

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 12 2017

Appeal from Florence County

S.C. SUPREME COURT

Honorable D. Craig Brown, Circuit Court Judge

JOHNELL RICHARDSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000222

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE)	CASE NO. 2012-GS-21-00238
)	
STATE OF SOUTH CAROLINA,)	
)	
Plaintiff,)	
)	
- vs -)	TRANSCRIPT OF RECORD
)	
)	
JOHNELL RICHARDSON,)	
)	
Defendant.)	
)	

April 15 & 17, 2013
 Florence, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge; and a jury

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

JOHN JEPERTINGER, Assistant Solicitor
 Attorney for the Plaintiff

KAREN PARROTT, Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Court Reporter

FILED
 APR 17 2013
 FLORENCE, S.C.

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1 APRIL 15, 2014

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 proceedings began at 11:15 a.m.)

5 THE COURT: All right. Members of the jury panel, up to
6 this point in time you have been qualified to serve as jurors
7 this week. Now, I need to go one step further and ask you a
8 series of questions that you -- to make sure that you are
9 qualified to serve on a particular case. In that regard, I
10 need for you to remember that you're under oath and at any
11 point in time, again, if you'd like to answer a question up
12 here, that's perfectly fine, but you need to respond and you
13 need to respond truthfully if any of these questions apply to
14 you.

15 All right. Solicitor, if you would, go ahead and call
16 your first case.

17 MR. JEPERTINGER: Yes, sir. The State would call State
18 versus Johnell Richardson on 2012-GS-21-238, Your Honor,
19 charging Mr. Richardson with six counts of kidnapping --
20 excuse me, five counts of kidnapping. All right.

21 THE COURT: All right.

22 MR. JEPERTINGER: And six armed robberies, Your Honor.

23 THE COURT: All right. Thank you very much. Members of
24 the jury panel, in this particular case the State of South
25 Carolina alleges that a Johnell Richardson did in Florence

1 County on or about September 13, 2011, did kidnap and rob a
2 Glen Bruce, Christy McElveen, Andy Porter, Howard Nettles, and
3 William Brown at an establishment called the R&J Billiards.

4 Now, in this regard, has any member of the jury panel
5 heard anything about this case, read anything about this case,
6 know of anybody that knows anything about this case? If you
7 have any knowledge, no matter how insignificant you think it
8 might be, about this case, please stand.

9 (Whereupon, no one stands.)

10 THE COURT: All right. No one stood. Are the victims
11 here, Mr. Jepertinger?

12 MR. JEPERTINGER: Your Honor, some of the victims are
13 here.

14 THE COURT: All right. How about a Glen Bruce?

15 MR. JEPERTINGER: Mr. Bruce is here.

16 THE COURT: Would you please stand and turn and face the
17 jury panel? Christy McElveen? Is she here?

18 MR. JEPERTINGER: It's now Ms. ---

19 THE COURT: Smith?

20 MR. JEPERTINGER: Ms. Smith.

21 THE COURT: All right. If you would, turn and face the
22 jury panel. Andy Porter? Howard Nettles? And William Brown?

23 MR. JEPERTINGER: Mr. Brown is not here, but the owner of
24 the establishment, Mr. Johnson, is here.

25 THE COURT: All right. If he would, stand and turn and

1 face the jury panel. All right. You may be seated. Thank
2 you.

3 Is any member of the jury panel related by blood or
4 marriage or has a close personal or social relationship with
5 any of these individuals that just stood up? If so, please
6 stand.

7 (Whereupon, two people stand.)

8 THE COURT: All right. Your name and your number,
9 please, sir?

10 THE POTENTIAL JUROR: Michael Rieckenberg, 187.

11 THE COURT: 187? All right. And who do you know?

12 THE POTENTIAL JUROR: I know Mr. Porter.

13 THE COURT: All right. Well, taking that into account,
14 if you were selected to serve on the jury in this case, could
15 you set that relationship aside and be fair and impartial to
16 the State and the defendant?

17 THE POTENTIAL JUROR: Yes, sir.

18 THE COURT: Would you be fair and impartial to both sides
19 if you were selected to serve on this jury?

20 (Whereupon, there is no verbal response.)

21 THE COURT: Is that a yes or a no?

22 THE POTENTIAL JUROR: That was a yes.

23 THE COURT: All right. Thank you very much. I
24 appreciate you standing. All right. And your name and your
25 number, please, sir?

1 THE POTENTIAL JUROR: Kip Purvis, 182. I know Mr. Porter
2 also.

3 THE COURT: All right. Well, if you were selected to
4 serve on the jury in this case, could you set that
5 relationship aside and be fair and impartial to both the State
6 and the defendant?

7 THE POTENTIAL JUROR: Yes, sir.

8 THE COURT: Would you be fair and impartial to both
9 sides?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: Thank you. You may be seated. Anybody else?
12 (Whereupon, there is no response.)

13 THE COURT: All right. And the defendant, a Mr. Johnell
14 Richardson, if he would, please stand and just turn and face
15 the jury panel.

16 (Whereupon, the defendant complies.)

17 THE COURT: All right. Thank you. You may be seated.
18 Is any member of the jury panel related by blood or marriage
19 or has a close personal or social relationship with the
20 defendant, Mr. Johnell Richardson? If so, please stand.

21 (Whereupon, no one stands.)

22 THE COURT: All right. No one stood. Solicitor, if you
23 would, stand up and introduce yourself and then any members of
24 your staff.

25 MR. JEPERTINGER: Yes, sir. I think you've met Solicitor

1 Ed Clements. My name is John Jepertinger. I work for the
2 Solicitor's Office here and in Marion County. In our office,
3 we have Matt Ozment, Todd Tucker, Patricia Singleton Parr, Bob
4 Wells, Stephen Hill, Catherine Wyse, Emily Crayton, and part-
5 time over in our office in Marion, we have Fitzlee McEachin.

6 THE COURT: All right. Thank you. Is any member of the
7 jury panel related by blood or marriage or has a close
8 personal or social relationship with this solicitor or any
9 member of his staff? If so, please stand.

10 (Whereupon, no one stands.)

11 THE COURT: All right. No one stood. Ms. Parrott, would
12 you please stand and introduce yourself and any members of
13 your office?

14 MS. PARROTT: Thank you, Your Honor. May it please the
15 Court.

16 THE COURT: Mm-hmm.

17 MS. PARROTT: Ladies and gentlemen, my name is Karen
18 Parrott and I'm an attorney in the Public Defender's Office.
19 Along in my office are: the head of the office is Scott Floyd,
20 Michael Bell, Will Grove, Vic Meetze, Daniel Jordan, Jay
21 Jordan, Scott Suggs, and also part-time, Hank Anderson.

22 THE COURT: All right. Thank you. Is any member of the
23 jury panel related by blood or marriage or has a close
24 personal or social relationship with Ms. Parrott or any member
25 of her staff? If so, please stand.

1 (Whereupon, no one stands.)

2 THE COURT: All right. No one stood. The witnesses in
3 this case from the Florence County Sheriff's Office will be a
4 Russell Cox, Alvin Powell, Andrew Clendenin, Robert Hooks,
5 Ryan Huggins, Wayne Drummond, Austin Meggs, Eric Barnes, Larry
6 Quick. In this regard, is any member of the jury panel
7 related by blood or marriage or has a close personal or social
8 relationship with any of these witnesses? If so, please
9 stand.

10 (Whereupon, two people stand.)

11 THE COURT: All right. Your name and your number,
12 please, sir?

13 THE POTENTIAL JUROR: John Hudson, 97.

14 THE COURT: All right.

15 THE POTENTIAL JUROR: I am acquainted with Officer
16 Powell.

17 THE COURT: Okay. Taking that into account, if you were
18 selected to serve on the jury in this case, could you set that
19 relationship aside and be fair and impartial to the State and
20 the defendant?

21 THE POTENTIAL JUROR: I can.

22 THE COURT: Thank you. Would you be fair and impartial
23 to both sides if you were selected?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: Thank you very much. I appreciate you

1 standing. Yes, sir? Your name and your number?

2 THE POTENTIAL JUROR: My name is George Tassios, Number
3 219.

4 THE COURT: All right.

5 THE POTENTIAL JUROR: My question is: I run a restaurant
6 here in town ---

7 THE COURT: Town House.

8 THE POTENTIAL JUROR: I do feed a lot of these people and
9 I'm not saying I would be -- I think I'm okay, but just so --
10 from the attorneys to everyone in the courtroom, so I stood.

11 THE COURT: All right. Well, let me ask you this
12 question. If you were selected to serve on the jury in this
13 case, could you be fair and impartial to the State and the
14 defendant?

15 THE POTENTIAL JUROR: I think so.

16 THE COURT: I need to know yes or no.

17 THE POTENTIAL JUROR: Yes, sir.

18 THE COURT: All right. If you were selected to serve on
19 the jury in this case, would you be fair and impartial to both
20 sides?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: All right. Thank you very much. Anybody
23 else?

24 (Whereupon, there is no response.)

25 THE COURT: All right. The private witnesses in this

1 case will be a Mr. John Johnson, Mr. Jeffrey Gordon, and Mr.
2 Joseph Backus. In this regard, is any member of the jury
3 panel related by blood or marriage or has a close personal or
4 social relationship with any of those witnesses? If so,
5 please stand.

6 (Whereupon, no one stands.)

7 THE COURT: All right. No one stood. Is any member of
8 the jury panel related by blood or marriage to any law
9 enforcement officer? If so, please stand. That could be the
10 highway patrol, the sheriff's department, police department,
11 or what have you.

12 (Whereupon, several people stand.)

13 THE COURT: All right. Your name and your number,
14 please, ma'am?

15 THE POTENTIAL JUROR: Linda Myers, 156.

16 THE COURT: And how does that apply to you?

17 THE POTENTIAL JUROR: I have a son-in-law who is a
18 Florence police officer.

19 THE COURT: All right. Well, taking that into account,
20 if you were selected to serve on the jury in this case, could
21 you be fair and impartial to the State and the defendant?

22 THE POTENTIAL JUROR: Yes.

23 THE COURT: Thank you very much. You may be seated. And
24 the lady in the front that just stood up, your name and your
25 number?

1 THE POTENTIAL JUROR: Lisa Gaymon, 79.

2 THE COURT: How does that -- how does that apply to you?

3 THE POTENTIAL JUROR: My cousin is a law enforcement
4 officer.

5 THE COURT: All right. Taking that into account, if you
6 were selected to serve on the jury in this case, could you be
7 fair and impartial to the State and the defendant?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: Thank you. All right. How about you? Your
10 name and your number?

11 THE POTENTIAL JUROR: James McLeod, 140.

12 THE COURT: All right.

13 THE POTENTIAL JUROR: I have several family members in
14 law enforcement in New York City.

15 THE COURT: All right. Well, taking that into account,
16 if you were selected to serve on the jury in this case, could
17 you be fair and impartial to the State and the defendant?

18 THE POTENTIAL JUROR: Yes, Your Honor.

19 THE COURT: Thank you. And the lady in the -- up front?
20 Your ---

21 THE POTENTIAL JUROR: I've got a son with the Sheriff's
22 Department in Clarendon County.

23 THE COURT: And your name and your number?

24 THE POTENTIAL JUROR: Emily Davis, Number 53.

25 THE COURT: Okay. Taking that into account, if you were

1 selected to serve on the jury in this case, could you be fair
2 and impartial to the State and the defendant?

3 THE POTENTIAL JUROR: Yes.

4 THE COURT: Thank you very much. And the gentleman next
5 to her?

6 THE POTENTIAL JUROR: Tarrell Floyd, 68.

7 THE COURT: All right.

8 THE POTENTIAL JUROR: I have a cousin that's a state
9 trooper and I think he works Sumter and Clarendon counties.

10 THE COURT: Okay. Taking that into account, if you were
11 selected to serve on the jury in this case, could you be fair
12 and impartial to the State and the defendant?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: Thank you. And the lady in the back?

15 THE POTENTIAL JUROR: Marta Mack, 126.

16 THE COURT: How does that apply?

17 THE POTENTIAL JUROR: My husband work for the City of
18 Florence.

19 THE COURT: A little bit louder.

20 THE POTENTIAL JUROR: My husband work for the City of
21 Florence.

22 THE COURT: All right. Well, taking that into account,
23 if you were selected to serve on the jury in this case, could
24 you be fair and impartial to the State and the defendant?

25 THE POTENTIAL JUROR: Yes, sir.

1 THE COURT: Thank you. You may be seated. Anybody else?

2 (Whereupon, there is no response.)

3 THE COURT: All right. Is any member of the jury panel
4 aware of any bias or prejudice for or against the State in
5 this case? If so, please stand.

6 (Whereupon, no one stands.)

7 THE COURT: All right. No one stood. Has any member of
8 the jury panel formed an opinion as to the guilt or the
9 innocence of the defendant, Mr. Johnell Richardson, in this
10 case? If so, please stand.

11 (Whereupon, no one stands.)

12 THE COURT: All right. No one stood. Is there any
13 member of the jury panel who is a member of or contributor to
14 any group which has as its primary concern the promotion of
15 law enforcement or victims' rights? These groups would
16 include but certainly not be limited to MADD, SADD, or CAVE,
17 Citizens Against Violent Crimes. If so, please stand.

18 (Whereupon, no one stands.)

19 THE COURT: All right. No one stood. Has any member of
20 the jury panel or any member of your immediate family ever
21 been involved in a crime of personal violence? A crime of
22 personal violence would include but certainly not be limited
23 to criminal sexual conduct, assault and battery of a high and
24 aggravated nature, assault and battery with intent to kill,
25 murder, manslaughter, kidnapping, armed robbery, et cetera.

1 Now, if you or any member of your immediate family have ever
2 been a victim or a defendant in a crime such as these just
3 mentioned or anything similar to them, please stand.

4 (Whereupon, several people stand.)

5 THE COURT: All right. If you would, come on up and I'll
6 speak to you up here.

7 (Whereupon, the potential juror approaches and counsel
8 approach and a bench conference is held in the presence
9 of the jury panel but out of the hearing of the jury
10 panel as follows.)

11 THE POTENTIAL JUROR: Hey, how are you?

12 THE COURT: Let them get up here and hear it since they

13 ---

14 THE POTENTIAL JUROR: All right.

15 THE COURT: All right. Your name and your number?

16 THE POTENTIAL JUROR: John Taylor, 221.

17 THE COURT: Okay. How does that apply to you?

18 THE POTENTIAL JUROR: My daughter is a sexual abuse
19 victim. It's a pending case. Two counts, one up in
20 Greenville and one in Beaufort County.

21 THE COURT: Okay. Taking that into account, if you were
22 selected to serve on the jury in this case, could you be fair
23 and impartial to the State and the defendant?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: All right. Would you be fair and impartial

1 to both sides?

2 THE POTENTIAL JUROR: Yes.

3 THE COURT: Thank you. I appreciate you standing up.

4 (Whereupon, the potential juror returns to the jury panel
5 and counsel remains.)

6 THE COURT: All right. If you would, come on up

7 (Whereupon, the potential juror approaches and a bench
8 conference is held in the presence of the jury panel but
9 out of the hearing of the jury panel as follows.)

10 MS. PARROTT: (To the clerk) His name was 221 and he's
11 staying.

12 THE COURT: He's staying. All right. Good morning.

13 What's your name and your number?

14 THE POTENTIAL JUROR: Jasper Singletary, 205.

15 THE COURT: 205. All right. How does that apply to you?

16 THE POTENTIAL JUROR: I've got a son that's in the state
17 prison.

18 THE COURT: What's he in jail for?

19 THE POTENTIAL JUROR: Murder.

20 THE COURT: Okay. Taking that into account, if you were
21 selected to serve on the jury in this case, could you be fair
22 and impartial not only to the defendant but the State as well?

23 THE POTENTIAL JUROR: I believe I could.

24 THE COURT: I need to know if you could or could not.

25 THE POTENTIAL JUROR: Yes, I could. Yes.

1 THE COURT: All right. Would you be fair and impartial
2 to both sides?

3 THE POTENTIAL JUROR: Yes.

4 THE COURT: Thank you. I appreciate you coming forward.

5 (Whereupon, the potential juror returns to the jury panel
6 and counsel remains.)

7 THE COURT: All right. Ma'am, if you would, come on up
8 here.

9 THE CLERK: Is he staying?

10 THE COURT: He's staying.

11 (Whereupon, the potential juror approaches and a bench
12 conference is held in the presence of the jury panel but
13 out of the hearing of the jury panel as follows.)

14 THE COURT: All right. Give me your name and your
15 number, please, ma'am.

16 THE POTENTIAL JUROR: Irma Gause, 78.

17 THE COURT: All right. How does that apply to you?

18 THE POTENTIAL JUROR: I don't know if it applies or not,
19 but my brother was run over by a car that had left the scene
20 of an -- the accident and he died in the accident.

21 THE COURT: All right. Taking that into account, if you
22 were selected to serve on the jury in this case, could you be
23 fair and impartial to both the State and the defendant?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: Would you be fair and impartial to both

1 sides?

2 THE POTENTIAL JUROR: Yes, sir.

3 THE COURT: Thank you. I appreciate you coming forward.

4 (Whereupon, the potential juror returns to the jury panel
5 and counsel remains.)

6 THE COURT: Anybody else? All right. If you will, come
7 on up here.

8 (Whereupon, the potential juror approaches and a bench
9 conference is held in the presence of the jury panel but
10 out of the hearing of the jury panel as follows.)

11 THE COURT: What's your name and your number?

12 THE POTENTIAL JUROR: Brittany Ellis, Number 63.

13 THE COURT: 63?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: Okay. How does that apply?

16 THE POTENTIAL JUROR: My home was burglarized maybe in
17 2011, around that time.

18 THE COURT: Taking that into account, if you were
19 selected to serve on the jury in this case, could you be fair
20 and impartial to the State and the defendant?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: Would you be fair and impartial to both
23 sides?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: Thank you. I appreciate you standing up.

1 (Whereupon, potential juror returns to the jury panel and
2 counsel remains.)

3 THE COURT: All right. We have one more.

4 (Whereupon, the potential juror approaches and a bench
5 conference is held in the presence of the jury panel but
6 out of the hearing of the jury panel as follows.)

7 THE COURT: Give me your name and your number.

8 THE POTENTIAL JUROR: Renee Defalco, 56. I was many
9 years ago a victim of domestic violence.

10 THE COURT: All right. Taking that into account, if you
11 were selected to serve on the jury in this case, could you be
12 fair and impartial to the defendant and the State?

13 THE POTENTIAL JUROR: I believe so, sir.

14 THE COURT: Yes or no?

15 THE POTENTIAL JUROR: Yes.

16 THE COURT: All right. Would you be fair and impartial
17 to both sides?

18 THE POTENTIAL JUROR: Yes.

19 THE COURT: Thank you. I appreciate you standing. All
20 right.

21 (Whereupon, the potential juror returns to the jury panel
22 and counsel remains.)

23 (Whereupon, the potential juror approaches and a bench
24 conference is held in the presence of the jury panel but
25 out of the hearing of the jury panel as follows.)

1 THE COURT: Good morning.

2 THE POTENTIAL JUROR: How are you doing?

3 THE COURT: Good. Your name and your number?

4 THE POTENTIAL JUROR: McCall Ford, 69.

5 THE COURT: 69? How does that apply to you?

6 THE POTENTIAL JUROR: I have a nephew in jail for murder.

7 THE COURT: All right. Taking that into account, if you
8 were selected to serve on the jury in this case, could you be
9 fair and impartial to the State and the defendant?

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: Would you be fair and impartial to both
12 sides?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: Thank you. I appreciate you standing up and
15 coming forward.

16 (Whereupon, the bench conference ends.)

17 THE COURT: Anybody else?

18 (Whereupon, there is no response.)

19 THE COURT: All right. I think that will do it. Is
20 there any member of the jury panel who knows of any reason
21 whatsoever why they could not give the parties in this case a
22 fair and impartial trial? If so, please stand.

23 (Whereupon, one person stands.)

24 THE COURT: If you would, come on up here.

25 (Whereupon, the potential juror approaches and counsel

1 approach and a bench conference is held in the presence
2 of the jury panel but out of the hearing of the jury
3 panel as follows.)

4 THE COURT: That's always an interesting question.

5 SOLICITOR MATTHEW OZMENT: His mom is my secretary.

6 THE COURT: All right. What's your name and your number?

7 THE POTENTIAL JUROR: Christopher Tindall.

8 THE COURT: All right.

9 THE POTENTIAL JUROR: I forgot my number.

10 THE COURT: You got it anyway; don't you?

11 MS. PARROTT: Yeah.

12 THE COURT: All right. What you got?

13 THE POTENTIAL JUROR: My mom told me to come up here.

14 THE COURT: You listen to your mom. Well, let me ask you
15 this. If you were selected to serve on the jury in this case,
16 could you be fair and impartial to the State and the
17 defendant?

18 (Whereupon, there is no verbal response.)

19 THE COURT: Was that a no? You've got to say no.

20 THE POTENTIAL JUROR: No.

21 THE COURT: All right. Well, I'm going to excuse you
22 from this case, but just hang around.

23 THE POTENTIAL JUROR: Thank you.

24 THE COURT: All right.

25 MR. OZMENT: Your Honor?

1 THE COURT: Yeah.

2 MR. OZMENT: Could we just excuse him for the week? I
3 mean that's going to come up every time.

4 THE COURT: That's fine with me. All right. We're going
5 to just go ahead and excuse him for the week. After this, you
6 can go.

7 THE POTENTIAL JUROR: Thank you.

8 THE COURT: All right.

9 (Whereupon, the bench conference ends.)

10 THE COURT: Does any member of the jury panel have any
11 religious or philosophical objections to rendering judgment
12 against their fellow man? If so, please stand.

13 (Whereupon, no one stands.)

14 THE COURT: All right. No one stood. Has any member of
15 the jury panel or any member of your family ever been
16 prosecuted by this solicitor or any member of the solicitor's
17 staff, regardless of whether or not the case was dismissed?
18 If so, please stand.

19 (Whereupon, no one stands.)

20 THE COURT: All right. No one stood. Anything further
21 from the solicitor?

22 MR. JEPERTINGER: No, sir.

23 THE COURT: Anything further from the defense?

24 MS. PARROTT: No, Your Honor.

25 THE COURT: All right. Except for those I have excused,

1 I find the jury panel qualified for this case and, Ms. Clerk,
2 let's select a jury of twelve and one alternate.

3 (Whereupon, there is a pause in the proceedings as the
4 jury list is drawn.)

5 THE CLERK: Are you ready, Judge?

6 THE COURT: I'm ready.

7 THE CLERK: Members of the jury, as I call your name, I
8 need you to come to the side rail, come to the microphone, and
9 face the back of the courtroom. 118, Peggy Ladd.

10 (Whereupon, a white female comes forward.)

11 THE CLERK: What say the State?

12 MR. JEPERTINGER: Please present the juror.

13 THE CLERK: What say the defendant?

14 MS. PARROTT: Please swear Ms. Ladd.

15 THE CLERK: Please have a seat in the jury box, ma'am.

16 THE BAILIFF: This way.

17 THE CLERK: 89, Jeanne Hanrahan.

18 (Whereupon, a white female comes forward.)

19 THE CLERK: What say the State?

20 MR. JEPERTINGER: Please present the juror.

21 THE CLERK: What say the defendant?

22 MS. PARROTT: Please swear Ms. Hanrahan.

23 THE CLERK: Please have a seat in the jury box, ma'am.
24 53, Emily Davis.

25 (Whereupon, a white female comes forward.)

1 THE CLERK: What say the State?

2 MR. JEPERTINGER: Please present the juror.

3 THE CLERK: What say the defendant?

4 MS. PARROTT: Please excuse Ms. Davis from this trial.

5 THE CLERK: You've been excused from this trial only,
6 ma'am. 7, Lemuel Benjamin.

7 (Whereupon, a white male comes forward.)

8 THE CLERK: What say the State?

9 MR. JEPERTINGER: Please present the juror.

10 THE CLERK: What say the defendant?

11 MS. PARROTT: Please swear Mr. Benjamin.

12 THE CLERK: Please have a seat in the jury box. 32,
13 Chanda Carpenter.

14 (Whereupon, a white female comes forward.)

15 THE CLERK: What say the State?

16 MR. JEPERTINGER: Please present the juror.

17 THE CLERK: What say the defendant?

18 MS. PARROTT: Please swear Ms. Carpenter.

19 THE CLERK: Please have a seat in the jury box, ma'am.
20 126, Marta Mack.

21 (Whereupon, a black female comes forward.)

22 THE CLERK: What say the State?

23 MR. JEPERTINGER: Please present the juror.

24 THE CLERK: What say the defendant?

25 MS. PARROTT: Please excuse Ms. Mack.

1 THE CLERK: You've been excused from this trial only.
2 216, Adam Starrett.
3 (Whereupon, a white male comes forward.)
4 THE CLERK: What say the State?
5 MR. JEPERTINGER: Please present the juror.
6 THE CLERK: What say the defendant?
7 MS. PARROTT: Please swear Mr. Starrett -- Starrett.
8 THE CLERK: Please have a seat in the jury box. 3, Linda
9 Baroody.
10 (Whereupon, a white female comes forward.)
11 THE CLERK: What say the State?
12 MR. JEPERTINGER: Please present the jury -- the juror.
13 THE CLERK: What say the defendant?
14 MS. PARROTT: Please excuse Ms. Baroody.
15 THE CLERK: You've been excused from this trial only,
16 ma'am. You may return to your seat. 205, Jasper Singletary.
17 (Whereupon, a white male comes forward.)
18 THE CLERK: What say the State?
19 MR. JEPERTINGER: We'd excuse this juror for the purposes
20 of this trial only.
21 THE CLERK: You've been excused from this trial only,
22 sir. 182, Kip Purvis.
23 (Whereupon, a white male comes forward.)
24 THE CLERK: What say the State?
25 MR. JEPERTINGER: Please present this juror.

1 THE CLERK: What say the defendant?

2 MS. PARROTT: Please excuse Mr. Purvis from this trial.

3 THE CLERK: You've been excused from this trial only.

4 40, Kristen Combs.

5 (Whereupon, a white female comes forward.)

6 THE CLERK: What say the State?

7 MR. JEPERTINGER: Please present this juror.

8 THE CLERK: What say the defendant?

9 MS. PARROTT: Please swear Ms. Combs.

10 THE CLERK: Please have a seat in the jury box. 56,

11 Renee Defalco.

12 (Whereupon, a white female comes forward.)

13 THE CLERK: What say the State?

14 MR. JEPERTINGER: Please present this juror.

15 THE CLERK: What say the defendant?

16 MS. PARROTT: Please excuse Ms. Defalco.

17 THE CLERK: You've been excused for this trial only.

18 204, Crystal Singletary.

19 (Whereupon, a black female comes forward.)

20 THE CLERK: What say the State?

21 MR. JEPERTINGER: Please present this juror.

22 THE CLERK: What say the defendant?

23 MS. PARROTT: Please swear Ms. Singletary.

24 THE CLERK: Please have a seat in the jury box, ma'am.

25 217, Jonathan Sturgeon.

1 (Whereupon, a white male comes forward.)
2 THE CLERK: What say the State?
3 MR. JEPERTINGER: Please present this juror.
4 THE CLERK: What say the defendant?
5 MS. PARROTT: Please swear Mr. Sturgeon.
6 THE CLERK: Please have a seat in the jury box. 164,
7 Krystal Oncale.
8 (Whereupon, a white female comes forward.)
9 THE CLERK: What say the State?
10 MR. JEPERTINGER: Please present this juror.
11 THE CLERK: What say the defendant?
12 MS. PARROTT: John?
13 MR. JEPERTINGER: Yes?
14 MS. PARROTT: Can we approach, Your Honor?
15 THE COURT: Sure.
16 (Whereupon, a bench conference is held in the presence of
17 the jury panel but out of the hearing of the jury panel
18 as follows.)
19 THE COURT: All right.
20 MS. PARROTT: This young lady, whenever she stood she
21 actually gave a Potato House Road address, which is over in
22 Darlington County. It's actually over there near the
23 Sheriff's Office, as a matter of fact.
24 THE COURT: So she gave a Darlington County address.
25 MS. PARROTT: She gave a Darlington address. So if we

1 could just ---

2 MR. JEPERTINGER: If we could have her approach, then ---

3 THE COURT: Yeah.

4 MR. JEPERTINGER: Come on up here, Ms. Oncale.

5 THE COURT: Ms. Oncale, are you from Florence? Are you a
6 resident of Florence County?

7 THE POTENTIAL JUROR: I recently moved to Darlington.

8 THE COURT: So you live in Darlington?

9 THE POTENTIAL JUROR: Yes, sir.

10 THE COURT: Work over there? Get your mail over there?

11 THE POTENTIAL JUROR: I work in Florence. I get my mail

12 ---

13 THE COURT: But live over there in Darlington?

14 THE POTENTIAL JUROR: Yeah. I get mail in Florence and
15 Darlington.

16 THE COURT: Where do you consider home?

17 THE POTENTIAL JUROR: Darl -- well, Florence, but I stay
18 at my mom's and my dad's.

19 THE COURT: Okay.

20 THE POTENTIAL JUROR: So it's ---

21 THE CLERK: Where does she vote?

22 THE COURT: Where do you vote?

23 THE POTENTIAL JUROR: Florence.

24 MS. PARROTT: Okay.

25 THE COURT: All right. We're going to keep you.

1 THE POTENTIAL JUROR: Okay.

2 MS. PARROTT: Sorry. I'm just trying to ---

3 THE COURT: I understand.

4 (Whereupon, the bench conference ends.)

5 THE CLERK: What say the defendant?

6 MS. PARROTT: Please swear Ms. Oncale.

7 THE CLERK: Please have a seat in the jury box. 187,

8 Michael Rieckenberg.

9 (Whereupon, a white male comes forward.)

10 THE CLERK: What say the State?

11 MR. JEPERTINGER: Please present the juror.

12 THE CLERK: What say the defendant?

13 MS. PARROTT: Please excuse Mr. Rieckenberg, please.

14 THE CLERK: You've been excused for this trial only.

15 156, Linda Myers.

16 (Whereupon, a white female comes forward.)

17 THE CLERK: What say the State?

18 MR. JEPERTINGER: Please present this juror.

19 THE CLERK: What say the defendant?

20 MS. PARROTT: Please excuse Ms. Myers.

21 THE CLERK: You've been excused from this trial only.

22 47, Leslie Cooper.

23 (Whereupon, a white female comes forward.)

24 THE CLERK: What say the State?

25 MR. JEPERTINGER: Please present this juror.

1 THE CLERK: What say the defendant?

2 MS. PARROTT: Please swear Ms. Cooper.

3 THE CLERK: Please have a seat in the jury box. 219,
4 George Tassios.

5 (Whereupon, a white male comes forward.)

6 THE COURT: You have fed me many times as well. Good
7 food.

8 THE CLERK: What say the State?

9 MR. JEPERTINGER: Please present this juror.

10 THE CLERK: What say the defendant?

11 MS. PARROTT: Please excuse Mr. Tassios.

12 THE CLERK: You've been excused from this trial only.

13 MR. JEPERTINGER: He didn't want to eat Town House.

14 THE COURT: I was about to say. I'm getting hungry as we
15 speak.

16 MS. PARROTT: No, I do want to eat there.

17 THE CLERK: 183, Brenda Rabon.

18 (Whereupon, a white female comes forward.)

19 THE CLERK: What say the State?

20 MR. JEPERTINGER: Please present this juror.

21 THE CLERK: What say the defendant?

22 MS. PARROTT: Please swear Ms. Rabon.

23 THE CLERK: Please have a seat in the jury box. 22,
24 Julius Bunch.

25 (Whereupon, a white male comes forward.)

1 THE CLERK: What say the State?
2 MR. JEPERTINGER: Please present this juror.
3 THE CLERK: What say the defendant?
4 MS. PARROTT: Please swear Mr. Bunch.
5 THE CLERK: Please have a seat in the jury box. One and
6 two, Judge?
7 THE COURT: Correct.
8 THE CLERK: 97, John Hudson.
9 (Whereupon, a white male comes forward.)
10 THE CLERK: What say the State?
11 MR. JEPERTINGER: Please present this juror.
12 THE CLERK: What say the defendant?
13 MS. PARROTT: Please excuse Mr. Hudson.
14 THE CLERK: You've been excused from this trial only.
15 221, John Taylor.
16 (Whereupon, a white male comes forward.)
17 THE CLERK: What say the State?
18 MR. JEPERTINGER: Please present this juror.
19 THE CLERK: What say the defendant?
20 MS. PARROTT: Please excuse Mr. Taylor.
21 THE CLERK: You've been excused from this trial only.
22 104, La Tron James.
23 (Whereupon, a black male comes forward.)
24 THE CLERK: What say the State?
25 MR. JEPERTINGER: We'd excuse this juror for the purposes

1 of this trial only.

2 THE CLERK: You've been excused from this trial only.

3 129, Stevie Marlow.

4 (Whereupon, a white male comes forward.)

5 THE CLERK: Does the State wish to challenge this juror
6 for cause?

7 MR. JEPERTINGER: No.

8 THE CLERK: Does the defendant wish to challenge this
9 juror for cause?

10 MS. PARROTT: No. No, Madame Clerk.

11 THE CLERK: Please have a seat in the jury box, sir.

12 THE CLERK: Judge, would you like to have another
13 alternate?

14 THE COURT: Sure. Let's go ahead and get one more just
15 in case.

16 THE CLERK: 64, George Elvington.

17 (Whereupon, a white male comes forward.)

18 THE CLERK: What say the State?

19 MR. JEPERTINGER: Please present this juror.

20 THE CLERK: What say the defendant?

21 MS. PARROTT: Please swear Mr. Elvington.

22 THE CLERK: Please have a seat in the jury box.

23 THE COURT: All right. Any objections to the jury or the
24 process by which they were drawn? What says the State?

25 MR. JEPERTINGER: Not from the State, Your Honor.

1 THE COURT: What says the defense?

2 MS. PARROTT: None, Your Honor.

3 THE COURT: All right. Thank you very much. All right.
4 Members of the jury panel, we're going to start this trial at
5 nine thirty on Wednesday morning. I'm going to excuse you
6 until that time.

7 However, I want to instruct you that I do not want you to
8 investigate this case on the computer. I don't want you to
9 leave here and talk about this case with anybody else. Don't
10 research it. Just totally forget the names and what the case
11 is about and then come back here at nine thirty on Wednesday
12 morning and we will begin the case at that time.

13 All right. You are excused. Everybody else remain
14 seated until the jury is excused.

15 THE BAILIFF: They are to report back to the eleventh
16 floor; right?

17 THE COURT: They are excused until Wednesday morning at
18 nine thirty.

19 THE BAILIFF: Report back here?

20 THE COURT: Yeah.

21 THE BAILIFF: Okay.

22 (Whereupon, the jury exits the courtroom at 11:54 a.m.)

23 THE COURT: Is the State ready to proceed with the next
24 jury selection?

25 (Whereupon, there is a break in the proceedings from

1 11:56 a.m. until 1:05 p.m.)

2 THE COURT: All right. Solicitor, is there any pre-trial
3 that we need to take up?

4 MR. JEPERTINGER: Judge, we have looked with the defense
5 attorney over several of these items that we'll need to have
6 marked.

7 THE COURT: Okay.

8 MR. JEPERTINGER: And there are certain things that she
9 has no objection to. The first thing, Your Honor, that I
10 think the State and the defense would stipulate to are a set
11 of phone records for one of the co-defendant's phones.

12 MS. PARROTT: Let me make sure. Let me make sure that
13 you've got everything. I know I've got everything that you've
14 got here, but -- yeah. Yes.

15 THE COURT: Let's go ahead and mark them. That would be
16 Number 1?

17 MR. JEPERTINGER: Number 1 stipulated into evidence.

18 THE COURT: All right.

19 MR. JEPERTINGER: Okay. The next thing, diagrams. We
20 have two diagrams. We have an aerial photo of the scene of
21 the incident, Your Honor.

22 THE COURT: Mm-hmm.

23 MR. JEPERTINGER: Of R&J Billiards and surrounding areas,
24 Your Honor, off Third Loop Road. I believe that the defense
25 has no objection to that.

1 MS. PARROTT: It's correct in its representation, Your
2 Honor.

3 THE COURT: That'll be Number 2.

4 MR. JEPERTINGER: Okay. I'll let you mark that. Can you
5 do it on the photo itself? Thank you. And the third thing,
6 even though it's not to scale, it is a diagram. It's on the
7 back side of the aerial. Andy Clendenin put it together and
8 it's not to scale, but it is a diagram of R&J Billiards.

9 THE COURT: All right. Any objections to that, Ms.
10 Parrott?

11 MS. PARROTT: Your Honor, I'm actually -- excuse me.
12 Investigator or Officer Clendenin is here and I'm just wanting
13 to make sure that there was nothing else different as far as
14 at that place as opposed to what's on that drawing.

15 OFFICER CLENDENIN: What you see in the photographs is
16 pretty much what you see on the drawing there.

17 MS. PARROTT: Okay.

18 THE COURT: Any objections?

19 MS. PARROTT: No.

20 THE COURT: All right.

21 MS. PARROTT: I mean I knew that was basic, Your Honor,
22 but I just wanted to make sure that there was nothing
23 different.

24 THE COURT: All right. That will be Number 3.

25 MR. JEPERTINGER: That will be Number 3 in evidence

1 without objection, Your Honor.

2 THE COURT: All right.

3 MR. JEPERTINGER: All right. Number 4 and 5, Your Honor,
4 would be enlargements of text conversations that one of the
5 co-defendants who will testify had with another co-defendant
6 who is not here, but it lays out what I would consider
7 conspiracy and time frame.

8 THE COURT: Okay. 4 and 5 will be text messages. Any
9 objections?

10 MS. PARROTT: John, you're going to lay the foundation
11 for those through Jeffrey Gordon, are you not?

12 MR. JEPERTINGER: I'm going to put them in through
13 Jeffrey Gordon that he texted and officers there saying that
14 Montez Baccus was receiving text messages at that time and
15 phone conversations from J.D., but J.D. will testify that he
16 did text him to tell him that the coast was clear and that
17 they should send him in to get the cell phones.

18 MS. PARROTT: Subject to foundation being laid, Your
19 Honor, that would be ---

20 THE COURT: All right. 4 and 5 are not into evidence
21 yet.

22 MR. JEPERTINGER: Would you write that down, Donna? 4
23 and 5 are not in evidence.

24 MS. PARROTT: You've got those records which will
25 basically -- that's just going to be another one or two

1 questions in that.

2 MR. JEPERTINGER: Right. All right. There are ---

3 MS. PARROTT: Except the ones from the cell phone records
4 -- from the cell phone texts.

5 MR. JEPERTINGER: Right. I'll remove those ---

6 MS. PARROTT: Okay.

7 MR. JEPERTINGER: --- since we have kind of ---

8 MS. PARROTT: Do you want me to hand those to Donna?

9 MR. JEPERTINGER: Yeah.

10 MS. PARROTT: Okay.

11 MR. JEPERTINGER: Those are just extra and those are
12 duplicative. Two, three, four, five, six, seven, eight, nine,
13 ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen,
14 seventeen, eighteen, nineteen, twenty, twenty-one. Twenty-one
15 photographs of R&J Billiards, the surrounding scene where some
16 of the physical evidence was found, Your Honor.

17 THE COURT: All right. How about it, Ms. Parrott? Any
18 objections to twenty-one photographs?

19 MS. PARROTT: I don't believe there's going to be any
20 objection, Your Honor. We've already gone through these
21 independently and together and I believe everything is ---

22 THE COURT: All right. Go ahead and check it out and
23 verify it.

24 MS. PARROTT: That's all. Those are in without
25 objection, Your Honor.

1 THE COURT: All right. That'll be Number 6; is that
2 right?

3 MR. JEPERTINGER: Well, I would just -- could we -- I
4 don't know how we -- they are a series of photographs. I
5 would number them. I think there's twenty-one photographs.

6 THE COURT REPORTER: 6-A, B, C, D, et cetera.

7 MR. JEPERTINGER: Okay. That -- that way -- all right.
8 But all the photographs and the clerk -- I mean the court
9 reporter will give you the final tally.

10 THE COURT: Okay. So that will be Number 6.

11 MR. JEPERTINGER: Okay.

12 THE COURT: All right.

13 MR. JEPERTINGER: All right. The next -- the next deal
14 would be the -- excuse me -- the ski mask -- a ski mask and a
15 ---

16 MS. PARROTT: Black t-shirt.

17 MR. JEPERTINGER: --- black t-shirt, and I would ask one
18 to be 7-A and 7-B.

19 MS. PARROTT: Okay. No objection to those, Your Honor.

20 THE COURT: All right. 7-A is a black ski mask and 7-B
21 is a black t-shirt.

22 MR. JEPERTINGER: All right. 8-A would be four shotgun
23 shells.

24 THE COURT: Any objections?

25 MS. PARROTT: No, Your Honor.

1 THE COURT: All right.

2 MS. PARROTT: I'm sorry.

3 MR. JEPERTINGER: 8-B would be ---

4 (Whereupon, there is a pause in the proceedings as
5 counsel confer.)

6 MR. JEPERTINGER: Sixteen 9 millimeters.

7 MS. PARROTT: Sixteen as they came from the forensics as
8 well.

9 MR. JEPERTINGER: Those are -- those are -- those are
10 Federal 9's; correct.

11 MR. VIC MEETZE: Correct.

12 MR. JEPERTINGER: Federal 9's.

13 THE COURT: Are they spent casings or ---

14 MS. PARROTT: No.

15 MR. JEPERTINGER: No. They're actually live.

16 THE COURT: Okay. All right. That will be 8-B, sixteen
17 9mm bullets.

18 MR. JEPERTINGER: Okay. And let's see.

19 (Whereupon, there is a pause in the proceedings as
20 counsel confer.)

21 MR. JEPERTINGER: All right. And finally, Your Honor,
22 which number are we at -- up to?

23 THE COURT REPORTER: Nine.

24 MR. JEPERTINGER: Are we up to 9?

25 THE COURT REPORTER: Mm-hmm.

1 MR. JEPERTINGER: Okay. 9 would be a shotgun. It's an
2 SWD Cobra. It looks like an Uzi-type pistol. I'll show it to
3 the Court. And a clip out of the Uzi-type pistol.

4 MS. PARROTT: Whoa.

5 MR. JEPERTINGER: And they're strapped -- and I want --
6 and I want the record to reflect that they're strapped down.

7 THE COURT: And that is not a clip. That is a magazine
8 by the way.

9 MR. JEPERTINGER: That's a magazine. Thank you so much,
10 Judge. All right. I've got the terms for that.

11 MS. PARROTT: Unloaded, please?

12 MR. JEPERTINGER: They are unloaded.

13 MS. PARROTT: I was going to say I know that they were
14 loaded at the time, but ---

15 MR. JEPERTINGER: And I would ask, Your Honor, just for
16 whatever reason when the jury gets this case that ---

17 THE COURT: They're not getting the bullets and the
18 magazine at the same time.

19 MR. JEPERTINGER: Yeah, that they don't go at the same
20 time. If they want to look at one, then the other one has to
21 come back.

22 THE COURT: All right.

23 (Whereupon, there is a pause in the proceedings as
24 counsel confer.)

25 MS. PARROTT: Are these 9-A and 9-B or are they just one

1 -- one together?

2 THE COURT: If it's ---

3 MS. PARROTT: Nine? Okay.

4 THE COURT: It's one thing and they're in the box and
5 they're strapped down. It will be one exhibit.

6 MS. PARROTT: Okay.

7 THE COURT: Number 9.

8 MS. PARROTT: I just wanted to make sure before ---

9 MR. JEPERTINGER: All right.

10 MS. PARROTT: Okay.

11 MR. JEPERTINGER: So -- so the only thing that's not in
12 evidence at this point is -- are these photographs ---

13 MS. PARROTT: Of the texts.

14 MR. JEPERTINGER: --- of the cell phone texts.

15 THE COURT: Okay. All right. For the record, State's
16 Exhibit 1, 2, 3, 6 which is 21 photographs, 7-A which is a ski
17 mask, 7-B which is a black t-shirt, 8-A which is four shotgun
18 shells, 8-B which is sixteen 9mm bullets, and 9 which is a
19 shotgun and a pistol and magazine, are into evidence without
20 objection. Is that right?

21 MR. JEPERTINGER: That is correct.

22 THE COURT: Ms. Parrott?

23 MS. PARROTT: I believe so, yes, Your Honor.

24 THE COURT: Yes or no?

25 MS. PARROTT: Yes, Your Honor.

1 THE COURT: All right. Thank you very much. 4 and 5 are
2 not.

3 MS. PARROTT: Thank you. That -- thank you.

4 THE COURT: All right. That will help things out.

5 MR. JEPERTINGER: All right.

6 THE COURT: What else do we have?

7 MR. JEPERTINGER: I think ---

8 THE COURT REPORTER: I haven't marked those yet.

9 MR. JEPERTINGER: You haven't marked those yet?

10 MS. PARROTT: No.

11 MR. JEPERTINGER: Okay. We'll just put these here and I
12 guess since they're going to be in evidence, we'll just turn
13 them over to the clerk for Wednesday morning. I don't think
14 there are any other issues that -- that I have.

15 MS. PARROTT: The ---

16 MR. JEPERTINGER: Do you?

17 MS. PARROTT: --- book bag.

18 MR. JEPERTINGER: Well, the book bag. We have the
19 photographs and that -- Backus is going to claim that. Joe
20 Backus ---

21 MS. PARROTT: Okay.

22 MR. JEPERTINGER: --- will claim that -- yeah, that he
23 was carrying that book bag.

24 MS. PARROTT: Okay. All right. And not into evidence
25 yet and not marked.

1 MR. JEPERTINGER: If he doesn't, we'll deal with that
2 then.

3 MS. PARROTT: Okay. And that's fine. I just wanted to
4 turn it around and look in it and see if it was there. It
5 made me think.

6 MR. JEPERTINGER: All right.

7 MS. PARROTT: All right.

8 THE COURT: Is that it?

9 MS. PARROTT: That is it because there's no -- he didn't
10 give a statement. There's no Neil v. Biggers.

11 MR. JEPERTINGER: The only -- the only thing I can say in
12 terms of Neil v. Biggers, I believe Christy McKenzie -- Smith
13 now -- will say she identified the individual. I believe
14 Russell Cox did show her pictures of Joe Backus and this
15 individual and she said that to distinguish which one
16 threatened to blow her brains out and she will say it was
17 Johnell Richardson. I've already told you that.

18 MS. PARROTT: Okay. Are you putting her up before you
19 are going to be putting up J.D. -- Jeffrey Gordon?

20 MR. JEPERTINGER: At this point, I probably will put the
21 victims up first, yes.

22 MS. PARROTT: Okay. Then I guess pursuant to the latest
23 case law that I understand then if there's an in-court
24 identification after that, then we probably do need to have at
25 least ---

1 MR. JEPERTINGER: Well, before she testifies ---

2 MS. PARROTT: Right.

3 MR. JEPERTINGER: --- we'll go through that.

4 MS. PARROTT: Right.

5 THE COURT: It's an out-of-court identification that
6 she's going to testify; is that what you're saying?

7 MS. PARROTT: Yes, sir.

8 THE COURT: All right.

9 MS. PARROTT: But then I know she'll be making an in-
10 court identification would be my guess as well.

11 MR. JEPERTINGER: Well ---

12 THE COURT: Based on an out-of-court identification;
13 right?

14 MR. JEPERTINGER: Yes. So ---

15 THE COURT: But we can do that Wednesday.

16 MR. JEPERTINGER: We can do that before she testifies.

17 THE COURT: Yeah. All right.

18 MS. PARROTT: Okay. But that shouldn't take but only a
19 couple minutes I would think. That's not a ---

20 MR. JEPERTINGER: That's correct.

21 THE COURT: All right.

22 (Whereupon, there is a pause in the proceedings as
23 counsel confer.)

24 MR. JEPERTINGER: That's it.

25 MS. PARROTT: Yeah.

1 THE COURT: All right.

2 MS. PARROTT: I believe so, Your Honor.

3 THE COURT: Nine thirty Wednesday morning.

4 MR. JEPERTINGER: Yes, sir. Thank you ---

5 THE COURT: Thank you.

6 MR. JEPERTINGER: --- so much and I hope you enjoy the
7 rest of the day.

8 THE COURT: Thank you.

9 (Whereupon, there is a break in the proceedings from 1:24
10 p.m. on April 15, 2013, until 9:31 a.m. on April 17,
11 2013.)

12 APRIL 17, 2014

13 (The proceedings resume at 9:31 a.m.)

14 THE COURT: All right. Before we begin, are any jurors
15 in the courtroom?

16 MR. JEPERTINGER: Are there any jurors in the courtroom?
17 No.

18 THE COURT: All right. Are all of them here and back
19 there?

20 MR. JEPERTINGER: All of them are in the back and Ms. Jo
21 is manning the door.

22 THE COURT: Okay. Good deal. All right. I'm ready to
23 hear from you when you are.

24 MR. JEPERTINGER: Okay. I would ask Ms. Parrott to bring
25 her client around. He's -- there's a change of plea from not

1 guilty to guilty.

2 THE COURT: All right.

3 MS. PARROTT: Your Honor, if you could just give me one
4 more second with him?

5 THE COURT: Sure.

6 MS. PARROTT: I've done this before, but I want to make
7 sure.

8 THE COURT: Sure. Take your time.

9 (Whereupon, there is a pause in the proceedings.)

10 MR. JEPERTINGER: All right. If it please the Court,
11 Your Honor.

12 THE COURT: Yes, sir.

13 MR. JEPERTINGER: Standing in front of you is Johnell
14 Richardson on six counts of armed robbery and five counts of
15 kidnapping, Your Honor. This plea is without negotiations or
16 recommendations.

17 THE COURT: And armed robbery carries up to how much
18 time?

19 MR. JEPERTINGER: Thirty years and the kidnapping carries
20 up to 30 years. Your Honor, I would tend to think that that
21 would equal to 330 years maximum. Your Honor, obviously the
22 armed robberies, there are minimums of ten years to 30 years.
23 I mean ten years on each of the armed robberies.

24 THE COURT: Ten to 30 on the armed robbery, zero to 30 on
25 the kidnapping?

1 MR. JEPERTINGER: That is how I read it. Yes, sir.

2 THE COURT: And a total up to 330 years?

3 MR. JEPERTINGER: That is correct.

4 THE COURT: And there's no negotiations?

5 MR. JEPERTINGER: That is correct.

6 THE COURT: No recommendations, no nothing?

7 MR. JEPERTINGER: Nothing.

8 THE COURT: Okay.

9 MS. PARROTT: I'll explain part of that whenever it's
10 time. Thank you, Your Honor.

11 THE COURT: All right. Mr. Richardson, good morning.

12 THE DEFENDANT: Good morning, sir.

13 THE COURT: You are pleading guilty to armed robbery,
14 which has a minimum of ten years and a maximum of 30 years; is
15 that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you are pleading guilty to six counts of
18 that; is that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Each one carrying a minimum of ten years and
21 a maximum of 30 years; is that right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. And you are also pleading guilty
24 to kidnapping, which has a maximum of 30 years in jail; is
25 that right?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you are pleading guilty to five counts of
3 that, each count carrying up to 30 years in jail; is that
4 right?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Technically, you are looking at a total of
7 330 years in jail; do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Do you still want to plead
10 guilty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Do you understand that you do not
13 have to plead guilty, that if you would rather have a jury
14 trial instead, we've already selected a jury, they're back
15 there in the back room, and if you want your trial, you could
16 have a seat and we could just move on with your trial? You
17 have that right; do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you understand that if you -- if we went
20 forward with your jury trial that the burden of proof is on
21 the State of South Carolina to prove you guilty beyond a
22 reasonable doubt? You have nothing to prove; do you
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that if you had a trial,

1 your jury would be made up of the twelve people we have back
2 there in that room and it would have to take all twelve
3 members to agree unanimously to convict you before the Court
4 could sentence you? It would have to be a unanimous decision;
5 do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand also that if you had a
8 trial that your lawyer would have the right to cross examine
9 and confront each and every one of the State's witnesses? Do
10 you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Furthermore, do you understand that if you
13 had a trial, you have the right to testify if you would like?
14 You could come over here, you could be sworn in, you could
15 take the witness stand, and you could testify and tell your
16 side of the story any way that you and your lawyer see fit.
17 However, I want you to understand that you do not have to do
18 that because you have the constitutional right to remain
19 silent. You don't have to testify and nobody can make you
20 testify. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that if you did not take
23 the stand and you exercised your constitutional right to
24 remain silent that I would tell the jury they cannot use that
25 against you in any way? I would tell the jury they cannot

1 even talk about that fact in the jury room. I would tell the
2 jury the fact that you did not testify is to have absolutely
3 no prejudice against you. Do you understand that right?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Furthermore, if you had a trial or with this
6 plea, if you're not happy with something that takes place, you
7 can appeal it, but you've got to do so within ten days; do you
8 understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Are you satisfied with your
11 lawyer?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has she answered all of your questions?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Has she done everything you've asked her to
16 do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anybody promised you any type of reward
19 or gift, anything like that, to induce you into pleading
20 guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Is anybody forcing you to plead guilty? Is
23 anybody coercing you into pleading guilty? Is anybody making
24 you plead guilty?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Are you under the influence of
2 any drugs or alcohol at this time that would affect your
3 ability to think, reason, and understand and know what you're
4 doing?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Are you guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you understood all of my questions?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Have you answered me truthfully?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions for me or your
13 lawyer at this time?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Thank you. Solicitor?

16 MR. JEPERTINGER: Okay. Your Honor, we're going to go
17 back to September the 13th, 2011, Your Honor, and realistically
18 this probably also kind of started maybe September the 12th of
19 2011. Your Honor, sometime either September the 12th, 2011,
20 September the 13th, 2011, a plan was concocted to rob at
21 gunpoint R&J Billiards.

22 R&J Billiards, Your Honor -- and I will show you on
23 State's Exhibit 2 that had been admitted into evidence in the
24 trial of this case -- is off Third Loop Road. Irby Street is
25 right -- kind of right here going South Irby. You have the

1 DSS building. Here's the parking lot of the DSS building up
2 in the upper right-hand corner. R&J Billiards is located in
3 this strip mall.

4 Your Honor, the club is normally open I would say from
5 four to two in the morning. However, that evening after the
6 club had closed, there were still workers -- a worker and
7 patrons of that club still present. Now, the owner of that
8 club is Mr. John Johnson, this gentleman here. Raise your
9 hand, Mr. Johnson, just to let ---

10 THE COURT: Mm-hmm.

11 MR. JEPERTINGER: --- let the Court know that he's there.
12 He was not there that evening. Christy McElveen Smith was
13 present, employed there. I believe Andy Porter, who is in the
14 white t-shirt next to Ms. Smith, was -- had some sort of
15 responsibility, more of a patron than any sort of
16 responsibility. He was there along with Dell Nettles and Glen
17 Bruce, the gentleman in the plaid shirt.

18 There were two other individuals, a William Lee Brown, an
19 African-American male that chose not to participate in this
20 matter, and a Montray Green or Montrez Green. We'll tell you
21 a little bit more about Montray Green here in a second.
22 Montray Green went by the nickname of Montana.

23 As I was stating to you, there was a plot, a conspiracy
24 to rob this place. Now, who was involved initially in this
25 plot and conspiracy? One of the co-defendants who would have

1 testified for the State by the name of Jeff Gordon, just like
2 the automobile racer, was involved in the plot. He was also
3 on the inside of R&J Billiards. He was the inside man that
4 evening that we initially knew about.

5 He, along with Joseph Backus, who would have also
6 testified for the State, and a Montrez Baccus were initially
7 the ones that we knew had conspired to rob this place. They
8 were at a gentleman's over -- his name was Maurice. They were
9 over at Savannah Grove at his house. They had been smoking
10 marijuana, playing video games, and talking about hitting this
11 place. The plan was to go get -- have Jeff Gordon go back to
12 R&J Billiards and go on the inside of the place, and the other
13 two were going to pick up Johnell Richardson from his home on
14 Roughfork Street. They did do that.

15 Now, this is where it gets a little complicated, Your
16 Honor, because when I was speaking to Mr. Gordon, he said
17 you've got to -- you've got to understand something. One of
18 the individuals on the inside of R&J Billiards, the person
19 with the nickname of Montana, is Johnell's uncle -- that's how
20 he referred to him -- and I needed to contact Johnell. I
21 didn't have his phone number and Montana knew what was going
22 to go down according to Jeff Gordon.

23 Montana was initially listed as one of the victims in the
24 incident report. He held himself out to be a victim to the
25 police officers after this happened. He got the number from

1 Montana, called Johnell, and Johnell said, well, you know, I
2 got to go get a shotgun, and apparently he told Jeff Gordon
3 I'm going to go get a shotgun from my cousin.

4 Your Honor, after that conversation took place, there was
5 several -- several phone texts between Jeff Gordon, the inside
6 guy that we knew about, and Montrez Baccus. Montrez was
7 driving a Buick. He was going to be the wheel man at the --
8 for everybody to get from Roughfork Street over to Third Loop
9 Road, R&J Billiards. Sitting in the front passenger seat was
10 Joe Backus and in the back seat was Johnell Richardson.
11 Johnell had the shotgun. Joe had the Uzi-type weapon that
12 they've been introduced into evidence.

13 Okay. Then begins the texts from J.D. That was Jeff
14 Gordon to Montrez Baccus and we waiting on Andy to leave. He
15 stalling. Now, the text messages were from September 10th,
16 2011, at 4:07 p.m. We found out that those times were
17 incorrect. The correct phone records, which were State's
18 Exhibit 1 that we got from T-Mobile that we subpoenaed, would
19 have verified that the correct times would have been on
20 September 13th, 2011, at 4:07 a.m. That information was just
21 incorrect as it was programmed into the telephone.

22 But this is how it started. We waiting on Andy to leave.
23 He stalling. Referring to Andy Porter we believe. That's at
24 4:07 p.m. Next one, way y'all or where are you all. Okay?
25 At 4:15. Montrez Baccus, at the crib. Okay? At 4:16. Next

1 thing, come on, hurry. 4:17 p.m. Next one -- well, it's the
2 same one. Come on, hurry. Again, now hurry. From Montrez,
3 what? And then the dispositive thing. Clear. Make sure they
4 get the phones.

5 When they were discussing the thing at Maurice's house
6 over in Savannah Grove, it's how you gonna do this? The idea
7 was to have Joe Backus to go in and to have Johnell Richardson
8 to go in. At 4:27 p.m. [sic.], they get the clear signal.
9 According to Gordon, they stop on Third Loop Road, and Backus
10 confirms this. They stop on Third Loop Road, they get out,
11 they come in.

12 Backus is kind of dressed in I would say blue or dark-
13 colored jogging pants and he's got a red bandanna caught
14 across his face and he's -- he's carrying the Uzi-type weapon.
15 The Uzi-type weapon we learned from Clendenin is fully loaded.
16 Well, not fully loaded, but it's got sixteen -- sixteen
17 bullets. They're -- they're in evidence and there's one in
18 the chamber, maybe fifteen in the -- in the magazine and one
19 in the chamber. We also find a matching Federal 9mm in
20 Montrez Baccus' car after he gets stopped. I'll get to that
21 here in a second.

22 Johnell Richardson, this defendant, comes in with a --
23 with the shotgun that's in evidence and with that ski mask on
24 and, of course, you got these folks in various locations all
25 across the pool hall. You've got some sitting at the end of

1 the bar, some at the tables, some shooting pool. As soon as
2 they get in, you can imagine what's said, Judge. You know,
3 get the F down. Get the F down. You know, we ain't playing.
4 We ain't playing.

5 At that point, one of them -- and I'll say there was a
6 discrepancy between what Ms. Smith tells me and what Mr.
7 Nettles told me, but he recalls that the initial person to
8 take Ms. Smith to the safe area -- there is a small safe
9 that's located on this counter and there's a large safe under
10 this table. He recalls the gentleman with the red bandanna
11 doing that. She's scared to death at this point according to
12 her and she can't really -- you know, she doesn't remember
13 which one, whether it was the guy with the ski mask or the red
14 bandanna.

15 Everybody is getting their money taken, their personal
16 money, including Ms. Smith, and, of course, she opens this
17 little safe because she has the combination to that. She
18 opens that and -- and gives the robber the store's money. So
19 that's why Mr. Johnson is sitting here today because he's --
20 he's out of business money and Ms. Smith was his agent at that
21 time, but her own personal money is taken. They all had money
22 taken from them. A few of them have cell phones taken from
23 them.

24 Now, the other guy is out there and they are all down on
25 the ground not knowing whether they are going to live or die.

1 At that point, Your Honor, after they get the money from the
2 little safe, Ms. Smith and, for lack of a better term, the
3 African-American gentleman that would be Jeffrey Gordon, the
4 inside guy, Montana, who we later find out is knee deep into
5 this himself, William Lee Brown, and her are taken into the
6 women's rest room. The Caucasian individuals, that would be
7 Mr. Glenn Bruce, Mr. Andy Porter, and Mr. Dell Nettles, are
8 taken into the men's rest room.

9 Now, this didn't make sense. I don't know if they were
10 trying to block them, but they had them confined in there.
11 You know, don't -- don't leave, don't move, don't do any of
12 that business. There is a change machine that was located
13 next to the juke box here. It was physically moved and placed
14 in front of the women's rest room. Now, the door didn't open
15 to the outside. It opened to the inside so it was kind of a
16 stupid thing to do, but it was -- it was done and the purpose
17 was was to block ingress and egress. It was confining them to
18 that bathroom. The cigarette machine was against this wall.
19 It was pushed over same deal in front of the men's rest room.

20 Now, Dell Porter [sic.] was -- had just had I believe
21 knee surgery and his leg was in a cast and he was having -- he
22 couldn't get down, Judge. I mean that -- it -- if there were
23 pictures that we would have put in evidence, I mean his leg
24 was -- I mean it was just -- I mean there was a cast on it.
25 He could not get down. They didn't get his cell phone. So

1 when he goes in the men's rest room, you know, he's calling 9-
2 1-1 from there.

3 Mr. Bruce had been in the military and he had a knife on
4 him and he didn't know what was going to come busting through
5 that door, but he was going to fight them. If they came in
6 and he knew he was going to get killed, he was going to fight
7 them. In fact, he had everybody kind of step back from the
8 door and move to the -- to the wall area because he figured
9 maybe they didn't have the guts to shoot us face to face, that
10 they're going to shoot us through the door because he saw that
11 machine-type pistol and it's a semi-automatic, but he didn't
12 know if it was -- at that point, he didn't know if it was a
13 Uzi or one of these other automatics.

14 Okay. At that point, Judge, Johnell Richardson gets
15 Christy out of the women's rest room, walks her back to the
16 big safe because that's where more money can be found, and she
17 would have testified that she recognized Johnell through the
18 ski mask eyes and around the mouth. That's him. Russell Cox,
19 the investigator, showed her a -- I guess two photos, one of
20 Johnell and either of Joe Backus or Montrez, and she said
21 that's the guy. That's the guy in the ski mask. That's the
22 guy that said I'm going to blow off your F'ing head. And she
23 kept telling him I can't open that. I don't have the
24 combination. I don't have a key to that. I don't have it.

25 After, he walked her back and put her back in the rest

1 room and there they stayed. Now, they heard what was going on
2 on the outside. There was an ATM machine located against this
3 wall approximately where this -- where this table -- right
4 behind this table, and it seemed like they were trying to get
5 into that, but, you know, there was no way they -- they could
6 get in the ATM machine and I don't think they got anything out
7 of that. They got -- they got change out of the change
8 machine because that -- that kind of busted open a little bit
9 and there was -- there was change on the floor.

10 They were there, Your Honor -- I don't know how long it
11 took, but on the CAD report the first call in it looks like
12 came in at 4:45. So if -- if you can -- if -- from this point
13 of 4:27, you've got to 4:45. Now, what happened at 4:45?
14 When that call came in, there were several sheriff deputies at
15 the South Florence Exxon less than I would say a quarter mile
16 away. That's on South Irby Street and I believe Third Loop
17 Road. No, not Third Loop, it's ---

18 MS. PARROTT: Alligator.

19 MR. JEPERTINGER: --- Alligator Road. Thank you, Ms.
20 Parrott. And they were there in less than two to three
21 minutes. What happened? On the inside -- and I will say
22 this. One of the things the inside guy said you got their
23 cell phones, you got the money, there's no reason for anyone
24 to get hurt. Okay? He did say that. I don't know if he
25 trusted or didn't trust his co-defendants. He knew what --

1 what the deal was and the way we see it, Your Honor, with
2 Montana and Jeff and the three that were kind of involved in
3 this, they were going to split the money five ways the best we
4 can figure out as of today, Your Honor, but they eventually
5 left. Now, obviously thousands of dollars are missing at this
6 point. I'll let the victims address that.

7 The police get on -- the police get on scene very, very
8 quickly -- and I'll flip this over -- and they begin
9 canvassing the -- the area, Judge, and what happens, they
10 begin kind of going in this area and around this area and
11 obviously there's an apartment complex behind the strip mall
12 and these storage bins. They ultimately find the -- the
13 clothing strewn of -- that Joseph Backus was wearing, that
14 black t-shirt and black ski mask that Johnell was wearing.

15 They don't find Johnell. However, they do find Joseph
16 Backus as he's trying to escape over this fence area, Your
17 Honor, and he has that back pack with over \$4,000 in it and a
18 cell phone that we think belongs to either William -- I
19 believe William Lee Brown. Is that his cell phone you think?
20 There's a cell phone in the back pack that belongs to Brown,
21 and he's caught.

22 Now, Deputy Ryan Huggins canvasses this area in his
23 patrol vehicle and he notices kind of a silver-ish type Buick
24 there with the lights on. He makes a stop there and in that
25 car is Montrez Baccus. Eventually, he stops Montrez's car

1 right up here and Montrez is -- and you've got to mind you,
2 this is about 4:45 in the morning. He says he's there in that
3 neighborhood to meet his girlfriend. Now, he doesn't have a
4 name for a girlfriend, nor does he know where she lives. He
5 just happens to be there.

6 While he's there, the cell phone is going off, getting
7 messages from J.D., Jeff Gordon, in there and we have -- we
8 had other messages past this where it just kept ringing, and
9 one of the officers, Austin Meggs, said the thing kept ringing
10 saying J.D., J.D., J.D. It -- basically get the heck out of
11 there. Okay? The cops are -- the cops are around. He didn't
12 text that in there because the cops already had the cell phone
13 and, obviously, when the cell phone -- the last text message
14 that they saw in there was clear, make sure they get the
15 phones.

16 Tony Drummond of the Sheriff's Department, he reports
17 over to the billiard lounge and he starts talking to some of
18 the victims and starts talking about what was your cell phone
19 number, what was your cell phone number. When he gets to Jeff
20 Gordon's and he said what is your cell phone number and -- and
21 he -- he gives a number to Drummond, the officers that stopped
22 Montrez Baccus said, hey, wait a minute. That's the same
23 number that's been leaving the text messages and calling this
24 phone.

25 At that point, Gordon knew he was caught and he began to

1 cooperate. Obviously, Backus they caught on scene with the
2 money and he began to cooperate. They did not catch Johnell
3 Richardson on -- on site. The next day after Backus and
4 Gordon started talking, they started figuring out who was
5 involved, and it was just recently that I learned that Montana
6 was also tied into this, Judge, but that's it. It was a -- it
7 was a -- it was absolutely a planned crime. It was a
8 dangerous crime.

9 I still have to try Montrez Baccus in June. I was going
10 to try him this week, but his -- his attorney's son got sick
11 and we're going to put it off in June. We're still going to
12 use the testimony of Gordon and Backus and Richardson. If
13 Richardson wants to cooperate with the State, we will use that
14 testimony and I've already told his attorney that there is
15 something akin to a 35(b) motion in state court now that if he
16 avails himself of helping the State, that that is a
17 possibility of reducing -- being able to reduce his sentence.

18 But this crime is about as serious as you're going to
19 get. These folks were terrified. For fifteen minutes, they
20 didn't know if they were going to live or die, Judge, and
21 that's just -- I mean that's just the way it is and I'll give
22 you an opportunity to hear from them and they have a right to,
23 if you want to say anything.

24 Mr. Johnson, how much money are you still out of?

25 MR. JOHNSON: As far as I can account for is \$850.

1 MR. JEPERTINGER: That you're still out? How much was
2 returned to you? Do you remember?

3 MR. JOHNSON: I don't remember.

4 MR. JEPERTINGER: Okay. How about you, Mr. Bruce?

5 MR. BRUCE: I was returned 1,400 out of 2,300, and a cell
6 phone is still missing.

7 MR. JEPERTINGER: Ms. Smith?

8 MS. SMITH: I got my money back.

9 MR. JEPERTINGER: She got her money back and no cell
10 phone was taken from you; correct? How about you, Mr. Porter?

11 MR. PORTER: I got my money back. I didn't get my cell
12 phone.

13 MR. JEPERTINGER: All right. And Mr. Nettles?

14 MR. NETTLES: I got some of it back. They give me like
15 250. I'm still like 200 out.

16 MR. JEPERTINGER: So he's out 200. There was -- the back
17 pack that -- and the photos show that the back pack that was
18 recovered had a lot of money in it, Judge. I'll show you
19 what's marked as State's Exhibit 6-J.

20 THE COURT: Okay. Thank you.

21 MR. JEPERTINGER: I think -- think that's it unless you
22 all want to say anything else.

23 THE COURT: All right. Thank you very much. I'll accept
24 the plea. I'll find there's a factual basis for the plea and
25 that he's giving same freely and intelligently and with the

1 advice of very competent counsel. Ms. Parrott?

2 MS. PARROTT: Thank you, Your Honor. May it please the
3 Court. Your Honor, I stand here with Johnell and also he
4 stands here with his mother, Astrid Richardson, and I've known
5 Ms. Richardson now for probably about ten years and I know
6 that he is extremely sorry for his part in all of this.

7 THE COURT: What kind of record ---

8 MS. PARROTT: I think ---

9 THE COURT: What kind of record does he have?

10 MS. PARROTT: He only has a shoplifting.

11 THE COURT: Okay.

12 MS. PARROTT: And I'm glad you asked that because I think
13 one of the worst things that you could say sometimes standing
14 up here before the Court is that you were hanging with the
15 wrong people who happened to be doing the wrong thing, but I
16 honestly am thinking that if I have ever had a case where a
17 group of people took another one in and started educating him
18 on how to do the wrong things, this is the case. The other
19 co-defendants are or were at the time I believe 24, 24, 26,
20 and then I'm going to go ahead and include the person who gave
21 the name of Montray Green, who was 35 -- 36 -- 35 -- 36 at the
22 time.

23 That is not his real name and I will -- that has been
24 given over as information that's part of a statement that
25 Joseph Backus gave, and then whenever I went further and did

1 even further research into this, I believe his name is going
2 to be Donald Richardson and he's going to be an uncle to not
3 only Johnell but from what his mother has just told me and
4 informed me up here, there may even be a distant cousin
5 relation between Donald Richardson and the Baccus ---

6 MR. JEPERTINGER: Montrez.

7 MS. PARROTT: Montrez, as well as Joseph.

8 MR. JEPERTINGER: Joseph.

9 MS. PARROTT: And the text messages that Mr. Jepertinger
10 has put into evidence are a part of the story. Mr.
11 Jepertinger also gave over as part of discovery one where
12 Jeffrey Gordon is texting Montrez saying I will give you some
13 gas money. Will you go get John-John? And so it was Jeffrey
14 Gordon asking for Montrez to go and pick up Johnell for him to
15 be part of this and when I'm talking with my client, what he's
16 told me is that his uncle, Donald, who has never been charged,
17 who gave a fake name, who was also one of them who was put
18 into a bathroom that night, who only got about \$100 taken off
19 of him as opposed to the hundreds and thousands of dollars
20 taken from the rest of everyone else, it was more Montrez and
21 Donald's idea of how to do all this and then getting all of
22 the players involved.

23 And so I don't mean to belittle Johnell's role in it
24 because he still did go in. He still took part, but even
25 Joseph Backus says in his statement -- and there is some

1 contradictory information in the statements, but Joseph Backus
2 is the one who says that he took the lady out of the bathroom
3 and went and got the money out and he's the one who is found
4 with the back pack with the money. If you give me a second, I
5 can read you the quote even.

6 THE COURT: Sure.

7 MS. PARROTT: "You went back there with the girl?"

8 Yes, sir.

9 Did you have a knapsack on?

10 Yes, sir.

11 Then you got the money from everybody and put it in the
12 knapsack; is that right?

13 Yes.

14 Who locked them in the rooms?

15 I think me and him did.

16 You was talking about going -- talking about the inside.

17 I know Donald Richardson was in there."

18 And so, yes, we have loaded guns and, no, this is not an
19 easy case. No, this is not something to take lightly, but I
20 do submit to you that Jeffrey Gordon is on community
21 supervision right now because he got released in April of 2010
22 from a burglary first conviction. So within a year and a half
23 or so, he's involved in an armed robbery and this kidnapping,
24 multiple counts, and he's just done at least -- he had a
25 fifteen-year suspended sentence. So he -- he's just come out

1 from a good long haul. He's got a reason to start cooperating
2 even though he's going to be facing some time and needs to
3 start making deals.

4 Joseph Backus I don't really believe had too much of a
5 record. He's taken care of a malicious injury charge since
6 this -- and Montrez, of course, is still hanging out there,
7 but Joseph -- excuse me -- Johnell only has a shoplifting.

8 No one was shot, thank God. I have had that armed
9 robbery and kidnapping charge not too long ago in that case
10 and, as a matter of fact, I understand you heard a co-
11 defendant on that one and that was a much worse case to me
12 because someone was shot at, at least, and so I do
13 differentiate and maybe that's just too many years of doing
14 this job, but I do differentiate between having a gun at a
15 scene and actually shooting when you have more than ample
16 opportunity and could have done so. I really don't think that
17 they meant to hurt them. I think it was planned out this way
18 by other people and Johnell took orders and did his part and,
19 unfortunately, that's -- that's enough.

20 But the offer as of last Friday was fifteen years for him
21 based on all of this. I understand and I have talked with him
22 already about the fact that Montrez is still out there to
23 possibly go to trial. There's obviously some more
24 investigation that can be done in this case and further
25 arrests that can be made with information that I have, as well

1 as what my client is giving me even this morning, giving me a
2 little bit more information that may lead further.

3 So he understands that there are things that he can do to
4 help himself and I would certainly urge him to do so. He
5 tells me that he is willing to do so. So I would ask that you
6 would consider all of that. He's new to this and so I think
7 he really got scared and didn't exactly understand some deals
8 can get taken off the table. Some -- some offers can be
9 revoked and they don't come back, and so I don't blame Mr.
10 Jupertinger for that. I don't even really blame my client for
11 it, Your Honor, but I would ask if you would consider that
12 fifteen years that was offered for him just based on -- based
13 on his youth and based on the severity of everything that is
14 here, but he is willing to cooperate and trying to fix things
15 as best he can now that he fully understands how this system
16 works.

17 THE COURT: All right.

18 MR. JEPERTINGER: Does he want to say anything?

19 MS. PARROTT: Your Honor, if you would listen to Mr.
20 Richardson?

21 THE COURT: I'd be glad to. All right.

22 THE DEFENDANT: If it may please the Court, I'd just like
23 to apologize for having -- for what happened to the victims,
24 and I ask that no matter how much time I do receive today that
25 they may find mercy in their heart to forgive me for the

1 things that happened. I'd like to apologize to the jury for
2 having them sit back and wait for a trial that I'm glad ain't
3 happening, but I apologize for wasting the time and the power
4 -- manpower y'all had to prosecute and the lawyers had to put
5 together to present a trial.

6 And I apologize for my role in this robbery/kidnapping
7 thing that happened. I'm sorry that it happened and I promise
8 it won't happen again. And I ask that you find mercy in your
9 heart to give me not a tap on the hand, but I pray that you
10 don't give me too much time that I may spend away from my
11 grandmother and my mother.

12 THE COURT: All right. Thank you.

13 THE DEFENDANT: Thank you.

14 MR. JEPERTINGER: Did you want to say something to the
15 Court?

16 MR. PORTER: Yeah, I would.

17 MR. JEPERTINGER: Mr. Porter would like to say something.

18 THE COURT: Mm-hmm.

19 MR. PORTER: I'm sure you're sorry ---

20 MR. JEPERTINGER: Address the comments to the Court,
21 please.

22 MR. PORTER: But what happened that night has changed
23 every one of us. I don't know if any of y'all ever had a
24 loaded weapon pointed at you or felt that you had taken your
25 last breath. That ain't a good feeling, and my life, his

1 life, his life, and her life has not been the same since.
2 Every night when I drive up in my yard since that night, I
3 never did this before. I'd get out of my truck and I'd go
4 over to the door. I never looked across the yard or looked
5 around to see if there was anybody around because I felt safe.

6 Ever since that night, every night I get home the first
7 thing I do when I step out my truck is I scan my whole yard to
8 make sure there's nobody around. Every time I step out that
9 building, if my truck ain't parked right there by the door, I
10 scan that whole parking lot. You shouldn't have to do that.
11 Nobody should have to do that.

12 THE COURT: All right.

13 MR. JEPERTINGER: Thank you.

14 (Whereupon, there is a pause in the proceedings.)

15 MR. JEPERTINGER: Your Honor, I was going to stay away
16 from doing the sentencing sheets and I know Ms. Parrott
17 informed me that these are all violent, most serious, no
18 parole offenses. I don't know if that was stated during the
19 plea conference, but they are and I'm sure she's informed him
20 of that fact.

21 MS. PARROTT: I have talked to him about the fact. If we
22 could just -- I know you're doing that as well, Your Honor,
23 but we'll put it on the record. I have informed him that
24 these are things that he should count on doing a hundred
25 percent of, but that -- that the least that he would do would

1 be eighty-five percent. We've talked about the fact that
2 these are most serious offenses and so should he ever be
3 arrested for anything again and that goes into the serious or
4 the most serious offense, the right combination thereof that
5 that could be life without parole against him and -- and that
6 he does get credit for the time that he has done, which I've
7 calculated I believe at 583 days now, Your Honor. He's never
8 bonded out in this matter, but yes, that these are very
9 serious offenses in the ---

10 THE COURT: Okay. Thank you.

11 MS. PARROTT: --- colloquial sense as well as the legal
12 sense.

13 (Whereupon, there is a pause in the proceedings.)

14 MS. PARROTT: I'm sorry, Your Honor. Also, because of
15 this being a kidnapping offense, I believe that they have to
16 opt out of the sex offender registry on this, and I would ask
17 ---

18 MR. JEPERTINGER: That's correct.

19 MS. PARROTT: --- that you make a finding that there is
20 no sex-based ---

21 MR. JEPERTINGER: Yeah. There's no sexual issue involved
22 in this kidnapping at all, Your Honor, and I had said he would
23 not have to register as a sex offender because of these
24 crimes.

25 MS. PARROTT: Record keeping.

SENTENCE OF THE COURT

1
2 THE COURT: All right. The sentence on each is that the
3 defendant is committed to the State Department of Corrections
4 for a term of 25 years, and I'm going to give him credit for
5 583 days, and I'm going to run them all concurrent.

6 MS. PARROTT: And no registry? And the finding is made?

7 THE COURT: And no registry.

8 MS. PARROTT: Thank you, Your Honor.

9 MR. JEPERTINGER: Thank you, Your Honor.

10 THE COURT: Do I need to write that on the sentencing
11 sheet?

12 MR. JEPERTINGER: Yes. I would say no sex offender
13 registry.

14 MS. PARROTT: I think it has to be an actual finding by
15 the Court, yeah. I'm sorry, Your Honor.

16 MR. FITZLEE MCEACHIN: I think it needs to be on the
17 sentencing sheet, Judge.

18 THE COURT: All right.

19 (Whereupon, there is a pause in the proceedings.)

20 (Whereupon, a bench conference is held off the record.)

21 MR. JEPERTINGER: Bring the jury out?

22 THE COURT: Go ahead and bring them all out.

23 (Whereupon, the jury enters the courtroom at 10:18 a.m.)

24 THE COURT: All right. Good morning.

25 THE JURY: Good morning.

1 THE COURT: I want to let you know that we were not here
2 just eating Moon Pies and drinking Coca-Cola while you were
3 back there in the jury room. While you were back there, the
4 defendant that was going to be tried before you pled guilty.
5 So that case has been disposed of.

6 I'm going to dismiss you for forty-five minutes and ask
7 that you be back at eleven o'clock and we may pick another
8 jury for another case. But thank you for your service on that
9 case. It took you to make it happen and it took you being
10 back there in that room waiting to come out here to make it
11 happen. So I'll see you back at eleven o'clock.

12 (Whereupon, the jury exits the courtroom at 10:19 a.m.)

13 (Whereupon, the proceedings end at 10:19 a.m.)

14 (Whereupon, the items introduced into evidence are
15 released to counsel for the State and are not retained by
16 the clerk.)

17

18 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

CERTIFICATE

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 73 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 15th and 17th days of April, 2013.

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

Krystal J. Smith
Court Reporter

Florence, South Carolina
May 28, 2014

FILED
FORM 5

2014 APR 10 PM 2:20

STATE OF SOUTH CAROLINA
COUNTY OF Florence

CONNIE REEL-SHAW THE COURT OF COMMON PLEAS
CCCP & GS
FLORENCE COUNTY, SC

Full name and prison number (if any) of Applicant.

Johnell Richardson #355032

v.

State of South Carolina

20 14 CP 21 908

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED: A TRUE COPY

Connie Reel-Shaw

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Florence County-city complex
3. Name(s) of co-defendant(s) (if any) Jeffery Gordon, Joseph Backus, Montrez Backus
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-21-00238/ Armed Robbery (7 counts)
 - (b) 2012-GS-21-00234/ kidnapping (6 counts)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April, 27, 2013/ 25 year sentence
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
8. If you answered "yes" to (7), 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. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of counsel

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Failing to obtain a mitigation investigator or to
- (a) otherwise adequately prepare and present powerful
- (b) mitigating evidence.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- 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. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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

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

- (a) the name and address of each attorney who represented you:
- i. Karen Parrott/180 N. Irby St. Florence, S.C. 29501.
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. arraignment and plea.
 - ii. sentencing
 - iii. _____

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

I seek the 15 year sentence that was promise
To me.

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

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION)

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

Jonnell Richardson

SWORN to and subscribed before me this 8 day of April, 2014.

Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
2014 APR 10 PM 2:20
CONNIE REEL-SHEPHERD
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shepherd
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

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

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

Johnell Richardson
Applicant

SWORN or affirmed to and subscribed before me this 8 day of April, 2014.

Debra Jones
Notary Public

My Commission Expires: 11-4-2015

FILED
2014 APR 10 PM 2:20
CONNIE REEL-SHEARER
CLERK OF COURT & G.S.
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearer
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Johriell Richardson, #355032,

2014-CP-21-0908

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 10, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the March 2012 term of the Florence County Grand Jury for six (6) counts of kidnapping and seven (7) counts of armed robbery (2012-GS-21-0238). Applicant was represented by Karen Parrott, Esquire.

On April 17, 2013, Applicant pled guilty to five (5) counts of kidnapping and six (6) counts of armed robbery. The Honorable William H. Seals, Jr., sentenced Applicant to concurrent terms of twenty-five (25) years imprisonment. Applicant did not appeal his guilty pleas or sentences.

II.

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

- 1. Ineffective assistance of counsel.
 - a. Failure to hire a "mitigation investigator."
 - b. Failure to adequately prepare.

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

III.

Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner

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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. As such, Respondent requests an evidentiary hearing to fully resolve this issue. 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.

[Signature on following page]

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737


Nov 5, 2014

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)	
)	2014-CP-21-0908
)	
JOHNELL RICHARDSON, #355032)	
)	
Applicant,)	
)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
)	

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

Tristan Michael Shaffer, Esquire
4701 Oleander Drive
Myrtle Beach, SC 29577

DATED this 5th day of November, 2014.


 Norma Bigbee, Legal Assistant

State of South Carolina)	Court of Common Pleas
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2014-CP-21-00908
)	
Johnell Richardson,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
State of South Carolina,)	
)	
Defendant.)	
)	

November 7, 2016
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

Tristan Shaffer, Esquire
Attorney for the Plaintiff

Lindsey McAllister, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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(No Exhibits Presented)

1 NOVEMBER 7, 2016

2 (WHEREUPON, the proceedings began at 11:32 a.m.)

3 THE COURT: All right. Call your next case, please.

4 MS. MCALLISTER: Thank you, Your Honor. This will be
5 Johnnell Richardson.

6 THE COURT: What happened with Mr. Brown? Y'all told me
7 back in chambers, but I don't remember. I didn't write it
8 down.

9 MR. SHAFFER: Your Honor, there was a pending motion by
10 the State --

11 THE COURT: Okay.

12 MR. SHAFFER: -- to dismiss.

13 THE COURT: Right. Judge Newman?

14 MS. MCALLISTER: Judge Newman.

15 MR. SHAFFER: Yes, Your Honor.

16 THE COURT: Yes, ma'am.

17 MS. MCALLISTER: Your Honor, this is the case of Johnnell
18 Richardson versus the State of South Carolina. Mr. Richardson
19 filed his application for post-conviction relief on April 10th,
20 2014.

21 He is presently incarcerated in the South Carolina
22 Department of Corrections pursuant to orders of commitment
23 from the Florence County Clerk of Court. He was indicted at
24 the March 2012 term of the Florence County Grand Jury for six
25 counts of kidnapping and seven counts of armed robbery. He

1 was represented by Karen Parrott on those charges.

2 On April 17th, 2013, he pled guilty to five counts of
3 kidnapping and six counts of armed robbery before the
4 Honorable William H. Seals and was sentenced to concurrent
5 terms of 25 years. He did not appeal his guilty pleas or
6 sentences, and he is alleging ineffective assistance of
7 counsel.

8 He is present in the courtroom today represented by Mr.
9 Shaffer, and I will turn it to Mr. Shaffer at this time.

10 THE COURT: Mr. Shaffer.

11 MR. SHAFFER: Thank you, Your Honor. In this case, Mr.
12 -- Mr. Richardson had informed me last week -- he said that
13 he'd sent a letter the previous week indicating that there was
14 a witness that he wanted here, a young lady named Brittany
15 Robinson. Brittany Robinson is his sister or his stepsister.
16 I'm not sure if it's his sister, Your Honor.

17 I've spoken with Ms. Robinson. I don't believe I
18 actually received the letter yet. That being said, it's
19 possible that it's in a pile waiting to get scanned in my
20 office. He said he sent it approximately 10 days ago. It
21 would have been at the end of the week before last whenever he
22 told me he sent it, but so it's possible it's waiting to get
23 scanned in my office.

24 But Ms. Robinson would've indicated that -- she had
25 spoken to me over the phone and indicated that if she was

1 called here to testify, what she would do is say that, you
2 know, she allowed -- she opened the door for him the night of
3 the robbery and that he came in earlier and stayed at the
4 house basically the entire time and would not have been able
5 to have committed the robbery based off the timeline given by
6 the State.

7 Your Honor, this witness -- he's indicated that he wanted
8 his trial attorney to contact this witness, but this -- but
9 Mr. McKenzie, the investigator, was unable to actually get a
10 hold of this witness. She confirmed that she's never spoken
11 to any -- anybody for any investigator.

12 I would ask that the Court either consider a continuance
13 or consider allowing me to leave the record open. This
14 particular witness -- I think that I can have her present,
15 based off of what she told me, at some point this week. She
16 just could not be present today. I spoke to her this morning
17 prior to coming into court. I also -- I tried to contact her
18 last week as well and it took me a little while to get a hold
19 of her.

20 THE COURT: Ms. McAllister?

21 MS. MCALLISTER: Thank you, Your Honor. The State would
22 object to a continuance or to leaving the record open for this
23 witness. This case is old. It's almost two years old -- over
24 two years old -- two-and-a-half years old. He's not
25 indicating that this is someone new. This is his sister.

1 He's known about this witness the entire time and he has
2 failed to have her here.

3 And so we would object to -- this is his shot. I mean
4 we'd object to a continuance and we would object to leaving
5 the record open. He knew about today and he doesn't have her
6 here.

7 THE COURT: All right. Mr. Shaffer, how long have you
8 represented Mr. Richardson?

9 MR. SHAFFER: Your Honor, I can't tell you because this
10 file would have come to me after I changed over firms. So I
11 can't tell you. I don't have that order of appointment in
12 front of me, Your Honor.

13 THE COURT: If you had --

14 MR. SHAFFER: Perhaps the State has it. I can maybe find
15 it online, Your Honor. I do know this is the first time it
16 came on the docket, obviously, but, you know, I believe that
17 I've been appointed -- I would say -- I know for a fact I've
18 been appointed more than a year, Your Honor.

19 THE COURT: Okay.

20 MS. MCALLISTER: The order of appointment was clocked on
21 May 27th, 2014.

22 THE COURT: All right. All right. I'm going to
23 respectfully deny your request that the matter be continued.
24 I understand your client has indicated he sent you a letter
25 pertaining to this witness last week. He's had 2+ years to do

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 so. We're going forward on this matter here today.

2 Mr. Sammy, is there any coffee back there?

3 THE BAILIFF: Yes, sir.

4 THE COURT: Could I bother you? My microwave is broken
5 in there and I can't heat it up; so this has gotten cold on
6 me.

7 THE BAILIFF: Okay. No problem.

8 THE COURT: Thank you. All right. Mr. Shaffer, call
9 your first witness.

10 MR. SHAFFER: Thank you, Your Honor. The applicant would
11 call Mr. Johnell Richardson.

12 THE CLERK: Raise your right hand as much as you can. Do
13 you swear to tell the truth, the whole truth, and nothing but
14 the truth, so help you God?

15 THE APPLICANT: Yes, ma'am.

16 THE CLERK: Please have a seat and state your name for
17 the record.

18 THE APPLICANT: Johnell Richardson.

19 THE COURT: All right.

20 JOHNELL RICHARDSON, being first
21 duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SHAFFER:

24 A: Good morning, Mr. Richardson.

25 A: Good morning.

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 Q: You are currently serving a 25-year sentence for armed
2 robbery; correct?

3 A: Correct.

4 Q: Okay. Tell us a little bit about the allegations against
5 you. What did the State say you did?

6 A: They alleged that I arm robbed six or seven people or six
7 people and kidnapped five of them.

8 Q: Okay. Now, you had stated that the -- they're alleging
9 that you kidnapped five of them, but there were seven people
10 that were robbed; correct?

11 A: Correct.

12 Q: Okay.

13 A: The report is six people at a business -- a place of
14 business.

15 Q: Okay. So this is all one incident; right?

16 A: Yes, sir.

17 Q: Okay. And I guess two of the individuals were in the
18 bathroom; correct? Is that right? Two of them were hiding
19 out in the bathroom of the business; is that right?

20 A: No. They say -- they say that we placed the victims in
21 the bathroom.

22 Q: Okay. So would there have been five -- they're claiming
23 five individuals got locked in the bathroom and then two were
24 not locked in the bathroom; is that right?

25 A: No.

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 Q: Is that right?

2 A: They're saying that two of the victims were actually
3 suspects in the case.

4 Q: Okay.

5 A: But not suspects, but one was a suspect and the other was
6 -- I don't know what he was.

7 Q: They were not -- they did not -- they were participants;
8 right?

9 A: Yeah, basically.

10 Q: Okay. So tell us a little bit about -- you obviously did
11 not want -- based off the transcript, you ended up pleading
12 after the trial started or after you picked a jury; correct?

13 A: Correct.

14 Q: Okay. Why did you end up pleading guilty?

15 A: Because my attorney -- the only thing she tell me that I
16 was going to lose trial and get life in prison and said that
17 because my co -- my alleged codefendants was going to testify
18 against me and say that I did this crime, that I had no chance
19 of winning, and she really put forth no type of defense to
20 defend me whatsoever.

21 So I felt like, okay, I'll plead guilty and I was
22 assuming from what the advice that she gave me, she was going
23 to try her best to get me the 15-year plea that was supposed
24 to be made. I was supposed to have a 15-year plea; so I said,
25 okay, I guess.

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 Q: Okay. So you -- you thought that there was going to be a
2 15-year plea or there was a 15-year plea offer prior to going
3 to trial?

4 A: There was one.

5 Q: Okay.

6 A: There was one.

7 Q: And then when you ended up pleading guilty, that offer
8 had been taken away; correct?

9 A: Correct.

10 Q: Okay. At any point -- well, back up. When is the first
11 time you spoke to your attorney prior to going to trial? When
12 is the first time you spoke to her about this case? How long
13 after was it?

14 A: About a month. No, two months. No. Matter of fact, I
15 was arrested in September. I haven't -- I ain't spoke to her
16 until my preliminary hearing on December 28th.

17 Q: And do you recall how many times you spoke to her prior
18 to going to trial?

19 A: I spoke to her once -- well, no. One time in 2011 and
20 twice in 2012. Twice in 2012.

21 Q: Okay. And during these meetings, can you explain the
22 relationship you and your -- your attorney had? Was it a good
23 working relationship or not?

24 A: Hostile.

25 Q: Hostile? How was it hostile?

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 A: Because she -- basically, the only thing she was telling
2 me was I was going to lose trial and I was going to get life
3 in prison. I told her I was going to trial. She asked me to
4 plead guilty. I said no and we had exchange of words -- had
5 exchange of words and then parted ways.

6 Q: Okay. And why did she tell you that you were going to
7 lose at trial? What evidence did she point to?

8 A: My codefendants was going to testify against me.

9 Q: Was there anything else? Did she ever mention anything
10 about cell phone records?

11 A: Not that I recall.

12 Q: Did you ever go over discovery with her -- the Rule 5
13 with her?

14 A: Never. The only -- the only information pertaining to
15 the Rule 5 I had was the summary report from the Sheriff's
16 Office and two statements that my codefendants made.

17 Q: Now -- so you didn't have your full Rule 5 file; right?

18 A: Correct.

19 Q: You ended up getting that later; is that right?

20 A: In December of 2015.

21 Q: So that was after your plea, obviously?

22 A: Correct.

23 Q: Okay. Did Mr. McKenzie work on this case as well?

24 A: Yes, sir.

25 Q: Okay. Did you have many conversations with Mr. McKenzie

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 about the case?

2 A: I believe I spoke with him two or three times -- two or
3 three times.

4 Q: And just for the record, he was the investigator of -- he
5 would have been the investigator for the Public Defender's
6 Office?

7 A: Yes, sir.

8 Q: Okay. During those conversations with Mr. McKenzie, did
9 you ever ask him to look into any witnesses?

10 A: Yes, sir.

11 Q: What witnesses did you want him to speak to?

12 A: I wanted him to speak with my sister, Brittany Robinson,
13 my neighbor who stayed across the street, Jackie Wilson, and
14 my uncle. He's deceased now.

15 Q: Okay. And why did you think those witnesses would've
16 been good to talk to?

17 A: Because they was at my house prior to the crime and they
18 would be able to verify that I was home at the time of the
19 crime.

20 Q: Okay. So they were essentially alibi witnesses?

21 A: Correct.

22 Q: Now, do you recall -- did he ever tell you whether or not
23 he spoke to these witnesses?

24 A: He said he -- he said he spoke with Jackie Wilson and he
25 stated that I was home. I was -- we was sitting on the front

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 porch.

2 MS. MCALLISTER: Objection, Your Honor. I would object
3 to him testifying about what Mr. McKenzie told him. Mr.
4 McKenzie, the investigator.

5 THE COURT: Restate your question.

6 MS. MCALLISTER: Thank you.

7 BY MR. SHAFFER:

8 Q: Did you believe that your defense team contacted any of
9 those witnesses that you wanted them to contact?

10 A: I believe they contacted one.

11 Q: Okay. What was the basis of that belief? Was it a
12 conversation?

13 A: Yes, sir.

14 Q: Who was the conversation with?

15 A: Mr. McKenzie.

16 Q: Okay. Did you ever speak to your attorney about and
17 request that she contact any additional witnesses?

18 A: No, sir. I really -- I haven't. The only time I spoke
19 with my attorney was when I went to court.

20 Q: Okay. But I thought you said you spoke to her a couple
21 other times, three other times?

22 A: Those was during court appearances.

23 Q: Okay. So they were when -- she didn't come out to the
24 jail?

25 A: No, sir.

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

- 1 Q: Is that correct?
- 2 A: I never spoke to her at the county jail.
- 3 Q: Okay. But you spoke to Mr. McKenzie at the county jail?
- 4 A: Yes, sir.
- 5 Q: Now, the prior plea offer -- what was the original offer
- 6 in the case?
- 7 A: I believe 20 years was what Mr. Jepertinger came to me
- 8 and said, and then Mr. McKenzie -- when he came to speak to
- 9 me, he said 15 years.
- 10 Q: Okay. Did you turn down the 15-year offer?
- 11 A: Yes, sir.
- 12 Q: Why did you turn down the 15-year offer?
- 13 A: Because I ain't did the robbery; so I wanted to go to
- 14 trial.
- 15 Q: Now, at any point, did you move to or ask that your
- 16 attorney be replaced?
- 17 A: I attempted to.
- 18 Q: Okay. How -- how did you go about attempting to do that?
- 19 A: I wrote the clerk of court and asked could me and her be
- 20 -- could she be relieved off my case because of conflict of
- 21 interest.
- 22 Q: Okay. Did you -- did you speak to your attorney about
- 23 that at all?
- 24 A: I asked her could she -- could she get off my case during
- 25 one of our arguments.

JOHNELL RICHARDSON - DIRECT BY MR. SHAFFER

1 Q: What was her response?

2 A: That ain't how it work.

3 Q: Okay. Did you ever go to court on any sort of motion to
4 relieve your attorney?

5 A: No, sir.

6 Q: Okay. Now, you testified that you turned down a 15-year
7 offer. Why did you end up pleading guilty after the trial
8 started?

9 A: Because the -- the -- the -- what is it? The
10 investigator for the public defender, Mr. McKenzie, and Ms.
11 Parrott -- they were contacting my family, and my family
12 basically telling me, oh, you're not -- they say you're not
13 going to win. Just go ahead and take the plea and come home
14 earlier because they couldn't -- my grandmother said she
15 couldn't take it if I caught -- if I got life in prison.

16 So I said, you know, I ain't got no case. Nobody want to
17 do nothing. I guess I ain't got no choice but to plead
18 guilty.

19 Q: If -- if the public defender had contacted all of your
20 witnesses, would you have decided to plead guilty or go to
21 trial?

22 A: I'd have went to trial.

23 MR. SHAFFER: No further questions.

24 THE COURT: Cross-examination.

25 MS. MCALLISTER: Thank you, Your Honor.

JOHNELL RICHARDSON - CROSS BY MS. MCALLISTERCROSS-EXAMINATION

1
2 BY MS. MCALLISTER:

3 Q: Do you remember the day of your plea having some
4 conversations and back and forth with the judge where you
5 answered some questions for the judge?

6 A: Yes, ma'am.

7 Q: Do you remember that? Do you remember the judge asking
8 you whether you were satisfied with Ms. Parrott as your
9 attorney?

10 A: Yes, ma'am.

11 Q: Do you remember what you told the judge?

12 A: Yes, ma'am.

13 Q: What did you tell the judge?

14 A: Yes, sir.

15 Q: And did the judge also ask you if she, Ms. Parrott, had
16 done everything you had asked of her?

17 A: Yes, ma'am.

18 Q: And did you tell the judge that she had, in fact, done
19 everything that you had asked her?

20 A: Yes, ma'am.

21 Q: Did you ever raise to the judge that you had any problems
22 with your attorney?

23 A: No, ma'am.

24 Q: Okay. And you talked a little bit about your decision to
25 plead guilty. I believe you said there was an offer of 15

JOHNELL RICHARDSON - CROSS BY MS. MCALLISTER

1 years that you declined; correct?

2 A: Yes, ma'am.

3 Q: And Ms. Parrott conveyed that offer to you and you knew
4 about that offer?

5 A: Yes, ma'am.

6 Q: And you decided not to take it and that you wanted a
7 trial instead?

8 A: Yes, ma'am.

9 Q: Okay. And when the day of the trial came, you changed
10 your mind; is that correct?

11 A: Yes, ma'am.

12 Q: Okay. And you --

13 A: But actually before. It was during the -- over the --
14 after the jury was impaneled.

15 Q: Okay. So you were there at the courthouse and you were
16 ready to go to trial and you changed your mind? The trial was
17 starting or about to start?

18 A: Yeah. Basically.

19 Q: Okay. And I believe you said you had some conversations
20 with your family members about taking the guilty plea; is that
21 correct?

22 A: Yes, ma'am.

23 Q: So you were able to talk to people that you trust and
24 care about and get some advice; is that correct?

25 A: Yes, ma'am.

JOHNELL RICHARDSON - CROSS BY MS. MCALLISTER

- 1 Q: Okay. And so you decided, based on your conversations
2 with your attorney and with your family, that the plea was in
3 your best interest; is that correct?
- 4 A: I mean it was in the best interest for my attorney.
- 5 Q: You don't believe it was in your best interest?
- 6 A: No, ma'am.
- 7 Q: But you never told that to the judge on that day?
- 8 A: No, ma'am.
- 9 Q: You told the judge you wanted that plea?
- 10 A: Yes, ma'am.
- 11 Q: Okay. And do you remember your attorney asking the judge
12 to accept the previous offer of 15 years? Do you remember --
13 hang on. When you went in front of the judge to tell the
14 judge that you wanted to take the plea, do you remember Ms.
15 Parrott arguing on your behalf that the Court should accept
16 that offer of 15 years?
- 17 A: No, ma'am.
- 18 Q: No?
- 19 A: I don't remember.
- 20 Q: I think you -- I think you testified on -- you told Mr.
21 Shaffer that when you got there at trial, you were talking
22 about whether you were going to go with the trial or whether
23 you were going to take the plea, that she told you she would
24 try to get the 15 years because that was what the offer was
25 that you refused? Do you remember that? Do you remember

JOHNELL RICHARDSON - CROSS BY MS. MCALLISTER

1 saying that to Mr. Shaffer just a minute ago?

2 A: Yes, ma'am.

3 Q: Okay. Do you remember that day that Miss Parrott did
4 indeed ask the Court to give you only 15 years?

5 A: No, ma'am.

6 Q: You don't?

7 A: I don't. I don't remember nothing about that court
8 basically.

9 Q: If I showed you the transcript, do you think that that
10 would refresh your memory?

11 A: That would help.

12 MS. MCALLISTER: May I approach, Your Honor?

13 THE COURT: Yes.

14 BY MS. MCALLISTER:

15 Q: Do you see here where she says the offer as of last
16 Friday?

17 A: Yes, I see it.

18 Q: And she's asking -- does that refresh -- does that
19 refresh your recollection as to whether she asked for 15 years
20 on your behalf?

21 A: Yes, ma'am.

22 Q: Okay. And you understood that because you had refused
23 that offer at the time that it was going to be up to the judge
24 to determine the sentence when you went back into court to
25 take the plea; correct?

JOHNELL RICHARDSON - CROSS BY MS. MCALLISTER

1 A: I understand that now.

2 Q: Did you understand that at the time?

3 A: No.

4 Q: You didn't understand that when the judge -- do you
5 remember the judge going over with you the charges and how
6 much the charges carried -- how much sentence the charges
7 carried? Do you remember that?

8 A: All I remember is answering the questions and just going
9 through it. Just answers.

10 Q: Okay. So you did answer questions from the judge about
11 whether you understood what you were pleading to and that you
12 wanted to plead?

13 A: Yes, ma'am.

14 Q: And you told the judge you did want to do that?

15 A: Yes, ma'am.

16 Q: And you understand now from seeing the transcript that
17 your attorney did argue for a lesser sentence than what you
18 actually received?

19 A: Yes, ma'am.

20 Q: Okay.

21 MS. MCALLISTER: I have nothing further, Your Honor.

22 THE COURT: Any redirect?

23 REDIRECT EXAMINATION

24 BY MR. SHAFFER:

25 Q: Mr. Richardson, why did you tell the judge that you were

JOHNELL RICHARDSON - REDIRECT BY MR. SHAFFER

1 satisfied with your attorney's services?

2 A: Because they said -- she said the only thing if I
3 answered the questions, don't -- don't give -- don't put up no
4 type of argument. That it would be probable that I could get
5 -- that she could get the 15 years.

6 Q: Okay. So you thought you were going to get 15 years if
7 you didn't protest?

8 A: Yes, sir.

9 MR. SHAFFER: No further questions.

10 THE COURT: Anything further from the State?

11 MS. MCALLISTER: I beg the Court's indulgence, Your
12 Honor.

13 THE COURT: All right.

14 MS. MCALLISTER: Nothing further from the State, Your
15 Honor.

16 THE COURT: Sir, you may step down.

17 MR. SHAFFER: The applicant rests, Your Honor.

18 THE COURT: All right. Ms. McAllister?

19 MS. MCALLISTER: One moment, Your Honor. Your Honor, we
20 would call Karen Parrott.

21 THE COURT: All right.

22 THE CLERK: Place you left hand on the Bible and raise
23 your right hand. Do you swear to tell the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 THE CLERK: Please have a seat and state your name for
2 the record.

3 THE APPLICANT: My name is Karen Parrott, P-a-r-r-o-t-t.

4 KAREN PARROTT, being first duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MCALLISTER:

8 Q: Ms. Parrott, how long have you been practicing law?

9 A: Eighteen years now.

10 Q: Okay. And what is your current position?

11 A: I am an assistant public defender in the Florence County
12 Public Defender's Office, where I been employed now for the
13 past 13 years.

14 Q: Okay. And did you have any criminal experience before
15 you came to the Public Defender's Office?

16 A: A little bit, mostly was Family Court.

17 Q: Okay. So you have at least 13 years of criminal
18 experience?

19 A: Yes, ma'am.

20 Q: Do you remember how you came to be involved in this case?

21 A: Our office was appointed to represent Mr. Richardson
22 because of his having qualified through indigency status and
23 then the case was assigned to me through our office
24 procedures.

25 Q: Okay. And can you tell us a little bit about how the

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 applicant came to be arrested and what his charges were?

2 A: This event happened on September the 13th of 2011. He was
3 arrested after certain of his codefendants were arrested
4 either on scene or within a very short distance thereof and
5 within minutes of this event occurring, which was an armed
6 robbery and a kidnapping. Officers had responded in a very
7 quick fashion because they had been literally a couple miles
8 away at another store right down the road.

9 And so then once they figured out that one person who was
10 inside was actually involved in the armed robbery and
11 kidnapping himself and was not a victim -- and that was
12 because his cell phone had been taken as part of the armed
13 robbery, but it was -- he was calling -- that cell phone
14 number was calling one of the other people that they had just
15 called as well.

16 And so they were linking people together fairly quickly
17 because of cell phones. One of them immediately started
18 talking, and actually I think the second one started talking
19 pretty quickly thereafter and they gave up Mr. Richardson's
20 name and his address.

21 Q: Okay. And do you recall meeting with Mr. Richardson to
22 discuss these charges?

23 A: Yes, ma'am.

24 Q: Do you recall approximately how many times you met with
25 him?

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 A: I do not know how many times. I know -- my notes
2 indicate that I tried to see him on Sept -- excuse me -- on
3 November the 30th of 2011, but they didn't have a guard in C-
4 Pod, which was where he was at the time. So I actually gave
5 his Rule 5 and Brady materials that I had already received at
6 that point to one of the guards up further in the jail so that
7 they could deliver them to him. I actually got a letter from
8 him letting me know that he had received them and had some
9 questions about his discovery dated that same date, and that's
10 part of my file.

11 I put in for a preliminary hearing for him and that was
12 scheduled and held on December the 28th of 2011. So he was
13 present for his preliminary hearing. We met after the
14 preliminary hearing as well and discussed what had been talked
15 about as part of the preliminary hearing and why probable
16 cause had been found.

17 And then there were multiple conversations over the
18 phone, letters, Mr. McKenzie having gone out to the jail and
19 interviewed him to begin with, and his also talking with me
20 throughout my representation. So no, I'm really not sure of
21 how many times I had contact with Mr. Richardson, but it's
22 certainly more than what was previously indicated.

23 Q: Okay. So more than two or three times?

24 A: Yes, ma'am.

25 Q: Okay. Some of those may have been through written

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 correspondence or over the telephone and not necessarily in-
2 person communication?

3 A: Absolutely, they were.

4 Q: Do you -- did you discuss the indictments, the elements
5 of the defenses -- I mean the elements of the offenses, any
6 defenses that he might have to those charges? Do you recall
7 those discussions?

8 A: Yes, ma'am. He told me and gave me and gave Mr.
9 McKenzie, my investigator, names of members of his family that
10 he wanted interviewed, including his grandmother, which was a
11 Mary -- I think it's Green. Hold on a second and I'll look at
12 what the original note was.

13 Yes. Mary Green, Brittany Robinson, Harold Richardson,
14 and Jackie Robinson were the names that he gave to Mr.
15 McKenzie on that first interview, and I contacted Ms. Green
16 multiple times. I couldn't get in touch with her sometime and
17 then I got in touch with her and, at the time, Brittany was in
18 Pennsylvania.

19 His Uncle Harold was in Georgia and, whenever I was
20 talking with the grandmother because Donald wasn't around, she
21 told me that Donald wasn't even involved, but we talked to
22 them about the fact that, yes, Brittany had let him into the
23 house and that he had been in the house earlier that night,
24 but that everyone had fallen asleep and that while she wanted
25 to say that he probably -- he would've stayed in the house,

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 she couldn't swear that he would've stayed in the house and I
2 couldn't take the chance of putting her up on the stand and
3 having her then not be able to swear that she knew he was in
4 the house all night.

5 Q: Okay. So you had enough of a relationship with Mr.
6 Richardson that he was cooperative in terms of giving you
7 information and leads to track down?

8 A: Yes.

9 Q: And you did -- you or someone in your office did track
10 down all of the leads that he gave you?

11 A: Yes.

12 Q: Okay. And those witnesses and leads you felt did not
13 corroborate his story or were not -- the strength of those
14 witnesses was not sufficient?

15 A: No. Especially not in light of what they would be
16 putting up against him.

17 Q: Okay. Can you talk about that little bit? I think you
18 kind of mentioned that -- you mentioned eyewitnesses, as well
19 as cell phone records. Was there anything else?

20 A: There were people inside of the -- inside of the pool
21 hall. What -- what happens very quickly is that this was a
22 group of four or five people, depending on how many people you
23 think were involved, that got together and planned this. And
24 even Johnell tells me -- told me at a later time that they had
25 been at his house the night before.

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 He wanted to say that they were involved in it, they were
2 doing it, but then later on he told me that, yes, he had been
3 involved in it too. But they had decided to do this and one
4 of them was going to be an inside person. What eventually it
5 comes to look like is that two people were on the inside, one
6 of whom was his Uncle Harold. Excuse me. Uncle Donald, I
7 believe. Anyway, one of his uncles had given a false name
8 while he was inside.

9 So they had two people on the inside. They've got one
10 driver who was literally in the next neighborhood over, which
11 is probably about a football field away, and he stopped in the
12 middle of the road and the officers come up on him and want to
13 know what he's doing, why he's in the middle of the road, and
14 he can't give an answer.

15 And at the same time, his phone starts ringing and it's
16 connected to one of the people who just had their cell phone
17 taken. It's that person's cell phone. So you've got somebody
18 who was just robbed, these people in here calling the driver.
19 So you had those people.

20 Then there was a lady by the name of Christy who was on
21 the inside who said -- and that was given over at the
22 preliminary hearing that because they had masks on she
23 couldn't necessarily identify by facial -- by any kind of --
24 like, a true facial composition or a line-up that way, but she
25 knew the eyes and she would never forget them.

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1 And then there was also the question of a voice, if that
2 was going to come through, because Mr. Richardson was one of
3 them who was supposed to have actually gone to the female's
4 bathroom, gotten a person out by gun, told them to go to the
5 safe and get all the money out and, if they didn't, then they
6 -- then he was going to blow their f'ing face off or blow them
7 up.

8 So those were her comments to the investigator that he
9 relayed as part of everything as well was that she would never
10 forget that whole situation and what had occurred. So I had
11 the people who were on the inside who were his codefendants
12 who were going to testify against him, I had one of the ladies
13 who had a gun put in her face who was going to testify that
14 she'd never forget the terror of having that happen, and I had
15 the cell phones and the text messages between them all where
16 it was talking about go pick John-John up, I'll pay you and
17 give you gas money, and John-John was supposed to be getting a
18 gun.

19 Q: Okay. So in your opinion, you believed that the State
20 would be able to prove their case beyond a reasonable doubt?

21 A: Yes.

22 Q: And did you tell that to Mr. Richardson?

23 A: I told him that multiple times.

24 Q: Okay. And you felt like -- did you feel like you had
25 enough time to investigate this case and to fully flesh out

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 the State's case versus your case?

2 A: Yes. The things that I would've wanted to have been
3 there weren't there or the things that he wanted to be there
4 weren't there to help him as far as a defense. I asked about
5 possibly even a video from the corner store that was literally
6 on the other side of things from where this person went and
7 parked his car in this neighborhood. On the other side of
8 this store in this little shopping center is a store and I
9 thought it had pretty good video, but whenever I asked about
10 it, there was no video.

11 Q: Okay. Let's talk a little bit about the plea offer for
12 15 years. Can you tell us how that offer came about?

13 A: Okay. The first offer in this case from Mr. Jepertinger
14 was concurrent and it was for seven counts of armed robbery
15 and six counts of kidnapping. Once everybody figured out that
16 at least a couple of people that were -- at least one other
17 person that was involved in it was possibly not a victim
18 either, then it became the six counts and the five counts
19 respectively, but that was -- that was actually happening at
20 the last.

21 So it went from concurrent. Then on January the 8th of
22 2013, Jepertinger and I met and he gave me a 20-year cap. Mr.
23 Richardson was brought to court on January the 9th. I told him
24 then what his offer would be. He told me no. He was not
25 guilty. He wasn't going -- he wasn't going to take that.

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 On April the 1st of 2013, he was brought back to court. I
2 saw him again and we talked about it. I had gotten a new
3 offer from Jepertinger at that point. It was two counts of
4 armed robbery for 15 years, but that -- I believe we actually
5 hashed that out after Mr. Richardson had been -- had left or
6 been taken back to the jail that day, even though I had
7 already spoken with him at court that day.

8 So I wrote him a letter on April the 3rd letting him know
9 what his offer would be or that he could take the offer of the
10 15 years. On April the 10th, I received a letter back saying
11 that he wanted -- he did not want to take that offer and that
12 he wanted to go to trial. That was on a Wednesday. On
13 Friday, I actually called the jail and got him on the phone on
14 the 12th and he told me then yet again that he did not want to
15 take their offer, that he wanted to go to trial.

16 And so at that point then, he was brought over on the
17 15th, which would've been that Monday, and we picked the jury
18 but to start the trial on Wednesday. And in the meantime
19 then, he was asking me about possibly doing it as an *Alford*
20 plea. John -- I asked Jepertinger about doing it as an *Alford*
21 plea. He told me no.

22 I was able to get Jepertinger to say yes to taking it as
23 an *Alford* plea. Then when I took that back to Mr. Richardson,
24 Mr. Richardson said no, he wouldn't do it as an *Alford* plea.
25 And by that point, Jepertinger is mad and he's ready to spit

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 nails and it's done.

2 Q: Okay. And you did talk over -- when he did eventually
3 decide to take a plea after you had picked the jury, you had a
4 chance to discuss with him what that meant at that time,
5 taking a plea without -- without any negotiation or
6 recommendation?

7 A: I not only discussed it with him, I did an affidavit of a
8 defendant for a guilty plea and had him sign it.

9 Q: Do you have that with you?

10 A: I do.

11 MS. MCALLISTER: May I approach, Your Honor?

12 THE COURT: Yes.

13 MS. MCALLISTER: Thank you.

14 BY MS. MCALLISTER:

15 A: If I may, that's the one that Judge Anderson had as his
16 standard affidavit for a defendant for a guilty plea and so it
17 covers -- it covers cases, especially like this, whenever
18 you've got something that's a lot of time and a fairly serious
19 -- a serious or a most serious crime in detail.

20 Q: Can you -- can you show me in here where Mr. Richardson
21 signed this?

22 A: If it's not signed, it's because we ran out of time. He
23 would have signed it there and he has not signed it, but we
24 ran out of time because we were doing this at the last minute
25 after everything had already been marked.

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 Q: Okay. But you -- you did -- you did feel that you had
2 enough time to talk to him about what he was doing when he
3 decided to take the plea?.

4 A: This document is eight pages long. I don't go over this
5 document just for the fun of it. This is something that if
6 it's in my file and it's done, it's done because I went over
7 it with my client.

8 Q: Okay. And you feel like he fully understood what he was
9 doing and he knowingly, intelligently, and voluntarily chose
10 to plead?

11 A: Yes, ma'am. I -- yes, ma'am. I have notes all over the
12 place where I've informed him and in his every -- in the
13 correspondence with him about the fact that he had charges
14 that if they chose to max him out -- and this is the kind of
15 case where I could certainly see a judge giving consecutive
16 time because of the guns being put in people's faces and
17 people being actually locked up in bathrooms, having their
18 freedom of movement deprived, that this is something that you
19 can get as much as 390 years when it was the 13 counts at 30
20 years each, but even if you didn't do that, then 85 percent of
21 even the 30 would get you the 25 years.

22 Q: And so did you feel that taking the plea at that time was
23 in his best interest rather than pursuing to trial?

24 A: Yes.

25 Q: And did you tell him that?

KAREN PARROTT - DIRECT BY MS. MCALLISTER

1 A: Yes.

2 Q: And did you have -- did you feel like you were prepared
3 to go to trial if you had to?

4 A: Yes.

5 Q: And you had witnesses prepared or I mean you had a -- you
6 had a defense prepared?

7 A: Yes. I had questions for the witnesses that were going
8 to be presented, yes.

9 Q: You were prepared to cross-examine the State's witnesses?

10 A: Yes. Yes.

11 Q: Okay.

12 MS. MCALLISTER: That's all from the State, Your Honor.

13 THE COURT: Cross-examination.

14 MR. SHAFFER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SHAFFER:

17 Q: You said that Brittany Williams could not swear that he
18 was in the -- I mean Brittany Robinson could not swear that he
19 was in the house; is that correct?

20 A: She never got even in touch with me. These people all
21 lived at the same -- same phone number, same address, and I
22 called and spoke with the grandmother. The grandmother,
23 whenever I talked with her the first time, told me that she
24 wasn't even in town. She was up in Pennsylvania.

25 Q: Uh-huh.

KAREN PARROTT - CROSS BY MR. SHAFFER

1 A: And that the other members -- one other member of the
2 family was outside, was in George I believe or something like
3 that, but my phone number, everything, our office doesn't
4 change. None of these people ever contacted me. I told him
5 that his family wasn't contacting me like what he was wanting
6 them to do either.

7 Q: Okay. Do you know if Mr. McKenzie ever attempted to
8 speak to them?

9 A: Mr. McKenzie attempted to follow these people and hunt
10 the information down as well and received as much cooperation
11 as I did, which was almost none.

12 Q: Okay. And Brittany Robinson -- you -- you testified that
13 she could not swear he was in the house. Where did you get
14 that information from?

15 A: Getting it from the grandmother.

16 Q: Okay.

17 A: Because -- because what they were going to say or what
18 grandmother told me they were going to say and what she would
19 be able to say is that she knew that he was in the house
20 earlier, but that she wouldn't be able to say that he was
21 there then when this is supposed to have occurred at 4 o'clock
22 in the morning, 4:45 in the morning, because they were -- she
23 was asleep.

24 Q: Okay. Do you recall whether Mr. Richardson ever told you
25 that Brittany -- Brittany Robinson was actually in -- stayed

KAREN PARROTT - CROSS BY MR. SHAFFER

1 in the same room as he did in the house?

2 A: No.

3 Q: Now, you mentioned this cell phone, that they had cell
4 phone information. That was disclosed to you in discovery;
5 right?

6 A: Yes.

7 Q: Okay. Some of those were text messages; correct?

8 A: Yes.

9 Q: Did you take -- they actually took pictures of the text
10 messages that looked something like this?

11 A: Yes.

12 Q: Is that fair to say? Could you take a look at those and
13 tell us what dates are in those text messages?

14 A: September the 10th, 2011. Yep, September the 10th, 2011,
15 and they go backwards on some of them.

16 Q: Okay. And the State was going to use those as
17 inculpatory; right?

18 A: Yes.

19 Q: Okay. Now, those were several days before the -- this
20 incident happened on 9/13; is that correct?

21 A: Yes.

22 Q: Okay. Did you ever go over with Mr. Richardson the
23 fact that there were -- there was a gap in time there?

24 A: I'm not -- I don't recall, but dates on cell phones don't
25 really mean so much considering people can change them and I

KAREN PARROTT - CROSS BY MR. SHAFFER

1 wouldn't want to risk 390 years on that.

2 Q: Okay. Now, do you know -- do you know if -- well, what
3 were you planning on presenting? You said initially that you
4 thought it was a bad case; correct? For Mr. Richardson;
5 right?

6 A: Yes.

7 Q: Okay. And you knew that going into the trial; correct?

8 A: Yes.

9 Q: What were you planning on doing for mitigation for the
10 case if it resulted in a conviction?

11 A: What I -- the same thing I offered whenever he pled was
12 the fact that he was the young -- he was quite young for this
13 crew. There were quite a few other people that seemed to have
14 a lot more involvement on it than he did and that they were
15 kind of making him become one of the worst guys by having a
16 gun, but that I didn't think he was the main person involved
17 in having planned this. But unfortunately, the execution of
18 it falls harder on him than it certainly does on a driver or a
19 person who is acting like a victim on the inside.

20 Q: Okay.

21 MR. SHAFFER: No further questions.

22 THE COURT: Any redirect?

23 MS. MCALLISTER: Nothing, Your Honor.

24 THE COURT: Ma'am, you may step down. Thank you. All
25 right. Anything by way of argument, Mr. Shaffer?

1 MR. SHAFFER: Your Honor, briefly related to the -- to
2 Ms. Robinson, I understand that Ms. Parrott had some problem
3 getting the members of the family to cooperate and call them,
4 but essentially that -- she could have been -- she would have
5 been the witness who was actually there. Everyone else in the
6 family I think was hearsay people because she testified that
7 Brittany Robinson actually was the one who let him into the
8 home.

9 Therefore, she would've been in the position to say what
10 time he actually got in. All the other people obviously were
11 hearsay declarants saying that he was at that home that
12 morning or they were asleep during the time period. So I
13 think that counsel was deficient in failing to actually get in
14 contact with Ms. Robinson.

15 The -- on the cell phone front, you know, the cell phone
16 was a good bit earlier. That could have been a possible
17 strategy to attack and I think Ms. Parrott said that she
18 doesn't recall actually bringing that up or disclosing that to
19 the client.

20 If he pled guilty basically because of the fact that his
21 attorney was telling him he was going to lose, which is his
22 testimony, I don't doubt that. I don't think it's
23 inconsistent with what Ms. Parrott said. I just think that
24 there are certain things that could have changed that had she
25 done other things related to the cell phone obviously and the

1 alibi witnesses.

2 THE COURT: Ms. McAllister.

3 MS. MCALLISTER: Thank you, Your Honor. I think Ms.
4 Parrott has testified quite clearly that she and her office
5 did a thorough investigation. These witnesses that Mr.
6 Richardson is talking about were looked at at the time. They
7 were not cooperative or just couldn't back up the story that
8 he wanted them to.

9 She testified that she went through all of this with him
10 at the time. None of this is -- none of the things -- none of
11 this is new and none of it is strong enough, in the State's
12 opinion, to change the outcome of this case had he proceeded
13 to trial.

14 I think her actions were clearly reasonable and
15 effective. She did have plenty of time to investigate and did
16 a thorough job on that. She can't force witnesses to come
17 forward. You know, he's not presenting anything that would
18 overturn the fact that he knowingly and voluntarily, as he
19 himself has said, decided to take this plea.

20 That's all, Your Honor. Thank you.

21 RULING

22 THE COURT: All right. First of all, I am going to
23 respectfully deny counsel's request to leave the record open
24 as it relates to this matter. This matter has been pending
25 approximately two years. The defendant has had an opportunity

1 to get any witnesses that need to be here here and has failed
2 to do so.

3 The burden of proof is on the applicant to show pursuant
4 to case law that counsel's performance was deficient, that
5 counsel failed to render reasonably effective assistance under
6 prevailing professional norms. I find that the applicant has
7 failed, first and foremost, to put forth evidence indicating
8 counsel's performance was deficient.

9 In fact, based upon the testimony of counsel, whom this
10 Court determines to be believable, competent, however you want
11 to put it, that she did and her office did a thorough
12 investigation of this case. That counsel advised the
13 applicant of what his choices were. That counsel -- that
14 ultimately the applicant made his decision as to what he was
15 going to do.

16 That Judge Russo -- was it Judge Russo? Excuse me.
17 Judge Seals thoroughly went through questioning of this
18 applicant at the time of his guilty plea to determine whether
19 or not he was satisfied with counsel and whether or not he was
20 entering this plea freely, voluntarily, knowingly, and
21 intelligently, and that he certainly did so.

22 Furthermore, even assuming that counsel's performance was
23 deficient, the defendant has failed to establish that any
24 errors on her part would have resulted in a reasonable
25 probability of the result being different.

1 Therefore, the Court respectfully denies applicant's
2 request for relief. Thank you.

3 MR. SHAFFER: Thank you, Your Honor.

4 MS. MCALLISTER: Thank you, Your Honor.

5 (WHEREUPON, the proceedings ended at 12:24 p.m.)

6

7 --- END REQUESTED TRANSCRIPT ---

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1 State of South Carolina)
 2) Certificate
 3 County of Florence)
 4

5 I, the undersigned, Krystal J. Smith, Notary Public and
 6 Official Court Reporter for the Twelfth Judicial Circuit of
 7 the State of South Carolina, do hereby certify that the
 8 foregoing pages, numbered 1 through 41, constitute a true,
 9 accurate, and complete Transcript of Record of all the
 10 proceedings had and evidence introduced in the hearing of the
 11 above captioned case, relative to appeal, in the Court of
 12 Common Pleas for Florence County, South Carolina, on the 7th
 13 day of November, 2016.

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

16
 17 s/ Krystal J. Smith
 18 Court Reporter

19
 20 Florence, South Carolina
 21 April 11, 2017

22
 23
 24
 25

CONFIDENTIAL

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Johnell Richardson, #355032,)

2014-CP-21-0908

Applicant,)

ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
2014 DEC 30 PM 3:05
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2014. Respondent made its Return on November 5, 2014. An evidentiary hearing into the matter was convened on November 7, 2016 at the Florence County Courthouse. Tristan Shaffer, Esquire, represented Applicant. Lindsey A. McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the call of the case, Applicant requested a continuance in order to arrange for a witness to be present. Applicant stated that he had mailed a letter to his attorney the previous week requesting that the witness be present. Mr. Shaffer informed the Court that he had not yet received the letter. Respondent opposed the continuance because Applicant had known about the witness, his sister, since the beginning of the case and had ample time to arrange for her to be present. Applicant's request for a continuance was denied.

At the hearing, Applicant testified on his own behalf. Karen E. Parrott, Esquire, also testified. This Court had before it a copy of the records of the Florence County Clerk of Court, records from the South Carolina Department of Corrections, the application, the State's Return, and the guilty plea transcript.

DOC 10/12

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the March 2012 term of the Florence County Grand Jury for six counts of kidnapping and seven counts of armed robbery (2012-GS-21-0238). Applicant was represented by Karen Parrott, Esquire. On April 17, 2013, Applicant pled guilty to five counts of kidnapping and six counts of armed robbery. The Honorable William H. Seals, Jr., sentenced Applicant to concurrent terms of twenty-five years imprisonment. Applicant did not appeal his guilty pleas or sentences.

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

1. Ineffective assistance of counsel.
 - a. Failure to hire a "mitigation investigator."
 - b. Failure to adequately prepare.

II. SUMMARY OF TESTIMONY

Applicant's Testimony

At the evidentiary hearing, Applicant testified that he decided to plead guilty after the jury was seated because Counsel told him that he would lose and could get a life sentence and because his codefendants were prepared to testify against him. Applicant also testified that Counsel contacted his family, and his family members advised him that he should plead guilty. He stated that it was his decision to plead and that he did so because of the influence of his family, even though he wanted to go to trial. Applicant testified that, once he decided to plead, Counsel told him that she would try to get him fifteen years like the previous offer, but Applicant felt she did not put forth any effort to do so. Applicant stated that Counsel advised him not to argue with the judge or Solicitor during the plea and "maybe" he would receive fifteen years. Applicant testified that he turned down two plea

offers, one for twenty years and one for fifteen years, because he was innocent of the charges and wanted a trial.

Applicant testified that Counsel never provided copies of discovery to him, and he did not receive his full file until after his plea, in December 2015. Applicant also testified that Counsel did not review any cell phone records with him, but Counsel did discuss his codefendants' statements with him, and he reviewed a summary report. Applicant further testified that he spoke with the Public Defender's Office investigator multiple times and gave him the names of witnesses who could provide an alibi for him. Applicant stated that the investigator only contacted one witness, but if the investigator had contacted all of the witnesses, Applicant would have gone to trial. Applicant also stated that he never asked Counsel to contact the witnesses herself because he only spoke with her at court, and Counsel did not come to the jail like the investigator did.

Applicant stated he had a hostile relationship with Counsel and that he did not want to plead guilty even after she advised him that he would lose at trial. Applicant stated that he wrote to the Clerk of Court and asked to have Counsel replaced, and he asked Counsel to remove herself from the case, but he was told "that is not how it works." Applicant stated that he never made a motion to relieve Counsel.

On cross-examination, Applicant testified that Counsel did relay the offer of fifteen years to him prior to the plea, but he declined it. Applicant admitted that during his guilty plea, he told the judge that he was satisfied with Counsel, that she had answered all of his questions, and specifically, that she had done everything he asked her to do. Applicant further testified that he recalled that the judge reviewed the facts on which these charges were based, and Applicant admitted that the facts were true, and he told the judge that he wished to plead guilty. Applicant testified that he did not

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understand that the sentence would be up to the judge, and he did not recall Counsel asking the judge to honor the "offer as of last Friday," which referred to the fifteen year sentence, despite what the transcript showed.

Counsel's Testimony

Counsel testified that she has been practicing law for eighteen years, thirteen of which have been with Public Defender's Office. Counsel stated that she was unsure of the exact number of times she met with Applicant, but her notes reflected multiple phone calls and letters, as well as visits to the jail by the investigator. Counsel also testified that she gave a copy of Applicant's discovery to an officer at the jail and received a letter from Applicant dated the same day, asking questions about the contents of the file. Counsel stated that Applicant gave the names of several family members who purportedly could verify that he was at home at the time of the crimes, but the witnesses did not cooperate with Counsel or the investigator, and none of them could account for Applicant through the entire time period in question. Counsel further stated that Applicant was aware that his family members were not contacting Counsel like he had believed they would and that the investigator was having difficulty locating them. Counsel testified that the State's evidence was particularly strong, including eyewitnesses, codefendants' statements, and cell phone and text message records. Counsel stated that even though some of the text messages were time stamped for the day before the crime, her opinion was that it was not enough to overcome the possibility of a combined 390 year sentence. Counsel believed that the State could prove its case beyond a reasonable doubt and conveyed that belief to Applicant on multiple occasions. Counsel also stated that she believed a plea was in Applicant's best interest.

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Regarding the plea offers, Counsel stated that the first offer was for the State to recommend a cap of twenty years, dropping one count each of armed robbery and kidnapping. Counsel testified a few weeks before trial the State offered fifteen years on two counts of armed robbery. Counsel stated that she conveyed the offer to Applicant via letter on April 1, 2013, and Applicant responded that he wanted a trial on April 10, 2013. Further, Counsel testified that she called Applicant at the jail on April 12, 2013, and he again told her he wanted a trial. Counsel stated she also negotiated for a plea pursuant to North Carolina v. Alford, which the Solicitor at first refused, then changed his mind, and then Applicant refused to agree. In Counsel's opinion, Applicant's refusal to take the Alford plea angered the Solicitor and ended negotiations, so Applicant ultimately pleaded without recommendation from the State. Counsel stated that she and Applicant went over the plea in detail using a standard guilty plea form, though the form was not signed by Applicant.

Finally, Counsel testified that she was prepared to go to trial and was ready to cross examine the State's witnesses. She also testified that she had prepared mitigation arguments for sentencing, which were the same arguments she made during the plea – that Applicant was young, that other codefendants were more involved, and that Applicant was not “the ringleader.”

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

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Applicable Law

Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 625. First, the applicant must prove that counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under professional norms.” Id. (quoting Strickland v. Washington, 466 U.S. 668, 688 (1984)). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness and that, but for

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counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

Findings of Fact

This Court finds Applicant's testimony regarding Counsel's ineffectiveness is not credible while also finding Counsel's testimony is credible. This Court also finds Counsel provided effective assistance of counsel in this case. Counsel is a trial practitioner who has extensive experience in the trial of criminal offenses. Counsel conferred with Applicant on multiple occasions, during which Counsel discussed the pending charges, Applicant's version of the facts, the State's evidence, and the lack of possible witnesses or defenses for Applicant. Additionally, this Court finds that Counsel conducted a thorough investigation of this case. Counsel credibly testified that she conveyed all plea offers to Applicant, which he rejected on numerous occasions, despite Counsel's advice to the contrary.

The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. In addition to Counsel, the plea judge also explained the charges to Applicant, including the maximum penalties on each. The judge also reviewed each of Applicant's constitutional rights and questioned Applicant as to whether he understood those rights and wished to give them up to plead guilty. Applicant agreed that he did. Applicant admitted he was guilty of these offenses and agreed with the facts presented by the State at the plea. Applicant told the plea court that he was satisfied with his attorney and that Counsel had done everything that Applicant had asked of her. This Court finds that Applicant understood the terms of the plea and the possible sentence.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in her representation of Applicant. Even assuming *arguendo*, that Counsel's performance was deficient, this Court finds that Applicant has failed to prove the second prong of Strickland, that he was prejudiced by Counsel's performance, because Applicant has failed to establish that the result of the proceeding would have been different even if his allegations were true. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance.

This Court also finds that the record fully supports the knowing and voluntary nature of Applicant's guilty plea. See Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (holding defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and

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defendant, between court and defendant's counsel, or both."'). In addition, Applicant has presented no evidence or valid reasons why he should be allowed to depart from the truth of his statements made at the plea. See Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) ("[Admissions] made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975))).

For these reasons this Court finds Applicant has failed to satisfy his burden of proving ineffective assistance. Accordingly, this allegation is denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

IV. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post conviction relief must be denied and dismissed with prejudice. This Court also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

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The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.



THE HONORABLE D. CRAIG BROWN
Presiding Circuit Court Judge
Twelfth Judicial Circuit

12-21, 2016
Florence, South Carolina

FILED
2015 DEC 30 PM 3:05
CLERK OF COURT
TWELFTH JUDICIAL CIRCUIT
FLORENCE, SC

DCB
12/10/16

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.
Anna J. Spaulding

FILED
2012 MAR -1 PM 11:47
CONNIE REEL-SHEARMAN
C.C.P. & G.S.
FLORENCE COUNTY, SC

WITNESSES

Russell Cox Florence County Sheriff

DOCKET NO. 2012-GS-21-00238

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2012

THE STATE

vs.

JOHNELL RICHARDSON

John C Jepertinger

ARREST WARRANT NUMBER

M274058 M274059 M274060 M274061 M274062

M274063 M274070 M274071 M274072 M274073

M274074 M274075 M274080

ACTION OF GRAND JURY

TRUE BILL

Kimberly Bonella
Foreperson of Grand Jury
Date: 3-12-12

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

**KIDNAPPING
(SIX COUNTS)**

AND

**ARMED ROBBERY
(SEVEN COUNTS)**

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)

INDICTMENT FOR

KIDNAPPING
 (SIX COUNTS)
 AND
 ARMED ROBBERY
 (SEVEN COUNTS)

At a Court of General Sessions, convened on MARCH 1, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- KIDNAPPING

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Glenn Bruce by taking him at gunpoint and locking him in a back room at R and J Billiards in Florence, S.C., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT TWO- KIDNAPPING

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Kristie McElveen by taking her at gunpoint and locking her in a back room at R and J Billiards in Florence, S.C., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT THREE- KIDNAPPING

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Andy Porter by taking him at gunpoint and locking him in a back room at R and J Billiards in Florence, S.C., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT FOUR- KIDNAPPING

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Howard Nettles by taking him at gunpoint and locking him in a back room at R and J Billiards in Florence, S.C., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR KIDNAPPING (SIX COUNTS) AND ARMED ROBBERY (SEVEN COUNTS), WITH THE AFORESAID NAMES(S) OF JOHNELL RICHARDSON SHOWN THEREON:

COUNT FIVE- KIDNAPPING

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Montrey Green by taking him at gunpoint and locking him in a back room at R and J Billiards in Florence, S.C., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SIX- KIDNAPPING

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one William Brown by taking him at gunpoint and locking him in a back room at R and J Billiards in Florence, S.C., without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

COUNT SEVEN- ARMED ROBBERY

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of R and J Billiards from or in the immediate presence of R and J Billiards with intent to deprive R and J Billiards of possession of cash, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT EIGHT- ARMED ROBBERY

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of Glen Bruce from or in the immediate presence of Glenn Bruce with intent to deprive Glen Bruce of possession of cash and/or a cell phone, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT NINE- ARMED ROBBERY

That JOHNELL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of Kristie McElveen from or in the immediate presence of Kristie McElveen with intent to deprive Kristie McElveen of possession of cash and/or a cell phone, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR KIDNAPPING (SIX COUNTS) AND ARMED ROBBERY (SEVEN COUNTS), WITH THE AFORESAID NAMES(S) OF JOHNNEL RICHARDSON SHOWN THEREON:

COUNT TEN- ARMED ROBBERY

That JOHNNEL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of Andy Porter from or in the immediate presence of Andy Porter with intent to deprive Andy Porter of possession of cash and/or a cell phone, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT ELEVEN- ARMED ROBBERY

That JOHNNEL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of Howard Nettles from or in the immediate presence of Howard Nettles with intent to deprive Howard Nettles of possession of cash and/or a cell phone, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT TWELVE- ARMED ROBBERY

That JOHNNEL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of Montrey Green from or in the immediate presence of Montrey Green with intent to deprive Montrey Green of possession of cash and/or a cell phone, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT THIRTEEN- ARMED ROBBERY

That JOHNNEL RICHARDSON did in Florence County on or about September 13, 2011, while armed with a deadly weapon, to wit: a shotgun or an UZI-type gun, take and carry away personal property of William Brown from or in the immediate presence of William Brown with intent to deprive William Brown of possession of cash and/or a cell phone, by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR