

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Edgefield County

Honorable Eugene C. Griffith, Circuit Court Judge

K. C. LANGFORD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001397

APPENDIX

LANELLE CANTEY DURANT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

KELLY OPPENHEIMER
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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1 look over at the prosecutor, look back there at your
2 lawyer and figure out what to say, that's just
3 sewing those seeds of doubt, that's lawyer games,
4 trying to -- just like trying to talk about hitting
5 somebody with a gun when the only one that ever said
6 that was somebody on cross-examine. There's nothing
7 in the record about hitting anybody with a gun, but
8 if I repeat it over and over again, even though it's
9 not true, maybe it will take seed with somebody
10 here. Y'all are too smart for that.

11 Seven reasons, all those other charges, all
12 that time swirling around over his head. Ladies and
13 gentlemen, if you've got any problem at all with
14 anybody being fed out of a different spoon here,
15 they're all charged with armed robbery, find those
16 two guilty of armed robbery, feed them all out of
17 the same spoon, find them not guilty of everything
18 else. Absolutely if you think he's getting fed out
19 of a different spoon, if that's the medicine they
20 want, if that's justice, find them guilty of armed
21 robbery, find them not guilty of everything else and
22 come back out here.

23 You take an oath as jurors to come back with a
24 verdict that speaks the truth. You've heard the
25 evidence in this case. You know who's got a reason

1 to lie. You know who would have a reason to try to
2 get him to sign statements like this.

3 And you can tell from this young man he doesn't
4 want to testify against them. He did not want to be
5 here, but he told the truth to Roosevelt Young after
6 being advised of his rights. He doesn't want to
7 testify against them, he never did. He told on
8 himself. He got up here under oath and he told you,
9 that's the most I can tell you in this case, this
10 statement is false. It's wrong. It didn't happen.
11 He told you that.

12 The young man got up here on the stand and I
13 asked him, Did anybody ask you to say anything other
14 than the truth up here? No. That wasn't the same
15 for everybody. Whoever got him to sign this
16 statement that didn't have the nerve to sign their
17 name as a witness in this case, they didn't want him
18 to tell the truth. They wanted him to lie for their
19 benefit and to his detriment. That's what that's
20 about. It's no mystery. You don't leave your
21 common sense, just exactly as I told you, you don't
22 leave your common sense at home. You know who's got
23 a motive to try to get him to say that.

24 He didn't want to testify against them. Sure
25 he hesitated about it because he didn't want to. He

1 didn't want to be up here today, but he did.

2 Oh, that deal he got enticed him. Like I said,
3 feed them out of the same spoon. If he got a
4 Christmas present there with that plea to armed
5 robbery, feed them out of the same spoon, find them
6 all guilty of the same thing, because what this is
7 about is truth and justice not mercy.

8 Mercy comes from the bench. Justice is what
9 we're talking about. Isn't that what they wrote in
10 this statement right here? To bring about the end
11 of justice.

12 They don't want justice. They want mercy, want
13 you to let them walk out here if they let this
14 17-year-old young man carry the burden for the
15 unlawful acts of all of them alone and by himself,
16 that's what they're asking you to do.

17 And like I said, they put Roosevelt Young on
18 trial. They've put Alvin on trial. They've put the
19 prosecution on trial all to shift the focus and to
20 stir up, kick up a cloud of dust and obscure the
21 simple fact of this young man implicating himself
22 and told on himself. There's no more inherently
23 truthful statement at all. He told on himself.

24 Look at the handwriting, see what you think
25 about these statements, think about all of the seeds

1 of doubt that they've tried to sew in this case and
2 think about who's got a motivation. And like I
3 said, they don't have to put up any evidence in this
4 case. We've got the burden of proof and we welcome
5 it.

6 Alvin P. got up here under oath. He did
7 do the right thing. He told you what he did and he
8 implicated himself. And we're going to put it in
9 your hands and you're going to decide whether these
10 two young men over here are going to let this 17
11 year old bear all the responsibility for this and
12 take this ride by himself or not, that's ultimately
13 what it comes down to.

14 We're going to put it in your hands as other
15 people, these Chinese folks that live down here and
16 run this restaurant that live here and are citizens
17 here in Edgefield County, live here as well and work
18 and try to make a living and raise their family as
19 to whether or not it's fair for them to be subjected
20 to this kind of behavior.

21 The police did what they could do. You know
22 good and well that they wish that they could have
23 gotten more and they could have done more in this
24 case, but it just wasn't there. On some crimes,
25 there's no magic bullet like there is on crime scene

1 CSI. There's no DNA. There are no hair fibers
2 they're going to vacuum up out of the yard. They've
3 got to rely on what happens sometimes through, as
4 unlikely a source as somebody that had a family
5 court bench warrant that's a family member of
6 theirs.

7 But you know one thing about it, no matter how
8 you try to cover something up or hide it or walk
9 away from something, be sure your sins will always
10 find you out sometimes through the most unlikely
11 ways. One of their family members gets in trouble
12 with a bench warrant, tells what he knows.

13 They bring in this 17 year old. He does the
14 right thing and they're going to villainize him for
15 what he's doing. He did it. He accepted
16 responsibility. He pleaded guilty to it.

17 If you've got any problems about him getting
18 anything different than they get, feed them out of
19 the same spoon, not guilty on anything else and
20 guilty on armed robbery that's as easy as you can
21 be, but I hope you'll fulfill your obligations as
22 jurors in this case, use your common sense, come
23 back with guilty verdicts.

24 They robbed this man in the yard, then they
25 kidnapped him, these Chinese people. If they went

1 in that house, it's a burglary. If they got
2 together and they planned it together, it's criminal
3 conspiracy. This is about justice here. This is
4 about you sitting as judges of the facts in the
5 case. Mercy comes from some other place.

6 The Judge is going to charge you with what the
7 law is in this case and you apply it to the facts.
8 And you've got the facts up here. You saw what
9 Alvin P. said. You saw what he told Roosevelt
10 Young. The statements match. The timeline's there.
11 He was with Bryan ahead of time. He was with K.C.
12 Langford right afterwards. There wasn't anybody
13 else. He told the truth up here. He didn't want
14 to. He didn't want to tell on them. You know he's
15 got genuine affection for them. And he didn't want
16 to testify against them, but he did do the right
17 thing.

18 This comment about don't snitch on anybody,
19 don't tell anybody, this system breaks down when
20 people get up here under oath and they don't tell
21 the truth. The only way this system works is when
22 people get up here and take that oath and tell the
23 truth. And you can see how upset the defense got in
24 this case when the Chinese lady, he didn't think she
25 took the oath or didn't get it out of her mouth.

1 It's important because it's arrogant to think,
2 I'm smart enough that from the periphery of this or
3 from around the edges from down in jail, falsifying
4 statements or whatever else I'm going to do, that I
5 can outsmart the collective wisdom of 12 jurors up
6 here, because if there's one thing about this
7 courtroom, just like with all these windows, it puts
8 the light of day on things.

9 Y'all don't leave your common sense at home
10 when you come up here and I know you won't. Come
11 back with a verdict that speaks the truth, serve the
12 ends of justice, speak the truth in this case, let
13 mercy come from where it needs to come from.
14 Appreciate your close attention.

15 **THE COURT:** All right. Thank you, Solicitor.

16 Ladies and gentlemen, as I told you, I always
17 take a brief recess between the closing arguments
18 and the charge. Usually this is very brief. It's
19 just time for me to get set up and bring you back
20 out here and let you stretch your legs a little bit
21 in the meantime. So in about five minutes or so, I
22 plan to send for you if everybody's ready. And as I
23 told you, the charge should take me 38 minutes to
24 give it.

25 All right. Follow the bailiff, please

1 (The jury retires to the jury room.)

2 **THE COURT:** All right. We're at ease.

3 (Brief recess.)

4 **MR. CALHOUN:** Your Honor, I would like to make
5 a motion -- put something on the record.

6 **THE COURT:** Sure.

7 **MR. CALHOUN:** At this time, I would want to
8 move for a mistrial. The Solicitor may -- made an
9 improper comment on my client's decision not to
10 testify. At the end of his closing argument about
11 two minutes ago, he said, quote, The only way this
12 system works is if people get up here on the stand
13 and tell the truth. And I don't think that that was
14 a vail message. That was a distinct, pointed
15 comment on the fact that my client and Bryan
16 Phillips didn't take the stand, Your Honor.

17 **THE COURT:** Do you have something,
18 Mr. Williams?

19 **MR. WILLIAMS:** Your Honor, I have to join
20 Mr. Calhoun in his assertion for the record on
21 behalf of my client.

22 **MR. MAYE:** Your Honor, I didn't name their
23 clients. I was talking about Alvin P. in this
24 case. And I didn't comment on their right. In
25 fact, I specifically told the jury in this case that

1 they had an absolute right not to put up any
2 evidence, not to testify in this case and I told
3 them that directly in my closing argument. I didn't
4 make any comment on these two individuals' right,
5 that they should not have relied on their right to
6 remain silent. I was talking about witnesses that
7 take the stand in this case. That's the only way
8 this works is the witnesses come up here and they
9 tell the truth.

10 **MR. CALHOUN:** The problem with that argument is
11 my client didn't take the stand and the jury knows
12 it, so.

13 **THE COURT:** I can tell you when I was listening
14 to it, it didn't strike me as an improper argument,
15 but I'm trying to find it so I can make absolutely
16 certain I didn't miss something.

17 (Pause.)

18 **THE COURT:** One of the things that really makes
19 my ears stand up is when I hear people commenting on
20 the defendant's exercise of a right not to testify
21 or a right to remain silent and my radar did not get
22 tuned into anything the Solicitor said. I looked
23 back through the rough notes. And in context, I
24 just -- it didn't strike me then as being a comment
25 on the right -- exercise of the right to remain

1 silent and it doesn't strike me now as being a
2 comment. So your objection is noted. Your request
3 for a mistrial is noted and respectfully denied.

4 All right. Be back in place in five minutes.

5 **MR. MAYE:** Thank you, Your Honor.

6 **MR. CALHOUN:** Judge, I -- we're renewing our
7 motions, of course, for the record for a directed
8 verdict and any previous motions made.

9 **MR. WILLIAMS:** And so am I, Your Honor. I
10 think we forgot to do it toward the end of closing.

11 **THE COURT:** Well, that would have been my
12 fault. We got all wrapped up in that witness.

13 **MR. MAYE:** And I would certainly stipulate they
14 can make any motions now that they should have made
15 at that time.

16 **THE COURT:** All right. Do you have any
17 additional things you want to put on the record
18 considering these motions to have been made at the
19 close of all the evidence? Anything else, Mr.
20 Calhoun, other than renewing the motions you made at
21 the close of the State's case?

22 **MR. CALHOUN:** No, Your Honor.

23 **THE COURT:** And do you have anything else?

24 **MR. WILLIAMS:** No, sir, Your Honor.

25 **THE COURT:** All right. Once again, these are

1 all jury issues and the motions respectfully denied.

2 Now, make sure these folks know that when I
3 start talking to the jury, we lock the doors.

4 **MR. WILLIAMS:** Yes, sir, Your Honor.

5 **THE COURT:** So they need to be in here if they
6 want to hear the charge.

7 **MR. CALHOUN:** Yes, sir.

8 **THE COURT:** I can certainly understand if they
9 would not want to hear it, but they have to be in
10 here if they want to hear it.

11 All right. We're at ease.

12 (Brief recess.)

13 **THE COURT:** All right. During the charge,
14 please stay still and stay quiet. Don't do anything
15 to distract the jury absent an emergency and if
16 there is an emergency, act accordingly. If anybody
17 needs to be in, let them come on in. If anybody
18 needs to go out, you need to leave.

19 Okay. Bring in the jury.

20 (The jury returns to the courtroom.)

21 CHARGE OF THE COURT

22 **THE COURT:** Members of the jury, all of the
23 evidence has been presented. You've heard the
24 arguments of counsel. Now, it's time for me to
25 instruct you on the law that applies to the cases.

1 Please continue to pay close attention during this
2 next stage.

3 Now, first, you need to understand some basic
4 ground rules. You, the jury members, are the sole
5 judges of the facts. You decide all of the issues
6 of fact. You alone determine the truth of the
7 evidence, its effect, its value and its weight. You
8 alone judge the credibility of witnesses, in other
9 words, whether or not a witness' testimony is
10 believable.

11 In this regard, you may believe all that a
12 witness said or none of it. You may believe part of
13 what a witness said and not believe the balance.
14 You may believe one witness against many or many
15 against one. You may consider the -- any interest,
16 bias or prejudice that you feel that a witness has
17 in the case. You may consider the demeanor and the
18 appearance of the witness and the opportunity for
19 knowledge that the witness had. You may consider
20 the lack of evidence presented by the State. But
21 you're not to exercise these considerations
22 arbitrarily. What I want you to do is to use your
23 common sense, use your sense of logic and reason and
24 your good judgment.

25 It's not proper for me to give you a charge on

1 the facts of the case. I can't discuss the facts
2 with you. I'm not even permitted to convey to you
3 an impression as to what, if any, personal opinions
4 I may develop about the facts of a case as it goes
5 along. So if during any stage of this trial, you
6 develop an impression that I've got a personal
7 opinion about the facts, you have to remove that
8 totally from your mind. You're the sole judges of
9 the facts.

10 I am the judge of the law that applies to this
11 case and under your oath, you have to accept and
12 apply the law as I give it to you. If you've got
13 conflicting ideas about what the law is or what it
14 should be, you have to remove those. I give you the
15 law, you apply that law to the facts as you
16 determine them to be and in that way you reach your
17 verdicts.

18 It's also my job to decide what evidence is
19 admissible. If I've ruled something inadmissible or
20 told you to disregard something, you're not to
21 consider those things in arriving at your verdicts.
22 Base your verdicts on the competent evidence before
23 you, consider the testimony of the witnesses and the
24 exhibits admitted in the trial.

25 Now, you heard testimony of some witnesses

1 through an interpreter. And as odd as this may
2 sound, I'm supposed to tell you that if you have
3 some knowledge of Chinese or Mandarin Chinese, you
4 cannot rely on your own knowledge of that language.
5 So even if you disagree with the interpreter's
6 translation, you have to accept the translation of
7 the witnesses' testimony that was given by the
8 interpreter.

9 I need to explain to you that there are two
10 types of evidence generally presented during a
11 trial. There's direct evidence and there's
12 circumstantial evidence.

13 Direct evidence is evidence of direct
14 perception including the testimony of a person who
15 asserts or claims to have actual knowledge of a fact
16 such as an eyewitness.

17 Circumstantial evidence is proof of a chain.
18 It's proof of a chain of facts and circumstances
19 indicating the existence of a fact.

20 The law makes absolutely no distinction between
21 the weight or value to be given to either direct or
22 circumstantial evidence nor is a greater degree of
23 certainty required of circumstantial evidence than
24 of direct evidence. What you need to do is to weigh
25 all of the evidence in these cases. And after

1 weighing all of the evidence, if you're not
2 convinced of the guilt of the defendant beyond a
3 reasonable doubt, then you must find him not guilty.

4 The defendants in these cases are presumed to
5 be innocent. This is no mere legal theory. It is a
6 fundamental and substantial right to which every one
7 is entitled.

8 It's been described as being like a robe of
9 righteousness that's placed around an accused and it
10 remains with him through every stage of the trial.
11 It continues to exist after you go back to your jury
12 room to deliberate so that the defendant, the
13 accused, is presumed to be innocent unless and until
14 you, the jury, determine that the State has proven
15 him guilty beyond a reasonable doubt.

16 A defendant is not required to prove his
17 innocence. He is not required to prove anything at
18 all. The burden is entirely on the State to prove
19 the guilt of the defendant beyond a reasonable doubt
20 and it's required that every essential element of an
21 offense charged be proven by the State beyond a
22 reasonable doubt.

23 Now, that does not mean that the State has to
24 prove the guilt of the defendant beyond all doubt or
25 beyond every doubt. The appropriate standard is

1 proof beyond a reasonable doubt.

2 Some of you may have served as jurors in civil
3 court. And if you've ever served as a juror in
4 civil court or been in civil court, you understand
5 that the burden of proof there is to establish that
6 something is probable, that it's more likely than
7 not and we call that the greater weight or
8 preponderance of the evidence. But in this setting,
9 a criminal court setting, the standard is much
10 higher and the proof required is much stronger than
11 what is required in civil court. As I've told you
12 repeatedly, the burden of proof in these cases is
13 proof beyond a reasonable doubt.

14 So what do I mean by that term? Proof beyond a
15 reasonable doubt is proof that leaves you firmly
16 convinced of the defendant's guilt. There are few
17 things in the world that we know with absolute
18 certainty and in criminal cases, the law does not
19 require proof that overcomes every possible doubt.

20 If, based on your consideration of the
21 evidence, you are firmly convinced that a defendant
22 is guilty of a crime charged, then you are to find
23 him guilty of that crime. If, on the other hand,
24 you think there is a real possibility that he is not
25 guilty, you must give him the benefit of the doubt

1 and find him not guilty on that charge.

2 Now, there is no obligation on the part of a
3 defendant to raise any doubt or any other
4 possibility. A defendant is presumed to be
5 innocent. And the State has the entire burden of
6 proof and the State has to prove to you that that
7 defendant is guilty to the exclusion of any other
8 real possibility.

9 I remind you, ladies and gentlemen, and
10 emphasize once again that the fact that the
11 defendants in this case elected not to testify is
12 not a factor to be considered by you in any manner
13 in your deliberations, in your consideration on the
14 question of whether a defendant is guilty or not
15 guilty. The decision not to testify must not be
16 considered by you in any manner whatsoever against a
17 defendant. An accused has a constitutional right to
18 remain silent and the assertion of that right cannot
19 and must not be considered by you in your
20 deliberations.

21 Under your oath, you are to reach no inference
22 and you are to draw no conclusion whatsoever from
23 the fact that a defendant elected not to testify.
24 His decision not to testify should not be discussed
25 by you in your deliberations. It should not even

1 enter your minds in making your decision on these
2 cases. The burden of proof is entirely on the State
3 to prove the guilt of the defendant beyond a
4 reasonable doubt and the State has to prove every
5 essential element of each offense charged beyond a
6 reasonable doubt.

7 Now, I need to explain to you that a person can
8 be guilty of a crime either by directly perpetrating
9 that crime himself or by being present at the scene
10 of the crime and aiding, abetting and assisting in
11 the commission of the crime. This is known as
12 accomplice liability, being an accomplice. And it's
13 sometimes referred to with the phrase, The hand of
14 one is the hand of all. A person who was present at
15 the scene of a crime and intentionally or through a
16 common plan aided, abetted and assisted in the
17 commission of that crime through some overt act is
18 guilty as an accomplice.

19 Now, to be liable as an accomplice, the
20 defendant must have knowledge of the principal's
21 criminal conduct. Mere presence at the scene of a
22 crime is not sufficient to establish guilt as an
23 accomplice to that crime.

24 Now, intentionally means willful, intending the
25 result that actually occurs, not something done

1 accidentally or involuntarily.

2 During the rest of this charge when I refer to
3 the term accomplice, you should consider that I mean
4 that term to include all the conditions of
5 accomplice liability that I just instructed you
6 about and incorporate those into that term.

7 Now, let's turn to the specific charges that
8 are alleged in this trial. As you know, there are
9 two separate defendants and the charges against each
10 defendant have to be evaluated separately. Further,
11 each defendant is charged with four separate
12 charges, each of which has to be evaluated
13 separately on its own merit or lack of merit.

14 I read these indictments to you at the
15 beginning of the trial. All of the indictments
16 allege that the incident occurred in Edgefield
17 County on or about August 14, 2008. The defendants
18 are charged with armed robbery. It is alleged that
19 each defendant while armed with a deadly weapon and
20 by means of force or intimidation, feloniously took
21 from the person or presence of Ji Quing Chen
22 approximately \$3,000 in United States currency with
23 the intent to deprive Mr. Chen permanently of that
24 property.

25 Each defendant is also charged with burglary in

1 the first degree. It is alleged that each defendant
2 willfully and unlawfully entered during the
3 nighttime without consent and with the intent to
4 commit a crime therein the residence of Ji Quing
5 Chen.

6 Each defendant is charged with kidnapping.
7 It's alleged that each defendant unlawfully seized,
8 confined, inveigled, decoyed, kidnapped, abducted or
9 carried away Ji Quing Chen and/or Guan Xin Li
10 without authority of law and without consent by the
11 following means: It's alleged that each defendant
12 with the use of a firearm and/or physical force,
13 held those persons, either one or both, against
14 their will and would not let them leave the
15 residence.

16 And, finally, each defendant is charged with
17 criminal conspiracy. It's alleged that each
18 defendant unlawfully and willfully united, combined,
19 conspired, confederated, agreed and/or had a tacit
20 understanding with the other defendant and with
21 Alvin P. for the purposes of accomplishing the
22 crime of armed robbery.

23 I caution you, ladies and gentlemen, that an
24 indictment is not evidence. It has no evidentiary
25 value. An indictment is nothing more than a

1 charging paper, the formal means by which someone is
2 charged and brought to trial. It's not evidence and
3 you may not consider an indictment as having any
4 evidentiary value.

5 Now, first, I'm going to explain to you the law
6 about armed robbery. Armed robbery is using force,
7 threats or intimidation while armed with a deadly
8 weapon to unlawfully take and carry away personal
9 property of another person with the intent to
10 deprive the owner of possession.

11 So in order to prove this offense, the State
12 must first prove beyond a reasonable doubt that the
13 defendant or an accomplice of his took personal
14 property from the person or presence of the person
15 or persons named in the indictment. It has to be
16 taken from the person or presence of another person.
17 Personal property is anything other than real estate
18 basically.

19 In order for property to be in the presence of
20 a person, it must be within the person's reach,
21 inspection, observation or control so that the
22 person could keep possession of that property if not
23 overcome with violence or prevented by fear.

24 The State also has to prove beyond a reasonable
25 doubt that the defendant or an accomplice of the

1 defendant carried the property away intending to
2 permanently deprive the owner of the property and
3 keep the property for the defendant's own use. The
4 taking or the carrying away of the property must
5 have been done with violence or by putting the owner
6 of the property or possessor of the property in fear
7 of violence.

8 And, finally, the State has to prove to you
9 beyond a reasonable doubt that the defendant or his
10 accomplice was present and aiding, abetting and
11 assisting in the commission of the robbery while
12 armed with a deadly weapon during the robbery. A
13 deadly weapon is any article, instrument or
14 substance that is likely to cause death or great
15 bodily harm.

16 Next, I'm going to explain to you burglary in
17 the first degree. Burglary in the first degree is
18 willfully and unlawfully entering a residence
19 without consent and with the intent to commit a
20 crime therein where the entering or remaining
21 occurred in the nighttime. It is willfully and
22 unlawfully entering a residence without consent and
23 with the intent to commit a crime therein where the
24 entering or remaining occurred in the nighttime.

25 So to prove the defendant or a defendant guilty

1 of burglary, the State has to prove to you that the
2 defendant in question either as the principal or as
3 an accomplice who was present and aiding, abetting
4 and assisting another defendant in the crime of
5 burglary did the following things:

6 First, that he entered a dwelling without
7 consent. A dwelling is any building in which a
8 person ordinarily sleeps.

9 Next, the State has to prove to you that the
10 entry was done with the intent to commit a crime,
11 either a felony or a misdemeanor, at the time of the
12 entry. Merely entering into a dwelling without
13 consent is not burglary. The entry has to be made
14 with the intent to commit a crime once inside a
15 dwelling. Intent may be shown by acts and conduct
16 of the defendant and other circumstances from which
17 you may naturally and reasonably infer intent.

18 And, finally, the State has to prove beyond a
19 reasonable doubt that an entering or remaining
20 occurred in the nighttime.

21 Next, I'm going to explain to you kidnapping.
22 Kidnapping is knowingly and unlawfully seizing,
23 confining, inveigling, decoying, kidnapping,
24 abducting or carrying away another person without
25 lawful authority.

1 Now, to do an act unlawfully requires willfully
2 doing something that's against the law. Willfully,
3 as I told you, means intentionally. Knowingly means
4 with knowledge and consciously not something done by
5 accident. To seize means to take hold of suddenly
6 or forcibly. To confine means to limit, to
7 restrict, to enclose within bounds, to imprison or
8 to shut in or keep in another person. Kidnap is to
9 remove a person against his will by unlawful force
10 or by fraud. Abduct means to carry off secretly or
11 by force for an illegal purpose. And carry away
12 means to remove.

13 The State does not have to prove that the
14 defendant or someone with whom he was acting as an
15 accomplice did all of these things. If you find
16 beyond a reasonable doubt that the defendant or an
17 accomplice knowingly and willfully seized, confined,
18 kidnapped or abducted either or both of the two
19 purported victims against the will of the purported
20 victim or victims, as I have defined those terms to
21 you and as alleged in this -- in the particular
22 indictments, then you may find that defendant guilty
23 of kidnapping.

24 Now, something done without the authority of
25 law is something that the law does not sanction,

1 permit, allow, condone or provide justification for.
2 The kidnapping does not have to be for ransom or for
3 any personal or monetary gain.

4 And, finally, I need to explain to you the
5 crime of conspiracy. The State has to prove beyond
6 a reasonable doubt that the defendant in question
7 combined with one or more persons named in the
8 indictment for the purpose of committing an unlawful
9 act or of committing a lawful act by unlawful means.
10 Now, here it's alleged that the unlawful act was
11 armed robbery, that there was conspiracy to commit
12 armed robbery.

13 There has to be a mutual understanding for
14 there to be a criminal conspiracy, a mutual
15 understanding, an agreement or a common intention
16 and plan. Mere passive knowledge of or consent to
17 the criminal conduct of another is not enough to
18 make a person a conspirator. There has to be guilty
19 knowledge and participation.

20 And, similarly, the mere fact that the
21 defendant may have associated with another person or
22 met with another person and discussed common aims
23 and interests does not necessarily establish proof
24 of the existence of a conspiracy or that the
25 defendant was involved in a conspiracy.

1 The essence of conspiracy is an agreement to
2 commit an unlawful act. The agreement does not have
3 to be formal. It does not have to be in writing.
4 The agreement of a criminal conspiracy may come into
5 being through implied mutual understandings. A
6 conspiracy requires the willful, intentional and
7 knowing adoption by two or more persons of a common
8 plan to do an illegal act.

9 The State has to prove to you beyond a
10 reasonable doubt not only that the defendant knew of
11 the unlawful conduct, but that the defendant agreed
12 in advance to combine with the other persons for the
13 purpose of accomplishing armed robbery.

14 All right. The last thing I have to go over
15 with you about the law is that a defendant is
16 entitled to every reasonable doubt arising in an
17 entire case.

18 If, upon any issue of fact essential to a
19 conviction, you have a reasonable doubt as to how
20 that issue should be resolved, then you have to
21 resolve that doubt in favor of the defendant. If,
22 upon reviewing an entire case, you have a reasonable
23 doubt as to whether the defendant has been proven by
24 the State to be guilty of a crime charged, then the
25 defendant is entitled to that reasonable doubt and a

1 verdict of not guilty on that charge.

2 On the other hand, if you, upon reviewing the
3 entire case, find that the State has proven every
4 essential element of a crime charged against a
5 particular defendant beyond a reasonable doubt, it's
6 equally your duty to find the defendant guilty of
7 that charge. And that's the law.

8 Folks, when you go back to your jury room to
9 decide these cases, you're going to have with you
10 all of the exhibits that were admitted in the trial
11 and you're going to have these verdict forms. On
12 these forms, you're going to tell us your decisions.

13 Now, there are eight separate pieces of paper
14 because you have two defendants each charged with
15 four offenses. And what you will see when you get
16 back there is that the caption on four of these
17 reads, The State versus K.C. Langford, III. And the
18 caption at the top of the page on the four others
19 reads, The State versus Bryan Jordan Phillips.

20 Now, what I have done is I have listed the
21 possible forms of verdict on each. And to make sure
22 that there's no confusion, I've been a little bit
23 repetitive, so even though I've got the caption up
24 here with the name, I have put the charge that
25 you're considering and the name of that particular

1 defendant again.

2 So this one reads, As to the charge of burglary
3 in the first degree against K.C. Langford, III, we,
4 the jury, unanimously find the defendant, and then
5 you have two options, you may find the defendant not
6 guilty or you may find the defendant guilty of
7 burglary in the first degree.

8 Now, the verdict form for Mr. Phillips on the
9 indictment for burglary in the first degree will be
10 exactly the same except the names will be changed.

11 Then you have another set of verdict forms for
12 armed robbery. And, again, I'll just stick with the
13 one I have in my hand. It reads, As to the charge
14 of armed robbery against K.C. Langford, III, we, the
15 jury, unanimously find the defendant, and you have
16 two options, you may find him not guilty or you may
17 find him guilty of armed robbery.

18 The verdict form for Mr. Phillips will be
19 identical except the names were changed. You have
20 the option of finding Mr. Phillips not guilty or
21 guilty of armed robbery.

22 Then there are two separate and distinct
23 verdict forms for kidnapping, one against
24 Mr. Langford and one against Mr. Phillips. And they
25 would read, As to the charge of kidnapping against,

1 whichever defendant you're considering, we, the
2 jury, unanimously find that defendant, you have two
3 options, you may find him not guilty or guilty of
4 kidnapping.

5 And then criminal conspiracy, same thing, two
6 options, you may find the defendant not guilty, you
7 may find that particular defendant guilty of
8 criminal conspiracy.

9 Now, Mr. Foreman, part of your job is to record
10 the verdicts of the jury. I think you'll find these
11 forms to be self-explanatory. They're pretty
12 simple. Just make sure that you're looking at the
13 name and the charge that's all right up here
14 underlined for you and you check the response the
15 jury chooses on each form and you sign your name on
16 each form.

17 Now, ladies and gentlemen, how you go about
18 your deliberations and how you go about taking your
19 votes, all of that is in your discretion subject to
20 this requirement: Your verdicts must be unanimous.
21 All 12 of you have to agree before the Foreman can
22 record your verdict.

23 You cannot do anything to change the
24 requirement of a unanimous verdict. When you come
25 back out with your verdicts, you can be asked

1 individually if that is your verdict and if it is
2 still your verdict. So please understand, folks,
3 the verdicts have to be unanimous and you cannot do
4 anything to change the requirement of a unanimous
5 verdict.

6 When you've reached your verdicts, knock on the
7 door, the bailiff will respond to your knock.

8 Now, over the course of the last three days,
9 I've probably told you all dozens of times not to
10 discuss the case until I tell you. And I told you
11 you wouldn't have any doubt about when that would
12 be. Well, it isn't time yet. The law says that I
13 have to let the attorneys discuss with me what I
14 just told you and that's just common sense, we don't
15 want you back there deciding these cases using the
16 wrong law. They don't get to stand up and object
17 when I'm talking. They have to wait till I turn to
18 them and ask them if they have any input.

19 So what will happen is this. I'm going to send
20 you back to the jury room. I will get input from
21 the attorneys. If I agree with them that I need to
22 clarify something or I misstated something, I'll
23 bring you back out and do that.

24 But if I'm satisfied with what I told you,
25 here's the signal you need to look for. The bailiff

1 is going to bring these verdict forms and those
2 exhibits back there in that jury room. When you
3 have those exhibits and verdict forms in the jury
4 room and the door is shut and it's just the 12 of
5 you in there, you start talking about the case. You
6 don't have to wait another second, but don't talk
7 about it until then.

8 Thank you very much for your attention. You
9 may retire to your jury room.

10 (The jury retires to the jury room.)

11 **THE COURT:** Please state for the record
12 exceptions, additions or objections to the
13 instructions from the State.

14 **MR. MAYE:** None from the State, Your Honor.

15 **THE COURT:** On behalf of Mr. Langford.

16 **MR. CALHOUN:** None for Mr. Langford, Your
17 Honor.

18 **THE COURT:** And on behalf of Mr. Phillips.

19 **MR. WILLIAMS:** None from Mr. Phillips, Your
20 Honor.

21 **THE COURT:** Gentlemen, I want to thank you all
22 very much, everybody involved, the attorneys, the
23 witnesses, defendants, family members, everybody for
24 the respect you've shown the Court. I appreciate
25 that very much. Everybody obviously has worked very

1 hard on these cases.

2 The jury has a very difficult choice to make.

3 They've got the toughest job in the courthouse.

4 We'll put it in their hands and see what happens.

5 Check the verdict forms, check the exhibits.

6 When you're satisfied, give those to the bailiff and

7 he or she will take them back.

8 MR. CALHOUN: Thank you, Judge.

9 MR. WILLIAMS: Thank you, Your Honor.

10 (Pause.)

11 THE COURT: Everybody's square?

12 MR. CALHOUN: Yes, sir.

13 MR. WILLIAMS: Yes, sir, Your Honor.

14 MR. MAYE: Nothing from the State.

15 THE COURT: All right. Mr. Bailiff, if you
16 will give those to the jury and tell them they may
17 begin their deliberations and knock on the door when
18 they've completed them, when they've got their
19 verdicts.

20 We're at ease on these cases pending a verdict.

21 I guess I need to put this on the record.

22 After I told the jury about taking notes, none of
23 them took any notes. The bailiff watched them. I
24 watched them and they didn't take any notes. So I
25 didn't give any further instructions about that.

1 All right. We're at ease pending a verdict.

2 (The jury commenced its deliberations at
3 5:48 p.m.)

4 (A recess transpired.)

5 (Court's Exhibit Number 4, jury note, marked
6 for identification purposes.)

7 (The following occurred at the bench during
8 jury deliberations at 7:54 p.m.)

9 **THE COURT:** The attorneys have agreed to submit
10 another blank form and shred the original without
11 looking at it as it relates to Court's Exhibit 4.

12 (A recess transpired.)

13 (Court's Exhibit Number 5, jury note, marked
14 for identification purposes.)

15 (The following occurred during jury
16 deliberations at 8:48 p.m.)

17 **THE COURT:** All right. The jury's asked to
18 hear -- the jury's asked to hear definitions of all
19 four offenses, so I just intend to charge the jury
20 those sections that I gave them earlier where I
21 define the offenses. Do y'all have any input before
22 I bring them in?

23 **MR. MAYE:** None from the State, Your Honor.
24 Thank you.

25 **MR. CALHOUN:** No, Your Honor.

1 **MR. WILLIAMS:** No, sir.

2 **THE COURT:** Bring them in, please.

3 (The jury returns to the courtroom at 8:49
4 p.m.)

5 **THE COURT:** Mr. Foreman, I received a note from
6 the jury basically asking that I recharge you on the
7 definitions of the four separate offenses; is that
8 right?

9 **FOREMAN:** Yes, sir.

10 **THE COURT:** Okay. First, I'll explain to you
11 the law of armed robbery. Armed robbery is using
12 force, threats or intimidation while armed with a
13 deadly weapon to unlawfully take and carry away
14 personal property of another person with the intent
15 to deprive the owner of possession.

16 In order to prove this offense, the State must
17 prove beyond a reasonable doubt that the defendant
18 or an accomplice of his took personal property from
19 the person or presence of the person or persons
20 named in the indictment. In order for property to
21 be in the presence of a person, it has to be within
22 the person's reach, inspection, observation or
23 control so that the person could, if not overcome
24 with violence or prevented by fear, keep possession
25 of the property.

1 The State must also prove beyond a reasonable
2 doubt that the defendant or an accomplice carried
3 the property away intending to permanently deprive
4 the owner of the property and keep the property for
5 the defendant's own use. The taking and carrying
6 away of the property must have been done with
7 violence or by putting the owner of the property in
8 fear of violence.

9 And, finally, the State must prove beyond a
10 reasonable doubt that the defendant or his
11 accomplice was present and aiding, abetting and
12 assisting in the commission of the robbery and was
13 armed with a deadly weapon during the robbery. A
14 deadly weapon is any article, instrument or
15 substance which is likely to cause death or great
16 bodily harm.

17 So armed robbery is, to recap, using force,
18 threats or intimidation while armed with a deadly
19 weapon to unlawfully take and carry away personal
20 property of another person with the intent to
21 deprive the owner of possession. It's robbery with
22 the use of a deadly weapon and force, threats or
23 intimidation and all those elements I went through
24 with you earlier.

25 With regard to first degree burglary, burglary

1 in the first degree is willfully and unlawfully
2 entering a residence without consent and with the
3 intent to commit a crime therein where the entering
4 or the remaining occurred in the nighttime.

5 So to prove a defendant guilty of burglary, the
6 State must first prove that the defendant in
7 question either as the principal or as an accomplice
8 who was present and aiding, abetting and assisting
9 another defendant in the crime of burglary did the
10 following things:

11 First, that he entered a dwelling without
12 consent. A dwelling is any building in which a
13 person ordinarily sleeps.

14 Next, the State must prove that the entry was
15 done with the intent to commit a crime, either a
16 felony or a misdemeanor, at the time of the entry.
17 Merely entering a dwelling without consent is not
18 burglary. The entry has to be made with the intent
19 to commit a crime once inside the dwelling. Intent
20 may be shown by acts and conduct of the defendant
21 and other circumstances from which you may naturally
22 and reasonably infer intent.

23 And, finally, the State has to prove beyond a
24 reasonable doubt that the entering or remaining
25 occurred in the nighttime.

1 Kidnapping is knowingly and unlawfully seizing,
2 confining, inveigling, decoying, kidnapping,
3 abducting or carrying away another person without
4 authority of law.

5 Now, to do a thing unlawfully requires
6 willfully doing something that is against the law.
7 Knowingly means that it's done with knowledge. It's
8 consciously done. It's not something done by
9 accident. To seize means to hold or take hold of
10 suddenly or forcibly. Confine means to limit,
11 restrict or enclose within bounds or to imprison or
12 shut in a person or keep in a person. Kidnap is to
13 remove a person against his will by unlawful force
14 or by fraud. And abduct means to carry off secretly
15 or by force for an illegal purpose. Carry away
16 means to remove.

17 Now, the State does not have to prove that the
18 defendant or someone with whom he was acting as an
19 accomplice did all of these things. If you find
20 beyond a reasonable doubt that the defendant or an
21 accomplice knowingly and willfully seized, confined,
22 kidnapped or abducted either or both of the two
23 purported victims against the will of the purported
24 victim or victims, as I have defined all these terms
25 for you and as alleged in the particular indictment,

1 then you may find that defendant guilty of
2 kidnapping.

3 Something done without authority of law is
4 something which the law does not sanction or permit
5 or allow or condone or provide a justification for.

6 Now, kidnapping does not have to be for ransom
7 or for any personal or monetary gain.

8 And, finally, I'll talk to you about
9 conspiracy. To prove criminal conspiracy, the State
10 has to prove beyond a reasonable doubt that the
11 defendant combined with one or more persons named in
12 the indictment for the purpose of committing an
13 unlawful act or of committing a lawful act by
14 unlawful means.

15 Now, here the indictment alleges that the
16 conspiracy was to commit an unlawful act, which is
17 alleged to be armed robbery.

18 There has to be a mutual understanding,
19 agreement or common intention and plan. Mere
20 passive knowledge of or consent to the criminal
21 conduct of another is not enough to make a person a
22 conspirator. There has to be guilty knowledge and
23 participation.

24 And, similarly, the mere fact that a defendant
25 may have associated with another person or met with

1 another person and discussed common aims and
2 interests does not necessarily establish proof of
3 the existence of a conspiracy or that the defendant
4 was involved in a conspiracy.

5 The agreement does not have to be formal. It
6 does not have to be in writing. The agreement of a
7 criminal conspiracy may come into being through an
8 implied mutual understanding, but a conspiracy
9 requires willful, intentional and knowing adoption
10 by two or more persons of a common plan to do an
11 illegal act.

12 The State has to prove beyond a reasonable
13 doubt not only that the defendant knew of the
14 unlawful conduct, but the defendant agreed to
15 combine with the other persons named in the
16 indictment for the purpose of accomplishing armed
17 robbery.

18 Those are the four definitions. If you need
19 anything else, let me know. Thank you.

20 (The jury retires to the jury room to
21 continue its deliberations at 8:58 p.m.)

22 **THE COURT:** Are there any exceptions, additions
23 or objections to the instructions from the State?

24 **MR. MAYE:** Nothing from the State, Your Honor.

25 **MR. CALHOUN:** None from Mr. Langford, Your

1 Honor.

2 MR. WILLIAMS: None from Defendant Phillips,
3 Your Honor.

4 THE COURT: Thank you. We're at ease pending a
5 verdict.

6 (A recess transpired.)

7 THE COURT: All right. Please stay still, stay
8 quiet as the verdict's announced and thereafter.
9 Don't show signs of approval or disapproval.

10 (The jury returns to open court to report
11 its verdict at 9:54 p.m.)

12 THE COURT: Madame Clerk.

13 THE CLERK: Mr. Foreman, have you reached a
14 verdict?

15 FOREMAN: Yes, we have.

16 THE CLERK: Please pass it to the bailiff.

17 (The bailiff hands the verdicts to the
18 Judge.)

19 VERDICT OF THE JURY

20 THE COURT: All right. The State of South
21 Carolina, County of Edgefield, the State versus K.C.
22 Langford, III, case number 2010-GS-19-00278, as to
23 the charge of kidnapping against K.C. Langford, III,
24 we, the jury, unanimously find the defendant guilty
25 of kidnapping, signed by the Foreman.

1 Case number 2010-GS-19-272 as to the charge of
2 burglary in the first degree against K.C. Langford,
3 III, we, the jury, unanimously find the defendant
4 guilty of burglary in the first degree, signed by
5 the Foreman.

6 Indictment 2010-GS-19-273 as to the charge of
7 armed robbery against K.C. Langford, III, we, the
8 jury, unanimously find the defendant guilty of armed
9 robbery, signed by the Foreman.

10 Case number 2008-GS-19-673 as to the charge of
11 criminal conspiracy against K.C. Langford, III, we,
12 the jury, unanimously find the defendant guilty of
13 criminal conspiracy, signed by the Foreman.

14 State of South Carolina versus Bryan Jordan
15 Phillips, case number 2010-GS-19-277, as to the
16 charge of kidnapping against Bryan Jordan Phillips,
17 we, the jury, unanimously find the defendant guilty
18 of kidnapping, signed by the Foreman.

19 Case 2010-GS-19-274 as to the charge of
20 burglary in the first degree against Bryan Jordan
21 Phillips, we, the jury, unanimously find the
22 defendant guilty of burglary in the first degree,
23 signed by the Foreman.

24 Case number 2008-GS-19-723 as to the charge of
25 armed robbery against Bryan Jordan Phillips, we, the

1 jury, unanimously find the defendant guilty of armed
2 robbery,, signed by the Foreman.

3 As to the charge of criminal conspiracy against
4 Bryan Jordan Phillips, we, the jury, unanimously
5 find the defendant guilty of criminal conspiracy,
6 signed by the Foreman.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 if I have accurately stated your verdicts, that is
9 guilty on -- guilty as charged on each count against
10 both defendants, please signify by raising your
11 right hand.

12 All 12 hands are raised. Thank you.

13 Are there any matters to take up prior to the
14 jury being discharged from the State?

15 **MR. MAYE:** Nothing from the State, Your Honor.

16 **THE COURT:** On behalf of Mr. Langford?

17 **MR. CALHOUN:** No, Your Honor.

18 **THE COURT:** On behalf of Mr. Phillips.

19 **MR. WILLIAMS:** Your Honor, on behalf of
20 Mr. Phillips, we would request that the jurors be
21 polled.

22 **THE COURT:** Do you want each charge done
23 individually or do you want them done collectively?

24 **MR. WILLIAMS:** Collectively, Your Honor.

25 **THE COURT:** All right. Ladies and gentlemen of

1 the jury, what's going to happen is that the Clerk
2 is going to call the role. As your name is called,
3 I need for you to raise your hand so she knows where
4 to look. You can put your hand back down then. And
5 then she's going to ask you questions along these
6 lines, were -- these are the charges against Bryan
7 Jordan Phillips, the four charges against him.
8 She's going to ask you, were these your verdicts and
9 are they still your verdicts. Just answer her
10 truthfully.

11 Madame Clerk.

12 **THE CLERK:** Mr. Foreman, Mr. Hillary.

13 **FOREMAN:** Do I need to stand?

14 **THE COURT:** No. You can stay seated, just let
15 her know where you are.

16 **THE CLERK:** The verdict of the jury reported of
17 the Court to Mr. K.C. Langford --

18 **THE COURT:** No. Mr. Langford didn't ask for
19 it.

20 **THE CLERK:** I mean, Mr. Bryan Jordan Phillips,
21 was this your verdict in the jury room and is it
22 still your verdict? Please answer yes or no.

23 **FOREMAN:** Yes.

24 **THE CLERK:** Kevin L. Chinn, the verdict of the
25 jury reported to the Court of Mr. Phillips was

1 guilty. Was this your verdict in the jury room and
2 is it still your verdict?

3 JUROR: It wasn't at first, but, yes.

4 THE CLERK: Sir?

5 JUROR: I said it wasn't at first, but, yes.

6 THE COURT: Was it your verdict?

7 JUROR: Yes.

8 THE COURT: Is it still your verdict?

9 JUROR: Yes.

10 THE COURT: As to each charge?

11 JUROR: Yes.

12 THE CLERK: Mr. Gustave Frazer, the verdict of
13 the jury reported to the Court was guilty. Was this
14 your verdict in the jury room and is it still your
15 verdict to Mr. Phillips?

16 JUROR: Yes.

17 THE CLERK: Regina Harrell, the verdict of the
18 jury reported to the Court with Mr. Bryan Phillips
19 was guilty. Was this your verdict in the jury room
20 and is it your verdict -- still your verdict?

21 JUROR: Yes, ma'am.

22 THE CLERK: Doresa A. Hartley, the verdict of
23 the jury reported to the Court on Mr. Bryan Phillips
24 was guilty. Was this your verdict in the jury room
25 and is it still your verdict?

1 **JUROR:** Yes.

2 **THE CLERK:** Richard J. Koenig, the verdict of
3 the jury reported to the Court on Mr. Bryan Phillips
4 was guilty. Was this your verdict in the jury room
5 and is it still your verdict?

6 **JUROR:** Yes.

7 **THE CLERK:** Jerry A. Richardson, the verdict of
8 the jury reported to the Court for Mr. Bryan
9 Phillips was guilty. Was this your verdict in the
10 jury room and is it still your verdict?

11 **JUROR:** Yes, ma'am.

12 **THE CLERK:** Beatrice Ryan, the verdict of the
13 jury reported to the Court on Mr. Bryan Phillips was
14 guilty. Was this your verdict in the jury room and
15 is it still your verdict?

16 **JUROR:** Yes.

17 **THE CLERK:** M.L. Ryan, the verdict of the jury
18 reported to the Court on Mr. Bryan Phillips was
19 guilty. Was this your verdict in the jury room and
20 is it still your verdict?

21 **JUROR:** Yes.

22 **THE CLERK:** James H. Satcher, III, the verdict
23 of the jury reported on Mr. Bryan Phillips was
24 guilty. Was this your verdict in the jury room and
25 is it still your verdict?

1 **JUROR:** Yes, ma'am.

2 **THE CLERK:** Ervin M. Talbert, the verdict of
3 the jury reported to the Court on Mr. Bryan Phillips
4 was guilty. Was this your verdict in the jury room
5 and is it still your verdict?

6 **JUROR:** Yes, ma'am.

7 **THE CLERK:** Deborah A. Weaver, the verdict of
8 the jury reported to the Court on Mr. Bryan Phillips
9 was guilty. Was this your verdict in the jury room
10 and is it still your verdict?

11 **JUROR:** Yes.

12 **THE COURT:** Is that everybody?

13 All right. Any further matters to take up
14 prior to the jury being discharged on behalf of
15 Mr. Phillips?

16 **MR. WILLIAMS:** No, Your Honor.

17 **THE COURT:** Thank you very much.

18 All right. Ladies and gentlemen of the jury, I
19 realize the hour. There are some matters that I
20 have to take up outside your presence and then I've
21 got a little bit of information I need to give to
22 you before I let you go. You'll be through with
23 jury duty once I finish that.

24 Once I deal with these issues with the
25 attorneys, depending upon how they come out, at that

1 point, I may be sentencing the defendants. If you
2 want to come in for the sentencing, if that takes
3 place tonight, I'll let you do that, but right now I
4 need for you to step in the jury room.

5 (The jury retires to the jury room.)

6 **THE COURT:** Any motions?

7 **MR. CALHOUN:** No, Your Honor.

8 **THE COURT:** All right. If you don't make
9 motions, you're going to lose your right to appeal.

10 **MR. CALHOUN:** I mean, Your Honor, we just renew
11 our previously made motions. Right now we'd move
12 for a motion for a judgment notwithstanding the
13 verdict based on the arguments previously made and
14 our motion for a directed verdict.

15 **THE COURT:** All right. So you move for a
16 judgment not withstanding the verdict and for a new
17 trial on the same grounds, on the grounds that
18 there's insufficient evidence to support each of
19 these convictions; is that basically your argument?

20 **MR. CALHOUN:** Yes, Your Honor.

21 **THE COURT:** All right. What about you,
22 Mr. Williams?

23 **MR. WILLIAMS:** Your Honor, I move to renew my
24 motions for a directed verdict. Further, Judge, I
25 would move for a new trial on the basis that we

1 believe that there wasn't sufficient evidence in
2 this matter in which the jury could find guilt of my
3 client and any decision that they made we believe
4 that it was made out of passion or prejudice. We
5 would ask the Court to grant a new trial. If not,
6 direct a verdict of not guilty.

7 **THE COURT:** Do you adopt the same arguments as
8 well, Mr. Calhoun?

9 **MR. CALHOUN:** Yes, Your Honor.

10 **THE COURT:** The jury acted within its province.
11 There's no indication that the jury's verdicts are
12 the product of any passion, prejudice, caprice or
13 any improper or undue influence. The motions are
14 respectfully denied.

15 **MR. WILLIAMS:** Thank you, Your Honor.

16 **THE COURT:** I don't see a sentence sheet on --

17 **MR. MAYE:** They would have been taken off the
18 indictments at the time that they were passed up,
19 Your Honor, I would imagine.

20 **THE COURT:** I've got sentence sheets on
21 everything except this kidnapping charge on K.C.
22 Langford.

23 **MR. MAYE:** I'll retrieve them, Your Honor. You
24 have one on everything but kidnapping on K.C.
25 Langford?

1 **THE COURT:** Yes.

2 We're at ease.

3 (Brief Recess.)

4 **THE COURT:** Do you have anything on sentencing,
5 Mr. Calhoun?

6 **MR. CALHOUN:** Your Honor, you're aware of what
7 he has on his record and the age that he was when
8 this occurred and I just please ask you to take that
9 into consideration.

10 **THE COURT:** Does the State have anything on
11 sentencing on Mr. Langford?

12 **MR. MAYE:** No, sir, Your Honor. You've heard
13 all of the facts. You're very familiar with this
14 case over a long period of time. I leave it to the
15 wise discretion of the Court.

16 **THE COURT:** Mr. Langford, do you want to say
17 anything?

18 **DEFENDANT LANGFORD:** Yes, sir. As of now, I
19 understand that I'm under your leniency. I just
20 like to direct it to you about me being found guilty
21 in the eyes of the jurors by one statement that was
22 made on the behalf of a co-defendant who wavered
23 back and forth, I don't think was reliable.

24 I don't understand how I got put in this crime.
25 I don't know why he placed me there. I do know he

1 tried to remove me. I do know that he didn't want
2 to testify. I do know that the last court term, he
3 pled the Fifth and didn't want to testify. And it's
4 just, I feel that it's some type of prejudice
5 because of my charges didn't get dropped last court
6 term.

7 I came to court term -- I came to court last
8 May facing the same thing that I was facing today,
9 these same charges. I came taking the same chances
10 today of being found guilty and not guilty.

11 The last court term I don't feel that I got the
12 proper justice because Alvin P. came to court
13 that morning to testify for the State the way he did
14 on yesterday, but he also that morning informed them
15 that he was not going to testify that morning. And
16 I just -- I filed at the time for a motion of fast
17 and speedy, in the alternative to dismiss. And my
18 trial was not granted that day because of unduly,
19 dilatory, laziness of the State and I was ready to
20 go forth at that time.

21 If Mr. Phillips wanted to testify at that time,
22 he had the right to do so, but he did not. So it
23 just doesn't amaze me. And I wrote my lawyer and
24 asked him at the time why didn't my trial get
25 dismissed when I filed for an alternative to

1 dismissal along with a fast and speedy trial.

2 And I knew in my mind the same tactic that the
3 Solicitors was going to use this court term by
4 allowing him to be applied pressure by his lawyer
5 and the Solicitors, I knew that they were going to
6 threaten him if you don't testify to -- with a
7 larger sentence over his head. I understand that
8 it's -- and I don't know the deal that he has
9 gotten, but I do know, Your Honor, as you've heard
10 for yourself, that it's charges that's being held
11 over his head that relied on what happened in this
12 trial this court term.

13 I feel some type of prejudice because my trial
14 didn't go forth the last court term. I feel that my
15 trial should have got heard, that if Mr. Phillips
16 didn't come to testify last court term, what enabled
17 him to come to court term -- this court term to
18 testify? What was the difference from last court
19 term to this court term? Was it last court term
20 that they did not apply enough pressure to him to
21 get him to testify? I mean, I just want you to take
22 that into consideration, Your Honor.

23 I talked to my lawyer. He told me what I was
24 facing. He obviously at one time thought that my
25 co-defendant was going to testify.

1 Your Honor, as you see, I came out on faith
2 with unexperience (sic) in the law accepting my
3 lawyer on my behalf to be my defense, but I walked
4 out on faith last court term trusting in my God to
5 touch Alvin heart and not to testify. And God
6 touched him last court term to not allow him to
7 testify. I feel last court term that I was supposed
8 to walk free.

9 I know that my other co-defendant, Mr. Bryan
10 Phillips, he filed for bias, a motion to relief
11 (sic) you off this case. I also felt that it was in
12 your hands last court term to dismiss these charges.

13 At that time, I was in the county for
14 approximately 20 months. And I was there them 20
15 months without the investigator of my case,
16 Mr. Lamaz Robinson, never coming to investigate or
17 talk to me period to get my side of the story or to
18 see what happened on the night of the crime. I know
19 that it was in your hands, Your Honor, last court
20 term to bring about justice to just do your job the
21 way that you see fit and that you saw fit.

22 It's no doubt in my mind that the Solicitors
23 has coerced Mr. Alvin P. . They have pressured
24 Mr. Alvin P. . They have been working back and
25 forth with his lawyer to negotiate a plea bargain

1 with him if he testified or he didn't testify.

2 And I just want you to think about it, Your
3 Honor, and everyone else, it's Alvin trying to save
4 his hide himself. I don't doubt in my mind that if
5 it was his sister, if it was his mother up here that
6 he had to testify against to keep from getting 60
7 years, 50 years, 30 years what my charges carry,
8 possibly life, I don't doubt in my mind that he
9 would have testified against them.

10 But I just want you to take into consideration,
11 Your Honor, that last court term I was prepared to
12 go to court and get tried and I did not get that. I
13 don't know what type of justice that is in your
14 eyes.

15 I have been -- I filed a motion of -- for a
16 fast and speedy trial, in the alternative to dismiss
17 in June or July 2009 and my case didn't come to
18 court until May 2010, 20 months later. I don't know
19 the limitations on how long or fast a speedy trial
20 is to be granted in the State of South Carolina, but
21 I have done everything that I can on my behalf to
22 come to court to get this issue before a court and
23 get it out of the way.

24 And I don't feel that it's justice on the
25 circumstances of evidence and the direct evidence

1 for me to be found guilty. I understand that it was
2 no follicle hair, no DNA, no blood, of course, Your
3 Honor, but it's just on the statement of one
4 co-defendant who's been wavering back and forth,
5 who's been, I don't think, reliable.

6 Last court term I discussed it with my lawyer
7 about going to trial. And it was -- like I said at
8 the time, he was informed that Alvin was going to
9 testify. And he asked me did I want to get a deal
10 and I didn't because I didn't feel like I was
11 guilty. I didn't feel like that I should take a
12 plea bargain for something that I did not do. I
13 wasn't at the crime. I wasn't caught at the crime.
14 I wasn't investigated about the crime. I wasn't
15 questioned by any investigators about the crime. I
16 was only placed there by a co-defendant.

17 This co-defendant also removed me away from
18 this crime on two different occasions, not only did
19 he write one statement, he wrote two statements.
20 Two statements in my eyes, it always is more than
21 one with the one statement that he gave to law
22 officials. He also indicated that he wanted to
23 testify last court term, but he also indicated that
24 he did not want to testify last court term. Why did
25 the State get a continuance in that case, I don't

1 know.

2 I just pray and just like I say just fall upon
3 your mercy right now of the Court. And like I say,
4 my lawyer talked to me about getting me a deal last
5 court term and it was ten years and I didn't want it
6 because I didn't feel that I should go to prison for
7 ten years for something I didn't do. I was already
8 here in Edgefield County at that time 20 months,
9 going on 21 months. I felt that that was enough
10 time for me being placed in captivity. I feel, in
11 my eyes, kidnapped, being held someone against my
12 own free will, so I did -- I declined those ten
13 years.

14 And he also let me know by me declining the ten
15 years, that he was able to discuss with the
16 Solicitors that if I didn't take the ten years, I
17 was going to trial and by trial, I would be facing
18 more. And they didn't go to trial last court term.
19 So that was justice, it should have been on my
20 behalf. I just want you to consider that, Your
21 Honor.

22 I fall upon the mercy of your court and I pray
23 that God just touches your heart and pray that you
24 just have leniency upon me.

25 **THE COURT:** Anything else?

1 **DEFENDANT LANGFORD:** That's all, Your Honor.

2 **THE COURT:** Thank you. Have a seat.

3 Anything else?

4 **MR. CALHOUN:** No, Your Honor.

5 **MR. WILLIAMS:** Your Honor, on behalf of my
6 client, he's 21 years old. He's the son of Janie
7 Robinson. He's her only son. He's got four
8 sisters. He's supported by, I believe, three of his
9 sisters who are here present in the courtroom. And
10 I would also ask you to consider the fact that my
11 client is now 21 years old. At the time of this
12 incident, he was 19 years old.

13 Judge, we understand the jury's verdict. We
14 certainly cannot dispute it at this point. They
15 have spoken. And we all understand in this line of
16 work and in this profession, that once the jury
17 speaks, they have rendered a verdict which speaks
18 the truth. It's at this point, Your Honor, we ask
19 that your great wisdom, your great consideration of
20 the sometimes recklessness of youth, we ask that you
21 would consider that in your sentencing.

22 Judge, these are some of the most serious
23 offenses that individuals can be convicted of. And
24 I recognize the Court has very limited discretion as
25 it relates to the burglary charge in particular. I

1 just pray, Judge, that you will allow your sentence
2 to stop right where the mandatory minimums will
3 require you to go, that's the only thing I can ask
4 of you, Judge.

5 **THE COURT:** Thank you.

6 Do you want to say anything, Mr. Phillips?

7 **DEFENDANT PHILLIPS:** Yes, sir. Mr. Keesley, I
8 want to follow what Mr. Langford said, you know,
9 about the charges not being dismissed, us coming to
10 court last term. I seen not too long Mr. Calhoun
11 filed a motion for a mistrial, denied. A few
12 seconds ago another motion from Mr. Calhoun and
13 Mr. Williams for trial, denied. I'm under your
14 jurisdiction right now, Mr. Keesley.

15 **THE COURT:** What about when I didn't let them
16 put that witness up to testify that they wanted to
17 put up to testify against you?

18 **DEFENDANT PHILLIPS:** Gustav Sawvell?

19 **THE COURT:** If y'all want to get up there --
20 never mind. Go ahead, say whatever you want to say.

21 **DEFENDANT PHILLIPS:** No, go ahead, Mr. Keesley.

22 **THE COURT:** Say whatever you want to say.

23 **DEFENDANT PHILLIPS:** They go up there under
24 oath on the Bible, so whatever they feel free to do
25 or say under oath, lie or not, I have no problem

1 with it. Every motion is rhetoric to my freedom,
2 not to no witness is he credible or not, to my
3 freedom is denied. I understand I had filed a
4 motion to relieve you.

5 **THE COURT:** That's fine. I told you I had
6 nothing against you personally then, I don't now.

7 **DEFENDANT PHILLIPS:** Yes, sir, I understand
8 that. I want to apologize for that.

9 **THE COURT:** You don't need to apologize to me.
10 Go ahead.

11 **DEFENDANT PHILLIPS:** I just ask you to have
12 mercy upon me, Mr. Keesley. We have charges that,
13 you know, I don't see no evidence on, you know,
14 armed burglary, no different charges. We relied on
15 three law enforcement officers to take the stand to
16 testify under oath, Alvin P. , a waiver, who
17 recanted statement several times that everyone knew
18 about. Ms. Newby seen our copies.

19 **THE COURT:** The jury saw it. Go ahead.

20 **DEFENDANT PHILLIPS:** The jurors didn't deny the
21 motion. I'm sorry, Your Honor. I'm frustrated,
22 aggravated a little bit.

23 **THE COURT:** I understand. And I think the best
24 thing is I just tell y'all I'll be back in about
25 five minutes and I'll allow y'all to say whatever

1 you'd like to say. I understand it's very
2 emotional. I understand that you all don't agree
3 with the jury's decision. You don't agree with my
4 rulings, that's fine. I'm not going to make any
5 decisions based on emotion. It's not going to
6 happen. We're at ease.

7 (Brief Recess.)

8 **THE COURT:** All right. Mr. Phillips, you may
9 continue.

10 **DEFENDANT PHILLIPS:** Your Honor, sorry for the
11 tension. You know, I have mixed emotions. I'm
12 under your justice right now, Your Honor. I just
13 ask you to have mercy upon me right now. Thank you.

14 **THE COURT:** All right. Thank you.

15 I'm going to give y'all the same sentence that
16 I had thought that I would give before either of you
17 spoke. I will say that you speaking certainly did
18 not help in the sentencing, but I'm going to resist
19 the temptation. You're not going to be happy with
20 the sentence I give, but I'm going to resist the
21 temptation to have any sort of emotional reaction to
22 being accused of bias and prejudice and constantly
23 ruling against you and not giving you a fair trial
24 basically, because that's what you told me. Y'all
25 have a seat.

1 (Pause.)

2 **THE COURT:** Does the State have anything else
3 on Mr. Phillips? I didn't ask that question.

4 **MR. MAYE:** No, sir, Your Honor, I don't have
5 anything else. I think the Court's well aware of
6 his previous criminal history and all the facts of
7 this.

8 **THE COURT:** Either one of these gentlemen on
9 probation?

10 **MR. MAYE:** No, sir, Your Honor. I note that
11 Mr. Phillips got a YOA in 2006. I'm not sure how
12 old he is. I don't know if he's on YOA parole or
13 not, that I -- I do not know if he's out on YOA
14 parole, I'm not sure.

15 **THE COURT:** Do you know if he's on YOA parole?

16 **PROBATION AGENT:** No, sir, he's not.

17 **THE COURT:** So neither one of them are on
18 probation or parole?

19 **PROBATION AGENT:** Mr. Langford is on probation.

20 **THE COURT:** Are you going to charge him with
21 that now?

22 **PROBATION AGENT:** Yes, sir, Your Honor, I can.

23 **THE COURT:** I'm not telling you to do it or
24 don't do it, I'm just asking you.

25 **PROBATION AGENT:** Yes, sir.

1 **THE COURT:** Mr. Calhoun, are y'all -- which one
2 did you say -- Mr. Langford was on probation?

3 **PROBATION AGENT:** Yes, sir, Mr. Langford.

4 **THE COURT:** Mr. Calhoun, are you prepared to go
5 forward on that?

6 **MR. CALHOUN:** Yes, sir.

7 **THE COURT:** Do you have to serve him?

8 **PROBATION AGENT:** No, sir, Your Honor. He's
9 already been served.

10 **THE COURT:** All right. What's his situation on
11 probation?

12 The papers indicate that I sentenced you in
13 June of 2006 for receiving stolen goods greater than
14 \$5,000. I gave you a sentence of five years
15 suspended on the service of one year with five years
16 probation, ordered you to pay \$2,120 in restitution
17 plus a 20 percent handling charge.

18 It's indicated that you reported as directed.
19 You have two prior violations for failing to pay
20 your money. The second one you're charged with
21 failing to make a truthful report, tested positive
22 for marijuana on September the 4th, 2007, failed to
23 maintain lawful employment and failed to pay your
24 money as directed.

25 At that time, I continued you on supervision.

1 I ordered that you complete the restitution center
2 not to exceed six months if your money had not been
3 brought current by November 15th, 2008 and directed
4 that you were to attend substance abuse counseling.

5 The allegation now is that you have violated
6 your probation by having been convicted of these
7 offenses today.

8 Do you have anything else on probation matter,
9 Mr. Calhoun?

10 **MR. CALHOUN:** No, Your Honor, I don't.

11 **THE COURT:** Do you have anything you want to
12 say about that, Mr. Langford?

13 **DEFENDANT LANGFORD:** No, Your Honor.

14 **THE COURT:** Gentlemen, everybody in the
15 courtroom, sentencing is a very difficult thing.
16 I'm the same guy sentencing now who sentenced to
17 probation before. I'm the same guy sentencing now
18 who continued probation before. I haven't changed.

19 I recognize and fully appreciate and respect
20 that others in a different position would feel very
21 strongly that some injustice has been done and some
22 wrong has been done, but the assertion in my mind
23 and in my defense that I have in some way not
24 rendered a fair trial is something I am not willing
25 to accept.

1 Now, I told you all I had in my head a number
2 before anybody ever spoke and that's the number I
3 put on this piece of paper, but the reasons for the
4 continuance at the prior term of court had been
5 stated is the same Bruton analysis that I used when
6 I denied the State the opportunity to present a
7 witness that the State was tendering. I'm the same
8 judge who denied the State's request to set aside
9 the jury because it appeared, I suppose, to them to
10 be a favorable jury for the defense. I have called
11 it straight down the middle. If people don't agree
12 with that, I respect their right to disagree. I
13 don't see the basis for it, but if I were in jail, I
14 would be trying to get out, too. If I was
15 wrongfully accused, I would be furious about it. So
16 I understand those positions.

17 But the jury was given the information about
18 the conflicting statements. The jury was given all
19 the information that you all are talking about. The
20 legal conclusions that I made are subject to appeal
21 and if I was wrong, I apologize profusely.

22 Now, both of you gentlemen need to understand
23 that you have a right to appeal from these
24 proceedings. If you want an appeal filed, which I
25 strongly suggest that you file, that you tell your

1 attorneys right now file a written notice of appeal.
2 If they are -- if you are unable to afford an
3 attorney to pursue the appeal, there are procedures
4 whereby the State will appoint appellate counsel for
5 you to pursue the appeal.

6 So, Mr. Langford, do you understand that if you
7 want to file an appeal, you have to tell your
8 lawyer? There's a deadline and it needs to be done
9 in writing and done quickly. Do you understand?

10 **DEFENDANT LANGFORD:** Yes, sir.

11 **THE COURT:** Mr. Phillips, do you understand
12 that as well?

13 **DEFENDANT PHILLIPS:** Yes, sir.

14 **THE COURT:** All right. I'm not going to sit up
15 here and be repetitive except to say I do not have
16 any personal animosity toward either of you and I
17 don't have any personal favoritism for the State.
18 Your attorneys did an excellent job in presenting
19 your case. I didn't know which way the case would
20 go. The jury's made its decision. And most of what
21 you all are talking to me about about the
22 inconsistencies, those are jury issues. Those are
23 not issues the Court can decide. They're not for me
24 to review.

25

1 SENTENCE OF THE COURT

2 THE COURT: The sentence of the Court on both
3 defendants as to kidnapping, armed robbery, burglary
4 in the first degree is 20 years.

5 The sentence of the Court on criminal
6 conspiracy on each defendant is five years. The
7 sentences are to run concurrently.

8 They're given credit for jail time under
9 section 24-13-40, that'll be calculated and applied
10 by the department of corrections. Restitution is
11 deferred.

12 On the kidnapping charge, I am required to make
13 a finding as to whether or not the defendants are
14 required to be registered as sex offenders. There
15 is no allegation or assertion of any sexual offense
16 related to the kidnapping and I have written on both
17 sets of sentence sheets that the defendants are not
18 required to register as sex offenders.

19 The court costs are not permitted to be waived.
20 If I could waive them, I would, but they don't allow
21 me to. So the court costs have to be paid to the
22 Clerk of Court within one year of being released
23 from maximum incarceration in prison.

24 Do you understand your sentence, Mr. Langford?

25 DEFENDANT LANGFORD: Yes.

1 **THE COURT:** Do you understand your sentence,
2 Mr. Phillips?

3 **DEFENDANT PHILLIPS:** Yes, sir.

4 **THE COURT:** Good luck to both of you.

5 On the probation matter, terminate from
6 supervision, roll the supervision fees.

7 **PROBATION AGENT:** Thank you.

8 (The jury was excused by the Court.)

9

10 END OF PROCEEDINGS

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C E R T I F I C A T E

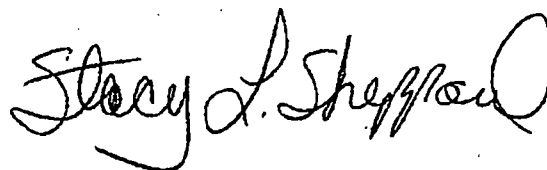
STATE OF SOUTH CAROLINA

COUNTY OF EDGEFIELD

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 trial of the captioned cause, relative to appeal in the Criminal Court for Edgefield County, South Carolina, on the 7th of September, 2010.

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

January 23, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of EDGEFIELDKC LAUGFORD 294500

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2014-CP-19-002APPLICATION FOR
POST-CONVICTION RELIEF

RECEIVED

JUL 10 2017

INSTRUCTIONS - READ CAREFULLY

APPELLATE DEFENSE

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 Perry Corr. Inst. Q1A 118
2. Name and location of Court which imposed sentence Edgefield County, Edgefield County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) Bryan Phillips, Alvin Phillips
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-19-673 - criminal conspiracy
 - (b) 2010-GS-19-273 - armed robbery

(c) 2010-GS-19-278 - Kidnapping / 2010-GS-19-272 - burglary 1st

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 9-9-10, 20 years for burglary 1st, Kidnapping, armed robbery

(b) 5 years for criminal conspiracy run concurrently

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty was found guilty by a jury

(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?

judgment of conviction

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Supreme Court

ii. United States Supreme Court

iii. _____

(b) the result in each such Court to which you appealed:

i. denied relief

ii. denied relief, United States Supreme Court did not grant petition

iii. _____

(c) the date of each such result:

i. November 21, 2012

ii. October 7, 2013

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 27195

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) denial of due process of law in violation of U.S. Constitution, S.C. Constitution and the laws of this State,
- (b) ineffective ass. of trial counsel + appellate counsel
- (c) prosecutorial misconduct
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached memorandum of law in Support of Post Conviction
- (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? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? yes
- (d) any other petitions, motions or applications in this or any other Court? _____
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. writ of certiorari in the South Carolina Supreme Court
- ii. _____
- iii. writ of certiorari in the U.S. Supreme Court
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Supreme Court, Columbia, SC
- ii. _____
- iii. _____
- iv. United States Supreme Court, Washington DC

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) _____
 (b) _____
 (c) _____

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

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

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. trial counsel Mark Calhoun, Lexington SC
codefendant Bryan Phillips' lawyer - Randall Williams - Edgefield, SC
- ii. Elizabeth Best Franklin, Columbia SC
Breen Stevens
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Mark Calhoun - trial
codefendant Bryan Phillips' lawyer - trial
- ii. Elizabeth Best Franklin - direct appeal
Breen Stevens - Direct appeal
- iii. _____

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

reversed and remanded for new trial

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

no

STATE OF SOUTH CAROLINA)

County of Edgefield)

VERIFICATION

I, KC Langford 294500, 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.

KC Langford

SWORN to and subscribed before me this 20
day of December, 2013

Tamara Curren (L.S.)
Notary Public

My Commission Expires
My Commission Expires: September 25, 2023

CLERK OF COURT
JUDITH E. NEWBY

2014 JAN -3 AM 10:41

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

I, KC Langford 294500, 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.

KC Langford

Applicant

SWORN or affirmed to and subscribed before me this
20 day of December, 2013

Notary Public

My Commission Expires
September 25, 2023

My Commission Expires: _____

KC Langford 12-30-13
signed at presence of notary,
Nancy C. Muehler on the
30th day of December, 2013.
my commission expires 1-23-2023

State of South Carolina
County of Edgefield

KC Langford # 294500

vs.

State of South Carolina,
Respondent

EDGEFIELD COUNTY
CLERK OF COURT
WILLIAM KEESLEY

2014 JAN -3 AM 10:41

In the Court of Common Pleas
Case No: 2014-CP-19-002

Memorandum of Law in Support of
Application for Post Conviction
Relief.

The Applicant presents the memorandum of law in support of the application for Post Conviction Relief and would show the following unto the court.

I. Statement of Facts

The state arrested KC Langford on October 3, 2008. Edgefield County grand jury direct indicted Langford for criminal conspiracy on December 2008 term of General Sessions Court. Langford moved for a speedy trial on June 29, 2009. Edgefield county grand jury then direct indicted Langford for armed robbery, kidnapping, and burglary 1st degree on May 5, 2010. The applicant had a joint jury trial with codefendant Bryan Phillips, represented by Randall Williams. The Applicant was represented by Mark Calhoun. The case was initially noticed for trial on May 17, 2010, but the solicitor, Ervin Maye continued the trial because the third codefendant Alvin Phillips (state's key witness) asserted his right to the 5th Amendment and refused to testify against applicant. (see May trial transcript in support of facts) on May 20, 2010, the Honorable William Keesley denied Langford's motion to dismiss for his right to a speedy trial. (see Judge's order*) on May 25, 2010 Langford again moved for the charges to be dismissed for his right to a speedy trial. However, on September 7th 2010, applicant went to trial before the Honorable William Keesley, Judge, and jury. The jury found the Applicant guilty of all charges. Judge Keesley sent the applicant to (20) twenty years for armed robbery, burglary 1st, kidnapping, and (5) five years for criminal conspiracy. All charges were run concurrently. An appeal was filed on Applicant's behalf.

On Appeal, Applicant was represented by Elizabeth Franklin Best and Breen Stevens from the Division of Appellate Defense. Mrs. Franklin Best filed for leave to have applicant's case certified in the South Carolina Supreme Court and the petition was granted and certified on November 3, 2011. The Applicant was denied relief sought in the South Carolina Supreme Court in opinion No: 27195 on November 21, 2012. The Applicant filed for a rehearing and it was denied also. Mrs. Franklin Best petitioned the United States Supreme Court on behalf of Applicant, but that petition was denied also on October 7, 2013. Applicant now presents this court with the following:

II The applicant alleges and can prove that he was denied effective assistance of trial counsel and appellate counsel. The applicant submits that the extensive records (transcripts) speaks for itself as for the competency of counsel. Trial counsel was not diligent in his representation of the applicant and did not perform well within the range of competence demanded of attorneys in criminal matters and did not perform within the wide range of the reasonable professional assistance. Applicant alleges that the deficient performance prejudiced the defense so as to deprive the applicant of a fair trial. The Applicant can prove that counsel's conduct so undermined the proper functioning of the Adversarial Process that the trial could not have been relied upon as having a just result. Trial Counsel performance prejudice the applicant to the point where there's a reasonable probability that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different. Counsel did not investigate some critical evidence when he was preparing for the applicant's defense, neither did counsel consult with the applicant on important decisions. Applicant contends and can show that his conviction and sentence was in violation of the United States Constitution, South Carolina Constitution and the laws of this state. The Applicant is asserting a 6th and 14th Amendment violation. The applicant grounds are constitutional dimensions. The fundamental defects alleged are standards that require establishment of a complete miscarriage of justice and an omission inconsistent with the rudimentary demand of fair procedure. The following acts and omissions by trial counsel constituted ineffective assistance of trial counsel.

1. The Applicant was denied effective Assistance of trial counsel by counsel's failure to object to the composition of the jury.

i. However During the selection of the jury, the trial Judge made the following comments: (Transcript pgs 39 L. 22-24, 42 L. 18-24)

THE COURT: The jury panel is qualified. How many people do I have?

THE CLERK: Thirty-two.

THE COURT: obviously, if all of the strikes are exercised, I've got to have 42 people at a minimum to have a 12 person jury, which is what required in the United States for criminal Court -- or in South Carolina for Criminal Court and I don't have 42 people, but I don't know how many strikes will be exercised. So we're going to go through this, bear with us.

Trial counsel's failure to object allowed the trial Judge to abuse his discretion, Counsel should have objected to preserve the issue for Appellate Review. See Stater v. Johnson, 396 S.C. 424, 721 SE2d 786.

Also see Section 22-2-70(b) of the South Carolina Code. The legislature provided that a specific number of jurors are required to be present in Court.

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Q. So they asked you to sign those statements there telling you no one would get in trouble?

A. Yes, sir.

Q. Are those true, the ones that you signed here? Who was with you when you did the robbery?

A. Bryan Phillips and KC Langford.

Q. Is what you've told the jury up here under oath today testifying live before them is that true? Are these two gentlemen that were with you when you did the robbery?

A. Yes, sir.

Q. Then those statements they asked you to sign they're false, aren't they?

A. Yes, sir.

Q. Did you sign them to please them? Were they pressuring you to sign these?

A. No, sir.

In rule 613(b), there is not a ruling determining the signature portion of a statement. Therefore a proffer should have been done to determine what testimony was to be presented to the jury by applicant's codefendant. There should have been a ruling to determine the admissibility or inadmissibility. The record shows were the codefendant admitted rehearsing his testimony with the solicitor. (Transcript pg 276L-11-19)

Q. Okay. Now, have you rehearsed your testimony?

A. (No response)

Q. Look at me. Have you rehearsed your testimony?

A. Yes, sir.

Q. All right. Who did you rehearse it with?

A. (Witness indicating)

Q. The Solicitor?

A. Yes, sir.

Q. All right. That's what I thought.

A prosecutor may not use staged testimony to attempt to introduce inadmissible or admissible evidence. The prosecutor knew trial lawyers were going to enter statements into evidence, therefore he staged his testimony with the codefendant. Trial counsel's limited questioning about the signature prejudice Applicant because counsel knew applicant wasn't going to testify to rebut the allegations that were made against him. Therefore, the only way to prove the matter which was asserted against applicant, was false, was to get an handwriting expert which Langford requested, but counsel refused to do so or even entertain. So Applicant's last sole protection of his rights which was governed by Rule 613 SCRE was the trial judge. And trial counsel, trial judge, and the solicitor postponed the proffer until a later time, which worked in the State's favor and caused harm to applicant. A proffer is to offer for immediate acceptance.

2. The Applicant was denied effective Assistance of trial counsel by counsel failing to ask for a continuance to obtain a certified interpreter.
- i. The following VOIR DIRE was presented: (Transcript pgs 120 L.23 - 123 L.16)

VOIR DIRE By TRIAL COUNSEL

Q. So have you ever applied for certification through any court administrations in any states of the United States?

A. No.

Q. Okay. And you're not certified in the state of South Carolina in any foreign language?

A. No, because no such program available for certification.

Trial counsel should have objected and asked for a continuance to get a certified interpreter. The interpreter was not certified to interpret in any state in the United States or in South Carolina. See South Carolina Court of Administrations - list of certified interpreters.

Trial counsel allowed the trial judge to abuse his discretion by going off the interpreters "verbal convincing" testimony, which was not supported by any documentation, only a resume that has no merit or proof of actual degrees or qualifications to interpret. See Melton v. Olenick 379 S.C. 45, 664 SE2d 487

3. The Applicant was denied effective assistance of trial counsel by counsel allowing the state to do a proffer, with the states key witness (Alvin Phillips) on the witness stand, listening to the argument pertaining to the proffer.

i. Trial counsel asked the trial judge to do the proffer before the witness testified on direct examination, but the request was not granted. (Transcript pgs 181 L. 21 - 183 L. 1-6)

MR. CALLHOUN: Judge, we wanted to bring this to your attention before you do send them to lunch. We would like to do a proffer of Alvin Phillips' testimony, so maybe you can take that into consideration when you tell them what time to get back. I don't know what order they're going to be calling their witnesses, but before Mr. Phillips testifies, we would like to do that.

MR. WILLIAMS: On the basis of statements that he made, that we believe he made prior to actually offering testimony against our clients at his plea.

MR. MAYE: I've got three Chinese witnesses before he testifies we can go on and do our Chinese witnesses and we're done with our interpreter at that point in time as far as I know.

THE COURT: Let's do that after that. I can send the jury home early if I need to or something. I really don't understand what it is you all are going to ask me to do. If he gave inconsistent statements, that's a jury issue - it's not really anything for me.

MR. WILLIAMS: I guess the issue is is I just want to make sure that he doesn't allege that he didn't write it is what I'm concerned about.

THE COURT: He did not write a written statement that you have?

MR. WILLIAMS: Yes, Your Honor.

MR. MAYE: Your Honor, I think the issue is the defendant's -- the allegation is the defendant's got him to sign a statement and I think they're wanting to get involved into some hearsay from that, but I think we can do that. It will be a while before they testify. By the time we get direct and through cross, we're going to be into this afternoon before we ever get to that point.

Trial Counsel allowed the trial court to abuse its discretion by going forward without the proffer done. That denied applicant the fundamental fairness due to the rule provided in rule (SCRE) South Carolina Rules of Evidence Rule 613. Prior statements of witnesses, Extrinsic Evidence.

The following testimony and discussion was presented to the Court while the witness Alvin Phillips was on the witness stand. (pgs 248L-253L-11)

THE COURT: Mr. Calhoun, are you ready for the jury?

MR. CALHOUN: Yes, Your Honor.

MR. MAYE: May it please the Court, Your Honor, I'm informed, I just wanted to take up prior to us getting this, that they have a statement that was purported, I don't know that it was authored by him or they're purporting that it was signed by him or authored by him. I wanted to take up any impeachment or admissibility based on that statement.

THE COURT: Do you know what he's talking about?

MR. CALHOUN: Yes, Your Honor.

MR. MAYE: I have copies that I'll hand up.

THE COURT: All right. what's this about?

MR. CALHOUN: Your Honor, that's the statement that Mr. Phillips provided to my client while they were in jail. And actually, Judge, I object to a proffer being done now because I think Mr. Maye is doing it "now" so he can "coach" his client as to what to say about this statement. Mr. Maye has known about this statement for a long period of time and if he wanted to do a proffer, which we suggested to the Court that we do before Mr. Phillips testify, then "we should have done so". I think any testimony now is going to be done in preparation of Mr. Phillips so I would request that -- I object to us doing this proffer now in the presence of Mr. Phillips right before he testifies

about something he's going to be crossed on.

THE COURT: Well, do you know if he admits or denies making the statement?

MR. CALHOUN: well, I was told that he admits that he signed it.

MR. MAYE: Your Honor, and I'm not -- we need to ask him. I don't know -- it'd be hearsay and if he didn't sign it, I can't unring the bell in front of the jury. And it would certainly be improper to put up a statement and plant the seed to the jury that he made a statement that -- I don't know if he wrote it, I don't know if he signed it, but they're apparently going to attempt to -- these -- their clients, I don't know how, they either extracted it or they got this statement, they purport that it is, I don't know if he made it or not or what the circumstances were and I want to take that up outside the presence of the jury because if it's not admissible --

MR. CALHOUN: Your Honor --

MR. MAYE: -- I can't unring the bell.

MR. CALHOUN: -- this isn't a surprise document. He's already talked to his client about this. He knows exactly what his client is going to say. And the fact that Mr. Maye knows that we're going to possibly have it entered into evidence or cross him on it, now he wants to do a proffer in the presence of his client to prepare his testimony. There's no other explanation for this being done right now.

MR. WILLIAMS: Your Honor, I join Mr. Calhoun in his assertion. And I would further suggest to the Court that if we simply limit it to, is this your signature, if that is significant, then I think we can limit -- limit it to that. And if Mr. Maye needs to expound upon it in recross, then he can do that.

MR. MAYE: Your Honor, prior to today, I did not know if they were going to attempt use this statement. We were informed, law enforcement was informed these two individuals down in the jail were pressuring him to sign a statement. He was moved Soloda at that time. I don't know whether they were actually going to attempt utilize it or not because this was not the two lawyers that were involved in

this. The two ~~defendants~~ defendant's in this case were involved in either extracting this statement. I don't know whether or not it's admissible or not, but I wanted to ~~take~~ it up outside the presence of the jury. And like I said, because this was certainly done outside the attorneys -- I don't know if they were going to attempt to use it or not.

THE COURT: Why is this piece of paper -- what's cut off of this?

MR. WILLIAMS: Your Honor, this was how it was given to me quite honestly.

THE COURT: Look and see if the copy I have has everything on it that you have.
(Pause)

MR. WILLIAMS: It doesn't seem to have the signature portion, which was this corner.

THE COURT: Somebody make me a copy that has everything on it, that piece of paper.
(pause)

(Defendant Phillips Exhibit Numbers 1 and 2, statements marked for identification)

THE COURT: I'm looking at Rule 613 and I'm struggling to find any reason to have an in camera hearing on this. Motion is denied.

Bring the jury in.

MR. MAYE: Your Honor, the only thing I wanted to make sure is I know these statements will elicit responses that they were all incarcerated together and they -- and statements that they made while they were all incarcerated together and I would anticipate that that's the way he's going to answer those. And so I just wanted to make sure we didn't step on any land mines in regard to that, but where they were made, what was said, all of that is going to be fair game, I would say, if they ask him about those or the authorship of them. And I just wanted to make sure that we brought that out prior to the jury coming out.

THE COURT: I don't know how I can rule. I mean, it depends on exactly how things develop as to whether you get into any extrinsic evidence at all.

MR. CALHOUN: Mr. Maye doesn't know what I'm going to ask him, Judge. I just think he's being prepped right now. I mean, he doesn't even know if I'm going to ask him

any questions about this statement. I mean, if this was done, it should have been done before he testified on direct.

THE COURT: Well ~~he~~, he was saying that it may be elicited that these two defendant's are incarcerated. I've got no way of knowing that. And I don't think that would come as any shock to the jury with the charges that are lodged against them, but I'll deal with what comes up as it comes up. If I've got to do what it's, you know, we'll be here next December going through this.

Trial counsel's objection was too late, therefore the testimony that was presented in front of codefendant by both trial counsels, solicitor, and the judge rendered the applicant's trial unfair. Applicant was denied the fairness and the protection that comes along with RULE 613 SCRE. Trial counsel's failure to have the proffer done before codefendant Phillips' testified on direct examination by the prosecutor allowed evidence to go before the jury that could have and should have been "ruled inadmissible." See rule 613(b) Extrinsic Evidence of Prior Inconsistent Statement of witness. -- "If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement extrinsic that the prior statement was made is inadmissible. (see statements, transcript pgs 266 L.18-267 L.23)

No proper foundation was laid for the judge to make an accurate ruling, because of the way the solicitor prepped applicant's codefendant to answer questions, by listening to the questions pertaining to the proffer.

(Redirect Examination By MR. MAGE pgs 279 L.25-282 L.4)

Q. who wrote out that statement that -- these two right here that the defense gave you saying they didn't do this, who wrote these out?

A. I don't know.

Q. where did you get them from? what were the circumstances of the statements being generated? Did you write them?

A. No, sir.

Q. These are not your words at all, are they?

A. No, sir.

Q. Someone else wrote this. Where were you and what were the circumstances about that?

A. I was in Edgefield County.

Q. Okay.

A. In my room.

Q. And how did those get presented to you?

A. KC Langford.

Q. KC Langford brought those to you?

A. Yes, sir.

Q. Why did he want you to sign those?

A. Keep him and Bryan Phillips from getting in trouble.

Q. Keep them from getting in trouble?

A. Yes, sir.

Q. Okay. What did he tell you would happen if you signed those statements?

A. That nobody will be in trouble.

Q. That no one would be in trouble?

A. Yes, sir.

Q. Alvin, at the time that this happened in August, were these two men your friend?

A. Yes, sir.

Q. You never wanted anybody to get in trouble with this, did you, especially not your friends, did you?

No, sir.

4 The Applicant was denied effective assistance of trial counsel by not securing the defense key witness (Joseph Patrick Stevens).

Applicant was denied the right to confront his accuser.

i. The following acts and omissions by counsel caused ineffective assistance of trial counsel. (transcript pgs 359 L. 7-360 L. 11, 360 L. 19-361 L. 1-4)

MR. WILLIAMS: I'm having a problem gaining access to a witness that I intended to call, which is Joseph Patrick Stevens. He was supposed to -- well, his supervisor was spoken to, I believe, by Investigator Duran in Orangeburg and he told him that he needed to be here. I received a note from my office at 9:21 in which Mr. Stevens called my office and indicated that he was in Fresno, California and wouldn't be back until Monday. I have a hard time reconciling Orangeburg and Fresno unless somehow that was -- he flown from Orangeburg to Fresno, but I believe he's in Orangeburg and should be on his way here. I do have an alternative remedy, your Honor, which was to call instead Investigator Roosevelt Young whom I concede that I did not place under subpoena because he appeared on the State's witness list and I quite frankly expected that he would be here, "but I should have done my own job" and not trusted that the state would call him".

MR. MAYE: Was Mr. Stevens under subpoena because we might be able to --

MR. WILLIAMS: He is..

MR. MAYE: He was served?

MR. WILLIAMS: yes

THE COURT: See what you can find out. And, Sheriff, help him locate this person, please. And if I need to have him picked up, you can make a

motion for me to have him picked up and brought here.

THE COURT: All right. My understanding is that I'm going to let the jury go to lunch until 1:00 and then we'll see where we are at that point. I think Investigator Young is on his way up here and I think that might be sufficient from what Mr. Williams is telling me. They're still tracking down that other man.

MR. WILLIAMS: They are, Your Honor.

THE COURT: I think now there's something about him being in Tennessee. So he must have a Private Jet.

Trial Counsel did not have a strategic reason for failing to call the key witness (one who stated the case for the state) to trial. Counsel's failure to wait until Joseph Patrick Stevens' arrived, which he never did, caused a prejudicial ripple effect in Applicant's case. That led to Police officer Roosevelt Young vouching for Joseph P. Stevens testimony. Applicant was denied the opportunity to evaluate and cross examine the witness. see Crawford v. Washington 124 S.Ct. 1354. Counsel was unable to secure the witness, due to the lack of adequate preparation that was unreasonable, in light of the fact that counsel had almost two years to effectively prepare and do a thorough and independent investigation of that particular witness. see Lounds v. State 380 S.C. 454, 670 SE2d 646. Trial counsel did not consult with Applicant concerning the alternative remedy. Applicant had no idea as to how his defense was to be prepared. If the jury would not have heard of Joseph Stevens the outcome of my trial would have been different. There was no testimony to corroborate Applicant's codefendant testimony, only the police officer which was highly harmful. Joseph Stevens statement shows either him (Joseph P. Stevens) or Applicant's codefendant is lying. See attached statement made by Joseph P. Stevens. Therefore, the failure to secure Joseph Stevens as a witness for the defense was very critical. There was a numerous of assessments

that the jury could have based their verdict off of had Stevens would have been present to testify. State v. Nance 393 S.C. 289, 712 SE2d 466 (2011) states: the accuser has the right to confrontation, insures the witness will give his statement under oath, forces the witness to submit cross-examination; and permits the jury that is to decide the defendant's fate to observe the demeanor of the witness.

5. Trial counsel was ineffective for helping assist the state in laying the foundation for their case.

i. Trial counsel was ineffective for "ever" mentioning the name Joseph Patrick Stevens. The prosecutor chose to bring this case to trial based on Applicant's codefendant Alvin Phillips' testimony alone. On direct examination by the prosecutor, the name Joseph P Stevens was never elicited during any of the witness (Alvin Phillips) testimony. Trial counsel chose to help aid and assist the state by opening the door for the prosecutor by the following cross-examination: (Transcript pg 264 L. 8-18) CROSS BY WILLIAMS: Q. Vanessa Phillips. Are you familiar with a Joseph Patrick Stevens?

A. No, sir.

Q. Do you know a Patrick Stevens?

A. Yes, sir.

Q. Okay. Who is Pat Stevens?

A. My cousin.

Q. He's your cousin?

A. That's my cousin baby daddy.

Q. He's your cousin's baby father?

A. Yes, sir.

Counsel's actions allowed "foundational evidence", which is evidence that determines the admissibility of other evidence. which led to the testimony by Police officer, Roosevelt Young. Roosevelt Young was the only person to testify as to how this entire case was brought forth, which

was by the foundational evidence created by Counsel Williams making mention of Joseph P. Stevens. Trial counsel's unprofessional conduct aided the State's case by its only corroborating evidence or corroborating witness. The corroborating evidence was hearsay alone and prejudicial by young. The corroborating witness was also Roosevelt Young, confirming or supporting someone else's testimony, Joseph Stevens. Had trial counsel never brought up Joseph Stevens' name, the state could not have brought this case to trial on codefendant's testimony alone. Trial counsel's strategy was plain error and intentional towards both defendants in this case. Without any of this testimony elicited about Joseph P. Stevens, there's a reasonable probability that the outcome of this trial would have been different. see Strickland v. Washington 466 U.S. 668 (1984). See statement made by Joseph P. Stevens, which was given to the applicant the day of trial. Obviously there's inconsistencies as to what the codefendant (Phillips) testified to. Obviously, someone's lying. Still, the trial counsel's failed to strategize effectively to represent applicant after the prejudicial representation.

b. The Applicant was denied effective assistance of trial counsel by counsel's failure to object to officer Roosevelt Young testifying to hearsay testimony.

i. On pages 369-390 of the applicant's transcript, counsel should have objected to the testimony of officer Roosevelt Young. Hearsay is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Officer Young is testifying about a telephone call / statement that led up to the applicant's arrest, which was made by Joseph P. Stevens. Joseph Stevens never testified in the Applicant's trial. Rule against hearsay prohibits admission of testimony, or written evidence, of a statement made out of court, offered in court to prove the truth of the matter asserted unless an exception to the rule is applicable. It was obvious that the police officer's testimony of the crime was out "in court"; but the declarant's statement or phone call was made "out of court." The hearsay rules and the confrontation clause are generally designed to protect the same values. Therefore, by trial counsel's failure to secure the sole witness (which started case for State) Joseph Stevens (confrontation), trial counsel calling officer Young to testify (hearsay) was prejudicial and unprofessional, causing irreparable damage to the applicant's defense. Hearsay testimony about an informant's tip containing a specific charge of criminality can be extremely prejudicial because the jury may believe the testimony without any guarantee that it represents the truth. There is a strong possibility that the jury could have made improper use of the evidence introduced through the police officer's testimony as concrete proof that the defendant did indeed participate in the crimes. This hearsay testimony could give rise to an inference in the jurors' mind that because a confidential informant identifies defendant or applicant

as one of the robbers, then it must be true. The police officer's testimony was the only testimony that corroborated codefendant Phillips' testimony. "Black Law Dictionary" states an accomplice witness is a witness who is an accomplice in the crime that the defendant is charged with. A codefendant "cannot" be convicted "solely" on the testimony of an accomplice. Therefore, trial counsel allowing officer Young to testify to inadmissible hearsay about Joseph P. Stevens phone call/statement was the only other evidence that supported the state's case, and it was prejudicial. (see Strickland v. Washington, 466 U.S. 668 (1984)).

7. The Applicant was denied effective Assistance of trial counsel by counsel asking codefendant Alvin Phillips about the mandatory minimum of his charges.

i. Trial lawyer should have objected to the following:
(Transcript pgs 273 L. 3- 275 L. 10)

Q. I want to go through your indictments, you've been indicted for armed robbery, isn't that right?

A. Yes, sir.

Q. You talked to your lawyer about this charge?

A. Yes, sir.

Q. Okay. Do you know this charge could carry up to 30 years in the penitentiary?

A. Yes, sir.

Q. This is the one you actually have entered a plea to, isn't it?

A. Yes, sir.

Q. You know it carries a mandatory minimum of ten years?

A. Yes, sir.

In State v. Gracely 399 S.C. 363, 731 SE2d 880 (2012), the court instructed the defense counsel that the state's witness could be questioned about the maximum punishment, but "not" the mandatory minimum punishment.

In State v. Mizzell, 349 S.C. 326, 563 SE2d 315, the jury is, generally, not entitled to learn the possible sentence of a defendant because the sentence is irrelevant to finding guilt or innocence.

10-(b)-11(b)

i. Prosecutorial Misconduct: By the Solicitor denying that a deal exist between the Applicant's codefendant (Alvin Phillips)

i. In the opening argument the prosecutor made the following comment: (trial transcript pgs 161 L. 24-25, 162 L. 1 ; 289 L. 22-25 ; 289 L. 7-14 ; 245 L. 4-11 ; 254 L. 17-24 ; 255 L. 3-5)

PROSECUTOR: Alvin Phillips has already pleaded guilty at this time to armed robbery. He hadn't been sentenced yet.

PROSECUTOR: Q. You don't have any deal with the prosecution in this case, do you? Have you ever been promised anything?

A. No Sir.

In Washington v. State, 324 S.C. 232, 478 SE2d 833 (S.C. 1996) under the present facts, the state allowed false testimony to go on corrected about a deal with its witness. Riddle v. Ozmint, 369 S.C. 39, 631 SE2d 70, A prosecutor's deliberate deception of a court and jurors by the presentation of known false evidence is incompatible rudimentary demands of justice. The failure to correct false evidence is as reprehensible as its presentation. see Napue v. Illinois, 360 U.S. 264.

Throughout trial the solicitor denied that a deal existed. The prosecutor knowingly deceived the court by failing to inform the jury of the deal that existed. The jury is entitled to know of any sentences or deals that the cooperating codefendant received. The prosecutor intentionally misrepresented the facts in applicant's trial causing a due process violation and prejudice.

8. The Applicant was denied effective assistance of trial counsel by counsel failing to object to the kidnapping indictment.

i. In the body of the kidnapping indictment, there's six alleged victims, but throughout trial, testimony revealed that only two victims were supposedly kidnapped. The judge verbally amended the indictment, but damage was already done. In the beginning of trial, the entire jury pool applicant's kidnapping indictment (Transcript pgs 6-7 L. 1-7; 339-344) Had trial counsel investigated properly he could have moved to have the indictment amended at an earlier stage of applicant's adversarial process.

9. The Applicant was denied effective assistance of trial counsel by counsel arguing charges I wasn't on trial for.

i. In trial counsel's closing argument, counsel made the following comments: (Transcript pg 442 L. 13-16)

MR. CALHOUN: "But this is all information, evidence that you should have to make a huge decision because that guy over there is charged with burglary first degree, kidnapping, assault and battery with intent to kill.

That testimony was a misrepresentation of the facts and known to be false, which could have prejudice the Applicant.

10. The Applicant was denied effective assistance of trial counsel by counsel commenting on applicant's silence.

i. in closing argument, trial counsel made the following comments: (Transcript 438 L. 16-20; 448 L. 24-25, 449 L. 1-6; 450 L. 19-20)

MR. CALLHORN: "And with credibility in mind and the reasonable doubt standard, let's go through the evidence that you've heard from Mr. Langford's perspective and let's look at what we have here when it comes to reasonable doubt."

MR. CALLHORN: The judge is going to tell you that Mr. Langford is not required to testify, that every person is presumed innocent as you know. There's nothing for Mr. Langford to address. There's no accusation that he has to respond to. And he's maintained his innocence on this case from the very beginning. From the very beginning, he's maintained his innocence for the last two years, okay.

MR. CALLHORN: the two most important people that didn't testify today are logic and common sense.

ii. The Applicant was denied effective Assistance of trial counsel by failing to object to the solicitor commenting on Applicant's silence.

i. The solicitor made the following comments in closing argument:
[Transcript pgs 479 L. 10-14; 480 L. 24-25, 481 L. 1, 12-19; 488 L. 2-4, 490 L. 18-23]

PROSECUTOR: They've got an absolute right to a jury trial. They're absolutely within their rights to put the state to proving it. They don't have to put up any evidence in this case. But Alvin, in this case, he told on himself. They don't have to do anything.

PROSECUTOR: You've heard the evidence in this case, you know who's got a reason to lie.

PROSECUTOR: The young man got up here on the stand and I asked him, Did anybody ask you to say anything other than the truth up here? No, that wasn't the same for everybody. Whoever got him to sign this statement that didn't have the nerve to sign their name as a witness in this case, they didn't want him to tell the truth. They wanted him to lie for their benefit and to his detriment.

PROSECUTOR: This comment about don't snitch on anybody, don't tell anybody this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth.

In State v. Cockerham, 294 S.C. 380, 365 SE2d 22 (1988), prosecutor's direct or indirect reference to defendant's silence and indirect comments on defendant's exercise of his rights to counsel and jury trial violated applicant's due process. In Johnson v. State 325 S.C. 182, 480 SE2d 733 (1997), it is impermissible for the prosecution to comment directly or indirectly upon a defendant's

12. The applicant was denied effective assistance of trial counsel by failing to object to Police officer Roosevelt Young vouching for Joseph Stevens

i. on page 344 L. 12-14 the following statements were made:

WILLIAMS: would you consider Joseph Patrick Stevens a good citizen?

A. Yes, sir.

On pages 455 L. 18-22 Williams is vouching for Roosevelt Young in closing argument.

WILLIAMS: My good friend, Mr. Roosevelt Young, he indicated to you that Mr. Stevens was just a good samaritan. He just wanted him to know. Ladies and gentleman, he is a very good witness and I couldn't really shake him on that.

13. The Applicant was denied effective assistance of trial counsel by counsel quoting Bible scriptures during closing argument.

i. On pages 456 L. 10-18, 457 L. 3- the following statements were made.

WILLIAMS: ladies and gentlemen, I ask that you would consider the New International version, I didn't get the King James version, but I would ask you to consider Deuteronomy 19. It says, one witness is not enough to convict a man accused of any crime or offense he may have committed. A matter must be established by the testimony of two or three witnesses. I ask you to also consider Deuteronomy 17 - -

WILLIAMS: Deuteronomy 17 verse six says, on the testimony of two or three witnesses, a man shall be put to death, but no one shall be put to death on the testimony of only one witness.

In SCRE Rule 610 Religious Beliefs or Opinions: Evidence of the beliefs or opinions of a witness on matters of religion is not admissible for the purpose of showing that by reason of their nature the witness' credibility is impaired or enhanced.

2. PROSECUTORIAL MISCONDUCT: For using inflammatory and irrelevant testimony in closing argument.

i. In closing argument, the solicitor made the following improper comments: (Transcript pgs 467 L. 1-7; 468 L. 5-9; 481 L. 7-9)

PROSECUTOR: "his own house to get the money, his daddy laying there with them holding a gun on him, his wife, his child inside, his mama inside, And his only hope at that time is hope that all they'll do is just take the money and not kill them all. That's what these people faced, people that live right here in Edgefield county."

PROSECUTOR: "How long do you think those minutes were as he was held, as he held his breath and hoped they didn't go in there and kill his wife, his baby and his mama as they went in that house, how long were those minutes?"

PROSECUTOR: "It doesn't get any worse than this short of killing somebody."

PROSECUTOR: "And they got their billfold, they got their cigarette lighter, they took what they could get and they left. "Thank goodness that's all they did!"

The prosecutors improper comments were forceful and graphic, arousing passion from the jury, causing them to divert their attention from the evidence presented, to convict off of highly emotion. There's no testimony presented in trial where any of the victims said they were afraid of being killed.

14. Trial counsel was ineffective for failing to object to the Solicitors' vouching and bolstering for the credibility of numerous of its witnesses in closing argument.

i. Trial transcript (pgs 470 L. 9-11; 474 L. 16-18; 486 L. 5-8; 490 L. 13, 18-21; 465 L. 17-20 479 L. 20-22) the prosecutor made the following comments:

PROSECUTOR: And read that statement he gave, he tells all this in his statement He got up here under oath and told ya'll. - (vouching for codefendant)

PROSECUTOR: Lamar Robinson went and he told you, he got up here and he put his hand on the Bible under oath. (vouching for officer Lamar Robinson)

PROSECUTOR: But he told the truth to Roosevelt (young after being advised of his rights. He doesn't want to testify against them, he never did. He told on himself. He got up here under oath and he told you. (vouching for codefendant)

PROSECUTOR: This comment about don't snitch on anybody, don't tell anybody, this system breaks down when people get up here under oath and they don't tell the truth. The only way this system works is when people get up here and take that oath and tell the truth. (vouching for codefendant)

PROSECUTOR: Those statements have inherent truth because why in the world would he start lying and telling half truths at that point in time. (vouching for codefendant)

PROSECUTOR: And he told them as well as it matches up exactly with the information that Roosevelt got from Mr. Stevens. (bolstering and vouching for codefendant/officer (young)

PROSECUTOR: He told the truth up here. (vouching for codefendant)

See Vaughn v. State 362 S.C. 163, 607 SE2d 72 (2004), Matthew v. State 565 SE2d 766, it is inappropriate for the state to assure the jury of a witness' credibility because the jury is charged with assessing the credibility of witnesses based on evidence in the record. The solicitor's summation led the jury to believe that the state corroborated the witness' testimony before trial and found it to be true. Vouching for a witness based on outside material or opinion alone conveys the impression to the jury that the Solicitor has evidence not presented to the jury but known by the prosecution which supports conviction. Gilchrist v. State, 350 S.C. 221, 565 SE2d 281

15. The Applicant was denied effective Assistance of trial Counsel by trial counsel failing to object to premature deliberations by the jury.

i. Trial (transcript pgs 491 L. 22-25, 492 L. 1) was complete as far as closing arguments and the following comment was made by trial judge.

THE COURT! And as I told you, the charge should take me 30 minutes to give it. All right, Follow the bailiff, please -

(The jury retires to the jury room)

See Gallman v. State, 414 SE2d 789, 781, The jury should not begin discussing the case, nor deciding the issues, until all evidence has been introduced, the arguments of counsel's complete, and the applicable law charged.

16. The Applicant was denied ~~the~~ effective assistance of Appellate counsel for counsel failing to file a reply brief concerning inadmissible testimony presented at applicants trial.

i. witness Gustav Sawrell was not allowed to testify before the jury at applicants trial because his testimony consisted of too much hearsay. There was an in camera hearing to determine what Gustav Sawrell was to testify to, but after questioning, his testimony was ruled as inadmissible. (Transcript pgs 427 L. 16-25, 428 L. 1-25, 429 L. 1-25, 430 L. 1-3)

The trial judge ruled Gustav Sawrell testimony as inadmissible but the state chose to use this inadmissible evidence [testimony in the Respondent's brief to support their pressuring theory, which helped them deny me relief in my four prong test with my fast & speedy trial.

Appellate lawyer acts and omissions denied me the opportunity to defend myself against a hearsay theory that the state strategically and deliberately planned at trial to use against me on appeal.

By appellate counsel failing to do a reply brief, counsel conceded my guilt, which is contrary to what the trial transcript presents. (transcript pgs 282 L. 2-4, 429 L. 11-12)

Applicant's codefendant testified to no pressuring and the trial judge said that the codefendant admitted statements were made on his own free will.

17. The Applicant was denied the right to effective assistance of trial counsel due to counsel's cumulative errors.

The cumulative effect of two or more individually harmless errors has the potential to prejudice a defendant to the same extent as a single reversible error. Counsel errors in combination, effectively deprived the applicant of a meaningful defense. Due to the combined errors of counsel, applicant was unable to subject the prosecutions' case to "the crucible of meaningful adversarial testing" the essence of the right to effective assistance of counsel. The errors rendered the adversarial process and the resulting conviction unreliable. Blackburn v. Folt 2,828 F 2d 1177 (6th Circuit 1987)
U.S. v. RIVERA, 900 F 2d 1462 (10th Cir.)

Conclusion

Herein above, it has been shown, by presentation of facts and analysis of law, that Langford was tried, convicted, and sentenced by a deficient performance of trial counsels, which resulted in prejudice. Furthermore, Langford's presentation of facts and law shows that his conviction was obtained by a "deliberate", a "willful" deception by the prosecutor which shows that this prosecutorial misconduct resulted in Langford's fundamental fairness being violated, which caused him a denial of due process of law. Ervin Maye's conduct caused Langford's trial to be deemed as "unfair" and it caused harm to Langford, but also his misconduct undermines public confidence in our state's judicial system; the proper functioning of which is a topic of great fundamental interest. "Every South Carolinian has a vital interest in the fair administration of justice."

Therefore, in the matter of Langford, it is his earnest prayer that in order that an order that justice be vindicated and restored, this Honorable Court, upon due consideration of facts and law presented, grant him the post-conviction relief he seeks by reversing the judgment of conviction/sentence and remand the criminal matter for new trial based upon these facts.

EDGEFIELD COUNTY
CLERK OF COURT
CHARLES D. REEL
IN THE COMMON PLEAS COURT
DOCKET NO.: 2014-CP-19-0002
2017 JAN 30 PM 12:24

STATE OF SOUTH CAROLINA
COUNTY OF EDGEFIELD
K.C. LANGFORD, # 294500
Applicant,
-v-
STATE OF SOUTH CAROLINA
Respondent,

AMENDMENT AND SUPPLEMENT
POST-CONVICTION RELIEF
APPLICATION

The Applicant, through undersigned Counsel, files this amendment and supplement to his Application for Post-Conviction Relief and would respectfully show unto the Court of Common Pleas the following:

This is an amendment and supplementation to a PCR Application submitted to this Court pursuant to the S. C. Code Ann. 17-27-10, filed with this Court on January 3, 2014. This amendment and supplementation in no way replaces the factual predicates, and argumentation in the initial PCR pleadings, thus this amendment's primary goal is to add arguments to what has been filed already.

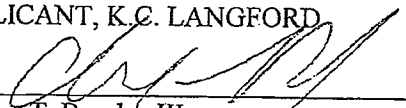
The Applicant, in support of his Amendments and Supplements, provides the Court with the following:

1. Applicant alleges that that the trial counsel failed to investigate two potential alibi witnesses, Veronica and Vanessa Phillips.

RELIEF SOUGHT

That the convictions and sentences be vacated and that Applicant be immediately released from prison pursuant to S. C. Code Ann. 17-27-80.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, K.C. LANGFORD


Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
803-418-5708

January 26, 2017

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF EDGEFIELD	)	ELEVENTH JUDICIAL CIRCUIT
	)	
K.C. Langford,	)	C.A. No. 2014-CP-19-0002
S.C.D.C. No. 294500	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed July 8, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. The Applicant was indicted at the December 2008 term of the Edgefield County Grand Jury for criminal conspiracy (2008-GS-19-0673). The Applicant was indicted at the May 2010 term of the Edgefield County Grand Jury for burglary, first degree (2010-GS-19-0272); armed robbery (2010-GS-19-0273); and kidnapping (2010-GS-19-0278). The Applicant was represented by Mark R. Calhoun, Esquire. On September 7, 2010, the Applicant proceeded to trial before a jury and was convicted of all charges as indicted. The Honorable William P. Keesley sentenced Applicant to a term of twenty (20) years imprisonment for kidnapping, twenty (20) years for armed robbery, twenty (20) years for burglary, and five (5) years for criminal conspiracy. Judge Keesley ordered that the sentences be served concurrently.

A timely notice of appeal was filed and perfected on Applicant's behalf by Elizabeth Franklin-Best, Esquire. The Supreme Court of South Carolina certified Applicant's appeal and affirmed his sentences and convictions in a published opinion filed November 21, 2012. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2010). The United States entered an order denying Applicant's petition for writ of certiorari dated October 7, 2013.

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

II.

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

1. Ineffective assistance of counsel;
2. Denial of due process of law;
3. Prosecutorial misconduct;
4. Ineffective assistance of appellate counsel;

III.

Respondent interprets Applicant's first three allegations as being claims 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.

The Applicant also raises ineffective assistance of appellate counsel. Respondent contends that this allegation is without merit, and that applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by

appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 664 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests and evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

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

KAREN C. RATIGAN
Assistant Deputy Attorney General

WALT WHITMIRE

Assistant Attorney General

By: J. Walker
ATTORNEYS FOR RESPONDENT

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

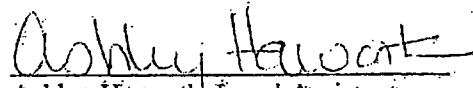
April 28th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF EDGEFIELD	)	
	)	
	)	2014-CP-19-0002
K. C. LANGFORD, #294500	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Mr. Charles T. Brooks, III, Esquire
 Law Office of Charles T. Brooks, III
 309 Broad St.
 Sumter, SC 29150

DATED this 19th day of March, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

1	State of South Carolina	)	In the Court
		)	Of Common Pleas
2	County of Edgefield	)	Case No.: 2014-CP-19-0002
		)	
3	K.C. Langford, III,	)	
		)	
4	Applicant,	)	
	vs.	)	Transcript of Record
5		)	
	State of South Carolina,	)	
6		)	
	Defendant.	)	
7		)	

8

9

February 1, 2017

10

Lexington, South Carolina

11

12 BEFORE:

13

The Honorable Eugene C. Griffith, Junior, Judge

14

15 APPEARANCES:

16

17 Charles T. Brooks, III, Esquire
Attorney for the Applicant

18

19 Johanna Valenzuela, Assistant Attorney General
Attorney for the State

20

21 ALSO PRESENT:

22

K.C. Langford, III

23

24

25

Steven E. LeBlanc, R.P.R., Circuit Court Reporter
P.O. Box 184, Lexington, South Carolina 29071

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EXHIBITS

APPLICANT'S

NO.	DESCRIPTION	ID	EVDS.
1	Voluntary Statement Joseph Stevens		19

COURT'S

NO.	DESCRIPTION	ID	EVDS.
1	Voluntary Statement Veronica Phillips		133

1 Thereupon, the following proceedings were had,

2 THE COURT: Okay. Give me the procedural history so
3 I can find out why it ended up back here in trial
4 court.

5 MS. VALENZUELA: Your Honor, this is the case of
6 K.C. Langford versus the State of South Carolina.
7 2014-CP-19-002. The applicant filed his application on
8 July 8th of 2014. This arises out of indictments from
9 the Edgefield County Clerk of Court from the December
10 2008 term. The applicant was indicted for criminal
11 conspiracy, burglary first degree, armed robbery and
12 kidnapping. He was represented at trial by Mark Calhoun.
13 On September 7th of 2010 the applicant proceeded to trial
14 before a jury and he was convicted of all charges as
15 indicted. He proceeded to trial with his co-defendant
16 also which I think is apparent from the transcript, Your
17 Honor.

18 Judge Keesley was the presiding Judge and he ended
19 up sentencing the applicant to a term of 20 years for the
20 kidnapping charge, 20 years for the armed robbery, 20
21 years for the burglary and then five for the criminal
22 conspiracy charge and he ordered that all of those to be
23 served concurrently so we are talking about a 20 year
24 sentence here.

25 A timely notice of appeal was filed on behalf of the

1 applicant by Elizabeth Franklin-Best. The Supreme Court
2 certified that appeal and affirmed his sentences and
3 convictions in a published opinion filed on November
4 21st, 2012 and the United States entered an order denying
5 the applicant's petition for writ of certiorari on
6 October 7th, 2013.

7 The applicant submitted his own applications which
8 have a lengthy set of amendments. I believe that's part
9 of the Judge's packet. It's referred to as memorandum
10 attached to the PCR application.

11 THE COURT: That's what I have been reading.

12 MS. VALENZUELA: He has an attorney. Mr. Brooks is
13 present in the courtroom. Mr. Brooks filed an amendment
14 to that PCR application at the end of last week in which
15 he adds the allegation of an alibi. The alibi witnesses
16 should have been investigated and called to the trial.

17 THE COURT: Okay. What I was confused about
18 originally the Supreme Court opinion was only a direct
19 appeal. It wasn't appealed to PCR. That's where I was
20 confused. So it was an appeal up, affirmed, cert denied,
21 then PCR filed.

22 MS. VALENZUELA: Yes.

23 THE COURT: I'm with you. I thought it was PCR,
24 appeal, then it kicked back. That's why I've been
25 sitting here confused how did it get back here.

1 MS. VALENZUELA: This is the first PCR hearing that
2 the applicant is having.

3 THE COURT: I've got it. That makes a little better
4 sense for me.

5 MS. VALENZUELA: It is a long protracted history.

6 MR. BROOKS: And I think, you know, the incident,
7 the alleged incident occurred I want to say August of
8 2008 so Mr. Langford went through this whole ordeal of
9 being incarcerated and set speedy trial motions and, of
10 course, that's where you now have this whole Langford
11 Rule and first appearances and all of that is attributed
12 to Mr. Langford but, of course, it had a long extensive
13 appellate history.

14 THE COURT: Mr. Langford, you have no idea how many
15 people use your name.

16 MR. BROOKS: We were talking about that a couple
17 times on the telephone and, of course, he's like, well, I
18 understand but I still want my PCR so I'm like I
19 understand so this is actually his first time, his first
20 bite at the apple of post conviction relief. We do have
21 two witnesses under subpoena, Vanessa and Veronica
22 Phillips who are seated in the back of the courtroom so
23 we are ready to begin.

24 THE COURT: Now that I have the procedural history,
25 the Court understands how it got here. This is not the

1 second PCR hearing. This is an original.

2 MR. BROOKS: Yes, sir.

3 THE COURT: All right. Call your witness.

4 MR. BROOKS: We call K.C. Langford to the stand.

5 Thereupon,

6 K.C. LANGFORD

7 after having been first duly sworn, testified as follows,

8 THE CLERK: Take your seat and state your name.

9 THE WITNESS: My name is name is K.C. Langford.

10 MR. BROOKS: Ready, Judge?

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q. Mr. Langford, I'm just gonna kind of give you a
15 little brief advice on testifying. You've got the court
16 reporter here. Make sure you speak up clearly and distinctly
17 because that's how the court reporter is taking down the
18 transcript of what's going on here in court today. I notice a
19 lot of times like when we were next door talking a lot of
20 times when you're on the street or obviously back at the unit
21 you're in a lot of times people tend to communicate with just
22 nodding of the head and uh-huh and uh-uh. In the courtroom
23 because we have the court reporter it's better and it's better
24 for you to make sure you speak up clearly and distinctly. I
25 don't think I needed to tell you that because you appear to be

K.C. LANGFORD - DIRECT BY MR. BROOKS

8

1 speaking clearly and distinctly but I just wanted to make sure
2 you understood that, okay?

3 A. Yes, sir.

4 Q. Okay. And as Madam Attorney General stated, you are
5 presently incarcerated. I believe you're at the Kershaw
6 Correctional Facility now; is that correct?

7 A. Yes, sir.

8 Q. And this is your first time on post conviction
9 relief. You had Mr. Mark Calhoun represent you; is that
10 correct?

11 A. Yes, sir.

12 Q. He was court appointed to represent you?

13 A. Yes, sir.

14 Q. Okay. And in the course of his representation of
15 you did he hire any type of private investigator to help
16 prepare your case?

17 A. Not to my knowledge.

18 Q. And we'll go through your issues. I kind of talked
19 to you about it. Make sure you just don't read it. You can
20 look down at your notes and kind of refer to them, but I want
21 to make sure we have got all of the allegations on the record.
22 One of the allegations you start off with was Mr. Calhoun's
23 failure to object to the composition of the jury.

24 A. Yes, sir.

25 Q. Can you explain about that? What he should have

1 done. Tell us about that.

2 A. Well, the Judge stated that it was supposed to be a
3 42 people juror to choose from. However, it was only 32
4 people.

5 Q. Back up just a little bit from the mic because you
6 got that acoustic.

7 A. Okay. However, it was 32 people to choose from and
8 Mr. Calhoun failed to object. He allowed us to go forward,
9 uhm, just choosing from the 32 people. Uhm, after the jurors
10 was, uhm - after we started going through the jurors and there
11 were strikes, at the end we had one juror left where we had to
12 seat that juror in order for us to go forth with that trial,
13 uhm, and if we would have probably had probably 42 to choose
14 from, we probably wouldn't have had that issue. We didn't
15 have an alternative juror to seat on the trial.

16 Q. And you feel that that's something your lawyer
17 should have objected to; is that correct?

18 A. Yes, sir.

19 Q. Okay. Now, the victims in this case were of Chinese
20 ancestry; is that correct?

21 A. Yes, sir.

22 Q. And there was some issue about them, their
23 communication?

24 A. Yes, sir.

25 Q. And one of the things you raised was that there

K.C. LANGFORD - DIRECT BY MR. BROOKS

10

1 should have been a court certified interpreter --

2 A. Yes, sir.

3 Q. -- in this matter?

4 A. Yes, sir.

5 Q. Obviously to relay the testimony that they would
6 give to make sure it was clear to the jury. Is that what
7 you're talking about?

8 A. Yes, sir.

9 Q. Can you - you want to elaborate a little more on
10 that? What was going on there?

11 A. Well, we, uhm, the State, uhm, they had claimed that
12 they went to a great expense to get a certified interpreter
13 and, uhm, the interpreter that they had he wasn't certified in
14 any state in the United States certified to interpret so, uhm,
15 I mean, he had his resume that he submitted to the Court,
16 however, he still wasn't certified in any state, licensed to
17 interpret. However, uhm, he still interpreted for the State
18 and I believe that --

19 Q. You think that your lawyer should have objected to
20 that; is that correct?

21 A. Yes. I believe he should have objected.

22 Q. Do you recall if he did object?

23 A. I can't recall.

24 Q. But obviously we've got the transcript but that's
25 something you felt he should have objected to?

1 A. Yes. I believe we should have, uh, went forth with,
2 uh, an interpreter who was certified.

3 Q. Okay. Now, one of your other issues dealt with
4 Alvin P. --

5 A. Yes.

6 Q. -- who was a co-defendant who ended up testifying
7 against you. You talked about you felt that your counsel was
8 ineffective for allowing the State to proffer Alvin P. s'
9 testimony; is that correct?

10 A. Yes, sir.

11 Q. Can you explain, paint the picture for the Judge as
12 to what was going on and how that impacted your case?

13 A. Well, at the time, uhm, my lawyer was asking to do a
14 proffer, I would assume, to find out what Alvin was going to
15 testify about. Uhm, there was a statement that, two
16 statements that Alvin P. had wrote, uhm, saying that I
17 didn't have anything to do with the crime.

18 Q. When Alvin Phillip says "I didn't have anything",
19 you're talking about I, K.C. Langford didn't have anything to
20 do with the crime; is that correct?

21 A. Yes, sir. Yes, sir.

22 Q. Go ahead and continue.

23 A. However, uhm, while this proffer didn't get done,
24 Alvin P. , he was sitting on the witness stand. He had
25 already testified on direct and my lawyer was trying ask the

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1 Judge to, uhm, remove Alvin from the courtroom so the proffer
2 could be done, uhm, but he wasn't removed. So basically the
3 State was allowing Alvin to be coached or, uhm, just to hear
4 what was going on so he would know how to answer the questions
5 that he would be asked pertaining to these two statements and,
6 uhm, I felt that the lawyer at the time, even the Judge or the
7 Solicitor should have had Alvin P. removed from the
8 courtroom so the proffer could have been done.

9 Q. Okay. All right. And that's something that you
10 felt your lawyer should have raised as an issue or objected
11 to; is that correct?

12 A. Yes, sir.

13 Q. Going through your issues, what is the next issue?
14 I just want to make sure you and I are together.

15 A. The applicant was denied effective assistance of
16 trial counsel by not securing the defense key witness Joseph
17 Patrick's statements.

18 Q. Okay. All right. And --

19 MS. VALENZUELA: Can you show that to me real quick?
20 I don't have that in my notes.

21 MR. BROOKS: (Proffering.)

22 BY MR. BROOKS:

23 Q. All right. K.C., paint the picture for the Judge.
24 What's the significance of Joseph Patrick Stevens?

25 A. Joseph Patrick Stevens, he was a guy who had a

1 family court bench warrant, uhm, which he called Investigator
2 Roosevelt Young and gave him information about this crime. He
3 told the investigator that he and Alvin P. had talked
4 and Alvin had confessed, uhm, to the crime to him and he gave
5 a statement to Investigator Young.

6 Q. Okay. Now, Mr. Stevens didn't testify at your
7 trial; is that correct?

8 A. No, sir.

9 Q. Okay. But Investigator Young was called to the
10 stand to talk about the conversation he had with Mr. Stevens;
11 is that correct?

12 A. Yes, sir.

13 Q. And this was done in the presence of the jury?

14 A. Yes, sir.

15 Q. Now, it wasn't Mr. Calhoun that called and put him
16 on the stand; is that correct?

17 A. No, sir.

18 Q. It was Brian Phillips' lawyer; is that correct?

19 A. Yes, sir.

20 Q. Did Mr. Calhoun object in any way?

21 A. No, sir.

22 Q. Okay. Do you think he should have?

23 A. Yes, sir.

24 Q. And basically Mr. Stevens' statement to Investigator
25 Young was Alvin P. , Brian Phillips and K.C. Langford had

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1 done this robbery; is that correct?

2 A. Yes.

3 Q. Was that the gist of what he told Investigator
4 Young?

5 A. Yes, sir. Uh, I would like, if I could, uh, to
6 admit Joseph Patrick Stevens' statement into evidence and
7 Alvin P. .

8 MS. VALENZUELA: Objection to hearsay, Your Honor.
9 Our understanding is that Mr. Stevens is not present in
10 the courtroom and is not going to testify today and this
11 would fall under hearsay so we would object.

12 THE COURT: Wasn't he called as a witness?

13 MR. BROOKS: Stevens was not called as a witness.
14 Investigator Young was a witness who testified about what
15 Mr. Stevens told him in the statement.

16 THE COURT: And that was published in the record?

17 MS. VALENZUELA: So Detective Roosevelt's testimony
18 is in the record. This statement I have never seen, is
19 not part of the underlying record and would be introduced
20 to show prejudice, and I get to say that this doesn't -
21 he needs to bring the live witness.

22 THE COURT: No, no, no, no. I'm not worried about
23 that. What I'm saying is in the court record that I can
24 read the detective testified about a statement that was
25 given to him and is the gist of the statement in the

1 record?

2 MS. VALENZUELA: Yes.

3 MR. BROOKS: The gist of it. I want to make sure.
4 Can I see the statement that he's got, Judge, and I'll
5 show it to her.

6 THE COURT: If that statement is consistent with the
7 statements in the record, the Court will consider what's
8 in the record.

9 MR. BROOKS: And that's what I want to get that from
10 him and make sure with her about that.

11 THE COURT: Okay. If it was testified to by the
12 detective, then the gist of it is in there. I agree
13 with you that it's hearsay.

14 MS. VALENZUELA: Yes. I hear the Court. In terms
15 of the point that the applicant is trying to make to you,
16 you have that before you in the transcript.

17 THE COURT: Right. We don't need to argue about it.
18 It's in the record.

19 THE WITNESS: Say that again.

20 THE COURT: Is it in the record?

21 MR. BROOKS: It is in the record as far as what
22 Investigator Young said.

23 THE COURT: All right. Here's what -- I don't know
24 what the statement says. The detective came and
25 testified as to what someone told him and this is what

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1 that someone told him.

2 MR. BROOKS: Right.

3 THE COURT: And he testified in the trial about that
4 and that's in the court record that I can consider right
5 now without that coming in, I think.

6 MR. BROOKS: Right.

7 THE COURT: I'll get to read it because it was
8 testified to in trial.

9 MR. BROOKS: Since my client had the statement, I
10 wanted to make sure I ran it past her. It is consistent
11 with what the detective testified.

12 THE COURT: Okay. So it's there so I agree with her
13 that I will sustain her objection to this statement
14 coming in here because it's kind of already in.

15 MR. BROOKS: Right. It's already in.

16 MS. VALENZUELA: And I should have explained for the
17 applicant's purposes that you have been given a judge's
18 packet, Your Honor, and that includes the entire
19 transcript of the underlying case.

20 THE COURT: The whole trial transcript.

21 MR. BROOKS: Just like I got a transcript. She got
22 a transcript. He got a transcript, too, just to make
23 sure you know that.

24 THE COURT: When you talk about that, I'm not gonna
25 let you read it, okay?

1 THE WITNESS: I got you.

2 BY MR. BROOKS:

3 Q. That make sense?

4 A. Kind of.

5 Q. You looking like you got that deer in the headlight
6 look on you.

7 A. Yeah. What I - what I -- The reason why I wanted to
8 enter, uh, this statement into evidence is because it's
9 inconsistent to, uhm, what Alvin P. testified to. I'm
10 trying to show that there has to be an inconsistency.

11 Q. But that's also in the record, too, so that the
12 transcript contains what Alvin P. testified to and what
13 Investigator Young says Stevens told him.,

14 A. It doesn't.

15 Q. It doesn't?

16 A. No, sir.

17 Q. Okay.

18 A. Investigator Stevens - Young doesn't go into detail
19 as to the statement. The only thing he goes in detail about
20 is that he receives a phone call from Joseph Stevens saying go
21 see Alvin P. about a crime.

22 Q. Okay. All right.

23 MS. VALENZUELA: I renew my objection on hearsay.

24 MR. BROOKS: But, Judge, it actually might be some
25 issue about we got a statement. I guess I would ask the

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1 Court to at least take a look at it and at least attach
2 it as an exhibit because it may have been something
3 significant for the Court to evaluate if there is some
4 significant differences and I don't think there's any way
5 the Court can know that without at least taking a look at
6 the statement.

7 MS. VALENZUELA: If he wants to proffer it as
8 subject to the objection, I have no problem as this being
9 offered as a proffer. My objection would be hearsay.
10 It's the applicant's case. They do have to prove it and
11 they have to show that this is evidence they could have
12 gotten in at the trial and obviously they wouldn't have
13 been able to get the written statement in without the
14 live witness but I have no objection to this solely being
15 entered as a proffer.

16 MR. BROOKS: But not necessarily because if
17 Mr. Young took the statement, then it could have been
18 used at the trial because Detective Young was allowed to
19 testify and testify about getting the statement from
20 him.

21 THE COURT: What step is the proffer, subject to her
22 objection and you can argue however you want to argue,
23 whether it should have been used more or should have been
24 used with a live witness or whatever but you're kind of
25 stuck with what happened.

1 MR. BROOKS: So...

2 THE COURT: You can proffer it. We'll offer it as a
3 court's exhibit or we'll mark it as a plaintiff's exhibit
4 but proffer but not accepted.

5 MR. BROOKS: Okay.

6 (Whereupon, Applicant's Exhibit #1 marked for
7 identification.)

8 BY MR. BROOKS:

9 Q. K.C., nobody knows this case better than you. You
10 have been living with it for the last eight, nine, close to 10
11 years. I say that, what is significant between what's in
12 Mr. Stevens' statement versus what Alvin P. testified
13 to? Paint that picture for us. Why is that significant?
14 What is the difference? Distinguish that.

15 MS. VALENZUELA: This is still subject to my
16 objection?

17 THE COURT: Sure.

18 BY THE WITNESS:

19 A. Alvin P. , he, uhm, in his statement he, uh,
20 says that, uhm, after the crime was done, that, uhm, we ran up
21 the road and we split up and, uhm, we met back at the house.
22 Uhm, Joseph Stevens' statement says that Veronica Phillips
23 came to pick us up from the crime scene. So clearly there's
24 an inconsistency as to what happened. Someone has to be lying
25 between either Alvin P. or either Joseph Stevens.

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1 Q. Okay. Is that something that -- To your knowledge
2 did your lawyer ever investigate that?

3 A. No. He was never able to secure, uhm, Joseph
4 Stevens as a witness or interview him before trial.

5 Q. To your knowledge?

6 A. To my knowledge.

7 Q. Okay. All right. Let's try to keep ourselves
8 together here, K.C. What's next?

9 A. Applicant was denied effective assistance of counsel
10 by counsel's failure to object to Roosevelt Young testifying
11 hearsay.

12 Q. Hearsay testimony?

13 A. Yes.

14 Q. That's goes to what we were just talking about.

15 A. Okay.

16 Q. You're just saying that Mr. Calhoun never objected
17 to all of that coming in?

18 A. Yes.

19 Q. What Roosevelt Young was saying about what he got
20 from Mr. Stevens?

21 A. Yes, sir.

22 Q. Your position is that it shouldn't have come in at
23 all?

24 A. It shouldn't have. He never should have called
25 Investigator Roosevelt Young to the stand to testify about --

1 Q. And just to be clear, Mr. Calhoun didn't call him.
2 Brian Phillips' lawyer called him?

3 A. Randall Williams. Yes.

4 Q. But your lawyer didn't object to it?

5 A. He never objected.

6 Q. Okay. Now, I believe the next one is about Alvin
7 Phillips and whether or not he got a deal?

8 A. Yes.

9 Q. Okay. Now, Alvin P. as we know testified
10 against you. His sentence to your knowledge was he pled
11 guilty but his sentence was deferred until after your trial;
12 is that correct?

13 A. Yes, sir.

14 Q. And that's one of the things you felt your lawyer
15 should have objected to was when he was asked about a deal or
16 any discussions of a deal. Paint the picture for us. What
17 happened?

18 A. He basically the entire time Alvin P. just
19 denied that a deal existed between him and the jury.

20 Q. You mean him and the prosecutor?

21 A. Yeah. Him and the prosecutor. I apologize.

22 Q. Okay. And he denied that and you're saying that's
23 something your lawyer should have objected to; is that
24 correct?

25 A. Yes, sir.

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1 Q. Okay. Is there anything you want to explain about
2 that --

3 A. No, sir.

4 Q. -- or is it pretty much self explanatory in your
5 application?

6 A. Yes.

7 Q. Okay. All right. And you also talked about you
8 felt that the prosecutor actually engaged in misconduct by
9 denying that a deal existed; is that correct?

10 A. Yes, sir.

11 Q. Also in your application you talked about your
12 counsel failing to object to the kidnapping indictment?

13 A. Yes, sir.

14 Q. Go ahead and explain that.

15 A. Uhm, in the original kidnapping indictment it was
16 six individuals, uhm, whose names was in the body of the
17 indictment. However, after, uhm, going through the testimony,
18 uhm, the victims, it was, uhm, only two, uhm, people who were
19 actually kidnapped. They didn't charge us with kidnapping the
20 entire six people. It was just only two people.

21 Q. Okay. That's something you felt your trial counsel
22 should object to; is that correct?

23 A. Yes.

24 Q. Okay. And also there was some charges that you
25 weren't on trial for?

1 A. Yes, sir.

2 Q. Can you explain that?

3 A. Yes, sir. I was charged with, uhm, armed robbery,
4 burglary first, kidnapping, uhm, criminal conspiracy, assault
5 and battery with attempt to kill and, uhm, I was only brought
6 on the charge, tried for four of those charges. However, in
7 my, uhm, trial counsel's closing argument he informed the jury
8 that this was, uhm, the most important day of my life and I
9 was, uhm, being charged with, uhm, burglary first, kidnapping
10 and assault and battery with attempt to kill which I wasn't on
11 trial for assault and battery attempt to kill. The State
12 failed to bring that charge against me at trial.

13 Q. Okay. So actually your trial counsel talked about
14 something you weren't even on trial for and you felt that that
15 prejudiced you; is that correct?

16 A. Yes, sir.

17 Q. Okay. Another thing that you had mentioned in your
18 application was your trial counsel commenting on the
19 applicant's silence?

20 A. Yes.

21 Q. Can you explain that to the Court.

22 A. Yes, sir. I would have to read from the transcript
23 about it. Mr. Calhoun, he know I didn't testify and he said
24 that the two most important people who didn't testify today
25 are logic and common sense and, I mean, me and Brian Phillips

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1 neither one of us testified so I felt that it was kind of like
2 he was commenting on our silence by us not testifying and
3 taking the stand.

4 Q. Okay. And that's indicated in the transcript?

5 A. Yeah.

6 Q. Okay. And also the Solicitor talked about your
7 silence, too; is that correct?

8 A. Yes.

9 Q. And you felt that that obviously was something your
10 trial counsel should have objected to?

11 A. Yes.

12 Q. And in the transcript the Solicitor talks about who
13 has got a reason to lie. Alvin told on himself. They don't
14 have to do anything. You want to elaborate on that?

15 A. Well, it was, uhm, in my, uhm, memorandum that I
16 submitted. My application, I have the pages where, uhm, the
17 prosecutor made, I think, prejudicial comments, uhm, as to us
18 not testifying, me and Brian Phillips. I think those comments
19 was prejudicial.

20 Q. Okay. And you felt that the prosecutor basically
21 bolstered things that Joseph Stevens said without Joseph
22 Stevens actually testifying; is that correct? And your lawyer
23 should have objected to that?

24 A. Yes, sir.

25 Q. We have already talked about statements being

1 proffered that you have but that's something that your lawyer
2 should have objected to?

3 A. Yes.

4 Q. That's something that the prosecution did in closing
5 argument?

6 A. Yes, sir.

7 Q. You also raised the issue about I believe your
8 co-defendant's counsel raising biblical scriptures during the
9 closing argument.

10 A. Yes.

11 Q. You want to explain that?

12 A. Yes. He used two scriptures from Deuteronomy
13 about a, uhm, person who could only be convicted by two or
14 three witnesses and, uhm, we had two witnesses who testified
15 against us so basically he was conceding, uhm, you know, that
16 because we had two witnesses to testify we were guilty for
17 this crime.

18 Q. Now, one of the things that happened in this trial
19 was the prosecution actually got the last word in the case; is
20 that correct?

21 A. Yes.

22 Q. That was because your co-defendant's lawyer put up
23 Investigator Young --

24 A. Yes.

25 Q. -- and put in the evidence; is that correct?

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1 A. Yes.

2 Q. And that actually, you feel that actually harmed
3 you; is that correct?

4 A. Yes. Uhm, at the time my lawyer, uhm, didn't know
5 that we wasn't going to have the closing argument. We thought
6 we was going to have the closing argument but since, uhm,
7 Investigator Young testified we lost the closing argument and
8 that harmed the defense I believe.

9 Q. Had you guys already rested when that was
10 determined? Let me paint the picture for you. Had your
11 lawyer already said, Judge, we don't have anything else to
12 call in our case and then was there some discussion about the
13 order of closing after that?

14 A. Yes.

15 Q. Now, let me kind of back up a minute. You didn't
16 testify in this case.

17 A. No, sir.

18 Q. And do you think it would have been helpful for you
19 to testify in your case?

20 A. Yes, sir. Extremely.

21 Q. Okay. Now, we get into the issues kind of side
22 track issue from what you have written. You understand that
23 if you had testified, that your prior criminal record, if you
24 had any, would have been used to potentially impeach your
25 credibility, undermine your credibility in the face of the

1 jury?

2 A. Yes, sir.

3 MS. VALENZUELA: Your Honor, if this is going to one
4 of the allegations made, I have no objection. But if
5 this is adding a new allegation, then under Rule 15 I
6 would object to the amendment.

7 MR. BROOKS: Getting into the closing, the order of
8 closing, not knowing the order of closing, obviously,
9 Judge, we are asking just for latitude just to talk about
10 here is a case where the guy didn't testify.

11 THE COURT: He had a little bit of anomaly with a
12 co-defendant there, too.

13 MR. BROOKS: Right. So I guess what I'm saying is
14 obviously knowing -- Basically as I hear him say it, and
15 I'm not trying to put words in my guy's mouth, but I
16 think you can kind of follow along, if he had known that
17 he would have not gotten the last word, then he probably
18 would have gone ahead and said, hey, I want to testify
19 and say I didn't do this. And I'm just trying to paint
20 the picture for the Court and also get into --

21 THE COURT: All right. You can do that but that's a
22 -- Go ahead.

23 MR. BROOKS: Okay.

24 BY MR. BROOKS:

25 Q. What record did you have prior to this trial? What

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1 criminal record did you have?

2 A. In the State of South Carolina I had a grand
3 larceny, use of a vehicle without permission and joy riding.

4 Q. And you had something in any other jurisdiction?

5 A. Yes. In the State of Georgia I have distribution of
6 cocaine, possession of a firearm and destruction to state
7 property, government property or something.

8 Q. Okay. And what I'm hearing you say, K.C., is that
9 you didn't know that you guys didn't have the closing argument
10 until after all the evidence and your lawyer said we don't
11 have anything else to put in; is that correct?

12 A. Yes, sir.

13 Q. Okay. Now, kind of getting back on one of the
14 things that you raised is that the prosecutor used
15 inflammatory and irrelevant testimony in closing argument?

16 A. Yes, sir.

17 Q. Can you elaborate on that to the Court?

18 A. Yes, sir. Well, after my lawyer in his closing
19 argument, uhm, stated that I was on trial for assault and
20 battery attempt to kill, the prosecutor and on five different
21 occasions they commented on the fact that the victims was
22 scared and what was going through their mind is that I
23 wouldn't kill them or, I mean, they just kept saying that over
24 and over that thank goodness that Langford didn't kill them.
25 That's all that he, uhm, you know, they was going there to get

1 the money and rob them.

2 Q. And also you felt that the prosecutor kind of tried
3 to bolster his case by talking about credibility of numerous
4 witnesses. That's one of the allegations that you raised?

5 A. Yes, sir.

6 Q. And was that in regards to him saying we have more
7 people testifying and look at all the witnesses we have? Is
8 that what you are referring to?

9 A. Yes, sir.

10 Q. And one other allegation is you felt that your trial
11 counsel failed to object to premature deliberations by the
12 jury?

13 A. Yes, sir.

14 Q. Can you explain that?

15 A. After the, uhm, after the closing argument was over
16 with by the State, the Judge instructed the jury to go into
17 the room but he didn't, uhm, instruct them not to start
18 deliberating so there's a possibility that they could have
19 started premature deliberations before instructed.

20 MS. VALENZUELA: Objection. Speculation, Your
21 Honor.

22 THE COURT: We'll let him argue it but I understand.
23 I'm very familiar with Judge Keesley's trial practices.

24 MR. BROOKS: Okay.

25 BY MR. BROOKS:

1 Q. Now, after that you also raise ineffective assistant
2 of counsel against appellate counsel?

3 A. Yes, sir.

4 Q. And that's for failure to file a reply brief
5 regarding inadmissible testimony.

6 A. Yes.

7 Q. That's in regards to on appeal was the issue about
8 Stevens and Investigator Young; is that correct?

9 A. Yes. Well, uhm, on appeal it wasn't about
10 Investigator Young. It was about another witness who was
11 called at trial. Uhm, they had an in camera hearing
12 pertaining to this witness and, uhm, after the in camera
13 hearing was held, it was determined that his testimony was
14 inadmissible to go before the jury. And, uhm, however, on
15 direct appeal the State in their respondent's brief used this
16 guy's testimony Gustav Sovelle (phonetic) to, uhm, support
17 their theory that I pressured Alvin P. into not
18 testifying.

19 Q. Okay. Now, paint the picture for us.

20 A. Okay.

21 Q. I wasn't there. The Judge wasn't there. Madam
22 Attorney General wasn't there. Why is this significant? Why
23 is this Gus Sovelle significant? What's the significance of
24 this?

25 A. This is very important. I was in the county jail

1 for 23 months and Mr. Sovelle was in the county jail for I
2 would say roughly around the same amount of time. He was on,
3 uhm, criminal sexual conduct charges on a minor and at the
4 last minute he came forth to testify for the State, uhm, that
5 I had shared information with him about this crime and that I
6 was, uhm, getting Alvin P. , getting word to Alvin
7 P. in Saluda County not to testify. There was just a
8 whole bunch of hearsay where the lawyer, uhm, my lawyer,
9 Mr. Calhoun had just got Mr. Sovelle's discovery. He wasn't
10 able to kind of cross examine him, uhm, the way I think he
11 wanted to and, uhm, however, Mr. Sovelle, like I said, was a
12 whole bunch of hearsay so the Judge didn't allow his testimony
13 to go before the jury because there was just too much hearsay
14 I think.

15 Q. But your contention is that the State in their brief
16 touched on that and you felt that your appellate counsel
17 should have raised that in reply or responded to that?

18 A. Yes, sir. With me, uhm, filing the speedy trial
19 motion in the four prong test in State versus Langford I met
20 three of the prongs, however, the fourth prong, the prejudice
21 prong it was Gustav Sovelle's testimony that killed me off
22 where I didn't get the relief that I sought after because his
23 testimony was that, uhm, that I was sending word to Alvin
24 Phillips pressuring him and my lawyer didn't, uhm, refute it.
25 They just let the allegations go.

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1 Q. Even though that was not admissible to the jury the
2 appellate court heard that in terms of arguments presented by
3 the State and your contention is that your appellate counsel
4 should have replied to say those things that you're saying
5 now; is that correct?

6 A. Yes. It was clearly in the record, in the
7 transcript that, uhm, when the prosecutor asked Alvin P.
8 did K.C. Langford pressure you into not signing the statements
9 or testifying, he didn't agree to it.

10 THE COURT: How is that an issue if nothing came of
11 it? The snitch was gonna testify there was pressure
12 made. Judge Keesley suppressed the testimony. The
13 appellate counsel didn't object to the State talking
14 about it. How did it affect the outcome if he didn't
15 come forward and Phillips didn't fall for it?

16 MR. BROOKS: Well, it's not so much for the jury. I
17 guess he's talking about in terms of his speedy trial
18 relief because the Court in the infamous Langford case --

19 THE COURT: Well, I don't know how to address speedy
20 trial.

21 MR. BROOKS: I understand, Judge.

22 THE COURT: No disrespect to you. That speedy trial
23 thing is a confusing issue.

24 MR. BROOKS: And he's looking back at what the State
25 said which a lot of it was favorable for him. Or excuse

1 me. What the Supreme Court said is a lot of it is
2 favorable for him. And he's saying it's a four prong
3 test. They said he met three of them, but they said he
4 really wasn't prejudiced. And, of course, I think what
5 my client is saying is when the State starts talking
6 about Gus, they put that in their arguments and brief to
7 the Court is that this type of stuff, somebody who's in
8 the jail concocting or possibly concocting stories puts
9 him in a situation where he's facing prejudice because
10 all of a sudden now you have got this guy. Now, he does
11 understand that Judge Keesley determined that this was
12 inadmissible.

13 THE COURT: Yeah. Or whatever. It didn't come into
14 trial.

15 MR. BROOKS: Right. But it felt like that still
16 could have been used, or a reply brief should have been
17 submitted to argue that this type of thing does prejudice
18 him, this guy making this statement, even though it was
19 not heard by the jury.

20 THE COURT: I'm not sure how that works.

21 MR. BROOKS: I understand. But that's going to his
22 speedy trial and why he didn't get that granted because
23 obviously if he would have gotten all the relief, then he
24 wouldn't even be here today.

25 THE COURT: Okay. I guess I understand your

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1 argument but it doesn't seem to hold a whole lot of
2 water. He prevailed at trial on that issue. It didn't
3 go to the jury, therefore, it didn't have an impact on
4 the outcome so I don't understand how the State talking
5 about it in the appeal in front of the Supreme Court made
6 any difference. It's a non issue.

7 MR. BROOKS: He wants to kind of explain that,
8 Judge.

9 THE COURT: Okay.

10 BY THE WITNESS:

11 A. In a speedy trial, uhm, it's a four prong test you
12 have to meet. You have to, uhm, one, assert your right. The
13 length of delay. The reason of delay and the prejudice. I
14 met three of them, those prongs, the asserting of the right,
15 the reason of delay and the length of delay. However, the
16 prejudice prong Gustav Sovelle's testimony was that I
17 pressured Alvin P. into --

18 THE COURT: Is that why he failed it because it
19 didn't come forward in the trial?

20 BY THE WITNESS:

21 A. No. I failed it because the State's theory was that
22 I was pressuring Alvin P. the entire time and this is
23 what Gustav Sovelle's entire testimony is.

24 BY MR. BROOKS:

25 Q. Did the State -- Even though Gus Sovelle's testimony

1 was not admitted to the jury, did the State still argue to the
2 jury that you were pressuring Alvin P. ?

3 A. Yes.

4 Q. And that's in the transcript?

5 A. Yes. What I'm saying is in the transcript when the
6 State asked Alvin P. did I testify - I mean, did I
7 pressure him, he said no but Gustav Sovelle is saying yes.

8 Q. But Gus didn't testify in front of the jury?

9 A. But he didn't testify but the State uses it in their
10 reply - in their respondent's brief as concrete, yes, I'm
11 testifying.

12 THE COURT: It sounds to me like it's since you
13 didn't testify, it didn't prejudice him on that fourth
14 prong because the State didn't give in, therefore, it was
15 a long time. There was a delay. Yes, there was the
16 right. But did all that prejudice him? The testimony
17 doesn't come in failure to prejudice test. That's the
18 fourth prong. His testimony didn't come in, therefore,
19 no prejudice to him. His lawyer and Judge Keesley did a
20 good job on that issue apparently.

21 BY MR. BROOKS:

22 Q. Did the State argue that you pressured Alvin to the
23 jury?

24 A. Yes.

25 MR. BROOKS: Now, obviously, Judge, this would be in

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1 the record of the transcript so obviously Your Honor can
2 view that for himself but I think that's kind of --

3 THE COURT: Okay. I understand.

4 MR. BROOKS: -- where my client is going.

5 THE COURT: I need a break.

6 (Short break.)

7 MR. BROOKS: Two of my witnesses are out there and
8 we'll finish. I'll go hunt for them.

9 THE COURT: Okay. We'll get them in here.

10 BY MR. BROOKS:

11 Q. All right. K.C., we also filed an amendment to your
12 PCR about alibi witnesses.

13 A. Yes, sir.

14 Q. These alibi witnesses are Veronica Phillips and
15 Vanessa Phillips?

16 A. Yes, sir.

17 Q. Were you at their home on the day of the robbery?

18 A. Yes, sir.

19 Q. Did you ever tell your lawyer this?

20 A. Yes, sir.

21 Q. Did you ever tell him about Veronica and Vanessa
22 Phillips?

23 A. Yes, sir.

24 Q. Now, Veronica, what relation is she to you?

25 A. I have a son by her.

1 Q. Okay. At the time the little boy would have been
2 what, one, two years old?

3 A. About 20 months.

4 Q. Okay. And Vanessa is her mom?

5 A. Yes.

6 Q. And you told your lawyer -- What did you tell your
7 lawyer about that?

8 A. Well, I told my lawyer I was staying with Veronica
9 Phillips and I was home with her and he could have interviewed
10 her and, you know, she could have vouched that I was home and
11 didn't commit a robbery.

12 Q. To your knowledge, did he ever talk to her, to any
13 of them?

14 A. No, sir.

15 Q. Do you know, you already testified he didn't have an
16 investigator that you knew of?

17 A. Yes, sir.

18 Q. But to your knowledge did anybody on his behalf talk
19 to these ladies?

20 A. No, sir.

21 Q. Okay. And these ladies would have, it's your
22 position that these ladies would have said that you were at
23 their residence pretty much all day; is that right?

24 A. Yes, sir.

25 Q. And at the time that the robbery was said to have

1 been committed where were you?

2 A. I was home.

3 Q. Home being?

4 A. Well, I was - we stayed in an apartment complex and

5 --

6 Q. When you say "we", who is "we"?

7 A. Me and Veronica Phillips. We stayed in an apartment
8 complex and, uhm, it was late at night and like I said my son
9 was about 20 months old and, uhm, I was kind of like in and
10 out of the house from the porch to the living room. You can
11 kind of see from the living room the front porch. And our son
12 was outside with, uhm, two other girls and two other guys, you
13 know, close friends and I was monitoring him.

14 Q. Him being your son?

15 A. My son. Yes. And Veronica Phillips, she can vouch
16 for me being, you know, in the vicinity as far as me being in
17 the house and on the porch.

18 Q. Did you -- There was a time where I want to say you
19 and Veronica got in the car and took Vanessa to work; is that
20 correct?

21 A. Yes, sir.

22 Q. So is it your position that you were there with
23 Veronica and Vanessa throughout the entire day whether inside
24 the apartment or on the porch with your son; is that
25 correct?

1 A. Yes, sir.

2 Q. And the only time you actually left was when you got
3 together with Veronica to take her mother to work and that
4 would have been like 11:00?

5 A. Yes, sir.

6 Q. Did you tell Mr. Calhoun all that?

7 A. Yes, sir.

8 Q. Okay. And again to your knowledge you don't know
9 whether or not he actually talked to these ladies?

10 A. I don't know.

11 Q. Okay. Now, it's fair to say your position is that
12 if these ladies would have testified, that would have changed
13 the outcome of your case; is that correct?

14 A. Possibly. Yes, sir.

15 Q. Okay. These ladies put you -- Let me ask you this:
16 I don't know the lay of the land down there, okay?

17 A. Yes, sir.

18 Q. Paint the picture for me. Paint the picture for the
19 Judge. Let me finish. In relationship to where the apartment
20 was, where was the victim's house? How far away? Can you
21 give some type of idea considering I wasn't there? I don't
22 know the lay of the land. The Court was not there and doesn't
23 know the lay of the land. Try to give an idea.

24 A. No further than half a mile. A little over an
25 eighth of a mile. Probably half of a mile. Not even that far

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1 --

2 Q. Okay.

3 A. -- from the apartment.

4 Q. Okay. All right. Is there anything we haven't
5 covered? We have gone through all of that. Put the alibi
6 witness allegation on the stand. We have our witnesses here.
7 I assume the other one is coming back. Is there anything else
8 that we haven't covered? I think we have pretty much put
9 everything out there.

10 A. That's it.

11 MR. BROOKS: Okay. Answer any questions of the
12 Attorney General.

13 CROSS EXAMINATION

14 BY MS. VALENZUELA:

15 Q. Okay. Mr. Langford, let's go through these in the
16 same order you went through them with your attorney, okay?

17 A. All right.

18 Q. I see you're getting organized. I'm just going to
19 wait.

20 A. I think I'm pretty familiar. Just go ahead. I'm
21 good. I'm good.

22 Q. Okay. So your first allegation was that you wanted
23 your attorney to object to the jury panel because the Judge
24 announced that usually he would have 42 but he had a smaller
25 amount but they were going to go forward with it, correct?

1 A. Yes.

2 Q. Okay. And do you remember that the Judge said that
3 he wasn't sure what to do in a case where there were
4 co-defendants who didn't want to collaborate on their strikes
5 and each wanted to have their ten strikes each?

6 A. Yes.

7 Q. And do you remember that?

8 A. Yes.

9 Q. And do you remember that Judge Keesley decided to
10 allow you to have your full ten strikes and your co-defendant
11 to have his full ten strikes?

12 A. Yes.

13 Q. And do you remember that your attorney did actually
14 use all ten of his strikes before the final juror was
15 seated?

16 A. Okay. Yes.

17 Q. You do remember that?

18 A. Yes.

19 Q. Do you remember that you had a jury panel that
20 included men, women, both black and white?

21 A. Yes.

22 Q. Do you remember that the State actually made what is
23 referred to as a Batson motion against your attorney and your
24 co-defendant's attorney?

25 A. Yes.

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1 Q. And your attorney actually had to justify every
2 single strike and the reason why that strike was made?

3 A. Yes.

4 Q. And that entire analysis is laid out in the
5 transcript for the Court, correct?

6 A. Yes.

7 Q. All right. And you were happy with the jury that
8 you got?

9 A. I had no -- My lawyer picked the jury.

10 Q. But you had something to do with the jury because at
11 least at one point your attorney explained to the Court that
12 the reason he had stricken a potential juror was because you
13 had leaned over and told him that you didn't want to seat that
14 juror, correct?

15 A. I never -- He never asked me about seating jurors.

16 Q. Is that part of the transcript though?

17 A. I don't think it's in the transcript.

18 MS. VALENZUELA: Your Honor --

19 THE COURT: Tried in Edgefield? Are you from
20 Edgefield?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Mr. Calhoun is not from
23 Edgefield?

24 MR. BROOKS: No, sir.

25 THE COURT: That's what I thought.

1 MS. VALENZUELA: One moment and I'll be able to
2 tell. So, Your Honor, I believe it's on either page 75
3 or page 82. I can look that up but it's referencing
4 juror number 75. There's a discussion both by the
5 attorney saying the reason that he struck this potential
6 juror and also Judge Keesley goes through a full
7 analysis. He struggles with striking a juror just
8 because an applicant says to do that but then eventually
9 finds that it is not a Batson violation.

10 THE COURT: That's all right. That's during the
11 Batson hearing?

12 MS. VALENZUELA: Yes. Correct.

13 BY MS. VALENZUELA:

14 Q. Okay. So Let's move onto your second allegation.
15 Oh, actually one of the points that you made was that there
16 were not enough jurors. Y'all did not have an alternate on
17 your jury, correct?

18 A. Yes.

19 Q. Did you end up having any jurors excused throughout
20 the trial?

21 A. No, ma'am.

22 Q. So there was never any need for an alternate?

23 A. Yes, ma'am.

24 Q. Correct. Okay. You mentioned the Court certified
25 interpreter and you said that your attorney had not objected

1 to that. Is that still your position?

2 A. Not to my knowledge.

3 Q. Okay. So we have got the transcript. I'm showing
4 you the cover. Is that your transcript right there?

5 A. Yes, ma'am.

6 Q. And I'm turning to page 136 in the transcript and
7 here we're talking about the interpreter right here. Do you
8 see interpreter, court, interpreter, court?

9 A. Yes, ma'am.

10 Q. And then here it says does the defense -- the court
11 is speaking -- does the defense have anything related to
12 qualifications? Any objections to put on the record? And
13 then Mr. Calhoun, that's your attorney?

14 A. Yes.

15 Q. Does this say that Mr. Calhoun says just for the
16 record we'll have to state our objection to his certification
17 on behalf of you, Mr. Langford?

18 A. Yes, ma'am.

19 Q. Okay. And then your co-defendant also has some
20 things that he states with respect to that?

21 A. Yes, ma'am.

22 Q. So your attorney did object to the certification of
23 the interpreter?

24 A. Yes, ma'am.

25 Q. And, in fact, it goes on for some time where they

1 actually have a full discussion about how hard it is to find
2 an interpreter who speaks Mandarin Chinese is the State of
3 South Carolina, correct?

4 A. Yes, ma'am.

5 Q. And they actually had to go out of state to secure a
6 interpreter for this case?

7 A. Yes, ma'am. I have, uhm, an exhibit that I would,
8 uhm, like to show forth where --

9 Q. So in my case you aren't allowed to put in evidence
10 when I'm doing your cross, but your attorney will have an
11 opportunity to do what's called a redirect.

12 A. Okay.

13 Q. Okay. The next point is the proffer. You argue
14 that -- And there's a couple of different proffers in the
15 trial so I'm gonna try to be really clear. I think I
16 understand that you're arguing here about the proffer of your
17 co-defendant who did end up testifying against you and saying
18 that -- And that's Mr. Phillips, right?

19 A. Yes.

20 Q. So at the beginning of trial your attorney asked the
21 Court and before they even started, before the State had
22 started, we want to proffer the co-defendant that the State
23 claims is gonna testify against our clients, right?

24 A. Yes.

25 Q. And Judge Keesley says I don't understand why we

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1 would do that. No. And then they get started with the three
2 victims, correct?

3 A. Yes.

4 Q. And then after the three victims testify and after
5 they put your co-defendant up and he testifies against you,
6 before it goes over to your attorney getting to ask questions
7 Mr. Maye stands up and he goes I now want -- Or I'm sorry.
8 Before they put Mr. Phillips on the stand at all. I'm sorry.
9 I didn't mean to confuse us. Before Mr. Phillips even takes
10 the stand, Mr. Maye stands up, the prosecutor and he says
11 I want to proffer this witness before because I have questions
12 about this statement and how they're gonna use it against the
13 witness.

14 A. Yes.

15 Q. And do you remember that Judge Keesley said, no.
16 I'm not gonna let you proffer. I said no to a proffer
17 earlier. There's no reason to do that here.

18 A. Yes.

19 Q. Okay. Your argument is that there was something to
20 do with him being able, with Mr. Phillips being able to hear
21 testimony?

22 A. Yes, ma'am.

23 Q. Okay. Explain that to me again.

24 A. While the proffer was being done Alvin P. , he
25 was hearing the questioning that Mr. Calhoun had and the

1 prosecutor. It was two statements that, uhm, Alvin P.
2 wrote saying that I didn't have anything to do with the
3 crime.

4 Q. Do you remember though that there was no proffer?
5 Didn't we just establish that, that there was no proffer of
6 Mr. Phillips?

7 A. But they were doing it at the time though. They was
8 questioning him. They was kind of, Mr. Mayes was prepping him
9 at the time concerning this matter, this issue.

10 Q. So you're saying that the witness was present when
11 the attorneys were arguing back and forth with each other?

12 A. Yes.

13 THE COURT: Was Phillips the co-defendant in the
14 trial?

15 MS. VALENZUELA: No, sir.

16 THE COURT: He's the one that pled and was gonna be
17 sentenced later?

18 MS. VALENZUELA: Correct.

19 BY THE WITNESS:

20 A. It was done in his presence.

21 THE COURT: So what you're saying is that the
22 witnesses were sequestered and while they were discussing
23 the potential questions he was in the courtroom and kind
24 of was tipped off of what was coming down the train track
25 at him?

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1 THE WITNESS: Yes.

2 THE COURT: Okay. I understand what he's saying.

3 You keep going.

4 BY MS. VALENZUELA:

5 Q. And your attorney did make a motion to sequester, to
6 have the witnesses removed from the courtroom?

7 A. Yes.

8 Q. Okay. Now, the next one is Joseph Patrick Stevens
9 and Stevens is a person who did not testify at trial,
10 correct?

11 A. Yes, ma'am.

12 Q. This is the one where you had that written statement
13 that you wanted this Court to consider, right?

14 A. Yes.

15 Q. So this is who we're talking about. Do you remember
16 that your co-defendant who you were being tried with, his
17 attorney brought up to the Court that he had a problem because
18 he had subpoenaed Joseph Patrick Stevens to come to the trial
19 and he had been told that morning that Stevens was in
20 California?

21 A. Yes.

22 Q. Do you remember that your co-defendant's attorney
23 said, so what I'm stuck with is a witness who's out of state
24 and I still need to get this information in so I actually,
25 I want to call a witness who I don't have under subpoena. And

1 he says to the Court, I don't have Detective Roosevelt under
2 subpoena but I want Detective Roosevelt because he's at least
3 a way for me to get Joseph Patrick Stevens' statement before
4 the jury?

5 A. Yes. My lawyer should have objected.

6 Q. And your attorney -- And I think what we have
7 established is Mr. Stevens is not here today?

8 A. Yes.

9 Q. Right?

10 A. Yes.

11 Q. So we don't know what his testimony would have been
12 at trial?

13 A. At least it would have been kind of possibly
14 centered around the statement that he --

15 Q. But we don't know, right?

16 A. Yes.

17 Q. That would be us guessing as to what his testimony
18 would have been?

19 A. Yes.

20 Q. Okay. So you both think that your attorney should
21 have objected to Detective Roosevelt's testimony but then your
22 attorney should have somehow gotten Stevens to testify also?

23 A. Yes.

24 Q. Okay. So you did want what Stevens had to say to
25 come out in front of the jury?

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1 A. Not through Investigator Young. I wanted it to come
2 out through him. I wanted to confront him as my accuser.

3 MS. VALENZUELA: Your Honor, may I see a copy of the
4 proffered statement?

5 THE COURT: Here you go right here (proffering.)
6 BY MS. VALENZUELA:

7 Q. Just to be clear, you're arguing that what you think
8 you would have gotten out of Joseph Patrick Stevens was to be
9 able to point out that there was an inconsistency as to where
10 you got picked up by Veronica whether it was at the crime
11 scene or at your house? That that was the only
12 inconsistency?

13 A. I mean, there's obviously the statements between
14 Joseph Stevens and Alvin P. are inconsistent.

15 Q. As to that point about where y'all got picked up?

16 A. As to the crime, period, I would assume.

17 Q. Okay. You said that your attorney did not object
18 during Roosevelt's testimony. I'm just going to check real
19 quick before I -- But your attorney did object during that
20 testimony and he objected to leading the witness but he didn't
21 object to Mr. Roosevelt actually testifying?

22 A. Okay.

23 Q. Is that right?

24 A. He didn't object to him testifying.

25 Q. And that's what you really wanted him to do?

1 A. Yes.

2 Q. But that was a witness who was called by your
3 co-defendant's attorney to present his case to the trial - to
4 the jury?

5 A. Yes.

6 Q. It wasn't -- Detective Roosevelt was not called by
7 the State. Detective Roosevelt was called by the attorney
8 representing your co-defendant?

9 A. Yes.

10 Q. Okay. Let's turn to Alvin P. . Alvin P.
11 is your co-defendant who did testify at trial. He's the
12 person who is alleged to have committed the crime with you but
13 he was not on trial with you, correct?

14 A. Yes.

15 Q. So Alvin P. had pled guilty already to one of
16 the indictments that he had facing him, correct?

17 A. Yes, ma'am.

18 Q. That came out in trial in front of the jury that he
19 had all the same indictments as you all did but he only pled
20 to one of them?

21 A. I just remember him saying that he pled guilty
22 already but he hadn't been sentenced.

23 Q. Okay. So that came out in front of the jury that he
24 had pled guilty but that his sentencing wasn't going to happen
25 until after he testified at the trial?

1 A. Yes.

2 Q. And do you remember that your attorney and your
3 co-defendant who you were on trial with attorney repeatedly
4 asked Mr. Phillips to confirm that there was some sort of deal
5 with the Solicitor's office, correct?

6 A. He never agreed to a deal.

7 Q. He never agreed but he was asked about it --

8 A. Yes.

9 Q. -- on the stand in front of the jury?

10 A. Yes.

11 Q. And it was emphasized that even though -- And let's
12 just give the Court a little bit of the facts or the
13 allegations here. The allegations are that you three scoped
14 out this Chinese family's home. Saw that they would bring a
15 money bag home after they would leave their Chinese restaurant
16 and decided to go and rob them; that Mr. Phillips is the only
17 person who has a gun. He goes and retrieves the gun and the
18 three of y'all go. Mr. Phillips holds I'm just gonna say the
19 older Chinese gentleman up whenever he's outside in his
20 garden, right? These are the allegations at trial?

21 A. Yes.

22 Q. And Mr. Phillips says I'm the only one with a gun.
23 I hold him hostage and then he testifies that your other
24 co-defendant who was on trial punches the younger Chinese man
25 in the back of the head, correct?

1 A. Yes.

2 Q. He never makes allegations that you had a gun or did
3 any of the physical damage to anybody, correct?

4 A. Correct.

5 Q. Physical injuries, correct?

6 A. Yes, ma'am.

7 Q. And then the allegations continue where he says that
8 he and the other co-defendant stay outside with the two men
9 and you go into the house and that's where one of the females
10 is in the house, correct?

11 A. Yes.

12 Q. And that you take the money bag which was sitting on
13 a table right by the front door, correct?

14 A. Yes.

15 Q. And then the three of y'all run back to your
16 apartment which I think as you explained is a short distance
17 away, correct?

18 A. Yes.

19 Q. So Alvin P. is even crossed where it says so
20 you're the one with the gun and you're the leader, essentially
21 the leader of this crime and he agrees to that, correct?

22 A. Yes.

23 Q. And then your attorney, it's either your attorney or
24 the co-defendant's attorney makes the point that why would a
25 leader of the crime be convinced to sign a statement by

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1 somebody else, correct?

2 A. Yes.

3 Q. Okay. And so all of these points are made by the
4 attorney throughout the entire trial in front of the jury?

5 A. Yes.

6 Q. Okay. Now, let's move onto the kidnapping
7 indictment. The kidnapping indictment is a notice document
8 and I'll cover that with your attorney but the kidnapping
9 indictment alleged that there were more victims than just the
10 two men who had been held outside, correct?

11 A. Yes.

12 Q. It included at least the woman who was inside the
13 house, correct?

14 A. Yes, ma'am.

15 Q. And then at trial the three witnesses testified, the
16 older Chinese gentleman, the younger Chinese gentleman and the
17 Chinese woman.

18 THE COURT: Slow down. Slow down. You're really
19 rattling off these facts fast.

20 MS. VALENZUELA: Sorry. There's a lot to get
21 through on these allegations.

22 THE COURT: I'm just not following that fast.

23 MS. VALENZUELA: So there's --

24 THE COURT: Do we have to go through it all or can
25 we hit the high points? I know what you're trying to do.

1 MS. VALENZUELA: Yes. I think I'm hitting the high
2 points, Your Honor.

3 THE COURT: Okay. I'm not listening quite as fast
4 as you're talking today.

5 MS. VALENZUELA: I will slow my speech down.

6 BY MS. VALENZUELA:

7 Q. There's three co-defendants. I'm sorry. There's
8 three victims, correct?

9 A. Yes, ma'am.

10 Q. And they all testify at the trial?

11 A. Yes.

12 Q. And the two - the female victim testifies that she
13 was in the home when one of the three of y'all, the
14 allegations are that one of the three of y'all entered the
15 home, correct?

16 A. Yes, ma'am.

17 Q. She says she doesn't know who it was. She just
18 knows that it was a black man with his face covered,
19 correct?

20 A. Yes.

21 Q. She testifies, she is asked did you feel free to
22 leave when he was there and she responds that she was scared,
23 correct?

24 A. Yes.

25 Q. Okay. And then the co-defendant's attorney in this

1 case does make a motion --

2 THE COURT: Can you call them by name? Because I'm
3 following names better than I am co-defendant. That way
4 I can keep up with them. Phillips is the co-defendant
5 but in the trial there's a co-defendant so I'm kind of
6 getting mixed up.

7 MS. VALENZUELA: There's a different -- Right.
8 Okay.

9 THE COURT: Phillips is the guy who pled and there's
10 another guy.

11 MR. BROOKS: There's two Phillips.

12 MS. VALENZUELA: Yes. There's an Alvin P. who
13 is the one who testified and then there's a Brian
14 Phillips who is on trial along with K.C. Langford.

15 THE COURT: And then Veronica and Vanessa Phillips?

16 MR. BROOKS: Yes.

17 MS. VALENZUELA: Who did not testify at trial but
18 are here today.

19 THE COURT: Okay.

20 BY MS. VALENZUELA:

21 Q. So the kidnapping indictment. Brian Phillips'
22 attorney at the trial makes a motion to quash the kidnapping
23 indictment, correct?

24 A. Yes.

25 Q. And part of the argument is that the kidnapping

1 indictment involves more victims than just the two males who
2 were held at gunpoint in the garden, correct?

3 A. Yes.

4 Q. And the Judge in his analysis in addressing this
5 motion says I remember testimony from the female victim inside
6 the house who said that she was scared or some indication that
7 that's why she didn't leave the house, right?

8 A. Yes.

9 Q. Yes. But then the Judge says but, you know, if what
10 you would like is to limit the indictment, then maybe we can
11 do that. And then the State says fine. We'll line out the
12 other victims and just leave the two male victims, correct?

13 A. Yes.

14 Q. Okay. But as part of the State's case you had the
15 female victim's testimony before the jury that she had felt
16 scared whenever that person was in the house, correct?

17 A. Mm-hmm.

18 Q. And then Alvin P. who is not the person who is
19 on trial testified that you were the person who went into the
20 house, correct?

21 A. Yes.

22 Q. He said that of all the three of y'all, you were the
23 only one who entered the house, correct?

24 A. Yes.

25 Q. So actually there could have been evidence against

1 you that the indictment reached more than those two victims,
2 correct?

3 A. Yes.

4 Q. But instead what went back to the jury was only the
5 two male victims, right?

6 A. Yes.

7 Q. Okay. Your reference to the ABWIK --

8 A. Yes.

9 Q. -- reference to assault and battery with intent to
10 kill is that while your attorney is doing the closing argument
11 he makes a passing reference to you being charged with assault
12 and battery with intent to kill?

13 A. Yes, ma'am.

14 Q. Okay. But there was, as we covered a moment ago
15 when Alvin P. testified, Alvin P. made clear to
16 the jury that you had not assaulted, personally assaulted
17 anybody, correct?

18 A. Yes.

19 Q. Okay. And it wasn't charged by the Judge to the
20 jury that there was anything to do with assault and battery
21 with intent to kill associated with you?

22 A. Yes. My trial lawyer only made reference of it.

23 Q. Okay. And in one sentence in his whole closing,
24 correct?

25 A. Yes, ma'am.

1 Q. Okay. You indicated that you had a problem with the
2 co-defendant saying that there's really two witnesses who have
3 not testified today and that's logic and common sense?

4 A. Say that again, ma'am.

5 Q. You said that the co-defendant in his closing, the
6 co-defendant's attorney, Brian Phillips' attorney said in his
7 closing argument that the two witnesses who the jury didn't
8 hear testify were common sense and logic?

9 A. Yes.

10 Q. And that you had a problem with that because you
11 think it indicated, made reference to you not testifying?

12 A. Yes, ma'am.

13 Q. Okay. Is logic and common sense something that you
14 would hope the jury would use to find you not guilty?

15 A. I would hope so.

16 Q. Okay. As part of your attorney's case in
17 challenging Alvin P. and just because it was a little
18 confusing earlier and I was speaking fast for the Court, Alvin
19 Phillips is the person who was not charged - who was not in
20 court with you, correct? He was not your co-defendant?

21 A. Brian Phillips was not on trial.

22 Q. And then Alvin P. is the one who testified
23 against you, correct?

24 A. Yes, ma'am.

25 Q. And Alvin P., one of the things that your

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1 attorney fought hard for was to be able to use Alvin P.
2 out of court written statement where he said that you guys
3 did not commit the crimes, right?

4 A. Yes.

5 Q. Your attorney also fought hard to be able to say
6 that there had been a previous trial that had been called
7 where Alvin P. had been brought to court and refused to
8 testify against you, correct?

9 A. No, ma'am.

10 Q. That's not correct?

11 A. I can't - I can't recall that in the transcript.
12 It's possible, but I can't recall them arguing it.

13 Q. We'll do this the fast way. Do you remember Alvin
14 Phillips being questioned about the fact that there had been a
15 prior trial?

16 A. No, ma'am.

17 Q. For the Court, we're in the same transcript, right?

18 A. Yes, ma'am.

19 Q. And we're looking at page 259. At the top it tells
20 us it's Alvin P. ?

21 A. Yes, ma'am.

22 Q. And it's cross examination by your attorney?

23 A. Yes, ma'am.

24 Q. And then is there an objection taken up? Okay.
25 Does your attorney ask, do you remember being brought over

1 here for a trial in May of this year for this trial?

2 A. Okay.

3 Q. And then the State objects and then does the Court
4 say objection overruled?

5 A. Yes, ma'am.

6 Q. Okay. And then does your attorney go on to say, Mr.
7 Phillips, as I was previously asking you, do you remember that
8 this case was called for trial back in May?

9 A. Yes, ma'am.

10 Q. Do you remember being brought up here? Yes, sir.
11 You came with your lawyer? Yes, sir. And he goes, okay, and
12 Mr. Maye the prosecutor was expecting you to testify against
13 my client, correct? And I'm summarizing.

14 A. I got you. Yes, ma'am.

15 Q. And you decided you were not going to testify
16 against my client that day, correct?

17 A. Yes.

18 Q. And he answered yes, sir?

19 A. Yes, ma'am.

20 Q. Okay. And he confirms you refused to testify?

21 A. Yes, ma'am.

22 Q. Okay. So your attorney did, in fact, reference the
23 statement and then that Alvin P. had refused to testify
24 against you in the past?

25 A. Yes, ma'am.

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1 Q. Okay. And so it was part of the State's case that
2 they had to address to say why Alvin P. suddenly wanted
3 to, why he changed his mind not to testify and to testify,
4 correct?

5 A. Yes, ma'am.

6 Q. That was something that they needed to persuade the
7 jury on in their direction, correct?

8 A. Okay.

9 Q. Okay. Okay. You made a reference to the Bible
10 scriptures. I'm gonna pass on that. There's an allegation
11 that Mr. Stevens' testimony was bolstered but we have
12 established that Mr. Stevens never testified, correct?

13 A. Yes. There was --

14 Q. And his statement or even summaries of his statement
15 only came in through the defense's case through Detective
16 Roosevelt, correct?

17 A. Yes.

18 Q. Okay. Now, you indicated that your attorney should
19 have objected to the co-defendant entering evidence and
20 preventing you guys from having last closing?

21 A. Yes.

22 Q. What you might have done is you might have decided
23 to testify?

24 A. Yes.

25 Q. Do you remember that Judge Keesley spent a

1 significant amount of time talking to you about your decision
2 on whether to testify?

3 A. Yes.

4 Q. Do you remember that he went through every single
5 criminal charge with you and explained what he thought his
6 ruling would be on that?

7 A. Yes.

8 Q. Do you remember him saying that this needed to be
9 your decision and that if anyone was coercing you on this to
10 let him know?

11 A. Yes. At the time my lawyer, uh, informed me that
12 the closing argument would be more important and, uhm, to get
13 than me testifying thinking that my charges was more
14 prejudicial, uh, to me than getting the closing argument so I
15 didn't testify.

16 Q. But Judge Keesley did tell you that if anybody
17 pressured you, you needed to let him know, that you could talk
18 to him about your decision to testify?

19 A. Yes. Yes.

20 Q. Okay. And you indicated to Judge Keesley for sure
21 that it was your decision voluntarily not to testify?

22 A. Yes.

23 Q. Okay. So let's talk about Mr. Sovelle and the
24 allegation related to him and your appellate counsel, okay?

25 A. Yes.

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1 Q. Okay. So as an initial matter earlier I went over
2 how Alvin P. had, your attorney was able to get his
3 written statement in, correct?

4 A. Yes.

5 Q. How did that written statement come into your or
6 Brian Phillips' possession?

7 A. We was in the county jail together. He presented
8 them to me.

9 Q. When you say "he", which he are you talking about?

10 A. Alvin P.

11 Q. So Alvin P. brought you these written
12 statements saying that he had not - that nothing had
13 happened?

14 A. Yes.

15 Q. Okay. So you had contact with Alvin P. while
16 y'all were in jail waiting for your trial?

17 A. Yes.

18 Q. And you were conversing with Alvin P. leading
19 up to the trial?

20 A. Yes. We were segregated but, I mean, we were able
21 to see each other as far as passing by each other.

22 Q. Okay. Were you segregated from Alvin P. the
23 entire time that you were held before trial or did that change
24 at some point?

25 A. Like the housing in the jail we were segregated but.

1 I think like after two months we was there together. They
2 moved him to another county jail.

3 Q. So that y'all couldn't even pass each other anymore,
4 correct?

5 A. Yes.

6 Q. And were you still in a relationship with Alvin
7 Phillips' sister at the time that you were waiting to go to
8 trial?

9 A. No.

10 Q. Okay. But you and Alvin P. ' sister have a
11 baby together?

12 A. Yes.

13 Q. And Alvin's sister is one of the women who is here
14 today?

15 A. Yes.

16 Q. Okay. Do you remember that it came out in trial
17 that Mr. - that Alvin P. was segregated from you and
18 Brian Phillips in the county jail prior to the trial?

19 A. Yes.

20 Q. Yes. That evidence did come out. And do you
21 remember -- And then as we discussed, there was evidence
22 separate from the proffer of Sovelle that Alvin P. had
23 come to trial and changed his mind about testifying against
24 you?

25 A. Yes.

1 Q. But then in the present trial where it actually went
2 forward he did go back and decide to testify against you?

3 A. Yes.

4 Q. And that all came out in the trial separate from
5 Sovelle's proffer?

6 A. Yes.

7 Q. Okay. And so you would agree that there was
8 testimony other than the proffer of Sovelle that the Court
9 could look at to say that there's an indication that Alvin
10 Phillips was pressured to change his statement one way or the
11 other?

12 A. Say that again.

13 Q. Sure. You would agree that there is testimony in
14 the record to suggest that Alvin P. could be pressured
15 one way or the other as to his statement because there was
16 evidence that he had to be segregated; that he had been
17 brought to trial to say something different and changed his
18 mind separate from Sovelle's proffer?

19 A. There was no evidence presented at trial to support
20 that.

21 Q. But you do agree that the two pieces I talked about
22 were presented at trial? That he was segregated?

23 A. Yes.

24 Q. And that he had changed his testimony completely at
25 one point or the other?

1 A. Yes.

2 Q. Okay. Now, earlier you were talking about that the
3 day of the crime you were at home. I think you sat home the
4 entire day?

5 A. Yes.

6 Q. And home you were referencing Veronica's
7 apartment?

8 A. Yes.

9 Q. And Veronica is Alvin P. ' sister?

10 A. Yes.

11 Q. And you and Veronica have the 20 month old son that
12 you were referencing earlier?

13 A. Yes.

14 Q. And you were telling us that you were watching your
15 20 month old son outside playing?

16 A. Yes.

17 Q. And this would have been -- What time was the crime
18 alleged to have been committed?

19 A. About 10:30, 10:45 p.m.

20 Q. P.m.?

21 A. Yes.

22 Q. Okay. So at 10:45 p.m. you're home all day and
23 you're watching your son play outside at around this time
24 frame?

25 A. Yes, ma'am.

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1 Q. Your 20 month old?

2 A. Yes.

3 Q. Okay. And I think you established that the
4 apartment complex in which you call home of Veronica's
5 apartment was a short distance away from the victims' home?

6 A. Yes.

7 Q. Okay. Do you remember that in the State's opening
8 statement they informed the jury that you had been found in a
9 car with Veronica a short time approximately around 11:00 the
10 night of the crime?

11 A. Yes.

12 Q. Okay. And that came out in trial. The jury knew
13 that you had been in the car with Veronica and several other
14 people at approximately 11:00 at night, correct?

15 A. Yes.

16 Q. And that actually came out from a law enforcement
17 official who had pulled you over near the scene of the crime
18 at around 11:00 p.m. at night?

19 A. Yes.

20 Q. So the jury had all of that, that time frame and who
21 you were with?

22 A. Yes.

23 MS. VALENZUELA: Nothing further, Your Honor.

24 THE COURT: Redirect.

25 MR. BROOKS: Briefly.

1 REDIRECT EXAMINATION

2 BY MR. BROOKS:

3 Q. K.C., I forgot to ask you this and this is just a
4 housekeeping matter first. When I initially got your case, I
5 actually unknowingly at the same time had Brian Phillips' case
6 all at the same time?

7 A. Yes.

8 Q. The investigator that I use Glen Harrell had come
9 and saw you and saw him and then immediately alerted me that
10 you guys were actually co-defendants?

11 A. Yes.

12 Q. And at that time with your consent I got rid of
13 Brian Phillips and he got another lawyer and we discussed that
14 and you were okay with that; is that correct?

15 A. Yes, sir.

16 Q. Okay. I just wanted to clear that up. Now, when
17 she was asking you some questions, you said something about
18 you wanted to submit something and she said you can't do it on
19 cross examination. You may have to wait until your lawyer
20 comes back up on redirect. I'm just asking you.

21 A. Yes. It was - it was pertaining to the, uhm,
22 interpreter issue. Uhm, the trial that was, uh, set to go
23 forth in May, the Judge, uhm, made a order denying the speedy
24 trial and, uhm, the bond because those were the two issues
25 that was raised in the May trial. However, in the Judge's

1 order, uhm, the Judge states that the State went to great
2 expense to have a certified interpreter present before the
3 trial and, however, uhm, when we went to trial in September,
4 there wasn't a certified interpreter.

5 Q. Okay. All right. And that's what, because you said
6 something --

7 A. Yes.

8 Q. You said something to the effect I want to submit
9 something?

10 A. Yes. I mean, I have - I have paperwork, uhm, to
11 submit showing that, uhm, the Judge in his order said that it
12 was a certified interpreter whereas in my trial there wasn't a
13 certified interpreter.

14 Q. Okay. And that's what you wanted to submit was the
15 Judge's order?

16 A. Yes.

17 Q. Which is a part of the record in this case; is that
18 correct?

19 MS. VALENZUELA: I mean, with candor to the Court,
20 that is not something that is included in the Judge's
21 packet but my position would be that that's part of the
22 record of the underlying criminal case which is part of
23 this PCR.

24 THE COURT: Okay. That was a pretrial matter from a
25 prior term of court.

1 MR. BROOKS: Right. Right. I just wanted to make
2 sure that it was clear. I just wanted to make sure to
3 protect my client.

4 BY MR. BROOKS:

5 Q. And in regards to her questions about Ms. Phillips,
6 Veronica Phillips, is it your assertion that you were with
7 Veronica Phillips the entire day up until going to take
8 Vanessa, her mother to work? Is that you're understanding?

9 A. Say that again.

10 Q. Is it your assertion that you were with Veronica and
11 your child --

12 A. Yes.

13 Q. -- the entire day?

14 A. Yes.

15 Q. Before --

16 A. Yes.

17 Q. -- and after this crime would have been committed;
18 is that correct?

19 A. Yes. Before, during and after the crime was
20 committed. Yes.

21 Q. Okay. And along with your 20 month old son and her
22 mother Vanessa; is that correct?

23 A. Yes, sir.

24 Q. Okay. And that was never relayed to the jury; is
25 that correct?

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1 A. Yes.

2 Q. Because these ladies were never called to testify?

3 A. Yes.

4 MR. BROOKS: Okay. No other questions.

5 THE COURT: Okay. You can step down.

6 MS. VALENZUELA: Your Honor, before he calls his
7 next witness, can I make a very brief phone call? I
8 think I may be able to release one of my witnesses.

9 THE COURT: Sure. We'll take a short break.

10 (Short break.)

11 THE COURT: All right. Ready?

12 MR. BROOKS: Yes. We would call Veronica Phillips
13 to the stand.

14 Thereupon,

15 VERONICA PHILLIPS

16 after having been first duly sworn, testified as follows,

17 THE CLERK: Take your seat and state your name for
18 the record.

19 THE WITNESS: Good morning. My name is Veronica
20 Phillips.

21 DIRECT EXAMINATION

22 BY MR. BROOKS:

23 Q. Ms. Phillips, you may have heard me talk to Mr.
24 Langford about testifying and making sure you speak up clearly
25 and distinctly for Mr. court reporter here to take all that

1 information down. Do you understand that?

2 A. Yes, sir.

3 Q. Okay. And I'll get this out of the way. How do you
4 know Mr. Langford?

5 A. He's the father of my second son.

6 Q. Make sure you speak up a little bit.

7 A. He's the father of my second child.

8 Q. Okay. And how old is that child?

9 A. He's now 10.

10 Q. Okay. All right. And get to the heart of the
11 matter. Do you remember when this robbery took place or when
12 all of that went on?

13 A. Vaguely. Yeah.

14 Q. Okay. You say vaguely. Was Mr. Langford living
15 with you at that time?

16 A. Yes. He was.

17 Q. So this would have been back in August of 2008.

18 A. It was.

19 Q. And bear with me. I can't remember the exact
20 specific date but I think I have the indictment. August 14th,
21 2008.

22 A. I know school had just started back. Yes.

23 Q. Okay. Y'all live down in the Edgefield area?

24 A. Yes. Johnston.

25 Q. Johnston. Okay. Now, on that day was K.C.

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1 working?

2 A. No.

3 Q. He was unemployed at the time?

4 A. Yes. He would help his uncle occasionally like do
5 yards, landscaping.

6 Q. Now, on that particular day was K.C. home
7 with you?

8 A. All day.

9 Q. Were you working at the time?

10 A. No. I wasn't.

11 Q. Who all stayed at that place? Was this a house or
12 an apartment?

13 A. It was an apartment and me, K.C., and my oldest son
14 I have who is 15 years old and our child.

15 Q. Okay. And who is Vanessa Phillips?

16 A. She's my mother.

17 Q. Was she living there?

18 A. No. But she comes everyday.

19 Q. Tell me, when you say she comes everyday --

20 A. Because she doesn't drive so I'm her transportation
21 and it still happens today. I take her everywhere so we are
22 together everyday so she worked third shift at night and she
23 just would be at my house everyday with me.

24 Q. Was she at the house that day?

25 A. Yes.

1 Q. Okay. Was she at the house all day that day?

2 A. Yes.

3 Q. Okay. And now your 10 year old son, he was about 20
4 months at the time --

5 A. Mm-hmm.

6 Q. -- is that accurate?

7 A. Yeah. He would have been 20 months.

8 Q. Now, did anybody ever talk to you about K.C.
9 Langford's whereabouts on that particular day?

10 A. Well, I was asleep on my couch and I had got a knock
11 on my door and my mom woke me up and she was like there's an
12 officer at your door.

13 Q. Stop right there. When you say you got a knock at
14 the door, this is not August 14th, 2008. This is some time
15 after that; is that correct?

16 A. No. This -- I'm thinking --

17 Q. No. No. August 14th is when the incident occurred.

18 A. Oh, that's when the robbery took place on August the
19 14th?

20 Q. Right.

21 A. No. This was after that.

22 Q. Okay. Then when you're talking about the knock at
23 the door --

24 A. It was -- Yeah. It was months later.

25 Q. Okay.

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1 A. Months later.

2 Q. I just want to make sure. I'm painting a picture
3 now. Because remember now, I wasn't there. The Judge wasn't
4 there. So I'm trying to make sure when I ask you a question
5 about has anybody ever talked to you about K.C. Langford and
6 his whereabouts on August 14th, 2008 --

7 A. The night of the incident?

8 Q. Yes.

9 A. No.

10 Q. Okay. Now, you said something about the knock at
11 the door and I think, I believe you said or getting ready to
12 say that the police came to see you. This is some time after
13 that?

14 A. Yeah. This was months later. Like maybe around
15 about -- I don't know approximately how many months later
16 because I wasn't keeping up with the time or nothing like that
17 so I wasn't thinking that they would actually come to my house
18 for what they came to my house for so...

19 Q. Okay. But the police did come some months later and
20 talked to you about K.C.'s whereabouts?

21 A. Mm-hmm. But I don't want to confuse the Court.
22 That night I did get stopped by some officers that night of
23 the incident.

24 Q. Okay. And do you remember about what time this
25 was?

1 A. Uhm, it was - it wasn't 11 but it was roughly close
2 to it because I have to have my mom to work at Milliken at
3 11:00 and where I stay from Milliken is probably about five
4 minutes away driving a vehicle.

5 Q. Okay.

6 A. So she - I was going to take her to work but she
7 left her ID badge at home which is at Long Cane so I was
8 taking her to her house to get her ID badge because she cannot
9 get inside the gates at Milliken without that badge, swiping
10 that badge to let the gate open to let you in at so... I know
11 it wasn't 11:00 yet but I knew she was gonna be late for work
12 because I stated that to her. Like, mom, you're gonna be late
13 for work and you've got me going backwards and --

14 Q. Okay. Slow down. Slow it down. Go ahead and
15 repeat that. Just do it a little slower.

16 A. Yeah. I know it wasn't 11:00 yet but I know it was
17 fairly close to it.

18 Q. Okay. All right. Now, you said you had talked to
19 the police some months later. Do you remember who you talked
20 to with the police and what did you actually say to them?

21 A. Uhm, Officer Young and at the moment it was Officer
22 Robinson but he's now the chief of police in Johnston. Those
23 two officers and two more officers. I don't really know like
24 if they were actually officers or not because they never
25 stated who they were or anything. I'm just assuming. But

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1 they knocked on my door and Officer Young, I came to the door
2 and he told me --

3 MS. VALENZUELA: Objection to hearsay.

4 THE COURT: Sustained.

5 MR. BROOKS: Judge -- Okay. Okay.

6 BY MR. BROOKS:

7 Q. Without saying what somebody else said is that --
8 Let me ask you this: Was that when -- Did you tell them where
9 K.C. was on August 14th, 2008?

10 A. I didn't have to tell them that. No one asked me
11 that question.

12 Q. So nobody ever asked you even when you were -- You
13 were interviewed by police?

14 A. Yeah.

15 Q. Are you saying that even then they never asked you
16 where K.C. was and his whereabouts on the night of August
17 14th, 2008?

18 A. They told me.

19 Q. They told you?

20 A. Mm-hmm.

21 Q. Okay. Did you tell them where K.C. was on August
22 14th, 2008?

23 A. Yes, sir.

24 Q. What did you tell them?

25 A. I told them that he was home with me. We was asleep

1 on the couch until it was time for me to take my mom to
2 work.

3 Q. Okay. Now, you said, you just said you were asleep
4 on the couch?

5 A. (Witness nodding head.)

6 Q. Now, asleep on the couch. Is it possible that if
7 you were asleep on the couch K.C. might have gotten up and
8 left the apartment without you knowing?

9 A. No, sir.

10 Q. Okay. Now, I wasn't in the apartment. Are you
11 pretty sure of that?

12 A. Positive.

13 Q. Okay. And obviously y'all were together at that
14 point; is that correct?

15 A. Yes, sir.

16 Q. Is that why you feel so sure, so positive?

17 A. Yes. I am positive.

18 Q. Okay. All right. Now, so are you saying that the
19 only time K.C. left was when you went and took your mother to
20 work?

21 A. No. He rode with me to work. My mom woke me up to
22 take her to work. I can't see good at the moment. I did not
23 have glasses and he knows that I did not like to drive at
24 night so I would get him to drive for me or ride with me
25 because we stay in the country and there's deers so he said he

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1 wasn't going with me. So I was like why you don't want to
2 ride with me? He was like I'm gonna stay here with the kids
3 and that's what he did. He went out the door. I said if you
4 go out the door, I'm going to -- We had a conversation amongst
5 ourselves and he went outside for a brief moment. I told mama
6 to go ahead and get ready. I was ready to go because I was
7 kind of angry at the moment, upset.

8 Q. Now, when you say he went outside for a brief
9 moment?

10 A. Mm-hmm.

11 Q. Was your 20 month old son around at the time?

12 A. Yeah. And my older son.

13 Q. Now, I believe we've got some testimony about your
14 residence would have been maybe a half mile away from where
15 the victims lived; is that correct?

16 A. Yes. Mm-hmm.

17 Q. After K.C. went outside and came back, was he
18 sweating?

19 A. He went outside and in a pair of flip flops,
20 basketball shorts and tank top. He came - he came back to my
21 car the exact same way that he left.

22 Q. Did he have your son?

23 A. Yeah.

24 Q. All right. You said that law enforcement told you
25 but you told them where he was?

1 A. Yeah. I actually got pulled over that night.

2 Q. Okay. Now, did you ever talk to anybody
3 representing K.C., his lawyer or anybody on his lawyer's
4 behalf about this?

5 A. No. Because I was kind of like more focused on my
6 brother at the moment.

7 Q. Okay. You're focused on your brother?

8 A. Mm-hmm.

9 Q. You're brother being Alvin?

10 A. Mm-hmm.

11 Q. Now, when you say "mm-hmm", remember we have a court
12 reporter here.

13 A. Yes, sir.

14 Q. All right. Now, did you know where Alvin was that
15 day?

16 A. Alvin, he had been outside all day.

17 Q. He had been outside all day?

18 A. Mm-hmm.

19 Q. So you didn't know where he was?

20 A. No. I didn't.

21 Q. All right. Did you tell the police that?

22 A. No. And they never asked.

23 Q. Okay. Now, other than the police on that day that
24 you talked about they came to your house and interviewed you,
25 had you talked to anybody else about where K.C. was in

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1 relationship to this case?

2 A. No, sir.

3 Q. Now, the only other - is it fair to say the only
4 other person you talked about it was a big heavy set burly
5 white fellow named Glen Harrell that came to your house about
6 two years ago?

7 A. Yes.

8 Q. That was a person that I sent down there; is that
9 correct?

10 A. Yes, sir.

11 Q. He came and saw you again a couple weeks ago with a
12 subpoena?

13 A. Yes, sir.

14 Q. Is that when you pretty much repeated everything you
15 just told --

16 MS. VALENZUELA: Objection, Your Honor. He's trying
17 to bolster the witness' testimony by using his
18 investigator which I think is improper.

19 THE COURT: No. I think he delivered a subpoena.
20 I'm with you.

21 MR. BROOKS: I just wanted to make sure. Her point
22 is that she's never talked to anybody else except for the
23 one time she talked to police that she mentioned and then
24 my investigator and that's pretty much it, Judge.

25 THE COURT: I got the point.

1 MR. BROOKS: Okay.

2 BY MR. BROOKS:

3 Q. And, you know, I know you got a child with K.C. The
4 child is now 10. Are you telling the truth?

5 A. Yes, sir.

6 Q. Did you tell the police the truth several years ago?
7 I can't remember how many years ago when you talked.

8 A. Yes.

9 Q. You told them the truth?

10 A. Yes, sir.

11 Q. And you're telling the truth here today?

12 A. Yes, sir.

13 MR. BROOKS: All right. Answer any questions for
14 Madam Attorney General.

15 CROSS EXAMINATION

16 BY MS. VALENZUELA:

17 Q. Ms. Phillips, how do you support you and your 10
18 year old son?

19 A. I work.

20 Q. Are you the sole income earner?

21 A. Yes, ma'am.

22 Q. You're not able to get any income from Mr. Langford
23 while he's in prison, correct?

24 A. No, ma'am.

25 Q. Do you still talk to Mr. Langford?

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1 A. Vaguely.

2 Q. What does that mean?

3 A. We haven't had a conversation in almost eight years
4 to be honest with you.

5 Q. So vaguely means that you haven't talked to him in
6 eight years?

7 A. Mmm-mmm. (Witness shaking head.) Like through his
8 mom he's made a phone call to talk to his son and things like
9 that. But we weren't really on speaking terms.

10 Q. Okay. So you communicate with him through his
11 mom?

12 A. Mm-hmm.

13 Q. And do y'all exchange letters?

14 A. He writes me but I don't write him anymore.

15 Q. When was the last time Mr. Langford sent you
16 a letter?

17 A. He hasn't sent me a letter but he actually wrote his
18 son.

19 Q. So now it's that he does not write you but he just
20 writes his son?

21 A. No. He writes his son.

22 Q. Okay. When is the last time you spoke to his mom
23 about Mr. Langford?

24 A. Maybe about two weeks ago.

25 Q. Did y'all talk about this case?

1 A. No. We talked about him as a person.

2 Q. So you spoke to him two weeks before you were
3 supposed to come in here for court --

4 A. I spoke with her.

5 Q. -- but y'all didn't talk about it?

6 A. I spoke with her.

7 THE COURT: Spoke with her mother, right?

8 MS. VALENZUELA: Yeah.

9 BY THE WITNESS:

10 A. I spoke with her.

11 THE COURT: She's talking about talking with her
12 mother.

13 BY THE WITNESS:

14 A. I spoke with her.

15 MS. VALENZUELA: Yeah. I know she's talking about
16 the mother. I used the wrong pronoun.

17 BY THE WITNESS:

18 A. Yes. You did.

19 BY MS. VALENZUELA:

20 Q. So you were talking to the mother about him
21 though?

22 A. Him as a person.

23 Q. Okay. Two weeks ago but you did not discuss this
24 case?

25 A. No. Because I had no idea that I was going to have

VERONICA PHILLIPS - CROSS BY MS. VALENZUELA

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1 to really be here or this case was coming forth until --

2 Q. But you just testified that you talked to the
3 investigator?

4 A. -- until the investigator came to my home. That was
5 after I spoke with his mom.

6 Q. So you have only spoken to the investigator in the
7 last two weeks?

8 A. Mm-hmm.

9 THE COURT: And two years ago.

10 MR. BROOKS: And two years ago.

11 BY THE WITNESS:

12 A. And two years ago.

13 BY MS. VALENZUELA:

14 Q. Oh. Okay. Clarifying. So two years ago you did
15 know that you might have to come in here and talk about this
16 case?

17 A. No. I did not. They never made that statement.

18 Q. Okay. Who was asleep at the home? I got lost a
19 little bit when we were talking through that story. Were you
20 asleep or was the applicant asleep on the couch?

21 A. Both of us.

22 Q. Both of you were asleep?

23 A. Yes, ma'am.

24 Q. Okay. And you were asleep until you were awoken by
25 your mom to get in the car and drive her to work?

1 A. Mm-hmm.

2 Q. And that would have been shortly before 11 p.m. at
3 night?

4 A. Mm-hmm.

5 MR BROOKS: Is that a yes?

6 BY THE WITNESS:

7 A. Yes, ma'am.

8 BY MS. VALENZUELA:

9 Q. How long did Mr. Langford sit in jail waiting to go
10 to trial?

11 A. I have no idea.

12 Q. Was it about three years?

13 A. He was already incarcerated.

14 Q. Was it about three years?

15 A. I have no idea. I didn't keep up with the time.

16 That was not --

17 Q. When the father of your child went to prison, your
18 child was about two years old?

19 A. Mm-hmm.

20 Q. Were you present at his trial, Mr. Langford's
21 trial?

22 A. No. I was not.

23 Q. You did not go to the trial?

24 A. No. I did not.

25 Q. Did you talk to Mr. Langford in the time before his

VERONICA PHILLIPS - CROSS BY MS. VALENZUELA

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1 case went to trial?

2 A. I talked to him. I went to go visit him I think
3 maybe in the county jail in Edgefield. I don't know when it
4 was but I did make a visit to him in the county jail in
5 Edgefield.

6 Q. Okay. And you said you never spoke to the attorney
7 about this information that you had?

8 A. Not his previous attorney.

9 Q. Mark Calhoun?

10 A. Yes. Never spoke to him.

11 Q. His attorney at the trial?

12 A. Mmm-mmm. (Witness shaking head.)

13 Q. You never spoke to him. And you claim that you did
14 tell police about this?

15 A. Mm-hmm.

16 Q. About both of y'all being asleep on the couch?

17 A. Mm-hmm.

18 Q. Until you were awoken shortly before 11 p.m.?

19 A. Mm-hmm.

20 MR. BROOKS: Is that a yes?

21 BY THE WITNESS:

22 A. Yes, ma'am.

23 BY MS. VALENZUELA:

24 Q. Okay. Now, your brother is Alvin P. ?

25 A. Yes, ma'am.

1 Q. And what relation are you to Brian Phillips?

2 A. He's my first cousin.

3 Q. And Brian Phillips is the other co-defendant in this
4 case?

5 A. Yes, ma'am.

6 Q. And you went to visit Alvin P. --

7 A. Numerous times.

8 Q. -- In jail?

9 A. Yes, ma'am.

10 Q. You did. And did you take him the statement that he
11 signed that said that he was, that Mr. Langford and Brian
12 Phillips had not been involved in the crime?

13 A. No, ma'am. I did not.

14 Q. Why did you go to see Alvin P. between the
15 Friday and the Monday before the first trial attempt in this
16 case?

17 A. That was his visitation day most likely I'm
18 thinking.

19 Q. And so why did you go to see him?

20 A. That's my brother. I was gonna support him as I'm
21 still supporting him right now.

22 Q. Support him in what?

23 A. As I said, as I still am right now.

24 Q. Did you ask him not to testify against the father of
25 your child?

VERONICA PHILLIPS - CROSS BY MS. VALENZUELA

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1 A. No. I did not. There - there's a lot of things
2 pertaining to that situation. I don't know if I can speak on
3 them today because it would probably be considered as hearsay
4 but I never left my brother's side during his whole time of
5 him getting in that trouble because he never had been in
6 trouble before.

7 Q. Except that he was in jail so you did leave his side
8 physically. You're saying like emotionally, supportively you
9 didn't leave his side?

10 A. Yes. Yes, ma'am. That's what I mean.

11 Q. Okay. Got you. Now, you said your mother - you
12 were leaving the apartment that night with all of these people
13 in your car to take your mother to work?

14 A. Mm-hmm.

15 Q. Okay. And then where were you -- And where does
16 your mother work?

17 A. Milliken. She did. She no longer works there
18 anymore.

19 Q. Okay. And so walk me through kind of the process of
20 where your apartments are to get to Milliken. Your apartment
21 is on Roland Avenue or was on Roland Avenue?

22 A. (Witness shaking head.)

23 Q. No?

24 A. Ouzts Street.

25 Q. I'm sorry?

1 A. Ouzts.

2 Q. Ouzts?

3 A. O-u-z-t-s.

4 Q. O-z-t --

5 A. O-u-z-t-s.

6 Q. Ouzts. Yes. O-u-t-z-e. Got it.

7 A. No. It's O-u-z-t-s.

8 Q. Okay. I'm sorry. I'm spending a lot of time on
9 this but I actually don't -- It's fine that we leave it at me
10 not being able to spell this name for some reason. Okay. So
11 it's Ouzts close to Roland Avenue?

12 A. I don't know where Roland Avenue is.

13 Q. Okay. Highway 23?

14 A. I know where Highway 23 is.

15 Q. So would you usually go out your street to Highway
16 23 to get to Milliken?

17 A. (Witness shaking head.)

18 Q. No. No.

19 THE COURT: She went to her mother's house to get
20 the ID.

21 BY THE WITNESS:

22 A. Yeah. So in order to get to Milliken from where I
23 live at you would have to take Academy Street. I think that's
24 where the victims lived at the moment. So you leave Ouzts
25 Street and take Academy Street and you cross over highway 121

VERONICA PHILLIPS - CROSS BY MS. VALENZUELA

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1 and you just keep straight. I don't know what the name of
2 that -- I think it's all Academy Street. You make a left turn
3 off Academy Street. I don't know the name of that street.
4 But then you end up to highway maybe 25 I'm thinking it is or
5 maybe 23. I don't know. But it's called the four lane
6 highway in Johnston that will take you to Edgefield and
7 Milliken is on that highway.

8 Q. The path that you just described, is that the same
9 path that you took the night that you were pulled over by
10 police officers?

11 A. No, ma'am. It isn't.

12 Q. Okay. So the path -- And you know what? That's
13 probably the question I should have asked so I apologize.

14 A. Okay.

15 Q. So the path that you chose to take the night of the
16 crime was different than the path you usually take?

17 A. Yes, ma'am.

18 Q. Was it fair to refer to it as a back path up to
19 Monument Drive?

20 A. Yes. Because it's better to go that way to my mom's
21 house than to go back up through town and all of that.

22 Q. But -- But you -- So you changed your route the
23 night of the crime?

24 A. I changed my route due to the fact that my mom left
25 her ID badge at home and I had to take her home to get it.

1 Q. Okay. So you're saying everything that you just
2 explained has nothing related to your mom's house?

3 A. Mmm-mmm. You asked me about Milliken. You didn't
4 ask me about going to my mom's house.

5 Q. I got you. I am not spending anymore time on this.

6 A. Okay.

7 MS. VALENZUELA: Nothing further.

8 THE COURT: Any redirect?

9 MR. BROOKS: No, sir.

10 THE COURT: Step down.

11 MR. BROOKS: We call Vanessa Phillips.

12 Thereupon,

13 VANESSA PHILLIPS

14 after having been first duly sworn, testified as follows,

15 THE CLERK: Take your seat and state your name for
16 the Court.

17 THE WITNESS: My name Vanessa Phillips. I'm
18 Veronica mom.

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q. You're Veronica's mom?

22 A. Yes.

23 Q. Okay. Where do you live?

24 A. Say what?

25 Q. Where do you live?

VANESSA PHILLIPS - DIRECT BY MR. BROOKS

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1 A. I stay with her right now.

2 Q. You do. You stay with her now?

3 A. Because I got sick and I had breast cancer and I got
4 sick and she took care of me.

5 Q. Okay. Now, do you remember where you lived back in
6 August of 2008?

7 A. Yeah. I stayed on my own. Then when I got sick, I
8 was with her.

9 Q. Okay. Now, let me ask you this, Ms. Phillips. How
10 far did you go in school?

11 A. I ain't gonna lie. Back in the day about maybe the
12 eighth grade, ninth grade.

13 Q. Okay. So is it fair to say that you might not be
14 the best at reading and writing?

15 A. Yep.

16 Q. Okay. Now, I don't want to put you on the spot as
17 far as age is concerned. I think you might not be no more
18 than 45 but --

19 A. I'm 60.

20 Q. All right. I ain't want to come out --

21 A. I know.

22 Q. -- and ask that. Okay..

23 A. I ain't ashamed about my age.

24 Q. Okay. All right. Now, you know this man here?

25 A. Yes, sir.

1 Q. Okay. That's K.C. Langford?

2 A. Yes, sir.

3 Q. And I know you're 60 and sometimes -- Let me ask you
4 this: On August 14th, 2008 do you remember where you were?

5 A. Yeah.

6 Q. Where were you?

7 A. I was right over there with my daughter.

8 Q. All right. Was K.C. there?

9 A. Yes. He was there, too.

10 Q. Was he there all day?

11 A. All day long.

12 Q. Are you sure?

13 A. I'm sure because I ain't be lying.

14 Q. Now, let me ask you this: The only time you left
15 the house was --

16 A. The time to go to work.

17 Q. Did y'all have to go back to --

18 A. Yes.

19 Q. -- your house? Wait a minute. Let me ask the
20 question first now. I know you see it coming. Like a
21 baseball player, you see it coming. You trying to hit the
22 bat. Let me ask the question. Did y'all have to go back to
23 your house to get your ID?

24 A. Yes, sir.

25 Q. And that's the ID that you had at Milliken plant?

- 1 A. Yes, sir.
- 2 Q. Did you need that ID to get in the plant?
- 3 A. Yes, sir. I do. I had to have it at all time.
- 4 Q. Okay. Was the Milliken plant situated as one of
- 5 those plants where when you go in you have to swipe your ID?
- 6 A. Yes, sir.
- 7 Q. Otherwise you couldn't get in?
- 8 A. Mmm-mmm. Couldn't get in.
- 9 Q. Okay. All right. Now, was K.C. riding with y'all
- 10 when y'all went --
- 11 A. Yes, sir.
- 12 Q. Wait. Let me finish. Let me finish. Was K.C.
- 13 riding with you when you had to go back to your house to get
- 14 the ID?
- 15 A. Yes, sir.
- 16 Q. And was he with you and Veronica when Veronica took
- 17 you to the job after that?
- 18 A. Yes, sir.
- 19 Q. Okay. Was he at the house up until y'all left?
- 20 A. Yes, sir.
- 21 Q. Okay. And the little boy who is now 10?
- 22 A. Yes, sir.
- 23 Q. That's your grandson.
- 24 A. My grandson.
- 25 Q. He was almost two then. He was there?

- 1 A. Yes, sir.
- 2 Q. Okay. Are you sure K.C. was there?
- 3 A. Yes. I'm sure.
- 4 Q. Now, I'm asking you that.
- 5 A. I ain't got no reason to lie.
- 6 Q. I understand. But now, you know --
- 7 A. I know.
- 8 Q. -- and I'm not saying, I'm not casting no aspersions
- 9 on you but you're 60. Sometimes --
- 10 A. Uh-uh.
- 11 Q. -- memories fade.
- 12 A. Uh-uh. I ain't got no bad memory not right now. I
- 13 can knock on wood about that.
- 14 Q. You sure about that?
- 15 A. I'm sure.
- 16 Q. And you're telling the Court the truth?
- 17 A. I'm telling the truth.
- 18 Q. Okay. Now, did anybody ever talk -- After August
- 19 14th, 2008, has anybody ever asked you about where K.C. was on
- 20 August 14th, 2008?
- 21 A. Mmm-mmm. No, sir. Nobody never talked to me.
- 22 Q. Did you ever talk to the police?
- 23 A. No, sir.
- 24 Q. Did you ever talk to Mr. Calhoun?
- 25 A. No.

VANESSA PHILLIPS - DIRECT BY MR. BROOKS

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1 Q. Did you ever talk to anybody on Mr. Calhoun's
2 behalf?

3 A. No, sir.

4 Q. Now, about two years ago you talked to us --

5 A. Yes.

6 Q. -- earlier?

7 A. Yes.

8 Q. I got it.

9 A. Yes.

10 Q. His name is Glen Harrell. You remember?

11 A. I talked to him.

12 Q. Okay. Is he the only person that talked to you
13 about where K.C. was on that day of August 14th, 2008?

14 A. He the only one because I ain't talked to nobody
15 else.

16 Q. Okay. And then you talked to him again a few weeks
17 ago when he came to serve the subpoena?

18 A. Yes, sir.

19 Q. Okay. Are you sure nobody ever talked to you about
20 K.C. --

21 A. Ain't nobody talked to me.

22 Q. And you sure K.C. was with you that day?

23 A. I'm sure.

24 Q. And he was with you when y'all drove to your house
25 to get your ID?

1 A. Yes, sir.

2 MS. VALENZUELA: Objection. Asked and answered.

3 THE COURT: Sustained.

4 MR. BROOKS: I just wanted to make sure.

5 THE COURT: I know. I remember it clear.

6 MR. BROOKS: All right. I guess I don't have any
7 other questions of Ms. Phillips.

8 THE COURT: Okay.

9 CROSS EXAMINATION

10 BY MS. VALENZUELA:

11 Q. Ms. Phillips, Mr. Langford has been in jail since
12 2008. Why would you not go to the police and let them know
13 that you had the key to get him out of jail before today if
14 you had this knowledge the entire time?

15 A. Do I have to go?

16 Q. Did you what?

17 THE COURT: I don't think she understood the way you
18 characterized the question. I know what you mean.

19 BY MS. VALENZUELA:

20 Q. Why did you let Mr. Langford sit in jail until - and
21 choose today to come and testify about this?

22 A. Ain't nobody ask me to testify.

23 Q. So someone has to come and ask you when you have an
24 alibi for --

25 THE COURT: That's not her burden though.

MARK CALHOUN - DIRECT BY MS. VALENZUELA

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1 BY MS. VALENZUELA:

2 Q. You talked to the investigator two years ago about
3 this?

4 A. Yes.

5 Q. And you told him what you're telling us today?

6 A. Yes. Yes, ma'am.

7 MS. VALENZUELA: Nothing further.

8 THE COURT: Okay. Step down.

9 MR. BROOKS: Judge, that's the applicant's case.

10 THE COURT: Let's take us a little break.

11 MS. VALENZUELA: Okay.

12 (Short break.)

13 THE COURT: Ms. Valenzuela.

14 MS. VALENZUELA: Yes, Your Honor. The State calls
15 Mark Calhoun to the stand.

16 Thereupon,

17 MARK CALHOUN

18 after having been first duly sworn, testified as follows,

19 DIRECT EXAMINATION

20 BY MS. VALENZUELA:

21 Q. Can you state your name please.

22 A. Mark Calhoun.

23 Q. And, Mr. Calhoun, I'm not sure if you know our
24 presiding Judge and then also for purposes of the record do
25 you mind giving a brief introduction or a brief summary of

1 what your background is as an attorney?

2 THE COURT: I know who he is. Skip that unless you
3 want to make a record of it.

4 BY MS. VALENZUELA:

5 Q. Just for the record one sentence.

6 A. I have been practicing law since 1989. I started
7 off as a prosecutor for four years. I have been practicing
8 criminal defense ever since 1993.

9 Q. Okay. Thank you for that. And were you appointed
10 or represented to represent, to represent Mr. Langford?

11 A. I was.

12 Q. Appointed or hired is what I meant to say. Which
13 one?

14 A. I was appointed.

15 Q. Okay. Now, you tried this case along with Brian
16 Phillips who had a separate attorney, Brian Phillips'
17 attorney?

18 A. That's correct.

19 Q. And did y'all cooperate with each other in terms of
20 your strategy going forward at trial?

21 A. We did. Randall Williams was his attorney, Brian
22 Phillips' attorney.

23 Q. And I will make a point of using names as we go
24 through that so that we can all stay clear on the different
25 roles. So let's go through these allegations. There's a

1 reference to hiring an investigator. Did you feel that there
2 was a need for an investigator in representing Mr. Langford?

3 A. I did not. He never gave me any information to
4 investigate.

5 Q. What do you mean by that? Tell the Court a little
6 bit more about that.

7 A. He essentially didn't give me any defense to hang my
8 hat on. The allegation is that he was with two family members
9 at the time of the robbery. That was not brought up until
10 about two weeks before the trial and when it was brought to my
11 attention, it was essentially presented to me, hey, I have got
12 a couple of relatives who are willing to testify that I was
13 with them but it wasn't true and I told him that it would be a
14 bad idea to put a young girl that's the mother of his child or
15 a relative up on the stand to commit perjury and that the
16 Solicitor would probably chew her up and it would make him
17 look a lot more bad than good and when I explained that to
18 him, he dropped it.

19 Q. Okay. And so, and we skipped to that allegation but
20 that's good. So referring to the two alibi witnesses that we
21 had today, this is something that you talked about with
22 Mr. Langford. You explained the strengths and weaknesses.
23 You had perjury concerns and after you talked to him about it,
24 he indicated he did not want to go forward with those?

25 A. He did not. He never mentioned it to me during the

1 previous entire time I was representing him. It was something
2 that I felt he just thought of shortly before the trial and I
3 didn't think it was a good idea.

4 Q. And you didn't see a need for an investigator I
5 think is what you said at the beginning there, right?

6 A. I did not and neither one of those ladies or any
7 other family members ever contacted me either.

8 Q. I want to go to the first allegation that he made
9 about the jury panel and it including a smaller number. Were
10 you happy with the jury that y'all ended up settling on?

11 A. I was. I was pleased with our jury panel. I
12 thought we did better than we expected to. I think
13 Mr. Williams was as well.

14 Q. And you were able to utilize all of your strikes
15 regardless of the size of the jury?

16 A. I was.

17 Q. I think we covered the Batson motion enough with the
18 applicant. Now, going to the Court certified, the certified
19 interpreter.

20 MS. VALENZUELA: Your Honor, may I approach the
21 witness?

22 THE COURT: Sure.

23 BY MS. VALENZUELA:

24 Q. Can you take that and I know it's one document in
25 the full thing, but are these the clerk's records in this

1 underlying case?

2 A. They are.

3 Q. Okay. And the Court has the entire packet of the
4 court records. But let's focus on the page that you are
5 looking at. What is it that you are looking at?

6 A. The title of the document is request for payment for
7 qualified interpreter.

8 Q. Who submitted that request for payment for a
9 qualified interpreter?

10 A. It was submitted by Mr. Maye and approved by Judge
11 Keesley.

12 Q. Okay. So the State attempted to get a certified
13 interpreter?

14 A. They did.

15 Q. And talk to us a little bit about why you felt the
16 need to object to that and what your position was as to the
17 interpreter going through the trial?

18 A. Well, there wasn't a Mandarin certified interpreter
19 in the State of South Carolina. I don't think they could find
20 one in Georgia either. This fellow, I believe, came from
21 North Carolina and Judge Keesley decided to examine him which
22 is clear in the record and Judge Keesley found him qualified
23 but there was no certified Mandarin Chinese interpreter in
24 South Carolina, North Carolina or Georgia so this was the only
25 option and Judge Keesley heard that he had been involved in, I

1 think, 50 court proceedings before this trial and approved
2 him.

3 Q. And that's part of the record before the Court that
4 the entire exchange with the court interpreter before the
5 Judge rules on your objection?

6 A. That's true. I still objected to his certification
7 but I was overruled.

8 Q. Right. Okay. Now, moving onto, there was some
9 discussion about the proffer which I think we have cleared up.
10 The record speaks for itself in terms of you asking for the
11 proffer and that proffer of Alvin and that being denied and
12 then Ervin Maye asking for the proffer and Judge Keesley
13 denying that. But I want to focus on the portion where the
14 applicant alleges that Alvin was present in the courtroom
15 hearing your motion argument. Did you have any concerns
16 during the trial in the discussion of this motion argument
17 about Alvin P. being in the courtroom?

18 A. No. I did not. And that's why I objected during
19 the second request by Mr. Maye to have a proffer. I felt that
20 the prosecutor was at that point requesting the proffer to
21 allow Mr. Phillips to hear testimony and to bolster his
22 testimony and basically coaching. I think that's the word I
23 used. It would be coaching him. But Judge Keesley stuck to
24 his ruling throughout the trial and when Mr. Maye wanted to
25 have one, he said no. And when I wanted to have one, he said

1 no as well.

2 Q. So you successfully prevented the State from having
3 kind of a dry run with their key witness prior to putting him
4 in front of the jury?

5 A. Yes. That's why I objected.

6 Q. Great. Okay. Let's talk about Joseph Patrick
7 Stevens. Did you have anything in your notes in terms of
8 preparing for this trial about Joseph Patrick Stevens and your
9 client's position on how he would affect his case?

10 A. No. I had very little. In fact, it was
11 Mr. Williams' decision to call him as a witness. I think
12 Mr. Williams is the one that had him served with the
13 subpoena.

14 Q. So it was never part of your strategy to have
15 Stevens testify?

16 A. It was not.

17 Q. Okay. Were you aware of Mr. Stevens?

18 A. Yes. I had.

19 Q. So being aware of Mr. Stevens is it fair to say it
20 was a strategic decision not to try to have him testify in
21 your client's case?

22 A. That's true.

23 Q. Was there any concern once he started once -- I'm
24 trying to remember all the different names -- once the
25 detective testified in Mr. Stevens place?

1 A. Roosevelt Young.

2 Q. Roosevelt. Thank you. When Detective Roosevelt
3 Young testified in Mr. Stevens place, did you have any
4 concerns about that affecting your client's case?

5 A. No. I did not.

6 Q. Would you have raised them to the Court if you had
7 had any?

8 A. Certainly..

9 Q. Let's talk a little bit about the kidnapping
10 indictment. Did you find that - did you have any concerns
11 about the kidnapping indictment providing you with notice
12 going into the trial?

13 A. I did not.

14 Q. Did you feel that it benefited your client to have
15 the kidnapping indictment narrowed before it went to the jury
16 at the end of the trial?

17 A. I did.

18 Q. Why is that?

19 A. The facts of the testimony revealed that only two
20 individuals were taken out of the house during the robbery.

21 Q. Did Judge Keesley comment on the fact that he had
22 heard the female victim testify that she had been afraid in
23 the house?

24 A. (Witness nodding head.)

25 Q. Yes?

1 A. Yes.

2 Q. I see you nodding. I'm just making sure that I'm
3 saying that out loud. And he commented that even though he
4 thought that there was testimony, that that was his
5 recommendation was just to strike it down to two?

6 A. That's correct.

7 Q. And Alvin P. did testify at trial that the
8 only one of the three who had gone inside the home and
9 interacted with the female victim was your client?

10 A. That's right.

11 Q. Okay. Closing argument. You make a reference to
12 assault and battery with intent to kill but your client wasn't
13 charged with that. Can you tell us a little bit about it?

14 A. Yeah. The original warrants, that was one of the
15 charges in the original warrants that he was served with was
16 ABWIK and there was testimony, of course, that one of the
17 victims was pistol whipped during the robbery and that's the
18 only reason. It was really more or less a slip if anything
19 but I don't feel it was prejudicial because the facts
20 supported it and he wasn't charged with it and the Judge is
21 going to give the jury instructions and tell the jury what he
22 was charged with.

23 Q. Okay. So you were present during the closing
24 argument of Randall Williams who was the attorney for Brian
25 Phillips, right?

1 A. Yes.

2 Q. And you heard this reference to logic and common
3 sense being the two witnesses who had not testified at trial
4 or a reference like that?

5 A. Yes. I didn't feel that was a reference to my
6 client's decision not to testify at all. I didn't make that
7 connection.

8 Q. Okay. So you saw no reason to object to that?

9 A. I did not.

10 Q. Then or even in hindsight?

11 A. Or in hindsight.

12 Q. How about Mr. Williams' references to Bible
13 scriptures in his closing. Is there anything about that that
14 -- What did you think when you heard those references?

15 A. Well, I was impressed because I'm Catholic and we
16 don't know much scripture so any time someone else quotes
17 scripture, I find that impressive. I do. So I liked it.

18 Q. Did you think it was helpful in terms of convincing
19 the jury in what you and Mr. Williams were trying to convince
20 them of?

21 A. I did. Yes.

22 Q. You objected during the Solicitor's closing at least
23 one time, correct?

24 A. That's correct.

25 Q. Would you -- What is your position in terms of

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1 objecting to any statement that you think is making a comment
2 on your client's right not to take the stand?

3 A. Well, the way I have always conducted jury trials is
4 I tend to treat the Solicitor or the opposing attorney with
5 the same amount of decorum that he treats me and if the
6 Solicitor allows me to go through my closing and doesn't make
7 unnecessary objections in order to disrupt my train of
8 thought, I extend to him the same courtesy. I only object
9 unless it's required and so I would have objected to anything
10 Mr. Maye said if I felt it was necessary but I wasn't going to
11 do it just to be disruptive.

12 Q. So other than the one time that you did feel like
13 you needed to object, there was not another portion of the
14 closing argument that you felt was objection worthy or called
15 for an objection?

16 A. No.

17 Q. Okay. Did your client indicate to you at any time
18 that once y'all found out that y'all didn't have last closing
19 that he had changed his mind about testifying?

20 A. He did not.

21 Q. Had y'all talked about whether he was going to
22 testify at trial or not?

23 A. Yes. We did.

24 Q. And what had his position been?

25 A. He didn't want to testify. When I presented him

1 that option, I think he was glad, seemed to be relieved that
2 he did not have to if he didn't want to.

3 Q. Okay. And when you say that option, you're saying
4 you don't have to testify not the option of last close versus
5 having to lose last close?

6 A. That's correct.

7 Q. Okay. If you're client had changed his mind, do you
8 think that you still would have been able to ask the Judge to
9 present a case after Mr. Williams presented his case?

10 A. No. I don't think I would have. I don't think I
11 would have changed anything.

12 Q. Did the Judge say that y'all had lost last close
13 before Mr. Williams put up Detective Roosevelt?

14 A. Yes.

15 Q. Yes.

16 A. We were aware of that.

17 Q. And at that point if your client had indicated he
18 wanted to testify, could you have told the Judge that your
19 client had changed his mind before?

20 A. Yes.

21 Q. Okay. Did you see any indications that the jury had
22 started deliberating before the Judge had indicated to them
23 that it was time to start their deliberations?

24 A. I did not.

25 Q. No concerns about that --

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1 A. None at all.

2 Q. -- during the time. Okay. Did you feel that you
3 had the opportunity to properly challenge Alvin P. on
4 the fact that he was getting a benefit or some sort of benefit
5 with the Solicitor's Office in testifying against your client?

6 A. Yeah. In fact, I felt it was helpful to bring it to
7 the jury's attention that he was still going to get a minimum
8 of 10 years in exchange for his testimony. The prosecutor
9 wasn't going to let him go home scot-free. I thought that was
10 helpful, not prejudicial. That was my opinion.

11 Q. And you had the opportunity to question Mr. Phillips
12 on his -- Let me ask you. Throughout the testimony of
13 Mr. Alvin P. did he continuously look at the Solicitor
14 throughout his testimony? Not continuously, but at different
15 times?

16 A. Yes.

17 Q. And did you make a point of pointing that out on the
18 record to the jury at numerous times?

19 A. I did.

20 MS. VALENZUELA: Nothing further, Your Honor.

21 CROSS EXAMINATION

22 BY MR. BROOKS:

23 Q. Mr. Calhoun, is it your testimony that you didn't
24 know anything about Veronica Phillips' existence during the
25 course of your representation of Mr. Langford?

1 A. Again, I said he told me he had two family members
2 but I wasn't given their names and they had not contacted
3 me.

4 Q. Okay.

5 A. I did not speak to them.

6 Q. Did you -- Do you remember where about you got
7 appointed? The incident occurred August of 2008. Is it fair
8 to say that you got appointed some time after he got
9 arrested?

10 A. Yes. That's fair.

11 Q. Okay. And in the course of being appointed to
12 represent him I'm sure you filed the necessary motions for
13 discovery, Rule 5 and all of that as we always do as criminal
14 defense lawyers; is that correct?

15 A. That's correct.

16 Q. And the prosecution sent you a response from Rule 5
17 with a bunch of stuff pertinent to the case; is that
18 correct?

19 A. Yes.

20 Q. And in that bunch of stuff that they gave you do you
21 recall getting a statement from the police that they took of
22 Veronica Phillips?

23 A. I do not.

24 MR. BROOKS: Can I approach the witness?

25 THE COURT: Sure.

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1 BY MR. BROOKS:

2 Q. Take a minute and review that (proffering.)

3 A. Okay. I have read it, I believe.

4 Q. Do you recall getting that in the discovery
5 response?

6 A. I do not.

7 Q. Okay. So you don't recall sending this to
8 Mr. Langford when he asked for copies of his file?

9 MS. VALENZUELA: Object, Your Honor. He's already
10 said that he didn't recognize it and it wasn't part of
11 his discovery file.

12 MR. BROOKS: Okay.

13 THE COURT: He said he's never seen it before.

14 MR. BROOKS: Never seen it before. Okay.

15 THE COURT: Fair enough.

16 BY MR. BROOKS:

17 Q. Did you -- I think you already testified to this.
18 You did not have an investigator help you in this case?

19 A. No.

20 Q. You did not talk to Veronica Phillips and you did
21 not talk to Vanessa Phillips?

22 A. No.

23 Q. Did you ever go out and visit the area where K.C.
24 said he lived?

25 A. The area where he lived?

1 Q. Yes. In relationship --

2 A. I drove to the area but I did not go to his home.

3 Q. Did you ever go to the area where the victims
4 lived?

5 A. I drove by that area. Yeah. I drove the area where
6 the scene occurred.

7 Q. Okay. You stated earlier that Mr. Langford had
8 mentioned that he had two family members as potential alibi
9 witnesses. I just want to make sure I clarify. What was your
10 response to him when he said that?

11 A. Okay. What he said was I've got two family members
12 who are willing to say I was with them at the time it
13 occurred. But he also made it clear that it wasn't true.
14 They were just willing to present perjured testimony on his
15 behalf.

16 Q. What did he say to you that gave you the impression
17 that it was perjured testimony or would be perjured testimony?
18 Did he say they're gonna say something but they're really
19 lying? I'm just trying to -- How did you -- How did we get
20 there? Did he say it's false testimony or how do we get
21 there?

22 A. Because the previous several months I had
23 represented him he had never told me that he was with anybody,
24 with these two ladies, these two family members. He did say
25 one was the mother of his son and the other one was a relative

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1 and also related to Brian Phillips.

2 Q. Okay.

3 A. Okay.

4 Q. And when he told you this, can you tell us when this
5 was in relationship to when the case was going to trial?

6 A. Shortly before the trial. A couple of weeks.

7 Q. Is it before it was supposed to go to trial in May
8 or was it when it actually --

9 A. The actual trial date.

10 Q. Okay. All right. What else did he say that
11 convinced you that this was going to be false testimony?

12 A. Because he had not previously told me that he was
13 not present at the crime scene.

14 Q. Okay. So the fact that he told you this shortly
15 before the case went to trial convinced you that this was
16 going to be false testimony?

17 A. Yeah. I did not think they would be telling the
18 truth if they testified.

19 Q. And you never talked to -- I know I asked and you
20 answered this, but you never talked to Veronica and never
21 talked to Vanessa to find out whether the veracity of it or
22 anything like that?

23 A. I told Mr. Langford that if these ladies want to
24 call and talk to me, they're welcome to. He had my phone
25 number. He was in jail but he had my phone number and I never

1 heard from either one of them according to my notes.

2 Q. Do you recall how many times you met with Mr.
3 Langford prior to going to trial and discussing his case?

4 A. I do not. I mean, that's information that I could
5 pull out of my file how many times we met before trial but I
6 don't remember off the top of my head.

7 Q. Is it fair to say you met more than five times?

8 A. Yeah. Yeah.

9 Q. And throughout your representation he was in jail
10 the entire time?

11 A. Right.

12 Q. Did you discuss with him about Mr., I believe it's
13 Mr. Williams. That's the gentleman who represented
14 Mr. Phillips, Brian Phillips?

15 A. Correct.

16 Q. Did you discuss with K.C. about Mr. Williams' plan
17 to call Investigator Young to talk about what was gathered
18 from this Mr. Stevens fellow?

19 A. I did. Something you need to realize is that during
20 the entire time I was representing K.C., he was totally
21 disengaged to the process. He wasn't very helpful in his own
22 defense. Not just before the trial but during the trial he
23 and Mr. Brian Phillips were joking and laughing, not paying
24 attention to the testimony. I had to tell him several times
25 during the trial not to laugh or joke in front of the presence

1 of the jury. It didn't look good. He was completely
2 disengaged and treated it as though it was some type of game.
3 He was young but he still wasn't treating the situation he was
4 in with the degree of seriousness that he needed to. He
5 wasn't very helpful in preparing for the trial. He --

6 Q. Well -- Go ahead. I didn't mean to cut you off.

7 A. He just had decided he was not open to any plea
8 negotiations and he wanted a trial but he didn't give me much
9 to work with when it came time to prepare for the case or even
10 during the trial itself. It's unusual for me to have to tell
11 a client to not laugh and joke in the presence of a jury.
12 That doesn't happen very often.

13 Q. Now, you just said he was not engaged. I presume by
14 what you said he was not engaged during the course of your
15 representation prior to going to trial; is that correct?

16 A. Correct.

17 Q. But before going to trial, shortly before going to
18 trial you said that he told you about two family members and
19 he gave you their names; is that correct?

20 A. My notes don't have any names. He just said, I
21 remember it being two ladies.

22 Q. He told you one of them was the mother of his
23 child?

24 A. Yeah. I remember that one being the mother of his
25 child and the other one being a relative of Brian Phillips.

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1 Q. Okay. And even though he gave you that you still
2 say that he was disengaged prior to the case going to trial?

3 A. Yes. I do.

4 MR. BROOKS: No other questions, Judge.

5 MS. VALENZUELA: No redirect, Your Honor. We would
6 call our second witness Mr. Ervin Maye.

7 THE COURT: All right.

8 Thereupon,

9 ERVIN MAYE

10 after having been first duly sworn, testified as follows,

11 THE CLERK: After you're seated, state your name for
12 the record.

13 THE WITNESS: My name is Ervin Maye. I'm an
14 Assistant Solicitor in the Eleventh Judicial Circuit.
15 I've been employed as Assistant Solicitor in the Eleventh
16 Circuit since August of 1994. I prosecuted Mr. Langford
17 and Mr. Phillips in the trial at hand.

18 DIRECT EXAMINATION

19 BY MS. VALENZUELA:

20 Q. Thank you, Mr. Maye. My question for you is there's
21 been an allegation that there was a deal for Alvin P.
22 that didn't come out. Was there a deal that the Solicitor's
23 Office had with Alvin P. at the time of the trial?

24 A. No. I had no deal with Alvin P. I had
25 previously hoped that he would testify for the State the first

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1 time I attempted to call this case for trial. I had Mr.
2 Phillips moved from Mr. Langford and Mr. Phillips in the
3 Edgefield County Detention Center because I wanted to stop
4 efforts to chill his testimony or for them to persuade him not
5 to testify. I acted on that directly. I moved him from the
6 Edgefield County Detention Center to the Saluda County
7 Detention Center so that he would be away from the other two
8 co-defendants.

9 Mr. Alvin P. had been the cooperating witness
10 that had given the information that lead to all of the arrests
11 and all of them being charged. He had given information that
12 inculpated himself and also Mr. Langford and Brian Phillips.
13 I had him moved to the Saluda jail. I talked with him at
14 length on the Friday before I attempted to try the first case.
15 He was represented by Mr. Ola Johnson who was his counsel. I
16 never talked with him about what I would do with his charges.
17 I told him directly that I could not speak with him as to
18 anything that I would do with his charges until after we had
19 prosecuted the two co-defendants in this case that he had
20 implicated. I never made him any deal. Never made any
21 implication that I would give him favorable treatment. Just
22 asked him to tell the truth and that we would deal with his
23 charges after the time that we had dealt with his two
24 co-defendants.

25 We prepared for trial on the first Friday. He was

1 animated. He gave us all of the information and corroborated
2 what he had previously he told law enforcement. Went through
3 it with me in great detail with his counsel. He returned on
4 that Monday morning when I attempted to try the case. He
5 refused to testify in any regard. He indicated that he had a
6 visit from his sister that testified in this case over the
7 weekend in the jail in Saluda. I called the Saluda jail and
8 corroborated that she had been to see him; that she was the
9 only one that had been to see him that weekend, and he
10 indicated that he was not going to testify because he had been
11 informed that if he kept his mouth shut that all three of them
12 would go free.

13 Of course, Mr. Johnson, his attorney in my presence
14 there and I told him that that was absolutely not true. That
15 we were going to prosecute him and that I was going to
16 prosecute him for armed robbery at the very next term of
17 court. We left there that day not able to proceed because
18 that witness, any efforts that we had to call him at that
19 point in time had been chilled. We were unable to use him as
20 a witness or even proceed.

21 It was my intention to try Alvin P. at the
22 next term of General Sessions in Edgefield County for armed
23 robbery. Prior to me doing that, Mr. Johnson contacted me and
24 told me that Mr. Phillips, Alvin P. had had a change of
25 heart; that he was going to testify truthfully what he had

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1 originally said was truthful. I met with him again. We
2 prepared again.

3 I prosecuted Mr. Langford and Brian Phillips at the
4 very next term of court in Edgefield County and they were
5 convicted. But at no time did I ever make him any concrete
6 deal, did I ever intimate to him what we would do. There was
7 no wink or a nod that we were gonna do this or that. I never
8 told his attorney what I would do with his charges and, in
9 fact, I made him plead guilty to armed robbery which is very
10 unusual with a cooperating witness. I made him plead to armed
11 robbery before even considering whether or not we were gonna
12 let him testify and, of course, armed robbery has a minimum of
13 10 years. But I certainly didn't tell them that we were going
14 to recommend the minimum. I didn't tell him anything about
15 any recommendation of sentence or even what I was going to do
16 with the other charges that he pleaded to. I mean, there was
17 no deal with him about dismissing or nolle prosequing any of the
18 other charges that he faced in the case.

19 Q. Okay. Thank you, Mr. Maye. Now, was -- This is my
20 last question for you. Was there -- What was your impression
21 of the representation of opposing counsel during your trial?
22 And I want you to be truthful but brief.

23 A. I understand. I knew that this case came down to
24 Alvin P. 's credibility alone. I think that -- I knew
25 that Mr. Calhoun and Mr. Williams were both former

1 prosecutors. I knew they were seasoned attorneys. They
2 certainly conducted themselves as such in the case. Mr.
3 Langford's counsel certainly very capably demonstrated that we
4 didn't have any forensic evidence in this case; that all we
5 had was the credibility of a witness Alvin P. that they
6 had information that he had previously recanted. I mean, they
7 had a written document purported to be signed by him and they
8 repeatedly made reference to the fact that the case hinged
9 upon his credibility and the suspect nature of his testimony
10 given the fact that he had previously recanted.

11 I had hoped that I would be able to use Gustav
12 Sovelle because I suspected that they would try to proffer the
13 purported statement that they had extracted from Alvin
14 Phillips and I knew that Gustav Sovelle had direct information
15 about how that statement was generated; that it was, in fact,
16 false. I had hoped that they would do that from a trial
17 strategy and I intended to use Gustav Sovelle as a reply
18 witness. Mr. Calhoun persuaded Judge Keesley not to let me
19 use that evidence that I thought would be devastating and, of
20 course, I was extremely upset about that because I had gambled
21 that that would come into evidence in this case and would
22 corroborate what Alvin P. had said that basically that
23 this - that there were efforts to obstruct justice and that
24 would put that before the jury. But Mr. Calhoun was able to
25 persuade Judge Keesley not to allow me to use that evidence

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1 that I thought was relevant and admissible in reply and it
2 gutted a big portion of the State's case and what we were
3 going to rely on to prove it.

4 And like I said, the only thing that I was able to
5 rely or the State was able to put forward was Alvin P. s'
6 testimony with no corroboration or limited corroboration
7 because of their efforts.

8 MS. VALENZUELA: Thank you, Mr. Maye. Please answer
9 any questions opposing counsel has.

10 CROSS EXAMINATION

11 BY MR. BROOKS:

12 Q. Mr. Maye --

13 A. Yes, sir.

14 Q. -- this is my first time dealing with you. I can't
15 say anything bad. You seem to be a pleasant fellow and since
16 you are the prosecutor down there I'm sure when you get
17 discovery requests from defense lawyers, you package up stuff
18 and you send Rule 5 response to them on any case that they
19 representing a client in a generic sense. I mean, that's
20 generally what you do; isn't that correct?

21 A. You know, we endeavor to put forward every bit of
22 discovery that we have and that's made available to us. I
23 certainly turn over anything that we have got at the
24 Solicitor's Office pursuant to Rule 5. I certainly make every
25 effort to do that.

1 Q. Okay. Now, you had an opportunity to look at this
2 statement but I'm gonna give it to you again with the Judge's
3 permission. I want you to take a minute to take a look at
4 this.

5 A. Certainly. I'll take a look at it again.

6 Q. (Proffering.)

7 A. I have certainly refreshed my recollection on it.

8 Q. Can you just tell us for the record what is that?

9 A. It says it's a voluntary statement of Veronica
10 Phillips, date of birth [REDACTED], dated 9/29/08. Shows that,
11 I believe, Special Agent Perry and Roosevelt Young as
12 witnesses on it.

13 Q. Okay. And Roosevelt Young was the investigator in
14 this case; is that correct?

15 A. No. Roosevelt -- It was a Johnston case. Lamage
16 (phonetic) Robinson, Johnston Town Police Department would
17 have been the chief investigator for Johnston. It's just that
18 Roosevelt Young received the information or the tip that these
19 three were involved in it and he went out. He knew Alvin
20 Phillips and he knew these people. He's an Edgefield person
21 and so he assisted the Johnston Police Department because he
22 had been provided with information as to who had done this
23 Johnston crime.

24 Q. Okay. So he wasn't the chief but he had a role in
25 the investigation?

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1 A. He helped to break the case based on information
2 that he got from the person that had the family court bench
3 warrant for Mr. Stevens.

4 Q. Did that statement that you just read, did that come
5 through your office as a part of getting the police
6 discovery?

7 A. You know, I do not know honestly. I mean, it's been
8 so many years ago. I don't know what discovery was. I know
9 that we would have turned over everything we had. I don't
10 know the origin of that. I don't even think I would have my
11 file at this point in time. I don't have any recollection if
12 I saw it, if we gave it to them or if we did not. I would
13 have certainly been happy for that witness to have testified
14 because I knew she had been over to the Saluda jail and I knew
15 about her involvement and her - if she had given alibi
16 information, I would have relished the opportunity to cross
17 examine her as to some of the information that I had.

18 Q. Basically what you're saying is you would have been
19 chomping at the bit for her to take the stand because you
20 would have been prepared for cross examination?

21 A. Absolutely. I knew that she had been to the jail.
22 I knew that I had been directly told by Alvin P. that
23 she was asking him to basically perjure himself and refuse to
24 cooperate. I felt like she was a co-conspirator in the
25 efforts on the part of Brian Phillips and K.C. Langford to

1 attempt to obstruct justice in this case and I thought it
2 would open the door for me to be able to proffer the testimony
3 of Gustav Sovelle. I was holding that certainly as reply
4 because the attempts to obstruct justice become relevant if
5 they try to put it up in their defense. I felt like they
6 would. Like I said, I don't think it would have affected the
7 outcome. I think it would have in all likelihood tipped the
8 scale towards Judge Keesley allowing me to use the testimony
9 of Gustav Sovelle which was what I was hoping to get an
10 opportunity to do.

11 Q. But also in that statement it makes reference to
12 Veronica's mother?

13 A. I assume so.

14 Q. Okay. You want me to give it to you again?

15 A. No. I assume that it did.

16 Q. Okay. It did. Okay. Now, I haven't heard anything
17 in what you said that would undermine Vanessa Phillips'
18 credibility in what you just said. Is that fair to say?

19 A. In that line. But the fact that a lady would let
20 her relative sit in jail for three years when she had the key
21 to his release would have certainly been ripe for cross
22 examination, that she would let him sit up at the jail house
23 for three years charged with armed robbery and she had alibi
24 information that she could have gone and told. I know she had
25 no obligation to do so but there wouldn't be many mothers or

1 family members that would let a relative sit in jail when
2 somebody was with them at the time of the crime and she would
3 have certainly been ripe for cross examination as to why she
4 would have let somebody languish in jail for three years
5 without coming forward and saying wait a minute. Y'all got
6 the wrong person in jail.

7 And also, you know, these are all relatives. By
8 that time Alvin P. would have testified, you know. I
9 doubt that they would -- They would have had to choose who
10 they love the most at that point in time, these people all
11 being relatives. Like I said, I think she would have been as
12 ripe for cross examination. But I never had to reach that
13 because the defense counsel in this case knew that the
14 testimony that they wanted to put up was perjured and so as an
15 officer of the court --

16 Q. Wait a minute. How did they know it was perjured?
17 That's the question that I asked Mr. Calhoun and I'm asking
18 you. How did we know that this purported testimony would have
19 been perjured?

20 A. I didn't know that until right now.

21 MS. VALENZUELA: I know that the witness introduced
22 this. I think it's speculation at this point because
23 obviously this witness was not present in whatever
24 exchange informed the defense attorney as to his
25 conclusions as to testimony being perjured.

1 MR. BROOKS: He said it would have been perjured
2 testimony. I just want to know how he knows, if he knows
3 that it would have been perjured or is that just his
4 opinion.

5 BY THE WITNESS:

6 A. That's the sworn testimony of a member of the bar
7 here --

8 BY MR. BROOKS:

9 Q. No, no, no, no.

10 A. -- and I know that and I believe him.

11 Q. I guess what I'm saying is you're saying --

12 The COURT: Not what you know here today. How did
13 you now then?

14 BY MR. BROOKS

15 Q. Yeah. That's what I'm trying to know. How did you
16 know then?

17 A. I did not. But like I said, that was his -- I know
18 now why that was his strategy not to put this forward. I do
19 realize that now.

20 Q. Okay. And I just want to make sure. You're
21 clarifying when you say perjure, you're saying that in regards
22 to what Mr. Calhoun testified to here today.

23 A. Exactly.

24 Q. But years ago --

25 A. I had no knowledge of it then but it certainly

1 explains why a member of the bar wouldn't put forward
2 testimony that he believed to be perjured.

3 Q. And I understand now. I understand now. So I just
4 wanted to clarify. It's not like you had any idea whether or
5 not this would have been perjured testimony. You had your gut
6 feeling about it if --

7 A. I never heard anything about this alibi testimony
8 until I got her today and I have been involved in this case
9 since 2008.

10 MS. VALENZUELA: Just to correct, I did e-mail him
11 last week about this.

12 BY THE WITNESS:

13 A. That is correct. Yeah. I became aware of it as we
14 were preparing for this.

15 BY MR. BROOKS:

16 Q. And I told her about it and I'm sure she had
17 communicated it to you.

18 A. Yeah. And I didn't mean to misspeak. Until
19 prepping for this.

20 MR. BROOKS: I understand. I understand. Your
21 Honor, I don't have any other questions.

22 MS. VALENZUELA: No redirect, Your Honor. Before I
23 do rest my case there is one allegation that I just
24 wanted -- I think that a lot of these allegations are in
25 the record or we have covered that with testimony before

1 you today. I did just want to touch on the direct appeal
2 records are part of the file and so you would see that
3 whole process and, of course, it would also show you that
4 there was oral argument in this case and oral argument
5 follows a reply brief being filed with the Court so the
6 appellate counsel would have had an opportunity to talk
7 to the Court of Appeals about whatever he felt like was
8 properly before the Court without that reply brief being
9 filed is our position. We also think looking at the
10 direct appeal file will show the Court whether the
11 applicant's allegation that this was the only thing that
12 happened in the applicant's request.

13 MR. BROOKS: Your Honor, the only thing that I have
14 before the conclusion of this is I don't know if you want
15 me to call my client to the stand but it would only be
16 for the limited purpose of saying he got that statement
17 that I had Mr. Maye read, he got that statement from his
18 prior defense counsel when he requested his file.

19 THE COURT: The statement that you were referring
20 to?

21 MR. BROOKS: Right. That's the only thing that I
22 was only asking. If I call him back to the stand, it's
23 just for the limited purpose of him saying I got the
24 statement from Mr. Calhoun. And, of course, I had Mr.
25 Maye basically outline what the statement was. So I

1 don't know if you want me to call him just for that but
2 obviously Mr. Maye has established that we have a
3 statement. It involved Veronica Phillips. My client is
4 going to say he got it from Mr. Calhoun. I don't know if
5 you want me to call him up to the stand just to say
6 that.

7 THE COURT: I don't think there's any need for that.
8 I mean, Mr. Maye, he had a statement that said alibi. He
9 gave it over to defense counsel. Obviously he's not
10 gonna call that person as a witness.

11 MR. BROOKS: I just wanted to say that that's the
12 only thing that I wanted to add to the record that it's
13 my client's position he got that statement. He didn't
14 certainly get it from Mr. Maye. He got it from
15 Mr. Calhoun. And, of course, if you recall from my
16 questioning of Mr. Calhoun, he said he never knew about
17 these ladies except right before trial and never talked
18 to them, so on and so forth.

19 THE COURT: Okay. Then maybe my logic that the
20 statement came through discovery is wrong?

21 MR. BROOKS: No. The statement came through
22 discovery but Mr. Calhoun said he had never seen it.

23 THE COURT: Okay. Mr. Maye said he didn't have any
24 recollection of it but there it went.

25 MR. BROOKS: Right. So obviously, Judge, our

1 argument is that these ladies were out there and needed
2 to be talked to by defense counsel. Somebody to have
3 potential alibi witnesses. We obviously presented them
4 here today, particularly Ms. Vanessa Phillips.

5 THE COURT: I don't think the statement -- Let me
6 ask the State. Ms. Valenzuela, do you challenge the
7 representation that Mr. Langford claims it was provided
8 to him in discovery through his lawyer is what I believe
9 he's saying.

10 MS. VALENZUELA: I understand that's what the
11 applicant is saying and the two witnesses today said that
12 they had not seen it.

13 THE COURT: Yeah. And the statement, let's mark it
14 as a Court's exhibit or something because it's signed by
15 the police investigators?

16 MR. BROOKS: It is, Judge.

17 THE COURT: Okay. That's going to be number 1.

18 (Whereupon, Court's Exhibit #1 marked for
19 identification.)

20 MR. BROOKS: That's our position with regard to
21 that, Judge.

22 THE COURT: Okay.

23 MR. BROOKS: So with that out of the way then we
24 won't have anything else to put back up.

25 THE COURT: Okay.

1 MR. BROOKS: I don't know if you want to hear
2 arguments.

3 MS. VALENZUELA: And I think you know the evidence
4 that we presented today. I have been trying to make my
5 arguments throughout this PCR hearing and then I think
6 you have the records and I have touched on the one thing
7 that I thought was necessary for argument so that's
8 fine.

9 MR. BROOKS: Judge, I think you kind of gathered
10 where we were going and my arguments on behalf of Mr.
11 Langford and obviously, you know, we are seeking relief
12 for being granted a new trial.

13 THE COURT: All right. What I'm gonna do, I'm gonna
14 review the record that's been presented and then I may
15 ask for a proposed order from one side or the other
16 before I make my ruling. I may not. I may just rule and
17 ask for an order then. But y'all have done a very nice
18 job presenting all of this. Kind of interesting. All
19 right. Anything else? Because I don't need you to argue
20 this. I know what y'all want.

21 MS. VALENZUELA: Thank you, Your Honor.

22 MR. BROOKS: That's it. Thank you, Judge.

23 THE COURT: Then we'll stand at ease.

24 WHEREUPON, THE HEARING WAS CONCLUDED.

25

1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

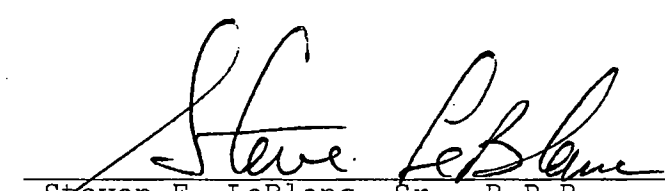
3 (COUNTY OF LEXINGTON)

4
5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of Common Pleas in and for the
10 State of South Carolina on the 1st day of February, 2017.

11 I FURTHER CERTIFY that the forgoing 134 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 9th day of September, 2017.

17
18
19 
20 Steven E. LeBlanc, Sr., R.P.R.
21 Eleventh Circuit Court Reporter
22 State of South Carolina.
23
24
25



DETAILS WILL REVEAL.
SOURCE

VOLUNTARY STATEMENT

CASE # _____ 751

LEAD # _____

LAST NAME <u>Phillips</u>		FIRST NAME <u>Alvin</u>		MIDDLE NAME <u>Wash</u>	AGE <u>34</u>	D.O.B. <u>11/18/77</u>
NICKNAME/AKA		M ☒ F ☐	SSN		STREET ADDRESS <u>2041 E. 1st St</u>	
CITY <u>Johnston</u>		STATE <u>S.C.</u>	ZIP <u>29832</u>	MAILING ADDRESS IF DIFFERENT		
HOME TELEPHONE	WORK TELEPHONE		CELL TELEPHONE <u>803-241-0004</u>		OCCUPATION	
EMPLOYER			EMPLOYER ADDRESS			
DRIVER'S LICENSE NUMBER/STATE			DATE AND TIME OF INTERVIEW			
LOCATION OF INTERVIEW <u>Solicitors Office</u>						
INTERVIEWING AGENT <u>Mike Kern</u>		DEPARTMENT <u>SLED</u>		INTERVIEWING AGENT <u>Chris Wash</u>		DEPARTMENT <u>ECSO</u>

I, Alvin Phillips, understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can cannot read and write and completed the GED grade in school.

JP3 A few week ago Alvin Phillips & myself were riding in Trenton, when he pointed out that he had stolen a 40cal hand gun from HARM's Auto. A few weeks after JP3 when visiting Veronica she told me that K. Langford had gotten her involved in a robbery the other night. The robbery with the Chinese the other night. She said she told me K.C. called her to pick them up (K.C. Brian Phillips & Alvin Phillips) after the robbery, but she didn't know what had happen until later Veronica Phillips seemed to be JP3 very upset at the time. A couple of days later while talk to my JP3 (Alvin Phillips), I told her I heard that her JP3 (Alvin Phillips) was involved in the robbery with the Chinese. She said he probably was, because he had a lot of money. On the JP3 5th day Alvin & myself were riding in Trenton he also told me that the gun didn't have a clip, he as soon as he found a clip he was looking for a (lick) robbery he could pull. JP3

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 9.2.08 Time: 10.00 AM

Signature of person giving voluntary statement

WITNESS: S/A H.M. Long

WITNESS: Det Chris Wash

I certify that I have been given a copy of this statement consisting of 1 pages.





VOLUNTARY STATEMENT

CASE # _____

LEAD # _____

LAST NAME <u>Phillips</u>		FIRST NAME <u>Veronica</u>		MIDDLE NAME	AGE <u>27</u>	D.O.B. <u>12-17-79</u>
NICKNAME/AKA		M ☐ F ☒	SSN	STREET ADDRESS <u>Apt. 152 Oak St.</u>		
CITY <u>Shasta</u>	STATE <u>S.C.</u>	ZIP <u>29832</u>	MAILING ADDRESS IF DIFFERENT			
HOME TELEPHONE	WORK TELEPHONE	CELL TELEPHONE <u>706-825-7415</u>	OCCUPATION <u>Student</u>			
EMPLOYER		EMPLOYER ADDRESS				
DRIVER'S LICENSE NUMBER/STATE <u>011140393 S.C.</u>			DATE AND TIME OF INTERVIEW <u>9/29/08</u>			
LOCATION OF INTERVIEW						
INTERVIEWING AGENT <u>Sgt. H.M. Perry</u>		DEPARTMENT <u>SLED</u>		INTERVIEWING AGENT		DEPARTMENT

I, Veronica Phillips, understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can read and write and completed the 11th grade in school.

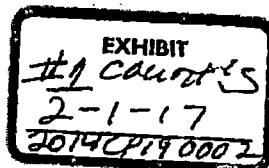
V.P. On the day of August 14th, I was leaving to take my mom to work about 10:45 a.m. and as I was leaving my house K.C. Langford and Alvin Phillips approached coming into the house. I told them I was going to take mom to work. They decided to leave and ride with me. As I left home I was pulled over by an officer who asked where I was going and where I live. I told him and said there was a robbery and I asked where he said Academy Street. He said they were looking for 3 black males and he asked for everyone I'd and checked the status of all our backgrounds and he gave us a pass and let me go. I felt like something wasn't right so I asked them had they done any wrong and they said no. K.C. said and no one else that we took my mom to work and went to Billie's Super Store, K.C. bought me cigarettes and we went back to my house. I went out to the porch to see what else was going on and it wasn't much so I went back into the house and after a while went to sleep. V.P.

I have read each page of this statement consisting of 1 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 9/29/08 Time: 3:45 p.m. Veronica Phillips
Signature of person giving voluntary statement

WITNESS: Sgt. H.M. Perry WITNESS: Korey Young

I certify that I have been given a copy of this statement consisting of 1 pages.



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS FOR
COUNTY OF EDGEFIELD	)	THE ELEVENTH JUDICIAL CIRCUIT
	)	
K.C. Langford, #294500,	)	
	)	C.A. No.: 2014-CP-19-0002
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 8, 2014 and amended on January 30, 2017. Respondent made its return on May 4, 2015. An evidentiary hearing was held on February 1, 2017, at the Lexington County Courthouse. Applicant was present and represented by Charles Brooks, III, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant; Veronica Phillips, alleged alibi witness; Vanessa Phillips, alleged alibi witness; Mark Calhoun, Esquire, Applicant's trial counsel; and Ervin Maye, prosecutor, testified at the hearing. The Court had before it the trial transcript; the Edgefield County Clerk of Court records; the South Carolina Department of Corrections records; Applicant's appellate records; the PCR application; and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Edgefield County Clerk of Court. Applicant was indicted at the December 2008 term of the Edgefield County Grand Jury for criminal conspiracy (2008-GS-19-

0673). Applicant was indicted at the May 2010 term of the Edgefield County Grand Jury for burglary, first degree (2010-GS-19-0272); armed robbery (2010-GS-19-0273); and kidnapping (2010-GS-19-0278). At trial, Applicant was represented by Mark R. Calhoun, Esquire. On September 7, 2010, Applicant proceeded to trial before a jury and was convicted of all charges as indicted. The Honorable William P. Keesley sentenced Applicant to a term of twenty (20) years imprisonment for kidnapping, twenty (20) years for armed robbery, twenty (20) years for burglary, and five (5) years for criminal conspiracy. Judge Keesley ordered the sentences be served concurrently.

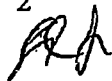
A timely notice of appeal was filed and perfected on Applicant's behalf by Elizabeth Franklin-Best, Esquire. The Supreme Court of South Carolina certified Applicant's appeal and affirmed his sentences and convictions in a published opinion filed November 21, 2012. State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2010). The United States entered an order denying Applicant's petition for writ of certiorari dated October 7, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing SCRCF 71.1(e)). Where the application alleges ineffective assistance of counsel as a



ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's deficient performance must have prejudiced 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; see Strickland v. Washington, 466 U.S. 668, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

This Court will now address each allegation of ineffective assistance of counsel:

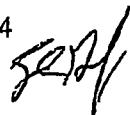
**Allegation #1: Failure to investigate two potential alibi witnesses:
Veronica and Vanessa Phillips**

Applicant testified his counsel should have investigated his alibi witnesses in support of his case. Veronica Phillips, whose brother testified against Applicant and his co-defendant and who was dating Applicant and has a child in common with him, testified at the PCR hearing, along with her mother, Vanessa Phillips.

Veronica Phillips testified Applicant was with her in their apartment, which was about half a mile from the victim's home. She said Applicant was watching the son, who was twenty months old at the time, playing outside. Veronica confirmed she was claiming Applicant was watching toddler son play outside at approximately 10:30 at night. Veronica claimed she was asleep around 11 PM and her mother woke her up when it was time to go to work. Veronica claims she did not tell trial counsel this information because she was focused on her brother at the time. Veronica confirmed she was still in contact with Applicant while he was in prison.

Vanessa Phillips, mother of Veronica Phillips and grandmother to Applicant's son, testified she also observed Applicant at the time he was allegedly committing the crime. She claims she never told anyone because no one ever asked.

Prosecutor Ervin Maye also testified at the PCR hearing. At the time of the trial, Assistant Solicitor Maye believed Veronica Phillips was possibly a co-conspirator in obstructing justice. Assistant Solicitor Maye recalled Ms. Phillips visiting her brother in jail and him going back and forth on whether he was going to testify against his co-defendants. Asst. Solicitor Maye testified he felt he would have been able to successfully cross-examine Ms. Phillips had she testified at the trial.



Trial counsel testified Applicant did not mention alibi witnesses for months leading up to the trial. Suddenly, about two weeks away from trial, Applicant offered alibi witnesses for the first time. Trial counsel believed this alibi claim to be false and believed testimony to support it would be perjured testimony. Trial counsel explained why that was not a good idea to Applicant, and Applicant did not raise the issue again.

This Court finds an alibi charge was not supported by credible evidence. Alibi means elsewhere. State v. Robbins, 275 S.C. 373, 271 S.E.2d 319 (1980). Normally, it is based upon proof advanced by the defendant, attempting to show the impossibility of being involved in a crime due to absence from the scene. Id. Having observed the testimony offered by Applicant, Veronica Phillips, Vanessa Phillips, Assistant Solicitor Maye, and Applicant's trial counsel, this Court finds the testimony of Applicant's trial counsel credible on this issue. Additionally, Vanessa Phillips testified she was either away from Applicant or asleep during the time of the crime and that she lived very close to the victim's home. Veronica Phillips provided very little detail on the time during which she saw Applicant the night of the crime. Neither of these women informed anyone of this life-changing alibi. Under these circumstances, this Court finds their alibi testimony is not credible.

Accordingly, this Court concludes Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #2: Jury Panel of Only 32

Applicant also testified that trial counsel should have challenged the jury panel only having thirty-two people. Testimony at the PCR Hearing, however, was that parties were pleased

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with the jury that was selected, they used all the strikes, and challenged the jury where necessary with a *Batson* motion. Applicant provided no evidence to support his argument that the size of the jury panel was prejudicial to him or that it was erroneous of his counsel not to object.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #3:
Court-Certified Interpreter**

Applicant argues his trial counsel should have objected to the court interpreter not being certified. The record in this case shows his attorney did in fact object, and the Court outlined the specific reasons why it was finding the interpreter qualified. (Record on Appeal p. 64, l. 18 - p. 70, l. 11.)

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #4:
Failure to Call Joseph Patrick Stevens**

Applicant argues his trial counsel failed to call Joseph Patrick Stevens as a witness. Applicant did not produce testimony from Mr. Stevens at the PCR hearing. Furthermore, trial counsel testified Mr. Stevens was never one of his anticipated witnesses and was instead co-defendant's witness.

Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the PCR hearing. Underwood v. State, 309 S.C. 560, 425

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S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998).

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #5:
Failure to object to hearsay for witness Roosevelt**

Applicant next argues his counsel should have objected on the basis of hearsay to witness Detective Roosevelt's testimony. The record shows the State did not call Detective Roosevelt; instead, Applicant's co-defendant was the one to call Detective Roosevelt to the stand. (Record on Appeal, p. 297.) Applicant's co-defendant used Detective Roosevelt's testimony to present the jury information about how the investigation ended up focusing on Applicant and his co-defendant. Applicant's co-defendant used Detective Roosevelt's testimony to show an alleged informant who had a pending legal problem called Detective Roosevelt and offered information on Applicant and his co-defendants. (Record on Appeal, pp. 297- 307.) "[A]n out of court statement is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994).

Thus, Applicant has failed to establish any prejudice in Detective Roosevelt's testimony.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #6:
Alvin P.**

Applicant argues trial counsel was ineffective for failing to pursue State's witness, Alvin Phillip's, claim that he had no plea deal with the prosecutor. Trial counsel testified at the PCR hearing that he had no reason to believe any different than what was testified to, which was that Alvin P. was likely going to get at least ten years and was not getting off "scot-free." Assistant Solicitor Ervin Maye testified he did not have an offer with Alvin P. Asst. Solicitor Maye testified he did make Alvin P. plead to armed robbery, and he testified he never told Alvin P. what he would recommend.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #7:
Kidnapping Indictment**

Applicant argues his counsel should have moved to dismiss the kidnapping indictment before trial. Trial counsel testified at the PCR hearing that the indictment was a notice document and that going in to the trial the State had evidence Applicant went in to the victim's home and some of the victims did not feel free to leave.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly, finds this

allegation is denied.

**Allegation #8:
Closing Argument Misstatement**

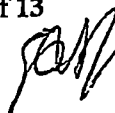
Applicant argues his counsel erred by saying Applicant had a pending Assault and Battery with Intent to Kill (ABWIK) charge pending against him. Trial counsel explained that at one stage in the process Applicant did have an ABWIK charge, but the State did not proceed forward with that indictment at trial. Trial counsel believed he mistakenly referenced that charge in his closing argument. Trial counsel noted the jury was charged with the correct indictments.

The Court finds Applicant has failed to show that he was prejudiced by his counsel's mistaken reference to an ABWIK charge one time in his closing argument and therefore denies this allegation.

**Allegation #9:
Failure to object to prosecutor commenting on Applicant's silence & bolstering
Stevens' testimony**

Applicant claims his trial counsel should have objected to the solicitor's alleged comment on his "silence" when the solicitor told the jury in closing argument that logic and common sense would decide this case. Trial counsel testified that he would have objected if he had heard a reason to do so and did object at least once. Trial counsel did not hear anything objectionable in these statements.

This Court finds Applicant has failed to present any evidence on how these comments reflected on his Fifth Amendment right; Applicant has therefore failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby and, accordingly,



this Court denies this allegation.

Allegation #10:

Failure to object to co-defendant's counsel quoting Bible scripture in closing

Applicant argues his trial counsel should have objected to his co-defendant's counsel quoting Bible verses in his closing argument. Trial counsel did not find anything objectionable in those statements and thought they may even be effective.

"[W]here counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006) (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992)). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #11:**Failure to close without presenting evidence, to include Applicant's testimony**

Applicant also argues trial counsel was ineffective for failing to present a case, to include Applicant's testimony. Applicant agreed he was advised of his right to testify and recollected the advisement discussion with the trial court. Applicant did not want to testify. Applicant did not proffer the "left out" evidence or testimony to the PCR court, failing to establish any prejudice.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #12:**Too much focus on victim in closing argument**

Applicant also argues trial counsel was ineffective for focusing too much on the victim in closing. However, Applicant offered no evidence of how this was ineffective or what prejudice was caused by this alleged emphasis on the victim in closing.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

Allegation #13:**Failure to object to premature deliberations**

Applicant also argues trial counsel was ineffective for failing to object to premature deliberations by the jury. However, Applicant failed to present any evidence to support his assertion that the jury was prematurely deliberating. Trial counsel testified at the PCR hearing that there was no indication there were premature deliberations by the jury.



This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

**Allegation #14:
Failure to file reply brief for appeal**

Applicant also argues appellate counsel was ineffective for failing to file a reply brief. Applicant offered only speculation and no evidence of how a reply brief would have changed the outcome of the appellate decision in his case.

This Court finds Applicant has failed to meet his burden of proving counsel's performance was deficient or that Applicant was prejudiced thereby and, accordingly, finds this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial. Trial counsel was not deficient in any manner, and Applicant was not prejudiced by his representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15th day of June, 2017.


EUGENE C. GRIFFITH, JR.
Presiding Judge
Eleventh Judicial Circuit

Nawbey, South Carolina.



EDGEFIELD COUNTY
CLERK OF COURT
SHIRLEY F. NEWBY

2012 DEC 31 AM 9:17

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

K.C. Langford, III, Appellant.

Appellate Case No. 2010-173128.

Appeal From Edgefield County
William P. Keesley, Circuit Court Judge

Opinion No. 27195

Heard April 18, 2012 – Filed November 21, 2012.

AFFIRMED

Elizabeth Anne Franklin-Best, of South Carolina
Commission on Indigent Defense, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Salley W. Elliott, Assistant
Deputy Attorney General David A. Spencer, all of
Columbia, and Solicitor Donald V. Myers, of Lexington,
for Respondent.

E. Charles Grose, Jr., of Greenwood, and Tara S. Waters,
of Laurens, for Amicus Curiae South Carolina Public
Defender Association.

THE ABOVE IS A TRUE COPY OF THE OPINION
WHICH IS ON FILE IN THE OFFICE OF THE
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Shirley F. Newby
SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.

Solicitor David M. Pascoe, Jr., of Columbia, for Amicus
Curiae Solicitors' Association of South Carolina.

JUSTICE HEARN: We must determine whether Section 1-7-330 of the South Carolina Code (2005), which vests control of the criminal docket in the circuit solicitor, violates the separation of powers principle embodied in Article 1, Section 8 of the South Carolina Constitution. In 1980, we recognized that "[t]he authority of the court to grant continuances and to determine the order in which cases shall be heard is derived from its power to hear and decide cases." *Williams v. Bordon's, Inc.*, 274 S.C. 275, 279, 262 S.E.2d 881, 883 (1980). "This adjudicative power of the court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Id.* The time has now come for us to acknowledge that section 1-7-330 is at odds with this intrinsically judicial power. We therefore hold that section 1-7-330 violates the separation of powers and therefore is unconstitutional. However, because K.C. Langford, III, the Appellant herein, suffered no prejudice as a result of section 1-7-330, we affirm his convictions.

FACTUAL/PROCEDURAL BACKGROUND

On August 14, 2008, Ji Quing Chen, along with his son, Li Guan Xin, and wife, Li Ai Ming, left the Chinese restaurant they own in Johnston, South Carolina, shortly after 10:00 p.m. and headed home. With them was a black bag containing the day's earnings. When they arrived home, Ji Quing stayed outside to water some plants while his wife and son entered the house. As he was tending to his garden, three men wearing masks came out from the bushes, forced him to the ground, hit him, and took his wallet. Concerned that his father had not yet come inside, Li Guan stepped out onto the porch to check on him. Once he was outside, the men forced Li Guan to the ground and asked where the restaurant's money was. He told them it was in the house, and one of the men went inside to find it. That man returned shortly with the black bag, and all three of them ran off. Because the men wore masks, the victims were unable to provide a useful description to law enforcement. Moreover, it does not appear the men left any forensic evidence during the commission of these crimes.

Investigators eventually met with Alvin P. , who in a statement dated September 28, 2008, confessed that he was one of the men who robbed the family. He further identified his cousin and Langford as the two remaining suspects. In the absence of an eye-witness identification and forensic evidence, Phillips' statement

was the only evidence implicating the other men. Langford was arrested shortly thereafter on October 3, and he was indicted for criminal conspiracy a few months later in December 2008. However, he was not indicted for armed robbery, first degree burglary, and kidnapping until May 5, 2010, nineteen months following his arrest. He would remain incarcerated until his trial.

The State attributed the delay in procuring these indictments to difficulties in finding Chinese interpreters to translate what Ji Quing and his family, none of whom spoke English well, were relaying to investigators. Furthermore, Phillips retracted his statement implicating Langford while the two of them were housed in the same detention facility. He did so first in a signed statement dated January 29, 2009. On March 31, 2009, he signed another statement wherein he attested that the original statement he made to police in September 2008 was not true and he was not in the "right state of mind" when he made it. According to the State, Langford and his co-defendant pressured Phillips into recanting. In fact, Phillips testified Langford even brought him these later statements to sign. To avoid further intimidation, Phillips was moved to another facility. At some point thereafter, although it is not clear when, Phillips again agreed to testify against Langford.

On June 29, 2009, nearly nine months after he was taken into custody, Langford made what appears to be a *pro se* motion for a speedy trial. A hearing was held on May 17, 2010, and Langford renewed his motion at that time and joined it with a motion to dismiss.¹ This was the date on which the State originally planned to try Langford and his co-defendant, with Phillips serving as a cooperating witness who would testify against them. But the State received word that morning that Phillips decided to invoke his privilege against self-incrimination and would not testify at the trial. Allegedly, this was due to pressure Langford and Phillips' cousin continued to exert on him even after his transfer. Phillips now would not be available for cross-examination at trial, and the State therefore could not use his prior statement implicating Langford.² Because the State's case against

¹ It does not appear the court ever ruled on Langford's ostensibly *pro se* motion prior to this hearing. Moreover, the record suggests that the hearing was held upon the motion of Langford's co-defendant, Phillips' cousin. This motion was styled as a motion to dismiss or, in the alternative, a motion for a speedy trial.

² See *Bruton v. United States*, 391 U.S. 123, 126 (1968) (holding the Confrontation Clause bars the admission of a statement of a co-defendant who remains silent which is to be used against the other defendant at trial).

Langford rested almost exclusively on Phillips' statement, without it the State effectively was prevented from going forward.

To remedy the situation, the State needed to try Phillips first or, presumably, obtain a guilty plea with the attendant waiver of his right to remain silent. However, Phillips had retained new counsel just eight days prior to the hearing who understandably was not ready to move forward during that term of court. The State therefore requested a continuance so it could proceed against Phillips at the next available opportunity, at which point it would then be able to try Langford. Although the court was "deeply concerned" by the twenty-month delay in the case, it found that "[n]one of this delay was occasioned by any impropriety on the part of the State." It also recognized that, for all intents and purposes, the State could not proceed in the absence of Phillips' testimony. The court accordingly denied Langford's motion to dismiss and granted the State a continuance. However, cognizant of the delays which had already accrued, the court ordered the State to try Langford within nine months, and it further directed that Langford could renew his motion at that time if the State failed to do so.³

Phillips pled guilty in August 2010 and once again agreed to testify for the State. Langford's case was then called for trial on September 7, 2010, nearly two years after his arrest.⁴ The jury convicted Langford on all four charges, and the court sentenced him to twenty years' imprisonment on the armed robbery, kidnapping, and first degree burglary charges, and five years' imprisonment on the civil conspiracy charges, all to run concurrently. This appeal followed. After the appeal was perfected, the court of appeals granted permission for the South Carolina Public Defender Association to file an amicus curiae brief challenging the constitutionality of section 1-7-330. This case subsequently was certified to us pursuant to Rule 204(b), SCACR.

³ The court would have set an earlier deadline, but there were scheduling conflicts with a pending death penalty trial and a visiting judge. Additionally, while Langford did file what seems to be another *pro se* motion to dismiss on May 25, 2010, it does not appear the court ruled on it.

⁴ This was only the second General Sessions term of court for Edgefield County after May 17, 2010, the term in which the State received the continuance.

ISSUES PRESENTED

- I. Is section 1-7-330 constitutional?
- II. Did Langford suffer any prejudice as a result of the solicitor controlling when his case would be called for trial?

LAW/ANALYSIS

I. SECTION 1-7-330

We agree with the Public Defender Association that section 1-7-330 is unconstitutional. Before we reach the merits of this question, however, we must first address the State's position that it is not preserved for our review.

Constitutional questions must be preserved like any other issue on appeal. *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). As the State correctly notes, this issue was not raised to or ruled upon by the circuit court. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (stating an issue must have been raised to and ruled upon to be preserved for review). Moreover, Langford's statements of the issue on appeal do not raise this question. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Indeed, this issue is only before us by way of the amicus brief filed by the Public Defender Association, and our rules provide that an amicus brief "shall be limited to argument of the issues on appeal *as presented by the parties*." Rule 213, SCACR (emphasis added).

Nevertheless, we previously have considered arguments raised only by an amicus when they concern a "matter of significant public interest." *Ex parte Brown*, 393 S.C. 214, 216, 711 S.E.2d 899, 900 (2011). We stress that this exception to Rule 213 must be applied narrowly and only under the appropriate circumstances so as not to eviscerate the long-standing preservation requirements in our jurisprudence. However, we have little trouble concluding that who decides when criminal defendants in this State should be tried is a matter of significant

public interest as envisioned by *Brown*.⁵ We therefore proceed to analyze the constitutionality of section 1-7-330.

Section 1-7-330 states in full:

The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. *Provided*, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.

In reviewing the validity of this statute, we are reluctant to find it unconstitutional. *See In re Treatment and Care of Luckbaugh*, 351 S.C. 122, 134, 568 S.E.2d 338, 344 (2002). We will therefore make every presumption in favor of its validity. *Id.* The party challenging the statute bears the heavy burden of proving that "its repugnance to the constitution is clear and beyond a reasonable doubt." *Id.* at 134-35, 568 S.E.2d at 344.

The Public Defender Association contends section 1-7-330 violates the separation of powers by impermissibly conferring judicial responsibilities upon a member of the executive branch. Our constitution mandates that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." S.C. Const. art. I, § 8.

⁵ We do not take lightly the dissent's concern that by addressing the merits of the Public Defender Association's argument we offend our rules of preservation, but remain convinced this issue falls easily within our exception. Moreover, if the issue is truly unpreserved, as the dissent contends, we are at a loss to understand why the dissent addresses the merits. Preservation in South Carolina is a threshold issue and if an issue is unpreserved, it is not properly before the court and the merits should not be reached. *See State v. Roach*, 377 S.C. 2, 3, 659 S.E.2d 107, 107 (2008) (noting that issues not preserved for review should not be addressed); *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (same).

One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws.

State ex rel. McLeod v. McInnis, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

We begin by ascertaining where in our system of government solicitors fall. We note the only reference to solicitors in the constitution is in the article creating the judicial department. *See* S.C. Const. art. V, § 24. However, this section also provides that "[t]he General Assembly shall provide by law for their duties." *Id.* To that end, Section 1-1-110 of the South Carolina Code (2005) squarely places solicitors in the executive branch. Moreover, the Solicitors' Association of South Carolina unequivocally states in its own amicus brief defending section 1-7-330, "The Office of Solicitor is part of the Executive Branch of our state government." Accordingly, we conclude solicitors are members of the executive branch.

We must next determine whether vesting solicitors with the exclusive authority to prepare the dockets for General Sessions is an infringement on the court's powers. "[A] usurpation of powers exists, for purposes of [the] constitutional separation of powers doctrine, when there is a significant interference by one branch of government with the operations of another branch." 16A Am. Jur. 2d *Constitutional Law* § 246. This rule is not fixed and immutable, however, as there are grey areas which are "tolerated in complex areas of government." *McInnis*, 278 S.C. at 313, 295 S.E.2d at 636 (1982). There consequently is "some overlap of authority and some encroachment to a limited degree." *Id.*; *see also* 16A Am. Jur. 2d *Constitutional Law* § 244 ("Separation of powers does not require that the branches of government be hermetically sealed; the doctrine of separation requires a cooperative accommodation among the three branches of government; a rigid and inflexible classification of powers would render government unworkable."). At its core, the doctrine therefore "is directed only to those powers which belong exclusively to a single branch of government." 16A Am. Jur. 2d *Constitutional Law* § 246.

As we noted at the outset of this opinion, a court's power to hear and decide cases "carries with it the inherent power to control the order of its business." *Williams*, 274 S.C. at 279, 262 S.E.2d at 883. Setting the trial docket therefore is the prerogative of the court. Section 1-7-330, on the other hand, states,

"Preparation of the dockets for general sessions courts shall be *exclusively vested in the circuit solicitor* and the solicitor shall determine the order in which cases on the docket are called for trial." (emphasis added). Vesting a member of the executive branch with the exclusive authority to perform an inherently judicial function unquestionably is a violation of separation of powers. *See Hagy v. Pruitt*, 331 S.C. 213, 222, 500 S.E.2d 168, 173 (Ct. App. 1998) (Howard, J., concurring) ("[A] statute which attempts to exercise ultimate authority over the inherent power of the court is unconstitutional because it violates the separation of powers doctrine"), *aff'd*, 339 S.C. 425, 529 S.E.2d 714 (2000). This is not a grey area where some encroachment can be tolerated, but rather a complete invasion into the court's domain.

The dissent, however, takes a different approach and contends that finding the statute unconstitutional will somehow permit courts to infringe upon the powers of the solicitor.⁶ Nevertheless, the dissent correctly acknowledges that the discretion afforded the solicitor "does not mean that the solicitor's authority is unrestrained by judicial oversight. The trial judge has the ultimate authority to determine whether a case called by the solicitor will be tried at a particular juncture." Thus, it appears the dissent truly believes the court has always had the authority to control the docket. In light of that position, we are at a loss as to why it believes our holding today infringes on the solicitor's power.

In fact, we believe our holding is consistent with the dissent's support for the importance of judicial restraint on prosecutorial power. However, unlike the dissent, we recognize that by providing that the "[p]reparation of the dockets for general sessions courts shall be *exclusively vested in the circuit solicitor* and the *solicitor shall* determine the order in which cases on the docket are called for trial" (emphasis added), the plain and unambiguous language of section 1-7-330 cannot be squared with this oversight. The statute must therefore yield.

⁶ Undoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain. True too is the fact that he must grapple with marshaling witnesses, ranging from victims, to police officers, to experts. Because the State bears the burden of proof, the solicitor also does not want to call the case before he himself is ready. Moreover, he is the person most knowledgeable about the status of the case. These are all truisms we cannot dispute, and they are prerogatives of the solicitor (and, to a large degree, of defense counsel as well) and are unaffected by our decision.

Accordingly, we hold section 1-7-330 is unconstitutional beyond a reasonable doubt.

II. PREJUDICE

Our determination that section 1-7-330 violates separation of powers is not dispositive of Langford's appeal. To warrant reversal, Langford must demonstrate that he sustained prejudice as a result of the solicitor setting when his case was called for trial. As this case comes to us, two different forms of prejudice are alleged: (1) Langford was denied his right to due process because section 1-7-330 permitted the solicitor to judge shop, and (2) Langford was denied his right to a speedy trial. We disagree that Langford's trial suffered from any infirmities as a result of section 1-7-330 and therefore affirm his convictions.

A. Due Process

We consider first whether the power impermissibly granted to the solicitor by section 1-7-330 enabled him to violate Langford's due process rights. Although many different violations are discussed anecdotally, the only due process violation said to have occurred in this case is that section 1-7-330 permitted the solicitor to select the judge who would preside over Langford's trial. Although we question the extent to which section 1-7-330 actually permitted judge shopping, we proceed assuming *arguendo* that it did so.

A criminal defendant has a due process right to have his case heard by a fair and impartial judge. See *Schweiker v. McClure*, 456 U.S. 188, 195 (1982) ("[D]ue process demands impartiality on the part of those who function in judicial or quasi-judicial capacities."). Similarly, he has the right to have a judge assigned to his case "in a manner free from bias or the desire to influence the outcome of the proceedings." *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir. 1987) (Kozinski, J.). On the other hand, he does not have a right to "any particular procedure for the selection of the judge." *Id.* Thus, there is no right to have one's judge selected randomly, nor is there one to have a case heard by any particular judge. *Sinito v. United States*, 750 F.2d 512, 515 (6th Cir. 1984). Moreover, a defendant has "no vested right in the order in which cases are assigned for trial." *Levine v. United States*, 182 F.2d 556, 559 (8th Cir. 1950).

Accordingly, a state may use any method to select judges so long as it is impartial and not geared towards influencing the trial's outcome. Without a doubt, permitting solicitors—who represent a party in the case—to select the judge raises

the specter of partiality and calls the validity of the entire system into question. See *United States v. Pearson*, 203 F.3d 1243, 1257 (10th Cir. 2000) ("In our view, if the assignment of a case to an individual judge should not be based on 'the desire to influence the outcome of the proceedings,' then allowing a prosecutor to perform that task raises substantial due process concerns." (quoting *Cruz*, 812 F.2d at 574)); *Tyson v. Trigg*, 50 F.3d 436, 442 (7th Cir. 1995) (Posner, J.) ("The practice of allowing the prosecutor to choose the . . . trial judge is certainly unsightly, as the Indiana court of appeals opined; it does lack the appearance of impartiality . . ."); *Cruz*, 812 F.2d at 574 ("The suggestion that the case assignment process is being manipulated for motives other than the efficient administration of justice casts a very long shadow, touching the entire criminal justice system . . ."). Some courts have therefore struck down their systems of permitting prosecutors to select judges. *State v. Simpson*, 551 So. 2d 1303, 1304 (La. 1989) (doing so on due process grounds); *McDonald v. Goodstein*, 83 N.Y.S.2d 620, 625 (Sup. Ct. 1948) (holding that granting prosecutors control over choosing the judge threatens the independence of the judiciary); see also *Rosemond v. Catoe*, 383 S.C. 320, 326 n.1, 680 S.E.2d 5, 8 n.1 (2009) ("We acknowledge the practice of the prosecutor selecting the trial judge is inappropriate and troubling.").

However, as Judge Posner wrote, "[t]he presumption that judges are unbiased is more than a pious hope." *Tyson*, 50 F.3d at 439. Furthermore, "[t]he right to a judge who is free from the mere *appearance* of partiality is not part of due process at all." *Id.* at 442. Hence, we will not presume the judge is partial simply because he was selected by the prosecutor, for adopting such a rule would "conflate[] the appearance of partiality with actual partiality." *Francolino v. Kuhlman*, 224 F. Supp. 2d 615, 636 (S.D.N.Y. 2002), *aff'd*, 365 F.3d 137 (2d Cir. 2004); see also *Pearson*, 203 F.3d at 1262 ("[W]e cannot presume that a federal judge selected by the prosecutor will be his agent or henchman."). In order to be entitled to relief, a defendant therefore must establish actual partiality and prejudice on the part of the judge. *Pearson*, 203 F.3d at 1263 (finding prosecutorial selection of judge harmless error because there was no evidence the judge decided any issue in a manner more favorable to the prosecution than other judges would have); *Tyson*, 50 F.3d at 442 (holding permitting the prosecutor to choose the judge "does lack the appearance of impartiality[,] but that is all, so far as the record of this case discloses, and it is not enough"); *Sinito*, 750 F.2d at 515 ("Even when there is an error in the process by which the trial judge is selected . . . the defendant is not denied due process as a result of the error unless he can point to some resulting prejudice."); *Francolino*, 224 F. Supp. 2d at 636 ("While the Court agrees that the former system gave the appearance of partiality, maintaining that Justice

Snyder was in fact partial is a separate matter."); *State v. Huls*, 676 So. 2d 160, 167 (La. Ct. App. 1996) (noting a showing of prejudice was required even after the Louisiana Supreme Court struck down the practice of prosecutorial selection of judges on due process grounds).

The only support offered for the allegation of bias by the presiding judge in this case, Judge Keesley, is the simple fact that he ruled in favor of the State on previous issues that arose. Yet, there is not a shred of evidence that he did so out of any animus towards Langford or allegiance to the State. The contention that a judge was biased *solely* because he ruled against a defendant is untenable and insulting towards the court, and it would set a dangerous precedent were we to sanction it. Moreover, Judge Keesley ordered in May 2010 that the State try the case within nine months, and he would have ordered the State to do so sooner but for scheduling conflicts. Simply put, there is no suggestion that Judge Keesley conducted Langford's trial in anything but a fair and impartial fashion. We therefore find no evidence of actual prejudice in the record.

Undoubtedly, section 1-7-330 leaves room for abuses which can deny a defendant due process. Not only can the State theoretically pick a judge to preside because he will favor the prosecution, but the Public Defender Association's brief contains very troubling examples of abuses occurring in other cases and in other forms. Andrew M. Siegel, *When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot*, 32 Am. J. Crim. L. 325, 351-69 (2005) (detailing the potential ills of prosecutorial control of the docket). Perhaps this is why South Carolina until today has stood alone amongst our sister states in permitting the prosecutor to control the docket. *See id.* at 327 (noting that South Carolina is the only state with such a system). Of course, the vast majority of solicitors operate the criminal courts in a fair and even-handed manner, and the abuses cited generally are not associated with any nefarious intent. They do, however, inevitably stem from the nature of a system that allows the prosecution to control the criminal docket.

Nevertheless, we cannot equate the potential for abuse with it actually occurring in this case. Indeed, whether the statute may be unconstitutional in other circumstances has no bearing on whether it has been unconstitutionally applied in the case at hand. *See Simeon v. Hardin*, 451 S.E.2d 858, 871 (N.C. 1994) (holding prosecutorial control of the docket is facially constitutional and must be attacked on an as-applied basis). We must therefore determine whether Langford's rights were infringed based on the record before us. Under the lens of the only

deprivation alleged to have occurred in this case, we find no evidence that Langford's due process rights were violated even if the State was able to select Judge Keesley to preside.

B. Speedy Trial

Langford also contends the State's dilatory practices in calling his case deprived him of his right to a speedy trial.⁷ The Sixth Amendment to the United States Constitution provides, in part, "In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial." U.S. Const. amend. VI. Similarly, the South Carolina Constitution guarantees that "[a]ny person charged with an offense shall enjoy the right to a speedy . . . trial." S.C. Const. art. I, § 14. The main goals of this right are to prevent undue pretrial incarceration, minimize the anxiety stemming from public accusation of a crime, and limit the possibility of long delays impairing an accused's defense. *State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978).

The Supreme Court of the United States has deemed this right "generically different from any of the other rights enshrined in the Constitution for the protection of the accused." *Barker v. Wingo*, 407 U.S. 514, 519 (1972). This is due in large part to the reality that "[d]elay is not an uncommon defense tactic" and "deprivation of the right to a speedy trial does not per se prejudice the accused's ability to defend himself." *Id.* at 521. More important, however, is the vagueness of this right, which makes it nearly impossible to determine when it has been violated. *Id.* Indeed, the various procedural safeguards built into the criminal process require that it "move at a deliberate pace." *United States v. Ewell*, 383 U.S. 116, 120 (1966). Thus, "there is no fixed point . . . when the State can put the defendant to the choice of either exercising or waiving the right to a speedy trial." *Barker*, 407 U.S. at 521.

⁷ We reject the State's argument that this issue is not preserved for review due to Langford's failure to renew his motion to dismiss when his case was called for trial. In its May 2010 order denying Langford's original motions, the court required the State to try the case within nine months. It then said Langford could renew his motion to dismiss at that time if the State failed to do so. Because nine months had not yet passed when the case was tried, it would have been futile for Langford to raise the issue again. *See State v. Pace*, 316 S.C. 71, 74, 447 S.E.2d 186, 187 (1994) (finding appellant did not waive an objection by not presenting it to circuit court because it would have been futile to do so).

Accordingly, "[t]he right to a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances." *Beavers v. Haubert*, 198 U.S. 77, 87 (1905). Stated differently, "[a] speedy trial does not mean an immediate one; it does not imply undue haste, for the [S]tate, too, is entitled to a reasonable time in which to prepare its case; it simply means a trial without unreasonable and unnecessary delay." *Wheeler v. State*, 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966). Because of the vagaries of this unavoidably ad hoc inquiry, the Supreme Court has acknowledged that it "can do little more than identify some of the factors" for courts to examine. *Barker*, 407 U.S. at 530. These factors include the length of the delay, the reason for it, the defendant's assertion of his right to a speedy trial, and any prejudice he suffered.⁸ *Id.*; see also *Waites*, 270 S.C. at 107, 240 S.E.2d at 653 (recognizing the same factors apply under South Carolina law).

The Supreme Court has counseled further that none of these factors is "either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial." *Barker*, 407 U.S. at 533. Instead, they are all related and must be considered along "with such other circumstances as may be relevant." *Id.* Thus, the Supreme Court created a balancing test which is a rejection of "inflexible approaches" and weighs "the conduct of both the prosecution and the defense." *Id.* at 529-30. If a court concludes that this right has been violated, dismissal of the charges "is the only possible remedy." *Id.* at 522. A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion. See *State v. Edwards*, 374 S.C. 543, 571, 649 S.E.2d 112, 126 (Ct. App. 2007) (applying abuse of discretion standard to speedy trial claim), *rev'd on other grounds*, 384 S.C. 504, 682 S.E.2d 820 (2009); see also *State v. Redding*, 561 S.E.2d 79, 80 (Ga. 2002) (noting the inquiry is whether court abused its discretion under *Barker*). "An abuse of discretion occurs when the trial court's decision is based upon an error of law or upon factual findings that are without evidentiary support." *Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 555, 658 S.E.2d 80, 85 (2008)

We begin our analysis with the "triggering mechanism" of a speedy trial claim, which is the length of the delay. *Barker*, 407 U.S. at 530. We should not even examine the remaining factors "[u]ntil there is some delay which is

⁸ The circuit court did not cite to *Barker* or explicitly apply any of these factors. However, the court's analysis largely tracks the substance of the test, and no party has contended the court did not use the proper legal framework when ruling on Langford's motions.

presumptively prejudicial." *Id.* The clock starts running on a defendant's speedy trial right when he is "indicted, arrested, or otherwise officially accused," and therefore we are to include the time between arrest and indictment. *United States v. MacDonald*, 456 U.S. 1, 6 (1982). The Supreme Court was quick to remind in *Barker*, however, that even the length of time necessary to trigger the full inquiry "is necessarily dependent upon the peculiar circumstances of the case." 407 U.S. at 530-31. Thus, a simple prosecution for ordinary street crime may have a lower threshold for a presumptively prejudicial delay than a more complex conspiracy case. *Id.* at 531; *see also id.* at 531 n.31 (suggesting that a delay of nine months could have been presumptively prejudicial in a case that depended on eyewitness testimony (citing *United States v. Butler*, 426 F.2d 1275, 1277 (1st Cir. 1970))).

In the case before us, Langford's speedy trial clock began when he was arrested on October 3, 2008, and ran until he was tried twenty-three months later on September 7, 2010. Moreover, while the charges against him were serious, the factual proof was not complicated. Thus, this length of time is presumptively prejudicial and triggers the remaining *Barker* inquiry. *See Waites*, 270 S.C. at 108, 204 S.E.2d at 653 (holding a two-year-and-four-month delay in a prosecution for assault and battery of a high and aggravated nature and for pointing and presenting a firearm implicated the rest of the *Barker* analysis); *see also Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992) ("Depending on the nature of the charges, the lower courts have generally found postaccusation delay 'presumptively prejudicial' at least as it approaches one year."); *Brooks v. State*, 674 S.E.2d 871, 873-74 (Ga. 2009) (finding a nineteen-month delay presumptively prejudicial in trial for murder, aggravated assault, and firearms offenses).

Turning to the second element, the Supreme Court has stated that "different weights should be assigned to different reasons" for the delay. *Barker*, 407 U.S. at 531. A deliberate attempt by the State to delay the trial as a means of impairing the accused's ability to defend himself "should be weighted heavily against the government." *Id.* Neutral reasons, which could include overcrowded dockets or negligence, are "weighted less heavily" but still count against the State because it bears the ultimate responsibility for these circumstances. *Id.*; *see also State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("The ultimate responsibility for the trial of a criminal defendant rests with the State."). Delays occasioned by the defendant, however, weigh against him. *Vermont v. Brillon*, 129 S. Ct. 1283, 1290 (2009). This is not only in accord with the reality that delay may be a defense tactic, but it is also a recognition that a defendant should not be able to procure a dismissal of the charges against him due to delays he caused. *See id.*

The State advances two different reasons for the delays in Langford's prosecution. First, it argues that the initial twenty-month delay in indicting him was due to its inability to have a "meaningful" conversation with the victims because it could not find an interpreter. Although we are not persuaded the State used its best efforts to secure an interpreter, there is no evidence that it intentionally tarried in finding one. At most, the State was negligent, and this is a neutral reason for delay which does not weigh heavily against it.

Next, the State contends the final four-month delay in trying Langford, running from May 2010 to September 2010, was the result of Langford coercing Phillips to not testify. From our review of the record, there is evidence that Langford and his co-defendant persuaded Phillips to remain silent. So long as he did so, he would be unavailable for cross-examination. Thus, the State would be unable to use Phillips' original statement as evidence against Langford. *See Bruton*, 391 U.S. at 126. The loss of this crucial piece of evidence therefore effectively gutted the State's case on the day of trial.

The State consequently needed to first procure a waiver of Phillips' right to remain silent, and then it could try Langford using the statement. Because Phillips' attorney was not ready to proceed during that term of court, however, a continuance was required for this to happen.⁹ From that point on, the State moved with reasonable haste given the few General Sessions terms scheduled for Edgefield County during that time. We agree with the circuit court that the delays already incurred are troubling, but we cannot ignore the fact that this additional delay is the product of Langford's efforts to spoil the State's evidence. Therefore, we will not count it against the State. *See United States v. Loud Hawk*, 474 U.S. 302, 316 (1986) (holding a defendant who causes delays in his trial "should not be able upon return to the district court to reap the reward of dismissal for failure to receive a speedy trial").

⁹ Langford's argument that the State simply could have redacted Phillips' references to him in the statement to avoid *Bruton* misses the point. Phillips was the key prosecution witness, and his testimony was essential to the State's case. Holding that the State was required to forego the use of Phillips' statement against Langford without consideration of why Phillips changed his mind would allow Langford to benefit from his tampering with the State's star witness.

The third factor in the *Barker* analysis is the defendant's assertion of his right to a speedy trial. While Langford first filed what seems to be a *pro se* speedy trial motion in June 2009, the record suggests that he never sought a ruling on it until the May 2010 hearing. Moreover, while Langford did file a *pro se* motion for a speedy trial/motion to dismiss days after the court issued its May 2010 order, it was never ruled upon and he never renewed his motion when the case was called for trial. Although it may have been futile for him to raise the issue again from an error preservation standpoint, the "failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial." *See Barker*, 407 U.S. at 532.

Finally, we must consider the prejudice Langford suffered. The Supreme Court has identified three different types of prejudice the right to a speedy trial seeks to prevent: (1) oppressive pre-trial incarceration; (2) anxiety stemming from being publicly accused of a crime; and (3) the possibility that the accused's defense will be impaired due to the death or disappearance of witnesses or the loss of memory with the passage of time. *Id.* "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Id.*

Langford was in jail for nearly two years pending trial. "The time spent in jail awaiting trial has a detrimental impact on the individual" through its attendant job loss, disruption of family life, and encouragement of "idleness." *Id.* While we are cognizant of not minimizing the deleterious effects of lengthy pre-trial incarceration, the two-year delay in bringing this case to trial does not amount to a constitutional violation in the absence of any actual prejudice to Langford's case.¹⁰ *See State v. Kennedy*, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (Ct. App. 2000) ("While Kennedy may have been slightly prejudiced by the twenty-six month pretrial incarceration, the more important question is whether he was prejudiced because the delay impaired his defense."). To that end, Langford has not demonstrated how his own defense was prejudiced by the delay. Although he does argue the final delay enabled the State to secure Phillips' testimony and thereby bolster its case against him, he fails to recognize that the State only had to do so

¹⁰ While extreme delays may warrant relief based solely on pre-trial incarceration, this case has not crossed that threshold. *See Doggett*, 505 U.S. at 657 ("[T]o warrant granting relief, negligence unaccompanied by particularized trial prejudice must have lasted longer than negligence demonstrably causing such prejudice.").

because of his interference. Moreover, he cannot point to any evidence of anxiety caused by the stigma of being accused of these crimes.

Looking at these factors and the case as a whole, and taking into account the balance of the State's interests and Langford's, we do not believe the circuit court abused its discretion in finding Langford was not denied a speedy trial in the constitutional sense.

CONCLUSION

For the foregoing reasons, we hold section 1-7-330 is unconstitutional under the separation of powers clause of our constitution. The General Sessions docket will henceforth be managed pursuant to the administrative order issued in conjunction with this opinion. Nevertheless, we affirm Langford's convictions because he has not shown he was prejudiced by the solicitor's control over calling his case for trial. In particular, we find no due process violation or a denial of his right to a speedy trial.

TOAL, C.J., BEATTY and KITTREDGE, JJ., concur. PLEICONES, J., dissenting in a separate opinion.

JUSTICE PLEICONES: I respectfully dissent from that part of the opinion that finds S.C. Code Ann. § 1-7-330 (2005) unconstitutional.

As explained below, the constitutionality of the statute is not before us. It is axiomatic that this Court will not address a constitutional issue unless it is necessary to a resolution of the case. *E.g.*, *S.C. Dep't of Soc. Servs. v. Cochran*, 356 S.C. 413, 589 S.E.2d 753 (2003). It is also axiomatic that we sit to review the lower court's order based upon the issues properly presented by the parties for our consideration. *E.g.*, *Herron v. Century BMW*, 395 S.C. 461, 719 S.E.2d 640 (2011). Constitutional issues are not exempt from issue preservation requirements. *Id.* Further, our rule restricts amicus to the issues presented by the parties, Rule 213, SCACR: to strike down a statute as unconstitutional based upon an amicus brief is tantamount to a *sua sponte* declaration. Unless a statute infringes upon our jurisdiction, we may not *sua sponte* declare it unconstitutional. *See State v. Keenan*, 278 S.C. 361, 296 S.E.2d 676 (1982). We should not decide the constitutionality of § 1-7-330 on this record.

Even if the constitutionality of § 1-7-330 were before us, under our existing precedents I find that the statute does not offend the separation of powers doctrine. I agree that solicitors are executive officers. S.C. Code Ann. § 1-1-110 (2005). Further, I agree that § 1-7-330 vests the exclusive authority to prepare the general sessions docket in the solicitor, and also authorizes her to determine the order in which the docketed cases are called. Finally, I do not disagree with the majority that by vesting exclusive authority in the solicitor to prepare the general sessions docket, and by permitting the solicitor to call cases from that docket in his desired order, § 1-7-330 could lead to unnecessary delay, oppressive haste, and other abuses. As I interpret the statute, however, I do not believe that it violates the South Carolina Constitution.

We have recently addressed a separation of powers challenge to prosecutorial authority:

Under the separation of powers doctrine, which is the basis for our form of government, the Executive Branch is vested with the power to decide when and how to prosecute a case. Both the South Carolina Constitution [footnote 5 citing S.C. Const. art. V, § 24] and South Carolina case law [footnote 6 citing *McLeod v. Snipes*, 266 S.C. 415, 223 S.E.2d 853 (1976)] place

the unfettered discretion to prosecute solely in the prosecutor's hands. The Attorney General as the State's chief prosecutor may decide when and where to present an indictment, and may even decide whether an indictment should be sought.

Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety. The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion

State v. Thrift, 312 S.C. 282, 291-292, 440 S.E.2d 341, 346-347 (1994) cited with approval in *State v. Needs*, 333 S.C. 134, 146, 508 S.E.2d 857, 863 (1998); *State v. Burdette*, 335 S.C. 34, 40, 515 S.E.2d 525, 528 (1999).

Further, "[a]ll the authorities agree that, in the exercise of a discretionary official act, an executive officer cannot be restrained, coerced, or controlled by the judicial department." *State v. Ansel*, 76 S.C. 395, 57 S.E. 185 (1907).

Subject to the limitations discussed below, the solicitor has the discretion to decide when to prosecute and how to prosecute a case. This does not mean that the solicitor's authority is unrestrained by judicial oversight. The trial judge has the ultimate authority to determine whether a case called by the solicitor will be tried at a particular juncture. See *State v. Mikell*, 257 S.C. 315, 185 S.E.2d 814 (1971) ("In the calling of cases for trial the solicitor has a broad discretion in the first instance, and the trial [sic] judge has a broad discretion in the final analysis."). This is so because the trial judge has "the inherent power to control the order of [the court's] business to safeguard the rights of litigants" through her discretion to grant a continuance. *Williams v. Bordon's Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980). In *Williams*, the Court held the General Assembly violated the separation of powers doctrine by enacting a statute which purported to limit the court's discretion to grant a continuance in any case which involved an attorney-legislator as "attorney of record, witness, or otherwise." If we read § 1-7-330 as preventing a trial judge from exercising her discretion to require a solicitor to place a case upon a future docket if necessary to safeguard the rights of the defendant, then we would render the statute unconstitutional. Such an interpretation would create a separation of powers issue, not between the executive and the judiciary, but between the legislative branch and the judicial branch since we would find the

statute unconstitutionally infringes upon judicial authority. *Williams, supra*. Nothing in § 1-7-330 affects the court's inherent authority to safeguard litigants' rights; rather, the statute represents the reasonable delegation of preparing the general sessions docket to the solicitor.

The solicitor is a party to every general sessions proceeding, and has the information and resources necessary to determine when a case is ready to be called. If the solicitor is perceived to be unlawfully delaying the call of a case, the defendant has available the remedy of a speedy trial motion: If it is called with undue haste, the defendant may seek a continuance. It is only logical to have the solicitor initially set the docket since he knows the status of the law enforcement investigation, of the examination of the forensic evidence, of any codefendant's case, and of the defendant's other charges. *See State v. Mikell, supra* ("A prosecuting attorney normally has many cases for disposition. He must plan ahead to expedite the work of the court . . ."). The solicitor bears the burden of proof in every case and should not ordinarily be compelled to call his case before he is ready. *Id.* ("solicitor has authority to call cases in such order and in such manner as will facilitate the efficient administration of his official duties, **subject to the broad discretion of the trial judge.**") (emphasis supplied). In my opinion, there is no separation of powers problem with § 1-7-330. *E.g., State v. Thrift, supra*.

Finally, I disagree with the premise of the majority's opinion, "that section 1-7-330 is at odds with [the courts'] intrinsically judicial power." Even if one were to grant that the statute creates some overlap of executive and judicial authority, it cannot be said that preparing a docket and calling cases from that docket usurps the judicial power vested in the unified judicial system under S.C. Const. art. V, § 1 (1977). *See Carolina Glass Co. v. Murray*, 87 S.C. 270, 291-292, 69 S.E. 391, 399 (1910) *overruled in part on other grounds* *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985).

In my opinion, however, we cannot reach the constitutionality of that statute in this case. Were we to reach the issue, I would interpret the statute in a way that does not offend the separation of powers doctrine. If the Court is nonetheless determined to declare § 1-7-330 unconstitutional, then we must both deal with our precedents and describe the new system in sufficient detail that the parties most intimately involved in the process can implement the necessary changes.

I concur in the majority's decision to affirm this appeal and in the sentiment that our General Sessions docketing system needs reform, but dissent from so much of that opinion as reaches and decides the constitutionality of § 1-7-330.

The Supreme Court of South Carolina

The State, Respondent,

v.

K.C. Langford, III, Appellant.

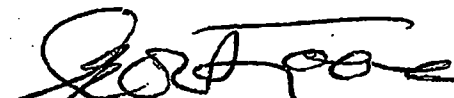
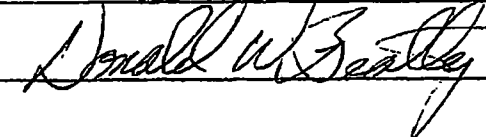
Appellate Case No. 2010-173128

Opinion No. 27195 (S.C. Sup. Ct. filed November 21,
2012)

ORDER

After careful consideration of the petitions for rehearing filed in this matter, the petitions are denied. This Court does, however, hold the implementation of the administrative orders entitled *Disposition of Cases in General Sessions* and *Uniform Differentiated Case Management*, both dated November 21, 2012, in abeyance pending further action by this Court.

To assist this Court, a committee will be appointed by the Chief Justice to propose a plan for the implementation of the changes necessary to docket management in the court of general sessions in light of the decision in this case. This committee will include a wide range of stakeholders including representatives from the South Carolina Solicitors' Association, the South Carolina Public Defender Association, the South Carolina Clerks of Court Association, Court Administration, the practicing bar and the judiciary.

 C.J.
 J.
 J.

John Kittredge J.
Kaye L. Ham J.

Columbia, South Carolina
December 20, 2012

cc: K.C. Langford, III
Salley W. Elliott
John W. McIntosh
Elizabeth Anne Franklin-Best
Mark Reagan Calhoun
Donald V. Myers
Alan McCrory Wilson
Tara Schultz Waters
David A. Spencer
Ernest Charles Grose, Jr.
David Michael Pascoe, Jr.
William P. Keesley



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX: (803) 734-1499

www.sccourts.org

December 20, 2012

Shirley F. Newby
PO Box 34
Edgefield SC 29824-0034

REMITTITUR

Re: The State v. K. C. Langford, III
Lower Court Case No. 2010GS1900272, 2008GS1900673,
2010GS1900273, 2010GS1900278
Appellate Case No. 2010-173128

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Edgefield County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

K.C. LANGFORD, III

APPELLANT

AND

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS,

APPELLANT

Final Brief of *Amicus Curie*
South Carolina Public Defender Association

E. Charles Grose, Jr.
600 Monument St., Box P-133
Greenwood, SC 29646
(864) 229-9505

Tara S. Waters
100 Hillcrest Drive, Suite P
Laurens, South Carolina 29360
(864) 984-8807

Attorneys for *Amicus Curie* South
Carolina Public Defender
Association

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Statement of Issue on Appeal

Did the trial court judge err when he did not dismiss Langford's case in May, 2010 when Langford motioned for dismissal for violating his right to a speedy trial, and when the state sought a continuance of that trial so it could further pressure a formerly cooperating co-defendant, who elected to assert his right to remain silent under the 5th Amendment of the federal Constitution, into testifying for the state at the subsequent trial?

Statement of the Case

The State arrested K.C. Langford on October 3, 2008. The Edgefield County Grand Jury indicted Langford for Conspiracy in December 2008.

Langford moved for a speedy trial on June 29, 2009.

The Edgefield County grand jury indicted K.C. Langford for first degree burglary, armed robbery, and kidnapping on May 5, 2010.

The case was initially noticed for trial on May 17, 2010, but the solicitor continued the trial. On May 20, 2010 the Honorable William P. Keesley denied Langford's motion to dismiss for denial of his right to a speedy trial. On May 25, 2010, Langford again moved for the charges to be dismissed for denial of his right to a speedy trial.

The State tried Langford before the Honorable William P. Keesley and a jury on September 6, 2010. After the jurors convicted, the judge sentenced to concurrent sentences of twenty (20) years for kidnapping, armed robbery, and burglary. The judge also imposed a concurrent sentence of five (5) years for conspiracy.

This appeal follows.

Statement of Facts

The victims are a Chinese family that owned a Chinese restaurant in Edgefield. They speak the Mandarin dialect. At 10:30 p.m. on August 14, 2008, three people attacked this family after they had left their restaurant to go home for the day. One attacker struck the father in the head while he watered plants outside the house, and another attacker went inside and stole a black bag. One of the perpetrators attacked the son when he came outside to check on his father. Two women remained in the house during the crimes.

An undisclosed, confidential informant seeking assistance with a Family Court bench warrant helped law enforcement develop Langford, Alvin P. , and Bryan Phillips (brothers) as suspects. R. 302. According to the State's theory, the three defendants observed the victims over a period of time and noticed the family usually left the restaurant carrying the black bag, likely containing money.

Both Langford and Bryan Phillips exercised their right to remain silent. Alvin P. , however, made multiple statements. He signed two statements saying neither Langford nor his brother was involved in the crimes. R. 190, 194-95. Other statements made by Alvin P. , however, constituted *the only evidence* linking Langford to these crimes.

On June 22, 2009, Langford moved for the solicitor and presiding judge to give him a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution. R. 3.

The solicitor scheduled Langford's case for trial to begin on May 17, 2010 and planned for Alvin P. to testify for the State. However, the solicitor ultimately elected not to call Langford's case to trial because "[a]t the last moment, the cooperating witness

changed his mind and declared that he was not going to testify and would assert his privilege under the 5th Amendment to the Constitution of the United States." Langford moved for his charges to be dismissed "based on the State's failure to provide a speedy trial." The judge expressly found that "the case hinge[d] almost *exclusively on the testimony of the cooperating defendant*" who had "declared that he was *not going to testify* and would assert his privilege under the 5th Amendment of the Constitution of the United States." Despite finding Langford had been "incarcerated for 20 months" and being "deeply concerned about the length of time that [Langford had] been incarcerated," the trial court judge denied the motion to dismiss and ordered Langford's continued pre-trial detention "without bail." Order, Suppl. R. 3 (emphasis added). *See also* R. 190 (Phillips confirmed his refusal to testify in May, 2010).

After the court filed the order denying the motion to dismiss, Langford filed a second motion for a speedy trial on May 25, 2010. This second motion for a speedy trial referenced Langford's first speedy trial motion. R. 1-2.

The state finally called this case to trial in September, 2010, after the solicitor had once again secured Alvin P. ' cooperation. P. testified against Langford and his brother, claiming that the three committed the crimes together and split the proceeds of the robbery. R. 150-219. Phillips admitted he "rehearsed" his testimony with the solicitor. R. 204. Before testifying Phillips had pleaded guilty to one count of armed robbery with the other indictments still pending, R. 172-72, 205, and his sentence was deferred until after he

testified. Judge Keesley ultimately sentenced Phillips to the minimum sentence for armed robbery of ten (10) years¹ with the solicitor dismissing the other charges.

Both prior to and subsequent to trial, Langford complained about the prior continuance and reasserted his speedy trial motions. Langford told the judge he had been prejudiced by the delay and denial of his right to a speedy trial. However, the trial court judge reaffirmed the rulings contained in the May 20, 2010 order. R. 3, 461-68, 475.

¹<http://publicindex.sccourts.org/edgefield/publicindex/PICaseDetails.aspx?County=19+&Casenum=J595143&CourtType=G&CaseType=Criminal&CourtAgency=19001&LastName=Phillips&FirstName=Alvin><http://publicindex.sccourts.org/edgefield/publicindex/PICaseDetails.aspx?County=19+&Casenum=J595143&CourtType=G&CaseType=Criminal&CourtAgency=19001&LastName=Phillips&FirstName=Alvin> (last viewed July 25, 2011).

Argument

The trial court judge erred when he did not dismiss Langford's case in May 2010 when Langford motioned for dismissal for violating his right to a speedy trial, and when the state sought a continuance of that trial so it could further pressure a formerly cooperating co-defendant, who elected to assert his right to remain silent under the 5th Amendment of the federal Constitution, into testifying for the state at the subsequent trial.

The State delayed 673 days before calling Langford's case to trial. The order denying the motion to dismiss incorrectly found, "None of this delay was occasioned by any impropriety on the part of the State." Suppl. R. 2. In reality, the solicitor, who has exclusive control of the criminal docket, was responsible for *all of the delay* and this solicitor docket control denied Langford his right to a speedy trial. In order to establish the Solicitor's responsibility for the delay, it is necessary to understand the Solicitors' and the courts' respective roles in administering the General Sessions Court dockets, including the judiciary's historical deference to solicitor control.

Tension exists between the South Carolina Supreme Court's constitutional authority to oversee the unified court system and the sixteen elected solicitors' statutorily authorized control of the criminal docket. Our Supreme Court has the exclusive authority to "make rules governing the administration of all the courts" and "[s]ubject to the statutory law . . . make rules governing the practice and procedure in all such courts." S.C. Const. Art. V, §4. Yet, solicitors have exclusive authority to prepare criminal dockets and to "determine the order in which cases on the docket are called for trial." S.C. Code Ann. §1-7-330 (1976). The solicitors cite public policy to justify their authority:

[H]istorically, solicitors have published and administered the criminal dockets in South Carolina, and in turn, solicitors have been called to explain burgeoning caseloads, decide whether to concentrate on jail cases in hopes of obviating the need for jail expansion construction, or call the cases of

defendants out on bond before they reoffend. Solicitors are expected to schedule guilty pleas as well as explain to crime victims when their case will be reached and why it has taken so long.

"Criminal Dockets Administered by Prosecutors: Past, Present and Future," by Solicitor Trey Gowdy,² *The South Carolina Lawyer*, March 2010, p. 28.

As seen in Langford's case, the actual practice can be quite different. This justification fails to consider a defendant's due process right to be treated fairly by the courts. To fully understand how the systemic shortcomings prejudiced Langford, it is necessary to: (1) review the evolution of the Supreme Court's and solicitors' roles in administering General Sessions Court, (2) identify the potential for solicitors to abuse control of the docket with particular emphasis on the abuses in petitioner's case, (3) consider the constitutional doctrines of Separation of Powers and Due Process, and (4) argue why this Court should reverse the trial court and dismiss the charges against Langford.

I. Evolution of the South Carolina Supreme Court's and solicitors' roles in administering General Sessions Court.

Some version of §1-7-330 has appeared in the South Carolina code since at least the 1932 edition of the code of laws. The cases challenging solicitor control of the docket can generally be grouped into two categories: (1) those arising from requests for continuances and (2) those arising from speedy trial motions.

First, prosecutors might attempt to call a case to trial before a defendant or defense counsel is prepared to defend the charges. Because "[t]he solicitor has a broad discretion deciding the order in which cases are called," the fact that much older cases remain on

² In November 2010, Solicitor Gowdy was elected to the United States House of Representatives for the Fourth Congressional District.

the docket³ does not show prejudice or establish grounds to continue the newer case, and a defendant must show an inadequate opportunity to prepare. *State v. Flood*, 257 S.C. 141, 145-45, 184 S.E.2d 549, 552 (1971). The solicitor's discretion is "subject to the overall broad supervision of the trial judge. If a defendant feels that his rights are prejudiced by reason of the calling of his case at any particular time, he may apply to the judge for a continuance." *State v. Mikell*, 257 S.C. 315, 322, 185 S.E.2d 814, 817 (1971). As practitioners can attest, trial courts sometimes continue cases when a defendant demonstrates a need for additional time to prepare a defense. The trial court's supervisory authority to continue cases is codified by Rule 7, SCRCrimP.

Second, the solicitor might intentionally delay calling a case, thereby denying someone a speedy trial. This type of intentional delay is precisely what happened to Langford. In these situations, our courts are reluctant to exercise supervisory power. In fact, neither the Supreme Court nor the Court of Appeals has ever dismissed a case because the solicitor denied a defendant a speedy trial.⁴ See *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007) (Both state and defense gave reasonable explanations for the delay); *State v. Kennedy*, 339 S.C. 243, 251, 528 S.E.2d 700, 704-05 (Ct. App. 2000) ("Given the complexity of the case, supplying the State with a legitimate reason for the delay, and the lack of prejudice to the defendant, we conclude the trial court properly denied Kennedy's motion to dismiss based on his assertion of a speedy trial violation."); *State v. Robinson*, 335 S.C. 620, 518 S.E.2d 269 (Ct. App. 1999) ("There is no evidence the delay was

³ In the order denying Langford's motion to dismiss, the trial court judge recognized Langford was seeking to have his case resolved before older cases. R. *.

⁴ The Supreme Court recently dismissed a case based on pre-indictment delay. *State v. Lee*, 375 S.C. 394, 653 S.E.2d 259 (2007).

wilful or intentional," and appellant did not assert right until ten months before trial); *State v. Smith*, 307 S.C. 376, 415 S.E.2d 409 (C. App. 1992) (delay resulted from state's decision to try defendant on another charge for which he was sentenced to death, and state dismissed this charge until Supreme Court vacated the other conviction); *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997) ("Although the delay was lengthy and the justification was unsatisfactory," appellant did not establish prejudice.); *State v. Chapman*, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("The delay was not caused by any willful neglect on the state's part."); *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) ("there is no record of an actual demand by Waites for a speedy trial"); *State v. Tyson*, 283 S.C. 375, 378, 323 S.E.2d 770, 770 (1984) ("Nothing in the record suggests the State caused unnecessary delay. It appears that everything possible was done to expedite the case while protecting appellant's rights considering the serious nature of the charges. Furthermore, part of the delay was caused by his initial failure to accept appointed counsel.").

There is not a court rule authorizing the trial court to dismiss charges for a denial of the right to a speedy trial. Our Supreme Court traditionally attempted other means to oversee the orderly disposition of General Sessions Court cases. For almost three decades, the Supreme Court has been urging solicitors to resolve cases within 180 days of arrest.

On August 17, 1983, Chief Justice Lewis ordered "all criminal cases in the State of South Carolina shall be disposed within 180 days from the date of the defendant's arrest." The order provided that a case could be continued by written order "if the Court determines that exceptional circumstances exist in the case." To accomplish the purpose of the order, the Chief Justice provided:

[T]he Chief Circuit Court Judge for Administrative Purposes shall be in overall charge of and responsible for the criminal roster in order to develop a procedure for expediting the disposition of criminal cases, including the setting of rosters of cases for disposition, if such be necessary to accomplish the timely disposition of criminal cases.

This order also required the trial courts to continue cases pending for less than 180 days until such time no cases older than 180 days were pending for trial. "The order [did] not create or define a right of a defendant to a speedy trial." By order dated January 13, 1984, Chief Justice Lewis would clarify that orders continuing cases beyond 180 days for exceptional circumstances "shall not be valid for more than thirty (30) days from the date of issuance."⁵

Illustrating the tension between the Supreme Court's constitutional oversight of the courts and the solicitors' statutorily authorized control of the criminal dockets, Chief Justice Lewis' orders, very arguably, were in direct conflict with Supreme Court precedent that seemingly supported solicitor docket control. *See Flood, supra*.

On March 5, 1999, Chief Justice Finney rescinded Chief Justice Lewis' orders dated August 17, 1983 and January 13, 1984. Chief Justice Finney retained the 180 day benchmark, ordering "all criminal cases in the State of South Carolina [to] be disposed of within 180 days from the date of the defendant's arrest." Similar to Chief Justice Lewis' orders, Chief Justice Finney's order provided for cases to be continued "beyond 180 days by written order if the court determines that exceptional circumstances exist in the case" and explicitly "[did] not create or define a right of a defendant to a speedy trial." However, in apparent deference to the solicitors, Chief Justice Finney's order deleted

⁵ Copies of Chief Justice Lewis' orders dated August 17, 1983 and January 13, 1984 are attached as Appendices A and B.

language regarding the trial court's oversight of criminal dockets and authority to set rosters.⁶

Consistent with the Chief Justice Finney's removal of the trial court's authority to set General Sessions rosters, the current order setting forth the authority of the Chief Administrative Judge is limited to granting continuances and setting "hearings on bonds, motions, probation revocations and other nonjury general sessions matters and to designate which presiding judge shall hear these matters."⁷

Chief Justice Toal implemented oversight of her predecessor's order by tracking whether the solicitors dispose of eighty percent (80%) of the cases within 180 days. Each month, the Judicial Department publishes reports including a graph of circuits meeting this benchmark. A copy of the graph for July 31, 2011 is attached as Appendix C.⁸ None of the sixteen solicitors currently meet the benchmark. The Sixteenth Circuit Solicitor is most successful, disposing of sixty-six percent (66%) of the cases within 180 days. The other fifteen solicitors disposed of forty-six percent (46%) or less of the cases within 180 days. The Eleventh Circuit, where Langford was tried, disposed of only thirty-three percent (33%) of the cases within 180 days.

In addition, in 2002 Chief Justice Toal began a differentiated case management pilot program in Richland County. Each case was assigned to one of three tracks, 120 days, 180

⁶ Order of Chief Justice Earnest A. Finney, Jr. dated March 5, 1999 (available at <http://www.judicial.state.sc.us/courtOrders/displayOrder.cfm?orderNo=1999-03-05-01>), (last viewed July 31, 2011)

⁷ Order of Chief Justice Toal, dated February 4, 2010, <http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2010-01-13-01> (setting authority of Chief Administrative judges) (last viewed July 31, 2011)

⁸ http://www.judicial.state.sc.us/monthlyReports/Jul2011/cr75_mon_graph.pdf (last viewed August 14, 2011).

days or 270 days, based on the complexity of the case. Circuit Court Judge Henry Floyd managed the tracks with the goal of processing the cases within the deadline. During calendar year 2002, the criminal case backlog in Richland County was reduced by nearly one third. Based on the success of the program, the system was adapted for use in Greenville, Horry, and Orangeburg Counties.⁹ The program has spread state-wide. On March 1, 2007, "[T]he sixteen Judicial Circuit Solicitors agree[d] to develop with the Chief Justice and implement criminal case management systems in each county throughout the State of South Carolina."¹⁰

The Supreme Court continues to exercise more supervision of the criminal dockets. In the February 25, 2009 State of the Judiciary address, Chief Justice Toal discussed the backlog of General Sessions Court cases. She told the General Assembly that while the solicitors control the docket, there should be deadlines for disposition of cases. The Chief Justice acknowledged a practice of some solicitors allowing defendants to linger in jail until the solicitor determines the person has served enough time before offering a time served plea.¹¹

Also in 2009, Chief Justice Toal formed a task force to draft proposed South Carolina Criminal Rules (SCCR). Retired Circuit Court Judge Howard King chaired the task force that included prosecutors, public defenders, and private criminal defense

⁹ Efficient South Carolina Court Management Produces Result, Press Release for 1/22/2003, <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=132>, (last viewed July 31, 2011)

¹⁰ Consent Order of Chief Justice Toal dated March 1, 2007 and sixteen Circuit Solicitors, <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=371>, (last viewed July 31, 2011).

¹¹ <http://www.judicial.state.sc.us/whatsnew/displayWhatsNew.cfm?indexId=503> (last viewed August 14, 2011).

lawyers. The proposed rules were published on December 2, 2009.¹² The proposed rules provide for all cases to “be governed by a docket management system pursuant to Supreme Court docket management orders that now exist or may be implemented or amended by the Supreme Court.” Proposed Rule 101, SCCR. Continuing the current system, a defendant would receive discovery and a plea offer at the initial appearance. Proposed Rule 119, SCCR. By the second appearance, a defendant would have to accept the offer or be placed on a trial docket. Proposed Rule 120, SCCR. The proposed rules provide for judicial oversight, allowing the Chief Administrative Judge to hold status conferences to monitor the progress of the case or if a pretrial detainee’s case is not disposed of during the track. *See* Proposed Rules 121, 122 and 124 SCCR.

The proposed rules, however, only minimally enforce a defendant’s right to a speedy trial. Rule 121(b) would provide:

Cases should be disposed of within the track to which they are assigned. **Failure to dispose of a case within the track is not grounds for dismissal but may be considered by the chief administrative judge in determining remedies or sanctions.**

(Emphasis added). There is no further specification of “remedies or sanctions.” Reconsideration of bond is the only remedy listed anywhere in the proposed rules, but “unreasonable delay” is only one factor the court “may” consider. Proposed Rule 106(g), SCCR. However, the proposed rules expressly exclude dismissal as a remedy.

The rules, likewise, would not provide for a meaningful trial order. Although the solicitor would be required to prepare a trial roster fourteen (14) days before a term of

¹² Request for Written Comments and Notice of Public Hearing on Proposed SCCR, <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=602> (last viewed July 31, 2011).

court, the solicitor is not required to specify the order the cases would be called for trial. Defendants would be required to be in court within two hours of oral notification, and failure to appear would result in a bond revocation. Proposed Rule 123, SCCR. The solicitor also would retain the authority to select the trial judge.

The Supreme Court received comments on the proposed criminal rules.¹³ The Court convened a public hearing on the proposed rules on January 5, 2009.¹⁴ Although the solicitors did not provide written comments concerning the proposed rules, the President of the Solicitors' Association appeared and opposed the Supreme Court being able to issue docket management orders pursuant to Rule 101, SCCR without the solicitors' consent. The Supreme Court is currently conducting a "comprehensive review" of the proposed rules. "Full vetting of the proposed new rules will be conducted in 2010 with submission to the General Assembly planned for the 2011 [or 2012] session."¹⁵ In February 2011, the Supreme Court announced the formation of a Docket Management Task Force chaired by the Honorable Kaye Hearn with a General Sessions Court Committee chaired by the Honorable Costa Pleicones.¹⁶

¹³ Comments received by Supreme Court on Proposed SCCR, <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=612> (last viewed July 31, 2011).

¹⁴ See Request for Written Comments and Notice of Public Hearing on Proposed SCCR, <http://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=602> (last viewed July 31, 2011)

¹⁵ Chief Justice Toal's Presentation to the S.C. Bar, January 22, 2010, PowerPoint slide 12, <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=621> (last viewed July 31, 2011).

¹⁶ <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=714> (last viewed July 25, 2011).

II. Identify the potential for solicitors to abuse control of the docket.

Unchecked authority to control the flow of criminal cases through General Sessions court hands solicitors a license to exploit this control to disadvantage defendants in several ways.¹⁷ First, solicitors use their control of the docket to call cases to trial when the defense is ill-prepared or unable to present the most complete defense possible. Second, solicitors use their control to leverage guilty pleas from those who would otherwise exercise their rights to a jury trial. Third, solicitors can repeatedly and unnecessarily request the appearance of defendants who have made bond. Fourth, solicitor docket control essentially cuts off judicial involvement with trial cases until the morning of trial. Fifth, docket control allows the solicitors to "judge shop." Sixth, unchecked docket control allows solicitors to call a case when the State has the best possible opportunity to convict. Each of these abuses will be discussed in detail below, along with how these abuses affected Langford.

A. Solicitors use their control of the docket to call cases to trial when the defense is ill-prepared or unable to present the most complete defense possible.

Whether they are public defenders or members of the private bar, criminal defense lawyers juggle dozens, even hundreds, of clients at any given time; and the solicitors are adept in using this to their advantage. There is no method to be used in guessing which cases solicitors will call to trial during any given term of court.

Since solicitors have total discretion in formulating a trial docket, they have the ability to stack the list with a number of cases all handled by a specific defense lawyer.

¹⁷ For a discussion of these abuses, *see* Siegel, Andrew M., When Prosecutors Control Criminal Court Dockets: Dispatches on History and Policy from a Land Time Forgot, 32 Am. J. Crim. L. 325 (2005).

That lawyer would then have a choice to make: divide time between all of their cases appearing on the trial docket or attempt to prioritize and prepare a select few. Neither of these options provides the defendant with effective assistance of counsel. Under the first scenario, the lawyer is unable to devote the necessary time and attention to each case, falling short of being fully prepared for any one case. Under the second scenario, some cases will be neglected, and since the lawyer does not know which cases will actually be called to trial, it is possible the lawyer would be wholly unprepared for the right case. Further, solicitors may call cases of one lawyer to trial in consecutive weeks which would wear down that lawyer and leave little time to prepare for upcoming trial cases or manage other clients. This is not the only way solicitors can use their docket control to sabotage the defense. Solicitors can also schedule trials when strong defense witnesses may not be unavailable. The defense would be in a position to either utilize weaker witnesses, who may not present well to a jury or be highly impeachable, or forgo presenting crucial evidence all-together.

While each of the scenarios above lend themselves to a request for a continuance, that is not a surefire way to combat solicitor docket control. A continuance is never automatic because the decision of whether or not to reschedule a trial lies solely within the discretion of the presiding judge. This problem is often exacerbated by the fact that in our current judicial rotation system, a motion for continuance may not be heard until the proposed trial judge is on the bench, on the date the trial is slated to start. Defense lawyers seeking a continuance due to unpreparedness or unavailable witnesses may still have to spend precious time doing their best to get ready for a trial that may later be continued. That time could surely be spent tending to other matters.

B. Solicitors use their control to leverage guilty pleas from those who would otherwise exercise their right to a jury trial.

Not all defendants make bond after being arrested. Some defendants, like Langford, are held without bail. See S.C. Const. Art. 1, §15. Those who remain in pretrial detention face a difficult decision – remain in jail until the solicitor sees fit to call their case to trial or take a plea offer that would either release them or send them to the Department of Corrections. In many situations, there is no true choice to be made; the plea offer is taken. Langford, however, asked the trial court to enforce his constitutional right to a speedy trial.

Each day people are arrested for things they are not guilty of and cases full of legal or evidentiary issues come into being. Unless the solicitor exercises his or her discretion and dismisses the charge, the only way to raise legal or evidentiary challenges or assert claims of actual innocence is to take the case to a jury trial. The right to a jury trial is central to our system of justice, yet cannot be freely exercised in South Carolina because the power to schedule the trial lies solely with the prosecution.

Often defendants, like Langford, request a jury trial but have to wait months, sometimes even years, for the solicitor to call the case to trial. In the interim, many defendants decide, regardless of how strong their case may be, to take a plea offer rather than languish in jail. The solicitor's power to refuse to call a case trial goes unchecked by the judiciary and sends a message to the defendant that the only way to resolve the pending charges is a guilty plea. In other cases, the solicitor holds someone like Langford in pre-trial detention until the prosecutor removes the weaknesses in the State's case and gains the maximum possible strategic advantage.

C. Solicitors can repeatedly and unnecessarily request the appearance of defendants who have made bond.

Prior to the implementation of county or circuit-wide case management systems, it was common for the state to require all defendants with pending charges to appear each and every term of court. These mass roll calls served little purpose other than harassing the defendants who were fortunate enough to make bond and jeopardize employment that the defendants may have secured.

Even after these case management orders have been put into place, the solicitors can, and have, compelled the appearance of defendants, both represented and *pro se*, under threat of bench warrant. Most times, these appearances are used merely to insure that the defendants are available at the beck and call of the state.

D. Solicitor docket control essentially cuts off judicial involvement with trial cases until the morning of trial.

Under the current system of solicitor docket control, judges are not assigned to cases prior to the case being called for trial.¹⁸ Thus, it is nearly impossible to address pretrial matters, such as exclusion of evidence, in advance of trial. In a case where there is a strong argument for the exclusion of evidence the state will heavily rely on, the defendant has no choice but to request a jury trial, wait for the state to call the case to trial, and then gamble away any plea offer by pressing forward with jury selection and pretrial hearings. If the defendant loses and the evidence in question is found to be admissible, the defendant has often lost any favorable plea offers that may have previously been extended and must either plead guilty and receive a harsher sentence or continue on with trial and risk the maximum punishment.

¹⁸ However, judges are assigned to capital cases once the defendant is served with notice of the state's intention to seek the death penalty.

In larger jurisdictions, this lack of judicial involvement can lead to judges being unfamiliar with cases. The absence of a judge who will be familiar with the peculiarities of a given case and be in a position to rule on pretrial matters removes options from the defendant's menu of possible resolutions to his or her case.

Langford's case was tried in one of the smallest counties of the state. While the same circuit court judge was involved in multiple proceedings, Langford did not receive the benefit of any judicial supervision. The solicitor, however, used docket control to manipulate the judicial proceedings to the state's benefit. When Alvin P. refused to cooperate in May, 2010, the solicitor declined to go forward, despite claiming "great...expense" to the state in preparing the case for trial during that term of court. Order Suppl. R. 2. Once the state again secured Alvin P. cooperation, the solicitor increased his leverage over the witness by securing a guilty plea and deferring sentencing until after Langford's trial. In addition to presiding over Langford's trial, Judge Keesley also sentenced Phillips on October 5, 2010.¹⁹

E. Docket control allows the solicitors to "judge shop."

Because cases may be called for plea or trial entirely at the whim of the solicitor, the prosecution has the unique ability to unilaterally select which judge will hear a given case. With the increased ability to communicate with other prosecutors around the state, especially those who practice regularly in front of a particular judge, prosecutors can learn which judges will be likely to rule favorably on evidentiary issues and sentence defendants to the maximum allowed by statute.

¹⁹<http://publicindex.sccourts.org/edgefield/publicindex/PICaseDetails.aspx?County=19+&Casenum=J595143&CourtType=G&CaseType=Criminal&CourtAgency=19001&LastName=Phillips&FirstName=Alvin> (last viewed July 31, 2011).

Defendants can do little to escape the wrath of an unfavorable judge. If there is a plea offer extended by the solicitor, they have the unfettered ability to revoke the offer at any time, leaving the defendant with no choice but to plead guilty in front of the state's judge of choice. If the defendant has elected to exercise his or her right to a jury trial, their case will be tried in front of the judge selected by the state unless a continuance is granted. However, a continuance can only be sought if meritorious grounds exist and even then, the sole discretion in granting the continuance lies with the trial judge.

In Langford's case, the solicitor used the same circuit court judge to ensure Alvin P. cooperation. Judge Keesley continued Langford's case in May, 2010 when "the cooperating witness changed his mind" about testifying for the state. Next, the solicitor arranged for Alvin P. to plead guilty before Judge Keesley with sentencing deferred until after he testified for the state. Finally, the solicitor called Langford's case to trial before Judge Keesley in September, 2010, correctly predicting he would allow the state to proceed to trial since he had denied Langford's motion to dismiss in May, 2010.

III. Solicitor control of the docket is unconstitutional because it violates the Separation of Powers doctrine and Due Process.

Solicitor control of the docket is not constitutional. First, solicitor control of the docket violates the constitutional doctrine of separation of powers. Second, solicitor control of the docket violates the due process clauses of the United States and South Carolina Constitutions. Each are discussed below.

A. The constitutional doctrine of Separation of Powers.

The South Carolina Constitution explicitly divides the government into three branches and prohibits encroachment of one branch into the purview of another:

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever

separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties or any other.

S. C. Const., Art. I, §8.

Judges are inherently members of the judicial branch and solicitors are statutorily defined as members of the executive branch. S.C. Code Ann. §1-1-110 (Supp.). However, the South Carolina Code of Laws bestows on the solicitor the power to control dockets for General Sessions Court:

The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial.

S.C. Code Ann. §1-7-330 (Supp.).

The South Carolina Supreme Court has held that managing the court docket is an inherently judicial function, at least in the Court of Common Pleas. *Williams v. Bordon's, Inc.*, 274 S.C. 275, 262 S.E.2d 881 (1980). Section 1-7-330 takes a judicial function, control of the court docket, and places it in the hands of an executive officer. This statute violates the Separation of Powers clause of the South Carolina Constitution. Judicial oversight should include the authority for the trial court to prevent solicitors from abusing their control of the docket to gain a strategic and tactical advantage over a defendant. Through separation of powers, a judicial officer should have decided when Langford's case was set for trial.

B. Due Process²⁰

Judges are not fungible; they cover the constitutional spectrum; and a particular judge's emphasis may make a

²⁰ U.S. Const. Am. 5 and 14 and S.C. Const. Art. I, §3.

world of difference when it comes to rulings on evidence, the temper of the courtroom, the tolerance for a proffered defense, and the like. Lawyers recognize this when they talk about 'shopping' for a judge; Senators recognize this when they are asked to give their 'advice and consent' to judicial appointments; laymen recognize this when they appraise the quality and image of the judiciary in their own community.

Laird v. Tatum, 409 U.S. 824, 834-35 (1972) (Rehnquist, J.) (quoting *Chandler v. Judicial Council of the Tenth Circuit of the United States*, 398 U.S. 74, 137, 90 S.Ct. 1648, 26 L.Ed.2d 100 (1970) (Douglas, J., dissenting)).

Solicitor control of the docket includes the awesome power to select the trial judge. This practice "raises substantial due process concerns." *U.S. v. Pearson*, 203 F.3d 1243, 1257 (10th Cir. 2000). "Any criminal justice system in which the prosecutor alone is able to select the judge of his choice, even in limited types of cases, raises serious concerns about the appearance of partiality, irrespective of the motives of the prosecutor in selecting a given judge." *Francolino v. Kuhlman*, 224 F.Supp.2d 615, 630 (S.D.N.Y. 2002). In fact, our Supreme Court recently observed, "[T]he practice of the prosecutor selecting the trial judge is inappropriate and troubling" and "is no longer possible . . . in death penalty cases." *Rosemond v. Catoe*, 383 S.C. 320, 326, fn. 1, 680 S.E.2d 5, 8, fn. 1 (2009). This practice is just as inappropriate and troubling in non-capital cases.

At least two states hold it violates due process for the prosecutor to assign the trial judge. *State v. Simpson*, 551 So.2d 1303 (La. 1989) ("To meet due process requirements, capital and other felony cases must be allotted for trial to the various divisions of the court, or to judges assigned criminal court duty, on a random or rotating basis or under some other procedure adopted by the court which does not vest the district attorney with power to choose the judge to whom a particular case is assigned.") and *McDonald v.*

Goldstein, 191 Misc. 863, 83 N.Y.S.2d 620 (948) ("A court dealing with the life and liberty of the people must be free from outside control. . . . That a judge should ever be burdened with the thought that his assignments depended on the district attorney's appraisal of his court work is unthinkable in American jurisprudence.").

As a result of the judiciary's historical deference to solicitor control of the docket, the circuit courts have developed a systemic bias against enforcing the right to a speedy trial. In Langford's case, the solicitor recognized the state had an advantage in front of Judge Keesley. The solicitor arranged for all the proceedings to be in front of this judge. The state obtained a favorable ruling from Judge Keesley, denying Langford's motion to dismiss for denial of a speedy trial. This order also granted the solicitor and additional "9 months" before Langford could "reassert his motions." Suppl. R. 3. The solicitor then manipulated the docket for Judge Keesley to be the trial judge and to later sentence the cooperating co-defendant. Judicial supervision in this manner allowed the solicitor additional time to pressure Alvin P. into testifying against Langford and then to reward Phillips when he complied.

IV. This Court should reverse the trial court and dismiss the charges against Langford.

The Court should reverse the trial court judge and order Langford's case be dismissed. This section will review the law applicable to speedy trial claims and argue why dismissal is necessary for judicial supervision of the criminal docket.

A. Law applicable to speedy trial claims.

There is a four part test for analyzing a speedy trial claim: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy

trial, and (4) whether the defendant suffered any prejudice as to the delay's result. *Doggett v. United States*, 505 U.S. 647, 651 (1992).

First, the delay here was uncommonly long. In his May 20, 2010 order, the trial court judge found that Langford had been "incarcerated for 20 months" and was "deeply concerned about the length of time [Langford had] been incarcerated." Suppl. R. 2. "[B]ecause of the imprecision of the right to speedy trial, the length of delay that will provoke such an inquiry is necessarily dependent upon the peculiar circumstances of the case." *Barker v. Wingo*, 407 U.S. 514, 530-31 (1972). The length of delay in Langford's case, however, is consistent with delays that have triggered further judicial review. "[A] delay of nine months [is] overly long, absent a good reason, in a case that depended on eyewitness testimony." *Id.* at 531 (fn. 31) (citing *U.S. v. Butler*, 426 F.2d 1275 (1970)). The South Carolina Supreme Court has held a twenty-eight month delay triggers further review. *State v. Waites*, 270 S.C. 104, 240 S.E.2d 651 (1978). The 673 day delay in Langford's case, therefore, is uncommonly long, and likewise, triggers further review.

Second, the government was solely at fault for the delay in petitioner's case. The solicitor delayed indicting petitioner until May 5, 2010, when a grand jury indictment is required to prosecute these offenses. S.C. Const. Art. I, §11 and S.C. Code Ann. §17-19-10. The prosecution alone decides when a case is presented to the grand jury. Thus, the entire delay is attributable to the state. *Vermont v. Brillon*, ___ U.S. ___, 129 S.Ct. 1283, 173 L.Ed.2d 231 (2009). "Deliberate delay to hamper the defense weighs heavily against the prosecution." *Id.* 129 S.Ct. at 1290. The trial court, therefore, erred by concluding, "None of the delay was occasioned by any impropriety on the part of the State." Suppl. R. 2.

Third, Langford asserted his right to a speedy trial by filing his first speedy trial motion on June 22, 2009 and moving to dismiss the charges in May, 2010. After this motion was denied, Langford filed a second speedy trial motion on May 25, 2010, even though the trial judge ordered him to wait “9 months” before he “may reassert his motions.” Suppl. R. 3.

Turning to the fourth prong, Langford was prejudiced by the solicitor’s intentional delay. Langford was ready to go to trial on May 17, 2010, the very day the solicitor had noticed him for trial. “[T]he State claimed it had gone to a great deal of time and expense” to give Langford a trial on this date. The state’s decision not to proceed with the trial was entirely strategic – they needed additional time in order to gain an evidentiary advantage by securing the cooperation of Alvin P. . . . The so-called “*Bruton*”²¹ problems and confrontation clause issues” are red herrings. Since Phillips’ statement implicating Langford could have been redacted in a joint trial, the judge erred in relying on *Bruton*. In reality, proceeding to trial on May 17, 2010 would have resulted in Langford being acquitted because the solicitor’s “case [against Langford] hinge[d] almost exclusively on the testimony of the cooperating codefendant” who had “declared that he was not going to testify.” Solicitors using docket control to gain this type of strategic advantage violates Due Process. See Section III(B), *supra*. By filing a speedy trial motion and moving for the charges to be dismissed, Langford was seeking judicial oversight to enforce his right to a speedy trial. See Section III(A), *supra*. In addition to being the presiding judge for the May 17, 2010 term of court, Judge Keesley was also the Chief Administrative Judge for General

²¹ *Bruton v. United States*, 391 U.S. 123 (1968).

Sessions Court in the Eleventh Circuit.²² Rather than dismissing the charges against Langford, Judge Keesley became a *de facto* instrument of the prosecution by denying the motion and giving the solicitor up to nine months to re-secure the cooperation of the “cooperating codefendant.”

With Langford establishing a violation of his speedy trial right, dismissal is “the only possible remedy.” *Baker*, 407 U.S. at 522.

B. Dismissal is necessary for judicial supervision of the criminal docket.

As pointed out in Section I, *supra*, the appellate courts in South Carolina have never ordered a case to be dismissed for violation of a defendant’s right to a speedy trial. There is no statute or court rule providing guidance to the bench and bar about enforcement of the right to a speedy trial in this state. Dismissal may be unprecedented in South Carolina, but it is not unprecedented in Sixth Amendment jurisprudence. As the United States Supreme Court observed in *Baker*:

The amorphous quality of the [speedy trial] right also leads to the unsatisfactorily severe remedy of **dismissal of the indictment** when the right has been deprived. This is indeed a serious consequence because it means that a defendant who may be guilty of a serious crime will go free, without having been tried. Such a remedy is more serious than an exclusionary rule or a reversal for a new trial, but it is **the only possible remedy**.

Baker, 407 U.S. at 522 (emphasis added).

²² <http://www.judicial.state.sc.us/adminJudges/changeTermsCir.cfm> (last viewed July 30, 2011).

The prosecution's flagrant disregard for Langford's right to a speedy trial is exactly what the Sixth Amendment was designed to prohibit. Judicial oversight and intervention is not only appropriate but also constitutionally required.²³

The current scheme of administrative orders, *see* Section I, *supra*, does not provide sufficient judicial oversight of a defendant's right to a speedy trial. Even though Judge Keesley was the Chief Administrative Judge at the time, he very likely believed that his administrative authority did not include the power to dismiss the charges against Langford. Intervention by this Court is necessary to recognize dismissal as an appropriate remedy for denying a defendant the right to a speedy trial.

Dismissal is a necessary remedy for the courts in South Carolina to provide meaningful oversight of General Session Court. As discussed in Section II, *supra*, solicitor control of the docket may lead to unacceptable abuses of defendants' rights. The threat of dismissal will ensure solicitors do not use their control of the criminal docket to deny the right to a speedy trial. Based on the proposed South Carolina Criminal Rules, it appears this state may retain solicitor control of the docket but with increased judicial oversight. Such oversight of the constitutional right to a speedy trial is an essential addition to the case management orders and the proposed rules of criminal procedure. As a result, the courts would exercise the authority to administer the criminal dockets, a defendant would receive due process, and the separation of powers would be preserved. *See* Section III, *supra*.

This Court, therefore, should dismiss petitioner's charges with prejudice.

²³ Other States have developed procedures for enforcing the right to a speedy trial. *E.g. State v. Godfrey*, 309 Ga.App. 234, 709 S.E.2d 572 (2011) (trial court was required on remand to balance speedy trial factors under proper standard).

Conclusion

Langford demanded a speedy trial. Instead of providing him a speedy trial, the solicitor delayed calling Langford's case for trial until the state obtained a strategic advantage. Rather than enforcing Langford's right to a speedy trial by dismissing the charges, the trial court judge deferred to solicitor control of the docket. The trial judge's deference to solicitor control of the docket in this case is representative of a larger, systemic problem.

This Court should reverse the trial court judge and dismiss the charges against Langford. In the process, this Court should provide guidance to the bench and bar for enforcing the right to a speedy trial.

Respectfully submitted,

By 

E. Charles Grose, Jr.
600 Monument St., Box P-133
Greenwood, SC 29646
(864) 229-9505

Tara Marie Schultz
P.O Box 174
Laurens, South Carolina 29360
(864) 984-8807

**Attorneys for *Amicus Curiae*
South Carolina Public Defender Association**

March 19, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 Appeal from Edgefield County

 William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

K.C. LANGFORD, III

APPELLANT

AND

THE STATE,

RESPONDENT,

V.

BRYAN PHILLIPS,

APPELLANT

 CERTIFICATE OF SERVICE

I certify that I served two copies of the proposed initial *amicus curie* brief of the South Carolina Public Defender Association on the date reflected below on counsel by United States Mail, postage prepaid, addressed as follows:

Elizabeth A. Franklin-Best, Esquire
 Appellate Defender
 South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, S. C. 29211-1589

ATTORNEY FOR APPELLANT K.C. LANGFORD

LaNelle Canty DuRant, Esquire
Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589

ATTORNEY FOR APPELLANT BRYAN PHILLIPS

David Spencer, Esquire
Senior Assistant Attorney General

William M. Blitch, Jr., Esquire
Assistant Attorney General

SC Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211

ATTORNEY FOR RESPONDENT

Respectfully submitted,

By



E. Charles Grose, Jr.
600 Monument St., Box P-133
Greenwood, SC 29646
(864) 229-9505

Tara Marie Schultz
P.O. Box 174
Laurens, South Carolina 29360
(864) 984-8807

Attorneys for *Amicus Curiae*
South Carolina Public Defender Association

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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

 Appeal from Edgefield County

 William P. Keesley, Circuit Court Judge

THE STATE,

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V.

RESPONDENT,

BRYAN PHILLIPS,

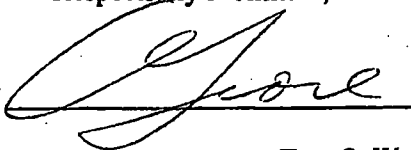
APPELLANT

 Rule 211(b), SCACR Certification

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

By



E. Charles Grose, Jr.
 600 Monument St., Box P-133
 Greenwood, SC 29646
 (864) 229-9505

Tara S. Waters
 P.O. Box 174
 Laurens, South Carolina 29360
 (864) 984-8807

Attorneys for Amicus Curiae
 South Carolina Public Defender Association

March 19, 2012

Appendix A

The Supreme Court of South Carolina

O R D E R

Effective Date: October 1, 1983

Pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

IT IS ORDERED that all criminal cases in the State of South Carolina shall be disposed within 180 days from the date of the defendant's arrest. Provided, however, that the Circuit Court may continue a criminal case beyond 180 days by written order if the Court determines that exceptional circumstances exist in the case.

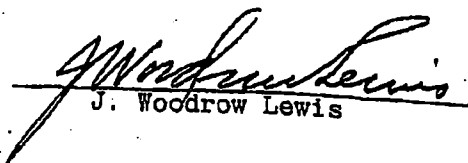
IT IS FURTHER ORDERED that the Chief Circuit Court Judge for Administrative Purposes shall be in overall charge of and responsible for the criminal roster in order to develop a procedure for expediting the disposition of criminal cases, including the setting of the roster of cases for disposition, if such be necessary to accomplish the timely disposition of criminal cases.

IT IS FURTHER ORDERED that each circuit court judge is to continue any and all criminal matters which have been pending for a period of less than 180 days from date of arrest until such time as there are no cases exceeding 180 days from date of arrest pending and awaiting trial. This shall not include the taking of guilty pleas nor cases in which capital punishment is being sought or cases

gtr

in which the circuit court judge by written order determines that exceptional circumstances exist which require the disposition of the case in advance of a case pending for more than 180 days.

This order does not create or define a right of a defendant to a speedy trial.


J. Woodrow Lewis

Columbia, South Carolina

August 18, 1983

Appendix B

The Supreme Court of South Carolina

O R D E R

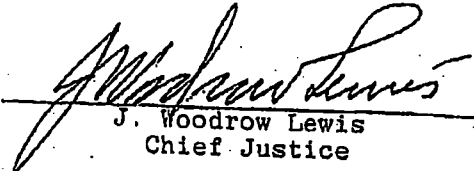
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S.C. SUPREME COURT

I find that there currently exists some misunderstanding concerning the scope and compliance requirements of my August 17, 1983 order establishing a 180-day time limitation for the disposition of criminal cases, particularly as it relates to the contingent docket and the duration of an exceptional circumstances order.

Therefore, pursuant to the provisions of Section 4, Article V, South Carolina Constitution,

IT IS ORDERED that all criminal cases, including contingent docket cases, are subject to the requirements of my August 17, 1983 order, a copy of which is attached to and made a part of this Order.

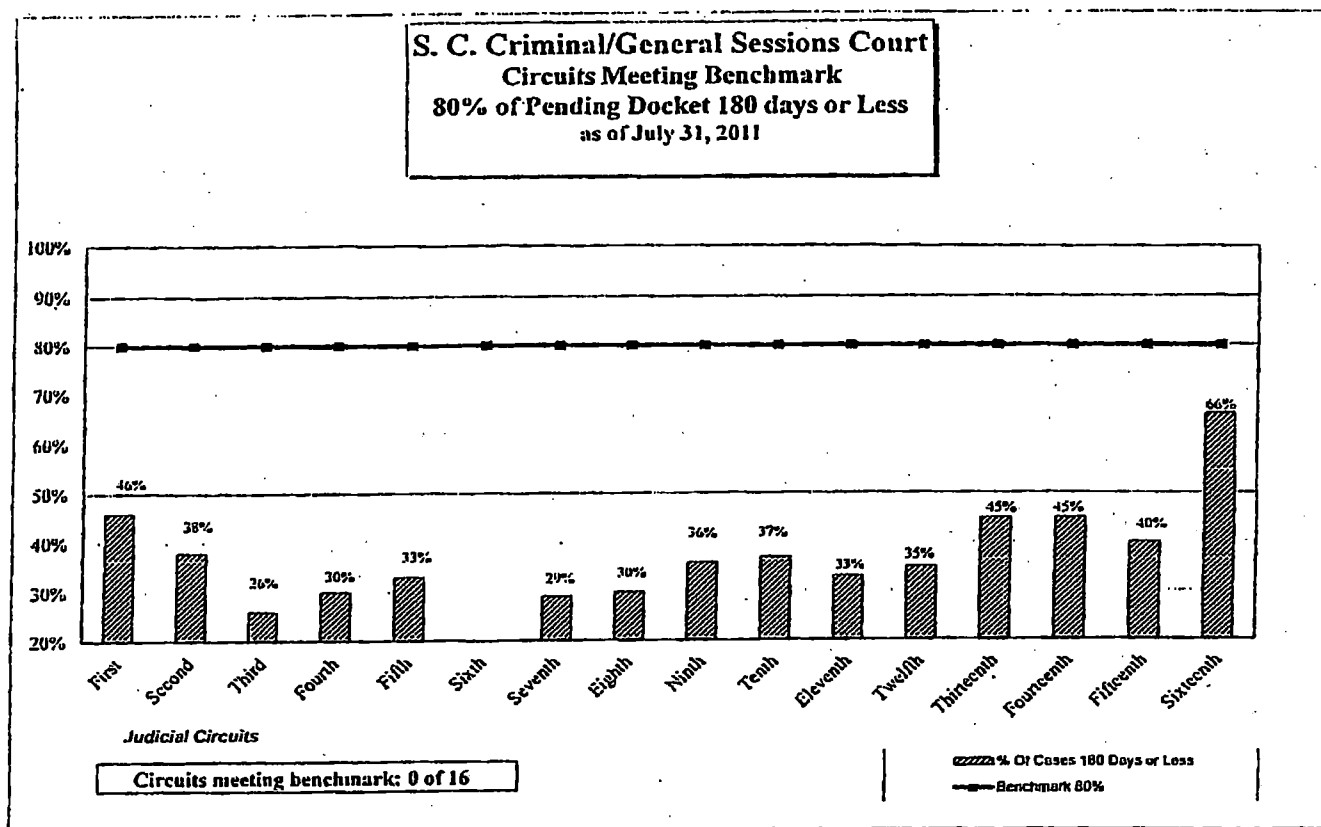
IT IS FURTHER ORDERED that any exceptional circumstances orders shall not be valid for more than thirty (30) days from the date of issuance.


J. Woodrow Lewis
Chief Justice

Darlington, South Carolina

January 13, 1984

Appendix C



Source: S.C. Court Administration, CRM75, July 31, 2011. Run Date: August 11, 2011.

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY

Court of General Sessions
William P. Keesley, Circuit Court Judge

The State of South Carolina,

Petitioner,

v.

K.C. Langford,

Respondent.

and

The State of South Carolina,

Petitioner,

v.

Bryan Phillips,

Respondent.

Brief of *Amicus Curiae*.
South Carolina Solicitors' AssociationSOLICITOR DAVID M. PASCOE, JR.
President, Solicitors' Association
of South CarolinaPost Office Box 11251
Columbia, SC 29211-1251
(803) 436-2185COUNSEL FOR *AMICUS CURIAE*

THE STATE OF SOUTH CAROLINA
In The Supreme Court

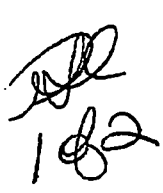
APPEAL FROM EDGEFIELD COUNTY

Court of General Sessions
William P. Keesley, Circuit Court Judge

The State of South Carolina,		Respondent,
	v.	
K.C. Langford,		Appellant.
	and	
The State of South Carolina,		Respondent,
	v.	
Bryan Phillips,		Appellant.

PROOF OF SERVICE

I certify that I have served the *Amicus Curaie* Brief of the South Carolina Solicitors' Association on both Petitioners, Respondent, and Amicus Curaie South Carolina Public Defenders' Association by depositing one copy of each in the United States Mail, first class postage prepaid, on April 17, 2012, addressed to each of their counsel of record:


Elizabeth A. Franklin-Best, Esquire
Counsel for K.C. Langford
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

LaNelle C. DuRant, Esquire
Counsel for Bryan Phillips
S.C. Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

COUNSEL FOR APPELLANTS

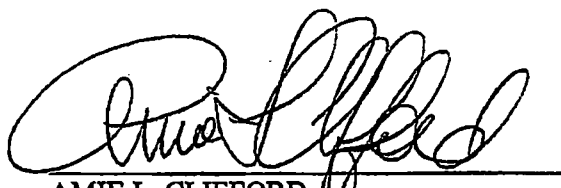
William Blitch, Esquire
Counsel for the State in *State v. Phillips*
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

William Blitch, Esquire
Counsel for the State in *State v. Langford*
S.C. Attorney General's Office
P.O. Box 11549
Columbia, SC 29211-1549

COUNSEL FOR RESPONDENT

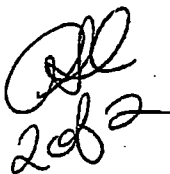
E. Charles Grose, Jr., Esquire
Counsel for the Amicus S.C. Public
Defender Association
600 Monument Street
P.O. Box P-133
Greenwood, SC 29646

COUNSEL FOR AMICUS CURIAE S.C.
PUBLIC DEFENDER ASSOCIATION



AMIE L. CLIFFORD
Post Office Box 11561
Columbia, SC 29211-1561
(803) 343-0765

April 17, 2012
Columbia, South Carolina



2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY

Court of General Sessions
William P. Keesley, Circuit Court Judge

The State of South Carolina,

Petitioner,

v.

K.C. Langford,

Respondent.

and

The State of South Carolina,

Petitioner,

v.

Bryan Phillips,

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Brief of *Amicus Curiae*
South Carolina Solicitors' Association

SOLICITOR DAVID M. PASCOE, JR.
President, Solicitors' Association
of South Carolina

Post Office Box 11251
Columbia, SC 29211-1251
(803) 436-2185

COUNSEL FOR *AMICUS CURIAE*

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STATEMENT OF ISSUES

Is S.C. Code Section 1-7-330, which provides that "preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial" constitutional?

I.

Does Section 1-7-330 violate the separation of powers mandate of the South Carolina Constitution?

II.

Does Section 1-7-330 violate the due process provisions of either the United States or South Carolina Constitution?

STATEMENT OF THE CASE

Inasmuch as the Solicitors' Association is participating only on the issue of the constitutionality of S.C. Code Section 1-7-330, it will defer to the Appellant and Respondent for the statement of the case.

ARGUMENT

Section 1-7-330, which provides that “preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial” is constitutional.

History and Purpose of Section 1-7-330

The statute at issue is Section 1-7-330, which reads as follows.

The solicitors shall attend the courts of general sessions for their respective circuits. Preparation of the dockets for general sessions courts shall be exclusively vested in the circuit solicitor and the solicitor shall determine the order in which cases on the docket are called for trial. Provided, however, that no later than seven days prior to the beginning of each term of general sessions court, the solicitor in each circuit shall prepare and publish a docket setting forth the cases to be called for trial during the term.

Id. A review of this statute’s history establishes that the first sentence has always been included, in some form, since at least 1902.¹ See S.C. Civil Code §655 (1902). The last two sentences, which are at the center of the constitutional challenge raised by *amicus*, the South Carolina Public Defenders’ Association (hereinafter SCPDA), were added by the South Carolina Legislature in 1980. See 1980 S.C. Act No. 462, §3.

Research has not disclosed an appellate decision interpreting this statute. Thus it is necessary to look to this Court’s long established rules of statutory construction, the foremost of which is to ascertain and effectuate the intent of the legislature. *Gordon v. Phillips Utils., Inc.*, 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005); *State v. Martin*, 293 S.C. 46, 358 S.E.2d 697 (1987); *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 579 S.E.2d 334 (Ct. App. 2003).

¹ Originally, the predecessors to Section 1-7-330 provided that the Solicitors were to attend the Courts of General Sessions and Common Pleas for their Respective Circuits. The Legislature removed Common Pleas Court from this provision in 1972. See 1972 Act. No. 1276, §1 (amended 1962 Code Section 1-252).

The Legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense.

Pee v. AVM, Inc., 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct. App. 2001), affirmed, 352 S.C. 167, 573 S.E.2d 785 (2002). This Court has held that when the language of a statute is clear and unambiguous, it requires no further construction and must be literally applied. *Lindsay v. Main Ins. Co.*, 281 S.C. 331, 315 S.E.2d 166 (1984).

Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.

Bayle v. South Carolina Dept. of Transp., 344 S.C. 115, 122, 542 S.E.2d 736, 739-740 (Ct. App. 2001). See also *Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 717 S.E.2d 603 (2011) (if statute's language is plain, unambiguous, and conveys clear meaning, rules of statutory interpretation not needed and court has no right to impose another meaning); *City of Camden v. Brassell*, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct. App. 1997) (where language of statute is clear and explicit, court cannot rewrite statute and inject matters into it that are not in legislature's language). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. *Id.* See also *Timmons v. S.C. Tricentennial Comm'n*, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Bayle v. South Carolina Dept. of Transp.*, *supra*.

Inasmuch as the wording of Section 1-7-330 is very clear and unambiguous, it requires no further construction and must be literally applied. Utilizing the plain and ordinary meaning of the words used therein, it clearly provides that the Solicitors are vested with the authority to both

prepare the docket and decide the order in which the cases on the docket are to be called.

This interpretation is consistent with the long-standing common law of South Carolina. Even prior to the amendment to Section 1-7-330 adding the specific provision about Solicitor control of the docket, this Court held that the Solicitors have the authority to set the criminal docket *subject to the overall broad discretion of the trial court*.

We hold that the solicitor has authority to call cases in such order and in such manner as will facilitate the efficient administration of his official duties, subject to the overall broad supervision of the trial judge. If a defendant feels that his rights are prejudiced by reason of the calling of his case at any particular time, he may apply to the judge for a continuance beyond the term or for postponement to a date later within the term. In the calling of cases for trial the solicitor has a broad discretion in the first instance, and the trial judge has a board [sic] discretion in the final analysis. A prosecuting attorney normally has many cases for disposition. He must plan ahead to expedite the work of the court, and should the day come when he is required to call cases in the order entered on the docket, the administration of justice will bog down.

State v. Mikell, 257 S.C. 315, 322, 185 S.E.2d 814, 816-817 (1971). See also *State v. Ridge*, 269 S.C. 61, 64, 236 S.E.2d 401, 402 (1977); *State v. Flood*, 257 S.C. 141, 146, 184 S.E.2d 549, 552 (1971).

Very little, if any, legislative history exists in this state. However, in addition to the issuance of the three decisions cited above – *Mikell*, *Ridge* and *Flood* – in the 1970s, that same decade found the office of Solicitor turned from a part-time position into a full-time position.² See 1976 S.C. Act No. 690. It can be reasonably concluded that, with the amendment to Section 1-7-330, the Legislature was, after changing the nature of the office of Solicitor into a full-time professional office, codifying the common law pronouncements of this Court related to the

² The position of Solicitor was a part-time position until 1976. In 1976, legislation was passed that made the position a full-time one, but allowed any person then holding the office of Solicitor who wanted to remain part-time to do so until 1979. As of 1979, the position of Solicitor was, without exception, full-time. See 1976 S.C. Act No. 690.

authority of the Solicitor to control the docket in *Mikell, Ridge, and Flood* and acknowledging the rationale of this Court therefor. See *State v. Corey D.*, 339 S.C. 107, 112, 529 S.E.2d 20, 23 (2000) (Legislature presumed to be aware of judicial decisions); *Kendall v. Kendall*, 295 S.C. 136, 367 S.E.2d 437 (Ct. App. 1988) (presumed that Legislature “had full knowledge and information as to prior judicial decisions and existing law”).

I. Section 1-7-330 does not violate the separation of powers mandate of the South Carolina Constitution.

SCPDA argues that the portion of Section 1-7-330 vesting the Solicitors with authority to prepare the docket and decide the order in which cases from the docket are to be called violates the separation of powers mandate of the South Carolina Constitution. The Solicitors strongly disagree.

The South Carolina Legislature may enact any law that is not, either expressly or by clear implication, prohibited by the United States and South Carolina Constitutions. *City of Rock Hill v. Harris*, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011); *Moseley v. Welch*, 209 S.C. 19, 16-27, 39 S.E.2d 133, 137 (1946); *State v. Charron*, 351 S.C. 319, 323, 569 S.E.2d 388, 390 (Ct. App. 2002). Moreover, a statute will be interpreted, if at all possible, so as to render it constitutionally valid. *Mitchell v. Owens*, 304 S.C. 23, 402 S.E.2d 888 (1991); *Moseley v. Welch, supra*.

[E]very presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

Id., 209 S.C. at 27, 39 S.E.2d at 137. See also *City of Rock Hill v. Harris*, 391 S.C. at 158, 705 S.E.2d at 57; *Peoples Nat. Bank of Greenville v. South Carolina Tax Commission*, 250 S.C. 187, 191, 156 S.E.2d 769, 771 (1967).

Article V of the South Carolina Constitution establishes the Judicial Branch of our state government. In that Article, the authority of the Supreme Court in regard to the operation of the trial courts of this state is provided.

The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system. He shall appoint an administrator of the courts and such assistants as he deems necessary to aid in the administration of the courts of the State. The Chief Justice shall set the terms of any court and shall have the power to assign any judge to sit in any court within the unified judicial system. Provided, each county shall be entitled to four weeks of court each year and such terms therefor shall be provided for by the General Assembly. Provided, further, that the Chief Justice shall set a term of at least one week in any court of original jurisdiction in any county within sixty days after receipt by him of a resolution of the county bar requesting it. The Supreme Court shall make rules governing the administration of all the courts of the State. Subject to the statutory law, the Supreme Court shall make rules governing the practice and procedure in all such courts. The Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted.

(Emphasis added.) S.C. Const. Art V, §24.

The Office of Solicitor is part of the Executive Branch of our state government. *State v. Tootle*, 330 S.C. 512, 500 S.E.2d 481 (1998). See also S.C. Code Section 1-1-110.

The separation of powers mandate is contained in Article I, Section 8 of the South Carolina Constitution.

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

S.C. Const. Art I, §8.

In *McLeod v. McInnis*, 278 S.C. 307, 295 S.E.2d 633 (1982), this Court addressed the reasons for the separation of powers

One of the prime reasons for separation of powers is the desirability of spreading out the authority for the operation of the government. It prevents the concentration of power in the hands of too few, and provides a system of checks and balances. The legislative department makes the laws; the executive department carries the laws into effect; and the judicial department interprets and declares the laws.

Id., 278 S.C. at 312, 295 S.E.2d at 636. The Court went on to state that “there is tolerated in complex areas of government of necessity from time to time some overlap of authority and some encroachment to a limited degree.” *Id.*, 278 S.C. at 313, 295 S.E.2d at 636

Article V, §24, provides clearly vests the Supreme Court with the authority to administer the Court of General Sessions – set the terms of court, assign judges to sit, and make rules governing the administration of the courts as well as practice and procedure in all courts. Section 1-7-330 does not remove any of that authority from the Court. Instead it focuses on the preparation of the General Sessions docket and places the authority related to the creation and execution of such with the branch that is responsible for prosecuting the cases on that docket with all that that entails, *i.e.*, keeping track of thousands of indictments and/or warrants each month³ (what is the status of each on the prosecution continuum – have all law enforcement reports and forensic testing reports been received; have discovery obligations been complied with; has there been a preliminary hearing; has the case been indicted; is further investigation or testing necessary; has the prosecutor met with the victim and/or witnesses; are there any issues that need to be addressed by motion and, if so, have motions and any memos been prepared; and what other pretrial preparation needs to be completed before the case is ready to be called for

³ While SCPDA makes a point of the fact that a defense attorney may have hundreds of clients at a given time, it should be noted that, while no public defender's office or private law firm in any Circuit handles all of that Circuit's General Sessions Court cases, the Circuit Solicitor's office does. Depending upon the experience level of the individual prosecutor and the type of cases involved, an individual prosecutor in a Solicitor's Office could handle between 200 and 700 cases at any given time.

trial, any plea offer extended to the defense, or case resolved in another manner). As this Court itself recognized in *Mikell* back in 1971, the sheer volume of cases handled by each of the Solicitors' Offices – and that number has only increased since the 1970s – requires that the preparation of the docket and order in which cases are called from that docket be left, *in the first instance*, to the Solicitor.⁴

Section 1-7-330 does not remove the authority of the trial court to supervise the docket – to set cases for date-certain trials, to grant speedy trial motions or provide a remedy if the prosecution violates a defendant's right to a speedy trial, and to grant continuances so as to protect a defendant from having his case called before he is prepared to proceed. Instead, at worst, this is one of those complex areas recognized by this Court in *McLeod v. McInnis*, *supra*, in which there is, of necessity, some overlap of authority that is allowed by the South Carolina Constitution.⁵

4 As noted by former Solicitor Trey Gowdy in an article written for the South Carolina Bar magazine, there are four principal reasons that Solicitors have been given the responsibility of preparing the court dockets.

The principal reasons prosecutors have been called upon to administer the dockets are fourfold: (1) neither circuit court judges nor clerks of court have the personnel, time or infrastructure to organize, publish and administer a criminal docket; (2) solicitors are elected to represent a hybrid of public safety and justice balanced with efficiency within their circuits; (3) prosecutors are uniquely well suited to know the nuances of individual cases and the availability of lay witnesses, law enforcement witnesses, as well as expert witnesses they routinely share with other circuits; and (4) since prosecutors are the ones called upon to provide an explanation for the current state of the criminal justice system, the muses thought it only fair to provide them with a few tools to actually impact the administration of the justice.

Trey Gowdy, *Criminal Dockets Administered by Prosecutors*, South Carolina Lawyer, Apr. 2010, at 26.

⁵ Another example of an area in which some overlap of authority is allowed by the South Carolina Constitution is judicial rule making. The Constitution, in Article V, §24, clearly gives

Furthermore, the Solicitors' Association maintains that the Separation of Powers Clause actually require that the Solicitors have the authority over the docket provided for in Section 1-7-330. Otherwise, the Judicial Branch – the members of which, unlike all but one other state, are not popularly elected by the community in which they serve – would be encroaching upon the authority of the Executive Branch – which is actually elected by the community served – by dictating the order in which cases should be prosecuted. The fact that the Solicitors' authority in this regard is subject to the broad supervision of the trial court ensures that both branches are afforded due deference and that there is no unconstitutional encroachment by one branch upon the authority of the other.

For all of the reasons set forth above, Section 1-7-330 does not violate the Separation of Powers Clause of the South Carolina Constitution.⁶

II. Section 1-7-330 does not violate the Due Process Clause of either the United States or South Carolina Constitution.

SCPDA argues that the portion of Section 1-7-330 vesting the Solicitors with authority to prepare the docket and decide the order in which cases from the docket are to be called constitutes a *per se* violation of the Due Process Clause of both the United States and South Carolina Constitutions, U.S. Const. amend. V and XIV; U.S. Const. art. I, §3, because it the Judicial Branch, via the Supreme Court, the authority to make rules governing the practice and procedure in all of the state courts. Yet, because of the authority vested in the Legislature by the Constitution, the two branches share this authority and responsibility by creation of the rules by the Judicial Branch and submission of them to the Legislative Branch for action (or inaction) in order for them to be enacted. The authority for both branches to act in this regard does not violate the Separation of Powers Clause of the state constitution.

⁶ This issue has only been analyzed under the state Constitution because the Separation of Powers Clause of the United States Constitution is not applicable to the States. See *Sweezy v. New Hampshire*, 354 U.S. 234, 255 (1957) (“concept of separation of powers embodied in the United States Constitution is not mandatory in state governments); *Straley v. Utah Bd. Of Pardons*, 582 F.3d 1208, 1215 (10th Cir. 2009) (“The United States Constitution’s separation of powers principles are inapplicable to a state’s organization of its own government.”).

essentially allows the Solicitor to judge shop, *i.e.*, choose which judge will hear a case. The Solicitors strongly disagree.

Due Process requires Fair Trial before Fair Judge

"A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." *State v. Singleton*, 395 S.C. 6, 15, 716 S.E.2d 332, 336 (Ct. App. 2011), *quoting State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997). Fundamental fairness requires a fair trial before a fair judge. A fair judge for Due Process purposes means a judge with "no actual bias against the defendant or interest in the outcome of his particular case." *Bracy v. Gramley*, 520 U.S. 899, 904-905 (1997). The South Carolina courts appear to have adopted the same standard. In *State v. Cheatham*, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002), the Court of Appeals addressed an issue remarkably similar to that raised in this case.

In *Cheatham*, the Solicitor and defense counsel had an informal conference with a judge to discuss whether he would grant the defense's motion to suppress evidence of the defendant's prior convictions for burglary and housebreaking at his trial for first degree burglary if the defendant stipulated that the first degree burglary occurred in the nighttime. The judge indicated that he would not allow the state to present such evidence, and the Solicitor decided not to call the case before that judge. The case was later called before another judge and the defense moved for that second judge to recuse himself due to the Solicitor's allegedly improper judge selection. The motion was denied, the evidence of the prior convictions were admitted, and the defendant was convicted. On appeal, he argued the trial judge erred in not recusing himself because of the alleged due process violation resulting from the prosecution's judge selection.

The Court of Appeals in *Cheatham, supra*, found that Cheatham did not claim that the

judge who actually presided over his case was biased and the record did not support such a conclusion. Because Cheatham received a fair trial, the Court rejected Cheathams' assertion of error. In doing so, the Court noted that even if the Solicitor had acted improperly in calling the case before the second judge, it did not affect the ability of that judge to give Cheatham a fair trial. Without expressly saying so, the Court very clearly found no prejudice to Cheatham because there was no evidence that he did not receive a fair trial. The Cheatham case provides an example of one instance of judge selection by the prosecution, but it clearly is one that indicates a selection based on something other than favoritism – it was a selection based on the fact that the first judge indicated an inclination to rule on an issue contrary to settled law and was something that would not be subject to challenge by the State because the actual ruling would not have been made until after jeopardy attached. See *Id.*, 349 S.C. at 112, 561 S.E.2d at 624

While SCPDA provides examples of all types of possible misuse of the authority bestowed by Section 1-7-330, it provides no real-life, *founded* examples.⁷ The Solicitors' Association opines that this is so because reality is inconsistent with SCPDA's position. A very clear example of this is how their portrayal of Judge Kessley as a "de facto instrument of the prosecution" simply because he did not rule with the defense and grant them the relief they sought. As the South Carolina Attorney General's Office argues, the Record on Appeal establishes that Judge Kessley's rulings were supported by the law and the evidence.

Due Process Neither Guarantees nor Prohibits
any Particular Method of Selection of Judges to Preside over Cases

While research has not disclosed any South Carolina case interpreting the state Due

⁷ For example, SCPDA asserts that Solicitors use their authority over the docket to call cases when defense counsel is unprepared or unable to present the most complete defense. This defies logic. No prosecutor wants to spend the time and resources to prepare a case for trial that a judge will continue on defense motion. Moreover, no prosecutor wants to try a case with a defense attorney who is truly unprepared and risk having any conviction overturned on appeal or PCR.

Process clause in regard to judicial selection, a few federal courts have addressed the issue. The following excerpt from an opinion from the U.S. Court of Appeals for the Tenth Circuit captures the import of some of those holdings.

[T]here is scant authority discussing the requirements (if any) imposed by the Due Process Clause on the judicial assignment phase of adjudication. Congress has granted broad discretion to the federal district courts in the assignment of cases to particular judges. See 28 U.S.C § 137 ("The business of a court having more than one judge shall be divided among the judges as provided by the rules and orders of the court."). In light of this discretion, a number of courts have concluded that "a defendant does not have a right to have his case heard by a particular judge," see *Sinito v. United States*, 750 F.2d 512, 515 (6th Cir.1984), that "a defendant has no right to any particular procedure for the selection of the judge," *Cruz v. Abbate*, 812 F.2d 571, 574 (9th Cir.1987), and that he or she does not enjoy "the right to have [the] judge selected by a random draw." *Sinito*, 750 F.2d at 515; see also *Board of School Directors of City of Milwaukee v. Wisconsin*, 102 F.R.D. 596, 598 (E.D.Wis.1984) ("Even a criminal defendant has no due process rights in the assignment of his case."); *United States v. Keane*, 375 F.Supp. 1201, 1204 (N.D.Ill.1974) (concluding that "a defendant has no vested right to have his case tried before any particular judge, nor does he have the right to determine the manner in which his case is assigned to a judge").

U.S. v. Pearson, 203 F.3d 1243, 1258-1259 (10th Cir. 2000).

SCPDA relies upon two cases from two different states, Louisiana and New York. In *State v. Simpson*, 551 So.2d 1303 (La. 1989), the Louisiana Supreme Court stated, in *dictum*, that due process required that capital and felony cases be randomly assigned to trial judges by some method that does not vest the prosecutor with any authority related to the judge selection. The court did not provide any reasoning for its conclusion. In subsequent cases, the Louisiana appellate courts have followed the Court's direction in *Simpson*, but have treated this type of "due process" violation as one that is subject to a harmless error analysis. See, e.g., *State v. Huls*, 676 So.2d 160 (La. Ct. App. 1996); *State v. Romero*, 552 So. 2d 45 (La. Ct. App. 1989).

Louisiana thus have treated prosecutor involvement in judge selection not as a *per se* violation, but one that requires a showing of actual prejudice before the defendant may obtain relief. Moreover, in a much more recent case, the Louisiana Supreme Court clarified its statements in the Simpson case.

This Court did observe in *Simpson*, albeit in dicta, after holding the procedure for allotting criminal cases employed at the time in 15th Judicial District Court did not comport with due process, that “the criminal docket for a particular day must indicate the order in which cases are to be called for trial.” *Id.*, 551 So.2d at 1305. However, we made that observation in considering a local rule of the 15th Judicial District Court, which permitted the District Attorney to call criminal cases “in any order preferred by him.” We cautioned that the rule “cannot be interpreted to grant that authority on the day of trial.” *Id.* However, we meant by that observation not to impose a rigid rule of practice encroaching on the broad discretion of a District Attorney to determine “whom, when, and how he shall prosecute,” La.C.Cr.P. art. 61, but only to emphasize as a general proposition that “[a]ll litigants have a right to their day in court, and have a right to know, at least relatively, when that day will come, that he may prepare for his defense, or otherwise, as the case may be.” *Simpson*, 551 So.2d at 1305 (internal quotation marks and citation omitted); *cf.* La.C.Cr.P. art. 702 (providing that cases shall be set for trial on motion of the state and that “defendant shall be given notice of trial sufficiently in advance thereof so that he may summon his witnesses.”).

State v. Chapman, 46 So.3d 660, 661 (La. 2010).

The second case relied upon by SCPDA is *Matter of McDonald v. Goldstein*, 191 Misc. 863, 83 N.Y.S.2d 620 (1948). In the *Goldstein* case, the Court did not address due process considerations at all. Instead, it held that the power to control the assignment of cases rested with the court and could not be delegated to the prosecutor. Thus neither case relied upon by SCPDA supports their assertion that prosecution involvement in judge selection is a *per se* violation of the Due Process Clauses warranting relief.

While SCPDA relies upon the *Simpson* and *Goldstein* opinions in its efforts to have this

Court hold Section 1-7-330 unconstitutional, the majority of the few courts to actually address the issue of whether prosecutorial judge selection violates due process have held that there is either no violation at all or no *per se* violation. Those finding no *per se* violation require a showing of actual prejudice to establish a due process violation. In 2000, the Tenth Circuit Court of Appeals issued an opinion in which it reviewed these decisions.

In contrast to *Simpson* and *McDonald*, most federal courts that have addressed the issue of prosecutorial involvement in judicial assignments have not found due process violations. In *Tyson v. Trigg*, 50 F.3d 436, 439–42 (7th Cir.1995) (“*Tyson II*”), the most recent and thorough of these federal decisions, the Seventh Circuit rejected an argument raised in a habeas corpus proceeding that the case assignment system in an Indiana state court violated the defendant’s due process rights. The system in question allowed the prosecutor to select one of six grand juries to which a proposed indictment would be presented. Each grand jury was assigned to a specific judge, and thus, by selecting the grand jury, prosecutors could choose the judge to which the case would be assigned. The habeas petitioner in *Tyson II* did not argue that the assigned judge was prejudiced against him. Instead, he asserted “to allow the prosecutor to pick the judge so greatly stacks the deck against the defendant as to make the trial unfair—so unfair as to deny due process of law.” *Id.* at 439.

The Seventh Circuit rejected that argument. First, it noted a lack of precedent holding that prosecutorial steering could constitute a due process violation warranting the reversal of a conviction. Additionally, it concluded that the fact that the prosecutor might gain a certain advantage over the defendant in being allowed to select the judge did not render the trial fundamentally unfair. *See id.* at 440–41. It reasoned that the American system of criminal procedure is not balanced equally between the prosecution and the defense at every stage, but rather represents “an aggregate of imbalances.” *Id.* at 440. Thus, prosecutors have certain advantages in the investigative stage⁸ and in impeaching witnesses, while the rules on burdens of proof favor defendants. *See id.* Absent any allegation that the judge selected by

⁸ It should be noted that the investigative advantage referred to in *Tyson v. Trigg*, 50 F.3d 436 (7th Cir. 1995), and *Pearson, supra*, would not be present in South Carolina inasmuch as it is clear from the courts’ opinion they are specifically referring to investigative grand juries which, with the exception of the State Grand Jury, do not exist in the state criminal justice system in South Carolina.

the prosecutor was actually biased against the defendant, the imbalance caused by the Indiana system was not so egregious as to affect the fairness of the trial.

Several other federal courts have held that, in order to establish a due process violation for prosecutorial judge-shopping, a defendant must demonstrate that he has been actually prejudiced by the assignment of a particular judge to his case. For example, in *United States v. Gallo*, 763 F.2d 1504, 1532 (6th Cir.1985), the Sixth Circuit rejected the defendant's argument that he was entitled to a new trial because the prosecutors had engaged in a pattern of steering significant criminal cases to the judges of their choice. *See id.* at 1532. The court relied on its earlier decision in *Sinito v. United States*, 750 F.2d 512 (6th Cir.1984), in which it had held that due process concerns were not implicated by a clerical error resulting in the assignment of a case to a particular judge. *See Gallo*, 763 F.2d at 1532. The *Sinito* panel had concluded that "a defendant does not have the right to have his case heard by a particular judge," "does not 'have a right to have his judge selected by a random draw,'" and "is not denied due process as a result of the error unless he can point to some resulting prejudice." *Gallo*, 763 F.2d at 1532 (quoting *Sinito*, 750 F.2d at 515). The *Gallo* panel found this reasoning dispositive, rejecting the defendant's argument because he had not alleged that he was prejudiced by the prosecutor's alleged steering of cases. 763 F.2d at 1532. Several other decisions have similarly required a showing of prejudice. *See, e.g., United States v. Erwin*, 155 F.3d at 815, 825 (6th Cir.1998); *United States v. Osum*, 943 F.2d 1394, 1401 (5th Cir.1991).

U.S. v. Pearson, 203 F.3d at 1258-1259.⁹ *See also Francolino v. Kuhlman*, 224 F. Supp. 2d 615 (S.D. N.Y. 2002); *Tyson v. Trigg*, 50 F.3d 436 (7th Cir.1995).

Neither the federal nor the state Due Process Clause requires or prohibits any specific method of judge selection.¹⁰ While an appearance of impropriety in regard to any aspect of the

⁹ The court in *Pearson* ultimately decided that it did not need to answer the constitutional question to resolve that case.

¹⁰ The Solicitors' Association recognizes that SCPDA uses the term "judge shopping" while it has used "judge selection." This difference in terminology is deliberate. "Judge shopping" connotes a deliberate, improper attempt by a party to choose a judge that will be biased or prejudiced in its favor. "Judge selection" is intended to connote a selection by a prosecutor *not* based on partisan reasons, such as before which judge the defense bar will plead their clients.

criminal justice system is never desired, the Due Process Clauses do not afford protection from the appearance of an unfair trial or unfair judge – they only, with rare exception,¹¹ protect a criminal defendant from an actually unfair trial or actually unfair judge. Therefore, in the absence of actual prejudice, the judge selection method that naturally follows the Solicitors' preparation of a trial docket under Section 1-7-330 does not violate the Due Process Clauses of either the United States or South Carolina Constitutions.¹²

¹¹ Those rare exceptions are with what the courts have referred to as "structural error" – e.g., total deprivation of the right to counsel at trial, exclusion of juror on the basis of race, and the denial of the right to self-representation. See *U.S. v. Pearson*, 203 F.3d at 1260-1261.

¹² In *U.S. v. Pearson*, *supra*, when determining whether having the prosecutor involved in the selection of judges was a structural error (they concluded it was not), the Court discussed what judge selection in that case consisted of and what remedies were available to a federal criminal defendant who felt aggrieved by the judge actually selected for his trial.

First, a prosecutor's choice of judges is limited. Even if a case assignment system allows the prosecutor to select the judge, the prosecutor must still choose from a group who have undergone the process of selection and appointment, who have sworn to uphold the law and defend the Constitution, and whose conduct can be scrutinized through appellate review. There is "a presumption of honesty and integrity in those serving as adjudicators," and, as a result, we cannot presume that a federal judge selected by the prosecutor will be his agent or henchman. Additionally, we note that a prosecutor may want the case assigned to a particular judge for a variety of reasons, some of which may not involve any disadvantage to the defendant at all: a prosecutor may simply make a random selection or he or she may seek out the most intelligent or the most experienced judge, or the one most familiar with a particular area of law.

Moreover, a defendant who must proceed to trial before a judge selected by the prosecutor is not without remedies. If the judge appears biased, a defendant may file a motion for recusal. If the judge denies that request, the defendant may challenge that decision prior to trial by filing a petition for a writ of mandamus or prohibition with this court. In certain instances, by invoking this court's supervisory powers, a defendant may also, prior to trial, challenge the case assignment procedure itself. Additionally, a defendant may contest the government's prosecution of the case by filing pretrial motions, making objections at trial, and introducing

CONCLUSION

For the foregoing reasons and any other supported by the record, this Court should find that Section 1-7-330 is constitutional; and grant any other and further relief deemed appropriate.

Respectfully Submitted,

SOLICITOR DAVID M. PASCOE, JR.
President, Solicitors' Association
of South Carolina

Post Office Box 11251
Columbia, SC 29211-1251
(803) 436-2185

BY: _____
COUNSEL FOR AMICUS CURIAE

Columbia, South Carolina

April 17, 2012

ALC

evidence; he may also challenge the trial judge's rulings on appeal. For all these reasons, a defendant in a case in which the prosecutor has selected the judge does not necessarily receive a trial that "cannot reliably serve its function as a vehicle for determination of guilt or innocence" and consequently renders any resulting punishment fundamentally unfair.

(Citations omitted.) *Id.*, 203 F.3d at 1261-1262.

WITNESSES
ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: DEC 3 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2008-GS-19- 673

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

DECEMBER TERM 2008

THE STATE
vs.

KC LANGFORD, III

CDR# 0049

Indictment for

CRIMINAL CONSPIRACY

DONALD V. MYERS, SOLICITOR

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC

Shirley F. Newby
SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.

11/14
DATED

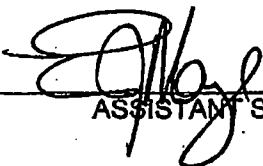
STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
CRIMINAL CONSPIRACY

At a Court of General Sessions, convened on December 3, 2008 the Grand Jurors of Edgefield County present upon their oath:

That KC LANGFORD, III. did in Edgefield County on or about August 14, 2008, unlawfully and wilfully unite, combine, conspire, confederate, agree and/or have tacit understanding with Alvin P. and Bryan Phillips for the purpose of accomplishing the crime of armed robbery, in violation of Section 16-17-410 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield
STATE VS.

Kc Langford III

AKA:

Race: B Sex: M Age: 25DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] N. Maple St.
Summerville, SC 29483DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-65-19-673A/W#: DIRECTDate of Offense: 8/14/2008S.C. Code § : 16-17-410 C/LCDR Code #: 0049

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: CRIMINAL CONSPIRACYin violation of § 16-17-410 C/L of the S.C. Code of Laws, bearing CDR Code # 0049☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years, and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 2500

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 390§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00TOTAL \$ 133.90Shirley J. Newby

Clerk of Court/ Deputy Clerk

Court Reporter: Stacey Sheppard

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Pay court costs within 1 yr. OF RELEASE FROM ACTUAL INCARCERATION IN PRISON☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE William P. [Signature]Judge Code: 2101510Sentence Date: Sept. 9, 2010

SCCA/217 (07/2008)

WITNESSES

ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

MAY 05 2010

VERDICT

RUE E.

Foreperson of Petit Jury
Date:DOCKET NO. 2010-GS-19- 272

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

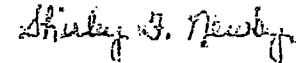
KC LANGFORD, III

CDR# 0079

Indictment for

BURGLARY
1ST Degree

DONALD V. MYERS, SOLICITOR

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC

 12/14 DATED _____
 SHIRLEY F. NEWBY, CLERK OF COURT
 OF GENERAL SESSIONS AND
 COMMON PLEAS, E.C.S.C.

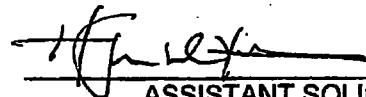
STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
BURGLARY
1ST Degree

At a Court of General Sessions, convened on May 5, 2010 the Grand Jurors of Edgefield County present upon their oath:

That KC LANGFORD, III, along with one or more other persons did in Edgefield County on or about August 14, 2008, willfully and unlawfully enter, during the night time, without consent and with the intent to commit a crime therein, the residence of J. Quing Chen, in violation of §16-11-0311(A) of the South Carolina Code of Laws, as amended, with penalties provided for in 16-11-311(b) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Edgefield

VS.

Kc Langford III

INDICTMENT/CASE#:

2010-65-19-272

AM#: DIRECT

Date of Offense: 8/14/2008

S.C. Code §: 16-11-0311

CDR Code #: 0079

AKA:

Race:

Sex: M

Age: 26

DOB:

SS#:

Address:

N. Maple St.

City, State, Zip: Summerville, SC 29483

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

BURGLARY IN THE FIRST DEGREE

In violation of §

16-11-311

of the S.C. Code of Laws, bearing CDR Code #

0079

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lawd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendant's initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211 (A)(1)(Conv. Surcharge)

\$14-1-211 (A)(2)(DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$56-1-286 (DUI Breath Test)

\$47.12 (Public Def/Prob)

\$14-1-212 (Law Enforce. Funding)

\$14-1-213 (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

\$90.7 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$	100
\$	100
\$	12
\$	25
\$	500
\$	25
\$	100
\$	50
\$	40/ea
\$	5
\$	500
\$	3.90
\$	733.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other:

Pay court costs w/in 1 yr. of release from prison

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

William P. Clardy
2050
Sept. 9, 2010

Clerk of Court/Deputy Clerk

Court Reporter:

Shirley J. Newby
Stacy Shepherd

WITNESSES
ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

M. Williams
Foreperson of Grand Jury
Date:

MAY 05 2010

VERDICT

TRUE

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-19- 273

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE
vs.

KC LANGFORD, III

CDR# 0139

Indictment for

ARMED ROBBERY

DONALD V. MYERS, SOLICITOR

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC

Shirley F. Newby
SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS AND
COMMON PLEAS, E.C.S.C.
DATED: 11/21/14

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on May 5, 2010 the Grand Jurors of Edgefield County present upon their oath:

That KC LANGFORD, III, along with one or more other persons did in Edgefield County on or about August 14, 2008, while armed with a deadly weapon, and by means of force or intimidation feloniously take from the person or presence of the victim J. Quing Chen approximately Three Thousand Dollars (\$3,000.00) US currency with intent to deprive the victim permanently of such property, in violation of §16-11-0330(a) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Edgefield

VS.

Kc Langford III

INDICTMENT/CASE#: 2010-6S-19-273

AW#: DIRECT

AKA:

Date of Offense: 8/14/2008

Race:

Sex: M

Age: 26

S.C. Code §: 16-11-0330(A)

DOB:

SS#:

CDR Code #: 0139

Address: N. Maple St.

City, State, Zip: Summerville, SC 29483

DL#

SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: ARMED ROBBERY☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lawd Act) ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense,
The plea is: ☐ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Pardon and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Random Drug/Alcohol Testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender FundOther: Pay court costs w/in 1 yr.
of rehab from prison☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/Deputy Clerk
Court Reporter:Shirley J Newby
Glady ShepherdPresiding Judge
Judge Code:
Sentence DateWilliam P. Hanks
2056
Sept. 9, 2010

SCCA/217 (11/2009)

WITNESSES

ROBINSON

JPD

ARREST WARRANT NUMBER

DIRECT

ACTION OF GRAND JURY

M. G. Williams
Foreperson of Grand Jury
Date:

MAY 05 2010

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-19- 278

The State of South Carolina

County of EDGEFIELD

COURT OF GENERAL SESSIONS

MAY TERM 2010

THE STATE

vs.

KC LANGFORD, III

CDR#0095

Indictment for

KIDNAPPING

DONALD V. MYERS, SOLICITOR

THE ABOVE IS A TRUE COPY OF THE ORIGINAL
WHICH IS ON FILE IN THE OFFICE OF THE
CLERK OF COURT OF EDGEFIELD COUNTY, SC

12/1/14
DATED

Shirley F. Newby
SHIRLEY F. NEWBY, CLERK OF COURT
OF GENERAL SESSIONS, 1ST
COMMON PLEAS, E.C.S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF EDGEFIELD)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on May 5, 2010 the Grand Jurors of Edgefield County present upon their oath:

That KC LANGFORD, III, along with one or more other persons did in Edgefield County on or about August 14, 2008, unlawfully seize, and confine, inveigle, decoy, kidnap, abduct, or carry away one Ji Quing Chen, Ai Ming, Guany Xing Li, Lin Yan Fung, Selina Li, and/or Winson Li, without authority of law and without consent, by the following means, to wit: the defendant, with the use of a firearm and/or physical force did hold them against their will and would not let them leave their residence, in violation of §16-3-910 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

STATE OF SOUTH CAROLINA

COUNTY OF Edgefield

STATE VS.

Kc Langford III

AKA:

Race: B Sex: M Age: 25

DOB: SS#:

Address: N. Maple St.
Summerville, SC 29483

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-19-278

A/W#: J605802

Date of Offense: 8/14/2008

S.C. Code § : 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: KIDNAPPINGin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.90
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$ 133.90

Shirley J Newby

Clerk of Court/ Deputy Clerk

Court Reporter: Stacy Sheppard

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: NOT REQUIRED TO REGISTER AS SEX OFFENDER AS NO SEXUALLY RELATED OFFENSE. COURT COSTS w/ a ltr. of release from prison

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 210 15 10

Sentence Date: Sept. 9, 2010

SCCA/217 (07/2008)