VOLUME I of IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

GENE TONY COOPER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001149

APPENDIX

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GENE TONY COOPER, JR.,

APPELLANT

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THOMAS H. COMERFORD
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	90-GS-32-83 90-GS-32-84
STATE OF SOUTH CAROLINA	)	Defendant's Motion No. 1
v.	)	DEFENDANT'S AMENDED DEMAND FOR SPEEDY TRIAL
GENE TONY COOPER,	)	
Defendant.	)	

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL CIRCUIT:

You will please take notice that the defendant Gene Tony Cooper hereby moves, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2003), a speedy trial of all charges now pending against him. In support of this motion, he would show:

1. In 1990, The defendant was indicted for kidnaping, armed robbery, conspiracy, and murder in connection with the death of Kimberly Quinn. He was convicted and sentenced to death on the murder count, and to terms of years for the other offenses, on February 22, 1991.

2. On January 10, 1994, the South Carolina Supreme Court reversed the defendant's murder conviction and remanded that

count for a new trial. At the same time, the South Carolina Supreme Court affirmed the defendant's other convictions and sentences. State v. Cooper, 312 S.C. 90, 439 S.E.2d 276 (1994).

3. On September 4, 1995, the defendant filed an application for post-conviction relief respecting his noncapital convictions. Counsel for the state and for the defendant informally agreed that the retrial of the murder charge should await disposition of his PCR challenge to the remaining counts.

4. The post-conviction court granted relief with respect to all of the defendant's remaining convictions on December 3, 1998, following an evidentiary hearing. The state appealed, and on August 12, 2002 the South Carolina Supreme Court affirmed the grant of post-conviction relief. Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

5. The state did not petition for rehearing, and the Clerk of the South Carolina Supreme Court sent down the remittitur to the Circuit Court for Lexington County on August 29, 2002.

6. Since August 29, 2002, the state has, to the defendant's knowledge, taken no action to bring him to trial.

7. On June 23, 2003, Deputy Solicitor Riddle returned a telephone inquiry from defense counsel and advised that the state would respond to counsel's informal inquiry regarding a trial date in ten days. The ten day period elapsed on July 3, 2003. On July 11, 2003, Mr. Riddle returned counsel's call but advised

that the State was currently not in a position to propose a date certain for the trial of this case.

8. The defendant remains in confinement awaiting his retrial.

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper demands a speedy trial of all charges now pending against him.

Respectfully submitted,

DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

July 11, 2003

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

STATE OF SOUTH CAROLINA,)
)
-vs-) Transcript of Record
)
GENE TONY COOPER,) 90-GS-32-083 & 084
)
Defendant.)

August 18, 2003
Lexington, South Carolina

B E F O R E:

HONORABLE MARC H. WESTBROOK, Judge.

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

DONALD V. MYERS, Solicitor
C. DAYTON RIDDLE, III, Deputy Solicitor
Attorneys for the State

DAVID I. BRUCK, Esquire
ROBERT E. LOMINACK, Esquire
Attorneys for the Defendant

L. COCONUT PANISARI, R.P.R.
Circuit Court Reporter

THE COURT: In the matter of the State versus Gene Tony Cooper, Mr. Bruck, I believe this is your motion?

MR. BRUCK: Yes, it is, Your Honor. I should say that I am waiving the Defendant's presence here today with his expressed consent.

THE COURT: Okay.

MR. BRUCK: If Your Honor please, this is simply a motion to get a trial date set. We have moved for a speedy trial. At this point the relief we are seeking is simply a trial.

By way of background, Mr. Cooper was arrested in 1989, tried in early 1991, sentenced to death. His conviction was reversed for murder in 1994; however, the Supreme Court declined on procedural grounds to reverse several -- two other noncapital charges which he was convicted of at the same time.

In effect it required us to return to circuit court to seek post conviction relief. Mr. Cooper did that successfully. Post conviction relief was granted by Judge Keesley.

The State appealed and on August the 12th, 2002, the Supreme Court affirmed the grant of post conviction relief as to all remaining charges. Therefore we are now back to square one. Mr. Cooper

is a pretrial detainee in the contemplation of the law and has been for one year and six days.

To be fair, although this case is 14 years old, I don't want to make it appear that the State has dragged its feet for a lot of that time. The Attorney General's Office, Mr. Myers, and I all agreed that until the status of his noncapital cases was finally resolved on post conviction, it was in the interest of neither Mr. Cooper nor the State to proceed on retrial of the murder case.

Therefore, in effect the murder cause was held in abeyance by mutual consent. However, that period ended on August 12, 2002. We are now more than a year down the road.

Mr. Cooper has maintained his innocence of all of these charges since the day of his arrest in 1989. He wants a trial. I have waited for a trial date to be set or hear on something for a number of months.

Finally on June 20, 2003, I left a phone message for Mr. Myers. Mr. Riddle called me back after a couple of days and advised Mr. Myers was unavailable for family, personal reasons and was not in the offense, requested that I give Mr. Riddle about ten days to get back to me about a trial date.

That call came back on June 23rd. I left

several more messages. Finally on July 11th, 2003, Mr. Riddle called me back to say that I probably needed to go ahead and file this motion, that the State was not in a position to propose a trial date as yet. Since then we have been going through the mechanics to bring the matter before the Court.

I realize that there are a lot of other cases. But, of course, this case is an old case. It has been pending and ready for retrial now, as I say, for more than a year. There is no other reason why Mr. Cooper is in jail, prison other than this case.

Obviously, once a date is set, I need enough time to get ready and subpoena our witnesses; but we would like an early trial date set. My only schedule at this point includes only one other firm commitment, and that is on February 15th.

I am set for resentencing in the case of State against Schaffer in Union County, which I am appointed by the Court for resentencing. Other than that, I will be ready to go.

I would ask the Court to consider a trial date in November of this year. I think that would give both sides enough time to get ready and get this case finally tried and Mr. Cooper's guilt or innocence decided. Thank you.

THE COURT: Mr. Myers.

SOLICITOR MYERS: Your Honor, this is just one of about eight or nine that are lined up. Mr. Starnes who just left, he is on the list, too. We also have Mr. Cooper's codefendant, Robert Southerland, that we have to schedule also.

As you know, we have been trying to work with Mr. Delgado on the Radwell case, Caleen Radwell's case, Your Honor. That has already been set. We have got one coming up in September, Mr. Northcutt's case. I think that we had worked out that Radwell was next in line.

This one would have to come after Radwell. Then we have Mr. Cooper's codefendant Southerland. We've got William Kelly that the United States Supreme Court sent back on a parole charge.

We have got Jeffrey Jones. We have got Hazeldon on a parole charge coming back. We've got an Ard case in the hopper. So that's just some of them that are on retrial.

One further matter, Your Honor, I would like to bring up at this time is that we would move Mr. Bruck be disqualified from being involved in this case and that he have no input, be enjoined from any participation whatsoever.

Mr. Cooper was sent to death row, and then Mr. Southerland was sent to death row. They are codefendants in this case. Once they were on death row, Your Honor --

MR. BRUCK: Your Honor, may it please, I had no notice that this motion would be made today. I am going to object to notice to a motion to disqualify me without at least giving notice.

I think if the State had a motion like that, they should have reduced it to writing, served me; and we will litigate it at the appropriate time.

THE COURT: Mr. Myers, I think he probably does have a right to have some notice.

SOLICITOR MYERS: I will put him on notice that I'm going to move to have him disqualified for his contact with Bo Southerland, which he has admitted in transcripts that we have with the Court.

He has stipulated to it. We are going to move at that time and will set this up as soon as we can. So we need to dispose of that before we set a trial date.

THE COURT: We can probably try to do it when we set the other matter for Mr. Starnes. We can probably set this at that same time. Should Mr. Southerland's attorneys be notified also? Would

that come into play at all?

SOLICITOR MYERS: I can notify them, but I don't know -- I can let them know that we are going to do that at that time. They can be here or not be here. I will leave it up to them.

THE COURT: Let me do this. Let me -- anything else, Mr. Bruck?

MR. BRUCK: Well, yes, sir. I don't think the fact that the State plans to try to run me off the case affects the fact that we still have -- I am Mr. Cooper's lawyer now. He has made a motion. I think we should set the case for trial.

If it turns out I get booted out of the case for whatever reason, then the trial data can be reexamined at that time. But I should note that the State in other -- there's a couple of things I would like to say by way of response.

One is that Southerland, Kelly, and Hazeldon are all resentencings. That is to say, those people are convicted of murder. They are not going anywhere. I certainly think it would be unfair to give those cases priority over a case where the pending charge is the only thing keeping the man in jail.

He wants a trial on his guilt or innocence. Guilt or innocence is not an issue on either Kelly,

Hazeldon or Southerland, as I understand the status of those cases.

That is not to say they don't have other guilt phase cases also pending. It seems to me that the fact that there are a lot of other cases piled up is not an excuse to keep people in jail year after year after year without a trial.

We have not made a motion for release on bond. I thought we would take things up one at a time. If the State does not have the capacity to give this man a trial, then obviously he is entitled to release on bond.

I don't know if electronic monitoring or whatever might be needed, but at this point I simply am asking the Court today to set a date for Mr. Cooper.

If there is no case set for November right now, why don't we set this case for November? In reviewing the transcript of another case, Mr. Riddle said they did intend to call a case for November.

The reason they couldn't put the Northcutt case back then when Northcutt's lawyers wanted it to be was that if they did that, they wouldn't be able to try anything else this year. So the inference was that they needed to keep a slot open in November. We

would like to fill it. So why not?

THE COURT: I understand. One of the problems -- let me just note from a Court standpoint, there would be some problem with November. As you know, November is the time that has been set to actually begin moving into the new courthouse.

There is going to be some necessary disruption that is going to take place obviously with the Court's procedures during that. We don't know the exact dates at this point.

We have a tentative date of November 22nd from the contractors. They tell us that some moving may take place prior to that. The problem is we don't get to control that.

The contractors and the architect really more than anybody probably would have control over that at this point. So there are some uncertainty in terms of November because of that particular issue.

MR. BRUCK: Understanding that, Your Honor, I would ask that we set a date. If it turns out that it has to be adjusted by a few weeks, we can work our way around that. I just feel like we would like to get the process moving if we can.

THE COURT: I certainly understand. Let me take -- I agree, I will not -- well, am I going to

have to hear the motion on disqualification first though?

Because I guess in essence if you are not disqualified, then it would make no difference. If you were disqualified, would it be fair in essence to set a trial date for other attorneys to have to deal with?

MR. BRUCK: Well, at this point I am the only attorney appointed to the case. I think I may have some assistance from another lawyer who would be appearing pro bono.

To begin with, I think I know the grounds of Mr. Myer's motion. Without going to pre judge a motion that I haven't seen yet, I would be extremely surprised if the Court finds that it has merit.

I don't doubt for a moment that he would like to see me out of the case. But leaving that aside, I don't think I will be out. If that were to happen, then the date can be changed. We change trial dates all the time.

But if there is no case set for November now, why don't we set this case for November? Then if it has to be changed, it has to be changed. I don't see that they are proposing to set anything else for November.

THE COURT: Let me do this. I will take it under advisement at this point, mainly because of those two issues. The one is the disqualification issue.

The other, the main issue really, is the uncertainty of the Court's schedule right now. Let me do this. Let's get a hearing set for sometime later, and I will have a little better idea of what the schedule is like at that point. We are probably talking about just a couple of weeks or so.

MR. BRUCK: Very well.

THE COURT: Thank you.

MR. BRUCK: If I could, Your Honor. I think I mentioned to the Court when scheduling this, the one understanding on which I waived the need to have Mr. Cooper here was that I would be able to send him a transcript of this short hearing.

THE COURT: Yes, sir.

MR. BRUCK: I will make a request, but if I could get any assistance in having a transcript sent to Mr. Cooper and letting him know the outcome.

THE COURT: Madame Court Reporter, would it be any disruption on your schedule to go ahead and give that priority?

COURT REPORTER: No, sir.

THE COURT: How about do that then, please.

COURT REPORTER: Yes, sir.

MR. BRUCK: Thank you so much, Your Honor.

THE COURT: Thank you, sir.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 18th day of August, 2003.

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

August 19, 2003

L Coconut Pantsari

Court Reporter

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FILED
2005 FEB 10 P 1:15
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)	90-GS-32-83 90-GS-32-84
STATE OF SOUTH CAROLINA)	Defendant's Motion No. 2
v.)	DEFENDANT'S RENEWED DEMAND FOR SPEEDY TRIAL
GENE TONY COOPER,)	
Defendant.)	

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that at 12:00 noon on Tuesday, February 15, 2005, or as soon thereafter as counsel can be heard, the undersigned counsel for the defendant Gene Tony Cooper will appear in open court before the Honorable William P. Keesley, Chief Administrative Judge for General Sessions, Eleventh Judicial Circuit, at Lexington County Courthouse, to renew his outstanding motion for a speedy trial of all charges pending against him.

YOU WILL FURTHER TAKE NOTICE that by the service of this pleading, the defendant hereby moves, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2004), for a

speedy trial of all charges now pending against him. In support of this motion, he hereby realleges all facts set forth in his Amended Motion for Speedy Trial filed on or about July 11, 2003, and heard in by Judge Westbrook in open court on August 18, 2003, and again in chambers on August 25, 2003, as well as all facts alleged by undersigned counsel at the August 18, 2003 hearing.

He would further show:

1. At the conclusion of the August 18, 2003 hearing, Judge Westbrook remarked on the uncertainty of the court's schedule, and asked that another hearing be set for the near future, in "just a couple weeks or so." Aug. 18, 2003 Hearing Tr. at 11. Pursuant to this direction, an in-chambers conference before Judge Westbrook was conducted on the afternoon of August 25, 2003. At that time, Deputy Solicitor Riddle advised Judge Westbrook and the undersigned counsel for the defendant that the state would call Mr. Cooper's case for trial during the spring of 2004--that is, between April and the end of June, 2004. Based on this representation, no on-the-record hearing was held at that time.

2. Despite its undertaking to call the defendant's case for trial during the spring of 2004, the state has not done so.

3. The defendant remains imprisoned at Lieber Correctional Institution, without bond, and has been there awaiting his retrial since before August 29, 2002, the date when the South

Carolina Supreme Court sent down the remittitur of its judgment affirming the grant of post-conviction relief as to the last of the criminal convictions arising from the homicide of Kimberly Quinn. Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper again demands a speedy trial of all charges now pending against him.

Respectfully submitted,

DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

February 8, 2005

ORIGINAL

FILED

2005 FEB 10 P 1:15

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
COUNTY OF LEXINGTON) 90-GS-32-83
90-GS-32-84

STATE OF SOUTH CAROLINA)
) CERTIFICATE OF SERVICE
v.)
)
)
GENE TONY COOPER,)
)
Defendant.)

I do hereby certify that I have served upon counsel for the State Defendant's Motion No. 2, Defendant's Renewed Demand for Speedy Trial, by first class mail, with postage prepaid and addressed to:

Dayton Riddle, Esq.
Deputy Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse Annex
205 E. Main Street
Lexington, SC 29072

This the 8th day of February, 2005.

Natasha J. Holliday

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON

THE STATE,

V.

GENE TONY COOPER,

DEFENDANT.

BEFORE: THE HONORABLE WILLIAM P. KEESLEY, JUDGE.

APPEARANCES:

FOR THE STATE: DAYTON RIDDLE, DEPUTY SOLICITOR

FOR THE DEFENDANT: DAVID I. BRUCK, ESQUIRE

COURT REPORTER: SMOKEY PERRY

FEBRUARY 15, 2005

90-GS-32-83

90-GS-32-84

MR. BRUCK: IF I CAN PASS UP A COPY OF THE MOTION THAT WAS THE REASON WE'RE HERE TODAY AND RENEW DEMAND FOR A SPEEDY TRIAL.

THE COURT: OKAY. ALRIGHT. GO AHEAD, MR. BRUCK, PLEASE.

MR. BRUCK: THANK YOU, YOUR HONOR. THIS IS A MOTION, A RENEWED DEMAND FOR A SPEEDY TRIAL IN THE MATTER OF THE STATE -VS- GENE TONY COOPER. I'D LIKE TO SAY MR. COOPER IS NOT HERE TODAY. WITH HIS CONSENT WE WAIVE HIS PRESENCE FOR MAKING THIS MOTION. I HEREBY WISH TO DEMAND AGAIN IN OPEN COURT A SPEEDY TRIAL OF ALL CHARGES NOW PENDING AGAINST MR. COOPER.

BY WAY OF BACKGROUND, YOUR HONOR, THE RECORD WILL REFLECT THE FIRST MOTION FOR SPEEDY TRIAL WAS MADE BEFORE JUDGE WESTBROOK AS CHIEF ADMINISTRATIVE JUDGE IN AUGUST 2003. HE ASKED THE PARTIES TO COME BACK IN A WEEK OR TWO FOR A TRIAL DATE SETTING. WE DID SO. AT AN IN CHAMBERS CONFERENCE THAT WAS NOT RECORDED, AT THAT TIME THE STATE REPRESENTED THAT IT WOULD CALL MR. COOPER'S CASE DURING THE SPRING OF 2004 IN APRIL, MAY OR JUNE OF THAT YEAR. THERE THE MATTER RESTED. THE STATE DID NOT CALL MR. COOPER'S CASE FOR TRIAL. HE AT ALL TIMES HAS DESIRED A SPEEDY TRIAL, AND FOR THIS REASON WE ARE NOW RENEWING OUR DEMAND FOR SPEEDY TRIAL.

I SHOULD SAY I ASKED THIS MATTER BE HEARD LAST WEEK. MR. RIDDLE SAID THAT WAS NOT CONVENIENT FOR THE STATE. WE AGREED TO HAVE IT HEARD TODAY. IT WAS MY INTENTION TO ASK THE COURT TO SET, AND IS MY INTENTION, TO ASK THE COURT TO SET A TRIAL DATE IN THIS MATTER.

NOW MR. RIDDLE JUST A MOMENT AGO ADVISED ME THAT MR. MYERS IS NOT PRESENT TODAY AND THAT THE STATE IS NOT PREPARED TO GO FORWARD

WITH THE DATE SETTING IN MR. MYERS' ABSENCE. I APPRECIATE THAT MR. MYERS IS THE MAN IN THESE MATTERS, BUT, NEVERTHELESS, THE STATE HAS HAD NOTICE FOR A WEEK OF THIS MOTION. THIS MATTER SHOULD'VE BEEN TRIED A LONG TIME AGO, AND AS CHIEF ADMINISTRATIVE JUDGE, YOUR HONOR HAS THE POWER TO SET THE CASE FOR TRIAL AND WE WOULD ASK THAT YOU DO THAT.

I SHOULD BY WAY OF BACKGROUND STATE THAT AFTER THE TIME IN WHICH THE STATE WAS GOING TO TRY THIS CASE IN THE SPRING OF 2004 ELAPSED, I TOOK A JOB AS A CLINICAL PROFESSOR OF LAW AT WASHINGTON AND LEE UNIVERSITY LAW SCHOOL IN LEXINGTON, VIRGINIA. THAT'S A FIVE-HOUR DRIVE FROM HERE.

IN EFFECT, I FEEL LIKE I'VE BEEN WAITED OUT. I KNOW THAT THE STATE DIDN'T KNOW THAT WAS GOING TO HAPPEN, BUT THAT'S WHAT HAPPENS WHEN A CASE IS NOT TRIED. CHANGE AND DIFFICULTIES INCREASE.

THE CLIENT IS VERY ANXIOUS NOT TO HAVE A CHANGE OF COUNSEL AFTER ABOUT 14 YEARS I REPRESENTED MR. MYERS -- MR. COOPER, AND -- AND HE WANTS ME TO REPRESENT HIM AND I'M WILLING TO DO IT. THE SCHOOL YEAR IS OVER IN MAY, AND I'D BE PREPARED TO TRY THIS CASE IN JUNE OR JULY OF THIS YEAR. I REALIZE THAT SCHEDULES ARE NOT NORMALLY MADE AROUND THE CONVENIENCE OF LAWYERS ON EITHER SIDE. BUT UNDER THESE VERY UNUSUAL CIRCUMSTANCES, THE FACT THIS CASE HAS BEEN PENDING, ALL CHARGES HAVING BEEN REVERSED SINCE LATE AUGUST OF 2002, THE FACT THAT THE STATE HAS HAD THIS MOTION FOR A SPEEDY TRIAL PENDING FOR QUITE SOME TIME AND THE FACT THAT NOW MY AVAILABILITY IS SOMEWHAT CONSTRAINED, I THINK THOSE ARE REASONABLE TIMES IN WHICH TO TRY THE CASE, AND I MOVE THAT THE CASE BE SET FOR TRIAL DURING ONE OF THOSE TWO MONTHS. THAT'S THE

MOTION.

THE COURT: WELL--

MR. RIDDLE: YOUR HONOR, I WAS NOT PRESENT AT THE PRIOR HEARING BEFORE JUDGE WESTBROOK; NOR WAS I PRESENT AT THE CHAMBERS CONFERENCE THAT MR. BRUCK ALLUDED TO THAT TOOK PLACE A COUPLE OF WEEKS AFTER THE HEARING BEFORE JUDGE WESTBROOK.

SO I'M UNABLE TO ADDRESS ANYTHING THAT MAY HAVE TAKEN PLACE AT EITHER OF THOSE TIMES.

IT OCCURS TO ME, YOUR HONOR, THAT THE SUPREME COURT HAS ALWAYS APPOINTED A JUDGE TO HEAR MATTERS RELATED TO CAPITAL MURDER CASES, AND IT JUST OCCURS TO ME THAT MAYBE -- I GUESS A PRELIMINARY MOTION TO SET A TRIAL DATE IS GONNA BE -- WE NEED TO GET A JUDGE APPOINTED BECAUSE EVEN IF YOUR HONOR WERE TO SET A TRIAL DATE AND THEN CHIEF JUSTICE TOAL WAS TO APPOINT A PARTICULAR JUDGE THAT, YOU KNOW, WAS UNAVAILABLE DURING THAT PARTICULAR TIME, IT JUST SEEMS LIKE WE'RE PUTTIN' THE APPLE BEFORE THE -- EXCUSE ME -- PUTTIN' THE CART BEFORE THE HORSE AS IT WERE. BUT, YOUR HONOR, SOLICITOR MYERS WAS HERE EARLIER. HE HAD TO LEAVE WHEN THE SUPREME COURT RAN LATE THIS MORNING AND WE -- THIS WAS ORIGINALLY SCHEDULED FOR ABOUT 45 MINUTES AGO, YOUR HONOR.

AND, FRANKLY, JUDGE, YOU KNOW HOW THESE CASES WORK WITH SOLICITOR MYERS. I CANNOT SET A TRIAL DATE -- CANNOT AGREE TO ANY TRIAL DATE ABSENT WHAT HE IS DOING. WHAT I HAD PROPOSED TO MR. BRUCK IS THAT WE HAVE A CONFERENCE CALL AND TRY TO DISCUSS THIS WHERE MR. BRUCK WON'T HAVE TO DRIVE BACK DOWN HERE FROM WASHINGTON AND LEE. BUT I'M JUST NOT IN A POSTURE WHERE I CAN CONSENT OR AGREE OR DISAGREE OR

WHATEVER WITH ANYTHING.

THE COURT: ALRIGHT. NO CIRCUIT JUDGE HAS BEEN ASSIGNED.

MR. BRUCK: THAT'S CORRECT. I DON'T KNOW FOR A FACT THAT THE STATE INTENDS TO SEEK THE DEATH PENALTY, AND IF THEY DO NOT, THEN IT WOULD NOT BE NECESSARY TO ASSIGN A JUDGE. THAT'S THEIR CALL OBVIOUSLY. THEY HAVE NOT SAID ANYTHING TO ME ONE WAY OR THE OTHER.

THE COURT: YOU GET OUT OF THE SCHOOL YEAR WHEN?

MR. BRUCK: THE FIRST WEEK IN MAY. I SHOULD ADD THAT MR. COOPER HAS NO OBJECTION TO YOUR HONOR TRYING THIS CASE. YOU HEARD THE PCR AND ARE BROADLY FAMILIAR WITH IT. IF THAT'S AGREEABLE TO THE STATE WE COULD JUST SEE IF YOUR HONOR IS ABLE TO WORK IT INTO A REGULAR GENERAL SESSIONS TERM. I KNOW YOU HAVE AT LEAST ONE DURING THE PERIOD. AND SEE IF THAT'S AGREEABLE WITH COURT ADMINISTRATION.

THE COURT: ALRIGHT. LET ME DO THIS: LET ME TAKE IT UNDER ADVISEMENT, AND I WILL ISSUE A WRITTEN ORDER AND I'LL -- WHEN I DO IT I'LL E-MAIL IT TO YOU IF YOU CAN GIVE ME YOUR E-MAIL ADDRESS.

MR. BRUCK: YES, SIR.

THE COURT: I AGREE WITH MR. RIDDLE IF THE CASE -- IF A DEATH PENALTY NOTICE IS ASSIGNED, THE INSTRUCTIONS THAT WE'VE BEEN GIVEN -- I DON'T KNOW THAT THEY'RE ANYWHERE IN WRITING, BUT WHAT WE'VE BEEN TOLD IS THAT WE DEFER EVERYTHING TO THAT ONE JUDGE. I DON'T SEE TWO WEEKS OF CRIMINAL COURT BACK TO BACK WITH THE SAME JUDGE. I DON'T KNOW EXACTLY HOW LONG THIS CASE WOULD TAKE TO TRY. OBVIOUSLY, IT DEPENDS ON A LOT OF THINGS. BUT IT'S A 1990 CASE AND IT NEEDS TO MOVE. ALRIGHT. MR. BRUCK, I APPRECIATE YOUR COMIN' DOWN. I DIDN'T REALLY

REALIZE Y'ALL HAD THIS. SO I DON'T KNOW ANYTHING ABOUT IT.

MR. BRUCK: I THINK THERE MAY BE A LETTER WAITING IN EDGEFIELD FOR YOU ABOUT IT.

THE COURT: OKAY. WELL, THAT'S ENTIRELY POSSIBLE. THANK YOU VERY MUCH. I'LL SEND YOU A WRITTEN ORDER.

MR. BRUCK: THANK YOU.

MR. RIDDLE: THANK YOU, YOUR HONOR. AND YOUR HONOR HAS MY E-MAIL.

MR. BRUCK: APPRECIATE YOU TAKING TIME FOR US.

THE COURT: NO PROBLEM.

**********ENDOFTRANSCRIPT**********

CERTIFICATE

I, THE UNDERSIGNED, CARLA PERRY, OFFICIAL AND CERTIFIED COURT REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT TO THE BEST OF MY ABILITY AND SKILL.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

Smokey Perry

1-31-05

ORIGINAL

STATE OF SOUTH CAROLINA)
FILED IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

2005 APR 25 P 5:27

THE STATE,)
)
-vs- BETH A. CARRIG CLERK OF COURT LEXINGTON ORDER FOR SPEEDY TRIAL
)
GENE TONY COOPER,) Case Number: 1990-GS-32-0083
) 1990-GS-32-0084
Defendant.)

The defendant has moved for a speedy trial. The case is to be heard before the end of 2005, or the defendant may move for bail or for dismissal of the charges.

Mr. Cooper had been convicted and sentenced to death, but was granted Post-Conviction Relief, which was affirmed by the South Carolina Supreme Court in 2002. A speedy trial motion was argued before The Honorable Marc H. Westbrook on August 18, 2003. Judge Westbrook needed to check the court's schedule and directed that a hearing be scheduled in a couple of weeks. A meeting was held in chambers on August 25, 2003, during which the State indicated that the case would be tried in the Spring of 2004. The case has not been called for trial yet.

The court directs that the Solicitor's office speak with the Judge assigned to this case and to the Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

AND IT IS SO ORDERED.

William P. Keesley
Judge

April 25, 2005

FILED
2005 JUN -1 P 4:57
KEITH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)	90-GS-32-83 90-GS-32-84
STATE OF SOUTH CAROLINA)	Defendant's Motion No. 3
v.)	NOTICE OF MOTION AND MOTION TO DISMISS ALL CHARGES FOR LACK OF SPEEDY TRIAL
GENE TONY COOPER,)	
Defendant.)	

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL CIRCUIT:

YOU WILL PLEASE TAKE NOTICE that at a time to be set by the Court not less than one week after service of this motion, the undersigned counsel for the defendant Gene Tony Cooper will move before the Honorable William P. Keesley, Chief Administrative Judge for General Sessions, Eleventh Judicial Circuit, at Lexington County Courthouse, for an order dismissing all charges against him for lack of speedy trial.

YOU WILL FURTHER TAKE NOTICE THAT, should the motion to dismiss be denied or deferred, the defendant will move for his immediate release pending trial, upon such conditions as the Court may direct.

YOU WILL FURTHER TAKE NOTICE that by the service of this pleading, the defendant hereby renews his demand, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees

of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2004), for a speedy trial of all charges now pending against him.

GROUNDS FOR RELIEF

In support of the foregoing requests for relief and demand for speedy trial, the defendant hereby realleges:

- all facts set forth in his Amended Motion for Speedy Trial filed on or about July 11, 2003, and heard in by Judge Westbrook in open court on August 18, 2003, and again in chambers on August 25, 2003, as well as all facts alleged by undersigned counsel at the August 18, 2003 hearing.

- all facts set forth in his Second Motion for Speedy Trial filed on February 8, 2005, and heard in open court on February 15, 2005.

He would further show:

1. At the conclusion of the February 15, 2005 hearing before the Honorable William P. Keesley, Chief Administrative Judge, Eleventh Judicial Circuit, the Court advised that it would issue an order respecting a trial date.

2. On April 7, 2005, counsel for Mr. Cooper wrote to Judge Keesley inquiring about the order respecting a trial date, which had yet to issue.

3. On April 25, 2005, Judge Keesley issued an order that the case be tried before the end of 2005. The order included the following directive:

> The court directs that the Solicitor's office speak with the Judge assigned to this case and to the

> Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

3. This order was sent to the parties by e-mail on April 25, 2005, along with an invitation to advise the court if there were any problems. In response to this invitation, counsel for Mr. Cooper sent the following message via e-mail to Judge Keesley, with copies to opposing counsel, on April 26, 2005:

> Dear Judge Keesley:
>
> I realize that scheduling a trial to suit everyone is never easy, but since you invited us to advise if there were any problems, I have to say that there is one.
>
> As I mentioned at the speedy trial motion hearing before you on February 15, 2005, I'm now a law professor at Washington & Lee, and am available to try this case from early May to early August. From mid-August to early December I am both teaching a lecture course and running the Virginia Capital Case Clearing-house, a clinical program at W&L.
>
> Normally such conflicts would be my problem and no one else's. But here my scheduling crunch is actually a result of the state's long delay in bringing this case to trial. Mr. Cooper is extremely anxious to have me defend him, and has been asking me for years not to hand over his case to anyone else. It does not seem fair for the state to force either a further delay of the trial into 2006 or else a change of counsel by, in effect, waiting me out. This is especially true considering Mr. Cooper's three motions for speedy trial, and considering the state's prior commitment, reflected in your order, to bringing the case to trial in the spring of 2004.
>
> Under the circumstances, <u>I must respectfully renew my request that this case be set for trial on or before August 1 of this year.</u> This request is made so that Mr. Cooper will not be unfairly disadvantaged by the

> state's unjustified and (to me at least) unexplained delay in calling his case for trial.

(Emphasis added).

4. On April 27, 2005, Judge Keesley responded by e-mail that he would speak to Judge Westbrook about counsel's message.

5. Despite Judge Keesley's order of April 25, more than 30 days have now elapsed since that order, and the state has failed to inform the defendant or his counsel of a trial date. Instead, on May 18, the solicitor wrote to Judge Westbrook requesting that a hearing be held as soon as convenient. To counsel's knowledge, no action has been taken respecting this request.

6. Along with the letter to Judge Westbrook, the Solicitor filed and enclosed a frivolous motion to disqualify "all present attorneys and agents" involved in Mr. Cooper's defense, on the grounds that in early 1992, more than 13 years ago, the undersigned counsel interviewed a co-defendant in the case, Robert Southerland, at Mr. Southerland's request but without permission from Mr. Southerland's counsel.

7. Defense counsel has been informed by the staff of the South Carolina Court Administration on April 26, 2005, and again on May 27, 2005, that there has been no request received from the Eleventh Circuit Solicitor's Office for assignment of a trial judge or scheduling a trial in this case at any time between 2003 and May 27, 2005.

8. Upon counsel's information and belief, Judge Westbrook

has not been assigned as trial judge in this case, and therefore is not "the judge assigned to this case" with whom Judge Keesley's order of April 25, 2005 directed the Solicitor's Office to confer. Due to the Solicitor's persistent failure to advise Court Administration of the need for a judicial assignment, no judge is currently "assigned to this case."

9. Judge Westbrook has previously recused himself, on motion of the applicant, from presiding at Mr. Cooper's post-conviction relief hearing, due to his having heard the PCR application of the co-defendant Southerland. Although Mr. Cooper made his August, 2003 demand for speedy trial before Judge Westbrook, the motion was made at a time when Judge Westbrook was serving as the Chief Administrative Judge for the Eleventh Judicial Circuit. Judge Keesley is currently the Chief Administrative Judge for the Eleventh Judicial Circuit, and will remain in that capacity for the remainder of 2005. Under these circumstances, it appears that Judge Keesley is the appropriate judge to hear and decide this motion.

9. In view of the persistent refusal of the state to call Mr. Cooper's case for retrial, compounded by its failure to abide by the express terms of Judge Keesley's order of April 25, 2005, or to take any other action necessary to bring this case to trial, the defendant submits that the relief prayed for in this motion should be granted.

CONCLUSION

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper hereby moves for an order dismissing all charges against him for lack of speedy trial. Should the motion to dismiss be denied or otherwise not granted, the defendant further moves, reserving his rights under his motion to dismiss all charges, for his immediate release pending trial, upon such conditions as the Court may direct.

The defendant further hereby renews his demand, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90, for a speedy trial of all charges now pending against him.

Respectfully submitted,

David I. BRUCK

DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

May 27, 2005

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

FILED
2005 JUN -1 P 4:57
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

90-GS-32-83
90-GS-32-84

STATE OF SOUTH CAROLINA)

CERTIFICATE OF SERVICE

v.)

GENE TONY COOPER,)

Defendant.)

I do hereby certify that I have served upon counsel for the State Defendant's Motion No. 3, Notice of Motion and Motion to Dismiss all Charges for Lack of Speedy Trial, by first class mail, with postage prepaid and addressed to:

Donald V. Myers
Solicitor
Eleventh Judicial Circuit
Lexington County Judicial Center
205 E. Main Street, Third Floor
Lexington, SC 29072

This the 27th day of May, 2005.

Natasha J. Holliday

Natasha J. Holliday

ORIGINAL

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON)

State of South Carolina,

PLAINTIFF,

-VS-

Gene Tony Cooper,

DEFENDANT.

MOTIONS HEARING
1990-GS-32-0083
1990-GS-32-0084

BEFORE THE HONORABLE WILLIAM P. KEESLEY, JUDGE

July 12, 2005
LEXINGTON, SOUTH CAROLINA

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

Donald V. Myers, Esq.
For the State

Stuart M. Andrews, Jr., Esq.
Nelson Mullins Riley & Scarborough, LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201

David A. Bruck, Esq.
Washington and Lee University
Sydney Lewis Hall
Lexington, Virginia 24450-0303

Jack Duncan, Esq.
For the Defendant

REMA K. GANTT
CIRCUIT COURT REPORTER

E X H I B I T S

PAGE NO.

(There were no exhibits introduced at this hearing.)

THE COURT: Thank you. Have a seat, please.

Have you got the file on Mr. Cooper?

CLERK OF COURT: Yes, sir.

THE COURT: All right. In the matter of the State of South Carolina versus Gene Tony Cooper, there are some motions that we need to consider and some logistical issues that we'll need to discuss. There's been a motion for speedy trial filed by Mr. Cooper.

There have been several motions for speedy trial that have been filed and heard. The last one was heard by me and an order issued on April 25, 2005, which directed the commencement of this trial in the year 2005 and directed that defense counsel be notified of a date within 30 days.

It's my understanding there's a renewed motion for speedy trial. There's also a motion filed by the State to excuse defense counsel, Mr. Bruck, from the case. And there is a motion by the State to have the Solicitor's Office for the Eleventh Judicial Circuit step out of the case, and that's based on a potential claim for conflict of interest.

Mr. Cooper is present with counsel. Mr. Myers is present for the State. Do you all want to be heard on the order in which we should take these?

MR. BRUCK: I propose that we take the matters up in the matter that Your Honor has listed it.

THE COURT: Okay, let's go.

MR. MYERS: It may be better, Your Honor, to take up our disqualification thing first, because that might resolve some other things.

MR. BRUCK: We have no preference about that, except that it can't possibly resolve the speedy trial motion or any alternative for release on bond, because he'll need to have that heard today. But with that proviso, whatever suits the Court.

THE COURT: The rulings may be different. I mean, I may rule after the hearing that some of these can't be ruled upon if I grant their motion. But at this point, even though it may be somewhat of a waste of time -- I don't know what the ultimate rulings will be -- I'm going to hear from you first, Mr. Bruck.

MR. BRUCK: Thank you, Your Honor. This

is a motion to dismiss all charges for lack of speedy trial. And in the alternative, we have requested reserving our rights under that motion and, should it be denied, that Mr. Cooper be released on bond pending trial.

I'm not going to go through the entire history of Mr. Cooper's fruitless efforts to bring this case to trial because the record already abundantly reflects them. But just by way of refreshing the Court's memory, this case was ready to be retried in its entirety, all charges, at the end of August 2002, when the Supreme Court finally affirmed Your Honor's grant of post-conviction relief to disapprove it as non-capital charges.

After 11 months went by and there was no sign of any activity from the State about bringing the case to trial, I contacted the Solicitor's Office, Mr. Riddle and thereafter, when I was unable to secure a trial date through an informal process of negotiation, moved for speedy trial. That was heard on two occasions in August of 2003.

The record reflects the second time when Judge Westbrook heard those motions, although Judge Westbrook had previously recused himself from

hearing Mr. Cooper's post-conviction case, which is why the case was ultimately assigned to Your Honor. But he did hear us on the speedy trial motions.

And finally in in-chambers conference at the end of August 2003, the State agreed to call the case during the spring of 2004. That was not reduced to an order, but it's reflected in the record that has developed since then. The case was not called in the spring of 2004, and the State took no other action.

In 2005, Mr. Cooper made a second written motion for speedy trial that was heard before Your Honor on February 15, 2005, here in this courthouse. Some weeks later, Your Honor issued an order for speedy trial, which, as the Court has recited, was issued on April 25th and directed the State to get a trial date set and advise Mr. Cooper and counsel of that date within 30 days. When the 30 days had nearly run, Mr. Myers wrote a letter to Judge Westbrook concerning the scheduling of a trial date.

I also advised the Court that because the State had waited so long and I had actually moved out of South Carolina and had responsibilities as a full-time professor of law at Washington and

Lee University, the end of 2005, the last half of the year -- at least the last four months of the year -- posed serious logistical problems for me. And I renewed the request that I had made back in February, which was to try the case before August 1, 2005. That's where matters stood when the present motion was made.

As the motion reflects, I contacted Court Administration and determined that the State never contacted Court Administration to ask for the assignment of a trial judge. Now, that could reflect that the Court doesn't intend to seek the death penalty, in which case there is no need for a specially assigned judge.

Or it could reflect that the State is simply not interested in complying with Your Honor's order to get a trial date set, which included the directive that the State confer with the judge assigned to the case. Now, that can't be done if no judge is assigned to the case, and yet no action was taken, even after receiving a written order from Your Honor to make this happen within 30 days.

Close to three years have now elapsed since this case was ready for retrial, and close to two years have elapsed since the first of Mr.

Cooper's motions for speedy trial. Then at the last minute, about ten days before today, or June 29th, to be precise, Mr. Myers had written a letter to the Court raising for the first time the prospect of a conflict of interest which would require his office to be recused.

Now, we had not spotted this problem. We are inclined to believe that he does present a problem. But the immediate problem for this motion is, why wasn't it raised before now?

The timing, I would suggest, should not entitle the State by this sort of dilatory approach to more time to try this matter. He is on Death Row. He has been there for 16 years and, according to the South Carolina Supreme Court, has yet to have his first fair trial. He's still there. And this just isn't fair. It goes on, and on, and on.

Now, having done a little bit of investigation, it's entirely possible that the reason for that is that the State may have a very difficult time proving Mr. Cooper's guilt. The State Supreme Court already found in affirming Your Honor's ruling last time that the case for guilt was not overwhelming.

It depends on the credibility of convicted criminals. And Mr. Cooper has denied his guilt and asserted his innocence since the day he was arrested in 1989, so vigorously that he insisted on himself with a portable tape-recorder tape-recording his own interrogation by the Lexington County Sheriff's Department, because he was afraid that what he actually said was not going to be recorded. What he said was, "I didn't do this." And that's still what he says.

The way we resolve that is not by lawyers arguing about it in court but by having a jury trial. And the State seems to be unwilling to accord this man his day in court. We think really they've had their chance and they've missed it, and it's time to dismiss the charges.

The length of the delay is completely unreasonable. The reasons for the delay are entirely invalid. I'm not really aware that there are any, except that there is always some other case which has to be tried before this one.

It seems to have developed -- and I'm sure Mr. Myers has these case names and dates in his mind. But it always seem to develop that the cases ahead of Mr. Cooper's case don't actually get tried,

but they were always the reason why his couldn't be tried.

This is not a substitute for a trial, just keeping a man in prison forever. And we think the time in which this can be tolerated has elapsed, particularly because Your Honor issued an order that directed that this end, in response to the second motion for speedy trial.

And that order has got to be obeyed, and it wasn't. And there's got to be some sanction for that. So we respectfully submit that the Court should dismiss this case for lack of prosecution, for lack of speedy trial, and let that be the end of it.

In the alternative -- and that is our motion -- at the same time, should that be denied, I'd like to be heard further on Mr. Cooper's right to be released now on bond. And there are all sorts of measures that could be taken.

THE COURT: Just go ahead, Mr. Bruck.

MR. BRUCK: I'm sorry?

THE COURT: Just go ahead, because I'm probably not going to rule from the bench on these things.

MR. BRUCK: Well, as I've told you, Mr.

Cooper has been in prison for 16 years. His roots are in Lexington County. His father, Gene Cooper, Sr., is present in the courtroom, along with Mr. Cooper's stepmother.

Mr. Cooper, Sr., has a home for Tony, a three-bedroom house. He would be happy for his son to come home and live with him. Mr. Cooper, Jr., would, of course, agree to any reasonable condition -- or any condition, reasonable or otherwise -- imposed by the Court, including the wearing of an electronic ankle bracelet and any restrictions on his movement that the Court would think appropriate.

So we would not be proposing that the Court simply turn him out without any substantial supervision. He could be placed on house arrest 24 hours a day if that seemed to be the appropriate restriction on his movement.

But it is simply unfair to keep a man in maximum security confinement forever when the State had their chance to bring him to trial, was ordered to bring him to trial, and didn't do it. And that changes the ordinary calculus of whether bond is appropriate in a capital case, whether bond would have been appropriate in this case.

The State should not be heard to say this is too terrible a crime. It is a terrible crime, but Mr. Cooper says he didn't do it. And the State should not now be heard to say that you should not order his release on bond because of the facts of the crime or Mr. Cooper's record from when he was 17 years old and went to prison for a series of armed robberies previously or anything else.

This needs to be considered in conjunction with the motion for speedy trial. And we really think that it would be extremely unfair to keep this man in prison any longer.

So that's the motion that we ask to have heard today. What remains is Mr. Myers's request that I be excused. I don't know if he wants to argue that today or what. We filed a written return with exhibits and tried to be respectful about the arguments of opposing counsel.

But suffice it to say that the law cited in support of this motion is without merit. Mr. Myers's contention that I violated the canons of ethics by speaking to the represented co-defendant has absolutely nothing to do whatsoever with whether or not I can continue as Mr. Cooper's attorney.

We anticipate that this represented

person, Bo Sutherland, will be a defense witness at trial. We plan to apply to the Court for an order authorizing us -- if his lawyers do not agree, authorizing us to meet with Mr. Sutherland in order to prepare his testimony. I haven't spoken to him in many, many years.

But the motion represents that for some reason the fact that I interviewed Mr. Sutherland, as I would interview any witness who is material to the case, makes me a witness in the case. Now, if that were true, when Mr. Myers interviews and prepares witnesses for trial, that makes him a witness and he can't ever prosecute anything in this courtroom.

The contention on its face is preposterous. We have an additional case that I did not see in time to include in our reply, but I'll hand it to Mr. Myers and hand it up to the Court, State against Sanders. Briefly, that was a case involving co-counsel who was accused by the State of actually trying to coerce and manipulate the testimony of the State's witnesses.

The murder conviction was reversed because the Court granted the motion to relieve co-counsel, co-counsel being the sister of the

defendant, and said that an evidentiary hearing had to be conducted on such a motion and there had to be proof of actual prejudice and an actual basis for recusing, and disqualifying counsel without such a basis is reversible error, apparently without even showing its prejudice. So we think that takes care of Mr. Myers's motion.

I'm not sure whether Mr. Myers thinks that there might have been some parallel between this situation and my talking to Mr. Sutherland in the Quattlebaum case. I'm just mystified by the motion, but I don't know.

In any event, we don't think that it should be granted. I should add that I've represented Tony Cooper since 1991. He is extremely anxious to have me continue on the case. This is the one case pending trial that I committed to him many years ago that I would not abandon him, no matter what happened.

I have now moved to Virginia. I had to drive five hours to be down here today, but I am prepared to stay with the case. He wants me to, and I think he's entitled to have me.

The last motion in the matter is Mr. Myers's request to be withdrawn. I know nothing

more about that than what's in his letter. You probably should hear it from him.

THE COURT: I'll hear it from him. Mr. Bruck, I don't know. What if Mr. Sutherland now changes his story? Would you then become a witness?

MR. BRUCK: I don't believe so. He has told the same story so many times to so many different --

THE COURT: I'm not saying that he will. I'm just asking you what if he --

MR. BRUCK: No, I'm indulging -- no, no. I mean let's say he changed his story and it became adverse. He has told a story which is exculpatory to Mr. Cooper, including in open court during his own post-conviction hearing. He has signed a statement that's been notarized by someone other than me. There is a tape-recording.

If that were to happen, one can always imagine a situation when any witness gives any version that it's always possible that he could change his story and that it's always possible that, among others, a lawyer in the case could be a witness.

THE COURT: Let's assume the worse.

MR. BRUCK: Right.

THE COURT: Who else is representing Mr. Cooper so that if we're in the middle of the trial and that happens? Does he have a first seat attorney? Does he have a death penalty qualified attorney who can --

MR. BRUCK: Yes. And I apologize, I should have introduced the lawyers at the counsel table with me before I began. Stuart Andrews from the firm of Nelson Mullins has been assisting me back at the time of the post-conviction, as Your Honor will recall, and has volunteered pro bono to continue to assist Mr. Cooper through this trial.

The Lexington County Public Defender's Office, which was originally involved -- and, in fact, Jack Duncan, who is also present at the counsel table, has also agreed to assist. And Mr. Cooper, despite the fact that one discrete issue there was an allegation of ineffectiveness which Your Honor sustained, Mr. Cooper is happy to have Mr. Duncan's assistance.

So if that were to happen, there would be two lawyers present, of whom Mr. Duncan is death qualified -- well, both are -- well, Mr. Duncan is death qualified from felony trial experience. And so if I were to be relieved in the

middle of the trial in order to become a witness for either side, the case could go on pretty much without a hitch. I cannot imagine that happening. But regardless of what -- what Mr. Sutherland will or won't do.

THE COURT: Well, I understand that.

MR. BRUCK: Right.

THE COURT: He testified at the PCR hearing where there's transcripts of all of that still around.

MR. BRUCK: Right.

THE COURT: Okay. Thank you, sir.

Mr. Myers, let me hear your motion that you filed. And then if you want to respond to anything they've brought up, that's fine.

MR. MYERS: Which motion, Your Honor?

THE COURT: Your motion.

MR. MYERS: For us being disqualified. Your Honor, he's wrong about not having, as he said, spotted a conflict litigation until my letter of May 18th. And in that letter, I clearly brought out that at a prior hearing I brought this motion up, and I was prepared to argue it then to get it out of the way.

But Mr. Bruck objected because he had

no notice of the issue. So as to spotting a conflict issue, he spotted that quite some time ago. Rick Hubbard, who is my Deputy Solicitor, whose office is right next to mine, who I work with more closely on a daily basis with the operation of the Solicitor's Office, he was the clerk for Judge Hubert Long for his trial.

Mr. Hubbard assisted Judge Long tremendously -- matter of fact, he did a lot of work -- on ex parte communications, on things that the Solicitor's Office couldn't be present, and we were told we had to leave the courtroom, to discuss very attorney-client issues. And Mr. Hubbard in that capacity, I think there is a tremendous conflict with our office proceeding.

Now, whatever you rule today has no bearing on what could happen later on. Mr. Bruck brought up the Quattlebaum issue. Judge Tommy Cooper ruled in the Quattlebaum issue that the Solicitor's Office did nothing wrong. The Supreme Court didn't believe that, and they didn't care what the Circuit Court Judge had ruled.

So whatever you do today still puts Mr. Hubbard and I in a precarious situation. And I frankly don't want to get involved anymore with

attorney-client matters, which is exactly what this is. For example, in Quattlebaum, I have no idea what was on that tape, didn't see the tape. When I heard about it, I turned it over to the defense.

And I know about this issue. I know that Mr. Hubbard was present. I know Mr. Hubbard was in there, a lot of attorney-client matters in which we could not even be present. So based upon that, I think that it would be highly unjust for my office to proceed and then later some defense lawyers or the -- or somebody else file a complaint.

And this is a more clear-cut case than the Quattlebaum case. We raised this in our old motion previously. The defense said that they weren't ready to proceed. I informed you and Judge Westbrook of the matter. And I vigorously submit to the Court that the Eleventh Circuit Solicitor's Office should not be involved.

That's on the conflict issue. If you want me to go on to the speedy trial one, I'll be glad to do that.

THE COURT: Go ahead.

MR. MYERS: You issued an order on April the 25th. And in that order, you directed the Solicitor's Office to speak to the judge assigned to

this case and for the Chief Administrative Judge to select a firm date beginning in 2005. Twenty-three days later, on May the 18th, I wrote Judge Westbrook, who I have assumed all along was assigned to this case, because he has been the only presiding judge up until April 25th that has ruled on this or had hearings.

I told him that enclosed is your order. I also submitted an e-mail that Mr. Bruck had sent saying that he wanted it tried between May and August. I told Judge Westbrook that it would be impossible to try it in that time frame. And I also enclosed the motion to disqualify Mr. Bruck and other attorneys and agents associated with the case.

And I also asked him to have a hearing, and I asked him then, thinking we would have a hearing on that. One was not held. Within the 30 days, I tried to get this resolved. The matter couldn't be tried between May and August, and I was looking for him to have a hearing so we could resolve this and other issues.

As far as their motion to dismiss for lack of speedy trial, in your order it says it must be tried in 2005. I think the cart is before the horse. Also, as to bond, I have no motion on bond,

and I would submit that's not before the Court.

Lastly, I think Mr. Bruck and the attorneys associated with Mr. Bruck relating to -- should all be disqualified. I submitted a brief that I sent to you and to Judge Westbrook, I believe, and I outlined the reasons. You may want to talk with Mr. Sutherland's attorney. They're in the courtroom.

You may want to talk with them as to whether or not Mr. Sutherland sticks by his statement, whether he's made some statements, there is some impropriety with the defense attorneys, or whether or not other folks are involved in this matter.

If you get into a trial, you have to excuse one or more attorneys or agents for improper contact with a co-defendant without permission of their lawyers. We cited cases in there in our brief. That's highly improper. It's kind of like when they accuse law enforcement officers of improper conduct.

And if you get into a trial and you have to start excusing lawyers, what if you get down to only one lawyer that's left? The defendant is entitled to two. What effect is that going to have

on the case? Is that a mistrial?

So that matter needs to be resolved up front. And I submit to you that there will be, the way I see it -- whether I try it or somebody else tries it, I submit to you there's going to be some serious issues about defense attorneys being witnesses, contacting a co-defendant without permission of that person's lawyer. It's a clear violation.

So for those matters, we submit, number one, that my office should be disqualified from the case. That doesn't mean that it's not going to be tried this year. The order says it's going to be tried in 2005.

Number two, I think there is a serious problem with the attorneys associated with Mr. Bruck and Mr. Bruck continuing in this case, because there is going to be a conflict. And bond is not before the Court at this time.

There's no motion for that. The lack of speedy trial is premature, and I would request that you ask Mr. Sutherland's lawyers their position.

MR. BRUCK: A couple of matters in direct response, if I could.

THE COURT: Yes, sir, Mr. Bruck.

MR. BRUCK: First of all, I think the Solicitor has confused two allegations of conflict. The transcript of the August 2003 hearing reflects that he did raise a motion about getting off the case, but it wasn't about his getting off the case. I'll read it to you.

After discussing scheduling, at page five of the August 18, 2003, hearing, Mr. Myers says, "One further matter, Your Honor, I would like to bring up at this time is that we would move Mr. Bruck be disqualified from being involved in this case and that he have no input, be enjoined from any participation whatsoever."

He starts to make his argument, and I objected, "There's been no notice. This is an oral motion that's come out of the blue." Judge Westbrook, who was hearing the case because he was Chief Administrative Judge in 2003, as you are Chief Administrative Judge now -- and that explains why each judge heard the cases when they did.

Judge Westbrook said, "Mr. Myers, I think he probably does have a right to have some notice." And Mr. Myers said, "I will put him on notice that I'm going to move to have him

disqualified for his contact with Bo Sutherland, which he has admitted in transcripts that we have with the Court. We need to dispose of that before we set a trial date."

And that's all that was said about counsel for either side at that hearing. So Mr. Myers has made an error. He did not notify us that he intended himself to get off the case. He notified me orally in 2003 that he wanted to boot me off the case.

And the first we ever heard about the State wanting to withdraw was in his letter of June 29th, which the letter itself reflects that this is something that they're at least saying came up recently. The second paragraph begins, "It has been brought to my attention that my office and I have a major conflict."

It's dated June 29, 2005, so I just think it is incorrect that this has been hanging around in this case, at least in anybody's minds other than Mr. Myers's.

This letter which I received almost a week after it was written was the first I ever heard of this. And we're at a loss to understand why it's being raised at such a late date, long after the

time that Your Honor had ordered a trial date be set had elapsed.

As far as whether the State has notice of our bond motion, I know the Court has read the bond motion through. And at the end of the speedy trial, we say, in the alternative, if the motion for speedy trial is denied, and reserving our rights and not waiving them, Mr. Cooper wants to be released on bond, and he is so moving.

That's the State's notice. They received that a good while ago. They've had plenty of notice to resist a bond motion, if that's what they intend. And --

MR. MYERS: I'm sorry, Your Honor, I hate to interrupt. But I don't see the words "bond motion" in there. But you can direct me to what page it's on.

MR. BRUCK: I'm trying to locate it. It doesn't use the words "bond motion." It says, "Should the motion be dismissed be denied or otherwise not granted, the defendant further moves, reserving his rights under his motion to dismiss all charges, for his immediate release pending trial, upon such conditions as the Court may direct, respectfully submitted."

State would have been entitled to if this was the only notice they had had of Mr. Cooper's intent to move for bond.

This is the pattern that we've been encountering, Judge, for almost two years. It's always mañana, it's always "We're not ready," it's always "We didn't get notice, and plus we've got something else," which would keep you, the Court, from doing anything to vindicate this man's rights.

Everybody has got rights in this country, including Tony Cooper. And time's up. So we think that the Court should entertain both of these motions today, rule on them, and grant the speedy trial motion; and if you notify that one, grant the motion to release Mr. Cooper under appropriate description for the day, if it ever comes, that the State actually brings his case to trial.

The last matter, if Mr. Myers intends to have an evidentiary hearing as required by the case law and prove to us that I'm a witness in this case, this is his opportunity to do it. He's the moving party. We certainly object to hearsay allegations about what Bo Sutherland now claims or doesn't claim, that I be accused of.

Clearly, the case law makes very clear that without a showing of prejudice from failure to -- that unless the State is going to be prejudiced, unless someone is going to be prejudiced, it is reversible error to relieve counsel in a criminal case over the defendant's objection.

And there hasn't been any suggestion of what prejudice the State is going to suffer from any of these allegations. I am confirmed in my belief that this may just be sort of a reprise without much understanding of the appreciation of the legal points involved in the Quattlebaum matter.

Those two situations could not be any more different. Obviously, that was the intrusion by the prosecution into an attorney-client conference, in violation of the Constitution, by the prosecution. The fact that I did or did not speak to a witness who under the rules of ethics I shouldn't have been speaking to without permission from his lawyer, there is absolutely no resemblance to that.

Mr. Sutherland will be a witness, he won't be, he'll be a witness for one side or the other. And if the State actually has evidence that

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON JULY 12, 2005, IN LEXINGTON, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT LEXINGTON, SOUTH CAROLINA, THIS THE FIFTH DAY OF FEBRUARY, 2006.

Rema K. Gantt Homer

REMA K. GANTT
AL

OFFICI COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12/13/2010

STATE OF SOUTH CAROLINA) FILED
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON 2005 MAY 18 A 9:58

STATE OF SOUTH CAROLINA)
) 90-GS-32-83; 90-GS-32-84
v.)
)
GENE TONY COOPER, JR.,) MOTION TO DISQUALIFY AND
) RECUSE DEFENDANT'S ATTORNEYS
) AND AGENTS
Defendant.)

TO: DAVID I. BRUCK, Defense Attorneys and Agents:

Please take notice that The State, at the next hearing in the above case, will move for the defendants' attorneys and agents to be disqualified, recused, relieved and removed from this case.

The Defendant Cooper and Co-defendant Robert Southerland were arrested and indicted on capital murder charges. They were tried separately, and the jury in each respective trial returned death penalty sentences as to each defendant.

Mr. Bruck did not represent either defendant at trial. However, at a later date, Mr. Bruck undertook representation for Cooper. Mr. Bruck has never been the attorney of record for Southerland.

193 Dm

Southerland's sentence was affirmed by the S.C. Supreme Court with Joseph Savitz being his appellate attorney. Wayne Floyd and Bill Rast were appointed to represent Southerland for his Post Conviction Relief (PCR) proceeding. Subsequently, the S.C. Supreme Court granted Southerland a re-sentencing trial. The State's Notice to Seek the Death Penalty remains in full force against Southerland.

Mr. Bruck represented Cooper at Cooper's PCR hearing. During the hearing, Mr. Floyd and Mr. Rast appeared and objected to Mr. Bruck attempting to subpoena Southerland as a witness. Mr. Floyd stated that Mr. Bruck had contacted and communicated with Southerland and obtained statements from Southerland relating to facts surrounding the murder and crimes charged against Southerland and Cooper, all without the consent of Southerland's attorneys in violation of Rule 4.2 of the Code of Professional Responsibility. Mr. Floyd argued the statements taken from Southerland by Mr. Bruck were not admissible due to the unauthorized contact and communication. Mr. Floyd offered to present Joseph Savitz as a witness to prove the lack of consent by Southerland's attorneys.

At the time, Mr. Bruck then stipulated that Southerland's PCR attorneys and his appellate attorney, Joseph Savitz, did not authorize the contact or communication by Mr. Bruck. Based upon Mr. Bruck's stipulation, Joseph Savitz was excused by the judge. See attached transcript. Mr. Bruck further admitted communicating with Southerland on numerous occasions without notifying or seeking consent from Southerland's attorneys. The statements concerned the actions of Cooper and Southerland in the indicted murder and other charges.

2 of 3

Based upon Mr. Bruck's unauthorized contact and communications with Southerland without consent of Southerland's attorneys, the State moves for an Order to (1) disqualify and remove Mr. Bruck and other present attorneys and agents from this case, (2) to appoint other attorneys to represent Cooper, and (3) to prohibit Mr. Bruck, other defense attorneys, and agents from discussing this case or delivering any tapes, statements and materials of any and all communications with Southerland to the newly appointed attorneys.

This motion is further based upon:

1. A violation of Rule 4.2 of the Rules of Professional Conduct, Rule 407, SCACR. State v. Chisolm, 439 S.E. 2d 850 (1994); In Re: Vaught,. 235 S.E.2d 115 (1997); United States v. Lopez, 4 F.3d 1455 (9th Cir. 1993); People v. DeLoach, 944 P.2d 522 (Colo. 1997); Re: Mahoney, 437 N.E.2d 49 (Ind. 1982); Cases collected in 26 A.L.R. 4th 102.

2. That any and all statements taken by Mr. Bruck from Southerland are fruits of the unauthorized communications and violations of Rule 4.2.

3. That Mr. Bruck would be a witness relating to statements made to him by Southerland if Southerland is a witness in the trial of the above case.

4. That Mr. Bruck would be a witness relating to statements made by Mr. Bruck to Southerland if Southerland is a witness in the trial of the above case.

393 DVM

5. That Rule 3.7 prohibits a lawyer as advocate at a trial in which the lawyer is likely to be a necessary witness.

6. That the interest of justice requires the disqualification of all present attorneys and agents based upon the unauthorized communications without consent, all of the above, and the violations of the Rules of Professional Conduct.

Respectfully submitted,

Donald V. Myers
Solicitor

May 18, 2005
Lexington, South Carolina

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & P.C.

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA v. GENE TONY COOPER, JR., Defendant.	)	90-GS-32-83; 90-GS-32-84 CERTIFICATE OF SERVICE

I do hereby certify that I have served upon counsel for the Defendant the State's Motion to Disqualify and Recuse Defendant's Attorneys and Agents, by first class mail, with postage prepaid and addressed:

David Bruck, Esq.
Director
Virginia Capital Case Clearinghouse
Washington & Lee Law School
Lexington, VA 24450

This the 18th day of May, 2005.

Mary Ann Derrick

Mary Ann Derrick

VOLUME SEVEN OF SEVEN

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Lexington County
Honorable William P. Keesley, Circuit Court Judge

Case No. 95-CP-32-2248
Opinion No. 23987

GENE TONY COOPER ..... Respondent,

v.

MICHAEL MOORE, Commissioner, South Carolina Department of Corrections ... Petitioner.

APPENDIX

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DONALD J. ZELENKA
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ATTORNEYS FOR PETITIONER

JUDGE WESTBROOK FOUND THAT MR. SOUTHERLAND'S SWORN STATEMENT WAS FREELY AND VOLUNTARILY GIVEN TO HIM. THE STATE'S ONLY POSITION IN THIS WOULD BE THAT ANY RULING THAT YOU MAKE WOULD NOT AFFECT THE PREVIOUS FINDING CONCERNING THE VOLUNTARY NATURE AND KNOWING NATURE OF THE STATEMENTS BY MR. SOUTHERLAND TO JUDGE WESTBROOK.

THE COURT: WHAT IS YOUR MOTION, MR. FLOYD?

MR. FLOYD: THANK YOU, YOUR HONOR. IN CASE YOU DON'T HAVE ONE, I WILL PASS IT UP TO YOU.

(HANDS TO COURT).

(PAUSE).

THE COURT: ALL RIGHT. MR. BRUCK, ARE YOU ALL PREPARED TO ARGUE THIS MOTION?

MR. BRUCK: YES, SIR.

THE COURT: OKAY. WHICH OF YOU IS GOING TO DO IT, MR. FLOYD OR MR. RAST?

MR. FLOYD: YOUR HONOR, I WILL BE MAKING THE ARGUMENT.

THE COURT: OKAY. YOU ALL ARE APPOINTED TO REPRESENT MR. SOUTHERLAND IN HIS POST CONVICTION RELIEF ACTION?

MR. FLOYD: THAT'S CORRECT, YOUR HONOR. MR. SOUTHERLAND'S -- WE HAD OUR POST CONVICTION RELIEF HEARING AND THE MATTER IS PENDING CERT TO THE SOUTH CAROLINA SUPREME COURT. WE HAVE GOT NO RULING ON THAT AS OF THIS

TIME. WE ARE ALSO APPOINTED TO REPRESENT HIM ON THE APPEAL TO THE SUPREME COURT, AS WE WERE IN THE CIRCUIT COURT BELOW ON HIS POST CONVICTION RELIEF MATTER.

THE COURT: WHAT IS YOUR MOTION?

MR. FLOYD: YOUR HONOR, IT IS OUR UNDERSTANDING THAT THE ATTORNEYS FOR MR. COOPER DO INTEND TO CALL ROBERT SOUTHERLAND AS A WITNESS IN MR. COOPER'S POST CONVICTION RELIEF MATTER.

YOUR HONOR, BACK IN FEBRUARY OF 1992, THERE WAS A STATEMENT OBTAINED FROM MR. SOUTHERLAND BY MR. COOPER'S CURRENT ATTORNEY, MR. BRUCK. AT THAT TIME MR. SOUTHERLAND WAS REPRESENTED BY THE APPELLATE DEFENSE. WE HAVE PRESENT MR. JOSEPH SAVITZ, WHO WAS WITH APPELLATE DEFENSE AT THAT TIME.

YOUR HONOR, WE ARE PREPARED TO PRESENT TESTIMONY FROM MR. SAVITZ THAT'S HE DID NOT GIVE CONSENT TO MR. BRUCK TO CONTACT MR. SOUTHERLAND TO OBTAIN THE STATEMENT AT THIS TIME.

YOUR HONOR, IT IS OUR POSITION THAT THAT WOULD BE IN VIOLATION OF RULE 4.2 OF THE CODE OF PROFESSIONAL RESPONSIBILITY WHICH SAYS THAT A LAWYER SHALL NOT COMMUNICATE WITH A PARTY WHO THE LAWYER KNOWS TO BE REPRESENTED BY ANOTHER LAWYER UNLESS THE LAWYER HAS THE CONSENT OF THE OTHER LAWYER OR IS AUTHORIZED BY LAW TO DO SO.

YOUR HONOR, IT'S OUR POSITION THAT THAT WAS UNAUTHORIZED CONTACT AND THAT THE STATEMENT THAT WAS OBTAINED AT THAT TIME, WHICH IS CONTRARY TO MR. SOUTHERLAND'S INTEREST, WOULD NOT BE ADMISSIBLE AGAINST MR. SOUTHERLAND IN ANY TYPE OF PROCEEDING.

YOUR HONOR, IT'S OUR POSITION THAT AS MR. SOUTHERLAND'S ATTORNEYS NOW WE ARE ENTITLED TO HAVE AN ORDER ISSUED QUASHING ANY SUBPOENA TO REQUIRE MR. SOUTHERLAND TO TESTIFY IN ANY PROCEEDING FOR MR. COOPER AND ALSO TO RESTRAIN MR. COOPER OR ANY AGENTS OF MR. COOPER FROM HAVING ANY FURTHER CONTACT WITH MR. SOUTHERLAND IN CONNECTION WITH ANY MATTERS WITHOUT OUR PERMISSION, YOUR HONOR.

YOUR HONOR, IF YOU FEEL LIKE WE NEED TO PUT ON THE TESTIMONY OF MR. SAVITZ, WE WILL DO THAT.

MR. BRUCK: WE WILL STIPULATE THAT MR. SAVITZ DID NOT AUTHORIZE.

THE COURT: OKAY. MR. SAVITZ, I DON'T KNOW IF THEY NEED YOU ANY FURTHER. IF YOU WANT TO STICK AROUND, WHATEVER YOU WISH TO DO.

MR. SAVITZ: I PREFER TO LEAVE IF IT'S OKAY WITH YOU.

THE COURT: THANK YOU VERY MUCH. MR. BRUCK, WHAT DO YOU HAVE TO SAY?

MR. BRUCK: IF YOUR HONOR PLEASE, MR. SOUTHERLAND

ORIGINAL 76

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

FILED
2005 JUL 13 P 4:10
BETH A. KIRKLAND
CLERK OF COURT
LEXINGTON SC

THE STATE,) IN THE COURT OF GENERAL SESSIONS

-vs-) ORDER REGARDING MOTIONS

GENE TONY COOPER,) Case Number: 1990-GS-32-0083
1990-GS-32-0084

Defendant.)

Several motions are pending in this death penalty case. (1) The State's motion to remove defense counsel is denied. (2) The State's motion to have the 11th Circuit Solicitor's office disqualified is granted. (3) The defendant's motion to dismiss is denied. (4) The defendant's motion for bail is denied. To the extent that the defense is reasserting a motion for speedy trial, that issue is already covered in the Order of April 25, 2005, directing that the case be tried in 2005.

WAL #1

(1) REMOVAL OF DEFENSE COUNSEL

The State has moved to have defense counsel, David I. Bruck, Esquire, and his co-counsel and agents removed from the case based on allegations that he had unauthorized communications with a co-defendant, Robert "Bo" Southerland, without the knowledge or consent of Mr. Southerland's attorneys. While there may be issues related to this matter that have to be resolved by the judge assigned to handle this case or by those charged with enforcement of the rules of ethics, the motion is denied at this point. There has not been a sufficient showing to justify removal of defense counsel.

(2) DISQUALIFICATION OF THE SOLICITOR'S OFFICE

The State has also moved to have the Solicitor's Office of the Eleventh Judicial Circuit disqualified on the case due to a conflict of interest. A Deputy Solicitor, S. Richardson Hubbard, III, was serving as law clerk to the trial judge who presided over

Mr. Cooper's first trial. As such, the current Deputy Solicitor was privy to *ex parte* proceedings related to attorney-client matters. The court agrees that the Solicitor's Office for the Eleventh Judicial Circuit should be disqualified based on this conflict.

(3) DISMISSAL BASED ON FAILURE TO HAVE A SPEEDY TRIAL

The defendant was arrested on October 11, 1989. In February 1991, he was sentenced to death for murder and also received sentences for kidnapping, armed robbery, and conspiracy to commit armed robbery. The Supreme Court of South Carolina reversed his murder conviction in 1994. He was granted post-conviction relief (PCR) by this court on the other convictions in December 1998. The granting of PCR was affirmed in August 2002.

Mr. Cooper has been incarcerated on these charges for about 16 years. Since at least August 2002, he has repeatedly sought to have his case called for trial. There are several speedy trial motions. When the Honorable Marc H. Westbrook was Chief Judge for Administrative Purposes, he held hearings and status conferences in an attempt to get this case set for re-trial. At the last conference with Judge Westbrook, the State indicated that it intended to call the trial in the Spring of 2004. No formal Order was issued.

WPC #2

After the undersigned judge was designated as Chief Judge for Administrative Purposes, another speedy trial motion was heard, from which an Order issued on April 25, 2005. It directed that the case be called for trial in 2005, failing which the defense could move again for dismissal or speedy trial. One of the defense attorneys, Mr. Bruck, is now a full-time professor of law at Washington and Lee University in Virginia. Upon receiving the Order, he contacted the court and indicated that he needed to have the case tried before the school year resumed. Then, the Solicitor filed the motions to remove Mr. Bruck from the case and to disqualify the 11th Circuit Solicitor's office.

The court finds insufficient cause at this stage to dismiss the charges. Obviously, the court is troubled by the fact that the removal of the Solicitor's office from the case may result in a further delay of the trial. However, the court does not accept the

defense's assertion that this is part of an intentional pattern of delay. If the case is not heard by the end of 2005, the judge assigned to the case may consider whether the case should be dismissed or bail should be granted.

(4) REQUEST FOR BAIL

Defense counsel strenuously argued that the defendant should be released on bail. The motion is denied. If the case is not tried as directed in the April 2005 Order, the motion may be reasserted.

CONCLUSION

The court will probably not be able to accommodate Mr. Bruck's request that the case only be tried during periods when he is not involved in his professorial duties, while also trying to schedule the case at the earliest possible time. The court knows of 8 cases with death penalty notices in Lexington County, as well as several other cases which would have been pursued as death penalty cases but for the United States Supreme Court's determination that persons who were minors at the time of committing an offense cannot be executed.

Wpe #3

One of the pending cases involving a minor has a defendant who has never been tried, despite spending 10 years in pretrial detention. That case is also one in which the Solicitor's office of this circuit has been disqualified. Today, a date was set for that trial to begin in November 2005. This court is willing to take extraordinary steps to move terms around to accommodate the trial of Mr. Cooper's case, even though there are also serious scheduling problems involving the backlog of civil court. If the newly assigned prosecutors can be ready to try this case in 2005, it is unlikely that it could be done around the calendar of the law school at Washington and Lee.

On the other hand, this court has frequently expressed its deep concern about the length of time that people accused of crimes are being required to sit in jail (in this case, on death row) awaiting trial. The court is aware that there are many reasons for this situation, including the explosive growth of this county. But, defense counsel is correct

in his protestations that the constitutions of the United States and South Carolina must mean something when they afford to everyone the right to a speedy trial.

The court has previously had communications with the Chief Justice about the need to schedule the large number of death penalty cases pending in Lexington County. Today, the court received a list of the pending cases, which will be forwarded to the Chief Justice. Notice is being given today to the Chief Justice, Court Administration, and the Attorney General's office about this decision and the need for expedited steps to bring this matter to trial.

The court directs that the Solicitor's office transmit its file to the Attorney General's office or the designated prosecutors immediately.

AND IT IS SO ORDERED.

William P. Keesley
Judge

July 12, 2005

COPY

STATE OF SOUTH CAROLINA)
) IN THE ☒ COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON) ☐ FAMILY COURT

FILED
2005 DEC 29 P 4:11
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

State of South Carolina,) Case No. 90-GS-32-83 and 90-GS-32-84
☐)
)
vs.)
)
Gene Tony Cooper,) **MOTION AND ORDER INFORMATION FORM AND COVER SHEET**
☒ Defendant.)
)
)

State Attorney:	Defendant's Attorney:
B. Harrison Bell, Jr., Bar No.	Stuart M. Andrews, Bar No.
Address 140 Main Street, Ste. 102 Summerville, SC 29483	Address: 1320 Main Street, 17th Floor Columbia, SC 29201
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☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion and Renewed Motion to Dismiss
Estimated Time Needed: 60 Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐Plaintiff ☒Defendant — Date submitted: Dec. 29 2005

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status
☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act
☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication
☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ DATE FILED
(print name)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	90-GS-32-83
		90-GS-32-84
STATE OF SOUTH CAROLINA	)	
	)	Defendant's Motion No. 4
	)	
	)	NOTICE OF MOTION AND RENEWED
v.	)	MOTION TO DISMISS ALL CHARGES FOR
	)	LACK OF SPEEDY TRIAL, OR IN THE
GENE TONY COOPER,	)	ALTERNATIVE FOR RELEASE PENDING
	)	TRIAL
Defendant.	)	

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CLERK OF COURT
LEXINGTON SC

TO THE HONORABLE DAVID PASCOE, SOLICITOR:

YOU WILL PLEASE TAKE NOTICE that at a time to be set by the Court not less than one week after service of this motion, the undersigned counsel for the defendant Gene Tony Cooper will move before the Honorable Daniel F. Pieper, Presiding Judge, Eleventh Judicial Circuit, at Lexington County Courthouse or at such other location as the Court may direct, for an order dismissing all charges against the defendant for lack of speedy trial.

YOU WILL FURTHER TAKE NOTICE THAT, should the motion to dismiss be denied or deferred, the defendant will move for his immediate release pending trial, upon such conditions as the Court may direct.

YOU WILL FURTHER TAKE NOTICE that by the service of this pleading, the defendant hereby renews his demand, pursuant to S.C. Const. Art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2004), for a speedy trial of all charges now pending against him.

GROUNDS FOR RELIEF

In support of the foregoing requests for relief and demand for speedy trial, the defendant hereby realleges:

- all facts set forth in his Amended Motion for Speedy Trial filed on or about July 11, 2003, and heard in by Judge Westbrook in open court on August 18, 2003, and again in chambers on August 25, 2003, as well as all facts alleged by undersigned counsel at the August 18, 2003 hearing.

- all facts set forth in his Second Motion for Speedy Trial filed on February 8, 2005, and heard in open court on February 15, 2005.

- all facts set forth in his Motion to Dismiss All Charges for Lack of Speedy Trial filed on or about May 27, 2005, and heard in open court on July 12, 2005.

He would further show:

1. The record already reflects that on April 25, 2005, Judge Keesley, more than two months after hearing Mr. Cooper's second demand for speedy trial, Judge Keesley, as Chief Administrative Judge for the 11th Judicial Circuit, issued an order that this case be tried before the end of 2005. The order included the following directive:

> The court directs that the Solicitor's office speak with the Judge assigned to this case and to the Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

2. Despite this clear and unambiguous order, the state failed to notify S.C. Court Administration of the need for assignment of a judge to this case, and took no other action of any kind to set this case for trial within the time specified by Judge Keesley. Instead, after another delay of one month, Solicitor Myers moved to recuse his office on the basis of a conflict which had been in existence for many years.

3. In light of the state's failure to set the case for trial within 30 days, as Judge Keesley's order required the state to do, Mr. Cooper moved to dismiss for lack of speedy trial.

That motion was denied after a hearing on July 12, 2005, but Judge Keesley issued a second order in which he reiterated his April 25, 2005 order that the case be tried in 2005, failing which "the judge assigned to the case may consider whether the case should be dismissed or bail should be granted."

4. Despite this second directive to accord Mr. Cooper his constitutional right to a speedy trial, the Eleventh Circuit Solicitor's Office appears to have taken no action other than to deliver the file to the Attorney General Office and to request assignment of a new solicitor.

5. After the state failed to honor its own commitment to try this case in the spring of 2004, as it promised Judge Westbrook it would do, Mr. Cooper's lead counsel, David Bruck, began new employment as a clinical professor of law at Washington & Lee University School of Law in Lexington, Virginia. This circumstance was yet another reason why Mr. Cooper pressed the state to call this case for trial during the summer of 2005, during Mr. Bruck's academic summer recess. However, Mr. Bruck has consistently made clear that his academic and employment responsibilities would not prevent him from representing Mr. Cooper at any time that this case could be called for trial, and he did not and does not seek any delay in this case for this (or any other) reason.

6. Mr. Cooper recognizes that the state is now represented by new counsel who are not personally responsible for most of the state's unconstitutional refusal to call his case for retrial. This circumstance—which is itself attributable to the inexcusable delay of the Eleventh Circuit Solicitor's office in moving to withdraw—should not, however, affect the disposition of this motion in any way. It goes without saying that a denial of a defendant's right to a speedy trial cannot be remedied or even affected by substitution of counsel for the prosecution.

CONCLUSION

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper hereby renews his motion previously made by motion dated May 27, 2005, and heard in open court on July 12, 2005, for an order dismissing all charges against him for lack of speedy trial. Should the motion to dismiss be denied or otherwise not granted, the defendant further moves, reserving his rights under his motion to dismiss all charges, for his immediate release pending trial, upon such conditions as the Court may direct.

The defendant further hereby renews his previous demands, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90, for a speedy trial of all charges now pending against him.

Respectfully submitted,

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ATTORNEYS FOR GENE TONY COOPER

December 29, 2005

COPY

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Gene Tony Cooper, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: DEFENDANT'S NOTICE OF MOTION AND RENEWED MOTION TO DISMISS ALL CHARGES FOR LACK OF SPEEDY TRIAL, OR IN THE ALTERNATIVE FOR RELEASE PENDING TRIAL

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FILED
2005 DEC 29 P 4:11
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CLERK OF COURT
LEXINGTON SC

Jane M. Heinzelman
Administrative Assistant

December 29, 2005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	INDICTMENTS 1990GS32-83, 84
	)	
STATE OF SOUTH CAROLINA	)	
	)	
-versus-	)	**STATE'S RESPONSE**
	)	**TO DEFENDANT'S MOTION FOR**
	)	**SPEEDY TRIAL AND/OR GRANTING**
GENE TONY COOPER	)	**BAIL**
	)	
	)	
Defendant.	)	

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LEXINGTON, S.C.

I.

The defendant moves that the charges against him be dismissed because the State has violated his right to a speedy trial guaranteed by the South Carolina Constitution, S.C. Const. Art. I, §§ 9 and 14, the United States Constitution by the Sixth Amendment through the Fourteenth Amendment, and pursuant to §17-13-90, Code of South Carolina, 1976, as amended. He also moves in the alternative if the court does not dismiss his case because of failure to afford him a speedy trial, that the Court release him on bond pending trial.

II.

The State opposes the motion that the charges against the Defendant be dismissed because he has not been granted a speedy trial. This case, as it sits now, is somewhat different than most cases that deal with the issue of a speedy trial either directly or indirectly, i. e., violation of due process due to preindictment or pretrial delay, because it has been tried. Most of the speedy trial cases deal with preindictment or pretrial delay. *See* Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972); United States v. Loud Hawk, 474 U.S. 302, 106 S.Ct. 648 (1986); Howell v. Barker, 904

F. 2d 889 (1990); State v. Brazell, 480 S.E.2d 64 (S.C., 1997), State v. Lee, 602 S.E.2d 113 (S.C. App., 2004).

In Barker, the United States Supreme Court characterized the right to a speedy trial as "generically different" than any of the other rights guaranteed by the U. S. Constitution because (1) there is a "societal interest" in providing for a speedy trial separate from and sometimes in opposition to the interests of the accused, (2) the deprivation of this right may sometimes work to the accused's advantage, and (3) this right is somewhat more vague than other procedural rights because fixed time schedules are hard to place on the system. Barker v. Wingo, at 519-522. The Court stated that courts should analyze speedy trial cases on a case-by-case basis employing a balancing test that considers a number of factors. These factors include (1) Length of delay (being somewhat of a triggering mechanism), (2) the reason the government assigns to justify the delay, (3) whether and how a defendant asserts his rights to a speedy trial, and (4) prejudice to the defendant encompassing three subfactors, (i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) the most serious subfactor; the possibility that the defense will be impaired. The Court stated that, "we regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant." Id at 530-533. The South Carolina Supreme Court adopted the *Wingo* analysis in State v. Brazell for speedy trial cases under Article I, Section 14 (and presumably Section 9) of the South Carolina Constitution and under the Sixth and Fourteenth Amendments of the United States Constitution.

Here, the State concedes that the length of delay triggers further analysis as to the reasons the trial has been delayed and whether the defendant has been prejudiced. However, the State would only agree that the delay has been approximately 3 years and 4 months, beginning on August 29, 2002, the date of the remittitur of the judgment of the South Carolina Supreme Court of Cooper v. Moore, 569 S.E.2d 330 (2002). More importantly, the defendant has been tried previously on these charges and that trial commenced approximately one year and four months after the crime occurred.

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LEXINGTON

Second, prior orders (specifically the order of Judge William Keesley, July 25, 2005) in this case indicate other factors related to the delay. First, the explosive growth of Lexington County has increased the length of time people accused of crimes are required to stay in jail. Second, there are numerous cases in Lexington County that have death penalty notices pending as well as other potential death penalty cases that were awaiting Appeal. Third, the Eleventh Circuit Solicitor's Office was disqualified by Judge Keesley on July 25, 2005 and the First Circuit Solicitor's Office took over the case in September or October of 2005. While the State has been accused of delaying the retrial of this case in prior motions for speedy trials, the State does not stand to benefit by actively delaying the trial. It is important to remember that the defendant was tried, convicted, and sentenced a little over one year after this crime occurred. The State certainly didn't delay the first trial. While testimony exists from the record of the first trial, the live witnesses are getting older and their availability is not guaranteed, which may, in fact, inhibit the prosecution of this case. It was also alleged the State was waiting until Mr. Bruck went to his professorship in Virginia to get him off of the case. However, Mr. Bruck has stated in prior motions that he will continue to represent the defendant. Therefore, even if the State purposely delayed, as alleged, there is no benefit derived from the delay.

Third, the State would agree that the defendant has asserted his right to a speedy trial several times and before the proper Courts. The State would remark that those courts for whatever reason have denied dismissing the charges against the defendant based on the speedy trial motions.

Fourth, the State argues that the defendant has not been prejudiced after considering all the subfactors from the *Wingo/Brazell* analysis. The defendant has been incarcerated for a long time, a total of almost fifteen years. However, the vast majority of that time, 11-12 years, were awaiting the results in the Appellate Courts. The most serious prejudice to the defendant is that the defense would be impaired by the delay. That is not the case here. As stated above, the defendant was tried before. He was tried just over a year after this crime occurred. He had the opportunity to cross examine and subpoena witnesses. He had the opportunity to present a defense. He has had the opportunity to review that trial over these years. There have been further

hearings involving witnesses that could inure to his benefit. The testimony of the witnesses has been staked out completely. The defendant, if anyone, has benefited from the delay in this case.

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The two cases that the State relies on dealt with delays of 5 years in Wingo and 3 years and 5 months in Brazell. Those periods of time were disturbing to the respective Courts. However, upon reviewing the facts found, the defendants speedy trial rights were not violated. The Courts have focused more on the lack of prejudice to the defendant. Especially in Brazell, the South Carolina Supreme Court found that the delay was lengthy and that the State could not justify the delay. However, the Court found the defendant was not prejudiced by the delay, and that his speedy trial rights were not violated.

The Court must consider these factors as well as any other factors to determine if the case should be dismissed because of the alleged lack of a speedy trial. The State's main position in this case is that the defendant has been tried and convicted for the crimes he now faces. Because of that, the defendant has not been prejudiced by the delay. The convictions were overturned on a technical not an evidentiary ground and justice demands that this case be retried, not dismissed.

III.

As to the motion pursuant to §17-23-90, Code of Laws of South Carolina, 1976, as amended, the case was originally indicted in 1990 and called for trial and tried in 1991. The State has fulfilled its duty under this statue.

Assuming, for the sake of argument, that the State has not fulfilled its duty, this statue does no apply to the present case. Since this case involves a "special term" of Court, that is, one ordered by the Chief Justice and not a statutory term of Court, this statue does not apply. Ex parte Attardo, 249 S.E.2d 771, (1978).

IV.

The State opposes the granting of a bond to the defendant pending his trial. First, the controlling statue, §17-15-10, Code of Laws of South Carolina, 1976, as amended, does not allow

this. This Section allows bond for persons charged with non-capital crimes. This case is a capital murder trial.

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Second, if the Court finds that bond for this defendant may be appropriate, the state would oppose bond on the grounds that, pursuant to §17-15-30, Code of Laws of South Carolina, 1976, as amended, the defendant is a danger to the community based on the crimes he is currently charged with; Murder, Kidnapping, Armed Robbery, and Conspiracy to commit Armed Robbery; the fact that he was convicted of these crimes and was sentenced to Death; and that he has prior convictions for violent crimes and crimes that would pose a danger to the community: Armed Robbery in February 1977; Burglary and Armed Robbery in March 1977;and two counts of Housebreaking and Larceny in September 1977. Also, pursuant to §17-15-30, the defendant is a flight risk because he has been convicted of Attempted Escape in December of 1977, Escape in September 1980, and Escape in March 1985.

V.

The States does not believe that the defendant's speedy trial rights, pursuant to the United States and South Carolina Constitutions, have been violated and therefore thecurrent charges should be not be dismissed. The State further believes that §17-23-90 does not apply in this case. However, the State is ready for the Court to set a trial date in this matter. Finally, the State strongly opposes the setting of bond or the release of this defendant prior to the trial based and the above state reasons.

Respectfully submitted,

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140 N. Main St., Suite 102
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David M. Pascoe
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1. Length of the delay. The state admits, as it must, that the delay of "approximately three years and four months" between the reversal of the last of Cooper's convictions and his still-unscheduled retrial is sufficient to trigger judicial scrutiny under the Speedy Trial Clause of the Sixth Amendment. Response at 2. This is not open to debate as matter of federal constitutional law, since the United States Supreme Court has recognized that, as a general matter, delays approaching one year are regarded as presumptively prejudicial. Doggett v. United States, 505 U.S. 647, 652 n. 1(1992). A delay of close to three-and-a-half years, moreover, already exceeds that found in almost any reported South Carolina case. See e.g., State v. Brazzell, 480 S.E.2d 64, 70 (S.C. 1997) (two years, four months); State v. Chapman, 344 S.E.2d 611, 612 (S.C. 1986) (one year); State v. Tyson, supra (13 months); State v. Waites, 240 S.E.2d 651, 652 (S.C. 1978) (two years, four months); State v. Allen, 237 S.E.2d 64 (S.C. 1977) (two years, four months); cf. State v. Robinson, 528 S.E.2d 269, 271 (S.C. App. 1999) (delay of nearly five years triggered Barker scrutiny, but trial occurred 10 months after defendant's first request for speedy trial, and no prejudice resulted from delay); State v. Foster, 197 S.E.2d 280 (S.C. 1973) (seven-and-a-half year delay in trying defendants who jumped bond before trial and were imprisoned in another state for unrelated crimes; trial occurred within 15 months of their belated demand to be returned to South Carolina for trial).

Despite the almost unprecedented length of the delay in this case, the state urges that its significance is diminished by the fact that Cooper has already been tried one time, and that the state's prolonged inaction has occurred only with respect to his retrial. Response at 2. This argument does not withstand scrutiny. The state cites no authority for the proposition that the

Sixth Amendment's speedy trial guarantee is diluted or rendered ineffective by an intervening conviction and appellate reversal. If anything, the opposite is true: having marshaled its proof once, the state is normally in a better position to accord a defendant a speedy trial after his conviction is reversed. "[C]ommon sense suggests that, ordinarily on retrial, less time will be necessary to bring a case to trial than before," State v. Ferguson, 576 So.2d 1252, 1254 (Miss. 1991), and courts have recognized that "the delay that can be tolerated for a retrial is considerably less than for an initial trial because the issues and evidence have been fully explored." Lahr v. State, 615 N.E.2d 150, 152 (Ind. App. 1993). This observation holds all the more in this case because the state has already familiarized itself with the evidence not once, but twice, due to the separate trial of the co-defendant Southerland. Under these circumstances, there is no merit to the state's suggestion that its extremely long delay in scheduling Cooper's retrial should count for less in the Barker analysis because his case was tried once before, and because the state did not also violate his right to a speedy trial the first time around.

(2) The government's reason for the delay. Next, the state makes a series of unsupported factual assertions concerning the reasons for the delay. Taking a sentence out of context from Judge Keesley's July 12, 2005 order, the state seems to imply that Judge Keesley attributed some part of the state's failure to call Cooper's case for trial to criminal court backlogs caused by the "explosive growth of Lexington County." Response at 3. In fact, Judge Keesley alluded to these systemic problems merely as background to his reiteration of his prior order of April 25, 2005, directing that this case be tried before the end of 2005.

It is clear that the state's failure to abide by Judge Keesley's repeated orders to try this case by December 31, 2005 cannot be explained by vague generalizations or mere protestations of good faith. The most likely explanation appears to be simply that, for whatever reason, the state was concerned that it could not establish Mr. Cooper's guilt beyond a reasonable doubt, and wished to delay the moment of reckoning (while Mr. Cooper sat in a Death Row cell) as long as possible. The state cites the transfer of the case from the Eleventh Circuit Solicitor's Office to the First as an additional reason for delay, but that explanation begs the question of why Solicitor Myers waited so many years—including close to two years of speedy trial demands by Cooper— before advising the court of what he deemed to be a disqualifying conflict that had existed for a decade or more. The state also fails to explain why, in the face of at least three speedy trial demands and two orders mandating a 2005 trial, the First Circuit Solicitor's Office took no discernible action to bring this case to trial after receiving the file from the Attorney General in September 2005.

The fact is that the state has offered no adequate explanation for its failure to follow through on its August 2003 promise to try Cooper in the Spring of 2004, nor for its failure to abide by Judge Keesley's two orders mandating a trial in 2005. The accumulated evidence now supports the inference that the state's delay was willful, although the possibility exists that part of the delay was merely negligent. No evidence shows it to have been justified.

Barker v. Wingo requires this Court to determine why Cooper's case has yet to be tried, and in particular to determine whether the state has deliberately delayed the trial, or whether its inaction is explained by more "neutral" reasons such as negligence or crowded dockets. 407 U.S. at 531. To be sure, negligence and crowded dockets still weigh in favor of

the defendant, but less heavily than deliberate delay. Id. Since the state's response sheds no light on the actual reasons for the state's persistent refusal to take any action to set this case for trial through the end of 2005, and in order to assess the extent to which the delay was willful as opposed to negligent, an evidentiary hearing will be necessary at which the Court may take the testimony of the two prosecutors responsible for most of the delay, namely, Solicitor Donald V. Myers and Deputy Solicitor Dayton Riddle. Accordingly, Cooper hereby advises the state of his intention to issues subpoenas for the attendance of Mr. Myers and Mr. Riddle at the hearing on his motion, unless the state prefers to provide an assurance that they will be present.

3. Assertion of the speedy trial right. The state further admits that Cooper "has asserted his right to a speedy trial several times and before the proper courts." The fact that he has been persistently demanding a trial ever since July, 2003 is yet another important factor differentiating this case from almost all of the reported South Carolina cases decided since Barker: in most of these cases, the defendants' requests for a speedy trial came late if ever, and much of the delays complained of were actually attributable to the defendants or their counsel. E.g. Tyson, supra (part of 13-month-delay attributable to defendant's initial refusal to accept appointed counsel); State v. Chapman, supra (first assertion of speedy trial right was made the day of motion to dismiss); State v. Waites, supra (defendant contributed to delay and never requested speedy trial); State v. Allen, supra, (defendants requested continuance and never requested speedy trial). Cooper's persistence in seeking to vindicate his constitutional right to a speedy trial differentiates this case from the great majority of reported cases dealing with claims of pretrial delay, and weighs heavily in favor of granting his motion to dismiss.

4. Prejudice. Finally, the state claims that Cooper was not prejudiced by the long delay in retrying him. Barker lists "oppressive pretrial incarceration" and anxiety and concern of the accused" as two of the three forms of possible prejudice that may arise from the denial of a speedy trial, 407 U.S. at 532, and Cooper's incarceration in a Death Row cell in Lieber Correctional Institution for the past three years and eight months, while awaiting the day when he is again placed in jeopardy of being sentenced to death, amounts to no small prejudice in and of itself. As for the remaining component of prejudice under Wingo, impairment of Cooper's defense at trial, he has not yet identified witnesses or evidence that have become unavailable since August of 2002. However, in the absence of a trial date, he has not been in a position to subpoena witnesses for trial, and he anticipates that the trial-related harm from this long delay may become clearer as he finalizes his trial preparation. At this point, he would merely stress that trial-related prejudice, while potentially a reason to grant a motion like this one, is not a prerequisite for relief. Barker, supra, 407 U.S. at 533 ("We regard none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.") The Supreme Court's discussion in Doggett, supra, provides a useful caution:

> [C]onsideration of prejudice is not limited to the specifically demonstrable, and, as [the government] concedes, affirmative proof of particularized prejudice is not essential to every speedy trial claim. Barker explicitly recognized that impairment of one's defense is the most difficult form of speedy trial prejudice to prove because time's erosion of exculpatory evidence and testimony "can rarely be shown." 407 U. S., at 532. And though time can tilt the case against either side, see id., at 521; Loud Hawk [v. United States, 474 U. S. 302,] 315 [(1986)], one cannot generally be sure which of them it has prejudiced more severely. Thus, we generally have to recognize that excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove or, for that matter, identify. While such presumptive prejudice cannot alone carry a Sixth Amendment claim without regard to the other Barker

> criteria, see Loud Hawk, supra, at 315, it is part of the mix of relevant facts, and its importance increases with the length of delay.

505 U.S. at 655-6 (emphasis added, internal citations omitted). This passage from Doggett disposes of the state's reliance on its claim that the long delay in scheduling Cooper's retrial may actually have hurt the state more than the defense. Response at 3-4. The point is not that this could not be true, but that its truth or falsity is unknowable. Doggett shows that to deny Cooper's motion solely on the ground that he cannot now demonstrate sufficient trial-related prejudice would impermissibly impose a crippling burden of proof on an accused whose trial has been needlessly delayed for years, and would effectively vitiate the Constitution's speedy trial guarantee.

To be sure, Cooper envisions that should his present motion be denied, it will be necessary to renew it as trial approaches, and likely during the trial itself, as previously-undetectable prejudice reveals itself. But he submits that a fair application of the Barker factors mandates dismissal now, without waiting for additional evidence of trial-related prejudice. The state had a reasonable time in which to retry him. It first agreed to do so, but did not. Then it was ordered to do so, and still did not. Now, nearly three and a half years after the Supreme Court ordered that the last of his charges be retried, the state's time is up.

CONCLUSION

For the reasons set forth above and in his Renewed Motion to Dismiss for Lack of Speedy Trial, or for Release Pending Trial previously filed on December 29, 2005, the defendant Gene Tony Cooper hereby requests:

(1) that the Court set an early date for an evidentiary hearing on his motion;

(2) that the Court take the testimony of Solicitor Myers and Deputy Solicitor Riddle concerning the reasons for the lengthy delay in retrying this case,

(3) that it grant the motion and dismiss all charges now pending against him by reason of the state's denial of his right to a speedy trial under the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, Section 14 of the Constitution of South Carolina, and

(4) should the motion to dismiss be denied or deferred, that it order the defendant's immediate release pending trial, upon such conditions as the Court may direct.

Respectfully submitted,

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BY: David I. Bruck by SMA
ATTORNEYS FOR GENE TONY COOPER

January 18, 2006

ORIGINAL 105 99

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Gene Tony Cooper, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: DEFENDANT'S REPLY TO STATE'S RESPONSE TO RENEWED MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL, OR FOR RELEASE PENDING TRIAL

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2006 JAN 18 A 10:42
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LEXINGTON SC

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Cindy K. Bass
Administrative Assistant

Jan. 18, 2006

CERTIFICATE OF SERVICE

I, the undersigned administrative assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Gene Tony Cooper, Jr., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by delivering to the following address(es):

Pleadings: DEFENDANT'S RESPONSE TO THE STATE'S MOTION TO DISQUALIFY AND RECUSE DEFENDANT'S ATTORNEYS AND AGENTS

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Cindy K. Bass
Cindy K. Bass
Administrative Assistant

June 24, 2005

State of South Carolina)	Court of General Sessions
)	
County of Lexington)	Eleventh Judicial Circuit
State of South Carolina,)	
)	
vs.)	Case No. 90-GS-32-83, 84
)	
Gene Tony Cooper,)	
)	
Defendant.)	
)	

TRANSCRIPT OF RECORD

February 8, 2006

Charleston, South Carolina

B E F O R E:

The Hon. Daniel F. Pieper, Judge

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

B. Harrison Bell, Jr., Esq.
Attorney for the State

David Bruck, Esq.
Jack Duncan, Esq.
Attorneys for the Defendant

Brenda Cooley
Circuit Court Reporter

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1	File of documents of Solicitor Myers	22	22
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* * *

(The exhibits were retained by the Clerk of Court.)

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(On Wednesday, February 8, 2006, the defendant being present with counsel, the hearing convenes at approximately 10:00 a.m., and the following proceedings were had:)

THE COURT: Good morning. The first thing I'd like to do, if you'd each identify yourselves for the record and who you're representing.

MR. BRUCK: I'm David Bruck. I'm appointed by the Court to represent Tony Cooper. With me is Jack Duncan, assistant public defender for Lexington County, also representing Mr. Cooper.

THE COURT: All right.. This is Mr. Cooper?

MR. BRUCK: I'm sorry?

THE COURT: Is this Mr. Cooper?

MR. BRUCK: That is Mr. Cooper. I apologize.

THE COURT: All right.

MR. BELL: Thank you, Your Honor. My name is Harrison Bell. The First Circuit Solicitor's Office has now been assigned the case. I'm a senior assistant solicitor.

THE COURT: All right. You said you want to take up an issue about the cuffs?

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MR. BRUCK: Yes, Your Honor. Mr. Cooper is wearing box cuffs. His hands are visibly swelling. He's been cuffed like that for many hours now.

It's been my normal experience with clients who are being held on death row, which he is, although he's not a death row inmate, that the courts most often order the Department of Corrections to release the cuffs.

He has leg irons, so he's not going anywhere. Mr. Cooper has been in court hearings before. There's never been a bit of trouble.

As the state has pointed out in response to the bond motion, that he had an escape history, but that was 25 years ago.

And this man is no risk at all. And it not only is physically painful to him, it keeps him from taking notes.

THE COURT: You're not asking that his leg shackles be removed?

MR. BRUCK: No, sir, just the handcuffs.

THE COURT: All right. I'll allow that.

MR. BRUCK: Thank you very much.

THE COURT: Yes, sir.

(The defendant is escorted from the

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courtroom and returns, said handcuffs removed.)

MR. BRUCK: Thank you, Your Honor.

THE COURT: All right. And I understand you have some matters pertaining to speedy trial issues and a bond?

MR. BRUCK: Speedy trial, yes, Your Honor; and if that should be denied, bond.

THE COURT: All right. I'll be happy to hear you out on it.

MR. BRUCK: Thank you.

The first thing which we'd like to do before getting to the legal argument on this is to put on some evidence.

As Your Honor is well aware, one of the four *Barker v. Wingo* factors is the reason for the delay in bringing a case to trial. And to that, in order to elucidate that issue, we have Mr. Myers here today and Mr. Dayton Riddle, deputy solicitor, and we'd like to call Mr. Myers to examine him on the reason for the delay.

THE COURT: All right. I mean, are these reasons in dispute?

MR. BRUCK: I'm sorry?

THE COURT: Is there some dispute as to these facts?

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MR. BRUCK: The state has simply -- the burden is on the state to show the reason, and there are no -- there is nothing in their Return to show an itemized particularized reason why in 2002 and 2003 and 2004, even when there was a court order in 2005, this case was not called for trial, and there is simply no other way to develop the record other than to ask the person whose job it was to call it why it wasn't called.

THE COURT: All right. That's fine. Before you do that, can anyone tell me why a judge was never assigned to this case since the time that this case has been reversed in 2002?

MR. BRUCK: That is another reason why I wanted to question Mr. Myers.

It is the solicitor's job to call Court Administration and ask for a case -- a judge to be assigned if they intend to seek the death penalty, which we didn't know, so we couldn't do it, and the ---

THE COURT: When the case came back down, did they re-file the notice of the death penalty?

MR. BRUCK: No, sir.

THE COURT: Okay.

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MR. BRUCK: No action was taken, period, and that's what we need to explore.

THE COURT: All right. Go ahead.

Do you have any problem with that?

MR. BELL: Your Honor, the only problem I have is it seems to me from the July 12th order from Judge Keesley they've already explored most of these issues. I mean, the only time period would be from then on when we got the case.

And, I mean, in his order he said -- and he denied the speedy trial motion, so apparently he heard these. And he also found that even the solicitor moving to get out of the case back then was not to delay the case, not to do it. I mean, we think it's already been adjudicated.

THE COURT: Well, then what did he mean when he said the matter could be reconsidered if it were not tried in December?

MR. BELL: That I don't know. I mean, I can't answer that, Your Honor.

THE COURT: I mean, I normally deem reconsideration to be reconsider *de novo*. If that's not the case, then I'll be happy to hear you on that. But if the judge says he can bring it, it would seem to be somewhat academic to just say you can revisit

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the speedy trial motion from the date of the order only; would it not?

MR. BELL: That's correct, Your Honor. But, I mean, you know, you can have bond reconsiderations at, you know ---

THE COURT: But he didn't ---

MR. BELL: --- for a change of circumstances.

THE COURT: He didn't say, as we often do, if it doesn't go to trial the defendant may apply to the Court for bond. I understood him to say the motion for speedy trial could be renewed. Is that not the case?

MR. BELL: I believe that is correct. That's how it's said in there, Your Honor.

THE COURT: Now, my concern would be, as I would imagine your same concern is, that you are not from the Solicitor's Office that was originally handling this case. So one of the reasons that I might be willing to hear this testimony is that I'm not sure that you'll be able to fill in the gaps yourself, will you?

MR. BELL: I doubt I can. That's true.

THE COURT: All right.

MR. BELL: I can only base it from when

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we got the case in September or so.

THE COURT: So do you have any problem with him telling us the history?

MR. BELL: No, Your Honor, I don't.

THE COURT: All right. Come forward.

DONALD LEE MYERS, ESQ.,

being first duly sworn by the clerk, is examined and testifies as follows:

THE CLERK: Please be seated. If you would, sir, please state your full name to the Court and spell your last.

THE WITNESS: Donald Lee Myers, M-Y-E-R-S.

MR. BRUCK: All right. Good morning, Mr. Myers.

One housekeeping matter. Mr. Riddle, the deputy solicitor, he's here. We would ask that Mr. Riddle, so as not to put him in an awkward spot, have -- possibly remembering something different than his boss, that Mr. Riddle wait in the hall until Mr. Myers ---

THE COURT: All right. Step out, Mr. Riddle, please.

(Mr. Riddle leaves the courtroom.)

MR. BRUCK: Thank you.

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DIRECT EXAMINATION

BY MR. BRUCK:

Q. You are the solicitor of the Eleventh Judicial Circuit?

A. Yes, sir.

Q. And you prosecuted Tony Cooper in 1991 in the case we're concerned with today?

A. I prosecuted him. I don't remember the year.

Q. Okay. Mr. Myers, the record reflects that on August 29th, 2002, the remittitur was sent down from the Supreme -- from the Supreme Court on the remaining non-capital counts against Mr. Cooper, just to say that this case was entirely ready to be retried on all charges. Is that your recollection?

A. It was sent back down. There was an appeal to the Supreme Court, and then there was a PCR. The PCR was appealed, and then the final decision was to come back down for a new trial.

Q. Okay. Do you know, Mr. Myers, at that time, excluding cases that were only awaiting resentencing, what was the oldest murder case in Lexington County?

A. I don't know.

Q. You don't know if it was this one or some other one?

A. No. I don't think it was this one.

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Q. But which one do you think it was?
A. I really couldn't tell you, because some of the -- probably -- probably Raymond Patterson.
Q. Okay. But that case was only pending resentencing, correct, not a whole new trial?
A. Patterson the last time was sentencing.
Q. Right. Okay. And I'm not asking you about anyone that's going to be doing death or life no matter what, no matter when they're retried. I'm asking about people who have no conviction whatsoever, keeping them in jail for the charge of murder. Would this be the oldest case in the Eleventh Judicial Circuit?
A. As of when?
Q. As of August 29th, 2002, when this case was sent back from the Supreme Court.
A. I really couldn't say. I mean, it very well could be, because of all the appellate process and the PCRs.
Q. Okay. Now, within your office, when a case is sent back from -- for retrial, do you assign it, or is it assigned to a member of your staff to be the lead prosecutor?
A. Yes.
Q. And was this case assigned?

A. Yes.
Q. And who was it assigned to?
A. Dayton Riddle helped me on this one.
Q. He helped you on it?
A. Uh-huh.
Q. And did you keep the case, or did you give it over to Dayton, or who is responsible?
A. They are responsible for all the pretrial workup, getting it together for it, yeah.
Q. Okay. And do you know what was done to work this case up after August 29th, 2002, or would we have to ask Mr. Riddle about that?
A. Probably the files were trying to -- to be relocated.
Q. Now, when you say probably, are you telling us how it normally works, or are you testifying to Judge Pieper about what was done in this particular case?
A. What's normally done.
Q. And if you can, can you tell me what was done in this case?
A. No, sir.
Q. You don't know or you don't remember or which?
A. Both.
Q. You neither know nor remember?

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A. We've probably had eleven or twelve death penalty cases pending for the last several years.
Q. Okay. And was this the oldest one in terms of the date of arrest in which there was no valid conviction on the books as of August 29, 2002?
A. Probably. I couldn't tell you with any definite.
Q. Okay. All right. So the case in the normal course would have been assigned to Mr. -- was assigned to Mr. Riddle; and in the normal course, he would try to find the file. Is that your testimony?
A. Uh-huh.
Q. But you don't know if he did that in this case?
A. No.
Q. You don't know ---
A. I can't -- you know, I can't tell you whether Dayton tried this thing with us the first time or not. He didn't -- not today.
Q. Right.
A. And Dayton probably came in later on, after -- he may have left in the mid-nineties.
Q. Okay. Can you tell us when, if ever, Dayton gave you a progress report about how his work on this case was ---

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A. I really can't. Once Judge Keesley took over this thing and we had all these hearings and then our office was removed from it, I told him to box up everything and send it to the new prosecutor, and I moved on to other stuff. I haven't looked through this stuff in quite a while, Mr. Bruck.

Q. Okay. Well, we'll take it in order then. Do you remember what directions, if any, you gave Mr. Riddle about getting this case ready for trial?

A. No.

Q. And I'm talking about 2002.

A. No, sir.

Q. And does that mean you don't remember, or you don't -- didn't give him any?

A. I don't remember.

Q. You don't remember. Okay. Now, if a case is going to be tried as a death penalty case, it requires the Court Administration or the Supreme Court Chief Justice to assign a judge specially; is that correct?

A. Usually.

Q. Usually?

A. Uh-huh.

Q. And it has required that invariably since the early 1990s, hasn't it?

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A. In fact, when this case first came up, that wasn't the practice. We had different judges setting bonds, different judges having hearings.

Q. Okay. But I'm asking you about August 29th, 2002, and thereafter.

A. They got around to doing that.

Q. I'm sorry?

A. They got around to doing that, yes.

Q. Okay. And how does Court Administration know that a judge has to be assigned?

A. I notify the chief administrative judge, and the chief administrative judge usually talks to Court Administration. Sometimes I communicate with Court Administration and then send copies to the chief administrative judge.

Q. Okay. And can you tell us when you notified the chief administrative judge in this case after August 29th, 2002, that this case had to be retried and needed a judge assigned?

A. Judge Westbrook would have been the chief administrative judge, and probably within six months.

Q. Now, when you say probably, do you remember that you made the request, or are you saying ---

A. No. Because Judge Westbrook and I would talk periodically about cases and scheduling court,

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because he handled most of the capital cases because Judge Keesley had recused himself on capital cases.

Q. All right. So to be precise, you have no memory of talking to Judge Westbrook about the need for assigning of a judge to try this case?

A. What I'd do is give him a list of cases, and as we tried to set up things six months in advance and arrange our court schedules, we would go over them. And we would get the ones that had been sent back by the Supreme Court, whether it was for new trial, a retrial, whatever, plus the new ones coming up.

Q. Okay. If Judge Westbrook didn't hear from you about the need to assign a judge, he wouldn't in the normal course of his duties know about it, correct?

A. Oh, sure, he'd know about it.

Q. Whose job is it to make this process happen?

A. The chief administrative judge.

Q. Not yours?

A. Sometimes I do.

Q. And, in fact, you could notify Court Administration on your own, couldn't you?

A. Sure. I have.

Q. And you have done that many times?

A. Uh-huh.

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Q. But you didn't do it in this case?
A. No.
Q. Why not?
A. Because sometimes I notify them at the request of the chief administrative judge; sometimes the chief administrative judge. I'm not in charge of the court schedule; the judges are.
Q. That's not responsive to my question.
A. I apologize.
Q. My question is: Why in this case did you not take it upon yourself to notify Court Administration that you needed a judge?
A. Because it was my impression that Judge Westbrook had been assigned to it.
Q. And what do you base that impression on?
A. Discussions I had with him.
Q. *Ex parte*?
A. No. About court schedules.
Q. Okay. But Mr. Cooper's attorneys were not involved in that, correct?
A. Yes. And y'all would file motions. Then I would ask the judge, you know, when do you want to have these motions. General Sessions, nonjury, chambers weeks? Things of that nature.
Q. Okay. There was no -- the record reflects

there was no motion filed between August 29th, 2002, and July of 2003. What request, if any, did you make of Judge Westbrook or of Court Administration between those two dates?

A. None.

Q. You made none. Okay.

A. As to a judge being assigned? As to a judge being assigned?

Q. Right.

A. None.

Q. Okay. Why not?

A. Because I talked to Judge Westbrook about pending capital cases we had.

Q. And Judge Westbrook told you that there shouldn't be a judge assigned?

A. No, sir.

Q. What did he tell you?

A. He said we'd try to get a schedule fixed up and try to work it in. And with all the problems we had with the courthouse and the new courthouse, things were pretty hectic for a while.

Q. All right. And Mr. Cooper's attorneys were notified of this, that you had talked about scheduling and Judge Westbrook had told you that it couldn't be done any time soon, or is that not a fair

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characterization of Judge Westbrook's statement to you?

A. No, sir, Mr. Bruck, you don't understand. The chief administrative judge for General Sessions...

Q. Yes, sir.

A. --- they are in charge of the court schedule. It's just like now when I communicate with Judge Keesley and I tell him we want to have double terms of court or single terms of court. I give him a list of capital cases, I give him a list of old cases, jail cases, and we try to organize the General Sessions docket, anything from shoplifting to capital cases.

Q. Okay.

A. And I did the same thing with Judge Westbrook. It was -- and I can't speak for him, but I was fully convinced that he had been assigned to this case as the presiding judge.

Q. All right. And you were served with a subpoena *duces tecum* to bring with you records, paper records, if any, of any communication between you and the Court concerning the exact matters we're discussing, the scheduling of this case. What did you bring with you?

A. (The witness removes file from briefcase.)

This is all that I have in my file.

Q. May I examine it?

A. Sure.

MR. BRUCK: May I approach?

THE COURT: Yes, sir.

(The witness tenders file to Mr. Bruck.)

(Mr. Bruck reviews documents in file.)

BY MR. BRUCK:

Q. This file is everything that is responsive to the subpoena that you have in your possession?

A. That is my file. The other files were boxed up ---

Q. Right.

A. --- and sent to the solicitor for the First Circuit. Now, Dayton may have some more stuff, I don't know.

Q. Okay. So as far as correspondence concerning the scheduling of this case, if it ain't here it don't exist?

A. No. No. I can't say that, because there may be in those boxes that we gave to the First Circuit Solicitor's Office.

Q. Okay.

A. I'm just saying that that's what I have had in my office in my personal file.

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Q. Okay. So if you don't have it, the prosecutor that has this case now does?
A. I assume he does, or Dayton may have it, or there may be some mis-filed correspondence in those other files.
(Mr. Bruck tenders file to Mr. Bell.)
(Mr. Bell reviews documents in file.)
MR. BELL: No objection, Your Honor.
THE COURT: All right.
MR. BRUCK: This would be defendant's ---
THE WITNESS: I've got some legal research in there. Can I take it out?
BY MR. BRUCK:
Q. Show me what you're taking out.
A. (The witness complies.)
THE COURT: Is there something in particular in that file you want me to look at?
MR. BRUCK: Well, it's partly a negative, Your Honor. I've just had a chance to look quickly through it, and we may be able to cull it by consent after the...
THE COURT: Well, that's what -- I mean, if the negative is something that's not in there and we can all agree to that, then I don't need to look for a negative. If y'all agree that there's nothing

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pertinent in that file, he can keep his file.

MR. BRUCK: Let me quickly cull it out and see what -- if there's anything germane.

Okay. I think we have reduced this down.

Mr. Myers, I'm going to hand you back most of your file.

We have agreed that the contents of what will now be marked as defendant's one for purposes of this hearing are all the materials in -- when I say we, the state and I have agreed -- are all the materials that Mr. Myers produced responsive to the subpoena *duces tecum* germane to the issue of the motion to dismiss for lack of a speedy trial.

THE COURT: Correct?

MR. BELL: Yes, Your Honor.

MR. BRUCK: May I have it marked.

(Defendant's Exhibit No. 1, file of documents of Solicitor Myers, is marked for identification and received in evidence.)

BY MR. BRUCK:

Q. Now, you may need to look in your file to see, but between 2002 and 2003 is there anything in your file reflecting any communication between you and Judge Westbrook or any other judge about the scheduling of this case?

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A. I would not have written the judge. I would have called him personally.
Q. And when did you talk to him between those two dates?
A. I can't tell you.
Q. And what did you say concerning this case?
A. This case ---
Q. If you remember.
A. --- might not have been specifically discussed. This would have been one of many capital and serious cases in which we'd talk about needing additional terms of court or not needing court and organizing the court schedule.
Q. And did you tell -- and what decision was made after this conversation of unknown date with Judge Westbrook concerning the need to schedule additional court?
A. That we would advise Court Administration of the cases that would be tried whenever the dates were set and then we would try to work out the court schedule then.
Q. And what discussion did you have with court -- with Judge Westbrook or anyone else about setting a date for the Tony Cooper case prior to the first motion for speedy trial in July of 2003?

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A. I don't think we ever had a hearing on that.
Q. That's not what I asked you. You're telling me that you're having these conversations with the chief administrative judge.
A. I'm sorry. Repeat the question.
Q. The question is: What discussion was there between you and Judge Westbrook or any other judge about a date for this case?
A. For this case specifically?
Q. Yes.
A. None.
Q. None. Okay. Then in July of 2003 you received a motion for a speedy trial, correct?
A. We received a motion for speedy trial. I don't know when it was.
Q. Okay. And prior to that, Mr. Riddle had gotten a phone call from me in which I attempted to just discuss informally agreeing on a trial date for Mr. Cooper, correct, and he raised it with you?
A. I don't know what y'all talked about.
Q. Okay. Did Mr. Riddle come and talk to you and say that Bruck had called and wanted a trial date for Tony Cooper and what did you want to do?
A. He could have. I don't recall if he did.
Q. You don't remember?

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A. Uh-uh.
Q. Okay. So if Mr. Riddle responded to me later that he couldn't set a date and I'd have to make a motion, you wouldn't -- after talking to you, after representing that he had talked to you, you wouldn't know one way or the other if that was true?
A. No.
Q. Okay. Then we had a on-the-record motion hearing on August 18th, 2003, correct?
A. Before whom?
Q. Well, maybe you don't ---
A. Before whom?
Q. Before Judge Westbrook.
A. I know we had a hearing before Judge Westbrook. I don't remember when.
Q. Right, okay.
A. I think we had several.
Q. Right. And the record reflects that date?
A. Uh-huh.
Q. And I was trying to get a trial date set?
A. Uh-huh.
Q. And you were saying you had other cases to try?
A. Yes, sir.
Q. Okay. What was there about -- tell me which

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other cases had priority over this one and why.
A. I don't recall right now.
Q. You don't know. Okay. And you don't know at this point what work, if any, had been done to see whether or not you could get this case ready for trial?
A. What do you mean by that?
Q. Whether witnesses had been contacted, whether the file had been reviewed, whether readiness of the case for re-prosecution had been set by your office?
A. A judge never set a trial date.
Judge Westbrook never set a trial date. That's correct.
Q. No, that's not what I'm asking you. I'm asking you about your office. When you were resisting, a trial date being set in the fall of 2003 at that hearing, as reflected by the transcript, you can't tell us what you knew about any proof problems or anything else in the Cooper case?
A. No, sir.
Q. You don't know? There might have been some, might not? You just don't know?
A. That's correct.
Q. Okay. And you don't -- and Mr. Riddle didn't tell you about that?

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A. Well, he -- he could have.
Q. But you don't remember?
A. Not specifically.
Q. And your file doesn't reflect anything, correct?
A. No, sir.
Q. Okay.
A. I try not to communicate with my staff by written word. We'd ask each other and we'd meet and we'd talk about things, but I don't keep notes of that stuff.
Q. Okay. Have you ever read the case of *Barker v. Wingo*?
A. I've heard of it.
Q. You've looked at that?
A. A speedy trial, among other things.
Q. Okay. Are you aware that the Supreme Court has said that a delay of more than a year is presumptively prejudicial?
A. No, sir.
Q. You didn't know that?
A. No, sir.
Q. Okay.
A. And I don't think there has been a death penalty case in South Carolina in the last seven or

eight years that's been tried in less than a year. Because every time we call it for the first time, y'all move for a continuance.

Q. Okay. And what about this case? Have you ever had another death penalty case in which rather than asking for a continuance the defendant asked for a speedy trial?

A. Sure.

Q. Which one?

A. I don't know.

Q. Do you think there has been, but you can't tell us which case?

A. No, sir, I can't tell you.

Q. All right. But it happened in this case?

A. Yes, sir.

Q. All right. Do you think this might have been the oldest murder case pending?

A. I don't know.

Q. Okay. Then we reconvened a week after that in chambers with Judge Westbrook. Correct?

A. If you say so. I don't recall.

Q. Well, Judge Keesley's order reflects that on August 25th there was an in-chambers meeting at which you or your office said that you would call the case in the spring of 2004. Do you remember that?

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A. Yes, sir.
Q. And so, specifically, between August and June, I think was the representation, sometime in there?
A. I can't tell you. I don't know.
Q. Spring of 2004, that was the plan, right?
A. August and June?
Q. I'm sorry. April and June?
A. It could have been, Mr. Bruck. I really don't know.
Q. All right. So you don't disagree if that's what's in Judge Keesley's order, right?
A. No. If it's in Judge Keesley's order. That's fine.
Q. All right. And was the case -- what did you do between -- what did your office do, you or Mr. Riddle or anyone else, to get this case ready for trial so that it could be tried in the spring of 2004?
A. What did we do?
Q. Yes.
A. I don't know. You'll have to ask him. I didn't do anything.
Q. You didn't do anything?
A. I don't get involved in the death penalty cases till about a month or two before we get ready

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to go to trial.

Q. Okay. And, of course, the record reflects that the case was not called for trial in the spring of 2004. Do you know why?

A. There were many reasons.

Q. Well, tell us what they were.

A. Some of the reasons had to do with us moving around so much. Other reasons were for other cases. Other reasons were court schedules.

Q. All right. I need you to be more specific.

A. I can't. That's as specific as I can be for you.

Q. Do you know what case had priority over this one?

A. No, sir.

Q. Now, in between 2002, August 29th of 2002, and the time of the making of the speedy trial motion in July, how many death penalty cases did you try in your circuit?

A. I don't have any idea.

Q. Would it surprise you to know that the answer is none?

A. No, sir.

Q. Okay. And between 2000 -- August 18th, the first speedy trial hearing, and -- and the spring of

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2004 -- I'm sorry -- the summer of 2004 ---
A. I'm sorry, you lost me.
Q. Okay. Between the speedy trial motion hearing, the first one...
A. When was that?
Q. On August 18th, 2003, and the end of 2004, how many death penalty cases did you try in the Eleventh Judicial Circuit?
A. I don't have any idea.
Q. Would it surprise you to learn it would be -- would you disagree with me that the answer is one, the *Northcutt* case?
A. If you say so.
Q. Well, you remember the cases, the capital cases you tried, don't you?
A. I remember the capital cases I tried. The dates and times, I couldn't tell you when we tried this thing first. I can't tell you when it went to the Supreme Court first. I can't tell you when y'all took it on PCR and then it went back to the Supreme Court. I don't keep up with all those dates, Mr. Bruck.
Q. Okay. But you remember ---
A. Or remembering what I had for breakfast.
Q. You remember the cases you tried. What was

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the last capital case you tried, your office tried? Would it have been *Northcutt*?

A. I think you're right, yes.

Q. And that was in November of 2003?

A. If you say so. I don't remember.

Q. Okay. And, in fact, Mr. Northcutt did not ask for a speedy trial, did he?

A. I don't know.

Q. Not that you can recall?

A. No.

Q. But you had received a letter from Mr. Northcutt asking if he could plead guilty and be sentenced to death. Correct?

A. I think you're right on that.

Q. Right. And, in fact, he ended up standing in front of the jury and asking for the death penalty?

A. Yes.

Q. So that case was like shooting fish in a barrel, wasn't it?

A. No, sir. I think it's been on appeal since y'all had him withdraw his -- I guess by now it's going through an appeal. None of these cases are shooting fish in a barrel.

Q. All right. Can you tell us why the *Northcutt* case, in which there was no motion for speedy trial

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and which was not nearly as old a case as this one, was called by your office before this case was?

A. No, sir.

Q. You cannot tell us?

A. No.

Q. You have no idea why?

A. No.

Q. All right. Does anyone know?

A. I don't know.

Q. Is there a reason out there somewhere?

A. For what?

Q. For why the *Northcutt* case was tried in 2003 and this one wasn't, even though there was an outstanding motion for speedy trial by Mr. Cooper?

A. I don't think we had heard these motions by then. Maybe we had, I'm not sure, but a date wasn't set for that, Mr. Bruck.

Q. Okay.

A. When we have hearings on things, the judges usually set the dates. I've had five dates set for this year on capital cases and ---

Q. I'm sorry. You've had five dates set for what?

A. For capital cases for this year.

Q. Uh-huh.

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A. By the judge. And when the judge sets it, then we start looking forward to that one.
Q. Okay. Well, there had been an agreement to set this case in 2004, in the spring of 2004, right?
A. Uh-huh.
Q. And then you didn't do anything?
A. No, sir.
Q. No, sir, you didn't do anything?
A. We didn't call this case for trial, and a judge didn't set this case for trial, Mr. Bruck.
Q. And you didn't notify Court Administration that you needed a judge?
A. No, sir. I notified the chief administrative judge of the Eleventh Judicial Circuit for General Sessions Court.
Q. Orally in the conversations you can't put a date or time on?
A. That's true.
Q. Okay. And you can't tell us that you ever had a conversation that was focused on this case as opposed to all the other cases that were pending?
A. I can't tell you whether we did or not.
Q. Okay. All right. Would you say that this is a complex case to retry?
A. All of them are complex.

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Q. And this no more than any other?
A. Equally.
Q. Okay. So there's nothing unusually complex about this case as opposed to other murder cases that have been reversed and sent back, correct?
A. All of them are complex, Mr. Bruck.
Q. Okay.
A. None of this stuff is -- is a cakewalk or shooting fish in a barrel, as you term it, physically or emotionally for anybody, on all sides.
Q. So was it the physical and emotional toll of this case that made you not try it when your office agreed to try it in the spring of 2004?
A. No, sir.
Q. What was it?
A. We didn't get to it, we had other cases, and we didn't get to this, and a judge did not set a date for a trial.
Q. Okay. Although you tried no other case in 2004?
A. If you say so. No capital case.
Q. Okay. Can you tell us if you ran into any specific -- that you know of, any specific problem having to do with witnesses, having to do with evidence, having to do with the law that impeded or

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delayed the calling of this case and setting of this case for retrial by your office?

A. Mr. Bruck, for the Eleventh Circuit, in capital cases, the judges set the case for trial in consultation with the solicitor and the defense attorneys.

Q. I'm going to ask you the question again. Was there any problem or aspect of the case of *The State vs. Tony Cooper* relating either to the availability of witnesses, to the availability of evidence, to changes in the law that posed a problem for the state in retrying this case between 2002 and the present day? That you know of?

A. Not that I know of. It could have been, but not that I know of.

Q. Not that you know of. All right. Okay. Then there was another speedy trial motion made in February of 2005, correct, before Judge Keesley who was then the chief administrative judge?

A. I think there were two before Judge Westbrook. I'm not sure.

Q. All right. And in response to either one, however many there were, did the state get -- did the state take any action to call this case for trial?

A. Now, you wrote something in there about you

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couldn't get your motions heard for two years. You wrote some correspondence that you had been trying to get those motions heard for two years, but the judges didn't set a hearing on it.

Q. Well, the letters will ---

A. Pardon me?

Q. I say the record will reflect whatever it reflects.

A. I've got it in this, somewhere in these files that y'all got, that you wrote me and said for two years you had been trying to get the speedy trial motions heard, but the judges hadn't set a date.

Q. Okay.

A. We can find that. You wrote me that yourself.

Q. All right.

A. For two years you couldn't get a hearing set on your motion. So that will take care of two years.

MR. BRUCK: Does the Court still have the file, the exhibit?

(Defendant's Exhibit No. 1 is tendered to Mr. Bruck.)

BY MR. BRUCK:

Q. Can you tell me what you're referring to?

A. I'll have to look through this. (The witness reviews exhibit.) This was a letter from you to

Judge Keesley dated July the 5th, 2005, and it talked about my office being conflicted out, and you say, the second paragraph:

"While I appreciate and respect Mr. Myers' concern over the situation that has prompted his action, his timing creates potential problems. Mr. Cooper has been awaiting retrial since August of 2002, and his successive motions for speedy trial have been pending for nearly two years."

Q. Right. Okay.

A. So I took that to mean that you had motions for two years and a judge hadn't set up a hearing on your motion.

Q. All right. The -- okay, whatever. Now ---

A. I don't set speedy trial hearing motions, either, Mr. Bruck. The judge does that.

Q. Okay. And you're aware that when a demand for speedy trial is made, it's pending until the case is -- until the motion is either withdrawn by the defendant or the case is tried -- is tried?

A. Or until the motion is heard by a Circuit Court judge.

Q. Right. And, in fact, getting back to what I was asking you, in February of 2005 a hearing was held, and two months later Judge Keesley issued an

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order directing this case to be tried by the end of 2005?

A. I know that he issued an order in 2005.

Q. Okay. Ordering the case to be called for trial before the end of the calendar year 2005?

A. Yes, sir.

Q. And directing you within thirty days to contact Court Administration to have a judge set this -- to have a judge designated to hear this case. Correct?

A. (The witness further reviews exhibit.) No, sir, I don't think it does.

Q. Look down at the bottom of the order.

A. (Reading:) "The Court directs the Solicitor's Office to speak with the judge assigned to this case."

Q. Right.

A. "And to the chief administrative judge for administrative purposes to select a firm date for the commencement of a trial which shall begin in 2005."

Q. Okay. Does it say ---

A. I don't see anything about the Court Administration.

Q. And what judge was assigned to this case at that point?

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A. I thought Judge Westbrook was. I never could figure out how it went from hearings before Judge Westbrook to a hearing before Judge Keesley, other than there may have been -- I don't really know that the -- but anyhow, after this, after this April 25th letter, that's when I started writing to the judges.

Q. Who did you write to? You wrote to Judge Westbrook?

A. Judge Westbrook.

Q. Okay.

A. And I sent him, I said -- I wrote to him on May 18th, 2005; and I talked about Judge Keesley's order, and I talked to him about a motion to disqualify you.

Q. Which you had originally brought up orally with no notice to me, a year and a half before, in August 2003. Correct?

A. I brought it up. I don't know when it was.

Q. Right. You hadn't filed a motion, you just started talking about it in open court, and the judge said you had to file it in writing, and a year and a half later you ---

A. No, sir. You objected to it.

Q. Okay. And a year and -- and Judge Westbrook

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told you on the record that I was entitled to notice. And a year and a half later, you still hadn't filed it. Correct?

A. That's right.

Q. Okay. But then when you got an order from Judge Keesley telling you this case had to be set for trial and tried by the end of 2005, then you served a notice to try to get me kicked off the case. Right?

A. To have you disqualified, yes, sir.

Q. Kicked off the case?

A. Disqualified, yes, sir.

Q. Okay. Now, how long has Rick Hubbard worked in your office?

A. A long time. I couldn't tell you.

Q. Ten years?

A. Pardon me?

Q. Ten years?

A. Probably.

Q. And when is the first time you mentioned the possibility of a conflict because Mr. Hubbard had been the law clerk to the trial judge when this case was tried the first time?

A. Hubbard mentioned it to me.

Q. And when was that?

A. I can't tell you.

Q. You don't know?
A. No, sir.
Q. Okay. But you didn't bring that to anybody's attention until the summer of 2005, after Judge Keesley ordered this case be tried by the end of the year?
A. I brought it to your attention in a hearing before Judge Westbrook, and you objected to me making a motion.
Q. No. I'm not talking about kicking me off. I'm talking about kicking yourself off. Did you say anything in that hearing on the record that will reflect it so?
A. I don't recall.
Q. You don't know. Okay. So there's nothing in the record prior to your correspondence in May 2005 alerting the Court to your desire to withdraw from the case or your need to withdraw? As far as you know, that's the first time that anyone outside of your office became aware of it, correct?
A. I don't know whether anybody outside of my office was aware of it or not.
Q. Okay. All right. Then at that point we had a hearing in July at which Mr. Cooper moved to dismiss the case?

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A. Yes, sir.
Q. For lack of a speedy trial? Before Judge Keesley?
A. Yes, sir.
Q. And by the way, in 2005 -- you have expressed mystification about why we were before Judge Keesley rather than Judge Westbrook. Is it not correct that Judge Keesley was the chief administrative judge for General Sessions in the year 2005?
A. He came in in 2005, yes, sir.
Q. So that if a lawyer were to make a motion and no judge was assigned to the case, it would have been before Judge Keesley, correct, because he was the chief administrative judge for administrative purposes?
A. Yeah. That's right. And, you know, I can't understand that, because in his order of April he directed me to talk to the chief administrative judge. And he's the chief administrative judge. I didn't understand that.
Q. That would be to talk to him?
A. Anyway, I couldn't understand that terminology in there.
Q. But isn't that just like saying talk to the Court? Signed by the Court?

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A. No, I -- I couldn't understand why he would put that in there when we are referring to the chief administrative judge when he is the chief administrative -- and he didn't put that title down on the copy that he sent me. It said "Judge." And then to say to talk with him, well, when we set a death penalty case or something, we try to work it out with both sides in order to meet that the best we can.

Q. What effort did you make to work it out with me?

A. Pardon me?

Q. What effort did you ever make to work out the scheduling of this case with me?

A. When you wrote back and said you wanted to try it between May and August because you were teaching at some law school ---

Q. Yes, sir.

A. --- and I had informed the judge that that was impossible under our schedule.

Q. Okay. And that was the extent of your effort to cooperate with me, correct? Is that what you're telling me?

A. For what?

Q. To set a trial date.

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A. I don't know whether anything else was said at those hearings or not, but I didn't contact you personally.

Q. Okay. Then on July 12th, 2005, where Judge Keesley denied your motion to disqualify me, correct?

A. Uh-huh.

Q. And granted your motion to disqualify your office, correct?

A. Uh-huh.

Q. And directed you to furnish the file to the Attorney General, correct?

A. Yes, sir.

Q. At that point there was an outstanding order to try this case by the end of 2005, correct?

A. Yes, sir.

Q. He didn't rescind that order in any way, did he?

A. Not as I know of.

Q. All right. Did you notify the Attorney -- who did you speak to at the Attorney General's Office, by the way?

A. Judge Keesley's order was signed July the 12th, 2005.

Q. Right.

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A. July 13th, 2005, I wrote this letter in exhibit number one to Henry McMaster...

Q. Right.

A. --- telling him about the hearing the day before, and enclosed a copy of Judge Keesley's order disqualifying my office from retrial, and the next paragraph is: "My office will certainly assist with files and documents being transferred to the new prosecutor." I think before I wrote this letter, I think I talked to John McIntosh...

Q. Okay.

A. --- to let him know the letter was coming.

Q. May I see that letter?

A. Sure.

Q. (Mr. Bruck reviews document.) All right. There is nothing in that letter alerting the Attorney General to the fact that there is a court order requiring that the case be tried by the end of the year, is there?

A. Yes, sir.

THE COURT: Can I stop you for a second, Mr. Bruck?

MR. BRUCK: Yes, sir.

THE COURT: Maybe you can explain your -- part of what's going on in your head, and then he can

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explain, too.

MR. BRUCK: Yes, sir.

THE COURT: This whole process is somewhat foreign to me, because, I mean, you know, I've had eight assigned to me and it's been my practice that no one touches them other than the presiding judge, except issues as to counsel sometimes, to go ahead and appoint counsel to get things moving even though ---

MR. BRUCK: Right.

THE COURT: --- the assignment has not been made. I've never known a judge to touch a case before the appointment has been made. Is that the practice in Lexington?

MR. BRUCK: Judge, I am mystified by this, too, and I am simply trying to explore something that I've never seen before.

Our contention is, in effect, that the state lodged a sit-down strike in this case. And the one thing they did to ensure that no one would call them on it was they made no effort, as is normally required to be done, to get a judge assigned who would do exactly what Your Honor has done, which is to start the case moving.

THE COURT: Well, according to this order

by Judge Keesley, he said he was giving notice that the Chief Justice, Court Administration -- that he saw the need for expedited steps to bring this matter to trial. Was that done? Was a copy of the order sent? I mean, I thought it was a pretty interesting statement on his part, he gave the Chief Justice notice.

MR. BRUCK: Well, at that point, Judge Keesley took it upon himself at some point to notify Court Administration, and then there was then apparently a brief delay because Judge -- Chief Justice Toal is disqualified from the case.

THE COURT: She's disqualified from the case?

MR. BRUCK: Right. So it apparently took a little longer than it normally does, but not much. We're only talking about a few weeks.

THE COURT: Well, what I'm asking you is: As far as your position being advocated, from July 12th, if Judge Keesley gave the people in Columbia notice about the need to get this thing moving, are you attributing some responsibility to the state for a judge not being appointed even though the chief judge gave notice to them about the need to get this thing going?

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MR. BRUCK: Well, we don't -- we don't have the correspondence to the Chief Justice or to Court Administration, so we don't know the exact date, but Mr. Myers has already testified that he frequently calls Court Administration himself and not required to wait for the judge to do anything.

THE COURT: I agree with that.

MR. BRUCK: And if the state were making any effort of any sort to move this case along, that's what they would have done.

Now, as far as from July 12th on, until Your Honor was appointed, it sort of goes into a bit of a black box, but -- and there are some other issues to be explored there, as well, but I'm just -- I'm ploughing the ground in the same black box that Your Honor is. I don't ---

THE COURT: I mean, I'm just mystified that the first thing that was not done in this case is just to get a judge appointed.

MR. BRUCK: Right.

THE COURT: Everybody knows that's the practice.

MR. BRUCK: Yes.

THE COURT: All right. Go ahead.

MR. BRUCK: We then had a judge to go to,

because there was a chief administrative judge, and that's why we went first to Judge ---

THE COURT: That's my point. I'm saying that if this were down here, for example, and -- I've seen it where counsel is appointed right away because someone presents the matter to the Court to get the counsel appointed, whatever, to get things moving. Even though we all know amongst ourselves that the judge handling the case usually handles the appointment of counsel, if we don't hear something, we might go ahead and appoint counsel or remove counsel. I could see a recusal or something being handled.

MR. BRUCK: Right.

THE COURT: But other than that, I don't know any judge in the state whose inclination wouldn't be to just say let's get the judge appointed.

I mean, this whole process is just interesting to me. I mean, I'm just wondering if it's done differently there.

MR. BRUCK: Well, I think it is. And there are a few more issues.

BY MR. BRUCK:

Q. Mr. Myers, you said there was a backlog of

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about eight death penalty cases?

A. Do you want to withdraw your question on this letter to the Attorney General about it being tried in 2005?

THE COURT: I mean, I guess what I'm saying -- is that withdrawn?

MR. BRUCK: Yes.

THE COURT: All right. I guess what I'm saying, too, like even here, for example, oftentimes the public defender notifies the Court we need a second counsel appointed right away, for example.

MR. BRUCK: Right.

THE COURT: And, I mean, there's just something moving right away. I'm just at a loss. Go ahead.

BY MR. BRUCK:

Q. Mr. Myers, you -- Mr. Myers, you said there were about eight other death penalty cases pending?

A. Now?

Q. As of the beginning of 2005, let's say.

A. Maybe more.

Q. Okay. And I'd like now just to ask you about cases in which the entire case had to be tried, either for the first time or on a retrial. There's this case, right, where the date of arrest was 11 --

10/11/89, October 11th, 1989. Correct?
A. You're asking about what now?
Q. Cases in which the entire case was pending trial, not just resentencing but the entire case, guilt and innocence as well as punishment. How many cases like that would have been at the beginning of 2005?
A. I think it was one, maybe two, that were just for resentencing only.
Q. Okay. Did Judge Keesley direct your office to -- at the beginning of 2005 to work with the clerk to compile a list of all pending criminal cases that were more than a certain amount old, more than a year old?
A. No. I think what we did at the first of every year is go over all of them, all capital cases, no matter what the age, or potential capital cases.
Q. Okay. But was there also a list compiled at Judge Keesley's direction of all pending criminal cases that were over a year or...
A. Oh, yeah.
Q. And a list like that was compiled?
A. Yes.
Q. Eventually?
A. You're talking about all old cases in the ---

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Q. Yes.
A. --- General Sessions court roster? Oh, yes.
Q. Yes. I'm handing you a 33-page printout dated 2/7/2006 which reflects 1,082 cases, the oldest of which -- the second oldest of which is this one and the most recent of which shows a date of arrest of 11/12/03, and I ask you if this is the list or appears to be the list that was compiled at Judge Keesley's direction?
A. You'll have to give this to Dayton, because Dayton is in charge of old cases. I'm in charge of the ---
Q. All right. Would that list refresh your memory if I ask you ---
A. You'll have to ask Dayton.
Q. You don't know anything about it. Okay.
A. Well, yes, I've seen it, and I've asked him from time to time what's the status, that we're bringing in 200 defendants every other week or so, to try to find out where they are and what the status is.
Q. All right. We'll ask him about that.
Did you notify the Attorney General's Office orally of the fact there was an order to try this case by the end of 2005 when you -- at any time after

the hearing before Judge Keesley when you were ---

A. Here again, Judge Keesley signed the order on July 12th.

Q. Right.

A. I am confident that I called John McIintosh with the Attorney General's Office and told him what had happened and that I was going to be sending a letter over and I needed to know what to do with the file. The letter was -- I probably called him while we were -- before we typed the letter up, to find out who he wanted me to send it to and what he wanted to do.

There's no doubt about it, and we sent him the order, that in there -- attached to that letter to Henry McMaster from me on July the 13th, the day following Judge Keesley's order on July 12th, the first paragraph says in here about issues already covered in the order of April 25, 2005, directing that the case be tried in 2005.

Q. Very good. So that was the notice you provided, a copy of the order?

A. And I probably told Henry -- John McIntosh the same thing when I talked with him.

Q. And the record ---

A. Because there was an urgency of getting

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somebody appointed to the case now from the other Solicitor's Office.

Q. Okay. And did you make a recommendation as to which Solicitor's Office might be an appropriate choice?

A. No, sir.

Q. Okay. And have you had any further involvement in the case in any way, shape, or form since then?

A. The only involvement we had was the transferring what files my staff had put together.

Q. Okay. Has any member of the staff of the First Circuit Solicitor's Office contacted you or your office for assistance in getting this case ready for trial?

A. They could have contacted my office about files and stuff. I have not been contacted personally.

Q. All right. And do you know whether there's been contact with any other member of your staff other than concerning getting ahold of the file?

A. Come again?

Q. Do you know whether the First Circuit Solicitor's Office has been in touch with any -- any member of your staff concerning getting this case

ready for trial other than getting ahold of the file?
A. I don't know. I wouldn't be surprised if there had been contact, but I don't know. No one has contacted me personally.
MR. BRUCK: Okay. Your Honor, if you'll bear with me for just a moment. I appreciate your indulgence.
BY MR. BRUCK:
Q. One last question just to sum up, Mr. Myers. Can you give us the reason why this case has not yet been tried?
A. Yes, sir.
Q. What is the reason?
A. Because a judge didn't set it for a date certain until Judge Keesley set it to be tried in the latter part of 2005.
Q. And why was that?
A. You'll have to ask the judge.
Q. Who is deceased.
A. It was my understanding all along that this case had been assigned to Judge Westbrook. All the hearings were held before him until the first of the year in 2005.
Q. Are you aware that Judge Westbrook recused himself from hearing a post-conviction hearing in

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this matter?
A. No, sir.
Q. You didn't know that?
A. No, sir. Because he heard the motions that you made after this case was sent back by the Supreme Court.
Q. Okay. And at the time I made those motions, he was chief administrative judge in the Eleventh Circuit, right?
A. He was the chief administrative judge ---
Q. So if no other judge -- if no other judge had been especially assigned to this case, he was the only judge to go to, right?
A. Oh, yeah. I'm sure. He was the chief administrative judge.

MR. BRUCK: Thank you. Nothing further.

THE COURT: Any questions?

MR. BELL: Just a couple, Your Honor.

CROSS-EXAMINATION

BY MR. BELL:
Q. Solicitor.
A. Yes, sir.
Q. Death penalty cases, they are a little different than the run of the mill criminal case; is that correct?

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A. Considerably.

Q. How long do they take to try at a minimum in your experience?

A. How long do they take to try?

Q. Yes, sir. At a minimum.

A. By selecting a jury, trying the case, a week and a half, a week. At least a week and a half or so.

Q. And they take a significant chunk of court time to be -- to be prosecuted. Is that correct?

A. Yes, sir.

Q. And back in 2003, can you estimate about how many cases, death penalty cases you had pending?

A. Ten, give or take. You have to understand, back in 2003 we were in the old courthouse in Lexington. It was during all that time that -- we moved in and out of our old courthouse twice. That's four moves. Court was shut down because of the mold problem. We moved into the new building. We moved five times in the -- in a time period and in which court was cancelled.

And it was mentioned about the *Northcutt* case. We tried the *Northcutt* case in whatever year they said it was. Back then, we only had one court running, so that -- that effectively eliminated a

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month of court there.

We probably lost seven or eight months more of court with moving in and out of the courthouse because of the mold and the new courthouse.

So court time was substantially consumed since 2000 in Lexington County for various reasons.

Q. And when this case was returned in August, late August of 2003, there were matters that were already scheduled; is that correct?

A. Some were.

Q. So this just kind of plopped down in the middle of what had been scheduled; is that correct?

A. Well, this was another log in the fire. That's the best way to describe it.

Q. And originally back -- I believe the case was originally tried in 1991, and the defendant was convicted; is that correct?

A. Yes.

Q. So there was no reason that it couldn't be tried again; is that correct?

A. None that I know of.

Q. I mean, you're not intending -- your office didn't intentionally delay it for any reason; is that correct?

A. No.

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Q. I mean, it was just a matter of getting the witnesses back together; is that correct?
A. And getting it organized, like any case we have.
Q. But basically what you're saying is: With the move from the courthouse and the backlog of the schedule, which I believe is reflected in Judge Keesley's order, are the main reasons that this case was not heard; is that correct?
A. In summary, yes.

MR. BELL: Thank you. I have nothing further.

REDIRECT EXAMINATION

BY MR. BRUCK:

Q. Mr. Myers, when did you move into the new courthouse?
A. I think it was 2004. I'm not sure.
Q. When, beginning or end?
A. Pardon me?
Q. The beginning of 2004, correct?
A. It took us several months, but I think we started -- I think we started in December and the last of January or February.
Q. You began in December 2003 ---
A. March.

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Q. --- to move into the new courthouse, right after the *Northcutt* case, correct?
A. No, sir. February the 14th of 2003, we were in the old courthouse. I can tell you about that date.
Q. No, I understand that. I'm talking about the end of 2003 and the beginning of 2004, that was when you moved into the new courthouse, right?
A. That sounds about right.
Q. Okay. So you've been in the new courthouse for two years. Correct?
A. Yes, sir.
Q. And in that case, you have tried no death penalty cases?
A. That's correct. We've tried no death penalty case in the new courthouse.
Q. You have not?
A. We have not.

MR. BRUCK: Thank you. That's all I have.

MR. BELL: Nothing further, Your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

MR. BRUCK: I'd ask that Mr. Myers be

excused, although I know Mr. Riddle doesn't want to be left.

THE COURT: Any objection?

MR. BELL: No objection.

THE COURT: You may be excused.

THE WITNESS: Will I get a copy of this back, Judge?

(The witness refers to Defendant's Exhibit No. 1.)

THE COURT: Yes. We'll hold it -- well, do you need that?

MR. BRUCK: Well, we can copy everything in there, and let counsel look at what we're substituting, and send it back to Mr. Myers. I don't know if we'll do it right away, but...

THE COURT: Okay.

MR. BRUCK: --- we'll do it by the end of the day.

THE COURT: All right.

THE WITNESS: There's no rush.

THE COURT: That's all right.

THE WITNESS: Thank you.

THE COURT: Just put the copy in the record and give him the original back.

MR. BRUCK: Thank you. That'll be fine.

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(Copy of Defendant's Exhibit No. 1, file of documents from Solicitor Myers, to be substituted for original.)

(The witness is excused from the witness stand and leaves the courtroom.)

MR. BRUCK: Dayton Riddle.

(Mr. Riddle enters the courtroom.)

CHARLES DAYTON RIDDLE, III,

being first duly sworn by the clerk, is examined and testifies as follows:

THE CLERK: Please be seated. If you would, please state your full name to the Court and spell your last.

THE WITNESS: Charles Dayton Riddle, R-I-D-D-L-E, the Third.

DIRECT EXAMINATION

BY MR. BRUCK:

Q. Good morning, Mr. Riddle.

A. Good morning.

Q. What do you do for a living, sir?

A. I'm a deputy solicitor at Lexington County.

Q. And how long have you been employed in that capacity or as an assistant in Lexington County?

A. '91 or '92. '91 or '92.

Q. Fifteen years, thereabouts?

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A. Ballpark, yes, sir.
Q. All right. And were you the member of Mr. Myers' staff to whom the case of Tony Cooper was assigned after the final reversal by the Supreme Court in August of 2002?
A. I'm the one that was dealing with you, Mr. Bruck. I don't know that it was ever formally assigned to me.
Q. Okay. Well, how does -- how does that work? How many lawyers are in your office?
A. Total?
Q. Uh-huh.
A. Well, counting the tri-counties and Family Court, roughly 20, I guess.
Q. Okay. And in -- for murder cases, I assume that senior lawyers within the office are assigned those cases?
A. There's about five of us that have those cases, excluding Mr. Myers.
Q. And, of course, you're one of those five?
A. Yes, sir.
Q. And to get a murder case, it's formally assigned to you in some way?
A. I'm sorry?
Q. To get a murder case on your plate, it is

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formally assigned to you in some way through an office procedure?

A. It depends. Some cases are assigned to me. Murder cases or other kinds of cases are assigned to me. Some cases are assigned to Solicitor Myers, and yet I would be doing legwork on them.

Q. Okay. Which case did this -- which category did the case of Tony Cooper fall into?

A. I don't think Mr. Cooper or Mr. Southerland ever appeared on my roster, on my personal roster.

Q. Okay. Would that mean that it was being handled by another member of your staff or by Mr. Myers?

A. It could be either way. I would suspect that this was on Solicitor Myers' roster, but I -- I don't recall ever going and looking in the clerk system -- in the computer system to see, you know, whose initials appeared by that case.

Q. Okay. And what was the first contact you had with this case after it was reversed by the Supreme Court, after the final charges were reversed in August of 2002?

A. I think the first contact I had was an e-mail from you.

Q. Okay. And do you have that e-mail with you, a

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copy of it?
A. I should. The first one that I remember was in August of '03.
Q. In August of '03?
A. Yes, sir. That's the first one I could find.
Q. Okay. Prior to that, do you recall getting a phone call from me in June of '03 to discuss the setting of the case for trial?
A. I may have; I may not have.
Q. Okay.
A. I can show you this e-mail.
Q. If you would.
A. (The witness tenders document to Mr. Bruck.)
Q. Okay. And the e-mail concerns scheduling a speedy trial motion. Correct?
A. Yes, sir.
Q. And prior to that, that e-mail seems to reflect that we had had some ongoing communications before that, correct?
A. Yes, sir.
Q. All right. And but you don't remember when they were?
A. No, sir. I mean, I know we talked on the phone, but specifically when, I couldn't tell you.
Q. Okay. Other than responding to inquiries from

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me about a speedy trial, what involvement did you have in this case, in Tony Cooper's case, between August 2002 and the speedy trial motion in August of 2003?

A. None that I can think of.

Q. Okay. So you weren't getting this case ready for trial?

A. I was not -- no, not at that point, I was not.

Q. Okay. And as far as you know, no one else was either?

A. I don't know.

Q. Had you ever heard that anyone other than you or Mr. Myers in your office after August 2002 had any involvement whatsoever in this case in any way, shape, or form?

A. No, sir.

Q. Not that you heard?

A. Not that I know of.

Q. Okay. So a pretty safe bet that if you didn't do it, Mr. Myers must have or else it wasn't done?

A. No, I wouldn't say that.

Q. Okay. But you don't know?

A. But I don't know.

Q. All right.

A. But I'm not going to speculate about what

Mr. Myers may have done with one of the other solicitors in the office.

Q. Okay. I understand. All right. So I take it from that that Mr. Myers did not give you any direction about what to do about getting this case ready for trial in 2002?

A. None that I recall.

Q. Okay. Or 2003?

A. None that I recall.

Q. Or 2004?

A. None that I recall.

Q. Or 2005?

A. None that I recall.

Q. And did you take it on your own initiative to start readying this case for retrial?

A. No, sir.

Q. You didn't contact witnesses?

A. Did I?

Q. Contacted or direct ---

A. I would put that in the -- in the prior, the overall question...

Q. Right, okay.

A. --- you know. I don't know that you need to go through every...

Q. Then I won't. Thank you. Did it come to your

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attention that there was any problem, any proof problem in this case, between 2002 and today? And let me be more specific. That would include unavailable witnesses, uncooperative witnesses, evidence that had disappeared or become unavailable for whatever reason, or a change in the law.

A. I don't follow what you're asking, Mr. Bruck.

Q. All right. You said that you didn't do anything to get this case ready for trial between 2002 and now. Right?

A. Yeah.

Q. Okay. And you're not aware of anyone else in the office that did...

A. No, sir, I'm not.

Q. --- anything? And you can't even name someone who might have, other than Mr. Myers?

A. Well, I certainly can name other people, but I don't know that they would have done anything.

Q. I got you. Okay. No reason to name anyone who...

A. Again, I'm not going to speculate about it, Mr. Bruck.

Q. Okay.

A. I don't know. So the answer is I don't know.

Q. You're quite right. I withdraw the question.

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In any way did it come to your attention that there was any problem with retrying this case due to the unavailability of a witness or for any other reason between 2002 and now?

A. I don't know of any witnesses that are unavailable.

Q. So the answer to my question is no?

A. Ask the question again, and then I'll tell you the answer.

Q. Have you at any time between 2002 and today been made aware of any problem that would inhibit or make more difficult the re-prosecution of this case due to either the unavailability of witnesses or any other evidentiary problem?

A. The only thing that I can think of is what was in the basis of the motion to recuse you.

Q. And that had to do with the fact that I had taken a statement from the codefendant at some point, Mr. Southerland ---

A. Right.

Q. --- at his trial?

A. And apparently Mr. Southerland may have made differing statements at some point. I don't know.

Q. Okay. Of course, Mr. Southerland is not a witness for the state as far as you know, correct?

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A. I don't know whether he is or not.
Q. All right.
A. I know that he is represented by Mr. Rast and Mr. Floyd, I believe.
Q. Okay. Do you know why this case has never been set for trial?
A. Do I personally?
Q. Yes, sir.
A. No, sir.
Q. You do not know why?
A. No, sir.
Q. Were you part of any of the discussions concerning the decision that was made by the Solicitor's Office to move to be recused on the grounds of conflict of interest?
A. No, sir, I didn't know anything about that. I knew that Rick Hubbard had clerked for Judge Long a long time ago.
Q. Uh-huh.
A. I did not realize that Rick Hubbard had been involved with Judge Long at the time of the original trial. I didn't know a thing in the world about that.
Q. Okay. Now, I'm going to hand you a 33-page case roster and ask you -- it's not stapled, but we

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can staple it if we need to -- and ask if you can tell me what that is.

A. Yeah. That's a roster that I generated.

Q. Okay. And what is that -- describe for us what the roster is.

A. It's the 1156 oldest defendants pending in Lexington County as of a certain date, and I'm not sure what that date is.

Q. And might that date have been one year after the youngest case or in November of...

A. No. I'm -- what I'm saying is, I don't know what the date was that I originally generated this roster.

Q. Okay.

A. It was ballpark November of '05.

Q. Okay. And what is the oldest case shown on that roster?

A. Raymond Patterson.

Q. All right. And Raymond Patterson is pending only resentencing, correct? His death sentence was ---

A. Yes. I think that's correct.

Q. Okay. So at least serving a sentence or at least has a valid conviction for murder, that is not disturbed by any...

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A. Not as far as I know.
Q. Right.
A. Correct.
Q. Okay. And he's just waiting for life or death?
A. Yes, sir.
Q. Okay. What's the next oldest case?
A. Cooper.
Q. This case?
A. Uh-huh.
Q. Okay. When your office schedules, if you know, cases for trial, do you pay any attention to the amount of time that the case has been pending or how old it is?
A. Do I pay any attention to that?
Q. Yes.
A. Certainly.
Q. Certainly. And why do you -- why is that important?
A. All kinds of different reasons, Mr. Bruck. I mean, it's important in differing cases for different reasons. I mean, if it's a unlawful weapons charge and it's 90 days old and the guy is in jail, he's just about maxed out the sentence. So, you know, a case like that, you may have a different timetable of

when they need to be tried than others, but, I mean -- I don't know how to explain that answer.

Q. Okay. I don't know that you really need to.

MR. BRUCK: I'd like to offer this roster that Mr. Riddle prepared.

THE COURT: Mr. Bell.

MR. BELL: No objection.

MR. BRUCK: All right. We're going to need to both mark it and staple it, if we could, Madam Court Reporter.

(Defendant's Exhibit No. 2, roster of pending cases, is marked for identification and received in evidence.)

MR. BRUCK: Bear with me.

BY MR. BRUCK:

Q. Mr. Riddle, did you ever have any meetings with Mr. Myers concerning the case of The State against Tony Cooper between 2002 and today? Well, I should say yesterday. You drove down here together.

A. We had talked about it on various occasions, but I guess it depends on how you define the word "meeting."

Q. Okay. Well, do you remember any discussion with Mr. Myers about getting this case set for trial?

A. I don't have any specific recollection of it,

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no, sir.

Q. Okay. Do you know why it wasn't set for trial?

A. I've already indicated to you that I don't know.

MR. BRUCK: Okay. I think that is all I have. Thank you, sir.

MR. BELL: I don't have any questions for this witness, Your Honor.

THE COURT: You may step down.

(The witness leaves the witness stand.)

MR. BRUCK: We've been at this an hour and a half. I'm prepared to argue, but maybe the Court's pleasure -- I don't know if we can take a short recess?

THE COURT: Yeah, let's go ahead and take a short break. Thank you.

MR. BRUCK: We'd ask that Mr. Riddle be excused.

MR. BELL: No objection.

THE COURT: You may be excused, sir.

(The witness is excused from the witness stand.)

THE COURT: We'll go ahead and take a short break.

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(A break is taken at approximately 11:25 a.m.)

(The hearing reconvenes at approximately 11:35 a.m., the defendant being present with counsel, and the following proceedings were had:)

THE COURT: All right. Yes, sir.

MR. BRUCK: Thank you.

Your Honor, this is a motion to dismiss all charges against Mr. Cooper for the denial of his Sixth Amendment and South Carolina state constitutional rights to a speedy trial.

Now, I have to say, I've only been practicing law for thirty years in May of this year, and this is the first time I have ever made a motion like this, and I know that Your Honor probably has not heard very many and probably has not granted many at all.

Typically, a speedy trial motion occurs when there's been a substantial delay by a defendant who didn't want a trial, and when he finally has to face it, he for the first time remembers that he had a right to a speedy trial and claims it's been denied.

And those are routinely denied by the courts, and we don't have much case law on the

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granting of speedy trial motions. This is the exception, though, to the rule.

One can look through the reported decisions of the U.S. Supreme Court and for the South Carolina Supreme Court and not find another record where the evidence requiring dismissal is so compelling as this one. I didn't realize that when I began working on this motion, because I knew the facts of this case, but I didn't fully grasp how strong the law is in Mr. Cooper's favor.

It is not an easy thing to dismiss charges, for a judge, for any judge, and less so in a murder case and less so in a murder case where the defendant was once sentenced to death, albeit at a trial that has been found not to have been fair, but I would submit that this is that rarest of case where Your Honor's duty is to grant the motion, and I'd like to explain why.

THE COURT: Yes, sir.

MR. BRUCK: Before I do, I want to say that this -- I have been representing Tony Cooper for fifteen years. And he first got his murder conviction reversed, and then it took eight more years in order to persuade the Circuit Court and the Supreme Court that his other convictions should be

reversed.

And Mr. Cooper has been denying his guilt from the day he was arrested. He actually tape recorded, he tape recorded, the interrogation with the police because he wanted to be absolutely sure that he was never misquoted about what he was saying. The police might have wanted to tape record it themselves.

And he has consistently from that day in October 1989 until today denied guilt in this case, and he has waited and waited and waited for what in contemplation of the law will be his first fair and lawful trial.

Finally, in August 2002, all of the charges were reversed, and he was back to square one. And at that point, we encountered what I referred to before and I think now that Your Honor has heard the testimony can fairly be described as a sit-down strike by the prosecution.

This is the oldest case, not counting re-sentencings which are a different category, and there was simply a concerted refusal to even think about bringing this case to trial.

Now, the framework that Your Honor must use, of course, is the four-factor test under *Barker*

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v. *Wingo* which has been applied many times by our State Supreme Court.

The first factor is the length of the delay. A year is presumptively prejudicial, as the court noted in *United States vs. Doggett* which is the most recent speedy trial decision of the United States Supreme Court.

THE COURT: But they used the language it's "presumptively prejudicial"? I know you said that earlier in reference to *Barker*, but *Barker* didn't say that. *Barker* said that until we find that -- that line where it is presumptively prejudicial, then we have to look at all the factors.

MR. BRUCK: Right. Well, though, the one year is -- they explained it in both cases, I think, or at least in *Doggett*, that presumptively prejudicial is used in two different ways.

One is the triggering requirement that you employ the four-factor test. A year is on the far side of what is required.

THE COURT: Right.

MR. BRUCK: And there are many speedy trial cases where you don't even need a year.

THE COURT: Now, I might be more inclined to agree with that.

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MR. BRUCK: Right.

THE COURT: That there is a time period for which you should go through all the factors.

MR. BRUCK: Right.

THE COURT: I don't think that's what presumptively prejudicial means insofar as there is prejudice to your client.

MR. BRUCK: Okay.

THE COURT: And I'm looking at *Barker vs. Wingo* to make sure that my recollection is correct, and what they did -- the only context that they used presumptively prejudicial was unless there is that period then you look to all the factors.

MR. BRUCK: Yeah, no, that's right. If I implied differently, I misspoke. I didn't mean to suggest that the one year takes care of the prejudice inquiry. It certainly doesn't.

THE COURT: All right.

MR. BRUCK: And I'll get to that. That's the last factor.

But, of course, we have now a three-and-a-half year delay. And I assume the case can't be tried today even if -- so the delay would be longer before this case is called to trial.

Your Honor would look through the

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South Carolina cases and there are precious few that involve and allege anything like this, and the ones that do usually involve a greater or lesser extent of consent to the delay by the defendant.

That gets me to the next factor, which is the demand, and that is part of what really separates this case out. I'll touch on reason for delay, I think that's actually the number two factor, but I want to deal with the issue of the demand for speedy trial, because that is what makes this case different from almost every other South Carolina case. It's what makes it different from *Barker vs. Wingo*. It's what makes it different even from *Doggett* where the defendant prevailed. Of course, *Doggett* couldn't have demanded it because he didn't know about the charge.

THE COURT: In that case, did they show prejudice?

MR. BRUCK: Absolutely not. Not an ounce of prejudice. Mr. Doggett wasn't even in jail. They couldn't possibly have shown any sort of prejudice because he had been going on with his life and didn't even know that there was a charge outstanding. And *Doggett* is the case on which we place very heavy reliance on the prejudice, and I'll come back to

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that.

THE COURT: Do you have a copy of that case?

MR. BRUCK: Yes.

THE COURT: Can I see it?

MR. BRUCK: Yes.

(Mr. Bruck tenders document to the Court.)

MR. BRUCK: In our reply brief -- well, I'll let Your Honor examine the case.

(The Court reviews document.)

MR. BRUCK: Judge, we draw your attention to the part we quote in our brief, 505 U.S. 655, 656, dealing with prejudice.

(The Court further reviews document.)

THE COURT: All right.

MR. BRUCK: Yes, sir. Before leaving length of delay, I should have responded to a point the state made in their brief.

According to the state, the delay was not that big a deal because of the fact that this is -- that its significance is diminished by the fact that Mr. Cooper has already been retried one time and the delay there was only a little bit over -- over a year.

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That actually cuts the exact opposite way. I mean, there are no South Carolina cases on point, and I've cited some cases from other states that make a perfectly commonsensical point; but when the state has a trial transcript showing the whole roadmap of how to try the case, it takes less time not more, normally, unless there is some particular problem, and I certainly canvassed that.

THE COURT: Well, does that same fact work against the defendant insofar as this concept of presumptive prejudice in *Doggett*?

In *Doggett*, the court specifically indicated that that presumption of prejudice had not been rebutted. In *Doggett*, there's no facts developed, there's no witnesses that were procured.

You have all of that just the opposite here, correct? You have all your witnesses identified, and you have testimony that's been preserved.

You don't have some of the problems that they were concerned about in *Doggett* that the court was suggesting takes place by the failure of a prosecution to not try the case, that it affects your ability to develop your case in an evidentiary manner. That's not here, right?

MR. BRUCK: Let's keep in mind -- it's true that there is a transcript for both sides. What we don't know yet is whether we'll be impugned in presenting live testimony, which is ---

THE COURT: Let's stop at that point: What we don't know yet.

MR. BRUCK: Right.

THE COURT: All right. Now, what does "yet" mean to me?

MR. BRUCK: What that means is, without a trial date we cannot subpoena our witnesses. The final trial preparation will reveal whether or not there are proof problems on our side that we didn't know about yet.

The state, apparently, except for whatever has been done in the last few weeks or couple months, and all this time, the testimony from the Eleventh Circuit's office is they haven't done a lick of work in preparing the case. So there's nothing that we can begin getting new discovery about. We don't know.

But let's recall that there are three forms of prejudice, and they have to be analyzed separately, and we have the first two in spades.

The first form of prejudice is pretrial

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confinement. *Barker vs. Wingo*, the man was out on bond for all the ten months, and the court nevertheless took all that very seriously.

Tony Cooper has been held in a death row cell, in isolation, in the most severe and oppressive conditions that one could possibly imagine, for day after day and week after week and month after month and now it's been year after year.

Now, the only way for us to think that that is not the most horrendous type of prejudice is to suppose that because he had already endured many years of this, despite his protestations of innocence and despite his claim, ultimately vindicated, that he hadn't gotten a fair trial, that it doesn't hurt Tony Cooper as much as it hurts us.

And I have to say that that is a natural way of -- that those of us who work in the criminal justice system tend to fall into; that there are people on the inside, and there are people on the outside, and even though if I were to go to death row for one night, I would remember every hour of that night for the rest of my life, that somehow three and a half extra years on a death row for Tony Cooper isn't prejudicial. I know the Court does not imagine that that could possibly be true.

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This is torment, and it is more torture because he thought he was going to have a chance to vindicate his innocence three and a half years ago, and here we still are.

He thought he was going to have a chance to vindicate his innocence when the state promised to try the case in the spring of 2004. And then they didn't do it.

And then he had a court order that it was going to be tried in 2005, and they still haven't done it.

Now, that goes to other *Barker* factors, but it certainly goes to the issue of prejudice. You cannot treat an American citizen like that without a very good reason. It is cruel, it is -- it is impermissible.

That's the first form of *Barker vs. Wingo* prejudice, and we could hardly have more of that. You will not find another speedy trial case in which a man has been held in maximum security death row confinement as a pretrial detainee for three and a half years. If there is one, I am sure Mr. Bell's research would have turned it up.

This case is *sui generis*. It is out there at the outer edge of prejudice under the *Barker*

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analysis. Okay. That's the first form.

The second form of prejudice is anxiety and the stress of a pending charge, and I don't know how anything can be more stressful and more anxiety provoking than the fear of being convicted and sentenced to death of a capital murder case of an infamous crime like this.

Mr. Cooper is presumed innocent. So we do not analyze his fear and anxiety as though he were guilty of this crime. We analyze and we empathetically imagine his fear and anxiety as though he were innocent of the charge. And for three and a half years, this sword hangs over him.

Now, again, you will not find another speedy trial case where a man has been dangled over the abyss for three and a half years pending trial for his life. There ain't one. This case stands alone.

Those are the first two forms of prejudice, and yet you then -- yes, there is the third form of prejudice under the *Barker* four factors which is effect on Mr. Cooper's ability to defend himself. And at this point, we don't know.

THE COURT: All right.

MR. BRUCK: Yes, sir.

THE COURT: Why would that be -- did not the court in *State vs. Foster* indicate that they had a five-and-a-half year period of delay in South Carolina and indicated that the government demonstrated a lack of prejudice? Now, why would that have not been the same case there? It's an even longer period.

MR. BRUCK: If you'll give me the date of *Foster*, I will ---

THE COURT: 1973.

MR. BRUCK: I'm sorry?

THE COURT: 1973.

MR. BRUCK: Okay. *State vs. Foster* is the case where everybody jumped bond. The reason for the five-and-a-half year delay was the defendants not only didn't want a trial, a speedy trial; they didn't want any trial at all. They didn't even want to be in South Carolina. Five and a half years was caused by their -- by their decision to jump bond and flee the jurisdiction.

Now, once they were securely locked up for other crimes in Florida, of course, they then all of a sudden become interested in a speedy trial right in South Carolina. And they were tried within 18 months of their making a demand, or I think it

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was 18 months or 15 months. Let's see. The court said:

"The fact the defendant did not request a trial for some five and one half years and that the state had shown a lack of any prejudice to the defendants means that this speedy trial demand was not -- was not meritorious.

"There was a one-and-a-half-year delay subsequent to the defendant's demand, and that can be attributed to the state's administrative procedures in returning the defendant to South Carolina."

Well, why did the state have to get them to South Carolina? Because they had run.

Now, what has Mr. Cooper done to be responsible for one day of this delay? Nothing. On the contrary, Mr. Cooper has been moving for a speedy trial, he has been demanding a speedy trial, he has been begging for a speedy trial, and ---

THE COURT: I'm inclined to agree with that. How do you still respond to my earlier question, has the state rebutted -- let's just call it presumptive prejudice. Has the state rebutted that?

MR. BRUCK: Well, they certainly haven't rebutted the experience of leaving this man as a

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pretrial detainee on death row. If they want to put on witnesses to say it wasn't so bad, I guess they can. They certainly haven't rebutted the anxiety and the stress of dangling in this situation for three and a half years.

And at this point, the only thing they have said to rebut the last factor -- which we don't even need. I mean, *Doggett* is the case that says if you make a strong showing on the first three factors, you don't need any of the forms of prejudice on the fourth factor.

THE COURT: Well, I mean, *Doggett* specifically indicated that that presumption had not been rebutted. That's what was important to the court...

MR. BRUCK: Right.

THE COURT: --- the presumption of prejudice. Let's say they call it presumptive of prejudice. *Doggett* indicated that it had not been rebutted.

MR. BRUCK: Well, like I say, Your Honor ---

THE COURT: That's why my question is, has it been rebutted. Does it work the opposite when you actually have trial testimony that's preserved?

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No dispute at this time as to whether or not witnesses will be available. Do all those go into the pot to say that prejudice has been rebutted, unlike -- we haven't had all those factors in the other case.

MR. BRUCK: I will acknowledge that until we do final trial prep, we cannot make a further showing, because that's when you encounter small things that really hobble a case, the missing witnesses that we thought were there that aren't that may have to be presented through a transcript in a much less compelling way, and so on and so forth.

THE COURT: So what happens if the state stands up and says that? The witnesses' testimony has been preserved; there's no indication they will not be here; we had a prior trial; yes, there's a delay, but we rebut that prejudice by the fact that the defendant's case has not been impaired in any way.

MR. BRUCK: No. All that does is rebuts that one of the three forms of prejudice. And even if the prejudice was rebutted entirely, even if the state could somehow show that he didn't suffer from three and a half years of pretrial confinement and he didn't experience any anxiety, and that is to say,

even if the state could rebut the entire *Barker vs. Wingo* prejudice showing, which obviously they can't, that just gets you to *Doggett* which says, okay, so there isn't a showing of effect on the trial, but what about the other three factors? *Doggett* is a case where -- there was no -- it's not that he also showed prejudice. It's that an actual showing of prejudice was not -- was not required.

THE COURT: And I just think that's totally consistent with the jurisprudence that no one factor controls...

MR. BRUCK: Right.

THE COURT: --- in its most elementary form.

MR. BRUCK: That's right. No one factor controls. So that even if the state can say that because we've got a transcript to look at and a transcript to guide our trial preparation, just like they do, that doesn't end the inquiry.

THE COURT: Then why does *Barker* say that it had been un-rebutted? I mean -- yeah. Why did *Barker* say it had been -- I mean, *Doggett* say it had been un-rebutted?

MR. BRUCK: I guess because -- I guess because the state -- the government, the federal

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government didn't make any showing of why it had no -- why the delay had no effect on *Doggett*'s.

The state can't do that either. I mean, the mere fact that there is a transcript and we have a list of witnesses and their testimony has been preserved, let's not forget that this is the testimony that was sufficient to convict Mr. Cooper.

THE COURT: I'm not saying -- not just the mere transcript. The fact -- the lack of any indication to the Court that the witnesses are unavailable, also, or that the defense has been impaired in any type of way.

While I understand actual prejudice may not be shown, I want to understand why the *Doggett* court said presumption of prejudice is neither extenuated, as by the defendant's acquiescence, nor persuasively rebutted, and therefore the defendant is entitled to relief.

Under what, perhaps -- I'll rephrase. Under what circumstances would that presumption be rebutted? Tell me, under case law, what they mean by that.

MR. BRUCK: If there was a showing that Doggett had -- had no possible defense, that there was nothing that he wanted to present. In this case,

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you are guided by the fact that the South Carolina Supreme Court, reviewing the evidence that the state has to convict this man, has already held it is not overwhelming, such that he was able to show a reasonable likelihood that he would have been acquitted if he had only been allowed to address the jury.

Now, that's -- well, we don't have to argue about weight of the evidence, because basically the court has assessed it and told you that is -- that is the record you've got. And under that, we haven't -- the Supreme Court, having found that this is a case that is so evenly balanced, I just don't see how the state, having the case in the can, as it were, the case that was sufficient to convict Mr. Cooper, constitutes any sort of rebuttal of the possibility that it's going to be harder for him to retry this case. At that point, this is simply an unknown.

I think it will -- well, we made this motion because we thought we had adequate grounds for it before we began our final trial preparation which, of course, we were inhibited from doing until first we had a judge, which happened fairly recently, and until we have a trial date, which, of course, we

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still don't have.

Once that happens, if the Court were to -- if the motion were to be denied now, I feel sure we are going to encounter examples of how our case or our ability to challenge the state's case has been impeded by this long delay since 2002.

Something else about that, though. One thing that's going to make it very, very hard for us to pinpoint damage is the fact that the state can always say, oh, no, it's not the delay from August 2002 till now that is the problem; it's the delay from 1989 until 2002. And, of course, we don't have a Sixth Amendment speedy trial claim because Mr. Cooper was challenging his convictions during those years.

That's another example of why *Doggett* says don't require a defendant to show trial-related prejudice in passing on a speedy trial. It is an important thing to consider; but in the end, it is ultimately unknown. And this is -- this is a textbook example of why that's so. The state can always make the prejudice disappear unless we have a witness who actually dies.

THE COURT: Well, I mean, when would you ever overcome -- putting it in the position of the

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state, how would you overcome the other type of prejudice that you claim exists? The prejudice attributable to confinement, if that door is opened by the court and challenged, what kind of factual scenario would allow that challenge to be made?

MR. BRUCK: On this record, they can't. That's my whole point. After you let a man dangle on death row for three and a half years without the slightest indication of a valid justification of any sort, it's over. It's over. It cannot be rebutted. The time ran on the State of South Carolina while they did nothing except deny this man a trial.

That's really my whole point. It assumes a way out of the case to say if you assume that a man demanded a speedy trial for two and a half years and that for three and a half years the state let him dangle in this kind of pretrial incarceration and if you further assume, which is the issue I haven't even got to yet, that there is no good reason, no justification, not even negligence, rather just a willful refusal to do anything to bring this man to trial, even when they were confronted with demand after demand for a speedy trial, then the question is, well, what can they do to get out of that? Well, the answer is there isn't anything they can do.

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THE COURT: Well, the language you use, you have to be very careful with that type of language. I think there is a difference between intentional bad faith conduct on the government and perhaps negligent conduct on the government. Do you agree with that concept?

MR. BRUCK: Yes, I do, but let's be -- let's also be careful about -- about negligence. Negligence is what happened in *Doggett* where you had government gumshoes, one hand didn't know what the other was doing, and they should have known but they didn't. That's the kind of thing that bureaucracies do all the time.

This is negligence. This is the oldest case, not counting a resentencing, on their docket. They know it's coming in 2002. The case isn't assigned to anybody.

And Mr. Myers, I had expected Mr. Myers to put on more of an explanation than he did. I was kind of stunned when it turned out that he just basically let it sat.

He had some vague memory that he would mention from time to time to Judge Westbrook that there are a lot of cases. He had no recollection of discussing this one specifically. And then after

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eleven months or ten months, they get a call from me wanting to know what's going on, and then a formal speedy trial motion, and then they put another case in front of this and try it, and they don't try anything else for two years, and that's not negligence.

The one thing we don't have -- if the prosecution does nothing at all, simply goes on strike and refuses to try this man's case just because they don't want to try it, then we can't prove that they had the maligned motive of impeding his defense. This -- on the other hand, that is not negligence.

THE COURT: Well, what if it's about the procedural -- the procedural question posited at the beginning of the hearing; that the prior judge, chief judge in that circuit, ruled there was no speedy trial violation at that time and set it for the end of December.

And just for the purposes of the record, I was not assigned this case until December. The last two weeks of December are not court terms, and there was no way to try this case in December.

But what about that question? He denied it, but based on all that stuff up to that point, and

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while I say I have to review it perhaps *de novo*, you know, everything that's going on in the context of my decision, until that point there was some -- at least included a finding by the judge that the state had not engaged in that type of conduct; was there not?

MR. BRUCK: He denied our speedy trial motion in the context of the order that was then outstanding to try the case by the end of 2005, which in my wildest dreams I did not think would be disregarded as it was.

THE COURT: Right. But, you see, then that -- that gets to my point. If Judge Keesley put in the order that he was notifying Court Administration about the case...

MR. BRUCK: Right.

THE COURT: --- and no one took any action about assigning a judge -- as far as I know, this is the first time I've ever seen this happen where a judge was not immediately assigned within a few weeks to a death penalty case. Is that conduct attributable to negligence or whatever on the part of the state or to Court Administration?

MR. BRUCK: Well, there's no -- as far as Mr. Cooper's speedy trial right, it makes no difference. The State of South Carolina is

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represented by both the judiciary and the prosecution. Now, there are a couple of balls in the air and ---

THE COURT: Well, it makes a difference -- it makes a difference if you're trying to label something as bad faith conduct on the part of the prosecution ---

MR. BRUCK: Yes.

THE COURT: --- as opposed to something else; does it not?

MR. BRUCK: Yes, it does. And, of course, we need to keep the dimensions -- I had thought about having a big chart so it would be -- and I probably should have so it would be -- you know, we just want to keep visually in mind the magnitude of time.

Almost all of this delay was occasioned, three years of it minus a few weeks, was entirely attributable to the Fifth Circuit Solicitor's Office. That takes us to July of 2005. And even then, one has to question why it was that not until they were under court order to try the case did they seem to remember that they've got a conflict going back a decade or more. And now they're saying, well, that justifies further delay. Well, that is attributable.

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That's more fault.

My original point about bad faith versus negligence is that at one extreme of bad faith is the willful desire to hobble a man's defense; but very, very close to that is another form of bad faith which is the desire to punish the defendant without trial, and that is what the state, the Solicitor's Office, did.

THE COURT: What would suggest that?

MR. BRUCK: Their conduct. They knew that the man was a pretrial detainee. He wasn't going to be released on bond. He was going to have this case dangle, and they didn't care. They let him rot.

(The Court reviews document.)

THE COURT: Go ahead.

MR. BRUCK: That is a form of bad faith. That is not negligence. It didn't slip their mind that Tony Cooper was sitting on death row, waiting and waiting and waiting and waiting.

As I say, negligence is what happened in *Doggett*. And if this isn't the same kind of bad faith, it weighs right about as -- as a deliberate intention to hobble the defense.

In a way, it's almost worse, because at

least the hobbling of the defense contemplates that eventually there'll be a trial, but a willful refusal to move a case toward trial -- and remember that this is one of the very few states where the prosecution controls the docket. It's an extremely unusual aspect in South Carolina. I did some research on it one time, and there's only one or two other states where that's -- that's true. So the prosecution has unusual power over whether a case gets tried in this case.

And their willful refusal to move this case toward -- toward trial was, in effect, a decision to punish Mr. Cooper without according him any trial whatsoever, not just a trial at which his defenses would be impaired by the delay but no trial at all. I mean, it's like Guantanamo or whatever, he's just been a detainee in perpetuity as far as ---

THE COURT: I agree that -- well, I'm somewhat inclined to agree that in the majority of the situations that you demonstrated, that if the government has intentionally delayed or violated someone's speedy trial rights, due process, then the government would have to go extremely far in convincing this Court why a dismissal should not take

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because they were not doing anything.

THE COURT: Interestingly enough, I don't know of any South Carolina case that's really focused on confinement in the manner which you suggest, not that I disagree with that, because I think the whole point of the right to a speedy trial is directly derivative from the concept of liberty.

MR. BRUCK: And what we've got here is *Doggett* plus. *Doggett* was a no confinement case. It was a no anxiety case. The guy was blissfully going on about his business for eight years, while negligently -- and there's no suggestion it was anything other than genuine garden variety negligence -- and negligently the government failed to arrest him.

And -- and no showing that -- that he couldn't have defended the case eight years later. He pled guilty, for heaven's sake. It was a conditional guilty plea. And the court upon appeal dismissed the charges, the U.S. Supreme Court.

The reason, like I said, there is no case for this is that no deprivation of a speedy trial in this state has ever been this bad. You know?

I mean, usually no one on death row wants a speedy trial. I'll be very candid about it. None

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of my other clients want a speedy trial. It's the last thing they want.

But Mr. Cooper is in a different category. He says he doesn't belong on death row, he didn't do it, and he's been trying to have his trial for a long, long time.

And that's why you can't find another case to analyze it. If there was, it would have been dismissed. The motion would have been granted.

THE COURT: Go ahead.

MR. BRUCK: Then, finally, even though we have the -- well, one thing that was very telling was the fact that for -- I mean, this is one of those cases where the Court cannot find on the evidence that the backlog or any of the usual excuses has anything to do with the failure to call this case or the courtroom, the courthouse move, or there being mold for a few weeks or anything of these things that Mr. Myers strung together as a vague sort of justification. And the...

THE COURT: Go ahead.

MR. BRUCK: Excuse me.

THE COURT: I do that a lot. I'm listening to you.

MR. BRUCK: Okay. Well, I ---

THE COURT: You've got to understand while I'm doing this -- everybody else knows about that. I can hear and listen. Go ahead.

MR. BRUCK: The really telling detail was the *Northcutt* case. They tried one death penalty case between 2002 and now. And Mr. Myers acknowledged it was a case where there was no speedy trial motion, it was tried in the fall of 2003, the defendant had told Mr. Myers he wanted the death penalty, and they put that case in front of this one.

Now, no matter what other imaginary, un-remembered, vague reason Mr. Myers might have had for not trying that case or this case or the next one, there is no hint of a reason why that case received precedence over Tony Cooper.

At that time he had a pending, outstanding motion for speedy trial. The *Northcutt*, pendency of the *Northcutt* case was even discussed on the record at a first speedy trial demand hearing in August of 2003.

They just made the decision they wanted to try something else, period, without the slightest hint of a justification. And now here we are, two and a half years after the *Northcutt* trial, and they still haven't tried this or any other pending capital

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case in Lexington County. I mean, the record is unbelievable.

THE COURT: Let me ask you -- let me ask you a question.

MR. BRUCK: Yes, sir.

THE COURT: Does our jurisprudence confuse what speedy trial is all about, prejudice to liberty as opposed to prejudice to defense?

MR. BRUCK: I don't understand what you mean.

THE COURT: In South Carolina?

MR. BRUCK: In South Carolina? To some degree. I mean, I don't want to concede that the South Carolina cases violate *Barker vs. Wingo* and *Doggett* by having a hard and fast prejudice requirement that is not in the U.S. Supreme Court cases.

You know, all we -- and there is no case in South Carolina that denied a motion to dismiss for speedy trial where the only basis for doing so, the only factor that weighed in favor of the state, was lack of prejudice.

And what *Barker* basically says is: That can't carry it. Because the speedy trial right, they explain certain -- many societal interests other than

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the fairness of the trial.

THE COURT: Well, there is no doubt that one of the concepts is to consider whether or not the defense has been impaired in the case.

MR. BRUCK: That's correct.

THE COURT: But it's not the overriding objective of the speedy trial involved with the constitution. It's an objective that springs from the concept of liberty.

MR. BRUCK: Yes. Absolutely.

THE COURT: And if one's liberty is severely impaired for an inordinate period of time, is that what the speedy trial clause is all about?

MR. BRUCK: You have made my argument for me. That is exactly correct. That is what the speedy trial clause is all about.

And it would be a very serious error and an unconstitutional error to say that even though this man's liberty has been so grievously impaired for so many years with no justification, that because he can't also show one of the three additional forms of prejudice of the case law, therefore, in effect, the tail -- the tail will wag the dog and the motion will be denied because he can't make that additional showing. That is exactly what *Doggett* cautions about

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against.

And *Doggett* on its facts shows that the lack of a trial-related prejudice does not weigh against the defendant. It doesn't weigh in his favor, obviously, but it doesn't help the state. The state still has to prevail on all -- on the four factors viewed as a whole.

And if there is a case ---

THE COURT: So you think that when *Doggett* used the language in conclusion that it had not -- the state had not persuasively rebutted the presumption of prejudice, you think that they may have been talking about prejudice to one's liberty?

MR. BRUCK: I'm at a disadvantage because I handed the Court my only copy, and maybe I should look at that in the context in which -- you know, I don't know if they were talking about only trial-related prejudice, but certainly it only makes sense in light of the rest of the jurisprudence if they mean prejudice across the board.

THE COURT: All right.

MR. BRUCK: All three forms.

And as I say, there is -- there ain't no rebutting that can be done as far as the first three forms of *Barker v. Wingo* prejudice, because they are

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as plain as day, and there is no South Carolina case and there is no U.S. Supreme Court case which presents those kinds of prejudice in this extreme form.

THE COURT: All right.

MR. BRUCK: That's why at the beginning I said this -- this is the rare case. I don't think there is any way around it.

And, of course, the remedy for the denial of the constitutional right to a speedy trial is not to do the best we can and set a trial date now. That was then. That's what Judge Keesley required the state to do in April of 2005.

Perhaps when Mr. Bell stands up he will tell us what trial preparation was undertaken by his office to comply with Judge Keesley's order between September when I understand they received the file and December 31st, 2005; but if the answer is that they didn't start getting the case ready for trial until then, I think that weighs against the state even more.

They had notice of the case. They received the -- they received this file with a ticking clock in it that anyone who was listening couldn't help but hear, and the alarm bell was going

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to go off on New Year's Eve. And they were not at liberty to just say, well, we better wait until a judge gets assigned and until someone tells us what to do, while this man every day woke up and went back to bed in a ten-by-six-foot cell on death row.

So here we are, and our motion is to dismiss. Thank you.

THE COURT: State.

MR. BELL: Thank you, Your Honor.

Your Honor, the main thrust of the state's -- I mean, he's been awaiting trial, retrial, for three months now -- three years, excuse me, and six months, and we have to concede that point. There's no doubt about that.

The main -- we do argue the reasons. And we will go back to Judge Keesley's order, as a reference, not as a prior ruling. I mean, they were there, they were in Lexington County, they had the chance to see everything and all the evidence, so I do it by reference, that he did not grant a speedy trial motion even though he set the date for December 2005.

And he also found that the motion to recuse himself -- he specifically found in that order that it was not -- it was no intentional pattern of

delay done.

He also references in that order that -- I think there's an evidentiary reference that there were backups of death penalty cases pending, as well as an explosive docket. I mean, while that's -- that's a neutral reason, as I understand it, for that, I mean, and it weighs somewhat against the state, it's still not part of intentional -- an intentional pattern of delay of prejudicing the defendant.

I will say, from the First Circuit Solicitor's Office, we did get the case in -- I can't tell you the exact date. It was in September. We got the file in late September.

We were relying on that order stating that a judge would be ordered to be -- ordered to be the new trial judge, so that we -- we were ordered to get with that judge to set a trial date.

When none was -- when none was forthcoming, I will say I took it upon myself to call Judge Keesley to ask what's the status of it. And, basically, he found that it hadn't been done as pursuant to his order, and that's when Your Honor was finally brought in as the judge in that.

We were relying on the order of September

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12th, 2005. We took steps to get the judge, we took the steps to get a judge appointed on this, to have a trial date set, as best we could. Unfortunately, it was late, due to the process, due to the court's mistake, not to the prosecution's mistake in that.

And the other reason, talking about the delay, the argument is kind of illogical to me, to the state, that we're intentionally delaying this case, because I have to reference that the case has been tried before.

As I said in my -- in my response to their motion, most of the witnesses' testimony has been fleshed out. The evidence is out there. I don't know that it's going to get any more different. I mean, everything's been fleshed out as far as the trial. The trial has been -- been made.

There was a conviction back in 1991, and the state realizes it can get a conviction. There is no logical reason why they'd want to delay. It makes no sense why there is an intentional delay on the state.

We would say that the state did not intentionally delay this case. So that factor weighs at least neutral. It's certainly not intentional. It doesn't go to the defendant's factor.

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We concede that he has asserted his right on at least two different occasions since August 2002. We have no argument with that.

And the fourth one is prejudice to the defendant; and in my review of most if not all the cases, that's been the overriding factor in the court's decision.

I mean, in *State vs. Bradley*, one of the Supreme Court cases that factors *Barker vs. Wingo*, I mean, they found that the delay was three years four months, and the delay triggered a review. They found that the state couldn't -- didn't have any valid excuse for the delay, and yet their overriding concern was there was no prejudice to the defendant.

And that's -- if you read *Barker vs. Wingo*, it talks about the three types of prejudice, of course, and the fourth factor, which Mr. Bruck referenced.

The pretrial confinement, yes, there is that in that. And that's a subjective. I don't know how the state can rebut that.

The mental anguish on the defendant, I don't know how the state can rebut that.

But if I remember correctly, *Barker vs. Wingo* says the most important of those was the

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impairment of a defense to -- to the defendant. In this case, that hasn't been impaired. I mean, the original trial was tried a year and four or five months after he was arrested. This case has been tried. Evidentiary issues have been out.

THE COURT: Why in *Doggett* did the United States Supreme Court not conclude that the defense had not been impaired? What was shown in *Doggett* to suggest otherwise?

MR. BELL: I'm trying to remember *Doggett*. I read the case. If I remember correctly, that's the one where there was an eight-year and they found that there was impairment; that the eight years had gone by, I thought, that did lead to that somewhat.

But I think what theirs was, what they hung their hat on in *Doggett*, though, was that the government knew where he was, and while it wasn't like gross negligence, that they could have gotten him anytime and they just -- they just chose not to for a while until it was easy for them.

THE COURT: Well, I mean, in *Doggett* the man was even out of jail.

MR. BELL: I understand, yes, sir.

THE COURT: Why is that more compelling

than a person that is in jail for several years and his liberty so restrained?

MR. BELL: Your Honor, I think that ---

THE COURT: At what point does the government have to do something?

MR. BELL: Your Honor, I believe that the government should do stuff as soon as it can, quite honestly. In this case, the problem is, you know, I'm kind of dealt an old hand and I'm trying to play it, and I have to go back to the findings that have already been made in that ---

THE COURT: Well, what does the speedy trial provision protect?

MR. BELL: It protects -- I'll agree it protects the liberty of the individual, also his ability if he so chooses to defend himself, as well, in court.

THE COURT: I mean, what in this case -- let's -- let's go step back for a second from your perspective insofar as prejudice is concerned. What are some of the factors insofar as the defense' conduct at issue do you think warrants consideration by the Court? Has the defense done anything to delay this case, number one? Anything in this record?

MR. BELL: Not since August 2002, no, not

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that I know of.

THE COURT: All right. In August 2002 what did they do?

MR. BELL: No, not since -- I mean, that was the -- when the...

THE COURT: Okay. Repeat that?

MR. BELL: When the appeals were finalized.

THE COURT: All right. There has been no, like, intentional request for delay by the defense or any request for delay by the defense that you know of; is that correct? By formality, now.

MR. BELL: No, not that I'm aware of.

THE COURT: I'm double-checking my facts. Did they ever make any motions for continuance?

MR. BELL: Not that I'm aware of.

THE COURT: And it's clear from the record that they've made more than one request for speedy trial?

MR. BELL: Two that I am aware of.

THE COURT: Two. So they've asserted their position?

MR. BELL: Yes.

THE COURT: And in these cases that support the state's position, oftentime that's not

done, and there's oftentime conduct of the defense that the court latches onto to suggest that part of the delay is attributable to the defense or to tactics or strategy, or whatever it may be, which happens all the time. Sometimes defense counsel intentionally delay the case for reasons known best to the defense.

But if I were to hang a decision upon that type of reasoning that's normally -- that normally accompanies the state's position, what would I hang it on here?

MR. BELL: As to the defense's conduct?

THE COURT: Any of the type of things that the court can look to, to say that the rights have not been violated. I mean, what your argument essentially is, from what I'm hearing now, is because it was previously denied by the court?

MR. BELL: Well, Your Honor, the only thing that I can do is -- I wasn't there in July of 2005, and ---

THE COURT: I don't attribute anything to you insofar as bad conduct or negligence. When did you get appointed?

MR. BELL: We got -- I can't tell you the exact date. It was in September of 2005.

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THE COURT: All right. You were appointed in September. I was designated the trial judge in, what, December, something like that.

MR. BELL: Late November.

THE COURT: End of November, beginning of December. The last two weeks of December were designated as a chamber's week, holiday week sort of, and I definitely don't attribute anything to y'all from that point, because I could not get up to speed on that.

I understand Mr. Bruck's argument that everyone has a responsibility for satisfying the constitutional rights. I do agree with that concept.

But, look, what's here?

MR. BELL: Your Honor, I mean, I think the main part is, is seeing if there was an intentional delay on the state's part, number one, which there is no evidence of.

THE COURT: Well, and there is no evidence of intentional delay in *Doggett*.

MR. BELL: But I think the conduct -- I think the conduct, though, in *Doggett*, if I recall *Doggett* ---

THE COURT: Was there an intentional delay in *Doggett*, Mr. Bruck?

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MR. BRUCK: No. It was just ---

THE COURT: I thought they were going to hinge their whole analysis on this concept of negligence of the government by not doing things.

MR. BELL: Yeah, and I think the negligence was a bit more in *Doggett*. And I don't know that there's negligence here. I just think, you know ---

THE COURT: Well, I think they mean by "negligence," something that came to inaction, but I'm not sure if that's completely, but the government didn't do anything.

MR. BELL: But as I recall in *Doggett*, and correct me if I'm wrong -- it's been a week since I read it, and I didn't bring my copy with me -- it seems like the government in *Doggett* somehow knew where he was and just didn't go get him. If I recall, one side knew where he was, and they didn't go get him, and they just kept waiting until he came to where they could get him, I guess is what -- is what I recall.

THE COURT: But interestingly enough, to me, is just that the facts in *Doggett*, on the face of the opinion as compared to this case, seem less compelling. Would you be somewhat inclined to agree

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with that?

MR. BELL: I think it ---

THE COURT: I'm not asking you to concede any position, but if we start with the proposition that the speedy trial provision of the constitution, its primary importance is derived from the concept of liberty, and in *Doggett* he was not even constrained -- he was not confined pretrial, as far as I recollect. It's hard to see why they granted that. Perhaps that's why the defense was so adamant about -- I don't know -- about it. I might -- I might be somewhat inclined to agree with the defense in that case.

MR. BELL: Well, I just have a feeling in *Doggett,* I think it seems to me what they really latched onto in *Doggett* was eight -- the eight years, regardless of whether he'd been confined or not, and basically what the government did or didn't do was just -- I mean, totally, they did nothing or they knew of something that they should have done at that point.

THE COURT: But at least in *Doggett*, like the dissent argued, I mean, the man didn't even know about it for most of the time. So you don't even have -- aside from the prejudice that's assigned to

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the concept of restrained liberty, this type of prejudice assigned to anxiety provision impairment of liberty, that did not even exist in *Doggett* either. The person did not even know.

MR. BELL: That's true. But my question, too, Your Honor, is if -- maybe I misspoke a little bit. And the whole Sixth Amendment, as far liberty, if it is liberty, then why does *Barker vs. Wingo* put more emphasis on what the government has to do ---

THE COURT: Mr. Bruck, what happened to the concept of liberty in *Barker vs. Wingo*? Where did it get lost?

MR. BRUCK: Well, I don't know that it gets lost. It's true that *Barker* talks about the importance of impairment of defense as a form of prejudice, but *Barker* is also the case that says that no -- no single factor or subfactor is dispositive.

THE COURT: But does *Barker* lead itself to a reading that a --- back to my question, back to my question -- does it lend itself to this notion, even consistent with the language in *Doggett*, that the prejudice, whether -- whether it is linked to incarceration or liberty, linked to pretrial anxiety, or linked to prejudice in the defense, can all be overcome, can be rebutted, if there is? That seems

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to be consistent on their cases.

MR. BRUCK: Well, I suppose it can be rebutted by evidence.

THE COURT: Well, how long was the delay in *Barker vs. Wingo*, like five years?

MR. BRUCK: It was -- yes, but almost no delay -- almost no demand. And, clearly, from the record, Barker wanted most of the delay. It was in his interest. He was hoping that the codefendant wouldn't be convicted and wouldn't be made to roll over and ---

THE COURT: So you think *Barker* is a little different because the pretrial incarceration, in part, hinged upon a tactical decision of the defense?

MR. BRUCK: Well, the pretrial incarceration was very brief. He was out on bond for four years.

THE COURT: Yes.

MR. BRUCK: Secondly, the reason for the delay was valid, that the prosecution had no case against him until they convicted the codefendant, and it required five trials to accomplish that.

THE COURT: Well, does that answer the question from the state's perspective; that because

he was out for four years, that underlying the opinion is this knowledge that he was -- although they probably should have stated it, that although he probably -- that he could have still had the pretrial anxiety or stress, which I assume the record does not demonstrate in *Barker vs. Wingo*.

MR. BRUCK: It's stated in *Barker*, and the reason it ---

THE COURT: All right. Go ahead.

MR. BRUCK: The reason it rebutted it was that the record was -- you could fairly infer from the -- from the evidence in *Barker* that Barker didn't want a trial. He was content to put up with the anxiety. His only anxiety was that the government would eventually get their ducks in a row, and he was hoping against hope that the codefendant would be acquitted and that would be the end of -- the end of the case.

So that's a pretty good example of how the government can rebut the first two types of prejudice, that is, confinement, and not that it didn't occur but that it shouldn't be given any weight because the defendant made a conscious decision to put up with that and to let the case drag on in the hopes that time would be his friend.

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THE COURT: All right.

MR. BRUCK: We sure don't have that here.

THE COURT: State's position?

MR. BELL: Well, Your Honor, to go back, I mean, the language out of *Barker vs. Wingo* talks about there's three -- there's three prongs of the fourth factor, and it says of these the most serious is the last, which is the impairment of defense. So it doesn't go -- I mean, they're considering that. I mean, if ---

THE COURT: That is an interesting concept, Mr. Bruck. Why didn't they say the most serious is the one that's constraining liberty, impairment of liberty? That kind of occurs to me.

MR. BRUCK: I mean, this is all dictum, that they are dealing with -- the Supreme Court deals with the case before it, and there wasn't much constraint on liberty, and where the defendant -- as I just finished saying, and where the defendant clearly was willing to bear the burden. He didn't want a speedy trial until -- and then moved for one intermittently one time and then let it lay again until right at the last minute before it looked like the jig was up, and now all of a sudden when the state had their case and now he wanted it, now he was

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worried about a speedy trial.

So, you know, the Supreme Court, when they lay down these categories, it's -- in many ways, it's influenced by the facts of the case before them.

If they meant that -- if by "most important" they meant you can't win without it, as Your Honor has just pointed out, *Doggett* would have come out the other way.

THE COURT: All right. Go ahead.

MR. BELL: But, I mean, that's -- I mean, I think that's the seriousness of prejudice to the defense, Your Honor, and I think that's pointed out again and again in the South Carolina cases even where, you know, there isn't a lengthy pretrial detainment. I mean, it certainly is a factor to be considered in this case. It's one of the factors to be considered, Your Honor.

And I just think that this is also a unique case from the fact that the case -- and I keep harping on it, but I think it's a very important concept that this case has been tried before. And even though it is now de novo, there is no doubt that I think that that is overriding that there is no pretrial impairment, impairment to the defense. I think that's -- that and the fact that there can be

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shown no -- shown no intentional delay or even a negligent delay in this case, Your Honor.

Because we're trying to look at this case in a vacuum when, you know, Lexington County, I mean, just the docket that was put into evidence has a thousand cases over more than 180 days. I mean, they have terms of court, they have dockets to run, they have death penalty cases that have been, you know, found that they were existing. And I reference the order as evidentiary, merely not as a finding.

But, you know, it's all part of the system. And I know it goes -- it's a neutral part of a decision that goes somewhat against the state, but I think there can be no intentional delay found.

THE COURT: I still have some concern that it may be the difference between *Barker* and *Doggett* is that in *Barker* there pretty much was a concession that the defendant did not want a speedy trial.

MR. BELL: Your Honor, I mean, I can't answer that. I mean, the problem is, again, in this case is that -- that the judge is aware of it, the motion was made, and the first motion that was put on, I think, was held in abeyance and never formally ruled on. And it finally came to a head in the

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second motion, and that -- I mean, that is where we -- where we are and...

MR. BRUCK: If I could correct one point. The State has said that we made two motions for speedy trial. We actually made, by my count, four and perhaps five.

And there are two different things. There is a demand for a speedy trial, and there is a motion to dismiss for denial of a speedy trial.

The first demand for a speedy trial was in August of 2003. There was another demand for a speedy trial in February of 2005. There was a third demand for a speedy trial in July, as well as a motion to dismiss, and there is now yet a fourth demand for speedy trial.

THE COURT: All right.

MR. BRUCK: So two, I think, understates what Mr. Cooper has been trying to do.

THE COURT: Anything else?

MR. BELL: No, Your Honor.

THE COURT: Anything else?

MR. BRUCK: No, sir.

THE COURT: If in the alternative, do you wish to address the Court about bond? I'm not sure if -- I think I want to think about it a little bit,

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but I might as well hear you out on the motion. Go ahead.

MR. BRUCK: Well, if by a little bit, if Your Honor is thinking about ruling today, perhaps we should think about a bond. We have some witnesses. Perhaps we should do that after lunch, depending what the schedule is. I naturally hope it doesn't come to that.

I'm struck, too, by the fact that if the speedy trial motion is denied, we have no recourse until after trial. And if Mr. Cooper is acquitted, we have no recourse at all. It's a right without a remedy. A speedy trial motion is --

THE COURT: Hold on just a second.

MR. BRUCK: Yes.

THE COURT: How many witnesses do you have? We'll have to do this after lunch.

MR. BRUCK: Oh, it will be short. Mr. Cooper's father and -- and two ladies who are friends.

THE COURT: I'm trying to coordinate scheduling.

MR. BRUCK: We can go forward now.

THE COURT: Well, either way, I have to break for lunch. Either I'm going to do this or

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something else. I think the next thing is still firm.

MR. BRUCK: Judge, I just thought of one other point, if I could, that I should have responded.

THE COURT: Yes, sir.

MR. BRUCK: And that has to do with the effect of Judge Keesley's order of July 12th, providing and saying that we hadn't made out our motion. At that point, there was -- he had already given the state till the end of 2005. We did not litigate the issue then like we did now. There was no evidence. We didn't call witnesses. That was a quick and dirty 20-minute argument in which he basically decided to stick to the schedule that he had -- that he had already decided on in February.

This is the first time that these issues have really received a full airing, and I think ---

THE COURT: Well, I mean, it somewhat troubles me that, you know, I have this order and...

MR. BRUCK: It's very clear that he -- he intended this issue to be fully re-litigated.

If the Court -- I mean, the state for whatever reason did not abide by an unambiguous order to try this case in 2005, okay, for a whole grab bag

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of reasons have not abided by his order.

And I feel sure Judge Keesley would be the first to say that he intends this case to be re-decided from the ground up and not -- and not just sort of there'd be a six-month add on to what's before you now.

THE COURT: Hold on just one minute.

(The Court leaves the bench and returns.)

THE COURT: All right. I juggled the schedule around. If y'all can be back at 2:15. All right. 2:15, we'll see y'all back then. Thank you.

(A lunch break is taken at approximately 12:50 p.m.)

(The hearing reconvenes at approximately 2:25 p.m., the defendant being present with counsel, and the following proceedings were had:)

THE COURT: All right. Are y'all ready to proceed?

MR. BRUCK: Yes, sir.

MR. BELL: Yes, sir. The state is, Your Honor.

THE COURT: Yes, sir.

MR. BRUCK: The remaining matter is the bond motion. I don't know if you want to proceed to

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that right away?

THE COURT: Yes, sir. If I have some more questions about it, I'll let you know at the end.

MR. BRUCK: Thank you.

MR. DUNCAN: Your Honor, I'd call Gene Tony Cooper, Sr.

THE COURT: The state have any witnesses that you plan on presenting?

MR. BELL: No, Your Honor. We would -- we would go with what we put in our response and the prior record.

THE COURT: All right.

THE REV. GENE T. COOPER, SR., being first duly sworn by the clerk, is examined and testifies as follows:

THE CLERK: Please be seated. Sir, if you would, please state your full name to the Court and spell your last.

THE WITNESS: Reverend Gene T. Cooper, C-double-O-P-E-R.

DIRECT EXAMINATION

BY MR. DUNCAN:

Q. Mr. Cooper, as I understand it, you're a little hard of hearing?

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A. Yes, sir, I am.
Q. Okay. Mr. Cooper, how old are you?
A. I'm 76.
Q. And you're the natural father of Tony Cooper who is seated here at the table, correct?
A. Right.
Q. And Tony's mother passed away in 1992; is that correct?
A. Yes.
Q. And you have since remarried Frances H. Cooper who is in the back row?
A. Yes.
Q. All right, sir. Mr. Cooper, I understand you're retired?
A. Yes.
Q. And you're retired from being a brick mason; is that correct?
A. Yes.
Q. And your wife is retired from Wachovia?
A. Yes.
Q. Mr. Cooper, how long have you lived in Lexington County?
A. Since I got out of the Army back in 1949, when I come out of the Army, you know.
Q. Ever since that time?

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A. Yes, sir.
Q. And Lexington County is where Tony was born?
A. Right, yeah.
Q. And you live, as I understand it, at [redacted]?
A. Yes.
Q. T-R-E-M-O-U-N-T?
A. Yes.
Q. Lane?
A. Yes.
Q. And that's in Gaston, G-A-S-T-O-N, area of Lexington?
A. Right.
Q. And, Mr. Cooper, do you have a land line telephone?
A. Yes.
Q. Okay. And you've lived in the house you and your wife live in now for about ten years; is that accurate?
A. Yes.
Q. Okay. And that house is paid for?
A. Yes.
Q. Now, Mr. Cooper, I'm not trying to embarrass you or anybody, but neither you nor your wife have any kind of criminal record, do you?

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A. No.
Q. And if the judge were to consider a bond for Tony and allow him to be released on bond, you would have no difficulty with him staying in your residence?
A. No. I've got a -- I've got a place ready for him.
Q. All right, sir. And, of course, you'd cooperate with any kind of restrictions that were put on Tony?
A. Yes.
Q. And as I understand it, you would have no -- or let me back up, excuse me. As I understand it, your residence has a fair market value of a little under $50,000?
A. Nine-forty (phonetic).
Q. All right, sir. So it's under $50,000, and you would have no difficulty in encumbering your part of the residence if that were required?
A. Right.
MR. DUNCAN: Okay. Answer any questions that Mr. Bell or the Court might have, please.
MR. BELL: No questions from the state.
THE COURT: All right. You may step down, sir. Thank you. You may step down. Thank

you.

MR. DUNCAN: Mr. Cooper, you can step down.

(The witness is excused from the witness stand.)

MR. DUNCAN: Your Honor, also present in the courtroom, and we just wanted to recognize them, they're going to stand, Mrs. Betts Davis from Cayce and Mrs. Nadia Knotts from St. Matthews who have been visiting death row inmates for approximately the last 25 years and have known Tony ever since he was there. They just wanted to be here to show their support.

THE COURT: All right. Anything else?

MR. DUNCAN: That's all, Judge, as far as testimony.

THE COURT: All right. I'll be happy to hear you out on argument.

MR. BRUCK: Well, Your Honor, a lot of the arguments we've made, obviously, with respect to dismissal for a lack of speedy trial, are equally applicable on the equities of releasing Mr. Cooper on bond.

THE COURT: Does he have three prior escape charges ---

MR. BRUCK: From the ---

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THE COURT: --- convictions?

MR. BRUCK: From the 1980's during a prior incarceration.

(Mr. Bruck and the defendant confer.)

MR. BRUCK: I'm sorry. Two from the seventies, he tells me.

THE COURT: The state brief says December 1977, September 1980, and March 1985.

THE DEFENDANT: I don't know where they get that. It was about ---

THE COURT: Are there three, Counsel?

(Mr. Bruck and the defendant confer.)

MR. BRUCK: Three, Your Honor. Three in all. My client advises me the most recent was 23 years ago.

THE COURT: Okay.

MR. BRUCK: And, of course, since that time he was released from prison, and this charge arose later. So he went to prison when he was 17 years old for a series of armed robberies. And those escapes, all of those were at that time.

He has no -- nothing remotely resembling that kind of behavior during the last 16 years of his incarceration, either when he was at Lexington County jail or at Lieber. Well, he was first at CCI, then

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he was at Broad River, and then at Lieber.

Your Honor...

THE COURT: Go ahead.

MR. BRUCK: I mean, the average -- the normal criteria that you would consider in releasing a defendant on bond, including Mr. Cooper. He has ties to the community. He has a place to live. His father is going to put him up.

We obviously would have no problems whatsoever with Mr. Cooper being required to wear an ankle bracelet and being required to be basically put on home arrest except for his looking for a job and being able to go to work. And the Court, I'm sure, is more experienced with restrictions of that nature than I am, but it's done in Lexington County all the time.

You heard the testimony that they have a land line and can hook up a electronic monitoring device to the telephone, so that we're not simply -- the choice is not simply to put Mr. Cooper totally at large, but rather to recognize the fact that after so many years of failing to try him, the equities require that he be released pending trial. And we still don't have a trial date, of course.

THE COURT: And we will talk about that

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shortly in the event ---

MR. BRUCK: All right.

THE COURT: --- that I don't grant this relief. Let me ask you back on the other matter.

MR. BRUCK: Yes, sir.

THE COURT: Is your request for relief based solely on the fact -- let me rephrase. Is there any consideration being given to the fact that you wanted everything kind of postponed until 2002 to get him all cleared up with collateral requests?

MR. BRUCK: No. No. And -- and he was in a bind because of that. He had no realistic choice; because if he had asked for the murder case to be retried all by itself between 1994 and 2002, that eight-year period, he would not -- of course, if he'd been acquitted of murder, he wouldn't have been released. He'd still be serving a very lengthy prison sentence for the other charges, and then the state would have another bite of the apple. They would have been able to try him twice.

THE COURT: But for whatever reason, if that -- be that for a tactical decision or otherwise, should that be considered?

MR. BRUCK: Well, no. I mean, for one reason not to consider it is that the gravamen of the

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speedy trial motion is from 2002 on.

THE COURT: That's what I was asking.

MR. BRUCK: Right. Right. We're not -- I think the Court should take into account the fact that this has been pending for sixteen years and according to the judgment of the South Carolina Supreme Court he has yet to have one constitutionally fair trial, but -- but we're not saying as if it's an unjustified delay of fourteen years. It's an unjustified delay of three and a half. And to that extent, yes, it should be taken into account.

Had we been asking for a speedy trial on the single isolated count that was reversed first and they had refused to call the case for trial, that wouldn't ---

THE COURT: Well, I guess it's kind of a corollary to the point or -- I don't know if that's the proper word, but was there any attempt by the prosecution to retry it ---

MR. BRUCK: No.

THE COURT: --- but for that delay?

MR. BRUCK: Absolutely not. Oh, you mean the -- during the year and a half? No. No. That was an additional part of the delay, actually, which is attributable to simply the prosecution. There was

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no -- and we filed. We realized that this would -- could be attacked and needed to be and filed. At that time it was -- the first one was in '94. We filed in '95.

THE COURT: But why is it not relevant, though, you know, if they potentially could have gone forward back then, and then all of a sudden they have delayed eight years, and then "be ready" because the defendant wants to go forward?

MR. BRUCK: Well, it's not that they held off at our request. They had -- they had not the slightest interest in going forward at any time.

THE COURT: Okay.

MR. BRUCK: From the day of his conviction in 1991 until they were ordered to do so by Judge Keesley and really until the case was handed off to another office.

So it's not as though we have restrained them in any way or asked them not to proceed. Absolutely not.

It's worth keeping in mind that -- that a lot of speedy trial cases, the speedy trial right continues as a right even if the defendant isn't making any demand, as you well know.

But this is certainly not anything to be

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charged against Mr. Cooper. We did not ask the state to hold off. They were content to hold off for reasons of their own. And, of course, he was in a bind because of the way that the Supreme Court delivered -- granted partial relief and made us go back and prove the rest of our case in post-conviction.

THE COURT: But insofar as the failure to allow him to speak, they made a determination that as a matter of law that was reversible *per se*. As to that, they did not say there was a reasonable probability that the outcome would have changed in the direct appeal.

MR. BRUCK: Only as to the murder because they didn't reach that.

THE COURT: All right.

MR. BRUCK: But then we had to prove that exact issue as to the armed robbery and the kidnapping.

THE COURT: Because he chose -- because it was PCR.

MR. BRUCK: Because it was PCR. And the reason it had to be PCR was the court said that the *in favorem vitae* rule only applied to the capital count and not to the non-capital count, which is --

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they had held that for the first time just within weeks of that decision in *Bingham* (phonetic), *Charping*, C-H-A-R-P-I-N-G, and then *Cooper*.

And what that meant was that we had to go back and prove a regular garden variety effectiveness claim -- which would have been equally true of the murder case if we had had to prove it, but they didn't make us prove it.

So it doesn't mean that there is any less of a constitutional violation in the murder conviction. It just means we were not required to prove it yet. We had to prove it again later. It was all in one trial, one series of charges. There was no differentiation that could be made.

So when the state says, well, it was a technicality that it was reversed, that is not true. It was a violation of the Sixth Amendment right to counsel, and we proved it. And they found prejudice because they found the evidence wasn't that strong. And the evidence of the other charges was exactly the same evidence as the evidence of the murder. They all stood or fell together.

THE COURT: Anything else you wish to add, after lunch, on that issue?

MR. BRUCK: Well, the only -- in terms of

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what the fairest way of proceeding on this, and I realize that this -- I'd say, viewed most favorably to the state it's a close call on -- on the speedy trial question.

If you deny relief on the speedy trial, Mr. Cooper has a right without a remedy, because he's either acquitted and that's the end of it after a trial that he never should have been forced to stand or he's convicted at which point he can then appeal the denial of a speedy trial, and if he was right, he has been in prison for -- and endured a trial and so on.

If you grant the speedy trial ---

THE COURT: Well, I mean, but if he's convicted -- you mean if he's not convicted.

MR. BRUCK: If he's not convicted, he can't ever appeal the fact that he was made to stand trial ---

THE COURT: All right.

MR. BRUCK: --- when he shouldn't have been. If he is convicted, he can appeal then; and if he has a meritorious ground and he wins the appeal, he has served who knows how much more time that he shouldn't have served and he has been subjected to a trial that he shouldn't have been subjected to.

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If the Court grants the motion, the state has an appeal which stays everything. It would be up to the Supreme Court about whether he should be released on a bond pending the state's appeal.

And it would not -- and I feel sure that appeal could be expedited, and we would know very quickly whether we're on solid constitutional footing or whether we're on very soft ice in proceeding with this matter.

Now, I don't for a minute suggest that that should enter into your evaluation of the merits, but it is an equity that is out there.

It seems like at this late date, at a very minimum, the state ought to be the one before we have this trial that ought to bear the burden to the Supreme Court of showing that this did not violate Mr. Cooper's speedy trial right.

If there was another case out there like this that the state could point to, that would be one thing, but -- but there isn't. And if this right means anything, it's got to be enforced, and it's got to be enforced in a way that means something and not just as an academic exercise after the fact.

So I think that's a fair way of proceeding, all things ---

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THE COURT: Do they have the discretion to hear it interlocutory?

MR. BRUCK: They have the duty to hear it interlocutory if Mr. Bell -- they -- our court is the most restrictive on interlocutory appeals in criminal cases of any in the country. They don't recognize -- that our court will not hear double jeopardy appeals, even though the United States Supreme Court has said it's a matter of federal constitutional law it's interlocutory appealable. So if you deny a double jeopardy appeal, review this directly to the United States Supreme Court from -- from your court. That's how restrictive South Carolina is.

And so, no, there is no interlocutory review of the denial of a speedy trial. We have to wait and appeal if there is a conviction; and, of course, if there is an acquittal, you know, we just suck it up. That's how it works.

THE COURT: All right. Anything else on that issue?

MR. BRUCK: No, sir.

THE COURT: Anything else from the state on that issue?

MR. BELL: None from the state, Your Honor.

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THE COURT: All right. Make sure I don't have more questions.

Did you state in your response it's going to be difficult for you to track down all the witnesses because of the age of the case?

MR. BELL: I may have indicated -- I probably indicated that since it was there. I don't know that I've...

THE COURT: But you don't know that to be true?

MR. BELL: I do not know that to be true. I know that we've started the process, and we've been able to find some. So I do not know that to be true.

THE COURT: All right. Now, if I do not grant this request -- I'm not sure. I want to think about it some more. I have some concerns, some serious concerns about some of the issues.

While I have you here, what are you contemplating in terms of preparation for trial, etc.? I can tell you what I was kind of thinking about.

MR. BRUCK: Yes, sir.

THE COURT: I won't -- I'm not tying anyone's hands. I mean, we're at -- it's February now, and I was potentially thinking near the end of

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May, like the week of May 22nd and May 29th. Obviously, it takes a lot of juggling in schedules to get terms changed, but it will probably take me a couple weeks just to get that done.

What does -- and I tried to take into consideration that you would be out of your class by then, I assume?

MR. BRUCK: Yes, sir.

THE COURT: What do you think about that? Would everybody be ready to go by then?

MR. BELL: Yeah. Your Honor, I would. I mean, we have discussed it a little beforehand, and May was sounding like a pretty good time. As far as I know, hopefully we'll be ready and just get everything on a roll.

THE COURT: What about that, Mr. Bruck, May 22nd, May 29th? I think there's a holiday somewhere in that week, most liably, but...

MR. BRUCK: May 30th is Memorial Day.

MR. DUNCAN: It's the 29th this year.

THE COURT: Let me ask you, I never did, how long do you think the case will take to try?

MR. BRUCK: I would think a little less than two weeks.

THE COURT: Okay. Depending on how soon

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we get the jury drawn.

MR. BELL: Yes, sir.

THE COURT: What about those proposed weeks?

MR. BRUCK: That is enough time for us unless -- I mean, obviously, if some -- if we make some remarkable discovery, we can bring it to the Court's attention and change that, but for now I think we could be ready.

THE COURT: I'm just trying to do it as soon as possible. At the same time, as you all know, you have to get weeks changed, you have to notify the Clerk of Court to have a larger jury pool, you know, there's just a lot of arrangements to be made. That's about, you know, two and a half months.

MR. BRUCK: Right. For family reasons, the week of the 29th is -- and if it were up to me, I would move it one week forward, but obviously the Court came up with those dates for a reason, and I...

THE COURT: I think I also looked at -- even though it wasn't perfect, I looked at Lexington's schedule as far as trying to juggle around, looked at when they had General Sessions weeks.

MR. DUNCAN: There are two weeks

scheduled, Judge, two concurrent terms the week of Monday, May 15th.

THE COURT: May 15th?

MR. DUNCAN: Right. There are two weeks then. The week of the 22nd there is no court scheduled at the present time, and then the 29th there is no court scheduled, other than second appearances are scheduled at the courthouse on Thursday, June 1st.

THE COURT: I'm not scheduled to be here the week of May 15th. I'm scheduled on vacation that week. Let's see. You're saying May 15th and May 22nd? I might be able to change that. It's a possibility.

MR. BRUCK: The problem is my wife has a conflict on 5/29 and the following first week in June, which would make it hard for both of us to be gone. We have two high school age kids. Obviously, everybody's got problems, and we can make accommodations if we have to, but I would get a very cold reception when I get back to Virginia if I do not make that known to the Court.

Oh, I've been reminded, as well ---

THE COURT: What is your conflict the week of the 29th?

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MR. BRUCK: My wife has a two-week program that she has tentatively committed to, to be away from home.

THE COURT: That whole week?

MR. BRUCK: Two weeks, May 29th and June -- I believe June 7th or 8th, which means that I'm supposed to be a single dad those two weeks. On the other hand, you know, obviously, no time is good for anybody -- everybody in many respects, so I just...

I've also been reminded by my students that I have a hearing in a Virginia death penalty case on May 26th but, if need be, that I feel sure the Court will work with us on that. It's on a non-jury matter.

THE COURT: All right. Alternatively, I was looking at the week of June 5th and June 12th. I mean, obviously, I have to present a couple options to the people in Columbia. I don't just get to necessarily pick. What about the 5th and 12th?

MR. BRUCK: That is -- that presents me with the same problem in terms of those. The last week in May and the first week in June, that's when my daughter's high school graduation would be pending between the ---

THE COURT: I see.

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MR. BRUCK: It's -- if this case had been tried when I lived in South Carolina, it would be a lot easier.

THE COURT: Well, I'm going to shoot for May 22nd and 29th and possibly bump it up one week.

Did anyone say there was a conflict during the 15th of May? My problem is I'm scheduled off, and that's going to present them with a problem to swap it around if they can't swap someone to my slot. Did anyone say anything about the 15th?

MR. BRUCK: No, sir.

THE COURT: Do you have a preference as to the 22nd and 29th or the 5th and 12th of June? What would you prefer?

MR. BELL: Your Honor, the state will plan on being ready either time.

MR. BRUCK: We really don't have any preference.

THE COURT: All right. We'll look at that block and see what they say.

All right. I want to think about the other issues, and we'll let you know of my decision. Thank you.

MR. BELL: Thank you, Your Honor.

MR. BRUCK: Thank you very much, Your

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Honor.

THE COURT: Do y'all want to take care of the copying of that file for Mr. Myers?

MR. BRUCK: However the -- I mean, I will take custody of the exhibit if the Court wants to let me have it.

THE COURT: Have you seen all the documents in there?

MR. BELL: I can look through them, just here, as well. Some of them are duplicates, too. We can pull those.

THE COURT: How many pages are there?

(Mr. Bruck and Mr. Bell review exhibit.)

MR. BELL: Do you want us to copy it here or...

THE COURT: How long is it?

MR. BELL: I count about 39 or 40 pages.

THE COURT: I mean, if you don't have any objection to his copying it and getting that -- putting that in the record here with the clerk.

MR. BELL: I have no objection to that, as long as Solicitor Myers gets his original file back, sure.

THE COURT: I don't mind if you want to substitute a copy for this defendant's exhibit one.

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MR. BRUCK: Okay. Your Honor, and I noticed as I went through it one more time, some of them are duplicates. So I won't copy -- I'll copy -- make one copy of everything that's in there and return the original. So what's in will be one set of each.

THE COURT: All right. Okay. Well, tell you what, I need to hold that for now. I need to look at that. Once we make a decision, we can let you know.

MR. BRUCK: Okay.

THE COURT: Anything else that we can take care of?

MR. BRUCK: Excuse me.

(Mr. Bruck and the defendant confer.)

MR. BRUCK: Oh. We have a matter respecting appointment of counsel that we'd like to take up *ex parte* if we can.

THE COURT: Okay.

MR. BRUCK: So if Your Honor...

THE COURT: Is there anything else while he's here?

MR. BELL: Nothing from the state.

THE COURT: All right. Anything we can do to make sure it gets ready for trial if I don't

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grant the relief?

MR. BELL: Not right that this moment. I just have to -- we've started the process of looking at witnesses, and we'll be getting information from the county and looking at those.

MR. BRUCK: I predict there are going to be some unusually challenging *Brady* issues in this case, given the nature of the key witnesses. I served the state on that to see what we have to do.

I know there will be a pretrial motion coming from us, which I think I told you in our conference call, very shortly to allow us to have access, if he's willing to talk to us, to include Defendant Southerland.

His lawyers are refusing to allow us to talk to him even though he previously had made statements, both in court and out of court, exculpating Mr. Cooper and taking all of the responsibility on himself. So, clearly, our trial preparation requires ---

THE COURT: You say there's a witness that is claiming responsibility?

MR. BRUCK: Mr. Southerland, the codefendant, exercised his Fifth Amendment right and didn't say anything during his own trial, and then

shortly thereafter gave a statement that I took and then another statement in open court in his own post-conviction hearing in which he said that in fact he committed this murder by himself, that some of the preparations involved another individual, that Mr. Cooper was not involved in the conspiracy and was not present at the crime. So it's as exculpatory as it can be.

Since that time, his lawyers have directed that we not speak with him. So we can't talk to him to see if he is a potential trial witness.

THE COURT: But you said he made that statement under oath?

MR. BRUCK: Yes. I'm not sure if he was sworn, but -- he first made a statement to me. That was the basis of Mr. Myers' attempt to -- this is what happened.

THE COURT: But, I mean ---

MR. BRUCK: Yeah.

THE COURT: --- sometimes that type of information is presented at a bond hearing. So if you have statements from someone saying that he didn't do it...

MR. BRUCK: It is actually -- it's in the

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record of the case, and I think we'd be happy to make a copy of it and...

THE COURT: I think I just had that delivered.

MR. BELL: Not a copy of Mr. Southerland's PCR. That's a copy of the...

THE COURT: Trial?

MR. BELL: Of Mr. Cooper's PCR, including the entire trial transcript.

MR. BRUCK: Yeah. Mr. Cooper's PCR includes as an exhibit to the original PCR application a copy of Mr. Southerland's statement.

THE COURT: Do you want to look for it?

MR. BRUCK: I'm not sure if the application is here.

(The Court and Mr. Bruck review documents.)

THE COURT: Mr. Bruck, do you remember what document that was in?

MR. BRUCK: It was an attachment to the application for post-conviction relief. It should be towards the back of the PCR appendices. I should be able to find it pretty quickly.

THE COURT: While he's looking, are you familiar with that?

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MR. BELL: I'm familiar with the statement that Mr. Bruck apparently took.

Honestly, I've read Southerland's PCR transcript, and I don't recall him ever saying anything in the transcript, but I can go back and look, but I don't recall that. I was reading it with interest to what he was saying, and he never really said anything.

THE COURT: But that testimony was not presented at the trial?

MR. BRUCK: No.

MR. BELL: This happened post-trial. All of this happened post-trial.

MR. BRUCK: All post-trial.

THE COURT: So he hadn't made that statement before trial?

MR. BRUCK: No.

MR. BELL: No.

MR. BRUCK: No. He took his Fifth Amendment and he ---

MR. BELL: He made it after his trial which was after Mr. Cooper's trial.

MR. BRUCK: No. He made -- he made the statement exculpating Mr. Cooper at his own post-conviction hearing. He didn't testify at his

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own trial, and he didn't testify -- he took the Fifth Amendment when Mr. Cooper tried to call him at his -- at his trial.

THE COURT: And you're planning on subpoenaing him for this trial?

MR. BRUCK: Yes, we are, but, of course, we need to talk with him. There is an ethical prohibition which, of course, could be overridden by the Court if Mr. Southerland says he's willing to talk to us, and we -- years past, he was. It was only the lawyer standing between. And so our Sixth Amendment right to prepare for trial seems to ---

THE COURT: Okay.

MR. BRUCK: --- trump his lawyer.

THE COURT: And the lawyer sitting in between, was that before the PCR case?

MR. BRUCK: Before and after.

THE COURT: Okay.

(Mr. Bruck further reviews documents.)

MR. BRUCK: I am sorry, this is taking a little longer time than I thought it would.

(Mr. Bruck further reviews exhibit.)

THE COURT: That presents a little bit of an interesting question to me. Has the delay in fact assisted him?

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MR. BRUCK: We think not. When the case was on direct appeal, Mr. Southerland was willing to be a witness for Mr. Cooper. Now he -- we are told that he no longer is willing. We don't know that, because we can't find out.

THE COURT: Okay.

MR. BRUCK: So, if anything, this may well turn out to be evidentiary harm.

(Mr. Bruck further reviews documents.)

MR. BRUCK: Mr. Bell, do you have a volume seven? It's not here?

MR. BELL: We marked part, part of volume seven and...

MR. BRUCK: Do you have the rest of it?

MR. BELL: That's all I've got. That's all that was in the box.

MR. BRUCK: Okay. Oh, well. That's what we're looking for. And I did not bring everything with me.

(Mr. Bruck and Mr. Bell review documents.)

MR. BRUCK: This can be off the record.

THE COURT: We can be off the record.

(There was off-the-record discussion, after which the following proceedings were had:)

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MR. BRUCK: Thank you. We will get this to you as quickly as we can. Would a PDF attachment be...

THE COURT: Yes, that's fine.

MR. BRUCK: That's probably the easiest.

THE COURT: That's easiest. Send that to Culver. Copy it to the other side.

MR. BRUCK: Yes, sir. Anyway, there was -- and I hadn't realize it would consume so much time, but I did want the Court to know that that matter is on the summary. It is the first item on our pretrial motions docket. I will be getting that, if need be...

THE COURT: Okay.

MR. BRUCK: --- filed quickly. The other thing, as far as pretrial motions go, that we indicated in our papers that I really wanted to stress is that it's not until the rubber hits the road in preparing the case for trial that we're actually going to encounter trial relief issues.

THE COURT: I understand.

MR. BRUCK: And if we encounter something serious, we'll have to make the motion again and allow the Court to pass on it ---

THE COURT: Well, let me ask you, is that

time too soon for you?

MR. BRUCK: I'm sorry?

THE COURT: Is the date that I picked too soon?

MR. BRUCK: Well, it probably would not...

THE COURT: There is kind of a box when you ask for a speedy trial.

MR. BRUCK: Not if we were asking for a speedy trial. It's a box when you want a speedy trial.

THE COURT: Yes. I understand that.

MR. BRUCK: What I would prefer to do is to have an early date, and if we have to ask you to set it back a very short while...

THE COURT: Well, the only caution about that, as you understand ---

MR. BRUCK: I understand.

THE COURT: I've had this come up before. I get a case set and then someone says we need a delay, and then it takes six months or so to pull something out, you know, to get the scheduling change done.

MR. BRUCK: Yeah.

THE COURT: Can you come see if this

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might be it? We might have it.

(There was off-the-record discussion.)

(Mr. Bruck further reviews documents.)

MR. BRUCK: I took the statement, myself. And, like, this is Southerland's statement. I might cover that, as well. Then he also stood and either made his unsworn statement or testified at his own post-conviction hearing.

THE COURT: Oh, so we don't have the post-conviction transcript in here.

MR. BELL: No, that's not the transcript. That's just the...

THE COURT: Yeah.

MR. BRUCK: But that was -- that excerpt was attached as an exhibit to Mr. Cooper's post-conviction hearing. So it should be in the -- in the PCR record.

THE COURT: All right. I'll let you send that to us.

MR. BRUCK: Okay. It needs to be stapled.

(Mr. Bruck tenders document to the Court.)

THE COURT: All right. Anything else?

MR. BRUCK: I don't believe so, no, sir.

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THE COURT: All right. If for some reason you find something else you want to add before I actually rule, I'll let you do that, but I will not when I rule on it. Okay?

MR. BRUCK: Okay.

THE COURT: Thank you.

MR. BRUCK: Thank you.

MR. BELL: Thank you, Your Honor.

(Whereupon, the hearing is concluded at approximately 3:00 p.m.)

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CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, pages 3 through 164, inclusive, relative to appeal, in the Court of General Sessions for Lexington County, Lexington, South Carolina, said hearing having been heard at the Court of General Sessions, Charleston County, Charleston, South Carolina, on the 8th day of February 2006.

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

December 8, 2007

Brenda Cooley

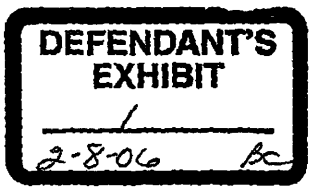
Brenda Cooley

Circuit Court Reporter

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STATE V. TONY COOPER, JR.



State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

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TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

July 13, 2005

The Honorable Henry McMaster
South Carolina Attorney General
P. O. Box 11549
Columbia, SC 29211-1549

The State v. Gene Tony Cooper

Dear Henry:

After a hearing in the above capital case, Judge William P. Keesley issued the enclosed Order dated July 12, 2005, disqualifying my office from the re-trial. As the Order states, Deputy Solicitor Rick Hubbard was the law clerk for the presiding judge in the initial trial, and he was present and privy to in-camera and ex parte communications between the defense attorneys and the presiding judge which included attorney-client matters.

My office will certainly assist with files and documents being transferred to the new prosecutor. We need to be actively involved in the transfer of these materials since I will be prosecuting the co-defendant, Robert Southerland, at a later date and will need some of the same materials for that case.

Thanking you for your assistance and cooperation, I am

Very truly yours,

Donald V. Myers

DVM/mad
Enclosure

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DONALD V. MYERS
Solicitor

June 29, 2005

FILED
2005 JUN 29 P 3:41
BETTIE A. [illegible]
CLERK OF COURT
LEXINGTON, SC

The Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

The Honorable Marc H. Westbrook
Judge, Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

RE: The State v. Gene Tony Cooper

Dear Judges Keesley and Westbrook:

I am uncertain which of you are authorized to hear pending matters in the above case, or if another judge has been assigned as the presiding judge. Therefore, I am writing both of you.

It has been brought to my attention that my office and I have a major conflict which would prevent us from being involved in the prosecution. Deputy Solicitor Rick Hubbard, whose office is next to mine and who is most closely associated with me and the operation of my office, was the law clerk for Judge Hubert Long who presided over the initial trial. Rick was present and actively assisted Judge Long in numerous in-camera and ex parte proceedings with the defendant's attorneys which included confidential and attorney-client discussions and strategies. Therefore, I certainly do not intend for my office to become

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involved in an attorney-client issue, and I will officially disqualify the Eleventh Judicial Circuit Solicitor's Office at the next hearing.

Very truly yours,

Donald V. Myers

DVM/mad
Cc: David I. Bruck, Esq.

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Lex. Co. C.C.C.P., G.S. & E.C.

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DONALD V. MYERS
Solicitor

August 23, 2005

The Honorable William P. Keesley
Administrative Judge
Eleventh Judicial Circuit
P. O. Box 10
Edgefield, SC 29824

RE: The State v. Tony Cooper

Dear Judge Keesley:

This is to advise you of the status of the above case. I have been informed that First Judicial Circuit Solicitor David Pascoe has been requested to assume prosecution of this case. However, I do not know whether he has made a decision concerning that request.

Your July Order directed my office directed my Office to transmit the file to the Attorney General's Office or the designated prosecutor. This is to inform you that we have delivered the file to the Attorney General's Office.

Very truly yours,

Donald V. Myers

DVM/mad
Cc: The Honorable Henry McMaster
The Honorable David Pascoe
Mr. David Bruck, Director, Virginia Capital Case Clearing House
Washington and Lee School of Law
Lexington, VA 24450

Dayton Riddle

From: David Bruck [BruckD@wlu.edu]
Sent: Tuesday, August 16, 2005 7:29 PM
To: Donald V. Myers
Cc: Dayton Riddle; stuart.andrews@nelsonmullins.com; duncan@pdlex.com; WKeesleyj@sccourts.org
Subject: State v. Tony Cooper

Donnie:

Since we have heard nothing further since Judge Keesley granted your motion to withdraw at the last hearing on July 12, 2005, I'm sending this to ask you to advise me who now represents the State in the Cooper matter.

All best,

David

David Bruck
Clinical Professor of Law
Director, Virginia Capital Case Clearinghouse
Washington & Lee School of Law
Lexington, Virginia 24450
540-458-8188 (direct)
540-460-8178 (cell)

Kenley

Tues July 12, 2005

Speedy Trial Order — April 25

Bruch's E-Mail — April 26
Trial May-Aug

Kenley E-Mail — April 27
Will speak to Westbrook

DVM letter to Westbrook — May 18
May-August No good

MOTION to Disqualify D Ellyn — May 18

Bruch Motion to Dismiss — May 27

Dvm letter Kenley & Westbrook — June 29
Set hrg conflict

Bruch letter to Kenley — July 5

Hearing — July 12

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DONALD V. MYERS
Solicitor

May 18, 2005

The Honorable Marc H. Westbrook
Eleventh Judicial Circuit Judge
205 E. Main Street
Lexington, South Carolina

RE: The State v. Gene Tony Cooper, Jr.

Dear Judge Westbrook:

As you know, Judge Keesley issued an Order (copy enclosed) directing my Office to speak with you to set a date for the trial of the above case in 2005. I respectfully suggest that a hearing be held as soon as it is convenient to discuss this issue as well as other matters.

In an e-mail to Judge Keesley (copy attached), Mr. Bruck requested the case be set between May and August. As you know, another capital case is scheduled during that time. Also, this and other factors would make that time span impossible.

Further, enclosed is a Motion to Disqualify and Recuse Defendant's Attorneys and Agents which was filed today. You will recall that I raised this

issue at a previous hearing at which Mr. Bruck objected because a formal written Motion had not been served.

Very truly yours,

Donnie Myers

Donald V. Myers

DVM/mad

Enclosures

Cc: The Honorable William P. Keesley
Mr. David I. Bruck

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	
THE STATE,	)	
	)	
-vs-	)	ORDER FOR SPEEDY TRIAL
	)	
GENE TONY COOPER,	)	Case Number: 1990-GS-32-0083
	)	1990-GS-32-0084
Defendant.	)	

The defendant has moved for a speedy trial. The case is to be heard before the end of 2005, or the defendant may move for bail or for dismissal of the charges.

Mr. Cooper had been convicted and sentenced to death, but was granted Post-Conviction Relief, which was affirmed by the South Carolina Supreme Court in 2002. A speedy trial motion was argued before The Honorable Marc H. Westbrook on August 18, 2003. Judge Westbrook needed to check the court's schedule and directed that a hearing be scheduled in a couple of weeks. A meeting was held in chambers on August 25, 2003, during which the State indicated that the case would be tried in the Spring of 2004. The case has not been called for trial yet.

The court directs that the Solicitor's office speak with the Judge assigned to this case and to the Chief Judge for Administrative Purposes and select a firm date for the commencement of the trial, which shall begin in 2005. Notice of that date is to be given to defense counsel within 30 days from today's date.

AND IT IS SO ORDERED.

/s/ William P. Keesley
William P. Keesley
Judge

April 25, 2005

From: David Bruck [BruckD@wlu.edu]
Sent: Tuesday, April 26, 2005 9:26 PM
To: bcarrigg@lex-co.com; Donald V. Myers; Dayton Riddle; hfrick@lex-co.com; Rick Hubbard; WKeesleyj@sccourts.org
Cc: MWestbrookj@sccourts.org; MWestbrookLC@sccourts.org
Subject: Re: FW: State vs. Gene Tony Cooper (90-GS-32-0083 and 0084)

Dear Judge Keesley:

I realize that scheduling a trial to suit everyone is never easy, but since you invited us to advise if there were any problems, I have to say that there is one.

As I mentioned at the speedy trial motion hearing before you on February 15, 2005, I'm now a law professor at Washington & Lee, and am available to try this case from early May to early August. From mid-August to early December I am both teaching a lecture course and running the Virginia Capital Case Clearinghouse, a clinical program at W&L.

Normally such conflicts would be my problem and no one else's. But here my scheduling crunch is actually a result of the state's long delay in bringing this case to trial. Mr. Cooper is extremely anxious to have me defend him, and has been asking me for years not to hand over his case to anyone else. It does not seem fair for the state to force either a further delay of the trial into 2006 or else a change of counsel by, in effect, waiting me out. This is especially true considering Mr. Cooper's three motions for speedy trial, and considering the state's prior commitment, reflected in your order, to bringing the case to trial in the spring of 2004.

Under the circumstances, I must respectfully renew my request that this case be set for trial on or before August 1 of this year. This request is made so that Mr. Cooper will not be unfairly disadvantaged by the state's unjustified and (to me at least) unexplained delay in calling his case for trial.

Thank you for your understanding and assistance in this matter.

Yours truly,

David Bruck

From : Keesley, William P.
Sent : Monday, April 25, 2005 2:25 PM
To: 'bruckd@wlu.edu'; Myers, Donnie; Riddle, Dayton; Hubbard, Rick; Carrigg, Beth; Frick, Hope
Subject: State vs. Gene Tony Cooper (90-GS-32-0083 and 0084)

Attached to this email is a copy of the Order entered in response to the defendant's motion for speedy trial. Please let me know if there are any problems. Thank you. [wpk]

David Bruck
Director
Virginia Capital Case Clearinghouse
Washington & Lee Law School
Lexington VA 24450
540-458-8188

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255

LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29072
TELEPHONE: (803) 785-8352

DONALD V. MYERS
Solicitor

FILED
2005 JUN 29 P 3:41
BETTIA A. HARRIS
CLERK OF COURT
LEXINGTON, SC

June 29, 2005

The Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

The Honorable Marc H. Westbrook
Judge, Eleventh Judicial Circuit
205 E. Main Street
Lexington, SC 29072

RE: The State v. Gene Tony Cooper

Dear Judges Keesley and Westbrook:

I am uncertain which of you are authorized to hear pending matters in the above case, or if another judge has been assigned as the presiding judge. Therefore, I am writing both of you.

It has been brought to my attention that my office and I have a major conflict which would prevent us from being involved in the prosecution. Deputy Solicitor Rick Hubbard, whose office is next to mine and who is most closely associated with me and the operation of my office, was the law clerk for Judge Hubert Long who presided over the initial trial. Rick was present and actively assisted Judge Long in numerous in-camera and ex parte proceedings with the defendant's attorneys which included confidential and attorney-client discussions and strategies. Therefore, I certainly do not intend for my office to become

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

involved in an attorney-client issue, and I will officially disqualify the Eleventh Judicial Circuit Solicitor's Office at the next hearing.

Very truly yours,

Donald V. Myers

DVM/mad
Cc: David I. Bruck, Esq.

A TRUE COPY
Lex. Co. C.C.C.P., G.S. & F.C.

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Office of the Solicitor
Eleventh Judicial Circuit

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DONALD V. MYERS
Solicitor

FILED
2005 JUN 29 P 3:41
BETTIA A. [illegible]
CLERK OF COURT
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June 29, 2005

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Eleventh Judicial Circuit
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Very truly yours,

Donnie Myers

Donald V. Myers

DVM/mad
Cc: David I. Bruck, Esq.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

DAVID I. BRUCK
Attorney at Law

1247 Sumter Street, Suite 201
Columbia, South Carolina 29201

Mailing Address: P.O. Box 11744
Columbia, South Carolina 29211

Telephone: (803) 765-1044
Fax: (803) 765-1143
E-mail: bruckd@wlu.edu

July 5, 2005

Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
PO Box 10
Edgefield, SC 29824

Via E-mail and U.S. Mail

RE: The State v. Gene Tony Cooper, Jr.
90-GS-32-83, 90-GS-32-84

Dear Judge Keesley:

I have just received a copy of a letter from Solicitor Myers to you and Judge Westbrook, dated June 29, 2005 and postmarked June 30, 2005, advising of his office's intention to withdraw from the prosecution of this case due to a possible conflict.

While I appreciate and respect Mr. Myers' concern over the situation that has prompted this action, its timing creates a potential problem. Mr. Cooper has been awaiting retrial since August of 2002, and his successive motions for speedy trial have been pending for nearly two years. We are now one week away from a scheduled hearing before you on Mr. Cooper's motion to dismiss for lack of speedy trial or, in the alternative, for release on bond pending his retrial. I infer from Mr. Myers' letter that he plans to take no action at this hearing other than to "officially disqualify" his office.

Given the circumstances, it would be extremely unfair to deny or further delay Mr. Cooper's scheduled day in court due to the Solicitor's withdrawal. Therefore, I write to request that the state be prepared, with new counsel, to go forward as scheduled with the hearing on Mr. Cooper's pending motion on July 12.

Thank you for your kind assistance in this matter. Owing to the lateness of Mr. Myers' announcement, I am taking the liberty of sending this letter to you by e-mail as well as by mail.

Yours truly,

David I. Bruck

David I. Bruck

cc: Hon. Marc H. Westbrook
Hon. Beth Carrigg, Clerk of Court
Solicitor Donald V. Myers
Deputy Solicitor Dayton Riddle
Stuart M. Andrews, Esq.
John Earl Duncan, Esq.
Carson Sowell, Esq.
Tony Cooper

DAVID I. BRUCK
Attorney at Law

1247 Sumter Street, Suite 201
Columbia, South Carolina 29201

Columbia, South Carolina 29211

Mailing Address: P.O. Box 11744
Fax: (803) 765-1143
E-mail: bruckd@wlu.edu

Telep

July 5, 2005

Honorable William P. Keesley
Chief Administrative Judge
Eleventh Judicial Circuit
PO Box 10
Edgefield, SC 29824

Via E-mail and U.S. Mail

RE: The State v. Gene Tony Cooper, Jr.
90-GS-32-83, 90-GS-32-84

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Yours truly,

David I. Bruck

cc: Hon. Marc H. Westbrook
Hon. Beth Carrigg, Clerk of Court
Solicitor Donald V. Myers
Deputy Solicitor Dayton Riddle
Stuart M. Andrews, Esq.
John Earl Duncan, Esq.
Carson Sowell, Esq.
Tony Cooper

LAW OFFICES OF
DAVID I. BRUCK

David I. Bruck
Robert E. Lominack

1247 Sumter Street, Suite 201 (29201)
Mailing Address: P.O. Box 11744
Columbia, South Carolina 29211

Telephone: (803) 765-1044
Fax: (803) 765-1143
E-mail:david@bruckjaw.com

August 7, 2003

Dayton Riddle, Esq.
Deputy Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse Annex
105 South Lake Drive
Lexington, SC 29072

(Via Fax 359-8255)

RE: The State v. Gene Tony Cooper, Jr.
90-GS-32-83, 90-GS-32-84

Dear Dayton:

Please be advised that Judge Westbrook has scheduled a hearing on my Amended Motion for Speedy Trial at 2:30 p.m. today, August 7th, 2003 at the Lexington County Courthouse. I intend to waive my client's presence at this hearing. I look forward to seeing you at that time.

With all best personal regards, I remain,

Yours truly,

David

David I. Bruck

DIB/njh

cc: Hon. Marc H. Westbrook
Hon. Tom Comerford, Clerk of Court
Mr. Tony Cooper

LAW OFFICES OF
DAVID I. BRUCK

David I. Bruck
Robert E. Lominack

1247 Sumter Street, Suite 201 (29201)
Mailing Address: P.O. Box 11744
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Fax: (803) 765-1143
E-mail:david@brucklaw.com

July 16, 2003

Dayton Riddle, Esq.
Deputy Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse Annex
105 South Lake Drive
Lexington, SC 29072

RE: The State v. Gene Tony Cooper, Jr.

Dear Dayton:

This is to followup on my telephone message of Monday, July 14th regarding the pending speedy trial motion in the above-referenced case. I would greatly appreciate your arranging for Mr. Cooper to brought to Court during the latter part of the week of August 4th, when Judge Westbrook is holding a term of General Sessions Court. I can argue the speedy trial motion on either Wednesday, Thursday or Friday of that week, whichever is most convenient for you.

I look forward to hearing from you shortly regarding the date and time for this motion hearing.

Thank you for your kind assistance in this matter.

Yours truly,

David I. Bruck

DIB/njh

cc: Hon. Tom Comerford, Clerk of Court

LAW OFFICES OF
DAVID I. BRUCK

David I. Bruck
Robert E. Lominack

1247 Sumter Street, Suite 201 (29201)
Mailing Address: P.O. Box 11744
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E-mail:david@brucklaw.com

July 11, 2003

Tom Comerford, Clerk of Court
Lexington County Courthouse
139 E. Main Street
Lexington, SC 29072

Dear Mr. Comerford:

Please find enclosed, with proof of service, the original and one copy of Defendant's Amended Demand for Speedy Trial.

Please replace the motion that was sent on July 10th with this amended motion. Please return a stamped copy to me in the enclosed self-addressed stamped envelope.

If you should have any question, please do not hesitate to contact this office.

Yours truly,

David I. Bruck

enclosure

DIB/njh

cc: Dayton Riddle, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	90-GS-32-83 90-GS-32-84
STATE OF SOUTH CAROLINA	)	
	)	Defendant's Motion No. 1
v.	)	DEFENDANT'S AMENDED DEMAND FOR SPEEDY TRIAL
GENE TONY COOPER,	)	
Defendant.	)	

TO THE HON. DONALD V. MYERS, SOLICITOR, ELEVENTH JUDICIAL CIRCUIT:

You will please take notice that the defendant Gene Tony Cooper hereby moves, pursuant to S.C. Const. art. I, §§ 9 and 14, to the speedy trial guarantees of the Sixth and Fourteenth Amendments to the Constitution of the United States, and to S.C. Code Ann. § 17-23-90 (West 2003), a speedy trial of all charges now pending against him. In support of this motion, he would show:

1. In 1990, The defendant was indicted for kidnaping, armed robbery, conspiracy, and murder in connection with the death of Kimberly Quinn. He was convicted and sentenced to death on the murder count, and to terms of years for the other offenses, on February 22, 1991.

2. On January 10, 1994, the South Carolina Supreme Court reversed the defendant's murder conviction and remanded that

count for a new trial. At the same time, the South Carolina Supreme Court affirmed the defendant's other convictions and sentences. State v. Cooper, 312 S.C. 90, 439 S.E.2d 276 (1994).

3. On September 4, 1995, the defendant filed an application for post-conviction relief respecting his noncapital convictions. Counsel for the state and for the defendant informally agreed that the retrial of the murder charge should await disposition of his PCR challenge to the remaining counts.

4. The post-conviction court granted relief with respect to all of the defendant's remaining convictions on December 3, 1998, following an evidentiary hearing. The state appealed, and on August 12, 2002 the South Carolina Supreme Court affirmed the grant of post-conviction relief. Cooper v. Moore, 351 S.C. 207, 569 S.E.2d 330 (2002).

5. The state did not petition for rehearing, and the Clerk of the South Carolina Supreme Court sent down the remittitur to the Circuit Court for Lexington County on August 29, 2002.

6. Since August 29, 2002, the state has, to the defendant's knowledge, taken no action to bring him to trial.

7. On June 23, 2003, Deputy Solicitor Riddle returned a telephone inquiry from defense counsel and advised that the state would respond to counsel's informal inquiry regarding a trial date in ten days. The ten day period elapsed on July 3, 2003. On July 11, 2003, Mr. Riddle returned counsel's call but advised

that the State was currently not in a position to propose a date certain for the trial of this case.

8. The defendant remains in confinement awaiting his retrial.

WHEREFORE, having set forth his grounds, the defendant Gene Tony Cooper demands a speedy trial of all charges now pending against him.

Respectfully submitted,

DAVID I. BRUCK
P.O. Box 11744
Columbia, SC 29204
(803) 765-1044

ATTORNEY FOR GENE TONY COOPER

July 11, 2003

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	
COUNTY OF LEXINGTON	)	90-GS-32-83 90-GS-32-84
STATE OF SOUTH CAROLINA	)	
	)	
	)	CERTIFICATE OF SERVICE
v.	)	
	)	
	)	
GENE TONY COOPER,	)	
	)	
Defendant.	)	
	)	

I do hereby certify that I have served upon counsel for the State defendant's Amended Demand for Speedy Trial, by first class mail, with postage prepaid and addressed to:

Dayton Riddle, Esq.
Deputy Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse Annex
105 South Lake Drive
Lexington, SC 29072

This the 11th day of July, 2003.

David I. Bruck

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON	)	
THE STATE,	)	
	)	
-vs-	)	ORDER REGARDING MOTIONS
	)	
GENE TONY COOPER,	)	Case Number: 1990-GS-32-0083
	)	1990-GS-32-0084
Defendant.	)	

Several motions are pending in this death penalty case. (1) The State's motion to remove defense counsel is denied. (2) The State's motion to have the 11th Circuit Solicitor's office disqualified is granted. (3) The defendant's motion to dismiss is denied. (4) The defendant's motion for bail is denied. To the extent that the defense is reasserting a motion for speedy trial, that issue is already covered in the Order of April 25, 2005, directing that the case be tried in 2005.

(1) REMOVAL OF DEFENSE COUNSEL

The State has moved to have defense counsel, David I. Bruck, Esquire, and his co-counsel and agents removed from the case based on allegations that he had unauthorized communications with a co-defendant, Robert "Bo" Southerland, without the knowledge or consent of Mr. Southerland's attorneys. While there may be issues related to this matter that have to be resolved by the judge assigned to handle this case or by those charged with enforcement of the rules of ethics, the motion is denied at this point. There has not been a sufficient showing to justify removal of defense counsel.

(2) DISQUALIFICATION OF THE SOLICITOR'S OFFICE

The State has also moved to have the Solicitor's Office of the Eleventh Judicial Circuit disqualified on the case due to a conflict of interest. A Deputy Solicitor, S. Richardson Hubbard, III, was serving as law clerk to the trial judge who presided over

Mr. Cooper's first trial. As such, the current Deputy Solicitor was privy to *ex parte* proceedings related to attorney-client matters. The court agrees that the Solicitor's Office for the Eleventh Judicial Circuit should be disqualified based on this conflict.

(3) DISMISSAL BASED ON FAILURE TO HAVE A SPEEDY TRIAL

The defendant was arrested on October 11, 1989. In February 1991, he was sentenced to death for murder and also received sentences for kidnapping, armed robbery, and conspiracy to commit armed robbery. The Supreme Court of South Carolina reversed his murder conviction in 1994. He was granted post-conviction relief (PCR) by this court on the other convictions in December 1998. The granting of PCR was affirmed in August 2002.

Mr. Cooper has been incarcerated on these charges for about 16 years. Since at least August 2002, he has repeatedly sought to have his case called for trial. There are several speedy trial motions. When the Honorable Marc H. Westbrook was Chief Judge for Administrative Purposes, he held hearings and status conferences in an attempt to get this case set for re-trial. At the last conference with Judge Westbrook, the State indicated that it intended to call the trial in the Spring of 2004. No formal Order was issued.

After the undersigned judge was designated as Chief Judge for Administrative Purposes, another speedy trial motion was heard, from which an Order issued on April 25, 2005. It directed that the case be called for trial in 2005, failing which the defense could move again for dismissal or speedy trial. One of the defense attorneys, Mr. Bruck, is now a full-time professor of law at Washington and Lee University in Virginia. Upon receiving the Order, he contacted the court and indicated that he needed to have the case tried before the school year resumed. Then, the Solicitor filed the motions to remove Mr. Bruck from the case and to disqualify the 11th Circuit Solicitor's office.

The court finds insufficient cause at this stage to dismiss the charges. Obviously, the court is troubled by the fact that the removal of the Solicitor's office from the case may result in a further delay of the trial. However, the court does not accept the

defense's assertion that this is part of an intentional pattern of delay. If the case is not heard by the end of 2005, the judge assigned to the case may consider whether the case should be dismissed or bail should be granted.

(4) REQUEST FOR BAIL

Defense counsel strenuously argued that the defendant should be released on bail. The motion is denied. If the case is not tried as directed in the April 2005 Order, the motion may be reasserted.

CONCLUSION

The court will probably not be able to accommodate Mr. Bruck's request that the case only be tried during periods when he is not involved in his professorial duties, while also trying to schedule the case at the earliest possible time. The court knows of 8 cases with death penalty notices in Lexington County, as well as several other cases which would have been pursued as death penalty cases but for the United States Supreme Court's determination that persons who were minors at the time of committing an offense cannot be executed.

One of the pending cases involving a minor has a defendant who has never been tried, despite spending 10 years in pretrial detention. That case is also one in which the Solicitor's office of this circuit has been disqualified. Today, a date was set for that trial to begin in November 2005. This court is willing to take extraordinary steps to move terms around to accommodate the trial of Mr. Cooper's case, even though there are also serious scheduling problems involving the backlog of civil court. If the newly assigned prosecutors can be ready to try this case in 2005, it is unlikely that it could be done around the calendar of the law school at Washington and Lee.

On the other hand, this court has frequently expressed its deep concern about the length of time that people accused of crimes are being required to sit in jail (in this case, on death row) awaiting trial. The court is aware that there are many reasons for this situation, including the explosive growth of this county. But, defense counsel is correct

in his protestations that the constitutions of the United States and South Carolina must mean something when they afford to everyone the right to a speedy trial.

The court has previously had communications with the Chief Justice about the need to schedule the large number of death penalty cases pending in Lexington County. Today, the court received a list of the pending cases, which will be forwarded to the Chief Justice. Notice is being given today to the Chief Justice, Court Administration, and the Attorney General's office about this decision and the need for expedited steps to bring this matter to trial.

The court directs that the Solicitor's office transmit its file to the Attorney General's office or the designated prosecutors immediately.

AND IT IS SO ORDERED.

William P. Keesley
Judge

July 12, 2005

Jack

	Name	DOA	# of	Charges	ASOL	Def Atty	Disp	D
1	Patterson, Raymonc	There were only 31 pgs. not 33. This exhibit was stapled and showed no signs of any pages being torn off. JF			DVM	Bill Toal	n	
2	cooper, tony gene				1st	Bruck	n	
3	Southerland, Rober				RKM		n	
4	charping, james				DVM		n	
5	Powers, Ted Benjar				CDR	D Holt	y	
6	Stinton, Joseph James	11/18/94	1		SHY		y	
7	gilbert, jacqueline	4/6/95	1		RWP		n	
8	Radwill, Calen John	11/3/95	6		7TH	DELGADO	y	
9	jamison, jamil	11/30/95	2		SRH		y	
10	kelly, william	1/10/96	4		DSG	KIRKLAND/Fullwood	n	
11	jones, jeffrey	2/6/96	5		CDR	MCCAULEY	n	
12	hutto, terry	3/19/96	2		CDR		n	
13	brown, toby	4/3/96	2		DVM		n	
14	Starnes, Norman E	5/27/96	2		16TH		n	

DEFENDANT'S EXHIBIT 2 2-8-06 BC

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Da
1	Patterson, Raymond	11/1/84	1		DVM	Bill Toal	n	
2	cooper, tony gene	10/11/89	3		1st	Bruck	n	
3	Southerland, Robert H	11/16/89	1		RKM		n	
4	charping, james	2/2/90	3		DVM		n	
5	Powers, Ted Benjamin	1/29/91	1		CDR	D Holt	y	
6	Stinton, Joseph James	11/18/94	1		SHY		y	
7	gilbert, jacqueline	4/6/95	1		RWP		n	
8	Radwill, Calen John	11/3/95	6		7TH	DELGADO	y	
9	jamison, jamil	11/30/95	2		SRH		y	
10	kelly, william	1/10/96	4		DSG	KIRKLAND/Fullwood	n	
11	jones, jeffrey	2/6/96	5		CDR	MCCAULEY	n	
12	hutto, terry	3/19/96	2		CDR		n	
13	brown, toby	4/3/96	2		DVM		n	
14	Starnes, Norman E	5/27/96	2		16TH		n	

DEFENDANT'S EXHIBIT
2
2-8-06 BC

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
15	Rand, Thomas	9/26/96	9		CDR	DUNCAN	n	
16	Wise, Michael	11/18/96	1		RMM		n	
17	Todd, William A	11/23/96	1		MMM		y	
18	erving, david	7/14/97	6		SRH		y	
19	Smith, Clyde Arnold	10/10/97	1		RCC	wayne floyd	y	
20	durney, walter	2/15/98	1		AG		n	
21	gentry, melvin	2/20/98	2		AG		y	
22	green, timothy	5/18/98	2		LGW	Tom Young	y	
23	forrest, joshua	6/8/98	2		DSG		y	
24	lott, nancy	6/17/98	7		LGW		y	
25	barnes, daniel	7/26/98	1		SHY	Carol McCurry	n	
26	Ward, Woodrow Anthony	8/21/98	4		KC		y	
27	Serra, Thomas Edward	10/22/98	2		LGW	Bob Mills	n	
28	Wilson, Carroll E	11/17/98	1		AG		n	
29	akrim, musa neelain	11/22/98	1		AG		n	
30	gadson, sheila	11/22/98	1		AG		n	
31	mccary, teresa	12/9/98	1		SJM	Sally Henry	n	
32	bolton, jennifer	2/12/99	1		PTI		y	
33	HUTTO, ROBERT B.	3/11/99	4		DSG		y	
34	haselden, jeffrey	5/16/99	1		DVM		n	
35	Thompson, Kevin Andrev	6/13/99	1		DBM		y	
36	mueller, douglas	7/1/99	2		RMM		y	
37	corley, lee	7/4/99	5		DVM		y	
38	harmon, jodie	7/13/99	1		LGW	Lisa McPherson	n	
39	hutto, garrett	7/24/99	5		LGW	Wayne Floyd	y	
40	Wood, Michael	8/3/99	4		AG		n	
41	bradwell, charles	8/30/99	6		AGA	Beth Fullwood	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
42	Volious, Vance Edward	9/9/99	1		KYR		y	
43	Wright, Francis Lee	9/24/99	3		SHY	Wayne Floyd	y	
44	maroney, alisha	11/5/99	1		SHY		y	
45	Trotter, Marvin Richard	11/24/99	1		DSG	Sam Kramer	y	
46	Warren, Tony	12/1/99	2		SHY	Marlene Sipes	y	
47	adams, shedrick jr	12/6/99	1		KYR		y	
48	howell, annie	12/7/99	2		AGA	Lisa McPherson	y	
49	mitchell, sharon	12/9/99	2		AGA	Lawrence Simmons	n	
50	Pearson, Linda Ann	12/9/99	2		AGA	Sally Henry	y	
51	West, Andrew	12/24/99	4		SHY		y	
52	flott, julius	12/29/99	4		AGA	Dennis Bolt	y	
53	coston, john	1/15/00	1		DVM		y	
54	Stone, James Brian	1/19/00	3		SJM	Ralph Kennedy	y	
55	coward, denise	2/12/00	2		DVM		y	
56	elders, melvin	2/22/00	2		AW		y	
57	english, terry	2/22/00	2		DBM	wayne floyd	n	
58	Williamson, Latanya M	2/23/00	1		DVM		y	
59	johnson, chasity	3/9/00	3		FAB	Beth Fullwood	y	
60	Spivey, John Wayne	3/18/00	1		DSG	Jack Swerling	n	
61	michaels, edward	3/20/00	1		SJM		y	
62	jeffcoat, anthony	3/27/00	1		JM	Heath Taylor	y	
63	nelson, reginald	3/29/00	2		KC		y	
64	mccray, tabitha	4/7/00	2		LGW		y	
65	Wilson, Ryan Lee	4/9/00	1		SHY		y	
66	mcdaniel, harriete	4/11/00	3		KC	James Sarvis	y	
67	Reid, Connie Lynn	4/12/00	3		LGW	Neal Lourie	n	
68	moore, david	4/13/00	1		KC		y	
69	brown, robin	4/20/00	1		rcc	Theo Williams	n	
70	higgins, alex	4/27/00	1		LGW		y	
71	goodwin, alvin	4/29/00	2		DVM		y	
72	Watson, Alexander Jr	4/29/00	3		DVM	Cam Littlejohn	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
73	barr, darrell	5/4/00	7		CDR	Beth Fullwood	n	
74	milam, justin	5/6/00	3		WJH		y	
75	corder, rex	5/9/00	1		SHY		n	
76	leaphart, al	5/12/00	1		LGW		y	
77	mosley, michael	5/12/00	3		LGW		n	
78	griffin, damien	5/17/00	3		AGS		y	
79	Reed, Byron K	5/26/00	4		SRH		y	
80	corley, tony	5/31/00	2		FAB		y	
81	Rowland, Deeanna Brayt	6/5/00	1		LGW		y	
82	Welsh, William L	6/7/00	1		CGS		y	
83	Reese, Vincent D	6/11/00	1		AGA		y	
84	mincy, elijah	6/13/00	1		KYR		y	
85	nutter, christopher	6/13/00	1		SRH		y	
86	Hagins, woodrow	6/17/00	4		MMM		y	
87	Way, Ricky	6/25/00	4		LGW		n	
88	martin, timothy	8/6/00	2		RCC		y	
89	Scott, Tremaine	8/7/00	6		LGW	Adriane Falgione	n	
90	Toney, Matt Earl	8/7/00	6		LGW	Bob Mills	n	
91	hammond, cameron	8/9/00	1		SJM	Lisa McPherson	y	
92	chatman, calvin	8/22/00	6		SHY		y	
93	dantzler, maurice	8/22/00	1		LGW	Pro Se	y	
94	hammond, thomas	8/23/00	5		AGA		y	
95	Shakkori, Jasem Moham	9/1/00	1		CDR	Paul Reeves	n	
96	Thompson, Jamin Larry	9/2/00	1		LGW	James Corley	y	
97	Wade, Charles N	9/4/00	1		DBM	Sam Kramer	Y	
98	Price, Bobby Joe	9/11/00	2		SJM	Theo Williams	n	
99	butler, everett	9/15/00	3		AW	Sam Kramer	n	
100	johnson, james	9/27/00	5		AW	Kirk Morgan	n	
101	mims, scott	9/27/00	1		SCB		y	
102	jones, robert	10/4/00	1		LGW	Richard Breibart	n	
103	grant, christina	10/7/00	3		AHE		y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty.	Disp	Disp Date
104	montgomery, kawana	10/7/00	1		JM	Sally Henry	n	
105	Willis, Brandon Thomas	10/18/00	13		SJM		y	
106	blackstone, donald	10/31/00	1		WJH		y	
107	Stone, William Edgar	10/31/00	1		SHY		n	
108	keen, gloria	11/1/00	1		DVM		y	
109	langford, cal	11/7/00	1		LGW		y	
110	harrison, lisa	11/12/00	2		SHY		n	
111	disher, matthew	11/14/00	1		CDR		y	
112	Williams, Karen	11/18/00	1		RCC	Sam Kramer	y	
113	hopkins, michael	11/21/00	4		RMM		n	
114	dotson, mickey	11/22/00	2		AGA	Theo Williams	y	
115	murphy, pete	11/26/00	1		LGW	Lawrence Simmons	n	
116	cogdill, thomas	11/27/00	1		DBM	Steven Hudson	y	
117	brigman, timothy	11/30/00	1		LGW	Sam Kramer	y	
118	Talty, Brian F	12/6/00	2		JM		n	
119	gillings, don	12/7/00	1		AG		n	
120	hagler, charles	12/8/00	1		SJM		n	
121	padgett, billy	12/11/00	1		FAB		y	
122	Williams, Michael Curtis	12/11/00	2		SRH		n	
123	bickley, dianne	12/13/00	1		MMM		y	
124	Roen, Deborah Mae	12/14/00	1		LGW	Steve Soltis	y	
125	murphy, virgil	12/15/00	3		LGW	Lawrence Simmons	n	
126	childs, kenneth	12/18/00	1		KC		y	
127	hall, randell	12/21/00	1		SJM	Public Defender	y	
128	hook, jessica	12/30/00	1		MMM	Debbie Chapman	y	
129	Wrestler, Stacy N	1/5/01	2		SHY	Theo Williams	n	
130	martin, ronald	1/10/01	23		LGW		y	
131	hinson, ronald	1/15/01	1		KYR		y	
132	Robinson, John Daniel	1/17/01	1		CGS		y	
133	Walden, Detrina Denise	1/19/01	2		DVM		y	
134	austin, ray	1/30/01	3		KC	Wayne FLoyd	n	
135	evans, danny	2/1/01	4		JM		y	
136	Spencer, Christopher	2/5/01	3		SRH		y	
137	kimbler, glenn	2/10/01	2		RMM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Dat
138	Wood, Donald	2/11/01	1		AG		n	
139	inman, kristen	2/17/01	2		CDR	Keith Giese	y	
140	lewis, stephen	2/17/01	2		LGW		y	
141	harrison, christopher	2/18/01	2		LGW		y	
142	hughes, raymond	2/22/01	1		JES		y	
143	nelson, demetric	2/22/01	1		JM	Jack Duncan	n	
144	Pierce, Justin	2/22/01	5		SHY	Steve Soltis	n	
145	Spell, Ruffer	2/27/01	1		SHY		y	
146	Perito, William Frederick	2/28/01	4		LGW	Mike McMullen	y	
147	metcalf, jason	3/1/01	3		AGA	Mickey Ellisor	n	
148	Powell, Jack Arnold Jr.	3/5/01	2		LGW	Beth Fullwood	y	
149	mitchell, detrell	3/7/01	1		DVM		y	
150	Richardson, Donnie	3/25/01	6		AGA	Jack Swerling	n	
151	myers, harry	3/29/01	2		LGW	Hugh Roberts	n	
152	Sheppard, James Thoma	3/31/01	2		KC	Debbie Chapman	n	
153	hodges, thomas	4/13/01	5		SJM	Wayne Floyd	n	
154	mcdowell, sarah	4/13/01	1		AGA	Richard Breibart	y	
155	mintz, jerry	4/13/01	1		SJM		n	
156	Price, Bradford Scott	4/16/01	1		DBM		y	
157	Robinson, Ivantae Teren	4/20/01	3		SRH	John Potterfield	n	
158	graham, robin	4/21/01	1		CGS		y	
159	nguyen, hoang	4/21/01	1		SJM		y	
160	davis, timothy	4/28/01	1		DBM	Wayne FLoyd	n	
161	lemus, fernando	5/8/01	2		DSG	Richard Breibart	y	
162	Vixie, Stephanie	5/8/01	1		SHY		n	
163	Simmons, Christopher D	5/10/01	1		MMM		y	
164	grant, jason	5/17/01	3		SHY	Joseph Epting	y	
165	Scalf, Jason Allen	5/31/01	3		CDR	Mickey Ellisor	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Dis Dat
166	bookman, willie	6/1/01	2		SHY	Sam Kramer	n	
167	harris, barron	6/1/01	5		LGW	Sally Henry	n	
168	Shannon, Daniel Allen	6/1/01	3		CDR	Lisa McPherson	n	
169	gibbs, brian	6/6/01	1		FAB		y	
170	cannon, michael	6/9/01	1		LGW		y	
171	Weston, Gregory	6/10/01	3		SHY	Joenathan Chaplin	y	
172	Pettus, Barry Olando	6/15/01	2		SHY		y	
173	cooley, jackie	6/21/01	1		DBM	Sam Kramer	y	
174	karst, melissa	6/26/01	8		KC	Bill Rast	n	
175	Reisinger, Rose Marie	6/30/01	1		SCB		y	
176	murrel, quincy	7/3/01	3		CGS		y	
177	favor, jacqueline	7/7/01	1		SCB	Theo Williams	n	
178	Raybine, Nelson Eugene	7/9/01	5		FAB		y	
179	knight, christopher	7/17/01	3		AGA	Jack Duncan	y	
180	blair, stephen	7/19/01	1		SHY	Beth Fullwood	n	
181	martin, christopher	7/21/01	2		DVM		y	
182	mccall, darla	7/23/01	1		DBM	Lisa McPherson	n	
183	harmon, angela	7/24/01	1		AGA		n	
184	goudelock, joshua	7/25/01	1		SRH		n	
185	babb, patrick	7/27/01	1		AGS		y	
186	james, michael	7/29/01	7		RMM		n	
187	cyrus, cleveland	7/30/01	2		SHY		y	
188	Wilson, Charles Wesley	7/31/01	2		LGW		y	
189	baldwin, christopher	8/1/01	1		CDR	Steve Soltis	n	
190	Watford, Travis E	8/5/01	1		WJH		y	
191	joiner, ira	8/10/01	1		LGW	Theo Williams	y	
192	Williams, Marguita	8/11/01	3		CGS		y	
193	dyches, anthony	8/14/01	3		AW		y	
194	Tolen, Terry Louise	8/21/01	1		DVM		y	
195	hutchens, belinda	8/22/01	4		KC	Bill Rast	y	
196	gonzalez, jose	8/26/01	1		DVM		y	
197	boswell, robert	8/27/01	4		SRH		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Dis Dat
198	jordon, paul	8/27/01	1		SJM		y	
199	Shuler, Stroman Lee	8/28/01	5		FAB		y	
200	garvin, timothy	8/29/01	1		LGW		y	
201	littlejohn, roberta	9/9/01	1		MMM		n	
202	Smith, Robert Anthony	9/12/01	3		SJM	JACK DUNCAN	n	
203	Smith, Jerry Wayne Jr	9/15/01	8		MMM		y	
204	Smith, Kenneth	9/17/01	4		MMM	P Holler	n	
205	maroney, michael	9/18/01	6		JM	Sam Kramer	y	
206	bish, sean	9/19/01	1		DVM		y	
207	culley, stephen	9/19/01	2		aw		y	
208	keller, hudie	9/19/01	10		rmm		n	
209	Wood, Fulton Otis	9/19/01	4		WJH		y	
210	hoff, lawrence	9/21/01	1		kc		y	
211	lyles, randy	9/21/01	1		DVM		y	
212	Watson, Jamie Elliott	9/22/01	2		DBM	Jerry Screen	y	
213	grissom, ronnie	10/3/01	2		kc		y	
214	Patrick, Howard C	10/3/01	1		SHY		n	
215	garrick, steve	10/4/01	2		SHY	PRO SE	n	
216	Stewart, James	10/4/01	1		JM		n	
217	gerald, gregory	10/5/01	5		dbm	Richard Breibart	n	
218	kimbler, alvin	10/12/01	1		AGA		y	
219	moelich, robert	10/12/01	3		RCC	THEO WILLIAMS	y	
220	Wise, Jerry Bradford	10/12/01	5		KC		n	
221	gillings, james	10/13/01	2		rmm		y	
222	mention, douglas	10/14/01	1		shy		n	
223	Schwartz, Kevin Barry	10/15/01	7		DVM		y	
224	Panter, Tyrone	10/18/01	3		DBM		n	
225	metze, mary	10/21/01	2		lgw		n	
226	morris, robert	10/21/01	1		shy		n	
227	Taylor, Lawrence Chris	10/21/01	2		SHY	THEO WILLIAMS	n	
228	kitts, david	10/23/01	1		SJM		y	
229	gentry, mark	10/25/01	1		SHY	THEO WILLIAMS	n	
230	mcdaniel, floyd	10/25/01	3		dbm		y	
231	Umbarger, Alonzo Richar	10/25/01	1		KC	Theo Williams	y	
232	Umbarger, Angie Denise	10/25/01	1		KC	Theo Williams	y	
233	brown, lawrence	10/26/01	2		CGS		y	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
234	hanthorn, ryan	10/26/01	1		lgw		y	
235	Stevenson, Todd Lee	10/26/01	4		JM		n	
236	neal, christopher	11/1/01	1		aga	Ripley Timms	n	
237	gilmer, edward	11/4/01	2		lgw		n	
238	hamilton, william	11/5/01	2		MMM		y	
239	campbell, robert	11/8/01	1		mmm		n	
240	Saucedo, George	11/11/01	1		DSG		n	
241	mathews, joseph	11/13/01	1		SHY		n	
242	harrison, thomas	11/15/01	1		RCC	ROBIN ALLEY	n	
243	Preston, Michael Anthon	11/16/01	2		KC		y	
244	jones, charles	11/19/01	1		RMM		n	
245	Sanders, Danny Dwayne	11/19/01	3		CDR	Beth Fullwood	y	
246	ILDERTON, STEVEN	11/23/01	1		SCB		y	
247	lanham, anthony	11/24/01	2		mmm		n	
248	card, candida	11/27/01	2		lgw		y	
249	mullen, john	11/28/01	1		KYR		y	
250	Walker, Michael Anthony	12/1/01	1		SJM	CATHERINE HENDRI	n	
251	hayes, charles	12/3/01	1		CDR	H PAULING	n	
252	daniels, tyrone	12/6/01	3		WJH		y	
253	muller, james	12/11/01	5		kc		n	
254	Patrick, Jeffrey	12/12/01	5		SJM		y	
255	crum, edward	12/13/01	3		kc		n	
256	demarco, john	12/19/01	2		aw		y	
257	Vincellette, Andrew Paul	12/21/01	2		BWJ		y	
258	Quattlebaum, Jicousha T	12/24/01	4		AGA		n	
259	Panter, Charles Jack Jr.	12/26/01	1		SHY		y	
260	Sessions, Carol	12/30/01	1		SHY		y	
261	Tindal, George B	12/30/01	9		KC		n	
262	Stone, Charles Lee	12/31/01	1		AW		n	
263	Richardson, Donald	1/2/02	3		CGS		y	
264	West, James	1/2/02	1		SJM	THEO WILLIAMS	n	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
265	bandlow, david	1/7/02	1		SHY	PRO SE	n	
266	foister, john	1/8/02	2		BWJ		y	
267	Pondexter, Joshuaway jr	1/9/02	2		DBM		y	
268	frye, larry	1/10/02	2		SHY		y	
269	hutto, richard	1/10/02	1		SHY		y	
270	morris, phillip	1/10/02	5		SJM		n	
271	Williams, Sammie Lee	1/10/02	1		MMM		n	
272	Watson, Russell	1/11/02	3		AW		n	
273	Smalls, Steven Christoph	1/14/02	2		AGA		Y	
274	Thompson, Donny Orlan	1/15/02	2		LGW		n	
275	Robinson, James Edwar	1/16/02	5		AW		y	
276	matthews, ardyth	1/17/02	1		BWJ		y	
277	kyzer, timothy	1/18/02	1		RCC		y	
278	Stone, Michael Mitchell	1/18/02	1		LGW		n	
279	Timmons, Richard	1/22/02	2		SRH		n	
280	Walczesky, Michael M	1/22/02	1		LGW		n	
281	morgan, ranji	1/24/02	1		SJM		n	
282	harsey, melissa	1/26/02	1		lgw		y	
283	deaton, melissa	1/27/02	1		lgw		y	
284	garcia, daniel	1/27/02	1		SJM		y	
285	ellison, larry	1/29/02	2		aw		y	
286	mcintosh, ronald	1/29/02	1		aw		y	
287	hutchins, joshua	2/1/02	2		dsg		y	
288	douglas, jeff	2/4/02	1		lgw	William Applegate	n	
289	gallashaw, tyrone	2/5/02	2		SJM		Y	
290	Williams, Jackson H	2/5/02	6		AGA		n	
291	hill, steve	2/6/02	1		CDR	JACK SWERLING	n	
292	mcciary, carl	2/6/02	1		FAB		y	
293	metcalf, theron	2/6/02	5		lgw		y	
294	Stewart, Richard Patters	2/7/02	4		RMM		n	
295	Willner, Jack A	2/7/02	1		SJM	WAYNE FLOYD	n	
296	Smith, Dalton L	2/8/02	7		KC	Theo Williams	n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
297	daniels, sherrline	2/11/02	1		CGS		y	
298	Shealy, Rodney Brandon	2/16/02	3		DSG		y	
299	mccoy, tony	2/21/02	1		DVM		n	
300	Wise, Richard Geddings	2/21/02	1		LGW		n	
301	Watson, John Edward	2/22/02	1		RMM		n	
302	Robinson, Thomas Dean	2/23/02	2		RCC		y	
303	harley, bobby	2/25/02	1		lgw		Y	
304	johnson, erik	2/26/02	1		RMM		n	
305	Rabon, Hubert Randall	2/28/02	2		AGA		n	
306	frost, elias	3/1/02	1		SJM		n	
307	Rainwater, Troy	3/1/02	1		RMM		y	
308	blue, ricky	3/2/02	1		N/A		y	
309	Taylor, Jasper	3/2/02	1		SRH		y	
310	brimfield, kim	3/3/02	4		BWJ		y	
311	Thompson, Callie Lucille	3/4/02	1		SJM		y	
312	fordham, entwain	3/8/02	5		JM		y	
313	Ware, Larekos Marquette	3/9/02	1		SJM		n	
314	cam, brandon	3/14/02	6		jm		y	
315	cassidy, walter	3/15/02	1		srh		n	
316	kitchen, christopher	3/15/02	11		aga		n	
317	Seets, William Caldwell	3/16/02	1		CGS		y	
318	Phillips, Roger Dale	3/17/02	1		SJM	THEO/WAYNE	n	
319	mathis, mike	3/19/02	3		RCC		n	
320	Spencer, Howard Dean	3/19/02	6		AGA		n	
321	mcgee, darren	3/20/02	8		JM	Heath Taylor	n	
322	cooper, samuel	3/21/02	1		AGA		y	
323	edwards, darrin	3/21/02	4		JM	Heath Taylor	n	
324	Rhodes, Ricky Frederick	3/23/02	1		SHY	DAVID TAYLOR	n	
325	Sibert, Charles Ashley	3/24/02	2		SRH		n	
326	martin, demetris	3/25/02	1		srh		n	
327	barnes, gregory	3/27/02	3		lgw		y	
328	berry, brian	4/1/02	4		AG		n	
329	Webster, Scot Dennis	4/2/02	1		LGW		y	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Dis Dat
330	berry, robert	4/3/02	1		AG		n	
331	gosnell, brett	4/10/02	4		jm	Keith Giese	y	
332	mims, derek	4/17/02	1		SHY		y	
333	ornelas, gilberto	4/17/02	7		CDR	BILL RAST	Y	
334	Tessnear, Max Ricky	4/17/02	3		JM	Steve Soltis	y	
335	nelson, joseph	4/18/02	1		SJM		n	
336	Sieg, Sylvia Barbara	4/18/02	5		LGW		n	
337	lytes, letricia	4/19/02	2		lgw		n	
338	Riley, William Ray	4/21/02	1		SJM		y	
339	moses, michael	4/23/02	1		lgw		y	
340	blankenship, joy	4/24/02	6		kc		n	
341	brown, david	4/25/02	6		SJM		n	
342	dean, jimmy	4/25/02	1		SHY	Joenathan Chaplin	n	
343	Wilkes, Delbert Alexande	4/25/02	1		DBM		y	
344	bess, charlie	4/26/02	1		lgw	Neal Lourie	n	
345	jenkins, henry	5/1/02	1		jm	Will Bryant	y	
346	Simpson, Octavious J	5/1/02	10		RMM		y	
347	Smith, Thomasina	5/1/02	1		JM	Hugh ROberts	y	
348	Tucker, Lawrence	5/1/02	2		SJM		y	
349	hill, harriel	5/3/02	1		dvm		y	
350	howell, christopher	5/3/02	1		KYR		n	
351	mathur, sameer	5/3/02	2		AGA		y	
352	Phillips, Sharon Elaine	5/3/02	1		CGS		y	
353	Pike, Juston David	5/3/02	3		DBM	Richard Breibart	n	
354	culley, glenn	5/10/02	3		RMM	John Delgado	n	
355	mitchell, arthur	5/10/02	4		kc		y	
356	Senterfeit, Larry Bradley	5/10/02	2		RMM	Debbie CHapman	n	
357	Toole, Chad S	5/10/02	2		RMM		n	
358	miller, andrew	5/11/02	1		cgs		y	
359	haston, kevin	5/15/02	2		AGA		Y	
360	oree, claudiesha	5/16/02	2		kc		y	
361	mercer, kevin	5/17/02	4		DVM		n	
362	Thompson, Marcus Anto	5/17/02	3		DVM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
363	Turner, Brenda Ann	5/18/02	1		JES		n	
364	dinkins, ronnie	5/21/02	2		aga		n	
365	Williams, Darrell Lasteve	5/21/02	12		AGA		n	
366	kriger, daniel	5/23/02	1		lgw		n	
367	Young, Richard Colin	5/23/02	8		KC		n	
368	moates, marianne	5/24/02	2		SJM		y	
369	baxter, richard	5/27/02	1		aw		y	
370	graham, kelly	5/27/02	1		aw		y	
371	lane, tadd	5/27/02	1		aw		y	
372	Watts, Gabrielle C	5/29/02	6		DSG		n	
373	howell, kenneth	5/30/02	1		RMM		y	
374	carter, terrence	5/31/02	3		jm		n	
375	Young, Donald Antonio	5/31/02	2		DBM		y	
376	Parker, Nancy Patricia	6/2/02	1		LGW		y	
377	holloman, kathy	6/5/02	1		FAB		y	
378	Williams, Donald E	6/5/02	1		SJM		y	
379	looney, jimmy	6/11/02	2		dbm	Ken Mathews	n	
380	Summers, Cynthia Irene	6/12/02	5		RMM	Harry Depew	n	
381	amaker, leroy	6/13/02	2		jm		n	
382	jones, michael	6/14/02	14		kc		y	
383	Rickard, Katashi	6/18/02	1		LGW		n	
384	burley, antonio	6/21/02	2		scb		n	
385	carter, renea	6/21/02	2		sjm		y	
386	jackson, jimmie	6/21/02	9		jm		y	
387	davis, felicia	6/25/02	1		jm		y	
388	dix, jason	6/25/02	4		mmm		n	
389	kelly, william jr	6/26/02	4		RMM		n	
390	Woodhouse, James Jeffr	6/27/02	1		LGW		y	
391	Vereen, Bernard Leranzo	6/28/02	3		KC		y	
392	Tyler, Jerica C	6/30/02	3		EJM		n	
393	lee, victor	7/2/02	2		AGA		y	
394	mosely, gina	7/2/02	1		aw		y	
395	brown, norris	7/3/02	3		jm		y	
396	furtick, stephanie	7/3/02	1		CGS		y	
397	goolsby, lisa	7/3/02	2		jm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
434	lawson, joseph	8/11/02	3		kc		n	
435	choice, alphonzo	8/13/02	2		sjm		y	
436	Parker, Scott Douglas	8/13/02	5		DSG	Bill Rast	n	
437	Scott, Bryant Nathaniel	8/13/02	1		KC	Debbie Chapman	y	
438	Smith, Cory Benjamin	8/13/02	1		RMM		y	
439	batdorf, brent	8/14/02	1		SJM	Robert Hood	n	
440	jackson, marsha	8/14/02	1		aga		y	
441	Williams, Stan W	8/14/02	4		SHY		n	
442	goff, ernest	8/15/02	2		kc	Ken Mathews	n	
443	mclemore, terrence	8/15/02	4		SHY		y	
444	Robinson, Ricky Jelani	8/15/02	1		LGW		n	
445	Smith, Charles Edward	8/15/02	1		RMM		y	
446	Player, James Louie III	8/16/02	2		SJM		y	
447	griffin, edward	8/21/02	1		rmm		y	
448	Wagner, Raeanne Renee	8/21/02	1		SJM		n	
449	morgan, robert	8/22/02	2		SJM		Y	
450	odom, marcelus	8/22/02	1		SHY		y	
451	hutto, angie	8/23/02	3		shy		n	
452	davis; jennifer	8/28/02	10		kc		y	
453	Stezler, Robby Clemson	8/29/02	1		DNP'd		y	
454	Ward, Lisa Michelle	8/29/02	1		SHY		y	
455	Rich, David William	8/30/02	1		Not assigned		n	
456	Walker, James J	8/30/02	1		DVM		y	
457	Sumter, Jason	9/3/02	1		MMM		n	
458	Taylor, Darryl Stephone	9/4/02	3		JM		y	
459	Smith, Andre L	9/6/02	1		SJM		y	
460	Venable, Nichole Renee	9/6/02	1		JM	Sam Kramer	n	
461	gary, jody	9/7/02	1		dbm		y	
462	Watsky, David Dennis	9/8/02	1		CGS		y	
463	Posey, Lillian E	9/10/02	2		DSG	Steve Soltis	n	
464	moore, ivan	9/11/02	7		rmm	Chuck Brooks	n	
465	Taylor, Buddy	9/12/02	1		RMM		y	
466	coleman, kenny	9/13/02	1		SJM		y	
467	ford, corey	9/14/02	1		WJH		n	
468	brown, andre.	9/17/02	2		jm		y	
469	mccrea, julius	9/17/02	4		lgw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Attv	Disp	Disp Date
470	Stroman, Chris Bryan	9/17/02	5		JES		y	
471	padgett, clarence	9/20/02	1		SJM		y	
472	Wells, Allan Floyd	9/24/02	1		MMM		n	
473	corley, stephen	9/25/02	10		aga	Wayne FLoyd	n	
474	frazier, carlos	9/25/02	2		aw		n	
475	gortman, jamille	9/25/02	1		RCC		y	
476	kelley, essence	9/25/02	3		CGS		y	
477	Starr, Melissa Arlene	9/26/02	1		DVM		n	
478	Rivera, Ignacio Cuadros	9/27/02	2		WJH		n	
479	Sexton, Jamie Eric	9/28/02	1		JES		y	
480	hatchell, joseph	10/1/02	1		lgw		n	
481	Sandish, Charles F	10/1/02	2		JM		n	
482	nguyen, duc	10/2/02	1		RMM	Jack Swerling	n	
483	leaphart, marvin	10/3/02	4		kc	Theo Williams	n	
484	Schofield, John William	10/3/02	2		KC		y	
485	cormier, jeff	10/4/02	1		SJM		y	
486	cheeseboro, nicholas	10/5/02	1		aw		n	
487	diaz, jorge	10/6/02	1		mmm		n	
488	milling, hannie	10/7/02	1		aw	Jay Elliott	n	
489	carson, tekela	10/9/02	3		mmm		n	
490	ford, gerald	10/11/02	1		sjm		n	
491	Reed, Samuel Walter	10/11/02	2		N/A		y	
492	Reeves, Freddie Lee	10/12/02	1		AW	Todd Rutherford	n	
493	barber, kelly	10/15/02	2		jm	Garry Wooten	n	
494	gohagen, lindward	10/19/02	4		kc	Steve Soltis	n	
495	Robinson, Marvin Lirico	10/19/02	1		JES		y	
496	Riple, Sean Lee	10/22/02	4		AW		y	
497	Smith, Brent Devin	10/22/02	2		JM	Murry Kinard	n	
498	dallas, edrice	10/25/02	5		AW		n	
499	manley, charles	10/26/02	3		JES		n	
500	mayzes,kimberly	10/26/02	5		JES		n	
501	Williams, Christopher	10/26/02	1		CGS		y	
502	gleaton, ricky	10/27/02	1		mmm		n	
503	fink, teresa	10/28/02	1		mmm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dist Date
504	bude, donald	10/30/02	1		RCC		y	
505	Rodrigues, Javiel	10/30/02	4		SCB		y	
506	Washington, Theoneous	10/31/02	2		MMM		n	
507	elders, ricky	11/1/02	13		RMM		n	
508	mcmahan, devin	11/1/02	1		MMM		n	
509	brant, william	11/2/02	1		LTC		n	
510	brown, jarrell	11/2/02	1		mmm		n	
511	morse, danial	11/2/02	2		sjm		n	
512	Williams, French L	11/2/02	1		MMM		n	
513	Staley, Cedric Dion	11/3/02	2		AW		y	
514	king, dustin	11/7/02	8		lgw		y	
515	Williams, Charles Jr	11/8/02	2		MMM		n	
516	jones, reggie	11/12/02	2		kc	Robert Mills	n	
517	brown, edmond	11/14/02	3		aw		y	
518	key, marvin	11/14/02	1		kc		y	
519	matzen, bobby	11/14/02	4		shy		y	
520	grice, angela	11/15/02	1		aw		n	
521	johnson, tracey	11/15/02	1		aw		y	
522	harvey, alfred	11/21/02	1		MMM		n	
523	Vaughn, Leroy	11/21/02	2		KC	Beth Fullwood	y	
524	martinez, abner	11/22/02	1		SJM		y	
525	Thompson, Yancey Rand	11/22/02	1		DSG		n	
526	Tucker, Brenda Brooks	11/23/02	1		MMM		n	
527	Smith, Frank Leonard	11/24/02	1		MMM		n	
528	Parker, Christian Francis	11/25/02	1		RMM		n	
529	Wise, Ricky Everett	11/25/02	1		MMM		n	
530	Roberts, Vicent Walter	11/26/02	5		WJH		n	
531	harvey, jamar	11/27/02	2		sjm		y	
532	leaphart, lindsay	11/30/02	1		kc	Theo Williams	n	
533	martin, andrea	11/30/02	1		aw		y	
534	Perry, Ira Travis	11/30/02	2		SHY		n	
535	Taylor, Marion Kristopher	12/1/02	1		JM		y	
536	coker, johnnie	12/3/02	2		sjm	Wayne Floyd	n	
537	corley, catherine	12/3/02	5		aga	Wayne Floyd	n	
538	damron, jason	12/4/02	3		jm	Mickey Ellisor	y	
539	krohn, keith	12/4/02	2		aga		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
540	Thompson, Montique Lev	12/4/02	1		JM	Beth Fullwood	n	
541	Walsh, Joseph James	12/4/02	2		KC	Lisa McPherson	y	
542	foguth, james	12/5/02	1		SCB		n	
543	knight, angela	12/6/02	4		SJM		y	
544	Patterson, Tehron	12/6/02	2		MMM		n	
545	dantzler, antoine	12/7/02	2		jm		y	
546	lawrie, thomas	12/9/02	2		cdr		y	
547	davis, michael	12/10/02	4		dsg	Adrian Falgione	n	
548	hall, shelton	12/10/02	1		mmm		n	
549	Stoudemayer, Joann Sm	12/10/02	1		SJM		Y	
550	Toscano, Angela Mario	12/10/02	2		AW	Bill Rast	n	
551	brooker, anthony	12/11/02	4		jm		n	
552	cates, chris	12/11/02	6		dsg		y	
553	haltiwanger, george	12/11/02	1		JES		y	
554	Smith, Tiffany Danielle	12/12/02	3		AW		n	
555	Snelgrove, Ronald Steve	12/12/02	1		JM		n	
556	christle, robert	12/16/02	2		shy		y	
557	cook, worth	12/16/02	5		shy		y	
558	gallmon, henry	12/16/02	3		kc		y	
559	Peele, Brandi D	12/16/02	1		MMM		n	
560	Santana, Avelino Jacobo	12/16/02	1		RMM		n	
561	berry, steven	12/17/02	4		mmm		n	
562	gantt, henry	12/17/02	1		jm		n	
563	james. Stephanie	12/17/02	1		jm		n	
564	Richardson, Renee W	12/18/02	1		SJM		Y	
565	Sturkie, Renee Armstron	12/19/02	6		SCB		n	
566	jenkins, timothy	12/22/02	5		mmm		n	
567	conyers, charles	12/23/02	1		SJM		n	
568	clark, donnie	12/25/02	1		RMM	Bill Gorski	n	
569	culbreath, kevin	12/26/02	1		RCC		y	
570	amador, jose luis	12/29/02	1		MMM		n	
571	gainey, john	12/29/02	1		mmm		n	
572	kirby, angelo	12/29/02	1		dvm		y	
573	Roach, John Wesley	12/31/02	1		AW	Hugh Roberts	y	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
574	mack, jason	1/1/03	1		kc		y	
575	Whitaker, Sandy Lee	1/2/03	1		DBM	Wayne Floyd	n	
576	Williams, Sheryl Lynn	1/2/03	1		KC		n	
577	hallman, kevin	1/3/03	1		MMM		n	
578	odom, kenneth	1/3/03	3		shy		n	
579	Portwood, Amber N	1/3/03	1		RMM		y	
580	Reed, Michael Deangelo	1/3/03	3		KC	Charlie J Johnson	n	
581	Smith, Wayne Clifford	1/3/03	1		LGW		n	
582	Wood, Charlie Jr	1/5/03	1		MMM		n	
583	cooper, ned	1/7/03	3		aw		n	
584	Robinson, Mark Anthony	1/7/03	2		LGW		n	
585	fair, russell	1/8/03	1		mmm		n	
586	knoppel, john	1/8/03	3		jm	Hans Pauling	n	
587	Quattlebaum, Joshua Alv	1/8/03	3		SJM		n	
588	hughes, stephen	1/9/03	4		sjm		n	
589	morant, joseph	1/9/03	5		mmm		y	
590	clark, homer	1/10/03	1		SJM		y	
591	jones, michael l	1/10/03	3		mmm		n	
592	karaniuk, donna	1/10/03	1		shy	Mark Calhoun	n	
593	caceres, manuel	1/11/03	1		shy		n	
594	larry, ranard	1/11/03	1		kc		y	
595	bennett, eric	1/12/03	1		dvm		y	
596	jones, reginald	1/12/03	1		mmm		n	
597	evans, swinda	1/13/03	1		mmm		n	
598	hall, calvin	1/13/03	2		mmm		n	
599	gordon, travis	1/16/03	1		mmm		n	
600	matthews, david	1/16/03	3		SJM		n	
601	blume, tony	1/17/03	3		jm		n	
602	murray, george	1/17/03	1		mmm		n	
603	Williams, Wilfred D	1/17/03	4		MMM		y	
604	curtin, david	1/18/03	1		mmm		n	
605	mills, thomas	1/18/03	4		mmm		n	
606	Richberg, Darryle Laquai	1/20/03	3		RMM		n	
607	Watkins, James Andrew	1/20/03	3		RMM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
608	Watkins, Jamie Madonna	1/20/03	3		RMM		n	
609	Smith, Amy G	1/22/03	1		CGS		y	
610	barrs, clayton	1/23/03	1		scb		n	
611	moseley, sidney	1/23/03	2		kc		n	
612	oswald, millard	1/23/03	2		kc		n	
613	dozier, marquez	1/24/03	3		dvm		n	
614	greenfield, jessin	1/25/03	1		jm		n	
615	james. Lawrence	1/25/03	2		aw		n	
616	Wooten, Ricky O	1/26/03	2		AW		n	
617	Steele, Kevin Randolph	1/28/03	1		CGS		y	
618	freeman, nathaniel	1/30/03	2		mmm		n	
619	hair, derrick	1/30/03	3		DSG		y	
620	jones, jacobe	1/31/03	4		kc		n	
621	Turner, Christopher G	1/31/03	1		SJM		n	
622	Taylor, Adam Howard	2/1/03	2		JES		n	
623	Suber, Nathaniel Jason	2/2/03	3		LGW		n	
624	dell, kevin	2/3/03	1		FAB		n	
625	Roberts, Justin Antonio	2/3/03	2		KYR		n	
626	duckson, janice	2/5/03	1		mmm		n	
627	gaona, leobardo	2/5/03	6		dsg		n	
628	mcclinton, keith	2/5/03	1		dbm		n	
629	muller, brad	2/5/03	2		sjm		n	
630	addy, james franklin jr	2/7/03	4		kc		n	
631	bell, tavaris	2/7/03	5		dbm		n	
632	clark, bernard	2/7/03	1		KC		n	
633	Zaledzieski, William Jose	2/7/03	1		JES		n	
634	farrington, brnet	2/8/03	2		shy		n	
635	mcgee, ralph	2/8/03	2		kc		n	
636	Worrock, Justin S	2/8/03	4		SJM		n	
637	knotts, randall	2/10/03	9		aga		n	
638	leviner, claudia	2/13/03	1		sjm		n	
639	golson, ernest	2/14/03	3		aga		n	
640	jackson, william	2/14/03	2		mmm		n	
641	johnson, abra	2/14/03	1		kc		n	
642	Royal, Roger Mack	2/14/03	1		BWJ		n	
643	Welch, Dawn Rene	2/15/03	1		AW		n	
644	lee, grover	2/16/03	1		shy		n	
645	habighorst, charles	2/17/03	1		mmm		n	
646	burroughs, john	2/18/03	3		srh		n	
647	ferris, erika	2/18/03	1		aw		n	

	Name	DOA	# of Warrants	Charges			
648	miller, brian	2/18/03	5		kc		n
649	anderson, andrew ocain	2/19/03	1		mmm		n
650	breazeale, eddie	2/20/03	3		scb		n
651	Smith, Rodrigues	2/20/03	1		KC		n
652	mcdade, jeremy	2/21/03	1		aw		n
653	Walters, Anne Louise	2/21/03	1		CDR		n
654	moore, patrick	2/22/03	2		aga		n
655	Weaver, Alan Bruce	2/22/03	1		SJM		n
656	Rothchild, Edward	2/26/03	3		LGW		n
657	demary, jeffery	3/1/03	1		RMM		n
658	evans, melissa	3/1/03	1		mmm		n
659	Snyder, Angela Denese	3/3/03	2		KC		n
660	Smith, Bradley Richards	3/4/03	1		RCC		n
661	Reyes, Erick	3/5/03	1		LGW		n
662	mullins, edward	3/6/03	2		kc		n
663	burns, michael	3/7/03	3		sjm		y
664	Rollinson, Crystal A	3/7/03	1		MMM		n
665	harris, erica	3/8/03	3		kc		n
666	mathis, michael	3/9/03	3		scb		n
667	ferguson, neal	3/10/03	2		RMM		n
668	glenn, mack	3/11/03	3		lgw		n
669	Sheppard, Shannon Ren	3/11/03	1		LGW		n
670	Ziolkowksi, Alysha Miche	3/11/03	1		JM		n
671	kyzer, charlie	3/12/03	2		rcc		n
672	mims, herschel	3/12/03	3		dvm		n
673	etheridge, randall	3/13/03	1		DBM		n
674	burrough, harold	3/14/03	3		SJM		n
675	coates, james	3/14/03	7		lgw		n
676	Ruff, Michael	3/16/03	1		MMM		n
677	lindsey, michael	3/17/03	1		mmm		n
678	morris, latorya	3/17/03	1		SJM		n
679	Shefield, Donnie Jr	3/17/03	1		MMM		n
680	calling, matthew	3/18/03	1		lgw		n
681	hatfield, scott	3/18/03	1		shy		n
682	Ressler, Herbert Keith Jr	3/18/03	1		LGW		n
683	Williams, Elbert Eugene	3/19/03	1		SJM		n
684	herrera, victor	3/20/03	2		mmm		n
685	kuarles, rena	3/20/03	3		N/A		n
686	miller, randy	3/21/03	2		kc		n
687	compton, larry	3/24/03	1		SCB		n

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Dis Dat
688	meyer, halford	3/24/03	1		sjm		n	
689	Roberts, Jerusha Donaw	3/24/03	4		JM		n	
690	Swain, Marty	3/24/03	1		DVM		n	
691	crim, shondel	3/25/03	2		dbm		n	
692	Rumph, Jonathan Corey	3/25/03	4		JM		n	
693	Taylor, Charles F	3/25/03	1		Not assigned		n	
694	Staley, Gregory	3/27/03	1		SJM		n	
695	Thompson, Bruce Emanu	3/27/03	4		LGW		n	
696	kennedy, anthony	3/28/03	1		mmm		n	
697	Villena, Alejandro E	3/28/03	2		RMM		n	
698	finley, gerald	3/29/03	1		mmm		n	
699	Richardson, Willie James	3/31/03	2		AW		n	
700	hopkins, james	4/1/03	2		scb		n	
701	cates, brandon	4/2/03	2		aga	Richard Dolce	y	
702	Watts, Ernest Lee	4/2/03	2		SCB		n	
703	cobb, karen	4/3/03	1		rmm		n	
704	lindler, keith	4/3/03	1		mmm		n	
705	Ryan, Wade J	4/3/03	1		LGW		n	
706	bartsch, daniel	4/4/03	2		mmm		n	
707	gregory, edward	4/4/03	2		kc		n	
708	mitchell, terry	4/4/03	2		kc		n	
709	Slitzer, Debra Jean	4/4/03	4		KC		n	
710	White, Latashia Denise	4/5/03	3		SCB		n	
711	Thurmond, Mikel	4/6/03	1		LGW		n	
712	cook, jamel	4/9/03	1		jm		n	
713	grant, benny	4/10/03	1		rmm		n	
714	Younce, Ronald Huston	4/10/03	1		Not assigned		n	
715	ketcham, troy	4/11/03	2		mmm		n	
716	kibler, albert	4/11/03	2		lgw		n	
717	mccorkle, charles	4/11/03	1		lgw		n	
718	Terry, Carl Patrick	4/11/03	4		JM		n	
719	clark, jimmy	4/12/03	1		lgw		n	
720	fulmer, michael	4/12/03	1		mmm		n	
721	chambers, joseph	4/13/03	2		kc		n	
722	Perez, Leonel Concha	4/15/03	1		Not assigned		n	
723	bostick, clarence	4/16/03	1				y	
724	bromell, brenda	4/18/03	1		lgw		n	
725	longoria, earl	4/18/03	1		kc		n	
726	Phillips, Debra Ann	4/18/03	1		KC		n	
727	Webber, Crystal Diane	4/18/03	1		KC		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def Atty	Disp	Disp Date
728	cranshaw, steve	4/21/03	1		jm		n	
729	barber, albert	4/22/03	2		rmm		n	
730	keith, johnny	4/22/03	6		kc		n	
731	Peyton, Lara Marie	4/22/03	1		LGW		n	
732	Saunders, Laura Sylvia	4/22/03	2		SCB		n	
733	chapman, laura	4/23/03	1		rcc		n	
734	davis, lamont	4/23/03	1		rcc		n	
735	frazee, raymond	4/23/03	1		aga		n	
736	gordon, anna	4/23/03	12		cdr		n	
737	moultrie, stanely	4/23/03	24		sjm		n	
738	anderson, paul edward	4/24/03	12	murderx2, ARx2, etc.	CDR	Kimbrough, Lisa	n	
739	Watkins, Jeffrey L	4/24/03	1		DVM		n	
740	Zaragoza, Esthela Blanc	4/24/03	1		SJM		n	
741	jackson, charles	4/25/03	2		lgw		n	
742	hook, william	4/26/03	6		lgw		n	
743	Perkins, Tommy James	4/29/03	1		LGW		n	
744	Perriel, Andrew	4/29/03	1		MMM		n	
745	herring, Stephen	4/30/03	4		sjm		n	
746	arcand, kyle	5/1/03	3		DSG		n	
747	drum, ralph	5/1/03	1		rmm		n	
748	duggans, annie	5/2/03	1		lgw		n	
749	dunn, leroy	5/2/03	1		mmm		n	
750	Phillips, Dustin Edwards	5/2/03	1		AGA		n	
751	Williams, Jamie Jeanette	5/2/03	2		LGW		n	
752	burke, ronald	5/3/03	2		lgw		n	
753	harris, patricia	5/3/03	1		lgw		n	
754	mclellan, timothy	5/3/03	2		lgw		n	
755	jones, robert n	5/4/03	1		scb	Richard Breibart	n	
756	hoffman, pamela	5/6/03	2		mmm		n	
757	Sweatt, Jason Thomas	5/6/03	1		SJM		n	
758	crumpton, kevin	5/7/03	2		N/A		n	
759	griffin, shana	5/7/03	1		aga		n	
760	harsey, james	5/7/03	2		sjm		n	
761	Young, Kenneth	5/7/03	1		MMM		n	
762	baker, kenneth	5/8/03	1		dvm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Dat
763	jones, george	5/8/03	7		mmm		n	
764	jorgensen, kai	5/8/03	1		lgw		n	
765	gaines, louis	5/9/03	1		mmm		n	
766	johnson, author	5/9/03	2		n/a		n	
767	Todd, William Reed IV	5/9/03	2		FTA		n	
768	Washington, Isadore L	5/9/03	1		MMM		n	
769	bishop, barry	5/10/03	2		sjm		y	
770	heyward, leandre	5/11/03	1		lgw		n	
771	knight, carol	5/11/03	3		lgw		n	
772	gunter, michael	5/12/03	1		aga		n	
773	Still, Ricky	5/12/03	1		SJM		y	
774	Tweed, Ronald L	5/12/03	2		LGW		n	
775	butler; harveta	5/13/03	1		mmm		n	
776	Smith, Janon	5/13/03	2		MMM		n	
777	Shannon, Roger Lee	5/14/03	1		Not assigned		n	
778	daniels, darrell	5/15/03	1		mmm		n	
779	james, mary	5/15/03	1		dbm		n	
780	Roach, Brian L	5/15/03	2		MMM		n	
781	Taylor, Randall Melvin	5/15/03	1		LGW		n	
782	krause, john	5/16/03	2		mmm		n	
783	Register, Lisa Crim	5/16/03	1		SJM		n	
784	Watkins, Joseph	5/16/03	1		DVM		n	
785	Story, Alisha Laquanda	5/19/03	1		LGW		n	
786	bromell, derrick	5/20/03	1		mmm		n	
787	cornelius, christopher	5/20/03	1		sjm		n	
788	andes, christina	5/22/03	1		lgw		n	
789	kirby, demetra	5/22/03	1		kc		n	
790	mazes, kim	5/22/03	1		scb		n	
791	melvin, linda	5/23/03	1		dvm		n	
792	Sanders, Jonathan Kyle	5/23/03	1		DVM		n	
793	Shealy, William Terry	5/23/03	3		LGW		n	
794	Poole, Perry Kevin	5/24/03	1		RCC		n	
795	Shealy, Jacqueline E-	5/24/03	3		LGW		n	
796	Taylor, Tanisha T	5/24/03	1		LGW		n	
797	kallgren, jonathan	5/25/03	1		lgw		n	
798	mattox, david	5/25/03	1		lgw		n	
799	mavins, charles	5/25/03	1		MMM		y	
800	Santana, James Harris	5/30/03	1		MMM		n	
801	mack, fred	5/31/03	2		N/A		n	
802	morton, willie	5/31/03	1		mmm		n	

	Name	DOA	# of Warrants	Charges	ASOF	Def. Atty	Disp	Disp Date
803	davidson, chris	6/2/03	1		mmm		n	
804	lindsey, brad	6/2/03	2		N/A		n	
805	harlin, charles	6/5/03	4		mmm		n	
806	West, Bradley Gerad	6/5/03	4		LGW		n	
807	Williams, Jason Micheal	6/5/03	2		MMM		n	
808	hayes, tommy	6/6/03	1		mmm		n	
809	mccoy, philip	6/6/03	11		mmm		n	
810	james, roger	6/10/03	1		lgw		n	
811	Tolan, Ronald C	6/10/03	1		MMM		n	
812	kems-lee, davon	6/11/03	1		mmm		n	
813	lundy, christian	6/11/03	2		lgw		n	
814	mccoy, oneal	6/11/03	3		mmm		n	
815	morgan, willie	6/12/03	3		rcc		n	
816	ezelle, scott	6/13/03	1		aw		n	
817	hydrick, john	6/13/03	3		cdr		y	
818	clark, albert	6/17/03	2		kc		n	
819	lee, anthony	6/19/03	1		lgw		n	
820	Toole, Eric K	6/19/03	1		MMM		n	
821	landrum, robert	6/20/03	5		shy		n	
822	Shealy, George Arthur	6/20/03	2		KC		n	
823	Watts, Brian Keith	6/20/03	2		KC		n	
824	Wymer, Thomas Claude	6/20/03	1		KC		n	
825	ball, wayne	6/21/03	1		lgw		n	
826	boyer, jacqueline	6/21/03	1		mmm		n	
827	koivo, royce	6/21/03	2		lgw		n	
828	newman, benjamin	6/21/03	2		mmm		n	
829	Smith, Patricia	6/21/03	1		SJM		n	
830	Poplin, Micheal S	6/22/03	1		MMM		n	
831	Richardson, Horace Den	6/22/03	1		LGW		n	
832	ellison, antonio	6/23/03	1		mmm		n	
833	hardin, ashley	6/24/03	4		cdr		y	
834	leaphart, christie	6/24/03	1		cdr		n	
835	Zeigler, James	6/24/03	1		LGW		n	
836	arcand, carter	6/26/03	2		DSG		n	
837	clark, david	6/26/03	3		lgw		n	
838	hayden, damon	6/26/03	1		sjm		n	
839	adams, ferlandus	6/27/03	1		mmm		n	
840	dick, joab	6/27/03	1		cdr		n	
841	Quinonez, Jose Alberto	6/27/03	1		PLED		y	
842	blackwell, adrianne	6/28/03	2		dvm		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
843	gillie, theus	6/28/03	1		mmm		n	
844	jenkins, kathy	6/29/03	1		mmm		n	
845	Shoemaker, Brian Rober	6/29/03	3		RMM		y	
846	Taylor, Darryl Rodney	6/29/03	2		Not assigned		n	
847	hall, mary	6/30/03	1		mmm		n	
848	hawkins, michael	7/1/03	4		lgw		n	
849	Pontoon, Willie James Jr	7/1/03	2		LGW		n	
850	Simon, Louis B	7/1/03	2		DVM		n	
851	Shuler, Donald W	7/2/03	1		MMM		n	
852	Shuler, Linda Fay	7/2/03	2		MMM		n	
853	crow, mitzi	7/3/03	3		mmm		n	
854	dixon, calvin	7/3/03	3		sjm		n	
855	holmes, desiree	7/3/03	3		sjm		n	
856	Simmons, Anthony L	7/3/03	3		SJM		n	
857	johnston, timothy	7/4/03	2		dbm		n	
858	anderson, terry lee	7/5/03	2		aw		n	
859	jeffcoat, roger	7/5/03	1		N/A		n	
860	Sease, George Vernon	7/5/03	1		MMM		n	
861	hendrix, henry	7/6/03	3		sjm		n	
862	duncan, james	7/7/03	2		mmm		n	
863	Roland, Carlos Maurice	7/7/03	2		CDR		y	
864	Taylor, Christopher A	7/8/03	1		KC		n	
865	Rabon, Michael B	7/9/03	2		DVM		n	
866	Smith, Joel Ray	7/9/03	4		MMM		n	
867	miller, shannon	7/10/03	2		shy		n	
868	Yarborough, Robert Milto	7/10/03	1		LGW		n	
869	barnes, yolanda	7/11/03	1		jm		n	
870	hendrix, gary	7/11/03	1		jm		n	
871	kelly, william f	7/11/03	3		cgs		y	
872	Randolph, Marian Franci	7/11/03	1		JM		n	
873	burkhelmer, robin	7/12/03	1		mmm		n	
874	gordon, tyrone	7/14/03	7		lgw		n	
875	Sims, Torrean A	7/14/03	5		DBM		n	
876	lebel, gregory	7/15/03	1		mmm		n	
877	Simpkins, Edward D	7/15/03	4		DBM		n	
878	mcmillian, detrick	7/16/03	4		dbm		n	
879	evans, robert	7/18/03	4		lgw		n	
880	felder, jessie	7/18/03	2		kc		n	
881	gardner, timothy	7/18/03	1		jm		n	
882	hutto, george	7/18/03	3		lgw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
883	Sutton, Henry A	7/18/03	1		MMM		n	
884	dobey, jimmie	7/19/03	1		dvm		n	
885	Rogers, Kim M	7/19/03	1		LGW		n	
886	Straws, Jabbar J	7/19/03	3		SJM		n	
887	hewitt, george	7/20/03	1		sjm		n	
888	Vanderlick, Michael	7/20/03	1		RMM		n	
889	Swindler, Christopher W	7/21/03	1		MMM		n	
890	davis, george	7/26/03	1		mmm		n	
891	garitt, jerome	7/30/03	1		lgw		n	
892	graham, quientin	7/30/03	1		lgw		n	
893	coffey, benjamin	7/31/03	1		lgw		n	
894	harper, ulysses	7/31/03	3		lgw		n	
895	mcelhaney, jessica	7/31/03	1		lgw		n	
896	carr, william	8/1/03	1		shy		n	
897	carter, david	8/1/03	19		aga		n	
898	finley, candice	8/1/03	1		scb		n	
899	jivers, sheree	8/1/03	1		dsg		n	
900	jumper, heather	8/1/03	1		sjm		n	
901	kyzer, christopher	8/1/03	2		aga		n	
902	blackwell, jerry	8/2/03	1		kc		n	
903	Street, Henry	8/3/03	2		AW		n	
904	Street, Lisa June	8/3/03	4		AW		n	
905	hopkins, james l	8/4/03	1		dbm		n	
906	burden, sasilana	8/6/03	1		mmm		n	
907	green, james	8/7/03	1		scb		n	
908	cohen, kaheli	8/8/03	2		lgw		n	
909	curtis, harold	8/8/03	1		lgw		n	
910	davis, theodore	8/8/03	4		srh		n	
911	finklea, ron	8/8/03	4		srh		n	
912	Walker, Rae Lynn	8/8/03	1		MMM		n	
913	Shumpert, Jeffrey Dean	8/9/03	2		MMM		n	
914	craft, william	8/12/03	1		mmm		n	
915	nelson, gino	8/12/03	6		mmm		n	
916	byrd, john	8/13/03	2		dvm		n	
917	garcia, jose	8/13/03	1		CGS		Y	
918	Smalls, Dian Albright	8/13/03	2		RMM		n	
919	Wilson, Ron	8/13/03	1		MMM		n	
920	norton, clinton	8/15/03	5		mmm		n	
921	hilts, darlene	8/16/03	2		mmm		n	
922	Watts, Craig Michael	8/16/03	1		AW		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
923	Summers, Marion Duran	8/18/03	1		MMM		n	
924	Walters, Robert Edward	8/18/03	2		AW		n	
925	mcclinton, terrence	8/19/03	1		mm		n	
926	Pierce, Virginia Ann	8/19/03	1		LGW		n	
927	baldwin, eddie	8/20/03	1		sjm		n	
928	brown, gary	8/20/03	1		mm		n	
929	fennick, audrey	8/20/03	1		sjm		n	
930	harley, tameka	8/20/03	1		mm		n	
931	mason, tray	8/20/03	1		kc		n	
932	Sims, Jonathan Darnell	8/21/03	2		SJM		n	
933	ingle, christopher	8/22/03	2		scb		n	
934	knight, michael	8/22/03	4		sjm		n	
935	Townsend, Adele Lynn	8/22/03	1		LGW		n	
936	Webb, Kenneth Charles	8/22/03	3		MMM		n	
937	Williams, Antonio D	8/23/03	5		KC		n	
938	palmer, james	8/24/03	2		N/A		n	
939	morris, jemmell	8/25/03	1		mmm		n	
940	brown, edward	8/26/03	1		mmm		n	
941	hopkins, chasity	8/26/03	1		N/A		n	
942	jenkins, john r	8/26/03	3		kc		n	
943	love, bobby	8/27/03	4		mmm		n	
944	morales, victor	8/27/03	1		sjm		n	
945	Seboe, Brandon Charles	8/27/03	1		FAB		n	
946	holmes, levi	8/28/03	12		mm		n	
947	barwick, james	8/29/03	1		mmm		n	
948	brogdon, joseph	8/29/03	2		mmm		n	
949	craven, michael	8/29/03	1		mmm		n	
950	derrick, charles	8/29/03	1		mmm		n	
951	goff, karen	8/29/03	1		mmm		n	
952	malecki, mark	8/29/03	1		mmm		n	
953	martin, john	8/29/03	3		sjm		n	
954	Wilson, Sharon R	8/29/03	1		MMM		n	
955	edwards, michael	9/3/03	1		lgw		n	
956	miller, anthony	9/3/03	1		jm		n	
957	Profit, Lonell Jeremiha	9/3/03	3		RMM		n	
958	folk, trenton	9/4/03	1		mmm		n	
959	ketchen, ginger	9/5/03	1		lgw		n	
960	hernandez, fidel	9/6/03	1		mmm		n	
961	miguel, jose	9/6/03	1		sjm		n	
962	alavez, simon	9/8/03	1		lgw		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty	Disp	Disp Date
963	durham, amanda	9/8/03	2		lgw		n	
964	durham, josh	9/8/03	1		lgw		n	
965	Riddle, Angelicia M	9/8/03	2		DBM		n	
966	Riddle, John	9/8/03	9		DBM		n	
967	Stone, Bobby Joe	9/8/03	1		Not assigned		n	
968	geiger, alfred	9/9/03	1		dvm		n	
969	brailey, koshia	9/10/03	2		sjm		n	
970	duncan, betty	9/10/03	1		mmm		n	
971	favor, deandra	9/10/03	1		lgw		n	
972	Salley, Otis	9/10/03	2		SJM		n	
973	dreher, miko	9/11/03	1		sjm		n	
974	owens, charles	9/13/03	5		aw		n	
975	jeffcoat, jerry	9/14/03	1		mmm		n	
976	Wood, Wayne	9/14/03	1		MMM		n	
977	baker, jerome	9/15/03	1		kc		n	
978	dean, glenda	9/15/03	2		mmm		n	
979	jones, jimmie	9/15/03	1		kc		n	
980	Williams, Alfonso L	9/15/03	2		LGW		n	
981	jones, deonta	9/16/03	1		n/a		n	
982	adams, craig steven	9/17/03	1		mmm		n	
983	cunningham, jason	9/17/03	2		lgw		n	
984	howdyshell, robert	9/17/03	3		jm		n	
985	Peele, Lukan	9/17/03	1		LGW		n	
986	Smith, Patrick Leon	9/17/03	2		SRH		n	
987	brown, marty	9/18/03	2		kc		n	
988	morris, tyrone	9/18/03	7		lgw		n	
989	Taylor, Reginald D	9/18/03	4		DVM		n	
990	Walker, Joseph Clint	9/18/03	2		RMM		n	
991	glover, ronnie	9/19/03	1		rmm		n	
992	lawrence, karla	9/19/03	1		rmm		n	
993	milligan, desmond	9/19/03	5		aga		n	
994	murry, kenneth	9/19/03	1		jm		n	
995	mack, marion	9/20/03	1		kc		n	
996	Price, Frank	9/20/03	2		RMM		n	
997	Richardson, Edward L	9/20/03	1		AGA		n	
998	Secer, Peter	9/20/03	2		RMM		n	
999	guerrero, melodie	9/22/03	7		kc		n	
1000	dickerson, johnny	9/23/03	4		mmm		n	
1001	jackson, rose	9/23/03	1		mmm		n	
1002	Veronee, Kyle Dawson	9/23/03	2		MMM		n	

	Name	DOA	# of Warrants	Charges	ASOL	Def. Atty.	Disp	Disp Date
1003	ames, ross jamal	9/25/03	1		lgw		n	
1004	Stroud, David Eugene	9/25/03	1		AW		n	
1005	davis, james	9/26/03	2		JM		n	
1006	finley, pam	9/26/03	6		kc		n	
1007	clark, billy	9/27/03	4		mmm		n	
1008	david, christopher	9/27/03	1		mmm		n	
1009	finley, michael	9/27/03	3		kc		n	
1010	Quattlebaum, John N	9/27/03	2		SJM		n	
1011	Watkins, Kenneth L	9/27/03	3		MMM		n	
1012	day, william	10/1/03	1		lgw		n	
1013	Rawls, Mariol Juante	10/1/03	2		SJM		n	
1014	Reynolds, Denise	10/1/03	3		LGW		n	
1015	dwyer, jackie	10/4/03	3		aga	Sam Kramer	n	
1016	panter, arnold	10/4/03	2		mmm		n	
1017	Watts, William Tony	10/4/03	1		LGW		n	
1018	Patterson, Gregory A	10/5/03	1		KC		n	
1019	Riley, Ronald Lewis	10/5/03	2		LGW		n	
1020	bynum, sammy	10/6/03	3		scb		n	
1021	alston, alvin darrell	10/7/03	1		aw		n	
1022	bouler, rejois	10/7/03	2		scb		n	
1023	hicks, michael	10/7/03	2		rmm		n	
1024	miller, cori	10/7/03	2		aw		n	
1025	brooker, darren	10/8/03	4		kc		n	
1026	areheart, jon	10/9/03	1		lgw		n	
1027	goodwin, otis	10/9/03	1		lgw		n	
1028	higgs, raymond	10/9/03	1		kc		n	
1029	Thompson, Shana	10/9/03	1		LGW		n	
1030	alexander, dianna dawn	10/10/03	2		kc		n	
1031	dockery, david	10/10/03	1		dsg		y	
1032	kennedy, kenneth	10/10/03	2		sjm		n	
1033	meetze, robert	10/10/03	1		mmm		n	
1034	berger, gina	10/11/03	1		mmm		n	
1035	reese, jeanette	10/11/03	3		kc		n	
1036	Smith, Brent Allen	10/11/03	1		KC		n	
1037	Slater, Charlton	10/13/03	1		SCB		n	
1038	Phelps, Christopher A	10/15/03	3		MMM		n	
1039	Vamadoe, Karla A	10/15/03	1		SHY		n	
1040	Weaver, Marc Anthony	10/15/03	12		CDR		n	
1041	duke, jesse	10/16/03	1		rmm		n	
1042	felts, bartow	10/16/03	2		jm		n	

	Name	DOA	# of Warrants	Charges	ASO	Def. Atty	Disp	Disp Date
1043	jordan, ray	10/16/03	1		lgw		n	
1044	Penny, Michael C	10/18/03	2		MMM		n	
1045	contreras, jose	10/19/03	2		N/A		n	
1046	kearse, william	10/20/03	1		scb		n	
1047	Templeton, James	10/20/03	1		RMM		n	
1048	Vest, Timothy Scott	10/21/03	1		LGW		n	
1049	dixon, lucious	10/22/03	2		mmm		n	
1050	jackson, marcus	10/22/03	1		mmm		n	
1051	Rivers, Curtis Lee	10/22/03	2		SCB		n	
1052	Stokes, Paul	10/22/03	1		LGW		n	
1053	Shepherd, Robert Ervin	10/23/03	1		KC		n	
1054	hipp, erma	10/24/03	1		sjm		n	
1055	Wells, Jimmy W	10/24/03	1		RCC		n	
1056	barfield, crystal	10/25/03	1		rcc		n	
1057	huggins, miles	10/25/03	1		mmm		n	
1058	moore, charles	10/26/03	1		lgw		n	
1059	jones, doyle	10/28/03	1		lgw		n	
1060	Ray, David Lee	10/28/03	1		LGW		n	
1061	Rivers, Andrianne C	10/28/03	1		Not assigned		n	
1062	Trapp, John Marion II	10/28/03	3		KC		n	
1063	carrillo, armando	10/29/03	1		scb		n	
1064	harris, kenneth	10/30/03	6		mmm		n	
1065	Temples, Charlie Waymc	10/30/03	1		MMM		n	
1066	lee, ronald	10/31/03	1		kc		n	
1067	Prater, Carey Vaughn	10/31/03	6		MMM		n	
1068	blackmon, leon	11/1/03	2		lgw		n	
1069	christie, wesley	11/2/03	1		mmm		n	
1070	Thomas, George J	11/4/03	1		SHY		n	
1071	foulks, ashley	11/5/03	1		kc		n	
1072	frazier, okaretta	11/5/03	1		lgw		n	
1073	jamison, desmond	11/5/03	3		mmm		n	
1074	mack, marion j	11/5/03	1		lgw		n	
1075	Swilley, Melissa Lekelle	11/5/03	1		KC		n	
1076	chandler, corey	11/9/03	1		lgw		n	
1077	harden, robert	11/9/03	1		mmm		n	
1078	Pugh, Stafford	11/10/03	1		SHY		n	
1079	abney, aaron	11/12/03	1		mmm		n	
1080	caughman, thomas	11/12/03	1		mmm		n	
1081	jones, michael r	11/12/03	1		mmm		n	
1082	lance, randolph	11/12/03	1		mmm		n	

ORIGINAL 328

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	INDICTMENTS: 1990-GS-32-0083
	)	1990-GS-32-0084
STATE OF SOUTH CAROLINA	)	
	)	
-versus-	)	ORDER
	)	
GENE TONY COOPER,	)	
	)	
Defendant.	)	

FILED
2008 JUL 21 P 2:17
Beth A. Gilbert, Clerk of Court
Lexington County, S.C.

This matter is before the court on the defendant's motion to dismiss his indictments due to violations of the defendant's right to a speedy trial guaranteed by the South Carolina Constitution, S.C. Const. art. I, §§ 9 & 14, the United States Constitution by the Sixth Amendment through the Fourteenth Amendment, and the Code of Laws of South Carolina 1976, S.C. Code §17-13-90. If the court does not grant his motion, he alternatively requests release on bond pending trial. For the following reasons the court denies both of the defendant's motions.

Background

The defendant was arrested in 1989 and tried and convicted of murder, armed robbery, kidnapping, and conspiracy to commit armed robbery, by the Eleventh Judicial Circuit Court in Lexington County in 1991. He has remained incarcerated since his original arrest[1]. The Supreme Court reversed and remanded his murder conviction in 1994 due to the circuit court's failure to obtain an on-the-record waiver of the defendant's right to personally address the jury during the guilt phase of his trial. The defendant then applied for post conviction relief from his remaining convictions. On August 12, 2002, the South Carolina

[1] Mr. Cooper has now been incarcerated for approximately sixteen years.

Supreme Court affirmed his post conviction relief as to the non-capital charges. The Supreme Court held that the defendant had the right to personally address the jury regarding all of his charges and that his counsel provided ineffective assistance by failing to inform him of his statutory right to make a closing statement to the jury.

Mr. Cooper has been incarcerated without a valid conviction on his murder charge since 1994 and since August 12, 2002 on his other charges. The first of four speedy trial motions was made in front of the Honorable Marc H. Westbrook on August 18, 2003. Judge Westbrook did not directly rule on the motion. Instead, he took it under advisement to allow the state to move for dismissal of Mr. Bruck from the case, since granting that motion to set a trial date would be unduly burdensome on any new defense counsel. Additionally, Judge Westbrook expressed concerns about setting the trial for that November because that was the month tentatively scheduled for Lexington County to move into a newly constructed courthouse and there were a number of other pending capital cases on the court's docket. Following the hearing, an in chambers meeting was held with Judge Westbrook in which the state represented that it would call the defendant's case in the spring of 2004.

Due to the fact that the state did not call the case that spring as they represented that they would, the defendant filed another speedy trial motion on February 10, 2005. That motion was heard by the Honorable William P. Keesley on February 15, 2005. Judge Keesley issued an order on that motion which was filed on April 25, 2005. The order directed that Mr. Cooper's case "is to be heard

before the end of 2005, or the defendant may move for bail or for dismissal of the charges."

The defendant subsequently renewed his speedy trial motion in front of Judge Keesley. It was also denied in a July 12, 2005 order issued by Judge Keesley on the grounds that it was already covered by the order in April directing that the case be tried in 2005. The July 12, 2005 order also denied the state's motion to remove defense counsel, granted the state's motion to have the Eleventh Circuit Solicitor's office disqualified due to a conflict, and denied the defendant's motion for bail. As a result of the disqualification of the Eleventh Circuit Solicitor's Office, the First Circuit Solicitor's Office was appointed to the case in September of 2005. The Honorable Jean Toal, Chief Justice of the South Carolina Supreme Court, designated the undersigned judge to hear and dispose of the case in an order signed December 2, 2005.

The defendant filed his current motion to dismiss for denial of a speedy trial on December 29, 2005, because the state did not comply with Judge Keesley's April 25, 2005 order directing the case to be tried in 2005. In the alternative, the defendant requests that bail be set if the motion to dismiss is not granted. The issue this court must consider is whether the delay since the denial of the motion by Judge Keesley is justified.

Analysis

The Constitution of the United States guarantees that a defendant facing criminal charges "shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. In *Klopfer v. North Carolina,* 386 U.S. 213, 87 S.Ct. 988 (1967), the

United States Supreme Court established that the right to a speedy trial is fundamental and imposed by the Due Process Clause of the Fourteenth Amendment on the States. *Klopfer* at 223, 993. The right to a speedy trial is also guaranteed to the citizens of South Carolina by the state Constitution. S.C. Const. Art. I, § 14. In *Wheeler v. State,* the Supreme Court of South Carolina recognized that "[a] speedy trial is a part of the due process of law to which every person accused of crime is entitled under Article 1, Section 5 of the Constitution of South Carolina and under the Fourteenth Amendment to the Federal Constitution." *Wheeler v. State,* 247 S.C. 393, 400, 147 S.E.2d 627, 630 (1966).

The United States Supreme Court has articulated the proper approach for a court to take when dealing with the right to a speedy trial: "[t]he approach we accept is a balancing test; in which the conduct of both the prosecution and the defendant are weighed." *Barker v. Wingo*, 407 U.S. 514, 530, 92 S.Ct. 2182, 2192 (1972).

> A balancing test necessarily compels courts to approach speedy trial cases on an ad hoc basis. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of delay, the reason for the delay, the defendant's assertion of his right, and prejudice to the defendant. *Id.* at 530, 2192.[2]

The South Carolina Supreme Court has recognized the factors identified in *Barker* as the controlling considerations when dealing with speedy trial questions.

[2] Later in the opinion, the U.S. Supreme Court made clear that it regarded "none of the four factors identified above as either a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial. Rather, they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process. But, because we are dealing with a fundamental right of the accused, this process must be carried out with full recognition that the accused's interest in a speedy trial is specifically affirmed in the Constitution." *Barker* at 533, 2193.

State v. Chapman, 289 S.C. 42, 44, 344, S.E.2d 611, 612 (1986); *State v. Waites*, 270 S.C. 104, 107, 240 S.E.2d 651, 653 (1978); *see also State v. Foster*, 260 S.C. 511, 513-514, 197 S.E.2d 280, 281 (1973); *State v. Monroe*, 262 S.C. 346, 350, 204 S.E.2d 433, 435 (1974). However, South Carolina jurisprudence is somewhat undeveloped on the topic, including the different forms of prejudice, and there has not been any state guidance on the issue since the United States Supreme Court issued its opinion in *Doggett v. U.S.*, 505 U.S. 647, 112 S.Ct. 2686 (1992).

LENGTH OF DELAY

The first factor that this court will analyze is the length of delay. "It has long been the rule that when a defendant obtains a reversal of a prior, unsatisfied conviction, he may be retried in the normal course of events." *U.S. v. Loud Hawk*, 474 U.S. 302, 313, 106 S.Ct. 648, 655 (1986). The defendant is not trying to assert that any portion of the eight-year span between when his murder conviction was reversed and his post conviction relief was affirmed should be taken into account in this speedy trial analysis. For all analytical purposes, Judge Keesley considered the time period from August 2002 until the end of December 2005, since a delay in trial was requested to pursue PCR relief. The undersigned is now considering the further delay since December 2005. Although delay alone is not dispositive, the total delay of at least forty four months is sufficient to trigger review of the other factors. *See State v. Kennedy*, 339 S.C. 243, 249, 528 S.E.2d 700, 704 (Ct.App.2000), *aff'd* 348 S.C. 32, 558 S.E.2d 527 (2002), (finding that a delay of two years and two months was

troubling and sufficient to trigger inquiry into the other factors). Additionally, it should be noted that the state in the case at hand concedes that the length of delay is sufficient to trigger further scrutiny of the remaining factors. In *Doggett,* the Supreme Court suggested in dicta that a delay over one year is presumptively prejudicial. *Doggett v. U.S.*, 505 U.S. 647, 652, 112 S.Ct. 2686, 2691 (1992). This marks a point where courts may deem the delay unreasonable enough to trigger a *Barker* inquiry. *Id.*

REASONS FOR DELAY

The second factor in the analysis focuses on the reasons for the delay. "The constitutional guarantee of a speedy trial is protection only against delay which is arbitrary or unreasonable." *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978)(citing *People v. Hairston*, 46 Ill.2d 348, 263 N.E.2d 840 (1970)). This factor is construed in *Doggett* as probative of "whether the government or the criminal defendant is more to blame for the delay." *Doggett* at 651, 2690. The delay was not apparently part of an intentional scheme designed to prejudice the defendant. However, the court finds that the delay was to some degree the result of prosecutorial and governmental negligence, and partly justifiable. There were a variety of reasons offered by the Eleventh Circuit Solicitor's Office to show why the defendant's case had not been set for trial in a timely fashion. However, while none of these excuses alone are sufficient to justify such delay, in the aggregate they sufficiently justify the majority of the delay.

First, the state contends that Mr. Cooper's case is not only a very complex case, but it is over fifteen years old, and as such, will require a substantial amount of time to prepare for trial. However, according to the testimony of Eleventh Circuit Solicitor Donald Myers, nothing substantial had been done by his office to prepare for trial. It is not clear whether or not Judge Keesley weighed this factor in the state's favor prior to the case being assigned to the First Circuit. The delay since the First Circuit was assigned the case in September, 2005, is justified because "the case was clearly complicated and required substantial time to investigate and prepare." *State v. Kennedy*, 339 S.C. 243, 250, 528 S.E.2d 700, 704 (2000) (justifying fourteen month delay post assertion of speedy trial right).

Secondly, the state argues that moving the Eleventh Circuit Solicitor's Office between the new and old Courthouse due to mold contamination hampered its ability to promptly dispose of an already overcrowded docket. It can account for several months of the delay. According to court records the last general sessions term in the old courthouse was November 13, 2003; during that term, the Northcutt case, a capital case, was tried. The first general sessions jury trial in the new courthouse was on April 4, 2004. However, starting January 8, 2004, general sessions pleas and civil trials were regularly being conducted. Despite the actual time there were no criminal jury trials being held, it would not be inappropriate to justify additional time for the solicitor's office to get settled into the new facility as was explained by the testimony of solicitor Myers. As to the overcrowded docket argument, the court found in *Kennedy* that the state's claim

of a loaded docket was a correct yet insufficient excuse alone for the delay. *State v. Kennedy*, 339 S.C. 243, 249, 528 S.E.2d 700, 704 (Ct.App. 2000)(the court was ultimately persuaded by the state's claim that the case was complicated and required a substantial amount of time to prepare). Therefore, even though the overcrowded docket argument was standing alone insufficient, it should still be considered.

Thirdly, there was apparently much confusion as to which judge if any had been assigned to the case prior to the appointment of the undersigned. Solicitor Myers believed that Judge Westbrook was the judge assigned to the case, when in fact no judge had been assigned. The delay in assigning a judge occurred because court administration was not notified of the state's intent to seek the death penalty. Solicitor Myers testified that the typical process is that the General Sessions Chief Judge for administrative purposes conveys that notice to court administration so that the Chief Justice of the South Carolina Supreme Court will assign a judge pursuant to her authority granted by the South Carolina Constitution in article V, § 4. However, that has not been the experience of this court. The solicitor has the duty of alerting court administration so that a judge will be assigned, and the consequences (insofar as delay is concerned) resulting from the postponement of this procedure is a burden the state must bear. Due to this delay, the undersigned was not given exclusive jurisdiction over this case until December 2, 2005, so that trying the case in 2005, as Judge Keesley's order directed, was virtually impossible due to the time necessary to summons a

larger jury pool, mail out questionnaires, etc., that normally is associated with a capital trial.

Furthermore, the state's ability to adhere to Judge Keesley's order was also substantially frustrated by the Eleventh Circuit Solicitor's Office's recusal of itself on July 12, 2005, preventing the First Circuit Solicitor's Office from being assigned to the case until September of that year. Generally, a reasonable delay attributable to recusal of the state is justified because the process of recusal is designed to protect the defendant's due process right to a fair and impartial trial:

This court finds that the reasons for the delay are unintentional and for the most part justifiable. Various reasons for a lag between indictment and trial are weighed differently. *U.S. v. Frith*, 181 F.3d 92, 1999 WL 387849 (C.A. 4(Va.)). For example, "[a] deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government." *Barker* at 531, 2193. "More neutral reasons, such as governmental negligence or an overcrowded court docket, are still weighed against the government (because it bears the ultimate responsibility for bringing a defendant to trial), but less heavily." *Frith* at 3 (citing *Barker*). It should be noted that there is South Carolina case law that indicates that the burden is on the movant to prove that the "delay was due to the neglect and willfulness of the State's prosecution." *State v. Dukes*, 256 S.C. 218, 222, 182 S.E.2d 286, 288 (1971)(emphasis added)(citing 21 Am.Jur.(2d), Criminal Law, Sections 251—253, 286; State v. Hollars, 266 N.C. 45, 145 S.E.2d 309 (1971)). It is not clear to this court whether such precedence requiring neglect and willfulness is in line with the jurisprudence of

the United States Supreme Court. Nonetheless, the court finds that the state's conduct in this instance was not apparently willful and was largely justifiable.

ASSERTION OF RIGHT

The third factor this court must weigh is the defendant's assertion of his right to speedy trial. "The constitutional right of an accused to a speedy trial is a personal one, which he may waive by his conduct. Such waiver is generally inferred: (1) where he has failed to make timely demand that he be either tried or discharged; (2) where a continuance has been granted on his motion or with his consent; or (3) where he has voluntarily entered a plea of guilty without raising the question of denial of speedy trial." *Wheeler v. State*, 247 S.C. 393, 401, 147 S.E.2d 627, 630 (1966); *See also State v. Sarvis*, 265 S.C. 144, 146, 217 S.E.2d 38, 41 (1975) ("The continuance of the case in order to convenience respondent's counsel and the failure to demand a trial constituted a waiver of respondent's right to a speedy trial.") "While the United States Supreme Court has rejected the demand-waiver rule as applied to the right to speedy trial, *Barker, supra*, the manner in which the defendant asserts his right thereto is an important factor to be considered. 'We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.'" *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (quoting *Barker v. Wingo*, 407 U.S. at 532, 92 S.Ct. at 2193); *see also State v. Foster*, 260 S.C. 511, 197 S.E. 2d 281 (1973). It cannot be argued that since 2003 the defendant ever failed to assert his right to speedy trial. In *Kennedy, supra*, even though Kennedy asserted his right to a speedy trial fourteen months before the trial

commenced, the court noted that lead defense counsel had only been counsel of record for nine months prior to the trial and the procedural history of the case outweighed any presumption of prejudice. *Kennedy* at 250, 704. In contrast, Mr. Cooper has been represented by his attorney for more than a decade. The state could contend that the defendant's attorney, Mr. Bruck, waived the defendant's right when he requested that the court try the case within a specific timeframe that would not interfere with his newly acquired educational responsibilities as a law school professor at Washington and Lee. However, this court finds that because Judge Keesley ruled in an order that the court would not be able to accommodate Mr. Bruck's request, it does not appear that Judge Keesley assigned any weight to this request in the denial of the motion[3]. Therefore, nothing in the procedural history of the case could support a finding that the defendant failed to properly assert his right to speedy trial. Logically this court weighs the delay accruing post assertion of one's right to a speedy trial more heavily against the state than the portion of delay that accrues prior to the assertion of that right.

PREJUDICE

The fourth and most important factor that this court must examine is the prejudice that the defendant suffered as a result of the delay. "Among the goals of the Sixth Amendment right to speedy trial is prevention of undue incarceration, minimization of the anxiety accompanying public accusation, and limitation of the possibility that long delay will impair the accused's ability to defend himself."

[3] However, since being designated to preside over this case, this court did consider Mr. Bruck's faculty schedule for the time period from December 2005 to the present.

Waites, supra, at 107, 653. All of these goals have been recognized as forms of prejudice, not just the latter as has been more frequently seen in state jurisprudence. "Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system." *Kennedy* at 250, 704 (citing *Barker* at 532, 2192). However,

> [t]he Sixth Amendment Right to a speedy trial is thus not primarily intended to prevent prejudice to the defense caused by the passage of time; that interest is protected primarily by the due process clause and by statutes of limitations. The speedy trial guarantee is designed to minimize the possibility of lengthy incarceration prior to trial, to reduce the lesser, but nevertheless substantial impairment of liberty imposed on an accused while released on bail, and to shorten the disruption of life caused by arrest and the presence of unresolved criminal charges." *U.S. v. MacDonald*, 456 U.S. 1, 8, 102 S.Ct. 1497, 1502 (1982).

In *State v. Brazell*, a delay of three years and five months was lengthy and the justification was unsatisfactory, but Brazell's right to a speedy trial was not denied upon balance of the *Barker* factors. *State v. Brazell*, 325 S.C. 65, 480 S.E.2d 64 (1997). "The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional." *Id.* at 76, 70-71. The most significant difference from the case at hand is that Brazell was already incarcerated on other charges so he was arguably not prejudiced by the delay in the form of pretrial incarceration. The defendant herein has not shown how his defense has been or will be prejudiced by the delay through the use of demonstrative evidence. Accordingly, this lack of proof in regard to trial prejudice will weigh against his claim to a violation of his right to a speedy trial.

In this regard it should be noted that the majority of South Carolina case law relies on a lack of demonstrable evidence of trial prejudice in the denial of

speedy trial motions. However, as pointed out in *Doggett*, demonstrable trial prejudice is not essential. *Doggett v. U.S.*, 505 U.S. 647, 655, 112 S.Ct. 2686, 2693 (1992). The defendant relies on the presumption that his defense was prejudiced by the passage of time. *Doggett* noted that "presumptive prejudice cannot alone carry a Sixth Amendment claim," but rather must be considered in context with the other factors; it also recognized that "affirmative proof of particularized prejudice is not essential to every speedy trial claim." Id. at 655-56, 2693-94.

This court recognizes that the main prejudice Mr. Cooper has suffered from is pretrial incarceration[4]. In *Kennedy*, the delay and pretrial incarceration was twenty-six months, and Kennedy asserted his right to speedy trial fourteen months before his trial started. The state's reasons for delay were blamed on an overcrowded docket, complexity of the case, and the procedural history which the court found "outweighed any presumption of prejudice." Id. at 250, 704. The case at hand consists of a forty-four month delay as opposed to the twenty-six month delay in *Kennedy*. In *Kennedy*, the court found that the pretrial incarceration at issue was only "slight prejudice," and insufficient alone to carry the speedy trial motion. This court has not lost sight of the importance of a defendant's liberty, for it is that liberty which the speedy trial right was designed to protect. However, upon balance of the Barker factors, especially with this court heavily weighing the lack of demonstrable evidence of trial prejudice, the

[4] However, recent developments have led Mr. Bruck to indicate that he desires to supplement his speedy trial motion while it was pending in order to demonstrate particular trial prejudice. While this order is being issued prior to the receipt of any such supplement, this court finds that upon receipt of the same, this issue may be revisited by a renewed motion if necessary upon discovery of such trial prejudice.

presumption of prejudice has been persuasively rebutted and as such, this court must deny the defendant's motion. *Doggett* at 658, 2694[5]. It also should be noted that the state recently withdrew their notice to seek the death penalty, and this could be construed as a benefit to the defendant that materialized from the delay.

Bond

The defendant's motion in the alternative to be released on bond if this court refused to grant the previously discussed motion for speedy trial is also denied. "Before conviction it is mandatory to grant bail, except for capital offenses when the proof is evident or the presumption is great." S.C. Const. art. 1 § 20. Moreover, this court finds that the heinous nature of the alleged offenses, and the fact that he has prior convictions for violent crimes makes him a potential danger to the community. Furthermore the defendant is a potential flight risk as evidenced by his prior convictions for attempted escape in December of 1977, escape in September 1980, and escape in March of 1985. For the aforementioned reasons, this court denies the defendant's motion to be released on bond pending trial.

Conclusion

Having considered the arguments of counsel and the record herein, the motions are hereby denied without prejudice. Judge Keesley had originally denied the speedy trial motion in the event the case was tried prior to the end of 2005. In the interim, a new prosecutor was assigned to the case and a judge

[5] The United States Supreme Court specifically found in Doggett that while the government countered Doggett's efforts to demonstrate particularized trial prejudice, it had not, and probably could not have affirmatively proved that the delay left his ability to defend himself unimpaired. In the case at hand, the court finds that the state has proved that the delay has not impaired the defendant's ability to defend himself, contrary to the circumstances in Doggett.

was assigned to preside over this matter in December 2005; in addition, all persons involved needed at least a brief time to prepare for the anticipated trial from the date the undersigned was appointed. Further, since the deadline in Judge Keesley's order, this court considered the availability of trial terms, the time needed to prepare juror questionnaires, the need for a larger jury pool in a capital death penalty trial, as well as the faculty schedule of defense counsel.

Accordingly, the record suggests that the further delay was justified from the period in which Judge Keesley had found that a speedy trial violation did not exist. Although not dispositive, to some extent, the defendant has benefited from the delay inasmuch as the State has now withdrawn its notice to seek the death penalty. The court has designated that the case be tried the weeks of May 22nd and May 29th, 2006.

Provided, however, the defense counsel has requested additional time to supplement the record with claims of trial prejudice in addition to the other form of prejudice previously asserted. Since the court indicated it would allow the defendant to supplement the record if needed, the defendant may renew his motion if he can articulate some trial prejudice in addition to the other form of prejudice previously asserted; the defendant may also separately renew his motion if the State fails to call the case as originally ordered the week of May 22, 2006. These renewed motions may be heard de novo by any judge presiding over this matter.

On another matter, South Carolina Court Administration has notified the undersigned that he no longer has exclusive jurisdiction over this case since it is

no longer designated as a death penalty matter. Notwithstanding, in no event should this delay the trial of the case. Two points should be noted in this regard. First, in Judge Keesley's order, he specifically put Court Administration and the Chief Justice on notice of the need for the necessary changes in scheduling to effectuate disposition of this case. Second, regardless of where such fault lies in the sequence of events, the protection of the constitutional rights of an accused is the duty of everyone involved in the judicial process. "'The government and, for that matter, the trial court are not without responsibility for the expeditious trial of criminal cases. The burden for trial promptness is not solely upon the defense.'" *Barker v. Wingo*, 407 U.S. 514, 527, 92 S.Ct. 2182, 2190 (1972) (quoting *Hodges v. United States*, 408 F.2d 543, 551 (8th Cir. 1969)). As such, any governmental and/or prosecutorial negligence in not trying this case on schedule should weigh against the state in any renewed motion. The burden is certainly not on the defendant to facilitate his own prosecution.

IT IS SO ORDERED.

Judge Daniel F. Pieper,
9th Judicial Circuit

This 21 day of April 2006

Attorney for the defendant: David Bruck, Esquire
Jack Duncan, Esquire

Attorney for the state: David Pascoe, Esquire
Harrison Bell, Esquire

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LEXINGTON

STATE	)	
	)	
V.	)	TRANSCRIPT OF RECORD
	)	
GENE TONY COOPER	)	90-GS-32-083
	)	90-GS-32-084
DEFENDANT.	)	

MAY 22, 2006
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; AND A JURY.

ORIGINAL

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

B. HARRISON BELL, JR., ASSIST. SOLICITOR
THEODORE N. LUPTON, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

DAVID A. BRUCK, ESQUIRE
JOHN E. DUNCAN, ESQUIRE
STUART M. ANDREWS, JR., ESQUIRE
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

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THE COURT: All right. Thank you.

Anyone else? Anyone have any connection whatsoever to any of those individuals?

(There was no response.)

THE COURT: Now, ladies and gentlemen, I'm just going to tell you a little bit about the allegations in this case just to see if any of you have any knowledge or information about this case or have heard anything about this case. Please remember any time that an indictment is issued, they're just allegations on the part of the State and the State has an obligation to prove those allegations beyond a reasonable doubt.

Now, in this case, the State charges that in October 1989, the defendant entered into a conspiracy to rob Kimberly Quinn. And the indictments also charge the defendant with the offense of kidnapping and murder. Now, the State alleges that after she was killed, Ms. Quinn's body was set on fire and her hands and feet were cut off and thrown in a creek in Lexington County.

Now, does anyone have any knowledge or information about this case or has anyone on the panel read or heard anything about this case? Again, those are just the allegations on the part of

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MR. DUNCAN: No, sir, Your Honor.

THE COURT: What's the next issue?

MR. LUPTON: Your Honor, if it please the Court, I guess probably the biggest thing we have to settle is the issue of Phillip Gary, also known as Red Farmer.

Y'all have seen both of the affidavits.

MR. DUNCAN: We've only got one.

MR. LUPTON: Your Honor, if I can get these marked and present them to the Court as Court's Exhibits.

THE COURT: Yes, sir.

(Court's Exhibit Numbers 3 and 4, affidavits, were marked for identification purposes.)

MR. LUPTON: Your Honor, Court's Exhibit 3, affidavit of James M. Frazier, the Third, Court's Exhibit 4, affidavit of B. Harrison Bell. I believe that you -- we gave you copies of those in chambers so that you could read them ahead of time.

Your Honor, I think that we can primarily argue this based on the affidavits. If you wish to have supplemental testimony, we can certainly do that, but I think this is primarily a matter of law.

Your Honor, the affidavits establish that once

the lead prosecutor, Mr. Bell, discovered the precise date, once it was firmed up in March, he began the process of trying to get Farmer brought in to testify. The normal interstate subpoena, normal out-of-state subpoena procedures were rejected by the State of Texas under their laws. They would not honor a South Carolina out-of-state subpoena.

They had a separate procedure, the rendition of prisoners, according to the fact -- based on the fact that we're not a signatory state in the Uniform Rendition of Prisoners as Witness in Criminal Proceedings Act that they're a signatory state of, they required us to go through a special procedure. Well, that procedure was initiated in March.

The initial steps were began in March, background information had to be obtained, identities of SLED agents that would transport the witness, arrangements for transportation, arrangements for secure housing, all of those matters had to be arranged, all of that had to be done. That was all done.

The paperwork was drawn up in April, submitted, you signed it, had to be brought, signed by the Clerk of Court here in Lexington, had to go to the Governor's office, had to go to the South Carolina

Secretary of State, then to the Texas Governor's office, the Texas Secretary of State and on to their criminal justice department, basically their prison bureau.

The procedure was initiated well in advance of trial. I believe the Court is aware that normally prisoners can be brought from out of state on a normal subpoena within one to two weeks, often times in less time than that. It's often that witnesses are identified as being necessary and brought within the same week. So one to two weeks would be a very reasonable time frame.

The State in this case initiated the process two months in advance, had the paperwork to the Court a month in advance, had it to Texas well in advance. The State acted in good faith and acted reasonably in making the effort to get the prisoner.

That gets us to the legal standard for declaring a witness unavailable under Rule 804(a)(5) I believe it is.

Your Honor, the standard set by the Supreme Court under (a)(5) is that -- is basically the lead cases Page, which was cited by the defense as well, Barber versus Page, 390 U.S. 1 -- excuse me -- 719. Reading from that on page 724 through 725, In this

case, the state authorities made no effort to avail themselves of either of the above alternative means of seeking to secure Woods' presence at petitioner's trial. And this was basically attempting to get a witness transported from federal prison to a state trial through requesting the Bureau of Prisons to assist them.

The Court of Appeals majority appears to have reasoned that because the State would have had to request an exercise of discretion on the part of federal authorities, it was under no obligation to make any such request. Yet as Judge Aldrich, sitting by designation, pointed out in dissent below, quote, The possibility of a refusal is not the equivalent of asking and receiving a rebuff.

The Court goes on to say, In short, a witness is not unavailable for purposes of the foregoing exception to the confrontation requirement unless the prosecutorial authorities have made a good faith effort to obtain his presence at trial.

Your Honor, in this case, the State did make a good faith effort. The State did ask the State of Texas to make its discretionary ruling and we were rebuffed.

The State did this in a timely fashion. It

acted reasonably and it acted in good faith. The case law is very specific that the standard is that the State must act in good faith, must act reasonably. Both of those actions were met in this case. I don't think that there is any suggestion that the State acted in bad faith in this case. I don't believe that's a contention. Obviously, we want him here as much as anybody.

As set out in the affidavits, this witness has consistently testified against the defendant. He was subject to cross-examination even after any incentive he might have to cooperate with the State was removed by his plea and double jeopardy barred from any further prosecution regardless of what he said in this case.

He was brought before a separate Court in another trial, the trial of the codefendant, Bo Sutherland, informed by the State and by the Court in that case that he could not possibly be retried for anything, that he could not face any further punishment and he still testified consistent. So, obviously, the State would like to have him.

We didn't act in bad faith and our actions were reasonable. The State acted in four to eight times -- left itself four to eight times the normal

amount of time required in order to get the witness here.

Under the case law, the witness would qualify for an 804(a)(5) unavailability. And once that's established, his prior testimony under (b)(1), 804(b)(1), should be permitted to be read into evidence. It was subject to cross-examination. It was vigorously cross-examined.

The defense in the case in the original trial, vigorously cross-examined him as to his incentive to testify favorably in order to get a favorable deal. That cross-examination wouldn't be available to him at this point because he has no further incentive. So they've had adequate confrontation.

THE COURT: Why did y'all arrange for SLED -- why did it take ten days to get SLED arranged to -- I mean, why didn't y'all just use two local Lexington deputies?

MR. LUPTON: Your Honor, I believe because SLED is essentially the lead investigation agency in this case and the state law enforcement agency is my understanding, I could be mistaken on that, but that was why they were chosen.

THE COURT: Well, why did -- I mean, that took ten days to get two agents assigned to the case?

MR. LUPTON: I think that part of the problem was scheduling because this trial falls in between Myrtle Beach Bike Week and Black Bike Week in Myrtle Beach and I believe the Court's aware that SLED has a significant manpower presence at the beach for both of those events and they had trouble arranging two agents.

THE COURT: Then that goes back to my question, why weren't local agents -- officers used? I certainly don't think bike week takes precedence over this sort of proceeding.

MR. LUPTON: I agree, Your Honor. And I certainly don't think that had this -- had this paperwork been to Texas a week earlier, had they given us an immediate turnaround, I don't think that it would have made any difference because the judges were unavailable for the month of May. So had the paperwork been to them a week earlier, it still would have been the same result. So I don't think that matter would have affected it one way or the other. But if you'll give me a second, I can ask why SLED was used.

(Pause.)

MR. LUPTON: Your Honor, I'm informed it was the fact that SLED was the -- is acting as the lead

prosecution agency and is the state law enforcement agency. And when I say prosecution, they're state -- they're the primary investigating agency in this retrial and they are the state law enforcement agency and they were the agency that we were in contact with and were working with at that point. And it was just a matter of this was the agency that we were logistically connected to.

THE COURT: And when did you initiate that conversation with SLED?

MR. LUPTON: Your Honor, Mr. Bell and my understanding was that it was initiated in early April, some time around the 10th, I believe.

THE COURT: April?

MR. LUPTON: 10th of April, yes, Your Honor, requesting the two names and they were provided some time, I believe, the 17th through the 20th, somewhere in that time frame. And, at that time, the paperwork was prepared. I believe you signed it in approximately that time period. It went to the Governor's office and then went to the Secretary of State's office, then the Texas Governor's office, Texas Secretary of State's office and, finally, to the Texas Department of Criminal Justice.

THE COURT: Do you wish to respond?

MR. BRUCK: Yes, please. If the Court feels that you need to hear from me, I think the showing is inadequate on its face, but I'll be glad to explain why we think that is.

THE COURT: Yes, sir.

MR. BRUCK: Well, first, Your Honor, and please stop me if I'm providing too much information, but I would like to give a little background about Red Farmer so that the Court is apprised of the real state involved, the confrontation, Sixth Amendment states that are at issue here.

Mr. Farmer is a classic unreliable witness. He testified, he could have received a life sentence for the conduct he admitted to and instead received a five year sentence pursuant to a plea deal which ended up being partially concurrent even though when he was confronted in cross-examination at the last trial in '91, he said it would be consecutive. He served just, I don't know, two or three years as a consequence of this -- or less, two years, as a consequence of his admitted involvement or what he claimed to have been his involvement in this crime and was released.

He then went to Aiken where before long was rearrested on multiple counts of drug trafficking.

He then made bond and absconded, a bench warrant was issued. So he remains to this day wanted in Aiken.

These are all facts now that I'm relating from the sentence he actually did, the time he actually served, his behavior after that. None of this he was cross-examined about because it all happened after the 1991 trial. And we're to be satisfied with the confrontation that occurred then.

So he skips out from Aiken and next turns up charged with manufacturing methamphetamine in Texas. He is in jail for a while in Texas, is released on bond shortly before his trial and almost immediately thereafter is rearrested for manufacturing methamphetamine, with a large quantity of meth found in a truck.

The transcript of his trial in Texas reflects that, at that time, he tried to impress the authorities with by knowing a lot more about methamphetamine manufacturing then he claims he really did so as he could work out some kind of deal. In other words, the man is a classic sociopathic manipulator of the criminal justice system and we have the transcripts and the evidence to show that.

THE COURT: Well, none of that was brought out

earlier?

MR. BRUCK: No, because it's all subsequent to 1989 and '91. This is all new impeachment that we're not able to confront him with if we're stuck with a piece of paper instead of the man himself.

He testifies at his own sentencing hearing and under oath having presumably placed his hand on the Bible, gives a very different version of his involvement in this very case minimizing his own role and making it sound as though he was charged with conspiracy merely because he hadn't reported some things he had heard Tony Cooper say or have people say about Tony Cooper, rather than that he was, according to the State's theory, the linchpin of this whole conspiracy.

So we have him in effect committing perjury about this case in a transcript with which we were fully prepared to confront him in this courtroom.

He then goes to jail. He is interviewed by an investigator from us in 2003, says that there's absolutely no way in the world he intends to testify at Mr. Cooper's retrial, tells a whole series of different kinds of things that -- about he claimed at the original trial and now continues to claim that he was beaten by the West Columbia Police

Department.

The record already reflects that he gave various versions. He was uncooperative. He lied. And then he eventually, after being held over here and, he says, coerced in various ways, came up with this statement implicating Mr. Cooper.

We more recently reinterviewed him just a few weeks ago in Texas. He again said that there was no way he was going to testify. I don't doubt for a moment he said the exact opposite as has been related to you by the State. He'll tell anybody who is talking to him anything. The man has absolutely no conception of what telling the truth might involve.

He again told a -- he did allow as how the State could arrange his transfer to South Carolina that he might be willing to serve out his Texas life sentence for drugs that he might be willing to cooperate with them. So he didn't completely rule the door out, but always the same threat that Mr. Farmer testifies depending on what's in it for Mr. Farmer.

THE COURT: What happens when you have a situation where you have prior testimony and the new opportunities develop for cross-examination as you

would allege? I mean, has that exception ever been carved out that you had the original opportunity to cross and now you really didn't because you became aware of information later? I mean, you only get the benefit of that because of the new trial.

MR. BRUCK: Well, I know, but it still goes to the believability of this man. I mean, there are two ways to approach it. One is that he has -- our position is that we have not had, now that we know fully how dishonest and unreliable a witness this is, we have not had an opportunity to confront him. And he should not -- the transcript is not enough even though we had the opportunity at the time.

It's just like -- it's like after discovered evidence, it wouldn't be a fair trial if you just arbitrarily said, no, that evidence has come up too late, it can't be used.

I recognize that there is a middle ground, which is to allow us to call witness after witness with new impeachment evidence, documentary and from the people who have interviewed him. And we have someone standing by in Nevada, an investigator who has since moved out there, who's ready to get on a plane and come down and relay her interview with Mr. Farmer and on and on and on.

But, of course, the jury would have a very hard time evaluating any of this because they don't get to see Mr. Farmer. They don't get to see him come face-to-face with Mr. Cooper and they don't see him cross-examined as to any of these --

THE COURT: Not coming face-to-face with him is not per se the standard.

MR. BRUCK: Well, that is the right of confrontation as we well know.

THE COURT: I understand the right.

MR. BRUCK: But the constitutional standard is whether or not reasonable efforts have been made to secure his attendance and if it hasn't and there has been a prior --

THE COURT: I mean, because the discussion already assumes there's not going to be the face-to-face examination.

MR. BRUCK: Right. That's correct. And unless there is a showing that the State has made a reasonable effort under all of the circumstances, and it's very hard to compare this with any other case for reasons I'll get into in a moment, then the face-to-face confrontation and the opportunity for live cross-examination prevails and the transcript can't be used.

And this is not simply a rule of evidence. We know from the U.S. Supreme Court cases, Mancusi versus Stubbs and Barber versus Page, that this is part of the Sixth Amendment right.

And as recently as Crawford versus Washington, the Court in passing reaffirmed the holding of Barber versus Page, said Crawford was a case about opportunity to cross-examine, but the Court said, don't forgot that even when there's been an opportunity to cross-examine, you still can't use a transcript under the Sixth Amendment unless there has also been -- unless the State has also been reasonably unable to obtain the physical presence of the witness. And that's where we are now.

THE COURT: Do you feel that the State did not act in good faith in trying to procure his presence here?

MR. BRUCK: The issue is not good faith. The issue is the reasonableness of their efforts under all of the circumstances.

THE COURT: Well, how is reasonableness defined?

MR. BRUCK: I mean, it's one of those things which in the end is a judgment that Your Honor has to make.

I'd like to layout why we don't think the effort was reasonable in this case going back to the beginning. Of course, for reasons that need not be belabored, this case has been waiting around a long, long time. And when I talk about the State, it's hard to, you know, we need to keep in mind that there is only one State of South Carolina. This has nothing to do with the professionalism or the good faith of any particular lawyer. And we don't quarrel with Mr. Bell's sincerity in all of this.

The point is what the State, which is a single party to this proceeding, did looking all the way down, because that's all that matters to the rights of the accused is how he has been treated at the hands of the State.

THE COURT: Well, in the case -- did you submit the Barber case?

MR. BRUCK: Yes.

THE COURT: In Barber, they said --

MR. BRUCK: They made no effort.

THE COURT: Pardon?

MR. BRUCK: There they made no effort at all.

THE COURT: But they used the language that the witness is not unavailable for purposes of the foregoing exception to the confrontation requirement

unless the prosecutorial authorities have made a good faith effort to obtain his presence at trial.

MR. BRUCK: Right, but the -- I mean, that's in shorthand. They're not going to differentiate between good faith and reasonableness. Obviously, if --

THE COURT: Well, I mean, if you -- I assume that if you claim that they acted in good faith, then does it necessarily follow that their efforts were reasonable?

MR. BRUCK: No. Good faith in the sense that we do not contend that this was part of a manipulative effort to ensure that Mr. Farmer would not be present, that would be bad faith. Anything other than that is good faith, but it's still not reasonable under the circumstances.

THE COURT: If we were just analyzing it from the reasonable perspective as that word is used in the rules, what more do you believe the State should have done? Perhaps that's the way to look at it.

MR. BRUCK: Well, to get to the end of the story, 11 days ago the State found out that they couldn't have Mr. Farmer. There was not -- it was casually mentioned during a meeting for another purpose with counsel when -- I think only because

two of Mr. Cooper's lawyers were down looking at discovery that we've run into a problem with Mr. Farmer.

We heard about this on Friday a week, ten days ago. In all of the time between then and now, the Court has not heard one word about this until this morning. And most tellingly, there was no motion for a continuance.

Now, that, to me, ends the inquiry because one of the things obviously that the State could have done, you could have denied it, you could have granted it, but that goes to the reasonableness of their effort. And, instead, the jury was sworn, this case has started and now they want, in effect, a cross-examination light where this witness who is as I have described will never set foot in this courtroom. And Mr. Cooper will be tried based on a transcript of what he had to say back in 1991 supplemented by what will be a confusing miasma of documents and testimony and records and claims and counterclaims, all of which are in his absence.

THE COURT: Why didn't the State bring this to the Court's attention prior to this morning?

MR. LUPTON: Your Honor, with regards to the -- I think this goes to his motion for a continuance

argument. I was not present. I've only been involved in this case for approximately ten days. I got involved on the Thursday before they discovered that -- we found out about it on Thursday, they were told on Friday.

THE COURT: Well, I mean, the fact that you came in recently is not going to be dispositive. Mr. Bell was handling this case.

MR. LUPTON: I understand that. I'm just saying that to say that I was not present at the February conference regarding the speedy trial motion, but it is my understanding that the Court's ruling then explained in March was very firm in that this case was going to go to trial this week, that -- I believe it was some confusion in February, but it was firmed up in March this trial was going to go forward, and pardon the language, but I believe the Court at one point said, Come hell or high water this week.

In fact, if you'll recall, when you were getting ready to swear the jury, both Mr. Bell and I approached the bench and we asked the Court to delay that and the Court refused saying that we were going forward. Based on that, there was --

THE COURT: Just stop for a second. Listen to

my question, okay, because all of that is meaningless what you've just said. If you think this issue is going to turn on the fact that you approached and didn't want the jury sworn today, you've got a problem, okay.

My question was, why didn't you bring this matter to the Court's attention prior to today? When everyone knew we were ready to go forward with this case and all, why wasn't I told there's an issue about a witness? That's the question.

MR. LUPTON: Your Honor, for that, we have --

THE COURT: It has nothing to do with swearing the jury, okay?

MR. LUPTON: For that, we have no excuse other than to say that it was our impression that the Court was not going to entertain any motions to continue the trial no matter what our problems were. Based on that, we felt that we were going to be required --

THE COURT: When did the Court say that? When we went back to chambers after the Court swore the jury, I said, We're going forward with this case.

MR. LUPTON: And, Your Honor, again, if the State misunderstood your --

THE COURT: Any time prior to today, did the

Court indicate it would not entertain any motions on the part of the State? At the pretrial conference, did the Court not ask is there any kind of motions?

MR. LUPTON: Your Honor, all I can say is that it was our understanding that -- and it could have been wrong, you know, we concede that and we certainly aren't trying to imply that there was anything wrong with the Court's position or our belief in the Court's position. We simply felt that the Court wanted this trial to go forward today. There had been speedy trial motions. It was our understanding that the Court's denial of the speedy trial motion was partially contingent that we were going to go forward with this now and that --

THE COURT: Well, at no point, did the Court say it would not entertain your motions. If that's your belief, you're wrong. Not only did I not transmit that thought to you, I specifically said, Maybe the issue about this witness is premature because you might be able to go back and still get this witness here; did I not?

MR. LUPTON: Yes, Your Honor. And we are still trying to do that.

THE COURT: So, again, that suggests that we can deal with this issue. Secondly, the fact that I

said we're starting the trial doesn't mean we would not stop at some point and wait to see if we can get this witness and pick up at the appropriate time. Again, none of those communications indicate that the Court would deprive you of requesting any relief you deemed appropriate.

Let's just be honest, there was never any desire in your mind to convey to me that you wanted a continuance. I'm asking you that as an officer of this court, was that what you wanted to convey to me today?

MR. LUPTON: Your Honor --

THE COURT: Because I know what I see and hear. I've been in this business a long time. Now, you tell me, as an officer of the court, that's what you really wanted to convey before you try to pin that on the Court, tell me that.

MR. LUPTON: Your Honor --

THE COURT: Answer the question. Was that your intent?

MR. LUPTON: Your Honor, it was never my intent to ask for a continuance based on the fact --

THE COURT: Ever?

MR. LUPTON: -- it was my understanding that that was not an option. And I apologize if I was

wrong. I mean no disrespect to the Court.

THE COURT: You were coming here today to request a continuance because of that witness issue?

MR. LUPTON: Your Honor, if I had thought it was an option, then that would have been my preference. I'm not the lead prosecutor.

THE COURT: Mr. Bell, was that your intention? Have you ever had it in your mind to ask for a continuance to deal with this witness issue?

MR. BELL: No, sir, I have not.

THE COURT: You better think carefully about what you're telling this Court because I know the people I've been dealing with in this case and I never got a clue that there would be any desire to continue this case from anyone here today.

I bet, based on my experience on this bench, that you came here today just assuming that you're going to either not have that testimony or go forward with the transcript from the prior trial; is that correct, Mr. Bell?

MR. BELL: Your Honor, my understanding with this was that we were going to try one or two options and if we weren't able to get them, we would go forward without the --

THE COURT: Exactly. That's what I assumed

everything was based on. Now, why is your thought different than the lead prosecutor?

MR. LUPTON: Your Honor, I'm telling you as an officer of the court, it was my understanding that a continuance was not an option. And I am basing what I'm telling you on my understanding. If I was wrong, I apologize to the Court. I never meant any disrespect to the Court.

THE COURT: I didn't say you're disrespecting the Court. I'm just saying I never got a sense from any of you that you were going to ask for a continuance.

MR. LUPTON: Your Honor, again, I have not been involved in this very long. And if my understanding of the situation was wrong, then I apologize.

THE COURT: If you're not the lead prosecutor, how are you going to ask for a continuance if Mr. Bell was not?

MR. LUPTON: Exactly. That's -- my understanding was that we were not -- that that was never on the table. And I apologize. And, again, I stress that I was never intending to mislead the Court or act in disrespect towards the Court when I explained my understanding. You simply -- that was my understanding, right or wrong.

THE COURT: All right. Let's just leave it at that. The point I'm trying to make is you were suggesting that the mere fact that we swore the jury precluded you from requesting a continuance or based on the Court's indication we were going forward with the trial. I just want the record to be specifically clear that the fact that I said we would start has no bearing whatsoever on any request that you make. I have never indicated in any way I would not entertain any motions.

If it comes to the point that we have to stop this trial, I've made it clear to everyone involved in this case that we'll do whatever we have to do. If we have to stop at Wednesday of the second week to wait another week to finish, that's what we will do, but that has nothing to do with starting the trial. So you make whatever motions you deem appropriate.

MR. LUPTON: And I certainly did not mean to convey any sense that I was trying to blame the Court or disrespecting the Court. And I apologize if that was accidentally conveyed. It was never my intention.

THE COURT: All right. Now, let's go back to my original question before we got off on that

tangent. My question was, why was I never notified, prior to this day, that there was a problem with this witness?

MR. LUPTON: Your Honor, I cannot offer any excuse for that. It was discovered. It was conveyed to the defense the next day. It was not something that -- I can't speak for Mr. Bell, but it was not something that I thought personally was the kind of thing that we needed to come straight to you and tell you pretrial, that it was something that would be handled in the pretrial motions as to whether or not what relief you were going to grant.

And, again, if my belief on that was wrong or inappropriate, I apologize to the Court, but there was never any intent to conceal it from anyone. The defense was told. I didn't -- I didn't have a belief that it was something that I -- that was appropriate to bring to your attention immediately.

THE COURT: Well, I mean, at the last hearing, we went over all pending motions. And other than routine -- other than telling me we may have some routine motions, there was no other motions to be considered. Why would that have not flagged -- raised a flag in your eyes, Mr. Bell, about bringing this to my attention?

MR. BELL: Your Honor, number one, I'm sorry. Of course, at the back of that hearing, we had no idea and I apologize. I was just under the assumption, and it's my fault, that the State had very -- a low margin for any continuances and I figured -- I believed that we had to go ahead regardless of what had happened and that is my -- based on my -- because based on the prior speedy trial motion, I was trying to minimize the State's responsibility for any further delay in this case and that was my call. That's my responsibility.

THE COURT: Well, when we called -- when this case started today, I asked you are you ready to call your case; did I not?

MR. BELL: Yes, sir, Your Honor.

THE COURT: That was before any discussion about when you thought that I thought we were going forward or not.

Secondly, the order on the speedy trial, what did it say at the end? If the State did not call this case today, then the defense could renew that motion. Again, it put the burden on you to make that decision to call this case; did it not?

MR. BELL: Yes, sir, Your Honor.

THE COURT: You had the ability to say we're

not ready to call this case; did you not?

MR. BELL: Yes, sir, Your Honor.

THE COURT: Because once it was out of the death penalty realm, then it was just another case on the roster, correct?

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

THE COURT: And that's how we proceeded ever since the death penalty notice was removed. That's why I put that language in that order because it then became your duty to call that case. Although, I do believe it raised -- could raise some significant concerns if you didn't call it, that option was still there.

MR. BELL: Your Honor, and I'm still ready to proceed with my case regardless of what happens. I mean, I'm ready to go. So we were just...

THE COURT: I was pretty confident of that when I staked my robe on what I thought the situation was, Mr. Bell. Tell me what you're doing to try to get this witness here.

MR. BELL: Your Honor, I think we've called -- I'm sorry.

MR. LUPTON: Your Honor, I've spoken today with Texas Department of Criminal Justice, have not heard back from them as to the earliest opportunity for

getting this hearing scheduled, but I've asked them to please call us as quickly as possible. I've stated that the Judge has started the trial and has requested this information. I stated that you personally wanted to know to hopefully get a little bit faster action to get a judge some information than just us.

THE COURT: Do you have any feedback on the period of time that this routinely takes once a judge gets the application?

MR. LUPTON: In Texas, no, Your Honor.

THE COURT: Is that something y'all could inquire about?

MR. BELL: Your Honor, I think once the judge signs it, he's ready to go.

THE COURT: I mean, is it almost akin to when you submitted the paperwork in the first place like to me?

MR. BELL: Yes, sir. I mean, we have to do -- we haven't asked them if we have to resubmit all of that paperwork. Again, since the dates have shifted, I mean, that was to have him here the 18th.

THE COURT: Do you actually have to appear in Texas?

MR. BELL: No, I do not. The people from the

Department of Criminal Justice down there appear. We just have to have somebody there ready to pick him up when they're ready to release them.

THE COURT: So they do that kind of like ex parte?

MR. BELL: Yes, Your Honor. I think what their -- what they do, their whole concern with is when a prisoner is traveling from Texas to whatever state has requested, their whole thing is to make sure that the prisoner is not served with any civil judgments or any other arrest warrants and all of that and that's kind of the agreement is what it is. And I think the court has to make that finding that all of that's been put in place and then they sign off on it is my understanding of the process from Texas, Your Honor.

THE COURT: And how long do you expect your part of the case to last?

MR. BELL: Your Honor, it could go -- I mean, it depends. When we get together, we might be able to agree on some witnesses. It might go fairly quickly from the State's perspective. I mean, we might be able to finish up most of our witnesses, depending on cross-examination, maybe in the Thursday realm I would expect, so.

THE COURT: All right. Now, Mr. Bruck, what would your position be on -- I have two options -- well, I have three, but if I were to wait to see what they could do with procuring this witness' testimony, would you be opposed to their reopening or taking that person out of sequence per se if you go ahead and start your witnesses?

MR. BRUCK: Your Honor, I mean, we feel like everyone was told to be ready today. I haven't gone through the chronology, it's very hard to piece together from these two affidavits, but I don't think there's anything reasonable about what's happened until today.

And we really oppose -- I mean, I just cannot, for this man who's been waiting for his trial for so long, agree to any further accommodation for the State to make up for the fact they don't have their witnesses lined up. If the defense don't have their witnesses, that's the end of it. You do without. You argue and charge. And I think that's where we are in this case.

This case, in the normal course, probably should go to the jury on Thursday or possibly Friday based on what we know and it might even be sooner than that. Going back to, I mean --

THE COURT: Well, wait a minute. Both sides indicated to me that they thought it was going to be in both weeks, take both weeks.

MR. BRUCK: As capital case, yes, but not when we picked the jury in an hour. I always felt it would be --

THE COURT: I thought y'all were both having communications with one another even after the capital issue was withdrawn about perhaps even doing motions the first couple of days and then going into next week; is that incorrect?

MR. BRUCK: That is incorrect. I didn't expect that.

MR. BELL: Nor as I -- I don't know that we expected that as well, Your Honor.

THE COURT: All right. And y'all didn't send e-mails out about that?

MR. BRUCK: I don't believe so.

MR. BELL: I don't recall any.

THE COURT: I'll look into that. That's irrelevant anyway. Go ahead.

MR. BRUCK: I should say, you know, I mean, it should have become obvious by now, the State doesn't need this witness. I don't mean to suggest he's unimportant. He is important, but they tried and

convicted Sutherland without him. In fact, he was a defense witness in Sutherland. So he is not an absolute indispensable witness to get to the jury.

THE COURT: Well, let me ask, why do you need this witness?

MR. LUPTON: Your Honor, he is not as important in State versus Sutherland. He is very important in this case because he is the one who initiates the conspiracy with Mr. Cooper. He's the one who gets the information concerning the victim getting an insurance settlement. He communicates that to the defendant. And the defendant communicates statements and admissions to him, basically a confession.

The defendant -- or Mr. Farmer would testify that the defendant told him after the murder that the witness' intelligence was wrong, that she did not have $2800, that he did get paid, but it wasn't as much as expected, that he completed the construction job and burned everything -- burned the excess material, which Farmer testified he understood to mean that he had robbed her, killed her and burned her body. So he is the initiator of the conspiracy. He communicates directly with this defendant and he received a confession from the

defendant. I think that --

THE COURT: Well, I guess, I'm just at a loss. If Mr. Bell is saying he's ready to go forward one way or another, how are you planning on approaching this if they were critical?

MR. BELL: Your Honor, I mean, I can approach it from other witnesses mainly --

THE COURT: Well, then that's going to be my next question. Are other witnesses available that can communicate the same thing?

MR. BELL: They can communicate parts of it, but they can't communicate the meat of it. We can hit around it and we can communicate that degree. And like I said, I was prepared to go forward with or without him.

MR. BRUCK: The Court should know that the State, first of all, has an alleged eyewitness who claims to have seen everything. He testified in the Sutherland case. They could call him again to say that he saw it all and this is what happened.

Alternatively, the State has indicated today they plan to call Mr. Sutherland himself as a prosecution witness to say that he was there and saw everything. That is inconsistent with the first witness' version. So I assume they have these two

road tested versions and they'll call one or the other, but they have two different ways of prosecuting Mr. Cooper for this crime that do not require Mr. Farmer.

Now, I don't mean to suggest that Mr. Farmer's testimony is unimportant. Obviously, it is important, but it is -- they can get to the jury through one of two different alleged eyewitnesses without anything from Mr. Farmer or anything from anyone else at CCI. This, to them, is something they want for their case.

And because they wanted it, I mean, we found Mr. Farmer in Texas in 2002 and the State, I assume, has known for almost as long or maybe even longer that that's where he was, you would think that the first thing they would do is call Texas and say, What do we have to do to get him here, he's an important witness, we need him. That apparently wasn't done, they used the wrong process.

The beginning of this process seems to be very slow. As Your Honor knows, this date was penciled in the 22nd of May or the 29th of May. On February the 3rd or February the 4th, the hearing we had, the speedy trial motion hearing in Charleston, that was the latest time at which the State should have

initiated this process. They should have been ready to go. As soon as they had a date, they should have already known what to do, but they didn't.

THE COURT: Were these two proceedings, were they initiated at the same time in Texas or did you start one after you got rejected on the subpoena part?

MR. BELL: Which two proceedings?

THE COURT: I mean, the two approaches in Texas.

MR. LUPTON: My understanding was that the subpoena approach was inquired about and we were told that that was not -- that they would not honor a subpoena. And then they gave us the proper procedures to follow in March and that the proper procedures were initiated in March as far as gathering the background information that was needed and that the paperwork was processed in April and submitted in April and that the paperwork was received in Texas at the beginning of May, processed in Texas. And, ultimately, we were informed on May 11th that he would not be made available to South Carolina during the month of May.

THE COURT: Well, did y'all follow up -- it seems kind of strange that they would let only two

judges do it and then have both judges be unavailable for any -- for a whole month, that they didn't have some kind of backup procedure or a judge that could fill in while those two judges were not available.

MR. BELL: Your Honor, all I can say is I was aware of their process that they had a judge that would come in like a week or every other week, but I had no idea that there was no judge available for May until they called and said we can't do it.

THE COURT: Is there any kind of emergency procedure that they have?

MR. BELL: I asked if they could go to another judge. I asked if he could waive it without having -- and just have a judge sign off of it. He said, no -- they said, No, these judges must do it and these are the only two judges that are designated to do it. I asked all kinds of options about the judges, Your Honor.

MR. BRUCK: I can respond to that briefly, Your Honor. The paperwork the State has provided shows that they received this -- Texas received the paperwork on May the 10th, 12 days before a trial that has been pending for four years and months after this date was set and two months after it was

set in stone or in six weeks.

As far as the procedure not being what the Solicitor thought it was, the State of South Carolina is on notice that the State of South Carolina is not a signatory to this Uniform Act. It all comes back to the fact that -- I mean, these are hardly qualified excuses. I mean, if you want to call it bad faith, if you want to call it lack of due diligence, if you want to call it an unreasonable effort, you can call it any of those things constitutionally.

Recall that this entire period from January 1st, 2006 is overtime from Judge Keesley's order requiring that this case be tried by the end of 2005. And this sort of comedy of errors all occurred after the expiration of a speedy trial deadline. And that is also a factor that ought to be weighed in in deciding reasonableness. This is all time that the State wasn't entitled to, according to Judge Keesley back in April of 2005, and now we're, you know, we're in double overtime and they say that, well, it's close enough.

MR. LUPTON: Your Honor, in regards to the date, May 10th is the date that Mr. Frazier received it. It was received in the Texas Governor's office

on May 5th.

I think the focus -- they're trying to focus this back on the issues. There's been a lot of talk about the cross-examination issues that I think are not really the key that this Court has to look at. Those come in to be decided after the issue of whether or not the witness is unavailable. The issues of cross-examination go to how to impeach.

And we're certainly -- we certainly understand that he's entitled to impeach with after occurring incidents, after occurring conduct and convictions. However, as far as the initial issue, the threshold issue is, does this witness meet the Rule 804(a)(5) definition of unavailable. And in deciding that issue, the Court has to look at whether or not the State acted in bad faith or unreasonably. And the case law does not support that we've done that.

We asked for the State of Texas to render this witness. And the State of Texas has refused that act. We acted in adequate time.

Based on the information that was given by Texas, this should not have become an issue. He should have been rendered. In the normal course of events, this would not have come up. The paperwork was started well ahead of time.

In the Court's experience, and you can take your experience into account, numerous cases where witnesses are brought from --

THE COURT: Again, let's not back pedal on that. I mean, there's no reflection on you or anything. The only reason I had that discussion is you suggested by the comment that I went ahead and swore the jury that you were being precluded from doing something you would have done. And my gut was telling me all along that if I heard the motion and just said we're proceeding, that would have been the end of it, Mr. Bell was proceeding.

I mean, that is what my gut was telling me and that's what he's confirmed. It had nothing to do with the decision to go ahead and swear the jury. That's all I was trying to convey to you.

MR. LUPTON: I'm sorry. I'm talking about the issue of the amount of time it normally takes to get a prisoner from another state to South Carolina to testify. I'm talking about in your experience, you've tried many murder trials, many other trials. You have an understanding of the normal procedures. You've undoubtedly had many cases where you have signed out-of-state subpoenas for other states. You're aware of --

THE COURT: I agree with you it's generally routine. I agree with that. It's never presented an issue. It generally doesn't present an issue.

MR. LUPTON: The State expected this to go through. We acted with due diligence. We acted reasonably. We acted in good faith. And the efforts of the State were frustrated by the actions of Texas, another sovereign state in the United States over which this state has no authority and no power. This witness is, at this time, unavailable to the State of South Carolina within the meaning of Rule 804(a)(5).

THE COURT: Let me ask you, are you always in a state -- a static state once you have the opportunity to cross-examine no matter what may develop after the fact? Or, do you not get a clean slate once the retrial is granted to consider all of the circumstances at that time to decide whether or not there was a meaningful opportunity to cross-examine?

MR. LUPTON: I think that the -- I think that those present two separate issues. I think that the -- within the meaning of whether or not there has been an opportunity to cross-examine, that is static at the time that the original hearing is conducted.

If there was an adequate and meaningful cross-examination at that time, then within the meaning of the Constitution, there has been an adequate opportunity to cross-examine, adequate confrontation.

If this person has passed away, then the fact that there were additional impeachment issues that had arose after the original testimony would not make the person any less unavailable, if the Court follows what I'm saying. For purposes of whether or not a witness is unavailable and has been subjected to meaningful cross-examination in the past, that issue was set at the time of the original hearing.

Now, certainly on a retrial --

THE COURT: Then there's no leeway for the Court to ever consider anything that develops?

MR. LUPTON: Again, I'm talking about in terms of the constitutional issue of whether or not there was a meaningful confrontation at the time, that is set at the time of the original hearing. I believe that certainly once you have a retrial, the defense is entitled to cross-examine a witness that comes in on anything that has occurred prior to that cross-examination and that's a separate issue. They would be allowed to impeach.

THE COURT: How do you deal with that then in deciding whether or not --

MR. LUPTON: I think that that would be a matter of discretion for the Court. You could -- certainly the State's willing to stipulate to convictions and certain things as that that are subject to verification. Anything that they have that wouldn't be subject to our verification, they would be entitled to present evidence to impeach a witness same as they would in any other case.

THE COURT: Well, when you've heard some of the examples cited by Mr. Bruck, how would you deal with those?

MR. LUPTON: Your Honor, trying to focus in on this case, they talked about investigators who have interviewed the witness since the last trial, I think that they would be entitled to present evidence concerning inconsistent statements or things of that nature, things that would be impeachment material, they would be entitled to present that within the rules of evidence.

Now, I think that if you look at this as if this person were deceased, we would -- you can see that the issue of whether or not there was a meaningful confrontation has to be fixed at the time

of the original confrontation because if you leave it as an open issue, then any time somebody is meaningfully cross-examined at one date, say the year 1990 just to have a date, if they are cross-examined in 1990, then in '95 they commit some crime, in '96 they die and you want to retry them in the year 2000, if you're trying to say that they can't be -- they're not unavailable because they did something after the original trial that could be potential impeachment material, you would basically eviscerate the whole unavailable witness rule.

THE COURT: Well, a conviction is not the same as a statement, that's a little bit of a different example. A certified conviction would be different than a statement that can't be tested.

But, Mr. Bruck, give some specific examples that you're referencing, we'll see how the State would suggest that you could deal with that.

MR. BRUCK: Well --

THE COURT: Insofar as what's changed since the time -- if I were to allow in his testimony from the prior trial, what more would you ask him that can't be rectified in another way.

MR. BRUCK: Well, if we had to basically attack a pile of paper that was the witness against us, his

prior testimony, we would call two interviewers, one from 2003, one from 2006, who would relay a series of statements which constitute impeachment material, all different sorts of things, how he was given the run of six different jails, how he has thrown in effect a pizza party, applauded when his testimony was over.

THE COURT: Okay. So that's not necessarily inconsistent with what the State would suggest you could do. Why would you need the person here, the witness here? I mean, it says interviewers that will add context to that scenario not witness.

MR. BRUCK: Well, part of what we would miss is the witness acknowledging the truth of these statements. It would just be somebody that works for the defense claiming this and claiming that.

We can confront the witness. He might very well say, yes, that's true, and give us a cynical smirk about how he got over on the system, which is what we think we would get out of him. And that is very, very different. That's the difference between cross-examination and a stack of paper. And so there, you know, there we are. The same when we confront him with his prior testimony at his own sentencing.

And through all of this, we really think that the State -- that the jury would perceive, as we confronted him with this, they would perceive a narcissistic manipulator because that is really why we need the confrontation. We can't do that on paper. We can't do that by people --

THE COURT: Well, I mean, but that's always the case. That's always the case when you don't have the witness here. If that were the per se rule, the analysis would be so easy. It would just be the witness has to be here.

MR. BRUCK: Right. It all comes down to whether or not they have made a reasonable effort to have him here. It's true that the Constitution is satisfied with that rather unsatisfactory alternative.

THE COURT: Well...

MR. BRUCK: The question is --

THE COURT: But how are they to -- why should they be accountable for the fact that all of a sudden the only two judges in the state that do these things are not going to do them for May?

MR. BRUCK: If you get your paperwork for a case that has been pending this many years and has had a date certain for this many weeks and for

whatever reason, South Carolina gets its paperwork to Texas 17 days before the case starts, you've got to expect and you should reasonably expect that it may not go smoothly. It's too bad. They waited too long. They did not use due diligence.

If they had called Texas and said, when do you need the paperwork, what's the latest we can get it, all of this is the most elementary things that you do when you're organizing a trial and for --

THE COURT: Well, aren't they making that statement? Aren't they saying that we've done these things and it's usually enough time to do these things?

MR. BRUCK: First of all, from the time that we pencilled in this date, there was about two weeks to two months of dead time from February to April where nothing was happening from the State's own representation. We have no way, of course, of giving you our own version because this is -- we simply have to rely on this rather vague --

THE COURT: Do you have the transcript from that February hearing?

MR. BRUCK: I don't.

THE COURT: Does anybody?

(There was no response.)

THE COURT: Okay. Go ahead.

MR. BRUCK: I mean, at that point, the State was on notice to contact Texas and say, we're looking at a trial at the end of May, beginning of June, what do we have to do. But none of that was done. And it wasn't -- this was just a lackadaisical approach.

Now, is it the same as no effort at all? No, it's not the same as no effort at all. This case is not on absolute all fours with Barber versus Page, but it's pretty close.

The question and the rule is whether Farmer's presence could not be obtained. And it could have been obtained if they had just started reasonably earlier.

And for all of this to occur so long after the last date that Judge Keesley had allowed this case to be tried and for this still to be the way the State is proceeding, I'm not going to call it bad faith, but it certainly is lackadaisical and it's not fair.

And the issue before Your Honor is who should pay for that, who bears the burden of this mistake, whose mistake it is? It is the State's mistake. The State should bear the burden. Tony Cooper, who

has been waiting so long for a trial, should not be the one to bear the results of the State's error. That's all this comes down to and just fair is fair.

THE COURT: Well, I mean, no one is saying that he has to bear that burden, that Mr. Cooper would be bearing that. If the case starts and we proceed, you know, there is that possibility if I consider -- if I have some feedback from the State of Texas indicating that that prisoner can be transported, yeah, I would consider a temporary delay, but nothing in any kind of substantial way, but the trial will be underway at the time. But it just depends on where we're at in the proceeding.

It may be able to be accomplished in the normal course of this trial without any further delay. I don't know. It just depends on the status of the witnesses, that's why I set it originally first thing this morning, but perhaps I need to wait to see what could happen.

MR. BRUCK: I have to say, Judge, I just had -- ten days ago was the 30th anniversary of my being sworn into the bar and I have never, in those 30 years, had a trial where if I didn't get a witness there on time, the judge just recessed until I could get him there. And so we have notice of when the

trial is and time to go.

Of course, if they get him here before the end of the trial, that's fine. We don't think that we should all go back and let's send the jury home and ask them, please don't read anything until we call you back, to accommodate this error and the case can go forward. The State still has a case. It will get to the jury with or without Mr. Farmer.

And it's -- to say that this case is ready to be tried is the understatement of the month. I just think we should go forward as is. And we've stated our position.

THE COURT: All right.

MR. LUPTON: Your Honor, may I briefly respond?

THE COURT: Yes.

MR. LUPTON: Your Honor, I think that trying to frame this as that the State should have done something years ago is a little bit inaccurate in the sense that I think that the relevant dates for this issue are the dates that the trial date was set. Once the date was set, the State was able to begin the process of getting the witness here for that date.

THE COURT: I think all he's saying is you should have done it in March.

MR. LUPTON: And the process was begun -- the process was begun in March. The paperwork was given to Your Honor in April.

THE COURT: Well, why was it given to me in April? That's the big thing. I don't necessarily understand that. Why wasn't it given to me in March?

MR. LUPTON: Your Honor, as best we could, we've explained those delays. And, Your Honor, all I can say is that while obviously any time something doesn't work out, it is always possible to go back and look at it and say, if this were done differently, if that were done differently, perhaps we would have had a different result. Unfortunately, we don't have the ability to do that. We're stuck with where we're at.

And I think that the issue becomes, given where we're at, did the State act in bad faith or act unreasonably. And I don't think that we did because once we had a firm date, the process was begun, the paperwork was completed in April, it was provided to the Court in April, provided to the Governor's Office, South Carolina Secretary of State, went to the Texas Governor, Texas Secretary of State, Texas Department of Criminal Justice, the Texas Department

of Criminal Justice Representative.

The member there, I believe it was their general counsel or a member of their general counsel's office, an attorney over there, had told Mr. Bell that the judges were available every week or every other week.

THE COURT: Is that the case, y'all were told that they would be available?

MR. BELL: Back in April or March, late March or early April when I talked to him.

THE COURT: Said that they would be available every week?

MR. BELL: Either every week or every other week and that's looking forward perspectively from -- I believe I talked to them in middle to late March it seems to me.

MR. LUPTON: And, Your Honor, based on that, the State prepared the paperwork, got it to you, ran it through the channels, got it to Texas. This should have been adequate. The State may have failed in its efforts, but it acted in good faith and it acted reasonably.

And I believe that the talk about who should bear the burden, I think that the ultimate issue is the jury is the ones who are supposed to get the

relevant, probative evidence and the system of justice should not be required to bear the burden.

THE COURT: I agree with that. I mean, that may very well be Mr. Bruck's experience that you've got to be ready to go and that's the end of the discussion. That's not my experience.

I mean, I don't mean that in a way that everyone's not doing that. I do agree with his statement that that happens quite frequently, but my philosophy has always been that I want everybody to have their day in court and then a fair and just decision rendered and I do whatever I can to accomplish that. That's just my philosophy. I'm sure it's everyone else's in their own way.

But I'll think about it. No reference to Mr. Farmer's prior testimony until I decide.

What else?

MR. BELL: Your Honor, I think the only other thing -- other things are some housekeeping, some other unavailable witnesses that I think we discussed. We have Sharon Freeman Clonts, now is her last name, who died. And we have a certified copy of her death certificate for a court's exhibit if --

THE COURT: Do you have any issues as to the

deceased individual?

MR. BRUCK: No.

THE COURT: All right.

MR. BELL: And I think the only other individual that was unavailable was Mr. Jim Springs, who was a SLED agent. And I think I provided them with a copy of a doctor's letter that was dated, I believe, May 7th. It stated, he did the crime scene where the body was found, that he underwent some major surgery or had a major illness and was not able to testify for six weeks, that I can provide for the Court as well if I need to.

THE COURT: Any issues with that?

MR. BRUCK: No, we're fine with that.

THE COURT: All right. Any other motions from the State?

MR. BELL: The only other motion, we may, during the course of the testimony -- of course, we haven't discussed -- we probably need to sit down and talk with the defense counsel to kind of see what they're willing to stipulate to before we potentially have any other evidentiary motions, Your Honor, I think would be the way to proceed.

THE COURT: Well, what would they pertain to? I mean, that's why we have the jury out today.

MR. BRUCK: I don't think we're really talking about motions, are we? We're just talking about things that we can stipulate to.

MR. LUPTON: I think that we can streamline this trial by there's a lot of -- there was a lot of testimony in the original trial by people that I don't think are disputed. For example, there was a bank teller that cashed the check that was stolen from the victim and I don't think that there's any dispute that she cashed the check the next morning, things like that that I think we can stipulate to so that we move the trial along without having to present unnecessary witnesses.

MR. BELL: I just won't know until we have a chance to sit down and discuss with them from there.

MR. LUPTON: And there might well be issues from the defense that they want to put up that we can stipulate to and speed things along and exhibits for both parties that we can agree to ahead of time. And the more we can do tonight before the jury comes back tomorrow, you know, while withstanding these, I think the faster we can make this trial go.

THE COURT: Anything else from the defense?

MR. BRUCK: No, sir.

THE COURT: All right. See y'all tomorrow.

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THE COURT: Before he starts, ladies and gentlemen -- sorry, counsel -- one other thing, you'll often see me -- I try to remember to do this in my opening statements, jurors will often ask me, Why are you staring at your screen so much? I can actually see all of the testimony as it's presented. It's just a way for me to remember everything that I need to remember and I can actually mark things insofar as my job and what I have to do in the case.

Go ahead.

MR. BELL: Mr. Foreman, ladies and gentlemen of the jury, back on the early morning of October 6th, 1989, a little five, six-year-old girl came to her neighbor's house with a simple question, basically, Where's my mommy?

That question led to the start of an investigation that day by SLED and the West Columbia Police Department which ended up in finding the dead body of her mother, Kimberly Quinn, on October 8th, 1989 by a pond where it had been burned. She'd been shot. She'd been shot, burned and her arms and feet had been cut off.

That investigation, ladies and gentlemen, led to charges against the defendant, Tony Cooper, seated over there. He's charged with murder, armed

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robbery, kidnapping and conspiracy to commit armed robbery and that is why we're here today.

Ladies and gentlemen, my name is Harrison Bell. Seated at the table with me is Ted Lupton. I'm a Senior Assistant Solicitor in the First Judicial Circuit, that's Orangeburg, Calhoun and Dorchester Counties. Mr. Lupton, who's helping me, is from across the river in Columbia. He's from Richland County.

We're prosecuting this case because your Solicitor has been -- had a conflict of interest and could not try this case, so we were called in by the Attorney General. My boss, Solicitor Pascoe, was passed the case and he handed it to me, that's why we're here, that's why we have the honor of being here in Lexington County. It's sometimes good to be out of our home circuits and see other places and we're happy to be here. Unfortunately, we're not happy for the circumstances.

Ladies and gentlemen, we both represent the State of South Carolina. As you'll hear throughout the trial, as you've heard from His Honor and what you'll hear at the end of this trial, is we, as the State of South Carolina, have the burden of proof. We must prove the defendant guilty of those charges.

We must prove each element of those crimes beyond all reasonable doubt as the Judge stated. Let me kind of go through with you briefly with what these charges entail.

Murder simply is the killing of another, the unlawful killing of another with malice aforethought either expressed or implied. What malice is, it's a kind of -- it's one of those terms that you can't give a good definition in the law. It's called a term of art. It basically means ill will. It means hatred. It means reckless or wanton disregard for human life, those kind of things.

Expressed and implied don't mean two different kinds of malice. It simply means two different ways you can infer malice because sometimes it's hard, sometimes you don't have somebody that will -- you'll have testimony that said, I'm going to kill that person, sometimes you have to infer that from the facts of the case what their intentions were. And expressed malice is direct malice, that is, a person actually does say, I'm going to kill so and so.

Implied malice, as I stated, is from the facts, you gather from the facts. If somebody's laying in wait or if they are using -- the use of a deadly

weapon, those kind of things, their acts before that, were they planning it together, those things can imply that the malice occurred aforethought.

And the malice must be aforethought. Aforethought means it simply was in existence before the crime occurred no matter how short a time. It could have been a split second before that time.

Armed robbery is simply stealing with force or threats while armed with a deadly weapon. That's very simply, it's just taking the property of another by force or threats while armed with a deadly weapon.

Kidnapping is abducting. Kidnapping, taking somebody's freedom away and keeping it, taking them away by force, abducting them. It's not necessarily you're holding them for ransom, just the fact that you grab them and take them away and hold them, that's kidnapping in the law of the State of South Carolina.

And, finally, the conspiracy, the criminal conspiracy, simply means that two people, two or more people get together, they form an agreement or a combination to commit an unlawful act. They must agree, that's the big part of it, they must agree on it and then they do something to try to carry it

out.

Now, ladies and gentlemen, throughout this case, the State will present several -- large number of evidence. We'll have physical evidence from the scenes, from evidence that we've gathered from a vehicle. We'll have some direct testimony about putting the defendant involved in this murder.

I'm not going to go into specifics. You'll hear it from the stand throughout the course of the trial. But leave it to say that we'll present more than enough evidence that you can find the defendant guilty on each and every count.

Now, what's your job, ladies and gentlemen? The Judge touched on it pretty well in his opening remarks to you and I'm going to go into it a little bit more.

Your job is to find the facts in this case, first of all. That's your first job. And you're going, Well, how do I do that? Well, I can only suggest to you and state that you hear witnesses from the stand. You observe any exhibits that are produced, any stipulations that might be entered into. You have to judge the credibility of the witnesses that come to that stand.

And you're going, Oh, my gosh, how do I do

that? Well, I can't tell you that either. All I can say is this, each of you have lived your lives, you know when you talk to friends, family, strangers by looking at them, hearing what they say, hearing how they say it whether they're telling the truth or whether you feel they're telling the truth and I simply say, use that method here.

Just because you walked in this courtroom doesn't mean you've thrown out your life experiences. I urge you to listen to that. I urge you to listen to every witness up there carefully because it's an important day.

Now, ladies and gentlemen, I will also say, and Judge Pieper touched on this, that he is the judge of the law in this case. You have taken an oath and that oath basically said that how he tells the law -- what he tells you the law is, you must follow the law. Regardless if you have problems with it, if you disagree with it, the law that he gives you is the law of the State of South Carolina and you have taken an oath to follow that law.

But, ladies and gentlemen, there's another judge in the courtroom, the 12 of you individually and as one. And as he said, you're the finders of the facts. You are the judges of the facts. And

nobody in this courtroom can tell you how to find those facts. It's very simple.

All can I do, ladies and gentlemen, is ask you to listen carefully to all of the testimony, observe the exhibits very carefully.

Now, ladies and gentlemen, you were told that the State must prove the defendant guilty beyond all reasonable doubt. I will further tell you that all reasonable doubt does not mean every doubt, to 100 percent doubt, to the exclusion of every single reasonable doubt, it's beyond all reasonable doubt. And that simply means that nothing in life is certain, except one thing in life is certain.

Now, ladies and gentlemen, the State will present a number of witnesses. This trial may last two, three days. It's an important day for the State of South Carolina as it is for the defendant. We're here to enforce and uphold our law. We're here to get justice for the family of Kimberly Quinn. And we ask that you listen carefully to the evidence. And in the end, that the State will produce enough evidence, show you enough evidence to find the defendant, Tony Cooper, guilty of murder, armed robbery, kidnapping and criminal conspiracy. Thank you.

MR. BRUCK: May it please the Court.

THE COURT: Yes, sir.

MR. BRUCK: Good morning, Mr. Foreman, ladies and gentlemen. I think I've introduced myself, but I'll do it again. I'm David Bruck. With me is Jack Duncan and Tony Cooper is next to Jack and Stuart Andrews.

Jack and I were appointed to defend Tony Cooper a long, long time ago. And we've been doing that to the very best of our ability ever since. I think I had dark hair when I started working to defend Tony. Mr. Andrews has volunteered his time to help us out with this trial. So that's who we are.

There's no mystery about what happened to Amanda Quinn's mom. We know who did it, a man named Robert H. Sutherland did it and we can all agree on that. And you will hear the State present evidence, and from what I understand, even call Mr. Sutherland to give a new version that he's now decided to tell within the last few weeks about how this happened. That part's clear. Mr. Sutherland was convicted of this a long, long time ago.

The question in this case is whether someone did it with him. And if someone did, do we know beyond a reasonable doubt that that someone was Tony

Cooper. That's what we're having this trial for. That's why we're here.

Now, you'll hear when Mr. Sutherland testifies that one of the stories that he's told over the years and this is the story that he's told for many, many years is that the plan to kidnap and rob Kim Quinn had an escape hatch plan, what to do if things started to go bad and that was to -- where it went with the blame, who they were going to blame for this. And that's something if you're going to commit a crime like this, you need to think about, what happens if people start talking and the police get after you, well we better have a story. And the story was to blame it on Tony Cooper and that's what he did.

Originally, when he started putting that part of the plan into effect, it was all he didn't know anything about it, Tony Cooper just told him some things. The evidence will show that Bo Sutherland is the person that led the police to most of the evidence in this case, to the severed hands and feet of Kimberly Quinn, he knew where they were. But his story was that he didn't put them there, he wasn't there when they were put there, Tony Cooper told him, but that was the story then.

Then later on he told anyone who would listen that he committed this crime by himself, that Tony wasn't involved. And within the last few weeks, from what I understand, he now has a version that they sort of did this together, but Tony Cooper did pretty much everything. And that is what you are expected to sort out and to decide whether this evidence, along with what else the State can present, proves beyond a reasonable doubt that the killer of Kim Quinn, Robert Sutherland, was assisted by Tony Cooper. That's what this is all about.

Now, I'm going to tell you some things, the Judge told you about objections. And lawyers often times object when bad information, unfavorable information comes -- is about to come in from the witness stand about their client, I object, that's irrelevant, that's inflammatory, that's prejudicial, and, you know, you know that from T.V., you know that from real life.

One of the things lawyers often object to is anything that shows about the prior record of their client, they don't want the jury to know about that. Well, y'all need to know everything and we are not going to object to the warrants and the things in Tony Cooper's background that are relevant to your

job. So we're not going to object.

And we want you to know and we'll tell you right now that when Bo Sutherland was a career criminal in his early 30's, he committed a long series of crimes and he had along with him a 17-year-old kid named Tony Cooper. And they both went to prison together. And they both got out in 1988. And thereafter, Tony married and had an instant family of four children, his wife's children, working as a contractor doing roofing and different types of jobs like that trying to get a new start in life.

But he had his buddy, Bo Sutherland. He allowed Bo Sutherland to have his car, which was a Cougar, I think, a 1979 I believe. There will be pictures of it in evidence. And so Bo Sutherland was driving the car that was registered to Tony Cooper. And they were together a lot. They had known each other in prison and they still knew each other and they did some work together.

And that is where this involvement of Tony Cooper really begins because on the day before Kimberly Quinn was abducted in the middle of the night, someone saw the Cougar with Bo Sutherland in it. In fact, three people identified Bo Sutherland

watching her house from an apartment across the street, from the parking lot of an apartment across the street.

And one of those three people thought they identified, later from a photograph, a picture of Tony Cooper as the other person in the car and that witness took down the license number. So the police when they had to do -- when they began the investigation of this crime, quickly have the license number of Tony Cooper.

Now, if you've ever wondered how an innocent person gets convicted, this case will give you a pretty good case study. You get a detail, the license plate and one out of three people make an identification and then tunnel vision sets in, they've got their suspect, Sutherland, which, in fact, was the right guy, and Tony Cooper. Now, that's why we're in court. That's why these charges have been laid.

Then the question for you is, Well, what else have you got? Do you have any real proof or are we left finally with suspicion? Are we left with guilt by association? They're peas in a pod. Birds of a feather flock together. If Sutherland did it, Cooper must have done it. Now, that's the way we

think in normal life. We need to use shortcuts, common sense just to make snap decisions about things to guide us all through our daily life.

But in a court of law, birds of a feather flock together and peas in a pod is not proof, that's not how we convict a man of murder, kidnapping and armed robbery. You need a lot more than that.

I mention that to you because there will be a strong temptation to say, Well, if it's Sutherland, it must be then Cooper. I ask you now, as you hear the evidence, to guard against that because that is the sort of shortcut that can allow a terrible mistake to be made. It will not do justice to the family of Kimberly Quinn to convict the wrong person as a second member of whoever committed this crime. That is not justice, that does not help anybody.

Now, Judge Pieper told you a moment ago about the presumption of innocence. And he told you in the words that are used by the Supreme Court to explain that legal term. If I may, I'd like to break that down into something from our everyday experience to give you what I think the presumption of innocence really means.

Someone tells you that your best friend's son has committed a horrible crime, a murder, rape,

what's your reaction? Now, I dare say that your reaction is not going to be -- and you don't know this kid well, but you know him well enough you have a good opinion, you always thought well of him, you know the family, he's from a good family. You're not going to say, I do not believe that, that did not happen. I know for a fact he could not have done that because I know him and I know the family. That's not the reaction you're going to have. Because, you know, we all know that there are shocks in life. There are things we don't expect. But you are going to have a reaction to be very skeptical.

The way you respond to that, wouldn't you, is you'd be shocked and you'd think that doesn't sound right. I'm not going to believe that unless they can show me that that really happened. I think there's been a mistake. That doesn't sound like the kid I know. It doesn't sound like the family. I want to see the proof and it better be good and, otherwise, I'm going to believe that they've made a mistake, that he didn't do this.

That, ladies and gentlemen, is the presumption of innocence. That's what it feels like when you are following the instruction that Judge Pieper just gave you.

Now, Tony Cooper is not a friend of yours. He's not someone you know. You don't know his family. You have no reason to think -- well, even I just told you that he did a stint in the penitentiary, so it's not natural to have that reaction when you hear of a charge like this against Tony Cooper, but it is your duty, it is what you swore to do. You judge him like you have a bias in his favor, that is the presumption of innocence and that is the job of the jury.

You also have to judge credibility. Now, Mr. Bell told you they were -- of course, they're going to call witnesses. And one of the witnesses, as I've just told you, that we expect that they'll be relying on is a man named Robert Sutherland.

Now, if Mr. Bell called a witness and the bailiff marched him in and put him on the witness stand and took out his service revolver, the courtroom deputy, and as the witness testified, if the deputy held the gun to his head and if the Judge said, All right, Mr. Witness, you can answer questions, and throughout his testimony a loaded, cocked service revolver, a gun, was held at his head and he answered questions in that condition, what would you think of his testimony?

Wait a minute, I don't believe this. This man is being coerced. We don't know -- he may be telling the truth, he may not be, but how do we know, he has a gun to his head.

Well, surprising as this may seem, Mr. Sutherland's testimony is going to be like that. There won't be a gun, but you will hear that Mr. Sutherland has been sentenced to death for this crime. The sentence has been, at least temporarily, taken off. He's facing resentencing. He doesn't have a thing in the world to recommend it given his prior record, life of crime and the facts of this, so he has a very good chance of being resentenced to death.

But on April 21st of 2006, 16 and a half years after this crime, Mr. Sutherland had a meeting with the prosecution and said, I'm ready now to tell the story that puts most of the guilt on Tony Cooper. And in exchange for this, the State said, Okay, you can live. We won't ask for the death penalty against you.

Now, there will be other examples of those sorts of things, but I give you this example because the -- to underscore that the job of the jury is not simply to listen to the words that come out of the

mouths of the witnesses and if the words add up to what the State has charged, then the person is guilty. Your job above all, anybody can do that, a computer can do that, the reason we have a jury is for you to say -- to look at who's saying it and why is he saying it and can we trust him, is he saying it because it's true or is he saying it to help himself. And that will be another very large part of your job. And you will get no help from anyone else. The Judge, as he told you, he stays out of it. This is your job.

Can we prove that Tony Cooper didn't do this? No, we cannot. The trail has long since gone cold. This happened 16 and a half years ago. All we will ever be able to do is to show you reasons to hesitate, to stop, to wonder maybe this is true, maybe it's not, but the State has not proven it beyond a reasonable doubt and, therefore, your verdict must be not guilty. That is the most that we can possibly do, that anyone can do. This is the most that anyone could do who is not guilty.

You have a hard job and it's going to be made harder by one last thing I want to mention and that is that a case like this arouses powerful emotions. And Mr. Bell very skillfully invoked that in the

first words he said to you picturing little six-year-old Amanda Quinn waking up and her mother wasn't there. And the very first witness you're going to hear is the now grown-up Amanda Quinn and she is going to say what it was like on the first morning of her life when her mother wasn't there anymore.

Now, you cannot be a human being and not be affected by that. Emotion creates the temptation to forget about what the actual issues are in the case. The issue being not this is a terrible thing, of course, it was a terrible thing, the question is who did it and are we sure beyond a reasonable doubt that we know who the second person, if there was a second person, was. That's the issue in the case.

But one of the difficult things about being a jury -- a juror -- about being on a jury is that you have to steer yourself to avoid the -- a natural sympathy that any of us would feel, should feel, have to feel when faced with a crime like this and I'm sure you will. Thank you very much.

THE COURT: Call your first witness.

MR. BELL: Thank you, Your Honor. The State would call Amanda Vaughn to the stand.

THE COURT: Counsel approach, please.

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

AMANDA K. VAUGHN,

having been duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box and state your full name for the record, please.

THE WITNESS: Amanda K. Vaughn.

DIRECT EXAMINATION

BY MR. BELL:

Q Could you state your name again for the record? Speak up, all the jurors need to hear you back here.

A Amanda K. Vaughn.

Q Ms. Vaughn, who is your mother?

A Kimberly Quinn.

Q And how old were you back in October of 1989?

A Six.

Q What's the last thing that you remember with your mother?

A Not good memories.

Q Let me go back to the -- do you remember when she went missing?

A Yes, sir.

Q Let me ask you about the day before, which I think would have been October 5th, 1989. Do you

remember back that day?

A Yes, sir.

Q Do you remember what you kind of did that day?

A I remember that night we watched a movie and my mother was sick.

Q Do you remember anything that happened during that day other than watching a movie with your mom?

A Not really.

Q And y'all stayed at home that night?

A Yes, sir.

Q Do you recall -- did you eventually go to bed?

A Yes, sir. My bed was in the living room.

Q Excuse me?

A My bed was in the living room.

Q Your bed was in the living room?

A Uh-huh.

Q Why was your bed in the living room?

A Because I had been in a fire and my mother was real protective and wanted me at the door.

Q Do you recall what time you went to bed, went to sleep?

A No, sir. I just fell asleep.

Q You just fell asleep?

A Uh-huh.

Q Do you recall if it was dark when you fell

asleep?
A Yes, it was dark.
Q Do you recall if it was early or late that night when you fell asleep?
A I believe it was late.
Q What do you remember next?
A Someone knocking at the door.
Q Do you have any idea how long that was since -- did it wake you up?
A Uh-huh.
Q Do you remember how long it was?
A No, sir.
Q What happened when you heard that knock?
A My mother answered the door.
Q What happened then?
A Two men was trying to come in and she didn't want them to come in.
Q Did they come in?
A Uh-huh.
Q How were they acting?
A Loud, it was real loud and I was trying to sleep.
Q And how -- by loud, how were they acting loud?
A Just loud, noisy, talking really loud and I can't recall what they were saying or anything.

Q Let me ask it this way. Was it like a mean loud?

A Uh-huh.

Q Or just loud, boisterous loud?

A It was mean loud.

Q Okay. What do you remember next?

A Well, I tried to go back to sleep, but it was so loud, I couldn't go back to sleep.

Q Okay. What do you remember next?

A The last thing I remember that night was I tried to go to sleep and I had rolled over and someone told me to roll back over or they was going to do to me what they was doing to my mother.

Q Did you go to sleep then?

A Uh-huh.

Q What do you remember next?

A I woke up and she wasn't there.

Q What did you do?

A I started looking for her.

Q Where did you look?

A Everywhere. The door was open, so I went outside and she wasn't outside.

Q Was it dark or light?

A It was dark.

Q What did you do when you went outside?

A I looked around and I didn't see her, so I went next door and told them I couldn't find my mother.
Q Do you recall who lived next door?
A I know it was a friend -- I had a little boy that lived next door and I played with him so I knew to go there. I can't remember names.
Q What happened when you went over to next door?
A I told her that I couldn't find my mother and she sat me down. And I believe she called someone for me.
Q Was it her house or your house?
A Her house.
Q When you were outside, do you remember seeing anything?
A Uh-huh.
Q What do you remember seeing?
A I seen my mother's purse laying on the ground, in the dirt.
Q Where did you see that?
A We had like a little driveway with dirt and it was right there at the dirt.
Q Let me show you what's been marked as State's 9 and ask you if you recognize that?
A Yes, sir.
Q What is that?

A It's my mother's purse.

Q Is that the purse that you saw in the driveway that night?

A Yes, sir.

MR. BELL: Your Honor, this is into evidence.

Q What happened next; do you remember?

A Not really. I remember I believe they took me to the police station or something and waited on my grandmother.

Q Let me ask you this. The part about the men coming in, have you ever told anybody about that?

A Yes, I did.

Q Who did you tell?

A My -- Mickey, my Aunt Mickey, that's what I call her.

Q Have you ever testified to that in a prior trial?

A No, sir.

Q Why not?

A I was scared.

Q Why were you scared?

A Because he told me that, you know, that night if I rolled over, he would do to me what he was doing to her.

Q How many men was it; do you remember?

A Two.
Q Let me ask you this. In remembering your mother, did she have any jewelry?
A Uh-huh, rings.
Q What kind of jewelry did she have?
A I know she had rings. She always wore a lot of rings.
Q How many rings would she wear?
A A lot, usually all fingers or most of them.
Q All four fingers or five fingers?
A Sometimes even her thumb. She always had rings, always.
Q Did you ever see her without the rings?
A Huh-huh.
Q And based on your memory, would your mother leave you alone like that?
A No, no, sir.

MR. BELL: One moment, Your Honor.

(Pause.)

MR. BELL: Thank you, Amanda. Please answer any questions the defense counsel may have for you.

CROSS-EXAMINATION

BY MR. BRUCK:

Q Good morning, Ms. Vaughn.
A Good morning.

Q I am so sorry. I only have a couple things I need to ask you about.
A Okay.
Q You were six years old when this happened?
A Uh-huh.
Q And you've testified twice before today, right?
A Uh-huh.
Q The first time you testified you were eight?
A I believe so.
Q Okay. And you were asked then -- you testified then that you were watching T.V. with your mom and you fell asleep, right?
A Uh-huh.
Q And you testified that the next thing you remember was waking up and your mom was gone, right?
A Uh-huh.
Q And nothing about men coming in and talking?
A No, sir.
Q And then about a year later, you testified a second time, right?
A Uh-huh.
Q And then you were nine years old; is that right?
A Yes, sir.
Q And you were no longer living in this area,

were you?
A No, sir.
Q You were living up in Union with your grandmother?
A My grandmother.
Q And once again, you were asked the last time you saw your mom, right?
A Uh-huh.
Q And what did you say?
A At this point, I really don't remember.
Q Well, would it be right if I asked you whether you testified that you were watching T.V. with your mom?
A Uh-huh.
Q And you fell asleep?
A Yeah.
Q And the next thing you knew, you woke up and she wasn't there?
A Uh-huh.
Q And once again, you didn't say anything about hearing noises, hearing talk?
A I was scared.
MR. BRUCK: Can you bear with me just a minute?
THE WITNESS: Uh-huh.
MR. BRUCK: Thank you.

(Pause.)

MR. BRUCK: Thanks so much, Ms. Vaughn. That is all I have to ask you.

THE COURT: Anything else?

MR. BELL: Nothing further, Your Honor.

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

MR. BELL: The State will call Shirley Powell.

SHIRLEY LOUISE POWELL,

having been duly sworn, testified as follows:

THE CLERK: If you'll have a seat over here and state your full name for the record, please.

THE WITNESS: I'm Shirley Louise Powell.

DIRECT EXAMINATION

BY MR. BELL:

Q Ms. Powell, where do you live?

A [redacted], West Columbia.

Q How long have you lived there?

A Right now? About 29 years.

Q So my next question is kind of stupid. You were living there back in October of 1989?

A Yes, sir.

Q Back in October of 1989, who lived beside you? I think there are two houses beside you, one on each side; is that correct?

A Okay. Yes. On the right side, was the Hudsons, and on the left side, was Kimberly Quinn.
Q Do you remember how long she had lived there in October 1989?
A Probably about a year and a month.
Q And who lived with her; do you remember?
A Her daughter, Amanda.
Q Did you know Amanda?
A Yes, sir.
Q How did you know Amanda?
A She played with my son. They were schoolmates.
Q How old was your son back then?
A He was five.
Q Do you remember the time that your neighbor, Kimberly Quinn, went missing?
A It was -- when I first realized, it was like early in the morning. It was probably like Friday morning.
Q Okay. And how did you -- how did you realize it?
A Amanda came to my house.
Q And how did you know that she came to your house?
A She was knocking at the front door.
Q Okay. And what happened when you opened the

door?

A She was upset, crying. And she just told me, she said, My mommy's not there at the house.

Q Okay. And what did you do as a result of that?

A I just brought her on in the house.

Q Okay. And did you try to -- did you try to find her mom?

A Not at that time I didn't.

Q How long did she stay with you?

A Till about early dawn.

Q Okay. And what did you do then?

A My son and her, I stood there at the yard, and they went next door and they got a phone number to call a friend named Betty. And I called Betty and told her what was going on and she came over.

Q And what happened when she came over?

A She went inside and looked around. And after that, she took Amanda with her.

Q And that was the last you saw of Amanda?

A Yeah, that was the last time I saw her.

MR. BELL: Your Honor, can I ask the witness to step down, please?

THE COURT: Yes, sir.

You may step down.

(Witness leaves the witness stand.)

BY MR. BELL:

Q And I'm referring to State's 1 that's in evidence. Do these pictures and this diagram look somewhat familiar to you?

A Yes.

Q And what is that a diagram of?

A That's Lyngate Apartments across the street. And this is -- that's her house, Kimberly Quinn's house.

Q And can you step kind of aside so the jury can --

A Right there is Kimberly Quinn's house. And my house is right there (indicating).

Q Okay. And that's how it appeared back in around 1989?

A Yes, sir.

Q It's changed since then, hasn't it?

A Yes, sir.

Q How has it changed?

A They've put a four lane highway through.

Q Okay. And if you can -- I know this isn't drawn in scale. Could you show on the diagram which house was yours?

A I'm going to say this is my house and this is the Hudsons and this is Kimberly Quinn's house. And

then Lyngate Apartments is across the street.

Q And you can see Lyngate Apartments from your house?

A Yes, sir.

Q Thank you, ma'am. You can...

A (Witness resumes the witness stand.)

Q And after that you really had no other involvement with Amanda or anything in this case?

A No, sir.

MR. BELL: One moment, Your Honor.

THE COURT: Yes, sir.

(Pause.)

MR. BELL: Thank you, Ms. Powell. Please answer any questions they may have.

CROSS-EXAMINATION

BY MR. BRUCK:

Q Good morning, Ms. Powell.

A Good morning.

Q Just a couple things. When Amanda came over to your house that day, that early morning or middle of the night really, she said that her mom -- she didn't know where her mom was?

A She didn't know where her mother was.

Q Okay. Did she tell you anything else about what had happened?

A No, sir.
Q Did she tell you that there were -- men had come to the house?
A No, sir.
Q That anyone had threatened her?
A No, sir.
Q That anyone had ordered her to go back to sleep?
A No, sir.
Q Nothing like that?
A No, sir.
Q Okay. And she was upset?
A Yeah, she was upset. She was crying.
Q Okay. Did -- at this time, did Kimberly Quinn have a boyfriend named Craig Gilmore?
A At one time.
Q Okay. And he had been living in this house with her?
A At one time.
Q Right. And then he moved out, correct?
A He moved out.
Q But he still would come over and spend time with her?
A Yes, sir.
Q Right up until this time?

A Well, I would say so, but I didn't see him around in October.

Q Okay. But as far as you know that --

A Yes, sir.

Q Did there tend to be a lot of coming and going from --

A Yes, sir.

Q A lot of people coming at different -- very late at night?

A Yes, sir.

Q Men and women?

A Yes, sir.

Q All right. A lot of traffic?

A Yes, sir.

MR. BRUCK: That's all I have -- excuse me. I'm sorry. Bear with me a moment.

(Pause.)

Q I don't know whether you remember -- have any reason to notice this or not, but during the year or so before this occurred in October of 1989, did you ever happen to see Gene Love Plumbing doing work at the apartments across the street?

A I might have, but I don't recall.

MR. BRUCK: Thank you. That's all I have. Thank you so much.

THE COURT: Any follow-up.

MR. BELL: One question, Your Honor?

REDIRECT EXAMINATION

BY MR. BELL:

Q Do you recall what time Amanda came to your door that morning, approximately?

A I'm going to say between maybe 3:30, four o'clock. I'm not real sure.

Q In the morning, in the a.m.?

A Yes.

MR. BELL: Thank you, ma'am. I have nothing further.

THE COURT: You may step down. Thank you.

MR. BELL: Your Honor, we'd ask that the witness be excused.

THE COURT: Any objection?

MR. BRUCK: No objection.

THE COURT: You may be excused, ma'am.

MR. BELL: The State will call Elizabeth Quinn (sic).

ELIZABETH LOUISE GRIFFIN,

having been duly sworn, testified as follows:

THE CLERK: If you'll have a seat and state your full name for the record.

THE WITNESS: I'm Elizabeth Louise Griffin.

DIRECT EXAMINATION

BY MR. BELL:

Q Ms. Griffin, I'm going to ask you to speak up so all of these jurors can hear you, okay? Speak as loud as you can into the microphone. Could you say your name again, please?

A Elizabeth Louise Griffin.

Q Ms. Griffin, where are you currently located?

A Right now I'm at Lieber Correctional Institution.

Q Why are you there?

A For distributing charges.

Q Distributing what?

A Crack cocaine.

Q And how long ago did that happen?

A A year ago.

Q A year ago, okay. Let me take your memory back to 1989. Do you remember back then?

A Some of it, yes, sir.

Q Do you remember a person named Kimberly Quinn?

A Yes, I do. She's my best friend.

Q How long did you know her?

A About eight years.

Q Did she have any children?

A She had two.

Q And who were they?
A Allen Williams and Amanda Quinn.
Q And do you remember when she moved to Platt Springs Road?
A Yes.
Q Do you know how long about she lived there?
A Not long, four or five months, maybe.
Q Did you do anything with her daughter back then?
A I took her daughter to school.
Q Did you have children as well?
A Yes. I have two boys.
Q And would you take them all to school?
A Yes, sir.
Q And were you employed at the time?
A Yes. I worked for Southern Air.
Q Did Kim have a job back then?
A No.
Q How did she get around?
A Well, she had a car up until the time we had a car accident, me and her was together. And then we used my car after that.
Q Okay. Now, you said you had a car accident, when did that happen?
A In '89.

Q What part of '89; do you remember?
A Probably in September of '89, something like that.
Q Did -- were y'all -- did y'all seek legal counsel in regards to that accident at some point?
A Yes, we did.
Q And were you going to get some money -- insurance money or something out of that?
A We both were.
Q Did y'all have the same attorney?
A No, but I went with Kim on several times to her attorney.
Q All right. After the accident, how did you say she would get around, go places?
A My vehicle.
Q Now, Ms. Griffin, let me ask you about this. Do you remember around when she disappeared?
A Yes.
Q Do you remember the day before she disappeared?
A Yes, sir.
Q What happened on that day as you can remember, starting as early as you can remember?
A I picked up Amanda with my two children and took her to school.
Q Do you remember about what time that was?

A About 7:30 in the morning.
Q Okay. And then?
A I dropped her -- Kimberly's child off, Amanda, and then I took my two boys to school. And then, I think, Kim had got the car and my son had got sick. She picked me back up to pick my son up and then I had the car. And then --
Q What time was that?
A Probably about 12, one o'clock. And then I went back to work. Then when I got off work, I picked the kids up around 3:15.
Q And then where did you go from there?
A Back to Kim's house.
Q Okay. What happened when you went back to Kim's house at that time?
A I was fixing to leave and a car had pulled up behind mine and I had to ask the lady to move her car.
Q Okay. And did you get a good look at her at that time?
A Yes, sir.
Q Let me show you what is State's 8 in evidence.
MR. BELL: Your Honor, may I approach?
THE COURT: Yes, sir.
BY MR. BELL:

Q And ask you if you recognize what State's 8 is?
A Yes, that's her.
Q That's the woman you saw?
A Uh-huh. Her name was Brenda.
Q And what happened when you -- she pulled in behind you?
A Uh-huh.
Q And how did you get out of the driveway?
A She came out and moved her car to the side of the road where I could back out.
Q So she went in the house when she pulled in behind you?
A She was going in the house. When I left, she was going in the house.
Q Were you coming out of the house or --
A Uh-huh.
Q Okay. As you were going out, she was coming in?
A Uh-huh.
Q And then you asked her to move the car or she came out to move it. How did that work?
A She came out and she moved the car to right on the roadway. And I back -- she was going back up into the house when I was pulling out.
Q Okay. What's the next thing that you remember?

Did you talk with Kim anymore that day?
A I talked to her about 6:30 and she was -- wasn't feeling good. And she was going to ask the next-door neighbor for a glass of milk to settle her stomach. And then I talked to her again at 11 o'clock. She called me and I was on the phone with my husband. And I -- she still wasn't feeling good, but she was feeling better. That was the last time I talked to her.
Q What's the next thing you remember having to do with Kimberly Quinn?
A About 6:30 that morning, the next-door neighbor called from Kim's house and told me Amanda was there and couldn't find her mother.
Q What did you do as a result of that?
A I went and got Amanda.
Q You went to Kim's house or the next-door neighbor's house?
A I went to the next-door neighbor's house.
Q Okay. Did you stay around there or did you take Amanda somewhere or what did you do?
A Me and Amanda walked over to where they lived. We went through there. Kim wasn't there and I took her back home with me. I called a friend of mine and then she was going to the house and we all went

back to the house.

Q What did you do once you went back to the house?

A I called West Columbia Police Department.

Q Okay. Did you look around?

A Uh-huh.

Q Let me show you --

MR. BELL: Your Honor, if I may approach the witness again.

THE COURT: Yes, sir.

BY MR. BELL:

Q Let me show you what's been marked as State's 9 and ask if you recognize that?

A Yes, I do.

Q How do you recognize that?

A That belongs to Kim.

Q Okay. Can you look at it for a second and look in it?

A It's the same I.D. that was in it that morning, but there was -- there was a piece of paper in here.

Q Was there any money in it that morning?

A No.

Q Was that unusual?

A Yeah.

Q Kim usually had money in her wallet?

A Yes.
Q And you saw that on numerous occasions?
A Yes, sir.
Q Did you -- in knowing Kim, did she have any jewelry?
A Yes. She always wore jewelry on her hand.
Q What kind of jewelry?
A She had a turquoise ring that was two shades of turquoise. She had a hammer ring that had a C on it. She had a black onyx ring with a diamond that was at the very end -- the bottom of it that I remember.
Q How many rings would she wear; do you recall?
A On one hand, I think they were all -- they had rings on all of them.
Q All five or just the four fingers or would she have something on her thumb?
A She had on four I would say.
Q How about on the other -- I mean, on both hands or one hand?
A Mainly on just one hand that she wore all the time.
Q Did you go in the house at all?
A Yes.
Q Okay. Did you notice anything in the house?

A There was a basket full of beer cans that wasn't there the day before.

Q And let me go back. Did you have an opportunity to go in the house the day before, before she went missing, when you brought Amanda --

A Yes.

Q Did you notice anything in there when you went in the house?

A A welfare check sitting on the T.V. set, I noticed it. The beer cans wasn't there at that point. Other than that, no.

Q Now, the next day when you went in the house, did you see that check?

A No, sir.

Q Okay. Did you do anything in regards -- did you take -- did you go get Amanda? What did you do with Amanda?

A I took her home with me. And then I called another lady that we all knew, Norma Campbell, and asked her where Kim was at. If she knew where she was, that she needed to come home. And she said she was going to Kim's house. And I told her I would meet her there. So we both went back to Kim's house and that's when I called West Columbia.

Q Did West Columbia police come right out there?

A No.
Q Do you recall if any police officer or any law enforcement came out there?
A SLED did.
Q They did. How long was that?
A I'm not quite sure of the time. It was that morning, I believe, about 10:00 or 11:00 maybe. I'm not sure.
Q And did you talk with -- and you talked with them?
A Uh-huh. I talked to Ron Cook and Tyndal, Officer Tyndal.
Q Okay. And just told them what you knew at that time?
A Yes, sir.

MR. BELL: Your Honor, if I may have a brief moment. I have another exhibit that I forgot about that I want to show her. And I apologize. If I can have a brief moment.

THE COURT: All right.

(Pause.)

BY MR. BELL:
Q Now, you said about the jewelry on the hand. Which hand did she favor wearing the jewelry on, if you remember?

A I'm not sure. It's been a long time.

Q And then when you identified what's been marked as State's Number 8, you said something about Brenda. Did you know her at that time?

A No. Kim had told me her name.

Q So that was your only information on her?

A Yeah.

MR. BELL: And we're just waiting on this exhibit.

(Pause.)

MR. BELL: Your Honor, I apologize. Can we have a brief break?

THE COURT: Ladies and gentlemen, I'll send you to the jury room. Do not discuss this case in any way whatsoever. Thank you very much.

(The jury retires to the jury room.)

THE COURT: Ma'am, you may step down during the break. You may not discuss your testimony with anyone; do you understand?

THE WITNESS: Yes, sir.

THE COURT: We'll take a short break.

(Brief Recess.)

(State's Exhibit Number 15, jeans, were marked for identification purposes.)

THE COURT: Are y'all ready?

MR. BELL: Yes, sir, Your Honor.

THE COURT: You can bring the jury in, please.

(The jury returns to the courtroom.)

THE COURT: We're ready to proceed, ladies and gentlemen.

Go ahead.

MR. BELL: Thank you, Your Honor. May I approach the witness, Your Honor?

BY MR. BELL:

Q Ms. Griffin, I'm going to show you what's been marked as State's 15 and ask if you recognize these?

A Yes.

Q How do you recognize these?

A Because of the yellow paint that's on them.

Q Where is the yellow paint on them?

A These are paint marks where we painted her kitchen.

Q And whose jeans are these?

A Kimberly Quinn's.

Q No doubt about it?

A No doubt.

MR. BELL: Your Honor, this is in evidence I believe. Your Honor, I don't know if we had offered it.

THE COURT: Any objection to State's 15?

MR. BRUCK: No. I think we should make sure the jury understands that the cloth that's been removed from the crotch area was done for testing.

MR. BELL: Yes. That will be by a later witness.

THE COURT: All right. No objection?

MR. BRUCK: No objection.

THE COURT: All right. Is that State's 15?

MR. BELL: Yes, Your Honor.

THE COURT: All right. State's 15 in evidence.

(State's Exhibit Number 15, jeans, admitted into evidence.)

MR. BELL: Your Honor, may I approach the witness again?

BY MR. BELL:

Q Again, let me refer to State's 15 again. I'll kind of hold them like this so you can see it and the jury can see it. Now, down at the bottom on the left leg, there was some damage. Was that damage present the last time you saw them?

A No.

Q Okay. And then, of course, this hole right here in the middle, that wasn't present?

A No.

Q Now, let me show you what's been marked as

State's 2 and ask if you recognize that picture?

A That's where Kim was living.

Q And then State's 3 and ask if you recognize that picture?

A That's her driveway.

MR. BELL: Okay. Thank you, Ms. Griffin. Please answer any questions the defense counsel has for you.

CROSS-EXAMINATION

BY MR. BRUCK:

Q Good morning, Ms. Griffin.

A Good morning.

Q Just a couple things. You said you were Kim Quinn's best friend?

A Yes, I was.

Q So you knew what she was up to, what she was doing?

A Yes, sir.

Q Mr. Bell asked you about her employment. Wasn't she working up to a few weeks before this with Norma Campbell?

A Not to my knowledge, Norma Campbell, no.

Q Okay. She did have a job a few weeks before she disappeared, didn't she? Not a regular job, but a job, didn't she?

A Yeah.

Q And what was that?

A She worked at an escort service.

Q She worked at an escort service?

A Yes, sir.

Q You don't know whether Norma Campbell worked there, too?

A No, I don't.

Q Okay. Did she say why she needed some milk to settle her stomach that night?

A No, she didn't. She just said her stomach was upset.

Q She didn't tell you anything that she had taken or anything that she was doing that caused her to be sick?

A No.

MR. BRUCK: That's all. Thank you.

THE WITNESS: Thank you.

MR. BELL: Nothing further, Your Honor.

THE COURT: You may step down, ma'am.

MR. BELL: Your Honor, at this time, if it please the Court, we would like to read into the record a stipulation that has been agreed to by both the State and the defense the testimony of Peter Tony Demos, D-E-M-O-S.

THE COURT: All right. Ladies and gentlemen, a stipulation is just an agreement between each side as to certain facts. You should accept those facts and use those facts as you deem appropriate in your determination of the issues in this case.

Go ahead.

MR. BELL: Thank you, Your Honor.

The following stipulation is that the State and the defendant have agreed that on the morning of Friday, October 6th, 1989, shortly after 7:00 a.m., Peter Tony Demos went to the victim's residence along with Ms. Norma Campbell in order to help look for the victim, Kimberly Quinn. While there, he found the victim's wallet laying on the ground at the edge of the grass in her driveway. The wallet was recovered and contained her South Carolina driver's license, but not her South Carolina identification card. Additionally, there was no cash in the wallet when recovered.

Parties also further stipulate that the wallet in evidence is the wallet he found that morning. That's the...

THE COURT: All right.

MR. BELL: Your Honor, we've put that as a Court's Exhibit as well.

(Court's Exhibit Number 5, stipulation, marked for identification purposes.)

MR. LUPTON: Your Honor, the State would call Mike Hutchins.

MIKE HUTCHINS,

having been duly sworn, testified as follows:

THE CLERK: State your full name for the record, please.

THE WITNESS: Mike Hutchins.

DIRECT EXAMINATION

BY MR. LUPTON:

Q Good morning, Mr. Hutchins. Would you tell the jury what it is that you did back in October of 1989?

A I was a forest ranger technician and an investigator with the State of South Carolina.

Q And what kind of background and training did you have for that job?

A I'm a graduate of South Carolina Criminal Justice Academy. I'm also a certified arson investigator with the State of South Carolina.

Q And what kind of -- how long did you work for -- as a forest ranger?

A Twenty-three years.

Q And you were employed in that capacity in

October of 1989, correct?

A That is correct.

Q And with regards to that, did you have occasion to be called to -- well, let me back up. What kinds of duties did you have as a forest ranger?

A I was in charge of all of the wild fire activities in Lexington and Calhoun County for a while too, supervised the people that actually fight the fires and so forth.

Q And in that capacity, did you have occasion to be called to investigate a fire related to this case?

A I did.

Q And what date, if you recall, did you get that notice, that call for the fire?

A Around lunchtime on October the 6th.

Q And, specifically, do you recall or do you have notes that reflect what time the call was called in?

A I don't have anything with me, but it was around lunchtime I remember that.

Q Does 12:50 p.m. sound --

A That would be close, yes, sir.

Q And do you recall where the fire was?

A The fire was off of Beckman Road back down through some planted pines.

Q Is that here in Lexington County?

A Yes, sir, it is.

Q And show you what's been marked, Court's permission, State's Exhibit 4. I ask if you can come down and explain what this is?

A (Witness leaves the witness stand.)

MR. LUPTON: I believe this has already been offered into evidence without objection.

MR. BRUCK: No objection.

BY MR. LUPTON:

Q And can you tell the jury what that is?

A It's a sketch of where the fire was started and all this. Beckman Road is actually back over this way and this was --

COURT REPORTER: Can you have him turn around please? I'm having a hard time hearing him.

THE COURT: Swap sides, counsel.

BY MR. LUPTON:

Q So you say that this here, this sort of tan-colored area leading to what's labeled on the chart, is parking area?

A That is correct.

Q That that is a logging road?

A Yeah. It was pretty much grown up when we went in there.

Q Could you describe the condition of that road?
A Just an old road cut down through planted pines.
Q Was it a paved road?
A No. It was just all dirt. Like I said, just back down through the woods. Looked like it was usually used for a logging road or maybe access to this house at one time, but it was grown over a little bit.
Q Would it be the kind of road that a normal sedan type car would be traveling on a regular basis?
A No, sir.
Q Would it be -- what kind of vehicle would you normally use to drive on that type of road?
A I have a four-wheel drive pick-up truck.
Q And would it be a road consistent with that type of vehicle?
A Yes, sir.
Q Now, you say you got called out to the fire?
A That's correct.
Q And that was on what date?
A The 6th of October.
Q And that was a Friday?
A Yes, sir.

Q And when you got to the location, can you explain to the jury what you did?

A I was called out there by one of my employees that actually operates a bulldozer that fights the fire just to -- I actually go out and confirm everything he did to make sure the fire is under control and so forth and that's what I did. At that time, the fire -- I didn't really investigate it that close. Lexington County was running about a thousand fires a year at that time. So I just went out and everything looked good. I was out there for an hour or so with my employee and then we left. The fire was under control. Wood fires you don't put it out, you just get them under control. It's too big an area to actually put it out.

Q About how big an area was this that was actually burned?

A It was less than two acres if I remember right.

Q And these picture that are on the chart as well, does that reflect the area that the chart depicts?

A Correct. You can't tell a whole lot about the fire from the pictures, but, yes.

Q And that's how it appeared back then?

A That is correct.

Q 1989. And can you show on the pictures themselves approximately what area was burned?
A Right in here on the right hand -- looking at the picture this right-hand side. This is actually a fire break that was cut in on this side, cutting back into the woods. You can't see it when it gets back into the woods because it was under big pine trees and all. This is actually a fire break right here on this side.
Q Because that's how you -- you cutting the fire breaks was how the fire was controlled?
A Correct. We removed the fuel to put the fire out.
Q You said that somebody else did that?
A That is correct.
Q Working under your supervision. Y'all were there for I believe you said about an hour or an hour and a half?
A Yes, sir.
Q Did you conduct any investigation as to the cause of the fire that day?
A Not at that time I did not.
Q And would that be routine?
A With as many fires as we had going on, that is routine for us. The fire really didn't do any

damage just burned a few woods up under the trees and all. So we would just go in and look at it and everything is under control and leave.

Q And I guess you can tell by the chart, but did it do any damage to the structure that was out there?

A No, sir. This is our fire break right here, the drawing shows between the structure and what burned back in this area here.

Q So all it did was burned some woods. So y'all controlled it and left; is that accurate?

A Yes, sir.

Q Now, were you ever called back to the location?

A Yes, sir. On Sunday afternoon, I was called back to it to investigate further.

Q All right. And, at that point, did you investigate the fire?

A Yes, I did.

Q And were you able to determine where the fire had started?

A Yes, sir. The fire actually started in this area here (indicating) where a body was. The fire started from there and moved up the hill.

Q So there's -- on this chart, there's a B. Does that indicate where the body was found?

A That is correct.
Q And is that where the fire started?
A Yes, sir, it is.
Q And you -- describe how it burned?
A It was pretty bad mutilated and all. It looked like there was some type of accelerant.
Q Well, going to the fire itself, I'll let somebody else talk about the body, but talking about the fire, can you describe how it progressed?
A Sure. The fire was -- it had burned for quite a while because it was a nighttime fire it looked like because this area down here (indicating) did not burn up completely. It actually had pine straw and stuff that had not burned and it had scattered around, so that indicates a lot of moisture still on the ground or dew at night. And then what happened, that afternoon when the wind got up a little bit, the fire actually pushed up this hill and that's when the fire was discovered was later on in the day when we actually had enough wind and the ground got dry enough and the fuel got dry enough for the fire to move on in this direction here.
Q So, basically, you can tell by the burn pattern that it had been started at night; is that correct?
A That is correct.

Q And had it just sort of burned low or smoldered?

A Yeah.

Q Is that -- am I understanding you correctly?

A This is not real accurate right here. The fire didn't actually burn all the way to the pond. It actually burned itself out because of the moisture on the ground back on this side here. And there were several areas in here that were skipped, too, where there was still pine straw and stuff that was not burned, that indicates moisture on the ground. When the wind got up, all of this up here was consumed by the fire as far as degrees on the ground because you had low moisture and the wind pushing it up the hill.

Q So that would have taken place the next morning after daylight after the ground had dried?

A That is correct.

Q And then that's when the fire was discovered and called in; is that correct?

A That's correct.

Q You can return back to the stand. Thank you very much.

A (Witness resumes the witness stand.)

MR. LUPTON: Thank you, Your Honor. Nothing

further.

CROSS-EXAMINATION

BY MR. BRUCK:

Q Mr. Hutchins, just one thing. You said the road, the best vehicle would be a four-wheel drive or a pick-up truck, right, to go on that road?

A You could access it with a car. The question he asked me, Would that be the normal vehicle, a sedan or something going down it, I wouldn't think so.

Q You just answered my actual question. You could drive a sedan on that road?

A Yes, sir.

Q And get through. It's not a problem?

A Yes, sir.

MR. BRUCK: All right.

THE COURT: Anything else?

MR. LUPTON: Nothing further. Your Honor, the State would ask this witness be excused.

THE COURT: Any objection?

MR. BRUCK: No objection.

THE COURT: You may be excused.

MR. BELL: The State would call Andrew Baldwin.

****

****

ANDREW SCOTT BALDWIN,

having been duly sworn, testified as follows:

THE CLERK: If you'll have a seat and state your full name for the record, please.

THE WITNESS: Andrew Scott Baldwin.

DIRECT EXAMINATION

BY MR. BELL:

Q Mr. Baldwin, I'm going to ask that you keep that voice up so all of the jurors can hear you, okay?

A Okay.

Q All right. Mr. Baldwin, are you employed at this time?

A Yes.

Q Generally, what do you do?

A Custom stone work.

Q How old are you today?

A Twenty-seven.

Q And back in 1989, how old would you have been?

A Ten or 11 years old.

Q Do you remember where you lived back in 1989?

A Yes.

Q Where was that?

A We were living on Scenic Drive.

Q Where is that located?

A Just outside of South Congaree.
Q What's the main highway through there?
A Highway 302.
Q And are you familiar with a road called Beckman Road?
A Yes.
Q And where is that in relation to where you live?
A It was a side street right off of Beckman.
Q Scenic -- where you live, Scenic Drive, was?
A Yes.
Q And who did you live with at that time?
A My father and my stepmother.
Q Was anybody else living there?
A Yes, my sister and my three stepbrothers.
Q Okay. And do you recall something significant happening back in October of 1989?
A Yes, sir. Me and my brother we went fishing.
Q And who's your brother?
A Rob Turner, stepbrother.
Q Stepbrother?
A Yes, sir. We went fishing one day. He cut out kind of early. I stayed and I happened to run across a brain.
Q Do you remember what day of the week that was?

A It was a Saturday.
Q And when you saw that, what did you do?
A I just kind of got spooked a little bit, went home, told my brother. And he said, We'll just go back tomorrow and take a look at it. It was dark, so.
Q And where were you at when this occurred?
A I'm not understanding the question.
Q Where were you when you found what you said was a brain, where were you?
A We were at an abandoned pond house off of Beckman Road.
Q And so you -- did you immediately go home when you saw that or did you look around?
A I believe at the point I was more interested in finding fishing bait.
Q And what time did you go home?
A It was getting close to dark.
Q And when you went home, you said you told your brother?
A Yes, sir.
Q Did you tell anybody else?
A The best of my recollection, we told my parents at the supper table later on that evening.
Q And did they do anything when you told them

that?

A They just kind of blew it off. I mean, they didn't -- they didn't see it, so I guess they -- it would be natural for them to just not even worry about it.

Q Was your curiosity aroused at this time?

A Definitely.

Q So did you go back out to the pond any time after that Saturday night?

A The following morning.

Q What time about, as best you can remember?

A I believe it was about 6:30, seven o'clock in the morning, somewhere in that time frame.

Q What -- let me ask you this, to go back with what you found. What did you think -- you said it was a brain, did you think it was any particular type of brain?

A Yeah. I thought it was an animal brain of some sort, large animal, maybe a horse or, you know, something that size because -- I mean, it was just too small to be a small animal -- I mean, too large to be a small animal.

Q So you said the next time you went out was early the next morning?

A Yes, sir.

Q And what day was that?
A It was on Sunday.
Q Okay. And did anybody go with you?
A Yes.
Q Who?
A My stepbrother, Rob Turner.
Q And, again, I may have asked you, but about what time did y'all leave out?
A It was about 6:30, seven o'clock in the morning.
Q And where were you going?
A We were heading back out there to do some more fishing and show him what I had found.
Q And so you went over back to the same pond?
A Yes, sir.
Q And what did you do when you got there? What did both of you do?
A Just started looking around trying to gather live bait and, you know, he -- he -- my brother just started snooping around to see what he could find while I was fishing.
Q Okay. And what happened -- did you start fishing?
A Yes.
Q And did anything happen while you were fishing?

A Yes. My brother just started freaking out. He was -- he was very upset. And he yelled something and jumped on his bike and just left. I could not catch him. I didn't understand what was going on.

Q I mean, what did you do?

A I chased after him. I tried to find out what was wrong. And I never did catch up with him. He just totally left me in the dust.

Q Do you know where he went?

A He went straight to our house.

Q And did you eventually show back up there at your house?

A I never did make it all the way to the house. My dad came and picked me up in the truck and asked me to take him where we just came from.

Q Okay. And where did you go?

A Took him down to that abandoned pond house.

Q And what did y'all do when you got down there?

A My dad asked me to point him to where Rob was at when he just started, you know, getting upset and yelling and stuff like that and I just pointed to the direction. And my dad asked me to stay there. And I did until I saw what he was looking at and then I, you know, I walked closer and I saw.

Q And what did you see when you walked closer?

A I saw a badly charred, mutilated body.
Q Did you notice anything else about it?
A Hands and feet were missing. The head was detached and it was just very, very horrific.
Q And what happened after that?
A My dad asked me to go to the truck. And he, I guess, stayed for just a second to kind of gather his thoughts and we left, called the authorities.
Q And who called the authorities?
A My father.
Q And as a result of that call, who showed up?
A I'm not remembering who all was involved at that point. I was blind sided by the whole thing. I was just upset, nervous, completely shaken. I wasn't aware of much else after that.
Q And how do you remember it after 16 years so vividly?
A When you see something like that, you just can't forget it. It's like somebody taking a picture. I just see snapshots of everything that I saw that day.
Q Now, Mr. Baldwin, if I can, if you could step down please and come to this diagram.
A (Witness leaves the witness stand.)
Q If you'll step on this side so the court

reporter can hear you and all of the jurors can hear you. I'm referring to State's Exhibit 4. Does that look familiar to you?

A Yes.

Q And what is that a diagram of, the big diagram, what is that a diagram of?

A This is a diagram of the pond area that we were fishing at.

Q Okay. And then there are three pictures across the top. Do you recognize those pictures?

A Slightly different from an aerial view, but, yes, I do recognize that definitely.

Q And could you point out for the jury where you were fishing?

A We were fishing right along this bank right here (indicating), kind of close to the gazebo. There were some shrubbery right here, you know, good source of bait, so I stuck close to that area.

Q What kind of bait were you looking for?

A Crickets, grasshoppers, worms.

Q Okay. And then where did you -- can you point out where you found the brain?

A Um --

Q As best you remember?

A Somewhere right along this fire break area. It

was pretty close to that fire break.

Q Pretty close to where that X is marked on there?

A Right here?

Q Yes.

A Yes, somewhere a little close to there.

Q And did you notice the burned area at all over there?

A Yes. We just -- I mean, it was just pretty much like burning debris, like somebody had just tried to burn off some debris. That's how it appeared.

Q And why did you say it just appeared that somebody had just burned off?

A Just like logs and wood, you know, mattresses, stuff like that. It just looked like somebody had just tried to burn some stuff and get rid of it.

Q Okay. You can have a seat back on the stand.

A (Witness resumes the witness stand.)

Q You hadn't forgotten that day, have you?

A No, sir.

MR. BELL: Thank you, Mr. Baldwin. Please answer any questions the defense attorney has for you.

MR. BRUCK: I appreciate you being here. We

have no questions for you. Thank you so much.

THE COURT: You may step down. Thank you.

MR. BELL: We call Rob Turner to the stand, please.

ROBERT DENNIS TURNER,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name for the record, please.

THE WITNESS: Robert Dennis Turner.

DIRECT EXAMINATION

BY MR. BELL:

Q Mr. Turner, first of all, I don't think we're going to have any problem for the jury to hear you, speak in that voice and you'll be good, okay?

A Okay.

Q Mr. Turner, are you employed?

A Yes, I am.

Q And are you related to Andrew Baldwin?

A He's my stepbrother.

Q And I'm going to ask you, back in 1989, specifically October, where were you living at that time?

A I was living on Scenic Drive.

Q And is that near Beckman Road?

A Very close, yes, sir, next street over.

Q And what's the main road that goes through that area?

A Highway 302.

Q And let me ask you this. If you go -- how do you get to 302 from where you lived at that time?

A Well, you could either go up to Beckman Road and turn right or you could just come out of Scenic Drive and you were on 302.

Q And if you come out on Beckman Road and take a right, where does that lead you to?

A 302.

Q Is there a road across from Beckman Road?

A Sure is, Canterbury Lane.

Q Okay. Was there a road across 302 from Beckman at that point?

A I think Greenwood. Yes, Greenwood Drive.

Q Now, back in October 1989, do you recall something that sticks out in your mind?

A Absolutely.

Q What do you recall? Do you recall something happening with Andrew?

A Yeah. He discovered a brain. You know, we were living on Scenic Drive, he discovered a brain. He told me about it. We were all curious, you know, very young, went back the next morning going fishing

and I got to snooping around. That's when I discovered the body of a lady.

Q How did you discover it?

A Smelled smoke, followed the burn trail and she was there under a pile of brush and just kind of, you know, that's about all I remember.

Q Did you notice anything about the area, how it was -- can you describe the area that you saw?

A Pretty burnt, you know, vandalized a little bit. You know, we had been back there previously and it wasn't that way. Trees were knocked over and stuff like that.

Q Was there still any fire going on that you know?

A Smoke, it was still smoldering.

Q And whereabouts --

A The body.

Q Okay. When you saw that, what did you do?

A I went -- I left the scene. Me and my brother went straight back home. I told my father about it and notified the police, Lexington County, I believe.

Q And is this an area that you, you and your brothers and family, hung out at?

A Yes, sir.

Q What would y'all do down there?
A Fish.
Q Do anything else down there?
A Not a thing.
Q How far away was the pond from your house?
A Maybe five minutes by bicycle.
Q How would you get down to it?
A Bicycle.
Q I mean, was there a road or anything?
A Yeah. There was a road cut. If you were to take Beckman down Canterbury, you cut right to the left and there's like a fire break road, led you straight back to it.
Q Okay. And did you have to wind your way back around there?
A Sure did.
Q And do you recall any law enforcement coming down there after your father...
A Oh, yeah. Yeah, they had to take me back down there. I mean, it was tons of police.
Q And how old were you back in this time?
A I believe I was ten years old.
Q Let me ask you if you can step down please and come to this diagram. If you can stand on this side so the court reporter can hear you and the jury can

hear you.

A (Witness leaves the witness stand.)

Q And that's, again, State's Exhibit 4. Does that look familiar to you?

A Every bit of it.

Q And so this is the pond that y'all were down to?

A Uh-huh. This is the way we came in.

Q That road right there?

A Yeah. And we would park our bikes right by the little dock going out.

Q And what was Andrew doing when y'all --

A He was already on the dock fishing. You know, the brain was, I believe, over in here right off the front of the house. The body I saw -- that's when I saw the burn, because he didn't see the burning the night before.

Q Okay. So --

A And that's -- I immediately saw it.

Q And where did you find the body?

A Right here.

Q Where that B is and that X?

A Yeah, right there.

Q Inside the burned area?

A Yes, sir.

Q Okay. You can have a seat.

A (Witness resumes the witness stand.)

Q And what was your reaction?

A I was a little freaked out, scared. You know, I was ten, never seen a dead body before, you know.

Q And what did you do?

A I went home and I told my parents. And Andrew didn't see it at the time.

Q Did he go home with you?

A He -- I left him in the dust, man. I was gone. I couldn't speak.

MR. BELL: Thank you, Mr. Turner. Please answer any questions the defense has for you.

MR. BRUCK: Mr. Turner, we've got no questions for you. Thanks for coming.

THE COURT: You may step down. Thank you.

MR. BELL: The State would call Dana Harley.

DANA HARLEY,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your name for the record.

THE WITNESS: My name is Dana Harley.

DIRECT EXAMINATION

BY MR. BELL:

Q Mr. Harley, where are you employed now?

A Wil Lou Gray Opportunity School in West Columbia.
Q And what do you do there?
A I'm a teacher.
Q And 16 years ago, 16 and a half years ago, 1989, where were you working?
A I was working for L.D. Harley Properties who was my uncle. I was doing maintenance and clean up on his apartments in West Columbia near Platt Springs Road.
Q And what are the names of those apartments?
A Lyngate Apartments.
Q Would you spell that, please?
A I'm not sure if it's one N or two N's, L-Y-N-G-A-T-E, I believe.
Q And exactly what were you doing for your uncle there at those apartments?
A Doing clean up, maintenance. That day I was doing apartment [redacted], which is right on the end on the bottom floor, cleaning up an apartment after somebody moved out.
Q Okay. Do you recall what day that was?
A It was near the end of the week. It was a Thursday I believe.
Q And these apartments, again, they're located

A Back up towards Platt Springs Road and turned and left.

Q Turning left?

A Yes, sir.

Q Is that --

A Back towards Tri Angle City.

Q That's toward the center of town I guess?

A Yes, sir.

Q Okay. Now, did you see that vehicle again?

A Yes. It came back a little later around -- about 45 minutes later. They came in, pulled up. And this time the passenger got out. They pulled up for just a second and then the passenger got out.

Q How many people were in this vehicle?

A There were just two again, the same two.

Q Same two?

A Yes, sir. I was able to observe them as they drove in and out, so I pretty much knew it was the same two that had been there the first time.

Q So when they pull in, you saw the driver's side?

A Yes, sir.

Q And then when they pull out, you see the passenger side?

A That's correct.

Q Okay. And you said the passenger this time got out?

A Yes, sir. He got out and came and sat directly on the steps at [redacted] which led into a breezeway that led to the apartment downstairs. And you could go up the stairs to the apartment upstairs.

Q Okay. Now, the steps were out by the parking lot?

A Yes, sir, you -- no, the steps were actually in the breezeway and you could come into the breezeway. And you would have to walk directly on the sidewalk, then into the breezeway, then up the steps.

Q Now, let me ask you this. When you're looking out, where are you in the apartment?

A If you're looking out the window towards -- you can look out the peephole of the door and see somebody sitting there on the steps.

Q And when you were looking at the car, what were you looking out to see?

A I was looking out the living room window. It's a big four-by-four window and I could observe anything going on outside the window pretty good.

Q Did you have your face up next to the window looking out?

A No, sir. I had the lights down inside. I

could stand back and observe out there without having to worry about anybody actually being able to see inside too well.

Q Were you trying to act so they couldn't see you?

A Yes, sir. I was trying to be a little bit undercover myself, so.

Q Did you turn the lights off for a purpose?

A Yes, sir.

Q What was that purpose?

A I knew they were suspicious. And each time they'd drive up, I'd immediately turn off the lights and stand back a little bit from the window and observe.

Q Okay. Now, going back to the second time when the passenger got out.

A Yes, sir.

Q You said he got on the steps in the breezeway; is that correct?

A That's correct, yes, sir.

Q And where did you observe that person from?

A He was mostly just sitting there just kind of looking back and forth across the road or across, you know, just looking around and he was smoking.

Q And you said looking across the road, is that

Platt Springs Road?

A Yes, sir. He was looking out mostly towards across the road.

Q Did he just sit there the whole time?

A Yes, sir. He sat there the whole time until the other driver came back in a few minutes to get him.

Q How long did he stay there before the car came back?

A It was a good ten minutes, maybe 15.

Q When the car left after dropping him off, after he got out, which way did it go?

A Back towards Tri Angle City again.

Q And when the car came back, what direction did it come from?

A From the Tri Angle City area.

Q And how long were you looking at him through, you said, the peephole in the door?

A Yes, sir. I would sit there, pretty much stand there and kind of look out just to make sure he wasn't going up the stairs. So I observed him a good bit of that 15 minutes he was there so, to make sure he wasn't going up into the stairs or anything like that.

Q Okay. And then going back to when he got out,

did you -- where were you when you saw him get out?
A He walked directly towards me. I was inside the window. So when he got out of the passenger side door, he walked directly towards the sidewalk which ran parallel to the windows. And when he got out, he walked directly towards me. And then he turned and went towards the breezeway and sat down on the steps.
Q Did you get a look at his face?
A Yes, sir, a good look.
Q How long did you get to see his face?
A Probably five to six seconds, maybe a little bit more from there.
Q And plus seeing him when the car would go back and --
A Yes, sir. By then, I had a pretty good picture in my head.
Q Now, they left -- about what time did this vehicle leave?
A It was before lunch, 11:30 or so, and they left. He came and picked him up and they rode back out and went down Platt Springs towards Tri Angle City.
Q Okay. Now, did you stay there at the apartments past that?

A Yes, sir. After lunch, I was there. They came back about 3:00 or so. And I was -- noticed that this time, you know, they came in and stayed just a few minutes again and just parked the same way into the spot, backed in.

Q And backed in?

A Yes, sir.

Q Okay. Now, at one point, you got a good look at the vehicle, right?

A Yes, sir. There was -- I got the tag number and I wrote it down on the window sill. There was a Clemson sticker on the -- I'm a Carolina fan, so I always notice that, but a Clemson sticker on the back window. So I noticed, you know, it had a green vinyl top and, you know, just on the back half of the car, of the top that is. So I wrote the tag number down, which is UGD 865, and wrote that down and gave it to my uncle later.

Q And you wrote it down on the window sill?

A That's correct.

Q Now, let's go back to the next time you saw the vehicle. When was that?

A That was close to 3:30. I was kind of gearing up to get off, so I -- they came in again. This time they just drove through and drove down to the

end of the apartment complex, turned around and came back out and then sat at Platt Springs Road right at the end towards, looking across the street for probably, it was two or three minutes, maybe more than that.

Q And was there anybody else in the complex at this time?

A Yes. I had spoken to Ms. Freeman who lived in [redacted], which is directly across from my window. We had spoken, had mentioned about the suspicious characters coming in and out of the apartment complex that day.

Q When did you speak to her about that?

A Just before that, I believe, probably two o'clock or so.

Q And you said at 3:30, they kind of rode through or --

A Yes, sir. They just rode through the apartment complex, went to the end of -- came all the way back out towards Platt Springs Road and stopped.

Q Okay. How many people were there?

A The same two.

Q Same two. Did you see that vehicle there at any other time besides 9:30 in the morning, about 11:00 in the morning and 3:30 in the afternoon?

A No. There was four times.
Q When was the other time?
A It was right at one o'clock, that's the time whenever they just came through.
Q One o'clock was when they rode through?
A No. I believe it was the very last time, three o'clock.
Q Okay. When -- and when did you talk to Ms. Freeman?
A It was in between those two times.
Q The one o'clock and the three o'clock?
A Yes, sir. It was around 2:00 or so when I spoke to her.
Q The same individuals?
A The same individuals, yes, sir.
Q Okay. Could you tell the jury -- can you kind of describe the two individuals?
A The driver was a little -- kind of a robust, maybe a little overweight guy, he had a round face, beard, long hair, it was blondish, high cheeks, real puffy, reddish like. The passenger had black hair, a black mustache, shoulder length hair maybe, a little stringy in the front maybe, I wouldn't know if you'd call that bangs or what. And he was probably six -- five eight to six foot or so.

Q And is that the individual that got out of the vehicle and sat on the stoop?

A That's correct, yes, sir.

Q Mr. Harley, if I could get you to come down.

A (Witness leaves the witness stand.)

Q And put State's Exhibit 1 up here. And if you could stand on this side so the court reporter can hear you. Do you recognize these photographs?

A Yes, sir, I do.

Q Okay. And the map kind of, I know it's not to scale, but...

A Right. This would be -- these are actually single townhouses. I would be in this apartment right here on the bottom floor (indicating). [redacted] was right here in this bottom apartment. The gentleman would come in and pull in here right at my window where I was working in the living room area here of [redacted] and would back in each time here and look across the road this way.

Q And what are these four individual things that are over there?

A These?

Q Yes.

A These are the townhouses. This was [redacted]. This was where Ms. Freeman lived.

Q Now, the pictures, let's look at the picture down here on the, as the jury's looking at, at the right bottom.

A Right. This is the apartment I was working in here on the bottom. I was most of the time in this window right here and that's where they would back in directly in front of that window.

Q Okay. And then where's the breezeway you were talking about?

A The breezeway is right here. And the suspect got out of there and then went into that breezeway.

Q And then the top two pictures, could you describe what that shows?

A This is looking out of the breezeway. Each one of these are looking out of the breezeway across Platt Springs Road. They would basically park one space up from here and back into the window where I was observing.

Q And, I mean, is that the view -- there's two pictures of the breezeway, is that about where the doorway is to [redacted]?

A That's correct. The doorway to [redacted] would be right here on each one of these pictures.

Q Thank you. You can have a seat back.

A (Witness resumes the witness stand.)