juvenile Justice.
4. Nicholas Nesmith was placed on probation on several occasions and met the requirements of probation successfully. Persons who can meet these requirements may be more likely to adhere to the requirements imposed by the Court in rehabilitation.
5. Nicholas Nesmith has identified areas of strength and voiced a plan for future educational and vocational goals. Persons who are able to envision a positive future are more likely to invest in education and training toward those goals and

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
 Nicholas Andrew Nesmith
 JJMS#290148

15

may benefit from rehabilitative and educational opportunities available in the juvenile justice system.

C. ADEQUATE PROTECTION OF THE PUBLIC

The offenses with which Nicholas Nesmith has been charged are of a most serious and violent nature, resulting in the death of another person. If Nicholas Nesmith is found guilty of these offenses, this indicates a serious lack of concern for others and the need for concern and caution when considering the prospects for adequate protection of the public. If committed to the Department of Juvenile Justice for an offense that would be a criminal offense if committed by an adult, S.C. Code Ann. Section 20-7-7810 states that the juvenile may be committed for an indeterminate period not to exceed his twenty-first birthday. If committed to the Department of Juvenile Justice by the Family Court, Nicholas Nesmith's parole guidelines for these offenses would be 36-54 months. If he is not sooner released by the Juvenile Parole Board, at age seventeen he would be transferred to the South Carolina Department of Corrections (SCDC). Upon transfer to SCDC at age seventeen, the length of time that SCDC would maintain him in secure custody or under direct supervision (up to the age of twenty-one) would be within the discretion of the Juvenile Parole Board.

If not sooner released, the length of time he would remain incarcerated with the SCDC would be until age twenty-one. During this indeterminate period of incarceration, the public would be adequately protected from any further antisocial acts committed by Nicholas Nesmith.

Community supervision of a juvenile who is paroled (conditionally released) from DJJ can be provided by DJJ. Community supervision of a juvenile who is transferred to SCDC at age seventeen and paroled (conditionally released) from SCDC can be provided by adult Probation and Parole until the juvenile's twenty-first birthday.

D. PROCEDURES, SERVICES, AND FACILITIES CURRENTLY AVAILABLE TO THE JUVENILE COURT WHICH WOULD BE OF BENEFIT TO THE JUVENILE

If adjudicated delinquent by the Family Court and placed on probation, DJJ can provide, until the age of eighteen (S.C. Code Ann. Section 20-7-400B), probation, psychological consultation and, when appropriate, short-term placement for juveniles in need of non-secure community-based services.

If adjudicated delinquent by the Family Court and committed to the Department of Juvenile Justice for these offenses, the Department would provide institutional confinement up to age seventeen. If necessary, placement includes confinement to a maximum-security facility. Within its institutional facilities, the Department of Juvenile Justice operates twelve month continuous educational programs for incarcerated juveniles; and, if appropriate, a Communities in Schools program. Treatment services potentially available for Nicholas Nesmith include individual, group, and family therapy; social skills training; assertiveness training; tutorial programs; a vocational rehabilitation program, independent living skills groups; substance abuse counseling and psychiatric and medical services.

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION

Nicholas Andrew Nesmith
JJMS#290148

16

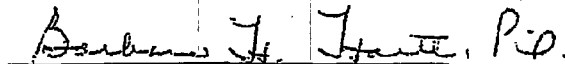
E. RECOMMENDATIONS

Whether his case is retained in Family Court or transferred to the Court of General Sessions, Nicholas Nesmith should be followed by a psychiatrist to address issues of medication needs. He should be compliant with medications as prescribed. Under stress, he may develop thoughts of self-harm and this should be monitored at times of transition or unusual stress. He will continue to need special educational programming to address his learning and behavioral issues in school. Assessment of visual acuity should be undertaken to determine if he needs prescriptive lenses; speech assessment and intervention may also be helpful to him.

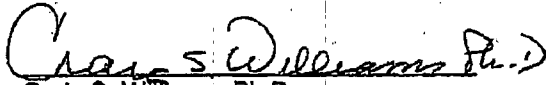
Nicholas will need counseling to address impulse control and behavioral problems in school. Nicholas has shown positive response to attention and support in the Detention Center School, indicating that he is able to form an alliance with teachers and respond favorably to positive attention. Nicholas will need clear and specific rules for acceptable behavior to help inhibit his impulsive response style, and to decrease his anxiety. He should be provided with encouragement and support toward vocational and educational planning for his future.

His conflicts related to independence vs. dependence in relationships will need to be addressed to help him make better decisions and to be less avoidant and more aware of the impact of his actions. He should learn to deal with forms of manipulation by others that result in self-defeating behaviors. Involvement in activities that enhance his self-esteem through positive actions may aid Nicholas in gaining improved self-confidence and to be able to turn his attention toward a more promising future.

Nicholas has a history of vision problems and reported blurry vision. He should be referred for an eye exam and receive prescriptive lenses if needed. At the time of his arrest, he had been referred for substance abuse treatment. He will need education related to the negative impact of alcohol and marijuana on one's health and behavior.



Barbara H. Hartt, Ph.D.
Psychologist IV
Department of Juvenile Justice



Craig S. Williams, Ph.D.
Director, Consultation and Evaluation Services
Department of Juvenile Justice

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

17

ATTACHMENT I

290148

NESMITH, NICHOLAS ANDREW

9/17/2008 12:07:36 PM

Alias: _____ County: Richland
 Home Address: _____
 Race: Black Sex: Male SSN: _____ Medicaid #: _____ Home Phone: _____
 Age: 15 DOB: _____ DOB Verified: Yes
 Schooling: 2006/10/11 | Dutch Fork Middle | Attending Day School | Grade: 8th | Attendance: Good | Special: Emotionally
 Father: NESMITH, VICTOR Home Phone: _____ Office Phone: _____
 Mother: NESMITH, CHRISE Home Phone: _____ Office Phone: _____
 IRMO, SC 29063

Probation/Parole Counselor: Brown, Kevin A Richland 03/18/2008

019 - DNA Test Required Yes DNA Test Complete No
 021 - Registry Required No

Referral Date	Description	Source/Action By
09/15/2008	09/15/2008 Kidnapping: Kidnapping 09/15/2008 - Prosecute - Solicitor 5th Circuit 09/16/2008 - Recommend Waiver To Circuit Court - Solicitor 5th Circuit	Irmo PD
09/15/2008	09/15/2008 Assault: Assault and Battery of a High and Aggravated Nature 09/15/2008 - Prosecute - Solicitor 5th Circuit 09/16/2008 - Recommend Waiver To Circuit Court - Solicitor 5th Circuit	Irmo PD
09/15/2008	09/15/2008 Burglary: 1st Degree 09/15/2008 - Prosecute - Solicitor 5th Circuit 09/16/2008 - Recommend Waiver To Circuit Court - Solicitor 5th Circuit	Irmo PD
09/15/2008	09/15/2008 Robbery: Common Law/Strong Arm Robbery 09/15/2008 - Prosecute - Solicitor 5th Circuit 09/16/2008 - Recommend Waiver To Circuit Court - Solicitor 5th Circuit	Irmo PD
03/12/2008	03/12/2008 Determinate Sentence/Probation Order (DSP)	Allen, Kellum W
01/29/2008	12/10/2007 Arson: Willfully Burning Lands of Another 01/29/2008 - Prosecute - Solicitor 5th Circuit 03/12/2008 - Determinate Sentence Commitment/Probation (DSP) - Allen, Kellum W	Richland County SO
04/02/2007	04/02/2007 Probation Order 09/07/2007 - Probation Requirement Ended - Jones, Dorothy M	Jones, Dorothy M

01/03/2007	10/11/2006 Alcohol:Unlawful Possession of Alcohol 01/04/2007 -- Prosecute -- Solicitor 5th Circuit 02/06/2007 -- Competency Evaluation - Preadjudicatory -- Jones, Anne Gus 04/02/2007 -- Other Special Conditions -- Jones, Dorothy M 04/02/2007 -- Probation -- Jones, Dorothy M	Richland County SD
10/11/2006	10/11/2006 Case Closure -- Court ordered obligation completed successfully	
02/28/2006	02/03/2006 School:Disturbing Schools 07/21/2006 -- Divert With Behavior Contract -- Solicitor 11th Circuit	Lexington County SD
02/28/2006	02/03/2006 School:Threatening life, person, family or public official/School Teacher 07/21/2006 -- Divert With Behavior Contract -- Solicitor 11th Circuit	Lexington County SD
10/26/2005	10/26/2005 Probation Order 12/11/2003 -- Probation Requirement Ended -- Court Judge (Unknown) 07/26/2006 -- Probation Requirement Ended -- Riddle, Leslie K	Riddle, Leslie K
11/15/2004	10/04/2004 Assault:Simple Assault and Battery 11/15/2004 -- Prosecute -- Solicitor 5th Circuit 12/01/2004 -- Competency Evaluation - Preadjudicatory -- Special Judges	Richland County SD
11/15/2004	10/04/2004 School:Disturbing Schools 11/15/2004 -- Prosecute -- Solicitor 5th Circuit 12/01/2004 -- Competency Evaluation - Preadjudicatory -- Special Judges 07/19/2005 -- Ordered for Local Evaluation -- Riddle, Leslie K 10/26/2005 -- Probation -- Riddle, Leslie K 10/26/2005 -- Community Services Restitution -- Riddle, Leslie K	Richland County SD
11/15/2004	10/04/2004 Telephone:Obscene calls, unlawful use:telephone, threats, repeated calls, false statements 11/15/2004 -- Prosecute -- Solicitor 5th Circuit 07/19/2005 -- Ordered for Local Evaluation -- Riddle, Leslie K 10/26/2005 -- Probation -- Riddle, Leslie K 10/26/2005 -- Community Services Restitution -- Riddle, Leslie K	Richland County SD
06/11/2003	06/11/2003 Probation Order 12/11/2003 -- Probation Requirement Ended -- System Generated	Riddle, Leslie K
06/10/2003	01/24/2003 School:Disturbing Schools 06/10/2003 -- Prosecute -- Solicitor 5th Circuit 06/11/2003 -- Probation -- Riddle, Leslie K 06/11/2003 -- Community Services Restitution -- Riddle, Leslie K	Richland County SD

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

18

ATTACHMENT II

YOUR RIGHTS

Date: Oct 23, 2005Time: 10:20 am

This evaluation has been ordered by the Court for the purposes of assisting the Court in determining whether your case should be transferred to the Court of General Sessions (Adult Court), and whether for the purposes of criminal prosecution you should be treated as an adult. The Family Court has issued an Order in your case protecting the use of any oral or written communication that you have with the psychologist related to your charges, in conjunction with this evaluation, as evidence against you in any court proceeding other than the Waiver hearing.

BEFORE CONDUCTING THIS EVALUATION, YOU MUST UNDERSTAND YOUR RIGHTS:

- (1) You have the right to remain silent.
- (2) Anything you say can and will be used against you in a court of law, with the exception of information you report to the psychologist about your charges.
- (3) You have the right to talk to a lawyer before we conduct this evaluation.
- (4) If you decide to participate in this evaluation without consulting your lawyer, you will still have the right to stop participating at any time.
- (5) You have the right to stop answering my questions at any time until after you talk with your lawyer.

I HAVE READ, OR HAD READ TO ME, THIS STATEMENT OF MY RIGHT AND I UNDERSTAND WHAT MY RIGHTS ARE.

Signed: Nicholas A. Permith

Waiver of Rights

I have read, or had read to me, my rights and I understand what my rights are. I am willing to participate in this evaluation and answer the questions presented to me. I do not wish to talk to my lawyer at this time. I understand and know what I am doing. No promises, threats, or inducements have been made to me and no pressure or coercion of any kind has been used against me.

Signed: Nicholas A. Permith

Witness: M. [Signature] - Attorney

Date and Time: October 23, 2005 10:25 am.

ATTORNEY
PRESENT

[Signature]

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

19

ATTACHMENT III

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND
IN THE INTEREST OF:

Nicholas Nesmith (B/M)

Irmo, SC 29063

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT

JUVENILE PETITION

#08-023

Sgt. Ryan Wilson, petitioner, of the Irmo Police Department, 1230 Columbia Ave., Irmo, SC 29063, having sufficient knowledge or information to believe that a case has arisen which invokes the juvenile jurisdiction of the Court, alleges:

1.

That the above named is less than seventeen years of age and resides in the county at the address shown above, or was found in the county as alleged herein.

2.

The name and address of the child's guardian is:
Victor Nesmith, address is same as above

3.

The juvenile named above did violate the criminal laws of the State of South Carolina in the following particulars:

On 9-14-08, the juvenile, with an adult co-defendant, entered the residence at Road in the Town Limits of Irmo, Richland County, SC during the night time hours with the intent to commit a robbery of the residence. While inside the residence the juvenile did physically assault a resident causing head trauma that required medical treatment. During the assault, the juvenile physically prevented the resident from moving or fleeing further harm. The juvenile then removed several personal and electronic items valued at greater than \$1,000 from the residence. The juvenile gave a statement to Law Enforcement detailing his involvement in this incident.

Juvenile charged with: Burglary 1st Degree - 16-11-311
Strong Arm Robbery - 16-11-325
Kidnapping - 16-3-910
Assault and Battery of a High and Aggravated Nature

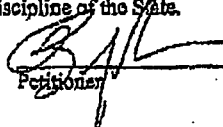
Petitioner prays the Court to hear the case to determine whether the allegations are true and whether the child is in need of care, protection, or discipline of the State.

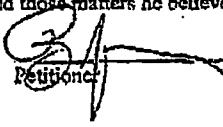
This 15th day of September, 2008.STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Sgt. Ryan Wilson, being duly sworn, says that he is the Petitioner herein and that he has read the foregoing Petition and knows the contents thereof. That the same is true of his own knowledge, except to matters therein alleged on information and belief; and those matters he believes to be true.

Darlene A. Terry
Notary Public commission expires:

July 19, 2014


Petitioner


Petitioner

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

20

ATTACHMENT IV

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE FAMILY COURT
FIFTH JUDICIAL CIRCUIT

IN THE INTEREST OF:)
Nicholas Nesmith)
A Minor Under the Age of)
Seventeen (17) Years)

ORDER

2008-JU-40-14

2008 SEP 16 PM 2:35
BARBARA A. SCOTT
CC, CP, DS
& FAMILY COURT

FILED

This matter was before me on the motion of Eden Hendrick, Assistant Solicitor, for an order requesting that the minor-Respondent undergo a pre-waiver evaluation.

It appears that the minor-Respondent has been charged with one count of Burglary in the First Degree, Strong Arm Robbery, Kidnapping and Assault and Battery of a High and Aggravated Nature (2008-JU-40-1474). The State has made a motion to waive jurisdiction of this matter to the Court of General Sessions. It further appears that a pre-waiver evaluation should be conducted by the Department of Juvenile Justice for further movement by the Court.

The State further stipulated that any and all oral or written statements made by the minor- Respondent concerning the above charges and communicated to the psychologist in conjunction with this evaluation shall not be admissible as evidence against the minor - Respondent in any criminal trial concerning the charges, excluding impeachment purposes and the waiver hearings pursuant to the South Carolina Supreme Court case of State vs. Hitopoulus, 309 SE 2nd 747, 1983.

Based on the foregoing, the motion of the State is granted.



IT IS THEREFORE ORDERED THAT Nicholas Nesmith shall undergo a pre-waiver evaluation to be conducted by the Department of Juvenile Justice with the above stipulation.

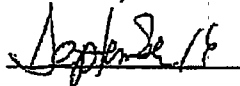
IT IS FURTHER ORDERED THAT any and all oral or written statements made by the minor-Respondent concerning the above charges and communicated to the psychologist in conjunction with this evaluation shall not be admissible as evidence against the minor- Respondent in any criminal trial concerning the charges, excluding impeachment purposes and the waiver hearings pursuant to the South Carolina Supreme Court case of State vs. Hitopoulus, 309 SE 2nd 747, 1983.

IT IS FURTHER ORDERED THAT the defense counsel shall be provided with a copy of the pre-waiver evaluation two (2) weeks prior to the wavier hearing. Defense counsel shall be notified of each instance wherein the person(s) conducting the pre-waiver evaluation intend to interview, evaluate and/or contact in any way the minor-Respondent and that defense counsel must have the opportunity to be present during the various interviews, evaluations and/or contacts with the minor-Respondent. Further, defense counsel shall be notified of all proceedings related to this motion.

AND IT IS SO ORDERED.


FAMILY COURT JUDGE

Columbia, South Carolina

 2008



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE FAMILY COURT
 FIFTH JUDICIAL CIRCUIT

IN THE INTEREST OF:)

DETENTION ORDER

Nicholas Nesmith)

Petition No.(s) 2008Ju401

A Minor Under the Age of)
 Seventeen (17) Years)

2008 SEP 16 PM 2:25
 FILED
 BARBARA A. SCOTT
 CC, CPSS
 & FAMILY COURT

This matter comes before the Court for the purpose of determining whether the above-named juvenile should be released or detained on this 16 day of September 2008.

The Court considered the allegation(s) recited in the Petition(s), the testimony, and other evidence presented. As a result thereof, the Court finds that the release of the minor would be contrary to the welfare of the minor or the community for the reason that there is probable cause to believe that the minor did commit the crime(s) of Burglary 1st Degree, Strong Arm Robbery, Kidnapping, Assault and Battery of a High and Aggravated Nature and may be a danger to him/herself and the community, if released pending a hearing on the merits.

IT IS THEREFORE ORDERED THAT Nicholas Nesmith remain in detention at the Alvin S. Glenn Detention Center juvenile wing until further order of this Court. Competency Order forthcoming

AND IT IS SO ORDERED.


 FAMILY COURT JUDGE

Columbia, South Carolina

September 16 2008

PREADJUDICATORY TRANSFER (WAIVER) EVALUATION
Nicholas Andrew Nesmith
JJMS#290148

21

ATTACHMENT V

II. Social History

A. Sources of Information Chrise Nesmith (Mother)

B. Prior Court History / Criminal Record

- 06/11/03 – Nicholas was before Judge Riddle on a petition alleging Disturbing Schools. He was adjudicated delinquent and placed on probation for six (6) months.
- 12/01/03 – Nicholas' probation was successfully terminated
- 12/01/04 – Nicholas was ordered to undergo a Pre-Adjudicatory Competency Evaluation after appearing before the Court for the offenses of Simple Assault and Battery, Disturbing Schools and Unlawful Use of the Telephone.
- 07/19/05 – Judge Riddle accepted and adopted the findings of the pre-adjudicatory competency evaluation and adjudicated Nicholas delinquent on the offenses of Disturbing Schools and Unlawful Use of a Telephone. Nicholas was ordered to undergo a Community Evaluation.
- 10/26/05 – At the Dispositional Hearing, Nicholas was placed on nine (9) months probation.
- 07/26/06 – Nicholas' probation was successfully terminated
- 02/06/07 – Nicholas appeared before Judge Anne Jones for an Adjudicatory Hearing on the offenses of Unlawful Possession of Alcohol. Judge Jones ordered Nicholas to undergo a Pre-Adjudicatory Competency Evaluation.
- 04/02/07 – Judge Dorothy Jones accepted and adopted the findings of the pre-adjudicatory competency evaluation and adjudicated Nicholas delinquent on the offense of Possession of Alcohol by a Minor. Nicholas was placed on probation for six (6) months.
- 09/07/07 – Nicholas' probation was successfully terminated.
- 03/12/08 – Nicholas appeared before Judge Kelvin Allen for an Adjudicatory Hearing on the offenses of Willfully Burning the Land of Another. Judge Allen adjudicated Nicholas delinquent and committed him to the Department of Juvenile Justice for a five (5) day determinate period and placed him on probation for nine (9) months.

01/08/2009 10:03

803-253-5477

DJJ RICHLAND COUNTY

PAGE 03/13

C. Family Description

Prior to his commitment to MEC, Nicholas lived at home with his natural Mother and Father, Chrise and Victor Nesmith, and older brother Victor who is a senior in high school. Nicholas' mother, Chrise is 49 years old and a native of Florence County South Carolina. Nicholas' father Victor is 51 years old and a native of Williamsburg County South Carolina.

D. Description of Parents Background

Mrs. Nesmith reported that she and her husband completed college. Mother and father have been married since May 1990. Mrs. Nesmith is employed with HRP Nursing Services as a Home Healthcare Contract Service Provider. Mr. Nesmith is currently employed as a Night Auditor with the Wingate Hotel in Lexington. He was formerly employed with Pulliam Ford for a number of years. Mrs. Nesmith reported that she is in good health, but that Mr. Nesmith was having some health issues.

E. Family Unity and Emotional Atmosphere

Mrs. Nesmith reported that she and her husband have a good relationship with each other and their sons. She considered them to be a very close family, respectful and encouraging of each other. She expressed concerns about Nicholas' choice of friends and his continued infractions of the law. The family is very supportive of Nicholas and wants him to get the help that he needs. She could not pinpoint any specific reasons and timeframes that would explain Nicholas' delinquent behavior. Mrs. Nesmith reported that she and her husband share in the discipline of the children. Discipline of Nicholas includes talking with him, restricting his use of games and telephone, and restricting his leaving home to visits with his friends.

F. Social Activities

Mrs. Nesmith acknowledged that the bulk of their time is spent working so that they can provide for their family. Mr. and Mrs. Nesmith are members of Wesley United Methodist Church where they attend regularly. Nicholas is reported to attend church on occasion, and the parents do not insist that he attend. Mrs. Nesmith reported that the family has done things together in the past such as visits to Myrtle Beach and family reunions. She and her husband use to attend movies but their work schedules have forced them to discontinue that activity.

G. Health Practices

Mrs. Nesmith reported that her health is good but her husband has health issues. Mr. Nesmith has chronic heart problems and suffered a heart attack when he was in his forties. His health does not restrict him from engaging in some activities, but he is cautiously aware of not over-exerting himself. The family does have health insurance through Mr. Nesmith's employment.

H. Home and Household Practices

The family lives in a 3 bedroom home in the Imo area. The neighborhood is ethnically diverse with black, white and Hispanic families. The home is reportedly modestly furnished with each child having his own bedroom. Mrs. Nesmith reported that they are

members of the homeowners association, but are not actively involved in any neighborhood activities. Mrs. Nesmith reported that there are no problems with her neighbors as the family stays pretty much to themselves.

I. Social Agencies Involved

Mrs. Nesmith reported that Nicholas continues to be involved with the Department of Mental Health.

1. Physical Description of the Child

Nicholas Nesmith is a 15 year old Black male who is approximately 5'11" in height and weighs approximately 240 pounds with black hair and brown eyes. Nicholas has identifying birthmark on his stomach

2. Early Developmental History

Mrs. Nesmith reported that her pregnancy with Nicholas was a normal one. He was born on April 1, 1993 at Palmetto Richland Medical Center, weighing seven pounds and eight ounces. Nicholas was born by Cesarean section because of a prior Cesarean with his older brother, and due to increased maternal blood pressure. Nicholas required no special care in the hospital. Nicholas had few health problems. There is no history of seizures, unconsciousness, head injuries, or serious illnesses.

3. Home Adjustment

Nicholas' mother reported that he was a very good child at home and school except for the discipline infractions he receives for his behavior. His mother believes that Nicholas is easily influenced and manipulated by his friends, especially those who are older. Any attempt to keep Nicholas from his friends is usually met with resentment and balking according to Mrs. Nesmith. Nicholas reportedly has a good relationship with his older brother Victor who is 18 years old. Mrs. Nesmith reported that Victor spends a lot of his time with his girlfriend which doesn't leave him much time for Nicholas. There reportedly is no sibling rivalry and Nicholas is apparently okay with the relationship with his brother.

4. Psychological and Psychiatric Information

Mrs. Nesmith reported that Nicholas has had a history of psychiatric involvement for several years. He was hospitalized twice at Baptist medical Center (12/12/02 and 1/28/03). His first hospitalization was "because of school problems" according to Mrs. Nesmith. His second hospitalization was to address the need for medication change. Nicholas also received a Community-Based Psychological Evaluation in August 2005 when he was 12 years old. He had been adjudicated delinquent on the offenses of Disturbing Schools and Unlawful Use of a Telephone.

5. School Information

Prior to his commitment to MEC, Mrs. Nesmith reported that Nicholas was in the ninth grade at Dutch Fork High School. He is in self-contained classes but reportedly is occasionally permitted to attend a class in the regular class setting. Mrs. Nesmith

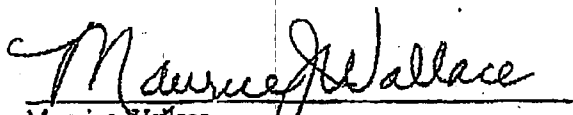
reported that Nicholas has a current Individualized Education Plan (IEP) with a primary disability of Emotionally Disabled. Nicholas' IEP which was dated 1/18/07 indicated that Nicholas is very strong in all academic areas and that he is capable of comprehending grade level material. It further states that Nicholas' poor socialization skills, low self-esteem, and anxiety makes it difficult for him to concentrate in class. He will become verbally and physically aggressive towards other students and adults in order to get him out of what he thinks are an uncomfortable situation.

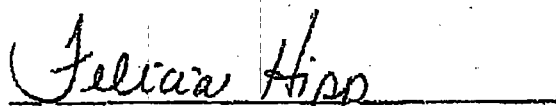
6. Recreational Interest and Activities of Client

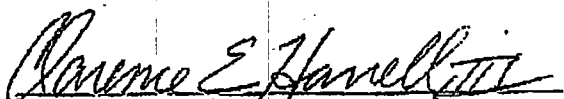
Mrs. Nesmith reported that Nicholas enjoys basketball and football, but had not participated in any organized sports at school or in the community. Nicholas appeared to be more interested in hanging out with his friends whom his parents disapproved of. Mrs. Nesmith believes that Nicholas is eager to please his friends and is therefore easily influenced and manipulated.

7. Employment, Vocational and Economic History

Nicholas has no employment history. His mother reported that they have told Nicholas that they would consider allowing him to work part-time at Publix if his performance and behavior at school is satisfactory. Mrs. Nesmith reported that Nicholas has expressed an interest in attending ITT Technical Institute with the intent of learning something mechanical. Mrs. Nesmith reported that Nicholas has always showed a strong propensity for anything mechanical.


Maurice Wallace
Community Specialist II


Felicia Hipp
Community Specialist III
Interim Intake Supervisor


Clarence E. Harrell III
Richland County Director

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Nicholas Nesmith, #342520,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Case No. 2011-CP-40-0423

ORDER OF DISMISSAL

JEROME W. FINNEY
C.C.P. CLERK

2015 MAR -2 PM 1:44

RICHLAND COUNTY
FILED

This matter comes before the Court by way of an application for post-conviction relief filed January 24, 2011. Respondent filed its Return on February 15, 2011 requesting an evidentiary hearing be held. Thereafter, on April 5, 2013, Applicant, through his counsel, filed an amended application. An evidentiary hearing into the matter was convened on March 19, 2014 at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Tricia A. Blanchette, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that 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-40-1713), Assault and Battery of a High and Aggravated Nature (2009-GS-40-1707), Strong Arm Robbery (2009-GS-40-1715), and Kidnapping (2009-GS-40-1714). Jerry L. Finney, Esquire, represented Applicant.¹ On August 11, 2010, Applicant appeared before the Honorable G. Thomas Cooper, Jr., where he pled guilty as indicted. Sentencing was deferred until September 1, 2010, when Judge Cooper sentenced Applicant to twenty-two years imprisonment for Burglary in the First Degree, twenty-two years imprisonment for Kidnapping, fifteen years imprisonment for Strong Arm Robbery, and ten years for Assault and Battery of a High and Aggravated Nature, in accordance with negotiations

¹ Applicant was originally represented by Assistant Public Defender Mitzi Campbell-Williams, Esquire, while his charges were pending in Family Court, as he was fifteen years old at the time of his arrest. Following his waiver to General Sessions, Applicant was represented by Assistant Public Defender Luke A. Shealey. Mr. Shealey's representation ceased in May 2010, when Applicant retained Jerry L. Finney of the private bar.

between Applicant and the State. All sentences were to be served concurrently. Applicant did not pursue a direct appeal of his guilty plea or sentences.

In his *pro se* application for post-conviction relief, Applicant alleged that he was being held in custody unlawfully based on allegations of ineffective assistance of counsel and due process violations. In his amended application for post-conviction relief, Applicant, through counsel, alleged the following claims of ineffective assistance of counsel:

1. Ineffective assistance of counsel Mitzi Campbell-Williams stemming from representation prior to and at Applicant's waiver hearing on February 24, 2009, specifically for: 1) failure to address the legality of applicant's arrest and voluntariness of his statement, 2) failure to prepare or utilize applicant or his parents as witnesses, and 3) failure to make an argument to the court against waiver; and
2. Ineffective assistance of counsel Jerry Finney for: 1) failure to conduct an independent investigation and properly prepare Applicant for trial; 2) failure to file pre-trial motions regarding Applicant's arrest, statement, and waiver hearing; and 3) advising Applicant to plead guilty, which waived his ability to challenge his statement and waiver hearing on appeal.

Applicant proceeded on these grounds as set forth in his amended application at the evidentiary hearing, as well as an oral amendment that trial counsel was ineffective for failing to notify Applicant and his parents of the guilty plea proceeding.

SUMMARY OF FACTS ADDUCED AT THE GUILTY PLEA

On the evening of September 14, 2008, Applicant, along with a co-defendant, broke into the home of an elderly couple, Mr. and Mrs. Bennett, aged 69 and 70, of Irmo, South Carolina while they were preparing for bed. Tr. p. 31-32. Applicant began to beat Mrs. Bennett about the face with a closed fist, and then proceeded to drag her from the bed and continued to attack her. Tr. p. 32. Simultaneously, Applicant's co-defendant began to physically assault Mr. Bennett, who suffers from Alzheimer's disease. Tr. p. 32. During the violent attack, Applicant's co-defendant pleaded with Applicant to stop assaulting Mrs. Bennett, who was recovering from a recent hip surgery. Tr. p. 34-35.

am
#2

Applicant and his co-defendant asked Mrs. Bennett if she had any jewelry in her home, to which she replied yes and showed them where her jewelry and other belongings were located. Tr. p. 33. Applicant and his co-defendant ransacked the house, eventually stealing a television, a D.V.D. player, jewelry, and cash. Applicant and his co-defendant also stole Mrs. Bennett's cell phone and broke the landline phone to prevent her from calling for assistance. Tr. p. 34-35.

After Applicant and his co-defendant fled the residence, Mrs. Bennett was able to drive the very short distance to her son's home to seek assistance. Tr. p. 35. Mrs. Bennett and her son called 911 and returned to the Bennett's home, where they were met by the Irmo Police Department. Tr. p. 35-36. Law enforcement entered the Bennett home, where they found Mr. Bennett bleeding from his injuries with a "goose egg on his head." Tr. p. 36. EMS was called and the Irmo Police Department began to process the scene and surrounding neighborhood. Tr. p. 36-37. Mrs. Bennett gave a detailed oral statement that was recorded by the Irmo Police Department. Tr. p. 37.

During the investigation, Jessica Mayweather, the girlfriend of Applicant's older brother, Victor, approached law enforcement and stated that she knew who committed the assault and home invasion. Tr. p. 38-39. She provided the name of Applicant and his co-defendant, which was confirmed by her brother, D.J. Tr. p. 39. D.J. confirmed that he saw Applicant and his co-defendant carrying the stolen television back to Applicant's home and discussing the offense. Tr. p. 39. D.J. elaborated that earlier that day, he heard Applicant and his co-defendant discussing that they intended to commit a crime to elevate their rank within their gang. Tr. p. 39.

Based on this information, the Irmo Police Department canvassed the area for Applicant. Tr. p. 39. Law enforcement identified Applicant while he was fleeing his home. Applicant then approached law enforcement and stated "I've done something wrong." After this admission, the officers advised Applicant of his Miranda rights and took him to a police cruiser to take a recorded statement. Tr. p. 39. Following two additional readings of his Miranda warnings, Applicant waived his rights and gave a verbal statement implicating himself in the crimes and describing the location of the stolen property in and around his home. Tr. p. 39-40. Applicant's eighteen year old brother, Victor, approached the police cruiser and was allowed to sit in the back and speak with Applicant. Victor encouraged his brother to be cooperative with law enforcement. Tr. p. 41.

and
#3

Following his discussion with his brother, officers transported Applicant to the Irmo Police Department. Tr. p. 41-42. Applicant was once again advised of his Miranda warnings and signed a waiver of rights form. Tr. p. 42. Applicant then proceeded to give a detailed statement of the crime during a forty-two minute interview with Sergeant Brian Wilson of the Irmo Police Department that was recorded by video camera.² During this interview, Applicant acknowledged that he understood his rights, including his right to remain silent and to an attorney, and that he wanted to speak with law enforcement. Tr. p. 42. Applicant gave a detailed confession to the crimes and confirmed that they were gang related. Tr. p. 42. At that time, Applicant was placed under arrest and detained as a juvenile. Tr. p. 42.

Several days later, Applicant's co-defendant, Gregory Hardee, was arrested. Tr. p. 42. Hardee gave a statement to law enforcement consistent with Mrs. Bennett's statement to law enforcement, implicating Applicant as the initial aggressor who attacked Mrs. Bennett. Tr. p. 43. Hardee confirmed that this incident was gang-related and committed at the request of more senior gang members. Tr. p. 43. Law enforcement also re-interviewed Jessica and D.J. Mayweather, who both again confirmed that this was gang related. Tr. p. 43-44. All sources suggested that Mr. and Mrs. Bennett were targeted because the gang believed that they were an elderly couple with money. Tr. p. 44.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from his mother, Chrise Nesmith. Applicant also presented six exhibits in support of his application.³ Respondent presented testimony from former attorneys, Luke A. Shealey, Esquire, and Mitzi Campbell-Williams, Esquire, and plea counsel, Jerry L. Finney, Esquire (hereinafter

² A complete copy of this forty-two minute interview was introduced as Applicant's Exhibit No. 1 at the evidentiary hearing.

³ Applicant's exhibits are as follows:

No. 1, a forty-two minute video of the interview of Applicant by Sgt. Wilson of the Irmo Police Department;
 No. 2, a Forensic Evaluation of Applicant by Alicia V. Hall, Ph.D. and Barbara Christensen, LISW-CP, dated Feb. 18, 2009;
 No. 3, the Family Court Waiver Order dated February 25, 2009;
 No. 4, a two paged handwritten letter by Applicant to an unknown court in reference to counsel Shealey's representation;
 No. 5, two letters, both dated May 5, 2010, sent by Counsel to Richland County Central Court and the Solicitor's office notifying the entities of his representation of Applicant; and
 No. 6, a letter dated July 1, 2010 from prosecuting Assistant Solicitor Luck Campbell to Counsel notifying him of Applicant's trial date.

and
#4