

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Colleton County

Honorable Thomas A. Russo, Circuit Court Judge

MACK WASHINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000182

APPENDIX

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S.C. SUPREME COURT

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1 that the defendant in this case has been arrested, that the
2 defendant has been charged, the fact that the defendant has
3 been indicted in this case is not evidence in this case, nor
4 does it create any presumption or inference of guilt. These
5 indictments, these documents that I've referred to, which I
6 have called indictments, are simply the formal written
7 instruments which contain the charges made against the
8 defendant. The indictments are the formal documents by
9 which the case is brought into this court for trial. I've
10 handed the indictments to my law clerk who will ask you, Mr.
11 Foreman, to sign your name and date on the indictments.

12 Now to those five indictments, the defendant has pled
13 not guilty. And that plea of not guilty to each of the five
14 indictments puts the burden on the State of South Carolina
15 to prove the defendant guilty beyond a reasonable doubt. A
16 person charged with committing a criminal offense in South
17 Carolina is never required to prove himself, or herself,
18 innocent.

19 I charge you, ladies and gentlemen of the jury, that it
20 is an important rule of the law that the defendant in a
21 criminal trial, no matter what the seriousness of the charge
22 may be, will always be presumed to be innocent of the crime
23 for which the indictment was issued, unless guilt has been
24 proven by evidence, satisfying you of that guilt beyond a
25 reasonable doubt.

1 This presumption of innocence, ladies and gentlemen of
2 the jury, does not end when you begin your deliberations,
3 but it accompanies the defendant throughout the trial until
4 you, as a jury, reach a verdict guilt based on evidence,
5 satisfying you of that guilt beyond a reasonable doubt.

6 The presumption of innocence is not a mere legal
7 theory. It is not just a legal phrase. It is a substantial
8 right to which every defendant in criminal court is entitled
9 unless you, the jury, are satisfied from the evidence of the
10 defendant's guilt beyond a reasonable doubt.

11 What is a reasonable doubt in the law? A reasonable
12 doubt is the kind of doubt that would cause a reasonable
13 person to hesitate to act.

14 The State has the burden of proving the defendant
15 guilty beyond a reasonable doubt. Some of you on the jury
16 today may have served as jurors in the past in a civil case,
17 where you were told by the judge that it was only necessary
18 to prove that a fact is more likely true than not true. We
19 call that, in a civil case, the burden of by the greater
20 weight, or the preponderance of the evidence. In a criminal
21 case, such as the case here today, the State's proof must be
22 more than that. It must be beyond a reasonable doubt.

23 Now, proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the defendant's guilt. There
25 are very few things in this world that we know with absolute

1 certainty. And in criminal cases, the law does not require
2 proof that overcomes every possible doubt. If, based on
3 your consideration of the evidence, you are firmly convinced
4 that the defendant is guilty of the crime, or crimes
5 charged, you must find the defendant guilty. On the other
6 hand, if you think there's a real possibility that the
7 defendant is not guilty, you must give the defendant the
8 benefit of the doubt and find the defendant not guilty.

9 I remind you, ladies and gentlemen, that throughout
10 this trial, you and I have had certain duties to perform.
11 As a trial judge, it has been my responsibility to preside
12 over the trial of the case, and I also have the duty to rule
13 on the admissibility of evidence offered during the trial of
14 the case.

15 I remind you that you are to consider only the
16 competent evidence offered during the trial. If there was
17 any testimony ordered stricken from the record by me during
18 this trial, you must disregard that testimony and not use it
19 as a basis of your decision. You are to consider only the
20 testimony which was presented from the witness stand by the
21 sworn witnesses, any exhibits which have been introduced
22 into evidence during the trial of the case, and if there
23 were any, any stipulations of counsel.

24 Now, I also, as the presiding judge, have the
25 additional duty to charge you the law that applies to this

1 case. As the presiding judge, I told you that I am the sole
2 judge of the law in this case, and it is your duty as
3 jurors, under that oath you took at the beginning of this
4 trial, it's your duty to accept and to apply the law as I
5 now state it to you.

6 So if any of you on this jury already have any idea as
7 to what you think the law is, or even what you feel the law
8 ought to be, and it does not agree with what I now tell you
9 the law is, you must abandon any of your preconceived ideas
10 or any of your preconceived opinions, because each of you
11 took an oath from the Clerk of Court. And in that oath, you
12 swore or affirmed that you would accept the law as given to
13 you, and apply the law exactly as I now state it to you.

14 In every case tried in this Court before a jury, the
15 jury becomes the sole and the exclusive judges of the facts
16 in the case. A trial judge, such as myself, cannot
17 intimate, comment on, or make any type of statement to a
18 trial jury, such as you, about the facts in a case.

19 Since you, the jury, are the sole judges of the facts
20 in this case, you are not to infer from what I have said
21 during the progress of this trial in ruling upon the
22 admissibility of evidence or otherwise, or anything that I
23 say now during the course of this instruction to you, that I
24 have any opinion whatsoever about the facts in this case.

25 The law does not allow me to have an opinion about the

1 facts in this case. This is a matter solely for you, the
2 jury, to determine. As jurors, then, it is your duty to
3 determine the effect, the value, the weight and the truth of
4 the evidence that's been presented during the trial of this
5 case.

6 Now, ladies and gentlemen, there are two types of
7 evidence that are generally presented during a trial. And
8 like many things in the law, we have names for those general
9 types of evidence. The two types of evidence presented
10 during a trial are called direct evidence and circumstantial
11 evidence.

12 Direct evidence, ladies and gentlemen, is testimony of
13 a person who claims to have actual knowledge of a fact, such
14 as an eyewitness to an event. Direct evidence is evidence
15 which immediately establishes the main fact to be proved.

16 Circumstantial evidence, as contrasted with direct
17 evidence, is proof of a chain of facts and circumstances,
18 indicating the existence of a fact. Circumstantial evidence
19 is evidence which immediately establishes a collateral fact
20 from which the main fact may or may not be inferred.
21 Circumstantial evidence is based on inference and not on
22 personal knowledge or personal observation.

23 The law makes absolutely no distinction whatsoever
24 between the weight or the value to be given to either direct
25 evidence or to circumstantial evidence. Nor is a greater

1 degree of certainty required of circumstantial evidence than
2 of direct evidence.

3 Ladies and gentlemen of the jury, you should weigh all
4 of the evidence in this case. You should consider all the
5 evidence in this case, both direct and circumstantial
6 evidence. After weighing and considering all the evidence
7 in this case, if you're not convinced of the guilt of the
8 defendant beyond a reasonable doubt, you must find the
9 defendant not guilty.

10 On the other hand, after weighing and hearing and
11 considering all the evidence in this case, if you're
12 convinced of the guilt of the defendant beyond a reasonable
13 doubt, you must find the defendant guilty.

14 Necessarily, ladies and gentlemen, you must determine
15 the credibility, meaning the believability, of the witnesses
16 who have testified during the trial of this case. It
17 becomes your duty as a juror to analyze. It becomes your
18 duty as a juror to evaluate the evidence and determine which
19 evidence convinces you of its truth.

20 In determining the believability or credibility of the
21 witnesses who have testified in this case, you may believe
22 one witness over several witnesses. You may believe several
23 witnesses over one witness. You may believe a part of the
24 testimony of a witness and reject the remaining part of the
25 testimony of that same witness. You may believe the

1 testimony of a witness in its entirety, or you may reject
2 the testimony of a witness in its entirety.

3 You may consider whether any witness has exhibited to
4 you any interest, any bias, any prejudice or other motive in
5 this case. You may also consider the appearance and manner
6 of the witness while the witness is on the witness stand.
7 We call it the demeanor of the witness in judging the
8 believability of the witnesses who have testified in the
9 trial of the case.

10 I instruct you, ladies and gentlemen, that the fact
11 that the defendant did not testify in this case is not a
12 factor to be considered by you in any way in your
13 deliberations and in your consideration on the question of
14 guilt or innocence by the defendant. It must not be
15 considered by you in any manner whatsoever in your jury
16 room. Every defendant has the constitutional right to
17 remain silent and the assertion of this right must not be
18 considered by you in your deliberations. You are to draw no
19 conclusion whatsoever from the fact that the defendant in
20 this case did not testify. In fact, the fact that the
21 defendant did not testify should not even be discussed in
22 your jury room. The burden of proof, as I have stated to
23 you, is on the State of South Carolina. The defendant is
24 not required to prove his innocence. The burden of proof
25 remains on the State to prove guilt by evidence, satisfying

1 you of that guilt beyond a reasonable doubt.

2 I charge you, ladies and gentlemen, that a person who
3 has a past criminal record is competent to testify during a
4 trial. In other words, because you have a past record for
5 convictions does not affect the ability of the witness to
6 testify. The past record may only be considered by you as a
7 jury, if at all, in determining the witness's believability
8 or credibility.

9 I remind you, ladies and gentlemen of the jury, that
10 you are the sole judges of the facts and of the
11 believability of any and all of the witnesses.

12 I charge you, ladies and gentlemen, that if there's
13 been evidence presented that witnesses have made prior
14 statements which are not consistent with the witness's
15 present testimony in the courtroom, you may, if you so
16 desire to find, you may use this evidence to decide whether
17 to believe a witness. You may also use evidence of an
18 earlier contradictory statement to determine the truth of
19 the statement. It is up to you to decide whether to believe
20 earlier statements or testimony given at trial.

21 If a witness has shown to have testified untruthfully
22 concerning any material matter, you may consider this in
23 determining whether to trust a witness's testimony or the
24 witness's credibility. You may reject all testimony of the
25 witness or give it all or part of the testimony the weight

1 you think it deserves.

2 Now, ladies and gentlemen, there is a doctrine in the
3 law called, "the hand of one is the hand of all." If a
4 crime is committed by two or more people who are acting
5 together in committing a crime, the act of one is the act of
6 all. A person who joins with another to commit an unlawful
7 act is criminally responsible for everything done by the
8 other person which happens as a probable or natural
9 consequence of the acts done in carrying out the common plan
10 or common purpose.

11 For example, two people can be guilty of killing
12 another person when only one of the two people had a gun.
13 There was only one bullet in the gun, and only one of the
14 two people fired the shot that caused the death. If two or
15 more people are together, acting together, assisting each
16 other in committing the offense, the act of one is the act
17 of all or, as it is sometimes said, "The hand of one is the
18 hand of all."

19 Prior knowledge that a crime is going to be committed,
20 without more, is not sufficient to make a person guilty of
21 that crime. Mere knowledge that another person is going to
22 commit a crime, even if the defendant is present when the
23 crime is committed, is not sufficient to convict the
24 defendant as a principal. Guilt, as a principal, is shown
25 by actual or constructive presence at the scene, as a result

1 of prior arrangement.

2 Therefore, a finding of a prior arranged plan, or
3 common scheme, is necessary for a finding of guilt as a
4 principal. The State must prove beyond a reasonable doubt
5 by competent evidence the theory of the hand of one is the
6 hand of all.

7 A principal in a crime is one who either actually
8 commits the crime or who is present, aiding and abetting, or
9 assisting in committing the crime. When a person does an
10 act in the presence of and with the assistance of another,
11 the act is done by both. When two or more, acting with a
12 common plan, a common intent, are present at the commission
13 of a crime, it does not matter who actually commits the
14 crime. All are guilty. The hand of one is the hand of all.

15 Present at the commission of a crime mean to be
16 sufficiently near to aid and abet and assist in the
17 commission of the crime. However, mere presence at the
18 scene of a crime is not sufficient to convict one as a
19 principal on the theory of aiding and abetting.

20 Intent is also a necessary element. For there must
21 have been a common design or common intent to commit the
22 crime, and the crime must have been committed pursuant
23 thereto with the person aiding and abetting by some type of
24 overt act.

25 Intent means intending the result which actually

1 occurs, not accidentally or involuntarily. Intent may be
2 shown by acts and conduct of the defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent. The State must prove these elements beyond a
5 reasonable doubt.

6 As I told you, ladies and gentlemen, even though we
7 have the theory of the hand of one is the hand of all, in
8 the law in South Carolina mere presence at the scene of a
9 crime is not sufficient to prove someone guilty of a crime.

10 The defendant's presence where a crime is being
11 committed or mere association with a person who commits a
12 crime does not make a defendant an accomplice or an aider
13 and abettor to the person committing the crime. The burden
14 is on the State to prove every element of the crime charged.

15 If you find, after reviewing all of the evidence, that
16 the State has proved that the defendant was only present at
17 the scene of the crime and they have not proved beyond a
18 reasonable doubt any other participation in the crime, you
19 must find the defendant not guilty. The law is proof that
20 at the scene of the crime or mere presence is not sufficient
21 alone to find a person guilty.

22 Whether a consent to search was voluntary or the
23 product of duress or coercion, express or implied, words
24 spoken or actions implying, is a question for the jury.
25 It's a question of fact to be determined by you from the

1 evidence from what we call the totality of the circumstances
2 based on evidence introduced during the trial of this case.

3 The burden of proving a voluntary search is on the
4 State to show beyond a reasonable doubt that the alleged
5 consent to the search was voluntary and if you determine
6 that the alleged consent to search was freely and
7 voluntarily given, you may give the evidence obtained in the
8 search any further consideration you as a jury deem proper.
9 If you determine the alleged consent and search was not
10 freely and voluntarily given, you should not consider the
11 evidence obtained from that search.

12 In order to establish criminal liability, I charge you,
13 ladies and gentlemen, that criminal intent is required. For
14 example, and these are examples of other cases, we're
15 talking about the mental state that may be required to be
16 proven by the State for a particular crime; and I'm going to
17 give you examples of criminal intent. It might be purpose.
18 It might be intent. It might be knowledge. It might be
19 recklessness. It might even be criminal negligence. Those
20 are examples of criminal intent. Criminal intent must be
21 proven by the State beyond a reasonable doubt. Criminal
22 intent is always a matter that must be determined by the
23 jury from the circumstances surrounding the situation based
24 on the evidence introduced during the trial of the case.

25 Now, ladies and gentlemen, there is no way to prove

1 intent to a mathematical certainty. There is no way that
2 medical science can dissect a person's brain and determine
3 what that person had in mind. So the law says, ladies and
4 gentlemen, that criminal intent may be inferred from the
5 circumstances shown to have existed, based on the evidence
6 introduced during the trial the case.

7 This, ladies and gentlemen, is how you, as a jury, make
8 the determination of whether or not any element in any crime
9 requiring a certain intent was present. It is not necessary
10 to establish intent by direct evidence, but intent may be
11 established by inference, in the same way as any other fact,
12 by taking into consideration the acts of the parties, and
13 all the facts and consideration and circumstances of the
14 case, based on evidence introduced during the trial of the
15 case.

16 Criminal intent is a mental state. It is a conscious
17 wrongdoing. It is up to you, the jury, from the evidence,
18 to determine what the defendant intended to do, based on the
19 circumstances shown to have existed from evidence introduced
20 during the trial of the case.

21 Criminal intent can arise from an action or even a
22 failure to act. It may arise from negligence, recklessness,
23 or an indifference to duty, or to consequences considered by
24 the law to be the equivalent of criminal intent.

25 Now, I charge you, ladies and gentlemen, in this case

1 the indictments allege different offenses against the
2 defendant, Mack Washington. As I told you, the charges are
3 the kidnapping of Joan Klem, the kidnapping of Frank Klem,
4 armed robbery of Joan Klem, armed robbery of Frank Klem, and
5 also possession of a weapon during the commission of a
6 violent crime.

7 Each charge is a separate and a distinct criminal
8 offense. You must decide each charge as a jury separately on
9 the evidence and the law that applies to it uninfluenced by
10 your decision as to any other charge with one exception, if
11 you find the defendant guilty of kidnapping as to either
12 Joan or Frank Klem or armed robbery as to either Joan or
13 Frank Klem, then you may also find the defendant guilty of
14 possession of a weapon during the commission of a violent
15 crime.

16 If you find the defendant not guilty of both kidnapping
17 and armed robbery as to either Joan or Frank Klem, then you
18 must find the defendant not guilty of possession of a weapon
19 during the commission of a violent crime. That is because
20 kidnapping and armed robbery are violent crimes under the
21 laws of the State of South Carolina and you can only find a
22 person guilty of possession of a weapon during the
23 commission of a violent crime if you find a person guilty of
24 a violent crime.

25 You will be asked to write a separate verdict on each

1 of these indictments of the verdict of either guilty or not
2 guilty for each charge following the instructions, which I'm
3 going to give in just a minute. Whatever you write on the
4 verdict form, you will also write on the indictments which
5 Wilder is holding in his hand right now.

6 I will now define the offenses for you. Let's start
7 with kidnapping. The defendant, Mack Washington, is charged
8 with two indictments of kidnapping. For this offense, the
9 State must prove beyond a reasonable doubt that the
10 defendant knowingly and unlawfully seized, confined,
11 inveigled, decoyed, kidnapped, abducted, or carried away
12 another person without authority of the law.

13 To do a thing unlawfully is to do it willfully against
14 the law. Knowingly means with knowledge, consciously; not
15 accidentally. Seize means to take hold of suddenly or to
16 take hold of forcibly. Confine means to limit, restrict, or
17 enclose within bounds, to imprison, or shut, or to keep in.

18 Inveigle means to lure, entice, or lead astray by false
19 representations, promises, or other deceitful means. Decoy
20 means to lure, or as if by decoy. A decoy is something to
21 entice a person into a trap. Kidnap is to remove a person
22 against his or her will by unlawful force or by fraud.
23 Abduct means to carry off secretly or by force for an
24 illegal purpose. Carry away means to remove.

25 The State does not have to prove for the offense of

1 kidnapping that the defendant did all of these things.
2 Instead, if you find beyond a reasonable doubt that the
3 defendant did any of these things, you may find the
4 defendant guilty of kidnapping. Something that is done
5 without authority of law is something that which the law
6 does not sanction, or the law does not permit, allow,
7 condone, or provide justification for.

8 I charge you now that the kidnapping does not have to
9 be for any personal or monetary gain for any illegal
10 purpose, but it may be for any reason whatsoever.

11 So for kidnapping, the State must prove beyond a
12 reasonable doubt that the defendant knowingly and unlawfully
13 seized, confined, inveigled, decoyed, kidnapped, abducted,
14 or carried away another person without authority of the law.

15 I charge you that the defendant is also charged with
16 the offense of armed robbery. In order to prove this
17 offense, the State must prove beyond a reasonable doubt that
18 the defendant took personal property from the person or
19 presence of another person. The property is in the presence
20 of a person if it is within a person's reach or inspection
21 or observation or control so that the person could, if not
22 overcome with violence or prevented by fear, keep possession
23 of the property.

24 The State must also prove beyond a reasonable doubt
25 that the defendant carried the property away intending to

1 permanently deprive the owner of the property and to keep
2 the property from the defendant's own use. The slightest
3 removal of the property or the complete possession of the
4 property, even for an instant by the defendant, is
5 sufficient to show a taking and carrying away of the
6 property.

7 The taking and carrying away of the property for armed
8 robbery must have been done with violence or by putting the
9 owner of the property in fear of violence.

10 Finally, for armed robbery, the State must prove beyond
11 a reasonable doubt the defendant was armed with a deadly
12 weapon during the robbery. A deadly weapon is any article,
13 instrument, or substance which is likely to cause death or
14 great bodily harm.

15 Included within the offense of armed robbery is the
16 lesser included offense of common law robbery. If you find
17 the State has failed to prove beyond a reasonable doubt that
18 the defendant committed armed robbery, you may then consider
19 whether the State has proven beyond a reasonable doubt that
20 the defendant committed common law robbery, sometimes
21 referred to as strong arm robbery.

22 In order to prove common law robbery, the State must
23 prove beyond a reasonable doubt that the defendant took the
24 personal property from the person or presence from another
25 person without that person's consent, carried it away. As I

1 charged you, property is in the presence of a person that is
2 within their reach, their observation, or their control, so
3 that the person, if not overcome with violence or prevented
4 by fear, can retain possession of their own property.

5 The State must show for common law robbery that the
6 defendant carried property away with the intent to
7 permanently deprive the owner of the property and to convert
8 the property to the defendant's own use, and the slightest
9 removal of the property or the complete possession of the
10 property, even for an instant, by the defendant is
11 sufficient to show a taking and a carrying away. The taking
12 and carrying away of the property must have been done with
13 violence or by putting the owner of the property in fear of
14 violence.

15 Elements for common law robbery and armed robbery are
16 the same, except in armed robbery the State must prove
17 beyond a reasonable doubt was armed with a deadly weapon
18 during the robbery.

19 Finally, the defendant in this case is charged with
20 possession of a weapon during the commission of a violent
21 crime. The State must prove beyond a reasonable doubt that
22 the defendant was in possession of a weapon during the
23 commission of or attempt to commit a violent crime.

24 In order to find a defendant guilty of possession of a
25 weapon during the commission of a violent crime, you must

1 first find the defendant guilty of either committing a
2 violent crime or attempting to commit a violent crime. I
3 charge you, ladies and gentlemen of the jury, that under the
4 laws of the State of South Carolina, kidnapping and armed
5 robbery are violent crimes under the laws of State of South
6 Carolina.

7 I charge you, ladies and gentlemen, also, that for
8 purposes of this offense that a weapon is any article,
9 instrument, or substance which is likely to cause death or
10 great bodily harm. The State must prove beyond a reasonable
11 doubt that the weapon furthered or advanced or helped in the
12 commission of the crime.

13 All right. Mr. Foreman, I told you I would prepare a
14 verdict form for you and I've done so. Please do not pay
15 any attention to the order in which I wrote the form's
16 verdict. I obviously had to write one before the other and
17 the order has no significance whatsoever.

18 I've made a caption on your verdict form. Your verdict
19 form, Mr. Foreman, is three pages. Don't let that scare
20 you. There's seven questions and I'll explain them to you.
21 The title says, "State of South Carolina, County of
22 Colleton." I put "Court of General Sessions," which is
23 criminal court. I listed all five indictment numbers, and I
24 listed this case, which is: "The State of South Carolina v.
25 Mack Washington, Jr., defendant." And I wrote the words

1 "verdict" under the caption.

2 Question number one: we, the jury, by unanimous
3 consent, find the defendant, Mack Washington, Jr., in
4 indictment number 2012-GS-15-00560, first form of verdict
5 under Question 1 is guilty of kidnapping Joan Klem. Mr.
6 Foreman, if that be your form of verdict, you would check on
7 the line for the entire jury that verdict.

8 Or under Question one: we, the jury, by unanimous
9 consent, find the defendant, Mack Washington, Jr., in
10 indictment number 2012-GS-15-00560, not guilty of kidnapping
11 Joan Klem. If that be your form of verdict, Mr. Foreman,
12 you would check on the line for the entire jury by that form
13 of verdict. You must find one form of verdict or the other.
14 The jury cannot find both. So it has to be either guilty or
15 not guilty as to kidnapping Joan Klem.

16 Question two: we, the jury, by unanimous consent, find
17 the defendant, Mack Washington, Jr., in indictment number
18 2012-GS-15-00416, first form of verdict under Question 2 is
19 guilty of kidnapping Frank Klem. Mr. Foreman, if that be
20 your form of verdict, you would check on the line for the
21 entire jury that verdict.

22 The second form of verdict under Question 2 is not
23 guilty of kidnapping Frank Klem. If that be your form of
24 verdict, you would check on the line beside that form of
25 verdict. You must find one form of verdict or the other.

1 Question Three: we, the jury, by unanimous consent,
2 find the defendant, Mack Washington, Jr., in indictment
3 number 2013-GS-15-00753, guilty of armed robbery of Joan
4 Klem. If that be your form of verdict, you would check on
5 the line beside that form of verdict. Or under Question
6 three, the second form of verdict is not guilty of armed
7 robbery of Joan Klem. If that be your form of verdict, Mr.
8 Foreman, you would check on the line beside that form of
9 verdict for the entire jury.

10 Then, I wrote instructions at the top of the second
11 page. If you find the defendant guilty of armed robbery of
12 Joan Klem, you do not need to answer question four, which is
13 common law robbery, guilty or not guilty. I'm putting that
14 on your verdict form. If you find the defendant guilty of
15 armed robbery of Joan Klem, do not answer question number
16 four. However, if you find the defendant not guilty of
17 armed robbery of Joan Klem, please answer question number
18 four, which is the lesser included offense of common law
19 robbery, we, the jury, by unanimous consent, find the
20 defendant, Mack Washington, Jr., either guilty or not guilty
21 of common law robbery of Joan Klem.

22 Question five, we, the jury, by unanimous consent, find
23 the defendant, Mack Washington, Jr., in indictment number
24 2012-GS-15-00417, guilty of armed robbery of Frank Klem. If
25 that be your form of verdict, you would check on the line

1 beside that form of verdict. The second form of verdict
2 under question five is not guilty of armed robbery of Frank
3 Klem. If that be your form of verdict, you would check on
4 the line beside that form of verdict. You must find one
5 form of verdict or the other.

6 I wrote more instructions after question five. If you
7 find the defendant guilty of armed robbery of Frank Klem, do
8 not answer question six, that's the lesser included offense;
9 that's included within armed robbery. If you find the
10 defendant not guilty of armed robbery of Frank Klem, then
11 you would answer question six, which is either guilty or not
12 guilty of common law robbery of Frank Klem and you would
13 answer it in accordance with the instructions on the verdict
14 form.

15 Finally, and this is question seven, and the last
16 question on your verdict form, and I wrote instructions at
17 the top. If you find the defendant not guilty of kidnapping
18 Frank Klem, not guilty of kidnapping Joan Klem, not guilty
19 of armed robbery of Frank Klem, and not guilty of armed
20 robbery of Joan Klem, you must find the defendant not guilty
21 in question number seven, which is possession of a weapon
22 during the commission of a violent crime.

23 If you find the defendant guilty of kidnapping of Frank
24 Klem or Joan Klem, or guilty of armed robbery of Frank Klem
25 or Joan Klem, then you must answer question number seven

1 which states, we, the jury, by unanimous consent, find the
2 defendant, Mack Washington, Jr., in indictment number 2013
3 at 754, the first form of verdict is guilty of possession of
4 a weapon during the commission of a violent crime; and the
5 second form of verdict is not guilty of possession of a
6 weapon during the commission of a violent crime.

7 After you've completed your verdict form for the jury,
8 Mr. Foreman, you would sign your name on the line and then
9 knock on your jury room door, tell the bailiff you have
10 reached a verdict, and then we will bring you back into the
11 courtroom in order to publish the verdict.

12 Now, ladies and gentlemen, your verdict must be
13 unanimous. That is, it must be the verdict of each and
14 every one of you; all 12 of you must agree on the verdict.
15 Now, Mr. Foreman, ladies and gentlemen of the jury, I've now
16 charged you on the law in order to help guide you to a fair
17 and a just result in this case.

18 You're the sole judges of the facts in this case based
19 on the evidence, and based on your determination of the
20 facts in this case and the law as I've explained it to you,
21 you're soon going to begin your deliberations. Now, I want
22 to remind you that each of you were selected as fair and
23 impartial jurors. You took an oath to fairly and
24 impartially try and determine the facts in this case. When
25 you comply with that oath, no one can criticize your

1 verdict.

2 You are to decide this case based solely on the
3 testimony, the evidence in this case that you heard from the
4 sworn witnesses who have testified, along with the exhibits
5 that have been introduced into evidence. And if there were
6 any stipulations entered into the record and nothing else.

7 You must decide the issues in this case without any
8 bias and prejudice for either party. You cannot allow
9 yourselves to be governed by prejudice for or against any
10 person. You cannot allow yourself when you go back into
11 that jury room to deliberate to be governed by public
12 opinion nor can you be allowed to be governed by any other
13 arbitrary factor, such as emotion.

14 Both the defendant and the State of South Carolina have
15 the absolute right to expect that each of you on this jury
16 have carefully and impartially considered all of the
17 evidence in this case.

18 Now, Mr. Foreman, ladies and gentlemen of the jury, I'm
19 going to ask you to retire to your jury room. Do not begin
20 your deliberations yet. Wait until I send the verdict form
21 into you by the bailiff, along with all of the exhibits
22 which have been introduced into evidence in the trial of
23 this case.

24 Now, ladies and gentlemen, there are two discs in
25 evidence, and obviously, to play those you will have to come

1 back in the courtroom if you want to listen to it again. So
2 with the exception of those two exhibits, I'll hold those
3 here, and all you've got to do -- well, I'll send them so
4 you can see what they are, but you can't use them without
5 the equipment. Just be aware that we're available if you
6 want to review those for any reason again.

7 Do not begin your deliberations until I instruct you to
8 do so by sending the verdict form in, as well as the
9 exhibits. Then, I will have the bailiff instruct you when
10 he brings those to you that you may then commence your
11 deliberations.

12 Now, my alternate jurors, step down to the front row
13 and remain with me while the jury goes to their jury room.
14 You may retire to your jury room at this time.

15 (WHEREUPON, THE JURY EXITS THE COURTROOM AND THE
16 FOLLOWING IS HELD ON THE RECORD WITH THE ALTERNATE JURORS
17 REMAINING IN THE COURTROOM.)

18 THE COURT: First of all, I want to thank you on behalf
19 of Colleton County. All a judge can ask is that you listen.
20 I watched all three of you in the trial of this case and you
21 did that. No one became ill or for some reason could not
22 continue to serve, so this concludes your service in this
23 case. You have now completed your jury service and you will
24 be exempt for three years; you can choose to claim your
25 exemption. Make sure that all of you have your belongings.

1 Does anybody have anything they've left in the jury room
2 that they need to get?

3 (NO RESPONSE.)

4 THE COURT: Now, Pat ordered lunch for you. She's
5 going to have it for you in a to-go container so you can
6 take that with you or they will provide a room for you if
7 you would like to stay here and eat. Thank you so much for
8 your service. I appreciate it so much. We couldn't
9 function unless we had alternate jurors. You're now excused
10 for the balance of the week and they will provide your
11 lunch. You may leave at this time.

12 (THREE ALTERNATE JURORS LEAVE THE COURTROOM.)

13 THE COURT: Any exceptions or additions to the charge,
14 by the State of South Carolina?

15 ASST. SOL. LEGETTE: None, Your Honor.

16 THE COURT: From the defendant?

17 MR. BENNETT: Yes, we have one, Judge.

18 THE COURT: Yes, sir

19 MR. BENNETT: On the kidnapping charge, we had asked in
20 our request that you charge that kidnapping is a mens rea
21 offense and the mens rea of kidnapping.

22 THE COURT: Well, mens rea means criminal intent, Mr.
23 Bennett, and I charged criminal intent.

24 MR. BENNETT: All right. Well, under State v.
25 Jefferies, Your Honor, it says that a required mens rea for

1 the crime of kidnapping is knowledge, and the State must
2 prove beyond a reasonable doubt that mens rea of knowledge
3 before you can convict a defendant of kidnapping, and it
4 goes on to say that the person is said to act knowingly if
5 he is aware of a result of his conduct whatever his desire
6 may be as to that result. So we ---

7 THE COURT: I charged that the defendant knowingly and
8 unlawfully had to seize, confine, inveigle, decoy, kidnap,
9 abduct, or carry away another person without authority of
10 law, which I believe is the exact definition of kidnapping,
11 and requires that they knowingly do one of those things
12 under the statute, Mr. Bennett. So what is it you're
13 requesting that I charge, now? Because I've charged a
14 knowing requirement.

15 MR. BENNETT: Well ---

16 THE COURT: And I said knowingly means -- I defined it,
17 "with knowledge, consciously, not accidentally."

18 MR. BENNETT: Your Honor, I was just under the strict
19 interpretation of the State v. ---

20 THE COURT: I can't hear you, now. Speak up.

21 MR. BENNETT: Yeah, I mean, you did. I understand you
22 said knowledge, but you know, the charge was not exactly as
23 they stated in State v. Jefferies, but I understand your
24 ruling on it. I just wanted to put that on the record.

25 THE COURT: I understand it. And I respectfully

1 decline to change my charge. I think the charge adequately
2 covered the law of kidnapping, including the fact that
3 criminal intent is required and knowledge is required as an
4 element of criminal intent for the offense of kidnapping.
5 Because I never got a request that I felt like -- I did get
6 a request to charge from you, but I didn't get a request to
7 charge from you that was inconsistent with what I charged is
8 my point. Anything else?

9 MR. BENNETT: Yes, sir. Your Honor, the only
10 additional thing, and I felt like, you know, this would be
11 additional. I would like the charge, and to avoid any
12 confusion with the jury, is that if you -- and my request to
13 charge would be that if you find during your deliberation
14 that the State has not proved beyond a reasonable doubt that
15 the defendant was not present at the scene of the crime,
16 then you cannot convict such defendant under the theory of
17 the hand of one is the hand of all requirement as previously
18 charged.

19 THE COURT: Actually, Mr. Bennett, the law is even more
20 favorable to your client. It doesn't have to be not
21 present. He can be present, and if he was merely present,
22 that's insufficient, and I charged them that.

23 MR. BENNETT: Okay.

24 THE COURT: I don't think -- I mean, clearly, if you
25 can be present and not be guilty, then clearly, if you

1 aren't present, you cannot be guilty. I think it's implied
2 from what I told the jury and I emphasized that to the jury.

3 MR. BENNETT: I understand your ruling, Your Honor. I
4 just thought that would be a better charge if you said, you
5 know, if you don't find that they've proven he wasn't
6 present, you can't convict him under that theory.

7 THE COURT: I think I've sufficiently covered presence
8 at the scene of the crime for the jury to make them
9 understand that mere presence is not sufficient. And
10 obviously, if the jury doesn't even believe that the
11 defendant is present, I don't think the jury needs a charge
12 to know that if you're not even present at the scene of a
13 crime, then you can't be guilty of the crime. I decline to
14 change my charge. Thank you.

15 MR. BENNETT: Thank you, Your Honor.

16 THE COURT: All right. I'd ask that counsel come
17 forward and certify on the record that you're satisfied the
18 court reporter has all the exhibits and that you have no
19 objection to the Major taking the verdict form which you've
20 agreed to and the exhibits into the jury and telling the
21 jury that they may now commence their deliberations.

22 ASST. SOL. LEGETTE: Your Honor, there is one more
23 matter. I think Mr. Bennett needs to renew his motion for
24 directed verdict. He did not renew it after he rested.

25 THE COURT: All right. Actually, Mr. Sanders made the

1 motion, as I recall. Mr. Sanders, I will make the record
2 for the grounds, because it has to be on the same grounds,
3 as you know.

4 MR. SANDERS: Yes, sir.

5 THE COURT: Let the record reflect, Becky, that we were
6 in the process of trying to get the jury's food that the
7 defense counsel has made a motion at the close of all the
8 evidence, renewed his motion for directed verdict on the
9 same grounds that counsel for the defendant made in his
10 motion at the close of the defendant's case, and for the
11 reasons I enunciated at the close of the State's case, I
12 decline to change my ruling and the motion at the close of
13 all the evidence is respectfully denied. Thank you, Mr.
14 Sanders. Please come forward and take a look at all the
15 exhibits.

16 (WHEREUPON, COUNSEL IN THE TRIAL OF THE CASE CONFIRM
17 THAT ALL OF THE EXHIBITS ARE IN EVIDENCE.)

18 THE COURT: Is the State satisfied that we have all the
19 exhibits?

20 ASST. SOL. LEGETTE: The State is satisfied, Your
21 Honor.

22 THE COURT: Is the defendant satisfied?

23 MR. BENNETT: Yes, sir.

24 THE COURT: Any objection from the State that the
25 Major take the verdict form and all of the exhibits into the

1 jury and informing the jury that they may now commence their
2 deliberations?

3 ASST. SOL. LEGETTE: No objection, Your Honor.

4 THE COURT: How about from the defendant?

5 MR. BENNETT: No objection, Your Honor.

6 THE COURT: All right. Give all of the exhibits to the
7 Major. Major, if you will take the verdict form and the
8 exhibits into the jury and tell them they may now commence
9 their deliberation.

10 (12:15 P.M., WHEREUPON, THE VERDICT FORM AND THE
11 EXHIBITS ARE TAKEN INTO THE JURY ROOM FOR THE JURY'S
12 DELIBERATION.)

13 THE COURT: All right. Counsel, as to this case, we
14 will be in recess until we can all have time to eat our
15 lunch and turn to other non-jury matters until we hear from
16 the jury.

17 (2:10 P.M., THE BAILIFF INFORMS THE COURT THAT THE JURY
18 HAS REACHED A VERDICT. THE DEFENDANT, MACK WASHINGTON, JR.,
19 IS BROUGHT INTO THE COURTROOM AND SEATED AT THE DEFENSE
20 TABLE.)

21 THE COURT: All right. Now, ladies and gentlemen, I'm
22 happy for you to be in the courtroom, but I'm not going to
23 tolerate any emotional outburst. If you can't control your
24 emotions, get up and leave right now when this verdict is
25 published. I'm not going to have this jury subjected to

1 anybody praising or complaining about their verdict. So if
2 you can't handle it, get up and leave right now; because I
3 will deal with you in front of this jury if you cannot, and
4 I'm giving you the opportunity. Nobody in or out once we
5 bring the jury in.

6 Is the State ready to proceed?

7 ASST. SOL. LEGETTE: Yes, Your Honor.

8 THE COURT: Is the defendant ready to proceed?

9 MR. BENNETT: Yes, Your Honor.

10 THE COURT: Okay. Marcus, bring us the jury, please.

11 (2:15 P.M., WHEREUPON, THE JURY ENTERS THE COURTROOM

12 AND THE FOLLOWING IS HELD ON THE RECORD.)

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

14 FOREMAN: Yes, we have.

15 MADAME CLERK: (RETRIEVES VERDICT FORM AND SHOWS TO THE
16 COURT.)

17 THE COURT: Will the defendant and counsel please rise?

18 (DEFENDANT AND COUNSEL STAND.)

19 THE COURT: Madame Clerk, would you please publish the
20 verdict?

21 MADAME CLERK: The State of South Carolina v. Mack
22 Washington, Jr., indictment 2012-GS-15-0560. We, the jury,
23 by unanimous consent, find the defendant, Mack Washington,
24 Jr., in indictment 2012-GS-15-0560, guilty of kidnapping
25 Joan Klem.

1 We, the jury, by unanimous consent, find the defendant,
2 Mack Washington, Jr., in indictment 2012-GS-15-0416, guilty
3 of kidnapping Frank Klem.

4 We, the jury, by unanimous consent, find the defendant,
5 Mack Washington, Jr., in indictment 2013-753, guilty of
6 armed robbery of Joan Klem.

7 We, the jury, by unanimous consent, find the defendant,
8 Mack Washington, Jr., in indictment 2012-GS-15-0417, guilty
9 of armed robbery of Frank Klem.

10 We, the jury, by unanimous consent, find the defendant,
11 Mack Washington, Jr., in indictment number 2013-GS-15-754,
12 guilty of possession of a weapon during the commission of a
13 violent crime.

14 Signed by Foreperson Kohnarens. If this is your
15 verdict, please raise your right hand.

16 THE COURT: Let the record reflect, 12 hands were
17 raised. Mr. Bennett, is there anything further from the
18 defendant for this jury before we proceed?

19 MR. BENNETT: Nothing further, Your Honor.

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen -- please be seated, counsel and Mr. Washington.
22 Mr. Foreman, ladies and gentlemen of the jury, on behalf of
23 Colleton County and this Court, I want to thank you for your
24 service. This concludes your service for the week. I'm
25 going to return you back to your homes today. Hopefully at

1 a reasonable hour. Now, I want to advise you of a couple of
2 things. If you want to talk about your verdict, you can.
3 If you don't want to talk about it, you don't have to. I
4 don't know whether anybody will inquire about it, whether
5 you will be asked by the Press about it or some other
6 individual. If you don't want to talk about, tell them you
7 don't want to talk about it. If somebody persists, get
8 their name and give it to me and I'll handle the problem for
9 you; they won't bother you anymore. That's number one.

10 Number two, we will be mailing you a check for your
11 jury service. We want to thank you for that very much.

12 Number three, if anybody needs a work excuse, go
13 downstairs to the General Sessions door, we will be happy to
14 provide you with a work excuse to show your employer where
15 you've been this week while serving on the jury.

16 What's going to happen now is sentencing, which is my
17 province, not yours. I'm going to sentence the defendant
18 and that's going to happen just as soon as the paperwork
19 which is being filled out right now is handed to me. So
20 we're going straight into sentencing. I invite you, if you
21 would like to stay, you can remain in the jury box and then
22 leave by the side door after sentencing, if you would like
23 to stay. If you would like to leave before sentencing, you
24 may do so and you have my blessings and thanks for your
25 service. All a judge can do is ask a jury to listen, and

1 each of you did that in this case. I watched you throughout
2 the trial and I appreciate your service and your willingness
3 to come.

4 Now, we're going right into sentencing. It's entirely
5 up to you. Thank you very much. Solicitor, do you have my
6 paperwork?

7 ASST. SOL. LEGETTE: I do, Your Honor.

8 THE COURT: All right. Mr. Bennett, you and Mr.
9 Sanders and the defendant come forward. Very well. I've
10 heard the evidence in this case, Mr. Bennett, and I'm
11 certainly going to hear some things that weren't in
12 evidence, which would include, although I think I'm pretty
13 aware of the defendant's record which the jury was not aware
14 of; I'll get you to publish it. However, Mr. Bennett, you
15 tell me, do you have any post-verdict motions that you want
16 to make?

17 MR. BENNETT: No, sir, I don't have any.

18 THE COURT: I would just like to say that I think there
19 was ample evidence for the jury to reach the conclusion that
20 they did in this case. Now, Mr. Bennett, let me hear first
21 -- Solicitor, I realize that Mr. and Mrs. Klem, who are from
22 Michigan, are no longer in the courtroom.

23 ASST. SOL. LEGETTE: Yes, sir.

24 THE COURT: I'm assuming that you want to speak about
25 them or about the defendant's record; is that correct?

1 Before I hear from Mr. Bennett?

2 ASST. SOL. LEGETTE: That's correct, Your Honor.

3 THE COURT: Happy to hear from you.

4 ASST. SOL. LEGETTE: Your Honor, Mr. and Mrs. Klem,
5 they thank the Walterboro Police Department and all of the
6 court officials for all that they did. But they felt like
7 they needed to get home to Michigan, and they did leave
8 Tuesday afternoon after Mr. Klem testified.

9 With regards to Mr. Washington's prior record, are you
10 ready for me to give that to you?

11 THE COURT: I am.

12 ASST. SOL. LEGETTE: Mr. Washington, on December 10,
13 2002, he broke into the home of Willie Jean Seabrook here in
14 Colleton County. He stole a shotgun and he got three years
15 suspended to three years' probation. On December 18th,
16 2002, he broke into another home, he and a co-defendant,
17 Kristin Jones, and he stole several items from that home.

18 He pled guilty in 2006, the same day as the first one
19 and he received a three-year sentence suspended to
20 probation. February 24th, 2003, he broke into another home,
21 Mr. and Mrs. Elton and he and his co-defendant stole credit
22 cards and several other items and they used the credit card
23 to purchase several things that they got from that home. He
24 pled guilty and got a concurrent sentence to the first two
25 burglaries.

1 On March 4th, 2003, he also committed another burglary
2 from another home, Mr. Harold Jackson, and stole a pistol,
3 or a gun, and he pled guilty on November 13th, 2006, to all
4 four burglaries at the same time and got the same concurrent
5 probationary sentence.

6 Then in October of 2003, Mack Washington and co-
7 defendant, they actually held up two patrons, a Vicky and
8 Terry Patton at gunpoint at a hotel, the Best Western Hotel,
9 on Savannah Highway and took cash at gunpoint. He got a
10 nine year sentence, concurrent with other charges that he
11 had pending at the time.

12 October 17th, 2003, the same day, he and his co-
13 defendants went down in Sumter County at a rest area on I-
14 95, they robbed another patron, he and his co-defendants, at
15 gunpoint, taking his cash and debit card and pin number.
16 And he got a 10-year sentence concurrent with the other
17 charge from October 17th, 2003.

18 The next day, October 18th, 2003, Mr. Washington and
19 his co-defendants went again to a Knights Inn on Myrtle
20 Beach Highway and he and his co-defendants, at gunpoint,
21 robbed a husband and a wife, taking her purse, cash, credit
22 cards, and checkbook. He got a concurrent 10-year sentence
23 along with that one.

24 Finally, in 2010, actually it occurred January 14th,
25 2008, he and a co-defendant, Ophelon Speaks, they robbed a

1 victim of cash money from a register here in Colleton County
2 and he got a probationary sentence, I think; and Dawn
3 mentioned to me that he is currently on probation for that
4 offense. I believe they want to have that matter heard here
5 today at sentencing, Your Honor.

6 THE COURT: Is that correct, Ms. Farish?

7 AGENT FARISH: Yes, Your Honor. He is on for accessory
8 before the fact of strong arm robbery. He was sentenced
9 March 15th, 2010, and received a sentence of five years,
10 suspended to 18 months and two years' probation.

11 THE COURT: So he's on probation at this time and this
12 conviction is a violation?

13 AGENT FARISH: Yes, sir.

14 THE COURT: All right. We'll take that up at the
15 appropriate time, and I'll hear Mr. Bennett in mitigation in
16 just a moment. Now, how many is that, Solicitor?

17 ASST. SOL. LEGETTE: Your Honor, it's a total of four
18 burglaries. He pled guilty to each of them at the same
19 time, getting a concurrent sentence. And then there were
20 four strong-armed robberies that were pled down from armed
21 robbery, along with the accessory before the fact to the
22 strong armed robberies. So a total of, I guess, you would
23 call it five strong armed robberies or one accessory and
24 four strong-armed robberies, along with a DUS, probation
25 violation and the resisting arrest and giving false

1 information.

2 THE COURT: And the burglaries?

3 ASST. SOL. LEGETTE: Yes, Your Honor. Four burglaries,
4 four strong armed robberies, accessory before the fact, two
5 strong-armed robberies and the DUS.

6 THE COURT: All right. Anything else you want to tell
7 me before I hear from Mr. Bennett?

8 ASST. SOL. LEGETTE: Your Honor, I will say this. The
9 Klems, Mr. Frank, said that when talking to him about this
10 matter, the sentencing, I told him, "Mr. Frank, I will ask
11 for as much as you want me to ask for, including the total
12 number of years he can get, which is 125 years." He said,
13 "Well, you know, he's a young man. Don't sentence him to
14 life. Don't give him his whole life."

15 So despite what happened to Mr. and Mrs. Klem, they are
16 still magnanimous and they're not asking for life for what
17 happened to them; but I would ask the Court to send a
18 message and to stop this kind of behavior. Mr. Washington
19 and his friends have robbed many patrons at hotels over the
20 years; that's his M.O. That's what he does for a living and
21 I would ask the Court to sentence him accordingly, Your
22 Honor. I would ask the Court to stop him. Please, stop
23 him.

24 THE COURT: Mr. Bennett, I'll be happy to hear from
25 you.

1 MR. BENNETT: Your Honor, the record, as I know it, as
2 stated by Ms. Legette, is accurate. We have nothing to
3 indicate otherwise, Judge.

4 Judge, he is -- Mack is now 31 years old. He went
5 through the 11th grade at Walterboro High School; he got his
6 GED. He does have children. He told me he had five
7 children, ages 4, 10, 2 and 11, and I think he actually has
8 two aged 4.

9 Mack is from Walterboro and he's lived, to my
10 knowledge, in Colleton County all of his life. His mother
11 is Earline Smith. She was here off and on during the trial,
12 and his sisters, Sharevia and Shakevia Washington, have been
13 here in support.

14 Judge, he was arrested, from my understanding, on June
15 8th, 2012. He's been in jail now, incarcerated
16 continuously, for over 21 months; I don't know the exact
17 number of days, Judge.

18 THE COURT: And when we began on Monday, Mr. Bennett,
19 it was 639 days, because I keep a jail list in my office,
20 which is the reason I wanted this case set for trial, and
21 the reason I denied your motion in Hampton last week for a
22 continuance of the matter in part.

23 THE COURT: But we just ask that whatever sentence you
24 give him, Judge, that of course he get credit for the time
25 that he's already served, which is pretty extensive. Your

1 Honor, he was previously employed; his occupation was a
2 painter. His last job before he got arrested was with SAS
3 Painting, which is owned by Steve Smith on Proctor Street
4 here in Walterboro. He's also worked at the Walterboro
5 Veneer Plant for a good while, and also he's worked other
6 odd jobs during times -- well, before he got arrested, Your
7 Honor.

8 Your Honor, we would just ask -- you've heard all of
9 the facts in the case; you've heard all of the evidence. We
10 would ask that you give him as low of a sentence or as
11 minimum of a sentence as possible under the circumstances.
12 We understand he has a record. We also ask you, Judge, to
13 run whatever sentence you give him on these charges
14 concurrent, except for the possession of a weapon; that's a
15 totally different statute.

16 THE COURT: It has to be consecutive.

17 MR. BENNETT: Yes, sir.

18 THE COURT: Although there is some language in there
19 that the mandatory five years, unless a longer mandatory
20 minimum is provided by law for the violent crime. Armed
21 robbery is no less than 10 years, up to 30 years. So you
22 would agree, then, that there is a possibility of sentencing
23 for possession of a weapon during the commission of a
24 violent crime because the jury found him guilty of armed
25 robbery, I could give him up to 10 years.

1 MR. BENNETT: Yes, sir.

2 THE COURT: He's looking, then, at 130 years total,
3 because he could get 30 years, max, consecutive on both
4 armed robberies; 30 years max on both kidnappings, and 10
5 years on the possession of a weapon during the commission of
6 a violent crime, which would be a total of 130 years.

7 MR. BENNETT: But we would ask, Judge, that you
8 consider sentencing him concurrently on all these charges,
9 all the crimes that he's been found guilty of, and on the
10 basis, Your Honor, that this was actually, I think, from the
11 evidence that I heard and I saw, it was all really one
12 single incident, you know, that happened at the motel, at
13 one time, and everything happened all together. It all was
14 just one set of facts, one set of circumstances. It wasn't
15 multiple offenses. It all grew out of the same situation
16 that occurred at that time at the Rice Planters Inn.

17 So on that basis, I think under the law of South
18 Carolina, Judge, that there is certainly -- there certainly
19 is grounds for you to give him concurrent sentences rather
20 than consecutive. I think under the law he would be
21 entitled to that since it all grew out of one set of
22 circumstances.

23 The other thing, Your Honor, we would ask on the
24 kidnapping charge, there is no evidence that the kidnapping
25 charge involved any kind of sexual misconduct, so we would

1 ask that the Court would find that there were no sexual acts
2 or no sexual misconduct involved. It was just purely a
3 robbery with a knife that constituted a kidnapping under the
4 definition of a kidnapping statute, under 16-39-10. We'd
5 ask for a specific finding on that, Judge, and also on the
6 sentencing sheet there is a spot for that I think.

7 THE COURT: There is not.

8 MR. BENNETT: Okay. I thought there was. Okay. We
9 certainly don't think that even though he has been found
10 guilty of kidnapping, that he should be required to comply
11 with any kind of sex offender registry requirements, because
12 there was no evidence of any kind of sexual conduct or
13 misconduct being involved in this case, Your Honor.

14 The other thing, Your Honor, on the probation, I don't
15 have a whole lot of information on that, but I think they
16 said he was put on probation in 2010 and he was supposed to
17 serve two years of probation, but I just want to make sure.

18 THE COURT: Dawn, you did say the conviction, it was
19 the date of the offense or ---

20 AGENT FARISH: The conviction date was 3-15-10. He
21 was sentenced and got two years' probation.

22 THE COURT: But he had to serve 18 months, first?

23 AGENT FARISH: Yes, sir.

24 MR. BENNETT: Okay.

25 AGENT FARISH: And then his case was extended later on.

1 THE COURT: And then he got an extension of his
2 probation. So he's still on probation for it.

3 AGENT FARISH: Yes, sir.

4 MR. BENNETT: I just want to make sure ---

5 THE COURT: Does your client understand, Mr. Bennett,
6 that this conviction constitutes a violation of his
7 probation?

8 MR. BENNETT: He does, Your Honor. He knows that he
9 has been found guilty of these crimes, but we would ask that
10 whatever remaining time he has on his probation that you
11 also consider running that concurrent with whatever sentence
12 you give him for the crimes that he's been convicted of by
13 the jury trial here today.

14 THE COURT: Very well.

15 MR. BENNETT: I think that's all I have, Your Honor.

16 THE COURT: Mr. Washington, is there anything else you
17 would like to tell the Court prior to sentencing? I'll be
18 happy to hear from you.

19 MR. WASHINGTON: No, sir.

20 (Brief pause.)

21 MR. WASHINGTON: Your Honor, I would like to thank the
22 jurors for taking their time to ---

23 THE COURT: You're talking to me, now, Mr. Washington,
24 not them or anybody else. You're addressing the Court.

25 MR. WASHINGTON: Your Honor, I'd like to thank

1 everybody who showed up today. I would like to apologize to
2 the victims and the family. I would like to apologize to my
3 family, also, for taking their time to come up here minding
4 my foolishness, Your Honor, and I would just ask you, Your
5 Honor, I know I've been found guilty of these charges, would
6 you be lenient to me, Your Honor, so I can come back home
7 and be with my kids, Your Honor? I got one child I haven't
8 even held, haven't even seen yet, Your Honor. I just ask
9 the Court to have mercy upon me, Your Honor.

10 THE COURT: Very well. Mr. Washington, you have a
11 terrible criminal record and there is no other way around
12 it. Mr. Bennett knows it, you know it, Mr. Sanders knows
13 it, and you certainly had the right not to testify in this
14 case. I charged the jury that your failure to testify -- in
15 fact, I even told you that I rule, which the jury doesn't
16 know, as a matter of law that I wasn't going to allow them
17 to impeach you on the fact that you had prior robberies if
18 you did testify, because I didn't want the jury finding you
19 guilty because you had a record.

20 I wanted them to decide on the evidence, but you can't
21 escape the fact that you have four burglaries, you have
22 robberies, and you cannot evade the fact that the jury heard
23 clear and convincing evidence of the fact that people that
24 came to our community to stay in our community were robbed
25 at knifepoint of their property. They were put in fear, and

1 although you asked me to have mercy on you, I don't know
2 that a lot of mercy was shown to the Klems. I'm very
3 thankful that they weren't physically harmed, but I
4 certainly believed that they were harmed by this incident.
5 I don't want them judging our community by what occurred to
6 them when they were here.

7 I could not agree with the jury's verdict anymore than
8 I possibly could. They listened to the evidence and I
9 believe it was a correct verdict in this case. I hope my
10 sentence reflects the same amount of justice that the jury's
11 verdict reflects in this case.

12 On Indictment 2012-GS-15-00417, the State v. Mack
13 Washington, Jr., the sentence of the Court is the defendant
14 is committed to the State Department of Corrections, and
15 this is armed robbery, for a period of 30 years.

16 On Indictment 2012-GS-15-00416, kidnapping, the
17 sentence of the Court is defendant is committed to the State
18 Department of Corrections for a term of 30 years. I
19 specifically find on the kidnapping that there is no sexual
20 misbehavior or sexual misconduct in connection with the
21 kidnapping for purposes of later on, Mr. Bennett; do you
22 understand?

23 MR. WASHINGTON: Yes, sir.

24 THE COURT: And I'm placing that on the record as to
25 either kidnapping. On Indictment 2013-GS-15-00753, which is

1 armed robbery, the sentence of the Court is defendant is
2 committed to the State Department of Corrections for a term
3 of 30 years.

4 On Indictment 2012-GS-15-00560, kidnapping, the
5 sentence of the Court is the defendant is committed to the
6 State Department of Corrections for a term of 30 years.

7 Finally, on Indictment 2013-GS-15-00754, possession of
8 a weapon during the commission of a violent crime, the
9 sentence of the Court is defendant is committed to the State
10 Department of Corrections for a term of five years, and
11 those five years will run consecutive to the 30 years that
12 I've given you on the armed robbery and the kidnappings,
13 totaling 35 years. The other sentences will run concurrent
14 to each other. The defendant is to be given credit for the
15 time that he's served in jail, pursuant to 24-13-40. That
16 is to be calculated and applied by the State Department of
17 corrections.

18 On the probation, I'm revoking him in full, running it
19 concurrent. I'm putting the number on the sentence sheet
20 and running it concurrent. Was it three years or five?

21 AGENT FARISH: Five.

22 THE COURT: Five years; I'm revoking the balance. He
23 served 18 months. I'm revoking the balance of his five
24 years and running it concurrent to my 30 year sentence and
25 terminating his probation.

1 Thank you very much. As to this case, this matter is
2 now concluded and adjourned. Take the defendant. He is now
3 in custody.

4 (BRIEF PAUSE IN THE COURTROOM AS THE DEFENDANT IS TAKEN
5 OUT OF THE COURTROOM.)

6 THE COURT: Mr. Foreman, ladies and gentlemen of the
7 jury, thank you for your service. You are now excused for
8 the week and you're exempt from jury service for three
9 years. You may leave the courtroom at this time.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the
Judicial Department of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had in the
trial of the captioned case, in the Court of General
Sessions for Colleton County, South Carolina, on the 17th,
18th, 19th and 20th days of March in 2014.

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

July 28, 2014

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Colleton)Mack Washington, Jr. #314550)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

16-CP-15-366

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber C.I., P.O. Box 205, 136 Wilborn Ave.
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Colleton County Court of
General Sessions, Walterboro, S.C.
3. Name(s) of co-defendant(s) (if any) Tyheem Lewis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2012-GS-15-416 kidnapping, -417 Armed Robbery, -560 kidnapping,
 - (b) -753 Armed Robbery, and -754 Possession of Weapon During

 PATRICIA C. GRANT
 COLLETON COUNTY
 COMMON PLEAS
 2016 APR 7 PM 12:00

- (c) A Violent Crime.
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 20, 2014, Kidnapping 30 years, Armed Robbery 30 years,
- (b) Kidnapping 30 years, Armed Robbery 30 years, and Possession
- (c) of Weapon During A Violent Crime 5 years.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. ~~March 2, 2016~~ March 2, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attach sheet pages 8-14.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

No.

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

(a) which grounds have been presented:

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

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

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

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

- (a) Could not be raised on direct appeal.
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. E.W. Bennett, Jr., P.O. Box 693, Walterboro, S.C. 29488
 - ii. Laurie Sanders, 148 S. Jeffries Blvd., Walterboro, S.C. 29488
 - iii. Tiffany Butler, Division of Appellate Defense, 1330 Lady St., Suite 401, Columbia, S.C. 29201
- (b) the proceedings at which each such attorney represented you:
 - i. Trial and sentencing.
 - ii. Trial and sentencing.
 - iii. Appeal

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

Reversal of conviction, Vacate sentences, and Grant
a New Trial.

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

No.

STATE OF SOUTH CAROLINA)

County of Colleton)

VERIFICATION

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

Mack Washington, Sr.

SWORN to and subscribed before me this 10th
day of March, 2016.

Quedeen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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

Mack Washington, Jr.
Applicant

SWORN or affirmed to and subscribed before me this
10th day of March, 2016.

Quintecia B. Bryant
Notary Public

My Commission Expires: May 26, 2020

o attach sheet.

10(a) Ineffective Assistance of Counsel.

FACTS IN SUPPORT OF APPLICATION

11(a) Applicant's trial counsel's performance was both deficient and prejudicial to the outcome of Applicant's trial. His trial counsel's deficient performance includes, but is not limited to, the following:

(1) Trial counsel failed to investigate Applicant's defense of alibi, and he failed to call Applicant's alibi witnesses to testify at trial. Applicant repeatedly told his trial counsel that Ranysha McClellon and Angie McClellon were his alibi witnesses who would testify as to his whereabouts on Saturday January 7, 2012 from before midnight, and well past midnight January 8, 2012. The robbery at the Rice Planters Hotel is said to have occurred shortly before midnight (12:00 a.m.) on January 7, 2012.

Applicant's trial counsel argued the fact that Applicant was not present at the scene of the crime, Tr. p. 190, lns. 1-6, but he failed to present Applicant's alibi defense showing where Applicant was at during the time when the robbery is said to have occurred. Applicant's trial counsel never talked to Ranysha McClellon or her mother Angie McClellon, both of who would have testified as to Applicant's whereabouts on the night of January 7, 2012 shortly before midnight.

Applicant's trial counsel's failure to investigate Applicant's alibi defense and/or interview his alibi witnesses, was unreasonable under prevailing professional norms, and therefore was deficient performance. Walker v. State, 397 S.C. 226, 723 S.E.2d 610 (S.C. App. 2012). Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case. Applicant's trial counsel failed to do this. Edward v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011). The duty to investigate a potential witness is even more critical when the witness might provide

An alibi. The Sixth (6th) Amendment requires that criminal defense attorneys thoroughly investigate potential alibi witnesses. Had Applicant's trial counsel called the witnesses Ranysha McClennon and her mother Angie McClennon, who were ready to testify that Applicant was at their house shortly before midnight (12:00 a.m.) on January 7, 2012, during the time which the robbery at the Rice Planters Hotel is said to have occurred, there is a reasonable probability the result of Applicant's trial would have been different. Martinez v. State, 403 S.E.2d 113 (1991) (trial counsel was ineffective for failing to subpoena witness, who would have made the difference in obtaining an acquittal.).

(2) Trial counsel failed to object to the testimony of state's witness Lt. Jason Chapman when he testified he was familiar with Applicant, and that on prior occasions it was relatively easy to find Applicant, Tr. p. 340, lns. 1-7, and he failed to request a curative instruction to cure this tainted testimony by Lt. Jason Chapman.

This prejudiced Applicant because it implied to the jury that Applicant had a prior criminal record and/or run ins with the police. In State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990), the S.C. Supreme Court held that evidence introduced for the sole purpose of implying a defendant has a prior criminal record is improper. It was the intent of the solicitor and its witness Lt. Jason Chapman to imply that the Walterboro Police Department, and even the witness himself, had searched for Applicant in the past and had no problem finding him, and without a curative instruction, this testimony (evidence) could lead one to believe that Applicant has had other bad acts, a criminal propensity and/or that Applicant is a bad person. State v. Tate, 288 S.C. 104, 341 S.E.2d 380 (1986).

Applicant's trial counsel's failure to object to this testimony by Lt. Jason Chapman, that he was familiar with Applicant and that on prior occasions it was relatively easy to find Applicant; and failed to request a curative instruction to cure this tainted testimony, constitutes deficient representation under an objective standard of

Reasonableness. Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991). See also Trial Judge's Reasoning as to why he denied the state's motion to introduce Applicant's criminal record into evidence. Tr.p. 455, lns. 8-13.

(3) Trial counsel failed to request a jury charge and/or instruction that the out-of-court inconsistent statements of Tyheem Lewis can only be used to impeach the witness, and not as substantive evidence of the facts to find guilt. There is a probability that the jury considered certain parts of the out-of-court inconsistent statements given by Tyheem Lewis as substantive evidence to find Applicant guilty. In State v. Bottoms, 260 S.C. 187, 195 S.E.2d 116, 118 (1973), the court stated "it is the duty of the court, upon request, to instruct the jury that it can consider such evidence for the purpose of impeachment only, not as substantive evidence of the facts." Applicant's trial counsel failed to request this instruction be given to the jury, and by doing so it prejudiced the outcome of Applicant's trial. There is a reasonable probability that the jury considered certain parts of Tyheem Lewis' out-of-court inconsistent statement and in court testimony, to piece together a version of the crime which they used to find Applicant guilty.

The trial judge instructed the jury that the statements could be considered as to the credibility of the witness, but did not instruct the jury that his out-of-court inconsistent statements could not be used as substantive evidence to find guilt, and had they been instructed not to do so, upon the request of Applicant's trial counsel, there is a reasonable probability that the outcome of Applicant's trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997) (a reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.).

(4) Trial counsel failed to object to the solicitor's statement in her closing argument that "Tyheem Lewis is a gentle soul." Tr.p. 489, lns. 14-15. Applicant's trial counsel allowed the solicitor to testify as to the credibility of its witness when she said he "is a gentle soul", i.e. worthy of belief.

In Gilchrist v. State, 350 S.C. 221, 565 S.E.2d 281 (2002) the court found trial counsel was ineffective for failing to object to the solicitor's statement vouching for the credibility of the state's witness, when he said he'll say from the bottom of his heart, the witness is one soul who at one time was unclean and is now clean. The court held that this statement amounts to a personal assurance of the witness's veracity because the solicitor emphatically stated that the witness was a soul who was now clean, i.e. worthy of belief.

In Applicant's case the solicitor stated emphatically that Tyheem Lewis had been led astray by the Applicant, who she called a pied piper, to do wrong, but "Tyheem Lewis is a gentle soul", i.e. worthy of belief, who is now doing the right thing, i.e. telling the truth. The court has held that it is inappropriate for the state to assure the jury of a state witness's credibility, and Applicant's trial counsel should have objected. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); State v. Kelly, 343 S.C. 350, 369, 540 S.E.2d 851, 861 (2001) (Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the state to assure the jury of a government witness's credibility.).

Applicant's trial counsel's failure to object to the solicitor's statement that "Tyheem Lewis is a gentle soul", i.e. worthy of belief, prejudiced Applicant, because Tyheem Lewis was the state's key and only witness to place Applicant at the scene of the crime, and his credibility was crucial to the state's case, especially because Tyheem Lewis had already given out-of-court inconsistent statements. Applicant's defense was that he was not present at the scene of the crime, Tr.p. 199 lns. 1-6; and believing the testimony of Tyheem Lewis was the only way the jury could find Applicant was present at the scene of the crime, an essential element to find Applicant guilty of the crimes charged.

Further, because of Tyheem Lewis' prior convictions and his

interest in providing favorable testimony for the state to obtain leniency in his own case, Tyheem Lewis' credibility clearly was questionable. Accordingly, given Tyheem Lewis' obvious credibility problems, and the fact that Applicant's conviction was inextricably linked to Tyheem Lewis' credibility, counsel's failure to object to the state's improper vouching for Tyheem Lewis as "a gentle soul", i.e. worthy of belief, prejudiced Applicant's trial. Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002) (counsel rendered ineffective assistance by failing to object to solicitor's comments vouching for credibility of state's witness.).

The solicitor's statement that "Tyheem Lewis is a gentle soul", i.e. worthy of belief, who had been led astray by Applicant to do wrong, so infected Applicant's trial with unfairness, that it made his resulting conviction a denial of due process. State v. Patterson, 482 S.E.2d 760 (1997) (citing Donnelly v. DeChristoforo, 416 U.S. 637, 94 S.Ct. 1868 (1974)).

(5) Trial counsel failed to protect Applicant's right to a fair and impartial trial when he declined the judge's offer to give a curative instruction to the jury to disregard the solicitor's statements that Applicant had a "pattern" of "manipulating young people and luring them and intimidating them", a "pattern" of violence, "intimidating and manipulating" women, "a pattern of robbing old folks, intimidating old folks, kidnapping old folks" and "holding them up." Tr. p. 496, lns. 5-12; Tr. p. 499, lns. 14-25.

It is the duty and responsibility of trial counsel to protect the defendant's rights to a fair and impartial trial, and to ensure the defendant's trial is not prejudiced by the statements of the solicitor. Strickland v. Washington, 466 U.S. 668 (1984), Matthews v. State, 350 S.C. 272, 565 S.E.2d 766 (2002). When Applicant's trial counsel declined the judge's offer to give a curative instruction from the court where the jury was instructed to disregard the solicitor's use of the word "pattern", he allowed the solicitor to make statements (testify) to the jury which inferred that Applicant had a prior criminal history (pattern) of robbing old folks, intimidating old folks, kidnapping

old Folks, holding up old Folks, manipulating young people and luring them and intimidating them, a pattern of violence, and a pattern of intimidating and manipulating women; and by inference was guilty of the crimes charged.

The trial judge even stated the reason he was not allowing Applicant's prior criminal record into evidence was because he did not want the jury to be prejudiced by it, and he wanted the jury to decide the case on the evidence that was presented at trial and not on the propensity of Applicant's prior criminal record. TR.p. 455, lns. 11-13.

This testimony by the solicitor, of which there was no evidence of presented to the jury, prejudiced Applicant's trial, just as the judge knew it would, and as the result so infected Applicant's trial with unfairness that it made his conviction a denial of due process. State v. PRIMUS, 341 S.C. 592, 535 S.E.2d 152 (S.C. App. 2000).

Applicant's trial counsel failed to protect his rights to a fair and impartial trial, and his deficient performance prejudiced Applicant's trial and the outcome thereof. Had Applicant's trial counsel answered yes to the curative instruction offered by the judge, there is a reasonable probability that the result of Applicant's trial would have been different.

Applicant's trial counsel's deficient performance also prejudiced Applicant's right to appeal the solicitor's challenged testimony. When Applicant's trial counsel rejected the trial court's offer to give a curative instruction, he waived Applicant's right to challenge the solicitor's testimony (statements) on appeal. State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (S.C. App. 2010). See also State v. Watts, 321 S.C. 158, 164, 467 S.E.2d 272, 276 (Ct. App. 1996) (in rejecting the trial court's offer to give a curative instruction, the defendant waived any complaint he had to the challenged testimony). State v. Tucker, 324 S.C. 155, 169, 478 S.E.2d 260, 267 (1996) (Finding issue unpreserved when defendant refused court's curative instruction).

(6) Applicant's trial counsel failed to request the trial judge to investigate juror misconduct after Applicant informed him on several occasions that a juror was sleeping, a fact which Applicant's trial counsel acknowledged himself. See State v Smith, 338 S.C. 66, 525 S.E.2d 263 (S.C. App. 1999) (issue of sleeping juror is an issue of juror misconduct) and State v Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999) (counsel must request trial court to investigate juror misconduct).

When Applicant's trial counsel failed to request the trial judge to investigate the sleeping juror, after he became aware of this, he placed Applicant in the position where he was denied his constitutional right to be tried by competent and impartial jurors. S.C. Constitution Article 1 § 14; and U.S. Constitution Article 3 § 2 and the sixth Amendment guarantees Applicant this right. State v Hurd, 325 S.C. 384, 480 S.E.2d 94 (Ct. App. 1996) ("a juror who has not heard all the evidence in the case or the court's instructions as to the applicable principles of law is grossly unqualified to render a verdict").

(7) Applicant also submits to the court, that the deficient performance of his trial counsel enumerated herein, are not only prejudicial by themselves, but are also prejudicial as an cumulation, and thereby warrants the relief stated herein. State v Peterson, 287 S.C. 244, 335 S.E.2d 800 (1985) (Court found each individual error caused prejudice and cumulation of the errors also warranted reversal.).

March 14, 2016
DATE

Mark Workman
APPLICANT

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Mack Washington, Jr., #314550,

2016-CP-15-00366

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on April 7, 2016, Respondent would show this Court:

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Colleton County Clerk of Court's orders of commitment. Applicant was indicted by the August 2012 term of the Colleton County Grand Jury for kidnapping (2012-GS-15-0416) and armed robbery (2012-GS-15-0417). Applicant was subsequently indicted by the August 2013 term of the Colleton County Grand Jury for kidnapping (2012-GS-15-0560), armed robbery (2013-GS-15-0753), and possession of a weapon during the commission of a violent crime (2013-GS-15-754). Everett W. "Eddie" Bennett, Esquire, and Laurie Sanders, Esquire, represented him. Assistant Solicitors Tameaka Legette and Carra Henderson prosecuted the case.

On March 17-20, 2014, Applicant proceeded to trial before The Honorable Perry M. Buckner, III and a jury. Applicant was found guilty as indicted on all charges. Judge Buckner sentenced Applicant to incarceration for thirty years for each charge of kidnapping and armed robbery, concurrently. Applicant was also sentenced to five years for the weapons charge, consecutively.

Applicant filed a timely notice of appeal. Tiffany Lorraine Butler, Esquire, represented

Applicant on appeal and filed an *Anders* brief. Applicant also filed a *pro se* supplemental brief. On March 2, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal after review. State v. Washington, Op. No. 2016-UP-101 (S.C. Ct. App., Filed March 2, 2016). The Remittitur was returned on March 21, 2016.

II. ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. Failure to investigate alibi defense and failure to call alibi witnesses to testify at trial
 - b. Failure to object to state witness testimony of Lt. Jason Chapman
 - c. Failure to request a curative instruction to cure tainted testimony by Lt. Jason Chapman
 - d. Failure to request a jury charge and/or instruction that the out-of-court inconsistent statements of Tyheem Lewis can only be used to impeach the witness, and not as a substantive evidence of the facts to find guilty
 - e. Failure to object to the solicitor's statement in her closing argument that Tyheem Lewis is a gentle soul
 - f. Failure to protect Applicant's right to a fair and impartial trial when he declined the Judge's offer to give a curative instruction to the jury to disregard the solicitor's statements that Applicant had a "pattern" of "manipulating young people and luring then and intimidating them," ad "pattern" of violent, "intimidating old folks, kidnapping old folks, and "holding them up"
 - g. Failure to request the trial judge to investigate juror misconduct after Applicant informed him on several occasions that a juror was sleeping, a fact which Applicant's trial counsel acknowledged himself

Attached herewith and incorporated herein are the records of the Colleton County Clerk of Court regarding the subject convictions, the Record on Appeal, Applicant's appellate records, and Applicant's records from the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant's PCR application claims ineffective assistance of counsel. Nevertheless, Respondent contends that Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland, 466 U.S. at 669. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. See Hill v. Lockhart, 474 U.S. 52, 52 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record, a question of fact is raised, which can only be resolved by an evidentiary hearing. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983). If the court does determine that Applicant's alleges specific instances of ineffective assistance which are not conclusively refuted by the record, then Respondent would request an evidentiary hearing to fully resolve this issue.

IV. AMENDMENT

Respondent denies Applicant is entitled to relief on any of these claims and demands strict proof thereof. Applicant must specify any claims he intends to raise at the PCR trial. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

{Conclusion and signature block on following page}

V. CONCLUSION

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. WHEREFORE, the Respondent requests that an evidentiary hearing be held solely for the purpose of determining whether the Applicant's trial counsel was ineffective.

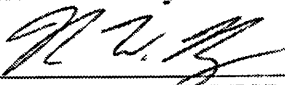
Respectfully submitted,

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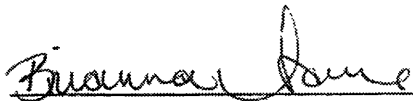
April 19, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF COLLETON	)	
	)	
	)	2016-CP-15-0366
MACK WASHINGTON, JR.,	)	
S.C.D.C. No. 314550,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

James Falk, Esquire
Falk Law Firm
PO Box 1058
Charleston, SC 29402

DATED this 19th day of April, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort
3
4 Case No.: 2016CP1500366
5 Mack Washington,
6 Plaintiff(s),
7 vs. Transcript of Record
8 State of South Carolina,
9 Defendant(s).

10

11

12 **POST-CONVICTION RELIEF HEARING TRANSCRIPT**

13

14

15

16 October 11, 2017

17 Beaufort, South Carolina

18

19

20

21

22 BEFORE:

23 The Honorable Thomas A. Russo

24

25

APPEARANCE PAGE

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1 PROCEEDINGS

2 MR. NEELY: The next case the State would call is
3 the case of Mack Washington, Junior versus State of
4 South Carolina, Case No. 2016-CP-15-00366. Applicant
5 was indicted by the August 2012 term by the Colleton
6 County grand jury for kidnapping and armed robbery.
7 Applicant was subsequently indicted by the August 2013
8 term of the Colleton County grand jury for a second
9 count of kidnapping, second count of armed robbery, and
10 possession of weapon during the commission of a violent
11 crime.

12 Everett Bennett represented applicant at trial.
13 Trial took place from March 17th through the 20th, 2014
14 before The Honorable Perry Buckner. He was found
15 guilty as indicted on all charges. Judge Buckner sent
16 applicant to incarceration for 30 years for each charge
17 of kidnapping and armed robbery, let the charges run
18 concurrently, and five years for a weapon's charge,
19 which was run consecutively.

20 Applicant did file a timely notice of appeal.
21 Tiffany Butler represented him on appeal and filed an
22 Anders brief. Applicant also filed a pro se
23 supplemental brief.

24 On March 2nd, 2016, the Court of Appeals dismissed
25 applicant's appeal after review. Remitter was issued

CALLING OF THE CASE

1 March 21st, 2016.

2 THE COURT: All right. Mr. Falk.

3 MR. FALK: Thank you, Your Honor. I'm going to
4 call Mr. Washington to the stand first.

5 But to sort of summarize the claims that we are
6 making is that we believe that the trial counsel was
7 ineffective for failing to call an alibi witness. We
8 believe the trial counsel was ineffective for failing
9 to object to an inflammatory closing argument made by
10 the Solicitor in this case. And we believe that trial
11 counsel was ineffective for failing to call to the
12 Court's attention that one of the jurors in the case
13 was, for lack of a better word, sleeping through the
14 trial, and that prejudiced his opportunity to get a
15 fair trial.

16 THE COURT: All right. All right.

17 MR. NEELY: Your Honor, just to clarify, there are
18 a few other allegations to make sure that we are clear
19 on the -- we are not moving forward on those
20 allegations for purposes of a ruling. It appears the
21 applicant is not moving forward on his claims regarding
22 Lieutenant Jason Chapman as a witness; failure to
23 request a jury charge concerning an inconsistent
24 statement of Tyhene Lewis as a witness; failure to
25 object to Solicitor's statement calling Tyhene Lewis a

CALLING OF THE CASE

1 "gentle soul" in her closing argument. I believe
2 that's it.

3 THE COURT: Is that correct, Mr. Falk?

4 MR. FALK: Your Honor, I guess, I was summarizing
5 where we were going to focus our attack, but I really
6 do not intend to abandon those claims.

7 THE COURT: All right. Well, we will deal with
8 whatever claims were presented.

9 MR. FALK: Thank you.

10 THE COURT: All right. You may call -- is it
11 Mr. Washington you are going to call first?

12 All right. Mr. Washington, sir, if you would
13 please come around and be sworn.

14 Thereupon,

15 MACK WASHINGTON

16 was called as a witness, having been first duly sworn,
17 was examined and testified as follows.

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q You ready, Mr. Washington?

21 A Yes.

22 Q Did you prepare a PCR application?

23 A Yes, sir, I did.

24 Q Okay. And just to clear up, let me go through the
25 allegations that you have set forth in your PCR application.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 A Yes, sir.

2 Q Your first grounds of ineffective assistance of
3 counsel is that trial counsel failed to investigate
4 applicant's defensive alibi; is that correct?

5 A Yes, sir.

6 Q Do you still wish to go forward with that today?

7 A Yes, sir.

8 Q Okay. The second ground was trial counsel failed
9 to object to the testimony of State's witness, Jason
10 Chapman.

11 A Yes, sir.

12 Q You still wish to go forward on that today?

13 A Yes, sir.

14 Q Thank you.

15 Trial counsel failed to request a jury charge
16 regarding inconsistent statements by witnesses.

17 A Yes, sir.

18 Q You still want to go forward on that?

19 A Yes, sir.

20 Q All right. And then we discussed the -- I
21 discussed the closing argument concerns that you have, and
22 you're going forward with that as well?

23 A Yes, sir.

24 Q And then there should have been a curative
25 instruction regarding the inflammatory closing argument.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 A Yes, sir.

2 Q But, I mean, I think those are all sort of
3 combined as part of the same.

4 A Yes, sir.

5 Q Okay. And the "kind soul" remark; is that
6 correct?

7 A Yes, sir.

8 Q Okay. Now, who represented you in this case?

9 A Attorney Everett Bennett.

10 Q And what kind of contact did you have with him?

11 A I wrote from time to time, sent a request form.
12 Had it hand-delivered or faxed to --

13 Q Can you speak up a little bit more clearly? Maybe
14 a little slower? Because I'm having a hard time hearing
15 you.

16 A Okay. I said, I used to write the question forms
17 and send those to him every so often to try to see what was
18 going on with the case, to see if he heard anything
19 pertaining to my case. I talked to him kind of regularly,
20 but he was the second attorney I had.

21 Q He was the second attorney?

22 A Yes. I had an attorney before him.

23 Q Were you -- did you have a public defender?

24 A Yes, sir.

25 Q And is Mr. Bennett retained or is he --

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 A Public defender, State appointed -- I mean, Court
2 appointed.

3 Q He's Court appointed?

4 A Yes, sir.

5 Q And what happened to the first attorney?

6 A It was a conflict of interest.

7 Q Okay. And so how long were you in custody?

8 A During the time I was incarcerated, 21 months
9 before I went to trial.

10 Q Twenty-one months?

11 A Before trial, yes, sir.

12 Q Yeah. And what time did Mr. Bennett get appointed
13 to your case?

14 A Mr. Bennett got appointed to my case -- I went to
15 trial in March. Mr. Bennett got on my case, I want to say,
16 if I'm not mistaken, October or November. I received a
17 letter from the courts stating that my attorney had changed.

18 Q And this was November?

19 A If I am not mistaken, October or November of 2014.

20 Q Okay. And when did your -- in November of 2000 --
21 I'm sorry. When did Mr. Bennett come on?

22 A It was October or November 2014.

23 Q So the year before the trial?

24 A Yes, I went to trial in 2014.

25 Q Because your trial was March 17th through 20th,

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 2014. So Mr. Bennett came down in October of the prior
2 year?

3 A I went to trial in 2015. March 2015.

4 Q Regardless of when you went to trial, Mr. Bennett
5 was there for about four or five months prior to?

6 A Yes, sir. Correct.

7 Q Thank you.

8 What kind of conversations did you have with
9 him as far as what the theory of the defense was going to
10 be?

11 A When I spoke to Mr. -- when I spoke to Mr. Bennett
12 about my defense, he asked me -- well, he came to the jail
13 and gave me the rest of the motion that the State had gave
14 me, and he also gave me a guilty plea.

15 He then asked me if I had any alibi
16 witnesses. The information I gave him at the time, he also
17 asked me what my parents' name was, my sister's name, if I
18 had any sisters. So when I did went to trial, the names
19 that I gave him was on the list, which was my mother's, my
20 sister's, which we got striked at trial. I asked the trial
21 Judge to take those names off my witness list.

22 Q Why did you do that?

23 A Because those were immediate family members.
24 Those were not names that I wanted to be on my list, like my
25 mother, my sister, my brother -- none of those were names

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 that I actually called. He just asked me who they was, and
2 I told him who they was, and they were added to my witness
3 list. There was a total five names on my witness list.

4 Q And so did he not ask you about an alibi witness?

5 A When we asked me about the alibi witness, I told
6 him, I said, well, being I was incarcerated already a total
7 of 16, 17 months already -- 18, 19 months already, he said
8 that he was Court appointed. And he said that the courts
9 wasn't paying him to hire an attorney and hire an
10 investigator to go speak to my alibi witnesses. So then I
11 gave him a name and a number of the last contact number that
12 I had, being that I was arrested over 16 months.

13 So I only gave him a name and number that I
14 last had before I got arrested.

15 Q And what name was that that you gave him?

16 A I gave him Loretta Beckett.

17 Q Loretta who?

18 A Loretta Beckett.

19 Q And what kind of contact information did you have
20 for her?

21 A At that time, I had her cell phone number.

22 Q Okay. Where did Ms. Beckett live at the time?

23 A Aiken, South Carolina.

24 Q Okay. Did you tell him that she was in Aiken?

25 A Yes, sir.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 Q Then did you have any contact with Ms. Beckett
2 while you were in custody?

3 A I spoke to Ms. Beckett a couple days prior to
4 trial.

5 Q And what was that conversation about?

6 A It was a short three-way conversation between my
7 sister, and I asked her -- I asked her could she -- could
8 she come to court.

9 Q Did she not have a subpoena from your lawyer?

10 A No. I don't think my lawyer had -- I don't think
11 he contacted her. I don't think -- I don't know if the
12 number he had worked, because I never hear what he came back
13 and said, did he speak to her or not.

14 Q How did your sister be able to get her on the
15 phone?

16 A My sister talked to her via Facebook.

17 Q Okay. So when the trial started, you heard the
18 witness list?

19 A Yes, sir.

20 Q Because you had made deletions from the witness
21 list?

22 A Yes, sir.

23 Q Did you have concerns that Ms. Beckett's name was
24 not on the witness list?

25 A At the time, no, sir. And this is only because

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 she was present in court. So, I mean, I didn't know that.
2 Being that she was there and everything, I didn't know that,
3 because the names that was on the list, wasn't none of the
4 witness names on the list.

5 Q But you saw her in court that day?

6 A Yes, correct.

7 Q So you assumed that she could be called as a
8 witness?

9 A Correct.

10 Q Thank you.

11 Did you explain to Mr. Bennett -- I mean,
12 obviously she's going to testify that y'all were together at
13 some point in time.

14 A Correct.

15 Q Did you explain that to Mr. Bennett during any of
16 your conversations with him?

17 A No, sir. Mr. Bennett, he somewhat informed me
18 that I didn't have to -- I didn't have to prove anything.
19 It was the court's burden to prove me guilty, find me
20 guilty. I didn't have to prove nothing, I didn't have to
21 show nothing. I just -- I didn't have to put no witnesses,
22 I didn't have to testify, it was -- it was my choice to
23 testify. But I chose not to testify.

24 I never put no one on the stand because I was
25 never asked to put no one on the stand. My defense was

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 based upon alibi witnesses. And I never got a chance to put
2 alibi witnesses up there because they was never called. She
3 came to court the day I asked her to come, which was
4 Tuesday, March the 18th.

5 Q So that was the second day of the trial?

6 A Second day of trial. The first day of trial, we
7 picked the jury around 3:30, 4 o'clock in the afternoon.
8 The trial didn't really start until the following day.

9 Q During the course of the trial, did you notice --
10 did you have any concerns about whether or not the jury was
11 paying attention?

12 A Throughout the trial, yes, I had -- like I say, I
13 had -- Mr. Eddie Bennett had co-counsel, Laurie Sanders.
14 Ms. Sanders is not here today. But at most, there was two
15 attorneys. We were just passing papers from one attorney to
16 the next attorney, and we was actually highlighted which
17 juror was sleeping.

18 I mean, she wasn't sleeping -- let me correct
19 -- she wasn't sleeping, as in just steady sleeping. But if
20 you were to look up, every now and then she would dropping
21 like -- so I would kick her feet. And like, "she's
22 sleeping." She'd write down juror number so and so, here,
23 pass it to Mr. Bennett. Mr. Bennett was fully aware. Both
24 attorneys were aware.

25 But at the time I didn't know that it needed

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 to be on record, you know, to protect. I didn't know that.
2 Like I said, I couldn't say nothing about it. I just made
3 sure they was probably aware of it. It happened like two
4 days, which is Tuesday and Wednesday.

5 Q Do you know which juror that was?

6 A Yes, sir.

7 Q What was it?

8 A It was Rosa Singleton.

9 Q Rosa Singleton?

10 A Yes, sir. I don't know if the juror -- I didn't
11 -- when they was writing amongst each other, they didn't
12 have the name, they just put Juror Singleton. They wrote
13 that, but they both was fully aware of it.

14 Q Okay. Have you had any contact with Ms. Singleton
15 since this trial?

16 A No, sir.

17 Q What were your -- what are your concerns about
18 Ms. Singleton as a juror?

19 A My concern is -- my main concern now is, was she
20 sleeping? Did she fall asleep? Was she by any chance
21 taking medication? You know, it could be lack of sleep, it
22 could be medication.

23 Like I said, in order to give a verdict, all
24 the jurors must be paying attention, and she clearly wasn't.
25 And then being that there was only one or two testimonies

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 throughout the whole week, it's not like it went over and
2 over.

3 You know, the witnesses, the State witness,
4 the key witness, the main witness itself only testified that
5 one time. So that's the critical part of my case. So if
6 she wasn't paying attention, then just that one second that
7 she dozed off, she could have heard something that could
8 have helped.

9 Q And which witness did you think was a critical
10 part of the State's case?

11 A Co-Defendant. And -- Co-Defendant.

12 Q Mr. Washington, I think I could hear better if you
13 could not jiggle, you know, swing back and forth. Because
14 you're drawing away from the microphone.

15 A Sorry.

16 Q Thank you.

17 All right. Do you specifically recall
18 whether or not she was sleeping during that part of the
19 testimony, or were you just looking at this testimony?

20 A That following day, yes, sir. I just can't say
21 for how long because honestly, Mr. Sanders, he highlighted
22 that while Mr. Bennett was interviewing Tyhene Lewis, which
23 was the Co-Defendant on the stand.

24 Q Okay. Do you have a copy of the transcript up
25 there?

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 A Yes, sir.

2 Q Would you go to Page 340 of it?

3 A Yes, sir. Okay.

4 Q And so I'm calling your attention to Lines 1
5 through 7 on Page 340.

6 A Yes, sir.

7 Q Can you read that testimony, just --

8 A Okay. It reads as follows, number one: "Okay, so
9 were you familiar with Mack Washington prior to getting a
10 warrant for him?"

11 "Yes." --

12 "Prior to that, how easy was it to find
13 Mr. Washington?"

14 "Relatively easy. I could usually -- we
15 could find him in Druid Hills or find him in Green Point or
16 Turkey Hill. I mean, it wasn't that hard to find him."

17 Q What are your concerns about that testimony?

18 A My concern is for him to say it's easy to find me
19 in Green Point or Turkey Hill, I mean, that's not a proven
20 fact. Me and Mr. Chapman, we never had a run-in. I was
21 never on the radar, he never seen me in Green Point, we
22 never bumped in Turkey Hill. He knew me from the Druid
23 Hills area, only Druid Hills, period.

24 And for him to say that he actually he could
25 go to Green Point or Turkey Hill to find me, I find that

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 hard to believe because if I had a warrant issued for my
2 arrest, he could have found me, if he said I just be in
3 Green Pond or Turkey Hill.

4 Q Well, let's back up. I mean, the record is what
5 it is, but Mr. Chapman, what was his role in this case? Was
6 he the investigating officer?

7 A Yes, he was the investigating officer.

8 Q Okay. And are your concerns primarily that --
9 well, what would be the problem if he knew that you were at
10 Green Point or Druid Hills?

11 A Well, my main concern is he's basically telling
12 the Court that I was easy to find, but then he goes on to
13 say that he was looking for me, he couldn't find me. But
14 for him to say that he -- Green Point or Turkey Hill, the
15 car -- a car was found in Turkey Hill. So this is part
16 of -- this is the back end of this crime. So for him to
17 just go directly to say Green Point or Turkey Hill, I felt
18 like it prejudiced my trial.

19 Q Did you have any concerns that a police officer
20 had previous contact with you, that's telling the jury that?

21 A Correct.

22 Q Did you have any prior? Did you?

23 A Yes.

24 Q All right. And then, let me draw your attention
25 to the closing argument.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 A Okay.

2 Q If you go to -- so let me back up so we take these
3 in order. Can you go to Page 489?

4 A Okay.

5 Q Lines 14 and 15.

6 A Okay. And it reads as follows: "He led him
7 astray, down the road of destruction. Tyhene Lewis is a
8 gentle soul. I hated to have to jump on him."

9 Q And so what was your concern about that statement?

10 A This is the State's witness. To me, she's
11 testifying, she's basically testifying for his credibility
12 and she's -- for her to say he is a gentle soul, that is
13 basically testifying, because who know how his soul is or
14 who know what is going on? For her to the say Tyhene Lewis
15 has a gentle soul, I felt like she was testifying for his
16 credibility.

17 Q So you were concerned that she was bolstering his
18 credibility?

19 A Correct.

20 Q Because, is it your opinion that Tyhene's
21 testimony was what the jury possibly relied on in this case?

22 A Correct.

23 Q Just can you summarize what his testimony was?

24 A His testimony was basically saying that he did a
25 robbery, he went to the robbery, he went there.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 Q Who is the "he"? You?

2 A Tyhene Lewis said he went to rob someone, I stood
3 there while he gathered everything, and we took the car, we
4 left and parked the car. Then he said I took some guns and
5 put inside the apartment.

6 Q Now, you had concerns about Mr. Tyhene's testimony
7 that it was inconsistent. What specifically were you
8 referring to?

9 A He gave two -- he gave two statements. He gave
10 two out-of-court, inconsistent statements. He gave one on
11 two different dates.

12 He wrote one statement, which Captain Jameson
13 at the jailhouse, she refused to notarize it due to the fact
14 that he was one part, I was in another part. She didn't
15 want to get caught up into the case.

16 He then wrote another --

17 Q What was that first statement?

18 A The first statement was -- the first statement --
19 if you don't mind, we can go to page of the transcript, on
20 Page 385.

21 Q Yes.

22 A On 385, Lines 8 through 23. And it reads as
23 follows: "To whom it may concern. I, Tyhene Lewis, would
24 like to admit to my involvement on Warrant Numbers I863209,
25 I863235, I863236, and state for the record that I implicated

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 a Mack Washington played a part in the crime during the
2 interrogation. I was under pressure. No event or anything
3 like this, being that Mack was already caught in an
4 apartment for receiving stolen goods, I mentioned his name.
5 I pled guilty to the charge and willing to serve my time for
6 my wrongdoing. I want it to be known that on or around
7 January 7, 2012, when I committed an illegal crime, Mack
8 Washington was not with me. I do not want an innocent man
9 charged with something he didn't have nothing to do with. I
10 will not testify in court against Mack Washington. I ask
11 that the legal charges be dropped against Mack Washington.
12 I, Tyhene Lewis, did willingly write this on the 29th day of
13 October 2013."

14 Q So your lawyer confronted him with that statement
15 in court, did he not, during his cross-examination?

16 A Correct.

17 Q Because that's actually what you are reading from.
18 What was his response?

19 A His response, he said he wrote that because I
20 asked him to write it, which I did, in fact, ask him to
21 write it. I sat in jail 16 months, and I finally seen
22 Tyhene Lewis. He called me to the window. I was in max --
23 I was in the max -- I was in the max part, he was in the
24 general population. And I think the only reason he called
25 me to the window is because he had some friends over there

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 and they overheard what was going on. So he come to the
2 window, got to the window. I tried to talk to him through
3 the window, but being that it's plexi-glass, he end up
4 coming to the door. I got to the door, I said, "What's up?"
5 He said, "What's up?"

6 He say, "What I need to do?" I said, "What
7 you talking about?" I said, "You need to get that right."

8 I said, "You done told them people that I
9 had something to do with it, I had nothing to do with it."
10 I said, "You need to fix it."

11 The following morning, they came down to rec,
12 I was still in my room because of rotating.

13 Q So you did ask him to write the statement?

14 A I asked him to write it, which he did write it.
15 He sent it to me. When I woke that morning, someone say,
16 "Mack, you got a kite on the flap."

17 It was the envelope. It had nothing -- no
18 name or nothing on it. But it was a letter inside. When I
19 received that letter, I hit the buzzer and I asked for
20 Captain Jameson to get it notarized. All they had to do was
21 play the cameras back, and they would see that he came
22 through and slide it up by the door. But Captain Jameson,
23 she refused to sign it.

24 So I did -- got back to Tyhene Lewis and I
25 said, "Well, she won't sign it." I said get it to your

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 attorney." I think he sent it up to the courthouse or
2 whatever, they shot it back down again.

3 So it comes again, he writes another letter,
4 he writes another letter and in that letter, he also
5 implicated that he did write the letter and that letter that
6 he wrote is, in fact, true. So he wrote two different
7 statements.

8 Q He wrote the initial statement saying that you
9 were -- that he was fully responsible for the crime, and you
10 weren't there.

11 A Correct.

12 Q Then he wrote a second statement saying that,
13 yeah, I wrote the first statement. Right?

14 A Correct.

15 Q So that second statement was completely consistent
16 with the first one that's in this letter; is that correct?

17 A Correct.

18 Q And did your lawyer confront him with that second
19 statement?

20 A Correct.

21 Q And his response at that time was?

22 A It still was the same. He wrote it because I
23 asked him to wrote it.

24 Q Okay.

25 I'm sorry, sir. I got off track there.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 So what are your concerns about the lack of a
2 jury charge?

3 A My concerns for lack of a jury charge is --

4 Q About the inconsistent statement, just --

5 A Okay. Because, like I say, he gave two different
6 statements. One of them was admitted into the records,
7 which each juror read the statement he read. Each juror
8 read the statement he wrote.

9 Q And which one was that?

10 A The first statement he wrote.

11 Q So the jury read the first statement?

12 A Correct. And that was admitted into evidence, and
13 they read it. The Judge got a copy of it, everybody got a
14 copy of it. Actually, he read it on the stand.

15 Q Okay.

16 A So, like I say, he gave two different inconsistent
17 statements. I was trying to see if my attorney would like
18 --

19 Q Let me just back up. He read it on the stand
20 because your attorney handed it to him? I mean, he didn't
21 have a copy of it?

22 A No, he didn't have it.

23 Q Yeah. Okay.

24 And, again, so just following up, what was
25 your response -- why are you concerned about the lack of a

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 jury charge?

2 A Because I don't think those statements should have
3 been used in court. I don't think those statements should
4 have been -- they shouldn't have been used, but they wasn't
5 used -- both statements. He wrote one, then he wrote
6 another one. You don't get to give two statements. There
7 were two different statements, both say the same thing on
8 two different occasions.

9 Q But you wanted those statements read in court
10 because they completely exonerated you?

11 A I wanted the statements, but, I mean, it was never
12 -- I mean, it was admitted on the record, but they never
13 looked at it. Never -- I guess, they just overlooked what
14 he said. I don't know.

15 Q Now, you had some concerns about the prosecutor's
16 closing argument?

17 A Correct.

18 Q And I'm looking at Page 496, starting with about
19 Line 5.

20 A Okay.

21 Q Is that sort of the area that you also are
22 concerned about?

23 A Correct.

24 Q Okay. Will you read those?

25 A Okay. Line 5. It starts off: "It is a filthy

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 rag, ladies and gentlemen. Mack Washington has a -- he has
2 a pattern of manipulating young people and luring them and
3 intimidating. He has a pattern of violence, throwing
4 Tynesha Young to the floor and intimidating and manipulating
5 her to lying for him. He has a pattern of robbing old
6 folks, intimidating old folks, kidnapping old folks, holding
7 them up, and also trying to manipulate Captain Jameson."

8 Q Okay. And could you also read Lines 13 through
9 18?

10 A And it reads as follows: "I ask you this day, who
11 is safe from the force that is Mack Washington, Junior? Who
12 among us is safe, ladies and gentlemen? I told you I would
13 ask you, I ask you now."

14 Q Okay. Now, you did not testify; is that correct?

15 A No, sir.

16 Q So there was no testimony about your prior
17 record --

18 A No, sir.

19 Q -- before the jury?

20 A No, sir.

21 Q So as far as the jury knew, you had no criminal
22 record?

23 A Yes, sir.

24 Q So what was the pattern that she's talking about?

25 A I'm trying to figure that out.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 Q Well, let me ask a better question. Why are you
2 concerned about that statement?

3 A I'm concerned about that statement because in
4 closing arguments, it was never proven -- it was never
5 proven throughout the whole trial that I robbed anyone or
6 that I threw anyone to the floor. But when she -- in the
7 closing arguments, when she said I had a pattern, she
8 basically -- I mean, I never testified. I never got on the
9 stand. But she put my character in play when she said I had
10 a pattern. Because, now, it's the last thing the jurors
11 heard before they went in the back. So he's saying a
12 pattern, there's more than one crime, it's more than one
13 thing.

14 That night, only two -- alleged -- two people
15 got robbed that night. When she said I had a pattern of
16 robbing people, a pattern is someone going on the past.
17 Either I robbed more than one person that night, or like I
18 got a pattern, that means I got a record of it. So she put
19 my character and I never testified. I never took the stand.

20 Q Well, who got robbed that night? The Clemms; is
21 that correct?

22 A Correct.

23 Q And that was all one incident, right?

24 A One incident.

25 Q And so that's really not -- even if the jury

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 thought that you were responsible for the Clemms, that's
2 really not a pattern.

3 A It's not a pattern.

4 Q Because that's just one incident.

5 A Correct.

6 Q We are going to call some other witnesses here,
7 but do you have any other concerns about your trial counsel?

8 A Yeah. I want to get into one other thing
9 before -- if you don't mind. I want to go to Page 2 -- I
10 want to think it's 251. Page 251, Lines Number 11 through
11 25, and it reads as follows: "Well, tell me where you
12 remember seeing him. What was he doing?"

13 Q Well, let's back up, just so we got context. Who
14 is being questioned at that point?

15 A This is the State's witness, Quincy White.

16 Q Okay. And generally, who is Quincy White in this?

17 A Quincy White was the car -- the Clemms' car,
18 remaining parts of the car was found behind his home.

19 Q Okay.

20 A Okay. So Number 11, Number 11 reads: "Well, tell
21 me where you remember seeing him? What was he doing when
22 you saw him?"

23 "He was standing by the side of the car, out
24 of John Manigot's house."

25 "What kind of car was it?"

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 "A red Impala."

2 Q Why are you concerned about the color of the car?

3 A Throughout the whole testimony, Clemms' car, we
4 was -- the whole trial, it was based upon a white car, the
5 remaining car that was found behind the State witness home,
6 Quincy White.

7 Now, according to testimony, the State
8 witness implicated that Mack operated a gray Impala. And
9 this, throughout the trial, my trial attorney asked him on
10 several different occasions what color car was I driving,
11 what color car was I operating. Now, this is a State
12 witness.

13 Now, once we -- like I said, if we going on
14 with other witnesses, all this will come out. But my main
15 concern now is if a white car with the bottom part -- the
16 parts of the white car was behind the house, where did this
17 gray Impala come in? I was operating a gray Impala, I was
18 never seen in a white Impala. I don't know nothing about a
19 white Impala.

20 Q Who owned the gray Impala?

21 A Loretta Beckett.

22 Q Loretta Beckett?

23 A Correct.

24 Q I have no further questions, if you could --
25 unless you had something else you wanted to add.

DIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 A No, that was it.

2 MR. FALK: Please answer any questions Mr. Neely
3 has.

4 CROSS EXAMINATION

5 BY MR. NEELY:

6 Q Mr. Washington, it's your testimony today that you
7 told your attorney that you had an alibi witness?

8 A Correct.

9 Q And that you gave him information on Ms. Beckett?

10 A Correct.

11 Q And when did you tell him this?

12 A He came to see me at the jail. He came to bring
13 me the last little bit of the packet of my -- my Brady
14 motion. So I went to trial that Monday, he came to see me
15 that Friday. It was a week prior to that.

16 Q All right. Sorry. You kind of mumbled with it
17 there. I didn't --

18 A A week prior to my trial. My trial was
19 March 17th, so a week prior to that he came to the jailhouse
20 to get information from me.

21 Q Now, you told -- you testified earlier that had
22 been in fairly constant communication with your attorney,
23 Mr. Beckett (sic), correct?

24 A Yes.

25 Q And you're telling the Court now that through the

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 22 months, I believe you said, that you were incarcerated --

2 A Twenty-one.

3 Q Twenty-one months, I'm sorry -- that you were
4 incarcerated, you waited until the week before trial to tell
5 your attorney that when this incident took place you were
6 with somebody else?

7 A I didn't know I was going to trial. I got a
8 guilty plea. They offered me a guilty plea. I didn't know
9 I was going to trial. I sat in there 21 months without a
10 bond. I didn't know I was going to trial. He came to see
11 me and brought me a guilty plea, and said, "Hey, do you want
12 take these ten years or go to trial?"

13 I said, "Why take ten years? I didn't do
14 anything."

15 Then, he said, "Well, if you want to go to
16 trial, we will go to trial."

17 So I said, "Okay." Well, then he started to
18 get information from me. So the information he gave me,
19 everything he asked me, I gave it to him.

20 Q Okay. So let me back up one second.

21 You didn't tell either your public defender
22 or Mr. Everett Bennett, as your trial attorney, about your
23 alibi witness because you were planning on pleading guilty?

24 A No.

25 Q Well, you just said you didn't tell him about it

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 because you had a guilty plea.

2 A No. I said I gave him that information. I only
3 gave him the information that I had, which is a name and a
4 phone number. I was locked up 16 months. I gave him the
5 information that I last knew of. He could have went on
6 Facebook and contacted her, the same way my sister did, but
7 I gave him the information. I gave the information before
8 the time that he wrote that witness list, I gave him all
9 that information. He wanted my boss name, he wanted to know
10 mother, father name. But the names that he put down was
11 just immediate family members. And these names that got
12 scratched off in the trial transcript, these were -- these
13 names were scratched off.

14 Q I understand all that. But I'm just making sure I
15 got it right.

16 A Right.

17 Q So it was a week before trial, and you were like,
18 hey, I was with Ms. Beckett when this happened in the gray
19 Impala, right?

20 A No. That question was never asked of me. Mr.
21 Bennett never asked me where I been, or who I been with.

22 Q Well, I know. I'm just saying that that's what
23 you volunteered to Mr. Beckett (SIC) a week before trial?

24 A I told Mr. Bennett, he said -- he said, "Do you
25 have any alibi? Anybody that could come to court for you?"

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 I said yes, and I gave him Loretta Beckett name.

2 Q Right. And that was a week before trial, right?

3 A Correct. That was somewhere around the time when
4 he brought the paperwork. I don't know if it was a week
5 before trial, three days before trial. But when we brought
6 me my last part of my motion, that's when we sat down and
7 showed me to the DVD of the Co-Defendant interview. I gave
8 him the information at that time.

9 Q Now, I was just trying to get the timing down.

10 A All right.

11 Q And you said that your defense was based on that
12 alibi, right?

13 A Correct.

14 Q But, you know, you said that you were in constant
15 communication with Mr. Bennett.

16 A Yeah. Sent him requests and writing letters.
17 But, I mean, he don't come to the jailhouse everyday. I
18 could call and leave a message, I can have things faxed. I
19 get a copy stating that they hand-delivered a fax to him, he
20 has it, but I don't get a message back to say, okay, yeah,
21 he have it. I sent a request, say yeah, it's in the fax, he
22 received it.

23 Q Right. But you received letters from Mr. Bennett
24 as well, and phone calls at the jail, right?

25 A No. I received one letter, I think. I think I

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 received one letter from Mr. Bennett.

2 Q Did you talk to Mr. Beckett (SIC) from the jail,
3 on the jail phone?

4 A Mr. Beckett or Mr. Bennett? Who is who?

5 Q I'm sorry. Mr. Bennett. I'm sorry. Everett
6 Bennett, your trial attorney.

7 A Did I speak to him on the phone?

8 Q Yes.

9 A No. I spoke to his secretary once or twice. I
10 left messages, but I don't -- I don't recall speaking to him
11 over the phone at the jail. He came to see me once or twice
12 to get a little bit of input on what I had going on. I seen
13 Mr. Bennett twice before I went to trial.

14 Q Okay. So you're saying that you saw Mr. Bennett
15 twice before you went to trial?

16 A I seen him twice.

17 Q And that you didn't talk to him ever on the phone?

18 A No, not that I can recall. Not that I recall. I
19 remember speaking to his attorney -- I mean, to his
20 secretary. I remember speaking to her.

21 Q And so when you saw him the second time, right
22 before trial, is when you told him about your potential
23 alibi?

24 A My alibi was in the courtroom.

25 Q Well, yeah, I understand that. I'm just asking

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 when it got communicated to Mr. Bennett.

2 A I told Mr. Bennett, like I told you, when he came
3 to the jail to see me the week before trial, I gave him all
4 that information right then. That's when he wrote
5 everything on that paper. He wrote everything on his yellow
6 notebook and took it with him.

7 Now, when I got the witness list, the only
8 names was on there was my mother name, my sister name, my
9 father name. It was five names on there, my immediate
10 family members. I scratched those off because they were in
11 the courtroom, but they were no alibi. There's no need to
12 have them on the witness list. And so Mr. Bennett, we asked
13 the Judge to take them off. I'm sorry.

14 Q No, you are fine. And if I ever cut you off, do
15 make sure that you finish your answer.

16 It's also true that you tried to fire
17 Mr. Bennett the day of trial; is that right?

18 A No -- yes, I did. And the reason why I did it was
19 because I was asked if I asked for a continuance. What
20 happened was -- it's in the transcript, I never did write it
21 down -- but what happened was, we went to Hampton County for
22 a continuance. And I don't think -- they shot the
23 continuance down. So Mr. Bennett came to see me. He came
24 and dropped the main package of my Brady 5 off. He left it
25 up front, which is a Friday. I didn't get it until that

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 Monday.

2 Officer Hollis didn't work at the jailhouse,
3 she does the mail, she said he was coming and she was
4 leaving. I said, That's evidence. I didn't get it until
5 Monday.

6 So when I got it I had no time to go through
7 things, but I knew they had -- being that I had been
8 incarcerated a long time, I felt like I should have
9 everything right there to go to trial, but then I'm getting
10 these last little bit of things. It's in the trial
11 transcript. This is why I asked the Judge to, you know, I
12 didn't want Mr. Bennett at the time. Because I felt like,
13 you know, it was like everything was just being pushed,
14 because I wasn't ready for trial, honestly.

15 Q And you mentioned before that you decided not to
16 testify.

17 A I mean, I would have, but he say it would bring up
18 something? I mean, it would bring up my past, so I mean, I
19 didn't get on the stand.

20 Q Okay. So the reason you didn't testify is you
21 didn't want to get into your prior record?

22 A He said it would bring up my burglary, some of
23 that on my record, so I didn't testify.

24 Q You mentioned speaking with, I believe, Mr. Lewis
25 before he --

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 A Correct.

2 Q -- seen the statements?

3 A Correct.

4 Q And you stated that those were just slid under
5 your prison door?

6 A Yes. And I was in maximum security, he was in
7 general population. The only thing separating us was one
8 door and one glass. So I could see him through the glass,
9 and we could talk and communicate through the door. There's
10 a gap big enough under the door for to slide anything under
11 the door. That's the only way I was communicating, through
12 that window. It was just that quick second.

13 Q But you said you never saw him slide it under
14 that, it was just there, or that's what you said.

15 A No. I said, he slide something to someone, they
16 put it on my flap the following morning. It was an
17 envelope. He told me he was going to take care of it. I
18 told him he need to tell them people I didn't have nothing
19 to do with it. Because I didn't have nothing to do with it.

20 Q Okay. So you woke up in the morning and there's
21 an envelope that slipped through the flap, right?

22 A Yes, there was. He told me the day before that he
23 was going to write something. I didn't know what it was.
24 But the following morning, it was there, it had his name on
25 it, it had his signature.)

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 And the second one that he wrote, I mean, it
2 is the same exact thing. It's just different wording.

3 Q And it's your statement that you didn't threaten
4 him? You didn't promise him anything?

5 A I couldn't have. I was in super max. We was out
6 one by one. I mean, he was in general population with
7 everybody.

8 Q Well, you were trying to get out of max, right?

9 A I mean, why get out of max? I couldn't get out of
10 max, I was stuck in max. I couldn't leave max.

11 Q Why were you stuck in max?

12 A I mean, when they arrested me in Beaufort, Jason
13 -- Jason Chapman called Frasier and say, "We need a room in
14 max." I mean, that's something -- he never said why we need
15 max. That's something you have to ask Jason Chapman over
16 directly at the jail. He just called to say we need a room
17 in max. I was in max the whole time.

18 Q Regarding Jason Chapman's statement, he said that
19 you could be found in Druid Hills, and you said that part
20 was right, correct? That you had seen him in Druid Hills
21 and that he knew how to get you in Druid Hills -- or how to
22 find you?

23 A Yes. I was staying in Druid Hills, but he ain't
24 see me in Druid Hills.

25 Q Okay. So you saw Mr. Chapman on a -- not a

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 regular basis, but occasionally.

2 A Yeah.

3 Q Okay. And when you said that you noticed that
4 Ms. Rosa Singleton wasn't paying attention, you said she
5 wasn't sleeping steady, she just wasn't paying attention.
6 Is that what your testimony is?

7 A No. When I say sleeping, when I said sleeping, I
8 mean, just like the whole just sitting there sleeping,
9 sleeping. Throughout the trial, I would say like she would
10 do this (indicating), and I hit my lawyer and he looked up.

11 The Judge looked over once or twice, I don't
12 think he seen it, I don't think he caught it. But both
13 attorneys were fully aware. And it happened on and on for
14 those two days. And when I say two days, Tuesday and
15 Wednesday. Because I picked the trial Monday evening. My
16 trial didn't really start until that Monday.

17 I'm just saying like certain parts of the
18 testimony, they could have been key part that she might have
19 missed throughout the trial.

20 Q Now, whenever the State finished their case, and
21 the Judge turned to Mr. Bennett and said, "Do you have a
22 case, does your client wish to testify?" And the Judge
23 explained, you know, you have a right not to testify, it
24 won't be held against you. And then there was some
25 conversation between you and Mr. Bennett.

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 Is there anything you thought you needed to
2 do? Whether you needed to testify, or whether there was
3 somebody needed to call -- did you tell him at that point in
4 time that you should call Ms. Beckett at that time?

5 A No. All he did was he said, "Do you want to
6 testify?" I said, "Do you think I should?"

7 He said, "Well, I don't know."

8 I said, "Well, what are they going to use?"

9 And they was thinking on using the burglary
10 charge. I said, "Well, I'm not going to testify."

11 So basically he was basically saying that it
12 was up to the Court to put the burden -- put the burden on
13 the Court. I didn't have to prove nothing. It was up to
14 the Court to prove me guilty.

15 Q Right. And that's absolutely true that it's not
16 up to you to defend yourself, but it's up to the State to
17 prove you guilty.

18 But at that point in time, whenever it was
19 time for the Defense to make a case, you didn't suggest to
20 call Ms. Bennett (SIC)?

21 A I was never asked -- Beckett.

22 Q Beckett, I'm sorry. I keep messing those names
23 up.

24 A She was there, but I was never asked because it
25 was stated that I didn't have to prove nothing. I didn't

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 have to prove nothing. Leave it to the State. That's
2 another reason why I didn't want to testify.

3 I could have testified, it would just been my
4 word against the Co-Defendant word. But they said we'll
5 just use this and use that. So -- but when he said, Did I
6 want to testify, I told him, No. He told the Judge to put
7 it on the record. He moved over. He never asked me, Well,
8 do you want to do this or do you want to do that? All he
9 said was, "Do you want to testify?" I said "No."

10 Q Okay. And I just want to clarify just, you know,
11 one more point.

12 You know, you said, you know, how could I
13 threaten him, I was in max. I mean, you can still threaten
14 somebody with words, can't you?

15 A Yeah, but I mean, if it was threatened, I mean, he
16 got my attention. I was in the rec field talking to the
17 people at the wall. He called me to attention. Like I
18 said, it was him and it seemed liked everybody that was on
19 the rec field was people from his area. So I figured the
20 only reason why he called me is because they was out there.
21 He didn't want to do it because he wanted to do it just
22 himself, I think his pride allowed him to do it because
23 people had already knew that, you know, what we had going
24 on. Like I said, I was in a totally different part of the
25 jail. I couldn't even look through the glass. I didn't

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 nobody over there, I didn't send no words over there.

2 That's what I said, as soon as that got on my flap, I hit

3 the button for Jameson. All she had to do was play anything

4 back from the jailhouse, and I'm more sure the cameras would

5 have caught it.

6 Q Well, you know, I understand all that, you know.

7 I'm just trying to get, like, I'm sure you were upset with

8 Lewis, right?

9 A Yeah, but what could I do?

10 Q No, I'm not here to talk about -- were you upset

11 with him?

12 A Was I upset?

13 Q Well, yeah.

14 A Honestly, I can't say I was upset.

15 Q You can't say you were upset by the guy --

16 A I sat in jail 16 months. I was just waiting on

17 the bond. They kept saying, you are going to get one,

18 you're going to get one, so I was just waiting. I figured

19 like one day, I'll get the bond, my grandparents have

20 property, I figured one day I was going to get a bond.

21 Q But you're telling me that the man that's

22 testifying -- that wrote a statement against you saying this

23 man did it with me, that you weren't -- and he was the

24 reason you were in jail, right? Basically.

25 A When, I seen him to the window, he say he was

CROSS EXAMINATION OF MACK WASHINGTON BY NEELY

1 going to fix it. I left it up to him. He chose to wrote
2 that statement, I didn't write it. He wrote it.

3 Q No. And I'm just -- I'm not worried about that.
4 I'm just saying, were you upset with him? You say you
5 weren't.

6 A No, I wasn't. I mean, how could I be upset? If I
7 would have seem upset, there would have been a motive behind
8 it. I was not upset.

9 Q Okay. So you and he were totally chill?

10 A They offered me ten years, I turned it down.

11 Q I'm not sure what that -- what does that have to
12 do with anything?

13 A I'm just saying. You're saying that I wasn't
14 upset. I mean, why would I be upset with him? I mean, I
15 had already been there 16 months. He told me to the window,
16 say he was going to fix it. I left it like that.

17 MR. NEELY: Thank you. That's all I have.

18 REDIRECT EXAMINATION

19 BY MR. FALK:

20 Q When did you get an offer for ten years?

21 A I got an offer for ten years that Friday, I went
22 to trial that Monday.

23 MR. FALK: Okay. I have no further questions.

24 THE COURT: All right. Thank you, Mr. Washington.

25 You may step down, sir.

REDIRECT EXAMINATION OF MACK WASHINGTON BY FALK

1 You may call your next witness.

2 MR. FALK: We would call Loretta Beckett to the
3 stand.

4 THE COURT: Ms. Beckett, if you would please come
5 around and be sworn, ma'am.

6 **Thereupon,**

7 LORETTA BECKETT

8 was called as a witness, having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FALK:

12 Q Just state your name for the record.

13 A Loretta Beckett.

14 Q And how do I spell your last name?

15 A B-E-C-K-E-T-T.

16 Q Thank you. And were you subpoenaed to come today?

17 A No, sir.

18 Q And how did you know to come here today?

19 A My sister had called me and told me about it, and
20 then I called up here and found out, and then I showed.

21 Q Okay. Were you present at his trial in Colleton
22 County?

23 A Yes, sir, on March 18th.

24 Q Were you there for the whole trial?

25 A Yes, sir.

DIRECT EXAMINATION OF LORETTA BECKETT BY FALK

1 Q And you had heard that Mr. Washington wanted you
2 to testify at the trial. Had you been called, what would
3 you have testified to?

4 A That he was with me. And that the car that he had
5 that night, the gray Impala, was mine.

6 Q Would you have said anything else?

7 A I mean, whatever they ask me, I would have
8 answered to the best of my ability.

9 Q And why do you think that he wanted you to
10 testify?

11 A Because he's wanting to be free. I mean, he's
12 telling the truth. There's no reason or doubt about it.

13 Q And your testimony would have been, you would have
14 been with him when?

15 A Actually, I was with him on March 7th -- I mean,
16 January 7th, and then I came back on the morning of March --
17 I keep saying, March, my bad -- but I came back on the
18 morning of the 8th.

19 Q Did you have any contact with Mr. Bennett?

20 A No, sir.

21 Q Did you have contact with Mr. Washington while he
22 was in custody?

23 A A couple of times, and then we lost contact.

24 Q And the crimes that he was charged with were in
25 Colleton County; is that correct?

DIRECT EXAMINATION OF LORETTA BECKETT BY FALK

1 A Yes.

2 Q And you lived -- and where were you living at the
3 time?

4 A Aiken County.

5 Q And is there anything else, as far as your -- is
6 there anything else regarding his whereabouts, that you
7 would have told the jury?

8 A I mean, if I had known anything else, I mean, I
9 would tell everything that I know. But all I can tell and
10 speak for is the time he was with me.

11 Q Okay. And what type of car do you drive?

12 A Back then, or now?

13 Q Back then.

14 A It was a silver -- a silver gray Impala.

15 Q Okay.

16 MR. FALK: I have no further questions.

17 THE COURT: Mr. Neely.

18 MR. NEELY: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MR. NEELY:

21 Q So it is your testimony that you lived in Aiken,
22 and you were just in Colleton County January 7th?

23 A No, sir. I have family in Walterboro.

24 Q Okay. So you were over there visiting family, and
25 you knew Mr. Washington as well?

CROSS EXAMINATION OF LORETTA BECKETT BY NEELY

1 A I met Mr. Washington through one of my sister's
2 acquaintances.

3 Q When did you meet him?

4 A I met him like early November of 2011.

5 Q Okay. But you knew him before -- your testimony
6 is you knew him before January 7th?

7 A Yes.

8 Q Okay. And it is also your testimony that you knew
9 that he was in jail, right?

10 A I did not know until my sister had told me.

11 Q Well, you say you spoke with him a couple times.

12 A After I left -- after I left on January 8th, when
13 I left to go back home, back to Aiken, it was like several
14 days after that, that my sister had called me and told me
15 that he was incarcerated, because I hadn't heard from him.

16 Q Okay. But -- so you knew that he was
17 incarcerated, you said, several days after you left. So it
18 would be early January?

19 A Early to mid-January.

20 Q Okay. And during those phone calls, did you ever
21 --

22 A I didn't -- the only phone calls I received is
23 once he went to the penitentiary. I talked to him, like, a
24 couple of times while he was in the penitentiary.

25 Q So you didn't talk to him while he was in County?

CROSS EXAMINATION OF LORETTA BECKETT BY NEELY

1 A No.

2 Q Okay. And once your sister, you know, told you
3 that he was in jail, you know, a few days after this
4 happened, this incident happened, you didn't make any
5 attempt to contact his attorney?

6 A No.

7 Q You didn't make any attempt to contact him?

8 A How could I contact him if he's in jail?

9 Q Well, you have to call in County.

10 A Besides writing a letter?

11 Q Write him a letter or call in County.

12 A I didn't call County.

13 Q And you didn't write him a letter?

14 A No, and I didn't call.

15 Q And you didn't contact law enforcement?

16 A For what?

17 Q To say that he was with you whenever they're
18 saying he's committing a crime?

19 A Nobody asked me any questions, I did not know what
20 he went for.

21 Q Okay. So your sister told --

22 A All I knew was she told me he went to jail.

23 Q Okay. And you said this occurred a few days after
24 the incident, and all you knew is he went to jail?

25 A Yes.

CROSS EXAMINATION OF LORETTA BECKETT BY NEELY

1 Q And you didn't worry about it after that?

2 A What do you mean, I didn't worry about it? I
3 worry about it everyday.

4 Q Well, you didn't do anything about it.

5 A What could I do? I'm not a millionaire, I can't
6 get him out.

7 Q You didn't call law enforcement to say, hey --

8 A I showed up in court, hoping to get called up as a
9 witness.

10 Q How is anybody going to know to call you as a
11 witness if you didn't tell anybody?

12 A Because he had already talked to his attorney
13 about it.

14 Q Well, you said you weren't talking in County, you
15 said he didn't talk to him.

16 A He talked to his attorney. I never spoke to his
17 attorney.

18 Q Well, how did you know he talked to his attorney,
19 if you said you never talked to him?

20 A Because he just told me that he did.

21 Q Well, how did you know then?

22 A Well, when I showed up for court, my sister called
23 me and told me --

24 Q Well, how did you know to show up for court?

25 A My sister -- my sister called me and told me that

CROSS EXAMINATION OF LORETTA BECKETT BY NEELY

1 he had court. So, therefore, I showed up. Now, hoping to
2 get called as a witness.

3 Q How is anybody going to know to call you as a
4 witness?

5 A He told them. He gave them the information. He
6 gave them my name.

7 Q But how do you know that?

8 A I don't know.

9 Q You just have this like, premonition that, you
10 know, I bet you he talked to his attorney and told him that
11 I was with him. Is that what you're testifying to?

12 A I believe what he says.

13 Q Well, how did you know then?

14 A I was going for support. When I my sister told me
15 he was going to court, I showed up for support.

16 Q So 21 months in jail --

17 A If they would have called me up, then yes. If
18 would have said yes, that I was with him or whatever, and
19 they would have called me up, I would have told them
20 everything. But I never got called.

21 Q Well, you never got called because nobody knew
22 about you. You didn't tell law enforcement that he was with
23 you, you didn't tell his attorney that he was with you?

24 A Nobody ever came to question me on anything.

25 Q Well, you said you were concerned everyday?

CROSS EXAMINATION OF LORETTA BECKETT BY NEELY

1 A I was.

2 Q It doesn't sound like you were that concerned.

3 A There's only so much a person can do.

4 Q Well, you didn't do anything.

5 A I'm not a millionaire. I'm not an attorney.

6 Q I don't think either one of those things are
7 important for someone to just call law enforcement. I mean,
8 I can call law enforcement, I'm definitely not a
9 millionaire.

10 You know -- you know, in fact, I bet you
11 those attorneys will tell you --

12 A I kept in touch with his family. I spoke with his
13 mother, I spoke with his grandmother, I spoke with his
14 sister.

15 Q While he was in County?

16 A That way of keeping in contact, showing my concern
17 for him. But there was nothing I could do for him while he
18 was incarcerated. I had no money to get him out.

19 Q So the 21 months that he was in jail, you never
20 spoke with him?

21 A No.

22 Q And then you showed up for court hoping to be
23 called as a witness?

24 A Of course. When my sister had called me and told
25 me that he was going to court, then I came.

CROSS EXAMINATION OF LORETTA BECKETT BY NEELY

1 Q And I'm assuming while you were at court, you
2 never spoke to him or his attorney?

3 A I wasn't allowed to speak to him.

4 Q But you never approached the attorney and, like,
5 hey, he was with me when this happened?

6 A No.

7 Q No further questions, Your Honor.

8 MR. FALK: No redirect.

9 THE COURT: Ms. Beckett, how would his attorney
10 even know you were in court if you didn't introduce
11 yourself to his attorney?

12 A I would presume once Mack saw that I was there, he
13 would let him know.

14 THE COURT: All right. You may step down.

15 Go ahead, sir.

16 MR. FALK: I call his trial counsel, Mr. Bennett,
17 to the stand.

18 THE COURT: All right. Mr. Bennett here?

19 Thereupon,

20 EVERETT W. BENNETT, JR.

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q Would you mind stating your name.

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 A Yeah. Everett Wilson Bennett, Junior.

2 Q And where do you practice law?

3 A Walterboro, South Carolina; Colleton County.

4 Q How did you get involved in this case?

5 A I got appointed in open court by Perry Buckner, I
6 think it was, was the Judge. The first attorneys in this
7 case was Harris Beach and David Mathews, who were the public
8 defenders, and I think one of them had the Co-Defendant,
9 Tyhene Lewis, so they conflicted out.

10 Then they appointed a guy by the name of
11 William Bennett, who I don't know, in Mt. Pleasant, and
12 apparently he and Mack Washington didn't get along too good,
13 and he filed a motion to be relieved of counsel. And it was
14 granted. I think Mack consented to it. There's an order
15 you know, in the record on that.

16 Then I got appointed -- I got a copy of the
17 order right here. The order appointing me was dated
18 September 17th, 2013, filed on the same day. And I was
19 appointed as -- he was considered an indigent.

20 Also, for the record, I actually as --
21 there's another lawyer in Colleton County, we call him
22 Laurie Sanders. I think his official name is Charles Laurie
23 (SIC) Sanders, Junior. He does a lot of criminal defense
24 work. He went to high school with one of my daughters. I
25 got four daughters. And I was kind of being his mentor, you

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 know, because he is a young lawyer, and I actually -- this
2 was a right involved case. There were some serious charges,
3 so I actually associated him. I just hired him.

4 I got permission from the Court to do so, he
5 just helped me in the trial basically. And he's now in
6 Germany. He is out of the country, so --

7 Q What was the scope of your practice in 2014?

8 A The scope?

9 Q What kind of cases did you do?

10 A I do general practice. I'm probably -- I do a lot
11 of -- of course, I do criminal defense, I do real estate
12 closings. I have another lawyer that works with me, Thomas
13 Howard, he helps me with real estate.

14 I do foreclosures, I do, you know, wreck
15 cases, accident cases.

16 Q About how many criminal cases do you try a year?

17 A A year? Now --

18 Q Well, back then, in the ten years before that?

19 A I don't -- I was the first tier defender for about
20 four or five years. I don't know if you remember when they
21 had that system. Any time the public defender conflicted,
22 and they did that so you have experienced criminal defense
23 attorneys. When I did that, I probably -- my caseload at
24 any one time was probably 20 cases.

25 Q Okay.

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 A But I don't remember, I don't know exact, I
2 probably tried 100 felony cases over the years, I guess.

3 Q Thank you. Thank you.

4 And you got files and discovery and all the
5 Rule 5 materials, all that from the Public Defender's office
6 on this case?

7 A Yeah. They -- I assumed Dave Mathews and Harris
8 Beach transferred their file to William Bennett, and, yeah,
9 we got pretty much everything they had, yeah.

10 Q So when you picked up this case in September,
11 October of 2013, were there any plea offers made?

12 A I don't think early on.

13 Q Okay.

14 A There wasn't.

15 Yeah, we served a Rule 5 discovery motion on
16 12/6/2013, and as soon as we got all the stuff from the
17 Solicitor's office, I think I actually took everything. I'm
18 trying to read -- read my notes here.

19 Yeah, we took -- you know, of course, we took
20 everything to Mack. You know, their CDs and all of that.
21 And some of the stuff we got early on, and some came, you
22 know, afterwards. It was kind of a continuous process, you
23 know, with the discovery.

24 But now, you want to know when the plea offer
25 first came in?

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 Q If you have that handy, yes.

2 A I think I do, yeah.

3 Yeah. What they offered was the minimum
4 sentence, armed robbery, ten years was part of it. And
5 let's see. Yeah, he actually officially refused it on
6 March 14th is when he refused it. Yeah, it was first --
7 this plea was first offered to Mack on January 10th is when
8 we first discussed the ten-year. And, you know, he wanted
9 to think about it, talk to his family, you know, that kind
10 of stuff. And so he didn't actually -- he mauled it over,
11 and the Solicitor will only let you sit on it for so long.
12 So they gave us a deadline, and I think March 14th was it,
13 and that's when he turned it down.

14 In fact, I actually had him sign. And the
15 reason I did -- I mean, the State had, in my opinion, I have
16 been doing this 36 years, they had a very strong case
17 against him, because they had his Co-Defendant, you know,
18 testifying against him, number one.

19 It is true that the two victims, you know,
20 their identification was, you know, two thin black males
21 about 6 feet tall, something like that. But they didn't
22 actually, you know, identify their names. But they also,
23 the police -- you have probably read the transcript, they
24 recovered a lot of evidence that, you know, actually pointed
25 toward Mack, and they had other witnesses that certainly

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 implicated him.

2 So being as that, you know, and he faced a
3 possibility of 30 years, and so -- but he decided to roll
4 the dice, you know. And that was his choice. I mean,
5 that's what I told him.

6 But it was such a good offer, I thought, you
7 know, based on the evidence, the strength of the State's
8 evidence, that I actually had him sign something saying he
9 refused the offer, and he did. And so we went to trial.

10 Q When did you come in contact or get a copy of the
11 letter by his Co-Defendant?

12 A I don't remember the exact date.

13 Q Just relative to when the offer was made. Was it,
14 you know, early on? Or was it in January, or a week before
15 the trial?

16 A Yeah. I think that it got sent over to us by the
17 sheriff's Captain Jameson over at the jail. I mean, I could
18 dig through here, if that's important. But, I mean, it
19 was -- I would say it was probably -- and I don't -- I can't
20 verify that, but I think it was a month or two before the
21 trial.

22 Q Okay.

23 A You know, one of those statements, I believe. But
24 I -- do you want me to find it? I mean, he's got a lot of
25 stuff in here. Is that important?

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 Q Well, it's only important whether or not you gave
2 him a recommendation to accept the offer, and you already
3 had the statement then.

4 A Yeah. I didn't actually recommend that he take
5 the offer.

6 Q Well, I mean, you said he had a strong case, and
7 you said his Co-Defendant was going to testify against him.

8 A Yes.

9 Q I just want to know when in that timeline did you
10 find out that there may be evidence --

11 A We knew about that during the course of the plea
12 negotiations. But prior to him making that decision, yeah,
13 we knew that.

14 Q Okay.

15 A And, of course, you know, these statements came
16 out. Of course, I pointed that out in closing arguments
17 about, you know, consistent and inconsistent statements and
18 credibility. And the Judge even had that in his charge, you
19 know, that they could consider, you know, if a witness made
20 prior inconsistent statements, you know, as far as
21 credibility, the record.

22 And, of course, I pointed out that Tyhene
23 Lewis got a sweet deal because he got a YOA sentence, and
24 they were -- you know, they reduced armed robbery to strong
25 armed robbery, which allowed that. And so he only served

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 originally, like, I think, ten months in jail at a YOA
2 facility. Of course, I pointed all that out to the jury,
3 that he's got reason to not tell the truth because he wants
4 to keep his deal. You know, he wants to state the truth in
5 favor of him, which they did. So all that was laid out.

6 And as far as the alibi witnesses, I don't
7 recall ever receiving any information on Loretta Beckett.
8 He told me early on his alibi witness was Tynesha Young, and
9 he said that he was staying with her on the date that this
10 happened, that this crime occurred, which was on a Saturday,
11 January 7th, about 11 o'clock at the Planters Inn. And she
12 actually said he stayed there, too. And she gave a
13 statement to the police, she testified and all. If you read
14 the transcript -- in fact, if you will turn to page -- if
15 he's trying to say we didn't try to present alibi witness,
16 he's wrong. If you turn to Page 308 of the transcript, and
17 I questioned Tynesha Young, because she actually ended up
18 being an adverse witness, because the State had charged her
19 with receiving stolen goods, and they agreed to drop it if
20 she would testify favorably.

21 Of course, I pointed that out to the jury in
22 closing argument. I told them she changed her story about
23 three times, and we pointed -- she admitted that, you'll see
24 in my cross-examination. Because she said, yeah, indeed, he
25 was at her house on the evening of Saturday, January 7th,

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 and that she said, if you will read through there, she said
2 she went to sleep, I think about 10 o'clock and that she was
3 sleeping off and on. And that Mack was there and Tyhene
4 Lewis was there. He lived in that facility. He was like 16
5 years old.

6 And that they were in and out, you know. But
7 she said when she went to sleep, they were there, and that
8 was a -- you know, just about an hour prior to the crime
9 occurring. And she said the next time she remembers seeing
10 Mack was, I think, about four in the morning. And you'll
11 see that in the transcript. So that's what I was doing, was
12 trying to establish his alibi -- because he told me about
13 her. I actually had her on the witness list, the State did,
14 too. Because, you know, they went to her house, that's
15 where they got the guns, you know, that were stolen from
16 these victims. They were under her bed. You read all that.

17 There was about a 45-minute fiesta at her
18 apartment, Mack was inside the apartment with her. And they
19 brought her mother over there, and she ultimately let them
20 in. And they recovered the guns, and there was credit cards
21 that had been flushed down the toilet that belonged to the
22 victims, in her house.

23 And, like I said, I tried to, you know, I
24 actually tried to utilize her as an alibi witness because he
25 said that's where he was. And she said that he was there.

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 And there was no evidence otherwise. I was never told that
2 he was with -- I mean, I don't see how he could have been at
3 Tynesha Young's apartment on January 7th in the early
4 morning of the 8th, and he was there, on the 8th, you know,
5 that night, Sunday night, when the police came, Jason
6 Chapman, with a warrant for search and all. So I don't see
7 how he could have been with Loretta Beckett. He never
8 mentioned her. And the police officers never mentioned a
9 Loretta Beckett was at Tynesha Young's apartment and nobody
10 else did.

11 So, you know, that doesn't seem possible, you
12 know, based on what he told me, what the testimony and what
13 police said. You know, he couldn't have been with Tynesha
14 Young in her apartment and then with Loretta at the same
15 time. There was no evidence of that.

16 And we actually gave -- you know, you have to
17 give notice of an alibi witness to the State at least ten
18 days in advance of trial. And, of course, we did that with
19 Tynesha Young, even though we knew that she may not be a
20 fully cooperative alibi witness, she was the best we had.

21 I didn't -- I didn't call her as a witness
22 because I questioned her, you know, about alibi testimony on
23 cross-examination, which you'll see in the transcript.

24 Q Did you file a motion in limine to restrict Lyle
25 evidence or 404(b) evidence from being admitted against?

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 A Yeah, we always do that. We filed a State versus
2 Lyle prior bad acts type situation. That was in a pre-trial
3 motion.

4 Also, and I don't think Mack -- I don't think
5 he intentionally misstated, but we actually had a Rule 609
6 hearing about his prior conviction record. And, of course,
7 I argued the COIF case, or pronounce it COIF course,
8 C-O-I-F. And Mack did have some, you know, like burglaries.
9 I think he had some robberies, you know, on his record and
10 all. And so I argued that, you know, the prejudicial effect
11 of that type of testimony would be outweighed by the
12 probative value because of the similarity of the crimes, the
13 current crimes he was being tried for.

14 And Judge Buckner agreed with that. And he
15 actually ruled that, you know, any crime -- you know,
16 robbery, burglary, larceny, you know, would be inadmissible
17 because of the prejudicial impact would outweigh the
18 probative value.

19 But he did allow -- Mack also had -- I don't
20 know, I can't remember how many, but he had at least one,
21 like giving false information to police, which you know, he
22 ruled would certainly -- could be used to impeach
23 credibility. And it wasn't similar to this crime, so he
24 did, you know, he ruled if Mack chose to take the stand that
25 they could introduce the charge of giving false information

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 to police. And I can't remember if there was any other
2 similar thing, but -- and then Mack, you know, we discussed
3 that. And you'll see that on the record. And based on
4 that, he decided, you know, not to testify. And all that's
5 on the record.

6 Q Did you have any concerns with testimony from
7 Lieutenant Chapman that was read earlier on 340 regarding
8 Mr. Chapman's familiarity with Mr. Washington?

9 A Well, you know, Walterboro is a small town. You
10 know, I didn't -- when he mentioned that he was easy to
11 find, I assumed he meant when he was investigating his case.
12 Because he had already testified when he was investigating
13 the case, and then when he was on direct that at every turn
14 that Mack Washington's name got thrown -- you know, was
15 being thrown around.

16 Now, so I assumed that he was talking about
17 he was easy to find, you know, as far as this case was
18 concerned. And I didn't want to make a big deal out of it.
19 You know, sometimes if you make a -- I guess, that's kind of
20 a trial strategy. If you try to make a big deal out of
21 that, then maybe they think there is something to that. And
22 I didn't want to help them out in any way. So I figured it
23 was best to leave it alone.

24 Q Because not only about the easy to find, but -- so
25 you were familiar with Mr. Washington prior to getting a

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 warrant for him. Maybe not everybody who's never had a
2 run-in with the law, the implication that that means that he
3 had been arrested before.

4 A I think that might be stretching it. Walterboro
5 is a small town, everybody knows everybody, pretty much. So
6 I wouldn't say -- I mean, a lot of police officers know kids
7 that play football, or, you know, there are a lot of
8 different ways to know people.

9 So, I -- again, I didn't think it was that
10 out of the way, you know, to say that you know somebody, you
11 know. I mean, I know Jason Chapman real well. He knows
12 half of everybody -- he probably knows three-fourths of the
13 people that live in Walterboro, and they don't all have
14 criminal records.

15 So, again, maybe that was -- I don't know my
16 exact thoughts on it. But, you know, I didn't want to point
17 it out, you know. I didn't think -- I didn't think the
18 Judge would give a curative instruction based on the fact
19 that he said he knew Mack Washington.

20 Q If you could go to Page 489. We read the
21 testimony in the Solicitor's closing argument. "He lured
22 him. He led him astray, down the road of destruction.
23 Tyhene Lewis is a gentle soul. I hated to have to jump on
24 him harshly."

25 A Did you read the whole transcript? I made a

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 motion for mistrial based on her whole closing argument.
2 Because she talked about him having a pattern of luring
3 young people, and this and that. And so I made a motion for
4 a mistrial based on her whole argument. The pattern.

5 Now, "gentle soul," to me, it doesn't
6 actually, in my opinion, I mean -- these people could vary
7 on this, but to me, that doesn't mean -- if somebody is
8 gentle, that doesn't mean they're believable or credible.
9 It just means they don't have a hot temper, or they're
10 easygoing. I mean, there are a lot of easygoing people,
11 laid back, that will sit there and lie all day long. I
12 mean, I just didn't see a gentle soul as being directly
13 related to credibility. I just didn't see that.

14 But my main reason I made a motion for
15 mistrial, because she kept talking about he had a pattern of
16 robbing elderly people, and luring and manipulating young
17 people, and I thought that was over the edge. And so that's
18 why I made the motion for a mistrial. And I actually think
19 that should have been granted, to be honest with you. And
20 that Judge Buckner, for whatever reason, he didn't grant it.

21 And so, you know, I was stuck with that. I
22 don't know if he argued that on appeal. But it seemed to me
23 that would have been a good grounds, you know, for the
24 appellate court. I know that an appeal was filed for him.
25 But I didn't read the whole record on appeal, but it seems

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 like that would have been a valid ground for -- on appeal.

2 Q In addition to the pattern comment, which
3 certainly makes it sound, you know, that's really Lyle
4 evidence coming in. Did you also have -- could you say that
5 possibly to say that "who among us is safe, ladies and
6 gentlemen," isn't that rather inflammatory?

7 A Yeah, she skirted the edge a little bit. And
8 that's why I made a motion for mistrial.

9 But I'll be honest with you, when she started
10 talking about pattern, I thought I had a slam dunk, motion
11 for mistrial was a hit. And so that was the main thing, I
12 just felt sure that Judge Buckner would grant it, because I
13 thought she had, I thought she had clearly crossed the line
14 there, when she started talking about a pattern and is he
15 didn't take the stand. And so I was kind of very surprised
16 when that wasn't granted.

17 And, you know, as a trial lawyer, you know,
18 you excited about things like that because you don't often
19 get that opportunity. You know, it doesn't happen a lot.
20 And so I was very disappointed when that wasn't granted.

21 Q I only practiced in South Carolina for the last
22 ten years, and used to practice in Kentucky. And I know in
23 South Carolina, they have very strict error preservation
24 rules on trial court objections. And, you know, they always
25 say that the reason that the appeals are more really to

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 protect the trial Judge than they are for protecting the
2 client.

3 A Right.

4 Q Do you know what the rule is for preserving an
5 objection to an argument, an inflammatory closing argument?
6 Are you aware that that needs to be made contemporaneously
7 before the person closes?

8 A Well, yeah. I know you can object, you know,
9 during, you know, a closing argument. Most people are
10 pretty careful about that. But, I mean -- yeah, I know that
11 you can do that.

12 Q Appellate defense filed an Anders brief based on
13 your motion for mistrial, based on the inflammatory
14 language. But then they also noted in the brief, that in
15 order to preserve the objection, it needs to be made
16 contemporaneously, then they need to ask for curative
17 instruction and waiting until the end and then asking or
18 moving for a mistrial, that the error is not preserved,
19 which is why they didn't file a merits brief on the issue.

20 MR. NEELY: No, I think that's misstating the
21 record. I don't think it's a very brief note, I don't
22 think it states half of what he just said.

23 THE WITNESS: I made a motion for a mistrial.

24 MR. FALK: Yes, Your Honor.

25 THE COURT: Do I have the Anders brief?

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 MR. NEELY: You should, Your Honor.

2 THE COURT: Well, I'll certainly read that.

3 MR. FALK: Thank you, Your Honor.

4 THE WITNESS: I will tell you this, I'm not an
5 appellate attorney. So I've never handled an appeal in
6 my whole life. So I don't know where that plays out,
7 but that's my bag. I don't do appeals.

8 BY MR. FALK:

9 Q Was there -- during the course of the testimony,
10 was there some confusion or some inconsistencies regarding
11 the color of this Impala? The victims had an Impala and
12 Mr. Washington was in an Impala. Do you recall there
13 being -- I mean, you heard his testimony earlier, about it
14 was a white Impala behind the one gentleman's house, but
15 that he was in a gray Impala that Ms. Beckett was driving.

16 A Yeah, I don't know -- I mean, I remember something
17 about a white Impala. I think that's what the victims had.
18 Like a 2007 or something like that.

19 But I didn't get too excited. You know, some
20 -- I heard some people, you know, can call gray white, or
21 white -- a dirty white car might look gray. I didn't -- it
22 wasn't like it was purple or green or anything. But -- and
23 I didn't know whether, you know, if a car gets burned, it
24 can probably look darker, but I'm not sure. I don't think I
25 saw that as a big issue.

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 But I mean, I'm sure that, you know,
2 testimony was presented. I mean, I would have to look back
3 at every word, and I don't know if we ever mentioned that
4 discrepancy between the color of the vehicles or not.
5 Either me or Mr. Sanford so --

6 MR. FALK: One moment, please.

7 BY MR. FALK:

8 Q So did Mr. Washington explain to you, part of his
9 alibi that he was in a gray Impala this whole time, and that
10 he wasn't in a white Impala?

11 A He told me that he was at Tynesha Young's
12 apartment, is what he told me, at Druid Hills. And he
13 talked about different cars that his girlfriend owned. He
14 said it was Shauna Kim (phonetic) at the time in Beaufort.
15 Said he was driving her car, I think. But I don't recall
16 off the top of my head what kind or what color it was.

17 Q Who was that?

18 A Shauna Kim. That was his girlfriend at the time.
19 She lived in Beaufort. And he said that he was driving her
20 car, is what he told me. But I don't recall. I mean, if he
21 says it was an Impala -- if he says it was an Impala, you
22 know, I don't have any reason to disbelieve that. I could
23 probably look at my notes, if you want me to. Do you want
24 me to look and see if he told me that?

25 Q Yes, sir.

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 A Okay.

2 Q He mentioned one time about riding around in a
3 purple car that belonged to one of Mack Washington's
4 friends, who Tyhene Lewis did not know, the Co-Defendant.

5 A Now, I -- I did -- hold on one second.

6 Yeah, I don't see the -- I think he just said
7 he was driving her car. I don't -- I don't think he said
8 what kind, from what I'm seeing.

9 Q Okay.

10 A And at one time he said, Shauna Kim was staying at
11 Druid Hills apartments. In Apartment I-4. But then, I
12 don't know if that's right or not.

13 There's something about a black Honda in
14 here. So, I'm not sure.

15 MR. FALK: I have no further questions.

16 THE COURT: Mr. Neely.

17 MR. NEELY: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. NEELY:

20 Q And just so we are clear, during your
21 conversations with Mr. Washington, he never mentioned a
22 Loretta Beckett to you?

23 A I don't recall her. I have no -- you know, I
24 looked, I got a lot of notes in here. I don't see anything
25 in there about her. And she wasn't on my -- you know, I had

CROSS EXAMINATION OF E. BENNETT BY NEELY

1 a witness list, and she wasn't on there. And so if -- I
2 didn't know -- I don't have anything in my file that
3 reflects that.

4 Q And his story to you was consistent that he was at
5 Ms. Young's house?

6 A That's what he told me, that he had a key. You
7 know, that came out in trial.

8 Q Right. And so it is fairly -- would you agree
9 with the characterization that it's fairly inconsistent to
10 say that he was driving around with Ms. Beckett at the same
11 time that he was at Ms. Young's house?

12 A Yeah. I mean, there was -- he never told me that,
13 you know, when I was interviewing him. It didn't show up in
14 the note I did, he never mentioned Loretta Beckett early on.
15 He says he brought it up right near the end, but I don't
16 recall it, and I don't remember seeing anything. And I
17 don't even remember her being in court.

18 I don't recall seeing her in court or anybody
19 telling me about her. I mean, you know, I always try to --
20 you know, I try to defend all my clients to the best of my
21 ability. And if somebody tells me they got an alibi
22 witness, I don't have any problems putting an alibi witness
23 on the stand.

24 Well, now, if you have a notice requirement,
25 I guess that it would be up to the State to object to that,

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1 you know. But anytime that I get an alibi witness
2 information, my normal policy is, you know, I disclose that
3 to the Solicitor's office. And they already knew about
4 Tynesha Young because, you know, that came up early on.

5 Tynesha Young even met with police officers
6 and said -- but they knew about, you know, she had been
7 mentioned as an alibi witness. And she made a statement to
8 the police that, you know, she was asleep, you know, at 10
9 o'clock. She wasn't awake when the Rice Planters -- people
10 that robbed the Rice Planters Inn. And then she says, We
11 went through a whole diatribe, she said he came back in her
12 apartment at four in the morning. And, of course, I asked
13 her, Well, how do you know he wasn't there the whole time?
14 You were asleep. You know, I mean, I tried to establish
15 that he was there, you know, when the crime occurred.

16 Q Would you say it's fair to characterize that as an
17 imperfect alibi if she stated she went to bed at 10:00 p.m.
18 and the call to law enforcement went out at 11:53?

19 A You said law enforcement did what now?

20 Q The call -- law enforcement was called about this
21 incident at 11:53.

22 A On, yes.

23 Q So her testimony was that she was asleep when this
24 event would have occurred?

25 A Yeah. She said that he was there when she went to

CROSS EXAMINATION OF E. BENNETT BY NEELY

1 sleep.

2 Q When she went to sleep, which was about --

3 A And when she woke up, he was there. But then he
4 said something about he had just come in. You know, like
5 from outside at 4:00. And basically after I tried to
6 establish, well, how do you know that if you were sleep?
7 You know, how do you know he just didn't walk outside and
8 walk right back in, you know. So I basically tried to
9 plant, you know, a seed or tried to present evidence to the
10 jury that he was at her apartment.

11 Q And actually I understand your argument that you
12 were planting the seed that perhaps he was there the entire
13 time.

14 A Yeah.

15 Q And she just didn't know about it.

16 A Right.

17 Q But her testimony, I don't think can be
18 characterized as an alibi because she was unable to testify
19 that he was there when the robbery occurred; is that
20 correct?

21 A Yeah. She said she -- yeah, that is right. She
22 testified he was there when she went to sleep. I think she
23 said -- it seems like there was some mention that he slept
24 on the couch or something when he was there. And then she
25 said the next time she was aware of, was like, I think, 3 or

CROSS EXAMINATION OF E. BENNETT BY NEELY

1 4 o'clock in the morning.

2 Q Right. And so her testimony was when she went to
3 bed at 10:00 p.m., that Mr. Lewis, who was Mr. Washington's
4 Co-Defendant, and Mr. Washington were both in the house?

5 A Uh-huh. (Indicating affirmatively.)

6 Q And then Mr. Lewis actually gave a statement
7 confessing to the crime?

8 A Uh-huh. (Indicating affirmatively.)

9 Q And implicated Mr. Washington as well?

10 A Yeah.

11 Q Concerning the -- the statements that you believe
12 are objectionable in the closing argument, when the Judge
13 offered to give you a curative instruction, you declined
14 that curative instruction; correct?

15 A Yes, it was about the pattern.

16 Q Correct.

17 A Yeah.

18 Q And so the Judge offered a curative instruction,
19 and you said, I don't want that, it'll call attention to it.
20 And I think it'll be better left alone.

21 A Yeah. I didn't want them honing in on it, is what
22 we ultimately decided. I guess it is a trial strategy
23 decision.

24 Q Certainly. If you had objected -- if you decided
25 to object during the closing argument as opposed to weighing

CROSS EXAMINATION OF E. BENNETT BY NEELY

1 in at the end of the closing argument, would your decision
2 on the curative instruction, declining the curative
3 instruction, have been the same; do you think? For trial
4 strategy reasons?

5 A No. I don't think -- well, I probably would have
6 asked for it.

7 Q You would have asked for a curative instruction?

8 A Probably, if I had have objected during the
9 closing argument, because I then I had already drawn
10 attention to it.

11 You know, see the motion for mistrial was
12 made outside of the presence of the jury. So it could have
13 been different.

14 Q And would Mr. -- Mr. -- when Judge Perry Buckner
15 declined your motion for a mistrial, he didn't agree with
16 your assessment that the pattern implicated a prior criminal
17 history, did he?

18 A Well, yeah. I don't know how he -- I know Tameaka
19 Legette argued, she said that when she mentioned pattern, I
20 think she -- it's in there, I think she said, because it was
21 two people. You know, I don't know. But she -- she tried
22 to explain it.

23 And to be honest with you, I don't think
24 she -- I guess she didn't intentionally mean to interject
25 that in there, but it was just the -- you know, the use of

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1 the word "pattern," to me, kind of implied to me that it's
2 been done before. You know, you wouldn't normally talk
3 about a pattern based on one incident, one single incident.
4 And that's kind of what I was trying to argue.

5 Q Certainly. And I understand your argument.

6 A Yeah.

7 Q And in this case, there were, at least by the
8 State, three allegations of Mr. Washington strong arming
9 somebody; isn't that correct? Because you had Ms. Young,
10 where she alleged that he wouldn't let her speak to police,
11 took her phone from her, and held her in the bedroom; isn't
12 that correct?

13 A Yeah. That's what she said.

14 Q Right. That's what she said. And then before
15 that would be the robbery incident, where he robbed the two
16 elderly people.

17 A Uh-huh. (Indicating affirmatively.)

18 Q Correct?

19 A Uh-huh. (Indicating affirmatively.)

20 Q Say, yes or no.

21 A Yes, that's right.

22 Q Sorry. It's for the court reporter.

23 A Yeah. That's right.

24 Q And then the third incident would be the State --
25 well, third and fourth incidents, would be the State would

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1 allege that Mr. Washington, threatened and coerced his
2 Co-Defendant into writing statements retracting his
3 statement that he was --could -- part of the robbery with
4 Mr. Lewis.

5 A That's right.

6 Q So that would be four incidences, where the State
7 is alleging Mr. Washington used force to coerce somebody
8 into doing something?

9 A Uh-huh. (Indicating affirmatively.)

10 Q Is that correct?

11 A Yes, that would -- that is correct. Yeah.

12 Q So, you know, it's possible that's the pattern
13 that the Judge saw. So that is at least more than one
14 instance that the State is alleging that Mr. Washington used
15 force to gain -- to accomplish his desires and will,
16 correct?

17 A Well, that is certainly a possibility of how he
18 looked at it, I guess. That is how he came down on it.

19 Q And you said you don't remember the car being --
20 the color of the car being an issue at trial. To your mind,
21 and the transcript reflects that the victim called the car a
22 "creamy white." But this was also at 11:45-ish?

23 A At night.

24 Q At night. So it would have been dark at that
25 point in time.

CROSS EXAMINATION OF E. BENNETT BY NEELY

1 To your mind, is there a whole lot of
2 difference between creamy white at 11:50 and gray, that the
3 witness called the car?

4 A That doesn't seem like a huge discrepancy. A lot
5 of witnesses will give ten different accounts of the same
6 thing, you know. But it don't mean it's not like purple or
7 green. I mean, I don't think a light gray and a creamy
8 white are probably not way far apart on the spectrum.

9 Q Right. I mean, even Mr. Washington's witness that
10 came up here earlier, described her own car as both silver
11 and gray.

12 A That's right. I don't think that turned the case,
13 if you're asking me that. I don't -- I mean, it is a piece
14 of evidence, but I don't think it was crucial to the final
15 outcome.

16 MR. NEELY: I believe that's all the questions I
17 have, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. FALK:

21 Q Your objection to the closing argument, did that
22 include the sentence about "who among us is safe, ladies and
23 gentlemen?"

24 A I don't think I mentioned that.

25 Q Do you find that again as possibly over the line,

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 or inflammatory type statement?

2 A I have heard similar type statements from
3 solicitors. So, you know, I don't know if you are a trial
4 attorney or whatever, but sometimes you have to make a call
5 about objecting while somebody is in closing argument.
6 Because if you do stand up and object to a solicitor's
7 closing argument, you better dad gum well be right because
8 then you really get castigated and fussed at. But, yeah,
9 you know, I actually do consider it. I considered it, and
10 then, you know, when we got around to using the word
11 "pattern," I thought I had a pretty meritorious actual
12 ground for a motion for a mistrial.

13 Q But as far as just trying to make a record here,
14 what had been preserved and what hadn't been preserved, your
15 statement about who's going to protect us from this man,
16 that was not part of your objection to the closing argument.
17 I don't think it's in the --

18 A I mean, the transcript speaks for itself. I will
19 tell you, this was three years ago, I can't remember
20 everything I said yesterday. And as you may have a
21 gatherer, I talked a lot at the time. Sometimes it's hard
22 to remember everything I say.

23 Q Well, are you comfortable just letting the
24 transcript speak for itself then?

25 A Yes. Whatever I argued, I argued.

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 Q Okay.

2 A Yeah, I said -- it's on Page 497, is where I
3 started making the motion. But I said it's improper in that
4 she told the jury, "My client had a pattern of robbing old
5 people."

6 I said, "He did not take the stand. This
7 case, his past record before this, was not published to the
8 jury."

9 "We believe that by saying he had pattern for
10 robbing old people implies that he has a prior record for
11 doing that, or prior charges to that. A pattern is not just
12 one time, a pattern is something that is repeated. We think
13 that implies to the jury he had a prior record of robbing
14 old people. That certainly is prejudicial to my client, and
15 there's no evidence to that in this case. We feel like that
16 would be the basis for a mistrial."

17 Well, I argued that pretty good, I thought.
18 It was the "pattern of robbing old people," that I thought
19 was most prejudicial.

20 Q I agree with you. Well, I certainly agree that's
21 certainly very prejudicial.

22 Did Judge Buckner tell you what curative
23 instruction he would give?

24 A Just to disregard that.

25 Q And that would be just basically disregard that

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 last remark?

2 A Yeah, pattern. That's particularly what we talked
3 about.

4 Q Did you suggest another curative instruction?

5 A I didn't. I didn't, I just -- I didn't want to
6 call any further attention to it.

7 Q So the reason why you didn't ask -- because you
8 could have probably framed a curative instruction similar to
9 like a 404(b), you know, Lyle type instruction that could
10 have been given?

11 A Yeah, I could have asked for that. But between me
12 and you, I don't know if anybody has ever done any research
13 on it, I don't -- you know, I know curative instructions
14 sound good, but do you really think a jury is going to say,
15 well, I'm just forgetting all that then. I mean, does
16 anybody really think that they do, even though the Judge
17 tells them? I kind of think they don't, you know.

18 Once a jury hears it, once the cat is out of
19 the box, so to speak, I think it's out of the box. But it
20 sounds all good in theory, you know, get a curative
21 instruction. But does that really resolve it? I don't --
22 you know, that's why I thought I should have been granted a
23 mistrial, because I don't think a curative instruction would
24 have done -- I mean, it sounds good in theory, but the jury
25 has already heard it, you know. And most people can't just

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 erase their memory.

2 Q Can't unring the bell?

3 A Yeah. That is just my opinion. I mean, everybody
4 has got different opinions though.

5 MR. FALK: Your Honor, could I address something
6 that I should have talked to on direct?

7 THE COURT: Yes.

8 BY MR. FALK:

9 Q There was a testimony about one of the jurors
10 being asleep. Did anyone call that to your attention, that
11 one of the jurors was dozing off?

12 A No, I don't remember that.

13 Q You heard Mr. Washington's testimony about notes
14 going back and forth between he and maybe your associated
15 counsel, or maybe your associated counsel and you. Do you
16 have any recollection of that?

17 A I don't remember any notes about a juror sleeping.
18 Now, sometimes, I will tell you, you know, Mr. Sanders, one
19 thing I asked him to do on -- when I was, you know, doing
20 cross or what have you, for him to write down questions or,
21 you know, that he thought should be, you know, like, on
22 recross and that kind of thing. And that was what most of
23 our notes were about.

24 I don't -- I never remember seeing any note
25 about a sleeping juror. And I certainly never noticed any

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 juror sleeping.

2 Now, I know I'm going to guarantee -- I don't
3 know if you know Judge Perry Buckner. If Judge Perry
4 Buckner saw a juror sleeping, he would definitely take care
5 of that. I don't -- I don't think there's any doubt about
6 that. And he's pretty observant.

7 So, now, if Mack says he saw somebody
8 sleeping, I didn't. But I know if he says that, you know,
9 he -- you know, I don't -- I mean, I don't know why he would
10 say that, but I didn't see it.

11 Q Had it been brought to your attention, what would
12 you have done?

13 A If I actually saw a juror sleeping, I would
14 generally tell the Judge if I knew about it.

15 Q And then what?

16 A Huh?

17 Q Would you ask for a mistrial? What would you do?
18 Tell the Judge.

19 A That's all I could do is ask for a mistrial. And
20 sometimes it might be helpful that a juror is sleeping, if
21 they're hearing all bad stuff. But, I mean, in general, you
22 want the jury to hear everything.

23 Q Was there still an alternate in the box?

24 A I think so. But all, you know, if there was one
25 sleeping juror, all the other 11 apparently heard everything

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 and it didn't apparently make any difference. I mean, you
2 know, they gave a unanimous verdict for guilty.

3 And I think I polled the jury, too, if I'm
4 not mistaken. I'm not sure of that. I usually do in a case
5 like this.

6 MR. FALK: No further questions.

7 MR. NEELY: No recross.

8 THE COURT: I just haven't read the entire
9 transcript. I have a question that probably is
10 completely irrelevant.

11 But Mr. Bennett, did the Defense put any evidence
12 into this record?

13 THE WITNESS: No.

14 THE COURT: Why didn't y'all get final argument?

15 THE WITNESS: You know, I thought we did.

16 THE COURT: The way the transcripts read, you
17 didn't. And the transcript may be reversed. The way
18 the transcripts read, it was Mr. Bennett's argument
19 first, and then there was the Solicitor's argument.

20 MR. NEELY: Not if Bennett put the statements into
21 evidence, Your Honor, the Co-Defendant's statements.
22 For impeachment purpose cross-examination.

23 THE COURT: Oh, is that what it was? Okay. Now,
24 that explains it.

25 THE WITNESS: Yeah, we didn't present a witness.

REDIRECT EXAMINATION OF E. BENNETT BY FALK

1 THE COURT: But you did put in a statement.

2 THE WITNESS: We did, that's right. We did put it
3 in. Now, I know why.

4 MR. FALK: Your Honor, may I ask a question on
5 that subject?

6 I just want to know if he appreciated the fact
7 that when he put the exhibit in, he was losing the last
8 argument?

9 THE COURT: That is not part of your application.

10 MR. FALK: Thank you.

11 THE COURT: All right. Thank you, sir.

12 MR. FALK: May I have a moment with my client?

13 THE COURT: Yes, sir.

14 MR. FALK: Your Honor, we have no further
15 questions.

16 THE COURT: Any further witnesses?

17 MR. FALK: We have no further witnesses.

18 THE COURT: State have any?

19 MR. NEELY: The State would call Ms. Legette to
20 the stand.

21 Thereupon,

22 TAMEAKA A. LEGETTE

23 was called as a witness, having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 BY MR. NEELY:

2 Q Thank you for being here, Ms. Legette.

3 A Yes.

4 Q Before we get into your closing argument, would
5 you summarize the State's evidence against Mr. Washington to
6 the Court?

7 A Okay. The evidence we had against Mr. Washington
8 included the Clemms, who had been robbed, I believe at knife
9 point by two tall, slender, black males. And had been
10 robbed of all their possessions, only left with their dog.
11 They called 911, they were at Rice Planters Inn, they come
12 down, I believe, from Ohio. And I believe Jason Chapman was
13 one of the officers who responded. They ended up -- and
14 forgive me, but it's kind of disjointed, it's been a long
15 time -- but they ended up going over to Tynesha Young's
16 apartment. I think this was perhaps on t he day after or
17 maybe that same night. I'm not real sure.

18 But they went over to Tynesha Young
19 apartment, and they got word that it was Mack Washington who
20 had been involved. They brought in, I believe, Tyhene
21 Lewis, called him, with his mother, I believe, present. And
22 he confessed to the entire crime. He included Mack
23 Washington basically, I think, being, more or less, the lead
24 person involved. And I think Tyhene Lewis ended up hanging
25 out with Mack Washington perhaps at Druid Hills, where

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 Tyhene Lewis was living at the time.

2 And basically he went over to Tynesha Young's
3 apartment at Druid Hills, and Mack Washington apparently was
4 there. I think she got barricaded in. He wouldn't allow
5 her to get out of the apartment. I think she wanted to open
6 the door. Jason Chapman, I think, responded. Jason knew
7 Mack from basically -- you know, just Jason being, I think,
8 a lieutenant at the Walterboro police department for a
9 number of years.

10 And Tynesha wanted to open the door. They
11 had to get her mom to come over to get her to open the door.
12 She indicated that Mack wouldn't let her open the door.
13 There were several items found in the apartment itself,
14 along with, I think maybe days later, a toilet backed up in
15 Tynesha's apartment, and I believe the groundskeeper
16 actually took the toilet apart and found, I believe, some
17 credit cards and possibly even a driver's license inside the
18 toilet that may have been flushed by Mack Washington.

19 I believe some of their clothing and effects
20 were found at a landing somewhere in Colleton County. This
21 is Clemms' stuff. And parts of their car may have been
22 recovered. Even maybe, I think, a set of golf clubs were
23 recovered somewhere.

24 Then, thereafter, we were getting the case
25 ready for trial, Mack had several attorneys. Then there was

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 a letter that came from Tyhene Lewis, and apparently he had
2 gotten a YOA for his plea. He got a YOA for him cooperating
3 with the State's case. There was a letter that came, I
4 think, from the jail. I'm not sure how we ended up with
5 this letter from jail, and indicate where Tyhene Lewis had
6 recanted his testimony, previous testimony about what
7 happened with Mack Washington.

8 We brought him in, talked to him again. He
9 indicated basically, more or less, he had been physically
10 threatened or coerced by Mack Washington while he was in
11 jail to write the letter. He got in trouble again. After
12 getting out on YOA parole, he got in trouble again, ended up
13 in jail.

14 Leslie Jameson indicated, I believe, that
15 Mack tried to get her to notarize the letter and she would
16 not. And that's pretty much the summary, as I remember it.
17 There may have been more -- I'm sure there was more.

18 There were other witnesses, I think Quincy
19 White was involved. And he saw Mack in the vehicle down in
20 Turkey Hill or Green Pond, not really sure.

21 Q And if, just to kind of jog your memory, do you
22 recall Quincy White testifying the applicant claimed that he
23 stole a Chevy Impala?

24 A Yeah, I think so. Yes. Yes. And there was
25 several people who were involved in this whole case, and I

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 believe Quincy White. And I asked him if the record
2 reflected this, and as soon as I asked him that, then he
3 said yes.

4 Q During your closing argument -- first off, did you
5 notice any jurors asleep at the trial?

6 A No. Specifically, Ms. Singleton, I'm familiar
7 with Ms. Singleton. Ms. Singleton standpoint was this.
8 After the jury was sworn, I learned from the Clerk of Court
9 that a juror was on the jury, who was the mother of a young
10 man who had been sent to prison for his involvement in a
11 triple homicide that was prosecuted by the Attorney
12 General's office, and that it's a Colleton County case, and
13 that she was on the jury.

14 And so when I figured out that she was on the
15 jury, and she actually was the mother of this young man, I
16 came very, very concerned about the jury and what it would
17 do to our case. I had no grounds to ask for her to be
18 relieved. I became hyper aware of the jury, and so I
19 watched them. Our investigator, Angela Stallings, watched
20 them because I was concerned how do we connect with a woman
21 who actually might be hostile towards the State of South
22 Carolina, given that her son was currently in prison.

23 So I was very aware of the jury, very hyper
24 aware of them, I watched them. I did not see any jurors
25 sleeping. Mr. Neely testified earlier about Judge Buckner's

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 courtroom. It's impossible to have sleeping jurors in Judge
2 Buckner's courtroom. I mean, if I had seen someone
3 sleeping, I would have brought it to his attention. I
4 certainly wouldn't have allowed the jury -- especially
5 Ms. Singleton, or anyone else, to sleep during the actual
6 trial. So, no, I noticed no one sleeping. Not anyone, no.

7 Q If you had noticed that particular juror sleeping,
8 would you have asked the alternate to be put in place of
9 her?

10 A Yes. I would have brought it to the Court's
11 attention immediately, and I would have asked either
12 instruction not to sleep or put the alternate in that
13 person's place if they could not remain awake.

14 Like I said, I found out about her from the
15 Clerk of Court about that particular issue, and so I became,
16 hyper aware of her especially. No one else was sleeping,
17 and I would have asked the Court to do something about it.
18 Should I had -- had I noticed, whether it was brought to my
19 attention.

20 My investigator as well, Angela Stallings,
21 and she indicated to me she didn't remember anyone sleeping.
22 And she has a memory like an elephant. So none of us
23 actually saw anyone sleeping, nor do we have any memory of
24 anyone sleeping during that particular case.

25 Q During your closing argument, when you mentioned

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 Mr. Washington's pattern of behavior, what pattern were you
2 talking about?

3 A I was referring to what he had done as far as the
4 case was concerned. Especially with Tyhene Lewis being 16
5 years old, him having come under the influence and
6 manipulation of Mack Washington. And if began to actually
7 get involved with the robbery.

8 And, thereafter, the second part of that was
9 Tynesha Young, and how she also was young. And the night
10 they came to the apartment looking for Mack Washington, how
11 she wanted to open the door, but Mr. Washington would not
12 allow her to open the door. And so how he had basically --
13 yeah, he's violent, keep her from opening the door, and
14 threatening her and manipulating her as well.

15 And, thereafter, it was -- well, the Clemms
16 themselves. And as far as the pattern was concerned,
17 they're two old people -- well, the old people that I was
18 referring to were the two of them. I mean, there was two
19 robberies. Mr. Clemm himself, and they're both, I think, in
20 their 70s or maybe early 80s. And you have his wife, who
21 was also robbed. So you have the two robberies there, then
22 two kidnappings of these two old people. There was no
23 mention of or any reference to his past behavior. It was
24 simply all in this case, and the way he would manipulate
25 people during this particular case.

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 And even with regards to Captain Jameson at
2 the time. I think he -- based on what I remember of the
3 overall testimony, it was more or less how he tried to
4 manipulate her in getting her to notarize the document he
5 had, indicating that Tyhene Lewis, somehow he had gotten
6 this letter from Tyhene Lewis and wanted her to notarize it.

7 So the pattern I was referring to was the
8 pattern of his behavior during the case itself in regards to
9 Tyhene Lewis and how he lured a young boy, how he lured and
10 basically used and lured and manipulated Tynesha Young, as
11 well as what he did with the Clemms, and with regards to
12 Lieutenant Jameson at the time.

13 Q And Judge Buckner agreed with your reasoning?

14 A Yes. Well, he had -- I think he had a Bench
15 conference. And he also saw the same pattern with regards
16 to what he had done with the young people, with regards to
17 the two old people, and there were actually two victims.
18 Rather than it just being one victim, it was actually two --
19 well, one incident, but you have two old people who actually
20 robbed at night of their possessions. As well as Tynesha
21 Young, as well as Tyhene Lewis.

22 Mr. Washington actually getting Tyhene Lewis
23 to be involved in the robbery, as well as him getting him to
24 write a letter, intimidating him while he was jail, as well
25 as Lieutenant Jameson, what he had done trying to get her to

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 actually notarized this letter.

2 Q Unrelated to that line of questioning, but did
3 Mr. Lewis, during his questioning, have trouble answering
4 questions?

5 A Yes. He had trouble answering questions. I'm not
6 sure if he was nervous or what his problem was. But at a
7 point, I guess the transcript itself has a void of the
8 emotion that's involved in trial. And so at a point, I
9 became very animated myself, trying to get him to remember
10 and tell the truth. Because I felt like -- and based on
11 what I had seen, he entered a plea freely and voluntarily,
12 with advice of counsel, competent counsel, and then he had
13 gone and as long as he had been out of jail and not around
14 Mack Washington, his story never changed. His -- the facts
15 of his case never changed.

16 It wasn't until he went back to jail, was
17 around Mack Washington in the actual detention center that
18 all of a sudden, this letter came out.

19 And so with him having trouble being able to
20 answer, and he hasn't said one thing on direct exam with me,
21 a totally different thing with Mr. Bennett, it seemed to me
22 he was being led down this road of, you know, basically
23 destruction where he -- I'm not sure if he's listening, I'm
24 not sure if he's getting it. But certainly I'm trying to
25 get him back to this is what you originally said. You know,

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 you were with your mother, were you intimidated then when
2 you gave a statement to Detective Chapman at the Walterboro
3 police department. And so it was like he was having trouble
4 remembering, so I wanted to make certain he remembered and
5 so I became rather animated. And what I mean, "animated," I
6 mean, rather harsh. Angry.

7 Q Is that what your statement of calling him "a
8 gentle soul," and apologizing for getting animated with him
9 was about in the closing argument?

10 A Yes, because by the time I was trying to -- by the
11 time I was physically lassoing him back in, or reining him
12 in, I was probably yelling at him, and like I said before, I
13 was hyper aware of the jury, I was hyper aware of Ms.
14 Singleton having a son who was in prison. I was hyper aware
15 of not losing the jury. And so I felt in those moments that
16 when I was yelling at Tyhene Lewis, or I was being as, I
17 suppose, harsh as I possibly could to a witness who has been
18 inconsistent, I had to consider that I might lose Ms.
19 Singleton, a juror, who obviously probably already has a
20 reason not to like the State of South Carolina.

21 So it was my intent not to lose her in those
22 moments, but at the same time, I had to make certain that he
23 understood this is the time for you to tell the truth. And
24 so when I called him a gentle soul, I simply was saying,
25 look, I was the person who was not gentle. What I had done

DIRECT EXAMINATION OF T. LEGETTE BY NEELY

1 to him probably looks bad. I understand that.

2 There was a purpose to it, and simply calling
3 him that was basically saying, look, don't blame him, I was
4 the person that -- I was the bad guy in the situation. I
5 was the person that had to do what I had to do to have
6 Mr. Lewis tell the truth, as it originally was.

7 Q So the gentle soul remark wasn't a comment on his
8 credibility, it was a comment on the emotionality of the
9 testimony?

10 A Yes. I'll be honest, I was basically kind of ugly
11 to him during that period of time, and I can't -- just in a
12 word, characterize it, I'm sure, rather being ugly. But it
13 was certainly very stern at the time.

14 MR. NEELY: Thank you. That's all the questions I
15 have, Your Honor.

16 CROSS EXAMINATION

17 BY MR. FALK:

18 Q Could you, I'm not sure I heard it correctly, what
19 was Ms. Singleton's relationship with her son and the prior?

20 A What I learned after the jury was selected, and it
21 was also confirmed to me at the end of trial by Laurie
22 Sanders, Laurie Sanders actually had previously represented,
23 I believe, Ms. Singleton's son, when he was actually
24 convicted at trial. I didn't know who Ms. Singleton was, I
25 had no idea during the actual jury selection process. I had

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 no idea who Ms. Singleton was.

2 And I found out after the jury was selected
3 that Ms. Singleton actually had a son who was convicted at
4 trial of -- I mean, I'm not sure what it was, but it was
5 suspicion of conspiracy, maybe, some sort of charge with
6 regards to a triple homicide that happened in Colleton
7 County. I had no idea who she was prior to that.

8 And once I found out who she was, then I had
9 to consider, well, we have no grounds to have her relieved,
10 and I now have to be hyper sensitive and hyper aware of the
11 entire jury panel, which I would have been anyway. But I
12 remember being hyper sensitive to Ms. Singleton, and I
13 basically became very sensitive to the entire jury panel.

14 Q And so her son was represented by co-counsel in
15 this case?

16 A I found that out after the trial -- well, just
17 before deliberations ended. Laurie Sanders came to me and
18 indicated that basically he actually had represented her son
19 prior to the actual -- I guess that was not really sure when
20 that was. But it was at some part where he had represented
21 her in the past -- he represented her son in the past.

22 MR. FALK: It's Page 60. I'm just reading through
23 the voir dire.

24 Your Honor, I'm trying to see -- Your Honor, this
25 is new information regarding Ms. Singleton, and I'm

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 just trying to track down what --

2 BY MR. FALK:

3 Q So, you believe her responses to the voir dire
4 were accurate?

5 A I'll be honest with you, I don't remember the voir
6 dire questions. I remember -- I always look at jurors when
7 they come up. If they look at me in the eye, I seat them,
8 and I had no reason to strike her.

9 Q On Page 6 -- I'm just going through this for first
10 time and I apologize -- but on Page 60 of the transcript,
11 Line 11. ;

12 THE COURT: You said, "60"?

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

14 MR. FALK: Your Honor, may I approach and give her
15 a transcript?

16 THE COURT: Uh-huh. (Indicating affirmatively.)

17 THE WITNESS: What page did you say?

18 BY MR. FALK:

19 Q Page 60.

20 A Uh-huh. (Indicating affirmatively.)

21 Okay. I'm there, yes.

22 Q Okay. On the top, the paragraph on the top of the
23 page, "Is any member related by blood or marriage to
24 Mr. Bennett or Mr. Sanders?"

25 A Yes.

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 Q "Nobody standing."

2 Then the next question is: "Any member of
3 the jury panel ever been represented in the past either by
4 Mr. Bennett or Mr. Sanders?"

5 A Yes.

6 Q So she shouldn't have stood up?

7 A No. She didn't have -- she was not represented by
8 Mr. Sanders, it was her son. And that question clearly
9 asks, "Is anyone on the jury panel ever been represented in
10 the past by Mr. Everett Bennett or Mr. Laurie Sanders,
11 currently or in the past. Stand at this time."

12 She was not represented, it was her son.

13 Q Okay. Okay.

14 A So the answer to your question is, she did answer
15 correctly, yes. She did not stand, she was not represented
16 by him.

17 Q Thank you.

18 In your testimony, you said that Jason
19 Chapman knew Mr. Washington because he was at the Walterboro
20 police department?

21 A Jason knows basically everybody, and Jason had
22 been a Walterboro police department officer, I think, at
23 that time, ten, 13 years, and knows -- I mean, I'm telling
24 you, Jason knows virtually everybody. And not only from the
25 standpoint of them being members of the community or

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 criminals, but he also has various informants. And as far
2 as anything goes, I mean, I think he probably even talked to
3 Mack before about these various things in the community, to
4 be honest with you. Because he does -- he just knows
5 everybody, including judges and lawyers and just various
6 members of the community.

7 Q Has he ever arrested Mr. Washington in the past,
8 to your knowledge?

9 A At that time, he worked for the police department.
10 He might have, but at the time when he talked about Turkey
11 Hill, Jason worked for the City, and so Turkey Hill is out
12 in the county. I don't know if he arrested him or not. He
13 might have, he might not have. But at the same time, the
14 question basically was -- I can't remember what the actual
15 question was, but it was more or less that Mr. Washington
16 basically was kind of nowhere around. He had basically fled
17 the area and he was gone.

18 It was more or less that he was no longer
19 anywhere he could actually find him. So, the community, as
20 small as it is, with Jason knowing everybody, Mack not being
21 very difficult to find, and him wanting information, I think
22 he and Mack had probably had conversations in the past.

23 Q Let me go back to Ms. Singleton. I haven't had
24 the pleasure of trying a murder case, or a criminal case,
25 before Judge Buckner. Does he usually let counsel submit

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 voir dire, or does he just go through those five questions
2 that he --

3 A You can, if you'd like to.

4 MR. NEELY: Objection, relevance. I don't believe
5 this has anything to do with any of the allegations
6 made.

7 MR. FALK: Well, Your Honor, I'm in possession of
8 new information regarding Ms. Singleton that I just
9 found out today. And as opposed to coming back later
10 and saying there's new information, I just thought I
11 could find out right now.

12 I guess I was surprised to find out that somebody
13 would be seated on the jury that would have had that
14 relationship, with having a son being convicted of a
15 violent crime and not knowing about that during the
16 voir dire. So it's caught me by surprise, and I'm just
17 trying to get my arms around that because I'm not sure
18 I would have wanted to seat Ms. Singleton had I been
19 trial counsel.

20 THE COURT: I'm pretty sure Ms. Legette wouldn't
21 have either. So what's your point?

22 MR. FALK: I don't have a firm point yet. I'm
23 just trying to get some information, and this is the
24 best opportunity to do it. I'm just saying, I'm just
25 finding out for the first time.

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 THE COURT: I'll give you some leeway.

2 BY MR. FALK:

3 Q You didn't submit any voir dire? Or if you did,
4 they didn't ask them because --

5 A Judge Buckner, if you can -- he always asks us
6 prior to trial to submit any motions we have or any voir
7 dire questions. And there were a lot of motions in this
8 particular case that Everett filed -- I'm sorry, Mr. Bennett
9 filed. And we can submit voir dire questions. I don't know
10 if I found any in this particular case, it just all depends
11 on the nature of the case, and I'm not sure whether
12 Mr. Bennett submitted any as well. But Judge Buckner,
13 typically, he will let you know in advance if you submit
14 them. He will let you know in advance. If you submit them,
15 he will let you know in advance I'll use this one, I'm not
16 going to use this one. He will give you an explanation for
17 why he's not going to use them, but you are welcome to
18 submit them if you would like to.

19 THE COURT: Okay.

20 MR. FALK: I have no further questions.

21 MR. NEELY: Nothing on recross, Your Honor.

22 THE COURT: Thank you very much, ma'am.

23 THE WITNESS: Yes, sir.

24 THE COURT: Anything further from the State?

25 MR. NEELY: Not from the State, Your Honor.

CROSS EXAMINATION OF T. LEGETTE BY FALK

1 THE COURT: All right. Be happy to hear from
2 Mr. Falk.

3 MR. FALK: Could I briefly recall Mr. Bennett,
4 just on this, limited to Ms. Singleton's son and the
5 voir dire.

6 THE COURT: Sure.

7 Mr. Bennett, could you please come around and take
8 the stand. You are still under oath, sir.

9 Thereupon,

10 EVERETT W. BENNETT, JR.

11 was recalled as a witness, having been first duly sworn,
12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q Do you recall submitting any voir dire? Because
16 looking at the record, it doesn't look like any sort of
17 tailored questions were.

18 A Yeah, I did. I always do every trial. Do you
19 want a copy of them?

20 Q Did you ask a question about whether or not anyone
21 had a close son or relative --

22 A Well, we knew that. Laurie Sanders represented
23 her son.

24 Q Okay. So you knew that at the beginning?

25 A Yeah. We would have never struck her. That is a

DIRECT EXAMINATION OF E. BENNETT BY FALK

1 dream to have a juror on the jury that your co-counsel
2 represented. You don't get any better juror than that.

3 Q Okay. So you knew it at the beginning?

4 A Yeah. Laurie represented her son. I can't
5 remember whether he was retained or appointed, but that was
6 in that gang shooting case that was tried through the State
7 grand jury.

8 MR. FALK: All right. No further questions.

9 THE COURT: Anything further?

10 MR. NEELY: No, sir, Your Honor.

11 THE COURT: Thank you, Mr. Bennett.

12 All right. Mr. Falk.

13 MR. FALK: I do have concerns about the closing
14 argument and about whether or not Mr. Bennett's
15 objection to some of the language in the closing
16 argument was properly preserved for appellate review.
17 I think -- I mean, the law is what the law is. I
18 can -- we -- I can provide the Court with case sites
19 that says that in order to make an objection like that
20 to a closing argument, that it's got to be made
21 contemporaneously, while in the course of the argument,
22 and not after the fact. At least, that is my
23 understanding of what the law is.

24 Therefore, although the objection was made and a
25 motion for a mistrial was made, I don't believe that it

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1 was timely, and I don't believe that the error was
2 preserved. And based on my conversations, I believe
3 that is why appellate counsel did not file a merits
4 brief on this issue, but instead filed an Anders brief
5 on the issue.

6 THE COURT: But why wouldn't you -- I mean, an
7 Anders brief is, as we all know, is submitted when the
8 attorney feels there's no meritorious issue. And to
9 just assume that the Court would take the position
10 that -- I mean, because it even states at the bottom,
11 in a footnote on Page 9, "Defense counsel did not
12 object when the Assistant Solicitor made these
13 prejudicial assertions in her closing. Consequently,
14 this Court may find this issue is more properly one for
15 post conviction relief rather than direct appeal."

16 Well, why would you just assume that and put it in
17 a footnote? Why wouldn't you flesh that out and argue
18 that to the Court?

19 MR. FALK: If we are going to speculate, I
20 believe -- and I'm not saying particular comments about
21 this case with the appellate defense, but I think
22 that's -- I know that that's what their practice is,
23 when they don't find an issue that, for one reason or
24 the --

25 THE COURT: Well, then, doesn't the Court -- now

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1 I'm talking about the appellate court -- when they
2 receive an Anders brief they still, along with their
3 staff, law clerks, and staff attorneys, they still
4 review the record to determine whether there's a
5 meritorious issue there. And then, of course, if not,
6 it's summarily dismissed. And here the Court basically
7 procuring an opinion, just does that basic, one line,
8 "dismissed after consideration of appellate's per se
9 brief and review of Anders in California. Counsel's
10 mission truly described it."

11 I know you can't answer for the Court, but I just
12 don't understand why it wouldn't have been listed as --
13 not preserved, therefore, the Court doesn't consider it
14 and dismisses the appeal.

15 In any case, go ahead.

16 MR. FALK: That's my argument, that it wasn't
17 properly preserved for appeal and that is why there was
18 not a meritorious finding on the issue.

19 THE COURT: Yes.

20 MR. FALK: I also think that we provided testimony
21 regarding the statement by Mr. Chapman that I think at
22 any time when the law enforcement officer tells the
23 jury, "I'm familiar with that gentleman," I think it's
24 very easy for a juror to then assume from that -- of
25 course, I don't live in Walterboro, but I think it's

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1 very easy for a juror to assume that, you know, law
2 enforcement officer knows him because he's been in
3 trouble with the law before, and I think that was a
4 back door way to try and address -- get it in front of
5 the jury that this is somebody who has skirted with the
6 law in the past.

7 And so I think that was a way to get prejudicial
8 testimony in front of the jury, and I -- I think that's
9 something that appellate court certainly can't address
10 because that issue is not preserved.

11 I think that it would be our position that his
12 objection to the closing argument should have also
13 included the inflammatory language, you know, "who
14 among us is safe, ladies and gentlemen," I think that's
15 asking the juror to not decide on the merits of the
16 case, but for just fear of this person and, therefore,
17 wanting to get him put out of the community, not
18 necessarily having anything to do with whether or not
19 he was responsible for the crimes that he was charged
20 with. And, therefore, I think that testimony was
21 inflammatory.

22 We will stand by the other points that we made
23 during our presentation, but I wanted to highlight
24 those two points.

25 THE COURT: Okay. All right, sir. Mr. Neely.

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1 MR. NEELY: Thank you, Your Honor. I guess, you
2 know, he didn't address the juror being asleep. But I
3 think that even in court today, we have seen the
4 continued pattern of Mr. Washington attempting to
5 manipulate people and putting testimony up.

6 We have testimony from Mr. Washington that notes
7 were being passed by a sleeping juror, that a juror was
8 asleep. We have testimony from both attorneys that
9 that did not take place. The passing of a note about a
10 juror being asleep did not take place, that both
11 attorneys were very aware, not only of the jury in
12 general, but also that particular juror, and that she
13 was not asleep. And he testified that she was asleep
14 throughout the trial.

15 We have test -- you know, him saying that he told
16 his attorney about this alibi witness, that his
17 attorney testified he was never told about. And, in
18 fact, not only was he never told about this alibi
19 witness, but actually conflicted with the actual alibi
20 that he told his attorney. And this -- that's the kind
21 of pattern that Ms. Legette was talking about.

22 We have -- we have Mr. Washington influencing his
23 Co-Defendant, the 16-year-old boy, basically, to come
24 with him in this robbery. We have him refusing to let
25 Ms. Young answer the door, and barricading her in her

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1 room and taking her cell phone away from her when law
2 enforcement came to the door.

3 We have him attempting to hide evidence by
4 flushing it down the toilet. We have -- and that is
5 not even mentioning the actual robbery itself that took
6 place. And then we have two instances, on two separate
7 occasions, where the Co-Defendant was not even with him
8 in jail, but in a separate part of county jail, where
9 he is threatening and coercing his Co-Defendant to
10 write statements trying to deny his own culpability.

11 This is certainly a pattern of behavior, and I
12 think Judge Buckner -- this is what Judge Buckner
13 found, this pattern of behavior was just -- Solicitor
14 Legette commenting on the facts presented in the case.

15 And if you look at Judge Buckner's language
16 whenever he offers to give a curative instruction --
17 and that is on Page 497 -- I'm sorry, 498, excuse me --
18 nope. Sorry. I'm scrolling this down on my lap, it's
19 489.

20 And this is Judge Buckner's language. "Would you
21 want the Court to prevent any confusion, which I don't
22 think exists, but would you want a curative instruction
23 from the Court, where I instruct them to disregard the
24 use of "pattern" by the attorney?"

25 Judge Buckner wasn't confused by what Ms. Legette

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1 meant. And he says earlier that she didn't mention
2 anything about her prior record, and that he didn't
3 think the pattern was talking about a prior record. It
4 was talking about the pattern of behavior throughout
5 Mr. Washington's course of behavior before the robbery,
6 during the robbery, and after the robbery, in
7 attempting to bring other people into the robbery and
8 then attempt to hide the robbery.

9 And certainly, to me, this is -- this is -- this
10 is also, you know, another defense for prejudice from
11 the State is that overwhelming evidence.

12 We have here a Co-Defendant implicating
13 Mr. Washington. We have the driver's license and
14 credit cards found at Mr. Washington's home. The guns
15 that were also taken from the cars of the victims found
16 in the home as well.

17 Ms. Young's testimony that both he and Mr. Lewis
18 were together the night of the incident, a mere hour
19 and a half before the incident took place. All of
20 these -- all of these things. And then we even have
21 the testimony of Mr. White, who said that
22 Mr. Washington confessed to stealing the Impala from
23 the day before.

24 To me, this is -- this adds up to overwhelming
25 evidence. I can't -- I can't conclude that any

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1 reasonable jury could come up with any conclusion other
2 than the fact that Mr. Washington was guilty of these
3 kidnapping and armed robbery charges.

4 Chapman's statement in regards to "I'm familiar
5 with Mack," I think people that are from cities don't
6 quite understand what a small rural county is like.
7 When I was a prosecutor in Newberry, we had a deputy
8 who knew every single person in the county. And if you
9 ever needed anybody in the county, criminal or not, you
10 could talk to him and he would tell you from memory.
11 You know, they live on 1268 Washington Street. And
12 that's testimony, not just from Ms. Legette, but also
13 from Mr. Bennett, that this is Walterboro, and
14 Mr. Chapman just knows everybody.

15 I certainly don't think it's objectionable, and I
16 don't think it -- I think it's a very far stretch to
17 assume a jury is going to take that to mean that he had
18 been arrested before.

19 In regards to whether the error was preserved,
20 even if he had asked for mistrial and didn't want the
21 curative instruction, I think that that would generally
22 mean the error is not preserved. Normally, we have to
23 ask for a curative instruction to get to error
24 preservation. And as Mr. Bennett said, that was a
25 matter of trial strategy. He didn't want to call

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1 attention to it, that's why he didn't object during the
2 closing argument, and that's why he didn't ask for a
3 curative instruction. He didn't think it was important
4 enough that he should draw attention to -- the jury's
5 attention to the word "pattern."

6 And, again, I think Judge Buckner's logic and Ms.
7 Legette's logic made perfect sense to me that he
8 certainly had a pattern of manipulating people and
9 using force to obtain what he wanted. And that's what
10 we have here.

11 Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 (Pause.)

14 MR. NEELY: And just in regards to "gentle soul,"
15 I don't think that is a comment on the credibility of a
16 witness at all. And, you know, as Ms. Legette
17 testified, sometimes, with a cold record, it can be
18 difficult to understand the emotionality that a
19 cross-examination and direct examination can be for any
20 witness, much less a co-defendant testifying against
21 his co-defendant.

22 And I think that that was certainly all that was,
23 and that is certainly how Mr. Bennett took it at trial
24 as well. But it was not a testimony on credibility, it
25 was more testimony on his nature, and that is all there

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1 was to it. So I certainly don't think there's any
2 grounds to that as well.

3 Thank you, Your Honor. That is all I have.

4 THE COURT: All right.

5 MR. NEELY: Your Honor, did I address the sleeping
6 juror at the beginning of my argument?

7 THE COURT: Oh, yes, you did. And I'm not -- I
8 mean, I'm not convinced of that, that being a concern.
9 I mean, I'm not concerned with any of that.

10 The comment about he knew where to find him from
11 law enforcement, I -- listen, I grew up in Edgefield,
12 South Carolina. To us, Walterboro is a big town. And
13 I can tell you, Sheriff Griffith, back when I was a
14 young'un, knew every one of us that ran those streets.
15 Sheriff Dolby after that. I don't think the fact that
16 anyone says, you know, I knew where to find Tommy
17 Russo, would think that Tommy Russo had any prior
18 run-ins with the sheriff's department. You know, I
19 agree with that, I think that's a stretch.

20 There's absolutely, as far as based on the
21 questioning and my understanding of the whole scenario,
22 this Loretta Beckett has no creditability. She wasted
23 her time coming here today. She came in here and, as
24 far as I'm concerned, willingly lied under oath about
25 everything she testified to.

COLLOQUY

1 There is absolutely nothing credible about what
2 she had to say. And if I'm wrong, and she did tell the
3 truth, shame on her for letting a man stay in jail for
4 21 months and sit here and say, "Well, there's nothing
5 I could have done."

6 I can tell you if someone is with me, and then
7 they're accused of committing a criminal offense
8 somewhere else, the first thing I'm going to do is go
9 to law enforcement and say hold on a minute, you got
10 the wrong person. And I'm not going to let that person
11 wale away in jail for 21 months.

12 There was nothing credible about her testimony at
13 all, so I'm going to completely disregard the alibi
14 issue. It just didn't work. It was cheap, and it was
15 ill-prepared.

16 I do have some things that if you want to look at
17 regarding the closing arguments, and the issues -- the
18 issue preservation on the things regarding that. And
19 so for most of what was presented, I can dismiss.

20 But that's an issue that I think the Court needs
21 to really look at. And so I'm going to take the
22 opportunity so that I can read -- I've read bits and
23 pieces, but until you read the transcript as a whole,
24 it's hard to put it in the proper context. And so I
25 think that may be married to that issue, and I want to

COLLOQUY

1 explore it further.

2 So I'm going to take the matter under advisement,
3 and take the opportunity to thoroughly read the
4 transcript as well as the appellate record. And then
5 I'll have a -- my answer for you. Okay.

6 MR. FALK: Thank you, Your Honor.

7 MR. NEELY: Thank you, Your Honor.

8 THE COURT: All right. Come on, let's take a
9 short recess.

10 (Whereupon, the hearing concluded.)

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COLLOQUY

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 24th day of April, 2018.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

14

Circuit Reporter for the 14th Circuit

(850) 893-6662

mmanley@sccourts.org

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STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Mack Washington Jr., #314550,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
THE FOURTEENTH JUDICIAL CIRCUIT

Case no. 2016-CP-15-0366

ORDER OF DISMISSAL

PAINIA O. GRANT
COLLETON COUNTY
COMMON PLEAS
2018 JAN 10 AM 8:44

The above-captioned matter comes before the court via an application for post-conviction relief (PCR) filed by Mack Washington Jr., on April 7, 2016. This Court convened an evidentiary hearing into the matter on October 11, 2017, at the Beaufort County Courthouse. Applicant was present at the hearing and represented by James Falk, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsel, Everett W. Bennett Jr., (Counsel), Esquire, and Applicant were both present and testified. Assistant Solicitor Tameaka Legette (the solicitor) and Loretta Beckett (Beckett) also testified. This Court had the opportunity to listen to their testimony and rule on their credibility. This Court also had before it a copy of the trial transcript, the records of the Colleton County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter.

I. PROCEDURAL HISTORY

Applicant was indicted by the August 2012 term of the Colleton County Grand Jury for kidnapping (2012-GS-15-0416) and armed robbery (2012-GS-15-0417). Applicant was subsequently indicted by the August 2013 term of the Colleton County Grand Jury for kidnapping (2012-GS-15-0560), armed robbery (2013-GS-15-0753), and possession of a weapon during the

commission of a violent crime (2013-GS-15-754). Assistant Solicitors Tameaka Legette and Carra Henderson prosecuted the case.

On March 17-20, 2014, Applicant proceeded to trial before The Honorable Perry M. Buckner, III and a jury. Applicant was found guilty as indicted on all charges. Judge Buckner sentenced Applicant to incarceration for thirty years for each charge of kidnapping and armed robbery, concurrently. Applicant was also sentenced to five years for the weapons charge, consecutively.

Applicant filed a timely notice of appeal. Tiffany Lorraine Butler, Esquire, represented Applicant on appeal and filed an *Anders* brief. Applicant also filed a *pro se* supplemental brief. On March 2, 2016, the South Carolina Court of Appeals dismissed Applicant's appeal after review. State v. Washington, Op. No. 2016-UP-101 (S.C. Ct. App., Filed March 2, 2016). The Remittitur was returned on March 21, 2016.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Ineffective Assistance of Counsel
 - a. Failure to investigate alibi defense and failure to call Loretta Beckett to testify at trial.
 - b. Failure to object and ask for a curative instruction on Lt. Jason Chapman's testimony.
 - c. Failure to request a jury charge and/or instruction that the out-of-court inconsistent statements of Tyheem Lewis can only be used to impeach the witness, and not as substantive evidence of the facts to find guilt.
 - d. Failure to object to the solicitor's statement, in her closing argument, that Tyheem Lewis is a gentle soul.
 - e. Failure to protect Applicant's right to a fair and impartial trial when he declined the Judge's offer to give a curative instruction to the jury to disregard the solicitor's statements that Applicant had "a pattern of "manipulating young people and luring them and

intimidating them," "a pattern of violence," "a pattern of intimidating old folks, kidnapping old folks, [and] holding them up."

- f. Failure to request the trial judge investigate juror misconduct after Applicant informed Counsel on several occasions that Rosa Singleton, a juror, was sleeping.

III. SUMMARY OF FACTS

Joan Klem testified that on January 7, 2012, she and her husband, Frank, were driving from Michigan to their winter home in Florida. R. 218. They stopped in Walterboro, South Carolina, and checked into the Rice Planters Inn. R. 220. After checking in at the front desk, she took her dog for a walk while her husband moved the car. R. 220. When the Klems reached their hotel room, "two men were at the door." R. 220. One man grabbed her at her waist and held a knife near her. R. 220. The other man demanded her purse and car keys. R. 220 - R. 221. After taking the purse, wallet, and car keys from the room, the two men "took off running and immediately got in the car and left." R. 223. Frank Klem ran to the hotel's main office and called the police. R. 223. Tyneshia Young testified that she and Applicant were "close friends." R. 288. Applicant had a key to her Druid Hills apartment, [REDACTED] in Walterboro and would "hang out" there almost every other day. R. 289. Young claimed that on the night of January 8, 2012 Applicant came over to her apartment. She heard a knock at the door and asked Applicant who was there. R. 294. He said "nobody." After hearing another knock on the door, she looked out of the peephole and saw the police outside. R. 294.

According to Young, Applicant pushed her into the bathroom to prevent her from opening the front door. R. 294. Applicant then took two guns out of her closet and put them underneath her bed. R. 294. He also grabbed Young's phone and carried it into the bathroom. R. 294. While Young was in the bathroom, she called her mother, who lived in the building next door and had seen the

police outside. R. 294. Young's mother walked over to her apartment and put Lieutenant Jason Chapman on the phone to speak to Young. R. 295. After speaking with her mother and Lt. Chapman, Young opened the door and allowed the police to come inside and take the guns. R. 297. The police identified the two guns as belonging to the Klems. R. 323. Young ultimately gave a statement that Applicant and his co-defendant, Tyheem Lewis, brought the guns to her apartment. R. 335 - R. 336. Young stated that the next day, she started having trouble with her toilet. R. 298. She called the maintenance man to come unclog it. R. 298 - R. 299. When he unclogged the toilet, he found an ID card that was "an older white woman." R. 299. After the toilet continued to get clogged, the maintenance man took it apart and found credit cards that had been flushed down. R. 299. Young claimed Applicant flushed the credit cards down the toilet because it started clogging up after Applicant had been in the bathroom. R. 300. Joan and Frank Klem's names were on the credit cards. R. 280. Lt. Jason Chapman (Lt. Chapman) investigated the case. R. 313. On January 8, 2012, he received a call from a confidential informant. The informant told him that two guns that were taken during the armed robbery at the Rice Planters Inn may be located inside Druid Hills' apartment C-7. R. 314. Lt. Chapman read the police report from the robbery and saw that the Klems told police two guns were stolen. R. 314. Lt. Chapman called his informant back to confirm that the guns stolen were rifles. R. 314. He then called for backup and drove to Druid Hills apartments.

After speaking to Tyneshia Young, Lt. Chapman and other officers went into apartment [REDACTED] and recovered the two guns. R. 323. On January 10, 2012, Lt. Chapman received information that property that possibly belonged to the Klems was located at Cuckhold's Landing in Walterboro County. R. 323. He and other officers drove to the landing and found closed suitcases and personal papers strewn all over the ground. R. 323. They found mail with the Klem's name on

it. R. 323. The Klems identified the two guns, suitcases and personal papers as theirs. R. 334. On January 30, 2012, Lt. Chapman received information that Applicant was driving a white Chevrolet Impala, like the one stolen from the Klems, in the Turkey Hill area of Walterboro. R. 327. Lt. Chapman was also told that Applicant had sold it to two people and remnants of the car were left behind a house at 703 Turkey Hill Road in Green Pond, South Carolina. R. 328. Police located the vehicle and, after finding the secondary vehicle identification number, were able to confirm that it belonged to the Klems. R. 333 - R. 334.

Based on the statement from Tyneshia Young that Tyheem Lewis and Applicant brought the guns to her apartment, Lt. Chapman interviewed Lewis. R. 335 - R. 336. Lewis admitted to robbing the Klems and was charged with armed robbery, kidnapping, and possession of a weapon during a violent crime. R. 338. Based on Lewis' confession, as well as the other evidence discovered during the investigation, Lt. Chapman charged Applicant with armed robbery, kidnapping, and possession of a weapon during a violent crime. R. 338.

Lewis pled guilty to strong arm robbery and was sentenced under the Youthful Offender Act for a term not to exceed six years. R. 375 - R. 376. Lewis testified against Applicant at trial, claiming Applicant was the mastermind of the robbery and the one holding the knife on Joan Klem. R. 360 - R. 361. According to Lewis, they found the guns inside the trunk of the car. R. 372. After throwing away the clothes that were in the car, he and Applicant dropped the guns off at Young's apartment. R. 373. Then, they drove to "the village" to park the car until the next day. R. 373.

IV. SUMMARY OF PCR HEARING TESTIMONY

Applicant testified he sent letters to and spoke with Counsel regularly. He testified Counsel asked about potential alibi witnesses and he told Counsel of Loretta Beckett. Applicant stated he spoke with Beckett before the trial and she told him she was never contacted by Counsel. Applicant stated he never explained to Counsel he was with Becket when he was accused of committing the acts he was charged with. Applicant stated he never told Counsel of the alibi because Counsel advised him he did not have to prove his innocence. Applicant also stated his defense rested solely on alibi witnesses. Applicant testified the juror, Rosa Singleton (Juror), was dozing off during the trial. Applicant stated he did not live at Greenpond or Turkey Hill, only at Druid Hills. Applicant stated he told his codefendant to write a statement absolving him of guilt and told his codefendant to "fix it." Applicant testified Beckett had a grey Impala, not a white one.

Beckett testified and at the end of her testimony, this Court found her testimony wholly unreliable, finding Beckett's story to be completely lacking in credibility; appearing to be a poorly-planned lie on Applicant's behalf. Beckett testified that she was present at Applicant's trial and would have testified that Applicant was with her on the night of January 7, 2012, the night the incident took place. Beckett stated that she spoke to Applicant while he was in SCDC after his conviction. Contrary to Applicant's testimony, Beckett testified that she never spoke with Applicant during his pre-trial incarceration. Beckett testified that after she left Applicant on January 8, 2012, her sister told her Applicant had been arrested, but her sister did not tell her why he was arrested. Beckett testified she never contacted law enforcement, Counsel, or Applicant with this information. She testified she hoped to be called as a witness and was surprised when she was not called. However, she testified that she never spoke to anyone concerning Applicant's presence in her vehicle the night of the incident. She testified that she was concerned and thought of Applicant every day, but never attempted to contact him or anyone else concerning this

information because she "[was] not a millionaire." She testified she did not know when the incident happened or when he was arrested, but merely showed up at court without obtaining this information.

Counsel testified he received the discovery from the public defender's file after being appointed to the case in open court by Judge Buckner. Counsel testified he served a Rule 5 motion on the solicitor's office on December 6, 2013. Counsel testified Applicant refused the plea offer on the day of the offer's deadline on March 14, 2014. Counsel had Applicant sign a paper stating he refused the offer. Counsel had never heard of Loretta Beckett and testified that she was never on the witness list. Counsel never informed the solicitor's office of an alibi involving Beckett because Counsel had no knowledge of her. Counsel testified Applicant told him he was at Tynesia Young's house when the incident occurred. Counsel testified Applicant mentioned he was riding in a purple car; the stolen car was "creamy white."

Counsel testified he did not believe Lt. Jameson's testimony was problematic or prejudicial because, in the small town of Walterboro, law enforcement knew almost everyone. Counsel testified he did not think the solicitor's remark concerning Tyheem Lewis being a gentle soul was prejudicial, but he made his mistrial motion based on the entire closing statement. Counsel testified he was concerned with the "pattern" language used by the solicitor in her closing argument.

Assistant Solicitor Tameaka Legette testified that she was familiar with Rosa Singleton (Juror), the juror Applicant alleged was asleep during trial. The solicitor testified Juror had a son in prison for a triple homicide, so she was particularly aware of her. The solicitor testified Juror was never asleep during the trial and, if she had been, the solicitor would have requested the alternate substitute for her. The solicitor testified her intent in using the word "pattern" during her

closing argument was to show the pattern of intimidation and manipulation by Applicant throughout this specific incident.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds Applicant has failed to satisfy his burden to prove Counsel's actions were deficient. Applicant also failed to prove he was prejudiced by Counsel's alleged deficiencies. This Court finds Counsel's testimony was credible. This Court finds Applicant and Beckett's testimony was not credible. This Court finds Counsel properly prepared for Applicant's trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant's application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668, 669 (1984). First, Applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). "The proper measure of counsel's performance remains whether he has provided representation within the range of competence required of attorneys in criminal cases." Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels' deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. "[E]very effort

be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

1. Failure to investigate alibi defense and failure to call Loretta Beckett to testify at trial.

This Court finds Counsel was not ineffective for failing to call Beckett as an alibi witness because Counsel had no knowledge of Beckett. Further, this Court finds Beckett's alibi account was wholly unbelievable. Applicant alleged Counsel was ineffective for failing to call Beckett as an alibi witness during Applicant's trial. This Court finds Counsel's testimony credible. Counsel testified he was never aware of Beckett or her alibi account and Applicant's alibi account to Counsel was always he was at Tyneshia Young's house when the incident occurred. Applicant testified he told Counsel of Beckett and that he was in her car when the incident occurred. Beckett's testimony at the PCR hearing was illogical and inconsistent. Beckett testified she showed up at the trial expecting and hoping to be called as a witness, but she never contacted anyone concerning her alibi account. Applicant testified he and Beckett spoke during his pre-trial incarceration, while Beckett testified that they did not speak during that time. Beckett also testified she did not know when Applicant's crime was committed, but believed her account to be pertinent to Applicant's innocence. She testified she was unable to contact law enforcement, Applicant, or Applicant's attorney with her story because she was "not a millionaire" or an important person. This Court finds these excuses diaphanous and false. This Court finds Beckett's and Applicant's testimony completely lacks credibility. This Court finds Applicant failed to show Counsel was ineffective for not calling Beckett as an alibi witness.

Secondly, this Court finds Counsel credibly testified he investigated and interviewed Tyneshia Young as a potential alibi witness. Counsel asserted his trial strategy was to present

Young as Applicant's alibi witness. Young testified Applicant was at her house when she went to sleep and at her house when she woke up. "Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective." Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996). "Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel." Whitehead, 308 S.C. at 417 S.E.2d at 52. This Court finds Counsel's decision was based on sound professional judgment and should not be disturbed due to the benefit of hindsight.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not calling Loretta Beckett as a witness. This Court also finds Applicant failed to prove Counsel's actions prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

2. Failure to object and ask for a curative instruction on Lt. Jason Chapman's testimony.

This Court finds Lt. Jason Chapman's testimony was not inappropriate and any objection would have been overruled. Applicant asserts Lt. Chapman's testimony was inappropriate because he stated he knew Applicant and where Applicant resided. R. 320-321. Counsel testified Lt. Chapman knew most everyone in Colleton County, as it is a small community. Counsel did not believe the statement prejudiced Applicant or that the jury would draw the conclusion Applicant had been arrested or had negative interactions with law enforcement in the past. This Court agrees with Counsel's assessment and finds Lt. Chapman's testimony did not indicate Applicant had a prior criminal history. This Court finds an objection or a request for a curative instruction by Counsel regarding Lt. Chapman's testimony would have been overruled. Therefore, Counsel was not deficient for failing to object and Applicant was not prejudiced.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not objecting to Lt. Chapman's testimony. This Court also finds Applicant failed to prove Lt. Chapman's testimony prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different had it been excluded. Accordingly, this Court denies and dismisses this allegation.

3. Failure to request a jury charge and/or instruction that the out-of-court inconsistent statements of Tyheem Lewis can only be used to impeach the witness, and not as substantive evidence of the facts to find guilt.

Applicant alleges Tyheem Lewis's prior inconsistent statement could not be used as substantive evidence. This is an incorrect statement of the law. "A prior inconsistent statement may be admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-99, 673 S.E.2d 434, 438 (2009). Lewis testified at trial and was subject to cross-examination. Therefore, this Court finds Counsel was not deficient for failing to request an incorrect jury instruction.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient. This Court also finds Applicant failed to prove such a jury instruction would have created a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

4. Failure to object to the solicitor's statement, in her closing argument, that Tyheem Lewis is a gentle soul.

This Court finds the solicitor's remark "Tyheem Lewis is a gentle soul" did not bolster Lewis's credibility as a witness or prejudice Applicant's case. R. 489. Applicant alleges the solicitor's comment was inappropriate bolstering of a witness and Counsel should have objected. Counsel testified he saw nothing wrong with the comment and did not think calling Lewis "gentle" was bolstering or objectionable. This Court agrees. This Court finds the solicitor's comment was

an explanation of facts presented at trial. Namely, the State's case presented Lewis as the weaker individual who was manipulated and bullied by Applicant. This Court finds the solicitor's use of the word "gentle" was not inappropriate or a comment on Lewis's credibility; thus, any objection would have been overruled. Further, this Court finds the solicitor's label of Lewis as "gentle" was not so egregious as to cause a reasonable probability the result of the trial would hinge on that label.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not objecting to the solicitor's labeling Lewis as 'gentle.' This Court also finds Applicant failed to prove Counsel's failure to object prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different had he objected. Accordingly, this Court denies and dismisses this allegation.

5. Failure to protect Applicant's right to a fair and impartial trial when he declined the Judge's offer to give a curative instruction to the jury to disregard the solicitor's statements that Applicant had a "pattern" of "manipulating young people and luring then and intimidating them." and "pattern" of violent, "intimidating old folks, kidnapping old folks, and "holding them up."

Applicant alleges Counsel should have contemporaneously objected or accepted the trial judge's offer of a curative instruction after the trial judge denied Counsel's request for a mistrial.

Mack Washington has a — he has a pattern of manipulating young people and luring them and intimidating them. He has a pattern of violence, throwing Tyneshia Young to the floor and intimidating and manipulating her into lying for him. He has a pattern of robbing old folks, intimidating old folks, kidnapping old folks, holding them up. And also, trying to manipulate Captain Jamison.

R. 492, ll. 5-12.

At the conclusion of the solicitor's closing argument, Counsel objected outside the presence of the jury and requested a mistrial on the basis that the solicitor's use of the word "pattern" implied Applicant had past criminal actions. R. 497-498.

"A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) (internal cites omitted). The trial court disagreed with Counsel's argument and denied his motion for a mistrial. R. 499. The trial court asked Counsel if he wanted a curative instruction given and Counsel stated he did not wish a curative instruction. R. 499. At the PCR hearing, Counsel stated he did not want a curative instruction because he believed it would draw attention to the use of the word "pattern" and believed the instruction would be more harmful than beneficial to his client's case. "[D]efense counsel testified at the PCR hearing that as a trial strategy, he did not request curative instructions because they tend to bring into focus precisely the item the objector has kept out. Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000) (internal cites omitted). This Court finds Counsel provided a valid trial strategy for declining the curative instruction. Therefore, this Court finds Counsel was not deficient for failing to request a curative instruction.

Applicant argued Counsel failed to preserve this issue for appellate review. This Court agrees Counsel failed to preserve the issue for review because he refused the curative instruction. The South Carolina Supreme Court has previously held an issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a post-conviction relief claim alleging ineffective assistance of counsel. McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013). However, to be entitled to relief on such a claim, an applicant must establish the underlying claim

is meritorious and would have resulted in a reversal on appeal to a reasonable probability. "Since the [issue] was not considered on direct appeal because it was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong in [applicant's] PCR claim. When the defendant claims counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded." *Id.* at 465, 746 S.E.2d at 47. This Court notes Counsel's reasons for refusing the curative instruction was a valid trial strategy, even though the refusal meant the error was not preserved for review. Counsel also believed he had a valid argument for a mistrial, which could have been granted at the conclusion of the closing argument outside of the jury's presence. This Court finds the solicitor's use of the word "pattern" appropriately described Applicant's consistent *modus operandi* of intimidation and manipulation. Therefore, this Court finds Applicant has failed to prove the result of his direct appeal would have been different had Counsel preserved the issue for review.

The trial court believed the use of the word "pattern" did not create any confusion regarding Applicant's potential criminal history. R. 502, ll. 14-16. This Court agrees with the trial court and finds the solicitor's use of the word "pattern" did not indicate a past criminal history. The State presented evidence that Applicant robbed and kidnapped two elderly victims, intimidated Tyneshia Young to prevent her from speaking with law enforcement, attempted to flush evidence down a toilet, threatened his codefendant into writing a letter recanting his implication of Applicant as a codefendant, and attempted to manipulate an officer into notarizing a recantation letter. This Court believes the solicitor's use of the word "pattern" appropriately directed the jury's attention to the Applicant's consistent use of intimidation and manipulation. The solicitor did not reference Applicant's prior criminal history or imply that he had one. Therefore, this Court finds Applicant

was not prejudiced because the jury had no reason to believe he had a prior criminal history from the solicitor's comments.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for not requesting a curative instruction and for failing to preserve the issue for review. This Court also finds Applicant failed to prove Counsel's failure to request a curative instruction prejudiced Applicant such that there was a reasonable probability the result of the trial or appeal would have been different. Accordingly, this Court denies and dismisses this allegation.

6. Failure to request the trial judge investigate juror misconduct after Applicant informed Counsel on several occasions that Rosa Singleton, a juror, was sleeping.

Based on the testimony of the solicitor and Counsel, this Court finds Juror was not asleep during the trial. Applicant testified Juror was sleeping during the trial and he pointed this out to Counsel through written notes during the trial. Counsel denied receiving any notes regarding a juror being asleep and never saw Juror appearing to sleep. The solicitor testified she was particularly attentive of Juror because Juror was the mother of a defendant who was convicted of a triple homicide prosecuted by the Attorney General's office. The solicitor also testified she never noticed Juror asleep and would have brought it to the trial court's attention if she had noticed. The record does not mention or note any juror falling asleep. This Court finds Counsel's and the solicitor's testimony credible and Applicant's testimony lacked credibility. Therefore, this Court finds Counsel was not deficient.

Applicant also failed to prove he was prejudiced by a sleeping juror. "The general test for evaluating alleged juror misconduct is whether there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence. Where a defendant seeks a new trial on the basis of juror misconduct, he is required to prove both the alleged misconduct and the resulting

prejudice.” State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005) (cited omitted). Applicant presented no evidence on when exactly the juror was asleep or how he was prejudiced when a full jury of twelve members found him guilty unanimously.

Accordingly, this Court finds Applicant failed to prove Juror was asleep during the trial. This Court also finds Applicant failed to prove one juror being asleep for portions of his trial prejudiced Applicant such that there was a reasonable probability the result of the trial would have been different had it been called to the Court’s attention. Accordingly, this Court denies and dismisses this allegation.

VI. CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

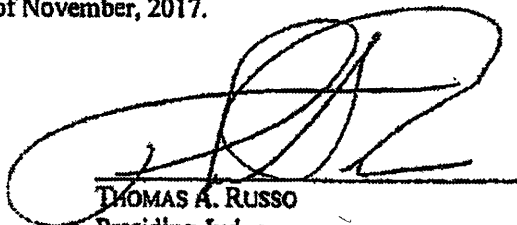
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel’s assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant’s behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 30th day of November, 2017.

A handwritten signature in black ink, appearing to be 'T. Russo', written over a horizontal line.

THOMAS A. RUSSO
Presiding Judge
14th Judicial Circuit

Florence, South Carolina

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

1-863235

June 8, 2012

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8/23/12

VERDICT

TRUE BILL

Guilty
Foreperson of Petit Jury
Date: 03/20/2014

INDICT

DOCKET NO. 2012 15-0416

**The State of South Carolina
County of Colleton**

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Mack Washington Jr

Indictment for

Kidnapping

SC Code: 16-03-0910
CDR Code:0095

COLLETON COUNTY
GENERAL SESSIONS
2012 AUG 23 PM 1:33

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

2012-GS-15-0416

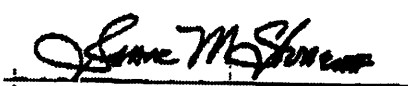
At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Colleton County present upon their oath:

Kidnapping

That in Colleton County, South Carolina, on or about January 7, 2012, the Defendant, Mack Washington Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Frank Klem, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended).

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

JUL 31 2012


Isaac M. Storie
Solicitor

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

I-863236

June 8, 2012

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: 8/23/12

VERDICT

Guilty

TRUE BILL

Foreperson of Petit Jury
Date:

INDICT

03/20/2014

DOCKET NO. 2012-GS-15-0417

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

Mack Washington Jr

Indictment for

Armed Robbery

SC Code: 16-11-0330(A)
CDR Code:0139

COLLETON COUNTY
GENERAL SESSIONS COURT
2012 AUG 23 PM 1:33

STATE OF SOUTH CAROLINA)

COUNTY OF Colleton)

INDICTMENT

2012-GS-15-0417

At a Court of General Sessions, convened on August 23, 2012, the Grand Jurors of Colleton County present upon their oath:

Armed Robbery

That on or about January 7, 2012, in Colleton County, South Carolina, the Defendant, Mack Washington Jr, at 97 Ladson Ln, Room 130, Rice Planters Inn, Walterboro, SC, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a knife, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Frank Klem with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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

Isaac M. Stone
Isaac M. Stone
Solicitor

WITNESSES

S. Bridge (WPD)

ARREST WARRANT NUMBER

2012-GS-15-0560

August 7, 2012

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury
Date: 8-22-13

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury
Date:

INDICT

03/20/14

DOCKET NO. 2012-GS-15-0560

The State of South Carolina
County of Colleton

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

Mack Washington Jr

Amended Indictment for
Kidnapping

SC Code: 16-03-0910
CDR Code:0095

COLLETON COUNTY
GENERAL SESSIONS COURT
2013 AUG 22 PM 12:06

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Colleton)

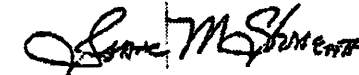
2012-GS-15-0560

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Colleton County present upon their oath:

Kidnapping

That in Colleton County, South Carolina, on or about January 7, 2012, the Defendant, Mack Washington Jr, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Joan Klem, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended).

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



Isaac M. Stone
Solicitor

WITNESSES

Stephanie Bridge WPS

ARREST WARRANT NUMBER

2013GS1500753

August 23, 2013

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury
Date: 8-22-13

VERDICT

Guilty

Foreperson of Petit Jury
Date:

INDICT

03/20/2014

DOCKET NO. 2013-GS-15-00753

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

Mack Washington, Jr.

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)
CDR Code: 0139

COLLETON COUNTY
GENERAL SESSIONS COURT
2013 AUG 22 PM 12:06

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

2013-GS-15-00753

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Colleton County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly ar

That on or about January 7, 2012, in Colleton County, South Carolina, the Defendant, Mack Washington, Jr, at 97 Ludsen Lane, Room 130, also known as the Rice Planters Inn, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object, which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Joan Klem with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

JUNE 11 2013

WITNESSES

Stephanie Budge, WPS

ARREST WARRANT NUMBER

2013GS1500754

August 20, 2013

ACTION OF GRAND JURY

TRUE BILL

Christopher West

Foreperson of Grand Jury

Date: 8-22-13

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

03/20/2014

DOCKET NO. 2013-GS-15-00754

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

August Term 2013

THE STATE

vs.

Mack Washington, Jr.

Indictment for

Weapons / Poss. weapon during violent crime,
if not also senSC Code: 16-23-0490
CDR Code: 0549COLLETON COUNTY
GENERAL SESSIONS COURT
2013 AUG 22 PM 12:06

STATE OF SOUTH CAROLINA)
COUNTY OF Colleton)

INDICTMENT

2013-GS-15-00754

At a Court of General Sessions, convened on August 22, 2013, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sen

That in Colleton County, South Carolina, on or about January 7, 2012, the Defendant, Mack Washington Jr, did possess a knife or visibly display what appeared to be a knife during the commission, or attempted commission, of armed robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

FILED