

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI FROM CHEROKEE COUNTY

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No: 2017-000758

John B. Bonner,

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2009-GS-11-824
6 JOHN BENDARIAN BONNER,) 2009-GS-11-825
7) 2009-GS-11-826
8 DEFENDANT.) 2009-GS-11-827
9) 2009-GS-11-828
10) 2009-GS-11-829
11) NOVEMBER 17, 2009
12) GAFFNEY, SOUTH CAROLINA

(VOLUME I)

13 B E F O R E:

14 THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.

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

16 BARRY BARNETTE, PRINCIPAL DEPUTY SOLICITOR
17 PRINA TAILOR, ASSISTANT SOLICITOR
18 ATTORNEYS FOR THE STATE

19 E. JOSHUA SCHULTZ, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

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1 (PROCEEDINGS, NOVEMBER 17, 2009)

2 THE COURT: Are we ready to begin with the
3 selection?

4 MR. BARNETTE: The State is ready, Your Honor.

5 MR. SCHULTZ: The defense is ready, Your Honor.

6 THE COURT: All right.

7 Ladies and gentlemen, we are ready to begin with
8 the jury selection in the first case that's going to require
9 some of your participation, and the title of that case is
10 the State versus John Bendarian Bonner.

11 Mr. Bonner has been accused by the State of having
12 committed, it looks like, six separate and distinct
13 offenses, although they are alleged to have arisen out of
14 one particular event or a course of events which the State
15 alleges occurred back on April the 2nd of 2008.

16 I'm going to read allegations that are contained
17 in these documents, which are referred to as indictments.
18 These indictments are not proof of anything. They don't
19 establish anything. They are simply the charging paper.
20 It's like an arrest warrant, and the indictment sets forth
21 what charges the State has brought against a defendant.
22 And, of course, the indictments serve to put a defendant on
23 notice as to what crimes the State claims they have
24 committed so that they will be able to prepare for the trial
25 in the case.

1 Now, in this particular case, as I told you, the
2 State has accused Mr. Bonner of having committed six
3 separate and distinct offenses, and they are set forth in
4 six separate indictments.

5 One indictment charges the defendant with burglary
6 in the first degree. And the State alleges by way of that
7 indictment that Mr. Bonner did, here in Cherokee County, on
8 or about April the 2nd of 2008, did willfully and
9 intentionally enter a dwelling that belonged to Dipali
10 Darji, located on Providence Road here in Gaffney, that he
11 entered that dwelling without consent of the owner and with
12 the intent to commit a crime therein; and further that he
13 did either when in effecting entry, or while in the
14 dwelling, or in immediate flight therefrom, he, or some
15 other participant in the criminal enterprise, was armed with
16 a deadly weapon, or did cause physical injury to some person
17 who was not a criminal participant in the crime; or, did
18 use, or threaten the use, of a dangerous instrument; or
19 displayed what appeared to be a knife, pistol, or other
20 deadly weapon; or the burglary was committed by a person
21 with a prior record of two, or more, convictions for
22 burglary or housebreaking; or the burglary occurred in the
23 nighttime.

24 The State also alleges in a separate indictment
25 that Mr. Bonner did commit the crime of kidnapping. They

1 allege that on April the 2nd of 2008, Mr. Bonner did
2 willfully and unlawfully and with a criminal intent seize,
3 confine, kidnap, or abduct, or carry away one Dipali Darji
4 without authority of law.

5 The State further alleges that Mr. Bonner did
6 commit the crime of armed robbery. They allege that on
7 April the 2nd of 2008, Mr. Bonner did, while armed with a
8 pistol or other deadly weapon; or while alleging either by
9 actions or words that he was armed; while using a
10 representation of a deadly weapon, or some object which a
11 person present during the commission of the robbery
12 reasonably believed to be a deadly weapon; and they allege
13 that he did take, steal, and carry away in the person or the
14 presence of Dipali Darji by the use of force or violence or
15 intimidation certain goods or monies that belonged to Dipali
16 Darji, and that he took those items with the intention to
17 depriving the owner of possession and use of the property
18 permanently; that is, an intent to convert the property to
19 his own use with an intent to steal.

20 The State also alleges that the defendant did
21 commit the crime of assault and battery of a high and
22 aggravated nature. The State alleges that on April the 2nd
23 of 2008, the defendant did commit an assault and battery
24 upon Dipali Darji, constituting an unlawful act of violent
25 infliction to Dipali Darji, accompanied by some

1 circumstances of aggravation.

2 The State also alleges that Mr. Bonner did, on
3 April the 2nd of 2008, willfully and unlawfully enter a
4 building, which was the Corner Stop #2, without consent of
5 the owner and with the intent to commit a crime therein, and
6 that when in effecting entry or while in the building he or
7 another participant was armed with a deadly weapon; or, a
8 burglary was committed by a person with a prior record of
9 two, or more, convictions for burglary or housebreaking; or,
10 the defendant did enter or commit the burglary in the
11 nighttime.

12 And the remaining indictment charges the
13 defendant, Mr. Bonner, with the crime of grand larceny.
14 Again, the State alleging on April the 2nd of 2008, that Mr.
15 Bonner did, with an intent to deprive the owner of the use
16 and possession of property, take, steal, and carry away cash
17 in an amount more than \$5,000 that belonged to the Corner
18 Stop #2.

19 Now, as to those allegations and as to each of
20 charges that are set forth in each of these separate
21 indictments, the defendant, Mr. Bonner, has entered a plea
22 of not guilty. Where a defendant enters a plea of not
23 guilty, the burden is on the State to establish the
24 defendant's guilt beyond a reasonable doubt. In other
25 words, the State has been the burden of proving the

1 allegations that they have set forth in each of the
2 indictments.

3 The State has the burden of proving each of the
4 essential elements of the crimes which are alleged against
5 the defendant. And, therefore, the State has the burden of
6 proving the defendant's guilt to the satisfaction of twelve
7 jurors beyond a reasonable doubt before any verdict of
8 guilty could be returned as it relates to any of the several
9 indictments.

10 And, therefore, we are going to be selecting
11 thirteen of you. There will be twelve primary jurors and
12 one additional juror to serve as an alternate. And by way
13 of your participation, you are simply going to be called
14 upon to listen to testimony that will come from witnesses
15 testifying from the witness stand and to consider any other
16 evidence that might be introduced during the trial of the
17 case. At the trial's conclusion, the jury will be asked to
18 deliberate. In other words, you will be called upon to
19 carefully evaluate a witness' testimony; to determine what
20 you believe to be the true facts as they relate to these
21 allegations; apply the law that I will have provided you
22 before you go back to deliberate; and the jury will
23 determine whether or not the defendant's guilt has been
24 proven beyond a reasonable doubt as to any of the charges.
25 And if it has, then the verdict would be guilty as to that

1 charge. And if it has not, then the verdict would be not
2 guilty as to that particular charge.

3 Now, before we begin with jury selection I have
4 got a few questions to ask you as a group. The purpose of
5 these questions is to determine whether or not there is a
6 reason why any one of you jurors should not be selected to
7 participate in the trial of this particular case. In other
8 words, I need to know if you have some reason why you could
9 not be fair and impartial as a juror if you were called upon
10 to serve in this particular case. So as these questions are
11 asked, in the event that you need to respond to them, I'll
12 ask that you please stand and I'll address those matters
13 with you individually.

14 First of all I'm going to be introducing some
15 people to you, and those are going to include the defendant
16 and the person alleged to be the victim of these events or
17 these crimes, the potential witnesses be called during the
18 trial of the case, as well as the lawyers that are involved
19 in the trial. The reason I'm introducing these people to
20 you is because I need to find out if any member of the jury
21 panel is connected by blood or by marriage, or whether you
22 have any close personal, social, professional, business, or
23 other relationship with any of these individuals. I simply
24 need to know if you know any of these people, if you have
25 any connection or relationship with them whatsoever. So as

1 they are introduced, if you have a connection, I'm going to
2 ask that you please stand so that we can determine what that
3 connection is and whether or not it would have any effect
4 upon your ability to be fair and impartial.

5 Now, first of all, as I told you, the defendant,
6 the person who's accused of having committed these offenses,
7 is John Bendarian Bonner.

8 Mr. Bonner, if you will stand and face the jury
9 panel. I just want Mr. Bonner to stand right now.

10 All right. Thank you. Be seated.

11 At the defense table with Mr. Bonner is Josh
12 Schultz. Mr. Schultz is his lawyer. He will be assisting
13 him in the trial of the case.

14 The person who is alleged to be the victim of
15 these incidents is Dipali Darji.

16 MR. BARNETTE: Your Honor, she's outside. We are
17 going to bring her in.

18 THE COURT: Let's have her sit down and sit behind
19 the prosecution table so the jury can see her.

20 Can we put that under the table or something so we
21 don't have to keep rattling that stuff so the jury can hear
22 while I'm asking questions?

23 MR. BARNETTE: Yes, sir.

24 Thank you, Your Honor.

25 THE COURT: All right. And presenting the case on

1 behalf of the State is Barry Barnette, principle deputy
2 solicitor for the Seventh Judicial Circuit.

3 JUROR NUMBER 95: Juror 95, John Vassy, Your
4 Honor.

5 THE COURT: You are responding to knowing someone?

6 JUROR NUMBER 95: Yes, sir, I was formally an
7 employee of the solicitor's office for years in the Pretrial
8 Intervention Program.

9 THE COURT: Let me just -- let me just run through
10 the list of all of the people first and then I'll ask you to
11 stand.

12 JUROR NUMBER 95: Okay.

13 THE COURT: All right. So in addition to the
14 defendant, Mr. Bonner, and Ms. Darji and Mr. Schultz and Mr.
15 Barnette, the following persons who potential witnesses
16 which might be called. Again, the reason I'm reciting these
17 is to find out if any juror knows any of these persons.

18 Ron Ramsey, Gaffney Police Department.

19 Michael Segina, Gaffney Police Department.

20 J.L. Sizemore, Gaffney Police Department.

21 Chris Skinner, Gaffney Police Department.

22 Billy Odom.

23 Terry Littlejohn.

24 Some of these people may not be present, but if
25 you know somebody that has the same name, if you will let me

1 know that fact and we will try to narrow down the
2 identification for the benefit of determining if you know
3 these people.

4 Billy Rodgers.

5 Kendrick Tate.

6 Robert Wilson, Jr..

7 Kwame Douglas.

8 Milseli Patel.

9 Mike Jones from the detention center.

10 Greg Phillips with the solicitor's office.

11 Matt Fitts, F-I-T-T-S.

12 All right. If any juror knows anybody who has
13 been introduced or identified, please stand.

14 All right. I'll start here on the front row and
15 I'll work my way across and back.

16 If you will give me your name and your juror
17 number, please. Then tell me how that question relates to
18 you.

19 JUROR NUMBER 73: Joel Porter, juror number 73.

20 I know Mike Segina. I went to school with him.
21 Greg Phillips, I go to church with him.

22 THE COURT: And would either of those connections
23 have any bearing upon your decision in this case?

24 JUROR NUMBER 73: No, sir.

25 THE COURT: Thank you. Be seated.

1 Yes, sir.

2 JUROR NUMBER 95: Yes, sir, Mark Vassy, juror
3 number 95.

4 An employee with the State Probation and Parole
5 Department. Three years with the solicitor's office. I
6 know the solicitor Mr. Barnette. Greg Phillips from
7 childhood. Ronnie Ramsey, Mike Segina, as well as Mr.
8 Skinner, all on the State's side.

9 THE COURT: All right. And is there anything
10 about those connections that would have any bearing upon
11 your decision in this case?

12 JUROR NUMBER 95: Yes, sir.

13 THE COURT: We will excuse you from service in the
14 trial. That's juror 95, but don't leave yet.

15 All right. Next row.

16 JUROR NUMBER 52: Juror number 52.

17 I know Greg Phillips, played some ball with him.

18 THE COURT: Anyone else?

19 JUROR NUMBER 52: No.

20 THE COURT: Is there anything about that
21 connection that would affect your ability to be fair in this
22 case?

23 JUROR NUMBER 52: No, sir.

24 THE COURT: Thank you. Be seated.

25 Yes, sir.

1 JUROR NUMBER 75: Juror number 75, Jeffrey
2 Richardson.

3 I know Greg Phillips, Chris Skinner. His son
4 played with my son's soccer.

5 THE COURT: And is there anything about either of
6 those connections that would impair your ability to be fair
7 and impartial?

8 JUROR NUMBER 75: No.

9 THE COURT: Thank you. Be seated.

10 Yes, sir.

11 JUROR NUMBER 31: Don Fritzsche, number 31.

12 I know Mr. Skinner. He used to be a neighbor of
13 mine several years ago.

14 THE COURT: Would that have any bearing upon your
15 decision in this case?

16 JUROR NUMBER 31: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NUMBER 80: Linda Sentell, juror number 80.

20 I know Mike Segina since he was in high school.
21 He was a friend of my sons.

22 THE COURT: And is there anything about that
23 connection that would have any bearing upon your decision in
24 the case?

25 JUROR NUMBER 80: No, sir.

1 THE COURT: You could be fair and impartial to
2 both sides?

3 JUROR NUMBER 80: Yes, sir.

4 THE COURT: All right. Thank you be seated.
5 Anyone else?

6 (No response).

7 THE COURT: Your Honor, Ms. Taylor is also going
8 to be presenting the case.

9 THE COURT: Okay. I'm sorry. This is also an
10 assistant solicitor with the Seventh Judicial Circuit.

11 MR. BARNETTE: Ms. Prina Taylor, Your Honor.

12 THE COURT: Prina Taylor. She works in the
13 solicitor's office.

14 Anyone know Ms. Taylor?

15 Okay. Thank you. Be seated.

16 Your Honor, I'm sorry to interrupt. My defense
17 witnesses there?

18 THE COURT: I didn't have that list.

19 (Off the record)

20 (Back on the record)

21 THE COURT: All right. These are other potential
22 witnesses:

23 Joshua Manning.

24 Labrontae Agnew.

25 Eva Bonner.

1 Kelvin Bonner.

2 If any of those witnesses are present in the
3 courtroom, I would ask that you please stand so the jury can
4 see who you are also.

5 All right. Any other witnesses on behalf of the
6 State?

7 MR. BARNETTE: Nothing, Your Honor.

8 THE COURT: You may be seated.

9 The defendant?

10 MR. SCHULTZ: None from the defense, Your Honor.

11 THE COURT: All right. Does any juror know any of
12 those additional witnesses that have been identified?

13 Yes, ma'am.

14 JUROR NUMBER 6: Juror number 6, Rebecca Austin.

15 I'm relation to Joshua Manning.

16 THE COURT: You are what?

17 JUROR NUMBER 6: Related to Joshua Manning.

18 THE COURT: And what's your number again, please?

19 JUROR NUMBER 6: 6.

20 THE COURT: And how are you connected with Joshua
21 Manning?

22 JUROR NUMBER 6: He's my first cousin.

23 THE COURT: First cousin.

24 And would that have any bearing upon your decision
25 in this case if you were selected as a juror?

1 JUROR NUMBER 6: No, sir.

2 THE COURT: All right. Thank you. Be seated.

3 All right. As I told you, in this case the
4 defendant has been accused of the crimes of burglary, armed
5 robbery, aggravated assault and battery, kidnapping and
6 grand larceny charges, which he denies.

7 I need to find out if any member of the jury panel
8 or any members of your immediate family, and I'm going to
9 define immediate family member as a parent, a spouse, a
10 child, or sibling. A parent, spouse, child, or sibling. I
11 need to know if you or any members of your immediate family
12 as I just defined it have ever been the victim of or have
13 ever been accused of having committed any type of an offense
14 which is similar to those that I have described for you by
15 reading these indictments? In other words, you or a family
16 member ever been the victim of, any type of violent criminal
17 offense of any nature, or have you been or family member
18 been accused of having committed any similar type of an
19 offense? If so, please stand.

20 All right. I have got jurors standing. I'll
21 start on the front row, or that is the front row, and I'll
22 ask you your name and number and then I need for you to tell
23 me how the question relates to you. And if for some reason
24 you do need to answer the question, but you don't want to
25 answer the question where you are, in other words, you don't

1 want to answer it front of an audience, you can come down
2 here and I'll discuss it with you privately, but you have to
3 respond to the question, but you can do it from where you
4 are or step down here. I'll leave that to you.

5 So if you will please give me your name and
6 number, please, ma'am.

7 JUROR NUMBER 69: 69, Diane Parker.

8 I was attacked in my driveway by a man one time.

9 THE COURT: And was someone charged with that
10 crime?

11 JUROR NUMBER 69: Yes, sir. He is serving 28
12 years right now.

13 THE COURT: Well, just please answer my questions
14 as I ask them.

15 JUROR NUMBER 69: Okay.

16 THE COURT: And that case has been disposed of?

17 JUROR NUMBER 69: Yes, sir.

18 THE COURT: Is there anything about that
19 experience that you have had that would in any way impair
20 your ability to be fair and impartial in this case?

21 JUROR NUMBER 69: Yes, sir, it would.

22 THE COURT: All right. We will excuse juror 69
23 from service, but don't leave yet.

24 Yes, ma'am.

25 JUROR NUMBER 63: I am Reyna Moore, juror number

1 63.

2 THE COURT: 63?

3 JUROR NUMBER 63: Yes, sir, and my fiance was
4 murdered.

5 THE COURT: All right. And was someone charged
6 with that crime?

7 JUROR NUMBER 63: Yes, sir.

8 THE COURT: Has that case been resolved or
9 disposed of?

10 JUROR NUMBER 63: Yes, sir.

11 THE COURT: Is there anything about that
12 experience that would impair your ability to be fair and
13 impartial in this case?

14 JUROR NUMBER 63: Yes, sir.

15 THE COURT: All right. We will excuse juror
16 number 63 from service in this case.

17 Yes, ma'am.

18 JUROR NUMBER 102: My sister --

19 THE COURT: Please give me your name and your
20 juror number.

21 JUROR NUMBER 102: 102, Debbie White.

22 THE COURT: All right.

23 JUROR NUMBER 102: My sister was broke in on and
24 was shot. It's been several years ago.

25 THE COURT: And was someone charged with that

1 crime?

2 JUROR NUMBER 102: No, she shot and killed the
3 intruder.

4 THE COURT: Okay. And is there anything about
5 that experience that would in any way impair your ability to
6 be fair and impartial?

7 JUROR NUMBER 102: Yes, sir, I think it would.

8 THE COURT: Okay. We will excuse juror number 102
9 from service in the case.

10 Now, I will go to the next row.

11 JUROR NUMBER 52: Ryan Kirby, juror 52.

12 No violence, just the victim of a robbery.

13 THE COURT: That you were?

14 JUROR NUMBER 52: Ryan Kirby.

15 THE COURT: You said you were the victim?

16 JUROR NUMBER 52: Yes, just -- I was not at home.

17 THE COURT: Okay. And was someone charged with
18 that?

19 JUROR NUMBER 52: They were.

20 THE COURT: They were?

21 JUROR NUMBER 52: Yes.

22 THE COURT: And has that case been disposed of?
23 It's been resolved or not?

24 JUROR NUMBER 52: Yes, sir.

25 THE COURT: And is there anything about that

1 experience that would have any bearing upon your decision in
2 this case?

3 JUROR NUMBER 52: No, sir.

4 THE COURT: All right. Thank you. You may be
5 seated.

6 Yes, ma'am.

7 JUROR NUMBER 6: Juror number 6, Rebecca Austin.

8 I had a brother who was accused -- well, he's
9 making time for beating someone.

10 THE COURT: For what?

11 JUROR NUMBER 6: Beating on this lady.

12 THE COURT: Okay.

13 JUROR NUMBER 6: His girlfriend.

14 THE COURT: And is there anything about that
15 experience or connection that you have that would have any
16 bearing upon your decision in this case?

17 JUROR NUMBER 6: No, sir.

18 THE COURT: All right. Thank you. You may be
19 seated.

20 Yes, sir.

21 JUROR NUMBER 75: Juror 75, Jeffrey Richardson.

22 Through employment, robbery. I work at a bank.

23 THE COURT: And is there anything about any
24 experience that you have had that would have any bearing
25 upon your decision in this case?

1 JUROR NUMBER 75: Probably not.

2 THE COURT: Well, we have to do better than
3 probably not. Do you think there is any reasonable
4 probability that any personal experience that you have had
5 is going to affect your judgment?

6 JUROR NUMBER 75: No.

7 THE COURT: All right. Thank you. You may be
8 seated.

9 Yes, ma'am.

10 JUROR NUMBER 81: Juror 81, Debra Shippy.

11 I have had a sibling, a brother, that committed a
12 crime.

13 THE COURT: And is there anything about that fact
14 that would have any bearing upon your decision in this case?

15 JUROR NUMBER 81: No.

16 THE COURT: Thank you. Be seated.

17 Yes, sir.

18 JUROR NUMBER 105: Jeffrey Wilson, 105.

19 Can I come up there?

20 THE COURT: You may. Before you do that, do you
21 need to come up here?

22 JUROR NUMBER 35: No.

23 THE COURT: You can come on up.

24 JUROR NUMBER 35: I'm juror number 35, Barry
25 Green.

1 THE COURT: Right.

2 JUROR NUMBER 35: My sister was robbed two
3 separate occasions by gunpoint.

4 THE COURT: And was someone charged with those
5 crimes?

6 JUROR NUMBER 35: Not to my knowledge, no.

7 THE COURT: Is there anything about that
8 experience that would affect your judgment in this case?

9 JUROR NUMBER 35: No, sir.

10 THE COURT: Thank you. Be seated.

11 All right. And you are juror?

12 JUROR NUMBER 105: Jeffrey Wilson.

13 THE COURT: 105.

14 JUROR NUMBER 105: 105.

15 (Off the record)

16 (Back on the record)

17 THE COURT: Juror 105 is excused.

18 Is there any other juror need to respond to that
19 question? If so, please stand.

20 (No response)

21 THE COURT: Is any member of the jury panel
22 related by blood or marriage to any law enforcement officer
23 of any kind; in other words, whether it be a sheriff's
24 deputy, or a city, town or municipal law enforcement
25 officer, a detention officer, Department of Corrections

(1 employee, military police, State Law Enforcement Division,
2 probation officer, parole officer? Any person who is
3 employed as a law enforcement officer, I need to know if you
4 have any connection with such a person.

5 JUROR NUMBER 69: Juror 69, Diane Parker.

6 My son is Joshua Parker, deputy coroner.

7 THE COURT: All right. Thank you. You have
8 already been excused.

9 And Mr. Vassy has already been excused.

10 All right, next row.

11 JUROR NUMBER 31: Don Fritzsche, number 31.

(12 My brother-in-law is a retired state highway
13 patrolman.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NUMBER 38: Juror 38, Elaine Guest.

17 My daughter is a probation officer in the
18 Department of Juvenile Justice in Spartanburg.

19 THE COURT: Thank you. Be seated.

20 Yes, sir.

21 JUROR NUMBER 35: My uncle is the crime scene
22 investigator Jimmy Henson.

23 THE COURT: And you are juror 35?

24 JUROR NUMBER 35: Yes, sir.

(25 THE COURT: All right. Thank you. Be seated.

1 Yes, ma'am.

2 JUROR NUMBER 56: I am not a law enforcement. I
3 work at 911 in Spartanburg County. I'm juror 56, Laura
4 McAbee.

5 THE COURT: All right. Thank you, ma'am. You may
6 be seated.

7 Does any member of the jury panel belong to or
8 contribute time or money to any type of organization that
9 might be characterized as law enforcement support
10 organizations or victims advocacy organizations or groups?
11 I need to know if you belong to any or you contribute time
12 or money to any? And examples of those organizations might
13 include Mothers Against Drunk Drivers, Citizens Against
14 Violent Crime, the Honorary Sheriff's Association, The
15 Troopers Association, the Neighborhood Watch Program, the
16 Child Advocacy Center, or any similar type of organization.
17 If you belong to them or contribute time or money to them,
18 if so, please stand.

19 JUROR NUMBER 65: I don't know if this qualifies,
20 but my husband -- I'm juror 65, and my husband serves on the
21 House of Representatives.

22 THE COURT: Okay.

23 JUROR NUMBER 65: Of South Carolina.

24 THE COURT: All right. Thank you, ma'am. Be
25 seated.

1 Yes, ma'am.

2 JUROR NUMBER 5: Juror number 5.

3 I usually contribute to the Fraternal Order of
4 Police.

5 THE COURT: Thank you. Be seated.

6 Yes, sir.

7 JUROR NUMBER 95: Law enforcement, Your Honor.

8 THE COURT: Thank you. That's 95. Be seated.

9 JUROR NUMBER 102: Juror 102.

10 I contribute to Mother's Against Drunk Drivers and
11 the state troopers.

12 THE COURT: Okay. Thank you. Be seated.

13 Yes, sir.

14 JUROR NUMBER 33: Juror 33.

15 I contribute to the Sheriff's Association and
16 Trooper Association.

17 THE COURT: Thank you, sir. You may be seated.

18 As I have told you, based upon my reading the
19 allegations in the indictments, this is an event that
20 occurred back on April the 2nd of 2008. It occurred at the
21 Corner Stop #2, and the residence of Dipali Darji on
22 Providence Road here in Gaffney. I need to know if any
23 member of the jury panel has heard, seen, or read anything
24 about the facts or circumstances that might relate to this
25 particular case? In other words, have you been exposed to

1 any information about this case from any source, whether it
2 be media, or whether it be individuals talking about the
3 case, or just any source whatsoever, I need to know if any
4 juror thinks that you are already know something about this
5 case. If so, please stand.

6 All right. Ms. Austin, you believe that you know
7 something about the case?

8 JUROR NUMBER 6: Well, I --

9 THE COURT: Just yes or no right now, please.

10 JUROR NUMBER 6: Yes, only what I have seen in the
11 media.

12 THE COURT: All right. You seen something in the
13 media?

14 JUROR NUMBER 6: Yeah, when --

15 THE COURT: Just -- is that yes or no?

16 JUROR NUMBER 6: Yes.

17 THE COURT: And what type of media was it?
18 Television, radio?

19 JUROR NUMBER 6: Newspaper.

20 THE COURT: All right. And about how long ago was
21 it that you were exposed to that?

22 JUROR NUMBER 6: It's been a while.

23 THE COURT: Is there anything about that exposure
24 that you recall or remember; yes or no?

25 JUROR NUMBER 6: Yes.

1 THE COURT: Yes.

2 Is there anything about what you remember that
3 would have any bearing upon your decision or affect your
4 judgment in this case?

5 JUROR NUMBER 6: No, sir.

6 THE COURT: No. Okay. Thank you. You may be
7 seated.

8 Has anyone else been exposed to any type of
9 information that might relate to the case? If so, please
10 stand.

11 (No response).

12 THE COURT: Has any member of the jury panel
13 already formed an opinion or made up your mind as to how you
14 think the case ought to be decided, based upon what you have
15 heard up to this point, or based upon any other
16 consideration? I just need to know if any other juror has
17 already made up your mind or formed an opinion as to the
18 outcome? If so, please stand.

19 (No response).

20 THE COURT: Does any member of the jury panel know
21 of any reason whatsoever why you think you could not be fair
22 and impartial if you were called upon to serve as a juror in
23 the case? If so, please stand.

24 (No response).

25 THE COURT: Any other questions requested by the

1 State?

2 MR. BARNETTE: None from the State, Your Honor.

3 THE COURT: By the defendant?

4 MR. SCHULTZ: None from the defense.

5 THE COURT: All right. Draw us a jury, please,
6 ma'am.

7 As your names are called, you are going to be
8 asked to come forward. You will see there is a gate over
9 there to my left, your right. There is also the center
10 aisle you can come down. I need -- when your name is
11 called, please just come down and stand directly in front of
12 the Clerk of Court and turn and look back towards where your
13 fellow jurors are.

14 Each side has an opportunity to have you excused
15 from service in the case or to have you seated for service
16 in the case.

17 If either asks that you be excused, you can simply
18 go back and have a seat where you are now.

19 If both agree to have you seated for service in
20 the case, you will be having a seat in the jury box to my
21 left and to your right.

22 So please come forward as your name is called and
23 you will be instructed if you are to be excused from serving
24 in the case or seated for service in the case.

25 THE CLERK: Number 28, Takia Epps.

1 What says the State?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SCHULTZ: Please present the juror.

5 THE CLERK: Please take a seat in the jury box.

6 Juror 82, James Simpson.

7 What says the State?

8 MR. BARNETTE: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SCHULTZ: Please seat the juror.

11 THE CLERK: Please take a seat in the jury box.

12 Juror 75, Jeffrey Richardson.

13 What says the State?

14 MR. BARNETTE: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. SCHULTZ: Please excuse the juror in this

17 case.

18 THE CLERK: You have been excused.

19 Juror 73, Joel Porter.

20 What says the State?

21 MR. BARNETTE: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SCHULTZ: Please excuse the juror in this

24 case.

25 THE CLERK: You have been excused.

1 Juror 25, Callie Deborde.

2 What says the State?

3 MR. BARNETTE: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. SCHULTZ: Please present the juror in this

6 case.

7 THE CLERK: Please take a seat in the jury box.

8 Juror 62, Kelyin Moore.

9 What says the State?

10 MR. BARNETTE: Please excuse this juror from

11 service.

12 THE COURT: You have been excused.

13 Juror 52, Ryan Kirby.

14 What says the State?

15 MR. BARNETTE: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. SCHULTZ: Please excuse this juror in this

18 case.

19 THE CLERK: You have been excused.

20 Juror 46, Christy Holmes.

21 What says the State?

22 MR. BARNETTE: Please excuse this juror from this

23 case.

24 THE CLERK: You have been excused.

25 Juror 33, Allen Galloway.

1 What says the State?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SCHULTZ: Please excuse the juror in this
5 case.

6 THE CLERK: You have been excused.

7 Juror 99, Frank Watkins.

8 What says the State?

9 MR. BARNETTE: Please excuse this juror from
10 service.

11 THE CLERK: You have been excused.

12 Juror 38, Elaine Guest.

13 MR. SCHULTZ: 38?

14 THE CLERK: Yes.

15 What says the State?

16 MR. BARNETTE: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. SCHULTZ: Please excuse the juror in this
19 case.

20 THE CLERK: You have been excused.

21 Juror 81, Debra Shippy.

22 What says the State?

23 MR. BARNETTE: Please excuse the juror from
24 service.

25 THE CLERK: You have been excused.

1 Juror 35, Barry Green.
2 What says the State?
3 MR. BARNETTE: Please present the juror.
4 THE CLERK: What says the defense?
5 MR. SCHULTZ: Please present this juror.
6 THE CLERK: Please take a seat in the jury box.
7 Juror 23, Kevin Davis.
8 What says the State?
9 MR. BARNETTE: Please present the juror.
10 THE CLERK: What says the defense?
11 MR. SCHULTZ: Please seat the juror.
12 THE CLERK: Please take a seat in the jury box.
13 Juror 20, Robert Cobb.
14 What says the State?
15 MR. BARNETTE: Please present the juror.
16 THE CLERK: What says the defense?
17 MR. SCHULTZ: Please seat the juror in this case.
18 THE CLERK: Please take a seat in the jury box.
19 Juror 31, Donald Fritzsche.
20 What says the State?
21 MR. BARNETTE: Please present the juror.
22 THE CLERK: What says the defense?
23 MR. SCHULTZ: Please seat the juror in this case.
24 THE CLERK: Please take a seat in the jury box.
25 Juror 27, Marc Eggers.

1 What says the State?

2 MR. BARNETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SCHULTZ: Please seat the juror in this case.

5 THE CLERK: Please take a seat in the jury box.

6 Juror 80, Linda Sentell.

7 What says the State?

8 MR. BARNETTE: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SCHULTZ: Please excuse the juror in this

11 case.

12 THE CLERK: You have been excused.

13 MR. SCHULTZ: That should be my last, correct?

14 THE COURT: You get ten.

15 THE CLERK: Juror 6, Rebecca Austin.

16 What says the state?

17 MR. BARNETTE: Please excuse this juror from

18 service.

19 THE CLERK: You have been excused.

20 Juror 65, Cheryl Moss.

21 What says the State?

22 MR. BARNETTE: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. SCHULTZ: Please excuse this juror.

25 THE CLERK: You have been excused.

1 Juror 5, Oveda Atkinson.
2 What says the State?
3 MR. BARNETTE: Please present the juror.
4 THE CLERK: What says the defense?
5 MR. SCHULTZ: What number was that?
6 THE CLERK: 5.
7 MR. SCHULTZ: Thank you.
8 Please seat the juror in this case.
9 THE CLERK: Please take a seat in the jury box.
10 Juror 8, Andrew Bailey.
11 What says the State?
12 MR. BARNETTE: Please present the juror.
13 THE CLERK: What says the defense?
14 MR. SCHULTZ: Please seat the juror in this case.
15 THE CLERK: Please take a seat in the jury box.
16 Juror 45, Barbara Hirschy.
17 What says the State?
18 MR. BARNETTE: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. SCHULTZ: Please excuse the juror in this
21 case.
22 THE CLERK: You have been excused.
23 Juror 87, Ralph Spencer.
24 What says the State?
25 MR. BARNETTE: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. SCHULTZ: Please present the juror in this
3 case.

4 THE CLERK: Please take a seat in the jury box.

5 Juror 98, Phillip Waters.

6 What says the State?

7 MR. BARNETTE: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. SCHULTZ: Please seat the juror.

10 THE CLERK: Please take a seat in the jury box.

11 Juror 66, Katherine Nix.

12 What says the State?

13 THE COURT: This is for the alternate.

14 MR. BARNETTE: What was that number again?

15 THE COURT: 66.

16 MR. BARNETTE: Thank you, ma'am. Please present
17 the juror.

18 THE CLERK: What says the defense?

19 MR. SCHULTZ: Please seat the juror in this case.

20 THE CLERK: Please take a seat in the jury box.

21 Those jurors who have been selected, I'll ask you
22 to please go with the bailiff to the jury room and I'll
23 bring you back. It will be a few minutes, but I'll bring
24 you back to begin with the trial shortly.

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT: Are there any matters that need to be
3 addressed regarding jury selection, by the State?

4 MR. BARNETTE: None from the State, Your Honor.

5 THE COURT: By the defendant?

6 MR. SCHULTZ: Your Honor, there are four problems
7 that we have here. I would like to make a Batson motion.

8 THE COURT: Well, let me see y'all up here a
9 minute, please.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 THE COURT: All right. Those jurors who were not
13 selected in the case, you are going to be excused for at
14 least the balance of today. I would ask that you please
15 call back to the number that you have on your juror
16 information card in order to receive reporting information.
17 Please call that number after six o'clock this evening.
18 After six o'clock this evening you will receive a message
19 either to report back at a certain time or to call back
20 perhaps at some other time in order to receive that
21 information. Just be sure that you call that number after
22 six o'clock this evening and follow the instructions on the
23 message. Okay.

24 Thank you for your participation. Have a good
25 afternoon.

1 (Whereupon, the jury venire panel left the
2 courtroom)

3 THE COURT: All right, Mr. Schultz, you wanted to
4 challenge the State's exercise of four peremptory strikes
5 wherein they struck juror number 46, juror number 99, juror
6 number 81, and juror number 6?

7 MR. BARNETTE: I did, Your Honor.

8 THE COURT: All right.

9 MR. SCHULTZ: Juror number 46 was struck. It was
10 black female.

11 Juror number 99 was struck by the State, a black
12 male.

13 81, a black female.

14 Number 6 was a black female.

15 I would like to make a motion under Batson. If
16 the State could not produce a race neutral answer or some
17 other factor that allow them to strike, then I would
18 challenge the legitimacy of the jury under Batson. Thank
19 you.

20 THE COURT: All right, Mr. Barnette.

21 MR. BARNETTE: Thank you, Your Honor.

22 Number 46 and 99, Your Honor, they both lived in
23 the neighborhood where the defendant and co-defendants are
24 located. The co-defendants will be testifying in this case.
25 There is co-defendants on both sides, on both witnesses

1 list. Also the defendant lives in the neighborhood near
2 them also, Your Honor.

3 Number 81, the response to the court's questions,
4 the brother had committed a crime. In that case we feel
5 like that's a reason that she could be struck for it.

6 Number 6 says she know Joshua Manning, was first
7 cousins with Joshua Manning, and also lives in that
8 neighborhood also and as the co-defendants and the defendant
9 would be in that neighborhood there, Your Honor.

10 Also number 46, Your Honor, was unemployed. I
11 did -- there was one person that was seated unemployed on
12 the jury, but I ran all the strikes by them, would have
13 probably used one, but did not have one available to use at
14 that time.

15 THE COURT: All right, Mr. Schultz, those appear
16 to be sufficiently race neutral to withstand the
17 Constitutional challenge. You contend that they were simply
18 giving those excuses as a pretext to otherwise strike jurors
19 for no proper purpose or motive?

20 MR. SCHULTZ: I do, Your Honor.

21 THE COURT: All right. What reason do you have?

22 MR. SCHULTZ: Well, just because someone lives in
23 the same neighborhood -- I mean, Gaffney is a small town and
24 I think that just looking at the size of the community, I
25 mean, anybody may know somebody in this community that may

1 be affected by this. So just because somebody lives -- for
2 instance, 46 and 99, just because they live in this same
3 neighborhood around the co-defendants or the defendant
4 themselves, there is no reason to excuse anybody.

5 THE COURT: Well, it might not be a reason for
6 you. It was a reason Mr. Barnette. The question is whether
7 or not it's a race neutral reason or whether it's a pretext,
8 and I do find that's sufficiently race neutral and it's not
9 a pretext, and, therefore, I'm going to deny your motion to
10 quash the panel.

11 MR. SCHULTZ: Thank you, Your Honor.

12 THE COURT: All right.

13 MR. BARNETTE: Your Honor, if we could, could we
14 take a ten minute break?

15 THE COURT: Yeah, we are going to take fifteen
16 right now. We will be at ease for fifteen minutes.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 (Picture of Dipali Darji's face in the hospital
20 marked as State's Exhibit No. 1 for identification)

21 (Picture of the left side of Dipali Darji's face
22 marked as State's Exhibit No. 2 for identification)

23 (Picture of the left eye of Dipali Darji marked as
24 State's Exhibit No. 3 for identification)

25 (Picture of the chin area of Dipali Darji, marked

1 as State's Exhibit No. 4 for identification)

2 (Picture of the neck of Dipali Darji marked as
3 State's Exhibit No. 5 for identification)

4 (Picture of the bruises and marks on the back of
5 Dipali Darji marked as State's Exhibit No. 6 for
6 identification)

7 (Picture of bruise on the right side of Dipali
8 Darji's back marked as State's Exhibit No. 7 for
9 identification)

10 (Picture of bruise on the elbow of Dipali Darji
11 marked as State's Exhibit No. 8 for identification)

12 (Picture of marks on the left knee of Dipali Darji
13 marked as State's Exhibit No. 9 for identification)

14 (Picture of marks on the right side and right ear
15 of Dipali Darji marked as State's Exhibit No. 10 for
16 identification)

17 (Picture of marks on lips of Dipali Darji marked
18 as State's Exhibit No. 11 for identification)

19 (Picture of Dipali Darji's home at [REDACTED]
20 [REDACTED] marked as State's Exhibit No. 12 for identification)

21 (Picture from the front of Dipali Darji's home
22 toward Corner Store at [REDACTED] marked as State's
23 Exhibit No. 13 for identification)

24 (Picture of front of [REDACTED] - Corner
25 Store marked as State's Exhibit No. 14 for identification)

1 (Picture from the front corner Corner Store
2 towards back of Dipali Darji's home marked as State's
3 Exhibit No. 15 for identification)

4 (Picture from the front of Corner Store toward
5 stair to back of house marked as State's Exhibit No. 16 for
6 identification).

7 (Picture of the back of [REDACTED] -
8 porch area marked as State's Exhibit No. 17 for
9 identification)

10 (Picture of the back door and window at [REDACTED]
11 [REDACTED] house marked as State's Exhibit No. 18 for
12 identification)

13 (Picture of the side of the house away from store
14 of side windows marked as State's Exhibit No. 19 for
15 identification)

16 (Picture of window inside where enter the house
17 marked as State's Exhibit No. 20 marked identification)

18 (Picture of the kitchen floor showing items thrown
19 on the floor marked as State's Exhibit No. 21 for
20 identification)

21 (Picture of Dipali Darji's purse on the floor of
22 the kitchen with other items marked as State's Exhibit No.
23 22 for identification)

24 (Picture of kitchen behind the stove area showing
25 the purse and other items marked as State's Exhibit No. 23

1 for identification)

2 (Picture showing kitchen area near the back door
3 and the stick on the floor marked as State's Exhibit No. 24
4 for identification)

5 (Picture of blood on floor near the stick and the
6 victim's tennis shoe marked as State's Exhibit No. 25 for
7 identification)

8 (Picture of blood on the floor near the back door
9 marked as State's Exhibit No. 26 for identification)

10 (Picture of another area of blood on the kitchen
11 floor near the door marked as State's Exhibit No. 27 for
12 identification)

13 (Picture of the living room where furniture had
14 been overturned marked as State's Exhibit No. 28 for
15 identification)

16 (Picture of family center been overturned in the
17 living room marked as State's Exhibit No. 29 marked
18 identification)

19 (Picture of TV being tossed on the chair in the
20 living room marked as State's Exhibit No. 30 for
21 identification)

22 (Picture of sofa being overturned in the living
23 room marked as State's Exhibit No. 31 for identification)

24 (Picture of items and furniture being overturned
25 and pulled out in one of the bedrooms marked as State's

1 Exhibit No. 32 for identification)

2 (Picture of drawers being pulled out of the
3 dresser in a bedroom marked as State's Exhibit No. 33 for
4 identification)

5 (Picture of items being pulled out and looked
6 through in the house marked as State's Exhibit No. 34 for
7 identification)

8 (Picture of items being tossed out on the floor in
9 a bedroom marked as State's Exhibit No. 35 for
10 identification)

11 (Picture of drawers being pulled out in a bedroom
12 out of a dresser marked as State's Exhibit No. 36 for
13 identification)

14 (Picture of the doorjamb of the victim's bedroom
15 being broken into marked as State's Exhibit No. 37 for
16 identification)

17 (Picture of the doorjamb being busted out to the
18 victim's bedroom marked as State's Exhibit No. 38 for
19 identification)

20 (Picture of the door lock hinge being on the floor
21 from the bedroom door marked as State's Exhibit No. 39 for
22 identification)

23 (Picture of door lock hinge on the floor in the
24 bedroom marked as State's Exhibit No. 40 for identification)

(25 (Picture of the victim's bed in her bedroom marked

1 as State's Exhibit No. 41 for identification)

2 (Picture of the bullet hole in the wall of the
3 victim's bedroom marked as State's Exhibit No. 42 for
4 identification)

5 (Video from the Corner Store at [REDACTED]
6 [REDACTED] at 4/2/08 marked as State's Exhibit No. 43 for
7 identification)

8 (Picture of John Bonner outside the Corner Store
9 at 2:48 a.m. on 4/2/08 marked as State's Exhibit No. 44 for
10 identification)

11 (Picture of John Bonner and Labrontae Agnew going
12 into the Corner Store marked as State's Exhibit No. 45 for
13 identification)

14 (Picture of John Bonner and Labrontae Agnew going
15 through the doors marked as State's Exhibit No. 46 for
16 identification)

17 (Picture of John Bonner in front of Labrontae
18 Agnew in the store marked as State's Exhibit No. 47 for
19 identification)

20 (Picture of John Bonner and Labrontae Agnew going
21 towards the counter marked as State's Exhibit No. 48 for
22 identification)

23 (Picture of John Bonner and Labrontae Agnew going
24 behind the counter in the store marked as State's Exhibit
25 No. 49 for identification)

(1 (Picture of John Bonner and Labrontae Agnew going
2 into the cash register marked as State's Exhibit No. 50 for
3 identification)

4 (Picture of John Bonner and Labrontae Agnew in the
5 cash register marked as State Exhibit No. 51 for
6 identification)

7 (Picture of John Bonner and Labrontae Agnew going
8 through the counter items marked as State Exhibit No. 52 for
9 identification)

10 (Picture of John Bonner and Labrontae Agnew
11 looking at items in the counter marked as State's Exhibit
12 No. 53 for identification)

(13 (Picture of the cash register tray in the floor
14 behind the counter in the store marked as State's Exhibit
15 No. 54 for identification)

16 (Picture of drawers in the store opened marked as
17 State's Exhibit No. 55 for identification)

18 (Picture of another drawer in the store opened
19 marked as State's Exhibit No. 56 for identification)

20 (Fingerprints marked as State's Exhibit No. 57 for
21 identification).

22 (Picture of Victim's Credit Card found at Exit
23 marked as State's Exhibit No. 58 for identification).

(24 (Picture where Credit Card was found marked as
25 State's Exhibit No. 59 for identification).

1 (Picture of Credit Card marked as State's Exhibit
2 No. 60 for identification).

3 (Aerial View of Crime Scene marked as State's
4 Exhibit No. 61 for identification)

5 (Whereupon, proceedings were recessed)

6 (Whereupon, proceedings were reconvened)

7 THE COURT: Any matters we need to address before
8 the jury is brought in?

9 MR. SCHULTZ: Your Honor, I have three, possibly
10 four pretrial motions here.

11 Number one is a motion for sequestration. I know
12 that is not granted as a matter of right for any defense or
13 State motions, but especially in this case we have --

14 THE COURT: Well, aren't y'all in agreement on
15 that?

16 MR. BARNETTE: Yes, sir, we are. The only thing I
17 ask is that Investigator Greg Phillips, as well as the Ron
18 Ramsey, the case agent. Of course, the victims have a
19 right, just having those folks in.

20 THE COURT: What's your -- any objection to that?

21 MR. SCHULTZ: No, Your Honor.

22 THE COURT: Okay. Sequestration is ordered with
23 the exception of those that the solicitor has requested to
24 be exempt, and all that applies to both State's and defense
25 witnesses.

1 MR. SCHULTZ: All right. I believe the -- Mr.
2 Bonner's mother is here and his brother, so --

3 THE COURT: Are they going to be witnesses?

4 MR. SCHULTZ: Right now they are going to be
5 witnesses.

6 THE COURT: Then they got to be sequestered.

7 MR. SCHULTZ: All right. Thank you, Your Honor.
8 Could I talk to them?

9 THE COURT: Sure.

10 MR. SCHULTZ: Thank you.

11 (Off the record)

12 (Back on the record)

13 MR. SCHULTZ: Number two is a motion to reveal the
14 deal that the State has offered for -- intending to offer or
15 proffer to any of the cooperating co-defendants in this
16 case.

17 My understanding is there are going to be five
18 co-defendants in this case of Mr. Bonner that plan to
19 testify against him. The State obviously has talked to them
20 before that, and I would like the State to reveal what any
21 offers or any kind of plea deals that they made prior to
22 them testifying here today.

23 THE COURT: And they have not told you what that
24 arrangement is?

25 MR. SCHULTZ: Has the State told me what the --

1 THE COURT: Yes, sir.

2 MR. SCHULTZ: They told me back in chambers, yes,
3 but I would like it on the record.

4 THE COURT: All right. Mr. Barnette?

5 MR. BARNETTE: Your Honor, all five co-defendants
6 have pled to burglary first; burglary second, violent; armed
7 robbery; grand larceny more than \$5,000; kidnapping; and
8 ABHAN. That's straight up. The armed robbery, Your Honor,
9 was reduced to common law robbery was the only concession
10 that was made by the State. They are still facing a
11 possible life sentence. There is no recommendations in the
12 case. We will be telling the court that they cooperated
13 after they testify.

14 THE COURT: The only concession made by the State
15 was a reduction of the armed robbery charge to the common
16 law robbery; the defendants pled guilty to all of the other
17 charges?

18 MR. BARNETTE: Yes, sir, they have all five have
19 already pled guilty to those charges.

20 THE COURT: And there has been no agreement,
21 recommendation, or negotiations as it relates to any
22 sentence that the court might impose to those co-defendants?

23 MR. BARNETTE: That's correct, Your Honor.

24 THE COURT: It would be strictly in the discretion
25 of the court?

1 MR. BARNETTE: Yes, sir.

2 THE COURT: Okay.

3 MR. SCHULTZ: So to just summarize, Your Honor,
4 the State has not the made any offers, as far as plea deals
5 or anything, but the five co-defendants have already entered
6 pleas for a burglary first, burglary second, and ABHAN, and
7 an armed robbery for everyone was reduced down to common law
8 robbery? That's the way I understand it.

9 MR. BARNETTE: Your Honor, I don't know why we
10 keep repeating it. I have told him this several times
11 already.

12 THE COURT: Well, they have entered pleas. That's
13 not -- that's not a deal. I mean, there was an offer, but
14 that's -- that's of record.

15 MR. BARNETTE: Yes, sir. I mean, I don't mind
16 putting it on the record, keep it on the record. The only
17 concessions made by the State was going from armed robbery
18 to common law robbery.

19 THE COURT: I understand. That's what I just
20 stated.

21 MR. SCHULTZ: That's fine. I'm just trying to
22 clarify it.

23 THE COURT: Okay.

24 MR. SCHULTZ: And being my last motion is a motion
25 to reveal any of the State's cooperating witnesses if they

1 have any records.

2 THE COURT: Those have been provided?

3 MR. BARNETTE: Your Honor, I'm going to provide.

4 None of the co-defendants have prior records. Of course,
5 the other ones are police officers and other witnesses. I
6 have given him three of the rap sheets and we will give him
7 the other two after lunch. I will give them to him prior to
8 them testifying.

9 THE COURT: Okay.

10 Anything else?

11 MR. SCHULTZ: And, Your Honor, at this time I have
12 nothing further, but the only thing is that maybe at a later
13 time we may have to do a Jackson-Denno hearing, if the State
14 does plan to present my client's statement, if he does plan
15 to testify, but I think we will save that at a later time.

16 THE COURT: If the State intends to offer any
17 statement made by the defendant, he's entitled to a hearing
18 to determine its voluntariness. Okay.

19 MR. SCHULTZ: Thank you, Your Honor.

20 THE COURT: All right. Bring the jury in. Ask
21 Mr. Fritzsche to take the foreperson's seat. Mr. Fritzsche.

22 (The following takes place in the presence of the
23 jury panel)

24 THE COURT: Thank you. Please be seated.

25 Ladies and gentlemen, we are ready to begin with

1 the trial of the case for which you each have been selected.

2 And, Mr. Fritzsche, I'm going to ask you to serve
3 as the foreperson of the jury. As the foreperson, you will
4 have three specific duties that none of the other jurors
5 will have.

6 Number one, you are going to be asked to serve as
7 the spokesperson for the jury. And so if during the trial
8 something arises that needs to be brought to my attention,
9 that is, you or a fellow juror has some difficulty or
10 problem or a question, if you will let the bailiff know, he
11 will let me know and I'll address that problem or answer
12 that question.

13 Secondly, you will be called upon to preside over
14 the jury deliberations when that time comes. And that, of
15 course, won't be until the end of the trial after all the
16 evidence has been received and I have instructed you on the
17 law that's applicable in the case. But when the time does
18 come for jury deliberations, you are called upon to preside
19 over that process in the jury room simply to ensure that
20 those deliberations are carried out in some orderly fashion.

21 And, thirdly, you will be asked to actually write
22 the verdict or the decision of the jury. You will do that
23 on verdict forms that I will provide you at the trial's
24 conclusion on which you will indicate the jury's unanimous
25 decision as it relates to that particular charge.

1 Now, the foreperson has those specific duties that
2 I have just indicated. That does not, however, mean that
3 he's any more important than any of you other jurors,
4 because the decision of the jury is the unanimous consensus
5 opinion of all twelve jurors. And, therefore, all of you
6 will have an equal say and an equal vote in what the
7 ultimate decision would be in the case. Someone simply has
8 to be delegated those responsibilities that I have just
9 indicated, and I have delegated those to Mr. Fritzsche in
10 appointing him as the foreperson, but all of you jurors are
11 equally important, so far as the ultimate decisions in this
12 case are concerned, because, as I have stated, the decisions
13 have to be unanimous. All of you must be in agreement.

14 Now, Ms. Nix, you have been selected as an
15 alternate juror. And the function of the alternate juror is
16 to take the place of one of the original twelve jurors in
17 the event one of those original twelve cannot continue to
18 serve for some reason during the trial of the case. And if
19 a juror is called away because of an illness or an emergency
20 and cannot continue, then you would be called upon to take
21 that person's place. In that event you would become the
22 twelfth juror. If, when the time comes for jury
23 deliberations, all the original twelve are able to
24 participate, your service would end. You would not
25 participate any further, because the decision of the jury is

1 that of twelve. No more than twelve are permitted to engage
2 in that deliberation process, but it is important that you
3 pay just as careful attention as we ask of all the jurors in
4 the case, because it does occur from time to time for one
5 reason or another one of these original twelve may be unable
6 to continue. In that event you become the twelfth. So we
7 do appreciate your participation as an alternate juror, just
8 as we appreciate the participation of each of you jurors who
9 have been selected for the purpose of deciding the verdicts
10 in this particular case.

11 You may swear the panel.

12 THE CLERK: Mr. Foreman, ladies and gentlemen of
13 the jury, please stand and raise your right hand.

14 Do you solemnly swear that you will truly try the
15 issues joined in this case and a true verdict rendered
16 according to the law and evidence, so help you God?

17 JURY PANEL: (Collectively said I do)

18 THE CLERK: You may be seated.

19 THE COURT: Now, ladies and gentlemen, as you well
20 know, you have been selected to decide the verdicts in the
21 case of the State versus John Bendarian Bonner.

22 Mr. Bonner has been accused by the State, as you
23 have been told, of having committed six separate and
24 distinct offenses, although they are alleged to have arisen
25 out of one particular event or course of events which the

1 State's alleges occurred back on April the 2nd of 2008.

2 And by way of six separate indictments the
3 defendant has been accused by the State with having
4 committed the crimes of burglary in the first degree,
5 kidnapping, armed robbery, burglary in the second degree,
6 aggravated assault and battery, and armed robbery.

7 As to the allegations contained in each of those
8 indictments and as to the charges that have been brought
9 against the defendant, as I told you, he's entered a plea of
10 not guilty. And the plea of not guilty, therefore, always
11 places upon the State, because they brought the charges
12 against the defendant, to establish his guilt to the
13 satisfaction of you twelve jurors beyond a reasonable doubt
14 before any verdict of guilty could be returned as to any
15 indictment that has been brought against him.

16 There are six separate charges. You will be
17 considering those six separate charges individually, and you
18 will determine your verdict as to that particular charge by
19 your consideration of the evidence that relates to those
20 allegations and then your application of the law as I will
21 have provided it to you. And in this case you are going to
22 be called upon to render six separate and distinct
23 decisions, because there are six separate and distinct
24 charges. And your verdicts in this case may be the same as
25 it relates to all of the indictments, or those verdicts may

1 be different. That, of course, will be dependent upon your
2 determination of fact and then your application of the law
3 to the facts as you determine them to be.

4 Anytime that a person is accused of a crime, a
5 person accused of a crime is always under the law presumed
6 to be innocent, and that presumption of innocence remains
7 with any defendant, as it does with this defendant, from the
8 time that he is placed under arrest and throughout the
9 course of the criminal process, and even throughout the
10 course of the actual trial in the case. And that

11 presumption of innocence will be with Mr. Bonner even as you
12 are asked to go back and to begin with your deliberations at
13 this trial's conclusion. And that presumption of innocence
14 will be with him in that jury room, and it will be with him
15 forever, unless you twelve jurors determine that he is no
16 longer entitled to the presumption of innocence. In other
17 words, after you have carefully considered all of the
18 evidence in the case and after considering that evidence you
19 have decided the facts as it relates to a charge, and upon
20 deciding those facts you apply the law that I will have
21 provided you, if you twelve jurors unanimously determine
22 that his guilt has been proven beyond a reasonable doubt as
23 it relates to a particular charge, then under those
24 circumstances he would no longer be entitled to that
25 presumption of innocence. But it's only if, unless, and

1 until you are satisfied of his guilt beyond a reasonable
2 doubt that the presumption of innocence would no longer be
3 applicable.

4 And as I have told you, the indictments are the
5 charging papers. They are not proof of anything. They are
6 not evidence of anything. They do not establish anything.
7 They will be going back into the jury room at the trial's
8 conclusion, because it is on the back of each of those
9 indictments, Mr. Foreman, that you are going to be asked to
10 indicate the jury's unanimous decision as it relates to a
11 particular charge, but the indictments will only be serving
12 as the verdict form. And so while they are in the jury
13 room, they are not evidence of anything. They don't mean
14 anything, so far as you are concerned. They simply will be
15 there to serve as the verdict form and upon which you will
16 indicate the jury's unanimous decision.

17 Now, the way trial will proceed is that in a
18 moment the lawyers are going to address you in what are
19 called opening statements. There are two occasions in the
20 trial of any case where lawyers are permitted to address the
21 jury personally, and that is at the beginning of the trial
22 before any evidence has been introduced, then again at the
23 conclusion of the trial after all of the evidence has been
24 received. Please keep in mind, however, that the statements
25 of the lawyers is not evidence. You will not base your

1 decision upon any statements made by the lawyers in this
2 case. They are not going to be telling you anything about
3 this case they know of their own personal knowledge or
4 perception like witnesses will be, and the lawyers aren't
5 going to take the witness stand. They are not going to
6 testify under oath. They are not going to be subjected to
7 direct and cross-examination, as each of the witnesses will
8 be. And that's what the lawyers tell you in their
9 statements is not to be considered by you as any evidence
10 upon which you will base your decision. But it is important
11 that you listen to what the lawyers tell you in those
12 statements, because those statements do serve a purpose.
13 And the opening statements will serve to provide you with
14 the basic understanding as to what this case is about from
15 both the perspective of the State and the defendant, so that
16 you will have some context in which to place the evidence
17 that we will be receiving shortly thereafter.

18 The closing statements will occur after all of the
19 evidence has been received. And, again, while those
20 statements are not evidence, it does permit the lawyers an
21 opportunity to discuss with you the evidence that you have
22 seen and heard during the trial of the case. And through
23 that discussion, each lawyer will have an opportunity to try
24 to persuade you or to convince you that that evidence does
25 or does not support a particular decision.

1 And it's in between the opening and the closing
2 statements accomplished by the lawyers that we will actually
3 receive the evidence upon which you will make your decision.

4 The State, as you know, has the burden of proof,
5 so the State will go forward first in its presentation of
6 evidence.

7 After the State has concluded in its presentation
8 of evidence, a defendant has the same opportunity to testify
9 or to call witnesses or to produce evidence. But understand
10 that while the State does have the burden of proving a
11 defendant's guilt beyond a reasonable doubt, a defendant in
12 a criminal trial has no burden of proof. A defendant never
13 has to produce evidence. A defendant never has to prove
14 that he or she is not guilty or that he or she is innocent,
15 because in some cases that might not even be possible. The
16 burden is always upon the State, because they have brought
17 these charges to prove a defendant's guilt beyond a
18 reasonable doubt.

19 And so in the trial of a criminal case a defendant
20 may not testify. A defendant may not call any witnesses. A
21 defendant may not produce any evidence. And if he or she
22 does not, that is not something that the jury may consider
23 in any way whatsoever in your deliberations or in your
24 determination as to whether or not the evidence in the case
25 proves him to be guilty beyond a reasonable doubt. You

1 can't draw any conclusion nor draw any inference from the
2 fact that a defendant does not testify or does not call
3 witnesses in the trial of the case, but a defendant is
4 afforded an opportunity to present evidence and to testify,
5 if a defendant chooses to do so.

6 After all the evidence has been received and after
7 you hear the final summations of the lawyers, I will then
8 instruct you fully on the law as it relates to the criminal
9 law, in general, and as it relates to these particular
10 crimes, specifically, after which you will be asked to go
11 back and begin with your deliberations in the case. And
12 through that process you will examine the evidence, decide
13 the facts, apply the law, and arrive at a fair and just
14 decision, whatever that decision might be.

15 Now, it's important that you give every witness
16 the same degree of attention as the witness testifies,
17 because one of your prerogatives as a juror is to evaluate
18 and to assess and determine the credibility of each witness
19 that testifies. And, therefore, you may choose to believe
20 everything that a witness testifies to. You may choose to
21 believe none of it. You may believe one portion of a
22 witness' testimony and reject some other portion of that
23 same witness' testimony. And in a given case you can
24 believe one witness as opposed to several, or several as
25 opposed to one. But whatever your good judgment and common

(1 sense tells you is most believable and credible testimony is
2 the testimony that you should accept, and you should reject
3 any testimony or other evidence that you find not to be
4 credible or believable. And that's why it's important that
5 you give every witness the same degree of attention as they
6 testify, so that you will be in a proper position at this
7 trial's conclusion to fairly assess that witness'
8 credibility in light of not just that witness' testimony,
9 but in light of all of the testimony and all of the evidence
10 received during the trial. And, of course, it's important
11 that you keep an open mind throughout the course of the
12 trial. And that just means that you are not to begin making
(13 up your minds or formulating your opinions as to what you
14 think the ultimate decisions in this case ought to be until
15 all of the evidence has been received, until I have
16 instructed you on the law that's applicable in the case and
17 until you have been asked to begin with your deliberations
18 at the trial's conclusion. That is the process that is
19 designed for you twelve jurors to arrive at a fair and just
20 decision in the case.

21 So I do want to thank you in advance for your
22 participation, as well as for your careful attention. I
23 would ask that you please give the lawyers your attention
24 now as they give you their opening statements.

(25 MR. BARNETTE: May it please the court, Your

1 Honor?

2 THE COURT: Yes, sir.

3 MR. BARNETTE: This is Dipali Darji, Your Honor --
4 I mean, ladies and gentlemen. Back on April 1st, 2008, she
5 was working as a clerk at the Corner Store up on Providence
6 Road. You know where Daddy Joe's is? You go there, you
7 take a right there and go out there. Providence Road is on
8 the left. You go up a block. The store she works there,
9 and she lives in the house right beside it at [REDACTED]
10 [REDACTED]. She had worked that day. She finished her shift at
11 midnight. It started April 1st -- it had gone from April
12 1st to April 2nd.

13 Another man, Mr. Patel, closed the store. He
14 walked with her over to her house. She went in her house.
15 She got her something to eat, watched a little bit of TV,
16 went to bed. She locked her bedroom door.

17 In the middle of the night the door gets busted
18 open. A gunshot rings out right above her head. Four men
19 go inside of her house. Two of them rush in at that time.
20 They grab her. They beat her. They choke her. They said
21 "where is the money? Where is the money?" She tried to
22 tell them "what money", or whatever. They go through her
23 purse. They go through the whole house. They choked her.
24 They start taking her clothes off - take her pants off, her
25 underwear. They keep saying "where is the money?" "She

1 tries to give them the keys to the store. Two of them run
2 in. They are all wearing gloves, masks over their face.

3 Two of them go in the store, and you will see on
4 the videotape from the store and the pictures that you will
5 see when they go in. They are wearing socks over their
6 hands, masks. Two of them still there in the house with
7 her. Others went through the house. Two of them -- there
8 is eight altogether, ladies and gentlemen, involved in this.

9 They drove two cars. They parked at the
10 Huntington Wood Apartments above there. Two of them stay at
11 the cars. Two of them stayed outside as a lookout. Four of
12 them went inside the house.

13 As they go into the store, one thing they didn't
14 know was they had the alarm system. Meanwhile, while she's
15 still being beat back at her house. As they are going
16 through the till and they rob it, they got \$14,000,
17 approximately, maybe more, from the store. When the door is
18 open, if you don't hit the button, the alarm will
19 automatically go off. That alarm went off. When that alarm
20 went off, everybody ran, leaving her beaten, bruised.

21 She called for help, people next door, from one of
22 her friends. The police were called.

23 The police gets involved in the investigation.
24 They start looking for suspects. As the police work on
25 this, they find the eight individuals involved in this. And

1 all of them had nicknames. You will hear different
2 nicknames.

3 They met at Mr. Bonner's house. He's the one that
4 led to the idea. The plan, as you will hear it, was in the
5 past him and others had seen her carry monies from the store
6 to the house. That night she didn't have any money with her
7 when she took it -- when she left the store. They were
8 watching. The six of them was watching from the bushes
9 watching her. And you will hear testimony about this. They
10 watched Mr. Patel walk her over and they didn't bring it so
11 they couldn't take it with them. They went back and they
12 decided at the cars that they would go in the window.

13 "Yankee", which is Joshua Manning. He goes
14 through side window in the house. He goes and unlocks the
15 door and he comes back out and they decide to wait until she
16 goes to sleep.

17 "Ro-Ro", which is John Bonner. Joshua Manning,
18 which is "Yankee". Labrontae Agnew, who they called
19 "Brontae". Kwame Douglas, who they call "Lil Fred" goes
20 into the house. They start looking for the money. They
21 can't find it. Finally they decided. They drove over to
22 "Yankee's", John Bonner's and Joshua Manning's, they are
23 going to go find it in her bedroom. They are the ones that
24 had the gun and fired the shot and who started beating on
25 her first. They heard the gunshot. You will hear the

1 witnesses from outside. They will testify about it. The
2 two were staying at the car was "R.J." Wilson. They called
3 him "R.J.", and Terry Littlejohn was at the car.

4 Outside the house, Kendrick Tate and Billy Rodgers
5 was out there. They will testify what they saw going on
6 inside the house. They went in and helped and couldn't find
7 it.

8 When she finally give up the key, once they took
9 her clothes, the only thing she had on was her nightclothes
10 and she was in her nightshirt. And she said "well, I'll
11 show you where the key is to let you in and so you can get
12 your money. I want to put my pants on first."

13 The key is given to "Ro-Ro" and "Yankee" and the
14 other two go in the store. "Ro-Ro" and "Brontae" go in the
15 store. And you will see it on the videotape as they go to
16 the door, they go in the store and they ruffle through the
17 till and they get all the money and carry it with them, in
18 their pockets and arms and everything.

19 They all went back. They get in the cars and they
20 go down the road to a trailer park in a complex and they
21 split the money up. You will hear how much money for each
22 co-defendant got and everything.

23 Later on "R.J." Wilson drives, because they --
24 "Ro-Ro" and two other co-defendants went to the hotel, a
25 Motel 6. They had took Dipali Darji's credit card. She had

1 money in her purse they took. And they decided they would
2 just through that in some bushes. "R.J. Wilson, who came
3 clean to the police, took them and showed them where the
4 credit card was thrown. The Gaffney police department went
5 and got that credit card.

6 You will see pictures of what was done in this
7 case. You will have the house. They will have it in the
8 store. You will see what happened to this lady right here.

9 You will hear from the co-defendants. You will
10 hear from "R.J." Wilson. He will talk about what happened
11 that day and what happened that night.

12 You will hear from Kendrick Tate. You will hear
13 what his involvement was.

14 You will hear from Kwame Douglas, what his
15 involvement was.

16 You will hear from Mr. Rodgers, what his
17 involvement was.

18 All of them have pled. They pled to burglary
19 first, burglary second violent, grand larceny, assault and
20 battery of a high and aggravated nature, kidnapping, and
21 common law robbery. They are facing a life sentence. There
22 is no offers on the table. We will be telling the judge
23 they cooperated. They are going to tell you what their
24 involvement was and what that man's involvement was right
25 over there, the man that called and talked to them and told

1 them that "we need to get together on this," meeting over at
2 his house and going over and doing what they did.

3 Now, the judge will give you the law. He will
4 tell you what each element is of the offense. But, ladies
5 and gentlemen, there is no doubt what this was. This was
6 everything I have just told you it was, and you are going to
7 hear that today, and the man that was involved with all of
8 it. The other co-defendants have pled. He's the one that
9 started it off and he's involved with it up to his neck.

10 What I would ask you to do is just listen to the
11 evidence as you hear it. I will be coming back to you, like
12 the judge said, coming back to you to go over that evidence
13 with you, but listen to it and look at it.

14 This man -- I'll be coming back and asking you to
15 give justice for what he did to this lady right here. Thank
16 you all very much.

17 Thank you, Your Honor.

18 MR. SCHULTZ: If it please the court?

19 THE COURT: Mr. Schultz.

20 MR. SCHULTZ: Good morning, ladies and gentlemen.

21 My name is Attorney Joshua Schultz. I represent John
22 Bonner. He is charged, charged, with very serious crimes.

23 When I was over there just now looking at some of
24 the looks on y'all's faces there, I saw some of the looks
25 and I know that you think this is a serious crime.

1 Everybody knows this is a serious crime. It is a crime, but
2 one in which Mr. Bonner, my client, had nothing to do with.
3 He stands before you, members of the jury, as an innocent
4 man. He will remain innocent, because there is no doubt in
5 my mind after hearing the witnesses today and tomorrow, this
6 week, that you will vote to acquit him. This will be your
7 verdict and that will be the truth.

8 The purpose of an opening statement, one that the
9 solicitor gave you and the one that I'm giving you right
10 now, gives you a preview of what is to come. Opening
11 statements are usually short, to the point, so I will not
12 give you a lot of detail on the case. What will happen is
13 you will hear the details when the witnesses testify.

14 I just want to give you a couple of key words to
15 remember when you hear testimony this week.

16 The first key word or key words are reasonable
17 doubt. Now, I know you have all heard that phrase in movies
18 and TV. We have all heard that before, Law and Order, if
19 some of you watch Law and Order on TV, or movies. In order
20 to convict a person of a crime in this country, you should
21 have no reasonable doubt that he or she did a crime.
22 Reasonable doubt means any kind of doubt that will cause a
23 reasonable person some hesitation to act. And when you hear
24 all of the testimony today and for the next couple of days,
25 you should know that if you have any reasonable doubt

1 whatsoever as to the reliability of any of these witnesses
2 that you are going to hear, then you must not convict, and I
3 know you will not convict. What I'm saying is that you have
4 to be sure of this.

5 The other words that I want to go over is burden
6 of proof. Now, what this means is the State must prove
7 beyond a reasonable doubt that this crime happened. Because
8 the State has this burden, they are allowed to go first.
9 Now, you are going to hear from their several witnesses and
10 then you are going to hear from my witnesses.

11 Now, the defense does not have the burden of
12 proof. They have to convince you, the members of the jury,
13 beyond a reasonable doubt that this happened the way they
14 said it did.. It's not my burden. It's not Mr. Bonner's
15 burden. It's not the judge's. It's not your burden. It's
16 their burden. They have to prove this. And if they don't,
17 you must convict (sic), and they can't and they won't.

18 Now, when the witnesses testify, they are
19 testifying to their own personal recollections of what
20 happened. Just think about this. If you don't know a
21 person real well, and I know you don't know these people.
22 That's why we all qualify y'all, okay? When you don't know
23 a person real well and that person comes up to you and
24 says -- you know, tells you a story, think of things in your
25 own personal experiences how can you tell whether that

1 person is telling you the truth or not, whether he's lying
2 or telling the truth? Think about what you would do if some
3 person that you didn't know came up to you and told you a
4 story. Well, if it was me, I would look at their
5 background, where and when you know those persons, okay?
6 Have they told lies in the past? And most of the people
7 that you are going to hear, especially these cooperating
8 witnesses, they told lies and you are going to hear that.
9 They told lies to the police. They -- in the beginning they
10 covered up their involvement in the crime. They said "we
11 had nothing to do with this." And the only way that you can
12 convict is if you believe those people, and they are all
13 liars. And you should remember this, because the only thing
14 linking my client to this crime are these five people that
15 have entered plea deals with the State that has everything
16 to gain and nothing to lose by testifying here today, and I
17 want you to remember that. I'm going to bring that out
18 during my cross-examination.

19 Now, ladies and gentlemen, y'all know this. Y'all
20 have common sense. The truth is always the easiest thing to
21 tell, because there is no need to embellish it because you
22 have lived it. There is no need to fill in the blanks,
23 because, again, you have lived it. You know what happened.

24 Now, I happen to know, or I can reasonably assume,
25 that each of you have been lied to in the past. Think about

1 that time that you were lied to. Remember that person and
2 think about what motivates someone to lie. And I can tell
3 you one big reason why someone would lie is to avoid any
4 more jail time. That is a big reason to lie. And these
5 people that you are going to hear from, they all have
6 something hanging over their head and they all don't want to
7 go to jail. And that I present to you is a reason, the
8 biggest reason, to lie. Now, as you know, there are a lot
9 of different reasons. They lie because sometimes the truth
10 hurts them. They lie because somebody made them, but mostly
11 they do it to protect themselves so they stay out of
12 trouble.

13 Now, you heard the solicitor when he went over his
14 opening statement there, you know that he had contempt for
15 these people that did this, but he's going to put these
16 people up on the stand and they are going to testify in the
17 State's behalf, people that will be convicted of a crime.

18 Now, I'll offer up a cross. I'm going to make
19 objections asked by the solicitor. He will make objections
20 to some of the stuff that I say, and the judge, Judge Cole,
21 will make a ruling. That is one of his jobs as the finder
22 of the law. You, however, are the finder of fact. You
23 assess whether witnesses are reliable or not. Use your
24 common sense. And as I told you before, you determine what
25 happened that night.

1 Now, let's talk a little bit about power and what
2 that means. Everywhere in this courtroom you see power.
3 The judge has power to make rulings on the law. The police
4 are here today. They have power to arrest people. The
5 solicitor has power to present a case and accuse somebody,
6 indict somebody of a crime. But, ladies and gentlemen, the
7 main power in this courtroom belongs to you. You have the
8 power to determine the truth.

9 The life of somebody, Mr. Bonner, my client, is in
10 your hands. And at the end of this week you will deliver a
11 verdict, and that's exactly what a verdict means. You will
12 tell the truth, as I said in the beginning. You will tell
13 the truth in your verdict after determining these witnesses
14 for the State are liars and you will acquit Mr. Bonner of
15 all of his charges.

16 I look forward to this case today. I hope you do
17 too. We appreciate your service in advance and thank you.

18 THE COURT: Have you got a short witness, Mr.
19 Barnette.

20 MR. BARNETTE: Your Honor, I would like to call
21 Officer Sizemore to the stand, please.

22 OFFICER J.R. SIZEMORE, having been first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BARNETTE:

25 Q. Please, sir, state your full name for the record,

1 please..

2 A. Jeff Sizemore.

3 Q. And where do you work at, sir?

4 A. Gaffney Police Department.

5 Q. And what is your position there, sir?

6 A. I'm a patrol officer..

7 Q. And how long have you been there, sir?

8 A. Two and a half years.

9 Q. Back on April 2nd, 2008, did you work that day, sir?

10 A. Yes, sir, I was working that night.

11 Q. Were you working the night shift that night?

12 A. Yes, sir.

13 Q. Did you receive a call at [REDACTED]?

14 A. Yes, sir.

15 Q. And, if you would, tell the jury what you found once
16 you arrived there.

17 A. That night I responded to a call, I pulled up to the
18 address of [REDACTED]. I saw a young lady -- two
19 young ladies standing out front of the store. One of the
20 ladies was bleeding from the face area. I was asking her
21 what had happened. She told me that she had been beaten.
22 Her house has been ransacked and the store had been broken
23 into.

24 Q. Is this store and the house, the one at [REDACTED]
25 [REDACTED] and one at [REDACTED], is that in the City of

1 Gaffney?

2 A. Yes, sir.

3 Q. And is that in Cherokee County also?

4 A. Yes, sir.

5 Q. And let me show you what's been marked as State Exhibit

6 61. Is that an aerial map of the area that we are talking
7 about?

8 A. Yes, sir.

9 MR. BARNETTE: Your Honor, I would like to enter
10 this into evidence at this time.

11 MR. SCHULTZ: No objection to State's Exhibit 61.

12 THE COURT: It's admitted.

13 MR. BARNETTE: Permission to publish it to the
14 jury, Your Honor?

15 THE COURT: You may.

16 BY MR. BARNETTE:

17 Q. Officer, if you would just step down for one second.

18 (Witness off the witness stand)

19 BY MR. BARNETTE:

20 Q. Can you tell us what this is right here, sir?

21 A. That's the Corner Stop on Providence Road, [REDACTED]

22 [REDACTED].

23 Q. And is this the store that we are talking about?

24 A. Yes, sir.

25 Q. Okay. And is the house in this area, approximately?

1 A. Yes, sir.

2 Q. And like Daddy Joe's is on Floyd Baker, in this
3 direction behind you kind of?

4 A. Yes, sir, Beltline Road. Floyd Baker Boulevard and
5 Daddy Joe's is down Beltline.

6 Q. You go down that road and take a left?

7 A. Yes, sir. Start from Daddy Joe's and go down Beltline.
8 Beltline, hang a left and then the store is right there on
9 the left.

10 Q. Okay. If you would please have a seat, sir.

11 (Witness back on the witness stand)

12 BY MR. BARNETTE:

13 Q. The lady that you saw the face, bleeding from the face,
14 was she the young lady we saw earlier in the courtroom
15 today?

16 A. Yes, sir.

17 Q. And once you received that information, were other
18 officers called out at that time?

19 A. Yes, sir.

20 Q. And did you go to the hospital with her?

21 A. Yes, sir, I did.

22 Q. And at the hospital was she treated for her injuries?

23 A. Yes, sir.

24 Q. And was she kept overnight?

25 A. Yes, sir, she was.

1 Q. Did you also -- before you went, did you go look at the
2 house and the house area?

3 A. Yes, sir, I did.

4 Q. And did you also go in the store?

5 A. Yes, sir, I did.

6 Q. Let me show you what's been marked as State Exhibits, I
7 think so it's going to be 12 through 37 -- or 36. 12
8 through 36. If you would look at those pictures there. See
9 if those pictures fairly represent what you saw that day.

10 A. Yes, sir, they do.

11 MR. BARNETTE: Your Honor, I would like to move
12 these into evidence at this time.

13 MR. SCHULTZ: No objection, Your Honor.

14 MR. BARNETTE: Permission to publish some of the
15 pictures to the jury, Your Honor?

16 THE COURT: You may. What are their numbers?

17 MR. BARNETTE: 12 through 36, Your Honor.

18 THE COURT: Thank you.

19 BY MR. BARNETTE:

20 Q. I'm showing you picture No. 12. I'll show that to the
21 jury.

22 You can step down, officer, if you would like to, sir.

23 (Witness off the witness stand)

24 BY MR. BARNETTE:

25 Q. Is this a picture in the front of her house there?

1 A. Yes, sir, it is.

2 Q. That's [REDACTED]?

3 A. Yes, sir.

4 Q. I'm showing you State's Exhibit No. 14. Is that the
5 picture of the front of the store?

6 A. Yes, sir, it is.

7 Q. Is that commonly called the C-Mart as well as the
8 Corner Shop?

9 A. Yes, sir.

10 Q. I'm showing you State's Exhibit No. 18. I'm not going
11 to show every picture here. A lot of them come from the
12 same area.

13 Is this a picture of the back door of the house?

14 A. Yes, sir, it is.

15 Q. Okay. I'm showing you State's Exhibit No. 19. Is this
16 a picture of the side window of the house?

17 A. Yes, sir.

18 Q. And is this away from the store?

19 A. Yes, sir, it is.

20 Q. I'm going to show you State's Exhibit No. 21. What is
21 that a picture of, sir?

22 A. That was a picture of the inside of the house, kitchen
23 area.

24 Q. And had it been gone through?

25 A. Yes, sir.

(1 Q. I'm showing you State's Exhibit No. 22. Was this her
2 purse?

3 A. Yes, sir.

4 Q. And were these several of the items that came out of
5 her purse?

6 A. Yes, sir.

7 Q. I'm showing you State's Exhibit No. 25. Was this the
8 kitchen, another part of the kitchen floor area?

9 A. Yes, sir.

10 Q. And what does this appear to be to you?

11 A. Appeared to be blood.

(12 Q. Let me show you State's Exhibit 28. What does this
13 appear to be, sir?

14 A. That's the living room area. The couch has been
15 flipped over. The entertainment center had been flipped
16 over.

17 Q. Does this house appear to be ransacked?

18 A. Yes, sir.

19 Q. I'm showing you State's Exhibit 30. Was this a TV set
20 turned over?

21 A. Yes, sir.

22 Q. Entertainment center?

23 A. Yes, sir.

(24 Q. I'm showing you State's Exhibit 31. Was this the couch
25 that was turned over?

1 A. Yes, sir.

2 Q. State exhibit 32. Is this one of the bedroom areas?

3 A. Yes, sir.

4 Q. I'm showing you State's Exhibit 33. This is another
5 bedroom area that had been ransacked?

6 A. Yes, sir.

7 Q. I'm showing you State's Exhibit 36. Was this another
8 part of the house that had been ransacked too?

9 A. Yes, sir.

10 Q. Okay. If you would, stand there for a second.

11 If you would look at State Exhibit 54, 55 and 56. Are
12 these fair representations of what you saw in the store that
13 night too?

14 A. Yes, sir, it is.

15 MR. BARNETTE: Your Honor, I would like to move
16 these into evidence at this time.

17 MR. SCHULTZ: No objection, Your Honor.

18 THE COURT: They are admitted.

19 MR. BARNETTE: Permission to publish these, Your
20 Honor?

21 THE COURT: You may.

22 BY MR. BARNETTE:

23 Q. I'm showing you State's Exhibit 54. Is this a picture
24 of the money that was taken out of the drawer?

25 A. Yes, sir, it was.

1 Q. I'm showing you State's Exhibit 55. Is this another
2 area of the store, the drawers that went through?

3 A. Yes, sir.

4 Q. State's Exhibit 56, is that another drawer, the items
5 that were taken out of it?

6 A. Yes, sir.

7 Q. And later on did the manager come out to the store?

8 A. Yes, sir, he did.

9 Q. And did he give the video information to the detective?

10 A. Yes, sir.

11 Q. And approximately -- do you know approximately how much
12 was taken from the store?

13 A. Approximately \$13,000 and cash.

14 Q. And that was just an estimate?

15 A. Yes, that's approximately \$13,000 in cash from the
16 store; \$5,000 in cash from the house; and \$5,000 in jewelry
17 was -- at that time was approximate.

18 Q. And was there also a credit card taken from her also?

19 A. Yes, sir.

20 Q. If you would, sir, please have a seat.

21 (Witness back on the witness stand)

22 BY MR. BARNETTE:

23 Q. How emotional was she that night?

24 A. I'm sorry?

25 Q. How emotional was she that night?

1 A. Very.

2 Q. And basically your first -- obviously you looked the
3 scene over and secured it and so forth. Did you feel like
4 you needed to stay with her at the hospital?

5 A. Yes, sir.

6 Q. And that's where you went with her?

7 A. Yes, sir, I did.

8 Q. Please answer any questions that Mr. Schultz may have
9 for you, sir. Thank you.

10 MR. SCHULTZ: Thank you, Your Honor.

11 CROSS EXAMINATION BY MR. SCHULTZ:

12 Q. Officer Sizemore, how long have you been on the force?

13 A. Two and a half years.

14 Q. Two and a half years?

15 A. Yes, sir.

16 Q. Okay. Did you work anywhere else prior to working in
17 Gaffney?

18 A. I have in Gaffney, yes, sir.

19 Q. Okay. So a combined total, how long have you been a --

20 A. Been in law enforcement two and a half years.

21 Q. Two and a half years?

22 A. Yes, sir.

23 Q. And you responded to this incident location, correct?

24 A. Yes, sir, I did.

25 Q. Okay. And we saw the pictures up there, right?

1 A. Yes, sir.

2 Q. All right. And those are now in State's evidence,
3 correct?

4 A. Yes, sir.

5 Q. And we also saw some what appeared to be blood on the
6 floor?

7 A. Yes, sir.

8 Q. Did you collect some of that blood?

9 A. I did not.

10 Q. Okay. Do you know if that blood was ever collected?

11 A. I don't know, sir.

12 Q. Okay. Do you know -- you obviously don't know whether
13 it was tested for any kind of DNA or anything, right?

14 A. No, sir, I have no idea.

15 Q. Now, you were the first officer to arrive on the scene,
16 correct?

17 A. Yes, sir.

18 Q. Okay. Now, as you know, most crimes are solved within
19 24 hours of their occurrence, correct?

20 MR. BARNETTE: Your Honor, I'm going to object.
21 That's speculation.

22 THE COURT: Sustained.

23 BY MR. SCHULTZ:

24 Q. It's very important -- the first officer on the scene
25 is one of the most important officers there for the

1 investigation of the crimes, correct?

2 A. Yes.

3 Q. Okay. And were you charged that day or tasked that day
4 with collecting any fingerprints or anything like that?

5 A. No, sir, I was not.

6 Q. Okay. So your job was just to arrive at the scene,
7 make sure everything was okay and not collect any evidence
8 whatsoever?

9 A. Secured the scene. I secured the scene and called
10 detectives.

11 Q. Okay. Now, you also talked to this victim in this
12 case, right?

13 A. Yes, sir, I did.

14 Q. And you said during your direct testimony that she was
15 very emotional?

16 A. Yes, sir.

17 Q. Did she identify anybody to you?

18 A. She told me at the time when I asked her what had
19 happened, she said approximately five black males wearing
20 dark clothes had attacked her.

21 Q. And she said all those men had masks or rags to cover
22 their heads, right?

23 A. Yes, sir.

24 Q. So at that very moment she could not identify anybody
25 or give you a good description of who assaulted her,

1 correct?

2 A. At that time, no, sir.

3 Q. Okay.

4 MR. SCHULTZ: That's all I have, Your Honor.

5 Thank you.

6 MR. BARNETTE: No further questions.

7 THE COURT: You may step down.

8 MR. BARNETTE: We ask the witness to be excused,
9 Your Honor.

10 THE COURT: He may be.

11 All right, ladies and gentlemen, we are going to
12 recess for lunch.

13 Let me caution you at any time we take a break,
14 you never are permitted to discuss the case even among
15 yourselves. You can't talk about the case with family
16 members or friends, and you can't discuss it with your
17 fellow jurors until you are actually involved in the jury
18 deliberations at the trial's conclusion. So from now on
19 until that time have no discussions of any kind whatsoever
20 with any persons whatsoever.

21 Also don't permit yourselves to be exposed to any
22 type of media coverage that might relate to the trial,
23 whether it be television, radio, or newspaper. You have got
24 to base your decision upon what you see and hear in the
25 courtroom and not what you might be influenced by outside of

1 the courtroom, so avoid any type of extraneous or outside
2 information. Your verdict has to be based upon the evidence
3 presented during the trial and not somebody else's
4 recollection or opinion or version of what the evidence
5 might be.

6 Also you are never to conduct any research or do
7 your own investigation into any issue that might arise
8 during the trial. As I say, you got to base your decision
9 upon the evidence presented. You can't supplement that
10 knowledge by consulting outside resources or doing your own
11 investigation or research.

12 With those cautions in mind, do have a good lunch
13 and please report to your jury room this afternoon at 2:30.
14 At 2:30 this afternoon report back to your jury room. And
15 when you come back to the courthouse, you will be reporting
16 to the side door that's across the street from the back of
17 the church, as opposed to the back door or the side door
18 that's on the opposite side the courthouse. So you park in
19 the parking lot, go to your right to the side entrance
20 across the street from the back of the church. Come up
21 those back steps and that will take you directly to your
22 jury room. The bailiff will give you those instructions.

23 Have a good lunch and please report back at 2:30.

24 (The following takes place outside the presence of
25 the jury panel)

1 THE COURT: Okay. Y'all stick around a minute. I
2 have got talk to a juror.

3 (Off the record)

4 (Back on the record)

5 THE COURT: All right. Any matters we need to
6 address before we recess for lunch?

7 MR. BARNETTE: None from the State, Your Honor.

8 MR. SCHULTZ: None from the defense, Your Honor.

9 THE COURT: Court is in recess until 2:30.

10 (Whereupon, proceedings were recessed)

11 (Whereupon, proceedings were reconvened)

12 THE COURT: All right. Are we ready for the jury?

13 MR. BARNETTE: The State is ready, Your Honor.

14 MR. SCHULTZ: The defense is ready.

15 THE COURT: Bring them in, please.

16 (The following takes place in the presence of the
17 jury panel)

18 THE COURT: Okay. Good afternoon, ladies and
19 gentlemen.

20 As you know, when we recessed for lunch the State
21 had begun with their presentation of evidence, so we will
22 continue with that presentation this afternoon.

23 Ms. Tailor.

24 MS. TAILOR: The State would call Mr. Patel.

25 MILSELI PATEL, having been first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION BY MS. TAILOR:

3 Q. Mr. Patel, please introduce yourself to the jury.

4 A. My name is Milseli Patel.

5 Q. And where do you work?

6 A. I work at Corner Stop #2.

7 Q. And is that here in Gaffney?

8 A. Yes, ma'am.

9 Q. Is that located here in Cherokee County?

10 A. Yes, ma'am.

11 Q. How long have you worked there?

12 A. Yes, ma'am.

13 Q. How long have you worked at the Corner Stop?

14 A. About fifteen, sixteen years.

15 Q. And what is your position there?

16 A. President.

17 Q. And at the present are you in charge of the store?

18 A. Yes, ma'am.

19 Q. On the night of April 2nd, 2008, were you working at
20 the Corner Stop?

21 A. Yes, ma'am.

22 Q. And what happened that night?

23 A. That night they broke in the house.

24 Q. Okay. Did you -- what time did you close the store
25 that night?

- 1 A. At twelve.
- 2 Q. And who was working at the store at that time?
- 3 A. Dipali Darji.
- 4 Q. And you were there with her?
- 5 A. I was.
- 6 Q. Was there anyone else at the store at the time?
- 7 A. No, ma'am.
- 8 Q. And when you closed the store, where did you go?
- 9 A. Directly -- I go to the -- very first we go to -- my
- 10 car was parked at the outside, so we go to -- go to that --
- 11 gather over there.
- 12 Q. So you left the store and went to the house?
- 13 A. Yes, ma'am.
- 14 Q. Did you walk with Ms. Darji?
- 15 A. Yes, ma'am.
- 16 Q. And did you -- when you left the house, did you leave?
- 17 A. Yes, after that.
- 18 Q. And how did you leave your house?
- 19 A. By the car.
- 20 Q. And was this your car?
- 21 A. Yes, ma'am.
- 22 Q. Where was it parked?
- 23 A. Next to her house.
- 24 Q. I'm going to show you what's been marked as State's
- 25 Exhibit No. 43. Do you recognize this?

1 A. Yes.

2 Q. Okay. What is it?

3 A. That's a video CD.

4 Q. Okay. And as president of the store, are you the one
5 that runs the video machine that you have?

6 A. Yes, ma'am.

7 Q. The surveillance-type program?

8 A. Yes, ma'am.

9 MS. TAILOR: At this time we would like to offer
10 No. 43 into State's evidence.

11 MR. SCHULTZ: No objection, Your Honor.

12 THE COURT: It's admitted.

13 BY MS. TAILOR:

14 Q. I'm also going to show you what's been marked as
15 Exhibits 44 through 51. Do you recognize these pictures?

16 A. Yes, ma'am.

17 Q. What are they?

18 A. They are from my store.

19 Q. And they are pictures from your surveillance?

20 A. Yes, at the time it was from seeing it too.

21 Q. Okay.

22 MS. TAILOR: At this time, Your Honor, we would
23 like to move to have Exhibits 44 through 51 into State's
24 evidence.

25 MR. SCHULTZ: No objection, Your Honor.

1 Could we approach briefly?

2 THE COURT: Yes.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 MS. TAILOR: Your Honor, briefly these are
6 actually Exhibits 44 through 53.

7 MR. SCHULTZ: No objection, Your Honor.

8 THE COURT: They are admitted.

9 MS. TAILOR: Your Honor, may I publish these
10 pictures to the jury?

11 THE COURT: You may.

12 BY MS. TAILOR:

13 Q. This is No. 44. Is this a picture of the outside of
14 your store?

15 A. Yes, ma'am.

16 Q. Next is Exhibit No. 45.

17 Could you please read the time and date at the top of
18 it? And you can actually step down to see the pictures.

19 (Witness off the witness stand)

20 BY MS. TAILOR:

21 Q. Is that the time of the date from the video?

22 A. Yes, ma'am.

23 Q. That's inside the store?

24 A. Yes.

25 Q. 45. Is this also a picture of inside the store?

1 A. Yes, ma'am.

2 Q. Number 47. Is this also from the video that you
3 retrieved?

4 A. Yes, ma'am.

5 Q. Number 48. Is this also from the store?

6 A. Yes, ma'am.

7 Q. Number 49. What area is this inside the store?

8 A. This is from behind the registers.

9 Q. From behind the registers?

10 A. Not really. It's the side.

11 Q. Number 50.

12 A. That's behind the register.

13 Q. Number 51?

14 A. Behind the register there also.

15 Q. Number 52.

16 A. Also behind the register.

17 Q. And number 53?

18 A. Also behind the register.

19 Q. Thank you.

20 (Witness back on the witness stand)

21 BY MS. TAILOR:

22 Q. Approximately how much money was taken from the store?

23 A. From the store, about \$14,000.

24 Q. And do you know how much was taken from the home as
25 well?

1 A. Altogether it was supposed to be about 25,000. That's
2 everything.

3 Q. That's -- the 25,000 is including what was taken from
4 the store as well as the home?

5 A. Right.

6 Q. Okay. And who owns that home?

7 A. I do.

8 MR. TAILOR: Your Honor, if I may.

9 (Off the record).

10 (Back on the record)

11 BY MS. TAILOR:

12 Q. We have no further questions. Please answer anything
13 that Mr. Schultz may ask you.

14 MR. SCHULTZ: Thank you, Your Honor.

15 CROSS EXAMINATION BY MR. SCHULTZ:

16 Q. Now, Mr. Patel, you own the store, correct?

17 A. Yes, sir.

18 Q. And you also own a house there, right?

19 A. Yes, sir.

20 Q. Now, Mr. Patel, looking at State's Exhibit 47 here,
21 now, you can't see whoever those are faces, right?

22 A. I cannot figure out because they had masks on.

23 Q. Okay. But you can't see their faces, right?

24 A. No.

25 Q. And also in this, Mr. Patel, State's Exhibit 44, you

1 can't make out the face of that, whoever that is?

2 A. No.

3 Q. Okay. So it would be fair to say that almost all these
4 pictures here, you can't make out who was in it, because
5 whoever they were, their faces were obscured, right?

6 A. (No response)

7 Q. Is that a yes?

8 A. Say that again.

9 Q. It would be fair to say that all those pictures that
10 the State just got into evidence you could not see --

11 A. I cannot see.

12 Q. You cannot see their faces, correct?

13 A. Because they have on masks on.

14 Q. All right.

15 MR. SCHULTZ: That's all I have, Your Honor.

16 Thank you.

17 MS. TAILOR: Just one question, Your Honor.

18 REDIRECT EXAMINATION BY MS. TAILOR:

19 Q. In each of these pictures, you can, however -- No. 44,
20 do you see anything on their hands?

21 A. He had a chain, a key chain with the key.

22 Q. Does it appear that there are any socks or gloves or
23 something covering his hands?

24 A. Yes.

25 Q. Thank you. Number 47, in each of these pictures you

1 can tell that the hands are covered?

2 A. Covered, yes.

3 Q. That's all.

4 MS. TAILOR: Your Honor, may the witness be
5 excused?

6 THE COURT: You may be. You may step down.

7 THE WITNESS: Thank you.

8 MR. BARNETTE: Your Honor, the State would like to
9 call Mr. Wilson to the stand.

10 ROBERT WILSON, JR., having been first duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE:

13 Q. If you would, sir, state your full name for the record,
14 please.

15 A. Robert Lahdrum Wilson, Jr..

16 Q. And what's your nickname, sir?

17 A. "R.J..".

18 Q. Sir, where do you live at?

19 A. [REDACTED].

20 Q. And who do you live with there, sir?

21 A. My grandparents.

22 Q. And who is your grandparents, sir?

23 A. Mrs. Linstine Wilson and Mr. Red Wilson.

24 Q. And how old are you, sir?

25 A. I'm twenty.

1 Q. Back on April 2nd, 2008, how old was you then, sir?

2 A. Nineteen.

3 Q. And did you go to high school, sir?

4 A. Yes, sir.

5 Q. Where did you go to high school at?

6 A. At Gaffney High.

7 Q. And did you graduate from there, sir?

8 A. Yes, sir.

9 Q. And did you play football there?

10 A. Yes, sir.

11 Q. And what years did you play football?

12 A. 2006.

13 Q. And what position did you play there, sir?

14 A. Wide receiver.

15 Q. And after you graduated from school, did you go
16 anywhere else after that?

17 A. I went to work.

18 Q. And where did you go to work at, sir?

19 A. I worked at Domino's.

20 Q. Back on April 1st, 2008, did you meet the defendant
21 late that night?

22 A. Yes, sir.

23 Q. Do you see him in the courtroom here today?

24 A. Yes, sir.

25 Q. What do you know him as?

1 A. "Ro-Ro". That's his nickname.

2 Q. And did you go over to his house?

3 A. Yes, sir.

4 Q. And who did y'all meet at his house?

5 A. Everybody was there.

6 Q. Okay.

7 A. "Brontae", Labrontae, "Trash Man", me, "Ro-Ro", "Fred",
8 Billy Rodgers and Terry Littlejohn.

9 Q. If you would, I want you to step down so we can follow
10 through. I want you to write down everybody's name and
11 their nicknames, so we can help follow it.

12 (Witness off the witness stand)

13 A. Robert. "R.J." BY

14 MR. BARNETTE:

15 Q. You are Robert Wilson?

16 A. Yes, sir.

17 Q. If you would write the first and last name, please.

18 A. Billy Rodgers. They call him Bill.

19 Q. Was Mr. Douglas one of them?

20 A. Yeah.

21 Q. So that was everybody's name and their nickname, is
22 that right?

23 A. Yes, sir.

24 (Witness back on the witness stand)

25 BY MR. BARNETTE:

- (1 Q. Okay, Mr. Wilson, who did you go over to Mr. Bonner's
2 house, "Ro-Ro's" house, who did you go with?
3 A. I came from work. I went by myself.
4 Q. So you came from work. Did somebody call you or
5 anything?
6 A. Yes.
7 Q. Who called you?
8 A. "Ro-Ro".
9 Q. When he called you, what did he tell you?
10 A. He told me to come back to his house as soon as I got
11 out of work.
12 Q. What time did you get off work, sir?
(13 A. Ten.
14 Q. You drove over to -- did you drive your car?
15 A. Yes, sir.
16 Q. What kind of car is it, sir?
17 A. 2001 Mitsubishi.
18 Q. When you got over there, who was there?
19 A. Everybody.
20 Q. Where does John Bonner, the defendant, live at?
21 A. He used to live on Frederick Street.
22 Q. Okay. Is that commonly known as the west end?
23 A. Yeah.
24 Q. When you got there, what were they talking about?
(25 A. Grabbing the money bag and like running back to the car

1 and -- that was the plan.

2 Q. Whose idea was that?

3 A. I believe it was Josh.

4 Q. Josh, which is "Yankee", Josh Manning?

5 A. Yes, sir.

6 Q. So they were talking about getting the bag and running
7 with it?

8 A. Yes, sir.

9 Q. Who had seen -- did you know what store they were
10 talking about?

11 A. Yes, sir.

12 Q. Which store were they talking about?

13 A. The Redwood store.

14 Q. And who had seen her walk with the money between the
15 store and the house?

16 A. "Ro-Ro".

17 Q. And he's the one who told you all about it?

18 A. Yes, sir.

19 Q. So what did y'all decide to do?

20 A. We got on the plan, wait for her to come out of the
21 store and grab the bag and run back to the car.

22 Q. So did y'all go over there?

23 A. Yes, sir.

24 Q. Who drove?

25 A. I drove my car and Kendrick Tate drove his.

1 Q. What kind of car did Kendrick have?

2 A. He had a Cadillac.

3 Q. Who got in the car with you?

4 A. It would be "Yankee", "Ro-Ro", "Fred" and "Brontae".

5 Q. And who got in the other car?

6 A. "Bugga", Kendrick and Billy.

7 Q. Where did y'all drive to?

8 A. We drove to Huntington Square.

9 Q. Let me show you what's been entered into evidence as
10 State's Exhibit 61.

11 If you would, sir, just step down for a second, Mr.
12 Wilson.

13 (Witness off the witness stand)

14 BY MR. BARNETTE:

15 Q. Right here.

16 This being the store, are these the apartments up here
17 that you parked at?

18 A. Yes, sir.

19 Q. Okay. So y'all parked up in here in the parking lot?

20 A. Yes, sir.

21 Q. And when y'all got there --

22 If you would, go have a seat there, sir.

23 (Witness back on the witness stand)

24 BY MR. BARNETTE:

25 Q. When you got there, what happened then?

1 A. Everybody got out of the car, except me and Terry
2 Littlejohn, and they walked up there and they were waiting
3 on them to walk out of the store with the money.

4 Q. So the other six went up there?

5 A. Yes, sir.

6 Q. And who stayed back at the cars?

7 A. Me and Terry Littlejohn.

8 Q. Y'all stayed there for awhile. Did they come back?

9 A. Yeah, we stayed there about thirty minutes or so and --
10 then they came back to the car and said she didn't have the
11 money or something.

12 Q. So when they said they didn't have the money, what did
13 they decide to do then?

14 A. They decided to go in the house and find it.

15 Q. How was they going to go in the house?

16 A. They said she left a back window open, that they were
17 going to climb through and unlock the door.

18 Q. Did they go back?

19 A. Yes, sir.

20 Q. When they went back, did they take on -- did they take
21 gloves, or socks, or something for their hands?

22 A. Yeah, they had socks over their hands.

23 Q. Did they wear masks?

24 A. Some of them put shirts on their face.

25 Q. So when they went back, who stayed back at the cars?

1 A. Me and Terry Littlejohn.

2 Q. And how long were they gone?

3 A. About another thirty minutes. .

4 Q. What was the next thing that you knew happened?

5 A. I was sitting there and I heard an alarm go off and
6 then I seen them run back to the car.

7 Q. When you are talking about the alarm, was that the
8 alarm from the store?

9 A. Yes, sir.

10 Q. So what happened after that alarm went off?

11 A. Sir?

12 Q. What happened -- once the alarm went off, what happened
13 next?

14 A. I seen them running back to the car a minute later.

15 Q. Did they have anything with them when they came back?

16 A. Money.

17 Q. Who had the money with them?

18 A. "Ro-Ro", "Brontae", "Lil Fred" and "Yankee".

19 Q. And who got in the car with you?

20 A. It was me, Labrontae, "Yankee" and "Ro-Ro".

21 Q. And did -- once they got in your car -- how was the
22 money packaged or how was it?

23 A. It had like little red bands on it that would tell how
24 much was on it.

25 Q. So where did y'all go after that?

(1 A. Going to the Ryans Apartments and everybody just gave
2 each other money.

3 Q. How much money did you get?

4 A. I would say about \$300.

5 Q. After y'all split the money up, what happened then?

6 A. Me and -- me, "Ro-Ro", "Brontae" and "Yankee", we went
7 to Spartanburg.

8 Q. And where did you go to Spartanburg?

9 A. They was going to a -- I guess they were going to --
10 they wanted to meet some girls. I guess they went to the
11 hotel. I'm not sure, but I had went to the store.

12 Q. So is that what they call Chesnee Highway, Exit 78?

(13 A. Yes, sir.

14 Q. And when you got there, what happened?

15 A. I had let them out and they went over there, or
16 whatever, and then I looked in my car to make sure there
17 wasn't nothing there. I had a card and threw the card in
18 the bushes.

19 Q. What kind of card was it?

20 A. I believe it was her bank card.

21 Q. So they took her bank card?

22 A. Yes, sir.

(23 Q. Let me show you State Exhibit 57, and I apologize it's
24 got fingerprint dust on it. Was that the bank card that you
25 found in your car?

1 A. Yes, sir.

2 Q. And what did you do with that bank card?

3 A. I took it out of my car and I threw it in the bushes.

4 MR. BARNETTE: Your Honor, I would like to enter
5 State's Exhibit 57 into evidence at this time.

6 MR. SCHULTZ: No objection.

7 THE COURT: It's admitted.

8 MR. BARNETTE: May I publish it to the jury, Your
9 Honor?

10 THE COURT: You may.

11 BY MR. BARNETTE:

12 Q. Is this the bank card that you found in your car, sir?

13 A. Yes, sir.

14 Q. And that's the one that you threw in the bushes?

15 A. Yes, sir.

16 Q. Let me show you what's been marked as State's Exhibit
17 58, 59 and 60. Are these pictures where the card was
18 located, where you took the police to later?

19 A. Yes, sir.

20 Q. Do those pictures fairly represent what you saw and
21 what they saw?

22 A. Yes, sir.

23 MR. BARNETTE: Your Honor, I would like to enter
24 these into evidence at this time.

25 MR. SCHULTZ: No objection.

1 THE COURT: It's admitted.

2 BY MR. BARNETTE:

3 Q. After you dropped them off and everything, where did
4 you go, sir?

5 A. I went back home.

6 Q. And later on did the police contact you?

7 A. Yes, sir.

8 Q. The first time that they talked to you, did you tell
9 them the truth?

10 A. No, sir.

11 Q. Why didn't you tell them the truth?

12 A. I was scared.

13 Q. Okay. Did you later tell them the truth?

14 A. Yes, sir.

15 Q. And did you take them and show them where the credit
16 card was?

17 A. Yes, sir.

18 Q. And publishing State's Exhibit 58.

19 Are these the bushes near -- I believe there is a
20 Burger King there off Exit 78?

21 A. Yes, sir.

22 Q. Are these the bushes where you threw the card at?

23 A. Yes, sir.

24 Q. I'm showing you State's Exhibit No. 59.

25 Is that the back of the credit card from the bushes?

1 A. Yes, sir.

2 Q. State's Exhibit 60, which is that picture of the card
3 that you threw out?

4 A. Yes, sir.

5 Q. Now, you touched this card, is that right?

6 A. Yes, sir.

7 Q. Sir, the man that whose house that you went over to, do
8 you see him now?

9 A. I really don't know, sir.

10 Q. I mean the man that the house that you went over to
11 before you went over to the store.

12 A. Oh, yes, sir.

13 Q. Do you see him in the courtroom here today?

14 A. Yes, sir.

15 Q. Can you identify him and tell me what he's wearing and
16 where he's located?

17 A. He's right there and wearing a collared shirt.

18 Q. He's sitting by his attorney?

19 A. Yes, sir.

20 Q. How is his hair?

21 A. Dreads.

22 MR. BARNETTE: Your Honor, I would like the record
23 to reflect he's identified the defendant.

24 THE COURT: It shall.

25 BY MR. BARNETTE:

1 Q. Is there any question in your mind that he wasn't
2 there?

3 A. No.

4 Q. Was he definitely there?

5 A. Definitely.

6 Q. And you pled to burglary first?

7 A. Yes.

8 Q. Burglary second, kidnapping, grand larceny, assault and
9 battery of a high and aggravated nature, and armed robbery,
10 haven't you, sir?

11 A. Yes, sir.

12 Q. Or actually common law robbery?

13 A. Common law.

14 Q. You never went into the house?

15 A. No, sir.

16 Q. You never went into the store?

17 A. No, sir.

18 Q. But you drove over there?

19 A. Yes, sir.

20 Q. And you knew what they were going to do?

21 A. Yes, sir.

22 Q. And you drove away from there?

23 A. Yes, sir.

24 Q. You realize you are facing a possible life sentence?

25 A. Yes, sir.

1 Q. And the only thing that you have been given is --
2 obviously you pled to common law robbery instead of armed
3 robbery, and then the court being told that you cooperated.
4 Is that the only thing that you have been promised?

5 A. Yes, sir.

6 Q. Have you been promised a sentence of any type?

7 A. No, sir.

8 Q. Who is going to be setting your sentence later?

9 A. Judge Hayes.

10 Q. So the judge would be sentencing you, is that right?

11 A. Yes, sir.

12 Q. And it will be up to the judge what your sentence is?

13 A. Yes, sir.

14 Q. Are you telling the truth here today?

15 A. Yes, sir.

16 Q. Is this what happened?

17 A. Yes, sir.

18 Q. And John Bonner, "Ro-Ro", was he the man that knew
19 about her walking from the store over to her house?

20 A. Yes, sir.

21 MR. BARNETTE: One moment, Your Honor, please.

22 (Off the record)

23 (Back on the record)

24 BY MR. BARNETTE:

25 Q. Let me show you what's been marked as State's Exhibit

1 27. If you would step down for a second, Mr. Wilson.

2 (Witness off the witness stand)

3 BY MR. BARNETTE:

4 Q. Who is this right here?

5 MR. SCHULTZ: Objection, Your Honor. He wasn't in
6 the store. I believe that's been verified.

7 MR. BARNETTE: Let me rephrase the question then.

8 BY MR. BARNETTE:

9 Q. Who is wearing those clothes?

10 A. The one on the left is Labrontae and the one on the
11 right is "Ro-Ro".

12 Q. So "Ro-Ro" is the one wearing the clothes on the right?

13 A. Yeah, with the furry hood.

14 Q. That's what he was wearing that night?

15 A. Yeah.

16 Q. Let me show you State's Exhibit 44.

17 Who was wearing those clothes that night?

18 A. "Ro-Ro".

19 Q. Thank you, sir. Please have a seat.

20 (Witness back on the witness stand)

21 BY MR. BARNETTE:

22 Q. What were you wearing that night, sir?

23 A. I had on a red shirt and khakis. I had just a Domino
24 shirt on.

25 Q. And you just sat in the car the whole time?

1 A. Yes, sir.

2 Q. Please answer any questions that Mr. Schultz would have
3 for you. Thank you.

4 CROSS EXAMINATION BY MR. SCHULTZ:

5 Q. You go by "R.J."

6 A. Yeah.

7 Q. "R.J." Wilson?

8 A. Yes, sir.

9 Q. Mr. Wilson, how old are you?

10 A. Twenty.

11 Q. Twenty.

12 Do you know the difference between the truth and a lie?

13 A. Yeah.

14 Q. You do?

15 A. Yes, sir.

16 Q. Okay. A lie is -- well, what is a lie?

17 A. Not the truth.

18 Q. Okay. Did you ever tell the police a lie?

19 A. Yes, I did.

20 Q. When did you tell the police a lie?

21 A. The first time I went in the interrogation room.

22 Q. And your exact words were "I didn't have anything to do
23 with it," correct?

24 A. Correct.

25 Q. And you said that a couple of times, didn't you?

1 A. Yeah.

2 Q. And you actually signed a statement saying this is the
3 truth, the whole truth, and nothing but the truth, didn't
4 you?

5 A. Yes.

6 Q. So you lied?

7 A. Yes.

8 Q. Okay. Then the police came back and interviewed you
9 again, right?

10 A. Yes, sir.

11 Q. What did you tell them?

12 A. Sort of the truth.

13 Q. Sort of the truth.

14 What did you tell them that time?

15 A. I just told them I didn't know nothing about it, the
16 plan, or whatever. I told them that I dropped them off and
17 picked them up.

18 Q. Right. What you said was that they called you and you
19 came and picked these people up, right?

20 A. Yeah.

21 Q. So now you have told two lies, right?

22 A. Yeah.

23 Q. Now, in your third interview you stated what you have
24 said was the truth, right?

25 A. Yeah.

1 Q. Okay. So you were lying back then and then you were
2 telling the truth, correct?

3 A. Yeah.

4 Q. Okay. So you lied two times and then you told the
5 truth eventually?

6 A. Yeah.

7 Q. And that's your testimony here today?

8 A. Yes, sir.

9 Q. Okay. So you are a liar, right?

10 A. No.

11 Q. No. But you were a liar?

12 A. Yeah.

13 Q. Okay. So you want us to believe that at this time you
14 are not lying?

15 A. Yes.

16 Q. Even though you lied in the past?

17 A. Yes.

18 Q. Okay. Now, you said in your testimony here today that
19 you never went in the house, right?

20 A. Correct.

21 Q. And you never went in the store, right?

22 A. Correct. I never left my car.

23 Q. Okay. So really you didn't know who actually went in
24 the house or went in the store, correct?

25 A. I didn't see them go in there, but they told me

1 afterwards.

2 Q. Okay. But you never saw anybody go actually in the
3 house or in the store, right?

4 A. No, sir.

5 Q. Okay. And your testimony here today is that you drove
6 to that place and you waited there for thirty minutes?

7 A. I waited for thirty minutes.

8 Q. Okay. And what happened during that thirty minutes?

9 A. I was waiting on them to come out, and they were just
10 sitting in the bushes. I was just in my car.

11 Q. Did you know then what you were doing was wrong?

12 A. Yes, sir.

13 Q. Okay. But still you went along with it?

14 A. Yeah.

15 Q. And you had plenty of time to get out of that
16 conspiracy, correct?

17 A. Yes, sir.

18 Q. Okay. But you didn't?

19 A. No, sir.

20 Q. Okay. So not only did you lie to the police when they
21 caught you, but you could have got out of something that you
22 knew at the time was wrong and you chose not to, correct?

23 A. Yes, sir.

24 Q. Okay. Did you tell the police that you wouldn't lie to
25 the police?

- (1 A. Yes, sir.
- 2 Q. Okay. And that was in your first statement, right?
- 3 A. Yes, sir.
- 4 Q. Okay. And your exact words were "I'm telling you the
- 5 truth. I had nothing to do with it."
- 6 A. Yeah.
- 7 Q. And you were surprised when other people brought your
- 8 name up?
- 9 A. Yes, I was.
- 10 Q. Now, you said that you are twenty years old, right?
- 11 A. Yes, sir.
- 12 Q. Do you have a criminal history?
- (13 A. No, sir.
- 14 Q. All right. So this is sort of new to you, right?
- 15 A. Yes, sir.
- 16 Q. You don't really know how this whole system works, do
- 17 you?
- 18 A. No.
- 19 Q. Okay. And according to your direct testimony, you have
- 20 already pled guilty to these charges, correct?
- 21 A. Yes, sir.
- 22 Q. Okay. And you pled -- according to my notes here, you
- 23 pled guilty to a kidnapping?
- 24 A. Yes, sir.
- (25 Q. Do you know what kidnapping carries?

1 A. No, sir.

2 Q. All right. Kidnapping carries zero to thirty years, is
3 that correct?

4 A. Yeah.

5 Q. Okay. You also pled to a grand larceny?

6 A. Yes, sir.

7 Q. That carries zero to five years.

8 You also pled guilty to assault and battery of a high
9 and aggravated nature, correct?

10 A. Yes, sir.

11 Q. And that carries zero to ten years, right?

12 A. Yes, sir.

13 Q. Okay. So right now you are looking at fifty years.
14 You also pled to a burglary second?

15 A. Yes, sir.

16 Q. That carries zero to fifteen years, correct?

17 A. Yes, sir.

18 Q. In exchange for your testimony here today, the State
19 has dropped your armed robbery from an armed robbery to a
20 common law robbery?

21 A. Yes, sir.

22 Q. Correct?

23 A. Yes, sir.

24 Q. So there was a deal, wasn't there?

25 A. No.

1 Q. No? There wasn't?

2 A. No.

3 Q. So an armed robbery to a common law robbery, the State
4 would have said oh, fine, that's whatever you -- do whatever
5 you want to do, right?

6 A. (No response).

7 Q. So the State didn't want you to testify?

8 A. Yeah.

9 Q. Of course the State wanted you to testify, didn't they?
10 You wouldn't do it by your own, did you, would you?

11 A. Yeah.

12 Q. You would?

13 A. (Shaking head yes).

14 Q. Okay. Who told you to testify here today? Your
15 lawyer?

16 A. No. I was -- it was just what it was.

17 Q. Your lawyer advised you to testify, right?

18 A. Yeah.

19 Q. Okay. Because it's in your best interests, isn't it?

20 A. Yeah.

21 Q. Because you are trying to get your time out, right?

22 A. Yeah.

23 Q. Right. That's what you are hoping for at least?
24 Right? Answer the question.

25 A. Yeah.

1 Q. Okay. Because you know that you are in a whole heap of
2 trouble, aren't you?

3 A. Yes, sir.

4 Q. You are looking at life in prison, correct?

5 A. Yes, sir.

6 Q. All right. Basically to summarize all your charges,
7 you are looking at approximately zero years to life in jail,
8 right?

9 A. Yes, sir.

10 Q. What are you hoping to get out of this today?

11 A. Less time.

12 Q. Right. Less time.

13 You have clear motivation to lie, don't you?

14 A. No, sir.

15 Q. You don't?

16 A. (Shaking head no).

17 Q. You don't have any bias right now to lie?

18 A. No, sir.

19 Q. Come on. Yes you do.

20 So you are testifying just out of the goodness of your
21 heart?

22 A. Yes, sir.

23 Q. Okay. Without any motivation whatsoever?

24 A. Yes, sir.

25 Q. No motivation whatsoever. You just said that you

1 wanted to get your time cut, didn't you?

2 A. No, I said that's what I was hoping for.

3 Q. That's what you are hoping for, and you are lying
4 today, aren't you?

5 A. No, sir.

6 Q. Yes you are.

7 A. No, I'm not.

8 Q. You are lying today because you want to get your time
9 cut.

10 MR. BARNETTE: Objection. Argumentative.

11 THE COURT: Sustained.

12 BY MR. SCHULTZ:

13 Q. Now, you agreed to testify for the State, didn't you?

14 A. Yes, sir.

15 Q. Could you pass a drug test today?

16 A. I didn't take a drug test.

17 MR. BARNETTE: Objection, Your Honor. What's the
18 relevance of this?

19 THE COURT: Well, I don't know.

20 MR. SCHULTZ: I'm seeing if he's in his proper
21 mind.

22 BY MR. SCHULTZ:

23 Q. You have been out on bail, right?

24 A. Yes, sir.

25 Q. Okay. Can you pass a drug test today?

(1 A. Yes, sir.

2 Q. Okay. What is your family situation like? You got a
3 mom and dad?

4 A. I got a dad, my grandma and grandpa.

5 Q. Do you have any children?

6 A. I have one little girl.

7 Q. You got one little girl. How old is she?

8 A. One.

9 Q. All right. And you want to see her grow up, right?

10 A. Yes, sir.

11 Q. Okay. And you know that you don't want to spend the
12 rest of your life in jail, right?

(13 A. Correct.

14 Q. Okay. So would it be fair to say that you are
15 testifying here today for your little girl, aren't you?

16 A. No.

17 Q. It wouldn't be fair for you to say that at all?

18 A. I mean I want to see her grow up and all, but that
19 ain't why I'm testifying.

20 Q. Right, but that's the main reason that you are here
21 today, right, to get your time cut, right?

22 A. No.

23 Q. No?

24 A. I'm hoping to get my time cut.

(25 Q. You are hoping to get your time cut. Okay.

1 But, again, you want to see your kid grow up, right?

2 A. Yes, sir.

3 Q. Okay.

4 A. I do.

5 Q. And the best way to get that done is to get less time,
6 right?

7 A. Yeah, I guess.

8 Q. Okay. Correct? Okay.

9 And the best way to get less time is to cooperate with
10 the State, correct?

11 A. I really don't know.

12 Q. You really don't know?

13 Again, I'm going to ask you this. You are hoping to
14 get your time cut, right?

15 A. Yeah.

16 Q. Okay. And the best way of getting your time cut is to
17 cooperate with the State, correct?

18 A. Yeah.

19 Q. Okay. And you would say -- whatever you say here today
20 will determine a lot of what happens for the rest of your
21 life, right?

22 A. Yes, sir.

23 Q. Now, going back to the morning, the 2nd, you were in
24 the car by yourself for a long time, right?

25 A. Yeah, I was at work,

1 Are you talking waiting across the street?

2 Q. When your co-defendants were across the street, you
3 were in the car by yourself, correct?

4 A. Yes, sir.

5 Q. Do you have a cell phone?

6 A. Yes, sir.

7 Q. You could have called the police, couldn't you?

8 A. Yes, sir.

9 Q. And you did not, right?

10 A. No, sir.

11 Q. Why didn't you do that?

12 A. I didn't think it was going to be that bad.

13 Q. But you knew what they were up to. You knew that they
14 were going to commit armed robbery, right?

15 A. No, sir, I thought they were going to grab the bag and
16 run to the car.

17 Q. That's still a crime, isn't it?

18 A. (Shaking head yes).

19 Q. You know that they were going to commit crimes that
20 night, right?

21 A. Yes, sir.

22 Q. And you only came clean when you were about to get
23 charged yourself, weren't you?

24 A. Yes, sir.

25 Q. All right.

1 MR. SCHULTZ: Beg the court's patience, Your
2 Honor.

3 (Off the record)

4 (Back on the record)

5 MR. SCHULTZ: Just one more question.

6 BY MR. SCHULTZ:

7 Q. Do you have a box of .22-caliber rounds that were found
8 in your yard?

9 A. Yes, sir.

10 MR. SCHULTZ: Nothing further, Your Honor.

11 MR. BARNETTE: I just a couple on redirect, Your
12 Honor.

13 REDIRECT EXAMINATION BY MR. BARNETTE:

14 Q. Mr. Wilson, you have no prior record?

15 A. No, sir.

16 Q. Had you had any dealings with the criminal justice
17 system?

18 A. No, sir.

19 Q. And you just said you didn't think it was going to be
20 that bad?

21 A. Yes, sir.

22 Q. Did you know what that defendant was going to do and
23 some of the other co-defendants?

24 A. No, sir.

25 Q. What would you have done if you knew it was going to be

1 that bad?

2 A. I wouldn't have went.

3 Q. Would you have pled guilty to something that you didn't
4 do?

5 A. No, sir.

6 Q. Did you do this?

7 A. Yes, sir.

8 Q. Did John Bonner do this?

9 A. Yes, sir.

10 Q. And he was the one that went over to the store and
11 house, wasn't he?

12 A. Yes, sir.

13 MR. SCHULTZ: Just one question on recross.

14 THE COURT: Reply to what he said?

15 MR. SCHULTZ: Yes.

16 THE COURT: Okay.

17 RECROSS EXAMINATION BY MR. SCHULTZ:

18 Q. You were in the car and you never saw anybody go in the
19 house, correct?

20 A. Yes, sir.

21 Q. You never saw anybody go in the store, correct?

22 A. Correct.

23 MR. SCHULTZ: That's all I have. Thank you .

24 MR. BARNETTE: We ask this witness be excused,

25 Your Honor.

1 THE COURT: You may step down.

2 MR. BARNETTE: I would like to call Kendrick Tate
3 now.

4 KENDRICK TATE, having been first duly sworn,
5 testified as follows:

6 DIRECT EXAMINATION BY MR. BARNETTE:

7 Q. Mr. Tate, I'm going to need you to talk as loud as you
8 can so the jury can hear you, okay?

9 A. Yes, sir.

10 Q. Give me your full name, please.

11 A. Kendrick Shye Tate.

12 Q. And where you live at, Mr. Tate?

13 A. [REDACTED].

14 Q. And who do you live with there, sir?

15 A. My family, mother and father.

16 Q. And whose your mom and dad?

17 A. Nannie and Weeks Williams.

18 Q. Do you have any other brothers and sisters?

19 A. Yes, sir, I got two other brothers.

20 Q. And who are they are?

21 A. Steve and Antwan Tate.

22 Q. Did you go to Gaffney High School?

23 A. Yes, sir.

24 Q. How old are you now, sir?

25 A. Twenty.

1 Q. And did you graduate from Gaffney?

2 A. Yes, sir.

3 Q. And after you graduated from Gaffney, where did you go,
4 sir?

5 A. I went to college at Spartanburg Tech.

6 Q. Did you play football at Gaffney?

7 A. Yes, sir, I played all four years.

8 Q. What position did you play at Gaffney?

9 A. Cornerback.

10 Q. Did you have a future in college?

11 A. Yes, sir, accounting, major in accounting.

12 Q. You were a major in accounting, but you were going to
13 go on to play in college football?

14 A. Yes, sir.

15 Q. What school were you going to play?

16 A. South Carolina.

17 Q. Back on April 2nd, 2008, or April 1st, was you in
18 school then, sir?

19 A. Yes, sir.

20 Q. And that was at Spartanburg Tech?

21 A. Yes, sir.

22 Q. And did you just need a class to qualify for your
23 scholarship?

24 A. Yes, sir.

25 Q. That evening did you go to John Bonner's house?

1 A. Yes, sir.

2 Q. And where is his house located at?

3 A. Right at the front of west -- I ain't really -- I don't
4 know the name of the road.

5 Q. Remember, you can't -- you got to talk loud enough so
6 the jury can hear you.

7 A. Yes, sir.

8 Q. He lives on west end?

9 A. Yes, sir.

10 Q. And who did you go over to his house with?

11 A. Me, Billy and Terry Littlejohn.

12 Q. That was Billy Rodgers and Terry Littlejohn?

13 A. Yes.

14 Q. And who drove?

15 A. I did.

16 Q. And what kind of car did you drive, sir?

17 A. Blue and yellow Cadillac Villa.

18 Q. And when you got over there, who was there?

19 A. "R.J.", Robert Wilson, "Brontae", "Lil Fred", "Yankee".
20 I think that was it.

21 Q. Keep your voice up. You are soft spoken. You need to
22 keep your voice up, okay?

23 A. Okay.

24 THE COURT: You can adjust the microphone, but you
25 still need to speak up. We want everybody to hear you.

1 A. "Lil Fred", "Brontae", "Ro-Ro", and "Yankee", Billy
2 and --

3 BY MR. BARNETTE:

4 Q. What did they usually call you?

5 A. Sir?

6 Q. What did they usually call you?

7 A. Kent Tate.

8 Q. While you was there what happened?

9 A. We just sat around and then that's when we started
10 talking about what we was going to do.

11 Q. And what did y'all start talking about?

12 A. About how the woman come out, the woman who was running
13 the store at that time carry money from house -- from the
14 store to the house.

15 Q. Who was telling you all about that?

16 A. "Yankee" and John Bonner.

17 Q. Okay. And John Bonner is "Ro-Ro"?

18 A. Yeah. Yes, sir.

19 Q. And what was the plan?

20 A. When they came out, just take the bag and ran.

21 Q. And did y'all go over there?

22 A. Yes, sir.

23 Q. And who drove?

24 A. I drove and Robert drove, Robert Wilson.

25 Q. So everybody goes over there. Where did y'all park at?

- (1 A. Huntington Square, at the second entrance.
- 2 Q. Is that the subdivision above?
- 3 A. Yes, sir, the entrance farther away from the store.
- 4 Q. Which entrance did you go to?
- 5 A. The second.
- 6 Q. What happened once y'all got there?
- 7 A. Once we got there, we got out of the car, went over to
- 8 the house and sat over there in the bushes and watched them
- 9 then came in and then came back to the car.
- 10 Q. Let me ask you, who stayed at the car when y'all went
- 11 over there?
- 12 A. Robert Wilson and Terry Littlejohn.
- (13 Q. And who went over behind the bushes near the house?
- 14 A. Me and Billy and "Ro-Ro" and "Yankee".
- 15 Q. Did all six of you went over there?
- 16 A. Yes.
- 17 Q. Was John Bonner there with you too?
- 18 A. Yes, sir.
- 19 Q. Do you see him here in the courtroom?
- 20 A. Yes, sir.
- 21 Q. Can you identify what he's wearing and where he's
- 22 located?
- 23 A. Right over there. There he is.
- 24 Q. What is he wearing, sir?
- (25 A. Button up shirt, green shirt I think.

1 MR. BARNETTE: Your Honor, I would like the record
2 to reflect he's identified --

3 THE COURT: I couldn't understand what he said.

4 THE WITNESS: Gray shirt.

5 THE COURT: A gray shirt?

6 THE WITNESS: Yes, sir.

7 BY MR. BARNETTE:

8 Q. How does his hair look?

9 A. Dreaded up.

10 MR. BARNETTE: Your Honor, I would like the record
11 to reflect he's identified the defendant.

12 THE COURT: It shall.

13 BY MR. BARNETTE:

14 Q. So when y'all went over the first time, what did you
15 see when she left the store?

16 A. I don't think -- I don't think she brought no bag from
17 the store, so we went back. We ran back to the car and
18 talked about it.

19 Q. Did a man also walk out of the store too?

20 A. Yes, sir. Yes, sir, he did.

21 Q. And did he leave after that?

22 A. Yes, sir.

23 Q. So y'all went back to the car. What did y'all talk
24 about then?

25 A. How we are going to get the money in the house, going

1 to get the key to the store.

2 Q. Y'all wanted to get the keys to the store?

3 A. Yes, sir.

4 Q. What did they decide to do?

5 A. Decided to go inside the house. Open up -- sneak
6 through the window and open up the front door.

7 Q. And let me show you what's been marked as State's
8 Exhibit -- let me show you State's Exhibit No. 19.

9 If you would step down for a second, sir, if you would.

10 (Witness off the witness stand)

11 BY MR. BARNETTE:

12 Q. This window here, was that the window that they went
13 in?

14 A. Yes, sir.

15 Q. And who went in that window?

16 A. "Yankee" went in that window.

17 Q. "Yankee", Josh --

18 A. Josh Manning.

19 Q. Josh Manning went in that window?

20 A. Yes.

21 Q. Where was everybody else at that time?

22 A. In the front and me was on the side.

23 Q. Where was you at? Speak up now.

24 A. On the side. On the side of the woods right here, the
25 tree.

1 Q. If you would just push that and it will --

2 A. Right here.

3 Q. Who was with you?

4 A. Me and Billy Rodgers.

5 Q. Where was the other guys at?

6 A. Out there in the front. That's where he was.

7 Q. When you call the front, it's actually --

8 A. That's actually the back door, yes, sir.

9 Q. Back door?

10 A. Yes, sir.

11 Q. Is that where the cars there in the back were?

12 A. Yes, sir.

13 Q. Okay. If you would have a seat, sir.

14 (Witness back on the witness stand)

15 BY MR. BARNETTE:

16 Q. So "Yankee" opened the back door. Who went in?

17 A. John Bonner, "Yankee", "Brontae" and "Lil Fred", and
18 Billy went out -- Billy and I was on the other side.

19 Q. But you and Billy was outside?

20 A. Yes, sir.

21 Q. Was y'all watching out for them?

22 A. Yes, sir.

23 Q. So when they went in, did they have anything on their
24 hands or their face?

25 A. Socks and masks.

1 Q. They went in. Did you ever see a gun?

2 A. A palm like .22 small.

3 Q. Who had that gun?

4 A. John Bonner.

5 Q. They go into the house. What happens after they go in
6 the house?

7 A. Well, I heard the shot and heard the lady scream.

8 Q. What's going on during this time?

9 A. People rummaging for money. And then by that time I
10 guess they came outside with the keys.

11 Q. And who came outside with the keys?

12 A. "Brontae" and John Bonner.

13 Q. Let me show you State's Exhibit 47. If you would step
14 down for a second, sir?

15 (Witness off the witness stand)

16 BY MR. BARNETTE:

17 Q. Who was wearing these clothes right here, these two
18 guys.

19 A. John Bonner is the one on the right here.

20 Q. John Bonner is on the right?

21 A. Yes, that's "Brontae" there.

22 Q. And "Brontae" was wearing this?

23 A. Yeah.

24 Q. If you would have a seat.

25 (Witness back on the witness stand)

1 BY MR. BARNETTE:

2 Q. They went in the store. Who stayed inside the house?

3 A. "Yankee" and "Lil Fred" and "Brontae". I mean "Yankee"
4 and "Lil Fred".

5 Q. And during that time was the lady still screaming?

6 A. Yes, sir.

7 Q. As you are standing outside watching, looking out, what
8 happened next?

9 A. Standing inside the house with the -- "Lil Fred" had
10 put a knife up to the lady.

11 Q. So you looked inside the house?

12 A. Yes.

(13 Q. And during that time did something else happen after
14 that?

15 A. Well, after we got the money, an alarm went off and ran
16 back to the cars.

17 Q. And who had the money with them?

18 A. "Brontae" and John Bonner.

19 Q. And y'all ran back to the car. After y'all got in the
20 cars, where did y'all go?

21 A. We went to Ryans Apartments. We both went to Ryans
22 Apartments.

23 Q. Did y'all split up the money?

24 A. Yes, sir.

(25 Q. How much money did you get?

(1 A. Around three or four hundred dollars.

2 Q. And after that what happened?

3 A. After that we had got two rooms. We had got money to
4 pay and they went over to Motel 6.

5 Q. And who rented those rooms?

6 A. Well, everybody. All of us did mostly. Super 8, but
7 only a couple of them went to the motel.

8 Q. Now, Super 8, where was it located at?

9 A. Over there by the skating rink.

10 Q. Hear in town?

11 A. Yes, sir.

12 Q. Off Floyd Baker Boulevard?

(13 A. Yes, sir.

14 Q. And then who went over to the Motel 6 over in
15 Spartanburg?

16 A. Just me and Billy and "R.J.".

17 Q. And y'all went over to the hotel there, and -- did
18 "R.J." drive over there?

19 A. Yes, sir.

20 Q. Do you know anything about a credit card or anything?

21 A. Yes, sir.

22 Q. How do you know about the credit card?

23 A. "R.J." had threw the credit card out. He had the
24 credit card.

(25 Q. And did -- afterwards did the police talk to you?

1 A. Yes, sir.

2 Q. Let me ask you this question. Did they approach you or
3 did you approach them?

4 A. I approached them.

5 Q. Why did you approach them?

6 A. I felt bad. My conscience ran me down.

7 Q. J.P. Manning was the officer that you went and talked
8 to, wasn't it?

9 A. Yes, sir.

10 Q. This gentleman right over here in the box?

11 A. Yes, sir.

12 Q. The police didn't approach you?

13 A. No, sir.

14 Q. You approached them?

15 A. Yes, sir.

16 Q. So you gave them a statement of what happened?

17 A. Yes, sir.

18 Q. You was the first one to talk to the police?

19 A. Yes, sir.

20 Q. You told them the truth?

21 A. Yes, sir.

22 Q. Why did you do that?

23 A. I just felt bad because -- I just felt bad for the
24 woman that had to endure all that.

25 Q. Did you know it was going to be that bad?

1 A. No, sir.

2 Q. Why did you do it in the first place? What did you
3 think was going to happen?

4 A. Made a bad mistake. Just sorry for what happened.

5 Q. You told the truth from the beginning when you talked
6 to the police?

7 A. Yes, sir.

8 Q. And you have pled guilty to what you were involved
9 with?

10 A. Yes, sir.

11 Q. You pled guilty to burglary first?

12 A. Yes, sir.

13 Q. Burglary second?

14 A. Yes, sir.

15 Q. Common law robbery?

16 A. Yes, sir.

17 Q. Kidnapping?

18 A. Yes, sir.

19 Q. Grand larceny?

20 A. Yes, sir.

21 Q. And assault and battery of a high and aggravated
22 nature?

23 A. Yes, sir.

24 Q. Had you had any prior record before this?

25 A. No, sir.

1 Q. You realize you are facing a possible life sentence?

2 A. Yes, sir.

3 Q. And you realize that the one concession the State has
4 really made is going to say basically that you cooperated?

5 A. Yes.

6 Q. You cooperated before without being talked about?

7 A. Yes, sir.

8 Q. Are you telling the truth today?

9 A. Yes, sir.

10 Q. Just like when you went and talked to the officer?

11 A. Yes, sir.

12 Q. The police didn't approach you?

13 A. No, sir.

14 Q. You approached the police.

15 Did you talk to your parents about it too?

16 A. Yeah, after I was in jail.

17 Q. You are hoping this will help you, but really are you
18 trying to just clear your conscience?

19 A. It led me to clear my conscience a whole lot, yes, sir.

20 Q. And you are willing to take the punishment that comes
21 out from it?

22 A. Yes, sir.

23 Q. Even though you don't know what that punishment is
24 going to be?

25 A. No, sir.

1 Q. And you have no problems with saying things?

2 A. No, sir.

3 Q. Except what I asked you before?

4 A. Yes, sir.

5 Q. Please answer any questions that Mr. Schultz may have
6 for you.

7 CROSS EXAMINATION BY MR. SCHULTZ:

8 Q. Mr. Tate, how old are you?

9 A. Twenty.

10 Q. Twenty?

11 A. Yes, sir.

12 Q. And, again, I asked your co-defendant this question.

13 Do you know the difference between a lie and the truth?

14 A. Yes, sir.

15 Q. Okay. Now, a lie is when, for instance, you -- you
16 would have nothing to do with this. You told the police
17 that you had nothing to do with this, right?

18 A. I lied.

19 Q. That's a lie, right?

20 A. Did I tell them that?

21 Q. Yes.

22 A. No, sir.

23 Q. You never told the police that?

24 A. No, sir.

25 Q. Okay. In your -- now, you have given a videotaped

1 statement to the police, right?

2 A. Sir?

3 Q. You gave a videotaped statement to the police?

4 A. Yes, sir.

5 Q. Okay. Do you remember when that was?

6 A. I think it was the 11th -- April 11th, probably.

7 Right, April 11th.

8 Q. Did you talk to the police officer in your car, or in
9 his car?

10 A. Yes, sir.

11 Q. But didn't you also go down to the police station, too,
12 and talk?

13 A. Yes, sir.

14 Q. Okay. And you went with somebody, didn't you?

15 A. Yeah, I went with my mother.

16 Q. And you went with your mom, right?

17 A. Yes, sir.

18 Q. And you were wearing a hat, I believe, right?

19 A. Yes, sir.

20 Q. Okay. And this was videotaped?

21 A. Yes, sir.

22 Q. And from what I saw is that you said that you had an
23 alibi that night, right?

24 A. Yeah, the first time I went.

25 Q. Okay. All right. So what you are saying right now is

1 that when you could have gone with the truth, you didn't,
2 right?

3 A. Yes, sir, at that time. Yes, sir, the first time.

4 Q. The first time?

5 A. Yes, sir.

6 Q. So that directly contradicts what you just told Mr.
7 Barnette there, right?

8 A. No, I did go down to the police and cooperate with
9 them.

10 Q. Was that before or after?

11 A. After the first interview. The second time I went down
12 there and talked to them.

13 Q. So the second time. So the first time you lied?

14 A. Yes, sir.

15 Q. Okay. So you didn't immediately come out and tell the
16 truth, right?

17 A. No, not at first.

18 Q. Not at first?

19 A. Not in the interview.

20 Q. But you just told Mr. Barnette that you did, right?

21 A. I did. On my second interview I went down there and
22 talked to officer -- I contacted J.P. Manning over there.

23 Q. Again, you just told the solicitor right there that you
24 told the truth at the beginning, correct?

25 A. Yes, sir, I guess so.

1 Q. Okay. But that's not true. That's a lie.

2 A. Okay. Well --

3 Q. Okay.

4 A. The first interview I did, but the second interview I
5 went down there. I contacted J.P. Manning --

6 Q. Okay.

7 A. -- and talked to Officer Manning.

8 Q. So what you are saying is -- just right now you lied,
9 right? Just right now sitting here you lied, right?

10 A. (No response).

11 Q. Yes or no? You can admit it.

12 A. No. Not intentionally, no.

13 Q. Not intentionally, but you lied?

14 A. I said --

15 Q. Just right there.

16 A. I got it mixed up.

17 Q. Oh, you got it mixed up. Okay.

18 A. Yeah.

19 Q. Okay. Now, again, in your first -- your very first
20 interview --

21 A. Very first one.

22 Q. -- the very first interview you said that you had a
23 alibi, right?

24 A. Yes, the first one.

25 Q. Okay. Who was that alibi?

- 1 A. That movie that was in Spartanburg.
- 2 Q. Okay. Does Rika and Kara ring a bell?
- 3 A. Yes, sir.
- 4 Q. Who are they?
- 5 A. Two girls that we were talking to at the time.
- 6 Q. Okay. Are those real people?
- 7 A. Yes, sir.
- 8 Q. Okay. And you were going to implicate them in your
- 9 alibi, right?
- 10 A. Yes, sir.
- 11 Q. So, again, you didn't tell the truth to begin with,
- 12 right?
- 13 A. Yeah, the first time interview, right.
- 14 Q. The first time you didn't, right?
- 15 A. Yes.
- 16 Q. And, again, you didn't tell Mr. Barnette that, right,
- 17 just now?
- 18 A. I don't understand what you are saying.
- 19 Q. Again, you just said at your direct testimony -- in
- 20 your direct testimony that you said that you were truthful
- 21 with the police at the very first time.
- 22 A. Yeah, I cooperated, but not the first time.
- 23 Q. Not the first time?
- 24 A. The second interview --
- 25 Q. Okay.

1 A. -- I did.

2 Q. But your testimony just then was that you have always
3 cooperated with the police, right?

4 A. I don't believe -- you are confusing me.

5 Q. Well, it's your story. It's the truth. You shouldn't
6 be confused by that, right?

7 A. All right.

8 Q. Okay. Because the truth is easier to tell because you
9 lived it, right?

10 MR. BARNETTE: Your Honor, I'm going to object at
11 this time. If he's going to ask questions, that's fine, but
12 if he's going to converse --

13 THE COURT: Be sure that you put it in the form of
14 a question.

15 MR. SCHULTZ: I'm sorry, Your Honor?

16 THE COURT: Be sure that you put your statement in
17 the form of a question.

18 MR. SCHULTZ: Beg the court's patience, Your
19 Honor.

20 (Off the record).

21 (Back on the record)

22 BY MR. SCHULTZ:

23 Q. All right. This is State's Exhibit 19. Now, you
24 remember that, right?

25 A. Yes, sir.

1 Q. Okay. Whose house is that?

2 A. The lady's house.

3 Q. Okay. And where were you that night?

4 A. Over here. Over here at the -- where the tree is at.

5 Q. Well, over there where the tree was at?

6 A. Yes, sir, the two trees there.

7 Q. Where that -- where that car is -- the car farthest to
8 the right?

9 A. Sir?

10 Q. The car farthest to the right, is that where you were
11 parked?

12 A. No, I was parked in Huntington Square.

13 Q. Okay. So you were far away away, right?

14 A. That's not where I parked my car at. That's where we
15 all walked over to the lady's residence.

16 Q. Okay. Did you ever go in the house?

17 A. No, sir.

18 Q. Okay. So you never went in the house.

19 Okay. So you hung around the outside of the house,
20 right?

21 A. Yes, sir.

22 Q. Okay. Who went in the house?

23 A. "Ro-Ro" and "Brontae" and "Lil Fred" and Billy, and we
24 heard a gunshot he came back out.

25 Q. Now, you were -- where were you around the house?

1 A. Over there by the tree and -- in that area right there.

2 Q. Where this --

3 A. Yes, where the two trees are at right there.

4 Q. Where this picture is taken, could you see people going
5 into the house?

6 A. Yes, sir.

7 Q. Okay. And who went into the house?

8 A. "Brontae", "Ro-Ro", "Lil Fred".

9 Q. Who went in the window there, according to your
10 testimony?

11 A. "Yankee".

12 Q. "Yankee."

13 And "Yankee" is Josh Manning, right?

14 A. Yes, sir.

15 Q. And "Yankee" has accepted responsibility for this,
16 hasn't he?

17 A. Yes, sir.

18 Q. And you have too, correct?

19 A. Yes, sir.

20 Q. In fact, you pled guilty in front of Judge Hayes,
21 right?

22 A. Yes, sir.

23 Q. Do you know how much time that you are looking at?

24 A. I know it's a lot.

25 Q. Would it surprise you that you are looking at life?

1 A. No, it wouldn't surprise me.

2 Q. Okay. The burglary first carries life in prison,
3 right?

4 A. Yes, sir.

5 Q. And you are twenty years old?

6 A. Yes, sir.

7 Q. Do you want to spend the rest of your life in jail?

8 A. No, sir.

9 Q. Right, nobody does.

10 And you had a bright future, didn't you?

11 A. Yes, sir.

12 Q. Okay. And all that is gone now, right?

13 A. Yes, sir.

14 Q. And right now you are just trying to salvage what you
15 have right now, right?

16 A. Yes, sir.

17 Q. Okay. By testifying and making up lies against my
18 client?

19 A. No, sir.

20 Q. Okay. But you are cooperating with the State, right?

21 A. Yes, sir.

22 Q. Okay. Now, burglary first carries life.

23 Burglary second carries zero to fifteen years, right?

24 A. I don't know. I don't know. I don't know how much
25 these things carry, but I know it carries a lot.

1 Q. Your lawyer never told you about what you faced?

2 A. Yeah, he told me what I was facing, but, I mean, I
3 don't know each -- briefly each individual charge, but I
4 know that burglary first carries life.

5 Q. Is your lawyer here today?

6 A. No, sir.

7 Q. He left?

8 A. No, he never showed up.

9 Q. He never showed up?

10 A. No.

11 Q. Did he advise you to take a guilty plea?

12 A. Yes, sir.

13 Q. So even he thought it was in your best interests,
14 right?

15 A. Yes.

16 Q. And you believed it was in your best interests, right?

17 A. Uh-huh.

18 Q. Okay. What are you hoping for?

19 A. Just hoping to get a second chance, basically.

20 Q. You are hoping to get no time, right?

21 A. If it was possible.

22 Q. But that's what you are trying to do today, right?

23 A. I'm trying to get as less time as I can.

24 Q. Exactly.

25 So you have a motivation to lie, right?

1 A. Not a motivation to lie, but a motivation to come
2 forward.

3 Q. Motivation to come forward, but also to cooperate with
4 the State in order to get your time cut, right?

5 A. Yes, sir.

6 Q. Now, I want you to listen to me very carefully. If
7 someone was looking at life in prison, wouldn't a reasonable
8 person think or suppose that they would have to do
9 everything in their power to avoid that, right?

10 A. Yes, sir.

11 Q. Okay. So a person looking at a life sentence would do
12 whatever they have to do to avoid that, right?

13 A. Yes, sir, but I wouldn't put that on nobody that didn't
14 do nothing.

15 Q. And that's what you are trying to do today. You are
16 trying to avoid that life sentence, aren't you?

17 A. Yes, sir..

18 Q. Okay. And you talked to the solicitor several times,
19 right?

20 A. Not several, no, sir.

21 Q. Pardon me?

22 A. Not several.

23 Q. How many times?

24 A. Probably twice. I think twice.

25 Q. All right. Do you remember when you pled guilty in

1 front of Judge Hayes?

2 A. Yes, sir.

3 Q. Okay. Do you remember all the things that you pled
4 guilty to?

5 A. Yes, sir.

6 Q. Okay. Did you complete your plea?

7 A. I don't understand. What?

8 Q. Did you complete your plea?

9 A. Yes, sir, I pled.

10 Q. So it's all done?

11 A. Yeah, I pleaded.

12 Q. Were you sentenced?

13 A. I wasn't sentenced, but I pleaded that day.

14 Q. Okay. So your plea is not complete, right?

15 A. I guess so.

16 MR. BARNETTE: Your Honor, I would object. It
17 seems like that's a legal conclusion from that standpoint.

18 THE COURT: Well, I think he's cleared it up. He
19 said his plea was complete, but he has not been sentenced
20 yet.

21 BY MR. SCHULTZ:

22 Q. Okay. Again, you have not been sentenced yet, correct?

23 A. No, I haven't been sentenced yet, no, sir.

24 Q. Prior to your sentencing do you know that the State
25 will say that you cooperated?

- 1 A. Yes, sir.
- 2 Q. And that's why you are doing this today, right?
- 3 A. Yes, sir.
- 4 Q. All right. Do you have any children?
- 5 A. No, sir.
- 6 Q. You have a mom and dad still around?
- 7 A. Yes, sir.
- 8 Q. Okay. And you love your mom and dad, right?
- 9 A. Yes, sir.
- 10 Q. Okay. And you want to spend time with them, right?
- 11 A. Yes, sir.
- 12 Q. And you know that if you get life in jail, that you
- 13 won't be able to spend anymore time with them, right?
- 14 A. Yes, sir.
- 15 Q. Okay. So you are doing this for your family as well,
- 16 right?
- 17 A. Yes, sir.
- 18 Q. Testifying for the State?
- 19 A. Yes, sir.
- 20 Q. Cooperating with them?
- 21 A. Yes, sir.
- 22 Q. Lying for them?
- 23 A. No, sir.
- 24 Q. But you just said that the reasonable person would lie
- 25 if they had this time hanging over their head, right?

1 A. No, I didn't. I said that I would -- I came forward.

2 Q. You can't afford it?

3 A. I said I came forward. That's why I came forward.

4 Q. Not at first?

5 A. Not at first.

6 Q. Not at first.

7 A. But eventually I did.

8 Q. Okay. During this whole time were you ever alone there
9 when this all happened?

10 A. Sir?

11 Q. Were you ever alone then when your co-defendants busted
12 in this house, or were you with somebody all during this
13 time?

14 A. Yes, I was with somebody.

15 Q. Okay. Did you have a cell phone during this time?

16 A. In the car.

17 Q. In the car?

18 A. Yes, sir.

19 Q. Okay. And when were you alone that night after you
20 dropped them off --

21 A. Yes, sir.

22 Q. -- did you call the police then?

23 A. No, sir.

24 Q. And then when you talked to the police, you told them a
25 lie, right?

1. A. Yes, sir, the first interview.

2. MR. SCHULTZ: Beg the court's patience again.

3. (Off the record)

4. (Back on the record)

5. MR. SCHULTZ: That's all I have, Your Honor.

6. MR. BARNETTE: Just a couple on redirect, Your
7. Honor.

8. REDIRECT EXAMINATION BY MR. BARNETTE:

9. Q. You went to talk to officer J.P.?

10. A. J.P., yes, sir.

11. Q. You had never met me?

12. A. Sir?

13. Q. You have never met a solicitor, have you?

14. A. No, sir.

15. Q. You hadn't been talking about charges or anything else?

16. A. No, sir.

17. Q. You went to him before anybody else did?

18. A. Yes, sir.

19. Q. And you told your story?

20. A. Yes, sir.

21. Q. And you told what happened that night?

22. A. Yes, sir.

23. Q. The next day afterwards did y'all go back to "Ro-Ro's"
24. house --

25. A. No, sir.

1 Q. -- at some point.

2 Did you ever talk to "Ro-Ro" about this?

3 A. No, sir, not after. After I talked to J.P., no, sir.

4 Q. And you had never been in trouble with the law before,
5 have you?

6 A. No, sir.

7 Q. But you told us today. Is that what happened today?

8 A. Yes, sir.

9 Q. As human you try to get all the help you can, but you
10 said something before Mr. Schultz cut you off, you said you
11 wouldn't get somebody else in trouble?

12 A. No, sir.

13 Q. You took your responsibility?

14 A. Yes, sir.

15 Q. You expect everybody else to take their responsibility?

16 A. Yes, sir.

17 Q. A lot of people that didn't have any responsibility?

18 A. Yes, sir.

19 MR. BARNETTE: Thank you.

20 MR. SCHULTZ: Just one question on recross.

21 THE COURT: Okay.

22 RECROSS EXAMINATION BY MR. SCHULTZ:

23 Q. Mr. Tate, when you came to the police and you told them
24 what you think is the truth, you also lied to the police
25 before that, correct?

1 A. Yes, sir, before that.

2 MR. SCHULTZ: Thank you. That's all I have.

3 MR. BARNETTE: I ask this witness be excused, Your
4 Honor.

5 THE COURT: You may step down.

6 We are going to take a short break before we have
7 go forth, so I'll ask you please go to the jury room again.
8 Do not discuss the case in any fashion. I'll bring you back
9 after that break.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: Court is in recess for fifteen
13 minutes.

14 (Whereupon, proceedings were reconvened)

15 (Whereupon, proceedings were recessed)

16 THE COURT: All right. Bring the jury back,
17 please.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: All right. We are going to continue
21 with the State's presentation. Mr. Barnette.

22 MR. BARNETTE: Please.

23 MS. TAILOR: State calls Chris Skinner.

24 OFFICER CHRIS SKINNER, having been first duly
25 sworn, testified as follows:

1 DIRECT EXAMINATION BY MS. TAILOR:

2 Q. Please introduce yourself to the jury.

3 A. Chris Skinner. I'm a captain with the Gaffney City
4 Police Department.

5 Q. And how would --

6 THE COURT: You need to stay close to that
7 microphone.

8 THE WITNESS: Yes, sir.

9 BY MS. TAILOR:

10 Q. How long have you been worked at the police department?

11 A. Approximately twenty-two years.

12 Q. Were you involved in this case?

13 A. I was.

14 Q. Could you please tell us about your involvement?

15 A. Mr. Wilson took me, myself and Sergeant Odom to -- he
16 advised us that they had throwed a credit card out. We went
17 up 85 to Spartanburg County, got off on Exit 78. There was
18 a convenience store there and a Burger King, and showed us
19 where it was. Sergeant Odom retrieved the card.

20 Q. I'll show you what's been marked as State's Exhibit --
21 I believe it's No. 57. Do you recognize this?

22 A. Yes, ma'am.

23 Q. Is that the card that you retrieved that day?

24 A. It is.

25 Q. Could you read the name that's on that card?

1 A. Dipali Darji.

2 Q. After you retrieved the card, did you have any more
3 involvement with the case?

4 A. No.

5 MS. TAILOR: I have no further questions.

6 Please answer any questions that Mr. Schultz may
7 have for you.

8 CROSS EXAMINATION BY MR. SCHULTZ:

9 Q. Now, officer, you have been on the force for twenty-two
10 years?

11 A. Yes, sir.

12 Q. And this credit card belonged to the alleged victims in
13 this case?

14 A. That's right.

15 Q. Did you lift any fingerprints from this card?

16 A. I didn't.

17 Q. Okay.

18 MR. SCHULTZ: Nothing further, Your Honor.

19 THE COURT: Step down.

20 MR. BARNETTE: I would like to call Mike Segina to
21 the stand, Your Honor.

22 We would ask this witness be excused, Your Honor.

23 THE COURT: He may be.

24 THE WITNESS: Thank you, sir.

25 OFFICER MIKE SEGINA, having been first duly sworn,

1 testified as follows:

2 DIRECT EXAMINATION BY MR. BARNETTE:

3 Q. If you would, sir, please state your full name for the
4 record?

5 A. Captain Mike Segina.

6 Q. And where do you work at?

7 A. Gaffney Police Department.

8 Q. And how long have you been with the Gaffney Police
9 Department, sir?

10 A. Approximately sixteen years.

11 Q. And back on April the 2nd of 2008, what was your
12 position there, sir?

13 A. I was a sergeant in the detectives division,
14 responsible for crime scene detective.

15 Q. Okay. You handled the crime scenes at that time, sir?

16 A. I did.

17 Q. And did you handle evidence at that time, sir?

18 A. I also handed the evidence for the Gaffney Police
19 Department.

20 Q. Was you called out to the scene of a burglary, armed
21 robbery, kidnapping, assault on the early morning hours of
22 April 2nd, 2008?

23 A. Yes, I was. I believe I was notified by Detective
24 Ramsey.

25 Q. When you arrived there, what did you do, sir?

1 A. When I arrived there, I met with the detective,
2 Lieutenant Ramsey, and began an observation of the scene and
3 then began photographing the scene.

4 Q. And some of these photographs have already been into
5 evidence. I think 12 through 36, I think you have seen
6 these photographs before.

7 Let me let you look at 37 through 42. Do those
8 pictures fully represent what you saw in the photographs
9 that day, sir?

10 A. Yes, sir, they do.

11 MR. BARNETTE: Your Honor, I would like to enter
12 these into evidence at this time.

13 THE COURT: What's the numbers?

14 MR. BARNETTE: 37 through 42, Your Honor.

15 MR. SCHULTZ: No objection, Your Honor.

16 THE COURT: They are admitted.

17 MR. BARNETTE: Permission to publish these, Your
18 Honor?

19 THE COURT: You may.

20 BY MR. BARNETTE:

21 Q. If you would, sir, please step down for a second.

22 (Witness off the witness stand)

23 BY MR. BARNETTE:

24 Q. I'm going to go back, because I know the jury has seen
25 a couple of these pictures, but I just want to go back to

1 them. I believe you took all the pictures that we are
2 talking about here?

3 A. At the residence, yes.

4 Q. I'm showing you State's Exhibit No. 18. Is this a
5 photograph of the back door?

6 A. Yes, it is.

7 Q. And did you enter the residence, sir?

8 A. Yes, I did.

9 Q. I'm showing you State Exhibit No. 21. I believe the
10 jury has seen it. I'm not going to go through all these
11 pictures that show, but did you take this picture, sir?

12 A. I did.

13 Q. And what did you see here and what did you observe in
14 that kitchen area?

15 A. This is the kitchen area and it was the contents of a
16 purse and its contents were scattered on the floor.

17 Q. I'm showing you State's Exhibit No. 30. What is that a
18 photograph of, sir?

19 A. If that darker image up there is the entertainment
20 center, that would have been the living room. There was an
21 entertainment center with a television and a couch had both
22 been ransacked, turned upside down and turned over.

23 Q. Had it been basically ransacked through the whole
24 house?

25 A. Yes, the whole house was in similar manner.

1 Q. I'm not going to go through every picture. A lot of
2 these pictures the jury has already seen.

3 Did you go into the victim's bedroom?

4 A. I did.

5 Q. Let me show you State's Exhibit No. 37, a picture I
6 think the jury has not seen.

7 Can you describe what we are seeing here, sir?

8 A. That would be the door frame and then the door going
9 into the back bedroom, the victim's bedroom.

10 Q. Let me show you State's Exhibit No. 38. What's that a
11 picture of, sir?

12 A. That's picture of the door frame where the metal part
13 is missing where it had been broken off of the door frame..

14 Q. I'm showing you State Exhibit No. 39. Can you tell the
15 jury what we are observing there?

16 A. I believe they call it a strike plate, but it's the
17 metal portion that screws to the door frame that the door
18 pulls to and locks onto.

19 Q. And State Exhibit No. 40?

20 A. It's just a close-up of that strike plate.

21 Q. Okay. State Exhibit 41, what's that a picture of, sir?

22 A. It's a picture of the bed that was inside that room
23 where the door had been busted.

24 Q. Had the mattress been moved?

25 A. Yes, sir, all the bed clothes, the sheets and stuff had

1 been taken off, and you could tell the mattress had been
2 moved.

3 Q. Okay. And State Exhibit 42, what's that a picture of?

4 A. It a picture of a bullet hole that we found in the wall
5 kind of up above that bed.

6 Q. And about up in this area right in here, sir?

7 A. Yes, sir, on the paneled wall.

8 Q. And what kind of a bullet did it appear? What size
9 bullet appeared to go through the wall area?

10 A. I couldn't determine what size of bullet, but it was a
11 small caliber. It wasn't a very large hole. That's
12 actually a close-up photograph of it.

13 Q. Would a .22 bullet make that hole?

14 A. Possibly.

15 Q. Let's look at some of the other pictures.

16 Let me show you State Exhibit 20. Was this the bedroom
17 with the window on the far end where it appears somebody
18 came through the window?

19 A. Yes, it was the opposite side of the home from the
20 bedroom where the mattress was.

21 Q. The opposite bedroom in the opposite end of the house?

22 A. The bedroom where the door was broken in, the bed was
23 on this side. This room is on the opposite end of the home.

24 Q. Let me show you State Exhibit No. 25. Could you tell
25 us what this was, sir?

1 A. This is -- once you walk into the back door, into the
2 kitchen area, this is what appeared to be blood spatter and
3 a wood two-by-four. It was a little bit smaller in diameter
4 than a two-by-four.

5 Q. It appeared to be a stick?

6 A. A stick, yes.

7 Q. And did this look like being one of the victim's shoes?

8 A. Not to my knowledge, no.

9 Q. State Exhibit 26?

10 A. It's a close-up of that same photograph.

11 Q. And 27?

12 A. Again, even closer up of that same material on the
13 floor.

14 Q. And based off of what you understand from the
15 investigation, was the victim only person that bled?

16 A. To my knowledge, is what I was informed, that she had
17 been assaulted, yes.

18 Q. Did you also go over to the store area and look at that
19 scene also?

20 A. Not to my knowledge, no, I don't believe I went to the
21 store. I was at the home.

22 Q. Okay. And looking at the home and everything, did you
23 check for fingerprints, any piece of evidence that you could
24 find?

25 A. Evidence, yes.

1 Fingerprints, I was informed by Lieutenant Ramsey that
2 the suspects in this case were wearing gloves.

3 Q. And if they were wearing gloves, could they leave
4 fingerprints?

5 A. No.

6 Q. Okay. And did you see pictures later from the video
7 and so forth understanding they were wearing gloves at the
8 time, or socks, or whatever they were?

9 A. Yes, Lieutenant Ramsey showed me a video where the
10 suspects were wearing gloves.

11 Q. There was no way to leave fingerprints in that
12 situation?

13 A. It would have left -- the material of the glove would
14 have been the only thing left.

15 Q. And you had received information about orange juice?

16 A. I did.

17 Q. And did y'all collect that?

18 A. I did.

19 Q. Was that sent to SLED?

20 A. It was. It was transported to the State Law
21 Enforcement Division for analysis and it was transported by
22 myself.

23 Q. And was there any useable DNA on that orange juice
24 bottle?

25 A. No, they could not find any.

1 Q. Did you find some handkerchiefs, bandannas in the
2 trailer that you thought might be used by the defendant?

3 A. Yes, there was a -- if I may?

4 Q. Yes, sir. Yes, sir, you may.

5 A. I believe it was a green and white bandana and a black
6 scarf, dew rag type hat.

7 Q. Was there any DNA -- was that sent to SLED also?

8 A. Yes, they were sent for analysis, for DNA analysis.

9 Q. Was there any useful DNA found on that?

10 A. No.

11 Q. And let me show you what's been marked State Exhibit 57
12 into evidence. Was this also fingerprinted?

13 A. Yes, sir, it was.

14 Q. And was there any useful fingerprints found on that?

15 A. No, there was not.

16 Q. Even though we know Mr. Wilson at least touched it, or
17 one of the defendant's had touched it?

18 A. It was collected, yes.

19 Q. Let me ask you a question. Just because I touch this,
20 does that mean I will leave a fingerprint?

21 A. Not necessarily.

22 Q. Why is that?

23 A. The surface that you are touching, whether or not your
24 hands are oily or greasy. You may move your hand and smear
25 what print could be there. It's not a hundred percent what

1 you touch is going to leave an identifiable fingerprint.

2 Q. It's got to be pristine or be able to be perfectly
3 examined?

4 A. It has to -- it requires enough points to be matched to
5 a known fingerprint.

6 Q. So items that you know may even be touched, like we
7 know the credit card was touched, may not have any useful
8 prints on them?

9 A. That's correct.

10 Q. And in this case it didn't?

11 A. No, it did not have any identifiable prints on it.

12 Q. But y'all checked everything possible that you could
13 check to see if there was any fingerprints or DNA, didn't
14 you?

15 A. All the evidence that was collected at the scene was
16 sent in for additional analysis.

17 Q. And did anything come back from that analysis?

18 A. No.

19 Q. But it was checked?

20 A. Yes, it was.

21 Q. If you would please answer any questions that Mr.
22 Schultz may have for you, sir.

23 A. Yes.

24 CROSS EXAMINATION BY MR. SCHULTZ:

25 Q. Officer Segina?

1 A. Segina.

2 Q. Segina. I'm sorry.

3 And you have been -- you have been a cop now for how
4 many years?

5 A. I have been with the Gaffney Police Department for
6 roughly sixteen years.

7 Q. Sixteen years. Okay.

8 You have a lot of experience handling these types of
9 crimes, don't you?

10 A. Not an extensive amount, but I have handled as a part
11 of my job as a crime scene detective burglaries, armed
12 robbery, homicides, yes.

13 Q. Okay. Now, referring to these exhibits that were just
14 entered into here.

15 MR. SCHULTZ: Beg the court's patience.

16 (Off the record)

17 (Back on the record)

18 BY MR. SCHULTZ:

19 Q. Now, that's State's Exhibit 42?

20 A. Yes.

21 Q. And what does that show?

22 A. It shows a bullet hole in a wood wall.

23 Q. Okay. And you told Mr. Barnette on your direct
24 examination that that could have been from a small caliber
25 weapon?

1 A.. Correct, that the angle that it went in, I was unable
2 to determine what caliber. I did not retrieve a bullet
3 fragment to determine what size caliber it was, but it.
4 wasn't a large hole. It was a smaller hole, probably from a
5 smaller caliber weapon.

6 Q. Could this -- could it have been made by a
7 9-millimeter?

8 A. Possibly.

9 Q. Okay. What about a shotgun?

10 A. No.

11 Q. Of course not, right?

12 A. (Shaking head no).

13 Q. A shotgun would blow out. There would be a bunch of
14 holes, right?

15 A. Depending on the type of shotgun shell used, you would
16 have, you know, several smaller holes, or maybe one large
17 hole.

18 Q. All right. Could it have come from a .22?

19 A. Possibly.

20 Q. All right. Now, how involved in the investigation were
21 you? Did you interview any of the witnesses here?

22 A. No. At the time my job was the crime scene detective
23 to come in, photograph the scene, collect any evidence,
24 store the evidence, and transport it down to -- or do any
25 analysis or transport it to the State Law Enforcement

1 Division for analysis.

2 Q. Did you know that Robert Wilson had a .22 -- had .22
3 ammunition found in his yard?

4 A. Yes, there was some .22 ammunition that was collected
5 as evidence at -- not at this scene, but at another location
6 and turned into evidence.

7 Q. That location was at Robert Wilson's residence?

8 A. If I may, I need to look in the evidence bag for
9 another property sheet.

10 Q. That's fine. I have no objection to that.

11 (Off the record)

12 (Back on the record)

13 A. The .22 caliber long rifle ammunition that was turned
14 into evidence was found at -- was located at Brown's Butcher
15 Shop, [REDACTED].

16 BY MR. SCHULTZ:

17 Q. All right. Now, there was a -- referring to back to
18 the State's Exhibit here, there was blood spots found on the
19 floor, correct?

20 A. That is correct.

21 Q. Was this sent out to the lab?

22 A. No, it was not.

23 Q. So it could have been from anybody that day, right?

24 A. The information I received when I got on the scene from
25 Lieutenant Ramsey was that the victim had been assaulted and

1 that's where she was at in the kitchen.

2 Q. But there was also co-defendants in the case, right?

3 A. There was I believe what I was informed five males.

4 Q. Okay. So it could have been from anybody, right?

5 A. Possibly, yes.

6 Q. Okay. But that was never tested, was it?

7 A. I did not take a sample of that blood, no.

8 Q. Why did you not take a sample?

9 A. I was informed by Lieutenant Ramsey that the victim was
10 assaulted and we assumed that it was her blood.

11 Q. Isn't it true that if you would have sent that back,
12 that could have come back as one of the co-defendants to
13 crack this case?

14 A. It could have.

15 Q. Okay. But you didn't do that, right?

16 A. No, I did not take a sample of that blood.

17 Q. Okay. Now, there was some shoes found, right? Or one
18 shoe, actually, referring to State's Exhibit 25?

19 A. That's correct.

20 Q. All right. And correct me if I'm wrong, but you said
21 in your direct examination that that was not the victim's
22 shoe?

23 A. I believe it was the victim's shoe.

24 Q. Okay, it was the victim's shoe. Okay.

25 Was that tested for any kind of DNA or anything like

1 that?

2 A. No, it was not.

3 Q. Okay. Even though the allegation was there was some
4 kind of struggle, right?

5 A. That the victim was assaulted.

6 Q. Okay. And the stick there?

7 A. Yes.

8 Q. Was that ever tested for fingerprints or anything?

9 A. No, it was not.

10 Q. Okay. Could it have been tested for fingerprints?

11 A. It could have.

12 Q. Okay. What about DNA?

13 A. Yes, it could have.

14 Q. Okay. And you didn't test that, right?

15 A. No, I did not collect or test that.

16 Q. Okay. Again, why did you not?

17 A. I was informed that the victim was assaulted in the
18 kitchen area where all three of these items were found.

19 Q. But wouldn't that be reasonable to do? I mean, you
20 have been on the force for sixteen years now. Wouldn't you
21 like to eliminate possible suspects or inculcate possible
22 suspects in this, by testing that?

23 A. At the time that my information was this was used to
24 assault the victim. The blood that was found there was
25 believed to be the victim's blood.

1 Q. But what about the stick?

2 A. Blood that was by the stick or on the stick was the
3 victim's blood.

4 Q. Okay. And you could have tested that for DNA again and
5 you didn't, right?

6 A. That's correct.

7 Q. Okay. Now, just because -- like Mr. Barnette was
8 saying, do I leave any fingerprints when I go like this?

9 A. It could.

10 Q. Right. Do I leave DNA?

11 A. It could.

12 Q. Okay. Now, if I leave my DNA right there, can you
13 prove that I was there at approximately 4:30, November 17th,
14 at 2009, just by touching DNA, right? Could you prove that
15 I was there?

16 A. At that time, or just that you were proved that you
17 were there?

18 Q. At this exact time.

19 A. Yes.

20 Q. So you are saying that you could prove that I was there
21 at this time with DNA, right?

22 A. If I was able to collect DNA off of that surface and it
23 come back to you, yes.

24 Q. Okay. So you could prove that I was there at this time
25 by just using DNA?

1 A. This -- are you -- a time, no, but I could prove that
2 you touched that surface, but I could not give you an exact
3 time that you touched that surface.

4 Q. All right. That's what I'm saying.

5 Okay. Now, you didn't go in the store, right?

6 A. Not to my knowledge.

7 Q. Well, you either know or you didn't know, right?

8 A. I believe I did walk into the store --

9 Q. Okay. Well, you just told --

10 A. -- with Lieutenant Ramsey.

11 Q. Okay. So you just told Mr. Barnette that you didn't go
12 in the store. So now you did go in the store?

13 A. I didn't write down that I went in the store, but I did
14 write down that Detective Ramsey collected the surveillance
15 video from inside the store. I'm not sure if I was with him
16 when he did that or not.

17 Q. All right. Could there have been fingerprints there at
18 the store that you, again, failed to collect?

19 A. There could have been, but I was informed by Lieutenant
20 Ramsey, after he watched the video, that the suspects were
21 wearing gloves.

22 Q. Now, you also collected handkerchiefs, right? You also
23 collected bandanas, handkerchiefs?

24 A. Yes, there was bandanas and handkerchiefs turned into
25 evidence.

1 Q. Okay. So if I put a bandana right now on my head,
2 there is going to be DNA there, right?

3 A. There could possibly be DNA there.

4 Q. Okay. More likely than not could there have been DNA
5 there?

6 A. Hair fiber, I guess, or something similar to that.

7 Q. Right. There has to be something linking me. If I put
8 a bandana on top of my head and then I gave it to you, you
9 could conclusively prove that one out of eighty million
10 chances that I had to be wearing this bandana, right?

11 A. If there was a hair fiber or skin cell that was found
12 inside that bandana, yes.

13 Q. Okay. Well, not only skin cells. Other things can
14 leave DNA, right?

15 A. Yes.

16 Q. Okay. Sweat can leave DNA?

17 A. Yes.

18 Q. Blood can leave DNA?

19 A. Yes.

20 Q. Cells? Any type of cells, right?

21 A. Skin cells, hair fibers, yes.

22 Q. Exactly. Okay.

23 And nothing was revealed, as far as the bandana goes,
24 right?

25 A. They were tested and come back there was nothing found.

1 Q. Okay. Now, you said in your direct testimony that the
2 whole house was ransacked, right?

3 A. That's correct.

4 Q. Okay. Wouldn't you think there would be some
5 fingerprints there, right?

6 A. I was informed by Lieutenant Ramsey that the suspects
7 were wearing gloves when they entered.

8 Q. Were there any footprints found on anything?

9 A. There were some footprints that were found outside the
10 driveway. We tried to photograph them, but nothing of any
11 value that we could get off of them. It was in the dirt
12 driveway.

13 Q. Okay. That sneaker right there, were those footprints
14 made by that sneaker?

15 A. Not my knowledge, no.

16 Q. Okay. Did you compare the tracks, the treads?

17 A. The tracks that were there were not of value to
18 determine what size the shoe was or what brand of shoe it
19 was.

20 Q. Okay. So really, in conclusion, there is really no
21 forensic evidence essentially linking anybody to any
22 involvement in any kind of criminal activity?

23 A. The evidence that was sent down did not come back to a
24 single -- to a person.

25 Q. So just to be clear, there is no forensic activity

1 linking anybody to this?

2 A. The evidence that was sent down and analyzed come back
3 to no single person.

4 Q. No forensic evidence, correct? Yes or no?

5 A. Yes.

6 Q. Okay. Thank you.

7 MR. BARNETTE: Just one question, Your Honor.

8 REDIRECT EXAMINATION BY MR. BARNETTE:

9 Q. If they are wearing gloves or socks or whatever on
10 their hands, they are not going to leave any DNA evidence
11 around either, are they?

12 A. DNA or fingerprints.

13 Q. Thank you.

14 THE COURT: You may step down.

15 MR. BARNETTE: We ask this witness be excused,
16 Your Honor.

17 THE COURT: He may be.

18 THE WITNESS: Thank you, Your Honor.

19 MR. BARNETTE: I would like to call Kwame Douglas
20 to the stand.

21 KWAME DOUGLAS, having been first duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION BY MR. BARNETTE:

24 Q. Mr. Douglas, I'm going to need you to speak up, okay,
25 because I want this lady back here in the back row to hear

1 you.

2 If you will give your full name, please?

3 A. Kwame Rashad Douglas.

4 Q. And Mr. Douglas, where do you live at, sir?

5 A. [REDACTED] [REDACTED].

6 Q. Who do you live with there, sir?

7 A. My mom.

8 Q. And who's your mom?

9 A. Carolyn Douglas.

10 Q. Back on April 2nd, 2008, or April 1st, 2008, what did
11 you do that evening, sir?

12 A. That evening I was at John Bonner's home that evening.

13 THE COURT: Don't eat the microphone. Just get
14 close enough so we can hear.

15 BY MR. BARNETTE:

16 Q. Back then how old was you then, sir?

17 A. I was seventeen.

18 Q. Was you in school then?

19 A. Yes, sir.

20 Q. Where was you in school at?

21 A. Gaffney High School.

22 Q. And did you play football there?

23 A. Yes, sir.

24 Q. What position did you play?

25 A. Safety.

1 Q. So that evening did you go to somebody's house that
2 evening?

3 A. Yes.

4 Q. Whose house did you go to, sir?

5 A. John Bonner.

6 Q. And what's John Bonner's nickname?

7 A. "Ro-Ro".

8 Q. Do you have a nickname?

9 A. Yes, sir.

10 Q. What's that?

11 A. "Fred".

12 Q. So you went over to his house that evening. What did
13 y'all do over at his house?

14 A. We was just chilling around until later on.

15 Q. Okay. And who else came over to the house?

16 A. Later on?

17 Q. Yes, sir.

18 A. Later on it was Billy, "R.J.", Kent Tate, and I believe
19 "Yankee" then. That's it.

20 Q. Had John Bonner talked to you before about you going
21 over by the store or anything about that?

22 A. Yes, sir.

23 Q. Can you tell the jury what y'all talked about?

24 A. Well, first of all we was talking about -- he was
25 talking about hitting a lick at a store, so everybody was.

1 like down with it. And when the time came, we did it.

2 Q. When you say hitting a lick, do you mean by robbing the
3 store?

4 A. Yes, sir.

5 Q. And how was it y'all were going to rob the store?

6 A. Sir?

7 Q. How were y'all going to rob the store?

8 A. We was going to wait until they come out the store with
9 the money bag.

10 Q. And what was y'all planning to do?

11 A. We were going to take the money bag and leave.

12 Q. So did all of y'all meet at John Bonner's house?

13 A. Yes.

14 Q. And where was it at?

15 A. I don't know the exact address, but I know it's on west
16 end.

17 Q. So when you met at his house, who drove from his house
18 over to the store?

19 A. "R.J.".

20 Q. And who else?

21 A. Kent Tate.

22 Q. Y'all rode with them and where did they park at?

23 A. Huntington Square.

24 Q. Is that that apartment complex above it?

25 A. Yes, sir.

1 Q. And what happened then?

2 A. We had got out of the car and we was waiting until a
3 certain time before we go hide in a bush and wait until they
4 come out.

5 Q. Who stayed back at the cars?

6 A. "R.J." and Terry.

7 Q. And the rest of y'all go to the bushes?

8 A. Yes, sir.

9 Q. And while y'all were hiding in the bushes, what
10 happened then?

11 A. We were just waiting until a certain time when they
12 come out with the money.

13 Q. So what happened as y'all were waiting when they came
14 out?

15 A. When they came out, we were just -- we were still right
16 there, but when they came out, they didn't have no money
17 bags or nothing. It was just --

18 Q. Was there a man walking out with her too?

19 A. Yeah.

20 Q. Did he get in his car and leave?

21 A. Yes, sir.

22 Q. And did she go in her house?

23 A. Yes, sir.

24 Q. What did y'all do then?

25 A. We had -- when they had went in the house and they

1 had -- we all had got together and waited around a little
2 bit and "Yankee" was talking to her about how we were going
3 to get into the house and went from there.

4 Q. So when you recall "Yankee" talked about going in the
5 house, how did he talk about going in the house?

6 A. Like entering one of the windows.

7 Q. Do you know which window he went in?

8 A. Yes, sir.

9 Q. Let me show you State's Exhibit -- let me show you
10 State's Exhibit No. 19.

11 You can just step down for a second, sir.

12 (Witness off the witness stand)

13 BY MR. BARNETTE:

14 Q. If you would, just point with this right here. Which
15 window did he go in?

16 A. This one right here.

17 Q. Okay. And who was outside with you when he went to the
18 window?

19 A. It was me, "Brontae" and "Yankee" at the time.

20 Q. GO ahead and have a seat and let you use the microphone
21 so we can hear better.

22 (Witness back on the witness stand)

23 BY MR. BARNETTE:

24 Q. Who was it staying with you at the time?

25 A. It was me, "Yankee", and "Brontae" at the time.

1 Q. And was y'all wearing socks and masks at the time?

2 A. Yes, sir.

3 Q. So when he went through, did he open the door?

4 A. Yes, sir.

5 Q. And did he come back out?

6 A. Yes, sir.

7 Q. And who else was outside with y'all? I know they
8 weren't with you, but where else outside the house? Who
9 were the other two people?

10 A. It was "Ro-Ro" and Billy and Kent Tate. That was the
11 rest of them out there.

12 Q. When he came back out, did y'all wait a little bit
13 before you went back in the house, or went in the house?

14 A. Yeah, we waited a little bit. Then we went to the car.

15 Q. You have got to talk up.

16 THE COURT: If you will use that microphone, we
17 can hear, but you do need to speak up. Just speak like you
18 would if you weren't in the courtroom.

19 BY MR. BARNETTE:

20 Q. Okay. If you would say that again.

21 A. Say that again, because -- what you asked me?

22 Q. When he came back out and opened the door, did y'all
23 wait a little bit before you went in the house?

24 A. Yes, sir.

25 Q. Why did y'all wait a little bit before?

- 1 A. Because she was still up.
- 2 Q. So did y'all wait until she went to bed?
- 3 A. Yes, sir.
- 4 Q. When she went to bed, what happened then?
- 5 A. We had -- we had went to the cars and sittid for a
- 6 minute to make sure she was like really asleep. That's what
- 7 we had did.
- 8 Q. And who went back?
- 9 A. Me, Kent Tate, Billy, "Ro-Ro", "Yankee" and me.
- 10 Q. And who stayed back at the cars?
- 11 A. Terry and "R.J.".
- 12 Q. When y'all went back to the house, who went in the
- 13 house?
- 14 A. At first it was "Ro-Ro", "Brontae" and "Yankee".
- 15 Q. And did you go in shortly after that?
- 16 A. Yes, sir.
- 17 Q. When you went inside, what did you start doing?
- 18 A. Went to the back room looking for the money.
- 19 Q. You were looking for the money?
- 20 A. Yes, sir.
- 21 Q. And when you were in the back room, did you go on the
- 22 opposite side of her bedroom?
- 23 A. Yes, sir.
- 24 Q. And what were y'all doing?
- 25 A. Messing around and tearing up stuff, looking for the

1 cash.

2 Q. Did y'all find any cash?

3 A. A little bit in the house.

4 Q. So who -- so at first was y'all looking through the
5 house? Nobody went in her bedroom?

6 A. Yes, sir.

7 Q. Who actually went into her bedroom first?

8 A. It was "Yankee", "Ro-Ro", and "Brontae" at first.

9 Q. And how did they go in the door, or how did they get in
10 her bedroom?

11 A. Kicked the door down.

12 Q. After they kicked the door down, what happened next?

13 A. Fired a little gunshot and she started screaming and --

14 Q. Who had the gun?

15 A. "Ro-Ro" had the gun.

16 Q. Was it a small gun?

17 A. Yeah.

18 Q. When you heard the shot, what did you do?

19 A. I went in there to see what was going on.

20 Q. And what was going on?

21 A. They had her pinned up asking where the money was.

22 Q. Did she tell them where the money was?

23 A. No, sir.

24 Q. What were they doing to her then?

25 A. They were beating and just kept on asking where the

1 money is at, you know.

2 Q. What did they do next do? Did they do anything to her
3 clothes?

4 A. Yeah, they took her clothes off of her.

5 Q. When they took her clothes off of her, did they
6 continuously keep beating her?

7 A. Yes, sir.

8 Q. What was you doing in the bedroom?

9 A. At the time when they were beating on her, I had wanted
10 her to get on some clothes before they -- you know what I'm
11 saying, because I didn't want to see all that.

12 Q. Did you go through her room, too, looking for money?

13 A. Yes, sir.

14 Q. Did y'all tear stuff out?

15 A. Yes, sir.

16 Q. Did she finally tell them where the key was?

17 A. Yes, sir.

18 Q. Why did she -- well, let me rephrase that question.

19 Was it before she got her clothes on that she told
20 y'all where the key was?

21 A. Yes, sir.

22 Q. Had they started to take her out of the bedroom?

23 A. Yes, sir.

24 Q. Had they choked her?

25 A. Yeah.

1 Q. Had they put her over a chair?

2 A. Something like that.

3 Q. Were they getting ready to assault her sexually?

4 A. I guess so.

5 MR. SCHULTZ: Your Honor, I object to speculation.

6 THE COURT: You can rephrase it.

7 BY MR. BARNETTE:

8 Q. Had they placed her over one of the chairs turned over
9 or the sofa?

10 A. Yes, sir.

11 Q. Is that when she decided to tell them where the key
12 was?

13 A. No, not right then.

14 Q. So they just -- after that she did?

15 A. Yeah.

16 Q. So did she get the key chain or did she show where the
17 key -- once she got her clothes back on, did she show them
18 where the key chain was?

19 A. She told them where it was.

20 Q. Okay. And who went and got the key?

21 A. "Ro-Ro" went and got the key.

22 Q. Once "Ro-Ro" got the key, what happened then?

23 A. Well, him and "Brontae" went to the store and the rest
24 of us stayed in the house.

25 Q. Let me show you what's been entered into evidence as

1 State Exhibit 47. Can you see from where you are sitting
2 at, sir?

3 A. Yes, sir.

4 Q. The gentleman that's in the -- with the fur on the
5 jacket, who is that?

6 A. That's "Ro-Ro".

7 Q. And who is the gentleman in the multi-colored jacket?

8 A. "Brontae".

9 Q. And did they have masks covering --

10 A. Yes, sir.

11 Q. -- or things covering their face?

12 THE COURT: Use the microphone.

13 A. Yes, sir.

14 BY MR. BARNETTE:

15 Q. Did they have socks on their hands?

16 A. Yes.

17 Q. Like they all did when they went in the house?

18 A. Yes, sir.

19 Q. When they went over into the store, what happened in
20 the house?

21 A. Well, I was with her. I was -- had her, telling her
22 that everything was going to be all right, that we just
23 wanted the money, and she was still trying to get away a
24 little bit, but "Yankee" had stopped her and she had -- I
25 had to go get her again.

1 Q. Did you grab ahold of her?

2 A. Yes, sir.

3 Q. Did you hold her?

4 A. Yes, sir.

5 Q. Did "Yankee" hit her and hold her?

6 A. No, he didn't hold her, but he hit her, though.

7 Q. As that was going on, did y'all hear an alarm?

8 A. Yes, sir.

9 Q. When you heard the alarm, what happened then?

10 A. When I heard the alarm, she tried to get up and run
11 away again, but he had pushed her into the washer and that's
12 when we had -- we were getting ready to leave by that time.

13 Q. Did she try to grab a stick to defend herself?

14 A. Yes, sir.

15 Q. What did "Yankee" do to her when he did that?

16 A. And he pushed her into the washer, or whatever, beat
17 her into the washer.

18 Q. Did -- was she the only one that was hurt, that was
19 bleeding?

20 A. Yes, sir.

21 Q. Once the alarm went off, did y'all leave?

22 A. Yes, sir.

23 Q. And where did y'all go after that?

24 A. We went to the trailer park.

25 Q. When you got to the trailer park, what did y'all do

1 after that?

2 A. We sat there for about five minutes and then we had
3 left.

4 Q. Where did you go to after that?

5 A. We went and took Terry home, dropped him off at his
6 home, and we went to my house.

7 Q. Before that did y'all split the money up?

8 A. No, sir, we split the money up at my house.

9 Q. At your house?

10 A. Yes.

11 Q. And how much did you get?

12 A. 2,500.

13 Q. You got \$2,500?

14 A. Yes, sir.

15 Q. How much did the other guys get? Did "Ro-Ro" get the
16 most money?

17 A. I don't know exactly. I don't know like how much.

18 Q. Did they get a lot?

19 Well, when they left, who had all the money? When
20 y'all left the store and the house, who --

21 A. "Ro-Ro" had the money.

22 Q. They helped separate it out?

23 A. Yes, sir.

24 Q. After you got the your money and y'all split up, where
25 did you go, sir?

1 A. We went to -- they dropped me off last. And when they
2 dropped me off, they left.

3 Q. You have pled guilty, is that right?

4 A. Yes, sir.

5 Q. And you pled guilty to burglary first?

6 A. No, sir.

7 Q. To burglary first, have you pled guilty to that, sir?

8 A. Oh, yes, sir.

9 Q. Have you pled guilty to burglary second?

10 A. Yes, sir.

11 Q. Have you pled guilty to grand larceny?

12 A. Yes, sir.

13 Q. Have you pled guilty to common law robbery?

14 A. Yes, sir.

15 Q. Have you pled guilty to kidnapping?

16 A. Yes, sir.

17 Q. Have you pled guilty to assault and battery of a high
18 and aggravated nature?

19 A. Yes, sir.

20 Q. And you realize what you are facing here today?

21 A. Yes, sir.

22 Q. And you realize that the judge will send you away
23 today?

24 A. Yes.

25 Q. Have you been promised any kind of sentence?

1 A. No, sir.

2 Q. The only thing that you have been told is if you
3 cooperate, the judge will be told that you cooperated?

4 A. Yes, sir.

5 Q. Would you tell this story just to get "Ro-Ro" in
6 trouble?

7 A. Say what now?

8 Q. Would you tell what you are telling today, testify,
9 just to get a man in trouble, or are you testifying to the
10 truth?

11 A. I'm telling the truth.

12 Q. Is that what happened that night?

13 A. Yes, sir.

14 Q. When you originally talked to the police officers, did
15 you tell the truth at the beginning?

16 A. No, sir.

17 Q. Why didn't you tell the truth at the beginning?

18 A. Because I figured they didn't really have nothing on me
19 for me to tell the truth.

20 Q. Later on did they get some items on you?

21 A. Yes, sir.

22 Q. And did you tell what happened then?

23 A. Yes, sir.

24 Q. Was "Ro-Ro" with you that night?

25 A. Which night?

1 Q. The night that y'all did this, went into her house?

2 A. Yes, sir.

3 Q. Do you see him in the courtroom here today?

4 A. Yes, sir.

5 Q. Can you identify him for us, what he's wearing and
6 where he's sitting, sir?

7 A. Right there..

8 Q. Can you tell me what hair he's got on and what shirt
9 he's wearing?

10 A. A gray shirt and dreads.

11 MR. BARNETTE: Your Honor, I would like the record
12 to reflect he's identified the defendant.

13 THE COURT: It shall.

14 BY MR. BARNETTE:

15 Q. So you are telling the truth today, sir?

16 A. Yes, sir.

17 Q. If you would, please answer any questions that Mr.
18 Schultz would have for you, sir.

19 CROSS EXAMINATION BY MR. SCHULTZ:

20 Q. Mr. Douglas, how old are you?

21 A. Nineteen.

22 Q. Nineteen.

23 So you are young, right?

24 A. Yes, sir.

25 Q. Have you ever been in trouble before?

1 A. No, sir.

2 Q. Okay. So this is your first time going through all
3 this?

4 A. Yes, sir.

5 Q. You fell in a big hole, didn't you?

6 A. Fell what?

7 Q. You fell in a big hole, didn't you?

8 A. Yes, sir.

9 Q. Do you know what burglary first carries?

10 A. Yes, sir.

11 Q. What does it carry?

12 A. Thirty to life.

13 Q. It carries life, up to life.

14 A. Yes.

15 Q. What does burglary second carry?

16 A. Fifteen to life.

17 Q. It carries zero to fifteen.

18 Do you know what kidnapping carries?

19 A. Life.

20 Q. Zero to thirty.

21 Sir, you are looking at a life sentence, basically.

22 You understand that, right?

23 A. Yes.

24 Q. Okay. You know that whatever you receive is a

25 sentence, and you are going to get sentenced pretty soon.

1 You know that you have to do eighty-five percent of that
2 time?

3 A. Yes.

4 Q. Did your lawyer tell you about that?

5 A. Something like that.

6 Q. Is your lawyer here today?

7 A. Yes, sir.

8 Q. Okay. Did he advise you to testify here today?

9 A. Yes, sir.

10 Q. Okay. Because it's in your best interests, right?

11 A. Yes..

12 Q. Because what you are trying to do is trying to get your
13 time cut, right?

14 A. Yeah.

15 Q. Right, exactly.

16 So that's your motivation here to come here today,
17 right?

18 A. Yes, sir.

19 Q. You guess so, or you know?

20 A. I say yes, sir.

21 Q. Yes, sir.

22 So that's your motivation to come here today is to
23 testify for the State?

24 A. Yes, sir.

25 Q. Okay. In order to get your time cut, right?

1 A. Yes, sir.

2 Q. And that's your motivation to do what you are doing
3 here today, right?

4 A. Yes, sir.

5 Q. Okay. Now, you talked to the police last year in
6 April, April 14th, right?

7 A. Yes, sir.

8 Q. Do you remember that?

9 A. Yes, sir.

10 Q. Okay. How old were you then?

11 A. Seventeen.

12 Q. Seventeen years old. Okay.

13 Now, first you didn't want to talk to the police,
14 right?

15 A. Yeah.

16 Q. Why was that?

17 A. Because I didn't feel they had enough evidence to
18 convict me.

19 Q. So what made you realize -- what made you realize that
20 they did have enough evidence to convict you?

21 A. Because my momma and my aunt and -- what they were
22 saying, really, they were saying what we did was true, but
23 when I'm speaking I was saying no, it's not true. In my
24 mind is right, though, what they were saying, but when I was
25 talking to them, I was telling them "no, I didn't do it. I

1 wasn't there and I don't know nothing about what y'all are
2 talking about."

3 Q. So that was a lie, right?

4 A. Say what?

5 Q. That was a lie?

6 A. Yes, sir.

7 Q. Okay. So you told a lie to the police?

8 A. Yes, sir.

9 Q. And you swore that it was the truth, the whole truth,
10 and nothing but the truth, right?

11 A. Yes, sir.

12 Q. So help you God?

13 A. (Shaking head yes).

14 Q. Yes or no?

15 A. Yes.

16 Q. You got say yes. You can't just nod your head.

17 So you go by "Fred", is it?

18 A. Yes, sir.

19 Q. All right. Now, today you said that you went inside
20 the house, right?

21 A. Yes, sir.

22 Q. Okay. This house right here, right?

23 A. Yes, sir.

24 Q. Okay. And your testimony here today is "R.J." stayed
25 in the car and Terry Littlejohn stayed in the car, right?

1 A. Yeah.

2 Q. Okay. Now, originally when you were talking to the
3 police you said that you didn't go in the house, right?

4 A. Yeah.

5 Q. Okay. So you lied again? Right?

6 A. Yeah.

7 Q. Okay. To the police?

8 A. Yes.

9 Q. Now, you said something interesting a couple minutes
10 ago. You said that they may not have enough evidence on
11 you, right, and that's why you lied, right?

12 A. Yeah.

13 Q. So if that would have continued, you would have
14 continued to lie, right?

15 A. Yes, sir.

16 Q. All right. Well, thank you for being honest.

17 So you would have continued to lie if more evidence
18 didn't come forward, right?

19 A. Yes, sir.

20 Q. You just would have said "I had nothing to do with it,"
21 and that's it?

22 A. Yes, sir.

23 Q. Okay.

24 MR. SCHULTZ: Bailiff, could you turn on the
25 lights again?

1 Thank you.

2 BY MR. SCHULTZ:

3 Q. Now, you said in your first statement that you got some
4 money, right?

5 A. Yes, sir.

6 Q. Okay. And you said today that you got some money,
7 right?

8 A. Yes, sir.

9 Q. Okay. You said today that you got \$2,500, right?

10 A. Yes, sir.

11 Q. You said in your first statement that you got 700,
12 right?

13 A. Yes, sir.

14 Q. Okay. So was that a lie?

15 A. Yes, sir.

16 Q. Which is a lie?

17 A. What do you mean?

18 Q. What one is a lie? Did you get \$2,500 or 700?

19 A. It was 2,500.

20 Q. Okay. So, now you are going to say that you got a full
21 \$2,500, but back in April of 2008, when this happened, when
22 it was fresh in your memory, you said that you got \$700,
23 right?

24 A. Yeah.

25 Q. And you also said that you didn't even go in the house,

1 right?

2 A. You are right.

3 Q. Okay. You said today that you heard a gunshot, right?

4 A. Yes, sir.

5 Q. Okay. In your prior statement you didn't hear a
6 gunshot, right?

7 A. I heard a gunshot. Everybody heard the gunshot.

8 Q. Right, but what I'm saying is that when you initially
9 talked to the police, you said that you never heard a
10 gunshot, right?

11 A. That's when they were talking to me, when I was denying
12 everything, like saying I wasn't doing nothing.

13 Q. Right, that's what I'm saying. You denied everything?

14 A. Yeah.

15 Q. Okay. It was your belief in your first statement that
16 "Yankee" had a gun, right?

17 A. Yes, sir.

18 Q. Okay. And so in your first statement, when again it
19 was fresh in your mind, you said that "Yankee" had a gun,
20 right?

21 A. Yes, sir.

22 Q. Who is "Yankee"?

23 A. Who is "Yankee".

24 Q. Who is "Yankee"?

25 A. "Yankee".

1 Q. His real name?

2 A. Joshua Manning.

3 Q. Okay. And now you said, and correct me if I'm wrong,
4 but you said my client had a gun, right?

5 A. Yes, sir.

6 Q. Okay. So, again, when it was fresh in your mind, you
7 said "Yankee" had a gun. Now you are saying -- when your
8 butt is on the line, now you are saying that it's my client
9 that had a gun, right?

10 A. Yeah.

11 Q. All right. Did you plead in front of Judge Hayes
12 already?

13 A. Yes, sir.

14 Q. You don't have a criminal history, right?

15 A. No, sir.

16 Q. So you don't really know what's going to happen, right?

17 A. No, sir.

18 Q. Okay. And, again, you are looking at a whole bunch of
19 time, right?

20 A. Yes, sir.

21 Q. For a young man like you, okay.

22 Can you pass a drug test today?

23 A. No, sir.

24 MR. BARNETTE: Your Honor, I'm going to object to
25 this line of questioning. I don't think it's relevant.

1. THE COURT: Sustained.

2. BY MR. SCHULTZ:

3. Q. What are you hoping for?

4. A. What do you mean?

5. Q. What are you hoping to get out of this by lying?

6. A. I want to be free.

7. Q. You want to be free?

8. A. Yeah.

9. Q. Okay. Do you have any kids?

10. A. No, sir.

11. Q. What about your family? Is your mom and dad still
12. around?

13. A. Yes, sir.

14. Q. And you love your mom and dad, right?

15. A. Yes, sir.

16. Q. And you want to stay out, right?

17. A. Yes, sir.

18. Q. Okay. And that's why you are here today, right?

19. A. Yes, sir.

20. Q. So what you are doing right now is probably up until
21. this point the biggest decision that you have ever made in
22. your life, isn't it?

23. A. Yes, sir.

24. Q. And you got all this time hanging over your head, don't
25. you?

1 A. Yes, sir.

2 Q. And you agreed to testify for the State today, right?

3 A. Yes, sir.

4 Q. Okay. And originally you lied, right?

5 A. Say what?

6 Q. Originally you lied, right?

7 A. At first.

8 Q. At first. Okay.

9 Do you think a reasonable person has the motivation to
10 lie when they are looking at jail time?

11 A. It depends.

12 Q. Depends? What does it depend on?

13 A. If they -- if you know they got you, then what's the
14 use of lying?

15 Q. But they got you, right?

16 A. Yeah.

17 Q. Okay. And you know that you are going to jail, right?

18 A. Yeah.

19 Q. Okay. So the only way that you can get your time cut
20 is by testifying for the State and making up this story,
21 right?

22 A. I ain't making up stories. I just told the truth.

23 Q. Okay.

24 A. I really have.

25 Q. But you are motivated -- a reasonable person would be

1 motivated to lie in this situation, right?

2 A. I don't understand what you are asking me.

3 Q. Okay. If a person is looking at jail time, life in
4 prison, you would think that that person would do anything
5 to get out of it, right?

6 A. I guess.

7 Q. You guess? Come on, you can answer the question. Not
8 your guess. It's either yes or no.

9 You would think that a reasonable person would try and
10 get out of jail time, especially looking at life in prison,
11 right?

12 A. Yeah, if you got responsibilities.

13 Q. Right, and you have responsibilities, don't you?

14 A. Yes, sir.

15 Q. Yeah, you have a family.

16 A. Yeah.

17 Q. Okay. You probably want to have kids, don't you? You
18 want to live the rest of your life, don't you?

19 A. Yeah.

20 Q. You don't want to go to jail, right?

21 A. Yes, sir.

22 MR. SCHULTZ: Beg the court's patience again, Your
23 Honor?

24 (Off the record0.

25 (Back on the record)

1 MR. SCHULTZ: That's all I have, Your Honor.

2 Thank you.

3 MR. BARNETTE: No further questions of this
4 witness, Your Honor.

5 THE COURT: You may step down.

6 MR. BARNETTE: We would ask the witness be
7 excused, Your Honor.

8 THE COURT: He may be.

9 We are going to recess for the afternoon. Let me
10 remind you of the caution I have previously given you. No
11 discussions about the case with any person whatsoever in any
12 fashion whatsoever.

13 Do not permit yourselves to be exposed to any type
14 of media coverage that might relate to the trial, whether it
15 be television, radio, or newspaper.

16 Do not conduct any research or do your own
17 investigation into anything that relates to the case.

18 Do have a good evening. Please report to your
19 jury room at 9:30 in the morning. 9:30 in the morning..

20 (The following takes place outside the presence of
21 the jury panel)

22 THE COURT: All right. Any other matters we need
23 to address?

24 MR. BARNETTE: Nothing from the State, Your Honor.

25 MR. SCHULTZ: None from the defense, Your Honor.

1 THE COURT: Court is in recess until 9:30 in the
2 morning.

3 (Whereupon, proceedings were adjourned to November
4 18, 2009)

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1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
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THE STATE) TRANSCRIPT OF RECORD
-vs-) 2009-GS-11-824
JOHN BENDARIAN BONNER,) 2009-GS-11-825
) 2009-GS-11-826
) 2009-GS-11-827
) 2009-GS-11-828
) 2009-GS-11-829
) NOVEMBER 18, 2009
) GAFFNEY, SOUTH CAROLINA

(VOLUME II)

B E F O R E:

THE HONORABLE J. DERHAM COLE, JUDGE. ; And a Jury.

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

BARRY BARNETTE, PRINCIPAL DEPUTY SOLICITOR
PRINA TAILOR, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

E. JOSHUA SCHULTZ, ESQUIRE
ATTORNEY FOR THE DEFENDANT

MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, NOVEMBER 18, 2009)

2 THE COURT: All right. Any matters we need to
3 address before the jury is brought in?

4 MR. BARNETTE: None from the State, Your Honor.

5 MR. SCHULTZ: None from the defense, Your Honor.

6 THE COURT: All right, bring them in.

7 (The following takes place in the presence of the
8 jury panel)

9 THE COURT: Good morning, ladies and gentlemen.
10 We are going to continue with the State's presentation of
11 evidence this morning.

12 Mr. Barnette.

13 MR. BARNETTE: Thank you.

14 May it please the court, I would like to call
15 Billy Rodgers to the stand.

16 BILLY RODGERS, having been first duly sworn,
17 testified as follows:

18 DIRECT EXAMINATION BY MR. BARNETTE:

19 Q. Mr. Rodgers, I think Madam Clerk told you too, but I'm
20 going to tell you again, make sure you raise your voice up
21 there so we can hear you in the back row, okay?

22 A. Okay.

23 Q. Give me your full name for the record, please?

24 A. Billy Antonio Rodgers.

25 Q. And where do you live at, sir?

- 1 A. [REDACTED].
- 2 Q. And who lives with you there, sir?
- 3 A. My mother and my father.
- 4 Q. And who are they are?
- 5 A. Cheryl Rodgers and Billy Rodgers.
- 6 Q. And how old are you, sir?
- 7 A. Twenty.
- 8 Q. Did you go to Gaffney High School?
- 9 A. Yes, sir.
- 10 Q. And did you graduate from there?
- 11 A. No, sir.
- 12 Q. Were you still in school at the time this happened?
- 13 A. No, sir.
- 14 Q. Did you play football there?
- 15 A. Yes, sir.
- 16 Q. Are you presently working on your GED?
- 17 A. Yes, sir.
- 18 Q. Back on April 1st, 2008, or April 2nd, 2008, did you go
- 19 to over to John Bonner's house?
- 20 A. Yes, sir.
- 21 Q. And who did you go with?
- 22 A. Kendrick Tate and Terry Littlejohn.
- 23 Q. And when you got over there, who else was there, sir?
- 24 A. Josh Manning, Labrontae Agnew, John Bonner, Robert
- 25 Wilson and Kwame Douglas.

1 Q. And where did John Bonner live at? Was it somewhere on
2 the west side?

3 A. Yeah. I don't know -- I don't know the address.

4 Q. Do you know where the house is?

5 A. Yes, sir.

6 Q. When y'all got there, what did y'all talk about?

7 A. Now, when me -- when me, Kendrick and Terry got there,
8 they were coming out of the house to get in the car. We
9 already talked about it. Me and Bonner had talked about it
10 a week before what we was going to do.

11 Q. So you had talked to Bonner a week before?

12 A. Yes, sir.

13 Q. And what did y'all discuss then the week before?

14 A. That we was just supposed to go to the house and wait
15 for them to come out and grab the money, the money bag, and
16 take off running.

17 Q. So when y'all go to the house, is that what y'all
18 decided to do?

19 A. When we what?

20 Q. When y'all got to the house, is that what everybody
21 decided to do?

22 A. Yes, sir.

23 Q. So did y'all go -- where did y'all go after that?

24 A. We went to Huntington Square Apartments.

25 Q. And who drove over there?

1 A. Robert Wilson and Kendrick Tate.

2 Q. When y'all got there, what happened then?

3 A. Everybody went -- everybody went to behind the --
4 everybody went to the behind the house except Terry
5 Littlejohn and Robert Wilson.

6 Q. When y'all went behind the house, tell the jury what
7 you saw what happened after that?

8 A. They came up -- they came up with the money. I mean,
9 they walked up, but they didn't have no money, so we sat out
10 there. And then we went back to the car. And when we went
11 back to the car, we sat out there. That's when we took off
12 our shoes took -- took off our socks and shoes and put our
13 socks on our hands. And we back over there and we were
14 planning to go in the house.

15 Q. Now, when you said they came out there, the man come
16 out with her?

17 A. Yes, sir.

18 Q. And did they have -- she didn't have the money then?

19 A. No, sir.

20 Q. Y'all went back to the cars and you put socks over your
21 hands and your shoes?

22 A. Yes, sir.

23 Q. And who stayed back in the car the second time when
24 y'all went back?

25 A. Robert Wilson and Terry Littlejohn.

1 Q. So six of y'all went over and what happened then?

2 A. That's when Manning went through the window and
3 unlocked the door. And he came back out and we sat out
4 there like thirty more minutes.

5 Q. Why did y'all wait thirty minutes out there?

6 A. We was waiting on her to go to sleep.

7 Q. So y'all thought she went back to sleep, but who went
8 in the house first?

9 A. Manning and Bonner.

10 Q. So Manning and Bonner went in first?

11 A. Yes, sir.

12 Q. And then who went in after them?

13 A. Agnew and Douglas.

14 Q. And it was you and Tate outside?

15 A. Yes, sir.

16 Q. Did you go in afterwards?

17 A. Yes, sir.

18 Q. Why did you go in afterwards?

19 A. After I heard the gun shot, I went in.

20 Q. And when you went in the house, what did you see?

21 A. I seen -- I seen her, but they shut the door. When I
22 went in the house I started looking for money.

23 Q. Did you start pulling stuff out?

24 A. I started pulling stuff out.

25 Q. And was she screaming while you were doing that?

- 1 A. Yes, sir.
- 2 Q. After awhile as you were looking through the house and
3 everything was there some money found?
- 4 A. Douglas grabbed some money from her pocketbook.
- 5 Q. Who got the key?
- 6 A. Bonner. Bonner and Agnew.
- 7 Q. Where did they go?
- 8 A. To the store.
- 9 Q. Did you go back outside after that?
- 10 A. Yes, sir.
- 11 Q. As you was outside, what happened then?
- 12 A. Then the alarm went off at the store. And by that time
13 Bonner and Agnew came out and we all took off running.
- 14 Q. Did they have money?
- 15 A. Yes, sir.
- 16 Q. How was the money packaged or whatever? How were they
17 holding the money? I mean, were they just grabbing it,
18 or --
- 19 A. I don't know how -- I don't know how they had the
20 money, but we just got to the car. When we got --
- 21 Q. When you got to the car, what did you see?
- 22 A. I seen the money then.
- 23 Q. Who had it?
- 24 A. Bonner and Agnew.
- 25 Q. So where did y'all go after that?

1 A. We went to a trailer park and then we went to Ryan's
2 Apartments.

3 Q. Did y'all split the money up?

4 A. Yes, sir.

5 Q. How much did you get?

6 A. 500.

7 Q. After that where did you go?

8 A. I went home.

9 Q. Who took you home?

10 A. Kendrick Tate.

11 Q. Let me show you a picture real quick. Let me show you
12 State Exhibit 47. Can you see that, sir, from where you are
13 at?

14 A. Yes, sir.

15 Q. The fellow with the fur on his coat and everything, who
16 was that?

17 A. Bonner.

18 Q. And who was the fellow that had the multi-colored coat
19 on?

20 A. Agnew.

21 Q. Do you have any prior record? Did you have a record
22 before this happened, sir?

23 A. No, sir.

24 Q. When the police talked to you the first time, why
25 didn't you tell the truth?

1 A. I ain't -- I was scared. I didn't want to get in
2 trouble --

3 Q. And --

4 A. -- for what I done.

5 Q. Did they later come back to you and confront you and
6 did you tell them what happened?

7 A. Yes, sir.

8 Q. You have pled to all your charges, is that right?

9 A. Yes, sir.

10 Q. And you realize that you are facing a possible life
11 sentence?

12 A. Yes, sir.

13 Q. And the only thing that you have been told is that the
14 judge would be told that you cooperated?

15 A. Yes, sir.

16 Q. But you haven't been promised anything?

17 A. No, sir.

18 Q. You don't know what your sentence is going to be, do
19 you?

20 A. No, sir.

21 Q. Obviously you are hoping for the best?

22 A. Yes, sir.

23 Q. Is that why you are testifying here today, or are you
24 telling the truth here today?

25 A. I'm telling the truth.

1 Q. Did you own up to what you did?

2 A. Yes, sir.

3 Q. Please answer any questions this Mr. Schultz has for
4 you.

5 MR. SCHULTZ: Thank you, Your Honor. May it
6 please the court.

7 CROSS EXAMINATION BY MR. SCHULTZ:

8 Q. Your name is Billy Rodgers?

9 A. Yes, sir.

10 Q. Billy, you don't have a criminal record, right?

11 A. No, sir.

12 Q. Okay. And you know that difference between a lie and
13 truth, right?

14 A. Yes, sir.

15 Q. What is a lie?

16 A. What I told the first time.

17 Q. Okay. You told -- the first thing you told a lie to
18 the police, right?

19 A. Yes, sir.

20 Q. Okay. And, in fact, you told the police that you don't
21 know anything about this stuff?

22 A. Yes.

23 Q. Right.

24 And you told the police that you had nothing to do with
25 it, correct?

1 A. Yes, sir.

2 Q. Okay. And then again you said to the police right
3 after you left you had nothing to do with it, correct?

4 A. Yes, sir.

5 Q. All right. And then you came back to the police. Then
6 you told a different story, right?

7 A. Yes, sir.

8 Q. Okay. You said that you didn't go in the convenience
9 store, right?

10 A. Uh-huh.

11 Q. Okay. And you just saw that picture up there, right?

12 A. Uh-huh.

13 Q. So you don't really --

14 THE COURT: Excuse me just a minute.

15 You have to answer yes or no. Don't say uh-uh.

16 BY MR. SCHULTZ:

17 Q. You don't really know what went on in the convenience
18 store, right?

19 A. No, sir.

20 Q. You never saw anybody come in there, right?

21 A. I seen them go in.

22 Q. You seen them go in, but you don't know what happened?

23 A. Uh-uh. No, sir, I don't know what happened when they
24 went in.

25 Q. And Kendrick or Kent Tate was a lookout, you said?

1 A. Yes, sir.

2 Q. And how much money did you say that you got?

3 A. \$500.

4 Q. \$500, okay.

5 Now, in your first statement to the police, you said
6 that was the truth, the whole truth, and nothing but the
7 truth, is that correct?

8 A. Sir?

9 Q. In your first statement to the police, you said that
10 was the truth, the whole truth, and nothing but the truth,
11 correct?

12 A. Yes, sir.

13 Q. Okay. That wasn't the truth, right?

14 A. No, sir.

15 Q. Right. You were lying?

16 A. Yes, sir.

17 Q. Okay. Now, you have already pled to this charge,
18 right?

19 A. Yes.

20 Q. To these charges, right?

21 A. Yes, sir.

22 Q. Do you know about the burglary first carries?

23 A. Yes, sir.

24 Q. What does it carry?

25 A. Fifteen to life, isn't it?

1 Q. Right.

2 Do you know what burglary second carries?

3 A. No, sir.

4 Q. Zero to fifteen.

5 Do you know what kidnapping carries?

6 A. No, sir.

7 Q. It carries zero to thirty.

8 And whatever time that you get, you got to do
9 eighty-five percent of that time, right?

10 A. Yes, sir.

11 Q. That's a whole lot of time for a young man like
12 yourself, isn't it?

13 A. Yes, sir.

14 Q. And you are going to do everything possible to avoid
15 that, right?

16 A. Sir?

17 Q. You are going to do anything and everything possible to
18 avoid that, right?

19 A. No, sir, because actually I'm came to tell the truth.

20 Q. But if you could, you would, right?

21 A. If I could, I would.

22 Q. Exactly. And that's why you are doing today, you are
23 trying to avoid that jail time, right?

24 A. No, sir, I came to tell the truth today.

25 Q. Oh, you don't -- you don't -- so you want to go to

1 jail?

2 A. I did the crime. If I got to go, I got to go.

3 Q. That's right. Okay.

4 But you are also cooperating with the State, right?

5 A. No, sir, I'm telling the truth.

6 Q. But you are cooperating with the State, right?

7 A. What do you mean by cooperating?

8 Q. You are the State's witness, right?

9 A. Yes, sir.

10 Q. You are testifying on their side, right?

11 A. Yes, sir.

12 Q. So you are cooperating with the State, right?

13 A. Yes, sir.

14 Q. In order to get a reduced time, right?

15 A. That's what I'm hoping for.

16 Q. That's what you are hoping for, exactly. And that's
17 why you are doing this today, right?

18 A. Yes, sir.

19 Q. Okay. Now, you don't have much of a criminal history,
20 do you?

21 A. No, sir.

22 Q. Okay. In fact, you don't have anything, right?

23 A. No, sir.

24 Q. Okay. And you know what kind of time that you are
25 looking at, right?

1 A. Yes, sir.

2 Q. And this is your first time going through this, isn't
3 it?

4 A. Yes, sir.

5 Q. And you just want to get back to your family, right?

6 A. Yes, sir.

7 Q. Do you have any kids?

8 A. Yes, sir.

9 Q. How many kids do you have?

10 A. One.

11 Q. One kid?

12 A. Yes.

13 Q. How old is that kid?

14 A. He's two.

15 Q. He's two?

16 A. (Shaking head yes)

17 Q. Okay. And you want to see your child grow up, right?

18 A. Yes, sir.

19 Q. And you know that you can't be a part of that child's
20 life if you go down the road, right?

21 A. Yes, sir.

22 Q. So you have an interest in here in coming today and
23 trying to avoid that life sentence, don't you?

24 A. Yes, sir.

25 Q. Right, exactly.

1 By cooperating with the State?

2 A. Yes, sir.

3 Q. So this right here, depending upon the outcome of this,
4 this could be the most important couple minutes of your
5 life, right?

6 A. Yes, sir.

7 Q. Okay. Because what you say up here will affect if you
8 get any jail time, right?

9 A. Sir?

10 Q. What you say up here, if you cooperate with the State,
11 which you are doing, that will affect what kind of time that
12 you get, right?

13 A. No, sir.

14 Q. Oh, it won't?

15 A. No, sir, because --

16 Q. Are you sure about that?

17 A. Repeat the question to me again.

18 Q. All right. Maybe I'll rephrase it.

19 Again, what are you hoping for out of this?

20 A. I'm hoping that the judge will take my honesty into
21 consideration.

22 Q. Your honesty into consideration?

23 A. Yes, sir.

24 Q. Okay. Now, today if you woke up this morning, you had
25 the option of not testifying, right?

1 A. Yes, sir.

2 Q. Okay. And what would have happened? Do you know what
3 would have happened if you would have decided not to
4 testify?

5 A. No, sir.

6 Q. You don't know?

7 A. No, sir.

8 Q. Okay. Let's take you back.

9 Do you remember pleading in front of Judge Hayes?

10 A. Yes, sir.

11 Q. And you admitted your involvement with this, right?

12 A. Yes, sir.

(13 Q. Okay. Now, the judge did not sentence you yet, right?

14 A. No, sir.

15 Q. Okay. Do you know why that sentencing was withheld?

16 A. No, sir.

17 Q. You don't know?

18 A. No, sir.

19 Q. Okay. Could it have been that they were waiting to
20 hear whether you cooperated or not?

21 A. I guess so, yes, sir.

22 Q. You don't really know, right?

23 A. (Shaking head no).

24 Q. Could it have been?

(25 A. It could have been, but I came to tell the truth.

1 Q. All right. We understand that, okay, but you lied
2 before, right?

3 A. Yes, sir.

4 Q. So you are lying then or you are lying now?

5 A. No, I ain't lying now.

6 Q. Okay. But you did lie, right?

7 A. Yes, sir.

8 Q. Okay. Now, let me rephrase the question again.

9 Now, you entered a plea in front of Judge Hayes, right?

10 MR. BARNETTE: Your Honor, I'm going to object. I
11 mean, we keep repeating his answers to the same questions
12 over and over again.

13 THE COURT: Sustained.

14 BY MR. SCHULTZ:

15 Q. If you chose not to cooperate today, do you know what
16 would have happened?

17 A. No, sir.

18 Q. Do you think it would be reasonable to say that you
19 would have gotten more jail time than less jail time, if you
20 did not cooperate?

21 MR. BARNETTE: I'm going to object; speculation.

22 THE COURT: He says he does not know.

23 MR. SCHULTZ: Okay.

24 BY MR. SCHULTZ:

25 Q. All right. So after all this happened -- you had a

1 cell phone, right?

2 A. Yes, sir.

3 Q. Okay. You could have called the police that night,
4 didn't you?

5 A. Yes, sir.

6 Q. And you chose not to, right?

7 A. Yes, sir.

8 Q. Okay. And then you went to the police when your name
9 got brought up in this and then you choose to tell a lie,
10 right?

11 A. Yes, sir.

12 Q. Okay.

13 MR. SCHULTZ: Beg the court's patience, Your
14 Honor.

15 (Off the record)

16 (Back on the record)

17 MR. SCHULTZ: That's all I have, Your Honor.
18 Thank you.

19 MR. BARNETTE: No further questions, Your Honor.

20 THE COURT: You may step down.

21 MR. BARNETTE: We would ask the witness be
22 excused, Your Honor.

23 THE COURT: You may be excused.

24 MR. BARNETTE: Your Honor, the State would call
25 our next witness, Ms. Darji.

1 THE COURT: Okay. Let me ask the jury to go to
2 your jury room for just a moment and I'll bring you back. I
3 have got one matter to address and I'll bring you back in
4 just a second.

5 (The following takes place outside the presence of
6 the jury panel)

7 THE COURT: This is the interpreter? You are?

8 THE INTERPRETER: My name is Pallav Raval.

9 MR. BARNETTE: Pallav Raval, R-A-V-A-L. First
10 name is P-A-L-A-V.

11 THE COURT: Pallav Raval?

12 THE INTERPRETER: Yes, sir.

13 THE COURT: All right. And you are a certified
14 court interpreter?

15 THE INTERPRETER: Yeah, interpreter.

16 THE COURT: And Madam Clerk, do you have his
17 credentials or his information?

18 THE CLERK: From Court Administration.

19 THE COURT: All right, you can swear him.

20 THE CLERK: Please raise your right hand.

21 Do you solemnly swear or affirm that the
22 translation that you make in this proceeding will be true
23 and accurate to the best of your ability and that you will
24 omit no part of the testimony or statements nor add to any
25 testimony or statements, so help you God?

1 THE INTERPRETER: Yeah, I do.

2 THE CLERK: Okay.

3 MR. BARNETTE: Thank you, Your Honor.

4 We do have the victim present, Your Honor, ready
5 to go, if the court is ready.

6 (Off the record)

7 (Back on the record)

8 MR. BARNETTE: Thank you, Your Honor.

9 THE COURT: All right. Bring the jury in, please.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: Ladies and gentlemen, the next witness
13 that's going to testify is not fluent in English and so
14 there will be a translator involved. The translator will be
15 asking the questions verbatim as they are asked by the
16 lawyers, asking the witness the questions verbatim, and he
17 will be translating her responses verbatim, for your
18 benefit.

19 If at any time for any reason you can't hear or
20 understand a question or a response, be sure that you let me
21 know, so that we can try to make other arrangements, because
22 obviously it's important that you hear every witness'
23 testimony. So I'm just letting you know ahead of time
24 that's what the situation is.

25 We are going to have an interpreter. The witness

1 will be on the witness stand answering questions, but will
2 not be responding in English. The interpreter will be
3 providing responses in English, and we will see. Hopefully
4 that will work out. Okay.

5 MR. BARNETTE: Thank you, Your Honor.

6 May it please the court, I would like to call Ms.
7 Darji to the stand, please.

8 DIPALI DARJI, having been first duly sworn,
9 testified as follows:

10 THE INTERPRETER: What she's going to tell is
11 she's going to tell the truth. That's what she said.

12 THE CLERK: Okay.

13 DIRECT EXAMINATION BY MR. BARNETTE:

14 Q. Ms. Darji, just concentrate on me, okay?

15 THE INTERPRETER: You can start now.

16 BY MR. BARNETTE:

17 Q. Give me your name, ma'am?

18 A. Dipali Darji.

19 Q. And where do you work at, ma'am?

20 THE INTERPRETER: She works in the store.

21 BY MR. BARNETTE:

22 Q. Is the Corner Store on Providence Road?

23 A. Yes.

24 Q. And back on April -- back on April 2nd, 2008, did you
25 live in the house beside the store?

1 THE INTERPRETER: She said yes.

2 Q. The day before, on April 1st, 2008, did you work until
3 midnight?

4 THE INTERPRETER: Up to twelve o'clock she said.

5 BY MR. BARNETTE:

6 Q. And who else was with you that night?

7 A. Milseli Patel was there.

8 Q. When y'all closed the store, did he walk her behind
9 your house and get in his car with you?

10 A. He went in his car.

11 Q. And did you go in your house?

12 A. Yes.

13 Q. When you went inside, did you cook anything or fix any
14 food?

15 A. No.

16 Q. Did you eat anything?

17 THE INTERPRETER: Yeah, she ate.

18 BY MR. BARNETTE:

19 Q. Did you watch a little bit of TV?

20 THE INTERPRETER: Yeah, she was eating. She saw
21 the TV.

22 BY MR. BARNETTE:

23 Q. When you went to bed, did you lock your bedroom door?

24 A. Yes.

25 Q. After you went to sleep, did somebody come in your

1 door?

2 THE INTERPRETER: She said that, you know, 1:30
3 she went to bed and around two o'clock somebody came in and
4 opened the door, you know, and showed her the gun.

5 BY MR. BARNETTE:

6 Q. They shot the gun?

7 THE INTERPRETER: Yes, he fired the gun and show
8 it to her here.

9 BY MR. BARNETTE:

10 Q. What did they start doing to you then?

11 THE INTERPRETER: As soon as they came in, one guy
12 showed her the gun over here and the other guy started, you
13 know, throwing stuff here and there and breaking it up and
14 they started beating her.

15 MR. BARNETTE: What were they asking her for?

16 THE INTERPRETER: They were asking for money and
17 they told her do you have any of that stuff, passport and
18 all that stuff.

19 MR. BARNETTE: How many men did she see come in
20 her room or her house?

21 THE INTERPRETER: Can you say again?

22 MR. BARNETTE: I'm sorry. How many people did she
23 see come into her house or her room?

24 THE INTERPRETER: First two of them, they come in
25 and then another two came in. She saw totaling four people.

1 MR. BARNETTE: What else -- did they take her
2 clothes off?

3 THE INTERPRETER: Yeah, they took the night dress,
4 you know, the bottom part of it and they took it out of
5 hers, from her body.

6 MR. BARNETTE: After they did that, did she tell
7 them where the key was?

8 THE COURT: Excuse me just a minute. Now, you
9 have to direct your questions to the witness, not to the
10 interpreter.

11 MR. BARNETTE: I'm sorry. I apologize.

12 BY MR. BARNETTE:

13 Q. Did they -- after that did you tell them where the key
14 was?

15 THE INTERPRETER: The key was lying on the table,
16 so they were asking for the key and they found it. And then
17 they asked for the, you know, which of the keys. She showed
18 her which of the keys, you know. It was -- she showed them
19 a bunch of keys, the main keys.

20 MR. BARNETTE: Before she showed them the keys --

21 BY MR. BARNETTE:

22 Q. Before you showed them the keys, did you tell them that
23 you wanted to put your pants back on, or your dress back on?

24 THE INTERPRETER: Stop.

25 They were beating her and then she -- they wanted

1 to take her with them, her to the store, and she said "I
2 cannot come." So she went in the -- she said "I want to wet
3 the clothes." She went and changed her clothes she put
4 herself. You know, they are wanting to go in and show her
5 how to open the safe.

6 BY MR. BARNETTE:

7 Q. Before you put your pants on, did they take you over a
8 chair before that?

9 THE INTERPRETER: You are talking about some
10 chair?

11 BY MR. BARNETTE:

12 Q. Before all that happened, did they take you -- did they
13 take you out OF the room and put you over a chair or lean
14 you over the chair, or a couch, or sofa?

15 A. (No response).

16 MR. BARNETTE: I'll tell you what. I'll withdraw
17 the question.

18 BY MR. BARNETTE:

19 Q. After they got the keys, did two of them leave?

20 THE INTERPRETER: After she showed them the key,
21 you know, two of them, they went out, you know, out of the
22 house, and one was only heard from next, and the other one
23 was standing at her. That's what she wants to tell.

24 BY MR. BARNETTE:

25 Q. As you was in the house, did you hear the store alarm

1 go off?

2 A. Yes.

3 Q. During that time did you try to get away from them?

4 THE INTERPRETER: When -- when the alarm went off,
5 after that two more guys, they came back, and the guy who
6 was standing nearby her, one of them, he saw them and then
7 he ran, and the other guy who was holding her, he also ran
8 outside.

9 BY MR. BARNETTE:

10 Q. Did you try to pick up a stick to defend yourself?

11 THE INTERPRETER: Can you repeat?

12 BY MR. BARNETTE:

13 Q. Did you pick up a stick to try to defend yourself when
14 you got so mad?

15 THE INTERPRETER: There was holding a piece of
16 wood behind the door. She wanted to grab it and beat her,
17 but the guy came to know that she is going to do that, so he
18 started beating her over here.

19 BY MR. BARNETTE:

20 Q. After they left then what did you do?

21 THE INTERPRETER: She ran towards the store.

22 MR. BARNETTE: Then what did she do?

23 THE INTERPRETER: She was very upset and, you
24 know, she went to the neighborhood to call, you know, for
25 the help.

1 BY MR. BARNETTE:

2 Q. Were you taken to the hospital, ma'am?

3 A. Yes.

4 Q. And did you stay in the hospital overnight?

5 THE INTERPRETER: Two days she was there in the
6 hospital.

7 BY MR. BARNETTE:

8 Q. Was the men wearing masks and gloves that came in your
9 house, or something over their hands?

10 A. Yes. They were wearing a lot of stuff and they had put
11 their handkerchief over here and their hand gloves. They
12 all had jackets on also.

13 Q. In the hospital did they takes pictures of you, ma'am?

14 A. Yes.

15 Q. And do these pictures fairly represent what your
16 injuries were?

17 A. Yes.

18 Q. Let me show you what's been marked 1 through 11. Do
19 these pictures fairly represent what your injuries were,
20 ma'am?

21 A. Yes.

22 MR. BARNETTE: Your Honor, I would like to move
23 these into evidence at this time.

24 MR. SCHULTZ: No objection, Your Honor.

25 THE COURT: They are admitted.

1 MR. BARNETTE: Your Honor, may I publish these to
2 the jury.

3 Tell her she don't have to look at them. She can
4 look down, if she wants to.

5 MR. BARNETTE: State Exhibit No. 1.

6 State Exhibit No. 2.

7 State Exhibit No. 3.

8 State Exhibit No. 4.

9 State Exhibit No. 6.

10 State Exhibit No. 7.

11 State Exhibit No. 8.

12 State Exhibit No. 9.

13 State Exhibit No. 10.

14 State Exhibit No. 11.

15 BY MR. BARNETTE:

16 Q. Ma'am, if you would, please answer any questions that
17 the defense attorney may have for you.

18 THE COURT: Did you tell her? Did you tell her
19 regard what he just said?

20 THE INTERPRETER: Yes, sir.

21 What was the last sentence that you spoke.

22 THE COURT: Mr. Barnette, you need to state that
23 again.

24 BY MR. BARNETTE:

25 Q. If you would, ma'am, please answer any questions that

1 the defense attorney may have for you.

2 THE INTERPRETER: Yes, she agreed.

3 MR. SCHULTZ: Ma'am, I have no questions for you.

4 THE COURT: All right, you may step down. Thank
5 you.

6 MR. BARNETTE: The Statè would rest, Your Honor.

7 THE COURT: All right, ladies and gentlemen, that
8 is all the testimony or other evidence to be offered by the
9 State, at least in their case in chief. Before we go
10 further I have got some matters I'll need to address with
11 the lawyers, so I'll ask you to please go to your jury room.
12 Do not, however, yet discuss the case in any fashion. I
13 will bring you back shortly to continue.

14 (The following takes place outside the presence of
15 the jury panel)

16 THE COURT: All right. Any matters we need to
17 address before we go further?

18 MR. SCHULTZ: Your Honor, at this time I would
19 like to move for a directed verdict. We have heard
20 testimony over the last two days from approximately -- I
21 count one, two, three, four, five, six, seven, eight,
22 nine -- nine witnesses here. Nobody -- the cops cannot
23 establish any forensic evidence whatsoever, Your Honor,
24 linking my client back to this crime.

25 As for the five testifying cooperating witnesses

1 with the State, they have proven that they are indeed very
2 bias. They are trying to get the time cut. They have
3 already entered pleas in front of Judge Hayes, and what they
4 are trying to do is they are trying to get their time cut,
5 obviously, so they are very biased in this.

6 Other than that, there is nothing possibly linking
7 my client back to this, so I would move for a directed
8 verdict at this time as a matter of law.

9 Thank you.

10 THE COURT: All right. Well, credibility is a
11 matter for the jury to determine.

12 The testimony in the case does establish, if found
13 to be credible, each of the essential elements of each of
14 the crimes that have been alleged against this defendant,
15 and, therefore, your motion for a directed verdict is
16 denied.

17 MR. SCHULTZ: Thank you, Your Honor.

18 THE COURT: What else do we need to address?

19 MR. SCHULTZ: Your Honor, I would request a very
20 short recess to talk to my client back there. He has not
21 made up his mind whether he wants to testify or not. I
22 would request a recess of approximately twenty minutes.

23 THE COURT: Well, I can give you fifteen, maybe.

24 MR. SCHULTZ: Yes, sir.

25 THE COURT: I mean, he's had plenty of time to

1 think about that. He may need to discuss it with you
2 further, but, I mean, that should have been done long before
3 now and not until then.

4 Mr. Bonner, do you understand that you were the
5 one who is charged with these crimes, and because you are
6 charged in the case and the case is now being tried, you
7 have an absolute right to remain silent. And that just
8 means that nobody can make you testify. No one can require
9 that you provide any statement or answer any questions as it
10 the relates to these charges for which you are now standing
11 trial.

12 You have an absolute right to remain silent and to
13 require the State to present sufficient evidence in this
14 courtroom to satisfy this jury beyond a reasonable doubt of
15 your guilt, and you never have to assist the State in their
16 effort to prove your guilt by you taking the witness stand
17 and answering questions that might tend to prove your own
18 guilt.

19 If you elect to testify in this case, you will
20 have to answer not just your lawyer's questions, but you
21 will also have to answer any questions that are asked by the
22 prosecutor, so far as are relevant, if the responses to
23 those questions might tend to prove you guilty of one or
24 more of the crimes that they claim that you committed.

25 And if you elect not to testify in this case, I

(1 will instruct the jury that they can't hold that against
2 you, they can't consider it in any fashion, nor allow that
3 fact to enter into their deliberations.

4 Have you and Mr. Schultz discussed the advantages
5 and disadvantages of testifying, as well as not testifying?

6 THE DEFENDANT: No, sir.

7 THE COURT: You haven't discussed that?

8 THE DEFENDANT: No, sir.

9 (Off the record)

10 (Back on the record)

11 THE DEFENDANT: Oh, yes, sir.

12 THE COURT: You have discussed it?

(13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. And did you appreciate
15 what the advantages and disadvantages are to taking the
16 witness stand, as well as not taking the witness stand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you also understand that only you
19 can make the decision as to whether or not you will testify?

20 THE DEFENDANT: Yes, sir.

(21 THE COURT: You may seek and accept advice from
22 your lawyer. You may seek and accept advice from any other
23 person, family members, or whomever, but the person that has
24 to make the decision is you, because you have to live with
25 that decision. And you can't later, after making the

1 decision, if you don't like the way the verdict goes, you
2 can't blame it on somebody else, because it's your choice.
3 It's no one else's choice. You get to make that decision.
4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. We are going to take a
7 fifteen minute recess. We will let you discuss it with your
8 lawyer further and then we will come back. You will have to
9 let me know as to whether or not that you want to testify
10 and/or call other witnesses.

11 MR. SCHULTZ: Thank you, Your Honor.

12 THE COURT: Court is recess for fifteen minutes.

13 (Whereupon, proceedings were recessed)

14 (Whereupon, proceedings were reconvened).

15 THE COURT: All right, Mr. Schultz, have you
16 talked to your client about his right to testify or not?

17 MR. SCHULTZ: I have, Your Honor.

18 THE COURT: Has he indicated to you a preference?

19 MR. SCHULTZ: Yes, he has, Your Honor.

20 THE COURT: What has he indicated to you?

21 MR. SCHULTZ: He has indicated that he wishes to
22 testify.

23 THE COURT: All right. Is that true, Mr. Bonner,
24 you wish to testify? You made that decision on your own?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. Are you satisfied with the
2 decision that you made?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Anybody force you into it?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. All right.

7 MR. BARNETTE: Your Honor, there is one matter
8 since he's testifying, he's been convicted of attempted
9 trafficking in cocaine in North Carolina, Your Honor. That
10 is a felony. And obviously I would like to ask him to
11 impeach him on that.

12 THE COURT: Does he admit or deny the conviction?

13 MR. SCHULTZ: He admits that conviction, Your
14 Honor.

15 THE COURT: He admits it?

16 MR. SCHULTZ: Yes, sir.

17 THE COURT: All right. Solicitor, you will be
18 able to inquire if the defendant has been convicted of a
19 crime classified as a felony for which he could have
20 received more than one year in jail.

21 MR. BARNETTE: Thank you, Your Honor.

22 THE COURT: Do you know what the -- I assume it
23 carries more than one year in jail.

24 MR. BARNETTE: They comply that as twelve years,
25 but I assume it's more than one year, since it's a felony.

1 THE COURT: What happened to the case?

2 THE DEFENDANT: Time served.

3 MR. BARNETTE: They gave him time served on it.

4 THE COURT: How much time did you serve?

5 THE DEFENDANT: Twelve, thirteen months time
6 served.

7 MR. BARNETTE: He served 397 days.

8 THE COURT: So he served more than a year?

9 MR. BARNETTE: Yes, Your Honor.

10 THE COURT: All right. Bring the jury in.

11 (The following takes place in the presence of the
12 jury panel)

13 THE COURT: All right, ladies and gentlemen, as
14 you know, the State has completed their presentation of
15 evidence, at least in their case in chief, so we will now
16 proceed with any to be offered by the defense.

17 Mr. Schultz.

18 MR. SCHULTZ: Thank you, Your Honor. May it
19 please the court.

20 The defense would like to call John Bonner to the
21 stand.

22 JOHN BENDARIAN BONNER, having been first duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. SCHULTZ:

25 Q. Good morning, Mr. Bonner. How are you?

- 1 A. I'm all right. How are you?
- 2 Q. Good.
- 3 Please state your name for the record.
- 4 A. John Bendarian Bonner.
- 5 Q. And how old are you, Mr. Bonner?
- 6 A. Eighteen.
- 7 Q. All right. Where did you go to school?
- 8 A. Gaffney High.
- 9 Q. All right. Did you complete high school or --
- 10 A. No, sir, I didn't.
- 11 Q. Okay. How far did you go in school?
- 12 A. 11th grade.
- 13 Q. Do you have a GED or anything?
- 14 A. No. Currently in the process of doing that.
- 15 Q. Okay. Now, Mr. Bonner, do you remember where you were
- 16 on the night of April 1st, in the early morning hours of
- 17 April 2nd?
- 18 A. Yes, sir, I do. I was at home.
- 19 Q. Okay. And April 1st you were at home, right?
- 20 A. Yes, sir.
- 21 Q. And April 2nd you were at home, right?
- 22 A. Yes, sir.
- 23 Q. And where was home for you?
- 24 A. On [REDACTED].
- 25 Q. [REDACTED] or [REDACTED]?

1 A. [REDACTED].

2 Q. [REDACTED]. All right.

3 When did you get to bed that night?

4 A. I went to bed around 10:30, eleven o'clock.

5 Q. So April 1st you went to bed, right?

6 A. Yes, sir.

7 Q. Okay. When did you wake up the following day?

8 A. I woke up around -- I woke up around 2:00, 2:30. I had
9 a call. I woke up around 2:00, 2:30 that morning. I had a
10 call from Mr. Fred Douglas. He told me to come outside, he
11 needed to talk to me.

12 Q. Okay. And what did Mr. Douglas want to talk to you
13 about?

14 A. He wanted to talk to me about, he said "bro," he said
15 wanted to go rob somebody, go rob somebody.

16 Q. What did you say in response to that?

17 A. I said "you are going to wake me up around 2:00, 2:30
18 for this?" That's what I said.

19 Q. And what did you do after that?

20 A. Then they talked a little bit more about it. My momma
21 came to the door seeing who was outside, and I walked in the
22 house a short little shortly after that.

23 Q. All right. And you -- when you went in the house, did
24 you stay there for the entire night?

25 A. Yes, sir, I did.

1 Q. Who were these guys that were outside there?

2 A. The only person that was out there was Fred, Billy
3 Rodgers and Kendrick Tate.

4 Q. Okay. Was Joshua Manning there?

5 A. No, he wasn't there at the time.

6 Q. Okay. When did Joshua Manning show up?

7 A. He didn't show up that night.

8 Q. Okay. All right. So your testimony is that -- how
9 many people were there?

10 A. Them three.

11 Q. Three people?

12 A. They showed up around my house about 2:00, 2:30 that
13 morning.

14 Q. Okay. And then you went right back to bed, right?

15 A. Yes, sir, I did.

16 Q. Do you know what they did that night?

17 A. No, sir, I didn't. I guess they committed this crime.

18 Q. Why do you think that they would make up these lies
19 about you here today?

20 A. I mean, why wouldn't I? I guess it was part of their
21 plea deal for a time, because -- I mean, I don't know. I
22 guess they had something against me. That's all.

23 Q. What do you think they had against you?

24 A. I mean, I truly don't know. I don't know.

25 Q. Okay. But you had nothing to do with it, right?

1 A. No, sir, I didn't.

2 Q. Okay. Why do you think your name was brought up in
3 this?

4 A. I mean, I guess the screws felt like I had something to
5 do with it and they were running around hollering my name,
6 and I have guess the intent was heard. I mean, I don't
7 know.

8 Q. Now, you are not under the influence of any drugs or
9 anything, right?

10 A. No, sir, I'm not.

11 Q. Okay. And everything that you have told me today is
12 the truth, right?

13 A. Absolutely.

14 Q. And everything that your co-defendants said are lies,
15 right?

16 A. Most definitely.

17 Q. Do you have a criminal history?

18 A. No, sir, I don't, but there is one felony.

19 Q. And where was that felony?

20 A. In North Carolina.

21 Q. What was it for?

22 A. Trafficking cocaine.

23 Q. And you accepted responsibility for that, right?

24 A. Yes, sir, I did.

25 Q. Would you accept responsibility for something that you

1 didn't do?

2 A. No, sir, I wouldn't.

3 Q. Like this, right?

4 A. Yes, sir.

5 Q. When did you first hear about this after this happened?

6 A. I mean, I heard about it the next day that it was done,
7 but I didn't know who did it. I mean, then I started seeing
8 them. They were acting funny, spending a lot of money, so I
9 started putting two and two together, and then the next day
10 the detectives come questioning me about it, about the
11 crime.

12 Q. What did the detectives say to you?

13 A. They asked me where I was at that morning.

14 MR. BARNETTE: Your Honor, I'm going to object at
15 this point. It's hearsay whatever questions he was asked
16 about.

17 THE COURT: Overruled.

18 BY MR. SCHULTZ:

19 Q. You may answer the question.

20 A. Yeah, they wanted -- they asked me where I was at early
21 in that morning.

22 Q. And did you tell them the same thing that you are
23 telling me today?

24 A. Yes, sir, I told them I was at home and I didn't know
25 nothing about that crime.

1 Q. And you heard your co-defendants testify here today?

2 A. Yes, sir, I did.

3 Q. And yesterday, right?

4 A. Yes, sir, I did.

5 Q. And they kept changing their story, right?

6 A. Yes, sir, they did.

7 Q. But you never changed your story?

8 A. No, sir, I didn't.

9 Q. So is there anything else you would like the jury to
10 know?

11 A. I mean, no. I mean, I'm innocent.

12 MR. BARNETTE: I'm going to object to that
13 question.

14 THE COURT: Well, it's already been responded to.

15 MR. SCHULTZ: That's all I have, Your Honor.

16 BY MR. SCHULTZ:

17 Q. Please answer any questions that Mr. Barnette has.

18 A. Yes, sir.

19 MR. BARNETTE: May it please the court, Your
20 Honor?

21 THE COURT: Yes.

22 CROSS EXAMINATION BY MR. BARNETTE:

23 Q. Mr. Bonner, you have lived in Gaffney all your life?

24 A. Yes, sir, I did.

25 Q. You have lived all your life here, haven't you?

- 1 A. Yes, sir.
- 2 Q. Well, why did you run to North Carolina then?
- 3 A. I didn't run.
- 4 Q. Where did they have to go get you at, sir?
- 5 A. I was in North Carolina. I'm free to leave the state.
- 6 Q. You are free to leave the state, but you lived here all
- 7 your life, and how long was you up in North Carolina?
- 8 A. A week.
- 9 Q. What was you doing up there for a week?
- 10 A. Sitting around chilling.
- 11 Q. You knew they were looking for you. You was hiding
- 12 out, weren't you?
- 13 A. They wasn't looking for me when I left.
- 14 Q. You had nothing to hide, why did you go to North
- 15 Carolina? You have lived here all your life.
- 16 A. I was not hiding. I was in North Carolina with a
- 17 friend.
- 18 Q. Who is that friend?
- 19 A. A girl.
- 20 Q. Who is the friend?
- 21 A. A girl, Evelyn Nicole Gaper.
- 22 Q. You were up there for a week. Where did you stay up
- 23 there for a week?
- 24 A. With her.
- 25 Q. With her?

1 A. Yes, sir, I did.

2 Q. Where is she from?

3 A. Concord.

4 Q. You stayed up there a week with her, huh?

5 A. Yes, sir.

6 Q. You didn't tell anybody where you was at or anything,
7 did you?

8 A. Yes, sir, I did.

9 Q. It's true the police had to bring you back, didn't
10 they?

11 A. Yes, sir, they did.

12 Q. You say Fred Douglas called you on your cell phone?

13 A. Yes, sir, he did.

14 Q. You got the cellphones records with you?

15 A. Not with me. It was in my motion of discovery.

16 Q. Okay. So you don't know these guys then, any of these
17 guys that testified yesterday?

18 A. I know them.

19 Q. You hung with them all the time, haven't you?

20 A. No, not all of them.

21 Q. You have been in the Corner Store before?

22 A. Which Corner Store?

23 Q. Which Corner Store?

24 A. There's a lot of Corner Stores. Which one?

25 Q. The one we have been talking about.

1 A. Yes, sir, I have.

2 Q. How many times have you been in that store?

3 A. I don't know.

4 Q. You know the lady that testified?

5 A. I don't know her. I seen her.

6 Q. Yeah.

7 Your testimony is that you went to sleep at 10:30 or
8 11:00 that evening?

9 A. Yes, sir, I did.

10 Q. What else had you done that day?

11 A. I just sat around the house with my mom and my brother,
12 my oldest brother, because both of them were sick. My
13 brother had mental -- mental disabled and was diagnosed with
14 leukemia, and my momma had back problems and was out a lot
15 on the medication.

16 Q. Did you work?

17 A. No, sir, I didn't. I did around the neighborhood work.

18 Q. Oh, you worked in the neighborhood then?

19 A. Yes, sir.

20 Q. Did you earn a paycheck?

21 A. No, sir, I ain't.

22 Q. You did this work, did you earn cash?

23 A. Yes, sir, I had.

24 Q. On a cash basis, isn't it?

25 A. Yes, sir. Cutting grass, raking leaves, stuff like

1 that.

2 Q. You have been convicted, haven't you, of a felony?

3 A. Yes, sir, I had.

4 Q. Isn't it true that you had been in that store that
5 night of April 1st to April 2nd?

6 A. No, sir, I was not.

7 Q. Why would they call you?

8 A. I don't know.

9 Q. Why would they call you?

10 A. I don't know. I don't know why would they call me?
11 You ask them that.

12 Q. We did and they told us.

13 Thank you.

14 A. They told you a lie.

15 MR. BARNETTE: No further questions, Your Honor.

16 MR. SCHULTZ: No redirect, Your Honor.

17 THE COURT: You may step down.

18 MR. SCHULTZ: Beg the court's patience, Your
19 Honor.

20 (Off the record)

21 (Back on the record)

22 MR. SCHULTZ: Your Honor, could we approach.

23 THE COURT: Yes.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 MR. SCHULTZ: Your Honor, for the defense, the
2 next witness, we would call Eva Bonner to the stand.

3 EVA BONNER LIPSCOMB, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION BY MR. SCHULTZ:

6 Q. How are you this morning, Ms. Bonner?

7 A. Fine.

8 Q. Good. Could you please state your name for the record?

9 A. Eva Bonner Lipscomb.

10 Q. And do you know my client Mr. Bonner?

11 A. Yes.

12 Q. How do you know him?

13 A. He's my son.

14 Q. Okay. And right now where do you live?

15 A. [REDACTED] -- excuse me. Walking up them steps got me.

16 [REDACTED], Gaffney, South Carolina.

17 Q. Okay. Now, that's a different address than where you
18 lived in April of 2008, right?

19 A. Yes.

20 Q. Okay. Where did you live in April of 2008?

21 A. [REDACTED].

22 Q. And who lived in that house with you?

23 A. John Bonner, Kelvin Bonner, Tony Wilson.

24 Q. Okay. All right. So there was, I guess --

25 A. Three -- yeah.

1 Q. Four people, including yourself, right?

2 A. Yes.

3 Q. Okay. And how long have you lived there for?

4 A. Probably a year.

5 Q. Okay. Were you renting that house?

6 A. Yes.

7 Q. Okay. All right.

8 So somebody else owned that house, right?

9 A. Yes.

10 Q. Okay. All right.

11 Do you remember the night of April 1st, the morning of
12 April 2nd?

13 A. Not too much.

14 Q. Okay. And April 2nd, do you remember if John was home?

15 A. Yes.

16 Q. Okay. And was he home for the entire night?

17 A. I don't know.

18 Q. Okay. Why don't you know?

19 A. Because I was asleep.

20 Q. Okay. Were you on any medication at that time?

21 A. Yes, I was.

22 Q. Okay. Did you see John at around three o'clock, 3:30
23 in the morning?

24 A. Yes, I did.

25 Q. Okay. All right.

- 1 So John was there, right?
- 2 A. Yes.
- 3 Q. At your house?
- 4 A. At that time, yes.
- 5 Q. All right. Do you remember where you saw him?
- 6 A. If I remember correctly, I was coming down the hall
- 7 from the bathroom and he was going up the hall to the
- 8 bathroom.
- 9 Q. Okay. Did you see him after that?
- 10 A. After I got up and went to the bathroom, I took some
- 11 medication and then I went back to bed.
- 12 Q. What kind of medication did you take?
- 13 A. I was on drugs that -- Symbalta.
- 14 Q. Okay. Was that affecting your reasoning?
- 15 A. No, but it made me sleepy.
- 16 Q. It made you sleep be, right?
- 17 A. Yeah.
- 18 Q. But you could perceive things that you were going on,
- 19 right?
- 20 A. Yes.
- 21 Q. So are you on that medication right now?
- 22 A. I'm supposed to be.
- 23 Q. But you are not on it?
- 24 A. On the Darvocet I am.
- 25 Q. Okay.. Do you believe that you are in your right mind

1 today?

2 A. Yes.

3 Q. Okay. And you were sure that you saw your son John at
4 your house that morning of April 2nd, right?

5 A. Yes.

6 Q. He was there for the entire time, right?

7 A. He was there at least I know from 3:00 to 3:30.

8 Q. Okay.

9 MR. SCHULTZ: That's all I have, Your Honor.

10 Thank you.

11 MR. BARNETTE: May it please the court, Your
12 Honor?

13 THE COURT: Yes.

14 CROSS EXAMINATION BY MR. BARNETTE:

15 Q. Ms. Bonner, you don't know where your son was that
16 night, do you? You don't know for sure, do you?

17 A. From 3:00 to 3:30 I know he was home.

18 Q. You said at 3:30 he was home?

19 A. From 3:00 to 3:30. In between 3:00 and 3:30.

20 Q. Let me ask you a question. Do you remember talking to
21 Officer Ramsey and talking to Investigator Phillips and
22 saying it was four o'clock?

23 A. I talked to -- I talked to him and I talked to
24 Jamieson.

25 Q. Okay. You never talked to the other gentleman over

1 there?

2 A. I don't remember talking to him. I talked to Jamieson.

3 Q. And you don't know about any other time, do you, or any
4 other -- you don't know where he was, do you?

5 A. At the time I said he was there, he was there.

6 Q. Oh, I understand, ma'am, but -- let me rephrase the
7 question.

8 You don't know -- other than what you saw him at that
9 time, you don't know --

10 A. No, I don't.

11 Q. You don't know where he was, do you?

12 A. No.

13 Q. What time did you go to bed that night, ma'am, do you
14 know?

15 A. I really don't remember.

16 Q. Do you know Fred Douglas?

17 A. Fred Douglas?

18 Q. Or let me -- "Lil Fred"?

19 A. Yes.

20 Q. Do you know "Yankee"?

21 A. Yes.

22 Q. Do you know "Brontae"?

23 A. Yes.

24 Q. Do you know Tate?

25 A. Yes.

1 Q. Do you know "Bugga"?

2 A. Yes.

3 Q. Do you know -- of course, your son's nickname is
4 "Ro-Ro", is that right?

5 A. Yes.

6 Q. And you know "R.J."?

7 A. Yes.

8 Q. They were all friends, weren't they?

9 A. Well, basically Fred and "Brontae", they were closer
10 friends to "Ro-Ro". And Billy, "R.J.", Kent Tate, they were
11 closer to my other son.

12 Q. Okay. But everybody knew everybody pretty much?

13 A. They knew, yeah.

14 Q. They did things together, didn't they?

15 A. Not to my knowledge.

16 Q. Not to our knowledge, but you know them all?

17 A. Yeah, I know them all.

18 Q. Okay.

19 A. But I'm saying when I usually see them together, that's
20 the order I usually see them.

21 Q. Okay. I understand. Yes, ma'am, I understand.

22 And did your son work?

23 A. No.

24 Q. And he's always lived here in Gaffney, is that right?

25 A. Yes.

1 Q. Did the police come and ask you where he was when they
2 want to arrest him?

3 A. Yeah, they came over to my house.

4 Q. Why did he leave?

5 A. I don't know. I thought he was with a girl.

6 Q. Who is Lyman and Charles Tate?

7 A. My cousin and his son.

8 MR. SCHULTZ: Objection, Your Honor, relevance.

9 THE COURT: Well, let me see y'all for a minute.

10 (Whereupon, the lawyers approached the bench for
11 an off-the-record discussion)

12 BY MR. BARNETTE:

13 Q. Ma'am, when you got up that night, you said that you
14 went to get some medication?

15 A. Uh-huh.

16 Q. And you was in your bedroom?

17 A. To my -- yeah.

18 Q. I didn't mean to cut you off. So what was you getting
19 ready to say?

20 A. To my recollection, yes.

21 Q. But you don't really remember a whole lot, do you?

22 A. No, I don't.

23 Q. In other words, you can't remember a whole lot about
24 that night?

25 A. Not really.

1 MR. BARNETTE: One moment, Your Honor, please.

2 (Off the record)

3 (Back on the record)

4 BY MR. BARNETTE:

5 Q. And you were taking your medications obviously that --
6 Darvocet. What else were you taking, ma'am?

7 A. Symbalta.

8 Q. And you say you saw him that day?

9 A. That night.

10 Q. That night.

11 Were the lights on? What was --

12 A. Yeah, they be on, because I was coming from the
13 bathroom.

14 Q. Okay. What was he wearing?

15 A. I don't remember.

16 Q. You don't remember what he was wearing?

17 A. No.

18 Q. What kind of coat did he wear?

19 A. I don't remember.

20 Q. You don't remember what kind of coat he would wear?

21 A. No, because they had different coats.

22 Q. Thank you, ma'am.

23 MR. SCHULTZ: Just a few questions, Your Honor.

24 REDIRECT EXAMINATION BY MR. SCHULTZ:

25 Q. Now, when you said that John wasn't working, did he do

1 any odd jobs around the neighborhood?

2 A. No.

3 Q. He didn't do any odd jobs? He didn't like rake --

4 MR. BARNETTE: Your Honor, I'm going to object to
5 leading.

6 THE COURT: Don't lead. She said no.

7 BY MR. SCHULTZ:

8 Q. As far as what your testimony is here today, do you
9 have any reason to lie?

10 A. No.

11 Q. Okay. And that's your son, right?

12 A. Yes.

13 Q. But you have no reason or motivation to lie whatsoever,
14 right?

15 A. No.

16 Q. Okay. Thank you.

17 MR. BARNETTE: No further questions, Your Honor.

18 THE COURT: You may step down.

19 MR. SCHULTZ: I ask this witness be excused.

20 THE COURT: She may be.

21 MR. SCHULTZ: Your Honor, the defense would call
22 Kelvin Bonner to the stand.

23 KELVIN BONNER, having been first duly sworn,
24 testified as follows:

25

1 DIRECT EXAMINATION BY MR. SCHULTZ:

2 Q. Good morning, Mr. Bonner. How are you?

3 A. Fine. How are you?

4 Q. Good.

5 Could you please state your name for the record?

6 A. Kelvin Bonner.

7 Q. Is it Kelvin other Kevin?

8 A. Kelvin.

9 Q. Kelvin. So K-E-L-V-I-N, right?

10 A. Yes, sir.

11 Q. Okay. Now, do you know my client Mr. Bonner?

12 A. Yes, sir.

13 Q. How do you know him?

14 A. My brother.

15 Q. Okay. And how old are you?

16 A. Seventeen.

17 Q. Seventeen?

18 A. Yes.

19 Q. Okay. Now, my client John is just a couple years older
20 than you, right?

21 A. A year and some months.

22 Q. Okay. Now, in April of 2008, where did you live?

23 A. [REDACTED].

24 Q. And where is that?

25 A. On the west end.

1 Q. Where you stayed, right?

2 A. (Shaking head yes).

3 Q. How many people lived in that house that you did?

4 A. Me, my brother, and my other brother, and my mom.

5 Q. Okay. And your other brother, who is that?

6 A. Tony Wilson.

7 Q. Okay. Now, do you remember what happened there April
8 1st?

9 A. Yes, sir.

10 Q. April 2nd?

11 A. Yes.

12 Q. Okay. Now, in the morning of April 2nd, was your
13 brother at home?

14 A. Yes, sir.

15 Q. So John Bonner, your brother, was at home, right?

16 A. From the time from 12:00 to 1:00 when we were talking
17 and fell to sleep.

18 Q. Okay. What time did you fall asleep?

19 A. Between 12:00 and 1:00.

20 Q. Do you have any motivation to lie today?

21 A. No, sir.

22 Q. Okay. And when you woke up that next morning, when did
23 you wake up?

24 A. About I would say 9:00, 10:00.

25 Q. 9:00?

1 A. Yes.

2 Q. Was John there?

3 A. Yes, sir.

4 Q. Okay. So, to your information, he -- to your
5 understanding that he stayed in the house the entire night,
6 right?

7 A. Yes.

8 Q. Was that normally his practice just to hang out at all
9 or anything during the night?

10 A. When we lived there, we just hung at home.

11 Q. What night of the week was that?

12 A. Sir?

13 Q. I'm sorry?

14 A. Can you say that again?

15 Q. What night of the week was that?

16 A. What night of the week?

17 Q. Yes, sir.

18 A. I can't really remember the night.

19 Q. Okay. But it was April 2nd?

20 A. Yes, sir, I remember the day.

21 Q. Okay. Are you motivated to lie today for your brother?

22 A. No, sir.

23 Q. Do you have any motivation to lie whatsoever?

24 A. No, sir.

25 Q. And it's your testimony here today that your brother

1 was at his house, your house, [REDACTED], when this
2 happened?

3 A. Yes, sir.

4 MR. SCHULTZ: That's all I have, Your Honor.

5 MR. BARNETTE: May it please the court, Your
6 Honor?

7 THE COURT: Yes.

8 CROSS EXAMINATION BY MR. BARNETTE:

9 Q. Mr. Bonner, you said that you was talking to your
10 brother before y'all went to bed?

11 A. Yes, sir.

12 Q. That was around midnight to one?

13 A. Yes, sir.

14 Q. If I understood, that's correct?

15 A. Yes.

16 Q. Midnight to one?

17 A. Yes, sir.

18 Q. Where was y'all talking at?

19 A. In the room. We slept in the same room.

20 Q. You shared the same room?

21 A. Yes, sir.

22 Q. Okay. So y'all went to bed around I'm assuming one
23 o'clock then?

24 A. I don't know if he went to bed. I went to bed, but he
25 was there when I went to bed.

1 Q. Okay. So he was still up at one o'clock?

2 A. He was laying down.

3 Q. Okay, so he was still up?

4 A. He was making the motion to go to sleep.

5 Q. Okay. And you didn't wake up until nine o'clock?

6 A. Yes, sir.

7 Q. So you slept all the way through that?

8 A. (Shaking head yes).

9 Q. So you don't know what he did or anything like that?

10 A. No, sir.

11 Q. Speak up a little bit.

12 A. No, sir.

13 THE COURT: You can adjust that microphone, if you
14 need to.

15 BY MR. BARNETTE:

16 Q. And y'all sleep right beside each other?

17 A. I sleep on the side of the room and he slept on the
18 side of the room.

19 Q. How big is the room?

20 A. It's about -- I can't really say.

21 Q. Is it small?

22 A. Not small.

23 Q. Two beds in there, obviously, right?

24 A. Yes.

25 Q. Y'all double beds?

- 1 A. No, sir.
- 2 Q. What kind of -- what I mean --
- 3 A. Like -- are you talking about like beds that you can --
- 4 I know what you are talking about, yeah.
- 5 Q. Okay. And how far apart are y'all away from each
- 6 other?
- 7 A. I would say about six, seven yards.
- 8 Q. Six or seven yards?
- 9 A. Yes.
- 10 Q. Okay. Y'all have tables in there and things like that?
- 11 A. No, sir.
- 12 Q. What other furniture do you have -- I mean furniture
- 13 you got there?
- 14 A. Just the beds is all. Clothes in the closet.
- 15 Q. Just beds and clothes in the closet?
- 16 A. No, sir.
- 17 Q. Nothing that you can lay down or anything like that?
- 18 A. No.
- 19 Q. And do you have a phone?
- 20 A. What?
- 21 Q. Do you have a cell phone, or did you have a cell phone
- 22 back then?
- 23 A. Yes, sir.
- 24 Q. Where did you keep it at?
- 25 A. My pocket.

1 Q. Okay. When you went to bed, where did you keep it?

2 A. On my bed.

3 Q. On your bed.

4 Did your brother have a phone?

5 A. No, sir.

6 Q. He didn't have a cell phone?

7 A. Not that I can recall.

8 Q. Okay. And y'all lived there -- you lived in Gaffney
9 and your brother has lived in Gaffney all his life, right?

10 A. I lived with my daddy for a period of time.

11 Q. Okay. And you don't know what -- you didn't hear
12 anything -- when you went to sleep with, when he was in the
13 bed beside you, you didn't hear anything going on anything
14 like that?

15 A. No, sir.

16 Q. You didn't hear him get up or anything like that?

17 A. No, sir.

18 MR. BARNETTE: One moment, please.

19 (Off the record)

20 (Back on the record)

21 MR. BARNETTE: No further questions, Your Honor.

22 THE COURT: Thank you.

23 MR. SCHULTZ: Nothing further, Your Honor.

24 THE COURT: Step down.

25 MR. SCHULTZ: I ask that this witness be excused.

1 THE COURT: He may be.

2 Your Honor, could we approach?

3 THE COURT: Yes.

4 (Whereupon, the lawyers approached the bench for
5 an off-the-record discussion)

6 THE COURT: All right, ladies and gentlemen, I
7 have got one matter I need to address, so I'll ask you to
8 please go to your jury room. Do not yet discuss the case.
9 I'll bring you back as soon as I can.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: We will be ease while Mr. Schultz
13 attempts to contact the additional witness.

14 MR. SCHULTZ: Thank you, Your Honor.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 THE COURT: All right. Mr. Schultz, now, you had
18 two witnesses that were transported from the Department of
19 Corrections that you had indicated that you might wish to
20 call to testify on behalf of Mr. Bonner. Have you had a
21 chance to talk to Mr. Manning and Mr. Agnew?

22 MR. SCHULTZ: I have, Your Honor.

23 THE COURT: And have you made a decision about
24 whether or not that you are going to call them as witnesses?

25 MR. SCHULTZ: I have, Your Honor.

1 THE COURT: What is it?

2 MR. SCHULTZ: We do not plan to present these
3 witnesses in our case in chief.

4 THE COURT: And you have discussed that with Mr.
5 Bonner?

6 MR. SCHULTZ: I have, Your Honor.

7 THE COURT: And he's in agreement with that
8 decision?

9 MR. SCHULTZ: He is.

10 THE COURT: Is that true, Mr. Bonner?

11 THE DEFENDANT: Sir?

12 THE COURT: Is that true?

13 THE DEFENDANT: In agreement with the decision?

14 THE COURT: Yes, sir.

15 THE DEFENDANT: No, sir.

16 THE COURT: You want to call Mr. Manning and Mr.
17 Agnew?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay.

20 MR. SCHULTZ: Okay. You perceive that as being a
21 good idea, Mr. Schultz, or do you need to talk to Mr. Bonner
22 about that any further?

23 MR. SCHULTZ: Your Honor, just for the record I do
24 not think that is a good idea.

25 THE COURT: Well, are they going to be able to

1 help Mr. Bonner in any way?

2 MR. SCHULTZ: No.

3 THE COURT: Mr. Bonner, do you understand Mr.
4 Schultz has talked to them and he says that they are not
5 going to be able to help you. You are trying to work
6 against your lawyer, who is trying to help you, or are you
7 trying to help your lawyer?

8 THE DEFENDANT: I ain't trying to.

9 THE COURT: Well, have you talked to Mr. Manning
10 and Mr. Agnew?

11 THE DEFENDANT: No, sir, I ain't.

12 THE COURT: Do you know what they are going to
13 say?

14 THE DEFENDANT: No, sir.

15 THE COURT: Well, did Mr. Schultz tell you what
16 they are going to say?

17 THE DEFENDANT: He didn't tell me what they were
18 going to say.

19 THE COURT: Well, maybe y'all need to discuss it.

20 MR. SCHULTZ: Thank you, Your Honor.

21 (Off the record)

22 (Back on the record)

23 MR. BARNETTE: Your Honor, may I step out for one
24 second?

25 THE COURT: Yes, sir.

1 (Off the record)

2 (Back on the record)

3 MR. SCHULTZ: Your Honor, I have discussed this
4 matter and we do not intend to call either Joshua Manning or
5 Labrontae Agnew. I have discussed that with my client. I
6 feel that he feels that it is in his best interests to not
7 call these potential witnesses.

8 THE COURT: All right. Is that true, Mr. Bonner?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay.

11 MR. SCHULTZ: Thank you, Your Honor.

12 THE COURT: Any other witnesses that you need?

13 MR. SCHULTZ: At this time the defense rests.

14 THE COURT: Okay. Do you want to renew any
15 motions?

16 MR. SCHULTZ: I do, Your Honor. I renew my motion
17 for a directed verdict.

18 THE COURT: That motion is denied.

19 Did you have any reply?

20 MR. BARNETTE: No, sir, we do not.

21 THE COURT: All right. Are there any specific
22 jury instruction requests?

23 MR. BARNETTE: None from the State, Your Honor.

24 MR. SCHULTZ: Your Honor, just the alibi defense
25 standard instruction.

1 THE COURT: Okay.

2 MR. SCHULTZ: That's all I have.

3 THE COURT: Okay. All right. Bring the jury in
4 please.

5 (The following takes place in the presence of the
6 jury panel)

7 THE COURT: Anything further on behalf of the
8 defendant?

9 MR. SCHULTZ: No, Your Honor. The defense rests
10 at this time.

11 THE COURT: All right. Any reply?

12 MR. BARNETTE: None from the State, Your Honor.
13 Thank you.

14 THE COURT: Ladies and gentlemen, that is all of
15 the testimony or evidence to be offered in the trial of the
16 case, and, therefore, what remains to be done are the
17 lawyers final summations, after which I'll instruct you on
18 the law, and then you can begin with jury deliberations in
19 the case. So please give the lawyers your attention now as
20 they give you their final summations.

21 Mr. Schultz.

22 MR. SCHULTZ: Thank you, Your Honor. May it
23 please the court?

24 Ladies and gentlemen of the jury, I want to thank
25 you first for your attention these last two day. I watched

1 every one of you very closely and I appreciate that very
2 much. You make this system work and we can't do this
3 without active members who are on jury system in this
4 country.

5 Well, it's over and I want to wrap up everything
6 for you at the end, and at the end of my closing statement
7 you will be even more convinced that my client had nothing
8 to do with this terrible crime. These five witnesses that
9 you heard have life in prison, life in prison, hanging over
10 their heads, and they lied to you yesterday, and they lied
11 to you today, just like they lied to the police before. You
12 should not trust what they said. And another thing, you
13 can't trust what they say. You cannot trust what they say.

14 Like I said before, closing argument is where I
15 tie up everything. We go over each and every part of the
16 testimony, because in a few minutes you are going to go back
17 to that room and talk this over and reach a verdict.

18 Now, in my opening I talked to you about a couple
19 of key words: Reasonable doubt and burden of proof.

20 After listening to the testimony the last couple
21 of days, you have now seen that there is more than enough
22 reasonable doubt to acquit John on all these charges. The
23 State has not carried their burden of proof, and you must
24 acquit. You have no other choice, you must acquit, and here
25 is why.

(1 Let's go back and see where we got here. You
2 heard from Officer Sizemore yesterday. He was the first
3 person to testify. He was the first officer to respond to
4 the scene. He just confirmed that something happened at her
5 house. He wasn't sure how many people were there. He
6 collected no evidence and secured the crime scene.

7 Then you heard from Mr. Patel. And the still
8 shots of video, you saw them up there on that big board
9 there. Now, you looked at each one of these still shots and
10 I know that nobody in the world, especially the jury, you,
11 the jurors, can tell who these people are. The only people
12 that supposedly identified them had a motivation to lie, and
13 we will get to that a little later.

(14 Whoever those people were that you saw up there on
15 those still photos, they had rags over their faces. There
16 is not a person on earth who could possibly identify these
17 people just by that photograph. Just by that photograph
18 there is not anybody in the world that can do that. That's
19 reasonable doubt right there.

20 Then you heard from the first person that was
21 there that night. He admitted to actual involvement in
22 this. His name was "R.J." Wilson. He's a kid. Most of
23 these guys are kids, all of them. He's scared. He's doing
24 whatever he has to do to avoid jail time. His attorney told
25 him to testify to avoid jail time, get his time cut, but

1 like all of these other guys, when he had the opportunity,
2 opportunity, to come clean about this, the very first time
3 he talked to the police, what did he do? By his own
4 admission, what did he do? He lied to the police the very
5 first time. He told the cops in quotes "I had nothing to do
6 with it." He doesn't talk about "Ro-Ro". He doesn't talk
7 about "Yankee". Nothing about "Brontae". Nothing about
8 "Lil Fred", all those guys up there. He just says --
9 through his own testimony yesterday, he says "oh, yeah, I
10 heard something about that." Are you going to believe a guy
11 like that that says that? You can't. He spent over an hour
12 and a half, this is "R.J." Wilson, talking to the police
13 that day. By his own admission, he said he lied to the cops
14 about his involvement in the case. You heard him in here
15 yesterday. So what happened? It's only when he is about to
16 get charged with it, only when he does get charged does he
17 come clean. Only when he's going to get charged does he
18 come clean. And that, my friends, is called dishonesty.
19 That's called deceit. And that's not the stuff that you get
20 an innocent man convicted for something that he did not do.

21 "R.J." said that he stayed in the car while the
22 other guys went in the house, into the store. Again, he's
23 trying to minimize his involvement in the crime. Before it
24 was "I had nothing to do with it." Then it was three days
25 later he went to the police. Oh, yeah, the next time he

(1 talked to the police it was "yeah, they told me to come pick
2 them up." Then one day later when he talked to the police
3 again, then it was "I drove the car. Then I was a lookout.
4 Then I took a card and threw it in the bushes," again trying
5 to cover up what he did. Every day it's a different story.
6 I bet if he testifies tomorrow, it's going to be a different
7 story. What would be tomorrow? He's liable to make up a
8 whole new story just to get his time cut, and he admitted to
9 that on the stand. You all heard it.

10 There was also little differences in these stories
11 too. And because you paid such close attention, you
12 probably heard this, but I'll go over it with you again.

(13 For instance, "R.J." told y'all that all the boys went home
14 after the incident was over. "R.J." said they went straight
15 home. Ken Tate, and I'll get into his testimony a little
16 later, said they went to a hotel. Well, what is it? They
17 should know it. It happened to them. It's the truth. And
18 the truth is the easiest thing to tell because you have
19 lived it. You know it. Especially when you are on the
20 stand, when you take that oath on the Bible, when you swear
21 to uphold the truth, nothing but the truth, you say so help
22 you God, and they lied. And you know what they said before?
23 They said that they were telling the truth before in their
24 first statements and they are liars.

(25 Now, "R.J." knew what he was doing. All these

1 guys are looking at life imprisonment. Everybody that you
2 heard that was there is looking at life in prison. Like I
3 said in my opening yesterday, they have everything to gain
4 and their whole life to lose. I want you to remember that
5 when you go back there and deliberate. Everything to gain
6 and their whole life to lose, because when that gavel comes
7 down, when they complete their pleas, that's it for them,
8 and they are doing everything they can in the world to get
9 their time cut.

10 Now, after "R.J." you heard from Kendrick Tate or
11 Ken Tate. The guy that had a lot to live for just last year
12 on the Gaffney football team, I guess. And through his own
13 admission, through his own admission, and I asked him that
14 question, if you remember that. I asked him he's trying to
15 salvage what he's got in his life and he said yes. Now,
16 when the police first started talking to him and all his
17 other buddies, and you heard this before, and ladies and
18 gentlemen, I want to apologize, because almost every witness
19 that I had, that the State had, I had the same questions for
20 had, the same questions for them, because they all had a
21 motivation to lie.

22 When the police started talking to him, like all
23 those other buddies, he denied everything. He said he was
24 in with two girls in Spartanburg, but that was a lie too.
25 And the most interesting part of this is that you heard his

(1 testimony yesterday. On his direct testimony, Mr. Barnette
2 said that "you came to the police first, didn't you? You
3 tell the truth all the time, didn't you?" And he said
4 "yeah, I did." But then he admitted when I cross-examined
5 him, he said that "oh, yeah, I remember now. I talked to
6 the police. In my first statement I said I had an alibi."
7 So he lied to you right then, right here in court. Then he
8 remembers it on cross-examination "oh, yeah, I did lie to
9 the police about saying that I had an alibi." Then he says
10 that he fessed up. So he went to go talk to the police in a
11 car and tell them what happened and the cop told him that
12 "you got nothing to worry about," but he did have something
(13 to worry about. He has life in prison hanging over his
14 head, and that's something to worry about, and that's why he
15 lied today and yesterday.

16 And I asked Kendrick if a reasonable person would
17 expect to do everything and anything in his power to avoid
18 jail time, and he said yes. Do you remember that? He said
19 yes. And that's exactly what he tried to do yesterday.

20 Now, the last guy that you heard from yesterday
21 was Kwame Douglas. And just like the rest of these people,
22 he gave -- he first give a statement where he lied. He told
23 the investigators that "I didn't go in the house." He
24 originally admitted to his involvement in the crime, but
(25 only told half truths. Well, I have been brought up to

1 believe that there is no such thing as a half truth. It's
2 either the truth or a lie. And, again, Douglas told you
3 what he wants you to believe as the truth, when his butt is
4 on the line, just like all these other guys.

5 Let's talk about the police in this case. Now,
6 yesterday when I cross-examined Officer Segina about this
7 case, he told me the whole house was ransacked. You saw the
8 pictures right up there. There is plenty of evidence to
9 collect. There was blood on the floor. There could have
10 been DNA all over that house. They could have closed out
11 this case. There was scarves. There were bandannas that
12 they recovered.

13 Now, I know that you have all seen CSI on TV, or
14 NCIS, or all those crime shows on CBS. How do they solve
15 crimes? Well, to get the results from the lab first and
16 then they talk to the people that they think were involved,
17 and then the people say "oh, yeah, it wasn't me." And then
18 they say "well, we have your hair strands here," or, "we got
19 your blood," or, "we got your DNA." And then they say
20 "yeah, it was me." It's all solved in under an hour. Okay.
21 This case is still not solved. All that stuff that you see
22 on CSI and NCIS, some of that stuff -- in fact, most of the
23 stuff, that's real. Every county in this country has the
24 ability to collect this evidence and get it tested; get it
25 tested for DNA, everything, okay, but they didn't do it

1 here. They thought it was an open and shut case. They
2 could have closed the deal with this case. Why didn't do
3 they do it? Reasonable doubt. They just chose not to. I
4 don't know why. Maybe they felt this was an open and shut
5 case, but, ladies and gentlemen, it was not, and you should
6 have a lot more questions than you have answers. And if you
7 remember, the last question I asked the officer was there
8 any forensic evidence linking anybody to this crime, and you
9 know what he said? Clearly he said no. And that, my
10 friends, is reasonable doubt right there.

11 You heard from the victim too. I didn't have any
12 questions for her. I felt bad for her. I wanted to tell
13 her that my guy had nothing to do with this crime. I didn't
14 have any questions for her.

15 In conclusion, ladies and gentlemen, this was a
16 regrettable incident and unfortunately we are no closer to
17 the truth than we were yesterday.

18 In fact, let's talk about Mr. Bonner getting up
19 there. Now, he's looking at a lot of time today. He told
20 you the truth today. And two people that had no motivation
21 to lie - his mother and his brother - they were there that
22 day, or that morning. They saw him there. They knew that
23 he had nothing to do with this. Again, I ask asked them, do
24 they have any motivation to lie. They said no. When they
25 were cross-examined by the solicitor, Kelvin and Eva Bonner,

1 Mr. Barnette never got it through that they had any
2 motivation to lie. They don't. They have still don't.
3 When they testified today, they told the truth.

4 The only eyewitnesses they have that they have
5 presented, all, every one of them, have a motivation to lie,
6 and there is no forensic evidence. Ladies and gentlemen,
7 that is reasonable doubt, if there ever was reasonable
8 doubt, ever in a case. The State has not met their burden
9 of proof.

10 You know, while I was preparing for this case I
11 came across an old quote, which I think is very appropriate
12 in this case, and it comes from the eighteenth century. It
13 is "nothing consecrates the mind quite like a hanging in the
14 morning." Well, what was true two hundred and fifty years
15 ago is true today in Gaffney.

16 All these five people, those five people up there
17 that testified, said that they never had any deals made, but
18 they know what happens if they didn't testify today or
19 yesterday. They know what happens. They admitted that up
20 on the stand. They all are looking to get their time cut.
21 And the best way to do that is to blame an innocent man,
22 John Bonner. The best way to do that is to blame an
23 innocent man to get their time cut. If you do, remember the
24 last guy from yesterday, Kwame Douglas, he admitted that at
25 first he didn't think there was any evidence to convict him.

1 Do you remember that? There is no evidence to convict him,
2 so he lied. And then I asked him so if it remained like
3 that, he wouldn't have come forward. And then I asked him
4 "so the evidence, if it remained like that, would you have
5 come forward," and he goes "no, I wouldn't have come
6 forward."

7 Ladies and gentlemen, in summary, you cannot
8 believe these people.

9 Another quote that I came across was an old law
10 book from law school. My first class in criminal defense.
11 That quote said "it's difficult to imagine a greater
12 motivation to lie than trying to avoid going to prison."
13 And I want you to think about that quote when you go back
14 there and deliberate, and I'll repeat it again. "It is
15 difficult to imagine a greater motivation to lie than trying
16 to avoid going to prison." When these five guys go up in
17 front of the judge again, and they will, and that gavel
18 falls down, the solicitor will say that they cooperated, and
19 you know what they will probably get? A slap on the wrist.
20 Don't let them get away with it. Send a message to all
21 these people that cut deals. Send a message to all these
22 people that cut plea deals; cut a deal in the last second,
23 that behavior should not be rewarded. All these guys lied.
24 And when they didn't think they could get caught, now not
25 only did they get caught, but they have already pled guilty

1 to these crimes. The State wants you to believe that these
2 people are telling the truth. They're about to be convicted
3 criminals, all five of them, and the State asking you to
4 convict based upon their word, and their word alone. And
5 you should not do that. Once more, you cannot do it. You
6 must vote to acquit. You must vote not guilty. Thank you.

7 THE COURT: Mr. Barnette.

8 MR. BARNETTE: If it please the court, Your Honor.

9 Ladies and gentlemen, they keep talking about
10 forensic evidence, but we all know that they were wearing
11 gloves and masks. You don't have to watch CSI. CSI
12 couldn't get DNA evidence, fingerprints from gloves or
13 stocks that they were wearing. Let's take care of that.
14 The police did everything that they could concerning that.
15 The blood on the floor was her blood.

16 He wants to talk about testimony. Let's talk
17 about Mr. Bonner's testimony. He said "well, I went to bed
18 at 10:00, 10:30 that night. I got a cell phone call around
19 2:00, 2:30 from Fred Douglas." And, by the way, he told us
20 who was with Fred. How would he have a cell phone, number
21 one? The first guy on his cell phone would get that phone
22 call. Do you remember his brother's testimony. The guy
23 that slept in the same room with him went up there and said
24 "he don't own a cell phone."

25 Then I asked him, I said, you know, I said "do you

1 work?" He says "yeah, I do few odd jobs, whatever, do it on
2 a cash basis."

3 He said -- Mr. Schultz asked his mom; "he doesn't
4 work. He don't do odd jobs."

5 Here is the man that comes in and tells you, and
6 you get to weigh the credibility of the witnesses, ladies
7 and gentlemen. He's here telling you that he had nothing to
8 do with this. He's sleeping in the bed all night and he's
9 just there. I said you can take that into consideration.
10 You look at that evidence. His mom and his brother
11 testified to that. He just flat out is not telling you the
12 truth.

13 Mr. Schultz makes a big deal out of all these
14 co-defendants. Well, they plead to what they done. And,
15 sure, it's human nature. You are going to lie to try to
16 keep out of trouble. You are not going to want to face the
17 music.

18 I'll never forget. My dad was a school principal.
19 And before I became a prosecutor, I was a school teacher. I
20 was substitute teaching one day. My dad had two couches in
21 his office. He was an elementary school principal. And
22 what happened was they didn't know was, but he already had
23 the evidence of what they done. They had stole some things
24 out of a locker. He looked at them, he confronted both of
25 them. They both lied at the beginning. He separates them.

1 He confronts them. One of them told him the truth. He had
2 a board of education paddle like that that he always kept in
3 his office. He give both of them two licks. And the other
4 kid, he keeps on walking. Then he brings in a witness that
5 saw what happened. The guy went in the room, he said you
6 are going to get five. You are going to get what he said.
7 I asked my dad why would you do that? He said son, nobody
8 wants to tell you the truth until you are faced with it. He
9 said that man -- that boy learned a lesson. And just like
10 they did, when they are confronted with the truth, they came
11 forward.

12 And you remember Kendrick Tate, his conscience got
13 him. They had no clue. The police had been talking to all
14 those kids. He came to this man right here and told him
15 what happened after he talked to his mom and his
16 grandmother. Then he came clean. That's when they all
17 started getting confronted with the truth.

18 But what did he do? He ran to North Carolina. He
19 said "well, I was up there with a girl." Here is a guy that
20 lived here all his life. Seventeen years old, living here.
21 Went to North Carolina and the police had to go get him to
22 bring him back here.

23 You heard the testimony. You heard all those
24 pieces of the puzzle from that standpoint. You got to hear.
25 These witnesses were sequestered and was not allowed in the

1 courtroom. They came to testify and told you what happened.

2 I started with "R.J." Wilson. He was just at the
3 car. He didn't even go into the house or into the store.
4 But you heard this lady right here say there was four people
5 that came in that house that she saw. He waited there. He
6 told you. He told you what he was doing.

7 Then you have got Kendrick Tate. He didn't go in
8 the house. He was a lookout. He told you what happened,
9 what his involvement was. Of course, under the law when you
10 are an accomplice, you are just as guilty as the principal
11 there. Even though they didn't go inside the house, they
12 didn't do that, they were involved with it.

13 You heard Billy Rodgers, that once he heard the
14 gunshot, he did go in. And he told you what he saw in
15 there.

16 Then you heard from Fred Douglas, "Little Fred",
17 or Kwame Douglas, tell what happened when he went in there.

18 And who had the gun, ladies and gentlemen? That
19 man right there had the gun.

20 They talk about all the lying they want to and
21 everything else, but what happened to this lady? She told
22 you what happened to her. Can you imagine being asleep in
23 your bed, the door is locked, middle of the night. A
24 gunshot rings out as soon as they knocked open your door and
25 they put a gun straight to her head, right here, and asked

1 her where the money was. They kept after her. They beat
2 her. You saw her injuries. Then they started taking her
3 clothes off. They went through her whole house. They went
4 through her purse. Can you imagine what that went through
5 for a woman to go through that? Then she said "let me get
6 my clothes on. Let me get my clothes." They give her the
7 key and you have seen the pictures.

8 This man right here dressed in his coat. And I
9 asked his mother, I said "what coat does he own, or
10 whatever?" He had several coats. Well, that's the coat he
11 used that night. Him and "Brontae" goes over to the store.
12 The thing that may have saved her life that night, they
13 didn't know the delayed alarm in that system. When you open
14 the door you have to push a button to keep the alarm from
15 going off. Of course, they are going through the till and
16 stealing all that money, what they had been looking for.
17 Then an alarm goes off, thank goodness, but she still got
18 hurt, making her go through what she went through. Then
19 they run off and split the money.

20 If you noticed what was interesting about the
21 money was their involvement and how much they got paid.
22 "R.J." I think was \$300. Mr. Wilson was \$300 and some
23 dollars. Rodgers was 500. I can't remember if Tate was
24 three or 400. Douglas got 2,500. I can't imagine how much
25 he got. He don't do any work. He does everything on a cash

1 basis.

2 All of them didn't have a record before all this
3 happened. One of them had a chance to go to USC on a
4 football scholarship. That's over. That ain't going to
5 happen.

6 But guess who had the record? He did. He had a
7 felony conviction on his record. He wants you to believe
8 that he was asleep in bed that night, and he put this woman
9 through the worst night of her life.

10 And if you remember yesterday when we started
11 this, I asked you one thing, and one thing only. I'll ask
12 you for justice here today, because the evidence is clear.
13 They can argue there was no forensic evidence and
14 everything, but they kept working this case. Kendrick Tate
15 started it. He went, after he talked to his mom and
16 grandmother, and told the truth, and then started all things
17 going. He's the only one who wouldn't come clean, ladies
18 and gentlemen, because he knows what he's facing. So the
19 one thing I ask you to do is bring him to justice today.
20 It's time for him to face his medicine, because stuff like
21 this doesn't happen in Cherokee County. Our people don't
22 deserve to go through something like this. Just please
23 bring this lady justice. Thank you all very much.

24 Thank you, Your Honor.

25 (Whereupon, at 12:50 p.m., the Court charged the

1 jury panel their jury instructions)

2 THE COURT: Mr. Foreman, ladies and gentlemen of
3 the jury, you, of course, have heard and seen all the
4 evidence in the case. You have now heard the final
5 summations of the lawyers, and, therefore, it now becomes my
6 duty and obligation to instruct you on the law that's
7 applicable in the case. Then you will be asked to go back
8 and begin with your deliberations. And through that process
9 you will examine the evidence, decide the facts, apply the
10 law and arrive at a fair and just decision in the case,
11 whatever that decision might be.

12 It is your exclusive duty to determine what the
13 facts are. And you do that through your own common sense
14 examination and evaluation of all of the testimony and other
15 evidence received during the trial of the case. You twelve
16 jurors alone will decide what weight, value and effect to
17 give any particular witness' testimony, or even portions of
18 testimony.

19 Your sole objective, again, is to simply reach the
20 truth in the matter. And by doing that you will have
21 fulfilled your obligations as jurors, and that is to simply
22 give both the State and the defendant a fair and impartial
23 trial.

24 Now, in this case, as you know, the State, through
25 the prosecutor, has accused this defendant of having

1 committed six separate and distinct criminal offenses,
2 although each of those offenses is alleged to have arisen
3 out of one particular event or course of events which the
4 State alleges occurred back on April the 2nd of 2008.

5 And by way of six separate indictments, the
6 defendant has been accused of the crimes of burglary in the
7 first degree, kidnapping, armed robbery, assault and battery
8 of a high and aggravated nature, burglary in the second
9 degree, and grand larceny. The allegations setting forth
10 those charges are contained in each of those separate
11 indictments. But as I have told you, while the indictments
12 will be in the jury room to serve as the verdict forms in
13 this case, the indictments serve no other purpose, so far as
14 jurors are concerned. The indictments don't prove anything.
15 They don't establish anything. They are simply in the jury
16 room to serve as the verdict forms.

17 But as to each of the charges contained in each of
18 those indictments, the defendant has entered a plea of not
19 guilty. And as I have told you, that plea not guilty,
20 therefore, places upon the State the burden of proving the
21 allegations that they have made against the defendant, the
22 burden of proving each of the essential elements that
23 constitutes the crimes that have been alleged against the
24 defendant. And, therefore, the burden is upon the State to
25 establish the defendant's guilt to the satisfaction of you

1 twelve jurors beyond a reasonable doubt before any verdict
2 of guilty could be returned as to any of the separate
3 indictments.

4 The burden is never upon a defendant or a person
5 accused of a crime to prove that they are not guilty or to
6 prove that they are innocent, because in some cases that
7 might not be possible. The burden is always upon the State,
8 because they have brought the charge against another to
9 establish that person's guilt beyond a reasonable doubt.

10 You are instructed that it is a vital, important,
11 and cardinal rule of law that every defendant in a criminal
12 trial, and it does not matter how serious the offense might
13 be for which that person stands charged, that person shall
14 always be presumed innocent of the charge. And that
15 presumption of innocence remains with any defendant, as it
16 does with this defendant, from the time that he is placed
17 under arrest, and throughout the course of the criminal
18 process, and even throughout the course of the actual trial
19 in the case.

20 And, as I have told you, that presumption of
21 innocence will be with Mr. Bonner even as you go back into
22 your jury room to begin the jury deliberations in this case.
23 And that presumption of innocence will be with him in that
24 jury room, and it will be with him forever, unless you
25 twelve jurors determine that he's no longer entitled to that

1 presumption of innocence as it relates to a particular
2 charge.

3 In other words, after you have carefully
4 considered all of the evidence in the case and from that
5 evidence you have decided the facts, and upon deciding those
6 facts, you apply the law that I will have provided you. If
7 you twelve jurors unanimously determine that his guilt as to
8 a particular charge has been proven beyond a reasonable
9 doubt, then he would no longer be entitled to that
10 presumption of innocence as it relates to that particular
11 charge. But it's only if, unless, and until you are
12 satisfied of his guilt of a charge beyond a reasonable doubt
13 that the presumption of innocence would no longer be
14 applicable.

15 Now, while the State does have the burden of
16 proving a defendant's guilt beyond a reasonable doubt, that
17 doesn't mean that the State has to prove his guilt beyond
18 all doubt or beyond any possible doubt, but it does require
19 the State to prove his guilt to your satisfaction beyond a
20 reasonable doubt. And the term reasonable doubt should be
21 given its plain and ordinary meaning. A reasonable doubt is
22 the kind of doubt that would cause a reasonable person to
23 hesitate to act upon the information provided. And a
24 defendant in a crime trial is entitled to any reasonable
25 doubt that arises from the evidence, or lack of evidence in

1 the case.

2 And if, upon any factual issue essential to a
3 finding of a verdict of guilty, you have some reasonable
4 doubt as to how this issue should be resolved, it would be
5 your duty to resolve that reasonable doubt in favor of the
6 defendant. And, therefore, upon your consideration of the
7 whole case you have a reasonable doubt as to the defendant's
8 guilt as it relates to a particular charge, it would be your
9 duty to resolve that reasonable doubt in his favor and to
10 return a verdict of not guilty as it relates to that
11 particular indictment.

12 And at the same time, after you have considered
13 all the evidence in the case and decided the facts and
14 applied the law, if you have no reasonable doubt as to the
15 defendant's guilt as it relates to a particular charge, then
16 it would be your corresponding duty to convict him of any
17 offense for which you are satisfied and has been proven
18 beyond a reasonable doubt.

19 Now, the same law that provides that you are the
20 judges of the facts also provides that I am the judge of the
21 law, and that simply means that nobody is going to tell you
22 how to arrive at your determination of fact in this case.
23 You do that, as I have stated, through the exercise of good
24 judgment and common sense consciously applied to the
25 testimony and the evidence received during the trial of the

(1 case. You must, however, under your oath as a juror accept
2 the law as I provide it to you as being the law that is
3 applicable in this particular case. In other words, you are
4 not to concern yourself with what you thought the law was
5 before you came to serve as a juror this week or what you
6 think the law ought to be. You must simply under your oath
7 accept the law as I provide it to you as being the law that
8 is applicable in this case. Then you take that law and you
9 apply it to the facts as you twelve jurors determine those
10 facts to be, based upon your common sense examination of the
11 testimony and evidence received during the trial.

(12 Because you are the sole judges of the facts in
13 this case, you are, therefore, necessarily the sole judges
14 of the credibility or the believability of each witness that
15 has testified during the trial of this case. You twelve
16 jurors alone with decide what weight, value, and effect to
17 give to any particular witness' testimony, or even a portion
18 of that testimony.

(19 And so there are several factors which you should
20 consider in arriving at your assessment as to a particular
21 witness' credibility, and I'm going to go list those factors
22 for you. You should consider the demeanor of the witness;
23 that is, what was the witness' manner and appearance as the
24 witness testified from the witness stand? Was the witness
25 straightforward in responding to questions, or was the

(1 witness hesitant or evasive in responding to questions that
2 were asked of that particular witness? Simply put, did the
3 witness appear to you to be telling the truth and to have
4 knowledge of the facts to which that witness has testified?

5 You may also consider whether or not the testimony
6 of a witness is consistent or is it inconsistent with that
7 witness' own testimony or with other statements made by that
8 same witness in court or outside of court. And you may
9 consider whether or not the testimony of a witness is
10 consistent or is it inconsistent with other testimony or
11 other evidence received during the trial of the case.

(12 You should also consider how the witness came to
13 know the facts to which a witness has testified. In other
14 words, what was a particular witness' opportunity and
15 ability to perceive the existence of those facts to which
16 that witness has testified by having previously used his or
17 her senses, and then what is that witness' ability to be
18 able to come into court and to accurately recollect to you
19 as to what that witness has previously perceived?

(20 And you should also consider any bias, prejudice,
21 or interests that a witness might have in a case. In other
22 words, do you find some reason that a particular witness
23 would come into court and would testify one way or another
24 to help or to hurt one side or the other, and you may
25 consider any interest that a witness might have in the

(1 outcome of the case, if you determine that a witness does
2 have such an interest, and you further find that that
3 interest would bear upon that particular witness'
4 credibility.

5 And you may also consider whether or not the
6 testimony of a witness is strengthened or was it weakened by
7 other testimony or other evidence received during the trial
8 of this case.

9 Now, during the course of the trial you have heard
10 testimony elicited from the defendant during the course of
11 his testifying regarding his having been previously
12 convicted of a criminal offense. Ordinarily evidence of
(13 prior criminal convictions are not admissible during the
14 trial of a case, because they are not relevant to any issue
15 that the jury must determine. However, when a witness takes
16 the witness stand and testifies, where that witness has been
17 convicted of particular criminal offenses, evidence of that
18 conviction may be introduced during that witness' testimony,
19 but evidence, such as that, is restricted and limited to a
20 very specific purpose. The only purpose for which it is
21 offered and the only purpose for which it may be considered
22 is for any impeachment value it may have as it relates to
23 the witness' testimony. In other words, you may consider
24 evidence of that conviction as it relates to the credibility
(25 and the believability of the defendant's testimony, in the

(1 event you find such evidence to be probative and credible on
2 that point, but you may not consider it for any other reason
3 or any other purpose. It is being offered solely for the
4 purpose of impeachment, should it have that value in your
5 opinion. It is not being offered as any proof of the
6 defendant's commission of any crime for which he presently
7 stands charged, and you may not consider it for that
8 purpose.

9 Now, you as the finders of the fact and you as the
10 judges of the credibility of each witness are permitted to
11 believe as much or as little of what a witness has testified
12 to as you deem is appropriate. And, therefore, you may
(13 believe everything that a witness testified to. You may
14 choose to believe none of it. You may believe one portion
15 of a witness' testimony and reject some other portion of
16 that same witness' testimony. And in a given case, you may
17 believe one witness as opposed to several, or several as
18 opposed to one. Whatever your good judgment and common
19 sense tells you is the most believable and credible
20 testimony is the testimony that you should accept, and you
21 should reject any testimony or other evidence that you find
22 not to be credible or believable.

(23 Again, your sole objective is to simply reach the
24 truth in the matter, and it should not matter from what
25 source that truth may come, whether it be from a witness for

1 the State or a witness for the defendant, or a combination
2 of testimony and evidence received from both sides in the
3 case.

4 Now, in this case, as you know, the defendant is
5 charged with six separate and distinct offenses. You will
6 be considering each of those offenses separately and you
7 will be considering those separately as it relates to the
8 evidence presented and the law that's applicable that I'm
9 going to provide you. You will be called upon to render six
10 separate and distinct verdicts. And as I have told you,
11 those verdicts may be the same. They may be different.
12 That, of course, will depend upon your determination of fact
13 and then your application of the law to the facts as you
14 determine them to be as they relate to each of the separate
15 charges.

16 Now, I have got to give these instructions to you
17 in some order, so I'm simply going to begin with the
18 indictment charging burglary in the first degree. Don't
19 attach any significance to the order I give the instruction
20 to you. I have got to start somewhere. I have got to
21 finish somewhere. When you go back to deliberate, you start
22 anywhere that you want to in any fashion that you want to.

23 The indictment charging burglary in the first
24 degree alleges that the defendant did, here in Cherokee
25 County, on April the 2nd of 2008, enter a dwelling that

1 belonged to Dipali Darji, located here in Gaffney, without
2 consent and with the intent to commit a crime therein. And
3 they recite additional factors which they contend support
4 the charge of burglary in the first degree.

5 Burglary in the first degree is a statutory
6 offense, and that statute is set forth in 16-11-311 of the
7 Code of laws. And the Code of Laws are simply these blue
8 volumes of books. There are twenty-seven of them. Every
9 year the legislature meets. They pass various laws, rules
10 and regulations that govern our conduct in a variety of
11 ways. Some of those statutes are criminal statutes, and it
12 just means that the legislature has described particular
13 conduct and prohibits us from engaging in that conduct in
14 violation of statute. And where a person is found to have
15 engaged in conduct in violation of a statute, then it would
16 subject that person to some form of punishment or penalty
17 for having violated the statute.

18 Please understand, however, that the jury is never
19 to be concerned with punishment or penalty. That's not
20 something that a jury decides. Your sole obligation, duty,
21 and function in this case is to determine whether or not the
22 evidence in the case proves the defendant guilty of a crime
23 beyond a reasonable doubt, and you are to make that
24 determination without any regard to punishment or to the
25 consequences of your decision. You simply must determine

1 whether or not the defendant's guilt has been proven beyond
2 a reasonable doubt.

3 Burglary in the first degree, as I stated, is set
4 forth in Section 16-11-311, and that statute provides as
5 follows:

6 A person is guilty of burglary in the first degree
7 if the person enters a dwelling without consent and with the
8 intent to commit a crime therein;

9 And when, in effecting entry or while in the
10 dwelling or in flight therefrom, the defendant or some other
11 participant in the crime:

12 Is armed with a deadly weapon; or,

13 Causes physical injury to a person who is not a
14 criminal participant in the crime; or,

15 Uses or threatens the use of a dangerous
16 instrument; or,

17 Displays what is or appears to be a knife, pistol,
18 revolver, rifle, shotgun, machine gun, or other firearm; or,

19 The entering or the remaining occurs in the
20 nighttime.

21 Therefore, based upon the foregoing statute before
22 you could return a verdict of guilty as to the crime of
23 burglary in the first degree, it would be necessary that the
24 evidence in this case has established to your satisfaction
25 beyond a reasonable doubt four essential elements:

1 First, it must be established that the defendant
2 entered a dwelling.

3 Entry is an indispensable element in the crime of
4 burglary, and entry is just simply the act of going into the
5 dwelling.

6 And as stated, it must be an entry into a
7 dwelling. And a dwelling is defined in the law as a
8 building or a structure which is used or normally used for
9 sleeping, living, or lodging by a person.

10 There must be an entry of a dwelling, and,
11 secondly, without consent.

12 Entering without consent means to enter a dwelling
13 without the consent of the owner or person otherwise in
14 lawful possession of the premises.

15 Thirdly, there must be an entry of a dwelling
16 without consent and with the intent to commit a crime
17 therein. There must be an intent to commit a crime, whether
18 or not the crime was actually committed, accomplished, or
19 completed. The mere entry of a dwelling without an intent
20 to commit a crime does not constitute the crime of burglary.
21 It is only when there is an entering accompanied with an
22 intent to commit a crime that the crime of burglary is
23 complete. And a crime of any grade or severity is
24 sufficient to satisfy this element of the crime of burglary.

25 And intent means the state of a person's mind

1 which directs his actions towards a specific object or goal.

2 The entry of a dwelling without consent and with
3 the intent to commit a crime therein completes the crime of
4 burglary.

5 Now, in order for the State to prove the crime of
6 burglary in the first degree, the State must prove a fourth
7 element. And that fourth element is that the State must
8 prove when in effecting entry; or while in the dwelling, or
9 in immediate flight therefrom the defendant or some other
10 participant in the crime was armed with a deadly weapon; or,

11 Caused physical injury to a person who was not
12 participating in the criminal enterprise; or,

13 Used or threatened the use of a dangerous
14 instrument; or,

15 Displayed what appeared to be a knife, pistol,
16 revolver, rifle, shotgun, machine gun, or other firearm; or,

17 The entering or the remaining occurred in the
18 nighttime.

19 Now, while the State may allege more than one of
20 the factors just enumerated above exists in alleging
21 burglary in the first degree, the State does not have to
22 prove more than one of the enumerated factors accompanying
23 the burglary, but the State must prove at least one of the
24 additional factors before burglary in the first degree may
25 be made out.

1 The next indictment I'm going to address is the
2 indictment charging the defendant with the crime of
3 kidnapping, the State alleging that on April 2nd, 2008, he
4 did unlawfully and with criminal intent, seize, confine,
5 inveigle, decoy, kidnap, abduct, or carry away one Dipali
6 Darji, without authority of law.

7 Kidnapping is also a statutory offense and that
8 statutory reference is set forth in 16-3-910 of the Code of
9 laws, and that statute provides that whosoever shall
10 unlawfully seize, confine, inveigle, decoy, kidnap, abduct,
11 or carry away any other person by any means whatsoever,
12 without authority of law, is guilty of the crime of
13 kidnapping.

14 In order for the defendant to be found guilty of a
15 violation of this statute, it would be necessary that the
16 State has proven to your satisfaction beyond a reasonable
17 doubt each of the essential elements of the crime of
18 kidnapping:

19 And the essential elements of kidnapping as
20 provided for in the statute are:

21 Number one, it must be proven that the defendant
22 did seize, or confine, or inveigle, or decoy, or kidnap, or
23 abduct, or carry away another person by some means or
24 method;

25 And secondly, that one, or more, of the above acts

1 was done without the authority of law.

2 Now, with regard to the term set forth in the
3 first element, you are instructed that the term seize means
4 to take hold of suddenly and forcibly.

5 The term confine means to imprison or to restrain
6 or to restrict a person's freedom in some significant way.

7 The terms inveigle and decoy means to lure,
8 entice, or lead astray by false representations or promises
9 or other deceitful means.

10 The term abduct means to take a person away
11 against his or her will and without consent.

12 And the term carry away means to remove from one
13 place to another without legal authority and without consent
14 of the person being removed.

15 The term kidnap means to carry a person away
16 through the use of force and against his or her will and
17 without authority of law.

18 And the term without authority of law simply means
19 that the conduct engaged in was not permitted, sanctioned,
20 condoned, allowed, or justified under the law.

21 Therefore, in order for the defendant to be found
22 guilty of a violation of this statute, the State must prove
23 one -- they may prove more, but it's not necessary that they
24 prove more than one of those terms as set forth in the first
25 element. In other words, the State need not prove each of

1 the terms seize, confine, inveigle, decoy, kidnap, abduct,
2 or carry away. Proof of any one of those prohibited acts is
3 sufficient, so long as it was done without authority of law
4 and without the consent of the person alleged to have been
5 kidnapped.

6 The next indictment I will address is the
7 indictment charging assault and battery of a high and
8 aggravated nature.

9 In order for you to understand an assault and
10 battery of a high and aggravated nature, I'll charge you and
11 define for you the terms of assault and battery and then
12 assault and battery of a high and aggravated nature.

13 An assault is the unlawful attempt to do violence
14 or injury to the person of another where there is the
15 present ability to complete the attempt by way of a battery.

16 And a battery is the unlawful and intentional
17 touching or striking of the person of another by the person
18 committing an assault or by any object put in motion by that
19 person.

20 A battery may be further defined as the carrying
21 into effect an assault by using or applying force to the
22 person of another, however slight, in a rude, angry, or
23 resentful manner and without just cause or legal excuse.

24 A battery is the completion of an act doing
25 violence or injury to the person of another.

1 And an assault and battery of a high and
2 aggravated nature is an assault and battery, as I have just
3 defined those terms for you, which is accompanied by some
4 circumstance of aggravation.

5 And a circumstance of aggravation is defined as
6 some fact, incident, detail, or circumstance accompanying
7 the assault and battery that tends to enhance or to increase
8 the severity of the assault and battery.

9 Some examples of facts which might be considered a
10 circumstance of aggravation would include, but not be
11 necessarily limited to, the following:

12 A fact that might be considered a circumstance of
13 aggravation is the unlawful use of a deadly weapon in the
14 commission of an assault and battery.

15 Also the infliction of serious bodily harm or
16 injury resulting from a battery, the serious harm or injury
17 meaning more than slight, meaning substantial.

18 An assault and battery committed during the course
19 of the intent to commit a felony crime. And you are
20 instructed that the crimes of burglary in the first degree,
21 kidnapping and armed robbery are classified as felonies
22 under the law of this state.

23 Another circumstance that might be considered as
24 an aggravating circumstance is an assault and battery
25 occurring between the parties where there is a difference in

1 their gender and a great disparity between the ages, the
2 physical conditions, or the abilities of the parties.

3 An additional circumstance that might be
4 considered a circumstance of aggravation is the taking of
5 indecent liberties with a female.

6 Additionally a resistance of lawful authority as
7 where an assault and battery occurs in the course of a
8 lawful arrest.

9 Another example might be the purposeful infliction
10 of shame or disgrace.

11 Now, as I have stated, the factors that I have
12 just enumerated are simply examples of circumstances of
13 aggravation, but the existence of any one, or more, of such
14 factors does not automatically make an assault and battery
15 one of a high and aggravated nature; but the existence of
16 such a circumstance is simply a factor which may be
17 considered by you jurors, along with all the other evidence
18 in the case, as well as any other circumstances proven to
19 have accompanied any assault and battery in your
20 determination as to whether or not any assault and battery
21 is one of a high and aggravated nature.

22 The next indictment that I will address is the
23 indictment charging the defendant with the crime of armed
24 robbery.

25 Armed robbery is also a statutory offense and that

1 statute is the set forth in 16-11-330. In order that you
2 could understand the term armed robbery, I'll also be
3 defining for you first the term of larceny and then the term
4 of robbery, because those are necessarily lesser included
5 offenses and must be proven as part of armed robbery. So
6 I'll instruct you on the definition of larceny, robbery, and
7 then armed robbery.

8 Now, in this case the defendant in a separate
9 indictment is also charged with grand larceny. The larceny,
10 as I will be defining it for you, included in the term armed
11 robbery is the same definition that will relate to the
12 indictment charging the defendant with grand larceny also.

13 Larceny is commonly referred to and known as
14 stealing. Larceny is defined in the law as the taking, the
15 stealing and the carrying away of the personal property of
16 another with the intention of permanently depriving the true
17 owner of use and possession of his or her property and with
18 the intent of converting that property to the taker's own
19 use.

20 Robbery is commonly referred to as a larceny by
21 force.

22 Robbery is defined in the law as taking, stealing,
23 and carrying away the property of another, having any value
24 whatsoever, from the person or presence of any person
25 without his or her consent and with an intent to steal the

1 property by using force or violence to accomplish the theft
2 or by threatening the use of force or violence in order to
3 accomplish the theft.

4 And a thing is deemed to be in the presence of a
5 person with respect to the crime of robbery when it is so
6 within his or her reach, inspection, observation, or control
7 that he or she could, if not overcome by violence or
8 prevented by fear, retain possession of his or her property.

9 Forcing a person to surrender property out of fear
10 from intimidation or through the use of force or violence or
11 the threat of the use of force or violence with an intent to
12 steal the property is a robbery under the law.

13 And Section 16-11-330 defines armed robbery as
14 where a person commits the crime of robbery while armed with
15 a pistol, dirk, slingshot, metal knuckles, razor, or any
16 other deadly weapon.

17 Now, the remaining two indictments charge the
18 defendant with burglary in the second degree and with grand
19 larceny.

20 I'll first instruct you on the laws that relates
21 to the indictment for burglary in the second degree. That's
22 the indictment that alleges that the defendant did, on April
23 the 2nd of 2008, unlawfully enter a building belonging to
24 the Corner Stop #2 without consent of the owner and with the
25 intent to commit a crime therein.

1 A burglary in the second degree, again, is a
2 statutory offense. That statute is set forth in 16-11-312
3 of the Code of laws, and that statute provides as follows:

4 A person is guilty of burglary in the second
5 degree if the person enters a building without consent and
6 with the intent to commit a crime therein; and,

7 Either when in effecting entry or while in the
8 dwelling -- excuse me, while in the building, or in
9 immediate flight therefrom the defendant, or any other
10 participant in the crime, is armed with a deadly weapon; or,

11 Causes physical injury to a person not a
12 participant in the crime; or,

13 Uses or threatens the use of a dangerous
14 instrument; or,

15 Displays what is or appears to be a knife, pistol,
16 revolver, rifle, shotgun, machine gun, or other firearm; or,

17 The entering or the remaining occurs in the
18 nighttime.

19 So based upon the foregoing statute, before you
20 could return a verdict of guilty as to the crime of burglary
21 in the second degree, it would be necessary that the
22 evidence has proven to your satisfaction beyond a reasonable
23 doubt the following four elements:

24 Number one, that the defendant entered a building,
25 a building being defined as a structure where goods are

1 normally stored.

2 There must be an entry of the building without
3 consent.

4 Again, entering without consent means to enter a
5 building without the consent of the owner or person
6 otherwise in lawful possession.

7 And consent means voluntary consent. It does not
8 mean forced submittal.

9 And there must be an entry of a building without
10 consent and with the intent to commit a crime therein.

11 Again, as I have stated, there must have been an
12 intent to commit a crime, whether the crime is completed or
13 not. The mere entering of a building without intent to
14 commit a crime does not constitute burglary. It is only
15 where there is an entering accompanied with an intent to
16 commit a crime that the crime of burglary is complete; and
17 crime of any grade or severity is sufficient to satisfy this
18 particular element.

19 The entry of a building without consent and with
20 the intent to commit a crime therein completes the crime of
21 burglary.

22 In order to establish the crime of burglary in the
23 second degree, it is necessary that the State prove one, or
24 more, of the following additional factors:

25 That when in effecting entry or while in the

1 dwelling -- excuse me, or while in the building, or in
2 immediate flight therefrom, the defendant or another
3 participant in the crime was armed with a deadly weapon; or,

4 Caused physical injury to a person who is not a
5 participant in the crime; or,

6 Used, or threaten the use of a dangerous
7 instrument, or displayed what appeared to be a knife,
8 pistol, revolver, rifle, shotgun, machine gun, or other
9 firearm; or,

10 That entering or the remaining occurred in the
11 nighttime.

12 Again, as I have stated, with respect to the law
13 as it relates to burglary in the first degree, while the
14 State may prove more than one of those additional factors
15 than the fourth element, it's not necessary that they prove
16 more than one, but one must be proven before the State will
17 have proven burglary in the second degree.

18 And the remaining indictment charges the crime of
19 grand larceny. And that indictment alleges that the
20 defendant did, on April the 2nd of 2008, take, steal and
21 carry away money in excess of \$5,000 which belonged to the
22 Corner Stop #2 in violation of 16-13-30.

23 Again, larceny is known as stealing. It's defined
24 in the law as taking, stealing, and carrying away the
25 personal property of another with the intention of

1 permanently depriving the true owner of the use and
2 possession of his or her property and converting the
3 property to the taker's own use.

4 Grand larceny is the larceny or theft of personal
5 property of another having a value of more than \$1,000.

6 Now, criminal intent is also a necessary element
7 of every crime that has to be proven beyond a reasonable
8 doubt. The term intent refers to the state of a person's
9 mind that directs his actions towards a specific object or
10 goal.

11 Criminal intent is the state of a person's mind
12 that operates jointly with the commission of an act in the
13 commission of a criminal offense.

14 Criminal intent is a mental state of conscious
15 wrongdoing in contrast to an act that is done inadvertently,
16 mistakenly, accidentally, and without any criminal intent.

17 Now, in this case the defendant has raised what is
18 referred to in the law as the defense of alibi.

19 An alibi means that the defendant was at another
20 specified place at the time that the crime alleged by the
21 State was committed, and, therefore, it was not possible for
22 the defendant to have committed the crime he is accused of
23 committing, because he was not present at the scene of that
24 crime when that crime was committed.

25 While a defendant may present evidence of an

1 alibi, there is no burden on the defendant to prove the
2 existence of that alibi. The burden is on the State to
3 prove beyond a reasonable doubt that the defendant was
4 actually present at the place where the crime was committed
5 and that he actually committed it and, therefore, was not
6 somewhere else.

7 In other words, because the State has the burden
8 of proving the defendant's guilt beyond a reasonable doubt,
9 such a burden would necessarily require that the State prove
10 beyond a reasonable doubt that the defendant was not
11 somewhere else; he was at the scene of the crime and
12 participated in that crime.

13 Well, I believe that covers it.

14 Three things. During the course of your
15 deliberations there may come a time where you have some
16 question about the evidence or testimony. I am never
17 permitted to answer questions that relate to issues of fact
18 or the evidence or the testimony.

19 Also do not inquire as to whether there is some
20 other piece of evidence that you might have. In other
21 words, if you go back and start deliberating, you wonder if
22 something exists that you think might assist you in
23 resolving the case, even if it did exist, you cannot have
24 it because the case is now being submitted to you for your
25 deliberations, and, therefore, no additional evidence may be

1 received, even if it did exists.

2 So I cannot respond to questions of fact and no
3 additional evidence can be received.

4 If during your deliberations you have a question
5 about a witness' testimony and that question can be resolved
6 by your having that testimony replayed in whole or in part,
7 we can bring you back into the courtroom to have testimony
8 of a witness replayed in some portion of it, or in its
9 entirety, if you prefer. So if you have a question about
10 witness' testimony and that can be answered by having the
11 testimony replayed, you are permitted to have testimony
12 reheard. We will have to bring you back into the courtroom
13 for that purpose.

14 If at any time you have a question about the law
15 that you are to apply, I am permitted to answer those
16 questions. So if at any time you need a re-instruction,
17 additional explanation, or a clarification of any law that I
18 have already provided, I am permitted to answer those
19 questions and would be happy to do so.

20 Mr. Foreman, if at any time you need to address
21 any matter to me, if you will write it on a piece of paper,
22 give it to the bailiff, he will submit it to me and then
23 I'll respond to that question accordingly.

24 If we have any smokers on the jury, and I think we
25 do, you are permitted to smoke during deliberations, but you

1 cannot smoke in the jury room. You will have to be taken
2 outside for that purpose. So if anybody wants to smoke, you
3 let the bailiff know and he will take you outside for that
4 purpose, but you are instructed that deliberations have to
5 stop and they may only resume when all twelve jurors are
6 present so that all may participate.

7 And I'm satisfied that all of you do eat and you
8 have ordered lunch and your lunch should be here shortly, if
9 it's not here. Nevertheless, when it does get here, we will
10 bring it to the jury room and you can stop and eat and then
11 start deliberations after you finish eating, or deliberate
12 while you are eating. That's up to you. I'll leave that to
13 your discretion. I'm not going to tell you how to do that.

14 Now, Mr. Foreman, as I have indicated to you, you
15 will have these indictments in the jury room. They are not
16 evidence of anything. They don't prove anything. They
17 will, however, be there to serve as the verdict forms. And
18 as I have stated, you will be asked to write separate
19 verdict forms as to each of the separate indictments. And
20 on the back of each indictment in the lower left-hand corner
21 you will see the word verdict, and it's beneath that word
22 that you are going to indicate the jury's unanimous decision
23 as it relates to that particular charge and indictment.

24 There is also a space for you to sign your name as
25 the foreperson. You are the only juror that needs to sign

1 the verdict form. There is also a space for the appropriate
2 date.

3 Now, with regard to each of the six indictments,
4 you have two possible verdict forms, and those possible
5 verdict forms are guilty and not guilty. So whatever that
6 decision is as it relates to the particular indictment, Mr.
7 Foreman, you just indicate that decision on the back as
8 indicated. Sign your name, place the date on it.

9 After you have reached a decision on all of the
10 indictments, let the bailiff know that you have reached
11 those decisions and we will bring you back to receive those
12 verdicts.

13 Now, with the exception of Ms. Nix, I'll ask the
14 twelve jurors to please go to your jury room. Do not,
15 however, yet begin your deliberations. I have got some
16 matters I'll need to address with the lawyers. If I do not
17 need to bring you back for any reason, I'll simply send word
18 by way of the bailiff that you may begin with your
19 deliberations. In that event, he will bring to the jury
20 room all of the exhibits which have been introduced during
21 the trial. And to you, Mr. Foreman, he will also bring the
22 indictments which will serve as the verdict forms.

23 So please retire to your jury room, but do not
24 begin deliberations until I send you word to do so.

25 (Whereupon, at 1:35 p.m., the jury panel retired

1 to the jury room, awaiting instructions to begin
2 deliberations)

3 THE COURT: Okay. Ms. Nix, you know that you are
4 the alternate?

5 JUROR NUMBER 66: Yes.

6 THE COURT: The twelve original jurors are able to
7 participate, so that's going to conclude your service. We
8 do want to thank you for your participation and the time
9 that you devoted to it. You did order lunch, and so if you
10 want to wait and get your lunch, you can eat it here, or
11 take it with you and leave. That's up to you.

12 JUROR NUMBER 66: Okay.

13 THE COURT: You are going to be excused for the
14 balance of today. I do anticipate that you likely will be
15 coming back tomorrow, but I'm not certain of that at this
16 moment. So when you leave, just be sure that you call back
17 this evening after six o'clock to the number that you have
18 in order to receive that reporting information. Okay?

19 JUROR NUMBER 66: Yes.

20 THE COURT: Thank you again for your participation
21 in this case.

22 JUROR NUMBER 66: Okay. Thank you.

23 (Whereupon, the alternate juror was discharged)

24 THE COURT: Are there any exceptions taken to the
25 instructions or requests for additions to the instructions

1 by the State?

2 MR. BARNETTE: None from the State, Your Honor.

3 THE COURT: By the defendant?

4 MR. SCHULTZ: None from the defense, Your Honor.

5 THE COURT: All right. Let me ask you all to
6 verify all of the exhibits before they go back, please.

7 (Off the record)

8 (Back on the record)

9 THE COURT: All right. All the exhibits are
10 accounted for?

11 MR. BARNETTE: Yes, sir.

12 THE COURT: Mr. Schultz?

13 MR. SCHULTZ: They are, Your Honor.

14 THE COURT: Okay. All right. Send them back and
15 tell the jury to begin deliberations and notify us when they
16 have concluded.

17 (Whereupon, at 1:40 p.m., the jury panel was
18 instructed to begin deliberations)

19 THE COURT: We'll be at ease while the jury is
20 deliberating.

21 (Whereupon, at 1:41 p.m., proceedings were
22 adjourned, pending the verdict of the jury panel)

23 (Whereupon, at 3:44 p.m., proceedings were
24 reconvened)

25 THE COURT: I'm told the jury has reached a

1 decision. Let's get everybody assembled.

2 (Off the record)

3 (Back on the record)

4 THE COURT: All right. I'm told the jury has
5 reached a decision. Are we ready to receive the verdict?

6 MR. BARNETTE: The State is ready, Your Honor.

7 MR. SCHULTZ: The defense is ready, Your Honor.

8 THE COURT: Okay. Bring them in, please.

9 (Whereupon, at 3:46 p.m., the jury panel returned
10 to open court to report its verdict)

11 THE COURT: Mr. Foreman, have you and your fellow
12 jurors reached a unanimous decision as to each of the
13 separate charges in the indictments?

14 JURY FOREPERSON: Yes, sir.

15 THE COURT: Have you indicated those decisions on
16 the back of the indictments as requested?

17 JURY FOREPERSON: Yes, sir.

18 THE COURT: And did you sign your name as the
19 foreperson and date it today's date?

20 JURY FOREPERSON: Yes, sir.

21 THE COURT: If you will please hand those verdict
22 forms up by way of the bailiff.

23 You may publish the verdicts.

24 THE CLERK: Indictment 2009-GS-11-824, the State
25 versus John Bendarian Bonner, indictment for burglary, first

1 degree, the verdict is guilty.

2 Signed by foreperson Donald Fritzsche.

3 Indictment 2009-GS-11-825, the State versus John
4 Bendarian Bonner, indictment for grand larceny, the verdict
5 is guilty.

6 Signed by foreperson Donald Fritzsche.

7 Indictment 2009-GS-11-826, the State versus John
8 Bendarian Bonner, indictment for burglary, second degree,
9 the verdict is guilty.

10 Signed by foreperson Donald Fritzsche.

11 Indictment 2009-GS-11-827, the State versus John
12 Bendarian Bonner, indictment for kidnapping, the verdict is
13 guilty.

14 Signed by foreperson Donald Fritzsche.

15 Indictment 2009-GS-11-828, the State versus John
16 Bendarian Bonner, indictment for armed robbery, the verdict
17 is guilty.

18 Signed by foreperson Donald Fritzsche.

19 Indictment 2009-GS-11-829, the State versus John
20 Bendarian Bonner, indictment for assault and battery of a
21 high and aggravated nature, the verdict is guilty.

22 Signed by foreperson Donald Fritzsche.

23 Ladies and gentlemen of the jury, if this is the
24 verdict of you all, please indicate by raising your right
25 hand.

1 Thank you.

2 THE COURT: Does the defendant wish to have the
3 jury polled?

4 MR. SCHULTZ: We do, Your Honor.

5 THE COURT: All right, poll the jury, please,
6 ma'am.

7 THE CLERK: When I call your name and your juror
8 number, if you will raise your right hand for me and I'll
9 ask you a question.

10 Juror 28, Takia Epps. Please raise your right
11 hand. Is this your verdict?

12 JUROR NUMBER 28: Yes..

13 THE CLERK: Juror 82, James Simpson, is this your
14 verdict?

15 JUROR NUMBER 82: Yes.

16 THE CLERK: Juror 25, Callie Deborde, is this your
17 verdict?

18 JUROR NUMBER 25: Yes.

19 THE CLERK: Juror 35, Barry Green, is this your
20 verdict?

21 JUROR NUMBER 35: Yes.

22 THE CLERK: Juror 23, Kevin Davis, is this your
23 verdict?

24 JUROR NUMBER 23: Yes.

25 THE CLERK: Juror 20, Robert Cobb, is this your

1 verdict?

2 JUROR NUMBER 20: Yes, ma'am.

3 THE CLERK: Juror 31, Donald Fritzsche, is this
4 your verdict?

5 JUROR NUMBER 31: Yes.

6 THE CLERK: Juror 27, Marc Eggers, is this your
7 verdict?

8 JUROR NUMBER 27: Yes, ma'am.

9 THE COURT: Juror 5, Oveda Atkinson, is this your
10 verdict?

11 JUROR NUMBER 5: Yes.

12 THE CLERK: Juror 8, Andrew Bailey, is this your
13 verdict?

14 JUROR NUMBER 8: Yes.

15 THE CLERK: Juror 87, Ralph Spencer, is this your
16 verdict?

17 JUROR NUMBER 87: Yes.

18 THE CLERK: Juror 98, Phillip Waters, is this your
19 verdict?

20 JUROR NUMBER 98: Yes.

21 THE COURT: All right. Any other matters to
22 address with the jury present?

23 MR. SCHULTZ: None from the defense, Your Honor.

24 THE COURT: All right. Thank you, ladies and
25 gentlemen for your service in the case. You are excused for

1 the balance of the afternoon. If you will call back after
2 six o'clock this evening to the number that you have on your
3 juror information card to receive reporting information, you
4 will find out about reporting for tomorrow or later in the
5 week. Okay.

6 Thank you again for your participation. Have a
7 good evening. Please call back after six to receive that
8 reporting information.

9 (Whereupon, at 3:51 p.m., the jury panel was
10 discharged)

11 THE COURT: All right. Any other matters to
12 address prior to the imposition of sentence?

13 MR. SCHULTZ: Yes, Your Honor. At this time the
14 defense would move for a new trial based upon all objections
15 and motions denied.

16 THE COURT: All right. That motion is denied.

17 MR. SCHULTZ: Thank you, Your Honor.

18 Your Honor, could the defendant's mother sit
19 there?

20 THE COURT: She may. He can just stay at the
21 table.

22 MR. SCHULTZ: Yes, sir.

23 THE COURT: All right, Mr. Schultz, I'll be glad
24 to hear from you and Mr. Bonner.

25 MR. SCHULTZ: Thank you, Your Honor. Briefly.

1 Mr. Bonner is nineteen years old. Obviously we
2 would like the court to take that into consideration when
3 rendering sentence because of his relative age and youth.
4 Thank you.

5 His mother is here, close family, and his two
6 brothers and his girlfriend are here as well in support of
7 him. They have been here. Obviously Ms. Bonner and Mr. --
8 or Kelvin Bonner had been sequestered, but they were here
9 present during his trial in support of him, so he does have
10 a support network here in Gaffney. He's lived in Gaffney
11 all his life and he just has one criminal conviction. And I
12 believe his mother would like to address the court.

13 THE COURT: All right, Ms. Bonner, I'll be glad
14 hear from you.

15 EVA BONNER: The only thing, I would just like to
16 apologize to everybody out of this that everyone has been
17 through.

18 THE COURT: All right. Thank you, ma'am.

19 MR. SCHULTZ: Thank you, Your Honor.

20 THE COURT: All right, Mr. Bonner, is there
21 anything that you would like to tell me prior to the
22 imposition of sentence?

23 THE DEFENDANT: No, I ain't got nothing to say to
24 you.

25 THE COURT: Anything further on behalf the State?

1 MR. BARNETTE: No, sir. You know his record.
2 Your Honor, you have seen the facts of the case and so
3 forth. Obviously Ms. Darji went through a serious -- I mean
4 a nightmare that night, and I know the court has seen that,
5 and we would ask you to take that into consideration, Your
6 Honor.

7 THE COURT: All right, on Indictment 2009-11-824,
8 an indictment for burglary in the first degree, wherein you
9 have been found guilty by the jury of that offense, the
10 sentence of the court is that you, John Bendarian Bonner, be
11 confined to the South Carolina Department of Corrections for
12 a period of your natural life.

13 Indictment 2009-825, an indictment for grand
14 larceny, wherein you have been found guilty by a jury of
15 that offense, the sentence of the court is that you be
16 confined to the South Carolina Department of Corrections for
17 a period of five years.

18 Indictment 2009-11-826, an indictment for burglary
19 in the second degree, wherein you have been found guilty by
20 the jury of that offense, the sentence of the court is that
21 you be confined to the South Carolina Department of
22 Corrections for a period of fifteen years.

23 Indictment 2009-827, an indictment for kidnapping,
24 wherein you have been found guilty by the jury of that
25 offense, the sentence of the court is that you, John

1 Bendarian Bonner, be confined to the South Carolina
2 Department of Corrections for a period of thirty years.

3 Indictment 2009-11-828, an indictment for armed
4 robbery, wherein you have been found guilty by the jury of
5 that offense, the sentence of the court is that you be
6 confined to the South Carolina Department of Corrections for
7 a period of thirty years.

8 Indictment 2009-11-829, an indictment for
9 aggravated assault and battery, the sentence of the court is
10 that you, John Bendarian Bonner, be confined to the South
11 Carolina Department of Corrections be for a period of ten
12 years.

(13 Now, Mr. Bonner, you have a right to appeal the
14 verdicts of the jury and decision that is the sentence of
15 the court. You must file a notice of your intentions to
16 appeal those decisions within ten days of today's date. You
17 will discuss that with Mr. Schultz.

18 Anything else?

19 MR. BARNETTE: No, sir.

20 MR. SCHULTZ: No, sir.

21 (END OF REQUESTED TRANSCRIPT OF RECORD)
22
23
24
(25

1 CERTIFICATE

2 I, the undersigned, Michael R. Watts, Official Court
3 Reporter for the Sixteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for CHEROKEE County, South Carolina, on the
9 17TH AND 18TH days of NOVEMBER, 2009.

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

12
13
14 APRIL 10, 2010

15
16 
17

18 Michael R. Watts
19 Circuit Court Reporter
20
21
22
23
24
25

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

J. Derham Cole
Seventh Judicial Circuit Court Judge

Indictment No.(s): 2009-GS-11-00824, 2009-GS-11-00825, 2009-GS-11-00826,
2009-GS-11-00827, 2009-GS-11-00828, 2009-GS-11-00829

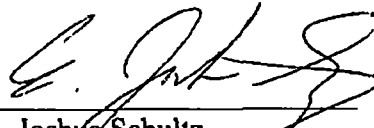
John Bendarian Bonner:.....Appellant

v.

The State of South Carolina.....Respondent

NOTICE OF APPEAL

John Bendarian Bonner, by and through his attorney, appeals his conviction and sentence for Burglary in the 1st degree, Burglary in the 2nd degree, Grand Larceny, Kidnapping, Armed Robbery, and Assault and Battery of a High and Aggravated Nature subsequent to a trial held before the Honorable J. Derham Cole.


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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 APPEAL FROM CHEROKEE COUNTY
 Court of General Sessions

J. Derham Cole
 Seventh Judicial Circuit Court Judge

Indictment No.(s): 2009-GS-11-00824, 2009-GS-11-00825, 2009-GS-11-00826,
 2009-GS-11-00827, 2009-GS-11-00828, 2009-GS-11-00829

John Bendarian Bonner.....Appellant

v.

The State of South Carolina.....Respondent

 PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on November 20, 2009 addressed to Barry Barnette, Seventh Circuit Solicitor's Office, 180 Magnolia Street, Spartanburg, SC 29306.

Kellie Garcia

Kellie Garcia
 Paralegal to Attorney E. Joshua Schultz
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN BENDARIAN BONNER,

APPELLANT

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Since Appellant was seventeen when the Burglary occurred, does the Eighth and Fourteenth Amendments, as interpreted by Graham v. Florida, forbid imposition of a life without parole sentence for that offense?

STATEMENT OF THE CASE**Procedural History**

Appellant was indicted by the Spartanburg County Grand jury for the offenses of burglary in the first degree, kidnapping, armed robbery, assault and battery of a high and aggravated nature (ABHAN), burglary in the second degree, and grand larceny greater than \$5,000. R.158-175. On November 17 2009, Appellant's case was called to trial before the Honorable J. Derham Cole. The State was represented by Barry Barnette and Prina Tailor. Appellant was represented by Joshua Shultz.

On November 18, 2009, the jury returned a verdict of guilty on all charges. R. 149-150. Regarding sentencing, Appellant's trial counsel asked the court to take into consideration his age. R. 154, l. 3. Appellant was sentenced to life imprisonment for burglary in the first degree. R. 155, ll. 8-12. Appellant's other sentences are as follows: Thirty years for kidnapping; Thirty years for armed robbery; fifteen years for burglary in the second degree; ten years for ABHAN; and five years for grand larceny. R. 155-156.

Factual History

Appellant turned seventeen-years-old on January 24, 2008. R.175; R.173. Less than three months later, on April 2, 2008, Dipali Darji was the victim of a home invasion robbery. R.173. Darji worked at the convenience store adjacent to her residence. She had closed the store earlier that evening.

Just after Darji went to bed, four masked assailants entered her residence. They demand money and the keys to the convenience store. One of assailants threatened her with a handgun. She refused to give them the keys to the store; so the assailants began beating her. Eventually, the assailants stripped Darji of her clothing, and threatened to rape her if

she did not give them the keys to the store. At that point, she surrendered keys. The assailants held Darji while they searched for money and valuables at the residence and in the convenience store. While inside the convenience store, the assailants activated the alarm system. Upon hearing the alarm the assailants fled. Before leaving, the assailants stole approximately \$25,000 worth of cash and jewelry.

The police arrested Appellant, Joshua Manning, Labronte Agnew, Kwane Douglas, Robert Wilson Jr., Kendrick Tate, Billy Rogers, and Terry Littlejohn for the home invasion robbery. R. 6-7. Tate, Wilson, Douglas, and Rogers decided to cooperate with the State and accepted a plea deal. R. 3, ll. 5-10. In return for their testimony against Appellant, the State lowered the armed robbery to common law robbery and agreed to tell the sentencing judge that they cooperated. R. 3, ll. 10-13.

Throughout the trial, Appellant maintained his innocence. Darji was unable to identify the robbers, because the assailants were wearing mask, but Tate, Wilson, Douglas, and Rogers testified that Appellant was involved in the burglary. Appellant presented an alibi defense. R. 117-128. His mother and brother testified that he was at home the night of the burglary. R. 128-140. Despite Appellant's alibi defense, the jury found him guilty on all charges. R. 149-150.

Before sentencing the trial judge asked to hear from Appellant's trial counsel. R. 153, ll. 23-24. Trial counsel mistakenly¹ said Appellant was nineteen. R. 154 l. 1. But, Appellant was actually eighteen at the time of the trial and seventeen at the time of the burglary. R. 118, ll. 5-6; R. 175; R. 173. Appellant's trial counsel asked the court to take

into consideration Appellant's "relative age and youth." R. 154, l. 3. The trial judge sentenced Appellant to life without parole for the burglary in the first degree charge. R. 155, ll. 8-12.

¹ This was clearly a mistake because Appellant testified he was eighteen; the sentencing sheet and arrest warrant indicate Appellant was born on January 24, 1991; and the record is void of any other indication that Appellant was eighteen when sentenced.

ARGUMENT

Since Appellant was seventeen when the Burglary occurred, the Eighth and Fourteenth Amendments, as interpreted by *Graham v. Florida*, forbid imposition of a life without parole sentence for the burglary.

Earlier this year, the United States Supreme Court held that the States cannot impose a life sentence for a non-homicide crime committed while the defendant was under the age of eighteen. *Graham v. Florida*, 130 S.Ct. 2011 (2010). The *Graham* Court found that the Eighth Amendment forbids the States from determining at sentencing that a juvenile non-homicide offender will never be fit to reenter society. *Id.*, 130 S.Ct. at 2030. Instead, juvenile non-homicide offenders must be given a meaningful opportunity to obtain release. *See id.*, 130 S.Ct. at 2033.

Appellant's life sentence for burglary in the first degree should be vacated. Under Appellant's current sentence, he would be imprisoned until his death. S.C. Code §16-11-311(b). Appellant was only seventeen when he allegedly committed the burglary. R. 175; R. 173. Appellant's "sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character." *See Graham*, 130 S.Ct. at 2033 (2010). Appellant's life sentence is therefore unconstitutional, and must be vacated.

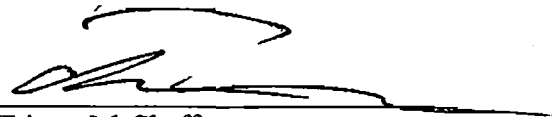
While the Appellant's age was brought to the attention of the trial judge prior to sentencing, Appellant's trial counsel never objected after the sentence. R. 154, 1. 3; R. 156, 11. 18-21. Generally, a challenge to sentencing must be raised at trial to be preserved for appellate review. *See State v. Vick*, 384 S.C. 189, 202, 682 S.E.2d 275, 282 (Ct. App. 2009)

(citing *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999)). In *Vick*, even though the sentence was not objected to at trial, this Court vacated a kidnapping sentence because by statute, one convicted of murder, should not also be sentenced for kidnapping. Because under *Graham*, Appellant's sentence is clearly unconstitutional, as in *Vick*, this Court should vacate the life sentence in the interest of judicial economy. See *Vick*, 384 S.C. at 202, 682 S.E.2d at 282.

CONCLUSION

Appellant respectfully requests this Court vacate his life sentence, and remand this case for resentencing that will allow him a “meaningful opportunity to obtain release.” *See Graham*, 130 S.Ct. at 2033 (2010).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tristan M. Shaffer', is written over a horizontal line.

Tristan M. Shaffer
Appellate Defender

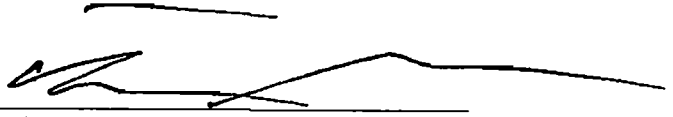
ATTORNEY FOR APPELLANT.

This 16th day of March, 2011.

CERTIFICATE OF COUNSEL

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

March 16th, 2011



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN BENDARIAN BONNER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of March, 2011.



Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 16th day of March, 2011.



(L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013 .

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Hon. J. Derham Cole, Circuit Court Judge

The State,

Respondent,

v.

John Bendarian Bonner,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's contention the trial court imposed an unconstitutional and, therefore, ineffective sentence is not properly preserved for review on appeal.

While it appears the sentence of life in prison should not have been imposed for a crime committed while Appellant was a juvenile, the conviction for burglary in the first degree stands.

STATEMENT OF THE CASE

Appellant was indicted on charges of burglary (first degree); grand larceny; burglary (second degree); kidnapping; armed robbery; and ABHAN. He proceeded to trial on November 17-18, 2009, before the Honorable J. Derham Cole and a jury. The jury found Appellant guilty as indicted. Judge Cole sentenced him as follows:

burglary (first degree)–2009-GS-11-824–life in prison without parole;

grand larceny–2009-GS-11-825–five (5) years;

burglary (second degree)–2009-GS-11-826–fifteen (15) years;

kidnapping–2009-GS-11-827–thirty (30) years;

armed robbery–2009-GS-11-828–thirty (30) years; and

ABHAN–2009-GS-11-829–ten (10) years consecutive to any other sentence.

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

ARGUMENT

- I. Appellant's contention the trial court imposed an unconstitutional and, therefore, ineffective sentence is not properly preserved for review on appeal. While it appears the sentence of life in prison should not have been imposed for a crime committed while Appellant was a juvenile, the conviction for burglary in the first degree stands.

Appellant contends, pursuant to Graham v. Florida, ___ U.S. ___, 130 S.Ct. 2011 (2010), the trial court erred in sentencing him to life in prison without the possibility of parole for a non-homicide crime he committed while a juvenile. While the sentence imposed for Appellant's conviction for burglary (first degree) may be improper, the issue was never raised to the trial court and is therefore not preserved for review on appeal. Appellant has not challenged the conviction for burglary (first degree) nor has he challenged the conviction or sentence on any other charge.

After the jury found Appellant guilty as indicted on charges of burglary (first degree); grand larceny; burglary (second degree); kidnapping; armed robbery; and ABHAN, the trial court sentenced him as follows:

burglary (first degree)–2009-GS-11-824–life in prison without parole;

grand larceny–2009-GS-11-825–five (5) years;

burglary (second degree)–2009-GS-11-826–fifteen (15) years;

kidnapping–2009-GS-11-827–thirty (30) years;

armed robbery–2009-GS-11-828–thirty (30) years; and

ABHAN–2009-GS-11-829–ten (10) years consecutive to any other sentence. (Sentencing Sheets; T.330-337; R.160, 163, 166, 169, 172, 175, 149-156).

Appellant's counsel never objected to the sentence imposed for burglary (first degree), nor did he raise any issue with the sentence in a post trial motion. It is well settled that "[i]ssues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693 - 694 (2003). Thus, "a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review." State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999).¹ At the time of Appellant's sentencing, there was no challenge to the sentence at all by defense counsel. Therefore, the sentencing issue is not preserved for review, and should not be addressed in this direct appeal. Id.

Even so, Respondent notes the issue will, most likely, be addressed in pursuant to the Uniform Post-Conviction Relief Act, section 17-27-10 *et. seq.* of the South Carolina Code, which was expressly created to address this precise issue. See S.C. Code Ann. § 17-27-20(3) (Supp. 2010) (finding PCR appropriate where sentence exceeds the maximum authorized by law); Accord, Owens v. State, 331 S.C. 582, 584-85, 503 S.E.2d 462, 463 (1998)(relief given in PCR setting).

As the United States Supreme Court found in Graham:

¹ The Supreme Court of South Carolina, while specifically noting that the relief granted was "not intended to disrupt our settled rules on issue preservation," nonetheless granted relief by way of remand for resentencing where it appeared the appellant would be held in custody "beyond the legal sentence due to the additional time" for a proper PCR action to resolve the issue. Johnston, 333 S.C. at 464 n. 3, 510 S.E.2d at 425, n. 3. Such a situation is not present in the instant case where Appellant was sentenced to thirty years on kidnapping and armed robbery and a consecutive ten years for ABHAN. (T.336-337; R.155-156). See State v. Passmore, 363 S.C. 568, 586, 611 S.E.2d 273, 282 - 283 (Ct. App. 2005)(Johnston not applicable where no "threat of continuing incarceration beyond the legal sentence").

The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.

Graham, 130 S.Ct. at 2034 (2010). According to the sentencing sheet, as well as Appellant's Department of Corrections records, his date of birth is January 24, 1991. (Sentencing Sheet for Burglary (First Degree); R.175). The burglary occurred on April 2, 2008. (T.237-240; R.108-111). At the time, Appellant would have been seventeen years old and a juvenile. Thus, while Appellant suffers no harm from the instant sentencing error, it is error, and likely will be address in a PCR proceeding. Here, however, the issue is procedurally barred from review, and should not be addressed. Appellant's argument to the contrary should be rejected.

The State recognizes this Court has addressed similar issues on direct appeal. In State v. Vick, this Court stated:

Vick next contends his thirty-year kidnapping sentence should be vacated inasmuch as he was sentenced for murder and the kidnapping sentence was therefore improper pursuant to S.C. Code Ann. § 16-3-910. We agree.

....

While the case at hand does not present a threat that Vick will remain incarcerated beyond the legal sentence as in Johnston, our courts have, in the past, "summarily vacated" sentences for kidnapping where such sentences were precluded by § 16-3-910 because the defendant received a concurrent sentence under the murder statute. See Owens, 331 S.C. at 585, 503 S.E.2d at 463; [State v. McCall, 304 S.C. 465, 470, 405 S.E.2d 414, 416-17 (Cl. App. 1991), *overruled on other grounds by Brightman v. State*, 336 S.C. 348, 352,

520 S.E.2d 614, 616 (1999)] (noting the appellate courts have “summarily vacated” sentences for kidnapping when the defendant received a concurrent sentence under the murder statute). Additionally, our courts have at times considered an issue in the interest of judicial economy. See S. Bell Tel. & Tel. Co. v. Hamm, 306 S.C. 70, 75, 409 S.E.2d 775, 778 (1991) (holding, where a party argued that the trial court erred in rendering judgment on a constitutional issue inasmuch as such an analysis was “purely advisory,” because the issue would be raised to the court at some future time and since both parties had fully briefed the issue, it was proper for the appellate court to decide the matter in the interest of judicial economy); Jeter v. S.C. Dep’t of Transp., 369 S.C. 433, 441 n. 6, 633 S.E.2d 143, 147 n. 6 (2006) (holding, regardless of any preservation problems, the appellate court would address an issue in the interest of judicial economy).

State v. Vick, 384 S.C. 189, 201-203, 682 S.E.2d 275, 281-282 (Ct. App. 2009). Therefore, applying this Court’s precedent in State v. Vick, vacation of the sentence for burglary (first degree) may be appropriate if this Court chooses to extend this limited exception to the preservation rules.² Id.

²Respondent however asserts that the most appropriate vehicle for raising the un-preserved claim consistent with the legislature intent would be a state post-conviction relief application, Section 17-27-10, *et seq.*, which was specifically created to address claims related to counsel’s failure to object to evidence, sentences and other collateral issues. Accord, Owens v. State, 331 S.C. 582, 584-85, 503 S.E.2d 462, 463 (1998). Respondent also notes again Appellant has not challenged his conviction for burglary (first degree), nor has he challenged the conviction or sentence for grand larceny, burglary (second degree), kidnapping, armed robbery, or ABHAN. He has only sought re-sentencing as to the burglary (first degree).

CONCLUSION

For all the foregoing reasons, Respondent asserts that the judgement of convictions must be upheld and affirmed related to Appellant's grand larceny, burglary (second degree), kidnapping, armed robbery, or ABHAN convictions. Respondent further assert that the challenge to the sentence related to Appellant's conviction for burglary (first degree) is not preserved for this Court's appellate consideration because there was no contemporaneous objection to the sentence. Respondent, however, must recognize that under the precedent of State v. Vick, a vacation of that particular life sentence may be appropriate on 2009-GS-11-824.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 11, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Hon. J. Derham Cole, Circuit Court Judge

The State,

Respondent,

v.

John Bendarian Bonner,

Appellant.

CERTIFICATE OF COUNSEL

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

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ATTORNEYS FOR RESPONDENT

March 11, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Cherokee County
Hon. J. Derham Cole, Circuit Court Judge

The State,

Respondent,

v.

John Bendarian Bonner,

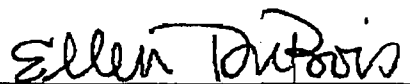
Appellant.

PROOF OF SERVICE

I, ELLEN DuBOIS, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tristan M. Shaffer, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.
This 11th day of March, 2011.


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

The State, Respondent,

v.

John Bendarian Bonner, Appellant.

Appellate Case No. 2009-146206

Appeal From Cherokee County
J. Derham Cole, Circuit Court Judge

Published Opinion No. 5048
Heard September 11, 2012 – Filed November 14, 2012

VACATED AND REMANDED

Chief Deputy Appellate Defender Wanda H. Carter and
Acting Appellate Defender Tristan M. Shaffer, both of
Columbia, for Appellant.

Attorney General Alan Wilson, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General William M. Blitch, Jr., all of Columbia,
for Respondent.

GEATHERS, J.: John Bendarian Bonner appeals his sentence of life imprisonment without the possibility of parole for a non-homicide offense he committed as a juvenile, arguing the sentence violates the Eighth and Fourteenth Amendments of the United States Constitution. We vacate Bonner's sentence and remand for resentencing.

2005). Thus, "a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review." *State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999). Nevertheless, an exception to the general rule of issue preservation exists authorizing the appellate court to consider an unpreserved issue in the interest of judicial economy under appropriate circumstances. *See State v. Vick*, 384 S.C. 189, 203, 682 S.E.2d 275, 282 (Ct. App. 2009) (vacating a kidnapping sentence in the interest of judicial economy, even though the issue was not preserved for review); *see also Jeter v. S.C. Dep't of Transp.*, 369 S.C. 433, 441 n.6, 633 S.E.2d 143, 147 n.6 (2006) (holding the appellate court would address an issue in the interest of judicial economy despite any preservation problems).

LAW/ANALYSIS

Bonner argues his sentence of LWOP for burglary in the first degree should be vacated. He contends the Eighth and Fourteenth Amendments of the U.S. Constitution, as interpreted in *Graham v. Florida*, __ U.S. __, 130 S. Ct. 2011 (2010), forbid the imposition of a LWOP sentence for a non-homicide crime committed by a juvenile. We agree.

"The Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'" *Miller v. Alabama*, 132 S. Ct. 2455, 2458 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). In *Graham*, the United States Supreme Court held that the Eighth Amendment's cruel and unusual punishment clause "prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide." 130 S. Ct. at 2034. The Court explained: "A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do, however, is give [these offenders] some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." 130 S. Ct. at 2030.

Here, it is undisputed that Bonner was seventeen years old at the time of the offense. The State concedes in its brief that it was error for the trial court to sentence Bonner to LWOP for burglary in the first degree. However, the State contends the sentencing issue is not preserved for appellate review because Bonner never objected to the sentence imposed for burglary in the first degree, nor did he raise any issue with the sentence in a post-trial motion. The State further argues the most appropriate avenue for addressing Bonner's claim is a post-conviction relief (PCR) proceeding.

In its opinion, the *Vick* court recognized, "our courts have at times considered an issue in the interest of judicial economy." *Id.* at 202, 682 S.E.2d at 282. The court cited *Jeter v. South Carolina Department of Transportation*, 369 S.C. at 441 n.6, 633 S.E.2d at 147 n.6, which addressed an issue in the interest of judicial economy "[r]egardless of any preservation problems[.]" *Vick*, 384 S.C. at 203, 682 S.E.2d at 282. Additionally, the *Vick* court referenced *Southern Bell Telephone & Telegraph Co. v. Hamm*, 306 S.C. 70, 75, 409 S.E.2d 775, 778 (1991), which considered a matter in the interest of judicial economy when the issue would be raised to the court at some future time and both parties had fully briefed the issue. *Vick*, 384 S.C. at 202, 682 S.E.2d at 282.

Moreover, the *Vick* court emphasized the State's concession that the kidnapping sentence was erroneously imposed as a controlling factor in its decision to address the issue in the interest of judicial economy. *Id.* at 203, 682 S.E.2d at 282. Specifically, the court noted that the State's concession presented an "exceptional circumstance" pursuant to the standard established in *State v. Johnston*. *Id.* Even though the court recognized *Vick*'s case presented only one exceptional circumstance because there was no threat *Vick* would be incarcerated beyond the legal sentence, it nevertheless referenced that exceptional circumstance as the determinative factor in its decision to address the sentencing issue in the interest of judicial economy. *Id.* at 202-03, 682 S.E.2d at 282.

Applying this court's precedent in *Vick*, we find vacating Bonner's LWOP sentence is appropriate. Both parties have fully briefed the issue and acknowledge that Bonner could raise the sentencing issue to the court at some future time by filing an application for PCR. Furthermore, this case presents an exceptional circumstance because the State concedes in its brief that the trial court committed error by imposing an improper sentence. *See Johnston*, 333 S.C. at 463, 510 S.E.2d at 425; *Vick*, 384 S.C. at 203, 682 S.E.2d at 282.

For the foregoing reasons, we vacate Bonner's sentence of LWOP for burglary in the first degree and remand the matter to the circuit court for resentencing.

VACATED AND REMANDED.

HUFF and THOMAS, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Cherokee County
Hon. J. Derham Cole, Circuit Court Judge
Appellate Case No. 2009-146206

The State,

Respondent,

v.

John Bendarian Bonner,

Appellant.

PETITION FOR REHEARING

On November 14, 2012, this Court Vacated and Remanded the trial court's sentence of life without parole for Appellant's conviction for burglary in the first degree. This Court misapprehended the South Carolina Supreme Court's opinion in State v. Johnston, 333 S.C. 459, 510 S.E.2d 423 (1999), and this Court's opinion in State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009). The Court erred in addressing any issue related to Appellant's sentence when it is not properly preserved for review on appeal. Further, this Court overlooked the judicial economy of allowing the sentence to be corrected in Post-Conviction Relief instead of vacating and remanding when the issue is not preserved for review on appeal. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the issue not preserved for review on appeal, and affirm the sentence of Appellant.

This Court finds it should vacate Appellant's sentence for life without parole and remand for resentencing even though the issue of whether the sentence was appropriate is not properly preserved for review on appeal. This Court relies on the cases of *Johnston* and *Vick* to find it should immediately address Appellant's sentence, even though the issue may be addressed through Post-Conviction Relief (PCR). The Court incorrectly applies both cases to the facts of this case.

In *Johnston*, the Supreme Court begins by iterating the general rule that "a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review." *Johnston*, 333 S.C. at 462, 510 S.E.2d at 425. The Supreme Court then presented a very limited situation requiring it to vacate a sentence on direct appeal even though the issue is not preserved for review on appeal. The Court explains the result is because of two exceptional circumstances which must both exist in order to overlook the preservation requirement in sentencing. The Court stated: "this case presents the exceptional circumstance in which the State has conceded in its briefs and oral argument that the trial court committed error by imposing an excessive sentence." *Id.* at 463, 510 S.E.2d at 425. The Court then stated: "if this Court unyieldingly enforces PCR as the only avenue of relief in this case, there is the real threat that Defendant will remain incarcerated beyond the legal sentence due to the additional time it will take to pursue such a remedy." *Id.* at 464, 510 S.E. 2d at 425. The Court held: "Under these exceptional circumstances, we hold that this case should be remanded for resentencing." *Id.* (emphasis added).

In its holding in *Johnston*, the Supreme Court makes it abundantly clear it is the existence of both exceptional circumstances which require it to address the unpreserved

issue and vacate the sentence. The use of the phrase “these exceptional circumstances” clearly indicates it is more than one that required their holding, and not either one or the other standing alone. This Court erred in finding Johnston stands for the proposition that either exception circumstance standing alone is sufficient to warrant consideration of the unpreserved sentencing issue. Again, the South Carolina Supreme Court made it clear it was the existence of both exceptional circumstances—the State’s concession and the possibility of Appellant being incarcerated beyond a legal sentence—which was necessary for the expedited result.

In this case, only one exceptional circumstance exists, the State’s agreement that as of now, Graham v. Florida, 130 S.Ct. 2011(2010), applies to render Appellant’s sentence to life without parole unconstitutional. However, Appellant was sentenced to thirty-years imprisonment on the kidnapping and armed robbery charges and a consecutive ten years for ABHAN. Appellant’s case clearly does not present the exceptional circumstance required in Johnston that there is a real threat Appellant will remain incarcerated beyond the legal sentence due to the time it would take to pursue PCR. Appellant can definitely raise the sentencing issue, and any other appropriate issue, in PCR and have plenty of time to complete the process prior to his cumulative forty-year sentence being served. As a result, this Court should find Johnston does not provide for the remedy Appellant seeks and instead supports a finding under the general rule that a sentencing issue not raised at trial is not properly preserved for review on appeal.

Additionally, this Court overlooked its opinion in State v. Passmore, 363 S.C. 568, 586, 611 S.E.2d 273, 282 - 283 (Ct. App. 2005). In Passmore, this Court refused to address an unpreserved issue related to Passmore’s sentence. This Court specifically

found it would not address the sentencing issue because the exceptional circumstance of Johnston requiring the threat that the appellant will be incarcerated beyond a legal sentence was not present in that case. Id. at 363 S.C. at 585-586, 611 S.E.2d at 282-283. The Court in the instant case should apply Johnston in the same way the Court did in Passmore.

In Vick, this Court addressed the situation where an individual was sentenced based on a kidnapping conviction while also being convicted of murder. Vick, 384 S.C. at 202, 682 S.E.2d at 282. In addressing the issue, this Court noted it was not applying the exceptional circumstance as found in Johnston. Instead, it held the Court has “summarily vacated” sentences for kidnapping in prior cases where the sentence was precluded by section 16-3-910 of the South Carolina Code. The Court in Vick, therefore, vacated the sentence in the interest of judicial economy. Id. at 203, 682 S.E.2d at 282. It is very significant to note in Vick, however, the Court did not have to remand for resentencing. The Court merely vacated the sentence. As a result, judicial economy could be satisfied because there was no remand for resentencing and no possibility the resentencing hearing would be an unnecessary action because of the result of a future PCR action.

The situation found in Vick, that the sentence was summarily vacated and no remand was required for resentencing, is not present in this case. The vacated sentence was one for kidnapping and not one for burglary in the first degree. Further, in this case this Court remanded for resentencing, which was not an action required in Vick because no sentence is allowed to be imposed under section 16-3-910. As a result, this Court erred in applying the very narrow holding of Vick to the facts of the instant case.

Further, this Court asserts, as it did in Vick, that addressing the issue on direct appeal provides for judicial economy. The Court overlooks the ramifications of its opinion, and the fact it is not in the interest of judicial economy to address the issue now instead of allowing it to be addressed in PCR. First, there is no reason to address the issue now because no exceptional circumstances exist. As a result, the Court's opinion has the effect of eviscerating the preservation requirements when a sentencing issue is involved. This is certainly not the consequence intended by the Supreme Court in Johnston, and it made it clear by clarifying its belief: "Our holding today is not intended to disrupt our settled rules on issue preservation and PCR applications. The facts here are unique and demand an expedited result." Johnston, 333 S.C. at 464 n.3, 510 S.E.2d at 425 n.3.

Second, judicial economy is not served by this Court's decision. This clearly distinguishes this case from Vick. In Vick, as discussed above, there was no remand for resentencing. As a result, the issue was complete and no further action could be necessary. In this case, however, the Court has to remand for resentencing. The impact of this remand is a hearing for resentencing, the outcome of which could then be appealed if the result is not acceptable or if issues arise at the resentencing hearing. The resentencing hearing and possible appeals would further delay the PCR from occurring. After that possible second round of appeals, Appellant could file a PCR action in which he alleges all appropriate issues, including issues related to the original convictions and sentences, as well as the resentencing. If the PCR court were to grant a new trial because of issues with the original trial, the resentencing hearing and any subsequent appeals

would have occurred for no reason, amounting to a waste of judicial resources which otherwise could have been reserved.

Instead, judicial economy is best served by following the general rule that a sentencing issue is not preserved for review on appeal without the issue being raised to the trial court. The issue can be raised along with all other appropriate issues on PCR. If a new trial is granted, no resentencing hearing or appeals have occurred, and the matter continues without using judicial resources for naught. If no new trial is granted, the PCR court can order resentencing on the first degree burglary, and the hearing and any appeals would still be complete long before Appellant could serve his thirty-year sentences for kidnapping and armed robbery, as well as the consecutive ten-year sentence for ABHAN.

Therefore, in addition to incorrectly applying the holdings of Johnston and Vick, this Court's opinion does not further judicial economy. This Court should find the general rule that a sentencing issue must be preserved for review on appeal applies in the instant case. As a result, the Court should grant rehearing, find Johnston and Vick do not apply in the case *sub judice*, hold the issue is not preserved for review on appeal, affirm Appellant's convictions and sentences, and allow any issues to be addressed in the interest of judicial economy in PCR if appropriate.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the trial court find Johnston and Vick do not apply in the case *sub judice*, hold the issue is not preserved for review on appeal, affirm Appellant's convictions and sentences, and allow any issues to be addressed in PCR if appropriate.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

November 29, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Cherokee County
Hon. J. Derham Cole, Circuit Court Judge
Appellate Case No. 2009-146206

The State,

Respondent,

v.

John Bendarian Bonner,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served.
This 29th day of November, 2012.

Ellen R. DuBois
ELLEN R. DuBOIS
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The South Carolina Court of Appeals

The State, Respondent,

v.

John Bendarian Bonner, Appellant.

Appellate Case No. 2009-146206

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded; hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Hoff J.

Paul H. Burch J.

John O. Stearns J.

Columbia, South Carolina

cc:

William M. Blich, Jr.

Wanda H. Carter

FILED

18 Dec 2012



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 17, 2013

The Honorable Brandy W. McBee
PO Drawer 2289
Gaffney SC 29342-2289

REMITTITUR

Re: The State v. Bonner, John Bendarian
Lower Court Case No. 2009GS1100826, 2009GS1100828,
2009GS1100825, 2009GS1100829, 2009GS1100824, 2009GS1100827
Appellate Case No. 2009-146206

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in cursive script.
CLERK

cc: William M. Blich, Jr.
Wanda H. Carter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JOHN BENDARIAN BONNER,) 2009-GS-11-00824
7 DEFENDANT.) JANUARY 22, 2013
GAFFNEY, SOUTH CAROLINA

8 (RESENTENCING HEARING)

9
10 B E F O R E:

11 THE HONORABLE J. DERHAM COLE, JUDGE.
12

13
14 A P P E A R A N C E S:

15 BARRY BARNETTE, SOLICITOR
16 ATTORNEY FOR THE STATE

17 JOSHUA SCHULTZ, ESQUIRE
18 ATTORNEY FOR THE DEFENDANT

19
20 MICHAEL R. WATTS
CIRCUIT COURT REPORTER
21
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WITNESSES

PAGE

(NO WITNESSES CALLED).

EXHIBITS

	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	CT-1	COURT OF APPEALS DECISION	4	
4	CT-2	COURT OF APPEALS REMITTITUR	4	
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1 (PROCEEDINGS, JANUARY 22, 2013)

2 (Court of Appeals Decision marked as Court's
3 Exhibit No. 1 for identification).

4 (Court of Appeals Remittitur marked as Court's
5 Exhibit No. 2 for identification)

6 MR. BARNETTE: May it please the court, Your
7 Honor, this is the case of State versus John Bonner, Your
8 Honor.

9 The Court of Appeals, Your Honor, in an opinion
10 filed on February 14th, 2012, which is Published Opinion
11 5048, Your Honor, sent us back the burglary first
12 conviction.

13 He was convicted at trial on November 18th, 2009,
14 of several charges, including burglary first degree, Your
15 Honor. The Court of Appeals has vacated the sentence and
16 remanded it back based off of a Supreme Court case that came
17 after this case, Your Honor, basically saying that life
18 without parole for the burglary first conviction can't be
19 given in a non-homicide offense, Your Honor, committed as a
20 juvenile. So the State has brought him back for
21 resentencing, Your Honor.

22 I have marked as two exhibits.

23 Court Exhibit 1 is the actual opinion, Your Honor,
24 that was issued by the Court of Appeals.

25 Court Exhibit No. 2, Your Honor, is the remittitur

1 which has been submitted by the Court of Appeals, Your
2 Honor. This was remitted back to this court on January
3 17th, 2013, Your Honor.

4 If I could enter those in the record, Your Honor,
5 and pass them up to the court.

6 And I believe his attorney, Mr. Josh Schultz at
7 the trial, Your Honor, is here for the sentencing hearing.
8 I believe he has a matter he wants to ask the court about at
9 this time.

10 THE COURT: All right, Mr. Schultz.

11 MR. SCHULTZ: That's correct, Your Honor.

12 May it please the court, Mr. Bonner and I have
13 talked about this case. Mr. Bonner feels that it's in his
14 best interest to continue this matter right now, and we
15 would ask the court to continue this matter.

16 He wants to do some more research. I feel that I
17 have done all the research necessary in this matter and I
18 would like to proceed with it, but I'm doing this on behalf
19 of Mr. Bonner, who requests a continuance from the court.

20 THE COURT: And what does he need time for? What
21 do y'all need time for?

22 MR. SCHULTZ: Mr. Bonner would like to research
23 this -- an issue further when it comes to concurrent -- his
24 concurrent sentencing for his life sentence.

25 THE COURT: Well, what does he need to research?

1 MR. SCHULTZ: The question is that Mr. Bonner
2 wishes me to research, and I've -- I have already come to my
3 conclusion, but Mr. Bonner would like to research it
4 further, if the court can grant him any more time or any
5 less time on the thirty year sentences that the court gave
6 him and also the ten year sentence on the assault and
7 battery of a high and aggravated nature, which ran
8 consecutive to the thirty year sentence that the court gave
9 him. That's what he would like to research.

10 THE COURT: Well, I can't change those sentences.
11 We are all in agreement on that, aren't we?

12 MR. BARNETTE: Yes, sir. As a matter of fact, in
13 the opinion itself basically says Bonner was sentenced as
14 follows: LWOP for the burglary first; five years for grand
15 larceny; fifteen years for the burglary in the second
16 degree; thirty years for the kidnapping; thirty years for
17 armed robbery; ten years for ABHAN, Your Honor. All of them
18 was concurrent to each other, with the exception of the
19 sentence for the ABHAN, Your Honor.

20 It says "Bonner does not challenge his conviction
21 or sentence for any other charge," and that was in the
22 opinion issued by the Court of Appeals, Your Honor. So
23 that's not an issue in front of this court at this time.

24 THE COURT: The only sentence I can impose today
25 is a sentence for burglary in the first degree. That's the

1 only case that's been sent back.

2 MR. SCHULTZ: Yes, sir.

3 THE COURT: Does he still need a continuance?

4 (Off the record)

5 (Back on the record)

6 MR. SCHULTZ: He still says he wants a
7 continuance, Your Honor.

8 THE COURT: And what's he need to research then?

9 The other sentences can't be altered, so what is
10 it that he needs to research now?

11 (Off the record)

12 (Back on the record)

13 MR. SCHULTZ: I beg the court's patience, Your
14 Honor.

15 THE COURT: Okay.

16 (Off the record)

17 (Back on the record)

18 MR. SCHULTZ: Your Honor, he tells me that he does
19 not wish to pursue a continuance at this time.

20 THE COURT: Okay.

21 MR. BARNETTE: May I pass the indictment up, Your
22 Honor?

23 THE COURT: Yes.

24 All right, we are here on Indictment

25 2009-GS-11-824, an indictment for burglary in the first

1 degree, wherein the defendant was previously found guilty of
2 the crime of burglary in the first degree by a jury.

3 The defendant is now before the court for the
4 imposition of sentence.

5 Anything further on behalf of the State?

6 MR. BARNETTE: Your Honor, I believe you know the
7 facts of the case, since you were the trial judge on it,
8 Your Honor.

9 Just two things I would like to bring to the
10 court's attention.

11 One thing, talking about juveniles, I know the
12 court, our U.S. Supreme Court, as well as the Court of
13 Appeals has ruled. But, however, some of the most dangerous
14 individuals I have seen in court has been seventeen years
15 old. I have dealt with Jonathan Vick; Calen Radwill, which
16 is in Lexington County.

17 We also had Eric Morgan in front of Your Honor I
18 believe on a death penalty case. In this situation -- of
19 course, his sentence was commuted to life.

20 I know they were all murder cases, Your Honor, but
21 I think as a seventeen year old -- of course, you know the
22 facts of the case. He was one of the main instigators in
23 it. And thank God that the alarm went off when they broke
24 into the convenience store next door or the victim would
25 probably not have been alive after that. I think if that

1 alarm hadn't went off and shocked all of them and obviously
2 draw attention from the neighborhood and from the local
3 police, that she would have probably been -- she was
4 definitely hurt emotionally, as well as physically, but I
5 think she would have definitely been dead from that
6 situation if they had had time to go ahead and take care of
7 her, and he was one of the main people involved with him.

8 I know the court knows the previous sentencing.
9 Joshua Manning, he was twenty-three years old and received a
10 sixty year sentence from Judge Hayes, Mark Hayes. And his
11 co-defendant, Labron Agnew received a thirty year sentence,
12 Your Honor. They were two of the main people that was with
13 him when they attacked and assaulted the victim in this
14 case, Your Honor.

15 I did talk to the victim and her family, Your
16 Honor. We had representatives talk to them. They trust the
17 judgment of this court. They appreciate you listening to
18 this case again and they trust your judgment in this case,
19 Your Honor. Thank you very much.

20 THE COURT: Okay.

21 Mr. Schultz?

22 MR. SCHULTZ: Thank you, Your Honor.

23 May it please the court, Mr. Bonner is now
24 twenty-one years old. When he was sentenced by Your Honor I
25 believe he was eighteen. When these acts were committed Mr.

1 Bonner was seventeen and arguably he was a juvenile.

2 In the course of my representation of Mr. Bonner,
3 which is now close to four years, I have come to know him
4 very well. We would like to take this opportunity to
5 explain to Your Honor why Mr. Bonner deserves a second
6 chance at life and a meaningful chance at rehabilitation.

7 His background, unfortunately we have been through
8 this several times, is unfortunately similar to a lot of
9 people who find themselves very young and in a lot of
10 trouble. Mr. Bonner and I have talked at length about this
11 and I do not believe that he ever had a lot of positive role
12 models in his life. I don't believe he had a positive male
13 role model in his life. His father tells me he was in and
14 out of jail for the better part of his life and as a result
15 his relationship with his father was certainly strained.

16 He's told me that his father encouraged him to
17 participate in sports - basketball, football and track. And
18 I believe his ex-football coach is present here today.

19 He told me that when his parents separated when
20 John was about twelve or thirteen years old.

21 I feel strongly that if he had a positive male
22 role model in his life, we may not be standing here right
23 now in front of Your Honor.

24 When his parents were separated, his father
25 stopped being a part of his life. His mother, who is here

1 today is Eva and she encouraged John to go to church and be
2 respectful of people and generally raised him right.

3 Before he was incarcerated John became a father to
4 a young -- to two young children. They are now seven and
5 five. He has a little boy name Sam, a seven year old, and a
6 little girl named Ivy. Because of his current incarceration
7 he has never got to know these children, and he hopes that
8 if the court gives him a meaningful chance at rehabilitation
9 he can develop some kind of relationship with these
10 children.

11 While in prison he has matured significantly, I
12 believe, and I have actually noticed a marked difference --
13 a marked difference in his tone and his attitude now from
14 when I first represented him back in 2009.

15 The Graham case, which Your Honor, of course, is
16 aware of that came down from the United States Supreme Court
17 established that juveniles like him at the time have less in
18 culpability. I believe that Mr. Bonner then had lack of
19 maturity and undeveloped sense of responsibility.

20 In talking with Mr. Bonner several times about
21 what led him to this point, he's told me several times that
22 he's been influenced by people that he should have never
23 been influenced by.

24 As the court said in the Graham case, that they
25 are -- some like John are more vulnerable and susceptible to

1 negative influences and outside pressures, including peer
2 pressure and the characters are not as well formed.

3 In my opinion, this description that the court
4 said in Graham fits Mr. Bonner's personality in 2008, and --
5 actually 2009.

6 I believe he can be reformed. And in the words of
7 Graham again, "from a moral standpoint it would be misguided
8 to equate the failings of a minor with those of an adult,
9 for a greater possibility exists that a minor's character
10 deficiencies will be reformed."

11 Also in looking at the Graham case, Your Honor,
12 the court held that someone who is incorrigible should not
13 have a chance of rehabilitation. John is not incorrigible.
14 He's not a danger to society. He has a very good support
15 network, people that care about him, and I believe that he
16 has the capacity to change what he once was.

17 John has told me that he received his GED in
18 prison and also certification in carpentry and electrician
19 training. It took him approximately about a little over
20 half a year to complete these certifications and John has
21 taken great pride in the ability to start and to finish
22 something that he sets his mind to.

23 He tells me in the very few times that he's
24 allowed out of his cell, he spends most of the time at the
25 library reading about subjects from legal procedure to

1 religion. He tells me he attends church frequently,
2 Wednesday and Sunday, and takes his devotion to God
3 seriously. He also told me that he has given testimonials
4 to prisoners and hopes that his fellow prisoners there that
5 gather there can learn lessons from what John has done.

6 Besides I believe he has ability to change, I
7 would tell the court that Mr. Bonner's several
8 co-defendants, several of these defendants were sentenced to
9 quite long sentences, but some of them, not all of them, but
10 some of them will have the opportunity to one day be allowed
11 to have some kind of meaningful chance of rehabilitation.

12 Your Honor, this is a young man with goals and
13 visions. He has expressed to me several times that he wants
14 to get a business degree from college. He wants to open a
15 record label. He wants to get married. He wants to have a
16 family. He wants to lead a normal life. He's looking for a
17 chance, Your Honor, to lead that normal life and for a
18 meaningful chance at rehabilitation.

19 At this current time Mr. Bonner, because he was
20 sentenced at so young an age, he will no doubt serve more
21 years and a greater percentage of his life than someone that
22 was say sentenced as an adult offender, whether it be thirty
23 years old or seventy years old.

24 We realize that, of course, in the Graham case,
25 and as well as our Supreme Court that says the State is not

1 required to guarantee eventual freedom to someone like Mr.
2 Bonner, the sentence we are asking for is a sentence that
3 provides some meaningful opportunity for release, based upon
4 demonstrated maturity and rehabilitation. I think in the
5 time that he's been in prison, he's demonstrated maturity
6 and the opportunity for rehabilitation. I believe he does
7 have a little maturity now that he did not when he was
8 seventeen, and his time in prison has allowed him to begin a
9 long process of rehabilitation.

10 The case law that I have read, most importantly in
11 the Graham case, a life without parole sentence I believe
12 should be reserved for those defendants, in the words of the
13 court there, are irredeemably depraved. Josh is not
14 irredeemably deprived. In fact, I would argue today that he
15 does have this capacity to change, and what we are asking
16 for the court today is to give him the opportunity to
17 demonstrate his capacity for change.

18 What we are asking for is hope, hope at a new life
19 and a chance for John to prove himself on the outside and
20 for a chance to live a meaningful and respectful life.
21 Thank you.

22 THE COURT: Mr. Schultz, I know that you have read
23 the opinion.

24 MR. SCHULTZ: Yes, sir.

25 THE COURT: The court said a life sentence could

1 not be imposed, even though it's authorized by statute.
2 Does the court give any guidance as to what kind of sentence
3 could be imposed in this case?

4 MR. SCHULTZ: The court did not give any
5 categorical rule, any kind of bright line guidance to assist
6 the trial courts in this. It's -- I guess it would be more
7 of a qualitative judgment rather than quantitative opinion.

8 The only research that I have been able to find
9 with this is the transcript in the Supreme Court oral
10 arguments, and it doesn't provide -- it may not provide
11 guidance, but I wanted to bring that up to the court's
12 attention.

13 Justice Scalia asked appellate counsel for Mr.
14 Graham in the Graham v. Florida case. And he asked him
15 about what exactly a sentence like this would propose. And
16 if I could read from the transcript here, Your Honor.

17 "Justice Scalia: What do you propose? I propose,
18 you know, one year before his life expectancy."

19 And then counsel for Mr. Graham here, a person
20 named Bryan Gowdy, has said "Your -- Your Honor, I think
21 that would be coming so close to the -- the constitutional
22 line, it would be -- it would be difficult to see that as
23 constitutional, but --"

24 And then Justice Scalia interrupts him and says
25 "oh, one year before life is also unconstitutional?"

1 And then Mr. Gowdy says "Your Honor, I'm. --"

2 And Justice Scalia says "two years before life?"

3 And then Mr. Gowdy goes on at length and says

4 "Your Honor, there would definitely be a -- a difficult line
5 to draw at that case. Life without parole, though, is
6 unequivocal. And even that sentence that you are
7 describing, there is some difference between it and life
8 without parole, because only life without parole makes the
9 unequivocal assessment that the adolescent cannot be
10 returned to civil society."

11 And Chief Justice Roberts then goes on to say --
12 he goes on to question counsel about a categorical rule.

13 Of course, counsel has not proposed a categorical
14 rule or any kind of bright line, so unfortunately I was not
15 able to find any research on it. I don't think that that
16 was what the court wanted to do in this matter. I think --
17 as I said before, I think it's a qualitative opinion that
18 the court wrote here and I don't think there is any bright
19 line or categorical rules where the trial courts can
20 sentence a person knowing that they cannot sentence
21 juveniles to life without parole.

22 THE COURT: All right, Mr. Bonner, do you have
23 anything that you would like to add to what Mr. Schultz has
24 told me?

25 MR. SCHULTZ: And, Your Honor, if I could, some

1 family members wish to address the court --

2 THE COURT: Okay.

3 MR. SCHULTZ: -- at the appropriate time.

4 THE COURT: All right.

5 MR. BARNETTE: And, Your Honor, if I could address
6 something he said earlier too about that --

7 THE COURT: Okay.

8 MR. BARNETTE: -- whenever the appropriate time.

9 THE COURT: I'll let you respond to whatever they
10 tell me.

11 Who else do you have that wants to speak?

12 MR. SCHULTZ: Your Honor, I would like to present
13 his mother Eva Bonner.

14 THE COURT: And your name is what, ma'am?

15 EVA BONNER: Eva Bonner.

16 THE COURT: Eva Bonner?

17 EVA BONNER: Yes, sir.

18 THE COURT: All right, Ms. Bonner, what would you
19 like to say?

20 EVA BONNER: I would like for the court to have
21 mercy on my son, because my son is -- I have been hearing is
22 not the son that I know. The son that I know has been the
23 one that has been encouraging me and giving me hope.

24 He has two kids, one of whom he has never spent
25 time with. They will have to grow up without a father or

1 anybody, something he done had to grow up with.

2 He didn't have a brother, a counselor that he
3 never got to see, or even come to see him when he left. I
4 just ask the court to have mercy.

5 THE COURT: Okay. Thank you, ma'am.

6 All right, tell me your name, please, sir.

7 CHRIS DEWBERRY: Chris Dewberry.

8 THE COURT: Chris Dewberry?

9 CHRIS DEWBERRY: Chris Dewberry, uh-huh.

10 THE COURT: All right. What would you like to
11 tell me?

12 CHRIS DEWBERRY: Oh, I coached him when I was
13 at -- when we was at Ewing Middle School, and I have been
14 knowing him most of my life. And I just want the court to
15 give mercy on him. He's -- he's not -- he's not a violent
16 person and he's got a lot of values in him. And I just feel
17 that he made a mistake, and I feel that, you know, God will
18 forgive him for that. And I just, you know, come to
19 represent him and support him. I love him. I love him as a
20 kid. I have been knowing him so long, I just love him, and
21 I support him and I believe that he still will be a good
22 citizen of Cherokee County. I think he's learned his
23 lesson. Thank you.

24 THE COURT: Okay. Thank you, sir.

25 MR. SCHULTZ: That's all I have, Your Honor.

1 MR. BARNETTE: Thank you, Your Honor.

2 Briefly I would just like to respond, Your Honor.
3 He talked about the other co-defendants, or whatever. Well,
4 this defendant, Mr. Bonner, went in the house, the victim's
5 house, broke into her house with Joshua Manning, Lebron
6 Agnew, as well as Fred Douglas, Your Honor. He was one of
7 the main instigators. The other four did not go in the
8 building. Two of them actually stayed at the car across
9 from the parking lot. Two of them was lookouts outside, so
10 they have different levels of culpability. He was one of
11 the main players in this case from that point. That's the
12 reason I brought up the three examples I used.

13 Jonathan Vick and Eric Morgan, I know the court
14 knows them, because you tried those cases. They were both
15 seventeen years old.

16 Calen Radwill kidnapped a fifteen year old boy
17 from a Winn Dixie at Lexington and took him out and stabbed
18 him seventy-eight times for absolutely no reason whatsoever,
19 other than just looking at him wrong.

20 And some of the most dangerous people I have ever
21 dealt were that age. And just because -- the problem I have
22 got with what the court has done -- not this court, but
23 obviously the Court of Appeals and possibly the Supreme
24 Court, they have made eighteen years old the bright line
25 rule. If you are seventeen years old, three hundred and

1 sixty-four days old, you are going to be treated
2 differently, even though you could do a crime just as
3 violent as anybody else. And this was definitely a violent
4 crime. I know the court knows that. I just wanted to put
5 that on the record that I have a real problem with that,
6 because now you are treating seventeen and sixteen year olds
7 differently than an eighteen year old just because maybe
8 possibly one day -- I don't know how many days old Mr.
9 Bonner was, but just because they picked an age range don't
10 mean that the crimes or the way they have done is any
11 different from anything, because you are differentiating
12 just because of age now. It needs to be looked at the
13 individual and the crime that they did. And obviously the
14 crime that this individual was involved in was very heinous.
15 Thank you, Your Honor.

16 THE COURT: All right, Mr. Bonner, anything that
17 you would like to add to what your lawyer has told me?

18 THE DEFENDANT: Well, I mean, you know, first off
19 I would just like to thank the most high for blessing me and
20 giving me the opportunity to be here, you know, and for
21 guiding me and keeping me strong throughout this, you know.

22 And just adding on to what my family and what my
23 friend was just saying, I mean, I'm ready for society, you
24 know. I did a lot of bad things in life. I made a lot of
25 mistakes, but, you know, we are all just human, you know

1 what I'm saying?

2 I went down there. I had to rehabilitate myself.
3 Prison didn't rehabilitate me. I did it myself. It's
4 something that I wanted to do, you know.

5 I just got a family that needed me. I got kids
6 that need me. A lot of people out there that need me. You
7 know, I -- I think I deserve a second chance. I mean, I
8 cried and begged every night to God to give me this
9 opportunity and he believed in me. He did. All I got to do
10 is obey it. That's all he asked me to do.

11 I'm just ready. I just need a second chance to
12 prove to the people, to my family and everybody. I'm ready
13 for society now. That's it. That's it.

14 THE COURT: On Indictment 2009-0824 on burglary,
15 first degree, the sentence of the court is that you, John
16 Bendarian Bonner, be confined to the South Carolina
17 Department of Corrections for a period of sixty years.

18 Give him credit for any time he's entitled to
19 pursuant to 24-13-40.

20 MR. BARNETTE: Thank you, Your Honor.

21 (END OF REQUESTED TRANSCRIPT OF RECORD)
22
23
24
25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for CHEROKEE County, South Carolina, on the 22ND day of JANUARY, 2013.

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

MARCH 9, 2013

Michael R. Watts

Michael R. Watts
Circuit Court Reporter

WITNESSES

Gaffney Police Dept.

[Signature]

ARREST WARRANT NUMBER

1068018

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

7-30-09

VERDICT

Guilty

Foreperson of Petit Jury

Date:

11/13/09

DO 09-00000000
09-GS-11-0824

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

THE STATE

vs.

John Bendarian Bonner

Indictment for

BURGLARY, FIRST DEGREE
(Dwelling)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

A TRUE COPY

Brandy L. McBee

CLERK OF COURT
CHEROKEE COUNTY, S.C.

RECEIVED

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

FEB 17 2013

JUL 30 2009

SC OFFICE OF
APPELLATE DEFENSE

At a Court of General Sessions, convened on _____ the Grand Jurors of
Cherokee County present upon their oath:

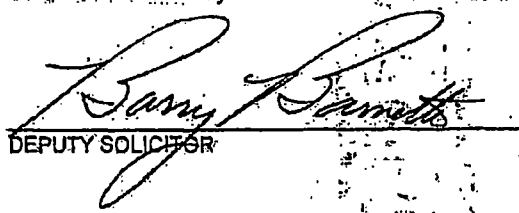
BURGLARY, FIRST DEGREE**(DWELLING)**

That the Defendant, John Bendarian Bonner, did in Cherokee County, on or about April 2, 2008, willfully and intentionally enter the dwelling belonging to Dipali Darji located at [REDACTED], Gaffney, South Carolina without consent and with the intent to commit a crime therein, and either:

- (1) when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:
 - (a) was armed with a deadly weapon or explosive; or
 - (b) caused physical injury to any person who was not a participant in the crime; or
 - (c) used or threatened the use of a dangerous instrument; or
 - (d) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- (2) the burglary was committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or
- (3) the entering or remaining occurred in the nighttime.

In violation of §16-11-311, Code of Laws of South Carolina (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

8644872754

14:52:26 03-07-2013

3/24

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
 STATE VS.
John Bendarian Bonner

INDICTMENT/CASE#: 2009GS110824

AKA: _____

A/W#: 1068018Race: B Sex: M Age: 18Date of Offense: 04/02/2008DOB: 01-24-1991 SS#: _____S.C. Code §: 16-11-0311

Address: _____

CDR Code #: 0079

DL#: _____ SID#: _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

BARNETTE, BARRY

SC Bar#

Defendant

Attorney for Defendant

74518
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation _____ for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

November 18, 2009

8549021119

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee

VS.
John Bendarian Bonner

AKA:

Race: BLACK Sex: M Age: 21

DOB: 01-24-1971 SS#:

Address:

City/State/Zip: Gaffney, SC 29340

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary/ Burglary (After June 20, 1985) First degree.

In violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lowd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
BARNETTE BARRY
SC Bar#

13039
SC Bar#

Defendant Sign: [Signature]
Attorney for Defendant: [Signature]
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 60 days/months/years or ☐ under the Youthful Offender Act not to exceed years,
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$ plus costs and assessments as applicable, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922 it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing, ☐ Ordered, PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS.

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforc. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(I) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$9
3% to County (if paid in installments)	\$ 3.90
TOTAL	\$ 13390

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

21:44:05 01-29-2013
IN THE COURT OF GENERAL SESSIONS

1/1

INDICTMENT/CASE#: 2009GS110824

A/W#: 1068018

Date of Offense: 4/2/2008

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

*Amended and re-sentenced
on removal from S.C. Ct. appeal*

☒ CONVICTED OF or ☐ PLEADS

Obtain GED: ☐
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling: ☐
Random Drug/Alcohol testing: ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

A TRUE COPY

☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk
during probation.

CLERK OF COURT
CHEROKEE COUNTY, S.C.

Presiding Judge

Judge Code: 2053

Sentence Date: 1/22/13

7/24

03-07-2013

14:53:10

WITNESSES

[Signature]
Gaffney Police Dept.

ARREST WARRANT

1068038

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 7-30-09

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 11/18/09

09-GS-11-0825

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

THE STATE
vs.

John Bendarian Bonner

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B)(2)

8644872754

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

JUL 30 2009

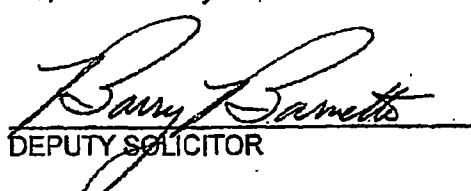
At a Court of General Sessions, convened on _____ the

Grand Jurors of Cherokee County present upon their oath:

GRAND LARCENY

That John Bendarian Bonner, did in Cherokee County, on or about April 2, 2008, with the intent to permanently deprive the owner, take and carry away cash, valued at five thousand dollars or more, belonging to Corner Stop #2, in violation of §16-13-30 (B)(2) Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

8644872754

14:52:48 03-07-2013

5/24

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
 STATE VS.
 John Bendarian Bonner

AKA:

Race: B Sex: M Age: 18

DOB: 01-24-1991 SS#:

Address:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
 TO: Larceny / Grand Larceny, value \$5,000 or more

INDICTMENT/CASE#: 2009GS110825

A/W#: 1068038

Date of Offense: 04/02/2008

S.C. Code §: 16-13-0030(B)

CDR Code #: 0479

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 0479

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Barnette Barry 13039/77947 *Mike Watts* 74518
 BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ § 14-1-206 (Assessments 107.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ § 47.12 (Public Def/Prob) \$500 \$ 25.§ 14-1-212 (Law Enforce. Funding) \$25 \$ § 14-1-213 (Drug Court Surcharge) \$100 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ § 90.7 (SCCA Surcharge) \$5 \$ 53% to County (if paid in installments) \$ 390TOTAL \$ 133.90Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing

Fines may be pd. in equal, consecutive weekly/monthly

prmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, \$47.12

requires \$500 be paid to Clerk during probation.

 Clerk of Court/ Deputy Clerk *Bondy H. McBe*Court Reporter: *Mike Watts*

SCCA/217 (06/2009)

PRESIDING JUDGE *Mike Watts*Judge Code: *11/15/13*Sentence Date: *11/15/09*

14/24

WITNESSES

03-07-2013

Gaffney Police Dept.

14:54:13

ARREST WARRANT NUMBER

1068037

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11/18/09

8644872754

09-GS-11-0826

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

THE STATE
vs.

John Bendarian Bonner

Indictment for

BURGLARY, SECOND DEGREE
(BUILDING)

SC Code: 16-11-312(B)

CDR Code: 0086

Class FEL/D

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE.)

INDICTMENT

JUL 30 2009

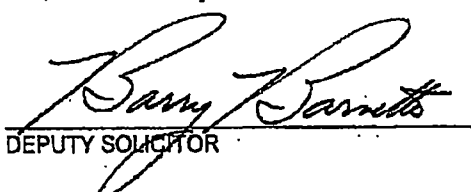
At a Court of General Sessions, convened on _____, the

Grand Jurors of Cherokee County present upon their oath:

BURGLARY, SECOND DEGREE**(Building)**

That John Bendarian Bonner, did in Cherokee County on or about April 2, 2008, willfully and unlawfully enter a building belonging to Corner Stop #2 without consent and with intent to commit a crime therein, located at [REDACTED], Gaffney, South Carolina, and either: when, in effecting entry or while in the building or in immediate flight therefrom, he or another participant in the crime: was armed with a deadly weapon or explosive; or the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or entering or remaining occurs in the nighttime, in violation of §16-11-312 (B), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.
John Bendarian Bonner

INDICTMENT/CASE#: 2009GS110826

A/W#: 1068037

Date of Offense: 04/02/2008

S.C. Code §: 16-11-0312(B)

CDR Code #: 0086

AKA:

Race: B Sex: M Age: 18

DOB: 01-24-1991

SS#:

Address:

DL#:

SID#:

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

BARNETTE, BARRY

13039/11947

Defendant

Attorney for Defendant

74318

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

078513

November 18, 2009

18/24

WITNESSES

03-07-2013

Gaffney Police Dept.

14:54:51

ARREST WARRANT NUMBER

1068044

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Petit Jury
Date: 11/18/09

DOCKET NO.

09-GS-11-0827

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

THE STATE
vs.

John Bendarian Bonner

Indictment for

KIDNAPPING

SC Code: 16-03-910
CDR Code: 0096
Class FEL-A

8644872754

413

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

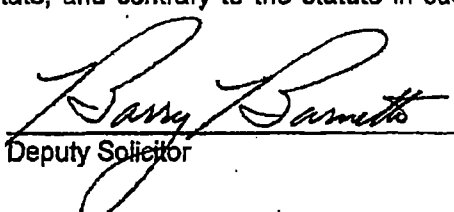
INDICTMENT

At a Court of General Sessions, convened on JUL 30 2009 the
Grand Jurors of Cherokee County present upon their oath:

KIDNAPPING

That John Bendarian Bonner, did in Cherokee County on or about April 2, 2008,
willfully and unlawfully with criminal intent seize, confine, inveigle, decoy, kidnap, abduct
or carry away one Dipali Darji without authority of law, all in violation of §16-03-910,
THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.


Deputy Solicitor

8644872754

14:54:22 03-07-2013

15/24

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
STATE VS.
John Bendarian Bonner

AKA:

Race: B Sex: M Age: 18

DOB: 01-24-1991 SS#:

Address:

Gaffney, SC 293400000

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping

INDICTMENT/CASE#: 2009GS110827

A/W#: 1068044

Date of Offense: 04/02/2008

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST Barnette, Barry 13039/11947 John P. Bonner 74S18
BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment,of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation — for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ — plus 20% fee: \$ —

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$ 3.90

\$ 133.90

— days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning\$ — paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.

John Bendarian Bonner

AKA:

Race: B Sex: M Age: 18

DOB: 01-24-1991

SS#:

Address:

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS110828

A/W#: I068045

Date of Offense: 04/02/2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED

☐ set by SCDPPPS

Attend Voc. Rehab. or Job Corp.

Recipient:

May serve W/E beginning

*Fine:

Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5 %)

Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge)

Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge)

pmts. of \$ beginning

§ 56-5-2995 (DUI Assessment)

\$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test)

Other:

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

6/6

WITNESSES

03-07-2013

[Signature]
Gaffney Police Dept.

15:00:51

ARREST WARRANT NUMBER

1068045

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: 7-30-09

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date: 11/18/09

09-GS-11-0828

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

THE STATE
VS.

John Bendarian Bonner

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

8644872754

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

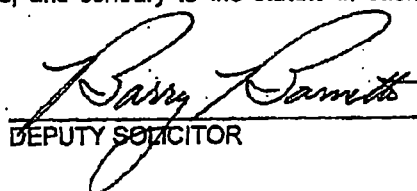
INDICTMENT

At a Court of General Sessions, convened on JUL 30 2009, the Grand Jurors of Cherokee County present upon their oath:

ARMED ROBBERY

That John Bendarian Bonner, did in Cherokee County on or about April 2, 2008, while armed with a pistol, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Dipali Darji, by means of force, violence, and/or intimidation, goods or monies of Dipali Darji, such goods or monies being described as follows: cash, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

22/24

WITNESSES

03-07-2013

Gaffney Police Dept.

14:55:30

ARREST WARRANT NUMBER

1068046

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilt

Foreperson of Petit Jury

Date: 11/13/09

DO 09-GS-11-0829

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 30 2009

TERM

THE STATE

vs.

John Bendarian Bonner

**Indictment for
ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE**

SC Code: 17-25-30

CDR Code: 013

Class MIS/UNC

8644872754

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on JUL 30 2009 the

Grand Jurors of Cherokee County present upon their oath:

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That John Bendarian Bonner, did in Cherokee County on or about April 2, 2008, commit an assault and battery upon the victim, Dipali Darji, constituting an unlawful act of violent injury against Dipali Darji, accompanied by circumstances of aggravation, including use of a deadly weapon, infliction of serious bodily injury, or great disparity in the ages or physical conditions of the parties, to wit: by striking the victim repeatedly about the face and body, in violation of §17-25-0030, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


DEPUTY SOLICITOR

8644872754

14:54:59 03-07-2013

19/24

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Cherokee
 STATE VS.
 John Bendarian Bonner

INDICTMENT/CASE#: 2009GS110829

AKA:

A/W#: I068046

Race: B Sex: M Age: 18

Date of Offense: 04/02/2008

DOB: 01-24-1991 SS#: 1

S.C. Code §: C/L, 17-25-0

Address:

CDR Code #: 0013

DL#: SID#:

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Assault / Assault and battery of a high and aggravated nature (ABHAN)

☒ CONVICTED OF or ☐ PLEADS

in violation of § C/L, 17-25-0 of the S.C. Code of Laws, bearing CDR Code # 0013

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Barnette, Barry 13139/77947 Defendant 74 S.18
 BARNETTE, BARRY SC Bar# Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: any other sentence
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
§ 47-12 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$100
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
§ 90.7 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$ 390

TOTAL

\$ 133.90

Clerk of Court/ Deputy Clerk Brenda H. B...Court Reporter: Mike H. Bates

SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]Judge Code: 21A1313Sentence Date: 11/18/09

11:33:01 Tuesday, July 21, 2015

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/21/15
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 338030 LOC: LEE
BONNER, JOHN BENDARIAN SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: Y
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: COMPLETED
GPS REQUIREMENT...: N
PREA DECISION...:
CURRENT SENTENCE: 060-00-000 CONSECUTIVE SENTENCE ...: N
060-00-000 CURRENT SENT START DATE: 06/01/2009
PROJECTED COMPLETION DATES
MAXOUT DATE: 05/19/2060 CURRENT EWC ..: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ..: 000526 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 002210 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections

Classification Summary Reports

Date: Tuesday, July 21, 2015

Classification Summary Reports

Inmate Number **338030**

Submit

Classification Summary Report for BONNER, JOHN BENDARIAN :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 07/21/2015

SCDC# 00338030

BONNER, JOHN BENDARIAN

FBI# 617312WC1

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

INSTITUTION: LEE

SECURITY/CUST: 3 MINIMUM IN

CURR INCARC SENT: 60 YRS 0 MOS 0 DAYS

VICTIM WITNESS: ~~SEP~~ SEPREQ:Y

MED CLASS: NO MED PROB/NO WORK RESTR

INST RESTRICT: ~~RESTRICTED~~

MENTAL CLASS: ~~MENTAL~~

CURRENT PROGRAM: NO CURRENT PROGRAM

SEX REGISTRY: Y

DNA: C

AGE: 24



RESIDENT STABILITY: NA

DORMROOMBUNK_CODE: DAR 2156 B

PROJ MAXOUT DATE: 05/19/2060

PROJ PAROLE DATE: -

EWC JOB: GENERAL WORKER

ASSIGNMENT: DARLINGTON UNIT

EWC LEVEL: 3F5 EEC LEVEL:

EDUC PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE		
			DYS	COUNTY		V/NV	CAT	INDICT
BURGLARY-1ST DEGREE	60	0	0	CHEROKEE	06/01/2009	V	4	09GS11-0824

ASSLT&BATTERY-HIGH&AGG.NA	10	0	0	CHEROKEE	06/01/2009	N	3	09GS110829
KIDNAPPING	30	0	0	CHEROKEE	06/01/2009	V	5	09GS110827
BURGLARY-2ND DEGREE	15	0	0	CHEROKEE	06/01/2009	V	4	09GS110826
ARMED ROBBERY	30	0	0	CHEROKEE	06/01/2009	V	4	09GS110828
GRAND LARCENY	5	0	0	CHEROKEE	06/01/2009	N	2	09GS110825

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

04/28/2008 TRAFFICKING IN COCAINE

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

NO DETAINERS

ESCAPES:

04/28/2008 OTHER ESCAPE RELATED

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

06/20/2011	POSSESSION OF A WEAPON	DISMISSED	MAJOR DISC. HEARING	N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

04/02/2015	INTERFERING WITH DUTIES OF ANY PERSON	CONVICTED	ADMINISTRATIVE RESOLUTION
02/03/2015	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
01/06/2015	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
01/04/2015	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
12/06/2014	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
12/06/2014	INTERFERING WITH COUNT	CONVICTED	ADMINISTRATIVE RESOLUTION
10/16/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
02/18/2014	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
12/05/2013	INCITING/CREATING A DISTURBANCE	DISMISSED	MAJOR DISC. HEARING
06/16/2013	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
05/13/2013	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
05/13/2013	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
02/14/2013	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
02/14/2013	USE OBSCENE,VULGAR,PROFANE LANG/GESTURES	CONVICTED	ADMINISTRATIVE RESOLUTION
11/14/2012	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
08/26/2012	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
08/26/2012	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
10/26/2011	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	CONVICTED	MAJOR DISC. HEARING
10/26/2011	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
10/26/2011	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
10/03/2011	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	NOT GUILTY	MAJOR DISC. HEARING
07/28/2011	POSSESSION OF CONTRABAND	CONVICTED	ADMINISTRATIVE RESOLUTION
06/19/2011	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION

06/16/2011	INTERFERING WITH COUNT	CONVICTED	ADMINISTRATIVE RESOLUTION
06/16/2011	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
06/04/2011	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
05/13/2011	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
05/09/2011	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
01/01/2011	POSSESSION OF CONTRABAND	CONVICTED	MAJOR DISC. HEARING
01/01/2011	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	DISMISSED	MAJOR DISC. HEARING
11/10/2010	EXHIBITIONISM AND PUBLIC MASTURBATION	DISMISSED	MAJOR DISC. HEARING
04/08/2010	OUT OF PLACE	CONVICTED	ADMINISTRATIVE RESOLUTION
04/08/2010	INTERFERING WITH COUNT	CONVICTED	ADMINISTRATIVE RESOLUTION
02/08/2010	INTERFERING WITH COUNT	DISMISSED	ADMINISTRATIVE RESOLUTION

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

01/22/2015	LEE	INCARCERATED	ADMINISTRATIVE
01/22/2015	KIRKLAND	INCARCERATED	MEDICAL
01/22/2013	LEE	INCARCERATED	RETURN FROM COURT
12/20/2012	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
11/29/2012	LEE	INCARCERATED	RETURN FROM COURT
11/21/2012	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
05/16/2011	LEE	INCARCERATED	ADMINISTRATIVE
05/16/2011	EVANS	INCARCERATED	MEDICAL
01/12/2010	LEE	INCARCERATED	ADMINISTRATIVE
11/19/2009	KIRKLAND	INCARCERATED	R&E PROCESSING
11/19/2009	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	12/11/2014	-		3F5
WASH RACK ATTENDANT	11/18/2010	12/14/2010	UNSAT JOB PERFORM	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	01/26/2010	11/18/2010	COMPLETED EDUC PROGRAM

***** END OF REPORT *****

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Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 11:35:48 AM]

426
COUNTY OF
STATE

Chero

VS.

John Bendarian Bonner

AKA:

Race: BLACK

Sex: M

Age: 21

DOB:

SS#:

Address: 203 Villa Drive

City, State, Zip: Gaffney, SC 29340

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

of the S.C. Code of Laws, bearing CDR Code #

0079

☒ MOST SERIOUS

☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)

☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense,

The plea is: ☒ Without Negotiations or Recommendation,

☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

☐ Negotiated Sentence,

☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY

13039
SC Bar#

Defendant SIGN

Attorney for Defendant

74-518
SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,

☐ County Detention Center,

for a determinate term of

60

days/months/years or

☐ under the Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing

☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS110824

A/W#: 1068018

Date of Offense: 4/2/2008

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

*Amended and re-sentenced
on removal from S.C. Ct. Appeals*

☒ CONVICTED OF or ☐ PLEADS

338030
CR
99.10099

INMATE RECORDS OFFICE
20 JAN 25 PM 2:51

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

COUNTY OF
STATE

Cherokee
VS.

John Bendarian Bonner

AKA:

Race: B Sex: M Age: 18

DOB: SS#:

Address: 205 villa Drive
Gaffney, SC 293400000

DL#: SID#:

INDICTMENT/CA#: 2009GS110829

A/W#: I068046

Date of Offense: 04/02/2008

S.C. Code § : C/L, 17-25-0

CDR Code #: 0013

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault and battery of a high and aggravated nature (ABHAN)

☒ CONVICTED OF or ☐ PLEADS

in violation of § C/L, 17-25-0 of the S.C. Code of Laws, bearing CDR Code # 0013

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

WITNESSES: Barnette, Barry 13839/77947 SC Bar# 74 S18 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed — years
and/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or payment
of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for —

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: any other sentence
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ — plus 20% fee: \$ —

Payment Terms: —

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
§ 47.12 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$100
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
§ 90.7 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

— days/hours Public Service Employment

Obtain GED —

Attend Voc. Rehab. or Job Corp. —

May serve W/E beginning —

Substance Abuse Counseling —

Random Drug/Alcohol testing —

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ — beginning —

\$ — paid to Public Defender Fund

Other: —

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Brandi H. K. B.

Court Reporter: Mike Watts

SCCA/217 (06/2009)

PRESIDING JUDGE [Signature]

Judge Code: 2121513

Sentence Date: 11/18/09

COUNTY **428**
STATE

Cherokee

VS.

John Bendarian Bonner

AKA:

Race: **B** Sex: **M** Age: **18**

DOB: **SS#:**

Address: **203 Villa Drive**
Gaffney, SC 293400000

DL#: **SID#:**

In disposition of the said indictment comes now the Defendant who was
TO: **Kidnapping / Kidnapping**

INDICTMENT/CA#: **2009GS110827**

A/W#: **I068044**

Date of Offense: **04/02/2008**

S.C. Code §: **16-03-0910**

CDR Code #: **0095**

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § **16-03-0910** of the S.C. Code of Laws, bearing CDR Code # **0095**

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

BARNETTE, BARRY **13039/11947** **John P. Bonner** **7AS18**
SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of **30** days/months/years or ☐ under the Youthful Offender Act not to exceed **—** years
and/or to pay a fine of \$ **—**; provided that upon the service of **—** days/months/years and/or payment
of \$ **—**; plus costs and assessments as applicable*; the balance is suspended with probation **—** for **—**

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ **—** plus 20% fee: \$ **—** days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$
3% to County (if paid in installments)	\$
TOTAL	\$

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ **—** beginning

\$ **—** paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

429

COUNTY OF Cherokee
 STATE VS.
John Bendarian Bonner
 AKA: _____
 Race: B Sex: M Age: 18
 DOB: _____
 Address: 203 Villa Drive
Gaffney, SC 29340
 DL#: _____ SID#: _____

INDICTMENT/CASE#: 2009GS110826
 A/W#: I068037
 Date of Offense: 04/02/2008
 S.C. Code §: 16-11-0312(B)
 CDR Code #: 0086

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

BARNETTE, BARRY 13039/77947 John Bonner 74318
 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$
3% to County (if paid in installments)	\$
TOTAL	\$

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12
 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

November 18, 2009

COUNTY **430**
STATE

Cherokee

VS.

John Bendarian Bonner

AKA:

Race: B Sex: M Age: 18

DOB: SS#:

Address: 203 Villa Drive
Gaffney, SC 293400000

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS110828

A/W#: 1068045

Date of Offense: 04/02/2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Barnette Barry 13039/11947 John Bendarian Bonner 74518
BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

~~months/years~~ and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$
3% to County (if paid in installments)	\$
TOTAL	\$

 days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code: 0101513

Sentence Date: November 18, 2009

COUNTY OF
STATECherokee
VS.

John Bendarian Bonner

AKA:

Race: B Sex: M Age: 18

DOB:

Address: 203 Villa Drive
Gaffney, SC 293400000

DL#:

SID#:

INDICTMENT/CA#: 2009GS110825

A/W#: 1068038

Date of Offense: 04/02/2008

S.C. Code §: 16-13-0030(B)

CDR Code #: 0479

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Larceny / Grand Larceny, value \$5,000 or more☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-13-0030(B) of the S.C. Code of Laws, bearing CDR Code # 0479

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Barnette, Barry 13039/77947 SC Bar# 74518 Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§ 56-5-2995 (DUI Assessment)	\$12 \$
§ 56-1-286 (DUI Breath Test)	\$25 \$
§ 47.12 (Public Def/Prob)	\$500 \$
§ 14-1-212 (Law Enforce. Funding)	\$25 \$
§ 14-1-213 (Drug Court Surcharge)	\$100 \$
§ 50-21-114(BUI Breath Test Fee)	\$50 \$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
§ 90.7 (SCCJA Surcharge)	\$5 \$
3% to County (if paid in installments)	\$
TOTAL	\$

 days/hours Public Service EmploymentObtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, §47.12
requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk Bondahl M. B.Court Reporter: Mike Watts

SCCA/217 (06/2009)

PRESIDING JUDGE Judge Code: Sentence Date: 11/18/09

COUNTY OF 432
STATE

Cherokee

VS.

John Bendarian Bonner

AKA:

Race: BSex: MAge: 18

DOB:

SS#:

Address:

203 Villa DriveGaffney, SC 29340

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (After June 20, 1985) - First degree

INDICTMENT/CASE #: 2009GS110824A/W#: I068018Date of Offense: 04/02/2008S.C. Code § : 16-11-0311CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0311

of the S.C. Code of Laws, bearing CDR Code #

0079☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

BARNETTE, BARRY

SC Bar#

Defendant

Attorney for Defendant

74518

SC Bar#

WHEREFORE, the Defendant is committed to the



State Department of Corrections,



County Detention Center,

for a determinate term of

life

days/months/years or

under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation~~

for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100 \$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100 \$

§ 56-5-2995 (DUI Assessment)

\$12 \$

§ 56-1-286 (DUI Breath Test)

\$25 \$

§ 47.12 (Public Def/Prob)

\$500 \$

§ 14-1-212 (Law Enforce. Funding)

\$25 \$

§ 14-1-213 (Drug Court Surcharge)

\$100 \$

§ 50-21-114 (BUI Breath Test Fee)

\$50 \$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea \$

§ 90.7 (SCCJA Surcharge)

\$5 \$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

November 18, 2009

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

The Honorable J. Derham Cole
Seventh Judicial Circuit Court Judge

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 30 AM 10 04
BRANDY W. MCBEE

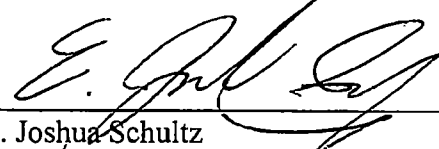
Case Nos. 2009-GS-11-00824, 2009-GS-11-00825, 2009-GS-11-00826,
2009-GS-11-00827, 2009-GS-11-00828, 2009-GS-11-00829

 The State of South Carolina.....Respondent
v.
John Bendarian Bonner.....Appellant

NOTICE OF INTENT TO APPEAL

John Bendarian Bonner appeals his resentencing in this case. The resentencing was imposed by the Honorable J. Derham Cole on January 22, 2013. Appellant received notice of the same on that date.

January 29, 2013


E. Joshua Schultz
184 N. Daniel Morgan Avenue
Spartanburg, SC 29306
(864) 582-3030
ATTORNEY FOR APPELLANT

Other Counsel of record:

Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED

FEB 01 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

The Honorable J. Derham Cole
 Seventh Judicial Circuit Court Judge

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2013 JAN 30 AM 10 04
 BRANDY W. MCBEE

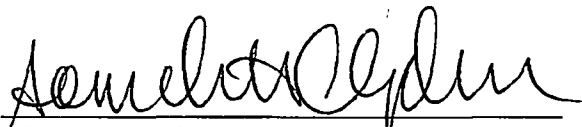
Case Nos. 2009-GS-11-00824, 2009-GS-11-00825, 2009-GS-11-00826,
 2009-GS-11-00827, 2009-GS-11-00828, 2009-GS-11-00829

The State of South Carolina.....Respondent
 v.
 John Bendarian Bonner.....Appellant

PROOF OF SERVICE

The undersigned, Somchite Chunphaven, hereby certifies that she is employed in the office of E. Joshua Schultz, Attorney at Law, and is a person of such age and discretion as to be competent to serve papers and that a copy of the **Notice of Intent to Appeal**, was served upon the following person(s) on the State, by depositing copies of same in the United States Mail, with sufficient postage affixed thereto, on January 30, 2013 addressed as follows:

Jenny Abbott Kitchings
 Clerk of Court, SC Court of Appeals
 1015 Sumter Street
 P.O. Box 11629
 Columbia, SC 29211


 SOMCHITE CHUNPHAVERN

RECEIVED

FEB 01 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

The Honorable J. Derham Cole
Seventh Judicial Circuit Court Judge

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JUN 30 PM 10 04
BRANDY W. MCBEE

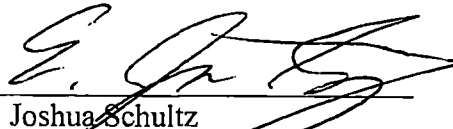
Case Nos. 2009-GS-11-00824, 2009-GS-11-00825, 2009-GS-11-00826,
2009-GS-11-00827, 2009-GS-11-00828, 2009-GS-11-00829

The State of South Carolina.....Respondent
vs.
John Bendarian Bonner.....Appellant

EXPLANATION OF APPEAL PURSUANT TO RULE 203(d)(1)(B), SCACR

Pursuant to Rule 203(d)(1)(B), SCACR, John Bendarian Bonner files this explanation of his appeal of his resentencing in this case. The resentencing was imposed by the Honorable J. Derham Cole on January 22, 2013. No issues were raised during the resentencing; however, the client insisted upon an appeal; therefore, this appeal was filed pursuant to Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995), and State v. Thrift, 378 S.C. 70, 661 S.E.2d 373 (2008).

January 29, 2013


E. Joshua Schultz
184 N. Daniel Morgan Avenue
Spartanburg, SC 29306
(864) 582-3030
Attorney for Appellant

Other Counsel of Record:

Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211

RECEIVED

FEB 01 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of General Sessions

The Honorable J. Derham Cole
Seventh Judicial Circuit Court Judge

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2013 JAN 30 PM 10 04
BRANDY W. MCBEE

Case Nos. 2009-GS-11-00824, 2009-GS-11-00825, 2009-GS-11-00826,
2009-GS-11-00827, 2009-GS-11-00828, 2009-GS-11-00829

The State of South Carolina.....Respondent
vs.
John Bendarian Bonner.....Appellant

PROOF OF SERVICE

The undersigned, Somchite Chunphaven, hereby certifies that she is employed in the office of E. Joshua Schultz, Attorney at Law, and is a person of such age and discretion as to be competent to serve papers and that a copy of the **EXPLANATION OF APPEAL PURSUANT TO RULE 203(d)(1)(B) SCACR**, was served upon the following person(s) on the State, by depositing copies of same in the United States Mail, with sufficient postage affixed thereto, on January 30, 2013 addressed as follows:

Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1015 Sumter Street
P.O. Box 11629
Columbia, SC 29211



SOMCHITE CHUNPHAVEN

RECEIVED

FEB 01 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN BONNER,

APPELLANT

Appellate Case No. 2013-000281

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

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

ATTORNEY FOR APPELLANT

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The judge erred in sentencing Appellant to sixty years' imprisonment for burglary in the first degree, a non-homicide offense, because Appellant was seventeen-years old at the time of the offense; thus, his sentence is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as it does not afford him a meaningful opportunity of release.....	6
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STATEMENT OF ISSUE ON APPEAL

The judge erred in sentencing Appellant to sixty years' imprisonment for burglary in the first degree, a non-homicide offense, because Appellant was seventeen-years old at the time of the offense; thus, his sentence is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as it does not afford him a meaningful opportunity of release.

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand jury for the offenses of burglary in the first degree (2009-GS-11-824), kidnapping (2009-GS-11-827), armed robbery (2009-GS-11-828), assault and battery of a high and aggravated nature (ABHAN)(2009-GS-11-829), burglary in the second degree (2009-GS-11-0826), and grand larceny greater than \$5,000 (2009-GS-11-0825). R. 361. On November 17 2009, Appellant's case was called to trial before the Honorable J. Derham Cole. The State was represented by Barry Barnette and Prina Tailor. Appellant was represented by Joshua Shultz. R. 1.

On November 18, 2009, the jury returned a verdict of guilty on all charges. R. 330, line 24 – R. 331, line 22. Regarding sentencing, Appellant's trial counsel asked the court to take into consideration his age. R. 335, lines 1-4. Appellant was sentenced to life imprisonment for burglary in the first degree. R. 336, lines 7-12. Additionally, Judge Cole sentenced Appellant to thirty years' imprisonment for kidnapping; thirty years' imprisonment for armed robbery, fifteen years' imprisonment for burglary in the second degree, ten years' imprisonment for ABHAN, and five years' imprisonment for grand larceny. Judge Cole ordered all sentences to run concurrently, except he ordered the sentence for ABHAN to run consecutively to the others. R. 336, line 7 – R. 337, line 12; R.363.

Appellant filed a timely notice of appeal. On November 12, 2010, Appellant filed his brief claiming his sentence for life imprisonment without the possibility of parole for a non-homicide offense violated his constitutional rights. This Court agreed, vacated his

sentence of life imprisonment, and remanded the matter for new sentencing. State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012).

On January 22, 2013, Appellant appeared before Judge Cole for re-sentencing. Barry Barnette appeared on behalf of the state, and Joshua Schultz represented Appellant. Sent. R. 339. Judge Cole sentenced Appellant to sixty years' imprisonment. Sent. R. 359, lines 14-17; R. 364.

ARGUMENT

The judge erred in sentencing Appellant to sixty years' imprisonment for burglary in the first degree, a non-homicide offense, because Appellant was seventeen-years old at the time of the offense; thus, his sentence is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as it does not afford him a meaningful opportunity of release.

Relevant facts

At the time of the offenses for which Appellant was charged and ultimately convicted, Appellant was seventeen-years old. Bonner, 400 S.C. at 563 n. 1, 735 S.E.2d at 526 n.1. During the re-sentencing proceeding, the state argued that Appellant's age should be used as an aggravating factor to increase his penalty. Specifically, the state acknowledged the ruling of the United States Supreme Court and this Court, but argued against clear precedent. Rather than arguing Appellant deserved a particular penalty unique to the circumstances of the crime and unique to the characteristics of Appellant, the state argued Appellant deserved a severe penalty because other defendants who were seventeen-years old at the time of their alleged crimes with whom the prosecutor was acquainted in some way were "dangerous."

One thing, talking about juveniles, I know the court, our U.S. Supreme Court, as well as the Court of Appeals has ruled. But, however, some of the most dangerous individuals I have seen in court ha[ve] been seventeen-years old. I have dealt with Jonathan Vick; Calen Radwill, which is in Lexington County.

We also had Eric Morgan in front of Your Honor I believe on a death penalty case. In this situation - - of course, his sentence was commuted to life.

Sent. R. 346, lines 11-19. Although he recognized that all of the individuals he mentioned were defendants in murder cases, the solicitor argued, without any evidence to support his argument, that the victim of the alleged burglary would have been killed had the alarm not sounded. Sent. R. 346, line 20 – Sent. R. 347, line 8.

Appellant pleaded that he deserved “a second chance at life and a meaningful chance at rehabilitation.” Sent. R. 348, lines 4-6. Appellant lacked positive role models in his life – particularly male role models. Appellant’s father was in and out of jail for most of his life. Sent. R. 348, lines 7-15. When Appellant was twelve years old, his father was no longer in his life at all. Sent. R. 348, lines 24-25. Appellant had young children at the time of re-sentencing and sought “a meaningful chance at rehabilitation [so] he [could] develop some kind of relationship with these children.” Sent. R. 349, lines 3-10.

Appellant observed that juveniles, like him, have less culpability based upon a lack of maturity and an underdeveloped sense of responsibility. Sent. R. 349, lines 15-19. Appellant fit the description of a juvenile who was vulnerable and susceptible to negative influences and outside pressures. Sent. R. 349, line 24 – Sent. R. 350, line 2. Appellant sought the opportunity to reform and detailed his efforts to reform, including obtaining his GED and certifications in carpentry and electrician training while in prison for just over a year. Sent. R. 350, lines 11-22. Appellant expressed his desire to obtain a business degree and open a small business. He also explained his desire to marry and “lead a normal life.” Sent. R. 351, lines 12-18.

Discussion

The United States Supreme Court held life sentences for non-homicide crimes committed while the defendant was under the age of eighteen violated the Eighth

Amendment to the United States Constitution. Graham v. Florida, 560 U.S. 48, 130 S.Ct. 2011 (2010). The Graham Court found that the cruel and unusual punishment clause of the Eighth Amendment forbids the states from determining at sentencing that a juvenile non-homicide offender will never be fit to reenter society. The Court explained that a sentence of life imprisonment without parole “forswears altogether the rehabilitative ideal.” Such a sentence “is not appropriate in light of a juvenile non-homicide offender’s capacity for change and limited moral culpability.” Id. at ___, 130 S.Ct. at 2030. The United States Constitution forbids judges from making subjective determinations at sentencing that a juvenile non-homicide offender has demonstrated an “irretrievably depraved character.” Id. at ___, 130 S.Ct. at 2031. The Court was clear that states are “not required to guarantee eventual freedom to a juvenile offender of a non-homicide crime.” Instead, juvenile non-homicide offenders must be given a meaningful opportunity to obtain release. Id. at ___, 130 S.Ct. at 2033.

Other states examining sentencing schemes involving juveniles convicted of non-homicide offenses have concluded that certain terms-of-years sentences violate the Eighth Amendment’s ban on cruel and unusual punishment. Essentially, those Courts have found that the term of years failed to offer the juvenile offender an opportunity to obtain release before the end of his expected life span. Thus, those sentences were the functional equivalent of a sentence of life without the possibility of parole. See People v. Rainer, ___, P.3d ___, 2013 WL 1490107 (Colo. App. April 1, 2013)(holding the juvenile’s sentence unconstitutional where he would not even be eligible for parole until he reached the age of seventy-five and his life expectancy was only between sixty-four and seventy-two years of age); People v. Caballero, 282 P.3d 291 (Cal. 2012).

Our Supreme Court explained that when a judge exercises his discretion in sentencing a defendant following a jury's recommendation of mercy, the judge must sentence the defendant to a term of years that will not exceed the life expectancy of the defendant unless the record disclosed some reasonable basis for disregarding the jury's verdict. State v. Kimbrough, 212 S.C. 348, 356, 46 S.E.2d 273, 277 (1948). The jury's recommendation of mercy was a finding that the defendant should not receive the maximum punishment of life imprisonment; however, the judge's sentence of thirty years' imprisonment was for "all intents and purposes the equivalent of a life sentence." Id. at 357, 46 S.E.2d at 277. Where the record revealed nothing to justify the trial court's disregarding the jury's recommendation, the Supreme Court held the sentence was "manifestly too severe." Id.

Appellant's life sentence for burglary in the first degree should be vacated. Pursuant to Appellant's current sentences and his life expectancy, he would be imprisoned until his death without a meaningful opportunity for release. Appellant was only seventeen when he allegedly committed the burglary. Appellant's "sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character." See Graham, 560 U.S. at ___, 130 S.Ct. at 2033 (2010). Although Judge Cole sentenced Appellant to sixty years' imprisonment for the offense of burglary, such a sentence fails to afford Appellant a meaningful opportunity to obtain release. Not only must Appellant serve the sixty-year sentence, he must serve ten years in prison consecutive to the sixty-year sentence to satisfy Judge Cole's sentencing order regarding ABHAN. Thus, Judge Cole has sentenced Appellant to seventy years for non-homicide offenses. Therefore,

it is likely Appellant would be close to ninety-years old if he is released from the Department of Corrections. Appellant's life expectancy varies depending upon the specificity of the information provided. The Center of Disease Control provides a life expectancy for all Americans born in 2010 as 78.7 years. However, the life expectancy of black males born in 2010 is only 71.8 years. Even more startling is the data revealing the life expectancy for males born in 1991, as Appellant was, is only 64.6 years. Essentially, the sentence imposed by Judge Cole is a de facto life sentence. Therefore, the sentence violates the Constitution's ban on cruel and unusual punishment.

CONCLUSION

Appellant respectfully requests this Court vacate his sentence for burglary and remand the matter for re-sentencing.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of July, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

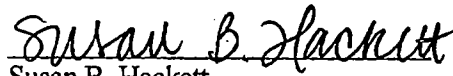
PETITION TO BE RELIEVED AS COUNSEL

Counsel for John Bonner states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's re-sentencing before Judge J. Derham Cole, which was held on January 22, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for John Bonner.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of July, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee CountyJ. Derham Cole, Circuit Court Judge

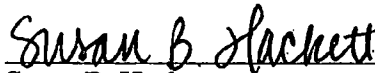
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictments;
- (2) Sentence sheets (original);
- (3) Amended sentence sheet for burglary in the first degree;
- (4) Trial transcript dated November 17-18, 2009;
- (5) Sentencing transcript dated January 22, 2013.

I certify that this designation contains no matter which is irrelevant to this appeal.

July 22nd, 2013



Susan B. Hackett
Appellate Defender

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

Attorney for Appellant

CERTIFICATE OF COUNSEL

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

July 22, 2013

Susan B. Hackett

Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

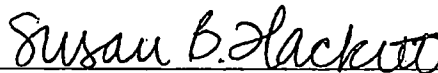
JOHN BONNER,

APPELLANT

Appellate Case No. 2013-000281

CERTIFICATE OF SERVICE

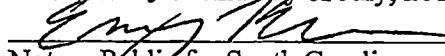
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on John Bonner, #338030 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 22nd day of July, 2013.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO
before me this 22nd day of July, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.

The South Carolina Court of Appeals

The State, Respondent,

v.

John Bonner, Appellant.

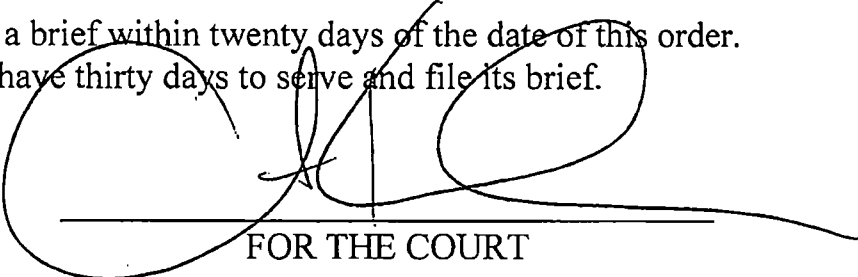
Appellate Case No. 2013-000281

ORDER

Counsel has submitted a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and a motion to be relieved as counsel.¹ We deny the motion to be relieved as counsel and direct the parties to brief the following issue and any other issue of arguable merit:

Did the trial court err in sentencing Bonner to sixty years' imprisonment for a non-homicide offense when he was seventeen years old and his sentence is cruel and unusual under the Eighth Amendment?

Appellant shall serve and file a brief within twenty days of the date of this order. Thereafter, Respondent shall have thirty days to serve and file its brief.



FOR THE COURT

Columbia, South Carolina

cc: Salley W. Elliott
Susan Barber Hackett

¹ Appellant also submitted a pro se brief which this court considered.

FILED

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ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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MAR 07 2014

SC Court of Appeals

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN BONNER,

APPELLANT

APPELLATE CASE NO. 2013-000281

BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in sentencing Bonner to sixty years' imprisonment for a non-homicide offense when he was seventeen-years old and his sentence is cruel and unusual under the Eighth Amendment?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand jury for the offenses of burglary in the first degree (2009-GS-11-824), kidnapping (2009-GS-11-827), armed robbery (2009-GS-11-828), assault and battery of a high and aggravated nature (ABHAN)(2009-GS-11-829), burglary in the second degree (2009-GS-11-0826), and grand larceny greater than \$5,000 (2009-GS-11-0825). R. 361. On November 17 2009, Appellant's case was called to trial before the Honorable J. Derham Cole. The State was represented by Barry Barnette and Prina Tailor. Appellant was represented by Joshua Shultz. R. 1.

On November 18, 2009; the jury returned a verdict of guilty on all charges. R. 330, line 24 – R. 331, line 22. Regarding sentencing, Appellant's trial counsel asked the court to take into consideration his age. R. 335, lines 1-4. Appellant was sentenced to life imprisonment for burglary in the first degree. R. 336, lines 7-12. Additionally, Judge Cole sentenced Appellant to thirty years' imprisonment for kidnapping, thirty years' imprisonment for armed robbery, fifteen years' imprisonment for burglary in the second degree, ten years' imprisonment for ABHAN, and five years' imprisonment for grand larceny. Judge Cole ordered all sentences to run concurrently, except he ordered the sentence for ABHAN to run consecutively to the others. R. 336, line 7 – R. 337, line 12; R.363.

Appellant filed a timely notice of appeal. On November 12, 2010, Appellant filed his brief claiming his sentence for life imprisonment without the possibility of parole for a non-homicide offense violated his constitutional rights. This Court agreed, vacated his

sentence of life imprisonment, and remanded the matter for new sentencing. State v. Bonner, 400 S.C. 561, 735 S.E.2d 525 (Ct. App. 2012).

On January 22, 2013, Appellant appeared before Judge Cole for re-sentencing. Barry Barnette appeared on behalf of the state, and Joshua Schultz represented Appellant. R. 339. Judge Cole sentenced Appellant to sixty years' imprisonment. R. 359, lines 14-17; R. 364. Appellant filed a timely notice of appeal. Undersigned counsel filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967) raising the following issue: The judge erred in sentencing Appellant to sixty years' imprisonment for burglary in the first degree, a non-homicide offense, because Appellant was seventeen-years old at the time of the offense; thus, his sentence is cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution as it does not afford him a meaningful opportunity of release. By an order filed on February 25, 2014, the Honorable Aphrodite K. Konduros, on behalf of this Court, denied counsel's motion to be relieved and ordered counsel to file a brief addressing the issue presented herein.

ARGUMENT

The trial court erred in sentencing Bonner to sixty years' imprisonment for a non-homicide offense when he was seventeen-years old and his sentence is cruel and unusual under the Eighth Amendment.

Relevant facts

At the time of the offenses for which Appellant was charged and ultimately convicted, Appellant was seventeen-years old. Bonner, 400 S.C. at 563 n. 1, 735 S.E.2d at 526 n.1. During the re-sentencing proceeding, the state argued that Appellant's age should be used as an aggravating factor to increase his penalty. Specifically, the state acknowledged the ruling of the United States Supreme Court and this Court, but argued against clear precedent. Rather than arguing Appellant deserved a particular penalty unique to the circumstances of the crime and unique to the characteristics of Appellant, the state argued Appellant deserved a severe penalty because other defendants who were seventeen-years old at the time of their alleged crimes with whom the prosecutor was acquainted in some way were "dangerous."

One thing, talking about juveniles, I know the court, our U.S. Supreme Court, as well as the Court of Appeals has ruled. But, however, some of the most dangerous individuals I have seen in court ha[ve] been seventeen-years old. I have dealt with Jonathan Vick; Calen Radwill, which is in Lexington County.

We also had Eric Morgan in front of Your Honor I believe on a death penalty case. In this situation - - of course, his sentence was commuted to life.

R. 346, lines 11-19. Although he recognized that all of the individuals he mentioned were defendants in murder cases, the solicitor argued, without any evidence to support his

argument, that the victim of the alleged burglary would have been killed had the alarm not sounded. R. 346, line 20 – R. 347, line 8.

Appellant pleaded that he deserved “a second chance at life and a meaningful chance at rehabilitation.” R. 348, lines 4-6. Appellant lacked positive role models in his life – particularly male role models. Appellant’s father was in and out of jail for most of his life. R. 348, lines 7-15. Appellant’s father’s involvement in Appellant’s life ended when he was only twelve years old. R. 348, lines 24-25. Appellant had young children at the time of re-sentencing and sought “a meaningful chance at rehabilitation [so] he [could] develop some kind of relationship with these children.” R. 349, lines 3-10.

Appellant observed that juveniles, like him, have less culpability based upon a lack of maturity and an underdeveloped sense of responsibility. R. 349, lines 15-19. Appellant fit the description of a juvenile who was vulnerable and susceptible to negative influences and outside pressures. R. 349, line 24 – R. 350, line 2. Appellant sought the opportunity to reform and detailed his efforts to reform, including obtaining his GED and certifications in carpentry and electrician training while in prison for just over a year. R. 350, lines 11-22. Appellant expressed his desire to obtain a business degree and open a small business. He also explained his desire to marry and “lead a normal life.” R. 351, lines 12-18.

Nevertheless, Judge Cole sentenced Appellant to sixty years’ imprisonment on the burglary count, and ordered the term of years to be served concurrently with the other sentences previously imposed. R. 359, lines 14-17; R. 364. Appellant’s sixty-year sentence for burglary in the first degree must be considered with the sentence imposed by Judge Cole on the other charges. Specifically, Judge Cole sentenced Appellant to thirty years’ imprisonment for kidnapping, thirty years’ imprisonment for armed robbery, fifteen years’

imprisonment for burglary in the second degree, ten years' imprisonment for ABHAN, and five years' imprisonment for grand larceny. Judge Cole ordered all sentences to run concurrently, except he ordered the sentence for ABHAN to run consecutively to the others. R. 336, line 7 – R. 337, line 12; R. 363. Thus, effectively, Judge Cole sentenced Appellant to **seventy** years' imprisonment for non-homicide offenses.

Discussion

The United States Supreme Court held life sentences for non-homicide crimes committed while the defendant was under the age of eighteen violated the Eighth Amendment to the United States Constitution. Graham v. Florida, 560 U.S. 48 (2010). The Graham Court found that the cruel and unusual punishment clause of the Eighth Amendment forbids the states from determining at sentencing that a juvenile non-homicide offender will never be fit to reenter society. Id. at 74-75. Instead, juvenile non-homicide offenders must be given a meaningful opportunity to obtain release. Id. at 82. Although no objection was made at the time of re-sentencing, this Court should address the issue in the interest of judicial economy just as it addressed the issue previously. See State v. Bonner, 400 S.C. 561, 567, 735 S.E.2d 525, 528 (Ct. App. 2012)(relying upon State v. Vick, 384 S.C. 189, 682 S.E.2d 275 (Ct. App. 2009), this Court excused the lack of preservation to address the merits of the claim, found Appellant's sentence violated the United States Constitution, vacated the sentence, and remanded the case for re-sentencing).

Turning to the merits of Appellant's issue on appeal, the Graham Court found that the cruel and unusual punishment clause of the Eighth Amendment forbids the states from determining at sentencing that a juvenile non-homicide offender will never be fit to reenter society. A sentence of life imprisonment without parole "forfeits altogether the

rehabilitative ideal.” Such a sentence “is not appropriate in light of a juvenile non-homicide offender’s capacity for change and limited moral culpability.” *Id.* at 74. The United States Constitution forbids judges from making subjective determinations at sentencing that a juvenile non-homicide offender has demonstrated an “irretrievably depraved character.” *Id.* at 76. The Court was clear that a state “need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.” *Id.* at 82.

The Graham decision explored the Court’s jurisprudence of the Eighth Amendment’s ban on cruel and unusual punishment. “To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to ‘the evolving standards of decency that mark the progress of a maturing society.’” *Id.* at 58 (quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976)). “Embodied in the Constitution’s ban on cruel and unusual punishment is the ‘precept of justice that punishment for the crime should be graduated and proportioned to [the] offense.’” *Id.* at 59 (quoting Weems v. United States, 217 U.S. 349, 367 (1910)).

Over the years, the cases addressing the proportionality of sentences have developed along two general lines. The first is concerned with the particular circumstances of the case and whether the defendant’s sentence for a term of years is grossly disproportionate given the particular offense. *Id.* at 59; Harmelin v. Michigan, 501 U.S. 957, 1005 (1991). The second classification of cases is concerned with categorical rules as applied to groups of offenses or groups of offenders. Graham, 560 U.S. at 60-61. For example, Supreme Court categorical rulings related to categories of offenses prohibit the imposition of the death penalty for non-homicide crimes against individuals. *Id.* (citing Kennedy v. Louisiana, 554

U.S. 407 (2008)). Categorical rulings prior to Graham prohibited the death penalty for defendants who committed their crimes before the age of eighteen, Roper v. Simmons, 543 U.S. 551 (2005), or whose intellectual functioning is in a low range, Atkins v. Virginia, 536 U.S. 304 (2002). Graham, 560 U.S. at 61.

When adopting categorical proportionality rules, the Court first considers “objective indicia of society’s standards, as expressed in legislative enactments and state practice” to determine whether there is a national consensus against the sentencing practice at issue. *Id.* at 61 (quoting Roper, 543 U.S. at 572). Generally, the Court has relied on social science data and statistics to discern “society’s evolving standards of decency.” Roper, 543 U.S. at 560-77. “[G]uided by ‘the standards elaborated by controlling precedents and by the Court’s own understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose,’” the Court, in the exercise of its own independent judgment, then determines whether the punishment in question violates the Eighth Amendment of the Constitution. Graham, 560 U.S. at 61 (quoting Kennedy v. Louisiana, 554 U.S. 407, 421 (2008)).

The evolution of the Court’s Eighth Amendment jurisprudence as it applies to juveniles is of particular import to Appellant’s appeal. In Roper, the Supreme Court established a categorical ban on the death penalty for juveniles relying in large part on social science research indicating that youths have a lessened culpability and are less deserving of the most severe punishments. 543 U.S. at 569-75. Juvenile offenders are fundamentally different from adults for purposes of sentencing for three reasons: (1) they are immature and have “an underdeveloped sense of responsibility,” (2) they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” and (3)

their characters are "not as well formed" as adults. Id. at 569-70 (internal citations omitted). "It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." Id. at 573. Therefore, "juvenile offenders cannot with reliability be classified among the worst offenders." Id. While "[a] juvenile is not absolved of responsibility for his actions," his transgressions are "not as morally reprehensible as that of an adult." Graham, 560 U.S. at 68 (internal citations omitted).

Sixteen-year old Terrance Graham was charged with armed burglary and attempted armed robbery of a barbeque restaurant. 560 U.S. at 53. Graham entered guilty pleas to both charges pursuant to a plea agreement. The trial court withheld adjudication of guilt as to both charges and sentenced Graham to concurrent three-year terms of probation with jail time. Id. at 54. Shortly thereafter, when Graham was seventeen-years old he was arrested again and charged with home invasion robbery. Graham's probation officer charged Graham with violating the terms of his probation by "possessing a firearm, committing crimes, and associating with persons engaging in criminal activity." When Graham appeared before the trial court where he maintained he had no involvement in the home invasion robbery, he admitted to violating his probation by fleeing arrest, even though the trial court emphasized that the admission could expose him to a life sentence based on his previous charges. Id. at 55.

After finding Graham had violated his probation, the trial judge, in his discretion, sentenced Graham to the maximum sentence of life. During the sentencing proceeding, the judge provided his reasoning for the sentence: "We can't do anything to deter you. This is the way you are going to lead your life.... [T]hat is where we are today is I don't see where

I can do anything to help you any further.” Id. at 56-57. Florida had abolished its parole system; accordingly, the life sentence gave Graham no possibility of release unless he was granted executive clemency. Id. at 57.

The Supreme Court held that “for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole.” Id. at 74. Just as the Court did in Roper, the Graham Court, relied upon developments in social science demonstrating the fundamental differences between juveniles and adults:

[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of irretrievably depraved character than are the actions of adults. It remains true that from a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.

Id. at 68 (internal citations omitted).

The Court explained the decision was “necessary to prevent the possibility that life without parole sentences will be imposed on juvenile non-homicide offenders who are not sufficiently culpable to merit that punishment.” Id. at 74. Although “[a] state is not required to guarantee the eventual freedom to a juvenile offender convicted of a non-homicide crime,” the state must “give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” “[W]hile the Eighth Amendment forbids a State from imposing a life without parole sentence on a juvenile non-homicide offender, it does not require the state to release that offender during his natural life.” Id. at 75. “The Eighth Amendment does not foreclose the possibility that persons convicted of non-homicide crimes committed before adulthood will remain behind bars for

life. It does forbid states from making the judgment at the outset that those offenders never will be fit to reenter society.” Id.

While explaining its rationale, the Graham Court noted that a life without parole sentence is the “second most severe penalty permitted by law.” Id. at 69 (internal citations omitted). Additionally, “life without parole sentences share some characteristics with death sentences that are shared by no other sentences.” Such a sentence “alters the offender’s life by a forfeiture that is irrevocable.” Id. For a juvenile offender, a life without parole sentence “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit [of the convict], he will remain in prison for the rest of his days.” Id. at 70 (quoting Naovarath v. State, 779 P.2d 944 (Nev. 1989)). Additionally, the Graham Court observed that a juvenile offender sentenced to life without parole will on average serve more years and a greater percentage of his life in prison than an adult offender. “A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.” Id.

Finally, the Graham Court concluded that its new categorical rule “gives all juvenile non-homicide offenders a chance to demonstrate maturity and reform.” “Life in prison without the possibility of parole gives no chance for reconciliation with society, no hope.” However, “[m]aturity can lead to that considered reflection which is the foundation for remorse, renewal, and rehabilitation. A young person who knows that he or she has no chance to leave prison before life’s end has little incentive to become a responsible individual.” By imposing a “categorical rule against life without parole for juvenile non-homicide offenders,” the Court avoided “the perverse consequences in

which the lack of maturity that led to an offender's crime is reinforced by the prison term." Id. at 79.

In Miller v. Alabama, 132 S. Ct. 2455 (2012), the United States Supreme Court continued the evolution of Eighth Amendment jurisprudence. The Court extended the reasoning of Roper and Graham by holding that a mandatory sentence of life without parole for juvenile homicide offenders also violates the Eighth Amendment's prohibition on cruel and unusual punishment. This was a categorical ban. However, the Court further explained that while the decision did not foreclose imposition of a sentence without the possibility of a parole on a juvenile convicted of a homicide offense, the Court required the sentencer "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." Id. at 2469.

The issue presently before this Court is whether Appellant's sixty-year sentence for a non-homicide offense, which is effectively a seventy-year sentence when combined with the consecutive nature of the sentence imposed for a companion offense, is the functional equivalent of a life without parole sentence and prohibited under Graham and the Eighth Amendment. Other states examining sentencing schemes involving juveniles convicted of non-homicide offenses have concluded that certain terms-of-years sentences violate the Eighth Amendment's ban on cruel and unusual punishment. Essentially, those Courts have found that the term-of-years failed to offer the juvenile offender an opportunity to obtain release before the end of his expected life span. Thus, those sentences were the functional equivalent of a sentence of life without the possibility of parole. In People v. Caballero, 282 P.3d 291 (Cal. 2012), the Supreme Court of California held that term-of-

years sentences that extend beyond a juvenile's life expectancy and are imposed for non-homicide offenses, violate the Eighth Amendment pursuant to reasoning announced in Graham. The California Supreme Court held "that sentencing a juvenile offender for a non-homicide offense to a term of years with a parole eligibility date that falls outside the juvenile offender's natural life expectancy constitutes cruel and unusual punishment in violation of the Eighth Amendment." The Court recognized that "the proper authorities may later determine that youths should remain incarcerated for their natural lives, the state may not deprive them at sentencing of a meaningful opportunity to demonstrate their rehabilitation and fitness to reenter society in the future." Caballero, 282 P.3d at 295. The court further directed that, when sentencing non-homicide juvenile offenders, California courts must consider the defendant's age and mental development in order to impose an appropriate time when the juvenile will be able to seek parole from the parole board. Id.

Likewise the Colorado Court of Appeals held a juvenile's sentence was unconstitutional where the juvenile would not have been eligible for parole until he reached the age of seventy-five and his life expectancy was only between sixty-four and seventy-two years of age. People v. Rainer, __ P.3d __, 2013 WL 1490107 (Colo. App. April 11, 2013). Rainer was convicted of two counts of attempted first degree murder, two counts of first degree assault, first degree burglary, and aggravated robbery, and was subject to a sentence enhancement due to crimes of violence. Id. Rainer was subject to a mandatory sentencing range of seventy-two to 224 years. Id. The judge sentenced Rainer to the maximum by ordering all of the maximum sentences to be served consecutively for a total prison term of 224 years. Id. After an appeal, the sentence was reduced to 112 years

when the trial judge was ordered to run two sentences concurrently. Id. Rainer would be eligible for parole in 2057 after serving one-half of his 112-year sentence. In 2057, Rainer would be seventy-five years old. Using statistics from the Center of Disease Control, the Court noted that Rainer had a life expectancy of only between 63.8 years and 72 years. Thus, Rainer would likely die while incarcerated. Id. The court held Rainer's aggregate sentence failed to offer him a meaningful opportunity to obtain release before the end of his expected life expectancy; therefore, the sentence was the functional equivalent of a life sentence without parole and was unconstitutional under the Eighth Amendment. Id. The court concluded "Rainer's sentence qualifies as an unconstitutional de facto sentence to life without parole." Id.

The Florida Court of Appeals found a juvenile's aggregate sentence of eighty years violated the Eighth Amendment's cruel and unusual punishment clause because it was the functional equivalent of a life sentence without parole. Floyd v. State, 87 So.3d 45 (Fla. Dist. Ct. App. 2012). Floyd was seventeen years old when he stole a car and committed two armed robberies. Initially, Floyd was sentenced to life imprisonment on the armed robbery charges. Id. at 45. After Graham, Floyd was re-sentenced to consecutive forty-year sentences on the armed robberies. Id. at 45-46. If Floyd served the entirety of his sentence, he would be ninety-seven years old when released. The earliest Floyd could be released was age eighty-five. Id. at 46. According to the court, "[t]his situation does not in any way provide [Floyd] with a meaningful or realistic opportunity to obtain release." Id. By sentencing Floyd to eighty years, the trial court "impermissibly" decided at the outset that Floyd will never be fit to reenter society. Id. "[C]ommon sense dictates that [Floyd]'s eighty-year sentence, which according to the statistics cited by [Floyd] is longer than his life

expectancy, is the functional equivalent of a life without parole sentence and will not provide him with a meaningful or realistic opportunity to obtain release.” Id. at 47.

Other courts around the country that have examined this issue have found a term of years sentence that results in a de facto life sentence violates the Eighth Amendment’s ban on cruel and unusual punishment when imposed upon a juvenile. See United States v. Mathurin, 2011 WL 2580775, No. 09-21075-CR (S.D. Fla. June 29, 2011) (holding a combined sentence of 307 years for a child offender convicted of armed robbery and carjacking constitutionally offensive under Graham); Adams v. State, 2012 WL 3193932, No. 1 D 11-3225 (Fla. Dist. Ct. App. Aug. 8, 2012) (holding that a sentence requiring a non-homicide juvenile offender to serve at least 58.5 years in prison was a de facto sentence to life because the defendant would not be eligible for release until he was nearly seventy-six years old, which exceeded his life expectancy according to data from the Centers for Disease Control and defining de facto life sentence as “one that exceeds the defendant’s life expectancy”); Thomas v. Pennsylvania, 2012 WL 6678686, No. 10-4537 (E.D. Pa. Dec. 21, 2012) (holding that where juvenile offender was not eligible for parole until the age of eighty-three, the sentence imposed amounted to cruel and unusual punishment in violation of the Eighth Amendment.

Our Supreme Court explained that when a judge exercises his discretion in sentencing a defendant following a jury’s recommendation of mercy, the judge must sentence the defendant to a term of years that will not exceed the life expectancy of the defendant unless the record disclosed some reasonable basis for disregarding the jury’s verdict. State v. Kimbrough, 212 S.C. 348, 356, 46 S.E.2d 273, 277 (1948). The jury’s recommendation of mercy was a finding that the defendant should not receive the maximum

punishment of life imprisonment; however, the judge's sentence of thirty years' imprisonment was for "all intents and purposes the equivalent of a life sentence." Id. at 357, 46 S.E.2d at 277. Where the record revealed nothing to justify the trial court's disregarding the jury's recommendation, the Supreme Court held the sentence was "manifestly too severe." Id. Thus, our Court has recognized that consideration of a defendant's life expectancy is necessary when fashioning a sentence when the intent of the sentence is to allow the defendant a meaningful opportunity to obtain release.

This Court should likewise adopt the holdings from courts around the country that Graham prohibits de facto life sentences for juvenile offenders which deprive such offenders of any "meaningful opportunity to obtain release." Appellant's seventy-year sentence guarantees that Appellant will die in prison without any meaningful opportunity to obtain release, "no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character, even if he spends the next half century attempting to atone for his crimes and learn from his mistakes." See Graham, 560 U.S. at 79.

Currently, Appellant is twenty-three years old.¹ South Carolina's life expectancy tables provide that a male aged twenty-three years old has a life expectancy of 54.40 years: S.C. Code Ann. § 19-1-150. According to the National Vital Statistics Reports, a black male aged twenty-three years old has a life expectancy between 49.9 and 50.8 years. Elizabeth Arias, "United States Life Tables, 2009," National Vital Statistics Reports, Vol. 62, No. 7, January 6, 2014, Centers for Disease Control and Prevention, http://www.cdc.gov/nchs/data/nvsr/nvsr62/nvsr62_07.pdf. Using this data, Appellant is

¹ Appellant was born on January 24, 1991.

expected to live to the age of 77.4 or between ages 72.9 and 73.8. Other data from the National Center for Health Statistics reveals the life expectancy for black males born in 1991, as Appellant was, is only 64.6 years. See National Center for Health Statistics, "Vital Statistics of the United States, 1992," Vol. II, sec. 6, life tables, Washington: Public Health Service, 1996 (http://www.cdc.gov/nchs/data/lifetables/life92_2.pdf). According to the South Carolina Department of Corrections' website, Appellant is not eligible for parole. However, he is eligible for release on January 1, 2064.² On that date, Appellant will be seventy-two years old (he will turn seventy-three on January 24, 2064). Based upon the life expectancy data, Appellant is expected to live to the age of 64.6 (using the life expectancy of a black male born in 1991), to the age of 77.4 (using South Carolina's statutory actuarial table), or between ages 72.9 and 73.8 (using the CDC's life expectancy table from 2009). Therefore, Appellant will likely not live long enough to become eligible for parole. Even using the most liberal data available, South Carolina's actuarial table, Appellant would live to see his seventy-second birthday and be eligible for parole, but he would likely live only five years thereafter. Such could not be considered a meaningful opportunity to obtain release.

Appellant's sentences for burglary in the first degree and assault and battery of a high and aggravated nature should be vacated. Pursuant to Appellant's current sentences and his life expectancy, he would be imprisoned until his death without a meaningful opportunity for release. Appellant was only seventeen when he allegedly committed the

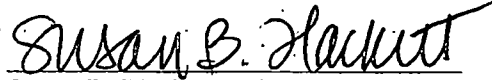
² Judge Cole sentenced Appellant to sixty years' imprisonment for the offense of burglary, and ordered the sentence of ten years in prison for ABHAN to be served consecutive to the sixty-year sentence. Thus, Judge Cole sentenced Appellant to seventy years' imprisonment for non-homicide offenses.

burglary. Appellant's "sentence guarantees he will die in prison without any meaningful opportunity to obtain release, no matter what he might do to demonstrate that the bad acts he committed as a teenager are not representative of his true character." See Graham, 560 U.S. at 79. By enforcing Appellant's current sentence, the state "has denied him any chance to later demonstrate that he is fit to rejoin society based solely on a non-homicide crime that he committed while he was a child in the eyes of the law. This the Eighth Amendment does not permit." Id. Therefore, Appellant requests that this Court vacate his sixty-year sentence and ten-year consecutive sentence as unconstitutional under the Eighth Amendment and remand for re-sentencing.

CONCLUSION

Appellant respectfully requests this Court vacate his sentence for burglary and assault and battery of a high and aggravated nature and remand the matter for re-sentencing.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of March, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

RECEIVED

Appeal from Cherokee County

MAR 07 2014

J. Derham Cole, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

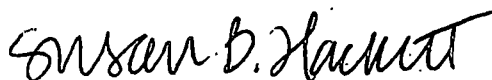
V.

JOHN BONNER,

APPELLANT

CERTIFICATE OF SERVICE

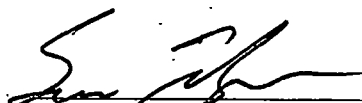
The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. John Bonner, #338030, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 7th day of March, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of March, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
Honorable J. Derham Cole, Circuit Court Judge
Appellate Case Tracking No. 2013-000281

The State,

Respondent,

vs.

John Bonner,

Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. The resentencing court did not err in sentencing Appellant to sixty years for burglary first. The issue is blatantly not preserved and is entirely without merit.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

Appellant was indicted on charges of burglary (first degree); grand larceny; burglary (second degree); kidnapping; armed robbery; and ABHAN. He proceeded to trial on November 17-18, 2009, before the Honorable J. Derham Cole and a jury. The jury found Appellant guilty as indicted. Judge Cole sentenced him as follows: burglary (first degree)-2009-GS-11-824-life in prison without parole; grand larceny-2009-GS-11-825-five (5) years; burglary (second degree)-2009-GS-11-826-fifteen (15) years; kidnapping-2009-GS-11-827-thirty (30) years; armed robbery-2009-GS-11-828-thirty (30) years; and ABHAN-2009-GS-11-829-ten (10) years consecutive to any other sentence.

At trial, several of Appellant's co-defendants testified regarding the events on the night of the burglaries. Kwame Douglas testified they all met at Appellant's house and Appellant discussed robbing a corner store. (R.181). They hatched a plan to wait in the bushes waiting for the victim, who ran the store, to emerge with the money from the store and go to her home, which was next door. They planned to grab the money and run. (R.182). The victim left the store with a gentleman, but did not have any money with her. (R.183). The perpetrators then waited around so they could break into the victim's home and find the money. (R.184).

One of the other co-defendants entered through a window of the victim's home and opened the front door. They waited until they believed she was asleep and entered the home looking for the money. (R.184-186). Appellant and another co-defendant kicked in the victim's bedroom door. When they entered, they fired a gun shot, and the victim began screaming. (R.186-187).

Douglas testified he entered the room and Appellant and the other co-defendant had the victim pinned asking her where the money was located. He testified they were beating the victim while they asked for the money. Douglas testified Appellant and the other co-defendant took off the victim's clothes and continued beating her. They demanded she give them the key to the store. When she did not, they placed her over one of the chairs or sofas and planned to sexually assault the victim. (188-189). She eventually told where the key to the store was located, and Appellant retrieved the key. (R.189).

Appellant and a co-defendant went to the store to get money from the store. An alarm went off in the store when Appellant and a co-defendant tried to get the money. The co-defendants all returned to the vehicles parked at a local apartment complex and eventually split up the money Appellant brought from the store. (R.190-192).

Testifying through an interpreter, the victim stated she worked at the corner store and lived in the house beside the store. (R.238). She testified she left the store around midnight and went home. After watching a little television, the victim went to bed, locking her bedroom door. (R.238). About two in the morning, people entered her bedroom and showed her a gun after firing a shot. The men started beating her demanding money. (R.239). She testified they took off the bottom part of her night dress. (R.240). After the men fled, the victim went to the neighbor to call for help. She spent two days in the hospital as a result of her beating. (R.242-243).

ARGUMENT

- I. **The resentencing court did not err in sentencing Appellant to sixty years for burglary first. The issue is blatantly not preserved and is entirely without merit.**

Appellant contends the resentencing court erred in sentencing him to sixty years in prison on the burglary first charge. He maintains the charge constitutes a “*de facto* life sentence” and, therefore, violated the Eighth Amendment to the United States Constitution pursuant to Graham v. Florida, 560 U.S. 48 (2010). First, the issue is blatantly not preserved for review on appeal. Second, it is entirely without merit as Graham is inapplicable to a term-of-years sentence¹. Third, Appellant has failed to provide the Court with sufficient data justifying extending the holding of Graham and, even if Graham applied to a term-of-years sentence, the sentence given in this case does not violate the mandates of Graham. Finally, to the extent Appellant is challenging the constitutionality of the portion of his aggregate sentence related to his consecutive ABHAN sentence, the issue is not appropriately before this Court because the circuit court judge only had jurisdiction over the burglary conviction and resentenced him solely on his first-degree burglary conviction.

PRESERVATION

First, the issue in this case is blatantly not preserved for review on appeal. Appellant presented argument in support of his contention that the resentencing court should not harshly punish him for the first degree burglary. However, once the trial court announced the sixty-year sentence on the conviction, Appellant remained silent. He

¹ “Term-of-years sentence” in this appeal is being used to denote a sentence for a specific number of years, i.e., sixty-year sentence, versus a life without parole sentence.

raised no issue regarding the length of the sentence; much less an argument the sentence was unconstitutional under the Eighth Amendment and Graham. The South Carolina Supreme Court “has consistently held that a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review.” State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999). A defendant’s failure to timely object to or seek modification of his sentence in the trial court precludes him from presenting his objection for the first time on appeal. State v. Winestock, 271 S.C. 473, 248 S.E.2d 307 (1978); see also, State v. Garner, 304 S.C. 220, 403 S.E.2d 631 (1991) (failure to object to sentence at time of its imposition constitutes a waiver of the issue on appeal); State v. Walker, 252 S.C. 325, 166 S.E.2d 209 (1969) (disposing of the defendant’s challenge to his sentence because it was not raised to the trial judge and such challenge did not implicate the subject matter jurisdiction of the trial court); Rhoad v. State, 372 S.C. 100, 108, 641 S.E.2d 35, 39 (Ct. App. 2007) (holding the length of a sentence is not preserved for appellate review in the absence of an objection to the trial judge); State v. Passmore, 363 S.C. 568, 586, 611 S.E.2d 273, 283 (Ct. App. 2005) (holding that despite the fact that the defendant was sentenced to greater than six months for contempt without the benefit of a jury trial, defendant failed to object to the sentence and the issue was not preserved for appellate review).

Appellant’s failure to say anything after the imposition of the sentence, and especially his failure to challenge the constitutionality of the sixty-year sentence imposed renders it unpreserved for review on appeal. See State v. Langford, 400 S.C. 421, 446, 735 S.E.2d 471, 484 (2012) (“Constitutional issues are not exempt from issue preservation requirements.”); In re Care & Treatment of Corley, 365 S.C. 252, 258, 616

S.E.2d 441, 444 (Ct. App. 2005) (“Constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal.”).

Further, even if a general objection to his sentence is manufactured from his attempt to use Graham to mitigate the sentence prior to its imposition, his current attempts in his brief to raise arguments related to his life expectancy and the constitutionality of his sixty-year sentence are clearly not preserved for review on appeal. A party may not argue one ground at trial and another on appeal. State v. Brockmeyer, 406 S.C. 324, 355, 751 S.E.2d 645, 661 (2013); see also, State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (defendant may not argue one ground below and another on appeal).

Additionally, Appellant now attempts to complain about a seventy-year sentence, by arguing the ten-year consecutive sentence for ABHAN should be considered in conjunction with his sixty-year sentence for burglary.² This argument has never been made at any time. He did not challenge the ten-year consecutive ABHAN sentence in his original appeal and did not challenge it below on resentencing. He has never maintained his aggregate sentence is in violation of the Eighth Amendment. As a result, this issue is not preserved for review on appeal and this Court should decline to consider the ten-year sentence for ABHAN in its analysis.

Finally, Appellant’s trial counsel admitted he preserved no issue for review on appeal. Specifically, in an Explanation of Appeal Pursuant to Rule 203(d)(1)(B), SCACR³, counsel stated: “No issues were raised during the resentencing; however, the

² The State will also argue in the following merits section this Court is without jurisdiction to consider this sentence on appeal as it was not part of the remand after Appellant’s original appeal.

³ The State does not know the basis for the filing of the explanation. Additionally, as this case was originally filed pursuant to Anders v. California, 386 U.S. 738 (1967), the Record on Appeal has already

client insisted upon and appeal" (Explanation of Appeal filed concurrent with Notice of Appeal).

Accordingly, the issues raised by Appellant in his brief are clearly not preserved for review on appeal and should not be considered by this Court on appeal.

MERITS

Appellant's sentence is not in violation of Graham or the Eighth Amendment to the United States Constitution. First, Graham does not apply to a term-of-years sentence, and therefore, does not form a basis to find the sentence unconstitutional under the Eighth Amendment. Next, to the extent Graham and its dictates are applicable, the sentence given does not violate the requirements of Graham. Finally, Appellant cannot challenge the collective sentence he received, but may merely challenge the sixty-year sentence he received for burglary in the first degree because the other sentences are beyond the jurisdiction of the Court.

First, the South Carolina Supreme Court has held it is well settled in this State that an appellate court has no jurisdiction to disturb, because of alleged excessiveness, a sentence which is within the limits prescribed by statute unless the statute itself violates the constitutional injunction against cruel and unusual punishment, or the sentence is the result of partiality, prejudice or pressure or corrupt motive. See Garrett v. State, 320 S.C. 353, 356, 465 S.E.2d 349, 350 (1995) (citing Wood v. State, 257 S.C. 179, 184 S.E.2d 702 (1971)). The imposition of a sixty-year sentence was clearly permissible under the burglary statute: "Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, 'life' means until death. The court, in its discretion, may

been produced and filed with the Court so the State craves reference to the Court's file for the Explanation of Appeal.

sentence the defendant to a term of not less than fifteen years.” S.C. Code Ann. § 16-11-311(B) (Supp. 2002). “A trial judge is allowed broad discretion in sentencing within statutory limits. A sentence is not excessive if it is within statutory limitations and there are no facts supporting an allegation of prejudice against a defendant.” Brooks v. State, 325 S.C. 269, 272, 481 S.E.2d 712, 713 (1997) (citing Garrett, 320 S.C. 353, 465 S.E.2d 349; State v. Sidell, 262 S.C. 397, 205 S.E.2d 2 (1974)).

The Eighth Amendment to the United States Constitution provides, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. Pursuant to the Eighth Amendment, punishments must not be “inherently barbaric” and must be graduated and proportioned to the offense. Graham, 560 U.S. at 59; see Atkins v. Virginia, 536 U.S. 304, 311 (2002) (instructing that it is a precept of justice that punishment for a crime should be graduated and proportioned to the offense). However, “[t]he Eighth Amendment does not require strict proportionality between crime and sentence.” Harmelin v. Michigan, 501 U.S. 957, 1001 (1991). Instead, “it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” Id. (citations omitted).

The United States Supreme Court (USSC) has identified two categories of cases which have invoked review under the Eighth Amendment’s cruel and unusual punishment clause: 1) challenges to the length of term-of-years sentences given all the circumstances in a particular case; and 2) cases in which the Court implements the proportionality standard by certain categorical restrictions. See Graham, 560 U.S. at 59-61. Appellant has not raised a challenge to his term-of-years sentence based on the facts and circumstances of this case. Instead, he has raised a categorical challenge to the

imposition of a term-of-years sentence which results in a “*de facto* life sentence” in violation of Graham.

As the South Carolina Supreme Court has recognized, what constitutes cruel and unusual punishment, and thus, what violates the Eighth Amendment, is determined by “evolving standards of decency that mark the progress of a maturing society.” State v. Standard, 351 S.C. 199, 204, 569 S.E.2d 325, 328 (2002) (quoting Thompson v. Oklahoma, 487 U.S. 815, 821 (1988)). “[U]nder State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), cert. denied, ___ U.S. ___, 128 S.Ct. 1872, 170 L.Ed.2d 751 (2008), the two principles to consider in determining whether a punishment is cruel and unusual are (1) the evolving standards of decency that mark the progress of a maturing society and (2) the proportionality between the punishment and the offense.” State v. Williams, 380 S.C. 336, 346, 669 S.E.2d 640, 645 (Ct. App. 2008).

The USSC noted: “We have pinpointed that the ‘clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures.’” Atkins v. Virginia, 536 U.S. 304, 312, 122 S.Ct. 2242, 2247 (2002) (quoting Penry v. Lynaugh, 492 U.S. 302, 331(1989)). “The Legislature has the power, within constitutional limits, to define and punish crimes.” State v. Washington, 338 S.C. 392, 400, 526 S.E.2d 709, 713 (2000) (quoting Guinard v. State, 260 S.C. 220, 226, 195 S.E.2d 392, 395 (1973)).

Furthermore, the court making such a determination should remember that “[i]t is not the burden of the state to establish a national consensus approving what their citizens have voted to do; rather, it is the heavy burden of the defendant to establish a national consensus against it.” State v. Williams, 380 S.C. 336, 347, 669 S.E.2d 640, 646 (Ct.

App. 2008); see Gregg v. Georgia, 428 U.S. 153, 175 (1976) (“[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity. We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved. And a heavy burden rests on those who would attack the judgment of the representatives of the people.”).

The USSC’s Eighth Amendment jurisprudence with respect to juveniles is articulated in three recent cases; including Roper v. Simmons, 543 U.S. 551 (2005); Graham; and Miller v. Alabama, ___ U.S. ___, 132 S.Ct. 2455 (2012). In Roper, the Court held the death penalty cannot be imposed on juvenile offenders. It relied in significant part on its finding that because juveniles have lessened culpability they are less deserving of the most severe punishments. Roper, 543 U.S. at 569. In Graham, the USSC relied on this same proposition, and additionally stated: “The Court has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers.” Graham, 560 U.S. at 69. The Court then found life without the possibility of parole, which it characterized as “the second most severe penalty permitted by law,” is not permitted under the Eighth Amendment for juveniles who commit non-homicide offenses. Id. at 81. Miller extended Roper and Graham by finding juveniles who commit murder cannot be sentenced to a mandatory life without parole. Miller, 132 S.Ct. at 2467. The case relied on and at issue in this case is Graham and whether it applies to Appellant’s sentence.

Term of Years versus Life Without Parole

First, Graham explicitly applies only to a life without parole sentence. Specifically, the USSC stated: "The instant case concerns only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense." Graham, 560 U.S. at 63 (emphasis added). The Court stressed that drawing a "clear line" was "necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment." Id. at 74-75 (emphasis added). The Court reasoned that "[b]ecause 'the age of 18 is the point where society draws the line for many purposes between childhood and adulthood,' those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime." Id. (emphasis added).

The language chosen is important and specifically limits the reach of Graham. The Court could have stated the case concern those juvenile offenders sentenced to a "de facto life sentence" as argued by Appellant or a sentence which has the effect of a life sentence. The USSC specifically stated its holding concerned only those juveniles sentenced to "life without parole."

The analysis in Graham supports the conclusion the Court was only reviewing life without parole sentences. The Court relied on statistics regarding the number of states that allow life without parole for juveniles, statistics on the number of juveniles actually sentenced to life without parole, and the nature of a sentence to life without parole. The Court never discussed a "de facto" sentence or any term-of-years sentence length which it found to be the equivalent to a life without parole sentence. The Court solely addressed

its attention to sentences of juveniles to life without parole for a non-homicide offense.

Graham, 560 U.S. 62-74. As explained in Bunch v. Smith, 685 F.3d 546 (6th Cir. 2012):

The Court's analysis in Graham supports this conclusion because the analysis did not encompass consecutive, fixed-term sentences. Since Graham involved a categorical challenge to a particular type of sentence, the Court first considered "objective indicia of society's standards, as expressed in legislative enactments and state practice" to determine whether there is a national consensus against the sentencing practice at issue." The Court analyzed state and federal sentencing laws, tallying the number of jurisdictions that allowed juvenile nonhomicide offenders to be sentenced to "life without parole." The Court then examined "actual sentencing practices in jurisdictions where the sentence in question is permitted by statute" and concluded that "[a]lthough these statutory schemes contain no explicit prohibition on sentences of life without parole for juvenile nonhomicide offenders, those sentences are most infrequent." Indeed, the Court found only "123 juvenile nonhomicide offenders serving life without parole sentences" in the United States. Based on this and other data, the Court concluded that the sentence of "life without parole for juvenile nonhomicide offenders ... is exceedingly rare. And it is fair to say that a national consensus has developed against it."

The Court, however, did not analyze sentencing laws or actual sentencing practices regarding consecutive, fixed-term sentences for juvenile nonhomicide offenders. This demonstrates that the Court did not even consider the constitutionality of such sentences, let alone clearly establish that they can violate the Eighth Amendment's prohibition on cruel and unusual punishments.

Bunch, 685 F.3d at 551-552 (internal citations omitted).

Additionally, other courts have examined the issue and find Graham stands solely for the proposition a life without parole sentence for a juvenile violates the Eighth Amendment. See e.g., Bunch, 685 F.3d at 552 (finding Bunch's eighty-nine year sentence did not violate Graham even though it may have been the functional equivalent

of a life without parole sentence and noting that the Supreme Court's analysis in Graham did not address such a situation); Walle v. State, 99 So. 3d 967, 973 (Fla. Dist. Ct. App. 2012) (declining to apply Graham to an aggregate ninety-two-year term of imprisonment for a juvenile non-homicide offender); Adams v. State, 288 Ga. 695, 701, 707 S.E.2d 359, 365 (Ga. 2011) (finding that the decision in Graham did not categorically bar anything other than life without parole sentences for juvenile non-homicide offenders); State v. Brown, 118 So. 3d 332, 341-342 (La. 2013) ("In our view, Graham does not prohibit consecutive term of year sentences for multiple offenses committed while a defendant was under the age of 18, even if they might exceed a defendant's lifetime, and, absent any further guidance from the United States Supreme Court, we defer to the legislature which has the constitutional authority to authorize such sentences.").

However, several appellate courts, as cited in Appellant's brief, have reached a different conclusion and found that term-of-years sentences carrying the same practical effect as life sentences violate the Graham decision's explicit prohibition against life without parole sentences for juvenile non-homicide offenders.⁴ These decisions all center around the USSC's language in Graham providing:

A State is not required to guarantee eventual freedom to a juvenile offender convicted of nonhomicide crime. What the State must do, however, is give defendants like Graham some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.

Graham, 560 U.S. at 75. Relying solely on this language completely ignores the USSC's directive which preceded it explaining: "The instant case concerns only those juvenile

⁴ It is important to note the decisions cited by Appellant all involve cases in which the juvenile would not be eligible for release until well after his expected life expectancy. As will be discussed, Appellant's sixty-year sentence (the only sentence the circuit court or this Court have jurisdiction to consider), or even the full seventy-year sentence Appellant which complains of for the first time on appeal, does not render him eligible for parole only after his full life expectancy. He retains a meaningful opportunity for release.

offenders sentenced to life without parole solely for a nonhomicide offense.” Graham, 560 U.S. at 63.

As the USSC has announced: “[A] State may not impose such greater restrictions as a matter of federal constitutional law when this Court specifically refrains from imposing them.” Oregon v. Hass, 420 U.S. 714, 719 (1975). The South Carolina Supreme Court recently articulated this same position indicating it can only apply constitutional rights under the United States Constitution as interpreted by the United States Supreme Court. See State v. Reid, Op. No. 27407 (S.C.Sup.Ct. filed July 2, 2014) (Shearouse Adv.Sh. No. 26 at 63 n.6). The State is free, of course, based on its own Constitution or law to impose greater restrictions. Appellant, however, has based his entire argument on Graham and the Eighth Amendment to the United States Constitution and not based on any South Carolina state law provision. Id.; see also, Arkansas v. Sullivan, 532 U.S. 769, 772 (2001) (instructing that state courts cannot interpret an amendment to the United States Constitution to provide greater protections than those provided by the precedent of the United States Supreme Court).

As a result, because the USSC specifically limited its holding to only those juveniles “sentenced to life without parole solely for a nonhomicide offense” this Court is without power to extend the holding to any other category of offender or offense. See Graham, 560 U.S. at 124 (Alito, J., dissenting) (“Nothing in the Court’s opinion affects the imposition of a sentence to a term of years without the possibility of parole.”); see also, Walle, 99 So.3d at 971 (finding “this court cannot expand the Supreme Court’s ruling beyond the limitations it set forth in its opinion, specifically its holding that Graham applies solely to a single sentence of life without parole.”).

As one of the Courts considering Graham's impact has noted:

If we conclude that Graham does not apply to aggregate term-of-years sentences, our path is clear. If, on the other hand, under the notion that a term-of-years sentence can be a de facto life sentence that violates the limitations of the Eighth Amendment, Graham offers no direction whatsoever. At what number of years would the Eighth Amendment become implicated in the sentencing of a juvenile: twenty, thirty, forty, fifty, some lesser or greater number? Would gain time be taken into account? Could the number vary from offender to offender based on race, gender, socioeconomic class or other criteria? Does the number of crimes matter? There is language in the Graham majority opinion that suggests that no matter the number of offenses or victims or type of crime, a juvenile may not receive a sentence that will cause him to spend his entire life incarcerated without a chance for rehabilitation, in which case it would make no logical difference whether the sentence is "life" or 107 years. Without any tools to work with, however, we can only apply Graham as it is written. If the Supreme Court has more in mind, it will have to say what that is.

Henry v. State, 82 So.3d 1084, 1089 (Fla.App. 5 Dist. 2012) (footnotes omitted).⁵

Similar analysis was used in State v. Kasic, 228 Ariz. 228, 229, 265 P.3d 410, 411 (Ariz. Ct. App. 2011). In that case, Kasic argued the reasoning of the Graham decision warranted a finding that his aggregate sentence of nearly one-hundred-and-forty years for offenses he committed as both a juvenile and an adult was unconstitutional. Id. at 232, 265 P.3d at 414. However, the Court of Appeals rejected that argument. Id. In doing so, the Court of Appeals initially found that Graham did not categorically bar a term-of-years sentence like Kasic's based on the fact that the Supreme Court expressly limited its

⁵ The bright line is nearly impossible to apply in a term-of-years sentence, which may be why the USSC specifically limited its holding to a sentence of life without parole. For example, is a sixty year sentence imposed on a twelve year old defendant the equivalent of a fifty or fifty-five year sentence imposed on a seventeen year old defendant? This is precisely the reason the USSC has stated you cannot compare sentences based on the age of the person sentenced. See Lockyer v. Andrade, 538 U.S. 63, 74 n.1 (2003) ("Two different sentences do not become materially indistinguishable based solely upon the age of the persons sentenced.").

decision in Graham solely to life without parole sentences for juvenile non-homicide offenders. Id. at 232-233, 265 P.3d at 414-415. Then, after concluding Kasic's aggregate term-of-years sentence was not categorically barred through Graham, the Court of Appeals considered whether Kasic's sentences taken individually and in the aggregate were grossly disproportionate to his crimes. Id. at 233-234, 265 P.3d at 415-416. Upon finding that they were not, the Court of Appeals held "that the Eighth Amendment does not prohibit Kasic's sentences for the crimes he committed as a juvenile." Id. at 234, 265 P.3d at 416.

Appellant was sentenced to a sixty-year sentence, and not a sentence of life without parole. The USSC's holding in Graham explicitly does not apply to his underlying sentence. As a result, this Court should not and cannot extend Graham to cover Appellant's sentence. Therefore, this Court should find Appellant's sentence does not violate the Eighth Amendment's prohibition on cruel or unusual punishment until such time as the USSC has considered a term-of-years sentence and found a certain sentence to be categorically invalid.

Extending Graham

Appellant has not met his burden of proof in order to extend Graham by demonstrating a categorical rule should be in place for lengthy term-of-years sentences which may or may not be "de facto life sentences." The specific and limited holding of Graham was not applicable to Appellant's case, and, as a result, the heavy burden remained on Appellant in raising a categorical constitutional challenge to lengthy term-of-years sentences for juvenile non-homicide offenders to establish a national consensus existed against such sentences. See Graham, 560 U.S. at 61 (indicating the first step in a

categorical constitutional challenge to a particular sentencing practice is to determine whether a national consensus exists against the challenged practice); see also Williams, 380 S.C. at 347, 669 S.E.2d at 646 (“[I]t is the heavy burden of the defendant to establish a national consensus against [a particular sentencing practice].”).

Specifically, in seeking an extension of the holding in Graham to a type of sentence not addressed in the decision, Appellant did not cite, and still does not cite on appeal, to any data regarding the number of juveniles sentenced to sentences similar to his own or present any information regarding the number of jurisdiction that do and do not allow such sentences to be imposed upon offenders like him.⁶ Without such objective indicia of society’s standards, Appellant cannot demonstrate the particular sentencing practice he is presently challenging has been rejected in the United States on a near universal basis and cannot meet his burden of establishing a national consensus existed against the imposition of lengthy term-of-years sentences. Cf. Walle, 99 So. 3d at 971 (declining to apply the decision in Graham beyond its express limitations to a term-of-years sentence where “[t]he limited record before this court [did] not contain the vast amounts of information regarding societal values, penological theories, or psychological effects that the Supreme Court had at its disposal”).

Appellant had the burden of providing the trial court, or at least this Court, with the type of data and information provided and considered in Graham. The Record in this case is woefully deficient. In the absence of a national consensus against sentences like Appellant’s, there is no proper basis to categorically declare Appellant’s sentence to be unconstitutional or to categorically extend the limited holding of Graham to his case.

⁶ His failure to articulate to the sentencing court any basis for his constitutional argument further demonstrates the blatant lack of preservation of the issue now before this Court.