

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

\_\_\_\_\_  
JOHNNY RAY WILKINS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001231

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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**RECEIVED**

**Apr 18 2023**

S.C. SUPREME COURT

## INDEX

|                                                                          |     |
|--------------------------------------------------------------------------|-----|
| INDEX .....                                                              | i   |
| TRANSCRIPT OF TRIAL HELD DATED MARCH 9-10, 2008 .....                    | 1   |
| APPLICATION FOR POST-CONVICTION RELIEF .....                             | 125 |
| RETURN AND MOTION TO DISMISS .....                                       | 132 |
| CONDITIONAL ORDER OF DISMISSAL .....                                     | 140 |
| REPLY TO CONDITIONAL ORDER OF DISMISSAL .....                            | 148 |
| TRANSCRIPT OF HEARING ON MOTION TO DISMISS HELD JUNE 3, 2021 .....       | 149 |
| TRANSCRIPT OF EVIDENTIARY HEARING HELD APRIL 20, 2022 .....              | 160 |
| ORDER OF DISMISSAL .....                                                 | 184 |
| INDICTMENT .....                                                         | 191 |
| SENTENCE SHEET .....                                                     | 193 |
| COURT’S EXHIBIT NO. 1 (AFFIDAVIT OF SERVICE; NOTICE OF LIFE SENTENCE) .. | 194 |

1 STATE OF SOUTH CAROLINA )  
2 COUNTY OF SPARTANBURG ) IN THE COURT OF GENERAL SESSIONS

3 The State, )  
4 ) TRANSCRIPT OF RECORD  
5 Johnny Ray Wilkins, ) 2008-GS-42-1183  
6 Defendant. ) March 9 - 10, 2008  
7 ) Spartanburg, South Carolina  
8  
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE; JUDGE; and a jury  
12  
13

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

15 BARRY BARNETTE, ESQUIRE  
16 Attorney for the State

17 TIMOTHY RAY, ESQUIRE  
18 Attorney for the Defendant  
19  
20

21 Linda D. Moffitt  
22 Circuit Court Reporter  
23  
24  
25

|    |                                      |             |
|----|--------------------------------------|-------------|
| 1  | <u>INDEX</u>                         |             |
| 2  | <u>WITNESSES</u>                     | <u>PAGE</u> |
| 3  | JAMIE McABEE (SW)                    |             |
| 4  | Direct examination by Mr. Barnette   | 38          |
| 5  | Cross-examination by Mr. Ray         | 42          |
| 6  | Redirect examination by Mr. Barnette | 44          |
| 7  | ROBERT BENSON (SW)                   |             |
| 8  | Direct examination by Mr. Barnette   | 45          |
| 9  | Cross-examination by Mr. Ray         | 53          |
| 10 | SHAWN MICHAEL PLOUNT (SW)            |             |
| 11 | Direct examination by Mr. Barnette   | 62          |
| 12 | Cross-examination by Mr. Ray         | 67          |
| 13 | Redirect examination by Mr. Barnette | 69          |
| 14 | JAMES RHODES (SW)                    |             |
| 15 | Direct examination by Mr. Barnette   | 69          |
| 16 | Cross-examination by Mr. Ray         | 74          |
| 17 | KIMBERLY ASHLEY (SW)                 |             |
| 18 | Direct examination by Mr. Barnette   | 74          |
| 19 | BRIAN SNEED (SW)                     |             |
| 20 | Direct examination by Mr. Barnette   | 78          |
| 21 |                                      |             |
| 22 |                                      |             |
| 23 |                                      |             |
| 24 |                                      |             |
| 25 |                                      |             |

|    |                    |     |
|----|--------------------|-----|
| 1  | Jury qualification | 6   |
| 2  | Jury sworn         | 22  |
| 3  | Opening statements | 32  |
| 4  | Closing arguments  | 87  |
| 5  | Jury charge        | 96  |
| 6  | Verdict            | 116 |
| 7  | Sentence           | 119 |
| 8  | Certificate        | 124 |
| 9  |                    |     |
| 10 |                    |     |
| 11 |                    |     |
| 12 |                    |     |
| 13 |                    |     |
| 14 |                    |     |
| 15 |                    |     |
| 16 |                    |     |
| 17 |                    |     |
| 18 |                    |     |
| 19 |                    |     |
| 20 |                    |     |
| 21 |                    |     |
| 22 |                    |     |
| 23 |                    |     |
| 24 |                    |     |
| 25 |                    |     |

|    |                 |                                    |            |            |
|----|-----------------|------------------------------------|------------|------------|
| 1  | <u>EXHIBITS</u> |                                    |            |            |
| 2  | <u>NO.</u>      | <u>DESCRIPTION</u>                 | <u>ID.</u> | <u>EV.</u> |
| 3  | S-1             | Statement of the Defendant (C. D.) | 6          |            |
| 4  | S-2             | Written waiver                     | 6          |            |
| 5  | S-3             | Video                              | 6          | 39         |
| 6  | S-4             | Clothes                            | 6          | 76         |
| 7  | S-5             | Photograph                         | 6          |            |
| 8  | S-6             | Photograph                         | 6          |            |
| 9  | S-7             | Enterprise Car lease               | 6          | 79         |
| 10 | S-8             | Clothing                           | 66         | 66         |
| 11 |                 |                                    |            |            |
| 12 |                 |                                    |            |            |
| 13 |                 |                                    |            |            |
| 14 |                 |                                    |            |            |
| 15 |                 |                                    |            |            |
| 16 |                 |                                    |            |            |
| 17 |                 |                                    |            |            |
| 18 |                 |                                    |            |            |
| 19 |                 |                                    |            |            |
| 20 |                 |                                    |            |            |
| 21 |                 |                                    |            |            |
| 22 |                 |                                    |            |            |
| 23 |                 |                                    |            |            |
| 24 |                 |                                    |            |            |
| 25 |                 |                                    |            |            |

|    |                 |                                 |                       |
|----|-----------------|---------------------------------|-----------------------|
| 1  | <u>EXHIBITS</u> |                                 |                       |
| 2  | <u>NO.</u>      | <u>DESCRIPTION</u>              | <u>ID.</u> <u>EV.</u> |
| 3  | C-1             | Affidavit of service; notice    | 119                   |
| 4  | C-2             | Copy of Indictment 97-GS-11-367 | 119                   |
| 5  | C-3             | Copy of Indictment 97-GS-11-366 | 119                   |
| 6  |                 |                                 |                       |
| 7  |                 |                                 |                       |
| 8  |                 |                                 |                       |
| 9  |                 |                                 |                       |
| 10 |                 |                                 |                       |
| 11 |                 |                                 |                       |
| 12 |                 |                                 |                       |
| 13 |                 |                                 |                       |
| 14 |                 |                                 |                       |
| 15 |                 |                                 |                       |
| 16 |                 |                                 |                       |
| 17 |                 |                                 |                       |
| 18 |                 |                                 |                       |
| 19 |                 |                                 |                       |
| 20 |                 |                                 |                       |
| 21 |                 |                                 |                       |
| 22 |                 |                                 |                       |
| 23 |                 |                                 |                       |
| 24 |                 |                                 |                       |
| 25 |                 |                                 |                       |

1           (Proceedings March 9, 2009)  
2           (Taped statement marked State's Exhibit No. 1 for  
3 Identification; written waiver marked State's Exhibit No. 2  
4 for Identification; video marked State's Exhibit No. 3 for  
5 Identification; clothing marked State's Exhibit No. 4 for  
6 Identification; photograph marked State's Exhibit No. 5 for  
7 Identification; photograph marked State's Exhibit No. 6 for  
8 Identification; Enterprise lease marked State's Exhibit No.  
9 7 for Identification.)

10           THE COURT: All right. Ladies and gentlemen, we are  
11 ready to begin with jury selection in the first case that's  
12 going to require some of your participation. And the title  
13 of the case is the State vs. Johnny Ray Wilkins.

14           Mr. Wilkins has been accused by the state through the  
15 prosecutor of having committed the crime of armed robbery.  
16 And the state alleges by way of a document called an  
17 indictment that Mr. Wilkins did here in Spartanburg County  
18 on or about January the 13th of 2008 while armed with a  
19 deadly weapon, did take, steal and carry away from the  
20 person or presence of Jamie McAbee and the Li'L Cricket  
21 store located on Highway 221 in Mayo by the use of force  
22 and/or intimidation certain good or monies. And they  
23 allege it was, in fact, money that was taken.

24           Now, as to those allegations and to that charge the  
25 defendant has entered a plea of not guilty. And that plea

1 of not guilty therefore places upon the state the burden of  
2 proving the allegations that are set forth in the  
3 indictment, the burden of proving each of the essential  
4 elements of the crime alleged in the indictment; and  
5 therefore the burden is upon the state to establish the  
6 defendant's guilt to the satisfaction of 12 jurors beyond a  
7 reasonable doubt before any such verdict could be returned.

8       So we're going to be selecting 13 of you. There will  
9 be 12 primary jurors and one additional juror that will  
10 serve as an alternate. And by way of your participation  
11 you're simply called upon to listen to the testimony and  
12 consider any other evidence introduced during the trial of  
13 the case.

14       From that evidence you'll determine what you believe  
15 to be the facts. That is you will determine what, if  
16 anything, you believe occurred back on January the 13th of  
17 2008 as it relates to these allegations.

18       Once you determine those facts, you will then apply  
19 the law that I will have provided you. And you will  
20 determine whether or not the defendant's guilt has been  
21 proven beyond a reasonable doubt. And if it has, then your  
22 verdict would be guilty. And if it has not, then your  
23 verdict would be not guilty.

24       Now, I'm going to ask you some questions. And the  
25 purpose of the questions is to determine whether or not

1 there's some reason why any one of you jurors should not be  
2 selected to participate in the trial of this particular  
3 case.

4 And so as these questions are asked should you need to  
5 respond to them, I'm going to ask that you please stand.  
6 And I will address those matters with you individually in  
7 the event that should become necessary.

8 Now, first of all, as I have told you, the person who  
9 is accused of the crime of armed robbery is Johnny Ray  
10 Wilkins.

11 Mr. Wilkins, if you will, please stand and face the  
12 jury panel so that they may see who you are.

13 (Whereupon, the defendant stood.)

14 THE COURT: All right. Thank you. Be seated.

15 Seated with Mr. Wilkins at the defense table is Tim  
16 Ray. Tim Ray is his lawyer. He'll be assisting him in the  
17 trial of this case.

18 (Whereupon, Mr. Ray stood.)

19 THE COURT: The person who is alleged to have been the  
20 victim of this armed robbery is Jamie McAbee.

21 Ms. McAbee, if you will, please stand and face the  
22 jury panel.

23 (Whereupon, the victim stood.)

24 THE COURT: And at the time of the event in question  
25 she was employed and working at the Li'L Cricket store on

1 Highway 221 in Mayo, South Carolina.

2 Presenting the case on behalf of the state is Barry  
3 Barnette, the Deputy Solicitor for the 7th Judicial  
4 Circuit.

5 (Whereupon, Mr. Barnette stood.)

6 THE COURT: Now, I'm going to ask you some questions.  
7 And if you can respond to the question where you are,  
8 that's fine. If you don't want to respond to the question  
9 where you are and you'd rather come down here, that's fine  
10 too. I'll leave that up to you. But I need to find out if  
11 any member of the jury panel or any member of your  
12 immediate family has ever been the victim of or has ever  
13 been accused of the commission of a violent crime.

14 Now, let me define an immediate family member as a  
15 parent, a spouse, a child or a sibling -- a parent, spouse,  
16 child or sibling. I need to know if you or any immediate  
17 family member has ever been the victim of or been accused  
18 of the commission of a violent crime.

19 And I'm going to define violent crimes as those  
20 including murder, manslaughter, burglary, armed robbery,  
21 criminal sexual conduct, criminal domestic violence of a  
22 high and aggravated nature, assault and battery with intent  
23 to kill or any other similar type of an offense.

24 All right. If that applies to any juror, I would ask  
25 that you please stand.

1 All right. And I've got four standing. I'm going to  
2 start to my right, and I will work to my left.

3 Ma'am, if you will, please, give me your name and your  
4 juror number. And then you can respond to the question.  
5 And, as I say, if you'd rather answer the question down  
6 here at the bench, you may have that choice also.

7 Yes, ma'am.

8 JUROR NO. 72: Esther Hendricks, No. 72. And my son  
9 on two separate occasions while working at two separate  
10 fast food restaurants was a victim of armed robbery.

11 THE COURT: Okay. And was somebody apprehended and  
12 have those cases been ended or disposed of?

13 JUROR NO. 72: Yes, sir.

14 THE COURT: Okay. Is there anything about that  
15 circumstance or that situation or that experience that  
16 would affect your judgment in this case or prevent you from  
17 being able to be fair and impartial?

18 JUROR NO. 72: No, sir.

19 THE COURT: All right. Thank you, ma'am. You may be  
20 seated.

21 Yes, sir.

22 JUROR NO. 40: Mark Lee, Juror No. 40 or Juror 95.  
23 When I was a young kid my dad was mugged and hit over the  
24 head and robbed at gunpoint.

25 THE COURT: All right. And is there anything about

1 that experience or that event that would affect your  
2 ability to be fair and impartial in this case?

3 JUROR NO. 40: No, sir.

4 THE COURT: Okay. Thank you. Be seated.

5 Yes, ma'am.

6 JUROR NO. 7: Jean Black, No. 7. My son has domestic  
7 violence against him twice, but it was closed out.

8 THE COURT: And is there anything about that that  
9 would affect your judgment in this case?

10 JUROR NO. 7: No.

11 THE COURT: Thank you. Be seated.

12 Yes, sir.

13 JUROR NO. 97: Rickie Littlejohn, No. 97. My mom's  
14 house was burglarized, broken in on. And they, you know,  
15 got everything.

16 THE COURT: All right. Your mother's home was  
17 burglarized. And what else?

18 JUROR NO. 97: They caught the guy and everything.

19 THE COURT: Okay. Is there anything about that  
20 experience or that event that would affect your judgment in  
21 this case?

22 JUROR NO. 97: No, sir.

23 THE COURT: You could be fair to both sides?

24 JUROR NO. 97: Yes, sir.

25 THE COURT: Okay. Thank you. Be seated.

1       Anyone else need to respond to that question?

2       (No response.)

3       THE COURT: Is there any member of the jury panel who  
4 is a member of or you contribute time or money to any types  
5 of organizations that might be characterized as law  
6 enforcement support organizations or victims' advocacy type  
7 groups?

8       Those might include Mothers Against Drunk Drivers,  
9 Citizens Against Violent Crime, the honorary troopers'  
10 association or, excuse me, the troopers' association, the  
11 honorary sheriffs' association, the fraternal order of  
12 police, any neighborhood watch group or any other similar  
13 type of organization.

14       I need to know if you belong to any such or you  
15 contribute time or money to any types of those  
16 organizations. If so, please stand.

17       All right. I'll start over here with you, ma'am. If  
18 you will, give me your name and your juror number, please.  
19 And then tell me how that question relates to you.

20       JUROR NO. 3: I'm Janie Babb, No. 3, volunteer of Safe  
21 Homes, Spartanburg.

22       THE COURT: Okay. Thank you, ma'am. Be seated.

23       Yes, sir.

24       JUROR NO. 165: I contribute to the sheriff's thing.

25       THE COURT: And your name and number?

1 JUROR NO. 165: 165, Edward Wells.

2 THE COURT: All right. Thank you.

3 Yes, sir.

4 JUROR NO. 146: My name is Joe Stavick, 146. And I'm  
5 a member of the N. R. A.

6 THE COURT: All right. Thank you, sir.

7 Yes, sir.

8 JUROR NO. 112: 112, Tom Nederostek. Do business with  
9 the sheriff's association.

10 THE COURT: Okay. Thank you. Be seated.

11 Is there any member of the jury panel who is connected  
12 by blood or marriage to any person who is now or has ever  
13 been employed as a law enforcement officer?

14 I need to know if you have been also employed at any  
15 time, employed as a law enforcement officer, you or an  
16 immediate family member. And that would include the  
17 sheriff's department or city, town or municipal law  
18 enforcement agency, the law enforcement division, working  
19 at a corrections facility or county detention facility or a  
20 military police officer. Any person employed as a law  
21 enforcement officer.

22 Yes, ma'am.

23 JUROR NO. 138: Megan Skinner, Juror 138. My father.  
24 He worked for the corrections facility. And he is a South  
25 Carolina firearms instructor.

1 THE COURT: Okay. Thank you, ma'am.

2 Yes, sir.

3 JUROR NO. 165: My live-in girlfriend's daughter works  
4 for the county and her husband works for SLED. I don't  
5 know if that counts or not.

6 THE COURT: That's all right. And you are Juror 65?

7 JUROR NO. 165: 165, Ed Wells.

8 THE COURT: All right. Thank you. Be seated.

9 Yes, sir.

10 JUROR NO. 55: Randy Fox, Juror 55. I was employed  
11 with Spartanburg County Detention Facility.

12 THE COURT: All right. Thank you, sir.

13 Yes, ma'am.

14 JUROR NO. 104: Juror 104, Debbi McDowell. My brother  
15 works for Spartanburg County.

16 THE COURT: Spartanburg County Sheriff's Department.

17 JUROR NO. 104: Yes, sir.

18 THE COURT: And his name is what?

19 JUROR NO. 104: Danny Shields.

20 THE COURT: Okay. Thank you.

21 That was Juror 104.

22 I identified the defendant and the person alleged to  
23 be the victim and the lawyers involved in the case.

24 Does any member of the jury panel know any of those  
25 persons or any members of their respective families? If

1 so, please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel heard,  
4 seen or read anything about this particular case, or have  
5 you received any information about the case from any  
6 source? If so, please stand.

7 (No response.)

8 THE COURT: Is there anything about the nature of the  
9 case itself, that is what has been alleged, that would  
10 prevent any juror from being able to be fair and impartial?  
11 If so, please stand.

12 (No response.)

13 THE COURT: Has any member of the jury panel already  
14 formed an opinion or made up your mind as to what you think  
15 the ultimate outcome in this case ought to be based upon  
16 what you've heard up until this point or based upon any  
17 other consideration? I just need to know simply whether or  
18 not you've already made up your mind. If so, please stand.

19 (No response.)

20 THE COURT: Does any member of the jury panel know of  
21 any reason whatsoever why you believe you could not be fair  
22 and impartial if you were called upon to serve as a juror  
23 in this case? If so, please stand.

24 (No response.)

25 THE COURT: Any other questions requested by the

1 state?

2 MR. BARNETTE: Your Honor, if I could just request No.  
3 7 and No. 8.

4 THE COURT: All right. Has any member of the jury  
5 panel or any member of your immediate family ever been  
6 involved in a case that was being prosecuted by Mr.  
7 Barnette and/or any other prosecutor in the 7th Judicial  
8 Circuit Solicitor's Office? If so, please stand.

9 All right. Your name, please, sir.

10 JUROR NO. 38: Name is Wayne Culp, Juror No. 38. And  
11 my father was killed by a drunk driver, and the driver was  
12 prosecuted by the 7th Circuit.

13 THE COURT: And about how long ago was that?

14 JUROR NO. 38: 1989.

15 THE COURT: All right. And is there anything about  
16 that event or that experience that would affect your  
17 judgment in this case?

18 JUROR NO. 38: Not a thing.

19 THE COURT: Okay. Thank you. Be seated.

20 Anyone else?

21 (No response.)

22 THE COURT: You should have the information on No. 8.  
23 I'm going to decline to ask that one.

24 MR. BARNETTE: Thank you, Your Honor.

25 THE COURT: All right. Any other questions requested

1 by the defense?

2 MR. RAY: No, sir, Your Honor.

3 THE COURT: All right. Draw us a jury, please, ma'am.

4 (Whereupon, a jury was impanelled.)

5 THE COURT: All right. Those who have been selected,

6 I'll ask you to please go with a bailiff to a jury room.

7 I'll bring you back in just a few minutes to begin with the

8 trial. And it will just be -- we'll probably break for

9 lunch at 1:00. So please go to your jury room right now,

10 and I'll bring you back in just a moment.

11 (The following takes place outside the presence of the  
12 jury.)

13 THE COURT: Are there any matters that need to be  
14 addressed regarding jury selection by the state?

15 MR. BARNETTE: None from the state, Your Honor.

16 THE COURT: By the defendant?

17 MR. RAY: No, sir, Your Honor.

18 (Whereupon, the remaining members of the jury venire  
19 were excused.)

20 THE COURT: Have the record reflect that Juror No. 17  
21 that was drawn was excused by the Court based upon a  
22 disqualifying conviction for failing to stop. And upon  
23 inquiry the juror agreed that he had such a conviction. He  
24 misunderstood the maximum sentence that could have been  
25 imposed. But, nevertheless, it is a disqualifying

1 conviction, and therefore he was excused.

2 All right. Any other matters we need to address  
3 before the jury is brought back in?

4 MR. BARNETTE: Your Honor, I have State's Exhibits 1  
5 and 2, are premarked. I don't know if it will become  
6 relevant or not.

7 No. 1 is the, I believe the, tape or the C. D.  
8 statement given by the defendant in this case.

9 State's Exhibit 2 for I. D. purposes is a written  
10 waiver that was taken by Investigator Mark Williams of the  
11 sheriff's department, Investigator Williams.

12 At this point I think they're contesting it. I don't  
13 know if I'm going to play it at this point. It depends on  
14 how the evidence develops in the trial. I don't think  
15 they're contesting the voluntariness of it at this point  
16 though.

17 MR. RAY: Yes, Your Honor.

18 It was my understanding that the state is not going to  
19 present that evidence or any type of Lyle evidence. There  
20 will be no need for a motion or a hearing on that at the  
21 time unless the state were to change its position.

22 THE COURT: Well, we're not going to get to the  
23 testimony before lunch. So I'll let y'all make that  
24 determination during the lunch break. Then when we come  
25 back you can let me know if there's been any change in your

1 position in that respect.

2 MR. RAY: Yes, sir.

3 THE COURT: Okay. Bring the jury in. And ask  
4 Ms. Ivey to take the foreperson's seat.

5 (The following takes place in the presence of the  
6 jury.)

7 THE COURT: All right. Ladies and gentlemen, we are  
8 going to begin with the trial of the case, but we're not  
9 going to actually start taking the testimony because it's  
10 close to 1:00 o'clock.

11 We'll recess for lunch, and then we'll start with the  
12 opening statements of the lawyers and the testimony after  
13 lunch. But there are a couple of things we can accomplish  
14 before we break.

15 Ms. Ivey, I'm going to ask you to serve as the  
16 foreperson of this jury. And as the foreperson of the jury  
17 you're going to have three specific duties that none of the  
18 other jurors will have.

19 Number one, you're going to be asked to serve as the  
20 spokesperson for the jury. And so if during the trial of  
21 this case something arises that needs to be brought to my  
22 attention, you or a fellow juror has some difficulty or  
23 problem or question, if you'll let the bailiff know, he'll  
24 let me know, and I'll address those difficulties or answer  
25 those questions.

1        Secondly, you're going to be asked to preside over the  
2 jury deliberations when the time comes for those  
3 deliberations. And that of course won't be until the end  
4 of the trial after all of the evidence has been received  
5 and I have instructed you on the law that's applicable in  
6 the case.

7        But when the time does come for jury deliberations  
8 you're going to be called upon to preside over that process  
9 in the jury room simply to ensure that those deliberations  
10 are carried out in some orderly fashion.

11       And, thirdly, you'll be asked to actually write the  
12 verdict or the decision of the jury. And you'll do that on  
13 a verdict form that I'll provide you at the trial's  
14 conclusion on which you will indicate the jury's unanimous  
15 decision.

16       Now, the foreperson has those specific duties that I  
17 have just indicated. That does not however mean that she  
18 is any more important than any of you other jurors, because  
19 the decision of a jury panel is the unanimous consensus  
20 opinion of all 12 jurors. And so all of you will have an  
21 equal say and an equal vote in what the ultimate decision  
22 will be in this case.

23       Someone simply has to be delegated those  
24 responsibilities that I have just indicated, and I have  
25 delegated those to Ms. Ivey in appointing her as the

1 foreperson. But all of you jurors are equally important so  
2 far as the ultimate decision in this case is concerned  
3 because, as I have stated, the verdict has to be unanimous.  
4 All of you must be in agreement.

5 Now, Ms. Nunnery, you've been selected as an alternate  
6 juror. And the function of an alternate juror is to take  
7 the place of one of the original 12 jurors in the event one  
8 of these original 12 cannot continue to serve during the  
9 trial.

10 If one is called away because of an illness or an  
11 emergency or some other reason that prevents them from  
12 continuing to serve as a juror, then it would be you who  
13 would take that person's place. In that event you would  
14 become the 12th juror. And in that event you would  
15 participate throughout the trial, including in the jury  
16 deliberations.

17 If however when the time comes for jury deliberations  
18 at this trial's conclusion the original 12 are all able to  
19 participate in that function, then your service ends. And  
20 you don't participate any further, because the decision of  
21 a jury is that of 12. But no more than 12 are permitted to  
22 engage in that deliberation process.

23 But it is important that you pay just as careful  
24 attention as we ask of all of the jurors in the case  
25 because it does occur from time to time for one reason or

1 another one of these original 12 may be unable to continue.  
2 In that event you become the 12th.

3 So we do appreciate your participation as an alternate  
4 juror, just as we appreciate the participation of each of  
5 you jurors who have been selected for the purpose of  
6 deciding the verdict in this particular case.

7 You may swear the panel.

8 (Whereupon, the jury was duly sworn.)

9 THE COURT: All right. Ladies and gentlemen, as you  
10 know, you have been selected to decide the verdict in the  
11 case of the State vs. Johnny Ray Wilkins.

12 As you know, Mr. Wilkins has been accused by the state  
13 of having committed the crime of armed robbery. And the  
14 allegations that are setting forth that crime are contained  
15 in the document called an indictment. And that's the  
16 document that I referred to prior to your selection as  
17 jurors.

18 In that indictment the state is alleging that Mr.  
19 Wilkins did here in Spartanburg County on or about January  
20 the 13th of last year commit the crime of robbery while  
21 armed with a deadly weapon, and further that he did take,  
22 steal and carry away from the person of Jamie McAbee at the  
23 Li'L Cricket store on Highway 221 in Mayo certain goods  
24 being described as money, and he took that money by the use  
25 of force and/or intimidation and while armed with that

1 deadly weapon.

2 Also, as I told you, as to those charges the defendant  
3 has entered a plea of not guilty. And therefore that plea  
4 of not guilty places upon the state the burden of proving  
5 the allegations contained in the indictment, the burden of  
6 proving each of the essential elements of the crime they  
7 have alleged against the defendant; and therefore the  
8 burden is upon the state to establish the defendant's guilt  
9 to the satisfaction of you 12 jurors beyond a reasonable  
10 doubt before any verdict of guilty could be returned.

11 The indictment, while it will be in the jury room,  
12 because it is on the back of the indictment, Madam  
13 Forelady, that you will indicate the jury's unanimous  
14 decision, the indictment serves no purpose so far as you  
15 jurors are concerned other than just being useful as the  
16 verdict form.

17 The indictment is not proof of anything. It doesn't  
18 establish anything. It simply puts the defendant on notice  
19 as to what crime the state claims that he has committed.

20 The state has the burden of proving the allegations  
21 and the charge against the defendant to your satisfaction  
22 beyond a reasonable doubt.

23 And, in fact, every person accused of a crime, and it  
24 doesn't matter how serious the offense might be, every  
25 person accused of a crime is under the law presumed to be

1 innocent of the charge.

2 That presumption of innocence remains with every  
3 defendant, as it does with this defendant, from the time  
4 that he is placed under arrest and throughout the course of  
5 the criminal process and even throughout the course of the  
6 actual trial.

7 That presumption of innocence will be with Mr. Wilkins  
8 even as you go back into your jury room to begin with your  
9 deliberations in this case. And that presumption of  
10 innocence will be with him in that jury room, and it will  
11 be with him forever unless you 12 jurors determine that he  
12 is no longer entitled to that presumption of innocence.

13 That is if, after you have considered all of the  
14 evidence in the case and from that evidence you decided the  
15 facts, and upon deciding the facts you apply the law that I  
16 will have provided you, if you 12 jurors unanimously  
17 determine that his guilt has been proven beyond a  
18 reasonable doubt, then he would no longer be entitled to  
19 that presumption of innocence.

20 But it's only if, unless and until you are satisfied  
21 of his guilt beyond a reasonable doubt that the presumption  
22 of innocence would no longer be applicable.

23 Now, the way the trial will proceed is that after  
24 lunch the lawyers are going to address you in what are  
25 called opening statements.

1        Now, there are two occasions in the trial of a case  
2 where lawyers are permitted to address the jury directly,  
3 and that is at the beginning of the trial before any  
4 evidence has been introduced and then again at the  
5 conclusion of the trial after all of the evidence has been  
6 received.

7        Keep in mind, as I have just stated, the evidence  
8 comes in between the opening statements and the closing  
9 statements of the lawyers. And therefore what the lawyers  
10 tell you in their statements is not evidence upon which you  
11 will base your decision. And that's because the lawyers  
12 aren't witnesses to anything.

13       They're not going to be telling you anything they know  
14 about this case of their own personal knowledge or  
15 experience as witnesses will be. And they're not going to  
16 take the witness stand. They're not going to testify under  
17 oath. They will not be subjected to direct and  
18 cross-examination as witnesses will be; and therefore what  
19 they tell you in their statements is not to be considered  
20 by you as evidence. But you should listen to what the  
21 lawyers have to say because those statements do serve a  
22 purpose.

23       The opening statements serve to provide you with a  
24 basic understanding as to what this case is about from the  
25 perspective of the state and the defense so that you'll

1 have some context in which to place the evidence that we  
2 will be receiving shortly thereafter.

3 The closing statements occur after all of the evidence  
4 has been received. And, again, as I have told you, those  
5 aren't evidence. But it does permit the lawyers an  
6 opportunity to discuss with you the evidence that you have  
7 seen and heard during the trial of the case. And it allows  
8 them an opportunity to try to convince you or to persuade  
9 you that that evidence does or does not support a  
10 particular decision.

11 And, as I've stated, the evidence upon which you will  
12 base your decision comes between the opening and the  
13 closing statements.

14 The state has the burden of proof because they have  
15 brought the charge against the defendant. They have the  
16 burden of establishing his guilt to your satisfaction  
17 beyond a reasonable doubt. And therefore the state will go  
18 forward first in its presentation of evidence.

19 After the state has concluded with its presentation  
20 the defendant has the same opportunity to present evidence  
21 by way of testimony or otherwise. But a defendant in a  
22 trial is never obligated to take the witness stand and  
23 testify or to present any other evidence or to call any  
24 witness, because the burden is not upon a defendant to  
25 prove that he is not guilty because in some cases that

1 wouldn't even be possible.

2       The burden is always upon the state to prove that he  
3 is guilty. And therefore in a given case where a defendant  
4 does not testify or call witnesses or produce evidence the  
5 jury may not consider that fact in the slightest degree  
6 against the defendant.

7       You may not allow that to enter into your  
8 deliberations or into your discussions, as well as into  
9 your determination as to whether or not his guilt has been  
10 proven beyond a reasonable doubt.

11       You simply may not consider such a fact in any way.  
12 It would be improper for you to do so. But a defendant is  
13 afforded an opportunity to present evidence in the event  
14 that defendant wishes to do so.

15       So after all of the evidence has been received and  
16 after you've heard the final summations of the lawyers, I  
17 will then instruct you fully on the law that's applicable  
18 in a case of this nature and to the criminal law in  
19 general, after which you'll be asked to go back into your  
20 jury room and to begin with your deliberations in the case.

21       Through that process you will carefully examine all of  
22 the evidence. You will determine the credibility of  
23 witness testimony. You will decide what evidence is the  
24 most credible, and that's the evidence you will accept.  
25 You will determine any evidence that you find not to be

1 credible, and that's the evidence that you will reject.

2 But you're simply called upon through the exercise of  
3 good judgment and common sense conscientiously applied to  
4 the testimony and evidence in the case to decide what you  
5 believe to be the true facts as they relate to these  
6 particular allegations.

7 And then once you decide the facts, you'll apply the  
8 law that I will have provided you. And you will arrive at  
9 a fair and just decision in the case.

10 So all we're going to ask for you to do is to pay  
11 careful attention throughout the course of the trial.

12 We're also going to ask that you keep an open mind,  
13 which just simply means you're not to begin making up your  
14 minds or formulating your opinions as to what you think the  
15 ultimate decision in the case ought to be until all of the  
16 evidence has been received, I've instructed you on the law  
17 and you've been asked to begin deliberations. That is the  
18 process that is designed for you 12 jurors to arrive at a  
19 fair and just decision in this case.

20 Now, it's lunchtime, so we're going to break for  
21 lunch.

22 Keep in mind at any time during a break in the trial  
23 when you're sent back to your jury room, or even if perhaps  
24 this case goes into tomorrow, during the overnight recess,  
25 you're never permitted to talk about the case with any

1 person whatsoever. That includes family; that includes  
2 friends; that even includes your fellow jurors.

3 You're only permitted to discuss this case when you  
4 and your fellow jurors have been sent back to begin with  
5 your deliberations at the trial's conclusion.

6 So during the lunch recess no discussions with any  
7 person whatsoever in any fashion whatsoever about the case.

8 And also you are not permitted to conduct any research  
9 or do your own investigation into any issue. You're also  
10 not permitted to be -- to allow yourselves to be exposed to  
11 any type of media coverage that might relate to the case.  
12 So no television, no radio, no newspapers, no internet  
13 searches, no nothing.

14 You have to base your decision strictly upon the  
15 testimony and the evidence received during the trial of the  
16 case, and you're not to be influenced by any outside or  
17 extraneous information or consideration.

18 So with that in mind, do have a good lunch. I'm going  
19 to ask that you please report back to your jury room, and  
20 that's the room that you've just been introduced to.  
21 Report back to that jury room at 2:30, at 2:30 this  
22 afternoon.

23 If you're not sure how to get back to that room be  
24 sure you discuss that with the bailiff. They'll assist you  
25 with those directions. Have a good lunch. I'll see you at

1 2:30.

2 (The following takes place outside the presence of the  
3 jury.)

4 THE COURT: All right. Any other matters we need to  
5 address before we recess?

6 MR. BARNETTE: Yes, sir. May we approach the bench  
7 for one second?

8 THE COURT: Yes.

9 (Bench conference held off the record.)

10 THE COURT: All right. Court is in recess until 2:30.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. I have been provided some  
13 information.

14 Apparently one of the jurors was involved in an  
15 accident, and I'm not certain as to what injuries might  
16 have been suffered, if any. But, nevertheless, the juror  
17 is not going to be able to come back today. Probably  
18 likely to be available tomorrow.

19 Any objection to just excusing the jury and having  
20 them come back in the morning to begin with the trial?

21 MR. BARNETTE: None from the state, Your Honor.

22 MR. RAY: None from the defense, Your Honor.

23 THE COURT: Okay. Bring the jury in, please.

24 (The following takes place in the presence of the  
25 jury.)

1 THE COURT: Good afternoon, ladies and gentlemen.

2 As you know, one of your fellow jurors is absent. And  
3 he apparently was involved in an automobile accident, but I  
4 don't think he's been injured. But, nevertheless, he  
5 couldn't get back this afternoon.

6 I anticipate that he will be able to be here in the  
7 morning. So we're just going to wait for him since he was  
8 kind enough to call in and let us know just like we asked  
9 him to do.

10 So what we'll do is begin with the trial first thing  
11 in the morning beginning at 9:30, at 9:30 in the morning.

12 So you're going to be excused for the balance of the  
13 afternoon. Keep in mind the caution I've already provided  
14 you. Do not discuss the case with anyone during the  
15 overnight recess. Don't conduct any research or do your  
16 own investigation into any issue. Do not permit yourselves  
17 to be exposed to any type of media coverage that might  
18 relate to the case.

19 Do have a good afternoon, and please report back to  
20 your jury room at 9:30 in the morning, 9:30 in the morning.  
21 Have a good afternoon.

22 (The following takes place outside the presence of the  
23 jury.)

24 END OF PROCEEDINGS MARCH 9, 2009

25

1 (Proceedings March 10, 2009)

2 (The following takes place outside the presence of the  
3 jury.)

4 THE COURT: All right. Are we ready for the jury?

5 MR. BARNETTE: The state is ready, Your Honor.

6 MR. RAY: Yes, Your Honor.

7 THE COURT: Okay. Bring them in, please.

8 (The following takes place in the presence of the  
9 jury.)

10 THE COURT: Good morning, ladies and gentlemen.

11 As you know, when we recessed yesterday you had been  
12 sworn but we had not begun with the trial of the case  
13 because of some difficulty. But it appears that we are now  
14 ready to begin with the trial of the case.

15 So we will begin with the opening statements by the  
16 lawyers beginning with the solicitor.

17 Mr. Barnette.

18 MR. BARNETTE: May it please the Court, Your Honor.

19 Madam forelady and ladies and gentlemen of the jury,  
20 good morning.

21 Like the judge introduced me earlier, my name is Barry  
22 Barnette. I'm a deputy solicitor here. And I'll be  
23 representing Jamie McAbee. She was the victim in this case  
24 of this armed robbery.

25 Let me tell you a little bit about it, give you a

1 preview or an idea of what you're going to be seeing in  
2 court today.

3 I take you back to January the 13th of 2008.  
4 Ms. McAbee is working at a Li'L Cricket up in Mayo, South  
5 Carolina. If you're familiar with that area up on 221,  
6 there's a Li'L Cricket there. And in that Li'L Cricket,  
7 she was working that evening about 6:20 to 6:45 that  
8 evening. And you're going to see the video.

9 The defendant, Mr. Wilkins, comes in. He's wearing a  
10 mask and has camouflage pants and a black jacket on.

11 Robert Benson, his codefendant, is driving the  
12 vehicle, parks it outside.

13 And he comes in and does the robbery. No question.  
14 It's armed robbery. The gun is pointed right at her. She  
15 complies. She gives him the till. He takes the money and  
16 goes.

17 Shawn Plount which you'll hear from is a deputy with  
18 the Spartanburg County Sheriff's Department. He's on  
19 patrol. He gets a BOLO about a white car being involved in  
20 an armed robbery.

21 He is up on Route 110 beside Cannons Campground Road.  
22 If you're familiar with Cowpens, there's a Hot Spot right  
23 there at that exit. I think it's Exit 83 off I-85.  
24 There's a Hot Spot there at Cannons Campground Road and  
25 110.

1       He is patrolling that area. He's waiting and just  
2 making sure there. A white car pulls in matching the  
3 description, and he pulls out to look into it. The car  
4 takes off and goes at a high rate of speed and goes down  
5 Kelly Road if you're familiar with that area.

6       What happens is Robert Benson is the driver. Mr.  
7 Wilkins had gotten out of the car to go into the Hot Spot,  
8 jumped back in the car when it took off because once they  
9 saw the black-and-white.

10       When they did, they come to a rolling stop after they  
11 go a period of time. Mr. Benson jumps out of the driver's  
12 side. Mr. Wilkins jumps out the passenger side. Deputy  
13 Plount catches Mr. Benson. He calls for backup. All kinds  
14 of officers come in. And they call the bloodhounds. And  
15 you will be hearing from the bloodhound handler in this  
16 case where he -- as a matter of fact, Officer Plount is  
17 also a part of the dog-handling team they had too.

18       They take the bloodhounds, and they track and find Mr.  
19 Wilkins behind an outhouse over in that area. He's wearing  
20 his camouflage pants and his black shirt. He had ran out  
21 of his shoes he run so hard, and when they're caught. Then  
22 they catch him there.

23       You're going to hear from Mr. Benson. He's already  
24 pled guilty to the charge in this case. He is going to be  
25 sentenced by a judge. There is no recommendation on his

1 case. He pled what we call straight-up. The judge will  
2 determine his sentence.

3 Obviously, he's cooperating now as we told the judge  
4 he's cooperating. But he's still facing a sentence from  
5 ten to 30 years for what he did, Mr. Benson did.

6 He's going to get up on the stand and tell you what  
7 happened concerning that night, or actually it's within a  
8 24-hour period when the situation happened in this Cowpens  
9 incident. That happened in the early morning hours of  
10 January the 14th. So this is a period of time.

11 You'll also hear from Enterprise where the car was  
12 rented by the defendant's girlfriend, the white car. And  
13 we will have that testimony brought to you too.

14 What I'd like for you to do is just listen to the  
15 testimony. I wanted to give you a preview of what you were  
16 going to be hearing today.

17 And you're going to be hearing from Jamie McAbee, what  
18 she saw. And you're going to see what she saw on the  
19 video. You're going to see the defendant was dressed in  
20 these clothes, the clothes he was wearing. Another thing  
21 too, if you notice the size of it. He's 5'6. Mr. Benson  
22 is 6'2". A big difference in the size between the two men.  
23 You will see the fellow was the small fellow that came into  
24 the store and did the robbery.

25 Again, I'll be coming back to you, like the judge

1 said, after you hear all the testimony in the case. And  
2 I'll be asking you to look at the evidence we are giving to  
3 you. And basically you've heard from here. And we're  
4 going to show that to you in this courtroom today.

5 And once you hear that evidence I'm going to ask you  
6 to return a verdict of guilty of armed robbery against  
7 Mr. Wilkins for what he did to Ms. McAbee in this case.  
8 Thank you very much.

9 Thank you, Your Honor.

10 THE COURT: Mr. Ray.

11 MR. RAY: Thank you, Your Honor. May it please the  
12 Court.

13 Good morning. As the judge told you yesterday, my  
14 name is Tim Ray. I'm here representing Johnny Ray Wilkins.  
15 I'm just going to call him Joe-Joe. That's what his  
16 friends and family members and everybody calls him.

17 The state has their idea of what happened. You're  
18 going to hear from Mr. Benson. He goes by the name Corn.  
19 He's going to tell you that Joe-Joe was involved in this  
20 armed robbery. He's going to tell you these things. And  
21 he's already pled guilty, as the state said. But he has  
22 not been sentenced.

23 The judge is going to tell you when we close all the  
24 evidence and before you deliberate, he's going to explain  
25 to you what the law is. He's going to explain to you the

1 state has the burden of proof. And they have to prove  
2 beyond a reasonable doubt that Johnny Ray Wilkins, Joe-Joe,  
3 was the one that went in and did this armed robbery.

4 There's going to be several different witnesses.  
5 They're going to tell you what they know happened. And  
6 it's your job, and maybe the most interesting but maybe one  
7 of the toughest jobs in here, to determine what the truth  
8 is and who is telling the truth.

9 There's, I think, concern for you, that especially  
10 look at Mr. Benson, the codefendant, when he testifies, and  
11 determine what the truth is in this case, what was really  
12 going on. And we'll talk about that more later at the  
13 close of all of the testimony when we do our closing  
14 arguments.

15 But I really think it's important in this case beyond  
16 any legal issues that we'll take up with the judge, I think  
17 the most important part of this case is determining what  
18 really happened, what the truth is.

19 I think when you take that and put it all together and  
20 go back to deliberate and understand that the state has the  
21 burden of proof and has to prove beyond a reasonable doubt  
22 that Johnny Ray Wilkins is guilty, I think you'll see they  
23 have not met that burden and you'll find him not guilty.  
24 Thank you.

25 THE COURT: Mr. Barnette.

Direct examination by Mr. Barnette

1       MR. BARNETTE: May it please the Court. I would like  
2 to call Ms. McAbee to the stand please.

3                       JAMIE McABEE, having been  
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BARNETTE

6 Q       Ms. McAbee, I'm going to have to ask you to speak. I  
7 know you speak softly. So if you could, speak loud enough  
8 so the jury can hear you. Okay.

9 A       Okay.

10 Q       So the last person can hear you. It's going to be  
11 hard, I know. If you can, pull that microphone as close as  
12 you can to you.

13       Can you give me your full name for the record, ma'am?

14 A       Jamie Victoria McAbee.

15 Q       And what town do you live in, ma'am?

16 A       Chesnee.

17 Q       And where do you work at ma'am?

18 A       Li'L Cricket.

19 Q       Work at back on January the 13th of 2008?

20 A       Li'L Cricket.

21 Q       And what was your position there, ma'am?

22 A       Cashier.

23 Q       And how long had you been a cashier there, ma'am?

24 A       Almost eight years.

25 Q       And what was part of your duties there?

Direct examination by Mr. Barnette

1 A I do cashier, stocking, make sure the parking lot is  
2 clean and stuff like that.

3 Q Back on January the 13th of 2008, was you working that  
4 evening, ma'am?

5 A Yes, sir.

6 Q And did an armed robbery occur to you?

7 A Yes, sir.

8 Q And was that on video tape?

9 A Yes, sir.

10 Q Let me show you what's been marked as State's Exhibit  
11 No. 3. Have you got a chance to review this video tape?

12 A Yes, sir.

13 Q Or that's actually on a C. D., but this video, ma'am.

14 A Yes, sir.

15 Q And was that a fair representation of what happened  
16 that evening?

17 A Yes, sir.

18 MR. BARNETTE: Your Honor, I'd like to enter State's  
19 Exhibit No. 3 into evidence at this time.

20 MR. RAY: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Video marked State's Exhibit No. 3.)

23 MR. BARNETTE: May I publish it to the jury, Your  
24 Honor?

25 THE COURT: You may.

Direct examination by Mr. Barnette

1           (Whereupon, a portion of the tape was played for the  
2 jury.)

3 Q     If you would, Ms. McAbee, just come down, and step  
4 down right here if you would, ma'am.

5           (Whereupon, the witness left the stand.)

6 Q     Ma'am, is this the video tape of your store?

7 A     Yes, sir.

8 Q     And you're behind the counter?

9 A     Yes, sir.

10 Q    And he comes in the door here shortly.

11 A    Yes, sir.

12       THE COURT: You can't enlarge that screen?

13       MR. BARNETTE: I'll try, Your Honor. One of the  
14 problems, the pixels is trying to break up. It starts  
15 breaking up. I'll probably play it both ways so we will  
16 have more detail.

17       (Whereupon, a portion of the tape was played for the  
18 jury.)

19       MR. BARNETTE: Let me play that back again.

20       (Whereupon, a portion of the tape was played for the  
21 jury.)

22 Q    Okay. What was he wearing on his hands, ma'am?

23 A    White gloves.

24 Q    And what kind of pants was he wearing?

25 A    Camouflage.

Direct examination by Mr. Barnette

- 1 Q And what kind of jacket was he wearing?
- 2 A Black, and a white t-shirt.
- 3 Q And he had a mask on.
- 4 A Uh-huh.
- 5 Q And what kind of gun was that, ma'am?
- 6 A A revolver.
- 7 Q How tall did he appear to you, ma'am?
- 8 A About 5'6".
- 9 Q Fairly small fellow?
- 10 A Yes.
- 11 Q If you would, I'm going to play it one more time.
- 12 (Whereupon, the tape was played for the jury.)
- 13 Q And another thing, the door handles on the door is not
- 14 very high up, are they?
- 15 A Uh-uh.
- 16 Q How much money did he take, ma'am?
- 17 A I don't know.
- 18 Q Thank you, ma'am. If you would, have a seat.
- 19 (Whereupon, the witness returned to the stand.)
- 20 Q Ma'am, let me show you what's been marked for State's
- 21 Exhibit 4 purposes.
- 22 MR. BARNETTE: And may I show this to the witness?
- 23 Q Showing you part of State's Exhibit No. 4. Do these
- 24 pants appear to be like the camouflage pants that the
- 25 person that came in the store was wearing?

Cross-examination by Mr. Ray

1 A Yes, sir.

2 Q Does this jacket appear to be the type of jacket that  
3 he was wearing that night?

4 A Yes, sir.

5 MR. BARNETTE: Your Honor, I'd like to move State's  
6 Exhibit 4 into evidence at this time.

7 MR. RAY: Objection, Your Honor. I don't think a  
8 foundation has been made for it yet.

9 MR. BARNETTE: I'll just, I'll redo that later, Your  
10 Honor.

11 Q And, ma'am, your store, it's in Spartanburg County.

12 A Yes, sir.

13 MR. BARNETTE: One moment, Your Honor, please.

14 (Pause.)

15 Q Please answer any questions Mr. Ray may have for you,  
16 ma'am.

17 A Okay.

18 CROSS-EXAMINATION

19 BY MR. RAY

20 Q Ms. McAbee, the night of the robbery there, did you  
21 give a description of what the robber was wearing to the  
22 police?

23 A Yes, sir.

24 Q Did you tell them that he was wearing white gloves?

25 A Yes, sir.

## Cross-examination by Mr. Ray

- 1 Q Camo pants?
- 2 A Yes, sir.
- 3 Q Did you say a white mask?
- 4 A White shirt.
- 5 Q Did you say white mask?
- 6 A Uh-uh.
- 7 Q Did you say a dark shirt?
- 8 A Yes, sir.
- 9 Q So what the robber was wearing there was a dark shirt.
- 10 A There was a white shirt up underneath a jacket.
- 11 Q But did you tell the police that he was wearing a dark
- 12 shirt?
- 13 A It looked like a shirt because it happened so fast.
- 14 Q So it looked like a shirt. When the person that
- 15 robbed you left, did you see which way they headed?
- 16 A No, sir.
- 17 Q What did you do? I saw you duck underneath the
- 18 counter there on the video. What were you doing there?
- 19 A Tripping an alarm.
- 20 Q And after you tripped the alarm what did you --
- 21 A Called 9-1-1.
- 22 Q Called 9-1-1. Did you give the police a description
- 23 that the robber could have been 6'3"?
- 24 A No, sir.
- 25 Q Could you have said that he would have been between

Redirect examination by Mr. Barnette

1 5' and 6'3"?

2 A Somewhere in there.

3 Q And that would be the description that you gave the  
4 police.

5 A Uh-huh.

6 Q Thank you, Ms. McAbee.

7 MR. RAY: No more questions.

8 MR. BARNETTE: Just one question, Your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BARNETTE

11 Q On the door there, the handle, how far is it up off  
12 the floor?

13 A I'd say probably starts at your knees up.

14 Q But it's not very high off the floor, is it?

15 A No.

16 MR. BARNETTE: Thank you, Your Honor.

17 Q Thank you, ma'am. Answer any other questions Mr. Ray  
18 has.

19 MR. RAY: No more questions.

20 THE COURT: You may step down.

21 MR. BARNETTE: Your Honor, I would ask the witness be  
22 excused. I think she has to work.

23 THE COURT: Any objection?

24 MR. RAY: No, sir, Your Honor.

25 THE COURT: She may be.

Direct examination by Mr. Barnette

1 (Whereupon, the witness was excused.)

2 THE COURT: Who is next?

3 MR. BARNETTE: Mr. Benson. They are having to get  
4 him, Your Honor.

5 ROBERT BENSON, having been  
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q Mr. Benson, I'm going to have to ask you to speak  
9 loud, okay, so the jury can hear you back over here.

10 Give me your full name, please.

11 A Robert Marcellus Benson.

12 Q And, Mr. Benson, where did you live at, sir?

13 A Bradford Road, Cowpens, on Carver Street.

14 Q Who lives with you there?

15 A My wife, Candy Coast (sic).

16 Q What kind of work did you used to do, sir?

17 A Worked for Benson Nissan on 221, on Chesnee Highway,  
18 right below the road.

19 Q And what kind of work did you do there, sir?

20 A Detailing cars.

21 Q Do you know the defendant in this case, Johnny  
22 Wilkins?

23 A Yes, sir.

24 Q When did you first meet Mr. Wilkins?

25 A Around about September or October through my wife.

Direct examination by Mr. Barnette

- 1 Q And what year was that, sir?
- 2 A That would be '07.
- 3 Q And how did your wife know Mr. Wilkins?
- 4 A That's her uncle.
- 5 Q And who was his girlfriend?
- 6 A I think her first name was Rhonda.
- 7 Q Okay. And when you met him October of 2007, did y'all
- 8 start to get to know each other?
- 9 A Yes, sir, a little bit.
- 10 Q And starting in January of 2008, what did y'all start
- 11 doing a lot of?
- 12 A Started just really hanging out together and really
- 13 basically just doing drugs and stuff like that.
- 14 Q What kind of drugs were y'all doing?
- 15 A Mostly cocaine and crack cocaine.
- 16 Q On January the 13th of 2008 had his girlfriend rented
- 17 a white car?
- 18 A Yes, sir.
- 19 Q What kind of car was it, sir?
- 20 A A 2007 G6 Pontiac.
- 21 Q And did y'all start driving that car that day?
- 22 A Yes, sir.
- 23 Q What had y'all done the night before, before all of
- 24 this happened?
- 25 A Armed robbery.

Direct examination by Mr. Barnette

1 Q Okay.

2 MR. RAY: Objection, Your Honor. May we approach?

3 THE COURT: Let me see y'all just a minute.

4 (Bench conference held off the record in the presence  
5 of the jury but out of the hearing of the jury.)

6 Q Mr. Benson, I was talking about the night before all  
7 of this, not the night that the armed robbery occurred.  
8 I'm talking about the night.

9 Did y'all watch anything, T. V.-wise or anything like  
10 that, the night before?

11 A You referring to Saturday night, I mean, the 13th or  
12 the 14th?

13 Q No. Actually I was referring, did y'all watch T. V.  
14 the night before?

15 A Yeah, I believe so. I believe the football game was  
16 on.

17 Q And did y'all get up later on the 13th, sir?

18 A Yes, sir.

19 Q And what kind of football game was you watching? Was  
20 you watching the play-off game?

21 A Yes, sir.

22 Q And on the 13th did y'all go to a store in Mayo, Li'L  
23 Cricket?

24 A Yes, sir.

25 Q If you would, tell the jury what happened there, sir.

Direct examination by Mr. Barnette

1 A Just driving toward Chesnee, just riding around,  
2 basically just getting high or whatever.

3 Got to the Li'L Cricket right there in Mayo. Turned  
4 in, went in for a minute, reviewed everything, was going to  
5 get some gas.

6 I can't, I ain't telling no lie, said whether I went in  
7 or not the first time when we pulled in. But we pulled  
8 around to the back and got out of the car and went to the  
9 store and came back to the car two or three times. And then  
10 we left.

11 Q Okay. Did he go in? What was he wearing that day?

12 A Fatigue or camouflage pants, black hooded shirt, black  
13 jacket and white tennis shoes.

14 Q Did -- and what was you wearing that day?

15 A I had on some blue jeans, some blue jeans with diamond  
16 pants on the inside of them, some black shoes and a  
17 multicolored shirt.

18 Q How tall are you, sir?

19 A About 6'2".

20 Q How tall is Mr. Wilkins?

21 A About 5'9" or 5'10".

22 Q So he's shorter than you, right?

23 A Oh, yeah.

24 Q And did y'all have a gun with you?

25 A Yes, sir.

Direct examination by Mr. Barnette

- 1 Q What kind of gun was it?
- 2 A About a five shot, .32 or .38 revolver.
- 3 Q And who took the gun in that store that day?
- 4 A Mr. Wilkins.
- 5 Q When he came back did he bring money with him?
- 6 A Yes, sir.
- 7 Q How much money did he have?
- 8 A A sum of money. I ain't going to put no certain amount
- 9 on it because I be telling a lie.
- 10 Q And what did y'all do with that money?
- 11 A Went and got some drugs with it.
- 12 Q And where did y'all go get drugs at?
- 13 A From the hood right over there by the Cotton Drive,
- 14 over there in that area.
- 15 Q And was y'all -- what kind of drugs, or what was you
- 16 doing with those drugs?
- 17 A Using it.
- 18 Q Later on, later on that morning on the 14th, did y'all
- 19 go to a Hot Spot over on Cannons Campground Road in Cowpens
- 20 on 110?
- 21 A Yes, sir.
- 22 Q And if you would, who was driving then?
- 23 A Me.
- 24 Q And who was the passenger on that one?
- 25 A Mr. Wilkins.

Direct examination by Mr. Barnette

1 Q Did -- tell the jury what happened when you pulled in  
2 that Hot Spot.

3 A We just pulled in to get some gas. Joe-Joe got out to  
4 get some gas. He gave them \$5. He took \$5 in the store,  
5 but they wouldn't turn on the pumps.

6 Stood there for a few minutes. And I knew the lady  
7 that, the manager there. And her husband was there. And I  
8 sat there for about, at least about five minutes. They  
9 still wouldn't turn on, you know, turn on the pumps, the gas  
10 pumps.

11 So finally they all came outside. So finally Joe-Joe  
12 just told them, he said, you know, why y'all won't, you  
13 know, turn on the pumps. So finally she turned on the  
14 pumps. So finally we put gas in the car. We might have put  
15 \$3 or something in there. But, I mean, just by so many  
16 people, you know, getting closer and closer to the car and  
17 on their cell phone, we just left the scene.

18 Q Did y'all see a black-and-white?

19 A Uh-uh, not at that particular time, no, sir.

20 Q Did you see a black-and-white pull behind you?

21 A Oh, yeah.

22 Q And when you saw a black-and-white, what did y'all do?

23 A I kept driving.

24 Q Did he turn on his blue lights?

25 A Yes, sir.

Direct examination by Mr. Barnette

1 Q And why did you keep on driving?

2 A Because I had drugs in the car. I was dirty.

3 Q Did -- how far did y'all run?

4 A I didn't make it very far. I made it about to right  
5 there on Dietz Drive, about my cousin's house, and passed  
6 out.

7 Q Okay. Did you run from the car?

8 A Oh, yes, sir.

9 Q How did you stop the car?

10 A Just put it in park, and we both got out. He went one  
11 way and I went the other.

12 As soon as I started running down the hill -- I think  
13 the officer's name was Officer Blunt (sic) -- he hit the  
14 front of the car. I thought he was going to kill me, you  
15 know what I'm saying, to be honest with you.

16 So I ran down the hill to the left. And when I -- I  
17 missed the jump of the next fence. Police was just  
18 everywhere. And that's when I went out. And then I don't  
19 know who the officer was. But then, you know, they woke me  
20 up then.

21 Q And the clothes you was wearing was the clothes that  
22 you had on when they caught you, is that right?

23 A Yes, sir.

24 Q Was Mr. Wilkins still wearing the same clothes he wore  
25 earlier?

Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q Let me show you what's been marked as State's Exhibit

3 No. 4. Was these the pants he was wearing?

4 A Yes, sir.

5 Q Was this the jacket he was wearing?

6 A Yes, sir.

7 Q Now, you've pled guilty to the armed robbery because

8 you was the driver obviously of the one in Mayo. You've

9 also pled guilty to failure to stop.

10 A Yes, sir.

11 Q Was you guilty of those crimes?

12 A Yes, sir.

13 Q Have you been promised anything for your testimony

14 here today?

15 A No, sir.

16 Q You realize that you're facing a minimum of ten years

17 at least.

18 A Yes, sir.

19 Q And it could be more than that. It could be up to 30

20 years for armed robbery. And you're also facing up to

21 three years on the failure to stop.

22 A Yes, sir.

23 Q Do you realize the judge is going to be the one to

24 sentence you and the judge is going to determine your

25 sentence?

Cross-examination by Mr. Ray

1 A Yes, sir.

2 Q Who is the man that went in and robbed that store in  
3 Mayo, sir?

4 A Mr. Johnny Wilkins.

5 Q Is that the man? Can you tell me what he's wearing,  
6 sir?

7 A Got on blue pants and green, green and beige pants,  
8 blue shirt and green pair of pants.

9 MR. BARNETTE: Your Honor, I'd like to show he  
10 identified the defendant in this case.

11 THE COURT: All right. The record reflects he's  
12 identified the defendant.

13 Q And you was in the car when that happened.

14 A Yes, sir.

15 Q And the car rented by his girlfriend. And he was the  
16 man with you later on when y'all pulled in the Hot Spot.

17 A Yes, sir.

18 MR. BARNETTE: One moment, Your Honor, please.

19 (Pause.)

20 Q Please answer any questions that Mr. Ray may have for  
21 you, sir. Thank you.

22 CROSS-EXAMINATION

23 BY MR. RAY

24 Q Mr. Benson, you go by the name of Coin, don't you?

25 A No, sir.

## Cross-examination by Mr. Ray

1 Q Nobody has ever called you that before?

2 A No. On my, I think it was the statement that was  
3 wroten (sic), that was wrote on there, I think it was  
4 spelled C-O-A-T-N. But a lot of people called me Corn, not  
5 Coin. I don't know who call me that.

6 Q They call you what?

7 A Corn.

8 Q Corn. Like C-O-R-N?

9 A The thing say C-O-H-E-N, and, I mean.

10 Q Okay. But it's Corn.

11 A Yes, sir.

12 Q Now, you say that Joe-Joe went in and robbed this Li'L  
13 Cricket.

14 A Yes, sir.

15 Q You said he was wearing a black hoody.

16 A Yes, sir.

17 Q Black jacket, black tennis shoes.

18 A No, sir.

19 Q Isn't that what you just said a few minutes ago?

20 A No. I said he had on camouflage pants and white tennis  
21 shoes.

22 Q Okay. And then you said a black jacket.

23 A Yes, sir.

24 Q Black hoody, black jacket, white tennis shoes,  
25 camouflage pants, right? You've known Joe-Joe for how

Cross-examination by Mr. Ray

- 1 long?
- 2 A Just a couple of months.
- 3 Q And you said that his niece was your wife.
- 4 A Yes, sir.
- 5 Q You aren't really married, are you?
- 6 A No. My common-law wife.
- 7 Q Okay. Did you go into the Li'L Cricket?
- 8 A No, sir.
- 9 Q So you didn't see Joe-Joe rob anybody, did you?
- 10 A No, sir.
- 11 Q Now, later that night at the Hot Spot you said y'all
- 12 had pulled in to get gas, correct?
- 13 A Yes, sir.
- 14 Q And Joe-Joe's pumping gas, is that right?
- 15 A Yes, sir.
- 16 Q And you said a crowd of people started coming around.
- 17 And you got nervous, right?
- 18 A We both got nervous.
- 19 Q You told Joe-Joe to get in the car, didn't you?
- 20 A No. Actually, it was a mutual agreement with that many
- 21 people coming around the car.
- 22 Q It was a mutual agreement. So y'all had a chance to
- 23 talk about this and make an agreement of what y'all were
- 24 going to do.
- 25 A Well, yeah, if, yeah, if you talk real fast where

Cross-examination by Mr. Ray

1 people coming around.

2 Q Or did you hop in the car and say let's go?

3 A I never got out of the car. It was in the driver's  
4 seat.

5 Q So you were in the driver's seat the whole time. Did  
6 you yell at him through the window come, hey, come on,  
7 let's go, anything like that?

8 A No. Those were actually his words.

9 Q Those were his words. So he was standing outside of  
10 the car and you were sitting in the car. But he told you  
11 come on let's go.

12 A Yes, sir.

13 Q Does that make a lot of sense?

14 A Yes, sir.

15 Q So y'all drove out of the parking lot of the Hot Spot  
16 going down the road. Did you notice a police car behind  
17 you?

18 A Initially, not at first, no, sir.

19 Q When did you notice it?

20 A As we take a right to the first 4-way stop, you be  
21 right there at the Cowpens Elementary School. And that be  
22 the first 4-way.

23 We got to the second 4-way, which would be right there  
24 at Jehovah's Witnesses Kingdom Hall. After not stopping,  
25 after going through both of them when we got behind Cannons

Cross-examination by Mr. Ray

1 Elementary School, that's when I seen the approaching  
2 black-and-white car or state trooper car.

3 Q And he didn't have his lights on then, did he?

4 A Yes, sir.

5 Q He did?

6 A Yes, sir.

7 Q So his lights were already on.

8 A Yes, sir. As a matter of fact, when we was coming --  
9 when I come past Cannons Elementary School and when I come  
10 around that curve, you know, like you coming from the Fast  
11 Fuel or the Lincoln Memorial, it was flashing lights coming  
12 all the way down through a bunch of cars.

13 Q So you hit the gas --

14 A Oh, yeah.

15 Q -- and took off. And you say because you had drugs on  
16 you.

17 A Oh, yes, sir.

18 Q So at that point how far did you drive trying to evade  
19 the police?

20 A Turn right there where the little store is right there  
21 on Cannons Campground Road, driving straight up Kelly Road  
22 and then taking a right, not at the first, not at the first  
23 right but at the second right, and going around the curve  
24 and got out right there.

25 Q About how far is that -- a mile, half a mile, two

Cross-examination by Mr. Ray

1 miles?

2 A It ain't far. I mean, by me telling you a distance,  
3 I'd be telling a lie.

4 Q Well, just in your best approximation, how far did you  
5 drive?

6 A Probably about a good 30 or 45 seconds.

7 Q Okay. At top speed?

8 A Yeah, at certain parts, certain points.

9 Q As fast as you could go and manage the turns and such.  
10 So Joe-Joe is sitting in the passenger seat while  
11 you're doing all of this, right? Did you tell him you had  
12 drugs on you?

13 A He already knew.

14 Q So he knew you had drugs on you. Okay. Now, so you  
15 stopped, bailed out of the car and ran, correct?

16 A Yes, sir.

17 Q Now, you pled guilty to the armed robbery and the  
18 failure to stop, correct?

19 A Yes, sir.

20 Q And the failure to stop is from that night trying to  
21 get away from the police, right?

22 Now, the armed robbery, as we've already stated, you're  
23 looking at ten to 30 years.

24 Did you have some kind of agreement with the state to  
25 come in here and testify today?

Cross-examination by Mr. Ray

1 A No, sir.

2 Q No agreement. Have you been sentenced yet?

3 A No, sir.

4 Q So is that the way it normally works? Do you plead  
5 one day and usually get sentenced on a different day?

6 A Mr. Pruett (sic), that's a good question. I'm going to  
7 tell you something I honestly did.

8 The other day I wrote a request form for a bond  
9 arrangement (sic) and got locked up on P. C. for escape. So  
10 I really can't tell you the truth about the matter. I mean,  
11 it, things can work different ways. I'm not, I'm not really  
12 sure how the system works.

13 Q Well, how long have you been in jail?

14 A I been in there 14 months this month.

15 Q And you've probably made friends in the jail, haven't  
16 you?

17 A Not on a regular basis.

18 Q And there's some people in there you know, right? You  
19 know what's going on with some of the people in there,  
20 right?

21 A In there, yes, sir.

22 Q So.

23 MR. BARNETTE: Your Honor, I'm going to object at this  
24 time. I don't know what the relevance is of this about  
25 what other people do and other people say.

Cross-examination by Mr. Ray

1 MR. RAY: Your Honor, what I am trying to see --

2 THE COURT: Come here just a minute.

3 (Bench conference held off the record in the presence  
4 of the jury but out of the hearing of the jury.)

5 Q Mr. Benson, how long has it been since you pled guilty  
6 to today?

7 A I want to say probably about that week right after  
8 Thanksgiving.

9 Q So quite a while. And you say you don't have any deal  
10 with the state.

11 A No, sir.

12 Q But they sure would be able to help you out, couldn't  
13 they?

14 A I don't know. It's up to the judge.

15 Q It's up to the judge, but the state can speak up for  
16 you, couldn't they?

17 A I guess. I ain't never been in no situation like this.

18 Q So you're here today testifying not trying to help  
19 yourself out.

20 A The only thing I know, I'm just supposed to come here  
21 and just tell the truth.

22 Q So you're just doing this out of the goodness of your  
23 heart, not looking for any benefit out of it.

24 A Mr. Pruett (sic), I got a 16-month year old. The  
25 longer I sit in that jail at Spartanburg County, I'm taking

Cross-examination by Mr. Ray

1 a day away from her. I need to get this over with and come  
2 and tell the truth.

3 Q But you're looking at ten to 30 years. So you'd  
4 rather be on that 10-year side than that 30-year side,  
5 right?

6 A It's up to the judge.

7 Q Well, what would you prefer, doing ten or doing 30?

8 A I wish I would be doing none at all to be honest with  
9 you.

10 Q But is it going to be better to do the ten, or had you  
11 just rather do the whole 30? I'm sure the judge would be  
12 happy to give that to you if that's what you want.

13 A Well, I mean, yeah, of course I'd love to do the ten.

14 Q And that's why you're here today, is trying to keep it  
15 down towards that 10-year mark, isn't it?

16 A No, sir.

17 Q No.

18 MR. RAY: No more questions, Your Honor.

19 MR. BARNETTE: No further questions, Your Honor. We  
20 would like for him to be excused.

21 THE COURT: You may step down.

22 MR. BARNETTE: I would like to call Deputy Plount to  
23 the stand, please.

24

25

Direct examination by Mr. Barnette

1 SHAWN MICHAEL PLOUNT, having  
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q If you would, sir, state your full name for the  
5 record, please.

6 A Shawn Michael Plount.

7 Q And where do you work at, sir?

8 A Spartanburg County Sheriff's Office.

9 Q And how long have you been there, sir?

10 A About six years.

11 Q And what's your position there?

12 A I'm a uniform patrol deputy, now the K-9 handler.

13 Q Back on January the 14th of 2008, the early morning  
14 hours, were you working that day?

15 A I was.

16 Q And what area was you patrolling, sir?

17 A East side of town.

18 Q Had you received a BOLO about an armed robbery, sir?

19 A Yes, sir.

20 Q And what was the description of that BOLO?

21 A Small white car, the subject wearing camouflage pants  
22 and a dark top.

23 Q Did -- was y'all, was you in your area? Was you  
24 watching the convenience stores?

25 A Yes, sir.

Direct examination by Mr. Barnette

1 Q Which convenience store was you watching at that time?

2 A The Hot Spot on 110.

3 Q And that's in Spartanburg County?

4 A It is.

5 Q And, if you would, tell the jury what you saw there,  
6 sir.

7 A I was parked a pretty good ways the other side of the  
8 street back in the dark where nobody could see me.

9 I saw a small white car pull into the convenience  
10 store. I put it in drive to go check it out. And I saw a  
11 commotion beginning to form in front of the business.

12 I was able to see a person get out of the passenger  
13 side of the car. They were at the pumps like they were  
14 getting gas. I couldn't identify the person because I was  
15 too far away.

16 I saw the clerk inside the store appeared to be  
17 agitated. As I pulled in the parking lot the white vehicle  
18 pulled out the other side and went down back towards town.

19 I stopped just long enough to ask the clerk if they  
20 were all right and what happened. They told me that the  
21 person who had gotten out of the car matched the description  
22 that they had been given to be looking out for for robbery.

23 I went down and followed the vehicle. It was in an  
24 extremely high rate of speed. I had a hard time catching  
25 up. It took quite a distance for me to catch up to them.

Direct examination by Mr. Barnette

1       Right as I caught up to them I activated my lights and  
2 siren. The vehicle failed to stop. It continued and turned  
3 left on Kelly Road, then right on Clearview Drive. At the  
4 end of Clearview Drive it turns into Murray Court to the  
5 left and Dietz to the right. And right before that  
6 intersection both occupants of the vehicle bailed out and  
7 ran in opposite directions.

8 Q     And did you catch the driver, sir?

9 A     I did.

10 Q    And was that Mr. Benson?

11 A    It was.

12 Q    That was the gentleman that just testified.

13 A    Yes, sir.

14 Q    And was backup coming behind you, sir?

15 A    Oh, yes, sir.

16 Q    And when the backup got there was Jim Rhodes part of  
17 that backup?

18 A    Not at that time, no, sir. We sat up the perimeter.  
19 We called for -- Deputy Rhodes was the on-call K-9 handler  
20 for the evening. And he responded shortly thereafter with  
21 his dog.

22 Q    And when his dog got there did he start -- how did  
23 they start the trail or whatever? Where did they start the  
24 trail?

25 A    We kept the area where the second subject had run, the

Direct examination by Mr. Barnette

1 passenger of the vehicle had run, clear to avoid  
2 contamination.

3 When he arrived on the scene I showed him the area  
4 where I had seen the subject run and he started his, his  
5 bloodhound in that direction. We followed the trail from  
6 there.

7 Q And did he track?

8 A Yes, he did.

9 Q And where did you track him to?

10 A Throughout the neighborhood. We found a couple of  
11 locations. He'd be better able to describe what his dog  
12 did.

13 And I was, I had stopped to check a, an outbuilding  
14 near a house under construction or a house being remodeled.  
15 And he and another team member had gone down the hill.

16 And I heard him call they'd found the subject and given  
17 verbal commands to the subject. We went down and joined him  
18 and assisted in placing, excuse me, placing the subject in  
19 custody.

20 Q Do you see the man that y'all arrested that day?

21 A Yes, sir. He's the defendant in the blue shirt.

22 MR. BARNETTE: Your Honor, let the record show that he  
23 identified the defendant.

24 THE COURT: It shall.

25 Q And when y'all caught him, sir, let me show you what's

Direct examination by Mr. Barnette

1 been marked as State's Exhibit No. 4. Is these the  
2 camouflage pants that he was wearing?

3 A Yes, sir.

4 Q And was this the black jacket that he was wearing?

5 A Yes, sir.

6 Q Did he have any shoes on?

7 A Not at that time, no, sir. He was in sock feet.

8 Q Okay. How cold was it that day?

9 A It was chilly.

10 Q This is in the middle of January, is that right?

11 A Yes, sir.

12 Q This was in the early morning hours.

13 A Yes, sir.

14 Q But it's still dark.

15 A Yes, sir.

16 MR. BARNETTE: One moment, Your Honor. One second.

17 (Pause.)

18 MR. BARNETTE: Your Honor, may I approach the court  
19 reporter?

20 (Clothing marked State's Exhibit No. 8 for  
21 Identification.)

22 Q Let me show you what's been marked as State's Exhibit  
23 No. 8, sir. Was these the jeans that Mr. Benson was  
24 wearing?

25 A Looks like them, sir.

-----  
Cross-examination by Mr. Ray

1 Q Was that the shirt he was wearing?

2 A Yes, sir.

3 Q And was those the shoes he was wearing?

4 A Yes, sir.

5 MR. BARNETTE: Your Honor, I would move State's

6 Exhibit 8 at this time.

7 I can set a chain up. I don't know if he wants to  
8 object to them or not at this point.

9 MR. RAY: I don't object to that exhibit, Your Honor.

10 THE COURT: It's admitted.

11 (Clothing marked State's Exhibit No. 8.)

12 Q Again, these are Mr. Benson's clothes that he was  
13 wearing that night.

14 A Yes, sir.

15 Q Not the defendant's?

16 A Correct.

17 Q If you would, sir, please answer any questions Mr. Ray  
18 would have for you, sir.

19 CROSS-EXAMINATION

20 BY MR. RAY

21 Q Deputy Plount --

22 A Yes, sir.

23 Q -- am I saying that right?

24 A Correct.

25 Q The night that you arrested Mr. Benson and

Cross-examination by Mr. Ray

1 Mr. Wilkins, you said they had both jumped out of the car.

2 A Yes, sir.

3 Q Correct? And actually Mr. Wilkins when he jumped out  
4 of the car, his shoes came off, is that correct?

5 A At some point. I didn't see them come off. He didn't  
6 have them on when we found him.

7 Q Right. Officer, when you make a police report do you  
8 try to make it as accurate as possible?

9 A I do.

10 Q And as complete as possible?

11 A I do.

12 Q And have you seen your report recently?

13 A I saw it again today.

14 Q Just to refresh your memory, let me show it to you  
15 here, particularly this sentence right here.

16 A Uh-huh.

17 Q Would I be correct in saying that Mr. Wilkins -- his  
18 boots were by the car when he had jumped out?

19 A That's what it says here. I didn't collect those or  
20 have any contact with them. That's what I was told at the  
21 scene. That's the words we used.

22 Q Okay. But it was your report, correct?

23 A Yes, sir.

24 Q Okay.

25 MR. RAY: No more questions, Your Honor.

Redirect examination by Mr. Barnette

1 MR. BARNETTE: Just one question.

2 REDIRECT EXAMINATION

3 BY MR. BARNETTE

4 Q What kind of car was that, sir, that they were  
5 driving?

6 A It's a small white. I'm not sure what the make was. I  
7 don't remember.

8 Q Thank you, sir.

9 THE COURT: You may step down.

10 MR. BARNETTE: We ask this witness be excused, Your  
11 Honor.

12 THE COURT: He may be.

13 MR. RAY: No objection, Your Honor.

14 (Whereupon, the witness was excused.)

15 MR. BARNETTE: I would like to call Jim Rhodes to the  
16 stand, Your Honor.

17 JAMES RHODES, having been  
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. BARNETTE

20 Q If you would, sir, state your full name for the  
21 record, please.

22 A James Spencer Rhodes.

23 Q Where do you work at, sir?

24 A Spartanburg County Sheriff's Office.

25 Q And what's your position there, sir?

Direct examination by Mr. Barnette

1 A I'm uniform patrol officer, as well as a K-9 handler  
2 for the sheriff's office.

3 Q And how long have you been with the sheriff's  
4 department, sir?

5 A This May will be 11 years.

6 Q And how long have you been a dog handler, sir?

7 A Handled since December of 2003.

8 Q And what kind of training did you receive concerning  
9 the dog handling, sir?

10 A I've been through the state law enforcement division,  
11 went through training with them.

12 I've also gone to York County through the National  
13 Bloodhounds Association's training and been to Greenville  
14 County to several schools over there as well, as well as  
15 on-the-job training. We train roughly four hours every week  
16 training track to trails and just basic K-9 training.

17 Q And who is your dog?

18 A My dog for this night was Hause, a bloodhound.

19 Q And was you called out to the scene to help Officer  
20 Plount and everybody at the sheriff's department that  
21 night?

22 A Yes, sir. I received a call from the sheriff's office  
23 to go out for an on-call. I was on call that week for K-9  
24 for trapping.

25 Q And when you got there did you start tracking the

Direct examination by Mr. Barnette

1 individual that ran from the car?

2 A I received information from Deputy Plount that where  
3 the subject -- he had seen the subject run from the pavement  
4 to the grass. And I usually want to start where he's seen  
5 on the grass. They usually tend to pick up the trail better  
6 right there.

7 I placed the harness on him and placed the lead on him  
8 and gave him the start command. And we trailed from where  
9 he had been seen, where he had bailed out of the car, down  
10 to the, down the roadway along the edge of the fences, came  
11 to a T-intersection there in the neighborhood.

12 He made. He angled up across a yard there at the  
13 T-intersection, came to a fence. And at that fence we made  
14 our way through it. He made another left down the back side  
15 of that fence line through some real thick pines.

16 I accidentally, getting caught up in the weeds and  
17 whatnot, briars, pines, I dropped the lead. And he really,  
18 he had his head down and tail up. I knew he was on the  
19 track.

20 He took off running just as hard as he could go. I, we  
21 usually run a security team. Deputy Plount was part of that  
22 that night, along with two other deputies, and behind me  
23 because my job is so watch that dog and keep up with him. I  
24 realize he's on the track. We run.

25 He gets to an open area of a gravel driveway and makes

Direct examination by Mr. Barnette

1 a left. We go down in front of the house that's being  
2 remodeled. He stops momentarily to sense. There was some  
3 scatterer or what there from another man.

4 I'm able to catch up at that point after a pretty brief  
5 run to get the lead. I give him the command to leave it.  
6 He knows what to do. Goes right back to work.

7 We cast on down the hill or track on down the hill.  
8 Deputy Plount and another deputy stops checking the  
9 outbuilding that they had heard some noise in. Myself and  
10 another deputy went down the hill into a little what we  
11 would call a bowl or an indentation.

12 The dogs starts circling. And I'm watching the dog  
13 trying to figure out, okay, where did it go from here. He's  
14 actually reading, is in a scent pool where the subject may  
15 have laid down or where he's at.

16 At that point I look up. I see a locked outbuilding.  
17 I see it. The deputy that's with me steps around the  
18 outbuilding as I'm working around this direction of it. And  
19 we locate Mr., locate Mr. Wilkins up under the outbuilding.  
20 He's pulled out and taken into custody at that time.

21 Q And is Mr. Wilkins the individual y'all saw that  
22 night?

23 A Yes, sir.

24 Q And can you tell me what he was wearing, sir?

25 A He was wearing like a black flack jacket and camouflage

Direct examination by Mr. Barnette

1 britches, and he was sock feet.

2 Q And I can show you again. But state's Exhibit 4 that  
3 I've showed everybody else, is that the clothes he was  
4 wearing that day?

5 A Yes, sir.

6 Q And do you see him in the courtroom here today?

7 A Yes, sir.

8 Q And can you tell me what he is wearing, sir?

9 A A blue shirt, and I believe that's khaki britches.

10 MR. BARNETTE: Your Honor, I ask the Court to reflect  
11 he's identified the defendant.

12 THE COURT: It shall.

13 Q And you said he was underneath the outbuilding.

14 A Yes, sir. He was wedged up under. The outbuilding was  
15 up on cement blocks or some type of something to hold it up  
16 off the ground. And he was actually on the -- if we're  
17 looking at the outbuilding, he was on the left side up under  
18 it. And the deputy happened to see him and assisted pulling  
19 him out to take him into custody.

20 Q And was it cold that night?

21 A Yes, sir. It was real cold.

22 Q Please answer any questions Mr. Ray may have for you,  
23 sir. Thank you.

24

25

Cross-examination by Mr. Ray

1 CROSS-EXAMINATION

2 BY MR. RAY

3 Q Deputy, can you tell me your name again?

4 A Deputy James Rhodes. I go by Jim.

5 Q Now, when you arrived on the scene there that night  
6 did you happen to see the boots that had been left by the  
7 car?

8 A I don't recall anything. I was told where he had last  
9 been seen, and that's where I started.

10 Q You just went straight to the grass there.

11 A I went to the grass.

12 MR. RAY: No more questions, Your Honor.

13 MR. BARNETTE: I ask the witness be excused, Your  
14 Honor.

15 THE COURT: You may step down. You may also be  
16 excused.

17 MR. BARNETTE: I would like to call Sergeant Ashley to  
18 the stand, Your Honor.

19 KIMBERLY ASHLEY, having been  
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q If you would, ma'am, please give your full name for  
23 the record.

24 A Kimberly Ashley.

25 Q Where do you work at, ma'am?

Direct examination by Mr. Barnette

1 A At the Spartanburg County Jail.

2 Q And what is your duties there, ma'am?

3 A I'm a sergeant over the I. D. and property area. We're  
4 responsible for all of the clothing and paperwork for the  
5 inmates.

6 Q So you maintain. That's part of your duties there.

7 A Yes, sir.

8 Q And how long have you been there, ma'am?

9 A Over 15 years.

10 Q Did, obviously, Mr. Wilkins and Mr. Benson, have been  
11 in jail, our jail, is that correct?

12 A Correct.

13 Q And did y'all get the clothes that they had when they  
14 were booked into the county jail?

15 A Yes.

16 Q Let me show you what's been marked as State's Exhibit  
17 No. 4. Was these camouflage pants and black jacket, was  
18 these Mr. Wilkins' clothes when he was booked into the  
19 jail?

20 A Yes.

21 Q Have they been maintained by y'all since then?

22 A Yes.

23 Q How do y'all maintain these, ma'am?

24 A When the individual has a bond set and they're not  
25 going to be going home, we go ahead and shower the inmates

Direct examination by Mr. Barnette

1 out. And all the clothing, all personal clothing including  
2 underwear and socks, go into a gray bin box, and it's  
3 labeled. And that's there it stays until they are  
4 transferred out to either go home or go elsewhere.

5 Q As a matter of fact, these were secured there until  
6 Investigator Bryant came to pick these clothes up.

7 A Yes, sir.

8 Q And they were maintained there. Nobody has tampered  
9 with these. Nobody has switched clothes or anything like  
10 that.

11 A No, sir.

12 MR. BARNETTE: Your Honor, I would ask to enter  
13 State's Exhibit No. 4 into evidence at this time.

14 MR. RAY: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Clothing marked State's Exhibit No. 4.)

17 Q And let me show you what's been marked as State's  
18 Exhibit No. 8. Was these Mr. Benson's clothes?

19 A Yes, sir.

20 Q And they were done the same procedure?

21 A Correct.

22 Q When he was booked in the jail, they were secured at  
23 that time?

24 A Yes, sir.

25 Q And this would have been his clothes.

Direct examination by Mr. Barnette

1 A Correct.

2 Q Including his shoes or anything else that he might  
3 have had with him.

4 A Yes, sir.

5 Q His pants and so forth.

6 A Correct.

7 Q And you brought those clothes today.

8 A Yes, sir.

9 Q And they was in y'all's custody all of the time.

10 A Yes, sir.

11 Q Thank you. Please answer any questions Mr. Ray has  
12 for you.

13 A Yes, sir.

14 MR. RAY: No questions, Your Honor.

15 THE COURT: You may step down.

16 MR. BARNETTE: May we approach for a second, Your  
17 Honor?

18 (Bench conference held off the record in the presence  
19 of the jury but out of the hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen, I have  
21 got one matter I'm going to need to address before we can  
22 go further. So I'll ask you to please go to your jury  
23 room.

24 Don't talk about the case. I'll bring you back in  
25 just a few minutes to continue.

Direct examination by Mr. Barnette

1       (The following takes place outside the presence of the  
2 jury.)

3       (Bench conference held off the record.)

4       THE COURT: All right. Bring the jury back, please.

5       (The following takes place in the presence of the  
6 jury.)

7       THE COURT: Okay. You may continue.

8       MR. BARNETTE: May it please the Court, Your Honor. I  
9 would like to call Brian Sneed to the stand please.

10                       BRIAN SNEED, having been first  
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BARNETTE

13 Q     State your name for the record, please.

14 A     Brian Sneed.

15 Q     And where do you work at, sir?

16 A     Enterprise Rent-A-Car.

17       THE COURT: You don't have to get right up on the  
18 microphone. It will pick it up. Just speak out.

19       THE WITNESS: Okay.

20 Q     And what position do you hold there, sir?

21 A     I'm a branch manager.

22 Q     And is part of your duties there maintaining the  
23 records and the rental agreements there at the, at  
24 Enterprise, sir?

25 A     Yes, sir.

Direct examination by Mr. Barnette

1 Q Let me show you what's been marked as State's Exhibit  
2 No. 7. Is this a copy of y'all's contract, sir?

3 A Yes, sir.

4 Q And on that contract who was the person that signed  
5 for that vehicle?

6 A Ms. Miranda Allen.

7 Q And what kind of vehicle was it, sir?

8 A It was a Pontiac G6, white in color.

9 Q It was a white Pontiac G6.

10 A Yes, sir.

11 Q Thank you.

12 MR. BARNETTE: Your Honor, I'd like to enter this into  
13 evidence at this time.

14 MR. RAY: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Enterprise rental agreement marked State's Exhibit  
17 No. 7.)

18 Q That's all the questions I have. Please answer any  
19 questions Mr. Ray or the judge may have for you.

20 MR. RAY: No questions, Your Honor.

21 THE COURT: Step down. Thank you.

22 MR. BARNETTE: We would ask for this witness to be  
23 excused, Your Honor.

24 THE COURT: He may be.

25 (Whereupon, the witness was excused.)

1 MR. BARNETTE: Your Honor, the only other thing I'd  
2 like the defendant to stand up in front of the jury and let  
3 them see how tall he is, sir.

4 THE COURT: All right.

5 (Whereupon, the defendant stood.)

6 THE COURT: Just come out here in the middle if you  
7 will, Mr. Wilkins. That's good.

8 (Pause.)

9 MR. BARNETTE: Thank you, Your Honor.  
10 Your Honor, the state would rest.

11 THE COURT: All right. Ladies and gentlemen, that is  
12 all of the testimony or other evidence to be offered by the  
13 state, at least in their case in chief.

14 Before we go any further I've got a couple of matters  
15 I'll need to address with the lawyers, after which we'll  
16 bring you back to continue with the balance of the trial.

17 So please again retire to your jury room, but do not  
18 discuss the case in any fashion. I'll bring you back in  
19 just a few minutes.

20 (The following takes place outside the presence of the  
21 jury.)

22 THE COURT: Mr. Ray, any motions or other matters to  
23 address?

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

25 The defense makes a motion for a directed verdict

1 based on the fact that viewing the evidence in the light  
2 most favorable to the state there's no evidence to support  
3 a conviction.

4 THE COURT: Where do you perceive that the evidence is  
5 lacking?

6 MR. RAY: Your Honor, I would say it's to the  
7 identification of Mr. Wilkins as being the perpetrator of  
8 the robbery.

9 THE COURT: You're saying as a matter of law I ought  
10 to find Mr. Benson's testimony to be not credible?

11 MR. RAY: Yes, Your Honor.

12 THE COURT: Okay. The motion for a directed verdict  
13 is denied.

14 Any others?

15 MR. RAY: Not from the defense, Your Honor.

16 MR. BARNETTE: Not from the state either.

17 THE COURT: Have you discussed with Mr. Wilkins his  
18 right to testify, as well as not?

19 MR. RAY: Yes, sir, I have.

20 THE COURT: And does he appear to understand the  
21 right?

22 MR. RAY: Yes, sir.

23 THE COURT: Has he indicated to you a preference?

24 MR. RAY: He has indicated to me that he would prefer  
25 not to testify, but if Your Honor would inquire.

1 THE COURT: All right. Mr. Wilkins, Mr. Ray tells me  
2 that you and he have discussed your right to testify, as  
3 well as not testify, during the trial of this case. Have  
4 you discussed it with him?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And has he explained to you that you have  
7 an absolute right to remain silent and that nobody can make  
8 you take the witness stand, nobody can require that you  
9 give any statement, no one can require that you answer any  
10 questions as it relates to these charges?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And did he also explain to you that if you  
13 wish to testify you may? It's your choice, it's your  
14 decision. And only you can make it.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: But you understand that now that the state  
17 has concluded with their presentation of evidence, now is  
18 the only opportunity that will have to take the witness  
19 stand and testify.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that if you choose to  
22 take the witness stand and testify you'll have to answer  
23 all the questions asked by the lawyers, not just your  
24 lawyer's questions but also the prosecutor's questions,  
25 even if those responses might tend to prove you guilty?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you also understand that if you choose  
3 not to take the witness stand I'll instruct the jury they  
4 can't hold that against you, they can't consider it in any  
5 way?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you and Mr. Ray discussed the  
8 advantages and disadvantages of your testifying, as well as  
9 not testifying?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And do you appreciate what those  
12 advantages and disadvantages are?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And have you had time to reflect upon your  
15 decision as to whether or not you will testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And have you reached a decision?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And what is that decision?

20 THE DEFENDANT: I won't testify.

21 THE COURT: You do not wish to testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: And is that a decision that you reached of  
24 your own free will and accord?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Has anybody forced you into it?

2 THE DEFENDANT: No, sir.

3 THE COURT: Pressured you into it?

4 THE DEFENDANT: No, sir.

5 THE COURT: That's a decision that you made on your

6 own.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you're satisfied with it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any other witnesses you want

11 Mr. Ray to call on your behalf?

12 THE DEFENDANT: No, sir.

13 THE COURT: Okay. Thank you.

14 Any requests for jury instructions by the state?

15 MR. BARNETTE: Your Honor, I would request the hand of

16 one, hand of all charge in the case.

17 I don't know what Mr. Ray is going to argue, possibly

18 they were both together and he didn't have anything

19 involved with it. I'm sure he's going to argue mere

20 presence. I don't know, but from there I think it'd be an

21 appropriate charge in this situation.

22 THE COURT: All right. Mr. Ray.

23 MR. RAY: Your Honor, I don't know that the hand of

24 one, the hand of all would be appropriate as seeing as how

25 Mr. Wilkins is the one alleged to have committed the

1 robbery.

2 Your Honor, other than Your Honor's normal charges for  
3 burden of proof and such, the defense has no additional  
4 charges.

5 The mere presence, we don't wish to argue mere  
6 presence. I don't think that that would be appropriate  
7 here either.

8 THE COURT: Okay. Mr. Barnette, isn't the testimony  
9 that it was, in fact, Mr. Wilkins that went in?

10 MR. BARNETTE: I will withdraw my request since mere  
11 presence will not be charged, so.

12 THE COURT: Okay. You're not requesting mere  
13 presence.

14 MR. RAY: No, sir.

15 THE COURT: Okay. All right. Anything else we need  
16 to address, any other requests?

17 MR. BARNETTE: No, sir.

18 THE COURT: Of the defense?

19 MR. RAY: No, sir, Your Honor.

20 THE COURT: All right. Are y'all ready to argue or do  
21 you need five minutes?

22 MR. BARNETTE: If I can just go to the bathroom.

23 THE COURT: We will take five minutes and then come  
24 back.

25 (Whereupon, a recess was taken.)

1 THE COURT: All right. Are we ready for the jury?

2 MR. BARNETTE: The state is ready, Your Honor.

3 THE COURT: All right. Bring them in, please.

4 (The following takes place in the presence of the  
5 jury.)

6 THE COURT: All right. Ladies and gentlemen, as you  
7 know, you've heard and seen all the evidence to be  
8 presented by the state.

9 So we will now proceed with any to be offered by the  
10 defendant.

11 Mr. Ray, do you have any additional evidence you want  
12 to present?

13 MR. RAY: No, sir, Your Honor.

14 THE COURT: Ladies and gentlemen, that is all the  
15 testimony and other evidence to be offered in the trial of  
16 the case, and therefore what remains to be done are the  
17 lawyers' final summations, after which I'll instruct you on  
18 the law, and then you'll begin with your deliberations.

19 So please give the lawyers your attention now as they  
20 give you their final summations.

21 MR. RAY: Your Honor, I believe, for the record, I  
22 will make one motion at this point.

23 THE COURT: All right. Let me see you.

24 (Bench conference held off the record in the presence  
25 of the jury but out of the hearing of the jury.)

1 THE COURT: All right. Note the motion.

2 MR. BARNETTE: May it please the Court, Your Honor.

3 THE COURT: Yes, Mr. Barnette.

4 MR. BARNETTE: Thank you, Your Honor.

5 Madam forelady and ladies and gentlemen of the jury,  
6 before -- well, I'm at this point before we started the  
7 case, I guess, about an hour and ten or 15 minutes ago.  
8 It's been a very quick case. But the thing I want you to  
9 remember is the evidence you have, the evidence that you  
10 received in this case.

11 The one thing you bring here to the Court is your  
12 common sense. Y'all every day are judges. You discern  
13 what you accept and what you don't accept.

14 The thing is that you see in this video that we showed  
15 you earlier. I'll be glad to show it to you again so you  
16 can see it. I may show it to you one more time. When you  
17 go back in the jury room you may not have it with you.

18 But looking at it and everything, the clothes tells  
19 the tale. If you look at what the defendant was wearing  
20 that night, and you'll have these back in evidence too.  
21 You saw Mr. Benson. He's my size, even probably a little  
22 bit bigger than me. Look at these pants. Look at the size  
23 of the pants, look at the waist of the pants.

24 You've also seen the defendant. You saw who went in  
25 the store wearing these pants, is the defendant,

Arguments

1 Mr. Wilkins.

2 He had a black jacket over the top. That's what he  
3 was wearing when they caught him underneath an outhouse,  
4 which he had ran from a car.

5 Like I say, you'll have the clothes that Mr. Benson  
6 had on wearing blue jeans, wearing a shirt like this. And  
7 he was wearing black shoes, I mean black, and you can  
8 clearly tell they're white shoes Mr. Wilkins was wearing  
9 when he went in the store that day.

10 And I'm sure, and I can't. I'm not going to get a  
11 chance to speak to you again. Mr. Ray will have the last  
12 argument, and the judge will give you the law you apply to  
13 the case.

14 Let me talk about Mr. Benson. Here's Mr. Benson was  
15 driving a vehicle in the case. He's not the one that went  
16 in, but he's just as guilty under the theory of accomplice  
17 liability, is what we call it, when you both do the crime.

18 He's pled. He's facing ten to 30 for what he did.  
19 I'm sure he would like to testify, and the judge is going  
20 to have to sentence him afterwards and determine it. And  
21 sure he'd like it to be the lower of the ten. He's facing  
22 the music. He's facing what he did in this case. But he's  
23 not the one that went into Ms. McAbee and pointed a gun at  
24 her, a revolver, a real gun as you can see on the video.

25 What could have happened? Thank goodness nothing else

1 happened other than the money was taken that night. Both  
2 of them was high on drugs and used the money to get the  
3 drugs, both of them in the car together, the car that was  
4 rented by the defendant's girlfriend.

5 This is a case if you look at the evidence presented  
6 and look at the evidence that's been presented to you,  
7 there is only one logical conclusion. The man that went in  
8 that store is this gentleman.

9 And then look on the video, like I said, I'm going to  
10 show you here. The handles on the door. And y'all been in  
11 stores, where the handles are where you can reach down and  
12 push them open if you need to.

13 Look how tall the defendant was. Look how short he is  
14 compared to that handle, especially if he went outside that  
15 door. And look at Mr. Benson, that man right there, the  
16 man that was with him on that night doing the armed  
17 robbery, doing the drugs, riding with him. He's the one  
18 that went in and robbed Jamie McAbee.

19 Let me show you the video real quick.

20 (Whereupon, the tape was played for the jury.)

21 MR. BARNETTE: You can look at the shoes. They're  
22 white shoes. They're not black shoes, like I said. These  
23 are pants he was wearing. Mr. Wilkins was wearing those  
24 pants. Black jacket. He's wearing a white t-shirt  
25 underneath that.

1           And he's definitely got a gun. He has white gloves  
2 on. There wouldn't be any fingerprints. He's clearly got  
3 a gun.

4           You can see the camouflage pants even better there.  
5 You can see he had a black hoody under that and a black  
6 jacket over the top of it. Definitely takes the money,  
7 definitely has a gun.

8           Look how short he is. I know you can see he is on his  
9 knees or whatever, but that's not Mr. Benson. Mr. Benson  
10 is a lot taller than that. It's his height. That's him.

11          I know I can stand up and talk to you all day about  
12 this, but the bottom line is y'all seen the evidence. The  
13 evidence has been presented here to you today, the evidence  
14 that you need in this case, because those things don't  
15 change.

16          The clothes does not change in this situation. The  
17 clothes tells the tale, and that along with what Mr. Benson  
18 told you, that's not Mr. Benson that went in there.  
19 Mr. Wilkins, the man he was with, doing the robbery, doing  
20 the drugs, in the car together. The car was driven by him  
21 and rented by his girlfriend.

22          I ask you to please based on the evidence presented  
23 here today to you, that this defendant had. We don't to  
24 prove beyond a shadow of a doubt. We have to prove beyond  
25 a reasonable doubt. And everything points, all the

1 evidence points, to that man being guilty of armed robbery.

2 Thank y'all very much.

3 THE COURT: Mr. Ray.

4 MR. RAY: Thank you, Your Honor.

5 This was a pretty short trial today. There wasn't a  
6 lot that we really needed to focus on much other than a  
7 couple of key things.

8 First, let's talk about Ms. McAbee's testimony, the  
9 clerk at the store. She testified that, and you saw on the  
10 video that, the person who robbed the store had a white  
11 shirt on. She said they were wearing a dark shirt.

12 She didn't say -- she testified here today jack, that  
13 she said jacket. But I talked to her about what she told  
14 the police that night, and she said dark shirt.

15 She also said the person who committed the robbery was  
16 between 5' tall and 6'3". And that's a huge range. And we  
17 can look at a video all day and handles on doors, which are  
18 in all different sorts of heights. And until you have  
19 something real to measure height by, I think you have to go  
20 by what the person there says, and that's not very helpful,  
21 between 5' and 6'3".

22 After the person arrived at the store, they left.  
23 Ms. McAbee signaled the alarm and called 9-1-1. That's it.  
24 She doesn't see where they go, if they're with anybody.  
25 That was all she saw.

1        Mr. Barnette said that the clothes tell the tale.

2        Let's look at the clothes. A dark shirt, or they say a  
3        black jacket, a white shirt.

4        Well, I haven't seen a white shirt here today. If he  
5        was arrested wearing these clothes, where's the white  
6        shirt?

7        You look at this jacket. It's, you got a little  
8        thickness to it. I see a zipper here on the arm. Did you  
9        see a zipper on the arm of the person who committed that  
10       robbery?

11       The shoes. I don't see any shoes here today.  
12       Apparently the police didn't think that was important. So  
13       who knows where the shoes are? It would have been pretty  
14       helpful if they would have gotten the shoes, wouldn't it?

15       One of the police officers told us there were boots.  
16       Well, boots are very different from white tennis shoes that  
17       the person who robbed the store was wearing.

18       The officer from the jail, Sergeant Ashley, testified  
19       that these were the clothes he was brought in with. We all  
20       know that he was found in sock feet as the officer said.  
21       That's it.

22       There's more in that video. Also, in the video you  
23       can see that whatever the person is wearing, whether it's a  
24       shirt, jacket, whatever it is, you can see that it's opened  
25       a little bit in the front. You see what the inside of this

1 jacket is. It's orange.

2 You see a white shirt in that video. I don't see  
3 anything in this jacket that looks orange to me. Maybe  
4 that's something to look at there.

5 Camouflage pants. Tons of people have camouflage  
6 pants.

7 So let's look at Mr. Benson. He's the one that says  
8 that Joe-Joe did this robbery. Well, for one, Corn as he  
9 goes by. I was mistaken when I said Coen. I am glad he  
10 corrected me.

11 Corn had been using drugs all day. He had drugs on  
12 him that night. He -- I don't know if his recollection of  
13 the day would be that reliable. He was confused about the  
14 night before. He says he wasn't in the store, he didn't  
15 see the robbery.

16 Of course he's pled guilty to robbery and failure to  
17 stop. He's looking at ten to 30 years.

18 And did you see how evasive he was? It's pretty  
19 straightforward. If somebody is in that situation and  
20 they're looking at ten to 30 years, wouldn't they want the  
21 ten years versus the 30? He was evasive to that.

22 He was evasive to whether or not he was going to get  
23 any benefit from the state. Seems pretty straightforward  
24 that he had a reason to try to help himself out. Didn't  
25 he?

1       He was charged with armed robbery, and maybe he  
2 thought, heck, I'm not going to be able to get out of this,  
3 let me see what I can do to lessen my time, let me blame it  
4 on Joe-Joe over here that did this one, say I was out in  
5 the car while Joe-Joe went in and did it.

6       That night there at the Hot Spot, they're just there.  
7 Joe-Joe is pumping gas. And Benson is sitting in the car.

8       A crowd of people starts coming around. Well,  
9 Mr. Benson knows he's got drugs on him. I don't know what  
10 all he's done.

11       But he says that it was kind of a mutual thing that  
12 Joe-Joe is yelling, hey, let's get out of here, let's go.  
13 And he says he was saying it too.

14       Does that really make a lot of sense? If Joe-Joe is  
15 concerned with all the people coming around, wouldn't he  
16 have hopped in the car and said let's go? Or would he  
17 stand outside the car yelling at him, hey, let's get out of  
18 here?

19       Seems to me that Mr. Benson was the one really  
20 concerned with getting out of there and getting away. So  
21 they hop in the car. They go down the road. The police  
22 get behind them.

23       Mr. Benson doesn't want to get pulled over, so he hits  
24 the gas and takes off. Joe-Joe knows Mr. Benson had drugs  
25 on him.

1       They get pulled over. Probably the last thing anybody  
2 wants to do is get arrested for drugs somebody else has on  
3 them. He takes off running too. Runs out of his boots  
4 trying to get out of there.

5       Things with Mr. Benson's story just don't quite seem  
6 to add up. Seems like he has a reason to blame something  
7 on Joe-Joe to try to get down to that ten years instead of  
8 the 30 that he's looking at.

9       The clothes tell the tale. They don't quite tell it  
10 the way the state would like for it to. There's  
11 differences. The similarity is there's camouflage pants.  
12 Different shoes, different top, whatever it is, whether  
13 it's a shirt or jacket. It's not quite the same.

14       Where is the mask? Where is the gloves? You'd think  
15 that if they got the same clothes here they're going to  
16 have the others too. Where is all of that stuff? Where is  
17 the gun? It's not there. It's because it wasn't Joe-Joe  
18 that did that armed robbery. I think when you go back and  
19 think about all of this, I think you'll agree.

20       The last thing I want to talk about is Mr. Benson said  
21 before the armed robbery he and Joe-Joe went in and out of  
22 the store several times. Did y'all see that anywhere? I  
23 didn't. I just don't see very much to corroborate Mr.  
24 Benson's story, and the obvious reason is he's just trying  
25 to help himself out. Thank you.

1 THE COURT: Madam forelady and ladies and gentlemen of  
2 the jury, you of course have heard and seen all the  
3 evidence in the case. You've now heard the final  
4 summations of the lawyers; and therefore it now becomes my  
5 duty and obligation to instruct you on the law that's  
6 applicable, and then you'll be asked to go back and begin  
7 with your deliberations. And through that process you'll  
8 examine the evidence, decide the facts, apply the law and  
9 arrive at a fair and just decision in the case.

10 It is your exclusive duty to determine what the facts  
11 are. And you do that through your own common sense  
12 examination and evaluation of all of the testimony and  
13 other evidence received during the trial of this case.

14 And you 12 jurors alone will decide what weight, value  
15 and effect to give to any particular witness' testimony or  
16 other evidence in the case. Your sole objective is to  
17 simply reach the truth in the matter, and by doing that you  
18 will have fulfilled your obligations as jurors, and that is  
19 to simply give both the state and the defendant a fair and  
20 impartial trial.

21 Now, as you know, in this case the state through the  
22 prosecutor has charged the defendant, Johnny Ray Wilkins,  
23 with the crime of armed robbery. And the charge setting  
24 forth that offense is contained in the indictment which I  
25 referred to earlier.

1       As I've told you, this indictment is not evidence of  
2 anything. It's not proof of anything. It simply contains  
3 the allegations and the charge brought against the  
4 defendant. It puts him on notice as to what the state  
5 claims that he has done by way of the commission of some  
6 criminal offense.

7       The indictment will be in the jury room, Madam  
8 Forelady, because it's going to be on the back of the  
9 indictment that you're going to be asked to indicate the  
10 jury's unanimous decision. But other than serving as the  
11 verdict form, the indictment serves no purpose so far as  
12 you jurors are concerned.

13       The defendant is charged with the crime of armed  
14 robbery. The state alleges that on or about January the  
15 13th of 2008 that he did commit the crime of robbery while  
16 armed with a deadly weapon in that he took, stole and  
17 carried away from the person or the presence of Jamie  
18 McAbee at the Li'L Cricket store located on Highway 221 in  
19 Mayo by the use of force or intimidation a certain sum of  
20 money and intended to deprive the owner of that property  
21 and convert that property to the taker's own use.

22       Those are the allegations in the indictment to which  
23 the defendant has entered a plea of not guilty. And, as  
24 I've told you, that plea of not guilty has therefore placed  
25 upon the state the burden of proving the allegations that

1 are set forth in the indictment, the burden of proving each  
2 of the essential elements of the crime alleged in the  
3 indictment; and therefore the burden is upon the state to  
4 establish the defendant's guilt to the satisfaction of you  
5 12 jurors beyond a reasonable doubt.

6 The burden is never upon a defendant to prove that he  
7 is not guilty or to prove that he is innocent because in  
8 many cases that might not be possible.

9 I instruct you that it is a vital, important and  
10 cardinal rule of law that every defendant in a criminal  
11 trial, and it does not matter how serious the offense might  
12 be for which that person stands charged, that person shall  
13 always be presumed innocent of that charge.

14 And, as I've told you, that presumption of innocence  
15 remains with any defendant, as it does with this defendant,  
16 from the time that he is placed under arrest and throughout  
17 the course of the criminal process and even throughout the  
18 course of the actual trial in the case.

19 And that presumption of innocence will be with Mr.  
20 Wilkins even as go back into your jury room to begin with  
21 your deliberations in this case. And that presumption of  
22 innocence will be with him in that jury room, and it'll be  
23 with him forever unless you 12 jurors determine that he's  
24 no longer entitled to that presumption of innocence.

25 That is after you have carefully considered all the

1 evidence in the case, from that evidence you decided the  
2 facts, and upon deciding the facts you have applied the  
3 law, if you 12 jurors unanimously determine that his guilt  
4 has been proven beyond a reasonable doubt, then he would no  
5 longer be entitled to the presumption of innocence.

6 But it's only if, unless and until you are satisfied  
7 of his guilt beyond a reasonable doubt that the presumption  
8 of innocence would no longer be applicable.

9 Now, while the state does have the burden of proving a  
10 defendant's guilt beyond a reasonable doubt, that doesn't  
11 mean that they have to prove his guilt beyond all doubt or  
12 beyond any possible doubt. But it does require the state  
13 to prove his guilt to your satisfaction beyond a reasonable  
14 doubt.

15 The term reasonable doubt should be given its plain  
16 and ordinary meaning. A reasonable doubt is the kind of  
17 doubt that would cause a reasonable person to hesitate to  
18 act upon the information provided.

19 A defendant in a criminal trial is entitled to any  
20 reasonable doubt that arises from the evidence or lack of  
21 evidence in a case. And if upon any factual issue  
22 essential to a finding of a verdict of guilty you have some  
23 reasonable doubt as to how that issue should be resolved,  
24 it would be your duty to resolve that doubt in favor of the  
25 defendant.

1       And therefore if upon your consideration of the whole  
2 case you have a reasonable doubt as to his guilt, you must  
3 resolve that doubt in his favor and return a verdict of not  
4 guilty.

5       And, at the same time, after you have carefully  
6 considered all the evidence and applied the law if you have  
7 no reasonable doubt as to the defendant's guilt, then it  
8 would be your corresponding duty to find him guilty of the  
9 crime that has been proven to your satisfaction beyond a  
10 reasonable doubt.

11       Now, the same law that provides that you are the  
12 judges of the facts also provides that I am the judge of  
13 the law. And that simply means that nobody is going to  
14 tell you how to arrive at your determination of fact in  
15 this case. You do that, as I've stated, through the  
16 exercise of good judgment and common sense conscientiously  
17 applied to the testimony and evidence received during the  
18 trial of the case.

19       You must however under your oath as a juror accept the  
20 law as I provide it to you as being the law that is  
21 applicable in this particular case. In other words, you're  
22 never to concern yourself with what you thought the law was  
23 before you came to serve as a juror this week or what you  
24 think the law ought to be.

25       Under your oath you simply accept the law as I provide

1 it to you as being the law that you are to apply in the  
2 case. And then you take that law and you apply it to the  
3 facts as you 12 jurors determine the facts to be based upon  
4 your common sense examination and evaluation of the  
5 evidence in the case.

6 Now, because you are the sole judges of the facts in  
7 this case you are therefore necessarily the sole judges of  
8 the credibility or the believability of each witness that  
9 has testified during the trial of the case.

10 You 12 jurors alone will decide what weight, value and  
11 effect to give to any particular witness' testimony, or  
12 even portions of that testimony. And therefore there are a  
13 number of factors which you should consider in arriving at  
14 your assessment upon the evaluation of a witness'  
15 testimony, and I'm going to list several of those factors  
16 for you.

17 You may consider the demeanor of the witness, that is  
18 how the witness appeared to you as the witness testified  
19 from that witness stand. Was the witness straightforward  
20 in responding to questions, or was the witness hesitant or  
21 evasive in responding to questions that were asked of that  
22 witness?

23 Simply put, did the witness appear to you to be  
24 telling the truth and to have knowledge of the facts to  
25 which that witness has testified?

1           You may also consider whether or not the testimony of  
2 a witness is consistent or inconsistent with testimony or  
3 information provided by that witness, whether it be in  
4 court or out of court, as well as whether or not the  
5 testimony of a witness is consistent or inconsistent with  
6 other testimony or other evidence received during the trial  
7 of the case.

8           You may also consider how the witness came to know the  
9 facts to which a witness has testified. In other words,  
10 what was that witness' opportunity and ability to perceive  
11 the existence of those facts to which that witness has  
12 testified by having previously used his or her senses, and  
13 then what is that witness' ability to be able to come into  
14 court and to accurately recollect to you as to what that  
15 witness has previously perceived?

16           You may also consider any bias or prejudice or  
17 interest that a witness might have in the case. In other  
18 words, do you find some reason that a particular witness  
19 would come into court and would testify one way or another  
20 to help or to hurt one side or the other?

21           You may consider any interest that a witness might  
22 have in the outcome of the case if you determine that a  
23 witness does have such an interest and you find that that  
24 interest would bear upon that particular witness'  
25 credibility.

1       You may also consider whether or not the testimony of  
2 a witness is strengthened, or is it weakened by other  
3 testimony or other evidence received during the trial of  
4 the case?

5       So you as the finders of the fact and you as the  
6 judges of the credibility of each witness that has  
7 testified are permitted to believe as much or as little of  
8 what a witness has testified to as you deem is appropriate.  
9 And therefore you may believe everything that a witness  
10 testified to. You may choose to believe none of it. You  
11 may believe one portion of a witness' testimony and reject  
12 some other portion of that same witness' testimony.

13       In a given case you could believe one witness as  
14 opposed to several, or several as opposed to one. But  
15 whatever your good judgment and common sense tells you is  
16 the most believable and credible testimony is the testimony  
17 you should accept. And you should reject any testimony or  
18 other evidence that you find not to be credible and  
19 believable.

20       Again, your sole objective is to simply reach the  
21 truth in the matter. And by doing that you will fulfilled  
22 your obligations as jurors.

23       Now, while there are various forms of evidence such as  
24 testimony, photographs, videos, documents, charts and other  
25 types of physical exhibits, there are really only two types

1 of evidence. But either or both of those types of evidence  
2 may be used to prove any fact in issue. But the two types  
3 of evidence are direct evidence and circumstantial  
4 evidence.

5 Now, direct evidence is the testimony of a person who  
6 testifies from actual knowledge of the fact. It is  
7 testimony by a person who has perceived the existence of  
8 some fact by means of his or her senses. And then they  
9 come into court and they testify as to what they have  
10 previously seen or heard, or felt for that matter.

11 Circumstantial evidence, on the other hand, is the  
12 proof of some other fact or set of facts which taken either  
13 singly or collectively may prove the existence of a fact in  
14 question as a necessary consequence, that is through an  
15 inference.

16 An inference is simply a deduction of fact that may  
17 logically and reasonably be drawn from the proof of some  
18 other fact or set of facts. It is a fact which is not  
19 proven by the direct testimony of a witness based upon  
20 personal perception. But it is a conclusion which might  
21 reasonably be drawn from the proof of other facts.

22 In other words, you may infer that a particular event  
23 occurred or that a particular fact exists based upon the  
24 proof of sufficient factual circumstances which would  
25 reasonably warrant your arriving at such a conclusion.

1       The law however makes absolutely no distinction  
2 between the weight or value to be given to either direct  
3 evidence or circumstantial evidence, nor is a greater  
4 degree of certainty required of circumstantial evidence as  
5 opposed to direct evidence.

6       Whatever the type of evidence used to prove a fact in  
7 issue, you should consider all of the evidence presented  
8 during the trial of the case. And after carefully  
9 considering all of that evidence and weighing it in your  
10 minds if you are not convinced of the guilt of the  
11 defendant beyond a reasonable doubt, then you must resolve  
12 that doubt in his favor and return a verdict of not guilty.

13       Now, as you know, the defendant is charged with the  
14 crime of armed robbery. And armed robbery is a statutory  
15 offense. It is set forth in the Code of Laws, the Code of  
16 Laws being these number of blue volumes you'll see.

17       Every year the legislature meets in Columbia. They're  
18 meeting right now. They pass various statutes, laws, rules  
19 and regulations that govern our conduct in a lot of ways.

20       Some of those statutes are criminal statutes. In  
21 other words, the legislature passes a statute that  
22 prohibits citizens engaging in particular types of conduct.  
23 And where a person is found to have engaged in that conduct  
24 which is prohibited by that statute, then it subjects that  
25 person to some form of punishment or penalty.

Charge

1 Please keep in mind however that the jury is never to  
2 be concerned with punishment or penalty. The sole  
3 obligation and function of a jury is to determine whether  
4 or not a person's guilt has been proven beyond a reasonable  
5 doubt. And you are to make that determination without  
6 consideration being given to any consequence of your  
7 decision.

8 But in this case the statute that the state claims the  
9 defendant has violated is set forth in Section 16-11-330 of  
10 the Code of Laws. And that refers to the criminal offense  
11 known as armed robbery.

12 The offense of armed robbery necessarily includes the  
13 lesser offense of robbery, and it also includes the offense  
14 of larceny. So I'm going to first define for you the term  
15 larceny, then robbery and then the offense of armed  
16 robbery.

17 Larceny is commonly referred to and known as stealing.  
18 Larceny is defined in the law as the taking, the stealing  
19 and the carrying away of the personal property of another  
20 with the intention of stealing it and converting that  
21 property to the taker's own use.

22 Robbery is commonly referred to as a larceny by force.  
23 Robbery is defined in the law as the taking, the stealing,  
24 the carrying away of personal property of another having  
25 any value whatsoever from the person or from the presence

1 of any person without his or her consent and with an intent  
2 to steal by using force or violence or the threat of using  
3 force or violence to accomplish the theft.

4 A thing is deemed to be in the presence of a person  
5 with respect to the crime of robbery when it is so within  
6 his or her reach, inspection, observation or control that  
7 he or she could if not overcome by violence or the threat  
8 of the use of violence or prevented by fear, could have  
9 retained possession of the property.

10 Forcing a person to surrender property out of fear  
11 from intimidation through the use of force or violence or  
12 through the threat of the use of force or violence with an  
13 intent to steal the property is a robbery under the law.  
14 And, as I've stated, Section 16-11-330 refers to the crime  
15 of armed robbery.

16 That statute provides that a person who commits the  
17 crime of robbery while armed with a pistol, dirk, slingshot  
18 metal knuckles or razor or other deadly weapon is guilty of  
19 the crime of armed robbery.

20 Now, ladies and gentlemen, I further instruct you and  
21 I emphasize to you that the fact that a defendant does not  
22 testify during the trial of a criminal case is not a  
23 consideration that you may take into account in any fashion  
24 whatsoever during your deliberations or in your  
25 determination as to whether or not his guilt has been

1 proven beyond a reasonable doubt.

2 As I have stated, the burden is never upon a defendant  
3 to prove that he is not guilty or to prove that he is  
4 innocent because in some cases that might not be possible.

5 The burden is always upon the state because they bring  
6 the charge against another to establish that person's guilt  
7 beyond a reasonable doubt. And therefore you are not to  
8 draw any inference or reach any conclusion from the fact  
9 that a defendant does not testify during the trial of a  
10 case, nor may that fact be considered by you in any fashion  
11 whatsoever, nor may that fact even be discussed while you  
12 are engaged in your deliberations in this case.

13 Now, Madam Forelady, I am not in any way concerned  
14 with what you and your fellow jurors' verdict is, but you  
15 are instructed that the verdict must be unanimous. All 12  
16 must be in agreement.

17 And so when the jury has reached a unanimous decision,  
18 Madam Forelady, I'll ask that you indicate that unanimous  
19 decision on the back of the indictment in the lower  
20 left-hand corner.

21 You'll see the word verdict. And beneath that word  
22 you'll also see some lines. And on those lines is a date  
23 stamp. That date stamp shouldn't be there. It's  
24 interfering with you being able to sign your name at the  
25 end of the verdict. So don't pay any attention to it.

1 Hopefully in the future they'll move it to the other side  
2 of the indictment. But, nevertheless, beneath that word  
3 verdict just ignore the stamp and write in the verdict,  
4 whatever that verdict is.

5 In this case you have two choices. They are guilty or  
6 not guilty. So whatever that decision is, it must be  
7 unanimous. Indicate it in the space provided and sign your  
8 name as the foreperson and also place today's date.

9 Now, during your deliberations -- I don't know if we  
10 have any smokers on the jury. If you do want to smoke, you  
11 are permitted to do so. But you can't smoke in the jury  
12 room. You have to go outside for that purpose.

13 So if anybody wants to smoke you'll have to let the  
14 bailiff know. He'll take you outside to accomplish that  
15 purpose. But you are instructed that the deliberations  
16 must stop. And they may only resume when all 12 jurors are  
17 present. So if any juror is absent for an authorized  
18 purpose, stop the deliberations. Only resume them once all  
19 12 jurors are present so that all may participate.

20 If during the course of your deliberations you have a  
21 question about the facts or the evidence, I am not  
22 permitted to answer any questions that relate to questions  
23 of fact.

24 And if you are -- if you've, by chance, wonder if  
25 there's some other piece of evidence that you could have,

1 you can't have any additional evidence now that you're  
2 going to begin deliberations. So even if something else  
3 existed, you couldn't have it, because the evidence has  
4 been closed and you're now going back to begin  
5 deliberations.

6 If however you have a question about testimony and you  
7 think that question can be answered by having testimony  
8 replayed, we can bring you back into the courtroom to have  
9 a witness' testimony replayed in whole or in part. But we  
10 don't have transcripts of the witnesses' testimony. But we  
11 can bring you back to have that testimony replayed.

12 If at any time you have a question about the law that  
13 is applicable, I can always respond to those questions. So  
14 if you need any additional explanation or a clarification  
15 of the law that you are to apply, if you let me know of  
16 that fact I can always respond to those questions and  
17 provide you with an additional explanation or a  
18 clarification of what's already been provided.

19 And so far as lunch is concerned, it's not quite noon.  
20 But as you go back to begin your deliberations if you get  
21 to a point in your deliberations where you want to stop and  
22 have lunch, if you'll let the bailiff know, he'll let me  
23 know. And we'll make arrangements to stop the  
24 deliberations and perhaps have you excused for lunch. And  
25 then you can come back and continue to deliberate after

1 your lunch.

2       So I'll leave that up to you. As you go back to  
3 deliberate, you'll deliberate as long as you determine it's  
4 appropriate. If you reach a verdict, you let us know of  
5 that fact. If you have not reached a verdict but you want  
6 to have lunch, let us know of that fact and we'll perhaps  
7 excuse you so that you can go to lunch.

8       I think that covers everything. So I'll ask the 12  
9 primary jurors with the exception of Ms. Nunnery, I'll ask  
10 the original 12 to please go with the bailiff to the jury  
11 room.

12       But do not begin your deliberations until I send you  
13 word to do so. I've got some matters I'll need to address  
14 with the lawyers. If I don't need to bring you back for  
15 any reason, I'll send word by the bailiff that you can  
16 begin deliberations. And in that event he'll bring all of  
17 the exhibits to the jury room.

18       And to you, Madam Forelady, he'll also bring the  
19 verdict form.

20       As far as the video is concerned, if we have something  
21 that -- if you want so see it again, if we have something  
22 we can send back, then we'll send it back with the D. V. D.  
23 so you can watch it if you need to. And if we don't have  
24 something to play it on the jury room, if you need to see  
25 the video again, we'll have to bring you back into the

1 courtroom to view it.

2       You can look at it as many times as you want to. So  
3 don't be shy about that. But I just don't know that we can  
4 arrange to have a machine sent to the jury room itself.  
5 But I'll make that determination. If we can, we'll send it  
6 back. If he can't, then you'll have to let us know if you  
7 want to view the D. V. D. again.

8       Okay. All right. With the exception of Mr. Nunnery,  
9 if the 12 jurors will go back, but await my instruction as  
10 to when to begin deliberations.

11       (Whereupon, the jury retired to deliberate at  
12 11:50 a.m.)

13       (Whereupon, the alternate juror was excused.)

14       THE COURT: Are there any exceptions taken to the  
15 instruction or requests for additions to the instruction by  
16 the state?

17       MR. BARNETTE: None from the state, Your Honor.

18       THE COURT: By the defendant?

19       MR. RAY: No, sir, Your Honor.

20       THE COURT: Let me ask y'all to please verify the  
21 exhibits before they go back.

22       (Pause.)

23       THE COURT: All right. Are all the exhibits accounted  
24 for?

25       MR. BARNETTE: Yes, sir.

1 MR. RAY: Yes, sir.

2 THE COURT: Okay. Send them back and ask the jury to  
3 begin deliberations and notify us when they have concluded.

4 We will be at ease while the jury is deliberating.

5 (Whereupon, a recess was taken.)

6 THE COURT: All right. Bring the jury in, please.

7 (Whereupon, the jury returned to the courtroom at  
8 12:14 p.m.)

9 THE COURT: Ladies and gentlemen, I understand you  
10 want to look at the video again. I'm sorry I don't have  
11 something I can send back to the jury room to allow you to  
12 view it back there. I just don't have it. Hopefully, one  
13 day we'll get it, but we don't have it right now.

14 Nevertheless, we're going play it for you. And if you  
15 want to look at it more than once, you can look at it as  
16 many times you want to. You just tell us you want to see  
17 it again.

18 But I am going to ask that you not discuss anything  
19 while you're in here, see, because you're outside the jury  
20 room. So don't talk about it. But anybody that needs to  
21 see it more than once, you let us know. We'll replay it  
22 for you.

23 (Whereupon, the tape was played for the jury.)

24 THE COURT: Do you want to see again?

25 UNIDENTIFIED JUROR: I have one question. Is there

1 any way you can freeze it at a certain point, slow it down  
2 and just freeze it?

3 THE COURT: All right. The lawyers can do that. And  
4 you tell us when you want to stop it.

5 MR. BARNETTE: I can't do that, Judge. I can freeze  
6 it and then they can watch it at that point.

7 THE COURT: Oh.

8 MR. BARNETTE: Thank you.

9 THE COURT: Okay.

10 UNIDENTIFIED JUROR: Right, right there. I think it  
11 just like, like, stepping one time, step so as far as his  
12 arm come down.

13 MR. BARNETTE: Okay.

14 (Whereupon, the tape was played for the jury.)

15 MR. BARNETTE: Do you want me to back it up?

16 UNIDENTIFIED JUROR: It is hard to catch, right? Keep  
17 moving.

18 THE COURT: I tell you something else y'all can do if  
19 you want to. If you want to come out of the jury box and  
20 stand right out here in front, I mean, you can't block the  
21 projector. But if you think you can see better by coming  
22 out here in front of the screen, you're welcome to do that.

23 UNIDENTIFIED JUROR: Can you freeze it when he is at  
24 the counter facing the lady at the counter?

25 THE COURT: All right. We'll see.

1 (Whereupon, the tape was played for the jury.)

2 UNIDENTIFIED JUROR: Request you enlarge that.

3 (Whereupon, the tape was played for the jury.)

4 MR. BARNETTE: Do you want me to play it again?

5 THE COURT: Do you want to see it again? Okay.

6 Replay it.

7 THE FOREMAN: Could you stop it as he is coming in the  
8 door?

9 MR. BARNETTE: I can try.

10 UNIDENTIFIED JUROR: I can if you might the two  
11 double -- it might slow -- do it.

12 UNIDENTIFIED JUROR: The other.

13 MR. BARNETTE: Would you like to see it again?

14 UNIDENTIFIED JUROR: One more time.

15 MR. BARNETTE: Okay. Tell me when anybody wants to  
16 stop it and I will try.

17 (Whereupon, the tape was played for the jury.)

18 UNIDENTIFIED JUROR: Stop.

19 MR. BARNETTE: Do you want me to keep going, sir?

20 UNIDENTIFIED JUROR: Just keep going.

21 MR. BARNETTE: I didn't know if you wanted me to stop  
22 it again.

23 THE COURT: All right. Any more? Okay. Please  
24 retire to your jury room but continue with your  
25 deliberations.

1           (Whereupon, the jury retired to deliberate at  
2 12:23 p.m.)

3           THE BAILIFF: Do I need to take that video, C. D.,  
4 back?

5           THE COURT: No. They can't use it. We are going to  
6 leave it in case they want to see it again.

7           (Whereupon, a recess was taken.)

8           THE COURT: All right. I understand the jury has  
9 reached a verdict. Are we ready to receive it?

10          MR. BARNETTE: The state is ready, Your Honor.

11          MR. RAY: Yes, sir, Your Honor.

12          THE COURT: All right. Bring them in, please.

13          (Whereupon, the jury returned to the courtroom at  
14 12:32 p.m.)

15          THE COURT: Madam forelady, have you and your fellow  
16 jurors reached a unanimous decision?

17          THE FOREMAN: Yes, Your Honor, we have.

18          THE COURT: And have you indicated that decision on  
19 the back of the indictment as requested?

20          THE FOREMAN: Yes, sir.

21          THE COURT: Did you sign your name as the foreperson?

22          THE FOREMAN: Yes, sir.

23          THE COURT: If you will, please hand that up by way of  
24 the bailiff.

25          You may publish the verdict.

1 THE CLERK: State of South Carolina, County of  
2 Spartanburg, State vs. Johnny Ray Wilkins, Indictment No.  
3 2008-GS-42-1183, we, the jury, find the defendant guilty.  
4 Signed today's date. Foreperson, Donna Ivey.

5 Ladies and gentlemen, if this is your verdict and  
6 still your verdict, please raise your right hand.

7 (Whereupon, all responded in the affirmative.)

8 THE CLERK: So say you all.

9 THE COURT: Does the defendant wish to have the jury  
10 polled?

11 MR. RAY: Yes, Your Honor.

12 THE COURT: All right. Poll the jury, please, ma'am.

13 THE CLERK: When I call your name, I will pose to you  
14 a question. That question is is this your verdict and  
15 still your verdict. Please answer yes or no.

16 Lemont Gaff.

17 THE JUROR: Yes.

18 THE CLERK: Keith McCollum.

19 THE JUROR: Yes.

20 THE CLERK: Martha Soto.

21 THE JUROR: Yes.

22 THE CLERK: Junior Spivey.

23 THE JUROR: Yes.

24 THE CLERK: Donna Ivey.

25 THE JUROR: Yes.

1 THE CLERK: Jonathan Atkins.  
2 THE JUROR: Yes.  
3 THE CLERK: Sharon Burnett.  
4 THE JUROR: Yes.  
5 THE CLERK: Christopher Williams.  
6 THE JUROR: Yes.  
7 THE CLERK: Brian Dully.  
8 THE JUROR: Yes.  
9 THE CLERK: Kayla Young.  
10 THE JUROR: Yes.  
11 THE CLERK: Terry Millwood.  
12 THE JUROR: Yes.  
13 THE COURT: And Ricky Littlejohn.  
14 THE JUROR: Yes.  
15 THE CLERK: The jury has been polled.  
16 THE COURT: All right. Any other matters to address  
17 with the jury present?  
18 MR. BARNETTE: None from the state, Your Honor.  
19 MR. RAY: None from the defense, Your Honor.  
20 (Whereupon, the trial jury was excused.)  
21 THE COURT: All right. Let the record reflect at the  
22 conclusion of all of the evidence the defense made a  
23 motion, and I noted the motion for the record.  
24 Mr. Ray, do you want to state that motion now?  
25 MR. RAY: Yes, sir, Your Honor. That was renewing a

1 motion for a directed verdict.

2 THE COURT: All right. And that motion was denied  
3 based on the same grounds as previously noted.

4 Any other matters we need to address prior to  
5 imposition of sentence?

6 MR. RAY: Just the defense would move for a new trial  
7 based on the denial of the previous motions and lack of  
8 evidence to support the jury's finding.

9 THE COURT: All right. That motion is denied.

10 MR. BARNETTE: I do have the sentencing sheets to pass  
11 to Mr. Ray. I do have some indictments I need to mark as  
12 court exhibits, Your Honor.

13 THE COURT: Okay.

14 (Affidavits of service and notice marked Court's  
15 Exhibit No. 1; copy of Indictment 97-GS-11-367 marked  
16 Court's Exhibit Nos. 2; copy of Indictment 97-GS-11-366  
17 marked Court's Exhibit No. 3.)

18 THE COURT: All right. Bring the defendant around.

19 All right. Anything further on behalf of the state?

20 MR. BARNETTE: Yes, sir, just for the record. Court's  
21 Exhibit 1, Your Honor, is two affidavits that was done by  
22 Investigator Rick Gregory. He served the defendant  
23 personally and served Mr. Tim Ray, his attorney, personally  
24 of the life notice on page three of that.

25 We included that life notice, his rap sheet which

1 contains two prior convictions, two most serious prior  
2 convictions, one for ABWIK and one for armed robbery. He  
3 received 12 years apiece.

4 Court's Exhibit 2, Your Honor, is a copy, certified  
5 copy, of the indictment from Cherokee County where he was  
6 sentenced to ABWIK, I believe by Your Honor over in  
7 Cherokee County and received a 12-year sentence.

8 Then Court's Exhibit 3, Your Honor, is a certified  
9 indictment for armed robbery where he received the same  
10 conviction, I believe, at the same time from Your Honor.  
11 And we would like to put those part of the record, Your  
12 Honor.

13 And based off that, Your Honor, and based off the  
14 notice, he is a life-without-parole sentence in this case.

15 THE COURT: All right. This Courts Exhibit No. 1, the  
16 first affidavit, is not sworn to. Is it supposed to be?

17 MR. BARNETTE: Yes, sir. And I have him here too if  
18 you'd like to hear from him also on the record.

19 THE COURT: Okay. I guess we'll have to.

20 MR. BARNETTE: Or can I have one of the notaries  
21 notarize it?

22 THE COURT: That will be fine.

23 MR. BARNETTE: May I approach the bench again?

24 THE COURT: Yes.

25 MR. BARNETTE: May I ask Mr. Gregory on the record

1 just to cover that, Your Honor, just to make sure there's  
2 no question about it?

3 THE COURT: Okay.

4 MR. BARNETTE: Investigator Gregory, did you serve  
5 personally on the defendant on February the 25th of 2009?

6 INVESTIGATOR GREGORY: Yes, sir, I did.

7 MR. BARNETTE: Did you also serve his attorney,  
8 Mr. Tim Ray, on February the 25th of 2009?

9 INVESTIGATOR GREGORY: Yes, sir.

10 THE COURT: All right. I have before me three  
11 exhibits.

12 Court's Exhibit No. 1 contains two affidavits of  
13 service by Richard Gregory of the 7th Judicial Circuit  
14 Solicitor's Office indicating that notice of a life  
15 sentence was served upon Mr. Ray, the defendant's counsel,  
16 on the 25th day of February of 2009, and further that a  
17 notice of a life sentence was served upon the defendant  
18 personally also on the same date.

19 I also have Exhibits 2 indicating that the defendant  
20 was convicted by a plea or trial for the offense of assault  
21 and battery with intent to kill, which is classified as a  
22 most serious offense under the law.

23 And also Exhibit No. 3, an indictment for armed  
24 robbery, wherein the defendant was convicted or pled guilty  
25 to armed robbery, that also being a most serious offense

1 under the law.

2 Mr. Ray, do you or your client take exception to any  
3 of those exhibits?

4 MR. RAY: No, sir, Your Honor.

5 THE COURT: All right. Anything else the state needs  
6 to add?

7 MR. BARNETTE: No, sir.

8 THE COURT: Anything from you, Mr. Ray?

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

10 THE COURT: What about Mr. Wilkins? Is there anything  
11 you'd like to tell me before I impose a sentence,  
12 Mr. Wilkins?

13 THE DEFENDANT: I didn't do it.

14 THE COURT: All right. On Indictment 2008-1183, an  
15 indictment for armed robbery, wherein the defendant has  
16 been found guilty by a jury of that offense, that offense  
17 being classified as most serious offense under the law, and  
18 the defendant having at least one prior conviction for a  
19 most serious offense, the Sentence of the Court is you,  
20 Johnny Ray Wilkins, be confined to the South Carolina  
21 Department of Corrections for the period of your natural  
22 life pursuant to Section 17-25-45.

23 Now, Mr. Wilkins, you have a right to appeal the  
24 verdict of the jury and the Sentence of the Court. You  
25 must file any notice of your intention to appeal those

1 decisions within ten days of today's date. Okay.

2 END OF REQUESTED TRANSCRIPT OF RECORD

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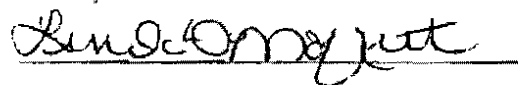
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th and 10th days of March 2009.

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

June 9, 2009



Linda D. Moffitt  
Circuit Court Reporter

## FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

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

Johnny Ray Wilkins #244320  
v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2019CP4204433

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Inst
2. Name and location of Court which imposed sentence Spartanburg SC
3. Name(s) of co-defendant(s) (if any) Robert M. Benson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 97-GS-367
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence
  - (a) March 9, 2009
  - (b) life

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SPARTANBURG COUNTY  
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- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. \_\_\_\_\_ Court of Appeal
- ii. \_\_\_\_\_ Supreme Court
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. \_\_\_\_\_ dismissed
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_ October 1, 2011
- ii. \_\_\_\_\_ 17<sup>th</sup> May 2018
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) Ineffective Assistance of Counsel (Strickland  
 (b) Conspiracy to violate Civil Rights us v chronic  
 (c) Violation of Due Process & Equal Protection

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) will be Amended by App Counsel  
 (b) Identification  
 (c) newly discovered Evidence

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes  
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO  
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? not yes  
 (d) any other petitions, motions or applications in this or any other Court? yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. Court of Appeals SC  
 ii. 1015 Sumter Street Box 1629 Columbia 29211  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

(b) the name and location of the Court in which each was filed:

- i. South Carolina Commission on Indigent Defense  
 ii. Division of Appellate Defense PO Box 11589  
 iii. \_\_\_\_\_  
 iv. \_\_\_\_\_

(c) the disposition thereof:

- i. Dismissed  
 ii. \_\_\_\_\_  
 iii. \_\_\_\_\_

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iv. \_\_\_\_\_

(d) the date of each such disposition:

i. \_\_\_\_\_ *dismissed*

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

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

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

(a) which grounds have been presented:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_ *Petitioner is raising ground now because they*

(b) \_\_\_\_\_ *could not have been presented on direct Appeal.*

(c) \_\_\_\_\_

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

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- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- Timothy M. Ray Attorney at Law 184 North Daniel Morgan Ave
  - Kathrine H. Huggins, Division of Appellate Defense
  - 1330 Hardy Street Suite, 401 Columbia SC 29201 5332
- (b) the proceedings at which each such attorney represented you:
- Timothy M. Ray at Trial
  - 
  - Kathrine H. Huggins, Court of Appeal
19. State clearly the relief you seek in filing this application:  
new trial
20. Are you now under sentence from any other court that you have not challenged?  
no

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STATE OF SOUTH CAROLINA )

County of Spartanburg SC )

## VERIFICATION

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

Shunay Ray Wilkins

SWORN to and subscribed before me this 10  
day of Dec., 2019.

Debra Eastley (L.S.)  
Notary Public

My Commission Expires: 3/3/2024

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SPARTANBURG COUNTY  
AMY W. COX

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

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

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

Johnny Ray Wilkins  
Applicant

SWORN or affirmed to and subscribed before me this  
10 day of Dec., 2019.

Debra Eastbury  
Notary Public

My Commission Expires: 3/3/2020

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

Johnny R. Wilkins, #244320,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-42-04433

RETURN AND MOTION TO DISMISS

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2020 OCT 14 PM 3:14  
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SPARTANBURG COUNTY  
ADMIN. COX

NOW COMES Respondent, making its return and moving to dismiss the post-conviction relief (hereafter “PCR”) application filed on December 17, 2019 by Johnny R. Wilkins (hereafter “Applicant”). Respondent respectfully offers the following in support of its Return:

#### I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its February 2008 term, the Spartanburg County Grand Jury indicted Applicant for Armed Robbery (2008-GS-42-1183). Applicant was represented by Timothy Ray, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor’s Office prosecuted the case. On March 9-10, 2008, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. Applicant was found guilty as indicted and Judge Cole sentenced Applicant to life imprisonment.

Applicant filed a timely Notice of Appeal on that was perfected by Katherine H. Hudgins, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and a motion to be relieved as counsel. The South Carolina Court of Appeals dismissed Applicant’s appeal and granted counsel’s motion to be relieved by unpublished opinion. *State v. Wilkins*, 2011-UP-482 (S.C. Ct. App. Oct. 28, 2011). The Remittitur was issued on November 15, 2011.

***First PCR Action (2012-CP-11-0453)***

Applicant filed his first PCR application on June 27, 2012, alleging:

1. "Ineffective assistance of counsel."
  - a. "Fail to call witnesses."
  - b. "Indemnification."
2. "Violation of due process of law, equal protection."

Respondent submitted a return and motion to dismiss, dated May 29, 2013, for untimeliness and failure to file his application in the proper county. The final order of dismissal signed by the Honorable Roger L. Couch, was filed on August 28, 2013, summarily dismissing the case for untimeliness and failure to file in the proper jurisdiction.

***Second and Third PCR Applications (2013-CP-42-2657 and 2013-CP-42-2847)***

Applicant subsequently filed a second PCR application on June 13, 2013 (2013-CP-42-2657) and filed his third PCR application in July 3, 2013 (2013-GS-42-2847). In his application, Applicant alleged:

1. Ineffective assistance of counsel
  - a. Failure to call defense witnesses
2. Violation of Due Process and Equal Protection.
  - a. "Indentification."

Respondent made its motion for merger on March 18, 2014, and its return on March 28, 2014. The second PCR application was merged into the third application. An evidentiary hearing into the matter was convened on March 25, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On May 17, 2018, the Honorable Roger L. Couch issued the order of dismissal denying Applicant's PCR application.

On June 21, 2018, Leah B. Moody, Esquire filed notice of appeal. This was perfected

through filing a petition for writ of certiorari, through Counsel Wanda H. Carter, in the Supreme Court of South Carolina on behalf of Applicant on December 5, 2018, pursuant to *Johnson v. State*, 204 S.C. 310, 364 S.E.2d 201 (1988), along with a petition to be relieved as counsel. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals denied the petition for writ of certiorari and granted Counsel's request to withdraw, through written order filed on July 14, 2020. The Remittitur was issued on August 5, 2020.

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JAY V. COX

## II. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Ineffective assistance of counsel."
2. "Conspiracy to violate civil rights."
3. "Violation of Due Process and Equal Protection."
4. "Indentification."<sup>1</sup>
5. "Newly Discovered Evidence."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, the Applicant's South Carolina Department of Corrections Records, the trial transcript, the current PCR application, and prior PCR and Appellate Records by reference. Respondent reserves the right to amend this Return based upon receipt of additional relevant information.

## III. Motion to Dismiss

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, Respondent requests the Court not appoint counsel in this matter, and instead issue a

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<sup>1</sup> Respondent interprets this to be "indemnification."

conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.<sup>2</sup> See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Re: Appointment of Counsel in Post-Conviction Relief Cases Before the Circuit Court*, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCP (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

***Newly Discovered Evidence***

Respondent contends that Applicant's claim of newly discovered evidence should be summarily dismissed because Applicant has failed to make a *prima facie* showing he is entitled to relief for his claim. A person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). To prevail, Applicant must show the newly-discovered evidence:

- (1) is such that it would probably change the result if a new trial were granted;
- (2) has been discovered since the trial;
- (3) could not in the exercise of due diligence have been discovered prior to the trial;

---

<sup>2</sup> A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

- (4) is material; and
- (5) is not merely cumulative or impeaching.

*State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

Beyond stating that newly discovered evidence exists, Applicant has offered nothing else to substantiate this claim. Specifically, he has not identified what the evidence is, how it would impact the case at trial, when it was discovered, why it is not cumulative or impeaching, or why he could not have discovered it through due diligence before. Thus, Applicant has failed to make a *prima facie* case for why he is entitled to relief on this claim and, as such, this court should dismiss this claim for failure to make a *prima facie* case of Newly Discovered Evidence.

### ***Statute of Limitations***

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, South Carolina Code Annotated Section 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to

judgment as a matter of law.”

Applicant was found guilty at trial on March 10, 2008, and the direct remittitur from his direct appeal was issued on November 15, 2011. The application was therefore due on November 16, 2012. This application was filed on December 17, 2019, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

### *Successiveness*

The application should be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive PCR applications are forbidden unless an applicant can indicate a “sufficient reason” why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that “could not have been raised ... in the previous application.” *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds

in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior PCR applications; thus, the current application is successive and barred under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish any sufficient reason why he could not have raised his current allegations in his previous PCR applications. Therefore, he has failed to meet the burden imposed upon him, and the application should be dismissed as successive to Applicant's previous PCR applications.

#### ***Res Judicata***

The application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foran v. USAA Casualty Ins. Co.*, 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; *see also Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Indeed, some of Applicant's allegations are identical to those raised to and ruled upon by the Court in the previous actions, including ineffective assistance of counsel, indemnification, and violation of due process and equal protection claims in his previous PCR applications. The finality of the previous Court rulings should be respected, and the application should be summarily dismissed as barred by the doctrine of *res judicata*.

#### **IV. Other Allegations Denied**

Each and every other allegation in Applicant's PCR application not explicitly admitted,

qualified, or explain in this Return is hereby denied by the Respondent.

**V. Conclusion**

WHEREFORE, Respondent moves to summarily dismiss the application for failure to establish a *prima facie* case of newly discovered evidence, and because all other claims except for the newly discovered evidence allegation are untimely, successive, and barred by *res judicata*.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO  
Assistant Attorney General

By: s/ Chelsey F. Marto  
ATTORNEYS FOR RESPONDENT

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

October 8, 2020

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SPARTANBURG COUNTY  
AMY W. COY

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
)

IN THE COURT OF COMMON PLEAS  
IN THE SEVENTH JUDICIAL CIRCUIT

Johnny R. Wilkins, #244320, )  
Applicant, )  
)

Case No.: 2019-CP-42-04433

v. )

**CONDITIONAL ORDER OF DISMISSAL**

State of South Carolina, )  
Respondent. )  
\_\_\_\_\_ )

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SPARTANBURG COUNTY  
AMY W. COX

This matter comes before the Court by way of a post-conviction relief application filed by Applicant Johnny R. Wilkins on December 17, 2019. Respondent made its Return, requesting the application be summarily dismissed.

**I. Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its February 2008 term, the Spartanburg County Grand Jury indicted Applicant for Armed Robbery (2008-GS-42-1183). Applicant was represented by Timothy Ray, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On March 9-10, 2008, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. Applicant was found guilty as indicted and Judge Cole sentenced Applicant to life imprisonment.

Applicant filed a timely Notice of Appeal on that was perfected by Katherine H. Hudgins, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and a motion to be relieved as counsel. The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved by unpublished opinion. *State v. Wilkins*, 2011-UP-482 (S.C. Ct. App. Oct. 28, 2011). The Remittitur was issued on November 15, 2011.

***First PCR Application (2012-CP-11-0453)***

Applicant filed his first PCR application on June 27, 2012, alleging:

1. "Ineffective assistance of counsel."
  - a. "Fail to call witnesses."
  - b. "Indemnification."
2. "Violation of due process of law, equal protection."

Respondent submitted a return and motion to dismiss, dated May 29, 2013, for untimeliness and failure to file his application in the proper county. The final order of dismissal, signed by the Honorable Roger L. Couch, was filed on August 28, 2013, summarily dismissing the case for untimeliness and failure to file in the proper jurisdiction.

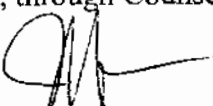
***Second and Third PCR Applications (2013-CP-42-2657 and 2013-CP-42-2847)***

Applicant subsequently filed a second PCR application on June 13, 2013 (2013-CP-42-2657) and filed his third PCR application in July 3, 2013 (2013-GS-42-2847). In his application, Applicant alleged:

1. Ineffective assistance of counsel
  - a. Failure to call defense witnesses
2. Violation of Due Process and Equal Protection.
  - a. "Indentification."

Respondent made its motion for merger on March 18, 2014, and its return on March 28, 2014. An evidentiary hearing into the matter was convened on March 25, 2015, at the Spartanburg County Courthouse. Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent. On May 17, 2018, the Honorable Roger L. Couch issued the order of dismissal denying Applicant's PCR application.

On June 21, 2018, Leah B. Moody, Esquire filed notice of appeal. This was perfected through filing a petition for writ of certiorari, through Counsel Wanda H. Carter, in the Supreme

  
Page 2 of 8

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SOUTH CAROLINA

Court of South Carolina on behalf of Applicant on December 5, 2018, pursuant to *Johnson v. State*, 204 S.C. 310, 364 S.E.2d 201 (1988), along with a petition to be relieved as counsel. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals denied the petition for writ of certiorari and granted Counsel's request to withdraw, through written order filed on July 14, 2020. The Remittitur was issued on August 5, 2020.

## **II. Current Action before this Court**

In his *pro se* PCR application, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. "Ineffective assistance of counsel."
2. "Conspiracy to violate civil rights."
3. "Violation of Due Process and Equal Protection."
4. "Indemnification."<sup>1</sup>
5. "Newly Discovered Evidence."

Before this Court are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, this PCR Action's Records, and prior PCR and Appellate Records by reference.

## **III. Findings of Fact and Conclusions of Law**

This Court has reviewed the pleadings, the records submitted to it by the parties, and the applicable law. Pursuant to South Carolina Code Annotated Sections 17-27-70 and -80, this Court informs the parties of its intent to dismiss the application based upon the following findings:

### ***Newly Discovered Evidence***

This Court finds Applicant's claim of newly discovered evidence must be summarily

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<sup>1</sup> The court interprets this to be "indemnification."

dismissed because Applicant has failed to make a *prima facie* showing he is entitled to relief for his claim. A person may institute a PCR action if “there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.” S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). To prevail, Applicant must show the newly-discovered evidence:

- (1) is such that it would probably change the result if a new trial were granted;
- (2) has been discovered since the trial;
- (3) could not in the exercise of due diligence have been discovered prior to the trial;
- (4) is material; and
- (5) is not merely cumulative or impeaching.

*State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

Beyond stating that newly discovered evidence exists, Applicant has offered nothing else to substantiate this claim. Specifically, he has not identified what the evidence is, how it would impact the case at trial, when it was discovered, why it is not cumulative or impeaching, or why he could not have discovered it through due diligence before. Thus, Applicant has failed to make a *prima facie* case for why he is entitled to relief on this claim and, as such, this court dismisses this claim for failure to make a *prima facie* case of Newly Discovered Evidence.

#### ***Statute of Limitations***

The Court finds that this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

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An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996).

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, South Carolina Code Annotated Section 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

Applicant was found guilty at trial on March 10, 2008, and the direct remittitur from his direct appeal was issued on November 15, 2011. The application was therefore due on November 16, 2012. This application was filed on December 17, 2019, well beyond the statutory filing period. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

#### *Successiveness*

The application shall be summarily dismissed because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code states:

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All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental, or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Under this statute, successive PCR applications are forbidden unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." *Id.* at 450, 409 S.E.2d at 394. If the applicant could have raised these allegations in a previous application, then the applicant may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant's current allegations were or could have been raised in the proceedings based on Applicant's prior PCR applications; thus, the current application is successive and barred under South Carolina Code Annotated Section 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous PCR applications. Therefore, he has failed to meet the burden imposed upon him, and the application shall be dismissed as successive to Applicant's previous PCR application.

### ***Res Judicata***

The application is similarly barred by the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. *Bell v. Bennett*, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. *Foreman v. USAA Casualty Ins. Co.*, 311 S.C. 189,

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427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. *Id.*; see also *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981).

Applicant had a full opportunity to litigate all his allegations in his prior actions. Indeed, some of Applicant's allegations are identical to those raised to and ruled upon by the Court in the previous actions, including ineffective assistance of counsel, indemnification, and violation of due process and equal protection claims in his previous PCR applications. The finality of the previous Court rulings should be respected, and the application shall be summarily dismissed as barred by the doctrine of *res judicata*.

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Page 7 of 8

#### IV. Conclusion

Pursuant to South Carolina Code Annotated Section 17-27-70(b), the Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this order upon him to show why this order should not become final. Applicant shall file any reasons he may have with the Spartanburg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Chelsey F. Marto, Esquire  
PCR Division – Seventh Circuit  
P.O. Box 11549  
Columbia, South Carolina 29211

Applicant is cautioned that his response to this order must be actually received by the Spartanburg County Clerk of Court and opposing counsel within twenty days, and that the Court will not consider any issues raised in his response if not so timely filed and served.

AND IT IS SO ORDERED this 14<sup>th</sup> day of October, 2020.

J. MARK HAYES, II  
Chief Administrative Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

JOHNNY R. WILKINS  
APPLICANT,

VS.

THE STATE OF SOUTH CAROLINA  
RESPONDENT.

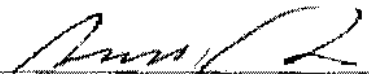
) IN THE COURT OF COMMON PLEAS  
) IN THE SEVENTH CIRCUIT  
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REPLY TO CONDITIONAL  
ORDER OF DISMISSAL

CASE NO: 2019-CP-42-4433

This matter comes before the Court by way of application of post conviction relief filed December 17, 2019. A Conditional Order of Dismissal was filed October 14, 2020. In response to the Conditional Order of Dismissal, the Applicant submits that his application is based on newly discovered evidence of improper notice and a violation of the Due Process Clause in that he was not properly noticed of the State's intent to seek life without parole in compliance with SC Code Ann. §17-25-45(H). Without proper notice, the court lacked subject matter jurisdiction to confer a life sentence. The undersigned on behalf of the Applicant requests that her PCR action proceed to a full hearing on this issue.

Respectfully submitted,



Susannah Ross  
Attorney for the Applicant  
330 E. Coffee St.  
Greenville, SC 29601  
(864) 242-0029

Greenville, South Carolina  
This 28 day of October, 2020

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SPARTANBURG COUNTY  
ALFRED COX

1 STATE OF SOUTH CAROLINA  
2 COURT OF COMMON PLEAS  
3 COUNTY OF SPARTANBURG  
4 2019-CP-42-04433

5 Johnny Wilkins

6 Vs.

7 State of South Carolina

8

9 Spartanburg, South Carolina

10 June 3, 2021

11 Before the Honorable Brian Gibbons

12 APPEARANCES

13 For the State: William Ray

14 For the Applicant: Susannah Ross

15

16 Reported by: Michael C. Watkins

17 Official Court Reporter

18

19

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1           THE COURT: You may introduce the case.

2           MR. RAY: Thank you, Your Honor. This is the matter of  
3 Johnny R. Wilkins versus the State of South Carolina, it is  
4 case number 2019-CP-42-04433. Mr. Wilkins is presently  
5 incarcerated in the South Carolina Department of  
6 Corrections. He was indicted by the Spartanburg County  
7 Grand Jury in February of 2018 for armed robbery, he was  
8 represented by Mr. Timothy Ray. And on March 9th through  
9 10th of 2009 -- I believe there's an issue with the  
10 transcript stating 2008, but I believe it was March 9th  
11 through 10th, 2009, applicant proceeded to trial before the  
12 Honorable Judge Cole and a jury, he was found guilty as  
13 indicted and Judge Cole sentenced him to life imprisonment.  
14 He filed a timely notice of appeal pursuant to Honors v.  
15 California, and the South Carolina Court of Appeals  
16 dismissed his appeal and granted counsel's motion to be  
17 relieved. The remittitur was issued on November 15th of  
18 2011. He then filed his first PCR application on June 27th,  
19 2012, where he raised a couple of issues of ineffective  
20 assistance of counsel and a violation of his due process  
21 rights. The application was dismissed on May 29th, 2013,  
22 and the final order of dismissal was issued by the Honorable  
23 Judge Couch on August 28th, 2013. It was dismissed for  
24 untimeliness and failure to file in the proper jurisdiction.  
25 Mr. Wilkins then filed two more PCR applications on June 13,

1 2013, and another on July 3rd of 2013, the two were merged  
2 together on March 18th, 2014. In these allegations -- in  
3 these applications he raised the allegations of ineffective  
4 assistance of counsel, and again, a violation of due process  
5 rights. A hearing into the matter was convened on  
6 March 25th, 2015, here in Spartanburg, applicant was present  
7 and he was represented by Ms. Leah Moody. The Honorable  
8 Judge Couch presided over the hearing and issued an order of  
9 dismissal on May 17th, 2018. Applicant appealed that  
10 dismissal on June 21st, 2018, and pursuant to Johnson v.  
11 State the South Carolina Court of Appeals denied his  
12 petition for writ of certiorari and granted counsel's  
13 request to withdraw on July 14th, 2020, and the remittitur  
14 was issued on August 5th of 2020. The State made its return  
15 to this application -- this application was filed December  
16 17, 2019, the State made its return and moved to dismiss  
17 citing the statute of limitations and res judicata and the  
18 prohibition and successive applications. There was also a  
19 claim of newly discovered evidence in his application, we  
20 moved to dismiss that one as well for failure to establish a  
21 prima facie case. I believe a conditional order of  
22 dismissal was signed, but in Mr. Wilkins' response he  
23 presented an explanation of his newly discovered evidence  
24 claim regarding the State's alleged failure to serve him  
25 with a life without parole notice. And I believe that

1 covers it all for the State. We are ready to proceed, and  
2 I'll go ahead and give it over to Ms. Ross.

3 THE COURT: All right. Ms. Ross, let me hear from you.

4 MS. ROSS: Thank you, Your Honor. May it please the  
5 Court? Do you by any chance have the reply to the  
6 conditional order of dismissal?

7 THE COURT: I do not but I would like to see that.  
8 Thank you. Okay. Ms. Ross?

9 MS. ROSS: And that lays out the situation. I was  
10 appointed to the case, he said he didn't get noticed of life  
11 without parole, and then he sent me the notice that he does  
12 have that he said he got from the clerk's office, after  
13 writing them for years he was sent this. And then I don't  
14 have transcripts or anything at this point. Like I said, I  
15 went down to try to pull the file but it's been sent to  
16 storage. But on the State's return all of these dates are  
17 showing a 2008 date of the trial, which would mean this  
18 notice was filed after the trial. Either way --

19 THE COURT: It looks like the notice was filed  
20 February 25th of 2009, it's dated February 25th of 2009  
21 signed by then Deputy Solicitor Barry Barnette, now is the  
22 current solicitor. And so your client claims he was never  
23 put on official notice, either hearing or written or  
24 otherwise, that he faced the LWOP sentence upon conviction.

25 MS. ROSS: Well, he said he found out -- he found out

1 about it the day of his trial.

2 THE COURT: But he wasn't given notice prior.

3 MS. ROSS: Right. And he wasn't given -- that document  
4 would have had to have been served on him ten days prior to  
5 that trial --

6 THE COURT: And the trial took place when?

7 MS. ROSS: Well, that's the question. I have it --  
8 just in the State's return it says the trial was March 9th  
9 and 10th of 2008.

10 THE COURT: Which is a full year before this document.

11 MS. ROSS: Right. But they're saying that's a typo,  
12 actually the trial was 2009 and I have no way -- I don't  
13 know.

14 THE COURT: Without having the transcript, which is in  
15 storage.

16 MS. ROSS: Right.

17 THE COURT: Got it. Does the State have the  
18 transcript?

19 MR. RAY: Yes, Your Honor, we do. We have an extra  
20 copy that we've got.

21 THE COURT: Have you shared that transcript with the  
22 defense?

23 MR. RAY: I thought that we had, but --

24 THE COURT: Well, I mean, I don't know what kind of  
25 discovery has gone on in this particular PCR application.

1           MS. ROSS: I think I got the return and the response  
2 and the conditional order of dismissal, I looked on my  
3 emails this morning and did not see a transcript. But I  
4 will accept whatever the transcript says as to the day of  
5 it.

6           MR. RAY: If I may, Your Honor, I think the issues is  
7 the cover page of the transcript, which I've got right here,  
8 states March 9th and 10th of 2008, I think that's a typo.  
9 The sentencing sheet that we have from the Court and that we  
10 have provided to Ms. Ross stated 2009, and then on page six  
11 of the transcript it again states proceeding March 9th, 2009  
12 at the very top. And then we also have testimony from his  
13 counsel at a prior PCR hearing in March of 2015 where his  
14 counsel acknowledged that the life without parole notice had  
15 been served upon Mr. Wilkins, and I believe there's even  
16 testimony in the trial transcript itself about the notice  
17 being served and his counsel acknowledged that that was  
18 correct.

19           THE COURT: Okay. Ms. Ross? But you haven't seen  
20 that. But you haven't seen that.

21           MS. ROSS: Right.

22           THE COURT: I mean, so what do you want me to do?

23           MS. ROSS: Should we -- if I could have a brief chance  
24 to review it since they've driven here, yeah, I'll take a  
25 quick look at it and I think just proceed with the hearing

1 and let him testify.

2 THE COURT: I mean, absolutely, I'm willing to do  
3 whatever you need to do, but certainly I'll give you some  
4 more time to speak with your client and Let him look at the  
5 transcript, you look at the transcript and we'll see whether  
6 it's just a scrivener's error or not. But the sole -- I  
7 guess the sole after discovered evidence claim is he wasn't  
8 given proper notice of a LWOP possibility.

9 MS. ROSS: Correct. And he didn't know that was a  
10 thing until someone at the jail said: Well, did they give  
11 you notice? Did you see this piece of paper? And he is  
12 like: No.

13 THE COURT: And so if the transcript says otherwise as  
14 well as previous testimony of another attorney says  
15 otherwise we kind of see where this is going.

16 MS. ROSS: Correct.

17 THE COURT: All right. But you need to have time to  
18 talk about that with your client. Okay? Let's take a  
19 recess and you speak with your client. Hand her that  
20 transcript so she can show him and y'all go over it and go  
21 from there. Okay? Do you have a decent enough meeting  
22 there back there to meet with him?

23 MS. ROSS: Yes.

24 THE COURT: It sounds good, because I've got things to  
25 take care of in here. We're in recess until 11:00.

1 (A recess was taken.)

2 THE COURT: Back on the record on Mr. Johnny Wilkins'  
3 matter. Ms. Ross?

4 MS. ROSS: Judge, I've reviewed the transcript with  
5 Mr. Wilkins, it's around page 120 the pertinent area. It  
6 looks like after his trial Judge Cole sort of says, wait,  
7 this affidavit is not notarized, I guess, about the serving  
8 LWOP notice, and they notarized it there. Mr. Wilkins is  
9 still saying, and would like to present testimony, he flat  
10 out -- he was at the jail, he did not get serve a copy of  
11 that notice at the jail. I think his lawyer did, right, but  
12 that doesn't fulfill the requirements of the statute. And  
13 that's his position, that he didn't get served.

14 THE COURT: All right. So the applicant is ready to  
15 proceed with a hearing on this matter then?

16 MS. ROSS: Yes, Your Honor.

17 THE COURT: All right. Is the State ready to proceed  
18 with this matter? On my docket it says it's a hearing on  
19 the State's motion to dismiss.

20 MR. RAY: Yeah, that's correct, Your Honor.

21 THE COURT: So the State has no witnesses to present?

22 MR. RAY: No. We do not have any witnesses on the  
23 motion to dismiss, as counsel is not here. If we're going  
24 to proceed towards a full evidentiary hearing we would need  
25 to request a continuance so that his attorney, Mr. Timothy

1 Ray --

2 THE COURT: All right, there you go. So, see, therein  
3 lies the issue. Okay. The only thing that was before the  
4 Court today was me hearing whether or not the case should be  
5 dismissed without having an evidentiary hearing. And so,  
6 Ms. Ross, you believe based upon your review of the  
7 transcript and going over this matter with your client is  
8 entitled and should be allowed to have an evidentiary  
9 hearing where you can testify and confront witnesses who may  
10 be saying something else for a judge to determine whether or  
11 not he should be entitled to a new trial based upon the  
12 State's alleged failure to serve LWOP on him.

13 MS. ROSS: Yes, Your Honor.

14 THE COURT: All right. And what's your position on the  
15 State's motion for a continuance then to not have the  
16 evidentiary hearing today because they don't have Mr. Ray  
17 here to testify?

18 MS. ROSS: I would consent to that.

19 THE COURT: So ordered. The matter is continued, it  
20 will be rescheduled for an evidentiary hearing -- hang on --  
21 go ahead, what are you going to say?

22 MS. ROSS: I was just going to --

23 THE COURT: I guess what I'm saying is, you know --  
24 well, for the purpose of the record, your motion to dismiss  
25 is because the transcript says something different from what

1 he's saying?

2 MR. RAY: Well, Your Honor, we moved to dismiss -- his  
3 initial application did not include specifics about his  
4 newly discovered evidence, we moved to dismiss for just the  
5 simple failure to establish the prima facia case. It wasn't  
6 until the response to the conditional order was issued that  
7 this came up, and our position is just that what was stated  
8 is a scrivener's error on the front cover of the transcript  
9 that's creating the confusion.

10 THE COURT: But that creates an issue of fact --

11 MR. RAY: Yeah.

12 THE COURT: -- and for the Court to make a  
13 determination of fact I have to have witnesses, all right,  
14 and so I'm going to respectfully deny the State's motion to  
15 dismiss and order that this matter proceed to an evidentiary  
16 hearing on this application. Okay? So Mr. Wilkins, do you  
17 understand what I am doing?

18 THE APPLICANT: Yes, sir.

19 THE COURT: You're going to get to come back -- it  
20 can't be today, though, okay? But you're going get to come  
21 back here and testify, and you and your lawyer can cross  
22 examine the witnesses for the State, and then me or another  
23 judge at that time can decide whether or not this  
24 application is good or not. Okay?

25 THE APPLICANT: Right.

1 THE COURT: Do you understand?

2 THE APPLICANT: Yes, sir.

3 THE COURT: Ms. Ross, do you understand?

4 MS. ROSS: Yes Your Honor.

5 THE COURT: All right. I need you, since you won the  
6 motion to dismiss and prevailed for your client, to prepare  
7 an order denying -- where I deny the State's motion to  
8 dismiss and order that this matter proceed to an evidentiary  
9 hearing. Okay?

10 MS. ROSS: Okay.

11 THE COURT: Sounds good. That concludes this hearing,  
12 y'all have a good day.

13 (End of proceedings.)

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|                          |   |                  |
|--------------------------|---|------------------|
| State of South Carolina  | ) |                  |
|                          | ) |                  |
| County of Spartanburg    | ) |                  |
| Johnny Ray Wilkins,      | ) | 2019-CP-42-04433 |
|                          | ) |                  |
| Applicant,               | ) |                  |
|                          | ) |                  |
| v.                       | ) | Transcript       |
|                          | ) |                  |
| State of South Carolina, | ) | of               |
|                          | ) |                  |
| Defendant.               | ) | Post-conviction  |
|                          | ) | Relief Hearing   |
|                          | ) |                  |
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|                          | ) |                  |
|                          | ) |                  |

Date: April 20, 2022

Time: 10:39 a.m.

Location: Spartanburg County Courthouse

180 Magnolia St.

Spartanburg, SC 29306

Reported by  
Amber Payne, CVR

## APPEARANCES

Presiding: The Honorable G.D. Morgan Jr.

For the Applicant: Susannah Ross, Esq.  
Ross and Enderlin, PA  
330 East Coffee St.  
Greenville, SC 29601

For the State/Defense: Chelsey Marto, Esq.  
South Carolina Attorney  
General's Office  
1000 Assembly St., Room 519  
Columbia, SC 29201

Also Present: Barry Barnette, Esq.  
Timothy Ray, Esq.

## INDEX

(AW) - Denotes Applicant's Witness

(SW) - Denotes State's Witness

Page No.

Exhibits.....3

(AW) JOHNNY RAY WILKINS:

Direct Examination by Ms. Ross.....8

Cross-Examination by Ms. Marto.....9

(SW) BARRY BARNETTE, ESQ.:

Direct Examination by Ms. Marto.....12

Cross-Examination by Ms. Ross.....15

Redirect Examination by Ms. Marto.....19

(SW) TIMOTHY RAY, ESQ.:

Direct Examination by Ms. Marto.....20

Cross-Examination by Ms. Ross.....22

Certificate of the Court Reporter.....24

## EXHIBITS

There were no exhibits marked and entered during this  
hearing.

1 PROCEEDINGS

2 THE COURT: All right. Next one's Johnny  
3 Wilkins. Case Number 2019-CP-42-04433. (To  
4 the State) Are we ready to proceed?

5 MS. MARTO: Yes, Your Honor.

6 THE COURT: All right. I'll hear from you.

7 MS. MARTO: Okay. May it please the Court.

8 Mr. Wilkins is presently confined in the South  
9 Carolina Department of Corrections pursuant to  
10 orders of commitment from the Spartanburg  
11 County Clerk of Court. During its February  
12 2008 term, he was indicted for armed robbery.  
13 He was represented by Mr. Timothy Ray. And  
14 Solicitor Barry Barnette of the Seventh  
15 Circuit Solicitor's Office prosecuted the  
16 case.

17 On March 9th through 10th, 2009, he  
18 proceeded to trial before the Honorable J.  
19 Derham Cole and a jury and was found guilty as  
20 indicted and sentenced to life imprisonment.  
21 Applicant filed a timely notice of appeal  
22 perfected by Kathrine Hudgens, who filed a  
23 brief pursuant to "Anders vs. California," and  
24 a motion to be relieved as counsel. South  
25 Carolina Court of Appeals dismissed

1           Applicant's appeal and granted counsel's  
2           motion to be relieved. The remittitur was  
3           issued November 15, 2011. He pursued two  
4           other PCR actions, one in 2012 and one in 2013  
5           and relief was denied. He filed this action  
6           December 17th, 2019, and on October 8th, 2020,  
7           we -- the State made a return, a motion to  
8           dismiss, for failure to establish a prima  
9           facie case in newly discovered evidence for  
10          untimeliness, excessiveness and as barred by  
11          res judicata. And the motion to dismiss was  
12          denied at a hearing before Judge Gibbons June  
13          3rd, 2021.

14                 And it is my understanding he now wishes  
15          to proceed forward based upon the allegation  
16          of newly discovered evidence that he was not  
17          properly served with a notice of intent to  
18          seek life without parole. With that, I would  
19          turn it over to Ms. Ross.

20          THE COURT: All right. Ms. Ross?

21          MS. ROSS: That is correct, Your Honor. The  
22          Statute 17-25-45(H) does require notice of  
23          life without -- attempt to seek life without  
24          parole ten days prior to a trial.

25                 Looking at the case, when I was initially

1           appointed, there -- there certainly appeared  
2           to be an irregularity. One of -- there's an  
3           affidavit of service of notice that's dated  
4           March 10th, '09, when the transcript cover  
5           said it -- the trial was March 10th of '08,  
6           which was misleading. And that notary -- that  
7           notarization occurred too late, not within the  
8           ten years. And that would be essentially our  
9           argument that in this case -- the notice of  
10          intent to serve -- Mr. Wilkins states he has  
11          no recollection of actually getting it  
12          himself. And there are apparent  
13          irregularities on the -- backdated of service  
14          as to that notice of intent to seek life  
15          without parole. And --  
16          THE COURT: All right. What the -- what that  
17          -- you said that it was -- it said 2008 --  
18          MS. ROSS: Yes, Your Honor.  
19          THE COURT: -- instead of 2009?  
20          MS. ROSS: I think the trial actually was in  
21          2009, and that might be a typographical error,  
22          but it certainly puts a -- an indication of an  
23          irregularity. and as well as the fact that --  
24          going back to the court exhibits, the one --  
25          the affidavit of service on Timothy Ray's

1 office is dated March 10th, '09 -- is  
2 notarized March 10th, '09, though it says the  
3 affidavit was served on February 25th. And I  
4 can't -- the affidavit --

5 THE COURT: February 25th, 2009?

6 MS. ROSS: It says, "2009," yes. And the one  
7 with the affidavit of service on Mr. Wilkins  
8 is notarized February 25th. I did go back and  
9 attempt -- Mr. Wilkins just denies any  
10 recollection of being served at all. I did go  
11 back and attempt to get -- they keep records  
12 of people going in and out of the jail here.  
13 Those records have been expired and destroyed,  
14 so I was not able to locate them at this time.  
15 So I just have Mr. Wilkins's testimony as to  
16 whether he was properly noticed or not.

17 THE COURT: Okay. Is that the narrow issue  
18 that we're dealing with? Are there any other  
19 issues?

20 MS. ROSS: I think we're barred from any other  
21 issues.

22 MS. MARTO: Yeah. That's the narrow issue,  
23 Your Honor.

24 THE COURT: I just want to make sure. I think  
25 you are, but I just wanted to make sure.

1 MS. ROSS: I'd love to bring up some more, but  
2 I don't think --

3 THE COURT: All right. Do you want to put him  
4 up on this issue?

5 MS. ROSS: Yes, Your Honor.

6 THE COURT: All right.

7 (To the Applicant) Yes, Sir. Come on up  
8 and be sworn.

9 (WHEREUPON, the applicant was sworn.)

10 **DIRECT EXAMINATION OF JOHNNY RAY WILKINS**

11 BY MS. ROSS:

12 Q Hey, there. So you're serving life without  
13 parole --

14 A Yes, ma'am.

15 Q -- correct?

16 A Yes, ma'am.

17 Q And you went to trial on a case that ended up  
18 getting you life without parole?

19 A Yes, ma'am.

20 Q Now, prior to that trial, do you recall being told  
21 -- getting a letter saying that the State intended  
22 to seek life without parole?

23 A No, ma'am. I never got a letter. The only time  
24 they told me about the life without parole was the  
25 same day I was going to court -- about 30 minutes

1           before I got ready to go to court. My lawyer came  
2           and said if I don't take the zero to 30, they're  
3           gonna seek a life without parole, and I told them,  
4           "Well, let's -- let's go to trial.

5   Q       All right. Now, this is it. Have you seen it  
6           since?

7   A       I had to write the Clerk of Court to get it.

8   Q       Okay.

9   A       I just wrote the clerk on the bottom. It was last  
10          year sometime, because it wasn't -- all the  
11          paperwork they were sending me was never in there.

12   Q       So when you were down at the jail before waiting  
13          for trial, you don't --

14   A       They never --

15   Q       -- recall getting that?

16   A       -- no. They never served it.

17   Q       Now, on -- why didn't you take the plea?

18   A       Because I didn't do what they -- not what they say  
19          I did.

20   Q       Okay.

21           MS. ROSS: (To the Court) I have no further  
22          questions.

23           THE COURT: All right. (To the State) Cross?

24           CROSS-EXAMINATION OF JOHNNY RAY WILKINS

25   BY MS. MARTO:

1 Q Good morning, sir.

2 A Good morning.

3 Q So do you recall at your trial, Mr. Barnette

4 standing up and informing the Court that you were

5 served with a LWOP notice?

6 A Yes. And I -- I told my lawyer at the time they

7 wasn't served with that. He just told me that

8 about 30 minute -- my lawyer told me 30 minutes

9 before the trial started.

10 Q So you --

11 A If I didn't take the zero to 30 or -- or let the

12 judge tell me what I -- he was going to give me,

13 and they were gonna seek lifes -- life without

14 parole.

15 Q So you realized that you weren't properly served

16 with LWOP at the trial; is that fair to say?

17 A Yeah. I didn't -- I didn't know they was supposed

18 to serve me. He just told me -- my lawyer just

19 told me that. I ain't never seen no paper or

20 nothing.

21 Q And you filed this -- why did you wait ten years

22 after knowing that you were not properly served to

23 file this action?

24 A I -- I didn't know. I didn't know at the time

25 until we -- I was in the law library at -- at Lee

1 County, and I was looking through it and I'd never  
2 -- and we was talking about it -- me and some guys  
3 were talking about it. And they was like, "You  
4 don't have the paperwork they supposed to serve you  
5 for seeking life parole."

6 I said, "They didn't never serve me none."  
7 And then I -- I was going through and -- and  
8 reading some law, and then I was, like, "They never  
9 served me," so I -- I put in the -- to try to see  
10 what they can do about it.

11 Q Okay. But you just stated you realized you weren't  
12 properly served at the trial; is that not true?

13 A No. I didn't -- I didn't know at trial.

14 MS. MARTO: No further questions, Your Honor.

15 THE COURT: All right. Any redirect?

16 MS. ROSS: No, Your Honor.

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

18 (WHEREUPON, the applicant was excused.)

19 THE COURT: All right. Anything else from the  
20 applicant?

21 MS. ROSS: No, Your Honor.

22 THE COURT: All right. From the State?

23 MS. MARTO: Yes, Your Honor. We would call  
24 Solicitor Barry Barnette to the stand, please.

25 THE COURT: All right. Mr. Barnette.

1 (WHEREUPON, the witness was sworn.)

2 DIRECT EXAMINATION OF BARRY BARNETTE, ESQ.

3 BY MS. MARTO:

4 Q Good morning, sir.

5 A Good morning.

6 Q So you prosecuted this case, correct?

7 A Yes, ma'am.

8 Q And this was a case where you were seeking life  
9 without parole; is that correct, at trial?

10 A Yes, ma'am.

11 Q Okay. And so typically what do you do when it  
12 comes to properly serving an individual with an  
13 LWOP notice?

14 A Once I realize that there's potentially a LWOP  
15 notice or whatever and we're gonna serve the notice  
16 on that, I have our investigator -- in this case,  
17 it was Investigator Rick Gregory -- serve the  
18 defense attorney, which is Mr. Tim Ray in this  
19 case, as well as the defendant.

20 Q Okay. And did that happen in this case?

21 A It did.

22 Q Did you see anything improper about the affidavits  
23 for service?

24 A What happened was we got Ray at the -- at the end  
25 of -- once he was found guilty and getting ready

1       for sentencing, we handed up the paperwork to Judge  
2       Cole. Judge Cole noticed that the -- the notice  
3       that was given to Mr. Ray was not notarized. So  
4       then he asked, "Can we have this notarized," and so  
5       we did. Lauren Williams (phonetic), obviously, was  
6       in the courtroom. I asked him if it was okay if he  
7       can notarize it there, and he said, "Yes." And  
8       that -- it's in the record from the standpoint of  
9       the transcript. Do you have a copy of the  
10      transcript?

11    Q     Yes, Your Honor --

12    A     Yeah.

13    Q     -- or yes, sir.

14    A     Could I see it for a second, please? And what I  
15       did, too, I did the extra thing to ask Investigator  
16       Gregory to testify to it, also. And that's part of  
17       the transcript, also. Thank you, ma'am.

18            You know -- and that started on -- I don't  
19       know if the Court has the transcript or not, but  
20       it's Page 119 on Line 8 -- Line 10. I said, "I do  
21       have some sentencing sheets. I do have some  
22       documents that we need to mark as court exhibits,"  
23       which was the basis for the LWOPs from there. I  
24       did the copies from there and then I handed the  
25       affidavits up that was done by Investigator Rick

1 Gregory listed -- and that was on Lines 20 and 22.  
2 And he served the defendant personally and Mr. Tim  
3 Ray personally, Your Honor, with LWOP notice. Then  
4 Judge Cole on Page 20, on Line 13 says, "Off --  
5 based off that, Your Honor" -- or I said, "Based  
6 off that, Your Honor -- or based off the notice,  
7 he's life without parole in the sentence."

8 The Court said, "All right. This Court  
9 Exhibit Number 1, the first affidavit is not sworn  
10 to as it's supposed to be."

11 I said, "Yes, sir. And I have him here, too,  
12 if you'd like to hear from him, too, on the  
13 record."

14 "Okay. I guess we would have to."

15 "Can we have one of the notaries notarize it?"  
16 And that -- the question I asked.

17 And the Court said, "That will be fine." So  
18 that's the reason why the date's different, because  
19 Judge Cole said we could go ahead and notarize it at  
20 that point from there. And then, of course, that  
21 was Investigator Gregory's answer. And then, if  
22 you -- I -- I can read it all, Your Honor, but I  
23 believe you have the transcript. Investigator  
24 Gregory testified about serving him, and as well as  
25 Mr. Ray.

1 Q Now, these affidavits wouldn't have been executed  
2 if they were not individually, personally served,  
3 correct?

4 A That's correct.

5 Q Okay. And you had no indication whatsoever that  
6 they were fraudulently filled out or anything like  
7 that, correct?

8 A No. It was just not notarized at the time --

9 Q Okay.

10 A -- from there. There was -- like I say, there was  
11 irregularly, but, like I said, the reason why the  
12 dates is different, because we asked Judge Cole at  
13 that time, and -- and it was notarized at that  
14 time.

15 MS. MARTO: No further questions, Your Honor.

16 THE COURT: All right. (To Ms. Ross) Any  
17 cross?

18 **CROSS-EXAMINATION OF BARRY BARNETTE, ESQ.**

19 BY MS. ROSS:

20 Q Just a quick -- I'm not going to be able to read  
21 this.

22 Who notarized the -- the first -- the  
23 affidavit on Johnny Ray Wilkins? And I'll show it  
24 to you. It looks likes "Shawna Pauly," maybe  
25 (phonetic.)

1 A No. That's Sharon Peeler. That's Cookie Peeler,  
2 which is a -- a secretary in our office.

3 Q So she's notarizing it after the fact? Again,  
4 she's not -- or are you swearing to it and she's  
5 notarizing it? He's signing it after he gets back  
6 to the office?

7 A Right. Now, he's served -- that's correct. He  
8 served it and gave it -- and then, of course, she  
9 notarized it after -- that's his affidavit of  
10 service.

11 Q Right.

12 A And which court exhibit is this? Do you know?

13 Q That --

14 A I know this isn't marked.

15 MS. MARTO: Your Honor --

16 Q I think it was --

17 A I just want to make --

18 MS. MARTO: -- this was entered as Court's  
19 Exhibit Number 1 at trial. And so it is  
20 already a part of the record is my  
21 understanding. But we would --

22 THE WITNESS: Thank you, ma'am.

23 MS. MARTO: -- request you take judicial  
24 notice of Court's Exhibit Number 1.

25 THE WITNESS: Wait. Wait. Now, wait. It's

1 not Court's Exhibit 1. The one she showed me  
2 is actually gonna be -- let me make sure.  
3 MS. MARTO: Okay.  
4 THE COURT: Okay. Let's make sure. Which one  
5 is Court's Exhibit Number 1?  
6 THE WITNESS: Your Honor, would it be okay to  
7 enter this in, what she just showed me, as an  
8 exhibit?  
9 THE COURT: Just for the record, tell -- clear  
10 that up what that is.  
11 THE WITNESS: Okay.  
12 MS. ROSS: I believe it's in there, but . . .  
13 THE COURT: Yeah. I believe it's in the  
14 record, but just --  
15 THE WITNESS: I believe this is gonna be Court  
16 Exhibit 2 that she just showed me.  
17 MS. MARTO: Right.  
18 MS. ROSS: That's right.  
19 MS. MARTO: Okay.  
20 THE WITNESS: But I just wanted to make sure.  
21 Do you have -- I don't have a copy of it in  
22 front of me here. I've got Court Exhibit 1  
23 and 3.  
24 MS. ROSS: Yeah. I don't have all of  
25 the . . .

1 THE COURT: Thank you. It looks like the  
2 transcript says, "Affidavit of Service and  
3 Notice" were marked as Court's Exhibit Number  
4 1, Copy of the indictment marking -- marked  
5 Court's Exhibit Number 2, that's one of the  
6 indictments, and then the other indictment is  
7 Court's Exhibit Number 3.

8 THE WITNESS: Okay. So I guess this is part  
9 of Court Exhibit 1. There's two affidavits  
10 here.

11 THE COURT: Two affidavits that's part of  
12 Exhibit Number 1?

13 THE WITNESS: Yes, sir. I just want to make  
14 that's clear for the record.

15 **CROSS-EXAMINATION OF BARRY BARNETTE, ESQ. CONTINUES**

16 BY MS. ROSS:

17 Q All right. Now, did your office require any kind  
18 of acceptance of service when notice of an attempt  
19 to seek life without parole is served upon an  
20 inmate?

21 A When Investigator -- Investigator Gregory serves it  
22 on them, then they fill out the affidavit when they  
23 get back.

24 Q Okay. So it's not your policy to do any kind of  
25 acceptance of service or have the inmate sign off

1 on the acceptance of --

2 A Well, usually, they're not very happy getting the  
3 notice --

4 Q Okay.

5 A -- to start with.

6 Q All right.

7 A So usually we don't --

8 MS. ROSS: (To the Court) No further  
9 questions.

10 THE COURT: All right. Any redirect?

11 MS. MARTO: Yes. Just briefly, Your Honor.

12 **REDIRECT EXAMINATION OF BARRY BARNETTE, ESQ.**

13 BY MS. MARTO:

14 Q Now, do you recall what -- so this affidavit was  
15 served February 25th, but it wasn't notarized until  
16 March 10th; is that correct?

17 A That's correct. Because it wasn't notarized --  
18 that -- that's what Judge Cole brought to our  
19 attention. And then --

20 MS. ROSS: I just object because he didn't do  
21 the service, but I understand your question.

22 MS. MARTO: Okay.

23 A Yeah.

24 Q And --

25 A The only thing I can answer, I -- obviously, I

1           wasn't there when it was served on him, but I was  
2           there when it was notarized.

3    Q     Okay. And that's reflected in the affidavit, both  
4           the date it was served and the notarization, that  
5           they were two different dates?

6    A     Right. And that's -- the reason why was Judge Cole  
7           said, "Yeah. Go ahead and notarize it now," so it  
8           had to be notarized the date that it was notarized.

9    Q     Okay.

10           MS. MARTO: No further questions, Your Honor.

11           THE COURT: All right. Anything else, Ms.  
12           Ross?

13           MS. ROSS: No, Your Honor.

14           THE COURT: Thank you, Mr. Barnette.

15           THE WITNESS: No problem. Thank you, Your  
16           Honor.

17                   (WHEREUPON, the witness was excused.)

18           THE COURT: All right. Anything else from the  
19           State?

20           MS. MARTO: Yes, Your Honor. We would call  
21           Timothy Ray to the stand.

22           THE COURT: All right. Mr. Ray.

23                   (WHEREUPON, the witness was sworn.)

24                   DIRECT EXAMINATION OF TIMOTHY RAY, ESQ.

25    BY MS. MARTO:

1 Q Good morning, sir.

2 A Good morning.

3 Q So you represented Mr. Johnny Wilkins at trial,

4 correct?

5 A Yes, ma'am.

6 Q And it was your understanding that the State

7 intended to seek life without parole; is that

8 correct?

9 A Correct.

10 Q And you and Mr. Wilkins were served personally,

11 correct?

12 A Correct.

13 Q Did you see anything wrong or inconsistent when it

14 came to the service, or did you think it was done

15 properly?

16 A I -- I thought it was done properly. We were

17 actually together when it was served on both of us.

18 Q Okay. And you thought that given the fact that you

19 were standing next to Mr. Wilkins, he was given

20 proper notice and knew he was going to face life

21 without parole if convicted, correct?

22 A Yes.

23 Q Okay.

24 MS. MARTO: No further questions, Your Honor.

25 THE COURT: All right. (To Ms. Ross) Any

1 cross?

2 CROSS-EXAMINATION OF TIMOTHY RAY, ESQ.

3 BY MS. ROSS:

4 Q So y'all were together down at the jail -- so your  
5 testimony is y'all were together down at the jail  
6 when -- when you were served? When Mr. Gregory  
7 served the notices?

8 A Yes, ma'am. It was actually the old jail that's  
9 connected to the courthouse here.

10 Q Okay. And that was not the same day? When was  
11 that?

12 A I don't remember the exact day. I think the  
13 affidavit says the -- the 25<sup>th</sup>, the same date as the  
14 -- as the notice was clocked.

15 Q All right. Are you a notary by any chance?

16 A I'm not.

17 Q All right.

18 MS. ROSS: (To the Court) No further  
19 questions.

20 THE COURT: All right. (To the State) Any  
21 redirect?

22 MS. MARTO: No questions, Your Honor.

23 THE COURT: All right. Thank you, sir.

24 THE WITNESS: Thank you.

25 (WHEREUPON, the witness was excused.)

1 THE COURT: All right. Anything else from the  
2 State?

3 MS. MARTO: No further witnesses, Your Honor.

4 THE COURT: All right. Anything else from the  
5 parties?

6 MS. ROSS: No, Your Honor.

7 MS. MARTO: No, Your Honor.

8 THE COURT: All right. I'll review it, take  
9 it under advisement, and I'll let you know of  
10 my decision. Thank you.

11 MS. ROSS: Thank you, Judge.

12 (Whereupon the within hearing was  
13 concluded at 10:57 a.m.)

14 (\*This transcript may contain quoted material.  
15 Such material is reproduced as read or quoted  
16 by the speaker.)

STATE OF SOUTH CAROLINA    )  
                                      )  
COUNTY OF SPARTANBURG    )                    CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April the 20<sup>th</sup>, 2022.

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



Amber J. Payne, CVR

Date: 12/13/2022  
Notary public for South Carolina  
My commission expires August 12, 2029

|                            |                                  |  |
|----------------------------|----------------------------------|--|
| STATE OF SOUTH CAROLINA )  | IN THE COURT OF COMMON PLEAS     |  |
| COUNTY OF SPARTANBURG )    | FOR THE SEVENTH JUDICIAL CIRCUIT |  |
| )                          |                                  |  |
| )                          |                                  |  |
| Johnny Wilkins, #244320, ) | Case No.: 2019-CP-42-04433       |  |
| Applicant, )               |                                  |  |
| )                          |                                  |  |
| v. )                       | <b>ORDER OF DISMISSAL</b>        |  |
| )                          |                                  |  |
| State of South Carolina, ) |                                  |  |
| Respondent. )              |                                  |  |
| _____ )                    |                                  |  |

FILED  
2022 AUG -9 AM 9:32  
CLERK OF COURT  
SPARTANBURG COUNTY  
ALAN W. COX

This matter comes before this Court by way of Applicant's post-conviction relief application filed December 17, 2019. Respondent made its return on October 8, 2020, requesting an evidentiary hearing be convened. An evidentiary hearing was held on April 20, 2022, at the Spartanburg County Courthouse. Susannah Ross, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Timothy Ray and Solicitor Barry Barnette also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

#### **Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its February 2008 term, the Spartanburg County Grand Jury indicted Applicant for Armed Robbery (2008-GS-42-1183). Applicant was represented by Timothy Ray, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On March 9-10, 2008, Applicant proceeded to trial before the Honorable J. Derham Cole and a jury. Applicant was found guilty as

indicted and Judge Cole sentenced Applicant to life imprisonment.

Applicant filed a timely Notice of Appeal on that was perfected by Katherine H. Hudgins, Esquire, through filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967) and a motion to be relieved as counsel. The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved by unpublished opinion. *State v. Wilkins*, 2011-UP-482 (S.C. Ct. App. Oct. 28, 2011). The Remittitur was issued on November 15, 2011.

***First PCR Action: (2012-CP-11-0453)***

Applicant filed his first PCR application on June 27, 2012, alleging:

1. "Ineffective assistance of counsel."
  - a. "Fail to call witnesses."
  - b. "Indemnification."
2. "Violation of due process of law, equal protection."

Respondent submitted a return and motion to dismiss, dated May 29, 2013, for untimeliness and failure to file his application in the proper county. The final order of dismissal, signed by the Honorable Roger L. Couch, was filed on August 28, 2013, summarily dismissing the case for untimeliness and failure to file in the proper jurisdiction.

***Second and Third PCR Actions: (2013-CP-42-2657 and 2013-CP-42-2847)***

Applicant subsequently filed a second PCR application on June 13, 2013 (2013-CP-42-2657) and filed his third PCR application on July 3, 2013 (2013-GS-42-2847). In his application, Applicant alleged:

1. Ineffective assistance of counsel
  - a. Failure to call defense witnesses
2. Violation of Due Process and Equal Protection.
  - a. "Indentification."

Respondent made its motion for merger on March 18, 2014, and its return on March 28, 2014. The second PCR application was merged into the third application. An evidentiary hearing

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SPARTANBURG COUNTY  
AMY W. COX

FILED

into the matter was convened on March 25, 2015, at the Spartanburg County Courthouse.

Applicant was present at the hearing and was represented by Leah B. Moody, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

On May 17, 2018, the Honorable Roger L. Couch issued the order of dismissal denying Applicant's PCR application.

On June 21, 2018, Leah B. Moody, Esquire filed notice of appeal. This was perfected through filing a petition for writ of certiorari, through Counsel Wanda H. Carter, in the Supreme Court of South Carolina on behalf of Applicant on December 5, 2018, pursuant to *Johnson v. State*, 204 S.C. 310, 364 S.E.2d 201 (1988), along with a petition to be relieved as counsel. The Supreme Court of South Carolina transferred the case to the South Carolina Court of Appeals. The South Carolina Court of Appeals denied the petition for writ of certiorari and granted Counsel's request to withdraw, through written order filed on July 14, 2020. The Remittitur was issued on August 5, 2020.

#### **Summary of Relevant Facts**

On January 13, 2008, Applicant committed an armed robbery at a Lil' Cricket convenience store while wearing a mask. (Tr. 38-40). Robert Benson testified he was riding with Applicant the day of the incident. He stated they drove to the store, Applicant took a gun, entered the store, and came out with money. (Tr. 47-54). The robbery was captured on video surveillance. (Tr. 39).

#### **Current Action Before this Court**

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. "Ineffective assistance of counsel."
2. "Conspiracy to violate civil rights."

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 CLERK OF COURT  
 SPARTANBURG COUNTY  
 ARMY W. COX

3. "Violation of Due Process and Equal Protection."
4. "Indentification."<sup>1</sup>
5. "Newly Discovered Evidence."

A conditional order of dismissal was filed October 14, 2020. On October 28, 2020, Applicant alleged in reply, "newly discovered evidence of improper notice and a violation of the Due Process Clause in that he was not properly noticed of the State's intent to seek life without parole in compliance with S.C. Code Ann. §17-25-45(H). Without proper notice, the court lacked subject matter jurisdiction to confer a life sentence." Based upon this response, a hearing on the motion to dismiss was held on June 3, 2021. The State's motion to dismiss was denied at the hearing.

At the PCR hearing, Applicant proceeded forward on the allegation raised in his reply to the conditional order of dismissal. All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

### **Summary of the Testimony**

#### ***Applicant Testimony***

Applicant stated that he did not recall receiving a notice of intent to seek life without possibility of parole. He stated he did not plead because he did not commit the crime. Applicant testified he realized he was not properly served with an LWOP notice when he was at trial but did not know he could bring this issue up at that time. He then stated he did not know he was not properly served at trial.

#### ***Solicitor Testimony***

Solicitor stated he was seeking life without parole at trial. He stated that his investigator

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<sup>1</sup> Respondent interprets this to be "indemnification."

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 STANBURY COUNTY  
 AMY W. COX

typically serves the notice. He stated that the notice was not properly notarized initially, but that it was later notarized in court during the trial. He stated that this was notarized on the record and his investigator served the notice. He stated that the two different dates on the notice reflect the date served and the later date that the noticed was notarized.

### ***Counsel Testimony***

Counsel testified he was present with Applicant when he was personally served with an LWOP notice. He stated he thought the notice was properly served upon both he and Applicant.

### **Findings of Fact and Conclusions of Law**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, prior PCR action records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

### ***Newly Discovered Evidence***

This Court finds Applicant's claim of newly discovered evidence must be dismissed as without merit. A person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the

SPARTANBURG COUNTY  
CLERK OF COURT  
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date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). To prevail, Applicant must show the newly discovered evidence:

- (1) is such that it would probably change the result if a new trial were granted;
- (2) has been discovered since the trial;
- (3) could not in the exercise of due diligence have been discovered prior to the trial;
- (4) is material; and
- (5) is not merely cumulative or impeaching.

*State v. Spann*, 334 S.C. 618, 619–20, 513 S.E.2d 98, 99 (1999).

Applicant's allegation that he was not properly served with the LWOP notice is refuted by the trial transcript, the LWOP notices themselves, and Counsel's and Solicitor's testimonies at the PCR hearing. Specifically, the trial transcript makes clear that both Counsel and Applicant were timely served with the notice. (Tr. 119-20). The notices show Applicant and Counsel were timely served. Solicitor credibly testified that the notice was properly served, but the issue causing confusion was that the notice was not properly notarized until the trial date. Counsel credibly testified that they were both timely served and that they were together when the service occurred. Thus, the alleged facts of improper service of the notice are untrue and without merit. Accordingly, Applicant is not entitled to relief.

### Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d

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 CLERK OF COURT  
 SPARTANBURG COUNTY  
 AMY W. COX

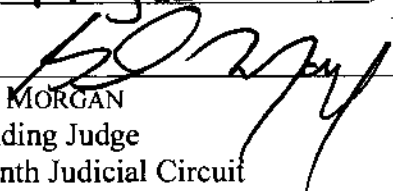
FILED

395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

**IT IS THEREFORE ORDERED:**

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1<sup>st</sup> day of August, 2022.

  
\_\_\_\_\_  
G.D. MORGAN  
Presiding Judge  
Seventh Judicial Circuit

Spartanburg, South Carolina.

**FILED**  
2022 AUG -9 AM 9:32  
CLERK OF COURT  
SPARTANBURG COUNTY  
AMY M. COX

WITNESSES

DOCKET NO.

08-GS-42-1183

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

Spartanburg County Sheriff's Office

3. SEARCHED ☒ Computer

2. CARD FILLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

COURT OF GENERAL SESSIONS

FEB 25 2008

TERM

ARREST WARRANT NUMBER ☒ Computer  
FINE CARD MADE

TRAFFIC VIOLATIONS COPY ☒

M020029

THE STATE  
vs.

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 2/22/08

VERDICT

Guilty

MARC KITCHENS

Johnny Ray Wilkins

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

Foreperson of Petit Jury

Date: 3/10/09

STATE OF SOUTH CAROLINA }  
COUNTY OF SPARTANBURG }

## INDICTMENT

At a Court of General Sessions, convened on FEB 22 2008, the Grand Jurors of Spartanburg County present upon their oath:

**ARMED ROBBERY**

That the Defendant, Johnny Ray Wilkins, did in Spartanburg County, on or about January 13, 2008, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of [REDACTED] and/or Lil Cricket located at [REDACTED] Highway 221, Mayo, South Carolina, by means of force or intimidation goods or monies of Lil Cricket, described as follows: money, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
DEPUTY SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Johnny Ray Wilkins

AKA:

Race: B Sex: M Age: 39

DOB: SS#:

Address: Maryland Avenue

SPARTANBURG, SC 29301

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS 193

INDICTMENT/CASE#: 2008GS4201183

A/V#: M020029

Date of Offense: 1/14/2008

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

## SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly we

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45 w/minor 1st or Lewd Act)

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

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

ATTEST:

*Barry Barnett*  
BARNETTE, BARRY

*Johnny Ray Wilkins*  
Defendant

*Steve M. B.* 70498  
Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed        years and/or to pay a fine of \$       ; provided that upon the service of        days/months/years and/or payment of \$       ; plus costs and assessments as applicable\*; the balance is suspended with probation for        months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:       

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

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

Total: \$        plus 20% fee: \$       

Payment Terms:       

☐ set by SCDPPPS       

Recipient:       

\*Fine: \$       

§ 14-1-206 (Assessments 107.5 %) \$       

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$       

§ 56-5-2995 (DUI Assessment) \$12 \$       

§ 35.13 (Public Def/Prob) \$500 \$       

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 23.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$       

§ 50-21-114(BUI Breath Test Fee) \$50 \$       

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$       

3% to County (If paid in installments) \$ 3.15

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.15

TOTAL \$ 133.90

*R. Roberts*  
Clerk of Court/ Deputy Clerk

Court Reporter: *L. Moffett*

       days/hours Public Service Employment

Obtain GED       

Attend Voc. Rehab. or Job Corp.       

May serve W/E beginning       

Substance Abuse Counseling       

Random Drug/Alcohol testing       

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

\$        paid to Public Defender Fund

Other:       

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE *William A. ...*

Judge Code: 1 9 1 5 1 3

Sentence Date: *March 10, 2009*

SCCA217 (07/2008)

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 )  
 COUNTY OF SPARTANBURG ) INDICTMENT NOS: 08.1181-85; 08.1561

THE STATE OF SOUTH CAROLINA )  
 ) SOLICITOR'S AFFIDAVIT OF  
 v. ) SERVICE  
 )  
 Johnny Ray Wilkins, )  
 )  
 DEFENDANT. )

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he served the following materials:

Notice of Life Sentence

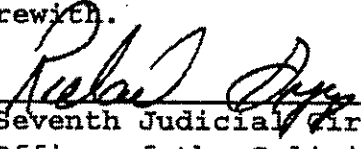
in this action on Johnny Ray Wilkins

( ) by delivering to Johnny Ray Wilkins personally.

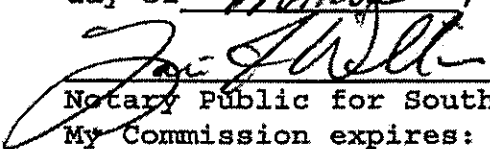
( ) by delivering \_\_\_\_\_, a person of age and discretion residing at the residence of the defendant and being at said residence at the time of service.

(☒) by delivering to \_\_\_\_\_ Timothy Ray Office  
 (Kelly)184 N Daniel Morgan Ave. Sptbg. SC \_\_\_\_\_ at  
 the place of business

and leaving with him/her copies of the same at 180 Magnolia Street, Jail Facility, Spartanburg, South Carolina, on the 25<sup>th</sup> day of February, 2009, and that the deponent is not a party to this action and has no interest therein or connection therewith.

  
 \_\_\_\_\_  
 Seventh Judicial Circuit  
 Office of the Solicitor

SWORN to before me this 10  
 day of March, 2009.

 (SEAL)  
 Notary Public for South Carolina  
 My Commission expires: 8-22-10

2009 MAR -5 PM 4:53  
 MARC KITCHENS

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG ) INDICTMENT NOS: 08.1181-85; 08.1561

THE STATE OF SOUTH CAROLINA )

v. )

Johnny Ray Wilkins, )

DEFENDANT. )

SOLICITOR'S AFFIDAVIT OF  
SERVICE

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he served the following materials:

Notice of Life Sentence

in this action on Johnny Ray Wilkins

( / ) by delivering to Johnny Ray Wilkins personally.

( ) by delivering \_\_\_\_\_, a person of age and discretion residing at the residence of the defendant and being at said residence at the time of service.

( ) by delivering to \_\_\_\_\_ at the place of business

and leaving with him/her copies of the same at 180 Magnolia Street, Jail Facility, Spartanburg, South Carolina, on the 25<sup>th</sup> day of February, 2009, and that the deponent is not a party to this action and has no interest therein or connection therewith.

*[Signature]*  
Seventh Judicial Circuit  
Office of the Solicitor

SWORN to before me this *25th*  
day of *February*, 2009.

*[Signature]* (SEAL)

Notary Public for South Carolina

My Commission expires: 07/03/2016

MARK KITCHENS

2009 MAR -5 PM 4:53

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF SPARTANBURG ) FOR THE SEVENTH JUDICIAL CIRCUIT

State of South Carolina, )

vs. )

Johnny Ray Wilkins, )

Defendant. )

**NOTICE OF LIFE SENTENCE PURSUANT  
TO SECTION 17-25-45(A)**

Indictment Nos.: 08-GS-42-1181,  
08-GS-42-1182,  
08-GS-42-1183,  
08-GS-42-1184,  
08-GS-42-1185, and  
08-GS-42-1561

To: The Defendant and his Attorney, Timothy M. Ray:

YOU WILL PLEASE TAKE NOTICE that pursuant to Section 17-25-45(A) & (H) of the South Carolina Code of Laws, 1976, as amended, the Defendant will receive a life sentence if he is convicted of one of the charges on the above listed indictment, based on his prior criminal record including but not limited to his prior Assault and Battery with Intent to Kill (ABWITK) conviction as shown by his NCIC Sheet attached to this Notice as Exhibit #1.



Barry J. Barnette  
Principal Deputy Solicitor  
Seventh Judicial Circuit  
Spartanburg County Courthouse  
180 Magnolia Street  
Spartanburg, South Carolina 29306  
(864)-596-2575

February 25, 2009  
Spartanburg, South Carolina

2009 FEB 25 AM 11:37  
MARC KITCHENS



## ICHR 003F4F273C from SCCH

SPTSL432

.ICHR.003F4F273C.SCCH.20080208 10:41:17

TO: SPTSL432-25383 20080208 10:41:17 003F4F273C

FROM: SCCH-5187388 20080208 10:41:17

ICHR REQUEST FOR RAP SHEET

ORI-SC042015A FBI-459605LA6 PUR-C

ATN-BARNETT, B

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING  
AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.  
BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY  
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-02/08/2008 TIME-10:46:25

REQ ORI-SC042015A 7TH JUDICIAL CIRCUIT

SID-SC00729549 FBI-459605LA6

NAME-WILKENS, JOHNNY

SEX-M RACE-B

HEIGHT-506 WEIGHT-157 EYES-BRO HAIR-BLK SKIN-DBR BORN-SC

FPC-POPI13POL5DII13131215

HENRY-13 O 29 W IOO 15

I 17 U OOI

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

\* DNA - TAKEN

DATE RECORD ENTERED--03/09/1990

DATE OF LAST UPDATE--01/16/2008

-----  
ADDITIONAL IDENTIFIERS

NAME

BIRTH

DATES

MARKS

SOC SEC

MISC NUM

SC FACE

WILKINS, JOHNNY RAY

WILKINS, JO JO

WILKINS, JOHNNY

-----  
CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

WILKINS, JOHNNY RAY

12/19/1986

SC0110200 GAFFNEY PD

CASE-021173

ARREST CHARGE 01-MALICIOUS  
INJURY PERSONAL PROPERTY  
OVER \$200  
PHOTOGRAPH AVAILABLE  
PALM PRINTS AVAILABLE

SC004015C PERRY RECPT &amp; EVAL

02/01/1990 CUSTODY STATUS-RECEIVED

CASE-164531

START DATE-02/01/1990

SC004015C PERRY RECPT &amp; EVAL

COURT CHARGE 01-MALICIOUS

INJURY TO PERS PROP -

PROB REVOKED

COURT DISP-CONVICTED; 6M REVOK

ED

WILKINS, JOHNNY RAY  
SC0110200 GAFFNEY PD  
WARR-D048404

06/04/1991

ARREST CHARGE 01-DISORDERLY  
CONDUCT  
OFFENSE DATE-06/04/1991  
PHOTOGRAPH AVAILABLE  
COURT CHARGE 01-DISORDERLY  
CONDUCT  
COURT DISP-CONVICTED;14D  
CONFINEMENT OR FINE

WARR-D048404

WILKINS, JOHNNY RAY  
SC0110200 GAFFNEY PD  
WARR-D153579

02/22/1992

ARREST CHARGE 01-DISORDERLY  
CONDUCT  
OFFENSE DATE-02/22/1992  
PHOTOGRAPH AVAILABLE  
COURT CHARGE 01-DISORDERLY  
CONDUCT  
COURT DISP-CONVICTED;10D  
CONFINEMENT OR FINE

WARR-D153579

WILKINS, JOHNNY RAY  
SC0110000 CHEROKEE CNTY SO  
WARR-D750509

04/14/1993

ARREST CHARGE 01-ASSAULT AND  
BATTERY  
OFFENSE DATE-04/14/1993  
PHOTOGRAPH AVAILABLE

WILKINS, JOHNNY  
SC0110000 CHEROKEE CNTY SO  
WARR-D750668

04/16/1993

ARREST CHARGE 01-BURGLARY 2ND  
OFFENSE DATE-04/14/1993

WARR-D750665

ARREST CHARGE 02-GRAND LARCEN  
Y  
OFFENSE DATE-04/14/1993  
ARREST INFO- PCC

SC040015G CENTRAL PPP  
CIT-16-11-312 FELONY  
WARR-D750668

COURT CHARGE 01-BURGLARY 2ND  
COURT DISP-CONVICTED;5Y SUSPE  
NDED;TIME SERVED AND 5Y  
PROBATION  
COURT DATE-07/02/1993

SC040015G CENTRAL PPP  
CIT-16-13-30 MISDEMEANOR  
WARR-D750665

COURT CHARGE 02-GRAND LARCENY  
COURT DISP-CONVICTED;30D  
CREDIT FOR TIME SERVED  
COURT DATE-07/07/1993

SC004015C PERRY RECPT & EVAL  
CASE-213202

04/05/1994 CUSTODY STATUS-RECEIVED  
START DATE-04/05/1994

CIT-16-11-312 FELONY

COURT CHARGE 01-BURGLARY 2ND  
COURT DISP-CONVICTED;PROBATIO  
N VIOLATION 5Y

WILKINS, JOHNNY RAY  
SC0110200 GAFFNEY PD  
WARR-58060AN

03/19/1997

WARR-58060AN

ARREST CHARGE 01-SIMPLE POSSE  
SSION OF MARIJUANA  
PHOTOGRAPH AVAILABLE  
COURT CHARGE 01-SIMPLE POSSES  
SION OF MARIJUANA  
COURT DISP-CONVICTED;30D

SC004015C PERRY RECPT & EVAL  
CASE-244320  
CIT-16-11-330(A) FELONY

10/01/1997 CUSTODY STATUS-RECEIVED  
START DATE-10/01/1997

CIT-16-3-620 FELONY

COURT CHARGE 01-ARMED ROBBERY  
COURT DISP-CONVICTED;12Y

COURT CHARGE 02-ASSAULT AND  
BATTERY WITH INTENT TO  
KILL  
COURT DISP-CONVICTED;12Y  
CONCURRENT

CIT-56-5-750(B) (1) MISDEMEANOR

COURT CHARGE 03-FAILURE TO  
STOP  
COURT DISP-CONVICTED;3Y CONCU  
RRENT

CIT-16-21-80(3) FELONY

COURT CHARGE 04-POSSESSION  
OF STOLEN VEHICLE  
COURT DISP-CONVICTED;5Y CONCU  
RRENT

WILKINS, JOHNNY RAY  
SC0420000 SPARTANBURG CNTY SO  
CASE-2008010828  
ATN-422100130890  
WARR-M020029  
CIT-16-11-330(A)-FELONY

01/14/2008

WARR-M020028  
CIT-16-11-330(A)-FELONY

ARREST CHARGE 01-ARMED ROBBER  
Y, ROBBERY ARMED WITH DEADL  
Y WEAPON  
OFFENSE DATE-01/14/2008  
PALM PRINTS AVAILABLE

WARR-M020027  
CIT-16-11-330(A)-FELONY

ARREST CHARGE 02-ARMED ROBBER  
Y, ROBBERY ARMED WITH DEADL  
Y WEAPON  
OFFENSE DATE-01/14/2008

ARREST CHARGE 03-ARMED ROBBER  
Y, ROBBERY ARMED WITH DEADL  
Y WEAPON  
OFFENSE DATE-01/14/2008

WARR-M020019  
CIT-16-11-330(A)-FELONY

ARREST CHARGE 04-ARMED ROBBER  
Y, ROBBERY ARMED WITH DEADL  
Y WEAPON  
OFFENSE DATE-01/14/2008

WARR-M020030  
CIT-16-11-330(A)-FELONY

ARREST CHARGE 05-ARMED ROBBER  
Y, ROBBERY ARMED WITH DEADL  
Y WEAPON  
OFFENSE DATE-01/14/2008

WARR-M020031  
CIT-16-11-330(A)-FELONY

ARREST CHARGE 06-ARMED ROBBER  
Y, ROBBERY ARMED WITH DEADL  
Y WEAPON  
OFFENSE DATE-01/14/2008

WILKINS, JOHNNY RAY  
SC0420100 SPARTANBURG PD  
CASE-0137508  
ATN-422100130976  
WARR-J012285  
CIT-16-11-325-FELONY

01/16/2008

ARREST CHARGE 01-COMMON LAW  
ROBBERY, STRONG ARM ROBBER  
Y  
OFFENSE DATE-01/16/2008  
PALM PRINTS AVAILABLE

BASED ON SEARCH OF SCLED CJIS CCH FILE USING FBI/459605LA6  
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION  
INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN  
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110  
(C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN  
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR  
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION  
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN  
CONVICTED OF A FELONY ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.  
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT, OR RECEIVE ANY  
FIREARM OR AMMUNITION AFFECTED BY INTERSTATE OR FOREIGN COMMERCE, AS  
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

\*\* S C CJIS END OF RECORD \*\*[]