

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lee County

Honorable Diane Schafer Goodstein, Circuit Court Judge

JOHNNY HAGGINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000176

APPENDIX

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STATE OF SOUTH CAROLINA)	}	COURT OF GENERAL SESSIONS
COUNTY OF LEE		

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
18-GS-31-0050

v.)

JOHNNY HAGGINS,)

DEFENDANT.)

June 4, 2018
Bishopville, South Carolina

B E F O R E :

THE HONORABLE KRISTI F. CURTIS, JUDGE

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

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(There were no exhibits submitted.)

1 MR. FATA: Your Honor, the State calls
2 indictment 2018-GS-31-50, the State versus Johnny
3 Haggins and Coty Weaver, indictment for domestic
4 violence high and aggravated and conspiracy and
5 burglary in the second degree and assault and
6 battery first degree. This is Mr. Etheridge. He
7 represents Mr. Haggins. Your Honor, I'll pass up
8 the indictment. We have notified on -- Mr. Haggins
9 is not here. We notified Mr. Etheridge on
10 April 19th, 2018, that this, I was preparing this
11 case for trial for June 4th, 2018, and I provided an
12 offer good until April 30th, 2018 and asked, please
13 let me know what your client wishes to do.

14 Subsequent to that, Mr. Etheridge on April
15 the 19th, 2018, emailed me back and said, "I'm
16 sorry, but I do not have the offer regarding Mr.
17 Johnny Haggins. Could you please forward a copy of
18 that information to me," and something about the
19 co-defendant. On May 22nd, why I waited so long --
20 haven't checked my emails I think -- just wanted to
21 let you know, it's my email with Mr. Etheridge,
22 "Just wanted to let you know that I have not been
23 able to" -- no, that's his email to me, excuse me,
24 I'm sorry. I emailed him back and told him what the
25 deal was. He emails me back on May 22nd, "Just

1 wanted to let you know that I have not been able to
2 reach Mr. Haggins. We have sent him a letter asking
3 him to contact us and to let him know to be present
4 in Lee County general sessions on Monday, June 4th,
5 2018, at 9 a.m., and I will let you know as soon as
6 I hear from him." My response or reply to that on
7 May 29th was, "He is the first for trial if he does
8 not take the plea." He is -- today is June the 4th
9 and he is not here and I plan to call this case --
10 it's one of the cases for trial. I plan to call
11 this case tomorrow whether the defendant is here or
12 not. My position is he has had notice through his
13 attorney. The only way I can get him notice is
14 through his attorney. And here are the emails.

15 THE COURT: Okay. Yes, sir,
16 Mr. Etheridge.

17 MR. ETHERIDGE: Yes, ma'am, Your Honor,
18 may it please the Court. We've tried several times
19 to contact Mr. Haggins. His number has been
20 disconnected. We've sent him, I think, two letters.
21 Both of them have come back returned to sender. And
22 I think I've actually tried to reach out to family
23 members, but all of that has been to no avail. I
24 understand Mr. Fata's position, but our position
25 would be that he has not received proper notice. I

1 was unaware that he would be potentially tried in
2 absentia so I looked up case law on that and
3 actually called my office and there is a case law
4 from State v. Wrapp. And I apologize for not having
5 a copy of this, Your Honor, I just didn't expect
6 this today. That for, and that was a case that was
7 heard at the Court of Appeals on August 16th, 2017.
8 The lower court ruling was overturned because of a
9 lack of notice, and the tenets of the case are
10 basically that he has to receive notice of the term
11 of court for which he needed to be present and also
12 that he would be tried in this absence if he was not
13 present during that time. We have been unable to
14 reach him so he's not only not aware of this
15 proceeding, he's not aware that he'd be tried in his
16 absence; and that was, again, the basic tenets of
17 that case.

18 In looking at that case it goes through
19 the bond paperwork that was given, which on that
20 bond paperwork says that total of his obligation to
21 be present if he failed to attend he would be tried
22 in his absence. Again, the Court of Appeals found
23 that was also not sufficient notice. We understand
24 Mr. Fata's position. We're obviously not gonna jump
25 up and down if he, you know, asks for a bench

1 warrant; but we obviously understand if that was to
2 transpire. But as far as hearing the case we think
3 we're setting a, we're going down a road that
4 obviously we don't think the powers at be would find
5 to be within Mr. Haggins' constitutional rights for
6 notice on these sorts of matters.

7 So obviously at this time we just ask for
8 a continuance in this matter, let his bondsman bench
9 warrant if they want to try find him that way, let
10 them try to find him and of course try to deal with
11 these matters once he is found so he can receive
12 proper notice of these proceedings.

13 MR. FATA: Your Honor.

14 THE COURT: Yes, sir.

15 MR. FATA: If I may, it's our position
16 that he has received proper notice. The only way we
17 can notice him is through his attorney, and we told
18 his attorney that he's first for trial this week.

19 MR. ETHERIDGE: And we agree with that.
20 And we agree that is the only way he can get notice,
21 but we have been unable to reach him and give him
22 notice of this proceeding or -- again, the two prong
23 test that they went through is that not only he has
24 to have notice of this proceeding, he has to have
25 notice that if he is not here that he will be tried

1 in his absence and that and none of that has
2 transpired.

3 MR. FATA: And I'm not familiar with ---

4 THE COURT: If he's discontinued, he's
5 disconnected his phone and you've notified him of
6 the others you have on file for him I'm assuming?

7 MR. ETHERIDGE: Yes, ma'am. And one thing
8 it goes into in that case is whether it's voluntary
9 or involuntary, and the point they make in that is
10 that there has to be a finding -- it doesn't matter
11 if there's a finding of voluntary or not. As long
12 as he doesn't get those notices of him supposed to
13 be present at this proceeding today, which he has
14 not gotten, and also if he is not at this proceeding
15 he will be tried in his absence, which we have not
16 been able to get him because of the return of the
17 letters.

18 THE COURT: Well, how do you know that he
19 hasn't gotten notice.

20 MR. ETHERIDGE: They were returned to
21 sender.

22 THE COURT: Yes, sir.

23 MR. FATA: Your Honor, that is very
24 convenient. All you got to do is just not answer
25 your mail, not accept your letters, not answer your

1 phones when getting calls from your attorney. That
2 is very convenient and self-serving, Your Honor.

3 MR. ETHERIDGE: Your Honor ---

4 MR. FATA: You're asking -- the defendant
5 is here asking to be rewarded for failure to keep up
6 with his lawyer.

7 MR. ETHERIDGE: And Your Honor, that -- I
8 understand, again, Mr. Fata's position, but again,
9 the Court of Appeals was pretty clear in their
10 August, August decision that, that is the two prong
11 test that you got to have about being notified of
12 these proceedings and being told that if he wasn't
13 here he'd be tried in his absence. And that
14 decision from a judge in a circuit that I've, and
15 quite often that was overturned and remanded for a
16 new trial.

17 MR. FATA: We need to look up the case,
18 Your Honor.

19 THE COURT: Yeah, I'll take a look at it.

20 MR. ETHERIDGE: I don't mind giving you
21 the case. And I apologize, I have it on my phone if
22 Your Honor wants to look at it.

23 THE COURT: You said Rabb, R-A-B-B?

24 MR. ETHERIDGE: Yes -- no, it's W-R-A-P-P
25 is the actual case and the -- I can give you the

1 appellate case number, too, if that is of
2 assistance.

3 MR. FATA: Your Honor, if that's the case
4 it's impossible to have defendants -- all they got
5 to do is hire an attorney disappear. I mean, that's
6 the purpose of having an attorney, to send notice to
7 to 'em.

8 THE COURT: Let me just take a look and
9 see what ---

10 MR. FATA: And I'd like -- I need to look
11 at the case also.

12 (A break was taken.)

13 THE COURT: Okay. Mr. Fata, Mr.
14 Etheridge, about Mr. Haggins, just let me ask this
15 first. Are the co-defendants, I see there's an
16 Ashley Haggins, co-defendant, are they -- you gonna
17 try them ---

18 THE STATE: That's -- Ashley Haggins ---

19 MR. ETHERIDGE: Coty Weaver, Your Honor.

20 MR. FATA: ---is the victim, Your Honor.

21 THE COURT: Okay, I'm sorry.

22 MR. FATA: Coty Weaver is the codefendant.
23 She is there, sitting out there.

24 THE COURT: Okay. They were going to be
25 tried together?

1 MR. FATA: Yes, ma'am. And this, I think,
2 well, I don't know if you ---

3 THE COURT: I've have a chance to look at
4 the case so ---

5 MR. FATA: I think it's distinguishable
6 from our facts here. In that case, in the Wrapp
7 case they didn't give the defendant notice of a
8 specific term of court. They just said we'll get to
9 it next time and they relied on the notice in the
10 bond paperwork as being, you know, be here every
11 time for every term of court, but we've given
12 specific notice of court.

13 MR. ETHERIDGE: Your Honor, they may have
14 done, but they never -- I've never been able to
15 relay that to my client. And in addition to that
16 there's also the second part of that that, about him
17 trying in his absence he didn't show up, that's
18 never happened. We've just been unable to reach him
19 and it's ---

20 THE COURT: Well, from what the record
21 reflects to me is that you emailed an offer in
22 April, on April 18th. On April 19th you responded
23 and said you needed the specifics of the offer. On
24 May 8th you responded and put the specifics of the
25 offer.

1 On May 22nd, Mr. Etheridge, you indicated
2 that you could not reach him to let him know. You
3 just said you had not been able to reach him. You
4 said that you have sent him a letter asking him to
5 contact us and to let him know to be present in Lee
6 County general sessions on Monday, June 4th, at
7 9 a.m. And to this date you have not heard any
8 response from him.

9 MR. ETHERIDGE: No, ma'am.

10 THE COURT: I understand, but you
11 indicated he's changed his phone numbers. You sent
12 it ---

13 MR. ETHERIDGE: It's disconnected, yes,
14 ma'am.

15 THE COURT: It's been disconnected.
16 Whether through letter or nonpayment he's changed
17 it. You've notified him at the addresses that you
18 have for him and those letters have been returned to
19 you as?

20 MR. ETHERIDGE: Return to sender.

21 THE COURT: Okay. So I mean, we do have
22 some differences from the Wrapp case. I mean, the
23 Wrapp case he didn't have an attorney that he
24 retained. There was nobody to communicate with and
25 the solicitor had just given kind of this general

1 we'll get to you as soon as we can. So, I mean,
2 honestly, at this point we don't know what the
3 circumstances of the moving are, but there's many
4 times we're not gonna know what the circumstances
5 are. If you notified him, the only address we know
6 to find him to let him know to be here on June 4th
7 and you've done everything that you can possibly
8 do ---

9 MR. ETHERIDGE: We have, yes, ma'am.

10 THE COURT: ---as his attorney, and
11 there's nothing really further the State can do
12 other than to notify so I don't know what the State
13 could have done further except to notify you that
14 it's up for trial.

15 MR. ETHERIDGE: I agree with that, but
16 there are things in place. A bondsman contacting
17 him, bench warrant to try to, you know, held him
18 into court outside of -- when you say, I think it's
19 a little disingenuous to say that the only person
20 that can notify him is me. True, that's somewhat
21 true, but also in addition to that there are these
22 other avenues that can hale him into court beyond me
23 informing him of this.

24 MR. FATA: But the State is limited to Mr.
25 Etheridge and so it's not like we have, you know,

1 all kind of ways to do it. Once he retains an
2 attorney that's our contact. That's the purpose of
3 having an attorney.

4 THE COURT: And I mean, we can sign a
5 bench warrant for him. They may or may want find
6 him before the next term of the court in which case
7 our only remedy really is to say, okay, we'll write
8 him again and tell him that you're coming up in the
9 July term and if you are not there the case is gonna
10 be tried in your absence; but I don't know how the
11 State can ever guarantee that he's gonna actually
12 get that notification.

13 MR. ETHERIDGE: Your Honor, I understand
14 those positions, I really do. I think if we went
15 forward tomorrow I think there's very little chance
16 that this wouldn't be appealed, but it's not me that
17 can make those type of determinations. But I just
18 feel the case law being what it is, not even
19 granting a continuance and trying to at least allow
20 that process to play itself out, I think we're
21 headed to disaster.

22 THE COURT: When was the last time you had
23 actual contact with him?

24 MR. ETHERIDGE: My paralegal -- Your
25 Honor, I've got five firms. And I'll be honest with

1 you. It's not that I reached out to them, my
2 paralegals reached out to him. And I don't know.
3 I, think it's been quite some time, but I'm not
4 exactly sure to be honest with you.

5 THE COURT: Well, I'll continue it one
6 time. You know, I don't have any control over who
7 is over here next time. With the understanding that
8 it's up to you to contact him to tell him if he
9 doesn't appear he'll be tried in his absence.

10 MR. ETHERIDGE: Yes, ma'am, Your Honor.

11 MR. FATA: And Your Honor, we request a
12 bench warrant for Mr. Haggins.

13 THE COURT: Absolutely, yes, sir.

14 MR. FATA: You know, I can't help but
15 believe, in fact, Mr. Haggins is playing the system.

16 THE COURT: That very well may be.

17 MR. ETHERIDGE: Very well. Thank you,
18 Your Honor.

19

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

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 12th day of July, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA) } COURT OF GENERAL SESSIONS
COUNTY OF LEE)

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
18-GS-31-00050

JOHNNY HAGGINS,)

DEFENDANT.)

July 10, 2018
Bishopville, South Carolina

B E F O R E :

THE HONORABLE GEORGE M. MCFADDIN, JR., JUDGE;
AND JURY

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

PAUL M. FATA, ESQ.
Assistant Solicitor

FRANCES B. RAY, RPR
Circuit Court Reporter

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EXHIBITS

STATE'S:

No.	Description	I.D./EVD.
1	Photo	29/29
2	Photo	29/29
3-A	Photo of victim	29/34
3-B	Photo of victim	29/34
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3-D	Photo of victim	29/34
3-E	Photo of victim	29/34
3-F	Photo of victim	29/34
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COURT'S:

1	Email of 6-04-18	15
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1 MR. FATA: Johnny Haggins is, he's charged
2 with burglary second degree violent and DV high and
3 aggravated.

4 MR. ETHERIDGE: High and aggravated.

5 MR. FATA: He is represented by John
6 Etheridge.

7 MR. ETHERIDGE: Kevin Etheridge.

8 MR. FATA: Kevin. Your daddy's John, I'm
9 sorry.

10 MR. ETHERIDGE: That's not the first time.

11 MR. FATA: Anyway, we had noticed
12 Mr. Etheridge about the trial last term of court and
13 he'd be tried; but due to a technicality, we did not
14 say that he would be tried in his absence. And
15 there's a case close on point, not necessarily on
16 point, but it's a case, and that Judge Curtis at
17 that time continued the case to this time. At that
18 hearing we placed on the record that Mr. Haggins'
19 case would be up for trial this term of court and
20 that he would be tried in his absence if he did not
21 appear. Mr. Etheridge was there and received notice
22 on the record. On June the 4th I emailed his office
23 and told him the same thing. This is the copy of
24 the email I sent.

25 MR. ETHERIDGE: I've already read it,

1 you're fine.

2 MR. FATA: A copy of the email I sent
3 indicating that the case would be number one, will
4 be up for trial, and would be tried in his absence,
5 the defendant would be tried in his absence if he
6 didn't show up so we're ready to go. Mr. Etheridge
7 is here and we've got a jury, and we're ready to go.

8 THE COURT: Mr. Etheridge, your motion?

9 MR. ETHERIDGE: Yes, sir, we make a motion
10 to be relieved. He's not only failed to maintain
11 any contact. I believe I've had one meeting
12 perhaps; it be none. He's only met with my office
13 one time; and we're talking, I think, September of
14 2017 and since that time we've had no contact with
15 him whatsoever. We have tried numerous times to
16 reach him via telephone, via mail, reached out to
17 other family members to try to get him and have had
18 no contact. In addition to that, he's lived up to
19 any of his obligations as far as payments; but the
20 main impetus behind why we're making this motion is
21 we've had no contact with him whatsoever.

22 THE COURT: Have your letters been
23 returned to you?

24 MR. ETHERIDGE: Yes, sir.

25 THE COURT: What is the notation on it

1 from the post office?

2 MR. ETHERIDGE: I found in the office by
3 my recollection is returned to sender. Nobody is at
4 those addresses anymore.

5 THE COURT: Okay. Gave you no forwarding
6 address?

7 MR. ETHERIDGE: No, sir.

8 THE COURT: Obviously gave the post office
9 no forwarding address.

10 MR. ETHERIDGE: No, sir.

11 THE COURT: Is he a paid client?

12 MR. ETHERIDGE: He was a paid client, yes,
13 sir, Your Honor.

14 THE COURT: So he affirmed to an assault,
15 your firm's representation, and you haven't heard
16 from him anymore?

17 MR. ETHERIDGE: No, sir.

18 THE COURT: Did you attend a bond hearing
19 with him?

20 MR. ETHERIDGE: I did not.

21 THE COURT: Did you go to preliminary
22 hearing with him?

23 MR. ETHERIDGE: No, sir, Your Honor.

24 THE COURT: Okay. And it's been a year
25 since you've had any face-to-face contact with him.

1 MR. ETHERIDGE: Yes, sir, at least.

2 THE COURT: With him? Okay. Well, I find
3 that he knew, he knew there was a charge against
4 him. He sought you out or your firm to pay you to
5 represent him. There's a duty on his part to
6 maintain that contact, let you know where he moved
7 to, so forth. And in addition, there's been no
8 true, what I call hard core attorney-client
9 relationship. It's here exempt on paper because
10 there have been no appearances with you or your firm
11 by him at any location, and I will relieve you
12 today.

13 MR. ETHERIDGE: Thank you, Your Honor.

14 THE COURT: If you'd get me, just get me a
15 good order on that.

16 MR. ETHERIDGE: Send you something this
17 afternoon.

18 THE COURT: And the trial will go forward,
19 Mr. Fata, if you want to put more about that on the
20 record today we will do that.

21 (WHEREUPON, a recess was taken from the
22 proceedings.)

23 MR. FATA: Mr. Stuckey, will you call
24 Mr. Haggins' name out there for me?

25 THE BAILIFF: Yes, sir.

1 (Pause.)

2 MR. FATA: You ready, Your Honor?

3 THE COURT: Yes, sir.

4 MR. FATA: The State calls indictment
5 2018-GS-31-50, the State versus Johnny Haggins,
6 indictment for domestic violence high and aggravated
7 and burglary second degree. This is a multi-count
8 indictment; it's six counts. The counts that we
9 propose to try today are count 1 and count 3, counts
10 1 and 3, count 1 being the domestic violence high
11 and aggravated nature and count three being the
12 burglary second degree violent.

13 THE COURT: Okay, sir.

14 MR. FATA: Let me give you my witness
15 list, Your Honor.

16 THE COURT: Yes, sir.

17 Madam Clerk, the jurors were sworn earlier
18 to give truthful answers; is that correct?

19 THE CLERK: No, they weren't, huh-uh.

20 THE COURT: Okay, we'll do that now.

21 THE CLERK: Okay, if y'all will stand and
22 raise your right hand please.

23 (WHEREUPON, the jury was sworn at 11:25 a.m.)

24 THE COURT: Ladies and gentlemen, we are
25 about to begin the trial of, or actually draw the

1 jury, for the case of the State of South Carolina
2 versus Johnny Haggins; but before we start that
3 process or have that trial, we have to select a jury
4 for that trial. There are several more questions I
5 need to ask you now to further narrow down the jury
6 selection process.

7 Is any member of the jury panel related by
8 blood or marriage to either the defendant Johnny
9 Haggins or -- Mr. Fata, who is the victim here?

10 MR. FATA: Your Honor, Ashleigh Haggins is
11 the victim. Her name is listed on the list.

12 THE COURT: Okay. All right. Ma'am,
13 would you turn around please.

14 Does that question apply to anybody
15 related by blood or marriage to either one?

16 (There was no response.)

17 THE COURT: Does any member of the jury
18 panel have a close personal or social relationship
19 with Ashleigh Haggins or Johnny Haggins, please
20 stand.

21 (There was no response.)

22 THE COURT: The following is a list of
23 possible witnesses in this case: James Hudson, Lee
24 County Sheriff's Office; Chase Iseman, Lee County
25 Sheriff's Office; Tommy Cobb, Lee County Sheriff's

1 Office; and Ashleigh Haggins. Is any member of the
2 jury panel related by blood or marriage to any of
3 those persons listed or does anybody here have a
4 close personal, social relationship with any of
5 these persons, if so, please stand?

6 Yes, ma'am, your number?

7 THE POTENTIAL JUROR: Number 3.

8 THE COURT: Number 3?

9 THE POTENTIAL JUROR: Uh-huh.

10 THE COURT: What's that connection, ma'am?

11 THE POTENTIAL JUROR: Chase Iseman is my
12 brother-in-law.

13 THE COURT: Ma'am, does that give you any
14 concerns about being fair and impartial in this
15 trial, either side?

16 THE POTENTIAL JUROR: No, sir. No.

17 THE COURT: Okay. You may be seated,
18 ma'am.

19 Mr. Fata, would you kindly stand and
20 introduce yourself and your law firm partners or
21 your associates please, sir.

22 MR. FATA: Yes, sir, Your Honor. My name
23 is Paul Fata. I'm attorney an attorney in
24 Bishopville, South Carolina. My law firm's name is
25 Stuckey, Fata, and Segars. My partner is James R.

1 Segars, Jr. We practice at 115 East Church Street.
2 Today we have our elected Solicitor, your elected
3 solicitor, Ernest Finney from Sumter. And that's
4 it.

5 THE COURT: Any there any members of this
6 panel here today ever been represented by any of the
7 attorneys named in any other matter, please stand?

8 (There was no response.)

9 THE COURT: Does any member of the jury
10 panel have a close, personal, or social relationship
11 with any of the attorneys just named, please stand?

12 (There was no response.)

13 THE COURT: Does any member of the jury
14 panel have a formed or expressed opinion about any
15 issue or matter involved in this case, please stand?

16 (There was no response.)

17 THE COURT: Is any member of the jury
18 panel aware of any bias or prejudice toward either
19 the victim or the defendant in this case, please
20 stand?

21 (There was no response.)

22 THE COURT: Does any member of the jury
23 panel know of any reason whatsoever why he or she
24 should not serve as a juror in this case with
25 particular emphasis being placed on your ability to

1 be fair and impartial to both the victim and the
2 defendant?

3 (There was no response.)

4 THE COURT: Does anybody have any concern
5 in any way about being a member of this possible
6 jury, please stand?

7 (There was no response.)

8 THE COURT: All right. Mr. Fata, do you
9 have any other questions, sir?

10 MR. FATA: No, sir, Your Honor.

11 THE COURT: I do not have any others and
12 are you ready to draw, Mr. Fata?

13 MR. FATA: Yes, sir.

14 (Pause.)

15 THE CLERK: Okay, when I call your name,
16 if you would gather up all your belongings and bring
17 them toward the front and you'll come here to the
18 center and face the attorney please.

19 Juror number 61, Derrick Hickmon (black
20 male).

21 MR. FATA: Please present the juror.

22 THE CLERK: Have a seat over in the jury
23 box.

24 Number 146, Blake Williams (white male).

25 MR. FATA: Please present the juror.

1 THE CLERK: Number 39, Paul Dickey (black
2 male).

3 MR. FATA: Please present the juror.

4 THE CLERK: Number 40, Tyre Dinkins (black
5 female).

6 MR. FATA: Please present the juror.

7 THE CLERK: Number 108, Mary Roberts
8 (white female).

9 MR. FATA: Please present the juror.

10 THE CLERK: Number 94, Woodrow Pearson
11 (black male).

12 MR. FATA: Please present the juror.

13 THE CLERK: Number 65, Ivan Holloman
14 (black male).

15 MR. FATA: Please present the juror.

16 THE CLERK: Number 25, John Cabrel (white
17 male).

18 MR. FATA: Please present the juror.

19 THE CLERK: Number 86, Shawanna Mickel
20 (black female).

21 MR. FATA: Please present the juror.

22 THE CLERK: Number 112, George Rollins
23 (white male).

24 MR. FATA: Please present the juror.

25 THE CLERK: Number 81, Shirley McCullough

1 (black female).

2 MR. FATA: Please present the juror.

3 THE CLERK: Number 70, Darren Jarvis
4 (black male).

5 MR. FATA: Please present the juror.

6 THE CLERK: Do you want an alternate?

7 MR. FATA: Yes, probably better to have
8 one.

9 THE CLERK: Number 1, Mokneshia Addison
10 (black female).

11 MR. FATA: Please present the juror.

12 THE COURT: All right. Mr. Fata.

13 MR. FATA: Yes, sir.

14 THE COURT: We've got a couple of matters
15 to take up; but I will prefer and suggest with your
16 consent of course, if we allow the panel members
17 remain to leave, have them come back after lunch or
18 dinner as I call it. Does that suit you?

19 MR. FATA: That's fine with me, sir.

20 THE COURT: What time do you think should
21 I ask them?

22 MR. FATA: Whatever. How long do you
23 think it will take us? 30 minutes maybe?

24 THE COURT: At most.

25 MR. FATA: That'll put us at 12. Do you

1 want to start at 1:30 maybe?

2 THE COURT: Folks, does 1:30 suit y'all?
3 If not, tell me now. That means we might get out
4 here a little bit earlier today. Okay?

5 Mr. Bailiff, would you show them the jury
6 room and then release them from there, and we'll see
7 you again at 1:30 or closely thereto. Thank you
8 very much.

9 (WHEREUPON, the jury was removed from the
10 courtroom at 11:36 p.m.)

11 MR. FATA: Your Honor, Mr. Haggins was
12 noticed last term of court, which was the June term
13 of court, that his case would be tried. His
14 attorney at the time was Kevin Etheridge. Mr.
15 Etheridge appeared, but Mr. Haggins did not appear;
16 and because he was, because Mr. Haggins' attorney
17 was not noticed that he, Mr. Haggins would be tried
18 in his absence, — of course, there was a dispute
19 about that. At the June term Judge Curtis continued
20 the case until today, until this week. At that time
21 I noticed on the record Mr. Haggins, Mr. Haggins
22 through his attorney Kevin Etheridge, that the case
23 would be, Mr. Haggins' case would be tried this term
24 of court and that Mr. Haggins would be tried in his
25 absence if he did not appear. I also confirmed that

1 fact by an email to the Etheridge firm in which I
2 said the judge, judge had issued bench warrant for
3 Mr. Haggins. Please be advised Mr. Haggins' case is
4 set for term of court beginning July 9th, 2018, and
5 he will be one of the first cases for trial and we
6 be tried in his absence if he does not appear. And
7 then I told him that the plea offer expired that
8 week.

9 Anyway, Mr. Etheridge acknowledged
10 receiving this so Mr. Haggins received notice
11 through his attorney at the last term of court which
12 was June of this year and by email to Mr. Etheridge
13 and that he was also noticed that if he, Mr. Haggins
14 was also noticed that if he did not appear he would
15 be tried in his absence. And I would like to make
16 this email an exhibit for the Court, Your Honor.

17 THE COURT: Yes, sir.

18 (Court's Exhibit Number 1 was marked
19 and made a part of the record.)

20 THE COURT: Anything else, sir?

21 MR. FATA: We have now called the case and
22 I would like to call the court crier to testify that
23 he has called Mr. Haggins three times.

24 THE COURT: Yes, sir.

25 MR. FATA: We call Mr. Roosevelt Stuckey.

SW - R. STUCKEY - DIRECT

1 WHEREUPON,

2 **ROOSEVELT STUCKEY,**

3 having been duly sworn by the Clerk, testified
4 as follows:

5 **DIRECT EXAMINATION**

6 BY MR. FATA:

7 Q Please state your name for the record, sir.

8 A Roosevelt Stuckey.

9 Q Mr. Stuckey, are you a bailiff here in the Lee
10 County Court of General Sessions?

11 A Yes, sir.

12 Q And you're also the court crier?

13 A Yes, sir.

14 Q And as a court crier were you requested to call
15 the name Johnny Haggins three times from the crier's
16 porch?

17 A Yes, I did.

18 Q And did you do that?

19 A Yes, sir.

20 Q And did you receive a response from anyone
21 claiming to be Johnny Haggins?

22 A No, sir, no response.

23 Q Okay. Answer any questions that His Honor may
24 have.

25 THE COURT: I have none.

1 MR. FATA: Okay, that's all we have.

2 THE COURT: Thank you, sir. Mr. Fata, I
3 find that the State's reached, notice has been
4 satisfied, and we'll move forward, sir.

5 MR. FATA: Thank you, and that will be at
6 1:30?

7 THE COURT: Yes, sir.

8 (Whereupon, a lunch break was taken.)

9 THE COURT: Are we ready?

10 MR. FATA: Yes, sir.

11 (WHEREUPON, the jury was returned to the
12 courtroom at approximately 1:33 p.m., and
13 the following proceedings commenced in
14 open court.)

15 THE COURT: Who is Mr. Derrick Hickmon?

16 THE POTENTIAL JUROR: I am, sir.

17 THE COURT: Mr. Hickmon, you were picked
18 first and now you are the foreperson of the jury.
19 And more about that later, all right.

20 All right, folks, I have to read to you
21 some prefacing remarks ahead of time. I will not
22 delay it with any civics lessons because I know
23 you're ready to move on so we shall begin.

24 What I'm going to tell you now or say to
25 you or read to you is intended to serve as an

1 introduction to the trial in this case. These
2 remarks are not an instruction or charge on the law
3 in this case. I will instruct you on the law to
4 apply in this case at the end of the trial before
5 you begin your deliberations. The defendant is
6 charged by an indictment filed in this court with
7 the crime of -- what is it, Mr. Fata?

8 MR. FATA: Burglary second degree under
9 the B section which is violent and domestic violence
10 high and aggravated nature.

11 THE COURT: All right, sir. The elements
12 of those crimes will be explained to you later. The
13 indictment is simply the charge by which the case is
14 brought into the court and it is not evidence of any
15 of the allegations. The defendant has pled not
16 guilty to this indictment. The State, therefore,
17 has the burden of proving each of the elements of
18 the indictment beyond a reasonable doubt, and it
19 will be your duty to decide the case later to
20 determine if the State has met that burden. Your
21 job as jurors is to find and determine the facts.
22 You're the sole judge of the facts. If at any time
23 I make a comment regarding the facts, you must
24 disregard it. You are to determine the facts from
25 the testimony you hear and other evidence introduced

1 in court. It is up to you to determine the
2 inferences which you feel may properly be drawn from
3 the evidence. It is especially important that you
4 perform your duty of determining the facts
5 diligently and conscientiously because ordinarily
6 there is no way to correct an erroneous
7 determination of the facts by a jury.

8 The same law that makes you the judges of
9 the facts makes me the judge of the law. The law as
10 given by the court is the only law you may consider.
11 You must accept that law and follow it even though
12 you may disagree with it. I cannot tell you what
13 the facts are and you cannot disagree with the Court
14 about what the law is or should be. Your job is to
15 take the law as the Court gives it to you and apply
16 it to the facts as you find them and all the
17 evidence introduced. After doing that you will
18 render your verdict, a verdict under the solemn oath
19 that you just took as jurors.

20 Why don't we stop and do that, ma'am.
21 Swear them.

22 THE CLERK: If y'all will stand and raise
23 your right hand please.

24 (WHEREUPON, the jury was sworn at 1:37 p.m)

25 THE COURT: Thank you. See, I make

1 mistakes too. Until I tell you that you may begin
2 to deliberate you must not discuss this case with
3 anyone, including your fellow jurors, friends,
4 family members, and anyone involved in the case.
5 During your deliberations you may only discuss the
6 case in the jury room with your fellow jurors
7 because they have seen and heard the same evidence
8 you have heard and seen; however, you must not
9 discuss this case with anyone else until you have
10 returned a verdict and the case is at an end. You
11 must decide this case based solely on the evidence
12 presented during the trial; and you must not conduct
13 any independent research about this case, the facts,
14 the evidence, or the people or organizations
15 involved in this case. Do not try to find out
16 information from any source outside the courtroom.
17 In other words, you must not look at dictionaries or
18 other reference materials. You must not search the
19 internet, websites or blogs, or use any other
20 electronics to get information about this case or to
21 help you decide the case. You may not use
22 computers, telephones, cellphones, smart phones,
23 tablets, internet, or any other tools of technology
24 with communication capabilities at any time while
25 you're in the courthouse or the courtroom or during

1 your deliberations. You must not use these devices
2 to communicate with anyone about the case until the
3 case is over. This means you must not use phone
4 calls, emails, text messages, instant messages,
5 twitter, or any blog, chat room, or website,
6 including Facebook, Google Plus, Myspace, LinkedIn
7 YouTube or any other social media website to receive
8 help or receive information about this case. This
9 includes information about a party, a witness, an
10 attorney, or a court officer. You must not consider
11 anything you may have read or heard about the case
12 outside the courtroom whether before or during the
13 trial.

14 It is important that you not have
15 influence by anything or anyone outside of this
16 courtroom. If you become aware of another juror's
17 violation of these instructions, please inform the
18 Court immediately. It is important that you keep an
19 open mind and not decide any issue in this case
20 until all of the evidence has been presented, the
21 parties have made their closing arguments, and I
22 have instructed you on the law in this case. It is
23 your solemn responsibility to determine the guilt or
24 innocence of the defendant, and your verdict must be
25 based solely on the evidence that is, as it is

1 presented to you in this trial, and on the law as I
2 instruct you during and at the close of the trial.

3 In just a moment the Solicitor will make
4 what is called the opening statement which the
5 solicitor will explain to you the issues in this
6 case, or at least what he thinks the issues are.
7 What the solicitor tells you during his opening
8 statement is not evidence in this case. It is only
9 his contention as what the issues are. The evidence
10 in this case will be presented to you by the
11 testimony of sworn witnesses from the witness stand
12 and/or by exhibits which may be introduced into
13 evidence. From time to time during the trial I may
14 excuse you from the courtroom for a short while so
15 that the attorneys and I can discuss a matter of
16 law. The reason for this is because you are the
17 judges of the facts and sometimes when I am
18 discussing matters of law, it may be necessary for
19 me to make a comment as to the facts in connection
20 with the ruling as to whether or not a particular
21 law applies. I am not supposed to tell you what I
22 think the facts are so I will excuse you from the
23 courtroom if that happens.

24 In determining what the true facts are in
25 this case you must decide whether the testimony of

1 the witness is believable or not believable. In
2 deciding whether to believe a witness you have the
3 right to consider the interest of the witness, the
4 bias of any witness, the prejudice of any witness,
5 the opportunity for the witness to have seen the
6 manners and things about which the witness may
7 testify and the way the witness acts on the witness
8 stand. You have a right to consider anything that
9 is in the record that will help you evaluate the
10 testimony of the witnesses. That means that it is
11 your duty to pay close attention to these witnesses,
12 to observe the witnesses, to listen to them, and to
13 pay close attention to the attorneys and to the
14 Court. Don't let your minds wander, but give strict
15 attention to the testimony of this case so that at
16 the end of all the testimony, after the arguments of
17 counsel, and the charge on the law by the Court, you
18 will then be in a position to determine what the
19 true facts are and to apply the law to those facts,
20 and thus, render a verdict.

21 Mr. Foreperson, it is your responsibility
22 to preside in the jury room and to be the jury's
23 spokesperson here in this court. It will be your
24 duty later to write the verdict and you will receive
25 further instructions about that later.

1 Mr. Foreperson, if the jury has a question please
2 knock on the door and the bailiff will respond to
3 your knock. I will charge you further that the
4 defendant is not present. His absence is not to be
5 held against him in any way during this trial now or
6 in your deliberations.

7 Mr. Fata, do you have any exceptions to my
8 comments about the charge?

9 MR. FATA: No, sir, Your Honor.

10 THE COURT: All right. We're ready, sir?

11 MR. FATA: Yes, sir. Thank you, Your
12 Honor.

13 Mr. Foreman and ladies and gentlemen of
14 the jury, good afternoon. I don't think we're gonna
15 be here long. I initially told the judge we might
16 here until tomorrow morning, but we may be done this
17 afternoon. You are about to hear the facts in a
18 case of criminal domestic, well, domestic violence,
19 high and aggravated nature, and burglary second
20 degree violent. Now we watch Law and Order or some
21 of these shows on TV, you may have an idea what
22 those are; but being a lady, probably not, so I'm
23 gonna tell you what these charges are 'cause Your
24 Honor is gonna tell you, is gonna charge you on the
25 law so if I say anything different now, you take

1 what His honor tells you, but I want you to kind of
2 know what burglary is. I kind of want you to know
3 what a domestic violence high and aggravated is
4 before or while you listen to the evidence.

5 Burglary in the second degree, a person is
6 guilty of burglary in the second degree if a person
7 enters a building without consent and with the
8 intent to commit a crime therein. Now the statute
9 defines a building as a place where people lodge or
10 live, so a house is a building. A mobile home is a
11 building. So if a person enters a building and
12 he — always talking about breaking and entering.
13 You don't have to break anything. A burglary is
14 just opening a door and walking through the open
15 door. That's a burglary if you intend to commit a
16 crime inside of that building. You really don't
17 have to break anything. But when, in effecting the
18 entry, when a person is going into the building or
19 while in the building or immediately, immediate
20 flight therefrom, he or another participant in the
21 crime. So you got a co-defendant and another
22 co-defendant does one of these things, creates a
23 burglary. But in this case we have Mr. Haggins.

24 Number one, a person is armed with a
25 deadly weapon or explosive. We're gonna have a

1 knife or a gun. Number two, and this is "or" --
2 this is "or" -- it has to have one of the two. And
3 this is where we're talking about here today.
4 Number two, causes physical injury to any person who
5 is not a participant in the crime. So, burglary
6 second degree violent is the act of going into a
7 building and inflicting harm on a person in that
8 building.

9 So when you listen to the evidence today,
10 and you'll hear from Captain James Hudson with the
11 Sheriff's Office and you'll hear from Ashleigh
12 Haggins what the defendant, Mr. Haggins, Johnny
13 Haggins, did when he broke into Ms. Haggins house,
14 okay. So that's burglary in the second degree.

15 Now what is a domestic violence high and
16 aggravated? Everybody's heard of assault and
17 battery of a high and aggravated nature. Well, it's
18 very similar to domestic violence high and
19 aggravated. In a assault and battery of a high and
20 aggravated nature the two parties do not have to be
21 related in some fashion. They do not have to be
22 husband and wife. They do not have to have children
23 in common. They do not have to have lived together
24 in the past. But under a domestic violence high and
25 aggravated nature, the two parties either have to

1 be, have lived together, have children in common, or
2 be married. In this case Ms. Ashleigh Haggins and
3 the defendant Johnny Haggins are husband and wife.
4 That's number one. In the evidence of -- the
5 offense is committed under circumstances of
6 manifesting extreme indifference to the value of
7 human life. You're gonna see in this case that
8 Johnny Haggins came in and beat Ashleigh Haggins
9 severely, and you'll see photographs of her bruises.
10 He hit her, he kicked her, he stomped on her. And
11 circumstances manifesting extreme indifference to
12 value of human life but not, but and including but
13 not limited, to the use of a deadly weapon, a knife
14 or gun -- we didn't have that in this case.
15 Domestic violence is a pregnant female, we don't
16 have that in this case. In the presence of a minor,
17 her son was there or her son was present in the
18 residence so we have that. During the, committed
19 during the commission of a robbery or burglary or
20 kidnapping or theft.

21 So, in this case we have a burglary and
22 you're gonna have evidence of that. We have a
23 married couple who were married technically, had
24 lived together -- they weren't living together at
25 this time. The defendant breaks in to the house,

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1 inflicts significant injury upon the victim during
2 the course of the burglary. Now, as you hear the
3 facts think of those, and His Honor is gonna tell
4 you, repeat all this again, and if he says something
5 different than I, you take his explanation of the
6 law. Now this case is not gonna to take long.
7 First we're gonna hear from Captain Hudson and then
8 Ashleigh Haggins, and then I'll have a few words to
9 say at the end, his Honor will charge you, and then
10 we'll be ready to go out and render a verdict.
11 Thank you.

12 THE COURT: Ready?

13 MR. FATA: Ready.

14 THE COURT: Yes, sir.

15 MR. FATA: The State calls Captain James
16 Hudson.

17 WHEREUPON,

18 **JAMES HUDSON,**

19 having been duly sworn by the Clerk, testified
20 as follows:

21 (WHEREUPON, State Exhibits Nos. 1 and 2
22 were marked for identification only.)

23 MR. FATA: Your Honor, the State would
24 move exhibits 1 and 2 into evidence.

25 THE COURT: Yes, sir.

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1 MR. FATA: Two photographs.

2 THE COURT: Yes, sir.

3 (WHEREUPON, State Exhibits Nos. 1 and 2
4 were admitted into evidence.)

5 **DIRECT EXAMINATION**

6 BY MR. FATA:

7 Q Captain Hudson, state your name for the record
8 please, sir.

9 A James Hudson, Jr.

10 Q And what is your occupation?

11 A Law enforcement.

12 Q How long have you been in law enforcement?

13 A Twenty-three years.

14 Q And you've been with several counties, I believe.
15 Darlington County was one?

16 A Yes, sir.

17 Q And then Lee County?

18 A Yes, sir.

19 Q How long have you been with Lee County?

20 A Seventeen months now.

21 Q Seventeen months. Now that's with the Sheriff's
22 Office?

23 A Yes, sir.

24 Q What is your position with the Sheriff's Office?

25 A Patrol commander captain.

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1 Q Patrol captain?

2 A Yes, sir.

3 Q And as patrol captain you're in charge of what?

4 A Patrol, answer calls for service, SROs, court,
5 and whatever the sheriff deems necessary.

6 Q Whatever the sheriff tells you to do.

7 A Right.

8 Q Now on -- and you're a certified law enforcement
9 officer?

10 A Yes, sir, class one.

11 Q Been to the Academy and all that sort of things?

12 A Yes, sir.

13 Q On August the 29th, 2017, were you working as a
14 captain over patrol in Lee County?

15 A Yes, sir, I was.

16 Q Did you receive a call to go to ■ Circle R Lane
17 in Bishopville?

18 A Yes, sir.

19 Q And what was the call about?

20 A The call came through 9-1-1 service that there
21 was a female located at the Pilot on Highway 15
22 South, and she needed some assistance and she had
23 been assaulted.

24 Q Okay. When you responded what did you find?

25 A I met with the victim, Ms. Haggins, Ms. Haggins,

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1 and she informed me that her husband had assaulted
2 her while her child was present and her child was on
3 the call with her at the time. I met with her.

4 Q Tell me who did she say assaulted her?

5 A Johnny Haggins.

6 Q Johnny Haggins. Now she was at the Pilot
7 Station?

8 A Yes, sir.

9 Q And that's out here on Highway 15?

10 A Yes, sir, Highway 15 South.

11 Q After you talked, after your initial
12 confrontation with her and you got the facts of what
13 happened and so forth, what did you do?

14 A I escorted her back to the residence, and I also
15 called for officers to meet me out there just in
16 case he was there or showed back up. And once we
17 arrived back at her residence we entered the
18 property, doublewide mobile home, and I saw where
19 the front door molding was damaged.

20 Q All right, I'm gonna show you State's Exhibit
21 number 1 and number 2 and see if you recognize those
22 two photographs.

23 A Yes, sir. These are the photographs that was
24 taken on the day of the incident of her front door
25 where the door was damaged by forced entry.

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1 MR. FATA: Your Honor, may he come down?

2 THE COURT: Yes, sir.

3 BY MR. FATA:

4 Q All right, hold it up for the jury. Now what is,
5 what does that show? Tell the jury what that shows.

6 A This is the facing of the door. When you close
7 your outer door it latches. Anybody out, you don't
8 want to come in. And all of this facing was broken
9 and all this had to be replaced.

10 Q If you will come down and show these folks down
11 here. Again, that is the what?

12 A This is the front door molding facing the
13 victim's residence where there was post injury
14 broken by post —

15 Q Okay, all right, have a seat. And you took those
16 photographs?

17 A They were taken by Officer Chase Izeman.

18 Q Okay. And they represent the door as you found
19 them when you accompanied Ms. Haggins back to the
20 mobile home on August 29th, 2017?

21 A Yes, sir.

22 Q All right. What else did you do at the scene?

23 A Once we got, once we secured the residence to
24 make sure there was not anyone else in the residence
25 to cause the State any harm, we asked her to sit in

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1 the living room area of her residence while officer,
2 then Officer Chase was videoing and taking pictures
3 of the damage of the residence and she also showed
4 us the back bedroom where the assault actually took
5 place. The things were in disarray and out of
6 place; we took a photo of that as well. Ms. Haggins
7 was very upset. She had a young son there with her
8 as well so we were just trying to make sure we did
9 everything by protocol.

10 Q Okay. Did you also take photographs of
11 Ms. Haggins?

12 A We took photographs of Ms. Haggins and we also
13 referred Ms. Haggins to the victim's advocate of the
14 Lee County Sheriff's Office to assist in taking
15 those photos and engaging more information.

16 Q Okay.

17 MR. FATA: Can we just mark these as one.
18 (WHEREUPON, State Exhibits Nos. 3-A
19 through 3-L were marked for identification
20 only.)

21 BY MR. FATA:

22 Q All right, photographs were taken?

23 A Yes, sir.

24 MR. FATA: Your Honor, we move State's
25 Exhibits 3-A through 3-L into evidence.

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1 THE COURT: Yes, sir.
2 (WHEREUPON, State Exhibits Nos. 3-A
3 through 3-L were admitted into evidence.)

4 BY MR. FATA:

5 Q I'm gonna show you a series of photographs As
6 State's Exhibit 3-A through 3-L and see if you
7 recognize those photographs.

8 A Yes, sir, I do.

9 Q And what are they?

10 A These are photographs taken of the victim with
11 her injuries and bruises.

12 Q Showing the bruises about her body?

13 A Yes, sir, about her body.

14 MR. FATA: May he come down, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. FATA:

17 Q Stand here. Can you stand right here so
18 everybody can see. All right, I'm gonna show you
19 3-A. Does that show bruising on the victim's
20 left -- or excuse me, right thigh?

21 A Yes, sir, it does.

22 Q And this is the bruised area here?

23 A Yes, sir.

24 Q 3-B, is that bruising on the victim's left calf?

25 A It is.

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- 1 Q In this area here?
- 2 A Yes, sir.
- 3 Q 3-C, is that a cut or scrape or something to the
- 4 victim's head?
- 5 A It is a bruise to the victim's head.
- 6 Q 3-D, is that a bruise or mark to the victim's, I
- 7 think, left arm?
- 8 A It is a bruise to the left arm.
- 9 Q That might have been the right. Here's the left.
- 10 3-F, is that bruising to the ---
- 11 A It is bruising to her arm.
- 12 Q Yeah. Again, 3, that was 3-E. Excuse me, 3-F
- 13 is?
- 14 A Bruising to below her elbow.
- 15 Q On her arm?
- 16 A On her arm.
- 17 Q 3-G?
- 18 A That's bruising to her facial area, left area of
- 19 the body.
- 20 Q It shows a black eye?
- 21 A Yes, sir.
- 22 Q And then bruising underneath, that's a black eye
- 23 on the right eye and then discoloration on the left?
- 24 A Yes, sir.
- 25 Q 3-H?

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- 1 A Bruising on her shoulder.
- 2 Q Okay. 3-I?
- 3 A More bruising about her body.
- 4 Q 3-J, is that on her back?
- 5 A That's on her back to the left side of her body.
- 6 Q 3-K?
- 7 A To her hand, bruising cuts on her hand like
- 8 defensive wounds.
- 9 Q Okay. What do you mean by defensive wounds?
- 10 A That's where her body would try to catch.
- 11 Q And how would that catch ---
- 12 A Hands trying to block.
- 13 Q Hold her hands up?
- 14 A Hold her hands up, keep her distance.
- 15 Q And that's on the marks on the back of her hand?
- 16 A Yes, sir.
- 17 Q And 3-L?
- 18 A More bruising about her arm.
- 19 Q Okay, have a seat. After the photographs were
- 20 taken and you took photographs of the door and that
- 21 sort of thing, what else did you do?
- 22 A We gathered all the information that we could
- 23 gather. Once Ms. Haggins was able to write a
- 24 statement, a written statement as to what events
- 25 took place, we also did a, what we call a DVD chart

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1 kit. It has to be filled out. Bruising has to be
2 located on that chart as well, which is in the
3 packet. Then I met with the magistrate, showed them
4 the evidence and information that I gained through
5 investigation, and we obtained warrants for Mr.
6 Haggins' arrest.

7 Q Okay. Now Ms. Haggins gave a statement at, on
8 September 1st; is that right? She came back in and
9 gave a statement on September 1st?

10 A That sounds, that date sounds about right, yes,
11 sir.

12 Q Okay.

13 A September 1st is correct.

14 Q Tell me what she, tell me what she told you at
15 that time.

16 A In her statement she wrote: "On August 29th,
17 2017, I was in my room at ■ Circle R Lane and I
18 heard a loud kicking noise. I thought it was my son
19 so I yelled at him to stop. The noise continued so
20 I got out of my bed to see what it was. That's when
21 Johnny Haggins and Coty Weaver was coming toward me.
22 They had kicked in my front door. Johnny was
23 screaming at me. I was begging him to stop. I
24 grabbed my phone to try and call 9-1-1, but I could
25 not get the phone unlocked. He hit me. He hit me

SW - J. HUDSON - DIRECT

1 the first time knocking me, knocking the phone out
2 of my hand. I crawled across my bed trying to get
3 away from him, and that's when he started punching
4 me and kicking me in my stomach. As I was screaming
5 for him to please stop Coty was yelling to him, hit
6 me, hit him hard, hit him hard. That's when I
7 temporarily blacked out. I don't remember Coty ever
8 hitting me. That's when I finished, he snatched my
9 phone up and told me he was talking with him, taking
10 it with him."

11 Q Okay. So that's, she gave you that statement
12 orally and then she wrote that statement out; is
13 that correct?

14 A That's correct.

15 Q Okay. Answer any questions His Honor may have.

16 THE COURT: I have none.

17 MR. FATA: Okay, you can come down.

18 Your Honor, we would now call Ashleigh
19 Haggins.

20 Mark this one for me.

21 (WHEREUPON, State Exhibit No. 4 was
22 marked for identification only.)

23 MR. FATA: Your Honor, we would now call
24 Ashleigh Haggins.

25 Mark this for me.

SW - A. HAGGINS - DIRECT

1 (WHEREUPON, State Exhibit No. 4 was
2 marked for identification only.)

3 WHEREUPON,

4 **ASHLEIGH HAGGINS,**

5 having been duly sworn by the Clerk, testified
6 as follows:

7 **DIRECT EXAMINATION**

8 BY MR. FATA:

9 Q Please state your name for the record.

10 A Ashleigh Haggins.

11 Q And Ashley, where do you live now?

12 A Now I reside in Hartsville, South Carolina.

13 Q In Hartsville?

14 A Yes, sir.

15 Q And I believe you work at Papa Johns?

16 A Yes, sir.

17 Q What do you do at Papa Johns?

18 A I'm a manager, training general manager.

19 Q Okay. And that's in Darlington?

20 A Darlington, yes, sir.

21 Q Okay. You used to live in Lee County, didn't
22 you, in Bishopville?

23 A Yes, sir.

24 Q And I think on August the 29th, 2017, you were
25 living in Bishopville?

SW - A. HAGGINS - DIRECT

1 A Yes, sir.

2 Q Okay. Now the defendant Johnny Haggins, how do
3 you know him?

4 A Johnny is my husband.

5 Q And when were y'all married? When were you and
6 Johnny married?

7 A December the 27th of 2010.

8 Q And after December 27th, 2010, did you all reside
9 together?

10 A No, sir, we separated right after the wedding.

11 Q Days after?

12 A Maybe two days.

13 Q Maybe two days?

14 A Yes, sir.

15 Q You all have any children together?

16 A We do. We have a seven year old daughter.

17 Q Okay. Now did you ever get a divorce from Johnny
18 Haggins?

19 A No, sir.

20 Q So y'all are still husband and wife?

21 A Yes, sir.

22 Q And except you all just never lived together?

23 A No, sir.

24 Q Okay.

25 A We lived together before we were married.

SW - A. HAGGINS - DIRECT

- 1 Q And you have a child together?
- 2 A Yes, sir.
- 3 Q And you had lived together a very, very, very
- 4 short time after you were married?
- 5 A Yes, sir.
- 6 Q Okay. Now how would you describe your
- 7 relationship between you and Mr. Haggins?
- 8 A He was my best friend.
- 9 Q He was?
- 10 A Yes, sir.
- 11 Q Tell me about it.
- 12 A We were relatively close. We didn't make it as a
- 13 couple, but as friends we were always there for each
- 14 other. I would go to him for advice on
- 15 relationships; he would come to me for advice.
- 16 Q And but you just stayed married and just never
- 17 got a divorce, and it was -- the relationship was
- 18 amicable?
- 19 A Yes, sir.
- 20 Q It was friendly terms?
- 21 A Yes, sir.
- 22 Q Okay. Well, what happened on August the 29th of
- 23 2017 to change the relationship between you and
- 24 Mr. Haggins?
- 25 A August the 27th me and Johnny had a disagreement

SW - A. HAGGINS - DIRECT

1 about me not taking him to Columbia to confront
2 another female on violent terms so he called his
3 girlfriend Coty Weaver ---

4 Q And let me ask you, what's, he wanted you to take
5 him to Columbia about to confront another woman?

6 A Yes, sir, about his music credentials.

7 Q About she had -- what had she done?

8 A Johnny is a music artist so she threw away all of
9 his credentials, and it takes years for him to get
10 it back, along with his pay card.

11 Q And was he mad about that?

12 A Yes, sir.

13 Q And he wanted you to take him to Columbia to
14 confront her and find out what happened?

15 A Yes, sir.

16 Q And what did you do when he had made that
17 request?

18 A I wouldn't take him. I told him that we would
19 just work ground up and get all of his stuff back
20 the legal way and just let it go.

21 Q And you refused to take him?

22 A Yes, sir.

23 Q And that was the 27th?

24 A Yes, sir.

25 Q Then what happened? Now we're at the 27th. Now

SW - A. HAGGINS - DIRECT

- 1 what time of day was that that he asked you to carry
2 him on the 27th?
- 3 A That was at night, maybe around 9:30, 10:00.
- 4 Q What happened on the next day, the 28th? Did you
5 have any contact with him?
- 6 A We didn't speak at all. I texted him the night
7 of the 28th and told him I hope he was safe, that
8 was it, and no communication between us until the
9 29th.
- 10 Q Now when you told him you weren't taking him to
11 Columbia did he get angry at that time?
- 12 A He was.
- 13 Q Did he voice any displeasure by cussing or using
14 hard words to you?
- 15 A That's Johnny.
- 16 Q Do what now?
- 17 A That's Johnny in general. He, it's just his
18 demeanor. He always yells. He cusses. He gets
19 upset if things doesn't go his way.
- 20 Q And you not taking him to Columbia, things
21 weren't going his way?
- 22 A Correct. He felt like I didn't care that she
23 threw all of his hard work away.
- 24 Q Okay. So you did not see him on the 28th. What
25 happened on the 29th?

SW - A. HAGGINS - DIRECT

1 A We got into a disagreement on Facebook. I'm not
2 sure, I don't remember how the disagreement started.
3 It ended up boiling down to me and his daughter. He
4 was upset about the fact I gave our daughter for
5 adoption. He started denying her. We argued. His
6 sister got involved in the conversation. The last
7 message he sent to his sister was not to worry about
8 it, he was fixing to handle the situation.

9 Q That he was fixing to handle it?

10 A Yes, sir.

11 Q Did you know what he meant by that?

12 A No, sir. When I asked what he meant there was no
13 more response on Facebook at all.

14 Q What time of day were those conversations?

15 A I don't know, it had to be after 3. It started
16 before 3 because my son wasn't home from school yet.

17 Q Okay. Well, about 4:30 did you see him again?

18 A Yes, sir.

19 Q Tell me how you saw him.

20 A He kicked in my front door, him and Coty Weaver.

21 I was ---

22 Q Tell me what you were doing.

23 A I was in my room.

24 Q Now just take a deep breath and relax. You want
25 some water?

SW - A. HAGGINS - DIRECT

1 A No.

2 Q Okay, just take a moment.

3 A I was in my room laying on the bed. Me and his
4 cousin Quay was talking. I was talking to Quay
5 about him making sure he was okay. And I heard a
6 real loud kick on the door, or I thought it was just
7 the wall. I thought it was my son so I yelled at
8 J.J. to stop. I heard the kick again and yelled at
9 J.J. again, but he still didn't respond to me. And
10 then the third kick came. It sound like my door
11 came off the hinges so I got up and I was telling
12 J.J. I was about to spank him, but it was my husband
13 and his girlfriend coming through the front door.

14 Q Okay. Now I'm gonna show you State's Exhibit
15 Number 1 and Number 2. Is this your front door?
16 Does this show your front door?

17 A Yes, sir.

18 Q Was it like that before Mr. Haggins kicked it in?

19 A No, sir.

20 Q So, these show that the, what do these show? The
21 frame is broken?

22 A Yes, sir. When he kicked the door inward it
23 broke the whole frame on the side.

24 Q Okay. And originally you thought that was your
25 son?

SW - A. HAGGINS - DIRECT

1 A Yes, sir, I thought my son was kicking the wall.

2 Q Okay. When did you realize it was not your son?

3 A On the third kick. It sounded like the whole
4 door came off the hinges so I got up to yell at my
5 son to tell him I was fixing to spank him, but it
6 was my husband and his girlfriend.

7 Q And what did your husband Mr. Haggins do?

8 A He was just yelling at me and running towards me
9 so I ran back towards the bedroom.

10 Q And then what happened?

11 A That's when he came in the room. I was trying to
12 get my phone unlocked, but I was shaking so bad I
13 couldn't get it unlocked. He knocked the phone from
14 my hands, and I crawled over the bedroom, over the
15 bed towards the back wall.

16 Q Uh-huh, go ahead.

17 A That's just when he came around the bed he
18 started hitting me and kicking me, stomped on my
19 head.

20 Q Relax, relax. Take a minute. Take a deep
21 breath.

22 (Pause.)

23 BY MR. FATA:

24 Q Tell me when you're ready to continue.

25 A I'm ready.

SW - A. HAGGINS - DIRECT

1 Q Okay. You went over the bed. I think you told
2 me you went over the bed and what happened? He
3 started doing what?

4 A That's when he came around the bed and started
5 kicking me and hitting me and kicking me in my head.

6 Q He kicked you in your head?

7 A He was stomping me in the head, not kicking
8 forward. Like stomping and kicking me and all over
9 my body, punctured me in my head.

10 Q And you had, did he mess up your bed, mess up
11 your room there?

12 A He did.

13 Q All right, I'm gonna show you State's — Your
14 Honor, we move State's Exhibit 4 into evidence.

15 THE COURT: Yes, sir.

16 (WHEREUPON, State Exhibit No. 4 was
17 admitted into evidence.)

18 BY MR. FATA:

19 Q I show you State's Exhibit 4. What is that?
20 What is that?

21 A My bedroom.

22 Q And what does it show?

23 A That's my bed. This is where my phone was, and I
24 crawled over there. In front of this stand is where
25 I was crouched down in the corner.

SW - A. HAGGINS - DIRECT

1 Q Crouched down in the corner right here?

2 A Yes.

3 Q Now it shows, does the picture show that the bed
4 cover is all messed up and everything is strung
5 around?

6 A Yes, sir.

7 Q What caused all that?

8 A I was in the bed, but that's when I came over the
9 bed.

10 Q All of that disheveling was caused by him?

11 A Just that top part. It was caused by me from
12 going over the bed.

13 Q Okay.

14 A He ran around the foot of the bed. He never got
15 on top of the bed.

16 Q Why did you try, why did you go over the bed like
17 that?

18 A To try to get in the corner so that I can crouch
19 down to where I could be able to protect my head.

20 Q So you got this black thing here, a bureau or
21 dresser or nightstand, you tried to get behind that?

22 A Yes, sir.

23 Q Were you successful in getting behind that bureau
24 or nightstand?

25 A Not as successful as I tried to be.

SW - A. HAGGINS - DIRECT

- 1 Q Did he continue to beat you, beat on you even
2 after you got there?
- 3 A Yes, sir. That's where the majority of the
4 beating took place.
- 5 Q Okay. Do you know how long it lasted?
- 6 A To me it felt like forever, but I'm sure it
7 wasn't.
- 8 Q Okay. Was your son at home?
- 9 A He was. He had just got home from school.
- 10 Q And Mr. Haggins broke in your front door?
- 11 A Yes, sir.
- 12 Q Now can you look at these photographs with me?
13 Can you?
- 14 A Uh-huh.
- 15 MR. FATA: Can she come down, Your Honor?
- 16 THE COURT: Yes, sir.
- 17 BY MR. FATA:
- 18 Q Come on down.
- 19 A (Complies.)
- 20 Q I'll call them out. 3-A, Exhibit 3-A, what does
21 that show?
- 22 A That's my right leg.
- 23 Q This yellowish spot, is that your bruise on your
24 leg?
- 25 A Yeah.

SW - A. HAGGINS - DIRECT

- 1 Q You got to speak up.
- 2 A Yes, sir.
- 3 Q Okay. 3-B?
- 4 A That's my left calf, my leg.
- 5 Q Calf. Does that show bruising there also?
- 6 A Uh-huh.
- 7 Q 3-C?
- 8 A That's the front of my hip.
- 9 Q And it shows what?
- 10 A The cut.
- 11 Q The cut on your head? 3-F?
- 12 A That's my right forearm.
- 13 Q And there's bruising, that bruising there?
- 14 A (Shakes head.)
- 15 Q 3-E?
- 16 A My left arm.
- 17 Q Your left arm. This one is out of order. 3-D?
- 18 A (Inaudible.)
- 19 THE COURT REPORTER: That's what?
- 20 MR. FATA: Right arm.
- 21 BY MR. FATA:
- 22 Q And those are bruises?
- 23 A Yes, sir.
- 24 Q 3-G?
- 25 A That's my face.

SW - A. HAGGINS - DIRECT

- 1 Q That a black eye?
- 2 A Yes, sir.
- 3 Q And the other eye is a little discolored also;
- 4 isn't it?
- 5 A Yes, sir. It took a few days for both to
- 6 actually show.
- 7 Q 3-I?
- 8 A That's my arm.
- 9 Q Bruising on your arm. 3-H?
- 10 A That's my arm. It's upside down though.
- 11 Q How about like that? Good. All right. 3-L?
- 12 A That's my left arm.
- 13 Q Okay. 3-K?
- 14 A That's my hand.
- 15 Q Now those cuts on your hand I think, Captain
- 16 Hudson described that as a defense move?
- 17 A Hands over my head.
- 18 Q Is that when you were down trying to get away
- 19 from him behind the dresser or the nightstand?
- 20 A (Shakes head.)
- 21 Q And 3-J?
- 22 A That's my back.
- 23 Q That's your back?
- 24 A Uh-huh.
- 25 Q Have a seat.

SW - A. HAGGINS - DIRECT

- 1 A (Complies.)
- 2 Q All these bruises and injuries were caused by
- 3 what?
- 4 A My husband.
- 5 Q And he broke into your house?
- 6 A Yes, sir.
- 7 Q And he attacked you?
- 8 A Yes, sir.
- 9 Q He hit you. Did he hit you?
- 10 A Yes, sir.
- 11 Q Did he kick you?
- 12 A Yes, sir.
- 13 Q Did he chase you through the house? Well, I
- 14 mean, into the bedroom; didn't he?
- 15 A Yes, sir.
- 16 Q You attempted to get away from him?
- 17 A Yes, sir.
- 18 Q To hide behind the nightstand.
- 19 A Yes, sir.
- 20 Q And that wasn't successful?
- 21 A No, sir.
- 22 Q Did he, did he say anything to you when he was
- 23 doing this?
- 24 A He was yelling, but I don't know exactly what he
- 25 said, I can't remember.

SW - A. HAGGINS - DIRECT

1 Q Okay. You gave the law enforcement a statement
2 on September the 1st, two days, two days later, and
3 you described exactly what you're talking about
4 here. Is this your statement?

5 A Yes, sir.

6 Q State's 5.

7 (WHEREUPON, State Exhibit No. 5 was
8 marked for identification only.)

9 BY MR. FATA:

10 Q Is this your signature at the bottom?

11 A It is.

12 MR. FATA: Your Honor, we move this in as
13 number 5, State's 5.

14 THE COURT: Yes, sir.

15 (WHEREUPON, State Exhibit No. 5 was
16 admitted into evidence.)

17 BY MR. FATA:

18 Q Can you read this to the jury for me. Speak up
19 now.

20 A "On August 29th I was in my room at ■ Circle R
21 Lane. I heard loud kicking noises. I thought it
22 was my son so I yelled at him please stop. The
23 noise continued so I got out of my bed to see what
24 it was, and that's when Johnny Haggins and Coty
25 Weaver was coming toward me. They had kicked in my

SW - A. HAGGINS - DIRECT

1 front door. Johnny was screaming at me, but I was
2 begging him to stop. I grabbed my phone to try to
3 call 9-1-1, but I couldn't get the phone unlocked.
4 He had snatched the phone out my hand. I crawled
5 across my bed trying to get away from him. That's
6 when he started punching me, kicking me, and stomped
7 on me as I was screaming for him to please stop.
8 Coty was yelling for him to hit me harder. That's
9 when I temporarily blacked out. I don't remember
10 Coty ever hitting me. That's when he finished.
11 Then when he finished he snatched my phone and told
12 me he was taking it with him."

13 Q Okay. Answer any questions that His Honor may
14 have.

15 THE COURT: I have none. Ashleigh, you
16 may step down.

17 MR. FATA: Your Honor, that is the State's
18 case.

19 THE COURT: Thank you, sir.

20 I'm gonna ask you to return to the jury
21 room for a few minutes while I discuss a matter with
22 Mr. Fata. Do not, do not discuss this case among
23 yourselves or make any deliberations please.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 2:25 p.m.)

1 THE COURT: Anything, Mr. Fata, you want
2 to say? I'm going to go put these charges together
3 now.

4 MR. FATA: I was gonna tell the jury
5 closing statement, other than that, very short.

6 THE COURT: Yeah, that's fine, that's
7 fine. I'm waiting on somebody to fax me the
8 burglary second degree elements.

9 MR. FATA: I got it right here.

10 THE COURT: Do you have that?

11 MR. FATA: I have it. Hold on.

12 THE COURT: And then what I'd like for you
13 to do is I just show you the charge that I want to
14 use so as soon as you finish with your argument we
15 can go straight to charge without a big gap.

16 MR. FATA: Burglary second degree and
17 there's a A and B section. He's charged with the B
18 section. Now I don't have the place where they
19 define building. I can get that for you.

20 THE COURT: Okay.

21 MR. FATA: Let me get that.

22 THE COURT: Okay, I'll be in chambers if
23 you can find it please.

24 MR. FATA: Okay, all right.

25 (WHEREUPON, a recess was taken from the

1 proceedings.)

2 THE COURT: All right. Mr. Fata, ready if
3 you are.

4 MR. FATA: Yes, sir.

5 THE COURT: If you'd bring them in please,
6 sir.

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 2:40 p.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: All right. Mr. Fata will now
12 offer his closing argument. After that I will
13 charge you on the law to apply to the case.

14 Mr. Fata.

15 MR. FATA: Thank you, Your Honor. Mr.
16 Foreman and ladies and gentlemen of the jury, thank
17 you for your attention today. It hadn't been very
18 long but, listening to the case and trying to listen
19 over the air conditioning kind of get, it's hard
20 sometime and I appreciate your attention.

21 Just a couple of reminders. First,
22 remember when I told you what domestic violence high
23 and aggravated was, that it's when a couple that has
24 a connection, husband and wife, boyfriend/girlfriend
25 who have lived together, or people with a child

1 together, which we have husband and wife in this
2 situation and they have a child together. When one
3 of the parties -- generally it's the man -- beats,
4 attack, beats the female, or the wife in this case,
5 severely beats the wife. And you've seen the
6 photographs of bruising and everything. You can
7 tell what a beating that was. I'll talk about that
8 in just a minute. And the domestic violence takes
9 place as a result or during the commission of
10 another crime, another crime like a robbery or a
11 kidnapping or something like that. But in this
12 case, a burglary, and we have evidence of a
13 burglary. His Honor is gonna tell you what the
14 burglary is. Burglary second degree violent is
15 breaking into -- and breaking, you don't have to
16 break anything, just open door and walk in and with
17 intent to commit a crime therein or to cause, intend
18 to commit a crime therein and cause harm to somebody
19 inside the residence. So we have the elements of a
20 burglary second degree violent and we have evidence
21 of domestic violence high and aggravated nature.

22 And here is your evidence. State's
23 Exhibit Number 1 and 2, that shows the doorjamb.
24 This is really the same photograph, but it shows the
25 doorjamb. It's busted in inward right here, here.

1 Again, it shows the same thing here and here. And
2 Captain Hudson testified that that appears to be
3 where the door was kicked in from the outside. So
4 you have your burglary, and you have the photograph,
5 each one of these photographs of the significant
6 bruising about Ms. Haggins body.

7 What did Ms. Haggins tell you? She's
8 sitting there, she thought that her son banging on
9 the wall or whatever; and after the third time she
10 got up to tell her son to quit, get him to quit,
11 whatever, and then comes Johnny Haggins, comes in on
12 top of her. She tries to get her phone and he spun
13 it out of her hands. He begins to beat on her. She
14 attempts to get across the bed and hide up under or
15 around this nightstand right here to get away from
16 him. Can you imagine that? Can you imagine this
17 man beating on her. She is running, gets down in
18 the corner and covers her head, covers herself up,
19 and he continues and continues and continues to beat
20 on her. Then you have evidence of that beating.
21 This was vicious, intentional, vicious. This is a
22 wild man that came in to this home and beat his wife
23 significantly.

24 You have her statement that she gave on
25 September 1st, two days -- to law enforcement -- two

1 days after the incident when it was fresh in her
2 mind. You have this statement in evidence. It says
3 everything that she testified to. "On August 29th,
4 2017, I was in my room at ■ Circle R Lane. I heard
5 a loud, kicking noise. I thought it was my son so I
6 yelled at him to stop. The noise continued so I got
7 out of my bed to see what it was and that's when
8 Johnny Haggins and Coty Weaver was coming toward me.
9 They had kicked in the front door. Johnny was
10 screaming at me. I was begging him to stop. I
11 grabbed my phone to try and call 9-1-1, but I
12 couldn't get the phone unlocked. He hit me the
13 first time knocking the phone out of my hand. I
14 crawled across my bed trying to get away from him,
15 and that's when he started punching me, kicking me,
16 and stomping me as I was screaming to him to please
17 stop. Coty was yelling for him to hit me hard.
18 That's when I temporarily blacked out. I don't
19 remember Coty ever hitting me. And then when he
20 finished, he snapped my phone up and told me he was
21 taking it with him."

22 She goes to the Pilot to call the police,
23 didn't have a phone. She had to go to the Pilot on
24 15 and I called the police. Can you imagine the
25 terror that she was going through. All of this, all

1 of this just because she wouldn't take him to
2 Columbia to confront another woman. All of this
3 just for that reason. What was he gonna do to this
4 other woman? If he could do this to somebody that
5 Ms. Haggins testified that they had a good
6 relationship, they were married, they never lived,
7 didn't live together, and were friends, and he does
8 this to her because she wouldn't take him to
9 Columbia? Is this the kind of conduct that we want
10 between husbands and wives? No, it's not, and
11 that's why we have domestic violence law. Mr.
12 Haggins is guilty and you've got all the evidence,
13 the testimony and evidence that shows that. Thank
14 you.

15 THE COURT: Mr. Foreperson, members of the
16 jury, it is now my turn to give you the law to apply
17 to this case. I have to put together like a puzzle,
18 that's what I've done, a bit here and a bit there to
19 make it all fit. And at the end before you begin
20 your deliberation, I will ask Mr. Fata to make sure
21 I did not leave something out, which is not hard to
22 do.

23 Members of the jury, I remind you that
24 during the trial you and I have had certain duties
25 to perform. As the trial judge it is my

1 responsibility to preside over the trial of the case
2 and I also have the duty to rule on the
3 admissibility of evidence offered during this trial.
4 You are to consider only the competent evidence
5 before you. You are to consider only the testimony
6 which has been presented from the witness stand, any
7 exhibits which may have been made a part of the
8 record in this case and any other stipulations. I
9 have the additional duty to charge you the law to
10 apply to this case as the presiding judge. I am the
11 sole judge of the law in this case, and it is your
12 duty as jurors to accept the law as I give it to you
13 now. If you already have any idea as to what the
14 law is or what the law ought to be and it does not
15 agree with what I now tell you the law is, you must
16 abandon this idea because you are sworn to accept
17 the law and apply it exactly as I state it to you.

18 In every case tried in this court before a
19 jury, the jury become the sole and exclusive judge
20 of the facts in a case. The trial judge cannot
21 intimate, state, comment on, or make any statement
22 to a trial jury about the facts in a case. Since
23 you, the jury, are the sole judge of the facts in
24 this case you are not to infer from what I have said
25 during the progress of this trial in ruling upon any

1 admissibility of evidence or otherwise, or anything
2 that I say now during the course of this instruction
3 to you that I have any opinion about the facts in
4 this case. The law does not allow me to have an
5 opinion about the facts. This is a matter solely
6 for you, the jury, to determine. As jurors it is
7 your duty to determine the effect, value, weight,
8 and truth of the evidence presented during this
9 trial.

10 The indictment and charges, or charges the
11 defendant with domestic violence high and aggravated
12 and burglary in the second degree. I remind you
13 that the fact that the defendant was arrested,
14 charged, and indicted in this case is not evidence
15 in this case and cannot be considered by you as
16 evidence of guilt in this case, nor does it create
17 any presumption or inference of guilt. This
18 document, the indictment, is simply the formal
19 written instrument which contains the charges made
20 against the defendant. It is the formal document by
21 which this case is brought to this court.

22 The indictment alleges several different
23 offenses, those being burglary second degree and
24 domestic violence high and aggravated. Each charge
25 is a separate and distinct offense. You must decide

1 each charge separate on the evidence and the law
2 applicable to it uninfluenced by your decision as to
3 any other charge. The defendant may be convicted or
4 acquitted on any or all of the offenses charged.
5 You will be asked to write a separate verdict of
6 guilt or not guilty for each verdict to each
7 indictment.

8 The defendant has pled not guilty to the
9 charges and that puts the burden on the State to
10 prove the defendant guilty. A person charged with
11 committing a criminal offense in South Carolina is
12 never required to prove himself innocent. I charge
13 you that it is an important rule of law that the
14 defendant in a criminal trial, no matter what the
15 seriousness of the charge may be, will always be
16 presumed to be innocent of the crime for which the
17 indictment was issued unless guilt has been proven
18 by evidence satisfying you of that guilt beyond a
19 reasonable doubt. This presumption of innocence
20 does not end when you begin your deliberations, but
21 it accompanies the defendant throughout the trial
22 until you reach a verdict of guilt based on evidence
23 satisfying you of that guilt beyond a reasonable
24 doubt.

25 The presumption of innocence is like a

1 robe of righteousness placed about the shoulders of
2 the defendant which remains with the defendant until
3 it has been stripped from the defendant by evidence
4 satisfying you of the defendant's guilt beyond a
5 reasonable doubt. A presumption of innocence is not
6 mere legal theory. It is not just a legal phrase.
7 It is a substantial right to which every defendant
8 is entitled to unless you, the jury, are satisfied
9 of the elements of the defendant's guilt beyond a
10 reasonable doubt. What is a relationship doubt. A
11 reasonable doubt is the kind of doubt that would
12 cause a reasonable person to hesitate to act.

13 There are two types of evidence which are
14 generally presented during trial, direct evidence
15 and circumstantial evidence. Direct evidence is t
16 he testimony of a person who claims to have actual
17 knowledge of a fact such as an eyewitness.
18 Circumstantial evidence is proof of a chain of facts
19 and circumstances indicating the existence of a
20 fact. The law makes absolutely no distinction
21 between the weight or value to be given to either
22 direct or circumstantial evidence, nor is a greater
23 degree of certainty required of circumstantial
24 evidence than of direct evidence. You should weigh
25 all the evidence in this case. After weighing all

1 the evidence, if you are not convinced of the guilt
2 of the defendant beyond a reasonable doubt you must
3 find the defendant not guilty.

4 Necessarily, you must determine the
5 credibility of witnesses who have testified in this
6 case. Credibility simply means believability. It
7 becomes your duty as jurors to analyze and to
8 evaluate the evidence and determine which evidence
9 convinces you of its truth. In determining the
10 believability, believability of witnesses who have
11 testified in this case, you may believe one witness
12 over several witnesses or several witnesses over one
13 witness. You may believe a part of the testimony of
14 a witness and reject the remaining part of the
15 testimony of that same witness. You may believe the
16 testimony of a witness in its entirety or reject the
17 testimony of a witness in its entirety. You may
18 consider whether any witness has exhibited to you
19 any interest, bias, prejudice, or other motive in
20 this case. You may also consider the appearance and
21 manner of a witness while on the witness stand.

22 I charge you further that a person is
23 guilty of burglary in the second degree if the
24 person enters a building without consent and with
25 intent to commit a crime therein and causes physical

1 injury to any person who is not a participant in the
2 crime who is in the building. A building is defined
3 as a structure, vehicle, watercraft or aircraft
4 where any person lodges or lives.

5 I further charge you that the defendant is
6 charged with domestic violence of a high and
7 aggravated nature. The State must prove beyond a
8 reasonable doubt that the defendant caused physical
9 harm or injury to a member of the defendant's own
10 household or that the defendant offered or attempted
11 to cause physical harm or injury to a member of the
12 defendant's own household with the apparent present
13 ability to cause, harm, or injury under
14 circumstances reasonably certain to create a fear of
15 imminent danger. A household member is a spouse, a
16 former spouse, a person with whom the defendant has
17 a child in common, or a person of the opposite sex
18 with whom the defendant is living or has lived in
19 the past.

20 The State must also prove one of the
21 following. The defendant committed offenses under
22 circumstances manifesting extreme indifference to
23 the value of human life and great bodily injury to
24 the victim. Committing the offense in the presence
25 of a minor child, committing the offense during the

1 commission of a robbery, burglary, kidnap, or theft,
2 or using physical force against another to block
3 that person's access to any cellphone, telephone, or
4 electronic device with the purpose of preventing,
5 obstructing, or interfering with that person.

6 I further charge you that the absence of
7 the defendant in this trial is not to be held
8 against the defendant in any way. It is not to be
9 used to punish him or to find any negative inference
10 against the defendant. Your verdict must be
11 unanimous. I will ask you now to please retire to
12 your jury room so I can consult with Mr. Fata.
13 Please do not begin your deliberations yet.

14 (WHEREUPON, the jury was removed from the
15 courtroom at 2:58 p.m.)

16 MR. FATA: No objections.

17 THE COURT: Okay.

18 MR. FATA: The verdict will be guilty or
19 not guilty on burglary second violent and guilty or
20 not guilty on domestic violence.

21 THE COURT: Yes, sir. Give me one minute
22 while I sketch out this verdict form unless you got
23 one, Mr. Fata.

24 MR. FATA: No, sir, don't have one.

25 THE COURT: Mr. Fata, would you like to

1 look at the verdict form, sir. I would like you to.
2 I made every effort to make it legible.

3 MR. FATA: Okay.

4 THE COURT: Bring them please.

5 (WHEREUPON, the jury was returned to the
6 courtroom at approximately 3:04 p.m., and
7 the following proceedings commenced in
8 open court.)

9 THE COURT: Mr. Hickmon, right?

10 THE FOREMAN: Yes, sir.

11 THE COURT: I have prepared in my
12 handwriting a verdict form for your jury to use. It
13 states as follows: At the top, State versus Johnny
14 Haggins. We, the jury, as to the charge of domestic
15 violence high and aggravated find defendant either,
16 check not guilty or guilty. And as to the charge of
17 burglary second degree: We find the defendant,
18 check not guilty or guilty. Sign it as the foreman.
19 Your decision must be unanimous and the form or
20 order of how I have prepared this is not to be
21 inferred in any way as to what your verdict should
22 be. Something has to come before something else.
23 All right, if you'd give that to the foreman.

24 And are they ready for the exhibits?

25 THE COURT REPORTER: Yes, sir.

1 THE COURT: You may retire to your jury
2 room to deliberate now. Knock on the door when you
3 have a verdict or a question please. Thank you very
4 much.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 3:05 p.m.)

7 THE COURT: We can let the alternate go.
8 (Alternate was excused and court was in recess.)

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 3:15 p.m. and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: Mr. Hickmon, it's my
14 understanding y'all have a verdict?

15 THE FOREMAN: Yes, sir.

16 THE COURT: Is it a unanimous verdict on
17 both counts?

18 THE FOREMAN: Yes, sir.

19 THE COURT: Would you please hand it to
20 the bailiff please. Thank you.

21 All right, Ms. Brown, would you kindly
22 publish please.

23 THE CLERK: Okay, in the case of the State
24 versus Johnny Haggins: We, the jury, as to the
25 charge of the domestic violence high and aggravated

1 find the defendant guilty. And as to the charge of
2 burglary second degree, we find the defendant
3 guilty. Signed Derrick Hickmon, foreperson. July
4 the 10th, 2018.

5 THE COURT: Mr. Fata, any questions?

6 MR. FATA: No, sir, Your Honor.

7 THE COURT: Okay. And we are through with
8 the jury this week, Mr. Fata?

9 MR. FATA: Yes, sir, we are.

10 THE COURT: Folks, your duties have ended
11 for this week. We appreciate your services very
12 much. Thank you very much.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 3:17 p.m.)

15 THE COURT: All right. I have completed
16 the sentencing sheets. Do they remain silent or do
17 I publish them?

18 MR. FATA: You seal the envelope, Your
19 Honor, and it's not published until he is arrested.

20 THE COURT: All right.

21
22 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
23
24
25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 19th day of April, 2019.

Frances B. Ray

FRANCES B. RAY, RPR

Paul Fata

From: Paul Fata <pfata@leecountysc.org>
Sent: Monday, June 04, 2018 4:09 PM
To: 'John Etheridge'
Subject: Johnny Haggins

Kevin,

The judge has issued a bench warrant for Mr. Haggins. Please be advised that Mr. Haggins' case is set for the term of court beginning July 9, 2018. He will be one of the first cases for trial and will be tried in his absence he does not appear. The plea offer expires this week.

Paul M. Fata

Assistant Solicitor
Third Judicial Circuit Solicitor's Office
Lee County County Courthouse
123 S. Main Street
Bishopville, SC 29010
(803) 484-5341 ext 392
Fax: (803) 484-4061
Mailing: P.O. Box 309
Bishopville, SC 29010



STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF LEE) 2018-GS-31-00050

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
))
JOHNNY HAGINS)
) DEFENDANT

September 4, 2018
Bishopville, South Carolina

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JUDGE.

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

PAUL FATA, ASSISTANT SOLICITOR
Attorney for the State

JOHNNY HAGINS, APPEARING PRO SE
Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

I N D E X

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E X H I B I T S

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

MR. FATA: Your Honor, this is 2018-GS-31-50. It's the State v. Johnny Hagins. He was tried in his absence last term of court. His attorney was given notice that his case was up for trial. He was -- his attorney was given notice that if he did not appear that the case would be tried in his absence.

Judge McFadden made a finding on the record that the State had complied with the case of State v. Wrapp, W-R-A-P-P, 421 SC 531, 808 SC 2d 821: Mr. Hagins was tried and found guilty, and Judge McFadden sealed the sentence. And we're here to open the sentence. Here today are the victim. This is Mrs. Hagins in the tee shirt, and I do not think she wants to address the Court.

THE COURT: Okay. Was he tried on all six counts?

MR. FATA: No, sir, just two counts.

THE COURT: Just two.

MR. FATA: Let me get the indictment out. It was the domestic violence high and aggravated and the burglary.

THE COURT: Okay.

MR. FATA: He had a codefendant who has not been tried yet.

THE COURT: Who was his attorney?

MR. FATA: Mr. Ethridge with the Gardner Law Firm.

THE COURT: Was he 608?

1 MR. FATA: He was retained.

2 THE COURT: Oh, he was retained; is that correct?

3 MR. FATA: That's right.

4 THE COURT: Mr. Hagins, you retained your attorney?

5 MR. HAGINS: Yes, sir.

6 THE COURT: Okay. You were not present, obviously,
7 at trial. All right. I will open the sentence. Has his
8 attorney been notified about today.

9 MR. FATA: His attorney was relieved, Your Honor. He
10 made a motion to be relieved.

11 SENTENCE OF THE COURT

12 THE COURT: He made a motion to be relieved. Okay.
13 On the burglary second, the sentence of the Court is that
14 you be committed to the State Department of Corrections
15 for a term of 15 years.

16 On the domestic violence high and aggravated,
17 sentence of the Court is that you be committed to the
18 State Department of Corrections for a term of 20 years to
19 run concurrent with each other. Credit for time served.

20 END OF TRANSCRIPT OF RECORD

21

22

23

24

25

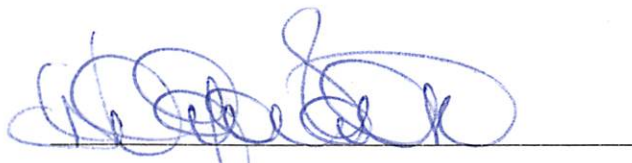
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEE)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Lee County, South Carolina, on the 4th day of September,
2018.

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

June 17, 2019



HATTIE O. GORDON, Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

INDICTMENT FOR

Domestic violence of a high and aggravated nature
Conspiracy, Burglary 2nd, A&B 1st

At a Court of General Sessions, convened on March 29, 2018 the Grand Jurors of
LEE County present upon their oath:

COUNT ONE

That Johnny Haggins did in Sumter County on or about August 28, 2017, cause physical harm or injury to his own household member Ashleigh Haggins and/or did offer/attempt to cause such harm/injury to the victim with the apparent present ability under circumstances reasonably creating fear of imminent peril, and the defendant either committed the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury results or would reasonably cause a person to fear either great bodily injury or death; or the defendant violated a protection order and, in the process, committed 1st degree Domestic Violence; in violation of Section 16-25-65, S. C. Code of Laws, 1976, as amended.

COUNT TWO

That Johnny Haggins did in Lee County on or about August 28, 2017 combine with Kodi Weaver, and/or with other persons, for the purpose of accomplishing a criminal or unlawful act or an act that is neither criminal nor unlawful through criminal or unlawful means, to wit: Burglary, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

COUNT THREE

That in Lee County, on or about 2017-08-28 the Defendant, Johnny Haggins, did enter the building of Ashleigh Haggins located at [REDACTED] Circle R Lane, Bishopville, South Carolina, without consent and with the intent to commit a crime therein. That, in addition, caused physical injury to a person not a participant, in violation of Section 16-11-312(B) of the South Carolina Code of Laws (1976, as amended).

WITNESSES

James Hudson
Sheriff

Lee County

DOCKET NO. 2018-GS-31-0050

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

March

TERM

2018

THE STATE

vs.

JOHNNY HAGGINS

KODI WEAVER

Indictment for

Domestic violence of a high and aggravated nature
Conspiracy, Burglary 2nd, A&B 1st

ARREST WARRANT NUMBER

2017A3110100284

2017A3110100286

2017A3110100285

2017DIR310019

2017DIR310020

2017DIR310021

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lee
STATE VS.
Johnny Haggins

AKA:
Race: Black Sex: M Age: 31
DOB: SS#
Address: Hampton Street
City, State, Zip: Bethune, SC 29009
DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Burglary / Burglary (Violent) (After 06/20/85) - Second degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-31-0050
A/W#: 2017A3110100285
Date of Offense: 8/28/2017
S.C. Code § : 16-11-0312(B)
CDR Code #: 0086

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0312(B) of the S.C. Code of Laws, bearing CDR Code # 0086
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 1966
Fata, Paul M SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: Leader, John was
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine:
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 61.6 (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Deena Brown
Court Reporter: Walter Gordon
SCCA/217 (07/2016)

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees

Presiding Judge [Signature]
Judge Code: 2759
Sentence Date: 7-10-18

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lee

VS.

Johnny Haggins

AKA:

Race: Black Sex: M Age: 31

DOB: SS#:

Address: Hampton Street

City, State, Zip: Bethune, SC 29009

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Domestic / Domestic violence of a high and aggravated nature

IN THE COURT OF GENERAL SESSIONS 27

INDICTMENT/CASE#: 2018-GS-31-0050

A/W#: 2017A3110100284

Date of Offense: 8/28/2017

S.C. Code § : 16-25-0065(A)

CDR Code #: 3814

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-25-0065(A) of the S.C. Code of Laws, bearing CDR Code # 3814

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Fata, Paul M

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 12 other sentences to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

FORM 5

STATE OF SOUTH CAROLINA)

County of Lee)Johnny Haggins 343140)

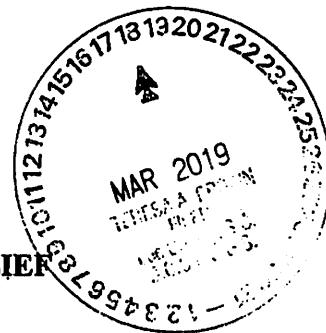
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

19-CP-31-77

APPLICATION FOR
POST-CONVICTION RELIEF**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Lee County 3rd Judicial Circuit, Bishopville SC 29010
3. Name(s) of co-defendant(s) (if any) Kodi Weaver
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017A3110100284 indictment/case # 2018-CG-31-0050
 - (b) 2017A3110100285 indictment/case # 2018-CG-31-0050

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) warrant # 2017A3110100264 20 years concurrent 7-10-18
- (b) warrant # 2017A3110100285 15 years concurrent 7-10-18
- (c) sent sentence date: 7-10-18 opening of seal sentence date 9-4-18
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere No
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- My attorney failed to file and/or take an appeal
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. See number 7
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. See number 7
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. See number 7
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. See number 7
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My attorney failed to file and/or take an appeal

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of trial counsel for failing to file a direct appeal Pursuant to White vs. State, 263 S.C. 110
- (b) Ineffective Assistance of trial counsel for failing to object to and/or challenge defendant being tried and/or sentenced in absentia.
- (c) Continue page 3 see attached Grounds sheet
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) In reference to ground one: my trial attorney failed to file a direct appeal on my behalf.
- (b) In reference to ground two: I was tried and/or sentenced without being present and without any challenge and/or objections from counsel
- (c) Continue page 3 see attached Grounds raised and reason sheet
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Do not apply
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Do not apply
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Do not apply
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. Do not apply
- ii. _____
- iii. _____
- iv. _____

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

- i. Do not apply
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. Do not apply
- ii. _____
- iii. _____
- iv. _____

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

- i. Do not apply
- ii. _____
- iii. _____

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

(a) Do not apply
 (b) Do not apply
 (c) Do not apply

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

(a) your arraignment and plea? N/A unknown
 (b) your trial, if any? N/A unknown
 (c) your sentencing? Not for opening and reading of sentence 7-4-18/unknown of Seal Sentence Date 7-10-18
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

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

i. N/A
 ii.
 iii.

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

i. N/A
 ii.
 iii.

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

I seek an evidentiary hearing on my ineffective assistance of counsel claims and reversal of my conviction or in the alternative be allowed to accept the 5 years non-violent plea that was offered by Solicitor Paul M. Fata or Belated appeal in Lee County 3rd Judicial Circuit Bishopville S.C. 29010

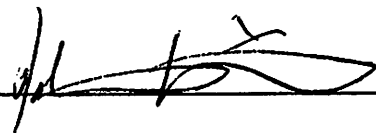
20. Are you now under sentence from any other court that you have not challenged?

NO I am not serving another sentence

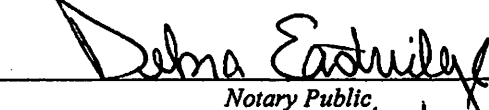
STATE OF SOUTH CAROLINA)
)
County of Lee)

VERIFICATION

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

X 

SWORN to and subscribed before me this 13
day of March 2019

 (L.S.)
Notary Public

My Commission Expires: 3/3/2024

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

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

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


Applicant

SWORN or affirmed to and subscribed before me this

13 day of March 2019


Notary Public

My Commission Expires: 3/3/2024

Lee Corr., Inst.,
990 Wisacky Highway
Bishopville, SC 29010-1775

County of Lee

Johnny Haggins 343146

Form 5: Application for
Post-Conviction Relief

Attached Sheet For Grounds From page 3

Q: 10

- (C) Ineffective Assistance of trial counsel for failing to challenge the indictment in relation to count one in the indictment on the grounds of lack of Jurisdiction and/or improper change of venue.
- (D) Defendant was denied his Sixth Amendment Right to be present at trial and/or sentencing and facing accuser.
- (E) The trial court abused it's discretion and/or committed reversible error when trying (Holding the trial) and/or sentencing defendant in absentia without giving defendant Proper Notice of hearing date 7-10-18 which was seal sentence.
- (F) Ineffective Assistance of trial counsel for failing to notice defendant of waiver of preliminary hearing and Future preliminary hearings requested by defendant.
- (G) Defendant was denied due process to fair opportunity of defense.
- (H) Defendant didn't have knowledge of being impeach by convictions to oppose and having fair opportunity to contest the use of such evidence.
- (I) Defendant didn't have knowledge of plea offer by Solicitor Paul M. Fata for 5 years non-violent unto after sentenced in absentia and placed in department of corrections.

Attached Sheet for Grounds from page 3

Q: 10

(J) Defendant didn't have counsel upon the opening and reading of seal sentencing on date 9-4-18 to represent him and request appeal or/and reconsideration of sentencing on defendant behalf as well as disposition sentencing sheet for date 7-10-18 shows no proof of defendant or attorney for defendant [Kevin B. Etheridge] or S.C. Bar # [728112] was present for this hearing dated 7-10-18 which defendant was sentence in absentia.

(K) Petitioner requests and intends to further amend application once counsel is appointed to him.

Attached sheet for Facts Supporting Grounds Raised and Reason From page 3.

Q:11

- (C) In reference to ground three: I was indicted and tried in Lee County for a crime that is/was said in the indictment under oath to have occurred in Sumter County. There were no objections or challenge by counsel. This amounted to a fatal defect in the indictment.
- (D) In reference to ground four: I was tried and sentenced in absentia despite not being given any notice of the trial and/or sentencing date 7-10-18 by the trial court. No finding of a notice to even the prior address and defendant receiving notice of this hearing date of 7-10-18 nor proof of voluntary or involuntary waiver on my behalf to be present of this hearing.
- (E) In reference to ground five; see the facts outlined in ground four supra.
- (F) In reference to ground six: Counsel fail to notice defendant of any waiver of preliminary hearing which was not agreed with defendant to not learn evidence against him which was defendant right. Defendant did request preliminary hearing back among arrest 9-1-17.
- (G) In reference to ground seven: Defendant was denied due process to fair opportunity of defense with defense lawyer. Defendant didn't attain another lawyer or was appointed another lawyer in his defense nor sign any waiver to represent himself.

Attached sheet for Facts Supporting Grounds Raised and Reason from page 3

Q: 11

- (H) In reference to ground eight: Defendant didn't have knowledge of being impeach by convictions to oppose and having fair opportunity to contest the use of such evidence due to the fact of not reviewing a motion of discovery unto after being sentence in absentia and place in the department of corrections.
- (I) In reference to ground nine: Defendant didn't have knowledge of plea offer on April 19, 2018 by Solicitor Paul M. Fata sent to lawyer Kevin R. ^{Etheridge} ~~Etheridge~~ ^{It} For 5 years non-violent unto after sentence in absentia that defendant may or may not had agreed to. Defendant didn't learn of this offer unto requesting lawyer Kevin R. Etheridge to send all information pertaining to his case including motion of discovery etc. after being sentence in absentia and place in the department of corrections.
- (J) In reference to ground ten: defendant didn't have counsel upon the opening and reading of seal sentencing dated 9-4-18 to represent him and request appeal or reconsideration of ^{sentencing} ~~sentencing~~ on his behalf. Disposition of sentencing sheet for 7-10-18 shows no proof of: Defendant or attorney for defendant [Kevin R. Etheridge] or S.C. Bar # [72811] was present for this hearing dated 7-10-18 which defendant was sentence in absentia.
- (K) In reference to ground eleven: Petitioner requests and intends to further amend application once counsel is appointed to him. Defendant had not been able to afford court transcripts for date 7-10-18 and date 9-4-18. all grounds are base off the information defendant was provided with.

3/13/2019

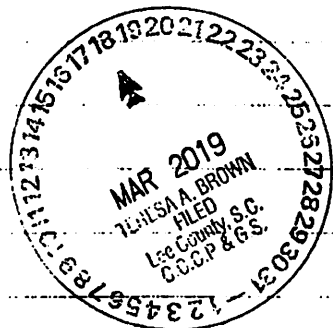
Teresa A Brown

Clerk of Court

Lee County

P.O. Box 387

Bishopville S.C. 29010



RE: Notice of Indigent and request of an appointed attorney for Post Conviction Relief

State vs. Johnny Haggins

Warrant(s) No. 2017 A3110100284, 2017 A3110100285

Indictment/case no. 2018-GS-31-0050

Dear Clerk of Court,

I'm writing in reference of being indigent and can't afford an attorney. This is a request to be appointed an attorney to help and represent me upon Post-Conviction Relief. Also upon this request of an attorney and filing P.C.R. I request that the attorney review the application and make any necessary revisions. I'm sending a copy of this letter to the Attorney General office as well. I've already sent in my Post-conviction Relief Application. Thanks for any help you can provide and have a blessed day.

Sincerely,

[Signature] SLP# 343140
 Johnny Haggins S.C.P.C. # 343140

C.C. Attorney General office

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Johnny Haggins, #343140,	)	2019-CP-31-77
	)	
Applicant,	)	RETURN AND PARTIAL
v.	)	MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on March 18, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. During the March 2018 term, the Lee County Grand Jury indicted Applicant for domestic violence of a high and aggravated nature, conspiracy, burglary – second degree, and assault and battery – first degree (2018-GS-31-0050). Applicant’s case was noticed for trial for July 10, 2018. On that date, Kevin Etheridge, Esquire, (Counsel) appeared before the Honorable George M. McFaddin, Jr., and requested to be relieved as Applicant’s counsel. Counsel explained to the trial court that Applicant had failed to keep in contact with Counsel and, despite his efforts, he has been unable to reach him through mail or family members. (Trial Tr. 4.) The trial court made a finding that Applicant had failed to maintain a “hard core attorney-client” relationship, which is his duty. (Trial Tr. 6.) Counsel’s motion to be relieved was granted and Applicant was tried in his absence on the second-degree burglary and domestic violence charges. Applicant was found guilty by the jury and the trial court sealed Applicant’s sentence. On September 4, 2018, Applicant appeared before the Honorable R. Ferrell Cothran, Jr., to be sentenced. Upon unsealing Applicant’s sentence, Judge Cothran imposed a

term of fifteen years imprisonment on the second-degree burglary offense, and a concurrent twenty years for domestic violence of a high and aggravated nature.

II. Factual History

On August 27, 2017, Applicant and his wife, Ashleigh Haggins (Victim)¹, got into an argument because Victim would not take Applicant to Columbia to confront a woman about his music credentials. (Trial Tr. 42.) Victim said she did not hear from Applicant again until August 29, 2017. (Trial Tr. 43.) On that date, Applicant and Victim got into an argument on Facebook about Victim giving their daughter up for adoption. (Trial Tr. 44.) Applicant's sister was also involved in the online argument and it ended with Applicant telling his sister not to worry about it, "he was fixing to handle the situation." (Trial Tr. 44.) Shortly thereafter, Applicant and his co-defendant, Coty Weaver² (Weaver), kicked in Victim's door. (Trial Tr. 44.) Victim testified Applicant ran towards her yelling and screaming at her and, as she tried to get away, he began hitting and kicking her, and even stomped on her head. (Trial Tr. 46.) Victim's son came home while Applicant was assaulting Victim. (Trial Tr. 49.) Weaver yelled at Applicant to hit her harder and that is when Victim blacked out. (Trial Tr. 54.) Applicant took Victim's phone with him when he left. (Trial Tr. 54.) Victim went to a Pilot station with her son and called law enforcement. (Trial Tr. 30.)

III. Allegations Raised and Relief Sought in Application

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

1. Ineffective Assistance of Counsel
 - a. Failing to file a direct appeal;
 - b. Failure to object to and/or challenge Applicant being tried in absentia;

¹ Victim testified at trial that she and Applicant were married on December 27, 2010 and they separated about two days after the wedding. Although they are currently still married, they do not live together.

² Weaver is referred to as Applicant's girlfriend in the trial transcript.

- c. Failure to challenge the indictment;
- d. Applicant was denied his Sixth Amendment right to be present at trial and /or sentencing to face his accuser;
- e. Failure to notice Applicant for preliminary hearing and future preliminary hearings;
- f. Failure to communicate plea offer from the State;
- g. Failure to inform Applicant that his prior convictions can be used against him;
- 2. Due Process Violation
 - a. Applicant “denied due process and fair opportunity for defense.”
- 3. Trial Court Error
 - a. Trial court committed reversible error by conducting the trial and sentencing of Applicant in absentia without proper notice.

As requested relief, Applicant states he wants “an evidentiary hearing on my ineffective assistance of counsel claims and reversal of my conviction or in the alternative be allowed to accept the five years non-violent plea that was offered by solicitor Paul M. Fata or belated appeal.”

Attached herewith and incorporated herein by reference are the records of the York County of Court regarding the subject convictions challenged in this application, the trial and sentencing transcript, and the application. Respondent reserves the right to amend its return upon the receipt of other relevant records.

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel should be dismissed as Counsel was relieved by the trial court prior to start of Applicant’s trial.

It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Faurey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct. App. 2007). A criminal defendant may be tried in his absence only upon a trial court’s finding (1) the defendant has received notice of his right to be present, and (2) he was advised the trial would proceed in his absence if he failed to attend. State v. Williams, 292 S.C. 231, 232, 355 S.E.2d 861, 862 (1987). Notice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at his trial.

Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976); Fairey, 374 S.C. at 99, 646 S.E.2d at 448.

On August 16, 2017, the Court of Appeals issued an opinion in State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017). The issue in Wrapp was whether Wrapp voluntarily waived his right to be present at trial and was sufficiently on notice he would be tried in his absence. Id. at 533, 808 S.E.2d at 822. The Court of Appeals held Wrapp was improperly tried *in absentia* because the trial court failed to make the required findings that Wrapp “(1) received notice of his right to present, and necessarily, of the term of court for which he needed to be present, and (2) was warned he would be tried *in absentia* if he failed to attend.” Id. at 536, 808 S.E.2d at 823. The Court of Appeals found the record to be “devoid of any fact indicating Wrapp had actual notice of the term of court in which his trial would occur.” Id. at 536, 808 S.E. 2d at 824. The Court stated: “It seems logical that for one to voluntarily fail to attend trial or otherwise waive his trial appearance, one must actually know when the trial is to occur.” Id. at 537, 808 S.E.2d at 824.

On June 4, 2018, the State and Counsel appeared before the Honorable Kristi F. Curtis. At that time, the State was calling Applicant’s case for trial and indicated they had provided notice to Applicant through Counsel of this court date. (Curtis Tr. 6.) Counsel raised the Court of Appeals decision in Wrapp to object to Applicant being tried in his absence as Applicant was not provided notice that he would be tried in his absence if he did not appear for his trial date. (Curtis Tr. 4-6.) Counsel explained he has attempted to contact Applicant, but his phone is disconnected and the letters he sent are being returned without a forwarding address. (Curtis Tr.4.) The State argued the only way for them to provide notice to Applicant is through his attorney and the State believed they complied with the notice requirement. (Curtis Tr. 6.) The Court distinguished Applicant’s case from Wrapp on several issues, but ultimately, allowed Applicant’s case to be continued one time with the understanding that Counsel would inform Applicant that he would be tried in his

absence if he did not appear for his trial during the next term of court. (Curtis Tr. 14.) Judge Curtis also issued a bench warrant for Applicant as requested by the State. (Curtis Tr. 14.)

On July 10, 2018, the State and Counsel appeared before The Honorable George M. McFaddin. Applicant failed to appear in court again and Counsel made a motion to be relieved. (Trial Tr. 4.) Counsel explained to Judge McFaddin that he has been unable to get in touch with Applicant, despite his efforts to reach him by telephone, mail and through family members. (Trial Tr. 4.) Counsel further explained he met with Applicant in person only one time and it had been about a year since he had seen him or had contact with him. (Trial Tr. 5-6.) Judge McFaddin relieved Counsel and proceeded with Applicant's trial in his absence. (Trial Tr. 6.)

Counsel was appropriately relieved after Judge Curtis provided Counsel more time to contact Applicant and inform him of his upcoming trial date with the understanding that he would be tried in his absence if he did not appear. Thereafter, Counsel was appropriately relieved by Judge McFaddin as Applicant had not maintained contact with Counsel, despite Counsel's efforts to reach him. As Counsel was properly relieved, Applicant's allegations that Counsel was ineffective are meritless as Counsel had no duty to Applicant during or after the trial. Further, any allegations that complain about Counsel's pre-trial communication with Applicant are also meritless as Counsel was unable to maintain contact with Applicant because he disconnected his phone and changed his address without informing Counsel of a new number or forwarding address. Counsel was unable to properly communicate and prepare Applicant's case because of Applicant's behavior, not Counsel's.

V. Due Process

Applicant alleges he was denied due process because he was unable to present his defense. This allegation is meritless as Applicant's total failure to maintain a relationship with Counsel or assist Counsel in his case prevented him from being able to present a defense in his case.

The Sixth Amendment to the Constitution requires that in all criminal proceedings, the accused shall have the right to the assistance of counsel. U.S. Const. amend. VI. However, South Carolina Courts recognize “three different ways in which a defendant may relinquish his right to counsel: (1) waiver by an affirmative, verbal request; (2) waiver by conduct; and (3) forfeiture.” State v. Roberson, 382 S.C. 185, 187, 675 S.E.2d 732, 733 (2009), overruled on other grounds by Osbey v. State, Op. No. 27866 (S.C. Sup. Ct. filed March 6, 2019) (Shearouse Adv. Sh. No. 10 at 31). When a defendant waives his right to counsel either by verbal request or by his conduct, the trial court is required to (1) advise the accused of his right to counsel, and (2) adequately warn the accused of the dangers of self-representation. Osbey, Op. No. 27866 (S.C. Sup. Ct. filed March 6, 2019) (Shearouse Adv. Sh. No. 10 at 31); Prince v. State, 301 S.C. 422, 424, 392 S.E.2d 462, 463 (1990); Faretta v. California, 422 U.S. 806 (1975). However, such warnings are not required when a defendant forfeits his right to counsel. United States v. Goldberg, 67 F.3d 1092, 1101 (3d Cir. 1995) (“[A] true forfeiture can result regardless of whether the defendant has been warned about engaging in misconduct, and regardless of whether the defendant has been advised of the risks of proceeding *pro se*, as required by Farretta and Whey.”) (citations omitted); State v. Thompson, 355 S.C. 255, 267, 584 S.E.2d 131, 137 (Ct. App. 2003) (“A defendant can forfeit his right to counsel irrespective of his knowledge of either the consequences of his actions or the dangers of self-representation.”); see also Osbey, Op. No. 27866 (S.C. Sup. Ct. filed March 6, 2019) (Shearouse Adv. Sheet No. 10 at 31, n. 2) (noting the Court’s holding applies to all cases of waiver both verbal and by conduct, but not necessarily to cases of forfeiture).

Prior to Applicant’s trial, Counsel filed a motion to be relieved as Applicant’s counsel citing Applicant’s failure to maintain a relationship with Counsel. Counsel explained Applicant had failed to maintain contact with him and has only met with him one time, which was about a year before his trial. (Trial Tr. 4.) Counsel explained he attempted to make contact with Applicant

by telephone, mail, and through family members, but had been unsuccessful. (Trial Tr. 4.) Counsel stated the letters he sent to Applicant were returned to him without a forwarding address. (Trial Tr. 4-5.) Counsel stated, even though Applicant retained his firm, he has failed to maintain contact with him, despite his efforts, for at least a year. (Trial Tr. 5-6.)

Here, it is clear Applicant was aware of his right to counsel, retained counsel, and then failed to follow through with his obligation to maintain contact with Counsel or assist him in preparing his case for trial. As Judge McFaddin found, Applicant failed to maintain a “hard-core attorney-client relationship,” which was Applicant’s duty. (Trial Tr. 6.) As such, Counsel was properly relieved as Applicant’s counsel and Applicant was properly tried in his absence and, therefore, this allegation is meritless.

VI. Summary Dismissal of Trial Court Error Allegation

Respondent requests that the claim of the trial court’s error be dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160.

An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

“Abuse of discretion, error of law” is not a claim cognizable under the act. These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a

substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's failure to maintain contact with Counsel or appear for his trial created the situation Applicant is now complaining Counsel should have used as the basis for appeal. Applicant's dilatory conduct has created all of the issues he is now alleging are grounds for post-conviction relief. However, Counsel was properly relieved and was therefore not obligated to attend Applicant's trial, nor make any objections on Applicant's behalf.

As such, pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss the allegation of the trial court's abuse of direction and error of law for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests

that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Request for Applicant to file an Amended Application

WHEREFORE, Respondent requests an evidentiary hearing be held solely on the claims of ineffective assistance of counsel and violation of due process. As to the trial court error claim, Respondent moves for summary dismissal.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

 JANELL H. GREGORY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 18, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	
	)	
	)	2019-CP-31-77
	)	
JOHNNY HAGGINS, #343140,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Timothy Lee Griffith, Esquire
Timothy L. Griffith, Attorney at Law
360 W Wesmark Blvd, Second Floor
Sumter, South Carolina 29150

DATED this the 18th day of July, 2019.



Caroline Collins, Administrative Coordinator
For Respondent

State of South Carolina	)	
	)	In the Circuit Court
County of Lee	)	
	)	
Johnny Haggins,	)	
	)	
Plaintiff,	)	
	)	2019-CP-31-77
versus	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

Lee County Courthouse
November 17, 2021

TRANSCRIPT OF HEARING

B E F O R E

The Honorable Diane Goodstein

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

Timothy Griffin, Esquire
Attorney for Plaintiff

Lillian L. Meadows, Esquire
Attorney for Defendant

PROVIDED FOR: Ms. Adriane Burk

FOR COPIES CONTACT: Melissa R. Singletary
Certified Verbatim Court Reporter

I N D E X

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E X H I B I T S

(There were no exhibits marked during this hearing)

Johnny Haggins vs. State of South Carolina

3

1 THE COURT: All right. Ms. Meadows, I'm listening
2 to you.

3 MS. MEADOWS: All right. Yes, ma'am. This matter
4 is Johnny Haggins v. State of South Carolina. Docket Number
5 2019-CP-31-0077. In March of 2018, Mr. Haggins was
6 indicted for Domestic Violence of a High and Aggravated
7 Nature and Second Degree Burglary, Violent. Kevin
8 Etheridge initially represented Mr. Haggins on these
9 charges and his case was initially called for trial in June
10 of 2018, before Judge Curtis. Mr. Etheridge requested a
11 continuance at that time because he was unable to get a
12 hold of Mr. Haggins and give him notice of the trial date.
13 He stated the number that Mr. Haggins had provided to him
14 had been disconnected and all mail sent to the address had
15 been returned and Judge Curtis granted a continuance and
16 issued a bench warrant.

17 Then over a month later his case was called for
18 trial before Judge McFaddin and at that time Mr. Etheridge
19 moved to be relieved as counsel. He stated that he had one
20 meeting with Mr. Haggins over a year before that time and
21 he had been unable to reach him and he said the main reason
22 he was moving to be relieved is because he had no contact
23 with Mr. Haggins whatsoever and he did not feel that he
24 could properly represent him. So, Judge McFadden granted
25 Mr. Etheridge's motion to be relieved and Mr. Haggins was

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1 tried in absentia and the jury convicted him, as indicted,
2 and then around two months later in September Mr. Haggins
3 appeared before Judge Cothran, who unsealed the sentence
4 and imposed the aggregate term of twenty (20) years
5 imprisonment. Mr. Haggins did not appeal. He filed this
6 application on March 18, 2019. Today he is represented by
7 Mr. Griffith.

8 MR. GRIFFITH: If it pleases the court, Your
9 Honor.

10 THE COURT: Yes. I was just finishing my note.
11 Yes, Mr. Griffith.

12 MR. GRIFFITH: A witness is trying to log in. Her
13 name is Ms. Miller. Has she been able to log in Ms.
14 Parker?

15 MS. PARKER: She is in our attendee list.
16 Unfortunately, I cannot make her a panelist. She can hear
17 and if she needs to speak I can unmute.

18 MR. GRIFFITH: Okay. If the court is ready to
19 proceed, I would like to call her as a first witness.

20 THE COURT: Sounds perfect. Thank you.

21 MS. MEADOWS: Excuse me, Your Honor. If Mr.
22 Griffith wouldn't mind putting the allegations on the
23 record, that would be great.

24 THE COURT: Do you have the application?

25 MR. GRIFFITH: I do.

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1 MS. MEADOWS: I do. Since that was filed by, you
2 know, by Mr. Haggins, I just wanted to make sure.

3 THE COURT: Mr. Griffith, are the allegations
4 going to be altered by any from the application? Are you
5 going to add any, subtract any?

6 MR. GRIFFITH: I don't believe so. The
7 allegations are that Mr. Haggins and I have talked about
8 are there are no attorney ... He feels he was not notified
9 of the trial because he was transit at the time. He never
10 saw any evidence or discovery. His co-defendant received
11 five (5) years, suspended to two (2) years probation and he
12 received twenty (20) years because he was tried in his
13 absence but had he been aware he certainly would have shown
14 up and communicated with his attorney about the plea offer.
15 Unfortunately, he was transit and was not receiving mail as
16 mentioned by counsel, Ms. Meadows, all of his letters were
17 returned. It's not that they went unanswered, they were
18 returned and his phone had been disconnected. He didn't
19 have a phone. He was transit. He was homeless. So if it
20 please the court, I would like to call Ms. Miller.

21 THE COURT: Sure. Okay. Those are the
22 allegations and we will unmute Ms. Miller. Have you spoken
23 to her before, Mr. Griffith?

24 MR. GRIFFITH: Yes, Yes, I have.

25 THE COURT: All right. So you will recognize her

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1 voice?

2 MR. GRIFFITH: Oh yeah.

3 THE COURT: Okay. If you will unmute Ms. Miller.

4 MS. PARKER: I have, Your Honor.

5 THE COURT: Very well. Ms. Miller, if you can say
6 good morning just so we know that we have you.

7 MS. MILLER: Good morning.

8 THE COURT: Do you recognize that voice?

9 MR. GRIFFITH: Yes, Your Honor.

10 THE COURT: Very well. You recognize her as being
11 Ms. Miller?

12 MR. GRIFFITH: Your Honor, I need you to swear her
13 in.

14 THE COURT: I'm going to. I just need you to
15 verify before I swear her in that that is her voice?

16 MR. GRIFFITH: Okay. I would say that is Ms.
17 Miller. I've spoke to her more than one time.

18 THE COURT: All right. Very well. Do you solemnly
19 swear or affirm that the testimony you will give will be
20 the truth, the whole truth and nothing but the truth?

21 MS. MILLER: Yes, ma'am.

22 THE COURT: Thank you Ms. Miller. All right. Mr.
23 Griffith does Mr. Haggins waive his right to be present
24 with you in the courtroom and his right to have this matter
25 be held live?

Nyeisha Miller - Examination by Mr. Griffith

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1 MR. GRIFFITH: If I can have an opportunity, I can
2 question him quickly.

3 THE COURT: Yes, please.

4 MR. GRIFFITH: Mr. Haggins, you are aware that we
5 are in a virtual courtroom. In other words, we're not all
6 standing in a courtroom together, you are doing this via
7 computer, do you understand that?

8 MR. HAGGINS: Yes, sir.

9 MR. GRIFFITH: And do you consent to us having
10 this hearing not in a courtroom. You have a right to be
11 heard in a courtroom but if you would consent to that we
12 could go forward now. If not, we can delay it and have it
13 in the courtroom. Do you consent to us doing it via
14 computer?

15 MR. HAGGINS: Yes, sir.

16 MS. JONES: I need him to speak up a little bit,
17 Your Honor.

18 MR. GRIFFITH: Is the court satisfied, Your Honor?

19 THE COURT: I am.

20 MR. GRIFFITH: Okay.

21 THE COURT: All right. Ms. Miller, Mr. Griffith,
22 will now ask you questions.

23 **Ms. Miller - Examination by Mr. Griffith:**

24 Q: Ms. Miller, will you please state your full name for
25 the record and your address?

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1 A: Nyeisha Miller, [REDACTED] Hoffmeyer Road, Darlington, South
2 Carolina.

3 Q: Ms. Miller, how are you related, if at all, to Mr.
4 Haggins?

5 A: I'm his sister.

6 Q: So, of course, you've known him all your life?

7 A: Yes.

8 Q: Ms. Miller, do you remember the time when he was
9 arrested and was having these charges brought against him?

10 A: Honestly, I knew it was something going on but I
11 really didn't know too much about, you know, until after
12 the fact.

13 Q: Okay. Were you aware during that time whether Mr.
14 Haggins --- was he transient? Did he have a home, did he
15 live on his own? Would he come to see you sometime?

16 A: A lot of times he would come to my house. If I see
17 him I'd come get him or you know what I'm saying or have
18 him come to my house. He would spend the night with me but
19 he was gone the next day. I didn't know where he went,
20 where he was going. I didn't see him until I basically saw
21 him walking by or he popped up at my house.

22 Q: Okay. Did he talk to you about whether he was
23 homeless or not?

24 A: He never really said but I know something wasn't right
25 with him because he was wearing the same clothes all the

Nyeisha Miller - Cross-Examination by Ms. Meadows

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1 time.

2 Q: So, as far as you know, he didn't have a place of his
3 own and you would let him stay with you on occasion, is
4 that correct?

5 A: Some, some; yes, sir. Sometimes he would come stay
6 with me because my landlord --- there was nobody on the
7 lease, you know, as far as the people who actually stayed
8 in the house so he could not live with me but he could come
9 and stay the night sometimes.

10 Q: I understand. But this was during that time when you
11 were aware that he was having some kind of trouble, legal
12 trouble, is that correct?

13 A: Yes, sir.

14 MR. GRIFFITH: I have no further questions for Ms.
15 Miller at this time. Please listen to the attorney general
16 or the judge and see if they have any questions for you
17 okay, Ms. Miller?

18 MS. MILLER: Okay.

19 THE COURT: Yes, ma'am. Cross-examination.

20 MS. MEADOWS: Yes, ma'am.

21 **Ms. Miller - Cross-Examination by Ms. Meadows:**

22 Q: Good morning, Ms. Miller. Have you ever been
23 convicted of a crime?

24 A: I have gotten in some trouble and that was back when I
25 was in high school.

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1 Q: Were you ever convicted of breach of trust with
2 fraudulent intent?

3 A: Yeah, that was --- that was, yeah, that was at a job
4 but I plead not guilty to that because that was something
5 totally different, somebody won the lottery and they gave
6 me some money and that was just a whole big mess.

7 Q: Okay. I understand. That was in 2011, right?

8 A: Yes, ma'am. I believe so.

9 Q: Okay. Do you currently have any pending charges?

10 A: Right now I have something that is going on but I
11 cannot discuss that without my lawyer.

12 MR. GRIFFITH: I would object to pending charges,
13 she's not been convicted of any of those charges.

14 MS. MILLER: I've been ...

15 THE COURT: Just a minute. Ms. Miller, I just
16 sustained the objection.

17 Q: Okay. So you testified that your brother, I guess,
18 would spend the night with you sometime but he didn't
19 really live with you, correct?

20 A: Yes, ma'am.

21 Q: Okay.

22 MS. MEADOWS: All right, Judge, that's all I have.

23 MR. GRIFFITH: Your Honor, I have no more
24 questions for Ms. Miller. If she's working right now and
25 if it please the court and if it's okay with the Attorney

Johnny Haggins vs. State of South Carolina

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1 General can she go back to work?

2 MS. MEADOWS: No objection, Judge.

3 MR. GRIFFITH: Thank you, Ms. Miller. You are
4 excused.

5 MS. MILLER: Thank you.

6 THE COURT: All right. Mr. Griffith, call your
7 next witness.

8 MR. GRIFFITH: I would call Mr. Haggins.

9 THE COURT: All right. Mr. Haggins. I need you to
10 keep your voice up for me and raise your right hand. Do
11 you solemnly swear or affirm that the testimony you will
12 give will be the truth, the whole truth and nothing but the
13 truth?

14 MR. HAGGINS: Yes, ma'am.

15 THE COURT: Put your hand down Mr. Haggins. Your
16 witness Mr. Griffith.

17 **Mr. Haggins - Examination by Mr. Griffith:**

18 Q: Mr. Haggins, you and I have talked about your case
19 several times, haven't we?

20 A: Yes, sir.

21 Q: Where are you currently incarcerated?

22 A: Lee County Correctional.

23 Q: How long have you been there now?

24 A: Going on three years.

25 Q: Okay. And you were sentenced to how many years?

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1 A: Twenty.

2 Q: What was going on before the trial? Why don't you
3 tell the court why you didn't show up for trial.

4 A: Well my situation was I had my address, actually the
5 co-defendant (cutting out can't understand) so ...

6 THE COURT: I can't hear.

7 MR . HAGGINS: Can you hear me now?

8 MS. JONES: Yes.

9 THE COURT: Oh, thank you. Yes.

10 A: Six (6) months ... we got into a little situation
11 where I had to move because of the case, you know what I'm
12 saying. So the phone that I had was actually in her name.
13 So, she turned the phone off. She also --- so it knocked me
14 out of having a actual job because that was the only way
15 that I was actually paying for my, you know, what I'm
16 saying. So after that I was going house to house and I also
17 had my son aunt was supposed to try to help because I was
18 staying with her as well. I (can't understand cutting out
19 ...) I don't understand why I haven't had any showing that
20 the case, that I was trying to make it. I didn't waive my
21 right to a preliminary hearing. I didn't waive my right, it
22 was a motion to not be in the court. I actually was --- I
23 had, had I even known or had a conversation with my co-
24 defendant to even know that what was going on with the
25 papers going to her home. I had no address to forward to.

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1 I couldn't live to my mom's house because of the
2 aggravation down there as she was dealing with smaller
3 kids. Her kids are real bad off sick so it was just like
4 you can't come here we already got problems, you know, what
5 I'm saying. I couldn't go to my father's house because him
6 and his wife always getting into an argument so I didn't
7 need to be in another domestic situation, you know what I'm
8 saying. That what really why. Had I known of the court
9 date, just like I've known about every roll call, I would
10 have made it because I made every roll call.

11 THE COURT: Okay.

12 Q: You made every roll call up to April. Mr. Haggins,
13 did you ever see any discovery in your case. In other
14 words, did you see the evidence that the state had against
15 you?

16 A: Never seen my discovery until I was incarcerated and
17 came to Lee County. Didn't even know about the appeal
18 until after I had came to Lee County. I had already missed
19 my one.

20 Q: Okay. So, in other words, how many times did you meet
21 with your attorney?

22 A: I believe once and that was when I first hired him.
23 After that I haven't seen him since.

24 THE COURT: Mr. Haggins, I should have told you
25 there is one call that I needed to make. Can you hold that.

Johnny Haggins vs. State of South Carolina

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1 I don't want to miss anything. Just hold tight, okay? I
2 will be right back, okay?

3 MR. HAGGINS: Yes.

4 (There was a break in the proceeding)

5 THE COURT: All right. Mr. Haggins you were
6 telling me that clearly that you would have been present if
7 you had received notice. You told me you were moving from
8 house to house. I think I'm up to what you were telling me
9 when I had to step away.

10 MR. HAGGINS: Yes, ma'am.

11 THE COURT: You may continue. Mr. Griffith, you
12 might want to ask him a question to direct him, too.

13 Q: Mr. Haggins, you were also informing the court about
14 how many times you had saw your attorney. You told us you
15 saw him one time prior to that ...

16 A: Yes. Within the first fourteen days after I actually
17 started to pay all the money that is when me and my co-
18 defendant got into it and I had to move. What had happened
19 when the first issue came up and I had moved she had
20 already disconnected the phone which was in her name so she
21 turned it off, cut it off.

22 Q: Okay. You had also stated that you had never seen
23 discovery of your case, any evidence, until you got to the
24 prison. Is that correct?

25 A: Correct.

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1 Q: Okay. So, as far as those things are concerned, very
2 important things, is there anything else that you want to
3 tell the court about anything that you would have to say
4 against your attorney or the process?

5 A: With legal counsel, I felt like he would request for
6 relief of counsel during trial, right before trial or
7 during the situation of trial. There was no counsel to
8 take the case. I was confused about who had even say so on
9 myself to volunteer waiver my rights and a person ... which
10 I do understand now in a bond they do actually say stuff
11 about if you miss court things going to happen. At the
12 time, I did not know that was something in there, you see
13 what I'm saying? Also, it like confused me as far as if I
14 have relief of counsel how am I represented by you and my
15 bench warrant comes right after I'm alright sentence.

16 Q: All right. So, to kind of put that into a phrase. No
17 one, as far as you know because you weren't there, but no
18 one represented you at the trial at all, you had no
19 representation at the trial. Is that what you understand?

20 A: Correct.

21 Q: Okay.

22 MR. GRIFFITH: I have no further questions for Mr.
23 Haggins. Mr. Haggins, will you answer any questions the
24 attorney general or the court may have for you?

25 MR. HAGGINS: Yes sir.

Johnny Haggins - Cross-Examination by Ms. Meadows

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1 THE COURT: Ms. Meadows cross-examination.

2 MS. MEADOWS: All right.

3 **Mr. Haggins - Cross-Examination by Ms. Meadows:**

4 Q: Mr. Haggins, you testified that you met with Mr.
5 Etheridge just once, right?

6 A: Yes, ma'am.

7 Q: What did you discuss with him at that meeting?

8 A: At that time I had just told him actually they had
9 just locked me up for CDV and I was wanting to get
10 representation. So he gave me a, I think, it was a
11 \$5000.00 fine for it and I had to put like \$300 something
12 for a deposit.

13 Q: Okay. Were you out on bond at that time?

14 A: Yes, ma'am. I was out on bond the next --- I went and
15 seen him the next day after I got out on bond.

16 Q: Okay. Did you really discuss your charges or anything
17 at that meeting or was that sort of a preliminary ...

18 A: I signed for the preliminary and never know about the
19 preliminary. I received a letter from Mr. Etheridge
20 thinking that the preliminary hearing that morning but he
21 didn't have the information until that afternoon so he went
22 ahead and waiver all the right, forfeiting that hearing.

23 Q: I'm sorry I should have worded that differently. I
24 just mean at this hearing did you discuss anything
25 different or was it just more like, you know, you were

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1 going to retain him and talking about the fee agreement and
2 ...

3 A: We really didn't discuss the whole situation. We just
4 discussed what the charges was and I was retaining him.

5 Q: So you also alleged that he failed to communicate a
6 plea offer to you. Do you know what that plea offer was?

7 A: It was a five (5) year non-violent.

8 Q: How did you find out about that?

9 A: Through the motion, being incarcerated and getting my
10 motion in Lee County.

11 Q: Okay. Did you ever discuss that with Mr. Etheridge?

12 A: No, ma'am.

13 Q: Okay. Who represented you at your bond hearing?

14 A: No one.

15 Q: Okay. All right. How many court appearances did you
16 make after making bond?

17 A: I believe it was four but it may have been three.

18 Q: Okay. Did you understand based on your prior court
19 appearances or your bond hearing that if you did not appear
20 for your trial date you would be tried in your absence.

21 A: Basically it was just like come in here, sign a piece
22 of paper letting them know you were here today, you got
23 your bond and your address. At the time I didn't have a
24 address so I just left the same address thinking that my
25 co-defendant would give me the information.

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1 Q: Okay. Did you understand that if you failed to
2 communicate with your attorney that he could move to be
3 relieved?

4 A: Yes. He advised me of that.

5 Q: Okay. All right. Then you testified that the, let's
6 see, I'm sorry, Mr. Etheridge stated that both the hearings
7 with Judge Curtis and Judge McFaddin but the phone number
8 that you provided was disconnected and I believe that they
9 attempted to mail letters to the address that you provided
10 but they were returned. Did you ever receive any letters
11 or phone calls from Mr. Etheridge?

12 A: No ma'am. And like I said the first fourteen days
13 when my co-defendant went through a situation that what
14 caused this all chaos with him.

15 Q: Okay. Did you provide Mr. Etheridge with any updated
16 contact information or maybe just some way that he could
17 get a hold of you?

18 A: No ma'am. I didn't have any contact. I was house to
19 house, literally house to house everyday.

20 Q: Well, you were notified that you were suppose to go to
21 trial and you were not aware of the court date but, I mean,
22 how did you expect to be notified of the court date if you
23 didn't tell your attorney that you no longer live at the
24 address or, you know, that the phone was disconnected?

25 A: Actually, when I went to my last general sessions they

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1 said a clerk had call, which I didn't understand what that
2 was.

3 Q: A what?

4 A: A clerk had call which I didn't understand what that
5 was.

6 Q: Okay. What did they say?

7 A: It just said you will be notified when it is your
8 actual trial date.

9 Q: It didn't say how you would be notified?

10 A: No, ma'am.

11 Q: Okay. So prior to these charges, do you have any
12 previous convictions?

13 A: Yes.

14 Q: Okay. And did you plead to those charges or did you go
15 to trial?

16 A: Most of them I plead to. That's what I'm saying, if I
17 knew of this charge and I knew that I had a plea for that
18 nine times out of ten I would have took the plea.

19 Q: Throughout the course of the proceedings and, you
20 know, any of these prior cases, were you warned if you did
21 not appear in court that you would be tried in your
22 absence?

23 A: Yes, but I always showed up for court. I always
24 showed up.

25 MS. MEADOWS: No further questions, Judge.

Johnny Haggins - Re-direct Examination by Mr. Griffith 20

1 THE COURT: Very well. Re-direct, Mr. Griffith?

2 MR. GRIFFITH: Just a little bit, Your Honor, if
3 it please the court.

4 THE COURT: All right.

5 **Mr. Haggins - Re-direct Examination by Mr. Griffith:**

6 Q: Mr. Haggins, you said that you paid your attorney, Mr.
7 Etheridge, a small amount. Did you say it was \$300.00?

8 A: Yeah, I think it was like \$300.

9 Q: That's all you had at the time?

10 A: Yes, sir. And I just had paid bond the day before so
11 that was all I had to my name.

12 Q: Then immediately after that you became unemployed, is
13 that correct?

14 A: Yes because my co-defendant was also my employer.

15 Q: Okay.

16 MR. GRIFFITH: I have no further questions, Your
17 Honor.

18 THE COURT: All right. Any re-cross Ms. Meadows?

19 MS. MEADOWS: No, ma'am.

20 THE COURT: All right. Thank you, Mr. Haggins.
21 Call your next witness, please, Mr. Griffith.

22 MR. GRIFFITH: Your Honor, I would call Mr. Paul
23 Fata, Esquire, please.

24 THE COURT: All right. Raise your hand please to
25 be sworn. Do you solemnly swear or affirm that the

Paul M. Fata - Examination by Mr. Griffith

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1 testimony you give will be the truth, the whole truth and
2 nothing but the truth?

3 MR. FATA: Yes, ma'am.

4 THE COURT: Just remember to keep your voice up,
5 please.

6 MR. FATA: Okay.

7 THE COURT: Your witness Mr. Griffith.

8 MR. GRIFFITH: Okay. If it please the court.

9 **Mr. Fata - Examination by Mr. Griffith:**

10 Q: Mr. Fata, thank you for appearing today. Would you go
11 ahead and state your full name?

12 A: Paul M. Fata.

13 Q: I'm not sure but I don't think you are currently
14 employed with the solicitor's office but ...

15 A: I am not.

16 Q: But you were employed with the solicitor's office
17 during the time that Mr. Haggins case come up?

18 A: That's correct.

19 Q: Do you remember his case?

20 A: Oh, I do.

21 Q: Mr. Fata, did you make a offer to Mr. Haggins as well
22 as the co-defendant?

23 A: I made the offer to his attorney, Mr. Etheridge and
24 offer to the co-defendants attorney, also ...

25 Q: Okay. I'm sorry.

Johnny Haggins vs. State of South Carolina

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1 A: ... who was represented by the public defender.

2 Q: That's what I meant, to their attorneys. Did you give
3 them both the same offer?

4 A: I don't have her file with me so I don't know. I
5 doubt if I did. He was the primary actor and she was the
6 cheerleader, I guess for a lack of a better term.

7 Q: What was the offer that you told Mr. Etheridge that
8 you were going to offer Mr. Haggins?

9 A: He was initially charged with burglary second degree
10 non-violent and high and aggravated and I told him that I
11 would run the charges concurrent, burglary second degree
12 non-violent and high and aggravated with a five (5) year
13 cap. He could have got zero to five, whatever the judge
14 decided at the plea.

15 Q: So basically a five (5) year cap, is that correct?

16 A: Correct.

17 Q: So, do you recall if you offered the co-defendant five
18 (5) years, suspended to two (2) years probation. Do you
19 recall that?

20 A: I have not looked at her file. I do not know.

21 Q: Does that sound familiar at all or logical?

22 A: Say that again?

23 Q: Does that sound logical or familiar?

24 A: What did you say that I offered the co-defendant?

25 Q: Oh, five years suspended to two years probation.

Johnny Haggins vs. State of South Carolina

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1 A: You know it could have been. I cannot dispute that.

2 Q: Okay. You felt that he was the main character and she
3 was not. Now, had he appeared and accepted that offer,
4 would you have honored that offer?

5 A: Absolutely.

6 Q: At the trial, when the case was called to trial and he
7 was tried in his absence, was anyone representing him at
8 all when he was tried?

9 A: No. Judge McFaddin had relieved Mr. Etheridge.

10 Q: So when the jury was picked did anyone from his side
11 say no we don't want that guy or yes we do.

12 A: No.

13 Q: So it was kind of a one-sided trial?

14 A: It was a trial in his absence.

15 Q: Correct. He was totally unrepresented, is that
16 correct?

17 A: Judge McFaddin had relieved Mr. Etheridge.

18 Q: Yes, sir. So you say had he come before you or his
19 attorney and accepted the offer you would have honored it
20 certainly. Do you recall ... I'm sorry.

21 A: Yes. I was just agreeing with you.

22 Q: Okay. Do you recall seeing Mr. Haggins at any
23 appearances whatsoever?

24 A: I do not. Always a effort was there at all the roll
25 calls. I do not recall ever seeing Mr. Haggins at the roll

1 call. We were going to try his case at the June term and
2 we sent notice to Mr. Etheridge about it and Mr. Etheridge
3 showed up and said he couldn't find his client so I think
4 Judge Curtis continued the case and at that time told Mr.
5 Etheridge it would be trial number one at the next term of
6 court. We requested that Judge Curtis issue a bench
7 warrant at that time and she did.

8 Q: Okay. Nowadays, I don't know if you practiced it
9 before, that I know when I come over there to have court
10 when people appear, generally speaking, there is a check
11 off list. Do you have any copies of check off lists when he
12 was supposed to appear?

13 A: I do not. Generally, what we did was went through the
14 docket whether they appear or not and back in 17 or 18, I
15 don't think those records have been maintained.

16 Q: Back in 17 and 18, that's quite a ways back.

17 A: It is.

18 Q: So you don't have any copies or notes that would proof
19 that he was not there is what I am asking?

20 A: No, other than if he had been there for the June term
21 we would have tried the case that week. He was not there
22 that June term so we requested a bench warrant in front of
23 Judge Curtis so he was not there at that term of court.

24 Q: Yes. Well, you have no ... Mr. Haggins has testified
25 that up until sometime in April he was doing his best to

Paul M. Fata - Cross-Examination by Ms. Meadows

25

1 show up and he was showing up. But you have no record of
2 him not showing up, no written record?

3 A: Prior to the June term, the June 18 term, no I have no
4 record of him not showing up. But, I don't believe he was
5 showing up. Mr. Etheridge was showing up for him but I
6 cannot dispute what Mr. Haggins says. On the June 18th
7 term he was not there.

8 Q: So you can't dispute what he is saying?

9 A: I don't believe he was there but he was not there for
10 June.

11 Q: Okay.

12 MR. GRIFFITH: I have no further questions, Your
13 Honor.

14 THE COURT: Very well. Cross-examination Ms.
15 Meadows?

16 MS. MEADOWS: Yes, ma'am.

17 **Mr. Fata - Cross-examination by Ms. Meadows:**

18 Q: Mr. Fata, I believe you testified that Mr. Haggins was
19 the main aggressor in these charges and the co-defendant
20 was more of a cheerleader. Could you give the court a brief
21 summary of the facts of this case?

22 A: Yes, ma'am.

23 MR. GRIFFITH: I'm going to object, Your Honor, on
24 the relevance. This case is not about what he was charged
25 with, this case is about whether or not he should have a

1 new trial.

2 MS. MEADOWS: Well, Your Honor, he was asking
3 about the co-defendant's plea deal and, you know, Mr. Fata
4 ...

5 MR. GRIFFITH: I would still object, Your Honor.
6 Mr. Fata doesn't remember her plea deal but he does
7 recognize that had he offered and that he did offer Mr.
8 Haggins a five (5) year cap, which is important, because
9 he's up for twenty (20) years.

10 THE COURT: Just a minute, Mr. Griffith. Ms.
11 Meadows the relevance of the factual basis would be so
12 minimal, I will sustain the objection. Just so both of you
13 are aware, the question is what is it that Mr. Etheridge
14 did that was ineffective representation of counsel.
15 Obviously, many of the issues that have been raised are for
16 direct appeal but I am listening attentively to see whether
17 or not you all can give me some information with regard to
18 assistance of Mr. Etheridge. And that's what I am
19 listening for. And quite frankly I'm unaware, quite
20 frankly, what, if anything, was offered to the co-
21 defendant/victim is not going to help me so if you would
22 proceed on that would be great.

23 MS. MEADOWS: Okay.

24 A: Let's see. So Mr. Haggins was released on bond,
25 correct?

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- 1 A: That's correct.
- 2 Q: Were you at the bond hearing?
- 3 A: No, ma'am. I was not.
- 4 Q: Okay. What does the standard bond form say, you know,
5 regarding a defendant's failure to appear in court?
- 6 A: Well, item number 3 we introduce the clerk's record at
7 trial it says shall appear at the term of court beginning
8 on this incidence was October 11, 2017 at 10:00 a.m. at
9 General Sessions and it gives the address at [REDACTED] South Main
10 Street, Bishopville, South Carolina.
- 11 Q: Okay.
- 12 A: And defendant shall appear and remain throughout each
13 term of court until his case is called or otherwise ordered
14 by the court.
- 15 Q: Okay. Do you recall whether there was a preliminary
16 hearing in this case?
- 17 A: You know, I think that there was. The deputy
18 testified, I believe. I believe there was a preliminary
19 hearing and the deputy testified as to the facts. I may
20 have had her testify. It's been so long I can't remember.
21 We generally don't keep a track of preliminary hearings.
- 22 Q: Okay. And the final plea offer you made, did that
23 offer just eventually expire or was it rejected?
- 24 A: It was made and he said he would take it up with Mr.
25 Haggins.

Paul M. Fata - Re-direct Examination by Mr. Griffith

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1 Q: Okay. You say you arranged to proceed for trial at
2 the time of the hearing before Judge Curtis right, in June
3 of 2018.

4 A: Right that was in June of 2019.

5 Q: And Judge Curtis issued a bench warrant, correct?

6 A: June of 2018.

7 Q: Okay.

8 A: And we requested a bench warrant.

9 Q: Okay. Generally, when a bench warrant is issued does
10 law enforcement actually search for the person or do they
11 just wait for them to show up on their radar?

12 A: I don't know what they do.

13 Q: Okay.

14 A: It seems like a lot of times they go into a deep dark
15 hole. Never know what happens.

16 Q: Okay.

17 MS. MEADOWS: All right, Judge. No further
18 questions.

19 THE COURT: Very well. Any re-direct?

20 MR. GRIFFITH: I do have a little bit of re-
21 direct, Your Honor. If it please the court.

22 **Mr. Fata - Re-direct Examination by Mr. Griffith:**

23 Q: Mr. Fata, on your recollection, you don't recall
24 seeing Mr. Haggins appear before that June general
25 sessions, but that would be like from October to June, is

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1 that correct?

2 A: October of 17. Hold on. Let me look. The bench
3 warrant is dated August of 2017 and he was arrested
4 September 1st of 2017 and the bond hearing was held
5 simultaneously with that. I can't tell you.

6 Q: I believe it was July of 2018.

7 A: It was 2018 and I can't tell you the exact date.

8 Q: Okay. In other words, there was quite a bit of
9 distance between the time he was released from bond til
10 this hearing. Is that correct?

11 A: The sentencing date was July 10th of 2018.

12 Q: Okay.

13 A: I don't recall when the sealed sentence was opened.

14 Q: Okay. And so, on your recollection, you say you never
15 saw him in the court room up until that time. Did you ask
16 that a bench warrant be issued since he wasn't showing up?

17 A: Generally, when somebody is represented by an attorney
18 we don't get a bench warrant we rely on that attorney to
19 get their client. In this case, we did not get a bench
20 warrant until Mr. Haggins didn't show up for the June term
21 of general sessions. At that time we told the deputy he
22 would be first case up at the next term of court and we
23 requested a bench warrant.

24 Q: Okay, I practice, as you know, and if my guy doesn't
25 show up that's why I asked that question.

1 A: Only if you say I can't find him or something like
2 that.

3 Q: Did Mr. Etheridge ever say to you, I can't find him?

4 A: He said he was having a hard time contacting his
5 client.

6 Q: At every one of these general sessions appearances,
7 did he say I'm having a hard time finding my client?

8 A: I think the June of 2018 one he did. The others when
9 we have roll call, generally, if somebody is represented by
10 an attorney and that attorney shows up and says, you know,
11 whatever, and we're not ready to try his case we make a
12 plea offer we don't get a bench warrant.

13 Q: I understand but do you recall Mr. Etheridge telling
14 you that he couldn't find his client on those probably once
15 a month appearances from October to June other than ...

16 MS. MEADOWS: Your Honor, I object. He's
17 basically seeking hearsay regarding what Mr. Etheridge
18 said.

19 MR. GRIFFITH: Your Honor, I think it's important
20 to know whether the solicitor's office was notified ...
21 I'll rephrase the question.

22 THE COURT: Okay.

23 Q: Was the solicitor's office notified that the attorney,
24 Mr. Etheridge had been unable to contact his client at
25 previous appearance dates?

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1 A: No, we were told that Mr. Etheridge and his client
2 were not in contact.

3 Q: And you were told that in writing or by whom or ...

4 A: It would be oral conversations at the docket meeting.

5 Q: Okay. And were those oral conversations with his
6 attorney?

7 A: Yes they were.

8 Q: Okay.

9 MR. GRIFFITH: I have no further questions, Your
10 Honor.

11 MS. MEADOWS: Nothing further, Judge.

12 MR. FATA: May I be excused?

13 MR. GRIFFITH: No objection, Your Honor.

14 MS. MEADOWS: Judge, I think you're muted but I
15 don't have any objection.

16 THE COURT: You are right. No objection. Thank
17 you. Thank you, Mr. Fata. You are free to go.

18 MR. FATA: Thank you.

19 THE COURT: Mr. Griffith, please call your next
20 witness.

21 MR. GRIFFITH: Your Honor, I would call Mr.
22 Etheridge.

23 THE COURT: All right. Mr. Etheridge, please
24 raise your right hand. Do you solemnly swear or affirm
25 that the testimony you give will be the truth, the whole truth

Keith Ray Etheridge - Examination by Mr. Griffith

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1 and nothing but the truth?

2 MR. ETHERIDGE: Yes, ma'am.

3 THE COURT: Mr. Griffith, your witness.

4 MR. GRIFFITH: Thank you.

5 **Mr. Etheridge - Examination by Mr. Griffith:**

6 Q: Mr. Etheridge, will you go ahead and state your full
7 name.

8 A: Kevin Ray Etheridge.

9 Q: Where do you practice Mr. Etheridge?

10 A: The Pee Dee. I've got an office in Florence,
11 Darlington, Marion and Hartsville.

12 Q: How long have you been practicing law?

13 A: Ten years.

14 Q: So since 2011 or so?

15 A: Yes around that. It may be a little longer.

16 Q: Do you recall representing Mr. Haggins?

17 A: Yes, sir.

18 Q: Do you recall speaking with his co-defendant's
19 attorney?

20 A: I don't recall speaking with the co-defendant's
21 attorney or not.

22 Q: Okay. During that time, how many times would you say
23 that you met with Mr. Haggins?

24 A: Met with him the first time in the office and again my
25 recollection of that is someone dazed. My assumption,

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1 again this is just an assumption, is that he pulled at my
2 heart strings and I took a case for much less than I
3 normally would. He seemed like a very nice gentlemen and I
4 wanted to help him. That's just assumptions. I don't
5 remember but my notes show that ...

6 Q: Been there, done that. In the one conversation that
7 you do recall, did you discuss his charges at all?

8 A: I seriously doubt it but I'm sure he gave me kind of
9 an overview of his position and his perspective on the
10 events but, of course, I wouldn't have had anything to look
11 at from the state's perspective so I'm assuming we had a
12 preliminary conversation.

13 Q: Were you present at the preliminary hearing?

14 A: I don't have anything in my notes about that. I tend
15 to recall that but I don't know.

16 Q: Eventually you did receive some discovery from the
17 solicitor's office is that correct?

18 A: I did.

19 Q: Were you able to share that with Mr. Haggins?

20 A: I was not.

21 Q: So can you tell us how many times you appeared in
22 court without Mr. Haggins?

23 A: I've got on my notes here that three times to court
24 without his appearance I don't know if it was that time I
25 just started keeping better ... as to the issue of whether

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1 he was there prior to this or not I don't know he may have
2 been in court. I do not recall. I don't remember him
3 being there but that does not mean he was not there. I
4 know at least three times he was not there.

5 Q: Okay. Two of those times would have been when it was
6 called and continued and the next time it was called you
7 asked to be relieved, is that correct?

8 A: This is just an assumption but I would assume that
9 would be correct.

10 Q: So you can, in your notes, see one time for a regular
11 appearance where he didn't show up.

12 A: That could be. Normally, if they don't show up I don't
13 make a lot of notes so I would assume that at some point it
14 started becoming a concern. That's one and the two that you
15 were discussing.

16 Q: So if he doesn't show up you make a note that he
17 didn't show up?

18 A: Not always. I mean sometimes I've got --- after this
19 I'm going to Judge Burke and I've got a couple that can't
20 be there and I will note sometimes my main entry is making
21 sure that there is not a bench warrant issued or anything
22 like that. But I do try to take notes and I don't have
23 anything here that says he was not there or was there but I
24 just don't recall.

25 Q: The attorney general in her opening stated that you

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1 made several attempts to phone Mr. Haggins, is that
2 correct?

3 A: Yes, sir.

4 Q: What was the results of those attempted phone calls?

5 A: I believe everything was disconnected. We've got a
6 number on the front that was disconnected and we have
7 another number that is disconnected and that was followed
8 up with several letters. I think I've got about five or
9 six return to sender here in my file as well. The numbers
10 we had we tried to call him numerous times. Of course,
11 after that didn't work we tried to send letters and they
12 were returned to sender.

13 Q: Been there, done that. Were you aware that he and his
14 co-defendant had lived together? Were you aware of that?
15 Same address.

16 A: Yes. Well, I'm assuming at the time I would have
17 been aware just because of their prior relationship; yes.

18 Q: So you are aware that they had a prior relationship?

19 A: Yes, sir. I think we reached out to her as well to
20 try to wrestle him up but unable to do so. We reached out
21 to, I think we reached out to the girlfriend again. I want
22 to say we made that attempt.

23 Q: Did you speak to her attorney at all?

24 A: I don't recall

25 Q: Did you write anything in your notes where you

1 communicated with her trying to find him?

2 A: No, sir.

3 Q: Did you call his bond agent to try to find him?

4 A: Again, I'm assuming we did. I have nothing in my
5 notes to tell me that. My paralegal at the time is no
6 longer with me she actually retired. I'm looking at her
7 notes but everything on here is about the phone calls. So,
8 I don't see anything in here saying we didn't reach out but
9 normally in this situation I believe she would have.

10 Q: So you don't have in your notes that you contacted the
11 bond agent?

12 A: No, sir.

13 Q: And you don't have any notes that you contacted the
14 co-defendant, his girlfriend?

15 A: No, sir.

16 Q: What other kind of attempts do you make to contact him
17 other than the letters and the phone calls?

18 A: I believe that was the extent of it. Every number we
19 had and every address we had I tried to reach out and
20 that's the only thing that I had in my notes. Again, my
21 paralegal has retired. She normally took those other steps
22 but I have nothing in my file to verify that. I've gone
23 through the file so if it's somewhere in the middle of this
24 I apologize but I don't have anything that I'm looking at.
25 For example the bondsman we would have reached out.

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1 Q: Now, when you received a offer from Mr. Fata, were you
2 able to communicate that offer to Mr. Haggins?

3 A: We were unable to reach him.

4 Q: So he never saw that discovery?

5 A: No, sir. I think our conversation was just the one.

6 Q: I've got you. When you received notice of the trial,
7 were you able to communicate that to Mr. Haggins?

8 A: No, sir.

9 Q: So as far as you know he never got notice of the
10 trial. Is that correct?

11 A: Yes, sir. As far as I know he never got notice of the
12 trial.

13 Q: Can you tell us any other --- did you make any other
14 type of attempts to contact him other than what you've
15 talked about already?

16 A: Not that I'm aware. Just the information that we had
17 about this letters and the phone calls and again if there
18 is something else, and I don't see it, but if those other
19 steps were taken I don't have it in my file to show it.

20 Q: Okay. Thank you.

21 MR. GRIFFITH: I have no further questions, Your
22 Honor.

23 THE COURT: Ms. Meadows cross-examination?

24 MS. MEADOWS: Yes ma'am.

25 Mr. Etheridge - Cross-Examination by Ms. Meadows:

Keith Ray Etheridge - Cross-Examination by Ms. Meadows 38

1 Q: Mr. Etheridge you testified that you did not represent
2 Mr. Haggins at his bond hearing, correct?

3 A: That is correct.

4 Q: Okay. During your one meeting I think you stated that
5 y'all didn't really get into the charges or anything it was
6 more so kind of just a first meeting talking about the fee
7 agreement and stuff like that, right?

8 A: Yes. Again that's normally the situation. Again, I'm
9 sure I got some information and his perspective on it and
10 went over that sort of stuff and again it wasn't into the
11 nitty gritty of the case because I don't have any notes to
12 that.

13 Q: Okay. I believe one of his allegations is that you
14 failed to inform him that his prior convictions could be
15 used against him. Do you recall whether Mr. Haggins had a
16 criminal history or were you aware of it at that time?

17 A: I know I've got some notes in here. I've got some
18 correspondence stuff about his rap sheet. I know he's got
19 a pretty good rap sheet.

20 Q: Okay.

21 A: I'm assuming again, without remembering that
22 conversation I'm assuming I asked him about his record. I
23 always do.

24 Q: You know you had this conversation, did you discuss
25 with him that previous conditions can be used against him

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1 for purposes of these charges?

2 A: I have no way of remembering.

3 Q: Okay. As far as the plea offer, did you try to
4 contact Mr. Haggins both by mail and telephone about this
5 offer?

6 A: Yes, ma'am.

7 Q: And all those were returned or the phone was
8 disconnected?

9 A: Yes, ma'am.

10 Q: Okay. Were you able to obtain the discovery in this
11 case?

12 A: We did.

13 Q: Okay. Was that after your first meeting?

14 A: Yes.

15 Q: Okay. So you were not able to review the discovery
16 with him, correct?

17 A: No, I didn't. In that situation we mailed the
18 discovery to the address so they can look at it and call me
19 back and we can go over it but there was no conversation
20 about that.

21 Q: Okay. And then, I don't have the exact number you
22 stated earlier, but how many court appearances did you make
23 on his behalf?

24 A: I'm not sure how many I made but on my notes there was
25 three.

1 Q: Okay.

2 A: At some point obviously, a bell went off in my head,
3 this is something that I need to start really ...

4 Q: Okay. Did you ever actually appear in court with Mr.
5 Haggins?

6 A: Never with Mr. Haggins. Went to court on his behalf
7 but never with Mr. Haggins.

8 Q: Okay. And this case was initially called to trial I
9 believe before Judge Curtis in June of 2018. How did you
10 try to communicate with him as far as this trial date?

11 A: By, again, phone, mail and it got returned. Again, I
12 should have done better on note taking but I would assume
13 also by bond but again I'm speaking without knowledge on
14 that so I can't say if that a hundred percent happened or
15 not, but normally we would try to reach out to the bondsman
16 so I'm assuming all that. The only thing I've got ... yeah.
17 Phone call and the return to senders.

18 Q: Okay. Did you try to contact anyone in his family?

19 A: Whatever numbers we have on here, if that was family
20 members we tried to reach out to him. But again it's the
21 numbers we have on our file.

22 Q: Where you able ever to get in touch with any of this
23 family members?

24 A: I don't believe so.

25 Q: Okay. At the hearing before Judge Curtis you requested

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1 a continuance, correct?

2 A: Right.

3 Q: Okay. And were you ever able to locate him prior to
4 the next time this case was called to trial in July?

5 A: No, ma'am. I think that is when the bench warrant was
6 issued as well.

7 Q: At that point, why did you move to be relieved as
8 counsel?

9 A: I had no conversation with this gentlemen whatsoever.
10 I didn't think I could be effective without any kind of
11 conversations in representing this man. At the prior
12 hearing being continued I quoted some case law and it kind
13 of kicked the can, for lack of a better word, down the road
14 to try to get him but once I couldn't reach him with all of
15 the attempts I felt like I wouldn't be very effective.

16 Q: Okay. So you were not present during his trial,
17 correct?

18 A: No, ma'am.

19 Q: Okay.

20 MS. MEADOWS: Judge, that's all I have.

21 THE COURT: All right. Mr. Griffith, re-direct?

22 MR. GRIFFITH: No re-direct, Your Honor.

23 THE COURT: All right. Very well. Obviously, I'm
24 sure that Mr. Etheridge has much to do. Any objection to
25 him going about his day?

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1 MR. GRIFFITH: No objection, Your Honor.

2 MS. MEADOWS: No objection.

3 THE COURT: Very well. Thank you Mr. Etheridge.

4 MR. ETHERIDGE: Thank you, Judge.

5 THE COURT: Call your next witness, please, Mr.
6 Griffith.

7 MR. GRIFFITH: Your Honor, that's the end of our
8 case.

9 THE COURT: All right. Yes, ma'am. Call your
10 first witness.

11 MS. MEADOWS: That state would rest at this time
12 as well.

13 THE COURT: All right, Ms. Meadows. Thank you
14 very much.

15 MR. GRIFFITH: If it please the court, I wonder if
16 I could have just three minutes.

17 THE COURT: Three minutes for a break, three
18 minutes for a ...

19 MR. GRIFFITH: Three minute break.

20 THE COURT: Are you in the next case?

21 MR. GRIFFITH: Probably.

22 THE COURT: We are going to take a break. We are
23 going to take a little break. That will conclude this
24 matter.

25 MS. MEADOWS: Judge, I'm sorry. Before we finish

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1 would you consider accepting post-hearing briefs possibly
2 from me and Mr. Griffith.

3 THE COURT: I tell you what. Take that three
4 minute break and we will come back and have that
5 conversation.

6 MR. GRIFFITH: I will be right back.

7 THE COURT: Five minutes. Just take five minutes.
8 Take a five minute break. See you in just a bit.
9 (There was a break in the proceeding)

10 THE COURT: Where is Mr. Griffith?

11 MR. GRIFFITH: I'm here. Your Honor, do you want
12 us to submit a brief or will it be okay --- would you
13 rather go ahead and give a closing or submit a brief, if
14 the court would indulge us?

15 THE COURT: What helps me most of all would be a
16 proposed order quite frankly. I mean that's the most
17 effective.

18 MS. MEADOWS: Okay. So we just submit proposed
19 orders?

20 THE COURT: That would be great.

21 MS. MEADOWS: Okay.

22 THE COURT: I mean y'all --- one thing about it
23 you guys have been very, very clear and I don't mind
24 sharing with you one of the concerns that I have just to
25 reiterate a PCR, of course, is a collateral attack

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1 following the convictions. Many of the issues that have
2 arisen are ...

3 MR. GRIFFITH: Appeal.

4 THE COURT: ... rather than a collateral attack.
5 So just keep that in mind as you do your orders, your
6 proposed orders. We will calendar it for thirty days but
7 if you need longer just let Kaye know, let my law clerk
8 know and we will calendar it.

9 MR. GRIFFITH: He did not appeal, is that correct?

10 THE COURT: He did not, correct.

11 MS. MEADOWS: Well, thank you, Judge.

12 MR. GRIFFITH: Thank you, Your Honor.

13 THE COURT: Thank you all very, very much. All
14 right. Well, that will conclude this matter.

15 **(End of Hearing)**
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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF LEE)

4
5
6 Be it known that I, the undersigned Melissa R.
7 Singletary, Certified Verbatim Reporter, for the State of
8 South Carolina, do hereby certify that the foregoing
9 transcript represents a true, accurate and complete
10 transcript of record of the testimony and evidence
11 introduced in during this testimony of the captioned case,
12 before the Family Court for Lee County, South Carolina, so
13 given on November 17, 2021, by Web-Ex to the best of my
14 skill and ability;

15 That I am not related to nor an employee of any of the
16 parties hereto, nor a relative or employee of any attorney
17 or counsel employed by the parties hereto, nor interested
18 in the outcome of this action.

19 IN WITNESS WHEREOF I have here unto set my hand this
20 day of May 30, 2022.

21 *Melissa R. Singletary*22 *Melissa R. Singletary*

23 Melissa R. Singletary, CVR

24 Certified Verbatim Reporter

25

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

Johnny Haggins, SCDC #343140,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2019-CP-31-0077

ORDER OF DISMISSAL



Certified as a True Copy
Teresa A. Brown
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

I. INTRODUCTION

This matter comes before the Court by way of post-conviction relief (PCR) action commenced by Johnny Haggins (Applicant) on March 18, 2019. The State requested an evidentiary hearing through its return on July 18, 2019. A hearing into the matter convened before the undersigned November 17, 2021, via Cisco WebEx Meetings in accordance with the Chief Justice's administrative memorandum, *Court Operations*, dated September 14, 2020.¹ Applicant was present at the hearing and represented by Timothy L. Griffith, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant; his sister, Niesha Miller; his trial counsel, Kevin Etheridge, Esquire; and former Assistant Solicitor Paul Fata all testified at the hearing.

In addition to the pleadings in this action, this Court had before it a copy of the Lee County Clerk of Court records regarding the subject convictions; Applicant's records from the South

¹ See S.C. Sup. Ct. Memorandum dated September 14, 2020 ("Judges . . . have discretion to determine whether it is appropriate to conduct a hearing using remote communication technology. Consent of the parties or counsel is not required. Please use WebEx, the conferencing platform supported by the Judicial Branch.").

Carolina Department of Corrections; the pretrial, trial, and sentencing transcripts; and the records of the current PCR action.

to review the record in this matter (S)
 After hearing the testimony at the PCR hearing ~~and upon review of the record, the~~ *having an opportunity*
 Court finds Applicant's allegations regarding ineffective assistance of trial counsel and due process violations are without merit. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lee County Clerk of Court. During its July 2015 term, the Lee County Grand Jury indicted Applicant for domestic violence of a high and aggravated nature (DVHAN) (2018-GS-31-0050) and second-degree burglary (violent) (2018-GS-31-0050). Kevin R. Etheridge (Counsel) initially represented Applicant on these charges. Assistant Solicitor Paul M. Fata prosecuted the case.

The case was first called to trial on June 4, 2018, before the Honorable Kristi F. Curtis. At that time, Counsel requested a continuance on the grounds that he had at that point been unable to reach Applicant to give him notice of trial. (Pretrial Tr. 4-6). Specifically, Counsel advised the Court that the telephone number Applicant provided him had been disconnected and all letters he sent to the address Applicant provided him *were DSG* ~~was~~ returned. (Pretrial Tr. 4). Judge Curtis granted the continuance to allow Counsel more time to attempt to find Applicant and issued a bench warrant. (Pretrial Tr. 14).

Over a month later, on July 10, 2018, Applicant's case was again called to trial before the Honorable George M. McFaddin, Jr. At that point, Counsel requested to be relieved, explaining that Applicant failed to keep in contact with him and, despite Counsel's efforts, he had been unable

to reach Applicant through mail or the family members Counsel contacted. (Trial Tr. 4). Counsel explained that he only met with Applicant once, which at that time occurred over a year prior. (Trial Tr. 4-5). Judge McFaddin granted Counsel's request, finding Applicant had a duty to maintain contact with his attorney and failed to do so. (Trial Tr. 6). The trial then proceeded in Applicant's absence. The jury convicted Applicant as indicted. At that time, Judge McFaddin sealed Applicant's sentence to be imposed once found and arrested.

On September 4, 2018, Applicant appeared before the Honorable R. Ferrell Cothran. Upon unsealing the sentence, Judge Cothran sentenced Applicant to concurrent terms of twenty years' imprisonment for DVHAN and fifteen years for burglary. Applicant did not appeal his convictions or sentences.

III. FACTS

On August 27, 2017, Applicant and his wife, Ashleigh Haggins (Victim),² got into an argument because Victim would not take Applicant to Columbia to confront a woman about his music credentials. (Trial Tr. 42). Victim said she did not hear from Applicant again until August 29, 2017. (Trial Tr. 43). On that date, Applicant and Victim got into an argument on Facebook about Victim giving their daughter up for adoption. (Trial Tr. 44). Applicant's sister was also involved in the online argument and it ended with Applicant telling his sister not to worry about it, "he was fixing to handle the situation." (Trial Tr. 44). Shortly thereafter, Applicant and his co-defendant, Coty Weaver³ (Weaver), kicked in Victim's door. (Trial Tr. 44). Victim testified Applicant ran towards her yelling and screaming at her and, as she tried to get away, he began

² Victim testified at trial that she and Applicant were married on December 27, 2010 and they separated about two days after the wedding. Although they are currently still married, they do not live together.

³ Weaver is referred to as Applicant's girlfriend in the trial transcript.

hitting and kicking her, and even stomped on her head. (Trial Tr. 46). Victim's son came home while Applicant was assaulting Victim. (Trial Tr. 49). Weaver yelled at Applicant to hit her harder and that is when Victim blacked out. (Trial Tr. 54). Applicant took Victim's phone with him when he left. (Trial Tr. 54). Victim went to a Pilot station with her son and called law enforcement. (Trial Tr. 30).

IV. SUMMARY OF TESTIMONY FROM EVIDENTIARY HEARING

Applicant

At the PCR hearing, Applicant testified he was sentenced to twenty years' imprisonment after being tried *in absentia*. Applicant testified he only met with his attorney, Kevin Etheridge, once, which was when he first hired him. Applicant had been released on bond the day prior to this meeting. He testified that, at that time, he lived with Weaver and had a cell phone in Weaver's name. However, the two got into an altercation at some point while he was out on bond, and Weaver kicked him out. He further testified that Weaver was the promoter for his music, and that, without her, he could not make any money. He stated his son's aunt was "supposed to talk on [his] behalf."

Applicant testified he did not have an address to forward letters to and that he could not contact his attorney via phone because his phone had been disconnected. However, he was aware that if he failed to communicate with his attorney, his attorney could move to be relieved. Applicant also admitted that he did not provide his attorney with updated contact information. He claimed he had no way to contact his attorney.

Applicant stated he did not waive his preliminary hearing, but that he did not have a preliminary hearing. He that he made most of his General Sessions court appearances until April of 2018. Applicant testified that, had he had notice of the trial dates, he would have made it to

court. He further testified that he was unaware that the bond paperwork stated he would be tried in his absence if he did not show up to court. He put Weaver's address on the bond paperwork.

Applicant further stated that he did not see any of the State's evidence in his case until he was incarcerated, nor did he know how to appeal. He further testified that his attorney failed to discuss a plea offer for five years, and that he also found out about this offer after he was incarcerated. Applicant admitted that he had previous convictions, and that he pleaded guilty to most of them. He stated that he was aware from his previous experience in court that he would be tried in his absence if he did not appear. However, he always appeared for court in matters regarding these prior charges.

Nieshia Miller

At the PCR hearing, Applicant's sister, Nieshia Miller, testified that Applicant was homeless at the time the instant charges were pending against him. However, she did not know what the charges were until after he was convicted. She testified that Applicant would come to her house occasionally and she would let him stay with her. She stated that she did not see Applicant around the community unless she happened to encounter him on the street or he showed up at her house. Miller testified that she was also having legal troubles at that time.

Paul Fata

At the PCR hearing, Paul Fata, Esquire, testified he was employed as a part-time assistant solicitor at the time of Applicant's trial. Fata recalled making a plea offer to Etheridge for a five-year cap for second-degree burglary, nonviolent, and to run the sentences concurrent. Fata testified he did not recall seeing Applicant at any of his prior court appearances. He recalled speaking to Etheridge on one of these occasions, who told Fata he could not find his client. He further recalled

initially calling the case for trial before Judge Curtis in June of 2018. Judge Curtis continued the case and issued a bench warrant.

Fata further testified that Applicant was released on bond, although Fata was not at the bond hearing. He testified that the standard bond form states that the defendant can be tried in his absence if he fails to appear. He testified a preliminary hearing did occur in this case, where the arresting officer testified about the facts of the underlying charges.

Kevin Etheridge

At the PCR hearing, Kevin Etheridge, Esquire, testified he was initially retained to represent Applicant. He recalled meeting with Applicant once, when he was first hired. Applicant gave him a general overview of his position. Etheridge testified that he did not have discovery at that time. Regarding the preliminary hearing, Etheridge testified he had nothing in his notes indicating he attended a preliminary hearing, but he cannot say with certainty whether he was there. Etheridge testified he appeared in court on Applicant's behalf, but without Applicant, three times. He stated that at least two of those times would have been the trial dates.

Etheridge testified he made several attempts to call Applicant, but that every phone number Applicant gave him was disconnected or he could not reach Applicant. He stated that the letters he sent to the address Applicant provided were returned. Etheridge further testified he was aware that Applicant and Weaver had a prior relationship, and that he believes he reached out to Weaver at some point to try and contact Applicant. Etheridge also tried to get in touch with Applicant through family members. However, despite his attempt to contact Applicant multiple times, he was not successful.

Etheridge testified he obtained discovery after his first and only meeting with Applicant. However, he was unable to review it with Applicant because he could not reach Applicant. He

further stated that the case was initially called to trial in June of 2018. Etheridge tried to communicate the trial date through phone calls and mail, but was unsuccessful. Etheridge testified he ultimately requested a continuance in June of 2018, but was never able to locate Applicant before the case was called to trial in July. Etheridge testified he moved to be relieved because he did not have any conversations with Applicant outside of their first meeting. He felt he could not effectively assist Applicant due to a lack of communication.

V. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons (verbatim):

1. "Ineffective assistance of trial counsel for failing to file a direct appeal pursuant to White vs. State, 263 S.C. 110."
2. "Ineffective assistance of trial counsel for failing to object to and/or challenge defendant being tried and/or sentenced in absentia."
3. "Ineffective assistance of trial counsel for failing to challenge the indictment in relation to count one in the indictment on the grounds of lack of jurisdiction and/or improper change of venue."
4. "Defendant was denied his Sixth Amendment right to be present at trial and/or sentencing and face accuser."
5. "The trial court abused its discretion[sic] and/or committed reversible error when trying (holding the trial) and/or sentencing defendant in absentia without giving defendant proper notice of hearing date 7-10-18 which was seal sentence."
6. "Ineffective assistance of trial counsel for failing to notice defendant of waiver of preliminary hearing and future preliminary hearings requested by defendant."
7. "Defendant was denied due process to fair opportunity of defense."
8. "Defendant didn't have knowledge of being impeach[sic] by convictions to oppose and having fair opportunity to contest the use of such evidence."
9. "Defendant didn't have knowledge of plea offer by solicitor Paul M. Fata for 5 years non-violent unto[sic] after sentenced in absentia and placed in department of corrections."

10. "Defendant didn't have counsel upon the opening and reading of seal[sic] sentencing on date 9-4-18 to represent him and request appeal or/and reconsideration on sentencing on defendant[sic] behalf as well as disposition sentencing sheet for date 7-10-18 shows no proof of defendant or attorney for defendant was present for this hearing dated 7-10-18 which defendant was sentence[sic] in absentia."

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims raised in the amended applications and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Direct Appeal Issues

This Court finds claims 4–5 and 7–9 are direct appeal issues that are not cognizable under the Uniform Post-Conviction Procedure Act⁴ (the Act). An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;

⁴ S.C. Code Ann. § 17-27-10 to -160.

5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of “ineffective assistance of counsel,” a contention under the Sixth Amendment of the United States Constitution. *See Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (noting that allegations of trial court error are not cognizable on PCR).

Free-standing claims of trial court error are not cognizable claims for post-conviction relief, and this prohibition has long been recognized. *See id.*; e.g., *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (finding that alleged trial errors and sufficiency of evidence are direct appeal issues that are not cognizable PCR claims); *see also Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“The *Simmons* rule gives effect to the Legislature’s clear intent that the post-conviction relief procedure is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *Stepney v. State*, 278 S.C. 47, 292 S.E.2d 41 (1982) (explaining that issues that could have been raised on direct appeal cannot be considered on PCR application absent claims of ineffective assistance of appellate counsel); *cf. Wolfe v. State*, 326 S.C. 158, 162 n.2, 485 S.E.2d 367, 369 n.2 (1997) (noting that trial court error does not constitute an appropriate basis for a finding of ineffective assistance of counsel, and is not a cognizable claim for post-conviction relief).

Further, an applicant “may allege constitutional violations in PCR proceedings . . . *unless the issue could have been raised by direct appeal.*” *Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (citing S.C. Code Ann. § 17-27-20(a)(1)); *Simmons*, 64 S.C. at 423, 215 S.E.2d at 885 (“Generally, post-conviction hearing statutes do not afford relief in the case of alleged errors for which remedies were available before and during the original trial, or by review on motion for a new trial or on appeal. These statutes were not intended to afford a procedure to operate as a substitute for a motion for a new trial, or for an appeal or writ of error; and ordinarily a judgment of conviction may not be challenged on grounds which could have been raised by a direct appeal.”).

Here, claims 4–5 and 7–9 alleged in the application are direct appeal issues that do not support a cognizable claim for post-conviction relief under any of the statutory grounds. *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) (“[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”); *cf. Hyman v. State*, 278 S.C. 501, 502, 299 S.E.2d 330, 331 (1983) (finding that direct appeal issues which could have been reviewed on appeal and were not objected to at trial or during guilty plea proceeding may only be presented to support a claim of ineffective assistance of counsel, not as a separate ground for relief). Accordingly, Applicant’s request for relief by way of these allegations is **DENIED**.

B. Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s

performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ “ *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer*

would have chosen.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more

important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists “a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt”).

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient “to show [counsel’s] errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial*.” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the

testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

1. Failure to file notice of appeal and motion to reconsider sentence⁵

This Court finds Applicant’s allegation that his attorney was ineffective for failing to file a notice of appeal is without merit. Because Etheridge did not represent Applicant at the time of sentencing and therefore never represented him in the timeframe in which he could have filed a notice of appeal, trial counsel could not have been ineffective. Further, Applicant complains that he was not represented at the sentencing hearing before Judge Cothran, and therefore no one filed

⁵ Claims 1 and 10

a motion to reconsider the sentence or notice of appeal on his behalf. Crucially, however, the record reflects that Applicant neither objected nor requested counsel be appointed to represent him at sentencing. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.⁶

2. Failure to object to or challenge defendant being tried in absentia

This Court finds Applicant's allegation that his attorney was ineffective for failing to object or challenge Applicant being tried *in absentia* is without merit. Crucially, at the time of his trial, Applicant was *pro se* and counsel did *not* represent Applicant, as counsel was relieved based on Applicant's own behavior, including wholly failing to communicate with counsel in the most basic ways, such as providing updated contact information. Therefore, any responsibility to object would not have been one trial counsel bore, as he simply did not represent Applicant at the time he was tried.

At the PCR hearing, Applicant testified he did not have an address to forward letters to and that he could not contact his attorney via phone because his phone had been disconnected. However, he was aware that if he failed to communicate with his attorney, his attorney could move

⁶ To the extent Applicant claims he was denied his right to counsel, this matter was not raised at the PCR hearing. However, such a claim would nonetheless fail on the merits. The record reflects Applicant forfeited his right to counsel by failing to provide updated contact information and keep in contact with his attorney. *See State v. Cain*, 277 S.C. 210, 210–11, 284 S.E.2d 779, 779 (1981) (inferring waiver of counsel and affirming defendant's conviction and sentence where defendant, who was tried in absentia and without counsel for third-offense driving under the influence, failed to fulfill the conditions of his appearance bond and neglected to keep in contact with his attorney despite knowing the trial was imminent). Applicant even admitted that, based on his previous convictions and experience in court, to knowing that (1) if he failed to communicate with his attorney, his attorney could move to be relieved; and (2) he would be tried in his absence if he did not appear. Despite counsel's success in convincing the court to grant a continuance the first time it was called to trial, Applicant's failure to call or visit counsel's office when his living circumstances changed resulted in a delay and reached the level of frustrating the orderly and efficient progression of the case. *See State v. Suriano*, 2017 WI 42, ¶ 21, 374 Wis. 2d 683, 701, 893 N.W.2d 543, 551 ("A defendant who acts in a voluntary and deliberate way that frustrates 'the orderly and efficient progression of the case' forfeits his right to counsel.").

to be relieved. Applicant also admitted that he did not provide his attorney with updated contact information. He further stated that he was aware from his previous experience in court that he would be tried in his absence if he did not appear.

When the case was initially called to trial on June 4, 2018, Etheridge vehemently objected to Applicant being tried *in absentia*. He was ultimately successful in convincing Judge Curtis to continue the case to allow Etheridge more time to attempt to contact Applicant about his trial date. However, both parties agreed that Applicant would be tried in his absence if he did not appear for the next trial date. Etheridge ultimately moved to be relieved on the morning of July 10, 2018, because he was never able to locate or contact Applicant. At that point, Etheridge had no basis to object or challenge Applicant being tried *in absentia* because he no longer represented Applicant. The trial judge was aware of all of these circumstances but found Applicant failed in his duty to maintain contact with his attorney. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

3. *Failure to challenge indictments*

This Court finds Applicant's allegation counsel was ineffective for failing to challenge the indictments is without merit. Applicant did not present any evidence or testimony at the PCR hearing regarding the basis upon which counsel should have challenged his indictments. Nonetheless, this Court finds Applicant's indictments are facially valid because each states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Costello v. United States*, 350 U.S. 359, 363 (1956); S.C. Code Ann. §§ 17-19-20, -30. Both were true billed and signed by the foreman of the grand jury. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

4. Failure to notify Applicant of preliminary hearing

This Court finds Applicant's allegation that counsel was ineffective for failing to notify him of his preliminary hearing is without merit. As an initial matter, this Court notes that, while every criminal defendant is entitled to notice of his right to a preliminary hearing "to determine whether sufficient evidence exists to warrant [his] detention and trial," neither South Carolina nor the United States Constitution recognize a constitutional right to a preliminary hearing. Rule 2(a), SCRCrimP; *State v. McClure*, 277 S.C. 432, 434, 289 S.E.2d 158, 160 (1982); *State v. Keenan*, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982). Moreover, no such hearing may be held if the defendant is indicted by a grand jury before a preliminary hearing is held. Rule 2(b), SCRCrimP; *see also State v. Ballington*, 346 S.C. 262, 551 S.E.2d 280 (Ct. App. 2001) (*overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009)). "The indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing." *McClure*, 277 S.C. at 434, 289 S.E.2d at 160.

Here, Fata recalled attending the preliminary hearing, and that the arresting officer testified about the facts of the underlying charges. Etheridge testified he did not have any notes about attending the preliminary hearing, although he could not say with certainty that he was there. However, even assuming Etheridge was deficient for failing to notify Applicant of the preliminary hearing, Applicant cannot establish prejudice because he was indicted for these offenses by a grand jury. Because the indictment itself constitutes a finding of probable cause, Applicant's request for relief by way of this allegation is **DENIED**.

VII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence

regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VIII. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant failed to meet his burden of proof pursuant to *Strickland* and Rule 71.1, SCRPC. Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 4 day of February, 2022.



DIANE S. GOODSTEIN
Presiding Circuit Court Judge
Third Judicial Circuit

Summerville, South Carolina