STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Honorable Brooks P. Goldsmith, Circuit Court Judge

RECEIVED
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S.C. SUPREME COURT

SAMMY WIGGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002031

APPENDIX

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State of South Carolina
County of Lexington

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	10-GS-32-3554
	)	10-GS-32-3555
Samuel T. Wiggins	)	12-GS-32-2283
	)	
Defendant.	)	

October 15 & 17, 2012
Lexington, South Carolina

B E F O R E:

The Honorable Howard P. King, Judge; and a jury.

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

J. Angela Garrick, Assist. Solicitor
Michael D. Ross, Assist. Solicitor
Attorneys for the State

Robert W. Mills, Esquire
Attorney for the Defendant

Stacy L. Sheppard, RPR
Circuit Court Reporter

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(The following proceedings were held on October 15, 2012.)

THE COURT: All right. Madame Solicitor.

MS. GARRICK: Your Honor, the State calls indictment 2012-2283, the State versus Samuel Wiggins indicted for burglary in the first degree; indictment 2010-3554, State versus Samuel Wiggins indicted for armed robbery; indictment 2010-3555, State versus Samuel Wiggins indicted for kidnapping.

THE COURT: All right. Ladies and gentlemen of the jury panel, give me your attention, please. What I'm going to tell you now is not evidence in this case. It is simply the indictments of -- the allegations of the indictments which the Solicitor has related. You will decide this case based upon the evidence that you hear in this courtroom from the witness stand and from any exhibits that are introduced into evidence, but I am going to tell you a little bit about what the allegations of the indictments are so you can determine if you know anything about the case or anything that would prevent you from serving as a juror in this case.

But in the indictments, the State alleges that on or about August the 30th of 2010, first of all, that the defendant, Mr. Samuel Travis Wiggins, did

willfully enter a dwelling, specifically being the dwelling of Carol and Richard Acre, A-c-r-e, without consent, and that was the charge of burglary in the first degree.

Also, it is alleged that on August the 30th, that same date, that he did while willfully armed with a deadly weapon or have in his possession what was reasonably believed to be a deadly weapon, take from the person or presence of Carol Acre by means of force, threats or intimidation, monies, guns and collectible coins, and that is the charge of armed robbery.

And then finally on August the 30th of 2010, the same date, that he did seize, confine, inveigle, decoy, kidnap or carry away Carol Acre by a means of -- by holding her at gunpoint and shoving her to the ground, and that is an indictment for kidnapping.

Those are the three charges against him, kidnapping, armed robbery and burglary in the first degree. As I say, they are not evidence of anything, but simply the charges against him that the State has made.

The defendant, Mr. Wiggins, is represented by Mr. Mills.

Mr. Mills, would you stand, introduce yourself

to the jury and have your client stand and face the jury, please?

MR. MILLS: My name's Robert Mills. I'm an attorney in Columbia downtown, 1728 Main Street in Columbia, South Carolina. This is Samuel Wiggins of Lexington.

THE COURT: Thank you. You may be seated.

MR. MILLS: Thank you, Your Honor.

THE COURT: All right. Ladies and gentlemen, before we select a jury, I need to ask you some questions. Please give your attention to these questions and if any of them apply to you, then respond accordingly.

Is any member of the jury panel related by blood or connected by marriage to the defendant, Samuel Wiggins; if so, please stand?

(There was no response.)

THE COURT: The following individuals may appear as witnesses in this case. And I would ask that if the witnesses are present, if they would stand when their name is called: Kevin Howard, Lexington County Sheriff's Department; Ed, and you're going to have to help me with this one, Solicitor.

MS. GARRICK: Prestigiacomo.

THE COURT: All right. Ed Prestigiacomo of the Lexington County Sheriff's Office; Michelle Singleton of the Lexington County Sheriff's Office; Ken Correll, C-o-r-r-e-l-l, with the Lexington County Sheriff's Department; Mike Phipps, Lexington County Sheriff's Department; Roy Mefford, M-e-f-f-o-r-d, Lexington County Sheriff's Department; Scott Ellis, Lexington County Sheriff's Department; Kenneth Shearer, S-h-e-a-r-e-r, of the Lexington County Sheriff's Department; Jessie Laintz, L-a-i-n-t-z, of the Lexington County Sheriff's Department; Barbara McMullen, Lexington County Sheriff's Office; Candy Kyzer of the Lexington County Sheriff's Department; Margaret Harmon of the Lexington County Sheriff's Department; Renee Strickland of the Lexington County Sheriff's Department; Jeff Flanders of the Lexington County Sheriff's Department; Nikki Rodgers of the Lexington County 9-1-1; Henry Dukes of the Calhoun County Sheriff's Office; Paige Moore of the West Columbia Sheriff's Department; Richard Acre, A-c-r-e; Carol Acre; Amanda Furr; Gloria Kirkland; Elizabeth Corley; Hattie Hall; Braxton Palmer; Myron Jennings.

Is any member of the jury panel related by blood or connected by marriage to any of the

proposed witnesses; if so, please stand?

(There was no response.)

THE COURT: The State of South Carolina is represented by Assistant Solicitors, Angela Garrick and Mike Ross. Ms. Garrick, would you stand and introduce yourself to the jury and introduce your associates, please?

MS. GARRICK: Yes, Your Honor. Thank you.

My name's Angela Garrick. Co-counsel is Mike Ross. Our investigator at the Solicitor's office, Matt Martin. And my victim's advocate, Wendy Frazier.

THE COURT: Thank you.

The defendant -- well, first of all, let me ask you, is any member of the jury panel represented now, been represented in the last ten years by Ms. Garrick, Mr. Ross or any member of the Lexington County Solicitor's Office; if so please stand?

(There was no response.)

THE COURT: The defendant is represented by Mr. Robert Mills. Is there any member of the jury panel represented now or been represented in the last ten years by Mr. Mills or any lawyer with whom he is affiliated; if so, please stand?

(There was no response.)

THE COURT: Thank you. Is any member close personal friends of any of the parties, their lawyers or any of the witnesses whom I have read off to you; if so, please stand?

(Juror stands.)

THE COURT: Yes, sir, in the back.

JUROR: I've known Wendy my whole life.

THE COURT: All right. First of all, let me get your name and number.

JUROR: Rex McCormack, 175.

THE COURT: Mr. McCormack. All right. And who do you know, Mr. McCormack?

JUROR: I know her as Wendy Johnson, but I think she said Frazier.

THE COURT: All right. Who is that, Madame Solicitor? Is that one of the witnesses?

MS. GARRICK: Your Honor, she's our victim's advocate. She won't be testifying.

THE COURT: All right. She will not be testifying?

MS. GARRICK: No, sir.

THE COURT: All right. She's the victim's advocate for the Solicitor's office. Would that fact prevent you from giving to both the State and the defendant a fair and impartial trial based on

the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

THE COURT: Thank you, sir.

Does any member of the jury panel know anything about the facts of this case as I have briefly recited them to you; if so, please stand?

(There was no response.)

THE COURT: Thank you. Is there any member of the jury panel or a member of your immediate family, and I define immediate family as spouse, parent, brother, sister or child, any member of the jury panel or member of your immediate family employed now or been employed in the last ten years with any law enforcement agency; if so, please stand?

(Jurors stand.)

THE COURT: Okay. Let's start over here and get the information from where we're starting. The lady to my right, your name and number?

JUROR: My name is Michelle Pugh. My number is

215.

THE COURT: 215.

JUROR: Yes, sir. My husband is employed with the City of Columbia Police Department as a police officer.

THE COURT: Okay. City of Columbia Police Department?

JUROR: Yes, sir.

THE COURT: All right. Madame Solicitor, there's no City of Columbia officers involved in this matter, are there?

MS. GARRICK: No, sir, Your Honor.

THE COURT: All right. Ms. Pugh, would that fact prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

THE COURT: All right. Thank you, ma'am.

All right. Let's start right here on the

front. Your name and number?

JUROR: Jennifer Jordan, 135.

THE COURT: All right. Ms. Jordan, tell me what your situation is.

JUROR: My husband is retired from Richland County, medically retired from law enforcement.

THE COURT: What agency?

JUROR: Richland.

THE COURT: He's retired from the Richland County --

JUROR: Sheriff's department.

THE COURT: -- Sheriff's Department. All right. Was he a law enforcement officer?

JUROR: Yes, sir.

THE COURT: All right. Would that fact prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you be able to put that fact aside and decide this case based upon what you hear in this courtroom?

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JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

THE COURT: Okay. Thank you, ma'am.

All right. Yes, ma'am, lady to my left.

JUROR: Savilla Webster, 280.

THE COURT: All right. Ms. Webster, what's your situation?

JUROR: My brother is currently a trooper with the South Carolina Highway Patrol.

THE COURT: Okay. All right. Ms. Webster, would that fact prevent you from giving to both the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

THE COURT: Thank you, ma'am.

Yes, sir, the gentleman in the blue-green shirt.

JUROR: Caleb Fulwood, number 93.

THE COURT: All right. Mr. Fulwood, what's your situation?

JUROR: My father is employed at Cayce Police Department.

THE COURT: Kingstree Police Department?

JUROR: Cayce.

THE COURT: Okay. In what capacity?

JUROR: He's the major.

THE COURT: But he's an officer, commissioned officer?

JUROR: Yes, sir.

THE COURT: All right, sir. Would that fact prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir, I would.

THE COURT: Yes, ma'am, the lady right behind him.

JUROR: Laura Richardson, juror 220. My

husband --

THE COURT: Wait just one minute. I'm sorry. Let me get your number. Your number?

JUROR: 220.

THE COURT: All right. Ms. Richardson, yes, ma'am.

JUROR: He currently works -- my husband currently works for City of Columbia Police Department as an investigator. He also worked up until May 2009 as an investigator with Lexington County Sheriff's Department.

THE COURT: So he left the Lexington County Sheriff's Office in 2009?

JUROR: Yes.

THE COURT: All right. Thank you, Ms. Richardson, for that information. That's the kind of information -- I'm not going to ask you the other questions because I feel that he has been too recently with the Lexington County Sheriff's Office, so thank you very much.

JUROR: Christina Young, number 298.

THE COURT: 288.

JUROR: 98, 298.

THE COURT: 298, Ms. Young. All right. Yes, ma'am.

JUROR: My dad's a lieutenant with the South Carolina Highway Patrol.

THE COURT: Okay. All right. Ms. Young, would that fact prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir, I can put it aside.

THE COURT: Ma'am?

JUROR: I can put it aside, yes, sir.

THE COURT: Okay. And would you do that?

JUROR: Yes, sir.

THE COURT: Thank you.

All right. Let's go to the ladies back on the left-hand side. Lady in the white, yes, ma'am.

JUROR: Kathie Rister, number 222.

THE COURT: All right. Ms. Rister, what's your situation?

JUROR: I have a brother that's a state trooper with the highway patrol and then my son's a reserve deputy with Richland County.

THE COURT: I got that about your brother.

What was your son's?

JUROR: Reserve deputy with Richland County.

THE COURT: Richland County, okay. Would those two facts prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put those aside and decide this case based upon the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: Is that a yes?

JUROR: Yes.

THE COURT: And would you do that?

JUROR: Yes.

THE COURT: Thank you.

All right. Lady right behind her.

JUROR: Number 116, Gloria Heh.

THE COURT: What's your situation?

JUROR: My sister is retired from the department of corrections.

THE COURT: Okay. Would that fact prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based upon what you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

THE COURT: Thank you.

And the lady right behind her.

JUROR: 182, Karla Miller.

THE COURT: All right. Ms. Miller, what's your situation?

JUROR: My husband is employed by Clover Police Department, a sergeant.

THE COURT: Which police department?

JUROR: Clover, sir.

THE COURT: Okay. And you're currently a police officer?

JUROR: Me, no.

THE COURT: I'm sorry, I couldn't hear --

JUROR: My husband.

THE COURT: Your husband, okay. Would that fact prevent you from giving to the State and the defendant a fair and impartial trial?

JUROR: No, sir.

THE COURT: And would you be able to put that

aside and decide this case based upon what you hear in this courtroom?

JUROR: Yes.

THE COURT: And would do you that?

JUROR: Yes, sir.

THE COURT: Thank you.

All right. And the gentleman in the middle.

JUROR: Your Honor, Theodore Podewil, number 208.

THE COURT: All right. Mr. Podewil.

JUROR: And as previously mentioned, my wife's retired from the South Carolina Attorney General's Office and I'm a current armed security officer in the state.

THE COURT: All right, sir. Would those facts prevent you from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put those aside and decide this case based upon the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

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THE COURT: Thank you, sir.

Is any member of the jury panel a member of or a contributor to a group whose primary concern is the promotion of law enforcement or victim's rights? These would be groups like CAVE, MADD, CADRE, any of those type of organizations. Anybody a member of those organizations or a contributor to any of those organizations; if so, please stand?

(There was no response.)

THE COURT: Has any member of the jury panel been a victim of a violent crime, that is any type of crime that involves the attack upon your person; if so, please stand?

(Juror stands.)

THE COURT: Yes, ma'am.

JUROR: Michelle Pugh, juror number 215.

THE COURT: Yes, ma'am.

JUROR: I got attacked last year of 2010, that was in Richland County.

THE COURT: All right. Was anyone arrested for that?

JUROR: They didn't arrest her, no.

THE COURT: They did not, okay.

JUROR: Went through the court.

THE COURT: Again, would that fact prevent you

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from giving to the State and the defendant a fair and impartial trial based on the evidence?

JUROR: No, sir.

THE COURT: Would you be able to put that aside and decide this case based on the evidence you hear in this courtroom?

JUROR: Yes, sir.

THE COURT: And would you do that?

JUROR: Yes, sir.

THE COURT: Thank you.

Has any member of the jury panel formed or expressed an opinion as to the guilt or innocence of the defendant, Samuel Travis Wiggins; if so, please stand?

(There was no response.)

THE COURT: Other than what has been disclosed to me, is any member of the jury panel aware of any interest, any bias or any prejudice for or against the defendant, Samuel Travis Wiggins; if so, please stand?

(There was no response.)

THE COURT: Other than what has been disclosed to me, can each member of the jury panel give to the State and the defendant, Samuel Travis Wiggins, a fair and impartial trial; if not, please stand?

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(There was no response.)

THE COURT: All right. Let me ask juror number 171 to come up, please.

And, Counsel, if you'll come up with her, please.

(Whereupon, the following bench conference was held on the record.)

THE COURT: This is juror number 171, she came up when we were qualifying and I'm going to let her tell me what she told me at the time --

COURT REPORTER: I can't hear you.

THE COURT: This is juror number 171. She came up when we were qualifying the panel. This did not disqualify her from the panel, but we'll see whether it disqualifies her from this case.

What's your situation, ma'am?

JUROR: Due to my Christian beliefs, I will not judge another person.

THE COURT: Did everybody understand? I'll talk to you about it later.

Okay. Thank you.

JUROR: Thank you.

(Whereupon, the bench conference with the juror was concluded and the following bench conference with the Judge and the attorneys was held

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on the record.)

THE COURT: What I do with people like this is I make them stay on the panel, but I don't put them on where they can be selected. I'm not going to let her get off for that, but she will not be on this case.

MR. MILLS: Okay.

MS. GARRICK: Thank you, Your Honor.

(The bench conference was concluded.)

THE COURT: All right. Counsel, Mr. Mills, I have been over your voir dire. I decline to -- I did ask -- I did not ask number six.

MR. MILLS: Yes, sir.

THE COURT: Number eight, numbers 10, 11 or 12. I did ask the rest of them. I am going to give to the court reporter your defendant's request for voir dire, have her mark it Court's Exhibit Number 1 and make it a part of the record.

MR. MILS: Thank you, Your Honor.

(Court's Exhibit Number 1, voir dire request, marked for identification purposes.)

THE COURT: Other than that, are there any additional questions on behalf of the State, Ms. Garrick?

MS. GARRICK: No, sir, Your Honor.

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THE COURT: On behalf of the defense, Mr. Mills?

MR. MILLS: Nothing from the defense, Your Honor.

THE COURT: All right. Madame Clerk, if you'll give us a jury.

Counsel, come up, please, just a moment. Let's talk a little bit of procedure.

(Whereupon, a bench conference was held off the record, in the presence of the jury venire, but out of the hearing of the jury venire.)

THE COURT: All right. Ladies and gentlemen, we are now going to go through the selection process. The names of the jurors are put into the computer and are drawn randomly. When your name is called, please come to the lectern up here where the bailiff is standing and stand as he is facing the back of the courtroom.

If you are acceptable to the State, the State will indicate present the juror. If you're acceptable to the defense, the defense will indicate accept the juror and you would have a seat in the jury box to my right. If either side excuses you, then you would have a seat back out with the remainder of the jury panel.

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All right. Madame Clerk.

THE CLERK: When I call your name, if you'll bring your belongings up front, please.

Juror number 235, Patricia Smith.

(Whereupon, Patricia Sinnott Smith, a white female, was called forward.)

THE COURT: Counsel, come up a minute. I forgot to tell you something.

(Whereupon, a bench conference was held off the record, in the presence of the jury venire, but out of the hearing of the jury venire.)

THE COURT: All right. Proceed.

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse Ms. Smith from the trial of this case.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 126, Peter Hynes.

(Whereupon, Peter J. Hynes, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please excuse the juror from the trial of this case.

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THE CLERK: If you'll return to your seat, sir.

Juror number 250, Yvonne Stenger.

(Whereupon, Yvonne C. Stenger, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please accept Ms. Stenger.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 241, Natalie Smith.

(Whereupon, Natalie O. Smith, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 296, Nancy Wyatt.

(Whereupon, Nancy L. Wyatt, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

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MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 89, Kenneth Fleming.

(Whereupon, Kenneth L. Fleming, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, sir.

Juror number 22, Miriam Bland.

(Whereupon, Miriam M. Bland, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 182, Karla Miller.

(Whereupon, Karla P. Miller, a Hispanic female, was called forward

THE CLERK: What say you for the State?

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MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse this juror from the trial of this case.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 84, Justin Fann.

(Whereupon, Justin T. Fann, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please excuse this juror.

THE CLERK: If you'll return to your seat, sir.

Juror number 153, Vanessa Lawton.

(Whereupon, Vanessa A. Lawton, a black female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 33, James Buchman.

(Whereupon, James J. Buchman, Jr., a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse this juror from the trial of this case.

THE CLERK: If you'll return to your seat, sir.

Juror number 9, Warren Barnes.

(Whereupon, Warren R. Barnes, Jr., a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, sir.

Juror number 273, Carol Walker.

(Whereupon, Carol D. Walker, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present the juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 60, Anita Cox.

(Whereupon, Anita H. Cox, a white female,

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was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 186, Jacqueline Molchan.

(Whereupon, Jacqueline A. Molchan, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse the juror.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 98, Edith Garner.

(Whereupon, Edith R. Garner, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse this juror.

THE CLERK: If you'll return to your seat, ma'am.

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280, Savilla Webster.

(Whereupon, Savilla M. Webster, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse this juror from the trial of this case.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 282, Thomas West.

(Whereupon, Thomas E. West, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please excuse Mr. West.

THE CLERK: If you'll return to your seat, sir.

Juror number 18, Jackie Bennett.

(Whereupon, Jackie A. Bennett, a white female, was called forward.)

THE CLERK: What say you for State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

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Juror number 15, John Bell.

(Whereupon, John Catlin H. Bell, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please excuse this juror.

THE CLERK: If you'll return to your seat, sir.

Juror number 215, Michelle Pugh.

(Whereupon, Michelle L. Pugh, a black female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse the juror from the trial of this case.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 286, Bessie Williams.

(Whereupon, Bessie C. Williams, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

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Juror number 194, Julie Murray.

(Whereupon, Julie Lynne Murray, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, ma'am.

Juror number 28, Kenneth Braxton.

(Whereupon, Kenneth R. Braxton, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, sir.

THE COURT: All right. Counsel, first alternate, one and two.

THE CLERK: Juror number 183, Marcus Miller.

(Whereupon, Marcus L. Miller, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

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THE CLERK: What say you for defense?

MR. MILLS: Please seat the juror.

THE CLERK: If you'll have a seat in the jury box, sir.

THE COURT: All right. Second alternate.

THE CLERK: Juror number 135, Jennifer Jordan.

(Whereupon, Jennifer G. Jordan, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse this juror from the trial of this case.

THE CLERK: If you'll return to your seat, ma'am.

Juror number 116, Gloria Heh.

(Whereupon, Gloria E. Heh, a white female, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please excuse this juror from the trial of this case.

THE CLERK: If you'll return to your seat, ma'am.

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Juror number 245, Jerry Spears.

(Whereupon, Jerry D. Spears, Jr., a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please excuse this juror.

THE CLERK: If you'll return to your seat, sir.

Juror number 39, Brent Caley.

(Whereupon, Brent A. Caley, a white male, was called forward.)

THE CLERK: What say you for the State?

MS. GARRICK: Please present this juror.

THE CLERK: What say you for the defense?

MR. MILLS: Please seat this juror.

THE CLERK: If you'll have a seat in the jury box, sir.

THE COURT: Anything with regard to the selection of the jury, on behalf of the State?

MS. GARRICK: No, Your Honor.

THE COURT: On behalf of the defense, Mr. Mills?

MR. MILLS: Beg the Court's indulgence.

(Pause.)

MR. MILLS: May we approach, Your Honor?

THE COURT: Yes, sir.

(Whereupon, a bench conference was held off

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the record, in the presence of the jury, but out of the hearing of the jury.)

THE COURT: All right. Ladies and gentlemen of the jury panel, I'm going to ask you at this time if you would go with the bailiff to your jury room. There are a couple things I want to tell you. I know you do not know anything about the case except what I've told you basically the case is about, but it would be improper for you to discuss the case among yourselves at all at this time. So while you're there in the jury room, you can get to know each other, talk about anything you want to, weather, sports, children, grandchildren, anything at all, but don't talk about anything to do with this case and we'll send for you very shortly.

Thank you -- there are a couple other things. Later on or at some point in this case, of course, somebody will be appointed as a foreperson of this case or either I'll allow you to select a foreperson, that person should always sit on the first seat on the front row. The two alternates should always sit in the seats where you're seated now. The rest of the seats on the jury box -- that's the first two seats on the back row.

The rests of the seats in the jury box are not

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reserved. And it does not matter what order you come and go from the courtroom, I would just simply ask that you go all the way down so it wouldn't be a situation of you crawling over one another.

And we'll send for you very shortly. Thank you. You may go with the bailiff.

(The jury retires to the jury room.)

THE COURT: All right. Ladies and gentlemen, there is a matter that I now need to take up on the record and I need to take it up, as I say, on the record and outside of your presence. So I'm going to have to require that all of the jurors step outside until we ask you to come back in.

This will probably take us about 15 or 20 minutes. So if you want to step outside the building or you can stay right outside in the foyer, whatever one you want to, but you are going to have to clear the courtroom. I would ask that you be back in the foyer at least by 12 o'clock so we'll be prepared to bring you back in the courtroom when we're ready to go forward, but let me ask all jurors please, just jurors only at this point, to please step either out into the foyer or outside and be back in the foyer at 12 o'clock. Thank you.

(The remaining jury panel leaves the

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courtroom.)

THE COURT: All right. It appears that the jurors have cleared the courtroom. Are there any jurors in the courtroom, any jurors at all on this jury panel in the courtroom, anybody at all?

(There was no response.)

THE COURT: All right. It appears that there are no jurors in the courtroom and the jury drawn in this case has been sequestered into the jury room. And I understand there's a motion with regard to the striking of the jury on behalf of the defendant. Mr. Mills, I'll be glad to hear from you.

MR. MILLS: Thank you, Your Honor.

Your Honor, we would put into the record a challenge in the Batson versus Kentucky on the grounds that of this -- from the strikes done by the State, they were all of men, some men approximately the age of the defendant. And, of course, I think that puts the burden on them to tell Your Honor why they struck these other than for that reason.

THE COURT: All right. The defendant is making a motion challenging the striking of the jury panel on behalf of the State on the grounds that all of the strikes exercised by the jury -- by the State, that is the first -- the four strikes that the State

exercised were all white male, and the one alternate, which the State exercised to strike, also white male. Having identified a racially cognizant group, that places the burden on the State to show that the strikes were not racially motivated. Ms. Garrick.

MS. GARRICK: Yes, sir. Thank you, Your Honor. May it please the Court.

THE COURT: Let's start with juror number two, Mr. Haynes or Hynes, juror number -- actually, it's two on the strike list, juror number 126, white male.

MS. GARRICK: Yes, sir. Your Honor, we had information that this juror potentially had been charged with murder and found not guilty and that's why we struck him.

THE COURT: And tell me a little bit about this information. Where did it come from?

MS. GARRICK: It came from his NCIC criminal conviction rap sheet. His month of birth and his year of birth matched the date. The day of birth was one day off and we were concerned that it could be him charged with murder and found not guilty, so we struck him based on that.

THE COURT: All right. That would be juror

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number 126.

MS. GARRICK: Yes, sir, Your Honor.

THE COURT: Then we go to number 84, Justin Fann.

MS. GARRICK: Your Honor, Mr. Fann during voir dire with the Court and also when he walked up here, appeared to take jury duty, in my opinion, very lightly. He indicated and made reference to Facebook, which I certainly don't think is appropriate. We're here on a very serious and significant trial. He also mentioned that his mom sent him down for jury duty.

Based on his somewhat cavalier attitude towards jury duty, the way he appeared disinterested and the fact that one of his prior businesses was a magician, just in totality, that's why we struck him.

THE COURT: All right. Juror number 282, Mr. West.

MS. GARRICK: Yes, sir. Your Honor, his criminal background check revealed an arrest for criminal domestic violence. This is a violent crime trial and because of that arrest, we had concerns that he would not be a fair and impartial juror.

THE COURT: Did the NCIC show a disposition?

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MS. GARRICK: No, sir, Your Honor, just an arrest.

THE COURT: Okay. And juror number 15, Mr. Bell.

MS. GARRICK: Your Honor, Mr. Bell has been convicted of malicious injury of personal property on his criminal rap sheet. He also was found not guilty of unlawful use of the telephone, but the fact that he had a malicious injury conviction property offense, which one of our offenses, burglary, is also a property offense, we struck him based on that.

THE COURT: All right. And the alternate, Mr. -- juror number 245, Mr. Spears.

MS. GARRICK: Your Honor, we didn't have a whole lot of information about him, but we had that he was from Gaston and we struck him based on that. And we did not seat anyone else from Gaston.

THE COURT: All right. The State having articulated a racially neutral reason as to the striking of each of the five jurors, the burden shifts back to the defendant to show that the reasons stated was pretextual.

MR. MILLS: Your Honor, I will start with the last one, number 254. I think that's pretextual. I

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don't see any -- that that's racially neutral just because he's from the Gaston area.

THE COURT: All right. Let's start at the top. What about 126, Mr. Hayes {sic}?

MR. MILLS: Well, Your Honor, there's no conviction there. He was charged. They can save that information, but there's no conviction of any crime. So I don't think that would be racially neutral.

THE COURT: So you don't have any problem with 126?

MR. MILLS: Your Honor, yes, I do. He has not been convicted of any crime according to the Solicitor's office.

THE COURT: Well, I understand that, but do you think that is a pretextual reason for the fact that he was charged with murder?

MR. MILLS: That's all the argument, Your Honor. That's all I have.

THE COURT: All right. Number 84.

MR. MILLS: Your Honor, number 84, I don't see -- there was no prior record for him, no arrest for him, totally demeanor, which he seemed to be, at first, a little nervous, but I don't think that's enough to make it a racially neutral reason for

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striking him.

THE COURT: All right. 282, Mr. West.

MR. MILLS: 282, I believe there is a rap sheet on that, Your Honor, but he was only arrested. There is no conviction.

THE COURT: All right. 15, Mr. Bell.

MR. MILLS: And he was convicted, so I believe that is a racially neutral reason.

THE COURT: And 245.

MR. MILLS: 245, is the one I believe they said is from Gaston. And -- if I can look back, Your Honor, I believe there is another person from Gaston, number 98, Edith Garner, who was also put on the jury -- I'm sorry. I struck her. But I don't think -- the place of residence I don't believe is a racially neutral reason. I think that is pretextual.

Your Honor, just to clarify, they were willing to accept number 98 from Gaston, I struck her, but they accepted her.

THE COURT: All right. So why do you consider their striking one from Gaston -- they accepted somebody from Gaston, so normally that shows it's not pretextual. So you struck the one from Gaston, but they didn't strike anybody from Gaston.

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MR. MILLS: No, they did -- they accepted the one that I -- and then I struck number 98. But number 245, their reason for striking him is because he's from Gaston when they -- when earlier they had accepted someone from Gaston.

THE COURT: I got you.

All right. The defense having articulated -- I mean, having identified racially cognizable groups of six jurors, the burden did shift to the State to show that the reason for striking was racially neutral and has articulated a racially neutral reason. The defense, on the other hand, then has the burden after that is done of showing that those racially neutral reasons were pretextual.

I find that the striking of 126, 282 and 15 were definitely not pretextual. All of them were involved in crimes. They were concerned that 126 may have been charged with murder and were concerned about that and that is a very good reason for a racially neutral reason for striking a jury on a violent case.

282 is a defendant that has an arrest for criminal domestic violence even though there was no conviction. Again, the State was concerned about that. And in a case of this nature, that would be a

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racially neutral reason and not pretextual.

Juror number 15 has a conviction and another charge for which he was found not guilty, but, again, that is a racially neutral reason and is not pretextual. So there's no question in my mind with regard to jurors number 126, 282 and 15.

With regard to juror number 84, Mr. Fann, the defense {sic} did articulate a racially neutral reason being that he took jury duty lightly, that he made some comment about Facebook, that he just had a cavalier attitude, which the Court also observed.

I would observe for the record that when we went over the jury strike, he did not check in and was not with the clerk's check-in list and later raised his hand when it appeared that he had been omitted and we brought him up. And he did appear -- did not appear timely and he did not check in and he did have some serious -- some problems with regard to the seriousness of the jury duty and I find that that is a racially neutral reason and is not pretextual and that the State was therefore authorized in striking him as well.

With regard to juror 245, I find that there is some question as to whether the reason stated by the State is pretextual, but I'm going to cure the

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matter by simply excusing the second alternate and we'll just go with one alternate and that'll take care of that problem.

MS. GARRICK: Thank you, Your Honor.

THE COURT: All right.

MS. GARRICK: Could we also just have, as a matter of record, that we had sat, just so the record will be clear, that we had sat three white males on the jury and we had sat two white males as alternates? I just want that part of the record.

THE COURT: The State did accept -- give me the numbers, I got them here, but just put them on the record, Ms. Garrick.

MS. GARRICK: Your Honor, the ones that actually ended up on the jury are number 89, a white male.

THE COURT: Mr. Fleming.

MS. GARRICK: Number nine, a white male.

THE COURT: Mr. Barnes.

MS. GARRICK: And number 28, a white male.

THE COURT: Is he the alternate?

MS. GARRICK: No, sir. He is actually on the jury.

THE COURT: Oh, Mr. Braxton.

MS. GARRICK: Yes, sir.

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THE COURT: And then Mr. Spears as the alternate.

MS. GARRICK: 245 that you now set aside that I had struck -- I'm sorry, Your Honor, the two alternates are 183 and 39.

THE COURT: And I have 245 is the one they challenge and I set that aside. And we want -- so that juror number 39 will be excused and we'll just go with one alternate, so that will take care of it, all right.

All right. Mr. Mills, anything you'd like to put on the record?

MR. MILLS: That's all, Your Honor. That's the basis of my motion.

THE COURT: All right. That being the case then, we will excuse from this panel Mr. Caley, who's juror number 39, was the last individual selected as the second alternate and we'll go with one alternate, and that takes care of that problem.

MS. GARRICK: Yes, sir.

THE COURT: Now, Counsel, let's talk about scheduling, see where we are before I bring that panel back in. Do we need to select a panel for Judge Macaulay?

MS. GARRICK: Yes, sir, Your Honor.

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THE COURT: All right. With regard to this matter, the State versus Wiggins, first of all, bring in -- let me ask the bailiff, Mr. Caley to come in please, and then also ask the panel to come back into the courtroom, but leave the rest of the jurors and the one alternate in the jury room. And then also bring the rest of the panel back into the courtroom, please.

And, also, for the record, Counsel, juror number 171, Ms. Williams, and the State already knows this, has a religious objection to serving on the jury. She will not be called on any panel, but she will serve the rest of the week.

(Juror number 39, Brent A. Caley, enters the courtroom.)

BAILIFF: Your Honor, this is Alternate Caley.

THE COURT: All right. Mr. Caley, I'm going to ask you if you'll have a seat. The rest of the panel is coming back in. I'm going to ask you to have a seat back out here with the rest of the panel.

JUROR: Okay.

(The remaining jury panel enters the courtroom.)

THE COURT: All right. Thank you very much,

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ladies and gentlemen. Thank you for your patience. We've dealt with that legal problem and we're going forward with this case shortly, but in the meantime, we're going to draw a panel for the case in Judge Macaulay's court. So the clerk is going draw 40 jurors. When your name is called, please stand up, and then after you have stood and all 40 names are called, I will give you some further instructions.

But, Madame Clerk, if you will give us a panel to go downstairs, please.

(Judge Macaulay's jury panel was called.)

THE COURT: All right. All of those jurors who are standing, if you will go with the bailiff, the gentleman in the red coat and the officer at the back, to Judge Macaulay's courtroom. I expect what he's going to do is to excuse you until after lunch and bring you back at 2:30, but we'll let you know. But if you'll just go down there and have a seat and let me check with Judge Macaulay and then probably go in that direction, but go down to Judge Macaulay's courtroom, please, and then we'll let you know what your further instructions are.

All right. Mr. Solicitor and Mr. Williams, would y'all check with Judge Macaulay and see what he wants to do? And if that's what he would like to

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do, go ahead and have him or somebody give the instructions to the panel.

MR. HUBBARD: Yes, sir. Thank you, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury panel not selected in the trial of this case or on the panel for the other case, I'm going to excuse you for the rest of the day, allow you to go about your business. I'm going to ask that you call that number that you have after six o'clock tonight, that is an answering machine very much like the one that you have at home. There will be a message on there after six o'clock tonight about your reporting instructions for tomorrow.

It's often very difficult for us to tell exactly how long a case is going to take or what may happen in connection with a case. And if we do not need you in the morning, the message will be do not come in. If we do need you in the morning, then the message will be for you to report in the morning.

So what I'm going to ask that you do, please, is call that number that you have after six o'clock tonight. As I say, you can call it all night long any time, it's an answering machine like the one that you've got at home, and then get your reporting instructions for tomorrow.

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So with those instructions then, I will excuse you for the rest of the day. Please call that number tonight and get your reporting instructions for tomorrow. Have a pleasant afternoon. Thank you.

(The remaining jury panel was excused.)

THE COURT: All right. Mr. Mills, you had indicated -- well, first of all, you had indicated there may be a pretrial conference and we can take that up, but before we do that, in connection with the case against Mr. Wiggins, are there any motions on behalf of the State that need to be considered, Mr. Ross or Ms. Garrick?

MS. GARRICK: I'd first like to hear what motions Mr. Mills has and I also need to go get all my materials and my victims and bring --

THE COURT: We'll take some time on that.

Do you have any motions that need to be made on the record, Mr. Mills?

MR. MILLS: Just some basic motions, Your Honor, basically our motion to sequester witnesses, motion in limine about the 9-1-1 tape regarding the stolen vehicle, which I believe the Solicitor has told me they've already redacted that part of the 9-1-1 tape.

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There's also a question about some -- a three-page list that's referred to in the discovery of the stolen goods that I cannot find anywhere in my discovery. I don't know if they have that or if it's -- if the sheriff's department didn't send it to the Solicitor or I just don't have it, one of the three.

And also in that -- as far as a motion in limine on anyone mentioning any stolen vehicles that are irrelevant to this case, Your Honor, I believe, would make a ruling on that at the time of the question, if any, but I just wanted to put that on the record, as well as any new discovery -- I was getting discovery up until last week from the Solicitor's office. And there are potentially exculpatory statements made by a Braxton Palmer and a Hattie Hall that I've not been given. I don't know if that's just something that was told to me --

THE COURT: All right. Let's do this, sounds like we've got a number of things that we need to address and you need to get your materials and things. All right, let's take -- let's do this, let's take five or ten minutes, get your things together, we'll hear from you on the record with regard to the State, with regard to motions and then

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we'll go to lunch.

In the meantime, I'm going to bring the jury back in here, go ahead and send them to lunch. And we'll try to take care of all pretrial matters between now, say, and one o'clock and then we will take a lunch break ourselves and bring the jury back at two o'clock and be ready to start with the jury at two o'clock. Is that suitable to the State?

MS. GARRICK: Yes, sir, Your Honor. We were going to make arrangements for a lap top and some of the discovery to go --

THE COURT: Right. He wanted to play that and those sort --

MR. MILLS: I'm not sure how long that will take. I know the one tape's not too long.

THE COURT: All right. So we'll --

MS. GARRICK: Thirty minutes.

THE COURT: Would an hour and 45 minutes give everybody -- give us time to do everything and get lunch?

MR. MILLS: Yes, sir.

THE COURT: All right. Let's do that.

All right. Let's bring the jury in, please.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen,

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thank you for your patience. Don't get too comfortable. But I just wanted to make a few remarks to you and tell you, first of all, we are going to try this case with one alternate and the alternate is seated where he will always sit and should always sit in that seat.

We've got some matters that we've got to take care of and I need to take care of those on the record and outside of your presence. And so rather than keep you waiting in the jury room while we were attending to those matters, I'm going to go ahead and allow you to go to lunch and ask you to come back to your jury room, please, at two o'clock, that's about an hour and 45 minutes. The bailiffs will show you how to get back in here and get back in to the jury room, and I'm going to ask that you do that.

Over the lunch recess, do not discuss the case with anyone, do not allow anyone to discuss it with you. If anyone should approach you or try to talk to you about the case, get their name or their description and report it to the bailiffs when you come back and I will deal with them. Also, again, don't discuss the case among yourselves while you're reassembling there in the jury room.

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And what I'm actually going to request that you do is that when you do come back to your jury room, if you will -- if the 12 of you who are the principal jury will select one of the members of the principal jury as the foreperson of that jury, notify the bailiff as to who that foreperson is and then that foreperson will sit in that first seat on the first row. The alternate will sit in the first seat on the second row. The rest of the seats are not reserved and you can sit anywhere in the jury box. And it does not matter what order you come and go from the courtroom.

So with those instructions then, I'm going to excuse you now, allow you to go and get your lunch. Please come back to your jury room and be in your jury room at two o'clock. Thank you. And we'll be ready to proceed at that time. Thank you. You may go with the bailiff.

(The jury was excused for lunch.)

THE COURT: All right. Counsel, let's take about five minutes to get your stuff together and let's come back in and address all pretrial motions and take care of those before lunch, about five minutes.

MS. GARRICK: Yes, sir.

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MR. MILLS: Yes, sir.

(Brief Recess.)

(State's Exhibit Numbers 1 through 3 marked for identification purposes.)

THE COURT: All right. We're back on the record with regard to the matter of the State versus Wiggins. Mr. Wiggins is present with his counsel. The State is also present. And we want to take care of pretrial motions before lunch.

The first motion that I recall that was made was with regard to sequestration of the witnesses. What's the State's position?

MS. GARRICK: Your Honor, certainly, we'll agree to do that except for our lead detective and then the victim will be here for all of the trial.

THE COURT: All right. That is correct. The State has the right to keep the primary officer and also the victims have the right to be present. The State has agreed to sequester the rest of the witnesses, so that motion is granted.

All right. Mr. Mills, what's your next motion?

MR. MILLS: Your Honor, I have another motion I didn't mention before. We were just handed some list of stolen items just today. And, previously, I had talked about fulfilling the discovery on a

three-page list from -- that was mentioned in the incident report. Your Honor, we were just handed both of those today, a new one that wasn't referred to to my knowledge, and we would ask for a continuance, Your Honor, so we can --

THE COURT: You would ask what?

MR. MILLS: A continuance of this case. My client wanted me to ask for a continuance of this case due to this late fulfillment of the discovery motion.

THE COURT: All right. Continuance based on failure to comply with Rule 5 until today?

MR. MILLS: Well, just new evidence. I don't know if the Solicitor had it or -- the Solicitor didn't have it, but we have the right to be able to determine the veracity of this list --

THE COURT: All right. First of all, I understand your motion. It's based upon failure to comply with Rule 5. In what respects have they not complied, be specific please?

MR. MILLS: Well, specifically, on the three-page list of items, which was not included in any of my discovery, which was referred to in the discovery in the incident report, I was handed a list of eBay -- it doesn't refer to it as eBay, but

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I was handed a list of eBay printout from the Internet showing -- well, the copy I have is not that good because the copier here in the courtroom did not pick up the color copy I believe, but I was just handed that today, Your Honor. And this is a list of the allegedly stolen items that were taken by the defendant and the co-defendant.

THE COURT: All right. Where did this list come from? I know you got it from the Solicitor's office.

Is it something you prepared, Madame Solicitor? What is it? I'm unclear as to what we're talking about here.

MS. GARRICK: If Mr. Mills is talking about the eBay list, there's something in Detective Prestigiacomo's incident report and summary where he talks about receiving from the victim a three-page list of stolen items. I had never seen a three-page list of stolen items either.

When Mr. Mills brought that up a few moments ago, we went to Detective Prestigiacomo and asked him about that. He indicated to me that it wasn't a list necessarily of stolen items. It was -- the victim went on eBay to get the value of some of the things that had been stolen from his home and he

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printed out sheets from eBay to get value of some of his stolen property, and that is what Detective Prestigiacomo was talking about in his incident report. And so I had just copied those eBay printouts myself and made a copy for Mr. Mills.

THE COURT: So this is something the victim did?

MS. GARRICK: Yes, sir.

THE COURT: All right. Let me see them, Mr. Mills.

MR. MILLS: This was actually something that the victim gave to the investigator is my understanding back in 2010.

MS. GARRICK: Yes, sir, Your Honor.

(Ms. Garrick hands documents to the Judge.)

THE COURT: And are these allegedly items that were taken in the burglary? Is that what they were?

MS. GARRICK: Yes, sir, Your Honor, some of those items, yes, sir. And it's mentioned on the 9-1-1 call. It's mentioned in the incident report. The victim has been always forthcoming about what items were stolen, so I don't think there's anything new in that information.

The only new thing may be what eBay values these items to be, but since this isn't a grand

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larceny case, I don't think that that really adds anything to our case. And we certainly aren't using those documents in our presentation.

MR. MILLS: Well, Your Honor, if I could respond to that, this is -- there's no specific list in the discovery until today and today we get that, as well as another list handed to me. This is from a 2010 case. And we have the right not only to determine the value of the goods --

THE COURT: Why?

MR. MILLS: Because we have to determine the -- what goods were actually taken for the veracity of the witnesses. And the witnesses have testified --

THE COURT: No. The charges are armed robbery, kidnapping and burglary in the first degree. Where does it matter what they took? To commit any of those crimes, it does not have to show that anything was actually taken.

MR. MILLS: I understand, Your Honor, but there is an allegation that things were taken and we have the right to investigate on our own whether or not the things that are alleged to be taken is true. And so that goes to the veracity of the allegations for our cross-examination of the victim and the victim's husband.

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THE COURT: But what does that -- I don't see where that list comes in. In other words, you can still cross-examine them if they say, and I'm just picking one item off of this list that was handed to me, and I don't even know what they are, but it appears that apparently there's some coins, but let's say that they say that a silver eagle coin was taken. Where does the fact that this is or was not disclosed to you make any difference at all with regard to the charge of armed robbery, burglary or kidnapping?

MR. MILLS: Your Honor, the difference is, in my opinion, is that we have the right to know what was taken. Just like in any armed robbery case, you have the right to know what was taken regardless of the value.

THE COURT: Sure.

MR. MILLS: That's mainly going to the value. We were handed today also another list, which I'll add to this motion --

THE COURT: No, no, no, you're not either. You're going to address this one first.

MR. MILLS: Okay. Yes, sir. As far as that goes, Your Honor, we do not have the full list of what was taken so that we can --

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THE COURT: What difference does that make?

MR. MILLS: So that we can know what -- we can investigate what was taken.

THE COURT: It's not -- the list is not coming in.

MR. MILLS: Yes, sir.

THE COURT: The witness is going to testify as to what was taken in the -- I assume she's going -- she or he is going to testify as to what was taken in the burglary and you'll have the right to cross-examine them on whether or not that was or was not taken. How does the fact that what was taken off of eBay have anything to do with those issues?

MR. MILLS: Your Honor, the issue is the -- not what was taken, but how the veracity of the victim is affected by what they claim was taken.

THE COURT: Well, how does that -- still how does that affect the eBay list? I don't see where that comes in at all.

MR. MILLS: Because we could have investigated what was alleged to have been taken to determine whether or not that was taken and we haven't -- we can't do that when we get the list the day of the trial. So it goes to investigation, Your Honor, towards the veracity of the victim.

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THE COURT: But you're going to have the right to cross-examine the witness on what they took or what they didn't take and I don't see where this list has anything to do with that. That's just what they determined -- they were looking -- for whatever purpose, let's say, and, of course, this doesn't have anything to do with it, but let's say for purposes of putting in an insurance claim, they go on eBay to find out what the value of the items which they're going to testify to were stolen from them for purposes of authenticating an insurance claim, that doesn't have anything to do --

Now, if there was a grand larceny charge involved where the issue of the value of the property was up, maybe you would have a little bit more argument, but I don't see where you've got any argument by the fact that they went on eBay to check the value of the items which they said was stolen and to which they're going to testify to. I just don't see where that has anything to do with the question of whether or not there was an armed robbery or kidnapping or a burglary.

Motion to suppress -- I'm not going to let the list in, but the motion for a continuance based upon the fact that this was not given to you is denied.

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MR. MILLS: Yes, sir. Would you like to hear the other --

THE COURT: Yes, sir. Now, let me hear from you with regard to whatever else.

MR. MILLS: They also -- well, we would move for a continuance on being handed a list of items with prices we don't know where they come from, but again, Your Honor, there's several, several items listed that we did not know about that were not listed as a general allegation as to some things taken, but nothing this specific. We were handed this today as well and we would ask for a continuance so that we can investigate --

THE COURT: What is that list, Ms. Garrick?

MS. GARRICK: Your Honor, when he mentioned that about a three-page missing list from the victim, I went to the victim and asked the victim -- since it supposedly came from the victim, I went to him and asked him about that. And he indicated to me that he had brought some paperwork with him that he thought might be what Mr. Mills was talking about and it's the items that he typed up that he submitted to his insurance company. And I'd never seen them before today either, so as soon as I got them, I made a copy for Mr. Mills here today.

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THE COURT: So, basically, it is a list that the victim made of the items that were stolen to which he is going to testify and either use that list to refresh his recollection or whatever, but it is not something that the State has had -- either the State or the State -- it has not been under the State's control; is that correct?

MS. GARRICK: Correct, Your Honor. And just so that the record is clear, in the initial incident report -- Mr. Mills has not always represented this defendant. Mr. Mills came in in October of 2011, I believe.

But this incident report by the first responder, the first officer to the crime scene, lists with pretty specificity 11 different types of things that were stolen from the victim's home where the deputy wrote down what the victim has told him was stolen. There's at least 11 things in here and all of these things are similar in nature to these documents that we're discussing here today. So I don't think Mr. Mills has any surprise as to what the victim has said was stolen on the night of the armed robbery.

THE COURT: All right. I'll hear from you, Mr. Mills.

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MR. MILLS: Your Honor, just that it's referred in the report of 2010 from two years ago that there was a three-page list of items and that's what --

THE COURT: Well, was there anything or is there anything that prevents you, at any time during the course of this case, from talking to the victims and determining what they claim to have been stolen?

MR. MILLS: No, sir, no, sir, but I just wanted to -- this copy -- is this what the three pages is that's referred to -- oh, it's not, okay.

So this is a separate one, Your Honor, that was provided to me today. That's the basis of our motion.

THE COURT: What is that then? I don't know what you're talking about.

MR. MILLS: This is the second one. May I approach, Your Honor?

THE COURT: Yeah.

What has been handed to me is something that appears to be a typed list consisting of four pages identifying rings and guns and coins and other things to be the -- I don't know what they are. I assume that they're missing -- that the victim's going to testify too that these -- I assume this is a list -- have you seen this list.

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MS. GARRICK: Yes, sir, Your Honor. That's what the -- when I asked the victim about any type of list he had made for law enforcement, this is what he gave me today. He said that he gave -- he had done this list for his insurance company. This was not provided to law enforcement.

THE COURT: That's what I understood, Mr. Mills. So this is just a list that the victim prepared for his own usage. Where is -- first of all, where is there any entitlement under Rule 5? And, secondly, why does that entitle you to a continuance?

MR. MILLS: Your Honor, basically, the same argument I made before as far as cross-examination as to truth and veracity. Does that mean that the State is not going to enter that into evidence?

THE COURT: Speak up, please.

MR. MILLS: Does that mean the State is not entering that into evidence, Your Honor?

THE COURT: I don't know. We'll wait and see. We can't resolve everything beforehand, but right now you're moving for a continuance because you haven't gotten this list.

MR. MILLS: That's correct, Your Honor.

THE COURT: And that motion is denied. The

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motion is not under -- I mean, the list was not under the control of law enforcement. It was something prepared by the victim. I assume he's going to testify to it, I don't know, but we'll address evidentiary questions when the time comes. But as far as it being grounds for a continuance, it's not and the Court will deny the motion for a continuance.

All right. What else?

MR. MILLS: Your Honor, the only other motion I have will be, and I believe the Solicitor has informed me --

THE COURT: Turn around, please, and talk to me.

MR. MILLS: I'm sorry, Your Honor.

The Solicitor has informed me that she will provide me with the rap sheets of any lay witness, any non-law enforcement witnesses before they testify. I've got some of them already, Your Honor, through the discovery motion.

THE COURT: That's what the rule requires. It does not have to be furnished until the witness is actually called as a witness in the case. And I would request that the State provide any criminal records to the defendant before the witness is

called to testify in time to give him an opportunity to look at it before time.

All right. Anything else, Mr. Mills?

MR. MILLS: That's all, Your Honor, at this time.

THE COURT: All right. Anything on behalf of the State?

MS. GARRICK: Your Honor, he had asked about the 9-1-1 redaction. I want to make that clear that we did redact where the victim says that the defendant said that his car that he was driving was stolen. We did redact that part of the 9-1-1 tape. That's already been done.

Your Honor, I have a question about if Mr. Mills has any questions or concerns about the validity of a search warrant that was executed on a car that the co-defendant left at someone's house. There was, I know you don't know the history of the case, but a search warrant.

There's a stolen car out of West Columbia that the defendant and the co-defendant had been riding around in. When the co-defendant turned herself in, she gave the keys to that car to another person who gave them to law enforcement. Law enforcement got a search warrant and found items related to this case

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in that car. Mr. Wiggins' I.D. was in that car, a medical I.D. was in that car, and some of the victim's stolen property was in the trunk of the car.

I just want to make sure there's not any issue with the search warrant, which, of course, I don't think that there could be because I don't believe the defendant has any standing to question -- I don't think he had any legitimate reasonable expectation of privacy in a stolen car.

But Mr. Mills had talked about us talking about a stolen car, that's the stolen car we're discussing. If he's not going to -- if Mr. Mills is not going to raise any type of issue about the search warrant of the car --

THE COURT: What is your position with regard to the search warrant?

MR. MILLS: Your Honor, I agree with the Solicitor, we don't have standing on the car as far as a search warrant, as long as it's not mentioned that it was a stolen vehicle.

THE COURT: All right. Well, you be careful not to bring out the fact that it's a stolen vehicle, but he's not questioning the search of that car and does not contest the fact that he has no

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standing to move to suppress the evidence received as a result of the search of that car.

MS. GARRICK: Thank you, Your Honor.

Your Honor, we have cautioned our lay witnesses about talking about that. And, certainly, we've done all we can to try and make sure that doesn't happen.

Your Honor, the only other issue I would have is the victim, Carol Acre, who was home during the burglary, armed robbery and kidnapping, she knew the defendant. She knew him from prior times. He and the co-defendant had been to her home on numerous occasions. And on that night, she identifies him on the 9-1-1 call and to responding officers. So it was always known who committed this offense.

I want to be sure that the defense doesn't have any issues as far as a Neil versus Biggers hearing because I'm sure the Court's aware, there was a June 2012 case that just came out that may have some bearing on our case.

Once the victim had identified that she knew the defendant and the co-defendant and she tells law enforcement that, Detective Prestigiacomo, not for identification purposes, but for confirmation, shows Ms. Acre a D.L. photograph and also a booking

photograph of the defendant. And he says, Is this the Sam Wiggins you're talking about? And she says, Yes, absolutely, that's the same one. So I want to bring all that out to the Court.

THE COURT: What is the defense position on the Neil versus Biggers issues?

MR. MILLS: Well, Your Honor, I guess, to be on the safe side, we probably need to hold a hearing on it. That shouldn't take too long from what the Solicitor stated.

THE COURT: All right. Do you have your witnesses here?

MS. GARRICK: Yes, sir, Your Honor.

THE COURT: All right. Let's proceed.

MS. GARRICK: Carol Acre, please. Ms. Acre, if you can come forward.

CAROL ACRE,

having been duly sworn, testified as follows:

THE CLERK: Once you're seated, speak up loud and clear stating your full name, spelling your last.

THE WITNESS: My name is Carol Acre, A-c-r-e.

DIRECT EXAMINATION

BY MS. GARRICK:

Q Ms. Acre, can you please tell the Court prior

to August 30th of 2010, did you know the defendant, Sam Wiggins?

A Yes, ma'am, I did.

Q Can you tell the Court when you first met him and with whom?

A First time I met him he came over with Amanda Furr. We'd known her for a couple years and he -- about six months, eight months, something like that. He came over a few, you know, five, six, dozen times maybe with her.

Q And when they would come to your house, did they have business with your husband?

A Yes. He always, since his heart trouble, he works on computers at home and he fixes people's computers just to have something to do and doesn't charge them for anything but parts and stuff. So everybody brings their computer to him and Amanda always brought her computer to him.

Q And are you -- when Sam Wiggins would come to your home, did you have dealings with him yourself?

A Well, I'd talk to him, I mean, you know, let him in, told Rick, you know, Sam and Amanda's here, and answer the door. We had a few words, you know, nothing big, but a conversation here and there.

Q And on August 30th of 2010, can you tell the

Court did you have an occasion to see Sam Wiggins that night?

A Yes.

Q Around what time of day was it?

A Evening, right about dark, and he came to the door and I opened it and I said, Rick's not home right now. I said, But he should be back, you know, soon, let me call him. So I called him. And I couldn't remember, you know, couldn't remember his name at the time and I said, You know, the one that comes with Amanda, the red-haired girl. And he said -- and he said in the background, Tell him it's Sam.

Q Okay. When you say, He said, who are you speaking of?

A I'm speaking of Sam Wiggins.

Q So he identified himself as Sam, the man?

A Yeah.

MR. MILLS: Objection, Your Honor, leading. I don't believe that's what she's going to testify to.

THE COURT: All right. Go ahead.

BY MS. GARRICK:

Q So when you called Ricky and you were in your house, was Sam inside or outside at that point?

A He came in when I went to get my phone to call.

Q And how close to him were you?

A Oh, three feet.

Q And what room were you in?

A In the kitchen.

Q And what is the lighting there in the kitchen?

A The lighting is good.

Q And is this person that was in your home that night the same person you had known as Sam Wiggins for the months prior?

A Yes, ma'am.

Q Let's fast forward a little bit for the Court. At some point, was there an altercation in your home?

A Yes. He -- him and Amanda they asked if they could use my restroom while they waited for Rick and I said, you know, sure, go ahead. And when he came out of the bathroom, he had a gun in his hand pointed at me and told me to get on the floor. And I thought he was -- I didn't know he was talking to me. I thought he was talking to Amanda. And I said, Who are you talking to? And he said, I'm talking to you, get on the floor.

Q And did he come near you with the gun?

A He came in . after he went in the office, he came back out into the kitchen and said -- put the gun to my head and said, What's the combination to

the safe?

Q And did you answer him?

A And I told him I didn't know it. And so he went back in the office and, apparently, on the safe, you can turn it to like zero or something and it'll open if you don't have -- if it's not spun all the way and he figured that out and got in anyhow. But that's him and I thought he was going to kill me.

Q All right. Let's talk about the gun you saw. Did you know what kind of gun it was?

A No.

Q Did you know what color gun it was?

A It was silver I think.

Q And did you have any other conversations with Sam Wiggins on that evening, the evening of the robbery?

A Well, when Amanda went out the door, I went out the door too to try and get away because she wasn't standing over me and he was in the office. And I took off out the back door and I ran into her coming up the stairs and he came running out and threw me down on the ground.

Q All right. Let's slow down a little bit. When you say he came running out and threw you on the

ground --

A Sam Wiggins threw me down on the ground and put the gun back to my head and told me if I moved again, he would shoot me.

Q And were you -- what were you thinking during this encounter when you were on the ground?

A I figured he was going to kill me anyhow because I knew who he was.

Q And about how long do you think Sam and Amanda were at your home that evening?

A It seemed like forever, about probably 15, 20 minutes.

Q Okay. And after they left, what did you do?

A I tried to get on my computer to see if I could, you know, get to the police on my computer, but he had unplugged the modem in the office, so my computer wasn't working. And they had taken my cell phone. And so within a couple minutes, Rick came home, but, you know, before I could even go out to go to a neighbor's, he came home.

Q And did you tell Ricky --

A I told Rick that Sam Wiggins robbed us and had a gun and to call the police.

Q And did y'all call 9-1-1?

A Yes, he did.

Q And did law enforcement respond?

A Yes.

Q That evening?

A Yes, right away.

Q And did you tell the responding officers that you knew who had robbed you?

A Yeah.

Q And did you give them a name?

A I gave them -- I knew it was Sam, but I didn't know, at that moment, what his last name was and Rick did, though, I think. You know, it was just so hectic, I can't -- but I knew it was Sam.

Q And did you tell the detective you met that night, Detective Prestigiacomo, who had robbed you?

A Yes, ma'am, I did after I got my wits together.

Q And were you able to tell Detective Prestigiacomo it was Sam Wiggins?

A Yes.

Q And did there come a time that you went to the sheriff's department that evening?

A Yes, I did.

Q Okay. And why did you go to the sheriff's department?

A To look at a picture of Sam Wiggins to see if that was the same Sam that I knew and it was.

(Pause.)

MR. MILLS: No objections to court's exhibit, Your Honor.

THE COURT: All right. For purposes of this hearing, it will be marked as Court's Exhibit Number 2.

(Court's Exhibit Number 2, photographs, marked for identification purposes.)

BY MS. GARRICK:

Q If I can show you what's been marked as Court's Exhibit 2, do you recognize that document?

A Yes, ma'am.

Q And when did you first see that document?

A The night of the 30th.

Q Speak into the microphone.

A I'm sorry. The night of the 30th.

Q Okay. And when you saw that photograph, what, if anything, was your reaction?

A That's Sam Wiggins, that's the man that robbed me and put a gun to my head.

Q Did you have any hesitation at all?

A None.

Q Did you have an opportunity to view the video surveillance that was taken on the night of August 30th of 2010?

A Yes, I did.

Q And did you recognize any people on that video?

A Yes, Sam Wiggins, Amanda Furr and myself and my husband.

Q And you had no doubts about who was on the video?

A None.

Q And do you see here today the man who held a gun to your head and threatened to kill you?

A Yes, ma'am. He's sitting right over there, Sam Wiggins.

Q In the white shirt by Mr. Mills?

A Yes, ma'am.

Q Well, let me ask you this. On what is your in-court identification of Mr. Wiggins based?

A Based on the fact --

Q Tell me --

A -- that he came into my home, put a gun to my head and threatened to kill me.

Q How sure are you that --

A I'm positive that's him. I know it's him.

Q And you've known him for how many months prior to August 30th, 2010?

A Probably six or eight months.

MS. GARRICK: Your Honor, that's all the

questions on this issue that I have.

THE COURT: Cross-examination, Mr. Mills.

MR. MILLS: May it please the Court, Your Honor.

CROSS-EXAMINATION

BY MR. MILLS:

Q Hey, Ms. Acre. You were able to write a statement for the police in this case?

A Somewhat, yeah.

Q But you didn't say anything in that statement about Sam asking you to open the safe, did you?

A I'm sure I probably did. I don't know if I wrote it down, I don't know.

Q Okay. So you told -- you think you told maybe the investigator, but didn't write it down in your written statement?

A Probably.

Q And you say you've known Sam Wiggins through Amanda Furr?

A Right.

Q How do you know Amanda Furr?

A Just because she used to come over all the time and get her computer fixed.

Q Anything else she would come over for?

A No.

Q And how many years have you known her?
A Oh, a couple of years at the time.
Q How often would she come over?
A Oh, I don't know. She used to get viruses on her computer all the time and she couldn't get them off, so probably -- gosh, I couldn't say, probably about every month or two.
Q Okay. And your husband would -- you say his job was to fix the computers?
A Yeah. He fixed everybody's computer that --
Q Does he have a -- I'm sorry.
A He fixed everybody's computers that he, you know, everybody he knew because he'd fix them for nothing because he builds them and can take the viruses off of them and everything.
Q But he has -- does he do anything else for a job?

MS. GARRICK: Objection, Your Honor. What's the relevance of that for purposes of identification?

THE COURT: Let's try to confine it to the I.D. question.

MR. MILLS: I'm sorry, Your Honor.

BY MR. MILLS:

Q So how many times had you seen Sam Wiggins

before this incident?

A Oh, I'd say probably six, eight times.

Q And how -- in what circumstance did you see him?

A I don't know. He'd come over to see Rick I'd assume, you know, to fix his computer. Well, him and Amanda, he never came over without Amanda.

Q And any business between him and Rick?

A Just the computers as far as I know.

Q As far as you know. And did you sit and talk to Sam when he came over or how --

A Well, we, you know, how are you doing, you know, just conversation.

Q Okay. And then you said he came over that night?

A Yes.

Q And he came to the door?

A Uh-huh.

Q And you opened it and told him, Rick's not here right now, and then he asked about using the bathroom, correct?

A Uh-huh.

Q And then you let him in, correct?

THE COURT: Let me just -- a couple things, instead of saying uh-huh, say yes or no because it's

harder for her -- easier for her to pick it up and also she can't pick up a nod, okay.

THE WITNESS: Okay.

THE COURT: Go ahead.

MR. MILLS: Thank you, Your Honor.

BY MR. MILLS:

Q And then once he came in the house, how long was he in the house before you say he -- that you were in the kitchen, I believe?

A Uh-huh.

Q Does the door go to the kitchen?

A Yeah.

Q The door that's in the video, does that go into the kitchen?

A Yeah.

Q Okay. And so you were still in the kitchen?

A Yes.

Q And then where is the bathroom relative to that?

A It's through the living room and down the hall.

Q Okay. So were you still in the kitchen when he went to the bathroom?

A Right.

Q Okay. And your testimony is that he came out of the bathroom with some sort of handgun, correct?

A Right.
Q All right. And do you remember the color of the handgun?
A I think it was silver.
Q You think, okay. And you said that he asked you to get on the ground?
A Yeah. He just -- he pointed the gun at me and said, Get down on the ground.
Q Okay. And where was Amanda at this time?
A She was, like, in the -- I could see him through the kitchen pass-through and that's when he was looking at me pointing the gun. Amanda was in the doorway going into the living room.
Q When you said a kitchen pass-through, that goes into what?
A From the kitchen to the living room.
Q So he was in the living room?
A He was sort of coming out of the bathroom into the hallway right by the front door.
Q The front door is not the door that he came in?
A No. He came in the back door.
Q And so you're saying that he pulled a gun, then you're saying that he pointed it and told you to get on the ground?
A Right.

Q Okay. And then -- and Amanda was still in the kitchen?

A Right.

Q Okay. And then he began to, according to your testimony, he began to look around for things?

A Well, he went in, back into Rick's office and she was there in the kitchen.

Q Okay. And did she have a handgun or anything at that point to your --

A Not to my knowledge.

Q Okay. So when -- at that point, you decided to do what?

A Well, I tried -- I grabbed my phone and tried to call 9-1-1. She grabbed it from me and said something like, I'll do it. So I didn't know that she was also doing the robbery along with him. I just thought, you know, she just happened to be there, but then she took the phone from me and I was on the floor.

Q Okay. And then what did she do?

A She just stood there over me and then Sam went in and got a load of stuff out of the office and gave it to her, I guess. And then she went out the door with that and that's when -- after she went out the door, I figured he was back in the office again,

so I ran out the back door, too.

Q Okay. And --

A And I ran into her on the stairs or on the porch and he came out the door and I went down the steps and he threw me down on the ground.

Q Okay. He threw you on the ground, according to your testimony, off the porch?

A Yes, I was --

Q I mean, you were already down off the porch?

A Right.

Q And then what happened then?

A Then he threw me down on the ground and told me if I moved again, he would shoot me.

Q Then what happened?

A Then I stayed on the ground. Amanda stood over me and he just kept making trips in and out of the house to his car.

Q What did Amanda do while she was standing over you?

A Just stood there.

Q She just stood there. She wasn't threatening you or anything?

A No. She never said a word, but I was too afraid to say anything either.

Q So how long did Amanda stay standing over you?

A For as long as it took him to pull all of the stuff that he wanted out of the house, probably five minutes, ten minutes.

Q So you're saying Amanda stood over you the entire time that Sam went in and got stuff and took it to the car?

A Yes.

Q Okay. Then when did Amanda stop standing over you?

A When he said -- well, I assume he said. I didn't hear -- I can't remember if he said anything, but they just left.

Q So you're saying Amanda never went back up on the porch or back into the house?

A No, not that I know of. She stood right there by me.

Q And did -- according to your testimony, did Sam ever point a gun at you again?

A No, just the one time in the kitchen when he put it up against my head. And then one time when he threw me down on the ground, he put it back up against my head.

Q So he was the only one that put a gun to your head?

A Yeah.

Q All right. So then after this incident, you gave a statement to the police, correct?

A Uh-huh.

Q You gave a written statement and you gave an oral statement?

A Yeah.

Q Did they record that to your knowledge?

A I have no idea.

Q Okay. And after that, they showed you a, basically, the photo that was entered into evidence, correct?

A Uh-huh. Yes, sir.

Q Court's Exhibit Number 2?

A Yes.

Q Did they show you a lineup at all?

A No.

Q Just the one photo?

A Yes.

Q Okay. Beg the Court's --

A They did that because I knew who it was.

MR. MILLS: Beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

(Pause.)

MR. MILLS: Just a couple more questions, Your

Honor, if Your Honor pleases.

BY MR. MILLS:

Q Ms. Acre, you said that you didn't know the code for the safe?

A No, it was -- I have it written down somewhere in the house, but I -- at the time, no.

Q Okay. And was the safe opened?

MS. GARRICK: Objection, Your Honor. What's the relevance for I.D.?

THE COURT: Yes, sir, what does this have to do with the I.D. question?

MR. MILLS: We can ask that on direct, Your Honor. Thank you, Your Honor.

THE COURT: All right. Anything further of this witness on this question, Madame Solicitor?

MS. GARRICK: No, Your Honor.

THE COURT: All right. Thank you, ma'am. You may step down.

All right. Anything else on the I.D. question?

MS. GARRICK: Yes, sir, Your Honor. Detective Eddie Prestigiacomo.

THE COURT: All right. Come around, please.

EDDIE PRESTIGIACOMO,

having been duly sworn, testified as follows:

THE CLERK: Once you're seated, speak up loud

and clear, state your full name spelling your last name.

THE WITNESS: Eddie Prestigiacomo, P-r-e-s-t-i-g-i-a-c-o-m-o.

DIRECT EXAMINATION

BY MS. GARRICK:

Q Detective, where are you employed?

A Lexington County Sheriff's Office.

Q Did you have an occasion to go to on August 30th of 2010 to investigate a home invasion?

A Yes, I did.

Q And who did you meet when you got there?

A When I got to the scene at around 2115 hours, 9:15 p.m., I met with Sergeant Kevin Howard who briefed me on what had transpired that evening.

Q Did you get to meet the victim, Carol Acre, and Ricky Acre as well?

A Yes, I did.

Q And from the time you first got involved in the case, was this going to be a question of who did it, who committed the armed robbery, burglary and kidnapping?

A No. We had the two names from the very beginning. That evening shortly after I responded,

I had the two names.

Q And have you had an opportunity to listen to the 9-1-1 call?

A Yes, I did.

Q And were -- did the victims identify Sam and Amanda at that initial 9-1-1 call?

A Yes, ma'am.

Q That evening was there any hesitation that you observed on the part of Carol Acre as to who had robbed her?

A No, there was not.

Q Did you have an opportunity to get with Ricky Acre and view the video surveillance footage?

A Yes, I did.

Q And did what you saw on the video corroborate what Ms. Carol Acre told you?

A Yes, it did.

Q That evening did you have the general characteristics for Sam Wiggins, such as race, height, age, hair color, things of that nature?

A Yes, I did because I'm personally familiar with him from past experience, yes.

Q And did the description that Carol Acre had given law enforcement match the description you knew matched Samuel Wiggins?

A Yes, it did.

Q Did you ask the victim to come to the sheriff's department and view what's been marked as Court's 2?

A Yes, I did.

Q And can you tell the Court why you did the layout in that manner as opposed to a six person photo I.D.?

A This was another step for confirmation of what I already knew, the identities of the two suspects, and, as a matter of confirmation, I showed these pictures.

Q And did Ms. Acre, did you observe any hesitation on her behalf when she identified that as being the Sam who robbed her?

A No, I did not.

Q Have you had an opportunity to interview the co-defendant in this case, Amanda Furr?

A Yes, I did.

Q And did she indicate who her accomplice was in this armed robbery, kidnapping and burglary first?

A She implicated Samuel Wiggins.

MS. GARRICK: Beg the Court's indulgence one moment.

(Pause.)

MS. GARRICK: That's all I'd have, Your Honor.

THE COURT: Cross-examination.

MR. MILLS: Thank you, Your Honor, if it please the Court.

CROSS-EXAMINATION

BY MR. MILLS:

Q Investigator Prestigiacomo, so you decided that it would be better to use just the one photo or -- I mean, what was your thinking on that?

A My thinking is my 18 years of experience and many years as a detective, that if a suspect is not known, we put together a photo lineup. If a suspect is well known, we will show a picture, which correlates to if a suspect is on the scene, we'll do a showup where a victim will see the person standing there. That was my reasoning.

Q Okay. So wouldn't it be better, though, to -- if they could pick him out of a photo lineup?

A No, sir, not in this situation.

Q All right. And did Ms. Acre give you a statement that we talked about before?

A Yes, sir.

Q And did you -- the written statement was after you had questioned her?

A Yes.

Q Did you record any of the questioning by either

audio or video means?

A No, sir.

Q Did you record any of the identification process by audio or video means?

A No, sir.

Q And you stated she picked out, in Court's Exhibit Number 2, picked out Mr. Wiggins; is that correct?

A Yes, sir.

Q And is there anything in her statement to you that was not put into writing that -- from her statement that appears in the written statement she made?

MS. GARRICK: Objection, Your Honor. I mean, I think we're going a little afar.

THE COURT: Again, this is not getting into the I.D. question, Mr. Mills.

MR. MILLS: Thank you, Your Honor.

THE COURT: Objection sustained.

MR. MILLS: That's all the questions I have, Your Honor.

THE COURT: All right. Anything further of this witness, Madame Solicitor?

MS. GARRICK: No, Your Honor.

THE COURT: All right. Thank you. You may

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step down.

All right. Any other witnesses on this question?

MS. GARRICK: No, sir.

THE COURT: All right. Anything other than argument that the defendant wishes to present with regard to the I.D. question, Mr. Mills?

MR. MILLS: Your Honor, just that it is highly, having a one photo --

THE COURT: Well, wait a minute. The question was anything in addition to argument?

MR. MILLS: No, sir. I'm sorry. No, I do not have anything in addition.

THE COURT: All right. I'll be glad to hear from you, Mr. Mills.

MR. MILLS: Just that it's highly suggestive to have a one person photo lineup and we would ask --

THE COURT: So you move -- go ahead.

MR. MILLS: We'd move to suppress the identification.

THE COURT: All right. So you move to suppress on the grounds of suggestiveness?

MR. MILLS: Yes, sir, Your Honor.

THE COURT: All right. Madame Solicitor.

MS. GARRICK: Thank you, Your Honor. May it

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please the Court.

Your Honor, up until June 6 of 2012, new case State versus Liverman, prior to that, I would have argued that we wouldn't have even had to have this hearing and Detective Prestigiacomo had done everything properly.

Your Honor, our first argument would be that I'm not going to necessarily concede that a one picture lineup, in this case, is unduly suggestive. I know in general it is, but, in this case, it wasn't used for purposes of identification. The identity of the perpetrator had already been established. The victim said she'd known the defendant for months and months. And what he showed her was just confirming that it was the right Sam Wiggins.

So I would argue because the witness was so familiar with the defendant, that there was little or no risk that the police suggestion could lead to misidentification. And I think that the -- perhaps the somewhat suggestive nature of the one photo I.D. is mitigated by her prior knowledge of the defendant. And I think that's born out in the case law of the State versus Liverman, 398 Southeastern 130, 2012. And the cite is 727 S.E.2d 422.

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THE COURT: Do you have a copy of it?

MS. GARRICK: Yes, sir.

THE COURT: I've seen it, but...

MS. GARRICK: I can give you my copy.

Your Honor, so even if we move to the second prong of the Neil versus Biggers requirement, if we move to the second prong, you look at the totality of the circumstances and you try and see whether identification was reliable.

Your Honor, certainly the five factors we look at, the opportunity of Ms. Acre to view the defendant at the time of the crime, her degree of attention, the accuracy of her prior description of the criminal, her level of certainty demonstrated by her at the time of the identification and the amount of time between the crime and the confrontation, Your Honor, certainly taking all of that into account, I think we have met our burden.

I think Ms. Acre was very forthright with the Court. I think she made it clear that she had known him for six, eight months prior, that she had spoken with him, talked to him, observed him in her home on multiple occasions on that night. She did not hesitate to let him in for that first initial entry, that she knew him and that's why she let him in.

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And, Your Honor, she told, on the 9-1-1, she told the first responding officer, she told the detective that she knew him, it was Sam Wiggins. The description she'd given of the perpetrator matches the description of this defendant. She told you she was in fear of her life. And one of the main reasons she was so fearful is because she was afraid they were going to kill her because she did know them.

Your Honor, she had a high level of certainty from the beginning as to who did this. She had a high level of certainty that this man here in court on trial is the man who robbed her. Your Honor, Detective Prestigiacomo used the lineup just for confirmation purposes, but also, Your Honor, the hearsay testimony of the co-defendant, Amanda Furr, as -- that Sam Wiggins is the person who did this robbery with her.

Finally, Your Honor, the last thing is on what was Ms. Carol Acre's in-court identification today based and she said it was based on the fact that he's the one who robbed her, that she knew him and he's the man who put the gun to her head on at least two occasions on August 30th. So because of all that, I think we've complied with the law.

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THE COURT: All right. Thank you.

Do you wish to be heard further, Mr. Mills?

MR. MILLS: No, Your Honor. I stand on the argument before you.

THE COURT: All right. I'll -- I want to review this case again. I've read it before. And I want to review Neil versus Biggers, which I don't have here on the bench with me, but I've got with me, and I'll rule on these matters after lunch.

All right. Let's take a lunch recess at this time and be prepared to go forward. Are you prepared to let the defendant see the other matters?

MS. GARRICK: Yes, sir. It's about 30 minutes, so that's going to put us close to 2:00.

THE COURT: Okay. What are y'all going to do for lunch?

MS. GARRICK: Starve.

THE COURT: I had hoped that we'd get this finished by two o'clock -- by one o'clock. Well, we'll let the jury wait a little bit if they have to. Y'all go ahead and get you a sandwich or something and then we'll be ready to go forward as close to 2:00 as we can. But if he needs to review the video and he's still reviewing the video, then we'll just be a little bit late getting started.

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Okay. Let's be in recess until, let's say, as close to 2:00 as we can, but if we're running a few minutes late, so be it.

MS. GARRICK: Thank you, Your Honor.

(Whereupon, there was a luncheon recess.)

(State's Exhibit Numbers 4 through 20, photographs, marked for identification purposes.)

THE COURT: All right. Back on the record with regard to the matter of the State versus Wiggins. Mr. Wiggins is present in court with his counsel. The State is present and represented by the Assistant Solicitor.

Several matters that, one, the Court needs to rule on the identification issue and also I've been notified of the forelady of the jury, but I've also been advised at the bench that there has been a change in the status of the case. Mr. Mills, what is that?

MR. MILLS: Your Honor, it's my understanding the defendant decided to plead guilty to the charges at this time, Your Honor, and to have sentencing deferred, according to the Solicitor, until Wednesday.

THE COURT: All right. Do you have the sentencing sheets, Madame Solicitor?

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MR. MILLS: We're signing those right now, Your Honor.

THE COURT: All right. Tell the jury we've still got a few more things that we have to do outside of their presence, I apologize to them, but that we'll be with them very shortly, but this is something that I have to do on the record and outside of their presence. But don't tell them what it is.

BAILIFF: Yes, sir, Your Honor.

(Pause.)

THE COURT: All right. The Court has now been handed -- the Court now has a copy of the sentence sheets in the matter of the State versus Wiggins, indictments number 2012-GS-32-283, which is for burglary in the first degree; 2010-GS-32-555, which is for kidnapping; and indictment number 2010-GS-32-3554 for armed robbery.

It is now my understanding, Mr. Mills, that the defendant wishes to enter a plea of guilty to these charges; is that correct?

MR. MILLS: That's correct, Your Honor.

THE COURT: All right.

All right. Mr. Wiggins, before I can accept your plea of guilty, I need to make sure that it is

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freely and voluntarily given. I'm going to ask you some questions. If you don't understand the questions or the words I use, you tell me, I'll be glad to explain them to you. You may talk with your lawyer at any time as we go through this process. You understand?

DEFENDANT: Yes, Your Honor.

THE COURT: How old are you?

DEFENDANT: Thirty-three.

THE COURT: How far did you go in school?

DEFENDANT: Graduated.

THE COURT: So you have a high school diploma?

DEFENDANT: Yes, sir.

THE COURT: What kind of work do you usually do?

DEFENDANT: I usually do construction work.

THE COURT: Are you today under the influence of any kind of drugs or alcohol?

DEFENDANT: No, Your Honor.

THE COURT: Are you today aware of any physical, emotional or nervous problem that would keep you from understanding what you're doing here today?

DEFENDANT: No, Your Honor.

THE COURT: All right. You're familiar with

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the indictments and the charges contained in the indictments, but I want to make sure that you know about them, so I'm going to run over them with you for just a minute.

Indictment number 3554 returned as a true bill by the Grand Jury of Lexington County on 12/13/2010, charges that you did, along with the co-defendant, in Lexington County, on or about August the 30th of 2010, knowingly and willfully while armed with a deadly weapon or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that you were armed, did take from the person or presence of Carol Acre, by means of force, threats or intimidation, certain goods or property, specifically money, guns and collectible coins, with intent to deprive the owner of the use of the property, and the charge is one of armed robbery. Do you understand that charge?

DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that for that offense that you can get from 10 to 30 years in prison?

DEFENDANT: Yes, I do, Your Honor.

THE COURT: Do you understand that that is what

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is considered a violent crime under our law? Has your lawyer explained to you what is meant by a violent crime?

DEFENDANT: Yes, he has, Your Honor.

THE COURT: It is also considered a most serious crime, that means that if you, after you finish serving your time on these crimes, if you were to get another most serious crime, that you would be facing mandatory life in prison. Do you understand that?

DEFENDANT: Yes, I do, Your Honor.

THE COURT: And do you understand that because of the punishment involved, which is a minimum of 10 and a maximum of 30 years in prison, that you will have to serve 85 percent of whatever the Court sentences you to?

DEFENDANT: Yes, I do, Your Honor.

THE COURT: All right. The other -- another of the indictments is the indictment for kidnapping. And it alleges that on or about August the 30th of 2010, that you did knowingly, willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Carol Acre by any means whatsoever without authority of law and without her consent, specifically that you held the victim at

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gunpoint and shoved her to the ground to keep her from escaping from the residence during the robbery, and that charge is one of kidnapping. Do you understand that charge?

DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand for that offense you can receive from zero to 30 years in prison. Do you understand that?

DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that that is also considered a violent crime and a most serious crime; you understand that?

DEFENDANT: Yes, Your Honor.

THE COURT: And, again, under our two strikes, three strikes law, if you were to have another most serious crime, then you would be facing mandatory life in prison. You understand that?

DEFENDANT: Yes, sir.

THE COURT: And you understand that crime also is one that carries -- is a no parole offense, which means you would have to serve 85 percent of whatever I sentence you to before you would be eligible for any kind of release on community supervision. Do you understand that?

DEFENDANT: Yes, Your Honor.

THE COURT: And, finally, the last indictment is the indictment number 2010-3555, which also has been returned as a true bill by the Grand Jury of Lexington County. And it charges that on that date, you, along with your co-defendant, did, that's August 30th of 2010, knowingly, willfully and unlawfully seize, confine -- wait, that's kidnapping. I'm looking for the burglary first. We've talked about that one. No, we hadn't talked about the burglary first. We've talked about the armed robbery.

The last indictment is indictment number 2012-2283, which charges that on or about August the 30th, 2010, that you did knowingly and willfully enter a dwelling, specifically at

being the dwelling of Carol and Richard Acre, without consent with intent to commit a crime using deception, artifice, trickery or misrepresentation to gain consent and that this includes the crime of -- with intent to commit a crime while armed with a deadly weapon, and the charge is one of burglary in the first degree. Do you understand that?

DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that burglary

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in the first degree carries from 15 years to life in prison; do you understand that?

DEFENDANT: Yes.

THE COURT: And, again, that's a violent, most serious crime for which you would have to serve 85 percent before being eligible for any kind of release on community supervision. You understand that?

DEFENDANT: Yes, Your Honor.

THE COURT: All right. Now, Mr. Wiggins, you have certain important constitutional rights. You have the right to remain silent. You cannot be required to provide testimony or evidence against yourself. This is a right and a privilege which the law extends to you. And the State would have to produce evidence to convince all 12 members of a jury of your guilt without your testifying if you chose not to testify. And I would instruct the jury that you do not have to testify against yourself.

Also, you have the right to have a jury trial, that is the right to have a jury decide whether you're guilty beyond a reasonable doubt. In your case, we've already drawn a jury. The jury's in the jury room and would be prepared to hear the facts in this case and make a decision on this case if you

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want a jury trial. If you want to plead guilty and I accept your plea, the jury will be discharged and will make no decision in this case.

Do you understand both your right and privilege against self-incrimination and your right to a jury trial?

DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that if I accept your plea, that the jury will be discharged and would make no decision in this case?

DEFENDANT: Yes, I do, Your Honor.

THE COURT: Also, you give up the right to have the witnesses against you -- to confront the witnesses against you and have them come into court and testify and have your lawyer cross-examine those witnesses. And you also have the right to subpoena and call witnesses on your own behalf. Again, this is another constitutional right that you give up when you plead guilty. Do you understand that constitutional right?

DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that you give up all of these constitutional rights when you plead guilty, that I will discharge this jury and they will not make any decision in connection with this

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matter?

DEFENDANT: Yes, I do.

THE COURT: Do you have any questions that you want to ask me concerning your constitutional rights?

DEFENDANT: No, sir.

THE COURT: Have you had an opportunity to talk with your lawyer about all of your constitutional rights?

DEFENDANT: Yes, Your Honor.

THE COURT: Have you understood your talks with him?

DEFENDANT: Yes.

THE COURT: Do you have anything further that you need to discuss with him?

DEFENDANT: No, sir.

THE COURT: All right. Understanding then the nature of the charges against you and the consequences of a guilty plea, how do you wish to plead to these three charges of burglary in the first degree, kidnapping and armed robbery as I have outlined them to you, guilty or not guilty?

DEFENDANT: Guilty.

THE COURT: Do you understand that when you plead guilty, you are admitting that the charges

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against you are true?

DEFENDANT: Yes, I do, Your Honor.

THE COURT: And you're pleading guilty because you are guilty?

DEFENDANT: Yes, I am.

THE COURT: Has anyone promised you anything or held out any hope of reward to get you to plead guilty?

DEFENDANT: No, Your Honor.

THE COURT: Has anyone threatened you to get you to plead guilty?

DEFENDANT: No, Your Honor.

THE COURT: And are you pleading guilty of your own free will and accord?

DEFENDANT: Yes, I am.

THE COURT: Any plea negotiations, Madame Solicitor?

MS. GARRICK: No, Your Honor, other than we would not ask for consecutive time.

THE COURT: You would --

MS. GARRICK: Not ask for consecutive --

THE COURT: Not ask for consecutive sentences.

All right. The State has indicated that they are not requesting that I run the sentences consecutive, that means one after the other, but

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other than that, there are no negotiations between your lawyer and the State. Do you understand that to be the case?

DEFENDANT: I do, Your Honor.

THE COURT: Okay. Other than that, has anyone promised you anything to get you to plead guilty?

DEFENDANT: No, Your Honor.

THE COURT: You're represented in this case by Mr. Mills. Are you satisfied with the manner in which your lawyer has advised and represented you?

DEFENDANT: Yes, Your Honor.

THE COURT: Has he done everything for you that you feel he could have or should have done on your behalf?

DEFENDANT: Yes, Your Honor.

THE COURT: Has he done anything you feel he should not have done?

DEFENDANT: No, Your Honor.

THE COURT: And you're completely satisfied with his services?

DEFENDANT: Yes, sir.

THE COURT: And do you understand that you have the right to appeal the guilty plea and sentence of the Court and you must do so within ten days?

DEFENDANT: Yes, I do, Your Honor.

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THE COURT: All right. Madame Solicitor, I'll be glad to hear from you by way of a factual background, although we have taken some testimony in this case, so I already know something of the factual background, but if you would briefly put on the record the factual background.

MS. GARRICK: Yes, Your Honor. May it please the Court.

Your Honor, it happened on August 30th of 2010, the defendant and his co-defendant, Amanda Furr, were known to the victims, Carol and Ricky Acre. They had been to their home on numerous occasions. The Acres had known Amanda Furr before they had met Sam Wiggins. They met Sam Wiggins through Amanda.

On this date, it was about a little after 8:00 in the evening. Ricky had gone to the pharmacy to pick up some medicine. Carol was home alone. It was dust, dark, turning dark. There was a knock at her door. She goes to the door and it's Sam Wiggins. She lets him in because he said he wants to meet with Ricky. They call Ricky. Ricky says he'll be home in 20 minutes or so. Amanda Furr also comes in.

They're all talking there in the kitchen, then the defendant goes to the bathroom on the opposite

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end of the house. When he comes out of the bathroom, he comes back. He had taken a bookbag into the home with him and we assume that that's where the silver revolver came from. He presented a handgun to Carol Acre. He told her to get on the floor. She was shocked. She couldn't believe this was happening. She did get on the floor.

She tried to call 9-1-1, but Amanda Furr took her cell phone and said, I'll call. Sam Wiggins gives Amanda Furr a gun as well and tells her to watch Carol. He demands to know what's the combination to the safe. He's holding a pistol behind Carol's head. She tells him that she can't remember the combination. She's flustered. Sam goes back to the computer room where the safe is and guns are. Amanda Furr walks out of the house.

At that point, Carol decides she's going to make a run for it. She gets up off the kitchen floor, runs out the back door. When she goes out the back door, she meets Amanda Furr, who's coming back inside the house. Carol grabs Amanda and says, Come on, let's go. And, at that point, that's when she realizes that Amanda is part of this armed robbery, burglary and kidnapping because Amanda pushes her away and hollers for Sam Wiggins, She's

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running, she's running.

Amanda goes into the house. Sam Wiggins runs out of the house, chases Carol down the back steps of the porch where he grabs her around the throat and throws her on the ground, holds the gun on her, once again, to her head and says, If you move, I'm going to kill you.

Carol Acre, as she told you in pretrial, believed that they were going to kill her because she knew who they were, she knew their names, she knew everything about their description and she was going to tell.

So Amanda Furr, at that point, has a gun. She's standing over Carol Acre. Sam Wiggins goes back and forth inside the house three or four more times where he proceeds to rob them of their property.

Your Honor, guns were taken, pistols, long guns, jewelry, several computers, antique gold and silver coins, briefcases that had cash money, things of that nature. He loads up the trunk of the car, then he and Amanda leave.

Law enforcement -- Carol goes back inside. She tries to call for law enforcement with her computer, but the modem is gone, so she can't do that. But

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luckily, Ricky shows up just a couple of minutes, about three minutes later he shows up at the house. Carol tells him what's happened. They call 9-1-1. They identify that the armed robbers are Amanda and Sam.

Law enforcement responds very quickly. Eddie Prestigiacomo is the detective on the case. They get warrants very quickly because there's no doubt that Carol Acre knows who did this. There's a video surveillance system that the homeowners have.

THE COURT: I was going to ask you where the video came from.

MS. GARRICK: Yes, sir. They live out in the country. There are very few people -- there are no close neighbors. The home had been burglarized in the past, so Mr. Acre had put up some video cameras. Don't get me wrong, it's not high definition, it's not something, you know, awesome, but it is pretty clear. If you know these people, you can identify them. Carol has identified herself, her husband, Carol -- Sam and Amanda. Ricky's identified the people on the video.

Amanda Furr, you've heard us talk about her quite a bit, she is a co-defendant with no deal at all, still has pending charges. She was going to be

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a State's witness --

THE COURT: So her case has not been disposed of yet?

MS. GARRICK: Correct. She still has pending charges. She has an attorney. And she has no offer and no deal. She's cooperated fully with me, met with me numerous times. She was going to name Sam Wiggins as the man that's on the video that you can clearly see. And you can see that, you know, it happens just like Carol said of who came in first and then her running out, the confrontation with Amanda, Sam chasing her down the stairs and then Sam going back and forth, in and out several different times.

Your Honor, the case was on hold for quite some time. On September 11th, Amanda Furr decided that she didn't want to live on the run anymore. She was not getting along with the defendant. They were doing a lot of meth together. She had seen herself on WIS Most Wanted. She knew there were warrants. She knew she didn't want to live that way, so she decided -- she was out of state. She decided to come back to South Carolina and turn herself in to law enforcement and that's what she did.

She met up with a person that she cared about,

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an older lady named Gloria Kirkland who was going to be a witness for us. She and Ms. Kirkland and Mr. Kirkland, they turned Amanda in at the sheriff's department.

She told the detectives then, she kind of lied and said that Sam had made her do it all, tried to be a victim herself, but what's important, at that time, is that she was in a stolen car from -- that had been stolen out of West Columbia and she told law enforcement some of Ricky Acre's stuff is in the trunk. And she gave Ms. Kirkland -- Amanda Furr gave Ms. Kirkland a batch of jewelry -- a bunch of jewelry. And so Ms. Kirkland, of course, allowed law enforcement, they came and towed that stolen car away from her home, got a search warrant.

In that car, they found Sam Wiggins' medical I.D. They found one of Ricky Acre's lap tops. They found a bunch of paperwork and mail that had Ricky Acre's name on it. They found the jewelry that Ms. Kirkland turned over to Detective Prestigiacomo, a lot of the jewelry belonged to Ricky and Carol Acre, not all of it, but a lot of it had belonged to them.

So, Your Honor, at that point, Amanda Furr is in custody. She's listed at the jail as a Jane Doe

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because didn't really want it to get out that she'd been arrested and that she was talking to law enforcement.

Some time later in October of 2010, I think it was October 20th, Amanda had already gotten a public defender. She knew that there was video surveillance. She'd had time to review the discovery. She knew that law enforcement knew she was not being truthful about the robbery and that, you know, she had been forced into this, because clearly on the video, she's part of it and she's involved.

So, at that point, she sent an inmate request waiving her right to an attorney and she sent for Detective Prestigiacomo who met with her and confirmed that, yes, her attorney knew that she was going to talk. At that point when she met with the detective, she was more forthright about her involvement and what all they did. She gave law enforcement a lot of good tips that they were able to kind of finally finish piecing this case together.

She told them where they went when they left the Acres' house that night. They went to someone's house named Hattie Hall. Hattie Hall dates a guy

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named Braxton Palmer. They went there. They took a lot of the stolen stuff inside the house. They had drinks. They ate supper. They got some rest. And Hattie Hall would have testified, and I met with her several times --

THE COURT: Has she been charged?

MS. GARRICK: No, sir. Huh-huh. She knew they did something, but she didn't know exactly what they did and she knew she didn't want them in her house. So she and her boyfriend told them, Y'all have got to go. They were only there eight or nine hours.

So when Hattie Hall told them to leave, at that point, Sam Wiggins had owed her boyfriend some money. So he let -- Sam Wiggins gave Braxton Palmer a long-nose .38. And when Detective Prestigiacomo met with Hattie Hall and started talking about all this, Hattie Hall said, Please come get this gun. I don't want any trouble. And she turned it over to law enforcement. She was going to be a witness for us.

The victim has identified that as one of the stolen guns from his house. I mean, he's 99 percent sure. The problem is all the serial numbers of all his guns were in the safe that was robbed, but it's a very unique looking .38 pistol and it just all

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tracks with what's been said.

The last thing Amanda Furr had told Detective Prestigiacomo that helps our case was she said, You know there's a girl in the jail that you need to talk to, her name is Elizabeth Corley.

Elizabeth Corley gave Amanda a message from Sam Wiggins back in 2010. And what he said was is, Tell Red -- that's Amanda's nickname -- tell Red to keep her mouth shut. We're going to get off easy. Everything's going to be okay and she better not be cooperating with law enforcement.

Elizabeth Corley felt very uncomfortable with that message and she did tell Amanda, Hey, your boyfriend told me to tell you blah, blah, blah.

So when Amanda Furr was interviewed by the detective, the detective -- the last question that they always ask, which is important, Is there anything else that you want to tell me that I haven't thought to ask? And, at that point, Amanda said, Yeah, I think you need to go talk to Elizabeth Corley. So the detective did that.

He went to the jail October 2010, got Elizabeth Corley out of jail and said, What do you know about Sam Wiggins? What, if anything, has he said to you? And she gave a written statement, locked her down

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into that written statement.

Ms. Corley went to prison. She's out of prison. She's on probation. I've met with her. She was going to be a witness for the State as well.

Like I told you, the video, all of these things together, it was a very, very strong State's case, very strong State's case.

And sentencing, there's some people that have come in, I don't know if that's who they were waiting on, if we need to wait till Wednesday, whatever Mr. Mills wants to do, we're ready at the Court's pleasure.

THE COURT: One thing that I'm not real clear on, I know that originally Amanda took off and didn't come back for a while, how about this defendant? Did he -- how long was it before he was arrested?

MS. GARRICK: He was served these warrants on 10/6 -- I'll have to look in the clerk's packet -- he was served these warrants in October of 2010. He'd been out of the state. They'd gone to Myrtle Beach. They'd gone to Boone, North Carolina. They'd gone to Bristol, Virginia. It is my understanding he was extradited from out of state to in state. We got him from Spartanburg Jail. That's

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all I can tell you. And the date on the warrant that I can give you in one second is the date that he was served our warrants.

Spartanburg Jail, he's got pending charges. Richland County, he's got pending charges, probation issues as well.

THE COURT: But this happened on August 30th and y'all didn't get him back down here until October the 6th?

MS. GARRICK: Correct, yes, sir. And he was -- I know that we found him in Spartanburg Jail. I think Spartanburg had to extradite him from out of state, but I'm not sure.

THE COURT: All right. I'm sure Mr. Mills will be able to tell me about that.

All right. Undoubtedly, there is a substantial, factual basis for all three of these cases, that is the burglary, the kidnapping and the armed robbery. I find that the defendant has freely, voluntarily, knowingly and intelligently entered into the pleas on all three cases after having been advised by counsel with whom he says he is satisfied. The Court is going to accept the pleas as tendered to the Court. And I have signed the sentencing sheets that the pleas have been

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accepted.

Now, Mr. Mills, I see there are some folks that have come in. I don't know whether you want to go forward today or do you still wish to defer sentencing to another day or two?

MR. MILLS: We'd ask Your Honor to defer sentencing. There are some other people that we would like here as well.

THE COURT: All right. Does the State have any objection to that?

MS. GARRICK: No, Your Honor. I do have one other thing I want to put on the record about the burglary. I'm sorry. I neglected --

THE COURT: All right. Go ahead.

MS. GARRICK: Your Honor, just to be clear and I want the record to show that our intention and our proof on the case would have been that the first consent when Carol gave him consent to come in her home because she knew him, we would have said that that was not a valid consent, that he used trickery or deceit, which is one of the subsections in the burglary statute, because we think that he was acting funny. We think that he obviously had the gun with him. We think he had planned to do that.

But if that was not something that the jury

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could have believed, certainly after Carol runs out of the house and he follows her out, throws her on the ground and then goes back in her house three or four more times as born out by the video, certainly, at that point, there was no valid consent and there was certainly intent to commit a crime at that point.

Just because that's such an unusual fact situation, I appreciate you letting me put that on the record, Judge.

THE COURT: Well, I think you -- I think that's a good thing to put on the record. Of course, the definition of burglary is that a person who obtains entry by using deception, artifice, trickery or misrepresentation to gain consent and with intent to commit a crime, qualifies for the burglary. So I think that under the legal definition of burglary in the first, entering does qualify. Had it come to the directed verdict stage of that, I would not have directed a verdict because of the -- if the facts had shown that that's the way he gained initial entry.

But I think you're right, I think him going back into the house and, clearly, he didn't have any right to go back in at that time, so there's no

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question in my mind that there is a burglary first in this case.

MS. GARRICK: Thank you, Judge.

THE COURT: Now, I'll also address Mr. and Ms. Acre in this case. Of course, as the victims in this case, you have the right to be kept advised, and I'm sure the Solicitor's office has kept you advised of everything. You also have the right to be present whenever there's anything in court and you'll have the right to address the Court.

However, at the request of the State -- I mean, at the request of the defense, I'm probably going to delay the sentencing until no later than Wednesday, but I -- and, of course, we'll hear from you then if you would like to or if you don't think you can be back Wednesday, I will be glad to hear from you now. But I want to give you the opportunity to say anything that you would like to tell me about this matter and I'll be glad to wait until Wednesday and I will schedule it for Wednesday at your convenience. So you tell me what you would like to do.

MS. GARRICK: Your Honor, could we do it Wednesday morning at 9:30?

THE COURT: That suits me fine. And then

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we'll -- we will then hear the matter, the sentencing matter on this Wednesday morning at 9:30. And the victims have indicated that suits them fine and if they will be here at that time.

And, Mr. Mills, I'll be glad, of course, to hear from you and anybody that you wish to present by way of mitigation at that time as well.

But the pleas are accepted and there will be no withdrawal of the pleas. I'm going to dismiss the jury. The defendant has freely and voluntarily entered into pleas, the -- to the pleas. The evidence against him is very strong based upon what the State has indicated they would be able to prove. And so I would not, under any circumstances, allow a withdrawal of the pleas. The only matter that we're going to consider Wednesday morning is the sentencing.

MR. MILLS: Yes, sir.

THE COURT: All right. Have a seat and let's bring the jury in.

While the jury is coming in, the court reporter has advised me at your request, Madame Solicitor, she'd marked some State's Exhibits and she doesn't need them anymore. So she is going to give them back to you and have you receipt for them.

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MS. GARRICK: Sure. Thank you.

(The jury returns to the courtroom.)

THE COURT: All right. Ladies and gentlemen, thank you for your promptness in being back here at two o'clock. And I apologize for keeping you waiting in your jury room, but I will tell you that your time has not been wasted. One of the things that was being done while you were there in the jury room is that the defendant was reviewing the evidence against him, including certain video evidence that was set up outside the victim's house and had to do with whether he was the individual that went into the house, and he reviewed all of that, as well as the other evidence in this case. And I heard some motions and also -- in connection with this matter as well.

I tell you all that to tell you that after reviewing the evidence and having the Court having heard the motions that he made, the defendant had decided rather than to go through with a jury trial, to change his plea from not guilty to guilty. And he has pled guilty to the charges against him as indicted, that is a charge of burglary in the first degree, a charge of kidnapping and a charge of armed robbery. I have accepted the defendant's plea after

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concluding that the plea that he has entered into is freely and voluntarily given, and that as a result of that guilty plea, it is not going to be necessary that you make a decision in this case.

Now, I have deferred sentencing at the defendant's request so that he can bring certain individuals in in mitigation and present certain things to me. And I am actually -- he has not been sentenced for these charges yet and I'm going to sentence him Wednesday morning at 9:30. But as far as your having to make a decision in this case, you will not have to make a decision and I'm going to excuse you from any further service in this case. And I want to thank you for your patience and for working with us on this matter.

I will tell you this is not altogether unusual. Very often or not very often, but quite often when a defendant decides -- wants a jury trial and then he has a chance to review the evidence against him and talk with his lawyer, they will change their mind because the jury's here ready to hear their case and they might decide that they will plead guilty at that time, and that's what has happened in this case.

So I am going to excuse you. And you're not

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going to have to make any decision in connection with this matter. What I'm going to ask that you do is that you call that number that you have after six o'clock tonight. The remainder of the jury panel is doing the same thing. They will call that number that they have after six o'clock tonight and that is an answering machine in the clerk's office very much like the one that you've got at home. And your reporting instructions for tomorrow will be on the answering machine. So you can call that number any time all night long, but do call it some time after 6:00 tonight and we'll let you know about your reporting instructions for tomorrow.

But with that, I am going to excuse you from any further service on this case and I'll probably see you tomorrow, but please call that number after six o'clock tonight. Thank you. You are free for the rest of the day. Thank you very much.

(The jury was excused.)

THE COURT: All right. Mr. Mills, you'll be excused until Wednesday morning. I'll see you then.

MR. MILLS: Thank you, Your Honor. I'll see you then.

(The proceedings were concluded for October 15, 2012.)

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(The following proceedings were held on October 17, 2012.)

THE COURT: All right. Madame Clerk, you have the indictments on this case?

THE CLERK: Yes, sir.

THE COURT: All right. We're on the record with regard to the matter of the State versus Samuel Travis Wiggins. These are indictments numbers 2010-GS-32-3555 for kidnapping, 2010-GS-32-3554 for armed robbery, and 2012-GS-32-2283 for burglary in the first degree.

On Monday, the defendant pled guilty to these charges. I accepted his guilty plea and deferred sentencing to this morning and we are here today for the sentencing hearing.

All right. Madame Solicitor, I'll hear first from you, and maybe the appropriate thing to do at this time would be to recognize the victims in this case.

And I will tell the victims in this matter that, of course, as the victims in any kind of criminal case and under the Victim's Rights Amendment to the Constitution of South Carolina and also to the implementing legislation, you have the right to be kept advised of everything that's going

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on. And I'm sure the Solicitor's office has kept you advised of everything that's going on.

You also have the right, of course, to be present at any proceeding in court and you have the right to address the Court. So I'll be glad to hear from you at this time. If there's anything you will like to say, just come up to the podium by Ms. Garrick here and I'll be glad to hear from you.

MS. GARRICK: Thank you, Your Honor. Your Honor, if you would, would you hear about sentencing from law enforcement first and then we'll do our witnesses?

THE COURT: That'll be fine.

MS. GARRICK: Thank you.

Detective.

DETECTIVE PRESTIGIACOMO: Please the Court, Your Honor. The only comment that I'd like to make is to consider Mr. Wiggins' extensive criminal history and some violent episodes in the past that he was responsible for as well.

THE COURT: All right. Thank you, sir.

DETECTIVE PRESTIGIACOMO: Thank you, sir.

MS. GARRICK: Your Honor, if you'd hear from Richard Acre.

THE COURT: All right. Yes, sir, come up,

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please. Give the reporter your name.

MR. ACRE: Richard Acre.

THE COURT: Okay. Mr. Acre.

MR. ACRE: I ask Your Honor to give Samuel Wiggins the maximum sentence allowed by law on each of the charges he has pled guilty to. I also ask the sentences to be served consecutively as Mr. Wiggins has been given more than enough chances to live within the law.

THE COURT: Thank you, sir.

MS. GARRICK: Your Honor, Carol Acre, who was the actual victim that was home during the whole episode, she's pretty emotional today, so my victim advocate, Ms. Frazier, is going to actually read Ms. Acre's statement.

THE COURT: All right.

MS. FRAZIER: Your Honor, my name is Wendy Frazier. I'm the victim advocate here at the Solicitor's office here in this case. And this is Carol Acre's statement, her victim impact statement:

I have never been so frightened in my life. Just to think someone I knew would put a gun to my head is frightening. I've tried staying home, but when someone knocks on the door, I go to the door with a gun in my hand. I'm not the kind of person

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who would ever think that I would do that, but I'm so afraid to be alone in my own home. I'm going to Arizona to visit my son for about a month to see if I can find work.

The things they took some of it can be replaced, but they took my mother's jewelry box that I had passed on to my daughter. It was the only thing I had left of my mother's. It also had my great grandmother's wedding rings in it. It had five generations of things from women in our family.

To say how scared I was, cannot put into words. And how terrified I am daily is undescribable. I worry about going to Arizona and leaving my husband who has a very bad heart condition, but I just don't know what else to do. So please keep Samuel Wiggins in jail for a very long time. The next time he will kill someone. If you let him out, there will be a next time. Thank you.

THE COURT: All right. Thank you.

MS. GARRICK: Your Honor, the only other thing I would add, one thing on the kidnapping indictment, I believe that since this was not sexual in nature, you need to make a finding of that on the sentence sheet because that will affect his housing in SCDC.

I will bring to the Court's attention that

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he [redacted]

THE COURT: Does not require registration.

MS. GARRICK: Right. And I think you just have to note it on the sentence sheet.

THE COURT: I agree.

MS. GARRICK: Your Honor, he was served these warrants October 16th of 2010, so he would get any credit by law since October 16th of 2010.

I want the Court to be aware that I am dismissing a chop shop indictment, 2011-002. I'm dismissing a possession of meth indictment, 2010-1627. There is an unserved warrant for possession of a stolen vehicle out of West Columbia, which was part of this case. That warrant's going to be served on him hopefully before he goes to SCDC and when I get that in my office, I will also dismiss that. Those are the only negotiations that we've had.

THE COURT: All right. Criminal record.

MS. GARRICK: Yes, sir, Your Honor. Your Honor, in 1999, he was charged with a burglary. He pled to accessory before the fact of a felony. He got five years suspended to three years probation. In May of 2000, he was convicted of shoplifting. In November of 2002, he was convicted in federal court

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for a felon in possession of a firearm and stealing from a licensed firearms dealer. In 2003, he was convicted of attempt to possess drugs, giving false information, simple assault and battery. June 2006, that federal probation was violated.

Your Honor, he has been convicted in 2009 for burglary in the second degree nonviolent. He also was convicted of manufacturing meth and possession of a stolen vehicle and I believe that's what he's on probation now for. Your Honor, I can tell you he has pending charges in other jurisdictions, Richland and Spartanburg.

Your Honor, what I think is significant is when this incident occurred, not only was he on probation, he was out on that possession of meth bond. He'd been arrested March of 2010 for possession of meth and he made bond. So he was out on bond, he was on probation and then he did this.

Certainly, the victim's life has been altered by this. It was a horrible and senseless crime. We think that he is a danger to the community. We do think he's violent. We do think he's extremely dangerous and we would ask for a significant prison sentence.

THE COURT: All right. Thank you, ma'am.

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All right. Mr. Mills, be glad to hear from you.

MR. MILLS: Thank you, Your Honor.

Your Honor, this is a tragic situation all around for the Acres and for Mr. Wiggins' family. And as you can see from his record, this is -- a lot of his problems are based on a drug addiction. And methamphetamine is the drug that he's addicted to or was addicted to. This is a tragic drug. I'm sure Your Honor knows from sitting on the bench, that methamphetamine is a -- is probably one of the worst and most addictive drugs there is. And this -- in fact, in this case, he was on methamphetamine at the time of this incident. He had been up for days doing methamphetamine. It's not an excuse. It is mitigation, Your Honor, that he was an addict.

He was, in fact -- he was on probation and they were -- they were -- he wanted to have his addiction addressed and get some treatment. It just didn't work out that way and they weren't able to do that at the time when this incident occurred.

He is 33 years of age now. He's -- went to Airport High School here in Lexington County, did get his GED. He has two younger children ages three and five now, and two older, ages 13 and 14. His

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wife, Melanie Wiggins, is here in the courthouse. She's very upset about this, of course, Your Honor. And he knows that his actions on that day have caused a lot of grief and pain both for Ms. Acre, Mr. Acre and for his own family.

He does have a record, Your Honor, as you heard. He's never had any violent crime where he's had to do 85 percent. He knows, Your Honor, he has to do 85 percent in this case.

This is a case where there was quite a bit of discovery in this case, Your Honor. We had gone through discovery along the way in this case. I had -- as Your Honor knows, I had been provided from the Solicitor's office a disk with a video, which I assumed was a video shot every couple seconds and -- because we had still frames on there. Then we finally got a video last week showing the full range of what exactly happened in actual motion.

Mr. Wiggins had not pled to that point. He may have if we had seen all the video as it was and been able to see how things actually occurred, but once he did see that on Monday, Your Honor -- we saw it Thursday and we saw an unedited version on Monday -- he did not want to put Ms. Acre through testifying in front of a jury, you know, he wanted to go ahead

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and take responsibility for his actions on that day. My advice may have been different earlier if we'd seen all of the discovery.

So we ask Your Honor not to hold that against him getting to this point in the case for -- for the plea. But he did -- once he saw what the video was, once he saw the actions, then he was -- he wanted to accept responsibility for his actions and we'd ask that you consider that, Your Honor.

He is -- as I stated, this is a case that -- where drug addiction is at the root of it. And it's the root of almost all of his actions that have occurred that have caused him legal problems, the pending charges, as well as the charges on his record.

As I stated, the probation that he thought he was going to get treatment for, that didn't happen for some reason by the probation department. He's not blaming the probation department. He's just saying that he didn't get the treatment, therefore he was on this methamphetamine at the time of this incident.

He is very remorseful for his actions on that day, Your Honor. He was -- he's the kind of guy, Your Honor, I have talked with him several times at

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the jail and he's always respectful to me. He seems like a nice guy.

He hasn't been on any kind, of course, on any kind of substances, methamphetamine, since he's been in jail. It's my understanding he's gained nearly a hundred pounds since he's been in jail. Because of the methamphetamine, you know, basically people don't eat well when they're on methamphetamine.

He's always been respectful to me, always very nice, very -- a good guy to talk to. The incident that occurred from the testimony just doesn't fit the guy that I know from the jail. And I assume that's because of the methamphetamine. I've had other cases with people on methamphetamine, they do do things that are out of character. For some reason, it changes the brain chemicals. And I know it's a very addictive drug because of that. And that's what I believe happened in this case.

Your Honor, he has been treated by Lexington Mental Health for obsessive compulsive disorder. He has had some medication for that while he's been down there. So he's been trying to get treated for any kind of problems that he does have.

Your Honor, we would just ask you to consider that and consider that he's never done any major

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time before, Your Honor. Of course, he has to get significant time on this case, Your Honor. Of course, Your Honor knows, as you've advised him as well, it's 85 percent. And, Your Honor, we'd ask you to consider the 15-year sentence, that he would have to do over 12 years on that. Of course, any -- and I've explained to him also after that, he'd have to come out on supervision, which is part of the 85 percent law.

Your Honor, we'd ask you to consider that. I think it will be appropriate in this case considering that he is pleading guilty, he has taken responsibility for his actions. He is very remorseful and very sorry for his actions on that night. As I stated, they don't really fit his character as the -- the Sam Wiggins that I know from the jail, this does not fit his character, but he's admitted to it once he -- and he didn't remember everything that happened because he was on methamphetamine, but once we saw the video as it was, this case probably could have been handled earlier. My advice may have been different earlier. We didn't know exactly what we were seeing. So we would ask you to consider that, Your Honor.

And he does have a strong family support here,

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his sister, his wife and his father is standing here with him and he wants to address the Court, Your Honor.

THE COURT: All right, sir. I'll be glad to hear from you. Give the court reporter your name, sir.

MR. WIGGINS: Herbert Wiggins.

Your Honor, it's mostly always been, you know, drugs. He was ordered by the last judge to go to inhouse lockup, you know, for the drug treatment. They didn't send him. So the drugs they kept on. They'd sent him -- they were supposed to send him for lockup, that's what the judge had ordered, a lockup for one year in the treatment center, and that was completely ignored. And so the drugs, they didn't stop the drugs.

THE COURT: Very possibly that was a budget situation. They cut out a lot of the drug treatment plans in the department of corrections just because the monies were not available for those treatment plans. But go ahead.

MR. WIGGINS: If he would have got that treatment, because every time, you know, he gets on the meth and stuff, he just don't act right. But he's always been respectful. That's basically --

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it's always been drugs, Your Honor.

THE COURT: Okay. Thank you, sir.

MR. MILLS: Your Honor, his sister would like to read a statement.

THE COURT: Come up, please, ma'am. Give the court reporter your name and I'll be glad to hear from you.

MS. HOYT: My name is Mindy Hoyt. I'm Samuel Wiggins' sister.

I know that before you there is a lot of evidence that say -- they say, well, convict my brother and make him look like a bad person, but if you had ever had time to get to know him, you would understand he has always been a sweet guy. He may have just made dumb decisions because he had a problem with a hallucinogenic drug that doesn't always allow him to think properly because it makes him stay up for days causing delirium as in the case. And I believe the only reason that he pled guilty was because he does truly feel sorry for the victims in this case.

And I believe, like my father, if that probation officer hadn't ignored the orders to have him put into a drug rehab, that maybe he would have been able to have help and this whole case would not

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have ever come to light. And I believe that it will come into light when his co-defendant comes into court that she also was one of the main ones that set this up.

But like I said, he has four small children that need him and he truly knows he can't continue to let them down because of drugs and they need their father. I never have before believed him, but this time I truly believe him as I have talked to him, that he has changed and risked it all to try to get as little time as possible to be able to be there for his kids as soon as you see fit. But I ask that you be lenient on him because a normal sober Sam could never do this what he is being accused of. I sincerely ask you help us find an alternative to help him and his family and children.

I believe in trial, there would have been a lot more doubt, but like I said, I did not believe that he would -- I'm sorry, I'm getting -- I do not believe he would have committed such a heinous crime. I'm sorry it happened to her and her husband.

I'm truly sorry for you guys.

And I believe in their heart they also know that had it not been for the drugs and being up so

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long that this never would have happened because obviously there have been other times that he had seen them and they had felt openly enough to welcome him into his {sic} house and I believe that it was the drugs. And, again, I'm sorry for what the victim's family went through, but Samuel also has a family that are now victims, too, that we want to have our loving Sam around to make us laugh and raise his precious kids who don't yet know the rotten things drugs can make you do.

And I beg for your leniency in this case for the sake of his family and that you help him get help for his drug problem also. I only wish you knew what a caring, giving person the real Sam is and I thank you for hearing me and hope you will take my statement into consideration. And thank you, Your Honor.

THE COURT: All right. Thank you for being here.

SERGEANT PATHEL: Your Honor, if it please the Court, I'd like to address the Court.

THE COURT: Yes, sir.

SERGEANT PATHEL: Your Honor, I'm Sergeant Pathel with court security. Ms. Wiggins, Mr. Wiggins' wife, is in the courthouse. She wishes

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to address the Court. I observed her acting in a belligerent way. She was not obeying our directions as to how she should behave in court. And out of respect to the Court, I had her removed. I'll be happy to escort her in, let her speak to you if that's what you direct.

THE COURT: Yes, sir, let's do that. I want to hear from her. Escort her in and I'll caution her, tell her that she's going to have to maintain the order and decorum of the court or you'll escort her right back out again.

(Pause.)

THE COURT: Mr. Mills, would you talk to her just a moment before she addresses the Court?

(Pause.)

THE COURT: All right. Mr. Mills.

MR. MILLS: Your Honor, if I can just have one moment, I can read her statement that she -- if Your Honor would so see fit.

THE COURT: Take your time.

(Pause.)

MR. MILLS: Your Honor, she's really upset about this, of course, Your Honor. If I could read the statement.

THE COURT: Yes, sir, you may. This is the

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statement of his wife that's being put into the record by Mr. Mills on behalf of the defendant.

MR. MILLS: Thank you, Your Honor.

Thank you, Your Honor, for allowing me to speak. I would like you to know that Samuel Wiggins and our two girls are my world. I hope you can sympathize and realize I need him in my life to help me raise these two precious children. He also has two other children that need him. I'm standing before you begging for your leniency so that he can be there to see his children, who adore him, grow up.

He's really a very sweet, thoughtful and generous man who takes care of his family, but unfortunately has a serious problem with drugs he needs help with. He has never received the help he needed and I believe if he did, he could become a productive member of society and get back to being that wonderful man who's going to be my husband.

I beg you to please try and understand the man before you accused of these crimes was up for 11 days out of his mind and realize my Sam would have never done those horrible things. But I ask you for the minimum sentence so that my family is not lost forever with my girls heartbroken and, two, for a

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mistake he made while he was not the Sam we know and love.

I beg you to allow me to give my girls and myself some hope because my girls know and look up to their dad and would not be able to bear the thought of not having him in their lives and they don't deserve that. He's a good man who has made mistakes like everyone else in life and I plead with you to allow him and his children a chance at a normal life with Sam in rehab and a chance to become the old Sam we know and love.

THE COURT: All right. Thank you, Mr. Mills.

All right. Before I call on the defendant, one other thing, Mr. -- I understand he's on probation and there was -- what's the status of that? Tell me about that.

PROBATION AGENT: I'll pass up the violation report.

THE COURT: All right. The Court has a copy of a 1106 Department of Probation, Parole and Pardon Services violation report in several cases 08-GS-32-2285, 08-GS-32-2288, 09-GS-32-1381, indicates that the -- the 1106, which I'm going to have marked as a court's exhibit and made a part of the record.

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Ms. Sheppard, if you'll make this a court exhibit and give it back to me, please, ma'am.

(Court's Exhibit Number 3, 1106 form, marked for identification purposes.)

THE COURT: And according to the 1106, the defendant was sentenced by Judge Childs on May 12th of 2009, was given an eight year sentence suspended on service of two years and three years probation. On one of the indictments, five years suspended on time served to one year probation, and three years suspended upon time served and one year probation on another indictment.

The Court also has a copy of an arrest warrant dated July the 8th of 2010, and served on August the 24th of 2011, thus this Court has jurisdiction. There's also a probation citation dated 10/17/2012 and served 10/17/2012.

Mr. Wiggins, the department alleges and claims by this arrest warrant that you violated the terms and conditions of your probation by failing to report as you were directed to have done, having not reported since April the 29th of 2010. You changed your residence without consent or notifying the agent, having moved from your last known residence at , West Columbia, about a month

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before this arrest warrant was issued. This is according to the information of -- given to the agent by your wife's grandmother and a close neighbor.

You also failed to attend substance abuse counseling as ordered pursuant to a continuation order that was issued by the court, never having reported as instructed for that so that you could be referred. And, of course, you are behind on your financial obligations.

And, finally, by the citation, you are in violation of your probation as a result of the guilty plea in this case -- guilty pleas in this case.

Is that correct?

PROBATION AGENT: Yes, sir.

THE COURT: Okay. What else? Anything else the department would like to add to what's in the 1106?

PROBATION AGENT: Yes, sir. I'd like to point out that I did speak with the victim in the burglary case and it was prior to the plea, so this was some time back that I've spoken to the victim. At that time, he felt like Mr. Wiggins should be put in prison. He indicated to me that he was going to

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hurt someone, and that was his words.

Judge, there was restitution ordered on that case and there's still an outstanding balance of $4,905.22. That was joint and several, but we would ask for a civil judgment against him and then the other co-defendant can continue to pay on that.

To address that substance abuse counseling, as the Court is probably aware, the Court generally does not sentence someone to a faith based program unless they request it. And Judge Childs ordered that he go to U-Turn for Christ.

THE COURT: Go where?

PROBATION AGENT: U-Turn for Christ, which is an eight month program that addresses numerous issues. And I feel certain, I cannot remember, but him or his attorney probably requested that, being faith based.

Well, when he got out of prison, he failed to go to it. He told the agent that they would not allow him to work and he needed to support his family. So the agent did an inhouse order and Judge Keesley signed it that he must go to outpatient treatment and he never reported so that he can be referred. So I just wanted to try to clear that up.

THE COURT: I understand. Okay. But the time

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that the -- the sentence that he got from Judge Childs apparently was an eight year sentence, suspended upon service of two years. There was nothing on the sentencing sheet about ATU, or you don't know. Do you have a copy of the sentencing sheet?

PROBATION AGENT: I do.

THE COURT: Look and see if there's anything that says it on there about ATU while in the department of corrections. It probably doesn't because, at that time, in 2009, all of those programs had been discontinued because of budgetary problems. But look that up and give that to me.

All right. Mr. Mills, I'll hear from you if there's anything else or I'll hear from Mr. Wiggins.

MR. MILLS: Your Honor, just on that issue, I think Your Honor's correct that there was no ATU at that time. That probably would have helped in this case, Your Honor. This obviously is an addiction case when this occurred and -- and the addictions have a terrible outcome sometimes, Your Honor. Mr. Wiggins does want to address Your Honor.

THE COURT: All right. Mr. Wiggins, be glad to hear from you.

DEFENDANT: Yes, sir, Your Honor. I just want

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to say I'm sincerely, very sincerely sorry about what happened, I really am. And, Your Honor, I'm not a violent person. I know you've heard testimony that I am, but I'm not. I'm not.

I've got kids. I know the minimum I could get is -- I'm going to have to do another 11, 12 years even if I get the minimum and that means my daughter is going to be about 16. And I just ask that you give me that because that's going to be a time in their life where they really need me.

And I know I made some mistakes and I pled to this crime because this is the right thing to do. I was made aware of the fact that I, that I was guilty of a burglary and all this. And I just ask you, please, just give me the minimum. I mean, that's a lot of time, Your Honor. And I promise you if you give me the minimum, that I will never, ever in my life get in another bit of trouble.

And every time I talk to my daughter on the phone, she said, Daddy, when are you coming home? And I -- she said, Six, seven, eight or nine and then now it's 16 minimum. And I just ask you, please, don't take my whole life from me, Your Honor. I got kids and I got family that love me. And drugs have just killed me, they've killed me,

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and I just, please, ask you to be lenient with me.

And, honestly, again, I'm very sorry, I really am, to both of y'all. And you know we was friends at one time, Rick. And I'm very, very sorry, I really, I really truly am.

I just ask that you really, please, just be lenient as possible, Your Honor.

THE COURT: All right. Thank you, sir.

PROBATION AGENT: Your Honor, ATU was not ordered.

THE COURT: Okay. And probably the reason is I think that, you know, that was during that stretch that the budgetary constraints had required ATU to be cut out. So there was no order of the court that he receive treatment in the department of corrections. And I agree with the probation agent that we do not order faith based treatment programs. We will sometimes make that as a condition of probation, but it is up to the individual to take care of that and it's also up to the individual to take part in the counseling that the department of probation recommends.

All right. Mr. Mills, is there anything else?

MR. MILLS: Your Honor, we would just, please, ask Your Honor to consider the minimum and a

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concurrent sentence on the probation violation with termination and civil judgment, I believe, is what the -- on the restitution amount.

As I stated earlier, Mr. Wiggins is truly sorry for this. He's very remorseful. He's taken responsibility. And we would ask you to consider the minimum sentence, which is a very significant sentence in prison. And, hopefully, he can get the treatment he needs if it is available now, Your Honor, in the prison. He's been treated by Lexington Mental Health since in jail here. And we just ask you to consider the minimum, that his family really needs him out as soon as he can, but, of course, Your Honor, 15 years is a very significant sentence with 85 percent. Thank you, Your Honor.

THE COURT: All right.

MS. GARRICK: Your Honor, if I may.

THE COURT: Yes, ma'am.

MS. GARRICK: Your Honor, I'm just greatly concerned that Mr. Mills has kind of said some things that are going to leave the door open to PCR issues in the future and I may not be around at that time, so if I can put a couple of things on the record.

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Your Honor, certainly, the video that we've all been discussing has been noted in the discovery from law enforcement from the moment this crime occurred. It's even mentioned on the 9-1-1 tape that was certainly provided years ago to Mr. Wiggins' prior defense attorney and then to Mr. Mills when he became involved.

Mr. Mills did have the video. He just didn't have the capability to play it and he didn't realize that until the last moment. But it's been our position and it's still our position that the stills, the video stills that capture screen images in consecutive orders, is the same thing that that full video would have been if Mr. Mills had been able to play it for his client. So we don't think that that changed anything.

It has been my experience with this case, which it's been my case from the beginning, that Mr. Wiggins wanted to plead, but he wanted to plead to what he wanted to plead to. He wanted to plead to nonviolent offenses. He wanted to plead for ten years nonviolent and things of that nature and that was never something that was going to be offered.

So I don't think this thing about just looking at the full video Thursday and then Monday of the

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trial changed anything. I think he just is one of those defendants that at the last moment realizes I'm going to need to do what I needed to do years ago and that's to plead guilty and admit what he did and ask for mitigation. And he just waited late to do that, Your Honor. I just wanted that on the record in case I'm not around in the future.

THE COURT: Okay.

(Pause.)

THE COURT: All right. First of all, I want to say that before I go and pronounce sentence in this case that I know that this is an important and emotional matter to all of the parties involved, the victims, the defendant and his family and it is a tragedy for everyone. But this is a court of law and we're going to have to treat it as a court of law and I'm going to have to require that order and decorum be maintained in the courtroom when the sentence is announced.

So if there's anyone in the courtroom who thinks that they cannot sit quietly and accept the sentence without any shows of emotion when this sentence is announced, then I would ask that you leave now because if there are any disturbances in the courtroom, I would punish it by contempt.

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Some of the lawyers in the courtroom have heard me say this before. I've been in this position now for 16 and a half years and before I got the position, I was told by my colleagues that the most difficult thing that we would have to do would be criminal sentencing. It is the most difficult thing that we have to do.

We judges have no crystal ball. We cannot see the future. We don't know what's going to happen in the future, nobody does. All we can do is make a decision based upon the facts of the case that are before us, our experience and our training.

Sometimes the sentences that we impose do not satisfy everyone, most of the time they do not satisfy everyone, sometimes they do not satisfy anyone. But we make a decision based upon our view of the overall situation, including the totality of the circumstances, and that's what I'm going to do, of course, in this case.

I have heard from the defendant and his witnesses and I appreciate them being here. I'm going to make a few comments about some of those things in a few minutes, but I also want to tell the victims that, of course, I appreciate your being here not only as witnesses in this case as you were

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going to have to be, but being here as victims in this case. And I hope that whether you agree with or disagree with the sentences imposed by the Court, that you feel like that the system has treated you fairly. I hope the defendant also feels like the system has treated him fairly.

I've often said that in any case that's before this court not everyone's going to be happy with the outcome. In fact, generally at least 50 percent of the people are going to be unhappy with the outcome, but it's been my experience that most people can accept the decisions of the Court if they feel like they've been given an opportunity to be heard and have been treated fairly and that's what I hope for all of the parties in this case that you feel like you have been given an opportunity to be heard and have been treated fairly.

First of all with regard to the probation violation, I find that the defendant does understand the nature of the proceedings, that he has been represented in the probation violation, as well as in the charges by competent counsel. I further find that he is in violation of the terms and conditions of his probation by not reporting as he was ordered to report, by failing to attend the substance abuse

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counseling as ordered by the Department of Probation, Parole and Pardon Services, by changing his address and not notifying his agent and by pleading guilty to criminal charges.

As a result of these violations, the Court's going to revoke the probationary sentence previously imposed and require him to serve the remainder of that sentence, give him credit for time served since Oct -- well, when was your warrant served, that would be when your time served would matter, but it's not really going to make a difference, and also civil judgment joint and several with the co-defendant in that case for $4,905.22 and terminate probation.

I have heard and given careful thought to Mr. Wiggins' request through his counsel and through his own pleas for a minimum sentence, but I don't think a minimum sentence is appropriate in this case for several reasons:

One thing is that he was on probation at the time that he committed these crimes and that's a time when everybody should be on their best behavior. Not only that, he was out on bond on pending charges, again, which require him to be on his best behavior when he commits these crimes. He

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also has a criminal record.

But most significantly, and this really troubles me in this case, that he blames his conduct on his use of drugs. And as I'm sure that Mr. Mills has told him and everyone has told him, that voluntary intoxication, be it liquor, drugs or whatever it is, is no defense, that person's got to take responsibility for their actions. It's not a defense and it's not an excuse. No one made you take the drugs. No one made you get addicted. You put yourself in that position.

But not only did you blame it on the drugs, but you blame it on the system, you blame it on the courts for not helping you. And there was no order of the court that the State of South Carolina get you drug treatment. Judge Childs gave you an opportunity to get drug treatment on your own, which you didn't do. And then when you went on probation, the probation department gave you an opportunity to get drug counseling through the probation department, which you failed to take advantage of. But I find it unconscionable for you to blame the State of South Carolina and the system for not getting you help.

DEFENDANT: I don't blame them, Your Honor.

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THE COURT: Yes, you did. Now, I've heard from you and I don't want to hear anymore.

You failed to take the advantage of the treatment programs that were given you and that's your fault, just like the drugs are your fault.

I'm not going to give you the maximum sentence, but I'm going to give you a substantial sentence and it is not going to be the minimum.

The sentence of the Court on all charges is that the defendant is committed to the State Department of Corrections for a determinant term of 25 years to run concurrent, given jail time credit since October the 16th, 2010.

MS. GARRICK: Thank you, Your Honor.

THE COURT: Thank you. We are concluded.

END OF PROCEEDINGS

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CERTIFICATE

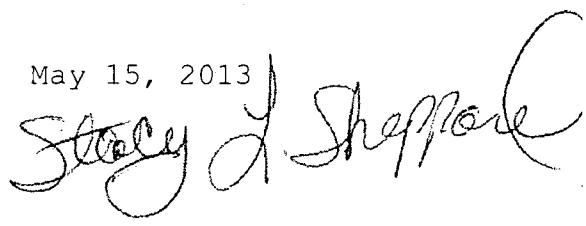
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the guilty plea of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 15th and 17th of October, 2012.

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

May 15, 2013



Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of Lexington) FILED
)
Sammy Wiggins, 334667) 2013 FEB 12 A 9:50
Full name and prison number (if any) of Applicant)
)
v.)
) APPLICATION FOR
)
State of South Carolina) POST-CONVICTION RELIEF
)

2013CP3200487

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution

2. Name and location of Court which imposed sentence Lexington County, S.C.

3. Name(s) of co-defendant(s) (if any) Amanda Furr

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2012-GS-32-02283

   (b) 2012-GS-32-03554

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) October 15, 2012 (25) years for all charges FILED

(b) _____

(c) _____ 2013 FEB 12 A 9:50

6. Check whether a finding of guilty was made:

(a) after a plea of guilty 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?
N/A

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. N/A

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

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) Guilty plea thus forth hereby comes PCR.

(b) _____

(c) _____

FILED
2013 FEB 12 A 9:50

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel.

(b) Prosecutorial misconduct.

(c) _____

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

(a) See attached.

(b) _____

(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? yes

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. Motion to reconsider.

ii. _____

iii. _____

iv. _____

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

i. Lexington Co. Judicial Center.

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Motion denied. FILED

ii.

iii. 2013 FEB 12 A 9:50

iv.

(d) the date of each such disposition:

i. November 2012.

ii.

iii.

iv.

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

i. N/A

ii.

iii.

iv.

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

No.

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

(a) which grounds have been presented:

i. N/A

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) Ineffective assistance of counsel, thus comes forth PCR.

(b) _____

(c) _____

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

(a) your arraignment and plea? Yes, Robert Mills.

(b) your trial, if any? N/A

(c) your sentencing? Yes, Robert Mills.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes, Robert Mills.

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

(a) the name and address of each attorney who represented you:

i. Robert Mills, Esq. 1728 Main St. Columnia, S.C. 29201

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

ii. _____

iii. _____

FILED

2013CP3200487

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

The original plea of seven years for common law robbery with the option to reject that plea and to proceed to trial based on States blatant failure to disclose Rule-5, Brady material that was favorable to the applicant that rendered applicant plea involuntary.

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

Yes, in Richland Co. S.C. grand larceny & trespassing sentenced to four years non violent concurrent. (2). Spartanburg, S.C. five years non violent run concurrent. Sentences expiration in three months.

FILED
2013 FEB 12 A 9:50

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Dorchester)

I, Samuel Wiggins, 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.

Samuel Wiggins

SWORN to and subscribed before me this 7th day of February, 2013.

Lindsey Dupont (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2013 FEB 12 A 9:50

2013CP3200487

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

I, Samuel Wiggins, 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.

Samuel Wiggins
Applicant

SWORN or affirmed to and subscribed before me this 7th day of February, 2013.

Andrea Pinyard
Notary Public

My Commission Expires: May 26, 2020

FILED
2013 FEB 12 A 9:50

2013CP3200487

FILED
2013 FEB 12 A 9:50

MOTION FOR DISCOVERY IN POST CONVICTION

17-27-150

Applicant asserts he is entitled to Discovery and moves the Circuit Court Judge to Order the same.

(1).Amanda Furr guilty plea transcripts (co-defendant) in Lexington County.

(2).All transcripts of Applicants plea taken on October 15-17, 2012 - as well motion to reconsider sentence (November 2012).

(3).Attorney -Client file in it's entirety to be provided to applicant.

(4).Entire Rule-5 Brady, file from solicitors office in applicants case.

Applicant moves before this court and request a hearing on this motion.

/s/ Samuel Wiggins.

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	COURT OF COMMON PLEAS
Samuel Travis Wiggins Applicant, v. STATE OF SOUTH CAROLINA Respondent.	FILED 2013 FEB 12 A 9:50 BRIEF IN SUPPORT OF POST CONVICTION RELIEF 2013CP3200487

The Applicant respectfully moves this court Honorable Court to grant His application for Post Conviction Relief, Pursuant 17-27-10 (esteq) SC Code of Laws (1976).

PROCEDURE HISTORY

Applicant was charged with first Degree Burglary, Kidnapping and Armed Robbery (2012-GS-32-02283, 2010-GS-32-03555, 2012-GS-32-03554, Respectfully). Robert Mills was retained to represent applicant. The State was represented by Asst.Solicitor Angela Garrick, of Lexington, Co. Solicitors Office. Honorable P. King. Judge.

After plea negotiations broke down applicant drew a jury and two alternates. Defense counsel moved Pursuant to Batson v. Kentucky, to strike the jury on the grounds solicitor struck white male jurors based on race. The trial court agreed in part and struck the two alternates but refused to strike the twelve juror panel.

FILED

At that point counsel renewed his privious motion pursuant to SCRCrim.Pro. Rule-5 and Brady v. Maryland, 373 U.S. 83 (1963) produce any new witness statements, and list of items alleged to have been taken during the offenses listed above that Detective Prestigiacomo to in discovery material that were never produced, and a reneval of motion to view the original video @ victims residence.

Counsel also objected to a new list of items allegedly taken during the offense being produce by the victim on the day of trial. Counsel moved for a continuance.

The Honorable Howard P. King ordered the State to "produce any new witness statements, denied the motion for the continuance, ordered State to show defense (for first time) the original video (FN 1) in open court (FN 2.)

A Neil v. Biggers, hearing was held to suppress the "one photo line-up" identification by Det. Prestigiacomo to victim Carol Acres, as unduly suggestive. (which was agreed by Asst.Sol.Garrick). This motion was denied.

At that point applicant entered into a "open plea" to all charges (upon advice of counsel) the court accepted the plea and deferred sentencing. two days later on October 17, 2012 a

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FN-1 The defense was unable to view the entire video due to State laptop computer malfunctioning.
FN-2 Applicant was unable to have a dialouge with counsel as to the content of video with Solicitor present, to prepare strategy.

FILED

sentencing proceeding was held. Det. Prestigiacomo Richard Acre, a probation agent testified for the state at that point Asst.Sol. Garrick addressed the court.

A Mr.Edward Wiggins, Mendy Hoyt, Melanie Wiggins (by statement) and applicant testified for the defendant. Robert Mills (Esq.) spoke for the defense.

The court imposed a aggregate 25 year sentence (to include a probation violation) within (10) days defense counsel filed a motion to reconsider sentence in which a hearing was held in November 2012 and denied by Judge Howard P. King.

This PCR Follows:

(1).Ineffective Assistance of counsel. in violation of sixth Amendment, USCA.

(A).Plea Negotiations:

"LAW"

Trial counsel's representation fell below professional norms and prejudiced the applicant. Strickland v. Washington, 104 S.Ct. 2052 (1984) Missouri v. Frye, 132 S.Ct. 1399 (2012) held, defense counsel has a duty to communicate formal offers from the prosecution and to accept terms and conditions that may be favorable to accused Id.. An companion case, Lafler v. Cooper, 132 S.CT. 1376 (2012) required the State to offer petitioner "plea deal" that he would have taken "but for" his attorney ineffective assistance of counsel.

FILED

FACTS

In August of 2012 Robert Mills visited applicant at Lexington Co. Jail and advised him that the State made a plea offer to a negotiated plea of 7-15 years to be reduced to common law robbery. Applicant immediately stated he would accept plea on those terms. Counsel advised applicant not to accept the plea "at this time" and that the plea offer was good for 60 days. This visit lasted less than five minutes.

Approximately a month later counsel met with applicant who immediately stated he wished to accept the States plea offer for the 7-15 years. Counsel stated the plea offer had expired. Applicant later plea to 15 to life plus 60 years and received and sentenced to 25 years.

"ARGUMENT"

Applicant was denied effective assistance of counsel when counsel advised applicant not to accept the States 7-15 plea offer which was favorable to applicant that he wanted to accept. Counsel admitted at plea he would have advised applicant to accept the plea offer had the State provided the video evidence prior to the date of trial pursuant to pretrial Rule-5 Brady motions. Counsel has a affirmative duty to review States evidence prior to advising his client in Re: to a plea, thus counsel should have moved a circuit court judge to order the State to produce the video prior to advising his client to reject a favorable plea. The video was material to guilt or innocence of accused.

Counsel's representation fell well below a objective standard of reasonableness and applicant was prejudiced thereby.

Counsel then advised applicant to enter a "Open Plea" to all charges that carried 15 years minimum of 15 years to life plus 60 years. Applicant received 25 years which is well in excess of the initial 7-15 years to establish substantial prejudice. Missouri v. Frye, Supra.

Relief:

Pursuant to Lafler v. Cooper, Supra, Applicant is entitled to the original plea offer of the 7-15 year common law robbery, which applicant would have accepted "but for" ineffective assistance of counsel and or in the alternative a new trial:,

(B). FAILURE TO INVESTIGATE

Trial counsel was ineffective when he failed to conduct a adequate pretrial investigation and the applicant was prejudiced thereby.

"LAW"

Strickland v. Washington, Supra, requires trial counsel to conduct adequate pretrial investigations and applicant was prejudiced. FN-3.

FN-3:in that he was not prepared to go to trial once State withdrew plea offer and was forced to plead 15 years to life upon advice of counsel.

FILED

FACTS

Counsel failed to conduct a independent investigation into items or list alleged to have been taken during the offense / video, search warrant (was based upon list not disclosed) that co-defendent was employed by victim in sex video (69 Girls.com) nude photos / so-dependent selling of stolen goods belonging to Gloria Kirkland / failed to use private investigator as part of retainer contract / that the victim was a fence for stolen goods, maker of pornography and dealer of drugs and to gather and establish proof of these items to be used at trial" "inter alia" (fact that victim co-defendant / victim changed story). This placed applicant in a position where he was not prepared to go to trial and the States plea offer allegedly had expired, and his attorney advised him to accept the 15 to life obviously because of the fact he was not prepared for trial.

III

Brady violations

(A).State withheld evidence favorable to accused.

Prior to trial in August 2011 counsel filed pretrial motions to disclose evidence favorable to accused pursuant to Brady v. Maryland, supra.

FACTS

(i).Solicitor Garrick stated after applicant pled guilty at the sentencing proceeding that co-defendant Amanda Furr changed her initial statement and lied to play the victim but after speaking with Garrick (4) times she finally told the truth.

This was never disclosed to the defense prior to the guilty plea. FILED

(ii). Solicitor Garrick also failed to disclosed Carol Acres had changed her story dramatically from her original statement that was first noticed at the Neil v. Biggers hearing where Carol Acres changed her original statement.

(iii). Solicitor Garrick failed to disclose statement / list of items alleged taken provided by Richard Acre containing "stolen goods" he obtained as a fence and that he was a known fence. Det. Prestigiacomo removed the list from discovery to conceal these facts. Solicitor failed to disclose video (10) days prior to trial that contradicted both co-defendant and victims statement.

LAW

Under Brady and it's progeny, the state is required to respond to a Brady motion well in advance of schedule of the trial date with all evidence favorable to the accused. When a Brady violation has occurred, the impact of the failure to disclose the evidence should be evaluated in the context of the entire trial record State v. Mixon, 275 S.C. 575 (SC 1981), see: States failure to disclose exculpatory evidence can render guilty plea involuntary Gibson v. State, 514 S.E.2d 320 (1999). Further, Brady violations may have a serious impact on trial preparations and strategy and this must be considered and determined if the violation was material to the outcome of the trial, see: U.S. v Bagley, 473 U.S. 667, @ 682 (1983).

FILED

ARGUMENT

Clearly, the evidence withheld of BOTH co-defendant and victim (wife of known fence / pornographer) changing their testimony was "material" for purposes of Brady and failure to disclose impacted the defendant's decision as to whether to enter a plea.

Likewise the video which contradicted BOTH co-defendant and victim was also "material" for purposes of Brady and counsel admitted video impacted his advice to his client whether (or not) to except 7-15 year plea. The States failure to disclose this material evidence rendered the guilty plea involuntary as defendant could not make a knowing and intelligent decision" as to strengthen / weakness of the States case. Gibson v. State, supra.

Relief: New trial.

(III) Rule-5 violations

State withheld Rule-5 material and this rendered this plea involuntary.

FACTS

Prior to trial counsel made Brady and Rule-5 motions to disclose relevant evidence. The State withheld the search warrant affidavit which contained numerous of items that were allegedly taken that were not provided to defense which had been diligently sought by defense, solicitor Garrick statedshe had no knowledge of any list of stolen items.

The prejudice manifested itself as the defense was unable to show that victim falsified alleged list and reported stolen goods he had purchased as a fence and victim could not establish ownership, counsel was made unable to prepare a defense based upon a investigation.

(B). Failed to disclose video.

(C). Copies of new statement made by co-defendant and victim.

(D). Failed to disclose evidence property records / chain of custody form that show Det. Henry Dukes and Det. Prestigiacomo falsified these documents and **planted** evidence in Ford Mustang that was actually found on co-defendant. This caused defense to be unable to investigate or prepare to show material evidence was falsified.

(E). Failed to disclose pictures and documentation of Ford Mustang which showed vehicle was searched prior to execution of search warrant.

LAW

SCRCrim.Pro. Rule-5(c) requires evidence to be disclosed (30) days prior to trial. State v. Kennerly, 503 S.E.2d 214 (1998) concerns Rule-5 in S.C. law. Rule-5 has goal of ensuring defendant right to a fair trial.

ARGUMENT

Defense counsel could not prepare a defense based on States **willful** violation of Rule-5 and some evidence was disclosed a day or two prior to trial which could not be investigated.

IV Prosecutorial Misconduct:

FILED

Solicitor and probation agent knowing presented false evidence and failed to correct evidence known to be false.

FACTS

Solicitor Garrick and probation agent knowingly presented false testimony at the sentencing of applicant that he had absconded from probation and that was reason applicant did not attend "U-Turn-For Christ" rehab center,when both parties knew that Michelle Whitlock had violated a court order to place applicant into rehab immediately upon his release and ordered him not to call or contact the rehab center. This false testimony resulted in defendant receiving a more severe sentence.

Solicitor Garrick failed to correct Carol Acres false testimony at the Neil v. Biggers, hearing that was directly contradicting to her prior statement.

LAW

In Giglio v. U.S. 405 U.S. 150, 153 (1972) the U.S. Supreme court held that presentation of false evidence to a court and jurors is incompatible with the rudimentary demands of justice. Riddle v. Ozmint, 631 S.E.2d 70 (2006) held the failure to correct false testimony is as reprehensible as it's presentation.

ARGUMENT

Solicitor Garrick who has shown a pattern: habit or

2013CP3200487

routine pursuant Rule 406 SCRE in committing Brady, Rule-5 violations knowingly presented false evidence at sentencing and allowed victim to testify falsely at the Biggers hearing violated the defendants right to due process of law.

CONCLUSION

The applicant asserts he is entitled to his original plea to seven years to common law robbery, with the option to reject that plea and proceed to trial based on States failure to disclose Rule-5 Brady material that rendered plea involuntary.

Respectfully,

Samuel Wiggins

FILED
2013 FEB 12 A 9:51

Sammy Wiggins, 334667
Lieber C.I. E-A 15
P.O. Box 205
Ridgeville, S.C. 29472

FILED

2013 FEB 11 P 12:35

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

February 1, 2013

Re: Post Conviction Relief Filing.

Lexington Co. Judicial Center
Beth A. Carrigg, Clerk of Court.
205 East Main St. Suite #128
Lexington, S.C. 29072

2013CP3200487

Dear Clerk of Court,

Please find enclosed an application for Post Conviction Relief that I am filing associated with the allegations related to my conviction. Would you please have this application filed and return to me a clocked stamped copy for my files. If you have any questions related to this application please do not hesitate to contact me at the above listed address.

Respectfully Submitted,

Samuel Wiggins

Sammy Wiggins, 334667
Lieber C.I. E-A 15
P.O. Box 205
Ridgeville, S.C. 29472

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Sammy Wiggins, S.C.D.C. No. 334667, Applicant, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No. 2013-CP-32-0487 **RETURN**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed October 8, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. Applicant was indicted at the December term of the Lexington County grand jury for armed robbery while armed with a deadly weapon (2010-GS-32-6387), burglary, first-degree (2010-GS-32-2283), kidnapping (2010-GS-32-3555). Applicant was represented by Robert W. Mills, Esq. On October 15, 2012, Applicant proceeded to trial before the Honorable Howard P. King. Subsequent to voir dire, Applicant pled guilty as indicted pursuant to the State's recommendation that his sentences be served concurrently. On October 17, 2010, Judge King sentenced Applicant to twenty-five years imprisonment for burglary, first-degree, twenty-five years imprisonment for armed robbery, and twenty-five years imprisonment for kidnapping. Applicant did not appeal his sentence or conviction.

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, and the Applicant's trial transcript. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

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

1. Ineffective Assistance of Trial Counsel:
   a. failure to convey a guilty plea offer.
   b. failure to investigate Applicant's case.
2. Prosecutorial Misconduct:
   a. Brady violation for non-disclosure of co-defendant's inconsistent statements

Attached herewith and incorporated herein by reference are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, and the transcript of the proceeding against Applicant. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

The Applicant's first claim is an allegation of ineffective assistance of trial counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged

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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 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 cannot be conclusively refuted by the record. 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.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Therefore, Respondent asks that this claim be summarily dismissed.

V.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not ***specifically*** laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code '17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file

amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

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

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

July 22nd, 2013

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON SAMMY WIGGINS, # 334667 Applicant, vs STATE OF SOUTH CAROLINA, Respondent	IN THE COURT OF COMMON PLEAS IN THE ELEVENTH CIRCUIT 2013-CP-32-0487 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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Anna R. Good, Esq.
1720 Main St. Ste. 303
Columbia, SC 29201

DATED this 22th day of July, 2013

Troyeshi Brailey, Legal Assistant
For Respondent

ORIG.

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF LEXINGTON	)	**2013-CP-32-0487**
	)	
Sammy Wiggins,	)	
	)	**SUPPLEMENT TO APPLICATION FOR**
v.	)	**POST-CONVICTION RELIEF AND**
	)	**INCORPORATED MEMORANDUM OF LAW**
State of South Carolina.	)	
	)	
	)	
	)	

Petitioner Sammy Wiggins, by and through his counsel, respectfully requests that the Court grant his petition for post-conviction relief, on the following grounds:

JURISDICTIONAL STATEMENT AND STATEMENT OF FACTS

Sammy Wiggins (hereinafter Petitioner) was charged in Lexington County, S.C. with one count of Armed Robbery, one count of Burglary 1st degree, and one count of Kidnapping. He entered a plea of guilty to all counts on October 15, 2012. At the hearing, Assistant Solicitor Angela Garrick represented the state. Attorney Robert Mills represented Petitioner.

Assistant Solicitor Garrick presented the facts of the case on the record for the Court.

FIRST GROUND FOR POST CONVICTION RELIEF:

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL FOR FAILURE TO REQUEST THE JUDGE TO MAKE A SPECIFIC FINDING ON THE RECORD THE KIDNAPPING CHARGE WAS NOT OF A SEXUAL NATURE

Strickland v. Washington, 466 U.S. 668 (1984), set forth a two pronged test for claims of ineffective assistance of counsel: 1) that counsel's advice was not within the range of competence demanded of attorneys in criminal cases; and 2) that there is a reasonable probability

that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on a trial. Id; *see also* Hill v. Lockhart, 474 U.S. 52 (1985) (applying the Strickland standard to guilty plea challenges based on ineffective assistance of counsel). Petitioner's statement is sufficient evidence to satisfy the prejudice prong. Jackson v. State, 321 S.C. 554 (1996) (*overruling* Judge v. State, 321 S.C. 554 (1996), which held that prejudice must be shown by objective evidence).

The Supreme Court's decision in Strickland v. Washington is the default rule for ineffective assistance of counsel claims. In Williams v. Taylor, 529 U.S. at 390-91, the Court held that applying Strickland to a particular set of facts does not constitute a new rule because Strickland is the general test governing ineffectiveness assistance claims. Id. Similarly, in Padilla v. Kentucky, 130 S.Ct. 1473 (2010). the Court applied Strickland to a particular set of facts, as opposed to creating a new rule. In his concurring opinion in Wright v. West, 505 U.S. 277, 301 (1992), Justice Kennedy stated:

> If the rule in question is one which of necessity requires a case-by case examination of the evidence, then we can tolerate a number of specific applications without saying that those applications themselves create a new rule.... Where the beginning point is a rule of this general application, a rule designed for the specific purpose of evaluating a myriad of factual contexts, it will be the infrequent case that yields a result so novel that it forges a new rule, one not dictated by precedent.

Id.

Mr. Wiggins was convicted of Kidnapping as a result of his plea on October 15, 2012. As a result of this conviction, he was automatically sentenced to be required to register as a sex offender. Mr. Wiggins will be required to register pursuant to S.C. Code Ann. § 23-3-430 (2007), which provides that persons convicted of certain offenses must register as sex offenders upon their release. The current statute requires that any person convicted of kidnapping a person

eighteen years of age or older must register as a sex offender ***unless a finding is made on the record that the kidnapping did not include a criminal sexual offense or attempted criminal sexual offense.***

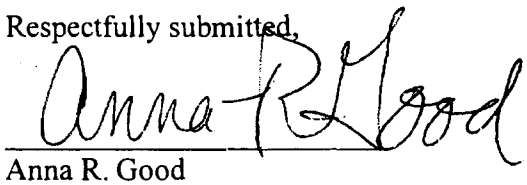
Mr. Wiggin's kidnapping conviction stemmed from an armed robbery and burglary of a home. There is no, and has never been, any allegation that there was any sexual offense involved in this incident. The facts discussed in the plea transcript corroborates this notion. In the sentencing portion of his plea, his defense attorney did not ask the judge make a finding on the record that the kidnapping did not include a criminal sexual offense; therefore, Mr. Wiggin's sentence defaulted to include the sex offender registry.

There is case law exactly on point regarding this issue in South Carolina. In Hazel v. State, 377 S.C. 60, 659 S.E.2d 137 (S.C. 2008), the court ruled that if a judge can make a determination that a prior kidnapping offense did not involve sexual misconduct such that the one convicted is required to register as a sex offender, then the defendant shall be removed from the registry.

CONCLUSION

It was Defense Counsel's responsibility to bring to the Court's attention the facts of the case of the Kidnapping did not include anything sexual in nature to keep the Applicant from being placed on the Sex Offender Registry. Counsel was ineffective for failing to do this. Prejudice is present in since the Applicant will be placed on the Sex Offender Registry upon his release from prison.

Respectfully submitted,



Anna R. Good
Law Office of Anna Good, LLC
Attorney for the Petitioner
1720 Main Street, Suite 303
Columbia, SC 29201
803-429-9107

August 14, 2013
Columbia, South Carolina

State of South Carolina

Court of Common Pleas

County of Lexington

Samuel T. Wiggins	)	
	)	
Applicant,	)	Transcript of Record
v.	)	13-CP-32-0487
	)	
State	)	
	)	
	)	

April 15, 2014
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge.

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

Anna R. Good, Esquire
Attorney for the Applicant

Walt Whitmire, Assist. Attorney General
Attorney for the State

Stacy L. Sheppard, RPR
Circuit Court Reporter

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NO.	DESCRIPTION	ID.	EVD.
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(The following proceedings were held on April 15, 2014.)

(State's Exhibit Number 1, photographs, marked for identification.)

MR. WHITMIRE: May it please the Court, Your Honor. The next matter before this Court is Sammy Wiggins v. State of South Carolina, case number 2013-CP-32-0487. Mr. Wiggins was indicted for armed robbery, burglary first degree and kidnapping. He was represented by Bob Mills.

On October 15th, 2012, the State called this case to trial. In the middle of trial right after the voir dire of the jury, Mr. Wiggins accepted a plea agreement from the State. He was sentenced by Judge King to 25 years imprisonment on each charge. Those sentences were to run concurrently.

Mr. Wiggins did not appeal his sentence or conviction. Mr. Wiggins did file a timely application for post-conviction relief. He is present and is represented by Ms. Good. At this time, I'll turn matters over to Ms. Good to put the allegations on the record for what she is pursuing today.

MS. GOOD: Thank you, Your Honor. Today Mr. Wiggins will be pursuing on his PCR application

in his amendment that -- or attachment that he filed with it, the brief in support for post-conviction relief section A regarding plea negotiations and him taking -- him basically denying a plea offer based on not receiving all the discovery in the case.

And there was an amendment in this case that I filed, Your Honor, regarding the kidnapping statute in Mr. Mills did not ask for there to be no sex offender registry. However, after reviewing the sentencing sheet, the judge took that into account and did it himself and did not put Mr. Wiggins on the sex offender registry. So we are withdrawing the amended application.

MR. WHITMIRE: Just for the record, Your Honor, Solicitor Garrick did move for that on the record during the sentencing phase of the plea.

THE COURT: Are you ready to proceed?

MS. GOOD: Yes, sir.

THE COURT: Call your witness.

MS. GOOD: Call Samuel Wiggins.

THE COURT: Mr. Wiggins, you need to come around over this way, please.

SAMUEL WIGGINS,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your name for

the record, please, sir.

THE WITNESS: My name is Samuel Wiggins.

THE COURT: Is it Samuel or Sammy?

THE WITNESS: Samuel.

DIRECT EXAMINATION

BY MS. GOOD:

Q Mr. Wiggins, you just heard Mr. Whitmire put on the record that on October 5th, 2012, you pled guilty to burglary first degree, armed robbery and kidnapping for 25 years, correct?

A Correct.

Q And, at that time, your attorney was Bob Mills?

A That's correct.

Q How long did you have Mr. Mills as your attorney?

A Since August 2011.

Q Was he retained or appointed?

A He was retained.

Q And approximately how many meetings did you have with Mr. Mills?

A I would say around three, four.

Q Okay. In the first meeting that you had with him, do you recall when that was?

A Not an exact date, ma'am. I have it actually wrote down over there. If I could -- I jotted a few

notes. If I was able to bring it up here, I could be more specific.

Q If I showed you...

THE COURT: Which ones do you want?

THE WITNESS: I have an outline right there that I drew up to help with questioning.

BY MS. GOOD:

Q If I showed these documents to you to help you refresh your memory, would it help?

A Yes, please.

Q Do you recall when your first meeting with Mr. Mills was?

A Looks like 9/14 of 2011.

Q And do you recall how long that meeting lasted?

A Maybe five minutes.

Q Okay. Did you discuss the case with him at that point?

A No, ma'am. I believe he was just letting me know that he was there working on my case.

Q And did you, eventually, did you meet with him and link later in August of 2012?

A Yes, ma'am.

Q And can you tell the Judge about that meeting?

A Yeah. He came in and he had told me, he said that the State had offered a 7 to 15-year plea. And

he, at that point in time -- well, he said the 7 to 15-year plea -- I'm sorry, I'm kind of flustered here. He told me, at that point in time, that he was still negotiating with the top of the line, like he was trying to get it down to a ten and whatnot. And he told me he would be back in a week because we had 60 days to accept or reject the plea. And, at that time, I didn't see him again until the plea had been rejected and pulled back.

Q Okay. And at that meeting in August of 2012, had you seen discovery at that point?

A No, ma'am.

Q Had you seen any still shots regarding this case and a potential video?

A No, ma'am.

Q At what point did you see any discovery regarding some photographs or a video in this case?

A After the plea was already gone, it was about three days to my trial, he came to visit me at the jail and brought tons of pictures and some video stills on a paper.

Q I'm going to show you what's marked as Respondent's Exhibit 1. Do you recognize these?

A I recognize them, but I've never seen them in color like that, but, yeah.

Q Are those the still shots from the video?

A Yes, ma'am.

Q Okay. And you said the first time that you saw those was three days before your trial?

A Yes, ma'am.

Q And, at that time, did you see a video regarding --

A No, ma'am. I never knew of a video or seen a video.

Q Okay. At what point did you become aware of the video?

A The day of my trial.

Q Okay. And if you had known about the video back when you had the offer, 7 to 15 years, would you have taken that plea offer?

A I absolutely would have taken it, yes, ma'am. It would have been in my best interest.

Q Okay. And prior to getting ready for trial, did you go over any preparation with Mr. Mills, go through the discovery to discuss a theory?

A No, ma'am, not that I recall, I don't. It just happened so fast, I -- it really wasn't nothing to say.

Q On the day of the trial when you showed up, did you meet with Mr. Mills?

A Yes, ma'am. He -- he came in a little late right when we were selecting a jury, so we really didn't have time to talk or anything. He had to come right in and get to picking a jury.

Q Did you have -- did he have his file with you {sic} with the discovery so you could look at it?

A No. He didn't have anything with him.

Q Did he have paper or pen or anything with him?

A No, ma'am.

Q At this point, how are you feeling about going to trial?

A I wasn't feeling too good about it. He didn't really seem very prepared on the day of trial.

Q Did he receive any paper or anything from anyone to help with jury voir dire?

A Actually, I believe it was Rob Madsen that actually had give him a pad and paper to use.

Q And then once you began the trial, did you ultimately decide to plead guilty?

A I did, yes, ma'am.

Q And was the original plea offer on the table at that time?

A No, ma'am, it wasn't.

Q When you were discussing the plea, was it the same day the trial began or did you end up pleading

the next day?

A Well, as soon as they showed the video or he put in a motion to view the video for the first time in court and they set up a laptop in court for us and we viewed it then and his advice was to take the plea, just to take the plea. And I was like, Well, I didn't have any other choice but to take that plea because the other plea was already gone and I didn't want to get a life sentence, you know.

Q And when you saw the video in court that day, was that the first time you had ever seen that video?

A Yes, ma'am.

Q Finally, during your discussions with Mr. Mills, did you ever ask for your discovery?

A I had a discovery that I got way back when I had a public defender and it was -- I didn't know he had anything else. I just assumed he would bring it as he got it.

Q And what was your impression from Mr. Mills about whether there was a video in this case or not?

A There was no impression at all. I didn't have no clue about a video.

Q You just thought they were the still photographs?

A Yes, ma'am.

MS. GOOD: No further questions, Your Honor.

THE COURT: Cross.

MR. WHITMIRE: May it please the Court.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. WHITMIRE:

Q Mr. Wiggins, so you just testified you received some discovery, reviewed some discovery with Mr. Cornwell, your former attorney; is that correct?

A No. They sent it to me in the Spartanburg County Jail.

Q So you're aware that the victim identified you for breaking into her house?

A Yes.

Q And she personally knew you; is that correct?

A Yes.

Q In fact, didn't she call her husband while you were inside of her home?

A No, sir.

MR. WHITMIRE: Page 114, Your Honor.

Q Did you have a chance to look over her statement in that discovery?

A I have.

Q In her statement, didn't she testify that you

and your co-defendant robbed her house clean of pistols, guns, jewelries, computers, valuable coins?

A Yes, sir, that's what she testified to.

Q You're aware of that from her statement; is that correct?

A Yes, I was.

Q You're also aware that your co-defendant, Amanda Furr, gave a confession?

A Yes, I was.

Q She implicated you, too?

A (No response.)

Q Furthermore, didn't she abandon her car when she fled after the offense?

A I'm not sure about that.

Q Did you review any statements or police reports where the victim's property was located in the trunk of her vehicle?

A Yes, sir.

Q Next to your ID card?

A That's what it says I believe, sir, but -- I'll just leave it at that, yes, sir.

Q Furthermore, didn't the State have a witness that was going to testify that he bought an antique gun from you that was stolen in the robbery?

A I'm unsure about that. I didn't know if it was

a State witness, but there is a statement to the effect from, I believe, somebody's girlfriend in there, yes, sir.

Q You have all this evidence and you're aware of it, correct? You're aware of all of this evidence before Mr. Mills even gets on your case?

A Yes, sir, I'm aware of what you just spoke about.

Q It's better. Didn't the victims have a home surveillance system, too?

A Yes, sir.

Q And the victim's husband identified you on that surveillance?

A Yes, sir.

Q And you're aware that that's how he identified you?

A I'm unsure how he identified me actually, sir.

Q In your application, you claim that this actual video is material to your guilt; is that correct?

A Yes, sir.

Q When did you get to see the second-by-second stills, the exhibit that your attorney passed up to you earlier for the first time?

A About three days prior to my trial, I believe the Solicitor had gave him them, as well as bunches

of more photos and a search warrant. There was a lot of stuff in there that we just got flooded with like three days before my trial.

Q So neither Mr. Mills nor Mr. Cornwell ever told you that this existed?

A No, sir.

Q Really?

A No, sir.

Q And you had no idea that that was actually of a video?

A No, sir, I did not.

Q Mr. Mills never reviewed any of the discovery with you?

A No, sir.

MR. WHITMIRE: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Pause.)

BY MR. WHITMIRE:

Q It's interesting, why didn't you speak up when the Solicitor -- well, when Solicitor Garrick told Judge King the reason you rejected the plea is because you wanted to plea to a nonviolent offense?

A There wasn't no speaking up for me, sir. I had already said what I could and it was her turn and my turn was over with. I couldn't dispute anything,

refute anything she said because the judge wouldn't allow me to speak again.

Q But on 161, didn't the judge allow you to speak again?

A I'm not sure of that. I'd have to look at the transcripts.

Q Wouldn't that have been a really good time to let the judge know you would have taken that 7 to 15 had you allegedly known about this video?

A Like I said, he wouldn't allow me to speak. I actually tried to speak in there to refute something and he told me that I already had my chance to speak and told me to be quiet. I believe it's on one of the later pages, 159 maybe. It's kind of deep in there, but he told me, Just don't talk, my turn was over.

Q Are you withdrawing your Brady violations today?

A Am I withdrawing?

Q Uh-huh.

A I'm unsure. I'd have to speak with my lawyer.

Q Just by reviewing your application, I believe on page seven, you claim the State also committed material Brady violations; is that correct?

A Yes, sir.

Q But you also just testified to earlier and claimed the State didn't give you evidence that was material of your guilt?

A Yes, sir.

Q Which is it, material evidence of innocence or material evidence of guilt?

A I'm unsure of the legal lingo, but the only discovery I was speaking about in that came three days prior to my trial and I was unable to review it or anything. I've had time since then to review it and I have went through it and found some things that I thought wasn't correct and how everything was done. But, yeah, I'm pretty sure we're withdrawing that and just going in a different path from this.

MR. WHITMIRE: No further questions, Your Honor.

THE COURT: All right. Redirect.

REDIRECT EXAMINATION

BY MS. GOOD:

Q Mr. Whitmire just went through all of this evidence regarding information in the discovery that you were aware of. You're not sitting here today saying you didn't do this, are you?

A No, ma'am.

Q You're saying that if you had been aware of all

of the discovery, including a video portraying the entire thing, you would have taken the 7 to 15 plea deal?

A Yes, ma'am.

Q Okay. And you rejected the plea offer based on Mr. Mill's advice to you and the information that you had at the time?

A Yes, ma'am.

Q And during the trial transcript -- in fact, the whole video issue was put on the record, was it not, during your plea?

A Yes, ma'am.

Q And Mr. Mills stated several times that he would have given you different advice if --

MR. WHITMIRE: Objection; leading.

THE COURT: Rephrase your question differently.

MS. GOOD: Yes, sir.

BY MS. GOOD:

Q During Mr. Mills' colloquy to the judge regarding mitigation for you, did he mention anything about the video?

A Yes, he did, three different times.

Q And what did he mention?

A He actually claimed that the State had not given him the video and that had he viewed the

video, that his advice may have been different earlier had he viewed the video. And he actually stated in another part that -- he says, Me and my client didn't know what we were seeing in the stills once we received them and that we didn't actually know what we were seeing. And had we had the video, we would have -- he would have said take the plea offer.

MS. GOOD: No further questions, Your Honor.

THE COURT: Recross.

MR. WHITMIRE: Just one question.

RECROSS-EXAMINATION

BY MR. WHITMIRE:

Q Again, if you're that upset about, you know, not getting an opportunity to plead guilty to the 7 to 15, why didn't you speak up and tell Judge King after Solicitor Garrick on page 156 tells the judge you rejected that plea specifically because you wanted a nonviolent offense -- a nonviolent plea?

A That would have been untrue.

Q Is this your first conviction?

A No, sir.

Q How many prior convictions do you have?

A I have quite a few.

Q Roughly how many times have you pled guilty in

front of a judge?

A I would say five times, four or five times.

MR. WHITMIRE: No further questions, Your Honor.

MS. GOOD: I have one recross (sic), Your Honor.

RE-REDIRECT-EXAMINATION

BY MS. GOOD:

Q Those prior convictions, did you PCR your attorneys in those?

A No, ma'am, I did not.

Q So this is the first time you've had an issue with an attorney?

A Yes, ma'am.

MS. GOOD: No further questions.

THE COURT: Anything else of the witness?

MS. GOOD: No, sir.

MR. WHITMIRE: No, Your Honor.

THE COURT: Thank you, sir. You may step down. Any other witnesses for the applicant?

MS. GOOD: No, sir.

THE COURT: Does the State wish to present any evidence?

MR. WHITMIRE: Your Honor, respondent calls Mr. Mills to the stand.

THE COURT: Come around, please.

ROBERT MILLS,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name for the record, please, sir.

THE WITNESS: Robert Mills.

DIRECT EXAMINATION

BY MR. WHITMIRE:

Q Good morning, Mr. Mills.

A Good morning.

Q Mr. Mills, how long have you practiced law?

A Twenty-nine years.

Q What is your experience in general sessions?

A Almost the full 29 years.

Q PCR experience, too?

A Yes.

Q Have you had a chance to review your file today?

A Pretty much.

Q Do you recall your representation in this matter?

A Yes.

Q What were the circumstances that led to you being substituted on this case?

A Mr. Wiggins' family hired me to represent him

on these charges.

Q Approximately when did they hire you prior to his inevitable plea?

A It was, I believe, late August, early September, somewhere in that range of 2011.

Q And how many times did you meet with Mr. Wiggins?

A That's what I was trying to -- I know I met with him in September of 2011. I've got notes for most of the meetings. Again in -- I met with him in March of 2012, April of 2012, twice in April of 2012 looks like.

Q Did you independently review Mr. Cornwell's file?

A I did. And I received information from the Solicitor's office as well. I also saw him in March, April, looks like July, maybe August of 2012, then again in -- before the trial.

Q Were you still --

THE COURT: Seen him when?

THE WITNESS: And then before the trial, which would be in October. I have notes from all of those dates.

BY MR. WHITMIRE:

Q Were you still receiving discovery piecemeal

from the Solicitor's office?

A A few things, yeah, here and there, including the DVD that has been mentioned earlier.

Q We've heard a lot about that DVD, the home surveillance video from the victims. When did you become aware of its existence?

A I do not have the date for that, but it was some time -- it was before the offer expired, so -- and Mr. Wiggins and I did go through it and we went through both the -- I brought my laptop to the jail. We looked at the video, what I thought was a video that looked like stills, okay. There were several stills and there were stills that were -- had been reduced to paper copies as well that we looked over, but there were several stills. And I thought that the video camera at the -- and I told Mr. Wiggins this -- I thought the video camera at the victim's house was a every few second takes a still. I did not -- I was not aware, at the time, that there was a actual regular style video.

MR. WHITMIRE: May I approach Your Honor?

THE COURT: Sure.

BY MR. WHITMIRE:

Q Mr. Mills, I'm showing you what's been marked as Respondent's Exhibit 1. Do you recognize these?

A It looks like, I'm not sure if I had color versions of this or not, but I did have -- these are the ones that I was saying were reduced to paper, the stills that were reduced to paper. So we had this on most of these I think, if I -- I hadn't had a chance to review all of them, but we had stills like this during that summer of 2012.

Q And you received those prior to the expiration of the first plea offer?

A Yes.

Q Approximately how many stills or how many pages are there?

A Approximately 25 maybe, maybe more. I haven't looked through all of this to see if I have each one of those pages, but we had some -- we had pages similar to that, if not the same, of stills from the camera.

MR. WHITMIRE: At this time, Your Honor, respondent moves Exhibit 1 into evidence.

MS. GOOD: No objection.

THE COURT: Mark those in evidence, please, ma'am.

(State's Exhibit Number 1, photographs, admitted into evidence.)

BY MR. WHITMIRE:

Q Did you have a chance to review all of the State's evidence from Mr. Cornwell's file with Mr. Wiggins?

A I believe so.

Q What was your impression of that evidence?

A Well, it was two eyewitnesses, I believe, including the co-defendant, who had made a statement saying that Mr. Wiggins had basically robbed at gunpoint the victim and she was -- she made a statement to that as well and the victim made a statement to that.

Q Did you review the police report of her abandoned vehicle?

A I believe so.

Q Do you recall what was retrieved from that vehicle?

A Not off the top of my -- I have to look at it again. Other than what you asked on cross, that sounds right, but I'd have to look at the evidence again to determine the specifics.

Q When did you begin negotiating pleas with Solicitor Garrick?

A I don't have a date on that. I just remember there was -- I believe there was an offer, and the Solicitor could correct me if I'm wrong, I believe

there was an offer before the 7 to 15 and then that was rejected and then the offer of 7 to 15 with an expiration date.

Q Do you recall why that first offer was rejected by Mr. Wiggins?

A He wanted a better deal.

Q What was he specifically looking for?

A I don't have that written down. I know just less time, but maybe nonviolent as well. I don't have that written down exactly what he wanted.

Q So the Solicitor correctly stated that that's what he wanted, nonviolent?

A That sounds right, that sounds right. And it looks like the offer was for attempted armed robbery from what I can see here and then I guess the other -- with a burglary second maybe, and that would have been -- that would have kept it as -- attempted armed robbery would have been a violent offense. That's what the notes I have is attempted armed robbery. I don't have a date that was offered.

Q Referring to the second offer?

A The second offer, yeah.

Q Did his motivation change at that posture of the case?

A Well, we -- he wanted a better deal than that.

I mean, like I just stated, we went through the -- all of the statements during that -- before the expiration of the offer, went through the stills. I brought my laptop, as I stated. We went through the stills both on the paper copies and on the video -- well, the stills video. And I was not aware of the regular running video at that time. Now, that came later.

Q In the State's discovery disclosure, did they label that CD-ROM, the video?

A I don't know. I'd have to look at it and see.

Q If you don't mind.

A If I have it. Let me see if I have it.

Well, actually, it's labeled video -- this one's labeled, Video Stills. And this is the redacted video that I received the week before trial. I believe this is the one. I'd have to look at it. That I received the redacted video which actually took out some of the lag time where there's nothing going on. So this does say, Video Stills. I don't know if I could open up a regular video from that or not, but that's what it has on it.

Q Did you ever follow up with Solicitor Garrick or the sheriff's department to see the video in its original format?

A That was what was done at the -- when I received this redacted video. I believe this is the one I received right before the trial date in October. That was the one -- that's when I got with the Solicitor and asked to see the entire video and that's when we were actually in court looking at it. Because the one I received was just a few days before the trial, which was an actual moving video as opposed to just stills.

Q And your inability to view the entire video, can you briefly explain what was the cause behind it?

A The cause?

Q Or the reason.

A Well, I'm not sure of the reason. I just know that I was unable -- they told me that there was a video and I did not open up the video. I just saw stills, which I assumed was, as I stated, I assumed that was -- that the camera actually took stills every few seconds instead of a moving, what, one 30 frames per second or 24 frames per second video. So I assumed that it was several stills and that's what -- there were copies of those stills in the reports that you showed and there was a -- so I was not aware of the video until right before the trial.

Q Inevitably how did you find out that you were unable to view it, the real reason behind it?

A I was told at court that there was -- I'd have to -- I think they said something about downloading a player or something to that effect that I didn't do for, I assume, this one which says Video Stills on it. So I'm not sure -- I've never actually tried to open it as a video since then.

Q Did you try opening the exhibit on your personal CPO?

A Well, I watched the one that's -- the redacted video I did watch. I did not try to open this one up, the one that has Video Stills written on it.

Q Going into trial were you prepared to try Mr. Wiggins' case?

A I think so from what we had. We had done some investigation about, not the victim, but the victim's husband and -- but the video definitely showed -- made things look different than they did on the stills.

MR. WHITMIRE: No further questions, Your Honor.

Thank you, Mr. Mills. Please answer any questions Ms. Good has for you.

THE COURT: Cross.

CROSS-EXAMINATION

BY MS. GOOD:

Q Good morning.

A Good morning.

Q You said you'd been practicing for 29 years, correct?

A That's correct.

Q What's your normal procedure when you receive discovery in your office in a criminal case?

A To enter it into the file.

Q Do you review it?

A Yes.

Q And how do you go through reviewing your discovery?

A Well, if it's paper discovery, I read it.

Q And, in this case, did you read the discovery?

A I did.

Q And, in fact, you've given me a copy of the discovery, correct?

A I think there maybe some little extra than what -- that's the main bulk of the discovery.

Q In the main bulk of the discovery, isn't it true that in approximately five or six different spots, it mentions a video in this case?

A That's correct. And my assumption was that it

was stills.

Q And on the video with the stills when you opened it up, do you recall if there was anything else other than just still photos or if there was another little tab to click on something?

A That's what I don't recall.

Q At what point, on what date, do you remember if you showed Mr. Wiggins the stills?

A It was some time during either -- the summer time I believe, but I don't have -- of 2012. I don't have the exact date.

Q When was the 7 to 15 plea offer given in this case?

A I also don't have that date. I remember that it was a -- there was a deadline, but I don't remember the date it was actually given. I don't have a written copy of that.

Q And I'm going to show you what's in evidence as Respondent's Exhibit 1. Mr. Whitmire asked you your impression regarding the case. When you saw those stills, what are your impression of those stills? Are they easy to see?

A Well, you can't see movement.

Q Can you see who is on the photographs?

A Actually I believe when you look at them on a

computer, it's a little bit better on the stills about who it is and who it looks like.

Q Can you -- you obviously have met with Mr. Wiggins on numerous occasions. Could you recognize him on these photographs?

A On the one on the computer, it looks -- you can see -- I mean, it fits the general description.

Q But on the actual still photographs that you showed him, could you recognize him?

A I mean, it fits the description.

Q Can you see his face?

A No, you can't see his face that well. What I'm saying is, though, just to be clear, we did look at the stills on the -- I took my laptop. So it wasn't just these photographs that we looked at. We looked at it on the computer, which is actually, I believe, was a larger view.

Q And on the computer, I think you said you had black and white. Were they black and white on the computer or were they color; do you remember?

A I don't remember.

Q Okay. After you reviewed the discovery and you saw that there was video actually in the discovery, Mr. Whitmire asked when did you follow up with the Solicitor about this case. What discussion did you

have with Ms. Garrick and when did you have it about the video?

A Well, it was just a few days before trial, I told -- when I got the redacted video, which is the one that where -- I assumed it was the one that the Solicitor wanted to put into evidence because it took away all the time where the cameras don't show anything.

Q Prior to the week before trial when you received that, did you ever follow up with Ms. Garrick regarding supplemental discovery in the video?

A I think I asked her about it either that -- end of that week or the first of the week of trial.

Q But prior to that, after you had received discovery and reviewed --

A It was not long before the trial that I received it. So it would have been a day or two before the trial, if I did. If not, it was, you know, the week of the trial.

Q Maybe I'm confusing my question. When you originally received discovery, the paper discovery and the still photographs --

A Okay. I'm sorry. I'm sorry.

Q -- did you follow up after that with

Ms. Garrick or have a conversation with her about the video prior to receiving the redacted video?

A We talked about there being a video which I assumed was the still --

Q The stills?

A -- succession of stills. So we may have been mis, you know, crossing our terms there because she obviously knew there was a moving video, yes.

Q And once you recognized that there was a video, when did you discuss it with Mr. Wiggins?

A It was that -- end of that week before the trial whenever I first got it. I mean, I went down to the jail and we looked at it.

Q If you had known about that video prior to the plea offer expiring, would you have advised him differently regarding that?

A When I say advise him differently, on the record, what I mean is advise him as to what the evidence is. Of course, I always leave it up to the client to determine whether or not they're going to plead to the offer.

Q Absolutely. So it's fair to say in this case when you advised him as to the evidence regarding the 7 to 15 plea offer, there was no discussion about the video, an actual video in the case?

A That's correct, because all we had was the stills that I knew of at that time.

Q And it's your testimony that the video made it look a lot more violent than it really was?

A Yeah. You can see things -- when you see it in action, it's much more specific as to exactly what happened.

Q And in your impression of the evidence, does it change the evidence significantly when it comes to your advising him regarding taking the plea offer?

A What the evidence is. I didn't advise him not to take the plea offer due to the stills.

Q Right. Just your impression of the evidence when you were discussing the plea offer with him?

A I would have shown it to him so he could see the different nature of what it looks like from a moving action film as opposed to stills.

MS. GOOD: No further questions.

MR. WHITMIRE: One or two quick questions, Your Honor.

REDIRECT EXAMINATION

BY MR. WHITMIRE:

Q Mr. Mills, the victim's husband ID'd your client based on those stills?

A I believe so.

Q Did the victim also?
A I'd have to look and see what her identification was.
Q And was this surveillance tape video, was this done by a police officer?
A No. I believe it was the victims -- at the house. It was one that was installed at the house of the victim -- the victims, because I'm not sure if Mrs. Acre or Mr. Acre actually installed it.
Q Did Mr. Wiggins ever ask you to follow up and see if -- the State's original copy?
A I don't remember that.

MR. WHITMIRE: No further questions, Your Honor.

THE COURT: Any recross?

MS. GOOD: No, sir.

THE COURT: Thank you, sir. You may step down.

THE WITNESS: Thank you, Your Honor.

MR. WHITMIRE: Your Honor, I just ask that Mr. Mills be excused from his subpoena.

MS. GOOD: No objection.

THE COURT: You're free to go. Thank you.

THE WITNESS: Thank you, Your Honor.

MR. WHITMIRE: Your Honor, respondent calls Ms. Garrick.

THE COURT: Come around, please.

ANGELA GARRICK,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name, please, ma'am.

THE WITNESS: Angela Garrick.

DIRECT EXAMINATION

BY MR. WHITMIRE:

Q Good morning, Ms. Garrick. How long have you been a Solicitor?

A A Solicitor since 1992 -- I'm sorry -- 1995. I was a public defender from 1992 to 1995.

Q Do you recall your prosecution of this case?

A I do.

Q Have you had a chance to review your file?

A Yes, sir.

Q Now, do you recall how many Rule 5 discovery disclosures you made in this case?

A If you give me one second to count them.

Approximately, eight different dates in the file.

Q On which of those eight dates, did you tender over the surveillance video from the victim's home?

A I believe that the surveillance video along with the stills went to Mr. Mills March of 2012.

Q Was that video in its full form?
A It was. There was video surveillance notations throughout the file. It's on the first page of the summary by the detective where he notes that there is a video surveillance evidence. And that was disclosed to Mr. -- the public defender that had it before Mr. Mills. That was in the first batch of discovery that went in October 2010.
Q Did you have any reason to believe or know that that video would not properly function on Mr. Mills' computer?
A No.
Q Solicitor, what measures do you take to make the evidence available to a defense attorney?
A We try and make copies of everything we can make copies of, but certainly our file -- we have an open file policy in our office and defense attorneys are welcome to come look through our discovery page-by-page, review our disks, whatever they need to do.
Q I believe you put some things on the record at the end of Mr. Wiggins' guilty plea, but do you recall the plea negotiations in this case?
A I recall most of them. I don't have a date of the first original offer that went to the public

defender, but I know that when Mr. Mills got the file in 2011, I did offer an attempted armed robbery with a negotiated range of 7 to 15. And then I have notifications, e-mails, that went to Mr. Mills in March of 2012 that said, We must resolve the case with those plea offers or it would move to the trial list. And then I have an e-mail to Mr. Mills June 25th of 2012, that said, Any and all plea offers were withdrawn, but if he wanted to reopen the plea negotiations, it must be done in August because the trial notice was for October 15th.

I think there was some earlier discussion about October 5th, but really the date was October 15th of the trial.

Q What caused those plea negotiations to fail on the first two plea offers?

A It has always been my impression from discussions with Mr. Cayce Cornwell and Mr. Mills, that Mr. Wiggins always wanted a nonviolent and that was never going to be offered. The time between when I believe Mr. Mills got the stills and got the video in March of 2012 up through when the plea offers were withdrawn the end of June or the middle -- June 25th of 2012, any time I saw Mr. Mills, he would say, Nonviolent, nonviolent, and I would say

no.

Q And just for the record, what is the difference between a nonviolent sentence and a violent sentence?

A It goes to the classification where inmates are housed and their parole eligibility.

Q In your experience as a Solicitor, does this often cause plea negotiations to stall, the violent versus nonviolent?

A It does.

MR. WHITMIRE: I have no further questions, Your Honor.

Ms. Garrick, please answer any questions Ms. Good has for you. Thank you.

CROSS-EXAMINATION

BY MS. GOOD:

Q Ms. Garrick, you said you gave the video to Mr. Mills in March of 2012 in full form?

A Yes.

Q Were you able to see that video on your computer?

A I mean, I know that I looked at the video. I don't remember what date I officially viewed it myself.

Q But you were able to view it?

A Right.

Q And you mentioned that the video was in the discovery all throughout the file, correct?

A Mentioned that it existed, video surveillance.

Q And when did you give the original discovery to Mr. Mills?

A To Mr. Mills, October 12th of 2011.

Q And after October 12 of 2011, did he ever follow up with you regarding this video that was mentioned in the discovery?

A I'm sure that he did because I requested it. I knew I didn't have it and I requested it from the detective in March and that's when I received it, March of 2012.

Q Okay. And after you gave it to him in March of 2012, did you have any discussion with him about the video?

A We did talk about the videos and I would ask him, you know, how does your client think he can not be found guilty? Now, whether -- I can't -- I assumed that Mr. Mills and I were talking about the same thing, which was the full video.

Q And you have no way to know that if Mr. Wiggins was shown the video or not, correct?

A I have no way to know that. I know that the

redacted video that they got the Thursday before trial, that is the one that Mr. Mills is correct where we took out -- it was a motion sensored video installed by the victims, and that's where we did take out the time lapses. I changed it for trial purposes. I would have a screen that would go blank and it would say, Time lapse 20 seconds, time lapse ten seconds. And I gave him that, that was the trial exhibit, the one we were going to use for trial. I gave him that on that Thursday. And on that Thursday is when I realized or when I was told that Mr. Mills had trouble with the video.

Q You said the plea offer, the attempted armed robbery 7 to 15, do you recall when you gave that offer?

A I've looked through everything I could find. A lot of the file is shredded. I don't see the date when it was offered. I just know that it was -- obviously by my e-mails and letters to Mr. Mills, it was open in March and it was withdrawn June 25th.

MS. GOOD: No further questions, Your Honor.

THE COURT: Redirect.

MR. WHITMIRE: No redirect, Your Honor. I just ask that Ms. Garrick be excused of her voluntary participation in this case.

THE COURT: You're free to go. Thank you.

MR. WHITMIRE: Your Honor, that's it for the respondent's case. The respondent rests.

THE COURT: Any reply?

MS. GOOD: No, sir.

THE COURT: Any argument?

MS. GOOD: Just very briefly, Your Honor. I want to put on the record that I think it's been clear from all the testimony, that what we're asking the Court for is the original plea offer that Mr. Wiggins testified that if he had been aware of this video prior to rejecting that plea offer, he would have accepted the plea offer, and as well as there was testimony from Mr. Mills that he had no idea there was an actual video. And we believe we've met our burden as to Mr. Wiggins being prejudiced because he lost potentially, at a minimum, ten years, Your Honor, regarding his sentences from 25 years to, if he would have gotten the maximum, 15 on the plea deal.

It was obvious from Mr. Mills' testimony that he had no idea there was a video until he received the redacted video. And while obviously not the Solicitor's fault that Mr. Mills couldn't open the video, it was something that was never shown to my

client because Mr. Mills had no idea that there was a video. So it's clear that the 7 to 15 plea offer was rejected not based on having all of the information. And the testimony was that the video showed everything in a lot more detail and made the evidence a lot worse and he would have advised him differently regarding the plea offer.

THE COURT: Thank you.

Anything from the State?

MR. WHITMIRE: Yes, Your Honor. This is a case of changed desires in hindsight. Pursuant to Lafler v. Cooper, 132 S.C. -- West Ct. 1376, First, the court must take into account the defendant's earlier expressed willingness or unwillingness to accept responsibility for his or her actions.

Furthermore, our state law in Holden v. State, 393 S.C. 572, To show prejudice, the defendant must demonstrate that there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial.

Here the record clearly shows from, I believe, the Solicitor, Mr. Mills and from the plea colloquy, that Mr. Wiggins declined those offers, rejected them because he wanted a nonviolent sentence.

Furthermore, his testimony today in hindsight is incredibly suspect in light of the overwhelming evidence of guilt that was presented to him by Mr. Cornwell and again by Mr. Mills, including two identifications, including property that was retrieved from his co-defendant's car, a confession by co-defendant that implicated him, among other things and other things. This is a -- even Judge King, I believe, comments at the plea colloquy that this is a case of overwhelming evidence of guilt. This is a defendant, Your Honor, who wants to have his cake and eat it, too.

MS. GOOD: Your Honor, just to respond to that, his earlier willingness to accept the plea or not and responsibility was based on information that he did not fully have. He did not have the video which would have been overwhelming in this case and been just clear evidence to a jury that he was there doing it.

And in addition, Your Honor, under Missouri v. Frye, Strickland's inquiry into whether the result of the proceeding would have been different requires not looking at whether the defendant would have proceeded to trial absent this information, but whether he would have accepted the offer to plea

pursuant to the terms earlier proposed if he had known about this information, which he did not. And it's very clear from the testimony that he did not have this information at the time of the original plea offer.

MR. WHITMIRE: Quickly in response, Your Honor, that determination is a credibility concern for the Court. In the record, the respondent submits it's pretty obvious under what his motivations and what his desires were in entering a guilty plea.

THE COURT: Mr. Wiggins, you're still under oath; you understand that?

MR. WIGGINS: Yes, Your Honor.

THE COURT: I noticed in the transcript that there was one mention -- there's a lot mentioned about -- from you and your family and attorney about drug treatment, drug addiction treatment.

MR. WIGGINS: Yes, Your Honor.

THE COURT: And the probation officer said in the sentencing portion of the transcript that there was a directive from Judge Childs, I believe, that you go to U-Turn for Christ, which they do not order unless the defendant asks for it because it's a faith-based program. Do you recall that?

MR. WIGGINS: Yes, sir.

THE COURT: And it states in there that because you -- I don't know whether this is your version or not, but the probation officer's understanding in the transcript was that you didn't want to go there after you got out of prison because they wouldn't let you work outside of the program. So it states that I signed an order which did away with the U-Turn for Christ requirement and allowed you -- or ordered you to go to outpatient treatment.

MR. WIGGINS: Yes, Your Honor.

THE COURT: Now, I vaguely remember that. Normally, if I'm involved in any way in a case, I won't hear the PCR. Now, I don't remember if that was just a paperwork thing. I've got a stack up here now. They bring me stacks of papers all the time and --

MR. WIGGINS: That's all it was that's at issue, over with.

THE COURT: All right. Do you think I have any type of involvement in your case aside from signing some sort of administrative order that just changed it from one type of program to another?

MR. WIGGINS: No, Your Honor.

THE COURT: Do you have any problem with me hearing the case?

MR. WIGGINS: No, Your Honor, I don't.

THE COURT: Your PCR case?

MR. WIGGINS: Yes, sir. I'd like you to hear it, yes, Your Honor.

THE COURT: Do you want to talk to your attorney about it?

MR. WIGGINS: No. I'm good on that, Your Honor.

MR. WHITMIRE: At this time, Your Honor, I believe Ms. Garrick wants to put something on the record.

MS. GARRICK: Your Honor, you did conduct a hearing July 23rd of 2012. The -- Mr. Wiggins, I guess he's the plaintiff here, but my defendant, Mr. Wiggins, filed a writ of mandamus about bad actions that the probation officer heard and you conducted a hearing that I attended just to watch. I just want you to be aware that you did do that.

Ben Applin (phonetic) with probation and parole came and defended the probation agent because he was claiming that the reason he committed future --

MS. GOOD: Your Honor, at this point, I'm going to object to the part of the hearing. However, I have discussed with Mr. Wiggins and he's fine with you hearing the PCR, Your Honor.

THE COURT: I don't know if I'm fine with it. I'm just -- I don't read these transcripts until after the hearings. I'll look at them during the hearing, kind of skim as I'm listening. Sometimes the attorneys point me to a particular page and I usually will read a little bit before and a little bit after. And until I saw my name in there, I didn't recall it.

Now, the more y'all are saying about this, the more I recall there was an issue. I remember that there was a case where there was a requirement of U-Turn for Christ. And I've already stated that we don't generally order that unless the defendant asks for it, but it was ordered by a different judge, so I don't know what she may have been thinking when she ordered it. And that there was a discussion about the defendant not wanting to go to that program because of his inability to work and make money, I guess, for his family.

And if I went to the extent of getting -- I know I'm not involved in the underlying plea. I know I'm not involved in the underlying conviction, which is really the issue, but it looks like it got pretty intense here about all this when judge -- when Mr. Wiggins talks about the judge don't want to

hear from me anymore, that's the very issue.

The judge is saying, You're blaming it on the State. You're -- you and the statements from the family -- apparently one of the family members from what I saw had been removed from the courtroom by security or was not allowed to come in the courtroom by security. So what she did was do a written statement, which was read by Mr. Mills in which, you know, I'm not saying it was disrespectful in any way, but what she's saying in there is she believes that had he gotten the treatment he needed all along, he would have never done any of this stuff. And the judge, Judge King, pointed out, at one point in the transcript, that voluntary intoxication is not a defense.

I'll think about it. It may just be better if somebody who had absolutely no involvement in this matter or with this defendant heard it because if I were to decide to rule against him, I don't want some accusation coming at me that I had sort of prejudged him in some way, shape or form. And I apologize to you all that I didn't recognize this beforehand. I just didn't pick up on it until just a few seconds ago.

All right. I'll let you know, though. Thank

you.

MR. WHITMIRE: Just for the record, Your Honor, the Supreme Court recently had a case on the interplay of PCR judges about six months ago with general sessions judges. Also, I don't believe applicant alleged anything in regards to mitigation or his actual sentence he received, just the plea negotiations.

THE COURT: I understand. I may be way too caution on this. I just -- there's over 50 circuit judges holding court right now and I may just opt out. It may not be your call. It may be my call.

All right. Thank you.

MR. WHITMIRE: Thank you, Your Honor.

END OF PROCEEDINGS

C E R T I F I C A T E

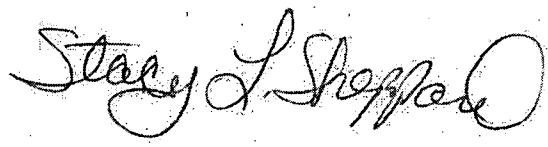
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Lexington County, South Carolina, on the 15th of April, 2014.

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

June 18, 2014



Stacy L. Sheppard, RPR
Circuit Court Reporter

LCSD Case Number 10080706

Burglary / Armed Robbery at

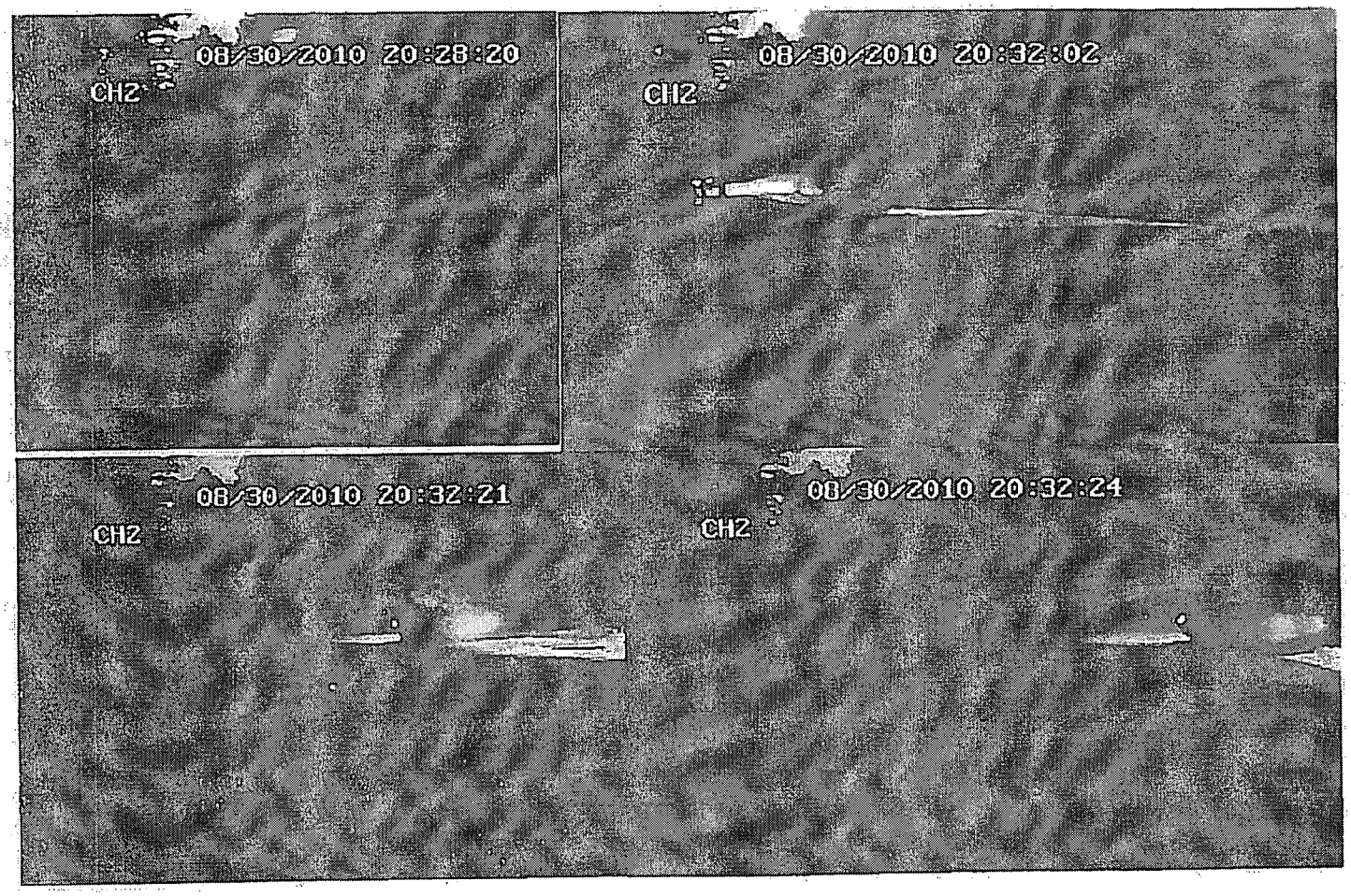
Suspects: Samuel Wiggins / Amanda Furr

Detective Ed Prestigiacomo
Major Crimes Unit

Surveillance Video

Camera # 2 – Clip 1:

20:32:10 Vehicle pulls up to the back door of residence (vehicle appears to be a sedan type vehicle)



STATE'S EXHIBIT

Camera # 1-Clip 1:

20:33:15 Samuel Wiggins walks up to the back door with what appears to be a back pack on his shoulder and knocks on the backdoor – he waves through the door and is soon let in by Carol Acre who opens the back door as Wiggins walks into the residence - Carol recognizes Wiggins from past dealings that Wiggins had with her husband - Wiggins tells Carol he is Chris but her husband knows him as "Sam the man" – Carol invites him in to wait on Richard who had just gone to the store

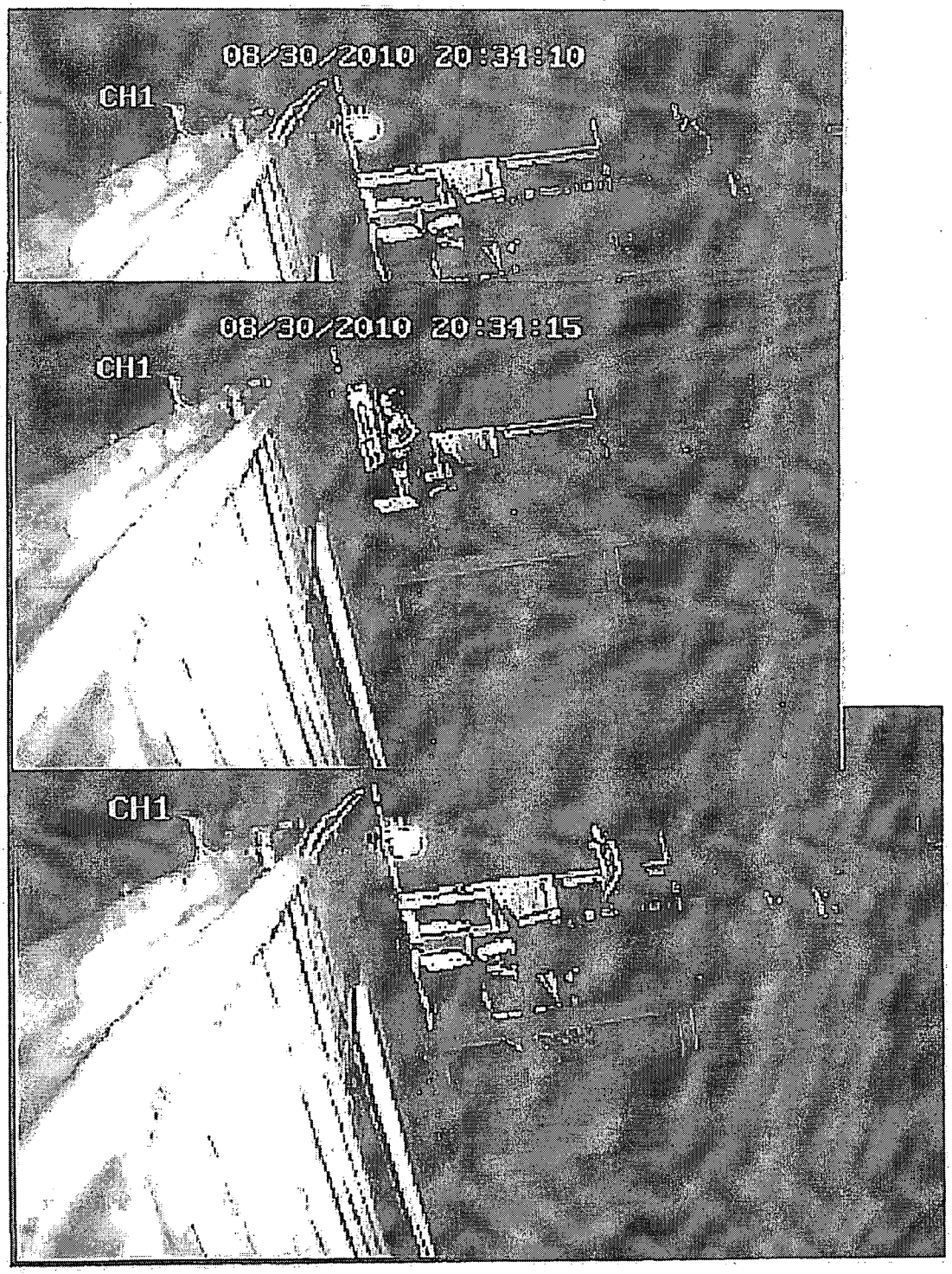






20:34:10 You can see the glow of a lit cigarette moving to the back door from the vehicle - Amanda Furr walks up to the back door - Furr waves then opens the door and enters the back door as she lets her herself in the back door

** according to Carol she advises Wiggins and Furr that they can wait on her husband, Richard, since he had just gone to the store – Carol said Wiggins uses the bathroom then he came out of the bathroom with a handgun and he pointed the gun at Carol as he directed Carol to lay on the kitchen floor which she did **



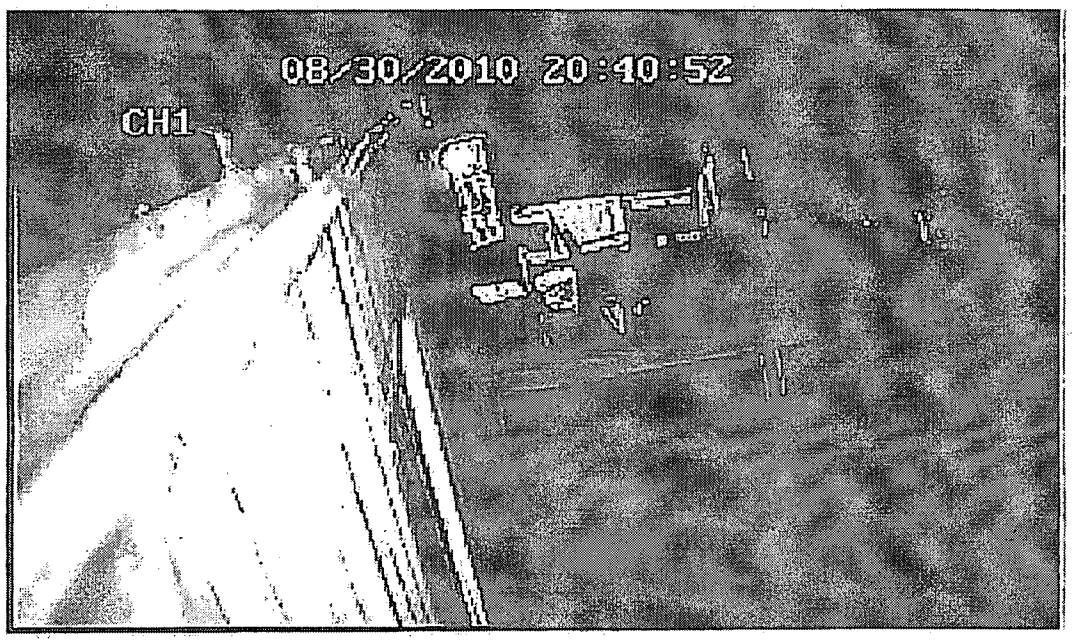
Camera # 1 - Clip 2: NOTHING BUT THE BACK DOOR WITH NO ACTIVITY

Camera # 1 - Clip 3:

20:40:52 Furr carries something out of the back door and walks to the vehicle

** Carol reports that as she was lying on the kitchen floor and she observes Furr go out the back door – Carol is unsure at this time whether Furr is involved in this crime so Carol gets up and runs after Furr **





20:41:23 Carol runs out of the back door



20:41:31 . Carol is met by Furr as Furr is walking back onto the back door deck – Carol reaches out and grabs Furr's arm as Furr pulls away and goes into the back door to apparently advise Wiggins what is going out with Carol – soon after Wiggins comes running out the back door towards Carol who is soon put down onto the ground



20:41:33 Wiggins runs out of the back door and runs towards Carol





20:41:38 Fur carries out long gun and walks in the direction where Carol and Wiggins are

** According to Carol Wiggins advises Furr to hold Carol at gunpoint as Carol is lying on the ground **





20:42:06 Wiggins walks back into the back door





Camera # 1 - Clip 4:

20:44:30 Wiggins carries out something that appears to be heavy, walks over to the vehicle, and walks back into the back door





Camera #1 - Clip 5:

20:45:58 Wiggins carries out his full back pack and walks over to the vehicle – soon after Wiggins walks back into the back door





Camera # 1 - Clip 6:

20:47:21 Wiggins carries something out of the back door

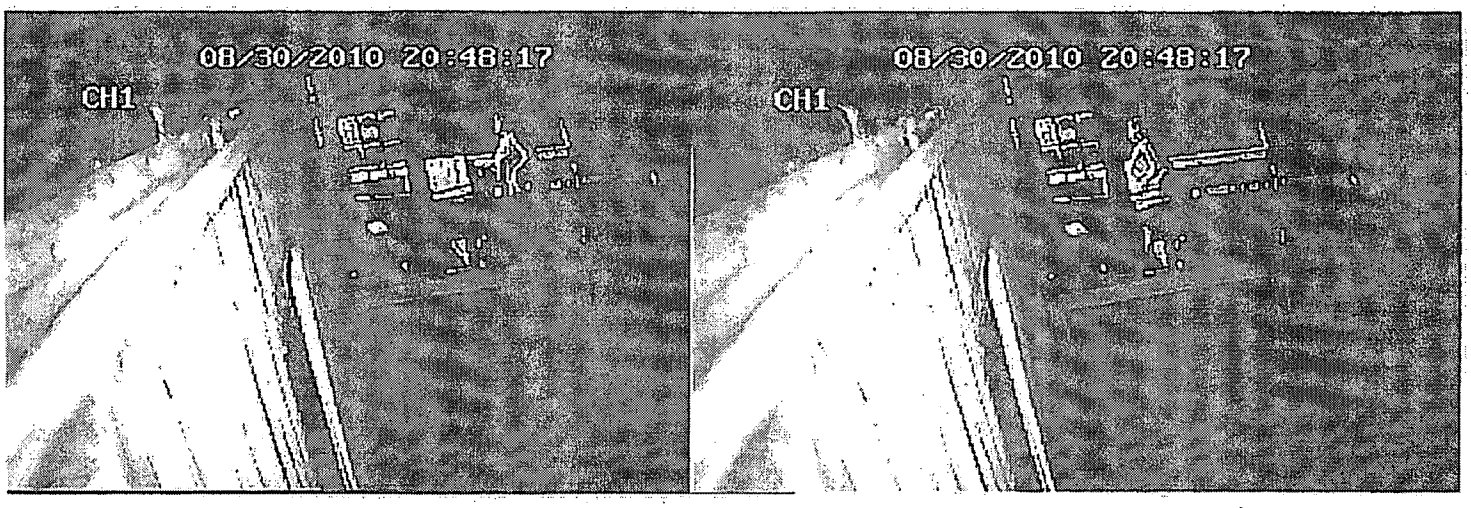




20:47:59 Wiggins and Furr leave in vehicle

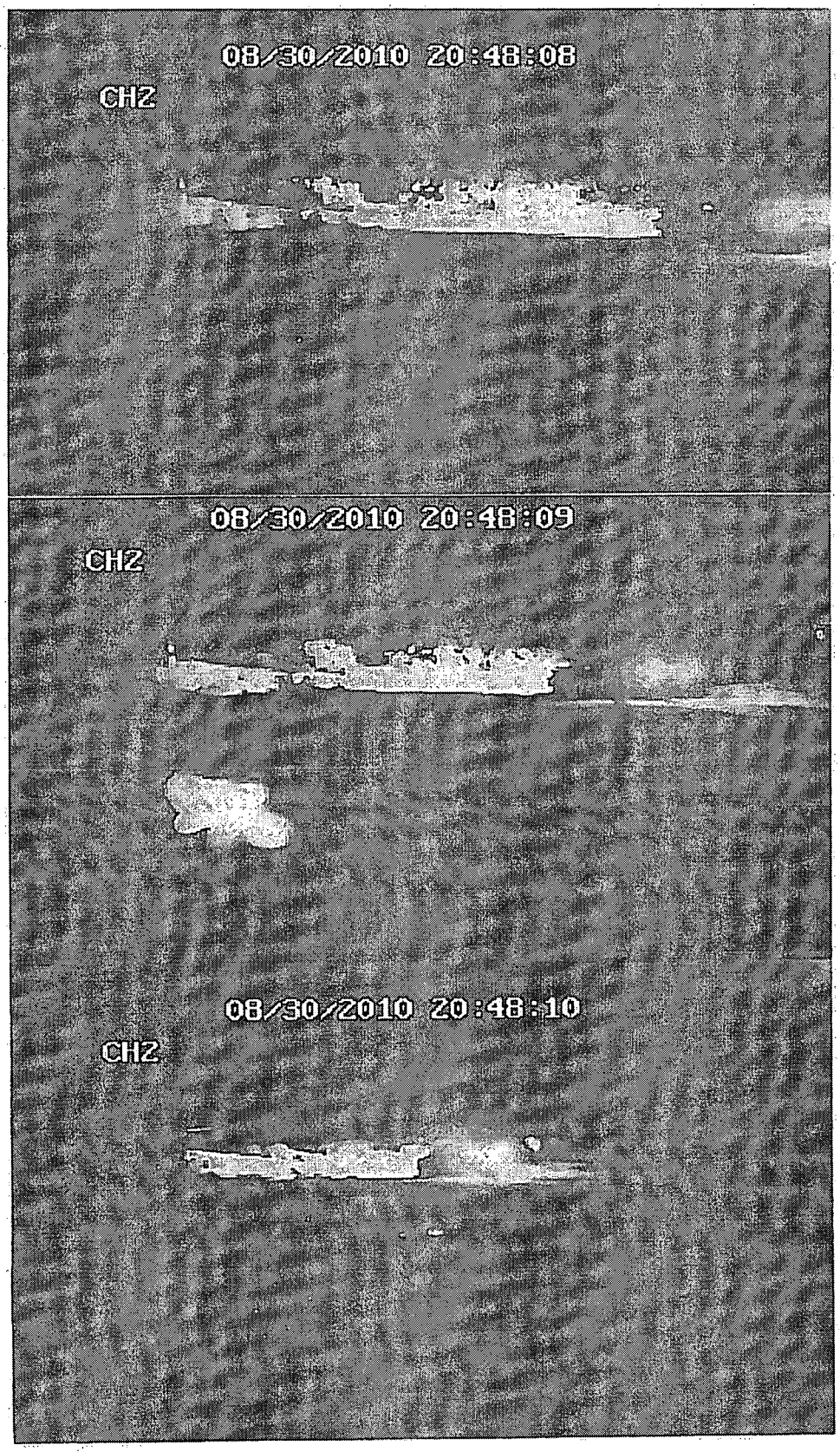


20:48:17 After vehicle leaves Carol Acre runs back into her residence



Camera # 2 – Clip 2:

20:47:58 Vehicle that they arrived in pulls off



20:51:37 Carol runs back out to meet Richard - Carol and Richard walk back into the back door as Richard is on the phone with 911 – Richard had driven up to the residence shortly after Wiggins and Furr pulls out






08/30/2010 20:33:13
CH1


08/30/2010 20:33:13
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CH1


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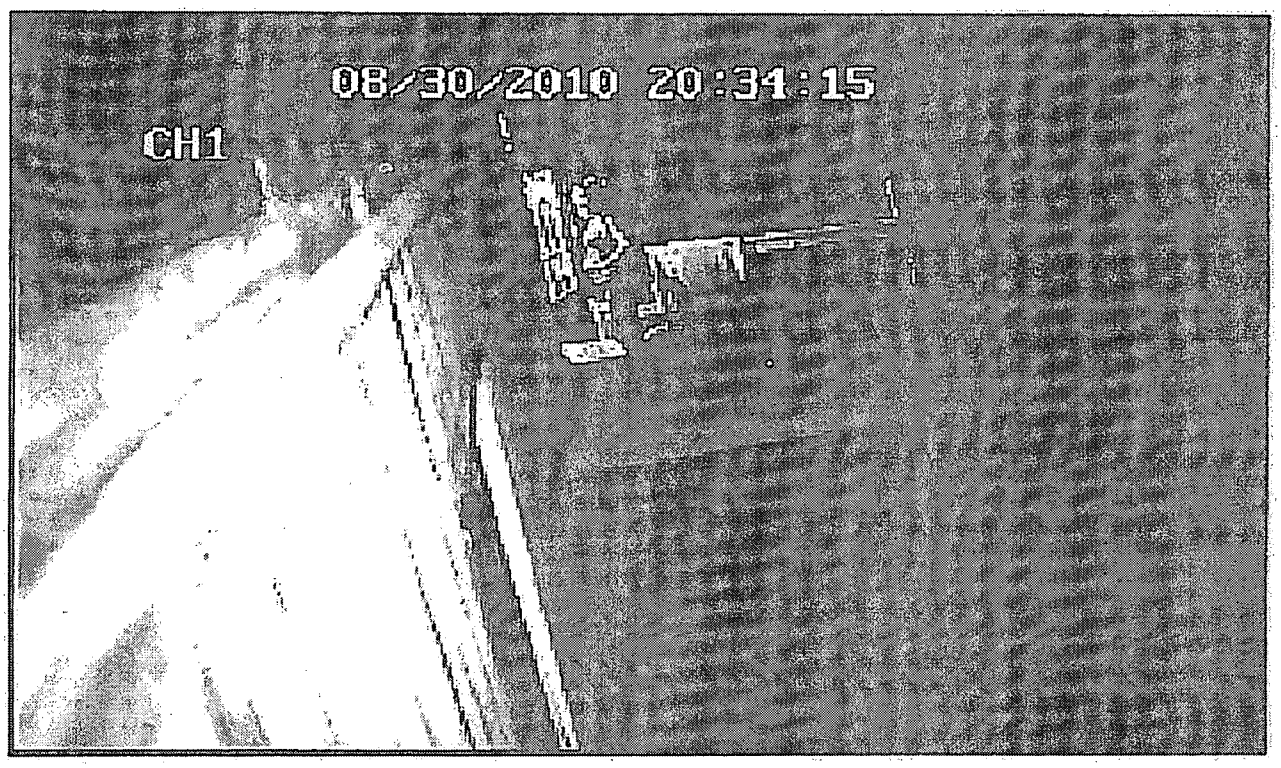

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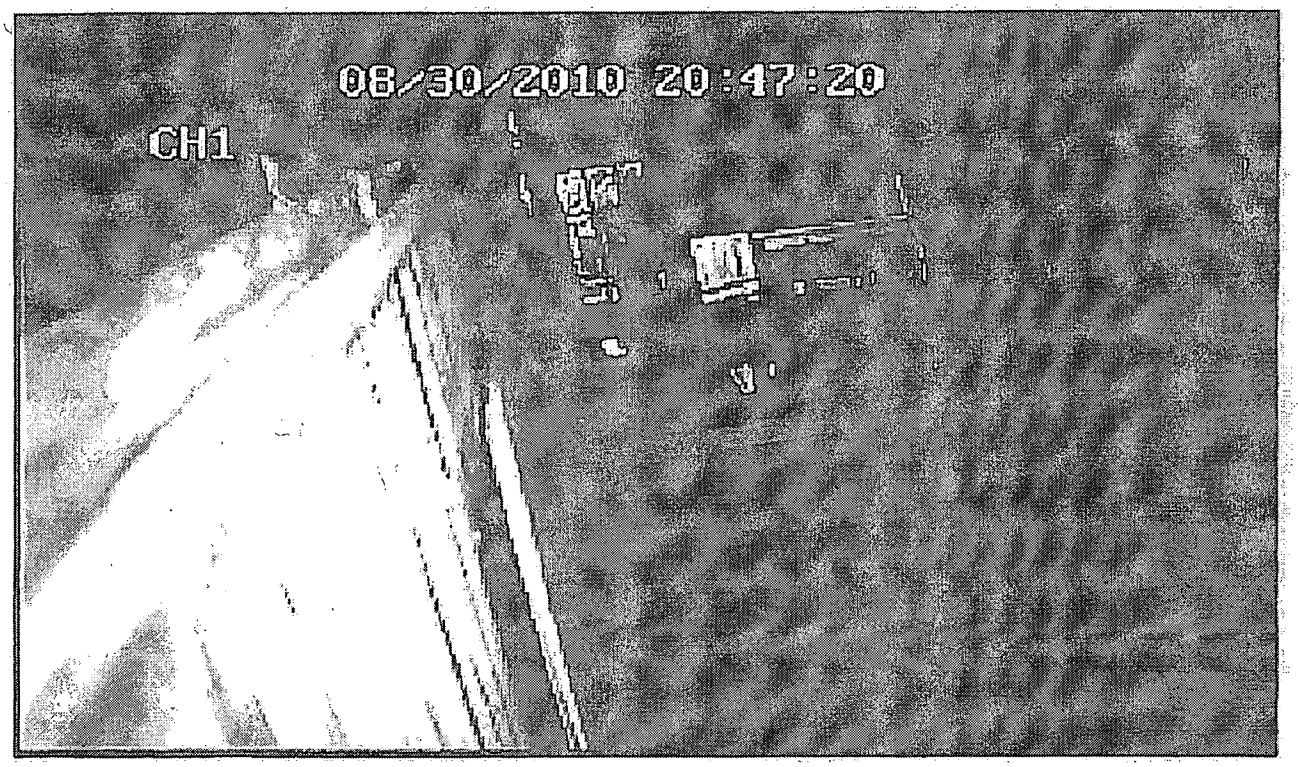

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
)
COUNTY OF LEXINGTON) Case No. 2013-CP-32-00487
)
Sammy T. Wiggins, 334 66,7)
Applicant / Petitioner)
vs.) **ORDER OF RECUSAL**
)
State of South Carolina,)
)
Respondent.)

FILED
2014 APR 18 P 4:54
BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

ORIGINAL

Following a hearing, the court makes the following final order(s) as indicated below.

The undersigned judge elects to recuse himself from the hearing of this PCR application. The court did not know until the end of the PCR hearing that an order had been signed by the undersigned judge related to the criminal case, and the court does not want there to be any possible issue related to the prior involvement with the underlying case.

THEREFORE, IT IS ORDERED that the undersigned judge is recused from this PCR case and the matter is to be rescheduled for hearing.

IT IS SO ORDERED.

Date: April 18, 2014

William P. Keesley, Judge

Date Heard: April 15, 2014
Court Reporter: S. Sheppard
Attorney for Applicant: Anna R. Good, Esq.
Attorney for State: Asst. A.G. Walt Whitmire

State of South Carolina)) County of Lexington)) Sammy Travis Wiggins,)) Applicant,) vs.)) State of South Carolina,)) Defendant.))	In the Court Of Common Pleas Case No.: 2013-CP-32-0487 Transcript of Record

April 23, 2015

Lexington, South Carolina

BEFORE:

The Honorable Brooks P. Goldsmith, Judge

APPEARANCES:

Anna Good, Esquire
Attorney for the Applicant

Walt Whitmire, Assistant Attorney General
Attorney for the Defendant

ALSO PRESENT:

Sammy Travis Wiggins

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EXHIBITS

APPLICANT'S

NO.	DESCRIPTION	ID	EVDS.
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Thereupon, the following proceedings were had,

(Whereupon, Applicant's Exhibit #1 marked for Identification.)

MR. WHITMIRE: May it please the Court. The next matter before Your Honor is Sammy Wiggins v. State Of South Carolina, 2013-CP-32-0487. Mr. Wiggins was indicted for armed robbery, weapons possession and burglary first. He was represented by Mr. Mills. The State called its case to trial. Mr. Wiggins pled guilty I believe on the second day of trial before Honorable Judge King as indicted and pled to a sentence of a 25 year term of imprisonment.

This matter was originally scheduled and the hearing was convened about a year ago in April. At the end of the hearing Judge Keesley recused himself because he remembered having contact with Mr. Wiggins years prior on a probation. We all put our positions on the record, the judge ultimately made a decision. Since then we have ordered the transcript, produced it and Mr. Mills reviewed it. Ms. Good has had it for at least a month or two plus so we are here today just to do an abbreviated review of the hearing just so Your Honor can make a credibility determination.

As I understand what remains is one real issue before the Court and that is whether counsel's

performance in advising his client to take the initial plea of I believe it was 7 to 15 for attempted armed robbery was deficient or ineffective. And the relief would be specific performance and going back to the police station and giving him a chance to plea to it if Your Honor grants it. That's the limited area.

Also, the other allegation was prosecutorial misconduct, breech of plea agreement. The Solicitor testified. We rested on the record on that. It's the State's position that the record is clear that Mr. Wiggins did not want to do a violent term of incarceration because of sentencing calculation and that was always his position in rejecting plea offers.

The big point of contention came down to stills or a brief video clip, part of the State's evidence and when it was provided to Mr. Mills and when he reviewed that with Mr. Wiggins. Ms. Garrick's testimony, the Solicitor shows that she tendered that piece of evidence in March of 2012. Plea negotiations, the offer that was on the table terminated months later.

Furthermore, it's the State's contention that his original attorney provided him a complete copy of discovery before Mr. Mills began his representation on the case with whom the original discovery disclosure which there were eight in total, original discovery

disclosure discusses the surveillance tape. As far as the record shows it's been provided. Whenever asked the State have been able to hand it over.

I think the big point of contention was that Mr. Mills was provided a CD disk and it didn't work properly on his computer. There was just some lost in translation language on that. But that was fully litigated at the last hearing. Unless Ms. Good has anything further, we are here to do an abbreviated hearing before Your Honor since you have the PCR transcript before you.

THE COURT: Okay. Ms. Good.

MS. GOOD: Your Honor, I would like to put my client up, however, we do agree for the transcript regarding Angela Garrick's testimony to be just you can look at and stipulate that that would be her testimony today so she does not have to be here today.

THE COURT: I have actually read it this morning. So you may go ahead and present your evidence.

MS. GOOD: Thank you, Your Honor. I call Sammy Wiggins to the stand.

Thereupon,

SAMMY WIGGINS

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're

seated, please state your full name for the record.

THE WITNESS: Sammy Wiggins.

DIRECT EXAMINATION

BY MS. GOOD:

Q. Good morning, Mr. Wiggins. I'll try to abbreviate this a little bit just because there is a prior transcript, however, who was your attorney throughout the entire time that you had these charges?

A. Robert Mills. Originally it was Casey Cornwell, but I hired Mr. Mills right there.

Q. You retained Mr. Mills?

A. Yes, ma'am.

Q. And you retained him approximately in August 2011?

A. Yes, ma'am.

Q. Your trial was in October 2012, correct?

A. Yes, ma'am.

Q. The first time that you met with Mr. Mills, what did you discuss with him?

A. We discussed getting a strong armed robbery plea.

Q. Okay. Ultimately did he come back to you and did you have a second meeting with him?

A. Yes, ma'am.

Q. At that meeting did he have a plea offer for you?

A. The plea offer at that time was, I think the second time was just as charged was the only one I remember at that

point in time. I think the third time he came back was when I was in the Spartanburg County jail and I spoke with him but it was the 7 to 15 attempted armed robbery that was later on down the line there.

Q. At the time of the 7 to 15 year plea offer had you seen discovery at that point?

A. Limited. Yes, ma'am.

Q. Were you aware of any videos showing the entire incident?

A. No, ma'am. I was not.

Q. Okay. I want to go ahead and make clear today the previous hearing and leading into the plea during the trial back when you had Mr. Mills as your attorney you are not saying that you did not commit this, correct?

A. No, ma'am.

Q. You're just saying you want the prior plea offer that was given to you?

A. Yes, ma'am. That's correct.

Q. Okay. And getting into a little bit more of that, at the time of the 7 to 15 year plea offer, were you aware of the video showing the incident?

A. No. I was not.

Q. What were you aware of regarding any type of photographs or stills or anything?

A. At the time it was presented to me I wasn't aware of

any video or any stills at that time. I had a paper that said like verbatim like saying what happened on it and words but there was no pictures at that point.

Q. Okay. Ultimately you ended up going to trial. When did you first see pictures regarding this potential video?

A. A few days prior to my trial after the plea had already been taken away, Mr. Mills came and saw me at county. He produced stills at that time and then the day of my trial --

Q. Okay. I'm gonna stop you real quick. The stills that he showed you, were they in color or were they in black and white?

A. Black and white.

Q. Did you see them on paper or computer?

A. Paper.

Q. I'm going as to show you what's been marked as applicant's number 1. Do you recognize this?

A. Yes, ma'am.

Q. What is this?

A. That's what I received about three or four days before my trial.

MS. GOOD: At this time I would like to enter into evidence applicant's number 1.

MR. WHITMIRE: Without objection.

THE COURT: Without objection.

BY MS. GOOD:

Q. On these photographs which you have seen before, I'll hand them to the Judge, they are black and white, correct?

A. Yes, ma'am.

Q. Can you differentiate any faces or who is in those still photographs?

A. No, ma'am.

Q. So when you saw those, you still did not know that there was an actual video showing everything that happened?

A. No, ma'am.

Q. At what point did you finally find out about the video?

A. The day of my trial when Mr. Mills put in a motion to view the video, they produced it here in this courtroom right here and we watched it on a lap top computer.

Q. When you saw this video, what did it portray?

A. It portrayed actual motion. Just me being there knocking on the door and things. It showed - it's color.

Q. There was a lot more detail?

A. Yes, ma'am.

Q. And you could see all the movements and all the violence that occurred that day?

A. Yes.

Q. If you had been aware of that video back when the

plea offer was 7 to 15 years, would you have taken that plea offer?

A. Yes, ma'am. It would have been in my best interest to do so.

Q. There's a lot of talk about you rejecting plea offers because you wanted something non violent. You did want something non violent; is that correct?

A. Yes, ma'am.

Q. But that wasn't the only reason you rejected the plea offer, was it?

A. No, ma'am.

Q. You were going based upon the evidence that you had seen at the time that you had?

A. Yes, ma'am.

Q. In fact, during your guilty plea, didn't Mr. Mills speak up regarding the fact that he would have advised you a little differently regarding the plea offer if he had had that video at the time?

A. Yes, ma'am. Because I had actually asked him about that. I said what's going on? And he said that he would take care of it in front of the judge and he spoke up and did speak and he said his advice would have been different if he had seen the video prior to his advising me as far as the plea offer went.

Q. In fact, he had had the video the entire time,

correct, since March before the plea offer expired?

A. As of the last hearing, yes, ma'am. That's what I understood at the last hearing, he did have it. He just didn't know he had it.

MS. GOOD: No further questions, Your Honor.

MR. WHITMIRE: Just a few questions. May it please the Court.

THE COURT: Sir.

CROSS EXAMINATION

BY MR. WHITMIRE:

Q. Mr. Mills, do you recall our previous PCR hearing a year ago? Do you recall our previous PCR hearing?

A. I do.

Q. Had a chance to look over that transcript at all?

A. Yes. I have.

Q. Were you honest in your answers when I asked you questions?

A. Yes, sir.

Q. Now, I just have a few more questions. I don't want to beat a dead horse. When you retained Mr. Mills, did Mr. Cornwell give you a copy of your file?

A. Mr. Cornwell I never spoke with or anything. I dealt with him when I was in the Spartanburg County jail but he did send me a packet, yes, sir.

Q. In the packet did you go over each piece of it and

look at it in depth?

A. Yes, sir. I did.

Q. You were facing a lot of time on these charges, correct?

A. Yes, sir.

Q. Did you review the summary of detective notes and incident reports?

A. Yes. I did.

Q. The detective and the summary state we have got surveillance video?

A. Uhm, actually she has the packet over there. Like I was telling you earlier it's broke out and it does say, it says events and then it says pictures side by side and it's got little lines where the detective wrote down what day it happened.

Q. But it says surveillance video and pictures?

A. It says surveillance slash pictures, with a slash in it.

Q. During that year you retained Mr. Mills before this thing was called for trial, did y'all ever discuss those pictures? Did you just talk about that they were out there?

A. No. We did not. He admits and the Solicitor admits something about pictures but I never seen any prior to about I think it was three or four days when he came up there.

Q. You read the words surveillance video, correct, for

the record?

A. For the record, yes. It says surveillance pictures.

Q. At any point did you tell Mr. Mills what's this about and this could be really damaging evidence? Did you ever bring it to his attention?

A. Yeah. He was supposed to have been talking to the Solicitor about them for quite a while, but like I said, I never saw any of them until after the plea and after all that right before trial and everything was already pulled back and there wasn't nothing left.

Q. So y'all did talk about the tape at least at some point, surveillance tape?

A. No. We did not talk about a surveillance tape. About pictures. That was it.

Q. And the pictures are just a snapshot every two seconds of what the tape is, correct?

A. That's what I saw. Yes, sir.

Q. And what you saw was a trial exhibit, how the Solicitor put it all together?

A. No. What he just entered into evidence is what I got. I seen that. It was probably a week or less before my trial.

Q. That's all you saw?

A. That was it.

MR. WHITMIRE: At this time no further questions. Thank you, Mr. Wiggins.

MS. GOOD: Nothing further, Your Honor.

THE COURT: You may step down, Mr. Wiggins. Anything else from the applicant?

MS. GOOD: The applicant rests, Your Honor.

THE COURT: The applicant rests. Mr. Whitmire.

MR. WHITMIRE: The State calls Mr. Mills.

Thereupon,

ROBERT MILLS

after having been first duly sworn, testified as follows,

THE CLERK: Please have a seat. After you're seated, please state your full name for the record.

THE WITNESS: Robert Mills.

DIRECT EXAMINATION

BY MR. WHITMIRE:

Q. Good morning, Mr. Mills.

A. Good morning.

Q. Mr. Mills, how long have you practiced criminal law in South Carolina?

A. At this point over 30 years.

Q. Do you recall your representation in this matter?

A. I did.

Q. Have you had a chance to review your file?

A. A little bit before today's hearing. I reviewed it

before the last hearing.

Q. Had a chance to review a transcript of our last hearing?

A. I have.

Q. Were you prepared for that hearing also?

A. Yes.

Q. How many meetings did you have with Mr. Wiggins during the course of your representation?

A. Several. I would have to go through each individual one, but it started back in like September. I have got notes from September 2011. I have got notes from March 2012, April 2012, another April 2012, March 2012 back to later on in October of 2012, August of 2012, July of 2012, August of 2012. So several months. I mean, several, several months.

Q. I'm going to ask you briefly to look over those notes and see if there are any notations by yourself or mention of the surveillance tape and the stills?

A. Well, I remember. I don't have to look at the notes. I remember we had, and there may be some confusion here about what we had, we had, what I knew that we had was a CD or DVD that had stills, successive stills as if the video had been broken up into successive stills. I did bring a computer to the jail and Mr. Wiggins did see that during that summer before the offer had expired. But we did not have that I knew of whether it was due to some technological thing or

whatever, but I did not know of a moving video until, as he stated, right before the trial. But we did have the still photographs which was a choppy version of a full video.

Q. If I'm wrong, please correct me. The choppy version, what you ended up eventually seeing at the time of trial, that is just it put together as a trial exhibit?

A. It was - the Solicitor had sent me the week before the trial was scheduled like what they were going to put into evidence which was not the whole video but it was what they were going to use in front of the jury. It was an actual moving video. It wasn't just the stills that I had seen before that I had shown to Mr. Wiggins. So there was a difference between the two.

Q. Did you ever discuss leading up to the date of trial anything to deal with the surveillance tape when it all comes together?

A. You mean the full video?

Q. The full video.

A. The moving video? We had little time to talk about it. As a matter of fact, as he stated, in this courtroom they began to show us the full video not the excerpted one that we had that I was given the week before.

Q. During your meetings with Mr. Wiggins, did this play a significant part in some of his decision making on the pleas?

A. Well, we discussed the stills and how they looked and what was shown in the stills and I believe as I testified before the video itself is much more revealing about what he did at the scene. It's much more - it shows more detail and shows a more - it looks worse for him in the moving video than the stills did.

Q. Did you put your position regarding this piece of evidence on the record at the plea?

A. I don't remember.

MR. WHITMIRE: Let the record reflect that the record reflects that.

BY THE WITNESS:

A. Yes. I just don't remember.

BY MR. WHITMIRE:

Q. I'm a little unclear on this. I believe you said you met with Mr. Wiggins September 2011, April 2012, March 2012, October 2012, August 2012?

A. I believe so. Yes. I don't have them in order. I apologize for them not being in order.

Q. That's okay. I'm just making sure I jotted it down correctly.

A. And then again in October and July of 2012 as well.

MR. WHITMIRE: No further questions. Thank you, Mr. Mills.

CROSS EXAMINATION

BY MS. GOOD:

Q. Good morning, Mr. Mills.

A. Good morning.

Q. You say you have been practicing law for over 30 years.

A. That's correct.

Q. When you receive a case in your office, what is your normal procedure regarding discovery?

A. As far as putting it in the file?

Q. Reviewing it.

A. Reviewing it? I review it.

Q. In this case did you review the discovery?

A. I did.

Q. During your review of the discovery, isn't it true that it mentions several different times regarding a video surveillance?

A. It does and I assume that was the stills. Some home surveillances to my knowledge have still framed instead of having a full 24 frames per second. Instead of having that they have the individual stills taken every few seconds potentially and that's what I assumed it was. I assumed they meant that. I had no reason to, no understanding of why they would give me a bunch of stills if they had an actual moving video. That was one of the questions I had near the end there

was why would they not - that I didn't have. Why would they even produce stills if there was a moving video. I didn't understand that.

Q. Did you ever follow up with Solicitor Garrick regarding whether it was just stills or video?

A. When we talked about it, I guess we were, she would say video and I assumed she met the succession of stills because it's like a video. It's just missing parts. You know, it's a succession of stills every few seconds.

Q. And you stated with the video, I guess, are you aware if it was on the original CD that was given to you with the stills?

A. I'm still unaware of that whether it was or not.

Q. You stated that the stills, you went over those with Mr. Wiggins, but the video was much worse, correct?

A. Yeah. It shows actual movement in realtime and some of the things that he did and it looks worse than just the stills.

Q. Was the video in color?

A. I'm not sure. I can't remember at this point.

Q. And the stills that you had shown Mr. Wiggins I believe you testified previously at the prior PCR hearing, he fits the general description but you can't see his face or see any type of detail or description of who it actually is in the stills?

A. That's probably right. Yes.

Q. At what point -- You stated he saw the video a couple of days before the trial, an actual long moving video?

A. Well, it was an excerpted video but it was a moving, it wasn't just a succession of stills. It was a moving video. I can't remember if it was a few days or a week before the trial. I can't remember which day of the week it was.

Q. And that video, if you had been aware and seen that video prior to the plea offer expiring the 7 to 15 years, would your advice regarding the evidence have been different then to him?

A. Yes. Because I would have seen that it looks different than just the stills. You see more detail as far as what happened, as far as his movement, the alleged victim's movement, all of that. It would have been different as far as what the evidence showed.

Q. And what would you have advised him regarding that evidence if you had the video at the time?

A. What I just said. That it looks worse than just the stills do.

MS. GOOD: No further questions, Your Honor.

MR. WHITMIRE: A few redirect. May it please the Court.

THE COURT: Sir.

REDIRECT EXAMINATION

BY MR. WHITMIRE:

Q. Mr. Mills, did you advise Mr. Wiggins in his best interest to take the 7 to 15 attempted armed robbery before this case made it to trial?

A. I usually don't make that advice. I put it on the table, what the offer is and then go over the evidence and I let him determine whether or not he should take it.

Q. Certainly. Of course. But as to the strength of all the other evidence?

A. There was other evidence, but we also had some, due to the fact that the stills didn't show everything, we had potential factual defenses that we thought we had potentially because we couldn't see everything from the moving video.

Q. Mr. Wiggins contested his guilt or is this just a mitigation case trying to get a good plea?

A. Well, there's guilt of different things, you know. And I mean, I can't remember exactly what our arguments could have been as far as lesser offenses and things of that nature because there was an issue about the burglary, whether or not he had consent to be in the building, things of that nature and there is case law that interprets that as far as that you, of course, have to apply that to the facts involved in each individual case.

Q. Why didn't you file a motion to revive and enforce

that original plea offer when the case was at trial?

A. I - I - I just didn't. I didn't think about that.

Q. If you thought there was a discovery violation, would you have done that as a general practice measure?

A. I could.

Q. Have you done it in your prior practice? I know you have testified you have done this for 30 years.

A. Well, the Solicitor has the right to withdraw an offer at any time. It's a contractual thing that they have the right to withdraw. So I don't know if I have ever done that. I would have to look back to see if I have ever done that before.

Q. During the course of representation, did Mr. Wiggins ever change his kind of bottom line position that he wanted to plea to a non violent offense because of calculation?

A. Did he change that?

Q. Mm-hmm.

A. You mean before the new evidence or after the new evidence?

Q. I'm talking throughout this case leading up to trial. That was always his bottom line, I want to get an offer to anything that's not going to involve a violent classification; is that correct?

A. I believe that was - that was one of the issues during the representation. I can't remember if he changed it.

If your question is did he change that, I don't remember.

Q. You said this was new evidence, the video?

A. Well, it's a new form of the evidence that we had, but it's a much more revealing form of evidence because it showed more detail in the motion of the video than the still frames did.

Q. So it's just a higher quality version of the same thing?

A. Well, it showed action which changes the way you look at something.

Q. Did you ever request to review the Solicitor's original video?

A. I think that's what they were showing us on the day of court.

Q. I mean, did you ever personally request to go review the original evidence?

A. No. I thought I had what they had.

Q. So this was just a mix up of technology?

A. Right. Right. That's my understanding. Because I thought I had what they had and that they would produce it in trial with the still framed DVD.

MR. WHITMIRE: Nothing further, Your Honor.

MS. GOOD: Just a couple more, Your Honor.

RECROSS EXAMINATION

BY MS. GOOD:

Q. You stated that, or Mr. Whitmire asked you about the non violent, Mr. Wiggins wanted non violent. Him wanting non violent was based on the information that you had and presented to him regarding the evidence in the black and white stills, correct?

A. Yeah. I guess. I mean, it was a plea. It was a try for plea bargains. I mean, it's not necessarily that the evidence showed that it was a non violent offense. He wanted a plea bargain for a non violent offer.

Q. Correct. And he was basing that on the information you had shown him at the time which at that time you had not shown him --

A. Whatever I had shown him. Yeah. He did not have the information that we got later on that showed the moving video at that time.

Q. Now, I want to clarify. When you got the original CD, and we have already taken judicial notice of Ms. Garrick's prior testimony in the PCR hearing, she stated she had given you the video in full in March of 2012, correct?

A. I believe that's what she said. I just don't see it. The only thing I had that I knew I had technologically I could open up or whatever the issue was was the still video.

Q. Okay.

A. The still frames within the DVD.

MS. GOOD: No further questions, Your Honor.

MR. WHITMIRE: The State rests.

THE COURT: Thank you. You may step down. The State rests. Ms. Good.

MS. GOOD: Thank you, Your Honor. We have nothing in reply at this point.

THE COURT: Go ahead.

MS. GOOD: Thank you, Your Honor. Based on the testimony you have heard here and from Ms. Garrick's testimony previously, I think it's very clear that there was a video of this incident that occurred that Mr. Wiggins was not aware of when he was first given the 7 to 15 year plea offer. And I think it's also clear based on the testimony that Mr. Mills had this video in his possession whether he was aware of it or not and it was something that was not presented to Mr. Wiggins. As a result of Mr. Wiggins not seeing that video and having all the information in order to determine whether to take the 7 to 15 year plea agreement he had decided at that time to decline that plea agreement and ended up in trial and ended up with a plea of 25 years which has prejudiced him at a minimum of 15 years just with the difference - or 10 years just with the difference between 15 and 25 if he had gotten the previous offer. So we are asking Your Honor for specific performance to allow him to go back and have the original plea offer and be resentenced under

that plea offer.

THE COURT: Mr. Whitmire.

MR. WHITMIRE: May it please the Court. As this case was originally pled, it was pled in the alternative either prosecutorial misconduct for breech of a plea offer, for pulling it too soon, or deficiency. I think it all comes down to this point as deficiency. The Solicitor testified she gave him this tape. It didn't open correctly under some sort of technical issue. Ultimately if there is any deficiency Mr. Mills should have gone and viewed the original.

Where this case really, where the rubber meets the road is actually Mr. Wiggins' testimony itself. It's highly incredible. I believe at the last hearing he testified he had five prior pleas. He's been through this process significantly. He knew from day one when he retained Mr. Mills of that video surveillance. In the notes, surveillance. Surveillance. And this is just one piece of evidence. We have identifications. We have the co-defendant leave the scene, get picked up. The victim's property was in her car next to his ID. The co-defendant gives a confession and would have most likely testified against him at trial.

His decision came down to what was being an intelligent decision knowing how much time he would

probably be serving due to his prior serving incarceration. If he gets a non violent, he's probably out before even half his sentence expires and if he goes with the violent on anything, that's a 10 year sentence minimum. That was always the concern. Ms. Garrick put substantial testimony in at the plea hearing and at the PCR. Mr. Mills is zealously advocating for his client on what is a very technical, I think mostly a non sequi order if not a red herring issue. There's significant argument on the law in the transcript. I'll spear Your Honor having to hear me speak anymore on this matter. Nothing further, Your Honor.

THE COURT: All right. Thank you, Mr. Whitmire. Anything else, Ms. Good?

MS. GOOD: No, sir.

THE COURT: All right. I have reviewed the transcript and given the case some thought. I'm compelled to deny applicant's motion. The court accepts the argument and position of the State on this case. I have been thinking about it. If the State gives a DVD to a defense attorney and the defense attorney's, this is a hypothetical, but the defense attorney's computer is not as high resolution as the State's and therefore what the defense attorney sees is a relatively grainy picture on his computer, but the State for trial purposes gets a

much more sophisticated piece of equipment so that they are able to zoom in to make things more clear, that fact alone certainly would not be sufficient to grant post conviction or give the defendant the right to compel the State to reopen its offer of settlement. At any rate, for the reason I have already stated, Ms. Good, I'm compelled to deny the motion. Thank you.

MS. GOOD: Thank you, Your Honor.

MR. WHITMIRE: Thank you, Judge. I'll get you an order after I send it to Ms. Good first.

THE COURT: If you would please.

WHEREUPON, THE HEARING WAS CONCLUDED.

CERTIFICATE OF REPORTER

(STATE OF SOUTH CAROLINA)

(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of Common Pleas in and for the State of South Carolina on the 23rd day of April, 2015.

I FURTHER CERTIFY that the forgoing 28 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 24th day of August, 2016.

Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

Camera # 1-Clip 1:

20:33:15 Samuel Wiggins walks up to the back door and knocks on the backdoor – he waves through the door and is soon let in by Carol Acre who opens the back door - Carol recognizes Wiggins from past dealings that Wiggins had with her husband - Wiggins tells Carol he is Chris but her husband knows him as "Sam the man"







EXHIBIT
#2 4/23/15
2013 CF32
0487

20:41:23 Carol runs out of the back door



20:41:31 Carol is met by Furr as Furr is walking back onto the back door deck – Carol reaches out and grabs Furr's arm as Furr pulls away and goes into the back door to apparently advise Wiggins what is going out with Carol – soon after Wiggins comes running out the back door towards Carol who is soon put down onto the ground



Camera # 1 - Clip 2: NOTHING BUT THE BACK DOOR WITH NO ACTIVITY

Camera # 1 - Clip 3:

20:40:52 Furr carries something out of the back door and walks to the vehicle

** Carol reports that as she was lying on the kitchen floor and she observes Furr go out the back door – Carol is unsure at this time whether Furr is involved in this crime so Carol gets up and runs after Furr.**





20:41:38 Fur carries out long gun and walks in the direction where Carol and Wiggins are

** According to Carol Wiggins advises Furr to hold Carol at gunpoint as Carol is lying on the ground **





Camera # 1 - Clip 6:

20:47:21 Wiggins carries something out of the back door

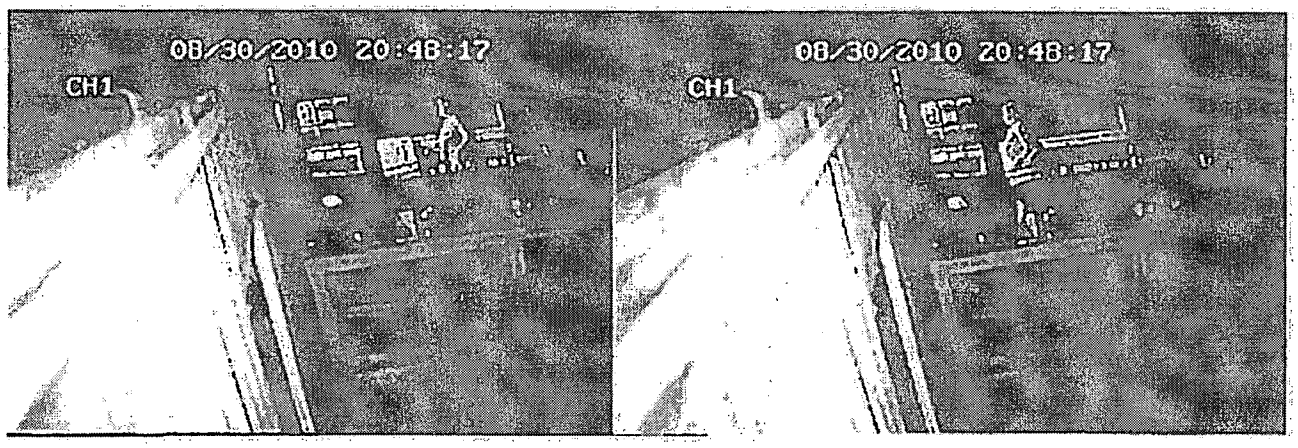




20:47:59 Wiggins and Furr leave in vehicle

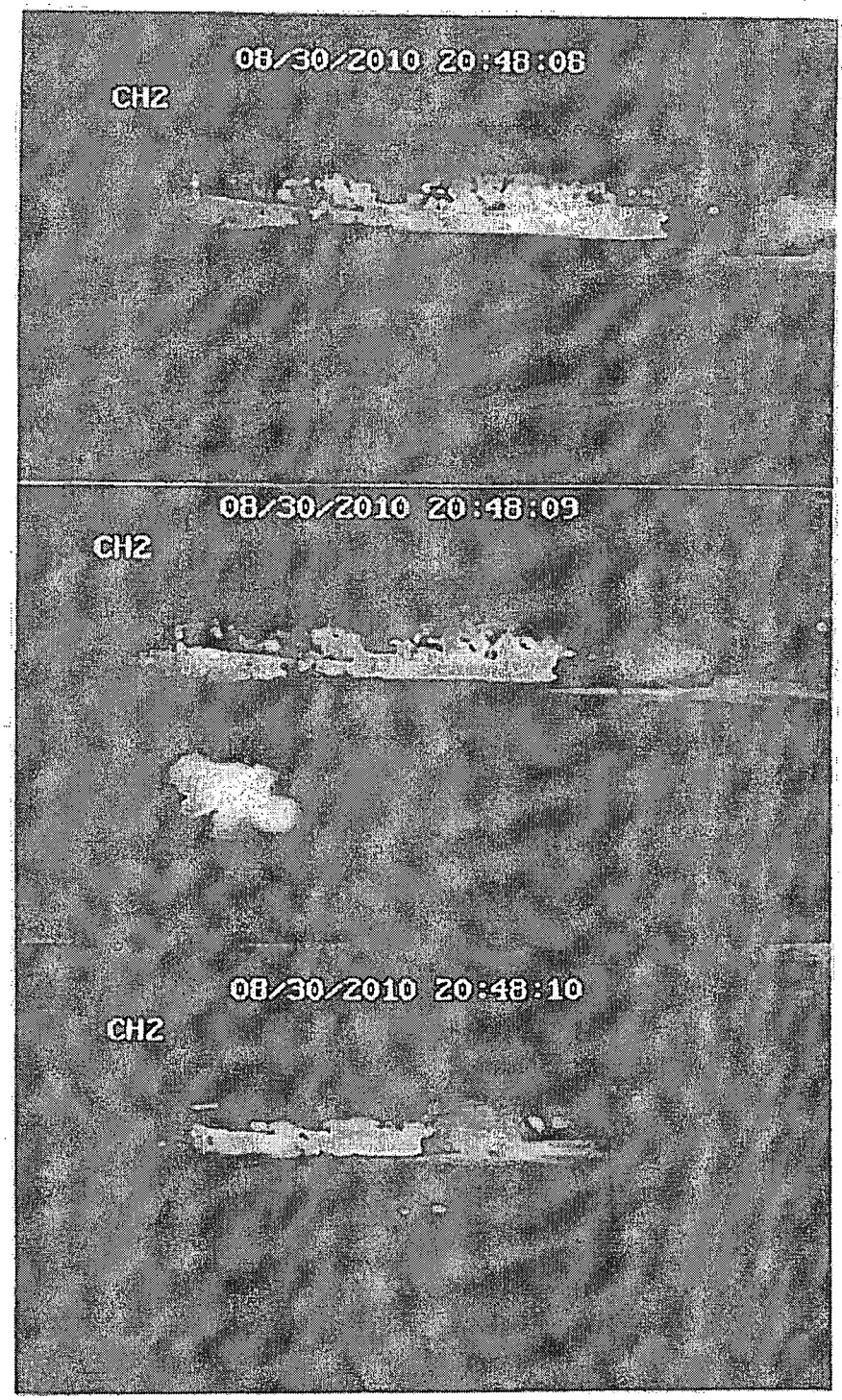


20:48:17 After vehicle leaves Carol Acre runs back into her residence



Camera # 2 – Clip 2:

20:47:58 Vehicle that they arrived in pulls off



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP3200487

Sammy Wiggins #334667	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

PCR hearing was held on April 23, 2015 @ 930am. PCR heard and denied. Attorney General's Office to prepare a more formal order.

FILED

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

2139

Circuit Court Judge — Judge Code — 4/28/2015 Date

For Clerk of Court Office Use Only

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

This judgment was entered on May 15 2015, and a copy mailed first class or placed in the appropriate attorney's box on May 15 2015, to attorneys of record or to parties (when appearing pro se) as follows:

Anna Rawl Good PO Box 7284 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Walter Whitmire
PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg /mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
2016 SEP 19 A 11:17
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	ELEVENTH JUDICIAL CIRCUIT
Sammy Wiggins, S.C.D.C. No. 334667 Applicant, v. State of South Carolina, Respondent.	C.A. No. 2013-CP-32-0487 **ORDER OF DISMISSAL** **(with prejudice)**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed February 12, 2013. Respondent made its Return on July 23, 2013. An evidentiary hearing into the matter was convened on April 15, 2014, at the Lexington County Courthouse, before the Honorable William P. Keesley. Following that hearing, Judge Keesley issued an order dated and filed April 18, 2014, recusing himself after discovering that he had been involved in the Applicant's underlying criminal case. Thereafter, a second evidentiary hearing was convened at the Lexington County Courthouse on April 23, 2015. The Applicant was present and was represented by Anna Good, Esquire. Respondent was represented by Walt Whitmire, Esquire, of the South Carolina Attorney General's Office.

The Applicant testified on his own behalf at the evidentiary hearing. The Applicant's trial counsel, Robert Mills, Esquire, also testified. The Applicant stipulated that the testimony of Angela Garrick[1] would be the same as in the previous hearing. This Court has before it a copy of Applicant's trial transcript, the records of the Lexington County Clerk of Court regarding the

[1] Ms. Garrick was the solicitor that originally prosecuted the Applicant on these charges. She testified at the original 2014 PCR hearing in front of Judge Keesley.

subject convictions, appellate records, the Applicant's records from the South Carolina Department of Corrections, and the pleadings. This Court has also reviewed the transcript from the 2014 PCR hearing in front of Judge Keesley. The Court finds as follows:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lexington County. The Applicant was indicted at the December term of the Lexington County grand jury for armed robbery while armed with a deadly weapon (2010-GS-32-6387), burglary, first-degree (2010-GS-32-2283), kidnapping (2010-GS-32-3555). He was represented by Robert W. Mills, Esquire. On October 15, 2012, the Applicant proceeded to trial before the Honorable Howard P. King. Following voir dire and a Neil v. Biggers[2] hearing, the Applicant pled guilty as indicted. On October 17, 2010, Judge King sentenced the Applicant to concurrent terms of twenty-five years imprisonment for burglary, first-degree, twenty-five years imprisonment for armed robbery, and twenty-five years imprisonment for kidnapping. Applicant did not appeal his sentence or conviction.

Allegations

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

1. Ineffective Assistance of Trial Counsel:
    a. failure to convey a guilty plea offer.
    b. failure to investigate Applicant's case.
2. Prosecutorial Misconduct:
3. Brady violation for non-disclosure of co-defendant's inconsistent statements

At the evidentiary hearing, the Applicant proceeded on the allegation that counsel was ineffective in failing to show him the video, rather than the video stills, of the crime before the

[2] 409 U.S. 188 (1972).

expiration of an earlier plea offer; or, in the alternative, prosecutorial misconduct for failure to disclose the video.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject guilty plea, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2015), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

Applicant has alleged counsel was ineffective in failing to show him the actual video of his offense, rather than merely the still frames of that video, prior to the expiration of a plea offer from the solicitor's office. The solicitor's office provided counsel with a CD that contained a video from the victim's home surveillance system of the offense, as well as the stills from that video as part of their discovery disclosures. Counsel was unable to view the video, and thought the CD consisted only of the video stills. Applicant testified at the evidentiary hearing that if he had seen the video prior to the expiration of a previous plea offer, then he would have accepted that offer rather than a subsequent, less favorable offer.

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged 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, (1984); Butler, 286 S.C. 441, 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. Courts presume that 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. The Supreme Court of the United States has held that an attorney's advice on whether to reject a plea offer is subject to a Strickland-type ineffective assistance claim. Lafler v. Cooper, 132 S.Ct. 1376, 1383, 182 L.Ed.2d 398 (2012). In order to show prejudice on such a claim, an applicant must show that there is a "reasonable probability that the plea offer would have been presented to the court (i.e., that the [applicant] would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." Id. at 1385.[3]

[3] The proper remedy, where an applicant has shown that but for counsel's deficient performance there is a reasonable probability he and the trial court would have accepted the guilty plea, is to order the State to reoffer the

Prejudice

Applicant has failed to establish prejudice resulting from counsel's alleged deficient performance. Specifically, this Court does not believe from the evidence presented that counsel's failure to provide the Applicant with the actual video footage of the armed robbery – rather than only the stills – induced his decision to reject the previous plea offer. Crucially, Applicant's self-serving testimony is not credible. See Merzbacher v. Shearin, 706 F.3d 356 (4th Cir. 2013) (to demonstrate a reasonable probability that he would have accepted a plea, a petitioner's testimony that he would have done so must be credible). Applicant's statement that he would have taken the favorable plea deal had he seen the video instead of the stills is "the type of testimony ... subject to heavy skepticism." Id., *citing* United State v. Day, 969 F.2d 39, 46 n. 9 (3d Cir. 1992) ("[C]ourts should be wary of this sort of claim because defendants will always want the best of both worlds: the chance at acquittal at trial, yet the chance to plead guilty if the trial defense fails.").

This Court has taken into account the qualitative differences between still frames from a video and the actual video itself[4] – keeping in mind that they depict the same material. However, in light of the substantial evidence of Applicant's guilt in this case – the rest of which was available to him when he rejected the previous offer – his testimony that seeing the video rather than the stills would have prompted him to plead earlier is not credible. The Applicant was identified by the victim of the home invasion, who knew him. (Plea Tr., p. 72-80). The Applicant's co-defendant was also planning on testifying against him. (Plea Tr., p. 116-17). Moreover, as explained by the solicitor during the sentencing hearing, the video stills captured

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plea agreement, and then, if petitioner accepted the offer, the state trial court could exercise its discretion regarding whether to resentence. Id. at 1391.

[4] Counsel testified at the evidentiary hearing that the video was more revealing than the stills because "it showed action which changes the way you look at something." (Apr. 23, 2015 PCR Tr., p. 23).

screen images in consecutive orders, and showed the same thing that the full video would have shown. (Plea Tr., p. 156). Far more likely and, in this Court's mind, compelling an explanation is that the Applicant – an experienced criminal defendant – was holding out for a more favorable, non-violent plea offer until he was ultimately faced with the prospect of going to trial on a very unfavorable set of facts. Indeed, Ms. Garrick testified that this was her impression from her discussions with the Applicant's attorneys. Apr. 15, 2014 PCR Tr., p. 39).[5] Having failed to provide any credible testimony as to how counsel's purported deficiency prejudiced him, or even submit the video at the evidentiary hearing, this Court finds that the Applicant has not met his burden to prove ineffective assistance of counsel. This allegation is therefore denied and dismissed with prejudice.

Deficient Performance

The Applicant has also failed to meet his burden to show deficient performance. Judicial scrutiny of counsel's performance is highly deferential and the court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler v. State, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985) (citing Strickland, 466 U.S. at 668, 104 S.Ct. 2052). Though hindsight may provide a different view of counsel's actions, the Applicant is not entitled to a new trial for the sole purpose of presenting a "fancier" case. Jones v. State, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998).

To the extent counsel's failure was the result of an oversight or miscommunication, this Court finds the oversight was not unreasonable given the circumstances. Counsel could very well have reasonably determined the stills – which he described at the evidentiary hearing as

[5] Ms. Garrick also raised this issue during the sentencing hearing, saying that her experience with this case was that the Applicant "wanted to plead to nonviolent offenses. He wanted to plead for ten years nonviolent . . . and that was never something that was going to be offered." (Plea Tr., p. 157).

simply a "choppy version" of a full video[6] – were all that came from the home surveillance system. Applicant has not met his burden to overcome the high level of deference required in post-conviction relief proceedings. This allegation therefore denied and dismissed.

Prosecutorial Misconduct

The Applicant alternatively alleges prosecutorial misconduct for failure to disclose the video during discovery. Angela Garrick, the solicitor who prosecuted the Applicant's charges, testified that she disclosed the entire video. She further testified that she had an open file policy, and defense attorneys are welcome to come in and look through her discovery page-by-page, as well as review discs. (Apr. 15, 2014 PCR Tr., p. 38). Her testimony is corroborated by counsel, who – as discussed above – acknowledged that he received the disc with the video but did not realize it contained anything more than the stills. As there is no evidence of any nondisclosure in this case, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

[Signature follows]

[6] (Apr. 23, 2015 PCR Tr., p. 16).

CONCLUSION

Based on the foregoing, this Court finds that the Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 11 day of September, 2016.

BROOKS P. GOLDSMITH
Presiding Judge
Eleventh Judicial Circuit

_____, South Carolina

FILED
2016 SEP 19 A 11:17
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

329

WITNESSES

Lexington County Sheriffs Department

Edward D. Prestigiacomo

Law Enforcement Case #: 10080706

JAG

ARREST WARRANT NUMBER

M301327

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 12/13/10

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS3203554

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

THE STATE
vs.

Samuel Travis Wiggins

CDR #: 0139

Indictment for

ARMED ROBBERY WHILE ARMED WITH A DEADLY WEAPON

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	ARMED ROBBERY WHILE ARMED WITH A
COUNTY OF LEXINGTON	)	DEADLY WEAPON
	)	
		§ 16-11-0330(A)

At a Court of General Sessions, convened on DECEMBER 2010, the Grand Jurors of Lexington County present upon their oath:

That **Samuel Travis Wiggins along with co-defendant** did in Lexington County, South Carolina on or about August 30, 2010 knowingly and willfully while armed with a deadly weapon or while having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed feloniously take from the person or presence of Carol Acre, by means of force, threats or intimidation goods or monies being described as follows: money, guns and collectible coins with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Edward D. Prestigiacomo

Law Enforcement Case #: 10080706

JAG

ARREST WARRANT NUMBER

M301328

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 12/13/10

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2010GS3203555

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

DECEMBER TERM 2010

THE STATE
vs.

Samuel Travis Wiggins

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	KIDNAPPING
COUNTY OF LEXINGTON	)	
	)	§ 16-03-0910

At a Court of General Sessions, convened on DECEMBER 2010, the Grand Jurors of Lexington County present upon their oath:

That **Samuel Travis Wiggins along with co-defendant** did in Lexington County, South Carolina on or about August 30, 2010, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one Carol Acre by any means whatsoever without authority of law, and without her consent, to wit: the defendant held the victim held at gunpoint and shoved her to the ground to keep her from escaping from the residence during a robbery, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR

333

WITNESSES

Lexington County Sheriffs Department

Edward D. Prestigiacomo

Law Enforcement Case #:

JAG

ARREST WARRANT NUMBER

12-STR-00096

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 9/10/2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS3202283

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2012

THE STATE
vs.

Samuel Travis Wiggins

CDR #: 0079

Indictment for

Burglary First Degree

§ 16-11-0311

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Burglary First Degree
COUNTY OF LEXINGTON	)	
	)	§ 16-11-0311

At a Court of General Sessions, convened on September 2012, the Grand Jurors of Lexington County present upon their oath:

That **Samuel Travis Wiggins** along with a codefendant, did in Lexington County, South Carolina on or about August 30, 2010, knowingly and willfully enter a dwelling, to wit:

being the dwelling of Carol and Richard Acre, without consent which includes entering by using deception, artifice, trickery, or misrepresentation to gain consent and with the intent to commit a crime therein and was armed with a deadly weapon and/or displayed what appeared to be a firearm and/or the entering or remaining occurred in the nighttime, in violation of § 16-11-311 of the Code of Laws of South Carolina, 1976, as amended

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ASSISTANT SOLICITOR