

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Berkeley COUNTY
Court of General Sessions

Honorable Deadra Jefferson, Ninth Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2016-000,793

The State,

Respondent

v.

Telly Darnell McClam,

Appellant

RECORD ON APPEAL
VOLUME II

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BEATRICE JONES - CROSS EXAM

1 about that?

2 A. I did not know anything about that.

3 Q. So at that time when you saw your
4 brother --

5 A. Yes.

6 Q. -- and the victims, you didn't know
7 anything --

8 A. I didn't know anything.

9 Q. -- that happened before?

10 A. I didn't know anything.

11 Q. So had you known that all that had
12 happened, you certainly would have reported?

13 A. The same way that I reported it -- the
14 same way I turned him in, I would have reported it.

15 Q. Exactly, but you didn't have any idea
16 that all that had happened, did you?

17 A. No, ma'am.

18 Q. So nobody faults you. I mean, you just
19 didn't know.

20 A. I did not know.

21 Q. Now, it seems like you have been
22 through a lot of anguish over this situation, as is
23 evidenced by your emotion here today. And I don't
24 think that anybody can look at you and not
25 understand that. You called Telly your worry

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BEATRICE JONES - CROSS EXAM

1 brother; tell us why.

2 A. Because he always worry you for money.
3 He worry you for that; Bee, go do that; Bee, go do
4 this.

5 Q. Does he have a way to make money
6 himself? Like why does he not ever have any money?

7 A. Well, he just -- he just got out of
8 prison. He got out and he was on probation, it was
9 hard for him to get a job.

10 Q. Okay. And so you had not been around
11 Leandre at all, the younger girl; you didn't know
12 her name?

13 A. No. I mean, when they come, I don't
14 know if she came, because, see, I don't want to say
15 that I had been around, I don't know. They come in
16 different groups. Sometimes it may be one or two
17 or -- so I cannot say that.

18 Q. You might have never met Leandre?

19 A. I might have not, because all of them
20 don't come at the same time. She has four
21 daughters, I believe.

22 Q. And how many times would you say you
23 had met Deadrene, or Trese? Is that what you call
24 her? Trese?

25 A. I met Trese several times.

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BEATRICE JONES - CROSS EXAM

1 Q. Okay. Several?

2 A. Yeah. We talked -- not talked. She
3 comes with Telly.

4 Q. Okay. And so when you say they were
5 acting the same way as they always acted --

6 A. Yes.

7 Q. -- you would not have known how Leandre
8 acted because you had never met her before?

9 A. I can't say that I never met her
10 before. She could have came with them too.
11 Because they came into my house and they were in
12 the den. There were three of them been in the den,
13 been in my den. I have given them books. We were
14 on the porch one day, I give them all three books.
15 So she could have actually came too.

16 Q. Leandre may not have ever been there?

17 A. She might not have. She may have.

18 Q. You may not know how she acted?

19 A. All I know is that there are two
20 light-skinned ones and two dark-skinned ones. I
21 don't know their names personally.

22 Q. Now, at some point they go into your
23 bathroom, right?

24 A. No, it was only Trese.

25 Q. Okay. Do you know, when you were in

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BEATRICE JONES - CROSS EXAM

1 the back bedroom with Telly, if anybody went in the
2 bathroom?

3 A. Trese went in there.

4 Q. How did you know that Leandre didn't go
5 into the bathroom?

6 A. I don't know; because she -- when I
7 went down the hall, I came back and Trese was in
8 the rest room and the girl was sitting right there
9 where she was at.

10 Q. You don't know what happened when you
11 weren't there?

12 A. No.

13 Q. So they could have been in the
14 bathroom?

15 A. I don't -- no. I don't think she
16 moved. Only one person moved, because we weren't
17 down there that long.

18 Q. And you gave your brother \$20?

19 A. Yes.

20 Q. Did he tell you he had no money?

21 A. No, he didn't say that. He said did I
22 have any money.

23 Q. Did you know that he had already been
24 somewhere else and got money?

25 A. No.

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BEATRICE JONES - CROSS EXAM

1 Q. He didn't tell you that?

2 A. Huh-uh.

3 Q. And when they were talking at the
4 table, do you remember what they were talking
5 about?

6 A. They were talking about I think getting
7 back together and whatever, working on it.

8 Q. She was trying to tell him she was
9 going to get back together with him?

10 A. He was doing most of the talking.

11 Q. He was?

12 A. He was talking and she was listening.

13 Q. He was wanting to get back together
14 with her?

15 A. Yes.

16 Q. You said -- you made a statement in
17 your statement about something he told you. It's
18 difficult to read, and I was just wondering if you
19 could take a look at it. Have you looked at your
20 statement any time recently?

21 A. Yes.

22 Q. Did you look at it with Mr. Schwacke?

23 A. No.

24 Q. When did you look at it?

25 A. I think about a week ago, I glanced

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BEATRICE JONES - CROSS EXAM

1 over it.

2 MS. WILLIAMS: Okay. I'm going to mark
3 this just for identification purposes.

4 (STATE'S EXH. 165, Statement, was
5 marked for identification.)

6 BY MS. WILLIAMS:

7 Q. What are you saying that Telly said to
8 you here? He said something about not wanting to
9 get into this, something going wrong?

10 A. Yes.

11 Q. Tell me what it is that you said there.

12 A. Let me explain.

13 Q. What do the words say?

14 A. I'm going -- he said, Bee, I'm going.
15 I'm going. I said, where are you going? And he
16 said, I'm -- I said, where are you going? He said,
17 I'm just going.

18 THE COURT: Ma'am, you can review the
19 statement and use it to refresh your memory. Read
20 it and then you need to ask her a question.

21 BY MS. WILLIAMS:

22 Q. If the statement refreshes your memory,
23 then tell us what it says.

24 A. Okay.

25 THE COURT: Ma'am, take a few minutes

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BEATRICE JONES - CROSS EXAM

1 to read it to yourself.

2 THE WITNESS: Okay.

3 BY MS. WILLIAMS:

4 Q. Does that refresh your memory?

5 A. Yes.

6 Q. What is it that he told you?

7 A. My brother stayed with me that

8 Wednesday night. He stayed with me that Wednesday

9 night. He said someone had broken into his house.

10 His house was torn up. He said his house was torn

11 up. And I said, what's wrong? He said, I don't

12 want you to get into this. And that's what I was

13 referring to, we were talking through it.

14 We were talking about somebody had

15 ransacked his house. And I said, Telly, are you

16 all right? He said, yeah, I'm all right. I don't

17 want you getting into this. He stayed with me that

18 Wednesday night -- that Wednesday night. And I

19 think I saw him again that Friday. That's what

20 that was about.

21 Q. Okay. But you were asking him right

22 then where he's going?

23 A. I asked, where are you going? I asked

24 him where they were going. And he said they were

25 going, just riding out to talk.

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BEATRICE JONES - CROSS EXAM

1 Q. Well, actually what he said is,
2 something is wrong, but I don't want to get into
3 it. And then he starts talking about the house?

4 A. It wasn't -- it wasn't like -- he was
5 just talking about -- me and him was just talking
6 about general conversation. And then we were
7 talking about -- that was -- we were in the room
8 talking and I said, are you all right? And he
9 said, yes, don't get into this.

10 It wasn't anything about -- it was
11 about his -- I was concerned about him being safe.
12 My main concern was Telly being safe. I didn't
13 have any concern about anything else. I was
14 thinking about him, because he had stayed with me
15 that Wednesday night and he was jumpy.

16 Q. But this statement was taken because
17 they came to you after he was captured -- or right
18 before he was captured. So this was in the context
19 of the October 28th situation, not the Wednesday
20 night. This was taken because they were asking you
21 questions about him allegedly kidnapping the two
22 women.

23 A. They didn't say all that. The only
24 thing they asked me is what happened and the
25 conversation we had. And I tell them the

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BEATRICE JONES - CROSS EXAM

1 conversation we had was about me and Telly, about
2 -- I think it was about -- about -- was he safe.
3 It wasn't anything about them more likely. He
4 didn't tell they me they were kidnapped. They
5 didn't say anything about that.

6 Q. Your testimony is that when you're
7 saying he said something was wrong, he didn't want
8 to get into it, it was about his house?

9 A. It was about -- I was concerned about
10 him. I mean, it wasn't any concern about anything
11 else. I was concerned about him and he said, I
12 don't want you getting into this, I'm all right.

13 Q. Okay. And then you said that he came
14 back to your home at like 10:30 p.m. and knocked on
15 the window?

16 A. That was at night.

17 Q. At night. Are you sure about the time?
18 I know it was three years ago. Could it have been
19 earlier?

20 A. No. Because we got -- we left for down
21 there around about like 7:00, 7:30 from down --
22 went and had -- the police hang-out, where the
23 police were parked at. So, no. We were home for a
24 good while. It had to have been I know around 9:00
25 or 10.

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BEATRICE JONES - REDIRECT EXAM

1 Q. Okay. You're as sure about that as
2 everything else that you testified about?

3 A. I can't be sure about the time. I can
4 not be sure about the time. All I know is, he came
5 to my house, knocked on the window, knocked on the
6 doors, and I called the police.

7 Q. It might not have been 10:30 p.m.?

8 A. I can't know exactly. It happened that
9 night. It happened that night.

10 MS. WILLIAMS: Okay. Thank you very
11 much, Mrs. Jones.

12 THE COURT: Any redirect?

13 REDIRECT EXAMINATION

14 BY MR. SCHWACKE:

15 Q. Beatrice, did some of these people come
16 to your house as well?

17 A. No. A man came -- well, they called
18 me.

19 Q. I mean recently, to talk to you about
20 this case?

21 A. No.

22 Q. And did you write your own statement?

23 A. Yes, I think I did.

24 Q. In your own writing?

25 A. Yes.

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BEATRICE JONES - REDIRECT EXAM

1 Q. And you were talking about something --

2 A. I was talking --

3 Q. -- totally different?

4 A. He was -- okay. Let me see the part
5 that I omitted. Let me see what I omitted. When
6 we were coming out the door, that's the part right
7 there. The part, when we were coming out, Telly
8 called me on the side of the house. I show you, he
9 called me on the side of the house.

10 Q. Closest to the woods or the house next
11 door?

12 A. Close to the clothes line. And I asked
13 him, I said, Telly, are you all right? I was
14 asking him about what happened at -- are you safe?
15 I asked him, are you safe? That's what I asked
16 him. Telly, are you safe? He said the house was
17 all ram up, he was sleeping in his car. That's
18 what he told me, he was sleeping in the car. And I
19 said, are you all right?

20 He said, I'll handle this. And he
21 said, don't get into this. And I said, well, call
22 Momma. And that's what that was referring about.
23 They -- they were standing right there at the step,
24 and Telly said -- he told Trese and -- I don't know
25 her name. I don't know her name, the girl, I'm

BEATRICE JONES - REDIRECT EXAM

1 going to say the young lady because she's a young
2 lady. That's how I see her, as a young lady.

3 And he said, wait a minute. They were
4 on the step right there. He came around the house
5 on the side of the house. And I said, Telly are
6 you all right? And he said, I'm all right. I'm
7 safe. He said, don't get into this.

8 I said, well, call Momma and let them
9 know the house was -- that's my mom and dad's house
10 -- let them know the house was -- that's all it
11 was.

12 MR. SCHWACKE: Thank you for your time.

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

15 MS. WILLIAMS: No, Your Honor.

16 THE COURT: From the defense?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: Ma'am, you're excused.

19 THE WITNESS: Okay.

20 MR. SCHWACKE: Shirley Wilson.

21 SHIRLEY WILSON,

22 being first duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your
24 full name for the record and spell your last name.

25 THE WITNESS: Shirley Wilson.

SHIRLEY WILSON - DIRECT EXAM

1 MR. SCHWACKE: You can look this way.

2 THE WITNESS: S-H-I-R-L-E-Y,

3 W-I-L-S-O-N.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. SCHWACKE:

7 Q. And you live where?

8 A. I live in Summerton, South Carolina.

9 Q. And you're employed at?

10 A. 52 Station in Greeleyville.

11 Q. And you are here today with regard to
12 some cameras that were operable in that store?

13 A. Yes.

14 Q. And you're familiar with that system?

15 A. Yes.

16 Q. It has multiple cameras?

17 A. Yes.

18 Q. And you've had occasion to review video
19 made from those cameras?

20 A. Yes.

21 Q. And it fairly represents what you --
22 which happened at that store on the morning of
23 October 28th --

24 A. Yes.

25 Q. -- 2013?

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SHIRLEY WILSON - DIRECT EXAM

1 A. Yes.

2 Q. And you, in fact, were shown in that
3 video?

4 A. Yes.

5 Q. You're the cashier?

6 A. Yes.

7 MR. SCHWACKE: Your Honor, I think
8 we've agreed --

9 MS. WILLIAMS: State has no objection
10 to the tape coming in.

11 THE COURT: What number is that?

12 MR. SCHWACKE: That would be
13 Defendant's Number 5.

14 THE COURT: It will be marked and
15 admitted without objection.

16 (DFT. EXH. 5 in evidence.)

17 THE COURT: You may proceed.

18 (Video played.)

19 MR. SCHWACKE: Go back to the very
20 beginning and pause it for a second.

21 BY MR. SCHWACKE:

22 Q. Ms. Wilson, that fairly and accurately
23 depicted what you saw that day?

24 A. Yes.

25 Q. And there is a date and time on here.

SHIRLEY WILSON -- DIRECT EXAM

1 Is that -- that's from the camera itself?

2 A. Yes, sir.

3 Q. And that indicates October 28, 2013,
4 9:54 a.m.?

5 A. Yes, sir.

6 Q. And that was you inside -- you can turn
7 around. Turn the lights back up. That was you as
8 the clerk inside?

9 A. Yes, sir.

10 Q. And the woman who paid the money, had
11 you seen her in the store?

12 A. From time to time she comes in. She's
13 not a regular customer, but she comes in from time
14 to time.

15 Q. And you don't know her by name?

16 A. I don't.

17 Q. You just recognized her?

18 A. Yes.

19 Q. And you volunteered while you were
20 watching that that you had seen her before?

21 A. Yes.

22 Q. What is -- is what was shown, is that
23 typical or not typical of how you would normally
24 have observed her?

25 A. She normally acts that same way.

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SHIRLEY WILSON - DIRECT EXAM

1 Q. Just that way?

2 A. It's her regular behavior.

3 Q. And no effort -- no one said anything
4 to you while you were there?

5 A. No.

6 Q. No one made any hand signals?

7 A. No, sir.

8 MR. SCHWACKE: One moment, Your Honor.

9 THE COURT: Uh-huh.

10 BY MR. SCHWACKE:

11 Q. And where is that store located?

12 A. Greeleyville, South Carolina.

13 Q. And what -- you can see a roadway in
14 the picture when you had the outside shot camera.
15 There was like a highway in front of this?

16 A. It's straight down 521. You can go to
17 Salters, Andrews. If you go straight through the
18 light, it takes you back to Kingstree. If you take
19 the left, 521 takes you to Manning.

20 Q. Is it a pretty busy roadway?

21 A. Yes.

22 MR. SCHWACKE: That's all the questions
23 I have.

24 THE COURT: Any questions for the
25 witness?

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SHIRLEY WILSON - CROSS EXAM

1 CROSS-EXAMINATION

2 BY MS. WILLIAMS:

3 Q. Ms. Wilson, now, I counted two seconds
4 that she was at your counter before she left. Is
5 that the typical amount of time that she would come
6 in?

7 A. Yes.

8 Q. How many times do you think that you
9 have seen her for about two seconds?

10 A. Normally, she comes in there, she's in
11 and out.

12 Q. Okay. Like more than five times? More
13 than ten?

14 A. Within a month, maybe five times.

15 Q. So you've seen her about five times for
16 about two seconds?

17 A. Yes.

18 Q. And did you know who was in the car
19 that she came up in?

20 A. I didn't.

21 Q. Did you know who was pumping gas?

22 A. I didn't.

23 Q. Did you have any idea what happened
24 before any of this happened?

25 A. I didn't.

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SHIRLEY WILSON - CROSS EXAM

1 Q. And did you have any idea what anybody
2 in the car had on their person?

3 A. I didn't.

4 MS. WILLIAMS: Thank you.

5 THE COURT: Any redirect?

6 MR. SCHWACKE: No, Your Honor.

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

9 MS. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. SCHWACKE: No, Your Honor.

12 THE COURT: Ma'am, you're excused.

13 Defense may proceed.

14 MR. SCHWACKE: Your Honor, may we
15 approach?

16 THE COURT: Sure.

17 (Bench conference.)

18 MR. SCHWACKE: I don't at this point
19 intend to call any more witnesses, but at this
20 point I just want to make sure he hasn't changed
21 his mind.

22 THE COURT: Sure. I'll do that for
23 you.

24 (End of bench conference.)

25 THE COURT: Madame Forelady, ladies and

1 gentlemen, we need to take up a brief matter of
2 law. During the break, please do not discuss the
3 case and please leave your notepads in your seats.
4 We appreciate your patience.

5 (Jury out, 12:07 p.m.)

6 THE COURT: You can take your seats.

7 Sir, stand for me, please. I'm
8 referring to the defendant. I remind you that you
9 are still under oath.

10 Sir, your defense has presented all the
11 witnesses they intend to call before resting. I
12 need to inquire once again, have you fully
13 discussed with your lawyers whether you should or
14 should not testify?

15 A. Yes.

16 Q. Do you understand your rights regarding
17 your right to testify?

18 A. Yes, ma'am.

19 Q. And do you need to speak with your
20 attorneys any more at this time?

21 A. No, ma'am.

22 Q. Sir, do you have any questions of the
23 Court regarding your right to testify?

24 A. No, ma'am.

25 Q. And, sir, do you wish to testify?

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1 A. No, ma'am.

2 THE COURT: Thank you. You may take
3 your seat.

4 MR. SCHWACKE: Your Honor, based --

5 THE COURT: Give me one second.

6 Yes, sir.

7 MR. SCHWACKE: Your Honor, based on
8 that, when the jury is back and present, we will
9 then rest our case.

10 THE COURT: Okay. And while we have
11 this break, does the State intend to call any
12 rebuttal witnesses?

13 MS. WILLIAMS: No, Your Honor.

14 THE COURT: Let's take a rest room
15 break and come back, Mr. Schwacke can rest in the
16 presence of the jury, and we'll go from there.

17 MR. SCHWACKE: Okay.

18 (A recess transpired.)

19 THE COURT: State ready to proceed?

20 MS. WILLIAMS: Yes, Your Honor.

21 THE COURT: Defense ready to proceed?

22 MR. SCHWACKE: Yes, Your Honor.

23 THE COURT: We'll bring the jury in
24 and, Mr. Schwacke, you need to rest in the presence
25 of the jury, and we'll proceed from there. And

1 then I'm going to let the jury go to lunch and then
2 we'll have charge conference, closing arguments and
3 instruction.

4 Please bring in the jury.

5 (Jury in, 12:28 p.m.)

6 THE COURT: You may be seated.

7 The defense may proceed.

8 MR. SCHWACKE: Your Honor, at this time
9 the defense rests.

10 THE COURT: Madame Forelady -- well,
11 we'll reserve motions. Anything further from the
12 State?

13 MS. WILLIAMS: No, Your Honor. Nothing
14 from the State.

15 THE COURT: Madame Forelady, ladies and
16 gentlemen, both the State and the defense have
17 rested their cases. We have now reached the stage
18 of the trial where we will have closing argument
19 and instruction; however, I have some matters of
20 law that I need to go over with the attorneys that
21 will probably take us another 30 minutes or so. I
22 will allow you to go to lunch and we're going to
23 resume at 2:00 with closing argument and
24 instruction. That gives us the 30 minutes we need
25 to deal with what we need to deal with and then

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1 gives us an hour for lunch as well.

2 During this break, please do not
3 discuss this case in any manner whatsoever. Please
4 do not have any contact with anyone in or about the
5 courthouse that you do not recognize to be a fellow
6 juror. Do not watch, read, or listen to any media
7 accounts about this case if there are any. And you
8 are strictly instructed not to do any independent
9 research of any type on the Internet regarding any
10 issue or matter involved in this case.

11 As soon as you all have returned to
12 your jury room, we will begin closing argument and
13 instruction. Have a good lunch. Please leave your
14 notepads in your seats.

15 (Jury out, 12:31 p.m.)

16 THE COURT: You may be seated. The
17 defense has rested. Any motions?

18 MS. WILLIAMS: No, Your Honor.

19 MR. SCHWACKE: Just to renew our
20 previous motions. Other than that, no, Your Honor.

21 THE COURT: Does the State wish to
22 state anything further on the record regarding the
23 renewal of the motions?

24 MS. WILLIAMS: We stand by our earlier
25 arguments, Your Honor.

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1 THE COURT: The Court will stand by its
2 earlier ruling and deny the motion and incorporate
3 those findings and conclusions of law for this
4 portion of the record.

5 MR. SCHWACKE: Thank you, Your Honor.

6 THE COURT: I assume the State will
7 open and close?

8 MS. WILLIAMS: Yes, Your Honor.

9 THE COURT: How long do you anticipate
10 your argument will be?

11 MS. WILLIAMS: I would say on opening,
12 probably about 15 minutes --

13 THE COURT: I need to know the total.

14 MS. WILLIAMS: Total would be, I would
15 say, an hour at the most.

16 THE COURT: How long will the defense's
17 closing be?

18 MR. SCHWACKE: Shorter than an hour.

19 THE COURT: I need you to give me a
20 time frame.

21 MR. SCHWACKE: I would guess
22 30 minutes.

23 THE COURT: I will give the jury a
24 general instruction regarding their responsibility
25 and my responsibility, how they are to judge

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1 witness credibility and believability. Give them a
2 general instruction regarding expert witness
3 testimony.

4 I will give them a general instruction
5 regarding direct and circumstantial evidence, as
6 well as a general instruction on the presumption of
7 innocence. I will charge Victor v. Nebraska on
8 reasonable doubt, as well as the defendant not
9 testifying, as well as the charge, the arrest, and
10 the indictment not being evidence. And that would
11 come before the presumption of innocence.

12 I will charge them and instruct the
13 elements of 16-3-652, which is criminal sexual
14 conduct in the first degree. I think we know the
15 elements that apply in this case. And subsection 3
16 would not be applicable as there is no evidence
17 that there is any incapacity.

18 I will then instruct, when there are
19 multiple counts of criminal sexual conduct, that
20 each act is a separate count of the alleged crime.
21 I will then instruct the elements of kidnapping,
22 which is 16-3-910, and then the elements of first
23 degree burglary, which are 16-11-311, those which
24 apply, which would be unlawful entry.

25 The second element would be that he

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1 intended to commit a crime therein; and that while
2 entering or while in the dwelling, he was armed
3 with a deadly weapon or explosive; or when
4 entering, while in the dwelling or when fleeing,
5 the defendant or an accomplice used or threatened
6 to use a dangerous object; when entering, while in
7 the dwelling, or when fleeing, the defendant or an
8 accomplice displayed what was or appeared to be a
9 knife, pistol, revolver, rifle, shotgun, machine
10 gun, or other firearm.

11 I don't know that the sixth element of
12 the statute would really apply, because the
13 testimony was that this happened at 5 in the
14 morning, but there is no test- -- or around
15 thereabout, but there is no testimony as to whether
16 it was sunset or sunrise.

17 MS. WILLIAMS: I don't think we alleged
18 it in the Indictment either, so...

19 THE COURT: I was not going to instruct
20 that. Then I will instruct the elements of
21 16-23-490, which is possession of a weapon during
22 the commission of or an attempt to commit a violent
23 crime, defining what a firearm and/or a knife is
24 defined as by statute; and instructing that
25 criminal sexual conduct in the first degree and

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1 kidnapping are defined as violent crimes.

2 MS. WILLIAMS: I think we only alleged
3 kidnapping.

4 THE COURT: Then I will only instruct
5 kidnapping. Then I will instruct 16-23-500, which
6 is unlawful possession of a firearm by a person
7 convicted of a violent offense. I will instruct
8 that he is charged with that offense, but the State
9 must first prove beyond a reasonable doubt that the
10 defendant was convicted of a violent crime as
11 defined by 16-160, and that the parties have
12 stipulated that the defendant has previously been
13 convicted of a violent felony as classified by
14 section 16-160 of the Code of Laws as Amended.

15 I will instruct the jury that a
16 stipulation is an agreement and it requires no
17 further proof, but I will do that earlier on in the
18 instructions.

19 Next, the State must prove beyond a
20 reasonable doubt that the defendant had possession
21 of a firearm. I'll instruct them that a firearm
22 means any machine gun, automatic rifle, revolver,
23 pistol, or any weapon which will, is designed to,
24 or may be readily converted to expel a projectile.

25 I will then instruct them that the

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1 prior conviction for a violent offense may only be
2 considered by them for the purpose of determining
3 whether or not it satisfies that element of the
4 offense that makes it a violation to possess a
5 firearm by a person convicted of a violent offense
6 and for no other purpose; and that the prior
7 offense cannot be considered by them as evidence of
8 guilt of the other crimes the defendant is charged
9 with or is evidence of his character, and that
10 before they can even consider the evidence of the
11 defendant's prior violent crime conviction, they
12 must first find that the State has proven beyond a
13 reasonable doubt that the defendant had possession
14 of a firearm.

15 Then they may consider the evidence of
16 his conviction for a violent offense as evidence of
17 one of the elements of the crime, making this an
18 unlawful possession of a firearm by a person
19 convicted of a violent offense.

20 I will then instruct them that he has
21 multiple charges and that he may be convicted or
22 acquitted on any or all and that they are to
23 consider each crime independently, with the law
24 applicable to it, uninfluenced by any of their
25 other decisions. I will then give them a general

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1 instruction regarding being fair and impartial.

2 Now, while we're dealing with -- well,
3 I'll go back and deal with that in a moment.

4 Are there any exceptions to the charges
5 proposed, from the State?

6 MS. WILLIAMS: No exceptions.

7 THE COURT: From the defense?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Okay. Now, there was a
10 motion filed by the defense regarding the ability
11 to present evidence of the victim's sexual conduct,
12 but that is moot because there was no evidence of
13 that kind presented.

14 THE COURT: Is that accurate? From the
15 State?

16 MS. WILLIAMS: Yes, ma'am.

17 THE COURT: From the defense?

18 MR. SCHWACKE: Yes, Your Honor.

19 THE COURT: Anything else? And I
20 assume there are no requests for any lesser
21 includes, because I haven't heard any. So I will
22 just do a straight form on each of the Indictments,
23 which is guilty or not guilty. And we will have
24 those after lunch for you to review.

25 MS. WILLIAMS: Thank you.

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1 THE COURT: I don't think there's
2 anything else to take up except to make sure that
3 you have all -- that the Court Reporter has all of
4 the evidence.

5 MS. WILLIAMS: We just would request an
6 additional one, 16-3-657, which is --

7 THE COURT: No corroboration? I'm
8 going to have to think about that. A recent
9 decision came down regarding me instructing that in
10 a case and it was a split decision and I need to
11 ruminate a little bit before I decide. That case
12 really stands for the proposition regarding the
13 legal sufficiency, that there not be corroboration.

14 I have instructed it in some instances.
15 Usually there is no exception to it, but it usually
16 depends on the way the case is going to be argued.
17 And if -- if Mr. Schwacke is going to argue that
18 she has to corroborate her testimony in some way, I
19 will probably be more inclined to instruct that
20 than if he is not going to argue his case that way.

21 MS. WILLIAMS: So we won't know until
22 after closing?

23 THE COURT: You won't know until we
24 resume after lunch, because I'm going to think
25 about it. I guess I need to ask, does the defense

1 have any exception to me instructing that?

2 MR. SCHWACKE: Yes, we would.

3 THE COURT: Are you going to argue that
4 she has to in some way -- that her testimony has to
5 be corroborated that she was sexually assaulted?

6 MR. SCHWACKE: I'm not going to be
7 making that argument.

8 THE COURT: I'll think about it over
9 lunch.

10 MR. SCHWACKE: Your Honor, the only
11 other thing --

12 THE COURT: Let me make sure that Ms.
13 Williams is done.

14 MS. WILLIAMS: I am, Your Honor.

15 THE COURT: Yes, sir?

16 MR. SCHWACKE: The unlawful possession
17 of a weapon during the commission of a violent
18 crime, I guess my request would be that the jury is
19 instructed not to consider that until they first
20 determine --

21 THE COURT: I think the charge says
22 that in and of itself: He has to have been
23 convicted of something that is violent in order for
24 him to have possession of a weapon during the
25 commission of a violent crime.

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1 MR. SCHWACKE: Thank you.

2 THE COURT: Anything further before we
3 adjourn for lunch? From the State?

4 MS. WILLIAMS: No, Your Honor.

5 THE COURT: From the defense?

6 MR. SCHWACKE: No, Your Honor.

7 THE COURT: Before you go, make sure
8 that the Court Reporter has all of the exhibits.

9 (A luncheon recess transpired.)

10 THE COURT: State ready to proceed?

11 MS. WILLIAMS: We're waiting on
12 Mr. Poulos. He was just here. He may have gone to
13 the rest room.

14 THE COURT: While we're waiting on him,
15 would you all approach so you can look at the
16 verdict forms?

17 (Counsel for the State and defense
18 complied.)

19 THE COURT: State ready to proceed?

20 MS. WILLIAMS: Yes.

21 THE COURT: Defense ready to proceed?

22 MR. SCHWACKE: Yes, ma'am.

23 THE COURT: Bear with us one second. I
24 need to get one thing that I left in my office.

25 (A recess transpired.)

1 THE COURT: If Counsel would approach
2 for me, please, to view the verdict forms.

3 Any exception from the State?

4 MS. WILLIAMS: No, Your Honor.

5 THE COURT: Any exception to the forms
6 of the verdict from the State?

7 MS. WILLIAMS: Not from the State.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: State ready to proceed with
11 closing argument?

12 MS. WILLIAMS: The State is ready, Your
13 Honor.

14 THE COURT: Is the defense ready to
15 proceed with closing argument?

16 MR. SCHWACKE: Yes, Your Honor.

17 THE COURT: Please bring in the jury.

18 (Jury in, 2:20 p.m.)

19 THE COURT: Oh, and, Counsel, approach
20 for me, please.

21 You all may be seated.

22 (Bench conference)

23 THE COURT: I'm not going to instruct
24 16-36-51; however, you need to be very careful
25 about your argument, because I may review that

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1 THE COURT: We'll be at ease until we
2 get further instructions from our jury.

3 (A recess transpired.)

4 THE COURT: You may be seated. We need
5 the defendant.

6 Where is the defendant?

7 THE CLERK: They went to get him, Your
8 Honor.

9 THE COURT: The jury sent me a note at
10 4:30. They wanted to go home at five and we resume
11 at 9:30 in. The morning I'm going to have the note
12 marked as a Court's exhibit. As soon as we get the
13 defendant I'm going to let them go
14 home.

15 (DFT. EXH. 4, Jury note, was marked for
16 identification.)

17 (Jury in, 5:11 p.m.)

18 THE COURT: You may be seated, ladies
19 and gentlemen. I received your note that you would
20 like to go home at 5:00 and resume in the morning
21 at 9:30, so I'm going to excuse you at this time
22 for the evening recess.

23 During the break, please do not discuss
24 the case among yourselves or with anyone else. As
25 I have indicated, your deliberations can only take

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1 place among the 12 of you in the jury room. Do not
2 watch, read, or listen to any media accounts about
3 this case, do not do any independent research on
4 the Internet.

5 In the morning when you return, come to
6 the point that has been designated by the bailiff
7 by 9:30. As soon as all 12 of you arrive, you will
8 be brought back up to resume your deliberations.
9 When you go back into the jury room to leave for
10 the evening, leave all of your notepads and the
11 evidence, so we can secure it all during the
12 recess.

13 I hope that you have a great evening
14 and we will see you in the morning at 9:30.

15 (Jury out, 5:12 p.m.)

16 You may seated. Any exception from the
17 State?

18 MS. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. SCHWACKE: No, Your Honor.

21 THE COURT: All right. Guys, be here
22 at 9:30 in the morning.

23 (These proceedings were recessed at
24 5:16 p.m. to be continued, 3/3/16 at 9:30 a.m.)

25

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1 (The following proceedings were had in
2 the Court of General Sessions, March 3, 2016,
3 Berkeley County, South Carolina at 9:37 a.m.)

4 THE COURT: Let the record reflect that
5 the jury resumed their deliberations at 9:30. So
6 we will await any further communication with them
7 whether it be a question or a verdict.

8 (Whereupon, there was a break in these
9 proceedings.)

10 THE COURT: Are the lawyers here for
11 Mr. McClam? I don't know that we need to bring
12 Mr. McClam out for this because it's really
13 insignificant. The jurors sent a note asking is it
14 proper to sign the verdict sheet in pencil. And I
15 instructed Marvin to get them a pen. And I will
16 have the note marked as a Court's Exhibit. I would
17 imagine there is no exception from the State.

18 MS. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. SCHWACKE: No, Your Honor.

21 THE COURT: All right.

22 (COURT 5, Jury Note, was marked for
23 identification.)

24 (Whereupon, there was a break in these
25 proceedings.)

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1 THE COURT: We have a verdict. So I
2 need the lawyers and I also need the defendant.

3 (Defendant in 10:19 a.m.)

4 All right. The jury has reached a
5 verdict. Is there anything before we bring in the
6 jury? From the State?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: Are there people that plan
11 to come into the courtroom? If they do, they need
12 to come now because I'm about to close those doors.

13 THE DEPUTY: We're doing a security
14 scan.

15 THE COURT: Thank you. Let me know
16 when you're done. I don't want to interfere with
17 what you're doing.

18 Now, for those who are present in the
19 gallery, I need to advise that there should be no
20 audible responses or reactions to the jury's
21 verdict. This is a courtroom; it is entitled to a
22 certain amount of decorum and respect. Whether you
23 agree or disagree with the verdict, I don't expect
24 there to be any outbursts.

25 If there are any, I have instructed

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VERDICT

1 security to handle it without my intervention,
2 which means you could be removed or arrested. So I
3 would suggest that you honor the Court's
4 instructions.

5 Please bring in the jury.

6 (Jury in, 10:21 a.m.)

7 THE COURT: You may be seated.

8 Madame Forelady, is it correct that the
9 jury has reached a verdict?

10 MADAME FORELADY: Yes.

11 THE COURT: Give the verdict form to
12 the bailiff, please.

13 Sir, if you would stand for publication
14 of the verdict. Bear with me one moment.

15 Madame Clerk, would you publish the
16 verdict?

17 THE CLERK: In the Court of General
18 Sessions, State of South Carolina v. Telly Darnell
19 McClam, Indictment No. 2014-GS-08-839, we, the
20 jury, by unanimous consent, find the defendant
21 guilty of criminal sexual conduct in the first
22 degree; Indictment No. 2014-GS-08-840, we, the
23 jury, by unanimous consent, find the defendant
24 guilty of criminal sexual conduct in the first
25 degree; Indictment No. 2014-GS-08-653, we, the

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VERDICT

1 jury, by unanimous consent, find the defendant
2 guilty of kidnapping; Indictment No.
3 2014-GS-08-654, we, the jury, by unanimous consent,
4 find the defendant guilty of kidnapping; Indictment
5 No. 2014-GS-08-655, we, the jury, by unanimous
6 consent, find the defendant guilty of burglary in
7 the first degree; Indictment No. 2014-GS-08-658,
8 we, the jury, by unanimous consent, find the
9 defendant guilty of possession of a firearm during
10 the commission of a violent crime; Indictment No.
11 2014-GS-08-659, we, the jury, by unanimous consent,
12 find the defendant guilty of unlawful possession of
13 a firearm by a felon -- I'm sorry, by a person
14 convicted of a violent offense.

15 Ladies and gentlemen of the jury, if
16 this is your verdict, please signify by raising
17 your right hands.

18 THE JURY: (Raised hands)

19 THE COURT: Thank you. You can put
20 them down.

21 Is there any request to poll the jury?
22 From the State?

23 MS. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. SCHWACKE: Yes, Your Honor.

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1 THE COURT: You can take your seats.

2 Ladies and gentlemen, if you would give
3 the clerk your attention, she's going to ask you
4 two questions as she announces your juror number;
5 is this your verdict and is this still your
6 verdict?

7 You may proceed.

8 THE CLERK: Juror No. 173, is this your
9 verdict?

10 THE COURT: I need you to raise your
11 right hand when she calls your number.

12 JUROR NO. 173: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 173: Yes.

15 THE CLERK: Thank you.

16 Juror No. 12, is this your verdict?

17 JUROR NO. 12: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 12: Yes.

20 THE CLERK: Thank you.

21 Jury No. 57, is this your verdict?

22 JUROR NO. 57: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NO. 157: Yes.

25 THE CLERK: Juror No. 46, is this your

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1 verdict?
2 JUROR NO. 46: Yes.
3 THE CLERK: Is this still your verdict?
4 JUROR NO. 46: Yes.
5 THE CLERK: Juror No. 122, is this your
6 verdict?
7 JUROR NO. 122: Yes.
8 THE CLERK: Is this still your verdict?
9 JUROR NO. 122: Yes.
10 THE CLERK: Juror No. 119, is this your
11 verdict?
12 JUROR NO. 119: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR NO. 119: Yes.
15 THE CLERK: Juror No. 117, is this your
16 verdict?
17 JUROR NO. 117: Yes.
18 THE CLERK: Is this still your verdict?
19 JUROR NO. 117: Yes.
20 THE CLERK: Juror No. 9, is this your
21 verdict?
22 JUROR NO. 9: Yes.
23 THE CLERK: Is this still your verdict?
24 JUROR NO. 9: Yes.
25 THE CLERK: Juror No. 75, is this your

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1 verdict?

2 JUROR NO. 75: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR NO. 75: Yes.

5 THE CLERK: Juror No. 112, is this your

6 verdict?

7 JUROR NO. 112: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NO. 112: Yes.

10 THE CLERK: Juror No. 56, is this your

11 verdict?

12 JUROR NO. 56: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NO. 56: Yes.

15 THE CLERK: Juror No. 82, is this your

16 verdict?

17 JUROR NO. 82: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NO. 82: Yes.

20 THE CLERK: Your Honor, the jury has

21 been polled and the verdict stands.

22 THE COURT: Thank you. Ladies and

23 gentlemen of the jury, we thank you for your time

24 and your attention to this case. We know that jury

25 service is thankless. And when I say this during

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1 jury qualification, people chuckle, but I really
2 mean it very sincerely that you learn that real
3 court is nothing like what you see on television.

4 Our system is the only kind in the
5 world where 12 ordinary citizens listen to the
6 facts of a case, apply the law to those facts, and
7 render verdicts.

8 I hope that it has been educational for
9 you and I hope that you know how very much we value
10 your service. South Carolina has one of the
11 largest case filings per capita in the nation at
12 over 5,0000 per judge. We have 49 -- I think now
13 probably about 51 circuit judges that travel
14 throughout the state and hear both civil and
15 criminal cases.

16 If you would like to remain for
17 sentencing, you're welcome to do that. Please just
18 let the bailiffs know and we will allow you to
19 remain in the jury box for that purpose.

20 You are welcome to discuss this case if
21 you would like. Lawyers will often contact you to
22 find out how they can do things better, sometimes
23 just to get your perspective on the proceedings.
24 So if you desire to discuss the case you can. If
25 you don't want to, you are not obligated to.

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1 If you need a work excuse, we will
2 provide those for you today. Mr. Marvin has them
3 in his hand and he will provide those to you, and
4 we will mail your checks -- or do we have those
5 today too? They will be mailed to you for your
6 service.

7 Is there anyone that desires to remain
8 for sentencing, if you will raise your hands for
9 me? That's the whole jury. Okay. We will remain
10 -- and I will excuse you after sentencing.

11 Are there any posttrial motions?

12 MR. SCHWACKE: Yes, Your Honor. Just
13 on behalf of the client, we would renew our
14 motions, at this point make a motion for a new
15 trial based on insufficient evidence to support the
16 verdict. That would include the information that
17 we provided to the Court in our earlier motion at
18 the close of the State's case and the close of all
19 evidence.

20 THE COURT: Would the State like to
21 respond?

22 MS. WILLIAMS: We stand with the
23 evidence that we presented, Your Honor, and the
24 arguments that we have made.

25 THE COURT: Okay. The Court would

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1 incorporate any previous rulings that it has made,
2 that being any findings of facts and conclusions of
3 law and incorporate them into this portion of the
4 record as there's no necessity to repeat those as
5 they were fully articulated at the time.

6 There is no basis for a motion for a
7 new trial and that motion is denied. There is more
8 than ample evidence in the record, that being
9 direct and substantial circumstantial evidence to
10 amply support the jury's verdicts in this matter,
11 and the Court is not in a posture to substitute its
12 judgment for that of a jury; but in this instance,
13 the evidence is so replete in the record to support
14 the verdict, I would not sit as a 13th juror and
15 substitute my judgment in any event as there is no
16 basis to have vacate this verdict where it is more
17 than amply supported both by the facts and the law
18 as the State beyond a reasonable doubt has met each
19 and every element of the offenses.

20 Now, as I recollect, Mr. McClam was
21 made a pretrial offer in this case, correct?

22 MS. WILLIAMS: Yes, Your Honor.

23 THE COURT: And what was that offer?

24 MS. WILLIAMS: A range of 15 to 25
25 years.

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1 THE COURT: And he rejected that on the
2 record, correct?

3 MS. WILLIAMS: He did.

4 THE COURT: And then subsequently the
5 State served him with life without parole notice,
6 correct?

7 MS. WILLIAMS: That's correct.

8 THE COURT: Which was based on 17-21-45
9 and based on a previous most serious conviction of
10 criminal sexual conduct second degree, which was on
11 6/16/99; is that correct?

12 MS. WILLIAMS: That is correct. He
13 also had a --

14 THE COURT: I'm going to go through his
15 record in just a moment.

16 But the only one that was attached to
17 this motion and articulated in the motion was the
18 CSC.

19 MS. WILLIAMS: That's true. Just to be
20 clear, the only reason we offered him 15 to 25 was
21 to spare these victims from going through this
22 trial.

23 THE COURT: I'm going to hear argument
24 on sentencing. I'm just doing some preliminary
25 matters.

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1 As I understand it from pretrial
2 proceedings, his criminal record consists of a
3 criminal sexual conduct second degree, which he was
4 released from confinement March 1 2012, a burglary
5 in the first degree with the same confinement
6 release, a burglary in the second degree with the
7 same confinement release, an assault and battery of
8 a high and aggravated nature which was pled down
9 from a criminal sexual conduct, which was the same
10 release date, and a breaking and entering a motor
11 vehicle from 1999, correct?

12 MS. WILLIAMS: That's correct, Your
13 Honor.

14 THE COURT: Does he have any other
15 record that I have not been made aware of?

16 MS. WILLIAMS: No, Your Honor.

17 THE COURT: Okay. Be glad to hear from
18 the State on sentencing.

19 MS. WILLIAMS: Your Honor, you have a
20 copy of our life without parole --

21 THE COURT: Do you have the sentence
22 sheets?

23 MS. WILLIAMS: They went to get them.
24 And I know that the family would like to address
25 the Court. If we just could have two minutes, we

1 could figure out which ones want to address the
2 Court, if I could just turn and ask them --

3 THE COURT: Uh-huh.

4 MS. WILLIAMS: -- if that is
5 appropriate.

6 (Pause)

7 They are happy with me addressing the
8 Court.

9 THE COURT: You may proceed.

10 MS. WILLIAMS: Okay. Mr. McClam and
11 his attorneys were served with the life without
12 parole notice, both signed and understood what that
13 meant. We provided them with a certified copy of
14 the previous convictions, and that was all done
15 January 5, 2016.

16 The family never really wanted to go
17 through a trial. They wanted Mr. McClam to take
18 responsibility for his actions. They have been
19 terrorized by this man. They have shown tremendous
20 courage in going through this trial and I'm so very
21 proud of them for doing it. I pray that now that
22 he will be locked up that they will have some peace
23 in their life and that they would move on.

24 We would just respectfully ask the
25 Court to impose the life without parole sentence on

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1 Mr. McClam. And the sentencing sheet should be
2 here in just a second, Your Honor.

3 THE COURT: The only ones he would be
4 eligible on would be the CSC first --

5 MS. WILLIAMS: The two counts of CSC
6 first, two counts of kidnapping --

7 THE COURT: I think there's some case
8 law that restricts them to imposition regarding
9 kidnapping charges. The possession of a weapon
10 during the commission of a violent crime carries
11 five years, the unlawful possession of the gun
12 carries two years, the burg first carries 15 to
13 life which that can be imposed as well, but I think
14 there is some case law that restricts imposition of
15 a life sentence on the kidnapping.

16 MS. WILLIAMS: Okay. Well, I'm going
17 to leave that to the wisdom of the Court. We would
18 ask for the maximum amount of time.

19 THE COURT: Well, life is life and they
20 are concurrent, so I don't know that it really
21 makes a difference.

22 MS. WILLIAMS: We would also ask that
23 he be placed on a sex offender registry for both
24 kidnapping and --

25 THE COURT: I think that is automatic.

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1 With the CSCs he'll be placed on the sex offender
2 registry. I think it's a bit of a duplication. Do
3 you really need on -- I mean, on the CSC he has a
4 life without parole. Life in South Carolina means
5 life, so he's never going to have a chance to
6 register. And the CSCs require registration, so I
7 don't --

8 MS. WILLIAMS: It matters in terms of
9 his incarceration, and we would just ask that those
10 be correctly assigned to sex offenses for each of
11 the ones that he actually committed sex offenses.

12 THE COURT: Well, it would be the
13 kidnapping on Ms. Leandre Jenkins.

14 MS. WILLIAMS: Correct.

15 THE COURT: But not Ms. McHoney.

16 MS. WILLIAMS: I agree. We would just
17 ask for the maximum sentences on the gun charges,
18 which I believe one is ten and one is five.

19 THE COURT: Actually, one is five and
20 one is two, based on the statute, if I'm accurate.
21 Five and five, I misread the note. The felon is
22 five years and a \$2,000, and the possession of a
23 weapon during the commission of a violent crime is
24 five years.

25 MS. WILLIAMS: We would ask the Court

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1 to impose the maximum.

2 THE COURT: Be glad to hear from you
3 Mr. Schwacke.

4 Is he on probation for anything
5 Mr. Fashion? Or community supervision?

6 MR. FASHION: Yes, ma'am.

7 THE COURT: He was released from
8 confinement in 2012, correct?

9 MR. FASHION: Yes, ma'am.

10 THE COURT: Did they release him on
11 community supervision or did he have probation?

12 MR. FASHION: He was released on
13 community supervision. A warrant was issued in
14 2013 because of a community safety violation. I
15 checked with SCDC, and even though he was in
16 incarcerated, he has no time to --

17 THE COURT: He maxed out his sentence.

18 MR. FASHION: Yes, ma'am.

19 THE COURT: On a community supervision
20 revocation, he could be extended to another year,
21 couldn't he?

22 MR. FASHION: No, ma'am. They said he
23 maxed out, so we will request that his warrant be
24 withdrawn.

25 THE COURT: Okay.

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1 MR. FASHION: And let the case expire.

2 THE COURT: Okay. Be glad to hear from
3 you, Mr. Schwacke.

4 MR. SCHWACKE: Thank you, Your Honor.
5 First, with regard to the sentencing statute
6 17-25-45, for the record, we would like to place on
7 the record -- we would like to state to the Court
8 that it is our position that 17-25-45 results in
9 cruel and unusual punishment --

10 THE COURT: The Supreme Court of South
11 Carolina has already addressed -- haven't they
12 already addressed the validity of the two, three
13 strike law? Because that's what this is.

14 MR. SCHWACKE: They have, Your Honor.

15 THE COURT: Hasn't the United States
16 Supreme Court also addressed it?

17 MR. SCHWACKE: They have, Your Honor.
18 I'm just covering myself on the record.

19 THE COURT: Yeah.

20 MR. SCHWACKE: But also that there --
21 and I don't believe this argument has ever been
22 addressed, that this results in an unconstitutional
23 separation of powers, as this statute is a creation
24 of the legislative branch which enables the
25 executive branch, in this case the Solicitor, to

1 exercise control over the judicial branch and
2 infringe upon their sentencing discretion and
3 authority.

4 THE COURT: I think that has been
5 addressed by the South Carolina Supreme Court and
6 the US Supreme Court. I'll find a case on point.
7 I think all of those arguments have been made
8 regarding the sentencing scheme for the two/three
9 strike law.

10 MR. SCHWACKE: And, again, just for the
11 record.

12 THE COURT: Anything that you would
13 like to say in the nature of sentencing?

14 MR. SCHWACKE: Your Honor, Mr. McClam
15 is a lifetime resident of the area. His family has
16 been present throughout the trial. I need to check
17 in a minute to see if any of them wish to address
18 Your Honor. It's honorable on their part that at
19 every stage of this they were acting in the
20 interest of society and not with any particular
21 assistance at all to Mr. McClam.

22 He attended St. Stephen High School
23 through 12th. He has worked in the past doing car
24 detailing work. Your Honor, I believe he wishes to
25 address the Court.

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1 THE COURT: Sure. I would be glad to
2 hear from him.

3 Yes, sir.

4 THE DEFENDANT: Good morning.

5 THE COURT: Good morning.

6 THE DEFENDANT: First of all, I would
7 like to say, thank you to the jurors for coming to
8 witness this gruesome movie they made of me where I
9 was the star, you know. I mean, I'd like to also
10 say that -- like they said earlier, you know, as
11 far as with the tape, everyone handled it without
12 gloves, you know, so -- and they are professionals.
13 No one knows where this tape went and what happened
14 in the middle or what happened in the end. All
15 they know is they received it.

16 It's just like, the State, they don't
17 know what happened before, in the middle, or in the
18 end. And you say that you-all are protective of
19 the state. Well, from my point of view, you only
20 looked at one side, you didn't look at my side.
21 So, therefore, you was not a protector for me. You
22 know what I mean?

23 So the next time when someone come into
24 the courtroom and they are faced with life
25 sentence, or any of these things, think about the

1 middle part. Think about all around. Don't stay
2 in a box. Be within -- without -- I mean, don't be
3 within that one box. Look outside the box for all
4 options.

5 You know, you have a job to do, but at
6 the same time, you're human and I'm human and it's
7 not right to judge one that you don't have no
8 knowledge of.

9 I would like to say thank you.

10 THE COURT: You're welcome.

11 Anything further from the defense?

12 MR. SCHWACKE: His mother may wish to
13 address you.

14 THE COURT: Sure. Be glad to hear from
15 her.

16 Ma'am, tell us your name for the
17 record.

18 THE WITNESS: Margaret C. McClam.

19 THE COURT: Yes, ma'am, be glad to hear
20 from you.

21 THE WITNESS: Giving honor to all of
22 yo-all in the courtroom. Judge.

23 THE COURT: Yes, ma'am.

24 THE WITNESS: I'm a Christian. I
25 raised my son, three girls. This is my baby. No

1 one knows how it feels when a mother have to come
2 and present before the child, their baby. I thank
3 you-all for everything that you-all have done. But
4 you know whose hands it's in? It's in God's hands.
5 Jesus, it's in his hands.

6 He knew from the time he give me this
7 son, the time he was sent in my womb and he was
8 born, the Lord knows just what was ahead, and that
9 goes for all of us. And I just want to thank you
10 for whatever you decide. I can still love him
11 until he dies until he leaves here, but he's still
12 my baby.

13 And I'm asking you-all to please,
14 please have mercy on him. We all have done wrong,
15 and fall short from the glory, and as we live we
16 still go forward short. And remember you-all got
17 some children too. And then you have some grands
18 coming along, and then you're going to have some
19 nieces and nephews. Think about what they've got
20 to face.

21 Before you go into a trial, I have to
22 say, think about if he done this here wilfully or
23 he didn't. Think about it. Think about when your
24 children come before this time here like me. I
25 pray hard, I teach him. We work hard, me and my

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1 husband. We work, give him all that we could give.
2 him.

3 Also, I turned around and help their
4 family, helped the family there. I was mother for
5 the whole family. When they said, I need a pack of
6 chicken, I done it. When my son couldn't pay the
7 light bill, me and my husband paid the light bill,
8 water bill. Go around all these churches in Moncks
9 Corner and begged them to help me pay the light
10 bill because he wasn't able to pay.

11 Every time he go for a job they say,
12 can't get a job. We take our Social Security money
13 and pay the light bill, water bill, buy washing
14 powder -- I want you-all to listen to me. Please,
15 give me this time -- washing powder, Clorox, teeth
16 paste, soap, towels, sheets, pillow cases for those
17 family that I take in. I take in, in my house. Me
18 and my husband, we give them a place to stay. He
19 is something like me. If people is not as
20 fortunate as him, he would take off his shirt and
21 give it to him and that's why he take these people
22 into this house. We told him, you are in trouble.
23 Why are you doing this to you? He said this word,
24 because I love her. They was out in the street.

25 But I'm going to say this here and I'm

SSS

1 going to sit down. Remember this rhyme, a man pick
2 up a snake and he bring him in out of the cold and
3 put him by the fire. After the snake done warm up
4 and stretch out into a warm place, he turned around
5 and bite the man. The man said, why did you bite
6 me? Do you know what the snake said? You knew I
7 was a snake before you -- when you bring me in
8 here. And this is what this is, a rattle snake.
9 But I thank you all for whatever decision you make.

10 THE COURT: Thank you, ma'am.

11 MR. SCHWACKE: Nothing further, Your
12 Honor.

13 THE COURT: Thank you.
14 Anything further from the State?

15 MS. WILLIAMS: No, Your Honor.

16 THE COURT: As regards to
17 Mr. Schwacke's argument that 17-25-45 constitutes
18 cruel and unusual punishment, as well as the
19 violation of the separation of powers, as I've
20 indicated, the South Carolina Supreme Court has
21 addressed both of those issues and found that they
22 are not -- that they were without merit and they
23 are not valid arguments and that our statute is
24 proportionate, that other states that have struck
25 the statutes down have dealt with the enhancement

1 based on petty offenses that were not traditionally
2 felonies, but South Carolina's scheme does not
3 proportion it in that way.

4 Each offense generally that you can
5 receive two-three strikes on is an offense that you
6 could face life for in any event and that it is
7 proportionate -- the offense is proportionate not
8 only in the nature of the elements of the offense
9 but in punishment. It has also addressed the
10 separation of powers argument and found that it is
11 likewise not an argument of merit.

12 I'm relying on the record for State v.
13 White, which is found at 349 SC 33, which is a 2002
14 Supreme Court Opinion, and State v. Standard, which
15 is 351 SC 199, which is a 2002 South Carolina
16 Supreme Court Opinion.

17 The latter addresses the separation of
18 powers and the former addresses the cruel and
19 unusual punishment argument.

20 Based on the fact, sir, that you
21 received a life without parole notice, it is
22 appropriate that that punishment be imposed
23 regarding those offenses that you were served
24 notice on, which would be the criminal sexual
25 conduct offenses, which would constitute -- and

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SENTENCE

1 these are not on here, so I'm going to have to fill
2 them in, but the CSC first is most serious and
3 violent, burglary first is violent and most
4 serious, and kidnapping is also most serious and
5 violent. But the notice gave him notice predicated
6 on the CSC charge I believe, and I will look back
7 at that in a moment.

8 But, in any haven't, certainly it is
9 appropriate that it be imposed in light of his
10 having been given a much more favorable offer and
11 having turned that down where he could have far
12 gone a life without parole exposure. Not that he's
13 being penalized for a trial because I'm a great
14 believer in the trial system. I think people
15 should exercise it.

16 I've never seen a verdict that I felt
17 was wrong or felt needed to be vacated. I think
18 jurors have an inordinate amount of common sense
19 and they listen objectively. They have no one to
20 punish and no one to reward, and I have never even
21 a verdict that I questioned yet. Certainly, this
22 verdict is more than amply supported by the record
23 and the evidence that has been presented.

24 As such, sir, you are sentenced to the
25 State Department of Correction as follows: On

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1 Indictment 2014-659, possession of a firearm by a
2 person convicted of a violent offense, you're
3 sentenced to five years; possession of a weapon
4 during the commission of a violent crime, 2014-658,
5 you are sentenced to five years; burglary in the
6 first degree, you are sentenced to life;
7 kidnapping, you are sentenced to 30 years; and the
8 Court will find as regards the indictment involving
9 Leandre Jenkins, which is 2014-653, that it is --
10 that it does involve an offense involving a
11 criminal sexual conduct and, therefore, requires
12 registration; and both criminal sexual conduct
13 first degree offenses, life without the possibility
14 of parole.

15 You'll get credit for any time pursuant
16 to 24-13-40 to be calculated and applied by the
17 Department of Corrections.

18 Ladies and gentlemen, we thank you for
19 your time and your attention to this case. You are
20 excused with the Court's profound thanks.

21 (Jury out, 10:50 a.m.)

22 (These proceedings were concluded at
23 10:50 a.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 11th day of May, 2016 at Charleston, Charleston County, South Carolina.

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
DEC 29 2017
SC Court of Appeals

APPEAL FROM Berkeley COUNTY
Court of General Sessions

Honorable Deadra Jefferson, Ninth Circuit Court Judge

Appellate Case No.: 2016-0001793

The State,

Respondent

v.

Telly Darnell McClam,

Appellant

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Appendix contains all material proposed to be included by any of the parties and not any other material pursuant to Rule 210(g) SCACR.

Respectfully Submitted,

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