

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Brooks P. Goldsmith, Circuit Court Judge

SASHA GASKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002554

APPENDIX

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1 to do.

2 Now the solicitor's office made us listen to
3 that tape. And wanted to make you listen to it
4 again. But you heard the same thing I heard. And I
5 hope they will give you that tape and let you take it
6 into the jury room. They played it to you. I hope
7 that they will let you take it in there, and
8 hopefully you'll listen to it. And hopefully you'll
9 hear the same thing I heard. She said, Mama, I'm
10 scared, I'm really scared. And, Mama, they
11 threatened us with guns.

12 And then they come up to you and say, well why
13 didn't you tell your parents? Because of the fact,
14 except for the fact that she did tell her parents she
15 was threatened, and except for the fact she did say,
16 Mama, I'm scared, I'm really scared, she did what she
17 thought she could do.

18 Now the law of coercion does not say what the
19 crime had to be. And the law of coercion does not
20 say that Sasha is not guilty what these guys did.
21 Now the solicitor's officer admits she is not guilty
22 of the rape, didn't charge her with rape.

23 But they are charging her, because they're
24 claiming -- and rightfully so, that's what the law is
25 -- anybody who participates in a crime is guilty of

1 everything that is done. If what was done was in
2 continuation of or to perform a crime, or could have
3 been expected to.

4 So Sasha was guilty of the crime of burglary,
5 she was guilty of the crime of armed robbery. But
6 the law of coercion says, although she has committed
7 those crimes and she is guilty of it, she is not to
8 be punished by criminal law if she can prove the
9 coercion; that the threats were made to her, that the
10 threats were said, that she had a reasonable
11 expectation of death or bodily injury and she had no
12 way to escape, no reasonable way to escape.

13 And if Reggie Rice and Miguel Starns (sic) are
14 the big bad guys they wanted us to think -- they even
15 told us about all these armed robberies in Georgia,
16 told the solicitor's office about it. I'm sorry
17 Reggie did, Miguel was at the Citadel, told the other
18 defendants that.

19 If they were the big, bad guys they wanted to
20 act like they were, if they were the big guys who had
21 committed armed robberies and burglaries and rape
22 women -- even rape a woman down in Charleston, raped
23 a 16-year-old down in Atlanta -- if they are that
24 bad, then I know they can come up with \$100 and take
25 the \$100 down the right road and get somebody to come

1 up from Charleston and come up to Laurens and kill
2 Sasha.

3 Because these guys know that the detectives in
4 Laurens will never find them. Spent \$100 bucks and
5 Sasha is dead. And who's going to testify about the
6 plan?

7 Maybe Breanna if she is not killed too. These
8 witnesses just disappear, Shasha and Breanna, they're
9 gone. We never hear from them again. That's what
10 Sasha was afraid of, that's the exact thing. First
11 day occurred because she was threatened at the last
12 second. The second incident occurred because she had
13 been warned, if you mess this up I will kill you.

14 Now Dr. Randolph Waid, one of the most
15 well-respected, highly accredited psychologists in
16 the world probably, and my brother is a psychiatrist
17 in Atlanta knew of him, sent me to him, comes highly
18 recommended, has all the certificates and diplomas
19 and education.

20 And he told us that the fear of serious bodily
21 injury or death can take away the power of an
22 individual to lead in violation of criminal laws.
23 Fear can make somebody commit a crime they wouldn't
24 otherwise do if they weren't under coercion.

25 That's exactly what happened here. It's a

1 classic example of exactly what Dr. Waid told us.
2 Fear of death can make a good individual do bad
3 things.

4 Sasha also testified to you that she would
5 have risked the death if she had known Emily and
6 those other two guys were going to get injured.
7 Emily suffered a great deal. Pain, I don't know that
8 she had a lot of pain, emotional scars that she'll
9 never get over. We are sorry that happened.

10 Sasha told you she would have risked her own
11 death if she thought this was going to happen in any
12 way. If she had even known that Emily was there, she
13 wouldn't have done it. Sasha is not charged with
14 raping Emily. Sasha is extremely sorry that it
15 happened. If she had any idea that the other crime
16 would have been committed, she would have said, Okay,
17 Reggie, kill me.

18 Now lets examine very shortly the evidence
19 presented. Sasha -- I'm in a hurry, sorry. Sasha
20 told you about the threats to kill her unless she
21 obeyed them. She didn't know the injures that would
22 be subjected on Emily. She said she never should
23 have had to go through this. She said had she known
24 what was going to happen, she would have told them,
25 you all kill me. I'm not going to do it.

1 All of her character witnesses came up here
2 from Clinton/Laurens and said she is the sweetest,
3 nicest 18-year-old girl in the world. Said she would
4 do things for church members, for school members, the
5 older people in town. She's just a wonderful,
6 cooperative, generous, honest, loving person. She
7 would never commit a crime if she had any choice.

8 We all know what a choice between two evils
9 means; one is bad and the other is bad.

10 Breanna testified that Sasha was not
11 threatened, but she admitted she was not present at
12 the time when Miguel threatened her. So she tells
13 you that Sasha wasn't threatened, but she says -- she
14 admitted that if she did get threatened, then I
15 wasn't there. That doesn't tell us anything.

16 But she didn't do something extremely
17 important, we have gone over this before, she said
18 the solicitor's office has promised me a deal. You
19 know what that means, it means she gets to avoid most
20 of the criminal and substantially less criminal if
21 she testifies against Sasha.

22 Stephen testified he was not present when the
23 bad guys, Miguel and Reggie, threatened Sasha. He
24 didn't know except that's what he admitted to the
25 stand. He had previously testified that they

1 threatened him --

2 MR. KIDD: Objection, Your Honor.

3 THE COURT: Basis?

4 MR. KIDD: Facts not in evidence.

5 MR. SOWELL: I think it is, Your Honor. I put
6 it in my notes.

7 THE COURT: Do not speak. Approach.

8 (Whereupon, the following discussion was held
9 at the bench.)

10 THE COURT: Mr. Sowell, who are you referring
11 to? Who are you referring to?

12 MR. SOWELL: Stephen. Stephen originally told
13 the police he had been threatened.

14 THE COURT: Did you elicit that in testimony?

15 MR. SOWELL: Yes, ma'am.

16 THE COURT: I don't recall it, I'd have to go
17 back through the transcript. But he asked him a
18 series of questions when he was interviewed by the
19 police and I think he did go through that because I
20 remember thinking he was setting up the stage to ask
21 Ms. Gaskins about that. Overruled.

22 MR. SAVAGE: He didn't previously testify, he
23 is making --

24 THE COURT: On cross-examination. He
25 cross-examined him about his statement to the police.

1 MR. SAVAGE: There is no testimony in the
2 court about that.

3 THE COURT: I think there is. I think he did
4 question him about it from his statement is my
5 recollection.

6 (In open court.)

7 THE COURT: Overruled.

8 MR. SOWELL: Thank you, Your Honor.

9 In addition, Stephen testified he was not
10 present at the time Sasha was threatened. There is
11 no question he wasn't there at the doorstep, wasn't
12 there on the doorstep when the two bad guys rush in,
13 and Sasha drugged up and told, if you don't knock on
14 the door I'm going to kill you.

15 Sasha (sic) further testified that if he
16 expects mercy from his testimony, he expects the
17 solicitor's office to give him mercy. His testimony
18 changed after he was promised by the police officers
19 that he would get mercy if he testifies and tells the
20 story that they wanted to hear.

21 Do we want to believe his original story, or
22 the story he told after he was promised from the
23 police officer to get mercy? Reggie is important.
24 Not only does his best friend Miguel say, he's going
25 to kill somebody if he gets pissed off. He further

1 testified, if I point a gun at somebody, he better be
2 in fear for his life. Sounds like exactly what
3 happened to Sasha.

4 I don't know if you all want to believe his
5 first version or his second version where he thinks
6 he has bought mercy. But he's bought what he thinks
7 is mercy.

8 Of course, it's also coming from somebody who
9 has planned and killed -- I'm sorry, not killed --
10 rapes a woman down in Georgia, a 16-year-old girl
11 down in Georgia; and rapes a woman here in
12 Charleston; and burglarizes and threatens to kill;
13 and threatens to cut off people's member of bodily
14 parts.

15 I don't know how much faith you can put in his
16 version of what happened, and which version you
17 should listen to, and which version he told the
18 police that he didn't threaten or the version he says
19 where he did. I don't remember what the version is,
20 if you are going to believe, anybody I threaten to
21 kill ought to be afraid.

22 Miguel, the quarterback, is the most stupid
23 one of all. He is going to talk to his coach, talk
24 in front of the coach and not be recognized. But
25 anyway, they also told us that if I threaten somebody

1 with my gun, they darn well better be afraid of their
2 life.

3 He is the one that told her, it's time to
4 start praying. And you want to listen to him and
5 believe him? Or do you want to believe his version
6 in contact after the solicitor's office helping him.
7 He thinks he bought her.

8 Please don't let the facts that they purchased
9 deals, and facts they purchased promises of mercy
10 ruin the life of a sweet girl who is trying to
11 protect herself. Remember Dr. Waid's testimony that
12 the fear continues even after a period of time.

13 Mercy is cheap. Sasha has a history, has a future,
14 but not unless all 12 of you take that away from her.

15 If I had more time I would discuss everything
16 that happened. Please remember, this is a promise,
17 before they change the story.

18 Let me spend a couple of seconds discussing
19 other important things. The police officer said,
20 tell me what I want or you will get sentenced to life
21 in prison. Starks said that Sasha was doing all
22 this. She agreed to do this with people she had only
23 known two days.

24 The solicitor made a big deal about how she
25 had hung around all these football players. She had

1 known him for two days. Starks said she wanted to
2 buy a car. She testified she had a good car, it was
3 in the shop, but it was fully paid for, she was happy
4 for it.

5 Rice says she did it because she wanted to get
6 her hair done. What idiot would expect us to believe
7 that somebody committed two armed robberies and two
8 break-ins because they wanted to get their hair done?

9 Remember even after the guys have charged into
10 Harms' (sic) house, she still thought this has to be
11 a joke. You got to be kidding me, you got to be
12 joking. But, Harm (sic) and Emily eventually got to
13 believe the same think that Starns (sic) believes and
14 Rice believes when they threaten to kill him if they
15 reported this.

16 How long did they wait before they reported
17 it? I think this testimony was this incident
18 happened about 1:00, 2 o'clock. And Emily never
19 reported it. She went down to the hospital and they
20 reported it around 12 o'clock, 12 hours later.

21 And so why you all didn't report it? Because
22 I was afraid for my life. They threatened to kill me
23 if I reported it.

24 Now if Emily can believe that, Sasha can
25 believe that. Anybody who knew Reggie and Miguel,

1 when they had guns in their hands, better believe
2 them. Miguel told us, if Reggie gets pissed off,
3 he'll kill you.

4 The solicitor's office is trying to make a big
5 deal out of this little note that Sasha sent to
6 Breanna. The only thing it says was, don't talk
7 about this to jail-mates, jailhouse snitches will
8 lie, and they will do anything possible to tell the
9 solicitor, hey, this guy committed something.

10 Because they think they're going to get a
11 get-out-of-jail free card if they testify. This
12 happens all the time. Inmates, fellow inmates in
13 jail will call the solicitor's office and say, hey,
14 if you give me a deal and let me out of here, I will
15 testify this guy admitted he committed a crime.

16 That happens. You read it in the paper all
17 the time. Jailhouse snitches are famous for that, or
18 should I say infamous. Sasha sent the note to
19 Breanna, don't get tricked by a jailhouse snitch.
20 That's what this thing says.

21 It says, don't worry. They don't believe us
22 about the threats, don't be tricked by a jailhouse
23 snitch.

24 The solicitor brought you all these pictures,
25 you know why? Because when the solicitor brings all

1 a bunch of pictures and this stuff here, it makes you
2 think that this case is more important. Those things
3 over there don't mean anything if you think that
4 Sasha was threatened.

5 I hope the solicitor's office will give you
6 all that tape. Now the police want, and the
7 solicitor's office wanted Sasha to tell her mother
8 her entire defense over the telephone that they were
9 taping. And if Sasha didn't tell her entire defense
10 to her mother during the telephone call that they
11 were taping, then she must be guilty.

12 surely they don't think somebody is going to
13 tell their entire defense over the telephone that the
14 police officer is sitting there listening to. But
15 they made a big deal out of it.

16 Why didn't you tell your mother? Why didn't
17 you tell your mother? You should have told your
18 mother. If you were afraid, why did you tell your
19 mother? That was her defense. She knew her lawyer
20 would not want her to tell anything until they get to
21 talk to her.

22 And especially when the police officers, in
23 their slime-ball ways, sit there and expect this
24 defendant to tell her entire defense when they're
25 sitting there listening to her. And the telephone

1 recording even tells her at the beginning of the
2 conversation, this is recorded. She knew they were
3 listening in.

4 That's the reason she didn't tell her entire
5 defense, because she knew her lawyer wouldn't want
6 her to do it. Now lawyers want you to tell the
7 truth, but only the right time when the lawyer knows
8 she's going to the right people.

9 I hope you listen to the tape because you will
10 hear her say, Mama, I'm scared, I'm really scared.
11 And, Mama, they threatened me. The solicitor's
12 office didn't listen when trying to play that tape,
13 but I did. I hope you did. And I hope if you
14 didn't, I hope the solicitor's office will let you
15 take it in your room.

16 MR. KIDD: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. KIDD: May we approach?

19 THE COURT: Uh-hum.

20 (Whereupon, the following discussion was held
21 at the bench.)

22 MR. KIDD: Just the characterization that I
23 can allow them to take the tape into the room. It's
24 not in evidence. I let it go by once or twice.

25 MR. SOWELL: They played it to her.

1 THE COURT: They didn't offer it in evidence.

2 MR. SOWELL: I am trying to get them to do
3 that.

4 THE COURT: They can't because it's not in
5 evidence.

6 MR. SAVAGE: Misstating the facts.

7 MR. SOWELL: That's not true, Your Honor.

8 THE COURT: It is in evidence, you played it
9 in impeachment. They listened to it. He can argue
10 what is on the tape.

11 MR. SAVAGE: What he is saying is do it back
12 there and listen to it.

13 THE COURT: I will deal with that if they ask
14 for it. I will just tell them it's not in evidence.

15 MR. SAVAGE: That's my point.

16 THE COURT: But that was your choice. You did
17 play it in impeachment. He can argue it. And I have
18 already instructed him not to make any further
19 references.

20 (In open court.)

21 THE COURT: Proceed.

22 MR. SOWELL: The police told Sasha, if you
23 cooperate we will tell the solicitor's office you
24 cooperated. Sasha, she didn't tell it the way they
25 wanted to hear it, now they want her to spend the

1 rest of her life in jail.

2 All the bad guys, the rapists, the guys that
3 threatened Sasha, they get a deal. I'm asking you to
4 be fair. I'm asking you to think what you would do
5 under those circumstances. And what a reasonable
6 person would do under those circumstances. What an
7 18-year-old kid would do under those circumstances.

8 Breanna testified, gave her statement, that
9 Sasha wanted nothing. After she was promised a deal,
10 she changed it to Sasha wanted use the TV. Stephen
11 and she wanted \$64, and she wanted a jar of coins.
12 But before she got her deal, before she got her
13 promise she cooperated, she said that Sasha wanted
14 nothing.

15 Please think what would happen if that was
16 your daughter. If your daughter had been threatened,
17 told she is going to get killed if she didn't
18 cooperate, told she was going to be killed if she
19 reports what is going on or got planned, she was even
20 told, if you tell the police what we have planned, we
21 will kill you.

22 If your daughter was up here --

23 MR. KIDD: Objection, Your Honor.

24 THE COURT: Basis.

25 MR. KIDD: May we approach?

1 THE COURT: Uh-hum.

2 (Whereupon, the following discussion was held
3 at the bench.)

4 MR. KIDD: He is saying, if your daughter,
5 personalizing.

6 THE COURT: He is arguing reasonable standard
7 objective. He is putting it in the way what a person
8 reasonably situated would do. Be very careful.

9 (In open court.)

10 THE COURT: You may proceed.

11 MR. SOWELL: This happened to her, this
12 happened to Sasha, she had reason to be scared.
13 She's not going to know what to do. Safest thing she
14 can do is to cooperate, make them leave me alone,
15 hopefully they will go away and I will live. That's
16 what she wanted, and that's what I hope you all can
17 see.

18 Each and every one of you have a vote. Each
19 and every one you have a choice. No one can make you
20 change your vote. And the Judge will tell you, don't
21 change because of what I say, you have a vote, if it
22 violates your conscious.

23 She will warn you that, you know, you should
24 consider your other juror's opinions. And she will
25 mean that to both sides. But don't violate your

1 conscious.

2 Don't strip away the entire life of a pretty
3 little girl, the sweet little girl over there, who
4 did nothing but try to save her life. Thank you.

5 THE COURT: Mr. Foreman, ladies and gentlemen,
6 I'm going to give you a very brief restroom break.
7 During the break please do not discuss the case and
8 please leave your notepads in your seats. As soon as
9 you are done using the restroom, knock on the door
10 and advise the bailiff. And at that point we will
11 resume argument. Go with the bailiff, please.

12 (Whereupon, the jurors exit the courtroom.)

13 (Whereupon, a recess was taken.)

14 THE COURT: Is the state ready to proceed?

15 MR. KIDD: We are, Your Honor.

16 THE COURT: Is the defense ready to proceed?

17 MR. SOWELL: Yes, ma'am.

18 THE COURT: Please bring in the jury.

19 (Whereupon, the jurors enter the courtroom.).

20 THE COURT: State may proceed.

21 MR. KIDD: Yes, ma'am.

22 May it please the Court, Mr. Sowell. Ladies
23 and gentlemen, I'm not quite sure what trial Mr.
24 Sowell was listening to this week, but I want you to
25 know that any words that come out of his mouth are

1 not evidence. In the same vein, anything that I say
2 is not evidence.

3 MR. SOWELL: Your Honor.

4 THE COURT: Basis of the objection?

5 MR. SOWELL: Basically it's harassment.

6 THE COURT: Overruled. It's an accurate
7 statement of the law. Argument is not evidence, nor
8 is it the law. You may proceed.

9 MR. KIDD: Anything that comes out Mr.
10 Sowell's mouth or my mouth is not evidence. The
11 evidence that you hear comes from exhibits, comes
12 from testimony from the witness stand.

13 He makes comments about that phone call. And
14 I apologize to you because it's not entered into
15 evidence so you are not going to get to listen to it
16 again. Mr. Sowell could have put it in evidence, but
17 it wasn't entered. And it was hard to understand.

18 I hope you were able to hear it. I hope you
19 were able to hear Ms. Gaskins say, I didn't know what
20 was going on. I hope you were able to hear her say,
21 I was with Bree the whole time. I hope you were able
22 to hear the things that were actually said on that
23 tape.

24 Now 90 percent Mr. Sowell's case has been
25 about painting his client as the sweetest little girl

1 in town. And, ladies and gentlemen, I'm not arguing
2 that this case isn't a tragedy as it relates to the
3 codefendants in this case.

4 You have five young people, athletes,
5 scholarship students, families who were involved in
6 their lives, who had every opportunity in life to be
7 successful. They have got the world at their
8 fingertips, and they threw it all away. Threw it all
9 away and it's a tragedy. It's a tragedy.

10 But save your sympathy for the victims in this
11 case. Save your sympathy for Joshua Harper, Emily
12 Michalak, save your sympathy for Herbert Butler.
13 They're the victims in this case. They're the ones
14 who were duct-taped up on the floor of their homes,
15 who were stripped of dignity and respect.

16 Ms. Gaskins, she made her choices. My parents
17 always told me growing up, we set our own tables in
18 live. Ms. Gaskins set her table, she made her
19 choices. She chose to hang out with these people.
20 She chose to knock on the door, involve herself in
21 these crimes. She chose to go in these residences
22 and carry things out.

23 She chose to make the phone call. She chose
24 to go inside again. She chose to participate in
25 these crimes. She made her choices. Duct-taped up

1 on the floor staring down the barrel of a gun, you
2 have no choices.

3 Joshua Harper, Emily Michalak, they weren't
4 allowed to make any choices. Save your sympathy for
5 them.

6 Now I'm going to talk to you a little bit, I'm
7 going to run through what took place on those days,
8 and I'm going to talk about the witness's testimony.
9 I'm not going to go through every little piece of
10 testimony that came off the witness stand, there is
11 too much.

12 But I do want to address the allegations that
13 there has been some sort of arrangement between me or
14 my office and those witnesses. If you think for one
15 second that me or my office is going to show leniency
16 to Miguel Starks in exchange for his testimony
17 against Ms. Gaskins, you're out of your mind.

18 If you think for one second me or my office is
19 going to show leniency to Reggie Rice in exchange for
20 his testimony, you are out of your mind. If you
21 think for one second that we are going to show
22 leniency to Stephen Francois in exchange for his
23 testimony, you are out of your mind.

24 They're much worse than Ms. Gaskins. They
25 pled guilty. They plead guilty to armed robbery, two

1 counts; burglary first, two counts; kidnapping, two
2 counts; possession of a firearm during a violent
3 crime. Starks pled to criminal sexual conduct in the
4 first degree, that's rape.

5 And we are going to show them mercy and
6 leniency for their testimony? I don't think. Ms.
7 Gaskins isn't near as culpable as they are, but she
8 is just as guilty. Everything Mr. Sowell presented
9 to you is mitigation. It's something that should be
10 considered as sentencing, not toward guilt.

11 MR. SOWELL: Your Honor.

12 THE COURT: Yes, sir.

13 MR. SOWELL: He is not quoting the law.

14 THE COURT: Please approach.

15 (Whereupon, the following discussion was held
16 at the bench.)

17 (Whereupon, the following discussion was held at the
18 bench.)

19 THE COURT: What is basis of the objection?

20 MR. SOWELL: He told them that coercion is not
21 to be considered by the jury.

22 THE COURT: It's not an absolute defense.
23 It's to be weighed by the jury. It's to be weighed
24 by the jury. He didn't misstate the law, he said
25 it's something they can consider. They don't have to

1 consider it.

2 MR. SOWELL: I understand that. He said it
3 has to be considered by the Judge at sentencing.

4 THE COURT: That's not what he said. I'm
5 reading exactly what he said.

6 MR. SOWELL: It's to be considered at
7 sentencing.

8 THE COURT: That's not what he said, he said
9 it's to be considered as mitigation.

10 MR. SOWELL: At sentencing.

11 THE COURT: That's not what he said. I'm
12 reading it exactly verbatim.

13 MR. SOWELL: He didn't say that?

14 THE COURT: He didn't say that. That's what
15 you think you heard but that's not what he said.

16 (In open court.)

17 THE COURT: Overrule. You may proceed.

18 MR. KIDD: Ladies and gentlemen, no one is
19 seeking a life sentence against Ms. Gaskins. And you
20 are not to concern yourself with what sort of
21 sentence she may or may not receive. It's not up to
22 you, it's not up to me, it's up to the Judge. The
23 Judge determines sentencing. The Judge determines
24 what sentence is appropriate.

25 Your job, as jurors, you are the judges of the

1 facts, much like Judge Jefferson is the Judge of the
2 law. She is the authority on the law, she is going
3 to change you with the law. And you apply the facts,
4 as you find them, to the law as she charges it. And
5 you determine whether she's guilty or not guilty.
6 You don't concern yourself with the sentencing,
7 that's for the Judge to do.

8 Now let's go through a little bit about the
9 story from beginning to end. Not so much a story,
10 it's actually what happened. What happened? Tuesday
11 Miguel Starks goes to Sasha and Stephen Francois'
12 place, they talk about an armed robbery for the first
13 time. You heard from Stephen, you heard from Miguel,
14 everyone is in, everyone is in agreement, no one is
15 being threatened.

16 What happened next? Wednesday. Wednesday in
17 the afternoon go back over to Francois' dorm room,
18 Sasha is there, Miguel and Reggie talking about the
19 armed robbery, drawing it out on a napkin, they have
20 got a plan. Sasha is going to knock on the door, she
21 is in agreement, she is part of it. No one is being
22 threatened.

23 What happens next? Miguel meets Bree, they
24 all end up going to the Kickin' Chicken. What does
25 Sasha say? We're really going to do this tonight?

1 We about to do something crazy.

2 What happens next? They drive back to
3 Miguel's place. In the car what are they talking
4 about? They are telling Bree what they're about to
5 do. Bree doesn't admit that. You wondered why
6 certain testimony don't match up by people, they're
7 minimizing. They're minimizing. All those
8 codefendants aren't telling 100 percent of the truth.
9 They're not. They're minimizing. They're
10 downplaying their own involvement.

11 So they go back to Miguel's place. They are
12 getting ready for this armed robbery, this home
13 invasion. She said she didn't know what they were
14 planning on doing? Thought they were going to a
15 party?

16 You think they were getting dressed in club
17 gear? Or are they getting dressed in dark clothes
18 and hoodies and masks getting ready for a home
19 invasion. Getting guns, duct tape, sword. It's
20 common sense, use your common sense. That's what
21 juries are for, to put 12 people together to use your
22 common sense.

23 What do they say? She is willing, she is in
24 it, even offered to leave Bree behind. They say, not
25 sure you want to get involved in this. You can stay

1 behind if you want. She says no, I will go with you.
2 On the way, you want us to drop you off at the dorm?
3 No, I will stick it out.

4 They go to Herbert Butler's house. Scoping
5 out the house, drive by a few times. She wants you
6 to believe she didn't know what they were doing
7 there.

8 Get out of the car. Says she is forced out.
9 Does Reggie testify to that? Does her boyfriend
10 testify to that? Did Miguel testify to that? Did
11 Bree testify to that? No. They were all there.

12 They walk up to the house. She says, Miguel
13 put a gun to my head, the gun which she knows is
14 broken, but a gun to my head. He said, I will kill
15 you if you don't knock on the door. Reggie was right
16 there. Reggie is right there, does he see that
17 happen? Nope.

18 You think Reggie would jump at the opportunity
19 to throw Miguel under the bus if he could if he saw
20 something like that? You know he would.

21 What happens next? She knocks on the door.
22 Emily answers it. What does Emily see? Did Emily
23 say she sees a girl with a gun pointed at her head?
24 Nope. Someone asked her for her phone. She turned
25 around to get her phone. Once she grabs her phone,

1 she turns back around and she is shocked because
2 sasha is now inside her house, has opened the door.

3 She says there is about a 2 or 3 seconds pause
4 there, after sasha grabbed her phone from her, where
5 she looks back at the door and she waits. Because
6 she knows that Miguel and Reggie are on the way in.

7 She goes back to the car after they start
8 getting duct-taped up in the middle of the living
9 room. Sasha leaves, she goes back to the car. If
10 she is threatened, if her life has just been
11 threatened, if someone has just put a gun in her
12 face, and she goes back to the car where her
13 boyfriend of seven months and her college friend who
14 just met these people that day are and she just had a
15 gun in her face, you tell me, what would a reasonable
16 person do?

17 Would a reasonable person hang out for a few
18 hours while this home invasion is occurring? Means
19 to escape? Means to get away from the harm?

20 Stephen, your friend just put a gun in my face
21 and threatened my life, get me out of here. That's
22 not done. That's not said.

23 What does she do? Hangs out, waits for the
24 phone call because it's part of the plan. It's part
25 of the plan she has been involved in all along. Gets

1 the phone call. They go back. They pick up Miguel.
2 They go to the ATM. What do you hear her say? Check
3 the savings accounts.

4 Is that what someone who has just been
5 threatened says? Check the savings account? Common
6 sense. It's all about common sense.

7 What happens next? Go to the gas station.
8 She buys a pack of cigarettes and puts \$5 of gas in
9 the car. Go back to the house. She is waiting. She
10 has just been threatened, she's going to go into a
11 home where she knows people are duct-taped up on the
12 floor for a lighter?

13 It's common sense. No, that's not what
14 happens. She goes to wipe her fingerprints off the
15 door. She goes to help them carry stuff out. You
16 heard the testimony of the codefendants, that's
17 exactly what happened. It's common sense. She is in
18 it. She is in it from the beginning to the end.
19 It's common sense.

20 Where do they go next? Go back to Miguel's
21 house, the guy who just threatened her life, and they
22 hang out. Carrying stuff from the robbery back
23 inside the apartment.

24 What happens the next day, Thursday? Did she
25 tell anybody? Did she tell her boyfriend that she

1 was just threatened? Did she tell anybody?

2 She goes to class. Works on a project. What
3 does she do Thursday night? She goes back to
4 Miguel's house to hang out, with a guy who just put a
5 gun in her face and said, I will kill you. It's
6 common sense, ladies and gentlemen. It's common
7 sense.

8 Spends the night Thursday night at Miguel's
9 house. Allows her college friend to sleep with the
10 guy who has just threatened her life. Common sense.

11 Friday, what happens? Went to hang out with
12 this guy who just threatened your life again. Go
13 over to his house, hang out, watch movies. He says,
14 make a phone call. I was afraid for my life. Common
15 sense, ladies and gentlemen, it didn't happen like
16 that.

17 What does she do? Her and Bree drive, drop
18 the guys off near Harpe's apartment, and they go to
19 make the phone call. Reasonable means of escaping
20 imminent harm? Her and Bree are in the car by
21 themselves. They don't have to make that phone call.
22 No one has a gun to her head. She can drive away,
23 she can go to the police, she can go home, she can go
24 anywhere. If she does anything but make that phone
25 call, that robbery does not occur. Joshua Harpe

1 never comes out of his apartment, except for the fact
2 that Sasha makes a phone call.

3 Then what happens next? She goes and makes
4 the call. She calls the guys says, he is coming, he
5 is on his way.

6 They go and get gas. You saw that video of
7 them putting gas in the car. Does that look like
8 someone who's under duress to you? Someone who's
9 being threatened? Whose life is in imminent danger?
10 Common sense. It's all common sense.

11 Then what happens? Miguel comes and picks
12 them up. They get in the Mustang, Joshua Harpe's
13 Mustang, go to ATM, get money out. They go back and
14 get the other car. They follow him to Harpe's place.
15 She is following Miguel to Harpe's place. She could
16 have just turned off the road, gone somewhere else.
17 She could have drove away.

18 What would a reasonable person do?
19 Opportunity to get away from the threat, to escape
20 the harm? No. She goes, she goes upstairs, she goes
21 inside, packs stuff up, she carries it down, she
22 takes it back to Miguel's place. Because that was
23 the plan. That was the plan all along. It was the
24 plan that they were all in on, they were all involved
25 in.

1 Then what happens? Reggie and Francois leave,
2 they get arrested. What does she do? She calls her
3 friend, need to get out of here, something bad is
4 going on. They leave, leave with friends, meet at a
5 gas station.

6 She takes Miguel and Bree back to Bree's dorm
7 room and leaves in Miguel's car. Someone who has
8 just put a gun in your face and threatened your life
9 lets you borrow their car? It's common sense. So
10 she drives around looking for Stephen, trying to find
11 where he is in jail, whatever she does over those
12 next few hours, handful of hours.

13 Then what does she do the next day? She goes
14 and she picks up Miguel, by herself she goes and
15 picks up Miguel. Do you pick up someone who has
16 threatened your life? Someone who has put a gun in
17 your face, do you go and pick them up? Walk into the
18 lion's den? Common sense. It doesn't make sense.

19 She is arrested, and you heard us talk about
20 that first police interview. She admits, she said I
21 lied to them. You know why? It's because there are
22 two separate police departments, there is a
23 Charleston City Police Department, and there's the
24 sheriff's office.

25 Joshua Harpe's case was a city case. Herbert

1 Butler's case is a county case. So when she is being
2 questioned on the 27th, a handful of hours after this
3 second robbery, they don't know that it's related to
4 the Herbert Butler incident. They're not questioning
5 her about that.

6 What does she say? She says, you know, I
7 thought it was a joke. I didn't know what was going
8 on. She is lying. She is arrested. You heard the
9 phone call. I hope you were able to hear it. I know
10 it was hard to hear, I hope you heard enough of it.

11 What does she tell her parents? I was with
12 Bree the whole time. I didn't know what was going
13 on. She never tells her parents on that phone call
14 that she was threatened.

15 And then what do we get next? We get a jail
16 note. It says a lot more than defense counsel
17 alleged. It says, don't talk to the cops. It says,
18 we can beat this shit. It says, flush this note.
19 And you'll have an opportunity to see it. You'll
20 have an opportunity to see what it means. She says,
21 it won't look good in court. She is right about
22 that. It does not look good in court.

23 Ladies and gentlemen, sweetest little girl in
24 town is not the same person who those people from
25 Clinton came and told you who she was. She lied to

1 her parents. She lied to the police. She came in
2 here, she put her hand on that bible and she lied to
3 you.

4 MR. SOWELL: Your Honor.

5 THE COURT: Basis?

6 (No response.)

7 MR. KIDD: Ladies and gentlemen, I just want
8 you to use your common sense. That's all we ask.
9 And to be honest with you, if you believe every word
10 that came out of Sasha Gaskin's mouth, if you think
11 she was 100 percent truthful with you, it does not
12 matter. She is still guilty.

13 She can only successfully assert the duress
14 defense if she had no reasonable means to escape the
15 harm. She had three days of reasonable means to get
16 out of that harm's way, to get out of that danger.
17 And that's just if you believe her.

18 When you are deciding who to believe, think
19 about who has a reason to lie and who has the reason
20 to tell you the truth. Is it some defendants who
21 already pled guilty, who they're going to do their
22 time. Let there be no mistake about that.

23 Are we recommending a little leniency on Ms.
24 Bruster? We are. Absolutely. Is it in exchange for
25 her testimony? No, it is not.

1 And to be perfectly honest, Ms. Gaskins is
2 guilty of criminal sexual conduct, she is guilty of
3 kidnapping. We are not seeking convictions on those.
4 Accomplice liability, when you are involved in a
5 crime with other people, you are responsible for
6 everything that happens incidental to that plan,
7 incidental to those actions.

8 In order for her to successfully assert a
9 duress defense, even if you believe everything she
10 said, she would have had to have no reasonable means
11 to get out of harm's way. What about when she is in
12 the car with Bree? What about when she is in the car
13 with Stephen? What about when she's in
14 the street after knocking on the door. She could
15 have run to the neighbor, she could have just gotten
16 out of there. She had a plethora of reasonable means
17 of escape.

18 Now I appreciate all the attention you paid. I
19 know it has been a long week, you've had to hear the
20 same story recounted five, six, seven times. It can
21 be a little painstaking. I appreciate the time and
22 the attention that you've paid.

23 I hope that I have never offended you. And if
24 I have, I hope you don't hold it against me. But
25 what I'm asking you is to use your common sense, to

1 judge the credibility of the witnesses that were on
2 that stand, to do your job and determine the facts
3 and decide what happened. Then apply it to the law
4 as Judge Jefferson charges you.

5 We only have one type of criminal justice
6 system and it's the best one in the world. But it
7 treats everybody the same. It treats 18-year-old
8 little girls the same as grown men as far as whether
9 they're guilty or not guilty.

10 whether they are a pillar in the community, an
11 active member of the church, or have a great
12 reputation, that's mitigation that's to be given to
13 the Judge at sentencing, so you can either
14 down-depart. Or if they have the opposite
15 reputation, if they have a reputation for being a bad
16 guy they might get a stiffer sentence.

17 But that's for sentencing, that's not for you
18 to consider, that's not for me to consider, that's
19 for the Judge. You are not to concern yourself with
20 sentencing, you are to concern yourself with guilt.

21 I'm confident that when you look at the facts,
22 when you view the evidence, there can only be one
23 decision. And that is Sasha Gaskins made her
24 choices, she decided to involve herself in this plan,
25 and there can be no doubt that she is guilty of armed

1 robbery, and she is guilty of burglary.

2 Thank you for your time.

3 THE COURT: Does anyone need to use the
4 restroom?

5 Please stand up and stretch.

6 Could counsel approach for me?

7 (Whereupon, the following discussion was held
8 at the bench.)

9 THE COURT: I do have an instruction on good
10 character and reputation. I found it last night. I
11 have never used it. It generally says that they can
12 consider it like any other evidence in deciding
13 whether or not the defendant committed the crime.

14 I was contemplating giving it. I'm now
15 convinced I need to because you argued that her good
16 character can only be considered in mitigation and
17 that's not the law. So I cannot leave them with that
18 misapprehension. Because they can consider it in
19 whether she committed the offense or not.

20 So it simply says, the defendant has presented
21 evidence of her good reputation and character to show
22 that it would be inconsistent with the defendant
23 committing the crime. The weight you give to that
24 testimony, like all other testimony in the case, is
25 for you to decide in your good judgment.

1 You may consider the testimony of the
2 defendant's good character along with the other
3 evidence in deciding whether or not the defendant
4 committed crime. And that's the extent of it, it
5 comes straight out of case law.

6 Now the other thing, because you all have
7 appealed to the jury's passion, I'm going to instruct
8 them that that has no place in their decision. That
9 their only decision is whether the state has met
10 their burden of proof beyond a reasonable doubt.
11 They are to completely exclude any passion,
12 prejudice, sympathy or any other emotion, that
13 that's not part of the evidence.

14 I wanted to make you aware that I'm going to
15 instruct that as well.

16 MR. KIDD: Thank you, Your Honor.

17 THE COURT: Are there any exceptions from the
18 state?

19 MR. KIDD: No, ma'am.

20 THE COURT: From the defense?

21 MR. SOWELL: No, ma'am.

22 (In open court.)

23 THE COURT: You all can sit down when you're
24 ready.

25 THE COURT: During this trial, ladies and

1 gentlemen, you and I have certain duties to perform.
2 As the trial judge it is my responsibility to preside
3 over the trial of this case. I also have the duty to
4 rule upon or pass upon the admissibility of the
5 evidence offered during this trial.

6 You are to consider only the competent
7 evidence that is before you. And you are to
8 disregard and disabuse from your mind any testimony
9 ordered stricken from the record in this case if
10 there has been any. You are to consider

11 only the testimony which has been presented to you.
12 from the witness stand, together with the other
13 exhibits and any stipulations, which is an -- a
14 stipulation is an agreement -- which have been made
15 between the attorneys and made a part of the record
16 in this case.

17 I have the additional duty to charge or
18 instruct you on the law applicable to this case. As
19 the presiding judge, I'm the sole judge of the law of
20 this case. And it is your duty as jurors to accept
21 and apply the law as I now state it to you.

22 If you have a preconceived idea as to what the
23 law is or what the law ought to be in a case, or in
24 this case, and it should not agree with what I tell
25 you the law is, you are obligated under your oath to

1 abandon this preconception on your part because you
2 are sworn to accept the law and apply the law
3 precisely as I now state it to you.

4 In every case tried in this court before a
5 jury, the jury becomes the sole and exclusive judges
6 of the facts. You the jury are the judges of the
7 facts in this case. The Court is the judge of the
8 law.

9 The constitution of our state has declared
10 that a trial judge shall not intimate, state, comment
11 upon or make any statement to a trial jury about the
12 facts in a case.

13 Since you, the jury, are the sole judges of
14 the facts in this case, you are not to infer anything
15 from what I have said to you during the progress of
16 this trial in ruling upon the admissability of
17 evidence or otherwise, or anything that I now say to
18 you during the course of this instruction, that I
19 have any opinion about the facts.

20 The constitution of our state does not allow
21 me to have an opinion about the facts. This is a
22 matter solely for you, the jury, to determine.

23 As jurors then it is your duty, as I have
24 instructed, to determine the effect, the value, the
25 weight, and the truth of the evidence presented

1 during this trial. Necessarily, you must assess the
2 credibility of witnesses who have testified.
3 Credibility is simply a legalistic term meaning the
4 believability of each witness who has testified.

5 It becomes your duty as jurors to analyze and
6 to evaluate the evidence, and determine that evidence
7 which convinces you of its truth.

8 Some of the things you may consider as you
9 decide whether or not to believe a witness's
10 testimony about a particular matter include, what was
11 the manner and appearance of the witness who
12 testified; was he or she straightforward or hesitant
13 in answering; was the testimony of a witness
14 consistent or inconsistent; how did the witness come
15 to know the facts and he or she testified to; or what
16 was his or her ability to know these facts; is there
17 some reason a witness would want to give testimony
18 which would help or hurt one side or the other, in
19 other words was the witness biased or prejudiced; and
20 was the testimony of a witness strengthened or
21 weakened by other testimony or evidence.

22 Again, as I have instructed, in determining
23 the question of the credibility or believability of
24 witnesses, you may believe one witness as against
25 several witnesses, or several witnesses as against

1 one witness. You may believe a part of the testimony
2 of a witness and reject the remaining part of the
3 testimony of that same witness.

4 If you have a good and sound reason, you may
5 believe the testimony of a witness in its entirety,
6 or reject the testimony of a witness in its entirety.
7 You may consider whether any witness has exhibited to
8 you any interest, any bias, any prejudice or other
9 motive.

10 You may consider the demeanor of a witness,
11 that is the manner and appearance of the witness from
12 the witness stand. You can believe as much or as
13 little of each witness's testimony as you think
14 proper. Throughout this process, ladies and
15 gentlemen, you have but one objective, to seek the
16 truth.

17 I further instruct you that a person who has a
18 past criminal record is competent to testify during a
19 trial. A past record does not affect the ability of
20 that witness to testify. The past record may be
21 considered by you, if at all, in determining the
22 witness's believability.

23 Remember, ladies and gentlemen, you are the
24 sole judges of the facts, and of the believability of
25 any and all of the witnesses.

1 I further instruct you that the defendant has
2 presented evidence of her good reputation and
3 character to show that it would be inconsistent with
4 the defendant committing the crime.

5 The weight you give to that testimony, like
6 all other testimony in this case, is for you to
7 decide in your good judgment. You may consider
8 testimony of the defendant's good character, along
9 with all the other evidence in the case, in deciding
10 whether or not the defendant committed the crime.

11 I further instruct you, ladies and gentlemen,
12 that the rules of evidence do not ordinarily permit a
13 witness to testify to opinions or conclusions. An
14 exception to this rule exists for witnesses we call
15 expert witnesses.

16 A witness who by education, training and
17 experience, has become an expert in some art, science
18 or profession or calling, may state an opinion as to
19 relevant and material matters in which the witness
20 claims to be an expert, and may also state the
21 reasons for that opinion.

22 You should consider any expert opinion
23 received in evidence like any other evidence. Give
24 it the weight you think it deserves. If you decide
25 that the opinion of an expert witness is not based on

1 sufficient education and experience, or if you
2 conclude that the reasons given in support of the
3 opinion are not sound, of that the opinion is
4 outweighed by other evidence, you may disregard the
5 opinion entirely.

6 An expert witness's testimony is to be given
7 no greater weight than that of other witnesses simply
8 because the witness is an expert. Further, you are
9 not required to accept an expert's opinion, even
10 though it is not contradicted.

11 Ladies and gentlemen, I instruct you that an
12 issue in this case is the identification of the
13 defendant as the person who committed the crime
14 charged. The state has the burden of proving
15 identity beyond a reasonable doubt.

16 You must be satisfied, beyond a reasonable
17 doubt, of the accuracy of the identification of the
18 defendant before you may convict the defendant.

19 Identification testimony is an expression of
20 belief or impression by a witness. You must
21 determine the accuracy of the identification of the
22 defendant. You must consider the believability of
23 each identification witness in the same way as any
24 other witness.

25 You may consider whether the witness had an

1 adequate opportunity to observe the offender at the
2 time of the offense. This will be affected by things
3 like how long or short a time was available; how far
4 or close the witness was; the lighting conditions;
5 and whether the witness had the chance to see or know
6 the person in the past.

7 Once again I instruct you, the burden of proof
8 on the state extends to every element of the crime
9 charged. And this specifically includes the burden
10 of proving beyond a reasonable doubt the identity of
11 the defendant as the person who committed the crime.

12 If after examining the testimony you have a
13 reasonable doubt as to the accuracy of the
14 identification, you must find the defendant not
15 guilty.

16 Ladies and gentlemen, I further instruction
17 you that you have heard testimony concerning the
18 potential for penalty that a person can serve for the
19 crimes alleged in the indictments. I instruct you
20 that in determining the guilt or innocence of the
21 defendant, you cannot consider any possible penalty
22 for any particular crime. That would be improper.

23 The punishment for the crimes is a matter of
24 law for the Court to determine, and should never be
25 considered in any manner whatsoever in your

1 consideration, and in arriving at a fair and
2 impartial verdict as to the guilt or innocence of the
3 defendant.

4 There are two types of evidence, ladies and
5 gentlemen, which are generally presented during a
6 trial; direct evidence and circumstantial evidence.
7 Direct evidence is the testimony of a person who
8 asserts or claims to have actual knowledge of a fact,
9 such as an eyewitness.

10 Circumstantial evidence is proof of a chain of
11 facts and circumstances indicating the existence of a
12 fact. The law makes absolutely no distinction
13 between the weight or value to be given to either
14 direct or circumstantial evidence. Nor is a greater
15 degree of certainty required of circumstantial
16 evidence than of direct evidence.

17 You should weigh all of the evidence in this
18 case. After weighing all of the evidence, if you are
19 not convinced of the guilt of the defendant beyond a
20 reasonable doubt, you must find the defendant not
21 guilty. Conversely, if you are convinced of the
22 guilt of the defendant beyond a reasonable doubt,
23 then you must find her guilty.

24 I instruct you, ladies and gentlemen, that the
25 fact that the defendant was arrested, charged and

1 indicted is not evidence in this case, and cannot be
2 considered by you as evidence of guilt in this case.
3 Nor does it create any presumption or inference of
4 guilt.

5 This documentation is simply the formal
6 written instrument which contain the charge or
7 changes made against a defendant. They simply serve
8 as the formal documentation by which the case is
9 processed or brought into this Court.

10 The defendant has pled not guilty to the
11 indictments. And that plea casts the burden on the
12 state to prove the defendant guilty.

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

16 I instruct you, ladies and gentlemen, that
17 this is a cardinal and important rule of the law of
18 evidence that the defendant in a criminal trial, no
19 matter what the seriousness of the charge or charges
20 made against him may be, will always be presumed to
21 be innocent of the crime for which they are indicted,
22 unless their guilt has been proven by evidence
23 satisfying you of that guilt beyond a reasonable
24 doubt.

25 This presumption of innocence does not cease

1 when you retire to deliberate, but it accompanies the
2 defendant from the time of their appearance,
3 throughout the trial, until you reach a verdict
4 satisfying you, based upon evidence satisfying you
5 beyond a reasonable doubt.

6 Our Supreme Court has said that the
7 presumption of innocence is like a robe of
8 righteousness placed about that shoulders of the
9 defendant. And it assigns them and remains -- it
10 remains with them and assigns them to that class, the
11 innocent, until that presumptive robe of
12 righteousness has been stripped from their person by
13 evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 Mr. Foreman, ladies and gentlemen, the
16 presumption of innocence is not mere legal theory.
17 It is not just a legal phrase. It is a substantial
18 right to which every defendant is entitled, unless
19 you, the jury, are satisfied from the evidence of
20 their guilt beyond a reasonable doubt.

21 The state has the burden of proving the
22 defendant guilty beyond a reasonable doubt. Some of
23 you may have served as jurors in civil cases where
24 you were told that it is only necessary to prove that
25 a fact is more likely true than not true, such as by

1 the greater weight or the preponderance of the
2 evidence.

3 In criminal cases the state's proof must be
4 more powerful than that, it must be beyond a
5 reasonable doubt. Proof beyond a reasonable doubt is
6 proof that leaves you firmly convinced of the
7 defendant's guilt. There are very few things in this
8 world that we know with absolute certainty, and in
9 criminal cases the law does not require proof that
10 overcomes every possible doubt.

11 If based on your consideration of the evidence
12 you are firmly convinced that the defendant is guilty
13 of the crime charged, you must find her guilty. If
14 on the other hand, you think there is a real
15 possibility that the defendant is not guilty, you
16 must give her the benefit of that doubt and find her
17 not guilty.

18 The defendant is charged with armed robbery.
19 In order to prove this offense, the state must first
20 prove beyond a reasonable doubt that the defendant
21 took personal property from the person or presence of
22 another person.

23 Property is in the presence of a person if it
24 is within the person's reach, inspection, observation
25 or control. So that the person could, if not

1 overcome with violence or prevented by fear, keep
2 possession of the property.

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

8 The slightest removal of the property, or the
9 complete possession of the property, even for an
10 instant, by the defendant, is sufficient to show a
11 taking and carrying away of the property. The taking
12 and carrying away of the property must have been done
13 with violence, or by putting the owner of the
14 property in fear of violence.

15 Finally, the state must prove beyond a
16 reasonable doubt that the defendant was armed with a
17 deadly weapon during the robbery. A deadly weapon is
18 any article, instrument or substance which is likely
19 to cause death or great bodily harm.

20 Whether an instrument has been used as a
21 deadly weapon depends on the facts and circumstances
22 of each case. The following are examples of
23 instruments which may be deadly weapons. A pistol, a
24 shotgun, a rifle, a dirk, a dagger, a knife, a
25 slingshot, metal knuckles, a razor, gasoline, a

1 firebomb or Molotov cocktail, and lighter fluid. A
2 gun may be a deadly weapon even if it is not
3 operating.

4 Ordinary objects may become deadly weapons
5 when the facts show that they have been used to
6 inflict serious bodily harm or death. Ladies and
7 gentlemen, I instruct you that these are simply
8 evidentiary facts to be considered by you, along with
9 the other evidence in this case, and it is for you,
10 the jury, to give it the effect, value and weight you
11 decide it should have.

12 The defendant is charged with first degree
13 burglary. The state must first prove beyond a
14 reasonable doubt that the defendant entered a
15 dwelling without consent. A dwelling is any building
16 or portion of a building in which a person ordinarily
17 sleeps.

18 A building constructed as a dwelling which has
19 never been occupied cannot be considered a dwelling
20 for purposes of burglary. But a building is a
21 dwelling, even if the residents are temporarily
22 absent from the building.

23 In order to prove that the defendant entered
24 the dwelling, the state does not have to show that
25 the defendant's entire body entered the dwelling.

1 The smallest entry is sufficient. It may be any part
2 of the body, such as a hand or foot, or even an
3 instrument such as a hook or other instrument.

4 In addition, the state does not have to prove
5 that force was used to gain entry. If a person
6 enters a building by using deception, artifice, trick
7 or misrepresentation to get consent to enter, this is
8 an entry without consent.

9 Next the state must prove beyond a reasonable
10 doubt that the defendant intended to commit a crime,
11 either a felony or misdemeanor, at the time of the
12 entry.

13 The mere entry into a dwelling without consent
14 is not burglary. If the intent to commit a crime is
15 formed after the entry, it is not burglary. On the
16 other hand, if the defendant intended to commit a
17 crime at the time of the entry, it is a burglary even
18 if that intent was abandoned after the entry. It
19 does not matter that the intended crime was not
20 completed.

21 Intent may be shown by acts and conduct of the
22 defendant, and other circumstances from which you may
23 naturally and reasonably infer intent. Finally,
24 ladies and gentlemen, the state must prove beyond a
25 reasonable doubt one or all of the following things.

1 when entering, while in the dwelling, or when
2 fleeing, the defendant or accomplice was armed with a
3 deadly weapon or explosive. A deadly weapon is any
4 article, instrument or substances which is likely to
5 cause death or great bodily harm. Whether an
6 instrument has been used as a deadly weapon depends
7 on the facts and circumstances of each case.

8 And as I have instructed, the following are
9 examples of instruments which may be deadly weapons.
10 A pistol, a shotgun, a rifle, a dirk, a dagger, a
11 knife, a sling-shot, metal knuckles, a razor,
12 gasoline, a firebomb or Molotov cocktail, and lighter
13 fluid. A gun may be a deadly weapon even if it is
14 not operating.

15 And, again, ordinary objects may become deadly
16 weapons when the facts show that they have been used
17 to inflict serious bodily harm or death. And as I
18 previously instructed, ladies and gentlemen, these
19 are simply evidentiary facts to be considered by you,
20 along with the other evidence in the case. And it is
21 for you, the jury, to give it the effect, value and
22 weight you decide it should have.

23 When entering, while in the dwelling, or when
24 fleeing the defendant or accomplice used or
25 threatened to use a dangerous object. When entering,

1 while in the dwelling, or when fleeing, the defendant
2 or accomplice displayed what was or appeared to be a
3 knife, pistol, revolver, rifle, shotgun, machine gun
4 or other firearm.

5 And the defendant entered or remained in the
6 dwelling in the nighttime. Nighttime is the period
7 between sunset and sunrise during which there is not
8 enough daylight to recognize a person's face, except
9 by artificial light or moonlight.

10 Ladies and gentlemen, I instruct you that if a
11 crime is committed by two or more people who are
12 acting together in committing the crime, the act of
13 one is the act of all. A person who joins with
14 another to committed an unlawful act is criminally
15 responsible for everything done by the other person
16 which happens as a probable or natural consequence of
17 acts done out in carrying out the common plan and
18 purpose.

19 For example, two people can be guilty of
20 killing another person when only one of the two had a
21 gun, there was only one bullet, and only one of the
22 two fired the shot that caused the death.

23 If two or more people are acting together, are
24 together, acting together, assisting each other in
25 committing the offense, the act of one is the act of

1 all. Or it is sometimes said, then hand of one, is
2 the hand of all.

3 Prior knowledge that a crime is going to be
4 committed without more, is not sufficient to make a
5 person guilty of that crime. Mere knowledge that
6 another person is going to commit a crime, even if
7 the defendant is present when the crime is committed,
8 is not sufficient to convict the defendant as a
9 principal.

10 Guilt as a principal is shown by actual or
11 constructive presence at the scene as a result of
12 prior arrangement. Therefore, a finding of a prior
13 arranged plan or common scheme is necessary for a
14 finding of guilt as a principal.

15 The state must prove beyond a reasonable doubt
16 by competent evidence the theory of the hand one, is
17 the hand of all.

18 A principal in a crime is one who either
19 actually commits the crime, or who is present, aiding
20 abetting or assisting in committing the crime. When
21 a person does an act in the presence of, and with the
22 assistance of another, the act is done by both.

23 Where two or more, acting with a common plan
24 or intent, are present at the commission of a crime,
25 it does not matter who actually commits the crime,

1 all are guilty. The hand of one, is the hand of all.

2 Present at the commission of a crime means to
3 be sufficiently near to aid and abet and assist in
4 the commission of the crime. However, mere presence
5 at the scene of a crime is not sufficient to convict
6 one as a principal on the theory of aiding and
7 abetting.

8 Intent is also a necessary element, for there
9 must have been a common design or intent to commit
10 the crime, and the crime must have been committed
11 pursuant thereto, with the person aiding and abetting
12 by some overt act.

13 Intent means intending the result which
14 actually occurs, not accidentally or involuntarily.
15 Intent may be shown by acts and conduct of the
16 department, and other circumstances from which you
17 may naturally and reasonably infer intent. The state
18 must also prove these elements beyond a reasonable
19 doubt.

20 Ladies and gentlemen, the defendant has raised
21 the defense of coercion or duress. Coercion or
22 duress is when a person makes another person commit a
23 crime against someone else's person or property by
24 the threat of immediate physical violence.

25 The coercion or duress must be present,

1 imminent and of the type to create a well-grounded
2 fear of death or serious bodily harm if the act is
3 not done. The fear of injury must be reasonable.

4 Coercion or duress is not a defense if there
5 is any reasonable way, other than committing the
6 crime, for the defendant to escape the threat of
7 harm. If you find that the defendant was coerced
8 into committing the crime, you must find the
9 defendant not guilty.

10 Ladies and gentlemen, I instruct you that
11 there are several indictment in this case.
12 Indictment 2010-GS-10-4793, armed robbery; 4794,
13 burglary in the first degree. And these will go into
14 the jury room with you, so you don't have to try to
15 write these down. 4761, armed robbery; and 4738,
16 burglary in the first degree.

17 Each indictment charges a separate and
18 distinct offense. You must decide each indictment
19 separately on the evidence and the law applicable to
20 it, uninfluenced by your decision as to any other
21 indictment.

22 The defendant may be convicted or acquitted on
23 any or all of the offenses charged. You will be
24 required to write a separate verdict for each
25 indictment of the guilty or not guilty.

1 Ladies and gentlemen, there are two possible
2 verdicts for each offense in this case. There is no
3 significance whatsoever to the order in which these
4 verdict options are read, so please didn't assign any
5 importance to that, it is simply that one must be
6 stated first and so forth.

7 And these will go into the jury room with you,
8 so again you don't have to try to write these down.
9 and For each indictment, that being for burglary and
10 armed robbery, the option are: we, the jury, by
11 unanimous consent, find the defendant guilty or armed
12 robbery or not guilty; or guilty of burglary in the
13 first degree, or not guilty.

14 Again there is absolutely no significance
15 whatsoever to the order in which these potential
16 verdicts are stated.

17 Ladies and gentlemen, your verdict must be a
18 unanimous one which means all 12 of you must agree in
19 order to reach a verdict. I instruct you, ladies and
20 gentlemen, that your verdict cannot be based on
21 sympathy, passion, prejudice, emotion, or any other
22 consideration that is not found in the evidence of
23 this case.

24 Again your verdict must be unanimous, which
25 means all 12 of you must agree.

1 Mr. Foreman, when the jury has reached a
2 verdict, it is your responsibility to fill out the
3 verdict forms, to sign and date the forms, and also
4 to knock on the door and advise the bailiff that the
5 jury has reached a verdict.

6 If the jury has any questions during
7 deliberations, it is also your responsibility to
8 write out those questions. Ladies and gentlemen,
9 if you have any questions during deliberations,
10 please know that there will be a delay, because there
11 is procedure that we have to follow in answering your
12 questions.

13 So if there is a question, I tell you in
14 advance that there will be a delay. Do not think we
15 are ignoring you, we are simply following the
16 procedure to answer your questions.

17 Again, ladies and gentlemen, your verdict must
18 be unanimous, which means that all 12 of you must
19 agree. I'm go to ask you to return to your jury
20 room, but do not yet begin your deliberations. I
21 have some matters of law that I need to take up with
22 the attorneys that may require further instruction or
23 clarification of an instruction.

24 However, if there is no further instruction we
25 will send in the evidence, your notepads. We will at

1 that time dismiss the alternate, and you will then be
2 allowed to begin your deliberations.

3 Ladies and gentlemen, we have ordered your
4 lunch and I have requested that it arrive between
5 quarter to 12:00 and 12:00. Hopefully the restaurant
6 will comply with my wishes. Generally they're -- we
7 sent it in early, so they should have that available
8 to us.

9 So I just wanted to tell you that for purposes
10 of your planning. If you would go with the bailiff
11 for me, please, and again yet do not begin your
12 deliberations, leave your notepads in your seats.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Are there any exceptions from the
15 state.

16 MR. KIDD: No, ma'am.

17 THE COURT: From the defense?

18 MR. SOWELL: Two, Your Honor. I would like to
19 have the Court to charge that reasonable doubt is a
20 doubt that would cause a reasonable person to
21 hesitate to act as Reed v State sets out.

22 And also, I object to the notebooks going back
23 to the jury room. Anybody who took notes is more
24 powerful for the jury, it should be equal power.
25 Whoever has got the notebooks has more power.

1 THE COURT: I have already instructed the jury
2 regarding note-taking. And I instructed them during
3 the preliminary instructions that their notes are for
4 their own purposes, they're not to be shared with
5 anyone, and it's only to be used to refresh their own
6 memory.

7 I also instructed them that someone else's
8 memory is just as reliable as notes as someone else
9 may have taken. I will note your exception and it is
10 overruled.

11 As it regard to request for reasonable
12 doubt, the Court charges Victor versus Nebraska. It
13 is approved by the U.S. Supreme Court, and the South
14 Carolina Supreme Court. The reasonable doubt
15 instruction will stand.

16 Any further exceptions for the record?

17 MR. SOWELL: Not to argue with Your Honor --

18 THE COURT: Well the rules provide that once
19 the Court has ruled there is to be no further
20 argument.

21 Are there any additional exceptions for the
22 record that I have not already ruled upon?

23 MR. SOWELL: No, ma'am.

24 THE COURT: Thank you very much. Please make
25 sure all the evidence is in place.

1 MR. SAVAGE: I do want to mention one thing,
2 not to change what you've done. I wanted to know if
3 we need to clarify with the jury the scriveners'
4 error which one they're following, that' all.

5 THE COURT: I think it's clear.

6 MR. SAVAGE: Very well.

7 THE COURT: I think it's clear that the
8 address has been corrected. And you all agreed to
9 that correction on the indictment. And it simply
10 reads, unit Ashley Crossing Dive.

11 I don't think it needs any further
12 clarification.

13 MR. SAVAGE: Very well, Your Honor.

14 THE COURT: I need you all to make sure all
15 the evidence is in place. Then I need the other
16 bailiff to bring in the alternates, please.

17 (Whereupon, the jurors enter the courtroom.)

18 THE COURT: Ladies, we thank you for your time
19 and your attention to this case. We know that being
20 an alternate is very necessary, but often thankless.
21 Because if we don't have someone get sick or
22 otherwise has to be excused, you all do not get to
23 serve in your full capacity as jurors.

24 Please know your service has been appreciated.
25 You both have been attentive to the proceedings, you

1 have been timely and we appreciate your service. I
2 hope it has been educational for you. I hope that
3 you've learned that it's nothing like television.

4 We have left your notes there for you. The
5 bailiff can destroy them if you like. Your lunch is
6 on the way upstairs, so I'm going to have the
7 bailiffs put you in the multipurpose room so you can
8 collect that. You are welcome to stay with us and
9 eat, or you are welcome to take it with you and leave
10 if you'd like to go about your day.

11 You're welcome to discuss this case. But I
12 ask that you not do that until the jury has been
13 released from its service and a verdict has been
14 rendered.

15 By the same token, if someone should try to
16 persist in speaking with you, please notify the
17 clerk's office so that we can take the appropriate
18 actions to protect your privacy.

19 You're excused with the Court's profound
20 thanks.

21 (Whereupon, the jurors exit the courtroom.)

22 THE COURT: Let the record reflect the jury
23 has begun its deliberation at 11:34. I would ask
24 that you all stay in place until I get them situated
25 with lunch and make sure I have no questions. Then

1 you can get lunch as well.

2 (Whereupon, a recess was taken.)

3 THE COURT: The jury has reached a verdict.
4 Is the State ready to proceed?

5 MR. KIDD: We are, Your Honor.

6 THE COURT: Is the defense ready to proceed?

7 MR. SOWELL: Yes, ma'am.

8 THE COURT: When are the other defendants
9 going to be sentenced, Mr. Kid?

10 MR. KIDD: Your Honor, at this point it will
11 probably be the later half of next week. I know we
12 have to give all of the defense attorneys time to get
13 their mitigation together.

14 (Whereupon, the jurors enter the courtroom.)

15 THE COURT: You may be seated.

16 Mr. Foreman, is it correct that the jury has
17 reached a verdict?

18 A JUROR: Yes, ma'am.

19 THE COURT: Give the verdict form to the
20 bailiff for me, please.

21 Mr. Clerk, if you would publish the verdict.
22 If you would stand for publication of the
23 verdict.

24 You may proceed when you are ready.

25 THE CLERK: State of South Carolina, County of

1 Charleston, Case No. 2010-GS-10-4761, State of South
2 Carolina versus Sasha Gaskins, indictment for armed
3 robbery: We, the jury, unanimously find guilty.

4 State of South Carolina, County of Charleston,
5 Case No. 2010-GS-10-4794, State of South Carolina
6 versus Sasha Alajawon Gaskins, indictment for
7 burglary in the first degree: We, the jury,
8 unanimously find the defendant guilty, signed Paul
9 Osbun, foreperson of the jury, dated March 4th, 2011.

10 State of South Carolina, County of Charleston,
11 Case No. 2010-GS-10-4793, State of South Carolina
12 versus Sasha Alajawon Gaskins, indictment for armed
13 robbery: We, the jury, unanimously find the
14 defendant guilty, signed Paul Osbun, foreperson of
15 the jury dated March 4th, 2011.

16 State of South Carolina, County of Charleston,
17 Case No. 2010-GS-10-4738, State of South Carolina
18 versus Sasha Alajawon Askins, indictment for burglary
19 in the first degree: We, the jury, unanimously find
20 the defendant guilty. Signed Paul Osbun, the
21 foreperson of the jury, dated March 4, 2011.

22 Jury, if you would please stand. Mr. Foreman,
23 ladies and gentlemen of the jury, if this is your
24 verdict and this is still your verdict, please raise
25 your right hand.

1 (Whereupon, all so indicate).

2 THE CLERK: Your Honor, the verdict stands.

3 THE COURT: You may be seated.

4 Is there any request to poll the jury from the
5 state?

6 MR. KIDD: No, Your Honor.

7 THE COURT: Any request from the defense?

8 MR. SOWELL: Yes, Your Honor.

9 THE COURT: Please poll the jury, Mr. Clerk.
10 Ladies and gentlemen, the clerk is going to
11 ask you two questions. After he calls your name and
12 your juror number you'll need to raise your right
13 hand.

14 He will ask, is this your verdict and you will
15 answer. And is this still your verdict, and you will
16 answer.

17 You may proceed, Robert.

18 THE CLERK: Yes, ma'am.

19 Paul Osbun, Juror Number 165. Is this your
20 verdict?

21 A JUROR: Yes, sir.

22 THE CLERK: Is this still your verdict.

23 A JUROR: Yes.

24 THE COURT: You can take your seat, sir.

25 THE CLERK: Joseph Walker, Juror Number 221.

1 Is this your verdict?

2 A JUROR: Yes.

3 THE CLERK: Is this still your verdict?

4 A JUROR: Yes.

5 THE COURT: You don't have to stand. You can
6 raise your hand.

7 THE CLERK: Robert Mantini, Number 138. Is
8 this your verdict?

9 A JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 A JUROR: Yes.

12 THE CLERK: Sarah Liebendorfer, Number 125.

13 Is this your verdict?

14 A JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 A JUROR: Yes.

17 THE CLERK: William Sorokach, Number 205. Is
18 this your verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: Martha Adams, Number 2. Is this
23 your verdict?

24 A JUROR: Yes.

25 THE CLERK: Is this still your verdict?

1 A JUROR: Yes.

2 THE CLERK: Latoya Kelly, Number 118. Is this
3 your verdict?

4 A JUROR: Yes.

5 THE CLERK: Is this still your verdict?

6 A JUROR: Yes.

7 THE CLERK: Jacqueline Thames number 212. Is
8 this your verdict?

9 A JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 A JUROR: Yes.

12 THE CLERK: Nicholas Kass, Number 117. Is
13 this your verdict?

14 A JUROR: Yes.

15 THE CLERK: Is this still your verdict?

16 A JUROR: Yes.

17 THE CLERK: Michael Campbell, Number 31. Is
18 this your verdict?

19 A JUROR: Yes.

20 THE CLERK: Is this still your verdict?

21 A JUROR: Yes.

22 THE CLERK: Jerome Wyllyn, Number 247. Is this
23 your verdict?

24 A JUROR: Yes.

25 THE CLERK: Is this still your verdict?

1 A JUROR: Yes.

2 THE CLERK: Christopher Malanuk, Number 134.
3 Is this your verdict?

4 A JUROR: Yes.

5 THE CLERK: Is this still your verdict.

6 A JUROR: Yes, sir.

7 THE CLERK: Your Honor, the jury has been
8 polled and the verdict stands.

9 THE COURT: Thank you.

10 Mr. Foreman, ladies and gentlemen, we thank
11 you for your time and your attention to this case. I
12 know that jury service has been a great sacrifice
13 both to your personal and your professional lives,
14 and we thank you for being here with us this week.

15 I hope that it has been educational for you.
16 I hope you understand how important you are to the
17 system. Charleston County is one of the busiest
18 circuits in the state. As a matter of fact, South
19 Carolina is one of the busiest states in the nation
20 with 5,000 case filings per judge.

21 I hope that gives you some context of how very
22 busy we are, and how much court we hold. We would
23 not be able to do that without 12 citizens being
24 willing to sit in cases and act as the fact-finders,
25 and then apply the law to those facts and render

1 verdicts.

2 We thank you for your time and your attention
3 to this case. You are welcome to discuss the verdict
4 and the case if you would like now that I'm
5 discharging you. By the same token, you are welcome
6 not to discuss the case. If someone should persist
7 in trying to talk to you and it makes you
8 uncomfortable, please contact the clerk's office so
9 that we can take the appropriate action to protect
10 your privacy.

11 If you need a work excuse today, you can get
12 those on the first floor, circuit side, any of the
13 deputy clerks can provide you with a work excuse.
14 Otherwise, they will be mailed to you along with your
15 checks. You are excused with the Court's profound
16 thanks.

17 I will hear post-trial notions in just a
18 moment.

19 (Whereupon, the jurors exit the courtroom.)

20 THE COURT: Are there any post-trial motions
21 from the state?

22 MR. SAVAGE: No, Your Honor.

23 THE COURT: From the defense?

24 MR. SOWELL: Defense would move for JNOV
25 because the state has failed to prove it beyond a

1 reasonable doubt, Your Honor.

2 THE COURT: The Court would find that there is
3 direct evidence, as well as substantial
4 circumstantial evidence supporting the jury's
5 verdict, and therefore the motion is denied.

6 Actually the standard is any evidence. And
7 certainly it's not within the Court's province to
8 substitute its judgment for that of the jury, and the
9 matter was well-articulated by both sides, and it
10 came down to a credibility contest, who the jury
11 believed, and whose testimony they gave weight to.

12 And taking all that into consideration, the
13 verdict will stand.

14 Are there any other post-trial motions from
15 the state?

16 MR. KIDD: No, Your Honor.

17 THE COURT: From the defense?

18 MR. SOWELL: No, Your Honor.

19 THE COURT: I'm going to hold sentence in
20 abeyance until the other codefendants are sentenced,
21 so you need to let me know when that will take place,
22 after which I will sentence Ms. Gaskins.

23 MR. KIDD: Would you like to sentence all of
24 the codefendants as well?

25 THE COURT: It's about to you all. You all

1 can talk about that with Judge Dennis, see what he
2 wants to do.

3 I don't want to necessarily hold anything up.
4 I will be in Moncks Corner next week holding
5 non-jury. Of course I always have jurisdiction in my
6 circuit so if I needed to come home and hear
7 something, I certainly can do that.

8 I will be in Berkeley in general sessions the
9 following week as well and I have no idea what their
10 docket is. Then I will be in chambers the following
11 week. On the 28th I have Charleston general sessions
12 again.

13 I am thinking that I have enough flexibility
14 in my schedule to either do one of two things. You
15 all can decide what day you all want to have Judge
16 Dennis sentence all the other defendants, let me
17 know what day that is. Then I will coordinate my
18 schedule such that victims and the defendants, those
19 who want to speak in mitigation on her behalf, will
20 not have to come twice.

21 More so the victims because I assume they will
22 want to be heard on sentencing of the other
23 codefendants. So what I can do is whatever day you
24 all schedule that with him, let me know and I will
25 create a window of time to be here in Charleston to

1 dispose of Ms. Gaskin's case as well.

2 Yes, sir.

3 MR. SOWELL: Your Honor, if I can have input
4 on that.

5 THE COURT: Absolutely.

6 MR. SOWELL: I would love to think you
7 personally would handle sentencing.

8 THE COURT: I'm going to handle Ms. Gaskins'
9 sentencing, absolutely. But what happened was -- I
10 want make sure I got all of my names correct-- Ms.
11 Bruster, Mr. Francois, Mr. Rice and Mr. Starks all
12 pled guilty before Judge Dennis. And he, I would
13 assume, retained jurisdiction to sentence them. I'm
14 not certain what the circumstance is.

15 But normally the person who takes the plea
16 would sentence them. The reason I'm holding her
17 sentencing in abeyance because I want the context of
18 the full sentencing. I think they were all involved,
19 and they all should be treated commensurately. I
20 want to know what happens.

21 MR. SOWELL: I was thinking if there is any
22 where possible, you've heard the full --

23 THE COURT: I've heard the full trial, that's
24 true. But you all can talk about that and work that
25 out. I don't have -- I don't have a dog in the fight

1 so to speak. It don't matter to me one way or the
2 other.

3 I think judges all to some extent think
4 similarly. I think that we all take the same things
5 into consideration. I don't want to do this in a
6 vacuum. And now that I have heard the entire case I
7 wanted them all to be treated -- they're all
8 similarly situated, and should all be treated
9 commensurately.

10 Actually what we had talked about originally
11 when she was contemplating whether to accept the
12 state's offer or not, we are going to do it the exact
13 same way that I suggested to the state's counsel;
14 which was that one morning they were going to be
15 sentenced by Judge Dennis, then I was going to take
16 the plea and then hold her sentence until he was done
17 sentencing them.

18 We have never gotten that far because she
19 decided to reject the offer.

20 Yes, sir.

21 MR. SOWELL: Could I --

22 THE COURT: Of course we will accommodate your
23 schedule because I know you have to come from
24 Anderson.

25 MR. SOWELL: I don't know, I would assume this

1 case would take precedent over anything set at the
2 Supreme Court?

3 THE COURT: Correct. I will work with you.
4 If I call them and ask them to give you the latitude
5 to be here to take care of this, I can't imagine that
6 they wouldn't tell me that they can't. I would
7 imagine they would do all they can to accommodate us.

8 If you need my assistance in that regard, let
9 me know and I will certainly call anyone that I need
10 to let them know your presence is required in
11 Charleston.

12 MR. SOWELL: Thank you.

13 THE COURT: You all talk to Judge Dennis. He
14 is here next week holding non-jury. I don't know
15 whether -- I don't know whether that's trials of
16 motions. I really don't know.

17 MR. KIDD: We will attempt to contact Judge
18 Dennis.

19 THE COURT: You all talk with him and let me
20 know. We will coordinate and accommodate everyone's
21 schedule.

22 MR. KIDD: If he agrees to sentence all the
23 defendants?

24 THE COURT: Just contact my office and we will
25 schedule it. If he decides he wants to do that that

1 way, then we can do it next week or the week after
2 that and I will just work out a day, again as I have
3 indicated, I have some flexibility with my non-jury
4 schedule.

5 MR. SOWELL: Thank you, Your Honor.

6 THE COURT: Ad Friday might be better with
7 everyone having to travel. Check with me, let's find
8 out what his preference is and I will defer to
9 whatever his preference is.

10 Maybe we can look at the 11th, which is next
11 Friday. Let's see what he wants to do. Then you all
12 should contact my staff and we will go from there.

13 MR. KIDD: Yes, ma'am.

14 THE COURT: Then Mr. Sowell if you can look at
15 your schedule next Friday as well, as well as the
16 defendant's family and whomever else you would have
17 speak in mitigation.

18 And you all check with the victims and see
19 what their schedule is like. I don't want them to
20 have to go out of their way also in terms of
21 traveling.

22 Thank you all very much. Have a good weekend.

23 (Whereupon, the proceedings in this matter
24 before the Court were adjourned.)

25 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS

2010-GS-10-04793

2010-GS-10-04794

2010-GS-10-04738

2010-GS-10-04761

3 STATE OF SOUTH CAROLINA)
4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 SASHA A. GASKINS,)

7 Defendant.)
8

9 MARCH 31, 2011
10 CHARLESTON, SOUTH CAROLINA

11
12 B E F O R E :

13 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
14
15
16

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

18 MS. SCARLET WILSON, SOLICITOR
19 REPRESENTING THE STATE

20 MR. KENNETH SOWELL, ESQUIRE
21 REPRESENTING THE DEFENDANT GASKINS

22 A L S O P R E S E N T :

23 MR. DEMAL I. MATTSON, JR., ESQUIRE
24 REPRESENTING THE DEFENDANT BRUSTER

25 ANNE BOULEY MEYER, RPR
26 CIRCUIT COURT REPORTER

1 THE COURT: This is State of South Carolina
2 versus Sasha Alajawon Gaskins, 2010-GS-10-4738,
3 burglary in the first degree; 4761, armed robbery;
4 4793, armed robbery; and 4794, burglary in the first
5 degree. I apologize if I repeated myself. In any
6 event, it's two counts of burglary in the first and two
7 counts of armed robbery.

8 Ms. Gaskins was originally tried by this Court
9 during the week of February 28th, after which a jury
10 found her guilty of all charges. The Court held
11 sentencing in abeyance until such time, because there
12 were four codefendants in this case, those being Miguel
13 Starks, Reginald Rice, Stephen Francois and Breanna
14 Bruster, all of whom testified against her at trial.

15 They pled guilty on other dates in this
16 case. And their sentencing was held in abeyance
17 pending the trial or plea of Ms. Gaskins. And the
18 Court held sentencing in abeyance until such time as
19 the other defendants were sentenced.

20 Also Case No. 2010-4785, and 2010-1328, the
21 State versus Breanna Bruster. Ms. Bruster pled guilty
22 before Judge Young on January 31st, 2011. Her
23 sentencing as well was held in abeyance subject to the
24 trial of any of her codefendants.

25 And she testified against Ms. Gaskins during the

1 trial which has already been mentioned. And Judge
2 Young provided that sentencing could be done by any
3 other judge, and as such the parties have brought the
4 matter before this Court for purposes of sentencing.

5 Is the state ready to proceed?

6 MS. WILSON: Yes, ma'am, Your Honor.

7 THE COURT: Is the defense ready to proceed, Mr.
8 Sowell?

9 MR. SOWELL: Yes, ma'am.

10 THE COURT: And you are on behalf of Ms.
11 Gaskins, correct?

12 MR. SOWELL: That's correct, Your Honor.

13 THE COURT: And Mr. Mattson on behalf of Ms.
14 Bruster?

15 MR. MATTSON: Yes, Your Honor.

16 THE COURT: State ready to proceed?

17 MS. WILSON: Yes, ma'am.

18 THE COURT: You may proceed.

19 MS. WILSON: Thank you, Your Honor, appreciate
20 your accommodating us. As you state, Ms. Bruster, who
21 was a witness in the case, she was also scheduled to go
22 forward with Judge Dennis. Mr. Mattson had a colossal
23 conflict and so we agreed for her to be sentenced here
24 today. And I appreciate you handing this case as well.

25 Your Honor is very familiar with the facts. I

1 don't believe that I need to go through the facts.

2 THE COURT: You don't.

3 MS. WILSON: You were with it for a week. The
4 victims are present in the courtroom. They have been
5 very cooperative, as you saw, and very supportive of
6 this prosecution.

7 They were intimately involved in any plea offers
8 that were made, any negotiations that we made. And
9 they are here today and do wish to address you. I
10 would move into that and then I will have some comments
11 after they address the Court.

12 First, Your Honor, as you recall Herbert Butler
13 is here. His mother is also here. And if they could
14 just step forward. They would like to address you.

15 THE COURT: Certainly. And as you address the
16 Court, if you would give us your name so that the court
17 reporter can take that down.

18 You may proceed when you are ready.

19 THE VICTIM: I'm Herbert Butler, III. I just
20 wanted to say a few things to wrap this up, I suppose,
21 be quick. Sasha was the bait, damsel in distress, and
22 tricked us and lied to us countless times.

23 She used her youthly -- she is no little girl.
24 She is old enough to make mature decisions. She used
25 her youthly appearance to look innocent at my doorstep.

1 The hand of one is the hand of all, Your Honor. She
2 made her own choices two separate times.

3 I have trouble trusting anyone nowadays. And if
4 she is going to participate and commit harsh crimes,
5 give her hard time.

6 This Court process has been stressful. I see
7 closure and know that justice will be served today.
8 Thank you for your time, Your Honor.

9 THE COURT: Thank you, sir. Did your mother
10 wish to make a statement as well?

11 Yes, ma'am.

12 THE MOTHER: I am Helen Butler, I'm Herb Butler,
13 the victim's, mother. Your Honor, it's unfortunate
14 that these girls made very bad decisions and choices
15 with unfortunate consequences. As a parent it's really
16 saddens me for their families.

17 I hope that the time served will allow these
18 girl to reflect on the choices that they have made, and
19 the great harm that they have caused both emotionally
20 and physically to all of the victims. I would hope
21 that justice will be served today with the maximum
22 allowable time. Thank you.

23 THE COURT: You're welcome, ma'am.

24 Anyone further who wishes to the address the
25 Court?

1 MS. WILSON: Yes, ma'am, Your Honor.

2 Regarding Ms. Michalak, she is here today. You
3 will recall she testified. Both her parents are here,
4 as well as her stepdad. And I believe they would like
5 to address the Court as well. If they could come up
6 with Emily.

7 MS. MICHALAK: My name is Emily Michalak. I'd
8 like to start off with she was the first one to enter
9 the house. She was the first one before any of the
10 other defendants entered the house.

11 She was the first one at the door. She looked
12 me in the eyes and she allowed me to trust her for a
13 brief couple seconds, and then after that she just
14 destroyed my trust in people.

15 She's taken the safety away from my home. I'm
16 afraid to answer the door. I have triggers everytime
17 the doorbell rings, everytime there is a knock at the
18 door. I haven't been able to sleep. I have nightmares
19 about this all of the time.

20 Not only did she -- there was a three-day gap
21 between it and she did it again. And during the trial
22 I learned that she was sitting there in the midst of it
23 laughing while she was getting the gas can, both of
24 them were.

25 They felt no remorse. They did not even feel

1 sorry for us, or anything that was happening.

2 So I feel like they should deserve it now. They
3 should be scared right now, just as scared as we were
4 the day of. And they should get the maximum sentence
5 for putting so many people in trouble, or in harm's
6 way, and the way we felt in the past year and we will
7 continue to feel.

8 THE COURT: Yes, ma'am.

9 MS. MICHALAK: I'm Carol Michalak.

10 THE COURT: Yes, ma'am.

11 MS. MICHALAK: I'm Emily's mom.

12 THE COURT: Yes, ma'am.

13 MS. MICHALAK: Your Honor, I cannot imagine such
14 a violent crime that involved trickery, brutality, and
15 the lost of dignity for human beings.

16 Neither Charleston nor any community across this
17 United States will tolerate the crimes of invasion of
18 our safety and privacy of our homes. Those crimes were
19 initially planned around the super table. They were
20 etched out in a napkin. Then it was when they were put
21 into action by the knock at the door by Sasha Gaskins.

22 Then 72 hours later another crime that was
23 planned, and it was put into action when the phone call
24 was made by Sasha Gaskins.

25 And then Ms. Gaskins brought these crimes to

1 your courtroom. And for four days we listened, and we
2 took the trial with the jury. And it was your
3 courtroom that finally put an end to her deceitful and
4 filthy actions.

5 Emily has been emotionally paralyzed by these
6 filthy actions. Emily has not known the comfort of
7 feeling safe since this home invasion occurred. In the
8 past, Emily has met her fears head-on.

9 She overcame sickness and death, and has worked
10 directly with patients at Roper Hospital for over four
11 years. She has helped them, and she has helped people
12 deliver themselves from their inequities.

13 Emily has overcome her struggles in school. She
14 has made B's in school until this last year. Emily
15 overcame the fear of independence and she developed
16 into a dignified young lady.

17 But one year ago she was stripped of her dignity
18 and fear has consumed her. Today Emily has replaced
19 work and academics with countless hours of therapy.
20 She and her doctors who have made numerous medication
21 adjustments in order for her just to function.

22 The effects of such trickery and brutality and
23 violence in this home invasion has been numerous. They
24 replaced safety with fear, and they replaced comfort
25 with fear. They replaced her home with fear.

1 It is my earnest prayer that Emily will be whole
2 again, and that justice will be served.

3 MR. FINCH: My name is Will Finch, I'm Emily's
4 stepdad. I'd like to reiterate what I said the other
5 day last week at the sentencing for the other three
6 conspirators.

7 When the victims are faced with crimes that are
8 this heinous they may want vengeance, society may want
9 vengeance. But acts of vengeance are not appropriate.
10 The maximum penalty is justify. What society demands
11 is justified. This is why laws exist.

12 These horrible crimes of home invasions were
13 committed by playing on the compassion, and the
14 goodness in people to help others in need. This is the
15 most vial sort of cynical trickery that's imaginable.

16 It's our societal duty to clearly establish that
17 this will not be tolerated. Everyone in this courtroom
18 is a victim of these crimes. This Court owes it to
19 society to give the maximum penalty.

20 This will be an example of law and service as a
21 deterrent for others. Societal retribution demands
22 that to project a deterrent, the maximum penalty is
23 imperative. There will be no rehabilitation if there
24 is no penalty. Thank you for your time

25 THE COURT: You're welcome, sir.

1 Yes, sir.

2 MR. MICHALAK: My name is Charlie Michalak, I'm
3 Emily's father. Just an unfortunate turn of events
4 that I never thought I would be standing here in this
5 courtroom looking at two women over here that have done
6 something so nasty to my daughter, and other people,
7 and filed as the victims.

8 My daughter's life was threatened at gunpoint if
9 she didn't sexually perform. Whether they were there
10 doing it, they were a part of it. I can't help but
11 wonder if Sasha Gaskins was not a part of these two
12 home invasions, would they have actually taken place.

13 She was a willing participant in the first one.
14 A key player. And she was the key player in the
15 initiation of the second one which took Mr. Harpe out
16 of his home to where he was able to be grabbed, bound,
17 beaten and taken back in.

18 There are a lot of victims today. Not only on
19 our side, but on their side. And I cannot help but
20 feel sorry for their families for what they have done.

21 I sat in this courtroom and listened for a week
22 to countless hours of testimony, which basically were
23 all lies. She wasted this Court's time because she
24 lied to everybody. Lied to her family, her family
25 spent a lot of money, and we all had to sit in here and

1 at the end of the day, at the end of that long week she
2 was found guilty on all accounts.

3 Today I'm happy this is the last time I'm going
4 to have to stand in this courtroom, with all due
5 respect to everybody. The solicitor's office has been
6 unbelievably professional, I cannot thank them enough.
7 The advocates for my daughter have been wonderful, I
8 cannot say enough for how well they supported her.

9 She has, just like her mother said, she has been
10 to countless hours of therapy over the last year. She
11 had to drop out of school. She was living by herself
12 in a nice apartment. She had to move back in with me,
13 and I was very happy for that, because she needed
14 someone there so she could possibly maybe get a couple
15 hours of sleep knowing that her dad was in the room
16 next to her.

17 In closing, I know that this Court is going to
18 do the right thing today. I know that justice will be
19 served. Thank you.

20 THE COURT: You're welcome, sir.

21 THE COURT: Ms. Wilson?

22 MS. WILSON: Yes, ma'am, Your Honor.

23 Also here is Joshua Harpe and his parents
24 Barbara and Jim. I believe they would like to address
25 the Court.

1 MS. HARPE: I'm Barbara Harpe, I'm Josh's
2 mother.

3 THE COURT: Yes, ma'am.

4 MS. HARPE: Thank you, Your Honor, for letting
5 me speak today. I would just like everyone to know
6 that this year has been a nightmare for Josh, for the
7 entire family, and for all the families that are
8 involved in this.

9 It's changed his life forever. His trust, his
10 compassion was used against him. He has had to deal
11 with post traumatic stress disorder this year, which
12 has totally disrupted his life.

13 We are proud of him. We are proud of his will
14 and his determination. He's trying to get his life
15 back to a normal routine. And he has done a good job
16 so far. He has got a ways to go.

17 But both Ms. Bruster and Ms. Gaskins played a
18 role in this. They both were very much a part of the
19 planning and the execution. They showed very little
20 remorse, very little remorse on Ms. Gaskins's part
21 during the trial.

22 Her knock on the door, her phone call to Josh,
23 set off this chain of events which has wreaked havoc on
24 all our lives this year.

25 Today, Your Honor, I ask for justice for these

1 evil acts. Thank you, ma'am.

2 THE COURT: You're welcome, ma'am.

3 MS. BAKER: Your Honor, my name is Lana Baker,
4 I'm Josh's girlfriend. All of the victims and their
5 families are going to say most of what I want to say.

6 But what I have to say to you is that if you
7 would have tried to rob Josh the night you originally
8 planned to do it, I don't think I would have let him
9 leave that condo to help you.

10 Your phone call would have seemed just wrong.
11 Nothing about your phone call would have seemed legit
12 to me. I would have never let him walk out of that
13 condo. We could have stopped the entire thing. Maybe
14 you would have changed your minds if I were there to
15 stop him from walking out, I don't know.

16 I wish that I could have taken the pain that
17 Emily had to take. It's not fair that she had to do
18 that. I feel like I could have handled it more than
19 she could have. It could have just stopped with us.
20 But it didn't. Things happen the way they did for
21 whatever reason.

22 If it didn't happen this way, you probably
23 wouldn't have been caught, I don't know. But you
24 deserve everything you get today. And I apologize to
25 your families for being cold. I don't wish to hurt

1 your family. I'm just angry. I'm not ready to forgive
2 you like the victims are. It's just not my time to
3 forgive you yet.

4 what you did was horrible and you deserve
5 punishment for it.

6 THE COURT: Thank you, ma'am.

7 MR. HARPE: Joshua Harpe, Your Honor.

8 THE COURT: Yes, sir.

9 MR. HARPE: Good morning.

10 THE COURT: Good morning.

11 MR. HARPE: Your Honor, I had to endure five
12 days of the most intense pain I have ever imagined in
13 the long, drawn out trial. Ms. Gaskins' counsel
14 repeatedly said that she was the sweetest, nicest
15 little girl in town.

16 I happen to know the nicest, sweetest little
17 girl in town. And if that had been her, and she had
18 been coerced, she would have been begging for
19 forgiveness from the victims. Ms. Gaskins sat on the
20 stand stone cold, refused to show any remorse, Your
21 Honor, none.

22 Coerced or not, she knew what she did. She
23 deceived her family. She deceived those closest to
24 her, and she attempted to deceive this Court, Your
25 Honor. I'm very angry about this. It has destroyed my

1 life as I knew it then.

2 And, Your Honor, without sounding vindictive I
3 ask for stern justice and that's it.

4 THE COURT: Thank you very much, sir.

5 Sir, did you wish to speak? I apologize, I just
6 didn't want you to -- us to neglect you addressing the
7 court if that was your desire.

8 MR. HARPE: No, ma'am, I wasn't planning on it.
9 My wife and I talked about it.

10 THE COURT: Don't feel compelled. I didn't want
11 us to neglect you if it was your intention to speak.

12 MR. HARPE: No, ma'am. I just want to say,
13 there is a lot of victims here. And you are sitting on
14 this side too. And we are over here, and we are all
15 feeling pain.

16 And the Christian nature is to forgive, and from
17 that standpoint that's between them and God. And try
18 in my heart, but there is also justice. And that's all
19 I'm going to ask for today, Your Honor, is justice.

20 THE COURT: Thank you, sir.

21 THE COURT: Anyone else that wishes to address
22 the court, Ms. Wilson?

23 MS. WILSON: No, ma'am, Your Honor.

24 Just to go over sort of where we are here from
25 the State's perspective. As you know Breanna Bruster

1 pled guilty to two armed robberies, and we agreed to a
2 recommendation of ten years in her case.

3 And that was based upon the fact that she
4 cooperated. She provided the note that was introduced
5 at trial that I think was very telling about Sasha
6 Gaskins and what her motives and intent were.

7 I think it also discredited the claim that she
8 was in an innocent in this whole fiasco. Those things
9 were very important to us.

10 I also felt that it was important for us to have
11 Ms. Bruster testify because she was the other female
12 involved. I think that she lent credibility to the men
13 who were involved in that there were no threats. And
14 while certainly the state respects and recognizes any
15 accused's right to go to trial, defendants don't have a
16 right to get on the stand and purger themselves, and
17 that's what Ms. Gaskins did.

18 She did not tell the truth about what happened.
19 I firmly believe, and I believe the jury believed, that
20 she lied about being coerced and pressured
21 inappropriately into her role in these offenses. And
22 in doing so, in purgering herself as if they were in
23 enough trouble as it were, her claims against Miguel
24 Starks could have hurt him even worse.

25

1 Now granted he got what was coming to him. But
2 piling on in a purgerous fashion is just not acceptable
3 and I would ask the Court to consider that in
4 fashioning your sentence.

5 As the victims have stated, there are many
6 victims on both sides, and that's what makes this so
7 difficult. And I don't envy the position you are in,
8 Your Honor, and I appreciate your being willing to do
9 your job.

10 You know, there are ways for judges to get out
11 of things and you don't do that.

12 THE COURT: Just a little levity. We do what we
13 need to do. It's our job to make decisions and they're
14 very difficult.

15 MS. WILSON: They're difficult on our end too.
16 And when we look at these things and we come up with
17 plea negotiations and we discuss them with the victims'
18 families, they understood why we offered the
19 recommendation that we did for Ms. Bruster.

20 But I think one of the things that is just so
21 mind-boggling and so damning about these facts are not
22 just that there were two home invasions and two armed
23 robberies, but that they went on for hours and hours at
24 a time.

25 I mean they were in Herb's house for hours.

1 They had an opportunity to leave and go to the ATM
2 machine. And at no time is anyone coming to their
3 senses.

4 It was a big, funny thing to them. They preyed
5 on compassion. They preyed on the goodness of others.
6 And that is just amazing for people who come from the
7 families that these people came from.

8 And it is sad for their families. They were in
9 the house for hours on the first occasion. I don't
10 think anyone believes that there was an intent
11 beforehand for there to be a sexual assault, but there
12 was.

13 And that was clear evidence to everyone involved
14 that things can go wrong. And yet when that robbery
15 was over, it wasn't enough. There were days in between
16 the first and the second, where somehow someday
17 somebody who was right thinking could have changed the
18 course and not gone along with the second one.

19 But instead they were laughing about it.
20 Breanna Bruster is laying in the bed with Miguel
21 starks, whom she's just met, and joking with him about
22 the cross on his neck and how he going to hell for
23 having done a robbery wearing the cross.

24 It's amazing that these were thoughts of young
25 college students. That the Sasha Gaskins left choir at

1 the College of Charleston to go plan and commit these
2 robberies.

3 When our office looks at least things, when
4 young people are involved in crimes and when there are
5 more than one offense, our hands are tied. Because
6 after that first one, they had days to think about it
7 and yet they set out again to prey on the goodness, the
8 compassion of Joshua Harpe.

9 That's why they picked him, Judge. They picked
10 him because they knew he would answer the distress call
11 from Sasha. While something told him it might not be
12 right, the goodness in his heart made him overlook
13 that.

14 Yeah, he was getting dressed, he was trying to
15 call his friend to verify whether or not Sasha was
16 really in danger, but all the while he is getting
17 dressed, he is getting his keys, he's going downstairs,
18 and then he is brutally robbed.

19 I cannot imagine what it is like to send your
20 child away to school and hope that their first of all
21 going to be safe from themselves, because a lot of
22 times that's the biggest danger, and it certainly
23 became the biggest danger for these defendants.

24 But for these victims' parents to want the best
25 for their children, and to want them to have the

1 benefit of the great educations offered here in
2 Charleston, and then for them to be victimized they way
3 that they are, and for their whole courses to be
4 disrupted.

5 They are very lucky because they have great
6 support systems. I know they have rough roads ahead in
7 dealing with this, but I have no doubt that they can.

8 But what we have to do is seek justice. I know
9 that the Court will give us justice. I just ask you to
10 remember, especially as to Sasha, how cool she has
11 been. And the effects that she has had on the victims,
12 her own family, on Ms. Bruster's family, on her
13 purgerous testimony, and her willingness, despite all
14 the good and all the opportunities that she had in her
15 life, to prey on goodness.

16 That's all I have, Your Honor, at this time.

17 THE COURT: Thank you very much.

18 Mr. Mattson or Mr. Sowell, who wants to proceed
19 first?

20 MR. MATTSON: Your Honor, I was just sitting up
21 there thinking, I have been practicing law for
22 43-and-a-half years. This is one of the saddest
23 occasions I have had in a courtroom, I don't envy your
24 job in a situation like this. When it comes to a
25 situation like this, I don't envy any judge.

1 I was a military judge and I had to try a young
2 man. Didn't like it at all. My client wishes to
3 apologize to Ms. Michalak, Mr. Butler and Mr. Harpe.
4 In fact, Mr. Butler doesn't know it but I knew his
5 grandfather.

6 I don't have an explanation for the actions of
7 my client, Your Honor. She is from a good family.
8 They go to church. She was a good student. She had
9 many recommendations written for her when she was
10 before this Court to have her bond set.

11 And I handed up a document to you that my client
12 continued her education after all of this, and she was
13 granted probation. In fact, the letter that you have
14 in your hand at this time is a letter congratulating
15 her for making the Deen's Honor List at the University
16 of South Carolina.

17 I realize that this situation is life-altering,
18 not only for the defendants in this case, but for the
19 victims and for the families. My client wishes to
20 apologize to you for whatever she has caused.

21 I would like to tell you, and I think you
22 already know it, because most of you have said it, my
23 client didn't make any phone calls. I don't know why
24 she went along for the ride, which is primarily what
25 she did. She was 17 years old. She spent her 18th

1 birthday in the Charleston County jail.

2 And I know what tragedy is like in families
3 because of, I guess you'd say, my service in the Navy
4 during the Vietnam conflict where I was Judge Advocate
5 General. I was right behind the chaplain when young
6 men were killed; having to talk to their wives, having
7 to talk to their parents.

8 I can only ask that this Court consider the
9 purposes of punishment, which are deterrents on other
10 people who are thinking about committing these crimes,
11 the rehabilitation of the criminal, and the protection
12 of society.

13 My client is looking at 10 to 30 years. She
14 cooperated. She testified. She provided the note to
15 the solicitor's office that was sent to her by Ms.
16 Gaskins. She has never lied to me, and she is from a
17 good family.

18 I have been in here before where people were
19 committed crimes like this who were trying to get money
20 for drugs and everything else. But she has no history
21 of drugs, she didn't even smoke. And she has great
22 possibility for rehabilitation.

23 She is going to attempt to continue her
24 education, because she knows she is going to the South
25 Carolina Department of Corrections today. I have done

1 a lot of research on her sentence, wishing I could get
2 her in the YOA program, but no way that's going to
3 happen.

4 she is here with her mother, her brothers and
5 sisters and her niece and nephew. Everybody in this
6 case, in her family, and the people who knew her, were
7 just totally incredulous that she had let herself get
8 involved in a situation such as this.

9 I know she is remorseful. I know she wishes to
10 God she had never done this or gotten involved with
11 these people. But it happened. And she willing to
12 face the consequences.

13 I know no one who knew her, or was involved with
14 her family, ever thought that this young lady would be
15 standing before this Court today going to the
16 Department of Corrections.

17 I would ask my client to speak, but she has been
18 very emotionally upset and crying. If she wishes to
19 speak, I will ask for her to. I will ask her if she
20 wishes to. But, she does want to apologize to the
21 victims whose lives she knows she has had a horrible
22 effect on. She wishes to apologize to the Court. And
23 she wishes to apologize to her family.

24 I think you can see her family sitting there,
25 most of them behind me have tears in their eyes.

1 I only ask that you consider my client's, what I
2 call, peripheral involvement, but it was just enough to
3 have the hand of one, hand of all take her down.

4 And she has confessed, she has testified, and
5 she's getting ready to start a new phase of her life.
6 I told her hopefully, with her intelligence, that she
7 can and will continue her education through
8 correspondence and other means while in the Department
9 of Corrections.

10 And I know this doesn't have anything to do with
11 this Court, but with her intelligence and her ability
12 to speak, I hope she will become, I don't know the
13 exact name, but one of the people who travel around
14 talking to other students and young people about not
15 getting involved.

16 I have nothing further to say. I don't know if
17 Ms. Bruster has anything she wants to say or not.

18 THE DEFENDANT: I just want to apologize to the
19 families and the victims. I didn't know anything that
20 especially that happened to the girl. I didn't even
21 know it happened up until trial.

22 I am story that happened to you. I'm sorry that
23 you had to go through the post-traumatic stress
24 disorder, everything today. I just want to say I'm
25 sorry.

1 MR. MATTSON: I don't know if any member of the
2 family wishes to speak or not. I think that I have
3 covered just about everything that there is to cover.

4 I know that my client is loved by her family.
5 And they just want to get this behind them and
6 hopefully move on.

7 I have explained to my client this is not the
8 end of her life. She has a good heart, she has a good
9 mind, and that she can move on. And in spite of this
10 adversity, still accomplish something very useful in
11 her life.

12 I appreciate the cooperation from the
13 solicitor's office, their recommendation. I know that
14 sitting up there I don't blame any of the victims or
15 their family for their attitude in this case. I wish
16 them all the very best.

17 And for the actual victims, Ms. Michalak, Mr.
18 Butler, Mr. Harpe, there is one way of looking at this
19 that might help you through it. Your families have
20 never had anything like this happen before. And I hope
21 you realize that the possibility of something like this
22 happening again is hopefully nonexistent.

23 Maybe keeping that in mind, that will help you
24 get over this and the stress that is involved.

25 Thank you.

1 THE COURT: Thank you, Mr. Mattson.

2 Mr. Sowell.

3 MR. SOWELL: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. SOWELL: I'd like to start with Sasha would
6 like to apologize and read a statement.

7 THE COURT: Sure. She may proceed.

8 THE DEFENDANT: My name is Sasha Gaskins. I'm
9 sorry to appear before you under these circumstances.
10 The reason for this appearance is because a crime was
11 committed and I was involved. I may have not been the
12 actual victim, however I too was victimized.

13 I understand the victims have brought up
14 military values, security and peace of mind. I cannot
15 apologize enough for the scars that have been inflicted
16 upon you due to this crime. And I pray that in time
17 you will find it in your heart to forgive me for the
18 role I played.

19 You may see me as a bad person, but that is far
20 from the truth. I'm actually a smart individual who
21 makes wrong decisions. If I could change what has
22 happened that causes us to be here today, I would in a
23 split second.

24 Your Honor, these two people are my parents who
25 made so many sacrifices to make certain that I received

1 the best living, best education, and good sense, needs
2 and wants. Mom and Dad, I am so sorry. I'm so sorry.
3 And I pray that you and my entire family and my friends
4 who supported me are not disappointed in me, and hope
5 your love for me has not diminished.

6 I know you only want the best for me, even when
7 I applied to school and got accepted, even when I
8 started for the Air Force and got accepted into it.
9 You have supported me in all my endeavors, and I can't
10 thank you enough.

11 Please continue to have faith in me. I love you
12 so much. And you guys have raised me to be strong,
13 courageous young lady. I just need for -- I need for
14 you all to be strong, for you all to be strong and have
15 faith in me and observe a power that's greater. I know
16 God will see me through this.

17 To the whole judicial system, I ask that you not
18 depict me as a person who committed a heinous crime.
19 I'm a young individual who was influenced and coerced
20 by fear. I ask that you please have leniency on me,
21 even though this has occurred. I have full intention
22 to be a contributor to society in a positive way.

23 Thank you.

24 THE COURT: You're welcome.

25 Mr. Sowell, anything further?

1 MR. SOWELL: Yes, Your Honor. I have a brother
2 who is a psychiatrist. I have a friend who's a
3 psychiatric nurse in the prison system in North
4 Carolina. This Court knows that nearly every female in
5 the prison was led like a sheep to slaughter by their
6 boyfriends.

7 It's a shame that young girls are so led into
8 the paths of destruction by what they thought was their
9 boyfriends. That happened in this case. She was wrong
10 she admits it, she's sorry she did it, she wants to
11 truly apologize to all of the victims. There are no
12 winners in this case, Your Honor, only losers.

13 She's -- Your Honor heard testimony from several
14 character witnesses during the trial. Her family is
15 here to tell you the exact same thing. I don't want to
16 put them up individually, because you've already heard
17 it all from her and her family and her friends. But
18 she's a nice girl, she just got led somehow down the
19 path of destruction.

20 Your Honor has, she has got the ability to make
21 something of her life. Next three minutes Your Honor
22 will determine what chances she has to survive in this
23 world. She -- if Your Honor can at least show some
24 compassion on her, she can have kids, she can have
25 grandkids, she can have a life.

1 But Your Honor has the power -- and the
2 solicitor's office has been total gentlemen in this
3 case and ladies. They have all been superbly generous
4 to me and to her and try to help and we have no
5 complaint about anybody in the judicial system.

6 We ask that Your Honor give her a chance to have
7 a life, have children, have grandchildren, maybe even a
8 puppy. Until she gets to go home, she can't even have
9 that puppy. Please have compassion for her.

10 THE COURT: Thank you, Mr. Sowell.

11 Is there anything further from the state?

12 MS. WILSON: No, ma'am.

13 MR. SOWELL: Your Honor, can I have one second.

14 THE COURT: Sure.

15 MR. SOWELL: Your Honor, this is her father,
16 he'd like to say a few words.

17 THE COURT: Absolutely, certainly, you may
18 address the Court. If you would state your name for
19 the record.

20 MR. NANCE: My name is Richard Nance. What my
21 daughter -- similar to what my daughter said, she is
22 not a heinous person. I haven't heard anything
23 contrary to what she stated to or testified to on the
24 stand.

25 I won't lie for her. All I can tell you is what

1 she said, she said exactly on the stand what she said
2 to us, that's exactly her statement.

3 However, so sad this situation had to happen. I
4 guess I previously talked to the victim, at least two
5 of them. Joshua Harpe, decent, really decent young
6 man, he is caring.

7 Herb is the same way. I don't think either one
8 of them, the parents of either one of these kids can
9 say that their kids made the best decision. As you
10 know, all of them was high during the situation. I
11 didn't even know my daughter smoked. I don't smoke, I
12 don't drink. Testimony said she did it all. That's
13 not who we raised.

14 But similar to Breanna Bruster, my daughter is
15 very educated, and continued her school after this
16 situation.

17 I was the victim of a crime as well, same way.
18 Someone come to my house. And I wear the scars to show
19 it on my arm, down my stomach. Unlike these victims
20 here I was shot twice by someone who come in my house
21 the same way. My daughter knows better.

22 All I can do is trust what she tells me. I
23 don't think anybody, any of these young ladies would
24 make a foolish decision like that. I don't know what
25 in the world would allow my daughter not to go to the

1 authorities after knowing people for one day. One day.
2 I don't know why she didn't go to the authorities.

3 But I was contacted about the situation. I told
4 I don't know what the officer was or who the officers
5 were the day she was arrested or before she was
6 arrested she went to the officer. I told her, tell her
7 your father said you tell them everything. Everything.
8 Whatever you do, you got to tell them.

9 I think this is what this state's case was built
10 on, what she told them. Then everybody else started
11 talking.

12 All I can do is ask for mercy. Her case has
13 been tried. I just ask for some mercy for her, and
14 mercy for Ms. Bruster, these young ladies needs it. I
15 wish none of these kids had gotten taken out of society
16 for a long time. Not for a long time. One day is too
17 much, but not for a long time. Thank you.

18 THE COURT: You're welcome, sir.

19 MR. SOWELL: This is her mother.

20 THE COURT: Yes, ma'am. State your name for the
21 record.

22 MS. NANCE: Roseitta Gaskins Nance.

23 THE COURT: Yes, ma'am.

24 MS. NANCE: When we brought Sasha here to start
25 school, I know I didn't want her to come here, this is

1 where she wanted to come. And then she called me
2 crying saying she wanted to come home and she was going
3 to come home and go to work and go to school closer to
4 home. I told her when she come home we will talk about
5 it.

6 She called me back and told me, Mama, I'm just
7 going to work harder. Ever since I have been coming
8 down here people have been treating us so. I just want
9 to say that Sasha has never been in any trouble, she
10 wouldn't hurt anybody. I don't know how she started.
11 Got to take her education, it's a lot for her.

12 MS. DELAINE: I'm Wanda Delaine.

13 THE COURT: Yes, ma'am.

14 MS. DELAINE: This is hard for all of us. There
15 is no running from the situation anywhere. I know
16 sasha, and for a while I too just told one person I did
17 that she was even involved with anything like this.

18 I'm not here to retry the case. And nor to say
19 how guilty or innocent she is, it's already in the
20 court system. But, I believe what she says because of
21 what I know about her.

22 And I am truly sorry for the victims and for
23 these girls with so much promise and so much ability to
24 give back to society. And just to think that their
25 lives are going to be taken and set aside and not be

1 able to contribute what they were brought here to
2 contribute is heartbreaking to me and to all of us.

3 And I just would ask the Court to have mercy.
4 Give these girls a chance to be rehabilitated. They
5 both made wrong decisions, bad influences, an arey of
6 things that goes through young people's minds. We have
7 all been young. We have all done things that we looked
8 and said, why in the world did I do that.

9 Some may not have been as serious as others.
10 But we all make mistakes. Some of us didn't get
11 caught, by the grace of God. These ladies made wrong
12 decisions, did wrong things, but we ask for mercy.

13 Justice is not always giving them the maximum
14 sentence. That's not always justice. But we know that
15 these girls did wrong. We are not saying that they
16 didn't, but we are asking for mercy from the Court.

17 We are going to stand behind Sasha and we love
18 her. We wouldn't be here today if we didn't. And we
19 are praying for her and everything. And we just ask
20 the Court to just have mercy.

21 THE COURT: Thank you, ma'am.

22 Anything further, Mr. Sowell?

23 MR. SOWELL: Your Honor, I know that the jury
24 found that the coercion or duress was not sufficiently
25 proven to excuse her for the crime that she committed.

1 I'm going ask the Court to possibly take that into
2 consideration in the sentence. She is not a bad girl.
3 She was with this guy for three days, and drug her down
4 the path. We are asking for mercy, Your Honor, thank
5 you.

6 THE COURT: You're welcome.

7 The Court is going to take a very brief recess.
8 I assume the state had nothing further?

9 MS. WILSON: No, Your Honor.

10 THE COURT: We are going to take about a
11 five-minutes recess, then we will resume the hearing.

12 (Whereupon, a recess was taken.)

13 THE COURT: If the defendants would stand,
14 please, for sentencing.

15 The Court having considered the matters before
16 it, having considered both the -- having sat through
17 the trial, and having heard the testimony of all the
18 witnesses, including the other codefendants involved in
19 this case, that being Mr. Rice, Mr. Starks and Mr. --
20 Francois, I was going to call his last name as his
21 first name, had to stop for a moment.

22 There have been some very astute observations
23 made in this courtroom, one is that the Court is faced
24 with a very difficult set of circumstances and a very
25 difficult decision to make. But of course that is this

1 court's job to make difficult decisions.

2 And while that observation was may by the
3 solicitor and the Court made some levity of it, that's
4 because we have to have that really because of the
5 serious things that we are faced with everyday and the
6 lives that are impacted by those sets of circumstances.

7 However, it is not lost on the Court that this
8 is a very serious decision that must be rendered today,
9 and both Mr. Sowell and Mr. Mattson have also made that
10 observation.

11 It is very difficult in many aspects, one of
12 which is being faced with the lives of young people,
13 and the severity and profundity of what has happened as
14 a result, really some thoughtless and abhorrent acts,
15 outside of what has been indicated is the character of
16 these individuals.

17 And having been given so much and so many
18 opportunities, and yet when faced with certain options
19 having made choices that were made.

20 And also, having listened to the victims and
21 their astute observations and their compassion for the
22 families of the defendants, knowing that they also face
23 a loss as well. I think it is always difficult when
24 the Court must look at the loss and the impact on young
25 people's lives. When I'm referring to that, not just

1 the defendants in this case but also the victims, and
2 the long-ranging impacts that these actions will have
3 on their lives as they have already articulated for the
4 record.

5 Having taken all these things into
6 consideration, as well as the arguments of the state
7 and the arguments of defense counsel, it is the
8 sentence of this Court, and consistent with the
9 recommendation of the state, that Ms. Bruster on both
10 indictments on the offenses of armed robbery that you
11 be sentenced to the state department of corrections for
12 a period of ten years.

13 You will get credit for any time that you have
14 served on these sentences. That time to be calculated
15 and applied by the department of corrections. And I
16 have not had any indication that she needs any drug
17 treatment or otherwise, so I'm not going to make any
18 other recommendations regarding that, Mr. Mattson.

19 MR. MATTSON: That has never been a problem.

20 THE COURT: Exactly. I wanted to make sure you
21 knew I was not making any other recommendations or any
22 other treatment or otherwise for her as it simply is
23 not necessary.

24 As it regards Ms. Gaskins, on two counts of
25 armed robbery, as well as two counts of burglary in the

1 first degree, you are sentenced to the state department
2 of corrections for a period of 18 years. These
3 sentences are to run concurrent with one another and
4 you'll get credit for any time that you've served. And
5 There is likewise no indication that she is in need of
6 any additional services.

7 I appreciate you all giving me the opportunity
8 to reflect on this matter. I know that I do not take
9 your time for granted and I appreciate you all being
10 very patient.

11 MS. WILSON: Thank you, Your Honor.

12 (Whereupon, the proceedings in this matter
13 before the court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

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

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

The State, Respondent,

v.

Sasha A. Gaskins, Appellant.

Appellate Case No. 2011-189166

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-203
Heard May 7, 2013 – Filed May 22, 2013

AFFIRMED

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

Attorney General Alan M. Wilson and Assistant Attorney
General J. Benjamin Aplin, both of Columbia, for
Respondent.

PER CURIAM: Sasha A. Gaskins appeals her convictions for two counts of armed robbery and two counts of first-degree burglary, arguing the trial court committed the following errors: (1) overruling her objection to the prosecutor's

closing argument; (2) ruling her expert could not testify as to her state of mind; and (3) refusing to permit her expert to respond to a hypothetical question. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in overruling her objection to the prosecutor's closing argument: *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998) ("On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt."); *State v. Patrick*, 289 S.C. 301, 306-07, 345 S.E.2d 481, 484 (1986) (finding several misstatements of law by the solicitor were "rendered harmless . . . when the trial judge correctly charged the jury on those matters"), *overruled on other grounds by Casey v. State*, 305 S.C. 445, 409 S.E.2d 391 (1991), and *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999).

2. As to whether the trial court erred in ruling Gaskins' expert could not testify as to her state of mind: Rule 103(a)(2), SCRE (providing error may exist where evidence was excluded if a substantial right of the party is affected, and the substance of the evidence was proffered *or was apparent from the context*); *State v. Cabbagestalk*, 281 S.C. 35, 36, 314 S.E.2d 10, 11 (1984) ("Failure to make an offer of proof precludes the appellant from raising the issue on appeal."); *State v. Porter*, 389 S.C. 27, 36, 698 S.E.2d 237, 242 (Ct. App. 2010) ("To warrant a reversal based on the admission of evidence, the appellant must show both error and resulting prejudice.").

3. As to whether the trial court erred in refusing to permit Gaskins' expert to respond to a hypothetical question: Rule 103(a)(2), SCRE (providing error may exist where evidence was excluded if a substantial right of the party is affected, and the substance of the evidence was proffered *or was apparent from the context*); *Cabbagestalk*, 281 S.C. at 36, 314 S.E.2d at 11 ("Failure to make an offer of proof precludes the appellant from raising the issue on appeal.").

AFFIRMED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.

FILED
1417

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Gasha Gaskins #345415
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2014-CP-10-2879
IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2014 MAY -5 PM 2:24
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Leath Correctional Institution
2. Name and location of Court which imposed sentence General Sessions of Charleston County
3. Name(s) of co-defendant(s) (if any) Stephen Francois, Breanna Bruster, Miguel Starks, Reginald Rice
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010-GS-10-04793 d) 2010-GS-10-04761
(b) 2010-GS-10-04794
(c) 2010-GS-10-04738
5. The date upon which sentence was imposed and the terms of the sentence:
(a) MARCH 31, 2011, 18 years concurrent
(b) march 31, 2011, 18 years concurrent

- (c) march 31, 2011 / 18 years concurrent (d) march 31, 2011 - 18 years concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Court of General Sessions → Charleston County
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 22, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective counsel / insufficient time for preparation
 (b) investigation + Presentation of witness
 (c) _____

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

- (a) trial lawyer was hired a few weeks prior to trial
 (b) there was a witness to help the case but she was not there
 (c) _____

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

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

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

(a) the specific nature thereof:

- i. n/a
 ii. _____
 iii. _____
 iv. _____

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

- i. n/a
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. n/a
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ n/a

ii. _____

iii. _____

iv. _____

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

i. _____ n/a

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Beattie Butler Public Defender
 - Kenneth Sowell 768 Mauldin Rd, Greenville, SC 29607
 - Susan Hackett P.O. Box 11589 Columbia, SC 29211
- (b) the proceedings at which each such attorney represented you:
- plea, public defender
 - trial, sentencing, arraignment, plea
 - appeal
19. State clearly the relief you seek in filing this application:
new trial and/or sentence reduction
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

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

Sasha Martin

SWORN to and subscribed before me this 30th
day of April, 2014.

Dandra B. Hill (L.S.)
Notary Public

My Commission Expires: Jan. 8, 2023

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

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

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

Sasha Masluis
Applicant

SWORN or affirmed to and subscribed before me this
30th day of April, 2014.

Sandra B. Hill
Notary Public

My Commission Expires: Jan. 8, 2023

(10) On appeal, the comments to the three arguments raised said "Failure to make an offer of proof precludes the appellant from raising the issue on appeal." Is this a failure by my trial lawyer?

(14) I'm not sure to put yes or no. I'm not sure if in (10) can Psychiatric Defense/ Expert witness can be placed. This was brought up on my direct appeal and I'm not sure if it can be brought up on PCR; due to ineffective counsel.

(10) Some cases similar to my case or relevant

- State v. Woolumer, 276 S.C. 258, 277 S.E. 2d 696 (1981)

- State vs Jennings 515 S.E. 2d 101 (S.C. App. 1999) 59(2)

- State vs Tyson E. Langley

• 16-11-330 Robbery + attempted robbery while armed with a deadly weapon

• 16-17-410 Conspiracy pg 600-601 (crimes + offenses)
pg 228, 229, 231
pg 605

- Nicolas A Strane vs U.S.

- State v. Guthrie

- Brown vs. State

- State v. Kelvin Jones

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2014-CP-10-2879

Sasha Gaskins, #345415,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 5, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2010 term of the Charleston County Grand Jury for two counts of armed robbery (2010-GS-10-4793, -4761) and two counts of burglary-first degree (2010-GS-10-4794, -4738). The Applicant was represented by Kenneth Sowell, Esquire.

On February 28-March 4, 2011, the Applicant proceeded to trial and was found guilty. On March 4, 2011, the Applicant submitted a "Motion for Reconsideration and Motion for New Trial" which was denied on March 23, 2011. On March 31, 2011, the Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of eighteen years for each charge. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. Her appeal was perfected by Susan Hackett, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were affirmed by the Court of Appeals. State v. Gaskins, No. 2013-UP-203 (S.C. Ct. App. May 22, 2013). The Remittitur was issued on June 14, 2013.

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

II.

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

1. Ineffective assistance of counsel.
 - a. Insufficient time to prepare.
 - b. Investigation and presentation of witnesses; There was a witness to help the case but she was not there.
 - c. Lawyer hire a few weeks before trial.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

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March 4, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SASHA GASKINS, #345415

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

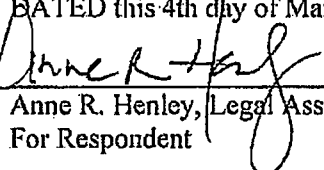
2014-CP-10-2879

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney D. Davis
 4000 Faber Place Drive, Ste 300
 Charleston, SC 29405

DATED this 4th day of March, 2015


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2014-CP-10-2879
	)	
	)	
SASHA GASKINS	)	
	)	
Applicant	)	
	)	
vs.	)	
	)	
STATE OF SOUTH CAROLINA	)	
	)	
Respondent	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

April 19, 2017
Charleston, South Carolina

B E F O R E:

THE HONORABLE BROOKS P. GOLDSMITH, JUDGE

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

RODNEY D. DAVIS, ESQ.
Attorney for the Applicant

ALICIA OLIVE, ESQ.
Attorney for the State

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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Sasha Gaskins v State
Post Conviction Relief Hearing
April 19, 2017

1 PROCEEDINGS

2 THE COURT: Good morning ladies and gentlemen.

3 MR. DAVIS: Your Honor, if I could have just one
4 moment to show my client these two pieces of paper.

5 THE COURT: All right.

6 [Whereupon, Mr. Davis confers with his client]

7 MR. DAVIS: Thank you, Your Honor.

8 THE COURT: Whenever you're ready.

9 MS. OLIVE: Thank you, Your Honor. May it please
10 the court? This is Sasha Gaskins, 2014-CP-10-2879. She
11 was indicted in June 2010 on two counts of armed robbery
12 and two counts of burglary first degree. She was
13 represented by Kenneth Sowell on those charges. February
14 28th through March 4, 2011 she proceeded to trial where a
15 jury found her guilty of all charges that were indicted.

16 On March 4, 2011 a motion for reconsideration and
17 motion for new trial was filed on her behalf and was
18 denied on March 23, 2011. On March 31st, 2011 she was
19 sentenced to confinement for 18 years for each count to
20 be served concurrently. A timely notice of appeal was
21 filed on her behalf and an appeal was perfected. She was
22 represented by Susan Hackett on appeal. The conviction
23 of those sentences was affirmed by the Court of Appeals
24 in an unpublished opinion on May 22, 2013. The
25 remittitur was issued on June 14, 2013. She filed this

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1 application for post conviction relief on May 5th, 2014
2 alleging several grounds of ineffective assistance of
3 counsel. Your Honor, at this time the State would oppose
4 any last minute amendments. There have been no
5 amendments filed to this application for post conviction
6 relief and the State would oppose any last minute
7 amendments at this point because it would prejudice the
8 State.

9 Ms. Gaskins is present in the courtroom today and
10 represented by Rodney Davis. I'll turn it over to Mr.
11 Davis at this time.

12 THE COURT: Mr. Davis?

13 MR. DAVIS: Thank you very much, Your Honor.
14 Judge, the entire thrust of our argument is ineffective
15 assistance of counsel at trial. There are no other
16 claims other than the direct ineffective assistance of
17 counsel. Judge, the moment that you gave me before we
18 started the State's return, and the State has just
19 recited what Ms. Gaskins was charged with, tried on and
20 convicted of. Through research I'm going to ask you to
21 go over with her the risks and benefits as I did up in
22 Berkeley. I have talked to her about that. Just so the
23 court will understand there was a directly indicted
24 kidnapping charge that was not pressed quite some time
25 later that is not a part of the record but it does deal

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1 with this event as well as a possession of a weapon
2 during the commission of a violent crime. There was
3 actually an arrest warrant for her initial arrest. It
4 was also nol prossed at the same time as the kidnapping
5 almost a year after the trial but -- so it was not
6 presented at trial, but it does exist.

7 These two do exist so out of an abundance of caution
8 on the record again if you will talk to her about the
9 fact that two armed robberies, two burglaries first,
10 there was a possession of a weapon during the commission
11 of a violent crime that is a flat five years and then the
12 kidnapping which is zero to thirty. So I have advised
13 her that it is possible that all six charges could come
14 back if we were successful. I've talked to her about
15 that but if you don't mind going over that on the record
16 I'd appreciate it.

17 THE COURT: All right. Ms. Gaskins, do you agree
18 with your attorney that y'all have in fact discussed what
19 he just said?

20 MS. GASKINS: Yes, sir.

21 THE COURT: And do you understand that the court,
22 meaning me today, all I can do is either grant your
23 request for a new trial or deny your request for a new
24 trial? I can't change the sentence; I can't change
25 probation eligibility or any such thing as that. Do you

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1 understand that?

2 MS. GASKINS: Yes, sir.

3 THE COURT: And you understand apparently because
4 your attorney said he advised you of this that if you
5 were to be successful you'd go back to square one so to
6 speak where you were the day before you well, I guess the
7 day that you began the trial in your case.

8 MS. GASKINS: Yes, sir.

9 THE COURT: You start all over. You could in fact
10 receive a greater sentence that you did receive and be
11 presumably charged with a kidnapping.

12 MS. GASKINS: Yes, sir.

13 THE COURT: Do you understand all that?

14 MS. GASKINS: Yes, sir.

15 THE COURT: And knowing all that you still wish to
16 proceed today?

17 MS. GASKINS: Yes, sir.

18 THE COURT: Okay.

19

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1 MR. DAVIS: Thank you very much. May it please
2 the court? We would call our first witness which would
3 be Ms. Gaskins.

4 THE COURT: All right. Come forward Ms. Gaskins.

5 [Whereupon, Ms. Gaskins comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: I'll ask you to state your full
9 name for the record and spell your last please.

10 THE WITNESS: Sasha Alajawon Gaskins, G-A-S-K-I-N-S.

11 - - - - -

12 SASHA GASKINS,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. DAVIS:

17 Q. Good morning, Ms. Gaskins.

18 A. Good morning.

19 Q. Before we get started on the complaint you have I'd
20 like you to tell the Judge a little bit about yourself.
21 How old are you?

22 A. Twenty-five years old. I'll be 26 next month.

23 Q. And so when you went to court back in late February
24 of 2011 how old were you?

25 A. Nineteen.

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1 Q. Now this was a trial here in Charleston County. Is
2 that where you grew up and were born and raised?

3 A. I was born and raised in Clinton, South Carolina.

4 Q. And what about family; where do they live?

5 A. Both of my parents they still live in Clinton, South
6 Carolina.

7 Q. How far did you go in school?

8 A. I went to the College of Charleston. I did a year
9 and a half. I went to school early; I went a summer
10 early and then when I got out on bond I went to Columbia
11 College and I did a semester there.

12 Q. You graduated high school before that?

13 A. Yes, sir.

14 Q. And that was Clinton High School?

15 A. Yes, sir.

16 Q. The final thing just about your background leading
17 up to the trial were you on any medication at that time?

18 A. No, sir.

19 Q. Prior to that had you dealt with some issues that
20 required you to take some medication?

21 A. No, sir.

22 Q. Now do you recall we just talked to the court about
23 all the charges that you were facing back in 2011? Do
24 you recall when you were originally arrested involving
25 this incident?

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- 1 A. Yes, sir.
- 2 Q. What date was that do you recall?
- 3 A. I don't remember the exact date.
- 4 Q. Okay. Would March 2, 2010 surprise you?
- 5 A. No, sir.
- 6 Q. And when you were first arrested do you remember
- 7 what you were charged with?
- 8 A. If I'm not mistaken it was accessory. I don't know
- 9 if it was before or after the fact of armed robbery. And
- 10 then I remember it being a 50,000 dollar bond because I
- 11 remember my parents getting ready to get me out and then
- 12 another set of cops came and got me.
- 13 Q. At some point you were charged with an armed
- 14 robbery, a burglary first, and possessing a weapon, do
- 15 you recall that?
- 16 A. No, sir.
- 17 Q. Do you recall when you were originally arrested?
- 18 When you were originally arrested did that deal with one
- 19 incident or two incidents when you were originally
- 20 arrested ---
- 21 A. --- one.
- 22 Q. At some point it came to be two ---
- 23 A. --- yes, sir ---
- 24 Q. --- different incidents, is that right?
- 25 A. Yes, sir.

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1 Q. Okay. And at some point you were facing armed
2 robbery and burglary charges from both incidents.
3 A. Yes, sir.
4 Q. Now how far apart were these two incidents supposed
5 to have occurred?
6 A. A couple of days.
7 Q. Okay. Now after you were arrested on all the
8 charges, okay, did you originally hire or were you
9 appointed an attorney?
10 A. I was appointed an attorney very late while I was in
11 the county. Someone came to see me and she told me they
12 would be giving me someone later.
13 Q. And who was that, do you recall?
14 A. Beattie Butler.
15 Q. Okay. Charleston County Public Defender's office?
16 A. Yes, sir.
17 Q. Okay. So that was your original attorney. Do you
18 have a timeframe of when he was appointed?
19 A. No, sir.
20 Q. But during his representation -- well, let me
21 rephrase that. At some point you went in a different
22 direction as far as who your attorney was, is that right?
23 A. Yes, sir.
24 Q. Leading up to that decision was there an offer
25 conveyed that you rejected?

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1 A. Yes, sir.

2 Q. And do you recall when that deadline on that offer
3 was?

4 A. I don't remember the deadline. I just remember how
5 much it was.

6 MR. DAVIS: Judge, I'll direct the court to the
7 transcript on page 24 line 5 it discussed a deadline of
8 February 11th of 2011 which would have been 17 days prior
9 to the beginning of the trial.

10 Q. [Mr. Davis] In addition to just the relationship,
11 the profession relationship between you and Mr. Butler
12 were there any other factors with Mr. Butler that caused
13 you to want to go in another direction with your
14 representation?

15 A. No sir, besides he started getting sick. I didn't
16 think he would be well enough or able enough to go
17 through with the trial.

18 Q. Okay. So following those issues it was decided to
19 go with a different attorney. And can you tell the Judge
20 how the new attorney was hired?

21 A. A friend of the family talked with my father and we
22 hired him.

23 Q. And that's Mr. Sowell that's in the courtroom today?

24 A. Yes, sir.

25 Q. And do you know where his office is?

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1 A. In Greenville.

2 Q. Okay. And again these charges were all out of

3 Charleston County is that right?

4 A. Yes, sir.

5 Q. Do you recall when Mr. Sowell was hired?

6 A. Not the exact date.

7 Q. Okay.

8 A. But I remember it being like a week and a half

9 before trial.

10 Q. Would February 16th of 2011 surprise you?

11 A. No, sir.

12 Q. In the sense that's when he was hired as your

13 attorney?

14 A. Probably like ten days before.

15 Q. Twelve. Does that sound about right?

16 A. Yes, sir.

17 Q. Now when he was hired did y'all enter into a written

18 contract?

19 A. No, sir.

20 Q. Okay. Can you tell the Judge how many times you

21 met with your attorney?

22 A. The first time it was like a meet and greet and then

23 I came to an office in Greenville another time and that's

24 it.

25 Q. You were out on bond?

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1 A. Yes, sir.

2 Q. So you're able to go to his office in Greenville?

3 A. Uh Huh.

4 THE COURT REPORTER: Was that yes?

5 A. Yes.

6 Q. [Mr. Davis] And how close to the beginning of trial
7 on February 28th, 2011 were either of those meetings?

8 A. Days.

9 Q. And how long would those meetings have lasted?

10 A. One of the meetings was maybe 30 minutes and the
11 other one was close to an hour or so.

12 Q. I'm going to circle back around. You told the Judge
13 what you recall you were originally arrested for and then
14 I think we ended that line of questioning with you
15 talking about another set of officers came to get you.
16 Do you recall that?

17 A. Yes, sir.

18 Q. In the days leading up to the trial did you have a
19 discussion with your attorney about more charges than you
20 were originally arrested for?

21 A. Not that I recall.

22 Q. So when did he discuss all four indictments that
23 were going to trial with you?

24 A. I honestly can't even remember.

25 Q. Now during these couple of meetings that lasted a

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1 total of 90 minutes approximately did he ever review with
2 you, your attorney, the elements of each of the charges?

3 A. Not that I can remember.

4 Q. Did he ever go over with you what the State would
5 have to prove to a jury to convict you of burglary in the
6 first degree?

7 A. I'm not sure.

8 Q. Do you ever recall him talking to you about what the
9 State would have to prove to a jury to convict you of
10 armed robbery?

11 A. I'm not sure.

12 Q. Would you be able to tell the Judge today what the
13 State would have to prove or what the definition of
14 burglary in the first degree is?

15 A. Verbatim I think for burglary in the first nighttime
16 with a weapon I'm guessing. And armed robbery I think is
17 entering someone's home and taking goods I'm guessing.

18 Q. Okay. Now we've already talked about the fact that
19 you were arrested for two different burglaries and two
20 different armed robberies I believe you testified two
21 days apart, is that right?

22 A. Yes, sir.

23 Q. Was there ever any discussion with your attorney
24 about having separate trials for these two incidents?

25 A. No, sir.

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1 Q. During these two meetings lasting approximately 90
2 minutes total did you discuss defenses that you had at
3 trial?

4 A. I'm not sure.

5 Q. Well, let me state it another way. As the trial was
6 coming up how did y'all plan to deal with the
7 allegations?

8 A. I can remember necessity; speaking about necessity.

9 Q. Okay. Any other discussions about that?

10 A. No sir, not that I can recall.

11 Q. As this led up to trial did you -- do you have any
12 recollections of any observations you had concerning your
13 attorney's demeanor or health?

14 A. He kept asking me did I want him. He was a little
15 sad. I don't know if he was going through a certain loss
16 or something but he seemed sad. He was older but he
17 spoke to my father mostly.

18 Q. Do you recall having any concerns about his physical
19 ability to conduct the trial?

20 A. No, sir.

21 Q. When were you made aware that additional evidence
22 was provided to your attorney the Friday before trial?
23 When were you made aware of that?

24 A. The day of court.

25 Q. I'm sorry?

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1 A. The day of court.
2 Q. The first day of your trial?
3 A. Uh Huh.
4 THE COURT REPORTER: Is that yes?
5 A. Yes; sorry.
6 Q. [Mr. Davis] So the Monday beginning your trial; so
7 February 28, 2011.
8 A. Yes, sir.
9 Q. What discussions if any did he have with you on how
10 to deal with the new information about co-defendants
11 statements?
12 A. He didn't have it with me. I remember it being
13 spoken in court that he had just got new evidence. I
14 guess the co-defendant changed his story that Friday. I
15 remember it being spoken in trial, in court; that's how I
16 knew.
17 MR. DAVIS: And Judge, for your reference there is
18 a discussion of that between the court and the attorneys
19 on page 6 of the transcript.
20 Q. [Mr. Davis] Leading up to your trial on February
21 28th 2011 was there any discussion about your attorney
22 hiring a psychiatrist or psychologist?
23 A. Not leading up to the trial.
24 Q. When is the first you heard about that possibility?
25 A. The first day of court the Judge actually suggested

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1 it. She was discussing a defense for me because she said
2 that she had never heard of a necessity defense in a
3 robbery case and was telling him the elements and the
4 things that he needed for a duress or a coercion case
5 instead of a necessity case.

6 Q. Let's pause here for a second. Can you summarize
7 for the Judge back in February of 2011 what your mindset
8 was or what your opinion was as far as your attorney's
9 preparations to begin the trial?

10 A. I was young then so I really didn't understand what
11 was going on. But I kind of felt like it was rushed and
12 I felt like we gave him money so of course I felt like he
13 was going to do it.

14 But I felt like it wasn't well prepared or -- I mean
15 it was my life so I felt like it wasn't enough time for
16 it to be handled.

17 Q. Speaking of the expert witness and any psychological
18 evaluation were you in fact -- was there any meeting set
19 up with you and the expert Dr. Waid?

20 A. No, sir. I just remember them speaking about it in
21 court and my parents had to pay some money for him to
22 come testify and that's it.

23 Q. Forgive me; I'm just going to go back for a second.
24 We talked about some last minute evidence and I want to
25 talk to you specifically about information on the co-

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1 defendants. There was also a video that was provided at
2 the last minute. When were you made aware that video was
3 provided last minute?

4 A. The day of the -- the first day of court.

5 Q. Were you ever able to review that with your
6 attorney? Did you see the video?

7 A. In court.

8 Q. Tell the Judge a little bit since he wasn't there
9 how that played out watching that video.

10 A. My co-defendant Breanna Bruster was on the witness
11 stand and they played it basically describing how she was
12 laughing or we wasn't at the house but we were putting
13 gas in the car and they played it then.

14 Q. So are you telling the Judge that the first time you
15 saw it was when it was played for the jury or did you
16 have a chance to look at it with your attorney?

17 A. I didn't. I saw it then in court.

18 Q. Do you recall whether your attorney had a moment to
19 review it before the jury saw it?

20 A. I don't recall.

21 Q. Were there any discussions that you and your
22 attorney had about that last minute evidence of the
23 video?

24 A. No, sir.

25 Q. In dealing with the statements -- the testimony;

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1 sorry, the testimony of your co-defendants can you tell
2 the Judge your observations and your opinions of the way
3 your attorney handled that testimony?

4 A. Of all my co-defendants?

5 Q. In general, yes.

6 A. A lot of my co-defendants their testimony versus
7 what they said to the officers when they were first
8 arrested were different. Their stories never were
9 consistent and never stayed the same; none of them.

10 One minute it was I wasn't at the house and the next
11 minute I wanted something from the homes. I felt like he
12 could have definitely objected to it or showed the
13 perjury or how they lied.

14 Q. Did you think the questioning of these discrepancies
15 or these contradictions were sufficient?

16 A. Sir?

17 Q. Did you think that the questioning of these
18 discrepancies or contradictions in their statement was
19 sufficient by your attorney?

20 A. No, sir.

21 Q. You testified at your trial, right?

22 A. Yes, sir.

23 Q. In handling your testimony or the defense of your
24 case can you tell the Judge your opinions or your views
25 about your attorney's handling of that process?

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1 A. I felt like most of my trial wasn't about me. I
2 felt like it was about the guys and not necessarily
3 surrounded by the part that I played.

4 My story definitely stayed the same. I told the
5 truth from then on to the officers when I first got
6 arrested and then; and that's it.

7 Q. Were there any discussions either at trial or at
8 these two meetings prior to trial, these two brief
9 meetings prior to trial about what different outcomes
10 could happen at trial?

11 A. As far as what?

12 Q. Did he talk to you about the different decisions or
13 verdicts that the jury could return?

14 A. I can't recall that.

15 Q. Do you recall talking with your attorney about what
16 you would face if you were convicted of burglary first
17 degree?

18 A. I think so.

19 Q. Okay. How about did you discuss what could happen
20 if you were convicted of armed robbery?

21 A. I think so.

22 Q. Was there any discussion about something called
23 lesser included offenses? Was there ever that
24 discussion?

25 A. No, sir.

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1 Q. So no discussion about strong armed robbery?
2 A. No, sir.
3 Q. Or burglary second degree?
4 A. No, sir.
5 Q. Or third degree?
6 A. No, sir.
7 Q. Or accessory before the fact?
8 A. I'm thinking it was about accessory because I have
9 paperwork back at the institution that one of my charges
10 was accessory.
11 Q. So you may have discussed that?
12 A. Yes, we may have discussed that.
13 Q. At these meetings before trial? Is that when you
14 would have discussed it?
15 A. Yes.
16 Q. Okay. Any discussions about accessory after the
17 fact?
18 A. I'm pretty sure.
19 Q. Or conspiracy?
20 A. I don't recall conspiracy.
21 Q. Was there a discussion about the fact a jury could
22 listen to the evidence and find you not guilty? Was
23 there a discussion about that?
24 A. I'm pretty sure.
25 Q. Was there ever any discussion about what is called a

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1 hung jury or a mistrial?

2 A. I'm not sure.

3 MR. DAVIS: Your Honor, may I have just a moment?

4 THE COURT: All right, sir.

5 [Whereupon, Mr. Davis reviews documents]

6 Q. [Mr. Davis] Ms. Gaskins, just a few more questions.
7 I think you already told the Judge a little bit ago but
8 you had talked to the police after your arrest, is that
9 right?

10 A. Yes, sir.

11 Q. Did you and your attorney ever discuss -- prior to
12 trial did you discuss how that might be presented to the
13 jury most appropriately?

14 A. Not that I can recall.

15 Q. Prior to trial was the plan that you would or would
16 not testify?

17 A. That I would.

18 Q. Was there any discussion about your right not to
19 testify?

20 A. Yes, sir.

21 Q. Were there discussions about problems or pitfalls or
22 risks in testifying?

23 A. Not that I recall.

24 Q. Do you recall ever talking to your attorney prior to
25 trial about any identification of you by any witness?

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1 A. No, sir.

2 Q. Do you ever recall your attorney using the phrase a
3 Biggers hearing or a Neil v Biggers?

4 A. No, sir.

5 Q. And finally going way back and when you were working
6 with Mr. Butler and you rejected an offer from the State
7 do you recall that timeframe?

8 A. Uh Huh.

9 THE COURT REPORTER: Is that yes?

10 A. Yes.

11 Q. [Mr. Davis] What do you recall after that rejection
12 about the setting of your case for trial? What do you
13 recall the court said about that?

14 A. What the court said?

15 Q. Uh Huh?

16 A. I just remember in court them bringing up the offer
17 again in court.

18 Q. I'm not talking about the February trial. I'm
19 talking back when the offer was made and not accepted.
20 Do you recall at that point any discussions about the
21 setting of the actual trial date?

22 A. No, sir.

23 Q. In the switching of attorneys do you remember there
24 being discussions about how that might affect your trial
25 date?

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1 A. No, sir.

2 Q. Ms. Gaskins, thank you. The Attorney General will
3 have some questions for you.

4 THE COURT: Ms. Olive?

5 MS. OLIVE: Thank you, Your Honor. May it please
6 the court?

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1 CROSS-EXAMINATION

2 BY MS. OLIVE:

3 Q. Ms. Gaskins, you stated that you don't remember how
4 the switching of attorneys might affect your trial date.
5 But at that time did you know that your trial was set for
6 a couple of weeks before then?

7 A. Not that I can remember.

8 Q. So on the date that you rejected the plea offer you
9 did not know when your case was going to trial?

10 A. Not that I can remember.

11 Q. Did you know that you were close to trial?

12 A. When we hired Mr. Sowell? Yes.

13 Q. Okay. So when you hired Mr. Sowell you knew that
14 you had about 12 days prior to trial?

15 A. I'm guessing so.

16 Q. And didn't Mr. Sowell actually come down to
17 Charleston for about a week and a half prior to the
18 trial?

19 A. I have no idea.

20 Q. You were out on bond?

21 A. Yes, I was home.

22 Q. Were y'all in touch? Did you stay in touch with
23 your attorney?

24 A. I seen him at a meet and greet; we went to
25 Greenville, and I went to Greenville to his office.

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1 Q. So you're claiming you never spoke to him when he
2 was down here in Charleston?

3 A. I never knew he was in Charleston.

4 Q. Regarding the identification there were four co-
5 defendants who testified against you at trial?

6 A. Yes.

7 Q. They would have been able to testify against you as
8 having participated in these crimes?

9 A. Ma'am?

10 Q. Excuse me, let me repeat. The four co-defendants
11 who testified against you they knew you?

12 A. Yes.

13 Q. Okay. So they could testify as to your
14 identification?

15 A. Yes.

16 Q. And they did in fact testify that you participated
17 in these events?

18 A. They testified against me, yes ma'am.

19 Q. You testified you don't recall your attorney having
20 a discussion with you about the problems and risks of
21 testifying? Didn't the Judge advise you of that prior to
22 taking your testimony?

23 A. She may have. It's been seven years -- six or seven
24 years.

25 Q. But you understood when you testified that there

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1 were certain risks and benefits of testifying, correct?

2 A. Yes.

3 Q. And you testified you don't recall whether your
4 attorney had discussions with you about the outcomes, the
5 different possible outcomes of the trial?

6 A. He talked about the guilty and the not-guilty but I
7 don't remember any other.

8 Q. So you didn't know what sentences you were facing on
9 those charges?

10 A. I'm not sure. I don't recall but I know we talked
11 about the guilty and the not guilty.

12 Q. You don't recall whether your attorney had a
13 discussion with you about the fact that burglary first
14 carries up to life?

15 A. Maybe.

16 Q. Again you rejected a previous plea offer, correct?

17 A. Yes.

18 Q. Did you know then what the sentences were that you
19 were facing on those charges?

20 A. Maybe.

21 Q. And again you testified at trial, is that correct?

22 A. Yes, ma'am.

23 Q. What was your understanding when you went to trial
24 the theory that your attorney, that you were going
25 forward on at trial?

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1 A. Not much. All I understood was necessity. I
2 understood necessity as being as if someone doesn't have
3 a license and they're driving in a car and maybe someone
4 next to them gets hurts and they have to drive they won't
5 get charged because they feel like it is necessary for
6 them to be able to save someone's life. That's how I
7 understood necessity. So I remember talking about that.
8 Q. Wasn't your testimony that you presented at trial
9 essentially that you had been forced into ---
10 A. --- yes ---
11 Q. --- both of these ---
12 A. --- yes ---
13 Q. --- correct? And again they took place a couple of
14 days apart?
15 A. Yes.
16 Q. Did you have discussions with your attorney about
17 that?
18 A. Yes.
19 Q. So y'all talked about what y'all were going to
20 testify to?
21 A. He actually got me to write everything that happened
22 and send it to him in an email because we didn't get to
23 talk much.
24 Q. And is what you wrote in that email what you planned
25 to testify to?

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1 A. Yes.

2 Q. So your testimony at trial is that you were forced
3 to assist with these invasions?

4 A. Yes.

5 Q. But the four co-defendants who testified against you
6 at trial testified that no one threatened or forced you.

7 A. At trial they did but according to what they said to
8 the officer was different.

9 Q. And didn't your attorney cross-examine these
10 witnesses with prior inconsistent statements at trial?

11 A. I'm not sure.

12 Q. But you were present at the trial?

13 A. Yes.

14 Q. And you heard them testify?

15 A. Uh Huh.

16 Q. And your attorney cross-examined them?

17 A. Yes.

18 Q. Did he -- do you recall him pointing out where there
19 were differences in previous statements that they had
20 given versus what they were saying at trial?

21 A. Some of them.

22 Q. And when you say that was different than what they
23 had told officers are you referring to a specific
24 document or is that just your understanding?

25 A. I had -- when I was home I listened to a lot of the

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1 interrogation of Stephen Francois --
2 THE COURT REPORTER: Tell me the name again?
3 A. Stephen Francois. And I seen statements Breanna
4 Bruster had written.
5 Q. [Ms. Olive] And your attorney had those as well?
6 A. I think so.
7 Q. Would he have provided those to you?
8 A. I didn't get them from him. I got them from Beattie
9 Butler.
10 Q. Okay. And in this video that you were testifying
11 to that you saw in court your attorney objected when the
12 State first tried to introduce that did he not?
13 A. I don't know.
14 Q. And wasn't that video that you yourself had filmed?
15 A. Yes.
16 Q. And that was just of y'all at the gas station?
17 A. Actually it was at the apartment complex.
18 Q. And do you recall the trial judge did in fact charge
19 the jury on the defense of duress?
20 A. I can't remember.
21 MS. OLIVE: Beg the court's indulgence.
22 [Whereupon, Ms. Olive reviews documents]
23 Q. [Ms. Olive] Do you remember how long Beattie Butler
24 represented you prior to Mr. Sowell being retained?
25 A. No, ma'am..

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1 Q. Did you have any other attorneys besides Mr. Butler
2 and Mr. Sowell?
3 A. No, ma'am.
4 Q. But you again made the decision to hire Mr. Sowell?
5 A. My parents did.
6 Q. And that was shortly before trial?
7 A. Yes.
8 Q. Had you seen your indictments prior to trial?
9 A. No, ma'am.
10 Q. You had never seen your indictments?
11 A. I've seen them since I've been in prison.
12 Q. Okay. Did you understand what the State was going
13 to have to prove at trial to convict you of these
14 charges?
15 A. I do now but at that time, no.
16 Q. And the co-defendants testified or at least Mr.
17 Starks and Mr. Rice were armed with a gun when they went
18 into each of these homes, is that right?
19 A. Ma'am?
20 Q. Mr. Rice and Mr. Starks, the co-defendants testified
21 at trial that those two were armed with guns?
22 A. Yes.
23 Q. And the victims testified to that as well?
24 A. Yes.
25 Q. Thank you, Ms. Gaskins. I don't have any further

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1 questions at this time.

2 THE COURT: Mr. Davis?

3 MR. DAVIS: Thank you very much, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Just to clear it up you had talked about watching or
4 listening to some of the statements right? I don't know
5 if we got this clear. Any discovery under Rule 5 was
6 that provided by Mr. Butler, Mr. Sowell or both?

7 A. Mr. Butler.

8 Q. So to be clear during the course of Mr. Sowell's
9 representation did he provide you any discovery or Brady
10 materials?

11 A. No.

12 Q. And clear something else up. The Attorney General
13 was asking you about times that he had been here in
14 Charleston and whether there had been meetings. To be
15 clear with the Judge once you made bond where were you
16 residing?

17 A. In Clinton; Clinton, South Carolina.

18 Q. With your parents?

19 A. Uh Huh.

20 Q. And his office is where?

21 A. In Greenville.

22 Q. Prior to your arrest you were here in Charleston
23 attending school?

24 A. Uh Huh; yes.

25 Q. But once you bonded out you did not reside in

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1 Charleston?

2 A. No, sir. I went to Clinton and then I moved to
3 Columbia and went to Columbia College.

4 Q. And one last clarification. Had you ever been in
5 big criminal court before?

6 A. No, sir.

7 Q. Ever had a trial before?

8 A. No, sir.

9 Q. You were 19 when you went to trial?

10 A. Yes, sir.

11 Q. Thank you very much.

12 MR. DAVIS: No other questions, Your Honor.

13 THE COURT: Ms. Olive, anything else?

14 MS. OLIVE: No further questions, Your Honor.

15 THE COURT: Thank you, ma'am. You may step down.

16 [Whereupon, the witness is excused and exits the
17 witness stand]

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1 MR. DAVIS: We would call Mr. Sowell to the stand.

2 [Whereupon, Mr. Sowell comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once you're seated please give us
6 your full name and spell your last please.

7 THE WITNESS: My name is Kenneth E. Sowell, S-O-W-
8 E-L-L.

9

- - - - -

10 KENNETH SOWELL,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. DAVIS:

15 Q. Mr. Sowell, it's a unique last name. If I
16 mispronounce it please forgive me.

17 A. It's just like Howell, Powell, and Sowell.

18 Q. Okay. I believe you filed a notice of
19 representation on February 16, 2011 with the Charleston
20 Clerk of Court's office is that accurate; on these
21 charges?

22 A. I don't remember the date. My file is with the
23 appellate defense.

24 Q. Okay. Since the PCR application has been filed
25 have you had a chance to review your files?

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1 A. Since when?

2 Q. Since the PCR application was filed have you had a
3 chance to review your file?

4 A. No. I've reviewed the few little portions I have
5 but very little.

6 Q. Okay. Its accurate you were hired by Sasha's
7 parents -- they were paying you, is that right?

8 A. I don't remember. I'm sure she didn't have the
9 money so I assume that's correct.

10 Q. And your main office is in Greenville, South
11 Carolina, correct?

12 A. Yes.

13 Q. You don't have a satellite office here in
14 Charleston?

15 A. No, not in Charleston. I have an office in
16 Spartanburg and I have an office in Rock Hill but I'm not
17 using the Rock Hill office.

18 Q. Okay. Now when you were hired you were aware there
19 was an eminent trial date, right?

20 A. Yes, sir.

21 MR. DAVIS: And Judge, for your purposes it's
22 discussed on page 5 around line 15.

23 Q. [Mr. Davis] It talks about at the time that you
24 substituted there would be no delay and that you were
25 ready. Do you recall telling Judge Jefferson that's

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1 correct?

2 A. That's correct.

3 Q. And that would have been on the first day of trial,
4 which was February 28, 2011.

5 A. No, it would have been ---

6 Q. --- I mean that back and forth, that colloquy with
7 the court was on Monday morning February 28th?

8 A. I don't remember it being on that day but I knew the
9 Judge had to approve me being substituted earlier than
10 that.

11 Q. Certainly, certainly. I apologize; my question is
12 very convoluted. When you told Judge Jefferson that you
13 were aware previously that conversation happened on the
14 Monday morning of the trial, which we just referenced on
15 page 5.

16 A. She probably asked me the same question that she
17 previously asked me --

18 THE COURT REPORTER: I'm sorry, repeat your answer.

19 A. When I got substituted the Judge asked if I had had
20 time.

21 Q. [Mr. Davis] There was a second armed robbery and
22 burglary that was indicted on June 7th, 2010. When, if
23 ever, did you review that second incident indictment with
24 Ms. Gaskins?

25 A. Just when we met.

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1 Q. And did you ever review a kidnapping direct
2 indictment from February 7, 2011?
3 A. I know nothing at all about the kidnapping.
4 Q. I'm so sorry?
5 A. I know nothing at all about the kidnapping. You
6 said February 7th?
7 Q. Yes, sir?
8 A. That would have been through which part of these
9 incidents?
10 Q. I'm so sorry?
11 A. That would have been through which part of these
12 incidents? I know nothing at all about them.
13 Q. After being hired mid February and the trial
14 starting on the 28th how many times did you meet with
15 Sasha?
16 A. She said twice. I can't imagine that would have
17 been correct but not a whole lot of times. I spent most
18 of my time down in Charleston. She did send me a little
19 review of what her contention is -- the facts --
20 Q. That was the email that she referenced?
21 A. Yes, sir.
22 Q. Okay.
23 A. I have it here if you would like to see it.
24 MR. DAVIS: May I approach, Your Honor?
25 A. She does not discuss -- it's either the first or

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1 second one she doesn't discuss in there.

2 Q. [Mr. Davis] Okay. So of the two incidents this
3 discusses one?

4 A. That's correct.

5 MR. DAVIS: May I have a moment, Your Honor, while
6 I share with the Attorney General; this letter?

7 THE COURT: All right, sir.

8 [Whereupon, Mr. Davis and Ms. Olive confer]

9 Q. [Mr. Davis] In preparing for the trial on four
10 charges, two different incidents of burglary first and
11 two different incidents of armed robbery at what point
12 did you discuss the elements of each of those defenses?

13 A. I would assume -- I don't remember discussing it but
14 I would assume the first time I met her.

15 Q. And as you just said the email covers one of the two
16 incidents, correct?

17 A. I don't remember the details; whatever it shows.

18 Q. Do you recall ---

19 A. --- it is not complete. That one incident is not
20 complete.

21 Q. You recall though these allegations being that these
22 two incidents were two days apart?

23 A. I think they were three days apart.

24 Q. Two different residences, correct?

25 A. That's correct.

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1 Q. Two different ---

2 A. --- both homeowners with coaches at the Citadel. I
3 never figured that out. You're a quarterback at the
4 Citadel which means 25 hours a day you're with the coach
5 and you expect the coach not to recognize his voice.

6 Q. One of the co-defendants was. And these were
7 actually charged by two different law enforcement
8 agencies, correct?

9 A. Whatever the record shows.

10 Q. Now knowing that these cases were two different days
11 apart and required the testimony of different witnesses
12 you never made an attempt to sever the two incidents; to
13 have separate trials?

14 A. I never thought that was an alternative and neither
15 did the public defender who represented her before I got
16 involved. If he was going to do that he would not have
17 waited until ten days prior to trial.

18 Q. I understand. But once you became her attorney you
19 were the one who would be going to trial, correct?

20 A. That's correct.

21 Q. Okay. So it's then your decision about what
22 motions to file.

23 A. That's correct. I don't think the Judge would have
24 denied or granted it. She had the trial set for a long
25 time. I don't think she would have severed it. I didn't

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1 see it being a necessity.

2 Q. In your career have you filed motions to sever
3 charges?

4 A. Yes, sir.

5 Q. And the benefit of severing cases is so that the
6 cumulative effect of the evidence of two different
7 incidents doesn't weigh the jury as to one particular
8 case, is that fair?

9 A. Yes, sir.

10 Q. Okay. And in this case both of these incidents had
11 some graphic and violent testimony, correct?

12 A. That's correct.

13 Q. So the fear, the tactical strategic fear of trying
14 cases two days apart at one time would be that the jury
15 could use the evidence of both to unfairly convict
16 someone even on scant evidence, is that fair?

17 A. If the Solicitor is not able to convince the Judge
18 that this was all one plan.

19 Q. But that was never discussed because you never filed
20 a motion to sever, correct?

21 A. That's correct.

22 Q. And similar to that any potential Lyle elements,
23 other bad acts, if it's a single trial the State would
24 have to jump through the hoops and jump over the hurdles
25 of Lyle to be able to introduce any testimony of the

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1 first or second incident if they would have been severed,
2 is that accurate?

3 A. That's a legal decision I guess you and I can make.

4 Q. I'm sorry?

5 A. I said I guess that's a legal decision that you and
6 I can make.

7 Q. But it's true that if they were separate trials and
8 if the State wanted to reference the other one they would
9 have had to couch it in terms of a Lyle exception, is
10 that fair?

11 A. In terms of?

12 Q. If these were two separate trials and at one of the
13 trials the State sought to introduce testimony from the
14 other incident they would have had to show there would
15 have been an exception to Lyle before the jury would have
16 heard the testimony.

17 A. That's correct. In the whole scheme or plan the
18 Judge would have tried them together.

19 MR. DAVIS: And Judge, page 28 line 17 through 19
20 the court asked if there is a motion to sever and Mr.
21 Sowell said no ma'am.

22 Q. [Mr. Davis] Other than what we've already heard
23 about necessity or defense -- I'm sorry, necessity or
24 duress did you ever discuss any other possible defenses
25 with Ms. Gaskins?

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1 A. Well, she admitted that she was involved in the
2 planning, she was involved in the preparation, she was
3 involved in the actual event. She discussed sharing of
4 the proceeds from the thefts.

5 She was never threatened and she could not fit into
6 the exact parameters of the duress defense because number
7 one she had the ability to get away. She had the ability
8 to escape.

9 She and the three girls the other two girls had very
10 little part in this. She -- they were left in one of the
11 apartments by themselves while the boys went -- I don't
12 know where they went.

13 Q. What we're speaking to now is the strength or the
14 weakness or the necessity for a duress defense.

15 A. That's correct.

16 Q. I'm sorry. What I'm asking is were there any
17 defenses other than that discussed between you and Ms.
18 Gaskins?

19 A. I asked her if she had any other defenses. I
20 couldn't find one and asked her if she had any idea. And
21 I talked to the public defender and he also joined with
22 me that there was no other defense other than duress.

23 I was afraid that the Judge would not allow us to
24 raise that issue because she had plenty of ability to
25 escape. She was never threatened. And I was afraid the

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1 Judge would hold that she didn't meet the threshold and
2 not let us attempt that as a defense. But she did; the
3 Judge did allow it.

4 Q. And a couple of times you said that Ms. Gaskins was
5 not threatened but she testified that she was, correct?

6 A. I think she testified she felt threatened.

7 Q. And you indicated that not only did you discuss it
8 with Ms. Gaskins you also discussed that particular
9 defense with Mr. Butler her prior attorney, right?

10 A. Yes.

11 Q. So knowing at least 12 days before trial that this
12 was your defense why was no action taken to obtain an
13 expert witness prior to trial?

14 A. Case law provides that possibility -- that is a
15 possibility. I didn't see the necessity of trying to
16 prove something that the case law supports.

17 If we had brought a psychiatrist the State would
18 have brought their own psychiatrist and it would have
19 magnified the impact on the jury about proof -- burden of
20 proof as to the defense.

21 Q. So you had considered and specifically chose not to
22 seek out an expert before trial?

23 A. That's correct.

24 Q. Okay. But you obtained new information about co-
25 defendant testimony on the Friday before trial, correct?

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1 A. I don't understand the question.

2 Q. Okay. On the Friday before trial the State
3 forwarded to you information about the details of the
4 testimony that the co-defendants would give that was
5 provided to them in preparing the witnesses for trial.
6 Do you recall that?

7 A. No.

8 Q. Okay. I'll turn your attention to page 6.

9 [Whereupon, the witness reviews document]

10 A. I remember that issue but I don't remember the
11 differences in the testimony.

12 Q. Okay. But you recall the court asking what is it
13 you provided to him on Friday; asking the Solicitor?

14 MR. DAVIS: And Judge, again this is page 6 line 9.

15 Q. [Mr. Davis] [Reading] Your Honor, it was the -- we
16 had brought the co-defendants back in our office to
17 basically trial prep them. In doing so there were some
18 inconsistencies or they basically changed their story a
19 little bit. We summarized and emailed that to Beattie,
20 Mr. Butler, on January 31st.

21 Do you recall that discussion with Judge Jefferson
22 and the Solicitor?

23 A. Yes.

24 Q. And so those inconsistencies or changes in their
25 story was what was provided to you the Friday before

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1 trial, correct?

2 A. Apparently, yes.

3 Q. Okay. And it's that inconsistency -- those
4 inconsistencies or changes that caused you on the Monday
5 morning of trial to ask for a continuance to get a
6 psychiatrist.

7 A. No --

8 THE COURT REPORTER: I'm sorry; what was your
9 answer?

10 A. No.

11 Q. [Mr. Davis] Can you characterize why then there was
12 this long discussion with Judge Jefferson about getting a
13 psychiatrist and having more time to do that but for that
14 new information?

15 A. The Judge was trying to make sure there was not some
16 motion to be made because I didn't ask for a professional
17 witness. The case law provides about the possibility of
18 coercion defense and that would have been all the
19 psychiatrist could have said.

20 I was afraid the psychiatrist would bring up the
21 fact that she had the chance to escape and she didn't try
22 to do that. In fact she was a cooperative co-defendant
23 or cooperative assistant at the second.

24 Q. And your understanding about the presentation of
25 testimony to that mindset comes from the case law that

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1 you had read about how it was admitted or not?

2 A. Yes.

3 Q. Other than I believe it was your brother that you
4 spoke to?

5 A. Yes.

6 Q. Who is a psychologist or psychiatrist?

7 A. Psychiatrist.

8 Q. Psychiatrist. Well, there is a reference to
9 speaking with him that sort of perked your interest on
10 whether you also should get an expert, isn't that
11 accurate?

12 A. No.

13 Q. Okay.

14 MR. DAVIS: And Judge forgive me, I'll suggest the
15 record speaks for itself. It follows in those pages
16 after or around page 6. I'll likely address that in
17 closing argument.

18 Q. [Mr. Davis] You did in fact on the first day or two
19 of trial hire Doctor Randy Waid a local psychiatrist?

20 A. At the request of Judge Jefferson, yes.

21 Q. So your testimony is that the presiding trial judge
22 influenced your defense of Ms. Gaskins?

23 A. Well, she wanted me to hire a psychologist and I did
24 that.

25 Q. Let me circle back just for a second and just so

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1 we're clear about your situation at the time of the
2 trial.

3 MR. DAVIS: And Judge this is the simplest
4 background to kind of set this up.

5 Q. [Mr. Davis] This PCR has been continued for health
6 reasons one prior time, your health reason you had one
7 prior time is that accurate?

8 A. That's correct.

9 Q. I don't recall if it was December of last year or
10 January of this year but around the end or the beginning
11 of 2016-2017?

12 A. I can explain it if you think it's relevant.

13 Q. I'll just use it as a jumping off point. Let's then
14 go back to February 20th were you dealing with health
15 issues at that time?

16 A. No.

17 Q. Okay. Had there been a loss in the family close to
18 the trial date?

19 A. Not that I know of.

20 Q. Okay. Were you on any medications at the time of
21 trial?

22 A. No.

23 Q. Let's stay with the issue of Doctor Waid and his
24 testimony for a second. Do you recall -- and you in fact
25 did call him at trial, correct?

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1 A. Yes.

2 Q. Subject to some parameters that Judge Jefferson had
3 set out early on that first day, do you recall that?

4 A. I don't know what you're talking about.

5 Q. Okay.

6 MR. DAVIS: Judge, page 17 the court begins on line
7 12 but specifically on line 16.

8 Q. [Mr. Davis] Mr. Sowell, do you recall Judge
9 Jefferson [Reading] The person would only be able -- see
10 that's where I get the reason why I'm seeing tentative,
11 Mr. Sowell, is the expert would be able to talk about the
12 effects of it in general. That expert would not be able
13 to say on this particular event that's how your client
14 would have reacted.

15 Do you recall that discussion?

16 A. Yes.

17 Q. Following all that you did hire Doctor Waid,
18 correct?

19 A. That's correct.

20 Q. Funds were provided by Ms. Gaskins' family for that,
21 do you recall?

22 A. They had previously paid me and I used some of those
23 funds.

24 Q. Okay. And then you actually did call Doctor Waid
25 in defense?

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1 A. That's correct.

2 Q. And then during the questioning of Doctor Waid you
3 attempted to flesh out the defense a little bit with him,
4 didn't you?

5 A. Yes.

6 Q. And in fact you tried to set up a hypothetical about
7 a gun being held to someone's head, do you recall that?

8 MS. OLIVE: Your Honor, I'm going to object to this
9 line of questioning. This was addressed on the direct
10 appeal as to this particular hypothetical question with
11 respect to Doctor Waid's testimony.

12 THE COURT: Mr. Davis?

13 MR. DAVIS: Judge, I'll cut right to the case. He
14 attempted to do it. Judge Jefferson did not allow it.
15 There was no objection noted on that. And citing Rule
16 701 and some case law I would show, I would attempt to
17 show, if you need more questioning if you allow more
18 questioning even with the Judge's ruling an objection
19 should have been noted there and it was not as to
20 hypothetical questioning --

21 THE COURT: Overruled. Go ahead.

22 Q. [Mr. Davis] Do you recall -- and for everyone's
23 benefit around page 798.

24 THE COURT: Page what?

25 MR. DAVIS: 798.

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1 THE COURT: 798?

2 MR. DAVIS: Yes, Your Honor.

3 Q. [Mr. Davis] Mr. Sowell, in general do you recall
4 trying to kind of set a scenario for Doctor Waid to
5 explain it to the jury?

6 A. What's your question for me?

7 Q. Do you recall trying to set a scenario or a
8 hypothetical for Doctor Waid so he could explain this
9 more thoroughly for the jury? Do you remember attempting
10 to do that?

11 A. No.

12 Q. Okay. I'll give you a moment and you let me know
13 when you're ready.

14 [Whereupon, the witness reviews document]

15 Q. 798 at line 67 the State brings up the parameters
16 the court had mentioned much earlier so it's around in
17 that area.

18 I'll let you take a moment to refresh your memory
19 about questioning Doctor Waid and some hypotheticals.
20 Can you find the page or do you need to look at my copy?

21 A. Just a second, please.

22 Q. Sure.

23 [Whereupon, the witness reviews document]

24 A. What page?

25 Q. Beginning on 798 and actually the discussion

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1 continues into 801 line 12 for you indicating I will do
2 my best to stay within the parameters. So take a moment
3 because there are a couple of pages there I want you to
4 refresh your recollection on.

5 [Whereupon, the witness reviews document]

6 A. What was your question?

7 Q. Do you recall attempting to question Doctor Waid by
8 use of a hypothetical so that he could explain the
9 defense more thoroughly to the jury?

10 A. Yes, sir.

11 Q. And do you recall there was an objection and Judge
12 Jefferson prevented you from asking hypothetical
13 questions?

14 A. Yes, sir.

15 Q. You made no objection to that?

16 A. That's correct.

17 Q. You did not cite Rule 701 which allows for opinion
18 testimony by experts. I'm sorry 702; I apologize.

19 A. [No response]

20 Q. You did not object to use that rule to allow you to
21 question hypotheticals?

22 A. I don't see in the transcript, no.

23 Q. And in the line of cases including Brown v LaFrance,
24 Wilder v Eberhart, McKnight v State, Alabama Power v
25 Bruce which all allow questioning of experts by

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1 hypotheticals. You had no dispute with the Judge about
2 your procedural authority to question about
3 hypotheticals. You just moved on and did not ask those
4 questions, isn't that accurate?

5 A. That's what it looks like, yes.

6 Q. Okay. What hypotheticals would you have asked?

7 A. I don't know.

8 MR. DAVIS: I don't want to misstate the record,
9 Your Honor.

10 Q. [Mr. Davis] But I believe if I recall you were
11 trying to set up for Doctor Waid that if someone was
12 holding a gun to your head for example hypothetically
13 could that cause you to act in a way that you would not
14 otherwise do. Would you have asked something like that
15 of Doctor Waid?

16 A. I assume.

17 Q. Would you have talked about group mentality and how
18 peer pressure and those kinds of things could influence
19 someone's decision-making processes?

20 A. I don't see anything in here about peer pressure.

21 Q. I'm sorry?

22 A. I don't see anything in here about peer pressure.

23 Q. There was certainly -- there were allegations of a
24 group of at least four folks who committed these
25 offenses, correct?

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- 1 A. That's correct.
- 2 Q. Two males and one other female, correct?
- 3 A. Two other females.
- 4 Q. Okay. And that the males were ---
- 5 A. --- and there were more than two males also.
- 6 Q. Okay. And at times the males were armed at various
- 7 times, correct?
- 8 A. Yes.
- 9 Q. And at various times a group of people were in one
- 10 vehicle correct?
- 11 A. Not all of them.
- 12 Q. I understand but a group of people were in a
- 13 vehicle, correct, leading up to one of these incidents?
- 14 A. I don't remember who was in the cars, no.
- 15 Q. But when you started -- after hiring Doctor Waid and
- 16 talking to your brother who is also a psychiatrist
- 17 knowing the defense was going to be duress when you
- 18 started and blocked from doing hypotheticals it would
- 19 have been to expand the jury's understanding and
- 20 knowledge of this unique defense, is that fair?
- 21 A. I guess.
- 22 Q. In your career had you handled this defense
- 23 previously?
- 24 A. Had I handled a burglary based on duress?
- 25 Q. Yes?

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1 A. I don't know anybody -- the Judge who said --
2 THE COURT REPORTER: I'm sorry?
3 A. The judges all said it was unique.
4 Q. [Mr. Davis] But the overarching purpose of having
5 Doctor Waid testify at all was so the jury would have a
6 better understanding of this defense, correct?
7 A. Yes.
8 Q. And as a psychiatrist as an expert being able to ask
9 him hypothetical scenarios would have enhanced that
10 presentation?
11 A. If I had been successful, yes.
12 Q. Now the State made the jury aware of the fact that
13 Mr. Waid -- Doctor Waid was hired at the last minute. Do
14 you recall them raising that in front of the jury?
15 A. No.
16 Q. I'll reference page 812 line 18.
17 [Whereupon, the witness reviews document]
18 Q. Do you recall that now?
19 A. Recall what?
20 Q. That the State asked Doctor Waid: When were you
21 first hired in this case. And his answer was: He was
22 first contacted this past weekend. Do you recall that?
23 A. Yes.
24 Q. No objection was made on the record? You made no
25 objection, right?

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1 A. You're the one quoting the record.

2 Q. Okay. Well, do you recall making objections that
3 are not in the record?

4 A. No.

5 Q. The only relevance of that potentially is to show
6 that he was hired last minute therefore this was thrown
7 together at the last minute and unprepared. That's not
8 relevant but yet you made no objection, correct?

9 A. I don't know the purpose of the question.

10 Q. My question or the question on the record? I
11 apologize.

12 A. The question from the State.

13 Q. Well when he was hired would have no likelihood to
14 make a fact at issue more or less likely, correct?
15 That's the definition of relevancy.

16 A. I didn't see it as a major issue.

17 Q. Okay. Now you understood that in the discovery
18 provided to you that a male co-defendant was alleged on
19 one of the incidents to have committed a criminal sexual
20 conduct, correct?

21 A. That's correct. And it's also in that statement I
22 got from Sasha ---

23 Q. --- the email?

24 A. The email.

25 MR. DAVIS: And Judge in an abundance of caution

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1 can we have that marked?

2 THE COURT: I'm sorry?

3 MR. DAVIS: In an abundance of caution can we have
4 this email marked or this -- it's not in the form of an
5 email but since it's being referenced can we have it
6 marked as a court's exhibit?

7 THE COURT: Any objection?

8 MS. OLIVE: No objection, Your Honor.

9 THE COURT: It will be admitted in as court's
10 exhibit number 1.

11 [Whereupon, court's exhibit number 1 is marked by
12 the court reporter]

13 [Whereupon, court's exhibit number 1 is entered into
14 evidence by the court]

15 Q. [Mr. Davis] So ahead of trial you knew that there
16 was evidence towards that allegation towards a male co-
17 defendant, correct?

18 A. That's correct.

19 Q. Okay. In none of the evidence provided to you was
20 there any allegation that Ms. Gaskins participated in
21 that?

22 A. She was the one who helped them get in the door.

23 Q. I understand that. I'm talking specifically about
24 any ---

25 A. --- I don't think she was involved in the sexual

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1 act, no.

2 Q. Okay. And so as to her charges of burglary in the
3 first degree and armed robbery as to that one incident
4 whether it could have been a CSC or not since she wasn't
5 charged with that it would be irrelevant, correct?

6 A. If she assisted even though she wasn't charged it
7 doesn't mean she wasn't involved.

8 Q. She wasn't charged with it so it wasn't an element
9 that the State had to prove to this jury, correct?

10 A. I didn't understand the question.

11 Q. If she was not charged with any type of CSC,
12 criminal sexual conduct then evidence towards that
13 criminal sexual conduct is irrelevant as to Ms. Gaskins.

14 A. I don't know that's correct.

15 Q. Okay. Would you give me at least then that
16 testimony about criminal sexual conduct where it's not
17 charged is inflammatory? Do you agree or disagree with
18 that?

19 A. If she was involved in it I think they have the
20 right to ask the question.

21 Q. Right. She was not charged with any sexual offense
22 ---

23 A. --- I didn't say not charged. I said not involved.

24 Q. Okay. So it's your testimony -- it's your opinion
25 the testimony about uncharged conduct should -- is not

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1 objectionable if presented by the State?

2 A. If she assisted I don't see that as being
3 irrelevant.

4 Q. When you say assisted you mean to the actual entry
5 into the residence, correct?

6 A. Correct. And calling in advance setting it up.

7 Q. Setting up a burglary and armed robbery because
8 that's what she was accused of, correct?

9 A. Correct.

10 Q. Okay. So that when -- forgive me, may I have a
11 moment.

12 [Whereupon, Mr. Davis reviews documents]

13 Q. [Mr. Davis] Do you recall Officer Church, the first
14 witness by the State at the beginning of the trial? Do
15 you recall her being called?

16 A. I don't remember who got called when.

17 Q. On page 87 during her direct examination --

18 MR. DAVIS: And just for background, Judge she is
19 the first responding officer to the hospital where one of
20 the victims was.

21 THE COURT: I read it.

22 Q. [Mr. Davis] Mr. Sowell, are you with me on page 87?

23 A. What line?

24 Q. Line -- let's start at line 18. Officer Church's
25 answer is I believe it was the next day after the

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1 incident or the 25th around noon time Emily had gone to
2 the hospital to be evaluated for sexual assault. And the
3 very next line you objected, correct?

4 A. Yes.

5 Q. Based on hearsay, correct?

6 A. Yes.

7 Q. But the purpose of objecting to that testimony is
8 the fact that they were raising this issue of sexual
9 assault. You didn't want the jury hearing that did you?

10 A. I didn't understand the question.

11 Q. You objected because they started talking about
12 sexual assault and you didn't want the jury hearing that
13 did you?

14 A. No.

15 Q. Because it wasn't germane or relevant to her charges
16 of armed robbery and burglary first, correct?

17 A. At that point I was trying to object to anything.

18 Q. On that particular issue the reason you objected
19 then was the last two words from the witness's mouth were
20 sexual assault and that's when you objected, right?

21 A. I objected to anything that was hearsay.

22 Q. Okay. There was testimony from Herbert Joseph
23 Butler dealing with the alleged sexual assault. Do you
24 recall him testifying about that?

25 A. Joseph Butler?

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1 Q. Yes, sir.

2 A. No. There was a Herbert Butler there.

3 Q. Herbert Joseph Butler; that was Emily's boyfriend.

4 Do you recall his testimony?

5 A. No, sir.

6 Q. Okay. I'll reference you to page 115, line 10.

7 [Whereupon, the witness reviews document]

8 Q. Actually line 8.

9 A. Discussing --

10 Q. Page 115, line 8 the answer begins I remember Emily

11 asking us.

12 A. What's your question?

13 Q. Okay. Do you recall -- it goes on or asking them

14 what they were there for or you asking me in reference to

15 the sexual assault or just in general. Just in general.

16 Do you remember that testimony by Mr. Butler?

17 A. No.

18 Q. But there he's talking about what Emily said to him,

19 correct?

20 A. It sounded like an excited utterance to me.

21 Q. But he is talking about what someone else said to

22 him, correct?

23 A. I think that's an exception to hearsay rule based on

24 excited utterance.

25 Q. I understand. Let me ask you my question. My

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1 question is simply this; is he talking about something
2 Emily said to him? That's my question.

3 A. Apparently.

4 Q. And so no objection at that point to hearsay was
5 made by you, correct?

6 A. I don't think it would be hearsay exception; excited
7 utterance would.

8 Q. Okay. No objection because it was talking about
9 the sexual assault that was made, correct?

10 A. -- for itself, I guess.

11 Q. I'm sorry?

12 A. I guess the record speaks for itself.

13 Q. During his testimony on page 120 beginning on line
14 10 he's also talking about something that Emily said to
15 him, correct?

16 A. Apparently, yes.

17 Q. Okay. Talking about she was worried about you know
18 STD's and things like that; you did object at that point
19 didn't you?

20 A. Yes.

21 Q. It was hearsay, correct?

22 A. That's correct.

23 Q. And it also dealt with the sexual assault allegation
24 of a male co-defendant, correct?

25 A. I don't understand what your question is.

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1 Q. If we're talking about STD's it can only be in
2 reference to the alleged sexual assault by one of Ms.
3 Gaskins male co-defendants, correct?

4 A. That would seem like it.

5 Q. Okay. Do you remember co-defendant Mr. Francois
6 testifying at trial?

7 A. No.

8 Q. Okay. Do you recall him -- well, you cross-
9 examined him, correct?

10 A. I don't remember.

11 Q. Okay. So more specifically you don't recall
12 whether he talked about the sexual assault or not?

13 A. No.

14 Q. Okay. On page 175.

15 A. What line?

16 Q. The answer begins on line 8 and more specifically
17 beginning on line 13.

18 [Whereupon, the witness reviews document]

19 Q. [Mr. Davis] So do you remember his testimony? This
20 is co-defendant Francois, on or about line 14. You know
21 you're wrong for what you did and Mr. Starks said -- now
22 he's quoting a third co-defendant -- well at least I
23 apologize. What about you -- I'm sorry, right before
24 that Francois testifies Mr. Rice said man you're dirty;
25 you know you're wrong for what you did. Do you recall

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1 that testimony?

2 A. No.

3 Q. That was talking also -- that was referencing the
4 CSC, the alleged CSC by a male co-defendant, right?

5 A. I don't remember.

6 Q. Okay. And you made no objection either to hearsay
7 since it was quoting someone else or relevance because it
8 was talking about the alleged CSC. You made no objection
9 to either one of those things, correct?

10 A. I guess the record speaks for itself.

11 Q. Okay. Do you recall co-defendant Rice testifying
12 in the trial?

13 A. I don't remember him by that name, no.

14 Q. Okay. So likewise ---

15 A. --- I'm sure he testified but I just don't remember.

16 Q. I'm sorry?

17 A. I don't remember the details.

18 Q. Then let's go to his testimony on page 346.

19 [Whereupon, the witness reviews document]

20 Q. [Mr. Davis] His answer actually starts on 345. But
21 on 346 around line 10 do you recall him testifying and
22 that's when I go into the living room and I see Starks
23 standing over Emily Michalak -- I'm not sure if I'm
24 pronouncing that right -- with his penis out and he's
25 erect and he is standing over her and she is on her

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1 knees. Do you recall that testimony?

2 A. I can see it, yes.

3 Q. You made no objection to the relevance of that at
4 the time.

5 A. The same as before. If she was involved he can
6 testify --

7 THE COURT REPORTER: I'm sorry.

8 A. If she was involved they can testify.

9 Q. [Mr. Davis] Page 349 --

10 MR. DAVIS: Actually, Your Honor, forgive me. I
11 don't have a specific question. It just continues on
12 from there. Then it goes from that point all the way
13 over to page 349, line 20 there is a discussion about
14 that. Again, I don't have a specific question but I
15 wanted to bring the court's attention to that area.

16 Q. [Mr. Davis] Do you recall that co-defendant, another
17 male co-defendant Mr. Starks also testified?

18 A. I remember they all testified.

19 Q. Okay. And on page 446 of his testimony you recall
20 he was the one who was accused of and charged with
21 criminal sexual conduct or if not specifically do you
22 remember that one of the male co-defendants was charged
23 with criminal sexual conduct?

24 A. What's your question?

25 Q. The first one is do you recall that one of the male

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1 co-defendants was charged with criminal sexual conduct?

2 A. Vaguely.

3 Q. Okay. And so do you recall whether it was Mr.

4 Starks or not that was accused of that?

5 A. I don't remember who it was now.

6 Q. Okay. On page 46, I'm sorry 446 line 6 -- or on 5:

7 Question: At some point did you sexually assault Emily.

8 Answer: Yes, sir. Do you recall that now?

9 A. Yes, sir.

10 Q. Okay. Similar line of questioning there was no
11 objection to that being irrelevant to Ms. Gaskins' trial
12 for two burglaries and two armed robberies, correct?

13 A. If she was involved in all of them it's going to
14 come out.

15 Q. Okay. The actual victim of that charge, Emily, do
16 you recall her testifying; one of the residents of the
17 home?

18 A. I remember -- I don't remember who it was but I
19 remember one of the residents did testify.

20 Q. Okay.

21 MR. DAVIS: And Judge, I'll not belabor the point
22 on it. I don't know that I need to give the specific
23 details on it but her testimony is on page 726.

24 THE COURT: Seven what?

25 MR. DAVIS: Twenty-six. There is questioning

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1 beginning on line 7 and goes for two more pages. I don't
2 know if the specific nature needs to be addressed but
3 that was her testimony about what occurred.

4 Q. [Mr. Davis] And just if you could confirm, Mr.
5 Sowell, during that testimony for the next few pages you
6 made no objection to any of her testimony about what co-
7 defendant Starks had allegedly done, is that accurate?

8 A. The same response; if she was involved she was
9 involved.

10 Q. And then a little bit later on, and I'll give you
11 the exact place if you want, a little later Emily
12 testified about the exam that was done because of those
13 allegations on page 734 line 23 you made no objection to
14 her testimony about her physical exam. 734, line 23.

15 [Whereupon, the witness reviews document]

16 A. Like I said before if she was involved even though
17 she was not indicted she was involved so all that
18 testimony can come out.

19 Q. One last thing dealing with that particular witness.
20 When that witness -- when you were cross-examining that
21 witness about how that incident began you were discussing
22 about an interaction at the door of the residence; page
23 737, starting on page 737.

24 [Whereupon, the witness reviews document]

25 A. What line?

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1 Q. [Mr. Davis] Basically at the beginning of your
2 cross-examination you begin almost immediately talking
3 about the girl at the door who began the incident. Is
4 that accurate?

5 A. I don't understand the question.

6 Q. Let's move to 738 your question is on line 14: Why
7 did you think she was the watch girl; because she left
8 the house. So you began discussing with this eyewitness
9 about the female that was at the door, correct?

10 A. I can't understand the question.

11 Q. You began a discussion with this witness about the
12 female who was at her door, is that accurate?

13 A. Yes.

14 Q. During that discussion with her you all but admitted
15 it was Ms. Gaskins who was at the door. You weren't
16 disputing that fact were you?

17 [Whereupon, the witness reviews document]

18 A. I don't understand the question. What exactly are
19 you trying to point out.

20 Q. You weren't disputing -- you basically were
21 conceding to the jury that that female at the door was
22 Ms. Gaskins, correct?

23 A. No.

24 Q. I'm sorry?

25 A. No. I was disputing why she figured the person at

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1 the door was the watch person.

2 Q. Was the watch person?

3 A. Was the watch person.

4 Q. Okay. We talked about times that you did not
5 object to testimony about the alleged -- I think he pled
6 to a criminal sexual conduct. There were times you
7 actually raised the issue of criminal sexual conduct at
8 the trial, isn't that accurate or do you recall?

9 A. I don't recall.

10 Q. Okay. On page 408.

11 [Whereupon, the witness reviews document]

12 Q. [Mr. Davis] Beginning on line 22. And this would
13 have been during co-defendant Rice's testimony. His
14 testimony runs from 306 to 426. So on page 408 line 22
15 you began your question to co-defendant Rice with an
16 apology.

17 Now, I'm sorry that she, meaning Emily the victim,
18 has to relive this but where was Sasha when either of you
19 or Starks stuck your private parts in her mouth. The
20 answer was that Sasha wasn't in the house, correct?

21 A. Is there a question there?

22 Q. You began by apologizing to having to go into the
23 whole CSC issue but you did raise a question about it,
24 correct?

25 A. Yes.

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1 Q. So while drawing light to that you wanted to
2 distance Ms. Gaskins from that, correct?

3 A. I was trying to.

4 Q. But then on the very next page on line 14 you
5 continue to ask and you give details, you ask on line 14:
6 You went back in -- and again this is co-defendant Rice,
7 male co-defendant Rice -- and you went back the third
8 time and he was finally zipping his pants.

9 And then he gives an answer that runs over until
10 page 410 about that act, is that accurate?

11 [Whereupon, the witness reviews document]

12 A. I don't understand the point.

13 Q. [Mr. Davis] You raised the factual allegations a
14 second time during Mr. Rice's testimony, right?

15 A. I was trying to distance her from the sexual
16 assault.

17 Q. Because she wasn't charged with it, right?

18 A. I was trying to make them think she had nothing to
19 do with it.

20 Q. Right. Okay.

21 A. Even though she was the one that let them all in the
22 house.

23 Q. When you were questioning Mr. Starks, the one
24 convicted of it, the one who admitted to it who we
25 referenced earlier in testimony on page 552, when you

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1 were cross-examining Mr. Starks on line 21, 552 line 21
2 -- in fact let me back up just before that on line 17.
3 You're talking about how Mr. Starks might be fearful of
4 co-defendant Rice:

5 You were afraid Reggie was going to kill his
6 victims. And he answered: If you push him to his limit
7 I was afraid of what he might do.

8 You were talking about threats and fear and mindset
9 all going to the defense of duress, is that right?

10 A. I don't understand the question.

11 Q. Just before that you are asking ---

12 A. --- what line? What line?

13 Q. Line 17. You were afraid Reggie was going to kill
14 his victims; that's Reggie Rice. And the answer from Mr.
15 Starks is: If you push him to his limits I'm afraid of
16 what he might do.

17 Well, the reason you're asking him that is you want
18 to set up mindset, you were setting up threats, you were
19 setting up the ability of these folks to do that that
20 would lead to the defense of duress for Ms. Gaskins.
21 That's the reason you're asking that type of question,
22 correct?

23 A. I'm not real sure.

24 Q. Well, why else would you be concerned about threats
25 or fear of a co-defendant other than to back up the

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1 defense of duress?

2 A. I really don't know how to answer that.

3 Q. Okay. Well, the odd thing is immediately
4 thereafter you asked line 21:- This was after you had
5 already raped Herb's girlfriend. That's your question
6 and the answer is: Yes, sir. You raised the issue of
7 the CSC with Mr. Starks, right?

8 A. Are you asking me for a question or an answer?

9 Q. I'm confirming that you raised again with Mr. Starks
10 the fact that he committed a CSC on one of the victims.
11 You raised that on your own accord.

12 A. I don't know if it was on my own accord but I did
13 ask the question.

14 Q. Okay. On page 557 further cross-examination of
15 this same witness on line 19 so after raising it two
16 pages earlier on 19 of 557 you then though attempt to
17 distance Ms. Gaskins.

18 Question: Was Ms. Gaskins in the house when you
19 attacked Emily. Answer: I never attacked Emily.

20 Continuing the answer: Are you referring to when I was

21 ---

22 A. --- which page are you on?

23 Q. 557.

24 A. What line?

25 Q. 19. Your question was Ms. Gaskins in the house when

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1 you attacked Emily you were trying to distance her from
2 the very issue you just raised, correct?
3 A. That's correct.
4 Q. Okay. Question: Was Sasha -- this is line 24 --
5 Question: Was Sasha in the house when you inserted your
6 penis into Herb's girlfriend. Answer: No, sir. And
7 again you're raising the issue simply to distance ---
8 A. --- which line are you talking about? Which line?
9 Q. Line 24 your question.
10 A. Which page?
11 Q. Same page, 557.
12 A. What's the question?
13 Q. You raised the details of the assault only on the
14 next page to get the response that Sasha was not in the
15 house, right? Ms. Gaskins was not in the house, right?
16 A. I don't think so, yes.
17 Q. One final point -- one final location I want you to
18 look at for me please. It's page 740. This would have
19 been during Emily, the victim's testimony. Page 740,
20 line 23.
21 [Whereupon, the witness reviews document]
22 Q. [Mr. Davis] I'm sorry, I'm going to back up, line
23 20.
24 A. What's the question?
25 Q. You're distancing, you're attempting to distance Ms.

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1 Gaskins from the event because on line 20 you ask about:
2 Do you have anything to show that she -- meaning Ms.
3 Gaskins -- knew anything about the taping. The answer
4 is: No. You go a step further did she ---
5 A. --- is this supposed to be the raping?
6 Q. Pardon?
7 A. This taping was this supposed to be the raping?
8 Q. Well, were you asking about taping or raping at that
9 point?
10 A. I'm just seeing it. I don't know what prompted that
11 question.
12 Q. So it could have been about the criminal sexual
13 conduct. It could have been the raping, correct?
14 A. Unless they taped her up and tied her up.
15 Q. Well you followed up on line 23: Did she know
16 anything about the molesting of you. I don't know, no
17 was the answer. So you raised the CSC again simply to
18 distance Ms. Gaskins from it.
19 A. Apparently. Okay, here on page 741 it's talking
20 about duct tape so I guess we're talking about taping.
21 Q. Okay. Final issue Mr. Sowell, you did receive new
22 information about inconsistencies or different stories by
23 the co-defendants on the Friday before trial from the
24 Solicitor's office, right?
25 A. Apparently.

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1 Q. You also received from them a short video
2 purportedly filmed by Ms. Gaskins on the Friday before
3 trial, correct?

4 A. Somebody filmed it; I don't know who filmed it.

5 Q. I'm so sorry?

6 A. I don't know who filmed it.

7 Q. Okay. But you received that evidence the Friday
8 before trial from the Solicitor's office, correct?

9 A. Yes.

10 MR. DAVIS: And Judge, specifically to that video
11 page 630 starting at line 3 there was a discussion of
12 that video what the evidence is and when it was provided.

13 Q. [Mr. Davis] And so, Mr. Sowell, on page 630 line 19
14 in dealing with the video you told the court I didn't
15 know about it, meaning the video, until yesterday at
16 12:30 which would have been Monday. I didn't see it.
17 The court asked you have not seen it and you said no
18 ma'am.

19 And so even despite the fact you had received it
20 last minute on the second day of the trial you had still
21 yet to view that video, right?

22 A. Apparently, yes.

23 Q. You made no motion to suppress that or the State
24 turning it over late?

25 A. I didn't see any damage. No harm no foul.

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1 Q. Okay. You made no motion for a continuance of the
2 entire trial. You did ask for some time right there in
3 court to review it, right?

4 A. Yes, apparently.

5 Q. But to get to that on page 633 line 8 through 10
6 you're asking the Solicitor how long it is and he
7 indicates three minutes and you ask can I see it.

8 And then there is a recess taken. Recess is noted
9 on line 21. So when you're told how short the recording
10 is you ask for a moment then to review it, is that
11 accurate?

12 A. I think I saw that, yes.

13 Q. Okay. But no motion to suppress it, no motion for
14 a continuance of the trial, no motion for a mistrial,
15 correct?

16 A. I don't see the basis for it.

17 Q. Even though the fact that this was the second item
18 of evidence that was given to you on the eve of trial or
19 during trial, correct?

20 A. But if I had known it in advance I don't know what I
21 would have done. If it's irrelevant who cares. Now I
22 don't think the film is irrelevant.

23 Q. You don't think?

24 A. I don't think the film is irrelevant. I don't know
25 how I could have kept it out.

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1 Q. I understand.

2 MR. DAVIS: Your Honor, if I may have just a moment
3 that may be all that I have.

4 THE COURT: Certainly.

5 [Whereupon, Mr. Davis confers with his client]

6 MR. DAVIS: Your Honor, if we could have just a
7 moment so that my client can review the exhibit and then
8 I believe that's all the questions I'm going to have.
9 Thank you, sir.

10 [Whereupon, the applicant reviews documents]

11 MR. DAVIS: Your Honor, thank you so much.

12 Q. [Mr. Davis] Mr. Sowell, thank you. No other
13 questions.

14 THE COURT: Let's take a five minute recess before
15 cross-examination. We'll be in recess for five minutes.

16 [Whereupon, court is in recess from 11:40 a.m. until
17 11:50 a.m.]

18 THE COURT: Lets come back to order. Cross-
19 examination of the witness?

20 MR. DAVIS: Your Honor, forgive me but during the
21 break there is one matter that I would like to put on the
22 record. My client mentioned to me before -- has
23 represented to me before for quite some time she had
24 mentioned this to me before. I had gone on the Clerk's
25 website and she even testified to it today that she was

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1 originally arrested for accessory before the fact. I
2 overlooked it. We've now pulled it up and there was an
3 arrest -- the original arrest date there was a warrant
4 for accessory before the fact. It was nol prossed after
5 the trial so it was never presented at the trial.

6 She would tell you that even with that pending as a
7 possible charge to come back up if we won she still would
8 have gone forward. But it's one that I had not found and
9 I just wanted to put on the record out of an abundance of
10 caution we have discussed it and she would have gone
11 forward with the hearing anyway. And that is warrant
12 number K611488 accessory before the fact to armed
13 robbery. So I apologize and out of an abundance of
14 caution just wanted to add that to the record.

15 THE COURT: Let me just briefly ask Ms. Gaskins a
16 question. Ms. Gaskins, you heard your attorney's
17 statement to the court just now. Do you agree with what
18 he just told me?

19 MS. GASKINS: Certain parts.

20 THE COURT: I'm sorry; your current attorney not
21 your former attorney.

22 MS. GASKINS: Yes, sir.

23 THE COURT: Do you agree with what Mr. Davis just
24 told me?

25 MS. GASKINS: Yes, sir.

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1 THE COURT: To you want to continue with your post
2 conviction application?

3 MS. GASKINS: Yes, sir.

4 THE COURT: Okay.

5 MR. DAVIS: I'm sorry, Judge. Thank you.

6 THE COURT: Cross-Examination?

7 MS. OLIVE: May it please the court, Your Honor.

8 Before I begin cross-examination I just wanted to state
9 for the record that we do have victims present in the
10 courtroom today who testified at this trial. I just
11 wanted to note for the record that they are present.

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1 CROSS-EXAMINATION

2 BY MS. OLIVE:

3 Q. Mr. Sowell, how are you this morning? Mr. Sowell,
4 I'm going to start by just asking you some general
5 questions and then I'll go back through the specifics of
6 the allegations that have been raised today. How long
7 have you been practicing law?

8 A. Since 1974.

9 Q. And how much of your practice has been criminal law?

10 A. A large percentage. I don't know what the
11 percentage would be.

12 Q. Had you handled charges like this before; armed
13 robbery and burglary first?

14 A. Yes.

15 Q. And you had represented defendants at trial on those
16 charges?

17 A. Yes.

18 Q. More than once?

19 A. Yes.

20 Q. You testified during direct examination that you
21 were retained as Ms. Gaskins' attorney by a member of her
22 family?

23 A. I don't remember who retained me. I'm sure the
24 money came from her parents.

25 Q. And again that was about 12 days prior to trial?

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- 1 A. I think that's correct.
- 2 Q. Do you recall specifically how many meetings you had
3 with Ms. Gaskins?
- 4 A. No, but it was more than two though.
- 5 Q. Do you recall where those meetings would have taken
6 place? Would that have been at your office in Greenville
7 or elsewhere?
- 8 A. I would assume it would be in Greenville.
- 9 Q. Do you recall what you would have discussed during
10 those meetings?
- 11 A. The charges, what they had to prove, what her risks
12 were, whether she would testify or not.
- 13 Q. So you testified you would have gone over the
14 charges with her. Would that have included discussing
15 elements of the offenses and what the State would have to
16 prove at trial to prove her guilty?
- 17 A. Yes.
- 18 Q. Did you also discuss the possible punishments of
19 those charges with her?
- 20 A. Yes.
- 21 Q. Did you discuss with her -- you testified that she
22 -- pardon me; I'm not sure if she testified or you
23 testified that she provided you some facts via email, is
24 that correct?
- 25 A. Yes.

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1 Q. Did you have any discussions with her about those
2 emails?

3 A. Yes.

4 Q. Would that have been discussions in person?

5 A. Probably telephone. I would have been in Charleston
6 at the time.

7 Q. Okay. So you had discussions with her over the
8 phone as well as in person?

9 A. Most of the time the conversations would have been
10 on the telephone.

11 Q. Okay. In those emails did she discuss each of the
12 incidents with you? I mean did she provide information
13 about ---

14 A. --- she provided it for one of the robberies. I
15 don't -- the court's got it but I don't think she
16 discussed but just one.

17 MS. OLIVE: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. [Ms. Olive] Would it refresh your memory if you
20 reviewed the document that contains her emails?

21 A. What's your question?

22 Q. Did she discuss with you only one incident or both
23 incidents; excuse me, contained ---

24 A. --- I think she discussed only one.

25 MS. OLIVE: Beg the court's indulgence.

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1 A. Well, she may have discussed both of them but she
2 only kind of accepted responsibility for one.

3 Q. [Ms. Olive] Okay. Mr. Sowell, this is page 2 of
4 court's exhibit 1.

5 [Whereupon, the witness is shown document]

6 Q. Just towards the bottom of the paragraph there.

7 A. Which paragraph?

8 Q. I'm sorry, the bottom paragraph.

9 A. What's the question?

10 Q. You testified that she may not have admitted her
11 involvement but she might have discussed the second
12 incident with you as well -- or excuse me; included it in
13 that email.

14 A. I don't remember. I didn't think this was a full
15 admission of both. I think this basically discusses one
16 of them. I'm not sure.

17 Q. But as far as she did provide you some information
18 as to both incidents?

19 A. Oh yes, definitely.

20 Q. I just wanted to clarify that for the record.

21 A. What she told me was that -- I'm sorry, you didn't
22 ask that.

23 Q. Mr. Sowell, did you file any motions for discovery
24 in this case?

25 A. I had all the discovery the co-defendants had

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1 already received.
2 Q. Okay. So ---
3 A. --- I did see at the last -- those two elements on
4 Friday before the trial on Monday.
5 Q. Which would have been the change in the statement by
6 the co-defendant and the video?
7 A. And the video. I didn't think the change in the
8 statements were that big a deal.
9 Q. But you did review those?
10 A. Yes.
11 Q. Did you review them with Ms. Gaskins?
12 A. Yes.
13 Q. Did you have discussions with her about how that
14 would affect, would or would not affect your strategy at
15 trial and her testimony at trial?
16 A. The changes?
17 Q. Correct.
18 A. It would have affected how I cross-examined them;
19 the witnesses.
20 Q. Did you have discussions with Ms. Gaskins about
21 that?
22 A. Yes.
23 Q. And back to discovery your testimony is that the --
24 to your knowledge did -- you took this case over from
25 Beattie Butler, is that correct?

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1 A. I don't remember his name who the public defender
2 was.
3 Q. Okay. To your knowledge did his file contain all
4 of the discovery that had been requested to that point?
5 A. As far as I knew, yes.
6 Q. Is that based on your review of the file or your
7 discussions with him, do you recall?
8 A. I reviewed the file and came down and talked to him
9 and met with him. We had the same thoughts on defenses.
10 And we both were afraid the Judge --
11 THE COURT REPORTER: I'm sorry?
12 A. We were both afraid the Judge might not let us use
13 that defense because we didn't meet the threshold of
14 proof.
15 Q. [Ms. Olive] And I'll get back to the duress shortly.
16 Did you review the discovery? Did you have an
17 opportunity to review the discovery with Ms. Gaskins?
18 A. The discovery that was in the file when I got the
19 file?
20 Q. Correct.
21 A. Yes.
22 Q. Okay. Back to the issue of defenses did you
23 discuss possible defenses with Ms. Gaskins?
24 A. Yes.
25 Q. Are you aware of any other defenses that were

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1 available to her apart from the defense of duress?

2 A. Both the public defender and I both agreed that she
3 had no other defenses.

4 Q. And did you discuss that with her?

5 A. Yes.

6 Q. Do you feel that you had enough time to meet with
7 Ms. Gaskins prior to trial?

8 A. Yes. I spent about 10 days down in Charleston. I
9 tried to meet with the co-defendants but I couldn't meet
10 with them. I did meet with one. I don't remember which
11 one it was but I did meet with one co-defendant.

12 We had the Solicitor, the public defender; I
13 attempted to meet with the victims but they didn't seem
14 to want to discuss it with me and I certainly couldn't
15 push them.

16 Q. And did you have the victim's statements in your
17 discovery?

18 A. Yes.

19 Q. So you were aware -- were you aware of what
20 testimony they would likely present at trial?

21 A. Yes.

22 Q. Do you feel like you had sufficient time to prepare
23 her case for trial?

24 A. Yes. I mean if the public defender had not been
25 prepared -- without his file I could not have been

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1 prepared but with his file it was not a problem;
2 especially the discussions with him trying to --

3 THE COURT REPORTER: Discussions with?

4 A. Especially him discussing the file with me and
5 trying to assist me.

6 Q. [Ms. Olive] And you already testified that the only
7 defense you are aware of is the defense of duress. What
8 was your overall trial strategy or theory going into
9 trial?

10 A. She had already discussed it with the officers so I
11 could not deny her being involved. All the co-defendants
12 testified against her so a duress defense was really the
13 only defense she really had.

14 Q. Did you have a strategy with regard to how you were
15 cross-examining the State's witnesses, their specific
16 facts that you were trying to bring out in cross-
17 examination?

18 A. I tried to bring out that she was not an active --
19 not a voluntary participant.

20 Q. Did you question them about the inconsistent
21 statements that they made?

22 A. I really don't -- if I did it would be in the file,
23 in the transcript.

24 Q. Is that something you would normally do in a trial?

25 A. Sure, if it was important; changing testimony.

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1 Q. Did you discuss this theory with Ms. Gaskins?

2 A. Which theory?

3 Q. Did you discuss your overall trial strategy with
4 her?

5 A. Yes. In fact the public defender discouraged her in
6 her chances for ---

7 MR. DAVIS: --- Objection, Your Honor; hearsay.

8 THE COURT: Overruled. Go ahead.

9 Q. [Ms. Olive] You can finish your statement.

10 A. That's okay.

11 Q. Mr. Sowell, do you recall whether you called any
12 witnesses other than Ms. Gaskins in her defense at trial?

13 A. I really don't remember.

14 Q. Do you recall whether you would have called any
15 character witnesses?

16 [Whereupon, the witness reviews documents]

17 A. I would have called Ms. Barksdale, Mr. Delaine, Mr.
18 Allison. We had no actual fact witness so those all
19 would have had to be character witnesses.

20 Q. How did the testimony of those witnesses play into
21 your trial strategy?

22 A. Like any character witness. I don't understand what
23 you mean by that.

24 Q. Why did you present these witnesses?

25 A. To make the jury think she is believable and she is

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1 nice and wouldn't have intentionally done this on her
2 own.

3 Q. Do you recall whether you discussed with Ms. Gaskins
4 her right to testify?

5 A. Without her testimony she would have had no defense
6 at all; yes, I did. There were no witnesses as to the
7 coercion except the ones that the State put up and her.

8 And they didn't -- the State's witnesses didn't help
9 her so without her testimony we had no testimony at all
10 concerning coercion.

11 Q. Did you advise her of her rights to remain silent?

12 A. That was part of the question of did she want to
13 testify or not.

14 Q. And she ultimately chose to testify?

15 A. Yes. I thought it was a real risk of concurrent
16 sentences. I believe at that time the maximum sentence
17 would have been 30 years.

18 Q. On the armed robbery?

19 A. I think -- I don't remember the exact date the law
20 changed but it used to be a total number of years
21 sentence if they were concurrent or consecutive still
22 would be 30 but that's changed now.

23 Q. So she was not facing life on the burglary first
24 charges?

25 A. She was. My point was I believe back then 30 years

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1 was a life sentence. They've changed that now.
2 MS. OLIVE: Beg the court's indulgence.
3 [Whereupon, Ms. Olive reviews documents]
4 Q. [Ms. Olive] Mr. Sowell, there was some discussion at
5 the beginning of trial about the potential Neil v Biggers
6 hearing being held regarding identification. But
7 ultimately there was no Neil v Biggers hearing held, do
8 you recall that?
9 A. No.
10 Q. Do you know of any reason -- did you think it was
11 necessary to have a Neil v Biggers hearing?
12 A. No.
13 Q. And why would that be?
14 A. I don't understand the question.
15 Q. Is it because -- was there a basis for challenging
16 the identification of Ms. Gaskins?
17 A. She had already talked to the police officers. She
18 had already testified as to her involvement.
19 Q. And her co-defendants testified as well?
20 A. Yes. Her identity was never in question.
21 Q. So you said her identity was never a question?
22 THE COURT REPORTER: Did you say yes? You nodded.
23 A. Not in question.
24 Q. [Ms. Olive] You testified you did not move to sever
25 the trial because you didn't think it was necessary?

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1 A. I didn't think it would be granted.

2 Q. Did you think it was necessary either?

3 A. No.

4 Q. So you didn't think it would be granted and you
5 didn't think it was necessary?

6 A. [Nods negatively]

7 Q. Why were you concerned that you were not going to be
8 able -- that the Judge was not going to let you proceed
9 on this defense of duress?

10 A. Because she had plenty of ways to -- number one, she
11 brought on the situation herself. She was involved from
12 the beginning. Number two, is that she had plenty of
13 opportunity to escape.

14 There were three women involved. She was directly
15 involved in the whole deal. The other two were minor
16 players. The three girls left the apartment for an
17 extended period of time.

18 Number two, they went to the gas station by
19 themselves after this, I don't remember if it was the
20 first one or second one, but she and the other two girls
21 went to the gas station. And nobody was harming them or
22 threatening them or even a danger to them.

23 Q. It was just two females involved, right; Ms. Bruster
24 and Ms. ---

25 A. --- I think there were three were there not?

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1 Q. There were five total; Mr. Starks, Mr. Rice, and Mr.
2 Francois.

3 A. I was thinking there was a third female. I may be
4 wrong.

5 Q. Nevertheless, your testimony is that she had time
6 that she could have withdrawn from the situation?

7 A. And she could have gone to the police station. She
8 had a car.

9 Q. Did -- Ms. Gaskins testified. In her testimony did
10 she herself indicate that there were times that she was
11 alone when she could have ---

12 A. --- yes.

13 Q. With regard to the psychologist who testified at
14 trial do you recall that you had something printed out
15 that you provided to the State, a hypothetical?

16 A. I don't remember that.

17 Q. Mr. Sowell, do you have the transcript with you?

18 A. Yes, sir.

19 Q. Could you turn to page 798, well really beginning
20 797 line 22?

21 [Whereupon, the witness reviews document]

22 A. I see that. I don't remember that.

23 Q. [Ms. Olive] And then on page 800 line 19 you told
24 the Judge we're hoping to present that hypothetical to
25 the doctor.

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1 A. I see that.

2 Q. And was Judge Jefferson preventing you from asking
3 any hypothetical or was she preventing you from asking a
4 hypothetical of the actual behavior of Ms. Gaskins in
5 this case?

6 A. She was not going to let me get my question --

7 Q. I'm sorry, can you repeat that?

8 A. She was not going to let me get to the ultimate
9 question. She said it was a jury issue.

10 Q. She said -- Judge Jefferson on page 798 said: The
11 doctor cannot get into a hypothetical about what she
12 could have done, would have done, or is capable of doing.
13 He can only testify in general as to human behavior and
14 the effects of fear on human beings generally situated.

15 Is that your recollection?

16 A. That's what it says.

17 Q. Okay. So -- and then again page 800 lines 22
18 through 25 with regard to the specific hypothetical,
19 again we don't have that document with us here today, but
20 the Judge -- you did ask -- do you recall what sort of
21 questions you asked of this expert?

22 A. No.

23 Q. Okay. Do you recall why you called this expert?

24 A. The Judge asked me to. Well, she suggested I do.

25 Q. Okay. Is that because you mentioned you had spoken

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1 to your brother the day before who is a psychiatrist?

2 A. No, that was part of our discussion. She was the
3 one who raised the issue.

4 Q. Okay. I'm not sure -- Mr. Sowell, can I refer you
5 to page 5 of the transcript. It is the first page that
6 we have in our transcript line 1.

7 A. I'm reading.

8 Q. Was there -- is that -- do you recall there being
9 any discussions prior to what you're seeing on page 5?

10 A. Apparently. It's the first question who did you
11 have evaluate your client. So obviously we had to have
12 discussed it earlier; it probably wasn't on the record.

13 Q. So again, but ultimately you chose not to have her
14 evaluated, is that right?

15 A. That's correct.

16 Q. Okay. Did you feel that you needed to have her
17 evaluated concerning this defense of duress?

18 A. No. The case law discusses it and says it is a
19 possibility that someone can be so threatened by fear
20 that they could commit a crime without it being
21 voluntary.

22 Q. And again, do you recall what your purpose was in
23 calling -- I mean did you only call -- you testified that
24 you called a psychologist because the Judge told you to
25 but did you have another reason for calling the

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1 psychologist? This is your...

2 A. She's the one who suggested it. She's the one who
3 requested I do it.

4 Q. And do you recall what sort of questions you asked
5 this expert?

6 A. No.

7 MS. OLIVE: Beg the court's indulgence.

8 [Whereupon, Ms. Olive reviews documents]

9 Q. [Ms. Olive] Mr. Sowell, can you refer to page 806 in
10 the transcript, line 22?

11 [Whereupon, the witness reviews document]

12 Q. And really if it would help to refresh your
13 recollection to sort of just refer to those pages of
14 Doctor Waid's testimony. It's only a few pages.

15 A. What's your question?

16 Q. My question is what sort of questions were you
17 asking him?

18 A. Well, apparently first I was trying to get in his
19 expertise. And we discussed how fear or duress can
20 affect somebody's ability to avoid not being voluntarily
21 involved in a crime.

22 Q. Okay. So again ---

23 A. --- page 108 line 3 sums it up. [Reading] Could
24 fear result in an otherwise completely normal reasonable
25 non-criminal person could fear force them to commit a

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1 crime ---

2 THE COURT REPORTER: --- I'm sorry; read just a
3 little bit slower.

4 A. [Reading] Could fear result in an otherwise
5 completely normal reasonable non-criminal person could
6 fear force them to commit a crime such as burglary or
7 armed robbery.

8 That's what I was trying to get from him or from her
9 if it's a female.

10 Q. Okay. And that's page 808 line 3 through 6. And
11 then you also asked him if having a gun placed against
12 your head -- well, you had to rephrase it.

13 You asked: If threat of bodily injury or death
14 could affect someone to the degree that they would commit
15 a crime of burglary. And he said: Yes.

16 And that testimony was allowed in. So you're asking
17 him about the effects of threat on a person?

18 A. That's correct.

19 Q. In general?

20 A. That's correct.

21 Q. You were not allowed to go into the specific facts
22 of the case but you were asking him hypotheticals based
23 on general human behavior.

24 A. That's correct.

25 Q. And the purpose of that was to aid in the defense of

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1 duress?

2 A. Yes.

3 Q. Regarding the video that was introduced that you
4 viewed for the first time prior to its introduction in
5 trial, the video?

6 A. Yes.

7 Q. And you testified you did not move to suppress the
8 video?

9 A. I don't know what grounds there would have been to
10 do that.

11 Q. Okay. So you did not feel that you had any reason
12 to move to suppress the video?

13 A. That's correct.

14 Q. Did you feel that the video harmed Ms. Gaskins?

15 A. Yes. It showed that she was part of the gang.

16 Q. But other individuals had already testified that she
17 was part of -- when you say gang you mean this group of
18 individuals?

19 A. Right.

20 Q. They had already testified that she had been
21 involved?

22 A. Right. She didn't act like she was in fear.

23 Q. And again you did not feel you had any reason to
24 move to suppress the video?

25 A. That's correct.

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1 Q. Regarding the criminal sexual conduct issue first of
2 all this was not just alleged to happen. Mr. Starks had
3 already pleaded guilty to that, right?

4 A. I think so.

5 Q. I mean all of these co-defendants have pleaded
6 guilty before they went to trial?

7 A. That's my understanding.

8 Q. That was part of the basis of your cross-examination
9 was it not?

10 A. Yes.

11 Q. You testified earlier that you called character
12 witnesses in Ms. Gaskins' defense.

13 A. Well, I really don't remember that but I called four
14 or five people and had no fact witnesses; I had character
15 witnesses. I have not verified that yet by checking the
16 transcript but it makes sense.

17 Q. Did Ms. Gaskins' good character or good reputation
18 have anything to do with your trial strategy?

19 A. No.

20 Q. But you testified earlier that you were trying to
21 distinguish -- you were trying to distinguish her from
22 this conduct, from the CSC?

23 A. Yes.

24 Q. Do you recall -- your strategy at trial as you
25 testified to was that Ms. Gaskins was -- let me rephrase

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1 it. In your opinion the best defense that she had
2 available to her and the only defense that she had
3 available to her was that she was forced into committing
4 each of these acts?

5 A. That's correct.

6 Q. Okay. Was there any trial strategy -- did you know
7 prior to trial that Mr. Starks had been charged with and
8 pleaded guilty to criminal sexual conduct?

9 A. I don't remember that but I'm sure I did.

10 Q. Okay. Do you remember any reason why you would not
11 have tried to exclude that from coming in?

12 A. She's the one who got him in the house to commit the
13 crimes.

14 Q. Do you know of any basis that you could have tried
15 to exclude that?

16 A. I think in theory but I don't think it would have
17 worked.

18 Q. So do you think -- you don't think it would have
19 worked. So if you had tried to exclude that evidence of
20 the criminal sexual conduct conviction or facts involving
21 the criminal sexual conduct if you had made a motion to
22 exclude that do you think it would have been successful?

23 A. No.

24 Q. And the criminal sexual conduct is not the only
25 thing that occurred. There was also in each of these

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1 incidents the victims, the two victims in the first one
2 they were both bound with tape, do you recall that?

3 A. Yes.

4 Q. Okay. And the victim in the second was also bound?

5 A. I don't remember.

6 Q. Okay.

7 A. I just remember the tape issue.

8 Q. And also the victims in the first were roughed up?

9 A. I remember that.

10 Q. Okay. And also the -- one of the co-defendants
11 threatened to -- held a knife to one of the victims, Mr.
12 Butler's penis and threatened to cut his penis off?

13 A. I don't remember that.

14 Q. But there were other things that happened in the
15 course of these burglaries besides the CSC?

16 A. Yes.

17 Q. What was the reason for trying to -- you testified
18 you were trying to distance Ms. Gaskins from the CSC.

19 A. I was afraid the hand of one is the hand of all was
20 going to kill them all. Not kill them; I mean it is
21 going to result in conviction.

22 Q. Did it help or hurt Ms. Gaskins' case for these
23 other individuals to appear more culpable than she?

24 A. Definitely, yes.

25 Q. Was that involved in your trial strategy?

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1 A. Yes.

2 Q. So in addition to trying to distance her from the
3 conduct you're also trying to show that this is not in
4 her character?

5 A. Yes. And she did testify that she and one of the
6 male defendants had been threatened by one of the other
7 ones. I never did understand how these people thought
8 they were going to get away with it.

9 They are sitting there talking in front of the
10 coach. The quarterback is talking to the coaches ten
11 days [sic] a week. The coach had to recognize his voice.
12 He testified he tried to change his voice but I just
13 can't imagine the coach not knowing him.

14 Q. Is there a reason why you would have raised the
15 issue of the CSC as to any of the co-defendants during
16 your cross-examination?

17 A. I don't understand the question.

18 Q. Mr. Davis went through several lines of testimony
19 with you where you asked questions related to the co-
20 defendants involvement with the CSC.

21 A. I was trying to show that she wasn't involved.

22 Q. Okay. Thank you, Mr. Sowell. Those are all the
23 questions I have.

24 THE COURT: Redirect?

25 MR. DAVIS: Thank you, Your Honor.

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1 REDIRECT EXAMINATION

2 BY MR. DAVIS:

3 Q. Two matters, Mr. Sowell. Back to a point you made
4 about a weakness in the defense. You talked about that
5 Ms. Gaskins had plenty of opportunity to escape to go to
6 law enforcement and those types of things. Do you
7 remember your testimony about that?

8 A. Yes.

9 Q. That would have been inbetween the two incidents
10 that were two or three days apart, right?

11 A. She could have gone between the two but she could
12 have also gone after the third she and the other female
13 went to the gas station to get gas all by themselves.

14 Q. So anytime after the first one happened would have
15 been the opportunity to do those things, right?

16 A. It seemed like to me.

17 Q. Okay. I don't know that we got a clear answer to
18 this. Did you ever officially file a Rule 5 Brady
19 request to the Solicitor's office?

20 A. Not individually. But the public defender had
21 already done that ---

22 Q. --- you obtained the file that Mr. Butler had?

23 A. Right.

24 Q. And you didn't file on your own?

25 A. I don't remember.

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1 Q. Okay.

2 MR. DAVIS: Thank you, Your Honor. No other
3 questions.

4 THE COURT: Thank you, sir. You may step down.

5 [Whereupon, the witness is excused and exits the
6 witness stand]

7 THE COURT: You may call your next witness.

8 MR. DAVIS: The applicant rests.

9 THE COURT: Applicant rests. Ms. Olive?

10 MS. OLIVE: No witnesses from the State, Your
11 Honor.

12 THE COURT: I'll be glad to hear argument.

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1 CLOSING ARGUMENTS

2 BY MR. DAVIS:

3 Thank you very much, Your Honor. And Judge I'll not
4 belabor all the points. We've gone quite a bit into
5 detail but what I will point out is obviously you had
6 first of all the opportunity to observe the demeanor, the
7 recollection, the testimony of the two witnesses here
8 today. We are obviously basing our post conviction
9 relief matter on the ineffective assistance of counsel.
10 I'll begin at the very end.

11 While we obtained a copy of the file from the
12 original attorney public defender he filed an independent
13 Rule 5 to ensure that he would have all the items. As we
14 know items of evidence came in on Friday, the Friday
15 before trial and the Monday of trial.

16 When you're determining what to believe here today
17 and whether we have met our burden the recollection of
18 the witnesses about what happened and what didn't happen,
19 what witnesses were called and whether there were two
20 females or three females I would hope you would, as I'm
21 sure you will, take that into consideration when you are
22 determining whether we have met our burden. I would
23 argue that Mr. Sowell had a difficult time explaining the
24 trial strategy. Certainly it was a necessity defense
25 that she was forced into this conduct. That seems clear

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1 from the transcripts which we know and my client knows
2 you have a copy of. He entered into his representation
3 it is undisputed 12 days before the trial date on
4 something this serious; two different incidents of
5 literally most serious offenses, four most serious
6 offenses.

7 While his testimony is well the family came to me
8 and hired me he admittedly knew ahead of time that the
9 Judge had ordered that the case would not be continued
10 even if counsel was substituted. And yet he undertook
11 this Herculean effort with less than two weeks prep time.
12 We begin with that and we believe that in and of itself
13 is ineffective assistance and should not have been
14 entered into.

15 This was a case here in Charleston County. All
16 these charges are in Charleston. His office was in
17 Greenville. That also would make this a difficult
18 preparation let alone the short nature of time to
19 actually prepare.

20 The most important point I wanted to make about
21 Doctor Waid's testimony is two things. Number one, it
22 was not obtained until last minute and even when he was
23 it was not presented appropriately. There is that period
24 in there around 806 on, and Your Honor certainly can
25 review it, where there is an attempt made to use him in

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1 the way you would use an expert to explain this defense;
2 to explain the psychology behind it to ask hypotheticals
3 that was not fully completed. Judge Jefferson -- the
4 State did object and what Judge Jefferson did was
5 parameters. But she allowed some hypothetical
6 questioning.

7 Mr. Sowell did not follow through as he should have
8 on that. His explanation for even why he called Doctor
9 Waid is because Judge Jefferson wanted him to. It shows
10 a complete -- not a complete, it shows disregard to the
11 seriousness and the necessity planning a unique defense
12 like this:

13 That dovetails me into the fact that he did not move
14 to sever these cases. The second question I asked on
15 redirect was about the fact that his weakness in, and I
16 think it's accurate, the weakness in the defense was the
17 fact that we have two incidents that she is alleged to
18 have been involved in and was convicted by a jury of
19 being involved in two incidents two days apart.

20 Well, if you're under duress that gap causes a
21 factual issue. You may have been forced into something
22 the first time and now you're had 48 hours to think about
23 it and you're involved and on the scene the second time
24 that makes that defense must more weak and we certainly
25 understand that factually and logically; all more to the

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1 point of why he should have requested a severance of the
2 cases. If they were dealing with one of the two
3 incidents in a vacuum then it greatly increases the
4 argument that I was under duress. If the jury doesn't
5 get to know about the second event that happens 48 hours
6 later then they are only determining on this incident on
7 this date with two football players -- three football
8 players -- sorry, two football players, another male and
9 another female I felt I had to do this. You don't get to
10 hear about what then allegedly happened two days later.

11 The motion to sever and the use of the expert are
12 hand in hand. They were mishandled by Mr. Sowell. They
13 were not used effectively. If either one or more
14 importantly both of those requests had been made and
15 thoroughly explained to Judge Jefferson we have two
16 different locations, two different sets of witnesses, two
17 different law enforcement agencies two days apart our
18 defense is she was forced into this.

19 Judge, if you try these together it is
20 inappropriate. It also implicates issues where the State
21 if they had attempted to would have had to jump through
22 Lyle hoops if they wanted to introduce other bad -- the
23 other conduct rather than trying them together. Your
24 Honor is obviously very familiar with severance or
25 dividing the charge. They were tried together; both sets

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1 of cases were tried together. On one of the incidents
2 there was a CSC that occurred and one of the males had
3 pled guilty and admitted to it. Not only does Mr. Sowell
4 fail to object when that is raised time and time again; I
5 won't belabor the point, you can find it in the record.
6 Ms. Gaskins was not charged with CSC. The elements of
7 CSC have no -- are not germane to the elements of armed
8 robbery or burglary in the first degree.

9 It's irrelevant. It should have been objected to
10 and I would argue likely sustained on the relevance
11 grounds what a co-defendant did that this client is not
12 charged with is not before this jury to decide. It would
13 be irrelevant. It does not pass the requirements of Lyle
14 to be brought in other acts to try to show either motive
15 or conformity or identity. There is no way the basis is
16 created. And that way finally no matter what; the court
17 always has a gate keeper function under 403 probative
18 versus prejudicial.

19 Even if this had any probative weight, which I would
20 argue it does not as to burglary first or armed robbery,
21 even if it had some weight to that the prejudicial nature
22 of the lurid acts of a male co-defendant, which Ms.
23 Gaskins was never charged should not have been presented
24 to this jury. It sought or it did, in fact, inflame the
25 jury and could have led easily to their guilty verdict.

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1 Of course our burden is to show either. The outcome
2 would have been different; either not guilty, hung jury,
3 or lesser included. And we would argue that had the
4 attorney handled the case properly, handled the defense
5 properly, had this severed, presented the unique defense
6 more appropriately, objected to the CSC testimony and not
7 brought it up himself on multiple occasions then the
8 outcome would likely have been different.

9 Even with the 12 days minimum time to prepare he
10 still received the evidence last minute and that is
11 handled inappropriate as well. No motion for
12 continuance, to suppress, or for a mistrial based on the
13 last minute evidence. The reason that is so important,
14 and maybe not the video, but after receiving the evidence
15 of the discrepancies of the co-defendants Mr. Sowell
16 testified that he thought it was of no consequence.

17 But the record shows that is incorrect because after
18 he finds out of the inconsistencies and the changing of
19 the story then on Monday morning he's talking to Judge
20 Jefferson about getting a psychologist. If that new
21 information would have made no difference then he
22 wouldn't have been trying to seek an expert on the first
23 day of trial.

24 Finally, I'll point out that during his cross-
25 examination he showed that he is unfamiliar, and may have

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1 advised Ms. Gaskins inappropriately, as to her maximum
2 potential punishment if she went to trial. His testimony
3 was it's his understanding that life really means 30
4 years. Of course life is life without parole. And we
5 point that out again to show the ineffective assistance
6 of trial counsel and this short window of time to prepare
7 for very serious offenses.

8 We believe we've met our burden. We believe if he
9 had prepared more thoroughly, or arguably not even have
10 taken on this case on such short notice, but the
11 presentation of the defense was ineffective, the lack of
12 a motion to sever was ineffective, the introduction of
13 the inflammatory uncharged conduct by a co-defendant was
14 ineffective. All of those things are likely to have
15 influenced the jury when they reached their verdict.

16 Again, our burden is to show the outcome would have
17 been different. If they had hung up, if they had found
18 her guilty of the lesser included accessory before or
19 accessory after, if they had found her not guilty any
20 three of those would have been a different outcome.

21 And we think it is very likely that one of those
22 other alternatives would have happened had she had
23 effective assistance. So we would ask you to grant her
24 application for post conviction relief, vacate her
25 convictions and allow her to again face these charges

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1 with new counsel. Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Davis. Ms. Olive?

3 MS. OLIVE: Thank you, Your Honor. May it please
4 the court?

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CLOSING ARGUMENTS

BY MS. OLIVE:

Your Honor, it's the State's position that if you review this record in its entirety you'll see that there has been no constitutional ineffective assistance of counsel. Furthermore, Your Honor, I submit to the court that this court has to look at each of these alleged allegations -- excuse me, each of the claims individually concerning prejudice. South Carolina courts do not combine error to make a finding of prejudice. And it's our position that in reviewing each of these claims there is no prejudice resulting from any alleged deficiency.

Your Honor, first with regard to the fact that Mr. Sowell took this case shortly before trial that was Ms. Gaskins choice. She hired an attorney 12 days before her trial. He testified that he had enough time to meet with her. He was prepared. He reviewed everything that he needed to review with her including the discovery. He reviewed the discovery himself and reviewed it with her.

Specifically regarding discovery the allegation is he filed no independent Rule 5. I would submit that there is no deficiency on his behalf in that regard. He obtained Mr. Butler's file. He reviewed that file with him and he then reviewed the discovery contained in that file with Ms. Gaskins. The only things alleged to have

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1 been missing from the file were those -- the inconsistent
2 statements of the co-defendants, which were provided to
3 him the Friday before which he reviewed and addressed
4 with Ms. Gaskins and addressed on cross-examination to
5 the extent that he felt those inconsistencies were
6 significant. He also reviewed the video and testified
7 that he had no basis to move to suppress the video
8 regardless.

9 So it's our position that there was no deficiency in
10 failing to make an independent motion under Rule 5 and
11 there was no prejudice certainly resulting from that.
12 The only things that were alleged to have been missing
13 did not prejudice the outcome did not -- they were
14 satisfactorily addressed by counsel as he testified and
15 their introduction did not prejudice Ms. Gaskins. And
16 regardless, as Mr. Sowell testified he had no basis to
17 move to suppress the video and no basis has been shown
18 today.

19 And regarding the creditability of the witnesses,
20 Your Honor, in terms of recollection Ms. Gaskins could
21 hardly remember anything during her testimony. Mr.
22 Sowell as you heard him testify did not have his file and
23 this trial was six years ago and he's dealt with
24 illnesses inbetween. He testified to everything he could
25 remember and though he might have not specific

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1 recollection of everything this transcript is 1,000 pages
2 long. But I would submit the fact that he can't remember
3 every detail of the trial should not weigh against his
4 creditability considering the length of time since the
5 trial.

6 With respect to Doctor Waid the State submits that
7 there is no deficiency or prejudice shown concerning how
8 Mr. Sowell dealt with that witness. First we don't have
9 the hypothetical he was asked so we don't have -- there
10 has been no deficiency shown. Only to the extent there
11 was -- beg the court's indulgence, Your Honor.

12 [Whereupon, Ms. Olive reviews documents]

13 MS. OLIVE: First, the argument was made he was not
14 retained until the last minute. Again, Mr. Sowell was
15 retained within a very short period of time. As he
16 testified he had a discussion with his brother concerning
17 this defense of duress and ultimately chose to call a
18 psychologist to testify as to the effects of duress, did
19 not feel he needed the psychologist to evaluate Ms.
20 Gaskins.

21 And although argument has been made today that he
22 was not permitted to ask hypotheticals he certainly asked
23 hypotheticals during Doctor Waid's testimony. He was
24 simply not allowed to ask specific hypotheticals with
25 regard to Ms. Gaskins' specific behavior or reactions or

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1 how she might have reacted in the situation. She
2 testified to that herself. Furthermore, an individual --
3 the defense of duress goes to -- it's an objective
4 reasonable standard. It's not whether -- beg the court's
5 indulgence, Your Honor.

6 [Whereupon, Ms. Olive reviews documents]

7 MS. OLIVE: Ms. Gaskins testified herself as to the
8 effects of these threats on her. And then Doctor Waid
9 testified concerning general effects of fear. So it's
10 our position there is no deficiency that has been shown
11 with regard to Ms. Sowell's handling of Mr. Waid [sic].

12 Furthermore, there has been no prejudice shown with
13 respect to how he handled Mr. Waid's [sic] testimony.
14 This court can only speculate as to how things would have
15 been different had Mr. Sowell handled it in a different
16 manner.

17 Regarding the fact that Mr. Sowell did not move to
18 sever this case it's our position he had no basis to move
19 to sever -- there was no basis to sever the trial. These
20 were the same individuals, both incidents and the
21 offenses were carried out in substantially the same
22 manner. They were close in time and place. For that
23 reason we would submit there is no deficiency for his not
24 moving to sever the case and no prejudice because the
25 same -- even if the case had been severed the same co-

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1 defendants would have testified as to each incident. And
2 with respect to Mr. Davis' argument that the expert
3 testimony essentially -- that the expert's testimony as
4 to the effects of fear on a person and the fact that
5 these were tried together that those go hand in hand,
6 Your Honor I would submit that that would be a cumulative
7 prejudice argument and Your Honor has to look at those
8 separately.

9 Lastly, with regard to the allegation that Mr.
10 Sowell should have moved to exclude reference to the
11 criminal sexual conduct he testified he didn't feel he
12 had a basis to do so. And Your Honor I would submit that
13 there was no evidence that the exclusion of that
14 testimony would have resulted in a different outcome at
15 trial or that there is a reasonable probability that it
16 would have resulted in a different outcome.

17 I would submit that there is overwhelming evidence
18 of guilt in this case. Multiple individuals testified
19 against Ms. Gaskins and testified concerning her
20 involvement. The victim testified concerning what they
21 knew of her involvement as well. Ms. Gaskins testified
22 herself. There was really no dispute whether she was
23 present at each scene and whether she assisted to some
24 extent. Really the only question was whether she was
25 participating out of duress. And even by her own

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1 testimony admitted that she had occasions where she could
2 have withdrawn -- could have withdrawn from the events or
3 recorded the events.

4 She -- her testimony with regards to the initial
5 armed robbery burglary were that when she got to the door
6 one of the co-defendants told her -- and Your Honor I
7 hope I'm not misstating it -- she got out of the car on
8 her own to walk up to the house to knock on the door.
9 She gained entry into the home through deception. The
10 testimony that she gave concerning her involvement in the
11 initial burglary would not have risen to the level of
12 duress regardless.

13 Your Honor, the Supreme Court of South Carolina in
14 State v Benjamin held that coercion is not a defense if
15 there is any reasonable way other than committing the
16 crime to escape the threat of harm. Given -- Your Honor,
17 I would submit that based on the testimony that was
18 presented at trial that she had plenty of opportunity to
19 do so.

20 Therefore, I would submit there is overwhelming
21 evidence of her guilt in this case. And regardless of
22 any deficiency in counsel that deficiency would not have
23 prejudiced her and that would be...

24 THE COURT: Thank you, Ms. Olive.
25

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1 RULING OF THE COURT

2 THE COURT: Let me ask y'all a question to make
3 sure I understand some of the facts in the case. The
4 first burglary did Ms. Gaskins assert that that's when
5 she was threatened with a gun?

6 MS. OLIVE: Did you say murder or burglary?

7 THE COURT: Burglary.

8 MS. OLIVE: Okay.

9 MR. DAVIS: Yes, Your Honor. It will take me a
10 second to find it but ---

11 THE COURT: --- that's what I thought. And then
12 the second burglary occurs about two days later?

13 MS. OLIVE: That's correct.

14 THE COURT: There's not a similar allegation about
15 a weapon then is it?

16 MR. DAVIS: Not specifically, no Your Honor.

17 MS. OLIVE: Your Honor, on page 852 it's her
18 testimony as to the first. She said he told her if she
19 didn't do it he would kill her or he'll kill Stephen.

20 THE COURT: Right. That's the first incident.

21 MS. OLIVE: Right.

22 THE COURT: What is inconceivable to me is if the
23 defense is that it was duress I can't imagine that the
24 Judge even if requested would have severed the two
25 charges because the evidence I think the State would want

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1 to present to show lack of duress was the period of two
2 days to go by and then, as the Attorney General argued a
3 moment ago, a very similar burglary occurs with the same
4 people involved.

5 And I realize that the argument about the criminal
6 sexual conduct evidence could have been prejudicial, but
7 all of the evidence if I read the transcript correctly
8 indicates that Ms. Gaskins was not present when that
9 occurred and knew nothing about that occurring. I think
10 the victim admitted that as well as other witnesses
11 admitted that.

12 To me there is overwhelming evidence of the guilt of
13 the applicant in this case. The court agrees with the
14 arguments and the position as stated by the Attorney
15 General in this case. I find that the applicant has
16 failed to meet applicant's burden of proof and that the
17 application for post conviction relief must be denied.
18 I'm going to ask Ms. Olive if she will please prepare an
19 order consistent with all of that. Thank you so much.

20 MR. DAVIS: Thank you, Your Honor.

21 *****END OF TRANSCRIPT OF RECORD*****
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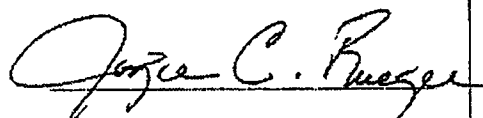
Sasha Gaskins v State
Certificate of the Court Reporter
April 19, 2017

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 19th day of April, 2017.

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

June 12, 2017



Joyce C. Rueger, CVR-M

Court Reporter



COPY

RECEIVED

JAN 22 2019

APPELLATE DEFENSE

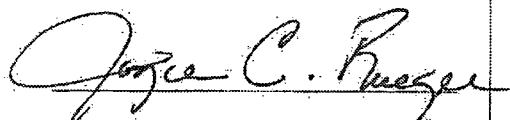
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APPELLATE DEFENSE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT

CASE #: 2014-CP-10-2879

SASHA GASKINS,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

MOTION TO AMEND JUDGMENT

2017 OCT 13 PM 3:20
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Now comes the defendant, by and through his undersigned attorney, moving to amend the Order of Dismissal pursuant to Rule 59(e) of the South Caroline Rules of Civil Procedure. Counsel received a copy of the filed Order on October 3, 2017. The Order fails to address one issue raised at the Post Conviction Relief (PCR) Hearing. The Applicant requests a ruling on the following issues:

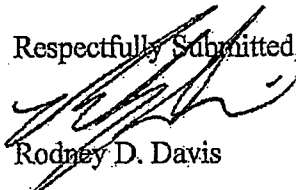
1. Ineffective assistance of counsel by inducing and failing to object to testimony about the sexual assault for which the Applicant was not charged. Such testimony was irrelevant, prejudicial and inflamed the jury to an extent that casts doubt on the fairness of the verdict.

This issue was fully presented at the PCR Hearing yet not addressed in the Order of Dismissal. Specifically, trial counsel testified that he made no objection to this testimony multiple times during the trial (Trial Transcript Pg. 115, Line 10; Pg. 120, Line 11; Pg. 175, Line 14; Pg. 346, Line 8; Pg. 348, Line 8 – Pg. 349, Line 20; Pg. 446, Line 6; Pg. 726, Line 9 – Pg. 728, Line 2; and Pg. 734, Line 23.). Furthermore, the trial attorney elicited testimony about the sexual assault from State's witnesses (Trial Transcript Pg. 408, Line 22; Pg. 409, Line 14 – Pg. 410, Line 21; Pg. 552, Line 21; Pg. 557, Line 19; and Pg. 740, Line 23.). The Applicant was never charged with Criminal Sexual Conduct (CSC). Applicant argued at the PCR Hearing that evidence involving a

CSC that occurred is irrelevant and prejudicial during the trial of the Applicant. It was argued that trial counsel's conduct is ineffective and directly influenced the jury's verdict.

The Order of Dismissal fails to address this issue. Therefore, the Applicant would respectfully request that this Court obtain and review the full evidentiary hearing transcript. Applicant would further request that this Court reconsider the standing Order of Dismissal and direct the entry of a new judgment or alter the standing Order of Dismissal to ensure that all arguments are fully addressed by this Court prior to appeal.

Respectfully Submitted,


Rodney D. Davis

Charleston, SC
10/13, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Sasha Gaskins, SCDC No. 345415,	)	Case No.: 2014-CP-10-2879
	)	
Applicant,	)	
	)	
v.	)	RETURN TO APPLICANT'S MOTION
	)	PURSUANT TO RULE 59(e), SCRPC
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to Applicant's Motion to Amend Judgment filed by Sasha Gaskins (Applicant) dated filed October 13, 2017, Respondent would show this Court:

I.

This matter comes before the Court by way of an application for post-conviction relief filed May 5, 2014, by Sasha Gaskins (Applicant), alleging various grounds of ineffective assistance of counsel . Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 19, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. On September 14, 2017, this Court signed an order of dismissal denying and dismissing this application in full. On October 13, 2017 Applicant, through counsel, filed a Motion to Amend Judgment, asking this Court to rule on an additional issue that although not raised in her application, was addressed at the evidentiary hearing.

II.

In her motion, Applicant asserts this Court's order of dismissal failed to rule on the following issue: "Ineffective assistance of counsel by indicting and failing to object to testimony about sexual assault for which the Applicant was not charged. Such testimony was irrelevant, prejudicial, and inflamed the jury to the extent that casts doubt on the fairness of the verdict."

III.

Respondent submits this Court's Order of Dismissal contains the required findings of fact and conclusions of law as required by S.C. Code Ann. §§ 17-27-70(c) and -80 and Rule 52(a), SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court properly addressed and ruled on all issues properly raised in the post-conviction relief application, and Applicant's motion should be denied. Respondent notes this allegation was not specifically pled in her application, and therefore, this Court's order fully addresses all issues raised.

IV.

Additionally, Respondent submits this additional allegation should be denied on its merits. Applicant alleges trial counsel was ineffective for failing to object to and indicting testimony about the sexual assault of a female victim by a co-defendant. Applicant asserts she was never charged with criminal sexual conduct and that this testimony was therefore irrelevant. Applicant also asserts the testimony was prejudicial and directly influenced the jury's verdict. Counsel testified there was an allegation that one of Applicant's male co-defendants committed criminal sexual conduct on a female victim, and although Applicant was not charged with or alleged to have committed any sexual offense, he did not object to any testimony regarding this because he thought it was relevant to the incidents in which Applicant participated. He further

testified he elicited testimony regarding the sexual offense in an attempt to distance Applicant's involvement in the crimes.

Respondent submits Applicant has failed to meet her burden of establishing either deficiency of counsel or prejudice, and that this allegation must be denied and dismissed the prejudice. Counsel was not deficient for failing to object or inducing this testimony, as it was part of a valid trial strategy to distance Applicant's involvement in the crimes and show she was a more peripheral member of the group while the co-defendants were the ringleaders. See Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (Internal citations omitted) ("When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel."). Additionally, Applicant cannot establish any resulting prejudice from this purported deficiency, as this was an ancillary issue not central to Applicant's involvement in the case, was irrelevant (as Applicant herself concedes), and did not contribute to the verdict.

[Signature page to follow]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SASHA GASKINS, #345415

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

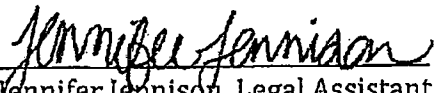
2014-CP-10-2879

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion Pursuant to Rule 59(e), SCRCF** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Duane Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, SC 29405

DATED this the 20th day of October, 2017.


 Jennifer Jennison, Legal Assistant
 For Respondent

cc
AG
AT
GS
SOL

FILED
2017 Nov 9 PM 2:22
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT

JULIE J. ARMSTRONG
CLERK OF COURT
Sasha Gaskins, SCDC No. 345415,

Case No.: 2014-CP-10-2879

BY _____
Applicant,

AMENDED ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed May 5, 2014, by Sasha Gaskins (Applicant), alleging various grounds of ineffective assistance of counsel. Respondent made its Return on March 4, 2015, requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened April 19, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Assistant Attorney General Alicia Olive from the South Carolina Attorney General's Office appeared on behalf of the State. At the conclusion of the hearing, this Court denied the application from the bench. On September 14, 2017, this Court signed an order of dismissal denying and dismissing this application in full. On October 13, 2017 Applicant, through counsel, filed a Motion to Amend Judgment, asking this Court to rule on an additional issue that although not raised in her application, was addressed at the evidentiary hearing. This amended order, addressing this additional ground, follows.

SUMMARY OF PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County

Clerk of Court. During its June 2010 term of court, the Charleston County Grand Jury indicted Applicant for two counts of first-degree burglary (2010-GS-10-4738 & -4794) and two counts of armed robbery (2010-GS-10-4761 & -4793). Kenneth Sowell, Esquire, represented Applicant. Assistant Solicitors Culver Kidd and Dale Savage prosecuted the case on behalf of the State.

On February 28, 2011, Applicant proceeded to a jury trial the Charleston County Court of General Sessions before the Honorable Deadra L. Jefferson, circuit court judge. On March 4, 2011, the jury convicted Applicant as indicted.

The trial court held sentencing in abeyance until Applicant's co-defendants could be sentenced. On March 4, 2011, Applicant submitted a written "Motion for Reconsideration and Motion for New Trial" to the trial court. On March 23, 2011, the trial court issued and filed a written order denying Applicant's motions. On March 31, 2011, the trial court sentenced Applicant to four concurrent terms of eighteen years' imprisonment.

Applicant filed a timely notice of appeal and was represented by Appellate Defender Susan B. Hackett, Esquire, of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Following briefing and oral argument, the South Carolina Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion. State v. Sasha Gaskins, 2013-UP-203 Ct. App. filed May 22, 2013). The Remittitur was returned to the circuit court on June 14, 2013.

SUMMARY OF FACTUAL HISTORY

On the first day of trial, Applicant's counsel moved for a continuance to seek a psychological evaluation of Applicant. The trial court expressed concerns over delaying the trial



and questioned counsel about his reasons for needing an evaluation. After a brief discussion, the trial court stated:

And I need to do a little bit of quick research. But I guess the real bottom line is whether it is applicable at all. You certainly could have her evaluated, and it does not take that long to have her evaluated.

And if it is your intention to have a psychiatrist testify as to the effects of fear on her or threats on her, they should be able to do that in very short order. You should be able to have somebody evaluate her today or tomorrow, and be ready to testify.

(Tr.p.10, line 19-p.11, line 4). After additional discussion concerning Applicant's duress defense, the trial court re-directed focus to the request for additional time to prepare for trial. Counsel asked for an additional week to prepare. The judge commented: "It doesn't take a week for a psychiatrist to evaluate somebody. I have them come over here and evaluate people all the time in a couple of hours." (Tr.p.15, lines 2-9). The assistant solicitor raised concerns about whether testimony from an expert would be proper, to which the trial court replied: "I don't know, I have to cross that bridge when I c[o]me to it." (Tr.p.17, lines 8-15). After additional discussion about whether an evaluation was needed, as well as the appropriate scope of an expert's testimony, the trial court ultimately ruled on Applicant's motion as follows:

The issue at this point, however, is not the admissibility of the evidence, it's making it available to her if she feels that she needs it. Then we will cross the admissibility threshold when appropriate.

But what is before the court at this point is a motion to continue based on giving access to the witness. And I am inclined to give her the ability to do that, but I don't think it's a basis for a continuance because I think her lawyer can figure out when that witness would be made available.

(Tr.p.22, lines 2-12).

Herbert Joseph Butler, III, (Herb) testified that at approximately ten o'clock on the evening of Wednesday, February 24, 2010, he and his girlfriend, Emily Michalak (Emily), were at Herb's house cooking steaks. (Tr.p.105, lines 20-24, p.108, lines 10-23; p.115, lines 17-25). Herb was in the back yard getting the steaks from the grill when Emily answered a knock at the front door. He heard a scream, dropped the steaks as he came in the back, saw Emily's face in total shock, and saw two black males with masks coming into the house. The intruders pointed guns at Herb and Emily and told them to get on the ground and be quiet. Herb described the men as well built and athletic, at least 6 feet tall, with black masks, black gloves, and gray clothes. The men took the victims' cell phones, duct taped their hands together, duct taped their legs together, and put duct tape over Herb's eyes. The intruders later duct-taped a sock in Herb's mouth to keep him quiet, eventually shoving him in a closet. (Tr.p.109, line 24-p.110, line 17).

During a nearly four hour ordeal, Herb and Emily were interrogated, beaten, pistol-whipped and kicked while being asked for money, debit cards, and drugs. Herb gave up his debit cards and PIN numbers willingly. (Tr.p.113, line 16-p.114, line 18.) At some point Herb and Emily were separated and Herb was taken to his bedroom. The intruders continued to demand that he give up the money even though Herb told them he did not have any money. One intruder pulled Herb's pants down, grabbed Herb's penis, put a knife to it, and threatened to cut it off if Herb did not give him some money. They left Herb with his pants down. (Tr.p. 116, lines 1-20). Despite the intruders' attempts to disguise their voices using an accent, Herb recognized one voice as belonging to Reggie Rice, a former Citadel classmate who had been one of Herb's "smoking buddies." (Tr.p.116, line 24-p.118, line 4).



Emily testified she had known Herb since 2004, her freshman year at Bishop England High School, where they ran cross-country together. They had been dating for several months before the night of the incident. Although they had typically been staying at Emily's place downtown, on February 24, 2010, they decided to go to Herb's house on James Island to grill steaks and have dinner and a couple of drinks before going to bed, so she could get up early for a class. (Tr.p.718, line 17-p.720, line 8). While Herb was out back at the grill, Emily heard a knock on the door. When she opened it, she greeted a young female saying her car had just broken down and she needed a cell phone to call for help. Emily identified the female as Applicant, Sasha Gaskins. Emily shut the door and went to retrieve her phone from across the room. When she turned around she noticed Applicant had pushed open the door and was standing about four feet inside Herb's house. Applicant looked over her right shoulder and within two seconds two big males with guns, masks and gloves entered the house and demanded that Emily get on the ground. (Tr.p.720, line 9-p.722, line 2).

Emily had retreated to the kitchen to get Herb and when they both returned to the living room, the defendant was still standing by the doorway. The two intruders proceeded to duct tape Emily and Herb around the wrists and legs and put duct tape over Emily's eyes. (Tr.p.723, line 1-p.724, line 6). Emily and Herb were separated, and while one intruder was in the bedroom questioning Herb, the other man sat down beside Emily and began touching her vagina through her jeans. He then undid his pants, picked Emily up and put her on her knees in front of him. The man put a gun to Emily's head and told her if she didn't do "this" he would kill her. The intruder then put one hand on the back of Emily's head, held the gun to her head with his other hand, and forced his penis into her mouth for approximately ten to fifteen seconds. The sexual assault



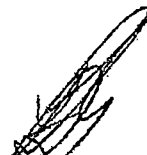
ended when the second intruder returned and told the first man to stop. (Tr.p.726, line 1-p.727, line 23). Before the intruders left for good, they told Emily if they ever heard of her calling the police they were going to come back and find her, no matter where she was, and kill her. (Tr.p.733, lines 11-17). Emily later picked Applicant from a photo line-up prepared by the police. (Tr.p.735, line 14-p.736, line 15).

Joshua Shelton Harpe (Harpe) testified at approximately 1:15 a.m. on Saturday, February 27, 2010, he received a phone call from a female claiming to be a friend's ex-girlfriend. The caller said her car had broken down in a nearby parking lot, that she had called Triple-A, and that she knew Harpe's house was close. She asked if he would come get her and let her stay in his condo until Triple-A arrived, because she didn't want to be alone. (Tr.p.763, line 24-p.764, line 21). Harpe agreed to assist the caller, but as he was walking to his car in the parking garage beneath his apartment building a man put a silver revolver in his face and told him to get on his knees. The man struck him in the back of the head with the pistol and he went to the ground. Harpe then saw two more people come from his left. All three assailants had their faces covered. (Tr.p.765, line 4-p.767, line 17).

The three men forced Harpe at gunpoint to take them up to his apartment. One man put Harper on his knees, pointed a gun at the back of his head and said now would be a good time to start praying. Harpe thought he was going to die. The assailants then duct taped Harpe's hands behind his back, duct taped his ankles together, and put a sock over his eyes secured by duct tape around his head. They ransacked his apartment looking for money and demanded Harpe tell them the PIN number for his debit card or else they would cut off his "balls." Harpe complied with their demands. (Tr.p.768, line 8-p.770, line 6; p.771, line 7-p.773, line 11). During the

attack, Harpe recognized the voice of one of his assailants, Reggie Rice. After the intruders left, Harpe was able to free himself and go for help. After being picked up by the police, Harpe was driven to another location and shown two suspects who were in police custody. He positively identified Reggie Rice. (Tr.p.778, line 15-p.784, line 11).

In addition to eliciting testimony from the three victims of these crimes, the State called Applicant's four co-defendants to the stand. Stephan Francois (Francois), Reginald Rice (Rice), Miguel Dominic Starks (Starks), and Breanna Yastace Bruster (Bruster) provided consistent testimony about a conspiracy to commit the two home invasions, including detailed descriptions of Applicant's knowledge of, and participation in, that conspiracy. Francois testified he was a student at the College of Charleston and was dating Applicant at the time the crimes were committed, and that Bruster was a mutual friend he met through Applicant. He said Starks was a high school friend from Georgia who was attending the Citadel, and that Rice was a friend of Starks whom he met shortly before the robberies. (Tr.p.137, line 17-p.142, line 25). Rice testified that although he was a couple of years ahead of Starks at the Citadel, they met in 2008 and were playing together on the football team. He said he met Francois and Applicant for the first time the day of the first robbery, and met Bruster for the first time a little later that same day, prior to the first robbery. Rice testified he knew both Herb and Harpe from his time at the Citadel and that he and Herb would sometimes hang out and smoke "weed" together. He said he also had smoked marijuana with Harpe and had sometimes purchased it from Herb. (Tr.p.306, line 9-p.315, line 24). Starks testified he met Rice at the Citadel in 2008 where they served in the same "company" together. He said he knew Francois from high school in Georgia and that while he may have seen Applicant before, his first real conversations with her were during the week of the



two robberies. Starks testified he met Bruster for the first time on the day of the first robbery when they were introduced by Francois. (Tr.p.431, line 3-p.434, line 23). Bruster testified she and Applicant were friends and classmates together at the College of Charleston, and met in June of 2009. She said she knew Francois before the robberies, but that she met Starks and Rice for the first time on the day of the first robbery. (Tr.p.586, line 12-p.591, line 20).

Rice and Starks testified that while they were on a drive from Atlanta to Charleston a few days before the first robbery, they started formulating a plan to rob someone. They initially discussed robbing Harpe, but eventually decided to rob Herb because as a seller, they assumed he would have a bunch of drugs and money. They determined they needed someone Herb did not know who could get him to come outside or allow them to get into the house, and they thought they should use a female to knock on the door. Starks suggested enlisting help from his childhood friend Francois and Francois's girlfriend (Applicant). (Tr.p.317, line 12-p.319, line 20; p.434, line 11-p.435, line 17).

Francois, Rice, and Starks testified about a meeting they had in Applicant's dorm room to discuss and to further plan the robbery. Rice, Starks, Francois and Applicant were present and participated in the discussion. Starks had even drawn up a "landscape" of Herb's apartment on a napkin, and explained the role each person should play in the plan. Applicant was expected to knock on the door and say she needed to use the phone, or her car was broken, or something to that effect. In other words, she would be the "bait" to "lure" him out, which would allow the others to enter Herb's house and rob him. (Tr.p.145, line 23-p.148, line 11; p.319, line 21-p.322, line 13; 435, line 21-p.436, line 14). Francois, Rice, and Starks also testified about picking up Bruster and going with her and Applicant to eat dinner before returning to Starks' apartment to



smoke and hang out prior to the first robbery. While at Starks' apartment, Francois, Rice, Starks and Applicant again discussed the robbery, and talked about the possibility of committing two robberies, one against Herb and another against Harpe. (Tr.p.148, line 16-p.158, line 20; p.324, line 20-p.331, line 1; p.438, line 9-p.442, line 21).

Francois, Rice, Starks, and Bruster testified in great detail as to how the burglary and robbery were carried out at Herb's house, including Applicant's participation. Rice and Starks gave details about the sexual assault against Emily and other events while they were inside Herb's house. (Tr.p.158, line 21-p.174, line 22; p.331, line 2-p.355, line 17; p.442, line 22-p.451, line 6; p.595, line 16-p.611, line 18). All four co-defendants further testified about driving back to Starks' apartment after the first robbery, dividing up the items stolen from Herb, and discussing plans for the second robbery. They testified as to Applicant's presence when those additional plans were discussed. Francois, Rice and Starks then described in detail how the ~~burglary and robbery were carried out at Harpe's apartment, including Applicant's participation.~~

(Tr.p.177, line 15-p.179, line 23; p.185, line 5-p.220, line 12; p.355, line 11-p.374, line 23; p.452, line 21-p.453, line 7; p.466, line 2-p.484, line 23; p.616, line 4-p.629, line 10; p.634, line 19-p.642, line 24).

Francois, Rice, Starks, and Bruster testified repeatedly that Applicant was a willing participant in both robberies, that she was part of the discussion when the robberies were being planned, and that she was never threatened in their presence. They testified she did not make any attempt to leave or terminate her participation in either home invasion despite having opportunities to do so. Each of the four testified they neither pointed a gun at nor threatened Applicant, and never saw any other co-defendant point a gun at or threaten Applicant. They also

testified Applicant never appeared to be threatened and never told them she felt threatened before or during the robberies.¹

After the State rested, the assistant solicitor advised the trial court there was a matter of law to discuss. He said Applicant's counsel had just handed him a document provided by a doctor Applicant planned to call as her first witness. The trial court was given a copy of the document and asked Applicant's counsel to explain. Counsel said Applicant would testify as to all the facts in the document, and the doctor would answer a hypothetical question based on those facts. (Tr.p.797, line 18-p.798, line 23). The trial court said the witness cannot answer a hypothetical about what she could have done, would have done, or is capable of doing, and could only testify in general as to human behavior, and the effects of fear on the human being. The trial court added that "no expert can testify as to the propensity for someone to do something, past or future . . . that's not permissible. That's a jury question." The trial court further stated, "he cannot

¹ Francois' testimony appears in the transcript as follows: Tr.p.147, line 10-p.148, line 11; p.153, line 6-p.154, line 8; p.155, lines 8-18; p.158, lines 3-20; p.159, lines 12-21; p.162, lines 10-25; p.164, lines 12-24; p.166, line 16-p.167, line 3; p.169, lines 14-24; p.171, line 11-p.172, line 12; p.173, line 14-p.174, line 10; p.175, line 22-p.176, line 15; p.188, line 18-p.189, line 12; p.191, lines 8-19; p.195, line 9-p.197, line 18; p.211, lines 2-12; p.213, line 15-p.214, line 25; p.217, line 24-p.218, line 25; p.238, line 25-p.239, line 18; p.241, lines 20-22; p.248, lines 3-8; p.259, line 22-p.260, line 3; p.261, lines 2-4; p.272, line 23-p.273, line 2; p.285, lines 12-19; & p.302, lines 12-14.

Rice's testimony appears in the transcript as follows: Tr.p.322, lines 14-20; p.325, line 24-p.327, line 21; p.330, lines 15-25; p.331, line 22-p.333, line 10; p.334, lines 2-5; p.335, lines 2-5; p.336, line 24-p.337, line 4; p.338, line 25-p.340, line 5; p.351, line 21-p.353, line 17; p.358, line 14-p.362, line 7; p.363, lines 20-24; p.369, line 24-p.370, line 5; p.373, lines 4-24; p.375, lines 13-20; p.377, line 19-p.378, line 8; p.397, lines 11-14; p.401, lines 5-20; p.406, lines 4-9; p.424, line 24-p.425, line 2.

Starks' testimony appears in the transcript as follows: Tr.p.436, lines 5-18; p.438, line 23-p.439, line 10; p.442, lines 7-20; p.443, line 21-p.444, line 4; p.446, line 23-p.448, line 4; p.450, lines 14-p.451, line 16; p.452, line 21-p.453, line 3; p.475, lines 9-14; p.479, lines 4-21; p.482, line 3-p.483, line 23; p.488, lines 1-11; p.490, line 12-p.491, line 13; p.493, line 15-p.494, line 11; p.512, lines 19-25; p.532, lines 7-11.

Bruster's testimony appears in the transcript as follows: Tr.p.599, lines 14-22; p.600, line 20-p.601, line 6; p.602, lines 18-20; p.603, lines 19-24; p.604, lines 19-25; p.605, line 21-p.606, line 3; p.608, line 8-p.609, line 5; p.612, lines 10-18; p.617, line 5-p.618, line 23; p.621, line 25-p.622, line 12; p.624, lines 2-11; p.625, line 5-p.626, line 20; p.638, lines 10-13; p.639, lines 2-15; p.641, lines 15-24; p.684, lines 4-10.

say he examined her and in his professional opinion she didn't do it on this date, or that she doesn't have the capacity to do it in the future because that's off limits." (Tr.p.798, line 24-p.800, line 7). Counsel said he had hoped to present the hypothetical to his witness; however, the judge ruled;

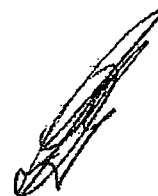
You can't do a hypothetical if it's going to have him say what she could have done or what she will do. That's a jury question.

....
You can always argue to the jury that, you know, of the effects of fear, and that you presented an expert as to the effect of fear, duress and coercion on a person. It's up to the jury to draw that conclusion.

The jury is the ultimate fact-finders whether something took place or didn't take place. But you can't have an expert supplant that and say that I think that they didn't do it or that they did do it or that they have the capacity to do it. That's off limits.

(Tr.p.800, line 19-p.801, line 11). Counsel said he would do his best to stay within those parameters. (Tr.p.801, lines 12-13).

Counsel then called Dr. Lewis Randolph Waid, a clinical psychologist from Mount Pleasant who is on the faculty at the Medical University of South Carolina, to testify on Applicant's behalf. Dr. Waid was admitted as an expert in neuropsychology and testified that the classic example of fear or duress is the absolute threat of loss or life to either the person, another individual, or a family member. (Tr.p.801, line 24-p.808, line 2). Dr. Waid testified that fear could result in an otherwise completely normal, reasonable, non-criminal person committing a crime, such as a burglary or armed robbery. (Tr.p.808, lines 3-15). He explained that the more reasonable the belief of imminent threat of death, the more it can mediate why a person would engage in criminal conduct, and that if the person making the threat has a gun available, or pointed at the subject, it would raise the ante that it is a reasonable threat. (Tr.p.808, line 23-

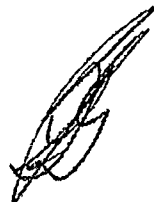


p.809, line 13). Dr. Waid said making a threat on one's life can cause a person to choose what seems to be the lesser of two evils, such as participating in a crime, and that the length of time a person may continue to engage in the participation depends on the continuing period of time he feels there is a continuing threat to himself or family members. (Tr.p.810, line 20-p.812, line 10).

Applicant testified in her own defense. She described her participation in church, school, extracurricular activities, and her academic success, including her acceptance into the College of Charleston. (Tr.p.833, line 16-p.838, line 3). She then described her relationship with Francois, her boyfriend of seven months, and meeting Rice and Starks for the first time on Wednesday, February 24, 2010, the day of the first robbery. (Tr.p.838, line 8-p.842, line 23). Applicant did not deny participating to some extent in the crimes; however, she claimed she initially thought the first robbery was a joke, and only continued participating in the crimes under duress. She testified Starks threatened to kill her or Francois if she did not do what he said. Applicant said ~~she felt scared and that her only options were to do it or die. She testified she was afraid for her~~ life and felt like she would be killed if she did not say yes. (Tr.p.842, line 24-p.878, line 4).

Applicant also called several witnesses who testified about her good character and reputation in the community. Alvenes Barksdale, William Eugene Delaine, III, Sa'Datrius Alson, Brenda Ligon, and Applicant's mother, Rosietta Gaskins Nance, all testified as to Applicant's good character and her reputation in her hometown community of Clinton, South Carolina. (Tr.p.814-p.832; p.940-p.968).

During closing arguments, Counsel for Applicant attempted to attack the State's case in two ways. First, he argued Applicant was a young, sweet, innocent, nice, helpful little girl who does not have the character to voluntarily commit these crimes. (Tr.p.989, lines 6-9; p.999, lines



9-10; p.1001, lines 3-22; p.1006, lines 1-9; p.1010, line 8-11; p.1018, lines 2-4). Second, although counsel acknowledged crimes were committed and that Applicant was involved in those crimes, she only did so out of fear for her life. He argued Applicant was coerced—that she acted under duress. Counsel argued on at least two occasions guns were pointed at Applicant and she was told she would be killed if she did not do as she was directed. (Tr.p.991, lines 2-11; p.992, line 25-p.993, line 16; p.994, line 23-p.1005, line 2; p.1008, line 23-p.1012, line 3).

After Applicant's counsel finished, the assistant solicitor made a closing argument, beginning with a reminder that "any words that come out of [Applicant's counsel's] mouth are not evidence. In the same vein, anything that I say is not evidence," (Tr.p.1018, line 24-p.1019, line 2). Despite an objection, the trial court noted this was an accurate statement of the law, and the assistant solicitor repeated the comment. (Tr.p.1019, lines 3-12). The solicitor noted that ninety percent of counsel's argument had been about painting Applicant as the sweetest little girl in town, but asked the jurors to save their sympathy for the victims. (Tr.p.1019, line 24-p.1020, line 15). The assistant solicitor then took a moment to "address the allegations that there has been some sort of arrangement between me or my office and those witnesses." He said:

And we are going to show them mercy and leniency for their testimony? I don't think. [Applicant] isn't near as culpable as they are, but she is just as guilty. Everything Mr. Sowell presented to you is mitigation. It's something that should be considered as sentencing, not toward guilt.

(Tr.p.1022, lines 5-10). Counsel for Applicant objected on grounds that "he is not quoting the law." When pressed about his objection, counsel specifically argued: "He told them that coercion is not to be considered by the jury." (Tr.p.1022, lines 11-21). The trial court said: "He didn't misstate the law, he said it's something they can consider. They don't have to consider it,"

Counsel responded: "I understand that. He said it has to be considered by the Judge at sentencing." (Tr.p.1022, line 22-p.1023, line 3). The trial court overruled the objection and the assistant solicitor continued his argument. (Tr.p.1023, line 17).

Much later in closing the solicitor said:

We only have one type of criminal justice system and it's the best one in the world. But it treats everybody the same. It treats 18-year-old little girls the same as grown men as far as whether they're guilty or not guilty.

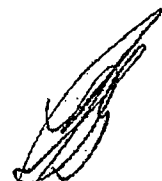
Whether they are a pillar in the community, an active member of the church, or have a great reputation, that's mitigation that's to be given to the judge at sentencing, so you can either down-depart. Or if they have the opposite reputation, if they have a reputation for being a bad guy, they might get a stiffer sentence.

But that's for sentencing, that's not for you to consider, that's not for me to consider, that's for the Judge. You are not to concern yourself with sentencing, you are to concern yourself with guilt.

(Tr.p.1035, lines 5-20). Applicant's counsel made no objection.

~~The trial court then advised the parties she had an instruction on good character and~~
reputation she was contemplating giving to the jury. She said she was now convinced she needed to give it, because the assistant solicitor had argued Applicant's good character could only be considered in mitigation and "that's not the law." The trial court said it did not want to leave the jury with that misapprehension, because it was actually appropriate for them to consider good character in determining whether Applicant committed the crime or not. (Tr.p.1036, lines 9-19). The trial court recited the language she planned to charge and neither party took exception. (Tr.p.1036, line 20-p.1037, line 21).

The trial court then charged the jury on the law, including correct general charges on the roles of the judge and jury, the duty to assess the credibility of witnesses, the duty to weigh the



evidence, expert witness testimony, identification, burden of proof, direct evidence, circumstantial evidence, the presumption of innocence, the crimes and the elements of those crimes, accomplice liability, intent, mere presence, and verdicts. The trial court gave the following charge on good character:

I further instruct you that the defendant has presented evidence of her good reputation and character to show that it would be inconsistent with the defendant committing the crime.

The weight you give to that testimony, like all other testimony in this case, is for you to decide in your good judgment. You may consider testimony of the defendant's good character, along with all the other evidence in the case, in deciding whether or not the defendant committed the crime.

(Tr.p.1042, lines 1-10). The trial court also specifically gave the jury the following charge on the defense of coercion or duress:

Ladies and gentlemen, the defendant has raised the defense of coercion or duress. Coercion or duress is when a person makes another person commit a crime against someone else's person or property by the threat of immediate physical violence.

The coercion or duress must be present, imminent and of the type to create a well-grounded fear of death or serious bodily harm if the act is not done. The fear of injury must be reasonable.

Coercion or duress is not a defense if there is any reasonable way, other than committing the crime, for the defendant to escape the threat of harm. If you find that the defendant was coerced into committing the crime, you must find the defendant not guilty.

(Tr.p.1055, line 20-p.1056, line 9).

At the conclusion of trial, Applicant was convicted of both counts of armed robbery and both counts of burglary in the first degree. (Tr.p.1063, line 14-p.1065, line 2). She was sentenced to four concurrent terms of imprisonment for eighteen years. (Sent.p.36, line 24-p.37, line 6).

ALLEGATIONS RAISED

In her application, Applicant alleged she is being held in custody unlawfully based on allegations of:

1. "Ineffective assistance of counsel."
 - a. Insufficient time to prepare.
 - b. Investigation and presentation of witnesses; There was a witness to help the case but she was not there.
 - c. Lawyer hire a few weeks before trial.

At the evidentiary hearing, Applicant proceeded forward on additional grounds that counsel was ineffective for failing to move for severance, failing to object to testimony regarding a co-defendant committing a sexual offense against a female victim, failing to move for suppression of a video, and failing to have Applicant evaluated by a psychiatric or psychological expert.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant testified first on her own behalf. She testified she has completed one-and-a-half-years of college. (PCR Tr. p. 7-8). She testified she did not recall her arrest date or the particular charges for which she was arrested but was aware it was for two separate incidents. (PCR Tr. p. 9). She testified her first attorney was Beattie Butler from the Charleston County Public Defender's Office and she retained private counsel shortly before trial because she was concerned about health issues with Butler. (PCR Tr. p. 10-11). She testified she met with her retained counsel twice before trial for a total of ninety minutes. (PCR Tr. p. 12-14). She testified she was unsure if counsel reviewed her charges or the elements of the offenses with her. (PCR Tr. p. 13-14). She testified counsel never discussed possible sentences with her or the possibility of being convicted of any lesser-included offenses other than accessory after the fact. (PCR Tr. 20-21). She later testified counsel "maybe" discussed these things with her. (PCR Tr. p.



27). She testified she never discussed the possibility of having two separate trials with counsel. (PCR Tr. p. 14). She testified the only defense they discussed was "necessity." (PCR Tr. p. 15, 27-28). She elaborated her defense was that she was forced to participate in these crimes. (PCR Tr. p. 28-29). She testified counsel discussed her testifying prior to trial and that she did testify during her trial. (PCR Tr. p. 22). She testified counsel had her type out her version of what happened and email it to him prior to trial in preparation for her testimony at trial. (PCR Tr. 28-29). She testified she understood the risks and benefits of testifying before she took the stand. (PCR Tr. p. 26-27). She acknowledged all four of her co-defendant's testified against her at trial and could identify her as a participant. (PCR Tr. p. 26). However, she testified counsel never discussed any identification of her prior to trial. (PCR Tr. 22-23). She testified she knew her co-defendants testified she was not forced or threatened to participate in the crimes. (PCR Tr. 29). She testified her co-defendants' statements to law enforcement were inconsistent with their trial testimony and counsel "could have definitely objected to it or showed the perjury or how they lied." (PCR Tr. p. 19). She acknowledged her attorney cross-examined her co-defendants and highlighted the inconsistencies between their prior statements and trial testimony. (PCR Tr. p. 29). She testified she reviewed her co-defendants' statements prior to trial. (PCR Tr. p. 30). She testified the discovery materials she received came from her first attorney, Beattie Butler, not from retained counsel. (PCR Tr. p. 33).

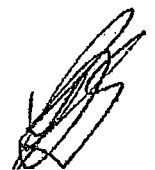
Applicant testified counsel "seemed sad" prior to trial but that she did not have any concerns about his physical ability to conduct the trial. (PCR Tr. p. 15). She testified counsel informed her of "new evidence" the morning of her trial and she thinks it was her co-defendant changing his story or a new video with her co-defendants. (PCR Tr. 16, 18). She testified she did



not have an opportunity to watch the video with counsel and saw it for the first time when it was played for the jury. (PCR Tr. p. 18). She testified the trial focused more on her co-defendants and not enough on her and the part she played in the crimes. (PCR Tr. p. 19-20).

She testified she felt like counsel was not well prepare and was rushed. (PCR Tr. 17). Applicant testified she did not discuss the impact of switching attorneys so close to her trial date, but acknowledged she knew her trial was twelve days away when she retained counsel. (PCR Tr. p. 23-25). She testified her parents made the decision to switch attorneys and retain counsel. (PCR Tr. p. 31). She testified there was no discussion of her being evaluated by a psychiatrist or psychologist until the morning of trial at the suggestion of the trial court. (PCR Tr. p. 16-17). She testified she did not meet with defense expert Dr. Waid before trial. (PCR Tr. 17).

Counsel testified next. Counsel testified he has been practicing law since 1974 and a large percentage of his practice is criminal defense. (PCR Tr. p. 80). He testified he was retained to represent Applicant shortly before trial and he assumes her parents paid his retainer. (PCR Tr. p. 35-36, 80). Counsel testified he told the trial court he was ready for trial despite being retained so close to the trial date. (PCR Tr. 36-37). Counsel testified he does not think Applicant's testimony of them only meeting twice is correct, but acknowledge it was not. "a whole lot of times." (PCR Tr. p. 38, 81). He elaborated he spent most of his time in Charleston preparing for trial after he was retained. (PCR Tr. p. 38, 82). He testified he believes he discussed that the charges arose from two separate incidents the first time he met with Applicant, including the elements of the offenses, possible punishments, and whether Applicant would testify. (PCR Tr. 39, 81). Counsel testified Applicant emailed him her version of events and anticipated testimony, and they then discussed this by phone multiple times. (PCR Tr. p. 82-83).



Counsel testified he did not need to file discovery motions because Applicant's prior counsel had already received discovery. (PCR Tr. p. 83-84). He testified he reviewed discovery with Applicant. (PCR Tr. p. 84-85). Counsel testified he also meet with Applicant's prior counsel and discussed the case. (PCR Tr. p. 85)

He elaborated the two homeowners were football coaches at the Citadel, where some of Applicant's co-defendant's played football. (PCR Tr. p. 39-40). Counsel testified he did not move to sever the case into two trials because he did not think it was necessary. (PCR Tr. p. 40-41, 90-91). He testified he thinks any severance motion would have been denied by the trial court. (PCR Tr. p. 40-42, 90-91). Counsel testified he did not have any medical or personal problems at the time of Applicant's trial. (PCR Tr. p. 48).

Regarding Applicant's role in the crimes, counsel testified, "Well, she admitted that she was involved in the planning, she was involved in the preparation, she was involved in the actual event. She discussed sharing of the proceeds from the thefts. She was never threatened and she could not fit into the exact parameters of the duress defense because number one she had the ability to get away. She had the ability to escape. She and the three girls the other two girls had very little part in this. She—they were left in one of the apartments by themselves while the boys went—I don't I know where they went." (PCR Tr. p. 42-43). He testified he was unaware of any potential defenses other than duress and Applicant's former public defender agreed. (PCR Tr. p. 43, 85). He elaborated Applicant had already given a statement to law enforcement admitting her involvement and all of the co-defendants were testifying as cooperating witnesses, so duress was the only possible defense that could be raised. (PCR Tr. p. 87). He testified he was worried the trial court would not allow him to raise duress as a defense because Applicant "had plenty of



ability to escape" and "was never threatened." (PCR Tr. p. 43). He later testified Applicant was directly involved in these crimes and had plenty of time to escape. (PCR Tr. p. 92). He testified the trial court allowed him to raise duress as a defense despite his concerns. (PCR Tr. p. 44). He testified Applicant testified she felt threatened at trial. (PCR Tr. p. 44). Counsel testified he made a strategic decision not to seek out a psychiatric expert to support his duress defense because the case law supported the defense without the need for an expert and the desire not to have a dueling expert from the State to possibly weaken their defense. (PCR Tr. p. 44, 94). Counsel elaborated, "If we had brought a psychiatrist the State would have brought their own psychiatrist and it would have magnified the impact on the jury about proof—burden of proof as to the defense," (PCR Tr. p. 44). He testified he was also afraid a psychiatric expert would highlight to the jury that Applicant did not try to escape when she had the chance. (PCR Tr. p. 46). He testified the evidence showed Applicant cooperated and assisted in the second incident. (PCR Tr. p. 46). He testified he ultimately retained a psychological expert, Dr. Randy Waid, at the insistence of the trial court. (PCR Tr. p. 47-49, 93). He testified he called Dr. Waid as an expert at trial and attempted to elicit testimony about a hypothetical situation involving a gun being held to someone's head. (PCR Tr. p. 50, 53, 92). He testified the trial court did not allow him to go into this line of questioning with Dr. Waid. (PCR Tr. p. 50, 92). He acknowledged he did not object or provide case law to the trial court in an attempt to elicit this testimony. (PCR Tr. p. 51-53). Counsel testified he had used a defense of duress in a burglary case previously. (PCR Tr. p. 55). Counsel acknowledged he did not object to the State's questioning of when Dr. Waid was hired. (PCR Tr. p. 55-56). Counsel testified he also called numerous character witnesses on Applicant's behalf. (PCR Tr. p. 88, 98, 101).



Counsel testified there was an allegation that one of Applicant's male co-defendants committed criminal sexual conduct on a victim. (PCR Tr. p. 56). He testified although she was not charged with or alleged to have committed any sexual offense, he did not object to any testimony regarding this because he thought it was relevant to the incidents in which Applicant participated. (PCR Tr. p. 57-68, 99-100). Counsel testified he elicited testimony regarding the sexual offense in an attempt to distance Applicant's involvement. (PCR Tr. p. 69-74).

Counsel testified he received a video purportedly filmed by Applicant with her co-defendants shortly before trial and he did not have an opportunity to watch it prior to trial. (PCR Tr. p. 75). Counsel testified he did not move to suppress the video because he did not think it was prejudicial. (PCR Tr. p. 75-76, 97). He testified he was provided with time to watch the video, watched the video prior to its introduction, and did not move to suppress or for a mistrial because he did not feel one was warranted. (PCR Tr. p. 76).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial



process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

After careful review of the entire record, including the testimony presented at the evidentiary hearings, based on the standard discussed above, this Court finds Applicant has failed to carry her burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court’s specific finding regarding each of Applicant’s allegations of ineffective assistance of counsel:

Allegation: Failure to Sufficiently Prepare for Trial

Applicant alleges trial counsel was not sufficiently prepared for trial, citing the short, twelve day period between when she retained counsel and the start of her trial. This Court finds

Applicant failed to show Counsel's trial preparation fell below an objective standard of reasonableness.

"[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." Smith v. State, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (citing Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008)). Applicant elected to fire her public defender and retain private counsel less than two week prior to her trial date and she acknowledged she knew her trial was less than two weeks away. Consequently, Applicant's own actions in choosing to obtain different counsel so shortly before trial is what caused trial counsel to have so little time to prepare for trial. See Strickland v. Washington, 466 U.S. 668, 691 (1984) ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions."). Regardless, counsel testified he had sufficient time to prepare and meet with Applicant. Counsel testified he spent the vast majority of the twelve days ~~between retainer and trial in Charleston preparing for Applicant's trial.~~ Although counsel testified he did not file any discovery motions because Butler already had, counsel met with Butler, reviewed Butler's entire file, discussed the file, possible defenses, and trial theory both with Butler and Applicant, and reviewed all discovery himself and with Applicant. Though counsel did not have the information concerning the change in his co-defendants' testimony until the Friday prior to trial, he testified that when he received that information, he reviewed it and reviewed it with Applicant and discussed the potential impact on testimony and evidence at trial. He testified it was not significant and he cross-examined the co-defendants on any inconsistent statements. Counsel could not recall how many times he met with Applicant prior to trial but that it was more than twice. He also testified they mostly spoke on the phone. He testified he



discussed the State's evidence with Applicant and what the State would have to prove at trial. Counsel testified he had sufficient time to speak with Applicant prior to trial, had sufficient time to prepare for trial, and was prepared to go to trial. This Court finds Applicant has presented no evidence of any deficiency in counsel's trial preparation.

Additionally, Applicant failed to show how the alleged failure to adequately prepare prejudiced her. Applicant presented no evidence of that any additional preparation time or investigation could have discovered or how it could have aided in her defense. Where an applicant fails to offer any evidence of how additional preparation or communication would have resulted in a different outcome, he cannot show prejudice. Smith v. State, 404 S.C. 493, 745 S.E.2d 378 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)) (finding applicant failed to show prejudice resulting from counsel's lack of preparation where applicant presented no evidence of what counsel could have discovered or what other defenses applicant would have requested counsel pursue had he been more fully prepared for trial). Pure conjecture is insufficient to support a finding of prejudice. See Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) ("[A]pplicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice.").

Therefore, this Court finds Applicant has failed to show either deficiency or prejudice with respect to this allegation. Accordingly, Applicant has failed to demonstrate he received ineffective assistance of counsel and this allegation is denied and dismissed.

Allegation: Failure to Move to suppress video

Applicant alleges Counsel was ineffective for failing to move to suppress a video, purportedly shot by Applicant with her co-defendant(s), that was turned over to the defense the

Friday prior to trial. Applicant has presented no evidence that counsel was deficient for not moving to suppress the video. Applicant failed to show on what basis counsel could have objected to the video. Counsel testified and the record reflects he had an opportunity to view the video before it was introduced as evidence. Counsel also testified he did not know how he could have kept the video out and he did not think it was irrelevant because it showed her demeanor between the incidents.

Further, Applicant has failed to show that had Counsel moved to suppress the video, there is a reasonable probability the trial judge would have granted the motion to suppress. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding applicant failed to establish that had he moved to suppress applicant's statement, there is a reasonable probability the trial judge would have granted the motion). Therefore, this Court finds Applicant has failed to satisfy her burden of proving either deficiency or prejudice with respect to this allegation. Accordingly, this allegation is denied and dismissed.

Allegation: Failure to Have Applicant Evaluated

Applicant alleges trial counsel was ineffective for failing to have her evaluated by a psychiatric or psychological expert and then calling that expert as a witness during trial. However, Applicant failed to present such an expert at her evidentiary hearing or offer any evidence of how such an expert would have aided her defense and led to her acquittal.

Because Applicant neither produced such an expert "nor offered [his] testimony in some other manner consistent with the rules of evidence," what his additional testimony would have been is "purely speculative." Bannister v. State, 333 S.C. 298, 304, 509 S.E.2d 807, 810 (1998). This Court finds this allegation must be denied and dismissed.



Allegation: Failure to Move for Severance

Applicant alleges trial counsel was ineffective for failing to move for a severance, essentially arguing she was entitled to separate trials for each incident. She argues the State would not have been able to present evidence from the other incident in each trial, making acquittal likely. Counsel testified he did not move for severance because he had no valid grounds to do so and the trial court would have denied a motion, as the two events were so intertwined. This Court agrees with counsel and finds this allegation must be denied and dismissed with prejudice.

Where "two offenses [are] of the same general nature involving connected transactions closely related in time, place, and character[,] the trial judge [has] power, in his discretion, to order them tried together over [a defendant's] objection in the absence of a showing that [her] substantive rights would have been thereby prejudiced." McCrary v. State, 249 S.C. 14, 36, 152 S.E.2d 235, 246 (Ct. App. 1967)) (citations omitted). In addition, "joinder of offenses in one trial is proper if the offenses (1) are of the same general nature or character and spring from the same series of transactions, (2) are committed by the same offender, and (3) required the same or similar proof." State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (quoting State v. Carter, 324 S.C. 383, 386, 478 S.E.2d 86, 88 (Ct. App. 1996)). Here, the burglaries were days apart, occurred in the same city, were carried out by the same people according to the same plan and in the same general manner. Counsel testified he did not move to sever because he did not believe the motion would have been successful. This Court finds that Counsel's decision not to move to sever the burglary charges into two separate trials was not professionally unreasonable. Likewise, Applicant failed to show that had Counsel moved to sever, the court would have

granted the motion. See State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002) (finding trial judge did not abuse discretion in refusing to sever burglary indictments where offenses were close in time and proximity, arose out of a single chain of events, were of the same nature, and were proved by the same evidence and witnesses); Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding applicant failed to establish that had he moved to suppress applicant's statement, there is a reasonable probability the trial judge would have granted the motion). Therefore, this allegation must be denied and dismissed with prejudice.

Allegation: Failure to object to testimony regarding a co-defendant committing a sexual offense

Applicant alleges trial counsel was ineffective for failing to object to and indicting testimony about the sexual assault of a female victim by a co-defendant. Applicant asserts she was never charged with criminal sexual conduct and that this testimony was therefore irrelevant. Applicant also asserts the testimony was prejudicial and directly influenced the jury's verdict.

~~Counsel testified there was an allegation that one of Applicant's male co-defendants~~ committed criminal sexual conduct on a female victim, and although Applicant was not charged with or alleged to have committed any sexual offense, he did not object to any testimony regarding this because he thought it was relevant to the incidents in which Applicant participated. He further testified he elicited testimony regarding the sexual offense in an attempt to distance Applicant's involvement in the crimes.

This Court finds Applicant has failed to meet her burden of establishing either deficiency of counsel or prejudice, and that this allegation must be denied and dismissed the prejudice. Initially, this Court finds counsel was not deficient for failing to object or inducing this testimony, as it was part of a valid trial strategy to distance Applicant's involvement in the

crimes and show she was a more peripheral member of the group while the co-defendants were the ringleaders. See Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (Internal citations omitted) ("When counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel."). Moreover, this Court finds Applicant cannot establish any resulting prejudice from this purported deficiency, as this was an ancillary issue not central to Applicant's involvement in the case, was irrelevant (as Applicant herself concedes), and did not contribute to the verdict. Therefore, this allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant her application. Therefore, this application for post-conviction relief is denied and dismissed with prejudice.

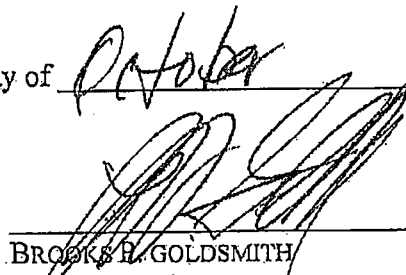
This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

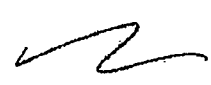


IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. Applicant Sasha Gaskins shall remain in the custody of the State.

AND IT IS SO ORDERED this 30 day of October, 2017.


BROOKS R. GOLDSMITH
Presiding Judge
Ninth Judicial Circuit


_____, South Carolina

1286

SAW20100301122

WITNESSES

Richard Holmes
Charleston City Police Department

AGENCY CASE NUMBER

1003307

ARREST WARRANT NUMBER

DIRIND1090

DATE OF ARREST

June 7, 2010

ACTION OF GRAND JURY

TRUE BILL

Paul P. Cohen
Foreperson of Grand Jury

JUN 07 2010

Date:

VERDICT

Guilty

Paul P. Cohen
Foreperson of Petit Jury

3-4-11
Date:

INDICT.DOT

DOCKET NO. 2010GS1004738

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June 2010 Term

THE STATE

vs.

SASHA ALAJAWON GASKINS

DOB: [REDACTED]

B/F

Indictment for

BURGLARY - FIRST DEGREE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

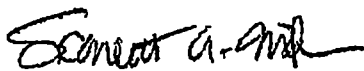
INDICTMENT

At a Court of General Sessions, convened on June 7, 2010, the Grand Jurors of Charleston County present upon their oath:

BURGLARY - FIRST DEGREE

That in Charleston County, South Carolina, on or about February 27, 2010, in concert with others, the Defendant, SASHA ALAJAWON GASKINS, did enter the dwelling of Joshua Harpe, located at ^{Unit 212, 2244 Drive} ~~1850 Ashley Crossing Lane, Apartment F~~, during the nighttime, without consent and with the intent to commit a crime therein. This in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SCARLETT A. WILSON
SOLICITOR

1288

SAW20100301122

DOCKET NO. 2010GS1004761

WITNESSES

Richard Holmes
Charleston City Police Department

AGENCY CASE NUMBER

1003307

ARREST WARRANT NUMBER

DIRIND1091

DATE OF ARREST

June 7, 2010

ACTION OF GRAND JURY

TRUE BILL

Da Silva
Foreperson of Grand Jury
Date:

JUN 07 2010

VERDICT

Gunny

Paul R. O'Brien
Foreperson of Petit Jury

3-4-11
Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June 2010 Term

THE STATE

vs.

SASHA ALAJAWON GASKINS

DOB: [REDACTED]

B/F

Indictment for
ARMED ROBBERY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 7, 2010, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about February 27, 2010, in Charleston County, South Carolina, at Unit Ashley Crossing Drive, Charleston, in concert with others, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, **SASHA ALAJAWON GASKINS**, did take and carry away goods and/or monies from the person or immediate presence of Joshua Harpe with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SCARLETT A. WILSON
SOLICITOR

SAW20100301178

WITNESSES

NICHOLAS WAGNER
Charleston County Sheriff

AGENCY CASE NUMBER

2010003169B

ARREST WARRANT NUMBER

K304805

DATE OF ARREST

March 2, 2010

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

JUN 07 2010

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2010GS1004793

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June 2010 Term

THE STATE

vs.

SASHA ALAJAWON GASKINS

DOB: [REDACTED]
B/FIndictment for
ARMED ROBBERY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

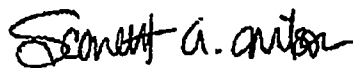
INDICTMENT

At a Court of General Sessions, convened on June 7, 2010, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about February 24, 2010, in Charleston County, South Carolina, at Woodland Shores Road, in concert with others, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, **SASHA ALAJAWON GASKINS**, did take and carry away goods and/or monies from the person or immediate presence of Herbert Butlef III with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SCARLETT A. WILSON
SOLICITOR

SAW20100301178

WITNESSES

NICHOLAS WAGNER
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2010003169B

ARREST WARRANT NUMBER

K304806

DATE OF ARREST

March 2, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 07 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2010GS1004794

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June 2010 Term

THE STATE

VS.

SASHA ALAJAWON GASKINS

DOB: [REDACTED]

B/F

Indictment for

BURGLARY - FIRST DEGREE

FILED

7/1/2010 3:33:07 PM
JULIE J. ARMSTRONG
CLERK OF COURT

10 1132 (02)

STATE OF SOUTH CAROLINA)

INDICTMENT

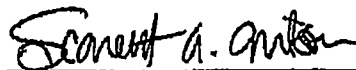
COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on June 7, 2010, the Grand Jurors of Charleston County present upon their oath:

BURGLARY - FIRST DEGREE

That in Charleston County, South Carolina, on or about February 24, 2010, in concert with others, the Defendant SASHA ALAJAWON GASKINS, did enter the dwelling of Herbert Butler III, located at Woodland Shores Road, during the nighttime, without consent and with the intent to commit a crime therein. This in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SCARLETT A. WILSON
SOLICITOR