

STATE OF SOUTH CAROLINA

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SC Court of Appeals

COURT OF APPEALS

Appeal from Horry County
Larry B. Hymas, Circuit Court Judge
Appellate Case No. 2020-001497

The state

Respondent

vs.

Theodore J. Bolick

Appellant

APPENDIX TO RECORD ON APPEAL

Theodore Bolick prose
Evans Correctional Inst.
610 Highway #9 West
Bennettsville, S.C. 29512

TABLE OF CONTENTS

1. September 16, 2020 Transcript from Appellants sentencing hearing.....1
2. Memorandum Support State's Motion For Reconsideration.....7
3. May 18, 2018 Transcript.....23

Exhibit 2

Exhibit

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) 2019-GS-26-04947, 04953, and 05081

STATE OF SOUTH CAROLINA,)
)
Plaintiff,) Transcript of Record
) (Sentence of the Court)
vs.)
) September 16, 2020
THEODORE JERRY BOLICK,)
)
Defendant.)

B E F O R E:

Honorable William H. Seals
Horry County Courthouse
Conway, South Carolina

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

Thomas
William G. Terrell, III
Attorney for Plaintiff

Theodore Jerry Bolick
Pro Se Defendant

REPORTED BY:

Grace L. Hurley
Retired Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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I N D E X

SEPTEMBER 16, 2020

Pg.

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| Sentence of the Court | 3 |
| Certificate of Court Reporter | 6 |

E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

1 SEPTEMBER 16, 2020

2 MR. TERRELL: Good afternoon, Your Honor.

3 This is State of South Carolina v. Theodore Jerry Bolick.
4 Mr. Bolick was tried and convicted on indictments 2016-05081,
5 2016-04947, and 2016-04953. That was a trial in Mr. Bolick's
6 absence. He was tried and convicted in front of the Honorable
7 Larry Hyman in July 25th, I believe, of last year. Pursuant
8 to standard protocol, those sentences were sealed. A bench
9 warrant was issued. Mr. Bolick is brought before Your Honor
10 for the unsealing of those sentences at this point.

11 THE COURT: Okay. Mr. Bolick, I want to let you know
12 that I didn't try your case. I don't know anything about your
13 case. I don't know anything about the facts. I don't even
14 know you. My job is simply to open this up and read what
15 Judge Hyman sentenced you to.

16 MR. BOLICK: Your Honor, if I may, first ---

17 THE COURT: That's my only job and that's all I'm
18 supposed to do.

19 MR. BOLICK: Excuse me, Your Honor.

20 THE COURT: All right.

21 MR. BOLICK: Please hear me.

22 THE COURT: I can hear you, but what do you have to say
23 in relation ---

24 MR. BOLICK: Can I please have a chair? I have problems,
25 and I have made several motions that are before the Court.

1 THE COURT: Okay. I have nothing to do with that. My
2 job is only to open this and read it.

3 MR. BOLICK: Your Honor ---

4 THE COURT: I don't know anything about your case, your
5 motions or nothing.

6 MR. BOLICK: Please, Your Honor, please.

7 THE COURT: I'll give you five minutes. Tell me what you
8 got to tell me.

9 MR. BOLICK: I have filed a motion for mistrial. I have
10 filed a motion for a new trial. I have filed a memorandum of
11 law in support of this, Your Honor.

12 THE COURT: Okay.

13 MR. BOLICK: I have ---

14 THE COURT: What's that got to do with me reading your
15 sentence?

16 MR. BOLICK: Your Honor, because at the time you read
17 that sentence, because I wasn't here for the trial, nor the
18 beginning of the trial.

19 THE COURT: I wasn't either. I wasn't either.

20 MR. BOLICK: Right. So, therefore, this is my first time
21 to get to speak on that trial. And *Crosby v. United States*
22 Supreme Court said that that trial in complete absentuna [sic]
23 is in violation of the Sixth and Fourth Amendment. Not only
24 is it backed by that, by *Diaz v. US*.

25 THE COURT: Right. Well, then appeal it. I'm just

1 simply here to read ---

2 MR. BOLICK: Your Honor, I am making by law a motion for
3 a new trial and a motion for mistrial. This is my first, and
4 that is something that you should, by law, rule on now.

5 THE COURT: Okay. Sentence of the Court is that the
6 defendant is committed to the Department of Corrections for a
7 term of 12 years. It is to run concurrent with his sentence
8 on 7/24/2019.

9 In reference to the burglary, the sentence of the Court
10 is 12 years, and it is to run concurrent as well.

11 In reference to the other burglary, the sentence of the
12 Court is 12 years and it's to run concurrent as well.

13 I've done my job and it's time to move on.

14 MR. BOLICK: Your Honor, may I please?

15 THE COURT: No.

16 MR. BOLICK: May I please?

17 THE COURT: It's not the time and place to do it.

18 MR. BOLICK: I would object, Your Honor. I would object
19 to -- I'm objecting to allow -- just allow a motion for a new
20 trial, and I will be complaining to the judicial ---

21 THE COURT: I look forward to it.

22 (REPORTER'S NOTE: Defendant is removed from courtroom.)

23 ADJOURNED.

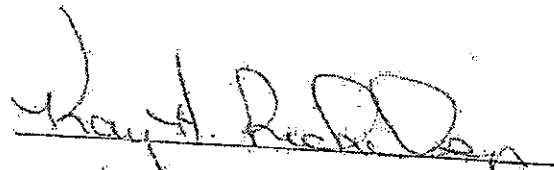
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Theodore Jerry Bolick, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 16, 2020, as reported by Grace L. Hurley.

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



Kay H. Richardson

Official Court Reporter

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May 4, 2022.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
15TH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

MEMORANDUM SUPPORTING STATE'S
MOTION FOR RECONSIDERATION

V.)

Indictment no: 2016GS2604947, 953, 5081

THEODORE JERRY BOLICK,)
DEFENDANT)

2021 JUN 14 6:11:33
Clerk of Court

When granting Defendant's motions for a mistrial and a new trial, this Court allowed the State to present an argument for reconsideration. The State's primary grounds urging reconsideration fall into two categories: procedural and factual. The granting of Defendant's Motion for Mistrial at this post-conviction stage is procedurally improper on a number of grounds. Factually, the decision on whether to allow joinder was in the discretion of the trial judge who did not abuse his discretion in allowing the State to join the charges. Joinder is appropriate for these charges given the specific set of facts linking these crimes. For these reasons and the explanation which follows, the State urges this Court to reconsider its granting Defendant's Motion for Mistrial and Defendant's Motion for a New Trial.

Relevant Trial History of the Case

Defendant was arrested and charged with three counts of burglary for breaking into three separate businesses in the nighttime hours on three separate days over a nine-day span. The State moved the court to join the three burglaries into one trial by calling all three to trial the week of July 22, 2019. The Defendant had filed a Motion to Sever the crimes into three different trials. This motion, along with other pre-trial motions filed by the Defendant were to be heard the morning of July 23, 2019. The Defendant was notified of this in person in the courtroom on July 22, 2019, and told to return to the courtroom the following morning for the pretrial motions and start of the trial. The court was also prepared to address the matter concerning the notice Defendant was to be given regarding which charge(s) would be called and tried. Notably, the State was prepared to go forward with trial whether or not the court severed the charges. When the Defendant was late for the designated time to begin on July 23, 2019, telephone contact was established with the Defendant who informed the court that he was in Myrtle Beach, that he had missed his bus, and that he was waiting for the next bus to bring him to Conway. After consulting the bus schedule, a Deputy was sent to the Conway bus terminal to await Defendant's scheduled arrival. Bolick was on neither that bus nor the following bus that arrived from Myrtle Beach. Law Enforcement was also requested to check the Myrtle Beach bus terminal for Defendant which yielded negative results. Additional attempts to establish contact with Defendant were unsuccessful. With the waiting jury panel in mind, the court decided to pick a jury without the Defendant so the selected jurors could go to lunch and the remaining jurors could be excused. Prior to swearing the impaneled jurors, the issue of Defendant's motions were addressed to the court in the Defendant's absence. All Defendant's pretrial motions were dismissed by the court citing Bolick's absence and failure to argue and

advance them. Without the benefit of the transcript (which has been requested, though not yet received), it is impossible to be sure whether the original trial judge ruled on the record as to the merits of joinder or only dismissed Defendant's motion when he failed to appear to argue the motion.

Defendant was subsequently tried and convicted in his absence. The sentence was sealed and a bench warrant was ordered for his arrest. Eventually, Law Enforcement arrested the defendant in North Carolina on his bench warrant. Defendant filed numerous motions. He was brought before the Court who unsealed and imposed the defendant's sentence of 12 years concurrent on all three burglary convictions. Defendant appealed his conviction and filed additional motions. After considering the issue of appealability, the Court of Appeals remanded the case to the Circuit Court to rule on Defendant's outstanding motions before the Court of Appeals would address any issues raised on appeal.

The original trial judge has retired. The Chief Judge for Administrative Purposes of General Sessions for the Fifteenth Judicial Circuit recused himself following claims of misconduct levied by this defendant against him. The Circuit Court judge who unsealed Defendant's sentence likewise has since recused himself following Defendant's formal complaints against him. The Court of Appeals asks this Court to sit in the place of the trial judge on ruling on Defendant's post-trial motions.

One of these outstanding motions was a motion for a mistrial based on the trial proceeding in the defendant's absence and on allegations of judicial and prosecutorial misconduct. In a supplemental pleading to this motion for a mistrial, Defendant raises the issue of consolidation of the charges into one trial as evidence of such prosecutorial and judicial misconduct.

A second motion was a motion for a new trial based on Defendant's claim that his absence was involuntary and on whether or not the trial court abused its discretion by allowing the consolidation of three charges of Burglary, 2nd Degree (Violent) into one trial.

This Court granted Defendant's Motion for a Mistrial and Motion for a New Trial relying on what it perceives as improper joinder.

I. JOINDER

A. Factual Background

The facts of the burglary crime spree are as follows:

On August 18, 2016, in the nighttime early hours of the morning, the Barrel Bar restaurant, located at 2303 S. Kings Hwy on the south end of Myrtle Beach was burglarized. The suspect entered the business through the roof-top air conditioning system and dropped down into the business from the ceiling. Surveillance video from the China Chef shows a suspect, visually physically consistent with Theodore Bolick, with long hair, wearing a skull cap style bandana and work gloves, search the bar area and the back room. The burglar is seen to be wearing a glove on each hand and has what appears to be a third glove sticking out of the back waistband of his shorts. The surveillance video shows the suspect examine the cash registers behind the bar and attempting to break into the ATM machine in the barroom. The cash drawers were locked up in a safe in the office. A green handled "Zombie Killer" throwing knife was found up the air duct near where entry was made from the ceiling. The evidence shows that the suspect made his exit through the back door of the business.

On August 26, 2016, in the nighttime early hours of the morning, the China Chef restaurant, located at 1470 S. Kings Hwy on the south end of Myrtle Beach was burglarized. The suspect

entered the business through the roof-top air conditioning system and dropped down into the business from the ceiling. Surveillance video from the China Chef shows a suspect, visually physically consistent with Theodore Bolick, with long hair, wearing a skull cap style bandana, search the area of the front counter and the side rooms. The suspect takes the cash drawer toward the back of the business, returns to the counter to pick up approximately \$30 of miscellaneous change that was knocked to the floor, knocks other miscellaneous items to the ground, and leaves the video frame heading toward the back of the business. The evidence shows that the suspect made his exit through the back door of the business.

On August 27, 2016, in the nighttime early hours of the morning, Giff's Liquors, located at 1490 S. Kings Hwy on the south end of Myrtle Beach was burglarized. The suspect entered the business through the roof-top air conditioning system and dropped down into the business from the ceiling. The cash drawer from the register was taken from the store that contained maybe \$20-\$30 in change as the cash had been removed from the drawer and placed in an envelope in the office. A right hand work glove was found in the back room of the store that was not there at closing a few hours before the burglary. This glove was sent to SLED where it was examined for DNA. Theodore Bolick was determined by SLED to be the major contributor of DNA to the inside of that glove. The evidence shows that the suspect made his exit through the back door of the business.

On August 27, 2016, using photographic stills from the surveillance videos of the Barrel Bar burglary and the China Chef burglary, Bolick was identified and named a suspect. A search warrant was executed at the motel room where he was living at the time at 2600 S. Ocean Blvd on the south end of Myrtle Beach, South Carolina. Located during the search of the motel room were multiple skull cap style bandanas matching the ones shown in the surveillance videos. One of these bandanas found has the same eagle design on it as the one the burglar is wearing in the surveillance video of the Barrel Bar. Also located was a left hand work glove that matches in shape, style, size, and wear indicators the right hand glove found on the scene at Giff's Liquors.

Bolick was located and arrested during the search of his motel room. Found on his person at the time of his arrest were two green-handled "Zombie Killer" throwing knives matching the kind of knife found in the ceiling of the Barrel Bar right after the burglary. Evidence introduced at trial shows that these throwing knives are sold as a set of three. Also located with Bolick during his arrest was a pocket full of loose miscellaneous change.

B. Joinder in South Carolina

Charges can be joined and tried together where they arise out of a single chain of circumstances, are proved by the same evidence, are of the same general nature, and no real right of the defendant has been prejudiced. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996). The Court of Appeals restricted joinder to offenses that are of the same nature which arise out of a single chain of circumstances and are proved by the same evidence indicating those that are not may not properly be tried together. State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (App. 2006).

Offenses are considered to be of the same general nature where they are interconnected. Conversely, offenses that are of the same general nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not be properly tried together. State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (App. 2006).

The Court has repeatedly diverged from a restrictive reading of the "single chain of circumstances" language, where in Beekman it indicated joinder is appropriate for crimes that involve connected transactions closely related in kind, place, and character. State v. Beekman, 415 S.C. 632, 785 S.E.2d 202 (2016).

The phrase “a single chain of circumstances” has been interpreted by our Supreme Court courts to include crimes that involve connected transactions closely related in kind, place, and character. State v. Beekman, 415 S.C. 632, 785 S.E.2d 202 (2016). Indeed, the Supreme Court found no abuse of discretion in denying a motion to sever charges involving the deaths two victims of Shaken Baby Syndrome even though the charges stemmed from different occurrences nearly nine months apart precisely because the deaths were closely related in kind (deaths of infants), place (deaths occurred at the same daycare facility), and character (Shaken Baby). State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005).

From the many instances of divergence, it is apparent that the “single chain of circumstances” language when determining joinder is far less influenced by the length of time between events than by their connectedness.

i. Time Between Crimes Not Dispositive

The time between joined crimes is a consideration of the trial courts in regards to joinder but it is not the determinative factor. There are numerous examples of South Carolina courts determining joinder is appropriate for crimes happening in rapid succession to one another thereby satisfying the “single chain of circumstances” requirement. *See, e.g., State v. Simmons*, 352 S.C. 342, 573 S.E.2d 856 (App. 2002) (holding that two separate burglaries that happened the same night at approximately the same time are properly joined), State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996) (ruling joinder appropriate on three groups of charges over a six day period of time where the latter two sets of charges were burglaries that occurred in successive days while attempting to evade capture for the first set of charges).

Conversely, there are instances where similar charges on successive days were determined to not “arise out of the same transaction” and, thus, misjoined in a single trial. *See, e.g., State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986) (rejecting the state’s “crime spree” argument for joinder where appellant escaped from prison on day one, raped and murdered one victim on day two, similarly raped and murdered a second victim on day three, and attempted to rob a grocery store on day four).

There are also numerous examples of substantial time elapsing between crimes where our courts have upheld consolidated trials. *See, e.g., State v. Rice*, 368 S.C. 610, 629 S.E.2d 393 (App. 2006) (upholding joinder of a murder charge and a trafficking charge from six weeks after the murder where the trafficking arrest arose out of the investigation of the murder); State v. Beekman, 415 S.C. 632, 785 S.E.2d 202 (2016) (affirming appropriateness of joinder of a CSC with a Minor charge with victim one twice in eight months and a single Lewd Act against a second victim); State v. Cutro, 365 S.C. 366, 618 S.E.2d 890 (2005) (agreeing that the “Shaken Baby” deaths of two victims in the defendant’s care nine months apart are properly consolidated in a single trial); Greenville v. Chapman, 210 S.C. 157, 41 S.E.2d 865 (1947) (determining joinder was appropriate on multiple counts of milk adulteration over a nineteen month period of time); State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (App. 2013) (ruling that two criminal sexual conduct with a minor charges involving two different victims over a 17 month span are proper for consolidation); State v. Jones, 325 S.C. 310, 479 S.E.2d 517 (App. 1996) (approving joinder of sexual abuse charges ten months apart with different victims).

While not controlling precedent on this Court, the Federal court system uses a similar “same act or transaction” language when evaluating the propriety of joinder. Fed. R. Crim. P. 8(a). Like South Carolina precedent, the time between charges is a factor, but by no means dispositive on the issue. *Compare U.S. v. Hawkins*, 776 F.3d 200 (4th Cir. 2009) (acknowledging a temporal relationship between a carjacking charge and a felon in possession of a firearm charge separated by

three weeks though holding it insufficient to sustain joinder because the crimes were not logically related), with U.S. v. Rousseau, 257 F.3d 925 (9th Cir. 2001) (approving joinder of two distinct counts of possession of a firearm by a felon nearly six and a half months apart).

Ultimately, courts are much more concerned with the connectedness of the crimes than the elapsed time between charges. Two charges can be “identical” and still not “related” for the purposes of joinder. E.g., State v. Tate, 286 S.C. 462, 334 S.E.2d 289 (App. 1985) (where without reference to the length time between charges, a forged government check passed at a liquor store in February and a different forged government check passed at a different liquor store in May by the same individual is insufficient to sustain a motion for consolidation because the evidence is proffered and supported the by testimony of different witnesses). This seems especially true for cases where the State seeks joinder of similar crimes based on a uniquely identifiable pattern of conduct. See Chapman, 210 S.C. at 161 (disfavoring the “inflexible application” of a “restrictive meaning” of “same transaction” where the charged conduct is instead a series of identical transactions proved by the testimony of the same witnesses and the respective dates are the main differences in the various counts); Cutro, 365 S.C. at 375 (holding multiple “Shaken Baby” deaths, while nine months apart, are nonetheless properly consolidated because they “clearly fit within the Lyle categories for common scheme or plan” and “are similar in kind, place, and character”).

Our Supreme Court has declined to mandate severance and outright rejected a “restrictive reading of the phrase ‘a single chain of circumstances’” in Beekman, 415 S.C. at 636. Beekman was convicted of first-degree criminal sexual conduct with a minor on his stepson and lewd act upon a child on his stepdaughter. The offenses occurred a different times within an eight-month period. The Beekman Court acknowledged that the crimes Beekman was charged with “did not arise out of a single, isolated incident” but rather “arose from, in substance, a single course of conduct or connected transactions.” Id. The Court goes on to evaluate a litany of cases where joinder was properly allowed even in the absence of evidence of a single chain of circumstances “when the crimes involve[ed] connected transactions closely related in kind, place, and character.” Id. Noting the “same time period” to be an eight-month span and the “same modus operandi” to be the stepchild and stepfather watching television together when the transgression occurred, the court found the same degree of interconnectedness sufficient to approve joinder in Tucker, Jones, McGaha, and Cutro. Supra.

In rejecting Beekman’s assertions that the charges are distinct crimes not supported by the same evidence because different testimony would be required for each child, the Court redirected the analysis to the “glaring similarities” between the offenses explaining that a rule strictly requiring all charges be proved by completely identical evidence is “nowhere to be found in our precedents.” Id. at 638.

| Case | Joined Crimes | Elapsed Time | Proper? | Notes |
|------------------------------|--|--------------|---------|--|
| Cutro (2005) | Shaken Baby Death Shaken Baby Death Shaken Baby Assault | 9 months | Yes | Acquitted of the Assault – no prejudice |
| Rice (2006) | Murder Drug Trafficking | 6 weeks | Yes | Res gestae |
| Simmons (2002) | Burglary Burglary | Minutes | Yes | No prejudice even with a Directed Verdict on 2 nd Burglary charge |
| Greenville v. Chapman (1947) | 23 Counts of Milk Adulteration | 19 months | Yes | |

| | | | | |
|--------------------------------------|---|---------------|-----|---|
| Tate (1985) | Forgery Forgery | 3-4 months | No | No connection between the 2 other than the defendant and the charge |
| Middleton (1986) | Escape Rape & Murder Rape & Murder Att. Armed Robbery | 4 days | No | |
| Jones (1996) | Sex Abuse Sex Abuse | 10 months | Yes | Different Victims Same M.O. |
| Beekman (2016) | CSC Minor Lewd Act | 8 months | Yes | Different Victims Closely connected transactions & great overlap of evidence |
| McGaha (2013) | CSC Minor (x2) Lewd Act (x2) | 17 months | Yes | Different Victims |
| Herry (1996) | Arson (x2) False Insurance Claim | Hours | Yes | Charges Interconnected Same Evidence |
| Tucker (1996) | Burglary & Murder Burglary Burglary | 4 days | Yes | Subseq. Burgs committed to evade capture |
| Tallent (2020) | CSC Minor 1 st Deg. CSC Minor 2 nd Deg. Lewd Act Cont Del Minor (x2) | Several Years | Yes | Logical Relationship between charges and no prejudice |
| Smith (1995) | ABHAN Homicide by Child Abuse | 1 month | No | Different evidence No <u>Lyle</u> similarities |
| Hawkins (4 th Cir. 2009) | Carjacking Felon in Poss. | 3 weeks | No | Crimes not logically related |
| Rousseau (9 th Cir. 2001) | Felon in Poss. Felon in Poss. | 6 ½ months | Yes | |

In the present case, three burglaries spanning nine days is by no means dispositive when questioning the appropriateness of joinder. Courts of all levels have found joinder appropriate when the time between charges is substantially greater than the nine days at issue here. Where the eight-month time span is considered the “same period of time” in Beekman, the nine-day time span regarding the burglaries at issue here can certainly be seen at least as worthy of consolidation based on time alone.

Where this Court saw nine days with time between crimes as a bar to joinder because it may not satisfy the “single chain” prong, the appropriate analysis as undertaken in Beekman, digs deeper to examine similarities in kind, place, and character of the offenses charged. As in Beekman, there are “glaring similarities” between the three burglaries at issue here that simply cannot be overlooked. As it relates to the same kind, all three crimes are burglaries of businesses in the food and beverage industry that occurred at approximately the same time with the same goal in mind. All businesses were in the same place all being within three-quarters of a mile on the same road in the south end of Myrtle Beach, South Carolina, and two were literally a part of the same building being different establishments in the same strip mall. In regards to the same character, the three offenses all show signs of the same modus operandi: all three buildings were accessed in an extremely

unique manner with the offender gaining access to the roof, cutting into the rooftop HVAC system, crawling through the air vents, dropping into the business, taking or attempting to take the money holders in the business, and breaking out the back door: not the typical smash-and-grab offense but a carefully devised plan.

As discussed in Beekman, the fact that additional witnesses may need to be called to establish the separate elements of the various offenses does not mean that the crimes are not provable by the same evidence. As Beekman clarifies, “for joinder of related offenses, our appellate courts have recognized that there may be evidence that is relevant to one or more, but not all, of the charges” and that “by arguing that the evidence of multiple crimes may not merely overlap but must be wholly identical to warrant consolidation” is an incorrect reading of controlling, established precedent. 415 S.C. at 638-9. The vast majority of the evidence presented for the burglaries for which Defendant was convicted would be the same outside of the additional victims to establish the additional crimes because the same detectives and officers and crime scene and evidence personnel would be required for each charge to say, largely, the same thing. Additionally, the body of evidence for each charge is so intertwined with the evidence gathered during the arrest and search warrant of the Defendant’s property that the full probative value of the evidence collected can only be realized after a full disclosure of all of the evidence.

ii. Analysis

This burglary crime spree spanning nine days involves interconnected offenses that are closely related in kind, place, and character. All three burglarized locations are on the south end of Myrtle Beach; indeed, they are all within $\frac{3}{4}$ of a mile. The three businesses are all located on the same street. Two of the businesses are located in the same strip mall, two doors apart, sharing the same roof (notable given the means of entry). The distance is only slightly more than half a mile from Defendant’s motel room to the nearest burglary. The burglar avoided the more numerous business locations on “the strip” (Ocean Boulevard) and opted instead for businesses on South Ocean Highway where there would be far less possibility of meeting with an unwary tourist or local law enforcement known to increase their presence along the beach front road.

All three burglaries share the same modus operandi indicative of an ongoing common scheme or plan – a single chain of circumstance. All three locations are businesses which would be closed and vacant during the pre-dawn hours of night. These are not run-of-the-mill smash-and-grab jobs, but significantly more intricate. All businesses were entered through the air unit on the roof where the suspect was able to cut his way into the unit and gain access to the business through the duct work in the ceiling. He then dropped down into the business and searched for what he likely hoped would be easy, readily available money. The cash drawers he was able to find, he took the drawer with its contents out of the business. He did not take accessible electronics or other valuables - just whatever money he was able to find leaving the rest behind. Each business was exited through the back door, even when other avenues of escape were available.

Due to the unique nature of the burglaries and the closeness in proximity, the burglaries were all assigned to the same detective with the Myrtle Beach Police Department. As a result, the same key officers were involved in investigating all three burglaries as well as conducting the search warrant and perfecting the arrest of the defendant to include the same Crime Scene Investigators, the same street crimes officer who was using the available surveillance images to identify the suspect, and the same evidence custodian.

All three burglaries are furthermore proved by the same evidence stemming from the execution of the search warrant. A match to the glove left at the liquor store was found in the defendant’s room. The skull cap style bandana defendant is seen wearing in the surveillance video

from the bar is found in the defendant's room. The different skull cap style bandana defendant is seen wearing in the surveillance video of the restaurant matches the style of other bandanas found in the defendant's room.

The defendant's arrest occurred at the execution of the same search warrant. Booking records indicate that Defendant was arrested with two green-handled "Zombie Killer" throwing knives in his pocket. These knives come as a set of three and they match the third knife found in the ceiling at the point of entry of the Barrel Bar. Defendant was also arrested with a pocket full of miscellaneous loose change. A substantial amount of loose change was stolen the morning of Defendant's arrest from Giff's Liquor as well as the morning prior to Defendant's arrest from the China Chef restaurant.

| | Barrel Bar | China Chef | Giff's Liquors | Search | Arrest |
|--|------------|------------|-----------------|--------|--------|
| Burglary, 2 nd Degree (Violent) | X | X | X | | |
| Pre-dawn Nighttime Morning | X | X | X | | |
| Vic - Food & Beverage Industry | X | X | X | | |
| Business off Ocean Hwy | X | X | X | | |
| South End of Myrtle Beach | X | X | X | X | X |
| Within ¾ Mile | X | X | X | | |
| Within 1 ½ Mile | X | X | X | X | X |
| Same Strip Mall | | X | X | | |
| Rooftop Entry | X | X | X | | |
| HVAC Entry | X | X | X | | |
| Moved in through Ducts | X | X | X | | |
| Drop in through ceiling | X | X | X | | |
| Cash Register Targeted | X | X | X | | |
| Entire Till Taken | | X | X | | |
| Change Taken | | X | X | | X |
| Surveillance Video | X | X | | | |
| Similar Physical Characteristics | X | X | | | X |
| Work Gloves | X (Seen) | X (Seen) | X (Left Behind) | X | |
| DNA Evidence | | | X | X | |
| "Zombie Killer" Knife | X | | | | X |
| Skull Cap Bandana | X | X | | X | |
| Exit Through Back Door | X | X | X | | |
| Lead Detective | X | X | X | X | X |
| Crime Scene Investigator | X | X | X | X | |
| Evidence Custodian | X | X | X | X | X |
| Street Crimes Officer | X | X | | X | X |

II. DEFENDANT'S MOTION FOR MISTRIAL

The defendant moved for a mistrial advancing theories of an improper *trial in absentia* and of prosecutorial and judicial misconduct. The Court granted Defendant's Motion for a Mistrial

specifically without a finding of misconduct by any party and without finding any impropriety in the trial going forward in the Defendant's absence. The State urges reconsideration of this grant.

A. DEFENDANT'S ABSENCE AT TRIAL

As his *trial in absentia* is cited by Defendant as for grounds for both the Mistrial and the New Trial motions, and both of these motions were granted (albeit on other grounds), it should be addressed.

The Sixth Amendment to the Constitution affords criminal defendants the right to be informed of the nature and the cause of the accusations against him and to be confronted with the witnesses against him. From this language comes the defendant's right to be present at trial. A person indicted for felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that he received notice of his right to be present and that a warning was given that he could be tried in his absence if the defendant does not then show up to court. SCRCrimP 16.

In this case, Defendant was present at the beginning of the term of court on July 22, 2019. He was told on the record by the Court that his case was being called the following morning on July 23. He was told what time to be back in the courtroom. He was informed that his motions would be addressed prior to the case being called. He was once again advised of his Faretta warnings, that he had ample and direct notice of the call of his case, and that failure of him to appear would result in the trial going forward in his absence. He once again was offered counsel which he once again declined.

As noted above, Defendant was aware of his trial as late as the morning the trial was set to begin when he misinformed the Court that he was on his way to Conway. It was not until he filed his motions after being arrested on his bench warrant that he began alleging "medical conditions," "opioid withdrawal," dope sickness, or any other excuse for his absence. A defendant's presence at trial is a right which can be waived through conduct. Notice at the time of trial that his absence was involuntary or due to circumstances beyond his control would certainly have been reason to postpone or continue the trial. There was none of that in this case. Defendant knew when to be in court, knew the dangers of self-representation, and knew that the trial would go forward in his absence if he didn't show up. Knowing all of this, he chose to misinform the trial court about his whereabouts and his intentions, chose not to answer or return phone calls from court personnel, chose to not get in contact with the court in anyway, and chose to leave the area. He apparently made no attempt to contact the court to offer excuse or justify his absence until he was arrested out of state on his bench warrant more than a year after his conviction.

Defendant knew he was going to trial. He knew the charges the State intended to call to trial. He knew he would have the opportunity to be heard on his motions and contest those charges being tried together. He knew where he needed to be and he knew when to be there. He knew that not showing up would not continue the case and that he would be tried in his absence. Defendant voluntarily waived his right to be present at trial, to confront the witnesses against him, and to present a case if he so desired. He knew all of this and he, instead, chose to skip town and avoid trial. Therefore his voluntary waiver of these not grounds upon which a mistrial or a new trial should be granted.

B. JUDICIAL AND PROSECUTORIAL MISCONDUCT

In addition to his absence at trial, the second ground Defendant cites in his motion for a mistrial is judicial and prosecutorial misconduct. Without getting too deep into Defendant's

outlandish false allegations, he argues that he is the victim of some far-reaching judicial conspiracy seeking to destroy him since his arrest on these charges in August 2016. He has strung together half-truths with untruths, concocted fabrications, levied baseless accusations, and told outright lies as "evidence" that such a conspiracy exists between myself and other members of law enforcement, corrections, and the judiciary. See Attachment A.

Defendant cites what he views as improper joinder of his three burglary charges as proof that such a conspiracy exists between (at least) myself, the State, the trial judge, and the resident Chief Judge for Administrative Purposes of General Sessions.

The Office of Disciplinary Counsel has investigated Defendant's claims on numerous occasions and found no evidence of misconduct or wrong-doing existed. See Attachment B. Also, this Court declared that it was specifically not finding any instances of misconduct. Indeed, Defendant's complaints appear to be little more than inappropriate, often vile, and overt attempts to intimidate the State and Law Enforcement into dismissing the charges against him or to make money through frivolous lawsuits. See Attachment C. With no evidence of gross misconduct, neither prosecutorial nor judicial, as alleged by the defendant, this should not be grounds upon which to grant a mistrial.

C. MISTRIAL

With both arguments advanced by the defendant as grounds for a mistrial found lacking, there exists no ground raised by the Defendant on which to declare a mistrial in this case. Rather, this Court looked to the consolidation of the three burglary charges into one trial and found error rising to the level necessitating a grant of a mistrial. Presumptively, this Court believes that improper evidence was submitted for the consideration of the jury rising to the level of gross misconduct by the prosecutor which prevented the jury from reaching a fair, unbiased verdict.

The power of the trial judge to declare a mistrial "ought to be used with the greatest caution and for plain and obvious causes stated into the record by the judge." State v. Prince, 279 S.C. 30, 32-33, 301 S.E.2d 471, 472 (1983). A mistrial is an extreme measure to be taken only where an incident is so grievous that the prejudicial effect can be removed no other way. State v. Tisdale, 338 S.C. 607, 527 S.E.2d 389 (App. 2000). A trial court will look to instances of gross misconduct by the party looking to introduce the evidence. A mistrial is typically reserved for gross, incurable injustices levied on either party during a trial. A post-trial motion for a mistrial is properly granted only when there is some sort of misconduct concerning a party or a juror. As it does not deal with a mistrial based on juror conduct or other similar evidence coming to light post-judgment, but rather on conduct of a party or introduction of evidence at a trial, the appropriate time to deal with the issue would be when the gross misconduct or introduction occurs. As that never occurred during the trial, it should not be allowed after the conviction.

Defendant's Motion to Sever was a pre-trial motion that was properly dismissed when he did not appear at the call of his case to argue said motion. Post-trial, a motion to sever charges is inappropriate. The Defendant voluntarily waived his constitutional rights to be present and to have counsel who could object at trial on his behalf. As noted above, Defendant was aware of the State's intent to call three charges to trial. Defendant was afforded ample opportunity to be heard on both the substance of the Motion to Sever and the related notice issue prior to his trial; an opportunity he forfeited through his willful failure to appear to court for his trial. An objection to joinder and the introduction of evidence of multiple charges was never raised at trial and is thereby not preserved as an appropriate issue on which to grant a mistrial. See McCrary v. State, 249 S.C. 14 at 38, 152 S.E.2d 235 at 247 (1967) (holding that a "defendant has no inalienable right to require that he be tried separately under each indictment, the matter of consolidation or severance being entrusted to

the discretion of the trial judge” before confirming that a “defendant ha[s] the right ... to object to the consolidation ... but that right can be waived”).

Moreover, in the instant case, the original trial judge found no gross misconduct or improper introduction of evidence to order a mistrial from the bench. The propriety of the introduction of evidence does not change based on who is present in the courtroom. Showing up post-conviction to argue does not make evidence more or less proper, nor does it render permissible conduct impermissible. If the introduction of the evidence were so improper as to warrant a mistrial, a mistrial would have been ordered at its introduction from the original trial judge, regardless of whether the defendant was there to object to it. As the trial court found no such issue and allowed the State to proceed with a consolidated trial, that decision should not be disturbed by this Court. See State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999) (ordering or refusing a mistrial is in the trial judge’s discretion and it will not be disturbed without abuse of discretion amounting to an error of law). As the trial judge did not see reason to grant a mistrial based on joinder from the bench, where none was asked for during the trial, nor at the call of the case, nor at the introduction of the evidence, this Court is essentially being asked to find that the trial judge committed an error of law in not declaring a mistrial from the bench. The trial judge committed no error in law in allowing the State to proceed without objection, so his refusal should stand.

To allow Defendant to prevail on a post-conviction argument that a mistrial that might have been granted at trial had he not waived his rights to be present and to object timely to the introduction of evidence, rewards the Defendant for not showing up to his trial and fleeing and wastes this Court’s preciously limited resources; essentially, doing so would afford the defendant another first bite of the metaphorical apple not available to defendants who appear for their trials.

Because Defendant’s failure to appear for his trial was willful and voluntary, because there exists no gross misconduct by the State or the trial judge, because the evidence was never objected to at trial, and because the evidence was not improperly submitted to the jury at the trial, the post-trial motion for a mistrial should not be granted. The State respectfully urges this Court to reconsider its grant of Defendant’s Motion for Mistrial.

III. DEFENDANT’S MOTION FOR NEW TRIAL

The defendant moved for a new trial advancing theories of an improper *trial in absentia* and improper joinder. A Circuit Court judge has the authority to order a new trial in cases which have been tried to a jury for reasons for which new trials have usually been granted. S.C. Code of Laws, § 17-23-110. The Court granted Defendant’s Motion for a New Trial. The State urges reconsideration of this grant.

A. DEFENDANT’S ABSENCE AT TRIAL

See above. The same reasons prevent Defendant from using his voluntary absence at trial as actionable grounds for a mistrial should hold equally as true with regards to a motion for a new trial.

B. IMPROPER JOINDER

The second reason advanced by Defendant in support of his Motion for a New Trial is that the trial court wrongly allowed the charges to be tried together. South Carolina leaves the decision of whether to join charges to the discretion of the trial judge after motion by one party. State v. Blakely, 402 S.C. 650, 742 S.E.2d 29 (App. 2013). The State sought consolidation of the charges into one trial. The Defendant opposed joinder and filed a Motion to Sever the charges. Defendant

was noticed his severance motion would be heard the morning of trial and failed to appear. See above. His Motion to Sever was dismissed and the State was granted leave to proceed with a consolidated trial.

The Court of Appeals remanded this case to have all Defendant's motions heard and ruled on in the Court of General Sessions. One of those motions is this Motion for a New Trial. The appellate court seemingly asked this Court to sit as the trial judge and rule on these motions.

It is error of law for a trial judge *sua sponte* to grant a new trial on a ground waived by the Defendant. State v. Dicapua, 383 S.C. 392, 585 S.E.2d 303 (2009). In Dicapua, the Defendant waived objection to the introduction of a videotape into evidence at the trial. Then Dicapua was convicted and sentenced. Following the imposition of the sentence, the trial judge vacated the conviction and the sentence and ordered a new trial on the ground that he found the introduction of the videotape evidence to be inappropriate for multiple reasons.

Similarly, in the instant case, the Defendant voluntarily waived his objection to the joinder of the three burglaries into one trial, was convicted by the jury, and sentenced by the judge. Now, Defendant asks this Court to grant to him precisely what the trial court could not: a new trial. If it would have been error of law for the original trial judge to vacate the sentence and grant a new trial due to evidence coming in to which the Defendant did not object (as Dicapua holds) this Court, sitting as the trial court and ruling on this motion, could not and should not do so, either. See Dicapua at 398-9, 294 (reasoning that "to affirm the grant of a new trial on a waived issue in a criminal case would lend [the Supreme Court's] imprimatur to a trial court's impromptu grant of post-conviction relief").

In tasking this Court with ruling Defendant's outstanding post-trial motions, it stands to reason that the Court of Appeals was not shirking its responsibility and asking this Court to decide an appellate issue by reaching the merits of joinder. The trial court has, at least implicitly, already made the determination that joinder was not improper in permitting the case to get to the current stage; had it deemed otherwise, it likely would have ordered a mistrial (see above) at the appropriate time at the introduction of the evidence.

In the unlikely event that the Court of Appeals is asking this Court to sit as a one-man appellate court and rule on the merits of joinder, the question then becomes not whether joinder is proper but, more accurately, whether the Circuit Court Judge presiding over the trial abused his discretion as the trial judge in allowing the State to present the three charges to the jury in a single trial. The State argues joinder of the three charges was proper given the facts of the case as discussed above and that the trial judge acted within his discretion in allowing joinder of the three charges.

C. NEW TRIAL

The Defendant's voluntary waiver of his right to be present at trial has been addressed. His absence is neither reason for a mistrial nor reason for a new trial. Defendant has a right to be at his trial but he is not required to be at his trial if he so chooses. The trial was allowed to go forward in his absence after a finding that he had notice and made the decision not to be present. Being convicted while he exercises his right not to be at his trial is not grounds for a new trial.

When the defendant failed to appear, he waives a number of his protected rights, such as the right to confront accusers. He similarly waives any direct challenge he might have to the admission of evidence or testimony. The trial judge is then bound to ensure only that fairness is preserved and that the defendant is not prejudiced through his absence. Indeed, the trial court instructed the jury not to take his absence as evidence of his guilt. Joinder is proper given the facts of this case tying

the crimes together or, at least, it was arguably proper. The trial judge did not abuse his discretion by allowing the joinder of the three charges or by allowing evidence that was not objected to at trial.

Because Defendant's absence is no cause for a new trial, because it would amount to an error of law for the trial court to grant a new trial on the grounds of admitting evidence that was never objected to at trial, and because joinder is appropriate given these facts and the trial court did not abuse its discretion by permitting consolidation, there is no ground on which to order a new trial in this case. The State respectfully urges this Court to reconsider its grant of Defendant's Motion for a New Trial.

IV. ADDITIONAL CONSIDERATIONS

A. Defendant was not Unfairly Prejudiced by a Joint Trial

i. Lyle / 404(b) Evidence

The final requirement to consider when determining to allow joinder is that consolidation of different charges at the same trial cannot prejudice any real right of the defendant. State v. Tate, 286 S.C. 462, 334 S.E.2d 289 (App. 1985). To be entitled to a mistrial, "a defendant must show both error amounting to absolute necessity and resulting prejudice." Simmons, 352 S.C. at 354, 573 S.E.2d at 862. Defendant asserts that he was prejudiced in his trial because the jury heard evidence of all three burglaries and issued a verdict of guilt not based on the weight evidence, but rather on unduly prejudicial propensity considerations. McGaha directly analyzed the "propensity to commit similar crimes" argument Defendant argues in the case at bar. Supra. McGaha was tried and convicted at a joint trial of sexual assault of two different victims at various times during a seventeen month period. His argument on appeal was that the trial court improperly joined the different cases involving the different victims into one trial. He argued, ultimately unsuccessfully, that he was prejudiced in a joint trial because, he contended, the evidence of the other charges improperly revealed his propensity to commit similar crimes. Affirming that no substantive rights were prejudiced at a joint trial, the McGaha Court explained that "in cases where defendant argues prejudice from the admission of evidence of the other charges tried in the same case, our courts have analyzed whether evidence of one or more charges would be admissible in a trial involving only the other charge." Id., at 298, 606. In McGaha, at a trial involving one victim, the State would have been allowed to introduce the evidence of the sexual molestation of the second victim under Rule 404(b), SCRE, to show a common scheme or plan. Id., at 298, 607. Upon a showing that the crime and the proffered 404(b) evidence are logically connected by sharing a close degree of factual similarity, the evidence would be allowed in a separate trial. As the jury would have heard substantially the same evidence in a severed trial as they heard in a joint trial, no substantive right of the defendant was prejudiced.

In analyzing specifically what is necessary for common scheme or plan evidence to be admitted, our Supreme Court just recently clarified that "there must be something in the defendant's criminal process that logically connects the other crimes to the crime charged" such as "the same particularly unique method of committing ... uncharged crimes that [one] used to commit the charged crime." State v. Perry, Op. 27963 (S.C. Sup. Ct. filed May 6, 2020). While differences are allowed between the various crimes, there is no need to undertake a "mathematical exercise where similarities and dissimilarities are counted," but rather a method being unique – more than just similar – and where the uniqueness would reasonably tend to prove a material fact in issue. State v. Durant, Op. 27964 (S.C. Sup. Ct. filed May 6, 2020). See also, State v. Cotton, Op. 27965 (S.C. Sup. Ct. filed May 6, 2020) (upholding the allowance of 404(b) evidence of a prior, uncharged

crime to show a common scheme or plan where the proffered evidence showed more than just similarities; the commonalities were extensive and tended to prove a specific disputed fact).

Identical to McGaha and directly in line with the Supreme Court's most recent opinions on 404(b) evidence as it pertains to showing a common scheme or plan, the defendant was not unfairly or improperly prejudiced by the jury hearing evidence of the three burglaries in a joint trial. As explained in the discussion on joinder, these burglaries were more than just similar – they were unique in their execution. In the language of Perry, the defendant employed the same particularly unique method of committing the burglaries. That uniqueness reasonably tends to prove the identity of the perpetrator – a material fact in issue in this case where, had Defendant bothered to show up to trial, he would have argued that the person in the surveillance videos wasn't him. Had Defendant's Motion to Sever been heard and ruled the morning of trial as scheduled, the State was prepared to proceed on the most recent burglary in the crime spree that occurred at the liquor store. The State would have sought introduction of additional evidence of the previous two burglaries relying on 404(b) and Lyle to show motive, identity, the existence of a common scheme or plan, identical *modus operandi*, and intent. As discussed above, there is abundant evidence of a close degree of factual similarity logically connecting the three burglaries.

Moreover, as our Supreme Court clarified in Cutro, when “determining joinder the trial judge need not find clear and convincing evidence of the charges” because the procedural safeguards this standard protects are already in place as it pertains to an indicted offense. 365 S.C. at 374, 618 S.E.2d at 894. As it further explains, the defendant may argue unfair prejudice if the trial judge determines that a directed verdict should be granted on one of the joined charges due to a lack of any substantial evidence. Id. In this case, as discussed above, there is ample evidence of each charge submitted to the jury so no unfair prejudice resulted from the consolidated trial.

ii. Res gestae

Additionally, the State would have sought introduction of the same evidence arguing the doctrine of *res gestae*. Just as allowable prior bad act evidence eliminates prejudice which may result from a jury hearing propensity evidence when joined crimes are similar in nature, *res gestae* operates to erase any undue prejudice that may arise in a joint trial where presentation of other crimes would be necessary to avoid unnecessary fragmentation. See Simmons, 352 S.C. at 352, 573 S.E.2d at 861 (discussing *res gestae* application in joinder analysis). Evidence of other crimes is admissible to offer a full presentation of the case or where it furnishes a part of the context of the crime or is intimately connected with and intertwined with the other crime. Id. In Rice, a murder charge and a drug trafficking charge from 6 weeks later were jointly tried before a single jury. 368 S.C. 610, 629 S.E.2d 393. Rice was under investigation for the murder of a victim with whom Rice was known to deal drugs. While under investigation, six weeks after the murder, Rice was pulled over at a traffic stop and arrested for his inability to provide proof of insurance and trafficking weight cocaine was found during an inventory of the vehicle. Rice argued that there was no nexus between the crimes that happened six weeks apart and the evidence of trafficking unjustly prejudiced the jury against him with respect to the murder charge. The State in Rice contended that the drug transaction was at the root of the murder itself. The appellate court agreed with the State and affirmed that the charges were properly consolidated into one trial and Rice's convictions were upheld. Therein, the court held that no prejudice was suffered by Rice by the joinder because “without the evidence of cocaine trafficking, the jury would not have received an accurate portrayal of the case [and it] was necessary for a full presentation of the case without fragmentation.” Id. at 616, 396. The court concluded that the arrest on one charge arose out of the investigation of the

other charge and the information regarding both crimes “was relevant to show the complete, whole, unfragmented story” regarding the other crime. *Id.*

Res gestae will operate to allow evidence of other crimes when necessary for a full presentation of the case without fragmentation. That being the case, the defendant can show no prejudice resulting from a joint trial based on evidence of three burglaries being before the jury because the evidence would have been before them anyway. Here, Bolick was under investigation for a burglary. Officers had his picture from the surveillance video from the Barrel Bar and were able to put a name with that picture through investigation. Before they were able to execute a search warrant to find evidence of the Barrel Bar burglary, two more food and beverage businesses in the same area were burglarized in an identical manner. When law enforcement conducted the search warrant at his residence and arrested the defendant during that search warrant, they found evidence of all three burglaries on the defendant and in the residence. An attempt to parse out and distill down evidence strictly pertaining to only one of the three identical burglaries would have resulted in unnecessary fragmentation that the doctrine of *res gestae* seeks to avoid.

As the jury would have been confronted with evidence of all three burglaries at one trial regardless of severance based on 404(b) evidence and *res gestae*, the defendant is unable to show the prejudice required to support his contention of improper joinder.

iii. Sentencing

Finally, because the 12 year sentences Defendant received on all three convictions were ordered to run concurrently, Defendant received no harsher punishment following his conviction on the three burglaries as opposed to had he been convicted on only one count. In actuality, the defendant garnered a substantial benefit from a joint trial. Had Defendant’s trial been severed, he would be facing three separate counts of what South Carolina classifies not only a Violent offense, but a Serious offense. With the Defendant already having a strike under the three strike law for a 1991 conviction for Assault with a Deadly Weapon with the Intent to Kill or Inflict Serious Injury, he could be facing a mandatory Life Without the Possibility of Parole sentence after the second and third convictions of trials nearly identical to the first trial.

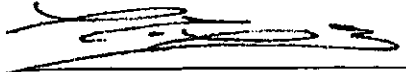
V. CONCLUSION

This Court granted a mistrial and a new trial on the grounds of improper joinder of charges. The State argues joinder was appropriate in this case. The introduction of the consolidated evidence did not rise to the level of misconduct which would be grounds for a mistrial from the bench. The trial court acted within its discretion in allowing the State to proceed with a consolidated trial. The trial court has no duty to a voluntarily-absent *pro se* defendant to act as counsel for the accused and object to questionable evidence. The court’s duty to ensure a fair trial does not and should not extend beyond keeping out evidence that is unquestionably improper. As the propriety of the introduction of the evidence of the three charges is not *unquestionably* improper, indeed the State maintains its contention that joinder is proper, the trial judge had no reason to grant a mistrial nor a new trial. Therefore, this Court, sitting in place of the trial judge, likewise has no reason to grant a mistrial or a new trial. The defendant also fails to show prejudice of a substantive right that would allow him to prevail on a claim of improper joinder.

For the reasons explained above, the State believes that the motions for a mistrial and a new trial should not have been granted by this Court and respectfully urges this Court to reconsider its prior rulings granting the same.

Lastly, should this Court choose to sustain its rulings, the State respectfully requests clarification on which motions are being granted and the specific basis for each ruling. The State also requests a specific finding from this Court that a sustaining of the grant of a mistrial is based on a manifest necessity to preserve the defendant's rights to a fair trial.

Respectfully Submitted,



Thomas Groom Terrell, III
Assistant Solicitor
Fifteenth Judicial Circuit of South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-04947, 04953, and 5081

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

May 18, 2018

THEODORE JERRY BOLICK,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Thomas G. Terrell, III, Esquire
Attorney for State

Theodore Jerry Bolick
Pro Se Defendant

TAKEN BY:

Dixie C. Eubank
Retired Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

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| Motions | 3 |
| Certificate of Court Reporter | 36 |

E X H I B I T S

No.

ID

EV

(No exhibits were marked or admitted.)

1 MAY 18, 2018

2 THE COURT: All right. We'll start with certain motions
3 in the case of State of South Carolina versus Theodore Jerry
4 -- is it Bolick? Where is Mr. Bolick? Is he not here? He
5 knew to be here. He did say had problems with the bus when he
6 was here on Wednesday.

7 Well, all right. We'll skip that for right now until he
8 gets here because I'm gonna deal with those today.

9 MR. TERRELL: Any chance Your Honor is inclined to
10 dismiss them for failure to prosecute at this point?

11 THE COURT: No, we're gonna deal with those motions.

12 MR. TERRELL: Yes, sir.

13 THE COURT: Now, he was here Wednesday, arguing those
14 motions on Wednesday and he did indicate he had difficulties
15 in getting transportation.

16 RECESS

17 *****OFF THE RECORD*****

18 ON THE RECORD

19 THE COURT: All right. So, we'll now commence the
20 motions in the case of State of South Carolina versus Theodore
21 Jerry -- sir, and I know I've said it both ways; is it Bolick
22 or Bolick (pronounced differently)?

23 MR. BOLICK: Bolick.

24 THE COURT: --- Theodore Jerry Bolick.

25 All right. If y'all will come forward, please.

1 You want to call the case, Solicitor?

2 MR. TERRELL: Yes, sir, Your Honor.

3 This is the State of South Carolina versus Theodore Jerry
4 Bolick. He's charged in true-billed indictments 2016-GS-26-
5 04947, 04953, and 05081. Those are all indictments for
6 burglary second degree under the violent statute. We're were
7 on various defense motions.

8 THE COURT: Very good. All right.

9 All right. We're gonna start off with the motion to
10 sever that was filed by the defendant on October 31 of 2017,
11 motion to sever in these particular matters.

12 All right, sir. Be glad to hear from you.

13 MR. BOLICK: Yes, sir. Your Honor, my understanding is
14 there are three separate burglaries that occurred on three
15 separate days. The state has so far intended to incorporate
16 all of these burglaries together. And it is my position that
17 I would deserve a different trial with a different jury on
18 each case as they are completely separate crimes. They are
19 not related. There is nothing that relates these crimes.
20 They are three separate charges standing alone. Three
21 separate indictments standing alone. And I think I would be
22 prejudiced in a severe way were a jury to hear all three
23 cases.

24 THE COURT: All right, sir. I'm just checking to see
25 when these matters went to the grand jury.

1 MR. BOLICK: I have the bills right here if would give

2 ---

3 THE COURT: And I appreciate that. I just want to do it
4 from the clerk of court's records. Thank you, sir.

5 All right. So, regarding those three indictments and as
6 you indicated Solicitor, all three of them are for burglary
7 second degree, nonviolent; is that correct?

8 MR. TERRELL: They're all for burglary second degree.
9 They should be violent, Your Honor.

10 THE COURT: The indictment should be for violent?

11 MR. TERRELL: Yes, sir.

12 THE COURT: Yes; I'm sorry. Yes. Three counts of
13 burglary second degree violent.

14 All right. So, regarding the defendant's motion to sever
15 those three cases, Solicitor, what's your position?

16 MR. TERRELL: Your Honor, my position is that the state
17 has not gotten to a place where we've decided whether or not
18 they can be tried together. I think that's a motion that's
19 properly heard before trial, not at this point while we're
20 still waiting on the DNA to be confirmed. Honestly, I haven't
21 even looked. I know that the three cases all have the same
22 MO. They were -- all three were businesses broken into in the
23 nighttime via the roof, all in the same area of Myrtle Beach,
24 the same -- within just a few blocks of each other in Myrtle
25 Beach. But beyond that, Your Honor, I don't know whether

1 they're properly tried together or not, and I think that's
2 something that we need to take up prior to -- immediately
3 prior to trial, Your Honor.

4 THE COURT: All right. And just so that we're all on the
5 same page, I'm looking at the case of *State v.* -- it's either
6 *Simmons* or *Simmons* (pronounced differently). It's a Court of
7 Appeals decision, and it's at 352 S.C. 342 or 573 S.E.2d 856;
8 it's a 2002 decision of the South Carolina Court of Appeals.
9 And there are any number of cases that our appellate courts
10 have dealt with the motion to sever charges. And regarding
11 the motion to sever charges, the appellate courts have always
12 held that is a matter addressed to the sound discretion of the
13 trial judge. And with that, now, in looking at that, whether
14 or not they should be severed, the Court will look at the
15 offenses charged, if the separate indictments are of the same
16 general nature involving connected transactions closely
17 related in kind, place, and character. If so, the trial court
18 has the power in its discretion to order the indictments to be
19 tried together if the defendant's substantive rights would not
20 be prejudiced. Now, in this matter -- so, it can be. Also,
21 the Court needs to look at whether or not, if they don't arise
22 out of a single chain of circumstances that are provable by
23 the same evidence, that's an argument against them to be
24 deemed tried together. So, I think *State v. Simmons* is a good
25 road map in this particular matter. I do find that those

1 matters should be addressed by the trial judge. Now, I do
2 think it is unfair, honestly, to the state and the defendant
3 for that decision to be made immediately before the matters go
4 to trial. So, when the matters are set for trial and they are
5 set certainly well in advance, then I am placing the burden on
6 the state to make sure that the matter is presented to the
7 trial judge before the call of the case on Monday. So, at
8 least a week before if not longer that the matter is to be
9 heard by the trial judge whether or not these cases will be
10 severed. Because it's not gonna be fair to the state or the
11 defense, because, you know, you're gonna have witnesses on
12 either side that need to be notified. So, the state needs to
13 make sure that this motion is heard prior to at least seven
14 days before the case starts, if not longer. That's the very
15 minimum is a week before the trial, but that's something that,
16 that's set to the discretion of the trial judge.

17 So, Mr. Bolick, I am not going to rule on that motion.
18 I'm going to continue it to the discretion of the trial judge
19 as our appellate cases have set forth. But, I do want it
20 heard at least a week before the trial commences. All right?

21 MR. TERRELL: Your Honor, most -- unless a judge chooses
22 to retain jurisdiction, this may be an issue that comes up
23 because, as Your Honor is well aware, we may think that
24 something's going and we may not get to it. Something else
25 may come up ---

1 THE COURT: Oh, once it's ruled on, then it's ruled on.
2 Okay? If the matter is on a trial docket, if it is in the
3 jurisdiction of that trial judge. And once it's ruled on by
4 that circuit judge -- that's why I'm not ruling on it now,
5 because it could be changed later on. Once it's ruled on,
6 that's it.

7 MR. TERRELL: Yes, sir.

8 THE COURT: Okay? Another circuit judge can't overrule
9 the finding over another circuit judge. So, that's why I'm
10 not ruling on it right now. So, but I -- you know, once the
11 trial judge, prior to -- you know, once it appears on the
12 docket, when it appears on the docket, then -- that's what I'm
13 saying. At least seven days before that Monday, it needs to
14 get heard. And once that trial judge rules on it, one way or
15 another, however it is, that's the ruling of the court and
16 that's what guides the prosecution of those cases from then
17 on.

18 MR. TERRELL: Yes, sir.

19 MR. BOLICK: Thank you, Your Honor.

20 THE COURT: Thank you very much.

21 All right. All right. So, Mr. Bolick, you've had a
22 motion to dismiss for judicial and prosecutorial misconduct,
23 correct?

24 MR. BOLICK: Yes, sir, Your Honor.

25 THE COURT: And it's labeled the same, but it appears

1 that -- and you clocked them in at the same time, but it
2 appears that there were two motions for this; is that right?

3 MR. BOLICK: There is, Your Honor. I have what's called
4 the second subsequent motion where I was able to lay forth my
5 allegations in more specific terms.

6 THE COURT: Okay. Very good. Okay.

7 All right. So, let's hear then the motion to dismiss for
8 judicial and prosecutorial misconduct, and that would include
9 the either the second motion are the additional motion. Okay?

10 MR. BOLICK: Your Honor, I have some problems. I would
11 like to present evidence but ---

12 THE COURT: Okay.

13 MR. BOLICK: --- the persons I make the allegations for,
14 he is a judicial official and I have not been able to subpoena
15 him. Nobody will cooperate in anything else in getting Judge
16 Ohanesian ---

17 THE COURT: Who is it?

18 MR. BOLICK: Judge Ohanesian.

19 THE COURT: All right. Well ---

20 MR. BOLICK: And the reason why, Your Honor, is because
21 when I was arrested for this crime, I was taken to Myrtle
22 Beach jail, I was placed in a cell. I had suffered several --
23 I suffered a fractured femur, which required surgery. I
24 busted both heels, and I blew off the tip of them three
25 fingers all in a very short period. And I became addicted to

1 opiates, Your Honor. When they put me in jail, I started
2 suffering severe opiate withdrawal in the form of diarrhea and
3 vomiting. I remember the morning of the officer opening the
4 door to the cell and saying it's court, Mr. Bolick. And the
5 only thing I could possibly do was because I had my pants down
6 around my knees and with diarrhea and vomiting at the same
7 time, and he slammed the door. Later on, I was carried to
8 South Strand Hospital, then I was placed in the Horry County
9 jail, and I was told that I had refused to go before the
10 judge, that my bond was denied, and if I could have this
11 paperwork, so that you could look at it.

12 THE COURT: All right, sir.

13 MR. BOLICK: And, at that time, the Judge even entered
14 the case not as an unbiased judicial official, but he was the
15 one who recommended that the state charge me with violent
16 crimes, and it is proof right there in his little writing.
17 Not only did he deny me the right to be informed of my
18 charges, the right to my probable cause hearing, but he went
19 above and beyond and appointed counsel to me, counsel from the
20 public defender's office, Your Honor, which I had already been
21 through it with Orrie West and Edward Crisco many times and
22 told them that if they ever entered any one of my cases again,
23 that I would pursue with civil litigation against them. He
24 appointed the public defender's office to -- three times I had
25 already motioned for them never to be able to touch another

1 case of mine. And then, while I laid in jail, and I made
2 discovery motions, the discovery motions I made were ignored
3 because of his appointment of this counsel. My discovery
4 motions were that I wanted the videotapes from the jail and I
5 wanted the officers who said that I refused to go before this
6 judge on that date. I wanted to be able to lay out my
7 allegations and provide the evidence for.

8 THE COURT: All right. Well, what is it that you're
9 asking me to do?

10 MR. BOLICK: Well, Your Honor ---

11 THE COURT: Just for the sake of argument, assuming what
12 you say is true that all that happened, what are you asking me
13 to do?

14 MR. BOLICK: I would like to bring Judge Ohanesian in
15 here, prove that I was never appeared before, that I was never
16 given rights, and I was never notified of the charges against
17 me. I was never notified for my right to a probable cause
18 hearing, and that I was appointed counsel when it was not
19 necessary. He actually violated my Sixth Amendment right, the
20 counsel of my own choosing. I choose to represent myself and
21 have done so for over 20 years, Your Honor.

22 THE COURT: Okay.

23 MR. BOLICK: And the reason I'm saying all this, what it
24 brings down and the way it prejudices me, Your Honor, is the
25 state knew that I had lived at the Palmetto Vista. They knew

1 that is from when I sued the City of Myrtle Beach Police
2 Department priorly, when they came into my house and arrested
3 me, took me to jail, held me in jail 90 days. I lost ever I
4 owned and then they just threw me out, because what I said was
5 true that a man had come in my front door with a baseball bat
6 to attack me and I defended myself. They didn't arrest this
7 man because he was known Myrtle Beach Police informant; they
8 arrested me. And I lost everything I owned, so I sued. So,
9 now, I've made quite a few enemies in the Myrtle Beach Police
10 Department.

11 THE COURT: Okay.

12 MR. BOLICK: All right. Now, when they arrested me from
13 this place -- I'm not married, Your Honor, and I have lived
14 and worked at that hotel for several years, and I had dated
15 several women in that hotel. On the day Officer Ammons
16 arrested me, he was questioning me, Where were you on this
17 date? A young lady by the name of Monique stepped out the
18 door and said, Sir, he was with me all night long. I can
19 verify that. He immediately ended the interrogation or the
20 questioning, took me to jail. And I was held 70 days, 70-some
21 odd days without bond. By the time I was released, by the
22 time I was able to get there, my alibi witnesses are gone.
23 They have relocated. They knew I lived at a hotel. They knew
24 that if I could get out that I could prove where I was, that
25 this was not me. And now my chance at my alibi witnesses are

1 forever gone. So, my chance at a fair trial is forever gone.
2 And not only that, Your Honor, if you would pay close
3 attention to my arrest -- and I'm pretty sure -- I've been in
4 Horry County jail and I've never seen bill of indictments come
5 down this quick. And if you'll look at the bill of
6 indictments and look back to the writ of habeas corpus I found
7 -- filed, the writ of habeas corpus that I was never heard on,
8 that has never been explained why it's still pending in there,
9 Your Honor, but all of a sudden the solicitor runs and gets
10 these true bills of indictments, which by law would disentitle
11 me to a hearing or a -- to the writ of habeas corpus. But, I
12 -- it wasn't fair, it wasn't ethical, and ---

13 THE COURT: And again, my question to you is -- and I
14 appreciate what you're saying. What is it you're asking me to
15 do other than have Judge Ohanesian come here; what is it
16 you're asking me to do?

17 MR. BOLICK: Ask Judge Ohanesian to come here, Your
18 Honor, so that I can question him on the witness stand.

19 THE COURT: If I'm assuming everything you're telling me
20 is true, for what purpose would it serve?

21 MR. BOLICK: Your Honor, that if I was never given the
22 right -- notified of my right to a probable cause hearing,
23 that if I was appointed counsel that which prevented me from
24 filing my own motions for discovery and bringing my own facts
25 to this case, and not what the public defender's office wanted

1 to with the solicitor's office, that that right there, it was
2 the beginning of the end of this fair trial. There is no fair
3 trial now; there never can be one.

4 THE COURT: Is that because you say you can't find
5 witnesses now?

6 MR. BOLICK: Because I cannot find my alibi witnesses. I
7 have not been able to locate them.

8 THE COURT: All right, sir. Have you delivered subpoenas
9 to the sheriff's office to be served on these people?

10 MR. BOLOCK: Sir, I cannot even get their full names now.

11 THE COURT: Okay. Have you served discovery either upon
12 the state or a request before the Court to -- you said they
13 were employees at this hotel, correct?

14 MR. BOLICK: No, sir. They were visitors from out of
15 state.

16 THE COURT: Okay. All right. So, have you tried to
17 secure the records of the hotel?

18 MR. BOLICK: Yes, sir, I have.

19 THE COURT: And how -- what have you done?

20 MR. BOLICK: Unsuccessful. One of the -- one of the
21 ladies ---

22 THE COURT: What did you do?

23 MR. BOLICK: I went and spoke to Cathy James. She runs
24 it and another lady by the name of Brenda Holmes. One of the
25 ladies that I had seen multiple times was never a registered

1 even guest at the hotel, but her name was Monique. That was
2 the lady who stepped out the day Officer Ammons was testing
3 me. There was another lady named Margaret, who I had dated
4 several occasions who I was with just the night before that.

5 THE COURT: Okay. All right.

6 MR. BOLICK: And I can't find these people, Your Honor,
7 and I have tried my best. I have tried diligently; I promise
8 you.

9 THE COURT: I appreciate that. So, you don't think their
10 records were at the hotel?

11 MR. BOLICK: I know -- I worked with Cathy James, and up
12 until this, me and her were on very good terms. But, since my
13 arrest that day, my apartment got robbed, everything that was
14 in there was stolen. I went back and she is scared that I'm
15 gonna pursue litigation against her because she never reported
16 it.

17 THE COURT: My question is, would the hotel have records
18 of where these people live?

19 MR. BOLICK: I don't think so, Your Honor.

20 THE COURT: All right. What's the state's position,
21 please?

22 MR. TERRELL: As to which part of this, Your Honor?

23 THE COURT: All of this. Every argument he's made. Let
24 me hear your argument.

25 MR. TERRELL: Your Honor, I don't think is the

1 appropriate forum to air those grievances. He's been charged;
2 the indictments have been true-billed. We have not -- the
3 state has not kept him from being able to procure his
4 witnesses, to find anybody he needs. We'd ask that these
5 motions be dealt with in the appropriate forum.

6 THE COURT: He said that he's been prevented from having
7 bond at the proper time, from his preliminary hearing, from
8 the -- that ---

9 MR. BOLICK: The right to counsel of my choosing.

10 THE COURT: Well, and I appreciate that, but you've taken
11 care of that, Mr. Bolick.

12 The issue about the state moving forward with the
13 indictments while a motion for habeas corpus is pending, he's
14 made all those arguments. What's your position on all of
15 them?

16 MR. TERRELL: Your Honor, as for bond, I don't know what
17 happened with bond. I know that for various reasons,
18 individuals can forfeit their right to be heard in front of a
19 judge. It's my understanding that he was coming off of -- he
20 was going through severe drug withdrawal and was in no
21 position to be in front of the Court. Beyond that, I have no
22 idea what happened. I don't know the circumstances of that.
23 I've not spoken with Judge Ohanesian. I don't know if that's
24 appropriate for me to do, Your Honor.

25 As far as your right to a preliminary hearing, he's been

1 indicted by a grand jury. The -- rendering any preliminary
2 hearing on this matters moot; the grand jury has acted on
3 those indictments.

4 There was something else.

5 THE COURT: There as a habeas corpus motion pending and
6 in the motion -- I'm assuming you've read his written motion?
7 It claims that the habeas corpus motion was intercepted by
8 agents of the state, that they acted in concert with the clerk
9 of court.

10 MR. TERRELL: Yes, sir, Your Honor. This was -- it -- if
11 memory serves me, the dates coincide with the dates of
12 Hurricane Matthew. He's -- the defendant claims that there
13 was a period of time between when he mailed his motion to the
14 clerk of court's office and when it was actually clocked in by
15 the clerk of court's office. And his claim was something akin
16 to I broke into the clerk of court's office and took that writ
17 of habeas corpus so that it could not be filed. When the fact
18 of the matter is the offices were closed and we weren't even
19 here. I believe that it counts for the delay. As far as what
20 that would do to the dates of the indictments, the first of
21 the indictments were true-billed on October 20th, which would
22 mean that they were prepared and sent ready for the grand
23 jury's report before I had any knowledge of this writ of
24 habeas corpus. Since then, it had -- charges had been true-
25 billed and he has been brought before the Court. He has been

1 given bond. I believe it was Your Honor who granted his
2 request for a bond and let him out. So, I think that handles
3 the writ of habeas corpus, the -- I think counsel for the
4 sheriff's office was here to ensure that that was done with --
5 complied with.

6 MR. BOLICK: Brief rebuttal, Your Honor?

7 THE COURT: Yes, sir, please.

8 MR. BOLICK: Your Honor, if you'll read both motions. I
9 never once alleged that he broke into the clerk's office;
10 that's obscene. It says that in neither -- in neither motion.
11 That is stories that ---

12 THE COURT: You alleged that he intercepted it.

13 MR. BOLICK: I alleged that the clerk, instead of doing
14 her duty as delegated by the law and in notifying the attorney
15 general's office and make sure that I'm before Court within
16 ten days. Instead, because I am sure that they are not used
17 to a writ writer in Horry County jail, that she called this
18 man and said, look, I've got a document entitled writ of
19 habeas corpus and brought it to his attention. And at that
20 time, he informed her to ignore it and run and got the
21 indictments. I didn't allege that he broke into anything,
22 Your Honor. By law, when that clerk received that writ of
23 habeas corpus, she was supposed to contact the attorney
24 general's office. The sheriff had a duty to get me within
25 this Court, Your Honor, within ten days because I lived within

1 -- because I was located within a hundred miles of this
2 courthouse. So, I should've been here. And if I'd have been
3 granted that writ and granted that bond, I could've went and
4 got my witnesses and we could have a fair trial. I might've
5 even had a chance at a probable cause hearing to stop this all
6 now.

7 Your Honor, just to prove to you that I'm being truthful,
8 we sit here and listen to Austin McPherson testify that he
9 never pulled up no photos off the bar -- Facebook Bar & Grille
10 page on Wednesday. If you will please look at that piece of
11 paper she just handed you, Austin McPherson completed perjury
12 here on Wednesday. And if this is the type of thing that I'm
13 going to deal with throughout this trial, Your Honor, there's
14 no way I can have a fair trial. The way it started was evil.

15 THE COURT: Did you subpoena Ms. Melanie Huggins-Ward to
16 come to court today?

17 MR. BOLICK: No, sir; I did not. She is no longer the
18 clerk of court and I don't know where she is.

19 THE COURT: She's across the -- in the next building,
20 working in the treasurer's office.

21 MR. BOLICK: I did not know that.

22 THE COURT: Which is why -- I mean, steps away.

23 MR. BOLICK: Your Honor, I have no friends in the court
24 system.

25 THE COURT: Well, and I appreciate that, but all you have

1 to do is just deliver the proper subpoena paperwork to the
2 sheriff's office.

3 MR. BOLICK: Your Honor, if I ---

4 THE COURT: They know where she is. If you're gonna
5 represent yourself, Mr. Bolick, you assume the duties and
6 responsibilities of an attorney and you are deemed by the
7 Court to know all the rules, rules of procedure, rules of
8 evidence, how things work, what they are to do. You can't
9 claim ignorance of the rules or what things are if you take
10 the following responsibility to represent yourself. You can't
11 fall back on that. All right?

12 MR. BOLICK: I did attempt to subpoena Judge Ohanesian
13 and I was greeted with the threat of arrest of the Myrtle-
14 Beach Police Department.

15 THE COURT: I appreciate that. Did you go through the
16 sheriff's office to have that served?

17 MR. BOLICK: No, sir. I don't have the ---

18 THE COURT: Did you ask the sheriff's office to subpoena
19 Ms. Melanie Huggins-Ward to come to court today to testify
20 about this matter.

21 MR. BOLICK: No, from my understanding, I have to pay
22 them, Your Honor, and I really do not have any funds at this
23 time. If this Court would recognize me as an indigent and
24 give me the opportunity and order the sheriff to ---

25 THE COURT: That motion has not been properly filed with

1 the Court. You have to properly file the respective motion,
2 along with documentation that would prove your indigency
3 status such as using the financial declaration form that is on
4 the clerk of court's website that they use for Family Court,
5 that you swear that these are all your assets and debts and
6 liabilities. You have to file the proper paperwork with the
7 Court to declare such indigency status. You haven't done
8 that. I can't hear it. Again, if you're gonna represent
9 yourself, you've got to follow the rules. I'm gonna make the
10 state follow the rules; you have to follow the rules, too. I
11 can -- I can't give you a break because you're representing
12 yourself, and you're welcome to do so. You've got a
13 constitutional right to do so, glad for you to do so, but that
14 doesn't give you any special status. The Court treats you
15 just like everybody else. You've got to follow the rules of
16 evidence. And I would suggest to you -- I don't know who the
17 trial judge is gonna be, but I would suggest to you that you
18 make sure you read the rules of evidence before you come in to
19 try your case, because the trial judge is gonna expect you to
20 follow the rules of evidence. All right?

21 MR. BOLICK: Yes, sir, Your Honor.

22 THE COURT: Just giving you a heads up on that. You --
23 you know, that it's not my job in any trial to help either
24 side. It's the rule that things be properly presented to the
25 Court. So, you've assumed the responsibility and that's gonna

1 be your duty and responsibility.

2 Now, still being somewhat uncertain of what it is that
3 you're asking -- the relief that you're asking for in this
4 particular matter. Information that has been provided to me
5 so far, I do not find any reason to grant your motion to
6 dismiss for judicial or prosecutorial misconduct. The
7 paperwork from the city judge indicates that the bond was
8 denied. The indication is that they -- the matters were a
9 violent offense because of the -- it looks like the
10 allegations that it occurred at a business at night, but
11 there's no -- reading through the paperwork or the information
12 that you've provided to me that there as any improper actions
13 of city judge in hearing this matter, denying bond, whether or
14 not the public defender's office should be appointed.
15 That has been resolved. You are here representing yourself.
16 As to the issues of unavailability of witnesses, first, we do
17 not have a trial date, so I don't know if the witnesses are
18 gonna be unavailable at trial or not. Secondly, I find that
19 you have not gone through the proper procedures to send out
20 the proper subpoenas or secure the necessary information to
21 have the Court find that the witnesses are unavailable to you.
22 Again, we're not at the trial.

23 As far as any prosecutorial conduct, I do not find if any
24 occurred that has affected the rights of the defendant to a
25 fair trial. The matters have been presented to the Horry

1 County Grand Jury, true-bills were rendered on these three
2 charges, 2016-GS-26-4947, 2016-GS-26-4953, and 2016-GS-26-
3 5081. The 4947 was presented to the Horry County Grand Jury
4 and true-bill rendered on October 20th of 2016. 2016-4953,
5 again, was true-billed by the Horry County Grand Jury on
6 October 20th, 2016. And 2016-5081 was true-billed by the
7 Horry County Grand Jury on November 17th, 2016.

8 The issues of the habeas corpus have been resolved. Mr.
9 Bolick is out on bond. Whether or not there was any prejudice
10 to the defendant cannot be ascertained by the Court at this
11 time. The matter is not for trial. At the time that the
12 matters come up for trial, if witnesses are unavailable, then
13 it may be that certain matters could be addressed to the trial
14 judge at that point in time. But at the present time, based
15 on the information presented, the Court is denying your
16 motions to dismiss for judicial or prosecutorial misconduct as
17 set forth in the two separate motions that you filed in this
18 matter.

19 You had some motions for access to a law library. That
20 was while you were confined. I'm assuming that matter has
21 been resolved since you are no longer confined to the J.
22 Reuben Long Detention Center; would that be correct?

23 MR. BOLICK: Yes, sir.

24 THE COURT: All right, sir.

25 The -- you filed a -- a motion for speedy trial; is that

1 correct?

2 MR. BOLICK: Yes, sir.

3 THE COURT: All right, sir. Be glad to hear from you on
4 that.

5 MR. BOLICK: I withdraw that motion at this time, Your
6 Honor.

7 THE COURT: All right, sir. So, the motion for speedy
8 trial is withdrawn. All right.

9 MR. BOLICK: I did make, Your Honor, if ---

10 THE COURT: Could you hold on one second, please, and
11 I'll get back to you in just one second.

12 I'm sorry. Yes, sir?

13 MR. BOLICK: I did make a motion for transcript, Your
14 Honor, and I would like the motion for the transcript from
15 Wednesday as I passed a piece of paper to you concerning Mr.
16 McPherson's report, the officer who testified the other day.
17 He plainly went on Facebook and got my picture and passed it
18 around, not as he testified.

19 THE COURT: All right. Now, if you want a transcript, as
20 you are sitting here today, as to decision of the case here
21 today, if you want a transcript, there's a procedure to that
22 that the state has where you have to notify the court reporter
23 in writing and request it. They can charge you for that.
24 Now, and we've addressed your issue about indigent status
25 already.

1 MR. BOLICK: I am indigent.

2 THE COURT: And that may well -- and I appreciate that,
3 but again, as I told you, that matter is not before the Court
4 because you haven't filed the proper paperwork, you haven't
5 filed the proper information attached to your motion. As I
6 suggested, there is a financial declaration form in the clerk
7 of court's database for such as they use for Family Court
8 where you fill out all your assets and debts. You can use
9 that, but you've got to prove your indigency status. You make
10 that motion, you direct that to the administrative judge,
11 Judge Culbertson, and he'll make a decision as to whether or
12 not to approve your indigency status. And if he does so, then
13 you can forward that on to the court reporter with your
14 written request for the transcript. But, until you resolve
15 that, the court reporter is not going to provide, even though
16 you make the proper request in writing. And you -- there are
17 certain rules that the State of South Carolina has or the
18 written rules set forth how you make these requests. And,
19 again, you know, you've got to figure that out. You know,
20 you're representing yourself, you've got to figure that out,
21 but there are written rules to tell you how to do that. But,
22 if you're not declared indigent, then the court reporter has
23 no duty to deliver a transcript to you without a proper
24 payment. So, you got to -- you understand that?

25 MR. BOLICK: Yes. If I may, though, Your Honor, Judge

1 Ohanesian declared me indigent when he appointed the public
2 defender's office back in 2016.

3 THE COURT: He declared that you were eligible, eligible
4 for appointment; that is not a declaration of indigency
5 through the circuit court. A municipal judge cannot govern
6 the status of a general sessions case. He declared that you
7 were -- that you had the ability to secure representation from
8 the public defender's office. Okay? So, you do what you deem
9 necessary in those regards but, you know, there's a proper way
10 to do things and you're gonna have to follow the rules of our
11 court.

12 MR. BOLICK: Your Honor, your rulings today will not
13 create a procedural bar for me to file a renewed motion to
14 dismiss for prosecutorial ---

15 THE COURT: No, sir. No, sir.

16 MR. BOLICK: Thank you.

17 THE COURT: And I said, that's why I based it upon what
18 was presented to me here today. It was denied based on what's
19 presented to me here today. And I did say if there -- because
20 we're not at trial. When it comes to trial and there is --
21 there are some facts that now you're at trial and you have
22 certain facts that are then available, you can present those
23 to the trial judge at that point in time. But, based on the
24 information today, I'm denying your motion. You're right. It
25 does not bar you from doing it based upon the available facts

1 at the time of trial. All right?

2 You presented to me a document. Deputy, would you give
3 that back to Mr. Bolick because that's a part of his file.

4 All right, sir.

5 And the magistrate -- did you give me these?

6 MR. BOLICK: Yes, sir.

7 THE COURT: Okay. Well, he needs to get these back, too.
8 I just want to make sure you've got back all your documents.

9 All right. So, does that take care of the motions -- it
10 looks like on the clerk of court's form that I've dealt with
11 the motions that we had.

12 MR. TERRELL: Your Honor, there's a motion to compel on
13 here as well.

14 THE COURT: Motion to compel, okay; I'm sorry. I missed
15 that. All right.

16 Is that your motion, sir, motion to compel?

17 MR. BOLICK: Yes, it was. At the time ---

18 THE COURT: All right, sir.

19 MR. BOLICK: At the time, the state has disclosed some
20 discovery but I'm unsure, and I would really like for them to
21 clarify, Your Honor, that I did give the DNA swab. I would
22 like for them to delineate with specific clarity what they are
23 testing my DNA against, Your Honor, so that it can't come up
24 in some other place or on other evidence that wasn't evidence
25 at this time.

1 THE COURT: It was a -- okay. So, Solicitor, and I think
2 we covered this the other day, but if you would state -- the
3 DNA swab that they took this morning pertains to which
4 particular case?

5 MR. TERRELL: Your Honor, that is -- I'm sorry --
6 indictment 4947 ---

7 THE COURT: Is that Giff's Liquors?

8 MR. TERRELL: I believe so; yes, sir.

9 THE COURT: All right. So, you have 2016-GS-26-4947, the
10 indictment alleges that Theodore Jerry Bolick did in Horry
11 County on or about August 27, 2016 enter without consent and
12 with the intent to commit a crime therein Giff's, G-I- F-F-S,
13 Liquors, a building located at 1490 South Kings Highway within
14 the city limits of Myrtle Beach, and the defendant, Theodore
15 Jerry Bolick, did enter the building in the nighttime in
16 violation of Section 16-11-312, subsection (B), South Carolina
17 Code of Laws, 1976 as amended. So, that is the case that the
18 swab, DNA swab was taken to prepare evidence in that
19 particular case. Is that correct, Solicitor?

20 MR. TERRELL: Yes, sir, Your Honor.

21 THE COURT: All right. Does that answer your question?

22 MR. BOLICK: No, Your Honor. I want to know ---

23 THE COURT: All right, sir. I didn't understand you.

24 MR. BOLICK: I want to know what evidence they have that
25 they are comparing my DNA with other than this glove.

1 THE COURT: All I can recall was from the hearing is they
2 have DNA from the glove that they want to compare with a known
3 standard. Known standard being the swab that they took from
4 you. So, the DNA that -- that's what I heard at the hearing.
5 Is that -- is there something different than that, Solicitor?

6 MR. TERRELL: No, sir, Your Honor; that's correct.
7 Basically, there was DNA in the glove that matched what they
8 have in the system as Theodore Jerry Bolick, but to be able to
9 confirm that the DNA did come from Theodore Jerry Bolick they
10 need a known standard.

11 THE COURT: A known standard, and the known standard is
12 the swab that they took from you today to compare -- the known
13 standard, the swab they took from you today to the DNA that
14 they found with the glove and then issue a written report
15 based on that. That's what I understood the officer to
16 testify and confirmed by the solicitor here today. All right.
17 So, does that answer the question?

18 MR. BOLICK: Yes. Yes, sir.

19 THE COURT: Very good.

20 MR. TERRELL: Your Honor, I believe that was separate
21 from the motion to compel. I think ---

22 THE COURT: I'm sorry. Is there something else? Let me
23 look again. Okay, what -- was there something else in the
24 motion to compel?

25 MR. TERRELL: Your Honor, I don't believe a motion as far

1 as that's concerned was ever filed. There's an outstanding
2 motion to compel discovery, and I'm not sure what the
3 defendant is asking.

4 THE COURT: Okay. Well, let me -- when was that motion
5 filed, Mr. Bolick?

6 MR. BOLICK: Your Honor, if I'm correct, I was still
7 incarcerated, and I was having problems getting the public
8 defender to remove himself from my case.

9 THE COURT: Okay.

10 MR. BOLICK: And I had filed my own motions for discovery
11 and the state had ignored them, but they did later on disclose
12 to me discovery as filed for by the public defender's office.
13 I had specifically asked and stated *Kyles v. Whitley* that I
14 wanted the videotapes from the Myrtle Beach jail, that I had
15 never been before Judge Ohanesian, and that his statement that
16 I was before him and that I'd applied for counsel and
17 everything, I wanted to be able to prove that false with that
18 evidence.

19 THE COURT: So, that was the purpose of the motion to
20 compel was that video evidence?

21 MR. BOLICK: Yes, sir.

22 THE COURT: Back on that timeframe.

23 MR. BOLICK: Yes, sir.

24 THE COURT: What's the state's position to that?

25 MR. TERRELL: A couple of things, Your Honor, the state

1 is not in possession or does the state have access to those
2 videos or any videos along those lines that the defendant is
3 requesting. We're required to turn over to the defendant
4 matters pertaining to the prosecution of these charges and we
5 just don't have that.

6 THE COURT: Well, let's just short circuit this. I'm
7 directing you to communicate with the officials of the City of
8 Myrtle Beach to discover whether or not these videos exist at
9 this point in time. If they so exist, they will make copies
10 of them and deliver them to you after which you will deliver
11 them to Mr. Bolick. If they are not in existence, someone
12 from the City of Myrtle Beach with the proper authority will
13 set that forth in writing and will send that to you and you'll
14 disclose that to Mr. Bolick. That shall be accomplished
15 within 20 days of today's date. All right?

16 MR. TERRELL: Just so we're clear, you want myself to ---

17 THE COURT: Yes, sir. You are going to communicate with
18 the officials of City of Myrtle Beach and tell them that the
19 Court has ordered them to search their records and see if
20 those video tapes exist, if they exist, they shall deliver
21 them to you, a copy of them to you in whatever means is
22 necessary to get a copy of it. A copy shall be delivered to
23 you. After that, get a copy to Mr. Bolick. If they do not
24 exist, a person in authority, keeper of the records, chief of
25 police, I don't care who it is, shall certify in writing that

1 they do not exist and the reasons why they do not exist.

2 MR. BOLICK: Thank you.

3 THE COURT: All this shall be accomplished within 20 days
4 of today's date. When you get that information, whatever it
5 is, you'll send that on to the defendant.

6 MR. TERRELL: Yes, sir, Your Honor.

7 THE COURT: All right?

8 MR. BOLICK: Thank you, Your Honor.

9 THE COURT: Thank you very much.

10 Any other outstanding motions that we are aware of at
11 this point in time?

12 MR. TERRELL: Not from the state, Your Honor.

13 MR. BOLICK: Not from the defendant, Your Honor.

14 THE COURT: All right. Thank you very much.

15 Hold on one second.

16 What is -- and this is on a question that I have -- what
17 is the defendant's prior record, if any, that -- and
18 specifically as to either property crimes or prior burglaries?

19 MR. TERRELL: Your Honor, substantial. 1981, breaking
20 and entering automobiles, larceny; 1982, larceny, B&E and
21 larceny; 1983, forgery, escape from a county farm; 1984,
22 breaking and entering, larceny; 1991, assault with a deadly
23 weapon with intent to kill and inflict serious injury; 2003,
24 possession of cocaine and petit larceny; 2004, breaking and
25 entering a vending machine and assault on a court official ---

1 MR. BOLICK: Objection, Your Honor.

2 THE COURT: I appreciate that. I've asked the state for
3 some information, and I'll tell you the reason why, and it may
4 or may not be of issue, you know, whether I should be doing
5 this or not. Regarding your motion to sever the charges, Mr.
6 Bolick, I would suggest that you look at your prior record ---

7 MR. BOLICK: Yes, sir.

8 THE COURT: --- whether or not, if the state severs those
9 charges and they decide to try them separately and they -- if
10 they secure convictions of those, what jeopardy that might
11 give you regarding on a subsequent burglary ---

12 MR. BOLICK: Yes. Your Honor, if I ---

13 THE COURT: --- burglary first, it would subject you to
14 life in prison without the possibility of parole. So, I would
15 just suggest that to you. You need to do what you need to do
16 to represent yourself. I would suggest that you need to do
17 some research about your prior record; your motion to sever,
18 what impact -- look at what entails or what can be charged for
19 burglary first and what that might mean if you go forward with
20 the motions to sever if the state decides to try you
21 separately. If they convict you on one, and then they convict
22 you on another, then what that might mean regarding burglary
23 first and the potential sentence that you could expose
24 yourself to. All right?

25 MR. BOLICK: The reason that, the reason ---

1 THE COURT: You can take that as unsolicited comment ---

2 MR. BOLICK: I appreciate it.

3 THE COURT: You can look at it, whatever you want to do.
4 Okay?

5 MR. BOLICK: I appreciate it.

6 THE COURT: All right.

7 MR. BOLICK: The reason I objected, Your Honor, is
8 because I am fairly certain that since I was about the age of
9 18 or 19, that I haven't stolen anything that I can recollect,
10 nor have I been charged and ---

11 THE COURT: And so, what -- you know, you just need to --
12 all I'm suggesting to you is you look into all those things.
13 Okay? That would be something an attorney would be doing, so
14 I'm suggesting that you ought to do it. Okay?

15 MR. BOLICK: Your Honor, I represented my ---

16 THE COURT: Thank you very much.

17 MR. TERRELL: May I approach, Your Honor?

18 THE COURT: Yes, sir. What is that?

19 MR. TERRELL: The Form IVs from ---

20 THE COURT: Well, we did some, so we'll prepare them and
21 see. But, now, just so that you make sure -- okay, your
22 address, Mr. Bolick, I know the clerk's office must know what
23 it is, but let's -- we'll put it on the Form IV because the
24 clerk's office has got to send you a copy of these Form IVs
25 that I've signed today that depicts how the motions were

1 resolved. So, and we're not gonna count on my handwriting.
2 Please tell us what your address is that you receive mail at?

3 MR. TERRELL: 2600 South Ocean Boulevard, Myrtle Beach,
4 South Carolina, 29577.

5 THE COURT: So, that's 2600 ---

6 MR. BOLICK: Yes, sir.

7 THE COURT: South Ocean Boulevard?

8 MR. BOLICK: Yes, sir.

9 THE COURT: In Myrtle Beach?

10 MR. BOLICK: Yes, sir.

11 THE COURT: Okay. That's 295 ---

12 MR. BOLICK: -- 77.

13 THE COURT: --- 77. All right. Very good, sir. We'll
14 put that on the forms so that the clerk's office, I'm positive
15 they have the address, but we'll just make sure so that they
16 send you copies of these form orders. Okay?

17 MR. TERRELL: Your Honor, there should be a room number
18 associated with that.

19 THE COURT: Is there a room number?

20 MR. BOLICK: No, sir.

21 THE COURT: Very good. Thank you very much.

22 All right? Thank y'all.

23 ADJOURNED.

24

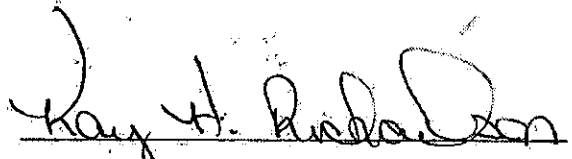
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Theodore Jerry Bolick, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on May 18, 2018, as reported by Dixie C. Eubank.

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



Kay H. Richardson
Official Court Reporter

October 7, 2021.