

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

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

RAYSHON SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000472

APPENDIX

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

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Rayshon Lamar Smith,) 2017-GS-42-3108-3111;4231
6 Defendant.) 2018-GS-42-4080
7) August 27, 2018
8) Spartanburg, South Carolina
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:

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16 ALLISON MARGARET MABBS, ESQUIRE
Attorneys for the State

17 ROBIN CLARK FILE, ESQUIRE
18 Attorney for the Defendant
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22 Linda D. Moffitt
23 Circuit Court Reporter
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Jury qualification

1 (Proceedings August 27, 2018)

2 THE COURT: All right. Are we ready for the jury
3 panel?

4 MR. HUNTER: The state is ready, Your Honor.

5 MR. FILE: The defense is ready.

6 THE COURT: All right. Bring them around, please.

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

9 THE COURT: All right. Ladies and gentlemen of the
10 jury panel, we are ready to begin with jury selection in
11 the first case that's going to require some of your
12 participation.

13 The title of that case is the State vs. Rayshon Lamar
14 Smith.

15 Mr. Smith has been accused by the prosecutor of having
16 committed seven separate and distinct criminal offenses,
17 although they are alleged to have arisen out of one event
18 or a course of events which the state alleges occurred back
19 on February the 11th of 2017. But they are separate
20 criminal offenses so far as the state's requirement to
21 prove and so far as the jury rendering a decision is
22 concerned.

23 The way a person is formally accused of a crime in
24 this court is by way of an indictment. The indictment is
25 the charging paper. The indictment is not proof of

Jury qualification

1 anything; it's not evidence of anything; it doesn't
2 establish anything; but it is the means by which any person
3 who is brought into this Court to stand trial on a charge
4 is put on notice as to what charge or crime the state
5 claims they have committed.

6 Those allegations are set forth in the indictments,
7 and therefore the defendant is made aware of what the state
8 claims that he did by way of the commission of a criminal
9 offense.

10 As to the indictments the defendant has entered a plea
11 of not guilty, and therefore the burden is upon the state
12 to establish his guilt to the satisfaction of a jury beyond
13 a reasonable doubt.

14 Now, the charges that have been brought against the
15 defendant are the crimes of burglary in the first degree,
16 the state alleging that on or February the 11th of 2017
17 Mr. Smith did wilfully and intentionally enter a dwelling
18 that was occupied by Francisco Javier Villar located at [REDACTED]
19 Marlboro Road here in the city of Spartanburg.

20 Marlboro Road is a road that's basically directly
21 across from the Beacon. It runs behind some business
22 establishments that are on Reidville Road, but it's close
23 to the Reidville Road/John B. White, Sr. Boulevard area and
24 near the Beacon.

25 They allege that he entered that residence without

Jury qualification

1 consent and with the intent to commit a crime therein and
2 that while effecting entry or while in the dwelling or in
3 immediate flight therefrom he or some other person who was
4 also participating in the crime was armed with a deadly
5 weapon, or caused physical injury to another person who was
6 not a participant in the crime, or used threatened the use
7 of a dangerous instrument or displayed what appeared to be
8 a deadly weapon, or entered the dwelling in the nighttime,
9 or other aggravating circumstances that the jury will be
10 made aware of.

11 By way of a separate indictment the defendant is
12 charged with the crimes of murder and possession of a
13 firearm during the commission of that violent crime.

14 The state alleges on February the 11th of 2017 that
15 Mr. Smith did with malice aforethought or acting in concert
16 with another, did kill one Francisco Javier Villar by
17 shooting him and that he died as a proximate result of that
18 gunshot wound.

19 Count two of the indictment alleges that he possessed
20 a firearm or visibly displayed a firearm during the
21 commission of that crime of murder alleged in count one.

22 A separate indictment charges Mr. Smith with the crime
23 of attempted armed robbery alleging on February the 11th of
24 2017 that Mr. Smith did attempt to commit a robbery against
25 Francisco Javier Villar while armed with a handgun and that

Jury qualification

1 he attempted to take away money or other property belonging
2 to Mr. Villar.

3 The state alleges in two separate indictments the
4 crime of kidnapping, the state alleging on February the
5 11th of 2017 that Mr. Smith did unlawfully seize, confine,
6 kidnap, abduct two different persons alleged to be the
7 victims of the kidnapping. Those are Dixie Wright and
8 Simon Joe Spicer.

9 And the remaining indictment alleges that Mr. Smith
10 did here in Spartanburg County on or about February the
11 11th of 2017 wilfully file a false report, doing so
12 knowingly and unlawfully, and that he filed that false
13 report with the Spartanburg Police Department.

14 Now, as to those allegations and as to each of those
15 charges Mr. Smith has entered a plea of not guilty, and
16 that plea of not guilty places upon the state the burden of
17 proving the allegations that they have made by way of each
18 of these indictments, the burden of proving each of the
19 essential elements of the crimes that have been alleged
20 against the defendant; and therefore the burden is upon the
21 state to establish his guilt to the satisfaction of 12
22 jurors beyond a reasonable doubt before any verdict of
23 guilty could be returned as to any of the indictments.

24 Therefore we're going to be selecting 12 primary
25 jurors and two alternate jurors to participate in the

Jury qualification

1 trial. By way of your participation you're going to be
2 called upon to simply listen to testimony that will come
3 from the witness stand by way of witnesses, to consider
4 other evidence introduced during the trial of the case.

5 At the trial's conclusion I'll instruct you on the law
6 that's applicable in this case, and then the jury will be
7 asked to deliberate, to decide the facts where you can
8 based upon the evidence presented, to apply the law to the
9 facts as you determine them to be and to decide whether or
10 not the state has proven the defendant guilty of a crime
11 beyond a reasonable doubt.

12 If they have, then the verdict would be guilty as to
13 that particular charge. And if they have not, then the
14 verdict would be not guilty as to that particular charge.

15 Now, before we begin with jury selection I've got some
16 folks to introduce to you.

17 The purpose of the introductions is to find out if you
18 have any connection whatsoever with anybody that's involved
19 in the trial of this case.

20 That includes the defendant; that includes the
21 purported victim; that includes any members of their
22 respective families; that includes the lawyers involved in
23 the trial, as well as any other employees of their
24 respective offices. That also includes any potential
25 witness that might be called during the trial of the case.

Jury qualification

1 I need to know if you have any type of connection by
2 blood or by marriage, are you related in some fashion, do
3 you attend church with any of these folks or any members of
4 their families, do you go to school with any of these folks
5 or any members of their families, do you socialize with any
6 of these people or any members of their families, have you
7 met them, do you know them, do you have any contact with
8 them in any fashion whatsoever by way of social, church,
9 school or employment. So I need to know if you have any
10 connection or know anybody that's going to be identified.

11 After that I'll have some additional questions to ask
12 you in order to determine whether or not you have any
13 reason why you should not serve in the case or could not be
14 fair and impartial if called upon to serve as a juror in
15 this particular case.

16 Now, first of all, as I told you, the defendant, that
17 is the person who is accused of having committed these
18 various offenses occurring back on February the 11th of
19 2017 -- the defendant is Rayshon Lamar Smith.

20 Mr. Smith, if you will, please, stand and face the
21 jury panel so that they may see who you are.

22 (Whereupon, the defendant stood.)

23 THE COURT: Seated at the table with Mr. Smith is
24 Robin File. Mr. File is Mr. Smith's lawyer. He'll be
25 assisting him during the trial of the case.

1 (Whereupon, Mr. File stood.)

2 THE COURT: Presenting the case on behalf of the state
3 are Eddie Hunter and Allison Mabbs. They are both
4 assistant circuit solicitors for the Seventh Judicial
5 Circuit.

6 Barry Barnette is the circuit solicitor, and they're
7 employed in his office.

8 (Whereupon, Mr. Hunter and Ms. Mabbs stood.)

9 THE COURT: Potential witnesses to be called during
10 the trial of the case include Cameron Adams with the
11 Spartanburg Police Department; Joshua Sexton with the
12 Spartanburg Police Department; William Washington with the
13 Spartanburg Police Department; Sandra Adorno with the
14 Spartanburg Police Department; Simon Spicer who is a
15 resident of Chesnee, South Carolina; Dixie Wright who is a
16 resident of Gaffney. She is present.

17 Jeff Kirby with the Spartanburg Police Department;
18 Shawn Cloran with the Spartanburg Police Department;
19 Christy Norkett with the Spartanburg Police Department;
20 Louis Nelson with the Spartanburg Police Department; Chris
21 Taylor with the Spartanburg Police Department; Tonya Camp,
22 Spartanburg County Clerk of Court's Office; John David
23 Wren, pathologist, Spartanburg Regional Medical Center;
24 Mark Norungolo, Spartanburg Police Department; Za'Kirra
25 Smith, Spartanburg Police Department; Stacy Smith,

Jury qualification

1 Spartanburg Police Department; and Keith Lee with 9-1-1
2 communications.

3 So I need to know if any juror has any connection, as
4 I have already described it for you, with anybody who's
5 just been introduced or any members of their respective
6 families. That would also include anybody employed in the
7 Seventh Judicial Circuit Solicitor's Office.

8 Does anyone have any connection with any of those
9 persons? If so, please stand.

10 And let me say this too. I neglected to -- the person
11 who is alleged to be the victim is Francisco Javier Villar.
12 So I need to know if you know any -- if you did know him or
13 any member of his particular family. Please stand.

14 All right. I have one juror standing. And your name
15 and number is what, ma'am?

16 JUROR NO. 4: Amanda Blackwell, Juror No. 4.

17 THE COURT: And how does that question relate to you?

18 JUROR NO. 4: I work under Dr. Wren in the laboratory
19 at Spartanburg Regional.

20 THE COURT: All right. And did you have any
21 connection or involvement in this particular case?

22 JUROR NO. 4: No, sir.

23 THE COURT: All right. Is there anything about your
24 connection with Dr. Wren that would have any bearing upon
25 your decision in this case?

1 JUROR NO. 4: No, sir.

2 THE COURT: Can you be fair and impartial,
3 notwithstanding you have such a connection?

4 JUROR NO. 4: I can.

5 THE COURT: All right. Thank you. You may be seated.
6 Juror No. 4.

7 Yes, ma'am.

8 JUROR NO. 79: Susan Glass, No. 79. I work in
9 radiation and oncology at Spartanburg Regional, and I know
10 Dr. Wren from the tumor board.

11 THE COURT: All right. Let me ask you the same
12 questions that I asked Juror No. 4.

13 Would any of those connections have any bearing upon
14 your decision?

15 JUROR NO. 79: No, sir.

16 THE COURT: You can be fair and impartial,
17 notwithstanding you have that connection?

18 JUROR NO. 79: Yes, sir.

19 THE COURT: All right. Thank you. Be seated.
20 Anyone else?

21 (No response.)

22 THE COURT: All right. Now, as I told you, this is an
23 event that the state alleges occurred back on February the
24 11th of 2017. They allege that it did occur at a residence
25 on Marlboro Road, [REDACTED] Marlboro Road, in Spartanburg, in the

Jury qualification

1 City of Spartanburg. And of course I read the allegations
2 in the indictments.

3 Does any juror think that you might have heard, seen
4 or read about anything that relates to this particular
5 case?

6 In other words, I need to know if you have been
7 exposed to any type of information that relates to this
8 particular case from any source, whether it be television,
9 radio, newspaper, whether it be from just somebody talking
10 about it at work or at church or at school or some social
11 event. Have you been exposed to any type of information
12 that relates to this particular case? If so, please stand.

13 (No response.)

14 THE COURT: All right. None have responded.

15 I also need to find out if any juror or any member of
16 your immediate family -- I'm going to define an immediate
17 family member as a parent or a spouse or a child or a
18 sibling -- parent, spouse, child or sibling. Have you or
19 any members of your immediate family ever been the victim
20 of any type of criminal offense that might be characterized
21 or described as a violent offense?

22 I also need to know whether or not you or any member
23 of your immediate family have ever been accused of having
24 committed any type of criminal offense that might be
25 described or characterized as a violent offense. And

1 offenses which would be included in that category would
2 include murder, manslaughter, burglary, armed robbery,
3 kidnapping, criminal sexual conduct, carjacking, domestic
4 violence of a high and aggravated nature or any other --
5 did I mention robbery -- or any other offense that might be
6 commonly described or characterized as a violent offense.
7 I need to know if you or any member of your family has ever
8 been the victim of such or ever been accused of having
9 committed such. If so, please stand.

10 All right. Is everyone standing that needs to respond
11 to that question? I'm just -- my question is is everyone
12 standing who needs to respond to the question.

13 All right. I'm going to start to my right. I'll work
14 my way row by row. I'll jump the aisle and started over
15 there.

16 Your name and number, please, ma'am.

17 JUROR NO. 93: Ruth Anne Hickerson, 93.

18 THE COURT: Was it you or a family member?

19 JUROR NO. 93: It was me. It was not a violent crime.
20 My business has been robbed on more than one occasion.

21 THE COURT: Okay. You mean somebody broke in and
22 stole?

23 JUROR NO. 93: No one was present. So it was just
24 things stolen, not -- no one in any danger.

25 THE COURT: Okay. All right. Is there anything about

Jury qualification

1 that experience that would affect your judgment in this
2 case?

3 JUROR NO. 93: No, sir.

4 THE COURT: Thank you. Be seated.

5 Yes, ma'am.

6 JUROR NO. 90: My family member.

7 THE COURT: Tell me what your name and number is,
8 please.

9 JUROR NO. 90: Latirrani Harris. I'm Juror NO. 90.

10 THE COURT: Ninety?

11 JUROR NO. 90: Ninety.

12 THE COURT: Nine zero. All right. And it was you or
13 a family member?

14 JUROR NO. 90: Family member.

15 THE COURT: A victim or accused?

16 JUROR NO. 90: Victim.

17 THE COURT: And the type of offense was what?

18 JUROR NO. 90: It was -- I think he's being charged
19 with murder.

20 THE COURT: Okay. And would that have any bearing in
21 your decision in this case?

22 JUROR NO. 90: No, sir.

23 THE COURT: Would that experience influence your
24 judgment in any way?

25 JUROR NO. 90: No, sir.

1 THE COURT: All right. Thank you. You may be seated.
2 Yes, ma'am.

3 JUROR NO. 112: Nichole Knauer, Juror No. 112.

4 THE COURT: Was it you or a family member?

5 JUROR NO. 112: Me.

6 THE COURT: A victim or an accused?

7 JUROR NO. 112: A victim.

8 THE COURT: And is it something you'd prefer not to
9 share with the audience and rather tell me, or do you mind?

10 JUROR NO. 112: It's fine.

11 THE COURT: Okay.

12 JUROR NO. 112: A gentleman kicked in our door at our
13 house.

14 THE COURT: Okay.

15 JUROR NO. 112: And, no, it would not affect my
16 judgment in this situation.

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

19 All right. I'll start over here. Your name and
20 number, please.

21 JUROR NO. 80: Tina Glenn. I'm Juror No. 80.

22 THE COURT: Eight?

23 JUROR NO. 80: Eighty.

24 THE COURT: Eight zero. Okay. You or a family
25 member?

Jury qualification

1 JUROR NO. 80: Family member.

2 THE COURT: Victim or accused?

3 JUROR NO. 80: Accused.

4 THE COURT: Of what?

5 JUROR NO. 80: I think it was burglary.

6 THE COURT: All right.

7 JUROR NO. 80: Breaking and entering.

8 THE COURT: And would that fact have any bearing in
9 your decision in this case?

10 JUROR NO. 80: No, sir.

11 THE COURT: Thank you. Be seated.

12 Yes, ma'am.

13 JUROR NO. 15: Miriam Spradlin, Juror No. 15.

14 THE COURT: You or a family member?

15 JUROR NO. 15: Both.

16 THE COURT: A victim or accused?

17 JUROR NO. 15: I am the victim. The family member was
18 the accused, but he was a juvenile.

19 THE COURT: All right.

20 JUROR NO. 15: So do I have to --

21 THE COURT: You don't need to. And you're -- and you
22 were the victim of what?

23 JUROR NO. 15: Personally raped.

24 THE COURT: All right. And would either of those
25 experiences or facts have any bearing upon your decision in

1 this case?

2 JUROR NO. 15: Not in this case, no, sir.

3 THE COURT: Okay. Thank you, ma'am. You may be
4 seated.

5 Yes, ma'am.

6 JUROR NO. 60: Shannon Decken, No. 60.

7 THE COURT: And you or a family member?

8 JUROR NO. 60: Family member, victim.

9 THE COURT: And what was the nature of the case?

10 JUROR NO. 60: Kidnapping and robbing.

11 THE COURT: All right. Is there anything about that
12 fact or that experience of your family member that would
13 have any bearing upon your decision in this case?

14 JUROR NO. 60: No, sir.

15 THE COURT: Thank you. You may be seated.

16 Anyone else need to respond to that question? If so,
17 please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel or
20 members of your immediate family ever been employed as any
21 type of law enforcement officer for any type of law
22 enforcement agency? If so, please stand.

23 All right. We'll start with Juror 90.

24 JUROR NO. 90: I have a cousin. He's with the F.B.I.

25 THE COURT: All right. Would that have any bearing in

Jury qualification

1 your decision?

2 JUROR NO. 90: No, sir.

3 THE COURT: Thank you. Be seated.

4 Yes, ma'am.

5 JUROR NO. 97: Pamela Isham, No. 97. My son is
6 currently a Spartanburg County deputy.

7 THE COURT: would that have any bearing in your
8 decision?

9 JUROR NO. 97: No, sir.

10 THE COURT: Thank you. Be seated.

11 Yes, sir.

12 JUROR NO. 24: Mark Androes, No. 24. My dad is a
13 highway patrolman.

14 THE COURT: would that have any bearing in your
15 decision?

16 JUROR NO. 24: No, sir.

17 THE COURT: Thank you. Be seated.

18 Yes, sir.

19 JUROR NO. 162: Thomas Smith, No. 162. My dad was a
20 security officer.

21 THE COURT: And would that have any bearing in your
22 decision?

23 JUROR NO. 162: No, sir.

24 THE COURT: Thank you. Be seated.

25 Is there anything about the nature of any of the

1 offenses that have been alleged against this defendant that
2 would affect any juror's ability to be fair and impartial
3 and to render a decision based upon the evidence presented
4 and the law that's applicable? Based upon the nature of
5 the cases does any juror believe you could not be fair and
6 impartial if selected to serve as a juror?

7 (No response.)

8 THE COURT: Has any juror already formed an opinion or
9 made up your mind as to what you think the ultimate
10 decision ought to be in these cases simply based upon what
11 you've heard up to this point or based upon any other
12 consideration? Have you already made up your mind as to
13 the ultimate outcome? If so, please stand.

14 (No response.)

15 THE COURT: Does any juror know of any reason
16 whatsoever why you think you could not serve as a juror and
17 be fair and impartial, consider all of the evidence, follow
18 the law as I will provide it to you and render a decision
19 that's fair and impartial based upon that evidence and the
20 law that's applicable?

21 Does anyone know of any reason why you could not do so
22 and be a fair and impartial juror? If so, please stand.

23 (No response.)

24 THE COURT: All right. None responding.

25 Any other questions requested by the state?

Jury qualification

1 MR. HUNTER: No, Your Honor.

2 THE COURT: By the defendant?

3 MR. FILE: No, Your Honor.

4 THE COURT: All right. Now, the way a jury is
5 selected is your names have been selected by the computer,
6 and your names will be called and you will be asked to come
7 forward. There's going to be a bailiff standing here in
8 the middle of the room. You'll stand by that bailiff, and
9 you'll look towards your fellow jurors.

10 Each side, the prosecutor and defense counsel, has an
11 opportunity to have you excused from serving in the case,
12 or both may agree to have you accepted or seated for
13 service in the case.

14 If either side asks that you be excused you can simply
15 go back and have a seat in the back of the courtroom.

16 If both agree to have you seated for service in the
17 case you'll be having a seat in that jury box to your right
18 and to my left.

19 So please come forward as your name is called and
20 you'll be instructed whether you are to be accepted for
21 service in the case or excused from service in the case.

22 MR. HUNTER: Your Honor, may Mr. File and I approach
23 briefly?

24 THE COURT: Yes.

25 (Bench conference held off the record.)

1 THE CLERK: No. 47, Jeffrey Campbell.

2 what say the state?

3 MR. HUNTER: Please present the juror.

4 THE CLERK: what say the defense?

5 MR. FILE: Please excuse this juror.

6 THE CLERK: Juror No. 90, Latirrani Harris.

7 what say the state?

8 MR. HUNTER: Please excuse this juror.

9 THE CLERK: Juror No. 93, Ruth Anne Harris. I'm
10 sorry.

11 what say the state?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: what say the defense?

14 MR. FILE: Please seat this juror.

15 THE CLERK: Juror No. 36, Makayla Bolin.

16 what say the state?

17 MR. HUNTER: Please present this juror.

18 THE CLERK: what say the defense?

19 MR. FILE: Please seat this juror.

20 THE CLERK: Juror No. 182, Donna Wheeler.

21 what say the state?

22 MR. HUNTER: Please present this juror.

23 THE CLERK: what say the defense?

24 MR. FILE: Please seat the juror.

25 THE CLERK: Juror No. 160, Michael Sloan.

Jury qualification

1 what say the state?

2 MR. HUNTER: Please present this juror.

3 THE CLERK: What say the defense?

4 MR. FILE: Please excuse the juror in this case.

5 THE CLERK: Juror No. 41, Mitchell Bradley.

6 what say the state?

7 MR. HUNTER: Please present this juror.

8 THE CLERK: What say the defense?

9 MR. FILE: Please excuse the juror.

10 THE CLERK: Juror No. 11, Christopher Hibbitts.

11 what say the state?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: What say the defense?

14 MR. FILE: Please seat the juror.

15 THE CLERK: Juror No. 97, Pamela Isham.

16 what say the state?

17 MR. HUNTER: Please present this juror.

18 THE CLERK: What say the defense?

19 MR. FILE: Please seat the juror.

20 THE CLERK: Juror No. 68, Christina Esber.

21 what say the state?

22 MR. HUNTER: Please present this juror.

23 THE CLERK: What say the defense?

24 MR. FILE: Please seat the juror.

25 THE CLERK: Juror No. 23, Judy Anderson.

1 what say the state?

2 MR. HUNTER: Please present this juror.

3 THE CLERK: What say the defense?

4 MR. FILE: Please excuse the juror.

5 THE CLERK: Juror No. 13, Janice Jolley.

6 what say the state?

7 MR. HUNTER: Please present this juror.

8 THE CLERK: What say the defense?

9 MR. FILE: Please excuse the juror.

10 THE CLERK: Juror No. 3, Benny Bentley.

11 what say the state?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: What say the defense?

14 MR. FILE: Please seat the juror.

15 THE CLERK: Juror No. 49, Lindsey Chase.

16 what say the state?

17 MR. HUNTER: Please present this juror.

18 THE CLERK: What say the defense?

19 MR. FILE: Please excuse the juror.

20 THE CLERK: Juror No. 24, Mark Androes.

21 what say the state?

22 MR. HUNTER: Please present this juror.

23 THE CLERK: What say the defense?

24 MR. FILE: Please excuse the juror.

25 THE CLERK: Juror No. 181, Mary Westphal.

Jury qualification

1 what say the state?

2 MR. HUNTER: Please present this juror.

3 THE CLERK: What say the defense?

4 MR. FILE: Please excuse the juror.

5 THE CLERK: Juror No. 69, Tracy Evans.

6 what say the state?

7 MR. HUNTER: Please present this juror.

8 THE CLERK: What say the defense?

9 MR. FILE: Please excuse the juror.

10 THE CLERK: Juror No. 113, Tyler Knighton.

11 what say the state?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: What say the defense?

14 MR. FILE: Please seat the juror.

15 THE CLERK: Juror No. 112, Nichole Knauer.

16 what say the state?

17 MR. HUNTER: Please present this juror.

18 THE CLERK: What say the defense?

19 MR. FILE: Please excuse this juror.

20 THE CLERK: Juror No. 26, Brenda Adkins.

21 what say the state?

22 MR. HUNTER: Please present this juror.

23 THE CLERK: What say the defense?

24 MR. FILE: Please seat the juror.

25 THE CLERK: Juror No. 145, Joshua Poteat.

1 what say the state?

2 MR. HUNTER: Please present this juror.

3 THE CLERK: What say the defense?

4 MR. FILE: Please seat the juror.

5 THE CLERK: Juror No. 4, Amanda Blackwell.

6 what say the state?

7 MR. HUNTER: Please present this juror.

8 THE CLERK: What say the defense?

9 MR. FILE: Please seat the juror.

10 THE CLERK: Juror No. 157, Debra Simon.

11 what say the state?

12 MR. HUNTER: Please present this juror.

13 THE CLERK: What say the defense?

14 MR. FILE: Please seat the juror.

15 THE COURT: This will be for the first alternate.

16 THE CLERK: Juror No. 96, Perry Hubbard.

17 what say the state?

18 MR. HUNTER: Please present this juror.

19 THE CLERK: What say the defense?

20 MR. FILE: Please seat the juror.

21 THE COURT: This will be for the second alternate.

22 THE CLERK: Juror No. 71, Charles Ferguson.

23 what say the state?

24 MR. HUNTER: Please present this juror.

25 THE CLERK: What say the defense?

1 MR. FILE: Please seat the juror.

2 (Whereupon, a jury was impaneled.)

3 THE COURT: All right. Those jurors who have been
4 selected, I'll ask you to please go with the bailiff to a
5 jury room, and I'll bring you back shortly and then we'll
6 probably excuse you for lunch.

7 (The following takes place outside the presence of the
8 jury.)

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

11 MR. HUNTER: Nothing from the state, Your Honor.

12 THE COURT: By the defendant?

13 MR. FILE: None from the defendant.

14 (Whereupon, the remaining members of the jury venire
15 were excused.)

16 THE COURT: All right. I understand we have some
17 pretrial motions.

18 How long do you anticipate it to take to have those
19 matters heard?

20 MR. HUNTER: Your Honor, the state's motion, that's
21 just going to be a short argument as far as the -- I
22 believe the other motions are going to be a Jackson vs.
23 Denno and a Neil vs. Biggers motion.

24 THE COURT: So?

25 MR. HUNTER: We don't plan to show the video, just

1 place them into evidence. That way if you need to watch
2 them, you can, so.

3 THE COURT: More than an hour?

4 MR. FILE: I would say probably.

5 MR. HUNTER: Probably between one and two hours.

6 MR. FILE: One and two hours, yes.

7 THE COURT: Okay. Bring the jury back, please.

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

10 THE COURT: Ladies and gentlemen, I've got some
11 matters that I need to address that were previously
12 scheduled, so we're not going to be able to begin with the
13 actual trial until this afternoon at 3:45 -- at 3:45.

14 So you're going to be excused now for lunch, and
15 you'll be asked to return this afternoon to the jury room
16 at 3:45, not later than 3:45.

17 Now, in the meantime -- now that you've been selected
18 you always have to base your decision in the case upon what
19 you see and hear during the trial and not what you see and
20 hear outside of the courtroom.

21 Every juror must follow the instruction. That is your
22 verdict has to be based upon the law and the evidence in
23 the case, and the law and the evidence comes during the
24 trial. It doesn't come outside the trial.

25 So in order to avoid you being potentially exposed to

1 extraneous information that would be inappropriate, you
2 can't talk about the case with anybody whatsoever in any
3 fashion whatsoever.

4 That includes your fellow jurors. You can't talk even
5 to your fellow jurors about the case until the case has
6 been concluded, I've instructed you on the law and asked
7 you to begin jury deliberations. That of course won't be
8 until the end of the trial after all of the evidence has
9 been received and I've given you the law.

10 Also, because you have to base your decision upon what
11 you see and hear during the trial and not to be influenced
12 by any outside information you can't conduct any research,
13 you can't do your own investigation into any issue.

14 You cannot law yourselves to be exposed to any type of
15 media coverage whether it be television, radio or newspaper
16 that might relate to the case; and you can't conduct any
17 internet search about any aspects that might relate to the
18 case, and that's because you're going to get the evidence
19 during the trial.

20 And anybody who's talking about the case outside of
21 the trial might have inaccurate information. And if you're
22 exposed to inaccurate information it might influence your
23 decision, and it can't be that way.

24 You cannot allow information that does not come during
25 the trial in the courtroom to influence your judgment.

1 That's how we ensure that you render a fair and impartial
2 decision based upon the evidence and the law.

3 So no discussions even among your fellow jurors until
4 deliberations begin. No research, no investigation, no
5 media exposure.

6 Do have a good lunch. Please report to your jury room
7 this afternoon not later than 3:45, 3:45 this afternoon.
8 Have a good lunch.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: All right. What's the first motion you
12 would like to address?

13 MR. HUNTER: First, Your Honor, may we do the
14 arraignment? I believe he has not been arraigned on the
15 charges of attempted armed robbery.

16 Mr. File does have a copy of that indictment.
17 Mr. Smith was informed that we would be indicting him for
18 that case at the last meeting Mr. File and Mr. Smith and I
19 had in our office.

20 I believe Mr. File said he is wishing to waive
21 arraignment on that case, that charge.

22 Further, the state recently reindicted the murder
23 charge. When it was originally indicted by the assistant
24 solicitor who had the case she indicted murder as a
25 separate count from the possession of a weapon during the

1 commission of a violent crime.

2 I sent the indictment back to the grand jury this past
3 Friday so that they would be under the same count.

4 Again, Mr. File and Mr. Smith were aware of that
5 possession of weapon charge. It should come as no shock
6 and surprise to them. We just did it as to the statute,
7 requested to place it as a count two on the violent crime,
8 which is the murder indictment, Your Honor.

9 THE COURT: All right. Mr. File, you've talked to
10 Mr. Smith about the charges?

11 MR. FILE: Yes, Your Honor.

12 THE COURT: Do you have copies of the indictments?

13 MR. FILE: Yes, Your Honor.

14 THE COURT: You shared those indictments with
15 Mr. Smith?

16 MR. FILE: Yes, Your Honor.

17 THE COURT: He understands what the charges are?

18 MR. FILE: Yes, Your Honor.

19 THE COURT: Did you explain the potential punishments
20 to him?

21 MR. FILE: Yes, Your Honor.

22 THE COURT: Does he wish for the Court to formally
23 arraign him, or does he waive arraignment on the new
24 indictment for murder and attempted armed robbery?

25 MR. FILE: It's my understanding he wishes to waive

1 the arraignment.

2 THE COURT: Is that true, Mr. Smith?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the murder charge is the
5 same? It's just been reindicted to include possession of a
6 firearm during the commission of that crime. And the
7 attempted armed robbery -- was it initially an armed
8 robbery?

9 MR. HUNTER: No, Your Honor. That charge was never
10 brought forward on -- that's a new charge.

11 THE COURT: This is a direct indictment? All right.
12 So you know now that you're charged also with attempted
13 armed robbery on the same date.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Mr. File explained all of that to you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. All right. Arraignment is waived
20 by the defendant.

21 MR. HUNTER: Your Honor, the state's only pretrial
22 motion is a motion to exclude the toxicology results from
23 the victim by SLED. Toxicology results show that the
24 victim did have a controlled substance in his system.

25 We are not seeking to exclude any drugs -- there was

1 some drugs found in the residence -- but just merely the
2 toxicology report that he ingested drugs at some point
3 prior to his death as we believe it's both irrelevant, or
4 even if found relevant that the prejudicial effect
5 substantially outweighs the probative value, Your Honor.

6 THE COURT: All right. Mr. File, do you -- do you
7 believe that that -- or do you intend to introduce that
8 evidence?

9 MR. FILE: I had -- I had planned. Had he not filed a
10 motion, I had planned to ask about it.

11 THE COURT: All right. Well, do you --

12 MR. FILE: But I understand the case law and also
13 would support not being able to go into that but we -- I
14 had planned to ask about it, so.

15 THE COURT: Do you believe it to be relevant on any
16 issue?

17 MR. FILE: Your Honor, as to -- it'd be relevant in
18 terms of the whole picture of the case with this being a
19 drug house and everything.

20 THE COURT: Well, as I understand it, he's not
21 suggesting that there's not going to be discussion about
22 drugs in this house.

23 The limitation he's seeking is to prohibit
24 introduction of evidence establishing that the decedent had
25 drugs in his system.

1 MR. FILE: I don't think it would be relevant
2 regarding anything as far as the -- to go into that
3 regarding the decedent's actions or anything. So we would
4 concede that.

5 THE COURT: Do you think it would be relevant to the
6 decedent's conduct?

7 MR. FILE: No. Like I said, I don't think the
8 decedent's actions in this case as far as what he did is
9 the drug evidence of his toxicology, would be relevant to
10 that, so.

11 THE COURT: So you're agreeing to the state's motion?

12 MR. FILE: We agree.

13 THE COURT: All right. It shall be prohibited.

14 All right. What's the next motion?

15 MR. HUNTER: That's the only motion from the state,
16 Your Honor.

17 MR. FILE: Your Honor, the state has a motion
18 regarding the out-of-court identification of the defendant.

19 We would move to exclude the -- first of all, the
20 show-up that took place, what we would term a show-up that
21 took place.

22 First of all, one of the victims, Simon Spicer, it's
23 my understanding likely not to be called as a witness, but
24 Mr. Spicer was brought into a room at the Spartanburg City
25 Police Department.

1 MR. HUNTER: Your Honor, we will not be calling
2 Mr. Spicer as a witness in this case.

3 THE COURT: All right. Mr. Spicer --

4 MR. HUNTER: Nor including any information about his
5 identification of Mr. Smith's shoes.

6 THE COURT: All right. The state says they don't
7 intend to introduce any identification of the defendant by
8 Mr. Spicer.

9 MR. FILE: Okay. And then the second would be what
10 took place with Ms. Dixie Wright at the Spartanburg city
11 Police Department.

12 Mr. -- and I believe we agreed pretty much to what
13 took place as far as the facts.

14 Mr. Smith was at Spartanburg Regional Hospital being
15 treated for a wound to his ear, a gunshot wound to his ear,
16 and Investigator Kirby at one point -- Investigator or
17 Officer Washington's body camera -- Investigator Kirby
18 comes into the treatment room where Mr. Smith is and is
19 talking to him about how Mr. Smith incurred the gunshot
20 wound.

21 At some point during this -- and it's documented in
22 Investigator Kirby's report on page 19 -- his report, page
23 19, he says, "I explained to Rayshon and Pamela" -- that's
24 Mr. Smith's mother -- "that it was a riot and Rayshon was
25 alleging he was shot less than a block away from the home

1 invasion and murder where a guy was killed. Rayshon acted
2 as if he knew nothing of the incident on Marlboro Road. I
3 confronted Rayshon and informed him that his replay of
4 events don't make sense and I felt as if he had some
5 knowledge or involvement with the incident on Marlboro
6 Road. Rayshon assured me that he was not involved."

7 And then it says, "It was determined that Rayshon was
8 going to be discharged from the hospital once the paperwork
9 was completed. I spoke with Rayshon and inquired if he
10 would consent to a gunshot residue kit. He agreed and
11 signed a consent-to-search form. Investigator Norkett
12 completed the G.S.R. kit. And then once the G.S.R. kit was
13 complete I asked Rayshon if he would accompany me to city
14 hall and speak with me about this whole incident. Rayshon
15 agreed. And once he was discharged Officer Adorno
16 transported him to city hall."

17 Once he was brought to city he was seated in the --
18 guess what we call a squad room or something. It was a big
19 room. And Investigator Kirby is seen on a video bringing
20 Mr. Spicer in. And of course we've already dealt with that
21 issue.

22 But then sometime after Investigator Kirby finishes up
23 with Mr. Spicer, Dixie Wright appears in the room. I'm not
24 sure how she -- the camera doesn't show how she appeared in
25 the room. But she appears in the room in another video,

1 the next video in sequence, and is standing near Mr. Smith.
2 Mr. Smith is seated in a chair bent over with an officer --
3 Officer Adorno -- who brought him there from the hospital.
4 She's standing there, and it's her camera that all of this
5 is on, is my understanding.

6 And sometime after that, or about, she's standing
7 there, I believe, in about a minute and a half, and then
8 shortly, sometime after that, officers come and get
9 Mr. Smith to take him out of the room.

10 He gets up and walks out the door, and then Ms. Wright
11 tells Officer Adorno and some others -- I believe some
12 others -- that she believes Mr. Smith was the person in the
13 house. She asked him questions about it before that.

14 We would argue that that is essentially a show-up.
15 Investigator Kirby had just been in the room with
16 Mr. Smith, knowing Mr. Smith was there with Mr. Spicer.

17 He actually -- to the extent I need to go into that --
18 he actually -- when Mr. Spicer was in the room brought
19 Mr. Spicer's attention to Mr. Smith and had Mr. Spicer turn
20 around and look at Mr. Smith to see if he could identify
21 him. Mr. Spicer was unable to do so.

22 But investigator Kirby knew -- knew that Mr. Smith was
23 placed in that room and put in his report that he was in
24 the room, sitting in that room, and that he says that was
25 brought to his attention that Ms. Wright subsequently

1 identified Mr. Smith based on her being in the room with
2 him.

3 These investigators -- Louis Nelson and Investigator
4 Taylor and Investigator Kirby -- were all working together
5 in this case. And it'd be our position that they knew what
6 was going on and that this -- that this was an intentional
7 show-up and that it was very suggestive.

8 Certainly, after almost -- a very short time after
9 Mr. Smith's taken out of the room and Ms. Wright brings it
10 to the attention that -- that she recognized Mr. Smith they
11 do a photo lineup with Ms. Wright, basically do a photo
12 array, and she picks his photo out after waffling between
13 two pictures. She picks his photo out.

14 MR. HUNTER: Your Honor, we will not be producing
15 evidence of that photo array. He is correct of what
16 happened, but we will not be producing testimony or
17 evidence of that photo lineup.

18 MR. FILE: But it would be our position that this was
19 all -- all they knew what each other -- investigators
20 working together in this thing -- and Investigator Kirby
21 knew Mr. Smith was seated there -- and it'd be our -- our
22 position that this was a suggestive show-up, which is
23 disfavored under the law, and we would ask that you
24 suppress any in-court identification of Mr. Smith as a
25 result of that.

1 THE COURT: well, let me ask you this.

2 Is it a fair statement that the video would reflect
3 that Mr. Smith was not -- and is this actually a fact --
4 that Mr. Smith was not in custody, he was not arrested, he
5 was not in handcuffs, he was there voluntarily because he
6 had agreed with Officer Kirby to come to the police station
7 to talk about what he knew about the event?

8 MR. FILE: According to the report, he did agree to
9 come with them there.

10 THE COURT: well, I mean, is that disputed? Is that
11 going to be disputed?

12 In other words, I don't know what evidence the defense
13 intends to present, but I'm just -- I haven't seen the
14 video.

15 MR. FILE: Your Honor, he didn't -- he went willingly,
16 but he -- Investigator Kirby didn't actually inform him
17 what he was going for. He just said he needed to ask him
18 questions about the incident, so.

19 THE COURT: All right. well, my question is this.

20 Was he in custody, was he made to go to the police
21 station, was he arrested, was he in handcuffs, or did he
22 upon being asked did he agree to go to the police station
23 to talk?

24 MR. FILE: I believe he was in -- he was in handcuffs.
25 He was with Officer Adorno seated -- seated there but --

1 THE COURT: All right. So you're saying at the time
2 that Ms. Wright recognized the defendant he was in custody
3 and in handcuffs?

4 MR. FILE: Well, he was in -- I don't know that he was
5 handcuffed.

6 THE COURT: Well, that's what I asked. I thought you
7 said he was.

8 MR. FILE: I don't know. It looked like he is in the
9 video. It's hard to tell that he -- Mr. Hunter is telling,
10 saying that he wasn't, but Mr. Smith is telling me that he
11 was.

12 THE COURT: Well, you've seen the video. Does it show
13 him in handcuffs?

14 MR. FILE: It shows his hands in front of him
15 together, but I can't see handcuffs on him.

16 THE COURT: That's what I'm thinking.

17 Okay. All right. My next question is this. When --
18 when Ms. Wright believed she recognized the defendant was
19 that a spontaneous statement made by her just because
20 she -- when he got up to leave she looked and told the
21 police that she recognized him or thought she did, or was
22 that in response to the police asking her if she recognized
23 that man?

24 MR. FILE: Well, when he gets up and goes outta the
25 room on the video -- maybe we might need to take a look at

1 the video -- but when he gets up and goes outta the room
2 she asked some questions, I think, about his ear, about his
3 injury, and then she -- she asked some other -- asked about
4 it, and they tell his name and -- and all and then she --
5 she does say that she thinks he was in the house.

6 THE COURT: Okay. All right. So I understand you
7 have a motion to exclude her in-court identification.

8 MR. FILE: Yes, Your Honor. And flowing from that I
9 would move to exclude his statements and subsequent
10 statements because after that identification in the first
11 interview with Mr. Smith by Investigator Kirby he uses the
12 identification telling Mr. Smith that he is -- that he has
13 been identified by witnesses that can put him at the scene.

14 And Mr. Smith of course disputes that initially, but
15 then eventually he does end up giving a statement
16 incriminating himself in this matter. But it'd be our
17 position that the fact that he used the identification to
18 eventually break Mr. Smith down to get him to give the
19 statement, it'd be our position that that statement that
20 flows from that is fruit of the poisonous tree and
21 therefore it should be excluded.

22 THE COURT: All right. Let met ask you this, and then
23 we'll break for lunch, and we'll start taking testimony
24 after lunch.

25 But is there any allegation that Ms. Wright was

1 brought or told and asked to come to the police station or
2 taken to the police station in order to identify someone,
3 or was she simply asked to come to the police station to
4 give a statement about what she knew?

5 MR. FILE: There is nothing in the report to indicate
6 that they -- that she was brought there to, specifically
7 to, identify somebody.

8 THE COURT: So there's no allegation --

9 MR. FILE: We concede that.

10 THE COURT: So there's no allegation and there's no
11 evidence that she was brought to the police station
12 expecting to be asked to identify someone who was involved
13 in the event.

14 MR. FILE: That is -- there's nothing to support that
15 allegation, Judge. I will concede that.

16 THE COURT: All right. We'll break for lunch. We'll
17 start this afternoon at 2:15. Court is in recess until
18 2:15.

19 (Whereupon, a recess was taken.)

20 (Photographs marked State's Exhibits Nos. 1 through 13
21 for Identification; D.V.D.s marked State's Exhibits Nos. 14
22 through 21 for Identification; copy of indictment and
23 sentence marked State's Exhibit No. 22 for Identification;
24 copy of indictment and sentence marked State's Exhibit No.
25 23 for Identification; Miranda and statement marked State's

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 Exhibit No. 24; pre-interrogation waiver form and statement
2 marked State's Exhibit No. 25 for Identification; statement
3 marked State's Exhibit No. 26 for Identification; statement
4 marked State's Exhibit No. 27 for Identification.)

5 THE COURT: Okay. What's first?

6 MR. HUNTER: Your Honor, just to clarify instead of
7 having to put these officers up multiple times for
8 testimony, I'm just wondering if he is questioning the
9 voluntariness of any statements given, so that we may have
10 to go into that. That's part of the question. He hasn't
11 stated that before, but I want to make sure whether that's
12 part of the motion.

13 THE COURT: Mr. File, is voluntariness an issue in the
14 case other than the fact that if you couch that in terms of
15 the statement was given in violation of the -- or, in other
16 words, other than taking a position that the statement was
17 given as a result of something the defense contends was a
18 violation, that being the unlawful -- an unlawful show-up
19 and then telling the defendant that that witness would put
20 him at the scene -- other than that, do you have any
21 contention that the statement was involuntary?

22 MR. FILE: In my motion I did put that he was in pain
23 because of his ear.

24 THE COURT: Okay.

25 MR. FILE: He asked at one point during the

1 questioning, he asked for any type of --

2 THE COURT: well, let's just do it this way.

3 MR. HUNTER: we'll go ahead and call --

4 THE COURT: The state can call a witness, and then he
5 can cross-examine, and you're going to ask direct --
6 redirect anyway.

7 MR. HUNTER: we'll go ahead and cover that, Your
8 Honor.

9 THE COURT: The first witness is?

10 MR. HUNTER: Your Honor, the state would call
11 Investigator Kirby.

12 JEFF KIRBY, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. HUNTER

15 Q Please state your full name for the record.

16 A Jeff Kirby.

17 Q And where are you employed?

18 A Spartanburg City Police Department.

19 Q And briefly go over your police experience.

20 A I've been with the city for 16 years. I was assigned
21 to narcotics, then to criminal investigations, and now back
22 to narcotics.

23 Q Okay. Were you employed on February 11th of 2017 by
24 the city?

25 A Yes, sir.

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 Q what was your position?

2 A Criminal investigations.

3 Q Okay. Did you have a position within criminal
4 investigations?

5 A Yes, sir. I did.

6 Q And what was that?

7 A Investigator.

8 Q Okay. At some point you become sergeant?

9 A Yes. I did approximately a year ago.

10 Q Okay. Were you working on February 11th of 2017?

11 A Yes, sir.

12 Q Okay. And what were you doing that day?

13 A I was investigating other crimes until I was notified
14 of a shooting that had occurred.

15 Q Okay. And where were you notified that that shooting
16 occurred at?

17 A Norris Ridge Apartments.

18 Q Okay. Where did you respond to initially?

19 A Spartanburg Regional Medical Center.

20 Q Okay. And what did you observe when you arrived at
21 the medical center?

22 A There was a couple of our uniform police officers on
23 scene.

24 I went into the trauma bay where there was a deceased
25 male. I was informed there was a victim in room, I

1 believe, 67 of the emergency department, and that's where I
2 responded to.

3 Q All right. So the victim in the trauma bay that was
4 deceased, was that the case you were assigned to
5 investigate?

6 A No, sir, no, sir.

7 Q So the person in room 67 was the person --

8 A Yes. That's correct.

9 Q And who was in room 67?

10 A Mr. Rayshon Smith.

11 Q Is he the one sitting at the defense table?

12 A Yes, sir.

13 Q When you -- what do you do when you enter the room
14 with Rayshon?

15 A Excuse me for one second.

16 (Pause.)

17 A I -- basically, I entered the room, introduced myself
18 and asked Rayshon if he could tell me what happened.

19 Q Okay. Did he give you a story?

20 A Yes, sir. He did.

21 Q And what was that?

22 A That he was in Norris Ridge Apartments when he heard
23 an argument in the parking lot, and he heard gunshots. He
24 was hit by a bullet and he fell to the ground and stayed at
25 that location.

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. During what he was telling you has happened to
2 him were you believing him?

3 A No, sir.

4 Q And why not?

5 A Well, just some of the circumstances. I mean, you
6 know, it was just ironic that one bullet would strike him
7 where it struck him. I had been informed that there was no
8 evidence of a shooting ever located inside of the complex
9 where Mr. Smith said that it occurred.

10 Q Okay. Was he very descriptive about the people who
11 were shooting at him?

12 A I don't think so. From recollection, I don't think he
13 was able to provide any kind of description.

14 Q Did he describe how he was dropped off at the
15 hospital?

16 A Yeah. He says a guy took him to the hospital and
17 dropped him off.

18 Q Was he able to describe who that person was?

19 A No, sir.

20 Q Is all of this part of the reason why you didn't
21 believe him?

22 A That's correct.

23 Q And who was -- what other officer was present when you
24 were interviewing Mr. Smith?

25 A I believe will Washington and maybe Adorno, Officer

1 Adorno.

2 Q Okay. Are you aware that they had body cameras?

3 A I'm aware of that, yes.

4 Q And you understand that your interview with
5 Mr. Rayshon, Mr. Smith, was caught on one of the body
6 cameras?

7 A Yes.

8 MR. HUNTER: Your Honor, for the purposes of this
9 hearing the state would offer State's Exhibit 20 into
10 evidence, for the purposes of this hearing as Washington's
11 B.W.C.

12 MR. FILE: No objection.

13 (D.V.D. marked State's Suppression Exhibit No. 20.)

14 MR. HUNTER: We're not going to play it, but if you
15 would like to view it at some other point.

16 Q How long -- approximately how long do you interview
17 him at the hospital?

18 A It was less than an hour, I would -- from
19 recollection. It was not long.

20 Q Okay. Can you please describe the injury he received?

21 A He had a tear to his -- to the top of his ear.
22 Basically, medical staff put a band-aid on it, and I think
23 some kind of ointment, and covered it and advised him that
24 he was free to leave.

25 Q Okay. Did it appear to be life-threatening?

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 A No, sir.

2 Q Did it appear to be really painful?

3 A No, sir.

4 Q Okay. Towards the end of your interview do you ask
5 him for a gunshot residue test?

6 A Yes. I did.

7 Q All right. And does he consent willingly to that
8 test?

9 A He does, and he signs a consent to search form.

10 Q Okay. Is that test performed by the police
11 department?

12 A Yes, it is. That's correct.

13 Q As he's being discharged, what do you ask him to do?

14 A I asked him to accompany me to city hall.

15 Q And why are you asking him that?

16 A Well, because I had learned that we had had a shooting
17 basically across the street, per se, from where he was
18 alleging that he was a victim of a gunshot. And his story
19 just wasn't adding up.

20 Q Okay. Now, his story was that he was shot at Norris
21 Ridge.

22 A Yes, sir.

23 Q And where is that in location to the Beacon?

24 A Well, behind it, right behind it.

25 Q And where is Marlboro Road in comparison to the

1 Beacon?

2 A Across the street.

3 Q So it's in front of it?

4 A Yes, sir, in front of it. I'm sorry.

5 Q And when you asked him to come to city hall, does he
6 come willingly?

7 A Yes.

8 Q Okay. Did he ask for anybody to accompany him to city
9 hall?

10 A No, sir.

11 Q Like his mother?

12 A No.

13 Q Is his mother present?

14 A Yeah. She was present in the room.

15 Q At the hospital?

16 A Yes. That's correct.

17 Q And is she supposed to come to city hall?

18 A I believe she was coming.

19 Q Okay. who -- who takes him to city hall?

20 A I believe Officer Adorno transports him.

21 Q Now, did you at any time tell Officer Adorno where to
22 place him?

23 A I didn't.

24 Q Typically, when someone's taken to the city hall, the
25 police department, where are they taken to? what was your

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 purpose in bringing him -- excuse me. That's a bunch of
2 questions at once. What was your purpose in bringing him
3 back to the police department?

4 A I guess to try and get the facts of where exactly he
5 was shot at, to try and locate this crime scene to see
6 if -- if what he was telling me was legitimately true or
7 was he involved in the incident on Marlboro Road.

8 Q Okay. And where are you going to do this interview?

9 A In our recorded interview room.

10 Q Okay. How many recorded interview rooms does the city
11 police department have?

12 A Just one.

13 Q Okay. And where is it located?

14 A Upstairs attached kinda to the criminal investigation
15 side of the department.

16 Q Okay. Can you describe the upstairs portion of the
17 police department?

18 A Yeah. So there's -- when you come up the steps
19 there's -- there's a little catwalk. To the right is the
20 criminal investigations and to the left is the uniform
21 patrol division. And those are just covered by two glass
22 doors, I mean, so you just move back and forth.

23 Q And can you describe the area of the patrol division?

24 A Yeah. I mean, it's a -- it's an open room with one,
25 two, three, four -- probably five or six rows of tables and

1 probably 20 to 25 chairs.

2 Q And can you please describe the C.I.D. portion of --

3 A The C.I.D. portion is a little smaller. It's broken
4 up into individual, like, modules, I guess, where each
5 investigator is assigned a desk. And those desks are
6 typically partitioned with a wall in between them.

7 Q Okay. So, again, did at any time you tell Adorno
8 where to placed Mr. Smith?

9 A No, sir.

10 Q Okay. When you arrived back at the police department
11 what happens?

12 A So when I arrive at the police department I was going
13 to have Mr. Smith placed into the recorded interview room,
14 but at the time it was occupied.

15 Q Do you know who it was occupied by?

16 A I didn't. So our interview room is once you shut the
17 door and turn the light on, inside of our interview room
18 there's a red light on the outside of the door that lets
19 you know that it's occupied.

20 Q Okay. So when you come and see that, what do you do
21 next?

22 A I just go over to the uniform patrol division and tell
23 him to hang out for a minute. Once the room becomes
24 available -- and then I believe at that time I encountered
25 a -- a gentleman that was -- there's two hard plastic

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 chairs that are outside the interview -- not outside the
2 interview room but outside of the investigations door.
3 There was a gentleman sitting there, and I spoke with him.

4 Q Okay. From -- from that seat can you see into the
5 patrol room?

6 A No.

7 Q Okay. So you're not close to the door to criminal
8 investigations.

9 A No. It's --

10 Q C.I.D. part.

11 A It's offset a little bit, yeah.

12 Q Okay. And who was that gentleman?

13 A I believe Mr. Spicer.

14 Q Would that be Simon Spicer?

15 A Yes, sir. I believe that's correct.

16 Q Okay. Did you know who was in -- officer-wise who was
17 in the recorded interview room?

18 A No, sir. I didn't.

19 Q Okay. Did you come to understand why Mr. Spicer was
20 present there?

21 A I did.

22 Q Okay. So what did you do at this point?

23 A I asked Mr. Spicer to step across the hall with me to
24 a patrol room. Like I said, there's tables there. And I
25 asked him to provide me a statement once I learned that he

1 was a witness to the incident on Marlboro Road.

2 Q So you're basically helping out officers on -- on that
3 investigation?

4 A Yes, sir.

5 Q When you start to interview him, what is his
6 statement?

7 A Basically, from memory he says that when the guys come
8 in the house he laid down on the floor. He don't remember
9 seeing no faces, just shoes.

10 Q Okay. And does he ultimately write his statement?

11 A Yes, sir. He does.

12 Q Okay. During your speaking with him was Mr. Smith in
13 the patrol room?

14 A That's correct. He was.

15 Q Did you ever ask Mr. Spicer to look at Mr. Smith?

16 A I did.

17 Q Okay. Did he -- what did you -- why did you ask him
18 to do that?

19 A Well, because of -- under the circumstances the -- the
20 incident that Mr. Smith was alleging he was involved, it
21 didn't make sense. And when Mr. Spicer was in the room and
22 I found out that he was inside the house on Marlboro Road,
23 I just kinda instructed him to turn around and take a look
24 at Mr. Smith to see if that was possibly one of the
25 suspects from the Marlboro Road incident.

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 Q And how did -- did you do that by asking him or did
2 you --

3 A No. I motioned for him to, like, to look, just kind
4 of like a motion, you know, hey, turn around and look at
5 that guy.

6 Q Did you put your --

7 A My finger, my two fingers.

8 Q -- two fingers or one finger to your eyes and then
9 pointed at Mr. Smith?

10 A Yes, sir.

11 Q Okay. Did Mr. Spicer identify Mr. Smith when you did
12 that?

13 A No. He didn't.

14 Q Okay. Was Mr. Spicer led from the patrol room at this
15 point?

16 A Yes. He was taken back to the investigation side and
17 asked to have a seat in those plastic, two hard plastic,
18 chairs.

19 Q Did at some point he -- he tell you he recognized
20 something?

21 A Yes. He did. I think as we exited the patrol room
22 and walked back across he said those are the shoes of the
23 guy or those shoes were in the house. I can't say who was
24 wearing them, but they was somebody in the house with those
25 shoes on.

1 Q Okay. And the shoes of who?

2 A Mr. Smith.

3 Q Okay. When you take Mr. Spicer out -- or first back
4 to Mr. Smith. How was he dressed?

5 A I'm wanting to say in a hospital gown.

6 Q Okay. Was he handcuffed?

7 A No.

8 Q Because at this point what is he to you?

9 A He's a victim --

10 Q Okay.

11 A -- of a shooting.

12 Q Now, as a victim you're not believing his story.

13 A Right.

14 Q But still a victim?

15 A Well, victim, yeah. Kind of suspicious with the
16 other, the Marlboro Road shooting. But I didn't have
17 nothing to say that, hey, you're a suspect.

18 Q Okay. Did at any point you come across Ms. Dixie
19 Wright, Chris Taylor or Louis Nelson after taking Mr.
20 Spicer back to the C.I.D. division?

21 A Not -- not that I remember, no.

22 Q Okay. And who stayed in the room with Mr. Smith?

23 A That would probably have been Officer Adorno.

24 Q Okay. At some point Mr. Smith was taken to the
25 recorded interview room?

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 A That's correct.

2 Q Was that by Mr. Investigator Taylor?

3 A Yes.

4 Q Okay. When he first comes into that room do you learn
5 something new? Before you interview him do you learn
6 something new from Investigators Taylor and Nelson?

7 A Let me -- cause I'm trying to think when -- when --
8 when I moved from the -- the patrol room to investigations,
9 Investigator Taylor and Nelson -- I'm wanting to say that
10 they was telling me that the female that they had
11 interviewed may have possibly been in the house.

12 Q So you did learn that right before interviewing
13 Mr. Smith.

14 A Yeah.

15 Q In fact, in your interview don't you confront him with
16 that?

17 A Yes. I -- from recollection, I do. I remember them
18 saying that -- that she was actually inside the house when
19 the -- the shooting occurred on Marlboro Road.

20 MR. HUNTER: And, Your Honor, just so we can go ahead.

21 (D.V.D. marked State's Exhibit No. 28 for
22 Identification.)

23 MR. HUNTER: Your Honor, for the purposes of this
24 hearing the state would put into evidence State's
25 Exhibits 14 through 17, which are interviews with

1 Mr. Smith, as well as State's Exhibit 28, which is all four
2 of Mr. Adorno's body worn cameras.

3 MR. FILE: No objection.

4 (D.V.D.s marked State's Suppression Exhibits Nos. 14
5 through 17; D.V.D. marked State's Suppression Exhibit No.
6 28.)

7 Q Now, Mr. Smith has moved to the investigation room by
8 Investigator Taylor?

9 A Yes. To the interview room.

10 Q As part of this did you do a photo lineup?

11 A Yes, I did.

12 After I learned that the -- the female witness had --
13 had seen Rayshon and said -- she verbally said that's one
14 of the guys, at that point I went and created a photo
15 lineup.

16 Q Okay. And were you part of showing that lineup with
17 Adorno to the --

18 A Yes. I was after.

19 Q And did she ultimately pick out Mr. Smith?

20 A Yes, sir. She did.

21 Q Did you start to interview Mr. Smith after this?

22 A Yes. I did.

23 Q Okay. When you first entered the room with Mr. Smith,
24 what do you do?

25 A So I entered the interview room, and I advised him

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 that because he was inside of a police department and his
2 mobility was limited via locked doors and secured doors
3 that I was going to provide him with his rights as
4 described by Miranda.

5 Q Let me show you what's been marked State's Exhibit 27.
6 Do you recognize that item?

7 A Yes, sir. That's the pre-interrogation waiver form I
8 presented to Mr. Smith.

9 Q Now, will you go over that form and tell us what you
10 did with Mr. Smith and what he did in response?

11 A Yes. So, basically, the top part of this form is --
12 is identifier's name, date of birth, social security
13 number, address, the time the interview began and the date
14 the interview was conducted.

15 Q Did you ask him the questions, those questions that he
16 would be able to identify?

17 A Yes.

18 Q And who filled out the form?

19 A I did.

20 Q Okay. So he answered your questions on those, those
21 questions.

22 A Yes, sir.

23 Q And you filled out the form as to the identifying
24 information.

25 A Yes, sir.

1 Q Okay. What did you do next?

2 A So if you move down the form it's the statement of
3 rights, which is your Miranda. And there's -- there's five
4 of them. Each one are numbered. And I provided him those
5 numbered Mirandas in -- in order.

6 Q Now, when you say provided, does that mean you
7 read them?

8 A I read them to him, yes.

9 Q Okay. Did he initial those?

10 A No, sir.

11 Q Okay. Did he state that he understood his rights
12 though?

13 A He did.

14 Q Okay. And what's the next form?

15 A So the next step down is the waiver of rights where it
16 basically says you're understanding your rights as they've
17 been provided, do you wish to waive or give up your rights
18 and speak with me in reference to a shooting.

19 Q Okay. And, again, you read that to him?

20 A Yes, sir. I did.

21 Q Okay. But he, again, refused to sign this?

22 A He did.

23 Q Okay. And did you fill out the bottom portion?

24 A No. I didn't.

25 Q Okay. Also part of State's Exhibit 27, did you make

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 some notes?

2 A I did.

3 Q And are those notes that you made during the interview
4 with him?

5 A Yes, sir. It is.

6 Q Did he explain what grade?

7 A I'm sorry?

8 Q Did he explain what grade he had finished in high
9 school?

10 A I -- from memory, he did, but I don't see it in my
11 notes where I wrote it down.

12 Q would it be safe to say that he provided that he
13 finished the 11th grade?

14 A Yes, sir. I believe --

15 Q Finished the 11th grade?

16 A I believe that would be a fair statement, yes, sir.

17 Q And in your interactions with Mr. Smith did he
18 understand English?

19 A Oh, yes, sir. He did.

20 Q was he able to read, write and listen to you?

21 A Yes, sir.

22 Q was he able to respond to you with answers that
23 correlated with your questions?

24 A Yes. He was.

25 Q Have you ever been in an interview with someone who

1 appears to be under the intoxication of alcohol --

2 A I have.

3 Q -- or drugs?

4 A I have.

5 Q Did it appear that Mr. Smith was intoxicated?

6 A No, sir.

7 Q Did you coerce him at all to give this interview?

8 A No, sir.

9 Q Okay. Did you -- again, during this interview was he
10 in handcuffs?

11 A No.

12 Q Okay. Did at any point you physically harm or
13 restrain him?

14 A No, sir.

15 Q Okay. Was he offered drinks?

16 A Yes.

17 Q Okay. Was he offered food?

18 A Yes.

19 Q Okay. Did he partake of any of that?

20 A I don't -- from recollection, I don't think he did.

21 Q Okay. Did he appear to be in pain?

22 A He didn't. I guess only when it was beneficial to
23 him. When I would confront him with a fact he would use
24 the, man, I'm in pain, but then he would become very
25 argumentative with me trying to talk over me.

Jeff Kirby (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. So was it your opinion and belief that he
2 wasn't in pain?

3 A Yeah. He -- yeah. He was not in pain of my opinion,
4 that's correct.

5 Q And you talked to him in the interview room for a
6 little bit.

7 A Yes, sir.

8 Q Approximately 40 minutes or so.

9 At some point does he mention asking for, possibly
10 asking for, a lawyer?

11 A No, sir. He never -- he never come out and said I
12 want a lawyer.

13 What led to those sequence of events is Investigator
14 Nelson entered the interview room, because they were the
15 lead investigators on that shooting.

16 This waiver form was laying on the table. Again,
17 Mr. Smith had verbally agreed he understood the rights and
18 he verbally agreed that he waived his rights and would
19 speak with me.

20 Investigator Nelson walked in and tried to speak with
21 him. Again, Mr. Smith talking over us, being
22 argumentative.

23 Investigator Nelson asked him to sign and initial the
24 form, and at that point he said I need to talk to my mother
25 about a lawyer.

1 Q So did you -- did you take that statement though as a
2 possible indication of --

3 A I did.

4 Q And did you stop the interview at that time?

5 A I did.

6 Q Okay. Just a few more questions.

7 Him, Mr. Smith, coming to city hall, was that done
8 voluntary, will on his part?

9 A Yes. I asked him.

10 Q And his first statement to you was -- was a report of
11 an assault on himself.

12 A Yes.

13 Q Okay. And when you were at the hospital did you see
14 that the -- were you -- were you there when he was
15 discharged from the hospital?

16 A Yes.

17 Q Okay. Did they -- did the doctors prescribe any
18 narcotics?

19 A No. They didn't.

20 Q Any controlled substances?

21 A No. Because if memory serves me, he was complaining
22 that -- I can't remember verbatim, but he said they didn't
23 even give me no f'ing prescriptions or they didn't even
24 give me no f'ing pain medicine or something to that effect.

25 Q Okay. And the statement he gave you prior to your

Jeff Kirby (In-camera)
Cross-examination by Mr. File

1 stopping the interview, was it voluntary?

2 A Yeah.

3 Q And done under no duress or coercion?

4 A No duress, no threats, no coercion.

5 Q Please answer any questions Mr. File may have for you.

6 A Thank you.

7 CROSS-EXAMINATION

8 BY MR. FILE

9 Q Investigator Kirby, you -- you at least thought he was
10 involved in that shooting just from the time
11 you encountered him at the hospital, didn't you?

12 A I'm sorry?

13 Q You thought he was involved in that shooting at
14 Marlboro Road from the time you encountered him at the
15 hospital, didn't you?

16 A Well, not from the time. After speaking with him and
17 listening to his story, I would say a good investigator
18 would safely assume that he may have had some involvements
19 in it.

20 Q Okay. And you asked -- you even confronted him about
21 it at the hospital and told him it didn't make sense and
22 that you thought he was involved.

23 A Yes, sir.

24 Q Okay. And -- and you also asked an officer to do a
25 G.S.R. on him, is that right?

1 A That's correct.

2 Q Okay. And then -- then you had somebody escort him
3 over to city hall to talk about -- about Marlboro Road,
4 didn't you?

5 A Well, I just -- somebody to give him a ride, yeah.

6 Q It wasn't just about this North Ridge shooting. It
7 was also you were going to talk to him about Marlboro Road,
8 weren't you?

9 A Well, about both incidents.

10 Q Okay. And when you came in the interview room with
11 Simon Spicer or came into the squad room with Simon Spicer
12 you saw Mr. Smith sitting there, didn't you?

13 A Yeah.

14 Q And while you were sitting there with Simon you -- you
15 already told the judge that you pointed -- pointed him out
16 to Mr. Spicer, didn't you?

17 A Just out of an abundance of caution and suspicion
18 that --

19 Q Okay.

20 A Because at the time Mr. Smith was still denying any
21 involvement with Marlboro Road.

22 Q And even though Investigators Nelson and Taylor
23 were -- were the primary investigators on this case, you
24 were helping them with this case, weren't you?

25 A Yes, sir.

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 Q Okay. And when you -- and you're telling this court
2 that you didn't know that Dixie Wright was in the building.

3 A No, sir. I didn't even know who she was. I never
4 responded to Marlboro Road.

5 Q And then somehow Dixie Wright ends up in the same room
6 as Simon and Mr. Smith, isn't that right?

7 A That's correct.

8 Q And when you interviewed Mr. Smith he was complaining
9 about his ear hurting, wasn't he?

10 A When it was convenient for him.

11 Q Well, that's your interpretation, but he was
12 complaining about his ear hurting, wasn't he?

13 A When it was convenient with him, yes, sir.

14 Q And he was complaining they didn't give him any pain
15 medicine, because he was hurting. And you told him -- at
16 one point you told him in the interview that you had
17 witnesses identify him as being at the scene of that
18 shooting when you -- when you called him on his story about
19 North Ridge, didn't you?

20 A On Norris -- about Norris Ridge?

21 Q Yes.

22 A After the fact, yes, I did.

23 Q You -- also you said at the hospital you already knew
24 or you -- you found out that there wasn't any evidence
25 that -- at Norris Ridge, didn't you?

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 A That's correct.

2 Q Okay. So you knew that that story wasn't believable.
3 So that even -- he became even more of a suspect in the
4 Marlboro Road shooting, didn't he?

5 A No, sir. He was still a victim. He has a wound, sir.

6 MR. FILE: That's all.

7 MR. HUNTER: Nothing further from the state.

8 THE COURT: Step down.

9 MR. HUNTER: State would call Dixie Wright.

10 DIXIE WRIGHT, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. HUNTER

13 MR. HUNTER: Your Honor, the state would offer State's
14 Exhibit 27, which is the waiver of rights form that
15 Mr. Kirby just spoke about into evidence just for the
16 purposes of this hearing.

17 (Statement marked State's Suppression Exhibit No. 27.)

18 Q Ms. Wright, please state your full name for the
19 record.

20 A Dixie Wright.

21 Q Okay. And how old are you?

22 A Twenty years old.

23 Q Okay. Do you know Mr. Francisco Villar?

24 A Yeah. That was my boyfriend.

25 Q Okay. I'm just going to jump ahead to what happened

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 after the shooting.

2 Once police arrived to the scene, what do you do?

3 A We open the front door and we walk outside and we let
4 them know that Franky had been shot. And then they put me
5 automatically into a patrol car.

6 Q Okay. Were you put in the patrol car of Ms. Stacy
7 Smith?

8 A I don't recall her name, but it was a woman, so yeah.

9 Q All right. And where did she take you?

10 A Well, we waited for a few minutes.

11 Simon got in the car with me as well in the back seat
12 and we were taken to city hall for questioning.

13 Q Okay. When you get to city hall did you get sick?

14 A Yeah. I was -- I had already been sick at the
15 residence, but I continued to get sick. And we sat out in
16 the hallway for a good 30 minutes.

17 Q Before you even get into city hall, did you throw up
18 at the --

19 A At the residence, yeah, I had threw up.

20 Q The residence and city hall?

21 A Yeah, and at city hall, yes, sir.

22 Q So where are you taken once you're brought into city
23 hall, the police department?

24 A We go upstairs.

25 Q Okay.

1 A And we are just like -- like the previous gentleman
2 has said, we were sitting. There's two chairs out in the
3 hallway. We've just kinda just sitting there until, I
4 guess, they got everything ready for us.

5 Q Okay. And who is we?

6 A Me and Simon.

7 Q Okay. Are you taken into an interview room?

8 A Yeah.

9 Q Okay. And who do you give that interview to?

10 A It was Mr. Nelson and Mr. Taylor.

11 Q Okay. And how long do you give that interview for?
12 You can do approximately, because it was quite a long time.

13 A It was an extensive amount of time, probably -- it was
14 well over a few hours. I was there for a while. I didn't
15 leave until almost 10:00 o'clock the next morning, that
16 morning, and I had been there since roughly probably
17 4:30 or 5:00 o'clock.

18 Q Okay. So if I were to say the interview lasted from
19 approximately 6:31 to 9:15 --

20 A Yeah. That sounds about right.

21 Q -- that would be good?

22 A Yeah.

23 Q Okay. Had you ever met the officer that just
24 testified -- Investigator Kirby?

25 A No, sir.

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 Q Did you meet him that morning?

2 A I met him after I had already been interviewed. Like
3 he said, he was in there when I did my photo lineup in the
4 squad room, the big open room with all of the chairs and
5 tables.

6 Q After your interview who escorts you to the patrol
7 room?

8 A I honestly cannot remember, but I want to say it might
9 have been Mr. Nelson. It was one of the officers that were
10 with me. They told me to go sit in there. I was only
11 going there to call my mom.

12 Q Who are the two officers with you?

13 A Nelson and Taylor.

14 Q Okay. So it was one of them that escorted you to the
15 patrol room?

16 A Yes, sir.

17 Q Okay. Had you met Investigator Kirby before this?

18 A No.

19 Q Okay. When you're brought into the room, what's the
20 purpose of bringing you into that room?

21 A Well, the overall purpose was they -- I was calling my
22 mom. I didn't have a ride. I'm not from Spartanburg. I
23 just lived here. Franky and I didn't have anywhere to go.
24 They told me I couldn't go back to the residence, so I was
25 calling her. She lived in Gaffney and then I --

1 Q So the whole purpose was to call your mother.

2 A Yeah, just to call her and get a ride.

3 Q So you were done a city hall.

4 A Yeah. I was pretty much done, yeah.

5 Q Okay. Did anybody ever ask you to look -- was
6 Mr. Smith seated in the room at that point?

7 A There was a gentleman in the corner towards, like, a
8 fetal position. His head was down. I didn't pay him any
9 attention though when I had walked in.

10 Q Did any officer ever ask you to look at him?

11 A No.

12 Q So Investigator Nelson, did he ask?

13 A No. He -- Nelson had actually -- I used somebody's
14 cell phone. I can't even recall who it was, but they
15 actually walked out.

16 Q All right. Investigator Taylor. Did he ask you to
17 look?

18 A No, sir.

19 Q Investigator Kirby. Did he ask you to look?

20 A No. He wasn't even in there.

21 Q And what about Officer Adorno, the female officer?

22 A No. She didn't tell me to look. She was more so
23 trying to calm me down and just talk to me.

24 Q And did you ever -- did any other officer ask you to
25 look at Mr. Smith?

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 A No.

2 Q Okay. After you call your mother, what do you do?

3 A I'm just standing there for a few minutes, you know,
4 mingling and talking to the female officer that was there.

5 And then Mr. Smith -- somebody had called him, I
6 believe. He got up, and I looked at him. That's the first
7 time I had ever noticed him really. I mean, I knew
8 somebody was sitting there, but I wasn't paying him any
9 attention. And then that's when I noticed him.

10 I did turn towards the officer, and I was already, you
11 know, like, kinda like, I notice him. And then I asked him
12 what happened to his ear. She just told me that he had
13 been shot. And then I informed her that he did look
14 familiar to me.

15 Q Okay. At that point did Investigator Taylor come back
16 into the room?

17 A I want to say it might've been Nelson or Taylor. I
18 know Nelson came through the door and was like what's
19 wrong. And I was like he looks familiar to me. I mean, of
20 course, I had only have ever seen the gentleman one time
21 prior to this.

22 Q Okay. And that was at?

23 A At the residence.

24 Q Have you observed body camera worn by Adorno of this
25 scene that you're describing?

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 A I knew she had one but...

2 Q Okay. Did you ever meet in our office and watch that?

3 A Oh, yeah. I did watch a body camera.

4 Q Of the scene as it unfolded that day?

5 A Yeah.

6 Q Now, the first video I'm going to show you is Adorno's
7 third of four videos. Go to the end of it.

8 (Whereupon, the video was played for the Court.)

9 Q If you want to, you can come down so you can view it a
10 little better.

11 (Whereupon, the witness left the stand.)

12 Q My main question to you is I want to identify the
13 person that comes through the door that we're looking at.
14 Okay?

15 A Okay.

16 (Whereupon, the video was played for the Court.)

17 Q Okay.

18 A That's Mr. Taylor.

19 Q That's Mr. Taylor. Who's behind Mr. Taylor?

20 A Me.

21 Q Okay. And so you can go ahead and sit down.

22 (Whereupon, the witness returned to the stand.)

23 Q So Investigator Taylor is the one who brought you into
24 the patrol room?

25 A Yes.

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 Q Okay.

2 (Whereupon, the video was played for the Court.)

3 Q Who are -- who are you talking to?

4 A I was on the phone -- mama.

5 Q And that is your voice that we hear?

6 A Yes, sir.

7 Q And you're asking her to come and pick you up?

8 A Yeah. She's asking me why I ain't with Franky. So
9 I'm trying to explain to her.

10 Q So she doesn't know what happened.

11 A No.

12 (Whereupon, the video was played for the Court.)

13 Q Okay. And just so we can kind of explain, those
14 chairs that they are speaking about that you and Mr. Spicer
15 were sitting at originally --

16 A They would have been through the two glass doors.

17 Q Can you kind of see the leg of one of them?

18 A Yeah. You can see the corner of one over here to the
19 far left.

20 Q Next to that trash bag?

21 A Yeah.

22 Q So when you were sitting there are you able to see
23 Mr. Smith --

24 A No.

25 Q -- from where you were sitting?

1 A No, sir.

2 Q Now, when he was sitting down were you paying any
3 attention to him?

4 A Nah. I was too busy talking to my mom.

5 Q Could you see his face?

6 A No. I mean, clearly in the video he lifted it up one
7 time, but I still wasn't paying him any attention. I had
8 not -- you know, my mind was somewhere else.

9 Q When did you first see his face?

10 A When he stood up.

11 Q When Investigator Taylor asked him to come there?

12 A Yeah.

13 Q Okay.

14 (Whereupon, the video was played for the Court.)

15 Q Now, why are you asking about if that's a shot on his
16 ear?

17 A I mean, like I said earlier, I noticed his face once
18 he stood up, and then I know that in the house there were
19 so many shots fired the people who were -- intruders --
20 also shot. So I was just curious. You know, I wanted to
21 know why -- how he had gotten shot.

22 Q Okay. Kind of go into the facts just a little bit.

23 Did you see Franky fire his weapon?

24 A Yeah. Now that it's been brought to attention, I
25 believe he was the first one to shoot.

Dixie Wright (In-camera)
Direct examination by Mr. Hunter

1 Q Okay.

2 A But shots were also returned.

3 Q Okay. So Mr. Villar shot as well as somebody else.

4 A Yeah, yes, sir.

5 Q Okay.

6 (Whereupon, the video was played for the Court.)

7 Q So what made you recognize him?

8 A I mean, in my statement I told them he met -- when he
9 came in the house he never had anything really covering his
10 face. So, I mean, it was pretty clear, you know, I mean,
11 even though I only saw him for a certain amount of minutes,
12 like, I was able to tell who he was if I would've seen him
13 again. And I seen him only a short amount of time later.
14 So, I mean, it was pretty fresh, but, I mean, his
15 complexion and, I mean, his tallness, like I said, like, it
16 was just -- I don't know. I just noticed him. It just
17 rang something.

18 Q So back to Marlboro Road. Had you ever met Mr. Smith
19 before?

20 A No. I had never met him a day in my life.

21 Q But earlier that morning at Marlboro Road how long was
22 he in the house?

23 A Not long, maybe, maybe five minutes.

24 Q Okay. Could it have even been a shorter time than
25 that?

1 A Could have been even shorter than that, yeah.

2 Q Okay. But did you have a chance to observe him?

3 A Yeah. I was -- I wasn't face down. I was -- I had a
4 chance to observe the whole scene.

5 Q Okay. And then how long -- so this is right after
6 you've been brought outta your interview?

7 A Yeah.

8 Q So this is pretty fresh from the time --

9 A Yes, sir.

10 Q -- that the crime had happened?

11 A Yes, sir.

12 Q Okay.

13 (Whereupon, the video was played for the Court.)

14 Q Now, you are positive that was him?

15 A I mean, I was pretty positive, yes, sir.

16 Q Did later in an interview with police, did you tell
17 them you were a hundred percent positive?

18 A Yeah. I'm 110 percent positive.

19 Q You're a 110 percent positive.

20 (Pause.)

21 Q Now, at the scene at Marlboro Road did this happen
22 inside?

23 A The shooting?

24 Q Yes.

25 A Yes, sir. It occurred inside.

Dixie Wright (In-camera)
Cross-examination by Mr. File

1 Q All right. Did you have your lights on inside the
2 house?

3 A In the house, yes, sir. They were on.

4 Q Okay. Had you just woken up?

5 A Yeah. I had been asleep. I woke up probably about
6 2:30, 2:00 or 2:30-ish, 3:00 maybe. And Franky and Simon
7 were actually in the living room, and I went in there with
8 them.

9 Q So had a couple of hours sleep before this.

10 A Yeah. I wasn't even -- I had found out later on that
11 they were changing cameras and had went to the store and
12 some more stuff. I didn't participate in that.

13 Q How close did Mr. Smith get to you at Marlboro Road?

14 A I mean, he was in the house. He was standing right
15 next to me numerous times.

16 Q I'm going to come next to you. Describe how close he
17 got to you.

18 A I mean, he was touching me, I mean.

19 Q Okay. So he was touching you.

20 A Yeah. You can't get pretty much any closer than that.

21 Q Okay. And you were able to observe his face.

22 A Yeah. He didn't have anything on his face. He had a
23 ball cap on.

24 Q Okay. But he wasn't covering his face?

25 A No.

1 Q And you said, again, that the -- his skin tone?

2 A Yeah.

3 Q And his tall -- his height?

4 A Yeah. They were both brown skinned complexion.

5 Q And as well as the shot in the ear?

6 A Yeah.

7 Q Please answer any questions Mr. File may have for you.

8 A Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. FILE

11 Q Nancy, who did you -- who did you identify in that
12 video as coming back to get Mr. Smith and take him out of
13 the room?

14 A Sir?

15 Q Who did you identify in that video as coming back to
16 get Mr. Smith and take him outta the room?

17 A I want to say it might have been -- was it Taylor? Or
18 Taylor brought me in. Was it Nelson?

19 THE COURT: Ma'am, you can't ask questions. You just
20 if you know the answer, tell him. If you don't, say you
21 don't know.

22 A I really can't remember. I want to say it was
23 probably Nelson that came and got me.

24 Q It was either Taylor or Nelson?

25 A Taylor or Nelson one that came and got me.

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 Q It wasn't Kirby, was it?

2 A No, no. I never seen him.

3 Q And then you -- you had been interviewed -- you had
4 just been interviewed by Nelson and Taylor just before they
5 put you in that room.

6 A Yes, sir.

7 Q Okay. Who escorted you down to the room?

8 A Taylor escorted me to the -- the open room.

9 Q Okay. And you said at the time you saw Rayshon you
10 were pretty positive that was him or that he was the person
11 in the house, right?

12 A Yeah. When I actually noticed him, yes, sir.

13 Q And now you're saying you're 110 percent positive?

14 A I mean, I am positive.

15 Q That's -- that's after you know what you know about
16 the case today, isn't it?

17 A I mean, yeah, but I was a hundred percent positive to
18 begin with.

19 Q Okay. And you said you didn't know him before.

20 A Nah. I never met him before. No, sir.

21 Q That's all.

22 MR. HUNTER: Just briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. HUNTER

25 Q In fact, later in that interview with Major Lamb do

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 you tell him that you're a hundred percent positive?

2 A Yeah.

3 MR. HUNTER: Nothing further.

4 THE COURT: Step down.

5 MS. MABBS: The state calls Investigator Nelson.

6 LOUIS MACEO NELSON, SR.,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. MABBS

9 Q Investigator Nelson, can you please state your full
10 name for the record?

11 A My name is Louis Maceo Nelson, Sr.

12 Q And where are you employed, Investigator Nelson?

13 A Spartanburg Police Department.

14 Q What is your role at the police department?

15 A Currently I'm an investigator within criminal
16 investigations bureau.

17 Q And can you briefly go through some of your duties as
18 an investigator?

19 A Well, pretty much I just work doing followups when
20 officers go out and take a report. Sometimes it requires
21 more leg work than they have time to do in their normal
22 activities. So they assign them to an investigator to
23 conduct the follow-up investigation and, you know, try to
24 make an arrest or close the case out.

25 Q And were you involved in an investigation in regards

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 to this case?

2 A Yes.

3 Q where did you originally respond to?

4 A Originally, I responded to Marlboro Road, ■■■ Marlboro
5 Road.

6 Q And after that did you go back to city hall?

7 A Yes. We -- I was briefly at the Marlboro Road
8 location just to observe the scene, and then we left and
9 went back to city hall.

10 Q And when you were at city hall did you have an
11 opportunity to interview Ms. Dixie Wright?

12 A I did.

13 Q And during that interview did you -- let me take that
14 back. Before you interviewed Ms. Wright was Mr. Rayshon
15 Smith at city hall before you entered that interview room
16 to your knowledge?

17 A To my knowledge, he wasn't.

18 Q And as Ms. Wright just testified, y'all interviewed
19 her for a couple of hours?

20 A That's correct.

21 Q And where did that interview take place?

22 A In the interview room upstairs, located upstairs,
23 adjacent to our office across the foyer.

24 Q And inside that interview room are there windows or
25 anything where you would be able to see people coming and

1 going in the hall?

2 A No.

3 Q After that interview do you recall who took Ms. Wright
4 out of the room?

5 A Investigator Taylor.

6 Q At that point had you had an opportunity yet to speak
7 with Investigator Kirby about the alleged shooting at
8 Norris Ridge?

9 A At that point I don't think we had spoken.

10 Q Because you -- he'd been in that.

11 A We'd been in the interview room for several -- for a
12 couple of hours.

13 Q So you -- Investigator Taylor took Ms. Wright out.
14 Were y'all aware that Mr. Smith was sitting in the foyer at
15 that point?

16 A No. I wasn't. I was not.

17 Q When was the first time you learned that Ms. Wright
18 had identified the defendant?

19 A I was standing in the foyer. It was not too long
20 after we've completed the interview with Ms. Wright.

21 I was in the foyer, and I overheard someone say she --
22 she just said that that guy was the one that was involved,
23 referring to Rayshon Smith.

24 And when I heard that I walked across from the C.I.D.
25 side through the catwalk over to the squad room.

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 Q Isn't that the part we just saw in that body cam?

2 A It is, yes.

3 Q At that point what did you do?

4 A Well, she was -- she was crying, so I asked her
5 what -- you know, was she okay, was she all right. And
6 they reiterated again that, you know, she said that that's
7 the guy that was at the house.

8 Q After that identification did you begin interviewing
9 the defendant?

10 A Not long after that I went into the interview room.
11 Investigator Kirby was already in the interview room with
12 him speaking to him when I came in.

13 Q And at that point was the defendant in handcuffs?

14 A I don't recall, but I don't think so.

15 Q To your knowledge did Investigator Kirby read him his
16 Miranda warnings?

17 A Yeah. The Miranda warning sheet was right there on
18 the table in front of him, and he told me that he had read
19 them and he stated that Rayshon stated that he understood
20 them and he had waived his rights.

21 Q At that point did you ask for Rayshon to sign or
22 initial on that waiver form?

23 A I did.

24 Q And did he?

25 A He did not.

1 Q And were you present when, as Investigator Kirby
2 testified, that Rayshon made the comment about wanting to
3 talk to his mom about a lawyer?

4 A Yes.

5 Q And at that point did that interview stop?

6 A Yes. It did.

7 Q When was the next time you spoke with the defendant?

8 A I believe I was back at -- back in my cubical area
9 possibly typing or either entering evidence, putting
10 evidence in or doing some type of administrative chores,
11 and someone walked back. I don't remember who it was, and
12 they said that Smith wanted to talk to us, Rayshon wanted
13 to talk, so.

14 Q Was he under arrest at that point?

15 A No. He wasn't.

16 Q Hadn't you already gone back into the interview and
17 placed him under arrest at that point? You didn't
18 interview him, but you went back and he was placed under
19 arrest.

20 A I don't -- I don't recall.

21 Q Do you recall, I believe, Investigator Taylor
22 putting or you put leg shackles on the defendant at that
23 point, or asked him to put his knees up on a chair?

24 A Yes. I do, yes.

25 Q So it was a couple of hours after that that you were

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 informed that Mr. Smith wanted to speak with you.

2 A Yes. It was.

3 Q So at that point you had not reinitiated any contact
4 with him.

5 A No. I had not. No.

6 Q what is your general procedure if someone asked,
7 invoked, you know, said that they want an attorney? Do you
8 ever reinitiate that without them coming to you first?

9 A No. I don't re -- I don't initiate any contact if
10 they -- if they say they want an attorney at that point I
11 cease and wait. You know, if they want to speak to me,
12 they request to speak to me, then I go back in at that
13 point and make sure.

14 Q So at that point did you and Investigator Taylor go
15 back to a recorded interview room at city hall?

16 A We did.

17 Q And you met with the defendant at that point?

18 A Yes.

19 Q Is there a recording of that interview?

20 A There should be, yes.

21 MS. MABBS: Your Honor, I believe those are already
22 up. And so those would be marked in State's Exhibits 14,
23 15, 16 and 17.

24 Q Because you eventually met with him on several
25 occasions, correct?

1 A Yes. That's correct.

2 Q On that first occasion did you again go through --
3 when you first walked into the room did you confirm that he
4 did want to speak with you?

5 A I did.

6 Q And what was his response?

7 A He stated that he did request to speak to us.

8 Q At that point did you go over his Miranda rights
9 again?

10 A I did.

11 Q Did you present him with a waiver-of-rights form?

12 A I did present him with a form.

13 Q Okay. On this occasion when you did that did you go
14 through each one of his rights again?

15 A I did.

16 Q Did he initial next to each one of those?

17 A He did.

18 Q And did he sign that form?

19 A He did sign it.

20 Q At that point y'all continued to speak with him?

21 A Yes. We did.

22 Q And during this meeting did he ever ask for food,
23 water or bathroom breaks, anything like that?

24 A Periodically, he would mention something about his
25 ear, but other than that I don't recall. If he did, we did

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 provide water.

2 Q To your knowledge he did not come to city hall with
3 any prescribed medications or anything like that?

4 A Not that I was aware of.

5 Q Did y'all let him smoke?

6 A Did we allow him to smoke?

7 Q Yes.

8 A He was allowed to smoke in the interview room, yes.

9 Q Did he smoke continuously throughout that -- that
10 interview?

11 A Yes.

12 Q And I assume that was at his request, not that y'all
13 were forcing him to smoke.

14 A No. I don't smoke and I don't like being in a
15 confined area with smoke.

16 Q And during the course of that interview was a written
17 statement done?

18 A Yes.

19 Q And who wrote that statement?

20 A I wrote -- I wrote that statement.

21 Q Is that a typical procedure for you to write the
22 statement instead of for an individual to write it
23 themselves?

24 A It's typical, yes, unless -- unless the -- the person
25 that I'm interviewing, unless they ask to write the

1 statement.

2 Q But in this case you wrote it?

3 A I did.

4 Q And in the statement, the words that are written,
5 those aren't your words, are they? Whose words are those?

6 A They're the words -- they're the words of the person
7 who is being interviewed. I write it in their words.

8 Q So this is Rayshon's best words.

9 A Yes.

10 Q And before you finalize this statement, which in this
11 case was a 4-page statement, is that correct?

12 A That's correct.

13 Q All right. Did he have an opportunity to go back and
14 review that statement?

15 A He did.

16 Q Okay.

17 A Yes. He did.

18 Q And if he disagreed with anything in that statement or
19 any errors would you have -- would he have been able to
20 correct those?

21 A I would have amended anything that he wanted to
22 change.

23 Q And then he ends up signing those statements, is that
24 correct?

25 A That's correct.

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 Q And does he sign on each individual page?

2 A That's correct.

3 Q Make sure that there's no page getting swapped out.

4 A Every page he signs.

5 Q Y'all also met with him, I believe, two days later on
6 the 13th. I'm sorry. Three days later.

7 A On the --

8 Q On the 14th. I'm sorry.

9 A On the 14th, yes.

10 Q And where did y'all meet with him on the 14th?

11 A I think it was at city hall.

12 Q And, again, did that occur in any recorded interview
13 room?

14 A It did.

15 Q Was there a recording made of that interview?

16 A Yes. I believe it was. Yes.

17 Q Was that with you and Investigator Taylor?

18 A Yes.

19 Q At the beginning of that interview was he again
20 advised of his Miranda rights?

21 A He was reminded and I asked him if he still understood
22 that he was under Miranda.

23 Q And did he indicate that he did understand that?

24 A Yes. He did.

25 Q And on that date did you get a written statement from

1 him or just speak with him?

2 A We -- we just spoke with him. The interview itself
3 was recorded by the camera system.

4 Q Okay. And, again, on that date at any point in time
5 did he indicate that he needed food, water, bathroom
6 breaks, wanted to stop speaking to you, anything like that?

7 A No.

8 Q And then did y'all meet with him again at a later date
9 at the jail?

10 A Yes. We did.

11 Q And when was that?

12 A I think it was the 15th.

13 Q And at the jail where did you meet with him at the
14 jail?

15 A When you go into the jail, the booking area, there's a
16 medical exam room. They don't really have per se an
17 interview room. So most of the time we go use that medical
18 examination room.

19 Q Okay. Was there any kind of recording device
20 available to y'all in that room?

21 A No. There's no video in that room.

22 Q Were y'all able to get an audio recording of the
23 interview?

24 A Yes. I have a small digital voice recorder that we --
25 all investigators have them. So when we go to the jail we

Louis Maceo Nelson, Sr. (In-camera)
Direct examination by Ms. Mabbs

1 usually take that with us and we record the interview by
2 audio.

3 Q Okay. And at this point, obviously, he's in the jail.
4 Is he in any kind of shackles or handcuffs when he meets
5 with y'all in the jail?

6 A No. He wasn't.

7 Q And, again, did y'all remind him of his Miranda
8 warnings at that point?

9 A Yes.

10 Q And did he again agree to speak with you?

11 A He did.

12 Q And on that date does he also give a written
13 statement?

14 A Yes. On that day he asked me. He said he wanted to
15 write his own statement.

16 Q And did you allow him to do that?

17 A Yes. If he wants to write his own statement, yeah.

18 Q So, obviously, he's writing. He also had an
19 opportunity to review that statement before signing it?

20 A He did.

21 Q And were you and Investigator Taylor a witness to that
22 statement?

23 A I believe so, yes.

24 Q At any point in time did y'all think he had any issues
25 in understanding his rights?

1 A No.

2 Q Any issues with his ability to understand English or
3 write?

4 A No. He didn't show any indications to me.

5 Q Have you ever interviewed someone who has been under
6 the effects of drugs or alcohol before?

7 A Yes.

8 Q Based off that experience do you believe that during
9 any one of those interviews that the defendant may have
10 been intoxicated?

11 A No.

12 Q Did he appear to be responsive to your questions?

13 A The first interview that night initially, no, but in
14 the latter part when we went back in and he -- when he
15 asked us to come back in, from that point forward he was --
16 he answered everything that we asked him. He was very
17 responsive.

18 Q And when you say he wasn't responsive the first time,
19 was it -- are you saying that he didn't understand
20 questions or that he was being argumentative?

21 A He was being somewhat argumentative.

22 MS. MABBS: Beg the Court's indulgence.

23 (Pause.)

24 Q And then y'all did meet with him a fourth time, is
25 that correct?

Louis Maceo Nelson, Sr. (In-camera)
Cross-examination by Mr. File

1 A I think it was on the 21st.

2 Q And that was not recorded, is that correct?

3 A No. It was very free.

4 Q Where did that interview happen?

5 A Once again, it was at the Spartanburg County Detention
6 Facility.

7 Q Would it have been in that same area, the medical
8 room, or was it somewhere different?

9 A I want to say it was in that medical examination room
10 again, but sometimes when that exam room, when it's
11 preoccupied, sometimes we go into the courtroom area if
12 there's no -- the judge isn't setting bond or holding any
13 court.

14 Q So it's in the little bond-setting courtroom?

15 A Yes.

16 Q And what was -- obviously, you've spoken with the
17 defendant multiple times. What was the purpose of having
18 the multiple interviews?

19 A Well, some of the things -- as we work a case, as the
20 case progresses and each day, sometimes we'll come across a
21 fact or something that just doesn't make any sense. So we
22 may need further clarification.

23 So, you know, we have to follow up, and we go back,
24 and we'll speak with an individual again. So, you know,
25 sometimes -- and if you look at the statements provided,

1 they changed a little bit as time went on.

2 Q So in this case would it be fair to say that each
3 interview you were able to get more information from the
4 defendant?

5 A Exactly.

6 Q So that'd be part of your continuing investigation to
7 make sure that you're as thorough as possible?

8 A Yes.

9 MS. MABBS: Nothing further at this time, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. FILE

12 Q Investigator Nelson, you said you and Investigator
13 Taylor interviewed Dixie Wright and you didn't know Rayshon
14 was in the building?

15 A No, sir. I didn't.

16 Q Okay. And then Investigator Taylor took Ms. Wright
17 outta the room?

18 A Yes.

19 Q Okay. And it's your testimony you hadn't spoken with
20 Investigator Kirby about the Norris Ridge case that he was
21 investigating. Had you?

22 A At that point I don't -- I don't think I had spoken to
23 him. We were kind of going back and forth doing different
24 things.

25 Q All right. And you weren't investigating Norris

Chris Taylor (In-camera)
Direct examination by Ms. Mabbs

1 Ridge, were you?

2 A No, sir. As a matter of fact, I don't even -- I don't
3 even know if I was aware that there had been a report or an
4 incident reported about a shooting in Norris Ridge.

5 Q Okay. You said you went to the interview room through
6 later when Rayshon was in the interview room with
7 Investigator Kirby. Then you went to the interview room.
8 That's right?

9 A Yes, sir.

10 Q Okay. Was Rayshon complaining about his ear hurting?

11 A There were a couple of times where he -- he mentioned
12 his ear. He was complaining about his ear.

13 Q Okay.

14 A At what point during the interview I just -- you know,
15 I can't say exactly.

16 Q Did he appear to be in pain?

17 A He didn't to me.

18 Q The -- when you interviewed him on 15th did he say
19 anything to you about having been prescribed some
20 medication?

21 A I don't recall. I don't remember if he...

22 MR. FILE: That's all I have.

23 REDIRECT EXAMINATION

24 BY MR. HUNTER

25 Q Mr. Nelson, is it fair to say that putting Dixie

1 Wright in the same room as Rayshon Smith was not planned?

2 A No. It wasn't planned. I didn't -- we didn't have
3 any idea who was over there.

4 MS. MABBS: No further questions, Your Honor.

5 THE COURT: Step down.

6 MS. MABBS: The state calls Investigator Chris Taylor.

7 CHRIS TAYLOR, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MS. MABBS

10 Q Investigator Taylor, can you please state your full
11 name for the record?

12 A My name is Christopher E. Taylor.

13 Q And where are you employed at this time?

14 A The City of Spartanburg Police Department.

15 Q And what is your role at the police department?

16 A I'm an investigator.

17 Q And can you explain briefly some of your duties as an
18 investigator?

19 A I work major crimes, so I do mostly work some cases
20 like murders, suicides, sexual assaults, armed robberies.
21 Usually I get a case once they've been assigned through our
22 lieutenant or Sergeant Wilkins in charge as far as
23 investigations. I follow up on them at that point.

24 Q And were you assigned to this case?

25 A Yes. I was.

Chris Taylor (In-camera)
Direct examination by Ms. Mabbs

1 Q And where did you first respond to back on February
2 the 11th of 2017?

3 A To [REDACTED] Marlboro Road.

4 Q And how long were you at Marlboro Road?

5 A It was only a short period of time, because no one was
6 at the house but patrol officer to secure the area.

7 Myself and Investigator Nelson walked through just to
8 get a brief synopsis of what possibly could have happened,
9 idea, layout of the house was. And then went to city hall.

10 Q Did you ever go to Spartanburg Regional?

11 A No, ma'am.

12 Q And once you got back to city hall, then what did you
13 do?

14 A Once I got to city hall I found out two people that
15 was at city hall that needed to be interviewed as far as
16 reference to [REDACTED] Marlboro, which was Dixie Wright and Simon
17 Spicer.

18 Q And did you have an opportunity to interview Dixie
19 Wright?

20 A Yes, ma'am.

21 Q When you went back to interview Ms. Wright was
22 Mr. Smith present at city hall at that point to your
23 knowledge?

24 A No, ma'am.

25 Q Where did you interview Ms. Wright?

1 A Ms. Wright was in our interview room, the only
2 recorded interview room in city hall.

3 Q And that's up in kind of like C.I.D.?

4 A That's actually in the C.I.D. bureau area. It's
5 across the hallway from my office.

6 Q And that interview, we've heard from other testimony,
7 lasted a couple of hours?

8 A Yes, ma'am.

9 Q And once that interview was over, what did you do at
10 that point?

11 A Ms. Wright was actually using the telephone to call
12 her mother to get a ride home. I provided my cell phone
13 and walked across the hall where we use the telephone. I
14 didn't take her outside because it was cold outside. So I
15 let her use the telephone across the hallway.

16 Q And when you say across the hallway, would that be
17 that patrol room?

18 A Yes. That's called our squad room with patrol as far
19 as getting ready to go on shift or get off shift. They go
20 in there as far as doing the interviews. Not interviews,
21 but more or less induction to what a day holds for them.

22 Q And is that a place you would normally bring, say, a
23 witness or a victim to use the phone?

24 A Normally, like I said, I would let them go outside,
25 but because it was cold I just took her across the hallway

Chris Taylor (In-camera)
Direct examination by Ms. Mabbs

1 and let her use the phone.

2 Q So for weather restriction purposes.

3 A Yes.

4 Q At that point were you aware of who Rayshon Smith was?

5 A No idea.

6 Q Were you aware that he was in that room?

7 A No, ma'am.

8 Q When you took Dixie Wright into that room did you or

9 anyone else ever tell her to look around and identify

10 anyone in that room?

11 A No, ma'am.

12 Q Did you ever tell her that someone related to that

13 shooting may be in that room?

14 A No, ma'am.

15 Q When you took her into that room did you stay in there

16 with her the whole time?

17 A Yes. Like I said, she used my telephone. So I was

18 standing there.

19 Q And while she using the phone -- I believe you saw on

20 the video -- you speak with Officer Adorno about who ends

21 up -- about a gentleman who ends up being the defendant?

22 A Yes.

23 Q And what you were going to do with the defendant at

24 that point?

25 A I was just going to take Mr. Smith across the hall so

1 he could be interviewed or continue to talk by Investigator
2 Kirby.

3 Q So you were doing that for Investigator Kirby at that
4 point?

5 A Yes, ma'am.

6 Q You weren't doing that to your knowledge as part of
7 this investigation at that point in time.

8 A No, ma'am.

9 Q And so you -- I believe we see you take him across the
10 hall.

11 At some point are you alerted to come back to the squad
12 room to speak with Dixie Wright?

13 A Yes, ma'am.

14 Q And when you come back, what does she tell you?

15 A She is visibly upset and she's crying and saying that
16 she remembers him.

17 Q Okay. And at that point do you continue to speak with
18 her, at that point, or do you go back to C.I.D.?

19 A Actually go back across the hallway to that interview
20 room area.

21 Q Okay. Later that day do you then interview the
22 defendant with Investigator Nelson?

23 A Yes. That's approximately about 2:00 o'clock p.m.

24 Q Okay. And you interview him several times with
25 Investigator Nelson?

Chris Taylor (In-camera)
Direct examination by Ms. Mabbs

1 A Yes, ma'am.

2 Q And during each one of those interviews is he either
3 read his Miranda rights or reminded of his Miranda rights?

4 A Yes, ma'am.

5 Q On each of those occasions does he waive them?

6 A Yes, ma'am.

7 Q In that initial visit did y'all initiate that, or were
8 you informed that the defendant wished to initiate contact?

9 A I was informed. I was actually at my desk at the time
10 typing up my supplemental to this case, and someone came
11 along and told me that he wanted to talk to us.

12 Q And during those interviews was the defendant ever
13 threatened?

14 A No, ma'am.

15 Q Did y'all ever tell him what he had to say?

16 A No, ma'am.

17 Q On all of his statements that you witnessed was he
18 given an opportunity to review those statements?

19 A Yes, ma'am.

20 Q And then at the end of that he signed them saying --
21 agreeing with what was written?

22 A Yes, ma'am.

23 Q And most of those interviews, as we've already
24 discussed, are captured either on video recording or the
25 audio recording?

1 A Yes, ma'am.

2 Q Investigator Taylor, I'm handing you State's
3 Exhibit 25. Is that the waiver-of-rights form?

4 A Yes, ma'am.

5 Q And those would be the defendant's initials next to
6 each one of his Miranda rights?

7 A Yes, ma'am.

8 Q Saying that he understands them?

9 A Yes, ma'am.

10 Q And then -- and can you go ahead and go over each one
11 of those rights?

12 A Okay. Statement of rights reads as follows: "Before
13 any questions are asked of you you must understand your
14 rights. One, you have the right to remain silent."

15 THE COURT: Excuse me just a minute.

16 Since this is an in-camera hearing is it necessary for
17 him to read to me the rights that are on a paper that I can
18 read myself?

19 MS. MABBS: No, Your Honor.

20 Q He does eventually sign that form?

21 A Yes, ma'am.

22 Q And that was the form that you personally witnessed,
23 correct?

24 A Yes, ma'am.

25 MS. MABBS: At this point, Your Honor, the state would

Chris Taylor (In-camera)
Redirect examination by Ms. Mabbs

1 move Exhibit 25 into evidence for purposes of this hearing.

2 MR. FILE: No objection.

3 (Pre-interrogation waiver form and statement marked
4 State's Suppression Exhibit No. 25.)

5 MS. MABBS: I have no further questions at this time.

6 CROSS-EXAMINATION

7 BY MR. FILE

8 Q Okay. Investigator Taylor, you testified that you --
9 when y'all were through interviewing Ms. Wright that you
10 took -- you're the one that took her out of the room and
11 take her to the room where Mr. Smith was, is that right?

12 A Yes, sir.

13 Q All right. And it's your testimony that you had not
14 spoken to Investigator Kirby about the Norris Ridge
15 shooting?

16 A That's correct.

17 Q Yet you escorted Mr. Smith or asked -- called him by
18 name and took him out of the room and down the hall, didn't
19 you?

20 A Yes, sir.

21 Q And you knew you had placed Ms. Wright in that room,
22 didn't you?

23 A Yes, sir. I escorted her to the room and let her use
24 the telephone.

25 Q Okay. You weren't investigating Norris Ridge yourself

1 though, were you?

2 A No, sir.

3 MR. FILE: That's all.

4 REDIRECT EXAMINATION

5 BY MS. MABBS

6 Q Investigator Taylor, did you know Mr. Smith's name
7 when you walked into the patrol room, or did you have to
8 ask Officer Adorno?

9 A I had to ask Officer Nelson inside the squad room.

10 Q Okay. And you placing Dixie in that room was not some
11 kind of setup? It wasn't planned to put her in the room
12 with the defendant?

13 A No, ma'am.

14 MS. MABBS: No further questions, Your Honor.

15 THE COURT: Step down.

16 MS. MABBS: Your Honor, that's all the witnesses the
17 state would present.

18 THE COURT: Mr. File, does the defendant wish to offer
19 any evidence?

20 (Pause.)

21 MR. FILE: He doesn't wish to.

22 THE COURT: Mr. Smith, you understand you've got a
23 right to testify at this hearing, and the purpose of this
24 hearing is for me to determine whether or not an in-court
25 identification was so impermissibly or unnecessarily

1 suggestive that I should exclude the in-court
2 identification, as well as whether I should exclude any
3 statement that law enforcement claims that you made after
4 your -- well, prior to your arrest and after your arrest.

5 So if you have any additional information you want me
6 to consider now is the opportunity that you have to call
7 that witness or testify yourself. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you want to testify and provide any
10 additional testimony or other evidence?

11 THE DEFENDANT: Sir, other than the fact that once I
12 arrived at --

13 THE COURT: No. My question is do you want to take
14 the witness stand and testify.

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. All right. Anything else?

17 MR. FILE: No, Your Honor.

18 In my motion as far as since we're dealing with all of
19 the motions, I did file a motion too about the prior
20 record, and I understand the law is that they would be able
21 to introduce that prior record for the burglary first
22 charge.

23 However, and if Your Honor is going to let that in,
24 then I would ask for a limiting instruction to the jury
25 about that, the use of that prior record for the purposes

1 of proving the element of the crime.

2 THE COURT: Well, I understand it. Am I not required
3 to do both, to allow it in and to give the limited
4 instruction?

5 MR. FILE: It's my understanding the prosecution is
6 entitled to produce the case law so --

7 THE COURT: And they don't have to agree to a
8 stipulation.

9 MR. HUNTER: Your Honor, we don't have to agree, but I
10 think we can talk to him tonight. We might be able to
11 agree to it. And we're okay with the limiting instruction.

12 THE COURT: Do y'all have any argument you'd like to
13 make so far as the motions are concerned?

14 MR. FILE: Your Honor, I think I pretty much stated
15 the argument already as to what, and also in my motions
16 themselves.

17 MS. MABBS: Your Honor, just very briefly.

18 First as to the identification, Your Honor, we don't
19 believe that this was a show-up. I think it would be the
20 closest definition that there is.

21 As the officers testified and as Ms. Wright testified,
22 this was basically an accident. No one planned it. It
23 wasn't some kind of collaboration to place them in the room
24 together. She just happened to see him in there and
25 identified him.

1 Your Honor, if you do determine that it is a show-up
2 we do still believe that it is reliable under the totality
3 of the circumstances. She did testify that she was able to
4 see the defendant at the time of the crime that did occur
5 shortly beforehand.

6 Your Honor, she stated there was light in the room and
7 he was standing right next to her. She had previously
8 given officers a description of him during her initial
9 interview at city hall. He does match that description
10 that was given.

11 She was very certain at the time of confrontation and
12 again here today. And, again, that is a short period of
13 time, Your Honor. So we do believe that that
14 identification is admissible.

15 Your Honor, as far as the statement goes, we believe
16 that was a voluntary statement. He reinitiated contact
17 after meeting initially with Investigator Kirby.

18 He did -- I say -- and honestly, Your Honor, he never
19 really asked for a lawyer during that first interpretation.
20 Investigator Kirby acted out of an abundance of caution,
21 but it certainly wasn't an unequivocal request for counsel
22 before he reinitiated.

23 He did initially come to city hall voluntarily. He
24 was provided water, food, bathroom breaks if he requested
25 them.

1 They even allowed him to smoke in the interviews. He
2 was not handcuffed during any of them. He was reminded of
3 his rights each time and then did continue to go and
4 continue to cooperate with investigators as would be heard
5 on the interview recordings that we did enter as exhibits.

6 So we believe that each of his statements, Your Honor,
7 and the identification by Dixie Wright and the statement
8 should be admissible.

9 THE COURT: All right. Mr. File, do you want to
10 respond?

11 MR. FILE: Your Honor, it'd be our position that these
12 officers were all working in conjunction with each other.

13 Investigator Kirby said he was working the Norris
14 Ridge shooting, yet Investigator Taylor comes and gets my
15 client who -- and Investigator Taylor admittedly wasn't
16 working the Norris Ridge shooting, but yet he comes and
17 gets my client outta the room where Ms. Wright was.

18 So it would be my position that they were all working
19 in conjunction with each other, that he -- and that they
20 knew Mr. Smith was in the same room with Ms. Wright and
21 that this was, in fact, a show-up.

22 And it'd be our position that it is a tainted show-up,
23 and we would argue that it for identification should be
24 excluded as a result.

25 So in addition Mr. Smith did complain about his ear

1 hurting. I think he was under some duress or stress when
2 they were interviewing him. And the officers admitted that
3 he was complaining about his ear, although their
4 interpretation of it is different.

5 And we would ask that you consider excluding those
6 statements as well.

7 And also, again, I will reiterate my argument too that
8 the -- that they used the identification information to
9 confront him about the shooting at Marlboro Road and at
10 that point that's when he started talking.

11 THE COURT: All right. Well, the defendant would be
12 entitled to have an in-court identification made by the
13 prosecution witness excluded or prohibited if that
14 identification was the result of some impermissibly
15 suggestive or unnecessarily suggestive police procedure
16 employed to have a witness identified by someone.

17 In this particular case it would appear that there was
18 no identification procedure being employed, that the
19 identification by the witness of the defendant as being an
20 accomplice or a perpetrator in a crime that occurred at the
21 residence of Mr. Villar, it appears it was a pure accident.

22 The police, while they work together on many things,
23 they clearly according to the testimony were investigating
24 two separate and distinct events, and the reason they were
25 investigating two separate and distinct events apparently

1 is because the defendant told them that he was involved in
2 a shooting at Norris Ridge Apartments, which was not
3 related to a shooting occurring on ■■■ Marlboro Road.

4 Had the police known that there was a connection,
5 perhaps they would have employed totally different
6 investigative procedures in order to investigate those
7 events.

8 In this case the defendant was not even a suspect
9 apparently. He was a victim of a shooting. He was asked
10 to voluntarily appear at the police station after being
11 treated at the hospital to talk to investigators about his
12 own case where he had been shot, they thinking, the police
13 thinking, that he was a victim.

14 Ms. Wright was there because she was being subjected
15 to an interview about her knowledge of the death and
16 shooting of her boyfriend at Marlboro Road.

17 Those were totally unconnected, at least so far as the
18 police were concerned.

19 Mr. Smith was at the police station in hospital
20 clothes. He was not handcuffed; he was not arrested. He
21 was not being involuntary detained. He came down to the
22 police station of his own free will and accord.

23 It appears that the police were surprised by the
24 identification by Ms. Wright of the defendant, and that can
25 be seen on the video, as well as the testimony that's been

1 provided.

2 So it doesn't appear that this was a procedure
3 employed by the police in order to make an identification
4 of the defendant by a potential prosecution witness. It
5 appears that it was a total accident.

6 It would be incomprehensible to think that the police
7 would employ a procedure whereby they would take a deceased
8 person's girlfriend into the same room as a person who they
9 believed killed him. That would not make sense and it
10 would be incomprehensible to think that they would employ
11 such a procedure.

12 So I'm convinced that they did not know of any
13 connection between the two. They did not know or have any
14 idea that Ms. Wright would be identifying Mr. Smith as an
15 accomplice or a perpetrator in the death of Mr. Villar, and
16 therefore -- and she testified that she was not asked if
17 she recognized anybody. She was not told any suspect was
18 even at the police station. She was asked to come down for
19 purposes of an interview.

20 So it appears to me that that was not a procedure that
21 was employed by the police, but even if -- even if you
22 stretching it you could conclude that while even if it was
23 accidental or inadvertent that that was a procedure that
24 was unnecessarily suggestive or impermissibly suggestive
25 because she came into contact with the defendant at a

1 police station and identified him as the perpetrator, the
2 identification doesn't have to be excluded if under the
3 totality of the circumstances her identification is not
4 premised upon the -- for want of a better word -- I'll put
5 it in quotes -- a show-up, which I do not believe it was,
6 but, nevertheless, you -- in the common sense of the word
7 you might say that was a show-up or at least it was a --
8 she was able to see him because he was in the room.

9 So if her identification based upon the totality of
10 the circumstances is not based upon that event but it's
11 based upon her own recollection of events, then her
12 identification does not have to be excluded even if it was
13 an impermissibly suggestive procedure.

14 And so in determining whether or not her
15 identification was independent of that event I have
16 considered the testimony as it relates to her opportunity
17 to view the defendant at the time of the crime, her degree
18 of attention at the time of that viewing, any accuracy or
19 inaccuracy of any prior description given by her, the level
20 of her certainty at the time of the confrontation, the
21 lapse of time between the event and the confrontation, any
22 failure of her to identify the defendant on some other
23 occasion, which of course there is none, and any corrupting
24 influence of the process whereby she saw the defendant at
25 the police station.

Guilty plea

1 And based upon the consideration of that evidence I do
2 find that the state has shown by clear and convincing
3 evidence that the in-court identification, as well as the
4 out-of-court identification, by the witness was not the
5 result of any impermissibly or unnecessarily suggestive
6 procedure employed by law enforcement; and therefore the
7 identification will be permitted.

8 I also find based upon the testimony there is no
9 evidence to indicate that the statements made by the
10 defendant were anything but voluntary, and therefore they
11 shall also be admitted.

12 All right. Anything else?

13 MR. FILE: No, Your Honor.

14 THE COURT: All right. Let's take ten minutes before
15 we bring the jury back.

16 (Whereupon, a recess was taken.)

17 THE COURT: All right. Mr. File.

18 MR. FILE: Your Honor, Mr. Smith wishes to enter pleas
19 from my understanding.

20 THE COURT: All right. You are Rayshon Lamar Smith.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. File is your lawyer. And we've had
23 this discussion earlier, but you understand that you're
24 charged in Indictment 2017-03109 with the crime of burglary
25 in the first degree.

1 The state alleges in the indictment that you did on or
2 about February the 11th of 2017 wilfully and intentionally
3 enter a dwelling in the possession of Francisco Javier
4 villar located on Marlboro Road in the City of Spartanburg,
5 and you entered that dwelling without consent and with the
6 intent to commit a crime therein and that there was some
7 additional aggravating factor, being one or more of the
8 following: You were armed with a deadly weapon; you or
9 another participant in the crime caused physical injury to
10 a person who was not; you used or threatened the use of a
11 dangerous instrument; you displayed what was or appeared to
12 be a firearm or other deadly weapon; you entered the
13 dwelling in the nighttime; and/or you have committed the
14 crime of burglary while having a prior criminal history of
15 two or more convictions for burglary or housebreaking or a
16 combination of the two.

17 Burglary in the first degree carries a mandatory
18 minimum sentence of not less than 15 years in jail. It
19 carries a potential maximum sentence of life in prison.

20 Do you understand that particular charge and the
21 potential punishment that can be imposed upon a conviction?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Indictment 2018-04080 charges you with
24 attempted armed robbery.

25 The state alleges that on February the 11th of 2017

Guilty plea

1 you and/or others attempted to rob Francisco Villar while
2 armed with a handgun and that you and/or they acting in
3 concert attempted to take money and/or drugs from Francisco
4 Villar.

5 Attempted armed robbery carries a potential sentence
6 of up to 20 years in jail.

7 Do you understand that charge and the potential
8 punishment?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Indictment 2017-03108 charges you with the
11 crimes of murder and possession of a firearm during the
12 commission of a violent crime. The state alleges, again,
13 those occurred on February 11th of 2017.

14 They allege you did -- you and/or others acting in
15 concert, that is acting together, did wilfully and with
16 malice aforethought kill one Francisco Javier Villar by
17 shooting him and he died as a proximate result of that
18 gunshot wound and that you did possess a firearm during the
19 commission of that violent crime, that crime being murder.

20 Murder carries a mandatory minimum sentence of not
21 less than 30 years day for day. You can't do less than 30.
22 It requires a mandatory minimum, and it requires a
23 potential maximum sentence of life in prison.

24 Do you understand that charge and the potential
25 punishment?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Count two charges you with possession of a
3 firearm during the commission of the crime of murder. That
4 carries an additional punishment of up to five years in
5 jail.

6 Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Indictments 2017-03110 and 03111 charge
9 you, both, with the crime of kidnapping, the state alleging
10 on February the 11th of 2017 you did unlawfully seize,
11 confine, kidnap or carry away Simon Jo Spicer and Dixie
12 Wright without authority of law.

13 Kidnapping as to each indictment carries up to 30
14 years in jail.

15 Do you understand those charges and the potential
16 sentence?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And the remaining indictment is Indictment
19 2017-04231 charging you with filing a false police report
20 of a felony.

21 The state alleges on February the 11th of 2017 you did
22 unlawfully and did wilfully file a false report to the
23 police, city police, department alleging that you'd been
24 shot knowing that report to be false.

25 well, that report is not false, is it?

Guilty plea

1 MR. HUNTER: Of where he got shot, Your Honor.

2 THE COURT: Well, this doesn't say that. It just says
3 he did wilfully file a false report alleging he was shot
4 knowing that to be false.

5 MR. HUNTER: He did file the false police report. The
6 fact that he did get shot, correct, but the circumstances
7 of how he got shot is --

8 THE COURT: Well, I know, but that's not what this
9 says.

10 But, in any event, they claim you filed a false police
11 report about the circumstances, I guess, related to the
12 shooting that you did sustain. And the filing false police
13 report carries up to five years in jail.

14 Do you understand that charge and the potential
15 sentence?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How long has Mr. File been representing
18 you on these charges?

19 THE DEFENDANT: Since I been detained, sir.

20 THE COURT: How long has that been?

21 THE DEFENDANT: About 22 -- 20 months, sir.

22 THE COURT: All right. Over a year and half and
23 approaching two years.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And during that time have you had plenty

1 of opportunity to talk to him about these charges, as well
2 as how you wish to dispose of them?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has he been over each of these indictments
5 with you and explained to you what the state claims you
6 did?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And he's told you what kind of sentence
11 could be imposed if you were convicted or if you pled
12 guilty to these charges?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did you tell him everything you know about
15 the allegations made against you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And did you and he discuss whether or not
18 you have a defense to any of the charges to which you're
19 now apparently offering to plead guilty?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And do you know of any defense that you
22 have to any of the charges?

23 THE DEFENDANT: No, sir.

24 THE COURT: Do you understand that when you plead
25 guilty, if you do, that you give up your right to assert

Guilty plea

1 any defense that you have, should you have one?

2 You also give up your rights to remain silent, to
3 confront any witness offering evidence against you and to
4 have a jury decide if you're guilty or not.

5 You also give up your right to challenge any unlawful
6 conduct on the part of law enforcement, if you believe
7 there was any, that related to the identification of you as
8 a witness or related to the taking of a statement from you,
9 which I believe the state contends constitutes a confession
10 of some type. So you give up your right to challenge all
11 of those matters.

12 Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now, have you had time to reflect upon
15 your decision as to whether or not you want to plead guilty
16 or continue with the jury trial?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And what have you decided to do?

19 THE DEFENDANT: Take a guilty plea, sir.

20 THE COURT: So you want to plead guilty to each
21 charge.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did Mr. File explain to you that you have
24 the right to remain silent?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And that of course means you don't have to
2 say anything.

3 You don't have to testify even during the trial. You
4 don't have to make any statement that relates to the
5 allegations.

6 You don't have to answer any questions that relate to
7 the allegations. You don't have to answer my questions
8 right now unless you want to plead guilty, because in order
9 for me to accept your plea of guilty I have to understand
10 that your decision is freely and voluntarily made and that
11 you are doing so freely and voluntarily, knowingly and
12 intelligently and that you understand the consequences of
13 that decision.

14 So in order for me to make that determination I have
15 to ask you questions, but you don't have to answer them
16 unless you want to plead guilty.

17 So do you understand you have the right to remain
18 silent?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you wish to give that right up in order
21 to enter your pleas of guilty today?

22 THE DEFENDANT: No, sir.

23 THE COURT: So you wish to remain silent?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So you wish to continue with the jury

Guilty plea

1 trial?

2 THE DEFENDANT: No, sir. I wish to plead.

3 THE COURT: All right. Well, maybe I didn't make
4 myself clear.

5 In order for me to accept your plea of guilty I've got
6 to ask you questions and I've got to get answers, because I
7 have to be satisfied that you know what you're doing right
8 now and that nobody is forcing you into it, nobody's
9 pressuring you into it, nobody's made you do it, that
10 you've done it after careful reflection and it's your
11 decision to plead guilty.

12 But in order for me to understand that that's true
13 I've got to ask you questions to decide for myself if what
14 you're doing right now is freely and voluntarily done by
15 you and you understand the consequences of it. I can't
16 make that determination unless you give me information. I
17 can't get that information unless you answer my questions.

18 So you have the right to remain silent, and only you
19 can give that right up. But if you want to plead guilty
20 you have to give it up because I have to ask the questions.
21 If you don't want to give it up, then we'll have a jury
22 trial.

23 THE DEFENDANT: Yes. I give up the right, sir.

24 THE COURT: All right. So you understand your right
25 to remain silent.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And you're telling me you wish to give
3 that right up in order to plead guilty.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did Mr. File also explain to you that you
6 have a right to confront and to examine any witness in
7 court who provides evidence against you, that is evidence
8 tending to prove you guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: In other words, you've got a right to
11 require the state to bring their witnesses here, make them
12 take the witness stand, have them testify in your presence
13 under oath so you can see them, you can hear them, your
14 lawyer can cross-examine them on that testimony in order to
15 test each witness' credibility and the reliability of the
16 information that they're providing to the Court.

17 Now, you've seen that because we had a pretrial
18 hearing outside the presence of the jury, but that's what
19 would happen during the trial. All of the witnesses would
20 testify.

21 The state would ask them questions; your lawyer could
22 also ask them questions to test their reliability and
23 credibility. But if you plead guilty that doesn't happen.
24 No additional witnesses are going to testify because we
25 won't be having a trial in the case.

Guilty plea

1 Do you understand your right to confront and to
2 examine the witnesses in court?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to give that right up in order
5 to plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And of course you also have a right to
8 have a jury trial and to have those 12 jurors that you
9 helped select decide the verdicts in your case.

10 In order for those 12 jurors to find you guilty of any
11 crime the state claims you committed the state must
12 convince them beyond a reasonable doubt that you committed
13 the crime.

14 The burden is on the state to convince the jury of
15 your guilt. The burden is not upon you to prove that
16 you're not guilty or to prove that you're innocent.

17 So you can have the jury trial and put the state to
18 the test of proving your guilt, and you can still remain
19 silent because you always have that right.

20 You don't have to call any witness; you don't have to
21 produce any evidence. The burden is not upon you to prove
22 anything. The burden is on the state to prove you guilty.

23 Before a jury could find you guilty all 12 jurors have
24 to be convinced of your guilt beyond a reasonable doubt.

25 There are seven separate charges. A jury in deciding

1 the facts and applying the law could find you guilty of all
 2 seven, could find you not guilty of all seven. They could
 3 find you guilty of some number and not guilty of some other
 4 number. In other words, they decide the facts, they apply
 5 the law and they decide the verdict in your case.

6 If you plead guilty the jury doesn't participate any
 7 further.

8 Do you understand your right to have a jury trial?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you wish to give that right up in order
 11 to plead guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anybody promised you anything that
 14 caused you to make that decision?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anybody forced you into that decision?

17 THE DEFENDANT: No, sir.

18 THE COURT: Has anybody threatened you in any fashion?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anybody pressured you in any way?

21 THE DEFENDANT: No, sir.

22 THE COURT: Are you pleading guilty freely and
 23 voluntarily?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: It was your decision?

Guilty plea

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And are you satisfied with that decision?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now, the crime -- the crimes of burglary
5 in the first degree is designated as a violent and a most
6 serious offense.

7 Did Mr. File explain to you the significance of a
8 crime being classified as a violent and a most serious
9 offense?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you understand that significance?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The crime of attempted armed robbery is
14 also classified as violent and most serious; the crime of
15 murder is also classified as violent and most serious; the
16 crimes of kidnapping are also classified as violent and
17 most serious.

18 And so you understand that additional fact?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you understand the significance of
21 that designation.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you still want to go forward and plead
24 guilty?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, has anybody suggested to you that you
2 might be entitled to or might have a right to be considered
3 for some type of parole on any sentence you receive for
4 these offenses?

5 THE DEFENDANT: No, sir.

6 THE COURT: And do you understand that you can never
7 make a decision to plead guilty based upon any advice that
8 might relate to any consideration for parole or early
9 release from prison? Because nobody here has any control
10 over that.

11 Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And so far as the crime of murder is
14 concerned, as I've already told you, it requires a
15 mandatory minimum sentence of 30 years in jail, and that
16 can't be reduced by any consideration.

17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you still wish to plead guilty to each
20 of the charges as you've indicated?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You are 27 years old?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: I made it to the 11th grade, but I

Guilty plea

1 also took G.E.D. classes, sir.

2 THE COURT: And have you ever been married?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you ever had a child?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you ever had a job?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Where?

9 THE DEFENDANT: Wendy's, sir.

10 THE COURT: And what were you doing there?

11 THE DEFENDANT: I was a fry cook and I was also
12 working the grill, sir.

13 THE COURT: Have you ever been treated for any type of
14 substance abuse or addiction?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you suffer from any such a condition
17 today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you ever been treated for any type of
20 mental illness or emotional disturbance?

21 THE DEFENDANT: Yes, sir. I'm currently being treated
22 now for P.T.S.D. and antidepression.

23 THE COURT: And have you been told what your
24 healthcare providers believe is the basis for that
25 diagnosis or why you suffer from that condition?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And what is the reason that you do?

3 THE DEFENDANT: Due to the fact of my -- my depression
4 that health states my depression I'm down most of the time.
5 That's about it, sir.

6 THE COURT: Okay. Is there anything about your mental
7 health or that condition that prevents you from
8 understanding fully what you're doing right now?

9 THE DEFENDANT: No, sir.

10 THE COURT: You've had plenty of time to discuss with
11 your lawyer your decision as to how to proceed?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need any additional time to talk to
14 him about anything?

15 THE DEFENDANT: No, sir.

16 THE COURT: And are you satisfied with the manner in
17 which he's assisted you in your case?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. I'm going to ask the solicitor
20 to tell me about the facts that relate to the charges.

21 Listen to what he tells me. This is what he would
22 offer to prove if your case did go to trial before the
23 jury. So listen to what he tells me because when he's
24 through I'm going to ask you if you agree or disagree with
25 his version of the facts.

Guilty plea

1 MR. HUNTER: Thank you, Your Honor. May it please the
2 Court.

3 THE COURT: Yes, sir.

4 MR. HUNTER: This incident occurred on
5 February 11th of 2017, in the early morning hours of
6 February 11th of 2017, which was a Saturday.

7 Police were -- multiple officers were sitting in the
8 Q.T. at John B. White and Main Street here in the City of
9 Spartanburg, County of Spartanburg, when they actually
10 heard multiple shots fired and heard a female screaming.

11 Those officers went around to Terrace Road and
12 ultimately around to Marlboro Road where dispatch said they
13 received a 9-1-1 call stating a shooting and a home
14 invasion had happened on Marlboro Road.

15 When they arrived on the scene they first encountered
16 Dixie Wright and Simon Spicer who were outside the
17 residence, obviously upset, stated that they -- I believe
18 Mr. Spicer's description was two black boys had entered the
19 house and shot Mr. Francisco Javier Villar.

20 Officers then entered the house to clear the residence
21 to see if there was anybody else left in the house. It was
22 cleared.

23 Mr. Villar was laying in the front room along a large
24 sectional sofa kinda in the middle where the sections meet
25 on the floor with his head next to the sofa in a large

1 puddle of blood. It was pretty evident to the officers
2 that he was most likely deceased.

3 E.M.S. was called to the scene and attempted to
4 resuscitate, however he was pronounced dead at the hospital
5 once they arrived there, Your Honor.

6 Officers then take Ms. -- as they're actually putting
7 Mr. Villar into the hospital or into the ambulance a call
8 comes out on the radio stating that there was a walk-in at
9 the hospital claiming he had been shot at Norris Ridge.
10 You can actually hear officers kinda upset because there's
11 already five or six officers out there on Marlboro Road and
12 there's another shooting. Turns out that that was
13 Mr. Smith, Your Honor, who had walked into the hospital.

14 An officer is sent to the hospital to investigate that
15 shooting. That's Officer William Washington. He arrives,
16 speaks to Mr. Smith. Mr. Smith states that he is shot in
17 the ear while at Norris Ridge at his -- near his aunt's
18 apartment.

19 He gives the story about where he was located, where
20 the shooters were located, but is not very descriptive.

21 Through that interview Officer Washington has stated
22 to us that he didn't really believe him. Some of the
23 descriptions were off. The apartment number he gave is not
24 an apartment number there. Kind of the direction of the
25 shooting and the travel doesn't make sense.

Guilty plea

1 Investigator Kirby is called in to investigate that
2 portion of the shooting while Investigators Nelson and
3 Taylor are investigating the shooting at Marlboro Road.

4 Investigator Kirby talks to Mr. Smith at the hospital.
5 He's voluntarily brought back to city hall where
6 Investigator Kirby talks to him again. Again, he still
7 continues with the story about him being shot at Norris
8 Ridge even though no evidence is found of the shooting at
9 Norris Ridge.

10 Interviews occur with Mr. Spicer and Ms. Dixie Wright.
11 Mr. Spicer during his interview or after his interview
12 indicates that the shoes that Mr. Smith was wearing while
13 he was at city hall were shoes worn by someone who was at
14 the shooting. They are Nike Air Jordans that he picked
15 out.

16 Ms. Wright, as you watched on the video, also in that
17 short encounter with Mr. Smith in the patrol room does
18 state that he is the one -- one of the ones who entered the
19 house at Marlboro Road where the shooting occurred --
20 boyfriend -- the killing of her boyfriend took place.

21 Through interviews with the witnesses, as well as
22 Mr. Smith, they learn that Alisha Pilgrim who had been
23 friends with both Dixie Wright and Francisco Villar had
24 been having issues with them in the weeks leading up to
25 this incident. She actually appeared on the doorstep of

1 ■ Marlboro Road in those early morning hours.

2 They didn't want to let her in, but at some point she
3 knocks her way in the door because it was unlocked.

4 She's met outside by Mr. Villar who he and Mr. Spicer
5 had just been -- had just finished putting up cameras on
6 the outside of the house. So you actually see this
7 incident occur where Ms. Pilgrim comes into the house.
8 She's there for a few minutes.

9 Witnesses would state that the door was actually
10 closed behind her. And after some time she stated that she
11 was hot and went back and opened the door.

12 Very shortly after that Mr. Smith and Mr. Jarvis
13 Stripling come into the house. Mr. Smith is the first one
14 in the house. He is holding what appears to be a
15 semiautomatic handgun, almost a MAC 10 or MAC 11 style
16 handgun.

17 The second gentleman entering we believe is Jarvis
18 Stripling. He is carrying a revolver.

19 They're in the house for about a minute. Testimony
20 would have shown that once they enter the house they, along
21 with Ms. Alicia Pilgrim, tell everybody to get on the
22 ground. Ms. Pilgrim's asking for the safe.

23 Their -- the language as Ms. Wright stated to me was
24 get on the fucking ground, where is it, where's the money,
25 where's the safe.

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1 ultimately, Mr. Villar does not get down on the
2 ground, is telling them that he doesn't have anything, to
3 leave. But at some point he does pull out a revolver that
4 he has on his person and fires the first shot.

5 Based on the evidence that we have seen of the scene
6 there are no shell casings on the scene. Obviously, one of
7 the persons who entered the house -- Mr. Stripling -- had a
8 revolver. Mr. Villar had a revolver. And as we stated,
9 the video would show that Mr. Smith had a semiautomatic
10 with no shell casings on the scene.

11 It is believed that Mr. Stripling did fire the shots
12 that ultimately killed Mr. Villar, however.

13 In some of his statements Mr. Smith does admit that he
14 knew that the plan was to rob Mr. Villar. He stated I
15 believe one time that he needed some money, it was coming
16 up on Valentine's Day. Alisha stated that she knew someone
17 who had a lot of money that they could steal and that he
18 admitted to agreeing to the robbery and entering the house
19 and ultimately where Mr. Villar was shot and killed.

20 Ms. Pilgrim, as I stated earlier, knew the victims of
21 this case and knew how much money and drugs that Mr. Villar
22 would have at the residence, Your Honor.

23 So during the 1-minute, approximately 1-minute, they
24 were in the house they did point their handguns at Mr.
25 Spicer and Mr. Wright -- Ms. Wright -- making sure that

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1 they didn't move, go to the floor, thus, in essence,
2 kidnapping them for that minute, restricting their
3 movement, Your Honor.

4 Also, based on the fact that he told officers
5 originally that he was shot at Norris Ridge the -- that
6 story ended up, he admitted, was false, that he was, in
7 fact, at Marlboro Road when this robbery and shooting took
8 place, Your Honor.

9 He is -- for the purposes of this plea I would offer
10 State's Exhibits 23 and 22 into the record. These are
11 sentencing sheets of his two prior burglary convictions.
12 Under the burglary first statute the aggravating factors,
13 we only have to prove one of them. Based on looking at the
14 aggravating factors, we probably could have proven every
15 single one as to Mr. Smith.

16 (Copy of indictment and sentence marked State's Exhibit
17 No. 22; copy of indictment and sentence marked State's
18 Exhibit No. 23.)

19 THE COURT: So I just want to make sure I've covered
20 the murder, the burglary, the kidnappings.

21 Obviously, the robbery was for money and drugs that
22 Ms. Pilgrim knew were in the house. Mr. Smith did not know
23 any of the victims there that night. They all state, the
24 ones that are still living state, they had never seen him
25 before, Your Honor.

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1 And I believe -- would you like me to state his prior
2 record?

3 THE DEFENDANT: Yes, please.

4 MR. HUNTER: So in 2008 looks like he had a juvenile
5 stolen pistol. There was also a trespassing, false
6 information. 2009, burglary second violent, accessory
7 after the fact to a felony. And then 2012, burglary second
8 nonviolent.

9 THE COURT: Am I correct in stating that there is no
10 evidence that this defendant fired the weapon in the
11 residence?

12 MR. HUNTER: The only thing I could think of is if he
13 fired a weapon and a shell casing got caught in the gun.
14 That would be the only way he fired the weapon. But it
15 does -- since there were no shell casings found on the
16 ground it does appear that he was not the one who fired the
17 shot that killed Mr. Villar.

18 THE COURT: And all of the evidence points toward Mr.
19 Stripling as being the one who actually fired the shot that
20 killed Mr. Villar?

21 MR. HUNTER: Yes, Your Honor.

22 We don't have any weapons recovered in this case, so
23 we can't say for sure, but about the only possibility I can
24 see is if he fired and the shell casing got caught in the
25 weapon and he was not able to fire again. However, I

1 believe Ms. Wright would testify that she does not believe
2 he fired his weapon.

3 THE COURT: And she was an eye witness.

4 MR. HUNTER: Yes, Your Honor.

5 THE COURT: And was there -- was the bullet recovered?

6 MR. HUNTER: The bullet that killed Mr. Villar was.
7 One of them was recovered inside of his body. There were
8 other bullets recovered, but they were not tested by SLED
9 to see if they matched each other.

10 THE COURT: So you don't know what caliber the bullet
11 was?

12 MR. HUNTER: No, Your Honor.

13 THE COURT: Okay. And there's -- am I also correct in
14 stating that while the state contends there is sufficient
15 evidence to establish Mr. Stripling and Mr. Smith did
16 combine and agree to commit the crime of armed robbery,
17 there was no agreement to actually commit a murder.

18 MR. HUNTER: No, Your Honor.

19 THE COURT: Okay. All right. Mr. Smith, you've heard
20 what the solicitor has told me about the facts that relate
21 to your cases.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you agree or disagree with his version
24 of the facts?

25 THE DEFENDANT: I agree, sir.

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1 THE COURT: And did you fire a weapon in the
2 residence?

3 THE DEFENDANT: No, sir.

4 THE COURT: Did you shoot Mr. Villar?

5 THE DEFENDANT: No, sir.

6 THE COURT: And who did?

7 THE DEFENDANT: I guess Stripling, sir.

8 THE COURT: You and he were the only two people in the
9 residence?

10 THE DEFENDANT: And Pilgrim.

11 THE COURT: All right. Ms. Pilgrim is the one that
12 got y'all in?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Well, did she have a weapon?

15 THE DEFENDANT: Not that I know of. I really don't
16 really know too much of what happened afterwards. I just
17 know once I got shot I was outta the house. I heard
18 gunshots going on behind me.

19 THE COURT: And you got shot by Mr. Villar?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Was that the first and only shoot that he
22 fired?

23 THE DEFENDANT: That I know of, yes, sir.

24 THE COURT: All right. Well, did you see or hear Ms.
25 -- what's her name --

1 MR. HUNTER: Ms. Wright?

2 THE COURT: No.

3 MR. HUNTER: Ms. Pilgrim.

4 THE COURT: Ms. Pilgrim. Did you see or hear Ms.
5 Pilgrim shoot a weapon?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Is there any contention she was
8 armed?

9 MR. HUNTER: No. Ms. Wright has stated that she did
10 not have a weapon.

11 THE COURT: Okay. All right.

12 MR. HUNTER: And I know you asked. Mr. Villar --
13 there were three fired casings in his revolver.

14 Now, I can't say for sure that he fired those that
15 night, but it appears that at most he did fire three shots
16 that night.

17 THE COURT: All right. Do you still wish for me to
18 accept your pleas of guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. I'll accept them and hear from
21 you and Mr. File.

22 Do we have the interpreter here now?

23 MR. HUNTER: Yes. Ms. Woody is here, Your Honor.

24 THE COURT: And can she hear what they are saying?
25 will she be able to hear?

Guilty plea

1 MR. HUNTER: She nods her head yes.

2 THE COURT: Okay. All right. Mr. File.

3 MR. FILE: Your Honor, Rayshon is 27 years old. He
4 just turned 27 on July [REDACTED] of this year. He has never
5 been --

6 THE COURT: Excuse me just a minute.

7 If they need to come up here, they may, if they want
8 to be certain to hear everything. Just have them stand
9 over here next to the witness stand. Okay.

10 MR. FILE: Judge, Rayshon, again, is 27 years old. He
11 just turned 27 on July [REDACTED]. He's never been married.

12 His mother is here -- Pamela Smith -- and he has got a
13 sister here too. She works, I believe, for the Department
14 of Corrections.

15 And he -- he went to the 11th grade at Dorman.

16 Is that right? You went to Dorman, didn't you?

17 And then he got a G.E.D. And after he got in trouble
18 with these burglaries he got out and he started attending
19 Spartanburg Community College. He attended there eight
20 months, and he told me he was majoring in physics and
21 psychology and he had a 3.8 G.P.A. there.

22 He was wanting to be a pharmacy technician or go into
23 psychology as a field or profession and all when he got
24 wrapped up into this.

25 He had worked too, I believe, in addition. He told

1 you Wendy's, but I think he'd worked at Tietech or
2 somewhere like that in the warehouse doing warehouse work.

3 Judge, and this thing came up. From what he's told
4 me, he kinda got pulled into it last minute. He went over
5 to one of the other codefendant's house -- I believe it was
6 Mr. Rivera -- and Ms. Pilgrim was there and they were
7 drinking. They were drinking some wine and I think doing
8 some pills.

9 Ms. Pilgrim had been buying, I think, pills for
10 Mr. Villar, which that's supported by the evidence. There
11 was a lot of drugs, a lot of marijuana, a lot of pills
12 found in the house, including in this safe. It was an
13 issue in the case.

14 THE COURT: What kind of pills were they?

15 MR. FILE: Various pills including Oxycontin. There
16 was Xanax; there was -- I don't know what he was taking. I
17 think it was Xanax or something. And there was all kinds
18 of pills. There was basically a pharmacy in that safe.

19 So I'm not trying to slander Mr. Villar, but there was
20 a lot of stuff going on. He had cameras at this house, and
21 marijuana and drugs.

22 And-but they had -- Ms. Pilgrim was agitated. From
23 what he tells me, she was agitated and they were all a
24 little upset because the pills that they had bought from
25 Mr. Villar previously hadn't been -- they thought were

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1 basically homemade pills of some kind. They weren't doing
2 what they were supposed to do.

3 And the idea was concocted to go over there and
4 confront Mr. Villar about it. I don't think he really knew
5 there was any other beef that Ms. Pilgrim had with
6 Mr. Villar at the time but apparently when they got -- rode
7 over there in the car Ms. Pilgrim told them to wait there,
8 told him and the others to wait there at the car, and she
9 went in the house first and apparently proceeded to get
10 into an argument about -- about a vehicle that Mr. Villar
11 was supposed to give her as well.

12 We think that may have been in some type of trade
13 involving Mr. Villar's cousin who was -- about marrying the
14 cousin, and who didn't have immigration papers.

15 So, but anyway, there was an argument about that
16 according to some accounts. And he tells me that after
17 about ten minutes they went up to the house to see what was
18 going on and they heard the commotion inside and then they
19 rushed into the house.

20 But his -- according to his statements and what he's
21 told me he was supposed to just stay at the door. And he
22 said he stood at or near the doorway during this and -- and
23 then when he got shot he ran.

24 You can see on the video he -- he went into the house.
25 He appears to go into the house first. And he's also the

1 first one out of the house. He comes running about and
2 Ms. Pilgrim and -- and the other gentleman run out about
3 two seconds behind him by my count after the shooting
4 starts taking place.

5 He had a gun that one of the others gave him. We're
6 not sure if -- if it was real. He doesn't know enough
7 about guns from what he tells me to know if it -- to know
8 even how to fire that gun had he been put in a situation of
9 firing and all.

10 But it was just very unfortunate. He -- you know, he
11 was -- seemed to be trying to do the right things and going
12 to school, but it's a very tragic situation. It's tragic
13 for the family of Mr. Villar, and we're very sorry about
14 what happened with that.

15 He is very remorseful about what happened. I think
16 that's what some of his depression is about, is everything
17 that took place in the occurrence that took place in his
18 life as a result of this and all.

19 He has always been respectful to me. He was raised
20 right. His mother obviously raised him to be a respectful
21 person, and he's always been very respectful in his
22 treatment of me. And any time I asked him anything he
23 always told me. He talked to me about it.

24 I think he may wish to address the victims and the
25 families too at the appropriate time. I don't know if he

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1 has anything else he wants to say about this or not.

2 THE DEFENDANT: I'd just like to apologize to the
3 family, sir, about everything that took place.

4 MR. FILE: He tells me too that it was never his
5 intent to go over there and kill anybody. He says he never
6 intended that to happen. It happened, and it was a
7 surprise to him as well.

8 Your Honor, I would ask that you please consider the
9 minimum sentence in this case. He has stepped up to plead
10 even though we picked a jury in the case and everything.
11 He -- he -- he has -- he has stepped up to -- to take
12 responsibility for this.

13 And, again, he -- there's no evidence. Ms. Wright had
14 indicated in her statements that she never saw him fire a
15 gun. And, like I said, he -- he doesn't seem to me to be
16 the type of person who would have fired that gun had he not
17 been in a situation where he had to.

18 THE COURT: All right. Anything further, Mr. Smith?

19 THE DEFENDANT: No, sir.

20 THE COURT: Anything further on behalf of the state?

21 MR. HUNTER: Yes, Your Honor.

22 I believe the victim's mother would like to speak, as
23 well as possibly his sister and Ms. Wright.

24 THE COURT: Okay.

25 MR. HUNTER: Please state your full name for the

1 record. Come up here closer.

2 THE INTERPRETER: Ninija Lopez.

3 She understands that for a mother all her kids are
4 good. But my son was special. He was very close to me,
5 never disrespected me, always wanted to progress in life.

6 He came here from Miami to be with them and to work.
7 His dream was to have a business selling cars. Always
8 asked for her support in starting the business.

9 The day before this happened she was coming here to
10 South Carolina. At 5:23 he called her and said, mama, when
11 are you coming, when are you going to get here, I want you
12 to be here with me. And I couldn't see him.

13 It destroyed my life, my family, my kids. We are not
14 the same. Every day that goes by I feel more and more
15 destroyed because I miss him a lot.

16 He was always with me, always close to me. And God
17 forgives him everything that he participated in, and she
18 believes in justice and God's justice. And may God forgive
19 all of them. I'm not anybody. There is no one to forgive
20 them but let God.

21 My son had a family. He was with her, very happy. He
22 was telling her that he found the happiness of his life.
23 She believes in justice, and may God forgive them.

24 THE COURT: All right. Thank you, ma'am.

25 MR. HUNTER: Your Honor, she did give me some pictures

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1 she wanted to show you just for your viewing.

2 One is a picture of Mr. Villar back in Miami and then
3 another one is a picture with his son [REDACTED] who is five
4 years old, Your Honor.

5 THE COURT: Okay. Thank you.

6 MR. FILE: Your Honor, Mr. Smith's mother, I believe,
7 may wish to --

8 MR. HUNTER: We are not finished.

9 Please state your name for the record.

10 GLORIA FRANTEZ: My name is Gloria Frantez.

11 MR. HUNTER: And your relationship to Mr. Villar.

12 GLORIA FRANTEZ: I am Franky's sister. I am his
13 youngest sister.

14 I helped Franky come down here so he could have a
15 better life. He wanted to be a better father to his son.
16 That was his number one goal, and I supported him to come
17 here with my mom and my other brother so he can get his
18 life straight since they were doing so well in this state.

19 And I always warned him to not trust people so much,
20 and that was his one problem. He saw good in the worst
21 person, and we always tried to warn him about that.

22 He was so friendly all of the time, always good to
23 everybody no matter what they did to him. It was people
24 that hurted him in the past that he still was friends with
25 them and surpassed all of that. And I'm so sorry for

1 everything that happened to him. And I hope that God
2 forgives everybody involved and that you guys continue your
3 great work in bringing everybody to justice. I really
4 don't have anything else to say.

5 THE COURT: Thank you, ma'am.

6 MR. HUNTER: And finally is Dixie Wright who is the
7 girlfriend of Mr. Villar.

8 DIXIE WRIGHT: Yeah. I just want to say that, you
9 know, I do feel for his family as well, because while we
10 lost someone that we loved, they're going to lose someone
11 that they love as well.

12 But I just hope that maybe he can find it in his heart
13 to come back and testify to actually bring justice to the
14 person who did kill him and to the person that made all of
15 this possible, who actually set it up, who actually just --
16 she took something from us that we can never get back.

17 And I would just -- you know, that's really all I want
18 to say, is that I hope that he can find it in his heart,
19 because I know that it's hard for him to say things and to
20 talk about it, but, I mean, it's hard for us too, you know
21 what I'm saying, because we still don't have the closure
22 that we need.

23 I mean, he didn't even get to see his son. He hadn't
24 seen his son in a long time, like Gloria said, like he
25 wanted to just be a good father and now he will never get

Sentence

1 that chance. So, I mean, that's all I really wanted to
2 say. And, you know, I hate it happened the way that it
3 did.

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

5 All right. Mr. File.

6 MR. FILE: I believe his mother would like to address
7 the Court. I'm not sure if his sister wants to say
8 anything, Your Honor.

9 THE DEFENDANT'S MOTHER: I just ask for y'all to have
10 mercy on my son. I've been carrying this around for two
11 years, and I'm tired. And I just want y'all to have mercy
12 on my son, because I know what type of person he is and I
13 know that he didn't intentionally do this. That's all --
14 that's all.

15 THE COURT: All right. Thank you, ma'am.

16 Ma'am, you have to address your comments to me. You
17 can't address your comments --

18 ASHLEY SMITH: I'd like to say I'm sorry to the
19 family. I hate the situation happened. Just my brother is
20 young. He's still got a lot of life. I know. I know they
21 lost a life, but it's hard with us too because he was loved
22 too. That's all.

23 THE COURT: All right. Anything else?

24 MR. HUNTER: Nothing from the state, Your Honor.

25 THE COURT: All right. On Indictment 2017-03108 --

1 that's the indictment for murder and possession of a
2 firearm during the commission of a violent crime -- as to
3 count one, murder, Sentence of the Court is you, Rayshon
4 Lamar Smith, be confined to the South Carolina Department
5 of Corrections for a period of 30 years.

6 Count two, possession of a firearm, five years.

7 Indictment 2017-03109, burglary in the first degree,
8 30 years.

9 Indictment 2018-04080, attempted armed robbery, 20
10 years.

11 Indictment 2017-03110, kidnapping, ten years.

12 Indictment 2017-03111, kidnapping, ten years.

13 Indictment 2017-04231, filing a false police report,
14 five years.

15 Sentences are concurrent. He's to be given credit for
16 any time he's entitled to pursuant to 24-13-40.

17 MR. FILE: For the record, he's been in jail since
18 February the 11th of 2017.

19 THE COURT: They will calculate that in the Department
20 of Corrections.

21 Bring the jury back, please, sir.

22 (Whereupon, the jury was returned and released outside
23 the presence of the defendant.)

24 END OF REQUESTED TRANSCRIPT OF RECORD
25

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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 27th day of August 2018.

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

December 15, 2020

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

Rayshon Smith 336807)

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

v.
~~Rayshon Smith #336807 RS~~

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020-CP-42-03528

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 Spartanburg County RS
2. Name and location of Court which imposed sentence Le Corr Ints F3 2110A
990 WISACKY HWY
BISHOPVILLE SC 29010
General Sessions, 10 Maryland St RS
3. Name(s) of co-defendant(s) (if any) Torvis Stripling, Alisha pilgrim
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2017A4210200490-0494 RS
- (b) 2017A4210200491; 2017A4210200492 RS
- (c) 2017A4210200493; 2017A4210200494 RS
2017A4210100954 RS

5. The date upon which sentence was imposed and the terms of the sentence

- (a) August, 27, 2018
- (b) 30 yrs

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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?
No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NA
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NA
- ii. _____
- iii. _____

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9. If you answered "no" to (7), state your reasons for not so appealing:

- (a) Not for Appellate Review
- (b) _____
- (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: ~~with~~ The prosecution held back evidence

Ineffective Assistance of Counsel / Collateral Attack
Subject Matter Jurisdiction New Discovered evidence after
Denial Due Process of Law Plea guilty, ~~Collateral Attack~~ (RS)

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- (a) _____
 (b) _____
 (c) _____

See Attachment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
 (b) _____
 (c) _____

See Attachment

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? _____

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. NA
 ii. _____
 iii. _____
 iv. _____

- (b) the name and location of the Court in which each was filed:

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

- (c) the disposition thereof:

- i. NA
 ii. _____
 iii. _____

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 SPARTANBURG COUNTY
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iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

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

NO I have Not

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

(a) which grounds have been presented:

i. NA

ii. _____

iii. _____

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

i. NA

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) NO I Have Not

(b) _____

(c) _____

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

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SPARTANBURG COUNTY
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- (a) your arraignment and plea? yes I WAS
- (b) your trial, if any? NO
- (c) your sentencing? yes I WAS
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA

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

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

i. I Robin File
 ii. I 804 John B. White Sr. Blvd
 iii. I Spartanburg S.C. 29300

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

i. plea and sentence
 ii. I
 iii. I

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

✓ ~~Are not~~ New trial
sentence

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)

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.

Raylen Smith

SWORN to and subscribed before me this 7day of Aug, 2019.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2026

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AMY W. COX

**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.

Rayphon Smith (PS)
Applicant

SWORN or affirmed to and subscribed before me this

7 day of Aug, 2019.

[Signature]
Notary Public

My Commission Expires: 3/3/2026

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will be closely and in the same order the facts which support each of the grounds set out.

1. Counsel was Ineffective for advising Client that he would face potential life sentence if he goes to trial. Based on plea Counsel erroneous advice Client plea guilty.
2. Counsel was Ineffective for failing to Investigate facts of the case
3. Counsel was Ineffective for Denied Due Process of ^{6th 14th} Amendments
4. New Discovered evidence after plea guilty
5. Counsel was Ineffective for not Challenge Invalid Indictments, The indictments unconstitutional lack specific day time finding By the grand Jury which is essential element of the charged, S.C. Code ANN 17-19-90(2003)
6. Collaterally Attack Castro v. United State 272 F Supp 3d 268 A prisoner can collaterally Attack his sentence on the ground that his guilty plea was not knowing or voluntary if his claim is based on evidence not available to him at the time of the plea.

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state concisely the ground on which you base your allegation that you are being held in custody unlawfully.

Ineffective Assistance of Counsel

Denied Due Process of Law

Subject matter Jurisdiction

New Discovered evidence after plea guilty

Collaterally Attack

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2016 Code Ann. 14-1-60 Process to Compel Attendance of
Criminal Applicant witness, subpoena.

Dixie Wright

Lewis Nelson "Investgat"

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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Rayshon Smith, #336807,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-42-03528

RETURN AND MOTION TO DISMISS

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NOW COMES Respondent, making its return and moving to dismiss the position relief (hereafter “PCR”) application filed on October 13, 2020 by Rayshon Smith (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 of the Spartanburg County Clerk of Court. In June 2017, the Spartanburg County Grand Jury indicted Applicant for murder (2017-GS-42-3108), first degree burglary (2017-GS-42-3109), two counts of kidnapping (2017-GS-42-3110 and -3111), and possession of firearm or knife during commission of or attempt to commit a violent crime (2017-GS-42-3112). In October 2017, the Spartanburg County Grand Jury indicted Applicant under an amended indictment on the first degree burglary charge (-3109). In August 2018, the Spartanburg County Grand Jury indicted Applicant under an amended indictment on the murder indictment (-3108), which included a second count of possession of a weapon during the commission of a violent crime. Robin File, Esquire represented Applicant. On August 27, 2018,

Applicant pled guilty before the Honorable J. Derham Cole, ¹ Circuit Court Judge. Judge Cole sentenced Applicant to thirty years' imprisonment for murder, five years' imprisonment for possession of a firearm, thirty years' imprisonment for first degree burglary, ten years' imprisonment for each kidnapping charge, and five years' imprisonment for filing a false police report, sentences running concurrently. Applicant did not appeal his conviction or sentence.

II. Statement of Facts

On February 11, 2017, the Officers were informed by two witnesses, Dixie Wright and Simon Spicer, that two black men entered the residence and shot Victim Francisco Javier Villar. (Tr. 132). The house was cleared and Victim found in a puddle of his own blood; evidently deceased. (Tr. 132-33). Victim was pronounced dead at the hospital. (Tr. 133). Meanwhile, Applicant appeared at the hospital as a walk-in, claiming he had been shot in the ear. (Tr. 133).

Applicant gave a statement to the investigator, who did not believe him because the story did not line up given faulty descriptions and the direction of the shooting and travel not making sense. (Tr. 133). Applicant ultimately admitted this story was false. (Tr. 137).

Applicant entered the home with a semiautomatic handgun who, along with his co-defendants, told everyone to get on the ground and demanded to know where the money and safe were. (Tr. 135). Victim refused to get on the ground, saying he did not have anything and asked them to leave. (Tr. 136). Victim picked up a gun and fired the first shot. (Tr. 136). Someone, presumably the co-defendant Jarvis Stripling, fired the shots that killed Victim. (Tr. 136). When they were in the house they pointed their handguns at witnesses of the murder, Dixie Wright and

¹ Judge Cole is currently the Chief Administrative Judge for Common Pleas for the Seventh Judicial Circuit, but because he heard Applicant's plea proceedings, the motion to dismiss and proposed conditional order of dismissal are being sent to the Honorable J. Mark Hayes, II, Chief Administrative Judge for General Sessions for the Seventh Judicial Circuit.

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AMY W. COX

Simon Spicer, kidnapping them while the robbery and shooting took place. (Tr. 136-37).

In some statements given, Applicant admits he knew the plan was to rob Victim. (Tr. 136). Victim's girlfriend identified Applicant as one of the individuals that entered the home at the time of the shooting. (Tr. 134). This was also documented on video footage. (Tr. 135).

III. Current Action before the Court

In his PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Counsel was ineffective for advising client that he would face potential life sentence if he goes to trial. Based on plea counsel erroneously advise client ple[d] guilty."
2. "Counsel was ineffective for failing to investigate facts of the case."
3. "Counsel was ineffective for deny[al of] due process of law – 6th, 14th amendments."
4. "New[ly] Discovered Evidence after plea [of] guilty."
5. "Counsel was ineffective for not challenging invalid indictments. The indictments [] lack specific day, time finding by the grand jury which is [an] essential element of the charged. S.C. Code Ann. 17-19-90 (2003)."
6. "Collaterally attack *Castro v. United State[s]*, 272 F.Supp.3d 268. A prisoner can collaterally attack his sentence on the ground his guilty plea was not knowing or voluntary if his claim is based on evidence not available to him at the time of the plea."

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the PCR application. Respondent reserves the right to amend this return based upon receipt of additional relevant information.

IV. 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 conditional order of dismissal indicating the Court's intent to dismiss the application and its

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and quality that, under the facts and circumstances of that particular case, the "interest of justice" requires the applicant's guilty plea to be vacated. In other words, a PCR applicant may successfully disavow his or her guilty plea only where the interests of justice outweigh the waiver and solemn admission of encompassed in a plea of guilty and the compelling interests in maintaining finality of guilty-plea convictions.

Jamison v. State, 410 S.C. 456, 470, 765 S.E.2d 123, 130 (2014).

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 have impacted his decision to plead, when it was discovered, why he could not have discovered it through due diligence before entering the plea, or why it, in the interest of justice, requires the plea be vacated. 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.

Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing that he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make a showing that he is entitled to relief based on the information set forth and, therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, this matter must be summarily dismissed with prejudice.

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

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SOUTH CAROLINA

decision on appeal, whichever is later.

S.C. Code Ann. § 17-27-45(A).

Our 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 (1993). 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 entered his plea on August 27, 2018. The application was therefore due on August 28, 2019. This application was filed on October 13, 2020, over a year after the statutory filing period expired. Therefore, the application should be summarily dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

V. 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 Respondent.

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SPARTANBURG COUNTY
A. W. COX

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VI. Conclusion

WHEREFORE, Respondent moves to summarily dismiss the application for untimeliness and failure to establish a *prima facie* case of newly discovered evidence.

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) 734-0386

March 10, 2021

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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	2020-CP-42-03528
	)	
	)	
	)	
	)	
RAYSHON SMITH,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
	)	

June 1, 2021
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE BRIAN M. GIBBONS, JUDGE.

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

WILLIAM RAY, ESQ.
Assistant Attorney General

RODNEY RICHEY, ESQ.
Attorney for the Applicant

AMBER PAYNE, CVR
Circuit Court Reporter

I N D E X

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I N D E XE X H I B I T S

There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began at

2:12 p.m.)

THE COURT: All right, Mr. AG, if you'll introduce the case. Tell me why we're here today.

MR. RAY: Thank you, your honor. May it please the Court. This is the matter of Rayshon Smith versus the State of South Carolina. It is case number 2020-CP-42-03528.

Mr. Smith is currently incarcerated in the Department of Corrections. He was indicted in June 2017 for murder, first degree burglary, two counts of kidnapping and possession of a firearm or knife during the commission of or attempt to commit a violent crime. In October of 2017, he was -- subsequently indicted of -- for the charges of -- of first degree burglary. In August of 2018, he was again indicted for murder and a second count of possession of a weapon during the commission of a violent crime.

He was represented by Attorney Robin File. And then on August 27th, 2018, he appeared before the Honorable Judge Cole and entered a guilty plea. He was sentenced to 30 years imprisonment for murder, five years imprisonment for possession of a firearm,

1 30 years imprisonment for first degree burglary, ten
2 years for each kidnapping charge, and five years for
3 filing a false police report. All the sentences
4 were set to run concurrently.

5 He did not appeal his sentence or his
6 conviction. Instead, on October 13th, 2020, he
7 filed his application for post-conviction relief,
8 and the State made its return and moved to dismiss,
9 citing the statute of limitations, given that it had
10 been over about two years since he entered his plea.
11 We also moved to dismiss. There was an allegation of
12 newly discovered evidence in his application, but we
13 moved to dismiss for failure to establish a prima
14 facie claim of newly discovered evidence. He didn't
15 identify any particular evidence at all that would
16 constitute newly discovered evidence.

17 And so, therefore, we respectfully request that
18 the Court dismiss his application. And with that
19 being said, I will go ahead and turn it over to Mr.
20 Richey.

21 THE COURT: Mr. Richey?

22 MR. RICHEY: Thank you, Your Honor. Your Honor, I
23 want to pass forward this affidavit --

24 THE COURT: All right.

25 MR. RICHEY: -- that I will submit it for my client.

1 Judge, I will say this is kind of a strange
2 deal. My client -- if the Court looks at the
3 application, this application was notarized on
4 August 7th, 2019. But somehow, it didn't make it to
5 the clerk's office until October 2020. He indicates
6 to me that he took it down to the mailroom at SCDC,
7 got it notarized, sent it off, and that they did it
8 within the statute of limitations. I just don't
9 know why they would notarize it and do all this
10 stuff, and then it doesn't get to the Clerk of Court
11 until October of the next year. So he's asked the
12 court for an equitable tolling. He says, in his
13 affidavit, he's done all he can do to get it to the
14 courts. It's just it's notarized, he mailed it out,
15 and it shows up in October of 2020. So we ask the
16 court to do an equitable toll to statute of law and
17 to go forward.

18 THE COURT: All right, Mr. Ray.

19 MR. RAY: Your Honor, this is not the case in which
20 he just missed the deadline by a couple days. I
21 mean, it was over a year, August 7th, 2019, is when
22 it's notarized. But certainly, we, the State's
23 position is that the -- date of notarization does
24 not constitute the day of filing. And there's no,
25 as far as we're aware, there's no indication other

1 than Mr. Smith's own word that he put the document
2 in the mail on -- on that date. We're unaware of
3 any case that would -- would justify tolling the
4 statute of limitations and under these
5 circumstances.

6 And therefore, we -- we request that this
7 application be dismissed.

8 THE COURT: All right. I'm gonna deny your motion
9 to dismiss. I'm gonna allow the statute of
10 limitations to be tolled for this applicant in order
11 that an evidentiary hearing be held on this
12 application just as soon as it can be developed and
13 be had, but not today.

14 THE COURT: (To the Applicant) Okay? Do you
15 understand what I did?

16 THE APPLICANT: Yes, sir.

17 THE COURT: I wanna make sure I'm giving you another
18 chance to have a hearing on your underlying PCR.
19 I'm not dismissing it. So make sure you listen to
20 Mr. Richey's advice, talk to him about what you
21 wanna do, and get ready for the next time you're up
22 in court, okay?

23 MR. RAY: Thank you.

24 THE COURT: All right. Good luck to you, sir.

25 (Whereupon, the within hearing was

1 concluded at 2:17 p.m.)
2 (*This transcript may contain quoted material.
3 Such material is reproduced as read or quoted by the
4 speaker.)
5

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 June 1st, 2021.

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



Amber J. Payne, CVR

Date: July 16, 2023

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	2020-CP-42-03528
	)	
	)	
	)	
	)	
RAYSHON SMITH,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
	)	

April 19, 2022
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN JR., JUDGE.

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

CHELSEY MARTO, ESQ.
Assistant Attorney General

RODNEY RICHEY, ESQ.
Attorney for the Applicant

AMBER PAYNE, CVR
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
(AW) - Denotes Applicant's Witness

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There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began at
3:02 p.m.)

THE COURT: All right. We're ready to proceed on
Rayshon Smith; is that correct?

MS. MARTO: Yes, Your Honor.

THE COURT: All right. This is Case Number 2021 --
I mean, 2020-CP-42-03528. All right. Ms. Marto?

MS. MARTO: Thank you, Your Honor. May it please
the Court. Applicant is presently confined in the
South Carolina Department of Corrections pursuant to
orders of commitment of the Spartanburg County Clerk
of Court.

June 2017, Spartanburg County Grand Jury
indicted him for murder, first-degree burglary, two
counts of kidnapping, and possession of a firearm or
knife during the commission of or attempt to commit
a violent crime. October 2017, the Spartanburg
County Grand Jury indicted him under an amended
indictment for first-degree burglary. In August
2018, there was -- the Spartanburg County Grand Jury
indicted him under an amended indictment on the
murder indictment, which included a second count of
possession of a weapon during the commission of a
violent crime.

1 Robin File represented Applicant on August 27,
2 2018. He pled guilty before the Honorable J. Derham
3 Cole. Judge Cole sentenced him to 30 years
4 imprisonment for murder, five years imprisonment for
5 possession of a firearm, 30 years imprisonment for
6 first-degree burglary, ten for each kidnapping
7 charge, and five years imprisonment for filing a
8 false police report, sentences running concurrently.
9 He did not appeal his conviction or sentence.

10 The post-conviction relief application was
11 filed October 13th, 2020. The State made its return
12 and motion to dismiss for untimeliness March 10th,
13 2021. And this motion by -- made from the State was
14 denied by the Honorable Brian Gibbons, June 3rd,
15 2021, and a full evidentiary hearing was ordered.

16 And so, with that, I'll turn it over to Mr.
17 Richey.

18 THE COURT: All right. Mr. Richey?

19 MR. RICHEY: Thank you. Call Mr. Smith.

20 THE COURT: All right. Mr. Smith, come up and be
21 sworn.

22 (WHEREUPON, the applicant was sworn.)

23 **DIRECT EXAMINATION OF RAYSHON SMITH**

24 BY MR. RICHEY:

25 Q Sir, can you state your name, please?

1 A Rayshon Smith.

2 Q And, Mr. Smith, you're currently in the Department of
3 Corrections; is that correct?

4 A Yes, sir.

5 Q And you were charged -- you -- you -- what charge was you
6 charged with?

7 A I was charged with murder.

8 Q Okay. And were you convicted of murder?

9 A Yes, sir.

10 Q And you have some other charges, too, correct?

11 A Yes, sir.

12 Q Go -- what -- do you remember what those were?

13 A First-degree burglary, kidnapping, attempted armed
14 robbery, possession of a firearm.

15 Q Okay. And you -- you filed an application of post-
16 conviction relief, because you believe that your attorney
17 did not adequately represent you; is that correct?

18 A Yes, sir.

19 Q Who represented you on these charges?

20 A Robin File.

21 Q Okay. And you believe that -- that his representation
22 was ineffective and it hurt you?

23 A Yes, sir.

24 Q Okay. What -- the -- the facts of this was -- was this a
25 robbery? Y'all went to somebody (verbatim) house? Just

1 tell me a little bit about that.

2 A Basically, just a robbery. It is entering a home, trying
3 to collect some stuff, and everything went bad.

4 Q Okay. What happened? Just go ahead and tell me what
5 happened. I've got the transcript, but tell me --

6 A Right.

7 Q -- what happened.

8 A Well, as soon as -- soon as I get into the house, I was
9 shot, so once I got shot, it's like my main focus was to
10 -- was to get away, so that's what I did. I ran out the
11 door.

12 Q Okay. So as you come up to the house, the individual in
13 the house shot you?

14 A Yes, sir.

15 Q And -- and you took off and left? Where -- did you go to
16 the hospital?

17 A Yes, sir.

18 Q Okay. And prior to you getting to the house, how did you
19 know to go to this place? Is it something that y'all did
20 -- somebody you --somebody else did?

21 A Yes, sir.

22 Q Okay. Who was that?

23 A Alicia Pilgrim.

24 Q Okay. And what did Alicia do?

25 A I mean, she -- she basically orchestrated the whole

1 thing. Like --

2 Q Right.

3 A -- basically brought me there.

4 Q And -- and you had another individual with you, correct?

5 A Yes, sir.

6 Q And what was his name?

7 A Stripling -- Josh Stripling.

8 THE COURT REPORTER: (To the applicant) I'm sorry.

9 What was the first name?

10 THE APPLICANT: First name, Joshua Stripling.

11 THE COURT REPORTER: Thank you.

12 Q Would it be Jarvis Stripling?

13 A Yes, sir. That's it.

14 Q Jarvis?

15 A Jarvis.

16 Q Jarvis. Okay. And -- and so when you got shot, what
17 happened after that? Do you know what happened?

18 A Yeah. After I was shot, I took -- like I say, I took off
19 running. While I was running, behind me I heard shots
20 going off behind me, but I ain't never turned around and
21 look and see what was going on, so . . .

22 Q But you discovered that someone had gotten killed; is
23 that correct?

24 A Yes, sir.

25 Q Okay. And -- and Mr. Stripling is the -- actually the

1 one who done that killing; is that correct?

2 A Yes, sir.

3 Q Huh?

4 A Yes, sir.

5 Q Okay. Okay. Now, you -- you've pled guilty. You didn't

6 have a trial; is that correct?

7 A Yes, sir.

8 Q And can you tell me why you pled guilty?

9 A I'm -- for one, I was told that the best thing not to do

10 (verbatim) is not to say anything, because I was going to

11 get a life sentence.

12 Q Okay. You were told -- now, when you say, "the best

13 thing," now, who's telling you this?

14 A Robin File.

15 Q Okay. He's telling you you're going to get a life

16 sentence?

17 A Yes, sir.

18 Q If what?

19 A If I take it through with the trial, I was gonna lose. I

20 ain't have no defense, so . . .

21 Q Okay. He -- what -- why did he tell you were gonna lose?

22 Do you know why?

23 A No, sir.

24 Q Y'all -- y'all talked about the case, right?

25 A Yeah. A couple of times.

1 Q Okay. And what did y'all talk about when you talked
2 about the case?

3 A Basically, talked about everything that happened. The
4 only thing he really told me, like, that I can catch time
5 for was, like, my burglary charge.

6 Q Burglary?

7 A Burglary, first.

8 Q Burglary, first?

9 A Yes, sir.

10 Q And this burglary, first, tell me about getting in the
11 house. Did y'all break the door down or what? Y'all --

12 A Just walked right in. The door was wide open.

13 Q Okay. And so -- so did you want to have a jury trial?

14 A Yes, sir.

15 Q You did?

16 A Yes, sir.

17 Q Okay. Did you talk to your attorney about having a jury
18 trial?

19 A Yes, sir.

20 Q And did y'all -- did y'all go over what a jury trial is -
21 - what it is?

22 A Yes, sir.

23 Q Okay. And so y'all discussed the mechanics of this is a
24 judge? this is a jury? this is a lawyer? all that, right?

25 A Yes, sir.

1 Q Then did y'all go over how your case was going to be
2 tried and presented within that framework, like, he was
3 going to say this? the State was going to say this? the
4 jury -- did y'all go through that?

5 A Yes, sir.

6 Q Okay. And after going through all that framework of how
7 it was going to be tried, you decided to plead guilty?

8 A Yes, sir.

9 Q Okay. What in those discussions led you to plead guilty?

10 A The discussions dealing with the -- the examinations of
11 the investigators -- the two investigators, and, also,
12 the eyewitness. I felt like it was improper police
13 conduct at the time, so my attorney, Robin File, he was
14 telling me, like, there's no win in it. There's no way
15 that I'm get anything from it other than life --

16 Q So he told you --

17 A -- if I go through with the trial.

18 Q -- that you're gonna get convicted, no question about it?

19 A Yes, sir.

20 Q Well, why is he so adamant about it?

21 A I guess he knew something I ain't know (verbatim.)

22 Q Okay. Y'all -- y'all looked at the same evidence,
23 correct? Did -- did you look at any evidence different
24 from him, or did he show it to you?

25 A Yes, sir. Some -- some evidence, but it was also some

1 evidence that I found afterwards after my conviction.

2 Q Okay. Tell me what evidence that you looked at to show
3 that you will be found not guilty.

4 A Okay. In -- in one of the witness's identifications --
5 eyewitness -- identified me, the female witness, in a
6 photo lineup. She picked me out as being the one that
7 killed her boyfriend.

8 Q Uh-huh.

9 A But in her -- her statements, and, also, during the
10 pretrial, she said something totally different.

11 Q Well, in -- in the trial, she -- she said that she was
12 not -- she was really saying that you were not the
13 shooter, correct?

14 A Yes, sir.

15 Q And then you got this video where she claimed you were
16 the shooter?

17 A Yes, sir.

18 Q Okay. And so your position is that's an inconsistent
19 statement?

20 A Yes, sir.

21 Q What other evidence did you find?

22 A That was just about it. Dealing with the new discovered
23 evidence.

24 Q You got to speak up, please, sir.

25 A That was just about it. Dealing with the new discovered

1 evidence.

2 Q Okay. I'm still -- okay. When -- when you and your
3 lawyer talked about pleading guilty, you had a chance at
4 trial, under what theory was he telling you were gonna be
5 found guilty?

6 A I guess, basically, like I say dealing with the burglary
7 charge -- the first-degree burglary, he was telling me
8 that if I lost -- if I went through with the trial and I
9 lost, then I was -- I was going to get life plus,
10 actually.

11 Q Okay. You got a murder conviction. Tell me about that
12 one.

13 A Yes. I pleaded to the murder. I really -- I pleaded to
14 all of the charges because, like I say, he -- he told me
15 not to -- not to say anything, and that was the best
16 thing for me to do to get a lesser sentence.

17 Q Okay. Now, you -- did you know at -- you knew at the
18 time that on this murder, you're gonna get at least 30
19 years, right?

20 A Yes, sir.

21 Q You knew that?

22 A Yes, sir.

23 Q Okay. And you agreed to that?

24 A (Nods head up and down.)

25 Q You -- okay?

1 THE COURT REPORTER: (To the applicant) Was that a
2 "yes" or --

3 THE APPLICANT: Yes, sir.

4 THE COURT REPORTER: Thank you.

5 Q So you believe he should have investigated the ID, right?

6 A Yes, sir.

7 Q Okay. And did you have a -- a history of depression?

8 A Yes, sir.

9 Q You did? And did you talk to your lawyer about that?

10 A Yes, sir.

11 Q Did -- did that have any -- any effect on you pleading
12 guilty or not pleading guilty or committing this crime?

13 A Yes, sir.

14 Q And how was that?

15 A At the time, dealing with the crime, like, I really
16 didn't understand everything like what I was doing at the
17 time. I was reacting basically out of fear and even the
18 time of -- of me pleading guilty, I didn't -- I didn't
19 know what was going on.

20 Q Okay. And this -- this charge, I mean, it happened
21 quick. When you got to the door, you were shot, right?

22 A Yes, sir.

23 Q You just really didn't --

24 A Yes, sir.

25 Q When the door opened, you got shot, right?

1 A Yes, sir.

2 Q So you really didn't have as far as time enough to do
3 anything, because the door opened, you're
4 shot --

5 A Yes, sir.

6 Q -- and you take off?

7 A Yes, sir.

8 Q Okay. Okay.

9 MR. RICHEY: (To the Applicant) Answer any
10 questions the Attorney General will have for you.

11 **CROSS-EXAMINATION OF RAYSHON SMITH**

12 BY MS. MARTO:

13 Q Good afternoon, sir.

14 A Good afternoon.

15 Q So you were set to go to trial in this case, correct?

16 A Yes, ma'am.

17 Q And you had pretrial motions, correct?

18 A Yes, ma'am.

19 Q Including one concerning the identification of you,
20 correct?

21 A Yes, ma'am.

22 Q And the judge decided to not rule in your favor; is that
23 correct?

24 A Yes, ma'am.

25 Q And you also gave police statements, correct?

1 A Yes, ma'am.

2 Q And the judge determined that those would have been
3 admissible at trial, correct?

4 A Yes, ma'am.

5 Q And immediately after those pretrial rulings, you and
6 your lawyer talked, and you decided to pled guilty,
7 correct?

8 A Yes, ma'am.

9 Q And you pled guilty to murder among some other charges,
10 right?

11 A Yes, ma'am.

12 Q And it was your decision, right?

13 A Yes, ma'am.

14 Q Okay. And that was after reviewing what evidence would
15 have been admissible at trial and what hadn't, right?

16 A Yes, ma'am.

17 Q Okay. And he told you that that plea deal was going to
18 be in your best interest, correct?

19 A Yes, ma'am.

20 Q Because you would likely receive life at trial, correct?

21 A Yes, ma'am.

22 Q And you would likely be convicted of murder, correct?

23 A Yes, ma'am.

24 Q So are you saying that your attorney's advice is faulty
25 in retrospect?

1 A Yes, ma'am. Especially, dealing with the facts of the
2 case, knowing that I didn't commit the murder.

3 Q But you had people identify you that were on scene,
4 correct?

5 A Yes, ma'am.

6 Q And they would've testified at trial, correct?

7 A Yes, ma'am.

8 Q Okay.

9 MS. MARTO: No further questions, Your Honor.

10 THE COURT: (To Mr. Richey) Redirect?

11 MR. RICHEY: No other questions. Call Mr. File.

12 THE COURT: (To the applicant) You may step down.

13 (WHEREUPON, the applicant was excused.)

14 (WHEREUPON, the witness was sworn.)

15 **DIRECT EXAMINATION OF ROBIN FILE, ESQ.**

16 BY MR. RICHEY:

17 Q Sir, would you state your name, please?

18 A Robin File.

19 Q Mr. File, do you recall representing Mr. Smith?

20 A Yes. I was appointed to represent him as a conflict from
21 the public defender's office.

22 Q Okay. Is the facts kind of what he said they would be?
23 He got to -- to the door of this house and got shot?

24 A Well, he got -- yes. Got to the door, got inside the
25 house, and got shot. He had given a -- a statement and -

1 - and everything. If I could lay out a little
2 background?

3 Q Go ahead.

4 A I was appointed to represent him, and he was the only one
5 in the group that had given a statement, and his thinking
6 was that he might offer testimony against the others, and
7 -- and then his -- when we met with the solicitor, he
8 didn't want to do that. And his was the most
9 prosecutable case, because he had given a statement. And
10 so we ended up being called for trial, so . . .

11 Q So he -- he was entertaining a cooperation agreement and
12 didn't go through with it?

13 A Right.

14 Q Did you discuss that --

15 A That --

16 Q -- with him what that meant, not going through with that?

17 A Yeah. That had been the offer -- well, it had been
18 offered to him, and then when we took him up to the
19 solicitor's office to meet with the solicitor, then he --
20 he chose not to offer any cooperation,
21 so . . .

22 Q And so -- and so was -- so he was one of the few of these
23 people who gave a statement?

24 A Right.

25 Q And -- and so -- so did -- did you discuss with him,

1 "Hey, you've incriminated yourself. You have an
2 opportunity to help yourself," that kind of deal?

3 A Yes.

4 Q And he declined that?

5 A He declined that.

6 Q Okay. Did he tell you why he did?

7 A I don't know unless maybe he didn't want to receive the
8 label or -- or -- you know, of -- of "being a rat," or --
9 or what, so . . .

10 Q And he -- he actually, I believe, got less time than the
11 guy that actually shot and killed the guy, correct?

12 A I believe so.

13 Q Because on this case a -- this Stripling guy got
14 kidnapping, attempted armed robbery, and burglary, first,
15 30 years. That is a lighter sentence than what this
16 gentleman got, correct? When I say "lighter" --

17 A A lot.

18 Q -- is --

19 A He got 30 years.

20 Q Right. But this kidnapping, attempted robbery, and
21 burglary, first-degree, that's not day to -- that's not
22 day for day, right? Was --

23 A I -- I don't know as to what Mr. Stripling, you know --

24 Q Okay.

25 A -- but --

1 Q Okay.

2 A -- but --

3 Q Do you know --

4 A -- yeah.

5 Q Do you know if Mr. Stripling cooperated with them or not?

6 Do you have any idea?

7 A I don't know.

8 Q Okay. Tell me, did you investigate what happened in this
9 crime?

10 A Yes. We -- we went through all the police reports and I
11 talked to the -- to officers and -- and everything, and
12 based what he -- what my client told me, we, you know,
13 everything was pretty consistent.

14 Q What -- how -- how did he -- where was his guilt at in
15 the murder?

16 A Well, it would've been based on the "hand of one is the
17 hand of all," and I explained that to him extensively in
18 this case, because it was a home invasion. The female
19 kind of set it up, and -- and he and another -- Mr.
20 Stripling went there and went in the home with -- and
21 there was some evidence that he -- that my client also
22 had a gun there. There would've been some evidence,
23 although he denied, I believe -- as I recall, he denied
24 having a gun, but there was evidence. Both were armed.
25 They went in there, and then he got shot in the ear

1 during -- during this, and I believe he ran out at some
2 point either before or contemporaneously with one of the
3 victims in -- one of the victims in the house getting
4 shot and killed.

5 Q Okay. And so that's what made him guilty, "Hand of one"?
6 Do you have -- did you have any information -- did -- I
7 mean, he gave -- do you recall him giving any statement
8 that he knew about the robbery part of it? Is that the
9 part of -- that got him? Do you recall that?

10 A I think it was covered in his statement.

11 Q Okay. And do you believe that -- do you believe that the
12 indictments in this case, do you believe they were
13 defective in any way?

14 A Not that I saw, no.

15 MR. RICHEY: (To the witness) Answer any questions
16 the Attorney General will have for you.

17 CROSS-EXAMINATION OF ROBIN FILE, ESQ.

18 BY MS. MARTO:

19 Q Good afternoon. Now, Mr. Smith received the mandatory
20 minimum sentence on murder, correct?

21 A That's correct.

22 Q And that was after pretrial motions commenced, correct?

23 A That's correct. We did pretrial motions on the -- I
24 believe I -- I did -- I filed a motion to suppress his
25 identification, because there was a -- a identification

1 of him at the police department. I did a motion
2 regarding his statement -- voluntariness of his statement
3 and, also, a motion, I believe, regarding the -- his
4 record -- his prior record and --

5 Q Uh-huh.

6 A -- the judge ruled against us on each and every one of
7 those motions. And then, at that point in time, I had a
8 discussion with the prosecutor about the case in front of
9 the judge and whether or not the prosecutor would allow
10 my client to entertain a plea for -- for the 30 years.
11 Prosecutor indicated that they would no longer table that
12 offer, but the judge had indicated to me that -- that if
13 he chose to plead guilty, that he would -- he would give
14 him the minimum, so . . .

15 Q After you lost the pretrial motions, what would you say
16 the likelihood of success at trial would've been?

17 A Oh, I'd say slim to none.

18 Q You thought the evidence against him was pretty
19 overwhelming at that point?

20 A Yes. Especially, with his statement coming in.

21 Q And did Mr. Smith seem to understand that?

22 A He seemed to. I explained that to him. We had talked,
23 you know, extensively prior to that, but I told him,
24 after the Judge's rulings, that the deck was really
25 stacked against us at that point in time.

1 Q Okay. And so, it was his decision to plead, given your
2 discussions, right?

3 A Yes.

4 Q Okay. Did you think he had a full understanding of what
5 the plea process entailed?

6 A I did. I did.

7 Q Okay. Do you still think that the plea offer was in his
8 best interest?

9 A Yes, I do. We were at trial in front of Judge Cole, and
10 I think that it was very likely had he been convicted,
11 that he would've gotten a life sentence.

12 MS. MARTO: No further questions, Your Honor.

13 THE COURT: All right. Any redirect?

14 MR. RICHEY: No questions.

15 THE COURT: (To the witness) Thank you, sir.

16 THE WITNESS: Thank you.

17 (WHEREUPON, the witness was excused.)

18 THE COURT: All right. (To Mr. Richey and the
19 State) Any other witnesses?

20 MR. RICHEY: No, Your Honor.

21 MS. MARTO: No, Your Honor.

22 THE COURT: Nothing from the State. All right.
23 Anything from the parties?

24 MS. MARTO: No, Your Honor.

25 THE COURT: All right. I'll take it under -- under

1 advisement and let you know.

2 MS. MARTO: Thank you, Your Honor.

3 (Whereupon, the within hearing was
4 concluded at 3:24 p.m.)

5 (*This transcript may contain quoted material.

6 Such material is reproduced as read or quoted by the
7 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 19th, 2022.

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



Amber J. Payne, CVR

Date: June 4, 2023

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
))
Rayshon Smith, #336807,)
Applicant,)
))
v.)
))
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-42-03528

ORDER OF DISMISSAL

2023 MAR -6 PM 4:51
FILED
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

This matter comes before this Court by way of Applicant's post-conviction relief application filed October 13, 2020. Respondent made its return on March 10, 2021, requesting an evidentiary hearing be convened. An evidentiary hearing was held at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Robin File 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 of the Spartanburg County Clerk of Court. In June 2017, the Spartanburg County Grand Jury indicted Applicant for murder (2017-GS-42-3108), first degree burglary (2017-GS-42-3109), two counts of kidnapping (2017-GS-42-3110 and -3111), and possession of firearm or knife during commission of or attempt to commit a violent crime (2017-GS-42-3112). In October 2017, the Spartanburg County Grand Jury indicted Applicant under an

amended indictment on the first degree burglary charge (-3109). In August 2018, the Spartanburg County Grand Jury indicted Applicant under an amended indictment on the murder indictment (-3108), which included a second count of possession of a weapon during the commission of a violent crime. Robin File, Esquire represented Applicant. On August 27, 2018, and after exhausting pre-trial motions, Applicant pled guilty before the Honorable J. Derham Cole, circuit court judge. Judge Cole sentenced Applicant to thirty years' imprisonment for murder, five years' imprisonment for possession of a firearm, thirty years' imprisonment for first degree burglary, ten years' imprisonment for each kidnapping charge, and five years' imprisonment for filing a false police report, sentences running concurrently. Applicant did not appeal his conviction or sentence.

Summary of Relevant Facts

On February 11, 2017, the Officers were informed by two witnesses, Dixie Wright and Simon Spicer, that two black men entered the residence and shot Victim Francisco Javier Villar. (Tr. 132). The house was cleared and Victim was found in a puddle of his own blood; evidently deceased. (Tr. 132-33). Victim was pronounced dead at the hospital. (Tr. 133). Meanwhile, Applicant appeared at the hospital as a walk-in, claiming he had been shot in the ear. (Tr. 133).

Applicant gave a statement to the investigator, who did not believe him because the story did not line up given faulty descriptions and the direction of the shooting and travel not making sense. (Tr. 133). Applicant ultimately admitted this story was false. (Tr. 137).

Applicant entered the home with a semiautomatic handgun who, along with his co-defendants, told everyone to get on the ground and demanded to know where the money and safe were. (Tr. 135). Victim refused to get on the ground, saying he did not have anything and asked them to leave. (Tr. 136). Victim picked up a gun and fired the first shot. (Tr. 136).

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2018 MAR 16 PM 4:51
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

presumably the co-defendant Jarvis Stripling, fired the shots that killed Victim. (Tr. 136). When they were in the house they pointed their handguns at witnesses of the murder, Dixie Wright and Simon Spicer, kidnapping them while the robbery and shooting took place. (Tr. 136-37).

In some statements given, Applicant admits he knew the plan was to rob Victim. (Tr. 136). Victim's girlfriend identified Applicant as one of the individuals that entered the home at the time of the shooting. (Tr. 134). This was also documented on video footage. (Tr. 134-35).

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. "Counsel was ineffective for advising client that he would face potential life sentence if he goes to trial. Based on plea counsel erroneous advise client ple[d] guilty."
2. "Counsel was ineffective for failing to investigate facts of the case."
3. "Counsel was ineffective for deni[al of] due process of law – 6th, 14th amendments."
4. "New[ly] Discovered Evidence after plea [of] guilty."
5. "Counsel was ineffective for not challenging invalid indictments. The indictments [] lack specific day, time finding by the grand jury which is [an] essential element of the charged. S.C. Code Ann. 17-19-90 (2003)."
6. "Collaterally attack *Castro v. United State[s]*, 272 F.Supp.3d 268. A prisoner can collaterally attach his sentence on the ground his guilty plea was not knowing or voluntary if his claim is based on evidence not available to him at the time of the plea."

Respondent made their return and motion to dismiss for untimeliness and failure to establish a *prima facie* case of newly discovered evidence. Respondent's motion to dismiss was denied by the Honorable Brian M. Gibbons, circuit court judge, on June 3, 2021. Judge Gibbons ordered a full evidentiary hearing be held. At the evidentiary hearing, Applicant proceeded forward on the following allegations:

1. Involuntary guilty plea:
 - a. Applicant only pled because Counsel told him to plead.
 - i. Counsel told Applicant that if he did not plead and, instead, proceeded to trial, he would likely receive a life sentence for murder before Judge Cole.

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 SPARTANBURG COUNTY
 AUSTIN, COX

2. Ineffective assistance of counsel:
 - a. Failure to use Applicant's history of depression in mitigation.
 - b. Failure to challenge the sufficiency of the indictments.

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 testified that he was shot as soon as he entered the home in which the incident took place. Applicant stated the incident was a robbery gone wrong. Applicant stated that he went to the hospital after he was shot.

Applicant stated that he pled guilty because Counsel told him that if he went to trial, he would likely receive a life sentence. Applicant stated that they talked about the case a couple of times, and he was told that the only charge he could receive time for was the burglary. Applicant stated he wanted a jury trial. Applicant was unsure why Counsel was so adamant that he was guilty and should plead. Applicant stated he pled guilty to all charges because his attorney told him to. He stated he had a history of depression and told Counsel this before the plea.

On cross-examination, Applicant stated that he gave a statement to the police. He stated he decided to plead guilty based upon the advice of Counsel, but now thinks the advice given was faulty. Applicant stated that there were other witnesses that saw him at the crime scene.

Counsel Testimony

Counsel testified that he was appointed to represent Applicant due to a conflict of interest with the public defender's office. Counsel testified that Applicant's case was most prosecutable because he gave a statement. Counsel testified that he investigated the incident. He stated that Applicant would have been found guilty at trial under the hand of one hand of all.

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 SPARTANBURG COUNTY
 ANDREW COX

Counsel stated that the robbery aspect of the crime was covered in Applicant's statement. He testified that he did not believe the indictments in the case were defective in any way.

On cross examination, Counsel testified that they pursued pre-trial motions concerning the voluntariness of Applicant's statement and a motion concerning the identification of Applicant by someone at city hall. He stated that the likelihood of success at trial after the pre-trial motions were denied were "slim to none." Counsel testified that Applicant received the mandatory minimum for murder, likely would have received a life sentence at trial, and pleading guilty was in his best interest.

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 plea transcript, 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).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984). *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the

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SPARTANBURG COUNTY
JAMMY CCGX

Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 694. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result

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SPRINGFIELD COUNTY
JANET W. COX

must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Involuntary Guilty Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and legal elements of the offense the maximum and minimum penalties, and the rights he is waiving by

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SPARTANBURG COUNTY
JANICE COX

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accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

This Court finds the plea was entered freely, knowingly, intelligently, and voluntarily. Applicant stated that he understood the charges, elements, and potential sentences. (Tr. 117-20). Applicant stated that he had plenty of time to talk to Counsel, that Counsel explained everything to him, and that he had no defense to the charges. (Tr. 120-21). Applicant waived his right to remain silent, right to a jury trial, right to call and confront witnesses, and right to present evidence. (Tr. 121-27). Applicant stated that no promises or threats were made to get him to plead, and that he was pleading freely and voluntarily. (Tr. 127). Applicant stated that he understood murder, first degree burglary, kidnapping, and attempted armed robbery are all classified as violent and most serious. (Tr. 128). Applicant stated he struggled with the pressure of

and post-traumatic stress disorder, but that this did not impact his ability to understand the plea process. (Tr. 130-31). Applicant stated he was satisfied with Counsel. (Tr. 131). After the State recited the facts of the case, Applicant agreed. (Tr. 132-38). This Court finds the plea was freely, knowingly, intelligently, and voluntarily entered. Further, this Court finds that Applicant's acceptance of Counsel's advice to plead and the fear of receiving more time if he proceeded to trial were not sufficient to undermine the plea's validity. Accordingly, relief is denied on this ground.

Indictments

Applicant is alleging he is entitled to PCR relief because there were "flaws in the indictment process." Challenges to the indictment must be raised before a jury is sworn in. S.C. Code Ann. § 17-19-90 (2003). If non jurisdictional defects apparent on the face of the document are not raised before then, they are waived. *Hooks v. State*, 353 S.C. 48, 577 S.E.2d 211, (2003), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Young*, 243 S.C. 187, 133 S.E.2d 210 (1963). Sufficiency of indictment is found when the offense is stated with enough specificity that the court knows what judgement to announce and the defendant knows what he has to answer to and whether he can plead acquittal or conviction upon it and whether it apprises defendant of offense that is intended to be charged. *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) *citing State v. Wilkes*, 353 S.C. 462, 465, 578 S.E.2d 717, 19 (2003).

Here, there is no indication Applicant was asserting indictment flaws prior to resolution of the case through the plea process. If he did not assert these claims prior to the resolution of the case, he waived his right to assert this claim and cannot be granted relief upon assertion of flaws now. At the PCR hearing, Counsel credibly testified that he did not see anything about the

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SARTANBURG COUNTY
AMY W. COX

indictments that should have been challenged. Further, upon this Court's review of the indictments, the Court fails to find anything insufficient about them. Accordingly, this Court finds this allegation is without merit and denies relief on this ground.

Mitigation

Applicant claims Counsel was ineffective for failing to mitigate the sentence. Counsel may be found deficient for failing to sufficiently investigate and present mitigating evidence. *See Council v. State*, 380 S.C. 159, 172, 670 S.E.2d 356, 363 (2008) (finding it unreasonable for counsel not to further investigate the defendant's background and present even minimal mitigating evidence obtained); *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (finding it unreasonable when Counsel failed to investigate mitigating evidence beyond a couple retained records, including the presentence investigation report and social service records); *Williams v. Taylor*, 529 U.S. 362, 398 (2000) (finding that Counsel was unreasonable for failing to evaluate the totality of available mitigation evidence). An applicant is prejudiced by this deficiency if there is a reasonable probability that a different sentence would have been imposed but for Counsel's failure to investigate and present mitigating evidence. *Council v. State*, 380 S.C. 159, 171, 670 S.E.2d 356, 362 (2008).

Applicant pled to murder and received the mandatory minimum sentence. Any mitigation strategy addressing Applicant's depression could not have resulted in a lesser sentence. Further, this Court finds Counsel's chosen mitigation strategy, namely highlighting his age, education, and career aspirations, was seemingly successful and no other approach could have lessened the sentence even further. Even so, Applicant himself informed the Court he struggled with depression and post traumatic stress disorder. (Tr. 130-31). Thus, this Court declines to find a deficiency or prejudice. Accordingly, relief is denied on this ground.

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SPRINGFIELD COUNTY
AMY W. COX

Conclusion

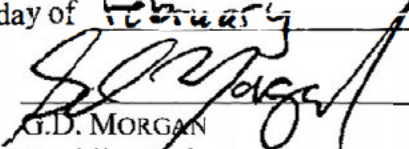
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

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 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 27th day of February, ~~2022~~ 2023


 G.D. MORGAN
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina.

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 SPARTANBURG COUNTY
 AMY W. COX

WITNESSES
Spartanburg Police Department
<i>Anthony S. Minor</i>
ARREST WARRANT NUMBER
2017A4210200494
ACTION OF GRAND JURY
<i>OE</i> JUN 02 2017
Foreperson of Grand Jury
Date
VERDICT
Foreperson of Petit Jury
Date

DOCKET NO.	17-GS-42-3112
The State of South Carolina	Spartanburg County
County of Spartanburg	2018 AUG 29 PM 2:00
Barry Barnette, Solicitor	H. FLORE BLACKLEY
COURT OF GENERAL SESSIONS	JUL 01 2017
TERM	
THE STATE	vs.
Rayshon Lamar Smith	
Indictment for	
POSSESSION OF FIREARM OR KNIFE	
DURING COMMISSION OF OR ATTEMPT	
TO COMMIT A VIOLENT CRIME	
SC Code 16-23-490	
CDR Code 549	
Class FELF	

Dismissed

8/30/18

original jury

NP
 Dismissed
 8/30/18
 original jury
 Dismissed
 8/30/18
 original jury
 Dismissed
 8/30/18
 original jury

NP

Dismissed
 8/30/18
 original jury
 Dismissed
 8/30/18
 original jury

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 12 2017 the

Grand Jurors of Spartanburg County present upon their oath:

**POSSESSION OF FIREARM OR KNIFE DURING COMMISSION
OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That the defendant, Rayshon Lamar Smith, did in Spartanburg County, on or about February 11, 2017, visibly display a firearm and/or knife during the commission or attempted commission of a violent crime, in violation of Code §16-23-490, *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.

J-H E. Mills
ASSISTANT SOLICITOR

WITNESSES

1. SENTENCE MADE ☒

2. REPORT ENDED

COMPUTER

3. CARD PULLED

Spartanburg Police Department

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

COMPUTER

ARREST WARRANT NUMBER

2017A4210200491

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

OCT 27 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-42-3109

(AMENDED)

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

OCT 30 2017

TERM

THE STATE

v.

RAYSHON LAMAR SMITH

Indictment for

BURGLARY FIRST DEGREE
(DWELLING)

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

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CLERK OF COURT
SPARTANBURG COUNTY

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 12 2017, the Grand Jurors of Spartanburg County present upon their oath:

BURGLARY, FIRST DEGREE**(DWELLING)**

That the Defendant, Rayshon Lamar Smith, did in Spartanburg County, on or about February 11, 2017 willfully and intentionally enter the dwelling belonging to Francisco J. Villar located at [REDACTED] Marlboro Road, South Carolina, and did enter the dwelling without consent and with the intent to commit a crime therein, and when, in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime were armed with a deadly weapon or explosive; and/or causes physical injury to a person who is not a participant in the crime; and/or uses or threatens the use of a deadly weapon; or displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; and/or the entering or remaining occurs in the nighttime in violation of Section 16-11-311, 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.

J. J. - E. J. Mills
 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Police Department

*Anthony S. Minor***ARREST WARRANT NUMBER**

2017A4210200491

ACTION OF GRAND JURY

JUN 02 2017

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

17-GS-42-3109

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM**THE STATE**

vs.

Rayshon Lamar Smith

Indictment for**BURGLARY, FIRST DEGREE
(Dwelling)**

SC Code: 16-11-0311

CDR Code: 0079

Class: FEL/EXM (V)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT (AMENDED)

OCT 27 2017

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

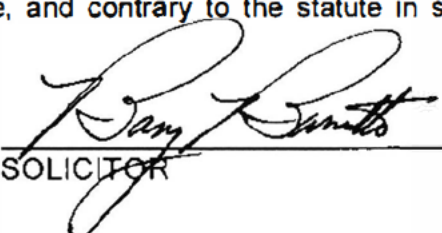
BURGLARY FIRST DEGREE (DWELLING)

That the Defendant, Rayshon Lamar Smith, did in Spartanburg County on or about February 11, 2017 willfully and intentionally enter a dwelling occupied by Francisco Javier Villar located at [REDACTED] Marlboro Road, Spartanburg, South Carolina without consent and with intent to commit a crime therein, and either in effecting entry or while in the dwelling or in immediate flight, he or another participant in the crime:

- (1) was armed with a deadly weapon or explosive, and/or
- (2) caused physical injury to any person who was not a participant in the crime, and/or
- (3) used or threatened the use of a dangerous instrument, and/or
- (4) displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, and/or
- (5) entered the dwelling during the nighttime, and/or
- (6) committed the crime while possessing a prior record of two or more convictions for burglary or housebreaking or a combination of both,

all in violation of Section 16-11-0311 of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

DOCKET NO. -

17-03-42-3110

The State of South Carolina

County of Spartanburg

Barry Barnett, Solicitor

COURT OF GENERAL SESSIONS

JUN 2 2017

TERM

THE STATE

vs.

Rayshon Lamar Smith

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

WITNESSES

1. SENTENCE MADE ☒2. REPORT ENDED ☒

COMPUTE

3. CARD FILLED ☒

Spartanburg Police Department

4. INDEXED ☒5. CHECKED ☒CHECKED SIGNATURE *Barry Barnett*7. ASSESSMENT AND
FINE CARD MADE ☒

COMPUTER

8. TRAFFIC VIOLATION COP ☒

ARREST WARRANT NUMBER

2017A4210200492

ACTION OF GRAND JURY

JUN 02 2017

DE
True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUL 2 2017

At a Court of General Sessions, convened on _____, the
 Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

The Defendant, Rayshon Lamar Smith, did in Spartanburg County, on or about February 11, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Dixie Wright, without authority of law, all in violation of Section 16-3-910, 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.

J. H. ENNIS
 ASSISTANT SOLICITOR

WITNESSES

DOCKET NO.

17-03-42-3111

The State of South Carolina

County of Spartanburg

Barry Barnett, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Rayshon Lamar Smith

Indictment for
KIDNAPPINGSC Code: 16-03-910
CDR Code: 0095
Class FEL-A1. SENTENCE MADE
Spartanburg Police Department

2. REPORT INDEXED

3. CARD FILLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ARREST WARRANT NUMBER

2017A4210200493

ACTION OF GRAND JURY

JUN 02 2017

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 02 2017

At a Court of General Sessions, convened on _____ the
 Grand Jurors of Spartanburg County present upon their oath:

KIDNAPPING

The Defendant, Rayshon Lamar Smith, did in Spartanburg County, on or about February 11, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Simon Joe Spicer, without authority of law, all in violation of Section 16-3-910, 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.

J. J. E. Mills
 ASSISTANT SOLICITOR

WITNESSES

1. SENTENCE MADE ☒ **COMPUTER**
 2. REPORT ENDED ☒
 Spartanburg Police Department
 3. CARD PULLED ☒
 4. INDEXED ☒
 5. CHECKED WARRANT ☒
 6. CHECKED SIGNATURE ☒
 7. ASSESSMENT AND FINE CARD MADE ☒ **COMPUTER**
 8. TRAFFIC VIOLATION COP ☒

ARREST WARRANT NUMBER

2017A4210200490

Direct Indictment (AMENDED)

ACTION OF GRAND JURY

[Signature]
 Foreperson of Grand Jury

Date:

VERDICT

[Signature]
 Foreperson of Petit Jury

Date:

DOCKET NO. 17-GS-42- 3108

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2018

TERM

THE STATE

vs.

RAYSHON LAMAR SMITH

Indictment for

COUNT 1 – MURDER
 COUNT 2 – POSSESSION OF A WEAPON
 DURING COMMISSION OF A VIOLENT
 CRIME

SC Code: 16-03 0010, 0020

CDR Code: 0116, 0549

Class: FEL-Exm, FEL/F

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

AUG 24 2018

At a Court of General Sessions, convened on _____, the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE - MURDER

That Rayshon Lamar Smith did in Spartanburg County, on or about February 11, 2017, feloniously, willfully, and with malice aforethought, kill one Francisco J. Villar, by shooting the victim, and that said victim died as a proximate result thereof, all in violation of §16-03-0010, 0020, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended

**COUNT TWO - POSSESSION OF FIREARM OR KNIFE DURING
 COMMISSION OF OR ATTEMPT TO COMMIT A VIOLENT CRIME**

That Rayshon Lamar Smith did in Spartanburg County on or about February 11, 2017, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to-wit: MURDER, in violation of Code §16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

WITNESSES

Spartanburg Police Department

Anthony S. Minor

ARREST WARRANT NUMBER

2017A4210200490

ACTION OF GRAND JURY

JUN 02 2017

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

17-G3-42-3108

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

Rayshon Lamar Smith

Indictment for

MURDER

SC Code 16-03-0010, 0020

CDR CODE: 0116: 0549

CLASS: FEL EXM: FEL/F

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 02 2017

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Rayshon Lamar Smith did in Spartanburg County, on or about February 11, 2017, feloniously, willfully and with malice aforethought, kill one Francisco J. Villar, by shooting the victim, and that the said victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *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.

J. H. E. Williams
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS **COMPUTER**COUNTY OF SPARTANBURG
STATE VS.Rayshon Lamar Smith

AKA:

Race: BLACK Sex: M Age: 27DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Burglary / Burglary (After June 20, 1985) - First degree (15-Life) ~~Not a crime~~in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

HUNTER, JAMES EDWARD

SCB77517

SC Bar#

Defendant

File, Robin Clark

Attorney for Defendant

SCB07843

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

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

TOTAL

\$ 128.75Clerk of Court/ Deputy Clerk C. PoolCourt Reporter: L. Moffitt

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2017GS4203109A/W#: 2017A4210200491Date of Offense: 2/1/2017S.C. Code § 16-11-031CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Presiding Judge

Judge Code: 2053Sentence Date: 8-27-2018

COUNTY OF SPARTANBURG
 STATE VS.
Rayshon Lamar Smith

AKA:

Race: BLACK Sex: M Age: 27DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Kidnapping / Kidnapping (0-30) ~~Not 30 years~~INDICTMENT/CASE#: 2017GS4203110A/W#: 2017A4210200492Date of Offense: 2/11/2017S.C. Code § 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

HUNTER, JAMES EDWARD

SCB77517

SC Bar#

Defendant

File, Robin Clark
Attorney for Defendant

SCB07843

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 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: not related to criminal sex act.☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL

\$128.75

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 FundOther:

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

Clerk of Court/ Deputy Clerk C. PooleCourt Reporter: L. MoffittPresiding Judge [Signature]Judge Code: 2053Sentence Date: August 27, 2018

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Rayshon Lamar Smith

AKA:

Race: BLACK Sex: M Age: 27

DOB:

Address:

City, State, Zip:

DL#:

SID#:

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

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

TO: Kidnapping / Kidnapping (0-30) Neg-30-9003

IN THE COURT OF GENERAL SESSIONS 231
COMPUTER

INDICTMENT/CASE#: 2017GS4203111

A/W#: 2017A4210200493

Date of Offense: 2/11/2017

S.C. Code § 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

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

ATTEST:

SCB77517

SC Bar#

Defendant

File, Robin Clark

Attorney for Defendant

SCB07843

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years ☐ 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:not related to criminal sex act☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

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

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

Presiding Judge

Judge Code:

Sentence Date:

COUNTY OF SPARTANBURG
 STATE VS.
Rayshon Lamar Smith
 AKA: _____
 Race: BLACK Sex: M Age: 27

INDICTMENT/CASE#: 2017GS4203108
 A/W#: 2017A4210200490
 Date of Offense: 2/11/2017
 S.C. Code § : 16-03-0010; 16-03-0020
 CDR Code #: 0116

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder (30-Life) None

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

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

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

ATTEST: 12-2-17 SCB77517 Rayshon Lamar Smith SCB07843
HUNTER, JAMES EDWARD SC Bar# File, Robin Clark SC Bar#
 Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 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 SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk C. Poole

Court Reporter: L. Moffitt

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge

Judge Code: 2053

Sentence Date: 8-27-2018