THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Oct 19 2022
S.C. SUPREME COURT

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

RECEIVED
OCT 09 2019
SC Court of Appeals

RECORD ON APPEAL
Volume I of II

October 4, 2019

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

Other Counsels of Record:

Honorable Alan McCrory Wilson
Attorney General

Chief Deputy Attorney General W. Jeffrey Young
Deputy Attorney General Donald J. Zelenka
Sr. Asst. Deputy Attorney General Melody J. Brown
Asst. Attorney General Samuel M. Bailey
Office of South Carolina Attorney General
PO Box 11549, Columbia, SC 29211
Attorney for Respondent

Ms. Chelsey Hucker
Assistant Solicitor,
10th Judicial Circuit
100 S. Main Street,
Anderson, SC 29624

INDEX

ORDERS

Order denying Motion for Reconsideration, dated January 30, 2019 1

Order denying Amended Motion for New Trial, dated January 4, 2019 3

PLEADINGS

Motion for New Trial filed September 5, 2017 5

Notice of Appeal, filed September 25, 2017 22

Motion to Hold Appeal in Abeyance, filed October 19, 2018 27

Motion for New Trial, filed December 21, 2018 129

Amended Motion for New Trial, filed December 27, 2018 289

Notice and Motion for Reconsideration, filed January 14, 2019 338

Addendum to Motion for Reconsideration, filed January 17, 2019 402

Notice of Appeal, filed February 5, 2019 407

TRANSCRIPTS

Transcript of Hearing for Motion for New Trial, September 14, 2017..... 422

Excerpts of Trial Transcript for Jason Carver, August 21-25, 2017

Deputy Grant	Direct Examination by Solicitor Moore	453
Brett Woodard	Direct Examination by Solicitor Moore	455
Patrick Henry	Direct Examination by Solicitor Moore	457
Eric Russell	Direct Examination by Solicitor Moore	471
	Cross Examination by Mr. Smith	474
	Redirect Examination by Solicitor Moore	493
Detective Marzolf	Cross Examination by Mr. Smith	494
Woodrow Curry	Direct Examination by Solicitor Moore	541
	Cross Examination by Mr. Smith	551
Sheila Curry	Direct Examination by Mr. Smith	580
Timothy Jacobs	Direct Examination by Mr. Smith	585
Milton Gambrell	In Camera Examination by Mr. Smith	595

Jason Carver	Direct Examination by Mr. Smith	624
	Cross Examination by Solicitor Moore	680
	Redirect Examination by Mr. Smith	694
Shannon Thurman	Direct Examination by Mr. Smith	713

Trial Transcript for Woodrow Curry Plea Bargaining, August 22, 2017 788

Excerpts of Trial Transcript for James Gambrell, September 5, 2018 800

CHARGES

True Billed Indictment 819

CERTIFICATE OF COUNSEL 823

ORDER DENYING MOTION FOR RECONSIDERATION 01/30/2019

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF GENERAL SESSIONS TENTH JUDICIAL CIRCUIT
State of South Carolina Plaintiff,	)	Case No: 2016A05324
vs.	)	**Order on Defendant's Notice and Motion for Reconsideration**
Jason Franklin Carver Defendant.	)	

Defendant filed a Notice and Motion for Reconsideration on January 14, 2019 in regards to the Court's Order dated January 4, 2019. It is Ordered that the Defendant's Motion for Reconsideration is denied without the necessity of a formal hearing.

Anderson, South Carolina.
January 16, 2019

R. LAWTON McINTOSH
PRESIDING CIRCUIT COURT JUDGE

A TRUE COPY
JAN 30 2019
ANDERSON CLERK OF COURT

0002

ORDER DENYING AMENDED MOTION FOR NEW TRIAL 01042019

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	IN THE COURT OF GENERAL SESSIONS TENTH JUDICIAL CIRCUIT
	Case No: 2016A05324
State of South Carolina Plaintiff,	
vs.	**Order on Defendant's Amended Motion for A New Trial**
Jason Franklin Carver Defendant.	

Defendant's filed an Amended Motion for a New Trial on December 27, 2018. It is Ordered that the Defendant's Amended Motion for a New Trial is denied without the necessity of a formal hearing. The court finds that there was competent evidence admitted to sustain the jury's verdict of guilty and the court may not substitute its judgment for that of the jury. *State v. Taylor*, 348 S.C. 152, 558 S.E.2d 917 (Ct.App. 2001).

A TRUE COPY
JAN - 4 2019
ANDERSON CLERK OF COURT

Anderson, South Carolina.
January 3, 2019

R. LAWTON McINTOSH
PRESIDING CIRCUIT COURT JUDGE

MOTION FOR NEW TRIAL
09/05/2017

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
The State of South Carolina,)	2016A05324
)	
Plaintiff,)	MOTION FOR NEW TRIAL
)	
v.)	
)	
Jason Franklin Carver,)	
)	
Defendant.)	

FILED-CLERK'S OFFICE
ANDERSON SC
2017 SEP -8 AM 11:
COMMON PLEAS

TO: THE HONORABLE R. LAWTON MCINTOSH AND ASSISTANT SOLICITOR CHELSEY MOORE:

Comes the Defendant, Jason Franklin Carver, by and through counsel, and moves for this Court for a new trial based on the absence of due process in all matters related to him. The lack of due process was overwhelmingly prejudicial and requires that this Court avail Mr. Carver with the opportunity to have a trial in front of a jury of his peers, along with the chance to play on an even playing field.

STATEMENT OF FACTS

Jason Carver worked a full day at the transmission shop, for whom he has toiled since 1999, on Monday March 28, 2016. He arrived at Milton Gambrell's house at approximately 6:00 p.m., where he was going to finish a transmission that he had been working on during the course of the preceding weekend. While there was a lot going on around him, he was focused on completing the job.

Stephen Cameron sold a dirt bike that he had to Mr. Gambrell's nephew at some point late that evening or early that afternoon. They were able to get a bill of sale created and executed, finalizing the sale. As a result of the sale, Mr. Cameron was left without a ride home.

A TRUE COPY
SEP 11 2017
ANDERSON CLERK OF COURT
0006

Due to Mr. Gambrell's knowledge of this situation, he asked Mr. Carver to give Mr. Cameron a ride home, due to the fact that he was drunk. Based on the fact that Mr. Carver had met Mr. Cameron previously, and his recognition that it would be best for him to drive him home, he took him somewhere around 8:45.

While Mr. Carver was taking Mr. Cameron home, Mr. Gambrell and Woodrow Curry learned that Mr. Cameron had taken approximately one ounce of cocaine from Mr. Gambrell prior to leaving. Apparently, Mr. Cameron wanted the cocaine that he had ordered in a manner that Mr. Gambrell could not provide. Thus, he took Mr. Gambrell's product.

Mr. Carver and Mr. Cameron arrived at the latter's home at approximately 9:02. Mr. Carver did not have a phone; and, he did not hear or see anything that indicated that Mr. Cameron did. Thus, Mr. Carver simply dropped Mr. Cameron off and quickly set off to finish putting up the tools that he had used in the transmission work that he had done. He arrived at Mr. Gambrell's home having successfully given Mr. Cameron the ride that he had been asked to give.

When he arrived back at Mr. Gambrell's home, he was quickly summoned by Mr. Gambrell. Mr. Gambrell could not believe that Mr. Carver did not have a phone, because if he would have, he would have had them return to his house to address the aforementioned missing coke. To that end, Mr. Gambrell simply told Mr. Carver that he needed to return to Mr. Cameron's home to get him. Since Mr. Carver was the only safe, legal driver on the premises, he most certainly didn't offer him any information as to why. He couldn't afford him to refuse to drive back over there.

Mr. Curry was not a licensed driver and jumped in the car with Mr. Carver as he prepared to return to where he was fifteen (15) minutes earlier. He needed to make sure that Mr.

Cameron was aware of the fact that Mr. Gambrell and Mr. Curry knew that he had taken what was not his. Admittedly, Mr. Carver could not have been aware of the conversation that had taken place while he was gone. He left Mr. Gambrell's home without knowledge of the theft.

When Mr. Curry attempted to put his seat belt on, a fun fell out of his hoodie. Mr. Curry had picked up Mr. Gambrell's .38 when he passed by it on the way out of the "man cave". Mr. Gambrell told him to put it down that he only needed to tell Mr. Cameron that he knew what he had done and that he needed address it, or come back over for a discussion.

Upon seeing the gun, Mr. Carver immediately started to cajole Mr. Curry into leaving the gun. It was at this point that Mr. Curry told Mr. Carver what his purpose was. Mr. Curry said that he needed for Mr. Cameron to pay him for the cocaine that he took, or come back to discuss it with Mr. Gambrell. In an effort to ensure that the gun did not leave the vehicle, Mr. Carver offered to Mr. Curry that he didn't need the gun because there were two of them, and that Cameron would likely be scared.

Mr. Carver's negotiating prompted Mr. Curry to leave the gun in the car. Mr. Carver had come back because he had just brought Mr. Cameron to this location. He had been asked to give him a ride to Mr. Gambrell's, much like the ride that he had just given him to his own home. Mr. Carver believed that he was going to be bringing Mr. Cameron back to the home. He knew that the three gentlemen interacted on a somewhat regular basis. He didn't think anything of it.

When they arrived at Mr. Cameron's home, Mr. Curry was the leader to the front door. He knocked on the door; and, there was no answer. Since there was no car in the driveway, there was thought that he may not be home. The two started walking back to the car when Curry noticed Cameron looking out the window. Curry turned and started to the porch. When

he approached the door, Cameron came out the door in an aggressive manner, wondering what they were doing at his home.

Curry quickly told Cameron of the missing cocaine and the need to make amend. It was understood that if he wished to challenge the accusations, he could do so with Mr. Gambrell. Unfortunately, Mr. Camerson was high on crack cocaine which made a man with a short fuse (especially after he had suffered a closed head injury. Just as explosive, Mr. Curry was high on methamphetamine. Their voices grew louder and more confrontational. They started pushing on each other.

Mr. Cameron got the best of him with one of his pushes. As a result, Mr. Curry came out of his crouch with a small handgun, which it was later learned to be a .25. Jason Carver immediately began pleading with him to put the gun away. Mr. Cameron's recognition of Jason's fear gave him the impetus to chide Mr. Curry. At some point, he had enough of Mr. Curry brandishing his pistol in his face.

Mr. Cameron had coke invincibility. He asked Mr. Cameron incredulously, "What are you going to do, shoot me?" While asking the question, he swept the weapon being held by Mr. Curry in his right hand out of his face with his left arm. Mr. Carver recognized that his attempts to quell the battle of Godzilla and Mothra would be futile. As he turned to run to the car, he heard what he believed to be a gun shot. When he attempted to put the keys in the ignition, he dropper them to the floor. By the time that he had collected them, Curry had got in the car with him.

Mr. Carver was in disbelief. He had taken Mr. Cameron home, twenty-eight (28) minutes earlier. He was now being instructed to leave the lights off as he was exiting the

subdivision. He was told that if he said anything, he would kill him and his mother. He was then given the ok to turn on the headlights.

When they got back to Mr. Gambrell's house, Mr. Carver began crying. On the other hand, Mr. Curry stated, "Shit got out of hand." His apathetic view towards Mr. Cameron's life struck a nerve in Mr. Gambrell, and they began to argue vociferously. Mr. Carver took this opportunity to let himself out the door. He went directly to his mom's home, where he was when Curry drove by his mom's house in his green Grand Am, just 15 minutes later.

Mr. Carver knew that he had just seen Curry shoot Cameron. He knew that he had just seen him drive by his mother's home. Given his violent tendencies, he did not wish to give him reason to believe that he told on him. On April 11, 2016, an opportunity presented itself to tell the police what had happened.

On that Monday morning, Mr. Carver was on a mission. He went to his employer and told him what had occurred. He didn't even clock in because he knew that he would be going to the police to share the shocking result of him giving Mr. Cameron a ride home. His employer told him to tell his mother, and go directly to the police.

He went to the police without an attorney because he knew that he had nothing to do with Mr. Cameron's death. He originally only knew that he needed to bring Cameron back to Gambrel's home; he learned of the theft during the 15-minute drive; he talked Curry into leaving what he thought to be the only gun in the car; he did everything that he could to talk down two individuals who were overly stimulated by their respective choices of drugs; and, he was turning himself in on his own accord, knowing that his mother was safe due to Curry's recent arrest. He was sadly mistaken.

ARGUMENTS

I. THE COURT ERRED BY NOT STRIKING THE STATE'S USE OF "KIDNAPPING" AND "ROBBERY".

The terms, kidnap and robbery, were not part of the case that was charged. There was no intimation-no referenced to them at all. In closing, counsel for the State referred to the acts of Woodrow Curry and Jason Carver as robbery and kidnapping. Defense counsel made a contemporaneous objection to the argument containing "facts not in evidence".

The Court acknowledged and sustained the objection. The Court subsequently attempted to make a curative instruction, wherein it was stated that the jury had the right to believe or not believe statements made the attorneys for both sides. This was instruction did not require the jury to stricken from the record of this case. Instead, it allowed the jury to make findings of fact, that the Court had apparently already made, but were not part of the evidence. The prejudice provided by allowing the jury to hang their hats on an accomplice liability theory with robbery and kidnapping, illegally bridged the gap from being merely present or associated, to being an integral part of crimes for which there had been no evidence offered during trial.

> (1) That timely objection was interposed to the argument; (2) the substance, at least, of the objectionable language; (3) the failure of the court to sufficiently warn the jury not to consider the improper argument; and (4) that the result was to materially prejudice the right of the losing litigant to obtain a fair and impartial trial.

State v. Meehan, March 31, 1931160 S.C. 111158 S.E. 151

II. THE COURT ERRED BY IMPLICITLY PREVENTING CO-DEFENDANT GAMBRELL FROM TESTIFYING PURSUANT TO HIS SUBPOENA.

The defense subpoenaed Milton Gambrell, Jason Carver's co-defendant, for the purpose of illustrating to the jury that Carver did not have anything to do with the events that took place on March 28, 2016, other than providing transportation. Furthermore, he could testify to

Defendant Curry's "rogue" behavior, and the unfortunate loss of life that followed.

> The Sixth Amendment to the U.S Constitution guarantees that "[i]n all criminal prosecutions the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor . . . ."This federal constitutional right is applicable to the states through the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

Washington v. Texas, 388 U.S. 14, 19 (1967).

In a conference prior to the call of the witness's, counsel for Gambrell stated that while he had advised him to plead the 5th, he was still wavering. The following morning, the undersigned was denied the ability to have Gambrell put on the stand in front of the jury. The Court required Gambrell be questioned outside the presence of the jury. Gambrell answered every question that he was asked. However, at some point the Court, without request or prompting from Gambrell's counsel, instructed Gambrell that he could plead the 5th. When Gambrell continued answering the direct examination questions, the Court again interjected and instructed Gambrell to refrain from answering any further questions, without further counsel with his attorney. He offered to let him leave the courtroom to collect his thoughts. Due to the urging of the Court, and his counsel, his testimony came to a halt at that time.

Gambrell was noticeably shaken when he left the courtroom. The Court would not allow anything related to Mr. Gambrell's presence to be published to the jury. In essence, he denied Carver from calling a witness in the defense of his case. The Court stepped over the line, becoming an advocate for the State by preventing Carver from pursuing the testimony from Gambrell which would have illustrated to the jury that he did not join either Curry, or Gambrell for that matter, to promote an impermissible campaign.

Gambrell's absence could only be viewed as Carver's fear of him as a witness.

Gambrell would not have been able to plead the 5th on all of the questions, which was a fact that the Court made clear to him. Despite the possibility of self-incrimination, Gambrell responded to questions without hesitation until the Court deterred from doing so. This act was detrimental to Defendant Carver's case.

III. THE COURT ERRED BY REFUSING TO ALLOW THE DEFENSE TO PLAY MILTON GAMBRELL'S VOLUNTARY INTERVIEW WITH LAW ENFORCEMENT THAT WSA CONDUCTED AT THE SAME TIME THAT DEFENDANT CARVER WAS BEING INTERVIEWED.

In an attempt to have the jury recognize that Carver did not fear the presence of Gambrell and, in fact, sought him out as an ally to the wayward actions of Mr. Curry, Carver attempted to introduce Gambrell's police interview. The State objected, and the Court sustained said objection, reasoning that it was hearsay and as such would not be in.

With Gambrell pleading the 5th, he had become unavailable. The statements gave by Gambrell were against his penal interests. It was also necessary for the statements to be used to exculpate the defendant.

Mr. Gambrell's unsolicited interview, which was conducted following the reading of *Miranda,* was offered by the defense to illustrate the lack of knowledge/participation by Defendant. It was offered to exculpate him and, therefore, needed an element of trustworthiness prior to its admission. "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." Since Mr. Carver intended to offer Mr. Gambrell's interview with police to exculpate himself, it was not admissible "unless corroborating circumstances clearly indicate[d] [its] trustworthiness." *State v. Willie Corda Doctor*, 413 S.E.2d 36, 306 S.C. 527 (1992). Mr. Gambrell's statements can be described as against his penal interests. Furthermore, the fact that the statements were made to the lead investigator of the murder for which Defendant is charged, is further corroboration of the the statement's

veracity.

The Court found that he had improperly denied the use of the interview. However, the Court once again forced the defense to play Gambrell outside of the courtroom, thereby preventing the jury from seeing his expressions and mannerisms. Upon review of the video, the Court reinforced his refusal to allow the jury to see Mr. Gambrell. He found that the interview materials did not tend to exculpate the defendant.

Utimately, the State agreed to allow it in, but not before getting the case off track for the defense. The State's courtesy did not nothing as it related to the prejudice caused by the Court's abolition of Milton Gambrell's existence in this case as it related to Defendant Carver's defense.

IV. THE COURT ERRED BY NOT COMPELLING TWO DEFENSE WITNESSES THAT HAD BEEN DULY SERVED, AND FAILED TO ATTEND.

Defense subpoenaed Dequavious Gambrell, Milton Gambrell's nephew, and his friend, Tykeon Gardner. Dequavious had purchased the bike from Stephen Cameron that day, which relegated him to being a pedestrian unless he got a ride. Furthermore, Dequaviuos had apparently been Mr. Cameron's drug dealer. That relationship had recently ended as a result of an apparent personality conflict.

When Gambrell and Curry had first recognized that Cameron had taken some of their cocaine, the younger Gambrell offered to go address the situation himself. However, his uncle recognized that the combination of Cameron being "crunk", and the youngster being far too willing to use fisticuffs to deal with issues., denied his request. Instead, he would send out Curry, because Curry was his best friend. He wouldn't allow himself to get caught up in any drama created by Mr. Cameron.

When the defense called the witnesses, neither of them were available to testify. There was no question that they had been properly served. They had been served twice due to the confusion of the location of the scene, as well as the actors. Thus, they were served with Anderson and Greenville County subpoenas. The defense could not afford to have a loop hole with which they could escape taking the stand.

When it became apparent that locating the witnesses would cause delay, or similar impediment to the trial, the Court sought out the importance of the witnesses. Defense counsel detailed the reasoning provided previously. Upon concluding the explanation, the Court provided the undersigned with the opportunity to attempt to seek out the witnesses privately. It was understood that if he failed to find the witnesses, the trial would be forced to proceed in the morning.

As expected, defense counsel could not track down the witnesses. This was especially true since Mr. Gambrell was no longer an issue to testify. Defendant Carver was unable to show to the jury that Gambrell had prevented the boys from going that night because he was concerned of the personality clashes that may have occurred had they gone down there. The Court did not attempt to compel the presence of the witnesses with any significance. The defense's Motion for Continuance, which was raised when the witnesses subpoenaed by Carver failed to appear to testify. was summarily dismissed The Court had a duty to compel the witnesses who been subpoenaed properly, so as to give Mr. Carver some semblance of equity.

> The right to offer the testimony of witnesses, and to compel their attendance if necessary is a plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so it may decide where the truthli. Just as an accused has the right to confront the prosecution's witnesses for the purpose or challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a

fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

V. THE COURT ERRED BY NOT ADDRESSING THE STATE'S WILFULL AND WANTON REFUSAL TO PROVIDE DISCOVERY IN A TIMELY MANNER; OR, PROVIDE IT AT ALL.

South Carolina Rules of Criminal Procedure provide rules for discovery.

> **112. DISCOVERY & DISCLOSURE**
>
> **(a) Disclosure of Evidence by the State.** Upon the motion or request of the defendant, the State shall disclose to the defendant the following information and material, whether in the possession, custody, or control of the prosecution or one of the prosecution's agents
>
> > (4) **Documents and Tangible Objects.** The State shall disclose the existence of, and shall allow the defense to review, inspect, and copy all documents and tangible objects associated with or related to the investigation of the case.
>
> **(d) Time and Manner of Disclosure.**
>
> > (1) The State and defense shall disclose all discoverable material either in their possession or available to them within thirty (30) days of the receipt of any motion or request for disclosure.

The State has a duty to provide discovery within thirty (30) days of the service of the discovery request. The investigation was completed by the end of April or May, in 2016. The State claims to have offered Mr. Carver discovery in December. However, the undersigned was unable to open it. It was as if the discovery had not been provided. Of course, the State had issues with their ability to open their discovery throughout the trial. The undersigned alerted the State that he could not review the discovery on March 7, 2017. (Exhibit A). The undersigned got an abundance of discovery after July 4th.

The State had thirty-six (36) hours of video surveillance from the neighborhood where the victim lost his life. During cross-examination, Detective Marzolf was questioned regarding

statements that he had in his notes where members of the victim's family had broached the topic that someone had been to the home and checked his person and most likely his house for drugs or money. Detective Marzolf said that the sources "were not credible". When the State was asked about playing the entire video, the response was that it would take three (3) days to break it down. Following trial, the surveillance materials were given to an expert to attempt to open. The USB drives could not be opened.

Steve Godsey turned his attention to the discs that had been created. They began at 11:59:59 on March 28, 2017, and were basically done in four-hour intervals. Mr. Godsey quickly learned that the time that the rolling of the body had occurred between 09:00 and 10:00 a.m. Mr. Godsey found a void in time from 08:17:08 a.m. to 10:28:58 a.m. Upon inquiry, the State is unaware of where this segment might be.

Neither Mr. Carver or Mr. Curry were at that home to rob anyone. Further, they were not there to kidnap anyone. The undersigned believes that the only reason that the materials are missing is because if the jury had seen the victim's family looting his home and person as he ly dead, they would be able to find there was in fact no robbery unless it was someone else.

> "The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." *State v. Anderson*, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). "[A]n individual asserting a *Brady* violation must demonstrate the evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or was impeaching." *Id.* at 287, 754 S.E.2d at 909.

The State did not give the defense the opportunity to review materials they had for nearly a year and a half. The materials that they did give initially could not be read by the computer systems in the office. Upon further investigation, an expert with videos and the associated

programs could not open the program(s). He also found a large window that coincides with the familial statements that allege that Mr. Cameron was robbed by his family. This intentional violation of *Brady* was to prevent the defendants from being let off the hook by the conduct of the aforementioned family.

The withholding of the damning surveillance takes away robbery as a motive for the death. It was simply an unfortunate situation where two people who were obviously affected by their habits ran into their respective alter ego with disastrous results.

CONCLUSION

Jason Carver has led an unassuming life working at a transmission shop since 1999. He has managed to develop some skills with said transmission work. He has been a solid member of the community with nary a scrape with the law. He is not a killer. He deserves a new trial. The impediments that were placed in front of him as he attempted to defend himself were too great. He deserved Due Process as he fought for what amounts to this life. He deserves that opportunity to rectify a very situation.

Respectfully Submitted,

Donald L. Smith, (SC Bar#6699)
Attorney for Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9295
attorneydonaldsmith@gmail.com

Anderson, South Carolina,
September 5, 2017

EXHIBIT 4

Don Smith <attorneydonaldsmith@gmail.com>

Mar 7

to
Chelsey

I just spoke to Jason again. He did not have a weapon, nor did he ever have a weapon. By the way, where is Marzolf? As I said, I can't get the discovery open. Jason had nothing to do with this crime. The notes are very clear about that. Gambrell noticed missing drugs when carver was taking the victim home. When Jason got back, he had barely got in the house when he was told that he needed to return to get the victim. He didn't know why. He didn't see a weapon until the shooting. Curry has a 25 in his fanny pack, and had apparently picked up gambrell's 38. Curry emptied the gun in the victim. When Jason dropped his keys, Gambrell had the opportunity to point the 38 at him (the 25 was empty). Curry told him that he would kill his mother and him. The first two nights, he slept in his car. He learned of curry's arrest on Saturday, went to work on Monday, without clocking in, and told his boss all of the facts regarding his involvement. You said that he was an accomplice. Can you direct me to the evidence that supports that?

EXHIBIT B

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
State of South Carolina,)	
)	AFFIDAVIT OF STEVE GODSEY
vs.)	
)	2016A05324
Jason Franklin Carver,)	
Defendant,)	
)	

Personally appeared before me Steve Godsey, who being duly sworn, deposes and states I am the owner of Adjunct Video Services. One of the services Adjunct offers is forensic review of audio and video footage. On August 28, 2017, I was contacted by Kirsten Nauta from the Attorney Office of Donald Smith. Mr. Smith's assistant requested my assistance in reviewing surveillance footage which had been part of a murder investigation which resulted in the arrest of their client, Mr. Jason Carver. Mr. Smith's office provided me with a copy of the discovery which they had received from the solicitor's office labeled, "2nd house on the left." Since I was unable to decipher exactly what it was that Mr. Smith wanted me to review, I met with him on August 30, 2017. At this time Mr. Smith provided another copy of the video he wished me to review.

I imported footage from the surveillance video into Camtasia Studio which allowed me to freeze-frame individual frames on the video. After obtaining the specific time stamped frames I used Camtasia Studio to zoom into the top left-hand corner of the frames to allow a better view of the victim's driveway and the activities which were caught on the neighbor's surveillance equipment.

The first thing that was apparent was that there was approximately two (2) hours of footage that were not contained in the 36 or so hours of video provided. The video begins at 11:59:59 p.m., which I understood was prior to the 911 call made reporting the discovery of the

victim's body. This footage runs until approximately 08:17:08 a.m. at which time, the time stamp appearing on the video jumps to 10:28:58 a.m. a.m. The video appears to run consecutively after this point. I found that the pick-up truck driven by the individual making the 911 call initially drove past the victim's home at 13:06. The pick-up is not seen again until it stops at the crime scene at 13:44:20. At this time, a person exits the vehicle at 13:46:17 and walks toward the house. The individual returns to the truck at 13:49:17. At 13:52:20 the first deputy arrives at the scene and walks up to the home with the individual from the pick-up truck. The caller returned to the truck at 13:58 and departed the scene at 14:05.

Based on my professional opinion I find that the missing footage was manually/intentionally omitted from the footage.

Steve Godsey

Signature of Steve Godsey, CLVS

SWORN before me this 5th day of September 2017

Notary Public for South Carolina
My Commission Expires: 11/18/2024

NOTICE OF APPEAL
09/25/2017

FORM 1
NOTICE OF APPEAL

RECEIVED
SEP 28 2017
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

Case Number: 2016A0410200556

State of South Carolina, Respondent,
v.

Jason Franklin Carver, Appellant.

NOTICE OF APPEAL

Appellant Jason Franklin Carver appeals the jury verdict rendered in the trial of this matter on August 25, 2017, and the denials of motions pled by Defendant on September 14, 2015, by the Honorable R. Lawton McIntosh, who issued his Order on September 15, 2017.

September 25, 2017

Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Other Counsel:
Chelsey L. Moore
Assistant Solicitor for the
Tenth Judicial Circuit
P O Box 8002
Anderson SC 29622

FORM 7
PROOF OF SERVICE
NOTICE OF APPEAL

RECEIVED
SEP 28 2017
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Case Number: 2016A0410200556

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

PROOF OF SERVICE
NOTICE OF APPEAL

I certify that I have served a Form 1, Form 7, Form 8, Form 9, Form 11, Explanation of Appeal and Order appealed, upon The Honorable Daniel Shearouse, Clerk of Court South Carolina Supreme Court, PO Box 11330, Columbia SC 29211, The Honorable Richard Shirley, Anderson County Clerk of Court, PO Box 8002, Anderson SC 29622 and Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, 100 S. Main Street, Anderson SC 29624 by depositing a copies in the United States Mail, postage prepaid, on September 25, 2017.

September 25, 2017

Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

FORM 8
LETTER TO THE SUPREME COURT CLERK OF COURT
NOTICE OF APPEAL

RECEIVED
SEP 28 2017
S.C. SUPREME COURT

September 25, 2017

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia SC 29211

RE: State v. Jason Franklin Carver
Case Number: 2016A0410200556

Dear Mr. Shearouse:

Please find enclosed the following:

(1) Form 1-Notice of Appeal;

(2) Explanation of Appeal;

(3) Form 11-Letter Ordering Transcript;

(4) Form 9-Letter to Lower Court;

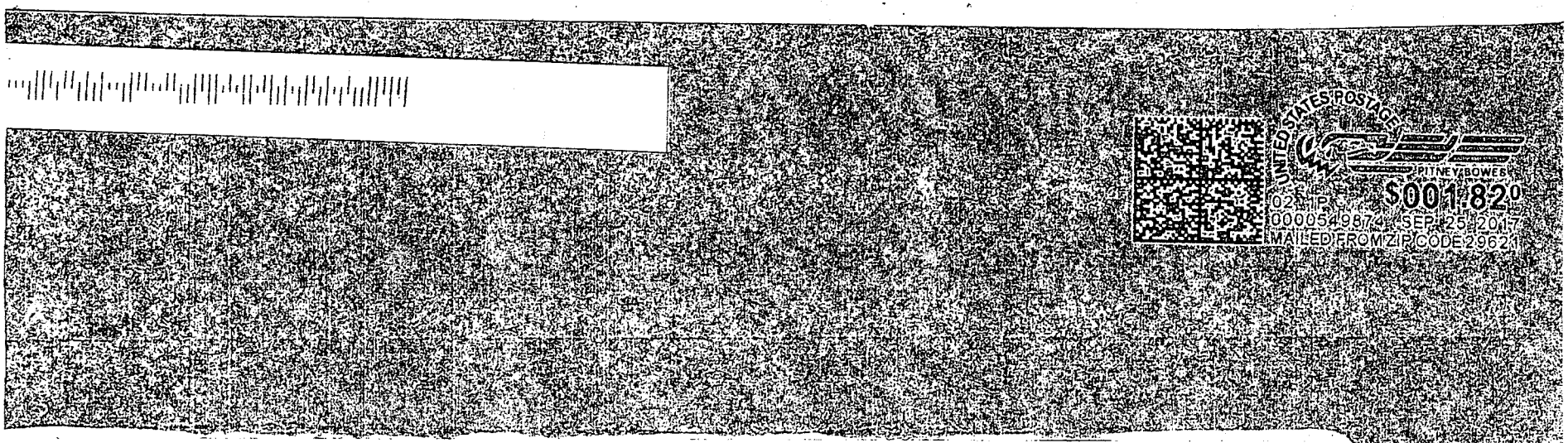
(5) Order appealed

(6) Form 7-Proof of Service for the same.

Sincerely,

Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc: The Honorable Richard Shirley, Anderson County Clerk of Court
Chelsey L. Moore, Assistant Solicitor Tenth Judicial Circuit



)ffice of Donald Smith
in Street
SC 29621

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia SC 29211

0026

MOTION TO HOLD APPEAL IN ABEYANCE 10/19/2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

RECEIVED
OCT 23 2018
SC Court of Appeals

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

APPELLANT'S MOTION TO HOLD HIS APPEAL IN ABEYANCE

Appellant hereby moves this Honorable Court to hold in abeyance the above-captioned review of a final order issued by Judge R. Lawton MacIntosh on September 14, 2017. Appellant seeks to suspend said appeal in order to be able to move to vacate or set aside the said judgment based on newly discovered evidence and misconduct of an adverse party. This action is expected to render moot the issues under review by this Court.

This is an appeal for the Appellant's conviction for the killing of Steven Cameron. This case was based on mere suspicion.

FACTUAL HISTORY:

On March 28, 2016, Appellant Jason Carver had been working on a transmission at James Gambrell's house, when the latter requested Appellant drive Steven Cameron home.

Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carver to drive Cameron because he had been drinking all day and was not able to drive. Carver agreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carver and Cameron as they traveled to Cameron's home. They were unable to reach either one. Carver returned within 30 minutes.

Upon Carver's return, Gambrell told him he wished he had a phone because they would have told him to turn around and come back. As a result, Gambrell asked Carver to take Curry with him and go back and get Cameron. Neither Gambrell nor Curry shared the secret about the missing cocaine. They didn't want to take the chance that Appellant would refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact Appellant was not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit in. Therefore, based on what he was told, Carver believed that he was bringing Cameron back, and Curry wanted to go, Carver grabbed Gambrell's Buick, which he knew always had keys in it. However, since

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carver was confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was

located. Curry claimed that everything that was found-was his, *in Gambrell's house.* Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Jason Carver worked full-time for a transmission business. He was at Gambrell's house because they had a joint venture turning cars, with Carver being responsible for getting them sale-ready.

Again, Carver told Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carver was confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carver leading the way, the two made their way back to the car. Curry noticed Cameron peaking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop, and pointed it directly at Cameron.

Carver frantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carver started toward the car, intending to leave Curry behind.

In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Carver, who has reached the car, heard the gunshots. Frightened and confused, Carver dropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Appellant to leave the lights off and leave the neighborhood. Unarmed Appellant did not put up any resistance; and, he did as he was told. Curry also offered that should Appellant feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Appellant's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Appellant and Curry arrived back at Gambrell's house, Carver was emotional and still shaken by the events that night. Curry told Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

Q. All right. So you get back to Mr. Gambrell's house?
A. (Affirmative nod).
Q. What takes place then?
A. When I got out, Curry got out behind me. I don't know if he still had the gun on me at the time but he followed me all the way into the house.
Q. So he --you say that he got out behind you. Did he slide across the front seat?
A. I'm assuming he did. I ain't for

sure.
Q. Because he was directly behind you?
A. Yes, sir, he was behind me.
Q. Did you take a chance and look behind you or just keep on walking?
A. I looked but I didn't pay that much attention. I was still shocked going in Gambrell's house. I was already in tears at that time too.
Q. Mr. Gambrell, he probably keeps his house locked up pretty good, doesn't he?
A. Yes, sir.
Q. And when you got to the front door, were you able to open it?
A. No, sir.
Q. How did you get in?
A. His nephew came to the door.
Q. So he opened the door?
A. (Affirmative nod).
Q. And you and Mr. Curry go in the house?
A. Yes, sir.
Q. Did you get past that immediate area?
A. (No verbal response).
Q. Did you go further than that? Did you go the man cave or ---
A. We started back towards the man cave. Then I sat down and Curry came across from me. Once he got on the other side of the little table, he sat down and laid the .38 down. So I'm assuming that he already had it out.
Q. So he had the .38?
A. Yes, sir.
Q. Where was Mr. Gambrell at this point.
A. Mr. Gambrell was sitting in his chair and he asked where Cameron was at. That's when Curry was telling him, said 'we got in an argument' and he said it got out of hand. Then he said that he shot him. And I was scared --I was shocked, in tears. Gambrell could see that I was scared, that I'd been crying.
Q. What was Mr. Gambrell's reaction?

17. A. Well, Mr. Gambrell and Curry started
18. arguing . I mean, they were getting real
19. loud.
20. Q. Did Mr. Gambrell say anything about
21. the fact that Mr. Cameron was just shot?
22. A. Well, he told him that 'you was just
23. supposed to have went up there and was
24 supposed to have brung him back', all that
25. stuff. That was it.
01. But, uh, Curry --he acted like he didn't
02. just acknowledge it. He acted like, you
03. know.
04. Q. So Curry and Gambrell are now in an
05. argument
06. A. Yes, sir.
07. Q. And the .38 is sitting on the coffee
08. table?
09. A. No, it was in the floor. He'd laid
10. it in the floor.
11. Q. What did you at this point?
12. A. Well, I was already so scared, I
13. just got up and left.
14. Q. Did you say goodbye?
15. A. No sir.

(Exhibit 1A – Carver Trial Trans., Direct Exam Jason Carver, 08/21-25, 2017, P. 542, 9.25 & P. 543.545).

Appellant's apprehensions were not unfounded. That night, Curry drove past Carver's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Carver's trial that he personally reviewed portions of the video that afternoon.

14. Q. And what did you do when you got
15. inside the residence?
16. A. Obviously because of the nature of
17. the offense and because the cameras were

there, we wondered if they were in fact
currently recording. They were and, so, we
were able to do a very rapid review of some
of the footage and were able to discover some
evidence that I felt was pertinent to the
case.
Q. What evidence was that?
A. Un, -- again, while we were review-
ing the video, and we just kinda of skimming
it very fast just to see.

(Exhibit 1B - Carver Trial Trans, Direct Exam Eric Russell, P. 245, 16.25 & p. 246, 1.2)

The footage was obtained that very day by forensics on scene.

Q. Okay. Did you ask that that footage
be collected?
A. I did, I went to the forensics that
was on scene and asked that it be collected
for evidence purposes.

(Exhibit 1C- Carver Trial Trans., Direct Exam Eric Russell, P. 248, 20.24)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

Buick appears, -- well, first, let me ask,
how many hours of surveillance footage did
you view in this case?
A. I can't give you an exact number but
hours. We watched it all the day of the
incident as well as the following day. So at
least thirty-six hours.

(Exhibit 1D- Carver Trial Trans., Direct Exam of Eric Russell, P. 253, 21.25 & p. 254, 1.2)

Again, on the 30th I spent my entire day
reviewing the video.

(Exhibit 1E - Carver Trial Trans, Cross Exam of Eric Russell, P. 268, 6.7)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

16. On April 5th, I was able to get stills
17. from the video taken and make comparisons,
18. and determined that it was the same vehicle.

(Exhibit 1F-Carver Trial, Direct Exam of Eric Russell, p. 255, 16.19)

The video was used to identify the vehicle driven by Carver. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Appellant did not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Appellant gathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder.

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

> **MS. MOORE:** Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason Carver's trial.

(Exhibit 2- Transcript Plea Bargain, Woodrow Curry plea, 8/22/2017, p. 3, 12.17).

Appellant was indicted for Murder. During Appellant's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carver had his own gun; (4) Gambrell instructed him and Carver to retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary

manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Appellant was convicted of murder on August 25, 2017. Appellant moved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Appellant perfected his appeal. He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in the Carver case. Appellant believed that these statements should be explored in depth as they go through the very core of the crime for which Appellant was convicted and sentenced to thirty (30) years of imprisonment.

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

20. Q. So when you mentioned that on the first video that
21. a neighbor had heard the argument and heard what went
22. on down that night, that just was not true, correct?
23. A. Actually, that was true. We had -- during the
24. neighborhood canvass, it's my understanding that one of
25. the detectives talked with a neighbor who overheard an
01. argument and the words "dirt bike" were mentioned
02. during the argument.
03. Q. Did they hear gunshots?
04. A. No one -- I don't recall. I don't recall if
05. somebody heard gunshots or not. I know that they
06. talked to several people in the neighborhood.

(Exhibit 3A- James Gambrell Trial Transcript- Cross Exam. Detective Kreig Marzolf, 9/5/2018, P. 38, 20.25 & P. 39, 1.6).

15. A All I know is what, you know, what the detective
16. that was told to canvass told me, which was that, you
17. know, somebody had overheard an argument involving the
18. words "dirt bike."
19. Q. But no gunshots?
20. A. I don't recall if they had heard gunshots or not,
21. sir. I don't want to tell you the wrong thing.

(Exhibit 3A- James Gambrell Trial. Trans., Cross Exam. Marzolf, P. 39, 15.21).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Appellant maintains that this should have been disclosed in the previous trial as this confirms what Appellant has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through Carver's lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Appellant's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any such instance. (Exhibit 1G- Carver Trial Trans., Cross Exam of Marzolf, P. 321, P. 20.25 & P. 356-357). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted the Cameron's volatile behavior. (Exhibit 1G). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 4A- Supplementary Report, Marzolf, 2016-05324, 04/13/2016). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 4B- Supplementary Report, Marzolf, 2016-05324, 04/13/2016).

Appellant believed that this information would have helped him formulate his defense.

Respondent relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carver case, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

14. Q. When you originally spoke to
15. detectives who did you say shot Steven
16. Cameron?
17. A. I didn't.
18. Q. You didn't?
19. A. (Negative gesture).
20. Q. So you're telling us today who shot
21. Steven Cameron?
22. A. Yes, ma'am. It just happened, I
23. didn't mean to shoot him. He was just coming
24. at me. I don't even remember pulling the
25. trigger, it just went—(pause)—I wish I
01. could turn back time, but I can't.
02. Q. Thank you, Mr. Curry. Please answer
03. any questions that Mr. Smith may have for
04. you.

(Exhibit 1G- Jason Carver Trial Trans., Direct Exam Woodrow Curry, 8/21-25/2018, P. 373, 14.25 & P. 374, 1.4).

However, in the Gambrell trial, Appellant learned that Curry, initially tried to pin the shooting on Carver. Marzolf, who interviewed Curry, testified to the following:[1]

16. Q. Now, did Mr. Curry, the shooter, admit to you what
17. had happened, or did he deny all knowledge of what had
18. happened?
19. A. He gave me a version of what had happened in which
20. he said that they did go to the house and that Jason
21. Carver was the shooter that night.
22. Q. But didn't Mr. Curry later change his mind and
23. admit that, in fact, he was the shooter?
24. A. Yes, sir, he did.

[1] On a side note, Marzolf's statement about not knowing the details of Curry' s plea bargain is improbable. They had to have discussed with Curry the consequences of entering a plea. Curry testimony is by no means a surprise confession.

25. Q. But at the time he was lying about that to you,
01. correct?
02. A. Yes, sir.
03. Q. Do you know when he changed his mind about that,
04. decided to admit he was the shooter?
05. A. Sometime after he had been charged.
06. Q. Charged by you?
07. A. Yes, sir.
08. Q. With these crimes?
09. And to your knowledge, was that part of a plea
10. agreement with him?
11. A. I don't know what the actual -- I know he's agreed
12. to testify.
13. Q. As a matter of fact, he's here today, isn't he,
14. ready to testify?
15. A. I believe so.

(Exhibit 3B- James Gambrell Trial Trans., Cross Exam. Marzolf, P. 40, 16.25 & P. 41, 1.15).

Second, when Curry was asked what he did after leaving Cameron's house during the Carver trial, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carver do
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1H- Carver Trial Trans., Direct Exam Curry, P. 371, 3.5).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 3C- James Gambrell Trial Trans., Direct Exam. Curry, P. 53, 9.25).

This was not disclosed during Carver's trial. There was no relevance to the trip home. Out of nowhere, the prosecutor asked him if they "did you do anything on the way to Gambrell's house?" Curry's response was that he called Gambrell. This question was not raised during Carver's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Third, at the Carver trial, Curry testified that Gambrell instructed Appellant to drive Cameron to his house.

21. Q. What were y'all doing?
22. A. Well, at the time—at the time I
23. was working on a car. I was working on a car
24. and I gues he was in there with them. Then
25. Milton came out there and told Jason to take
01. Steven home.

(Exhibit 1I- Carver Trial Trans., Direct Exam. Curry, P. 363, 21.25 & P. 364, 1).

In his subsequent testimony at Gambrell's trial, his statements implied that that Carver voluntarily took Cameron home.

16. Q. What we're y'all doing?
17. A. Well, I mean like I say, I was out there
18. working – to begin with, I was out there working on a
19. car. Carver wasn't even there yet. I was working on a
20. car there, and they was in the house. Steven had come
21. over with a dirt bike, and he was in the house.
22. And then later on, when Carver got off work, he
23. come over there like he normally did. He went in the
24. house and come back out, him and Steven there, and he
25. took Steven home.

(Exhibit 3D- Gambrell Trial Trans., Cross Exam. Curry, P. 48, 16.25).

Fourth, Curry, implicated Carver by testifying that Appellant had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

15. Q. Did you have a gun when you left
16. Appaloosa Drive?
17. A. Yes.
18. Q. Where did you get that gun?
19. A. Milton Gambrell.
20. Q. Did Jason Carver have a gun when you
21. left Appaloosa Drive?
22. A. Yes.
23. Q. Where did he get that gun?
24. A. It was his.
25. Q. Did you have more than one gun with
01. with you?
02. A. Yes.
03. Q. How many guns did you have?
04. A. Two.
05. Q. Do you remember what kind of guns
06. they were?
07. A. .38 and a .22--.25, I mean.

(Exhibit 1J- Carver Trial Trans., Direct Exam. Curry, P. 366, 15.25 & P. 367, 1.7.

However, in the same hearing, Curry stated:

02. Q. And the weapon that you said that
03. you had seen, was that the same weapon that
04. you allege that he had at this time?
05. A. I don't know that h owned one.
06. Q. The one with the sight on it, the
07. one that he allegedly brought out and showed
08. you previous to his incident, you still
09. don't know what that is?
10. A. No, sir.

(Exhibit 1K- Carver Trial Trans., Curry, P. 398, 2.10).

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

14. Q. So you had a chat with Steven
15. Cameron. And after he did not give you any
16. money and he did not give you any drugs, what
17. did you do?
18. A. I don't know, I like turned and he

19.		come at me, and I looked down, I didn't know
20.		I had the gun but obviously I did—I had
21.		it, I mean. Then like, 'oh.' He charged
22.		at me and – I don't even remember pulling the
23.		trigger but I heard *Pop! Pop!* So—(pause).
24.	Q.	So you shot Steven Cameron?
25.	A.	Yeah, I guess.

(Exhibit 1L- Carver Trial Trans., Direct Exam. Curry, P. 369, 14.25).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

08.	Q.	Why did you do it?
09.	A.	Because for some reason or another I had done
10.		pulled the gun, I guess to intimidate him or whatever,
11.		and he charged at me. "What are you going to do, shoot
12.		me?" And he charged at me. I don't know what to do.
13.		What's he going to do, take the gun and shoot me or
14.		what? I don't know. I mean, that's just—
15.	Q.	Why did you feel the need to try to intimidate
16.		him?
17.	A.	He's bigger than I am.
18.	Q.	He's bigger than you are?
19.	A.	A lot bigger than I was.
20.	Q.	But you just said you were just going to have a
21.		conversation with him. Why should him being bigger
22.		than you make a difference if you're just going to have
23.		a conversation?
24.	A.	Man, like I said, I was high. I was 150 pounds.
25.		I was all drawed up myself, you know I mean.

(Exhibit 3E- Gambrell Trial Trans., Cross Exam. Curry, P. 63, 9.25).

Appellant believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground and announcing "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Appellant having a gun. By Respondent having Curry testify that Carver had a gun, it made him "part of the team". The only statement regarding Carver possessing a gun was from Curry. Carver painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carver knew Curry had) in the car. Obviously, Carver did not have a gun; or, he would not have been so aggressive with his plea for Curry to leave his gun in the car.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carver went in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carver had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When – Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a – there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 3C- Gambrell Trial Trans., Cross Exam. Curry, P. 53, 18.25).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Carver had a -- there, and I..*" (Exhibit 3C). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In testifying that "*(W)e went in there to return the guns*", Curry tied Carver in with him. Curry admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carver returned the gun he allegedly had. If it were true that Carver had his own gun, he would have no need to return his own gun to

Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

Q. Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your cell phone? Which is the truth?
A. I called him on the cell phone.
Q. Why is this the first time you're saying this?
A. First time I recall being asked.
Q. Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.
A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

(Exhibit 3F- James Gambrell Trial Trans. Curry, P. 58, 14.25 & 59, 1.4).

Q. Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house --
A. Uh-huh.
Q. -- that you shot the guy.
A. I don't recall that, but if you say I did, I did.
Q. Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?
A. He didn't ask.
Q. Didn't you say something like, "Well, things just went crazy and I shot him"?
A. No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.
Q. You said the way back over there?
A. On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because

I just shot him."
Q. Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?
A. Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?
Q. No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.
A. Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.
Q. So you're telling this jury –
A. The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.
Q. My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?
A. It's the first time it's been asked.
Q. The detectives never asked you the details of what happened?
A. Not that I recall.

(Exhibit 3F & 3G- Gambrell Trial Trans., Curry, P. 59, 17.25; P. 60, & P. 61, 1.13).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

THE COURT: Are you under the influence of any medications, drugs, or alcohol today?
MR. CURRY: No, sir.
THE COURT: Counsel, are you satisfied that Mr. Curry's competent to plea?
MS. BYFORD: I am, Your Honor.

(Exhibit 2B- Plea Bargaining Hearing, Curry, P. 5, 18.23).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing" carrot" offered by the Respondent. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Carver's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

02. Q. Okay. Well, if your memory was so messed up, why
03. should this jury believe anything you have to say today
04. about what happened over two years ago?

Exhibit 3H - Gambrell Trial Trans., Curry, P. 66, 2.4).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

Appellant believes that due to this newly discovered evidence, he is entitled to remedy under Rule 29 SCRCrimP. Appellant further asserts that he is entitled to move to vacate/set aside judgment by reason of Respondent's misconduct in the handling of this case.

Appellant insists that Respondent abused its discretion in filing different charges against Carver, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder [2], and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory before the fact to a felony. The same prosecutor handled Carver's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the

[2] Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargaining.

accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Carver was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Appellant was found guilty not because of what he did, but because of what was suspected he did. The State said they were deferring Curry's sentencing until after Appellant's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell's trial. Curry testified as to what would convict Carver and then Gambrell. Based on Curry's lies, Appellant and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the state's evidence in both cases, Appellant asserts that the State has no evidence. Curry cannot be considered an evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of time Curry had talked to the police. There is no question that the State recorded the interview where

it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Defendant to never call a witness when you do not what know what they will say. They knew what Curry was going to say.

During Carver's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

> So what happened here is that Milton Gambrell, a known drug dealer, Mr. Smith just told you all about that, sent his two ""do boys"--- that is what Woodrow Curry called himself and Carver on the stand---they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

(1M- Carver Trial Trans.-Closing Argument of Chelsea Moore, P. 681, 4.12).

But in the Gambrell trial, this was all she stated:

> In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James Gambrell is also liable for any criminal act which, in the ordinary course of things, was the natural or probable consequence of the crime that he advised or commanded. So was the murder of Steven Cameron a natural and foreseeable consequence of James Gambrell's order? I submit to you that it was.

(Exhibit 3I- Gambrell Trial Closing Argument of Chelsea Moore, P. 10, 19.25 & 11, 1.6).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. The only logical

conclusion was that Respondent dangled Curry's sentencing over his head for him to testify according to Respondent's wishes.

In prosecuting the case, Respondent failed to disclose information and/or witness that may exculpate the Appellant. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. (Rule 3.8(d) of the Rules of Professional Conduct). Respondent failed to do the same. Instead, it allowed its star witness, Curry, to offer inconsistent statements during Carver and Gambrell's respective trials. Respondent also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect. This practice violates Rule 3.8(d) of the Rules of Professional Conduct.

Appellant had already questioned Respondent's method of prosecuting his case. The investigation on the Carver case was completed April or May 2016. Respondent offered Carver a copy of the discovery in December 2016, which Appellant was unable to open. By the State's own admission, what they provided had been faulty.

02. SOLICITOR MOORE: Yes, Judge. I cannot
03. guarantee that the flash drive will be able
04. to play for the jury. We have, as you know,
05. had some difficulty with that.

(Exhibit 1N -Carver Trial, Cross Exam of Eric Russell, p. 274, 2.5)

Appellant repeatedly requested the discovery materials, which included surveillance video which ran in excess of 36 hours. These materials have been in the State's possession since the first week of the investigation. Appellant was provided the materials only a year after. Another set of materials which included an audio recording and three supplemental reports was provided by the Respondent on August 9, 2017, or two (2) weeks prior to Appellant's trial. The

State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.

SOLICITOR MOORE: I understand, Your Honor.

THE COURT: So playing with evidence is not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong --and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.

SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---

THE COURT: I want to know why --I don't care what you did. I want to know why it just got sent out August 9th of this year.

SOLICITOR MOORE: Because I'd just received it, Your Honor.

THE COURT: From whom?

SOLICITOR MOORE: From Detective Henry.

THE COURT: Who is Detective Henry?

SOLICITOR MOORE: He is the man who was just testifying.

THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?

OFFICER HENRY: What information?

THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?

OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.
THE COURT: You thought you had.
OFFICER HENRY: Yes, sir.
THE COURT: So it was a case of honest mistake?
OFFICER HENRY: Yes, sir. Seriously, yes, sir.
THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern—and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay. Is there other evidence that was not delivered until late in the game? If so, why?
SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly
THE COURT: I'll be right back. I want to get this cleared up.
SOLICITOR MOORE: Yes, sir.
THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(Exhibit 1O- Carver Trial Trans., Direct Exam., Patrick Henry, 08/21-25/2017, P. 225, 17.25 & P. 226-228).

The trial judge initially found this delay as unacceptable.

Q. Why is there such a delay in getting that information?
SOLICITOR MOORE: Your Honor, I can only provide to Mr. smith what I have for myself.
THE COURT: That is not an excuse.
SOLICITOR MOORE: I understand—
THE COURT: That is not acceptable.
SOLCITOR MOORE: I understand, Judge.
THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be

18. some problems with it, I'm telling you.
19. SOLICITOR MOORE: I understand, Judge.

Exhibit 1P- Carver Trial Trans., Direct Exam. Henry, P. 224, 6.19).

The judge went easy on the Respondent and allowed all the information in the record when Officer Henry's attested that was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 1O- Carver Trial Trans., Direct Exam. Officer Henry, P. 227, 2.23). Instead, the court turned against Appellant's failure to view the 36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 1O- Carver Trial Trans., Direct Exam. Officer Henry, P. 228, 19.24). The lower court failed to consider that Appellant's counsel is a sole proprietor, whom unlike the prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this is the fact that there was precedence in the police's haphazard handling of evidence in this case.

Respondent's questionable conduct continued during Gambrell's trial, when the State deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Appellant was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Appellant submits that if Respondent's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

07. Q. Did you go over there with the intent to kill
08. Mr. Cameron?
09. A. No, sir.

Q. Did anybody tell you to go kill him?
A. No, sir.
Q. Did anybody tell you to go beat him up?
A. No, sir.
Q. Did anybody tell you to go threaten that you were going to beat him up?
A. No, sir. I was just told to go get the dope or get paid for it.
Q. What does that mean --
A. I never intended to --
Q. What does that mean, you were told to steal the dope from him?
A. No. I was just told to go and retrieve it. He stole the dope.
Q. What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A. Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.
Q. That's right. Because nobody had instructed you about that, correct?
A. That's right. I wasn't instructed. Nobody told me to. I've done said over and over this was never planned. I never planned to shoot Steven Cameron let alone kill him. This is something I'm living with. Nobody told me to do that. I didn't want to do that.

(Exhibit 3J- Gambrell Trial Trans., Cross Exam. Curry, P. 62, 7.25 & P. 63, 1.10).

Q. Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A. I don't know what he was thinking.
Q. All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A. Right.
Q. He did not tell you to threaten Mr. Cameron in any way?
A. No, sir.

(Exhibit 3K- Gambrell Trial Trans., Cross Exam. Curry, P. 68, 17.25 & P. 69, 1.2).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

Q. He also emphasized to you that all he wanted was

for them to let Mr. Cameron know that he had the drugs, they knew it, and to pay for it, right? Wasn't that his story?

A Yes, sir.

Q. Okay. You -- also on that video, at one point I believe I heard you say that Mr. Cameron -- dope was found on Mr. Cameron after he was killed?

A. Yes, sir. During the autopsy, they did find some drugs.

Q. Okay. Did you mean in his system?

A. No, sir. I mean they found actual drugs on his person.

Q. Do you know how much?

A. I think in his tennis shoes, I believe. I don't know the exact quantity, sir.

Q. Okay. So obviously --

A. It was significant, but I don't know exactly what it was.

Q. Couldn't have put it there after he was killed, so it was there in his shoes before he was killed, obviously. You don't know how much?

A. I don't know exactly, sir.

Q. Okay. Did anybody -- were his shoes still on when he was lying there on the porch?

A. Yes, sir, I believe so.

Q. All right. So nobody, obviously, tried to pull his shoes off to look for anything, correct?

A. I would imagine not.

(Exhibit 3L- Gambrell Trial Trans., Cross Exam. Curry, P. 42, 2.25).

The foregoing testimonies belied Respondent's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video

surveillance that other individuals entered Cameron's house. (Exhibit 1S - Carver Trial Trans., Cross Exam. Marzolf, P. 318, 5.8).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried Cameron away, or attempted to commit said acts by any means whatsoever without authority of law. (S.C. Code ann. § 16-3-910 (2012)).

Respondent contends that Gambrell, Curry and Appellant planned to commit the felony of murder or kidnapping by the fact that Curry was armed. Appellant had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver were all speculations by the police.

Q. Mr. Carver did not have a gun, did he?
A. There were two guns and two---
Q. Mr. Carver did not have, did he?
A. They had guns. They were given a .38 by Mr. Gambrell and Mr. Curry carried a .25 automatic with him.
Q. Where was the .25 carried?
A. In a fanny pack, is my understanding.
Q. Who knew about the .25?
A. Mr. Curry knew about it and I know that his wife knew about it, she told me about it as well.
Q. So neither of those people are Mr. Gambrell or Mr. Carver, right?
A. No.

(Exhibit 1R- Carver Trial Trans., Cross Exam, Marzolf, P. 340, 3.20).

Q. When Mr. Gambrell took that gun, Mr. Carver had not returned from Mr. Cameron's yet; had he?

11. A. Mr. Gambrell didn't take the gun,
12. sir. Mr. Curry received the gun from Mr.
13. Gambrell or took it from him.
14. Q. Mr. Curry took it from Mr. Gambrel?
15. A (No verbal response).

(Exhibit 1S- Carver Trial Trans., Cross Exam. Marzolf, P. 341, 8.15).

03. Q. You also learned that the .38 nor
04. any other guns were provided to Jason Carver;
05. right?
06. A. The gun was provided to Curry and
07. Carver when they were leaving, so I don't
08. know.
09. Q. Which gun was provided to Mr. Curry?
10. A. The .38.
11. Q. Which gun was provided to Mr.
12. Carver?
13. A. There were no other weapons
14. provided.
15. Q. And Mr. Gambrell told you that it
16. was not provided to him, meaning Mr. Curry
17. (sic); right?
18. A. He said that Mr. Curry took the weapon.

(Exhibit 1T- Carver Trial Trans. Cross Exam., Marzolf, 345, 3.19).

Proceeding from Respondent's fervent plea for the jury to believe Curry's words, Appellant submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

Finally, Appellant believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as rulings on sustaining when there was no objection.

12. Q. Mr. Curry told you that he left the
13. gun in the car; right?
14. Q. Yes.

15. Q. So we are here today and you're
16. saying that Mr. Carver did what?
17. SOLICITOR MOORE: Uh—
18. THE COURT: Sustained.

(Exhibit 1U-Carver Trial Tans., Cross Exam. Marzolf, P. 346, 12.18).

Or sustained an objection that has no grounds:

06. Q. Mr. Gambrell was aware of the
07. pistol, the .38 being picked up?
08. SOLICITOR MOORE: Objection, Your Honor.
09. THE COURT: Sustained.
10. SOLICITOR MOORE: Thank you.
11. CROSS EXAMINATION CONTINUED
12. BY MR. SMITH:
13. Q. That weapon was not utilized in this
14. event to our knowledge?
15. SOLICITOR MOORE: Objection, You Honor.
16. THE COURT: Asked and answered. Move forward, please.

(Exhibit 1V- Carver Trial Trans., Cross Exam. Marzolf, P. 351, 6.17).

Appellant believes that the trial judge showed his bias when he made conclusory statements as below:

06. MR. SMITH: It shows that what they've
07. provided, his statements and things in
08. evidence supports what he said from a non-
09. criminal standpoint. There was no criminal
10. thought in this matter. That's what he says.
11. THE COURT: Well, I'll look at it.
12. Quite frankly, I think you're just wrong. I
13. think that if your client went to go pick up
14. money or drugs, that's a criminal act in and
15. of itself. If you don't think so, then we
16. have a disagreement about that.

(Exhibit 1W- Carver Trial Trans., P. 496, 6.16).

06. THE COURT: Well, let me think about
07. that on the hand of one, hand of all. But
08. here are my thoughts on that. First, I don't
09. think that it exculpates your client, the
10. reason being --I think that they had a

criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence. So, if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose." So therefore -- although I think probably that your client did not know that a gun—that he was going to shoot this fellow, but—the cases recognize the connection between guns, drugs and violence where the plan was illegal and it just spiraled out of hand. So, the jury may believe that he was an innocent bystander, but that's my belief as to why the video of Mr. Gambrell does not exculpate your client. "

(Exhibit 1X- Carver Trial Trans., Redirect Exam., Carver, P. 585, 6.25 & P. 586, 1.10).

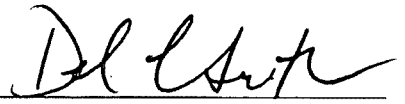
The preceding statements were replete with prejudice considering that Appellant disputed knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Appellant is presently serving a sentence of 30 years for a crime that he did not commit. Appellant is serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Appellant.

Appellant submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

To this end, Appellant seeks to hold this appeal in abeyance. Appellant further moves for leave to allow the Appellant to move to vacate/ set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence. Under certain circumstances, it is possible that this appeal will become moot: that is if the lower court affirms Appellant's motion and vacates the judgment.

Accordingly, to conserve the resources of the Court and the parties, Appellant respectfully requests this Honorable Court suspend and/or hold this appeal in abeyance, pending the resolution of Appellant's motion to vacate.



Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

October 19, 2018

EXHIBITS

EXHIBIT 1

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE VS. JASON CARVER

2016-GS-04-2279

08/21-25/2017

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
v.	)	Case No. 16-GS-04-2279
	)	
Jason Franklin Carver,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on August 21 through August 25th, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions for Anderson County, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Chelsey Lauren Moore, Assistant Solicitor
Scott McElhannan, Assistant Solicitor
10th CIRCUIT SOLICITOR'S OFFICE
Post Office Box 8002
Anderson, South Carolina 29622
...Appearing for State of South Carolina

Donald L. Smith, Esq.
...Appearing for Defendant

VIVIAN H. CROSS
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

shook up, I wasn't doing the speed limit for sure.

Q. Were you driving faster or slower?

A. I was a little bit faster somewhat because I was shook up, scared. I didn't know was going to happen. I didn't know if he was going to shoot me when we got back to Gambrell's house or not.

Q. All right. So you get back to Mr. Gambrell's house?

A. (Affirmative nod).

Q. What takes place then?

A. When I got out, Curry got out behind me. I don't know if he still had the gun on me at the time but he followed me all the way into the house.

Q. So he -- you say that he got out behind you. Did he slide across the front seat?

A. I'm assuming he did. I ain't for sure.

Q. Because he was directly behind you?

A. Yes, sir, he was behind me.

Q. Did you take a chance and look behind you or just keep on walking?

A. I looked but I didn't pay that much attention. I was still shocked going in Gambrell's house. I was already in tears at that time too.

Q. Mr. Gambrell, he probably keeps his house locked up pretty good, doesn't he?

A. Yes, sir.

Q. And when you got to the front door, were you able to open it?

A. No, sir.

Q. How did you get in?

A. His nephew came to the door.

Q. So he opened the door?

A. (Affirmative nod).

Q. And you and Mr. Curry go in the house?

A. Yes, sir.

Q. Did you get past that immediate area?

A. (No verbal response).

Q. Did you go further than that? Did you go the man cave or ---

A. We started back towards the man cave. Then I sat down and Curry came across from me. Once he got on the other side of

the little table, he sat down and laid the .38 down. So I'm assuming that he already had it out.

Q. So he had the .38?

A. Yes, sir.

Q. Where was Mr. Gambrell at this point?

A. Mr. Gambrell was sitting in his chair and he asked where Cameron was at. That's when Curry was telling him, said 'we got in an argument' and he said it got out of hand. Then he said that he shot him. And I was scared -- I was shocked, in tears. Gambrell could see that I was scared, that I'd been crying.

Q. What was Mr. Gambrell's reaction?

A. Well, Mr. Gambrell and Curry started arguing. I mean, they were getting real loud.

Q. Did Mr. Gambrell say anything about the fact that Mr. Cameron was just shot?

A. Well, he told him that 'you was just supposed to have went up there and was supposed to have brung him back', all that stuff. That was it.

But, uh, Curry -- he acted like he didn't just acknowledge it. He acted like, you know.

Q. So Curry and Gambrell are now in an argument?

A. Yes, sir.

Q. And the .38 is sitting on the coffee table?

A. No, it was in the floor. He'd laid it in the floor.

Q. What did you do at this point?

A. Well, I was already so scared, I just got up and left.

Q. Did you say goodbye?

A. No. No, sir.

Q. Did you say, 'can I leave?'

A. No, sir.

Q. You just left?

A. Yes, sir.

Q. Where did you go?

A. I went to my mom's.

Q. Where was your dog at this point?

A. My dog was still in the car at the time.

Q. Did you go back the normal way? Or

as one facing away from the incident location, towards Old Pendleton Road.

Q. What did you do when you found those?

A. We attempted to contact the residents, however no one answered the door. Shortly after I was approached by Corporal Caleb Wilkinson with the Sheriff's Department, who informed me that he had made contact with an individual. Through a series of phone calls I was able to get Mike Tallyan to arrive and -- he arrived inside the residence.

Q. And what did you do when you got inside that residence?

A. Obviously because of the nature of the offense and because the cameras were there, we wondered if they were in fact currently recording. They were and, so, we were able to do a very rapid review of some of the footage and were able to discover some evidence that I felt was pertinent to the case.

Q. What evidence was that?

A. Uh, -- again, while we were review-

ing the video, and we just kinda of skimming it very fast just to see.

Q. Um-humm.

A. I observed a vehicle that pulled into the victim's driveway. The time stamp on the video was approximately two hours off, that was information that we were able to get from Mike Tallyan. But, uh, we were able to look at the victim, identified by the clothing that he was wearing, at approximately 1602 Hours riding his dirt bike towards Old Pendleton.

At around 2102 Hours we were able to see what looked like a black vehicle pulling into 108 Sterling Bridge Road. It was there a very, very small timeframe. Pulls in, then essentially pulls out. You can see someone walking from the passenger side of that vehicle towards 108.

Then at -- I want to say 2130, I believe is the time, you see a white sedan pulling in. I can reference my notes if I need to get the exact timeframe.

Q. Okay.

A. But -- (upon review), 2130.

colored sedan as well as the Buick itself, the white car, uh, -- the timeline I established.

Q. Okay. I am going to show you what has been marked as State's Exhibit 10, 10A. Does this car look similar to the car that you saw in that footage?

A. It does, yes, ma'am.

Q. It does?

A. (Affirmative nod).

Q. Thank you. So what, if anything, did you do after you observed the footage at Mr. Tallyan's house?

A. The lead detective on this case had been determined to be Detective Marzolf. On seeing this information, I approached Detective Marzolf and we determined the necessity to try to locate this vehicle that I felt was involved in this incident.

Q. Okay. Did you ask that that footage be collected?

A. I did, I went to the forensics that was on scene and asked that it be collected for evidence purposes.

Q. And you mentioned that you had

vehicle, as it is pulling in the driveway the lights are off. There is some movement at the very top of the video here. That's when you see that the occupants are opening the doors and stepping out of the vehicle.

Q. (Video playing) -- can you tell us what is happening now?

A. Yes, ma'am. Just before that, you can see the interior lights illuminate in the vehicle. The white vehicle is now reversing from the driveway at 108 with no lights illuminated and it is -- you can see some motion lights come on, headlights are off.

Q. To the best of your recollection were those headlights on when they pulled into the driveway?

A. Yes, ma'am, they were.

Q. Thank you.

A. Between the time that the victim returns home and the time that the white Buick appears, -- well, first, let me ask, how many hours of surveillance footage did you view in this case?

A. I can't give you an exact number but hours. We watched it all the day of the

incident as well as the following day. So at least thirty-six hours.

Q. So you saw the victim leave his home on the dirt bike?

A. Yes, ma'am.

Q. Then you saw him return, obviously?

A. Yes, ma'am.

Q. In that dark-colored car?

A. Yes, ma'am.

Q. And did anyone else, between the time that the victim arrived home and the time that the white Buick pulled in the driveway, did anyone else appear to you in this surveillance footage to come to the victim's house?

A. In reviewing the video, ma'am, there's no additional activity visible on that camera.

Q. Okay. What, if anything, did you do after reviewing that footage?

A. Obviously after a detailed time line was established, I told Detective Marzolf that -- there was a time line that I was allowed to assist Detective Marzolf in showing this footage to some of the family of

then further meetings where you came together to share what you'd found?

A. I can't recall if we did on this case. I know that we did initially and that's where I got my assignment.

Again, on the 30th I spent my entire day reviewing the video.

As far as the 4th, that's the actual meeting that I had with Detective Marzolf, where I showed the video to the family with the help of Detective Price (phonetic).

Q. Detective Russell, you went to Williamston. When did you do that?

A. 2010, sir.

Q. Why did you leave?

A. I was a detective with the Anderson County Sheriff's Office and I took a more supervisory job with the Williamston police department.

Q. When you came back from Williamston, why did you leave Williamston?

A. I was a Captain and in the latest mayor's election they had a new mayor who replaced the main staff of the police department.

the victim in regards to possibly identifying this vehicle.

Through the course of that, I found a relative that was able to recognize that vehicle as being at a location that he had -- that he and Detective Patrick Henry went to on March 30th and observed that location.

Q. During the course of your investigation, were you ever able to compare this video footage with video footage or photographs from Investigator Henry?

A. Yes, ma'am. When I assisted in showing that to the family, I learned that -- up to then, I didn't know that Detective Henry had done that.

On April 5th, I was able to get stills from the video taken and make comparisons, and determined that it was the same vehicle.

Q. Okay. If you would step off the stand for me, please, and tell me what you see on the screen in Exhibit 14.

A. Yes, ma'am. This is the image of the vehicle that arrived at the victim's residence that night.

Q. Okay. And I'm showing you State's

offense, from 2013?

A. Yeah, that sounds right.

Q. That sounds right?

A. (Affirmative nod).

Q. Okay. And you say that you're still being held on trafficking charges in Greenville?

A. Yes, ma'am.

Q. Is everything that you've told us here today the same thing that you told the detective who came to interview you or did your story change a little bit?

A. It's the same.

Q. When you originally spoke to detectives who did you say shot Steven Cameron?

A. I didn't.

Q. You didn't?

A. (Negative gesture).

Q. So you're telling us today who shot Steven Cameron?

A. Yes, ma'am. It just happened, I didn't mean to shoot him. He was just coming at me. I don't even remember pulling the trigger, it just went -- (pause) -- I wish I

could turn back time, but I can't.

Q. Thank you, Mr. Curry. Please answer any questions that Mr. Smith may have for you.

A. Okay.

THE COURT: Cross-examination.

MR. SMITH: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. SMITH:

Q. How did Mr. Cameron die?

A. I shot him.

Q. "I shot him" with what?

A. A .22.

Q. You reckon it was it a .22?

A. Yeah, it was a .22 or a .25. I'm not sure.

Q. Why don't you know which one it was?

A. It wasn't my gun. It looked like a .22 caliber, it was a small caliber.

Q. So you don't know if that was your .25?

A. It wasn't mine.

Q. It wasn't?

A. No, I don't have a gun.

in the car to turn the headlights off?
A. No, ma'am.
Q. What did you and Jason Carver do when you left Steven Cameron's house?
A. Went back to Milt's.
Q. Now, we talked about you being incarcerated in Greenville County.
A. Yes, ma'am.
Q. What are you incarcerated for?
A. Trafficking.
Q. Anything else?
A. Naw.
Q. Were you recently being held on other charges from Anderson County?
A. No, ma'am.
Q. For this case?
A. It was only like two weeks after this happened that Greenville arrested me.
Q. Had you been charged with murder in this case?
A. They come and told me, uh, I -- (affirmative nod). I turned myself in.
Q. So yes, you had been charged with murder in this case?
A. (Affirmative nod).

Q. So for a while?

A. Yes.

Q. All right. Were you with Jason Carver and James Gambrell on the night that I am asking you about?

A. (No verbal response).

Q. The night that you are here to talk about today?

A. Yes.

Q. You were?

A. Yes.

Q. Where were the three of you?

A. I was outside working on a car. Milton Gambrell, he was inside. Jason, he was at work and he'd just got off work and he came over there.

Q. Who else was at the house that night? Do you remember?

A. My wife, Milton's wife. My stepson, he was there.

Q. What were y'all doing?

A. Well, at the time -- at the time I was working on a car. I was working on a car and I guess he was in there with them. Then Milton came out there and told Jason to take

Steven home.

Q. Why did Milt get Jason Carver to take Steven home?

A. Because Steven didn't have no way. He'd brought a dirt bike over there, so -- (pause).

Q. He's brought a dirt bike -- the victim brought a dirt bike over to Mr. Garnbrell's house?

A. Yes.

Q. And he sold it while he was there?

A. Yes.

Q. So he didn't have any way to get home?

A. Right.

Q. Okay. And do you know in particular why he asked Mr. Carver to take him home?

A. I don't know.

Q. You just know that he did?

A. Yeah. He did stuff like that when he asked him to.

Q. Do you remember about what time that they left?

A. No, ma'am. I'd say around 6:30 or 7:00.

Q. Why were y'all going to Sterling Bridge Road?

A. To go retrieve -- Milton had told us that Steven had stolen some drugs and that since Carver knew where his house was for us to go back over there and get either the dope or the money.

Q. Can you repeat that one more time. You said Carver knew where his house was.

A. Yes, ma'am.

Q. Was Carver, to your knowledge, the only person who knew where Steve Cameron lived?

A. Yes.

Q. Did you have a gun when you left Appaloosa Drive?

A. Yes.

Q. Where did you get that gun?

A. Milton Gambrell.

Q. Did Jason Carver have a gun when you left Appaloosa Drive?

A. Yes.

Q. Where did he get that gun?

A. It was his.

Q. Did you have more than one gun with

you?

A. Yes.

Q. How many guns did you have?

A. Two.

Q. Do you remember what kind of guns they were?

A. A .38 and a .22 -- .25, I mean.

Q. Who drove to Sterling Bridge Road that night?

A. Uh, -- Jason Carver.

Q. And you said that was because Jason knew where Steven Cameron lived?

A. Yeah.

Q. What car did he drive?

A. The white Buick.

Q. Where did y'all get that car?

A. It was his, Milton's.

Q. And what happened next, what happened after you left Appaloosa Drive?

A. We went over there and knocked on the door. No one came to the door. The door looked like it hadn't been closed. So we just kinda of tapped a little harder and it come open. I didn't know if Steven had opened it or -- but all of a sudden he come

sometimes. He was pretty laid back.

Q. And the weapon that you said that you had seen, was that the same weapon that you allege that he had at this time?

A. I don't know that he owned one.

Q. The one with the sight on it, the one that he allegedly brought out and showed you previous to this incident, you still don't know what that is?

A. No, sir.

Q. No doubt that the mini bike was sold to Quay?

A. No, sir. Yes, sir.

Q. And in fact a bill of sale was created?

A. Yes, sir.

Q. Green Grand Am, is that right?

A. Yes, sir.

MR. SMITH: I have nothing further, Your Honor.

THE COURT: Redirect?

SOLICITOR MOORE: No redirect, Your Honor.

THE COURT: May this witness be excused?

Q. Did he give you any drugs?

A. No, ma'am.

Q. What did he do?

A. He denied that he took it. I told him, 'well, Milt says you definitely did.'

He said, 'Well, he ---

MR. SMITH: Objection as to hearsay.

THE COURT: Sustained.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR MOORE:

Q. That's okay, stop right here. I am going to ask you another question. Okay?

A. (Affirmative nod).

Q. So you had a chat with Steven Cameron. And after he did not give you any money and he did not give you any drugs, what did you do?

A. I don't know, I like turned and he come at me, and I looked down, I didn't know I had the gun but obviously I did -- I had it, I mean. Then like, 'oh.' He charged at me and -- I don't even remember pulling the trigger but I heard *Pop! Pop!* So -- (pause).

Q. So you shot Steven Cameron?

A. Yeah, I guess.

is not titled to Woodrow Curry. It is titled to James Milton Gambrell of 310-B Appaloosa Drive, Greenville, South Carolina.

So what happened here is that Milton Gambrell, a known drug dealer, Mr. Smith just told you all about that, sent his two "do boys" -- that is what Woodrow Curry called himself and Carver on the stand -- they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

Now, you also heard Detective Marzolf. Mr. Smith asked Detective Marzolf what crime they were going to commit. Detective Marzolf said, 'Well, when you're taking someone from one place to another and they don't want to go with you, that's kidnaping.' 'When you point a gun at someone and ask them to give you money for drugs, that's armed robbery.'

As I've told you more than once, what they were participating in was drug distribution.

Jason Carver knew that. He knew why they were going to this house. Mr. Smith told you

entire version is Exhibit 10.

SOLICITOR MOORE: Yes, Judge. I cannot guarantee that that flash drive will be able to play for the jury. We have, as you know, had some difficulty with that.

Like you said, I don't expect them to want to play the entire twenty-four or forty-eight hours, but if there is any ---

THE COURT: Well, we will let ---

MS. MOORE: Yes, Your Honor. We will be able to pull from that flash drive as needed but it would take several days, possibly, to extract all the footage from that flash drive onto several disks.

THE COURT: All right.

SOLICITOR MOORE: Mr. Smith, is this a sufficient place for you to play from?

MR. SMITH: Certainly.

SOLICITOR MOORE: It is cued at 1343:20 and the part that you are asking to show appears at 1344:10. I wanted to give you as much leeway in front of that as possible.

MR. SMITH: Yes, ma'am, thank you so much.

THE COURT: Are we ready?

gotten to a stage in the trial where I think it's good to break for the afternoon. I want to check with you and the jury to see if there is any reason why you couldn't be here and start the trial at 9:00 in the morning. Is that a problem for anybody? If there is, let me know. Would 9:30 be better? I saw some hesitant faces, that's the only reason that I am asking. Okay, so 9:00 o'clock is fine?

FORELADY: Yes, sir, that's fine.

THE COURT: Okay. Thank you. If you would, leave your note pads in the jury room. We will see you at 9:00 o'clock in the morning. I hope you all have a nice evening.

(JURY OUT @ 4:38 P.M.)

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.

SOLICITOR MOORE: I understand, Your Honor.

THE COURT: So playing with evidence is

not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong -- and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.

SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---

THE COURT: I want to know why -- I don't care what you did. I want to know why it just got sent out August 9th of this year.

SOLICITOR MOORE: Because I'd just received it, Your Honor.

THE COURT: From whom?

SOLICITOR MOORE: From Detective Henry.

THE COURT: Who is Detective Henry?

SOLICITOR MOORE: He is the man who was

just testifying.

THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?

OFFICER HENRY: What information?

THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?

OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.

THE COURT: You thought that you had?

OFFICER HENRY: Yes, sir.

THE COURT: So it was a case of honest mistake?

OFFICER HENRY: Yes, sir. Seriously, yes, sir.

THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern -- and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay.

Is there other evidence that was not delivered until late in the game? If so,

why?

SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly ---

THE COURT: I'll be right back. I want to get this cleared up.

SOLICITOR MOORE: Yes, sir.

THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: Please be seated. Miss Moore, have y'all identified any evidence out there that is late or recently received that was given to the defendant in this matter?

SOLICITOR MOORE: Your Honor, we ---

THE COURT: First, let me -- I'm giving them a hard time. You received it on the 9th, it is now the 22nd and you told me that you haven't listened to it. That's unacceptable as well. You have an obligation. So that cuts both ways. Go ahead.

SOLICITOR MOORE: Your Honor, in terms

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: And what was the date that this event took place?

SOLICITOR MOORE: I believe that he said that he drove to that car March 30th of 2016.

THE COURT: Why is there such a delay in getting that information?

SOLICITOR MOORE: Your Honor, I can only provide to Mr. Smith what I have for myself.

THE COURT: That is not an excuse.

SOLICITOR MOORE: I understand ---

THE COURT: That is not acceptable.

SOLICITOR MOORE: I understand, Judge.

THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be some problems with it, I'm telling you.

SOLICITOR MOORE: I understand, Judge.

THE COURT: Have you listened to this tape yet?

MR. SMITH: I have not.

THE COURT: Bring the jury in, please.

(JURY IN @ 4:36 P.M.)

THE COURT: Madam Forelady, we've

concerned that they left the scene at 900 Hours and did not call law enforcement until 1345."

Q. Speak up, please.

A. (Reading): "Erica said that she was concerned that they left the scene at 0900 but they didn't call law enforcement until 1345."

Q. Could you read that next sentence?

A. (Reading): "Erica told me that Christopher did not go to the decedent's funeral and stated that that weekend Christopher was pulled over by law enforcement. She stated that the police (inaudible reading) -- Ericka said Christopher ran from the scene because he was going to get some marijuana."

Q. With regard to this particular paragraph, is it your understanding that two people were on the porch at 900, or four hours and forty-five minutes prior to the police arrival?

A. I got information from Erica Cameron that said that but in viewing the video footage, no.

Q. Did Mr. Gambrell say that?
A. No, sir.
Q. Mr. Carver did not have a gun, did he?
A. There were two guns and two ---
Q. Mr. Carver did not have a gun, did he?
A. They had guns. They were given a .38 by Mr. Gambrell and Mr. Curry carried a .25 automatic with him.
Q. Where was the .25 carried?
A. In a fanny pack, is my understanding.
Q. Who knew about the .25?
A. Mr. Curry knew about it and I know that his wife knew about it, she told me about it as well.
Q. So neither of those people are Mr. Gambrell or Mr. Carver, right?
A. No.
Q. Was it a .380 or a .38?
A. It was a .38 revolver, sir.
Q. A .38 revolver.
A. (Affirmative nod).
Q. That was Mr. Gambrell's gun?

A. Yes, sir.

Q. Mr. Gambrell told you he -- that the gun was taken and that he told him to put it down, right?

A. Uh -- (no verbal response).

Q. 'You don't need a gun.'

A. That is what Mr. Gambrell says.

Q. When Mr. Gambrell took that gun, Mr. Carver had not returned from Mr. Cameron's yet; had he?

A. Mr. Gambrell didn't take the gun, sir. Mr. Curry received the gun from Mr. Gambrell or took it from him.

Q. Mr. Curry took it from Mr. Gambrell?

A. (No verbal response).

Q. When he did that, Mr. Carver was not there. He was at Mr. Cameron's house?

A. I am not sure about that.

Q. Well, you just talked about how long a trip it is, presumably both ways.

A. Yes, sir.

Q. There was just enough time for Mr. Carver to get up there and get back, according to your own calculation. Right?

A. Ten to fifteen minutes. It could be

taken?

A. Yes, sir.

Q. You also learned that the .38 nor any other guns were provided to Jason Carver; right?

A. The gun was provided to Curry and Carver when they were leaving, so I don't know.

Q. Which gun was provided to Mr. Curry?

A. The .38

Q. Which gun was provided to Mr. Carver?

A. There were no other weapons provided.

Q. And Mr. Gambrell told you that it was not provided to him, meaning Mr. Curry (sic); right?

A. He said that Mr. Curry took the weapon.

Q. But there is no doubt that Mr. Carver did not have a gun?

A. There were two guns in the car and two suspects. I don't know if Mr. Curry had a gun in his hand in the car and may have handed it to Mr. Carver or -- I don't know

any of what transpired inside that vehicle on the way to that house.

Q. So you're assuming that he did?

A. No, sir. I am just saying that there were two guns and there were two guys in the car.

Q. But nobody knows that that .25 — there is no evidence, no one to say that anyone knew about the .25 other than Curry?

A. There is nothing to say that he didn't. I just don't know.

Q. Mr. Curry told you that he left the gun in the car; right?

A. Yes.

Q. So we are here today and you're saying that Mr. Carver did what?

SOLICITOR MOORE: Uh, ---

THE COURT: Sustained.

SOLICITOR MOORE: Thank you, Judge.

CROSS EXAINATION CONTINUED

BY MR. SMITH:

Q. Mr. Carver is charged with murder, right?

A. Yes, sir.

Q. And that is based on what?

A. Yes, sir.

Q. Now, is it your understanding that Mr. Carver was a witness to Mr. Curry shooting Mr. Cameron?

A. Yes, sir.

Q. Mr. Gambrell was aware of the pistol, the .38 being picked up?

SOLICITOR MOORE: Objection, Your Honor.

THE COURT: Sustained.

SOLICITOR MOORE: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. That weapon was not utilized in this event to our knowledge?

SOLICITOR MOORE: Objection, Your Honor.

THE COURT: Asked and answered. Move forward, please.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. The reports that you created were based on your interviews; right?

A. Yes, sir, — well, my interviews and reports from other investigators and witnesses throughout the course of the case.

Q. Do you believe that your reports

THE COURT: So what about the statement besides impeaching what Ms. Curry said, that her husband didn't threaten her or didn't do these things -- what does it do to show that this guy is innocent?

MR. SMITH: It shows that what they've provided, his statements and things in evidence supports what he said from a non-criminal standpoint. There was no criminal thought in this matter. That's what he says.

THE COURT: Well, I'll look at it. Quite frankly, I think you're just wrong. I think that if your client went to go pick up money or drugs, that's a criminal act in and of itself. If you don't think so, then we have a disagreement about that.

MR. SMITH: Yes, sir.

THE COURT: Okay. Let's go ahead and view that. What were you going to say?

SOLICITOR MOORE: Your Honor, I was just going to say that if it might take time, Detective Marzolf can give a summary of his interview with James Gambrell.

THE COURT: He wants to see it live, and I'll be glad for you to pass it up but I

being the hand of all, statements given by police are not what we just witnessed. Not having an ability to place that before the jury when a man's life is at stake is prejudicial.

THE COURT: Well, let me think about that on the hand of one, hand of all. But here is my thoughts on that. First, I don't think that it exculpates your client, the reason being -- I think that they had a criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence.

So if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose."

So therefore -- although I think probably that your client did not know that a gun -- that he was going to shoot this fellow, but -- the cases recognize the connection between guns, drugs and violence where the plan was illegal and it just spiraled out of hand.

So the jury may believe that he was an innocent bystander, but that's my belief as to why the video of Mr. Gambrell does not exculpate your client.

Now, I'll think about it over night. If I change my mind, I'll let you play it in the morning. I don't think that I will. But I will think about it.

You can give me any cases that you want and I'll be happy to hear you on the record if you want to.

SOLICITOR MOORE: Your Honor, if Mr. Smith wishes to put into the record another person who says that his defendant knew that they were going to get drugs or money from Steven Cameron, then I agree we need to let him do that.

THE COURT: The question is that he wants to play Gambrell's video.

EXHIBIT 2
EXCERPTS OF TRANSCRIPT OF WOODROW CURRY'S PLEA BARGAINING HEARING
08/22/2017

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2017-GS-04-01648
Woodrow Walter Curry,	)	
	)	
Defendants	)	

ORIGINAL
TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on August 22, 2017, before The Honorable R. Lawton McIntosh, in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Chelsey Lauren Moore, Esq.,
Appearing for The State.

Elizabeth Jennings Byford, Esq.,
Appearing for The Defendant.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

P R O C E E D I N G S

1:23 P.M.

MS. MOORE: Good afternoon, Judge. I think we do have one guilty plea.

THE COURT: One guilty plea?

MS. MOORE: Yes, Your Honor.

THE COURT: Okay.

MS. MOORE: Woodrow Curry.

(DEFENDANT AND HIS ATTORNEY FORWARD .)

MS. MOORE: May it please The Court.

THE COURT: Yes, ma'am.

MS. MOORE: Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason Carver's trial.

(WHEREUPON, **WOODROW WALTER CURRY** WAS DULY SWORN AND TESTIFIED AS FOLLOWS:)

THE COURT: All right, you are Woodrow Walter Curry?

MR. CURRY: (Inaudible.)

THE COURT: Mr. Curry, I need you to speak up louder, okay sir?

MR. CURRY: Yes, sir.

MR. CURRY: Yes, sir.

THE COURT: And what they are -- The State is telling me is that they intend to defer your sentencing until after the trial of Mr. Carver, who we just picked a jury on; is that correct? You understand that?

MR. CURRY: (Nod.)

THE COURT: If you would give me verbal responses so we can have it for the record, okay?

MR. CURRY: Ye:s, sir.

THE COURT: But you do understand that you could get up to thirty (30) years in prison? That's the point r m trying to make.

MR. CURRY: Ye:s,sir.

THE COURT: KJowing that do you still want to go forward with yo r plea?

MR. CURRY: Yes, sir.

THE COURT: Jiire you under the influence of any medications, d'ugs, or alcohol today?

MR. CURRY: Nd, sir.

THE COURT: Jounsel, are you satisfied that Mr. Curry's compet$nt to plea?

MS. BYFORD: I am, Your Honor.

THE COURT: Nqw, Mr. Curry, do you understand that you have a Light to a jury trial on this

EXHIBIT 3

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE VS. JAMES GAMBRELL

2016-GS-04-02312 & GS-04-02234

09/05/2018

EXHIBIT 3

State of South Carolina
County of Anderson

In the Court of General Sessions

State of South Carolina,

-vs-

James Milton Gambrell,

Defendant.

2016-GS-04-02312
2016-GS-04-02234
September 5, 2018

Excerpt of
Transcript of Record

B E F O R E:

The Honorable R. Scott Sprouse, Judge;
and a jury.

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

Chelsey L. Moore, Esquire
Michael Scott McElhannon, Esquire
Assistant Solicitors
Tenth Judicial Circuit
Attorneys for the State

Robert Newton, Jr., Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

A I didn't know Mr. Cameron. I believe that there was some domestic violence and things like that in the home, but I don't know personally.

Q All right. Also in the video, first of all, of course, you know and the jury knows you're under oath and you're sworn to tell the truth and you're telling the truth now.

A Yes, sir.

Q But when you're giving the interview, isn't it true that you, police officers, are not bound to tell the truth. I mean, you're free to lie. I'm not saying there's anything wrong with that, but when you're interviewing a subject, you're free to tell him all kinds of lies to get him to give a confession; isn't that true?

A I don't have to be truthful with a suspect, that's true.

Q And that's perfectly legal?

A Yes, sir.

Q So when you mentioned that on the first video that a neighbor had heard the argument and heard what went on down that night, that just was not true, correct?

A Actually, that was true. We had -- during the neighborhood canvass, it's my understanding that one of the detectives talked with a neighbor who overheard an

argument and the words "dirt bike" were mentioned during the argument.

Q Did they hear gunshots?

A No one -- I don't recall. I don't recall if somebody heard gunshots or not. I know that they talked to several people in the neighborhood.

Q Did this person call the police?

A No, sir.

Q Do you know this person's name?

A Not off the top of my head, sir. I could probably find it in my file.

Q Isn't it possible they were referring to some other argument at some other time involving other people?

A All I know is what, you know, what the detective that was told to canvass told me, which was that, you know, somebody had overheard an argument involving the words "dirt bike."

Q But no gunshots?

A I don't recall if they had heard gunshots or not, sir. I don't want to tell you the wrong thing.

Q All right. You mentioned when -- oh, did you interview Woodrow Curry, the shooter, when you were still investigating this case?

A Yes. He was interviewed by Detective Mitchell

very briefly at Greenville County when he was first arrested, and then later on, I did interview him.

Q And where was that interview at?

A That was at the Greenville County sheriff's office.

Q Greenville County. Was he under arrest at that time for something else?

A Yes, sir, he was.

Q What was he under arrest for?

A Drug possession.

Q Possession? It wasn't a trafficking?

A It was some type of drug offense.

Q But he was being held there because he couldn't make bond at that time?

A Yes, sir.

Q Now, did Mr. Curry, the shooter, admit to you what had happened, or did he deny all knowledge of what had happened?

A He gave me a version of what had happened in which he said that they did go to the house and that Jason Carver was the shooter that night.

Q But didn't Mr. Curry later change his mind and admit that, in fact, he was the shooter?

A Yes, sir, he did.

Q But at the time he was lying about that to you,

correct?
A Yes, sir.
Q Do you know when he changed his mind about that, decided to admit he was the shooter?
A Sometime after he had been charged.
Q Charged by you?
A Yes, sir.
Q With these crimes?
And to your knowledge, was that part of a plea agreement with him?
A I don't know what the actual -- I know he's agreed to testify.
Q As a matter of fact, he's here today, isn't he, ready to testify?
A I believe so.
MR. NEWTON: May I beg the court's indulgence for a moment.
Q Now, I don't mean to, certainly not insulting my client, but he's sometimes hard to understand on the video, what he's saying?
A Yes, sir, he is.
Q But just to be clear, he denied giving either of those two people a gun, right? Isn't what he told you is that the person doing the shooting took the gun out of his house?

mean -- I don't know why I get them confused. Carver there, he was shortly there behind me there, jumped in the car and we left.

Q So you and Carver drove away?

A Yes, ma'am.

Q Where did you go?

A Back to -- back to Mr. Gambrell's, Appaloosa Drive.

Q Okay. Did you do anything on the way to Mr. Gambrell's house?

A Yes, ma'am. I called him there and told him that he better be sure that Steven got that dope. I mean, I just shot him.

Q You called Milt and told him that?

A Yes, ma'am.

Q And what happened when you got back to Appaloosa Drive?

A When -- Carver went in before me there, but we went in there and trying to give Milt there the guns there. And, I mean, Carver had a -- there, and I turned around and left there. I told him I was going home; I was done for the night.

Q Okay. What did you do with the gun when you got back to Mr. Gambrell's house?

A I gave them back to Mr. Gambrell.

Q Okay. And were you with James Gambrell on the night of March 28, 2016?
A Yes, ma'am.
Q Where were you?
A Appaloosa Drive, out there working on a car.
Q Okay. Who else was there?
A At the time there is just me -- me, him, his wife, my wife, my stepson. Jason come over after he got off work, Jason Carver.
Q Okay. And when you say "me and him," you mean you and James Gambrell?
A Yes, ma'am.
Q Okay. So you and Mr. Gambrell and Jason Carver were all at Appaloosa Drive that night?
A Yes, ma'am.
Q What were y'all doing?
A Well, I mean, like I say, I was out there working -- to begin with, I was out there working on a car. Carver wasn't even there yet. I was working on a car there, and they was in the house. Steven had come over with a dirt bike, and he was in the house.

And then later on, when Carver got off work, he come over there like he normally did. He went in the house and come back out, him and Steven there, and he took Steven home.

Q That's right. Because nobody had instructed you about that, correct?
A That's right. I wasn't instructed. Nobody told me to. I've done said over and over this was never planned. I never planned to shoot Steven Cameron let alone kill him. This is something I'm living with. Nobody told me to do that. I didn't want to do that.
Q Why did you do it?
A Because for some reason or another I had done pulled the gun, I guess to intimidate him or whatever, and he charged at me. "What are you going to do, shoot me?" And he charged at me. I don't know what to do. What's he going to do, take the gun and shoot me or what? I don't know. I mean, that's just --
Q Why did you feel the need to try to intimidate him?
A He's bigger than I am.
Q He's bigger than you are?
A A lot bigger than I was.
Q But you just said you were just going to have a conversation with him. Why should him being bigger than you make a difference if you're just going to have a conversation?
A Man, like I said, I was high. I was 150 pounds. I was all drawed up myself, you know I mean.

Q You didn't ever share anything?
A Steven bought his own. He had his money there. He had his own. He smoked big-time.
Q Okay. So you hung out with him and got high with him, didn't you?
A He hung out over there, yes, sir, and we got high.
Q So you did know him?
A Uh-huh. About five times, yes, sir.
Q Do you have a cell phone or did you have a cell phone at the time?
A Yes, sir.
Q You did?
A Yes, sir.
Q Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your cell phone? Which is the truth?
A I called him on the cell phone.
Q Why is this the first time you're saying this?
A First time I recall being asked.
Q Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.

A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

Q You're saying you can't remember the truth because it was 11 months ago when you testified in the other trial?

A No, sir. That's not what I'm saying.

Q What are you saying?

A I'm saying there is -- you have me twisted up here and I may be misunderstood. You know what I'm saying?

Q The question is simple, sir --

A I make a mistake.

Q Your first trial when you testified that --

A 11 months ago, yes, sir.

Yes, sir.

Q Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house --

A Uh-huh.

Q -- that you shot the guy.

A I don't recall that, but if you say I did, I did.

Q Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?

A He didn't ask.
Q Didn't you say something like, "Well, things just went crazy and I shot him"?
A No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.
Q You said the way back over there?
A On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."
Q Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?
A Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?
Q No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.
A Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.
Q So you're telling this jury --

A The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.

Q My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?

A It's the first time it's been asked.

Q The detectives never asked you the details of what happened?

A Not that I recall.

Q The lawyers in the first trial didn't ask you what happened?

A They never asked me whether I called Mr. Gambrell.

Q Sir, what kind of gun did you use to kill Mr. Cameron with?

A A .22 or a .25, I think. It was small caliber.

Q What did you do with it afterwards?

A I gave it back to Mr. Gambrell.

Q Are you sure about that?

A Yes, sir.

Q You didn't keep it?

A No, sir. What would I want to keep it for?

A Yes, sir. It happened almost 31 months ago.
Q Okay. Well, if your memory was so messed up, why should this jury believe anything you have to say today about what happened over two years ago?
A I'm just telling the truth as I remember it.
Q Is your memory good enough to remember what happened or not?
A I think it is. I have to live with this here all the time. I live that night over a lot.
Q Okay.
A I wake up with it. I have flashbacks from it.
Q What do you remember? I mean, you said he charged you.
A Yes, sir.
Q How far away was he standing from you when he charged you?
A Probably from here to the corner of where she's sitting at, that corner. He was at the front door; I was at the steps. We were about that far apart.
Q Why did he charge you?
A I guess, I mean, I don't know. I'm sure he was high, too, but I guess he did feel intimidated, you know. Like I said, he said, "What are you going to do, shoot me?" And he charged at me. I didn't think about -- I didn't think about it there. I just -- I

collected during our neighborhood canvass some surveillance video from neighbors' residences and things like that. And we noticed that there was a white Buick on the property at 310 Appaloosa that appeared consistent with the Buick that was seen in the surveillance footage.

So because of that and because of the statements and things that I had gotten from the family at that point, I knew he frequented that residence. I also had learned at that point he had taken a dirt bike over there to sell earlier the day that he was killed.

You know, all those factors combined, I coordinated with Greenville County and got the search warrant executed at the residence of 310 Appaloosa.

Q When you say he was taking a dirt bike over there to sell, do you mean over to 310 Appaloosa Drive?

A Yes, ma'am.

Q I'm going to show you State's Exhibit 6A, B and C. Are those the still shots from Detective Henry's surveillance?

A Yes, ma'am.

Q I'm also showing you State's 4A and 4B. Are those the photos taken of the Buick at the armory from the Anderson County Sheriff's Office?

A Yes, ma'am, they are.

Q So based on the surveillance footage that we watched yesterday and these still photos, is that the white Buick to which you're referring?
A Yes, ma'am.
Q And this is State's Exhibit 6A. And then in State's Exhibit 6C, is that the back of the white Buick you're referring to?
A Yes, ma'am, it is.
Q Okay. Now, when you went to -- did you go to 310 Appaloosa Drive with Greenville County to assist in executing that search warrant?
A Yes, ma'am. I was there.
Q When was that search warrant executed?
A I don't recall the exact date without the notes. I'm sorry.
Q Does April 5, 2016, sound about right?
A Yes, ma'am.
Q Were you -- did you get to observe the collection of any evidence while you were present for that search warrant?
A There was evidence collected. There were some firearms collected at the residence. A title for the Buick was collected. And also it's my understanding there was some drugs collected from the residence as well.

Q Didn't you have this gun before that, sir, the .25 caliber?
A No, sir.
Q Did you go over there with the intent to kill Mr. Cameron?
A No, sir.
Q Did anybody tell you to go kill him?
A No, sir.
Q Did anybody tell you to go beat him up?
A No, sir.
Q Did anybody tell you to go threaten that you were going to beat him up?
A No, sir. I was just told to go get the dope or get paid for it.
Q What does that mean --
A I never intended to --
Q What does that mean, you were told to steal the dope from him?
A No. I was just told to go and retrieve it. He stole the dope.
Q What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.

didn't even think of it; it escalated too fast.
Q Escalated on whose part, sir?
A Sir, like I said, he came out all aggressive there. I mean, I don't know. I ain't thinking there about clearly, you know, to call him. You know, I wish a million times that everybody had suggested it. I wouldn't be sitting here today and I wouldn't be in these chains and I wouldn't be going to prison.
Q Just to be clear, did Mr. Gambrell give you orders to go take by force drugs or money from this guy?
A At the time, no, sir.
Q Just want to be sure. It's an important point. Your testimony under oath is you were given no such instructions by Mr. Gambrell?
A I was just given the instructions to go get it back. That's all.
Q Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A I don't know what he was thinking.
Q All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A Right.
Q He did not tell you to threaten Mr. Cameron in any

way?
A No, sir.
Q That's just something that happened for whatever reason on that porch, according to you.
Mr. Gambrell was upset, isn't it true, when he found out you had killed Mr. Cameron; isn't that true?
A I don't know. He was still getting high.
Q I'm sorry?
A He was still drinking, still getting high.
Q He was drunk at the time?
A He was drinking. He drank beer but he don't get drunk. I ain't very seldom seen him drunk. He drinks all day and not get drunk.
Q Well, sir, you just testified he didn't want you to do all that stuff. What did he do, pat you on the back and say "good job" when you got back to his house?
A Sir, I just said he didn't tell me to go over there and do that.
Q Okay. You had no instructions from anybody to go do it; it was just something that happened between you and Mr. Cameron?
A Right.
MR. NEWTON: No further questions.
THE COURT: Anything further from this witness?
MS. MOORE: Nothing further, Your Honor.

A Yes, sir.
Q He also emphasized to you that all he wanted was for them to let Mr. Cameron know that he had the drugs, they knew it, and to pay for it, right? Wasn't that his story?
A Yes, sir.
Q Okay. You -- also on that video, at one point I believe I heard you say that Mr. Cameron -- dope was found on Mr. Cameron after he was killed?
A Yes, sir. During the autopsy, they did find some drugs.
Q Okay. Did you mean in his system?
A No, sir. I mean they found actual drugs on his person.
Q Do you know how much?
A I think in his tennis shoes, I believe. I don't know the exact quantity, sir.
Q Okay. So obviously --
A It was significant, but I don't know exactly what it was.
Q Couldn't have put it there after he was killed, so it was there in his shoes before he was killed, obviously. You don't know how much?
A I don't know exactly, sir.
Q Okay. Did anybody -- were his shoes still on when

EXHIBIT 4

SUPPLEMENTARY REPORT OF DETECTIVE KREIG MARZOLF

04/13/2016

EXHIBIT 4A

AGENCY I.D. SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER: 2016-053244

NCIC: INC. N ENTD. N

☐ ORIGINAL REPORT ■ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY

☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

NARRATIVE

1900-1930 left mother's house to meet Steven's mother at 108 Sterling Bridge

1930-1940 dropped off her son and her niece at her sister Christina's house

1945 arrived at 108 Sterling Bridge, Steven was not at home. Her mother and Steven's mother were with her.

Took the TVs and Xboxes to keep Steven from pawning them.

2023 sent a text to her sister, and left to go back to her sister's house to pick up the kids with her mom

2030-2035 arrived at Christina's house

2045-2100 left Christina's house with her mother, her son, and her niece (Marissa Moore)

2105-2110 stopped at the Spinx station across from Greenville Memorial Hospital near the CVS. Marissa went inside to pay for the gas and buy a Gatorade

2115 left the Spinx

2145 they arrived at her mother's residence in Fountain Inn where they all stayed for the rest of the night

Tuesday

0730-0735 left her mother's house for work

0750-0755 arrived at work, clocked in and stayed there until she received the call about Steven's death around 1400

See video for further information.

On 3/30/16,I conducted a video recorded interview with Erica Marie Cameron, Steven Cameron's sister. She told me that her mother Patricia White and her brother Steven Cameron used to live out at Heritage Trace, and while they were living there Steven was kidnapped over a drug debt. Erica advised me that after Steven got his settlement sometime around December 2015 she heard from her brother Christopher Cameron that Steven's neighbors were "feeding him drugs". She called and talked to Regina when she heard about that, and she stated that the neighbor's name was Andre. Erica said that about three months prior to this incident, she threw her mother Patricia out of her house for pawning Erica's property and using drugs. Erica also told me that there was a history of domestic violence between Regina and Steven, and she said that Steven has been violent in the past. She also advised me that her brother Christopher Cameron has "had some rage issues". Erica stated that Christopher got Steven back on drugs after Steven completed rehab. She said that Steven had given their brother Daniel marijuana to sell at school, and Daniel "got busted". Erica also claimed that Patricia Palm who is the person who found Steven dead originally found him at 10am but waited to report it. She said that Palm's sons, Timothy and Jonathan use meth. Erica said that there was a woman named "Dee" who is one of Steven's neighbors, and Dee's son, who is a blonde heavyset white male, saw the whole incident. Erica said that Dee's son won't talk about the incident because he was outside smoking marijuana when he witnessed it. Erica said that Ryan Banks, Steven's daughter Alyssa's ex-boyfriend, stole a four wheeler from Steven once. She said that the four wheeler was found at the home of Banks' drug dealer. Erica told me that Christopher Cameron's girlfriend Angie told Erica that she was the last

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED	■ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ■ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
■ YES ☐ NO	■ YES ☐ NO			

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MARZOLF, K	04/13/16				
			FOLLOW-UP INVESTIGATION ■ YES ☐ NO — OFFICER: MARZOLF, K	03/30/16	

EXHIBIT 4B

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER: 2016-05324

NCIC: INO. N | ENTD. N

☐ ORIGINAL REPORT ■ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY

PAGE 48 of _____ PAGES

NARRATIVE

-0645-0650 drove Christopher to work off of Hwy 123
-0700 arrived at Chris' place of employment and she left to go back home
-0710-0715 arrived at Patricia Palm's house
-0745-0810 left Palm's residence to go home
-0750-0815 arrived at home
-1115-1215 went to convenience store to get cigarettes and beer (probably the Sunoco)
-1120-1220 left store to go home
-1125-1235 arrived at home
-1700-1800 left home to pick up Chris from work
-1710-1815 left with Chris for home
-1720-1830 arrived at home and stayed there
-1720-1830 Chris' coworker William came to their residence
-1820-1930 William left
-2130-2200 went to bed

3/29/16
-0600 woke up at home
-0645-0650 left to take Chris to work
-0700 got to Chris' workplace
-0710-0715 got home and went back to bed
-1300-1500 woke up because Patricia Palm called about Steven dying

See video for further information.

On 3/31/16, I conducted a video recorded interview with Christopher Cameron at the Anderson County Sheriff's Office. He told me that his brother Steven had a crack cocaine habit. He stated that Steven liked to buy his crack at a house behind Bell's gas station close to Adam's Scrapyard. He said that he would find drug paraphernalia in Steven's house like baggies with white powder. He said that Steven has tried to make crack cocaine before. Chris stated that the black guy who lived to the left of Steven (facing the house from the roadway) did drugs with Steven and took him to the crack dealer. Christopher said that about a month ago Steven "jumped on" his daughter Alyssa and left bruises on her. He also said that two to three weeks ago he went to Steven's house, and Steven was pushing him and punched him twice. Chris said that Steven wanted him and Angie to take him to pawn things, and Steven had a $16,000 dirt bike he wanted to pawn. Chris told me that he thinks that Steven wanted to trade the dirt bike for drugs. He said that before Steven got his settlement money, he would get

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED			
■ YES ☐ NO	■ YES ☐ NO	■ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ■ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MARZOLF, K	04/13/16				
			FOLLOW-UP INVESTIGATION ■ YES ☐ NO — OFFICER MARZOLF, K	03/30/16	

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

RECEIVED
OCT 23 2018
SC Court of Appeals

Appellate Case No.: 2017-002011

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

PROOF OF SERVICE

I certify that I have served copies of Appellant's Motion to Hold his Appeal in Abeyance, and Proof of Service of same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, at 100 S. Main Street, Anderson SC 29624, and South Carolina Attorney General Honorable Alan McCrory Wilson and Assistant Deputy Attorney General Samuel Marion Bailey at PO Box 11549, Columbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on October 19, 2018.

October 19, 2018

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING MOTION TO HOLD APPEAL IN ABEYANCE

October 19, 2018

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RECEIVED
OCT 29 2018
SC Court of Appeals

RE: The State v. Jason Franklin Carver
Appellate Case No.: 2017-002011

Dear Ms. Kitchings:

Please find enclosed the following materials for filing:

(1) One (1) original and six (6) copies of Appellant's Motion to Hold his Appeal in Abeyance; and,

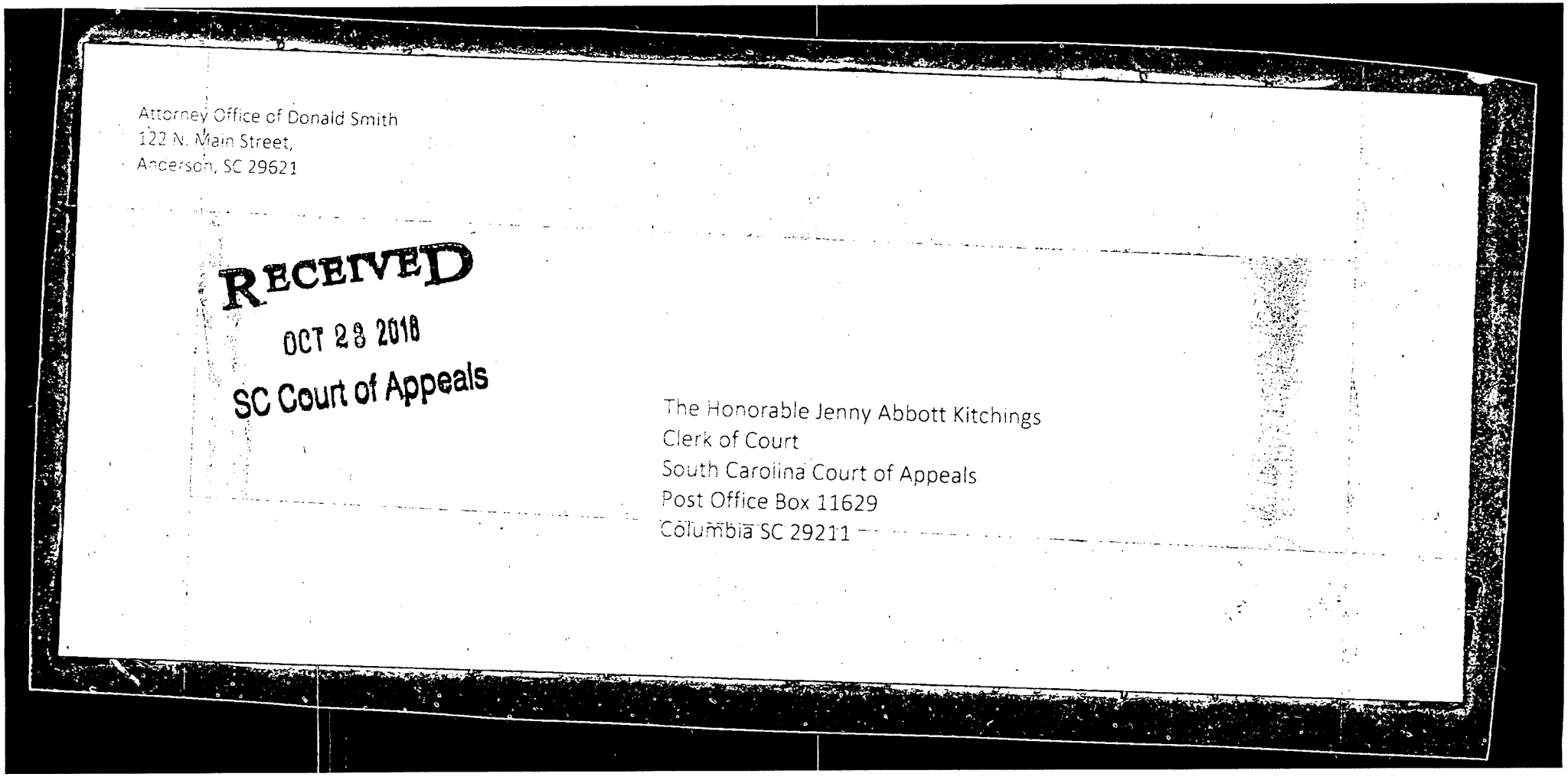
(2) Proof of Service for the same.

Sincerely,

Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc:

Mr. Alan McCrory Wilson, Esquire, South Carolina Attorney General
Mr. John Benjamin Aplin, Esquire, Assistant Deputy Attorney General
Ms. Chelsey L. Moore, Esquire, Assistant Solicitor for the Tenth Judicial Circuit



Attorney Office of Donald Smith
122 N. Main Street,
Anderson, SC 29621

RECEIVED
OCT 23 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

MOTION FOR NEW TRIAL
12/21/2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
The State of South Carolina, Defendant,	)	Case No. : 2016A05324
	)	
v.	)	**MOTION FOR NEW TRIAL**
	)	
Jason Franklin Defendant, Defendant.	)	

RECEIVED
DEC 31 2018
SC Court of Appeals

Jason Franklin Defendant, by counsel, now moves the Court for an order granting a new trial on two or more counts, as explained below. The bases for this relief are as follows:

FACTUAL HISTORY:

On March 28, 2016, CarverJason Carver (hereinafter referred as Carver) had been working on a transmission at James Gambrell's house, when the latter requested Carverdrive Steven Cameron home. Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carverto drive Cameron because he had been drinking all day and was not able to drive. Carveragreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carverand Cameron as they traveled to Cameron's home. They were unable to reach either one. Carverreturned within 30 minutes.

Upon Defendant's return, Gambrell told him he wished he had a phone because he would have told him to turn around and come back. As a result, Gambrell asked him go back and get Cameron. Neither Gambrell nor Curry shared the issue regarding the missing cocaine. They didn't want to take the chance that Carverwould refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact

A TRUE COPY
DEC 21 2018

Carverwas not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Gambrell's statement was made with the implication that Cameron wanted to come back since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit. Therefore, Carvergrabbed Gambrell's Buick, which he knew always had keys in it.

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carverwas confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was located. Curry claimed that everything that was found-was his, *in Gambrell's house.* Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Carverworked full-time for a transmission business. He was at Gambrell's house because they had a joint venture flipping cars, with Carverbeing responsible for getting them sale-ready.

Again, Carvertold Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carverwas confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carverleading the way, the two made their way back to the car. Curry noticed Cameron peaking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop and pointed it directly at Cameron.

Carverfrantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carverstarted toward the car, intending to leave Curry behind.

In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Defendant, who has reached the car, heard the gunshots. Frightened and confused, Carverdropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Carverto leave the lights off and leave the neighborhood. Unarmed Carverdid not put up any resistance; and, he did as he was told. Curry also offered that should he feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Defendant's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Carverand Curry arrived back at Gambrell's house, Carverwas emotional and still shaken by the events that night. Curry told

Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

Q. All right. So you get back to Mr. Gambrell's house?
A. (Affirmative nod).
Q. What takes place then?
A. When I got out, Curry got out behind me. I don't know if he still had the gun on me at the time but he followed me all the way into the house.
Q. So he --you say that he got out behind you. Did he slide across the front seat?
A. I'm assuming he did. I ain't for sure.
Q. Because he was directly behind you?
A. Yes, sir, he was behind me.
Q. Did you take a chance and look behind you or just keep on walking?
A. I looked but I didn't pay that much attention. I was still shocked going in Gambrell's house. I was already in tears at that time too.
Q. Mr. Gambrell, he probably keeps his house locked up pretty good, doesn't he?
A. Yes, sir.
Q. And when you got to the front door, were you able to open it?
A. No, sir.
Q. How did you get in?
A. His nephew came to the door.
Q. So he opened the door?
A. (Affirmative nod).
Q. And you and Mr. Curry go in the house?
A. Yes, sir.
Q. Did you get past that immediate area?
A. (No verbal response).
Q. Did you go further than that? Did you go the man cave or ---
A. We started back towards the man cave. Then I sat down and Curry came across from me. Once he got on the other side of

the little table, he sat down and laid the .38 down. So I'm assuming that he already had it out.

Q. So he had the .38?

A. Yes, sir.

Q. Where was Mr. Gambrell at this point.

A. Mr. Gambrell was sitting in his chair and he asked where Cameron was at. That's when Curry was telling him, said 'we got in an argument' and he said it got out of hand. Then he said that he shot him. And I was scared --I was shocked, in tears. Gambrell could see that I was scared, that I'd been crying.

Q. What was Mr. Gambrell's reaction?

A. Well, Mr. Gambrell and Curry started arguing . I mean, they were getting real loud.

Q. Did Mr. Gambrell say anything about the fact that Mr. Cameron was just shot?

A. Well, he told him that 'you was just supposed to have went up there and was supposed to have brung him back', all that stuff. That was it. But, uh, Curry --he acted like he didn't just acknowledge it. He acted like, you know.

Q. So Curry and Gambrell are now in an argument

A. Yes, sir.

Q. And the .38 is sitting on the coffee table?

A. No, it was in the floor. He'd laid it in the floor.

Q. What did you at this point?

A. Well, I was already so scared, I just got up and left.

Q. Did you say goodbye?

A. No sir.

(Exhibit 1 – Motion to Hold Appeal in Abeyance, P. 36).

Defendant's apprehensions were not unfounded. That night, Curry drove past Defendant's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Defendant's trial that he personally reviewed portions of the video that afternoon.

Q. And what did you do when you got inside the residence?
A. Obviously because of the nature of the offense and because the cameras were there, we wondered if they were in fact currently recording. They were and, so, we were able to do a very rapid review of some of the footage and were able to discover some evidence that I felt was pertinent to the case.
Q. What evidence was that?
A. Un, -- again, while we were review-ing the video, and we just kinda of skimming it very fast just to see.

(Exhibit 1- Motion to Hold Appeal in Abeyance P. 40)

The footage was obtained that very day by forensics on scene.

Q. Okay. Did you ask that that footage be collected?
A. I did, I went to the forensics that was on scene and asked that it be collected for evidence purposes.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.42)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

Buick appears, -- well, first, let me ask,

22. how many hours of surveillance footage did
23. you view in this case?
24. A. I can't give you an exact number but
25. hours. We watched it all the day of the
01. incident as well as the following day. So at
02. least thirty-six hours.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 43).

06. Again, on the 30th I spent my entire day
07. reviewing the video.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 45)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

16. On April 5th, I was able to get stills
17. from the video taken and make comparisons,
18. and determined that it was the same vehicle.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 46)

The video was used to identify the vehicle driven by Defendant. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Carverdid not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Carvergathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder.

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

> **MS. MOORE:** Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason

Defendant's trial.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P.73).

Carverwas indicted for Murder. During Defendant's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carverhad his own gun; (4) Gambrell instructed him and Carverto retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Carverwas convicted of murder on August 25, 2017. Carvermoved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Carverperfected his appeal. (Exhibit 2- Defendant's Notice of Appeal, September 25, 2017). He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carvercase, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in the Defendant's case. Carverbelieved that these statements should be explored in depth as they go through the very core of the crime for which Carverwas convicted and sentenced to thirty (30) years of imprisonment.

On October 19, 2018, Carvermoved to hold his appeal in abeyance based on newly discovered evidence. (Exhibit 1- Defendant's Motion to Hold Appeal in Abeyance, October 19,

2018). On December 10, 2018, the Court of Appeals granted Defendant's motion. (Exhibit 3-Court of Appeals Order Granting Motion to Hold Appeal in Abeyance, December 10, 2018).

ARGUMENTS

I.

NEWLY DISCOVERED EVIDENCE SURFACED THAT WARRANTS THE EXAMINATION AND RE-LITIGATION OF THIS CASE.

The trial of James Milton Gambrell, a co-Carverin the murder case of Steven Cameron, ushered new evidence that was not available during the Defendant's trial. The newly discovered evidence consists of statements by witnesses in the Carvertrial, whom the defense could not have been obtained during his trial since they were inconsistent and false statements.

This case is about the untimely death of Mr. Cameron, who has been gunned down by the State's star witness, Curry. It is a fact that does not escape the Defendant. From the inception of this case, the State relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carvercase, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

Q. When you originally spoke to detectives who did you say shot Steven Cameron?
A. I didn't.
Q. You didn't?
A. (Negative gesture).
Q. So you're telling us today who shot Steven Cameron?
A. Yes, ma'am. It just happened, I didn't mean to shoot him. He was just coming at me. I don't even remember pulling the trigger, it just went—(pause)—I wish I could turn back time, but I can't.
Q. Thank you, Mr. Curry. Please answer any questions that Mr. Smith may have for

04. you.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47).

However, in the Gambrell trial, Carverlearned that Curry, initially tried to pin the shooting on Defendant. Marzolf, who interviewed Curry, testified to the following:

16. Q. Now, did Mr. Curry, the shooter, admit to you what
17. had happened, or did he deny all knowledge of what had
18. happened?
19. A. He gave me a version of what had happened in which
20. he said that they did go to the house and that Jason
21. Carverwas the shooter that night.
22. Q. But didn't Mr. Curry later change his mind and
23. admit that, in fact, he was the shooter?
24. A. Yes, sir, he did.
25. Q. But at the time he was lying about that to you,
01. correct?
02. A. Yes, sir.
03. Q. Do you know when he changed his mind about that,
04. decided to admit he was the shooter?
05. A. Sometime after he had been charged.
06. Q. Charged by you?
07. A. Yes, sir.
08. Q. With these crimes?
09. And to your knowledge, was that part of a plea
10. agreement with him?
11. A. I don't know what the actual -- I know he's agreed
12. to testify.
13. Q. As a matter of fact, he's here today, isn't he,
14. ready to testify?
15. A. I believe so.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 80-81).

Marzolf's statement about not knowing the details of Curry's plea bargain, nor his involvement in the said process is belied by Curry. In his sworn affidavit, Curry specifically stated that Marzolf and Chelsey suggested to reduce his charges to voluntary manslaughter if he pleads guilty and implicates herein Defendant. (Exhibit 4- Affidavit of Woodrow Walter Curry, November 5, 2018).

Second, when Curry was asked what he did after leaving Cameron's house during Carvertrial's, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carverdo
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1 Motion to Hold Appeal in Abeyance, P. 49).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 1-Motion to Hold Appeal in Abeyance, P. 82).

This was not disclosed during Defendant's trial. Out of nowhere, the prosecutor asked Curry if he did anything on the way to Gambrell's. Curry's response was that he called Gambrell. This question was not raised during Defendant's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Gambrell contradicted Curry's claims. In his sworn affidavit, Gambrell categorically denied that Curry called him since Curry had no phone at the time he went to Cameron's house. (Exhibit 5- Sworn Affidavit of James Milton Gambrell, November 30, 2018).

Third, at the Carvertrial, Curry testified that Gambrell instructed Carverto drive Cameron to his house.

21. Q. What were y'all doing?
22. A. Well, at the time—at the time I
23. was working on a car. I was working on a car
24. and I guess he was in there with them. Then
25. Milton came out there and told Jason to take
01. Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 50-51).

In his subsequent testimony at Gambrell's trial, his statements implied that Carvervoluntarily took Cameron home.

16. Q. What we're y'all doing?
17. A. Well, I mean like I say, I was out there
18. working – to begin with, I was out there working on a
19. car. Carverwasn't even there yet. I was working on a
20. car there, and they was in the house. Steven had come
21. over with a dirt bike, and he was in the house.
22. And then later on, when Carvergot off work, he
23. come over there like he normally did. He went in the
24. house and come back out, him and Steven there, and he
25. took Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.83).

Fourth, Curry, implicated Carverby testifying that Carverhad a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

15. Q. Did you have a gun when you left
16. Appaloosa Drive?
17. A. Yes.
18. Q. Where did you get that gun?
19. A. Milton Gambrell.
20. Q. Did Jason Carverhave a gun when you
21. left Appaloosa Drive?
22. A. Yes.
23. Q. Where did he get that gun?
24. A. It was his.
25. Q. Did you have more than one gun with
01. with you?
02. A. Yes.
03. Q. How many guns did you have?
04. A. Two.
05. Q. Do you remember what kind of guns

06. they were?
07. A. ..38 and a .22--.25, I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 52).

However, in the same hearing, Curry stated:

02. Q. And the weapon that you said that
03. you had seen, was that the same weapon that
04. you allege that he had at this time?
05. A. I don't know that he owned one.
06. Q. The one with the sight on it, the
07. one that he allegedly brought out and showed
08. you previous to his incident, you still
09. don't know what that is?
10. A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 54).

Gambrell dismissed these contradicting statements of Curry. Gambrell confirmed that Carverdid not have a gun on March 28 or 29, 2016. (Exhibit 7-Gambrell Affidavit). Gambrell stated that the only time he saw Carverwith a gun in 2015, one year prior to the shooting incident. At that time, Carverwas showing his brother's gun to Gambrell. *Id.*

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

14. Q. So you had a chat with Steven
15. Cameron. And after he did not give you any
16. money and he did not give you any drugs, what
17. did you do?
18. A. I don't know, I like turned and he
19. come at me, and I looked down, I didn't know
20. I had the gun but obviously I did—I had
21. it, I mean. Then like, 'oh.' He charged
22. at me and – I don't even remember pulling the
23. trigger but I heard *Pop! Pop!* So—(pause).
24. Q. So you shot Steven Cameron?
25. A. Yeah, I guess.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 55).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

Q. Why did you do it?
A. Because for some reason or another I had done pulled the gun, I guess to intimidate him or whatever, and he charged at me. "What are you going to do, shoot me?" And he charged at me. I don't know what to do. What's he going to do, take the gun and shoot me or what? I don't know. I mean, that's just—
Q. Why did you feel the need to try to intimidate him?
A. He's bigger than I am.
Q. He's bigger than you are?
A. A lot bigger than I was.
Q. But you just said you were just going to have a conversation with him. Why should him being bigger than you make a difference if you're just going to have a conversation?
A. Man, like I said, I was high. I was 150 pounds. I was all drawed up myself, you know I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 84).

Carverbelieves that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground; and, announcing "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Carverhaving a gun. By Carver having Curry testify that Carverhad a gun, it made him "part of the team". The only statement regarding Carverpossessing a gun was from Curry. Carverpainstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carverknew Curry had) in the car. Obviously, Carverdid not have a gun; or, he would not have been so aggressive with his plea for

Curry to leave his gun in the car. More importantly, if Curry's testimony were to be believed that Carverbrought a gun with him, then Curry would not have felt threatened when Cameron lunged towards him during their exchange of words. It was irrational that Defendant, having a gun with him, did not use the same against Cameron, whether it was just to intimidate or to ensure that the latter complies with Curry 's demands. It would have shown unity in action and purpose. But that is not the case at hand. In the instant case, when Carverrealized that Curry would not heed his pleas to put the gun down, Carverran away from the two men, with the intention of leaving Curry behind. That is not the action of a man in agreement with Curry's actions.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carverwent in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carverhad his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When – Carverwent in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carverhad a – there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Carverhad a -- there, and I..*" (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In testifying that "*(W)e went in there to return the guns*", Curry tied Carverin with him. Curry

admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carverreturned the gun he allegedly had. If it were true that Carverhad his own gun, he would have no need to return his own gun to Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

14. Q. Why did you testify in your first trial that you
15. went back to Milt's house and that's when you told him
16. about the shooting when you're testifying in this trial
17. that you called him on the way on your cell phone?
18. Which is the truth?
19. A. I called him on the cell phone.
20. Q. Why is this the first time you're saying this?
21. A. First time I recall being asked.
22. Q. Weren't you asked in the first trial? And,
23. specifically, I'm talking about your codefendant's
24. trial, the other person who was with you, Jason
25. Defendant's trial.
01. A That's 11 months ago, sir. It's hard for me to
02. remember that far back. But, I mean, I told him on the
03. way, you know. When I got there, he smelled the gun.
04. I mean...

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 85).

17. Q. Okay. So the first trial, you testified that
18. after the shooting, you drove back to Milt's house,
19. Mr. Gambrell's, and then you told him inside of his
20. house --
21. A. Uh-huh.
22. Q. -- that you shot the guy.
23. A. I don't recall that, but if you say I did, I did.
24. Q. Do you recall what you told him as to why you shot
25. the poor man, why you shot Mr. Cameron?
01. A. He didn't ask.
02. Q. Didn't you say something like, "Well, things just
03. went crazy and I shot him"?
04. A. No. Like I say, he didn't ask. I told him on the
05. way back over there that he better have been sure that
06. that guy took his dope there because I shot him.

Q. You said the way back over there?
A. On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."
Q. Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?
A. Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?
Q. No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.
A. Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.
Q. So you're telling this jury –
A. The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.
Q. My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?
A. It's the first time it's been asked.
Q. The detectives never asked you the details of what happened?
A. Not that I recall.

(Exhibits 1, Motion to Hold Appeal in Abeyance, P. 85& 88-89).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

THE COURT: Are you under the influence of any medications, drugs, or alcohol today?
MR. CURRY: No, sir.
THE COURT: Counsel, are you satisfied that Mr. Curry's competent to plea?
MS. BYFORD: I am, Your Honor.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 75).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing carrot" offered by the Defendant. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Defendant's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

02. Q. Okay. Well, if your memory was so messed up, why
03. should this jury believe anything you have to say today
04. about what happened over two years ago?

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 89).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

The crux of the State's case against Carver is Curry's testimony that Carver(1) knew about the missing cocaine; (2) that Carver had his own gun when they drove back to Cameron; and that by driving Curry back to Gambrell's house, Carver approved and supported Curry's actions. Somehow these assumptions show that there was an agreement among Carver, Curry and Gambrell beforehand. That this is a case of drug distribution gone awry. Now that Curry's lies, and misleading statements came to light, it is incumbent for this Court to re-try this case.

On Defendants ACSO and police officers

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

20. Q. So when you mentioned that on the first video that
21. a neighbor had heard the argument and heard what went

on down that night, that just was not true, correct?
A. Actually, that was true. We had -- during the neighborhood canvass, it's my understanding that one of the detectives talked with a neighbor who overheard an argument and the words "dirt bike" were mentioned during the argument.
Q. Did they hear gunshots?
A. No one -- I don't recall. I don't recall if somebody heard gunshots or not. I know that they talked to several people in the neighborhood.

(Exhibit 1, Motion to Hold Appeal in Abeyance, PP. 78-79).).

A All I know is what, you know, what the detective that was told to canvass told me, which was that, you know, somebody had overheard an argument involving the words "dirt bike."
Q. But no gunshots?
A. I don't recall if they had heard gunshots or not, sir. I don't want to tell you the wrong thing.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 79).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Carver maintains that this should have been disclosed in the previous trial as this confirms what Carver has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through Defendant's lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Defendant's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any instances. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted the Cameron's volatile behavior. (Exhibit 1- Motion to Hold Appeal in

Abeyance, P. 47). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97)

As discussed in the previous section, Marzolf has shown no qualms in offering conflicting testimonies/statements. He testified not having knowledge of, nor even participated in, Curry's plea offer. Curry exposed that it was Marzolf and the prosecutor's idea to reduce his charges.

Carver believed that this information would have helped him formulate his defense.

Carver believes that due to this newly discovered evidence, he is entitled to remedy under Rule 29 SCRCrimP.

II.

CARVER IS ENTITLED TO HAVE THE JUDGMENT AGAINST HIM VACATED DUE TO PROSECUTORIAL MISCONDUCT.

Carver further asserts that he is entitled to move to vacate/set aside judgment by reason of Defendant's misconduct in the handling of this case.

Carver insists that the prosecution abused its discretion in filing different charges against him, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder [1], and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory

[1] Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargain.

before the fact to a felony. The same prosecutor handled Defendant's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Carver was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Carver was found guilty not because of what he did, but because of what was suspected he did.

Carver avers that in its zealousness to get a conviction for this case, the prosecution went beyond the boundaries of decency and professionalism.

First, according to the prosecution's star witness, Curry met with the prosecution team, three times. Marzolf was in at least one of these meetings. The prosecution provided no recording of the time they visited Curry to speak to him on his manslaughter deal. Defendant's counsel received two video interviews, but Solicitor withheld the third. Carver was not shown the video of what the prosecution exactly offered Curry. Curry maintained that Marzolf and Ms.

Moore said they would suggest voluntary manslaughter, if he pled guilty and testified against Defendant. (Exhibit 6-Affidavit of Curry).

Second, the State deferred Curry's sentencing for over a year, when the Order specifically stated that it will only be until after Defendant's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell's trial. Curry testified as to what would convict Carverand then Gambrell. Curry's testimony as to calling Gambrell on the way to the latter's house, a statement which he Curry did not offer at Defendant's trial, is a testament to the extent by which they would go to get a conviction.

Based on Curry's lies, Carver and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the State's evidence in both cases, Carver asserts that the State has no evidence. Curry cannot be considered credible evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of times Curry had talked to the police. There is no question that the State recorded the interview where it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Carver to never call a witness when you do not what know what they will say. They knew what Curry was going to say.

During Defendant's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

04. So what happened here is that Milton
05. Gambrell, a known drug dealer, Mr. Smith just

told you all about that, sent his two ""do boys"--- that is what Woodrow Curry called himself and Carver on the stand—they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 56).

But in the Gambrell trial, this was all she stated:

In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James Gambrell is also liable for any criminal act which, in the ordinary course of things, was the natural or probable consequence of the crime that he advised or commanded. So was the murder of Steven Cameron a natural and foreseeable consequence of James Gambrell's order? I submit to you that it was.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 90-91).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Third, Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. The only logical conclusion was that the State dangled Curry's sentencing over his head for him to testify according to its wishes.

Fourth, in prosecuting the case, the State failed to disclose information and/or witnesses that may exculpate the Defendant. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense.

(Rule 3.8(d) of the Rules of Professional Conduct). It failed to do the same. Instead, it fostered and facilitated, Curry, to offer inconsistent and false statements during Carver and Gambrell's respective trials. The State also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect.

Carver had already questioned the State's method of prosecuting its case. The investigation on Defendant's case was completed April or May 2016. The State offered Carver a copy of the discovery in December 2016, which Carver was unable to open. By the State's own admission, what they provided had been faulty.

SOLICITOR MOORE: Yes, Judge. I cannot guarantee that the flash drive will be able to play for the jury. We have, as you know, had some difficulty with that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 57).

Carver repeatedly requested the discovery materials. These materials had been in the State's possession since the first week of the investigation. On August 9, 2017, two (2) weeks prior to Carver's trial, the State provided discovery, which included 36 hours of video footage, and three supplemental reports. The State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.
SOLICITOR MOORE: I understand, Your Honor.
THE COURT: So playing with evidence is not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I

can't understand how, under any circumstances, that could be. Now, I might just be wrong --and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.

SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---

THE COURT: I want to know why --I don't care what you did. I want to know why it just got sent out August 9th of this year.

SOLICITOR MOORE: Because I'd just received it, Your Honor.

THE COURT: From whom?

SOLICITOR MOORE: From Detective Henry.

THE COURT: Who is Detective Henry?

SOLICITOR MOORE: He is the man who was just testifying.

THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?

OFFICER HENRY: What information?

THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?

OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.

THE COURT: You thought you had.

OFFICER HENRY: Yes, sir.

THE COURT: So it was a case of honest mistake?

OFFICER HENRY: Yes, sir. Seriously, yes, sir.

THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern—and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay.

Is there other evidence that was not delivered until late in the game? If so,

why?
SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly
THE COURT: I'll be right back. I want to get this cleared up.
SOLICITOR MOORE: Yes, sir.
THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 58-59).

The trial judge initially found this delay as unacceptable.

Q. Why is there such a delay in getting that information?
SOLICITOR MOORE: Your Honor, I can only provide to Mr. smith what I have for myself.
THE COURT: That is not an excuse.
SOLICITOR MOORE: I understand—
THE COURT: That is not acceptable.
SOLCITOR MOORE: I understand, Judge.
THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be some problems with it, I'm telling you.
SOLICITOR MOORE: I understand, Judge.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 62).

The judge went easy on the State and allowed all the information in the record when Officer Henry attested that it was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 60). Instead, the court turned against Defendant's failure to view the 36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 61). The lower court failed to consider that Defendant's counsel is a sole proprietor, whom unlike the

prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this, there was precedence in the police's haphazard handling of evidence in this case.

In failing to submit the video surveillance and required discovery materials within the reglementary period, it is tantamount to the State denying Carver his right to prepare his defense. The delay in providing discovery materials to defense counsel seemed to have become the norm. This issue should have been addressed more sternly especially since the judge, himself, stated he that it was not the first time this issue had arisen in this particular trial.

Fifth, the State's questionable conduct continued during Gambrell's trial, when it deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Carver was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Carver submits that if the State's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

07. Q. Did you go over there with the intent to kill
08. Mr. Cameron?
09. A. No, sir.
10. Q. Did anybody tell you to go kill him?
11. A. No, sir.
12. Q. Did anybody tell you to go beat him up?
13. A. No, sir.
14. Q. Did anybody tell you to go threaten that you were
15. going to beat him up?
16. A. No, sir. I was just told to go get the dope or
17. get paid for it.
18. Q. What does that mean --

A. I never intended to --
Q. What does that mean, you were told to steal the dope from him?
A. No. I was just told to go and retrieve it. He stole the dope.
Q. What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A. Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.
Q. That's right. Because nobody had instructed you about that, correct?
A. That's right. I wasn't instructed. Nobody told me to. I've done said over and over this was never planned. I never planned to shoot Steven Cameron let alone kill him. This is something I'm living with. Nobody told me to do that. I didn't want to do that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 92).

Q. Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A. I don't know what he was thinking.
Q. All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A. Right.
Q. He did not tell you to threaten Mr. Cameron in any way?
A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 93).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

Q. He also emphasized to you that all he wanted was for them to let Mr. Cameron know that he had the drugs, they knew it, and to pay for it, right? Wasn't that his story?
A Yes, sir.
Q. Okay. You -- also on that video, at one point I believe I heard you say that Mr. Cameron -- dope was found on Mr. Cameron after he was killed?
A. Yes, sir. During the autopsy, they did find some drugs.

Q. Okay. Did you mean in his system?
A. No, sir. I mean they found actual drugs on his person.
Q. Do you know how much?
A. I think in his tennis shoes, I believe. I don't know the exact quantity, sir.
Q. Okay. So obviously --
A. It was significant, but I don't know exactly what it was.
Q. Couldn't have put it there after he was killed, so it was there in his shoes before he was killed, obviously. You don't know how much?
A. I don't know exactly, sir.
Q. Okay. Did anybody -- were his shoes still on when he was lying there on the porch?
A. Yes, sir, I believe so.
Q. All right. So nobody, obviously, tried to pull his shoes off to look for anything, correct?
A. I would imagine not.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 95).

The foregoing testimonies belied the State's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. Upon examination of Cameron's body, drugs were found inside his shoes. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video surveillance that other individuals entered Cameron's house after his death. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 63).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried

Cameron away, or attempted to commit said acts by any means without authority of law. (S.C. Code Ann. § 16-3-910 (2012)). If we were to believe Curry, as the prosecution so insisted, it was actually Cameron who initiated aggressive behavior by advancing/lunging toward Curry.

The State contends that Gambrell, Curry and Carver planned to commit the felony of murder or kidnapping simply because Curry was armed. Carver had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver possessing a weapon were all speculations by the police.

Q. Mr. Carver did not have a gun, did he?
A. There were two guns and two---
Q. Mr. Carver did not have, did he?
A. They had guns. They were given a .38 by Mr. Gambrell and Mr. Curry carried a .25 automatic with him.
Q. Where was the .25 carried?
A. In a fanny pack, is my understanding.
Q. Who knew about the .25?
A. Mr. Curry knew about it and I know that his wife knew about it, she told me about it as well.
Q. So neither of those people are Mr. Gambrell or Mr. Defendant, right?
A. No.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 64).

Q. When Mr. Gambrell took that gun, Mr. Carver had not returned from Mr. Cameron's yet; had he?
A. Mr. Gambrell didn't take the gun, sir. Mr. Curry received the gun from Mr. Gambrell or took it from him.
Q. Mr. Curry took it from Mr. Gambrel?
A (No verbal response).

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 65).

Q. You also learned that the .38 nor any other guns were provided to Jason Defendant; right?
A. The gun was provided to Curry and Carver when they were leaving, so I don't know.
Q. Which gun was provided to Mr. Curry?
A. The .38.
Q. Which gun was provided to Mr. Defendant?
A. There were no other weapons provided.
Q. And Mr. Gambrell told you that it was not provided to him, meaning Mr. Curry (sic); right?
A. He said that Mr. Curry took the weapon.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 66).

Proceeding from Defendant's fervent plea for the jury to believe Curry's words, Carver submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

IV.
DEFENDANT'S RIGHT TO DUE PROCESS HAS BEEN VIOLATED BY THE TRIAL JUDGE'S PREJUDICIAL ACTIONS TOWARDS THE CASE.

First, Carver believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as ruling on sustaining when there was no objection.

Q. Mr. Curry told you that he left the gun in the car; right?
Q. Yes.
Q. So we are here today and you're saying that Mr. Carver did what?

17. SOLICITOR MOORE: Uh—
18. THE COURT: Sustained.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 67).

Or sustained an objection that has no grounds:

06. Q. Mr. Gambrell was aware of the
07. pistol, the .38 being picked up?
08. SOLICITOR MOORE: Objection, Your Honor.
09. THE COURT: Sustained.
10. SOLICITOR MOORE: Thank you.
11. CROSS EXAMINATION CONTINUED
12. BY MR. SMITH:
13. Q. That weapon was not utilized in this
14. event to our knowledge?
15. SOLICITOR MOORE: Objection, You Honor.
16. THE COURT: Asked and answered. Move forward, please.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 68).

Carver believes that the trial judge showed his bias when he made conclusory statements as below:

06. MR. SMITH: It shows that what they've
07. provided, his statements and things in
08. evidence supports what he said from a non-
09. criminal standpoint. There was no criminal
10. thought in this matter. That's what he says.
11. THE COURT: Well, I'll look at it.
12. Quite frankly, I think you're just wrong. I
13. think that if your client went to go pick up
14. money or drugs, that's a criminal act in and
15. of itself. If you don't think so, then we
16. have a disagreement about that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 69).

06. THE COURT: Well, let me think about
07. that on the hand of one, hand of all. But
08. here are my thoughts on that. First, I don't
09. think that it exculpates your client, the
10. reason being --I think that they had a
11. criminal enterprises regardless of the
12. shooting; that is, 'go get him', go get this

man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence. So, if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose." So therefore -- although I think probably that your client did not know that a gun—that he was going to shoot this fellow, but—the cases recognize the connection between guns, drugs and violence where the plan was illegal and it just spiraled out of hand. So, the jury may believe that he was an innocent bystander, but that's my belief as to why the video of Mr. Gambrell does not exculpate your client. "

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 70).

The preceding statements were replete with prejudice considering Carver disputed any knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Second, Carver avers that he was denied his right to present his witnesses. Carver believes that Mr. Gambrell was key to the whole case, as he would testify that his instruction to Carver was simply to bring Cameron back to his (Gambrell) house. This then would rule out conspiracy or unity in purpose and action. Gambrell was called as a witness on behalf of Defendant. The trial judge advised Gambrell of his rights, particularly his rights against self-incrimination. Gambrell proceeded to narrate the events that transpired on March 28, 2016, which confirmed Defendant's story. When he started to explain about the missing item, his lawyer and the court advised him of

his Fifth Amendment right. After explaining his rights against self-incrimination, and a stern warning of its consequence, the trial judge insisted Gambrell confer with his counsel. At that point, the court ruled that his statements to the court will be stricken from the record.

THE COURT: At this point I need to advise you of your rights under the Fifth Amendment of the United States Constitution which says in part that no person can be compelled in a criminal case to be a witness against themselves. Do you understand your rights?
WITNESS: Yes, sir.
THE COURT: That means that you can't be required to testify against yourself, the State can't require you to, I can't require you to. Nobody can.
You have the right to refuse any question asked of you, anything that gives you reasonable cause to believe that the answer, if given, might tend to incriminate you as charged.
If you wish to exercise your right under the Fifth Amendment, you will state that to the court. You will say, "I refuse to answer the question because the answer to the question may tend to incriminate me." Do you understand that?
WITNESS: Yes, sir.
THE COURT: And let me advise you further that your statement is not the final decision as to whether or not your answer to the question would violate the Fifth Amendment. I will ultimately make that decision. Do you understand?
WITNESS: Say that again, sir?
THE COURT: Just because you exercise your right by saying "I refuse to answer the question because the answer may tend to incriminate me" does not mean that is the end of the inquiry. I will make the final determination as to whether or not you will have to answer the question. Do you understand?
WITNESS: Yes, sir.

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, P. 2.4).

THE COURT. Mr. Phillips, do you have a matter you wish to bring up on the record?
MR. PHILLIPS. Yes, sir. I have advised my client not to testify in this case. He originally chose to testify. I am again advising him to exercise his Fifth Amendment right and not to testify in this case from this point forward.
THE COURT: Do you wish to honor your attorney's advice, Mr. Gambrell?
WITNESS: (No verbal response).
THE COURT: In other words, do you want to testify or do you want to exercise your rights under --on your attorney's advice to exercise your rights under the Fifth not to testify?
WITNESS: I don't really understand
THE COURT: Well, let me tell you this, Mr. Gambrell. Your testimony in this case is being transcribed and it will be obtained by the State and used against you in the upcoming trial against yourself, or it can be, Do you understand that?
WITNESS: Yes, sir.
THE COURT: Now, your attorney --I gave you your rights under the Fifth Amendment and you told me that you understood them. Is that correct?
WITNESS: I am trying to understand them.
THE COURT: Well, sir, either you understand them or you don't. You told me that you did. What I told you is that under the Fifth Amendment to the United States Constitution that no person can be compelled to testify against himself in a criminal trial. Do you understand that?
WITNESS: Yes, sir.
THE COURT: And effectively what you are potentially doing is testifying against yourself because this testimony will be or can be used against you in your trial later, if you continue to testify. Do you

understand?
WITNESS: (Pause) --yes, sir.
THE COURT: Okay, sir. Now, Mr. Phillips, who is your attorney for your criminal charges has just stated that he's advised you not to testify and he's re-advised you not to testify any further. Do you understand that?
WITNESS: (No verbal response).
THE COURT: Do you understand that, Mr. Gambrell?
WITNESS: Yes, sir.
THE COURT: Now, you have a right – the only person who can exercise their right under the Fifth Amendment is yourself. It is advisable to listen to an attorney, however the ultimate decision as to whether or not you wish to continue to testify in this proceeding is your decision, yours alone to make.
WITNESS: Yes, sir.
THE COURT: Okay. You have to make that decision knowing your rights under the Fifth Amendment and also knowing the consequences to you if you continue to testify.
That is that --the consequence are that the State can and will obtain the transcript of your testimony and when you are called to trial they can use that against you in the courtroom. Do you understand? In front of the jury?
WITNESS: Yes, sir.
THE COURT: Now, the question is, do you wish to testify or do you wish to exercise your Fifth Amendment rights and not testify; take your attorney's advice not to testify?
WITNESS: (No verbal response).
THE COURT: Would you like to speak with your attorney further?
WITNESS: Yes, sir.
THE COURT: Would you take him in the hallway, Mr. Phillips?
(BRIEF RECESS -COUNSEL PHILLIPS AND WITNESS TO CONSULT OUTSIDE COURTROOM)
THE COURT: Mr. Phillips, have you had

sufficient time to consult with your client?
MR. PHILLIPS: Yes, sir. May I ask him a question?
THE COURT: Yes, sir.
MR. PHILLIPS: Mr. Gambrell, is it
your desire to stop your testimony from this
point forward?
WITNESS: Yes, sir.
THE COURT: Very good. I'm going to
let him step down. He is relieved of his
subpoena.
MR. PHILLIPS: Thank you.

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, P. 5).

Appellant raises his concerns on the judge's overzealous efforts to explain to Mr. Gambrell about his Fifth Amendment Rights, which he invoked, then waived, and invoked again after repeated warnings by the judge. As Supreme Court noted in *Webb v. Texas*, 409 .S. 95, 98 (1972)- a trial judge's efforts to protect a defense witness—in this case, from prosecution for perjury—may impermissibly intrude upon a defendant's right to produce evidence.

More importantly, Appellant questions the propriety of the court's ruling on refusing to let Gambrell take the witness stand for pleading the Fifth, striking his entire testimony, and refusing to allow the Appellant to call him on the witness stand to plead the Fifth in front of the jury.

The witness' privilege against self-incrimination does not provide an absolute right to remain silent. It is well settled that a witness, who is not also a defendant, can invoke that privilege only after the incriminating question has been put. *State v. McGuire*, 272 S.C. 550-551. In short, unlike a Carver(or co-defendant) who is called to testify, a witness must invoke the privilege to specific questions, and may not assert "blanket privilege". Gambrell should have been allowed to take the stand and invoke the privilege in response to each question that could yield a self-incriminatory answer, but not to completely refuse to testify. The Court presiding over the proceeding in which a Fifth Amendment privilege is claimed has a duty to scrutinize a witness'

invocation of the privilege. In the instant case, the trial judge did not propound any question upon Gambrell to get by his Sixth Amendment Right.[2]

Defense subpoenaed Dequavious Gambrell, Milton Gambrell's nephew, and his friend, Tykeon Gardner. Dequavious had purchased the bike from Cameron that day. When the defense called the witnesses, neither of them were available to testify. As expected, defense counsel could not track down the witnesses. This was especially true since Mr. Gambrell was no longer an issue to testify. CarverCarver was unable to show to the jury that Gambrell had prevented the boys from going that night because he was concerned of the personality clashes that may have occurred had they gone down there. The Court did not attempt to compel the presence of the witnesses with any significance. The defense's Motion for Continuance, which was raised when the witnesses subpoenaed by Carver failed to appear to testify, was summarily dismissed by the judge. Carverbelieves that The Court had a duty to compel the witnesses who been subpoenaed properly, so as to give Mr. Carver some semblance of equity.

Carveravers that the judge's actions in prohibiting and/or denying his right to call his witnesses (Dequavious and Tykeon), was both arbitrary and capricious.

> The right to offer the testimony of witnesses, and to compel their attendance if necessary is a plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so it may decide where the truth lies Just as an accused has the right to confront the prosecution's witnesses for the purpose or challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

---

[2] The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

Washington v. Texas, 388 U.S. 14, 19 (1967).

This was in direct violation of Defendant's Sixth Amendment Rights.

Carverrecognizes that a violation of a defendant's Sixth Amendment right to confront a witness or present one is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 315 S.C. 383, 385, 444 S.E. 2d 525, 527 (1994). Error is harmless where it could not reasonably have affected the result of the trial. In Re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003).

Carversubmits that Gambrell's, Dequavious' and Tykeon's respective testimonies were critical to the case's outcome. Carverasserts that they will testify to Defendant's motive/intent in returning to Cameron's house. Gambrell will testify to the following: (1) He sent Carverto Cameron with instructions to return the latter to Gambrell's house; (2) He did not give any gun to Curry; (3) He did not inform Carverof the stolen item when the latter drove back to Cameron's; (4) Carverdid not have a gun with him on the day of the incident; (5) Curry did not call Gambrell between the time Carverand Curry left his house and the time they returned; and, (6) He did not instruct Curry to kill, rob or sell anything to Cameron. Gambrell's testimony will provide the crucial nexus establishing Defendant's innocence. Dequavious and Tykeon will testify, among other things, to the bike transaction with Cameron, which was witnessed by Defendant.

The trial judge also denied Defendant's attempt to introduce in evidence the audiotape of Gambrell's interview with the ACSO officers as an exception to the hearsay rule. Gambrell can be considered as an unavailable declarant under the doctrine laid down in the State v. Doctor, 413 S.E.2d. 36. The judge insisted that contents of the Gambrell's interview do not exculpate Defendant, nor were they clearly corroborated by evidence that indicates the trustworthiness of

Gambrell's statement. With the new developments in this case, Carvercould not have provided evidence that will corroborate the trustworthiness of Gambrell's testimonies because of the lies and conflicting statements that Curry perpetuated.

From the foregoing, Plaintiff believed that the trial judge sought, and/or prevented Gambrell from testifying in court. By his actions, he had improperly swayed a witness. The judge's failure to adhere to the neutrality and non-biased work required by his position, tainted the proceeding.

Carveris presently serving a sentence of 30 years for a crime that he did not commit. Carveris serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Defendant.

Carversubmits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

To this end, Carvermoves for the re-litigation of this case. Carverfurther moves for leave to allow the Carverto move to vacate/ set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence and misconduct on the opposing party.

Accordingly, Carverrespectfully requests this Honorable Court to suspend and/or hold this appeal in abeyance, pending the resolution of Defendant's motion to vacate.

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

December 20, 2018

EXHIBIT 1
DEFENDANT'S MOTION TO HOLD APPEAL IN ABEYANCE
October 19, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

RECEIVED
OCT 23 2018
SC Court of Appeals

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

APPELLANT'S MOTION TO HOLD HIS APPEAL IN ABEYANCE

Appellant hereby moves this Honorable Court to hold in abeyance the above-captioned review of a final order issued by Judge R. Lawton MacIntosh on September 14, 2017. Appellant seeks to suspend said appeal in order to be able to move to vacate or set aside the said judgment based on newly discovered evidence and misconduct of an adverse party. This action is expected to render moot the issues under review by this Court.

This is an appeal for the Appellant's conviction for the killing of Steven Cameron. This case was based on mere suspicion.

FACTUAL HISTORY:

On March 28, 2016, Appellant Jason Carver had been working on a transmission at James Gambrell's house, when the latter requested Appellant drive Steven Cameron home.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

State of South Carolina,
Plaintiff,

vs.

Jason Carver,
Defendant.

IN GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

Case No.: 2016A041020056

CERTIFICATE OF SERVICE

THE UNDERSIGNED person deposes and says that he served a copy of the Defendant's Motion for New Trial, upon the Solicitor's Office, Tenth Judicial Circuit, and the Honorable Lawton McIntosh, personally, by hand delivery to the below address:

Date: December 21, 2018

Donald L. Smith
Attorney for Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

HAND DELIVERED TO:

Honorable Lawton McIntosh
Anderson County Common Pleas
100 S. Main S.
Anderson, SC 29624

Asst. Solicitor Chelsey Moore
Office of the Solicitor
Tenth Judicial Circuit
100 S. Main St.
Anderson, SC 29624

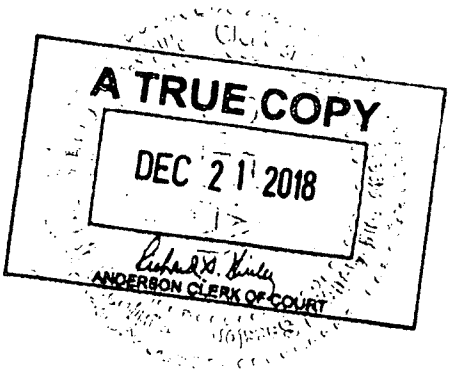


EXHIBIT 1
DEFENDANT'S MOTION TO HOLD APPEAL IN ABEYANCE
October 19, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No.: 2017-002011

RECEIVED
OCT 23 2018
SC Court of Appeals

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

APPELLANT'S MOTION TO HOLD HIS APPEAL IN ABEYANCE

Appellant hereby moves this Honorable Court to hold in abeyance the above-captioned review of a final order issued by Judge R. Lawton MacIntosh on September 14, 2017. Appellant seeks to suspend said appeal in order to be able to move to vacate or set aside the said judgment based on newly discovered evidence and misconduct of an adverse party. This action is expected to render moot the issues under review by this Court.

This is an appeal for the Appellant's conviction for the killing of Steven Cameron. This case was based on mere suspicion.

FACrUAL. HISTORY:

On March 28, 2016, Appellant Ja on Carver had been working on a transmission at James Gambrell's house, when the latter requested Appellant drive Steven Cameron home.

Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carver to drive Cameron because he had been drinking all day and was not able to drive. Carver agreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carver and Cameron as they traveled to Cameron's home. They were unable to reach either one. Carver returned within 30 minutes.

Upon Carver's return, Gambrell told him he wished he had a phone because they would have told him to turn around and come back. As a result, Gambrell asked Carver to take Curry with him and go back and get Cameron. Neither Gambrell nor Curry shared the secret about the missing cocaine. They didn't want to take the chance that Appellant would refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact Appellant was not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit in. Therefore, based on what he was told, Carver believed that he was bringing Cameron back, and Curry wanted to go, Carver grabbed Gambrell's Buick, which he knew always had keys in it. However, since

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carver was confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was

located. Curry claimed that everything that was found-was his, *in Gambrell's house.* Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Jason Carver worked full-time for a transmission business. He was at Gambrell's house because they had a joint venture turning cars, with Carver being responsible for getting them sale-ready.

Again, Carver told Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carver was confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carver leading the way, the two made their way back to the car. Curry noticed Cameron peaking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop, and pointed it directly at Cameron.

Carver frantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carver started toward the car, intending to leave Curry behind.

In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Carver, who has reached the car, heard the gunshots. Frightened and confused, Carver dropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Appellant to leave the lights off and leave the neighborhood. Unarmed Appellant did not put up any resistance; and, he did as he was told. Curry also offered that should Appellant feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Appellant's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Appellant and Curry arrived back at Gambrell's house, Carver was emotional and still shaken by the events that night. Curry told Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

9.	Q.	All right. So you get back to Mr.
10.		Gambrell's house?
11.	A.	(Affirmative nod).
12.	Q.	What takes place then?
13.	A.	When I got out, Curry got out behind
14.		me. I don't know if he still had the gun on
15.		me at the time but he followed me all the way
16.		into the house.
17.	Q.	So he --you say that he got out
18.		behind you. Did he slide across the front
19.		seat?
20.	A.	I'm assuming he did. I ain't for

sure.
Q. Because he was directly behind yo4?
A. Yes, sir, he was behind me.
Q. Did you take a chance and look behind you or just keep on walking?
A. I looked but I didn't pay that much attention. I was still shocked going in Gambrell's house. I was already in tears at that time too.
Q. Mr. Gambrell, he probably keeps his house locked up pretty good, doesn't he?
A. Yes, sir.
Q. And when you got to the front door, were you able to open it?
A. No, sir.
Q. How did you get in?
A. His nephew came to the door.
Q. So he opened the door?
A. (Affirmative nod).
Q. And you and Mr. Curry go in the house?
A. Yes, sir.
Q. Did you get past that immediate area?
A. (No verbal response).
Q. Did you go further than that? Did you go the man cave or ---
A. We started back towards the man cave. Then I sat down and Curry came across from me. Once he got on the other side of the little table, he sat down and laid the .38 down. So I'm assuming that he already had it out.
Q. So he had the .38?
A. Yes, sir.
Q. Where was Mr. Gambrell at this point.
A. Mr. Gambrell was sitting in his chair and he asked where Cameron was at. That's when Curry was telling him, said 'we got in an argument' and he said it got out of hand. Then he said that he shot him. And I was scared –I was shocked, in tears. Gambrell could see that I was scared, that I'd been crying.
Q. What was Mr. Gambrell's reaction?

A. Well, Mr. Gambrell and Curry started arguing . I mean, they were getting real loud.
Q. Did Mr. Gambrell say anything about the fact that Mr. Cameron was just shot?
A. Well, he told him that 'you was just supposed to have went up there and was supposed to have brung him back', all that stuff. That was it.
But, uh, Curry --he acted like he didn't just acknowledge it. He acted like, you know.
Q. So Curry and Gambrell are now in an argument
A. Yes, sir.
Q. And the .38 is sitting on the coffee table?
A. No, it was in the floor. He'd laid it in the floor.
Q. What did you at this point?
A. Well, I was already so scared, I just got up and left.
Q. Did you say goodbye?
A. No sir.

(Exhibit I A - Carver Trial Trans., Direct Exam Jason Carver, 08/21-25, 2017, P. 542, 9.25 & P. 543.545).

Appellant's apprehensions were not unfounded. That night, Curry drove past Carver's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Carver's trial that he personally reviewed portions of the video that afternoon.

Q. And what did you do when you got inside the residence?
A. Obviously because of the nature of the offense and because the cameras were

18. there, we wondered if they were in fact
19. currently recording. They were and, so, we
20. were able to do a very rapid review of some
21. of the footage and were able to discover some
22. evidence that I felt was pertinent to the
23. case.
24. Q. What evidence was that?
25. A. Un, – again, while we were review-
01. ing the video, and we just kinda of skimming
02. it very fast just to see.

(Exhibit 1B - Carver Trial Trans, Direct Exam Eric Russell, P. 245, 16.25 & p. 246, 1.2)

The footage was obtained that very day by forensics on scene.

20. Q. Okay. Did you ask that that footage
21. be collected?
22. A. I did, I went to the forensics that
23. was on scene and asked that it be collected
24. for evidence purposes.

(Exhibit 1C- Carver Trial Trans., Direct Exam Eric Russell, P. 248, 20.24)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

21. Buick appears, – well, first, let me ask,
22. how many hours of surveillance footage did
23. you view in this case?
24. A. I can't give you an exact number but
25. hours. We watched it all the day of the
01. incident as well as the following day. So at
02. least thirty-six hours.

(Exhibit ID- Carver Trial Trans., Direct Exam of Eric Russell, P. 253, 21.25 & p. 254, 1.2)

06. Again on the 30th I spent my entire day
07. reviewing the video.

(Exhibit IE - Carver Trial Trans, Cross Exam of Eric Russell, P. 268, 6.7)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

16. On April 5th, I was able to get stills
17. from the video taken and make comparisons,
18. and determined that it was the same vehicle.

(Exhibit IF-Carver Trial, Direct Exam of Eric Russell, p. 255, 16.19)

The video was used to identify the vehicle driven by Carver. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Appellant did not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Appellant gathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder:

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

> **MS. MOORE:** Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason Carver's trial.

(Exhibit 2- Transcript Plea Bargain, Woodrow Curry plea, 8/22/2017, p. 3, 12.17).

Appellant was indicted for Murder. During Appellant's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carver had his own gun; (4) Gambrell instructed him and Carver to retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary

manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Appellant was convicted of murder on August 25, 2017. Appellant moved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Appellant perfected his appeal. He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." .Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in the Carver case. Appellant believed that these statements should be explored in depth as they go through the very core of the crime for which Appellant was convicted and sentenced to thirty (30) years of imprisonment.

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

Q. So when you mentioned that on the first video that a neighbor had heard the argument and heard what went on down that night, that just was not true, correct?
A. Actually, that was true. We had – during the neighborhood canvass, it's my understanding that one of the detectives talked with a neighbor who overheard an argument and the words "dirt bike" were mentioned during the argument.
Q. Did they hear gunshots?
A. No one – I don't recall. I don't recall if somebody heard gunshots or not. I know that they talked to several people in the neighborhood.

(Exhibit 3A- James Gambrell Trial Transcript- Cross Exam. Detective Kreig Marzolf, 9/5/2018, P. 38, 20.25 & P. 39, 1.6).

A All I know is what, you know, what the detective that was told to canvass told me, which was that, you know, somebody had overheard an argument involving the words "dirt bike."
Q. But no gunshots?
A. I don't recall if they had heard gunshots or not, sir. I don't want to tell you the wrong thing.

(Exhibit 3A- James Gambrell Trial. Trans., Cross Exam. Marzolf, P. 39, 15.21).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Appellant maintains that this should have been disclosed in the previous trial as this confirms what Appellant has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through Carver's lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Appellant's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any such instance. (Exhibit 1G- Carver Trial Trans., Cross Exam of Marzolf, P. 321, P. 20.25 & P. 356-357). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted the Cameron's volatile behavior. (Exhibit 1G). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 4A- Supplementary Report, Marzolf, 2016-05324, 04/13/2016). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 4B- Supplementary Report, Marzolf, 2016-05324, 04/13/2016).

Appellant believed that this information would have helped him formulate his defense.

Respondent relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carver case, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

14.	Q.	When you originally spoke to
15.		detectives who did you say shot Steven
16.		Cameron?
17.	A.	I didn't.
18.	Q.	You didn't?
19.	A.	(Negative gesture).
20.	Q.	So you're telling us today who shot
21.		Steven Cameron?
22.	A.	Yes, ma'am. It just happened, I
23.		didn't mean to shoot him. He was just coming
24.		at me. I don't even remember pulling the
25.		trigger, it just went--(pause)-I wish I
01.		could turn back time, but I can't.
02.	Q.	Thank you, Mr. Curry. Please answer
03.		any questions that Mr. Smith may have for
04.		you.

(Exhibit IG- Jason Carver Trial Trans., Direct Exam Woodrow C_{urry}, 8/21-25/2018, P. 373, 14.25 & P. 374, *IA).*

However, in the Gambrell trial, Appellant learned that Curry, initially tried to pin the shooting on Carver. Marzolf, who interviewed Curry, testified to the following:[1]

16.	Q.	Now, did Mr. Curry, the shooter, admit to you what
17.		had happened, or did he deny all knowledge of what had
18.		happened?
19.	A.	He gave me a version of what had happened in which
20.		he said that they did go to the house and that Jason
21.		Carver was the shooter that night.
22.	Q.	But didn't Mr. Curry later change his mind and
23.		admit that, in fact, he was the shooter?
24.	A.	Yes, sir, he did.

[1] On a side note, Marzolfs statement about not knowing the details of Cuny' s plea bargain is improbable. They had to have discussed with *Curry* the consequences of entering a plea. Cuny testimony is by no means a surprise **confession.**

25. Q. But at the time he was lying about that to you,
01. correct?
02. A. Yes, sir.
03. Q. Do you know when he changed his mind about that,
04. decided to admit he was the shooter?
05. A. Sometime after he had been charged.
06. Q. Charged by you?
07. A. Yes, sir.
08. Q. With these crimes?
09. And to your knowledge, was that part of a plea
10. agreement with him?
11. A. I don't know what the actual – I know he's agreed
12. to testify.
13. Q. As a matter of fact, he's here today, isn't he,
14. ready to testify?
15. A. I believe so.

(Exhibit 3B- James Gambrell Trial Trans., Cross Exam. Marzolf, P. 40, 16.25 & P. 41, 1.15).

Second, when Curry was asked what he did after leaving Cameron's house during the Carver trial, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carver do
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1H- Carver Trial Trans., Direct Exam Curry, P. 371, 3.5).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 3C- James Gambrell Trial Trans., Direct Exam. Curry, P. 53, 9.25).

This was not disclosed during Carver's trial. There was no relevance to the trip home. Out of nowhere, the prosecutor asked him if they "did you do anything on the way to Gambrell's house?" Curry's response was that he called Gambrell. This question was not raised during Carver's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Third, at the Carver trial, Curry testified that Gambrell instructed Appellant to drive Cameron to his house.

Q. What were y'all doing?
A. Well, at the time--at the time I was working on a car. I was working on a car and I gues he was in there with them. Then Milton came out there and told Jason to take Steven home.

(Exhibit II- Carver Trial Trans., Direct Exam. Curry, P. 363, 21.25 & P. 364, 1).

In his subsequent testimony at Gambrell's trial, his statements implied that that Carver voluntarily took Cameron home.

Q. What we're y'all doing?
A. Well, I mean like I say, I was out there working - to begin with, I was out there working on a car. Carver wasn't even there yet. I was working on a car there, and they was in the house. Steven had come over with a dirt bike, and he was in the house. And then later on, when Carver got off work, he come over there like he normally did. He went in the house and come back out, him and Steven there, and he took Steven home.

(Exhibit 3D- Gambrell Trial Trans., Cross Exam. Curry, P. 48, 16.25).

Fourth, Curry, implicated Carver by testifying that Appellant had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

Q. Did you have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did you get that gun?
A. Milton Gambrell.
Q. Did Jason Carver have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did he get that gun?
A. It was his.
Q. Did you have more than one gun with with you?
A. Yes.
Q. How many guns did you have?
A. Two.
Q. Do you remember what kind of guns they were?
A. .38 and a .22--.25, I mean.

(Exhibit 1J- Carver Trial Trans., Direct Exam. Curry, P. 366, 15.25 & P. 367, 1.7.

However, in the same hearing, Curry stated:

Q. And the weapon that you said that you had seen, was that the same weapon that you allege that he had at this time?
A. I don't know that h owned one.
Q. The one with the sight on it, the one that he allegedly brought out and showed you previous to his incident, you still don't know what that is?
A. No, sir..

(Exhibit 1K- Carver Trial Trans., Curry, P. 398, 2.10).

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

Q. So you had a chat with Steven Cameron. And after he did not give you any money and he did not give you any drugs, what did you do?
A. I don't know, I like turned and he

19. come at me, and I looked down, I didn't know
20. I had the gun but obviously I d i d - I had
21. it, I mean. Then like, 'oh.' He charged
22. at me a n d - I don't even remember pulling the
23. trigger but I heard *Pop! Pop!* So-(pause).
24. Q. So you shot Steven Cameron?
25. A. Yeah, I guess.

(Exhibit 1L- Carver Trial Trans., Direct Exam. Curry, P. 369, 14.25).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

08. Q. Why did you do it?
09. A. Because for some reason or another I had done
10. pulled the gun, I guess to intimidate him or whatever,
11. and he charged at me. "What are you going to do, shoot
12. me?" And he charged at me. I don't know what to do.
13. What's he going to do, take the gun and shoot me or
14. what? I don't know. I mean, that's j u s t -
15. Q. Why did you feel the need to try to intimidate
16. him?
17. A. He's bigger than I am.
18. Q. He's bigger than you are?
19. A. A lot bigger than I was.
20. Q. But you just said you were just going to have a
21. conversation with him. Why should him being bigger
22. than you make a difference if you're just going to have
23. a conversation?
24. A. Man, like I said, I was high. I was 150 pounds.
25. I was all drawed up myself, you know I mean.

(Exhibit 3E- Gambrell Trial Trans., Cross Exam. Curry, P. 63, 9.25).

Appellant believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground and announcing "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Appellant having a gun. By Respondent having Curry testify that Carver had a gun, it made him "part of the team". The only statement regarding Carver possessing a gun was from Curry. Carver painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carver knew Curry had) in the car. Obviously, Carver did not have a gun; or, he would not have been so aggressive with his plea for Curry to leave his gun in the car.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carver went in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carver had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When - Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a - there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. bac;k to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 3C- Gambrell Trial Trans., Cross Exam. Curry, P. 53, 18.25).

Curry slipped with the following statement, *"we went in there and trying to give Milt there the guns there. And, I mean, Carver had a – there, and I."* (Exhibit 3C). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In testifying that *"(W)e went in there to return the guns"*, Curry tied Carver in with him. Curry admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carver returned the gun he allegedly had. If it were true that Carver had his own gun, he would have no need to return his own gun to

Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

Q. Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your cell phone? Which is the truth?
A. I called him on the cell phone.
Q. Why is this the first time you're saying this?
A. First time I recall being asked.
Q. Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.
A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

(Exhibit 3F- James Gambrell Trial Trans. Curry, P. 58, 14.25 & 59, IA).

Q. Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house –
A. Uh-huh.
Q. – that you shot the guy.
A. I don't recall that, but if you say I did, I did.
Q. Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?
A. He didn't ask.
Q. Didn't you say something like, "Well, things just went crazy and I shot him"?
A. No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.
Q. You said the way back over there?
A. On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because

I just shot him."

Q. Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?

A. Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?

Q. No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.

A. Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.

Q. So you're telling this jury -

A. The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't – I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.

Q. My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?

A. It's the first time it's been asked.

Q. The detectives never asked you the details of what happened?

A. Not that I recall.

(Exhibit 3F & 3G- Gambrell Trial Trans., Curry, P. 59, 17.25; P. 60, & P. 61, 1.13).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

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

MR. CURRY: No, sir.

THE COURT: Counsel, are you satisfied that Mr. Curry's competent to plea?

MS. BYFORD: I am, Your Honor.

(Exhibit 2B- Plea Bargaining Hearing, Curry, P. 5, 18.23).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing" carrot" offered by the Respondent. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Carver's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

> 02. Q. Okay. Well, if your memory was so messed up, why
> 03. should this jury believe anything you have to say today
> 04. about what happened over two years ago?

Exhibit 3H - Gambrell Trial Trans., Curry, P. 66, 2.4).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

Appellant believes that due to this newly discovered evidence, he is entitled to remedy under Rule 29 SCRCrimP. Appellant further asserts that he is entitled to move to vacate/set aside judgment by reason of Respondent's misconduct in the handling of this case.

Appellant insists that Respondent abused its discretion in filing different charges against Carver, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder [2], and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory before the fact to a felony. The same prosecutor handled Carver's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the

[2] Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargaining.

accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Carver. was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Appellant was found guilty not because of what he did, but because of what was suspected he did. The State said they were deferring Curry's sentencing until after Appellant's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell' s trial. Curry testified as to what would convict Carver and then Gambrell. Based on Curry's lies, Appellant and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the state's evidence in both cases, Appellant asserts that the State has no evidence. Curry cannot be considered an evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of time Curry had talked to the police. There is no question that the State recorded the interview where

it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Defendant to never call a witness when you do not what know what they will say. They knew what Curry was going to say.

During Carver's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

So what happened here is that Milton Gambrell, a known drug dealer, Mr. Smith just told you all about that, sent his two ""do boys"--- that is what Woodrow Curry called himself and Carver on the stand-they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

(IM- Carver Trial Trans.-Closing Argument of Chelsea Moore, P. 681, 4.12).

But in the Gambrell trial, this was all she stated:

In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James Gambrell is also liable for any criminal act which, in the ordinary course of things, was the natural or probable consequence of the crime that he advised or commanded. So was the murder of Steven Cameron a natural and foreseeable consequence of James Gambrell's order? I submit to you that it was.

(Exhibit 31- Gambrell Trial Closing Argument of Chelsea Moore, P. 10, 19.25 & 11, 1.6).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. The only logical

conclusion was that Respondent dangled Curry's sentencing over his head for him to testify according to Respondent's wishes.

In prosecuting the case, Respondent failed to disclose information and/or witness that may exculpate the Appellant. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigate the offense. (Rule 3.8(d) of the Rules of Professional Conduct). Respondent failed to do the same. Instead, it allowed its star witness, Curry, to offer inconsistent statements during Carver and Gambrell's respective trials. Respondent also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect. This practice violates Rule 3.8(d) of the Rules of Professional Conduct.

Appellant had already questioned Respondent's method of prosecuting his case. The investigation on the Carver case was completed April or May 2016. Respondent offered Carver a copy of the discovery in December 2016, which Appellant was unable to open. By the State's own admission, what they provided had been faulty.

02. SOLICITOR MOORE: Yes, Judge. I cannot
03. guarantee that the flash drive will be able
04. to play for the jury. We have, as you know,
05. had some difficulty with that.

(Exhibit IN -Carver Trial, Cross Exam of Eric Russell, p. 274, 2.5)

Appellant repeatedly requested the discovery materials, which included surveillance video which ran in excess of 36 hours. These materials have been in the State's possession since the first week of the investigation. Appellant was provided the materials only a year after. Another set of materials which included an audio recording and three supplemental reports was provided by the Respondent on August 9, 2017, or two (2) weeks prior to Appellant's trial. The

State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.
SOLICITOR MOORE: I understand, Your Honor.
THE COURT: So playing with evidence is not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong --and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.
SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith —
THE COURT: I want to know why –I don't care what you did. I want to know why it just got sent out August 9th of this year.
SOLICITOR MOORE: Because I'd just received it, Your Honor.
THE COURT: From whom?
SOLICITOR MOORE: From Detective Henry.
THE COURT: Who is Detective Henry?
SOLICITOR MOORE: He is the man who was just testifying.
THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?
OFFICER HENRY: What information?
THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?

OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.
THE COURT: You thought you had.
OFFICER HENRY: Yes, sir.
THE COURT: So it was a case of honest mistake?
OFFICER HENRY: Yes, sir. Seriously, yes, sir.
THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern-and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay. Is there other evidence that was not delivered until late in the game? If so, why?
SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly
THE COURT: I'll be right back. I want to get this cleared up.
SOLICITOR MOORE: Yes, sir.
THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(Exhibit 10- Carver Trial Trans., Direct Exam., Patrick Henry, 08/21-25/2017, P. 225, 17.25 & P. 226-228).

The trial judge initially found this delay as unacceptable.

Q. Why is there such a delay in-getting that information?
SOLICITOR MOORE: Your Honor, I can only provide to Mr. smith what I have for myself.
THE COURT: That is not an excuse.
SOLICITOR MOORE: I understand-
THE COURT: That is not acceptable.
SOLCITORMOORE: I understand, Judge.
THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be

18. some problems with it, I'm telling you.
19. SOLICITOR MOORE: I understand, Judge.

Exhibit 1P- Carver Trial Trans., Direct Exam. Henry, P. 224, 6.19).

The judge went easy on the Respondent and allowed all the information in the record when Officer Henry's attested that was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 10- Carver Trial Trans., Direct Exam. Officer Henry, P. 227, 2.23). Instead, the court turned against Appellant's failure to view the 36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 10- Carver Trial Trans., Direct Exam. Officer Henry, P. 228, 19.24). The lower court failed to consider that Appellant's counsel is a sole proprietor, whom unlike the prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this is the fact that there was precedence in the police's haphazard handling of evidence in this case.

Respondent's questionable conduct continued during Gambrell's trial, when the State deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Appellant was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479,697 S.E.2d at 584. Appellant submits that if Respondent's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

07. Q. Did you go over there with the intent to kill
08. Mr. Cameron?
09. A. No, sir.

Q. Did anybody tell you to go kill him?
A. No, sir.
Q. Did anybody tell you to go beat him up?
A. No, sir.
Q. Did anybody tell you to go threaten that you were going to beat him up?
A. No, sir. I was just told to go get the dope or get paid for it.
Q. What does that mean –
A. I never intended to –
Q. What does that mean, you were told to steal the dope from him?
A. No. I was just told to go and retrieve it. He stole the dope.
Q. What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A. Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.
Q. That's right. Because nobody had instructed you about that, correct?
A. That's right. I wasn't instructed. Nobody told me to. I've done said over and over this was never planned. I never planned to shoot Steven Cameron let alone kill him. This is something I'm living with. Nobody told me to do that. I didn't want to do that.

(Exhibit 3J- Gambrell Trial Trans., Cross Exam. Curry, P. 62, 7.25 & P. 63; 1.10).

Q. Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A. I don't know what he was thinking.
Q. All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A. Right.
Q. He did not tell you to threaten Mr. Cameron in any way?
A. No, sir.

(Exhibit 3K- Gambrell Trial Trans., Cross Exam. Curry, P. 68, 17.25 & P. 69, 1.2).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

Q. He also emphasized to you that all he wanted was

for them to let Mr. Cameron knpw that he had the drugs, they knew it, and to pay for it, right? Wasn't that his story?

A Yes, sir.

Q. Okay. You – also on that video, at one point I believe I heard you say that Mr. Cameron – dope was found on Mr. Cameron after he was killed?

A. Yes, sir. During the autopsy, they did find some drugs.

Q. Okay. Did you mean in his system?

A. No, sir. I mean they found actual drugs on his person.

Q. Do you know how much?

A. I think in his tennis shoes, I believe. I don't know the exact quantity, sir.

Q. Okay. So obviously –

A. It was significant, but I don't know exactly what it was.

Q. Couldn't have put it there after he was killed, so it was there in his shoes before he was killed, obviously. You don't know how much?

A. I don't know exactly, sir.

Q. Okay. Did anybody – were his shoes still on when he was lying there on the porch?

A. Yes, sir, I believe so.

Q. All right. So nobody, obviously, tried to pull his shoes off to look for anything, correct?

A. I would imagine not.

(Exhibit 3L- Gambrell Trial Trans., Cross Exam. Curry, P. 42, 2.25).

The foregoing testimonies belied Respondent's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann.§ 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video

surveillance that other individuals entered Cameron's house. (Exhibit 1S - Carver Trial Trans., Cross Exam. Marzolf, P. 318, 5.8).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried Cameron away, or attempted to .commit said acts by any means whatsoever without authority of law. (S.C. Code ann. § 16-3-910 (2012)).

Respondent contends that Gambrell, Curry and Appellant planned to commit the felony of murder or kidnapping by the fact that Curry was armed. Appellant had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver were all speculations by the police.

Q. Mr. Carver did not have a gun, did he?
A. There were two guns and two—
Q. Mr. Carver did not have, did he?
A. They had guns. They were given a .38 by Mr. Gambrell and Mr. Curry carried a .25 automatic with him.
Q. Where was the .25 carried?
A. In a fanny pack, is my understanding.
Q. Who knew about the .25?
A. Mr. Curry knew about it and I know that his wife knew about it, she told me about it as well.
Q. So neither of those people are Mr. Gambrell or Mr. Carver, right?
A. No.

(Exhibit IR- Carver Trial Trans., Cross Exam, Marzolf, P. 340, 3.20).

Q. When Mr. Gambrell took that gun, Mr. Carver had not returned from Mr. Cameron's yet; had he?

11, A. Mr. Gambrell didn't take the gur,
17. sir. Mr. Curry received the gun from Mr.
13. G8.ll)brell or took it from him.
14. Q. Mr. Curry took it from Mr. Gambrel?
15. A (No verbal response).

(Exhibit JS- Carver Ti al Trans,, Cross Exam. Marzolf, P. 341, 8.15).

03. Q. You also learned that the 3 8 nor
04. any other guns were provided to Jason Carver;
05. right?
06. A. The gun was provided to Curry and
07. Carver when they were leaving, so I don't
08. know.
09. Q. Which gun was provided to Mr. Curry?
10. A. The .38.
11. Q. Which gun was provided to Mr.
12. Carver?
13. A. There were no other weapons
14. provided.
15. Q. And Mr. Gambrell told you that it
16. was not provided to him, meaning Mr. Curry
17. (sic); right?
18. A. He said that Mr. Curry took the weapon.

(Exhibit 1T- Carver Trial Trans. Cross Exam., Marzolf, 345, 3.19).

Proceeding from Respondent's fervent plea for the jury to believe Curry's words, Appellant submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

Finally, Appellant believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as rulings on sustaining when there was no objection.

12. Q. Mr. Curry told you ti)at he left ti)
13. gun in the cai;; right?
14. Q. Yes.

Q. So we are here today and you're saying that Mr. Carver did what?
SOLICITOR MOORE: Uh-
THE COURT: Sustained.

(Exhibit IU-Carver Trial Tans., Cross Exam. Marzolf, P. 346, 12.18).

Or sustained an objection that has no grounds:

Q. Mr. Gambrell was aware of the pistol, the .38 being picked up?
SOLICITOR MOORE: Objection, Your Honor.
THE COURT: Sustained.
SOLICITOR MOORE: Thank you.
CROSS EXAMINATION CONTINUED
BY MR. SMITH:
Q. That weapon was not utilized in this event to our knowledge?
SOLICITOR MOORE: Objection, You Honor.
THE COURT: Asked and answered. Move forward, please.

(Exhibit 1V- Carver Trial Trh s., Cross Exam. Marzolf, P. 351, 6.17).

Appellant believes that the trial judge showed his bias when he made conclusory statements as below:

MR. SMITH: It shows that what they've provided, his statements and things in evidence supports what he said from a non-criminal standpoint. There was no criminal thought in this matter. That's what he says.
THE COURT: Well, I'll look at it. Quite frankly, I think you're just wrong. I think that if your client went to go pick up money or drugs, that's a criminal act in and of itself. If you don't think so, then we have a disagreement about that.

(Exhibit IW- Carver Trial Trans., P. 496, 6.16).

THE COURT: Well, let me think about that on the hand of one, hand of all. But here are my thoughts on that. First, I don't think that it exculpates your client, the reason being--I think that they had a

criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have – the cases are replete with the nexus between drugs and guns, also drugs and violence. So, if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose." So therefore – although I think probably that your client did not know that a gun-that he was going to shoot this fellow, but-the cases recognize the connection between guns, drugs and violence where the plan was illegal and it just spiraled out of hand. So, the jury may believe that he was an innocent bystander, but that's my belief as to why the video of Mr. Gambrell does not exculpate your client. "

(Exhibit 1X- Carver Trial Trans., Redirect Exam., Carver, P. 585, 6.25 & P. 586, 1.10).

The preceding statements were replete with prejudice considering that Appellant disputed knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Appellant is presently serving a sentence of 30 years for a crime that he did not commit. Appellant is serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Appellant.

Appellant submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

To this end, Appellant seeks to hold this appeal in abeyance. Appellant further moves for leave to allow the Appellant to move to vacate/ set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence. Under certain circumstances, it is possible that this appeal will become moot: that is if the lower court affirms Appellant's motion and vacates the judgment.

Accordingly, to conserve the resources of the Court and the parties, Appellant respectfully requests this Honorable Court suspend and/or hold this appeal in abeyance, pending the resolution of Appellant's motion to vacate.

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attomeydonaldsmith@gmail.com
Attorney for Appellant

October 19, 2018

EXHIBIT 1

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE VS. JASON CARVER

2016-GS-04-2279

08/21-25/2017

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	
COUNTY OF ANDERSON	)	COURT OF GENERAL SESSIONS
	)	
State of South Carolina,	)	
	)	
v.	)	Case No. 16-GS-04-2279
	)	
Jason Franklin Carver,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on August 21 through August 25th, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions for Anderson County, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Chelsey Lauren Moore, Assistant Solicitor
Scott McElhannan, Assistant Solicitor
10th CIRCUIT SOLICITOR'S OFFICE
Post Office Box 8002
Anderson, South Carolina 29622
---Appearing for State of South Carolina

Donald L. Smith, Esq.
---Appearing for Defendant

VIVIAN H. CROSS
Circuit Court Reporter -- 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

shook up, I wasn't doing the speed limit for sure.

Q. Were you driving faster or slower?

A. I was a little bit faster somewhat because I was shook up, scared. I didn't know was going to happen. I didn't know if he was going to shoot me when we got back to Gambrell's house or not.

Q. All right. So you get back to Mr. Gambrell's house?

A. (Affirmative nod).

Q. What takes place then?

A. When I got out, Curry got out behind me. I don't know if he still had the gun on me at the time but he followed me all the way into the house.

Q. So he -- you say that he got out behind you. Did he slide across the front seat?

A. I'm assuming he did. I ain't for sure.

Q. Because he was directly behind you?

A. Yes, sir, he was behind me.

Q. Did you take a chance and look behind you or just keep on walking?

A. I looked but I didn't pay that much attention. I was still shocked going in Gambrell's house. I was already in tears at that time too.

Q. Mr. Gambrell, he probably keeps his house locked up pretty good, doesn't he?

A. Yes, sir.

Q. And when you got to the front door, were you able to open it?

A. No, sir.

Q. How did you get in?

A. His nephew came to the door.

Q. So he opened the door?

A. (Affirmative nod).

Q. And you and Mr. Curry go in the house?

A. Yes, sir.

Q. Did you get past that immediate area?

A. (No verbal response).

Q. Did you go further than that? Did you go the man cave or ---

A. We started back towards the man cave. Then I sat down and Curry came across from me. Once he got on the other side of

the little table, he sat down and laid the .38 down. So I'm assuming that he already had it out.

Q. So he had the .38?

A. Yes, sir.

Q. Where was Mr. Gambrell at this point?

A. Mr. Gambrell was sitting in his chair and he asked where Cameron was at. That's when Curry was telling him, said 'we got in an argument' and he said it got out of hand. Then he said that he shot him. And I was scared -- I was shocked, in tears. Gambrell could see that I was scared, that I'd been crying.

Q. What was Mr. Gambrell's reaction?

A. Well, Mr. Gambrell and Curry started arguing. I mean, they were getting real loud.

Q. Did Mr. Gambrell say anything about the fact that Mr. Cameron was just shot?

A. Well, he told him that 'you was just supposed to have went up there and was supposed to have brung him back', all that stuff. That was it.

But, uh, Curry -- he acted like he didn't just acknowledge it. He acted like, you know.

Q. So Curry and Gambrell are now in an argument?

A. Yes, sir.

Q. And the .38 is sitting on the coffee table?

A. No, it was in the floor. He'd laid it in the floor.

Q. What did you do at this point?

A. Well, I was already so scared, I just got up and left.

Q. Did you say goodbye?

A. No. No, sir.

Q. Did you say, 'can I leave?'

A. No, sir.

Q. You just left?

A. Yes, sir.

Q. Where did you go?

A. I went to my mom's.

Q. Where was your dog at this point?

A. My dog was still in the car at the time.

Q. Did you go back the normal way? Or

as one facing away from the incident location, towards Old Pendleton Road.

Q. What did you do when you found those?

A. We attempted to contact the residents, however no one answered the door. Shortly after I was approached by Corporal Caleb Wilkinson with the Sheriff's Department, who informed me that he had made contact with an individual. Through a series of phone calls I was able to get Mike Tallyan to arrive and -- he arrived inside the residence.

Q. And what did you do when you got inside that residence?

A. Obviously because of the nature of the offense and because the cameras were there, we wondered if they were in fact currently recording. They were and, so, we were able to do a very rapid review of some of the footage and were able to discover some evidence that I felt was pertinent to the case.

Q. What evidence was that?

A. Uh, -- again, while we were review-

ing the video, and we just kinda of skimming it very fast just to see.

Q. Um-humm.

A. I observed a vehicle that pulled into the victim's driveway. The time stamp on the video was approximately two hours off, that was information that we were able to get from Mike Tallyan. But, uh, we were able to look at the victim, identified by the clothing that he was wearing, at approximately 1602 Hours riding his dirt bike towards Old Pendleton.

At around 2102 Hours we were able to see what looked like a black vehicle pulling into 108 Sterling Bridge Road. It was there a very, very small timeframe. Pulls in, then essentially pulls out. You can see someone walking from the passenger side of that vehicle towards 108.

Then at -- I want to say 2130, I believe is the time, you see a white sedan pulling in. I can reference my notes if I need to get the exact timeframe.

Q. Okay.

A. But -- (upon review), 2130.

colored sedan as well as the Buick itself, the white car, uh, -- the timeline I established.

Q. Okay. I am going to show you what has been marked as State's Exhibit 10, 10A. Does this car look similar to the car that you saw in that footage?

A. It does, yes, ma'am.

Q. It does?

A. (Affirmative nod).

Q. Thank you. So what, if anything, did you do after you observed the footage at Mr. Tallyan's house?

A. The lead detective on this case had been determined to be Detective Marzolf. On seeing this information, I approached Detective Marzolf and we determined the necessity to try to locate this vehicle that I felt was involved in this incident.

Q. Okay. Did you ask that that footage be collected?

A. I did, I went to the forensics that was on scene and asked that it be collected for evidence purposes.

Q. And you mentioned that you had

vehicle, as it is pulling in the driveway the lights are off. There is some movement at the very top of the video here. That's when you see that the occupants are opening the doors and stepping out of the vehicle.

Q. (Video playing) -- can you tell us what is happening now?

A. Yes, ma'am. Just before that, you can see the interior lights illuminate in the vehicle. The white vehicle is now reversing from the driveway at 108 with no lights illuminated and it is -- you can see some motion lights come on, headlights are off.

Q. To the best of your recollection were those headlights on when they pulled into the driveway?

A. Yes, ma'am, they were.

Q. Thank you.

A. Between the time that the victim returns home and the time that the white Buick appears, -- well, first, let me ask, how many hours of surveillance footage did you view in this case?

A. I can't give you an exact number but hours. We watched it all the day of the

incident as well as the following day. So at least thirty-six hours.

Q. So you saw the victim leave his home on the dirt bike?

A. Yes, ma'am.

Q. Then you saw him return, obviously?

A. Yes, ma'am.

Q. In that dark-colored car?

A. Yes, ma'am.

Q. And did anyone else, between the time that the victim arrived home and the time that the white Buick pulled in the driveway, did anyone else appear to you in this surveillance footage to come to the victim's house?

A. In reviewing the video, ma'am, there's no additional activity visible on that camera.

Q. Okay. What, if anything, did you do after reviewing that footage?

A. Obviously after a detailed time line was established, I told Detective Marzolf that -- there was a time line that I was allowed to assist Detective Marzolf in showing this footage to some of the family of

then further meetings where you came together to share what you'd found?

A. I can't recall if we did on this case. I know that we did initially and that's where I got my assignment.

Again, on the 30th I spent my entire day reviewing the video.

As far as the 4th, that's the actual meeting that I had with Detective Marzolf, where I showed the video to the family with the help of Detective Price (phonetic).

Q. Detective Russell, you went to Williamston. When did you do that?

A. 2010, sir.

Q. Why did you leave?

A. I was a detective with the Anderson County Sheriff's Office and I took a more supervisory job with the Williamston police department.

Q. When you came back from Williamston, why did you leave Williamston?

A. I was a Captain and in the latest mayor's election they had a new mayor who replaced the main staff of the police department.

the victim in regards to possibly identifying this vehicle.

Through the course of that, I found a relative that was able to recognize that vehicle as being at a location that he had -- that he and Detective Patrick Henry went to on March 30th and observed that location.

Q. During the course of your investigation, were you ever able to compare this video footage with video footage or photographs from Investigator Henry?

A. Yes, ma'am. When I assisted in showing that to the family, I learned that -- up to then, I didn't know that Detective Henry had done that.

On April 5th, I was able to get stills from the video taken and make comparisons, and determined that it was the same vehicle.

Q. Okay. If you would step off the stand for me, please, and tell me what you see on the screen in Exhibit 14.

A. Yes, ma'am. This is the image of the vehicle that arrived at the victim's residence that night.

Q. Okay. And I'm showing you State's

offense, from 2013?

A. Yeah, that sounds right.

Q. That sounds right?

A. (Affirmative nod).

Q. Okay. And you say that you're still being held on trafficking charges in Greenville?

A. Yes, ma'am.

Q. Is everything that you've told us here today the same thing that you told the detective who came to interview you or did your story change a little bit?

A. It's the same.

Q. When you originally spoke to detectives who did you say shot Steven Cameron?

A. I didn't.

Q. You didn't?

A. (Negative gesture).

Q. So you're telling us today who shot Steven Cameron?

A. Yes, ma'am. It just happened, I didn't mean to shoot him. He was just coming at me. I don't even remember pulling the trigger, it just went -- (pause) -- I wish I

could turn back time, but I can't.

Q. Thank you, Mr. Curry. Please answer any questions that Mr. Smith may have for you.

A. Okay.

THE COURT: Cross-examination.

MR. SMITH: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. SMITH:

Q. How did Mr. Cameron die?

A. I shot him.

Q. "I shot him" with what?

A. A .22.

Q. You reckon it was it a .22?

A. Yeah, it was a .22 or a .25. I'm not sure.

Q. Why don't you know which one it was?

A. It wasn't my gun. It looked like a .22 caliber, it was a small caliber.

Q. So you don't know if that was your .25?

A. It wasn't mine.

Q. It wasn't?

A. No, I don't have a gun.

in the car to turn the headlights off?

A. No, ma'am.

Q. What did you and Jason Carver do when you left Steven Cameron's house?

A. Went back to Milt's.

Q. Now, we talked about you being incarcerated in Greenville County.

A. Yes, ma'am.

Q. What are you incarcerated for?

A. Trafficking.

Q. Anything else?

A. Naw.

Q. Were you recently being held on other charges from Anderson County?

A. No, ma'am.

Q. For this case?

A. It was only like two weeks after this happened that Greenville arrested me.

Q. Had you been charged with murder in this case?

A. They come and told me, uh, I — (affirmative nod). I turned myself in.

Q. So yes, you had been charged with murder in this case?

A. (Affirmative nod).

Q. So for a while?

A. Yes.

Q. All right. Were you with Jason Carver and James Gambrell on the night that I am asking you about?

A. (No verbal response).

Q. The night that you are here to talk about today?

A. Yes.

Q. You were?

A. Yes.

Q. Where were the three of you?

A. I was outside working on a car. Milton Gambrell, he was inside. Jason, he was at work and he'd just got off work and he came over there.

Q. Who else was at the house that night? Do you remember?

A. My wife, Milton's wife. My stepson, he was there.

Q. What were y'all doing?

A. Well, at the time -- at the time I was working on a car. I was working on a car and I guess he was in there with them. Then Milton came out there and told Jason to take

Steven home.

Q. Why did Milt get Jason Carver to take Steven home?

A. Because Steven didn't have no way. He'd brought a dirt bike over there, so -- (pause).

Q. He's brought a dirt bike — the victim brought a dirt bike over to Mr. Garnbrell's house?

A. Yes.

Q. And he sold it while he was there?

A. Yes.

Q. So he didn't have any way to get home?

A. Right.

Q. Okay. And do you know in particular why he asked Mr. Carver to take him home?

A. I don't know.

Q. You just know that he did?

A. Yeah. He did stuff like that when he asked him to.

Q. Do you remember about what time that they left?

A. No, ma'am. I'd say around 6:30 or 7:00.

Q. Why were y'all going to Sterling Bridge Road?

A. To go retrieve -- Milton had told us that Steven had stolen some drugs and that since Carver knew where his house was for us to go back over there and get either the dope or the money.

Q. Can you repeat that one more time. You said Carver knew where his house was.

A. Yes, ma'am.

Q. Was Carver, to your knowledge, the only person who knew where Steve Cameron lived?

A. Yes.

Q. Did you have a gun when you left Appaloosa Drive?

A. Yes.

Q. Where did you get that gun?

A. Milton Gambrell.

Q. Did Jason Carver have a gun when you left Appaloosa Drive?

A. Yes.

Q. Where did he get that gun?

A. It was his.

Q. Did you have more than one gun with

you?

A. Yes.

Q. How many guns did you have?

A. Two.

Q. Do you remember what kind of guns they were?

A. A .38 and a .22 — .25, I mean.

Q. Who drove to Sterling Bridge Road that night?

A. Uh, — Jason Carver.

Q. And you said that was because Jason knew where Steven Cameron lived?

A. Yeah.

Q. What car did he drive?

A. The white Buick.

Q. Where did y'all get that car?

A. It was his, Milton's.

Q. And what happened next, what happened after you left Appaloosa Drive?

A. We went over there and knocked on the door. No one came to the door. The door looked like it hadn't been closed. So we just kinda of tapped a little harder and it come open. I didn't know if Steven had opened it or — but all of a sudden he come

sometimes. He was pretty laid back.

Q. And the weapon that you said that you had seen, was that the same weapon that you allege that he had at this time?

A. I don't know that he owned one.

Q. The one with the sight on it, the one that he allegedly brought out and showed you previous to this incident, you still don't know what that is?

A. No, sir.

Q. No doubt that the mini bike was sold to Quay?

A. No, sir. Yes, sir.

Q. And in fact a bill of sale was created?

A. Yes, sir.

Q. Green Grand Am, is that right?

A. Yes, sir.

MR. SMITH: I have nothing further, Your Honor.

THE COURT: Redirect?

SOLICITOR MOORE: No redirect, Your Honor.

THE COURT: May this witness be excused?

Q. Did he give you any drugs?

A. No, ma'am.

Q. What did he do?

A. He denied that he took it. I told him, 'well, Milt says you definitely did.' He said, 'Well, he ---

MR. SMITH: Objection as to hearsay.

THE COURT: Sustained.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR MOORE:

Q. That's okay, stop right here. I am going to ask you another question. Okay?

A. (Affirmative nod).

Q. So you had a chat with Steven Cameron. And after he did not give you any money and he did not give you any drugs, what did you do?

A. I don't know, I like turned and he come at me, and I looked down, I didn't know I had the gun but obviously I did -- I had it, I mean. Then like, 'oh.' He charged at me and -- I don't even remember pulling the trigger but I heard *Pop! Pop!* So -- (pause).

Q. So you shot Steven Cameron?

A. Yeah, I guess.

is not titled to Woodrow Curry. It is titled to James Milton Gambrell of 310-B Appaloosa Drive, Greenville, South Carolina.

So what happened here is that Milton Gambrell, a known drug dealer, Mr. Smith just told you all about that, sent his two "do boys" -- that is what Woodrow Curry called himself and Carver on the stand -- they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

Now, you also heard Detective Marzolf. Mr. Smith asked Detective Marzolf what crime they were going to commit. Detective Marzolf said, 'Well, when you're taking someone from one place to another and they don't want to go with you, that's kidnaping.' 'When you point a gun at someone and ask them to give you money for drugs, that's armed robbery.'

As I've told you more than once, what they were participating in was drug distribution.

Jason Carver knew that. He knew why they were going to this house. Mr. Smith told you

entire version is Exhibit 10.

SOLICITOR MOORE: Yes, Judge. I cannot guarantee that that flash drive will be able to play for the jury. We have, as you know, had some difficulty with that.

Like you said, I don't expect them to want to play the entire twenty-four or forty-eight hours, but if there is any ---

THE COURT: Well, we will let ---

MS. MOORE: Yes, Your Honor. We will be able to pull from that flash drive as needed but it would take several days, possibly, to extract all the footage from that flash drive onto several disks.

THE COURT: All right.

SOLICITOR MOORE: Mr. Smith, is this a sufficient place for you to play from?

MR. SMITH: Certainly.

SOLICITOR MOORE: It is cued at 1343:20 and the part that you are asking to show appears at 1344:10. I wanted to give you as much leeway in front of that as possible.

MR. SMITH: Yes, ma'am, thank you so much.

THE COURT: Are we ready?

gotten to a stage in the trial where I think it's good to break for the afternoon. I want to check with you and the jury to see if there is any reason why you couldn't be here and start the trial at 9:00 in the morning. Is that a problem for anybody? If there is, let me know. Would 9:30 be better? I saw some hesitant faces, that's the only reason that I am asking. Okay, so 9:00 o'clock is fine?

FORELADY: Yes, sir, that's fine.

THE COURT: Okay. Thank you. If you would, leave your note pads in the jury room. We will see you at 9:00 o'clock in the morning. I hope you all have a nice evening.

(JURY OUT @ 4:38 P.M.)

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.

SOLICITOR MOORE: I understand, Your Honor.

THE COURT: So playing with evidence is

not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong -- and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.

SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---

THE COURT: I want to know why -- I don't care what you did. I want to know why it just got sent out August 9th of this year.

SOLICITOR MOORE: Because I'd just received it, Your Honor.

THE COURT: From whom?

SOLICITOR MOORE: From Detective Henry.

THE COURT: Who is Detective Henry?

SOLICITOR MOORE: He is the man who was

just testifying.

THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?

OFFICER HENRY: What information?

THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?

OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.

THE COURT: You thought that you had?

OFFICER HENRY: Yes, sir.

THE COURT: So it was a case of honest mistake?

OFFICER HENRY: Yes, sir. Seriously, yes, sir.

THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern -- and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay.

Is there other evidence that was not delivered until late in the game? If so,

why?

SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly ---

THE COURT: I'll be right back. I want to get this cleared up.

SOLICITOR MOORE: Yes, sir.

THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: Please be seated. Miss Moore, have y'all identified any evidence out there that is late or recently received that was given to the defendant in this matter?

SOLICITOR MOORE: Your Honor, we ---

THE COURT: First, let me -- I'm giving them a hard time. You received it on the 9th, it is now the 22nd and you told me that you haven't listened to it. That's unacceptable as well. You have an obligation. So that cuts both ways. Go ahead.

SOLICITOR MOORE: Your Honor, in terms

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: And what was the date that this event took place?

SOLICITOR MOORE: I believe that he said that he drove to that car March 30th of 2016.

THE COURT: Why is there such a delay in getting that information?

SOLICITOR MOORE: Your Honor, I can only provide to Mr. Smith what I have for myself.

THE COURT: That is not an excuse.

SOLICITOR MOORE: I understand ---

THE COURT: That is not acceptable.

SOLICITOR MOORE: I understand, Judge.

THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be some problems with it, I'm telling you.

SOLICITOR MOORE: I understand, Judge.

THE COURT: Have you listened to this tape yet?

MR. SMITH: I have not.

THE COURT: Bring the jury in, please.

(JURY IN @ 4:36 P.M.)

THE COURT: Madam Forelady, we've

concerned that they left the scene at 900 Hours and did not call law enforcement until 1345."

Q. Speak up, please.

A. (Reading): "Erica said that she was concerned that they left the scene at 0900 but they didn't call law enforcement until 1345."

Q. Could you read that next sentence?

A. (Reading): "Erica told me that Christopher did not go to the decedent's funeral and stated that that weekend Christopher was pulled over by law enforcement. She stated that the police (inaudible reading) -- Ericka said Christopher ran from the scene because he was going to get some marijuana."

Q. With regard to this particular paragraph, is it your understanding that two people were on the porch at 900, or four hours and forty-five minutes prior to the police arrival?

A. I got information from Erica Cameron that said that but in viewing the video footage, no.

Q. Did Mr. Gambrell say that?
A. No, sir.
Q. Mr. Carver did not have a gun, did he?
A. There were two guns and two ---
Q. Mr. Carver did not have a gun, did he?
A. They had guns. They were given a .38 by Mr. Gambrell and Mr. Curry carried a .25 automatic with him.
Q. Where was the .25 carried?
A. In a fanny pack, is my understanding.
Q. Who knew about the .25?
A. Mr. Curry knew about it and I know that his wife knew about it, she told me about it as well.
Q. So neither of those people are Mr. Gambrell or Mr. Carver, right?
A. No.
Q. Was it a .380 or a .38?
A. It was a .38 revolver, sir.
Q. A .38 revolver.
A. (Affirmative nod).
Q. That was Mr. Gambrell's gun?

A. Yes, sir.

Q. Mr. Gambrell told you he — that the gun was taken and that he told him to put it down, right?

A. Uh — (no verbal response).

Q. 'You don't need a gun.'

A. That is what Mr. Gambrell says.

Q. When Mr. Gambrell took that gun, Mr. Carver had not returned from Mr. Cameron's yet; had he?

A. Mr. Gambrell didn't take the gun, sir. Mr. Curry received the gun from Mr. Gambrell or took it from him.

Q. Mr. Curry took it from Mr. Gambrell?

A. (No verbal response).

Q. When he did that, Mr. Carver was not there. He was at Mr. Cameron's house?

A. I am not sure about that.

Q. Well, you just talked about how long a trip it is, presumably both ways.

A. Yes, sir.

Q. There was just enough time for Mr. Carver to get up there and get back, according to your own calculation. Right?

A. Ten to fifteen minutes. It could be

taken?

A. Yes, sir.

Q. You also learned that the .38 nor any other guns were provided to Jason Carver; right?

A. The gun was provided to Curry and Carver when they were leaving, so I don't know.

Q. Which gun was provided to Mr. Curry?

A. The .38

Q. Which gun was provided to Mr. Carver?

A. There were no other weapons provided.

Q. And Mr. Gambrell told you that it was not provided to him, meaning Mr. Curry (sic); right?

A. He said that Mr. Curry took the weapon.

Q. But there is no doubt that Mr. Carver did not have a gun?

A. There were two guns in the car and two suspects. I don't know if Mr. Curry had a gun in his hand in the car and may have handed it to Mr. Carver or — I don't know

any of what transpired inside that vehicle on the way to that house.

Q. So you're assuming that he did?

A. No, sir. I am just saying that there were two guns and there were two guys in the car.

Q. But nobody knows that that .25 — there is no evidence, no one to say that anyone knew about the .25 other than Curry?

A. There is nothing to say that he didn't. I just don't know.

Q. Mr. Curry told you that he left the gun in the car; right?

A. Yes.

Q. So we are here today and you're saying that Mr. Carver did what?

SOLICITOR MOORE: Uh, ---

THE COURT: Sustained.

SOLICITOR MOORE: Thank you, Judge.

CROSS EXAINATION CONTINUED

BY MR. SMITH:

Q. Mr. Carver is charged with murder, right?

A. Yes, sir.

Q. And that is based on what?

A. Yes, sir.

Q. Now, is it your understanding that Mr. Carver was a witness to Mr. Curry shooting Mr. Cameron?

A. Yes, sir.

Q. Mr. Gambrell was aware of the pistol, the .38 being picked up?

SOLICITOR MOORE: Objection, Your Honor.

THE COURT: Sustained.

SOLICITOR MOORE: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. That weapon was not utilized in this event to our knowledge?

SOLICITOR MOORE: Objection, Your Honor.

THE COURT: Asked and answered. Move forward, please.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. The reports that you created were based on your interviews; right?

A. Yes, sir, — well, my interviews and reports from other investigators and witnesses throughout the course of the case.

Q. Do you believe that your reports

THE COURT: So what about the statement besides impeaching what Ms. Curry said, that her husband didn't threaten her or didn't do these things — what does it do to show that this guy is innocent?

MR. SMITH: It shows that what they've provided, his statements and things in evidence supports what he said from a non-criminal standpoint. There was no criminal thought in this matter. That's what he says.

THE COURT: Well, I'll look at it. Quite frankly, I think you're just wrong. I think that if your client went to go pick up money or drugs, that's a criminal act in and of itself. If you don't think so, then we have a disagreement about that.

MR. SMITH: Yes, sir.

THE COURT: Okay. Let's go ahead and view that. What were you going to say?

SOLICITOR MOORE: Your Honor, I was just going to say that if it might take time, Detective Marzolf can give a summary of his interview with James Gambrell.

THE COURT: He wants to see it live, and I'll be glad for you to pass it up but I

being the hand of all, statements given by police are not what we just witnessed. Not having an ability to place that before the jury when a man's life is at stake is prejudicial.

THE COURT: Well, let me think about that on the hand of one, hand of all. But here is my thoughts on that. First, I don't think that it exculpates your client, the reason being -- I think that they had a criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence.

So if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose."

EXHIBIT 2
EXCERPTS OF TRANSCRIPT OF WOODROW CURRY'S PLEA BARGAINING HEARING
08/22/2017

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2017-GS-04-01648
Woodrow Walter Curry.	)	
	)	
Defendants	)	

ORIGINAL
TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on August 22, 2017, before The Honorable R. Lawton McIntosh, in the Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

Chelsey Lauren Moore, Esq.,
Appearing for The State.

Elizabeth Jennings Byford, Esq.,
Appearing for The Defendant.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

P R O C E E D I N G S

1:23 P.M.

MS. MOORE: Good afternoon, Judge. I think we do have one guilty plea.

THE COURT: One guilty plea?

MS. MOORE: Yes, Your Honor.

THE COURT: Okay.

MS. MOORE: Woodrow Curry.

(DEFENDANT AND HIS ATTORNEY FORWARD .)

MS. MOORE: May it please The Court.

THE COURT: Yes, ma'am.

MS. MOORE: Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason Carver's trial.

(WHEREUPON, **WOODROW WALTER CURRY** WAS DULY SWORN AND TESTIFIED AS FOLLOWS:)

THE COURT: All right, you are Woodrow Walter Curry?

MR. CURRY: (Inaudible.)

THE COURT: Mr. Curry, I need you to speak up louder, okay sir?

MR. CURRY: Yes, sir.

MR. CURRY: Yes, sir.

THE COURT: And what they are -- The State is telling me is that they intend to defer your sentencing until after the trial of Mr. Carver, who we just picked a jury on; is that correct? You understand that?

MR. CURRY: (Nod.)

THE COURT: If you would give me verbal responses so we can have it for the record, okay?

MR. CURRY: Yes, sir.

THE COURT: But you do understand that you could get up to thirty (30) years in prison? That's the point I'm trying to make.

MR. CURRY: Yes, sir.

THE COURT: Knowing that do you still want to go forward with your plea?

MR. CURRY: Yes, sir.

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

MR. CURRY: No, sir.

THE COURT: Counsel, are you satisfied that Mr. Curry's competent to plea?

MS. BYFORD: I am, Your Honor.

THE COURT: Now, Mr. Curry, do you understand that you have a right to a jury trial on this

EXHIBIT 3

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE VS. JAMES GAMBRELL

2016-GS-04-02312 & GS-04-02234

09/05/2018

EXHIBIT 3

State of South Carolina
County of Anderson

In the Court of General Sessions

State of South Carolina,

-vs-

James Milton Gambrell,

Defendant.

2016-GS-04-02312
2016-GS-04-02234
September 5, 2018

Excerpt of
Transcript of Record

B E F O R E:

The Honorable R. Scott Sprouse, Judge;
and a jury.

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

Chelsey L. Moore, Esquire
Michael Scott McElhannon, Esquire
Assistant Solicitors
Tenth Judicial Circuit
Attorneys for the State

Robert Newton, Jr., Esquire
Attorney for Defendant

Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

A I didn't know Mr. Cameron. I believe that there was some domestic violence and things like that in the home, but I don't know personally.

Q All right. Also in the video, first of all, of course, you know and the jury knows you're under oath and you're sworn to tell the truth and you're telling the truth now.

A Yes, sir.

Q But when you're giving the interview, isn't it true that you, police officers, are not bound to tell the truth. I mean, you're free to lie. I'm not saying there's anything wrong with that, but when you're interviewing a subject, you're free to tell him all kinds of lies to get him to give a confession; isn't that true?

A I don't have to be truthful with a suspect, that's true.

Q And that's perfectly legal?

A Yes, sir.

Q So when you mentioned that on the first video that a neighbor had heard the argument and heard what went on down that night, that just was not true, correct?

A Actually, that was true. We had -- during the neighborhood canvass, it's my understanding that one of the detectives talked with a neighbor who overheard an

argument and the words "dirt bike" were mentioned during the argument.-

Q Did they hear gunshots?

A No one -- I don't recall. I don't recall if somebody heard gunshots or not. I know that they talked to several people in the neighborhood.

Q Did this person call the police?

A No, sir.

Q Do you know this person's name?

A Not off the top of my head, sir. I could probably find it in my file.

Q Isn't it possible they were referring to some other argument at some other time involving other people?

A All I know is what, you know, what the detective that was told to canvass told me, which was that, you know, somebody had overheard an argument involving the words "dirt bike."

Q But no gunshots?

A I don't recall if they had heard gunshots or not, sir. I don't want to tell you the wrong thing.

Q All right. You mentioned when -- oh, did you interview Woodrow Curry, the shooter, when you were still investigating this case?

A Yes. He was interviewed by Detective Mitchell

very briefly at Greenville County when he was first arrested, and then later on, I did interview him.

Q And where was that interview at?

A That was at the Greenville County sheriff's office.

Q Greenville County. Was he under arrest at that time for something else?

A Yes, sir, he was.

Q What was he under arrest for?

A Drug possession.

Q Possession? It wasn't a trafficking?

A It was some type of drug offense.

Q But he was being held there because he couldn't make bond at that time?

A Yes, sir.

Q Now, did Mr. Curry, the shooter, admit to you what had happened, or did he deny all knowledge of what had happened?

A He gave me a version of what had happened in which he said that they did go to the house and that Jason Carver was the shooter that night.

Q But didn't Mr. Curry later change his mind and admit that, in fact, he was the shooter?

A Yes, sir, he did.

Q But at the time he was lying about that to you,

correct?
A Yes, sir.
Q Do you know when he changed his mind about that, decided to admit he was the shooter?
A Sometime after he had been charged.
Q Charged by you?
A Yes, sir.
Q With these crimes?
And to your knowledge, was that part of a plea agreement with him?
A I don't know what the actual -- I know he's agreed to testify.
Q As a matter of fact, he's here today, isn't he, ready to testify?
A I believe so.
MR. NEWTON: May I beg the court's indulgence for a moment.
Q Now, I don't mean to, certainly not insulting my client, but he's sometimes hard to understand on the video, what he's saying?
A Yes, sir, he is.
Q But just to be clear, he denied giving either of those two people a gun, right? Isn't what he told you is that the person doing the shooting took the gun out of his house?

mean -- I don't know why I get them confused. Carver there, he was shortly there behind me there, jumped in the car and we left.

Q So you and Carver drove away?

A Yes, ma'am.

Q Where did you go?

A Back to -- back to Mr. Gambrell's, Appaloosa Drive.

Q Okay. Did you do anything on the way to Mr. Gambrell's house?

A Yes, ma'am. I called him there and told him that he better be sure that Steven got that dope. I mean, I just shot him.

Q You called Milt and told him that?

A Yes, ma'am.

Q And what happened when you got back to Appaloosa Drive?

A When -- Carver went in before me there, but we went in there and trying to give Milt there the guns there. And, I mean, Carver had a -- there, and I turned around and left there. I told him I was going home; I was done for the night.

Q Okay. What did you do with the gun when you got back to Mr. Gambrell's house?

A I gave them back to Mr. Gambrell.

Q Okay. And were you with James Gambrell on the night of March 28, 2016?
A Yes, ma'am.
Q Where were you?
A Appaloosa Drive, out there working on a car.
Q Okay. Who else was there?
A At the time there is just me -- me, him, his wife, my wife, my stepson. Jason come over after he got off work, Jason Carver.
Q Okay. And when you say "me and him," you mean you and James Gambrell?
A Yes, ma'am.
Q Okay. So you and Mr. Gambrell and Jason Carver were all at Appaloosa Drive that night?
A Yes, ma'am.
Q What were y'all doing?
A Well, I mean, like I say, I was out there working -- to begin with, I was out there working on a car. Carver wasn't even there yet. I was working on a car there, and they was in the house. Steven had come over with a dirt bike, and he was in the house.

And then later on, when Carver got off work, he come over there like he normally did. He went in the house and come back out, him and Steven there, and he took Steven home.

Q That's right. Because nobody had instructed you about that, correct?
A That's right. I wasn't instructed. Nobody told me to. I've done said over and over this was never planned. I never planned to shoot Steven Cameron let alone kill him. This is something I'm living with. Nobody told me to do that. I didn't want to do that.
Q Why did you do it?
A Because for some reason or another I had done pulled the gun, I guess to intimidate him or whatever, and he charged at me. "What are you going to do, shoot me?" And he charged at me. I don't know what to do. What's he going to do, take the gun and shoot me or what? I don't know. I mean, that's just --
Q Why did you feel the need to try to intimidate him?
A He's bigger than I am.
Q He's bigger than you are?
A A lot bigger than I was.
Q But you just said you were just going to have a conversation with him. Why should him being bigger than you make a difference if you're just going to have a conversation?
A Man, like I said, I was high. I was 150 pounds. I was all drawed up myself, you know I mean.

Q You didn't ever share anything?
A Steven bought his own. He had his money there. He had his own. He smoked big-time.
Q Okay. So you hung out with him and got high with him, didn't you?
A He hung out over there, yes, sir, and we got high.
Q So you did know him?
A Uh-huh. About five times, yes, sir.
Q Do you have a cell phone or did you have a cell phone at the time?
A Yes, sir.
Q You did?
A Yes, sir.
Q Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your cell phone? Which is the truth?
A I called him on the cell phone.
Q Why is this the first time you're saying this?
A First time I recall being asked.
Q Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.

A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

Q You're saying you can't remember the truth because it was 11 months ago when you testified in the other trial?

A No, sir. That's not what I'm saying.

Q What are you saying?

A I'm saying there is -- you have me twisted up here and I may be misunderstood. You know what I'm saying?

Q The question is simple, sir --

A I make a mistake.

Q Your first trial when you testified that --

A 11 months ago, yes, sir.

Yes, sir.

Q Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house --

A Uh-huh.

Q -- that you shot the guy.

A I don't recall that, but if you say I did, I did.

Q Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?

A He didn't ask.
Q Didn't you say something like, "Well, things just went crazy and I shot him"?
A No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.
Q You said the way back over there?
A On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."
Q Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?
A Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?
Q No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.
A Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.
Q So you're telling this jury --

A The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.
Q My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?
A It's the first time it's been asked.
Q The detectives never asked you the details of what happened?
A Not that I recall.
Q The lawyers in the first trial didn't ask you what happened?
A They never asked me whether I called Mr. Gambrell.
Q Sir, what kind of gun did you use to kill Mr. Cameron with?
A A .22 or a .25, I think. It was small caliber.
Q What did you do with it afterwards?
A I gave it back to Mr. Gambrell.
Q Are you sure about that?
A Yes, sir.
Q You didn't keep it?
A No, sir. What would I want to keep it for?

A Yes, sir. It happened almost 31 months ago.
Q Okay. Well, if your memory was so messed up, why should this jury believe anything you have to say today about what happened over two years ago?
A I'm just telling the truth as I remember it.
Q Is your memory good enough to remember what happened or not?
A I think it is. I have to live with this here all the time. I live that night over a lot.
Q Okay.
A I wake up with it. I have flashbacks from it.
Q What do you remember? I mean, you said he charged you.
A Yes, sir.
Q How far away was he standing from you when he charged you?
A Probably from here to the corner of where she's sitting at, that corner. He was at the front door; I was at the steps. We were about that far apart.
Q Why did he charge you?
A I guess, I mean, I don't know. I'm sure he was high, too, but I guess he did feel intimidated, you know. Like I said, he said, "What are you going to do, shoot me?" And he charged at me. I didn't think about -- I didn't think about it there. I just -- I

And so, ladies and gentlemen, I submit to you that a murder was committed, that Woodrow Curry committed the murder of Steven Cameron. And so, ladies and gentlemen, we have proven, I submit to you, the State has proven beyond a reasonable doubt each of those elements: That James Gambrell urged, advised, or in some way aided Woodrow Curry to commit an armed robbery, to commit a drug distribution, or to commit a kidnapping, that James Gambrell was not present when the crime was committed, and that one of James Gambrell's codefendants, Woodrow Curry, actually killed Steven Cameron with malice aforethought.

Now, the question remains is how do you get from James Gambrell advising, urging, or in some way aiding them to commit an armed robbery to finding him guilty of accessory before the fact to murder? He very expressly said in his statement he's not a murderer. So how do you get there?

In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James

Gambrell is also liable for any criminal act which, in the ordinary course of things, was the natural or probable consequence of the crime that he advised or commanded. So was the murder of Steven Cameron a natural and foreseeable consequence of James Gambrell's order? I submit to you that it was.

This is the evidence that we know: Woodrow Curry was high. Woodrow Curry was armed. James Gambrell knew that Woodrow Curry was armed. And whether you believe Woodrow Curry or whether you believe James Gambrell, he knew it one way or the other. According to James Gambrell, he said, "I told him to leave the gun, but, you know, he didn't listen to me." Woodrow Curry says, "No, he gave me that gun."

But it doesn't matter. In this instance, it doesn't matter because James Gambrell knew that Woodrow Curry was high and he knew that he was armed and he sent him there to get the drugs or the money or bring Steven Cameron back to him.

This was a drug transaction. And accidents happen in the drug trade. I submit to you that this was not only a foreseeable consequence, it was the most likely outcome. What would Mr. Gambrell have expected? He talks on his interview about how Steven Cameron was crying. $750 of cocaine he did every day. So he said,

Q Didn't you have this gun before that, sir, the .25 caliber?
A No, sir.
Q Did you go over there with the intent to kill Mr. Cameron?
A No, sir.
Q Did anybody tell you to go kill him?
A No, sir.
Q Did anybody tell you to go beat him up?
A No, sir.
Q Did anybody tell you to go threaten that you were going to beat him up?
A No, sir. I was just told to go get the dope or get paid for it.
Q What does that mean --
A I never intended to --
Q What does that mean, you were told to steal the dope from him?
A No. I was just told to go and retrieve it. He stole the dope.
Q What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.

didn't even think of it; it escalated too fast.
Q Escalated on whose part, sir?
A Sir, like I said, he came out all aggressive there. I mean, I don't know. I ain't thinking there about clearly, you know, to call him. You know, I wish a million times that everybody had suggested it. I wouldn't be sitting here today and I wouldn't be in these chains and I wouldn't be going to prison.
Q Just to be clear, did Mr. Gambrell give you orders to go take by force drugs or money from this guy?
A At the time, no, sir.
Q Just want to be sure. It's an important point. Your testimony under oath is you were given no such instructions by Mr. Gambrell?
A I was just given the instructions to go get it back. That's all.
Q Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A I don't know what he was thinking.
Q All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A Right.
Q He did not tell you to threaten Mr. Cameron in any

way?
A No, sir.
Q That's just something that happened for whatever reason on that porch, according to you.
Mr. Gambrell was upset, isn't it true, when he found out you had killed Mr. Cameron; isn't that true?
A I don't know. He was still getting high.
Q I'm sorry?
A He was still drinking, still getting high.
Q He was drunk at the time?
A He was drinking. He drank beer but he don't get drunk. I ain't very seldom seen him drunk. He drinks all day and not get drunk.
Q Well, sir, you just testified he didn't want you to do all that stuff. What did he do, pat you on the back and say "good job" when you got back to his house?
A Sir, I just said he didn't tell me to go over there and do that.
Q Okay. You had no instructions from anybody to go do it; it was just something that happened between you and Mr. Cameron?
A Right.
MR. NEWTON: No further questions.
THE COURT: Anything further from this witness?
MS. MOORE: Nothing further, Your Honor.

A Yes, sir.
Q He also emphasized to you that all he wanted was for them to let Mr. Cameron know that he had the drugs, they knew it, and to pay for it, right? Wasn't that his story?
A Yes, sir.
Q Okay. You -- also on that video, at one point I believe I heard you say that Mr. Cameron -- dope was found on Mr. Cameron after he was killed?
A Yes, sir. During the autopsy, they did find some drugs.
Q Okay. Did you mean in his system?
A No, sir. I mean they found actual drugs on his person.
Q Do you know how much?
A I think in his tennis shoes, I believe. I don't know the exact quantity, sir.
Q Okay. So obviously --
A It was significant, but I don't know exactly what it was.
Q Couldn't have put it there after he was killed, so it was there in his shoes before he was killed, obviously. You don't know how much?
A I don't know exactly, sir.
Q Okay. Did anybody -- were his shoes still on when

EXHIBIT 4

SUPPLEMENTARY REPORT OF DETECTIVE KREIG MARZOLF

04/13/2016

EXHIBIT 4A

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER: 2016-05324

NCIC: INCI. N | ENTD. N

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY
PAGE 43 of _____ PAGES

NARRATIVE

1900-1930 left mother's house to meet Steven's mother at 108 Sterling Bridge

1930-1940 dropped off her son and her niece at her sister Christina's house

1945 arrived at 108 Sterling Bridge, Steven was not at home. Her mother and Steven's mother were with her.

Took the TVs and Xboxes to keep Steven from pawning them.

2023 sent a text to her sister, and left to go back to her sister's house to pick up the kids with her mom

2030-2035 arrived at Christina's house

2045-2100 left Christina's house with her mother, her son, and her niece (Marissa Moore)

2105-2110 stopped at the Spinx station across from Greenville Memorial Hospital near the CVS. Marissa went inside to pay for the gas and buy a Gatorade

2115 left the Spinx

2145 they arrived at her mother's residence in Fountain Inn where they all stayed for the rest of the night

- Tuesday

0730-0735 left her mother's house for work

0750-0755 arrived at work, clocked in and stayed there until she received the call about Steven's death around 1400

See video for further information.

On 3/30/16,I conducted a video recorded interview with Erica Marie Cameron, Steven Cameron's sister. She told me that her mother Patricia White and her brother Steven Cameron used to live out at Heritage Trace, and while they were living there Steven was kidnapped over a drug debt. Erica advised me that after Steven got his settlement sometime around December 2015 she heard from her brother Christopher Cameron that Steven's neighbors were "feeding him drugs". She called and talked to Regina when she heard about that, and she stated that the neighbor's name was Andre. Erica said that about three months prior to this incident, she threw her mother Patricia out of her house for pawning Erica's property and using drugs. Erica also told me that there was a history of domestic violence between Regina and Steven, and she said that Steven has been violent in the past. She also advised me that her brother Christopher Cameron has "had some rage issues". Erica stated that Christopher got Steven back on drugs after Steven completed rehab. She said that Steven had given their brother Daniel marijuana to sell at school, and Daniel "got busted". Erica also claimed that Patricia Palm who is the person who found Steven dead originally found him at 10am but waited to report it. She said that Palm's sons, Timothy and Jonathan use meth. Erica said that there was a woman named "Dee" who is one of Steven's neighbors, and Dee's son, who is a blonde heavyset white male, saw the whole incident. Erica said that Dee's son won't talk about the incident because he was outside smoking marijuana when he witnessed it. Erica said that Ryan Banks, Steven's daughter Alyssa's ex-boyfriend, stole a four wheeler from Steven once. She said that the four wheeler was found at the home of Banks' drug dealer. Erica told me that Christopher Cameron's girlfriend Angie told Erica that she was the last

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO | SUBJECT LOCATED ☒ YES ☐ NO | ☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☑ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE – NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MARZOLF, K	04/13/16		FOLLOW-UP INVESTIGATION ☒ YES ☐ NO OFFICER MARZOLF, K	03/30/16	

EXHIBIT 4B

AGENCY I.D.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER
2016-053244

NCIC
INCL. N | ENTD. N

☐ ORIGINAL REPORT ☒ SUPPLEMENTAL REPORT ☐ ADDITIONAL VICTIMS ☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL ☐ CASE STATUS CHANGE ☐ ADDITIONAL OFFENDERS ☐ ADDITIONAL RECOVERED PROPERTY
PAGE 48 of _____ PAGES

NARRATIVE

-0645-0650 drove Christopher to work off of Hwy 123
-0700 arrived at Chris' place of employment and she left to go back home
-0710-0715 arrived at Patricia Palm's house
-0745-0810 left Palm's residence to go home
-0750-0815 arrived at home
-1115-1215 went to convenience store to get cigarettes and beer (probably the Sunoco)
-1120-1220 left store to go home
-1125-1235 arrived at home
-1700-1800 left home to pick up Chris from work
-1710-1815 left with Chris for home
-1720-1830 arrived at home and stayed there
-1720-1830 Chris' coworker William came to their residence
-1820-1930 William left
-2130-2200 went to bed

3/29/16
-0600 woke up at home
-0645-0650 left to take Chris to work
-0700 got to Chris' workplace
-0710-0715 got home and went back to bed
-1300-1500 woke up because Patricia Palm called about Steven dying

See video for further information.

On 3/31/16, I conducted a video recorded interview with Christopher Cameron at the Anderson County Sheriff's Office. He told me that his brother Steven had a crack cocaine habit. He stated that Steven liked to buy his crack at a house behind Bell's gas station close to Adam's Scrapyard. He said that he would find drug paraphernalia in Steven's house like baggies with white powder. He said that Steven has tried to make crack cocaine before. Chris stated that the black guy who lived to the left of Steven (facing the house from the roadway) did drugs with Steven and took him to the crack dealer. Christopher said that about a month ago Steven "jumped on" his daughter Alyssa and left bruises on her. He also said that two to three weeks ago he went to Steven's house, and Steven was pushing him and punched him twice. Chris said that Steven wanted him and Angie to take him to pawn things, and Steven had a $16,000 dirt bike he wanted to pawn. Chris told me that he thinks that Steven wanted to trade the dirt bike for drugs. He said that before Steven got his settlement money, he would get

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO | SUBJECT LOCATED ☒ YES ☐ NO | ☒ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED | ☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
MARZOLF, K.	04/13/16				
			FOLLOW-UP INVESTIGATION ☒ YES ☐ NO — OFFICER MARZOLF, K	03/30/16	

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

RECEIVED
OCT 23 2018
SC Court of Appeals

Appellate Case No.: 2017-002011

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

PROOF OF SERVICE

I certify that I have served copies of Appellant's Motion to Hold his Appeal in Abeyance, and Proof of Service of same upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211, Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, at 100 S. Main Street, Anderson SC 29624, and South Carolina Attorney General Honorable Alan McCrory Wilson and Assistant Deputy Attorney General Samuel Marion Bailey at PO Box 11549, Columbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on October 19, 2018.

October 19, 2018

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

EXHIBIT 2

NOTICE OF APPEAL

September 25, 2017

FORM 1
NOTICE OF APPEAL

RECEIVED
SEP 28 2017
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh Judge

Case Number: 2016A0410200556

State of South Carolina, Respondent,
v.

Jason Franklin Carver, Appellant.

NOTICE OF APPEAL

Appellant Jason Franklin Carver appeals the jury verdict rendered in the trial of this matter on August 25, 2017, and the denials of motions pled by Defendant on September 14, 2015, by the Honorable R. Lawton McIntosh, who issued his Order on September 15, 2017.

September 25, 2017

Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Other Counsel:
Chelsey L. Moore
Assistant Solicitor for the
Tenth Judicial Circuit
P O Box 8002
Anderson SC 29622

FORM 7
PROOF OF SERVICE
NOTICE OF APPEAL

RECEIVED
SEP 28 2017
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Case Number: 2016A0410200556

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

PROOF OF SERVICE
NOTICE OF APPEAL

I certify that I have served a Form 1, Form 7, Form 8, Form 9, Form 11, Explanation of Appeal and Order appealed, upon The Honorable Daniel Shearouse, Clerk of Court South Carolina Supreme Court, PO Box 11330, Columbia SC 29211, The Honorable Richard Shirley, Anderson County Clerk of Court, PO Box 8002, Anderson SC 29622 and Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, 100 S. Main Street, Anderson SC 29624 by depositing a copies in the United States Mail, postage prepaid, on September 25, 2017.

September 25, 2017

Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

FORM 8
LETTER TO THE SUPREME COURT CLERK OF COURT
NOTICE OF APPEAL

RECEIVED
SEP 28 2017
S.C. SUPREME COURT

September 25, 2017

The Honorable Daniel Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia SC 29211

RE: State v. Jason Franklin Carver
Case Number: 2016A0410200556

Dear Mr. Shearouse:

Please find enclosed the following:

(1) Form 1-Notice of Appeal;

(2) Explanation of Appeal;

(3) Form 11-Letter Ordering Transcript;

(4) Form 9-Letter to Lower Court;

(5) Order appealed

(6) Form 7-Proof of Service for the same.

Sincerely,

Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc: The Honorable Richard Shirley, Anderson County Clerk of Court
Chelsey L. Moore, Assistant Solicitor Tenth Judicial Circuit

EXHIBIT 3

SOUTH CAROLINA COURT OF APPEALS ORDER GRANTING MOTION TO HOLD APPEAL IN ABEYANCE

December 10, 2018

The South Carolina Court of Appeals

The State, Respondent,

v.

Jason Franklin Carver, Appellant.

Appellate Case No. 2017-002011

ORDER

Appellant has filed a motion to hold this appeal in abeyance and grant Appellant leave to file a motion "to vacate/set aside judgment of the lower court, and/or for a new trial based on newly-discovered evidence." Respondent filed a return, explaining it does not oppose the motion. After careful consideration, Appellant's motion is granted, and this appeal shall be held in abeyance pending the circuit court's resolution of this matter. Appellant shall provide proof that he has filed the motion within twenty days of the date of this order, and shall thereafter provide this court with status updates every thirty days.

FOR THE COURT

Columbia, South Carolina

FILED
December 10, 2018

cc:
The Honorable R. Lawton McIntosh
The Honorable Richard Shirley
Donald Loren Smith, Esquire
Chelsey Lauren Moore, Esquire
Alan McCrory Wilson, Esquire
Samuel Marion Bailey, Esquire

EXHIBIT 4

AFFIDAVIT OF WOODROW CURRY

November 5, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
)
State of South Carolina,)
)
vs.)
)
Jason Franklin Carver,)
Defendant,)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

AFFIDAVIT OF WOODROW WALTER CURRY

Personally, appeared before me, Woodrow Walter Curry, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

After Jason Carver's conviction, Greenville dropped drug charges; and, I was moved to Anderson. W.C.

Marzolf and Chelsey said they would suggest voluntary manslaughter. If he testified against Carver. If he lied, they also said it would look better if he testified against Carver. For Gamrell said he was offered the same deal. W.C. That Chelsey would have no problem suggesting 15 years provided Gambrell was convicted. However, neither of them spoke up when sentenced to 25 years. W.C.

Woodrow Curry
Signature of Affiant

Officer Griffin
Printed Name of Witness

Signature of Witness

SWORN before me this 5th day
of November 2019

Donald C Smith
Notary Public for South Carolina
My Commission Expires: 11/18/2024

EXHIBIT 5

AFFIDAVIT OF JAMES MILTON GAMBRELL

November 30, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
State of South Carolina,	)	
	)	AFFIDAVIT OF JAMES MILTON GAMBRELL
vs.	)	
	)	
Jason Franklin Carver,	)	
Defendant,	)	
	)	

Personally, appeared before me, James Milton Gambrell, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

WOODROW CURRY DID NOT HAVE A PHONE AT THE TIME HE SHOT STEVEN CAMERON. JG

WOODROW CURRY DID NOT CALL ME BETWEEN THE TIME HE LEFT MY HOUSE WITH JASON CARVER, AND THE TIME THEY RETURNED. JG

JASON CARVER DID NOT HAVE A GUN ON MARCH 28 OR 2ND 2016

THE ONLY GUN THAT I SAW JASON WITH WAS HIS BROTHER'S GUN, APPROXIMATELY ONE YEAR BEFORE THE INCIDENT, OR LONGER. JG

James Milton Gambrell

Anthony W Evans
Printed Name of Witness

Signature of Witness

SWORN before me this 30th day of November 2018.

Donald L. Smith
Notary Public for South Carolina
My Commission Expires: November 18, 2024

EXHIBIT 6

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE VS. JASON CARVER

2016-GS-04-2279

08/21-25/2017

been called as a witness in this case. It is my understanding that you are also a co-defendant along with Mr. Carver and Mr. Curry as to the incident in March of 2016. Is that correct?

WITNESS: Yes, sir.

THE COURT: At this point I need to advise you of your rights under the Fifth Amendment of the United States Constitution which says in part that no person can be compelled in a criminal case to be a witness against themself. Do you understand your rights?

WITNESS: Yes, sir.

THE COURT: That means that you can't be required to testify against yourself, the State can't require you to, I can't require you to. Nobody can.

You have the right to refuse any question asked of you, anything that gives you reasonable cause to believe that the answer, if given, might tend to incriminate you as charged.

If you wish to exercise your right under the Fifth Amendment, you will state that to

the court. You will say, "I refuse to answer the question because the answer to the question may tend to incriminate me." Do you understand that?

WITNESS: Yes, sir.

THE COURT: And let me advise you further that your statement is not the final decision as to whether or not your answer to the question would violate the Fifth Amendment. I will ultimately make that decision. Do you understand?

WITNESS: Say that again, sir?

THE COURT: Just because you exercise your right by saying "I refuse to answer the question because the answer may tend to incriminate me" does not mean that is the end of the inquiry. I will make the final determination as to whether or not you will have to answer the question. Do you understand?

WITNESS: Yes, sir.

THE COURT: Now, Mr. Phillips, let me ask you this. I think that I know the answer before we get started.

MR. PHILLIPS: Yes, sir?

THE COURT: Has -- do you represent Mr. Gambrell in the criminal charges?

MR. PHIILIPS: Yes.

THE COURT: And you've gone over his rights and the Fifth Amendment; is that correct?

MR. PHILLIPS: Yes.

THE COURT: Does your client intend to testify in this case?

MR. PHILLIPS: I don't believe so.

THE COURT: So you are not positive?

MR. PHILLIPS: I am ninety percent sure but I ---

THE COURT: Then, Mr. Smith, you may examine Mr. Gambrell.

MR. SMITH: Yes, sir, may it please the Court?

THE COURT: Yes, sir.

JAMES MILTON GAMBRELL, having been sworn to tell the truth, and nothing but the truth, testified as follows:

INCAMERA EXAMINATION

BY MR. SMITH:

Q. Mr. Gambrell, how old are you?

A. Fifty-eight.

Q. Because you couldn't talk to him by phone?

A. (Negative gesture), couldn't talk to him.

Q. So the only purpose was to go tell him that 'we know ...' ---

SOLICITOR MOORE: Your Honor, objection.

THE COURT: I sustain that objection. Just one second. Mr. Phillips -- for the record, William Phillips represents Mr. Gambrell. If counsel could come up here.

(OFF RECORD BENCH CONFERENCE)

THE COURT: Mr. Phillips, do you have a matter to bring up on the record?

MR. PHILLIPS: Yes, sir. I have advised my client not to testify in this case. He originally chose to testify. I am again advising him to exercise his Fifth Amendment right and not to testify in this case from this point forward.

THE COURT: Do you wish to honor your attorney's advice, Mr. Gambrell?

WITNESS: (No verbal response).

THE COURT: In other words, do you want to testify or do you want to exercise your

rights under -- on your attorney's advice to exercise your rights under the Fifth Amendment not to testify?

WITNESS: I don't really understand.

THE COURT: Well, let me tell you this, Mr. Gambrell. Your testimony in this case is being transcribed and it will be obtained by the State and used against you in the upcoming trial against yourself, or it can be. Do you understand that?

WITNESS: Yes, sir.

THE COURT: Now, your attorney -- I gave you your rights under the Fifth Amendment and you told me that you understood them. Is that correct?

WITNESS: I am trying to understand them.

THE COURT: Well, sir, either you understand them or you don't. You told me that you did. What I told you is that under the Fifth Amendment to the United States Constitution that no person can be compelled to testify against himself in a criminal trial. Do you understand that?

WITNESS: Yes, sir.

THE COURT: And effectively what you are potentially doing is testifying against yourself because this testimony will be or can be used against you in your trial later, if you continue to testify. Do you understand?

WITNESS: (Pause) -- yes, sir.

THE COURT: Okay, sir. Now, Mr. Phillips, who is your attorney for your criminal charges has just stated that he's advised you not to testify and he's re-advised you not to testify any further. Do you understand that?

WITNESS: (No verbal response).

THE COURT: Do you understand that, Mr. Gambrell?

WITNESS: Yes, sir.

THE COURT: Now, you have a right -- the only person who can exercise their right under the Fifth Amendment is yourself. It is advisable to listen to an attorney, however the ultimate decision as to whether or not you wish to continue to testify in this proceeding is your decision, yours alone to make.

WITNESS: Yes, sir.

THE COURT: Okay. You have to make that decision knowing your rights under the Fifth Amendment and also knowing the consequences to you if you continue to testify.

That is that -- the consequence are that the State can and will obtain the transcript of your testimony and when you are called to trial they can use that against you in the courtroom. Do you understand? In front of the jury?

WITNESS: Yes, sir.

THE COURT: Now the question is, do you wish to testify or do you wish to exercise your Fifth Amendment rights and not testify; take your attorney's advice not to testify?

WITNESS: (No verbal response).

THE COURT: Would you like to speak with your attorney further?

WITNESS: Yes, sir.

THE COURT: Would you take him in the hallway, Mr. Phillips?

(BRIEF RECESS - COUNSEL PHILLIPS AND WITNESS TO CONSULT OUTSIDE COURTROOM)

AMENDED MOTION FOR NEW TRIAL 12/27/2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
The State of South Carolina,)	Case No. : 2016A05324
Defendant,)	
)	**AMENDED**
v.)	**MOTION FOR NEW TRIAL**
)	
)	
Jason Franklin Carver,)	
Defendant.)	

Jason Franklin Carver, by counsel, now moves the Court for an order granting a new trial on two or more counts, as explained below. The bases for this relief are as follows:

FACTUAL HISTORY:

On March 28, 2016, Defendant Jason Carver (hereinafter referred as Carver) had been working on a transmission at James Gambrell's house, when the latter requested Carver drive Steven Cameron home. Cameron had sold his dirt bike earlier that day to Gambrell's nephew and had no means of getting home. Gambrell asked Carver to drive Cameron because he had been drinking all day and was not able to drive. Carver agreed and drove Cameron in his Ford Escort. While he was away, Gambrell and Curry realized that an ounce of cocaine, was missing. They deduced that Cameron had taken the cocaine. They attempted to reach Carver and Cameron as they traveled to Cameron's home. They were unable to reach either one. Carver returned within 30 minutes.

Upon Carver's return, Gambrell told him he wished he had a phone because he would have told him to turn around and come back. As a result, Gambrell asked him to go back and get Cameron. Neither Gambrell nor Curry shared the issue regarding the missing cocaine. They didn't want to take the chance that Carver would refuse to make the return trip. They were not capable of driving, since Gambrell was drunk and Curry had no license. Based on the fact

A TRUE COPY
DEC 27 2018
0290

Carver was not incorporated into the cocaine issue, he thought he was merely bringing Cameron back because either he or Gambrell had forgotten something.

Gambrell's statement was made with implication that Cameron wanted to come back since there would be no room for a third person in his car (his pit bull and tires were in the back seat), he needed an empty back seat for Cameron to sit.

When Curry jumped in the passenger seat, he dropped what we now know was Gambrell's .38 on the floor. Carver was confused. He did not understand the need for a gun. In fact, he remarked that there were two of them, and only Cameron. Clearly, that was simply a fact. He was not associated with Gambrell and Curry's drug business. In fact, within days of the murder, Gambrell's house was raided and enough cocaine to warrant a trafficking charge was located. Curry claimed that everything that was found-was his, *in Gambrell's house.* Gambrell was absent. Curry was willing to do 7 to 25 years for Gambrell.

Carver worked full-time for a transmission business. He was at Gambrell's house because they had a joint venture flipping cars, with Carver being responsible for getting them sale-ready.

Again, Carver told Curry to put the gun down; and, leave it in the car when they got to Cameron's house. Curry left the .38 on the floorboard. Seeing that Curry left the .38 in the car, Carver was confident that he had averted any trouble. Both men got out of the vehicle to talk to Cameron.

Curry went to the door and knocked. There was no response. With Carver leading the way, the two made their way back to the car. Curry noticed Cameron peeking out the window; and, he reversed his direction. By the time Cameron got to the front door, Curry was ascending the porch.

Based on both men having ingested a significant amount of stimulants, Curry's choice being methamphetamine, while Cameron's choice was cocaine, they were both agitated when they met on the porch. Curry immediately broached the topic of the missing cocaine. Cameron, a recognized hot head who was also high on cocaine, denied stealing anything. He let Curry know that he was not welcome. Upon Curry reiterating the accusation, Cameron nearly shoved him off the porch. Curry rose with the .25, which he testified was in his waistband, and unknown to anyone but him. He brought the gun to a stop and pointed it directly at Cameron.

Carver frantically screamed at him to put the gun away. When it became apparent that Curry would not heed his pleas, Carver started toward the car, intending to leave Curry behind.

In the meantime, Cameron's "cocaine muscles" allowed him to mock Curry and his gun. "What are you going to do, shoot me?" As he finished the sentence, he swiped the gun from right to left. When Curry regained his control of the gun, he brought it back to where it had been seconds before. He then shot Cameron twice at point blank range.

Carver, who has reached the car, heard the gunshots. Frightened and confused, Carver dropped the keys on the floor board. As he grasped for them, Curry got in the passenger seat and demanded he drive. Curry instructed Carver to leave the lights off and leave the neighborhood. Unarmed, Carver did not put up any resistance; and, he did as he was told. Curry also offered that should he feel compelled to tell anyone, he would kill him and his mother. Since he had just seen him kill Cameron, he recognized that this was not a hollow threat.

Both men drove back to Gambrell's home in silence. Thoughts of how and why this occurred were racing through Carver's head. He wanted to get Gambrell's car back to him; grab his car and dog; and, race to his mother's house. When Carver and Curry arrived back at Gambrell's house, Carver was emotional and still shaken by the events that night. Curry told

Gambrell what happened and that he shot Cameron. He left Gambrell and Curry arguing about the shooting.

Q. All right. So you get back to Mr. Gambrell's house?
A. (Affirmative nod).
Q. What takes place then?
A. When I got out, Curry got out behind me. I don't know if he still had the gun on me at the time but he followed me all the way into the house.
Q. So he --you say that he got out behind you. Did he slide across the front seat?
A. I'm assuming he did. I ain't for sure.
Q. Because he was directly behind you?
A. Yes, sir, he was behind me.
Q. Did you take a chance and look behind you or just keep on walking?
A. I looked but I didn't pay that much attention. I was still shocked going in Gambrell's house. I was already in tears at that time too.
Q. Mr. Gambrell, he probably keeps his house locked up pretty good, doesn't he?
A. Yes, sir.
Q. And when you got to the front door, were you able to open it?
A. No, sir.
Q. How did you get in?
A. His nephew came to the door.
Q. So he opened the door?
A. (Affirmative nod).
Q. And you and Mr. Curry go in the house?
A. Yes, sir.
Q. Did you get past that immediate area?
A. (No verbal response).
Q. Did you go further than that? Did you go the man cave or ---
A. We started back towards the man cave. Then I sat down and Curry came across from me. Once he got on the other side of

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT
0293

the little table, he sat down and laid the .38 down. So I'm assuming that he already had it out.

Q. So he had the .38?

A. Yes, sir.

Q. Where was Mr. Gambrell at this point.

A. Mr. Gambrell was sitting in his chair and he asked where Cameron was at. That's when Curry was telling him, said 'we got in an argument' and he said it got out of hand. Then he said that he shot him. And I was scared --I was shocked, in tears. Gambrell could see that I was scared, that I'd been crying.

Q. What was Mr. Gambrell's reaction?

A. Well, Mr. Gambrell and Curry started arguing. I mean, they were getting real loud.

Q. Did Mr. Gambrell say anything about the fact that Mr. Cameron was just shot?

A. Well, he told him that 'you was just supposed to have went up there and was supposed to have brung him back', all that stuff. That was it. But, uh, Curry --he acted like he didn't just acknowledge it. He acted like, you know.

Q. So Curry and Gambrell are now in an argument

A. Yes, sir.

Q. And the .38 is sitting on the coffee table?

A. No, it was in the floor. He'd laid it in the floor.

Q. What did you at this point?

A. Well, I was already so scared, I just got up and left.

Q. Did you say goodbye?

A. No, no sir.

(Exhibit 1 – Motion to Hold Appeal in Abeyance, PP. 36-39).

Carver's apprehensions were not unfounded. That night, Curry drove past Carver's mother's house in his green Grand Am.

On the day Cameron's body was found on the front porch of his residence, Officer Eric Russell was assigned the duty of canvassing the neighborhood to see if anyone had seen or heard anything. It was brought to his attention by a fellow officer that there were video surveillance cameras on two of the homes near the crime scene. Russell testified at Carver's trial that he personally reviewed portions of the video that afternoon.

Q. And what did you do when you got inside the residence?
A. Obviously because of the nature of the offense and because the cameras were there, we wondered if they were in fact currently recording. They were and, so, we were able to do a very rapid review of some of the footage and were able to discover some evidence that I felt was pertinent to the case.
Q. What evidence was that?
A. Un, -- again, while we were review-ing the video, and we just kinda of skimming it very fast just to see.

(Exhibit 1- Motion to Hold Appeal in Abeyance P. 40)

The footage was obtained that very day by forensics on scene.

Q. Okay. Did you ask that that footage be collected?
A. I did, I went to the forensics that was on scene and asked that it be collected for evidence purposes.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.42)

Law enforcement had a copy to begin reviewing, of the video surveillance on the day following the murder.

Officer Russell was called to forensics on March 30, 2016 to review the videos more thoroughly. When questioned as to how long it took to view the footage, he testified:

Buick appears, -- well, first, let me ask,

how many hours of surveillance footage did you view in this case?

A. I can't give you an exact number but hours. We watched it all the day of the incident as well as the following day. So at least thirty-six hours.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 43).

Again, on the 30th I spent my entire day reviewing the video.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 45)

Still shots were obtained from the video footage on April 5th which were used in identifying the vehicle at Cameron's house when he was shot.

On April 5th, I was able to get stills from the video taken and make comparisons, and determined that it was the same vehicle.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 46)

The video was used to identify the vehicle driven by Carver. The car was linked back to James Milton Gambrell. The search warrant that was executed on Gambrell's home which led to Curry's arrest was a direct result of the viewing of the surveillance video.

In his initial interaction with the investigating officers, Carver did not disclose Curry's deed for fear of his life and the life of his mother. It was only when Curry was arrested that Carver gathered his nerves and went to the police, intending to assist them with details of the shooting incident. Instead he was arrested and charged with murder.

Prior to the trial, Curry admitted to shooting Cameron. He entered into a plea agreement with the State prosecutor. He pled to Voluntary Manslaughter, but his sentencing was deferred.

> **MS. MOORE:** Judge, before you is Woodrow Walter Curry. He is pleading guilty on indictment number 2017-GS-04-1648 on the charge of Voluntary Manslaughter. He's represented by Jen Byford and The State is asking that we defer sentencing until after Jason

Carver's trial.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P.74).

Carver was indicted for Murder. During Carver's trial, Curry testified that: (1) Gambrell told him about the missing item; (2) Gambrell gave him two guns, the .38 and .25; (3) Carver had his own gun; (4) Gambrell instructed him and Carver to retrieve the stolen item or the money; (5) that he shot Cameron; (6) he was charged with murder, but plead guilty to voluntary manslaughter; and, (7) despite his many charges before, this was the first time his sentence was deferred.

Due to Curry's testimony, the judge believed this was a drug transaction gone awry. The judge charged the jury with the "hand of one is hand of all" doctrine. Carver was convicted of murder on August 25, 2017. Carver moved to vacate or arrest the verdict or in the alternative a new trial, but was denied in an Order, dated September 14, 2017.

Carver perfected his appeal. (Exhibit 2- Carver's Notice of Appeal, September 25, 2017). He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in Carver's case. He believed that these statements should be explored in depth as they go through the very core of the crime for which Carver was convicted and sentenced to thirty (30) years of imprisonment.

On October 19, 2018, Carver moved to hold his appeal in abeyance based on newly discovered evidence. (Exhibit 1- Carver's Motion to Hold Appeal in Abeyance, October 19,

2018, P.1). On December 10, 2018, the Court of Appeals granted Carver's motion. (Exhibit 3- Court of Appeals Order Granting Motion to Hold Appeal in Abeyance, December 10, 2018).

ARGUMENTS

I.

NEWLY DISCOVERED EVIDENCE SURFACED THAT WARRANTS THE EXAMINATION AND RE-LITIGATION OF THIS CASE.

The trial of James Milton Gambrell in the murder case of Steven Cameron, ushered new evidence that was not available during Carver's trial. The newly discovered evidence consists of statements by witnesses in the Carver trial, whom the defense could not have been obtained during his trial since they were inconsistent and false statements.

This case is about the untimely death of Mr. Cameron, who has been gunned down by the State's star witness, Curry. It is a fact that does not escape Carver. From the inception of this case, the State relied heavily on Curry's testimonies, which have been proven to be inconsistent and unreliable in many instances.

First, during the trial for Carver case, Curry denied having named anyone as the shooter, insisting that it was him who shot Cameron.

Q. When you originally spoke to detectives who did you say shot Steven Cameron?
A. I didn't.
Q. You didn't?
A. (Negative gesture).
Q. So you're telling us today who shot Steven Cameron?
A. Yes, ma'am. It just happened, I didn't mean to shoot him. He was just coming at me. I don't even remember pulling the trigger, it just went – (pause)—I wish I could turn back time, but I can't.
Q. Thank you, Mr. Curry. Please answer

any questions that Mr. Smith may have for you.

(Exhibit 1- Motion to Hold Appeal in Abeyance, PP. 47-48).

However, in the Gambrell trial, Carver learned that Curry, initially tried to pin the shooting on Carver. Marzolf, who interviewed Curry, testified to the following:

Q. Now, did Mr. Curry, the shooter, admit to you what had happened, or did he deny all knowledge of what had happened?
A. He gave me a version of what had happened in which he said that they did go to the house and that Jason Carver was the shooter that night.
Q. But didn't Mr. Curry later change his mind and admit that, in fact, he was the shooter?
A. Yes, sir, he did.
Q. But at the time he was lying about that to you, correct?
A. Yes, sir.
Q. Do you know when he changed his mind about that, decided to admit he was the shooter?
A. Sometime after he had been charged.
Q. Charged by you?
A. Yes, sir.
Q. With these crimes?
And to your knowledge, was that part of a plea agreement with him?
A. I don't know what the actual -- I know he's agreed to testify.
Q. As a matter of fact, he's here today, isn't he, ready to testify?
A. I believe so.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 80-81).

Marzolf's statement about not knowing the details of Curry's plea bargain, nor his involvement in the said process is belied by Curry. In his sworn affidavit, Curry specifically stated that Marzolf and Chelsey suggested to reduce his charges to voluntary manslaughter if he pleads guilty and implicates Carver. (Exhibit 4- Affidavit of Woodrow Walter Curry, November 5, 2018).

Second, when Curry was asked what he did after leaving Cameron's house during Carver trial's, Curry stated in a straightforward manner that they went back to Gambrell's house.

03. Q. What did you and Jason Carver do
04. when you left Steven Cameron's house?
05. A. Went back to Milt's.

(Exhibit 1 Motion to Hold Appeal in Abeyance, P. 49).

However, when the same question was asked at the Gambrell trial, Curry revealed, for the first time, that he called Gambrell after shooting Cameron and while returning to Gambrell's house.

09. Q. Okay. Did you do anything on the way to
10. Mr. Gambrell's house?
11. A. Yes, ma'am. I called him there and told him
12. that he better be sure that Steven got that dope. I
13. mean, I just shot him.
14. Q. You called Milt and told him that?
15. A. Yes, ma'am.

(Exhibit 1-Motion to Hold Appeal in Abeyance, P. 82).

This was not disclosed during Carver's trial. Out of nowhere, the prosecutor asked Curry if he did anything on the way to Gambrell's. Curry's response was that he called Gambrell. This question was not raised during Carver's trial. It is very clear from the direct examination that the solicitor brought out Curry's alleged call to Gambrell to paint the picture of the consigliere calling the mob boss after he had done a dirty deed on his behalf.

Gambrell contradicted Curry's claims. In his sworn affidavit, Gambrell categorically denied that Curry called him since Curry had no phone at the time he went to Cameron's house. (Exhibit 5- Sworn Affidavit of James Milton Gambrell, November 30, 2018). Gambrell's and Curry's respective phone records on the night of the incident will disprove Curry's statements.

Third, at the Carver trial, Curry testified that Gambrell instructed Carver to drive

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT

Cameron to his house.

Q. What were y'all doing?
A. Well, at the time--at the time I was working on a car. I was working on a car and I guess he was in there with them. Then Milton came out there and told Jason to take Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 50-51).

In his subsequent testimony at Gambrell's trial, his statements implied that Carver voluntarily took Cameron home.

Q. What we're y'all doing?
A. Well, I mean like I say, I was out there working -- to begin with, I was out there working on a car. Carver wasn't even there yet. I was working on a car there, and they was in the house. Steven had come over with a dirt bike, and he was in the house. And then later on, when Carver got off work, he come over there like he normally did. He went in the house and come back out, him and Steven there, and he took Steven home.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P.83).

Fourth, Curry, implicated Carver by testifying that Carver had a gun when they went to Cameron's house, only to deny the same in his subsequent testimony.

Q. Did you have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did you get that gun?
A. Milton Gambrell.
Q. Did Jason Carver have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did he get that gun?
A. It was his.
Q. Did you have more than one gun with with you?
A. Yes.
Q. How many guns did you have?

04. A. Two.
05. Q. Do you remember what kind of guns
06. they were?
07. A. .38 and a .22--.25, I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, PP. 52-53).

However, in the same hearing, Curry stated:

02. Q. And the weapon that you said that
03. you had seen, was that the same weapon that
04. you allege that he had at this time?
05. A. I don't know that he owned one.
06. Q. The one with the sight on it, the
07. one that he allegedly brought out and showed
08. you previous to his incident, you still
09. don't know what that is?
10. A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 54).

Gambrell dismissed these contradicting statements of Curry. Gambrell confirmed that Carver did not have a gun on March 28 or 29, 2016. (Exhibit 7-Gambrell Affidavit). Gambrell stated that the only time he saw Carver with a gun was in 2015, one year prior to the shooting incident. At that time, Carver was showing his brother's gun to Gambrell. *Id.*

Fifth, in recalling what transpired between him and Cameron, Curry testified that he only realized that he had a gun with him when Cameron came charging at him and that he had no choice but to shoot the latter.

14. Q. So you had a chat with Steven
15. Cameron. And after he did not give you any
16. money and he did not give you any drugs, what
17. did you do?
18. A. I don't know, I like turned and he
19. come at me, and I looked down, I didn't know
20. I had the gun but obviously I did - I had
21. it, I mean. Then like, 'oh.' He charged
22. at me and -- I don't even remember pulling the
23. trigger but I heard *Pop! Pop!* So---(pause).
24. Q. So you shot Steven Cameron?

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT
0302

25. A. Yeah, I guess.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 55).

However, in his testimony at Gambrell's trial, Curry testified that he pulled the gun to intimidate Cameron, who charged at him at that point. He pulled the gun prior to any exchange of words between him and Cameron.

08. Q. Why did you do it?
09. A. Because for some reason or another I had done
10. pulled the gun, I guess to intimidate him or whatever,
11. and he charged at me. "What are you going to do, shoot
12. me?" And he charged at me. I don't know what to do.
13. What's he going to do, take the gun and shoot me or
14. what? I don't know. I mean, that's just--
15. Q. Why did you feel the need to try to intimidate
16. him?
17. A. He's bigger than I am.
18. Q. He's bigger than you are?
19. A. A lot bigger than I was.
20. Q. But you just said you were just going to have a
21. conversation with him. Why should him being bigger
22. than you make a difference if you're just going to have
23. a conversation?
24. A. Man, like I said, I was high. I was 150 pounds.
25. I was all drawed up myself, you know I mean.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 84).

Carver believes that the purpose of Curry's new testimony was to eliminate any self-defense argument. By saying that he had already pulled the gun, it sounded as if he was a bank robber, who goes into the bank with gun drawn ordering everyone over the ground and announcing, "This is a stick up".

Ironically, that exchange also illustrated the fabrication of Carver having a gun. By Carver having Curry testify that Carver had a gun, it made him "part of the team". The only statement regarding Carver possessing a gun was from Curry. Carver painstakingly discussed how he pleaded with Curry to leave the .38 (the only gun that Carver knew Curry had) in the car.

Obviously, Carver did not have a gun; or, he would not have been so aggressive with his plea for Curry to leave his gun in the car. More importantly, if Curry's testimony were to be believed that Carver brought a gun with him, then Curry would not have felt threatened when Cameron lunged towards him during their exchange of words. It was irrational that Carver, having a gun with him, did not use the same against Cameron, whether it was just to intimidate or to ensure that the latter complies with Curry 's demands. It would have shown unity in action and purpose. But that is not the case at hand. In the instant case, when Carver realized that Curry would not heed his pleas to put the gun down, Carver ran away from the two men, with the intention of leaving Curry behind. That is not the action of a man in agreement with Curry's actions.

Sixth, in Gambrell's trial, Curry testified that upon returning to Gambrell's house from Cameron's place, that Carver went in to return the gun to Gambrell. Of course, this testimony conflicts with his prior testimony that Carver had his own gun.

16. Q. And what happened when you got back to Appaloosa
17. Drive?
18. A. When - Carver went in before me there, but we
19. went in there and trying to give Milt there the guns
20. there. And I mean, Carver had a – there, and I
21. turned around and left there. I told him I was going
22. home; I was done for the night
23. Q. Okay what did you do with the gun when you got
24. back to Mr. Gambrell's house?
25. A. I gave them back to Mr. Gambrell.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82).

Curry slipped with the following statement, "*we went in there and trying to give Milt there the guns there. And, I mean, Carver had a -- there, and I ...*" (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 82). The .25 was never seen prior to the shooting. Neither was it found following the shooting. On the other hand, the .38 was returned to Gambrell's house. In

testifying that *"(W)e went in there to return the guns"*, Curry tied Carver in with him. Curry admitted returning only one gun to Gambrell. More importantly, he caught himself saying that Carver returned the gun he allegedly had. If it were true that Carver had his own gun, he would have no need to return his own gun to Gambrell. In addition, if he just came over to work on the transmission, he would have no need for it.

Whenever confronted with the inconsistencies in his testimonies, Curry conveniently pulled the memory lapse excuse.

Q. Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your cell phone? Which is the truth?
A. I called him on the cell phone.
Q. Why is this the first time you're saying this?
A. First time I recall being asked.
Q. Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.
A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

(Exhibit 1- Motion to Hold Appeal in Abeyance, PP. 85-86).

Q. Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house --
A. Uh-huh.
Q. -- that you shot the guy.
A. I don't recall that, but if you say I did, I did.
Q. Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?
A. He didn't ask.
Q. Didn't you say something like, "Well, things just went crazy and I shot him"?
A. No. Like I say, he didn't ask. I told him on the

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT
0305

way back over there that he better have been sure that that guy took his dope there because I shot him.

Q. You said the way back over there?

A. On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."

Q. Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?

A. Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?

Q. No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.

A. Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.

Q. So you're telling this jury --

A. The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.

Q. My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?

A. It's the first time it's been asked.

Q. The detectives never asked you the details of what happened?

A. Not that I recall.

(Exhibits 1, Motion to Hold Appeal in Abeyance, P. 86-88).

However, during his plea bargaining, prior to the trial, Curry stated that he was not under the influence and his lawyer said that he was competent to plea.

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

MR. CURRY: No, sir.

THE COURT: Counsel, are you satisfied that Mr. Curry's competent to plea?

23. MS. BYFORD: I am, Your Honor.

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 75).

Clearly, Curry's testimonies were unreliable and inconsistent. It was another illustration of Curry being led by the "sentencing" carrot" offered by the State. Even assuming that Curry's testimonies were to be believed, he still deliberately withheld information that was relevant to Carver's case. The defense counsel in the Gambrell trial perfectly summed it in his statement:

02. Q. Okay. Well, if your memory was so messed up, why
03. should this jury believe anything you have to say today
04. about what happened over two years ago?

(Exhibit 1, Motion to Hold Appeal in Abeyance, P. 89).

On September 6, 2018, Gambrell who, following the prosecution's theory, was the mastermind of the "hand of one is hand of all", was acquitted of accessory before the fact. He was found guilty of solicitation of a felony.

The crux of the State's case against Carver is Curry's testimony that Carver: (1) knew about the missing cocaine; (2) had his own gun when they drove back to Cameron; and that by driving Curry back to Gambrell's house, Carver approved and supported Curry's actions. According to the State, these assumptions show that there was an agreement among Carver, Curry and Gambrell beforehand. That this is a case of drug distribution gone awry. Now that Curry's lies, and misleading statements came to light, it is incumbent for this Court to re-try this case.

On ACSO and police officers

At Gambrell's trial, Detective Kreig Marzolf testified that during one of their neighbor canvasses, one of his detectives talked to a neighbor who heard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned.

Q. So when you mentioned that on the first video that a neighbor had heard the argument and heard what went on down that night, that just was not true, correct?
A. Actually, that was true. We had -- during the neighborhood canvass, it's my understanding that one of the detectives talked with a neighbor who overheard an argument and the words "dirt bike" were mentioned during the argument.
Q. Did they hear gunshots?
A. No one -- I don't recall. I don't recall if somebody heard gunshots or not. I know that they talked to several people in the neighborhood.

(Exhibit 1, Motion to Hold Appeal in Abeyance, PP. 78-79).

A All I know is what, you know, what the detective that was told to canvass told me, which was that, you know, somebody had overheard an argument involving the words "dirt bike."
Q. But no gunshots?
A. I don't recall if they had heard gunshots or not, sir. I don't want to tell you the wrong thing.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 79).

This neighbor was not mentioned in previous reports. Neither was it mentioned by any of the detectives who testified in the Carver hearing. Carver maintains that this should have been disclosed in the previous trial as this confirms what he has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through his lack of criminal intent.

This was not the first time that the officers investigating this case failed to be forthright with information at their disposal.

Carver's counsel asked Marzolf twice regarding Cameron's violent tendencies, which the officer denied having heard of any such instance. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47). However, Marzolf had knowledge of Cameron's volatile behavior. He admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a

A TRUE COPY
DEC 27 2018
Richard D. Kinley
ANDERSON CLERK OF COURT

neighbor who recounted the Cameron's volatile behavior. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 47). Marzolf himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 97)

As discussed in the previous section, Marzolf has shown no qualms in offering conflicting testimonies/statements. He testified not having knowledge of, nor even participated in, Curry's plea-bargaining deal. Curry exposed that it was Marzolf and the prosecutor's idea to reduce his charges.

Carver believes that this information would have helped him formulate his defense.

Carver asserts that due to this newly discovered evidence which are not available during his trial, he is entitled to remedy under Rule 29 SCRCrimP.

II.

CARVER IS ENTITLED TO HAVE THE JUDGMENT AGAINST HIM VACATED DUE TO PROSECUTORIAL MISCONDUCT.

Carver further asserts that he is entitled to new trial and motion to vacate and/or set aside judgment by reason of the State's misconduct in the handling of this case.

Carver insists that the prosecution abused its discretion in filing different charges against him, Curry and Gambrell. The prosecution's theory was that the three conspired to rob or kidnap Cameron, and that under the "hand of one is hand of all" doctrine, all three of them were guilty of the killing of Cameron. However, the prosecutor charged Curry and Carver with murder [1],

[1] Curry admitted to shooting Cameron, but his original charge of murder was reduced to voluntary manslaughter after a plea bargaining.

and "the boss", Gambrell, with the lesser crimes of solicitation to commit a felony and accessory before the fact to a felony. The same prosecutor handled Carver's and Gambrell's trial. But while she was very emphatic and steadfast with her argument on the application of the accomplice liability doctrine on Carver and Curry, she has deliberately and cautiously omitted the same argument in her prosecution of Gambrell.

Carver was tried by himself because there would be no way to separate him from the other two. Gambrell and Curry were the ones involved with the cocaine trade. This cannot be better exemplified than by the fact that law enforcement raided Gambrell's house; found enough cocaine to fetch a trafficking charge; and, the only person there to take the fall, which he did (like a good consigliere), was Curry.

Carver took Cameron home for no other reason than Cameron had no ride. Similarly, he was to bring Cameron back because he still did not have a ride. The plain meaning of take or bring do not make a reasonable person conjure up thoughts of drugs, violence, armed robbery or kidnapping.

Carver was found guilty not because of what he did, but because of what was suspected he did.

Carver avers that in its zealousness to get a conviction for this case, the prosecution went beyond the boundaries of decency and professionalism.

First, according to the prosecution's star witness. Curry met with the prosecution team, three times. Marzolf was in at least one of these meetings. The prosecution provided no recording of the time they visited Curry to speak to him on his manslaughter deal. Carver's counsel received two video interviews, but Solicitor withheld the third. Carver was not shown the video of what the prosecution exactly offered Curry. Curry maintained that Marzolf and Ms.

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT
0310

Moore would reduce his charges to voluntary manslaughter, if he pled guilty and testified against Carver. (Exhibit 6-Affidavit of Curry).

Second, the State deferred Curry's sentencing for over a year, when the Order specifically stated that it will only be. until after Carver's trial. However, they liked the results of holding the anvil over Curry's head so much that they held off sentencing for another year, or after Gambrell's trial. Curry testified as to what would convict Carver and then Gambrell. Curry's testimony as to calling Gambrell on the way to the latter's house, a statement which Curry did not offer at Carver's trial, is a testament to the extent by which they would go to get a conviction.

Based on Curry's lies, Carver and Gambrell were convicted of the charges brought against them. In this appeal, the State is relying on the fact they merely have to show some evidence to defeat an appeal. However, considering Curry's testimony is the cornerstone of the State's evidence in both cases, Carver asserts that the State has no evidence. Curry cannot be considered credible evidence when his testimony changes to fit the prosecutor's needs. The irony of Mr. Curry's many stories is the one story we did not hear is him admitting to the shooting. Ms. Moore objected to a question regarding the number of times Curry had talked to the police. There is no question that the State recorded the interview where it had offered voluntary manslaughter for Curry's testimony. The first year of law school taught counsel for Carver to never call a witness when you do not what know what they will say. They knew what Curry was going to say.

During Carver's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine.

04. So what happened here is that Milton
05. Gambrell, a known drug dealer, Mr. Smith just

told you all about that, sent his two ""do boys"--- that is what Woodrow Curry called himself and Carver on the stand—they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 56).

But in the Gambrell trial, this was all she stated:

In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James Gambrell is also liable for any criminal act which, in the ordinary course of things, was the natural or probable consequence of the crime that he advised or commanded. So was the murder of Steven Cameron a natural and foreseeable consequence of James Gambrell's order? I submit to you that it was.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 90-91).

Clearly, the prosecutor applied a different standard at Gambrell's trial.

Third, Curry's sentencing was deferred for more than one year with no legitimate reason other than to ensure that his testimony would once again be beneficial to the State. This piece of information only came to light after the Gambrell trial, where Curry was called a witness. The only logical conclusion was that the State dangled Curry's sentencing over his head for him to testify according to its wishes.

Fourth, in prosecuting the case, the State failed to disclose information and/or witness that may exculpate Carver. A prosecutor's primary duty is to seek justice. Under the law, a prosecutor shall make timely disclosure to the defense of all evidence or information known to

the prosecutor that tends to negate the guilt of the accused or mitigate the offense. (Rule 3.8(d) of the Rules of Professional Conduct). It failed to do the same. Instead, it allowed its star witness, Curry, to offer inconsistent and false statements during Carver and Gambrell's respective trials. The State also failed to disclose the terms of its plea bargaining with Curry, which coupled with the deferment of his sentencing, is suspect.

Carver had already questioned the State's method of prosecuting its case. The investigation on Carver's case was completed April or May 2016. The State offered Carver a copy of the discovery in December 2016, which Carver was unable to open. By the State's own admission, what they provided had been faulty.

02. SOLICITOR MOORE: Yes, Judge. I cannot
03. guarantee that the flash drive will be able
04. to play for the jury. We have, as you know,
05. had some difficulty with that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 57).

Carver repeatedly requested the discovery materials, which included surveillance video which ran in excess of 36 hours. These materials have been in the State's possession since the first week of the investigation. Carver was provided the materials only a year after. Another set of materials which included an audio recording and three supplemental reports was provided by the State on August 9, 2017, or two (2) weeks prior to Carver's trial. The State failed to give the defense the opportunity to review materials which it had for more than one (1) year. Even the trial court judge took notice of this.

17. THE COURT: I want to know what
18. evidence that was delayed to August 9th, that
19. kind of delayed delivery that y'all gave to
20. the defense. This guy is on trial for murder
21. and if he gets found guilty, then he's
22. looking at life in prison.
23. SOLICITOR MOORE: I understand, Your

Honor.
THE COURT: So playing with evidence is not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong --and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.
SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---
THE COURT: I want to know why --I don't care what you did. I want to know why it just got sent out August 9th of this year.
SOLICITOR MOORE: Because I'd just received it, Your Honor.
THE COURT: From whom?
SOLICITOR MOORE: From Detective Henry.
THE COURT: Who is Detective Henry?
SOLICITOR MOORE: He is the man who was just testifying.
THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?
OFFICER HENRY: What information?
THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?
OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.
THE COURT: You thought you had.
OFFICER HENRY: Yes, sir.
THE COURT: So it was a case of honest mistake?
OFFICER HENRY: Yes, sir. Seriously, yes, sir.
THE COURT: If it is a case of honest mistake, I can understand. But if it's a

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT

case of a recurring pattern— and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay. Is there other evidence that was not delivered until late in the game? If so, why?

SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly

THE COURT: I'll be right back. I want to get this cleared up.

SOLICITOR MOORE: Yes, sir.

THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 58-61).

The trial judge initially found this delay as unacceptable.

Q. Why is there such a delay in getting that information?

SOLICITOR MOORE: Your Honor, I can only provide to Mr. smith what I have for myself.

THE COURT: That is not an excuse.

SOLICITOR MOORE: I understand—

THE COURT: That is not acceptable.

SOLCITOR MOORE: I understand, Judge.

THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be some problems with it, I'm telling you.

SOLICITOR MOORE: I understand, Judge.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 62).

The judge went easy on the State and allowed all the information in the record when Officer Henry attested that it was an honest mistake on his part to not ensure that important materials for a murder case have not been submitted to the parties on time. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 60). Instead, the court turned against Carver's failure to view the

36-hour long video and analyzed the same along with the other materials submitted to him two-weeks prior to the trial. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 61). The lower court failed to consider that Carver's counsel is a sole proprietor, whom unlike the prosecution, did not have enough manpower and resources to devote to a comprehensive analysis of loads of delayed discovery materials. Add to this is the fact that there was precedence in the police's haphazard handling of evidence in this case.

In failing to submit the video surveillance and required discovery materials within the reglementary period, it is tantamount to the State denying Carver his right to prepare for his defense, considering that this was not the first instance it happened in this case alone. The delay in providing discovery materials to defense counsel seemed to have become the norm. This issue should have been addressed more sternly.

Fifth, the State's questionable conduct continued during Gambrell's trial, when it deliberately offered Curry despite knowledge of his tendencies to lie and/or withhold information from the beginning.

Carver was convicted of murder under the accomplice liability doctrine. Under this doctrine, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Carver submits that if the State's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies.

04. Q. Did you go over there with the intent to kill
05. Mr. Cameron?
06. A. No, sir.
07. Q. Did anybody tell you to go kill him?
08. A. No, sir.
09. Q. Did anybody tell you to go beat him up?

A. No, sir.
Q. Did anybody tell you to go threaten that you were going to beat him up?
A. No, sir. I was just told to go get the dope or get paid for it.
Q. What does that mean --
A. I never intended to --
Q. What does that mean, you were told to steal the dope from him?
A. No. I was just told to go and retrieve it. He stole the dope.
Q. What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A. Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 92).

Q. Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A. I don't know what he was thinking.
Q. All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A. Right.
Q. He did not tell you to threaten Mr. Cameron in any way?
A. No, sir.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 94).

This was confirmed by Marzolf, who was asked of his interview with Gambrell:

Q. He also emphasized to you that all he wanted was for them to let Mr. Cameron know that he had the drugs, they knew it, and to pay for it, right? Wasn't that his story?
A Yes, sir.
Q. Okay. You -- also on that video, at one point I believe I heard you say that Mr. Cameron -- dope was found on Mr. Cameron after he was killed?
A. Yes, sir. During the autopsy, they did find some drugs.
Q. Okay. Did you mean in his system?

A. No, sir. I mean they found actual drugs on his person.
Q. Do you know how much?
A. I think in his tennis shoes, I believe. I don't know the exact quantity, sir.
Q. Okay. So obviously --
A. It was significant, but I don't know exactly what it was.
Q. Couldn't have put it there after he was killed, so it was there in his shoes before he was killed, obviously. You don't know how much?
A. I don't know exactly, sir.
Q. Okay. Did anybody -- were his shoes still on when he was lying there on the porch?
A. Yes, sir, I believe so.
Q. All right. So nobody, obviously, tried to pull his shoes off to look for anything, correct?
A. I would imagine not.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 95).

The foregoing testimonies belied the State's insistence on robbery and kidnapping as the underlying felonies that the three planned to commit. There was no robbery. Gambrell, Curry and Carver did not intend to, nor did any of them take nor attempt to take property belonging to Cameron. (S.C. Code Ann. § 16-11-330). It was Cameron who stole from Gambrell. Curry was tasked to recover stolen item or to collect payment for it, while Carver was instructed to return Cameron to Gambrell's house. Upon examination of Cameron's body, drugs were found inside his shoes. That there were drugs found on Cameron's person showed that Curry and Carver did not intend to take the stolen item by any means. This is particularly important considering that it has been established through testimonies and video surveillance that other individuals entered Cameron's house. (Exhibit 1- Motion to Hold Appeal in Abeyance, P. 63).

Gambrell, Curry and Carver did not plan to kidnap or attempt to kidnap Cameron, because neither one unlawfully seized, confined, inveigled, decoyed, abducted or carried Cameron away, or attempted to commit said acts by any means whatsoever without authority of

law. (S.C. Code Ann. § 16-3-910 (2012)). If we were to believe Curry, as the prosecution so insisted, it was actually Cameron who initiated aggressive behavior by advancing/lunging toward Curry. (Exhibit – Motion to Hold Appeal in Abeyance1, P. 84, 9.14).

The State contends that Gambrell, Curry and Carver planned to commit the felony of murder or kidnapping simply because Curry was armed. Carver had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him. Before leaving Gambrell's house, Carver had no knowledge of any stolen items, nor guns. Reference to Carver were all speculations by the police.

03. Q. Mr. Carver did not have a gun, did
04. he?
05. A. There were two guns and two---
06. Q. Mr. Carver did not have, did
07. he?
08. A. They had guns. They were given a
09. .38 by Mr. Gambrell and Mr. Curry carried a
10. .25 automatic with him.
11. Q. Where was the .25 carried?
12. A. In a fanny pack, is my understand-
13. ing.
14. Q. Who knew about the .25?
15. A. Mr. Curry knew about it and I know
16. that his wife knew about it, she told me
17. about it as well.
18. Q. So neither of those people are Mr.
19. Gambrell or Mr. Carver, right?
20. A. No.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 64).

08. Q. When Mr. Gambrell took that gun, Mr.
09. Carver had not returned from Mr. Cameron's
10. yet; had he?
11. A. Mr. Gambrell didn't take the gun,
12. sir. Mr. Curry received the gun from Mr.
13. Gambrell or took it from him.
14. Q. Mr. Curry took it from Mr. Gambrel?
15. A (No verbal response).

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 65).

03.	Q.	You also learned that the .38 nor
04.		any other guns were provided to Jason Carver;
05.		right?
06.	A.	The gun was provided to Curry and
07.		Carver when they were leaving, so I don't
08.		know.
09.	Q.	Which gun was provided to Mr. Curry?
10.	A.	The .38.
11.	Q.	Which gun was provided to Mr.
12.		Carver?
13.	A.	There were no other weapons
14.		provided.
15.	Q.	And Mr. Gambrell told you that it
16.		was not provided to him, meaning Mr. Curry
17.		(sic); right?
18.	A.	He said that Mr. Curry took the weapon.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 66).

Proceeding from the State's fervent plea for the jury to believe Curry's words, Carver submits that this Court takes note of his categorical denial of any agreement or intent to commit criminal acts against Cameron. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him.

The aforementioned evidence was discovered by Carver after his trial. Despite exercise of due diligence, counsel for defense could not and would not have discovered the lies and misrepresentation that Curry divulged during Gambrell's trial. The State's efforts to conceal important information deterred Carver from preparing for a comprehensive defense. The newly-discovered evidence is not merely cumulative nor impeaching, as it goes to the very essence of the elements of the crime of murder for which Carver was convicted. Some of the newly-discovered evidence such as statements stating that Carver had no gun at the day of the incident; that he had no prior knowledge of the stolen item before returning to Cameron's house showed

that there is no conspiracy, no agreement to commit a crime, and no criminal intent on the part of Carver. He did not commit murder as he did not shot Cameron. Carver cannot be convicted under the accomplice liability theory because there is no agreement to commit murder, robbery, kidnapping or any crime.

IV.
CARVER'S RIGHT TO DUE PROCESS HAS BEEN VIOLATED BY THE TRIAL JUDGE'S PREJUDICIAL ACTIONS TOWARDS THE CASE.

First, Carver believes that his case was prejudiced by the actions of the trial judge. In several instances, the trial judge made controversial rulings, such as ruling on sustaining when there was no objection.

12. Q. Mr. Curry told you that he left the
13. gun in the car; right?
14. Q. Yes.
15. Q. So we are here today and you're
16. saying that Mr. Carver did what?
17. SOLICITOR MOORE: Uh—
18. THE COURT: Sustained.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 67).

Or sustained an objection that has no grounds:

06. Q. Mr. Gambrell was aware of the
07. pistol, the .38 being picked up?
08. SOLICITOR MOORE: Objection, Your Honor.
09. THE COURT: Sustained.
10. SOLICITOR MOORE: Thank you.
11. CROSS EXAMINATION CONTINUED
12. BY MR. SMITH:
13. Q. That weapon was not utilized in this
14. event to our knowledge?
15. SOLICITOR MOORE: Objection, You Honor.
16. THE COURT: Asked and answered. Move forward, please.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 68).

Carver believes that the trial judge showed his bias when he made conclusory

statements as below:

MR. SMITH: It shows that what they've provided. his statements and things in evidence supports what he said from a non-criminal standpoint. There was no criminal thought in this matter. That's what he says.
THE COURT: Well, I'll look at it.
Quite frankly, I think you're just wrong. I think that if your client went to go pick up money or drugs, that's a criminal act in and of itself. If you don't think so, then we have a disagreement about that.

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 69).

THE COURT: Well, let me think about that on the hand of one, hand of all. But here are my thoughts on that. First, I don't think that it exculpates your client, the reason being -I think that they had a criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence. So, if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose." So therefore -- although I think probably that your client did not know that a gun--that he was going to shoot this fellow, but--the cases recognize the connection between guns, drugs and violence where the plan was illegal and it just spiraled out of hand. So, the jury may believe that he was an innocent bystander, but that's my belief as to why the video of Mr. Gambrell does not exculpate your client. "

(Exhibit 1- Motion to Hold Appeal in Abeyance, P. 70).

The preceding statements were replete with prejudice considering that Carver disputed knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house.

Second, Carver avers that he was denied his right to present his witnesses. Carver believes that Mr. Gambrell was key to the whole case, as he would testify that his instruction to Carver was simply to bring Cameron back to his (Gambrell) house. This then would rule out conspiracy or unity in purpose and action. Gambrell was called as a witness on behalf of Carver. The trial judge advised Gambrell of his rights, particularly his rights against self-incrumination. Gambrell proceeded to narrate the events that transpired on March 28, 2016, which confirmed Carver's story. When he started to explain about the missing item, his lawyer and the court advised him of his Fifth Amendment right. After explaining his rights against self-incrimination, and a stern warning of its consequence, the trial judge insisted Gambrell confer with his counsel. At that point, the court ruled that his statements to the court will be stricken from the record.

07. THE COURT: At this point I need to
08. advise you of your rights under the Fifth
09. Amendment of the United States Constitution
10. which says in part that no person can be
11. compelled in a criminal case to be a witness
12. against themself. Do you understand your
13. rights?
14. WITNESS: Yes, sir.
15. THE COURT: That means that you can't
16. be required to testify against yourself; the
17. State can't require you to, I can't require
18. you to. Nobody can.
19. You have the right to refuse any question
20. asked of you, anything that gives you
21. reasonable cause to believe that the answer,
22. if given, might tend to incriminate you as
23. charged.

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT

If you wish to exercise your right under the Fifth Amendment, you will state that to the court. You will say, "I refuse to answer the question because the answer to the question may tend to incriminate me." Do you understand that?

WITNESS: Yes, sir.

THE COURT: And let me advise you further that your statement is not the final decision as to whether or not your answer to the question would violate the Fifth Amendment. I will ultimately make that decision. Do you understand?

WITNESS: Say that again, sir?

THE COURT: Just because you exercise your right by saying "I refuse to answer the question because the answer may tend to incriminate me" does not mean that is the end of the inquiry. I will make the final determination as to whether or not you will have to answer the question. Do you understand?

WITNESS: Yes, sir.

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, P. 2.4).

THE COURT. Mr. Phillips, do you have a matter you wish to bring up on the record?

MR. PHILLIPS. Yes, sir. I have advised my client not to testify in this case. He originally chose to testify. I am again advising him to exercise his Fifth Amendment right and not to testify in this case from this point forward.

THE COURT: Do you wish to honor your attorney's advice, Mr. Gambrell?

WITNESS: (No verbal response).

THE COURT. In other words, do you want to testify or do you want to exercise your rights under -on your attorney's advice to exercise your rights under the Fifth not to testify?

WITNESS: I don't really understand

THE COURT: Well, let me tell you this, Mr. Gambrell. Your testimony in this case is

being transcribed and it will be obtained by the State and used against you in the upcoming trial against yourself, or it can be, Do you understand that?

WITNESS: Yes, sir.

THE COURT: Now, your attorney --I gave you your rights under the Fifth Amendment and you told me that you understood them. Is that correct?

WITNESS: I am trying to understand them.

THE COURT: Well, sir, either you understand them or you don't. You told me that you did. What I told you is that under the Fifth Amendment to the United States Constitution that no person can be compelled to testify against himself in a criminal trial. Do you understand that?

WITNESS: Yes, sir.

THE COURT: And effectively what you are potentially doing is testifying against yourself because this testimony will be or can be used against you in your trial later, if you continue to testify. Do you understand?

WITNESS: (Pause) --yes, sir.

THE COURT: Okay, sir. Now, Mr. Phillips, who is your attorney for your criminal charges has just stated that he's advised you not to testify and he's re-advised you not to testify any further. Do you understand that?

WITNESS: (No verbal response).

THE COURT: Do you understand that, Mr. Gambrell?

WITNESS: Yes, sir.

THE COURT: Now, you have a right – the only person who can exercise their right under the Fifth Amendment is yourself. It is advisable to listen to an attorney, however the ultimate decision as to whether or not you wish to continue to testify in this proceeding is your decision, yours alone to make.

WITNESS: Yes, sir.

THE COURT: Okay. You have to make

that decision knowing your rights under the Fifth Amendment and also knowing the consequences to you if you continue to testify.

That is that --the consequence are that the State can and will obtain the transcript of your testimony and when you are called to trial they can use that against you in the courtroom. Do you understand? In front of the jury?

WITNESS: Yes, sir.

THE COURT: Now, the question is, do you wish to testify or do you wish to exercise your Fifth Amendment rights and not testify; take your attorney's advice not to testify?

WITNESS: (No verbal response).

THE COURT: Would you like to speak with your attorney further?

WITNESS: Yes, sir.

THE COURT: Would you take him in the hallway, Mr. Phillips?

(BRIEF RECESS -COUNSEL PHILLIPS AND WITNESS TO CONSULT OUTSIDE COURTROOM)

(Exhibit 6- Carver Trial Tr., Direct Examination of Cameron, PP. 5-8).

Carver raises his concerns on the judge's overzealous efforts to explain to Mr. Gambrell about his Fifth Amendment Rights, which he invoked, then waived, and invoked again after repeated warnings by the judge. As Supreme Court noted in *Webb v. Texas*, 409 S. 95, 98 (1972)- a trial judge's efforts to protect a defense witness—in this case, from prosecution for perjury—may impermissibly intrude upon a defendant's right to produce evidence.

More importantly, Carver questions the propriety of the court's ruling on refusing to let Gambrell take the witness stand for pleading the Fifth, striking his entire testimony, and refusing to allow Carver to call him on the witness stand to plead the Fifth in front of the jury.

The witness' privilege against self-incrimination does not provide an absolute right to remain silent. It is well settled that a witness, who is not also a defendant, can invoke that privilege

only after the incriminating question has been put. *State v. McGuire*, 272 S.C. 550-551. In short, unlike Carver (or a co-defendant) who is called to testify, a witness must invoke the privilege to specific questions, and may not assert "blanket privilege". Gambrell should have been allowed to take the stand and invoke the privilege in response to each question that could yield a self-incriminatory answer, but not to completely refuse to testify. The Court presiding over the proceeding in which a Fifth Amendment privilege is claimed has a duty to scrutinize a witness' invocation of the privilege. In the instant case, the trial judge did not propound any question upon Gambrell to get by his Sixth Amendment Right.[2]

Defense subpoenaed Dequavious Gambrell, Milton Gambrell's nephew, and his friend, Tykeon Gardner. Dequavious had purchased the bike from Cameron that day. When the defense called the witnesses, neither of them were available to testify. As expected, defense counsel could not track down the witnesses. This was especially true since Mr. Gambrell was no longer an issue to testify. Carver was unable to show to the jury that Gambrell had prevented the boys from going that night because he was concerned of the personality clashes that may have occurred had they gone down there. The Court did not attempt to compel the presence of the witnesses with any significance. The defense's Motion for Continuance, which was raised when the witnesses subpoenaed by Carver failed to appear to testify, was summarily dismissed by the judge. Carver believes that the Court had a duty to compel the witnesses who been subpoenaed properly, so as to give Mr. Carver some semblance of equity.

---

[2] The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

Carver avers that the judge's actions in prohibiting and/or denying his right to call his witnesses (Dequavious and Tykeon), was both arbitrary and capricious.

> The right to offer the testimony of witnesses, and to compel their attendance if necessary is a plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so it may decide where the truth lies Just as an accused has the right to confront the prosecution's witnesses for the purpose or challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

This was in direct violation of Carver's Sixth Amendment Rights.

Carver recognizes that a violation of a defendant's Sixth Amendment right to confront a witness or present one is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 315 S.C. 383, 385, 444 S.E. 2d 525, 527 (1994). Error is harmless where it could not reasonably have affected the result of the trial. In Re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003).

Carver submits that Gambrell's, Dequavious' and Tykeon's respective testimonies were critical to the case's outcome. Carver asserts that they will testify to his motive/intent in returning to Cameron's house. Gambrell will testify to the following: (1) He sent Carver to Cameron with instructions to return the latter to Gambrell's house; (2) He did not give any gun to Curry; (3) He did not inform Carver of the stolen item when the latter drove back to Cameron's; (4) Carver did not have a gun with him on the day of the incident; (5) Curry did not call Gambrell between the time Carver and Curry left his house and the time they returned; and, (6) He did not instruct Curry to kill, rob or sell anything to Cameron. Gambrell's testimony will

provide the crucial nexus establishing Carver's innocence. Dequavious and Tykeon will testify, among other things, to the bike transaction with Cameron, which was witnessed by Carver.

The trial judge also denied Carver's attempt to introduce in evidence the audiotape of Gambrell's interview with the ACSO officers as an exception to the hearsay rule. Gambrell can be considered as an unavailable declarant under the doctrine laid down in the State v. Doctor, 413 S.E.2d. 36. The judge insisted that contents of the Gambrell's interview do not exculpate Carver, nor were they clearly corroborated by evidence that indicates the trustworthiness of Gambrell's statement. With the new developments in this case, Carver could not have provided evidence that will corroborate the trustworthiness of Gambrell's testimonies because of the lies and conflicting statements that Curry perpetuated.

From the foregoing, Plaintiff believed that the trial judge sought, and/or prevented Gambrell from testifying in court. By his actions, he had improperly swayed a witness. The judge's failure to adhere to the neutrality and non-biased work required by his position, tainted the proceeding.

Carver is presently serving a sentence of thirty (30) years for a crime that he did not commit. Carver is serving a harsher penalty for a crime, that Curry admitted doing and Gambrell "masterminded". There is no greater injustice than what happened to Carver.

Carver submits that the prosecutors' obligation to convict should be balanced by the overriding goal of seeking justice. As it stands, the purpose and goal of liberal prosecutorial discretion, has been subverted.

Accordingly, Carver respectfully requests this Honorable Court to grant new trial on this case to allow Carver to present the newly discovered evidence to a jury of his peers.

{SIGNATURE TO FOLLOW}

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

December 27, 2018

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON State of South Carolina, Plaintiff, vs. Jason Carver, Defendant.	)	IN GENERAL SESSIONS TENTH JUDICIAL CIRCUIT Case No.: 2016A041020056 **CERTIFICATE OF SERVICE**

THE UNDERSIGNED person deposes and says that he served a copy of Defendant's Amended Motion for New Trial, upon the Solicitor's Office, Tenth Judicial Circuit, by and through Assistant Solicitor Chelsey Moore and the Honorable Lawton McIntosh, personally, by hand delivery to the below address:

Date: December 27, 2018

Donald L. Smith
Attorney for Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

HAND DELIVERED TO:

Honorable Lawton McIntosh
Anderson County Common Pleas
100 S. Main S.
Anderson, SC 29624

Asst. Solicitor Chelsey Moore
Office of the Solicitor
Tenth Judicial Circuit
100 S. Main St.
Anderson, SC 29624

Diane Greenway
12.27.18

A TRUE COPY
DEC 27 2018
ANDERSON CLERK OF COURT

EXHIBIT 1

Pages 90-91

And so, ladies and gentlemen, I submit to you that a murder was committed, that Woodrow Curry committed the murder of Steven Cameron. And so, ladies and gentlemen, we have proven, I submit to you, the State has proven beyond a reasonable doubt each of those elements: That James Gambrell urged, advised, or in some way aided Woodrow Curry to commit an armed robbery, to commit a drug distribution, or to commit a kidnapping, that James Gambrell was not present when the crime was committed, and that one of James Gambrell's codefendants, Woodrow Curry, actually killed Steven Cameron with malice aforethought.

Now, the question remains is how do you get from James Gambrell advising, urging, or in some way aiding them to commit an armed robbery to finding him guilty of accessory before the fact to murder? He very expressly said in his statement he's not a murderer. So how do you get there?

In order for James Milton Gambrell to be found guilty of accessory before the fact to murder, he must have the same criminal intent as Woodrow Curry. They must have intended the same thing before the murder was committed. They must have intended for Woodrow Curry to take the money, to take the drugs, or to bring Steven Cameron back to James Gambrell. But James

Gambrell is also liable for any criminal act which, in the ordinary course of things, was the natural or probable consequence of the crime that he advised or commanded. So was the murder of Steven Cameron a natural and foreseeable consequence of James Gambrell's order? I submit to you that it was.

This is the evidence that we know: Woodrow Curry was high. Woodrow Curry was armed. James Gambrell knew that Woodrow Curry was armed. And whether you believe Woodrow Curry or whether you believe James Gambrell, he knew it one way or the other. According to James Gambrell, he said, "I told him to leave the gun, but, you know, he didn't listen to me." Woodrow Curry says, "No, he gave me that gun."

But it doesn't matter. In this instance, it doesn't matter because James Gambrell knew that Woodrow Curry was high and he knew that he was armed and he sent him there to get the drugs or the money or bring Steven Cameron back to him.

This was a drug transaction. And accidents happen in the drug trade. I submit to you that this was not only a foreseeable consequence, it was the most likely outcome. What would Mr. Gambrell have expected? He talks on his interview about how Steven Cameron was crying. $750 of cocaine he did every day. So he said,

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

RECEIVED
DEC 31 2018
SC Court of Appeals

Appellate Case No.: 2017-002011
C.A. No: 2016A041020056

State of South Carolina, Respon

v.

Jason Franklin Carver, Appella

PROOF OF SERVICE

I certify that I have served copies of Appellant's Motion for New Trial with Exhibits, Amended Motion for New Trial, and Proof of Service of same upon The Honorable Je Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 116, Columbia SC 29211, Assistant Solicitor for Tenth Judicial Circuit, Chelsey L. Moore, at S. Main Street, Anderson SC 29624, and South Carolina Attorney General Honorable Alan Crory Wilson and Assistant Attorney General Samuel Marion Bailey at PO Box 11549, C mbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on Decem 2018.

December 28, 2018

Donald L. Smith (SC B 9)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 64
Facsimile: (864) 64
attorneydonaldsmith
Attorney for Appella

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
REGARDING MOTION TO HOLD APPEAL IN ABEYANCE

December 28, 2018

The Honorable Jenny DeWitt Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RECEIVED
DEC 31 2018
SC Court of Appeals

RE: The State v. Jason Franklin Carver
Appellate Case No.: 2017-002011
Trial Court Case No.: 2016A041020056

Dear Ms. Kitchings:

Pursuant to the Honorable Court's Order, dated December 10, 2018, please find enclosed a copy of the following materials, which I have filed in the lower court:

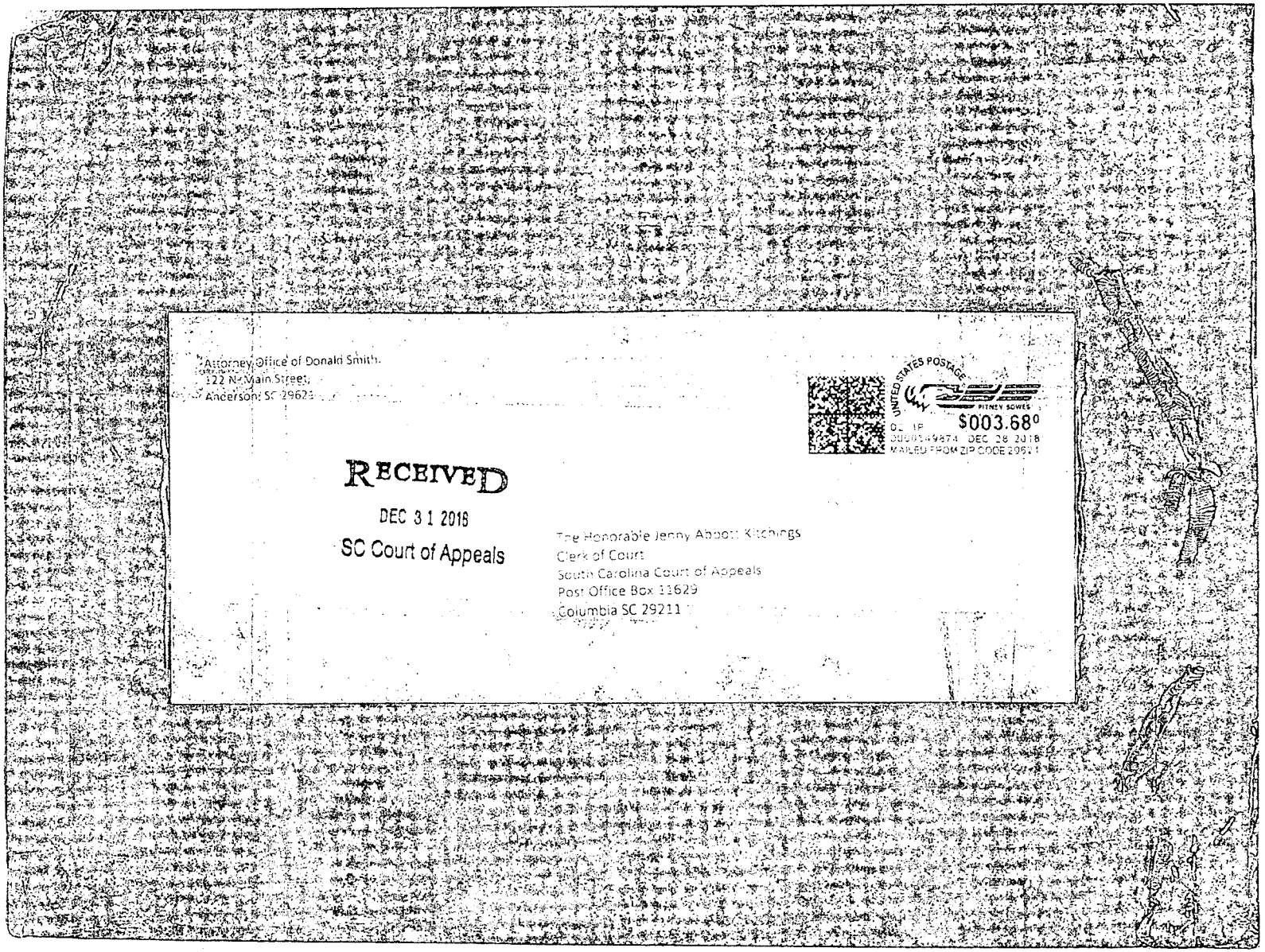
(1) One copy of Appellant's Motion for New Trial, with Exhibits;
(2) One copy of Appellant's Amended Motion for New Trial;
(3) Proof of Service for same.

Sincerely,

Donald L. Smith, (SC Bar#6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Appellant

cc:

Mr. Alan McCrory Wilson, Esquire, South Carolina Attorney General
Mr. Samuel Marion Bailey, Esquire, Assistant Attorney General
Ms. Chelsey L. Moore, Esquire, Assistant Solicitor for the Tenth Judicial Circuit



Attorney Office of Donald Smith
122 N Main Street
Anderson SC 29621

UNITED STATES POSTAGE
PITNEY BOWES
$003.68⁰
DEC 28 2018
MAILED FROM ZIP CODE 29621

RECEIVED
DEC 31 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

NOTICE AND MOTION FOR RECONSIDERATION 01/14/2019

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON The State of South Carolina, Plaintiff v. Jason Franklin Carver, Defendant.	)	IN THE COURT OF GENERAL SESSIONS TENTH JUDICIAL CIRCUIT Case No.: 2016A05324 **DEFENDANT'S NOTICE AND MOTION FOR RECONSIDERATION**

A TRUE COPY
JAN 14 2019
ANDERSON CLERK OF COURT

PLEASE TAKE NOTICE, pursuant to Rule 59(e), SCRCP, Defendant Jason Carver, (hereinafter referred as "Carver"), by and through counsel, and moves to reconsider the Court's Order dated January 4, 2019 (referred as the "Order"). Defendant seek rulings on matters that the Court did not address in its Order; Defendant seeks the Court's reasons for deciding certain matters where no reasons are given; and, Defendants seek for the Court to reconsider its findings and correct its errors based on the record and the law.

Carver moves to reconsider the Order based on: (1) exceptions to particular statements, findings, and conclusions in the order; (2) its failure to address Carver's contentions regarding newly-discovered or after-discovered evidence, and (3) the judge's apparent bias against Carver.

I. INTRODUCTION

Defendant Carver and Woodrow Curry were charged with the death of Steven Cameron on March 28, 2016. Curry admitted to shooting Cameron and pleaded to a lesser crime. He pled guilty to voluntary manslaughter. His sentence was put on hold as he testified in Carver's trial. Meanwhile, on the strength of Curry's admission that Carver was with him during the shooting incident, Carver was convicted of murder on August 25, 2017. Carver moved to vacate or arrest the verdict; or, in the alternative, a new trial, but was denied in an Order, dated September 14, 2017. Carver perfected his appeal. He was finalizing the record on appeal when he learned of

2017. Carver perfected his appeal. He was finalizing the record on appeal when he learned of the trial for James Milton Gambrell. Curry identified Gambrell as the one who instructed them to go to Cameron's house to either get the stolen item or its equivalent in monetary value, as well as provided them with guns. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder." Witnesses from the Carver case, such as Detective Kreig Marzolf and Curry, took the witness stand against Gambrell. These two witnesses offered statements that were either not introduced or ran inconsistent with their previous testimonies in Carver's case. He believed that these statements should be explored in depth as they go through the very core of the crime for which Carver was convicted and sentenced to thirty (30) years of imprisonment.

On October 19, 2018, Carver moved to hold his appeal in abeyance based on newly discovered evidence. On December 10, 2018, the Court of Appeals granted Carver's motion. Carver filed his motion for new trial on December 20, 2018 and amended the same on December 27, 2018. On January 4, 2019, Judge McIntosh summarily denied Carver's amended motion for new trial. (Exhibit 1- Order on Defendant's Amended Motion for a New Trial, January 4, 2019).

II. ARGUMENTS

A. DEFENDANT CARVER IS ENTITLED TO A RECONSIDERATION BASED ON EXCEPTIONS TO PARTICULAR STATEMENTS, FINDINGS, AND CONCLUSIONS IN THE ORDER

The trial judge denied Defendant Carver's motion for new trial citing the case of State v. Taylor, 348 S.C. 152, 558 S.E.2d 917 (Ct. App. 2001); and, stating that there was competent evidence admitted, to sustain the jury's verdict of guilty and the court may not substitute judgment for that of the jury.

Taylor, an employee of South Carolina Department of Motor Vehicle (SCDMV), was arrested for unlawful issuance of fictitious driver's license. She was accused of processing the driver's licenses for two (2) individuals who did not present any identification. At the close of the State's case, Taylor moved for directed verdict, which was denied by the trial court. The jury returned a verdict of guilty. Taylor moved for verdict in arrest of judgment, motion for new trial and an entry of judgment of acquittal. The trial judge granted the verdict in arrest of judgment and acquitted Taylor. The State appealed. The Court of Appeals affirmed the original guilty verdict.

The Court of Appeals found that the driver's licenses and the testimonies of the two individuals who obtained the license from her without proper identification, documentation or written and driving tests were sufficient to convict her of the offense.

Taylor did not present any newly-discovered or after-discovered evidence, nor did she question the sufficiency of evidence presented against her. In fact, she did not offer any defense except the argument that the license could not have been fictitious because they were issued by the SCDMV.

In the present case, Carver submitted new evidence to substantiate his claims. Carver presented trial transcripts and Affidavits that negated prosecution's theory and exposed its witnesses' manufactured statements.

B. DEFENDANT CARVER IS ENTITLED TO NEW TRIAL BECAUSE HE CHALLENGES THE VERY CREDIBILITY OF THE EVIDENCE PRESENTED AGAINST HIM.

During Carver's trial, Curry admitted that he had two (2) guns on the day of the shooting. In an attempt to implicate Carver, Curry testified that Carver had a gun when they went to Cameron's home.

During Carver's trial, Curry admitted that he had two (2) guns on the day of the shooting. In an attempt to implicate Carver, Curry testified that Carver had a gun when they went to Cameron's home.

Q. Did you have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did you get that gun?
A. Milton Gambrell.
Q. Did Jason Carver have a gun when you left Appaloosa Drive?
A. Yes.
Q. Where did he get that gun?
A. It was his.
Q. Did you have more than one gun with with you?
A. Yes.
Q. How many guns did you have?
A. Two.
Q. Do you remember what kind of guns they were?
A. .38 and a .22--.25, I mean.

(Exhibit 2A- Transcript of Trial of Jason Carver, 52-53).

However, in the same trial, Curry contradicted himself.

Q. And the weapon that you said that you had seen, was that the same weapon that you allege that he had at this time?
A. I don't know that he owned one.
Q. The one with the sight on it, the one that he allegedly brought out and showed you previous to his incident, you still don't know what that is?
A. No, sir.

(Exhibit 2B- Transcript of Trial of Jason Carver, P. 54).

Carver also introduced Gambrell's Affidavit, which directly negated Curry's claim.

AFFIDAVIT OF JAMES MILTON GAMBRELL

Personally, appeared before me, James Milton Gambrell, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

Woodrow Curry did not have a phone at the time he shot Steven Cameron.

Woodrow Curry did not call me between the time he left my house with Jason Carver, and the time they returned.

Jason Carver did not have a gun on March 28 or 29, 2019.

The only gun I saw Jason with was his brother's gun, approximately one year before the incident, or longer.

(Exhibit 3- Gambrell Affidavit, November 30, 2018).

Carver also submitted transcripts of Curry's testimony during Gambrell's trial that showed statements which are either inconsistent from his claims during Curry's trial, or downright false.

Q. Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your cell phone? Which is the truth?
A. I called him on the cell phone.
Q. Why is this the first time you're saying this?
A. First time I recall being asked.
Q. Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.
A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean...

(Exhibit 4A- Trial Transcript of James Gambrell, PP. 85-86).

Q. Okay. So the first trial, you testified that

after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house --

A. Uh-huh.

Q. -- that you shot the guy.

A. I don't recall that, but if you say I did, I did.

Q. Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?

A. He didn't ask.

Q. Didn't you say something like, "Well, things just went crazy and I shot him"?

A. No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.

Q. You said the way back over there?

A. On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."

Q. Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?

A. Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?

Q. No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.

A. Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.

Q. So you're telling this jury –

A. The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.

Q. My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?

A. It's the first time it's been asked.

Q. The detectives never asked you the details of what happened?

A. Not that I recall.

(Exhibit 4B-Trial Transcript of Gambrell, P. 86-88).

During Carver's trial, Curry did not divulge having called anyone on the way to Gambrell's house. After the passage of more than one year from the shooting, Curry volunteered such information—that he called Gambrell on his way back to the latter's house. Curry attempted to evade responsibility for his inconsistencies, and/or downright lies by laying the blame on the drugs that he had taken. What Curry did not disclose at that time was, that prior to Gambrell's trial, the prosecutor visited him and handed him questions, presumably to prepare him for his cross examination. This is the only logical explanation for Curry's suddenly vivid recollections of what allegedly transpired on the night of Cameron's shooting.

Carver believes that the prosecution offered unreliable witnesses such as Curry and Marzolf. Firstly, during Gambrell's trial, Detective Marzolf testified that one of his detectives talked to a neighbor who overheard about an argument between Cameron and unidentified person wherein the word "dirt bike" was mentioned. This information was not mentioned in previous reports, nor was it divulged when Marzolf testified during Carver's trial.

20. Q. So when you mentioned that on the first video that
21. a neighbor had heard the argument and heard what went
22. on down that night, that just was not true, correct?
23. A. Actually, that was true. We had -- during the
24. neighborhood canvass, it's my understanding that one of
25. the detectives talked with a neighbor who overheard an
01. argument and the words "dirt bike" were mentioned
02. during the argument.
03. Q. Did they hear gunshots?
04. A. No one -- I don't recall. I don't recall if
05. somebody heard gunshots or not. I know that they
06. talked to several people in the neighborhood.

(Exhibit 4C- Trial Transcript of James Gambrell, PP. 78-79).

15. A All I know is what, you know, what the detective
16. that was told to canvass told me, which was that, you

17. know, somebody had overheard an argument involving the
18. words "dirt bike."
19. Q. But no gunshots?
20. A. I don't recall if they had heard gunshots or not,
21. sir. I don't want to tell you the wrong thing.

(Exhibit 4C- Trial Transcript of James Gambrell, P. 79).

Carver maintains that this should have been disclosed in the previous trial as this confirms what he has long been saying: that he was being sent back to Cameron in relation to the sale of the dirt bike. This statement goes through his lack of criminal intent.

Secondly, Marzolf denied having knowledge of Cameron's volatile behavior. (Exhibit 2C- Trial Transcript of Jason Carver, P. 47). However, during Gambrell's trial, he admitted that he got hold of a supplemental report from Officer Scott Hill who interviewed a neighbor who recounted the Cameron's volatile behavior. (Exhibit 2C-Trial Transcript of Jason Carver, P. 47). Marzolf, himself interviewed Cameron's siblings, Erica and Christopher. Erica told him of Cameron's history of domestic violence against his wife. (Exhibit 4D- Trial Transcript of James Gambrell P. 97). Christopher stated that Cameron had punched him at one instance and jumped on his daughter and left bruises on her. (Exhibit 4D- Trial Transcript of James Gambrell P. 97).

Thirdly, Marzolf testified not having knowledge of, nor even participated in, Curry's plea-bargaining deal. But in his Affidavit, Curry exposed that it was Marzolf and the prosecutor's idea to reduce his charges in exchange for testifying against Carver and Gambrell. (Exhibit 5- Affidavit of Curry). Marzolf has shown no qualms in offering false testimonies.

Carver has also presented evidence of prosecution's misconduct. In his Affidavit, Curry disclosed meeting the prosecution and Marzolf three (3) times. (Exhibit 5- Affidavit of Curry). The defense was provided only two (2) video interviews. The prosecution did not present a recording of their visit where they (prosecution and Marzolf) spoke to Curry on his manslaughter

deal. Carver was not shown the video of what the prosecution offered Curry. This is tantamount to suppressing or withholding evidence that is material to the judicial process. Furthermore, the prosecution met with Curry prior to the Gambrell trial, and coached him regarding his pending testimony, providing him with written questions which were not provided to Carver. The prosecution offered a list of questions on solicitor letterhead. However, a copy of the actual list of questions was not provided.

Curry's sentence was suspended for over one year, in contrast to the Court's Order stating that it will only last until after Carver's trial. The deferment extended to Gambrell's trial; so, he could testify against Gambrell. Curry testified that he called Gambrell on the way back to the latter's house to inform him of Cameron's shooting. This was obviously made to implicate Gambrell; and, strengthen the State's theory of conspiracy. The problem is that this statement was not offered at Carver's trial, which makes it questionable. Furthermore, Curry had no cellphone on that day. (Gambrell Affidavit). The State clearly solicited false testimony by offering Curry special consideration, at the very least by implication. This is further aggravated by the fact that the prosecution knowingly allowing Curry to provide false statements or give wrong information.

There is also too much diversity in the prosecution of the cases against Carver, Curry and Gambrell. During Carver's trial, the prosecutor argued that all three were liable under the "hand of one is hand of all" doctrine. Carver and Curry were charged with murder, while Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder". So, it was as if "the hand of one is hand of all" doctrine was only applied to Carver, and not to Gambrell.

C. DEFENDANT CARVER IS ENTITLED TO RECONSIDERATION DUE TO THE JUDICIAL BIASES

Carver submits that the trial judge has shown judicial bias against him throughout the State's prosecution.

Firstly, the trial judge recognized the prosecution's numerous violations of the rules of discovery; yet, made only veiled threats of future sanctions for similar conduct.

The South Carolina Rules of Criminal Procedure provide rules for discovery.

> 112. DISCOVERY & DISCLOSURE
>
> (a) Disclosure of Evidence by the State. Upon the motion or request of the defendant, the State shall disclose to the defendant the following information and material, whether in the possession, custody, or control of the prosecution or one of the prosecution's agents
>
> (4) Documents and Tangible Objects. The State shall disclose the existence of, and shall allow the defense to review, inspect, and copy all documents and tangible objects associated with or related to the investigation of the case.
>
> (d) Time and Manner of Disclosure.
>
> (1) The State and defense shall disclose all discoverable material either in their possession or available to them within thirty (30) days of the receipt of any motion or request for disclosure.

The State has a duty to provide discovery within thirty (30) days of the service of the discovery request. The investigation was completed by the end of April or May, in 2016. The discovery was requested in October. The State claimed to have offered Mr. Carver discovery in December 2016, well-past the 30-day deadline under the law. More importantly, the USB drive supposedly containing the discovery could not be opened. It was as if the discovery had not been provided. The State had issues with their ability to open their discovery throughout the trial.

Carver's counsel alerted the State that he could not review the discovery on March 7, 2017. It submitted a vast array of discovery only after July 4th.

Included in this discovery, was thirty-six (36) hours of video surveillance from the neighborhood where the victim lost his life. During cross-examination, Detective Marzolf was questioned regarding statements that he had in his notes where members of the victim's family had broached the topic that someone had been to the home; rolled the victim; and, most likely looted his house for drugs or money during the morning hours. Detective Marzolf said that the sources "were not credible". When defense counsel inquired about playing certain aspects of the surveillance, the solicitor's response was that it would take three (3) days to break down the *thirty-six (36) hours* of video.

When defense counsel received the USB drive containing the video from the various neighborhood cameras, the video consisted of fifteen (15) hours of video. As a result of the difficulty opening the USB, the State provided the video on CDs. It was at that point that a two (2) hour discrepancy was discovered. There was no notation indicating a two-hour discrepancy existed. The individual who reviewed the video for the ACSO did not indicate that there was a two-hour gap. The two-hour discrepancy occurred around the time that the victim's body had been rolled.

Following trial, the surveillance materials on the USB were given to an expert to attempt to open. He was unable to open the surveillance. This is significant because in her closing remarks, the prosecutor aggressively argued that Carver, along with Curry and Gambrell, intended to commit a crime in going to Cameron's house. The prosecutor's own words were:

04. So what happened here is that Milton
05. Gambrell, a known drug dealer, Mr. Smith just
06. told you all about that, sent his two "do
07. boys" --that is what Woodrow Curry called

himself and Carver on the stand --they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all. Now, you also heard Detective Marzolf. Mr. Smith asked Detective Marzolf what crime they were going to commit. Detective Marzolf said, 'Well, when you're taking someone from one place to another and they don't want to go with you, that's kidnaping.' 'When you point a gun at someone and ask them to give you money for drugs, that's armed robbery.' As I've told you more than once, what they were participating in was drug distribution.

(Exhibit 4D- Trial Transcript of James Gambrell P. 97. 56).

Carver submits that the video surveillance would negate the State's theory because it would show that neither Carver nor Curry took time to look for drugs or money from Cameron. If the original intent was to rob Cameron, then Curry and Carver would have stayed and look for the money, because that was allegedly the instructions. It is alleged that the video showed that there were other people who came to Cameron's house, a fact that was admitted by his own relatives.

Despite the blatant violations of discovery rules by the State, the trial judge allowed the matter to proceed. The trial judge turned against Carver's failure to view the 36-hour long video; and, analyzed the same, along with the other materials submitted to him two-weeks prior to the trial. The court failed to consider that Carver's counsel is a sole proprietor, whom unlike the prosecution did not have enough manpower and resources to devote to a comprehensive analysis of the plethora of delayed discovery materials. The delay in the discovery is made that much more egregious by the fact that they State withheld the materials for greater than one year past its own review.

In failing to submit the video surveillance and required discovery materials within the reglementary period, the State essentially denied Carver his right to prepare for his defense. The Court noted that this was not the first instance that the prosecution delayed the submission of discovery materials in its possession. The delay in providing discovery materials to defense counsel seemed to have become the norm. This issue should have been addressed by the trial judge.

Secondly, Carver was indicted for Murder. It was expressly stated in the Indictment that he shot the victim with a gun.

> At a Court of General Sessions, convened on ----------NOV 1 5 2016, the Grand Jurors of Anderson County present upon their oath:
>
> MURDER
>
> That Jason Franklin Carver did in Anderson County, on or between March 28, 2016, and March 29, 2016, unlawfully and with malice aforethought, either express or implied, kill Steven Cameron by means of shooting the victim with a gun, and the victim died as a proximate result thereof. All in violation of §16-3-10, 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.

(Exhibit 6- Carver Indictment, November 15, 2016).

Nowhere in the Indictment did it state that Carver was being indicted under the "hand of one is hand of all" theory. There is no language used indicating that the state charged Carver under said theory. It was only during the trial that the State brought up the "hand of one is hand of all" theory. By doing so, it allowed the State to introduce robbery, kidnapping and drug distribution as the motive for the murder.

Under this accomplice liability theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose." Mattison, 388 S.C. at 479, 697 S.E.2d at 584. Carver submits that if the State's argument as to Curry's credibility be considered, then the court should take note of the entirety of his testimonies, where he vehemently and consistently denied a plan to commit a crime.

Q. Did you go over there with the intent to kill Mr. Cameron?
A. No, sir.
Q. Did anybody tell you to go kill him?
A. No, sir.
Q. Did anybody tell you to go beat him up?
A. No, sir.
Q. Did anybody tell you to go threaten that you were going to beat him up?
A. No, sir. I was just told to go get the dope or get paid for it.
Q. What does that mean --
A. I never intended to --
Q. What does that mean, you were told to steal the dope from him?
A. No. I was just told to go and retrieve it. He stole the dope.
Q. What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A. Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.

(Exhibit 4E- Trial Transcript of James Gambrell, P. 92).

Q. Well, isn't it true that what Mr. Gambrell wanted you to do was to relay the message that he knew Mr. Cameron had the drugs and that he should either pay for them or give the drugs back, correct?
A. I don't know what he was thinking.
Q. All right. But you are positive he did not tell you to go intimidate Mr. Cameron?
A. Right.
Q. He did not tell you to threaten Mr. Cameron in any

01. way?
02. A. No, sir.

(Exhibit 4F- Trial Transcript of James Gambrell P. 97).

Curry categorically denied any plan to commit any crime. Curry stated there was no plan nor instruction to intimidate, rob, hurt or kill Cameron. As Curry testified, he shot Cameron because the latter was aggressively advancing towards him. It was Curry's decision, and his alone, to bring a gun, to raise and aim the gun and to shoot at Cameron. Carver had successfully persuaded Curry to leave the gun that he had taken from Gambrell's house in the car. Curry used a gun that Carver was unaware of to shoot Cameron. It was Curry who shot Cameron, not Carver. Curry was the sole perpetrator of the crime of murder. Despite all these admissions from Curry, the trial judge proceeded to charge the jury with the "hand of one is hand of all" theory and try Carver for murder.

Thirdly, Carver reiterates that the trial judge has shown bias against him. In several instances, the trial judge made questionable rulings, such as ruling on sustaining when there was no objection.

12. Q. Mr. Curry told you that he left the
13. gun in the car; right?
14. Q. Yes.
15. Q. So we are here today and you're
16. saying that Mr. Carver did what?
17. SOLICITOR MOORE: Uh—
18. THE COURT: Sustained.

(Exhibit 2E- Trial Transcript of Jason Carver P. 67).

Or sustained an objection that has no grounds:

06. Q. Mr. Gambrell was aware of the
07. pistol, the .38 being picked up?
08. SOLICITOR MOORE: Objection, Your Honor.
09. THE COURT: Sustained.
10. SOLICITOR MOORE: Thank you.

CROSS EXAMINATION CONTINUED
BY MR. SMITH:
Q. That weapon was not utilized in this event to our knowledge?
SOLICITOR MOORE: Objection, You Honor.
THE COURT: Asked and answered. Move forward, please.

(Exhibit 2F- Trial Transcript of Jason Carver, P. 68).

Fourthly, Carver believes that the trial judge showed his bias when he made conclusory statements as below:

MR. SMITH: It shows that what they've provided, his statements and things in evidence supports what he said from a non-criminal standpoint. There was no criminal thought in this matter. That's what he says.
THE COURT: Well, I'll look at it. Quite frankly, I think you're just wrong. I think that if your client went to go pick up money or drugs, that's a criminal act in and of itself. If you don't think so, then we have a disagreement about that.

(Exhibit 2G- Trial Transcript of Jason Carver, P. 69).

THE COURT: Well, let me think about that on the hand of one, hand of all. But here are my thoughts on that. First, I don't think that it exculpates your client, the reason being --I think that they had a criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence. So, if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s)

in carrying out the common plan or purpose."
So therefore -- although I think probably that
your client did not know that a gun—that he
was going to shoot this fellow, but—the
cases recognize the connection between guns,
drugs and violence where the plan was illegal
and it just spiraled out of hand.
So, the jury may believe that he was an
innocent bystander, but that's my belief as to
why the video of Mr. Gambrell does not
exculpate your client. "

(Exhibit 2H- Trial Transcript of James Carver. 70).

The preceding statements were replete with prejudice considering that Carver disputed knowledge of Curry and Gambrell's motives (including stolen drugs and hidden guns) in summoning Cameron back to Gambrell's house. By his statements in court, the judge was convinced that the "hand of one is hand of all" doctrine is applicable in this case, while they were still in the middle of the trial, and that defense was presenting arguments to negate the doctrine.

Fifthly, Carver believes that the judge acted beyond judicial propriety during this trial, Carver called upon Gambrell to testify as to Carver's understanding of the necessity to return to victim's home. This then would rule out conspiracy or unity in purpose and action. As soon as Gambrell was called to the stand, the trial judge repeatedly advised Gambrell of his rights against self-incrimination. Gambrell insisted on testifying. When he started to explain about the missing cocaine, the Court unilaterally put a halt to his testimony. Gambrell had been advised by his learned counsel to plead the Fifth. Gambrell stood firm on testifying. When the cross examination of Gambrell turned to his supposed instructions, the judge stepped in for the third time. The Court helped him understand that he needed to go out in the hallway to further discuss

the matter with his attorney. Gambrell never returned to the stand. Without a peep from Gambrell's counsel, the trial judge insisted Gambrell confer with him.

THE COURT: At this point I need to advise you of your rights under the Fifth Amendment of the United States Constitution which says in part that no person can be compelled in a criminal case to be a witness against themself. Do you understand your rights?
WITNESS: Yes, sir.
THE COURT: That means that you can't be required to testify against yourself, the State can't require you to, I can't require you to. Nobody can.
You have the right to refuse any question asked of you, anything that gives you reasonable cause to believe that the answer, if given, might tend to incriminate you as charged.
If you wish to exercise your right under the Fifth Amendment, you will state that to the court. You will say, "I refuse to answer the question because the answer to the question may tend to incriminate me." Do you understand that?
WITNESS: Yes, sir.
THE COURT: And let me advise you further that your statement is not the final decision as to whether or not your answer to the question would violate the Fifth Amendment. I will ultimately make that decision. Do you understand?
WITNESS: Say that again, sir?
THE COURT: Just because you exercise your right by saying "I refuse to answer the question because the answer may tend to incriminate me" does not mean that is the end of the inquiry. I will make the final determination as to whether or not you will have to answer the question. Do you understand?
WITNESS: Yes, sir.

(Exhibit 2I- Trial Transcript of Jason Carver, PP. 2.4).

THE COURT. Mr. Phillips, do you have a matter you wish to bring up on the record?

MR. PHILLIPS. Yes, sir. I have advised my client not to testify in this case. He originally chose to testify. I am again advising him to exercise his Fifth Amendment right and not to testify in this case from this point forward.

THE COURT: Do you wish to honor your attorney's advice, Mr. Gambrell?

WITNESS: (No verbal response).

THE COURT: In other words, do you want to testify or do you want to exercise your rights under --on your attorney's advice to exercise your rights under the Fifth not to testify?

WITNESS: I don't really understand

THE COURT: Well, let me tell you this, Mr. Gambrell. Your testimony in this case is being transcribed and it will be obtained by the State and used against you in the upcoming trial against yourself, or it can be, Do you understand that?

WITNESS: Yes, sir.

THE COURT: Now, your attorney --I gave you your rights under the Fifth Amendment and you told me that you understood them. Is that correct?

WITNESS: I am trying to understand them.

THE COURT: Well, sir, either you understand them or you don't. You told me that you did. What I told you is that under the Fifth Amendment to the United States Constitution that no person can be compelled to testify against himself in a criminal trial. Do you understand that?

WITNESS: Yes, sir.

THE COURT: And effectively what you are potentially doing is testifying against yourself because this testimony will be or can be used against you in your trial later, if you continue to testify. Do you understand?

WITNESS: (Pause) --yes, sir.

THE COURT: Okay, sir. Now, Mr. Phillips, who is your attorney for your criminal charges has just stated that he's advised you not to testify and he's re-advised you not to testify any further. Do you understand that?

WITNESS: (No verbal response).

THE COURT: Do you understand that, Mr. Gambrell?

WITNESS: Yes, sir.

THE COURT: Now, you have a right – the only person who can exercise their right under the Fifth Amendment is yourself. It is advisable to listen to an attorney, however the ultimate decision as to whether or not you wish to continue to testify in this proceeding is your decision, yours alone to make.

WITNESS: Yes, sir.

THE COURT: Okay. You have to make that decision knowing your rights under the Fifth Amendment and also knowing the consequences to you if you continue to testify.

That is that --the consequence are that the State can and will obtain the transcript of your testimony and when you are called to trial they can use that against you in the courtroom. Do you understand? In front of the jury?

WITNESS: Yes, sir.

THE COURT: Now, the question is, do you wish to testify or do you wish to exercise your Fifth Amendment rights and not testify; take your attorney's advice not to testify?

WITNESS: (No verbal response).

THE COURT: Would you like to speak with your attorney further?

WITNESS: Yes, sir.

THE COURT: Would you take him in the hallway, Mr. Phillips?

(BRIEF RECESS -COUNSEL PHILLIPS AND WITNESS TO CONSULT OUTSIDE COURTROOM)

(Exhibit 2J- Trial Transcript of Jason Carver, PP. 5.8).

Carver raises his concerns on the judge's overzealous efforts to convince Mr. Gambrell about pleading his Fifth Amendment Rights, which he invoked, then waived, and invoked again after repeated warnings by the judge. As Supreme Court noted in *Webb v. Texas*, 409 S. 95, 98 (1972)- a trial judge's efforts to protect a defense witness—in this case, from prosecution for perjury—may impermissibly intrude upon a defendant's right to produce evidence. Plaintiff believes that the Court assumed the role of the prosecution and goaded Gambrell into pleading the Fifth, when he had refused to exercise *his* right.

More importantly, Carver questions the propriety of the court's ruling on refusing to let Gambrell take the witness stand for pleading the Fifth, striking his entire testimony, and refusing to allow Carver to call him on the witness stand to plead the Fifth in front of the jury.

The witness' privilege against self-incrimination does not provide an absolute right to remain silent. It is well settled that a witness, who is not also a defendant, can invoke that privilege only after the incriminating question has been asked. *State v. McGuire*, 272 S.C. 550-551. In short, unlike Carver (or a co-defendant) who is called to testify, a witness must invoke the privilege to specific questions, and may not assert "blanket privilege". Gambrell should have been allowed to take the stand and invoke the privilege in response to each question that could yield a self-incriminatory answer, but not to completely refuse to testify. The Court presiding over the proceeding in which a Fifth Amendment privilege is claimed has a duty to scrutinize a witness' invocation of the privilege. In the instant case, the trial judge did not propound any question upon Gambrell to get by his Sixth Amendment Right.[1]

[1] The Sixth Amendment guarantees the rights of criminal defendants, including the right to a public trial without unnecessary delay, the right to a lawyer, the right to an impartial jury, and the right to know who your accusers are and the nature of the charges and evidence against you. It has been most visibly tested in a series of cases involving terrorism, but much more often figures in cases that involve (for example) jury selection or the protection of witnesses, including victims of sex crimes as well as witnesses in need of protection from retaliation.

The State contends that Gambrell, Curry and Carver planned to commit the felony of murder or kidnapping simply because Curry was armed. Carver had not figured in any discussion about Gambrell's guns. It had always been Curry who either took it from Gambrell or received it from him.

Sixthly, the trial judge also denied Carver his right to present witnesses. Carver's counsel subpoenaed Dequavious Gambrell, Milton Gambrell's nephew, and his friend, Tykeon Gardner. Dequavious had purchased the motorcycle from Cameron that day. When the defense called the witnesses, neither of them were available to testify. The Court did not attempt to compel the presence of the witnesses with any significance. Carver asked for continuance, which the judge summarily denied. The defense's Motion for Continuance, which was raised when the witnesses subpoenaed by Carver failed to appear to testify, was summarily dismissed by the judge. Carver believes that the Court had a duty to compel the witnesses who have been subpoenaed properly, so to give Mr. Carver some semblance of equity.

Carver avers that the judge's actions in prohibiting and/or denying his right to call his witnesses (Dequavious and Tykeon), were both arbitrary and capricious.

> The right to offer the testimony of witnesses, and to compel their attendance if necessary is a plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury, so it may decide where the truth lies Just as an accused has the right to confront the prosecution's witnesses for the purpose or challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Washington v. Texas, 388 U.S. 14, 19 (1967).

This was in direct violation of Carver's Sixth Amendment Rights.

Carver recognizes that a violation of a defendant's Sixth Amendment right to confront a witness or present one is not per se reversible error if the error is harmless beyond a reasonable doubt. State v. Graham, 315 S.C. 383, 385, 444 S.E. 2d 525, 527 (1994). Error is harmless where it could not reasonably have affected the result of the trial. In Re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003).

Carver submits that Gambrell's, Dequavious' and Tykeon's respective testimonies were critical to the case's outcome. Carver asserts that they will testify to his motive/intent in returning to Cameron's house. Gambrell will testify to the following: (1) He sent Carver to Cameron with instructions to return the latter to Gambrell's house; (2) He did not give any gun to Curry; (3) He did not inform Carver of the stolen item when the latter drove back to Cameron's; (4) Carver did not have a gun with him on the day of the incident; (5) Curry did not call Gambrell between the time Carver and Curry left his house and the time they returned; and, (6) He did not instruct Curry to kill, rob or sell anything to Cameron. Gambrell's testimony will provide the crucial nexus establishing Carver's innocence. Dequavious and Tykeon will testify, among other things, to the bike transaction with Cameron, which was witnessed by Carver.

Seventhly, the trial judge also denied Carver's attempt to introduce in evidence the audiotape of Gambrell's interview with the ACSO officers as an exception to the hearsay rule. Gambrell can be considered as an unavailable declarant under the doctrine laid down in the State v. Doctor, 413 S.E.2d. 36. The judge insisted that contents of the Gambrell's interview would not exculpate Carver, nor were they clearly corroborated by evidence that indicates the trustworthiness of Gambrell's statement. With the new developments in this case, Carver could not have provided evidence that would corroborate the trustworthiness of Gambrell's testimonies because of the lies and conflicting statements that Curry perpetuated.

From the foregoing, Plaintiff believed that the trial judge sought, and/or prevented Gambrell from testifying in court. By his actions, he had improperly swayed a witness. The judge's failure to adhere to the neutrality and non-biased work required by his position, tainted the proceeding, as it is a violation of the Code of Conduct for U.S. Judges and the Judicial Conduct and Disability Rules.

The crux of the State's case against Carver is Curry's testimony that (1) Carver knew about the missing cocaine; (2) Gambrell instructed them to pick up Cameron, get the missing cocaine or get the monetary equivalent for the same; and (3) that Carver had a gun with him when they drove to Cameron's. The State contended that these acts, among others, showed a plan or agreement to commit either robbery, murder or kidnapping. In fact, there was no act that could be considered an element of robbery. In addition, there was no evidence that illustrated an element of kidnapping. Despite these ***facts,*** the Court overruled defense's objection to the State's discussion of either robbery or kidnapping. Now that Carver has presented evidence to negate all of Curry's statements pertaining to the aforementioned matters, it is in the interest of justice that this court afford Carver a chance to be heard by a new set of jurors.

Generally, the grant or refusal of a new trial is within the trial judge's discretion and will not be disturbed on appeal without a clear abuse of that discretion. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." State v. Hughes, 346 S.C. 339, 342, 552 S.E.2d 35, 36 (Ct.App.2001).

Considering that Curry's testimony is the cornerstone of the State's evidence in both cases, Carver asserts that the State has no evidence. Curry cannot be considered credible witness when evidence showed that when his testimony changes to fit the prosecutor's needs, false and

inconsistent. Carver has submitted evidence to support his claims. Thus, the Court's denial of the motion for new trial is not supported by evidence.

Secondly, Carver believes that in denying the motion for new trial by merely stating that there was competent evidence to sustain the jury's verdict, the trial judge erred in failing to recognize that the essence of Carver's motion is to challenge the very competency of the evidence in his trial. To allow the trial judge to deny the motion for new trial without addressing the new evidence presented by Carver defeats the purpose of the provision on new trial based on newly discovered evidence.

CONCLUSION

For the foregoing reasons, Defendant Carver respectfully requests this Honorable Court to reconsider its Order, dated January 4, 2019, and allow Carver to present his newly discovered evidence to the Court in an evidentiary hearing; or, simply grant the motion for new trial.

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

January 14, 2019

EXHIBITS

EXHIBIT 1
ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION
(JANUARY 4, 2018)

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF GENERAL SESSIONS TENTH JUDICIAL CIRCUIT
State of South Carolina Plaintiff,	)	Case No: 2016A05324
vs.	)	**Order on Defendant's Amended Motion for A New Trial**
Jason Franklin Carver Defendant.	)	

Defendant's filed an Amended Motion for a New Trial on December 27, 2018. It is Ordered that the Defendant's Amended Motion for a New Trial is denied without the necessity of a formal hearing. The court finds that there was competent evidence admitted to sustain the jury's verdict of guilty and the court may not substitute its judgment for that of the jury. *State v. Taylor*, 348 S.C. 152, 558 S.E.2d 917 (Ct.App. 2001).

A TRUE COPY
JAN - 4 2019
ANDERSON CLERK OF COURT

'19 JAN 3 PM 4:05:30
Anderson SC Circ. Ct/GS

Anderson, South Carolina.
January 3, 2019

R. LAWTON McINTOSH
PRESIDING CIRCUIT COURT JUDGE

EXHIBIT 2

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE VS. JASON CARVER 2016-GS-04-2279 AUG. 21-25, 2017

Q. Why were y'all going to Sterling Bridge Road?

A. To go retrieve — Milton had told us that Steven had stolen some drugs and that since Carver knew where his house was for us to go back over there and get either the dope or the money.

Q. Can you repeat that one more time. You said Carver knew where his house was.

A. Yes, ma' am.

Q. Was Carver, to your knowledge, the only person who knew where Steve Cameron lived?

A. Yes.

Q. Did you have a gun when you left Appaloosa Drive?

A. Yes.

Q. Where did you get that gun?

A. Milton Gambrell.

Q. Did Jason Carver have a gun when you left Appaloosa Drive?

A. Yes.

Q. Where did he get that gun?

A. It was his.

Q. Did you have more than one gun with

you?

A. Yes.

Q. How many guns did you have?

A. Two.

Q. Do you remember what kind of guns they were?

A. A .38 and a .22 — .25, I mean_

Q. Who drove to Sterling Bridge Road that night?

A. Uh, - Jason Carver_

Q. And you said that was because Jason knew where Steven Cameron lived?

A. Yeah.

Q. What car did he drive?

A. The white Buick.

Q. Where did y'all get that car?

A. It was his, Milton's_

Q. And what happened next, what happened after you left Appaloosa Drive?

A. We went over there and knocked on the door_ No one came to the door. The door looked like it hadn't been closed. So we just kinda of tapped a little harder and it come open. I didn't know if Steven had opened it or — but all of a sudden he come

sometimes. He was pretty laid back.

Q. And the weapon that you said that you had seen, was that the same weapon that you allege that he had at this time?

A. I don't know that he owned one.

Q. The one with the sight on it, the one that he allegedly brought out and showed you previous to this incident, you still don't know what that is?

A. No, sir.

Q. No doubt that the mini bike was sold to Quay?

A. No, sir. Yes, sir.

Q. And in fact a bill of sale was created?

A. Yes, sir.

Q. Green Grand Am, is that right?

A. Yes, sir.

MR. SMITH: I have nothing further, Your Honor.

THE COURT: Redirect?

SOLICITOR MOORE: No redirect, Your Honor.

THE COURT: May this witness be excused?

offense, from 2013?

A. Yeah, that sounds right.

Q. That sounds right?

A. (Affirmative nod).

Q. Okay. And you say that you're still being held on trafficking charges in Greenville?

A. Yes, ma'am.

Q. Is everything that you've told us here today the same thing that you told the detective who came to interview you or did your story change a little bit?

A. It's the same.

Q. When you originally spoke to detectives who did you say shot Steven Cameron?

A. I didn't.

Q. You didn't?

A. (Negative gesture).

Q. So you're telling us today who shot Steven Cameron?

A. Yes, ma'am. It just happened, I didn't mean to shoot him. He was just coming at me. I don't even remember pulling the trigger, it just went — (pause) — I wish I

is not titled to Woodrow Curry. It is titled to James Milton Gambrell of 310-B Appaloosa Drive, Greenville, South Carolina.

So what happened here is that Milton Gambrell, a known drug dealer, Mr. Smith just told you all about that, sent his two "do boys" -- that is what Woodrow Curry called himself and Carver on the stand -- they were his "do boys." He sent them in a car that he owned to collect on a drug debt. That is working together for an illegal purpose. That is the hand of one, hand of all.

Now, you also heard Detective Marzolf. Mr. Smith asked Detective Marzolf what crime they were going to commit. Detective Marzolf said, 'Well, when you're taking someone from one place to another and they don't want to go with you, that's kidnaping.' 'When you point a gun at someone and ask them to give you money for drugs, that's armed robbery.'

As I've told you more than once, what they were participating in was drug distribution.

Jason Carver knew that. He knew why they were going to this house. Mr. Smith told you

any of what transpired inside that vehicle on the way to that house.

Q. So you're assuming that he did?

A. No, sir. I am just saying that there were two guns and there were two guys in the car.

Q. But nobody knows that that .25 - there is no evidence, no one to say that anyone knew about the .25 other than Curry?

A. There is nothing to say that he didn't. I just don't know.

Q. Mr. Curry told you that he left the gun in the car; right?

A. Yes.

Q. So we are here today and you're saying that Mr. Carver did what?

SOLICITOR MOORE: Uh, ---

THE COURT: Sustained.

SOLICITOR MOORE: Thank you, Judge.

CROSS EXAINATION CONTINUED

BY MR. SMITH:

Q. Mr. Carver is charged with murder, right?

A. Yes, sir.

Q. And that is based on what?

A. Yes, sir.

Q. Now, is it your understanding that Mr. Carver was a witness to Mr. Curry shooting Mr. Cameron?

A. Yes, sir.

Q. Mr. Gambrell was aware of the pistol, the .38 being picked up?

SOLICITOR MOORE: Objection, Your Honor.

THE COURT: Sustained.

SOLICITOR MOORE: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. That weapon was not utilized in this event to our knowledge?

SOLICITOR MOORE: Objection, Your Honor.

THE COURT: Asked and answered. Move forward, please.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. The reports that you created were based on your interviews; right?

A. Yes, sir, - well, my interviews and reports from other investigators and witnesses throughout the course of the case.

Q. Do you believe that your reports

THE COURT: So what about the statement besides impeaching what Ms. Curry said, that her husband didn't threaten her or didn't do these things — what does it do to show that this guy is innocent?

MR. SMITH: It shows that what they've provided, his statements and things in evidence supports what he said from a non-criminal standpoint. There was no criminal thought in this matter. That's what he says.

THE COURT: Well, I'll look at it. Quite frankly, I think you're just wrong. I think that if your client went to go pick up money or drugs, that's a criminal act in and of itself. If you don't think so, then we have a disagreement about that.

MR. SMITH: Yes, sir.

THE COURT: Okay. Let's go ahead and view that. What were you going to say?

SOLICITOR MOORE: Your Honor, I was just going to say that if it might take time, Detective Marzolf can give a summary of his interview with James Gambrell.

THE COURT: He wants to see it live, and I'll be glad for you to pass it up but I

being the hand of all, statements given by police are not what we just witnessed. Not having an ability to place that before the jury when a man's life is at stake is prejudicial.

THE COURT: Well, let me think about that on the hand of one, hand of all. But here is my thoughts on that. First, I don't think that it exculpates your client, the reason being -- I think that they had a criminal enterprises regardless of the shooting; that is, 'go get him', go get this man, go get the drugs or go get the money like he said and the other officers testified to. If the jury finds that to be the case, that's a illegal plan or scheme in that they have -- the cases are replete with the nexus between drugs and guns, also drugs and violence.

So if you look at the charge of hand of one, hand of all, it says that "if two people join with another to commit an unlawful act then they are responsible for everything done by the other person which happens as a probable or natural consequence of the act(s) in carrying out the common plan or purpose."

been called as a witness in this case. It is my understanding that you are also a co-defendant along with Mr. Carver and Mr. Curry as to the incident in March of 2016_ Is that correct?

WITNESS: Yes, sir.

THE COURT: At this point I need to advise you of your rights under the Fifth Amendment of the United States Constitution which says in part that no person can be compelled in a criminal case to be a witness against themself. Do you understand your rights?

WITNESS: Yes, sir.

THE COURT: That means that you can't be required to testify against yourself, the State can't require you to, I can't require you to. Nobody can.

You have the right to refuse any question asked of you, anything that gives you reasonable cause to believe that the answer, if given, might tend to incriminate you as charged.

If you wish to exercise your right under the Fifth Amendment, you will state that to

the court_ You will say, "I refuse to answer the question because the answer to the question may tend to incriminate me." Do you understand that?

WITNESS: Yes, sir_

THE COURT: And let me advise you further that your statement is not the final decision as to whether or not your answer to the question would violate the Fifth Amendment. I will ultimately make that decision. Do you understand?

WITNESS: Say that again, sir?

THE COURT: Just because you exercise your right by saying "I refuse to answer the question because the answer may tend to incriminate me" does not mean that is the end of the inquiry. I will make the final determination as to whether or not you will have to answer the question. Do you understand?

WITNESS: Yes, sir.

THE COURT: Now, Mr. Phillips, let me ask you this. I think that I know the answer before we get started.

MR. PHILLIPS: Yes, sir?

THE COURT: Has -- do you represent Mr. Gambrell in the criminal charges?

MR. PHIILIPS: Yes.

THE COURT: And you've gone over his rights and the Fifth Amendment; is that correct?

MR. PHILLIPS: Yes.

THE COURT: Does your client intend to testify in this case?

MR. PHILLIPS: I don't believe so.

THE COURT: So you are not positive?

MR. PHILLIPS: I am ninety percent sure but I ---

THE COURT: Then, Mr. Smith, you may examine Mr. Gambrell.

MR. SMITH: Yes, sir, may it please the Court?

THE COURT: Yes, sir.

JAMES MILTON GAMBRELL, having been sworn to tell the truth, and nothing but the truth, testified as follows:

INCAMERA EXAMINATION

BY MR. SMITH:

Q. Mr. Gambrell, how old are you?

A. Fifty-eight.

Q. Because you couldn't talk to him by phone?

A. (Negative gesture), couldn't talk to him.

Q. So the only purpose was to go tell him that 'we know ...' ---

SOLICITOR MOORE: Your Honor, objection.

THE COURT: I sustain that objection. Just one second. Mr. Phillips — for the record, William Phillips represents Mr. Gambrell. If counsel could come up here.

(OFF RECORD BENCH CONFERENCE)

THE COURT: Mr. Phillips, do you have a matter to bring up on the record?

MR. PHILLIPS: Yes, sir. I have advised my client not to testify in this case. He originally chose to testify. I am again advising him to exercise his Fifth Amendment right and not to testify in this case from this point forward.

THE COURT.: Do you wish to honor your attorney's advice, Mr. Gambrell?

WITNESS: (No verbal response).

THE COURT: In other words, do you want to testify or do you want to exercise your

rights under -- on your attorney's advice to exercise your rights under the Fifth Amendment not to testify?

WITNESS: I don't really understand.

THE COURT: Well, let me tell you this, Mr. Gambrell. Your testimony in this case is being transcribed and it will be obtained by the State and used against you in the upcoming trial against yourself, or it can be. Do you understand that?

WITNESS: Yes, *sir.*

THE COURT: Now, your attorney -- I gave you your rights under the Fifth Amendment and you told me that you understood them. Is that correct?

WITNESS: I am trying to understand them.

THE COURT: Well, sir, either you understand them or you don't. You told me that you did. What I told you *is* that under the Fifth Amendment to the United States Constitution that no person can be compelled to testify against himself in a criminal trial. Do you understand that?

WITNESS: Yes, *sir.*

THE COURT: And effectively what you are potentially doing is testifying against yourself because this testimony will be or can be used against you in your trial later, if you continue to testify_ Do you understand?

WITNESS: (Pause) -- yes, sir_

THE COURT: Okay, sir- Now, Mr- Phillips, who is your attorney for your criminal charges has just stated that he's advised you not to testify and he's re-advised you not to testify any further- Do you understand that?

WITNESS: (No verbal response) -

THE COURT: Do you understand that, Mr- Gambrell?

WITNESS: Yes, sir-

THE COURT: Now, you have a right -- the only person who can exercise their right under the Fifth Amendment is yourself. It is advisable to listen to an attorney, however the ultimate decision as to whether or not you wish to continue to testify in this proceeding is your decision, yours alone to make.

WITNESS: Yes, sir-

THE COURT: Okay_ You have to make that decision knowing your rights under the Fifth Amendment and also knowing the consequences to you if you continue to testify_

That *is* that -- the consequence are that the State can and will obtain the transcript of your testimony and when you are called to trial they can use that against you in the courtroom. Do you understand? In front of the jury?

WITNESS: Yes, sir.

THE COURT: Now the question is, do you wish to testify or do you wish to exercise your Fifth Amendment rights and not testify; take your attorney's advice not to testify?

WITNESS: (No verbal response).

THE COURT: Would you like to speak with your attorney further?

WITNESS: Yes, sir.

THE COURT: Would you take him in the hallway, Mr. Phillips?

(BRIEF RECESS - COUNSEL PHILLIPS AND WITNESS TO CONSULT OUTSIDE COURTROOM)

EXHIBIT 3

AFFIDAVIT OF JAMES GAMBRELL (NOVEMBER 30, 2018)

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
State of South Carolina,)
vs.)
Jason Franklin Carver,)
Defendant,)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

AFFIDAVIT OF JAMES MILTON GAMBRELL

Personally, appeared before me, James Milton Gambrell, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

WOODROW CURRY DID NOT HAVE A PHONE AT THE TIME HE SHOT STEVEN CAMERON. JG

WOODROW CURRY DID NOT CALL ME BETWEEN THE TIME HE LEFT MY HOUSE WITH JASON CARVER AND THE TIME THEY RETURNED. JG

JASON CARVER DID NOT HAVE A GUN ON MARCH 28 OR 29 2016. JG

THE ONLY GUN THAT I SAW JASON WITH WAS HIS BROTHER'S GUN, APPROXIMATELY One year before the incident, or longer. JG

James Milton Gambrell

Anthony W Evans
Printed Name of Witness

Signature of Witness

SWORN before me this 30th day of November 2018.

Donald L. Smith
Notary Public for South Carolina
My Commission Expires: November 18, 2024

EXHIBIT 4

EXCERPTS OF TRIAL TRANSCRIPT FOR STATE V. JAMES GAMBRELL 2016-GS-04-02312 & GS-04-02234 SEPTEMBER 5, 2018

Q You didn't ever share anything?
A Steven bought his own. He had his money there. He had his own. He smoked big-time.
Q Okay. So you hung out with him and got high with him, didn't you?
A He hung out over there, yes, sir, and we got high.
Q So you did know him?
A Uh-huh. About five times, yes, sir.
Q Do you have a cell phone or did you have a cell phone at the time?
A Yes, sir.
Q You did?
A Yes, sir.
Q Why did you testify in your first trial that you went back to Milt's house and that's when you told him about the shooting when you're testifying in this trial that you called him on the way on your eel l phone? Which is the truth?
A I called him on the cell phone.
Q Why is this the first time you're saying this?
A First time I recall being asked.
Q Weren't you asked in the first trial? And, specifically, I'm talking about your codefendant's trial, the other person who was with you, Jason Carver's trial.

A That's 11 months ago, sir. It's hard for me to remember that far back. But, I mean, I told him on the way, you know. When I got there, he smelled the gun. I mean ...

Q You're saying you can't remember the truth because it was 11 months ago when you testified in the other trial?

A No, sir. That's not what I'm saying.

Q What are you saying?

A I'm saying there is — you have me twisted up here and I may be misunderstood. You know what I'm saying?

Q The question is simple, sir —

A I make a mistake.

Q Your first trial when you testified that —

A 11 months ago, yes, sir.

Yes, sir.

Q Okay. So the first trial, you testified that after the shooting, you drove back to Milt's house, Mr. Gambrell's, and then you told him inside of his house —

A Uh-huh.

Q -- that you shot the guy,

A I don't recall that, but if you say I did, I did.

Q Do you recall what you told him as to why you shot the poor man, why you shot Mr. Cameron?

A He didn't ask.
Q Didn't you say something like, "Well, things just went crazy and I shot him"?
A No. Like I say, he didn't ask. I told him on the way back over there that he better have been sure that that guy took his dope there because I shot him.
Q You said the way back over there?
A On the way back over there, I called him. He answered the phone. I said, "You better be sure that the man took your dope, Steven took your dope, because I just shot him."
Q Did you tell any of the detectives this, that you called him on the way back over there on your cell phone?
A Sir, I was under the influence. I don't recall speaking there to y'all, to detectives. Are you talking about when I was first arrested?
Q No, sir. When you were interviewed by the police, when you're sitting in Greenville County jail.
A Like I said, when I was first arrested 31 months ago, I was still under the influence of methamphetamines at that time. I went through their drug and alcohol treatment program in Greenville County Detention Center.
Q So you're telling this jury --

A The first time I spoke to a detective, I did not tell them nothing. I can tell you that much. The second time I spoke to them, I don't -- I don't recall what I told them. I mean, I was still, you know, as they told me in drug class, I was still high.
Q My question to you, sir, is: Why are we hearing this story that you called Mr. Gambrell on your cell phone after the shooting before you got back to the house? Why are we hearing this the first time today?
A It's the first time it's been asked.
Q The detectives never asked you the details of what happened?
A Not that I recall.
Q The lawyers in the first trial didn't ask you what happened?
A They never asked me whether I called Mr. Gambrell.
Q Sir, what kind of gun did you use to kill Mr. Cameron with?
A A .22 or a .25, I think. It was small caliber.
Q What did you do with it afterwards?
A I gave it back to Mr. Gambrell.
Q Are you sure about that?
A Yes, sir.
Q You didn't keep it?
A No, sir. What would I want to keep it for?

A I didn't know Mr. Cameron. I believe that there was some domestic violence and things like that in the home, but I don't know personally.

Q All right. Also in the video, first of all, of course, you know and the jury knows you're under oath and you're sworn to tell the truth and you're telling the truth now.

A Yes, sir.

Q But when you're giving the interview, isn't it true that you, police officers, are not bound to tell the truth. I mean, you're free to lie. I'm not saying there's anything wrong with that, but when you're interviewing a subject, you're free to tell him all kinds of lies to get him to give a confession; isn't that true?

A I don't have to be truthful with a suspect, that's true.

Q And that's perfectly legal?

A Yes, sir.

Q So when you mentioned that on the first video that a neighbor had heard the argument and heard what went on down that night, that just was not true, correct?

A Actually, that was true. We had -- during the neighborhood canvass, it's my understanding that one of the detectives talked with a neighbor who overheard an

argument and the words ''dirt bike" were mentioned during the argument.

Q Did they hear gunshots?

A No one — I don't recall. I don't recall if somebody heard gunshots or not. I know that they talked to several people in the neighborhood.

Q Did this person call the police?

A No, sir.

Q Do you know this person's name?

A Not off the top of my head, sir. I could probably find it in my file.

Q Isn't it possible they were referring to some other argument at some other time involving other people?

A All I know is what, you know, what the detective that was told to canvass told me, which was that, you know, somebody had overheard an argument involving the words "dirt bike."

Q But no gunshots?

A I don't recall if they had heard gunshots or not, sir. I don't want to tell you the wrong thing.

Q All right. You mentioned when -- oh, did you interview Woodrow Curry, the shooter, when you were still investigating this case?

A Yes. He was interviewed by Detective Mitchell

EXHIBIT4D

AGENCY I.P.
SC0040000

SUPPLEMENTARY REPORT

CASE NUMBER: 2016-05324

INC. N | ENTS. N

1900-1930 left mother's house to meet Steven's mother at 108 Sterling Bridge

1930-1940 dropped off her son and her niece at her sister Christina's house

1945 arrived at 108 Steritng Bridge, Steven was not at home.. Her mother and steven's mother were wtth her.

Took the TVs and Xboxes to keep steven tr?m pawnfng them.

202.3 sent a text to her sister, and left to go back to her sister's house to pick up the kids with he; mom

2030-2035 anived at Christina's house

2D45-2100 left Christina's house w"Jl her mother, /her son, and her niece (Marissa Moore)

2105-211 O stopped at the Spmx station across m Greenville Memorial Hospital near the CVS. Marissa went fnsideto payi'orthe gas and buy a Gatorade

2115 left the Spi

2145 they arrived at her mother's residence in Fa. ntain Inn where they all stayed for the rest of the night

Tuesday

0730-0735 left her mothers hOUSe for work

0750-.0755 arriVed at work, clocked in and stayed there until she received the call about Steven's death around 1400

See videoforfurtherInformation.

On 3/30/16,1 conducted a video recorded interview with Erica: Marie Cameron. steven Cameron's sister. She to[d me that her mother Patricia \iVhite and her brother Steven Cameron used to live at Heritage Trace; and while they were living there Steven was kidnapped over a drug debt Erica adVised me that after steven got his settlement sometime around December 2015 she heard from her brother Christopher Cameron that steven's neighbors were "feed'mg ,him drugs". She called and talked to Regina when she heard about that, and she stated that the neighbor's name NaS Andre. Erica said that about three months prior to this incident, she threw her mother Patricia out of her house for pawning Erica's property and using drugs. Erica also told me that there was a history of domesttcviolence between Regina and Sieven, and she said that Steven has been violent in the past She also advised me that her brother Christopher Cameron has "had some rage essues". Erica stated that Christopher got Steven :back on drugs after Steven completed rehab. She said that Steven had given their brother Daniel manjuana to sell at school, and Daniel "got busted". Erica also daimed that Patricia Palm Who is the person who found steven ciead originally found him at 1Cam but wa1ted to repo it She said that Pabn's sons. Tmothy and Jonathan use meth. Erica said that there was a woman named .,Dee· who is one of Steven's neighbors, and Dee's son. who is a blonde heavyset white male, saw the whole incident. Erica said that Dee's son won't talk aboutfae incident because he was outside smoking marijuana when he witnessed i t Erica said that Ryan Banks, steven's daughter Alyssa's ex-boyfrtend, stole a fourwheeterfrom steven once. She said that the fear wheeler was found at the home of Banks drug dealer. Erica told me :fuat Christopher Cameron's gbifiiend Angie told Erica that she was the last

M"RZ"LF. K	04/13116				
			K-"1S	= a MARZOLF. K	03/30/16

0393

Q Didn't you have this gun before that, sir, the .25 caliber?
A No, sir.
Q Did you go over there with the intent to kill Mr. Cameron?
A No, sir.
Q Did anybody tell you to go kill him?
A No, sir.
Q Did anybody tell you to go beat him up?
A No, sir.
Q Did anybody tell you to go threaten that you were going to beat him up?
A No, sir. I was just told to go get the dope or get paid for it.
Q What does that mean --
A I never intended to --
Q What does that mean, you were told to steal the dope from him?
A No. I was just told to go and retrieve it. He stole the dope.
Q What if he refused? What if he said, "I'm not going to give it to you?" What were you going to do then?
A Well, this is where this here seemed to blow out there. I mean, I didn't have intentions to do nothing.

way?

A No, sir.

Q That's just something that happened for whatever reason on that porch, according to you.

Mr. Gambrell was upset, isn't it true, when he found out you had killed Mr. Cameron; isn't that true?

A I don't know. He was sti 17 getting high.

Q I'm sorry?

A He was still drinking, still getting high.

Q He was drunk at the time?

A He was drinking. He drank beer but he don't get drunk. I ain't very seldom seen him drunk. He drinks all day and not get drunk.

Q Well, sir, you just testified he didn't want you to do all that stuff. What did he do, pat you on the back and say "good job" when you got back to his house?

A Sir, I just said he didn't tell me to go over there and do that.

Q Okay, You had no instructions from anybody to go do it; it was just something that happened between you and Mr. Cameron?

A Right.

MR. NEWTON: No further questions.

THE COURT: Anything further from this witness?

MS. MOORE: Nothing further, Your Honor.

EXHIBIT 5

AFFIDAVIT OF WOODROW CURRY
November 5, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)
State of South Carolina,)
vs.)
Jason Franklin Carver,)
Defendant,)

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

AFFIDAVIT OF WOODROW WALTER CURRY

Personally, appeared before me, Woodrow Walter Curry, who being duly sworn, deposes and states I am the affiant in this affidavit; and, I state the following:

AFTER JASON CARVER'S CONVICTION, GREENVILLE DROPPED DRUG CHARGES, AND I WAS MOVED TO ANDERSON. W.C.

MRAZOLF AND CHELSEY SAID THEY WOULD SUGGEST VOLUNTARY MANSLAUGHTER. IF THEY TESTIFIED AGAINST CARVER. IF A PLEA WAS THERE ALSO SAID IT WOULD LOOK BETTER IF THEY TESTIFIED AGAINST CARVER. W.C

FOR GAMBRELL SAID HE WAS OFFERED THE FACT THAT CHELSEY WOULD HAVE NO PROBLEM SUGGESTING 15 YEARS PROVIDED GAMBRELL WAS CONVICTED. HOWEVER, NEITHER OF THEM SPOKE UP WHEN SENTENCED TO 25 YEARS. W.C

Woodrow Curry
Signature of Affiant

Officer Griffin
Printed Name of Witness

Signature of Witness

SWORN before me this 5th day
of November 2015.

Donald C Smith
Notary Public for South Carolina
My Commission Expires: 11/18/2024

EXHIBIT 6

INDICTMENT SHEET FOR JASON CARVER

(November 15, 2016)

WITNESSES
Anderson Co. Sheriff's Office - Kreig Marzolf

DOCKET NO. 2016-GS-04- 02279

The State of South Carolina
County of Anderson

ARREST WARRANT NUMBER

2016A0410200556

COURT OF GENERAL SESSIONS
NOV 15 2016
_____, TERM

ACTION OF GRAND JURY

TRUE BILL
NOV 15 2016
Foreperson

Foreperson of Grand Jury
Date:

THE STATE

VS.

JASON FRANKLIN CARVER

COMMITMENT
8/24/17 RT

VERDICT
Guilty

Foreperson of Grand Jury
Date: 8-25-17

INDICTMENT FOR

MURDER

SC Code: § 16-03-0010
CDR Code: 0116

0399

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on NOV 1 5 2016, the Grand Jurors of Anderson County present upon their oath:

MURDER

That Jason Franklin Carver did in Anderson County, on or between March 28, 2016, and March 29, 2016, unlawfully and with malice aforethought, either express or implied, kill Steven Cameron by means of shooting the victim with a gun, and the victim died as a proximate result thereof. All in violation of §16-3-10, *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.

AUSTIN MCLAIN
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
) IN GENERAL SESSIONS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT
)
State of South Carolina,)
Plaintiff,) Case No.: 2016A041020056
)
vs.) **CERTIFICATE OF SERVICE**
)
Jason Carver,)
Defendant.)
)

THE UNDERSIGNED person deposes and says that he served a copy of Defendant's Motion for Reconsideration, upon the Solicitor's Office, Tenth Judicial Circuit, by and through Assistant Solicitor Chelsey Hucker and the Honorable Lawton McIntosh, personally, by hand delivery to the below address:

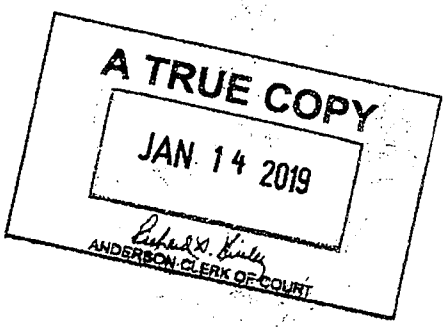
Date: January 14, 2019

Donald L. Smith
Attorney for Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

HAND DELIVERED TO:

Honorable Lawton McIntosh
Anderson County Common Pleas
100 S. Main S.
Anderson, SC 29624

Asst. Solicitor Chelsey Hucker
Office of the Solicitor
Tenth Judicial Circuit
100 S. Main St.
Anderson, SC 29624



ADDENDUM TO MOTION FOR RECONSIDERATION 01/17/2019

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON The State of South Carolina, Plaintiff v. Jason Franklin Carver, Defendant.	)	IN THE COURT OF GENERAL SESSIONS TENTH JUDICIAL CIRCUIT Case No.: 2016A05324 **ADDENDUM TO DEFENDANT'S MOTION FOR RECONSIDERATION**

COMES NOW, Defendant, by and through his counsel, and hereby submits this Addendum to the Defendant's Motion to Reconsider duly filed with the Court on January 14, 2019.

Defendant Jason Carver avers that his case is entitled to reconsideration based on error of law. Carver was indicted for Murder. There was no indication that the prosecutor will introduce the theory of the "hand of one is hand of all" during the trial. Woodrow Curry was indicted for murder, while James Gambrell was indicted for accessory before the fact of a felon. However, during the trial, the prosecutor argued that he was guilty of murder, even without shooting Cameron, because it was the unintended result of the alleged plan to either rob, kidnap or inflict physical harm upon Cameron. Plaintiff surmised that State has not enough reason and evidence to make the allegations based on this doctrine, because that would necessitate filing the case of criminal conspiracy under Article 16-17-41. The State knew it cannot convict Curry, Carver and Gambrell on the basis of conspiracy, so it indicted, charged and tried them separately with different offences.

It has long been held that the true test of the sufficiency of an indictment is whether it contains the necessary elements of the offense intended to be charged and sufficiently appraises

A TRUE COPY
JAN 17 2019
Richard D. Kinley
ANDERSON CLERK OF COURT

the defendant of what he must be prepared to meet. State v. Tabory, 262 S.C. 136, 202 S.E.2d 852 (S.C., 1974).

> 'As a general rule the instructions should be confined to the issues made by the pleadings, and should not be broader or narrower than the indictment or information, and an instruction which is not based on, and in conformity with, the issue properly raised by the pleadings is generally erroneous, . . . It has been held that the instructions should not . . . submit to the jury an offense not included in the indictment or information.' 23A C.J.S. Criminal Law § 1311 (1961), as cited in Tabory, 262 S.C. 136, 202 S.E.2d 852 (S.C., 1974).

The underlying offenses were not presented to Carver, until the trial started. Carver insists that his Due Process Rights were violated because he was not informed in advance, of the facts for which he was charged.

This is also relevant in that it shifted the burden of proof to Carver. Instead of the State having the burden of proving that Carver had a gun, that he shot Cameron, which was what was in the indictment, Carver had to prove that he did not commit a crime. Carver had to prove that (1) there was no plan to commit any of the underlying offenses; or (2) that if there was any agreement between Curry and Gambrell, that Carver had no knowledge of such; (3) he did not abet nor aid Curry in the commission of murder; and (4) he did not shoot Cameron. By charging the "hand of one is hand of all" theory, the State and this Court forced Carver to disprove that he did not have co-defendants, without being indicted for conspiracy.

In summary, Carver proposes that his conviction upon a charge not made in the indictment constitutes a denial of due process. The logical reason for this rule is that a defendant in a criminal case is entitled to be tried only upon the charges in the indictment against him. This principle was established in the case of Stirone v. United States, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960).

This principle in turn rests on the broader premise that person cannot incur the loss of liberty for an offense without notice and a meaningful opportunity to defend. Stirone v. United States, 80 S.Ct. 70.

The variance between pleading and proof here involved was not insignificant, and may not be dismissed as harmless error, because it deprived Carver of his substantial right to be tried for a felony only on charges presented in an indictment returned by a grand jury. *Stirone.*

CONCLUSION

For the foregoing reasons, Defendant Carver respectfully requests this Honorable Court to vacate the conviction against Jason Carver due to the fact he was found guilty of something for which he was not indicted. Defendant also asks that this Court reconsider its Order, dated January 4, 2019, and allow Carver to present his newly discovered evidence to the Court in an evidentiary hearing; or, simply grant the motion for new trial.

Donald L. Smith (SC Bar #: 6699)
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com
Attorney for Defendant

January 17, 2019

STATE OF SOUTH CAROLINA	)	IN GENERAL SESSIONS
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	
State of South Carolina, Plaintiff,	)	Case No.: 2016A041020056
	)	**CERTIFICATE OF SERVICE**
vs.	)	
	)	
Jason Carver, Defendant.	)	
	)	

THE UNDERSIGNED person deposes and says that he served a copy of Defendant's Addendum to his Motion for Reconsideration, upon the Solicitor's Office, Tenth Judicial Circuit, by and through Assistant Solicitor Chelsey Hucker and the Honorable Lawton McIntosh, personally, by hand delivery to the below address:

Date: January 17, 2019

s/Donald L. Smith
Donald L. Smith
Attorney for Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

HAND DELIVERED TO:

Honorable Lawton McIntosh
Anderson County Common Pleas
100 S. Main S.
Anderson, SC 29624

Asst. Solicitor Chelsey Hucker
Office of the Solicitor
Tenth Judicial Circuit
100 S. Main St.
Anderson, SC 29624

Diane Brenway
1.17.19

A TRUE COPY
JAN 17 2019
ANDERSON CLERK OF COURT

NOTICE OF APPEAL
02/05/2019

FORM 1
NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Case Number: 2016A05324

RECEIVED
FEB 07 2019
SC Court of Appeals

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

NOTICE OF APPEAL

Appellant Jason Franklin Carver appeals the denial of his Motion for New Trial and Motion for Reconsideration, by the Judge R. Lawton McIntosh, who issued his Orders on January 4, 2019 and January 30, 2019, respectively.

February 5, 2019

Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Other Counsel:
Ms. Chelsey Hucker
Assistant Solicitor for the
Tenth Judicial Circuit
P O Box 8002
Anderson SC 29622

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

State of South Carolina
Plaintiff,

vs.

Jason Franklin Carver
Defendant.

IN THE COURT OF GENERAL SESSIONS
TENTH JUDICIAL CIRCUIT

Case No: 2016A05324

Order on Defendant's Amended Motion for A New Trial

RECEIVED
FEB 07 2019
SC Court of Appeals

Defendant's filed an Amended Motion for a New Trial on December 27, 2018. It is Ordered that the Defendant's Amended Motion for a New Trial is denied without the necessity of a formal hearing. The court finds that there was competent evidence admitted to sustain the jury's verdict of guilty and the court may not substitute its judgment for that of the jury. *State v. Taylor*, 348 S.C. 152, 558 S.E.2d 917 (Ct.App. 2001).

A TRUE COPY
JAN - 4 2019
ANDERSON CLERK OF COURT

'19 JAN 3 PM4:05:30
Anderson SC COC. OP/SS

Anderson, South Carolina.
January 3, 2019

R. LAWTON McINTOSH
PRESIDING CIRCUIT COURT JUDGE

STATE OF SOUTH CAROLINA COUNTY OF ANDERSON	)	IN THE COURT OF GENERAL SESSIONS TENTH JUDICIAL CIRCUIT
State of South Carolina Plaintiff,	)	Case No: 2016A05324
vs.	)	**Order on Defendant's Notice and Motion for Reconsideration**
Jason Franklin Carver Defendant.	)	

RECEIVED
FEB 07 2019
SC Court of Appeals

Defendant filed a Notice and Motion for Reconsideration on January 14, 2019 in regards to the Court's Order dated January 4, 2019. It is Ordered that the Defendant's Motion for Reconsideration is denied without the necessity of a formal hearing.

'19 JAN 30 PM2:05:58
Anderson, SC COC, CP/GS

Anderson, South Carolina.
January 14, 2019

R. LAWTON McINTOSH
PRESIDING CIRCUIT COURT JUDGE

A TRUE COPY
JAN 30 2019
ANDERSON CLERK OF COURT

FORM 9
LETTER TO THE CLERK OF LOWER COURT
FILING OF NOTICE OF APPEAL

February 5, 2019

The Honorable Richard Shirley
Anderson County Clerk of Court
100 S. Main Street
Anderson SC 29624

RECEIVED
FEB 07 2019
SC Court of Appeals

RE: State v. Jason Franklin Carver
Case Number: 2016AA05324

Dear Mr. Shirley:

Please find enclosed a copy of the Notice of Appeal which I am filing in the above-referenced matter, as well as the Proof of Service for the same.

Sincerely,

Donald L. Smith, (Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc: The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals
Ms. Chelsey Hucker, Assistant Solicitor Anderson County
Mr. Alan McCrory Wilson, South Carolina Attorney General
Mr. Samuel Marion Bailey, Assistant Deputy Attorney General

FORM 14
APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Case No.: 2016A05324

RECEIVED
FEB 07 2019
SC Court of Appeals

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

APPELLANT'S DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

1. Appellant's Motion for New Trial, dated December 20, 2019;
2. Appellant's Amended Motion for New Trial, dated December 27, 2018;
3. Court Order on Defendant's Amended Motion for New Trial, dated January 4, 2019;
4. Appellant's Notice and Motion for Reconsideration, dated January 14, 2019;
5. Addendum to Appellant's Motion for Reconsideration, dated January 17, 2019;
6. Court Order on Defendant's Notice and Motion for Reconsideration, dated January 30, 2019; and
7. Notice of Appeal, dated February 5, 2019.

{SIGNATURE TO FOLLOW}

February 5, 2019

Donald L. Smith (SC Bar #: 6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Appellate Case No. 2017-002011
Case Number: 2016A05324

RECEIVED
FEB 07 2019
SC Court of Appeals

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

MOTION TO CONSOLIDATE RELATED APPEALS

Pursuant to Rule 42(a) of the SCRCP, Appellant, by and through his counsel, hereby moves to consolidate the two above-captioned appeals, which arise from the same circuit court case and involve related issues. Appellant states that:

1. On November 15, 2016, Appellant Jason Carver was indicted for the killing of Steven Cameron.
2. On August 21 to 25, 2017, Appellant was tried in the General Sessions Court of Anderson County, South Carolina.
3. Appellant, along with Woodrow Curry was charged with the crime of murder under the doctrine of accomplice liability (hand of one is hand of all). The State theorized that the killing of Cameron was the unintended result of an alleged plan by the Appellant, Curry and James Gambrell to commit either robbery, kidnapping, or physical injuries.

4. On August 22, 2017, Curry entered into a plea bargaining with the State to reduce his charges from Murder to Voluntary Manslaughter. His sentence was deferred until after Appellant's trial.

5. The State presented Curry as a State Witness against Appellant during his trial.

6. Appellant called on Gambrell to testify in his favor, but upon the prodding of the trial judge and his counsel, Gambrell invoked his Fifth Amendment right.

7. On August 25, 2017, Appellant was found guilty of Murder and sentenced to thirty (30) years in prison, due to the weight of Curry's testimony.

8. On September 9, 2018, Appellant perfected his Appeal, and was recorded as Appellate Case No. 2017-002011).

9. Appellant was finalizing his record on appeal when he learned of the trial for James Milton Gambrell. Gambrell was charged with "Accessory before the fact to a Felony" and "Solicitation to Commit Murder."

10. Appellant also discovered that Curry's sentencing was further deferred. The State presented him as a State Witness against Gambrell.

11. During Gambrell's trial, Curry and Detective Marzolf, the investigating officer for Appellant's case, offered inconsistent and outright false statements.

12. Believing that these statements are newly discovered evidence that can exonerate Appellant, he moved to suspend his appeal to give him the opportunity to file a motion to set aside/vacate the trial court decision, and/or motion for new trial.

13. On October 23, 2018, Appellant filed his Motion to Hold his Appeal in Abeyance, which this Honorable Court granted the motion on December 10, 2018.

14. On December 20, 2018, Appellant filed his Motion for New Trial based on newly-discovered evidence, in the lower court. The case was given a new case number (Case No. 2016A05324).

15. Appellant amended the same on December 27, 2018.

16. On January 4, 2019, Judge McIntosh issued an Order, denying Appellant's Motion for New Trial, without the necessity of a formal hearing.

17. On January 14, 2019, Appellant moved to reconsider the order of denial.

18. On January 17, 2019, Appellant filed an Addendum on his Motion for Reconsideration.

19. On January 30, 2019, the trial court ordered the denial of Appellant's motion for reconsideration, again without the necessity of a formal hearing.

20. On February 5, 2019, Appellant submitted to this Honorable Court of Appeals his status update, notice of appeal, and Form 11.

21. These two cases (Appellate Case No. 2017-002011 and Case No. 2016A05324) present common questions of fact and law. Consolidation will not delay the disposition of this case. It will, in fact, minimize delays and eliminate confusion.

CONCLUSION

WHEREFORE, because consolidation of these two cases (Appellate Case No. 2017-002011 and 2016A05324) will promote efficiency and judicial economy, and will not prejudice any party, Appellant respectfully requests this Honorable Court to enter an Order consolidating all further proceedings in these actions.

{SIGNATURE TO FOLLOW}

Respectfully submitted:

Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson, SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

Anderson, South Carolina
February 5, 2019

FORM 7
PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
FEB 07 2019
SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

R. Lawton McIntosh, Judge

Case Number: 2016A0410200556

State of South Carolina, Respondent,

v.

Jason Franklin Carver, Appellant.

PROOF OF SERVICE

I certify that I have served Appellant's Form 1, Form 7, Form 8, Form 9, Form 14, and an original and six (6) copies of Appellant's Motion to Consolidate Related Appeals, upon The Honorable Jenny Abbott Kitchings, Clerk of Court South Carolina Court of Appeals, at PO Box 11629, Columbia SC 29211. A copy of the above-mentioned materials were also served upon The Honorable Richard Shirley, Anderson County Clerk of Court, at PO Box 8002, Anderson SC 29622 ; Assistant Solicitor for Tenth Judicial Circuit, Chelsey Hucker, at 100 S. Main Street, Anderson SC 29624; South Carolina Attorney General Alan McCrory Wilson and Assistant Deputy Attorney General Samuel Marion Bailey, Office of South Carolina Attorney General at PO Box 11549, Columbia, SC 29211, by depositing copies in the United States Mail, postage prepaid, on February 5, 2019.

February 5, 2019

Donald L. Smith (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

FORM 8
LETTER TO THE COURT OF APPEALS CLERK OF COURT
FILING STATUS UPDATE, NOTICE OF APPEAL, FORM 9,
FORM 14 AND MOTION TO CONSOLIDATE RELATED APPEALS

February 5, 2019

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

RECEIVED
FEB 07 2019
SC Court of Appeals

RE: The State v. Jason Franklin Carver
Case No.: 2016A05324

Dear Ms. Kitchings:

Pursuant to this Honorable Court's Order, dated December 10, 2018, Appellant Carver informs this Court of the trial court's denial of his Amended Motion for New Trial and Motion for Reconsideration, on January 4, 2019 and January 30, 2019, respectively.

In view of this development, Appellant is submitting the following materials for filing:

(1) Form 8- which also serves as Appellant's status update;
(2) Form 1- Notice of Appeal;
(3) Trial Court Order, dated January 4, 2019;
(4) Trial Court Order, dated January 30, 2019;
(5) Form 9- Letter to Clerk of Lower Court;
(6) Form 14-Designation of Matter to be Included in the Record on Appeal;
(7) Appellant's Motion to Consolidate Related Appeals; and,
(8) Form 7- Proof of Service for the same.

Sincerely,

Donald L. Smith, (SC Bar#6699)
Attorney for Appellant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@gmail.com

cc:

Honorable Richard Shirley, Anderson County Clerk of Court
Mr. Alan McCrory Wilson, Esquire, South Carolina Attorney General
Mr. Samuel Marion Bailey, Esquire, Assistant Deputy Attorney General
Ms. Chelsey Hucker, Esquire, Assistant Solicitor for the Tenth Judicial Circuit

Attorney Office of Donald Smith
122 N. Main Street,
Anderson, SC 29621

RECEIVED
FEB 07 2019
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia SC 29211

0421

TRANSCRIPT OF HEARING FOR MOTION FOR NEW TRIAL 09/14/2017

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
v.	)	Case No. 16-GS-04-2279
	)	
Jason Franklin Carver,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on the 14th day of September, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions for Anderson County, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Chelsey Lauren Moore, Assistant Solicitor
10th CIRCUIT SOLICITOR'S OFFICE
Post Office Box 8002
Anderson, South Carolina 29622
...Appearing for State of South Carolina

Donald L. Smith, Esq.
...Appearing for Defendant

VIVIAN H. CROSS
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

SOLICITOR MOORE: Jason Carver. May it please the Court?

THE COURT: Yes, ma'am.

SOLICITOR MOORE: Judge, we are here in Indictment 16-GS-04-2279 on the charge of Murder, the State versus Jason Franklin Carver.

We are here on Mr. Smith's post-trial Motions.

THE COURT: All right, Mr. Smith?

MR. SMITH: May it please the Court?

THE COURT: Yes, sir.

MR. SMITH: Your Honor, the, uh, Defense in this particular matter brings up two issues: a Motion for a new trial and -- but, first, we move for arrest of judgment on the fact that the State proved that Mr. Carver drove the car but there was no proof of him being part of the team.

In fact, he was gone when they learned that the cocaine was missing, it wasn't his cocaine, it was not -- there's no -- he was not associated with the cocaine. So he is not part of the criminal act.

He was the driver, he took the victim

down to the house. That was not illegal.

So the idea of him bringing him back fifteen minutes later, when that was the only -- was the only purpose, that shows that he was not part of -- all he was doing is he was driving. That's it, simply driving.

Then the fact that the Court (sic) found that he was part of a criminal conspiracy when there was no evidence that he was part of the thing, and was going to do something in furtherance of the defendants -- as I said, not his cocaine, he was not associated with it, there is nothing in the record that says he is, and it's furthered by the fact that when Mr. Curry was arrested was because of drugs in Mr. Gambrell's house; so they weren't working together, Mr. Carver was not a part of that. That's with regard to the arrest of the judgment, because they didn't prove that, uh, he was anything more than reasonably suspicious, maybe. But there is no question that he didn't have anything to do with it.

Now, the Motion for new trial relates to, uh, calling the Defendant Gambrell and not

being able to put him in front of the jury for purposes of illustrating to the jury that Mr. Carver was not afraid of him. In fact, he wanted him to testify. He would have had to testify, or to plead the Fifth, in front of the jury so as to show the jury that we are not afraid of him. We wanted him, we subpoenaed him but he's got something to hide. We weren't able to do that and, therefore, that prejudiced his defense.

The two defendants or the two witnesses that we subpoenaed, uh, were subpoenaed on two separate occasions and once Mr. Gambrell decided that he wasn't going to testify, those guys disappeared and I've got nothing more than subpoenas -- I've got a subpoena and I wanted a continuance based on the fact that I thought that they were necessary. Given the fact that this is a murder case, every person is necessary to me. In fact, I don't know what was done to try to get them to -- to tell them to appear, but obviously they did not appear.

Mr. Carver, his due process was strangled by that. The idea that he couldn't put his

witnesses up, the Sixth Amendment provides that he's allowed to call witnesses in his defense just as the State is allowed to call people in the prosecution of it.

Based on those significant and particular defendant, Mr. Gambrell, not being able to put him in front of the jury was such that Mr. Carver could not present the defense that he needed to present.

In furtherance of the due process aspect, the sentence of thirty (30) years is cruel and unusual punishment based on the circumstances. Mr. Carver, as I said previously, there is nothing in the record that says that he was part of the -- he didn't know about the cocaine missing, he wasn't a part of the cocaine, uh, the cocaine was admitted to being the property of Mr. Curry, although it was most likely the property of Mr. Gambrell, but neither is Mr. Carver's.

Mr. Carver asks that the judgment be arrested or set aside, dismissed with prejudice or he be granted a new trial so that he can get a fair shake.

THE COURT: All right, sir. Let me ask you one question.

You brought up the Affidavit of a Steve Godsey ---

MR. SMITH: Yes, sir.

THE COURT: --- that someone allegedly intentionally deleted certain aspects of the video ---

MR. SMITH: Yes, sir.

THE COURT: --- that was from the security camera of the neighbor's.

MR. SMITH: Yes, sir.

THE COURT: Which would have, if I understand the affidavit and memorandum, would have reflected the next day somebody going to the residence and allegedly had an opportunity to take the drugs from the victim in the matter.

MR. SMITH: Yes, sir, and I questioned Detective Marzolf on that when he was on the stand. And I asked him, 'Hey, your notes say that this person', one of the victims that spoke at sentencing had told him that someone had been there, had rolled the body, retrieved whatever was retrieved. So when

they're up here talking about the fifteen-hour video that was on a USB or whatever, I understood that it was going to take three days in order to break it down into CDs.

Well, they did give us CDs. The CDs were in four-hour increments: 11:59 to 3:59 -- but then there's two hours missing, which is from about 8:30 to 10:30 when the notes ---

THE COURT: 8:30 to 10:30 in the morning after the murder. Is that right?

MR. SMITH: Yes, sir. Yes, sir.

THE COURT: All right.

MR. SMITH: Of course the lady didn't go see him or call the police until 1:45. But she had driven by there at 1:25, and she was the one that was part of this -- according to the notes -- part of the rolling and taking of the drugs or what-have-you.

I mean, two hours worth of video is not there of the fifteen hours allegedly on that USB that couldn't be opened, so they broke it down because of that. But then there's two hours missing.

THE COURT: All right, sir. Miss Moore?

SOLICITOR MOORE: Judge, as to everything except for the two hours of missing footage, I believe that you've ruled on all of those matters during trial. And I believe that those rulings were proper at the time.

As to the two hours of missing footage, first of all I would say that they are not exculpatory because they happened after the murder.

Second of all, I would note that Mr. Smith said that this happened, the rolling of the body allegedly happened at 9:00 A.M. The video footage is time-stamped but it is missing its time stamp from 8:30 to 10:30, I believe. However, as we noted at trial, those time stamps are incorrect, so they would be from approximately 6:30 to 8:30. The actual 9:00 o'clock time period to which Mr. Smith is referring, he would have those video clips. And I believe that we broke during the trial to allow Mr. Smith to see those clips, to allow us to put them on a CD. We gave him the opportunity to play those during the trial. And I'm sorry to say that I can't remember if he did or not but

certainly we did allow that.

And, finally, Your Honor, I will allow Detective Marzolf to answer the mystery of the missing two-hour footage.

THE COURT: All right, I will be glad to hear from him.

DETECTIVE MARZOLF: Your Honor, I spoke with Mr. Tallian (phonetic), who is the homeowner where the video surveillance footage was collected. There was a two-hour time gap in the video, but the reason for that was that Mr. Tallian was moving out of the residence. His father-in-law -- well, excuse me. His mother's boyfriend came to the house. You can see him pull up on the video in a dark sedan, he gets out and goes into the house. During that time they were switching the power and other utilities over to the new occupants of the residence. The surveillance footage was turned off during that time because the power was turned off for approximately two hours. You can see that once the video resumes that the utility crews are in fact out in front of the house immediately following that time stamp.

THE COURT: All right, sir. Thank you.

MR. SMITH: May I respond, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: First, using the analogy of the civil context, the idea that the two hours missing in between the two longer stints of film is -- you'd have to go out of your way to do that. The USB that they say was fifteen hours, then they say 12:00 to 8:00 in the morning, then 10:00 in the morning to 1:00 in the afternoon or 3:00 in the afternoon. It says fifteen hours. So fifteen hours on the USB but then it is thirteen hours broken down on the CDs that I was given.

So I don't know what to say. I mean, that clearly is missing and it is not Mr. Carver's fault.

THE COURT: Let me just say this. I tend to agree with you a little bit, Mr. Smith, that if that seemed to be intentionally manipulated that's concerning. Uh, I think the explanation that I received just now is reasonable. But the fact of the matter is even if it was intentionally

manipulated, which I don't think it was, it occurred after the murder. So it would not be exculpatory to your client at all, that I can see. I may just be dense on it, but I don't think so.

MR. SMITH: Well, part of -- part of the closing was that there was a robbery. Well, there wasn't a robbery. They didn't take anything, there is no evidence of them taking anything. That was made a point in the closing, so it is exculpatory, it has everything to do with this case. By making the robbery the criminal act to be hand of one is the hand of all it's a lot easier to get your grips on that as opposed to the murder where he has no idea that there was a second gun, didn't know about the first gun until it fell out of the car.

THE COURT: With regard to your Motion regarding the video, it's denied.

Let me address some of the other arguments that you had, that the defendant said that he wasn't a part of the criminal act, that he didn't know anything, he just drove the man back and forth on -- drove the

victim home and then went back. But if I recall, and Miss Moore will correct me if I am wrong, in the defendant's voluntary statement to law enforcement he said that Mr. Gambrell, I believe it was, 'sent myself and the other guy', I can't think of his name, there to either get the drugs, get the money or bring him back.

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: All right. So that showed me that there was a conspiracy. Additionally, he had -- he knew the gentleman had a gun on him while he was there. He didn't do anything to extricate himself from the situation. I just found that was a question of fact for the jury to decide.

If I am wrong, somebody will correct me but I am going to deny your Motions, Mr. Smith. Thank you, sir.

MR. SMITH: Motions, you say?

THE COURT: Sir?

MR. SMITH: Motions?

THE COURT: Yes, sir, Motions, all of them.

MR. SMITH: Yes, sir.

THE COURT: Thank you, sir.

SOLICITOR MOORE: Thank you, Judge.

THE COURT: Thank you.

(HEARING CONCLUDED)

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 13th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held in the within action heard on September 14th, 2017, before The Honorable R. Lawton McIntosh as prepared from the audio notes of Vivian H. Cross, assigned Court Reporter;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Deborah Garrison

Greenville, South Carolina

March 30, 2018

EXCERPTS OF TRIAL TRANSCRIPT FOR JASON CARVER 08/21-25/2017

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
v.	)	Case No. 16-GS-04-2279
	)	
Jason Franklin Carver,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on August 21 through August 25th, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions for Anderson County, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Chelsey Lauren Moore, Assistant Solicitor
Scott McElhannan, Assistant Solicitor
10th CIRCUIT SOLICITOR'S OFFICE
Post Office Box 8002
Anderson, South Carolina 29622
...Appearing for State of South Carolina

Donald L. Smith, Esq.
...Appearing for Defendant

VIVIAN H. CROSS
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

Q. Did you offer him anything or promise him anything?

A. No, ma'am.

Q. In addition to the advisory of rights portion, does Exhibit 8 also contain a waiver of rights portion?

A. Yes, ma'am.

Q. Can you read that portion for me?

A. It says, (reading): *"I have read the statement of my rights and understand what my rights are. I am willing to make a statement, answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me. No pressure or coercion of any kind has been used against me."*

Q. Did the defendant read that waiver or did you read it aloud to him?

A. I read it aloud to him.

Q. Was he watching as you were reading or what was he doing?

A. Yes, he was watching as I was reading.

Q. Did he indicate that he understood that waiver?

A. Yes, ma'am, he signed it.

mature. There's nothing that stands out about his physical or mental health that would concern me.

I don't know how he feels about the experience but there was certainly no misrepresentation by police, no duress, no violence, duress, or promise of leniency.

So all factors indicate that it was a noncustodial interrogation except for his experience with meth (phonetic).

So I'm going to find it's admissible.

Any question, Mr. Smith, as to the State's portion of the interview which you think needs to be added to the redacted tape to make it a fair representation?

MR. SMITH: Well, Your Honor, that is something that I will have to speak with my client about as to ---

THE COURT: If you feel like there needs to be additional parts -- talk to your client, talk to the State and make sure that y'all get that worked out ahead of time, if you can. All right?

MR. SMITH: Yes, sir. We've had difficulty trying to watch the video on my

computer. The Solicitor said that ---

THE COURT: I am sure that they will let you come down and watch it with them, if you want.

MR. SMITH: Yes, sir.

THE COURT: Is that a problem?

SOLICITOR MOORE: No, Your Honor. We've offered that opportunity to Mr. Smith.

THE COURT: All right. Anything further from *Jackson v. Denno*?

SOLICITOR MOORE: No, Your Honor, not from the State.

THE COURT: All right. Very good. That means that we are done with that issue, then?

SOLICITOR MOORE: Yes, Your Honor, unless Mr. Smith would like to have any kind of further questions about the redacted, or the unredacted, portion of the statement.

I would like to put on the record that the reason that we redacted the statement where we did is because although it is very hard to understand what the defendant says at the end of that portion, he says that he would feel better if he had legal representa-

Indictment 2016-GS-04-02279 for the charge of Murder.

THE COURT: Would you pass that indictment to me?

SOLICITOR MOORE: (Tenders).

THE COURT: All right. Does the State agree that the strikes are ten and five?

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: Mr. Smith, do you agree with that?

MR. SMITH: Yes, sir.

THE COURT: I think we should probably have one or two alternates. What would be your preference?

SOLICITOR MOORE: Two, Your Honor.

THE COURT: Mr. Smith, do you agree?

MR. SMITH: Yes, Your Honor.

THE COURT: And Mr. Smith gets two strikes per alternate and the State gets one strike per alternate. Does everybody agree?

SOLICITOR MOORE: Yes, Your Honor.

MR. SMITH: Yes, sir.

THE COURT: All right. Ladies and gentlemen, we're about to begin the case of the State of South Carolina versus Jason

Franklin Carver who has been indicted for murder.

Let me point out that this indictment sheet is not evidence of guilt, nor does it raise an inference or a presumption of guilt. It is simply the mechanism by which the State of South Carolina brings people before the court for trial and a determination of guilt or innocence.

Ladies and gentlemen, I also remind you are still under oath and it is absolutely essential that we get accurate and truthful information.

With that being said, let me see the attorneys here.

(OFF RECORD BENCH CONFERENCE)

THE COURT: All right, ladies and gentlemen. Ladies and gentlemen, give me -- has anyone ever been related by blood or marriage to either Jason Franklin Carver or Steven Cameron, who was from Powdersville? If so, would you please stand? (No response).

Has any member of the jury panel ever had a close personal or social relationship with

MR. SMITH: Yes, sir.

THE COURT: Solicitor.

SOLICITOR MOORE: May it please the Court?

THE COURT: Yes, ma'am.

SOLICITOR MOORE: Ladies and gentlemen of the jury, on the evening of March 28th, 2016, two men were sent to Steven Cameron's house to collect drugs or money from him.

One of those men, this defendant, Jason Carver, drove a white Buick Regal with his codefendant in the passenger seat. That codefendant was armed.

They drove to 108 Sterling Bridge Road in Powdersville. When they pulled into the driveway, they both got out of the car and went onto the front porch to confront Steven Cameron. Moments later, Steven was shot dead on his own doorstep.

After the shooting, Jason Carver got back into the vehicle with his codefendant and drove away.

Weeks later the two of them were arrested for the murder of Steven Cameron.

Now, for a person in South Carolina to be

because in the explanation that the State gave in the guilty plea they said that both men were armed. Well, there's only evidence -- to my knowledge, and you will be able to see that -- of two guns: one a .25, which was the instrument that killed Mr. Cameron, and then a .38, which the shooter states that he left in the car, meaning that no one had that. All right?

There is no evidence that Mr. Carver ever had a gun. He had taken Mr. Cameron, the victim, back to his house because he had sold a dirt bike that he had, so he had no way to get home. So Mr. Carver offered to take him home.

Actually he didn't even offer. Mr. Gambrell had been drinking and he's the proprietor of the house and he asked him to take him home because he had been drinking. Mr. Carver had worked a full day at Greenville Transmission Clinic. He got there about a quarter of 8:00 because he was doing some side work for Mr. Gambrell. He'd worked all weekend on this transmission and had to do a couple of things to get it ready to run

on Monday and clean up, so that was it. So he got there at a quarter of 6:00. At that point he was finishing up and Mr. Gambrell comes out, 'hey, can you take him home?' "Sure."

Mr. Carver had a Ford Escort and in it he had a couple of tires and, more importantly, he had a Pit Bull, his pet; a nice Pit Bull, but a Pit Bull just the same.

Now, when he took Mr. Cameron home, he took him in his Escort, in the front seat.

Mr. Carver didn't have a call phone. Mr. Carver wasn't aware that he needed to bring Mr. Cameron back to the house.

Well, he took him home. He got back and he went right to picking up his tools. It's getting dark now. Monday in June it's dark early, so he is putting stuff away.

The guy who shot Mr. Cameron, Mr. Curry, comes out and he says, 'Hey, Mr. Gambrell wants to talk to you.'

Well, Mr. Gambrell's big issue was, 'Why don't you have a cell phone? I could've had you just turn around.' He says, 'You gotta go back and get him.'

So they start driving down the road and Mr. Curry tells him 'yeah, we gotta go down there and get drugs or get payment.' Because apparently while Mr. Carver is in the process of taking Mr. Cameron home, they learned that Mr. Cameron may have taken some cocaine. Well, they wanted it back. And when I say "they", I mean the two people that were party to the conversation and have knowledge of what allegedly may have transpired.

Mr. Carver has no knowledge of that whatsoever, he doesn't have a cell phone and he wasn't a party to the conversation.

He comes back and is told, 'hey, go get him, bring him back or get money for', uh, for something. Okay?

He's not part of the hierarchy; he's the guy with the license. Mr. Cameron didn't have a license, Mr. Curry did not have a license. Mr. Gambrell was drunk, according to his own statement. So Mr. Carver gets there and they say, 'hey, you gotta go get him.'

So off he goes. He goes to get him. That's it.

However, when he's on the way he sees Mr. Curry with a .38. He says, 'We don't need that. We're just picking him up.'

He says, 'All right.' Well, he sets that gun down, and Mr. Curry said that in his own statement. Then they go and knock at the door.

Of course, Mr. Carver -- this guy Cameron was not some new person to the mix. He was seen over at this house, you know, periodically for whatever reason. So he knew him and Mr. Carver knew him as being part of this group. They were all acquainted with each other. So the idea of the house, he was just going back out to this guy's house.

So he's out there. He gets out of the car. Mr. Curry leads him to the porch, knocks on the door, no answer. So they start walking back to the car.

Mr. Carver walking to the driver's seat and Mr. Curry walking as well, looking over his shoulder. He sees Mr. Cameron peek out the window and he says, 'all right, he's here.'

So he goes back to the porch. He's met

on the porch by Mr. Cameron. Mr. Carver is standing short of the porch listening to an increased volume by the two men. He's not close enough that he can hear exactly what they are saying. But, you know, the discussion grows louder and louder; confrontational, if you will.

Moments later, Mr. Cameron pushes Mr. Gambrell (sic). Mr. Gambrell (sic) comes up with a gun in his face, a gun that was in his fanny pack, a .25.

Mr. Carver at this point is like, 'What the hell is going on here? Put the gun away! Put the gun away!'

Well, Mr. Cameron, who is high on crack cocaine at this point, he's the victim, and Mr. Curry, who is high on methamphetamine. Their ability to have a short fuse is certainly there. All right?

So Mr. Carver is begging him, 'put the gun away, put the gun away.' Mr. Cameron is, 'yeah, put the gun away.' He takes his left hand and knocks the gun out of his face. Well, that turned -- Mr. Curry comes up and shoots. At that first shot, Mr. Carver is

running for what he sees as his life. He is in shock, never seen anything like this. He gets in the car, drops the keys. Well, there's Mr. Curry who gets in the front seat, has the gun in his lap, points it at him and says, 'Hey, you're going to be driving and don't turn on the lights until I say so. If you say anything, I'm going to kill you and your mother.'

Well, Mr. Carver didn't finish the tenth grade. He's been working at the same transmission place for seventeen years. What he knows is simple English. Perhaps more importantly, he trusts his eyes. He just saw him shoot a guy. He knows where Mr. Carver lives and, importantly, he knows where his mother lives.

They drive back to Gambrell's house where they started from. Mr. Carver's emotions are -- he's crying, the whole thing. Mr. Curry who shot him says, "Ah, shit happens."

Well, Mr. Gambrell starts screaming, 'What did you do? What have you done? You were suppose to go get him so we could talk about it.' Well, that's not what happened.

Mr. Carver sees that they're fighting. 'I'm not having any more of this' and he just walks off and goes right to his mother's house. Within fifteen minutes, Mr. Curry drives by his house in a green Grand Am. Mr. Curry (sic) believed that the killer could kill again.

He wasn't sharing anything with anybody but at some point Mr. Curry gets picked up for trafficking, a larger drug charge. He is in Greenville County. Mr. Carver finds out on a Saturday and on Monday morning goes into his place of business for seventeen years, a family business, and tells his boss. Well, because of that his boss tells him that 'you need to go turn yourself in.' Well, he goes and talks to his mom. Then he comes right to the police station to tell them what happened.

Because he did that by himself, didn't have a lawyer, him telling what he saw has landed him here.

What you are going to have to evaluate is the evidence that they have, don't have. You're going to have to see whether Mr.

Carver was part of anything, had any knowledge. Knowledge is not guilt. They were told to go get someone. The proprietor of the home gives him the larger car, without a dog, so that he can bring the person back. Is there any reason that Mr. Carver should think anything other than what he's told, 'go back and get him, take the bigger car because he is going to ride.' That's it.

He wasn't a part of the discussion between the two of them while he was gone. They found that out. He was not part of that. He was there to work on that transmission he'd done the previous week, that he'd done for years prior to that, so that was nothing new to him.

The idea of the shooting, there is no question that he was shaken to the core. Police that testify for him, they're going to admit that.

Bottomline is, did Mr. Carver violate the law by simply driving the car -- like someone that drives you -- someone asks you a ride to the gas station, you give them a ride to the gas station, you think that they're getting a

Snickers bar. They come back with a Snickers bar but didn't tell you about the robbery? Is that your responsibility? That's what you need to take into account as you listen to the evidence.

Listen to the evidence as it was written and actually what was said in these interviews, because you will see that there is a difference.

Thank you very much, ladies and gentlemen.

THE COURT: Call your first witness, please.

SOLICITOR MOORE: The State calls Deputy Matthew Grant.

(WITNESS TAKES STAND)

MATTHEW GRANT, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR MOORE:

Q. Deputy Grant, where are you employed?

A. Anderson County Sheriff's Office.

Q. How long have you been with them?

Q. So did you follow that procedure in this particular case?

A. Yes, I did.

Q. What, if anything, did you learn about the victim, Steven Cameron?

A. There were two separate gunshot wounds:

One gunshot wound came into the left side of his neck, anteriorly, passed in a downward through the trachea, -- this would be right below your Adams apple or your voice box. It then left the trachea and struck the vertebral body at the top of the thoracic spine, right after the neck portion of the spine has ended, causing a bruise to the spinal cord. The projectile was left in the bone, which we were able to retrieve and place into evidence.

The second gunshot wound came in the left side of the chest. It passed through what we call the anterior mediastinum, the space in front of the lungs. It struck the arch of the aorta, where the aorta comes up out of the heart, turns and then falls down to your legs and where the branches are that go up to

your head and out to your arms. It put a hole in the aorta both as it entered and left. It then passed into the right lung and exited between the spaces of the ribs in the abselary line, the armpit line, and went into the soft tissue; almost exiting but not completely exiting, and we retrieved the projectile in this location.

There was massive bleeding which occurred into the spaces of the chest, what we call the mediastinum, the space around your heart and your major vessels, and the plural space, the space around the right lung where blood can collect. Although there aren't true spaces there, there are potential spaces.

Q. Okay. And you said that you collected two projectiles from the victim's body?

A. That's correct.

Q. I am showing you what has been marked as State's Exhibit 12. Can you take a look at that for me, please?

A. Yes, this represents a sealed package. Inside the sealed package is my sealable package with my identifying numbers,

A. The general pattern, both on the left side of the victim's body, both in a similar directionality suggests a quicker sequence of shooting.

Q. So they would have happened one after the other?

A. That's correct.

Q. Which gunshot wound would have been fatal to Mr. Cameron?

A. The gunshot wound that went through his aorta, that came through the left side of his chest, would have been fatal because of the hole that it produced in the aorta.

Q. In your expert opinion, what was the cause of Steven's death?

A. It would be that gunshot wound and the resultant bleeding, which we call exsanguination.

Q. What is exsanguination?

A. When someone bleeds to death.

Q. Okay. And in your expert opinion, how long would it have taken Steven Cameron to bleed to death?

A. Less than a minute.

Q. And what was his manner of death

it's part of your defense or not, tell me why it is not inadmissible hearsay based on what this witness would say.

MR. SMITH: I'm asking him what his knowledge of ---

THE COURT: That is not what you said. Rephrase your question and ask it now, please.

MR. SMITH: Yes, sir. What is your understanding, based on your investigation, based on your discussion with Mr. White and the evidence that you have seen since that time ---

THE COURT: No, sir. Ask one question, not a group of questions -- unless you are going to let one officer come up here and testify about the whole case, the whole investigation. The whole investigation is the investigation, it has to meet the rules.

MR. SMITH: Yes, sir.

THE COURT: Rephrase it again.

MR. SMITH: Based on your involvement in the case, what is your understanding as to the frequent visits?

OFFICER HENRY: I repeat, Mr. Daniel

White expressed to me that he gave his brother a ride to that location two or three times. He did not -- to my recollection he did not tell me exactly what his brother did there, he just gave him a ride.

MR. SMITH: Did you have audio on while you were doing that?

OFFICER HENRY: I did, (affirmative nod); yes, sir.

MR. SMITH: So that would be available to me?

OFFICER HENRY: It should be.

THE COURT: Did you give him the audio?

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: Is that the December 6th date?

SOLICITOR MOORE: No, Your Honor, we received this and provided it to Mr. Smith much later, although it would have been within the past two months. We have it on August 9th, 2017 that we provided it on DVD along with three supplemental reports as well as the DVD photographs and a supplement report.

THE COURT: August 9th?

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: And what was the date that this event took place?

SOLICITOR MOORE: I believe that he said that he drove to that car March 30th of 2016.

THE COURT: Why is there such a delay in getting that information?

SOLICITOR MOORE: Your Honor, I can only provide to Mr. Smith what I have for myself.

THE COURT: That is not an excuse.

SOLICITOR MOORE: I understand ---

THE COURT: That is not acceptable.

SOLICITOR MOORE: I understand, Judge.

THE COURT: Then there is going to be some consequences for the delay in getting this information to him. The information is going to be suppressed. There's going to be some problems with it, I'm telling you.

SOLICITOR MOORE: I understand, Judge.

THE COURT: Have you listened to this tape yet?

MR. SMITH: I have not.

THE COURT: Bring the jury in, please.

(JURY IN @ 4:36 P.M.)

THE COURT: Madam Forelady, we've

gotten to a stage in the trial where I think it's good to break for the afternoon. I want to check with you and the jury to see if there is any reason why you couldn't be here and start the trial at 9:00 in the morning. Is that a problem for anybody? If there is, let me know. Would 9:30 be better? I saw some hesitant faces, that's the only reason that I am asking. Okay, so 9:00 o'clock is fine?

FORELADY: Yes, sir, that's fine.

THE COURT: Okay. Thank you. If you would, leave your note pads in the jury room. We will see you at 9:00 o'clock in the morning. I hope you all have a nice evening.

(JURY OUT @ 4:38 P.M.)

THE COURT: I want to know what evidence that was delayed to August 9th, that kind of delayed delivery that y'all gave to the defense. This guy is on trial for murder and if he gets found guilty, then he's looking at life in prison.

SOLICITOR MOORE: I understand, Your Honor.

THE COURT: So playing with evidence is

not satisfactory. I'm not saying that anyone is playing with the evidence but I want to know why after over a year it's just getting to the defense. That's inexcusable and I can't understand how, under any circumstances, that could be. Now, I might just be wrong -- and it wouldn't be the first time. But I want an explanation and I want to know what else could be missing. We're not going through this trial, jerking and stopping here and there, because the State, either through its officers or through your office did not bother to give discovery. Okay? So I want to know why.

SOLICITOR MOORE: Your Honor, I can assure you that we gave Mr. Smith ---

THE COURT: I want to know why -- I don't care what you did. I want to know why it just got sent out August 9th of this year.

SOLICITOR MOORE: Because I'd just received it, Your Honor.

THE COURT: From whom?

SOLICITOR MOORE: From Detective Henry.

THE COURT: Who is Detective Henry?

SOLICITOR MOORE: He is the man who was

just testifying.

THE COURT: Why, sir, was it not until the 9th of August of this year that you didn't give this information up?

OFFICER HENRY: What information?

THE COURT: Why did you wait until this year, over a year, to give this information to the Solicitor's Office?

OFFICER HENRY: I thought that I had given it to a supervisor at an earlier point in time.

THE COURT: You thought that you had?

OFFICER HENRY: Yes, sir.

THE COURT: So it was a case of honest mistake?

OFFICER HENRY: Yes, sir. Seriously, yes, sir.

THE COURT: If it is a case of honest mistake, I can understand. But if it's a case of a recurring pattern -- and the reason why I say that is because this is the second time that I've heard it in this case, in two days. Not from you. Okay.

Is there other evidence that was not delivered until late in the game? If so,

why?

SOLICITOR MOORE: Your Honor, if you will allow me to go through my discovery with Mr. Smith and look at my exhibit list, I can tell you exactly ---

THE COURT: I'll be right back. I want to get this cleared up.

SOLICITOR MOORE: Yes, sir.

THE COURT: Officer, if it is an honest mistake, it's okay. I'll be right back. Don't anybody leave until I get back.

(BRIEF RECESS)

(DEFENDANT PRESENT)

THE COURT: Please be seated. Miss Moore, have y'all identified any evidence out there that is late or recently received that was given to the defendant in this matter?

SOLICITOR MOORE: Your Honor, we ---

THE COURT: First, let me -- I'm giving them a hard time. You received it on the 9th, it is now the 22nd and you told me that you haven't listened to it. That's unacceptable as well. You have an obligation. So that cuts both ways. Go ahead.

SOLICITOR MOORE: Your Honor, in terms

of evidence that we intend to admit or in terms of supplementals that we have sent him?

THE COURT: Well, you know, I would assume that -- it doesn't have to do with anything, but I would assume that if you are putting in evidence that it's not going to be real helpful to this gentleman.

I want to get just an idea of what evidence that was given to him -- or let me let you -- instead of putting the burden on you (Solicitor), let me put the burden on you (Mr. Smith) to tell me what you've gotten recently that you think you have a problem with because you only received it recently. Is there any?

MR. SMITH: Your Honor, I will just read what I have received. Okay?

THE COURT: No, sir. You prepared for this case. Right?

MR. SMITH: Sure.

THE COURT: Okay. So what evidence, the recent receipt of which, caused you a problem preparing or defending this case?

MR. SMITH: August 22nd, August 18th, uh, August 14th. As a sole proprietor (sic),

I am doing my very best to view everything to get ready for this trial. You know?

THE COURT: I really don't want to know -- let me ask you this way ---

MR. SMITH: The ---

THE COURT: Hang on. Not so much the dates but what evidence out there did you receive on those late dates that you referenced that you feel like has hampered your ability to investigate or prepare for this matter? Specifically.

MR. SMITH: Specifically Mr. Henry's video, ---

THE COURT: What was that -- that's why I broke, so you'll have time to review that today.

MR. SMITH: Right.

THE COURT: That's fine. Look at it tonight. We are not going to keep doing this thing: delay, question, delay, question, delay, question.

Either you -- you look through the video tonight. That's why I stopped it, in case you want to have a chance to play the video because they introduced it and if you want to

play it, that's your prerogative.

If there is other evidence out there that you feel like that you received late that causes you a problem, you need to articulate it, you need to articulate why, then we need to see if there is anything that can be done about it. Okay, sir? We need to do that first thing in the morning.

MR. SMITH: Yes, sir.

THE COURT: Now, that being said, I'm not trying to give anybody a hard time up here. I want an even playing field for everybody. I let the chips fall where they may.

That being said, anything before we break for the day?

SOLICITOR MCELHANNAN: Your Honor, I do have one thing on the jurisdictional issue.

THE COURT: Yeah, put that -- I saw that.

SOLICITOR MCELHANNAN: I've shown it to Mr. Smith and I think he agrees now. This is from Anderson County GIS and 911 addresses, updated as of today's date, August 22nd, 2017. It's an address confirmation. It says that

AUGUST 23, 2017 9:00 A.M.

(DEFENDANT PRESENT)

THE COURT: Mr. Smith, have you had an opportunity to review the video question from yesterday afternoon?

MR. SMITH: I reviewed the video. Yes, I did.

THE COURT: When we left yesterday afternoon, I asked you to identify other evidence that you contend was late in being turned over that caused you any problems. Did you find any?

MR. SMITH: I didn't.

THE COURT: You did not?

MR. SMITH: Did not.

THE COURT: Are you ready to proceed with cross examination?

MR. SMITH: Her questioning talked about how many hours that they reviewed. I do not have a year to review all of those videos, so my use of that to the jury is to show how -- how difficult that they've made it to try to defend my client.

THE COURT: Well, let me tell you this.

The point that you've made as to discovery, to suppress ---

MR. SMITH: Your Honor, you have to recognize that getting it last week and ---

THE COURT: I recognize that you got a lot of discovery back in December a year ago.

I recognize that there was some also late discovery that was given to you on August 9th. And of that discovery -- because the other stuff you had sufficient time to look at.

MR. SMITH: I couldn't get it ---

THE COURT: Of the discovery of August 9th, what if anything have you not been able to look at that causes you prejudice?

I want to know today -- we started the trial on the 21st, so although it was late you had a couple of weeks to look at it.

MR. SMITH: Yes, sir. Then the 18th, the 14th, the 16th. That is when I received it. I don't have the time that they have to watch every minute of that video. It's physically impossible. That is my argument.

They willfully and wantonly did that. I mean, they had it. So I don't understand why they didn't give it to me.

THE COURT: Tell me specifically what evidence that you contend was late -- if you can point to it specifically and if I can fashion a remedy, I will. But to just generically say that it was this date and you haven't had time to look at it is not sufficient. Okay? But you've had some time to -- so the burden shifts over to the defense side.

But from August 9th there was some time but I wouldn't say that there was plenty of time.

That being said, are you ready for your cross examination?

MR. SMITH: Ready.

THE COURT: Is the State ready?

SOLICITOR MOORE: Your Honor, if I may address one thing very briefly. I take umbrage with the fact that Mr. Smith says on the record that I willfully or wantonly withheld evidence from him. I would like that noted.

THE COURT: Very well. In fact, the evidence that you referred to yesterday was of Detective Henry, I questioned him under

oath and I believe that he said that it was an honest oversight.

SOLICITOR MOORE: Yes, Your Honor.

THE COURT: So I don't see that it was willful or wanton. I will say that I hear this in Anderson County, that it's beginning to be a recurrent thing that we are seeing -- and it's not just me, but people are taking a hard look at it.

SOLICITOR MOORE: I understand, Your Honor.

THE COURT: But I will state for the record that I don't see any evidence of willful, wanton -- now, it may be that he has a chance to prove that but at this point I don't see any. Now, quite frankly, I see none from the Solicitor's Office.

SOLICITOR MOORE: Thank you, Judge.

MR. SMITH: Your Honor, I didn't mention a name. I didn't --

THE COURT: I understand. We're done talking about that. Let's bring the jury in. Is Mr. Henry here?

SOLICITOR MOORE: He is in the lobby, Your Honor.

the victim in regards to possibly identifying this vehicle.

Through the course of that, I found a relative that was able to recognize that vehicle as being at a location that he had -- that he and Detective Patrick Henry went to on March 30th and observed that location.

Q. During the course of your investigation, were you ever able to compare this video footage with video footage or photographs from Investigator Henry?

A. Yes, ma'am. When I assisted in showing that to the family, I learned that -- up to then, I didn't know that Detective Henry had done that.

On April 5th, I was able to get stills from the video taken and make comparisons, and determined that it was the same vehicle.

Q. Okay. If you would step off the stand for me, please, and tell me what you see on the screen in Exhibit 14.

A. Yes, ma'am. This is the image of the vehicle that arrived at the victim's residence that night.

Q. Okay. And I'm showing you State's

Exhibit 5F, can you tell us what that is?

A. That appears to be taillights of the same vehicle. Yes, ma'am.

Q. And you said that these were the stills, 10A, that this is one of the stills that you observed from Detective Henry's ---

A. Yes, ma'am. That's accurate.

Q. And the vehicle here appeared to match the vehicle in this video?

A. Yes, ma'am.

Q. What, if anything, did you do after receiving the stills you received from Detective Henry?

A. After -- this was on April 5th when I learned this information based on my observation of reviewing that video as well as seeing those, I thought that it was a certain match to the vehicle that was in our video. I contacted one of the supervisors and Detective Marzolf to assist in locating that vehicle. I had learned that the residence was in Greenville County's jurisdiction, so they got the search warrant.

Q. Do you recall what address that they were attempting to get a search warrant for?

A. I know it was 113 Appaloosa. I'm not sure if it is Drive or Street.

Q. Did you participant in executing that search warrant?

A. I did.

Q. And what did you do?

A. When I arrived that day, we were tasked, myself and another detective, with the main residence on the bottom. The area that I was responsible for searching was the master bedroom of that residence.

Q. Was the white Buick that you see in this video, in these stills or in the photographs that I have shown you, was it at the residence that day?

A. It was not when we arrived, no.

Q. Other than coming here today to testify, did you have any further involvement in this case?

A. No, ma'am.

SOLICITOR MOORE: Thank you. Please answer any questions that Mr. Smith may have.

THE COURT: Cross-examination?

MR. SMITH: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. SMITH:

Q. (Inaudible) -- do you agree with that?

A. Sir?

Q. I have an iPhone. I can zoom, I can change the lighting, couldn't you make that more visible?

A. The camera system was outside on the porch, sir. As far as enhancing it, no, sir.

Q. Could you have?

A. There is a machine that does that from time to time but I don't think it was possible with this.

Q. But you work for the County?

A. I work for the Anderson County Sheriff's Office.

Q. You were working with Greenville County, as well?

A. They assisted in the search; yes, sir.

Q. Do you think they have technology that could have made that so that you could see?

A. That is not a question that we

asked, sir. I felt comfortable in my review of that picture that the body style of that vehicle that my assessment was accurate.

Q. So using that same experience and knowledge, what was the car that pulled in the driveway before that?

A. It was a dark car, sir. There was not enough detail on that dark silhouette to determine.

Q. But you saw the lights in the back, right?

A. You can see the light but I can't tell you the make or model of that vehicle.

Q. How hard did you try to identify that vehicle?

A. Sir, my job in this investigation was analyze and breakdown the video. The facts that I had, I took to the lead investigator.

Q. The video began at -- we saw the video and at the beginning there was lighting.

A. Yes, sir.

Q. Based on that fact, this video ran through the time that the body was found?

A. That's correct.

Q. And the body was found -- not at first by the police?

A. My understanding is that a neighbor or a family member found the body and they called the police but I can't, honestly, tell you that.

Q. But you are aware that the body was rolled; right?

A. No, sir, I was not aware of that.

Q. So how much communication did you have with Detective Marzolf?

A. My job in this investigation, sir, was to conduct a neighborhood canvas and view the surveillance video. That is the extent of my knowledge of this case.

Q. So in your review of the video, who came to that house in the next twelve to fifteen hours following the shooting?

A. Sir, the time that the body was located was well after the actual death of the victim in this case.

Q Like twelve to fifteen hours after?

A. Yes, sir.

Q. So you would be able to see anyone

that arrived in that driveway from the time of death until the officers showed up; right?

A. Yes, sir.

Q. Did you see anybody come in the driveway?

A. Not in the driveway. No, sir. There were some vehicles that came in front of the residence. I believe, if my memory serves me correctly, it was maybe a dark gray Dodge Ram.

Q. Do we have any video of that to show?

A. It was turned into evidence, sir.

Q. How many legs did you see come out and walk away from those cars?

A. I can't answer that question, sir.

Q. You can't answer what you saw?

A. I can't answer a question as far as a timeline how many people. I know that there was a female that gets out of that vehicle. But as far as legs, no, sir; I didn't count the legs.

Q. So you were able to tell us that it was a female.

A. You can see by her hair, sir.

Q. But in this vehicle you can only see legs or feet, is that right?

A. Yes, sir. There's a big difference between daylight and nighttime hours, sir. There is also an angle where the road curves in front of the residence.

Q. So if it is light out, you can see the victim?

A. No, sir. As I said, you cannot see the victim's front porch from this angle. You can see his driveway and you can see the side of the residence.

Q. Can you show me where you see the female and you recognize that it is a female?

A. Yes, sir. Again, this -- the white car is -- the road curves up to right here and then -- if my memory serves me correctly, and again it's daylight hours, so there's a different, uh, uh, appearance. But it appears that the vehicle pulls up right here on the main road and never enters this driveway.

Q. So this is the same video that has the female on it?

A. Yes, sir.

Q. Can you please show us that?

A. Again, sir, it is a different time stamp on the video. It's daylight hours when that person finds him.

Q. Can you show us?

A. I don't have the video here, sir. This is what has been turned into evidence. I don't have -- control that.

Q. So the video was not turned in?

A. The entire video was turned in, sir. What they have here, I can't answer for that. I can't say.

SOLICITOR MOORE: May it please the Court?

THE COURT: Yes, ma'am?

SOLICITOR MOORE: Your Honor, if Mr. Smith would like to play that footage, we can certainly cue that up for him but we may need to give the jury a break while we find it.

THE COURT: Mr. Smith, would you like to view that?

MR. SMITH: I would but I -- but I'd like to get rid of ---

THE COURT: Do you want to ask some more questions first?

MR. SMITH: Yes, sir.

THE COURT: Proceed.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. In your investigation, after seeing the vehicle you couldn't identify, do you know that Mr. Carver has an Escort?

A. No, sir, I had no way of knowing anything about Mr. Carver.

Q. So you can't share anything about Mr. Carver?

A. I haven't spoke with Mr. Carver.

Q. And the video that you reviewed didn't show Mr. Carver at all?

A. I can't answer that question, sir. I did not see Mr. Carver in that video, if that is what you are asking.

Q. Yes, sir. The two hours that you said there's a difference, how did you determine that?

A. There was a second video collected from down the way. I am not sure of the exact -- Detective Erskine collected it. I believe that he determined that their time stamp was accurate. Obviously in reviewing

the video that we saw and in talking with the homeowner, Mike Tallyan, he confirmed that his time was off. You could also see that daylight started earlier than it would have at that time, coming on Spring, so he said that he just didn't set his clock on the surveillance.

Q. Officer Dugan, who testified yesterday, what was his part in gathering the video?

A. To my understanding he collected -- I requested that it be collected from forensic on scene and it is my understanding that he is the one who actually collected it from Mr. Tallyan.

Q. So that is what you -- you did your analysis on?

A. When I was on scene the day that the body was discovered, again, I conducted a neighborhood canvas and discovered -- when we arrived at 112, we discovered cameras on the residence. When we reviewed the footage from those cameras, it was at a fast pace in his residence -- scanned through it, obviously did not watch it frame by frame -- and were

able to discover this vehicle that came and left, lights off. Based on all my experience, I informed the lead investigator who requested that forensics collect the video.

Q. Yes, sir. The video that we watched yesterday didn't have the dark sedan twenty-eight minutes beforehand, all the way to the right. Are we using the same video?

A. I didn't see the video that you're talking about yesterday, sir. The video that we see today is the video that I reviewed.

Q. Yes, sir. When the vehicle comes in, how many pair of legs/feet do you see?

A. To the best of my recollection, at least two sets of legs.

Q. Can you point those out to the jury and myself, please?

WITNESS: Is there a way to look at the bar at the top?

SOLICITOR MOORE: I can -- (working with video).

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. That vehicle is stated in the

Appaloosa search warrant?

A. That's right.

Q. And guns were found at that location?

A. There was a -- I believe there was a .385 (sic) caliber handgun. I did not write down the actual make.

Q. And that was Mr. Gambrell's?

A. I'm not sure of the ownership. We collected it on the execution of the search warrant and turned it in to forensics.

Q. So you just retrieved it, that's all that you did?

A. Yes, sir.

Q. Do you know, since you were on the initial, uh, team that went to 108 Sterling Bridge -- what, if anything, was found on the victim's person?

A. My job that day was to do a neighborhood canvas and review the surveillance video.

Q. Do you have any knowledge of that?

A. I do not, sir.

Q. Did you have any meetings with all the group where you were told what to do, and

then further meetings where you came together to share what you'd found?

A. I can't recall if we did on this case. I know that we did initially and that's where I got my assignment.

Again, on the 30th I spent my entire day reviewing the video.

As far as the 4th, that's the actual meeting that I had with Detective Marzolf, where I showed the video to the family with the help of Detective Price (phonetic).

Q. Detective Russell, you went to Williamston. When did you do that?

A. 2010, sir.

Q. Why did you leave?

A. I was a detective with the Anderson County Sheriff's Office and I took a more supervisory job with the Williamston police department.

Q. When you came back from Williamston, why did you leave Williamston?

A. I was a Captain and in the latest mayor's election they had a new mayor who replaced the main staff of the police department.

Q. Thank you, sir.

THE COURT: Redirect?

SOLICITOR MOORE: Your Honor, I think before we do redirect that Mr. Smith wanted to show ---

THE COURT: Mr. Smith, do you still wish to view that part of the video?

MR. SMITH: Yes, I do.

THE COURT: Do you need a few minutes to locate that?

SOLICITOR MOORE: Yes, sir.

THE COURT: Ladies and gentlemen, let's take a quick break. As soon as we locate the video that Mr. Smith wants to show you, we'll bring you back in. Please leave your pads here in the courtroom.

(JURY OUT @ 10:02 A.M.)

SOLICITOR MOORE: Your Honor, it may take a few minutes. This is a clip that we took off of the master drive because the -- the entire video, like they said, is about twenty-four hours long and would not fit on a disk. For some reason this computer is refusing to recognize our own flash drive, so we may have to take another clip, put it on a

disk and bring it back up.

I'm sorry. We were not anticipating using that portion.

THE COURT: Just let me know. We'll recess until -- just let me know.

MR. SMITH: Your Honor, can we get someone to fix this monitor?

CLERK: Neither one of them are working.

SOLICITOR MOORE: No, sir, and we had Rosemary in here yesterday attempting to fix it. We were unable to do so

THE COURT: Then you will have to stand up over here to look at it.

MR. SMITH: Yes, sir.

THE COURT: We'll be in recess.

(RECESS 10:04 - 11:00 A.M.)

(DEFENDANT PRESENT)

THE COURT: Please be seated. We have the video cued up to where it needs to be?

SOLICITOR MOORE: Your Honor, I made Mr. Smith a copy of that portion of the surveillance footage. I have only admitted the portion of the surveillance footage that I felt was pertinent. So if Mr. Smith does

intend to play this for the jury, we would ask that that be admitted as a defense exhibit.

THE COURT: Do you intend to play it?

MR. SMITH: I wanted the officer to testify as to the ---

THE COURT: Do you intend to admit it?

MR. SMITH: No.

THE COURT: Then we are not going to go into that. I tell you what, I'm not going to put up with a lot more delays like this, Mr. Smith. I'm telling you. We waited twenty or thirty minutes and now you're telling me that you don't want to play it for the jury?

MR. SMITH: I said that I don't want it to be my exhibit. It is his ---

THE COURT: We will make it a State's exhibit. If you're worried about losing your right to the last argument, I hear you and I'll make the State make it their exhibit.

MR. SMITH: Yes, sir.

THE COURT: But the point that I am making is we stopped so that you could play this for the jury and question him about it. You do want to play it but you want it to be

a State's exhibit, is that correct?

MR. SMITH: That's correct.

THE COURT: Okay. Then I'm sorry, I misunderstood it. I'm going to make it a State's exhibit.

SOLICITOR MOORE: Your Honor, if that is the case, then we would most likely reserve the right to move the entire footage in. Certainly not to play it for the jury but so that they can have that in the room when they go, so that they can look and see if there is anything that Mr. Smith is arguing, or that I am arguing, ---

THE COURT: Do this. Make the entire tape an exhibit along with the portion of the tape, so that we don't have three versions in the jury. So that if the jury wants to see the entire tape, which is unlikely, they will have that. Fair enough?

SOLICITOR MOORE: Correct.

THE COURT: Do you have any objection to that, Mr. Smith?

MR. SMITH: No, sir.

THE COURT: So mark the current version as your next exhibit, mark the entire one as

the following exhibit number.

SOLICITOR MOORE: Okay.

THE COURT: Then let's tee it up to where Mr. Smith is asking that it be paid.

SOLICITOR MOORE: Your Honor, it will take us some time to get all the -- we can admit that full video later.

THE COURT: Any objection to that, Mr. Smith?

MR. SMITH: No, sir.

THE COURT: All right. Ready to go?

SOLICITOR MOORE: Yes, sir, as soon as we get that tape where it needs to be.

COURT REPORTER: That will be State's Exhibit 18.

(SO ENTERED AS STATE'S EXHIBIT 18)

SOLICITOR MOORE: Your Honor, just for the record, my administrative assistant, I've just instructed her to copy from Detective Marzolf's flash drive, his original copy, to a new flash drive.

THE COURT: The entire?

SOLICITOR MOORE: Yes, sir. The entire surveillance footage.

THE COURT: In its entirety. The

entire version is Exhibit 10.

SOLICITOR MOORE: Yes, Judge. I cannot guarantee that that flash drive will be able to play for the jury. We have, as you know, had some difficulty with that.

Like you said, I don't expect them to want to play the entire twenty-four or forty-eight hours, but if there is any ---

THE COURT: Well, we will let ---

MS. MOORE: Yes, Your Honor. We will be able to pull from that flash drive as needed but it would take several days, possibly, to extract all the footage from that flash drive onto several disks.

THE COURT: All right.

SOLICITOR MOORE: Mr. Smith, is this a sufficient place for you to play from?

MR. SMITH: Certainly.

SOLICITOR MOORE: It is cued at 1343:20 and the part that you are asking to show appears at 1344:10. I wanted to give you as much leeway in front of that as possible.

MR. SMITH: Yes, ma'am, thank you so much.

THE COURT: Are we ready?

SOLICITOR MOORE: Yes, Your Honor.

MR. SMITH: Yes, sir.

THE COURT: All right, bring in the jury.

(JURY IN @ 11:06 A.M.)

THE COURT: Ladies and gentlemen of the jury, as I told you at the beginning of this case, trial are often slow, very methodical. That is something that goes on in most cases. That being said, are you ready to proceed, Mr. Smith?

MR. SMITH: Yes, Your Honor. May it please the Court?

THE COURT: Go right ahead. Officer, you are still under oath.

WITNESS: Yes, sir.

CROSS EXAMINATION RESUMED

BY MR. SMITH:

Q. As we play this video, kindly tell us what is happening and tell us how in the video you recognized this female.

A. (Video playing) -- The video you're seeing is from 112, the first driveway that you see is 110 and the second driveway with the mailbox against the roadway -- I'm sorry

-- with the roadway right here against the roadway is 108.

(Video playing) -- you can see the time stamp is 1344, but by all calculations this was two hours off, roughly.

(Video playing) -- obviously this is the vehicle which I deem to be the complainant in the action.

(Video playing) -- obviously you see the driver of this vehicle.

(Video playing) -- they are approaching the front porch where the decedent was found.

Q. Did you say "they", sir?

A. I'm sorry. A single person.

(Video playing) -- now you can see they go back.

Q. Can you tell me from what we just watched how you can tell that's a woman?

A. There was a female that made the call.

Q. Did it appear like she was just walking back or sauntering back to her vehicle, to you?

A. I can't say.

Q. She appeared to be in no hurry?

A. Not that I -- no.

Q. Now, she was on that porch or out of our view for, would you say, two minutes?

A. I didn't note the exact time stamp but more than a moment.

Q. Do you have any knowledge as to what she did during that two minutes?

A. I don't know for sure, sir.

Q. But it is definitely a "she"?

A. The way that I understand it.

Q. Very well. Thank you, sir.

MR. SMITH: Nothing further.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY SOLICITOR MOORE:

Q. Staff Sergeant Russell, not as to this surveillance but as to the previous surveillance footage that you testified to with Mr. Smith, you did say that you distinctly see the driver's door open. Correct?

A. That's correct.

Q. And you distinctly see the driver get out of the car?

A. Yes, ma'am.

witnesses and place them in separate interview rooms.

Q. Who, if anyone, did you interview?

A. I spoke with James Gambrell.

Q. And what action did you take after your conversation and interview with James Gambrell?

A. I obtained arrest warrants for James Gambrell for accessory before the fact of a felony and murder for Jason Carver.

SOLICITOR MOORE: I have nothing further. Please answer any questions that Mr. Smith may have for you.

THE COURT: Cross-examination?

MR. SMITH: May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR. SMITH:

Q. You've had the opportunity to hear all the testimony of your brethren; right?

A. Yes, sir.

Q. Are they all -- do they all lack that much knowledge?

A. (No verbal response).

Q. Are you the only one that knows

everything?

A. (No verbal response).

Q. For instance, the gentleman just testified that he had no idea of any relationship between the homeowner where the Buick was found and the Gambrells. Is that right?

A. Yes, sir.

Q. But you know more than that, right?

A. Yes, sir.

Q. Well, tell us about the residence where the Buick was found.

A. The residence where the Buick was found, I was told by Mrs. Gambrell that that is the residence of one of her friends.

Q. All right. So who took you there, do you know that?

A. Without referencing my report, I can't say for a hundred percent sure. I believe that the Gambrells took us there.

Q. And when you say that, was that Mr. Gambrell or Mrs. Gambrell?

A. I am not sure.

Q. But in no way would it have been Mr. Carver?

A. I can't advise. I am not sure if it was Mr. Carver or not, but I don't believe that it was.

Q. Is there anything that would indicate that Mr. Carver had something to do with that?

A. I don't know.

Q. When you saw the body on the porch, what was taken from his person or gleaned by investigators?

A. They don't typically take evidence off a body at a crime scene. That's typically done at the autopsy.

Q. And what was taken from his person at the autopsy?

A. I wasn't personally at the autopsy but my understanding is that there was some cocaine found in his shoes or taken from his person, as contained in the autopsy packet.

Q. When you got there, the body -- the shorts of the individual were down, isn't that right?

A. Yes, sir.

Q. And you had information that drugs had been taken from his person as well as

money; isn't that right?

A. (No verbal response).

Q. I'm asking, isn't that in your investigation report. Right?

A. (No verbal response).

Q. Do you recall someone telling you that that happened?

A. No, sir.

Q. Did anyone tell you that the body had been rolled?

A. No, sir.

Q. Do you have your report local so you can look at it?

A. Yes, sir.

Q. Can you get it for me?

SOLICITOR MOORE: Judge, if Mr. Smith would like, I can provide Detective Marzolf with a copy of his report.

THE COURT: Ma'am?

SOLICITOR MOORE: If Mr. Smith would like, I can provide Detective Marzolf with a copy of his report.

THE COURT: That's what he is asking him.

SOLICITOR MOORE: (Tenders)

WITNESS: Thank you.

CROSS EXAMINATION CONTINUED

BY MR. SMITH:

Q. If you would, turn to page eighteen.

A. (Complies).

Q. Is that your report?

A. Yes, sir, it is.

Q. Go down to the bottom where it says 4/4/2016.

A. Yes, sir.

Q. Go to the -- I believe that it is third sentence where it says, "Erica said..." -- can you read that for me?

A. (Reading): "Erica said that Patricia picked her up when she left the scene at 900 Hours."

Q. At 900 Hours, is when?

A. 9:00 a.m.

Q. And that was on March 30th, the day after the murder?

A. Yes, sir.

Q. All right. Please continue.

A. To read the report?

Q. Yes, sir.

A. (Reading): "Erica said that she was

concerned that they left the scene at 900 Hours and did not call law enforcement until 1345."

Q. Speak up, please.

A. (Reading): "Erica said that she was concerned that they left the scene at 0900 but they didn't call law enforcement until 1345."

Q. Could you read that next sentence?

A. (Reading): "Erica told me that Christopher did not go to the decedent's funeral and stated that that weekend Christopher was pulled over by law enforcement. She stated that the police (inaudible reading) -- Ericka said Christopher ran from the scene because he was going to get some marijuana."

Q. With regard to this particular paragraph, is it your understanding that two people were on the porch at 900, or four hours and forty-five minutes prior to the police arrival?

A. I got information from Erica Cameron that said that but in viewing the video footage, no.

Q. So Erica Cameron is whom?

A. She is the sister of the victim.

Q. Looking at page fifty-three, specifically talking about the very end of the page where it says Stacy Cameron. Can you tell us who Stacy Cameron is?

A. Uh, she is a cousin of Steve.

Q. Can you tell us what Stacy Cameron told you?

A. She said that Angie's friend went to Steven's house and rolled Steven's body.

She said -- Stacy said that Angie's friend went to the incident location and did not notify the police.

Q. Slow down and speak up.

A. Stacy said that Angie's friend went to the incident location and did not notify the police.

Stacy said that Erica told her that a drug dealer had threatened Steven with a gun and told him 'I will kill your whole family.' Stacy said that Christopher had threatened Steven too.

Q. So your interpretation of that is what?