

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

S.C. Supreme Court

Carmen T Mullen, Circuit Court Judge

Case No 06-CP-11-223

TYREE ROBERTS, SK6012
Aka ABDIYYAH BEN ALKEBULANYAHH

Petitioner,

v

STATE OF SOUTH CAROLINA

Respondent

APPENDIX
VOLUME X OF XI

JOHN H BLUME

Cornell Law School
112 Myron Taylor Hall
Ithaca, New York 14853
(607)255-1030

Counsel for Petitioner

ALPHONSO SIMON, JR

Office of the Attorney General
P O Box 11549
Columbia, SC 29211
(803) 734-6305

Counsel for Respondent

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K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 that on, but I gave them that statement

2 Q Could you look at your third statement on
3 March the 21?

4 A Yes, I see it

5 Q So that was March the 21st, is that
6 correct, 2002?

7 A Yes

8 Q About four months later, for the first
9 time, you said that Mr Alkebulanyahh was in a
10 closet, is that correct?

11 A Yes

12 Q But before that you never had made that
13 statement?

14 A Right

15 Q Okay You also stated in your second
16 statement about, if you can remember, on the end on
17 Page Number 3, Page Number 3, the last paragraph on
18 Page Number 3, that you state once you left the room
19 that Ben was -- had his legs apart, hands facing the
20 door -- the gun facing the door, I'm sorry That Ben
21 had his legs apart and hands on the gun facing the
22 door, is that correct, that's what you wrote in that
23 statement?

24 A Yes

25 Q Okay And you stated that the constant

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 shots that I heard was the first shots and it sounded
2 like a machine gun, is that correct?

3 A Yes

4 Q Do you know what a machine gun sounds
5 like?

6 A Yes, constant gunshots

7 Q Like (indicating sound), like that?

8 A Yes

9 Q Or pop, pop, pop, pop, pop?

10 A No

11 Q It was like (indicating sound) like an
12 automatic?

13 A Yeah

14 Q Could you give me a display of your
15 sound?

16 A It was constant gunshots

17 Q Like no other gun you ever heard before?
18 It wasn't like pop pop, pop?

19 A No, it wasn't like that

20 Q So it was going so rapid to you couldn't
21 even tell the first sound from the rest of the
22 sounds? Automatic, is that correct?

23 A Yes

24 Q In your third statement on January 11,
25 2002, do you recall that -- telling the officers that

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 you told Mr Alkebulanyahh that you was going to go
2 to jail for your child support and that being pretty
3 much the reason why you didn't want to go out of the
4 room, is that correct?

5 A That I was afraid that I would go to jail
6 if they caught me and you together, yes

7 Q For child support?

8 A Yes

9 Q Could you restate that, please

10 A I was afraid that I would go to jail if
11 they caught me and you together for the child
12 support

13 Q Right And that was one of the
14 reasons -- that was the reason why you didn't leave
15 the room and want to encounter the officers, is that
16 correct?

17 A That was one of the reasons, yes

18 Q When you was in that bedroom, the 21
19 Riley Road residence, who knocked on the door? Do
20 you recall who knocked on the door while you was in
21 there on the opposite side of the door?

22 A January the 8th?

23 Q Yes, on January the 8th?

24 A Mrs Brenda

25 Q Mrs Brenda Riley, she is the one who

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 knocked on the door?

2 A Yes

3 Q Did she state anything to you when she
4 knocked on the door?

5 A She just said -- I think she said, Mae
6 open the door I don't remember what she said
7 exactly

8 Q But something to the extent Mae, open
9 the door?

10 A Yes

11 Q When you came out that room, did you hear
12 the officers say anything to the extent of I m coming
13 in, it's the police? Did you hear them say anything
14 like that? I'm going in, police?

15 A No

16 Q Is anybody in there? Did you ever hear
17 anything like that from them?

18 A No

19 Q And when you saw them, you know, pull
20 their weapon and go inside the room, did you run?
21 Did you run when you saw them pull their weapons and
22 run into the room, or did you run after you heard the
23 shots?

24 A I never seen them pull their weapon All
25 I know is they had their hands on their gun when they

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 went in the room

2 Q Excuse me, I'm sorry?

3 A I never seen them pull their weapon out
4 They had their hands on their gun when they went into
5 the room, and I did not run away I was walking out
6 the door because Mrs Brenda told me I needed to go
7 outside and talk to them I ran after I heard the
8 gunshots

9 Q But the officers didn't escort you out of
10 the house?

11 A No

12 Q Okay Miss Blake, do you recall at any
13 time taking a polygraph test by the South Carolina
14 Law Enforcement Division?

15 A Yes

16 Q Do you know the results of that
17 polygraph?

18 A No I can't remember

19 MR ALKEBULANYAHH Your Honor, can I
20 have the witness take a look at the polygraph test?

21 MR MURDAUGH If Your Honor please, that
22 isn't admissible so I don't see why we would go into
23 it

24 THE COURT I sustain the objection It
25 is not admissible, sir

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 BY MR ALKEBULANYAHH

2 Q Do you believe that you failed or passed
3 the polygraph?

4 MR MURDAUGH Your Honor, that is --

5 THE COURT It is not admissible, sir

6 You can't go into the polygraph test There has been
7 no foundation about the reliability of those tests
8 laid for this court

9 MR ALKEBULANYAHH Yes, sir

10 THE COURT Based on that lack of
11 foundation, it is not admissible

12 BY MR ALKEBULANYAHH

13 Q Miss Blake, I would like to ask you on
14 January 8th did, at any time, did you call the radio
15 dispatch 911 and told them that you was being held
16 against your will?

17 A Did I call the 911 dispatch?

18 MR MURDAUGH If Your Honor please, that
19 has been asked and answered

20 THE WITNESS Thank you

21 THE COURT Hold on just a second

22 Yes, I think that is correct I sustain
23 that objection

24 MR ALKEBULANYAHH Okay

25 THE COURT You don't need to repeat any

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 questions

2 BY MR ALKEBULANYAHH

3 Q Miss Blake, if someone said you called
4 the 911 dispatcher and stated that --

5 MR MURDAUGH There is no way this
6 question cannot be pitting one witness against
7 another, sir, and I will object

8 THE COURT Yes, sir Are you trying to
9 pit her against another witness, sir?

10 MR ALKEBULANYAHH No, sir I'm trying
11 to establish the -- I'm trying to establish the
12 credibility of Miss Blake in reference to her
13 statements or what was said concerning what she
14 stated

15 THE COURT Go ahead I'm listening

16 MR ALKEBULANYAHH In reference to what
17 she stated as far as what was said that she made this
18 actual call and said -- and stated specifically that
19 it was Miss Kimberly Blake who made this call This
20 is the specifics from this transcript which, if
21 necessary, I can submit to you to review to see if
22 she recalled that making that actual statement by
23 these officials who said over and over and repeatedly
24 throughout the thing that Miss Blake made this call
25 and made the accusations that --

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 THE COURT Well, are you asking a
2 question about what she knows, or are you asking her
3 to compare to someone else s testimony?

4 MR ALKEBULANYAHH What I'm asking her
5 is in reference to whether or not she knows that
6 someone had stated officials had stated certain
7 statements that she's suppose to have made whether
8 she made this or not, the actual facts to this call

9 THE COURT You are asking her if she
10 knows that someone else is saying she said this or
11 that?

12 MR ALKEBULANYAHH Right Well the
13 reason is, Your Honor, what I m explaining is that
14 and attempting to show you is that the 911 dispatcher
15 stated to Mr Coursen and Mr Tate that Kimberly
16 Blake advised them that her boyfriend was holding her
17 hostage against her will and that she made that call
18 to them

19 THE COURT But you have already asked --

20 MR ALKEBULANYAHH Okay

21 THE COURT You've already asked the
22 witnesses about the line of questioning about whether
23 anyone is being held hostage, et cetera

24 MR ALKEBULANYAHH But what I'm
25 establishing -- what I'm establishing is this is that

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 is she aware that they have said that she did this
2 and this false information was given to these
3 deputies, then these 911 dispatcher people is
4 culpable for the death of these two deputies because
5 that would eliminate any probable cause or certain
6 amount of knowledge that these deputies would have
7 where they would not have to overreact or be going on
8 a bogus call

9 THE COURT Well, but she is not the one
10 to decide probable cause You only need to ascertain
11 what information she knows Do you understand that?

12 MR ALKEBULANYAHH Pretty much sir

13 THE COURT All right Go ahead

14 BY MR ALKEBULANYAHH

15 Q Miss Blake when you left the residence
16 when you ran out of the residence after you heard the
17 shooting the firing, gun firing, did you observe any
18 other -- how many other vehicles did you observe at
19 the residence at that time? Did you observe any
20 other vehicles outside of the residence?

21 A I remember three

22 Q Three?

23 A Uh-huh

24 Q Could you tell me what the vehicles was?

25 A The two police officers' and

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 Strawberry's

2 Q The two police cars and Strawberry s
3 You didn't observe a black truck or a green Pontiac
4 there, did you?

5 A No

6 Q Before or after the deputies arrived, is
7 that correct?

8 A Right

9 Q You stated that when you came out the
10 room that you had been crying or tears in your eyes
11 or something like that You only stated that I think
12 one time in all of your statements and all of your
13 interviews, and I think that was January the 11th,
14 2002

15 Could you explain why you left that part
16 out of your -- the rest of your statements that you
17 made and out of all of the interviews that you were
18 under the investigation for that you were
19 investigated?

20 A I was writing my statement to the best
21 that I remembered them

22 Q Miss Blake, subsequent after the January
23 8th incident, the investigators -- I assume
24 Lieutenant Bromage was being one of them -- they was
25 taking you off every day to the Beaufort County

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 Sheriff's Office, is that correct? For about a week
2 or two straight they was coming to pick you up and
3 taking you down to the police department or station?

4 A Not every day

5 Q Not every day How often would you say
6 they was coming to you?

7 A I can't remember that, but I know it
8 wasn't every day

9 Q They was coming to your grandmother's
10 house is that correct?

11 A Yes

12 Q Did you ever give -- do you ever recall
13 or remember any of your interviews or anything being
14 taped microcassette tape or just taped in general?

15 A No

16 Q No Do you ever recall giving permission
17 to them to tape you to tape your interviews or
18 anything? Did you ever give them permission to tape
19 you?

20 A No, I don't recall that

21 Q Okay Miss Blake, did you ever hear
22 Mr Isaac Riley in any conversations with the two
23 deputies that arrived that day on January the 8th,
24 2002?

25 A No

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 Q You didn't hear any conversation between
2 Mr Isaac Riley and the two deputies?

3 A No

4 Q No, okay Was Mrs Brenda Riley, I would
5 say adamant of putting up a lot of resistance, as
6 far as from what you were able to hear and see, to
7 prevent the two officers from coming into her house
8 by stressing that no one was being held hostage or
9 kidnapped?

10 A Right

11 Q She was very persistent, very outspoken
12 about telling them that, you know, they are wrong
13 about coming in the house they are wrong about
14 anybody being held hostage?

15 A She didn't say that they was wrong, but
16 she just told them --

17 Q I mean, that there was no account?

18 A Right

19 Q That none of that was happening or taking
20 place?

21 A They said that she said a baby was in
22 there

23 Q All right

24 A Just a baby

25 Q But she did state or try to prevent them

K BLAKE - CROSS-EX BY MR ALKEBULANYAHH

1 from entering the residence from what you heard?

2 A Right

3 Q And so forth, is that correct?

4 A Yes

5 Q Did you give permission for the officers
6 to enter the house?

7 A Not to enter the house, no I was in the
8 room at the time when they entered the house

9 Q You was in the room when they entered the
10 house?

11 A Yes

12 Q So you gave no permission, no consent,
13 said come on in or anything, is that correct?

14 A That s correct

15 MR ALKEBULANYAHH Your Honor, I have no
16 further questions

17 THE COURT All right

18 MR ALKEBULANYAHH Thank you

19 MR MURDAUGH Nor do I, nor do we have
20 any additional witnesses

21 THE COURT You may step down, ma'am
22 Thank you

23 MR MURDAUGH Can we take about a ten
24 minute break?

25 THE COURT Yes

1 (A recess transpired)

2 THE COURT All right Anything further
3 on that last issue?

4 MR MURDAUGH Not from the state

5 MR ALKEBULANYAHH Yes, sir, Your Honor

6 THE COURT Yes, sir

7 MR ALKEBULANYAHH The last issue I want
8 to bring to the Court's attention that, again, that
9 these officers violated the United States
10 Constitution Fourth Amendment, the South Carolina
11 Article 1, Section 10, their own codes and
12 procedures, particularly the South Carolina Codes of
13 Law 16-3-1810, offenses against a person which states
14 that a law enforcement officer's responsibility when
15 responding to and arresting at a stalking incident
16 they have violated the South Carolina Law of
17 16-3-1810 And they further violated the South
18 Carolina Law, the criminal law of 16-25-70, captive
19 warrantless arrest or search and inadmissibility of
20 evidence, Section C and Section D

21 Their conduct in reference to carrying
22 out standard procedures in separating the people at
23 the residence involved in conflict, particularly
24 speaking from Section D, South Carolina Law,
25 16-25-70, where it states that if a law enforcement

1 officer receives conflicting complaints of a domestic
2 or family violence from two or more household members
3 involving an incident of domestic or family violence
4 the officer shall evaluate each complaint separately
5 to determine who was the primary aggressor, which
6 that did not take place And the household members
7 was not separated to determine, at all, who was the
8 aggressor or who was making the complaints or was
9 there an issue

10 There was no testimony given from the
11 prosecutor's witness to state -- that stated at any
12 time that the officer separated the household members
13 and made any attempt to evaluate the situation to
14 determine was there a complaint or was there even
15 actually a domestic violence at the time of the
16 arrival

17 The officer violated his code by not
18 evaluating each complaint as 16-25-70 states in
19 Section D that the officer shall evaluate each
20 complaint separately to determine who was the primary
21 aggressor They did not evaluate Miss Blake at any
22 time to determine was there an aggressor, who was the
23 aggressor or was there any legitimacy to the
24 accusations or the alleged complaints that they had
25 heard for the reason they were responding to the 21

1 Riley Road residence

2 And the defendant feels clearly that
3 16-25-70, Section C and D supports overwhelmingly
4 that the deputies that responded to the 21 Riley Road
5 residence was acting outside of the law, the judicial
6 process and their own rules and procedures

7 In South Carolina section -- South
8 Carolina Codes of Law 16-3-1810, offenses of the
9 person captive, it is the law enforcement officer's
10 responsibility when responding to a harassment or
11 stalking incident, Section A, it states clearly and
12 unequivocally that the primarily responsibility of a
13 law enforcement officer when responding to a
14 harassment or stalking incident is to enforce the law
15 and protect the complainant

16 As the complainant testified today that
17 the officer made no effort to protect her from a
18 possible danger, to protect her in any type of
19 fashion in which a law enforcement officer has been
20 sworn to do when coming to give some type of
21 assistance to an alleged victim, complainant at a
22 location

23 It does not state any exception to this
24 rule that the law enforcement officer's primary
25 responsibility is to enforce the law and to protect

1 the complainant in Section A

2 Section B states that the law enforcement
3 officer shall notify the complainant of a right to
4 initiate a criminal proceeding and to seek a
5 restraining order in this section

6 As the complainant again, the witness
7 that testified today, indicated that the officer did
8 not inform or notify the complainant to initiate any
9 type of criminal procedure or to seek a restraining
10 order and, even further, not to even determine if the
11 actual complainant had a complaint of what -- actual
12 complainant being -- a law was being broken in
13 reference to complainant

14 The complainant stated unequivocally that
15 there was no law or any violation against herself
16 other than she felt that, in her words, that she was
17 just scared, just scared, nothing in reference to a
18 crime or violation or assault or kidnapping or
19 hostage or anything She stated there was no action
20 that Mr Alkebulanyahh took or anyone else at the
21 Riley Road residence had broken the law in any type
22 of matter

23 And that in itself is a blatant disregard
24 for the laws of this state, a blatant disregard for
25 the rights of an individual homeowner, a blatant

1 disregard for the South Carolina Codes of Law
2 16-3-1810, 16-25-70, South Carolina Article 1,
3 Section 10, Search and Seizure Invasion of Privacy,
4 United States Constitution, Fourth Amendment, Search
5 and Seizure

6 And in referenced to the alleged
7 complaint itself, it is unbelievable or inconceivable
8 to come to the point that after nearly two years of
9 numerous investigations and numerous statements by
10 the alleged complainant that only within a week that
11 it's kind of ironic that for the first time in the
12 hears of my investigators and attorneys and those
13 involved in this case that she would make the
14 statement that she gave consent to search this home
15 only in a matter of weeks ago after nearly two years

16 I don't have any documents or notes or
17 anything that the prosecutor has turned over to me or
18 anything from anybody from the sheriff's department,
19 the investigators or anybody that there was even a
20 hint or an inclination that that was even formulated
21 in her mind or in her writings or implemented in any
22 statements or interviewed and that was like I say,
23 shocking considering that nearly two years have
24 passed and only just a week ago, right before these
25 hearings, was to be determined that she would all of

1 a sudden say, well, just last week they came and
2 talked to me and I told them then for the first time
3 out of her own mouth and own statement

4 The defendant also, Mr Alkebulanyahh
5 also states that in reference to her action as to
6 which she does not bear witness to even on consent to
7 enter the home she states clearly that she has no
8 knowledge or anything that the officers -- that it
9 was a consent for the officers to enter the home at
10 any time

11 The living homeowners of the home give
12 statements in their own writing and gave interviews,
13 particularly Mr Isaac Riley, he gave three
14 interviews and one written statement and Mrs Riley,
15 his wife, also gave a couple interviews and in her
16 own written statement and take into account that
17 there is no indication, no indication, there is no --
18 there is no inferring in their statements or in their
19 own written statements, which Mr Alkebulanyahh can
20 present before the court to examine, where they
21 indicated that they told or said for the officers to
22 enter the home or, even further, to search

23 THE COURT Didn't Miss Blake say that
24 Mrs Smith gave them permission to enter the home?

25 THE DEFENDANT I consider that hearsay,

1 Your Honor because for Miss Blake to speak for
2 someone who is living and who made statements on her
3 own who is the owner or part owner of the residence
4 and who has been interviewed by several of the
5 Beaufort County Sheriff's Department investigators
6 and the SLED, South Carolina Law Enforcement Division
7 investigators, Miss Blake never ever told them that
8 nor did Mrs Riley tell them that

9 So to take into consideration that there
10 is no evidence written or recorded other than
11 outside of today, where Miss Blake is testifying to
12 something that never has transpired nor the persons
13 themselves, the only way that can be challenged is
14 the person themselves to say, no, I didn't say that
15 And the prosecutor has not presented the person
16 themselves, the homeowner of this residence to
17 support what Miss Blake has stated

18 And I think that it would be so -- it
19 would be an insult for the testimony of Miss Blake to
20 come after two years and say only a week ago to give
21 such a statement and being that you have responsible
22 adults and people who live at that home who stated
23 themselves and never stated to any law enforcement
24 official, never wrote in their own statement that
25 they give any officer any permission to search And

1 I'm sure that question was posed to them by the
2 Beaufort County Sheriff's Office and the South
3 Carolina Law Enforcement Division over a two-year
4 period, I'm sure Ain't nobody just forgot to ask
5 them did you get an officer's permission to search or
6 did you get an officer's consent to come in or could
7 you write that down, or did they forget to write it
8 down themselves that the owners or the people at this
9 residence consented or gave permission?

10 And to me, I feel so -- I feel insulted
11 and shameful to the extent to even think that how one
12 could even come to the conclusion after all of these
13 documents that I have and everything that has been
14 turned over to me from the prosecutor to all of a
15 sudden one week before this hearing for someone to
16 come whose credibility is in question, apparently,
17 quite openly and change the course of
18 Mr Alkebulanyahh being able to exercise his rights,
19 civil and criminal rights, in this proceeding as a
20 United States citizen of the United States of
21 America I myself feel like that I should not be
22 insulted to the extent that one whose credibility is
23 at question to come at such a time and has an impact
24 on whether or not to question -- especially when
25 you re dealing with authorities

1 THE COURT Credibility is an issue in
2 every case, Mr Alkebulanyahh

3 MR ALKEBULANYAHH Indeed, indeed

4 THE COURT It is always an issue You
5 are always going to have one person say this and
6 another person say that and someone say I don't
7 believe that and someone say I believe that That is
8 always an issue That is why we have jurors

9 THE DEFENDANT Indeed But
10 nevertheless nevertheless if the court -- and it s
11 clearly at an advantage The prosecutor is clearly
12 at an advantage to where --

13 THE COURT The court is not the
14 prosecution Did you just -- I just want to make
15 sure we are clear on the wording

16 MR ALKEBULANYAHH Yes, sir

17 THE COURT Yes, sir

18 THE DEFENDANT Thank you, sir I'm
19 sorry, sir I didn't mean to the extent that the
20 court is a prosecutor or being prosecutor itself I
21 was speaking in the court in reference to the
22 procedures that is taking place from the prosecutor's
23 standpoint Please pardon me for my statement that I
24 made in reference to the court

25 THE COURT All right Go ahead

1 THE DEFENDANT I don't mean to bring any
2 shadow down on the court or cast any shadow down upon
3 the court

4 Initially what I was stating is that
5 there is laws that establish about -- about what
6 actually is fact in reference to the application of
7 the law And I would like to reap benefit of these
8 laws overwhelmingly Because what we have here is
9 when I say the Fourth Amendment and the South
10 Carolina Article 1, Section 10 when we are dealing
11 with this search in itself and the invasion of
12 privacy, I am not taking away itself from the seizure
13 itself That in itself is a violation to where no
14 witness was able to shed light on the prosecutor
15 about the seizure of Mr Alkebulanyahh

16 And it has been established -- and I
17 would like to just state for the record in reference
18 to this seizure, and it states under 68 American
19 Jurisprudence, Second Addition, Section 26 For the
20 purpose of the Fourth Amendment, a person is seized
21 when police officers restrain the person's liberty
22 through physical force or a show of authority A
23 seizure of a person occurs if, based on all of the
24 circumstances of the encounter, a reasonable person
25 would not feel free to decline the officer's request

1 to otherwise terminate the encounter See Jones
2 versus Jones versus Webb -- I'm sorry -- Jones v
3 Jones, I'm sorry, Jones v Jones versus Webb 45
4 Federal 3d Addition 178 Second, 7th Circuit, 1995
5 Medeiros, M-E-D-E-I-R-O-S, versus O'Connell,
6 O-C-O-N-N-E-L-L, 150 Federal 3rd Addition, 164,
7 Second Addition, Second Addition Circuit 1998
8 Bathekan, B-A-T-H-E-K-A-N, versus Prince George
9 County, 154 Federal 3rd Addition, 173 the Fourth
10 Circuit, 1998 And see Terry 392 United States at
11 19N dot 16, 88 Supreme Court at 1879 --

12 THE COURT That is all right I
13 understand the concept

14 MR ALKEBULANYAHH Okay Thank you

15 And this seizure, there is nothing to --
16 there is nothing legally by law that I can perceive
17 at this time where they have showed any evidence to
18 where that defendant was not seized He had no way
19 of avoiding contact or limiting the encounter by
20 these officers And this is a violation of the
21 United States Constitution, Fourth Amendment, and the
22 South Carolina Article 1, Section 10 Because
23 clearly, the defendant has been seized

24 They have shown authority They got
25 their hands on their weapon, and it was stated by the

1 witness they had their hands on their weapons And
2 they entered there and they seized me They
3 prevented me They cut me off You know, what I'm
4 saying, they cut all of the individuals off in that
5 room They was cut off They was prevented from
6 being able to exercise their rights right in the very
7 home in which one resides

8 So not only just the search was illegal
9 but the seizure of Mr Alkebulanyahh was illegal
10 because Mr Alkebulanyahh had -- there has never been
11 any charges brought or any complaints by any witness
12 from anyone that Mr Alkebulanyahh had broken the
13 law

14 THE COURT All right

15 MR ALKEBULANYAHH That
16 Mr Alkebulanyahh had done anything to be arrested
17 for in his home

18 THE COURT All right

19 MR ALKEBULANYAHH At all

20 THE COURT I understand your argument
21 Let me hear from the state

22 MR MURDAUGH If Your Honor please, to
23 start of with, there has been no seizure, no arrest
24 There was no evidence that was obtained from that
25 house that will be used in this trial until a search

1 warrant was later gotten

2 These two officers went there under the
3 assumption that there is a domestic problem going
4 on They go there to investigate Under Section
5 16-25-70 C, it gives them the right to enter the
6 house to arrest, but they hadn't gotten to that point
7 yet They had gotten to the point where they went
8 there to investigate to see whether or not a crime
9 had been committed They were given permission by
10 Brenda Riley to enter the trailer They were giving
11 permission by Kimberly Blake to enter the room They
12 went into the room And at that point they had
13 done absolutely nothing wrong and they were ambushed
14 in that room before anything had happened

15 I think that there is nothing wrong with
16 them going there to investigate, and I think you
17 should dismiss his motion, sir

18 MR ALKEBULANYAHH Your Honor, may I?

19 THE COURT Yes, sir

20 MR ALKEBULANYAHH Your Honor, under 68
21 American Jurisprudence, Second Addition, Section 261,
22 a search based on consent A person's consent may
23 limit the extent or scope of a warrantless search in
24 the same way the specifications of a warrant limit a
25 search of persons to that warrant An officer may

1 not use a person's limited consent to gain access to
2 a home and conduct a general search United States
3 versus Dicalearinte, D-I-C-A-I-A-R-I-N-T-E, 45,
4 Federal Second Addition, 126, 71 dash 1, United
5 States tax T-A-X C-A-S dot dot parenthesis C-C-H
6 parenthesis 946, 27, A dot F dot T dot R dot, Second
7 Addition, PH dash H 71 dot 71 dash 1469, 7th
8 Circuit, 1971

9 These officers took the limited consent
10 to disregard basic constitutional rights which is at
11 the general interest of all citizens of this country
12 to enter a residence without a warrant, without
13 provocation, without exigent circumstances, without
14 emergency circumstances without any indication that
15 a crime or alleged crime had been committed or was
16 actually in the act

17 Now previously the prosecutor stated on
18 August 1st that Mr Isaac Riley, the deceased,
19 consented But today the prosecutor is stating on
20 the record the opposite, that Mrs Brenda Riley
21 And, at this particular time, Mrs Brenda Riley is
22 living Now, she is not here to speak for herself
23 and to give testimony and weight as far as Mrs Riley
24 being here to speak for herself

25 I would ask the court the review the

1 South Carolina Law, Article 1, Section 14, case note
2 15 on affidavits and depositions And it states in
3 pertinent part that even if a witness is beyond the
4 Court's jurisdiction under this section, formerly
5 Section 18, Article 1, unless a defendant in a
6 criminal cause consents thereto, the testimony of a
7 witness against him taken by affidavit cannot be used
8 in trial even if the witness is sick or dead or
9 beyond the jurisdiction of the court, State versus
10 Hester, 137 South Carolina 145 134, Southeastern
11 Addition, 85 -- excuse me 885 1996

12 Now the deceased is not here and the
13 other owner of the home is not here to give any
14 weight to anything that the prosecutor has presented
15 before this court And these are the actual
16 homeowners And in Section 16-25-70 it states
17 specifically in Section D Law enforcement officer
18 received conflicting complaints of a domestic or
19 family violence from two or more household members

20 Now, there has not been any conflicting
21 complaint by any household members, because all the
22 household members that the officers is going to
23 encounter just stated that there was no crime
24 committed, that there was nothing illegal going on
25 and that there was never any hostage or any

1 kidnapping or domestic abuse or no assault by all of
2 the household members on that day according to this
3 statute of South Carolina Therefore, if they don't
4 have a conflicting complaint, then how is it to make
5 an investigate -- I say investigate, investigatory
6 investigation to go from room to room searching the
7 house to searching all over the property

8 THE COURT I understand your argument
9 Mr Alkebulanyahh

10 MR ALKEBULANYAHH And I just, you know,
11 I pretty much just would like the court to understand
12 that, you know, that other courts has also ruled that
13 in support of what I am stating, what I want to (
14 introduce in the record in support And what I want
15 to make clear or make known to the court is that
16 under 16 -- excuse me -- under 68 American
17 Jurisprudence, Second Addition, Section 255
18 impermissibility, a search is unreasonable when the
19 officer arrest a suspect in a living room but the
20 search extends throughout the entire apartment
21 including a kitchen patio

22 THE COURT What about Miss Blake's
23 statement to Miss Washington that she was being
24 abused?

25 MR ALKEBULANYAHH Miss Blake's (

1 statement to Miss Washington, there is -- Miss Blake
2 stated no criminal, no criminal violations against
3 her physically or legally in no aspect There is no
4 evidence of Miss Blake being abused There is no
5 marks There is no bruises There is not anything,
6 and nor has Miss Blake produced or said that she
7 received any type of physical abuse to any type She
8 didn't even state specifically, at all, what type of
9 abuse was it What type of abuse was it?

10 It should be defined the type of abuse
11 that was illegal that she received, and she has not
12 stated any type of abuse There had been no verbal
13 abuse She didn't state, well I was verbally
14 abused I was --

15 THE COURT I mean, what was the extent
16 of the hair pulling?

17 MR ALKEBULANYAHH There was never no
18 hair pulling

19 THE COURT Well, that is what she said

20 MR ALKEBULANYAHH Exactly

21 THE COURT Go ahead

22 MR ALKEBULANYAHH But Miss Blake also,
23 Miss Blake also stated that she never ever called and
24 asked for assistance, but the record said she called
25 for assistance So, therefore, when we consider what

1 Miss Blake is saying, Miss Blake it seems possible is
2 saying anything

3 THE COURT All right

4 THE DEFENDANT If she waits two years
5 later to come and speak in general about some type of
6 hair pulling or --

7 THE COURT All right What is the
8 state's position on that?

9 MR ALKEBULANYAHH My --

10 THE COURT Hold on, just one second

11 MR ALKEBULANYAHH Yes, sir

12 THE COURT Is that what the abuse was,
13 the hair pulling?

14 MR MURDAUGH Yes, sir, and the
15 understanding that the officers had is what
16 Strawberry Washington called in that she had been
17 hit

18 THE COURT Okay

19 MR ALKEBULANYAHH Yet Miss Blake said
20 she hadn't been hit

21 THE COURT But what the officers had to
22 go on may be different for purposes of a probable
23 cause determination

24 MR ALKEBULANYAHH But my thing, what
25 I'm trying to demonstrate is that when Blake said I

1 haven't been hit and she told Strawberry Washington I
2 was hit and then she comes and say I hadn't been hit,
3 then you are going to say she said I had my hair
4 pulled And then you come later on and say, well,
5 she s going to say I didn't have my hair pulled It
6 shows that, you know, what weight can you give that
7 You know, can she just say anything? Can she be
8 allowed to just come before the court and just say,
9 well, I had been hit and Strawberry said, well, she
10 told me he hit her and she said well I didn't be
11 (sic) hit, I had my hair pulled And then she comes
12 later on and say well, I didn't have my hair pulled,
13 I had my ear pulled, I had my -- or feet stepped on,
14 my toes stepped on

15 THE COURT All right Yes, sir

16 MR MURDAUGH Judge, if these two
17 officers had broken into that trailer, kicked the
18 door down and gone in there, he would have had a
19 right to take out a warrant against them, but he did
20 not have a right to ambush them and to kill them,
21 sir And they were right in going in there But
22 even if they weren't, they did not -- he was not
23 entitled to kill them Because the testimony that
24 you have before you is that they were responding to a
25 call where Kimberly Blake called Strawberry

1 Washington Strawberry Washington called the
2 sheriff's department They went there to
3 investigate They were dispatched there to
4 investigate and that is all the testimony you have
5 before you, sir

6 THE COURT All right

7 MR ALKEBULANYAHH Your Honor

8 THE COURT I don't want anymore argument
9 on that I will think about that issue

10 MR ALKEBULANYAHH Your Honor

11 THE COURT Yes, sir

12 MR ALKEBULANYAHH Could I make two
13 final?

14 THE COURT Yes, go ahead If you are
15 just going to resummamize the facts to me, I don't
16 need that

17 MR ALKEBULANYAHH No, I'm not going to
18 resummamize the facts I would like to state
19 specifically from under 68 American Jurisprudence,
20 Second Addition, Section 109, in pertinent part it
21 states A warrantless entry into a residence, unless
22 conducted pursuant to a well defined exception to a
23 warrant requirement, is a search conducted outside of
24 the judicial process

25 THE COURT I understand your arguments

1 on that You have already made it clear that's your
2 argument that it was an improper search

3 THE DEFENDANT Okay if you do -- so
4 finally I want to go in -- because particularly he is
5 saying these officers were ambushed by
6 Mr Alkebulanyahh First of all, Mr Alkebulanyahh
7 has not killed anyone, has not ambushed or shot
8 anyone Let the record speak

9 Now, in Title 16, South Carolina Codes of
10 Law, Title 16 Chapter 6, Section E Resisting an
11 Unlawful Arrest in pertinent part In order for an
12 arrest to be lawful, the arresting officer must of
13 course have probable cause to believe that the
14 arrestee has committed the crime for which he is
15 being arrested

16 If, on the other hand, the arrest is
17 unlawful, South Carolina law -- excuse me -- if on
18 the other hand the arrest is unlawful, South Carolina
19 allows the arrestee to resist with deadly force
20 State versus Jackson, 227 South Carolina 271, 87
21 Second Addition -- I'm sorry -- Southeastern Second
22 Addition, 681, 1955 and see State versus Bethume

23 THE COURT Is it your position that, and
24 perhaps you want to consult with standby counsel,
25 that you were in the process of being arrested? Do

1 you wish to consult with counsel?

2 THE DEFENDANT No I don t wish to

3 consult with counsel

4 THE COURT Okay Do you wish to answer
5 that question?

6 MR ALKEBULANYAHH Yes

7 THE COURT All right

8 THE DEFENDANT What was the question?

9 THE COURT Is it your position that you
10 were in the process of being arrested?

11 MR ALKEBULANYAHH It is my position --

12 THE COURT Because you said you have the
13 right to resist an improper arrest, is it your
14 position you were in the process of being arrested?

15 MR ALKEBULANYAHH It is my position is
16 that -- it is my position that I was being seized and
17 assaulted, attempted to kill, not no arrested, I was
18 shot I was shot down I wasn't -- there is no
19 arrest This is beyond arrest There was violence
20 The officer has used violence against an unarmed
21 man That is my position

22 THE COURT Okay

23 MR ALKEBULANYAHH And there is no
24 evidence that the prosecutor or anyone else could
25 present to this court on this day that anything

1 otherwise took place in there that those officers
2 shot an unarmed man And I challenge him to produce
3 that to the court to make rational decisions,
4 rational concerning that evidence and that's a fact

5 THE COURT Okay As I indicated I will
6 think about this when we meet again I draw from
7 this it is your position by citation to that legal
8 authority that the right to use deadly force in
9 response to an improper arrest suggests that you are
10 taking the position that you used that force

11 MR ALKEBULANYAHH No

12 THE COURT But I will let you discuss
13 that with your attorney

14 THE DEFENDANT Excuse me

15 THE COURT Go ahead

16 THE DEFENDANT No, I would like to
17 address the court in reference

18 THE COURT All right Go ahead

19 MR ALKEBULANYAHH When I speak of this
20 resisting the unlawful arrest, then if the officer
21 has entered this room, which is my home, they have no
22 search warrant and no arrest warrant with them and he
23 is just --

24 THE COURT You are just saying generally
25 that a person in general would have the right to use

1 that?

2 MR ALKEBULANYAHH A person in general
3 because it was more than myself there

4 THE COURT Okay

5 MR ALKEBULANYAHH See, it seems to be
6 indicating that I, no, it has nothing to do with I
7 Mr Alkebulanyahh has not shot anyone

8 THE COURT So you are saying that
9 someone else there would have had the right to shoot
10 someone?

11 MR ALKEBULANYAHH What I'm saying is
12 someone else would have had the right to shoot them
13 officers with them coming into the home shooting,
14 using shooting, attempting to kill, not reading any
15 memorandum (sic) warnings not reading any memorandum
16 (sic) rights or anything to that extent

17 THE COURT Okay I understand your
18 position I have always thought that was your
19 position All right I will think about that
20 Obviously, this took a lot longer than we
21 expected I would like to have another meeting
22 before we start next week Can everyone be in
23 Charleston on Friday?

24 MR MURDAUGH I couldn't understand you

25 THE COURT I didn't realize this was

1 going to take this long We still haven't gone over
2 the jury selection and other procedures I would
3 like to see if everyone can meet in Charleston on
4 Friday perhaps

5 MR MURDAUGH I can certainly be at your
6 disposal

7 MR KELLY Your Honor, we will be in
8 Charleston as you see fit

9 THE DEFENDANT Yes, sir

10 THE COURT All right

11 THE DEFENDANT And I do have a --

12 THE COURT We will take that up on
13 Friday Mr Alkebulanyahh I didn't realize this was
14 going to take so long

15 MR MURDAUGH Can we do it Friday
16 morning, sir?

17 THE COURT Yes, sir We will do it at
18 9 30 Friday morning, if that is convenient

19 MR KELLY Your Honor, could we start
20 maybe at 10 00 That gives us a little more time

21 THE COURT Okay, 10 00 will be fine

22 Now you-all will arrange for the
23 transportation of Mr Alkebulanyahh to Charleston on
24 Friday

25 THE SHERIFF DEPUTY Yes, sir We need a

1 court order

2 THE COURT All right We will see
3 you-all in Charleston on Friday Thank you

4 MR MURDAUGH Thank you, Your Honor

5 THE COURT Thank you See you on
6 Friday

7 ---END OF TRANSCRIPT OF RECORD FOR FRIDAY,
8 OCTOBER 1, 2003---

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1 I, the undersigned, Holly Hiott O Quinn, Official
2 Court Reporter for the Ninth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate and complete Transcript
5 of Record of all the proceedings had and evidence
6 introduced in the trial of the captioned case,
7 relative to appeal, in the Circuit Court for Beaufort
8 County, South Carolina, on the 1st day of October,
9 2003

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto
12

13 June 4, 2004
14

15
16 Holly Hiott O'Quinn
17 Holly Hiott O'Quinn, RPR
18 Circuit Court Reporter
19 My Commission Expires
20 January 2006
21
22
23
24
25

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF BEAUFORT

3

4

5 STATE OF SOUTH CAROLINA,)

6 PLAINTIFF)

7 VS)

8

9 TYREE ALPHONZO ROBERTS, a/k/a)

ABDIYYAH BEN ALKEBULANYAHH,)

10 DEFENDANT)

11

12

October 3, 2003
Charleston, SC

13

14

B E F O R E

15

THE HONORABLE DANIEL F PIEPER, Judge

16

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

18

RANDOLPH MURDAUGH, III, Solicitor

19

DUFFY STONE, Assistant Solicitor

Attorneys for the State

20

ABDIYYAH BEN ALKEBULANYAHH, Pro Se

21

GERALD ALAN KELLY, Esquire

22

SEAN P THORNTON, Esquire

Standby Court Appointed Counsel for the Defendant

23

24

HOLLY HIOTT O'QUINN, RPR
CIRCUIT COURT REPORTER

25

ORIGINAL

TRANSCRIPT OF RECORD

02-GS-07-0370

02-GS-07-0369

1 (Whereupon, the following proceedings
2 were held before the court on Friday, October 3,
3 2003)

4 THE COURT All right If you will, each
5 identify yourselves for the record, please

6 MR MURDAUGH My name is Randolph
7 Murdaugh, the Third I am the Solicitor of the 14th
8 Judicial Circuit

9 MR KELLY I m Gerald Kelly I m lead
10 standby counsel

11 MR THORNTON Sean Thornton, and I'm
12 second chair standby counsel

13 THE COURT All right

14 THE DEFENDANT Abdiyyah Ben
15 Alkebulanyahh, defendant, pro see

16 THE COURT All right Yes, sir

17 MR MURDAUGH If Your Honor please,
18 Ms McMann with the attorney general's office is here
19 and has a motion to make regarding a subpoena

20 THE COURT All right

21 MR MURDAUGH I certainly don't intend
22 to take away your prerogative of how you want to
23 handle it, but I thought we could get her out early

24 THE COURT That is fine Do you wish do
25 identify yourself for record

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I N D E X

PAGE

WITNESS

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(NO WITNESSES PRESENTED)

E X H I B I T S

NO

DESCRIPTION

ID

(NO EXHIBITS PROFFERED)

1 MS MCMANN Your Honor, I'm Elizabeth R
2 McCann I'm here this morning on behalf of The
3 Honorable Robert S Armstrong who is a judge of the
4 Family Court for the 14th Circuit

5 I am here, as Solicitor Murdaugh
6 indicated, on a motion to quash a subpoena that was
7 issued demanding Judge Armstrong's appearance in
8 Mr Roberts' case This subpoena was issued on
9 September 22 The attorney general's office did file
10 the motion to quash the subpoena on October 1st I
11 have copies of all relevant documents, if the court
12 does need those

13 THE COURT All right

14 MS MCMANN Your Honor, we would request
15 that the court issue an order quashing the subpoena
16 for the following reasons Turning the court s
17 attention to South Carolina Rule of Civil Procedure
18 45C which does address protection of persons subject
19 to subpoenas, specifically 3A, 4, which -- or we
20 would assert it would exact an undue burden upon
21 Judge Armstrong to comply with the subpoena

22 And, just by way of background on Judge
23 Armstrong's involvement with Mr Roberts, there was a
24 DSS complaint filed against Mr Roberts subsequent to
25 his arrest There was a hearing held before Judge

1 Armstrong on May 14th of this year Judge Armstrong
2 did issue an order giving legal and physical custody
3 to Kimberly Blake who is the mother of Mr Roberts'
4 child And this was the extent of Mr Armstrong's
5 involvement

6 Your Honor, we would turn the Court's
7 attention to a case that came out earlier this year
8 which specifically addresses this type of situation
9 It is ex parte Charles W Whetstone in the matter of
10 Ivy V Cato 354 SC 213

11 THE COURT I'm familiar with it

12 MS MCMANN Thank you, Your Honor

13 THE COURT Go ahead

14 MS MCMANN The court did determine in
15 that case that in order to demand the appearance of a
16 judge two elements are necessary that the information
17 is critical and cannot be obtained by any other
18 source And we would assert that, first of all, it
19 is our understanding that Mr Roberts does, in fact,
20 have the transcript from that family court hearing
21 and that Mr Armstrong would not have any additional
22 information that could be added to Mr Roberts' case
23 and, therefore, we request that the order be issued
24 from this court quashing the subpoena

25 THE COURT Do you wish to respond,

1 Mr Alkebulanyahh? Why is it that that information
2 can't be obtained by other means if you have the
3 transcript and you have the people that participated
4 in the proceeding? The judge just presided

5 THE DEFENDANT Your Honor, sir, I does
6 (sic) not have the transcript of that proceeding and
7 there was information pertaining to that proceeding
8 which will discredit the witness for the prosecutor

9 THE COURT Is that the proceeding you
10 requested the transcript for?

11 MR KELLY Your Honor, we requested
12 family court transcripts in the particular DSS matter
13 for which you signed an order And we requested the
14 transcripts from the reporters who were present, and
15 we received from them one transcripts from each I
16 then turned those over

17 I'm now told there must have been another
18 hearing for which there may not be a transcript So
19 in essence, Your Honor, if there is another hearing
20 that is not transcribed, we would have to have it
21 transcribed by the reporter that was present

22 THE COURT Is there another hearing that
23 you are missing?

24 THE DEFENDANT Yes It is the only
25 hearing that I appeared to

1 THE COURT All right Well, then make
2 your request to the court reporter

3 THE DEFENDANT You know, I -- by I being
4 the only one who appeared at this hearing, I would
5 like a transcript of the hearing because I appeared
6 on the record for that hearing Judge Armstrong, by
7 me not having that transcript, Judge Armstrong will
8 be able to allow the defendant the opportunity to be
9 able to put up a defense against things that occurred
10 at that hearing which could be used at the time of
11 trial

12 THE COURT But because you can obtain
13 that transcript, there's other ways and you can
14 obtain the testimony of anyone else that is present
15 I don't know that you can overcome the general rule
16 that it should be quashed if you have access to that
17 information otherwise

18 THE DEFENDANT Well, Your Honor, I don't
19 have access My attorneys and investigator have made
20 every effort and every means to acquire this

21 THE COURT Well, it sounds to me like
22 they didn't indicate the date that you are talking
23 about

24 THE DEFENDANT There is only one date in
25 reference to my appearance

1 THE COURT Well, who else was at the
2 proceed

3 THE DEFENDANT Miss Kimberly Blake

4 THE COURT Who else?

5 THE DEFENDANT Attorney Olin McDougall

6 THE COURT Why can't you subpoena that

7 per

8 THE DEFENDANT That person is

9 sub

10 THE COURT Well then, why can't the
11 be obtained that way?

12 THE DEFENDANT Well the information
13 the record would be moreover proof than
14 a word of mouth to be used in the course

15 I think the transcript has more
16 at than the human voice itself One
17 they think possibly occurred, meaning
18 we a loss of memory about things that
19 that day while I appeared in that

20
21 THE COURT Well, is there another
22 not?

23 KELLY Your Honor, we don't know

24 the attorneys who were on standby,

25 family court and asked the family court

1 to supply us with the names of the court reporters
2 who were present at any hearings that were held in
3 the case that was recited into the order, which is
4 the only case at issue today And we were given the
5 names of two court reporters, Anderson and Nicholas
6 We contacted those and asked them to transcribe for
7 us the hearings at which they have been present We
8 received transcripts from each one of those which we
9 turned over to the investigators

10 If there is another hearing, I do not
11 know that there is or is not another hearing, then it
12 would have to be transcribed It could be
13 transcribed But as standby counsel, we simply do
14 not know

15 THE COURT What is the date of that
16 hearing, on the transcript?

17 MR KELLY Your Honor, the investigators
18 for the defendant have the transcripts The
19 transcripts are here before us, Your Honor Would
20 you like me to recite the dates into the record?

21 THE COURT Yes, sir

22 MR KELLY The transcript of record,
23 case number 02-DR-07-76 prepared by Deborah A
24 Anderson, the hearing was held February 12, 2002 In
25 the transcript of the record prepared by Timothy L

1 Nicholas in case 2002-DR-07-76, the date of the
2 hearing was January the 10th, 2002 These are the
3 two transcripts that have been prepared and these are
4 the two transcripts that have been turned over to the
5 defendant

6 THE COURT Is there another date that
7 you are referring to?

8 THE DEFENDANT Well, Your Honor, my
9 position is this In these transcripts, I did not
10 appear in these transcripts at no time whatsoever
11 Wherever these hearings was, it had nothing to do
12 with me I wasn't present and I wasn't there

13 THE COURT Well, what is the date of the
14 hearing that you are looking for?

15 THE DEFENDANT At the time that they had
16 the hearing, I was --

17 THE COURT What date was that hearing?

18 THE DEFENDANT I cannot recall that
19 date I was in jail I was detained I did not
20 have pencil I was not allowed paper to take notes
21 or anything at no time while I was in custody I
22 think I was here in the Charleston County Detention
23 Center at that time they said because of something
24 about security or danger to myself So they
25 disallowed me to have any paper, pencil, pens or

1 anything during the course of my time that -- before
2 this hearing took place in the Charleston County
3 Detention Center They wouldn't even allow me the
4 opportunity to have grievances and whatnot to fill
5 out to make complaints

6 But because I was prevented from being
7 able to keep notes or records or write dates or
8 anything in reference to the things that was
9 happening to me, I don't have or cannot recall to
10 this date the exact date and time there But the
11 most pertinent thing in reference to this is that if
12 there is any type of hearing without my presence then
13 it was illegal because they give me papers, they give
14 me work and they said they would bring me there

15 And when the judge ruled, at that time,
16 in that courtroom to return the child or to bring me
17 back into court to hear whether he should give the
18 child back to Miss Kimberley Blake or not, I was
19 there I spoke for the record At that time, my
20 attorney Mr Hood was there for the criminal aspect
21 Mr Olin McDougal was there for the family court
22 aspect They adamantly tried to prevent me from
23 speaking openly in the court on the record They did
24 not want my voice to be heard But Mr Armstrong
25 did, with my insistence, allow me to speak for the

1 record and voice my opinion in reference to that
2 child at that time

3 But it appeared to me, at that time, that
4 they did not want me to go on the record They did
5 not want the young lady, Miss Kimberly Blake, to go
6 to the stand They were supposed to have a hearing
7 at a later date whereas Miss Blake would have to be
8 in question as reference to why or why not this child
9 should be given or returned back into her custody
10 And at that time, he said he will temporarily give
11 the child in that matter in that area (sic) But as
12 far as I can remember, this is why I want the
13 transcript so that I can be more precise and accurate
14 to the actual wording and the things that were said
15 at that particular hearing

16 At that particular hearing, there is
17 information crucial to the defense of the defendant
18 in order for him to have a fair trial whereas he has
19 put up a defense against perjury that would be used
20 to also show that the prosecutor is aware as well
21 that perjury has already been given to you, testified
22 before you by Miss Blake and the prosecutor himself
23 in particularly in reference as far as that child
24 being taken into custody

25 THE COURT Hold on I don't have any

1 problem with you getting the transcript, but you have
2 some responsibility to identify the date,
3 Mr Alkebulanyahh I mean, otherwise, every time
4 people can't track their own dates of their hearings,
5 I would be calling in judges every day to testify
6 That is not their obligation

7 THE DEFENDANT Well, by me being in the
8 custody of the state, I should have had the
9 opportunity to have pencil, paper while in the
10 detention center and not have the state to interfere
11 with me being able to exercise my right to petition
12 the court under the United States Constitution, First
13 Amendment, therefore, preventing me from any writing
14 material --

15 THE COURT What does that have to do
16 with my last statement, Mr Alkebulanyahh?

17 THE DEFENDANT Excuse me, Your Honor
18 What it has to do with your last statement is that I
19 was not afforded the means because I was in detention
20 in total control I was prohibited through security
21 reasons from being able to have the apparatuses for
22 writing material, pencil, paper and pen to take notes
23 to petition the court and I --

24 THE COURT How is that possible when
25 just a few weeks ago, a month or so ago, whenever it

was in Florence, I heard at least 40 motions or so
that you had filed? Somebody must have written
those down Was that you?

THE DEFENDANT Those 40 motions came six
months after the time of my arrest

THE COURT Well, you had pen and paper
then, right?

THE DEFENDANT Yeah, six months ago
But my recollection is these events took place months
and months earlier than that six months before --
months before the time that I filed them 40 motions
or plus that is on the record

THE COURT Well, back to my question
why is it that you don't know when you were there?

THE DEFENDANT Your Honor, I could not
give you the exact date, but it may be possible that
at a later date or time I can give you a proximity of
the time I don't want to say anything that is
untrue or speculate about the exact time that this
hearing took place

But, nevertheless, the state, the court
had hearings, moved my body And it should be on the
record with the state to when they moved my body and
took me in that court, and there should be documents
and records

1 THE COURT Well, did the investigator go
2 pull the court file and see if there are any other
3 hearing dates? That would have been a very easy
4 thing to do

5 MR KELLY Your Honor, to my knowledge,
6 no But if it please the court, I have received a
7 note by way of the investigator from the attorney
8 general lawyer who is present saying that the hearing
9 referred to today where Judge Armstrong presided was
10 held May 14, 2002

11 THE COURT May 14, does that sound about
12 right, Mr Alkebulanyahh?

13 THE DEFENDANT Your Honor, to the best
14 of my knowledge, at this time, I'm only -- I would
15 have to see how many judges resided over these
16 different hearings

17 THE COURT Well, you only went one time
18 you said

19 THE DEFENDANT My personal appearance

20 THE COURT And that is the one you
21 want

22 THE DEFENDANT I have two transcripts
23 here

24 THE COURT But the one you are seeking
25 is the time, at least from what you indicated

1 earlier, is the time that you personally appeared?

2 THE DEFENDANT That I personally
3 appeared And if Judge Armstrong was that judge that
4 sat on the bench that day, then that would be the
5 date if I appeared

6 THE COURT All right Well, how about
7 order that transcript please

8 MR THORNTON Yes, Your Honor

9 THE COURT I think that you do have
10 access to this information otherwise My inclination
11 is to quash the subpoena I'm temporarily quashing
12 it But if we can't get access to the information, I
13 will entertain your request to bring in other means
14 of bringing that testimony in All right

15 THE DEFENDANT Thank you, Your Honor,
16 sir

17 MS MCMANN Thank you, Your Honor Is
18 there anything that the attorney general's office
19 needs to provide in the way of any documentation?

20 THE COURT You can prepare an order
21 saying that it is quashed for now provided however if
22 this information can't be located -- if this
23 transcript is not made available, then the court will
24 revisit the issue as to whether, number one, the
25 information is critical and whether it can be

1 obtained by other means and give him the right to
2 call the judge, if necessary

3 MS MCMANN Thank you Your Honor

4 THE COURT Thank you While I'm
5 thinking of it, housekeeping matters, I have received
6 several requests for camera coverage in the
7 courtroom Pursuant to the rule, I want to give you
8 notice of that so you can think about whether or not
9 you take a position on camera coverage one way or the
10 other I don't intend to have camera coverage during
11 jury selection anyway So I will give you time to
12 think about it, and then we will discuss whether or
13 not there are any objections to that prior to the
14 trial commencing and access of cameras in the
15 courtroom All right?

16 THE DEFENDANT Yes, sir

17 THE COURT So start thinking about that,
18 please

19 MR MURDAUGH Judge, there is one other
20 matter that I would request that you take up before
21 we begin the other portions of the hearing

22 THE COURT Yes, sir

23 MR MURDAUGH Sheriff PJ Tanner has been
24 subpoenaed

25 THE COURT Yes, sir

1 MR MURDAUGH I have talked to the
2 sheriff and I have the sheriff in court with me
3 sitting in the back left-hand side to where you are
4 facing He informs me that he has no information
5 He was involved in the overall setting up of the
6 command center, the directing of people where to go
7 but not in the collection of evidence and I would ask
8 that that -- and, in addition to that, sir, he has an
9 ongoing duty and obligation to the County of Beaufort
10 to maintain law and order in that county I would
11 ask that the subpoena against him be quashed

12 THE COURT Yes, sir

13 THE DEFENDANT Yes, sir, Your Honor,
14 Sheriff Tanner --

15 THE COURT Well, first, let me
16 interrupt Why would the subpoena interfere with any
17 duty to perform during the trial?

18 MR MURDAUGH Because of the fact that
19 he would have to be sequestered, sir

20 THE COURT Well, no, what I indicated
21 about the witnesses is they need to be made
22 available They would be sequestered from the
23 courtroom, but everyone can go about their business,
24 just as I indicated with the other deputies that have
25 been subpoenaed in the case For example, if you

1 have a dispatch officer, they can continue to do
2 dispatch duties And, if they are called, then we
3 will take a short break and get them over there

4 MR MURDAUGH The reason, sir is he is
5 in charge of overall law enforcement in Beaufort
6 County including security in the courtroom And if
7 there is no need for him to be there, then he needs
8 to oversee all of his operations

9 THE COURT Yes, sir What is it that
10 you are needing, sir?

11 THE DEFENDANT Sheriff Tanner is
12 critical to the defense of the defendant being that
13 the possibility of him planting evidence being
14 directly on the crime scene involved within the crime
15 scene matter on this day for him to be released
16 would deprive me of the right to prove that evidence
17 was planted to prove that maybe by his direction that
18 other officers concealed and removed evidence
19 inappropriately And he definitely was on the scene,
20 involved around the scene, around the evidence,
21 directly involved And I think that it would
22 definitely deprive myself, the defendant, the
23 opportunity to be able to show his innocence by
24 Mr Tanner being disallowed to be subpoenaed to
25 testify before the court

1 THE COURT Yes, sir, was he
2 supervising -- was he overseeing the crime scene?

3 MR MURDAUGH No, sir He went to the
4 crime scene, but he did not supervise the crime
5 scene He went to the crime scene, as I understand,
6 after the forensics people had done their duties Is
7 that correct, sheriff?

8 THE SHERIFF No, sir

9 THE COURT You went first?

10 THE SHERIFF Yes, sir

11 MR MURDAUGH He went earlier than
12 that I m sorry, sir

13 THE SHERIFF Yes, sir

14 THE COURT All right If he
15 participated in the crime scene investigation, I
16 don't think it would be appropriate to release him
17 from the subpoena I can't -- you know, the problem
18 with this issue about the subpoenas is I can't sit up
19 here and tell the defendant --

20 MR MURDAUGH Yes, sir

21 THE COURT -- how to plan his defense
22 strategy It is not appropriate for the court to do
23 that But the court will take whatever steps it
24 needs to take to ensure as few people as possible are
25 inconvenienced insofar as their duties are concerned

1 The best we can do is give a sufficient notice, if we
2 get to the point that the defendant actually calls
3 him as a witness

4 I decline to do that, at this point, just
5 based on those allegations It is impossible for me
6 to make an actual determination of what the defendant
7 is going to be able to show with this And, as I
8 indicated we can take a break, if necessary, to send
9 for the sheriff if it becomes necessary for him to
10 testify

11 MR MURDAUGH Yes, sir A way to solve
12 this thing and leave the subpoena in place, if it
13 would be agreeable, which I don't --

14 THE COURT Yes, sir

15 MR MURDAUGH Would be to allow him to
16 be in the courtroom

17 THE COURT To be in the courtroom?

18 MR MURDAUGH Yes, sir

19 THE COURT Why is that necessary in
20 light of the sequestration?

21 MR MURDAUGH Because it is his
22 obligation to oversee the security of the courthouse,
23 sir, during this trial even though he has assigned
24 that to Neal Baxley And I also call your attention
25 to the fact that Neal Baxley, who is head of

1 security, has now been sequestered

2 THE COURT Yes, sir, he has Yes, sir

3 THE DEFENDANT Your Honor, sir I can't
4 see no way that to allow this state witness to be
5 allowed to sit in the courtroom during the course of
6 testimony being that he will have the opportunity to
7 hear other witnesses' testimony and shape and form
8 his testimony according to what he hears and sees in
9 the courtroom I think that would be highly
10 prejudicial toward the defendant in this case

11 MR MURDAUGH May I ask a question
12 sir? When a witness has testified and I do not
13 intend to call him again will he be relieved of
14 sequestration?

15 THE COURT I will ask each side if they
16 have any objection to their being relieved If it is
17 not a witness that the other side intends to use any
18 further, then I assume that will be the case

19 I mean, even as Mr Alkebulanyahh
20 indicated yesterday or the other day, for example,
21 insofar as that doctor were concerned if you decide
22 to call that doctor, he very well may get all he
23 needs out during his examination of that witness and
24 that may be the end of it insofar as that witness

25 Obviously, you have been in this business

1 long enough to know that I have to do that --

2 MR MURDAUGH Oh I understand that

3 THE COURT -- on an individualized
4 case-by-case basis as we go along

5 But if he has a witnesses

6 Mr Alkebulanyahh, that you have no intention of
7 calling, are you going to have any problem with them
8 being released?

9 THE DEFENDANT Well, I would like to
10 maybe perhaps use him for recross, you know

11 THE COURT We will deal with that on a
12 case-by-case basis I really don't see a need to not
13 release people if they are not going to be used on
14 the other side They are your subpoenas So,
15 obviously, if you had some intended purpose for a
16 particular individual, it is your responsibility to
17 subpoena whomever you deem appropriate

18 THE DEFENDANT Right, I do deem him
19 appropriate

20 THE COURT I'm not talking about the
21 sheriff We were just talking about witnesses in
22 general

23 THE DEFENDANT In general

24 THE COURT Yes sir You have
25 subpoenaed the sheriff That is a different

1 question I m talking about people he has subpoenaed
2 that you have not

3 THE DEFENDANT Right But I just want a
4 little clarification because I'm not understanding to
5 the point that you know, is --

6 THE COURT Usually after every witness
7 they say may this witness be excused Unless you
8 have some reason for them not being excused, usually
9 it is normal to say that witness is hereby excused

10 THE DEFENDANT Right Would that allow
11 him to be in the courtroom whereas the other
12 witnesses would not be able to be in the courtroom?

13 THE COURT Once a witness is excused,
14 they are welcome to watch because they are not going
15 to be called again

16 THE DEFENDANT Okay

17 THE COURT But everyone will be directed
18 not to discuss their testimony with anyone

19 THE DEFENDANT I would ask that he be
20 disallowed to come beyond the partition being that,
21 you know, he's not a prosecutor, you know, to be up
22 here with the prosecutor sitting up here in the
23 case If he is in the audience or something, that is
24 fine

25 THE COURT I agree with that We are

1 just talking about witnesses in general You keep
2 getting back to the sheriff I'm talking about
3 witnesses in general For example, if the doctor
4 testified

5 THE DEFENDANT Right

6 THE COURT And you say, well, no,
7 instead you decide you are going to call him in your
8 case, then the doctor would have to leave because he
9 has not been excused Now, if some other person
10 testifies and he is done with him and you don't have
11 any further need for that person, that witness is
12 excused They can sit out there and watch if they
13 want to

14 THE DEFENDANT Right I just wanted to
15 make sure that I wasn't agreeing to him as to if he
16 is excused that he has special privileges to be up in
17 the body of the courtroom, other than a spectator

18 THE COURT No, witnesses will not be in
19 the main part of the courtroom

20 THE DEFENDANT Yes, sir

21 THE COURT All right

22 THE DEFENDANT Thank you sir

23 THE COURT Now again, I want you-all to
24 think about the media request for camera coverage

25 What else? Now, as far as jury

1 selection -- yes, sir

2 MR MURDAUGH I can give you my answer
3 about the media, sir

4 THE COURT Yes, sir

5 MR MURDAUGH I leave it up to your
6 discretion, but I would prefer that you didn't have
7 them

8 THE COURT All right

9 THE DEFENDANT Your Honor, I prefer the
10 media to have all access to the proceedings that is
11 taking place in this forum

12 THE COURT Well generally, I don't
13 allow them for jury selection because they are not
14 allowed to photograph jurors anyway

15 THE DEFENDANT Well, I feel if it is
16 possible that they could be there at the order or
17 direction of the court where that the jurors would
18 not be photoed or seen any visual camera aspect that
19 the media be allowed to be at the proceedings

20 THE COURT That may be difficult in
21 light of the number of jurors that are coming I
22 will think about it As I indicated, I don't intend
23 to rule on that until next week But my inclination
24 would be, if I allowed the camera coverage, that it
25 would be for the trial and not for the jury

1 selection (

2 Generally, you are not going to be doing
3 anything at jury selection, I'm talking about the
4 qualification And then when it comes to the
5 individual voir dire, I don't see what they would be
6 able to film for that either It would be everybody
7 up here at the front you, the solicitor and the
8 juror asking whatever is appropriate, and I don't see
9 what there is to do with that But I will think
10 about it

11 I just wanted to give you notice, as I
12 indicated It is totally within my discretion But
13 my problem also is that I have to decide whether or (

14 not that is going to impact upon the interest of
15 justice and your rights in any way

16 And, similarly, I understand you are not
17 objecting But, at the same time, by proceeding
18 without counsel obviously we have had to -- I have
19 had to already take a few moments, from time to time,
20 to explain things to you Obviously, every time I do
21 that or every time I indicate that you may want to
22 consult with your attorney, that is going to pop up
23 somewhere It already has been that way and it will
24 always -- it will continue to be that way That is
25 just my guess And it is an educated guess, by the (

1 way, but I will think about it

2 Is there any particular reason that you
3 think cameras would be appropriate?

4 THE DEFENDANT I think cameras would be
5 appropriate for the overall aspect for justice and
6 for the public that they may be able to obtain
7 knowledge, expand the awareness of the general public
8 as far as the procedures and what actually takes
9 place during the course of jury selection for
10 educational purposes for many aspects that could be
11 very positive and conducive to the public awareness
12 about the way the court is run and its procedures
13 that knowledge may be obtained or received from that
14 for the public to see exactly what is taking place
15 and what is going on with the jury and how jurors are
16 selected and the type of jurors that will be present,
17 many aspects so they can determine either by female,
18 the male, by gender, by racial or whatsoever, the
19 pooling of the jurors

20 THE COURT Well, they are not allowed to
21 film the jurors period

22 THE DEFENDANT But I mean as far as any
23 questioning

24 THE COURT They are not allowed to film
25 the jurors So if you are all standing up here,

1 there is no way for them to film it without filming
2 the juror

3 THE DEFENDANT What I mean is any
4 aspects as to any questioning of the gender and the
5 different ethnic and racial groups and questions that
6 arise from the voir dire

7 THE COURT Well, I'm not sure what kind
8 of questions, obviously, you are going to get into,
9 but I don't know what kind of questions you are
10 thinking about But I don't intend to go into any
11 kind of racial overtones about the questions

12 THE DEFENDANT No, it is not --

13 THE COURT You have a list of jurors
14 that you have that indicate the race of the
15 particular juror

16 THE DEFENDANT Right

17 THE COURT I don't know what more I'm
18 going to allow in that department

19 THE DEFENDANT Again, as I stated just
20 for the record, that I feel that the press you know
21 I should have the opportunity --

22 THE COURT I understand

23 THE DEFENDANT -- if they choose to be
24 there at any aspect of the criminal proceeding, any
25 aspect in my opinion, just my opinion

1 THE COURT All right I will think
2 about that I just wanted to give you notice in
3 accordance with the rules

4 Now, what about attire? Do you have
5 clothes that you are planning on wearing?

6 THE DEFENDANT Yes, sir, I do

7 THE COURT All right And you have made
8 arrangements with whomever to have those for you?

9 THE DEFENDANT Yes, sir, I sure have

10 THE COURT All right

11 THE DEFENDANT Thank you, sir

12 THE COURT Do you-all have a particular
13 procedure in Beaufort for that?

14 MR KELLY Your Honor I'm unaware of
15 any procedures

16 THE COURT I mean who are they delivered
17 to or?

18 MR KELLY Your Honor, since we became
19 standby counsel we haven't checked into anything
20 like that

21 MR MURDAUGH Your Honor, I am informed
22 by the detention center personnel that they do have a
23 procedure in place to allow him to dress
24 appropriately however he wants to

25 THE COURT All right What is next?

1 MR KELLY Your Honor, I have a
2 housekeeping matter

3 THE COURT Yes, sir

4 MR KELLY Your Honor, we, pursuant to
5 your order, orders us to prepared subpoenas and we
6 delivered 45 of those subpoenas to the sheriff's
7 department for service by them which were mainly on
8 people inside of their own department

9 THE COURT Yes, sir

10 MR KELLY They presented the defense
11 with a bill for \$15 each at \$675 00

12 Also, Your Honor, we copied or the
13 investigators copied for the defense the jury return
14 information which was 1820 pages for a total cost of
15 \$455 00

16 THE COURT The investigators copied
17 that, the clerk was preparing copies for you-all

18 MR KELLY No, Your Honor, the clerk
19 would not prepare copies for the defense, but they
20 would allow the investigators or their servants to
21 prepare the copies in the clerk's office and charge
22 them for the copies

23 THE COURT Were you-all charged for the
24 copies?

25 MR MURDAUGH I hope not sir I don't

1 think so

2 THE COURT Those were not my
3 instructions I will find out But if the state was
4 provided those copies free of charge, then you are
5 certainly going to be provided those copies free of
6 charge

7 MR KELLY Yes, sir Your Honor, what
8 we would request is an order by you that all copies
9 that are made of any documents in the clerk's office
10 that has to do with this case that would be, Your
11 Honor, for instance, they have a certified copy of
12 the order made which happens often in this case, that
13 all copies should be -- the cost would be absorbed by
14 the county and not passed on to the defense,
15 otherwise --

16 THE COURT Well, I don't think they need
17 to be passed on to the defense, but whether they
18 should be passed on to another agency is a different
19 question

20 MR KELLY Yes, sir

21 THE COURT I don't mind reimbursing you
22 for those copies that I did direct that the juror
23 returns be provided to the state and the defense

24 MR KELLY Yes, sir

25 THE COURT That is normal procedure, as

1 far as I know

2 MR KELLY Yes, sir That is the
3 housekeeping matter that I'm bringing forward

4 THE COURT Is that what you-all have
5 done in the past?

6 MR MURDAUGH No, sir To my knowledge,
7 we have never been charged for them, sir Whether I
8 have been charged for them, I didn't pick them up I
9 had a member of my staff but I --

10 THE COURT We will check into that

11 MR MURDAUGH And I join in his motion,
12 sir If they are charging me, I want to get out of
13 it too

14 THE COURT I agree with that I mean
15 that has been standard procedures everywhere I ve
16 ever been

17 MR MURDAUGH Yes, sir

18 THE COURT People are provided a copy of
19 the juror returns

20 MR KELLY Your Honor, what about the
21 service of the subpoenas? Should that be passed on
22 to the South Carolina Office of Indigent Defense?

23 THE COURT I don't think I have a
24 problem with that

25 MR KELLY Is that the way you would

1 have us handle it?

2 THE COURT Yes, I don't have a problem
3 with that Give me an order

4 MR KELLY I will do so

5 THE COURT All right Now, insofar as
6 jury selection is concerned, obviously the jury panel
7 as a whole will have to be qualified first

8 You can be seated, Mr Alkebulanyahh

9 The jury panel as a whole will have to be
10 qualified Then I intend to tell the panel a little
11 bit about the process, the bifurcated process, et
12 cetera Then we will break the panel down into many
13 panels, bring them back hourly or whatever it takes,
14 depending on the size of the group, probably six or
15 seven for each group just bring them back throughout
16 the day, at which point, I will ask some additional
17 questions as a lead-in about the process, about
18 aggravating, mitigating circumstances, et cetera
19 Then I will ask them about any press or media
20 coverage that they have been exposed to, and then I
21 will allow the defense the opportunity to engage in
22 voir dire, and then I will allow the state

23 Do you understand that process?

24 THE DEFENDANT Pretty much, yes sir

25 THE COURT All right Now, I reserve

1 the right to intervene at any time, if appropriate

2 Yes, sir Did you want to say
3 something?

4 MR MURDAUGH No, sir

5 THE COURT Now, I want to say something
6 too about cameras in the courtroom Although it has
7 been my policy in the past to allow cameras where
8 appropriate, please understand that at no point, not
9 that these proceedings will go that way, but I'm not
10 going to allow the proceedings to be used as some
11 platform for something else Do you understand
12 that?

13 (The defendant nods head)

14 THE COURT If at any point I think it is
15 going in a way it shouldn't be going or it is turning
16 into some kind of proceeding that is not dignified or
17 not in accordance with the formalities and
18 seriousness of the proceeding, I certainly have the
19 right, at all times, to limit or modify access for
20 camera coverage as appropriate I want to give you
21 that qualification

22 What else do we need to go over?

23 MR MURDAUGH If Your Honor please,
24 insofar as jury selection --

25 THE COURT Yes, sir

1 MR MURDAUGH -- may I inquire as to how
2 many people you intend to qualify before we strike
3 the jury

4 THE COURT All right That is something
5 I wanted to hear you out on today I actually
6 contemplated in this case striking as we go, and I
7 wanted to hear you-all out on that

8 MR MURDAUGH I would -- would you like
9 to hear me first?

10 THE COURT The last death penalty case I
11 heard I believe we did it the way that you are about
12 to suggest We got a group together and struck from
13 that group But I also had a request in that case to
14 do it as we went along We didn't go that route, but
15 it may not be a bad idea to do it that way I will
16 be happy to hear you out

17 MR MURDAUGH I have one feeling about
18 that sir

19 THE COURT Yes, sir

20 MR MURDAUGH And that is that I
21 anticipate, and I hope I am absolutely incorrect in
22 my anticipation, that this is going to be an extended
23 matter

24 THE COURT I agree with that
25 100 percent

1 MR MURDAUGH If we should qualify and
2 select a juror I am of the impression that at the
3 point that they are selected as a juror they should
4 be sequestered I would hate to select a juror on
5 Monday afternoon and then be sequestered for an
6 extended period of time before trial

7 THE COURT I don't think I would be
8 obligated to do that Obviously, sequestration is
9 not mandatory in any case

10 MR MURDAUGH I understand, sir

11 THE COURT And I'm really not sure
12 what -- aside from the Court's normal instructions
13 about media coverage and not exposing themselves to
14 media coverage, that it is going to make much
15 difference to give those instructions and tell the
16 person to come back in Friday, for example, as
17 opposed to them being in sequestration

18 What is the defense's position on that
19 about striking as we go along?

20 THE DEFENDANT Your Honor

21 THE COURT What that means is if, for
22 example, once we have qualified the whole panel and
23 then we go into individual voir dire then you
24 question that juror about their attitudes or whatever
25 about the death penalty, et cetera Once we are done

1 with that questioning, then there is no -- and the
2 juror has not been excused for cause, then I ask, at
3 that point, the clerk will say what says the state,
4 what says the defendant on that juror about
5 exercising your strikes And then we keep doing that
6 process until we actually have a jury that is drawn

7 THE DEFENDANT Your Honor, can I have
8 one minute, please?

9 THE COURT And what I would contemplate,
10 if we do it that way, is that I would instruct each
11 person selected they are not to expose themselves to
12 any coverage and then they would be allowed to go
13 home, and then we would bring them all back together
14 once we have drawn our jury and the sequestration
15 would take place at that point and they would all be
16 sent to the hotel All right

17 THE DEFENDANT Your Honor, can I have a
18 minute?

19 THE COURT All right

20 (The defendant confers off the record
21 with investigators)

22 THE COURT Mr Alkebulanyahh, I will be
23 happy to share with you at my last trial that is the
24 procedure requested by the defense All right

25 THE DEFENDANT Thank you

1 THE COURT But I will be happy to hear
2 you out either way

3 (The defendant confers off the record
4 with standby counsel)

5 THE DEFENDANT Yes, sir, Your Honor

6 THE COURT Yes, sir

7 THE DEFENDANT Yes, Your Honor,
8 Mr Alkebulanyahh, the defendant, prefers not to
9 strike as we go

10 THE COURT All right I will think
11 about that then You prefer to get a group together
12 of a certain number and then strike from that?

13 THE DEFENDANT Yes, sir

14 THE COURT All right Yes, sir

15 THE DEFENDANT I also want to, while we
16 are speaking on the jury, I want to mention for the
17 record about Mr Alkebulanyahh is not -- does not --
18 is pretty much, say, satisfied or have a -- I guess,
19 what you say have a complaint about the jury pool
20 and the disparity of the racial makeup of the 400
21 juror pool Being that Mr Alkebulanyahh had the
22 opportunity to pull up the statistic and democratic,
23 I'm sorry, demographic census of the Beaufort
24 population, which is dated -- the census was taken in
25 2000 -- and African-Americans make up about 25 point

1 14 percent of the African-Americans of the Beaufort
2 County region at that time in 2000

3 Being that the pool is a pool of 400, and
4 out of the 400 jurors pooled or selected or came up
5 in accordance to the program or whatever they have
6 established, only 83 of the 400 was African-Americans
7 and that is less than a quarter of all of the jurors
8 that came up for the -- in this pool for 400 And
9 being that that is below the -- possibly below
10 between the population and the many jurors that is on
11 the pool that the defendant feels like that something
12 is grossly wrong being that out of 400 that only
13 83 African-Americans came up on the pool And then
14 being that thus far there has been 11 already
15 released or removed from the pool which takes the
16 statistics down to 72 presently African-Americans to
17 be selected out of this group and that is not to
18 count, I guess, if any more others would be dismissed
19 or let go before the proceeding starts

20 THE COURT Well, then again, on the
21 other hand, it could be that you end up with 200
22 people and 70-something are a particular race Or
23 after the process is -- the qualification process and
24 the court entertains requests about people who can't
25 be there for three weeks or whatever the statistics

1 change also

2 What is the state's position on that?

3 MR MURDAUGH If Your Honor please, I
4 again tell you, sir, that I was not aware of this
5 motion until I heard it a second ago, so I do not
6 have the case cites with me There is a line of
7 cases that say as long as the jury is chosen at
8 random in accordance with the statute the mere fact
9 of an imbalance is not grounds for anything

10 THE COURT Yes, sir I was inclined to
11 think the same thing that as long as it's a random
12 selection by the clerk of court randomly generated
13 from those categories of individuals that are used
14 for jury selection then I don't see that it should be
15 a problem You can't guarantee that the panel will
16 have a certain percentage of the segment of the
17 population

18 THE DEFENDANT Well, my question -- my
19 main question is is that it states, it said that
20 these jurors are chosen at random In the event that
21 it is chosen at random, then this pool has the
22 potential to be a very evil thing in the judicial
23 system because in that case then it can eliminate all
24 African-Americans from the jury pool

25 It is frightening to just think that out

1 of 400 jurors that only 83 African-Americans would
2 have the opportunity to be pulled out of this racial
3 (sic) of jury pool being that the African-American
4 population makes up more than the differentiation
5 between the --

6 THE COURT There is no constitutional
7 guarantee to have a certain percentage of the segment
8 of the population on your jury pool,
9 Mr Alkebulanyahh As long as the pool randomly
10 draws from all members of society and the system
11 itself does not systematically exclude distinctive
12 groups in the community, then it doesn't -- the pool
13 does not have to mirror the makeup of the community

14 THE DEFENDANT What I'm questioning is
15 the system, the system who is in control of the
16 system who has influence of the system because --
17 what that question is that the corruption of the
18 Beaufort County officials in the Beaufort County area
19 in the aspects of the judicial system and the
20 sheriff s department, the magnitude of it is
21 astronomical as far as their corruption and their
22 conduct in that particular area above the law

23 THE COURT Well, those are just --

24 THE DEFENDANT They have the tendency to
25 influence machinery or things like that to that

1 extent

2 THE COURT You are making random
3 allegations If you have some evidence that the jury
4 pool was not selected in the random manner prescribed
5 by statute, then so be it, but there is no evidence
6 of that This whole trial is not going to be about
7 you speculating about everyone doing everything,
8 Mr Alkebulanyahh

9 THE DEFENDANT Yes, sir

10 THE COURT Do you understand that?

11 THE DEFENDANT Yes, sir, that is quite
12 understandable

13 THE COURT You have the opportunity to
14 question witnesses But when it comes to the jury
15 pool, you don't have any evidence You are just
16 saying that everyone is corrupt so the jury pool is
17 corrupt

18 THE DEFENDANT Well, what I'm saying --

19 THE COURT Secondly, let me specify
20 another important factor This court had the
21 opportunity to consider whether or not this case
22 should be tried in another area

23 THE DEFENDANT Yes, sir

24 THE COURT You were vehemently opposed
25 to that request

1 THE DEFENDANT Yes

2 THE COURT You asked that that request
3 be withdrawn

4 THE DEFENDANT Right

5 THE COURT You said that your lawyers
6 who were appointed at the time made that request
7 without your permission

8 THE DEFENDANT Right

9 THE COURT Now, for a person who claims
10 that everyone in the system is so corrupt, you
11 yourself insisted that it remain in this county, is
12 that correct?

13 THE DEFENDANT That is correct

14 THE COURT All right

15 THE DEFENDANT But my position is this
16 Being that I live in a European American society
17 where the black population only make up about
18 12 percent of the population, it is very, very
19 apparent to the educated and the enlightened that the
20 black population is a minority in the United States
21 of America Being in a region such as South Carolina
22 who has a long legacy of racism and segregations and
23 other methods of discrimination against
24 African-Americans, it is not, you know, in what
25 reference to county where it go in (sic) The hand

1 of corruption is not short you know, being that you
2 have so many types of brotherhoods or police
3 brotherhoods or prosecutor brotherhoods and different
4 things of that nature

5 But, nevertheless, it isn't to be that
6 I -- that I believe that just because it's in
7 Beaufort County I would receive a fair trial, if I
8 got it moved to Barnville, South Carolina, or
9 Greenville, South Carolina, or tank top (sic), South
10 Carolina

11 THE COURT Well, I'm saying as far as
12 the individual --

13 THE DEFENDANT I just wanted to make
14 that clear

15 THE COURT I'm not saying as far as the
16 individual jurors are concerned I'm saying insofar
17 as your continued allegations that everyone in
18 Beaufort County is corrupt

19 Now unless you have specific evidence --
20 and, again, I don't fault you for making whatever
21 motions that you think are appropriate But the
22 motions are going to have to be made in good faith
23 and there has to be a basis, an evidentiary basis for
24 your motions I'm more than happy to hear any
25 motion I never will stand in anyone's way to assert

1 a right that they are entitled to assert However,
2 for this motion to proceed, you are going to have to
3 show that this jury panel in somehow or another was
4 selected in a manner that systematically excluded a
5 distinct group of population And the only
6 information that this court has is that it was
7 randomly selected from the categories of individuals
8 who are entitled to be drawn as jurors for the pool
9 and nothing else is before the court

10 Again, the jury selection act does not
11 require that the particular -- a particular jury
12 mirror the makeup of the community and it is not
13 required that it contain representatives of all
14 racial, ethnic and religious groups That would be
15 impossible to do without hand-selecting jurors I
16 would have to go out and say you you, you, you and
17 you be on this jury That is the only way to give
18 you that guarantee that you are asserting

19 Now, let's just talk about that from a
20 theoretical perspective What you say is scary on
21 the one hand that they are not represented in a
22 random selection manner that would more -- that would
23 be scarier, would it not, that if one or more persons
24 had the right to go out and hand-select a jury, would
25 it not?

1 THE DEFENDANT Well

2 THE COURT Would it not,

3 Mr Alkebulanyahh?

4 THE DEFENDANT Not exactly

5 THE COURT Would you want me to go out
6 and select your jury?

7 THE DEFENDANT Well, if I was competent
8 that you wouldn't go out and pick 12 Klu Klux
9 Klansmen

10 THE COURT I understand your position,
11 but I will stand by my ruling Unless you have some
12 evidence of the systematic exclusion of these
13 individuals, I'm not prepared to grant that request
14 You have made it for the record though

15 THE DEFENDANT Your Honor, just in
16 general just one last statement in reference to
17 that It is just that being that the judicial system
18 is so vicious upon African-Americans --

19 THE COURT Again, I don't have any
20 evidence to support that, Mr Alkebulnyahh

21 THE DEFENDANT I just pray that my
22 argument would be able to maybe in the future, you
23 know, as Thurgood Marshall said, the Honorable
24 Thurgood Marshall's book entitled the Supreme Court
25 said that perhaps maybe by 2050 African-Americans may

1 get a glimpse of true justice in the judicial
2 system That is my last statement

3 THE COURT Yes, sir Your statements
4 are made known for record I think all individuals
5 with all racial persuasions and ethnic or religious
6 backgrounds have the capacity and do exercise that
7 capacity in evaluating all individuals equally in a
8 court of law

9 I'm not prepared to say any one group
10 treats another group unequally I have not seen that
11 in my time on the bench I have been on this bench
12 14 years, and I don't see that as the case I think
13 that cases are decided on the merits And if there
14 is some specific allegation they have not been, then
15 there are remedies for that

16 But I'm not going into this proceeding
17 with some assumption that you claim that the judicial
18 system expresses that type of attitude towards
19 African-Americans as you just indicated That is
20 totally unfounded by this record, and, again, it is
21 just a statement on your part Again, those
22 statements are not going to be the kinds that --
23 we're not using this case as some platform

24 Do you understand that?

25 THE DEFENDANT Right I mean, I respect

1 that

2 THE COURT When we are in trial, you
3 focus on the issues presented in trial

4 THE DEFENDANT Well, Your Honor, it
5 is -- I really do understand that this case is not to
6 be used as a platform But, nevertheless, I feel
7 like a platform myself or a rug mat being walked all
8 over in this judicial system As far as I see being
9 innocent and standing here, it seems so ridiculous,
10 to me, that there is no evidence to convict me of the
11 charges against me So I do respect and regard your
12 words as they are

13 THE COURT Well, our judicial system is
14 designed to give everyone their day in court,
15 Mr Alkebulanyahh

16 THE DEFENDANT That day is not justice
17 all of the time

18 THE COURT You will have your day in
19 court, okay You're getting it You re getting it
20 now

21 THE DEFENDANT There is an old saying
22 white man's justice, black man's grief though

23 THE COURT Well, what sayings you choose
24 to believe and what sayings I choose to believe are a
25 different thing

1 THE DEFENDANT Yes, sir

2 THE COURT And perhaps that is why I'm
3 sitting here

4 THE DEFENDANT With respect, Your Honor,
5 sir

6 THE COURT All right Go ahead

7 THE DEFENDANT I have other issues to
8 bring before the court I handed the prosecutor,
9 Mr Murdaugh, two motions that I wanted to present to
10 the court, both of them are motions to suppress

11 Motion to suppress, number one, is dated
12 October 3rd, 2003, and I would like to read from the
13 motion, if I may, Your Honor

14 THE COURT And this is something you
15 have served on the state?

16 THE DEFENDANT Yes, sir

17 MR MURDAUGH I received them this
18 morning, sir

19 THE COURT All right

20 MR MURDAUGH Now, if Your Honor please
21 if I might make one statement, these are both -- may
22 I before we start with his?

23 THE COURT Yes

24 MR MURDAUGH If Your Honor please, I
25 received these this morning They will require an

1 evidentiary hearing and I am in Charleston

2 THE COURT I understand

3 MR MURDAUGH I am not prepared to do
4 it, sir, and it is probably something that would
5 normally be done during trial

6 THE COURT All right

7 MR MURDAUGH I will be happy to hand
8 them up to you if you would like to see them

9 THE COURT Yes, sir, I would like to see
10 them If he just received those copies, there is no
11 way he can have his witnesses here We will have to
12 take them up before we start the case all right?

13 THE DEFENDANT Yes, sir

14 THE COURT Can I see a copy?

15 MR MURDAUGH May I approach?

16 THE COURT Yes

17 (The court reviews documents)

18 THE COURT Thank you What else?

19 THE DEFENDANT Your Honor, in reference
20 to these motions, you are speaking that the
21 particular witnesses he is saying in this that for
22 him to contest the motion --

23 THE COURT Yes, sir

24 THE DEFENDANT -- that he would want to
25 produce to object to it, or can you explain further

1 for me Your Honor, sir?

2 THE COURT He is saying that they
3 require an evidentiary hearing

4 THE DEFENDANT Right

5 THE COURT And since you just served him
6 this morning, he hasn't had time to get his witnesses
7 here

8 THE DEFENDANT Okay

9 THE COURT So we will have to take that
10 up once we start the case We will take that up
11 after we get the jury selected

12 THE DEFENDANT Yes sir

13 THE COURT What else do we have?

14 THE DEFENDANT Your Honor, I would like
15 to -- we was here in Charleston August 1st

16 THE COURT Yes, sir

17 THE DEFENDANT And that the prosecutor
18 requested a transcript from the court reporter

19 THE COURT Yes, sir

20 THE DEFENDANT And at the end of the
21 proceeding, we walked up to the desk and I said that
22 I would like to have a request of the transcript and
23 the prosecutor said that he would give me that And
24 he told me that when he got one he would provide me
25 with that transcript It has been over 60 days as of

1 today I don't know if he received it or not or
2 anything in reference to that transcript I wanted
3 to obtain that transcript being that he did say he
4 would release that transcript to me and told me that
5 he would give that transcript once he received that
6 transcript

7 THE COURT Has that transcript been
8 prepared?

9 THE COURT REPORTER I didn't take it

10 THE COURT That wasn't you?

11 THE COURT REPORTER No, sir

12 THE COURT Did you-all get that
13 transcript?

14 MR MURDAUGH I have not gotten it, sir

15 THE COURT It has not been prepared
16 yet I mean you can request one, but you are not
17 guaranteed a right to get it before we start

18 THE DEFENDANT Before we start the
19 trial?

20 THE COURT Yes I don't control their
21 backlog, each reporter

22 THE DEFENDANT Okay

23 THE COURT You were able to take notes
24 at that proceeding of everything that took place

25 THE DEFENDANT Well, I request a

1 transcript from the August 1st, 2003, hearing that
2 was held here in Charleston And, also, if I may, I
3 would like to request the July 25th transcript that
4 was held in Florence And I also would like to
5 request the October 1st transcript that was held in
6 Beaufort County, and this particular transcript is
7 very pertinent to Mr Alkebulanyahh having a fair
8 trial

9 THE COURT Well, the transcript itself
10 is not pertinent You had the right to record and
11 take down notes about everything that took place

12 THE DEFENDANT The transcript in itself
13 can be used as evidence to discredit the witnesses
14 that appeared that day --

15 THE COURT That's correct

16 THE DEFENDANT -- on October 1st And I
17 think that notes, me taking notes or anything has no
18 authenticity to prove or show discrepancies or
19 indifference, lies or whatever the defendant plan to
20 use in the course of the trial

21 THE COURT Yes But that was just two
22 days ago There is no guarantee that you will get
23 that before we start this case

24 THE DEFENDANT Well I ask the court
25 that --

1 THE COURT Do you understand that?

2 THE DEFENDANT Yes I may not get this
3 before we start the case, but I ask the court to make
4 known that the defendant would like to have this
5 transcript before the case is ceased so he may be
6 able to cross-examine the witnesses that testified at
7 that hearing from the information

8 THE COURT Right

9 THE DEFENDANT From that transcript to
10 prove and show

11 THE COURT You can make a formal request
12 for that But I'm telling you now, because that is
13 only a few days before trial, there is no guarantee
14 that you will get that If necessary though, those
15 tapes can be accessed by the court reporter And if
16 you think there is an inconsistent statement that has
17 been made, those tapes can be played back, if
18 necessary They will be played back in camera for us
19 to determine whether or not it has been inconsistent,
20 and then we can make a decision from there They are
21 accessible But there is no guarantee to get -- you
22 don't have a right to have these transcripts before
23 we start when the hearing was just a couple of days
24 before the proceeding

25 THE DEFENDANT Would I be able to use

1 that information and enter it in as evidence?

2 THE COURT If someone has testified
3 under oath, again, I'm not going to spend this trial
4 advising you about procedures If someone has
5 testified under oath and you claim they testified in
6 an inconsistent manner while under oath on another
7 occasion, then you have a right to impeach their
8 testimony

9 THE DEFENDANT With that transcript

10 THE COURT It doesn't have to be the
11 transcript

12 THE DEFENDANT With the tape recorder?

13 THE COURT We can play the recording
14 back to the witness, if necessary But I have no
15 doubt that you will not be able to get that
16 proceeding from October 1st transcribed over this
17 weekend That is just not going to happen

18 THE DEFENDANT Yes, sir

19 THE COURT But you did take notes of
20 everything the witnesses said, correct?

21 THE DEFENDANT I took sparse, very few
22 notes, very, very few

23 THE COURT All right That is no
24 different than any other proceeding You don't stop
25 trials just so people can get transcripts You have

1 to know what people say and you have to take notes
2 about what people say

3 THE DEFENDANT That is true

4 THE COURT All right Next matter

5 THE DEFENDANT Also, I have been
6 presented with subpoenas that was given to -- that
7 was given out to PFC Deputy J Mont (phonetical) of
8 the Beaufort County Sheriff's Department, and it was
9 brought to my attention that he moved to West
10 Virginia

11 This particular witness has some critical
12 information surrounding the case against the
13 defendant This particular witness, as well, has
14 knowledge and information about the persons who did
15 this crime or alleged crime, this called alleged
16 crime, excuse me, I would like to strike that from
17 the record, who did the shooting

18 THE COURT Yes sir

19 THE DEFENDANT And Mr Mont does know
20 and did have contact with the shooter or one of the
21 shooters or both of the shooters or whatever the
22 situation would be, whatever the prosecution is able
23 to show about that being the defendant wasn't there
24 And he has moved to West Virginia, and I don't know
25 any kind of way that I would be able to solicit from

1 him information that is necessary to be received from
2 him

3 THE COURT Have you discussed this with
4 standby counsel?

5 THE DEFENDANT No, not yet

6 THE COURT Why don't you go ahead and do
7 that We will take a short break so you can do that
8 We will go ahead and take a short break

9 (A recess transpired)

10 THE COURT Yes, sir Did you have an
11 opportunity to confer about the subpoena problem?

12 THE DEFENDANT Yes, sir, Your Honor
13 Your Honor, what I would like to do, if possible,
14 being that the witness is out of state, one of the
15 witnesses, Mr Mont, I was speaking to you earlier,
16 it may be possible that I may be able to obtain what
17 I need to get out about the situation from other
18 officers that were along with Mr Mont at that
19 particular location who had the opportunity to meet
20 the other suspects So I would like to move on to
21 another witness that I would like to speak about

22 THE COURT All right

23 THE DEFENDANT I would like to ask the
24 court to stipulate to put into evidence the dispatch
25 transcript and tapes because this particular witness

1 was the one who received the 911 call on --

2 MR MURDAUGH If Your Honor please,
3 perhaps to shorten this, I will be happy to introduce
4 in the case in chief the 911, the two 911 -- excuse
5 me -- the one 911 call, the dispatch from the time
6 the -- excuse me, sir

7 A call went into the sheriff's department
8 by Strawberry Washington I will be glad to put it
9 in I will be glad to put the dispatch starting with
10 that point to the end, and I will be glad to put in
11 the 911 tape, sir

12 THE COURT Is that what you are talking
13 about?

14 THE DEFENDANT Yes, sir

15 THE COURT All right

16 THE DEFENDANT One moment

17 (The defendant confers with standby
18 counsel)

19 THE DEFENDANT Yes, sir, Your Honor I
20 was also informed that there was a DEA agent, two
21 special agents, Kahn and Special Agent Mehann
22 (phonetical) that there was the possibility that --
23 or it was in the action that the United States
24 Justice Department of the Attorney General from South
25 Carolina was going to ask that they be excused from

1 being witnesses in this case And I wanted to
2 contend that these particular individuals has -- they
3 did investigative report They investigated the
4 case They spoke with witnesses I think one
5 possibly spoke with other suspects and was present
6 during the interviews and participated in the search
7 for suspects in this case And I would ask that the
8 court do not permit these two agents to be released
9 from giving testimony

10 THE COURT I don't know anything about
11 that

12 THE DEFENDANT You don't

13 MR THORNTON Your Honor, would you like
14 me to clarify? I actually got the letter

15 THE COURT Yes, sir

16 MR THORNTON Pursuant to the court's
17 order to me, I did of course, fill out numerous
18 subpoenas for the defendant the pro se defendant in
19 this case, two of them which are two DEA agents

20 THE COURT Right

21 MR THORNTON I got a letter, my office
22 received a letter I actually saw it on the 30th
23 We get it the 28th or 29th I saw it on the 30th and
24 brought it to the pro se defendant's investigator's
25 attention on our hearing Wednesday

1 Basically, Judge, the letter quotes
2 28 CFR 1621 et seq as requiring a more definite
3 written statement as to what these officers would
4 testify to and why they are being requested

5 In addition to that, Your Honor, even
6 after supplying that information, they have indicated
7 to me in this letter, some assistant in the US
8 Attorney's office, that even after compliance with
9 that that then they will make a decision regarding
10 their testimony and then they may move in federal
11 court to have the subpoena quashed So that is where
12 the status is I have informed the pro se defendant
13 of that and what the letter -- what I think the
14 letter would require me to do, and I will leave it at
15 whatever the court directs

16 THE COURT You can assist him of taking
17 care of that Notify them of the substance of what
18 he is requesting

19 MR THORNTON I understand, sir

20 THE COURT And you can work with the
21 assistant US attorney on that

22 MR THORNTON Yes, sir

23 THE COURT All right

24 THE DEFENDANT Thank you, Your Honor

25 In addition, Your Honor, Mr Alkebulanyahh would like

1 to --

2 THE COURT If it becomes necessary, you
3 may have to appear in federal court on that

4 MR THORNTON Yes, sir

5 THE COURT Do you understand that,
6 Mr Alkebulanyahh?

7 THE DEFENDANT Yes sir

8 THE COURT If it becomes necessary
9 during this trial, he may have to appear for you if
10 they file a motion to quash

11 THE DEFENDANT Would I have to be
12 present?

13 THE COURT No, you don't have to be
14 present Do you have a problem with him doing that
15 if they do file a motion to quash?

16 THE DEFENDANT If they file a motion I
17 don't have a problem with him doing that

18 THE COURT All right Go ahead

19 THE DEFENDANT Yes, sir, Your Honor I
20 would like to ask in reference to the hearing we had
21 on October 1st, 2003, that if the court will allow
22 Mr Alkebulanyahh to make a few additional arguments
23 and presentation on the motions that were presented
24 on October 1st, 2003?

25 THE COURT Insofar as the motion to

1 dismiss?

2 THE DEFENDANT Yes, sir

3 THE COURT Yes, sir Go ahead

4 THE DEFENDANT Your Honor, I would like
5 to first state for the record that the court heard
6 witnesses on October 1st, 2003, gave testimony as to
7 the issue of the United States Fourth Amendment
8 Constitution violation and the South Carolina
9 Article 1, Section 10, Search and Seizure Invasion of
10 Privacy violation Mr Alkebulanyahh also had two
11 other arguments in relation to the South Carolina
12 Code of Laws 16-3-1810, Law Enforcement Officer's
13 Responsibility when Responding to Harassment and
14 Stalking Incident, Section A and B and South Carolina
15 Law 16-25-70, pertinent part Warrantless Arrest or
16 Search Admissibility of Evidence, Section C

17 THE COURT You have already been through
18 all of that

19 THE DEFENDANT Right

20 THE COURT Is there something additional
21 that you did not say?

22 THE DEFENDANT Yes, sir What I would
23 like to add to this is that the court heard testimony
24 in which a witness stated that -- a witness alleged
25 that she gave consent to search The witness did not

1 state the limit of search that she give the deputies
2 the consent to search the entire house, outside the
3 house, the car or room or anything in specific
4 Being that, at that time, that witness took two years
5 later before the witness actually decided to come up
6 with that statement a week before that hearing, that
7 witness is not --

8 THE COURT I don't understand why that
9 is different than anything you have already argued

10 THE DEFENDANT Well, what is different
11 is that I want to bring to the Court's attention that
12 that witness is not an owner of the premises or own
13 any material in the premises and did not have the
14 right, if that witness did, to give that consent

15 THE COURT I thought that the witness
16 was -- you are talking about the person in New York?

17 THE DEFENDANT The person in New York
18 did not testify or say anything about giving any
19 consent None of the homeowners are the -- none of
20 the homeowner reside there at that home who had
21 control of that residence testified or gave or
22 presented any evidence or spoke to the court or
23 addressed anyone about giving consent to enter the
24 home nor to search the home There is nothing on the
25 record to indicate myself or my wife, Mishea

1 (phonetical) Bah (phonetical) Alkebulanyahh or
2 Mrs Bennett Smith Riley or Mr Isaac Riley the
3 residents of the residence who consented to the
4 officers to enter the home, nor to search the home

5 So there is no evidence anywhere on the
6 records, anywhere of any kind to that nature that the
7 homeowners give any consent to enter the home nor to
8 search the home And Mr Alkebulanyahh just wanted
9 that to reflect and be considered --

10 THE COURT Yes, sir

11 THE DEFENDANT -- in any decisions that
12 is made in reference to the facts that the homeowners
13 never gave any consent to enter or search on the
14 record or anywhere else in documents or anything in
15 their written statements or anything where the
16 deputies got permission or whatsoever how they come
17 about anyone saying that they had permission to go in
18 there It was not given --

19 THE COURT All right You don't need to
20 repeat What is the state's position on that?

21 MR MURDAUGH If Your Honor please, I
22 don't have anything further to add, sir The law
23 does not provide a dismissal of the case because of
24 that There is nothing to exclude so, no evidence to
25 exclude so I just --

1 THE COURT It is your position, insofar
2 as the gun was concerned that --

3 MR MURDAUGH I'm sorry, sir?

4 THE COURT Is your position insofar as
5 the gun is concerned that it would have been found
6 anyway?

7 MR MURDAUGH Yes, sir The statement
8 that he made was a one line statement in regard to
9 their protection Where is the gun? It is in the
10 tree line

11 It was not in the tree line, sir It was
12 in the woods It was not found in accordance with
13 that It was found because the Deputy Carl Smith of
14 Charleston County with his explosion dog or whatever
15 kind of dog it is that can detect gunpowder found it,
16 sir

17 THE COURT All right Anything else?

18 THE DEFENDANT No, Your Honor That
19 should be it as far as Mr Alkebulanyahh, the
20 defendant, has for today Thank you, Your Honor,
21 sir

22 THE COURT The other day when I took up
23 this issue about the requests are you planning on --
24 do you have witnesses that you are going to put up in
25 that regard about finding the gun, Mr Murdaugh?

1 MR MURDAUGH During the trial?

2 THE COURT Is there anything further on
3 this hearing that you need to put up?

4 MR MURDAUGH No, sir, not for this
5 hearing

6 THE COURT All right Anything else?

7 I'm still thinking about that I don't
8 intend to enter that ruling until we start

9 Anything else?

10 THE DEFENDANT That would be it, Your
11 Honor, sir Thank you

12 THE COURT Anything else?

13 MR MURDAUGH I would like to inquire of
14 the court about two things The sequestration order
15 of witnesses would begin at the beginning of the
16 trial itself, sir?

17 THE COURT Yes, sir

18 MR MURDAUGH And not jury selection?

19 THE COURT No, I don't know that we will
20 have room for anyone else in there anyway

21 MR MURDAUGH Okay, sir The second --

22 THE COURT Go ahead

23 MR MURDAUGH I'm sorry

24 THE COURT Go ahead

25 MR MURDAUGH The second thing, sir, it

1 is my understanding that you want no one in the hall
2 behind you

3 THE COURT Yes, sir

4 MR MURDAUGH We have no office in the
5 courthouse itself, sir We have made arrangements,
6 if it meets with your approval, to use the office of
7 the clerk of court which will be at the far end
8 There will be a door separating which will be kept
9 shut, again, if it meets with your approval

10 THE COURT You are talking about going
11 in and out of the main entrance of the courtroom?

12 MR MURDAUGH Going in and out the main
13 entrance going down to the clerk s office and going
14 through there, would not go back in the hallway, sir

15 THE COURT That's fine

16 MR MURDAUGH Except behind the clerk's
17 office

18 THE COURT As long as that hallway is
19 secured, that is fine

20 MR MURDAUGH Yes, sir

21 THE COURT Yes, sir

22 THE DEFENDANT Yes, sir, Your Honor I
23 had one other thing that crossed my mind that I
24 wanted to present to Your Honor

25 THE COURT Yes, sir

1 THE DEFENDANT I had spoken with you in
2 the past about space being available for the defense
3 team, if there is a room or small little spot or
4 space where we can have some privacy in discussing
5 the case

6 THE COURT Are there not rooms right
7 outside of the courtroom that each side can use?

8 MR MURDAUGH No, sir There is a jury
9 sequestration room which I understand -- and I don't
10 know why I understand this -- but I think that is
11 where the witnesses are going to be sequestered

12 There are two rooms at the back of the
13 courtroom itself, small rooms Then there are two
14 small courtrooms down there and that is all that is
15 available

16 THE COURT What is wrong with the two
17 rooms at the back of the courtroom, why can't each
18 side use those?

19 MR MURDAUGH I don't know of any reason
20 he couldn't, sir

21 THE COURT Why can't you-all use the
22 other one?

23 MR MURDAUGH Two reasons, sir We have
24 got a voluminous amount of evidence that we have got
25 to keep up with, sir, and it is inadequate to do

1 that Those rooms are probably, and I'm guessing
2 when I say this, maybe 10 by 10, sir, with a table in
3 them

4 THE COURT We are going to go through
5 all of the exhibits in the courtroom and then you
6 will be leaving those in the courtroom

7 MR MURDAUGH Yes, sir, once they are
8 introduced But I have a multitude of evidence that
9 I think is my responsibility to have available for
10 him if he wishes to use it, sir I'm talking about a
11 bunch

12 THE COURT And this room that the clerk
13 is going to provide to you --

14 MR MURDAUGH It is her office, sir

15 THE COURT It is her office?

16 MR MURDAUGH Yes, sir

17 THE COURT Let me look at that on Monday
18 when we get there

19 MR MURDAUGH Sure

20 THE COURT Mr Alkebulanyahh, there
21 should be a room in the back of the courtroom that
22 your team can use

23 THE DEFENDANT Thank you, Your Honor,
24 sir

25 THE COURT All right What other

1 matters do we need to take up before jury selection?

2 MR MURDAUGH None that I'm aware of

3 THE DEFENDANT I don't have anything at
4 this particular time, Your Honor, sir

5 THE COURT So other than those motions
6 to suppress and -- other than the two new motions to
7 suppress and the outstanding motion to dismiss and
8 the matter pertaining to the gun suppression, are
9 there any other matters that are outstanding?

10 MR MURDAUGH Not that I m aware of

11 THE DEFENDANT Neither am I, Your Honor,
12 to my recollection right now, Judge, sir

13 THE COURT All right I would like
14 everyone at the courthouse at 8 30 on Monday Thank
15 you

16 Hold on one second In the event the
17 court reporter is able to get that transcript or try
18 to expedite that transcript, the only thing you are
19 really looking for, if we can only get a bit and
20 piece of it before the trial or early in the trial,
21 would be the testimony part?

22 THE DEFENDANT Yes, sir, just the
23 testimony

24 THE COURT Of the witnesses?

25 THE DEFENDANT Yes sir

1 THE COURT If you could try, please

2 Thank you

3 THE DEFENDANT Thank you, Your Honor,

4 sir

5 THE COURT REPORTER Yes, sir

6 ---END OF TRANSCRIPT OF RECORD---

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1 I, the undersigned, Holly Hiott O'Quinn, Official
2 Court Reporter for the Ninth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate and complete Transcript
5 of Record of all the proceedings had and evidence
6 introduced in the trial of the captioned case,
7 relative to appeal, in the Circuit Court for Beaufort
8 County, South Carolina, on the 3rd day of October,
9 2003

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

12

13 June 10, 2004

14

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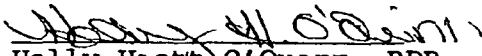
21

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25


Holly Hiott O'Quinn RPR
Circuit Court Reporter
My Commission Expires
January 2006

STATE OF SOUTH CAROLINA,) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) INDICTMENT NO 02-GS-07-0369
) 02-GS-07-0370
) THE STATE,)
) -vs-)
) NOTICE OF INTENT TO SEEK
) DEATH PENALTY
TYREE ALFONZO ROBERTS, aka,)
ABDIYYAH BEN ALKEBULANYAHH)
Defendant)

TO THE DEFENDANT, TYREE ALFONZO ROBERTS, AND HIS ATTORNEY
GENE HOOD, ESQUIRE

YOU WILL PLEASE TAKE NOTICE, that at the trial of the above
entitled action relating to the murders of Lance Cpl Dana Lyle
Tate and Cpl Dyke A "A J " Coursen, the imposition of a
sentence of death upon the above named defendant will be sought

Hampton, South Carolina

Jan 16, 2002



Randolph Murdaugh, III, Solicitor
Fourteenth Judicial Circuit
Post Office Box 546
Hampton, South Carolina 29924

02 JAN 22 PM 12 20
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

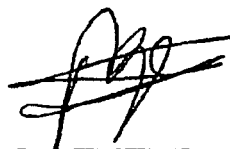
STATE OF SOUTH CAROLINA,) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) INDICTMENT NO 02-GS-07-0369
THE STATE,)
- vs -) NOTICE OF EVIDENCE IN AGGRAVATION
TYREE ALPHONZO ROBERTS)
aka)
ABDIYYAH BEN ALKEBULANYAHH,)
Defendant)

02 MAR 19 PM 2 16
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

TO THE DEFENDANT, TYREE ALPHONZO ROBERTS aka ABDIYYAH BEN ALKEBULANYAHH, AND GENE G HOOD, ESQUIRE, AND SAMUEL C BAUER, ESQUIRE

YOU WILL PLEASE TAKE NOTICE, that upon trial of the above entitled action, the State will seek to introduce into evidence aggravating circumstances in the above matter as follows, to wit

- 1 The murder of Lance Cpl Dana Lyle Tate Was committed on a federal, state, or local law enforcement officer during or because of the performance of his official duties
- 2 Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct in which Lance Cpl Dana Lyle Tate was murdered



Hampton, South Carolina

March 14, 2002

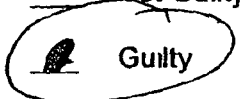
Randolph Murdaugh, III, Solicitor
Fourteenth Judicial Circuit
Post Office Box 546
Hampton, South Carolina 29924

Verdict Form
State v Abdiyyah Ben Alkebulanyahh

As to the indictment for Murder (Dana Tate), Docket No 2002-GS-07-0369 we the jury unanimously find the defendant

 Not Guilty
 Guilty

As to the indictment for Murder (Dyke A Coursen), Docket No 2002-GS-07-0370 we the jury unanimously find the defendant

 Not Guilty
 Guilty

Signature of Foreperson Thane Alan Hartstein
Date 10/20/03

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 STATE OF SOUTH CAROLINA)
)
 v)
)
 TYREE ALPHONSO ROBERTS AKA)
 ABDIYYAH BEN ALKEBULANYAHH)
)
 Defendant)
 _____)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

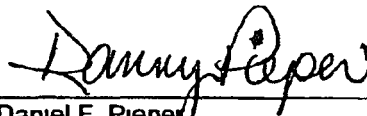
CASE NUMBERS 02-GS-07-369
 02-GS-07-370

STATUTORY INSTRUCTIONS

In determining whether to recommend that the defendant, Abdiyyah Ben Alkebulanyahh a/k/a Tyree Alphonso Roberts be sentenced by the court to Life Imprisonment or to Death you may consider the following statutory AGGRAVATING CIRCUMSTANCE(S)

- 1 Whether the murder of a federal, state, or local law enforcement officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties
- 2 Whether two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct

You may also consider any NON-STATUTORY MITIGATING CIRCUMSTANCE(S)



Daniel F. Pieper
 Presiding Judge

Beaufort, South Carolina
 October 22 2003

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) FOR THE FOURTEENTH JUDICIAL CIRCUIT

45:

The State,)
vs) AGGRAVATING CIRCUMSTANCES

Tyrce Alphonso Roberts a/k/a) 02-GS-07-0369
Abdiyyah Ben Alkebulanyahh) 02-GS-07-0370
Defendant)

We the jury in the above-entitled case, find beyond a reasonable doubt the following statutory aggravating circumstance(s) 1) Law enforcement officer because of the performance of his official duties 2) Whether two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.

Bruce Batastini
Bruce Batastini Foreperson

Veronica Jackson
Veronica Jackson, Juror

Mamie Clarke
Mamie Clarke, Juror

Stanley Leavitt
Stanley Leavitt, Juror

Colene Murray
Colene Murray, Juror

Amy Smith
Amy Smith, Juror

Cynthia Milanesi
Cynthia Milanesi, Juror

Jeannine Savage
Jeannine Savage, Juror

Joy Smith
Joy Smith, Juror

Kristen Lindsay
Kristen Lindsay, Juror

Isaac Buckner
Isaac Buckner, Juror

John Keener
John Keener, Juror

October 22, 2003 Beaufort SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
The State,	)	
	)	
vs	)	RECOMMENDATION OF DEATH SENTENCE
	)	
Tyree Alphonso Roberts a/k/a	)	02-GS-07-0369
Abdiyyah Ben Alkebulanyahh	)	02-GS-07-0370
Defendant	)	
	)	

We, the jury in the above entitled case, having found beyond a reasonable doubt the existence of the following statutory aggravating circumstance(s) to wit

1) Law enforcement officer because of the
performance of his official duties 2) whether
two or more persons were murdered by the
defendant by one act or pursuant to one scheme or
course of conduct

now recommend to the Court that the Defendant be sentenced to death

Bruce Batastini

Bruce Batastini, Foreperson

Veronica Jackson

Veronica Jackson, Juror

Mamie Clarke

Mamie Clarke, Juror

Stanley Leavitt

Stanley Leavitt, Juror

Amy Smith

Amy Smith, Juror

Colene Murray

Colene Murray, Juror

Cynthia Milanesi

Cynthia Milanesi, Juror

Jeannine Savage

Jeannine Savage, Juror

Joy Smith

Joy Smith, Juror

Kristen Lindsay

Kristen Lindsay, Juror

Isaac Buckner

Isaac Buckner, Juror

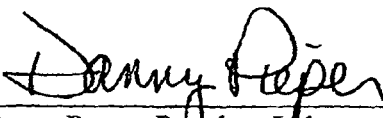
John Keener

John Keener, Juror

October 22 2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT
	)	
The State,	)	
	)	
vs	)	AFFIRMATION OF DEATH SENTENCE
	)	
Tyree Alphonso Roberts a/k/a	)	02-GS-07-0369
Abdiyyah Ben Alkebulanyahh	)	02-GS-07-0370
Defendant	)	
	)	

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, I find as an affirmative fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice passion, or any other arbitrary factor



 Danny Pieper, Presiding Judge

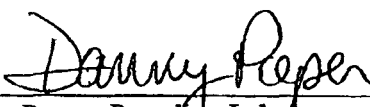
Beaufort, South Carolina

Dated October 22, 2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS	(
	)		
COUNTY OF BEAUFORT	)	FOR THE FOURTEENTH JUDICIAL CIRCUIT	
	)		
The State,	)		
	)		
vs	)	SENTENCE	
	)		
Tyree Alphonso Roberts a/k/a	)	02-GS-07-0369	
Abdiyyah Ben Alkebulanyahh	)	02-GS-07-0370	
Defendant.	)		
	)		

The Defendant has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is therefore the judgment of the law and the Sentence of the Court that the Defendant be taken to the Beaufort County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 22nd day of December 2003 upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon an Order of Execution issued by the South Carolina Supreme Court, the Defendant shall suffer death by electrocution or by lethal injection in the manner provided by law.



 Danny Pieper, Presiding Judge

Dated October 22, 2003

Beaufort, South Carolina

STATE OF SOUTH CAROLINA)
) **INDICTMENT #02GS07-0369**
County of Beaufort)

At a Court of General Sessions, convened on March 04, 2002,
the Grand Jurors of Beaufort County present upon their oath

COUNT

MURDER
16-3-20

That Tyree Alphonso Roberts aka Abdiiyyah Ben Alkebulanyahh did in Beaufort County on or about January 08, 2002, feloniously, wilfully and with malice aforethought, kill one Dep Dana Tate by means of shooting him and that the said Dep Dana Tate did die in Beaufort County as a proximate result thereof on or about the 8th day of January, 2002

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

SOLICITOR



STATE OF SOUTH CAROLINA)
) **INDICTMENT #02GS07-0370**
County of Beaufort)

At a Court of General Sessions, convened on March 04, 2002,
the Grand Jurors of Beaufort County present upon their oath

COUNT

MURDER
16-3-20

That Tyree Alphonso Roberts aka Abdiyyah Ben Alkebulanyahh did in Beaufort
County on or about January 08, 2002, feloniously, wilfully and with malice
aforethought, kill one Dep Dyke A Coursen by means of shooting him and that
the said Dep Dyke A Coursen did die in Beaufort County as a proximate result
thereof on or about the 8th day of January, 2002

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided

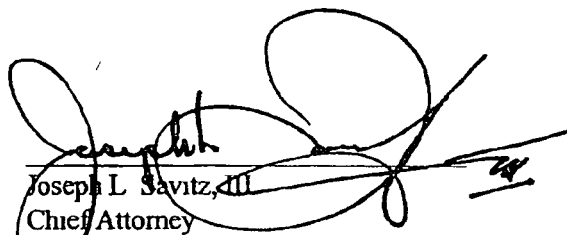
SOLICITOR



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material

February 6th 2006



Joseph L. Savitz, III
Chief Attorney

South Carolina Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S C 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

07-715

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of BEAUFORT)

ABDIYYAH BEN ALKE-)

Full name and prison number, if any of applicant)

BULANYAH, SK 6012)

v

APPLICATION FOR

POST-CONVICTION RELIEF

Name of Respondent)

INSTRUCTIONS - READ CAREFULLY

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

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

If the applicant 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 applicant was convicted.

1 Place of detention LIEBER CORRECTIONAL INSTITUTION
136 WILBORN AVENUE, RIDGEVILLE, SC 29472

2 Name and location of Court which imposed sentence COURT OF GENERAL
SESSIONS, BEAUFORT, SOUTH CAROLINA

3 The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 02-58-07-369

(b) 02-58-07-370

(c) _____

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

(a) 10/22/2003 DEATH SENTENCE

(b) SAME AS ABOVE

(c) _____

5 Check whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____

6 Did you appeal from the judgment of conviction or the imposition of sentence? YES

7 If you answered "yes" to (6), list

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

- i. BEAUFORT COUNTY SUPERIOR COURT
- ii. SOUTH CAROLINA SUPREME COURT
- iii. _____

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

- i. "CANCELLED" (INSTRUMENTED TO SUPREME COURT)
- ii. AFFIRMED
- iii. _____

(c) the date of each such result.

- i. OCTOBER 25, 2007
- ii. JULY 26, 2006
- iii. _____

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

- i. "I AM RETURNING YOUR NOTICE OF APPEAL."
- ii. OPINION NO. 26185
- iii. _____

8 If you answered "no" to (6), state your reasons for not so appealing

- (a) N/A
- (b) N/A
- (c) N/A

9 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

- (a) THE CONVICTION WAS CONTRARY TO LAW
- (b) THE VERDICT WAS CONTRARY TO EVIDENCE
- (c) (SEE REVERSE SIDE CONTINUE)

10 State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) THE VERDICT WAS CONTRARY TO THE LAW OF REASONABLE DOUBT, AND UPON A FALSE PROSECUTION
- (b) THE EVIDENCE PROVED THAT PETITIONER COMMITTED NO UNLAWFUL ACT. MR. TATE KILLED LOUGEN.
- (c) (SEE REVERSE SIDE CONTINUE)

11 Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law?

NO

- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

- (d) any other petitions, motions or applications in this or any other Court?

NO

12 If you answered "yes" to any part of (11), list with respect to each petition, motion or application.

- (a) the specific nature thereof

I

N/A

II

N/A

III

N/A

IV

N/A

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

I

N/A

II

N/A

III

N/A

IV

N/A

- (c) the disposition thereof

I

N/A

II

N/A

III

N/A

IV

N/A

(d) the date of each such disposition

- I N/A
- II N/A
- III N/A
- IV N/A

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

- I N/A
- II N/A
- III N/A
- IV N/A

13 Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14 If you answered "yes" to (13), identify

(a) which grounds have been presented

- I N/A
- II N/A
- III N/A

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

- i N/A
- ii N/A
- iii N/A

15 If any ground set forth in (9) 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) (SEE ATTACHED SHEET)
- (b) _____
- (c) _____

16 Were you represented by an attorney at any time during the course of

- (a) your arraignment and plea? NO
- (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 application with respect to this conviction, which you filed? (SEE REVERSE SIDE)

17. If you answered "yes" to one or more parts of (16), list

(a) the name and address of each attorney who represented you

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

18 State clearly the relief you seek in filing this application.

EXONERATION

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

NO

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

VERIFICATION

I, ABDIYAH BEN ALKEBUL ADIYAH, 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.

Abdullah Ben Alkebul Adiyah

Sworn to and subscribed before me

This 2 day of march, 2007

Ronald W. Soy L.S.

Notary Public for South Carolina

My Commission Expires 5 Apr 1 2016

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

I, ABDIYAH BEN ALKEBUL ADIYAH, 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 proceeding or give security therefor

Abdullah Ben Alkebul Adiyah
Applicant

Sworn to and subscribed before me

This 2 day of march, 2007

Ronald W. Soy L.S.

Notary Public for South Carolina

My Commission Expires 5 Apr 1 2016

IN THE COURT OF COMMON PLEAS
 BEAUFORT - SOUTH CAROLINA
 (APPLICATION FOR POST-CONVICTION RELIEF)

* (ATTACHED) *

REF: ABDIYAH BEN ALKEBULANYAH

CONTINUE TO QUESTION NO. 10 :

10(2) THREE, PETITIONER SIXTH AMENDMENT WAS VIOLATED WHEN HIS PETITION FOR SPEEDY TRIAL WAS DENIED, AND IGNORED AND BAIL WAS NOT BEING GRANTED; PETITIONER WAS DENIED A FAIR TRIAL IN THE FACT THAT ALLEGED VICTIMS WERE HONORED STATE-WIDE AS SOUTH-CAROLINA HEROES AND INDUCTED INTO THE SOUTH CAROLINA LAW ENFORCEMENT HALL OF FAME, AS WELL AS, THE PRESIDENT OF THE UNITED STATES OF AMERICA MR. GEORGE W. BUSH APPEARED ON NATION-WIDE TELEVISION, THEN HONORED ALLEGED VICTIMS BY INDUCTING THEIR NAMES INTO THE NATIONAL MEMORIAL FOR POLICE OFFICER, ON MAY 15, 2003 WHEREAS, PETITIONER HAD NOT BEEN TRIED BY A JURY, UNTILL OCTOBER 6th, 2003.

FOUR, IN VIOLATION OF THE EIGHT AMENDMENT, WHERE AS, PETITIONER WERE SENTENCE TO DEATH WHEN EVIDENCE SHOWED SOMEONE OTHER THAN PETITIONER KILL THE ALLEGED VICTIMS

FIVE, ~~PETITIONER~~ PETITIONER'S RIGHTS (CONSTITUTION) HAS BEEN ABRIDGED THE PRIVILEGES THE IMMUNITIES AFFORDED ALL CITIZENS, HIS LIFE, HIS LIBERTY WITHOUT DUE PROCESS OF LAW NOR EQUAL PROTECTION UNDER THE LAW.

(SEE REVERSE SIDE)

IN THE COURT OF COMMON PLEAS
BEAUFORT - SOUTH CAROLINA
 (APPLICATION FOR POST-CONVICTION RELIEF)

* (ATTACHED) *

REF: ABDIYAH BEN ALKEBULAYYAH

CONTINUE TO QUESTION NO. 15:

— — — — —

15 (a) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL:

THE COURT DENIED PETITIONER THE RIGHT TO PROCEED PRO SE TO RAISE GROUND

(b) DENIAL OF DUE PROCESS OF LAW: WAS NOT
~~RAISED BY APPOINTED APPELLATE COUNSEL~~

(c) DENIAL OF FAIR TRIAL: WAS NOT RAISED
 BY APPOINTED APPELLATE COUNSEL

(d) DENIAL OF EQUAL PROTECTION OF THE LAW:
 WAS NOT RAISED BY APPOINTED APPELLATE COUNSEL

(e) FOURTH AMENDMENT ISSUE: WAS NOT
 RAISED BY APPOINTED APPELLATE COUNSEL

(f) AFTER-DISCOVERED EVIDENCE: BECAUSE OF
 INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL;
 DISCOVERED EVIDENCE OR INFORMATION AFTER
 INITIAL BRIEF OF APPELLATE COUNSEL

2007CP070715

IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT

REF: APPLICATION FOR POST-CONVICTION RELIEF;
REQUEST FOR STAMPED OR CLOCK-IN COPY

TO: ABDIYYAH BEN ALKEBULANYAH
SK 6012, (RA 131)
LIEBER CORRECTIONAL INSTITUTION
P.O. BOX 205
RIDGEVILLE, SOUTH CAROLINA 29472

DEAR CLERK OF COURT,

PLEASE SEND ME OR RETURN A STAMPED
OR CLOCK-IN COPY OF MY APPLICATION FOR
POST-CONVICTION RELIEF.

YOUR COOPERATION WOULD BE GREATLY
APPRECIATED.

AND I FURTHER SWEAR UNDER AND BY
THE PENALTY OF PERJURY FORGOING IS TRUE
AND CORRECT.

THIS ~~2~~ DAY OF MARCH 2007.

Ronald Wilson

mce' 5 Apr 12 2016

THANK YOU
BY Abdiyyah Ben Alkebulanyah
ABDIYYAH BEN ALKEBULANYAH
SK 6012, (RA 131)
LIEBER CORR. INST
P.O. BOX 205
RIDGEVILLE, S.C. 29472

IN THE COURT OF COMMON PLEAS
BEAUFORT-SOUTH CAROLINA

NOTICE OF CERTIFICATION

THIS IS TO CERTIFY THAT 2 ADDZYHAN
BEN ALKEDULANYAHK, PETITIONER HAS PLACED
IN A SEALED AND ENCLOSED ENVELOPE WITH
CORRECT POSTAGE AFFIXED, BY U.S. MAIL
POSTAL SERVICE, TO: BEAUFORT COUNTY
COURT OF COMMON PLEAS, CLERK OF COURT
P.O. DRAWER 1228, BEAUFORT, S.C. 29901-1228
THE FOLLOWING:

I. APPLICATION FOR POST-CONVICTION RELIEF

II. LETTER-REQUEST FOR STAMPED OR
CLOCK-IN COPY

II. NOTICE OF CERTIFICATION

AND FURTHER SWEARS UNDER AND BY THE
PENALTY OF PERJURY FOREGOING IS TRUE AND
CORRECT.

THIS 12 DAY OF MARCH 2007.

RESPECTFULLY

Ronald W. Sora
MCE 5 Apr 1 2016

1/4 Addyhan Ben Alkedulanyahk
ADDZYHAN BEN ALKEDULANYAHK
SK 6012 (A-131
LIEBER CORR. INST.
P.O. BOX 205
RIDGEVILLE, S.C. 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	
Abdiyyah ben Alkebulanyahh, #6012	)	C/A No 2007-CP-07 0715
	)	
Applicant	)	
v	)	AMENDED RETURN, MOTION TO
	)	DISMISS AND/OR MOTION FOR
The State of South Carolina,	)	SUMMARY JUDGMENT
	)	
Respondent	)	
_____	)	

Respondent above-named here by make this Amended Return to the application for post-conviction relief (APCR), filed by Abdiyyah ben Alkebulanyahh¹ (Applicant") and dated March 12th 2007 and the Amended APCR filed by Applicant through his appointed counsel dated February 7th 2008 This matter is before the Court pursuant to an Order of the South Carolina Supreme Court dated May 4th 2007 which stayed the execution of Applicant to allow him to pursue post-conviction relief The Order gave the Honorable Roger Young continuing jurisdiction over the case regardless of assignment

Two hearings have already been held in this action at which Judge Young appointed Glenn Walters and Carl Grant as counsel for Applicant Judge Young s Order of August 2007 gave Applicant until February 2008 to file an Amended Application, which Applicant did This Amended Return follows

I

Procedural History

In March 2002 the Beaufort County Grand Jury indicted Applicant for two charges of murder for the shooting deaths of two Beaufort County Sheriff's Deputies (02-GS-07-

¹ Mr Alkebulanyahh was formerly known as Tyree A Roberts but has since changed his name

0369 & 0370) {R 4534-35} The state gave notice of intent to seek the death penalty and served its notice of evidence in aggravation

Applicant represented himself at his jury trial, but Attorneys Gerald Kelly and Sean Thornton remained throughout the trial to assist *Voir dire* in the case began before the Honorable Daniel F. Pieper on October 6th 2003. Trial began on October 10th 2003 {R 1316} On October 21st 2003 Applicant's jury convicted him of both charges {R 3472-73}

The sentencing phase of his trial began on October 22nd, 2003. Judge Pieper submitted the following aggravating factors to the jury

(1) The murder of a federal, state, or local law enforcement officer, peace officer, or former peace officer, corrections employee, or former corrections employee, or fireman, or former fireman, during or because of the performance of his official duties

(2) Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct

{R 3847, 4529} The following mitigating factors were submitted to the jury

Whether the existence of any non-statutory mitigating circumstance was supported by the evidence

{R 3851, R 4529}

On October 22nd, 2003, Applicant's jury found the existence of the aggravating factors and recommended a sentence of death on the murder counts. That same day Judge Pieper sentenced Applicant to death {R 3861-68, 3873, 4533}

A timely Notice of Appeal was filed with the South Carolina Supreme Court. Applicant was represented on direct appeal by Joseph L. Savitz, III, and Robert M. Dudek of the South Carolina Office of Appellate Defense, after the South Carolina Supreme Court

denied Applicant's motion to proceed on direct appeal *pro se*. On March 7th 2006, Applicant submitted a Final Brief of Appellant to the state supreme court in which he raised the following issue

The judge erred by refusing to allow appellant to waive his right to be present at the sentencing phase instead confining him to a holding cell attached to the courtroom in which he was visible to the jury, particularly since appellant's absence during sentencing was his *pro se* trial strategy and the State advanced no countervailing reason for requiring him to be present

The State, represented by Assistant Attorney General S. Creighton Waters, filed a Final Brief of Respondent on February 17, 2006. Oral argument was held before the South Carolina Supreme Court on May 24th 2006. The South Carolina Supreme Court issued an opinion dated July 24th, 2006, affirming the sentence.

Following a Petition for Stay of Execution by Applicant and a Return by the State, the South Carolina Supreme Court issued an Order dated September 7th, 2006 in which it stayed the execution so that Applicant could file a petition for writ of certiorari with the United States Supreme Court. Applicant filed his petition dated November 9th 2006 in which he raised the following issue:

May a capital defendant waive his right to be present at the sentencing phase of his trial where his absence during sentencing is the product of his trial strategy and the prosecution advances no countervailing reasons for requiring him to be present?

The State, through Assistant Attorney General S. Creighton Waters, filed a Return to the Petition for Writ of Certiorari dated February 5th 2007. The United States Supreme Court denied the Petition for Writ of Certiorari by Order dated March 19th 2007.

Applicant filed a *pro se* Application for Post-Conviction Relief dated March 12th 2007. Following a Petition for a Stay of Execution, the South Carolina Supreme Court

issued an order on May 4th, 2007 assigning Judge Young continuing jurisdiction over the matter. In August 2007 Judge Young signed an Order appointing Glenn Walters Esquire and Carl Grant Esquire as attorneys for Applicant, and giving them until February 8th, 2008 to file an Amended Application. The State filed an initial Return, Motion to Dismiss and/or Motion for Summary Judgment on October 15, 2007. Applicant followed with his Amended Application on February 7th, 2007.

This Amended Return follows. Incorporated herein by reference are the following documents²

- (1) Record on Appeal containing nine (9) volumes
- (2) Final Brief of Appellant
- (3) Final Brief of Respondent
- (4) State v. Tyree Alphonso Roberts SC S Ct Opinion No. 26185 filed July 24, 2006
- (6) Petition for Writ of Certiorari to the South Carolina Supreme Court
- (7) Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of South Carolina
- (8) Order Denying the Petition for Writ of Certiorari

II

Statement of Facts

In this case, Applicant was convicted and sentenced to death for murdering two police officers who responded to a domestic call at his home. Applicant testified that two others were in the room when the shooting happened and that he did not shoot anyone.

² These documents have already been provided to Applicant's counsel and Judge Young and were filed with the original return.

He did not present a case in mitigation

I Kimberly calls her friend for help

In January 2002, Applicant was living with his wife Nzun at the home of Brenda Smith on Riley Road in Beaufort County. Apparently, Applicant had also fathered a young infant with 20-year old Kimberly Blake {R 1682-83, 1809 10}

Kimberly apparently placed a whispered phone call to her friend Strawberry Washington at about 2:30 p.m. on January 8th 2002. Kimberly asked Strawberry to call the police because she was scared to leave Applicant's residence {R 1648-52, 1654-59, 1679-80, 1685-86, 1701-03, 1716-19, 1770-71}. Strawberry called police and then drove to the Riley Road home where she met Deputies Tate and Coursen {R 1649-52, 1657-59}

Brenda Smith answered the door and invited the officers inside. Brenda then knocked on Applicant's bedroom door and asked Kimberly to come out {R 1650-52, 1688, 1811-13, 1814-15, 1690}. Kimberly testified that Applicant said he was not going back to jail, got his rifle, and went into the closet {R 1686-90, 1784-85}. Once Kimberly came outside of the bedroom, the officers asked to search it. Brenda and Kimberly agreed {R 1690-91, 1812-15, 1833}.

At that point, Strawberry, Brenda, and Kimberly heard gunshots from the bedroom. Strawberry drove off to a nearby house and reported the gunshots to 911. Kimberly ran. Brenda stayed behind with the baby {R 1691-92, 1651-52, 1813}.

II Kimberly and Applicant run away

Kimberly ran to her cousin's house. Applicant then came running through the woods.

still holding the rifle Applicant proclaimed to Kimberly that he had just shot those “white bitches” and he was going to say it was self-defense {R 1691-94, 1700-01, 1783, 2219} The two then ran into a marsh Eventually, Kimberly told Applicant she could not go on Kimberly returned to the scene {R 1537-45, 1694-1701, 1840-42, 1850-55, 2072}

A marine reported Applicant crawling through the marsh and officers found Applicant hiding underneath a bridge In a fanny pack on Applicant’s waist were black leather gloves eight rounds of Wolf Hollow Point 7 62mm ammunition 31 rounds of 9mm ammunition a cell phone, and a 4 inch knife {R 1920-26, 1940-43, 1954-55, 2015, 2019-20, 2026-30, 2032-33, 2035, 2169, 2403-04} Officers found a loaded rifle magazine in the marsh A K-9 unit found Applicant’s SKS assault rifle hidden under a pile of leaves {R 2072-81, 2095-97, 2099-2101, 2103-2109, 2112-15, 2311, 2315, 2317, 2321, 2395}

III The forensic evidence

Deputy Coursen was discovered in Applicant’s bedroom dead from six gunshot wounds His pistol was secured in its holster {R 1435-37, 1494-1506, 2252-53, 2304-07, 2394-95} Deputy Tate was found with his service weapon underneath him He had seven gunshot wounds, but managed to get off ten shots {R 1437-1440, 1506-1515, 2252-53, 2308-10, 2392-93}

Police officers recovered twenty 7 62mm casings and ten 40 caliber casings {R 2253-86} The door to the closet in the corner of the bedroom had 40 caliber holes going from the outside into the closet and 7 62mm holes going from the inside of the closet out into the bedroom {R 2253, 2287-94, 2421, 2429-31} A box of Wolf 7 62mm ammunition was found {R 2296-97} Seventeen bullet fragments and projectiles were found in the

bedroom bathroom and living area of the trailer {R 2301-2304, 2403-04}

Applicant's SKS was matched to the bullet recovered from Deputy Coursen and a fragment from Deputy Tate {R 2401-02} Nineteen 7 62mm casings from the scene could be matched to Applicant's SKS {R 2405-06} All ten 40 casings came from Deputy Tate's gun {R 2406-07} Some of the bullet fragments could be matched to Applicant's SKS {R 2407-10}

Applicant's fingerprints were found on the magazine recovered from the marsh {R 2321-22} His DNA was matched to blood samples taken from the bedroom Kimberly's bra a stick found near where the rifle was hidden and the rifle itself {R 2312-16, 2483-84, 2491}

iv Applicant's incriminating statements

During booking Applicant told officers that he had just killed two cops and he did not have to comply with their requests as he was looking at the chair anyway {R 2551-57, 2562, 2569-71} On September 6th 2002 while at the Beaufort County Detention Center Applicant told officers I already took two people out and you guys are next {R 2574-2582, 2589-91}

v The defense guilt phase case

Applicant called a large number of witnesses, many of whom had nothing of significance to offer Deputy Campbell testified about giving Kimberly's baby to DSS and was asked whether she conspired to take Kimberly's baby to force Kimberly to claim Applicant had the gun {R 2871-87, 2925-33} Some deputies testified about some of Kimberly's allegedly inconsistent statements {R 2850-53, 2996-3014, 3158-60}

Applicant called some witnesses who testified about police investigation of other people for possible involvement in the crime {R 2720-30, 2750-59, 2956-67, 2969-87, 3015-22, 3157-58, 3161-63, 3175-77}

Finally, Applicant testified Applicant said when he returned to the Riley Road residence Kimberly supposedly told Applicant that Bobby Rigby and her cousin Michael Blake had been at the residence earlier but would be right back Applicant was using the restroom when he heard a knock at the door He screamed for Kimberly to answer it but the knocks persisted Applicant claimed he next saw the officer standing in front of him pointing a gun at his face, asking his name The officer told Applicant he 'looked like a Taliban , and ordered Applicant off the toilet {R 3190-93}

Applicant said he complied with the officer's instructions and saw Rigby and Blake in the bedroom Deputy Tate ordered Coursen to pat Applicant down {R 3193-94} Applicant claimed that when a stack of cassette tapes in the room fell over and made a noise, Deputy Tate fired which hit Deputy Coursen Applicant turned before being shot in the shoulder Applicant said he ran out of the house hearing more gunshots as he escaped {R 3194-96}

Applicant realized he had been shot in the hip Kimberly helped support him as they went to her cousin s house Supposedly Michael Blake ran up and helped until Michael said they had to leave Applicant behind {R 3196-99} Applicant finally collapsed on an embankment {R 3199-3203}

vi. The sentencing phase

The State called witnesses to testify as to Applicant s extensive prior record He

kidnapped a man at gunpoint in 1981 {R 3566-82} While serving about three years in jail for that crime in Florida, he committed thirteen disciplinary infractions which included assault and fighting {R 3583-88}

In 1986 Applicant robbed a Georgia fast food store at gunpoint {R 3590-3606} During his stay in Georgia prison he committed 66 disciplinary infractions and had to be repeatedly moved from one institution to the next because he was a troublemaker In one incident Applicant refused to comply with the orders of correctional officers and threatened to kill them as he resisted Another time he was involved in a plot to initiate a disturbance in the prison {R 3607-21}

In 1997 Applicant pled guilty to selling marijuana on the street During his stay in South Carolina prisons he committed five disciplinary infractions, including threatening to harm a correctional officer {R 3626-44}

In 2001 Applicant beat up an eleven year old girl who was throwing rocks at a dog Pictures of the wounds to the girl's legs were introduced into evidence {R 3648-57}

During his three months in Charleston pre-trial detention Applicant committed two infractions for destroying jail property {R 3658-62} During his pre-trial stay in Beaufort County jail he on three occasions threatened to kill or hurt a female guard while using other abusive language and refusing to calm down {R 3662-67} During his stay, he committed nine infractions most of which involved refusal to obey orders disorderly conduct or threatening an officer {R 3671-74}

Photos were introduced of the two officers at the horrific crime scene {R 3678-86}

The State concluded with a number of victim impact witnesses {R 3687-3759}

Applicant repeatedly declined to present any mitigation case whatsoever stating that after the jury found him guilty, he wanted no further involvement in the proceeding {R 3448-54, 3460-61, 3481-87, 3761 62}

III

Allegation in Amended Application

In his application for relief Applicant contends the trial court failed to make the proper inquiry and failed to ensure that Applicant knowingly, intelligently, and competently waived his right to counsel

As an initial matter this issue should be dismissed since it raises a freestanding claim that would properly be made in direct appeal Drayton v. Evatt 312 S.C. 443, 613 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective assistance of counsel) The issue should be denied as a matter of law or summary judgment granted See Rule 12(b)(6) SCRPC ("failure to state facts to constitute a cause of action") Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

In any event the record more than adequately refutes the claim At a pre trial hearing before Judge Pieper on July 23rd 2003 there was an extensive colloquy on Applicant's motion to represent himself Applicant stated he thought his lawyers were

incompetent and lazy and complained about them withdrawing his speedy trial motions. Applicant also complained that his lawyers hired an expert to make him look like he had a mental problem, when in fact the State expert found him competent – and he thought the State expert was far more professional and qualified. Applicant noted his lawyers had given him a sheet on the dangers of self-representation and the appointed defense lawyers agreed that if Applicant was found to be competent he could in fact represent himself. The trial court discussed the fact that by waiving counsel Applicant was waiving it for the entire case, and he might find himself shocked and dazed by a guilty verdict when faced with proceeding on with the penalty phase. The court also warned Applicant that his failure to properly raise issues at trial would preclude them on appeal and he would have no one to blame in PCR. Despite this, Applicant continued to indicate his desire to represent himself and the court specifically noted Applicant was very coherent. After Applicant reiterated his free, knowing, and intelligent decision, the court indicated its intent to allow Applicant to proceed *pro se*, pending a Blair hearing. {R 3800-3945}

The Blair hearing took place on August 1st 2001. Defense-retained psychiatrist Dr. Schwartz-Watts felt that Applicant was not competent to represent himself based on her assessment of his paranoia, psychosis, and reasoning for wanting to defend himself. The defense psychologist stated Applicant refused to see him and he had elevated scores on a portion of a test indicating defensiveness and underreporting of symptoms. {R 3971-4021} The court's psychiatrist and psychologist both found Applicant competent to stand trial, and criminally responsible. {R 4022-52} The court found based on the court's examiners' testimony as well as its own observations and interactions with Applicant that

he was competent {R 4054-55} The court then held another colloquy with Applicant on his desire to represent himself, and after a detailed and lengthy colloquy on the responsibilities dangers and issues with *pro se* representation Applicant held firm to his desire The judge thus accepted Applicant's request but ordered appointed counsel to remain as standby counsel to assist Applicant with advice and logistical support {R 4055-73}

Throughout the trial, Applicant engaged in lengthy jury arguments and examinations of witnesses for an emotionally charged case – and a reading of the guilt phase shows that while Applicant may have occasionally had trouble with rules of evidence and the like he had no trouble whatsoever during the guilt phase in maintaining proper demeanor in the courtroom and displaying proper respect for the court opposing counsel and the witnesses Indeed, Applicant repeatedly expressed his appreciation and respect to the trial court throughout the entirety of the guilt phase process See, e.g. {R 1914, 1976-79, 1991, 3456} Thus this is not a situation where a defendant requested to represent himself and misbehaved the whole time or repeatedly showed an inability to follow basic courtroom decorum

In the Amended Application Applicant makes no claim he was not competent or capable of freely intelligently and knowingly deciding to proceed *pro se* Thus with no issues of competency the record described above conclusively refutes that the Faretta inquiry was not properly handled that the trial court failed to conduct a proper inquiry or that Applicant was not properly advised of the dangers and issues surrounding self-representation See generally See Moorehead v State 329 S C 329 496 S E 2d 415

(1998)(transcript of guilty plea hearing will be considered to determine whether any alleged erroneous information from counsel was cured by information the trial judge conveyed at plea proceeding and applicant indicated to the judge that he understood the possible sentences and the terms of the plea agreement) Brooks v State, 325 S C 269 481 S E 2d 712 (1997)(trial court is not required to accept negotiated sentence and guilty plea transcript indicates trial court informed applicant of possible sentence), Rayford v State, 314 S C 46, 443 S E 2d 805 (1994) (record of plea proceeding including applicant's answers to the trial judge's questions clearly establishes that applicant could not have had misconceptions regarding sentencing)

Even if Applicant now was able to find some new mental health expert who could try to offer some opinion as to Applicant's competency five years ago at the time of trial this would be of no consequence to the waiver of counsel made at trial. As the Fourth Circuit has held

The Constitution does not entitle a criminal defendant to the effective assistance of an expert witness. To entertain such claims would immerse federal judges in an endless battle of the experts to determine whether a particular psychiatric examination was appropriate. See Harris v Vasquez 949 F 2d 1497 1518 (9th Cir 1990) Silagy v Peters 905 F 2d 986 1013 (7th Cir 1990). Furthermore, it would undermine the finality of state criminal convictions which would constantly be subject to psychiatric reappraisal years after the trial had ended. Harris 949 F 2d at 1517-18 Silagy 905 F 2d at 1013. This circuit consistently has rejected the notion that there is either a procedural or constitutional rule of ineffective assistance of an expert witness rather than ineffective assistance of counsel. " Pruett v Thompson 996 F 2d 1560 1573 n 12 (4th Cir 1993) see also Poyner v Murray 964 F 2d 1404 1418 (4th Cir 1992) Waye v Murray 884 F 2d 765 766-67 (4th Cir 1989)(per curiam). For example, the defendant in Waye claimed that his psychiatrist had not performed adequately because he had failed to emphasize Waye's diminished capacity in his trial testimony. We rejected this claim and observed

[i]t will nearly always be possible in cases involving the basic

human emotions to find one expert witness who disagrees with another and to procure an affidavit to that effect from the second prospective witness. To inaugurate a constitutional or procedural rule of an ineffective expert witness in lieu of the constitutional standard of an ineffective attorney, we think, is going further than the federal procedural demands of a fair trial and the constitution require.

See Wilson v. Greene, 155 F.3d 396 (4th Cir. 1998) (noting that to be reasonably effective counsel is not required to second-guess the contents of an expert's report). Cf. generally Jones v. State, 332 S.Ct. 329, 504 S.E.2d 822 (1998). Here, counsel was not required to find any particular expert or one who would testify a certain way, but in any event they did find and submit experts who testified on behalf of the defense that Applicant was not competent.

Moreover, the trial court already heard conflicting expert testimony and resolved it in favor of competency. There has been no allegation that Applicant's condition degraded or changed from the time he was ruled competent and the time the colloquies took place with regard to the issue. This credibility determination of the trial court is entitled to deference. See, e.g., Hall v. Catoe, 360 S.Ct. 353, 601 S.E.2d 335 (2004) (noting that the PCR judge has the duty to weigh the credibility of the experts who testified as to competence to stand trial, and the Court will affirm on appeal where there is evidence to support the PCR judge's findings). In a case where defendant was found competent at pretrial hearing in August 1991 but argued in PCR he was not competent at the time of trial in January 1992).

Thus, since there is a valid issue of competency, the record conclusively refutes the claim that the Faretta inquiry was insufficient and Applicant's waiver of counsel was not proper. The issue should be denied as a matter of law or summary judgment granted.

See Rule 12(b)(6) SCRPC (failure to state facts to constitute a cause of action") Gadson v. Hembree 364 S C 316 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

In the event this Court disagrees any of these issues should be dismissed as a matter of law Respondents request an evidentiary hearing to resolve any questions of fact See Sharper v. State, 279 S C 264, 305 S E 2d 247 (1983)

CONCLUSION

Each and every allegation in the Application not herein above either expressly admitted, denied qualified or explained is hereby denied

WHEREFORE Respondent submits that the Application for Post-Conviction Relief should be dismissed as a matter of law or summary judgment granted

Respectfully submitted

HENRY D McMASTER
Attorney General

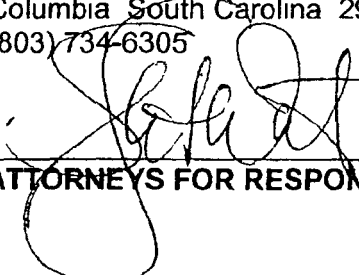
JOHN W McINTOSH
Chief Deputy Attorney General

DONALD J ZELENKA
Assistant Deputy Attorney General

S CREIGHTON WATERS
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia South Carolina 29211
(803) 734-6305

By


ATTORNEYS FOR RESPONDENT

March 21 2008

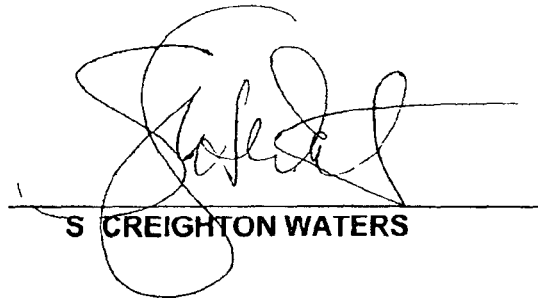
CERTIFICATE OF SERVICE

I S Creighton Waters counsel for the Respondent certify that I have served the ***Amended Return, Motion to Dismiss and Motion for Summary Judgment***, by depositing one (1) copy of same in the United States mail postage prepaid addressed to

Glenn Walters, Esquire
Glenn Walters & Associates PA
348 St Paul Street
Orangeburg, South Carolina 29115

Carl Grant, Esquire
960 Doyle Street
Orangeburg South Carolina 29116

This 21st day of March 2008



S CREIGHTON WATERS

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF BEAUFORT)
)
 ABDIYAHH BEN ALKEBUI ANYAHH) CIVIL ACTION NO 2007-CP-07-0715
 # 6012
 Full name and prison number (if any) of Applicant)
)
 v)
)
 State of South Carolina) AMENDED
) APPLICATION FOR
)
) POST CONVICTION RELIEF

REC'D
 COURT
 BEAUFORT SC
 FEB -8
 PM 3 04

INSTRUCTIONS - READ CAREFULLY

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

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

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

- 1 Place of detention LIEBER CORRECTIONAL INSTITUTION
- 2 Name and location of Court which imposed sentence BEAUFORT COUNTY COMMON PLEAS COURT, 102 RIBAUT ROAD, BEAUFORT, SC 29902
- 3 Name(s) of co-defendant(s) (if any) N/A
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
 - (a) 2002-GS-07-369
 - (b) 2002-GS-07-270
 - (c) _____
- 5 The date upon which sentence was imposed and the terms of the sentence

Revised 3/2003

02 15 08

(a) APPLICANT WAS SENTENCED TO DEATH FOR THE MURDER
CHARGES ON OCTOBER 21, 2003, BY THE HONORABLE JUDGE DANIEL F. PIEPER.

(b) _____

(c) _____

6 Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty THE JURY FOUND THE APPLICANT GUILTY ON
BOTH CHARGES ON OCTOBER 21, 2003

(c) after a plea of nolo contendere _____

7 Did you appeal from the judgment of conviction or the imposition of sentence?
YES

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

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

i SOUTH CAROLINA SUPREME COURT

ii _____

iii _____

--- (b) --- the result in each such Court to which you appealed ---
i THE SOUTH CAROLINA SUPREME COURT DENIED APPLICANT'S

MOTION TO PROCEED ON DIRECT APPEAL PRO SE

ii _____

iii _____

(c) the date of each such result

i _____

ii _____

iii _____

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

i _____

ii _____

iii _____

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

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

10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully

(a) TRIAL JUDGE FAILED TO MAKE THE PROPER FINDINGS TO DETERMINE IF THE APPLICANT KNOWINGLY AND INTELLIGENTLY UNDERSTOOD THE IMPLICATIONS OF PROCEEDING PRO SE

- (b) _____
- (c) _____

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

(a) Under the Sixth Amendment, an accused may waive the right to counsel and proceed pro se Foretta v. California, 422 US 806, 95 S. Ct. 2524, 10 L. Ed. 2d 562 (1975), State v. Reed, 332 SC 35, 503 S.E. 2d 747 (1998). The trial Judge has the responsibility to ensure that the accused is informed of the dangers and disadvantages of self representation and makes a knowingly and intelligent waiver of the right to counsel. The ultimate test of whether a Defendant has made a knowing and intelligent waiver of the right to counsel is the Defendant's understanding Graves v. State, 422 S.E. 2d 125 (1992).

In the present case, the trial Court failed to impress upon the Applicant the dangers and disadvantages of self representation. In addition, the trial Court failed to determine if the Applicant knowingly and intelligently waived his right to counsel. Further, the trial Court failed to determine that the Applicant understood what it meant to represent himself.

The inquiry by the Court was insufficient to determine if the Applicant understood what it meant to represent himself and waive the representation of experienced counsel.

- (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? YES

(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? YES

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

(a) the specific nature thereof

I RECORD ON APPEAL, CONTAINING NINE (9) VOLUMES,

II PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES

SUPREME COURT,

III PRO SE APPLICATION FOR POST-CONVICTION RELIEF

IV _____

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

I SC SUPREME COURT

II US SUPREME COURT

III _____

IV _____

(c) the disposition thereof

I THE SC SUPREME COURT ISSUED AN OPINION ON JULY 24, 2006,

AFFIRMING THE SENTENCE

II THE US SUPREME COURT DENIED THE PETITION FOR WRIT OF CERTIORARI

III _____

IV _____

(d) the date of each such disposition

I JUNE 3, 2005

II MARCH 19, 2007

III _____

IV _____

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

Revised 3/2003

i State v Tyree Alphonso Roberts, SC S Ct Opinion No 26185 filed July 24, 2006

ii Brief in Opposition to the to the Petition for Writ of Certiorari to the Supreme
Court of South Carolina & Order Denying the Petition for Writ of Certiorari

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?

N/A

- 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? NO

(b) your trial, if any? NO

(c) your sentencing? NO

(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? _____

Revised 3/2003

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 JOSEPH L SAVITZ, III, 1330 LADY STREET, STE 401, COLUMBIA, SC

29201

ii ROBERT M DUDEK, 1330 LADY STREET, STE 401, COLUMBIA, SC

29201

iii _____

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

i DIRECT APPEAL

ii DIRECT APPEAL

iii _____

19 State clearly the relief you seek in filing this application

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

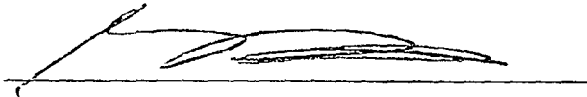
NO

STATE OF SOUTH CAROLINA

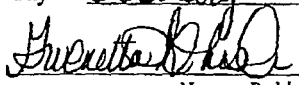
County of BEAUFORT

VERIFICATION

I, GLENN WALTERS, on behalf of ABDIYYAH BEN ALKEBULANYAHH, 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



SWORN to and subscribed before me this 6th
day of February, 2008

 (L S)
Notary Public

My Commission Expires 03/20/2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	
	)	
Abdiyyah ben Alkebulanyahh #6012	)	C/A No 2007-CP-07-0715
	)	
Applicant,	)	
v	)	RETURN, MOTION TO DISMISS AND/OR
	)	MOTION FOR SUMMARY JUDGMENT
The State of South Carolina	)	
	)	
Respondent	)	
_____	)	

Respondent above-named here by make a Return to the application for post-conviction relief ("APCR") filed by Abdiyyah ben Alkebulanyahh¹ (Applicant) and dated March 12th, 2007. This matter is before the Court pursuant to an Order of the South Carolina Supreme Court dated May 4th 2007 which stayed the execution of Applicant to allow him to pursue post-conviction relief. The Order gave the Honorable Roger Young continuing jurisdiction over the case regardless of assignment.

Two hearings have already been held in this action at which Judge Young appointed Glenn Walters and Carl Grant as counsel for Applicant. Moreover, Judge Young's Order of August 2007 gives Applicant until February 2008 to file an Amended Application which would be followed by an Amended Return and then a status conference to set a date for evidentiary hearing.

I

Procedural History

In March 2002 the Beaufort County Grand Jury indicted Applicant for two charges of murder for the shooting deaths of two Beaufort County Sheriff's Deputies (02-GS-07-

¹ Mr. Alkebulanyahh was formerly known as Tyree A. Roberts but has since changed his name.

0369 & 0370) **{R 4534-35}** The state gave notice of intent to seek the death penalty and served its notice of evidence in aggravation

Applicant represented himself at his jury trial, but Attorneys Gerald Kelly and Sean Thornton remained throughout the trial to assist *Voir dire* in the case began before the Honorable Daniel F. Pieper on October 6th 2003. Trial began on October 10th 2003 **{R 1316}** On October 21st 2003, Applicant's jury convicted him of both charges **{R 3472 73}**

The sentencing phase of his trial began on October 22nd 2003. Judge Pieper submitted the following aggravating factors to the jury

(1) The murder of a federal, state, or local law enforcement officer, peace officer, or former peace officer, corrections employee, or former corrections employee, or fireman, or former fireman, during or because of the performance of his official duties

(2) Two or more persons were murdered by the defendant by one act or pursuant to a scheme or course of conduct

{R 3847, 4529} The following mitigating factors were submitted to the jury

Whether the existence of any non-statutory mitigating circumstance was supported by the evidence

{R 3851, R 4529}

On October 22nd 2003, Applicant's jury found the existence of the aggravating factors and recommended a sentence of death on the murder counts. That same day, Judge Pieper sentenced Applicant to death **{R 3861-68, 3873, 4533}**

A timely Notice of Appeal was filed with the South Carolina Supreme Court. Applicant was represented on direct appeal by Joseph L. Savitz III and Robert M. Dudek of the South Carolina Office of Appellate Defense, after the South Carolina Supreme Court

denied Applicant's motion to proceed on direct appeal *pro se*. On March 7th 2006 Applicant submitted a Final Brief of Appellant to the state supreme court in which he raised the following issue

The judge erred by refusing to allow appellant to waive his right to be present at the sentencing phase instead confining him to a holding cell attached to the courtroom in which he was visible to the jury, particularly since appellant's absence during sentencing was his *pro se* trial strategy and the State advanced no countervailing reason for requiring him to be present

The State, represented by Assistant Attorney General S. Creighton Waters, filed a Final Brief of Respondent on February 17, 2006. Oral argument was held before the South Carolina Supreme Court on May 24th 2006. The South Carolina Supreme Court issued an opinion dated July 24th 2006 affirming the sentence.

Following a Petition for Stay of Execution by Applicant and a Return by the State, the South Carolina Supreme Court issued an Order dated September 7th 2006 in which it stayed the execution so that Applicant could file a petition for writ of certiorari with the United States Supreme Court. Applicant filed his petition dated November 9th 2006 in which he raised the following issue

May a capital defendant waive his right to be present at the sentencing phase of his trial where his absence during sentencing is the product of his trial strategy and the prosecution advances no countervailing reasons for requiring him to be present?

The State, through Assistant Attorney General S. Creighton Waters, filed a Return to the Petition for Writ of Certiorari dated February 5th 2007. The United States Supreme Court denied the Petition for Writ of Certiorari by Order dated March 19th 2007.

Applicant filed a *pro se* Application for Post-Conviction Relief dated March 12th 2007. Following a Petition for a Stay of Execution, the South Carolina Supreme Court

issued an order on May 4th 2007, assigning Judge Young continuing jurisdiction over the matter. In August 2007 Judge Young signed an Order appointing Glenn Walters Esquire, and Carl Grant Esquire, as attorneys for Applicant and giving them until February 8th 2008, to file an Amended Application.

This Return follows. Attached herewith and incorporated herein by reference are the following documents ²

- (1) Record on Appeal containing nine (9) volumes
- (2) Final Brief of Appellant,
- (3) Final Brief of Respondent
- (4) State v. Tyree Alphonso Roberts SC S Ct Opinion No. 26185 filed July 24, 2006,
- (6) Petition for Writ of Certiorari to the South Carolina Supreme Court
- (7) Brief in Opposition to the Petition for Writ of Certiorari to the Supreme Court of South Carolina
- (8) Order Denying the Petition for Writ of Certiorari

II

Statement of Facts

In this case Applicant was convicted and sentenced to death for murdering two police officers who responded to a domestic call at his home. Applicant testified that two others were in the room when the shooting happened, and that he did not shoot anyone. He did not present a case in mitigation.

I. Kimberly calls her friend for help

² As of the date of this Return, these documents have already been provided to Applicant's counsel and Judge Young.

In January 2002, Applicant was living with his wife Nzuri at the home of Brenda Smith on Riley Road in Beaufort County. Apparently, Applicant had also fathered a young infant with 20-year old Kimberly Blake {R 1682-83, 1809-10}

Kimberly apparently placed a whispered phone call to her friend Strawberry Washington at about 2:30 p.m. on January 8th, 2002. Kimberly asked Strawberry to call the police because she was scared to leave Applicant's residence {R 1648-52, 1654-59, 1679-80, 1685-86, 1701-03, 1716-19, 1770-71}. Strawberry called police and then drove to the Riley Road home where she met Deputies Tate and Coursen {R 1649-52, 1657-59}

Brenda Smith answered the door and invited the officers inside. Brenda then knocked on Applicant's bedroom door and asked Kimberly to come out {R 1650-52, 1688, 1811-13, 1814-15, 1690}. Kimberly testified that Applicant said he was not going back to jail, got his rifle and went into the closet {R 1686-90, 1784-85}. Once Kimberly came outside of the bedroom the officers asked to search it. Brenda and Kimberly agreed {R 1690-91, 1812-15, 1833}

At that point Strawberry, Brenda, and Kimberly heard gunshots from the bedroom. Strawberry drove off to a nearby house and reported the gunshots to 911. Kimberly ran. Brenda stayed behind with the baby {R 1691-92, 1651-52, 1813}

II. Kimberly and Applicant run away

Kimberly ran to her cousin's house. Applicant then came running through the woods still holding the rifle. Applicant proclaimed to Kimberly that he had just shot those white bitches and he was going to say it was self-defense {R 1691-94, 1700-01, 1783, 2219}

The two then ran into a marsh. Eventually, Kimberly told Applicant she could not go on. Kimberly returned to the scene. {R 1537-45, 1694-1701, 1840-42, 1850-55, 2072}

A marine reported Applicant crawling through the marsh, and officers found Applicant hiding underneath a bridge. In a fanny pack on Applicant's waist were black leather gloves, eight rounds of Wolf Hollow Point 7.62mm ammunition, 31 rounds of 9mm ammunition, a cell phone, and a 4 inch knife. {R 1920-26, 1940-43, 1954-55, 2015, 2019-20, 2026-30, 2032-33, 2035, 2169, 2403-04} Officers found a loaded rifle magazine in the marsh. A K-9 unit found Applicant's SKS assault rifle hidden under a pile of leaves. {R 2072-81, 2095-97, 2099-2101, 2103-2109, 2112-15, 2311, 2315, 2317, 2321, 2395}

III. The forensic evidence

Deputy Coursen was discovered in Applicant's bedroom, dead from six gunshot wounds. His pistol was secured in its holster. {R 1435-37, 1494-1506, 2252-53, 2304-07, 2394-95} Deputy Tate was found with his service weapon underneath him. He had seven gunshot wounds, but managed to get off ten shots. {R 1437-1440, 1506-1515, 2252-53, 2308-10, 2392-93}

Police officers recovered twenty 7.62mm casings and ten .40 caliber casings. {R 2253-86} The door to the closet in the corner of the bedroom had .40 caliber holes going from the outside into the closet, and 7.62mm holes going from the inside of the closet out into the bedroom. {R 2253, 2287-94, 2421, 2429-31} A box of Wolf 7.62mm ammunition was found. {R 2296-97} Seventeen bullet fragments and projectiles were found in the bedroom, bathroom, and living area of the trailer. {R 2301-2304, 2403-04}

Applicant's SKS was matched to the bullet recovered from Deputy Coursen, and a

fragment from Deputy Tate {R 2401-02} Nineteen 7 62mm casings from the scene could be matched to Applicant's SKS {R 2405-06} All ten 40 casings came from Deputy Tate's gun {R 2406-07} Some of the bullet fragments could be matched to Applicant's SKS {R 2407-10}

Applicant's fingerprints were found on the magazine recovered from the marsh {R 2321-22} His DNA was matched to blood samples taken from the bedroom Kimberly's bra a stick found near where the rifle was hidden and the rifle itself {R 2312-16, 2483-84, 2491}

iv Applicant's incriminating statements

During booking Applicant told officers that he had just killed two cops and he did not have to comply with their requests as he was looking at the chair anyway {R 2551-57 2562, 2569-71} On September 6th, 2002 while at the Beaufort County Detention Center Applicant told officers I already took two people out and you guys are next {R 2574-2582, 2589-91}

v The defense guilt phase case

Applicant called a large number of witnesses many of whom had nothing of significance to offer Deputy Campbell testified about giving Kimberly's baby to DSS and was asked whether she conspired to take Kimberly's baby to force Kimberly to claim Applicant had the gun {R 2871-87, 2925-33} Some deputies testified about some of Kimberly's allegedly inconsistent statements {R 2850-53, 2996-3014, 3158-60} Applicant called some witnesses who testified about police investigation of other people for possible involvement in the crime {R 2720-30, 2750-59, 2956-67, 2969-87, 3015-22,

3157-58, 3161-63, 3175-77}

Finally Applicant testified Applicant said when he returned to the Riley Road residence, Kimberly supposedly told Applicant that Bobby Rigby and her cousin Michael Blake had been at the residence earlier but would be right back Applicant was using the restroom when he heard a knock at the door He screamed for Kimberly to answer it but the knocks persisted Applicant claimed he next saw the officer standing in front of him pointing a gun at his face asking his name The officer told Applicant he looked like a Taliban and ordered Applicant off the toilet **{R 3190-93}**

Applicant said he complied with the officer's instructions and saw Rigby and Blake in the bedroom Deputy Tate ordered Coursen to pat Applicant down **{R 3193-94}** Applicant claimed that when a stack of cassette tapes in the room fell over and made a noise Deputy Tate fired which hit Deputy Coursen Applicant turned before being shot in the shoulder Applicant said he ran out of the house hearing more gunshots as he escaped **{R 3194-96}**

Applicant realized he had been shot in the hip Kimberly helped support him as they went to her cousin s house Supposedly Michael Blake ran up and helped until Michael said they had to leave Applicant behind **{R 3196-99}** Applicant finally collapsed on an embankment **{R 3199-3203}**

vi The sentencing phase

The State called witnesses to testify as to Applicant s extensive prior record He kidnapped a man at gunpoint in 1981 **{R 3566-82}** While serving about three years in jail for that crime in Florida he committed thirteen disciplinary infractions which included

assault and fighting {R 3583-88}

In 1986 Applicant robbed a Georgia fast food store at gunpoint {R 3590-3606}
During his stay in Georgia prison he committed 66 disciplinary infractions and had to be repeatedly moved from one institution to the next because he was a troublemaker In one incident Applicant refused to comply with the orders of correctional officers and threatened to kill them as he resisted Another time he was involved in a plot to initiate a disturbance in the prison {R 3607-21}

In 1997 Applicant pled guilty to selling marijuana on the street During his stay in South Carolina prisons he committed five disciplinary infractions including threatening to harm a correctional officer {R 3626-44}

In 2001 Applicant beat up an eleven year old girl who was throwing rocks at a dog Pictures of the wounds to the girl s legs were introduced into evidence {R 3648-57}

During his three months in Charleston pre-trial detention, Applicant committed two infractions for destroying jail property {R 3658-62} During his pre-trial stay in Beaufort County jail he on three occasions threatened to kill or hurt a female guard while using other abusive language and refusing to calm down {R 3662-67} During his stay he committed nine infractions most of which involved refusal to obey orders disorderly conduct or threatening an officer {R 3671-74}

Photos were introduced of the two officers at the horrific crime scene {R 3678-86}

The State concluded with a number of victim impact witnesses {R 3687-3759}

Applicant repeatedly declined to present any mitigation case whatsoever stating

that after the jury found him guilty, he wanted no further involvement in the proceeding
{R 3448-54, 3460-61, 3481-87, 3761-62}

III

Allegations in Initial Application

Applicant makes four (4) allegations in his APCR. As will be seen, all of the allegations should be dismissed or denied as a matter of law and the petition dismissed with prejudice.

A General Law on Ineffective Assistance Of Counsel

Pursuant to the familiar doctrine in Strickland v. Washington, Applicant must first demonstrate that his trial counsel's performance fell below an objective standard of reasonableness. 466 U.S. 668 (1984). Judicial scrutiny of counsel's performance is highly deferential and not subject to the distorting effects of hindsight and counsel may reasonably choose from a wide range of acceptable strategies. Strickland, 466 U.S. at 689; Burket v. Angelone, 208 F.3d 172 (4th Cir. 2000).

Competency is measured against what an objectively reasonable attorney would have done under circumstances existing at the time of the representation. Savino v. Murray, 82 F.3d 593, 598 (4th Cir. 1996). The Court should "decline to allow an ineffective assistance of counsel claim to create a situation where post-conviction attorneys stroll in with the full benefit of hindsight to second-guess trial lawyers who professionally discharge their duties to their clients under the manifold pressures of a state trial." Mazzell v. Evatt, 88 F.3d 263, 269 (4th Cir. 1996).

As the Supreme Court made clear in Strickland

the reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based quite properly on informed strategic choices made by the defendant and on information supplied by the defendant. In particular, what investigations are reasonable depends upon such information. [W]hen a defendant has given counsel reason to believe that pursuing certain investigations would be fruitless or even harmful, counsel's failure to pursue those investigations may not later be challenged as unreasonable.

Strickland, 466 U.S. at 691. Barnes v. Thompson, 58 F.3d 971, 978 (4th Cir. 1995). Matthews v. Evatt, 105 F.3d 907, 919-920 (4th Cir. 1997). The mere fact that trial counsel's strategy was unsuccessful does not render counsel's assistance unconstitutionally ineffective. Strickland, 466 U.S. at 689. Bell v. Evatt, 72 F.3d 421, 429 (4th Cir. 1995).

Next, Applicant must also establish prejudice by showing a reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. 668, 694 (1984). A reasonable probability is a probability sufficient to undermine confidence in the outcome. Id. It is insufficient to show only that the errors had some conceivable effect on the outcome of the proceeding because virtually every act or omission of counsel would meet that test. Id. at 693. The Applicant bears the highly demanding and heavy burden in establishing actual prejudice. Williams v. Taylor, 120 S.Ct. 1495, 1513-14 (2000).

Recently in Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998), the South Carolina Supreme Court restated the prejudice prong in a capital sentencing proceeding as being established when "there is a reasonable probability that absent [counsel's] errors the sentencer – including an appellate court to the extent it independently reweighs the evidence – would have concluded that the balance of aggravating and mitigating circumstances did not warrant death," citing Strickland. A reasonable probability is a

probability sufficient to undermine confidence in the outcome Jones 504 S E 2d at 823-824 Accord, Plath v Moore 130 F 3d 595 (4th Cir 1997) ('given the overwhelming aggravating factors there is no reasonable probability that the omitted evidence would have changed the conclusion that the aggravating circumstances outweighed the mitigating circumstances and hence, the sentence imposed ' Thus in weighing the omitted evidence against that actually used to convict and sentence Plath, the mitigating evidence seems insufficient to shift the balance in Plath's favor)

Finally, the Supreme Court of South Carolina has held that a hearing on an allegation is only required when factual allegations that lead to a Sixth Amendment deprivation are not conclusively refuted by the record Norman v State 276 S C 278 277 S E 2d 707 (1981)

As a general matter Respondent submits that the Record on Appeal from Applicant's trial and sentencing hearing conclusively demonstrate that appointed counsel were not deficient in their performance nor was Applicant prejudiced in any way by their performance To the contrary the Record from each proceeding demonstrates that Applicant's attorneys were diligent in their representation of Applicant performed well within the wide range of competence and reasonable professional assistance demanded of attorneys in criminal matters State v Pendergrass 270 S C 1 239 S E 2d 750 (1977) Marzullo v Maryland *supra* Butler v State 286 S C 441, 34 S E 2d 813 (1985) Hill v Lockhart, 474 U S 52, 106 S Ct 366 (1985)

B Ground One

Applicant's first ground for relief is as follows

The verdict was contrary to the law of reasonable doubt, and upon a false

prosecution

Applicant contends the verdict was contrary to the evidence and based upon a false prosecution

Applicant's claim is not viable in PCR and should be dismissed as a matter of law. As a freestanding claim, it is not proper for PCR. Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective assistance of counsel). See also S.C. Code Ann. § 17-27-20(b) (Rev. 2003) (PCR is not a substitute for remedies available at trial or on direct review). Indeed, the PCR statute specifically precludes collateral attack on the ground that the evidence was insufficient to support a conviction." S.C. Code Ann. § 17-27-20(a)(6) (Rev. 2003).

In any event, the claim is without merit. Kimberly's testimony as to Applicant's presence and admissions are alone sufficient to survive a directed verdict motion, without regard to the wealth of other testimony and forensic evidence linking Applicant to the crime as set forth in the Statement of Facts.

The issue should be dismissed as a matter of law or summary judgment granted based on the record. See Rule 12(b)(6) SCRPC ("failure to state facts to constitute a cause of action"), Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law). See also S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

C Ground Two

Applicant s second ground for relief is as follows

The evidence proved that Petitioner committed no unlawful act Mr Tate killed Coursen

Applicant contends the evidence shows he committed no unlawful act because Deputy Tate allegedly killed Coursen

Again this allegation should be dismissed as a matter of law As a freestanding claim it is not proper for PCR Drayton v Evatt, 312 S C 4, 430 S E 2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective assistance of counsel) See also S C Code Ann § 17-27-20(b) (Rev 2003) (PCR is not a substitute for remedies available at trial or on direct review) Indeed, the PCR statute specifically precludes collateral attack on the ground that the evidence was insufficient to support a conviction' S C Code Ann § 17-27-20(a)(6) (Rev 2003)

Regardless, the claim should be dismissed as it is conclusively refuted by the record Kimberly s testimony as to Applicant s admissions of killing the deputies is alone sufficient to reject this claim in a directed verdict context, but regardless there was no evidence conclusively establishing that Coursen s injuries came from Deputy Tate's gun rather than Applicant s Indeed forensic testimony from trial established that the door to the closet in the corner of the bedroom had 40 caliber holes going from the outside into the closet, and 7 62mm holes going from the inside of the closet out into the bedroom {R 2253, 2287-94, 2421, 2429-31} And Applicant s SKS was matched to the bullet recovered from Deputy Coursen and a fragment from Deputy Tate {R 2401-02}

The issue should be dismissed as a matter of law or summary judgment granted based on the record See Rule 12(b)(6), SCRPC (failure to state facts to constitute a cause of action") Gadson v Hembree, 364 S C 316 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

D Ground Three

Applicant s third ground for relief is as follows

- 1 Three Petitioner Sixth Amendment was violated when his petition for speedy trial was denied and ignored and bail was not being granted Petitioner was denied a fair trial on the fact that alleged victims were honored State-wide as South Carolina heros and inducted into the South Carolina Law Enforcement Hall fo Fame, as well as the President of the United States of America Mr George W Bush appeared on Nation-wide television then honored alleged victims by inducting their names into the National Memorial for police officer on May 15 2003 Whereas Petitioner had not been tried by a jury until October 6, 2003
- 2 Four in violation of the eight amendment where as Petitioner were sentence to death when evidence showed someone other than Petitioner kill the alleged victims
- 3 Five, Petitioner's rights (Constitution) has been abrideed The privileges the immunities afforded all citizens his life his liberty without due process of law nor equal protection under the law

Applicant makes four claims here that he was denied a speedy trial, that he was denied a fair trial because the victims were honored in the South Carolina Law Enforcement Hall of fame prior to trial, that the Eighth Amendment was violated since he was sentenced to

death even though the evidence shows someone else killed the victims, and that his constitutional rights have been abridged

Again, all of these claims are improper for PCR and should be dismissed as they are freestanding claims that could have been raised at trial or on direct appeal Drayton v. Evatt 312 S C 4 430 S E 2d 517 (1993) (issues that could have been raised at trial or on direct appeal can, not be raised in a PCR application absent a claim of ineffective assistance of counsel) See also S C Code Ann § 17-27-20(b) (Rev 2003) (PCR is not a substitute for remedies available at trial or on direct review)

In any event they are without merit

1. Speedy trial

As to the speedy trial claim the record reflects that Applicant filed a *pro se* motion for speedy trial but ultimately agreed with his attorneys to withdraw it once they filed a motion for a continuance {R 3878-80}

The record reflects that Applicant reasserted a *pro se* motion for a speedy trial at a preliminary hearing on August 1, 2003, based on that *pro se* motion he filed on September 5th 2002 Applicant claimed he should be acquitted because he was not brought to trial within two terms of his speedy trial request as supposedly required by S C Code Ann § 17-23-90 (1976) The solicitor responded that after Applicant made his motion he set a trial date for October 4th, 2002, but Applicant's attorneys then filed a motion for a continuance The continuance was granted by Judge Buckner in a written order The trial court found that based on caselaw the South Carolina Supreme Court had already ruled that section 17-23-90 only applied to the old setting of statutory terms of court

by the general assembly and not to the setting of terms of court by the chief justice, and had no applicability to Applicant's motion for a speedy trial. The court also found Applicant's attempts to show prejudice to be vague and too general. {R 4098-4107, 4161-67}

In applying the precedent of this Court and the United States Supreme Court, our Court of Appeals has stated:

The Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution provide that a criminal defendant is entitled to a speedy trial. State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997). In Barker v. Wingo, 407 U.S. 514 (1972), the United States Supreme Court identified several factors to be used in determining whether a defendant has been denied the right to a speedy trial, including:

- (1) the length of delay
- (2) the reason the government uses to explain the delay
- (3) when and how the defendant asserted his speedy trial right, and
- (4) the prejudice to the defendant

Id.

State v. Kennedy, 339 S.C. 243, 528 S.E.2d 700 (Ct. App. 2000). The reviewing court is to balance these factors, as no one is dispositive.

Here, Applicant was tried approximately one year and nine (9) months after the crime, and approximately thirteen (13) months after his original request. This is not an extreme delay. See Brazell, *supra* (a three year and five month delay was sufficient to trigger review of the other factors); State v. Waites, 270 S.C. 104, 240 S.E.2d 651 (1978) (a two year and four month delay was sufficient to trigger the remaining factors).

Moreover Applicant's attorneys requested a continuance, which certainly moots any contention that the State was neglectful or wilfully in the delay State v Foster, 260 S C 511 197 S E 2d 280 (1973) (the defendant's failure to assert the right will make it difficult for him to prove he was denied his right to a speedy trial) (citing Barker v Wingo) State v Dukes, 256 S C 218 182 S E 2d 286 (1971) (burden is on Appellant to show that the delay resulted from the neglect and wilfulness of the State)

Finally Applicant has not identified any specific prejudice from the alleged violation of a speedy trial

Therefore as a matter of law the circumstances do not constitute a violation of the right to a speedy trial See State v Tyson, 283 S C 375 323 S E 2d 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 Part of the delay was caused by his initial failure to accept appointed counsel), State v Kennedy 339 S C 243, 528 S E 2d 700 (Ct App 2000) (even though defendant asserted right some 14 months after arrest the 26 month delay was reasonable given that the case was complicated with much needed time to prepare and the absence of any purposeful delay on part of the State)

2 Denial of a fair trial

Applicant next complains that he was denied a fair trial due to an alleged honoring of the victims An unsupported claim that the jurors had knowledge of the case is simply not sufficient to show actual juror prejudice See Grancorvitz v Franklin, 890 F 2d 34 39 (7th Cir 1989), Willard v Pearson, 823 F 2d 1141, 1146 (7th Cir 1987) Applicant must put forth evidence of publicity but in any event mere adverse trial publicity is not sufficient to

show bias United States v Lane 811 F 2d 1166 (7th Cir 1987) The fact that the jurors case testified on voir dire that they were able to disregard any previously acquired information, and render a decision based solely on the evidence presented at trial, indicates that the publicity did not have a prejudicial impact See Washington v Lane, 840 F 2d 443, 447 (7th Cir 1988)

In this case, there was extensive *voir dire* of the jury both in the capital and non-capital context Upon information and belief not one potential juror mentioned the induction of the victims into the South Carolina Law Enforcement Hall of Fame Moreover the jurors who were qualified all stated they could be fair and impartial to both sides and keep an open mind There is simply no support in the record for Applicant s contention he did not receive a fair trial due to the alleged honoring of the victims See generally Ramdass v Angelone 28 F Supp 2d 343 (E D Va 1998) (rejecting habeas petitioner s voir dire claims by holding that he produced no evidence that a biased jury was impaneled and citing Ross v Oklahoma, 487 U S 81 (1988))

3 Violation of Eighth Amendment

Applicant next contends his death sentence violates the Eighth Amendment s prohibition on cruel and unusual punishment because the evidence supposedly shows someone else committed the crime

This claim simply challenges the sufficiency of the evidence and should be dismissed as a matter of law As a freestanding claim it is not proper for PCR Drayton v Evatt 312 S C 4 430 S E 2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective

assistance of counsel) See also S C Code Ann § 17-27-20(b) (Rev 2003) (PCR is not a substitute for remedies available at trial or on direct review) And as noted before the PCR statute specifically precludes collateral attack on the ground that the evidence was insufficient to support a conviction S C Code Ann § 17-27-20(a)(6) (Rev 2003)

Regardless the claim should be dismissed as it is conclusively refuted by the record Kimberly's testimony as to Applicant's presence and admissions are alone sufficient to support the verdict without regard to the wealth of other testimony and forensic evidence linking Applicant to the crime as set forth in the Statement of Facts Since there was ample evidence supporting Applicant's guilt of the crimes then as a matter of law there could be no Eighth Amendment violation with the imposition of the death penalty as punishment for the murder of two law enforcement officers

The issue should be dismissed as a matter of law or summary judgment granted based on the record See Rule 12(b)(6) SCRPC (failure to state facts to constitute a cause of action') Gadson v. Hembree 364 S C 316, 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

4 Constitutional rights

Finally Applicant asserts his 'constitutional rights' have been abridged This claim should also be dismissed as a matter of law

First, of course, as a freestanding claim raised outside of the context of ineffective

assistance of counsel the claim is not proper for PCR Drayton v. Evatt, 312 S.C. 430 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective assistance of counsel) See also S.C. Code Ann. § 17-27-20(b) (Rev. 2003) (PCR is not a substitute for remedies available at trial or on direct review)

Second, the claim should be dismissed because Applicant does not specify which rights were allegedly abridged and how they were supposedly abridged. This matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Indeed, this allegation is subject to dismissal pursuant to S.C. Rules of Civil Procedure Rule 12(b)(6) ("failure to state facts to constitute a cause of action"). Alternatively, Respondents move for an order to require Applicant to make this allegation more definite and certain as it is too vague and ambiguous for a response. Rule 12(e), SCRPC.

The issue should be dismissed as a matter of law or summary judgment granted.

E. Ground Four

Applicant's fourth ground for relief is as follows:

1. Ineffective assistance of Appellate counsel. The court denied Petitioner the right to proceed Pro Se to raise ground
2. Denial of due process of law was not raised by appointed Appellate counsel
3. Denial of a fair trial was not raised by appointed Appellate Counsel
4. Denial of equal protection of the law was not raised by appointed Appellate counsel
5. Fourth Amendment issue was not raised by appointed Appellate counsel

- 6 After-discovered evidence because of ineffective assistance of Appellate counsel, discovered evidence or information after Initial Brief of Appellate counsel

Applicant raises a number of allegations of ineffective assistance of appellate counsel. As will be seen, all should be dismissed as a matter of law.

1 Court denied right to proceed *pro se* on appeal

Applicant contends the court – presumably the South Carolina Supreme Court, since Applicant did represent himself at trial – was in error in denying his right to proceed *pro se* and raise his grounds. During the direct appeal, the South Carolina Supreme Court issued an order on June 3rd 2005 in which it denied Applicant's request to represent himself on appeal. The state supreme court denied a *pro se* motion for reconsideration on July 8th 2005.

Since this is the sort of issue that could be – and indeed was – raised on direct appeal, it is not proper for PCR. Drayton v. Evatt, 312 S.C. 443, 517 S.E.2d 517 (1993) (issues that could have been raised at trial or on direct appeal can not be raised in a PCR application absent a claim of ineffective assistance of counsel). See also S.C. Code Ann. § 17-27-20(b) (Rev. 2003) (PCR is not a substitute for remedies available at trial or on direct review). Indeed, since the South Carolina Supreme Court has already ruled on the motion, it is the law of the case and of course this Court in PCR has no authority to "overrule" the state supreme court.

Thus, since the state supreme court has already held that Applicant has no enforceable right to proceed *pro se*, appellate counsel could not have been deficient nor Applicant prejudiced from the failure to raise it again.

The issue should be denied as a matter of law or summary judgment granted See Rule 12(b)(6), SCRCP (failure to state facts to constitute a cause of action) Gadson v. Hembree 364 S C 316 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

2 Denial of due process of law

Applicant next contends appellate counsel was ineffective for failing to raise the denial of due process of law Applicant does not specify which rights were allegedly abridged, and how they were supposedly abridged Thus, this matter must be dismissed pursuant to S C Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion Indeed this allegation is subject to dismissal pursuant to S C Rules of Civil Procedure, Rule 12(b)(6) ("failure to state facts to constitute a cause of action") Alternatively Respondents move for an order to require Applicant to make this allegation more definite and certain as it is too vague and ambiguous for a response Rule 12(e), SCRCP

Inasmuch as Applicant refers to appellate counsel s failure to raise the grounds he asserted in Ground Three *supra*, appellate counsel could not have been deficient nor Applicant prejudiced for the reasons expressed therein The issue should be denied as a matter of law or summary judgment granted See Rule 12(b)(6) SCRCP ('failure to state facts to constitute a cause of action') Gadson v. Hembree, 364 S C 316, 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact

and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

3 Denial of a fair trial

Applicant next contends appellate counsel was ineffective for failing to raise the alleged denial of a fair trial. Applicant does not specify how he supposedly did not receive a fair trial. Thus, this matter must be dismissed pursuant to S C Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Indeed, this allegation is subject to dismissal pursuant to S C Rules of Civil Procedure Rule 12(b)(6) ("failure to state facts to constitute a cause of action"). Alternatively, Respondents move for an order to require Applicant to make this allegation more definite and certain as it is too vague and ambiguous for a response. Rule 12(e) SCRPC.

Inasmuch as Applicant refers to appellate counsel's failure to raise the alleged honoring of the victims as asserted in Ground Three, *supra*, appellate counsel could not have been deficient nor Applicant prejudiced because as set forth above the issue is without merit. The issue should be denied as a matter of law or summary judgment granted. See Rule 12(b)(6) SCRPC ("failure to state facts to constitute a cause of action") Gadson v. Hembree, 364 S C 316, 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to

relief)

4 Denial of equal protection

Applicant next contends appellate counsel was ineffective for failing to raise the denial of equal protection. Applicant does not specify how his equal protection rights were allegedly abridged. Thus, this matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Indeed, this allegation is subject to dismissal pursuant to S.C. Rules of Civil Procedure Rule 12(b)(6) ("failure to state facts to constitute a cause of action"). Alternatively, Respondents move for an order to require Applicant to make this allegation more definite and certain, as it is too vague and ambiguous for a response. Rule 12(e) SCRPC.

Inasmuch as Applicant refers to appellate counsel's failure to raise the grounds he asserted in Ground Three, *supra*, appellate counsel could not have been deficient nor Applicant prejudiced for the reasons expressed therein. The issue should be denied as a matter of law or summary judgment granted. See Rule 12(b)(6) SCRPC ("failure to state facts to constitute a cause of action"). Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law). See also S.C. Code Ann. §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief).

5 Fourth Amendment issue

Applicant next contends appellate counsel was ineffective for failing to raise a Fourth Amendment issue. Applicant does not specify which Fourth Amendment rights

were allegedly abridged, and how they were supposedly abridged. Thus, this matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Indeed, this allegation is subject to dismissal pursuant to S.C. Rules of Civil Procedure Rule 12(b)(6) ("failure to state facts to constitute a cause of action"). Alternatively, Respondents move for an order to require Applicant to make this allegation more definite and certain, as it is too vague and ambiguous for a response. Rule 12(e), SCRPC.

At trial, Applicant made a *pro se* Fourth Amendment motion that the indictments should have been dismissed because the officers allegedly had no consent to enter the trailer. Standby counsel pointed out he was aware of no law that allows for dismissal of an indictment based on an alleged Fourth Amendment issue. The motion was denied by the trial court. {R 4090-96, 4116-20}

Assuming this is the issue Applicant presently asserts, appellate counsel should have raised it. Appellate counsel could not have been deficient nor Applicant prejudiced because the issue was without merit. Police were responding to a call from Strawberry Washington, who informed police that Kimberly had called from within the residence and stated she was too scared to leave. {R 1648-52, 1654-59, 1679-80, 1685-86, 1701-03, 1716-19, 1770-71} Testimony from Brenda Smith was that she answered the door and invited the officers inside. Brenda then knocked on Applicant's bedroom door and asked Kimberly to come out. {R 1650-52, 1688, 1811-13, 1814-15, 1690} Once Kimberly came outside of the bedroom, the officers asked to search it. Brenda and Kimberly testified they agreed. {R 1690-91, 1812-15, 1833}

A warrantless entry does not offend the Fourth Amendment if the police are

assisting with or preventing a serious injury Brigham City, Utah v. Stuart, 164 L Ed 2d 650 (2006) or if a legal occupant of the premises consents to the entry, Schneckloth v. Bustamonte 412 U S 218 219 (1973) Thus there was not only a basis for entry from Strawberry's call to police about Kimberly's distress but also from Brenda and Kimberly's consent Since there is no valid Fourth Amendment issue, appellate counsel could not have been deficient nor Applicant prejudiced for failing to raise it

The issue should be denied as a matter of law or summary judgment granted See Rule 12(b)(6), SCRCP ("failure to state facts to constitute a cause of action), Gadson v. Hembree 364 S C 316 613 S E 2d 533 (2005) (summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to relief as a matter of law) See also S C Code Ann §§ 17-27-70(b) (2003) (stating that after return by the State the PCR court may give notice of its intent to dismiss if it is clear on the basis of the pleadings and the record that the applicant is not entitled to relief)

6 After discovered evidence

Finally Applicant contends that his appellate counsel was ineffective and that because of this ineffectiveness, he did not discover alleged after-discovered evidence until after the filing of the initial brief

This issue should be dismissed as a matter of law Our standard for addressing motions for a new trial due to after-discovered evidence is as follows

Applicant must show that the after-discovered evidence (1) is such that it would probably change the result if a new trial were granted (2) has been discovered since the trial (3) could not have been discovered prior to trial in the exercise of due diligence (4) is material and (5) is not merely cumulative or impeaching

Johnson v. Catoe 345 S C 389 548 S E 2d 587 (2001)

Applicant does not specify what after-discovered evidence was allegedly obtained, the circumstances by which it was obtained or how appellate counsel was deficient with regard to the discovery of this evidence. Thus, this matter must be dismissed pursuant to S.C. Code § 17-27-70(b) (1976) by the failure to allege facts to support his legal conclusion. Indeed, this allegation is subject to dismissal pursuant to S.C. Rules of Civil Procedure Rule 12(b)(6) (failure to state facts to constitute a cause of action). Alternatively, Respondents move for an order to require Applicant to make this allegation more definite and certain, as it is too vague and ambiguous for a response. Rule 12(e), SCRPC.

Moreover, appellate counsel would not be responsible for claims based in after-discovered evidence that were not raised at trial, as such claims would initially be raised to the trial court in a post-trial motion. Rule 29(b) SCRCrimP. Thus, appellate counsel could not have been deficient nor Applicant prejudiced.

In the event this Court disagrees, any of these issues should be dismissed as a matter of law. Respondents request an evidentiary hearing to resolve any questions of fact. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

CONCLUSION

Each and every allegation in the Application not hereinabove either expressly admitted denied, qualified or explained is hereby denied

WHEREFORE Respondent submits that the Application for Post-Conviction Relief should be dismissed as a matter of law or summary judgment granted

Respectfully submitted,

HENRY D McMASTER
Attorney General

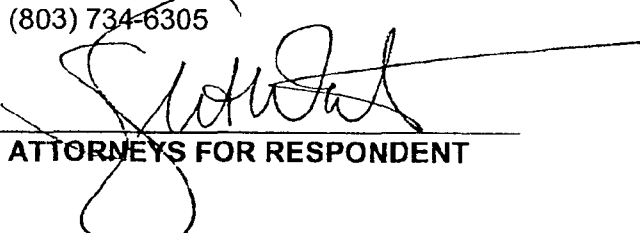
JOHN W McINTOSH
Chief Deputy Attorney General

DONALD J ZELENKA
Assistant Deputy Attorney General

S CREIGHTON WATERS
Assistant Attorney General
(Counsel of Record)

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

By


ATTORNEYS FOR RESPONDENT

October 9 2007

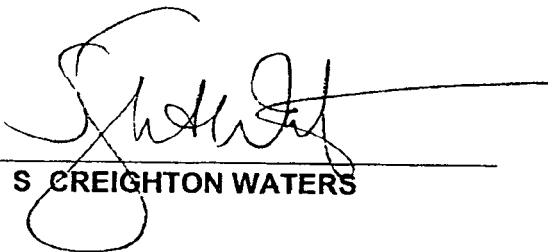
CERTIFICATE OF SERVICE

I, S Creighton Waters counsel for the Respondent certify that I have served the ***Return, Motion to Dismiss and Motion for Summary Judgment***, by depositing one (1) copy of same in the United States mail, postage prepaid addressed to

Glenn Walters Esquire
Glenn Walters & Associates PA
348 St Paul Street
Orangeburg South Carolina 29115

Carl Grant Esquire
960 Doyle Street
Orangeburg, South Carolina 29116

This 9th day of October, 2007



S. CREIGHTON WATERS

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BEAUFORT 07-CP-07-0715

ABIDIYYAH BEN ALKEBULANYAHH,)
Applicant,) TRANSCRIPT OF RECORD
- vs -) October 13-14, 2008
) Charleston, South Carolina
STATE OF SOUTH CAROLINA,)
Respondent)

B E F O R E

The Honorable Roger M Young, Sr , Judge

~~A P P E A R A N C E S~~

Glenn Walters, Esquire
Carl B Grant, Esquire
Attorneys for the Applicant

S Creighton Waters, Esquire
Alphonso Simon, Jr , Esquire
Attorneys for the Respondent

Amanda K Haffenden, RPR, CRR
Circuit Court Reporter

11/30/08

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Adibiyah Ben Alkebulanyahh	19	182	--	--
Sean Thornton	281	304	--	--

1	E X H I B I T S			
2	NO	DESCRIPTION	ID	EV
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10	Applicant's 7	Documents	164	164
11	Defendant's 1	Handwritten Document	194	194
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13	~~Defendant's 3~~	~~Letter and Motion~~	~~198~~	~~199~~
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15	Defendant's 8	Deposition of Joseph Savitz	280	280
16	Defendant's 9	Deposition of Robert Dudek	280	280
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18				
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1 (October 13, 2008)

2 THE COURT All right We're here on the
3 case of Tyree Roberts, who is also known as Abidiyyah Ben
4 Alkebulanyahh, versus the state of South Carolina This
5 is a PCR matter, 2007-CP-07-0715 This is a Beaufort
6 County matter, but we are holding this hearing in
7 Charleston County by consent, since I'm a resident judge
8 here

9 Now, before we begin, let me note for the
10 record that Mr Alkebulanyahh is present in the
11 courtroom Mr Alkebulanyahh, when we first spoke a year
12 or so ago, when I got this case assigned to me, I asked

13 ~~you your preference on how you would like me to refer to~~
14 you, and you at that time indicated that you preferred me
15 to call you by your surname of Alkebulanyahh Is that
16 still your desire?

17 THE WITNESS Yes, sir

18 THE COURT I told you at that time, also,
19 I'm not good on names, but I would do my best to
20 pronounce it correctly Am I pronouncing Alkebulanyahh
21 correctly?

22 THE WITNESS Yes

23 THE COURT Do you want to say something
24 else?

25 THE WITNESS Yes, sir

1 THE COURT If you would do something that
2 microphone, move towards him a little bit so I can hear a
3 little better Go ahead

4 THE WITNESS In reference to the name, as I
5 have just spoken, it's a matter of dignity and integrity
6 in reference to my name My legal name is Abidiyyah Ben
7 Alkebulanyahh, and it was my name before I was arrested
8 on this case And a previous judge had ordered that all
9 of the transcripts and all the records and everything
10 be -- I think, modified, if that is the proper word, to
11 fit accordingly to my legal name, and for the indictment
12 and so forth, and yet still the trial Court judge refused

13 or would not -- against my pleading and begging for him
14 to refer to me and make sure that the indictment and the
15 rest of the documents was done according to what the
16 judge had prescribed, which the prosecutor at the time
17 said that they would do

18 And since that time, you know, it bothers me
19 to an extent that in respect for law and the system, the
20 integrity of the Court, that these people, being
21 officials of the state, that it shows a prejudice or some
22 form of bias against me to not recognize me by my legal
23 and rightful name, and that -- to call me Tyree Roberts,
24 and me in my mid 40's and for the last seven years and
25 throughout the prison systems the officers don't respect

1 my name and my mail has went to Muslim inmates and the
2 officers have written disciplinary infractions because I
3 won't acknowledge the name Tyree Roberts, and it
4 aggrieves me that even at this late in time period that,
5 you know, the records won't reflect -- I could be, you
6 know, respect that it's been said that my name is
7 Abidiyyah Ben Alkebulanyahh, a/k/a Tyree Roberts, but it
8 reflects the opposite

9 And I'm a citizen I'm a citizen of this
10 country, and I feel like that, you know, every bit of the
11 law, I'm entitled to, you know, to try to respect the
12 Court in its essence, and it's just the beginning of, you

13 know, something that has, you know, been done to me in
14 the system The case should reflect that I am Abidiyyah
15 Ben Alkebulanyahh versus the state, or the state versus
16 Abidiyyah Ben Alkebulanyahh, a/k/a Tyree Roberts

17 THE COURT I say that simply because there
18 were some things in the records that say Tyree Roberts
19 and there were also things that had Alkebulanyahh, and so
20 I just wanted to make sure that was how you wanted me to
21 refer to you, and so as far as I'm concerned, in fact,
22 the previous order that I had issued in this case, it
23 referred to you as Alkebulanyahh, it doesn't even say
24 Tyree Roberts But just because I'm trying to make a
25 clean record, I just wanted to clear that up before we

1 got started

2 THE WITNESS I appreciate that, Your Honor,
3 and I just wanted to pretty much just give yourself
4 pretty much the discontent that I have, you know, not in
5 reference to what you have done, or anyone in your office
6 has done, with reference to me and this name and the case
7 itself that where in the future I refer to others or some
8 other people, officials or organizations, to research the
9 case or try to find a case, sometime even though it
10 perhaps would not come up, then I need to find something
11 on the state versus Alkebulanyahh, but Tyree Roberts, and
12 it has nothing to do with -- in reference to your address

13 to me, because it has been addressed to me, has been
14 respectful, and I just want to make that clarification in
15 reference to that

16 And I just wish that even at this date that
17 that could be cleared up, no more than the case itself,
18 being the case versus Alkebulanyahh, and not the case
19 versus Roberts

20 THE COURT Well, to the extent that I have
21 anything, you know, to control over it, obviously, I will
22 refer to you per your wishes I can't control people in
23 the future or certainly in the past, but the pleadings,
24 as far as I'm concerned, reflect your name as your
25 wishes

1 So I appreciate what you're saying As far
2 as any preliminary issues, there was some discussion as
3 to whether or not you had filed a motion, or some sort of
4 paperwork to have your counsel relieved That paperwork
5 did not make it to me, but earlier this morning, talking
6 to your lawyers, there was some discussion about that
7 Has there, in fact, been a motion to relieve your lawyers
8 been filed, or are you satisfied with your lawyers'
9 representation?

10 THE WITNESS This has, and at the present
11 time I withdraw that motion

12 THE COURT Okay

13 ~~THE WITNESS And I'm satisfied~~

14 THE COURT So you're satisfied with
15 Mr Walters and Mr Grant?

16 THE WITNESS Yes

17 THE COURT All right That's fine Thank
18 you

19 All right, then At this point, then, we
20 have a petition for post-conviction relief filed, and
21 since that is the petition of the applicant, they would
22 have the right to move forward first, so, Mr Walters, if
23 you would like to make an opening, you may begin, sir

24 MR WALTERS May it please the Court, Your
25 Honor, my client is going to testify with regard to

1 several issues, but I think the primary issue that is
2 before the Court today is that, number one, was my client
3 competent to stand trial, and, of course, that same
4 standard is used to determine if a defendant is also able
5 to represent himself in the court of law, and
6 specifically what we want to bring to the Court is the
7 testimony of four experts that were hired in this
8 particular case by the defense, and the primary expert
9 that we center upon is Dr Donna M Schwartz-Watts and,
10 of course, Ms Watts, the evidence will show, that she
11 testified that she said, number one, competency is a
12 fluid issue that needs to be determined on a basis of

13 ~~simply meeting with a client, over and over again, to~~
14 determine if there is any stability, but it being a fluid
15 issue, she would have to sit down and talk to any
16 particular defendant

17 And in this particular case, she met with
18 Mr Alkebulanyahh on three different occasions The
19 first occasion, she had conversation with him, the second
20 occasion, she videotaped him, and, of course, that
21 conversation went awry because he wanted to withdraw the
22 videotape, and the third occasion he, of course, had
23 threatened her and that was her testimony

24 The bottom line is what we presented before
25 this Court is that Donna M Schwartz-Watts' testimony

1 was, number one, that Mr Alkebulanyahh was not competent
2 to stand trial In addition to that, he was not
3 competent to represent himself, and of course, these
4 issues go to the Parada case, and the Parada case says
5 that it's your sixth amendment right to have counsel, or
6 associate counsel, and it is autonomous, it is an
7 individual decision It has to be made on the part of
8 the defendant as to whether he will go forward with
9 counsel or without counsel

10 And in this particular case, the testimony is
11 not only in the transcript, but in the recent deposition
12 that was taken of Dr Schwartz-Watts, number one, that he
13 ~~was not competent to stand trial, and, number two, he~~
14 certainly was in no position, he is not competent to
15 represent himself

16 Coupled with that, we also will present
17 testimony of Dr Jeffrey R McKee Dr McKee, in
18 evaluating Mr Alkebulanyahh, had reviewed the
19 information from Dr Schwartz-Watts, number one, that he
20 suffered bipolarism, and, number two, that he was also
21 psychotic And Dr McKee, in making his assessment, the
22 defendant refused to meet with him, and there had been a
23 personality assessment inventory conducted with regards
24 to Mr Alkebulanyahh

25 In that assessment that was done, his opinion

1 was that there was not an inventory, in other words,
2 enough information given to draw assessment as to his
3 condition, and, of course, his position was that, number
4 one, there needs to be a Minnesota multi-phasic that
5 needs to be conducted to so we can get further studies,
6 so we can get into these other factors we take into
7 consideration

8 Dr McKee, in the final analysis, reached the
9 same conclusion as Dr Schwartz-Watts, and essentially
10 that was this One, he is not competent to stand trial,
11 and, number two, he is not competent to represent himself
12 so no opinion was offered with regard to those particular
13 ~~issues before the finder of the facts and that would be~~

14 His Honor's, Judge Pieper's handling of in this case

15 In addition to that, the testimony of
16 Dr Richard L Frierson Dr Richard L Frierson is a
17 psychologist, and, of course, in conducting his
18 assessment in regards to Mr Alkebulanyahh, he determined
19 that he was competent to stand trial, and in this
20 particular case, questions were asked with regards to the
21 personal assessment inventory, the Minnesota
22 multi-phasic, and his conclusion he was not qualified to
23 offer an opinion with regard to those particular issues
24 because he is not a psychologist

25 They then contacted Dr Musick to come in,

1 and what essentially happened was that he did not conduct
2 the Minnesota Multi-phasic in this particular case, and
3 what he essentially did is another personality assessment
4 test, and I believe it's referred to as a PIA, or a PIM,
5 in that particular case

6 His conclusion was that he was competent to
7 stand trial. It requires there be an inquiry by the
8 Court so that you can determine whether he has the
9 cognitive ability to understand his surroundings and the
10 reasonable ability to determine, you know, what he's
11 doing under those circumstances, and the inquiry that was
12 conducted here, I've heard it said many times in the

~~13 process of going over this case, that Mr. Alkebulanyahh~~
14 participated in the trial, and we will submit the
15 information to the Court in the transcripts. When Mr.
16 Alkebulanyahh was allowed to conduct cross-examination,
17 he often referred to himself in the third person.

18 In addition, the record is replete over and
19 over and over again with testimony or questions being
20 asked by Mr. Alkebulanyahh that substantiates Dr. Donna
21 Swartz-Watts' position and also Dr. McKee, but, in
22 addition to his actual testimony, he's very nice, very
23 polite before the Court. The Court goes even further to
24 inquire into his demeanor and how he conducts himself,
25 but the bottom line I don't think any Court or any lawyer

1 sitting in the courtroom could conduct that proper
2 assessment

3 Under the circumstances that we will present
4 before the Court, it clearly shows that he was not
5 competent to stand trial, he was not competent to
6 represent himself The testimony was done by Dr Richard
7 L Frierson When he appeared in Court, there is an
8 assessment that was done on maybe four different
9 occasions during 2002 and 2003, and Dr Musick also
10 during those same periods of time on those particular
11 dates Dr Schwartz-Watts testified I must meet with him
12 today to determine where does he stand because competency
13 ~~is a fluid issue~~

14 And as far as his bipolarism is concerned --
15 and she goes deeper into that She goes into the history
16 of the family, the mother, the erratic behavior, and, of
17 course, she talks herself about being threatened by the
18 defendant where he was going to hurt her So I think in
19 sum that this issue is the paramount issue that is before
20 the Court We recently had a decision with regards to
21 Indiana versus Edwards on the defendant's record of
22 representing himself in court, but I think errata
23 controls here because there needs to be a proper inquiry
24 to determine if you know what you're doing

25 And, of course, he's not representing himself

1 on armed robbery He's representing himself on a death
2 penalty case, where two people died The significance of
3 that, the gothic proportions of what he's doing could not
4 be diminished, and when you have a psychiatrist come in
5 here along with another psychiatrist that needs to be
6 protesting, I think the evidence will pan out that in
7 this particular case, he did not want to represent
8 himself, and the testimony will be, one, my first counsel
9 I had I got rid of because they had a social relationship
10 with law enforcement and other individuals involved in
11 the case, and that was admitted by Court that openly
12 represented him about the first round They were then
13 relieved

14 In the second round, the testimony would be,
15 and this is coming from Mr Alkebulanyahh, that there was
16 talk about what would have happened to him 25 years ago
17 in a situation such as this, being in a position that he
18 is in, and being the person that he is, and, of course at
19 that time he believed there was a conspiracy, out to get
20 him or somehow do something to him, which is consistent
21 with the testimony of Dr Schwartz-Watts, that his
22 ability to reason is impaired

23 Although he could present himself well and he
24 may be aware of options, but his reasoning amount is
25 impaired significantly It is one thing to say, I don't

1 want a lawyer because he wouldn't get certain papers for
2 me or he won't take a certain strategic position or he
3 doesn't talk to me properly and we can't get along, it's
4 another thing when someone simply comes in and says, I am
5 operating under the belief that someone is out to get me,
6 and there is a sense of paranoia along with the
7 bipolarism that is coupled with the narcissistic behavior
8 and also in the end Schwartz-Watts says he is psychotic
9 also

10 So I think the testimony and the evidence
11 that will be presented will pan out that in this
12 particular case the Court failed to meet the standards of

13 Parada

14 THE COURT All right

15 MR WATERS May it please the Court,
16 initially with regard to this claim, the state would
17 assert again that at the pretrial hearing that we had
18 telephonically that this is a procedurally barred claim
19 because it is raised in a freestanding context that would
20 be appropriate only for direct appeal because what we
21 have here is Judge Pieper who heard conflicting testimony
22 from the Court's examiners, from the defense examiners,
23 and ultimately made the call as to competence

24 And that decision, if at all, would be
25 challenged on direct appeal, and not here in these

1 collateral proceedings I think if you look at the call
2 Judge Pieper made, it was made after extensive colloquies
3 and particular extensive colloquies on the dangers of
4 self-representation, in which Judge Pieper repeatedly
5 advised Mr Alkebulanyahh of those dangers

6 In addition, counsel advised him of those
7 dangers, and, in addition, Mr Alkebulanyahh, expressly
8 on the record, noted that he was provided with an
9 extensive packet of materials that the state had prepared
10 on that very issue, on the dangers of self-representation
11 and what was involved So this is fully embedded in the
12 record and set forth Ultimately, Judge Pieper made the
13 ~~call, and that is unchallengeable in this particular~~
14 proceeding

15 Beyond that, Your Honor, I think the record
16 would reflect Mr Alkebulanyahh's competence, as he -- to
17 his credit, I was able to try this lengthy guilt phase
18 trial, respectfully maintained appropriate demeanor,
19 while those of us who are lawyers who have law degrees
20 may not agree with some of the issues he raised or some
21 of the questions he asked, they had a point, they had a
22 logical point to them, and often any issues he did raise
23 are classic cross-examination or legal issues that
24 lawyers would raise, and he did a fine job and, indeed,
25 he even thanked Judge Pieper

1 So as far as his ability to act in the
2 courtroom, to examine the witnesses, the record is clear
3 he was able to do so effectively, and nothing about that
4 gives any pause to his competency. There was ultimately
5 an issue in sentencing, but that was Mr. Alkebulanyahh's
6 desire that he did not want to be present, and,
7 ultimately, he stood up and calmly recited a prayer to
8 achieve that end, and, in fact, did achieve that end, so
9 there is nothing about that aspect of the record that
10 would indicate to the contrary.

11 So even if the issue is challengeable, I
12 think the record -- it's already in existence, and the
13 ~~record that is from the depositions has nothing to~~
14 challenge the fact that Mr. Alkebulanyahh was competent,
15 and under the law that was in effect at the time of his
16 trial and indeed under *Indiana v. Edwards*, which does not
17 mandate any change in that, that he was appropriately
18 allowed to represent himself.

19 Thank you, Your Honor.

20 THE COURT: All right. Since the issue of
21 competency was raised in the trial and is the major issue
22 in this proceeding, is there any question about
23 competency today, Mr. Walters, of the applicant?

24 I mean, I understand it's not necessarily a
25 procedurally barred issue on a post-conviction relief,

1 but do we need to address that at any form, or do you
2 have any questions about Mr Alkebulanyahh's competency
3 to assist you at all during these proceedings, or has
4 that been an issue along the way?

5 MR WALTERS I would simply state I do not
6 believe it is an issue, but I would certainly state
7 before the Court, and I do not know how to put this, that
8 my client has a serene confidence that is undisturbed by
9 reality

10 THE COURT Could you say that again? We got
11 some kind of construction going on

12 MR WALTERS My client has a serene

13 confidence that is undisturbed by reality He has
14 remained the same as he's always been when I dealt with
15 him, and I believe he is probably competent to stand here
16 today and conduct this PCR

17 THE COURT All right Thank you Okay

18 Well, then, you have the ability to call
19 witnesses at this hearing, so if you want to call your
20 first witness

21 MR WALTERS Yes Your Honor, at this the
22 time we'll call Mr Alkebulanyahh

23 ABIDIYYAH BEN ALKEBULANYAHH,
24 having been first duly sworn,
25 was examined and testified as follows

1 DIRECT EXAMINATION

2 BY MR WALTERS

3 Q May it please the Court, Mr Alkebulanyahh, at our
4 meetings at the jail discussing your case, we discussed
5 your Sixth Amendment right to counsel, is that correct?

6 A Correct

7 Q And you understand at this post-conviction relief
8 hearing, we are addressing several of the issues that
9 were raised in your PCR, is that right?

10 A That's correct

11 Q Now, the Sixth Amendment, as you informed me, it
12 deals with the issue of the right to counsel, is that
13 correct?

14 A Correct

15 Q I'd like you to go through the history of each of
16 the lawyers that represented you and why certain motions
17 were made, independently by you with regards to each of
18 those motions

19 A Yes, sir The first attorneys that was appointed
20 to me was Mr Hood and Mr Bower Mr Hood was from the
21 public defender's office He was the head public
22 defender's of the Beaufort County public defender's
23 office, and Mr Bower was an ex-public defender, working
24 under Mr Hood in that same office before he went into
25 private practice

1 And I was -- I felt pretty confident about
2 Mr Hood's integrity to represent me in the trial, and
3 Mr Hood, it was discovered, Mr Hood was golfing with
4 the sheriff and he had been socializing with at least one
5 of the deceased's sheriffs in the case, in which I was
6 accused of killing

7 And I -- the first six months of the case,
8 Mr Hood and Mr Bower didn't appear to be doing any
9 investigating of the case, investigating witnesses,
10 getting any statements in pertinent matters about what
11 actually happened on the day of the incident, and at the
12 alleged crime scene

13 Q So you had a problem with the fact that your
14 defense lawyer had a relationship with the sheriff and
15 also the victim, is that correct?

16 A That's correct

17 Q All right

18 A But -- excuse me, if I may

19 Q Go ahead

20 A I brought it to the Court's attention, and the
21 Court in Walterboro, there was a hearing I had there, and
22 the Court would not -- wasn't allowing me to speak, or to
23 address about the problem that I had with them, and I
24 interrupted the Court and kept demanding that I be
25 allowed to speak, and finally I was allowed to speak, and

1 I brought that to the Court's attend about Mr Hood and
2 his golfing and his socializing with one of the fallen
3 deputies outside of the workplace, and he conceded to the
4 Court at that time that it was true And the judge
5 suspend the hearing, the open court hearing, and wanted
6 me to not say anything farther but to me in chambers

7 And they took me to the chambers with all of the
8 state attorney and the attorneys that were appointed to
9 me, and he asked me to speak for the record at that time,
10 but I would not speak for the record, and the sheriff was
11 nudging me and everybody was just trying to get me to say
12 my name and everything, but I didn't understand, you

13 know, why I was in this chambers when this was a public
14 matter and people was there in the courtroom representing
15 public media and people, you know, need to know what was
16 going on, because I don't know what to do from there

17 Q Let me ask you a question, then You talk about
18 your inability to understand and comprehend what was
19 going on, is that correct?

20 A Correct

21 Q All right And in your ability to understand and
22 comprehend what was going on -- let me ask you one
23 question point blank Did you feel you were competent to
24 represent yourself?

25 A No There was no way -- impossible, with

1 reasonable sense -- just common sense that it was
2 impossible for me to be able to effectively represent
3 myself in a trial case of a capital case, being accused
4 of killing -- accused of murdering two sheriff deputies

5 Q So in your decision to dismiss -- and I'll refer
6 to them as the first set of trial counsel that
7 represented you, you certainly did this out of
8 desperation because of the information you found out?

9 A Yes And basically, it was in desperation, you
10 know I had no other choice or alternative I just felt
11 myself being railroaded through the system, and things
12 would be farther covered up or not disclosed because the
13 ~~attorneys was working in cahoots with the state~~

14 Q Now, I interrupted you Just part of your
15 statement where you said you were inside the chambers and
16 there were various individuals there, and you said the
17 sheriff or someone nudged you You said you didn't
18 understand Could you further elaborate on that?

19 A Yes I'm not -- I wasn't in denial or I felt like
20 I was in allusion to racism and me being an African
21 American and, you know, living in the south, because I
22 was born and raised in the south, all my life and been
23 taught many things by my grandfather and grandmother and
24 different things

25 I've seen many aspects I never lived anywhere

1 else in my life except the south, the deep south, and the
2 sense of me just being there in a room that -- with 20 or
3 more people and nothing but white Americans in this room,
4 and they even pulled me out of an open courtroom into a
5 judge's chamber and they want to speak to me or talk to
6 me or nudge me, and, you know, I can't represent myself
7 I can't talk What am I going to say?

8 If I say something to the judge, if I say
9 something to the Court, whatever it is, it's going to be
10 used against me I couldn't freely speak, I couldn't
11 talk So the deputies was nudging me and telling me to
12 talk and the judge was telling me to speak, so I can't

13 turn to the lawyers They cannot be trusted, so going
14 into chambers was, you know, it -- I couldn't -- what am
15 I going to do? All I could do is just sit there If I
16 speak or say something, I'm not -- I'm not a lawyer You
17 know, I never went to law school

18 Q Let me ask you this, then Did the judge proceed
19 forward to appoint another set of counsel for you?

20 A Yes Not at that time They stated some things
21 on the record, and then at a later date, I was appointed
22 attorney Gerald Kelly and Mr Sean Thornton, I think
23 Mr Kelly was from Yemassee -- if I'm correct, but one --
24 both of them was from that area, the Yemassee area

25 Q Could you tell me this Did you have a problem

1 with Mr Kelly being in the public defender's office,
2 being appointed, and Mr Thornton being appointed?

3 A Yes, I did have a problem with Mr Kelly
4 Mr Sean Thornton, he was very young, and, you know, I
5 respected his integrity in reference to him being
6 professional, or professional and what he was doing, what
7 he was representing, but the lead attorney, Mr Gerald
8 Kelly, I had problems with him because in one of our
9 meetings, he -- actually, he looked me in the eye and his
10 exact words, I quote, Ben, you know, if this was 25 years
11 ago, you wouldn't and make it in a courtroom, unquote

12 And that statement, I interpreted to be, that if
13 it was 25 years ago, I would have probably been took to a
14 tree and hung or something, without having the benefit of
15 a trial by jury, or I should be appreciative of the days
16 and times or something really would have, you know, it
17 just -- I just never would made in a courtroom for being
18 accused of murdering two sheriff deputies

19 And there was nothing else that he could say or
20 talk to me about, you know, anything, you know, period,
21 any circumstance, you know, and he -- and then he made
22 statements to one of the psychologists to a certain
23 extent This psychologist -- I think this was Mr
24 Musick, I'm not sure, but one that came and interviewed
25 me at the jail, and the psychologist gave me some

1 reading, some of the skills and stuff

2 And then after the tests, he said that
3 unfortunately, that he can't see why Mr Kelly had said
4 that I was -- to go easy on me, the exact words that the
5 psychologist had said The person that was giving me the
6 test, the exact words, I remember correctly, was
7 Mr Kelly told him to go easy on me --

8 MR WATERS I object

9 THE WITNESS Because I was retarded or
10 something

11 MR WATERS Hearsay I move to strike As
12 long as he was testifying to it for the purposes of his

13 ~~decision as it pertains to the case, but for the truth of~~
14 the matter asserted, I would object as to hearsay

15 THE COURT I will let him say what he says
16 and determine how much weight to give it

17 BY MR WALTERS

18 Q Tell us what he said, sir

19 A He said for him to go easy on me because I was
20 retarded or there was some, like, real weakness with my
21 mind, in essence of being brain damaged or something, or
22 something to that extent

23 He just said, you know, you know, they was wrong,
24 you know He said whatever it is, they are wrong I
25 don't think they're talking to you enough or something to

1 that extent I felt very insulted that he would send
2 someone to speak to me of his wishes, but to interfere
3 with the person not coming to examine me, unbiasedly,
4 like he was putting some type of bias, imbuing something
5 into the psychologist's head -- it made me felt, like,
6 you know, his defense, I guess his defense was -- and
7 that was another thing His defense, in reference from
8 the beginning, that he told me that his exact words was,
9 in one document, and Mr Gerald told me, attorney Gerald
10 told me, that the only thing that he could do for me was
11 establish a defense, guilty, but mentally insane, and
12 that was really an insult to me

13 ~~And he said those exact words to me, the only~~
14 defense that he could do for me, or help me out with, was
15 being guilty, but mentally insane And I did, later on
16 after being in prison, review some documents and seeing
17 where he had wrote that, the words, in reference to his
18 files as far as a defense establishing that I was guilty,
19 but mentally insane, and that bothered me a lot, being
20 that I know that I was not guilty

21 Q Let me ask you this, then With regard to
22 counsel, we talked about the first set and the second
23 set I want to know your state of mind at that time,
24 after you go through the first set of counsel, and there
25 is a relationship, and you're forced to get rid of these

1 people and you're put in front of the judge You don't
2 know what's going on You get the second set of counsel,
3 and there were comments made about what could have
4 happened to you 25 years ago and refers to you as
5 retarded, what was your thinking at that time with
6 regards to lawyers, the legal system, and, essentially
7 getting some help?

8 A At that time, I seen it as a conspiracy to
9 railroad me into the system I didn't see no alternative
10 that -- you know, the system was going to murder me, and,
11 you know, if they're going to murder me, I figured if
12 nothing else, for the hopes of anything, that I would

13 ~~have to try to get something on the record because the~~
14 Court is not going to allow me proper lawyers

15 And another thing, if I may refer back to being,
16 like -- I'm reading this document where the Court then is
17 saying one lawyer should be private and one lawyer should
18 be -- could be from the public defender's office, and
19 then I knew Mr Gerald Kelly was the head lawyer of the
20 public defender's office in Barnville, South Carolina,
21 and I knew Sean Thornton was with the public defender's
22 office in Yemassee, in transition to going into private
23 practice

24 And so, you know, I'm highly, you know,
25 suspicious They're not, you know, like, the state is

1 just making it, you know, just laying the groundwork for
2 a pre railroad or whatever, you know, because it's
3 contrary to what I'm supposed to have to represent me and
4 to that effect, and in reference to the question you just
5 asked me about, you know, how I feel about the whole
6 situation with them and their actions and the lawyers
7 before, I don't know -- what -- I couldn't do nothing

8 What is it I'm going to do? I don't have no
9 lawyers The lawyers are totally against me They're
10 not doing the work for me I could see it's very
11 apparent that the Court don't want to appoint attorneys
12 for me I can't get rid of Sean Thornton or Mr Gerald

13 Kelly, and the Court has made it in such a stern sense
14 that, you know, you ain't getting no lawyers They're
15 going to be your standby counsel

16 So I'm, like, what are you appointing standby
17 counsel for? And they are supposed to help me, assist
18 me I can't turn and ask them no questions about what is
19 going on? What's going on? They're useless for them
20 being standby count I didn't trust them, after all the
21 things they done said to me, you know, so what am I going
22 to do?

23 You know, I just thought I had no lawyers What
24 is the purpose of having standby counsel when I can't get
25 rid of them and they're not from me, you know, if they

1 want to appoint some standby counsel, I just felt they
2 should have gave me a new set of lawyers and put them as
3 standby counsel, if anything

4 I think Mr Frierson, Dr Frierson, in a hearing,
5 he testified to that They was asking me at this --
6 before the psychologist, four or five of them, would I be
7 content with another lawyer or something? I said yeah
8 They said what about, I assume -- I may not be correct in
9 his name, but I think it was a well known lawyer like
10 Barry Scheck or something like that, and I said yeah,
11 I'll take a lawyer, any lawyer

12 You know, I don't think it's rocket science or
13 lawyer or doctor or anything, but I know that, you know,
14 that the burden of me going and representing myself on a
15 death penalty case was, you know -- and I'm back in the
16 jailhouse, and I got two inmates back there, which I let
17 the Court know at that time that the whole -- and gave
18 them the names and wrote the jail and everything, that
19 these two inmates was known for staying up all day and
20 night, howling and screaming, flushing water in the
21 toilet

22 And when I let the Court know that after many
23 nights of that, they finally took me out of the cell
24 block and put me on a hospital floor in a cell from the
25 noise and so forth, because I'm having to get up every

1 day I'm in the court, considered that the trial is --
2 I'm in the court at least 30 days, and seven days a week,
3 being woke up at 4 00 in the morning and not coming out
4 of the courtroom till sometime, 9 00 or 10 00 at night,
5 every day, you know, seven days a week

6 And I'm my own lawyer I got to go ahead and
7 examine all these witnesses and cross-examine all these
8 witnesses and do this all on my own and trying to do
9 things and, you know, it's just, you know, I had no
10 choice What else am I to do? Only thing I'm can do is
11 if they were going to murder me under the code of law,
12 I'll just -- in my mind, the only thing I could think
13 about was I'm going to try to put something on the record
14 to where at least my children or my grandchildren or my
15 family will maybe someday, if I'm dead, that they can
16 look back and see something in the record to show what
17 really actually happened at my home, at my residence, and
18 what happened at trial

19 That's the only thing I could think of I
20 couldn't think of winning or walking out of there The
21 only thing I'm thinking is I got to get something on the
22 record before it be lost, before the cover-up take place,
23 where they don't ask the proper questions or put the
24 proper things or facts on the record, you know, so for
25 whatever reason --

1 Q So let me ask you, Mr Alkebulanyahh, it was not
2 autonomous, or individual decision that you certainly
3 wanted to represent yourself

4 A No, no

5 Q So essentially what happened was that you go two
6 rounds with --

7 MR WATERS Your Honor, I object to the
8 leading

9 THE COURT Well, I don't think that suggests
10 an answer Go ahead

11 THE WITNESS Well, in reference to my
12 representation of myself, no I did not want to

13 represent myself I -- what do I know? What do I know?
14 I'm not even a high school graduate So, you know, I
15 could seen -- I could -- on a death penalty case, accused
16 of killing two police officers in the south, and you
17 know, where do I go? Where do I start?

18 But if they're going to kill me, they're
19 going to murder me, I don't have no defense I'm looking
20 at that Of course my brain is going, you know,
21 everywhere I'm looking at them I'm not looking at any
22 justice I can't tell -- no one wants to hear the truth
23 Nobody wants to talk to me

24 BY MR WALTERS

25 Q So it's essentially your position that the first

1 set of counsel, the issues that came up with their
2 socialization, with the other side of the fence was a
3 problem, that is correct?

4 A Yes, that is correct

5 Q And whether your belief was that there was
6 something purposely going on, that was your belief,
7 whether it was real or unreal --

8 MR WATERS Your Honor -- I apologize for
9 interrupting

10 THE COURT Go ahead

11 BY MR WALTERS

12 Q The second set of counsel, Court appoints new
13 counsel, is that correct?

14 A Right

15 Q And it just so happens that there are comments
16 made that are unsettling with regard to your status and
17 your race in this particular instance, is that right?

18 A Yes

19 Q Now, you go back a third time What are you
20 looking for the third time? What did you want from the
21 Court?

22 A I wanted at least one African American attorney at
23 that time, someone who may be able to talk to me how I
24 felt comfortable or understand my perspective, you know

25 Q But we discussed that issue You know you didn't

1 have a right to pick someone based on race

2 A Exactly

3 Q If you couldn't pick someone based on race, what
4 other factors were you looking for?

5 A What I was looking for was lawyers that, you know,
6 wasn't affiliated with, you know, within that circle
7 You know, I mean, I couldn't look for anything more,
8 because I already knew, as the first lawyers, it took me
9 to discovery before they conceded that they was too
10 closely tied with the case and the public

11 The people of the system didn't want -- too much
12 pressure was on them from all the people around the town
13 ~~and the people that they know and everybody, you know,~~
14 why you representing this killer and so forth and all
15 this

16 And the second set of lawyers, they just right
17 down the road, and I felt like, you know, it was just a
18 conspiracy They just picked someone right down the road
19 to bring in and just fill in to deceive me, to make
20 them -- to project that, you know, they really was in my
21 defense, but in actuality, you know, it was a
22 conspiracy -- they was in cahoots

23 Q So it was your position that lawyers could have
24 been appointed unaffiliated with that, that were
25 indigenous to that population somewhere in the state of

1 South Carolina, they could have tried your case?

2 A Indeed

3 Q Did you voice that concern to the Court?

4 A Yes, I did I asked the Court, and for
5 appointment of attorneys, and I told them that -- and
6 Mr Frierson, before they allowed me to proceed, pro se
7 had also told the Court at the hearings that
8 Mr Alkebulanyahh is, was, willing, he has no problem
9 with attorneys being appointed, other attorneys besides
10 the attorneys that was affiliated or associated, and he
11 said I didn't project anything, like I just wanted to
12 represent myself

13 Because he said -- he asked me a question, and I
14 told him, no, I do not wish to do that I did not wish
15 to represent myself

16 Q How did the masonry issue come up?

17 THE COURT What was that?

18 MR WALTERS How did the masonry issue come
19 about?

20 THE WITNESS The masonry issue came up in
21 reference to either one of two situations, or both of
22 them together, both situations together, with Dr Donna
23 Schwartz speaking to me reference to something of that,
24 and I think the second -- and it may have been initiated
25 at a hearing when they was alleging that I was saying

1 there was a conspiracy or people affiliated with one
2 another and so forth

3 And I told the judge, I think I said, Well,
4 you know, I felt that, you know, something in reference
5 to the jury being prejudiced -- or the black or African
6 Americans from the jury pool was being scrubbed off
7 before the pooling was concerned

8 And I was going on the record showing how out
9 of the 400 and something jurors that was pooled for the
10 jurors it was only, like, 50 or 60 of them, and then by
11 the time we got for the pooling of them, that number was
12 already sliced in half before we got to the voir dire,

13 ~~voir dire, if that is the correct pronunciation of the~~
14 word, the examination of the jurors

15 And I had said that -- and he said, well, you
16 can get a fair jury And I said, well, do you think I
17 can get a fair jury if you had 12 Ku Klux Klansmen on the
18 jury pool? And he said well, you know, it could be

19 I said -- well, 12 Masons or Shriners and I
20 think that is where -- that and something Donna
21 Schwartz-Watts said and it all came into play, but in
22 essence, you know, I feel like, you know, no discredit or
23 no harbor no ill will or ill feelings against the
24 Shriners or the many different branches of these
25 organizations to the extent that I know that they are

1 projected law-abiding citizens that has lots of law
2 enforcement in their organizations and lots of court
3 people and politicians and so forth in their
4 organizations

5 And I'm not one to know to say how they
6 judge, but I'm saying with two deputies being killed and
7 a lot of hatred and bitterness that is spread throughout
8 Beaufort County and that area, and Beaufort County, every
9 half a mile or a mile you see a Masonic lodge and, you
10 know, when I say us, I'll just say the common person, you
11 know, we know that they are mostly affiliated with law
12 enforcement officers and so forth, their work there And

13 ~~I feel like they have loyalties or ties to seeing if they~~
14 believe I was the murderer or seeing justice served in
15 reference to law enforcement because I figure that's what
16 they stand for, you know

17 Q So based on your experience with the first set of
18 lawyers and what was said to the second set of lawyers,
19 had you reached a point where you had gone off into the
20 theater of the absurd because you believed a conspiracy
21 was going on?

22 A Yes, yes I mean, there was no way in my mind,
23 there was no way in my mind that there was no conspiracy
24 There was no way in my mind Just everything happened --
25 you know, the lawyers is not investigating the case

1 They are not even getting a statement from one of the
2 main key witness about the events when the officer
3 arrived at my residence, you know?

4 No one took -- the state took no statement from
5 the witness, other than the omission statement, and my
6 lawyers is doing no investigating or getting a statement
7 from the witness in reference to the officers when they
8 first arrived at the residence and, you know, they're not
9 doing anything, you know? And, you know, they -- out of
10 their own mouth They're not -- there wasn't, you know,
11 what can I do? You know, what can I do? What can I say?

12 I didn't trust them I didn't trust his
13 ~~assistant, to an extent I can't even get them to call~~
14 my by my legal name, so, you know, and then I have -- I'm
15 accused of murdering two deputies and, you know, I'm
16 being shot up I'm in pain, still in pain and
17 everything, and I'm sitting in jail with all this noise,
18 and the noise, psychological maniacs around, I mean,
19 really, people that was really disturbed to the maximum,
20 disturbed inmates, and here I am, I can't get lawyers to
21 represent me

22 I can't -- what can I do? Gerald Kelly already
23 showed me that he's not going to represent me Gene
24 Hood, in the opening -- the first set of attorneys told
25 me they are not going to represent me, and the Court is

1 not making any effort to appoint any attorneys that are
2 showing me in a type of professionalism I mean, it's
3 insulting for me If I got a lead attorney from
4 Barnville and he's the head of the public defender office
5 in Barnville, Barnville, and he's telling his assistant
6 not to come and see me without him, you know, the other
7 attorney, the young attorney, he's doing things like
8 that Well, I can't come because Mr Kelly says not to
9 come see you without him And when he do come, he stop
10 refraining from talking to me period, openly

11 Now he comes, he sits down Gerald Kelly do all
12 the talking, and he just sits there He don't say

13 ~~nothing He don't add no inputs or anything And then I~~
14 got him telling me 25 years ago, 25 years ago, I wouldn't
15 have made it in a courtroom You know, and then I got
16 him saying I'm guilty but mentally insane I cannot
17 comprehend this type of action, when I know I'm innocent
18 I can't comprehend that It's ridiculous

19 Q Let's talk a minute about your personal history
20 Dr Donna Schwartz-Watts defined your condition as being
21 bipolar along with narcissistic behavior Are you aware
22 of that?

23 A Yes I'm aware of that

24 Q Are you aware of what bipolarism is?

25 A No, I don't know what neither one of them is,

1 really

2 Q Did she ever discuss with you manic behavior that
3 went from one extreme to another?

4 A No I mean, when I first met Donna
5 Schwartz-Watts, I didn't want to see her I did not want
6 to see Donna Schwartz-Watts They come get me out of the
7 Beaufort County jailhouse, and I had asked the Court to
8 dismiss, file a motion to dismiss attorney, for Gerald
9 Kelly

10 They took me to a hearing still, and they had half
11 a hearing before I got there It was the same hearing,
12 but when I walked in there, they just walked me in there

13 ~~to say, You have been determined that you're going to get~~
14 a psychological evaluation and this and this and this
15 So they already had me in here, so I stood up, and I was
16 like, You need to hear my motion about dismissal of
17 attorney Gerald Kelly

18 Q So you openly disagreed with the psychological
19 evaluation because you believed there was nothing wrong
20 with you?

21 A Well, I disagreed with the psychological
22 evaluation at that time because the lawyers did not have
23 my interest, and the Court didn't hear my motion to
24 dismiss these lawyers

25 I can't comprehend a psychological evaluation I

1 can't comprehend what's going on and why is the
2 psychological evaluation or anything

3 Q Was it your position that I can't agree with
4 anything these attorneys suggest that I should do because
5 I believe you're involved in the conspiracy, and I can't
6 go any further with you?

7 A Exactly That is correct And so I had stated
8 that to the Court in open court, at the hearing, and told
9 them that they were sabotaging the case They was doing
10 things that was very detrimental to me, and I've felt
11 this and seen this in their action

12 So I did make that clear on the record, and I
13 ~~couldn't see why they was still on the case, you know, to~~
14 send me there So when they sent Donna Schwartz, I don't
15 know -- told them, one day I was in the jail and they
16 come got me and they use force

17 About ten officers came in with shields and
18 electrical shields and stuff, and the batons and all that
19 stuff right here, and they dragged me out of the cell and
20 put me in a wheelchair and chained me up and put me in
21 the back of a van and drove me to Columbia

22 And when I got there, they told me -- threw me in
23 a room with nothing but a padded floor and told me that
24 Donna Schwartz was coming to see me or wanted to see me,
25 and I said I didn't want to see Donna Schwartz I didn't

1 want to see nobody I wanted my legal material

2 Q Let me ask you this, then Are you aware of the
3 fact that Donna Schwartz-Watts had also interviewed your
4 mother, Mrs Roberts?

5 A I wasn't really aware of that I don't -- I don't
6 think I was aware of that

7 Q You were present when she testified, is that
8 correct?

9 A Yes

10 Q All right

11 A And I found out that stuff then

12 Q All right But, again, we're exploring your

13 ~~personal history with regards to this issue of~~
14 competence, and in gathering her information, you've seen
15 the transcript where she testified in Court that your
16 mother alluded to the fact that you were off?

17 A Yes, I did Yes, I seen that, and --

18 Q Are you also aware of the fact that Donna
19 Schwartz-Watts, in interviewing your mother, stated that
20 you determined when you were small, you would cook
21 animals?

22 A Yes, I did see that

23 Q And she also determined some information with
24 regards to your early developmental process that your
25 head was larger than the other children it was -- picked

1 at about that, but you ultimately grew into your body
2 matching the size of your head

3 A That is correct

4 Q And you understand that Ms Schwartz-Watts, in
5 conducting her interviews, also determined that there
6 were erratic flights of thought --

7 A Excuse me?

8 Q -- and emotion that your mother had indicated you
9 went through at a child?

10 A Yes

11 Q Knowing that information -- first of all, do you
12 agree with Ms Schwartz-Watt's information that she

13 ~~gathered with regard to your cognitive ability about that~~
14 information about you growing up?

15 A I don't know You know, I read I read, and I
16 consider myself -- any advanced education is
17 self-education, that which I taught myself to an extent,
18 but things with the psychiatrists and lawyers and so
19 forth like that, you know, I don't think I can, you know,
20 say what or, you know, to what extent I don't know

21 Q Did she ever discuss with you -- I won't use the
22 word bipolarism, but did she ever use the word mood
23 disorder?

24 A Yes, yes, she did

25 Q What was your understanding of that?

1 A You know, to me, I was very, you know -- I don't
2 know what was going on I just couldn't comprehend
3 what -- my mind was on that I'm being falsely accused,
4 and everything else If something was wrong with my
5 head, I just knew I was falsely accused and I knew all
6 these things that they was characterizing or saying about
7 me or whatever It didn't -- you know, I couldn't see
8 the truth or false, or I never took the time to consider,
9 to consider, you know I was only considering -- just
10 thinking about the gravity of the charges that was
11 against me and that the state was trying to kill me

12 Q At any time did the Court order some form of
13 serial competency evaluations?

14 A Could you say that again?

15 Q Was there a series of evaluations up until the
16 date that you went to trial?

17 A Yes

18 Q All right And who saw you?

19 A I think a Dr Keyer tried to see me, or saw me,
20 Musick, Frierson, about two more other people I can't
21 recall their names presently

22 Q All right And understanding the history that you
23 had gone through, your relationship, you saw her a second
24 time and she attempted to videotape you, is that right?

25 A Yes

1 Q And I believe that she videotaped you, and you
2 disagreed with that and you wanted the tape back

3 A True That is correct

4 Q What caused the change where you withdrew your
5 consent?

6 A I didn't feel that -- I felt that Mrs Schwartz
7 was in conspiracy with the state, you know? I felt that
8 for some reason, you know, that she was in conspiracy
9 with the lawyers that were appointed to me, Gerald Kelly
10 at the time, to cause -- to make me feel -- you know, I
11 just didn't, you know, it just -- I just did not feel
12 right I just didn't want the tape I didn't want to

13 see her

14 I was very skeptical of everything and anything
15 she done I made it clear to the Court in the hearing
16 when she testified, and, you know, I was just in distrust
17 of everybody, I mean, everybody

18 Q So this woman that was appointed to assist you,
19 just like the public defender, your thoughts of a
20 conspiratorial issue going on, and now it's Ms
21 Schwartz-Watts, where you simply said I don't think
22 you're working in my best interest?

23 A True

24 Q How did you end up threatening her?

25 A I don't recall exactly I just recall her saying

1 something to that extent, that I did something like that
2 I just recall her saying that, you know, saying I
3 threatened her or saying something to that extent

4 THE COURT I'm sorry I don't understand
5 Saying what?

6 THE WITNESS That I threatened her I just
7 recall her making the statement that I threatened her

8 THE COURT You deny that you did?

9 THE WITNESS No, I can't deny, 'cause I
10 don't know what -- I don't know what my state of mind is
11 throughout that period to the extent that so many things
12 and so much was coming at me, and I had -- I really don't
~~13 know, you know, to what extent or what I was saying or if~~
14 I was saying anything or what, to the extent that -- I
15 was just -- I was losing my mind

16 I know I was losing my mind to the extent
17 that ain't nobody talked to me about my innocence or what
18 happened You know, ain't nobody talk about the case
19 Everybody talked about my psychological, this and that,
20 and I'm concerned about why you y'all got me in this
21 jail? Why do y'all have these charges on me? Why ain't
22 nobody talking to me about these charges, you know?

23 Show me evidence of why do y'all have any --
24 why ain't nobody come talk to me about what happened in
25 my residence? You know, and I feel like an animal I'm

1 feeling like an animal Nobody ain't going to take time
2 out, just come and say, what happened to your resume?
3 Instead of just giving me two counts of murder, don't ask
4 me nothing We're going to charge you with murder
5 You're going to be the murderer, you're going to take
6 these cases, you can't accuse of nobody else
7 I am like being the judge to say, hey, you
8 can't point the finger at nobody else because the
9 prosecutors are going to charge you with this case, and
10 this is what Judge Pieper told me I said, What do you
11 mean? I can't tell you who was the murderer or what was
12 involved in this case, because they charged me

13 THE COURT I interrupted just to clarify a
14 point I want to let Mr Walters get back on track
15 because he's has a loan of questioning he wants to
16 follow I apologize

17 BY MR WALTERS

18 Q May it please the Court, now, she referred to you
19 as being psychotic Do you know what that means?

20 A No, not in a sense I mean, only thing I know is
21 psychotic is, in my -- what I may think, I'm not saying
22 that this is the definition, this is just what any case
23 could mean, a person that doesn't have a stable mind, you
24 know, that -- just a person that is without a stable
25 mind, because, you know, I perceive a person -- if I was

1 psychotic, I feel like you calling me psychotic, if
2 someone called me psychotic it's because of the case
3 That's how I felt, you know?

4 I felt that if anything got something to do with
5 psychotic, it's because I'm charged with two counts of
6 murder, and I'm innocent, and this is -- in my -- if
7 that's psychotic and my skepticism -- and I'm trying to
8 figure out how did I get here? How did I end up with two
9 counts of murder? How did I end up with the death
10 penalty against me? I haven't shot anybody, you know
11 what I'm saying?

12 And so to me, you know, I can understand that I
13 ~~could be psychotic~~ ~~Something could be wrong with my~~
14 mind Something should be wrong with me if somebody
15 trying to kill me, if I got this judicial system or this
16 state attorney or state solicitor, the solicitor or
17 prosecutor trying to kill me, you know, seeking to take
18 my life to kill me, you know, I should be psychotic
19 Something should be wrong with me if I can comprehend
20 what's going on with me Somebody is definitely wrong
21 with me I know I'm not the same person that I was
22 before they arrested me I know this

23 Q How did you change?

24 A As you see now Everybody that knew me before
25 this, didn't know me, a person to be outspoken to

1 strangers and people I don't know or people around me or
2 discuss, you know, saying exactly what I feel is on my
3 heart, what's on my mind

4 You know, I'm going to say what is on my heart and
5 what is on my mind, you know, to where I feel I'm more
6 than me, and when I say more of me it's that -- I guess
7 another thing is too that, you know, just like I say,
8 knowing they're trying to kill me, you know, unjustly,
9 it -- you know, you know, I could be me I could speak
10 the truth to whatever I need to say, you know, how I feel
11 about it, because I'm not going to be -- what I say
12 wasn't respected

13 ~~No one was concerned about what I have to say or~~
14 what I know in the system, and the only thing I could
15 think about is, you know, to the extent, I just know -- I
16 know I'm not, I know I wasn't the same person

17 I can't be the same person. I cannot be the same
18 person that -- I don't think anybody would be the same
19 person, if you charged me with two counts of murder and
20 you at home, you at your house, in your residence, and
21 you charged me with two counts of murder and you know
22 you're innocent And the state says they're going to
23 kill you, seek the death penalty, no one talks to you
24 when you don't have lawyers I'm not able to afford
25 lawyers to any extent, so there is just no way possible

1 Q So it's your understanding that you were snatched
2 out of your home and charged with a crime but you have no
3 idea as to why?

4 A Exactly

5 Q Okay

6 A You know

7 Q Now, I believe you also were evaluated by a second
8 psychologist, this Dr McKee, is that correct?

9 A McKee? Yes

10 Q I believe that you refused to meet with Dr McKee,
11 is that right?

12 A That is correct

13 Q All right ~~Why did you refuse to meet with him?~~

14 A Right now I just -- I don't know I just felt
15 like I didn't understand I just didn't know what was
16 going on

17 I don't know -- I didn't understand the purpose
18 I didn't understand the purpose of it I didn't see what
19 there is to talk about, you know, and --

20 Q Without -- your position is that you were arrested
21 and taken from your home and you don't know why Did you
22 have the ability to assist your counsel in your defense?

23 A Yes, yes, I did

24 Q In what way?

25 A I could have, you know, just -- I mean, I only

1 seek communication, you know what I mean? I mean, my
2 attorneys, the attorneys that was appointed at that time
3 to me by state, they didn't communicate with me, and then
4 they go speak contrary that I'm not communicating with
5 them, but, you know, I assumed that, you know, attorneys
6 should talk to their clients and look into their
7 interests

8 And they didn't, you know, talk to me They
9 didn't look into my interest, and I think that I could
10 contribute, at least talk to me and, you know, about what
11 was going on, you know I just assumed that, you know,
12 the attorney that they had that appointed me, they just

13 ~~felt like I was a complete idiot or something I don't~~
14 know, in spite that the attorneys -- the record and the
15 attorneys' actions speaks in itself as far as their
16 unwillingness to represent me, or to defend me They had
17 no integrity about representing me fairly and without
18 biases

19 Q When did you reach the point where you said, I
20 must go and do for myself?

21 A I reached that point -- I reached that point when
22 there was a radio station on, a talk radio station in
23 Beaufort County, and this guy -- I was listening on the
24 radio, and I was listening to this guy, and he said that
25 the officer's wife, Mrs Coursen, and a couple other

1 people -- this was business people, of Beaufort County,
2 several other people, and they spoke to me, but I heard
3 on the radio that the deputy's wife, Ms Coursen, was
4 standing in front of the courthouse, accosting people
5 about them supporting a murderer, you know, are you
6 supporting this murderer?

7 And when I heard that on the radio and then I had
8 got a visit from one woman, in her 50s, and she said that
9 Ms Coursen had approached her too and about her
10 supporting a murderer in front of the courthouse, and
11 with that incident --

12 Q Let me ask you this about this incident You
13 ~~stated that there was a deputy's wife that was in front~~
14 of the courthouse What particular event was going on
15 that showed support to a murder?

16 A There was a hearing go on People was coming to
17 hearings There was court proceedings, and when the
18 people come into the courthouse, you know, they be
19 standing out and then some people come in they sit and
20 they break and some people go out It was in the
21 proceedings

22 Q Was it a hearing with regards to you?

23 A Yes, in regards to me and the case, in which I was
24 appearing in court

25 Q And you have some type of cheering section or some

1 one that was in support of you present?

2 A It was quite a few people initially, and --

3 Q Who came in support of you to support you at your
4 hearing?

5 A Some friends

6 Q Uh-huh

7 A My sister, my brother-in-law --

8 Q But these individuals didn't go around saying, I
9 openly support this murderer?

10 A No

11 Q Or --

12 A What was happening, they was black, so, you know,

13 and then when they came in the courtroom, you know, they --

14 would sit on the side that I was sitting in the

15 courtroom, and someone may have been dressed

16 distinctively

17 I think people can relatively look at people and

18 tell the common people from people that are more --

19 professionalism or so forth to that extent, a big class

20 difference

21 Q I don't want to interrupt you, but we're here
22 today, and the victim's family may be here?

23 A Yes

24 Q And of course you could have invited members of
25 your family, but what in your mind led you to believe

1 that this lady was somehow accosting -- I'm going to use
2 your words, accosting people saying, You're supporting a
3 murderer in front of the courthouse? What did they use
4 to draw that conclusion or to even reach that point to
5 say this is going on?

6 A Well, when I heard on the radio, they was talking
7 about it on the radio, on a talk show, and then visitors
8 came and told me that And I just believe, you know, and
9 I'm looking at the newspapers and I'm seeing, you know,
10 the deputy wife, you know, with different, I would say --
11 fraternal organizations, like law enforcement or
12 something to that extent, the organizations that support
13 one another, you know, writing them out checks and stuff
14 like this

15 Q What checks?

16 A Giving them checks for, like -- money for, like,
17 support, you know, for their loss or something, you know,
18 something like that, to the extent showing their support
19 of them, you know, to that extent

20 So you know, and, you know, and a little child had
21 told me that she had came to the school and was talking
22 to them about the -- she had lost a husband and stuff
23 like that, you know, the person that killed her husband,
24 murdered her husband

25 Q So a child came to you and said this?

1 A I spoke to a child over the telephone, and the
2 child spoke to me about that and was asking me about
3 certain questions about that in nature

4 And I was speaking with an 11-year-old, 10,
5 11-year-old, and if I'm correct, I think it was the
6 school I think she went to a school called Shanklin --
7 I think, Wellbranch elementary at the time

8 But I just seen that, you know, from looking at
9 these things, I just assumed that I'm pretty sure, you
10 know, I can understand if she felt like that, you know,
11 why she felt like that, and if she was doing that I
12 didn't think it was right, but I just felt that, it would
13 be, I guess, a natural thing to do

14 You know, if she believed that her husband was
15 murdered by me, you know, and would feel, you know, some
16 resentment, you know, toward anybody that was trying to
17 come to my defense, you know, or show any support for me,
18 being that they wanted to find me guilty You know --

19 THE COURT Mr Walters, in a couple minutes
20 I want to take a break, and I wanted you -- so when you
21 get to a break point, I don't know how much longer you're
22 going to have with him, and we could break for lunch now
23 or we can just take a nature break, but I'll let you
24 get --

25 MR WALTERS I'm at that point, Your Honor

1 THE COURT I anticipate it sounds like you
2 might want him on the stand for a little while longer?

3 MR WALTERS Your Honor, we can break right
4 now

5 THE COURT Why don't we go ahead and break
6 for lunch then, since it's noon, and we'll come back,
7 let's say -- let's resume at 1 30

8 MR WALTERS Yes, Your Honor

9 THE COURT Okay

10 (Recess taken)

11 A F T E R N O O N S E S S I O N

12 THE COURT All right Let the record

13 ~~reflect that Mr Alkebulanyahh is back in the courtroom,~~
14 and we are going to resume where we left off with the
15 direct examination, so you can come back up to the stand
16 I'll remind you that you're still under oath

17 THE WITNESS Thank you

18 THE COURT Mr Walters, whenever you're
19 ready

20 BY MR WALTERS

21 Q May it please the Court, Mr. Alkebulanyahh, when
22 did you reach a point where you simply made the decision
23 that I have to go and do for myself?

24 A I reached that point after several things had
25 taken place, and one of them, as I previously stated,

1 about the way the people that -- family and people that
2 our friends was approached by one of the deputy's wives

3 Another reason was, you know, as I said,
4 Mr Gerald Kelly, the appointed state attorney for the --
5 he had stated to me on one occasion too that when I asked
6 him about the defense in reference to him presenting to
7 the jury that the -- that if the officers would have been
8 performing their duties according to policeman procedures
9 that they would not have -- have not been killed, and
10 he -- Mr Gerald Kelly had stated to me that --

11 Q I'm sorry Speak up What did you say?

12 A It was at one occasion too in reference to a
13 collaboration of a lot of things that made me come to the
14 decision, but another decision was I had another
15 encounter with Mr Gerald Kelly

16 The state appointed an attorney for me at that
17 time I had spoke to him about presenting my case, my
18 defense about -- that if it was not for the officers
19 conducting themselves in an unlawful manner in the way
20 that they invaded my home or would have carried out the
21 proper procedures that a policeman would have carried out
22 when responding to -- at that time it was a presumed -- I
23 was presumed domestic -- a domestic violence case, or
24 domestic dispute

25 And I told them I wanted, you know, to put --

1 present it as one form of defense, and Mr Gerald Kelly
2 stated to me that did I really -- I'm paraphrasing, that
3 did I really expect him to present, before the jurors,
4 that the two deputies was the cause of their own death?

5 And I told him, yes, you know, and he said he
6 couldn't that He wasn't going to do that because he
7 didn't think so, and, you know, that was just one other
8 incident in reference -- because at that time I felt
9 like, you know, that if they was carrying out procedures,
10 if they would have knocked on their door and they would
11 asked questions and they said they was therefore a victim
12 and if they would have talked to the alleged victim,

13 ~~which turned out not to be a victim, that they would have~~
14 understood that I had committed no crime or no offense or
15 no one had, you know, at my residence

16 And the alleged victim was not a victim, would
17 have told them that no such thing had occurred and that,
18 you know, there would have been no problem, so I was
19 trying to explain that to Gerald Kelly at that time

20 Another incident that also contributed to me
21 representing myself, you know, being -- I would say
22 compelled, because I was compelled because I didn't want
23 that burden, and, you know, I didn't feel, you know, that
24 I was capable of doing it But I felt compelled because
25 of the circumstances of the Court and the lawyers, but

1 one other compelling circumstance was on May the 14th or
2 15th, I believe that's the correct date, of 2003, about
3 three to four -- about four or five months before the
4 trial date, the trial was in October, so this took place
5 on May the 14th or 15th, I believe

6 I was watching television, and I saw the president
7 of the United States of America, Mr George W Bush,
8 honoring the two deputies and inducted them into the
9 national memorial in Washington, DC And I hadn't even
10 been to trial I hadn't been tried by a jury, and that
11 really -- that was really something to the extreme, that
12 to me, it didn't matter after that, you know, even who

13 the attorneys was, you know, being that, you know, they
14 was honoring people that had been conducting themselves
15 unlawfully

16 And that was one of the reasons, in collaboration
17 with another reason, and I talked to Mr. Kelly, and he
18 was, like, oh, you know, that don't make no difference
19 and so forth, like that, but if only he or any of the
20 attorneys that they appointed to me, it didn't -- they
21 all was together, the psychologists, in my opinion This
22 is my opinion They was all working together, when he
23 hired Donna Schwartz, you know, I just felt she was
24 someone for the state, in defense for the state

25 And when I talked to Mr Hood, you know, he felt

1 the pressure of, you know, the public and everything,
2 and, you know, it's something that I did not want to do
3 I did not want to represent myself I felt compelled I
4 felt hopeless Typically, because of the attorneys --
5 particularly because of the attorney situation,
6 especially Mr Gerald Kelly because they appointed me
7 standby counsel, and as standby counsel, and they're not
8 indicating any type of anything, you know They're not
9 stating me anything, except, We're not going to do
10 nothing for you We're not going to put up no defense
11 for you

12 And then the judge appointed a standby counsel,

13 and, you know, I felt like they couldn't afford me any
14 counsel If they would have -- if they would have
15 brought in new counsel, I would not have represented
16 myself I believe that, especially from that area

17 Q Let me ask you some questions about -- let's talk
18 about the performance of counsel

19 First, there was the evaluation by Donna Schwartz
20 and Dr McKee, and I believe those were experts that were
21 hired for you, is that correct?

22 A Yes

23 Q In the process of hiring, I believe, two
24 psychologists, was there any discussion about hiring a
25 psychiatrist?

1 A I don't recall the professionalism of the title of
2 the doctors, but I know that, you know, that I was so --
3 maybe, because he was speaking of me being -- as a
4 defense of being mentally ill, guilty but mentally ill

5 Q Now, it's been your testimony today that defense
6 counsel -- there was belief that you were somehow
7 retarded, is that correct?

8 A That is correct

9 Q And how often did you hear that?

10 A Basically, you know -- basically throughout,
11 throughout the time that they was representing me

12 Q Is there anything that you believe counsel could
13 have done -- we're talking about their standard of
14 performance Do you understand what I'm saying?

15 A Yes, sir

16 Q I believe we talked about Strickland v
17 Washington, the performance of counsel Do you remember
18 that?

19 A Yes, sir

20 Q All right And we had a discussion about if that
21 performance was below the reasonableness that you
22 expected and being the grounds for your PCR, what did you
23 expect to be reasonable from your defense counsel? What
24 do you consider reasonable?

25 A What I expected to be reasonable would have

1 been -- one thing I would have expected to be reasonable
2 would have been -- would have been that they would have
3 been willing to investigate and put up a defense -- would
4 not just initiate defense of guilt, automatically

5 Q Do you consider these things to be simply
6 objective, that any lawyer would do these things?

7 A No, I wouldn't say any lawyer would have done
8 that I cannot concede that only a lawyer that would be
9 in -- as I'm saying, would be in cahoots with the state
10 would be doing that, would be more conformative to the
11 way they wanted me to -- I mean, to appear, or appear to
12 be, and it was a public way of doing something, even, you
13 know -- I know that, you know, they're not even in
14 control of the media and so forth, but even they post a
15 distorted picture of a look of me in motion

16 Q Based upon your personal knowledge of your
17 relationship with defense counsel, objectively, tell me
18 how you believe they failed to act reasonably with
19 regards to your case?

20 A How they acted what? I'm sorry

21 Q How they failed to act reasonable with regard to
22 your case

23 A I feel they failed to present a defense, or to
24 investigate and to investigate I feel that they did not
25 investigate the witnesses or the people that was present

1 on the day of incident They didn't get any statements
2 out of them, their selves They didn't go and ask them
3 about the conduct of the officer or what the witnesses
4 felt like, you know, everything that they had

5 Basically, it came initially from the state and
6 then later investigators went to -- that was hired from
7 my defense, went to initiate and discover these things,
8 which I would say take -- six months to over a year had
9 passed, I'm pretty sure, maybe about eight months to a
10 year had passed before they started

11 And I think that's critical in the beginning of
12 any criminal case, because people's memory and this type
13 of case, the influence of the public and different people
14 wanting a conviction and know what's going on, and they
15 didn't do any of them things that would have -- I think
16 that would have perhaps compelled a prosecutor or the
17 solicitor to see and understand that, my innocence and
18 got me on bail, got me on bail

19 I should have had a reasonable bail to be able to
20 bail it out, and they didn't do any -- I believe any
21 lawyer -- and I think that a lawyer should, you know, any
22 lawyer would investigate immediately, because of their
23 resources, witnesses, those witnesses are critical, they
24 are critical from the state, and got some type of
25 affidavits, sworn affidavits, notarized affidavits of the

1 events that took place immediately, which they did not
2 do, and --

3 Q So, essentially, you're not challenging a strategy
4 that was taken, you're saying there was no strategy

5 A Right There was no strategy There wasn't any
6 strategy, and that was their appearance I'm not --
7 there was no strategy The only strategy, the first
8 glimpse of any strategy that I knew and perceived that
9 was tangible, a tangible strategy throughout the whole
10 course that I see from any sets of attorney, the first
11 set and the second set, was that when I read a piece of
12 paper from Mr Gerald Kelly's office, I believe it was,

13 ~~it was a document that was in discovery that said~~
14 ~~mentally ill, guilty, but mentally ill~~

15 Q What did that mean to you? When he said the words
16 guilty but mentally ill, what did that mean to you?

17 A To me, it meant that I killed the two deputies,
18 sheriff's deputies, and that I was insane, insane, you
19 know, needed to be put in a psychological ward, and there
20 was no question about my guilt, and there was no question
21 about me needing to be put in a psychological ward

22 Q What was your reaction after you saw this within
23 Mr Kelly's notes?

24 A It was painful It was very painful It was very
25 painful, and --

1 Q Why was it painful?

2 A Because I could not understand why would he
3 surrender my life over to the solicitor, to the state?
4 And then no explanation why he felt that, no right or
5 nothing -- why he felt I was insane or why he felt I was
6 mentally ill And it was, like, there was no other
7 defense There was no other way that I can keep the
8 state, or solicitor, from putting me to death except
9 this

10 And to think that there is no other way, no other
11 alternative, no other defense, nothing available for me,
12 and the justice system, with the jurors or trial before a
13 judge, to keep the state from putting me to death, taking
14 my life -- you know, and that was horrible to me It was
15 terrifying I mean, I really was terrified, really was
16 terrified, and reading that document and seeing that
17 there was no alternative, you know, that the lawyer --
18 there was no other alternative

19 There was no other way, there is nothing else left
20 for me, and from that point on, that is another reason
21 why I feel like I had to represent myself, because if
22 that's the case, then what is the sense of me going to
23 trial with these lawyers or any lawyers that have already
24 come up with this type of strategy, or whatever it is?
25 Has he already presumed I'm guilty? I don't think any

1 lawyer would presume their client is guilty unless their
2 client told them they were guilty or their client --

3 THE COURT Excuse me We're going to move
4 down 4D They are tearing the building apart and they
5 had to rebuild it, and it's too much of a distraction
6 for, I think, everybody So they're going to move us
7 down to 4D so we don't hear that noise, so we'll just
8 take a break while we get everything moved down the
9 hallway

10 (Recess taken)

11 THE COURT We moved to courtroom 4D because
12 of construction now, and let the record reflect Mr

13 ~~Alkebulanyahh is in the courtroom present, and,~~
14 Mr Waters -- sorry about the interruption, but we'll
15 resume whenever you're ready

16 BY MR WALTERS

17 Q Mr Alkebulanyahh, we were talking about the issue
18 with regard to Strictland versus Washington My question
19 to you was, what actions did you consider to be
20 reasonable on the part of counsel?

21 A Yes I felt that it was unreasonable I felt it
22 was unreasonable that -- in my opinion, that the counsel
23 made no investigation for the first six months of the
24 case, and, as I said, counsel made no investigation by
25 giving, like, a sworn deposition or some notarized

1 deposition from any of the key witnesses that could have
2 been used in my behalf

3 I felt it was unreasonable for them to presume my
4 guilt, despite that I've -- I have declared time and time
5 again my innocence and for them to pretty much leave it
6 to me to plea for the Court, for the Court to -- I mean,
7 literally, myself, pro se, pleading to the Court to
8 inquire for expert witnesses --

9 Q Let me ask you this You understand that the
10 Court allowed you to represent yourself Do you
11 understand that?

12 A Yes

13 ~~Q And you alluded to the fact that the Court said~~
14 you would have standby counsel What did that mean to
15 you?

16 A I can only explain that in the sense that what
17 I -- the way it was explained to me by the Court and the
18 attorney Gerald Kelly how I perceived it at that time, it
19 meant, you know, from their explanation and the way I
20 interpreted it, I had assumed that the standby counsel --
21 I would be able to, if necessary, to seek or inquire
22 about the proceedings, as they went, on their advice,
23 which, you know, which I was not -- and Mr Kelly is on
24 the record to say that, you know, that his job was to do
25 nothing, you know --

1 Q Who said that?

2 A Mr Kelly

3 Q Can you state, actually, what Mr Kelly said?

4 A No, I can't quote exactly what he said

5 Q Can you paraphrase?

6 A I'm paraphrasing I'm not quite sure it was in
7 the record at the hearing on October the 1st or October
8 the 3rd, 2003 that his -- you know, he was saying, you
9 know, he was there to do nothing, basically, that is
10 correct, he didn't want to do nothing, and he kept
11 inquire inquiring to the Court about what he should do
12 because the Court was trying to explain to him there was
13 ~~some things that he should do, and in his deposition, the~~
14 way he was indicating that was that he was there if I
15 needed to ask him a question And if that is, basically,
16 what he was there for, then, you know, I think I was
17 prejudiced by that, because --

18 Q Did the Court ever explain to you that there is no
19 such thing as hybrid representation? Do you know what I
20 mean when I say hybrid?

21 A Yes, yes

22 Q What does that mean to you?

23 A The Court had explained to me that I could be part
24 lawyer and then when I want to, at my own whims, have the
25 lawyer come to me and stand up for me and we be doing

1 this together back and forth, I want my lawyer now, I
2 don't want lawyer now, and --

3 Q And that was your understanding of hybrid
4 representation?

5 A Yes That was my understanding of hybrid
6 representation

7 Q Let's me try to extrapolate on what you're trying
8 to say here It was your understanding that you could
9 represent yourself but at any time that you felt that you
10 were unprepared or you didn't understand the issue,
11 counsel could then be brought in, and they then could
12 serve in the role of addressing that concern because you

13 believed that you were incapable of doing so?

14 A No, no That's incorrect

15 Q All right

16 A I believe that -- you know, the way they explained
17 to me, if I wasn't able to do this, the Court would say,
18 You're not going to be able to get an attorney to come
19 here and to do what you can't do, and you got to be
20 willing to go through this all the way throughout the
21 endurance of the trial, you know, and they can't
22 represent -- they cannot step in at no time, at any time,
23 and assist you, ask questions, or take over or anything
24 under any circumstances once they establish them as
25 standby, and I'm pretty sure, I'm pretty confident that

1 they were very explicit, the judge was very explicit
2 about that --

3 Q What was your understanding of the role that they
4 should play?

5 A That -- nothing, except for me to ask them
6 questions If I need to ask them a question about
7 something, you know, nothing else

8 Q Now, after going through this process of getting
9 rid of the first set of counsel, second set, you have
10 your dispute, you come all this way, but you're put in a
11 position where your testimony is they serve a role where
12 they do nothing?

13 A Right.

14 Q Was that the objective of what you wanted to
15 achieve when you were raising these motions before the
16 judge, to be put in that kind of a position?

17 A No, no, sir, no, sir That was my position that I
18 wanted to be put in -- I just found it rather ridiculous
19 that to the extent that if they appointed standby counsel
20 and then the Court has -- already understands that me and
21 the counsel is at great connect and my distrust for them,
22 that the state would -- well, I would say, as we say,
23 takes the taxpayer money to pay them just to sit there,
24 and if I want to ask them a question and they tell me and
25 then who is to say that the question I'm asking them

1 they're going to tell me correctly what I need to know or
2 whatever I'm inquiring about when I already have a
3 distrust for them to go file a motion to have these
4 attorneys appointed?

5 So I just found that very conflicting, you know,
6 because, I mean, that, to me, I just felt it was
7 something that I just could not see, you know The state
8 is willing to pay them If the state is willing to pay
9 them just to sit there and do nothing, and if I make
10 inquiry of them, ask them a question or so forth, then
11 whatever answers they going to give me, I already have a
12 distrust for them, then I just felt like the state could
13 ~~have given me attorneys, you know, sufficient attorneys,~~
14 you know, attorneys that, you know, was willing and more
15 professional

16 It wasn't the point that I didn't want any
17 attorney You know, if I didn't want any attorney, I
18 would not have proceeded with them, you know I was --
19 in my mind, I was content after the first attorneys
20 stepped down, and they stepped down because of the
21 accusations, which they conceded that I said to the
22 Court, was true They stepped down on the case their
23 selves, but the comments that the second attorney gives
24 me and the things that -- I mean, the comments that they
25 stated to me, excuse me, and what they was doing, you

1 know, they wasn't stepping down And he was letting me
2 know right in my face, you know, face to face, that, you
3 know, he didn't have my best of interest, you know

4 Q Let me ask you a question Dr Frierson, it's
5 reflected in the transcript, saw you December 4, 5, and 6
6 of 2002, is that correct?

7 A Yes, sir, I presume the dates to be correct

8 Q Then he saw you February 26 of 2003, is that
9 correct?

10 A I presume the dates to be correct

11 Q When did your trial start?

12 A I think -- I believe October 3rd, 2003

13 Q And that is almost a nine-month period, is that
14 correct, between February and October?

15 A Well, I'm sorry I know that somewhere in
16 October -- we started in October I know the hearing and
17 then the October 3rd hearing the trial started, I believe
18 it was, but yes, the trial went on for, I'll say,
19 relatively -- about 30 days or 40 days

20 Q But during that period where there is a break, at
21 any time did your defense counsel ever come forward and
22 state that, you know, there needs to be another
23 evaluation or a series of competency evaluations during
24 this period of time leading up to October?

25 A No, sir, they did not, at no time

1 Q Now, these are people that are referring to -- and
2 it's your testimony -- referring to you as a retard?

3 A Yes

4 Q They are asking people to take it easy on you
5 because you're not too right in the head?

6 A Yes

7 Q Their own doctors are saying, We can't reach a
8 conclusion as to competence?

9 A That's correct

10 Q And during the nine-month period that you're
11 waiting to go to trial, no one ever came forward and
12 said, We need a psychiatrist or someone else to look at
13 you and evaluate you?

14 A Not that I recall at any time, I don't think so
15 I don't remember

16 Q If they are referring to you as a retard, did
17 anybody ever jump and, say I need to get someone because
18 I believe Dr Frierson is wrong?

19 A I knew that -- I knew they referred to me as a
20 retard, mentally retarded, and it was just beyond my
21 comprehension, you know, what was going on To me --

22 Q I want you to answer my question Dr Frierson
23 says you're competent and you can stand trial, and the
24 last time he saw you was February of 2003 Your
25 representation to this Court is that defense counsel has

1 referred to you as a retard, was there ever any
2 discussion that, We adamantly disagree with Dr Frierson
3 Let's get a psychiatrist or someone else in here who can
4 give us a straight answer on your mental competency
5 because we know for a fact -- they're calling you a
6 retard

7 A Yes, sir

8 Q Was there ever a discussion about, We need to get
9 additional funding, or apply to the Court to get someone
10 else to look at you because Frierson has come back with
11 an opinion that says you're competent and you're okay,
12 but all along they've been calling you a retard?

13 A No, sir ~~At no time did anyone approach me and~~

14 Q Let me ask you this now Was it ever presented to
15 you -- you said you saw something that said not guilty
16 but mentally ill, right?

17 A Yeah

18 Q And lawyers use little abbreviations for things
19 like that You figured out what it was Do you know the
20 implications of if you had been found not guilty but
21 mentally ill, what would have happened to you as opposed
22 to being found guilty of the two murders and now you're
23 on death row? Did you understand the difference between
24 the two?

25 A I believe I did I believe, I think I did

1 Q Did anyone sit down and explain that to you?

2 A No, sir

3 Q Well, you've been in jail a while, and I know they
4 have a good library over there so y'all can write briefs
5 better than lawyers When did y'all find out about that?

6 A Well, from -- I believe, this is what I believe at
7 that time, what it meant was I would -- the consequences
8 of that was a life sentence without parole and medicated,
9 because at that time, I had seen -- there was an inmate
10 that was in Charleston County Jail that was accused of
11 killing a deputy and shooting a paramedic, and he put him
12 in the cell with me

~~13 I think his name was Drake, his last name was~~
14 Drake, and I was laying up in the bed wounded I
15 couldn't get out of bed, but I heard the door open and
16 somebody come into the room and I was in the room and the
17 door was shut, and I must have had enough strength to
18 raise up to look I thought it was an officer, but I
19 looked over and there was an inmate laying on the
20 floor --

21 Q Let's make sure to be clear to the Court You
22 were wounded because you were shot whenever you were
23 originally apprehended?

24 A Right I was injured with two gunshot wounds from
25 the deputy, and I had my collarbone broken by the bullet,

1 one went through my hip, and I heard the door open to the
2 cell, and I was freshly wounded, no more than, I guess,
3 about seven days, ten days, and it was unbearable for me
4 to get up It takes me a half hour to get out of bed,
5 just to go to the toilet

6 And the door opened, and I thought it was the
7 nurses coming in to check my wound, change the bandages
8 and all that, and the door shut back, so I didn't hear
9 the nurse or the officers or nothing And I raised up,
10 took my time and raised up, you know, in great pain, and
11 I looked up And at the end of the bed, by the door, was
12 an inmate, sitting down on the floor on a mattress

13 ~~And I was looking I'm, like, you know, I~~
14 didn't know what to think I'm, like, they put a dude in
15 here to kill me or something? So that's what I'm
16 thinking

17 'Cause I'm defenseless, in the sense that, you
18 know, I'm injured, my collarbone broken and all that and
19 everything from the bullet, and I raised up, and I asked
20 him, you know, What he doing here? And he said he
21 brought me here, and I went to ask him, because, you
22 know, I'm straightforward I assume he was in there to
23 do me bodily harm or something I didn't know what he
24 was, and I was going to ask him, what you charged with?
25 And he told me that, you know, he was charged with

1 shooting an off duty policeman and a paramedic or
2 something like that, to that extent

3 And I asked him what the name was, he said Drake
4 I asked him how old he was He said he thought 19 years
5 old, and, you know, he was talking and so forth, and he
6 was telling me that -- I guess later on the next day or
7 something, because, you know, I just sat there and
8 watched him all day because I didn't know who this guy
9 was and why he was put in this cell with me, with me
10 injured like this, and then finally we had a discussion,
11 and he was telling me that his lawyers had said that they
12 was going to give him mentally ill with -- guilty but

13 ~~mentally ill and that he would get a life sentence and he~~
14 would have to go to -- I'll just say the word Columbia,
15 because in the jail when they say Columbia and they're
16 talking about mentally ill, they got something to do with
17 the mental ward I assume that's what they're talking
18 about And he said, We got mentally ill, and I said --
19 so that was the first notion that came to me

20 Q But let's talk about this now Your lawyers that
21 were representing you at that time, did they ever discuss
22 that issue with you?

23 A No

24 Q Not guilty but mentally ill

25 A No, they did not discuss that issue with me

1 Q But at that time you said one of the lawyers
2 referred to you as a retard?

3 A Yes

4 Q Now, when Dr Frierson came back with his opinion,
5 were you aware of the opinions of Dr Schwartz-Watts and
6 also McKee? Did you know that before you went into the
7 courtroom that day?

8 A I didn't know that -- I was surprised the way they
9 was testifying that day, because I thought they was
10 independent, you know, unbiased, just -- I felt like they
11 were independent psychiatrists or psychologists from the
12 state psychiatrists, you know? I thought they was in
13 ~~their own practice or something, because somewhere I was~~
14 looking at them with such skepticism

15 And I didn't want to be state affiliated, and they
16 said, Well, we're not appointed by the state or the
17 solicitor, and I'm just assuming, because I knew my
18 knowledge was not vast, in debt about the situation, how
19 to get appointed, but I was assuming that they was in
20 private practice, and that kind of made me speak to them
21 and open up to them -- as a matter of fact, to get them
22 to even speak to me after they brought me my legal
23 material, because I told them I wasn't speaking to them
24 at this place they had took me to in Columbia I would
25 not even speak to them they kept saying, You need to go

1 and then the man frightened me too, the man frightened
2 me The man that was questioning me, it was Musick,
3 Frierson and I think two other people, I think two or
4 maybe one other person When they said they was talking
5 to me and they said, If you don't cooperate, you know,
6 you could be forced, medicated

7 And I was terrified, because I know and have heard
8 of it from being incarcerated previous, from people being
9 forced to be medicated, and that was a big turning point
10 from there, I mean, because I felt -- I wasn't able to
11 get in touch with my parents or my wife or anyone else,
12 in-laws or anyone else They took me out of jail

13 ~~Nobody know where I'm at, nobody know where I'm at They~~
14 won't let me make no phone call and I had nothing

15 And when he said forced medicated -- and I'm sure,
16 I think it was Dr Frierson who stated that to me, and
17 they was recording it, press record on the whole thing,
18 and from then, I made every effort to try to be, I would
19 say, bright or intelligent as possible because they
20 terrified me, because I noticed it happened I heard it
21 and I believed that

22 Q Did you explain this to the lawyers that were
23 representing you at the time that whatever was said in
24 the interview with Dr Frierson was under this threat of
25 being medicated?

1 A No I wasn't on good terms with the lawyers at
2 all You know, we wasn't communicating at all, and they
3 knew I had filed the motion for dismissal because of
4 their actions

5 Q What was your belief if you had told them -- what
6 did you believe was going to happen if you told them
7 about Dr Frierson and what he said?

8 A I was terrified I just felt like there was no --
9 I just felt hopeless At that time, I honestly felt that
10 I was going to be medicated, forcefully, and I felt that
11 when I leave from up that place, that I will be drugged
12 out, walking around like some people I've seen, zombie
13 like ~~There was no doubt -- No one could tell me, you~~
14 know, and everything changed from that day, everything
15 changed when he mentioned medication

16 I've seen it, and I seen people that have been
17 medicated and the way they are after, you know,
18 medication and so forth, and I'm assuming that that is
19 what they was going to do to me, and that is -- you know,
20 they was all in it together, and they was going to make
21 sure that I was medicated and pushed me on through this
22 trial thing, and I would have no responsibility for
23 myself

24 Q Was the question ever raised by defense counsel,
25 just put it in real layman terms, how did a retard like

1 you end up being competent with Dr Frierson? Did anyone
2 ever discuss that? The whole time I'm calling you a
3 restar, or I've said you're a retard, and all of a sudden
4 you pass the test Did anyone ever sit down with you and
5 say how did you end up becoming competent with
6 Dr Frierson?

7 A I don't know You know, I know the judge,
8 Mr Pieper, Judge Pieper at the hearing He made a
9 comment, if I may, 'cause I know he made a comment that
10 he could not -- when he was speaking, I think,
11 Ms Schwartz, I think it was, that they were saying I was
12 so warp minded and delusional I was so delusional, and
13 ~~he said, just from looking at me, from where he was at~~
14 and watching me move in his courtroom, that it wasn't too
15 convincing for what they were saying was their expertise,
16 and, you know, and I found that, you know, you got --
17 these people have expertise and have integrity and not
18 being biased in their reports on what they're trying
19 to -- examination me, to get this process or trial
20 moving, and, you know, here they is, even the judge, you
21 know, is openly, you know, wondering about, you know,
22 what's going on with these psychiatrists or
23 psychologists? And they are reporting what they're
24 trying to say in reference to me being delusional and
25 retarded and so forth all off to the left because, you

1 know, in the statement he made at the hearing he was,
2 like, he can't proceed He can't see it to that extent,
3 you know, and he said in the courtroom, from the way he
4 sees me moving in his courtroom, and according to what
5 they was testifying to and characterizing me as,
6 negatively characterizing me as, my state of mind and the
7 level of my brain, the way I think, the level that I
8 think in my own mind

9 And, you know, that further heightened my belief
10 in the conspiracy of the attorneys, the psychiatrists or
11 psychologists that the state had to force me to go
12 before, and it was forced It was forced They

13 ~~literally physically forced me, physically used force to~~
14 get me, because I was very skeptical of them And then
15 after, you know -- in reference to questions that I
16 just -- how did I proceed once I seen that?

17 Well, when I seen that they was all together and
18 then they surprised me with the testimonies and the
19 things they were saying, and I just could not -- you
20 know, I just couldn't -- you know, I'm trying to
21 battle -- I'm trying to get my freedom I'm trying to
22 find a defense for this trial, of trying to see what's
23 going on, and now I'm not even fighting for -- to prove
24 my innocence, which, of course, that is not the way that
25 the judicial process works

1 But I'm trying to prove my innocence, and the
2 truthfulness of everything, and I got to leave this alone
3 because I'm totally distracted from all of that I'm
4 totally distracted from the attorneys and the Court
5 proceeding and what the prosecutor now -- because now I'm
6 only concerned about them medicating me, forcibly
7 medicating me and me being an adult male, and I never
8 been on no medication before

9 And here I am Just because you don't arrest me,
10 falsely accuse me of murder, now the state has the
11 authority to medicate me of their own wishes, you know
12 I have no say-so We can shoot a needle in you, force

~~13 medicine down your throat, and whether you have a trial~~
14 or not trial, so to me, that indicated that the attorneys
15 and the state already had some type of authority in their
16 writing or in collaboration to do me harm

17 Q Was any of your counsel present when you met with
18 Dr Frierson?

19 A No, no, sir

20 Q Was any of your counsel present when you met with
21 Dr Schwartz-Watts?

22 A No, sir

23 Q Was your counsel present when you met with
24 Dr Musick?

25 A No, sir

1 Q Was counsel present when you met with Dr McKee?

2 A No, sir

3 Q All right So let me make sure you're clear in
4 your testimony You allege that they referred to you as
5 a retard

6 A Yes, sir

7 Q You met with Dr Schwartz-Watts and Dr Frierson
8 in a room, did you not, at the jail?

9 A Yes, sir That is correct

10 Q And counsel was not present during the time that
11 this interview was conducted by any doctor

12 A That's correct

~~13 Q Did you believe that the assistance of counsel was~~
14 reasonable?

15 A I felt like they was reasonable They was
16 counsel, and they were supposed to be representing me, or
17 had my best of interest I think somebody should have
18 been present or been near or talked to me or something,
19 been there to see what was going on or what because I
20 didn't know that they was working for the state I
21 thought they was independent or psychiatrists I didn't
22 know they were doing work for the solicitor, getting a
23 report from the solicitor then

24 Q Did you believe that if the issue of not guilty
25 but mentally ill had been reasonably pursued by defense

1 counsel, you wouldn't be in the position that you're in?

2 A Absolutely I believe that wholeheartedly

3 Q But for their behavior, you wouldn't be here?

4 A Absolutely

5 Q Explain what you mean

6 A Well, I believe that if I would have did,
7 accordingly as they wanted me to do, which I think it was
8 to fenge (sic) mentally ill or retarded, that the state
9 would have probably presented me with a life sentence,
10 two life sentences without parole and medicated me, and I
11 wholeheartedly feel 100 percent, 100 percent that that
12 would have been the outcome I would not be here today

~~13 I would not be on death row I would not be on death~~

14 row, nor would I have been convicted of murder

15 Q So it's your testimony that the people that refer
16 to you as a retard, they simply abandoned you?

17 A Yes, yes After they proceed or presumed that I
18 didn't want to take that defense or didn't see me
19 inclining to look for an escape route or something in the
20 face of death or so forth because they're presenting
21 everything to me that lawfully or unlawfully, it don't
22 matter what the result, you're going to be guilty, and
23 you're going to death row and you're going to die It
24 don't matter if you're innocent or not -- excuse me,
25 that's what I meant, innocent or not innocent, guilty or

1 not innocent, you're going to death row It don't matter
2 what the outcome, no matter what That's what they
3 indicate to me Either way, you're not going to win

4 With the attorney, it means we got attorneys and
5 their actions, their language and everything, you know,
6 no matter what, so only thing, like Mr Kelly said to me,
7 you know, You can give me a guilty but mentally ill, you
8 know That's a defense, and he spoke in reference to
9 that He stated that And --

10 MR WALTERS Beg the Court's indulgence,
11 Your Honor

12 THE COURT Yes, sir

13 BY MR. WALTERS.

14 Q Mr Alkebulanyahh, is there any other issue with
15 regard to your PCR that you would like Your Honor to
16 hear?

17 A Yes, sir

18 Q Please tell us

19 A I would like the issue of -- the first issue -- I
20 would like for the issue in reference to the issue of me
21 being found guilty of murdering or killing Mr Coursen,
22 Deputy Coursen -- because I believe that it's in the
23 evidence and undisputable that by the evidence that
24 Deputy Tate shot and killed Deputy Coursen with a bullet
25 to the back of his head I believe that was the cause of

1 his death

2 THE COURT Could you speak a little louder

3 THE WITNESS Yes, sir The issue in
4 reference to the charge of me killing Deputy Coursen,
5 because I believe that overwhelmingly the evidence and
6 the facts presented by myself and that which were
7 presented by the state expert witnesses indicate that
8 Deputy Tate did shoot Deputy Coursen in the back of the
9 head inside my bedroom

10 And that is an issue because they have
11 charged me with the death -- for the death of
12 Mr Coursen, and it -- being, as I said, I believe, I
13 ~~believe that the evidence overwhelmingly from the state's~~
14 expert witnesses and the evidence that I present is in
15 the record would suggest that the bullet fragments that
16 was found under his head and on the back of his head came
17 from the pistol of Deputy Tate

18 And the state conceded that the shot, the
19 first shot that shot Mr Coursen in the head was from the
20 back of the head, and they found the bullet fragments
21 that matched the fragments under Mr Coursen's head and
22 on his head, in the records, by the state's expert
23 witnesses, that this evidence indicates overwhelming
24 there isn't any other way that Mr Coursen, deceased's or
25 death was caused initially by Deputy Tate, and that is an

1 issue that it's clear in the record

2 And they know this is -- this is the death of
3 Mr Tate -- I mean, the death of Mr Coursen should not
4 have even been an issue, because there is no argument
5 They can't argue They can't argue it They can't even
6 charge it There is no defense for the state because
7 their own expert witnesses indicate this, the likelihood
8 of the bullet coming from Deputy Tate's gun killed
9 Mr Coursen

10 The other issue is in reference to the juror
11 selection There was a juror, a black juror, that was
12 disqualified, and I raised an objection, and the state
13 ~~adamantly and vehemently just argued that this witness~~
14 should be dismissed because -- this black juror -- excuse
15 me, this black juror should have been dismissed because
16 this juror said he knew me, I believe that's correct, to
17 that extent --

18 THE COURT I can't hear you

19 THE WITNESS I believe that's what the
20 defense of the solicitor was, that the juror said he knew
21 me, and he came to find out that the juror was -- it was
22 untrue, and it was untrue that this juror knew It was
23 untrue that the juror claimed to have known me It
24 was -- the juror claimed to have known a state's witness,
25 and that was the facts in the case the juror had claimed

1 during the questioning voir dire, if that's the correct
2 pronunciation, to have known

3 The state's witnesses, one of the state's
4 witnesses was -- I think his name was Jamal, something
5 like this, it was the state's witness at that time, and I
6 think the judge abused his discretion by, you know, not
7 allowing, you know, the black witness, the black person
8 to be on the jury because the prosecutor turned the
9 situation and put it on me It wasn't truly -- the
10 witness never claimed that he knew me or had any
11 affiliation with me or knew any of my witnesses, because
12 the juror never said he knew any of my witnesses, nor did
13 he know me

14 It was that he knew the state's witness, and
15 I argued that, and I argued for quite some time, and we
16 went to the judge's chambers about that, that wasn't true
17 and that was the issue

18 Another issue, ineffective assistance of
19 counsel The appellate defense, attorney Joseph Savitz
20 and attorney Bob Dudek, the appellate defense counsel
21 called me four months -- about four months, I'd say four,
22 five months, about four months I was brought to death
23 row in October of 2003 I think it was around May or
24 April appellate defense called me and they took me to a
25 phone

1 At that time, I had came to death row and
2 they have -- I'm only going to say their own policy of
3 the way they have to do inmates They took all my
4 clothing and gave me a paper gown Put me in a cell, as
5 soon as I got onto death row from the trial, kept me in
6 the cell, sleeping on a concrete bed for 30 days, 33
7 days, and then they took me out of there, and they put me
8 in another cell and they gave me a prison jumpsuit

9 From there, about two weeks later, they came
10 and pulled me out of the cell and put me back in the cell
11 without none of my legal materials or anything, no way of
12 writing, no pen, no paper, no washcloths, nothing, and

13 ~~they put me back in the cell two weeks later with only a~~
14 paper gown And I stayed in that cell for four months,
15 sleeping on concrete, to bruises on my elbows and my
16 hips

17 I had my documents over there of the lawsuits
18 that I filed, which I will hold for the Court for the
19 case as evidence, that when I file civil actions against
20 them in these cases, and Mr Dudek called -- four months
21 later called me in April or May, and they pulled me out
22 of the cell, and they took me to the phone, and they
23 asked me -- he told me he was my attorney

24 I said, Okay, I said, but what I need right
25 now, I need a mattress I said, I need a mattress I

1 need some clothing I said, I've been laying on the
2 concrete for four months, you know, no mattress, no
3 nothing

4 And he says, I quote, Just be good Just be
5 good Just be good I'll look into it, unquote

6 And I told him, I'll wait until I hear from
7 you Just get me a mattress

8 And he told me, Just so you know, they're
9 letting me be your attorney, and this was in April or
10 May I never heard back

11 The next time I got a call from the appellate
12 defense attorney was years later, year and a half, maybe
13 ~~two years, somewhere between there, telling me that I've~~
14 been turned down on my direct appeal by the South
15 Carolina Supreme Court I have no communication I
16 never met either of the attorneys, never, and I don't
17 have any idea what they look like

18 They never came to visit, they never
19 submitted any form for me to make any contact, I never
20 made not one telephone call to them, to their offices
21 They didn't make that available to me They never came
22 to the prison to see me, in a year and a half, and they
23 filed my appeal

24 I have Supreme Court records for which about
25 two years I debated with the South Carolina Supreme Court

1 about filing the direct appeal and to pass along that I
2 didn't want Dudek on the case because at that time of the
3 initial brief from them, which I already knew and I
4 already filed it, they stated that they was only
5 challenging the sentencing phase with one issue, and that
6 was about me being in a room with a glass around it that
7 prejudiced me

8 And I -- we went on about two years with
9 that, about a year, and I have all the documents over on
10 the table from the Supreme Court, with them telling me
11 why I shouldn't, and the state was arguing -- the state
12 argued that I should not be allowed to proceed pro se at
13 ~~the proceedings or to file a brief or anything on direct~~
14 appeal, but my whole purpose was to try to get my issues
15 on the record somewhere at that time because the
16 appellate defense did not

17 And that is an issue that was ineffective
18 assistance of counsel, appellate defense, because I had
19 brought to the Court's attention that I would not -- that
20 I haven't read and I would not be able to challenge --

21 THE COURT Was there an appeal issue that
22 you wanted them to raise that they didn't raise that you
23 would have raised on your own? Is that what you're
24 telling me or --

25 THE WITNESS Yes, sir, yes, sir

1 THE COURT What was that?

2 THE WITNESS If I may get my belongings over
3 there, sir?

4 THE COURT Yeah, yeah

5 THE WITNESS Your Honor, if I may, could
6 have I one of my hands loosened for this --

7 THE COURT Yeah, I think we could
8 accommodate that

9 THE WITNESS Thank you

10 Your Honor, yes, if I may proceed, I have
11 documents here This first document is an order It's
12 two pages, and it's from the Supreme Court of South
13 ~~Carolina in a response to a motion that I filed in the~~
14 Court in reference to the issue of ineffective assistance
15 of counsel

16 And if I may read from the document --

17 THE COURT Okay Go ahead

18 THE WITNESS Thank you The first document
19 is from the Supreme Court of South Carolina, Respondent
20 Tyree Alphonso Roberts a/k/a Abidiyyah Ben Alkebulanyahh,
21 title of order, and I quote Appellant has filed two
22 motions in which he asks that Robert Dudek of South
23 Carolina office of appellate defense be relieved of his
24 counsel Appellant bases this motion on the allegation
25 that Mr Dudek will not pursue appellant's complaint

1 about mistreatment on death row and that Mr Dudek stated
2 that he does not need appellate assistance with
3 preparation of the appeal

4 Appellant also raised allegations of a
5 conspiracy, by way of return of Joseph L Savitz III,
6 acting chief attorney of the appellate office of defense,
7 states he is representing appellant along with Mr Dudek
8 He states that he is without information regarding any
9 connection between the appellate office of defense and a
10 prison guard as alleged by appellant and asserts neither
11 he nor Mr Dudek nor anyone else at the appellant office
12 of defense is engaged in a conspiracy against appellant

13 ~~We denied the motion to relieve Mr. Dudek as~~
14 counsel See State versus Marsha, 273 South Carolina
15 552, 257 Southeast edition, second edition S E 2nd
16 edition 740 1979 An indigent must generally show
17 satisfactory cause to dismiss counsel and have other
18 counsel appointed See State versus Boykin

19 The right of an accused to effective
20 assistance of counsel does not extend to appointment of
21 counsel of choice but to special rapport and a meaningful
22 relationship with appointed counsel There is no
23 indication that Mr Dudek is not fulfilling his duty to
24 appellant for his criminal appeal While Mr Dudek does
25 have a duty to communicate with appellant regarding the

1 appeal, he has no duty to raise every non-frivolous issue
2 and must be allowed to exercise his reasonable,
3 professional judgment, Tucker versus Cato, 343 SC 483,
4 552, S E 2d 712 2001 It is so ordered, Chief Justice
5 Jean Toal and three other judges

6 In response, the Court for the state clearly
7 states that, I quote, While Mr Dudek does not have any
8 duty to communicate with the appellant regarding the
9 appeal, he has no duty to raise every non frivolous
10 issue It must be a lot to exercise his reasonable
11 professional judgment, and there is no communication by
12 the appellate defense I only spoke to him twice, once

13 ~~when they assigned him to the appeal, and the second time~~
14 was when he notified me, had the officer take me to a
15 place where the telephone was and notified me that an
16 appeal has been dismissed, and that is an issue that I
17 wanted to challenge, to bring before the Court

18 I found numerous other documents back and
19 forth in response to the Court over a period in which the
20 Court gave numerous orders, and what I did was -- it
21 began with several motions and it went on and escalated
22 as I corresponded back and forth with the Court, trying
23 to establish my grounds for the record so they would not
24 be overlooked because they're not doing any action
25 because I felt that if the Court had allowed me to be my

1 trial attorney, then there should have been some type of
2 reasonableness, that there was issues that I should,
3 being able to present a direct appeal, that may even
4 reflect on some type of strategy that I used during the
5 course of the trial

6 And if there is -- and if these things are
7 not challenged on a direct appeal, from my understanding,
8 these issues cannot be later brought before the Court on
9 a state habeas corpus, according to the -- according to
10 the official documents that I read about the Death
11 Penalty Act that revised the system in reference to
12 PCR proceeding for death row inmates

13 So I felt that my issues needed to be
14 presented, during the direct appeal, whereas the
15 appellate defense presented no issue challenging my guilt
16 phase They only presented an issue challenging my
17 sentencing phase, and I did not put up a defense during
18 the sentencing phase at all, and the issue that they
19 raised was no more than an issue that I was put into a
20 cubicle in the presence of the jurors and I put forth the
21 record in which the Supreme Court acknowledged -- I asked
22 the Court to dismiss it, and the Court said he could not
23 dismiss them and they weren't going to be hybrid to that
24 extent I don't know that you will allow me to read the
25 responses

1 THE COURT I don't really need that because
2 I believe that is already in the record, so if you just
3 have an issue that you wanted them to bring up on your
4 appeal, that's what I was interested in, and not what
5 they brought up, but if there was something that you
6 would have wanted them to bring up, because on a
7 PCR matter, you have to show not only were they
8 ineffective, but it would have made a difference

9 So if you had some issue that they brought up
10 on your behalf, that's one thing, but if there is
11 something that you would have wanted them to bring up,
12 that is really more of what I'm interested in than what
13 they, in fact, brought up

14 THE WITNESS Thank you, sir I understand
15 If I may, I would like to share with you the motion that
16 I filed in asking the Court the things I would have liked
17 for them to bring up in this motion

18 THE COURT Okay Do you have that?

19 THE WITNESS Yes

20 THE COURT Well, why don't you just hand
21 that to the deputy there and I'll read that, and we'll
22 made it a court's exhibit so that way I'll have it so
23 later on when I'm studying the file, that will be fresh
24 in my mind

25 THE WITNESS I would like to submit all the

1 motions

2 THE COURT I'm going to let the court
3 reporter mark those as an exhibit

4 (Motions filed by the Appellant marked for
5 identification as Court's Exhibit No 1)

6 THE COURT Is there anything else?

7 THE WITNESS Yes, sir Your Honor, if I
8 may, when I initially -- at the time I had issues that I
9 had filed initially, I filed the initial -- an initial
10 appeal, a PCR, post-conviction paperwork initially, and I
11 lacked the paper, writing materials, and I wrote on the
12 back of the paperwork that they gave me, the form to
13 file.

14 I wrote on the back of them, and they made
15 copies, but whoever was printing them out to give me
16 copies, they did not make copies of the back, so what I'm
17 going to do, I'm going to try to recollect exactly the
18 issues that I felt that they should have brought forth --

19 THE COURT Where is the original that the
20 back was on?

21 THE WITNESS The original is -- I filed it
22 with the Court of the Common Pleas

23 THE COURT In Beaufort?

24 THE WITNESS Yes, sir

25 THE COURT Well, then that's in the file

1 THE WITNESS Yes, sir And I would like for
2 the Court to, you know, review -- if I miss out on
3 something that I have pieces of it here

4 THE COURT All right Well, go ahead

5 THE WITNESS But --

6 MR WATERS Your Honor, for the record,
7 apparently we were not served with a copy provided to us
8 by the clerk That does not contain that either, so I
9 have no idea what those allegations are either

10 THE COURT All right Well, let's see what
11 he has to say, and maybe we can piece it together with
12 the file

13 ~~MR WATERS I certainly as a general matter~~
14 don't want to be accused of trying by consent or anything
15 of that nature beyond what's been pled

16 THE COURT I understand

17 THE WITNESS As I mentioned, one of the
18 issues was the issue of Officer Tate killing Officer
19 Coursen, which I should haven't been charged with I
20 just felt the evidence -- as I spoke before, I already
21 spoke before The other issue, ineffective assistance of
22 appellate defense counsel, not speaking or communicating
23 with me or filing anything challenging the guilt phase of
24 the sentencing, and that was the issue, and the issue of
25 the juror, and the issue of the Fourth Amendment

1 violations

2 I felt that the appellate defense, if they
3 had me in reasonable interest, being that I had hearings,
4 and it was the main issue of the case, Fourth Amendment
5 violation, and this Fourth Amendment violation is that
6 the two deputies responded to my residence They did not
7 have my consent, nor my wife's consent, to enter the
8 residence and to enter into our private bedroom

9 And the issue here is that they had no
10 warrants, they had no probable cause, they had no exigent
11 circumstance, and the issue being that their conduct was
12 unlawful, and this should have been presented on direct
13 appeal.

14 They was killed inside my bedroom They
15 unlawfully shot me twice They had opportunity to
16 inquire to the people that they encountered when they
17 entered the residence They said they had a victim, but
18 they ignored the victim He totally ignored the victim
19 They didn't want to talk to the alleged victim that they
20 was there for, and they proceeded past them and the state
21 claims that they was told to go -- that they had
22 permission to go into mine and my wife's private bedroom
23 by another house member

24 The house member that they allege, Brenda
25 Smith, the state presented no evidence or made an effort

1 or an attempt to establish which authority did Brenda
2 Smith have at the residence or in the home or what use of
3 the property that she had

4 They presented no evidence that Brenda Smith
5 had any authority, any authority, or mutual use of the
6 bedroom, other than Brenda Smith was at the home on that
7 day This issue is a paramount issue to the case, and
8 this issue should have been presented by the attorneys

9 THE COURT Did you raise that at your trial
10 level?

11 THE WITNESS I raised it at the trial level
12 There was a hearing held There was a hearing held, I
13 ~~believe it was October -- October the 1st -- no, I'm~~

14 sorry I may not be correct I raised it at a hearing,
15 I filed a motion, and the issue was raised at a hearing

16 The trial had concluded that on the day of
17 trial that the alleged victim said had her hair pulled
18 and that, perhaps, gave the officers a reason to invade
19 the home, invade my private bedroom There was no
20 evidence, none whatsoever -- there was no evidence, none
21 whatsoever, established in the record that the trial
22 judge -- I mean, that the deputies had a right to enter
23 my home

24 And this is important to me to the extent
25 this issue, which should have been raised -- as I said,

1 it was a motion filed and there was a hearing held, and
2 it was denied, and the -- and lawfully, you know, the
3 Court has -- I'm sure you're very familiar with the law,
4 so I'm just saying what I know about the law, and what I
5 have read and my understanding --

6 THE COURT I think I understand what the
7 issue is that you say you wanted them to raise

8 THE WITNESS Yes

9 THE COURT Okay

10 THE WITNESS And one of the things that I
11 also want to present here today is to establish that the
12 state's only witness, Brenda Smith, who the state said
13 ~~was the owner of my residence and presented that as the~~
14 owners, when they aver to that has been the truth, is the
15 absolute untruth

16 THE COURT Let me see if I understand this
17 The issue that you wanted them to have raised is that the
18 police didn't have probable cause to enter your house,
19 and therefore it was legal for you to defend yourself
20 inside of your house?

21 THE WITNESS This is the issue If I had
22 defended myself, I don't -- I did not kill the officers

23 THE COURT Well, you're saying the one
24 accidentally shot the other

25 THE WITNESS Right And other -- either an

1 individual by the name of Michael Drake or Bobby Rigby,
2 which was brought before the Court during trial, was
3 present They was present, and if the officers had been
4 so reckless and taken to authority the Court's decision
5 to give to -- to determine, to judge whether a search
6 warrant should be issued to search this premises, or
7 warrants to search my home, or warrants to enter my
8 bedroom, they should have had authority, they should have
9 found out to was the owners of the home They never
10 established who was the owners of the home Brenda Smith
11 said during trial they never asked her to search

12 THE COURT I get your point there So the
13 ~~point would be they were in your house illegally~~

14 THE WITNESS Exactly, Your Honor

15 THE COURT And so therefore it was legal for
16 either you or someone on your behalf to --

17 THE WITNESS Defend themselves

18 THE COURT So you're saying it wasn't you
19 but it was one of these other two people?

20 THE WITNESS Right And they initiate, and
21 the officer initiated the shooting And what has
22 happened is that -- Your Honor, could I have a moment
23 please, with my attorney?

24 THE COURT Sure

25 (Recess taken)

1 MR WALTERS Your Honor, may I approach?

2 THE COURT Sure

3 (Sidebar discussion held off the record)

4 THE COURT It's about time for our break
5 We'll take about a 15 minute break

6 (Recess taken)

7 THE COURT All right We're going to
8 resume Let the record reflect Mr Alkebulanyahh is in
9 the courtroom

10 Did you find what you were looking for?

11 THE WITNESS Yes, sir, pretty much

12 THE COURT Okay Good What would you like
13 to tell me then?

14 THE WITNESS What I want to establish, Your
15 Honor, for these proceedings -- you was asking before
16 about the numerous issues, any issues that I would have
17 presented at the direct appeal that the appellate defense
18 did not, and I did -- I want to finish completing that,
19 but I also want to -- I would like to put on the record
20 some factual -- some documented factual things from the
21 trial proceedings in reference to the actions and the
22 witness and things that took place at the trial and the
23 testimony that was given to bring more -- to bring -- at
24 this level to bring -- that it be established what
25 actually took place in the course of me being tried, and

1 I have --

2 THE COURT I'm not sure I understand exactly
3 what you're trying to say, 'cause, see we're -- this is
4 not, as you understand, an appeal This is a process
5 where you come in and say, well, normally, you would say,
6 well, my lawyer didn't do a good job Well, you
7 represented yourself, so that issue is really not there

8 The issue that y'all raised was should you
9 have been allowed to represent yourself? And so that's
10 really why we're here today

11 As far as going back and rehashing the trial
12 and saying, This was done wrong at trial and this was
13 ~~done wrong at trial, these are the kinds of things that~~
14 would have been raised and had to have been raised on
15 direct appeal, so it's really not for me to go back and
16 treat this as if it's an appeal

17 THE WITNESS And with that said, being that
18 the issues was not brought forth on direct appeal, which
19 forfeited --

20 THE COURT Well, speak to me in terms of
21 what issue it is that you think your appellate counsel
22 should have raised

23 You brought up the one issue of, well, they
24 should have made an argument that the police didn't have
25 probable cause to enter my house, and therefore either I

1 or somebody on my behalf had the right to defend me from
2 intruders in my house Okay? So that's one issue that
3 you say should have been raised on your behalf All
4 right What other issue is it that you are saying should
5 have been raised?

6 THE WITNESS And in that issue, pertaining
7 to that same issue, is that the state never established,
8 on the record -- that the state never established on the
9 record the -- their witnesses had the right to forfeit my
10 constitutional right to search and seizure And --

11 THE COURT Say that again?

12 THE WITNESS The state never established --
13 ~~they never established, they never -- according to my~~
14 understanding, it is the burden of the state to establish
15 for the Court that a third party has the right to forfeit
16 the constitutional right of the people that -- the
17 defendant in a trial stage

18 THE COURT That is really brought up as
19 part of the issue we were just talking about, which is
20 standing, as we call it

21 THE WITNESS With this critical standing
22 being that -- you know, the simplicity is that, you know,
23 I'm here today and I'm -- I've been tried and convicted
24 as the criminal, whereas I am presenting that I committed
25 no criminal offense, no criminal conduct, and the -- and

1 it's all in reference to the home, you know, me wanting
2 to, you know, be protected under the Fourth Amendment
3 constitutional right, and I wanted to, if possible, I
4 wanted to put -- because I don't know if you're going to
5 review, but -- and, like you said, that the appellate
6 defense didn't present these things at the direct appeal,
7 so they forfeit it, and I cannot bring -- that is another
8 issue, that the appellant defense did not present
9 evidence of anything to the appellant Court wherefore I
10 could challenge insufficiency of evidence, insufficient
11 evidence, and that is not -- to my understanding, that is
12 not a matter that could be presented in the

13 ~~post-conviction remedy~~

14 THE COURT Uh-huh

15 THE WITNESS And that is one of the issues
16 that I wanted -- that is another issue, the insufficiency
17 of the evidence, to find me guilty of the charges in
18 which I was convicted of, and I want that issue -- the
19 evidence was insufficient, and the appellant defense
20 didn't present any evidence, and I would have argued
21 that I think a reasonable lawyer would have argued it,
22 based on the facts that took place and evidence in the
23 case, that, you know, there was no evidence to
24 establish --

25 THE COURT Okay

1 THE WITNESS -- my guilt

2 THE COURT So I'll put that down as your
3 second issue All right

4 Was there any other issues?

5 THE WITNESS Yes I apologize for not
6 having a copy of the initial grounds that I filed, that I
7 could present in my -- yes, the abuse of discretion by
8 the judge, by allowing the state to introduce evidence
9 during trial after ruling, making a ruling, on a matter

10 THE COURT What evidence was that in
11 particular?

12 THE WITNESS That particular evidence was
13 ~~the -- Your Honor, that was a box of -- at the time we~~
14 had a hearing, and the -- and I filed a motion and asked
15 the Court not to allow the state to introduce, or add
16 evidence, or alleged evidence, to the warrant return, or
17 anything to that nature

18 We had a hearing, and the Court said that we
19 were -- that we're not going -- the state told the Court
20 that they would not add nothing else to the warrant,
21 nothing else to the search warrant Nothing else would
22 be added to the search warrant, this is it, blah de blah,
23 and the state said, Well, if we knew this here, if we
24 knew this, we shouldn't have had this hearing

25 And so we, you know, we agreed, of course,

1 okay, but when the trial came and the time for trial, the
2 Court rescinded on this order and allowed the state to
3 add something else to the Court And what I have here is
4 a box of bullets, and I said that nowhere did the state
5 claim they had found a box of bullets inside my private
6 bedroom

7 They claim they forgot to officially list
8 them on the search warrant return, but before the box of
9 bullets was brought to the Court's attention, a motion
10 had been filed by myself to present and stop all surprise
11 evidence from popping up by the state So a hearing was
12 held on that motion, and I asked the Court to bar the
13 ~~state from arbitrarily manipulating the alleged evidence~~
14 and any of the law enforcement subsequent claim reports
15 of discovery of claimed evidence, particularly claimed
16 evidence outside the search warrant returned

17 At the hearing, the state informed the Court
18 they would not introduce any claimed evidence that was
19 not listed in the search warrant return The Court ruled
20 that the state would not be allowed to do so, and the
21 state did offer to the Court and defense that no other
22 items would be added on the search warrant return, and
23 the Court ruled and ordered the matter settled on my
24 behalf and in the request of my motion, and this can be
25 found in the trial transcript on page 1308, line 3,

1 through page 1309, line 13

2 And during the trial, the Court rescinded on
3 its own ruling and allowed the state to prejudicially add
4 planned evidence to the search warrant return, then
5 introduce it into the evidence during trial This can be
6 found in the trial transcript on page 22 -- I'm sorry, on
7 page 2296, line 10, through page --

8 THE COURT 2000 what?

9 THE WITNESS 2096

10 THE COURT The page number? I'm sorry

11 THE WITNESS Trial transcript, page number
12 2296, line 10, through page number 2297, line 14 And
13 ~~that evidence is State's Trial Evidence Exhibit Number~~
14 102

15 And I thought that was very prejudicial, being
16 it was presented to the jury after the judge had abused
17 his discretion, and I thought it was only fair, after
18 having a hearing on it, that he said he would not allow
19 them to keep adding and bringing evidence to the search
20 return

21 What they didn't find they were -- supposed
22 to found, they found, and it went in that way, in that
23 matter, that evidence was brought in after the ruling
24 And I don't know where he got the box of bullets from
25 They said they had searched home, they didn't and they

1 bring it back and said we didn't originally list it, and
2 they presented it during trial, and that is an issue
3 That is another issue

4 And the speedy trial issue, I filed numerous
5 speedy trials, asking the Court to set a trial date and
6 it was never acknowledged during the course of filing
7 several, four to five, and hearings was held in reference
8 to that, and that was an issue that I felt should have
9 been presented during the direct appeal that the direct
10 appeal attorneys did not file

11 I felt also another issue that the issue of
12 identity, there was a -- the identification by the state
13 ~~witness in identifying a suspect was so far -- was so~~
14 opposite and so indifferent that I felt like that I
15 believed that I should have got a direct verdict, just
16 based on the identification of all the state witnesses,
17 of the person that they seen who's supposed to be
18 involved in this case

19 And the prosecutor opened it up and saying
20 that all his witnesses had given a positive physical
21 identification and a clothing identification of the
22 suspect, and that identifying was totally opposite to my
23 physical description and the clothing that I was wearing
24 at the time of my arrest and in the very minutes of
25 these -- the incident took place with these witnesses

1 giving that type of identification

2 And the evidence in reference to it is clear,
3 and I felt that the appellate defense should have brought
4 that issue -- the issue up in reference to that
5 identification, that along -- that was not sufficient
6 enough to charge me be to charge me and indict me, to
7 continue to prosecute me, knowing that the state's own
8 witness had made an identification of the witness that
9 was totally different, and I have that information
10 that -- all the information now that what they did and
11 what they give a description of how they did give, and
12 the jurors and the jurors had submitted a note to the
13 Court during trial

14 And they asked the Court -- they asked the
15 Court whose fingerprints were on this gun, and they
16 submitted another note to the judge and asked him, Can
17 they see the black coat that I was wearing?

18 And -- because the suspect with the gun and
19 the person that was the witness had given a different
20 description -- and that is an issue that I felt that the
21 appellate defense also should have raised about the
22 evidence, because this evidence was never presented by
23 the state

24 And there was a description, as I said also,
25 with the description, the facial description, but all of

1 the state witnesses saying the guy had a beard and -- a
2 beard and a brown jacket, and then when the state
3 apprehends with a black jacket, solid black jacket with a
4 bullet hole through the jacket, through my shirt, with
5 the residue around the jacket, through the shirt, they
6 booked me in, and I don't have no beard, no long goatee

7 And all the state's witnesses say, The guy's
8 got a beard, a long goatee, wearing a brown jacket,
9 carrying a gun, but I got an all black jacket with the
10 stains from the bullet holes on the jacket going into my
11 body and into my pants, and this is evidence that should
12 have been brought up about identifying the suspect that

13 ~~they say -- the person who was alleged to have been~~
14 carrying a gun and been with their man, a key witness at
15 that time

16 And that is another issue that I felt -- I
17 believed that the appellate defense should have brought
18 up in reference to the identification of the person
19 involved in the case in reference -- and the other issue
20 is -- you asked about the hearings that we had We did
21 have hearings on the Fourth Amendment issue, and they
22 was -- the hearings was on 10/01/03, and the issue that I
23 believe that the appellant defense should have brought up
24 at this hearing was that the Court should have dismissed
25 the case

1 I was asking that the Court dismiss this
2 case, and at this hearing, because of the Fourth
3 Amendment violation, and I believe that the judge, by not
4 dismissing the case -- being that the fact of law was
5 presented to him, that these two officers that was
6 killed, not only in violation of the United States
7 Constitutional Amendment, United States Fourth Amendment
8 constitution, excuse me, and the South Carolina article
9 1, section 10, constitutional search and seizure and
10 unlawful invasion, I asked the Court to dismiss the case
11 based on them grounds, and the Court refused to do so

12 THE COURT All right

13 ~~THE WITNESS And the other things I wanted~~
14 to present was where there is a factual circumstance or
15 not, I wanted to present as an exhibit an article written
16 by a newspaper of an interview, Joseph Savitz, and the
17 appellate defense, in which the negative unfavorable
18 statement that they made in reference to them on the
19 case, I would read and I'll quote this --

20 MR WATERS Your Honor, I've got to object
21 to reading a newspaper article at this point

22 THE COURT I'm sorry Tell me again you
23 what want to do

24 THE WITNESS I want to present the evidence
25 in statements of an article that was -- to a newspaper

1 that interviewed Joseph Savitz and Bob Dudek

2 THE COURT And who is Joseph Savitz?

3 THE WITNESS I'm sorry Joseph Savitz is an
4 attorney for the appellate defense that filed my appeal
5 at the direct appeal

6 THE COURT Okay You have an article?
7 Subpoena

8 THE WITNESS Yes, sir

9 THE COURT Let's just make it a Court
10 exhibit rather than have you read it

11 MR WATERS And just for the record, Your
12 Honor, I'll object

13 ~~THE COURT I'll allow him to proffer it.~~

14 All right Anything else?

15 MR WATERS Your Honor, do I mind if I look
16 at the exhibit?

17 THE COURT Sure It's an article, the
18 date -- okay On the second page, it says Tuesday, March
19 20 -- okay, and there is another page -- Tuesday, March
20 20, 2007

21 MR WATERS Thank you, Your Honor

22 THE COURT All right Anything else?

23 THE WITNESS Yes I wanted to also
24 establish the facts of the state's two witnesses, the
25 state's two key witnesses in reference to their conduct

1 The state's main and key witness, Ms Kim
2 Blake, during the cross-examination, she was questioned
3 as follows, and I quote When you exit the bedroom, you
4 encountered the two police officers, is that correct?

5 Blake response Yes

6 Were you kidnapped?

7 Blake response No

8 Did they ask you was you held hostage?

9 Blake response No

10 Did they ask you was you being held?

11 Blake response was no

12 Did they ask you were you then held against

13 your will?

14 Blake response was no

15 Did they ask you did you ask for police
16 assistance?

17 Blake response was no, unquote

18 This can be found in the trial transcript at
19 page 1721, line 2 through 24, and the state's witness,
20 Brenda Smith, was cross-examined, and the question was
21 asked her, I quote Okay Did the officer ask May,
22 which is Kimberly Blake's alias, was she kidnapped?

23 Smith replied No

24 Did they ask May was anything wrong?

25 Smith replied No

1 Did they ask May did she call the police?

2 Smith replied No

3 Did they ask May, did she call somebody to
4 call the police for them?

5 Smith replied No, they did not ask her
6 that

7 So they did not ask May anything once they
8 encounter her, isn't that correct?

9 Smith replied Right

10 The question Did they escort May out of the
11 house?

12 No

13 ~~And did they ask May anything?~~

14 Smith replied No, unquote

15 This can be found in the trial transcript,
16 page 1826, line 10 through 25, and page 1831, line 20
17 through 23 And May is the alias name for Kimberly
18 Blake, and Blake had further testified that when she
19 encountered the policeman, Blake stated, I quote, they --
20 I'm sorry

21 In her voluntary statement, Blake gave the
22 following statement They walked past me and went in the
23 room The officer walked past me fast into the room, and
24 this -- unquote, this can be found in the trial defense
25 exhibit No 35, page 10, line 5

1 Blake was further asked the question, and I
2 quote Did they -- did you at any time hear the officers
3 ask Ms Brenda, or Mr Riley, can they go in the room and
4 search it?

5 Blake responded No

6 This can be found -- unquote, I'm sorry,
7 unquote

8 Blake responded No, unquote This can be
9 found in the trial transcript, trial hearing transcript,
10 I'm sorry, page -- trial hearing transcript, 10/01/03
11 page 147, line 5 through 8

12 Brenda Smith testified through trial, the

~~13 testimony that corroborated with Ms Blake, and the~~
14 question was asked her, and I quote Did they say to you
15 or Mr Riley, did they say to you or your husband, Can
16 they read you any Miranda rights?

17 Smith replied No

18 Did they say to you or your husband Can we
19 search the entire home?

20 Smith replied No

21 Did they say to you that We're going to
22 search you?

23 Smith replied No

24 This can be found in the trial transcript,
25 page 1826, line 11, through 13

1 Blake, the state's main witness, stated that,
2 quote, I quote, They walked past me and went into the
3 room, unquote, reference trial Defense Exhibit No 35,
4 page 10, lines 10, page 10, line 5

5 Blake further stated, I never seen them pull
6 their weapons All I know is they had their hands on
7 their guns when they went in the room, unquote This can
8 be found in the trial hearing transcript, 10/01/03 page
9 158, line 24, page 159, line 1

10 Blake was further asked, I quote When you
11 came out of that room, did you hear the officer say
12 anything to any extent, I'm going in? It's the police?

~~13 Did you hear them say anything like that? I'm going in,~~
14 ~~police?~~

15 Blake responded No

16 Question Did you hear -- did you hear them
17 say -- excuse me I would like to strike that and start
18 over Thank you

19 When you came out of that room, did you hear
20 the officers say anything to the extent as to, I'm coming
21 in, it's the police? Did you hear them say anything like
22 that, I'm going in, police?

23 Blake responded no

24 Question Is anybody in there? Did you
25 hear -- did you ever hear anything like that from them?

1 Blake responded no

2 The prosecutors two and only main witness
3 testified, clearly, that the officer asked no questions
4 when they come into my residence, and this should have
5 been established at the direct appeal issue to be
6 appealed They asked no questions They didn't ask --
7 Ms Smith stated they asked Blake no question
8 Ms Blake, who they claim was the alleged victim, herself
9 claimed they asked her nothing except, Are you Kimberly
10 Blake?

11 And they -- Blake said last time she seen
12 them, they rushed down the hall with their hands on their
13 ~~gun into my and my wife's bedroom, and I want to further~~
14 add that the chief investigator testified that the death
15 of the two deputies could have been justified, and the
16 chief investigator for the Beaufort sheriff department,
17 Mr Bob Grimmage, I quote, quote I know a crime was
18 committed because I actually visited the scene and did
19 speak to people that were inside the scene It was
20 determined that there was two dead police officers

21 Question And if one is dead, one -- if
22 one -- if an individual is dead or killed or stabbed,
23 it's automatically a crime, is that correct? Is that
24 what you said?

25 Response No That is not what I'm saying

1 at all

2 Question It could have been justified Is
3 that possible? It could have been justified?

4 Response It certainly could have been
5 justified, unquote This can be found in the trial
6 transcript, page 1543, line 1 through 17

7 And I would like to quote, if I could, maybe
8 for the record, case law, the state of South Carolina
9 versus Hewitt, 31 SEC -- excuse me, state of South
10 Carolina versus Hewitt, 31 S E 2d 257 I quote One
11 attacked on own premises has the right to claim immunity
12 from the law of retreat if he is without fault, unquote

13 ~~State of South Carolina versus Davis, 51 S, E~~
14 2d 86, quote To retreat required from place where one
15 has a legal right to be, unquote In reference that the
16 state argued and present evidence that Brenda Smith --
17 they refer to Brenda Smith as being the owner of the
18 residence, which is untrue, alleged that she waived the
19 constitutional right of myself and my wife, and I quote
20 the case of state of South Carolina versus Lawton, S C
21 2d 75, quote A landlord may not validly consent to a
22 search of a tenant's residence

23 A person who confers a right to enter an area
24 without conferring an equal or similar right to the use
25 or enjoyment of that area does not authorize the other to

1 consent on his behalf to a search by law enforcement
2 authority, unquote

3 Also, I would like to quote from the case
4 United States versus Whitfield, W-h-i-t-f-i-e-l-d, 939
5 Federal 2d 1071 Quote, the agents were met at the door
6 by Fariq Whitfield who identified herself as the
7 defendant's mother The agents explained that Maurice
8 was suspected of stealing money from the Brinks facility
9 To that end, the agent's asked Ms Whitfield whether the
10 house was hers She said it was and that she lived there
11 with the defendant, her other son, Willie, and her
12 daughter, unquote

13 ~~At any rate, the agents did ask Ms Whitfield~~
14 if they could search the defendant's room and gave her a
15 consent form to sign Ms Whitfield said that she would
16 consent to a search, but she refused to sign the form,
17 unquote In Whitfield, the Court held, I quote The
18 Court referred to the recurrent factual question, whether
19 a third party has authority to consent to a search and
20 held that the reasonableness of an officer's
21 determination of the authority of a consenting party must
22 be judged by the facts available to the officer at the
23 moment

24 As a factual matter, the agents could not
25 have reasonably believed Ms Whitfield had authority to

1 consent to this search The agents certainly did not
2 have enough information to make that judgment Under
3 United States versus Matlock 415 United States at 171
4 note 7, 94 Supreme Court at 993, note 7, quote, The
5 authority which justifies third party consent rests on
6 mutual use of the property by the person generally having
7 joint assets or control for most purposes so that it is
8 reasonable to recognize that any of the co-inhabitants
9 has the right to permit the inspection in his own right
10 and that the others have assumed a risk that one of their
11 numbers might permit the common area to be searched

12 We will assume the agent's questioning of Ms
13 ~~Whitfield Sparks, as it was, provided a sufficient basis~~
14 for believing she generally had access to her son's room
15 The room was locked, at least when the agents was there,
16 and Ms Whitfield lived in the house If access carries
17 its common meaning, Ms Whitfield had it, as did the
18 defendant

19 Both could enter his bedroom
20 Ms Whitfield's ability, or even legal right to enter,
21 simply qualified her as a person who under Matlock could
22 give consent to search a property subject to her mutual
23 use But whether she had mutual use of the room or the
24 closet containing the defendant's clothing could not be
25 determined from anything that the agents ask The

1 bedroom itself was not a common area, and the agents had
2 no grounds for believing otherwise

3 The agents never asked Ms Whitfield whether
4 she cleaned her son's room, visited with him there,
5 stored any of her possessions in the room, watched
6 television there, or made use of the room at any time for
7 any purpose. Officers may, of course, proceed on the
8 basis of the factual and practical consideration of
9 everyday life on which reasonable and prudent men, not
10 legal technicians, act

11 They may assume that a husband and a wife
12 mutually use the living area in their residence and have

13 ~~joint access to them so that either may consent to a~~
14 search. It is the government's burden to establish that
15 a third party had authority to consent to search. The
16 burden cannot be met if agents faced with an ambiguous
17 situation nevertheless proceed without making further
18 inquiry. If the agents do not learn enough, if the
19 circumstances make it unclear whether the property about
20 to be searched is subject to mutual use by the person
21 giving consent, then warrantless entry is unlawful
22 without further inquiry, Rodriguez, 110 Supreme Court at
23 2801

24 The government has not carried its burden in
25 this case. The agent's supervision and cursory

1 questioning of Ms Whitfield did not disclose sufficient
2 information to support a reasonable belief that she had
3 the authority to permit this search The agents could
4 not infer such authority merely for her ownership of the
5 house

6 Common authority is, of course, not to be
7 implied from the mere property interest a third party has
8 in the property The agents could not, for the reason we
9 have given, drawn such an inference from the parent child
10 relationship or from the fact that the room was unlocked,
11 which established only joint assets, not mutual use as
12 Matlock requires

13 ~~As we have said under Matlock and Rodriguez,~~
14 agents faced with such situation must make fervent
15 inquiries before engaging in warrantless searches If the
16 information gleaned from these inquiries is insufficient
17 to establish apparent authority, the Fourth Amendment
18 demands that the agents procure a warrant The agents
19 did not do so here, and the search violated the Fourth
20 Amendment

21 And this case was reversed and remanded

22 THE COURT I'll tell you what

23 Mr Alkebulanyahh, I see you're reading there from -- it
24 looks like a brief that you've written It's very well
25 written It's better than most of the briefs I've gotten

1 from the lawyers What I'd like to do we'll make a copy
2 of that

3 Rather than have you sit here and read it
4 into the record, I will take it back and read it We'll
5 mark it as a Court's exhibit It wouldn't necessarily be
6 an exhibit, but rather than you just sit here and read it
7 for the court reporter to take down, we'll incorporate
8 that into the record

9 MR WATERS Your Honor, I don't have any
10 objection to it as an Applicant's exhibit

11 THE COURT All right Thank you So if
12 you'll hand it to the gentleman right there and the court
13 reporter will mark it

14 (Briefs marked for identification and
15 admitted into evidence as Applicant's Exhibit No 1)

16 MR WALTERS My client wanted to make sure
17 we would be available to make a copy since that is his
18 only copy

19 THE COURT I'll tell you what If you want
20 to take it with you tonight and make a copy of it, you
21 can do that, and just --

22 MR WALTERS Yes, sir

23 THE COURT Would that be all right?

24 MR WALTERS Yes, sir

25 THE COURT All right We're nearing 5 00

1 Have you raised all the issues you want to raise?
2 Because he still has to do his cross-exam, and I figure
3 we'll just bring you back tomorrow to do that

4 THE WITNESS That would work

5 THE COURT So you brought to my attention
6 all the issues that wanted to raise, and you'll be ready
7 for cross then in the morning?

8 THE WITNESS I wanted to bring some other
9 things to the Court's attention about the -- just for the
10 record, you know, I want to put some things --

11 THE COURT I'll tell you what Why don't
12 you condense those down so that can you bring them to my
13 attention I don't want to get to the point where you're
14 just reading things If you have things that you have
15 written, then I'll just mark those as your exhibits, and
16 I'll read them, because I'm not going to make a decision
17 today or tomorrow

18 I'll take it under advisement I have a lot
19 of things I have to read, but I'll read whatever you give
20 me to read, but we don't want to repeat the same things
21 again. And I really think that the thing you just
22 brought up is the same as the first issue, it's just the
23 argument for the first issue, which is okay

24 All right What we'll do then is we'll break
25 for the day, and we'll resume tomorrow morning at 10 00

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(October 14, 2008)

THE COURT You can come on up to the witness stand there You're still on the stand

All right We're reconvened on Tuesday morning, the 14th Let the record reflect Mr Alkebulanyahh is present in the courtroom, present on the witness stand, and I remind you, sir, you're still under oath

THE WITNESS Yes, sir

THE COURT All right Now, when we left yesterday, I think you had presented pretty much everything that had wanted to, but before we begin with your cross-examination, is there anything else you wanted to bring to my attention before we move to that?

THE WITNESS Yes, sir

THE COURT All right What's that?

THE WITNESS Your Honor, yesterday I was pretty much caught off guard as to reference to the date of the -- you know, the PCR hearing

And pretty much, you know, I gave you what I was able to, as they say, you know, speak from the cuff about many of the different issues that you asked me about, particular -- if I'm recalling, the question you asked me about issues that could have been raised at the

1 direct appeal, being that I was referring to you because
2 of the ineffective assistance of counsel of the direct
3 appeal, you asked me, you know, are there issues, things
4 that I wanted to bring to your attention that I would
5 have brought up And I wanted to start off about some of
6 the things that I could not recollect at the time

7 THE COURT Okay Well, why don't you go
8 ahead and tell me what ones you had that you hadn't
9 already told me about yesterday, because I think you
10 raised, basically, five different ones yesterday,
11 although I read the last one and the first one to be
12 essentially the same thing, and that was a Fourth

13 ~~Amendment claim~~

14 So go ahead

15 THE WITNESS Okay I wanted to begin
16 with -- I had -- I did mention it yesterday about the
17 jurors selection, that I objected to during the trial of
18 the state striking the black jurors

19 At the time, during the jury selection, I
20 felt I had been prejudiced by the state striking the
21 juror, so I raised a Batson objection, B-a-t-s-o-n,
22 versus Kentucky, I believe, objection to the striking of
23 the juror, and the first juror that I wanted to bring to
24 the Court's attention was the -- was an African American
25 woman by the name of Ms Edith Owens, O-w-e-n-s, and she

1 was the juror number 286 in the trial, and I would like
2 to read this portion from the transcript, and I'll begin
3 with the Court I quote, from the trial transcript, the
4 Court All right Let's see The state struck juror
5 number 286, and that was their first strike Is that
6 correct?

7 Mr Alkebulanyahh response Yes, sir

8 The Court Edith Owens?

9 Mr Murdock, the state Yes, sir

10 The Court Can you give me your reason for
11 striking her?

12 The state responded If Your Honor please,

13 in observing her during the voir dire -- am I pronouncing
14 that correctly, Your Honor, the word voir dire?

15 THE COURT That's probably the closest
16 pronunciation I've heard We're in the south sometimes
17 you hear voir dire, and that is how I pronounce it

18 THE WITNESS Mr Murdock, if Your Honor
19 please In observing her during the voir dire, I had the
20 impression she was afraid of the defendant She was weak
21 on the death penalty, but most important, she made the
22 statement that I know nothing about this case, which
23 concerned me, sir

24 The Court responded All right I find
25 that's a factually neutral reason Is there anything you

1 have to show that is pretextual?

2 Myself responded Yes, sir, Your Honor

3 The Court Did he seek someone with similar
4 characteristics

5 Myself responded Yes If he seeks someone
6 with similar characteristics, meaning that, you know
7 that --

8 And the Court You have to give me the
9 juror

10 Mr Alkebulanyahh, with the same type of
11 juror -- I'm sorry Strike that

12 The Court responded You have to give me the
13 juror

14 Myself responded With the same type of
15 juror?

16 The Court Yes

17 Myself responded Your Honor, I believe
18 Christine Lindsay

19 The Court Christine Lindsay?

20 Mr Alkebulanyahh Yes, sir

21 The Court What were her similar
22 characteristics? She said she had read the form and had
23 not formed an opinion What characteristic does she have
24 that are similar?

25 Mr Alkebulanyahh responded Well, the

1 characteristic that she had that was similar was pretty
2 much to the extent that she seemed like she was more -- I
3 wouldn't want to use the word characteristics afraid of
4 the prosecution, but in a similarity, as far as she would
5 not be -- would feel intimidated by the prosecution, the
6 authority of the prosecution

7 And with the juror, Ms Edith Owens, being
8 that there was a limited -- as I spoke earlier, unquote,
9 there was a limit to the black jurors that was being
10 pooled at that time, and I had felt that -- I didn't feel
11 that Ms Edith had displayed anywhere in the record that
12 she would be -- she was afraid of me or would be weak on
13 ~~the death penalty, if it was actually contrary to what~~
14 the state had alleged when they examined her

15 She said she was willing to give the death
16 penalty, she was able to be unbiased and could carry out
17 her duties, if I believe -- there was a type three during
18 the questionnaire of this juror And other than that,
19 the state based their opinion that they just believed
20 what they could not do in spite of what she said she
21 could do it, and I felt the judge abused his discretion
22 by allowing the black juror to be dismissed based on the
23 state's belief, which was totally opposite, or contrary
24 to what the witness had testified to.

25 And I felt that that was a violation of my

1 Sixth Amendment right of the United States constitution
2 to a fair trial, and the Fifth Amendment clause of the
3 United States constitution

4 THE COURT Okay

5 THE WITNESS And there was also another
6 black juror that was struck, that the prosecutor struck,
7 which was by the name of Matthew Young The prosecutor
8 had alleged that Mr Matthew Young was -- had identified
9 himself with knowing my witness, but if I may, I would
10 like to read from the actual transcript of the dialogue
11 between the Court and myself and the state, and I quote
12 from the transcript, quote --

13 ~~THE COURT I'll tell you what What we~~
14 usually do is rather than quote the whole thing, just
15 refer me to the lines in the transcript, because I
16 actually have the whole transcript in a box in my office,
17 so I'll be reading that whole thing anyway, so I'll write
18 down the lines and the page and you just let me know what
19 they are

20 THE WITNESS Okay In the transcript, trial
21 transcript, page 1342, line 2, through 1346, line 19
22 And if I may quote the crux of a particular passage in
23 here is where the prosecutor -- I mean, I'm sorry The
24 state, I quote, stated that Matthew Young, quote, Matthew
25 Young stated in his voir dire that he knew a defense

1 witness named Javarı He also stated that he heard about
2 this incident on the street

3 The Court said I find that factually -- the
4 state responded He's weak on the death penalty too

5 The state, Mr Murdock, responded Yes, sir

6 And the Court responded I think that's a
7 factually neutral reason Do you have anything to show
8 he said -- that he said anyone with similar
9 characteristics, did they see anyone else that knew a
10 defense witness?

11 And I argued with the Court, telling them
12 that it was untrue that this black witness had said he

13 ~~knew anybody that was a defense witness, but it was,~~
14 rather, the state witness that this person knew

15 Is was one of the witnesses belonging to the
16 state, and the state conceded -- I mean, the Court -- I
17 presented a document of the Court -- of the state witness
18 list, and the Court did finally, I quote, from page 1346
19 of the trial transcript, quote, the Court responded I'm
20 looking at your list Javarı Mukesı, it has
21 Mufesı and he corrected it and said it was Mukesı, page
22 three of your witness list

23 The state responded The juror said that he
24 knew the defense witness, in spite that the state falsely
25 alleged that -- because there is no evidence in the trial

1 transcript record that this person even claimed to have
2 known any defense witness, and the Court is seeing and
3 telling the state face to face that this witness list of
4 yours, of the state, says that Javari Mukes1 is a state
5 witness

6 And finally, you can -- I also would like you
7 to refer to the questioning of Matthew Young, and it's in
8 the trial transcript on page 450 through page 451 And
9 it will show the questioning and examination by the
10 state, of this witness and I didn't -- myself, I read
11 totally and I didn't see where -- as a matter of fact, if
12 I may, I'll refer back, the state agreed that this --

13 ~~originally, that this black witness was sued to sit on~~
14 the jury, originally He stated that this witness was
15 sued to sit on the jury

16 If I may, of the trial transcript, page 450,
17 the Court, I quote Defense position on qualification,
18 myself responded I think he's qualified, Your Honor

19 The Court responded The state?

20 The state responded I don't disagree, sir

21 The Court All right Bring the jurors back
22 in, please The Court responded Mr Young, the Court
23 finds you to be qualified to serve on this panel That
24 doesn't mean you will be on the jury What that means is
25 you will go into a pool from which the juror will be

1 selected because I don't know how long this process is
2 going to take -- strike that, I'm sorry -- because I
3 don't know how long this process is going to take us
4 going through these questioning

5 We'll ask for your date Have you provided
6 that?

7 Yes, sir, unquote, and I felt that being that
8 it was a lack of African Americans to choose from
9 initially from the jury, from the jury total pool, and
10 then these two African Americans that did come under the
11 examination at the time they may have felt that the
12 prosecutor was using his strikes in a prejudicial way and
13 ~~to deny me a fair trial and the due process -- my due~~
14 process rights, to deny me my due process right in the
15 criminal procedure under the Fifth Amendment, and I want
16 to bring that issue -- was one of the issues that I
17 brought forth initially in the PCR file

18 THE COURT Okay Do you have another one?

19 THE WITNESS And another issue was the issue
20 in reference to the third party guilt, and the state had
21 alleged that -- well, the state claimed that I could not
22 bring forth, appoint a third party -- I could not
23 initiate or say that a third party guilt could be guilty
24 of this charge, or committed this crime, because I was
25 already charged, and the state was saying I was charged

1 of this crime, so therefore I could not question the
2 witnesses or solicit any -- procure any information from
3 the state, from the law enforcement, anything that would
4 suggest anyone else could have possibly killed the two
5 deputies, or killed one of the deputies

6 And I felt it was a -- that it was unfair
7 because they was using an alleged perjured witness only,
8 the state's only perjured witness The confessed
9 perjured witness stated that I told the person that I was
10 supposed to have committed this offense, I was supposed
11 to have killed the two officers

12 And in a recent ruling that came out after
13 ~~this argument that I was having with the Court about this~~
14 third party guilt, I'm referring to a ruling that, if I
15 may, I would like to submit as an exhibit for the Court
16 to see

17 THE COURT That would be fine

18 THE WITNESS And it's a ruling that was
19 dealing with Mr Justice Samuel Alito writing his opinion
20 of the United States Supreme Court case that was
21 overturned, a murder conviction of a South Carolina man
22 that was on death row, and this new ruling, I believe,
23 changed the dynamics of the way that the state had been
24 preventing evidence of the guilt of a third party, and if
25 I may say, this ruling -- if I may, I would like to quote

1 from this article, just a brief quote, paragraph, from
2 it

3 THE COURT Go ahead

4 THE WITNESS The justices -- I quote The
5 justices voted to hear the case, and it was argued on
6 February 22nd Alito's second day on the bench as an
7 appeal court judge he had a general conservative record
8 on criminal cases Alito's ruling said judges are
9 entitled to exclude evidence pointing to the third party
10 if it is misleading or irrelevant However, it is
11 arbitrary and unconstitutional to exclude evidence that
12 might well cast doubt on the defendant's guilt, he said

13 ~~And what that said, there was, I would say --~~
14 there was a person detained by the name of Bobby Rigby in
15 the case, and this person was apprehended on the
16 description that a witness said -- a person fit the
17 description of this person, clothing description, trying
18 to jump in the back of a truck

19 Because of this description from the witness,
20 Bobby Rigby was apprehended minutes after the shooting
21 incident They took Bobby Rigby in, and they gave him a
22 gunshot residue test, taking their clothes, confiscated
23 their clothing from them, and the whole works They
24 did -- in examining all the black witnesses, all the
25 black alleged suspects, and Bobby Rigby being a white

1 American, they didn't do that to him And his -- there
2 was witnesses and state law enforcement officials was
3 disbarred from testifying -- the Court disbarred me from
4 soliciting information from them that was witnesses
5 stating and saying Bobby Rigby confessions to them, that
6 he was involved in the shooting, that he was there, and
7 he saw what happened and he knew what happened

8 And they did -- the state, and how it
9 affected me, is that by the state -- when they detained I
10 Bobby Rigby, they detained Brenda Smith, a Kimberly
11 Blake, Devon Ivy, Otis Ivy, Timothy Morgan, Eddie Brown,
12 Arzell Brown, and I'll say there was a couple other
~~13 people that I do not name at the time, but the people~~
14 that was brought in as suspects, as they said, was
15 involved -- and to give you an example, Devon Ivy and
16 Otis Ivy, was detained in an area that was not relatively
17 close or nearby to the incident, and the state took their
18 property and gave them gunshot residue test and all that,
19 but Bobby Rigby they didn't, and according to Bobby
20 Rigby's statement, they thought he had done something

21 Eddie Brown was the owner of a home whom
22 Bobby Rigby stayed with Arzell Johnson and Timothy
23 Morgan was also associated with Bobby Rigby as his
24 friends, and Eddie Brown, or Arzell Johnson, was a cousin
25 to Eddie Brown They brought all these individuals in,

1 and Eddie Brown was the person that Bobby Rigby confessed
2 to being involved in an incident, and at a later
3 discovery, which I had also, I would presume, a
4 statement, a notarized statement, from Eddie Brown, which
5 I also would like to submit to the Court at this time

6 But the Court -- they refused to get any
7 statements from Eddie Brown concerning Bobby Rigby being
8 involved in the case, what he said and what he thought,
9 and the Court barred me from allowing this law
10 enforcement -- the law enforcement officials to testify
11 as to witnesses, firsthand witnesses, that Bobby Rigby
12 had confessed to them about his being there and being
13 ~~involved in this incident~~

14 And I feel that based on the rulings where
15 the Court had barred me from questioning the people in
16 that sense about the third party guilt -- and I would
17 like to refer to the Court, for the record, to review the
18 trial transcript, page 2808 through 2812, also, page 2774
19 through page 2784, also, page 2743, line 2, through 2744,
20 line 17, and page 2745, line 16 through page 2746, line
21 10, and page 2783, line 14 through 2785, line 5, and page
22 2786 through 1 through 9

23 And on page 2783, I had presented to the
24 Court evidence during the trial to show that it was the
25 law enforcement officials, because of their failure to

1 instigate an investigation, to carry out a thorough
2 investigation, to look farther into this individual, to
3 seek evidence from this individual, that there -- there
4 could has been exculpatory evidence there found on this
5 individual that could have vindicated me, just by simply
6 giving me a gunshot residue test, by simply taking his
7 clothes and finding out as many blood analysis -- expert
8 blood analysis could we find in his clothing and so
9 forth, to that extent

10 And on page 2783, I would like to read in the
11 trial transcript, page 2783, I stated, I quote Right
12 You don't want the jury, but, you know, I, the defense
13 ~~position, is that the action of the investigators and the~~
14 people involved in it, that because of the lack of them
15 to instigate or do a thorough investigation caused them
16 to lose exculpatory evidence in reference to that could
17 have shown the defendant was not guilty, and their
18 particular action in reference to other suspects
19 involved, they neglected their duty to rule out that the
20 defendant was not guilty, and I thought that their
21 action -- that they would have carried out their action
22 that it would have been exculpatory, but I think that is
23 exculpatory because --

24 And the Court responded Well, if you want
25 to?

1 And I myself responded It's cheer --

2 And the Court If you want to, I'm sorry I
3 didn't mean to interrupt

4 And I responded, myself responded Yes, sir,
5 go ahead, please

6 And the Court responded If you want to
7 impose upon an investigation, for example, if they found
8 other hair samples, for example, and then someone
9 suggests that another person was there and they didn't
10 ask that person who was actually there and they
11 questioned them, yeah, I would let you ask questions
12 about why did you ask that other person anything, just
13 upon their investigation?

14 That's not saying the other person did it
15 So when the Court said Well, the hair samples --
16 something about hair samples, then the state did not
17 acquire it The whole purpose of me saying they should
18 instigate it, or try to acquire hair samples, or blood
19 analysis, gunshot residue tests, tests did this person
20 fire a gun, to show that this person that they have
21 detained and apprehended, have handcuffed, based on a 911
22 call of a woman saying a person was fleeing the scene,
23 tried to jump into the back of her truck, when the
24 description of clothing he was wearing and that is what
25 he was detained from, as that would be seen in the sort

1 of brief like information I gave you yesterday introduced
2 the Court to review and look at the whole situation about
3 that

4 So my point is what I want, what I am asking
5 the Court, saying that I believe that the state violated
6 my Sixth Amendment right to a fair trial and due process
7 right, Fifth Amendment, and Fourteenth Amendment, equal
8 protection of the law and due process right by not
9 allowing me to question the law enforcement fairly during
10 trial, by not allowing me to bring forth witnesses
11 that -- or evidence, witnesses or evidence, that could
12 have been brought forth by law enforcement officials as

13 well as -- because of their lack of professionalism,
14 their lack of for whatsoever reason I can't -- I would
15 say their lack of ruling out that I was the only person
16 involved, or only suspect in this case at that time

17 And I believe that I should have been allowed
18 to thoroughly examine all the witnesses, all the state --
19 all the law enforcement officials concerning the matter,
20 and those cases that I read out to you was based -- I
21 mean, those -- excuse me, those transcript pages I read
22 off to you in reference to this matter is clearly based
23 around that argument of the third party guilt, and I
24 believe my constitutional rights was violated in
25 reference to that matter

1 And the state prohibited me from presenting
2 to the jurors testimony and possible evidence that could
3 have vindicated me by showing someone else actually did
4 the shooting other than myself, being that there was no
5 evidence found on me, on my person, in reference to
6 indicating that I -- for instance, gunshot residue, there
7 was no evidence that suggests that I fired a weapon

8 There was no evidence of my fingerprints
9 being on the weapon. The state introduced no evidence
10 that my blood was actually found on the weapon itself. I
11 believe, they said, they found blood drops on a scrap or
12 something that you carry a weapon with at the time is

13 ~~what I believe they are indicating, but they introduced~~
14 no evidence by pictures, nor the evidence itself into the
15 trial to show that I had any connection with any weapon
16 or that I fired if he weapon, and if they would have
17 examined this witness that they had, I believe they would
18 possibly have found evidence that would have shown, more
19 than likelihood than myself, has been the person who they
20 claim to have been -- shot the deputies, or shot one of
21 the deputies

22 And I feel like my rights was violated in
23 reference to that matter, and I hope that this Court will
24 be able to look into that matter for me and see it my way
25 in reference to the facts that the state had chosen me as

1 the person that would bear this case and excluded any
2 other people as being the person who committed alleged
3 said crime because there never was any criminal act

4 You know, there was no criminal act There
5 was no crime involved in this case, and I believe that
6 this issue of the state preventing me from presenting
7 evidence or showing that Mr Rigby was involved in this
8 case did injustice me greatly, and the conduct of -- law
9 enforcement officials' conduct was a grave miscarriage of
10 justice in reference to instigating and investigating
11 these people to find out the truth thereon

12 And if I may, I would like to move on from
13 that issue.

14 THE COURT Okay

15 THE WITNESS Another issue I wanted to
16 present to the Court is the issue If I may, may I
17 introduce this as an exhibit?

18 THE COURT Yes

19 MR WATERS May I see this, please? This is
20 reference in the Holmes versus South Carolina case, I
21 believe is what he is referring to

22 THE COURT Technically, it's hearsay, but
23 it's a citation to a published authority I'm aware of
24 the case

25 MR WATERS And I have no objection to

1 introduction to it as to that purpose I object to any
2 opinions to the author of the article or anything like
3 that

4 THE WITNESS Thank you

5 (Newspaper article marked for identification
6 and admitted into evidence as Applicant's Exhibit No 2)

7 MR WATERS As long as we're doing some
8 housekeeping, I want to go ahead and withdraw my
9 objection to the introduction of the article from
10 yesterday that referred to Mr Savitz, so I think that
11 would be Plaintiff's 3, that Mr Alkebulanyahh had wanted
12 to put into evidence

13 THE COURT. All right. Go ahead

14 THE WITNESS Another issue that I wanted to
15 raise was the issue of insufficient evidence I know
16 that in please -- in this Court that I didn't -- I know
17 this Court, I'm sure that the Court, I'm sure the Court
18 should -- I believe the Court is aware that -- I believe
19 you already have addressed me on that in reference to at
20 this stage, as we talked yesterday, at this stage that
21 insufficient evidence is not a ground to be raised in a
22 PCR proceedings I believe that was a ruling, or a rule
23 under the Anti-Terrorism Death Penalty Act

24 And I believe it was referring to when --
25 that it should be raised at the direct appeal, and I

1 would -- and as I said before, as one of the issues that
2 I did raise, and I mentioned yesterday about ineffective
3 assistance of counsel, and this issue, ineffective
4 assistance of evidence, which I'm raising now, is that I
5 wanted to -- I would have raised that at the direct
6 appeal, this issue, because the evidence that was
7 presented by the state, there was absolutely no evidence
8 that either pointed or even indicated that I committed or
9 killed any officer. There was only a belief that the
10 state presented that they believed that I committed --

11 THE COURT I think you raised insufficiency
12 of evidence yesterday afternoon. I have that written
13 down as an issue for -- in fact, it was your second issue
14 you raised yesterday afternoon, okay? So I don't think
15 we need to repeat that.

16 THE WITNESS If I may, sir, in brief, it
17 won't take but a minute, in raising that issue,
18 insufficient evidence, I would like to state for the
19 record that the case of State versus Schwab 283 SC 129,
20 322 S E second edition, and the case of the State versus
21 Michael Anthony Martin, and the case was appealed from
22 Henry F. Floyd, Circuit Court judge, and I would like the
23 Court to see the opinion number of the case, which is
24 25093, and it was heard on January 5th, 2000, and it was
25 refiled on June 12th, 2000, and both cases were reversed,

1 he Schwab case and the Martin case, based on the fact
2 that -- based on the fact that the trial judge should
3 have gave myself a direct verdict, being that the
4 evidence did not, I believe, stand up to the standards of
5 guilt beyond a reasonable doubt

6 And I believe that the state evidence only
7 raised a suspicion that myself was guilty, and there was
8 no proof of my guilt And if the Court would -- I would
9 like the Court to look into that matter for me in
10 reference to the issue I already raised yesterday

11 THE COURT All right Did you have any
12 others

13 THE WITNESS Yes, sir

14 Yesterday I gave testimony, but I was asked
15 questions by the PCR attorney appointed to me, Mr Glen
16 Walters, concerning the state of mind and whether my --
17 and my -- how I felt, was I satisfied with the trial
18 attorneys that was appointed to me, and I told the Court
19 that I was not satisfied and I mentioned about Mr Gerald
20 Kelly The first set of attorneys, they dismissed
21 themselves from the case, and the second set, Mr Gerald
22 Kelly and Attorney Sean Thornton, I filed a motion to
23 have them dismissed in the case

24 But I want to present to the Court into
25 evidence the documents that I referred to, which was the

1 only defense that I found that the lead attorney,
2 Mr Gerald Kelly, presented to me as far as to the mental
3 illness, mentally ill defense And I have these
4 documents in my hand, and it -- and this is the only
5 thing that was discussed between myself or Mr Kelly in
6 reference to any type of defense during the trial stage,
7 and I would like to present this to the judge, this
8 document, if I would, as an exhibit, in support of the
9 grounds that Attorney Glen Walters, brought up but I
10 would also like the attorney to see them and the
11 solicitor to see them, because I know the attorney does
12 not know that I have them, that I gave testimony to and
13 ~~this will support my testimony in reference to what I~~
14 have here about the only defense and the only thing that
15 I have, that indicate the type of defense that the trial
16 Court, the trial attorneys has what as pointed to
17 Mr Gerald Kelly was willing to provide to me

18 THE COURT Have you seen this?

19 MR WATERS If I could take a look at this,
20 please Thank you

21 Your Honor, with the Court's permission, do
22 you mind if I ask Mr Alkebulanyahh one quick question
23 about this document?

24 THE COURT Sure

25 MR WATERS Whose writing is this,

1 Mr Alkebulanyahh?

2 THE WITNESS I wrote at the top there I
3 put per Attorney Kelly It possibly, I believe, is
4 Mr. Kelly's writing, and if it's not, it's the other
5 attorney, Mr Sean Thornton, but I'm pretty confident
6 that it's either Sean Thornton but Mr Kelly, but I
7 believe -- I put the notation at the top right there that
8 said per Attorney Kelly because I believe it was, when I
9 found it --

10 MR WATERS Where did you get this document?

11 THE WITNESS I got that from one of the
12 investigators I believe it was Dale Davis, I

13 believe

14 MR WATERS It was a trial investigator?

15 THE WITNESS A trial defense investigator

16 MR WATERS Okay And what about the second
17 typewritten document? Where did that come from?

18 THE WITNESS Okay The second typewritten
19 document was also part of the -- I would say the
20 discovery, I believe it was I can't exactly say, but I
21 know it's part of the records of the state, it should be
22 If not, it's part of the records of Mr Kelly

23 MR WATERS Defense counsel's records?

24 THE WITNESS Right It comes from defense
25 counsel records, I'm pretty sure

1 MR WATERS Your Honor, I have no objection
2 to those documents

3 THE COURT All right Let's let the court
4 reporter mark that then

5 (Statute marked for identification and
6 admitted into evidence as Applicant's Exhibit 3)

7 (Newspaper article marked for identification
8 and admitted into evidence as Applicant's Exhibit No 4)

9 MR WATERS I waive my objection to
10 Plaintiff's 4

11 THE COURT Okay

12 THE WITNESS Yes, Your Honor If I may,
13 ~~also, in addition, as I said, I did not -- I apologize~~
14 for not being as thorough with the things that I want to
15 present to the Court today, but I also had spoke
16 previously yesterday, I believe, about the -- which I was
17 examined by the attorney about the -- for the discontent
18 of the lawyers and the psychological evaluation and to
19 that extent, and I didn't get the chance to read -- to
20 have what I need necessary with me, to find as rapid as I
21 need it, what I need to find in the transcript to support
22 what I'm saying

23 But I have another newspaper article which,
24 basically, I wanted the Court to be able to show what I
25 testified to, to some extent, that in relevance to that I

1 was -- I pleaded with the Court, the trial Court, Judge
2 Buckner, to hear my motion to dismiss attorney Gerald
3 Kelly and Sean Thornton at that time, before they
4 proceeded to mandate a psychological evaluation of myself
5 because of my distrust for the lawyers at that time And
6 if I may --

7 THE COURT Go ahead

8 MR WATERS Your Honor, before he reads it,
9 may I have a chance to look at it?

10 THE COURT Sure

11 MR WATERS Your Honor, the Court's
12 indulgence, one moment

13 ~~THE WITNESS If I may, Your Honor, call my~~
14 attorney up for a quick second?

15 THE COURT Sure

16 MR WATERS Your Honor, this is an article,
17 the date following a pretrial hearing that took place on
18 November 12, 2002, and that's present in the record
19 that's been provided to Your Honor on page 3887, and I
20 don't have any objection to it being admitted, subject to
21 what we earlier discussed, and, obviously, we're not
22 getting into any hearsay or opinions of the writers, but
23 I think it just reflects what he heard at that hearing
24 In that regard, I don't have any objection

25 THE COURT All right It's not being used

1 to prove the truth of the matter asserted, it's just
2 referring me to, basically, the record So it's
3 admitted, and do you have it marked?

4 THE WITNESS Thank you, and I appreciate
5 that the state agreed What he said, it's just a
6 reflection of what was actually on the record, which I
7 didn't have present at this time to refer to

8 (Newspaper article marked for identification
9 and admitted into evidence as Applicant's Exhibit No 5)

10 THE COURT All right Did you have anything
11 else?

12 THE WITNESS Yes, sir Your Honor, in
13 ~~addition, as I was stating, there is evidence that at the~~
14 time dealing with a witness that was privy to the case,
15 Mr Eddie Brown, I mentioned earlier, I had two
16 statements at the first I only have one, but I see
17 something that was given to me before, that was sent to
18 me through the mail, via the mail, while I was on death
19 row, and the first one was when I was in the county jail

20 I had a statement that was given to me, and I
21 think I disclosed it to the investigators at that time,
22 and they made copies of it And I received another
23 statement that was unnotarized and wasn't signed after it
24 was written, but the handwriting appeared to be the same
25 And I wanted to submit this for Your Honor to -- if

1 possible, as a possibility of newly discovered evidence
2 situation because I believe that the state had
3 intentionally avoided this witness, and there is evidence
4 in the record to show that of all the witnesses, this
5 witness here was more incriminating against his roommate,
6 Bobby Rigby

7 So they didn't get any signed voluntary
8 statements from him, but they got this signed voluntary
9 statement from his cousin and another roommate that was
10 at his house on that day of the incident, but this was
11 the only witness that they refused, law enforcement
12 officials refused, to obtain any information from him

13 ~~And I tried to procure the information from~~
14 law enforcement during trial that I call a defense
15 witness of the things that they got -- what they received
16 from interviewing this person, and in their reports, they
17 indicated, several law enforcement officials indicated,
18 that Mr Eddie Brown implemented and said that Mr Rigby
19 had told them --

20 MR WATERS Your Honor, I object to the
21 hearsay

22 THE COURT I'm not quite sure what it is
23 that you're asking me to consider You got a statement
24 from somebody?

25 THE WITNESS Yes, and it's a statement from

1 Mr. Eddie Brown I believe it's from Mr Eddie Brown I
2 have no way of proving it I've never met him, I've
3 never talked to him I asked the defense investigators
4 They tried to find him at the time

5 He moved to Georgia, and they tried to seek
6 him out, right after the incident He just disappeared,
7 and that was another issue that I had had with the
8 lawyers, them not being able to -- the ineffective
9 assistance of counsel during the trial level and forced
10 their investigatory method about not seeking this
11 witness, getting a statement from him signed, notarized,
12 and being -- that can be used in my defense

13 ~~THE COURT All right Let me see if I~~
14 understand this Somebody sent you a statement?

15 THE WITNESS Yes

16 THE COURT All right What I need you to do
17 is let me have it, and I'll consider it when we take a
18 break for lunch I'm not really sure whether this is the
19 proper place for you to offer newly discovered evidence
20 or not, but I'll research that during the lunch break
21 Okay?

22 THE WITNESS Okay

23 MR WATERS Your Honor, may I see the
24 statement?

25 THE COURT Sure We'll make a copy of it

1 for you too

2 MR WATERS Your Honor, I certainly object
3 to that statement as hearsay

4 THE COURT Well, let me have it to have the
5 court reporter mark Right now I'm just going to let you
6 proffer it I have not decided whether or not you can
7 have it admitted, but I want to make a copy of it when we
8 take a break here, and then I'll make a decision as to
9 whether or not it can come in What else did you have?

10 THE WITNESS There was the issue also of the
11 violation of my Miranda rights, that I want to make an
12 issue, and I believe I did claim it in the initial brief
13 when I filed it

14 THE COURT Is that something you raised at
15 the trial court level?

16 THE WITNESS Yes, sir

17 THE COURT All right So what is it you
18 want me to do?

19 THE WITNESS I believe it was a violation of
20 my Fifth and Fourteenth Amendment right, and my Fifth
21 Amendment right of due process of law and my Fourteenth
22 Amendment equal protection of the law and due process and
23 the conduct of the police officers when they detained me

24 The state had alleged or presented witnesses
25 saying that the officers said that I told them that the

1 location or area where the alleged murder weapon could be
2 found, when the officers detained me and they put a gun
3 in my face directly and started questioning me without
4 reading me my rights or anything based on demanding
5 questions from me

6 THE COURT Did you make a statement?

7 THE WITNESS I made a statement, but I don't
8 believe that it was a statement in reference to them
9 saying that -- with them saying that I said that a gun
10 was in the woods, after they pointed the gun at my face

11 THE COURT Let me ask you this Did you say
12 something that incriminated yourself?

13 ~~THE WITNESS No~~

14 THE COURT Okay Well, then it doesn't --

15 THE WITNESS Other than the statement of
16 them saying that I said that the gun was in the woods and
17 they found the gun in the woods I felt that statement,
18 what they said, was incriminating to me

19 THE COURT All right

20 THE WITNESS And I had filed a motion for
21 dismissal, asking the Court to suppress the use of this
22 gun that they said they found as a result of -- well,
23 they didn't say -- I'm sorry They did not say as a
24 result of the statement in itself, they said that the
25 police dogs or law enforcement probably would have found

1 it anyway, you know, was going to find it anyway, and
2 that was the defense of the state at that time

3 And at this time, what I'm saying is if that
4 is what their defense was, then if that was true that
5 they believed that the dogs could have found this at the
6 time then in this area, then would the dogs have found it
7 in the river where the gun was found next to, you know,
8 the dogs -- if this gun was tossed in the river or
9 something, or some other method or something? But I just
10 say a river because the river was right in the area, in
11 the vicinity, and I just believe that if that was the
12 case, then that evidence should have been suppressed

13 ~~THE COURT All right What else then?~~

14 THE WITNESS Finally, if I may, I want to
15 raise the issue, which I previously spoke about in
16 reference to the Fourth Amendment, actually, the United
17 States Constitution Fourth Amendment violation, the
18 state, in fact -- if this Court would seek out to
19 establish the truth to the matter that I'm about to
20 speak, say, the fact that -- to establish the truth to
21 the matter that neither of the state's witnesses,
22 Kimberly Blake and Brenda Smith, the two witnesses that
23 they had, are key witnesses that had any knowledge in
24 reference to the situation at my residence, that neither
25 of the state's two remain key witnesses, to establish

1 that -- I'm sorry, to see if -- to seek in the record to
2 establish that the state did not introduce in the record
3 any evidence that either Kimberly Blake or Brenda Smith
4 had any ownership in the private property or the
5 residence in which I live, and I think that is a pivotal
6 piece of evidence that needs for the state at this time
7 to show this Court

8 THE COURT Doesn't this relate back to the
9 issue you raised yesterday about whether or not they had
10 the right to come into the house in the first place?

11 THE WITNESS Yes, but --

12 THE COURT You've already brought this issue
13 up

14 THE WITNESS But I thought maybe if I did --
15 like I said, I wasn't -- as I did yesterday to the issue,
16 but I want to be specific in reference to the ownership,
17 that something in the record should suggest that either
18 one of these witnesses had ownership, were they renting,
19 did they own, was property in their name, and for the
20 state to present something into the evidence or show that
21 they had ownership or they had some type of a partnership
22 in the residence that was presented at trial or any
23 statute or law that would show that a third party, of
24 either one of them, had authority to allow the law
25 enforcement into my and my wife's residence and to allow

1 them inside our private bedroom

2 THE COURT Okay Well, you raised that
3 yesterday That is under what we call standing to raise
4 that, to give consent to enter the house, so you did
5 cover that yesterday afternoon

6 THE WITNESS And now, if -- thank you, but
7 what I did was I had numerous -- I had other cases that I
8 want to refer to, and I don't believe, because I'm not in
9 the legal profession, sometimes as it is said, that one
10 case law --

11 THE COURT Just -- what I'd like you to do
12 is, if you have some case names or something, you can
13 ~~just write those down for me Okay? And you can do that~~
14 during lunch and give it to me after lunch

15 THE WITNESS Okay

16 THE COURT All right Did you have any
17 other issues?

18 THE WITNESS Yes Your Honor, I previously
19 had -- as, again, I don't mean to be revisiting over and
20 over again the particular issue, but also I want to be,
21 if I could, I want to present about -- I want to add on
22 to the position that the appellate defense was -- and the
23 position of the appellate defense of counsel being
24 ineffective and my efforts that I did take and things
25 that I did try to do, put on the record my issues, which

1 were to be raised, and issues surrounding those to be
2 raised from the trial on direct appeal, and I wanted to
3 submit this into evidence, our orders, documents, and
4 correspondence with the Supreme Court of South Carolina,
5 because I initially took the initiative because I was pro
6 se during trial, and I -- from November 3rd, 2003, I had
7 received a letter because I had wrote the Supreme Court
8 about appealing the case

9 And I initiated this myself, and the Court
10 informed me that Gerald Kelly would do that for me at the
11 time that I was on death row when they responded back,
12 and it goes to show the first document and me trying
13 ~~to -- from the beginning, from the beginning, trying to~~
14 make an effort, a diligent effort, to put my issues and
15 prepare myself, prepare a defense for direct appeal And
16 this effort was made by myself initially, and even though
17 the Court said that I could not and would not be able to
18 proceed pro se on direct appeal, at a later time, after I
19 tried to make this attempt as different things was
20 evolving, but there was things that I certainly wanted to
21 get on the record, because, again, I felt that if I
22 had -- I had been my own attorney during trial, and by
23 so, I believe that that is an indication that I made some
24 type of attempt to present a defense in my behalf, in
25 reference to my guilt or innocence of the charge, the

1 guilt phase of the charge, the proper terminology in
2 reference to the opposite of the sentencing phase,
3 because I had not been convicted yet

4 But I made a diligent effort to establish a
5 defense, and my direct appeal was filed by attorneys, and
6 they made no effort to acknowledge or communicate to me
7 in any manner about the defense that I had presented or
8 tried to establish for myself during the trial phase, and
9 by them not challenging the guilt phase of my trial, I
10 believe it was an intentional doing, malice doing, to
11 prevent me from raising pertinent issues that could have
12 warranted me a new trial, or the case being referred back
13 to trial

14 THE COURT Okay

15 THE WITNESS And I have a document that I
16 would like to submit, evidence from the Supreme Court of
17 South Carolina dated November 3 --

18 THE COURT I'm sure that's part of the
19 record, but we'll go ahead and, you know, put it in
20 Mr Waters, I'm sure wants to just look at it

21 MR WATERS I handled the direct appeal so I
22 am familiar with them, but I would like to take a look

23 THE WITNESS And I also have --

24 THE COURT Hold on a minute

25 MR WATERS I have no objection, if he wants

1 to enter those

2 THE COURT All right Hold on I got to
3 let her mark that

4 (Direct Appeal marked for identification and
5 admitted into evidence as Applicant's Exhibit No 6)

6 THE WITNESS I wanted to add this too

7 THE COURT Just let Mr Waters look at it
8 and see if he has any objection to it

9 Mr Alkebulanyahh, let me ask you a question
10 How many more issues do you want to raise? Because I
11 need to take a rest room break, but also, we're
12 approaching noon, so if you've got just like one or two
13 ~~more, we'll just take a bathroom break and then we'll do~~
14 your cross after lunch, but if you've got -- how many
15 more do you have?

16 THE WITNESS I have two more issues that I
17 want to raise, and one would be probably relatively
18 quick, I believe

19 THE COURT Okay Well, let's take, like, a
20 15 minute rest room break I'll let you -- then we'll
21 come back, and I'll let you raise the issues that you
22 want, and we'll break for lunch and then when we come
23 back, Mr Waters can begin cross-examination

24 MR WATERS Your Honor, I have no objection
25 to these documents either if they were drawn from the

1 direct appeal I would note, though, that
2 Mr Alkebulanyahh has put his own personal notes on these
3 in pencil, and those obviously were not on the original
4 documents, I think that is pretty self-evident, but if he
5 wants to introduce those, I have no objection, subject to
6 that caveat

7 THE COURT Let's just have court reporter
8 mark those then collectively --

9 THE WITNESS If possible --

10 THE COURT It's okay

11 MR WATERS I just wanted the record to be
12 clear It's pretty obvious

~~13 THE WITNESS Before we take a break, I just~~
14 have these last little bit right here, that would
15 conclude this matter here

16 THE COURT That would go with what we just
17 marked?

18 THE WITNESS Yes

19 THE COURT All right Let Mr Waters see
20 what you want to introduce

21 MR WATERS Your Honor, I have no objection
22 to introducing those, subject to something I think I said
23 from the beginning, is that I do not intend to be accused
24 of trying anything by consent, and one of those is a
25 letter from Mr Alkebulanyahh to Joseph Savitz, and he

1 has pled some issues and there was an amendment to an
2 application that was pled, and I'm obviously ready to try
3 those, but any sort of new issue that might come from
4 those, that the state would object to those, and I don't
5 want to be accused, again, of trying anything by consent,
6 but one of them is a document he filed with the state
7 Supreme Court One of them is a letter to Mr Savitz,
8 and at least to show the efforts he was taking during the
9 course of the case, I have no objection to that in that
10 regard

11 THE COURT We'll have her just mark those
12 collectively as the next exhibit

13 (Documents marked for identification and
14 admitted into evidence as Applicant's Exhibit No 7)

15 (Recess taken)

16 THE COURT We're going to resume now Let
17 the record reflect Mr Alkebulanyahh is back in the
18 courtroom You said you have one or two more?

19 THE WITNESS Yes, sir Your Honor, if I
20 may, I would like to present the issue of -- also
21 included in the Fourth Amendment, the issue of seizure of
22 person

23 THE COURT How does that differ from --

24 THE WITNESS How it differs from what I have
25 previously been --

1 THE COURT Are you saying your arrest was
2 unlawful, is that it, when you say seizure of person?

3 THE WITNESS Yes, sir

4 THE COURT All right Go ahead Explain

5 THE WITNESS Excuse me That was not my
6 intention What I meant was the arrest was unlawful

7 THE COURT Just the same -- the fact that
8 there was no probable cause to enter into the house?

9 THE WITNESS Right, and I was seized inside
10 my home

11 THE COURT Okay All right

12 THE WITNESS Seizure of person

13 THE COURT So the same grounds as -- there
14 was no consent given or probable cause given to enter
15 into the house, there was no standing by the people that
16 allegedly did give consent to enter, and that that also
17 led to the grounds of unlawful arrest That's your
18 claim?

19 THE WITNESS Unlawful seizure

20 THE COURT Okay, which would be an arrest

21 THE WITNESS Yes, sir, exactly Yes, sir
22 Thank you

23 THE COURT All right

24 THE WITNESS And if I may, Your Honor, I
25 would like to quote a brief paragraph or two in essence

1 of my standings on the two deputies that entered my
2 residence and unlawfully seized me United States
3 constitution amendment right, and in violation of my due
4 process right of the United States constitution Fifth and
5 Fourteenth Amendment

6 I would like to -- if I may, I would read on
7 paragraph two, from Kaupp, K-a-u-p-p, versus Texas 123
8 Supreme Court 1843, case of 2003 And it was -- the
9 Court had held, I quote A seizure of the person within
10 the meaning of the Fourth and Fourteenth Amendment occurs
11 when taking into account all of the circumstances
12 surrounding the encounter

13 ~~The police conduct would have communicated to~~
14 a reasonable person that he was not at liberty to ignore
15 the police and to go about his business This test is
16 derived from Justice Stewart's opinion in United States
17 versus Mendenhall, 46 US 544, 100 Supreme Court 1870, 64
18 L Ed Second edition 497 1980, see California versus
19 Hadori D, 499 U S 621, 627 through 628, 111 Supreme
20 Court 1547, 113 L Ed , second edition, 690 1991, which
21 gave several examples of circumstances that might
22 indicate a seizure, even when a person did not attempt to
23 leave, including the threatening presence of several
24 officers, some physical touching of the person, of the
25 citizen, or the use of language or tone of voice

1 indicating that compliance with the officers' request
2 might be compelled Mendenhall Supra at 554 100
3 Supreme Court 1880, unquote

4 THE COURT Okay I really don't need you to
5 sit there and read me what the cases say If you'll just
6 give me a list of the cases that you wanted me to read,
7 I'll be glad to do that All right? So you had another
8 issue?

9 THE WITNESS Yes

10 THE COURT All right What was that?

11 THE WITNESS The other issue that I want to
12 bring before the Court was that with my being brought
13 into the prison system on death row, it interfered with
14 my access to court, prison officials interfered with my
15 access to court and, I believe, caused me harm

16 And the way that I would be able to stay
17 mentally focussed and aware and be able to exercise my
18 constitutional rights of First Amendment, having access
19 to the courts, as well as the physical abuse and, I
20 believe, as I said, torture that I had to endure from
21 prison officials, and I believe it was in relation to the
22 charges that I've been accused of

23 MR WATERS Your Honor, I apologize I do
24 have to object to this on relevance grounds as beyond the
25 scope of anything we raised in the PCR proceedings I

1 know you want to give him his day in court, but I want to
2 object on that business

3 THE COURT He's got a technical point, but
4 if you want to make it briefly, I'll let you make it
5 briefly, but it really isn't something that can be
6 addressed in a post-conviction relief matter

7 THE WITNESS Yes, sir If I may, because I
8 believe that the conduct of the prison officials
9 depriving me of my legal material, forcing me to sleep on
10 concrete without mattresses, without clothing, without
11 pen and paper and pencil, to be able to address the Court
12 in reference to my criminal case or even perceive

13 ~~anything in a civil action to get relief, so I would be~~
14 able to correspond with lawyers or family or friends,
15 whatever is necessary for me to be able to somehow
16 continue to vindicate myself from the false conviction

17 And had I had paper and pen and proper
18 clothing and things that was afforded to most prisoners,
19 I believe, especially in a Democratic nation, that I
20 believe that perhaps from the documents already submitted
21 into evidence in reference to the Supreme Court stating
22 that at one time that they believed that if I had took
23 the initiative and maybe was able to establish in a
24 timely fashion that there was a possibility that I could
25 have proceeded per se on direct appeal

1 It was -- in the document that I submitted,
2 it was an indication from the Supreme Court in their
3 words that it wasn't in a timely fashion, and the state
4 also had argued, along with the appellate defense,
5 claiming that, myself, was too late to be able to file
6 anything in my behalf, that perhaps would allow me to be
7 able to proceed pro se or negate a pro se proceeding on
8 direct appeal

9 And that avenue was stripped from me, and I
10 believe it was a tactical ploy with the Department of
11 Corrections in cahoots with the appellate defense and the
12 state because I believe that is a fundamental right that
13 ~~any person that has been convicted and tried and~~

14 sentenced should not have all his legal material taken
15 away from him, basic writing material, pencil and paper,
16 and making his living condition so unbearable to where
17 one, I believe, I would become mentally unstable to the
18 extent -- to be able to function in a normal manner to
19 continue to pursue and challenge his criminal conviction

20 And I don't believe that in this country that
21 prison officials that would have unlimited powers to be a
22 punisher, a judge, to treat me in a fashion that one
23 would assume that a dictator like Saddam Hussein or
24 someone they consider evil, like Osama bin Laden, would
25 treat an American soldier or someone that was captured in

1 war To me, I believe, in my mind, based on my Jewish
2 and African name they were presuming that I was a Muslim,
3 which I was not

4 And even the appellate defense, Mr Savitz,
5 stated in his direct appeal, filing his pleading from me,
6 that I was a Muslim, and I believe that was to -- perhaps
7 if it was the case to prejudice anyone who had a dislike
8 for Muslims at a certain time to give me proper justice,
9 and this was in his filing, in his brief on direct
10 appeal, and I brought that to the Court's attention it
11 was untrue, and in the trial records I have where -- that
12 I explicitly and openly and asked the judge, told the
13 judge, that I am of the Jewish faith and that I wanted to
14 exercise my rights in that behalf

15 But I just don't -- I just cannot concede
16 that in America, this day and time, that prison officials
17 can actually confiscate all legal material that is over
18 Once a person leaves the trial and is sentenced to death,
19 he does not have a right as determined by officials for
20 the Department of Corrections that he does not have a
21 right to be able to pursue, address the Court, or to find
22 any avenue to prevent him from being tortured or being
23 physically abused

24 And this abuse took place so long and so
25 enduring that when I was finally able to have paper and

1 pen and trading off my food to inmates for them to try to
2 smuggle me things so I could address the Court, because
3 at one period of time I know -- at least at one period of
4 time I actually filed a document on toilet tissue, which
5 I wrote the United States Supreme Court, pleading with
6 them about legal material and something to write with but
7 all I had was toilet tissue and a broken pencil that was
8 found in the cell

9 And I put that into the mail in a sealed and
10 enclosed envelope and sent it to the United States
11 Supreme Court I brought this to the attention to the
12 South Carolina Supreme Court, I brought it to the
13 ~~governor of South Carolina, Mark Sanford, who also~~
14 responded to me during this period, this early period,
15 that he would allow -- he would forward it to somebody,
16 to the appropriate officials, to look into it, if these
17 conditions was going on, and thanking me for bringing it
18 to his attention

19 And I have here the -- because I have to
20 write every document by hand They don't provide copies,
21 and I have to write -- if I do have documents to be able
22 to submit to the Court, I have to write by hand and back
23 and forth in civil actions I'm trying to write a brief
24 and respond back to the respondents and in reference to
25 matters, and the first civil action that I did take

1 place, for the record, that these was actually things
2 that occurred, and I pursued with every power and
3 everything that I had and spent all the time that I had
4 concentrating on this effort to change this condition so
5 that I could be in a position to also condition my
6 struggle to stave my life from the death penalty, to
7 challenge my criminal conviction, so I had to get this
8 burden off me first

9 And until this very day, since 2003, I am the
10 only inmate on death row that has been segregated and his
11 privileges abridged, even though in the last three years
12 I have had no type of infraction or encounter with the
13 ~~staff members or anyone~~

14 THE COURT Let me ask you Have you gone
15 through the administrative procedures?

16 THE WITNESS I use every administrative
17 procedure possible I --

18 THE COURT What happened as a result of
19 that?

20 THE WITNESS As a result, everything was
21 ignored The grievance system is broken

22 THE COURT Let me stop you, though, because
23 what happens is you have to go through the administrative
24 procedure If that doesn't work, then you go to the
25 administrative law court Then if that doesn't work,

1 then you can appeal to the Circuit Court

2 I really don't think there is anything I can
3 do in this proceeding to help you out, but that is what
4 the process is you have to do to get the kind of relief
5 you're talking about on that issue

6 THE WITNESS Well, sir, I took that step I
7 took that process and in my hand I have the civil docket
8 case number 605-CV-02324 MDS titled Tyree Roberts, also
9 known as Abidiyyah Ben Alkebulanyahh versus defendant
10 Mark Sanford, and I have also another document, civil
11 docket case, titled Abidiyyah Ben Alkebulanyahh versus
12 the defendant South Carolina Department of Corrections --

13 ~~THE COURT~~ I understand what you're telling
14 me, but there's processes when you -- if you don't get
15 the relief, then you can appeal, and it will eventually
16 make its way up to the Supreme Court, but I can't do that
17 in this proceeding, but what I'm telling you is when you
18 lose, it sounds like you have, on those certain levels,
19 then you appeal to the next level, and at some point
20 you'll get to the Supreme Court and they'll say, to the
21 lower Court, to the Department of Corrections, either
22 give him stuff or whatever he's asking for or not, but
23 this isn't the avenue to get to the Supreme Court on
24 that It's appealing those decisions when those people
25 turn you down to the next level

1 THE WITNESS I fully understand I fully
2 understand what you have explained to me

3 THE COURT Even if I agree with you, they
4 ought to give you that stuff, all they would have to do
5 if they wanted to is appeal it and the Supreme Court
6 would say, Young, you were wrong in doing that That
7 isn't the right avenue He has got to go through the
8 administrative procedure, so I can't help you on that

9 THE WITNESS Your Honor, I understand you
10 fully, and I've done that situation, and it's done --

11 THE COURT And you appealed to the Supreme
12 Court?

13 ~~THE WITNESS Yes, I appealed to the Supreme~~
14 Court and --

15 THE COURT You understand they're above me
16 I can't tell them they were wrong They often tell me
17 I'm wrong, but --

18 THE WITNESS Now -- indeed

19 THE COURT You follow what I'm saying?

20 THE WITNESS Yes, sir, absolutely

21 THE COURT They don't care what I think as
22 much as I have to care what they think

23 THE WITNESS Exactly, but my situation is I
24 appealed to the Supreme Court My documents don't go
25 out I have to use the Department of Corrections to mail

1 off and rely on them to put in the box to mail to the
2 Supreme Court, or any Court, for anything that I do

3 And they basically refuse to mail off
4 documents or anything for me if I cannot prove it, and I
5 have the evidence right here, from the Department of
6 Corrections themselves, telling me and returning
7 documents that was addressed to go to the United States
8 Supreme Court

9 THE COURT Maybe when we're finished at the
10 end of day you can give those to Mr Walters and
11 Mr Walters could mail them for you

12 THE WITNESS It was brought to Mr Walters'
13 ~~attention, in the sense of that one particular thing is~~
14 that if I was sitting on death watch and I had to depend
15 on an attorney to file my stay of execution and the
16 attorney don't do it, I can't file ineffective assistance
17 of counsel because the attorney didn't file my stay of
18 execution to the Supreme Court

19 Now, if the Department of Corrections was
20 this powerful, they have the power of life and death in
21 my hand because if I file my own state, ask the United
22 States Supreme Court for a stay of excuse and the
23 Department of Corrections refused to mail it, it's
24 frightening

25 THE COURT I understand the dilemma that you

1 have I understand that, but I just -- there is nothing
2 that I can do in this proceeding to assist you on the
3 problem that you're having And I'm not trying to blow
4 you off or anything, it's just -- I'm limited in what I
5 can hear, and I've left you over the last, you know,
6 yesterday afternoon, this morning, make a lot of issues
7 for a record that the state has objected to, but even if
8 I were to say I agree with you and you've been wronged,
9 I'm powerless to do anything to assist you on this last
10 one

11 So I'm just going to have to respectfully cut
12 you off on that one, because I just can't do anything on
13 it Okay?

14 THE WITNESS If I may, Your Honor, make just
15 one last comment?

16 THE COURT What is that?

17 THE WITNESS That my ability to challenge my
18 criminal conviction is -- it has -- I have a script of
19 all the ability by -- when the judge sentenced me to
20 death then I can't see, what right do I have once I leave
21 the trial court to challenge my conviction?

22 THE COURT Well, I understand your dilemma,
23 and the only thing I can say to that is as to your
24 appeal, the state provided you lawyers with that, and
25 they got a transcript, and as to this proceeding, you got

1 lawyers appointed, and they got copies of the transcript

2 And so, you know, perhaps between those two
3 the lawyers could provide you with a copy, if they had an
4 extra one, but I don't believe that there is -- I don't
5 believe there is a remedy through this proceeding for the
6 problem that you have, and the only thing that I could
7 suggest to you is, again, that you go through the
8 administrative procedures, and when you get an
9 unsatisfactory result, then you have an avenue for
10 appeals on those Okay?

11 THE WITNESS If I may, Your Honor, just a
12 final statement? I believe that the conduct of the

13 ~~Department of Corrections interfered with my Sixth~~
14 Amendment right, a fair trial, and my due process right
15 to be able to have access to the court and challenge my
16 conviction, and I appreciate it

17 Thank you

18 THE COURT Okay All right Then what
19 we'll do is -- that's the last one you had to bring up?

20 THE WITNESS No If I may have five
21 minutes?

22 THE COURT Okay Fair enough

23 THE WITNESS Yes, Your Honor, for the final
24 issue, very briefly, I wanted to bring to the Court that
25 I felt that it was an issue of -- that the Court, I

1 believe, that it was a denial of my Eighth Amendment
2 constitutional right and my Fourteenth Amendment right
3 and my First Amendment right that the trial Court denied
4 me by not allowing myself to exercise my religion during
5 the course of the trial

6 The trial was somewhere between 30 to 60
7 days, and the Court burdened me with being woken at 4 00
8 in the morning and leaving the county jail area and
9 entering the court and not departing from the court seven
10 days a week, at least 90 to 80 percent of the time, from
11 4 00 in the morning till 9 00 and 10 00 in the evening
12 time, and that was including Saturdays and Sunday, and it
13 was -- it affected me in many areas for me having to be
14 in the courtroom on my sacred religious day that is most
15 dear to me

16 I brought it to the Court's attention on page
17 1224 in the trial transcript, beginning at line 5, and I
18 spoke, and I quote I'm just going to state for the
19 record that I am Hebrew and my religion is Yawehism, and
20 it would just conflict with the practice of indifference
21 to the violation of my religious belief as far as the
22 holy sabbath is concerned, the holy date to give
23 reverence to my god

24 And on page 1471 of the trial transcript, I
25 would quote the Court at line 20, at a different time in

1 this process I will consider the request made by the
2 defendant As I indicated yesterday, I need to balance
3 the interest of the system in completing this case

4 The schedule that has been imposed upon this
5 case indicated I had previously brought to everyone's
6 attention that I was going to hold court on the weekend
7 Apparently, Mr Alkebulanyahh, you did not hear that
8 conversation, unquote

9 And I believe that it was a horrible thing
10 for the system, which knew I was not familiar, that the
11 court systems hold courts seven days a week and could
12 keep a person in the courtroom from -- before sunup to
13 way beyond sundown, and considering that I was pre-se and
14 I wanted to practice my religion, and I believe that
15 impaired me from being able to be as effective as I could
16 have been or more effective in preparing my defense, and
17 me being whole spiritually and having mental
18 accountability with being in the courtroom, and that is
19 my last issue, and I would like the Court to consider
20 that I believe that, you know, based on that, you know,
21 and other portions that I wanted to raise at that time
22 and I didn't know if the Court -- I'm not a lawyer, but,
23 you know, I believe that that issue, the issue with the
24 box of bullets, of the Court rescinding on its ruling and
25 allowing the state to enter a box of bullets, the issue,

1 based on the third party guilt, which I previously
2 mentioned, the issue on the speedy trial, the issue on
3 the -- I retract that about the speedy trial

4 I don't believe it falls in the category,
5 that issue, I believe that is -- those were violations of
6 my Sixth Amendment United States constitutional right,
7 and I believe that I deserve -- should be granted a new
8 trial, based on what was presented, the evidence, and
9 what I presented here in this Court

10 I believe that the Fourth Amendment issue,
11 which was the violation of the search and seizure on both
12 of them, the search of the residence and the seizure of
13 ~~the person that I've previously shown, I believed that~~
14 this Court should grant me a dismissal of my conviction
15 wholly I believe I should be exonerated because those
16 relations that took place, as well as -- I would ask the
17 Court that if the Court hears that issue and accept the
18 argument and review it, I believe it is in the Court's
19 power and discretion to grant me, in addition to
20 exoneration, total exoneration, and dismissal of the case
21 on the insufficiency of the evidence as well, and this is
22 what I am presenting before this Court, the actions to be
23 taken, that I be totally exonerated and the case
24 dismissed, based on the violations that I have previously
25 stated to the Court, and I rest with any other issues at

1 this present time, Your Honor, sir, and thank you

2 THE COURT All right Well, thank you

3 What we're going to do now, is it's 1 00, and we'll break

4 for lunch till 2 30, and we will resume then Mr Waters

5 can do his cross-examination at that time So we're in

6 recess until 2 30

7 MR WALTERS May it please the Court, to

8 close the direct examination, I have one question that I

9 need to ask Mr Alkebulanyahh

10 THE COURT All right Well, go ahead

11 BY MR WALTERS

12 Q Mr Alkebulanyahh, so the record is clear, have

13 ~~Mr Grant and I covered all of your issues with regard to~~

14 your PCR?

15 A Yes, sir, you have You have discussed with me

16 the matter, and I feel satisfactory about the

17 representation, and thank you, yes

18 THE COURT All right Okay See y'all at

19 2 30

20 (Recess taken)

21 A F T E R N O O N S E S S I O N

22 THE COURT All right We are back from

23 lunch, and the record reflect Mr Alkebulanyahh is in the

24 courtroom

25 Mr Waters, whenever you're ready to begin

1 with cross, you may

2 MR WATERS Thank you, Your Honor May it
3 please the Court

4 CROSS-EXAMINATION

5 BY MR WATERS

6 Q Mr Alkebulanyahh, how are you doing today?

7 A I'm as well as I can be under the circumstances,
8 thank you

9 Q I hear you I just want to ask you just a few
10 general questions about yourself, and I believe you
11 finished high school, correct?

12 A No, I did not I attended school till the 12th
13 ~~grade, and I was incarcerated in Florida and obtained a~~
14 GED

15 Q While in prison?

16 A Yes

17 Q And then you went to school to be a chef, is that
18 right?

19 A That is correct

20 Q And then after that, you took some classes in
21 business college and Brewton Parker Christian College, is
22 that correct?

23 A Yes While in prison, I took -- well, before
24 prison, I went to cooking school to be a chef and
25 technical school I didn't complete it, based on an

1 accident I was in I was in a motorcycle accident that
2 caused me to have to drop out of school, and I was
3 incarcerated, and I think it was '85, in Georgia, and --

4 Q Let's talk about that real quick, and I'm not
5 concerned whether or not you did it or not, but you
6 initially were incarcerated in Georgia, I believe, in
7 '81, correct?

8 A No, in Florida

9 Q Florida in '81, and that was for armed robbery,
10 right?

11 A Yes, sir

12 Q And I believe you served about three or four
13 years, is that correct?

14 A Yes, about three years

15 Q Was it there that you first started to kind of
16 study about post-conviction relief and the constitution
17 and things like that?

18 A It was -- well, it was there that I first walked
19 into a law library before I had -- you know, I had
20 never been in a law library before, but it was there that
21 I walked in and opened the books and just started looking
22 at what was in the law books

23 Q About criminal law, of course

24 A Well, I read some -- I didn't know what I was
25 reading, except I read stuff dealing with business law,

1 you know, dealing with civil stuff, some cases dealing
2 with corporations and stuff like that first, and then
3 while I was in there, I looked for -- someone pointed to
4 me something about criminal law, and then I started
5 reading just what was in that book, so I spent maybe --
6 going to the library once a week, maybe two or three
7 times I'd say maybe twice a month, I would go over
8 there with a group of people, and I would go and look
9 inside the book and just read things that --

10 Q And there were older inmates there that were kind
11 of helping you out, telling you what to look at?

12 A I guess what you consider older, but where I was a
13 ~~youthful offender there, and the oldest age was probably~~
14 about 23, 22

15 Q Okay And then you were convicted a second time
16 in 1987 in Georgia, correct, for armed robbery?

17 A That is correct

18 Q And at that point I think you were incarcerated
19 until '96, is that right?

20 A That's correct

21 Q And I guess during that period you also started to
22 go to the law library a fair amount, and that is probably
23 where you learned most of the stuff, is that accurate to
24 say?

25 A Yes At the end of the sentence, I was -- I was

1 socializing with a group of inmates that had an interest
2 in law, and at that time it was older guys that was,
3 like, trying to be mentors to young African American guys
4 to learning about something with how they end up in this
5 condition, at least so that, you know, if you ever have
6 an attorney or anybody that is not doing -- you can talk
7 to them and communicate to them when you've been done
8 injustice and so forth, and from there --

9 Q Did that teach you enough about the law to be able
10 to stand up for yourself if you were faced with a
11 criminal charge again?

12 A Well, to teach you enough about the law so that
13 ~~you can be able to know what people was doing inside the~~
14 courtroom, because I know I was absolutely ignorant
15 inside a courtroom about what was going on, and that was
16 based on my conviction, you know, me being convicted at
17 that time I had no knowledge of -- I knew something was
18 wrong for me to end up there

19 Q Right

20 A Based on the evidence and how I end up being --
21 what happened in the case, being innocent of the charge,
22 I knew something was wrong, but, you know, I didn't think
23 I could look to see them point a finger because at that
24 time the lawyer that represented me during the criminal
25 trial, he was -- he wasn't a criminal lawyer He was,

1 like, a real estate lawyer

2 Q I understand I don't want to get too much in
3 that case I just wanted to talk generally about your
4 past a little bit, and I think you even said you've done
5 some PCR stuff for other inmates when you were in jail at
6 that time You helped draft some things for other
7 people?

8 A Yes After a while there was older guy that told
9 me how to title a motion, you know, and I think that
10 was -- I think that was the real crux of the basis of
11 what I learned to do

12 Q Right

13 A ~~That I felt that -- I realized a real instrument~~
14 in communicating in the courtroom or in a situation was
15 knowing the title, how the title --

16 Q The correct procedures?

17 A Yeah, just title a motion, the correct procedures

18 Q You obviously know this particular record pretty
19 well, and I imagine you've studied this pretty well,
20 correct?

21 A Yes, I have

22 Q In fact, when you came in, you had a huge stack --

23 MR WATERS Your Honor, do you mind if I
24 approach the witness?

25 THE COURT Go ahead

1 BY MR WATERS

2 Q How big of a stack did you have? Would you say
3 that is about a foot and a half, two feet?

4 A Yes

5 Q And that is the materials you just prepared
6 related to this case, or copies that you received, things
7 like that?

8 A That is the transcript, trial transcript The
9 other material is less than that, which is maybe about
10 three, four inches, two, -- about three to four inches
11 thick with information that I read on cases and had to
12 copy because of not having access to the law library
13 ~~myself and books had to be brought over, and when I fill~~
14 out for the law books to come to me, it may be months
15 before they come, and then when they bring them, they
16 deliver them at 10 00, 11 o'clock at night, and at 8 00
17 in the morning -- this is the procedure at Lieber
18 Correctional -- they pick the books up and I have to fill
19 out a new request for maybe weeks or months

20 Q So you had to write down what you wanted pretty
21 quickly, then, I guess

22 A Write down basically by hand

23 Q I notice there is a lot of stuff, and you kind of
24 have it organized to your own system because you were
25 able to look over, and you know, when the judge would ask

1 you about a different issue, you kind of knew where to go
2 with that, is that correct?

3 A Yes, sir, because, you know, I have a lot of
4 material with -- in reference to different things that
5 have to transpire at different criminal or civil actions
6 that I've been doing, and I keep -- I try to keep
7 information that pertained to --

8 Q Let me ask you about that real quick, and I don't
9 want to know the specifics of the case, and I'm just
10 asking this not to try that issue that you had filed suit
11 because of your complaints about your treatment in the
12 prison, and I'm not asking you just to discuss that for
13 the merits of that, but what I did want to ask you is you

14 filed I guess a federal action, a 1983 action, is that
15 correct?

16 A Yes I filed a federal civil action in 1983

17 Q Okay And that was the one that had the '05
18 caption that you read out earlier?

19 A Actually, I filed those actions

20 Q Those were all in federal court?

21 A All in federal court, yes

22 Q Who prepared the actions for you or is that
23 something you did yourself?

24 A Well, if I may, I want to go back to originally
25 when I was speaking What I learned originally in prison

1 was I was learning civil stuff originally, and I had a
2 just brief encounter, crossing criminal stuff, and I
3 never had at the time, or never set aside that time, to
4 take it upon myself to learn the criminal aspect, and
5 that was something in my heart that, you know, I really
6 wanted to do, because at one time that I felt like, you
7 know, that I wanted to do it when I was young I had
8 aspiration myself --

9 Q Of being a lawyer?

10 A Yes, of being a lawyer or something to that
11 extent, but I had learned mostly on civil stuff, so I
12 never got to exercise it, the stuff that I had picked up
13 ~~initially in prison that I was learning, you know, the~~
14 writs and so forth to write, but when I became
15 incarcerated, I picked up a few points

16 Q That was a second stint, is what you're talking
17 about?

18 A Yes, sir

19 Q And then you went back for a third stint, I think
20 in South Carolina, for marijuana, correct?

21 A Yes, I did

22 Q And I guess you kept going to the law library then
23 when you were here the third time?

24 A No

25 Q Not much the third time?

1 A No I never at any time went to the law library
2 for the 12 months I was incarcerated in South Carolina

3 Q Those notebooks that I think have been introduced
4 as Plaintiff's 1, and I haven't had a chance to read
5 them, but what is in those? Are those briefs that you
6 prepared or discussions of the issues or what?

7 A Yes It's initially is -- I say it's sort of a
8 brief I title it as a documental· evidentiary note, or
9 book, in that sense, just a documentary of evidence,
10 based on all of the things that happened in the case

11 And it took me, basically, five years to bring
12 that concise and precision to where I felt that a person
13 ~~with at least a seventh or eighth grade education would~~
14 be able to read and understand what was in this --

15 Q And that is about, what, about three inches thick,
16 I guess, something like that?

17 A It's about three -- two and a half to three
18 notebooks, writing tablets

19 Q Right I remember when -- and I, of course, read
20 the transcript too, and I remember you talking to Judge
21 Pieper, and you talked about how you pulled cases and
22 read the law becomes, which I think we've talked about
23 I think you said you Shepardize as well, Shepardize
24 cases?

25 A Yes

1 Q And what is that?

2 A Well --

3 Q To your understanding, obviously, not being a
4 lawyer

5 A What I did is that because of the law, I tried to
6 learn as much as I can on myself, and anything that I
7 could see in there, someone would give me something to
8 read, in reference to legal things I would read them, and
9 I learned the -- when I was trying to explain it, I
10 learned -- I was trying to explain to the judge to the
11 extent that I want him to know that I have common sense
12 enough to know that the lawyers that was representing me
~~13 at that time -- excuse me -- was insulting me with things~~
14 they were saying and stuff they were doing in preparation
15 of my defense

16 And as for Shepardizing, I just pretty much
17 believed I have the definition of what -- to be done,
18 from reading I never had access to a law library or
19 anything to actually Shepardize myself at all, because
20 this is not what I picked up, pretty much, in prison
21 system, just from notes and different little booklets,
22 different paperback things that one would have that is
23 printed out from maybe a law place, something like that,
24 and I knew right then that I -- I guess it was based -- I
25 consider Shepardize based on a key in a book

1 Q Little keynote things?

2 A Right, that the keys would indicate that you could
3 go to older cases and find them, and you also can
4 research to find the most recent cases, of rulings in
5 cases

6 Q So it's a way to find other cases that might be
7 related to the subject of a case that you're looking for?

8 A Right, but I actually only had one -- went to one
9 experience with trying that method --

10 Q Right

11 A -- since I've been incarcerated on this case and
12 had someone else to do -- the library and asked them
13 about that key and did they have any information about

14 that particular key in a law book, and they sent me a
15 book, and that was about as far as I was able to, pretty
16 much, so I did consider that as something to say that --
17 to discredit -- I was really just basically trying to
18 show the judge that I wasn't mentally retarded or
19 mentally ill

20 Q I understand

21 A So --

22 Q I think you also told him that you had read some
23 criminal trial practice books I guess that you got from
24 the law library, is that correct?

25 A Yes, I have read a criminal trial practice -- no,

1 it was a post-conviction book

2 Q Post-conviction book?

3 A It was a green book It was a green book that --
4 for prisoners, mainly for prisoners I've read through
5 that, and I've read, not thoroughly, but the inmate civil
6 book they have, like a manual It's a paperback book
7 that is a manual that tells what you should do in a
8 courtroom when dealing with judges and attorneys, state
9 attorneys, as far as, you know, presenting a case and
10 conduct and so forth to that extent

11 Q Let me show you something, and I'm not -- I don't
12 really want to show you for the merits of what is in
13 ~~this, but this is a document that you had prepared~~

14 A Yes, I'm familiar with this document

15 Q And this is one that you had prepared yourself?
16 You can look at it

17 A This is a document, a copy of the document that --
18 yeah, it looks like my handwriting that I prepared
19 myself

20 Q I mean, do you recall it?

21 A Yes, I recall that document

22 Q All right

23 MR WATERS Your Honor, at this time I would
24 offer this as Defendant's 1?

25 MR WALTERS No objection, Your Honor

1 THE COURT Admitted

2 (Handwritten document marked and admitted
3 into evidence as Defendant's Exhibit No 1)

4 MR WATERS I'll describe this for the
5 record This is a document addressed to the United
6 Nations for the Commission on Human Rights from
7 Mr Alkebulanyahh

8 BY MR WATERS

9 Q I'll show you another document and see if you
10 recognize this And, again, I'm not offering it to get
11 into the merits of what is contained therein, just
12 whether you recognize that as something you generated
13 yourself

14 A Yes, sir, I recognize that

15 Q And this was something that you sent, kind of a
16 demand for exoneration and release that you sent to a
17 number of authorities, is that correct?

18 A Yes If I may add --

19 Q Sure

20 A -- that document is a document that I had attend
21 to because there was a date set with this honorable Court
22 about me coming back and forth to court at that time
23 And there was a date that I think it was February the 8th
24 that the Court said -- this Court said, We will reconvene
25 and discuss this case, and I had not been contacted with

1 the lawyers at that time about the date And then a
2 month passed without me hearing anything, and --

3 Q So you wrote this to try to get that addressed, is
4 that correct?

5 A I presumed that it was something that happened, I
6 didn't know whether it was a circumstance that I wrote
7 that, at least my -- because that's the first document I
8 have ever written, or anything I have ever written and
9 revealed to the public about how I feel about my
10 incarceration and the context of it So I put that -- I
11 wrote that in hope and desperation that if something
12 happened to me or I didn't wake up that the Court or
13 ~~whoever receives the document will know that, how I felt~~
14 about being falsely convicted

15 Q So it's just kind of to preserve the record?

16 A It was, yes, sir

17 MR WATERS Your Honor, I'd offer this as
18 Defendant's 2

19 MR WALTERS No objection, Your Honor

20 MR WATERS Again, this is a document that
21 is addressed to the chief offices of federal and state
22 government in the United States

23 (Handwritten document marked for
24 identification and admitted into evidence as Defendant's
25 Exhibit No 2)

1 THE WITNESS If I may mention that document,
2 it's also, Your Honor, included in the document that I
3 gave -- the evidentiary document that I presented
4 yesterday into evidence for you to review

5 BY MR WATERS

6 Q Right, and I agree I think some of these are
7 duplicative, but since I was looking at those fairly
8 quickly, I just want to make sure we get them all in
9 The first PCR application you wrote in this case, you
10 wrote that one yourself as well, correct?

11 A Yes

12 Q The handwritten one, and it had the attachments
13 and stuff on the back?

14 A That was sent to the Court of Common Pleas

15 Q Yeah, correct

16 A That's correct

17 Q Okay All right

18 A And if I may add, when I wrote that particular
19 document, it was based that -- my distrust for the
20 appellate defense at that time, and I wanted to -- I have
21 received information from inmates about how certain
22 things went, so I wrote that document to specifically
23 establish on the record officially what my issue was, the
24 top, the issues that were the main concerns for me, that
25 they being in the court record since they was totally --

1 Q I understand All right I want to show you
2 another document here see if you recognize that It's a
3 document addressed to the clerk of the state Supreme
4 Court dated -- what is that, March 26, 2005, is that
5 correct?

6 A That's correct

7 Q Do you recognize that document?

8 A Yes, sir, I do, I do recognize that document

9 Q Is that a document that you prepared as well?

10 A Yes, sir, it is

11 Q Okay And just real quickly, what was the point
12 of this document?

13 A Excuse me

14 Q Sorry I think you have the cover letter on the
15 front and then the motion behind it

16 A Yes, sir The question was -- you asked me --

17 Q Yes Briefly, just very briefly, what was the
18 purpose of this document?

19 A The purpose of that document was that I had read
20 the brief of the appellate defense, and I seen that he
21 made no challenges of my guilt phase of the trial, and I
22 moved the Court -- was appealing to the Court to
23 establish that I have issues that was relevant that was
24 not raised, and I asked the Court to allow me to amend
25 the brief and, if necessary -- on another document in

1 there, to let me proceed, if -- which I want to proceed
2 if necessary, I felt it necessary, because I have to
3 proceed pro se

4 Q Right Okay

5 A To have to get that on the record, and that is
6 what that is based on

7 Q Let me get this marked real quick I think this
8 will be Defendant's 3 Again, it's a letter and a motion
9 to file amended pro se initial brief

10 (Letter and motion marked as Defendant's
11 Exhibit 3)

12 BY MR WATERS

~~13 Q One more I want to do real quick here. This is a~~
14 copy of the one that I received, and see if you recognize
15 that document

16 A Yes, sir, I do recognize that document

17 Q Is that something you prepared?

18 A It is

19 Q What was that?

20 A Motion to dismiss attorneys, Mr Glen Walters and
21 attorney Carl V Grant

22 Q And that is -- so those are the lawyers in this
23 case, correct?

24 A Yes, sir

25 Q That was the motion you withdrew at the beginning

1 of the hearing yesterday?

2 A Yes, if I may, the motion that was filed because
3 there was a breakdown in communication about the court
4 dates, and I hadn't had that information on when was
5 hearings and things was going on at that time

6 Q But y'all worked that out, I think as you
7 testified, correct?

8 A We worked that out, and he explained to me what
9 was the breakdown on his behalf, and --

10 Q I don't mean to cut you off, but I wanted to get
11 this marked as well, and this is your motion to dismiss
12 attorneys, and this will be Defendant's 4

13 ~~MR WATERS~~ Your Honor, at this time I would
14 move Defendant's 3 and 4 into evidence as well

15 MR WALTERS No objection, Your Honor

16 THE COURT They're admitted

17 (Motions marked for identification and
18 admitted into evidence as Defendant's Exhibit Nos 3 and
19 4)

20 BY MR WATERS

21 Q I want to ask you just a few things about the
22 trial itself, and I recall in reading the record, I
23 remember shortly after you were allowed to proceed pro se
24 and you requested a expert on false statement -- do you
25 recall that?

1 A Yes, sir, I do

2 Q And I think the judge said you already had a
3 psychologist, or psychiatrist, Dr Schwartz-Watts Why
4 do you need another one? And what was the reason for
5 wanting a false statement expert? And I don't mean to
6 put you on the spot

7 A Could I have a moment?

8 Q Sure I'll be glad to show you the transcript, if
9 that will help refresh your memory

10 A No What I need to look at is -- I'll take but a
11 minute

12 Q Let me do this, Mr Alkebulanyahh I know it's a
13 ~~big record, it's about 4,000 pages, is that correct?~~

14 A Yes

15 Q Let me show you badge 3961 of the record and start
16 it at line 11, just that paragraph right there, see if
17 that refreshes your memory about that

18 A I want to know who is the doctor name -- what
19 doctor?

20 Q I was just asking if you remember That was
21 something from the trial record that you had made a
22 request If you don't remember, that's fine

23 A I wanted to remember because I thought it was --

24 Q If you don't recall, that's fine Maybe we'll
25 move on to something and come back to that in a minute

1 I think yesterday you were discussing some of your
2 issues --

3 A Excuse me

4 Q Sure, go ahead

5 A If I may, was that Dr Albinak?

6 Q I don't remember I just remember you making a
7 request in the record I don't believe there is any
8 objection --

9 A A request of Dr Abeniak, it was a person, a
10 doctor, that would be used to give expert testimony in
11 reference to the state's key witness, Kimberly Blake, and
12 the taking of her child from her and the state of mind
~~13 that she would be in that would compel her to make false~~
14 statements and lie or do whatever necessary in order to
15 retain our child that we had together which was in law
16 enforcement, police protective custody, because of the
17 false claim that the baby was left abandoned

18 Q So that was the witness you wanted to call,
19 correct?

20 A That was a witness I did call

21 Q Okay You read into the record some examination
22 of Kimberly Blake on what the officers did when they came
23 in Do you recall that?

24 A Yes, I do

25 Q And that was your cross-examination you were

1 reading out, correct?

2 A It was cross and direct

3 Q Direct and cross?

4 A Yes, some was direct, and some was cross
5 examination

6 Q And some of that was cross on the fact of
7 Ms Blake answering no when you were asking her questions
8 about what the officer did or did not do when they came
9 into the house, correct?

10 A Yes, I believe so

11 Q And I guess -- what was your purpose in asking
12 those questions?

13 ~~A The purpose that I chose to ask those questions --~~
14 because, according to my understanding, I believe, I
15 believe, from reading the statute on search and seizures
16 and some information -- the statute also -- reading a
17 statute on police response to domestic violence, and my
18 purpose was, asking those questions, was to show that
19 when the officers responded to my residence, that they
20 made no effort to assist Kimberly Blake, nor to find out
21 did she have a problem, was she harmed, was she hurt

22 Q Right

23 A Which would be, I would say, reasonable, I believe
24 reasonable, a person with expectation for an officer to
25 do, who is working in law enforcement, if the welfare of

1 the citizen, a person, is at hand or is at interest, they
2 are to protect and serve the citizen and they responded
3 to a residence that the first thing they would do, they
4 would first find out is the person of interest who
5 they're looking for has been harmed, has been hurt, or
6 did they make this call to keep them from having to
7 violate anybody's rights or to -- you know, to that
8 extent

9 So that's why I asked those questions, so that it
10 would be established on the record where for that anyone
11 could preclude -- I mean, where anyone could wipe out,
12 exclude their motion that the officer responded to this
13 ~~residence and Kimberly Blake, the key main witness, had~~
14 called them, which was untrue, that Kimberly Blake had
15 been kidnapped, which she said was untrue, or held
16 hostage or held against her will or she didn't have the
17 liberty to leave or the other thing that I myself had
18 physically assaulted her --

19 Q Right, I understand --

20 A So that was basically why I asked that line of
21 questioning

22 Q Right

23 A Because I also wanted to establish that it was the
24 officer that was in misconduct when they came to the
25 house

1 Q You mentioned another thing, DSS, and I think you
2 cross-examined Ms Blake about DSS as well, is that
3 correct?

4 A That's correct

5 Q And what was your purpose in doing that?

6 A I cross-examined Kimberly Blake about the DSS on
7 the police protective service, something like that, with
8 the child

9 Q With your child?

10 A With our child, my child and Kimberly's child that
11 we have together

12 Q Right

13 A My daughter Kenya

14 Q Right

15 A It was to bring out that Kimberly Blake had been
16 lied to by law enforcement officials, blatantly lied to,
17 and not only lied blatantly to her, but they also
18 blatantly lied to the Court in order to -- I would have
19 to use the word take the child unlawfully hostage in
20 exchange to coerce her to make false statements

21 Q So it was on the threat that if they had
22 threatened her to take the child then she was going --
23 unless she gave a statement or testimony favorable to the
24 state at your trial, is that correct?

25 A Because they had already took the took and they

1 took the child into custody and Blake said -- I
2 cross-examined her to let her know She said, They told
3 me I left my baby in the house in a diaper only with
4 two -- if I may, if I may, I would like to -- it wouldn't
5 take but a second

6 Q Mr Alkebulanyahh, I'm just asking very generally,
7 but you certainly have a right --

8 A But I want to ascertain exactly the specifics,
9 which this is why I cross-examined her, and what I'm
10 looking at right here was the Defense Exhibit No 34,
11 during the trial, and it's an affidavit of emergency
12 protective custody written out by the Beaufort County
13 ~~sheriff's office.~~

14 And it states that the minor child, Kenya Blake,
15 six months old, was left in the residence located at 21
16 Broughton Road, Burton after the shooting of two BCSO
17 deputies, the minor child was in the residence by her
18 mother -- excuse me, the minor child was in the residence
19 by her mother, Kimberly Blake, where the two deputies
20 were killed

21 The health and welfare and safety of the minor
22 child Kenya should be a matter considered by the Courts
23 due to the action of her mother, one, Kimberly Blake
24 The minor child was left behind in the residence wearing
25 clothing, no shoes Minor child was clad only -- excuse

1 me, strike that The minor child was left behind in the
2 residence wearing clothing, no shoes Minor child was
3 clad in only her Pampers, unquote, and this was notarized
4 document and it was sworn to by a law enforcement
5 official, I believe, lieutenant, but the name is signed
6 M Campbell, and this officer also gave sworn testimony
7 during the custody hearing of their child

8 Q All right Let me ask you --

9 A And this was a lie, this was an absolute lie that
10 they took the baby and child, and I asked that question
11 because I was going to establish, which I did, at the
12 trial, with the officer on the stand saying that when

13 he -- that he heard that there was a child at my home,
14 laying up in a blue comforter by a fireplace with several
15 adults around, and he asked these adults who this child
16 was, and they assumed or said it had something in
17 relation with Kimberly Blake

18 So the officers come, took the child, and put it
19 in protective custody, and then they falsified reports
20 saying that they found the child in a house alone with
21 two dead officers

22 Q I understand

23 A So that was the reason

24 Q And that is a document you just found in your own
25 materials right there, correct?

1 A This is a document that was a defense exhibit
2 number 34, yes, sir

3 Q All right I got you Let me ask you a little
4 bit, you keep talking about trial on direct appeal and
5 this process, post-conviction relief, and I think the
6 next process would be federal habeas, is that right,
7 federal habeas corpus?

8 A In this criminal matter?

9 Q Right, yeah

10 A I believe -- from what I believe and my
11 understanding is that if the Court does not rule in light
12 of the appellant, myself, that the next process would be
13 the Fourth Circuit, I believe, or something to the extent
14 that may be -- I believe, I don't know exactly, or I
15 think a writ of cert would be filed to the Supreme Court
16 of the United States

17 Q Right

18 A To prevent the state from executing me That way,
19 or -- it would go, I think, either to the Fourth -- I'm
20 not really sure, but I know that -- I believe one of the
21 Courts, higher Courts, something would have to be filed
22 to hear my issues

23 Q Right

24 A If they could be heard, would be heard, you know,
25 or presented properly, if you went that route

1 Q I got you

2 Now, obviously, Judge Pieper was your trial judge,
3 correct?

4 A Yes, sir

5 Q Correct me if I'm wrong, but just reading the
6 record, you seemed to get along pretty well with Judge
7 Pieper, is that fair to say?

8 A Yes, it was I felt Judge Pieper's respect to
9 myself as a person and was very -- you know, it was
10 different in a positive aspect that allowed me to be --
11 to speak openly and frankly with him about things, and
12 then I felt that he, you know, he -- I felt that he, you
13 ~~know, he was different than any of the other judges that~~
14 had -- that I had appeared before, before he came into
15 the case, because I felt that, you know, when I came to
16 the Court, I felt that they really looked at me and
17 treated and talked to me and in some despicable way as a
18 person, but I don't believe that Judge Pieper gave me a
19 fair trial

20 Q Okay I understand that I was just talking
21 about your personal interactions with him

22 A Yes As a person, I think he's a -- you know,
23 outside of the courtroom, I would say that I believe him
24 to be an upright and moral, decent man, American, you
25 know, a person that I would respect, and I'm sure that --

1 and I believe that he should be respecting that aspect of
2 him being a moral individual with some type of integrity
3 about himself, about the treatment of individuals I
4 believe that, you know, I'm personal, even though I don't
5 agree with --

6 Q His rulings?

7 A -- his rulings inside a courtroom in reference to
8 me

9 Q I understand You were asked a little bit
10 yesterday about hybrid representation and standby
11 representation

12 A Yes

13 ~~Q And there was a little bit of back and forth about~~
14 that, and I think your understanding of hybrid
15 representation is what?

16 A My understanding of hybrid representation was that
17 once -- well, I was -- to say what I came to believe,
18 from what I understood, what was explained to me by the
19 judge, Judge Pieper and Mr Kelly, the attorney, and
20 that --

21 Q And Mr Thornton?

22 A Mr Thornton, with them speaking and me looking
23 and seeing them moving about, moving about and talking,
24 and what I came to believe that once he represented --
25 once he appointed me an attorney to be pro se, to act pro

1 se, that I would not have -- I would not be able to have,
2 at no time, under any condition, the standby counsel that
3 he has appointed to come in and --

4 Q Take over?

5 A Take over

6 Q Right

7 A Except at the sentencing phase, and I think
8 Mr Pieper said that because he said that he had people,
9 when they were given the death sentence, that some people
10 faint, you know

11 Q Right

12 A In that sense, so stuff like that

~~13 Q So that one thing he warned you of, that if you do~~
14 do yourself, you might be kind of shocked and dazed if,
15 in fact, the guilty verdict came down, or the sentencing
16 verdict came down?

17 A Right, if it came down to that That was one of
18 the things that he said perhaps -- I think that is why he
19 wanted to -- I believe that is what he indicated was one
20 of the only reasons, one of the only -- the way of -- one
21 of the only ways or avenues that the standby counsel -- I
22 want to say the reason that he was appointed --

23 Q Right

24 A -- to be a standby counsel -- that was one of the
25 reasons that I remember that he said may be necessary for

1 him, if I got a sentencing verdict or I got death
2 penalty, because he said he got people in the courtroom
3 He said people have fainted and so forth and carried on
4 and they come in and do that to the extent

5 Q So your understanding was, obviously, you couldn't
6 have hybrid counsel, but that you could have standby
7 counsel, is that correct?

8 A Yes, basically, that I could have hybrid counsel
9 and that I had to have standby counsel

10 Q Right

11 A You know, I mean, and do particular standby
12 counsel

13 ~~Q Is the term that you initially wanted hybrid~~
14 representation where you would kind of be lead counsel
15 and you would have Mr Thornton as a second chair and
16 Judge Pieper -- you were told you couldn't do it that
17 way? And I don't know if Judge Pieper told you that or
18 someone else told you that, is that true?

19 A No I don't think that's true, because that's the
20 first time I'm hearing the way you framed it

21 Q I'm asking you If there is something similar to
22 that --

23 A I didn't -- I didn't want to be my lawyer and my
24 own attorney, and I told Dr Frierson that as well, after
25 we went up to the -- and I think he wrote that in his

1 report and he testified to that, to the judge, to the
2 honorable Mr Pieper, that I don't to represent himself,
3 it's just that he don't want the attorneys that he
4 distrusts and that he feels that, you know, in this case
5 was doing so Mr Frierson did testify to that

6 Q Right

7 A That I wanted an attorney and I had no problem
8 with my attorney, with whatever nationality they be or
9 race, but I didn't want Gerald Kelly on the case, and if
10 I may, please, if I may --

11 Q Sure

12 A As far as Mr Sean Thornton, I had not really
13 ~~prejudged Mr Sean Thornton in that aspect, because he~~
14 never said anything to me that was disrespectful or I
15 seen that was prejudicial or anything that he wouldn't
16 honor his law, morals of -- his integrity as a lawyer

17 Q His ethics?

18 A Right, his ethics, and I never seen that in
19 Mr Thornton, but I only seen that by his own words that
20 and everything changed about his -- everything when he
21 became recused, to the extent he said that Mr Kelly told
22 him do not come visit me and talk to me and discuss the
23 case with me anymore without him being present

24 Q Without Mr Kelly being present?

25 A Right And so I was willing to -- I was willing

1 to move forward with Mr Thornton --

2 Q Uh-huh

3 A -- to represent me, but I also knew that, you
4 know, he was in the public defender's office, and he was
5 a young lawyer, you know, in the public defender's
6 office, and he hadn't had the experience, you know, on
7 the record experience as Mr Kelly had that qualified him
8 as being the lead attorney

9 Q Right

10 A And --

11 Q Let me ask you a little bit about the sentencing
12 phase, or the case in mitigation You mentioned Dale
13 Davis earlier who was y'all's --

14 A Defense investigator

15 Q And what about Vicki Childs, do you recall her?

16 A Yes Vicki Childs, I really -- I liked the work
17 Ms Childs was doing, and we had a very -- working
18 relationship from the aspect of her being an
19 investigator, but there was something that really
20 concerned me about Vicki Childs, and I took notice that
21 she was -- in the courtroom, she was interacting with the
22 solicitor, and some things she was saying gave me a sense
23 of betrayal, which I've never expressed in a Court or to
24 anyone

25 And that distrust came because Vicki Childs had

1 visited me and I told her, asked her about going to
2 investigate the evidence that was stored in South
3 Carolina Law Enforcement Division headquarters, I
4 believe, where certain evidence was stored, evidence that
5 was supposed to have been stored was kept, and one being
6 the black fanny pack that the solicitor said that the law
7 enforcement officers was supposed to have got off me, off
8 my person, and was supposed to have been containing nine
9 millimeter bullets in it, and I think five or six or
10 somewhere between five or to eight or three to six
11 bullets, bullets rounds, that would fit a rifle inside
12 the fanny pack also

13 Q Right

14 A And it alarmed me that Vicki Childs went there and
15 came back and sat across from me, and she said, you
16 know -- and she said, I'm going to quote her exact words,
17 quote to Vicki Childs She said, Ben, she said, quote,
18 those people did not look inside the fanny pack as
19 thoroughly as they done

20 I can't believe it I was looking through the
21 fanny pack up there, and there was a driver's license in
22 it, back in the back compartment, and it was the driver's
23 license of Devon Ivy, Devon Ivy, and I said yeah, and I
24 just looked at her, unquote

25 And I was saving that, so when the trial came, I

1 asked the Court during the trial to bring the fanny pack
2 in to present as evidence, because the state had took all
3 of what they said was in the fanny pack and brought it
4 inside and left the fanny pack out

5 So Mr Pieper asked the state, Mr Murdock, where
6 is this black fanny pack? And Murdock said, Well, it's
7 somewhere

8 And the Court said, Well, you need to get it

9 And he said, Well, we'll try to get it

10 He said, You need to get it right now, because I
11 would not proceed in the case till they brought the fanny
12 pack, so they went on talking, and we went to -- judge
13 ~~recessed a break or something, I believe, and they leave~~
14 the courtroom to get get this fanny pack because I wasn't
15 going until they brought it

16 And when they brought it back, I guess about an
17 hour later, because I think he said it was in the -- they
18 have to go up to the sheriff's office and all that, and
19 they brought it back and I put the gloves on and I walked
20 up to the fanny pack, sitting at the front of the judge's
21 thing and I went to look, examine to fine the driver's
22 license, and it was then it was just -- there was
23 nothing, I believe, just a telephone book or nothing I
24 think it was a telephone book, it was a telephone book in
25 it

1 But after that, I asked Ms Childs about the
2 statement she said, and she told me Well, I don't
3 recall that

4 And so from that alone, which I knew I couldn't
5 prove that, so I didn't have any -- I had a grave
6 distrust from her based on that

7 Q All right I understand Going specifically to
8 mitigation, I think you told the defense when she took
9 over the case that you didn't want them interviewing your
10 family or anything like that, is that correct?

11 A There was a period during the investigation -- in
12 the -- when they was on the case that I told Ms Dale
13 Davis -- I didn't tell Ms. Dale Davis that, I was talking
14 to Mr Kelly, and I had believed, I had asked Ms Dale
15 Davis to go get a statement at that time or something in
16 reference, I'm not exact, it may come to mind in a
17 minute, Kimberly Blake, and she stated that Kimberly
18 Blake was -- I can't remember, but I felt it was
19 something she could have got from her, and she didn't
20 pursue it, and I felt like the attorney Gerald Kelly was
21 responsible for that, for her actions, because she spoke
22 about something about Gerald Kelly didn't want me to do
23 it that way, or ask her that

24 And so when I was dismissing -- at that time, what
25 you're speaking of, when I was dismissing Mr Kelly, I

1 also was going to send her along with Mr Kelly because
2 Mr Kelly brought her to the case with him

3 Q Right

4 A And I felt like she wanted to be my interest, but
5 I state now that Ms Dale Davis, the investigator, was
6 more than I could ever have expected There is an aspect
7 of her work and truth in this and integrity about the
8 truth and facts as she got them, whether they looked or
9 appeared favorable or unfavorable to me, just as there
10 was from that moment on

11 And Mr Kelly had asked me not to get rid of her,
12 even if I want to get rid of him, and from the time that
13 I had informed her that Mr Kelly was going and I was

14 going to keep her and she did take on a new initiative
15 and I say today that I am -- I find her remarkable in
16 reference to her integrity and truth in the work that she
17 did for me, because I believe it would have probably been
18 impossible -- I believe it may have been impossible for
19 me to be able -- to have been able to put up whatever
20 defense and things that I was able to do, get on the
21 record without Ms Dale Davis, and she brought a vast
22 amount of knowledge to me on how to conduct myself in the
23 courtroom, things that -- facts about what she discovered
24 and documents she looked over and things and questioning
25 of the people in the court, and if I have to say, per se,

1 I just say, per se, I ask -- I would have to say I credit
2 her for literally being replacement as my attorney,
3 because --

4 Q Her specialty is doing investigation of these
5 death penalty cases, is that correct?

6 A That is correct

7 Q All right Let me ask a little bit about Donna
8 Schwartz-Watts, and you had the first meeting with her
9 and that one went okay, and then you had the second
10 meeting where there was the videotape, is that right?

11 A That's correct

12 Q And then after that, I think you didn't want her
13 to give that videotape to Mr Kelly because at the time

14 you didn't want to communicate with Mr Kelly, is that
15 correct?

16 A That is correct

17 Q And she did that anyway, and despite the fact that
18 you asked her not to do that, is that correct?

19 A That is correct

20 Q So then when you met her the third time, I guess
21 you were a little bit upset with her about that, is that
22 fair to say?

23 A I didn't want to meet Ms Donna Schwartz-Watts

24 Q Just answer my question real quick, and you can
25 explain

1 A Could you repeat the question, please

2 Q Sure The third team you met her and you found
3 out that she had given Mr Kelly that videotape against
4 your wishes, you were pretty upset with her about that,
5 is that fair to say?

6 A I don't know if it was the third time I met her at
7 that time, that that tape was made I wasn't upset about
8 the tape, no I was upset with knowing that she was
9 hired, as I believe, she was receiving a state salary, I
10 would say, per se, that she was representing the -- she
11 does -- works for the solicitor's office exclusively,
12 most of her income, I believe, comes from work that she
13 does for the prosecutor's office

14 And I believe that Mr Kelly had deceived me by
15 making me believe that she had no affiliation and didn't
16 do that type of work for the solicitor's office or
17 anything like that

18 Q And I think that was part of the conspiracy you
19 thought that might exist that you talked about yesterday,
20 is that fair to say?

21 A That's fair to say

22 Q And then Dr Frierson -- you met with Dr Frierson
23 who was employed by the state, correct?

24 A Yes, sir

25 Q But you didn't think he was part of this

1 conspiracy, is that correct?

2 A No As far as Dr Frierson, is that correct,
3 Frierson?

4 Q Frierson, yeah

5 A As far as Dr Frierson, I found him particularly
6 and totally -- if I may use the word, indifferent to him
7 initially And I found him one of the people that I
8 found that had a great standard of integrity about this
9 work, and his evaluation of myself was his honest
10 examination or -- if I say the word correctly, prognosis

11 Q Prognosis?

12 A Prognosis, me, and how he felt and what I was and
13 ~~what I knew, and I just believe him to be the person that~~
14 he --

15 Q So even though he was employed by the state, you
16 didn't think he was part of the --

17 A Even though he was employed by the state, and I
18 knew he was employed by the state, I believe him in every
19 way, sitting in front of him for hours and different
20 things, that he could be a person strictly built around
21 the integrity of his work and truly --

22 Q And I think you told Judge Pieper that at the
23 trial, that you thought he was far more professional and
24 enlightened, in your opinion, than the defense experts
25 Do you recall that?

1 A I don't recall it, but it is something I could
2 believe that I did do

3 Q Okay

4 A I -- you know, I don't recall it, but I believe
5 that is something I would have done

6 Q Didn't yesterday you say that he threatened to
7 forcibly medicate you?

8 A No, he didn't threaten me

9 Q Okay Well, you said something about that
10 yesterday, didn't you?

11 A What he said was that -- well, as I see it, if I
12 could put it, as best I can, in the words the best I
13 can --

14 Q Sure

15 A He was making aware to me, I felt -- well, I
16 became aware from what he was making aware to me, he was
17 making aware to me that the state or whether it was him,
18 someone, in that profession at this time and who thinks
19 around me by me being uncooperative and that there are
20 people that actually can muscle their way over your life,
21 if they feel that you need to be medicated for legal
22 reasons --

23 Q Right

24 A Not for any unjust reason --

25 Q I think you said that terrified you

1 A Yes, it did

2 Q When you told the judge, you said, you know, he
3 was very professional and very enlightened, you didn't
4 mention anything about being terrified about that.

5 A I mean, I didn't take him -- it has nothing to do
6 with being terrified of him I wasn't terrified of him

7 Q You were terrified of what he told you, though,
8 correct?

9 A The words that was used was not him, it's a
10 procedure It's the essence of the system He was
11 making aware of the system, not -- he wasn't speaking in
12 reference that he had anything against me or he wanted to
~~13 himself terrify me or anything, you know. He was~~

14 speaking in reference that in the system that this could
15 happen, and I believed that, because, as I said
16 yesterday, I have known a situation where a person that
17 was incarcerated --

18 Q Right

19 A -- and was -- and I thought he was a person that
20 was a reasonable person, and I seen the light change, you
21 know, from forced medication all the way, and I knew this
22 was steps and so forth, about contact family members and
23 so forth that deal with certain people before they do
24 this type of thing, I believe this to be -- you know, as
25 I seen it and talked to other people who haven't been

1 directly used in that manner, or had that done to them,
2 but I know, and I could never forget when he told me
3 that, and I appreciate him telling me that

4 I appreciate him telling me that because to me, I
5 felt it shocked me back into reality of the brutal system
6 towards man, mankind, in a way that I don't really have
7 no power over myself, you know And so I kind of
8 appreciated that a lot as a terrified -- because I knew
9 that, but it had been dormant in my mind until he said
10 that, because I never thought myself would have to be
11 faced with doctors and setting forth like this, and so it
12 doesn't change any factor that I didn't see him as a

13 person, or I didn't see him as a threat, Mr. Frierson as
14 no threat

15 And I didn't see him as -- but what he said, you
16 know, I believed, and I believed that if there was that
17 conspiracy -- that I felt conspiratory action that could
18 be taken that for the next time somebody sees me in
19 court, you know, I can't talk with my tongue tied or
20 something I don't know

21 Q I think I understand I think you said yesterday
22 that your lawyers didn't discuss the psychological exams
23 with you Is that what you testified to yesterday?

24 A No, not to that extent If I make that statement,
25 if I make that statement in a sense, I'm not saying that

1 I made that statement to the exact -- because I don't
2 know what was said

3 Q I'm talking about your testimony yesterday

4 A Yeah, my testimony yesterday

5 Q I think you said that --

6 A That he wasn't going to make that work or that I
7 was speaking or they did talk about doctors in that
8 field, because they already was moving to have me
9 evaluated, and with this movement, I was aware that they
10 was making movement to have something done to me or have
11 me examined --

12 Q Right

13 A -- to that extent, so that's why I said that

14 Q It's true that during -- after that initial
15 evaluation with Dr Schwartz-Watts, during all the
16 subsequent evaluations, during that time were you
17 refusing to talk to Mr Kelly and Mr Thornton, is that
18 correct?

19 A Could you repeat that, please

20 Q After the first evaluation from Dr
21 Schwartz-Watts, I think you saw her three times, is that
22 correct?

23 A I don't recall how many times I saw her

24 Q It was multiple occasions?

25 A I do remember the first time, though

1 Q Okay And I think after that, during that period
2 of time, you were refusing to talk to Mr Kelly and
3 Mr Thornton, is that correct, after that first interview
4 with Dr Dr Schwartz-Watts

5 A That could be possible I don't know exactly, but
6 that could be possible, because -- yes, yes, yes, yes,
7 that -- I would say that was -- that's true, and the
8 reason I would say I believe that to be true, because I
9 was already -- I had already filed a motion for dismissal
10 before the psychological took place, and then they took
11 me to Columbia, you know

12 I knew that Mr Kelly then wasn't coming down, not
13 that I refused to see him, but he wasn't coming down to
14 see me anyway They were just sending other people to
15 see me because they knew I was discontent I don't
16 believe they made any effort themselves

17 Q Like Dale Davis, for example?

18 A I don't know when Dale Davis started coming back
19 into the picture, but I do know that Mr Kelly asked me
20 that -- when he didn't ask me, he said to me, and I don't
21 want -- I want to be particular about this, he said to
22 me, Well, I've known -- at some point in time, he said, I
23 know you don't like me, or maybe you screwed me or
24 something to that extent, and I'm not going to be your
25 lawyer, perhaps, whatever, but I believe that Dale Davis

1 is a very good investigator, and I -- you know, if you're
2 going to take my word for it, I think you should keep her
3 on, you know. If I can't tell you nothing else, I think
4 you should keep her on.

5 Q Right

6 A So that --

7 Q Let's talk a little bit about guilty but mentally
8 ill. I didn't quite understand your testimony yesterday.
9 I think at one point you said they never discussed
10 it with you, and then another point you said that they
11 did discuss it with you, the prospect of a sentence of
12 guilty but mentally ill. They did discuss it with you or
13 they didn't?

14 A There was not a discussion. They said it was
15 mentioned. Mr. Kelly mentioned about me and him was
16 talking, and I recalled this, that I had -- we was
17 talking, and I remember his words was -- I don't -- I am
18 thinking real hard about that.

19 Q That's okay. I don't recall is a fair answer.
20 Try your best to remember, but if you can't, that
21 certainly is a fair answer.

22 A Right. I don't think -- I don't see where he
23 actually mentioned to me that -- I remember him saying to
24 the extent that I can -- I believe that he said he can
25 get me -- that something to do with mentally ill and

1 guilty, because I was upset, I was really upset

2 Q So he said he could potentially get you that
3 sentence and save you from the death chair, is that
4 correct?

5 A I think he mentioned that was the only defense I
6 was upset because he mentioned in a fashion that, This is
7 all you got This is your only hope You're not going
8 to get out of this They're going to hang you, pretty
9 much the way Mr Kelly talked, they're going to hang you,
10 whether you like it or not

11 Q The mentally ill is the only way to go?

12 A And he mentioned that, and not only -- and he
13 ~~mentioned that in a subtle way~~ He mentioned that in a
14 subtle way to me, and, you know, it caused me to recoil
15 from him because, you know --

16 Q Because you said -- I think you said yesterday
17 that in your mind if you had to do that defense you would
18 end up having to I think you said fenge (sic) mental
19 illness Were you using the word feign, or did I
20 mishear?

21 A Yes Is that the correct word, f-e-i-g-n?

22 Q Exactly, yeah

23 A Okay

24 Q It's pronounced feign You said fenge, but that
25 is the word you meant to use?

1 A I'm sorry I pronounced that incorrect, but
2 that's correct, f-e-i-g-n, yeah

3 Q Because you wanted to raise your Fourth Amendment
4 defense and some of the other issues that we discussed
5 during the course of the last couple of days, is that
6 correct?

7 A That is true, and I just felt like -- I felt that
8 this form of -- if I have to feign -- I thought they
9 wanted me to feign this type of demeanor, you know, and
10 characteristics and attitude, and, you know, I feel they
11 were trying to break my confidence or something to me to
12 make me take medications

~~13 And I don't like medications. I don't take pills~~
14 or anything to that extent, and I didn't want to -- you
15 know, and I see it as this very thing to act untruthful
16 about myself, you know, and who am I, if I was that way,
17 or a person that way, nothing wrong with a person if they
18 have to be medicated or have something in order to
19 socialize or get by or survive, you know, for
20 respectable, legitimate reasons, but for -- to be a fake
21 or for me to -- if I am -- let's see if I do need
22 medications sincerely, but to exaggerate that, in an
23 effort to deceive the Court or someone else or whatever
24 reason for -- you know, something to say that, you know,
25 you're going to save your life, you know

1 And I'm not willing to save my life on that type
2 of false -- being false in that aspect, to anyone, you
3 know, when I feel like that, if I can just present the
4 truth and be me and I know what I'm here for and I know
5 why I'm in this circumstance, and now what does all this
6 has to do with a defense or me having to be medicated and
7 all of this, just because my feeling, as I feel, for me
8 being home, reclaiming my bedroom, you know, just being
9 there, and then here I am now, got to be medicated, you
10 know, because of circumstances that happened beyond my
11 control

12 So I just -- I didn't perceive it and have a life
13 ~~too, and I honestly believe that Mr. Kelly, you know, was~~
14 going with this, and I told him, I said, You don't want
15 to even hear the truth You don't want to do this

16 No, no, no We had differences many times

17 Q I understand that

18 MR WATERS Your Honor, we've been going for
19 an hour and a half, and I don't --

20 THE COURT Okay We'll take about a 15
21 minute break then

22 (Recess taken)

23 THE COURT All right We're back from our
24 break Let the record reflect Mr Alkebulanyahh is in
25 the courtroom Mr Waters, if you want to resume, you

1 may

2 MR WATERS Thank you, Your Honor

3 BY MR WATERS

4 Q Mr Alkebulanyahh, you mentioned yesterday about
5 seeing on TV the two victims in this case being honored
6 in the national thing in Washington, correct?

7 A Correct

8 Q And one of the things that happened when you took
9 over representation of this case is one of the first
10 things you did was move to withdraw your motion to change
11 venue, correct?

12 A Yes, that is correct That is correct, I did

13 Q Okay So, ultimately, you decided to go ahead and
14 still be tried in Beaufort County despite that, correct?

15 A Yes If I may?

16 Q Sure, go ahead What was your reasoning on that?

17 A My reasoning was that it was my belief that I
18 still believed that there was a conspiracy to manipulate
19 the system by the solicitor about things that I have no
20 knowledge of, if I had the case, if I did ask for a
21 change of venue, as Mr Kelly explained to me, that the
22 attorney, Mr Kelly that was appointed standby counsel at
23 that time, the person I mentioned explained to me that
24 the case could end up in a region or area where there
25 could be a lot of racism, as he said, and if not that,

1 people that was -- a town or city where the majority of
2 the people was prone to give the death penalty, and so
3 forth like that

4 Q So it was a gamble, and you decided to take the
5 county you already knew, is that right?

6 A Yes, because I had preknowledge about the makeup
7 of South Carolina

8 Q Right

9 A And I knew that South Carolina was a state that
10 has the most -- I want to say, white racists in all the
11 states of the United States, as far as Ku Klux Klan,
12 skinheads, and so forth, that this was a state where they
13 retreat to because of the age or they just like the way

14 the state works And I like the state myself, and so I
15 believe that was a federal report, that came from the
16 federal government that say seek out sensors or
17 something?

18 Q Census?

19 A Yes, about people and different radical
20 organizations, you know?

21 Q Right

22 A And they was seeing in writing and everything, was
23 reading a report about that South Carolina was a state
24 that showed that a lot of them infiltrating -- not
25 infiltrating, I would say would move from different

1 states around the United States to South Carolina, you
2 know, not to -- for racist reasons or to act in a racist
3 manner or to commit racial hate crimes or anything to
4 that extent --

5 Q They just happen to come here and live?

6 A I assume, and I assume the area -- and I like
7 South Carolina, you know, and to make up the census So
8 in the Beaufort County area, I decided that, you know,
9 that it could be worse, if it got moved, because I can't
10 dictate to the Courts where this case could be tried

11 Q Right

12 A And I kept going back and looking rational --
13 every time they change the venue, I don't like this

14 Court, I want another change of venue I don't like this
15 town, I want another change of venue, and so forth to
16 that extent

17 So I felt that the people of Beaufort County had
18 pretty much, you know, that I socialized and met, was
19 pretty much kind My family lived here for 25 years and,
20 you know, my parents, my mother and my stepfather, who
21 have been married over 30 years, 40 years, lived in their
22 home, which was in the majority of a white neighborhood,
23 which was all white at one time when they moved there for
24 many years, which is the center of Beaufort, and I knew
25 the people there and socialized with them and my sisters

1 and my brothers and I had no problem because, like I
2 said, I grew up in a military base, from a military
3 family, dealing with white Americans

4 So I felt that -- you know, I just felt that the
5 people there were socializing and knew many people
6 because I had also a beauty salon, and my wife, she was a
7 professional nail technician, and she had numerous close,
8 close white friends and so forth like this that was
9 beyond her age because she was, by my encouragement, per
10 the women's business association in Beaufort and go to
11 meeting and was a dedicated member

12 And then I went to the home and done different
13 things, so I felt like that area -- you know, it's a case

14 and I just, you know, I just felt that, you know, I like
15 Beaufort County, you know, I like the people

16 And, you know, every city or every location has
17 its differences and so forth, it's just a matter of the
18 respect for the people who you are, if you want to be
19 treated like you want to be treated, and I like the area,
20 even though I had been and had had very extreme
21 encounters with law enforcement there, you know, that
22 would warrant me, you know, with grave distrust of the
23 law enforcement there because I was in an accident that
24 nearly cost me my life because the car was split in half,
25 and I was charged with a DUI felony and the case never

1 went to trial And at that time I hired the attorney --

2 Q Just give us the short version. That's a whole
3 different case

4 A The short version was they charged me with DUI
5 felony, and the officer took beer cans off the side of
6 the road, put them in my car, and charged me with a DUI
7 felony, and therefore there was a bad thing about that
8 incident that -- you know, so forth, with law enforcement
9 in that aspect, and of course I been pulled over which I
10 recognize -- I would say racial profiling, you know,
11 because, you know, of the vehicle that I was riding in,
12 and they know my father's vehicle because my baby brother

13 ~~had -- my father did drive everywhere, but from work to~~
14 home, he was like a store manager, a general manager at
15 the Wal-Mart in Beaufort, and my baby brother is in the
16 military He serves in the Army, special forces

17 And he come home and he's got this jeep with the
18 rims and all that, but it draws a lots of attention, and
19 my father went to court and testified to an incident that
20 happened, you know, with him being stopped sometimes, but
21 they recognized his vehicle But I did -- of course, you
22 know, I went through that, pretty much changed, plus I
23 wore dreadlocks, you know, which was common -- implement
24 something different, but then, again, the officers and a
25 lot of people was familiar and then all the officers was,

1 you know, everybody -- you have bad people everywhere

2 Q Right I want to talk about the appeal a little
3 bit, and you introduced some documents relating to the
4 direct appeal And, obviously, you wanted to represent
5 yourself there, after you felt that the appellate lawyers
6 were not raising the issues that you wanted to raise,
7 correct?

8 A That's pretty correct, if I may

9 Q Sure

10 A I didn't know what was going on I didn't know
11 that lawyers are automatically appointed to the case on
12 direct appeal, because I wasn't familiar with the system
13 in South Carolina, you know, and so I figured I could

14 represent myself at the trial, and when I got to death
15 row, I knew that -- you know, I knew Kelly -- nobody told
16 me about motion for a new trial and stuff, but I knew
17 that was an action that was done in Georgia

18 As soon as your conviction, you put in for a
19 motion for a new trial and then they hear it and if they
20 deny it, then they sent you on to prison, so I filed that
21 document, like I knew that I filed -- you know, the way
22 it was designed And the Court wrote me and said you
23 don't have to file that document Kelly will file the
24 document for you, blah, blah, blah, so I understand

25 They can be hiring lawyers because there is

1 nothing else for me, so I didn't know that, and then when
2 I became traumatized, you know, with the treatment --

3 Q Right?

4 A -- I was at the same time concerned about this
5 appeal, you know, the motion, not to mention this appeal
6 process, because I wasn't under any awareness when they
7 can execute you, if they can, when certain things are
8 done I think I'm sensible and I believe this in my mind
9 that if certain deadlines and criterions are not met in
10 Court that, you know, this is an old little saying which
11 I heard, and I'm sure you've heard, ignorance is the law
12 is no excuse

13 ~~Q Right~~

14 A And I didn't want to fault being a victim because
15 I'm ignorant and I'm respecting somebody else that says
16 certain things to me and I'm not making any effort to
17 preserve the -- save my own life, so they said -- they
18 wrote me and told me that lawyers would be -- inmates
19 told me that the lawyers would be appointed for the
20 appellate defense and so forth And then they gave me a
21 brief, and, honestly, an inmate gave me a brief and I
22 read his brief

23 Q Which inmate was that?

24 A In fact, it was an inmate I did not like, but
25 nevertheless, I respect him in a sense He's deceased

1 right now That was Calvin Schuler that was on death
2 row He gave me a brief and showed me the brief that was
3 filed by Attorney Dudek, and -- in my opinion, I felt
4 like it was something really horrible because it was only
5 for the death penalty, case and it only made it look like
6 eight, nine, ten pages, and, you know, this then --

7 Q The brief in your case?

8 A No, in Calvin Schuler's case

9 Q In Calvin Schuler's case?

10 A And eventually they gave me Dudek, and he said he
11 was appointed So at that time, I was just making sure
12 that I understood certain things in the case, but when

13 ~~Dudek got in contact with me, I did make that decision,~~
14 and I'm not saying I was in the right state of mind to be
15 saying I want to represent myself at the appellant level
16 because I didn't know nothing about the appellate
17 process

18 Q Let's talk about that Notwithstanding the issues
19 that you mentioned regarding the alleged treatment in the
20 prison, but you ultimately got their brief and were
21 unhappy that they didn't raise the issues that you had
22 told them in that letter that you introduced that you
23 wanted to be raised, is that correct?

24 A Well, I didn't believe they had -- I didn't
25 believe they had any power or my interest at all before

1 that So it's possible that I had already started to --
2 it's possible I may have already started to -- wrote to
3 the Court and started to initiate and believed that I
4 needed to have my hand in it, because I felt they
5 couldn't get me a mattress to sleep on, you know

6 Q Right

7 A Or called the warden and say, Can he get a
8 mattress? He ain't got no write-ups, he ain't been in no
9 trouble here, there ain't been no disciplinary problems
10 Why doesn't this guy have a mattress to sleep on? He's
11 sleeping on the floor, a concrete bed

12 So everything was shattered from there, because,
13 ~~like I said, I might not have been in the right state of~~
14 mind because I was hurting, physically hurting, you know,
15 and losing sleep, physically, you sleep, everything just
16 told me -- I never been in that condition in the state in
17 my whole life, and so that was already in the -- rolling
18 that way, like a snowball, getting bigger, and how I felt
19 about him

20 Q Right I'm listening

21 A And I asked him -- like I said, I asked him to do
22 that, and he hadn't done that and they weren't make any
23 more contact with me or anything to any extent

24 So I felt that they was not going to challenge --
25 make challenges for me, I believe, and they --

1 Q So ultimately then, you did file a lot of motions
2 here, and the Supreme Court finally just told you, sorry,
3 we're not going to let you do that, is that fair to say?
4 And that is the stuff that's in Plaintiff's 7?

5 A That is correct

6 Q And Court's 1, right here which was your -- you
7 ultimately filed a motion for reconsideration, correct?

8 A That is correct, and to clarify more clearly, yes,
9 I filed those briefs I asked the Court to let me
10 represent me As a matter of fact, I believe in one of
11 the motions I asked the Court, I want to waive the direct
12 appeal, and they wrote me back and said, You cannot waive
13 ~~a direct appeal, you know~~

14 I didn't want the appeal waiting -- I didn't know
15 when, before I could get up off the floor So, you know,
16 I would rather skip this process, maybe get to another
17 Court, maybe a higher Court, a judge could say, We'll
18 hear your case, so I found out from that that you
19 can't -- you have to go through the process, the steps,
20 you know, have a direct appeal You got to go there

21 You can't waive the direct appeal And then I
22 told them, You either let me be pro se, which is unusual
23 motion, let me amend the brief Just let me add in
24 something in this brief of the guilt phase, which the
25 appellate defense did not make any effort, or did not

1 challenge this phase, and I believe those things are
2 relevant, that should be in the record

3 So that is correct, I did move to represent
4 myself, but I also believe, my state of mind is, which I
5 believe this, in -- believe this and know this to be true
6 from my understanding is that if you don't get something
7 in the record on a direct appeal about your case that you
8 cannot bring it up in a post-conviction proceeding if you
9 had the opportunity to present it to another Court

10 Q Right

11 A So that was my motivation, because they wasn't
12 going to bring up my issues in that direct appeal
13 ~~proceeding, so I knew if I went to another Court, then I~~
14 would not be able to bring these issues up because my
15 understanding was that not only direct appeal was
16 basically -- that the filing in courts after that is
17 concerned more with the -- or if the direct appeal, I'm
18 not -- trial Court's errors, the Court errors, you know,
19 the fair trial, pretty much was everything done, you
20 know, systematically as it's supposed to have been in
21 reference to basically just looking at the evidence and
22 so forth like that

23 Q Right

24 A So yes, I was very aware and I wanted to do that,
25 and I took every effort so that I wouldn't be

1 following -- you're ignorant of the law, you should have
2 done something or show something that you try to give me
3 issues on direct appeal, so only way I can say it is
4 which by my writings and that which is introduced into
5 evidence that I made that effort, reasonable effort

6 Q But you were worried if you didn't get those
7 issues out that they would end up being barred from
8 review at a later time?

9 A Yes, sir, correct Absolutely correct, that's
10 what I believed

11 Q I got you All right I'm going to show you real
12 quick what we've marked as Defendant's Exhibit 2, and on
13 ~~page four right there -- excuse me, if you turn it over~~
14 to page five, and this is your demand for exoneration and
15 release that we talked about earlier, is that correct?

16 A That is correct

17 Q Okay And there in the section four, I think you
18 state that as part of this document that one of the two
19 deputies unlawfully assaulted with intent to kill me by
20 shooting me twice, right?

21 A Yes, sir

22 Q Okay And let's look real quickly at what's been
23 marked as Defendant's Exhibit No 1, and I ask you to
24 look at page five real quick And I believe there you
25 state that the officers went to the bedroom with their

1 hands on the guns, and then they, I quote, initiated
2 shooting by shooting Mr Alkebulanyahh twice, attempting
3 to murder him, is that correct?

4 A Second paragraph, first paragraph?

5 Q I think it's in the first paragraph It's about
6 five lines down, after "thereafter" Let me show you

7 A I believe I see it, but --

8 Q Okay Go ahead

9 A This is a copy and --

10 Q It's very light I understand

11 A Very, very light

12 Q I think it says, Thereafter they initiated

13 ~~shooting by shooting Mr Alkebulanyahh twice, attempting~~
14 to murder him, correct?

15 A Yes, that is correct, from where -- attempting to
16 murder him, yes, sir, that is correct

17 Q All right So -- and these are documents that
18 we've established these are ones that you wrote, you
19 know, in the years after this trial, correct?

20 A That is correct

21 Q Okay So those documents reflect the deputies
22 came in with an intent to kill, but that wasn't your
23 testimony at trial, was it?

24 A That they came in with the intent to kill?

25 Q Right

1 A Well --

2 Q Was that your testimony at trial?

3 A There is no -- from my understanding, there is --
4 and I don't know, I'm going on what was told, in a sense,
5 from when I was learning as I go, there is no law or
6 statute that frames the word As I said, there is no
7 such thing as attempt to murder, as I wrote on here,
8 because there is no law that specified attempt to murder,
9 as I had said on here

10 So I realized that there is no law to that It
11 may be a way I was framing in my mind to express that
12 they was attempting to kill me, which, unlawfully
13 attempting to kill me, allowed me to commit, I guess,

14 bodily harm I'm still not precise on which one it is to
15 that extent, about the unlawfulness -- because, one, I
16 guess I would say attempted to kill would go maybe in a
17 sense of conspiracy to murder on another level, because
18 one plans to do harm to you, but I'm explaining that that
19 was physically -- I was physically assaulted by being
20 shot, and -- unnecessary, and I was unarmed, and I
21 believe and know that he was going to kill me because he
22 shot me on the side of my heart, just above my heart

23 And I believe that was a clear intent to kill me
24 instantly, and at that same time also when perhaps he
25 would have shot me in my heart, if he had not shot Deputy

1 Coursen in the back of the head, because his head was in
2 that same area while he was searching my pockets and
3 patting me under my arm, and he was shot in the head in
4 that same area

5 So I assume that the shot that hit me just above
6 my heart, in my shoulder that broke my collarbone, was
7 intending to kill me, you know, intending to murder me, I
8 would say --

9 Q I thought this thing started as an accident,
10 though

11 A No I never seen it as an accident I never
12 alleged it was an accident I never stated it was an
13 accident. I never perceived it as being an accident. It
14 was never an accident

15 Q He just opened fire?

16 A Well --

17 Q Deputy Tate?

18 A I wanted to believe -- initially, I wanted to
19 believe that he fired because -- I wanted to believe
20 because these tapes -- I've heard that sound before in
21 the middle of the night, and I have jumped and taken
22 tapes down, a stack of tapes, because if you don't know,
23 I also established the original church of the people of
24 God

25 Q I'm aware of that

1 A With the Attorney General's office

2 Q You had cassettes for your sermons?

3 A I used to record them, of my teachings and one of
4 the brothers used to -- members used to stack the tapes
5 up and stuff like that, and I used to tell him not to
6 stack them up in that area and put them down on the
7 floor, and that failed

8 And I heard the sound, but when I went to look,
9 the shot was fired, and so I wanted to believe that the
10 shot was an accident

11 Q That it was an accident?

12 A I wanted to believe, because I wanted to believe
13 because of the tapes, you know I just didn't want to
14 believe that, you know, why is -- you know, ain't nobody
15 going nowhere, you know? You got this guy sitting here
16 and this guy here, and I'm standing here and everybody --
17 I'm wondering --

18 Q Who was in the closet?

19 A No one was in the closet

20 Q No one was in the closet?

21 A No one was in the closet

22 Q What about all the evidence at trial showing the
23 SKS rounds coming out of the closet and the 40 caliber
24 rounds going in?

25 A I don't know, you know, the circumstances I can

1 only give a theory, or my opinion, what I believe, and
2 this is --

3 Q Go ahead

4 A I know no one was in the closet, and I'm sure that
5 the state knew no one was in the closet, but I felt that
6 Mr Murdock, the solicitor, stated at the time it would
7 be feasible and find it good for me, the public or the
8 Court situation, to show some type of evil or malice in
9 reference to that, because if I was shot in the shoulder
10 and I'm bleeding profusely and I'm shot in the hip and
11 I'm bleeding profusely and in this closet, the clothing
12 was -- pictures was introduced into evidence which I
13 initiated shows this closet filled all the way to the

14 door A human body couldn't get in there, because the
15 stereo was also in there, old broken down stereo, eight
16 track cassette that I was going to keep and preserve
17 because it still functioned It still worked And so
18 that was in there with the abundance of clothes which I
19 introduced into evidence to show that

20 Q So Bobby Rigby and Michael Blake, neither one of
21 them were in the closet?

22 A No, and not when I left the room

23 Q Okay So you were on the toilet, and when they
24 opened the door, where were Bobby Rigby and Michael
25 Blake?

1 A I was in the rest room, on the toilet, when
2 Officer Tate, the one with the gun, brought me out of the
3 area off the toilet, had me pull my pants and bring me
4 out --

5 Q First answer my question Where Mr Michael Blake
6 and Bobby Rigby? When did you first see them?

7 A I saw them when he brought me from around the
8 toilet I was at the toilet area into the master bedroom
9 area, adjoining to the main bedroom, me and my wife's
10 private bathroom

11 Q And what were they doing?

12 A Rigby was sitting on the bed and Blake was sitting
13 on the bed

14 Q Okay

15 A I think that it was a cot that Rigby was sitting
16 on, a cot Blake was sitting on the bed, and --

17 Q And Deputy Tate had his gun on you and asked
18 Coursen to pat you down, is that what happened?

19 A Exactly

20 Q Where were Rigby and Blake in relationship to the
21 three of y'all?

22 A They was still sitting I walked from the
23 bathroom past Blake to stand over there Mr Coursen was
24 in the area right on the other side of Rigby Rigby was
25 sitting all the way back with his hands behind his head,

1 and he walked along the cot to where I was, which was in
2 front of the exit door, the door to exit the bedroom, and
3 that's when he went to search me down

4 Q Okay So they were -- if I'm Deputy Tate and
5 Deputy Coursen and you are in front of me, correct?

6 A Yes

7 Q And then Rigby and Blake are sitting over here, is
8 that correct, to my left?

9 A Rigby is sitting toward the exit door, the far
10 wall, toward the exit door Blake is sitting on the edge
11 of the bed

12 Q Okay

13 A And that bed, the place where he's sitting, is

14 closest, near the closet Now, I believe -- I don't
15 know, but I believe, if I had to give an explanation
16 about them bullet holes in the closet door, then I also
17 introduced during the trial to show that the officer that
18 was shooting in that door, into that closet, as the state
19 would say, there is no bullet holes in the door, I mean,
20 if the closet There is no bullet holes in the clothes
21 in the back of the closet except in the clothes that was
22 hanging on the door But there is no bullet holes and no
23 holes in the closet, which would easily have been It's
24 a trailer

25 Q Right

1 A So there would have been bullet holes and there
2 would have been bullet holes in the clothes to show he
3 was shooting inside that closet, and I believe --

4 Q Go ahead

5 A If I may --

6 Q Sure, go ahead

7 A I believe that door, I know, would swing out
8 because there was a heater on the wall, and when the
9 heater was in use, I used to slide the heater up to keep
10 the door up from swinging out It had a swing problem,
11 and I believe when they were shooting, the shooting
12 after -- after I leave the room, it's possible one of
13 them guys -- and I would have to say Blake, maybe,

14 because he was there

15 Q You think it was Blake?

16 A Yes, I believe -- I mean, I assume I wasn't
17 there, but I assume he was nearest the closet area

18 Q So he got the SKS out of the closet?

19 A I don't know where he got the SKS from, but I
20 would assume that --

21 Q There was an SKS, though, right?

22 A I don't know

23 Q You never saw it?

24 A They told me -- I read in the paper there was a
25 China made --

1 Q You heard --

2 A AK47

3 Q Right

4 A That's all I know, it was said that it was a China
5 made AK47 I don't know what SKS is

6 Q Okay That's fine

7 A But for -- I believe that -- 'cause I'm trying to
8 figure out what happened in this place also, that that
9 door -- when he shot me and I swing out, I believe that
10 Coursen went down, and it's possible -- maybe Blake might
11 made a move for the closet or that area, and that door
12 swung open, and --

13 ~~Q And he shot through it?~~

14 A And he was shooting at Blake, possibly, and the
15 door was open No one was in the closet, but the door
16 swung open and Blake was over here near the dresser,
17 anywhere near the dresser or standing by the closet,
18 that's where the holes was going, inside the door only
19 Because if the door was closed, the bullets would have
20 went in and left holes inside the place

21 Q Right I got you This is a pretty small room,
22 though, it's not a real big room?

23 A Yes, yes

24 Q And the officers, though, they were focussed on
25 you, they weren't focussed on Blake or Rigby, which I

1 guess is how they were able to get that gun out, correct?

2 A I don't know I don't know

3 Q You walked in and you saw -- you didn't see him
4 holding a big old Chinese made assault weapon?

5 A No, I didn't see any weapons

6 Q So somehow they managed to get it and open fire,
7 correct?

8 A Yes, but I knew that there were possible -- I know
9 there was possible -- that the weapons was in there, or
10 could have been in there, in the house I knew this, and
11 the reason I knew this, or say I believed that, after the
12 shooting, was because when I talked to Kimberly over the
13 telephone, when I was in the next town over and I was
14 scolding her why her cousin was there, why he was at my
15 house, and they were real close, and she said, Well, he
16 said he had something to sell to you.

17 Q So you think it was the gun that he wanted to
18 sell?

19 A And I believe it was the gun, that he wanted to
20 present and see was I interested in buying a gun or some
21 guns or something like that to that extent because I was
22 very familiar with Michael, not as a friend or someone I
23 was social with I didn't really socialize with him that
24 much, but I didn't like this guy, and Kimberly knew I
25 didn't like him because Michael Blake was accused and

1 said, and the Beaufort sheriff department told me this, I
2 believe, of murdering a person, a drug dealer, that I was
3 a mentor to his little brother, a guy that went by the
4 name Davey And he was investigating, so Kimberly knew
5 that I was like, don't have -- you know, I don't mess
6 with your cousin

7 Q If Kimberly knew that y'all didn't get along and
8 you didn't get along very well with Michael, didn't like
9 him, why would he be wanting to sell you a Chinese made
10 assault weapon?

11 A Well, me and Michael didn't have no problems I
12 just didn't trust him

~~13 Q But why would he think that you would be in the~~
14 market for an assault rifle?

15 A Because people saw me all the time and they
16 presumed that -- them guys presumed that I ran the
17 streets

18 Q That you what? I'm sorry

19 A What they call run the streets and make money and
20 was into that trade because they see me with a brand new
21 motorcycle, a Jeep, and ride Jeeps and different
22 vehicles, and, you know, and so forth, but they didn't
23 know that I worked it, you know, doing drywall, and that
24 I also had owned a beauty salon to that extent because I
25 didn't hang out with them like that or socialize with

1 them in that respect

2 And I only knew them from a distance because
3 people, you know, like always inquire in reference to me,
4 and they just assumed, you know, the dreadlocks and, you
5 know, me being -- looking skeptical about people

6 Q So just out of the blue they figured you might be
7 in the market for an AK47?

8 A Well --

9 Q Because they thought you might be a drug dealer?

10 A No, what they probably felt I would be interested
11 in it, maybe something that come from television or
12 some -- something in the eye to -- serial type, about a
13 certain person and so forth like this But, of course,

14 he didn't know that I knew the dude that was murdered
15 because I knew his little brother, which was about ten,
16 11 years old

17 I used to teach, mentor, try to talk to him about
18 religion and so forth and study the Bible, so I knew his
19 little brother, and his little brother had lived with me
20 about a month or two, you know, and he knew that the
21 brother, the one that them guys was under investigation
22 for the murder, murdering, that I -- he knew that I had
23 bought marijuana from Dave, because he's been at the
24 place, in the location when I have drove in there and
25 bought the marijuana from Dave

1 And, actually, that was the first time I met him
2 then because Kimberly was with me, and she -- he was
3 asking her who was I, and that was the first time

4 Q Got you All right So what I'm still confused
5 about, though, is y'all were still in this small room
6 together and Deputy Tate has got his gun on you, right?

7 A Yes

8 Q And he's told Coursen to pat you down after they
9 pulled you out of the bathroom, right?

10 A Yes

11 Q And Michael Blake and Rigby are in the room, but
12 they weren't concerned with Blake or Rigby being in the
13 room?

14 A I don't know

15 Q You just know what you saw, and they were sitting
16 in there, one on the bed and one by the closet, correct?

17 A Yes, but --

18 Q And those two officers --

19 A Mr Coursen appeared to be, you know, looking
20 around the toilet, you know, coming from the bathroom
21 originally, you know, so -- I never knew they was in my
22 home, because -- if I may?

23 Q Sure, go ahead

24 A I never knew they was in the home, but I assumed
25 that they was in the area waiting for me to come home,

1 and I believed that -- for some reason I was reading a
2 document or something and it said that the police had --
3 the officers had -- the policeman had ridden in that area
4 before I got home, that the police had come in that area,
5 rode on that road before I came home

6 And I had been reading somewhere in many documents
7 that I have to some extent somebody said something like
8 that, to that extent, so I believed that -- because I
9 want to believe when and how did they get in there,
10 without me knowing they was in the home, and I believe
11 that when I came in to the house -- and as I had been
12 gone all day I've been gone from like 8 00 that morning
13 ~~till 4 00 that evening, hadn't been home~~

14 When I came in about 4 00 that evening, somewhere
15 near 4 00, me and my wife was together, and about ten
16 minutes before I got home, Kimberly called And she
17 said, I'm hungry Could you bring me something to eat?

18 And I was, like, Yeah You want some Maryland
19 Fried chicken or something? Because we're getting ready
20 to come past Maryland Fried chicken, which was directly
21 across from the courthouse, in downtown Beaufort And we
22 was coming from Port Royal, a washer and dryer area

23 And see said, Well, anything, anything I'm just
24 hungry Grab me some nuggets or something

25 And this was ten minutes, in the car, my wife

1 sitting next to me, I said, All right I'll do that
2 I'll tell them -- we'll pick you up something And went
3 back home

4 Q Did you get her the food?

5 A I didn't get her the food

6 Q So you went home and went straight to the
7 bathroom

8 A Right I was going to get my wife to get it
9 because my wife got a call from a client who was supposed
10 to do her nails, broke a nail Oh, could you fix my nail
11 right away? I can't believe it I have a trip, or
12 something to that extent

13 ~~And my wife turned to me, So and so broke a nail,~~

14 wants me to fix a nail and come by the house and fix a
15 nail for her or something real quick

16 And I said Well drop me off home again How
17 long you be?

18 Oh, it only take, I guess, 15 minutes, half hour
19 or something

20 I said, Well, drop me off home, and you go do the
21 nail and you can pick Kim something up to eat and bring
22 something back then, because I wanted to go home, you
23 know

24 Q Kimberly wasn't upset about that? She didn't say,
25 Where is my food, or You didn't get me no food? What

1 happened?

2 A She was only kidding -- you know she knows --
3 there is nothing to complain about She knew she was
4 going to get what she wanted

5 Q And when you were in the bathroom, she didn't
6 knock on the door and say, Michael and Bobby are here, or
7 anything like that?

8 A If I may

9 Q Sure

10 A I came -- I drove her into the yard, we got out,
11 we got the baskets and everything, and different things
12 that we had the clothes in, and -- because we had a large
13 ~~supply of clothing. We hadn't washed in a while,~~
14 preserved and so forth, the washer and dryer -- the
15 washer or the dryer, one of them had broke down, I don't
16 know which one it was, but I told her I would go and do
17 the laundry I had been putting it off, and I said, I'll
18 going to do the laundry because she wanted me to go with
19 her to sit through the course of it

20 So we went into the house When I went into the
21 house I passed Kimberly Blake, the daughter of -- the
22 mother of my daughter was lying on the cot, face down,
23 and the baby was laying face up And the baby's eyes was
24 open, my daughter's eyes was open She was six months,
25 and Kim had fallen asleep I walked past, I spoke, she

1 didn't say nothing I went to the bathroom, the master
2 bathroom I dumped the clothes into the tub, which the
3 pictures that went through some evidence, the prosecutor
4 stated have pictures or something which showed that this
5 tub was full up with clothes

6 And I dumped the clothes in the tub, but I figured
7 I would get them out later and refold them, or whatever,
8 stack them, restack them in there My wife come in, she
9 put her clothes in that area Still we begin to separate
10 them, put them wherever the clothes need to go

11 We had some clothes also that belonged to Brenda
12 Smith that she asked us to do for her, so we did So we
13 ~~put the clothes in the tub. I walked my wife out back to~~
14 the car, because she made the trip And I told her -- I
15 like Chinese food Pick up some Chinese food or
16 something, because that's my favorite, and she said okay,
17 and she left

18 I went into the house, went back in the bathroom
19 area, and got Ms Smith's clothes, and I went to the
20 bedroom, where she was -- which she occupied, and I said,
21 I got your clothes

22 And I give her the clothes, and I turned and went
23 back to the bedroom because I had to use the bathroom so
24 I went and sat on the toilet, and I was in there for a
25 while, you know, and --

1 Q What's when the officers opened the door?

2 A Yes And the TV was on, loud TV was on because
3 we had the TV running all the time, all the time, and I
4 believe that I heard knocking I heard knocking when I
5 was back there, but I didn't know it was the TV or if
6 somebody was outside I wasn't paying too much
7 attention, to that extent, you know, not really
8 concentrating, as they say, taking a number two --

9 Q I got you

10 A Defecating I'm defecating, so I heard knocking
11 and they went away Two minutes Two minutes later, I
12 would say two, three minutes later, I heard some more
13 ~~knocking, and I said, since I was defecating, I screamed,~~
14 Kimberly, Kimberly, answer the door

15 And I didn't get no response, Kimberly, answer the
16 door The knocking disappeared

17 I want to believe that Michael Rigby saw the
18 officer, or saw the patrol car come in that area or
19 something and was outside, creeping around somewhere,
20 coming up that road, and they run into the house, and
21 they just came in because they already seen Kimberly
22 there, and they just run into the house They just run
23 in there and came in there, and --

24 Q Carrying the SKS, I guess

25 A Possible, and they sit down, and from there,

1 that's -- I believe that, and I knew then they was there
2 and Kimberly knew they was there, and next thing I know,
3 the officer is there with a gun

4 Q I'm almost done Let's just get a move on real
5 quick one last little thing here From your testimony
6 yesterday, you said there were a few things that were
7 significant and you distrusted Mr Kelly I think one
8 thing was he mentioned about the thing about 25 years ago
9 you wouldn't even make it to a courtroom, and the other
10 thing about him calling you retarded, I guess, is how
11 Mr Walters put it?

12 A Yes, pretty much

~~13 Q And then the third thing was his mentioning this~~
14 guilty but mentally ill defense, which you thought would
15 be a false defense to pursue, and then the final thing
16 was just kind of investigating and communication Those
17 were the things that -- the primary things you mentioned?

18 A Yes

19 Q But those weren't the things that you told Judge
20 Pieper, were they?

21 A I don't recall

22 Q You don't recall? Because I think what you told
23 Judge Pieper was that they were withdrawing your motion
24 for a speedy trial and that they had filed the
25 psychological evaluation I'll show you 3909 of the

1 record, if you'd like to see that

2 A I thought I thought I told him I would be
3 sabotaging the case Where is that located? Just read
4 the whole thing?

5 Q I'll show you specifically Starting at 3908,
6 excuse me, starting at line 10

7 A Okay Yes, sir, and if I may, I filed a motion to
8 dismiss, and what is on that motion to dismiss is what
9 was considered, what the hearing was held, that
10 substantiate my opinion and what I --

11 Q But you don't mention anything about them calling
12 you retarded in there, do you?

13 ~~A No And this, it does not say anything about~~
14 retarded, but still yet, I'm giving an overview that in
15 this particular -- I'm bringing awareness to the Court,
16 what, I believe, was the highest Court's demand, United
17 States Supreme Court, had made the opinion, gave the
18 opinion, I believe, which this was prominent news about
19 lawyers taking cases and literally doing nothing on the
20 cases

21 And so when I directed this, this is my words, but
22 the words of it is based on what I got from authoritative
23 figures about these type of lawyers that they're trying
24 to do something to create some type of way where that
25 they would put up more -- better defenses for the paupers

1 or indigent people that are appointed

2 Q When Judge Pieper asked you, you know, what
3 specific things you had a problem with, you didn't
4 mention anything about retarded, you didn't mention
5 anything about him saying 25 years ago you wouldn't make
6 it to court?

7 A Because some of those statements happened after
8 this and some of them happened before this This was in
9 Florence County, I believe This hearing was held in
10 Florence County

11 Q That is correct

12 A And in Florence County, this was the very first
~~13 time I met Judge Pieper. I think Judge Pieper was on the~~
14 case, I believe, I don't know I don't believe because
15 he was recently -- I don't even think he was the judge on
16 this case I don't think Judge Pieper was --

17 Q No, this is a July hearing before Judge Pieper,
18 July 2003

19 A So this was the first time I met Judge Pieper, and
20 I was also -- it really offended me that he was appointed
21 to the case and nobody told me Nobody tells me, they
22 don't switch the judges on me again, and no one heard my
23 speedy trials and so forth, and to that extent, so I made
24 that openly known to Judge Pieper

25 And we went through that, that I told him that,

1 Who appointed you and why did they do this again and why
2 are my motions not being heard? So this is the first
3 time I met him In Florence County was the first time
4 that I began to exert what -- officially, make it in some
5 type of sense

6 But if I'm just demonstrating to Judge Piepers
7 that I know the word incompetent, and, as I said, things
8 that are going on with the Supreme Court today about the
9 lawyers being lazy and incompetent, I'm assuming that
10 he's very aware of these types of lawyers

11 Q That's what you are saying, though, you wanted to
12 fire them because they were lazy and incompetent?

13 ~~A Yes I wanted to say there is no acceptable~~
14 reason that I would accept them

15 Q But you were already saying right then and there
16 you were moving to dismiss them, so if, as you testified
17 yesterday, them calling you retarded or making a comment
18 about 25 years or raising the guilty but mentally ill,
19 those things were while you turned against them, then
20 they would have already have happened at that point,
21 correct?

22 A Some of the things, yes

23 Q You said those were reported decisions about why
24 you wanted to dismiss them, so obviously they had to
25 happen before this point, because you're asking to

1 represent yourself right there, correct?

2 A I would say, sir, that -- I would say that those
3 things had happened --

4 Q So they had happened?

5 A And then I need to -- I didn't feel no need to
6 list, or go through a listing of everything that has
7 transpired up until that moment to remove them from the
8 case All I wanted was them removed from the case, and
9 this is sufficient, I feel was sufficient enough -- the
10 truth of this, was sufficient enough to bring to this new
11 judge that is seeing me for the first time that don't
12 insult me to make me -- that I understand what
13 ~~incompetent is, or that this is not a serious allegation~~

14 that I'm making to you, and forcing me, with these
15 lawyers, and not wanting to hear my -- no Court wants to
16 hear my motion and doing me like you done did, when I
17 stood up many times, which was introduced in the records
18 and which you have shown the judge about the thing that
19 transpired with the mental health thing, but I'm having
20 to stand up in the Court These are not my lawyers
21 These are not my lawyers Why you got me moving?

22 So I'm really trying to get to the crux of
23 that because he had made the decision Go ahead

24 Q What I'm to understand is that there was the other
25 things that we mentioned, retarded, the guilty but

1 mentally ill, the 25 years, those things that caused you
2 to turn against them, but you decided just to tell Judge
3 Pieper that you thought they were lazy and incompetent
4 and didn't see the reason to state the real reasons, is
5 that correct?

6 A That is correct, and that was correct as you said
7 about the retardation, mentally ill but guilty As I
8 showed, that's correct, that's correct, too Both of
9 them is correct, that is true, sir

10 Q All right And so you said there that they're
11 lazy and incompetent, and that's why you want to fire
12 them, just like you said right here in this motion to
13 fire Glen Walters and Carl Grant that they're lazy and

14 incompetent, correct? Same thing, same complaint

15 A No, that is not true

16 Q You said they were unqualified and incompetent,
17 right? That's what the motion says, correct?

18 A Yes

19 Q Okay That is pretty much the same complaint,
20 isn't it?

21 A No

22 Q It's not? How is it different?

23 A It's different because if the judge asked me,
24 well, what do you mean by they're incompetent? I would
25 say that I believe, at this present time, because of the

1 issues I have raised, that I have not been able to --
2 there is something they were dealing with in reference to
3 communication, and I think that there is a breakdown of
4 communication that I don't believe a lawyer is
5 performing his duty

6 That is just my belief, that the lawyer is not
7 performing his duty, but if something happened that
8 caused that recourse, and I felt that way because I'm
9 very -- my tempo is very high, in reference to this being
10 a PCR stage, and I had known what was going on at that
11 period about the dates and there was a breakdown in
12 communications about them getting information about the
13 ~~dates of the hearing and the PCR dates and stuff like~~
14 that to make me more aware of --

15 Q That was your same problem with the appellate
16 lawyers too You said they were incompetent because they
17 weren't filing the issues that you wanted them to file,
18 right?

19 A Well this has nothing to do with the issues

20 Q Isn't that the same stuff we introduced into
21 evidence before, your documents?

22 A These documents here in reference to Mr Walters,
23 Attorney Walters and Attorney Walter (sic) Grant, I have
24 alleged nothing, made any statement that has anything to
25 deal with issues, that they're not filing my issues

1 Q I was talking about the appellate attorneys

2 A At the appellate level, I felt -- I'm not the
3 authority on incompetency That is the Courts, I
4 believe, the Court's expertise as to whether or not a
5 lawyer is incompetent or not performing accordingly, to
6 his standards, if he believes my allegations to be true
7 or not

8 So for me to take on the authoritative opinion
9 that I can speak about what's incompetent and not
10 incompetent, I believe, I believe that the Court can only
11 come to some type of conclusion as to whether -- what the
12 standard incompetency or incompetency as far attorneys
13 and clients and what is presented before them, or what

14 the incompetency -- because the incompetency can be from
15 many different levels Can be from a lawyer, I believe,
16 not contacting you at all, you never meeting a lawyer

17 I met Mr Walters, I met Attorney Grant, but I've
18 never met Bob Dudek and Joseph Savitz of the appellant
19 defense I have never seen their face If they were
20 sitting in this courtroom today I would not recognize
21 them, so that is a totally different type of
22 incompetency, I believe

23 Q I understand that The truth, though, is just
24 what you told Judge Pieper, is that you wanted to
25 represent yourself because, and I quote you and this is

1 on page 3909, line 5 I think I would do a better, much
2 better job, than they would be able to

3 A And I believe that without having to read that

4 Q And you refused to see them, so you weren't trying
5 to have a relationship with them

6 A I never refused to see them That is untrue

7 Q You never refused to see them?

8 A No This is a statement that someone may have
9 said or I may have felt that, I don't know

10 Q Let's look over on page 3912

11 A That I totally refused to see them

12 Q Let's look over on page 3912, right there, right

13 ~~there at line 12. So you're saying that is not true, and~~

14 they stated on the record that you refused to see the
15 lawyers for six months?

16 A As I just previously stated to you, sir, that I
17 have never -- and I don't believe that it was in the
18 record or I stated or it showed that I have refused to
19 see them, as I had previously showed you before you
20 showed me this a few seconds ago

21 Q That's what I was asking

22 A It may have been something that the attorney or
23 someone may have said, out of their mouth in reference
24 that I refused to see them, and I told you a second ago,
25 and it's on the record, as you just presented me, I

1 quote, Mr Kelly Your Honor, the defendant has not
2 allowed us to see him for about six months That is his
3 statement

4 Q Okay I understand So, though, when you said it
5 right here that you thought you could do a much better
6 job than the lawyers, that was your reason for wanting to
7 represent yourself, right? Because you wanted to be in
8 control You wanted to raise the defenses that you
9 wanted to raise, and you wanted to be able to control
10 this most important aspect of your life, correct?

11 A Well, no, that is incorrect

12 Q That's incorrect

13 A Because, if I may --

14 Q Sure Just like you said yesterday, that you
15 wanted to make sure to put all these things on the record
16 for posterity or for people who might look at this case
17 after whatever happens in the end, you wanted to say your
18 piece and have a chance to say your piece, just the way
19 you want to say it, correct?

20 A Previously, to the question you asked me before
21 when you was asking a question about that I could do a
22 much better job, in this same statement, I stated that --
23 I quote And that's one particular point, from my
24 opinion, in my opinion, and in reference to me asking
25 some basic things on copies, because I couldn't even get

1 copies from Attorney Kelly, of all the copies of all
2 the -- I'm sorry, let me quote Strike that, if you may,
3 please

4 And that is one particular point that forms my
5 opinion in reference to me to ask some basic things, like
6 copies of all the copies, or copies of all the things
7 that they have turned over to me to review, to look at,
8 you know I was told, once I was told, you know, that I
9 would have to get it from the prosecutor, if I'm going to
10 represent myself, and motions that I filed, or I asked
11 for a speedy trial

12 You know, he withdrew my speedy trial, you know,
13 ~~you know, and I want, you know, I want to have the full~~
14 exercise, exercise and extent of law, so I don't feel
15 like the lawyers that presently represent me are not to
16 my best interest, and it just doesn't fall in that
17 category, that's satisfactory for me to be defending for
18 my life I think I would do a well better -- a much
19 better job than they would be able to, unquote

20 Q So -- exactly You didn't like the strategy that
21 they took, so you wanted to take care of it yourself,
22 just like you wanted to fire your trial lawyers --

23 A Excuse me, if I may?

24 Q Sure, finish

25 A As I just finished saying, I have to say what I

1 said I quoted from the record, that I didn't like that
2 they withdrew my speedy trial I didn't like that they
3 would not make copies of the record for me I didn't
4 like the idea that they told me I would have to get them
5 from the prosecutor, if I wanted to have them, get them
6 from the prosecutors

7 I think that I would have to do -- I would do a
8 much better job having to do it for myself if I got to
9 file a motion for a speedy trial, have to get copies and
10 get information from the prosecutor, from the solicitor
11 So I don't believe that there is no contradiction in my
12 statement, nor my intentions was expressly that I felt --

~~13 I'm not a lawyer, but the level of work and the things~~
14 they done, was doing, as I stated here, I don't believe,
15 measure up to the standards, and I don't think anyone
16 else does, if they believe what I say to be true

17 Q I understand

18 A Thank you

19 Q So the bottom line is, you tried to fire every
20 lawyer you've ever had in this case, but you're trying to
21 tell the Court today that you were kind of forced into
22 that decision and you really didn't want to represent
23 yourself at trial, is that right?

24 A That's not true I didn't fire Gene Hood and Sam
25 Bower They dismissed themselves from the case

1 Q Let's talk about Gerald Kelly, Sean Thornton You
2 tried to fire them You did fire them Joey Savitz and
3 Bob Dudek, tried to fire them, Court wouldn't let you,
4 and Carl Grant and Glen Walters, tried to fire them So
5 you tried to fire all those lawyers, but you're saying
6 that you were forced into representing yourself at trial
7 and did not really want to do it yourself, is that
8 correct?

9 A I don't understand where that correlates to the
10 trial --

11 Q That's what you testified yesterday, that you
12 didn't really want to represent yourself, you just kind
13 of got forced into it by the circumstances of your

14 relationship with these two lawyers, with Gerald Kelly
15 and Sean Thornton?

16 A That is correct

17 Q Okay So you didn't really want to do it, you
18 were just kind of forced into it, correct?

19 A Well, if the state didn't offer me two lawyers and
20 both of them from the public defender's office, I believe
21 that I have read somewhere that is in violation of the
22 rules established for appointing counsel for death row
23 inmates

24 Q You never said that to Judge Pieper

25 A I'm saying that to you

1 Q I understand

2 A And that something that I have learned and that I
3 did not know I didn't have --

4 Q So that wasn't part of the reason then, because
5 you just said you didn't know it, right? That wasn't
6 part of your reasoning then You just said you learned
7 that

8 A That wasn't part of the reasoning, but I had that
9 belief I had that suspicion, but I couldn't prove that
10 I had the suspicion because --

11 Q You couldn't ask Judge Pieper that?

12 A Excuse me?

13 Q You couldn't ask Judge Pieper that?

14 A I don't know Judge Pieper

15 Q Well, you didn't have any problem telling him
16 about the speedy trial, you didn't have any problem
17 telling him about the psychological evaluation, you
18 didn't have any problem calling these lawyers lazy and
19 incompetent, but you couldn't tell him about that?

20 A I had so much on my mind, so much work to do, so
21 much preparation to do as a lawyer in representing myself
22 and trying to --

23 Q But you weren't representing yourself then

24 A I was representing myself every day in the cell,
25 every day in that cell, trying to become aware

1 Q So you're just saying you just forgot

2 MR WALTERS I object I think he should be
3 allowed to finish

4 BY MR WATERS

5 Q Go ahead

6 A To become aware that -- of this burden that has
7 been put on me Now, Gerald Kelly, in my opinion, he's a
8 real good lawyer for the state, and that's all he knows
9 He's the chief public defender of Barnville, South
10 Carolina I don't know the population, maybe 200, 100,
11 one stop sign, one stop light, I'm just believing, I'm
12 assuming

13 It may not qualify him, it may not disqualify him,

14 I don't know, but I think that a reasonable person would
15 assume at his age and what he's doing and the way he's
16 talking, I'm talking to a person like something out --
17 I'm looking on the television like on Roots or something
18 This is how he sound He sounds like Mississippi
19 Burning

20 I'm trying to figure out is he insulting me
21 because I'm a black man or what, you know? Why is he
22 talking to me like this? Why is he pursuing me that I'm
23 this person, I'm this -- I wouldn't use the word some
24 type of jungle bunny or something that don't know the
25 difference, but to me, wholeheartedly, I actually felt,

1 sitting in front of him, talking and listening, I thought
2 I was watching Mississippi Burning or something from the
3 1800s or Roots or something, so what am I to do?

4 I'm not that naive that I cannot see that He's
5 going to hang me, and this is illustrated in movies and
6 other things It was about them type of people, lawyers
7 and so forth And so if you said it's impossible that
8 I'm insane or that I'm so naive that I can't see that
9 this person -- my mother about my father raised me
10 better, my stepfather raised me better than that So I
11 think it's insulting my intelligence to concede that I
12 didn't want to just take over this case and be in here,
13 coming up against this establishment, this system, which

14 is a Goliath, and, you know, it has gentlemen like
15 yourself, you know, that I perceive to be very
16 intelligent, but most of all powerful, you know, very
17 powerful

18 And I have to respect that, and his willpower may
19 be in cooperation or maybe to get more cases or to
20 feel -- maybe a little pat on the back for railroading me
21 up the road or so forth to that extent I'm sure that
22 the Court as made numerous cases with them things
23 happening, but it's not to insult anyone in this
24 courtroom, but no, it's incorrect I did not want to
25 represent myself, and I just -- you know, I didn't want

1 that burden I was lazy too I knew that -- I believed
2 that it was something that, you know, I couldn't wish
3 that on nobody I mean, my life was on line, and if
4 you're talking about kill me, die, and -- I'm dying To
5 me, I'm dying It's a death

6 I'm against it, the establishment I'm against
7 what's going on here, and I'm looking at this guy and
8 this person talking to me, you know, and just looking at
9 me dead in the eye, looking me dead in the eye, and I
10 believe in his mind, I believe in his mind, he actually
11 could not perceive and see and think that there was a
12 possibility that I was a thinking person, that I could I
13 understand and see where he was presenting to me and what
14 he was saying

15 Just looking at him, just looking like -- I can't
16 change him I can't change Mr Kelly I don't hate
17 Mr Kelly No, I don't hate Mr Kelly You understand?
18 As a person, that's the way he was That's the way
19 things are That the way it is, and I understood, when
20 he looked at me and the way he was representing me, I
21 understood him because he's not the only one There is
22 thousands of lawyers out there like that, and I
23 understand that, but that is just the way he is.

24 It has nothing -- you can't change the makeup of a
25 person, so, you know, that was his makeup, you know, and

1 I believe he would like -- he made me feel like he was a
2 person that -- his best expertise, which I believe, was
3 to get me a deal And I believe that is his career and
4 what he represent in the public defender's office, so
5 forth I can get you a deal, and that is his power

6 So it has nothing to do with I want to show -- no,
7 I don't want to do that You know, that ages me It
8 physically wore upon me, that mentally wore upon me
9 That was a 100 bag on my back, I mean, really, because I
10 knew that I had to bear this and this is killing me and
11 they're going to kill me and I would be insulted and I
12 have no kind of way of showing my children, my adult
13 children, my grandchildren in the future, maybe they can
14 help make the system better, make America better, or if
15 they have something like that, this won't happen to them,
16 and know that there is people out there that is not
17 concerned with justice, not concerned with who is right
18 and who is wrong, so that is how I felt

19 MR WATERS I hear you, Mr Alkebulanyahh
20 Thank you very much

21 THE WITNESS Yes, sir

22 THE COURT You want to ask any questions
23 or --

24 MR WALTERS Your Honor, we have no further
25 questions

1 THE COURT Okay All right Then we will
2 break for the evening here at this point You have
3 witnesses, did you say, you would call?

4 MR WATERS I do at this point I just have
5 Mr Thornton I am not expecting him to be that long

6 THE COURT I thought you said two hours
7 earlier Well, then let's go ahead

8 MR WATERS I don't know if you want to push
9 ahead He's here

10 THE COURT Will that work for you?

11 MR WALTERS Yes, sir

12 THE COURT All right You can step down

13 then

14 I'll tell you what, why don't we go ahead and
15 take a ten minute break here

16 (Recess taken)

17 THE COURT Okay We're back on the record
18 Let the record reflect Mr Alkebulanyahh is in the
19 courtroom, and, Mr Waters, call your next witness Mr
20 Walters, technically, it's still yours to call Do you
21 rest?

22 MR WALTERS Your Honor, we rest at this
23 time

24 THE COURT Other than -- as a housekeeping
25 matter, we have depositions that we are going to add to

1 the record, some of which we have and some of which we
2 don't have

3 MR GRANT Your Honor, may it please the
4 Court, on August 13, 2003, I took the depositions of the
5 appellate defense attorneys whose names have been
6 mentioned in the record Number one, Mr Robert Dudek,
7 also took the deposition of Mr Joseph Savitz, and we
8 also took the deposition of Dr Donna Schwartz-Watts,
9 forensic psychiatrist in this case

10 I have the original depositions in hand here,
11 Judge I've shown them to the lawyers from the Attorney
12 General's office With the Court's permission, we would
13 ~~ask the Court to allow us to open the originals and offer~~
14 these depositions into evidence as the Plaintiff -- or
15 Applicant's Exhibits next in line and substantive
16 evidence for this hearing, considering as the parties,
17 and counsel for the parties, essentially, are stipulating
18 that there is really no challenges to the credibility of
19 these witnesses We just ask the Court to take these
20 depositions as information, as evidence, actually
21 substantive evidence, in this case

22 THE COURT All right

23 MR WATERS That's correct, Your Honor
24 Obviously, we don't think any of those witnesses are
25 lying There might be differences, but we agree to admit

1 them as substantive evidence

2 MR GRANT Do I have your permission to open
3 the original, Judge?

4 THE COURT That's fine

5 (Depositions marked for identification as
6 Applicant's Exhibit Nos 8, 9, and 10 were marked for
7 identification and admitted into evidence)

8 MR GRANT I have in my hand depositions
9 marked 8, 9 and 10, 8 being the deposition of Joseph
10 Savitz, Plaintiff's Exhibit 9, the deposition of Robert
11 Dudek, Plaintiff's Exhibit 10, the deposition of
12 Dr Schwartz-Watts Considering there are no objections,
13 ~~we offer these into evidence at this time.~~

14 THE COURT All right. Being there is no
15 objection, they are admitted I understand we have some
16 taken and not yet transcribed, and, by agreement, when
17 they come in, you will forward them on to me?

18 MR GRANT That's correct, Your Honor It
19 is my understanding the deposition of Mr Thornton, trial
20 defense attorney, as well as the deposition of Mr Kelly,
21 who represented our client at his trial -- well, standby
22 counsel at his trial, these depositions have been taken
23 but they're not completed yet

24 We would ask the Court, move the Court to
25 keep the record of this proceeding open until we get

1 those depositions in Of course, when we submit our
2 proposed orders to the Court, we would have those
3 depositions attached to our proposed order, and we would
4 ask the Court -- those depositions are taken as evidence
5 to the same as these depositions we just submitted, will
6 be taken as evidence

7 MR WATERS There also also the deposition
8 of the solicitor Duffy Stone as well

9 MR GRANT That's exactly right

10 THE COURT All right Let me know when you
11 get them All right So the applicant has now rested,
12 is that correct?

13 ~~MR WALTERS That's correct.~~

14 THE COURT Mr Waters?

15 MR WATERS Your Honor, at this time we
16 would call Sean Thornton

17 SEAN THORNTON,
18 having been first duly sworn,
19 was examined and testified as follows

20 DIRECT EXAMINATION

21 BY MR WATERS

22 Q Mr Thornton, very quickly, will you give us when
23 you graduated from law school and how long you've been
24 doing criminal law

25 A I graduated from law school from Mercer University

1 in 1998, I started out at that time as an assistant
2 public defender in Colleton County, subsequent to that, I
3 became the chief public defender for Colleton County, I
4 left that position in about -- I believe it's February or
5 March of 2002, was in private practice for a short time,
6 which is where I was asked by the Court to serve as
7 second chair counsel for Mr Alkebulanyahh in this
8 case --

9 Q Let me stop you right there Were you employed by
10 the public defender's office during your representation
11 or as either counsel or standby counsel with
12 Mr Alkebulanyahh?

~~13 A No, sir, I was not. I left the public defender's~~
14 office prior to taking this case It would have been
15 inappropriate, in my opinion, for the judge to have asked
16 a public defender from another county to work on this
17 case I was actually in private practice I had only
18 been in private practice for a short time, but I had
19 completely left the public defender's office when I was
20 asked to represent Mr Alkebulanyahh

21 Q What about Mr Kelly?

22 A Mr Kelly, I don't know how long ago he may have
23 been associated with the public defender's office There
24 is no Barnville public defender's office The public
25 defender's office for Hampton, Jasper, Allendale

1 Counties, up until the new law was passed, within the
2 last year or two, we made circuit public defenders, all
3 those counties were represented by Steve Plexico, who was
4 the public defender, and he had a couple of different
5 assistants, none of whom were Mr Kelly

6 As far as I know, Mr Kelly has not worked for him
7 as long as I've been in the Fourteenth Circuit, which has
8 been since 1998, so neither Mr Kelly nor myself was with
9 the public defender's office when we represented
10 Mr Alkebulanyahh

11 Q Okay And I'm just going to get -- and I cut you
12 off You left the public defender's office?

13 A ~~Left the public defender's office in early 2002,~~
14 so probably a month or two prior, I forget the exact date
15 of being appointed in this case, in Mr Alkebulanyahh's
16 case Subsequent to that, I was asked to join the
17 solicitor's office I was the assistant solicitor for
18 Colleton County up until 2000, end of 2005

19 I was asked by then deputy solicitor Duffy Stone
20 to join him in Beaufort Following his taking over as
21 solicitor in January of 2006, he asked me to be his
22 deputy solicitor, which is what I currently do I'm
23 right now one of two deputy solicitors for the Fourteenth
24 Circuit I supervise Colleton, Allendale, and Hampton
25 Counties I pretty much exclusively try death penalty

1 cases with the solicitor, I do murder cases, drug
2 traffickers, career criminals, armed robberies, et
3 cetera

4 Q Okay I'm going to go straight to some of the
5 issues, and probably jump around a little bit, but I just
6 want to hit them all real quick

7 Do you recall any comment made by you or Mr Kelly
8 relating to if this was 25 years ago, you wouldn't even
9 be here?

10 A Yes, sir I don't remember the exact quotes The
11 subject did come up Mr Alkebulanyahh was very
12 keenly -- as he has been in testimony, very keenly
13 ~~concerned about the possibility of racism or being, for~~
14 lack of a better, word I believe it was his word he used,
15 railroaded into a conviction, and the subject came up
16 that this was not 25 or 30 years ago, that this was now,
17 that both Mr Kelly and myself were here to protect his
18 rights

19 I remember the first time I talked to
20 Mr Alkebulanyahh I specifically told him I didn't care
21 whether he had done or had not done what they accused him
22 of because it wasn't relevant to my representation of
23 him Whether he did it and told me he did it or whether
24 he didn't do it and told me he didn't do it, I would
25 represent him to the best of my ability, and I also

1 remember telling him I didn't care what color he was At
2 the time, I was in private practice with an African
3 American lawyer whose name is Gerald Marie, and that did
4 seem to give him some solace at the time

5 And Mr Kelly and I did have that conversation
6 There was never -- with Mr Alkebulanyahh, there was
7 never any indication on either Mr Kelly's part or my
8 part, that I recall, that was trying to intimidate or
9 instill fear in Mr Alkebulanyahh that had this been 25
10 years ago, he wouldn't even get to trial It was more in
11 the line of this wasn't 25 years ago, his rights would be
12 protected, and both of us were there to do nothing but
13 ~~protect his rights and to go forward with the trial~~

14 Q Okay Did you ever hear -- excuse me, did you
15 ever ask or tell Mr Alkebulanyahh that he was retarded
16 or did you ever hear Mr Kelly do that?

17 A No, sir

18 Q How about telling Dr Musick to go easy on
19 Mr Alkebulanyahh because he wasn't all there?

20 A Not to my knowledge, no, sir

21 Q Okay Now, there has been some testimony
22 discussion about failure to investigate the case Did
23 y'all investigate this case while y'all representing
24 Mr Alkebulanyahh?

25 A Yes, sir I had a couple of bankers boxers full

1 of investigation in this case We immediately hired
2 Vicki Childs to be the fact investigator We also hired
3 Dale Davis to be the mitigation investigator

4 We also, as you know, as already been testified
5 to, had hired Donna Schwartz-Watts and a psychologist
6 She recommended, during our time on this case, but we
7 absolutely investigated this case We ran down every
8 person Mr Alkebulanyahh asked us to run down

9 We had Vicki Childs -- as I remember, lots has
10 been talked about with Bobby Rigby As I recall, Vicki
11 Childs did run down Bobby Rigby at some point I would
12 have to look back at the transcript, but he may even have
13 ~~been subpoenaed for court. I don't remember, but I know~~
14 we ran him down We went into Savannah, sent Vicki
15 Childs to Georgia to run down people, even after being
16 removed

17 Mr Kelly did, I do recall, tell
18 Mr Alkebulanyahh, Even if you want the lawyers removed,
19 please don't remove your investigators They can at
20 least keep working for you, and we instructed the
21 investigators that as long as what Mr Alkebulanyahh
22 asked them, to not violate any rules of law or anything
23 else, that they should cooperate with him, just as if it
24 was us, either Mr Kelly and myself asking the questions

25 Q How about discovery? There was some testimony

1 about whether or not you were willing to show, disclose,
2 any discovery materials or any of the state's evidence
3 from Mr Alkebulanyahh?

4 A I have never in my ten years of criminal trial
5 practice refused a client discovery As a prosecutor, I
6 don't refuse defense attorneys discovery Anything
7 Mr Alkebulanyahh wanted, he was given I don't know if
8 it was given to him in the time manner that he wanted it,
9 but I don't know of anything that was held back from
10 Mr Alkebulanyahh during the time that we represented
11 him, nor do I ever recall Mr Kelly or myself telling him
12 that he would have to get something from a prosecutor,
13 ~~unless it was after we were fired, and we would have~~
14 given him anything in our files, but once we were put off
15 as standby counsel, we were not -- we were instructed by
16 the judge that we were not to do things of our own
17 volition

18 We were not -- our understanding was we actually
19 got this squared away, I believe, in the July hearing in
20 front of Judge Pieper We were to be legal resources for
21 Mr Alkebulanyahh We weren't to make suggestions We
22 weren't to interfere or intervene in any way We were to
23 answer any questions he had during the process I also
24 had to prepare his and sign his subpoenas, which were
25 numerous for the trial Mr Kelly also had to act, for

1 lack of a better word, as his banker, because we had been
2 given money by the state for the investigators, and they
3 had to be paid, so Mr Kelly also handled that
4 responsibility because he was the one who was lead
5 counsel So we did -- that was what we were told to do
6 by the Court

7 Q So it was advice when asked and then logistical
8 support?

9 A Yes, sir

10 Q Okay When y'all were still representing
11 Mr Alkebulanyahh, was the only defense y'all raised to
12 him guilty but mentally ill?

13 A I will tell you -- no, sir, it was not. I will
14 tell you this They had a lot of evidence against
15 Mr Alkebulanyahh Whether he wants to admit that now or
16 not, it's not my prerogative This, in my opinion, was a
17 very strong case There was forensic evidence, there was
18 an eyewitness linking him to the scene, it was his
19 residence

20 He had some interesting Fourth Amendment claims
21 that have been brought up in here which we would have
22 done in a suppression motion before trial We instructed
23 Mr Alkebulanyahh that in our opinion it was not a good
24 idea to proceed with trying to blame the deputies for
25 their own deaths because that, frankly, will not play

1 well in front of a jury

2 So we did tell him that was not a good defense,
3 nor was it, in my opinion, a viable defense We did talk
4 with him about guilty but mentally ill We talked about
5 the fact that that is a mitigated -- could be used in
6 mitigation and it could even be used if we could build a
7 good enough case for it, if it existed, that it might
8 even be something we could proffer to the prosecution to
9 try to get a deal for life instead of death

10 He insisted that was not -- as he did here in
11 court, that that was not something he was interested in,
12 that there was nothing wrong with him, and that he would
13 ~~not be interested in that. The other thing we talked~~

14 about, and I talked about with Mr Alkebulanyahh several
15 times, was that, you know, there is always -- it's the
16 state's burden of proof You always have that defense,
17 and I know Mr Campbell and Mr Walters are well familiar
18 with that defense

19 It's always the state's burden, so if you have no
20 other real viable defense, you also make the state put up
21 every witness, you make them put in every bit of
22 evidence, and you fight it every step of the way, and you
23 basically just try to poke enough holes in it to raise
24 reasonable doubt, which in my relatively extensive
25 experience, is a very powerful weapon in and of itself

1 Q And I guess there is also a long view toward
2 sentencing phase as well?

3 A And finally we asked him about or told him about
4 the fact that even if nothing else, even if he lost, we
5 could try to save his life, and Mr Alkebulanyahh was not
6 interested in that. He believed that he would be
7 exonerated at the trial level. He believed that his
8 Fourth Amendment claims would win at trial, despite my
9 best efforts to educate him as to the -- that it would
10 probably go the other way.

11 Q Okay. Is that when the relationship started to
12 break down, or how did that happen?

13 ~~A I think that that is probably the straw that broke~~
14 the camel's back. I don't doubt, for whatever reason,
15 Mr Alkebulanyahh and Mr Kelly did not get along. It
16 may have been a generational thing. Mr Alkebulanyahh,
17 although he is a little bit older than me, he and I are
18 relatively close in age. Mr Kelly is significantly
19 older. Mr Kelly and he -- there was never any animosity
20 that I could remember, certainly not from Mr Kelly nor
21 from Mr Alkebulanyahh, but at some point, he ceased
22 trusting him as his attorney, and our repeated telling
23 him that the Fourth Amendment issue was not a valid
24 issue, number one, and not only would it not work, but it
25 would actually damage him at trial if he tried to portray

1 the officers as being responsible for their own deaths
2 That is probably the straw that broke the camel's back,
3 and when it really break down -- the essence of it is, is
4 he wanted to do his own case

5 He did He and I did have a discussion about if
6 he fired Mr Kelly, could I work the case with him, and
7 there were two problems with that At the time, although
8 I had enough felony trial experience, I had never sat on
9 a death penalty case, and I did not have five years in, I
10 had four At the time, the rule was you had to have five
11 years in, three years of felony trial experience, and I
12 think they preferred you to sit second chair on a death
13 penalty case

14 I had over three years of trial experience, but I
15 hadn't been in quite long enough, nor had I sat on a
16 death penalty case, and, in addition to that, you have
17 the hybrid representation problem, which we do not have
18 in South Carolina, so he and I had a brief discussion
19 about that I told him that could not be done and at
20 that point I believe sometime after that is when we
21 actually had the motion heard to have Mr Kelly and
22 myself relieved as counsel

23 Q There has been some testimony about the meetings
24 and who spoke and who didn't speak at the various
25 meetings you had with Mr Alkebulanyahh

1 A Yes, sir

2 Q Did you have conversations with Mr Alkebulanyahh?

3 A I did I believe I spoke to Mr Alkebulanyahh at
4 least some at every meeting There is no question that
5 Mr Kelly took lead, because Mr Kelly was lead counsel
6 He had also at that time, I think, either represented or
7 either seven or eight people in death penalty cases, so
8 he had a significant amount of experience doing death
9 penalty work and he was lead counsel, so he always took
10 lead, however, Mr Kelly always was perfectly willing for
11 me to put in my opinions, whether agreed with his or not

12 I never felt that I couldn't speak and, as I
13 recall, I spoke at every meeting I had with
14 Mr Alkebulanyahh, and I met with him once or twice, as I
15 recall, by myself

16 Q Okay

17 A Because he seemed more comfortable with me toward
18 the end than he did with Mr Kelly

19 Q I apologize for jumping around, but when y'all
20 were initially selected to replace Mr Hood and the other
21 initial attorney, were there some conditions that
22 Mr Alkebulanyahh were looking at that y'all met at to
23 why y'all were selected?

24 A Yes, sir I was actually at the hearing when
25 Mr Bower and -- it was Sam Bower from Beaufort and also

1 Gene Hood who was the chief public defender from
2 Beaufort, and I recall the issue was that I believe
3 Mr Alkebulanyahh had an issue with Mr Hood's close
4 connection to the sheriff's department, which Mr Hood,
5 of course, being the chief public defender there deals
6 with the sheriff's department on a general basis, and he
7 indicated he did have a lot of very close connections,
8 and because of that, they ended up being removed

9 As I recall, Mr Alkebulanyahh's wish at that
10 time, and one that he and I discussed later, was that he
11 either have African American attorneys or attorneys that
12 were appointed outside of Beaufort County Mr Kelly
13 ~~practices almost exclusively in Hampton County I~~
14 practiced almost exclusively in Colleton County, so while
15 in the same circuit, neither one of us was from Beaufort
16 County, nor had any substantial -- although Mr Kelly did
17 represent people in Beaufort on occasion, it was not his
18 normal forte, therefore, although both Mr Kelly and
19 myself were Caucasian, Mr Alkebulanyahh seemed to be
20 okay with it since we both practiced outside of Beaufort
21 County

22 Q Okay During the course of this trial, when you
23 were functioning as standby counsel, did
24 Mr Alkebulanyahh ever ask you all questions and ask for
25 advice and things of that nature as he tried the case?

1 A Yes, sir During the guilt phase he did ask a few
2 questions, not a lot He preferred to handle things
3 himself, but Mr Kelly and I were both there I don't
4 recall specifically what was asked, but I do remember on
5 at least two or three different occasions during the
6 trial when he did ask questions And then, of course,
7 during the sentencing phase, we took a slightly more
8 active role as Mr Alkebulanyahh's request

9 Q During that representation both as counsel and
10 standby counsel, did you ever see Mr Alkebulanyahh
11 terrified?

12 A No, sir

13 Q ~~Did you ever see him have a lack of confidence or~~
14 unsure of himself during the course of this?

15 A No, sir He was very confident that he would be
16 successful at trial or, if not successful at trial, that
17 he would win on appeal

18 Q And I also mean his demeanor in the courtroom and
19 how he handled himself and things of that nature

20 A He handled himself, as far as -- his demeanor in
21 the courtroom was fine He treated the judge with
22 respect, he treated opposing counsel with respect, he did
23 not make any outbursts Regardless of what my opinion is
24 on how well he did as a layman, you know, in a death
25 penalty case, the fact of the matter is he comported

1 himself as he was supposed to during the trial, and even
2 at the end when he decided he did not wish to be present
3 during the sentencing, he did not make any large
4 disturbance in the courtroom

5 He very calmly told Judge Pieper that when
6 somebody questions a witness, I'm going to get up and
7 disrupt the proceedings, but I won't do it
8 disrespectfully, or something to that extent

9 When the state called their first witness, the
10 witness took the stand and started to answer a question,
11 Mr Alkebulanyahh stood up and started reciting a prayer
12 He didn't raise his voice, he didn't scream, he didn't
13 stomp his feet, he did it in a very calm manner The
14 judge told him to be seated He was seated

15 When the witness was asked a question again, he
16 got up and repeated the same process, until such time as
17 eventually he was removed from the courtroom, but he
18 never lost control, he never lost his demeanor and was
19 polite to everybody in the courtroom, as I recall

20 Q Okay Did he ever recall -- or do you ever recall
21 him ever mentioning any sort of issue about forced
22 medication or anything along those lines?

23 A No, sir

24 Q Or that he was worried about that?

25 A No, sir He was very adamant that there was

1 nothing wrong with him and he did not want to participate
2 with any guilty but mentally ill defense or any
3 mitigation -- in any way that mitigation would question
4 his mental faculties

5 Q Okay

6 A But I don't recall one way or the other, to be
7 honest with you I don't recall anything about forced
8 medication

9 Q All right With regard to the examinations by
10 Dr Frierson and Dr Schwartz-Watts, did y'all discuss
11 those examinations with them, prior to them occurring?

12 A Yes, sir Up until the time that we were relieved
~~13 as counsel, and forgive me, I don't know where that was~~
14 this the process, but I know for a fact we let him know
15 that Dr Schwartz-Watts was hired by us, that she would
16 be coming to talk to him He indicated he did not wish
17 to talk to her, and we basically let him know that is
18 your right, but we feel like we have to have this
19 evaluation done

20 The state's doctor is going to do it, and we need
21 our own expert to see what's going on with you, and so we
22 let him know in advance that he would be receiving a
23 visit

24 Q Was there ever a time prior to him actually having
25 y'all relieved that he was not having -- or was refusing

1 any communications with you?

2 A Yes, sir There were -- I'm trying to think,
3 either two or three occasions, at least two that I can
4 think of, where Mr Alkebulanyahh refused to see me, and
5 Mr Kelly I actually went to Beaufort because I wanted
6 to make sure there was -- if there was a chance that we
7 could, you know, keep communicating, that we would, but I
8 went to the jail, let the jail know that I was there

9 They took me back to the holding room in the back,
10 and I was informed by the jailer that Mr Alkebulanyahh
11 did not wish to see me, and I did that twice, that I can
12 recall I did not -- I don't think I did it more than
13 ~~that, but I know at least twice~~

14 Q Okay And you mentioned a little bit earlier
15 about his outbursts or -- not his outbursts, but him
16 deciding to disrupt the sentencing phase, and what
17 happened after that, just very briefly?

18 A After that, what basically was decided was the
19 judge still wanted him to have access to the courtroom
20 and be able to see and hear what was going on In
21 Beaufort, similar to in the back of this courtroom, there
22 are rooms that are a little conference rooms, and the
23 ones in the Beaufort courthouse have substantially larger
24 windows

25 So what ended up happening was we had a line of

1 officers, bailiffs, stand around where the door was and
2 where the window was, and, basically, they blocked the
3 jury's view of Mr Alkebulanyahh In other words, we
4 also put some paper up, I believe, in the doorway so that
5 the jury could not see him in case he made any outbursts
6 or in case he got visibly upset, there was not going to
7 be prejudice to him

8 The judge instructed Mr Kelly to sit at counsel
9 table, and I went back in the room with Mr Alkebulanyahh
10 and was there with him in case he wished to make any
11 objections or anything else I could take that
12 information to Mr Kelly

13 Q And did he?

14 A He did make one objection, as I recall
15 Mr Stone, currently the solicitor at that time, deputy
16 solicitor, kept making reference to him as Tyree Roberts,
17 as has been stated in here, I believe it was in 1998,
18 Mr Alkebulanyahh had his name legally changed to
19 Alkebulanyahh, I think it was '98, but Judge Pieper had
20 already ordered that Mr Alkebulanyahh be referred to by
21 that name, and Mr Stone, on either two or three
22 occasions during sentencing phase, called
23 Mr Alkebulanyahh Tyree Roberts, and Mr Alkebulanyahh
24 asked me to go out and object on the grounds that the
25 judge had already made that ruling I did make that

1 objection, and it was sustained

2 Q Okay Once Mr Alkebulanyahh took over the
3 representation, how did that affect preparation of the
4 mitigation case, specifically with Mr Alkebulanyahh's
5 family?

6 A I know that Mr Alkebulanyahh had a very strong
7 desire that his family was not to be bothered and not to
8 be talked to, and we actually had a disagreement, we
9 being Mr Kelly and myself and Mr Alkebulanyahh We had
10 a disagreement about that We thought it was very
11 important to the mitigation aspect

12 He wanted Dale Davis to concentrate on other
13 ~~things, so all I can tell you is that he did not want his~~
14 family talked to and other things dealt with about
15 mitigation He wanted to concentrate more on the guilt
16 phase, and what happened after we were relieved, I don't
17 know, other than what -- that Dale Davis informed me that
18 she was not doing the same mitigation work, that he had
19 instructed her to do other things this and, again, we
20 told her as long as it wasn't anything improper that she
21 needed to cooperate with Mr Alkebulanyahh because he was
22 at that point at his request in control of his own
23 destiny

24 Q Going back to the Blair hearing, y'all presented
25 Dr Schwartz-Watts at that hearing, is that correct?

1 A Yes, sir

2 Q And I guess it's fair to say that is something
3 Mr Alkebulanyahh didn't want, but you wanted to make
4 sure to put that on the record and let the judge make the
5 call?

6 A Yes, sir I didn't think, nor did the judge, in
7 my opinion, think it was appropriate to hear his motion
8 to relieve counsel and proceed unless he was found
9 competent, and since we had conflicting reports, I
10 thought there needed to be a judicial determination

11 Q Okay Did you ever during the course of the trial
12 see Mr Alkebulanyahh appear to lose touch with reality
~~13 or have any psychosis or anything of that nature?~~

14 A No, sir He basically told pretty much the same
15 story, or one very close to it the entire time, and he
16 was convinced the entire time that he was correct on the
17 Fourth Amendment and that he would be exonerated at trial
18 or win at direct appeal

19 Q At any time during the course of this, as standby
20 counsel, did y'all abandon Mr Alkebulanyahh?

21 A No, sir We were -- basically, Mr Alkebulanyahh
22 was told, as he testified to, that he would have to do
23 the entire case once he made that decision, however, my
24 fear with it being a death penalty case was that we made,
25 regardless of what the judge had ordered, that if it was

1 asked to be reconsidered we may either have to do it over
2 again or we would need to take over at some point

3 So I was prepared and continued to prepare, at
4 least mentally, and organize myself to be ready to take
5 it back over and, of course, in fact, although we didn't
6 take over anything during the guilt phase, we actually
7 did do the sentencing phase, at least we did the
8 closings Mr Kelly delivered a closing, I delivered a
9 closing, and then Mr Alkebulanyahh was allowed to make a
10 final statement to the jury, per the statute

11 Q So y'all did the sentencing face still within the
12 parameters of what Mr Alkebulanyahh wanted?

13 A Yes, sir There were no witnesses that I recall
14 subpoenaed for mitigation, or other items because that
15 was not his wish That was his choice, but we did
16 deliver two closings, and then Mr Alkebulanyahh, per the
17 statute, made his final argument to the jury

18 Q Okay One thing I didn't mention that you talked
19 a little bit about, some of the investigation y'all did,
20 did y'all also investigate the cousin of Kimberly Blake,
21 Michael Blake?

22 A Yes, sir, and forgive me, I don't remember exactly
23 what the results were Mr Alkebulanyahh brought that to
24 our attention We ran that down Bobby Rigby was run
25 down The long and short of it is there was no forensic

1 evidence that tied anybody to anything except for
2 Mr Alkebulanyahh There -- the eyewitness testimony,
3 whether Mr Alkebulanyahh believes it to be true or not
4 or says it's true or not, the eyewitness testimony was
5 that he was the one in the room

6 The bullets -- there was obvious bullet marks,
7 bullet entrances and exits in and out of the closet
8 Mr Alkebulanyahh is right, there were not a lot of
9 bullet holes in clothes other than the ones that were
10 hanging on the door, however, there was I don't know how
11 many rounds exchanged It was a great deal of rounds
12 exchanged in and out of the bedroom He was listed as
13 the only person left in the bedroom.

14 When the officers went in by Kimberly Blake,
15 without question, she had some issues as to credibility
16 that could have been explored, and he did explore to a
17 certain extent, but basically, there was no evidence to
18 tie anybody to it other than him

19 Q I just got one or two more Was Mr Alkebulanyahh
20 able to discuss legal issues and the law with y'all, at
21 least in a relatively logical manner? How would you
22 characterize that?

23 A Without question, he was able to -- whether I
24 agreed with his conclusions or not, there is no questions
25 he had access to a law library He would come and