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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable William A. McKinnon, Circuit Court Judge

BRIAN FOSTER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000724

APPENDIX

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1 surveillance video. You'd have to believe that that person
2 is -- also happens to look like Brian Foster and is
3 familiar enough with Eric Morris that Eric Morris would
4 invite him into his back yard, into his house, into his
5 bedroom and hand him a loaded gun and walk out in front of
6 him. You'd have to believe that there's another individual
7 that's not Brian Foster but looks like him and is picked
8 out by him that exists.

9 You'd have to then believe that Jim Moore also
10 mistakenly picked out Brian Foster, even though he doesn't
11 know him. He has no skin to gain. He is the most neutral
12 person. He tries to help Brian Foster and then he helps
13 the state. He is absolutely neutral in this case. He did
14 everything -- that he did was helpful. You'd have to
15 believe that Jim Moore also is mistaken.

16 Further, you'd have to believe either that Jim
17 Moore -- she doesn't have his phone. There's house phones
18 that can look at the prior number.

19 She has -- she's making the implication that Jim Moore
20 literally guessed two 7-digit numbers, number for number,
21 and provided those to Mark Gaddy and he just so happened to
22 get Kalliana Johnson's phone number who's listed as his
23 goddaughter on his next of kin. You'd have to believe that
24 to believe that's not Brian Foster in his back yard.

25 You'd have to believe that there's a random guy

1 walking around with a t-shirt. And that's -- I showed. I
 2 make mistakes, but police make mistakes. Firmly convinced,
 3 not every single piece of evidence in the world but firmly
 4 convinced is what you need.

5 You'd have to believe that Jim Moore either made up
 6 these numbers and guessed them, or I don't know. He
 7 testified that he gave them to Gaddy and that that's
 8 Kalia Johnson's number, that's the number of his next of
 9 kin and that's the two first phone calls he makes from
 10 jail.

11 That is some coincidence, but it doesn't end there.
 12 You'd have to believe that a canine followed the track of
 13 that individual to a bag in the next-door neighbor's yard,
 14 which happens to contain -- and it's hidden up under an
 15 outbuilding, which is odd as Steve Henderson said. You'd
 16 have to then believe that that's all a coincidence that
 17 that bag contains his D.N.A. and that it contains three
 18 weapons that are all mentioned as being present at Old
 19 Canaan.

20 Then you'd have to believe that Brian Foster just cut
 21 his hair because it was a seasonable time to go bald.

22 MS. JONES: Your Honor, that's not responsive to
 23 anything I raised.

24 THE COURT: All right. Be sure you're responsive.

25 MR. SMITH: And then you'd have to believe that he has

1 first-hand knowledge of the incident. Look at the jail
2 calls -- look at the jail calls.

3 Ask yourself could this be a gigantic mistake or is it
4 an overwhelming case that he's guilty of everything that
5 he's been charged with. And I ask you to find that it is
6 an overwhelming case.

7 Ms. Jones -- what I have compared to the state's case,
8 we're going down a train track and we have a freight train
9 of evidence. We have D.N.A.; we have firearms; we have eye
10 witnesses; we have video surveillance; we have jail calls;
11 we have numerous things that point towards him.

12 And she can fire little shots at each individual part
13 and say that Mark Gaddy could have done this different or
14 we could have put in a blood swab. I don't know why we'd
15 put in a blood swab because it's clearly Eric Morris'
16 blood. Use your brain.

17 He shot him in the back of the head. There's a --
18 some sort of impression mark on the back of him. And if
19 you look at the -- the layout of the building and where he
20 intercepts with Koepke, he went through where Eric Morris
21 would be. He more than likely stepped in his blood.

22 There's no -- there's one gunshot. Why else would he
23 be bleeding? What's the point of introducing the blood?
24 It's Eric Morris' blood that's being tracked through the
25 house following the exact path that Mr. Koepke said that he

1 went.

2 Individual parts of the case can be deemed things
3 could have been done slightly different or the lineup could
4 have been a little bit better or things like that or we
5 could have asked a witness a different question.

6 That's -- that is fair, but the standard is beyond --
7 is beyond a reasonable doubt, which leaves you firmly
8 convinced. There is overwhelming evidence that should
9 firmly convince you that he is guilty of all these charges.
10 His own words do so the day he was arrested, and all of his
11 actions the moment after the crime indicate that he's
12 guilty. I ask you to return a guilty verdict on all of the
13 charges, and I thank y'all.

14 THE COURT: We're going to take a quick break before I
15 give you the instruction.

16 So please go to your jury room, but don't discuss the
17 case. I'll bring you back shortly.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: We'll be in recess for 15 minutes.

21 (Whereupon, a recess was taken.)

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

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

25 THE COURT: Mr. Foreman, ladies and gentlemen of the

1 jury, you of course have heard and seen all of the evidence
2 in the case. You've now heard the final summations of the
3 lawyers, and therefore it now becomes my duty and
4 obligation to instruct you on the law that's applicable in
5 the case.

6 You'll then be asked to go back and to begin with your
7 deliberations. Through that process you'll examine all of
8 the evidence, you will determine the facts as they relate
9 to the allegations, you will apply the law that I will have
10 provided you, and you will render fair and impartial
11 decisions as it relates to these charges.

12 It is your exclusive prerogative to determine what the
13 facts are, and you do that through your own common-sense
14 examination and evaluation of all of the testimony and
15 other evidence received during the course of this trial.

16 You 12 jurors alone will decide what weight, value and
17 effect to give to any particular witness' testimony or
18 other evidence in the case. Again, your sole objective is
19 to simply render a fair and impartial decision based upon
20 the evidence received during the trial of the case and the
21 law that's applicable as I will have provided it to you.

22 Now, as you know, in this case the defendant has been
23 charged in five separate indictments with nine separate and
24 distinct criminal offenses. And as I told you at the
25 beginning of the trial after your selection, you are to

1 consider each of the indictments and each of the charges
2 contained therein separately. You'll determine the facts
3 from the evidence as it relates to a particular charge and
4 the allegations making that charge.

5 Once you decide the facts as it relates to that
6 charge, you will apply the law as it relates to the charge,
7 and then you'll determine whether or not the defendant has
8 been proven guilty or not of that particular charge.

9 But in this case, as you know, Mr. Brian Cornelius
10 Foster has been charged in one indictment with the crime of
11 murder and in count two possession of a firearm during the
12 commission of that violent crime, the state alleging on
13 February the 18th of 2018 he did with malice aforethought
14 kill Eric Morris.

15 They also allege in the second count of the indictment
16 that he possessed or displayed a firearm during the
17 commission of a violent crime, that violent crime being the
18 murder that is alleged in count one of the indictment.

19 A separate indictment charges -- well, three separate
20 indictments charge Mr. Foster with having committed the
21 offenses of attempted murder, and the state alleges in
22 separate indictments that Mr. Foster did here in
23 Spartanburg County on or about February the 18th of 2018
24 with malice aforethought, did attempt to kill Thomas
25 Michael Koepke, Darryl Joe Lewis and Joel Campbell by

1 shooting at them, and he did so with the intent to kill
2 them.

3 Each of those indictments also contains a count two,
4 that count two being possession of a firearm during the
5 commission of a violent crime, that violent crime being
6 alleged to be the attempted murder charge which is set
7 forth in count one of each of those indictments.

8 The remaining indictment charges Mr. Foster with
9 unlawful possession of a firearm, again, occurring on
10 February the 18th of 2018. They allege that he did possess
11 a handgun after having been previously convicted of a crime
12 that is classified as a violent crime and is also
13 classified as a felony offense under the law of this state.

14 Now, as to each of those charges and each of the
15 allegations made and the crimes alleged against the
16 defendant he has entered a plea of not guilty, and that
17 plea of not guilty, as you know, has placed upon the state
18 the burden of proving the allegations that they have made
19 by way of each of those indictments, the burden of proving
20 each of the essential elements that make up each of the
21 crimes that have been alleged against this defendant; and
22 therefore the burden is upon the state to establish the
23 defendant's guilt to the satisfaction of you 12 jurors
24 beyond a reasonable doubt before any verdict of guilty
25 could be returned as to any of the separate charges

1 contained in those separate indictments.

2 The burden is never upon a person accused of a crime
3 to prove that they are not guilty or to prove that they are
4 innocent, because in some cases that might not be possible.
5 The burden is always upon the state because they brought
6 the charge against the defendant to prove his guilt to your
7 satisfaction beyond a reasonable doubt.

8 You are instructed that it is a vital, important and
9 cardinal rule of law that every defendant in a criminal
10 trial -- and it doesn't matter how serious the offense
11 might be for which that person stands charged -- that
12 person shall always be presumed innocent of that charge,
13 and that presumption of innocence remains with any
14 defendant, as it does with this defendant, from the time
15 that he is placed under arrest and throughout the course of
16 the criminal process and even throughout the course of the
17 actual trial in the case.

18 And as I told you previously, that presumption of
19 innocence be will be with Mr. Foster even as you go back
20 into your jury room to begin with your deliberations at the
21 conclusion of this instruction, and that presumption of
22 innocence will be with him in the jury room, and it'll be
23 with him forever unless you 12 jurors determine that he's
24 no longer entitled to that presumption of innocence as it
25 relates to a particular charge.

1 In other words, after you have carefully considered
2 all of the evidence received during the course of the
3 trial, and after receiving that evidence you have been able
4 to determine the facts as they relate to the allegations
5 made with respect to a particular charge, if you determine
6 after applying the law that the defendant has been proven
7 guilty of a crime that has been alleged against him, then
8 he would no longer be entitled to the presumption of
9 innocence as it relates to that charge. But it is only if,
10 unless and until you are satisfied of his guilt as to a
11 charge beyond a reasonable doubt that the presumption of
12 innocence would no longer be applicable.

13 Now, the state does have the burden of proving the
14 defendant's guilt to your satisfaction beyond a reasonable
15 doubt. This does not mean, however, that the state has to
16 prove his guilt beyond all doubt or beyond any possible
17 doubt. But it does require the state to prove his guilt to
18 your satisfaction beyond a reasonable doubt.

19 The term reasonable doubt should be given its plain
20 and ordinary meaning. A reasonable doubt is the kind of
21 doubt that would cause a reasonable person to hesitate to
22 act upon the information provided.

23 The defendant is entitled to any reasonable doubt that
24 arises from the evidence or lack of evidence in a case, and
25 if, upon any factual issue essential to a finding of a

1 verdict of guilty you have some reasonable doubt as to how
2 that issue should be resolved, it would be your duty to
3 resolve that reasonable doubt in favor of the defendant.

4 Now, while there are various forms of evidence such as
5 testimony, photographs, documents, charts and other types
6 of physical exhibits, there are really only two types of
7 evidence. Either or both of those types of evidence may be
8 used independently or in combination in order to prove a
9 fact in issue. But the two types of evidence are direct
10 evidence and circumstantial evidence.

11 Direct evidence is the testimony of a person who
12 testifies from actual knowledge of that fact. It is
13 testimony by a person who has perceived the existence of a
14 fact by means of his or her senses, and then they come into
15 court and they testify as to what they have previously
16 perceived.

17 Direct evidence proves the existence of a fact
18 directly, and it does not require any deduction or
19 inference in order to establish that fact.

20 Circumstantial evidence, on the other hand, is the
21 proof of some other fact or set of facts which taken either
22 singly or collectively may prove the existence of a fact in
23 question as a necessary consequence. That is through a
24 deduction or an inference.

25 An inference is simply a deduction of fact that may

1 logically and reasonably be drawn from the proof of some
2 other fact or set of facts. It is a fact not proven by the
3 direct testimony of a witness based upon that witness'
4 personal perception, but it is a conclusion which might
5 reasonably be drawn from the proof of other facts.

6 In other words, you may infer that a particular event
7 occurred or that a particular fact exists based upon the
8 proof of sufficient factual circumstances which would
9 reasonably warrant your arriving at a particular
10 conclusion.

11 The commission of a crime and any particular element
12 necessary to prove a particular crime may be proven by
13 direct evidence or by circumstantial evidence or by a
14 combination of both direct and circumstantial evidence.

15 The law makes no distinction between the weight or the
16 value to be given to direct evidence or to circumstantial
17 evidence. However, to the extent that the state relies
18 upon circumstantial evidence to establish the commission of
19 a crime, all of the circumstances proven must be consistent
20 with each other and when taken together point conclusively
21 to the guilt of the accused beyond a reasonable doubt.

22 If these circumstances merely portray the defendant's
23 behavior as suspicious the proof is insufficient and it
24 fails. The burden rests with the state regardless of
25 whether the state relies upon direct evidence or

1 circumstantial evidence or some other combination of both
2 types of evidence to prove the defendant guilty beyond a
3 reasonable doubt.

4 Proof beyond a reasonable doubt is proof that leaves
5 you firmly convinced of the defendant's guilt. There are
6 very few things in the world that we know with absolute
7 certainty.

8 In a criminal case the law does not require proof that
9 overcomes every possible doubt. If, based upon your
10 consideration of the evidence in this case and in the
11 exercise of good judgment and the application of common
12 sense to the testimony and evidence received, if you are
13 firmly convinced that the defendant is guilty of a crime
14 for which he stands charged, then it would be your duty to
15 find him guilty of that charge.

16 If, on the other hand, you think there is a real
17 possibility that the defendant is not guilty of a crime for
18 which he stands charged, then you must give him the benefit
19 of that doubt and find him not guilty.

20 Now, as I told you, you are the sole judges of the
21 facts in this case. You are therefore necessarily the sole
22 judges of the credibility and the believability of each
23 witness that has testified during the course of this trial.

24 You 12 jurors alone will decide what weight, value and
25 effect to give to any particular witness' testimony or even

1 portions of that testimony. But there are a number of
2 factors which you should consider in arriving at your
3 assessment and determination as to a witness' credibility,
4 and I'm going to list those factors for you.

5 You should consider the demeanor of the witness. That
6 is how the witness appeared to you when the witness
7 testified before you from that witness stand. Was the
8 witness straightforward in responding to questions or was
9 the witness hesitant or evasive in responding to questions
10 that were posed of a witness.

11 Simply put, did the witness appear to you to be
12 telling the truth and to have knowledge of the facts to
13 which that witness has testified.

14 You should also consider whether or not the testimony
15 of a witness is consistent, or is it inconsistent with that
16 witness' own testimony provided here in court or whether it
17 is consistent or inconsistent with other statements made by
18 that same witness, whether those statements be made in
19 court or outside of court. And you should also consider
20 whether or not the testimony of a witness is consistent, or
21 is it inconsistent with other witnesses' testimony or other
22 evidence received during the course of the trial.

23 You should also consider how the witness came to know
24 the facts to which that witness has testified. In other
25 words, what was that particular witness' opportunity and

1 ability to perceive the existence of those facts to which
2 that witness has testified by having previously used his or
3 her senses, and then what is the ability of that witness to
4 be able to come into court and to accurately recollect to
5 you as to what they have previously perceived.

6 You should also consider any bias or prejudice or
7 interest that you find a witness might have with respect to
8 the case.

9 In other words, do you find some reason that a
10 particular witness would come into court and would testify
11 one way or another to help or hurt one side or the other.
12 And you may consider any interest that a witness might have
13 in the outcome of the case if you determine that a witness
14 does have such an interest and you find that that interest
15 would bear upon that particular witness' credibility.

16 And you should also consider whether or not the
17 testimony of a witness is strengthened, or is weakened by
18 other testimony or other evidence received during the
19 course of the trial.

20 You as the finders of the fact and you as the judges
21 of the credibility of each witness are permitted to believe
22 as much or as little of what a witness has testified to as
23 you deem is appropriate in the exercise of your own good
24 judgment and common sense.

25 And so you can believe everything that a witness

1 testified to. You may choose to believe none of it. You
2 may believe one portion of a witness' testimony and reject
3 some other portion of that same witness' testimony.

4 In a given case you could believe one witness as
5 opposed to many, or many as opposed to one. But whatever
6 your good judgment and common sense tells you is the most
7 believable and credible testimony is the testimony you
8 should accept, and you should reject any testimony or
9 evidence that you find not to be credible or believable.

10 Again, your sole objective is to simply render fair
11 and impartial decisions based upon the evidence presented,
12 your determination as to the facts where you can and then
13 your application of the law as I will have provided it to
14 you.

15 The same law that provides that you are the judges of
16 the facts also provides that I am the judge of the law, and
17 that simply means that nobody's going to tell you how to
18 arrive at your determination of fact in this case. You do
19 that, as I've already stated, through the exercise of good
20 judgment and common sense conscientiously applied to the
21 testimony and the evidence received during the course of
22 the trial.

23 You however under your oath as juror must accept the
24 law as I provide it to you as being the law that you are to
25 apply in the case. In other words, you're never to concern

1 yourself with what you thought the law was before you came
2 to serve as a juror this week or what you think the law
3 ought to be.

4 Under your oath as a juror you must simply accept the
5 law as I provide it to you as being the law that you are to
6 apply in the case, and then you take that law and you apply
7 it to the facts as you 12 jurors determine those facts to
8 be based upon your consideration of the evidence in the
9 case.

10 Now, as you know, the defendant is charged with nine
11 separate and distinct criminal offenses. He's charged with
12 the crime of murder; he's charged with three counts of
13 attempted murder; he's charged with four counts of
14 possession of a firearm during the commission of a violent
15 crime; and he's charged with one count of possession of a
16 firearm after having been convicted of a violent-felony
17 offense.

18 I'm going to start with instructing you on the law.
19 I'm going to start with the indictment which is the
20 numerically -- I'm just doing them numerically -- which
21 alleges the crime of murder and possession a firearm during
22 the commission of that violent crime, the one that alleges
23 he killed Eric Morris with malice aforethought and
24 possessed a firearm during it. So I'm going to charge you
25 on the law as it relates to the crime of murder. I'll also

1 charge you as it relates to the law of possession of a
2 firearm during the commission of a violent crime.

3 Now, the law as it relates to possession of a firearm
4 during the commission of a violent crime is going to be the
5 same for -- for four of the indictments. So I'm just going
6 to charge you one time, but it'll apply to each of the
7 charges. There'll be a few little differences, and I'll
8 explain those to you, but the law basically applies to
9 those four separate charges.

10 All right. With respect to the crime of murder,
11 murder is defined in Code Section 16-3-10 of the South
12 Carolina Code of Laws. And the Code of Laws are these blue
13 volumes. They contain a lot of laws. Some of the statutes
14 that are contained in those volumes are criminal-penalty
15 statutes. And that just means the legislature has defined
16 the crime. In other words, they've stated in the statute
17 there's certain things we cannot do. And if we do as
18 citizens, we're subjected to some form of punishment or
19 penalty for having violated that statute.

20 But understand that you are never to be concerned with
21 any punishment or penalty that could result because of some
22 decision that you make. Your sole obligation and your sole
23 function as jurors is to determine whether or not the
24 defendant has been proven guilty of a crime. And you are
25 to make that determination without any consideration being

1 given to any consequence of that decision.

2 But one of the statutes that the defendant is alleged
3 to have violated is Section 16-3-10, and it defines what
4 the crime of murder is.

5 That statute provides that the murder is the killing
6 of any person with malice aforethought, either expressed or
7 implied. So murder is the killing of any person with
8 malice aforethought, either expressed or implied.

9 So in order for you to find the defendant guilty of
10 the crime of murder it would be necessary that the evidence
11 in the case has established to your satisfaction beyond a
12 reasonable doubt that the defendant, Brian Cornelius
13 Foster, did commit some act or acts which proximately
14 caused the death of Eric Morris and that that killing was
15 done with malice aforethought. Malice aforethought is an
16 essential element of the crime of murder.

17 Malice aforethought is also an essential element of
18 the crime of attempted murder. So I'm going to define for
19 you the term malice aforethought. It's applicable to both
20 the crime of murder and to the crime of attempted murder.

21 Malice as an essential element of the crime of murder
22 is a state of mind connoting an ill will and having the
23 intent to do harm. And the term in this context means the
24 state of a person's mind which directs his actions towards
25 a specific object or goal. And with respect to the crime

1 of murder, intent would include those consequences which
2 represent the very purpose for which an act is done, as
3 well as those consequences which are known to be
4 substantially certain to result, whether actually intended
5 or not.

6 Malice is a technical term importing wickedness and
7 excluding just cause or legal excuse. It is something
8 which springs from depravity, from a heart devoid of social
9 duty and fatally bent on mischief. It is a state of mind
10 indicating an extreme disregard for or an extreme
11 indifference to human life.

12 Malice may be likewise defined as a state of mind
13 which indicates a formed purpose and design to do a
14 wrongful act under circumstances that exclude any legal
15 right to do it.

16 The words expressed or implied malice do not mean
17 different kinds of malice but merely the manner in which
18 malice may be shown to have existed. That is to say malice
19 may be proven by direct evidence or by circumstantial
20 evidence from which you might infer the existence of
21 malice.

22 Malice may be expressed as where there's an expressed
23 threat to kill or where there's a lying in wait or where
24 the circumstances show directly that the intent to kill was
25 entertained by the killer.

1 Malice may be inferred, though no expressed intent to
2 kill is proven by direct evidence, where the facts and the
3 circumstances which have been proven by the evidence in the
4 case satisfy you beyond a reasonable doubt that malice was
5 present in the mind of the killer at the time that any
6 killing took place.

7 The existence of malice may be inferred from any acts,
8 declarations, as well as conduct of the killer, as well as
9 from any other circumstances shown to have existed at the
10 time of the event from which you might reasonably infer the
11 existence malice as often the state of a person's mind can
12 only be proven by circumstantial evidence.

13 Malice as an essential element of the crime of murder
14 does not necessarily require proof of an ill will or
15 a hatred toward the particular individual who was killed,
16 nor does it necessarily require proof of an actual or a
17 specific intent to take human life, even though there may
18 be evidence tending to prove that fact introduced during
19 the trial. But malice necessary to establish the crime of
20 murder refers to a state of mind accompanying conduct
21 signifying a general malignant recklessness and an extreme
22 disregard for or an extreme indifference to human life.

23 So even if the facts proven are sufficient to raise an
24 inference of malice, such an inference is simply an
25 evidentiary fact to be taken into consideration by you 12

1 jurors along with all of the other evidence received during
2 the course of the trial, and you may give weight to those
3 inferences, if any, that you determine they should receive,
4 if any.

5 The state is required to prove malice, just as it must
6 prove any other essential element of the crime charged, and
7 it is for you 12 jurors to determine whether or not the
8 evidence in the case establishes malice beyond a reasonable
9 doubt.

10 It's also essential that there exist not only malice
11 but there exist malice aforethought. The law does not
12 require that malice must exist for any appreciable length
13 of time before the commission of an act proximately causing
14 a fatal result. In fact, it may be conceived at the very
15 moment that the fatal act is committed.

16 It is sufficient in the law so long as the state does
17 prove beyond a reasonable doubt both the existence of
18 malice and the commission of an act or acts by the
19 defendant which proximately caused the fatal result.

20 You must determine whether or not malice aforethought
21 exists based upon your consideration of all of the evidence
22 received during the course of the trial and any reasonable
23 inferences that might be derived from that evidence.

24 While the state must prove beyond a reasonable doubt
25 that a killing occurred and that it was accompanied by

1 malice aforethought in order to establish the crime of
2 murder, it is not necessary that the state prove any motive
3 for the killing, although there may be some evidence
4 relating to that fact introduced during the course of the
5 trial.

6 Count two of that indictment also sets forth the crime
7 of possession of a firearm during the commission of a
8 violent crime.

9 Section 16-23-490 of the Code of Laws provides that it
10 shall be an additional criminal offense if a person is in
11 possession of a firearm or visibly displays what appears to
12 be a firearm during the commission of a violent crime and
13 is convicted of committing or attempting to commit a
14 violent crime as defined in Section 16-1-60 of the Code of
15 Laws. And that particular code section defines a violent
16 crime to include the crimes of murder, attempted murder and
17 assault and battery of a high and aggravated nature. I'm
18 going to be instructing you on that also.

19 So in order for the defendant to be found guilty of a
20 violation of this particular statute as it relates to the
21 indictment charging him with the crime of murder it must be
22 proven beyond a reasonable doubt that the defendant did
23 commit the crime of murder and that at the time he
24 committed that crime he possessed a firearm or visibly
25 displayed what appeared to be a firearm.

1 I'm now going to instruct you on the law as it relates
2 to the crime of attempted murder, and the instruction on
3 attempted murder would be applicable to three indictments,
4 those alleging the victims to be Mr. Koepke, Mr. Lewis and
5 Mr. Campbell.

6 Section 16-3-29 of the Code of Laws provides that a
7 person who, with intent to kill, attempts to kill another
8 person with malice aforethought, either expressed or
9 implied, commits the offense of attempted murder. Again, a
10 person who, with intent to kill, attempts to kill another
11 person with malice aforethought, either expressed or
12 implied, commits the offense of attempted murder.

13 So in order for you to find that the defendant is
14 guilty of the crime of attempted murder it would be
15 necessary that the evidence in this case has established to
16 your satisfaction beyond a reasonable doubt that Brian
17 Cornelius Foster, the defendant, did with malice
18 aforethought and a specific intent to kill commit some
19 overt act or acts in an attempt to kill the individual
20 named in the separate indictments, those being Mr. Koepke,
21 Mr. Lewis and Mr. Campbell. So, as I say, you're going to
22 consider each of those separately.

23 The term malice aforethought in relation to the crime
24 of attempted murder is the same as I've instructed you as
25 it relates to the crime of murder, and you are to consider

1 each indictment separately with regards to the evidence
2 relating to the allegations made in those particular
3 indictments in making your factual determination. But the
4 law defining the crime of attempted murder is the same as
5 it relates to each of those indictments that does allege
6 the crime of attempted murder.

7 So with regard to the crime of attempted murder, an
8 attempt is the commission of an overt act or acts done in
9 furtherance of the intent to do a specific thing which
10 tends towards the accomplishment of the intended goal which
11 falls short of completion.

12 An attempt to commit a crime means the making of an
13 effort towards the completion of the crime, or it's the
14 doing of an act or acts which directly move towards the
15 completion of the commission of that crime which is
16 intended. In this case it is alleged to be the crime of
17 murder.

18 Again, malice aforethought is an essential element of
19 the crime of attempted murder. It's a technical term
20 importing wickedness, excluding just cause or legal excuse.

21 It's a state of mind indicating an extreme disregard
22 for or an extreme indifference to human life. And it may
23 also be described as a state of mind which indicates a
24 formed purpose and design to do a wrongful act under
25 circumstances that exclude any legal right to do it.

1 As in the case of murder, the law does not require
2 that malice exist for an appreciable length of time before
3 the commission of an act or acts constituting the offense
4 of attempted murder. Indeed, it may be conceived at the
5 very moment that any wrongful act is committed. It is
6 sufficient so long as the state does prove beyond a
7 reasonable doubt malice accompanying those acts
8 constituting the attempt to commit the crime of murder.

9 Now, unlike the crime of murder, which does not
10 require a specific intent to kill -- now, this may be
11 confusing, but just accept it. That is the law. Unlike
12 the crime of murder, which does not require a specific
13 intent to kill, in order to prove the crime of attempted
14 murder a specific intent to kill must be proven. A
15 specific intent to kill means that the defendant
16 consciously intended the commission of the acts that
17 constitute the attempt to commit the crime of murder.

18 Specific intent refers to the state of a person's mind
19 which directs his actions towards a specific object or goal
20 or result. In this case that would be to kill someone.

21 The element of specific intent to kill may be inferred
22 from acts, declarations and conduct of the defendant, as
23 well as from any other circumstances established by the
24 evidence in this case from which you might reasonably infer
25 such intent, as often, as I say, a person's intent or state

1 of mind may only be established by circumstantial evidence.

2 Therefore in order to establish the crime of attempted
3 murder it is necessary that the evidence in this case
4 establishes that the defendant did with malice aforethought
5 and a specific intent to kill commit some act or acts in
6 the attempt to kill Thomas Michael Koepke, Darryl Joe Lewis
7 and Joel Campbell without justification or legal excuse.

8 I'm now going to instruct you on the law as it relates
9 to the offense of assault and battery of a high and
10 aggravated nature, and also after that the crimes of
11 assault and battery in the first degree.

12 The reason is because in your deliberations you're
13 going to be permitted to consider with respect to the
14 indictment charging Mr. Foster with attempted murder in
15 regard to Thomas Michael Koepke, you're also going to be
16 able to consider or be permitted to consider the lesser
17 included offense of assault and battery of a high and
18 aggravated nature.

19 After that I'm going to charge you on the law of
20 assault and battery in the first degree, and you will be
21 permitted to consider that lesser included offense as it
22 relates to the indictments charging the defendant with the
23 crime of attempted murder as it relates to Darryl Joe Lewis
24 and Joel Campbell.

25 So with regard to the crime of assault and battery, an

1 assault is the unlawful attempt to do violence or injury to
2 the person of another where there is the present ability to
3 complete the attempt by way of a battery. And a battery is
4 the unlawful and intentional touching or striking of the
5 person of another. It is the completion of an act doing
6 some violence or injury to the person of another.

7 A battery may be further defined as the carrying into
8 effect an assault by using or applying force to the person
9 of another, no matter how slight, in a rude, angry or
10 resentful manner and without a legal justification.

11 While an assault and battery does not require by
12 definition a specific intent to cause harm, it does require
13 that at least a general criminal intent be shown. Criminal
14 intent is a state of mind that operates jointly with an act
15 in the commission of acts which constitute a crime. A
16 criminal intent is a mental state of conscious wrongdoing
17 in contrast to the commission of an act which is the result
18 of accident or mistake or inadvertence.

19 Criminal intent may be proven by acts, declarations
20 and conduct of the defendant, as well as any other
21 circumstances established by the evidence in the case from
22 which you may naturally and reasonably infer such intent,
23 as I say, because often a person's state of mind can only
24 be proven by circumstances relating to the commission of an
25 act.

1 So, as I say, you will be permitted to consider the
2 lesser offense of assault and battery of a high and
3 aggravated nature in considering a decision on the
4 indictment alleging attempted murder with regard to Thomas
5 Michael Koepke.

6 Assault and battery of a high and aggravated nature is
7 also a statutory offense. I'm going to read the definition
8 to you.

9 Section 16-3-600(B) defines assault and battery of a
10 high and aggravated nature, and it provides that a person
11 is guilty of the crime of assault and battery of a high and
12 aggravated nature if a person unlawfully injures another
13 person and great bodily injury to another person results or
14 the injurious act is accomplished by means likely to
15 produce death or great bodily injury. And the statute
16 defines great bodily injury as injury which causes a
17 substantial risk of death or which causes serious permanent
18 disfigurement or a protracted loss or impairment of the
19 function of a bodily member or organ.

20 Now, with regard to the two indictments alleging
21 attempted murder, which allege Mr. Lewis and Mr. Campbell
22 as the victims, you will be permitted to consider the
23 lesser offense of assault and battery in the first degree.
24 That's a separate offense, assault and battery in the first
25 degree in considering a decision on those indictments

1 involving or alleging the attempted murder of Mr. Lewis and
2 Mr. Campbell.

3 Assault and battery in the first degree is also a
4 statutory offense. It's set forth in 16-3-600, Subsection
5 (1), and that statute provides a person commits the offense
6 of assault and battery in the first degree if the person
7 offers or attempts to injure another person with the
8 present ability to do so and the act is accomplished by
9 means likely to produce death or great bodily injury or it
10 occurs during the commission of a robbery, burglary,
11 kidnapping or theft.

12 The remaining indictment alleges that Mr. Foster
13 committed the crime of possessing a firearm after having
14 been convicted of a crime classified as violent and
15 classified as a felony.

16 Section 16-23-500, Subsection (A), of the Code of Laws
17 provides that it is unlawful for a person who has been
18 convicted of a violent crime as defined in 16-1-60 and that
19 is classified as a felony to possess a firearm or
20 ammunition in this state.

21 So before the defendant could be found guilty of a
22 violation of this particular section of law it would be
23 necessary that the evidence in the case establishes two
24 essential elements beyond a reasonable doubt.

25 Number one, it has to establish that the defendant did

1 possess a firearm or ammunition. In other words, he had a
2 firearm or ammunition in his actual or constructive
3 possession. Actual possession meaning being in his actual
4 physical custody, and constructive possession means being
5 in a location over which the defendant had the intent and
6 right to exercise dominion and control over the object.

7 And, secondly, the evidence must prove that the
8 defendant has previously been convicted of a crime which
9 was classified as a violent crime and classified as a
10 felony offense under the law of this state.

11 You are further instructed that not only must the
12 state prove beyond a reasonable doubt each of the essential
13 elements of a crime charged in a particular indictment
14 before a defendant may be found guilty of that particular
15 crime, but the state must also prove beyond a reasonable
16 doubt that it was this defendant who committed that crime
17 that is alleged and not someone else.

18 In this case the state must not only prove that the
19 crimes alleged in each of the indictments were committed by
20 someone, but the state must also prove beyond a reasonable
21 doubt that it was this defendant who committed that crime.

22 If, after a careful consideration of the evidence
23 received during the trial of the case, including any
24 evidence relating to the issue of the identification of
25 this defendant as the perpetrator of any crime proven to

1 have been committed by someone, should you have a
2 reasonable doubt as to the accuracy of the identification
3 of the defendant as the perpetrator of that crime, it would
4 be your duty to resolve that reasonable doubt in favor of
5 the defendant and return a verdict of not guilty.

6 If, on the other hand, you have no reasonable doubt as
7 to the accuracy of the identification of the defendant as
8 the perpetrator of a crime alleged in the indictment, then
9 it would be your corresponding duty to find the defendant
10 guilty of any crime that the evidence proves he has
11 committed beyond a reasonable doubt.

12 As I told you at the beginning of the trial in my
13 opening remarks and instruction, and I do emphasize to you
14 now, that the fact that a defendant in a criminal trial
15 does not take the witness stand and testify during the
16 trial of the case is not a fact which may be considered by
17 you in any way during your deliberations or in your
18 determination as to whether or not his guilt has been
19 proven beyond a reasonable doubt.

20 You may not permit such a fact to weigh in the
21 slightest degree against a defendant. As I've stated, the
22 burden is on the state to prove the defendant guilty of any
23 crime they claim he committed. The burden is not upon a
24 defendant to prove that he is not guilty or to prove that
25 he is innocent because in some cases that might not be

1 possible. And therefore you are not to draw any inference
2 nor reach any conclusion from the fact that the defendant
3 does not testify or call a witness during the trial of the
4 case, nor may that fact even be discussed by you jurors
5 while you are engaged in your deliberations in this matter.

6 Now, ladies and gentlemen of the jury, I am not in any
7 way concerned with what your decisions are, but you are
8 instructed that any decision that you reach must be
9 unanimous. All 12 of you must be in agreement.

10 Mr. Foreman, as you know, when you go back -- you and
11 your fellow jurors go back to deliberate -- you're going to
12 be called upon to preside over that process simply to
13 ensure that those deliberations are carried out in some
14 orderly fashion. But all jurors are expected to
15 participate, because, as I say, the verdicts have to be
16 unanimous and it has to be a consensus of all 12.

17 Mr. Foreman, in addition to the evidence that has been
18 introduced during the trial, you will also have the
19 indictments which will serve as the verdict forms.

20 And I know I've given you a lot of information about
21 the law that you are to apply. I'm also going to send back
22 a document which will reflect the various potential verdict
23 forms that the jury may find, and hopefully that will
24 assist you as you go through each of the charges and each
25 of the separate indictments. But, anyway, that document --

1 I'm getting ready to go through it. That document's going
2 to be in the jury room with you to help you, help guide you
3 through your deliberations as it relates to each of the
4 separate charges that you are to consider.

5 with respect to the indictment charging the crime of
6 murder and possession of a firearm during the commission of
7 a violent crime with -- count one is murder, count two is
8 possession of a firearm during the commission of a violent
9 crime, that being the murder.

10 with respect to count one, you have two potential
11 verdict forms. Those two potential verdict forms are
12 guilty and not guilty. So whatever it is, you'll indicate
13 it on the indictment.

14 Count two, possession of a firearm during the
15 commission of a violent crime, again, you have two
16 potential verdict forms. Those two potential verdict forms
17 are guilty and not guilty.

18 But understand, as I've explained to you in my
19 instruction, in order for the defendant to be found guilty
20 of possession of a firearm during the commission of a
21 violent crime, it would be necessary that he had been found
22 guilty of the crime of murder in count one of the
23 indictment.

24 So he cannot -- he cannot be found guilty of count two
25 unless he has been found guilty of count one, because count

1 two requires proof of the commission of a violent crime.

2 In this case the violent crime is alleged to be murder.

3 Now, with respect to the three indictments charging
4 the defendant with the crimes of attempted murder, you're
5 going to have also -- as I indicated to you earlier, you're
6 going to have some choices and some -- you'll be permitted
7 to consider a lesser included offense as it relates to
8 those three indictments.

9 But, now, they're different. The indictment alleging
10 an attempted murder against Mr. Koepke, the lesser offense
11 that you'll be permitted to consider is assault and battery
12 of a high and aggravated nature.

13 The indictments alleging attempted murder as it
14 relates to Mr. Lewis and Mr. Campbell, the lesser included
15 offense would be -- that you'll be permitted to consider
16 would be assault and battery in the first degree.

17 So they're different in that respect. Mr. Koepke's is
18 different than is Mr. Lewis's and Mr. Campbell's. That's
19 all -- that's all on this guidance form.

20 So with regard to Mr. Koepke's -- the indictment
21 alleging attempted murder against Mr. Koepke, the three
22 potential verdict forms, count one is attempted murder.
23 The three potential verdict forms would be guilty, or
24 guilty of assault and battery of a high and aggravated
25 nature, or not guilty.

1 Count two of the indictment alleges possession of a
2 firearm during the commission of a violent crime. In this
3 particular case both the crimes of attempted murder and
4 assault and battery of a high and aggravated nature are
5 classified as violent crimes.

6 And so if you find -- if you were to find Mr. Foster
7 guilty of either attempted murder or assault and battery of
8 a high and aggravated nature, then you would be able to
9 consider count two, whether or not he possessed a firearm
10 during the commission of either of those violent crimes.
11 But, again, he could not be found guilty of possession of a
12 firearm as alleged in count two unless you had found him
13 guilty of either attempted murder or assault and battery of
14 a high and aggravated nature.

15 Now, with respect to the two indictments charging
16 attempted murder relating to Mr. Lewis and Mr. Campbell,
17 again, you're going to have three potential verdict forms,
18 and those three potential verdict forms are guilty, which
19 means guilty of the crime charged in the indictment, or you
20 can consider the lesser included offense of guilty of
21 assault and battery in the first degree, or not guilty.
22 And then count two, possession of a firearm during the
23 commission of a violent crime is guilty or not guilty.

24 Now, with respect to those particular indictments
25 where you are permitted to consider the lesser offense of

1 assault and battery in the first degree, if you find the
2 defendant guilty on that indictment of the crime of
3 attempted murder, then you could consider the count two of
4 the indictment, possession of a firearm during the
5 commission of that violent crime, because, as I've stated,
6 attempted murder is classified as a violent crime.

7 If you were to find the defendant guilty of the lesser
8 offense of assault and battery in the first degree, then
9 you would have to find him not guilty of count two of that
10 indictment, because assault and battery in the first degree
11 is not classified as a violent offense under the law of
12 this state. And that's also on the guidance form.

13 And then the remaining indictment is possession of a
14 firearm during the commission of a violent -- excuse me.
15 The remaining indictment is possession of a firearm by a
16 person previously convicted of a crime classified as
17 violent and a felony, and those potential verdict forms are
18 guilty and not guilty.

19 As I say, I'm not concerned with what those decisions
20 are, but they have to be unanimous.

21 And, Mr. Foreman, I'll ask you in reflecting the
22 decisions of the jury to -- you can use this form as
23 guidance, and there's a place to check your decisions, and
24 you can do that.

25 If for some reason you mess this up, tell the bailiff

1 you need another copy. I'll send you another one. The
2 reason I say that is because you can do what you want to
3 with this. I want you to complete it. But if you mess it
4 up, I can give you a new form.

5 Okay. But you're going to have the indictments back
6 there, and I don't have any more indictments. These are
7 the indictments. These are the only ones.

8 But what I want you to do is after you've decided
9 everything -- you and your fellow jurors -- whatever your
10 decision is, you will have reflected it on the form. But I
11 need you to write that decision on the back of the
12 respective indictments, so whatever it is.

13 You'll see on each indictment in the lower left-hand
14 corner there's a word verdict. And it's beneath that word
15 that you'll indicate the jury's unanimous decision as it
16 relates to that particular indictment.

17 I will handwrite on there count one and count two
18 on -- on four of the indictments because they each have two
19 counts.

20 You'll sign your name as the foreperson. You're the
21 only juror that needs to sign the verdict form. And place
22 the appropriate date. Today is the 11th of April.

23 Once you have reached a decision knock on the door.
24 Tell the bailiff you've reached your decisions, and then
25 we'll bring you back to receive your verdicts.

1 while -- after you receive -- after you've made your
2 decisions and you've reflected those on the verdict forms
3 and you've told the bailiff such, you can give him the
4 evidence in the case, but you, Mr. Foreman, will hold onto
5 these verdict forms. You'll hold onto these, and I'll
6 receive those from you after you and your fellow jurors
7 come back to provide us with your decision.

8 Now, during deliberations there may come a time where
9 you have some question about the facts of the matter or the
10 evidence in the case. I am not ever permitted to discuss
11 with you any issues of fact or comment upon the facts of
12 the matter or the evidence in the case.

13 You simply have to decide the facts relating to the
14 allegations based upon your consideration of the evidence
15 presented, and I can't give you any guidance about that,
16 nor can I comment upon it.

17 Also, you might -- sometimes it occurs that the jurors
18 think, well, if we had such and such, you know, that'd help
19 us to make a decision, but understand that all of the
20 evidence that's going to be introduced in this case has
21 been introduced.

22 The case is closed now, so no additional evidence can
23 be received. So don't ask me about having something else,
24 because even if it existed I couldn't give it to you. No
25 additional evidence may be received now that you're going

1 back to begin deliberations.

2 Myself, the court reporter and the lawyers will verify
3 all of the exhibits that have been introduced during the
4 trial. So every one of them should be there. I think
5 there are 80 of them. But, anyway, we've got a list. But
6 they should be there.

7 But if for some reason you think something was
8 presented and shown to you during the trial that is not in
9 there somewhere, you let me know of that fact. We'll try
10 to locate it, but everything should be there because we're
11 going to verify them, verify the existence before they go
12 back.

13 The only thing that you will not have that you were
14 presented with, exposed to during the trial, was a -- a
15 phone call that was recorded by the detention facility that
16 was alleged to have been made by Mr. Foster. That
17 recording is not going to be sent back because it has a lot
18 of things on it that don't have anything to do with this
19 case, and so it's not relevant.

20 What has been introduced in the trial as being
21 relevant to the case has been reduced to a transcript of
22 that call, and so that transcript will be in the jury room
23 with you.

24 Now, I do not have any transcripts of any other
25 witness' testimony. So you're not going to get transcripts

1 of the witnesses' testimony. But if during the trial you
2 have a question about a witness' testimony and you think
3 that testimony, I mean, that question can be resolved by
4 having a witness' testimony reheard, we can bring you back
5 to the courtroom, and the court reporter will be happy to
6 replay the testimony in whole or in part, whatever you
7 need. You just let us know what witness you need to hear
8 from, and we'll bring you back, and Ms. Moffitt will find
9 that testimony and she'll replay it for you.

10 If you ever a question about the law that's
11 applicable, I am permitted to answer those questions. And
12 so if you need a complete re-instruction, I'll provide that
13 for you. If you need an explanation as to some point, I'll
14 be happy to provide that explanation. If you need a
15 clarification as to some point of law that I've provided,
16 I'm happy to provide that clarification.

17 So should you have a need for a re-instruction, an
18 explanation or a clarification of any point of law that you
19 are to apply, I'm happy to provide that re-instruction,
20 explanation or clarification.

21 So, Mr. Foreman, if at any time during deliberations
22 you have some matter that needs to be addressed to me,
23 please write it on a piece of paper, give it to the
24 bailiff. He or she will give it to me, and I'll be able to
25 respond to your question or any issue that arises during

1 deliberations.

2 Smokers. I don't have if we have any smokers. If you
3 want to smoke, you can, but you can't do it inside. You
4 have to go outside. So if you need to smoke, let the
5 bailiffs know. He or she will take you outside. But
6 please understand that deliberations can only be engaged in
7 when all 12 jurors are present so that all may participate.

8 So if at any time any juror is absent for an
9 authorized purpose, the deliberations have to stop. They
10 may only resume when all 12 jurors are present so all have
11 an opportunity to participate.

12 And I'm guessing that all of you do eat lunch during
13 most days, and today we've ordered your lunch, and it
14 probably will be here shortly if it's not here already.

15 So once it does arrive we'll give it to you, and you
16 can stop and eat, or you can eat while you deliberate. I'm
17 going to leave that up to you. I'm not going to give you
18 any guidance about that.

19 I think that covers everything, but if it does not and
20 there's something else that needs to be provided, I'm sure
21 one of these able lawyers will provide me with that
22 information and ask me to give you some additional
23 information. And if I think you need it or I should give
24 it, I'll bring you back to do so. And if I do not need to
25 provide you with any additional information, I'll simply

1 send word by way of the bailiff that you may begin your
2 deliberations. And in that event he'll bring to the jury
3 room all of the exhibits which have been introduced.

4 And to you, Mr. Foreman, he'll also bring the
5 indictments which will serve as the verdict form, and
6 they'll also bring the document that I've prepared to give
7 you some guidance as to potential verdict forms.

8 Now, I've got two alternates. And of course, as you
9 know, y'all can't participate in deliberations, but I'm
10 going to ask you to go with the rest of the jurors right
11 now until I find out about if the lawyers need me to give
12 you any other information.

13 We're going to verify all of the exhibits and get
14 everything ready to send back. When that time comes if
15 everything's in order, then I'll just ask the bailiff to
16 bring the two alternates back into the courtroom. The two
17 alternates -- I'll talk to you about what you'll be doing
18 while the jury is deliberating.

19 So right now I'll ask the jury panel to please go to
20 your jury room, but do not begin any discussions of the
21 case until I send you word to do so.

22 (Whereupon, the jury retired to deliberate at
23 12:50 p.m.)

24 THE COURT: Are there any exceptions taken to the
25 instruction or requests for additions to the instruction by

1 the state?

2 MR. SMITH: Your Honor, I had a few small concerns
3 that I didn't know if you had an instruction about
4 stipulations that were entered into. We didn't discuss
5 that in the jury charge. I don't know. But that was one
6 thing.

7 And on the possession of a weapon by a violent felon,
8 I didn't know if Your Honor wanted to instruct them that
9 that fact, like a similar instruction from a burglary
10 first, the fact that he has been previously convicted of a
11 violent felony that shouldn't be used to say that he
12 committed this crime.

13 The other concerns I had with the -- that indictment
14 has the listed charge in it. I didn't know if we were
15 going to redact that out or if you wanted me to present --

16 THE COURT: You're talking about the handgun
17 indictment?

18 MR. SMITH: The violent --

19 THE COURT: No, yeah. I've got that. That's got to
20 be fixed.

21 MR. SMITH: All right. That one concern. And we need
22 to do something with the bullets that are in the SAR
23 weapon.

24 THE COURT: We'll do that.

25 MR. SMITH: That's all I have, Your Honor.

1 THE COURT: Okay. Ms. Jones, have you got any?

2 MS. JONES: No, sir, other than what he stated about
3 the prior conviction.

4 Is there an actual charge about a stipulation or...

5 THE COURT: I don't intend to address that. I mean,
6 y'all are supposed to address that in argument.

7 MS. JONES: Yeah. I didn't think --

8 THE COURT: That's a factual thing.

9 MS. JONES: -- we needed that. Yeah.

10 THE COURT: I don't comment on the facts. So that's a
11 stipulation. It's introduced. It's a fact that's stated,
12 but I am going to instruct them on the fact that the fact
13 that it has been stipulated to is not something they can
14 consider for any other purpose other than as an element of
15 the offense on that particular indictment.

16 MS. JONES: Right. Thank you.

17 THE COURT: Okay. What were y'all thinking?

18 MR. SMITH: Just for the cleaning up that
19 indictment --

20 MS. JONES: That indictment.

21 MR. SMITH: -- and the bullets. That's all.

22 THE COURT: I'm talking about for the jury.

23 MR. SMITH: That was all.

24 MS. JONES: Yeah. That was it.

25 THE COURT: Okay. Bring them back. What?

1 MR. SMITH: Your Honor, Ms. Clark has mentioned expert
2 witnesses I didn't -- I know we didn't cover that but...

3 THE COURT: They were not -- that's not -- that's not
4 contested here.

5 Bring them back.

6 (Whereupon, the jury returned to the courtroom at
7 1:55 p.m.)

8 THE COURT: Ladies and gentlemen, I did neglect to
9 provide you with one additional instruction that I was made
10 aware of by the lawyers, and that relates to during the
11 trial you've heard that there was a stipulation of fact as
12 to the defendant having been previously convicted of a
13 crime that was classified as violent and it was classified
14 a felony.

15 That evidence ordinarily wouldn't be admitted because
16 it's not relevant to anything that you have to decide, but
17 in this particular case, as you know from my instruction on
18 the law, that is an element of the crime of possession of a
19 firearm by a person convicted of a violent crime and a
20 crime classified as a felony. So that evidence -- evidence
21 of that fact has to be introduced because that's an element
22 of the offense.

23 So while you may consider that evidence as it relates
24 to the indictment charging the defendant with possession of
25 a firearm during the -- possession of a firearm by a person

1 who's been found guilty or previously convicted of a crime
2 classified as a felony and a violent crime, you may not
3 consider that evidence or that information as it relates to
4 anything else you are to determine.

5 It is not being introduced as evidence of character.
6 It's simply being offered and introduced as an element of
7 the offense on one indictment. So while you may consider
8 it in your determination as to the verdict on that
9 indictment, you may not consider that fact for any other
10 purpose.

11 It's certainly not being introduced as evidence that
12 he must be guilty of the other offenses for which he stands
13 charged. It's only relevant to the indictment charging him
14 with possession of a firearm by a person who's previously
15 been convicted of a violent felony.

16 All right. That's it. So let me ask the 12 jurors to
17 go back.

18 Oh, one other thing. There's going -- there was a
19 video played and it's -- might be some issues with it. I'm
20 not sure. But we're going to give you a clean laptop, and
21 of course that disc is in evidence. And so it'll be sent
22 back, and you can work with it. We've got 12 of you.
23 Hopefully between you 12 you can figure it out. Otherwise,
24 I'll get one of my grandchildren down here. They'll do it.
25 But, anyway, if you can't figure it out, I certainly can't,

1 but if for some reason you can't get it to work and you
2 need to see it, let the bailiff know. We'll arrange that
3 for you.

4 Okay. So I'll ask the 12 jurors primary jurors to
5 please retire to your jury room, but await my instruction
6 and reception of the evidence and verdict forms before you
7 begin.

8 (Whereupon, the jury retired to deliberate at
9 1:00 p.m.)

10 THE COURT: All right. Now we've got my two alternate
11 jurors. And as y'all know, the 12 original are able to
12 function in deliberations. So that's going to conclude
13 your service so far as deliberations are concerned.
14 However, you never know what's going to happen during
15 deliberations. Something might happen to a juror and
16 they'd be unable to continue.

17 If that were to happen then one or both of you would
18 be called upon to participate as the twelfth juror. So
19 your lunch was also ordered. You will be taken to a
20 separate location. You will not be in the jury room with
21 the other jurors.

22 Also, one additional instruction is you can't talk
23 about the case. You still can't discuss it. However, if I
24 need to bring the jury back for any reason whatsoever,
25 you'll come back too so that you'll have all of the

1 information they have in the event you're called upon to
2 assist.

3 So you will be taken to a separate location. You'll
4 be sequestered just like the jury, but you won't be able to
5 discuss the case. But you will be given your lunch.

6 Okay. And we'll let you know when the jury decides it
7 or when they need to come back for any reason. Okay. So
8 thank you for your participation.

9 (Whereupon, the alternate jurors were excused from the
10 courtroom.)

11 MS. JONES: Your Honor, in examining all of the
12 exhibits in preparation to submit them to the jury it was
13 discovered that there were two Exhibit 47s and two 48s.
14 They were all four photos.

15 So two of them have now been moved to 79 and 80. They
16 are photographs, as I recollect, of the two firearms in the
17 general area of the outbuilding on Bayberry. Is that
18 correct?

19 MR. SMITH: The two black -- the two black firearms.

20 MS. JONES: Right. Just so that it's clear. Thank
21 you, Your Honor.

22 (Photographs marked State's Exhibits Nos. 79 and 80.)

23 THE COURT: All right. Are there any other matters to
24 address prior to the jury being instructed to begin
25 deliberations?

1 MR. SMITH: No, Your Honor.

2 MS. JONES: No, sir, Your Honor.

3 THE COURT: Okay. Tell the jury to begin
4 deliberations and notify us when they've concluded. And
5 we'll be at ease while the jury is deliberating.

6 Let me ask y'all one other thing. Y'all have -- each
7 counsel has verified the existence of all of the exhibits
8 and they're in proper order?

9 MR. SMITH: Yes, Your Honor.

10 MS. JONES: Yes, sir.

11 THE COURT: Okay.

12 (Whereupon, a recess was taken.)

13 THE COURT: I'm told the jury has reached a decision.
14 Are we ready to receive it?

15 MR. SMITH: The state's ready, Your Honor.

16 MS. JONES: Yes, sir, Your Honor.

17 THE COURT: Okay. Bring them in.

18 (Whereupon, the jury returned to the courtroom at
19 3:23 p.m. to report its verdict.)

20 THE COURT: Mr. Foreman, have you and your fellow
21 jurors reached unanimous decisions as they relate to each
22 of the separate indictments and the charges contained in
23 each?

24 THE FOREMAN: We have, Your Honor.

25 THE COURT: Have you reflected those decisions on the

1 back of the indictments as requested?

2 THE FOREMAN: I have, Your Honor.

3 THE COURT: And did you sign your name as the
4 foreperson?

5 THE FOREMAN: I have, Your Honor.

6 THE COURT: All right. If you will, hand those up,
7 please, by way of the bailiff.

8 You may publish the verdicts.

9 THE CLERK: State of South Carolina, County of
10 Spartanburg, County of -- Court of General Sessions, State
11 vs. Brian Cornelius Foster, for indictment murder and
12 possession of a firearm during violent crime, murder, the
13 jury, which is 2018-GS-42-2086, the jury finds the
14 defendant guilty, and then possession of a firearm during
15 the commission of a violent crime, 2018-GS-42-2086A, the
16 jury finds the defendant guilty.

17 2018-GS-42-2087, attempted murder and possession --
18 for attempted murder the jury finds the defendant guilty.

19 And 2018-GS-42-2087A, possession of a weapon during a
20 violent crime, count two, guilty.

21 2018-GS-42-2088, attempted murder, not guilty, and
22 possession of a weapon during a violent crime, not guilty.

23 2018-GS-42-2089, attempted murder, not guilty, and
24 possession of a weapon during a violent crime, not guilty.

25 2018-GS-42-2090, possession of firearm or ammunition

1 by person convicted of a violent crime, guilty.

2 Ladies and gentlemen of the jury, is this your verdict
3 and still your verdict? If so, please raise your right
4 hand.

5 (Whereupon, all jurors responded in the affirmative.)

6 THE CLERK: So say you all.

7 THE COURT: Does the defendant wish to have the jury
8 polled?

9 MS. JONES: Yes, sir, please.

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

11 THE CLERK: Ladies and gentlemen of the jury, I'll be
12 asking you a question, and that question is is this your
13 verdict and still your verdict. Once I call your jury
14 number, if you'll just answer yes or no.

15 Juror No. 158, is this your verdict and still your
16 verdict?

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 4, is this your verdict and
19 still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 89, is this your verdict and
22 still your verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: Juror No. 181, is this your verdict and
25 still your verdict?

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 138, is this your verdict and
3 still your verdict?

4 THE JUROR: Yes, it is.

5 THE COURT: Juror No. 52, is this your verdict and
6 still your verdict?

7 THE JUROR: Yes.

8 THE CLERK: Juror No. 113, is this your verdict and
9 still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 11, is this your verdict and
12 still your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Juror No. 163, is this your verdict and
15 still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 123, is this your verdict and
18 still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Juror No. 155, is this your verdict and
21 still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 132, is this your verdict and
24 still your verdict?

25 THE JUROR: Yes.

1 THE CLERK: So say you all. The jury has been polled.

2 THE COURT: Are there any other matters to be
3 addressed before the jury is excused?

4 MR. SMITH: No, Your Honor.

5 MS. JONES: No, Your Honor.

6 (Whereupon, the trial jury was excused.)

7 THE COURT: Any other matters that need to be
8 addressed prior to the imposition of sentence?

9 MS. JONES: Yes, sir, Your Honor.

10 I need -- would like to make the standard posttrial
11 motion at this point based on the grounds I stated earlier.

12 THE COURT: Okay.

13 MS. JONES: Make a motion for a new trial on all -- on
14 the cases, the three indictments, upon which there was a
15 guilty verdict.

16 THE COURT: All right. Those motions are denied.

17 Was Indictment 29 -- excuse me -- 2090, was that a
18 direct indictment?

19 MR. SMITH: Yes, Your Honor.

20 THE COURT: All right. Ms. Jones, do you have
21 anything you'd like to present prior to the imposition of
22 sentence?

23 MS. JONES: Yes, sir, if I may. Do you want us to
24 approach or do it from the table?

25 THE COURT: Either one.

1 MS. JONES: We can just stay here.

2 Your Honor, I do have a few relatives of Mr. Foster.

3 Ms. Garrett, come up please.

4 This is Beverly Garrett. I think this is his
5 grandmother.

6 THE COURT: Beverly Garrett?

7 MS. JONES: Yes, sir.

8 THE COURT: Okay. Ms. Garrett.

9 BEVERLY GARRETT: My sympathy goes out to the Morris
10 family, Campbell, Lewis and the Koepke family for
11 everything that has happened in this event.

12 My grandson came to stay with me at a young age. He's
13 always been a bright person. And just as they loved their
14 son, I love him as well. And I know the sentence that has
15 been passed down is harsh, but I ask that you show mercy
16 towards my grandson.

17 That's all I have, I believe. And my family's heart
18 does go out everyone that is involved in this incident as I
19 understand. And we just ask for your mercy on the Court's
20 sentencing at this time.

21 THE COURT: All right. Thank you, Ms. Garrett.

22 MS. JONES: Mr. Johnson, Ms. Dillard? No, yes?

23 Your Honor, this is Larry Johnson. He is Mr. Foster's
24 uncle.

25 THE COURT: All right. You're Larry Johnson?

1 LARRY JOHNSON: Yes, sir.

2 THE COURT: All right. Mr. Johnson.

3 LARRY JOHNSON: Yeah. I know -- I want to say I know
4 the family, you know -- I know they're going through
5 things, because I know they -- they loved him, you know.
6 And sorry for all that went on and all.

7 But I just want to say I'm sorry, and I am a
8 God-fearing man, you know, and I know what God says, you
9 know.

10 And I love everybody, no matter what goes on, what
11 happens. I still going to love them. And just like I say,
12 I just want to give condolence to the family.

13 And like my sister said, you know, be lenient with
14 him, you know, and because, you know, I will tell in order
15 to forgive, you know, for we know it says I shall not --
16 what thou shalt do, you know, but, again, I just want to
17 say to the family, you know, we love you. You know, we
18 love, you know.

19 We sorry for what happened, you know, what went on,
20 you know, but we just got to keep God in our life, you
21 know, and in our hearts, you know, and love each other
22 dearly, you know, and just know growing up, you know, just
23 like to say, you know, but, like I say, we don't have the
24 time, you know, but I just want to say, you know, thank you
25 for a job that you do.

1 And what you got coming to you, and want to let him
2 know I love him, you know. And I love him.

3 THE COURT: Thank you, Mr. Jackson.

4 MS. JONES: Ms. Dillard, Angela Dillard. She's his
5 aunt.

6 THE COURT: Angela Dillard?

7 ANGELA DILLARD: Yes, sir.

8 THE COURT: Okay. Ms. Dillard.

9 ANGELA DILLARD: We just ask that you please show him
10 mercy. He's only 19 and he has a rough life. He ahas had
11 a rough life. His mom suffers from mental illness.

12 Things have never been easy for him, but we've always
13 tried to do the right thing and show him the right path,
14 and he's always been such a sweet, caring and loving
15 person, and this is not a reflection of us or how he was
16 raised.

17 And I just want to say I'm so sorry for the family,
18 and I can feel the hurt that they're going through. But I
19 just ask that you please give him a chance and that you
20 show him some mercy because he is a very, very good person.

21 THE COURT: Thank you, Ms. Dillard.

22 MS. JONES: Do you want the remainder of my comments
23 or can I follow the victim's family?

24 THE COURT: No. I'm ready to hear you.

25 MS. JONES: All right. Thank you, Your Honor.

1 THE COURT: Does Mr. Foster wish to tell me anything?

2 MS. JONES: I don't know if he does.

3 THE COURT: Mr. Foster, do you want to tell me
4 anything? I'm just asking. Do you want to say anything or
5 do you want your lawyer to talk?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: What would you like to tell me?

8 THE DEFENDANT: I want to say to the family that I'm
9 sorry for the situation that I was put in and that I hope
10 that they can find it in their hearts to forgive me and
11 also for you to be able to show mercy on me today.

12 THE COURT: Okay. Thank you, Mr. Foster.

13 Ms. Jones.

14 MS. JONES: Thank you, Your Honor.

15 As you know from the trial, Brian is 19. And as I
16 said specifically earlier, he's 19 and four months.

17 He -- it was alluded to by the family, but his mother
18 has had problems, emotional problems and legal problems, of
19 her own.

20 So for a large part of his life he lived with
21 Ms. Garrett, his grandmother, and his great-grandmother,
22 Birdie Harper. Ms. Harper died in 2016. And according to
23 Ms. Garrett that had a large -- took a large toll on Brian.
24 And at that point in time, as you will no doubt know or be
25 told, his criminal history, that's when he became a part of

1 the system.

2 He -- it was a chaotic time. He was not living and
3 taking advantage of a loving family that was offering him a
4 safe harbor. He actually -- that's when he began kind of
5 living in the street like we see or jumping from house to
6 house as was demonstrated through the trial.

7 Your Honor, he did complete ninth grade at Spartan
8 High but was expelled for truancy reasons. He has since
9 gotten his G.E.D. in the jail. I believe he was working on
10 work keys, attending A.A. and anger management. He has
11 been incarcerated since the 20th of February of '18.
12 That's 415 days. I'd ask Your Honor to give him credit for
13 that time.

14 My dealings with Mr. Foster, in my dealings with
15 Mr. Foster, I found him to be very polite, but he is very
16 bright. It's unfortunate he's finding himself here because
17 of making choices he has instead of taking advantage of his
18 intellect, because he probably could have accomplished a
19 lot if he'd picked another path.

20 I would ask Your Honor to be as merciful as possible,
21 consider giving him something less than a life sentence. I
22 also ask Your Honor to not give him a consecutive sentence
23 because of the -- either of the additional convictions
24 after the murder. That's all, Your Honor. Thank you.

25 THE COURT: Okay. Mr. Smith.

1 MR. SMITH: Your Honor, I have several family members
2 that would wish to address the Court.

3 THE COURT: Okay.

4 MR. SMITH: Or friends and family members.

5 THE COURT: Okay. Joel Campbell is first up?

6 JOEL CAMPBELL: Where do I stand?

7 THE COURT: Stand right there with Mr. Smith.

8 JOEL CAMPBELL: I ain't too good at this. Short
9 notice. But I don't know if I can do it.

10 All right. Your Honor, I stand here before you today
11 a changed man, changed in different ways. How, may you
12 ask.

13 Well, to start off with I used to never fear anyone
14 nor anything but God. That all changed 2/18/18 of last
15 year, and the reasoning behind that is I never seen what I
16 had seen that day before, and never do I want to see it
17 again, and it will forever change my life.

18 That day of February of 2018 I seen a human being take
19 someone's life with no remorse to life at all and was
20 really trying to take three more lives that day, one of
21 those being mine.

22 Your Honor, the look in his eyes was one of a soulless
23 individual and I will never forget the look Brian Foster
24 gave me twice that day. The actions of Brian Foster that
25 day has affected me mentally.

1 Let me tell you how the first three months after this
2 incident I could not close my eyes without seeing his face,
3 and I could not sleep and definitely not in the dark. And
4 I lost work over it for a month.

5 And I still have night terrors. I slip into a
6 depression because of this incident. It really -- it --
7 because of this incident it really's something I don't know
8 how to deal with alone any longer.

9 It's got to the point where I -- if I'm alone anywhere
10 I just imagine someone coming up and shooting me in the
11 back of the head. It paralyzes me, and I have never felt
12 that way before and I just don't want -- want to any more.

13 Your Honor, Eric Morris was a good-hearted,
14 red-blooded American that would do anything for anyone.
15 We -- we need more people like that in the world, and the
16 world would be a better place because of it.

17 Eric Morris had this all-around goodness about him,
18 kind of like seeing the sun on a rainy day like a light in
19 a dark room. And Brian Foster decided that day to
20 extinguish that light for no reason at all. And for taking
21 his life with no regard, I would ask you to take his as in
22 a sentence to -- as sentenced to him to life in prison, his
23 natural-born life.

24 Brian's -- Foster's actions that day, not only did he
25 take a life, but he ruined many others, even his own

1 family's. But, nonetheless, I just think what they say
2 should be true. The punishment should fit the crime, and
3 that would be the rest of his natural-born life for the one
4 he took from Eric Morris and for -- for devastating his
5 family's and many others' lives. Thank you.

6 THE COURT: Thank you, Mr. Campbell. I wish you the
7 best.

8 LINDA MORRIS: Good afternoon, Your Honor.

9 THE COURT: Good afternoon.

10 LINDA MORRIS: On February the 18th of 2018 Brian
11 Foster took a son, a brother, an uncle, a nephew, a cousin
12 with an unspeakable violence, created a hole in our heart
13 and our lives.

14 I would like to approach the bench so that you can put
15 a face with the name I'm about to read. This is my son
16 Eric.

17 THE COURT: Thank you.

18 LINDA MORRIS: My son, Eric Shane Morris, with his
19 family. This is the last of our family, our entire family.
20 I will never, ever get to have a family portrait again
21 without Eric in it.

22 Eric was not perfect, as none of us are, but he was
23 full of life, had a gorgeous, fun-loving smile and was
24 friends to many.

25 He was my husband's -- John -- only biological child.

1 Eric worked with his dad John for the last 14 years. Every
2 day John has to look at the empty seat where Eric once sat.

3 Eric was a piece of John that will continue into the
4 future of the family business carrying on the family name.

5 I will never see Eric get married, have any
6 grandchildren with Eric. Eric loved motorcycles, fishing
7 and tubing down the river and mom bears. He absolutely
8 loved Christmas staying over every Christmas at our house
9 so he could be the first up in the morning ready to
10 celebrate with the whole family.

11 This past Christmas was the first Christmas without
12 him. John and I had to leave town as we could not bear the
13 thought of Christmas without him even though that meant we
14 were missing our gathering with our family, then our
15 grandchildren opening their gifts.

16 I wonder if we will ever truly be happy again to
17 celebrate the holidays, the birthdays.

18 More than anything Eric was a friend of so many. He
19 had a wide variety of friends and was willing to help out
20 anyone. Eric may have been rough and tough on the outside,
21 but on the inside he had a huge heart.

22 Eric didn't know Brian Foster that well, but when
23 Brian was homeless Eric let him stay with him until his
24 grandmother would let him come back home. In the end that
25 turned out to be the worst decision he ever made. But in

1 his heart -- overruled his judgment.

2 Eric took on the job of thinking he was the family
3 protector. He was always ready to help a family member and
4 never left the house or hung the phone up without telling
5 you that he loved you. No one could stay angry with him as
6 he would show up with that contagious smile and all would
7 be forgiven. We will never see him, hold him, touch him or
8 share his wonderful smile again on this side of heaven.

9 We have a close loving family, and Eric has --
10 Eric's -- losing Eric has impacted so many not -- not only
11 Eric's immediate family but our extended family -- aunts
12 Naomi, Darlene, Shirley, Renee. Cousin Joe who lived with
13 Eric was like another brother, and a cousin Jennifer
14 Morgan, Brittany and Brandon and Autumn.

15 We are asking for life in prison without no chance of
16 parole so that Brian Foster can never hurt anyone again.
17 With no chance of parole we will not be asked to relive
18 this horrible period in our life.

19 I want Brian Foster to remember my son, Eric Shane
20 Morris, for the rest of his natural life. Some marriages
21 doesn't survive this trauma. I know John and I will make
22 it through with the help of our family, friends and faith.
23 But it has affected our relationship. We grieve in
24 different ways. John cannot speak of the death of Eric.
25 He is a man of such kindness, caring and love, and to see

1 him filled with so much hatred is heart-breaking. John has
2 a hole in his heart that I cannot fill. I cannot help him
3 because of my own pain.

4 Everyone believes they know how they would feel if
5 they lost their child, but when it actually happened it
6 sucks the wind out of you and it physically -- the physical
7 pain deep down can cause a deep depression so deep that you
8 feel there is no point of return.

9 We don't sleep. Our thoughts are scattered making it
10 hard to concentrate, and our tears are always close to the
11 surface.

12 We know we will never see Eric again, and the pain is
13 too deep to fathom. Brian Foster was playing God that day
14 when he went there with the intent to kill the man who
15 helped him, who took him in when he had nowhere else to go.

16 I will never understand that -- this. Unfortunately,
17 his name will be stuck in our heads for the rest of our
18 life. Brian Foster should never have the right to walk
19 free again for what he did to our beloved son Eric or the
20 opportunity to ever hurt anyone else again. Thank you.

21 THE COURT: Thank you, ma'am. I wish you the best.

22 MR. SMITH: Statement from Mr. Koepke.

23 THOMAS MICHAEL KOEPKE: My name is Thomas Michael
24 Koepke, and on February 18th of 2018 my life changed.
25 Losing my best friend and almost being killed has deeply

1 affected my life.

2 I still have pain physically and mentally. I lost my
3 job, bank accounts are closed. I had to find a place to
4 live. I have severe trust issues from this. There are
5 times I wake up in a panic sweating. Brian Foster is a
6 cold-blooded killer and is a danger to society. I was
7 begging for my life telling him I had a 3-year-old daughter
8 and he continued to try to shoot me in the face. He is a
9 threat to society.

10 Losing my friend Eric Morris to such a careless act
11 has and will affect me for the rest of my life. Eric loved
12 everyone. He also had a very close bond with my daughter.
13 He was like my brother. That day of February 18th of 2018
14 was the scariest day of my life.

15 I strongly suggest a life sentence because this man a
16 danger. Please don't let this man get out. Being a friend
17 for Eric for 20-plus years, I know how close Eric was to
18 his mother and father and it has truly -- it truly crushes
19 my heart to see them now. Eric did not deserve this.
20 Thank you for taking the time to hear me.

21 CRYSTAL LOWE: My name is Crystal Lowe. I'm Eric's
22 big sister.

23 On February the 18th of 2018 my life was forever
24 changed. On Sunday, February the 18th, Brian Foster
25 murdered my baby brother, Eric Shane Morris. I can

1 remember that day like it was yesterday. It is forever
2 etched in my memory as the worst day of our lives.

3 My mom called, and I never will forget hearing the
4 hard cry in the phone telling me Eric had been murdered. I
5 was in disbelief. I just kept saying what as if I didn't
6 understand what she was saying. It couldn't be real.

7 Once my mind started to realize something was really
8 wrong I started to panic. I was 30 minutes away, and I had
9 to figure out how to get to my family.

10 I remember arriving at my brother's house to police
11 tape roping off the road. I remember trying to get
12 details. I remember my mom telling me the police would not
13 confirm that it was Eric's body inside the house.

14 There were other people other that day with my brother
15 that had also been shot at. They were the ones telling my
16 parents that my brother was dead. But the police could not
17 confirm it, only that there was one deceased male victim
18 inside.

19 So we held out hope from 3:00 o'clock Sunday afternoon
20 until 10:00 o'clock Sunday night. We held out hope. We
21 cried. We begged God. We prayed it wasn't Eric.

22 Around 10:00 o'clock that night the coroner's office
23 came to my parents house and to confirm that it was Eric
24 Morris that had been murdered.

25 I remember my dad buckling and falling to his knees.

1 I remember my mom's first question was where was he shot
2 and the coroner replying in the back of the head.

3 I tried to console my parents, but there was nothing
4 anyone could do. My mom was crying out please tell me this
5 didn't mess up his beautiful face, I want to at least be
6 able to see him one more time. That's something a mother
7 shouldn't ever have to wish for, just to see their child
8 one more time.

9 The next couple of days were horrific, more of the
10 same crying, not sleeping, anger, questioning God why did
11 this happen to my brother, how can someone do this, wishing
12 it was all a bad dream, hoping that we would wake up and
13 Eric would still be here.

14 Some days it doesn't feel real. I remember thinking
15 if the police could just find Brian Foster we would have a
16 little bit of peace, but the peace we were looking for, it
17 never came even after a few days when they did find him.
18 He had been on the run and hiding out because Brian Foster
19 thinks he's above the law. He thought he could get away
20 with murder. He thought he could take my brother's life
21 and continue to walk the street.

22 Just in 2017 he was arrested three times for four
23 violent crimes. He was out on parole when he murdered my
24 brother. Prior to 2017 Brian Foster has been in and out of
25 D.J.J. several times. He thinks he can do whatever he

1 pleases and still walk these streets.

2 I remember watching the news and being filled with
3 anger that this little coward got to live but we would
4 never see Eric here on earth again.

5 Our life is forever changed. Not only did Brian
6 Foster take my little brother from me, but he took my
7 parents as well. My parents will never be the same. They
8 face each day with a huge hole in their hearts knowing that
9 Brian Foster took their baby.

10 I wake up every day and pray that they have a good
11 day. I pray that they're able to get out of the bed. I
12 pray that they don't sit in their house and cry and mourn
13 all day and I pray that one day they learn to live life
14 again.

15 Brian Foster took an uncle that was loved and adored
16 by his niece and nephews -- Chase, Austin, Avery and
17 Brently. Eric was the cool uncle. Chase thought so
18 because he was extreme with dirt bikes and 4-wheelers.
19 Austin thought so because he was a lady's man. And Avery,
20 she was the baby of the family for so long. That was his
21 skinny minnie. And Brently, he has very few memories of
22 his Ec-Ec, but his Ec-Ec loved him and adored him.

23 Eric was always the light in the room, always happy,
24 never meets a stranger, would strike up a conversation with
25 anyone. He would do anything he could to help others, even

1 welcoming them into his own home.

2 Brian Foster took everything from us. He has taken
3 our family dinners; he has taken our holidays; he's taken
4 the happiness from our life. Our family is not and never
5 will be the same.

6 I used to be a trusting person, but Brian Foster took
7 that as well.

8 I had never held a gun before 2018, but since that
9 traumatic day I have felt the need to purchase and learn to
10 shoot a gun. I've also felt the need to install a security
11 system and video surveillance around my house and property.
12 Brian Foster has stole our sense of safety and security.

13 Brian Foster is a murderer, he is a thief and he's a
14 repeat criminal. He murdered my 29-year-old brother Eric
15 Shane Morris in Eric's own home by shooting him at the back
16 of the head like a coward, not giving my brother a chance
17 to defend hisself. He then proceeded to try to kill three
18 other people that day.

19 I'm asking you to give us some closure because we're
20 learning that the peace we're looking for will never come.
21 Brian Foster is a threat to our society. Our family does
22 not want him to ever be able to cause this type of thing to
23 any other family. My family and I are asking you to
24 sentence Brian Foster to a life in prison with no chance of
25 parole. We're asking you to run his charges consecutively,

1 not concurrently.

2 I do feel sorry for the Foster family. I know they
3 are losing someone today as well, but he deserves to spend
4 the rest of his life in prison. They will at least get to
5 talk to him on the phone. They will at least get to see
6 him the visitations. Heaven doesn't have a phone and
7 heaven doesn't have visiting hours. We'll never get to see
8 Eric again until we go. That's all. Thank you.

9 THE COURT: Thank you, Ms. Lowe. I wish you the best.

10 MR. SMITH: Your Honor, he has a prior burglary second
11 violent and grand larceny from 2017. It was charged as a
12 burglary first. I was the prosecutor on it and you were
13 the judge on it. I would just ask that he had an
14 opportunity for mercy on that. He did receive mercy both
15 from the prosecutor and from the judge, and I'd ask for no
16 mercy on this case.

17 What Your Honor and the jury saw on the video inside
18 the bedroom is two people acting like friends, and then
19 somebody who, is five seconds later, shoots a guy in the
20 back of the head. It couldn't be more cold blooded. Life
21 sentences are designed for people like Brian Foster. We
22 would ask that you give him that.

23 THE COURT: Anything else?

24 MS. JONES: No, sir, Your Honor.

25 THE COURT: Well, as many of you know, I've been doing

1 this for a long time. I always look for an explanation.
2 Sometimes I find them. More often, I don't. I look for
3 one here. I don't find one. I don't understand why this
4 happened.

5 I know that people ask for second chances. I know
6 back in March on the 16th of 2017, Mr. Foster, you asked
7 for a second chance.

8 You were convicted by pleading guilty to burglary
9 violent. You received a suspended sentence because you'd
10 done some time in the jail. I suspended that, placed you
11 on probation.

12 You had certain conditions of probation to follow.
13 One of those of course would be that you couldn't have any
14 firearms.

15 And you were under house arrest and supervision for
16 the first 90 days. If you'd followed those conditions you
17 wouldn't be here today. You could not follow the
18 conditions imposed while you were on probation. You were
19 given that chance. You were 17 years old. You had no
20 record.

21 Less than one year after you were placed on probation
22 you kill a man in cold blood in the back of the head for no
23 reason. No explanation for it. I don't understand that.
24 No explanation. I can't find one. I'm quitting looking
25 for one.

1 On Indictment 2018-02086, that's the indictment for
2 murder and possession of a firearm during the commission of
3 a violent crime, wherein you have been found guilty by a
4 jury for each of those offenses, as to count one, the
5 sentence for murder, Sentence of the Court is you be
6 confined to the South Carolina Department of Corrections
7 for the period of your natural life.

8 On Indictment 2018-02087, that's an indictment for
9 attempted murder and possession of a firearm during the
10 commission of a violent crime, as to count one, attempted
11 murder, Sentence of the Court is you be confined to the
12 South Carolina Department of Corrections for a period of 30
13 years.

14 As to count two, possession of a firearm, five years.

15 Indictment 2018-02090, possession of a firearm by a
16 person who has already been convicted of a violent felony,
17 wherein you have been found guilty by a jury of that
18 offense, the Sentence of the Court is you be confined to
19 the South Carolina Department of Corrections for a period
20 of five years.

21 Now, Mr. Foster, you have a right to appeal the
22 verdicts of the jury and the Sentence of the Court. You
23 must file any notice of your intent to appeal those
24 decisions within ten days of today's date. Your lawyer
25 will provide you guidance with that.

1 Anything else?

2 MR. SMITH: No, Your Honor.

3 (Copy of Indictment No. 16-GS-42-6075 marked Court's
4 Exhibit No. 6.)

5 END OF REQUESTED TRANSCRIPT OF RECORD

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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 8th, 9th, 10th and 11th days of April 2019.

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

January 3, 2020

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable J. Derham Cole, Circuit Court Judge

Case No. 2018GS4202086, 2018GS4202086A, 2018GS4202087, 2018GS4202087A,
2018GS4202090

The State,

Brian Cornelius Foster Jr.

v.

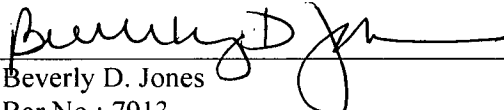
Respondent,

Appellant

NOTICE OF APPEAL

Brian Cornelius Foster Jr. appeals his conviction and sentence in this case. The sentence was imposed by the Honorable J. Derham Cole, on April 11, 2019. This appeal is taken from the conviction and sentence and the order of the Honorable J. Derham Cole, on April 11, 2019 which denied the appellant's motion for a new trial.

April 23, 2019


Beverly D. Jones
Bar No.: 7913
Seventh Judicial Circuit Public Defender Office
366 N Church Street, Suite 3000
Spartanburg, South Carolina 29303
(864) 596-2561
Attorney for Appellant

Other Counsel of Record:
Spenser H Smith, Esq.
Seventh Judicial Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, South Carolina 29306
(864) 596-2575
Attorney fo Respondent

RECEIVED
APR 25 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable J. Derham Cole, Circuit Court Judge

Case No.: 2018GS4202086, 2018GS4202086A, 2018GS4202087, 2018GS4202087A,
2018GS4202090

The State

Brian Cornelius Foster Jr.

v.

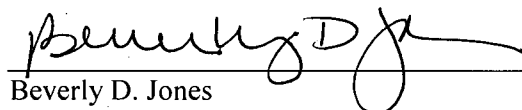
Respondent,

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the State of South Carolina by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2019, addressed to its attorney of record, Spenser H Smith, Esq., Assistant Solicitor, 180 Magnolia Street, Spartanburg, South Carolina 29306.

April 23, 2019



Beverly D. Jones

Bar No.: 7913

Seventh Judicial Circuit Public Defender Office

366 N Church Street, Suite 3000

Spartanburg, South Carolina 29303

(864) 596-2561

Attorney for Appellant

RECEIVED
APR 25 2019
SC Court of Appeals

The South Carolina Court of Appeals

The State, Respondent,

v.

Brian Cornelius Foster, Jr., Appellant.

Appellate Case No. 2019-000699

The Honorable J. Derham Cole
Spartanburg County
Trial Court Case No. 2018GS4202086, 2018GS4202087,
2018GS4202090

ORDER

Appellant has failed to timely serve the Notice of Appeal, as required by Rule 203 of the South Carolina Appellate Court Rules. The appellant was sentenced on April 11, 2019, and the notice of appeal was served on April 23, 2019. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Beverly Dorine Jones, Esquire
Robert Michael Dudek, Esquire
Spenser Holloran Smith, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire

FILED

June 3, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SPARTANBURG COUNTY
Court of General Sessions

Honorable J. Derham Cole, Circuit Court Judge

Appellate Case No. 2019-000699

The State,

Respondent,

Brian Cornelius Foster Jr.

v.

Appellant

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 JUN 26 PM 4:43

MOTION TO REINSTATE APPEAL

The undersigned counsel petitions the Court to reinstate the direct appeal of Brian Cornelius Foster, Jr. In support in the petition, counsel would respectfully show the Court that:

1. Counsel served the notice of intent to appeal on April 23, 2019.
2. On June 3, 2019, this Court dismissed the appeal due to counsel's failure to timely serve the notice of appeal.
3. Counsel's failure to timely file the notice of appeal was due to an inadvertent miscalculation of the appellate deadline.
4. Based on the foregoing, counsel most respectfully request that this Court reinstate appellant's direct appeal.

WHEREFORE, undersigned counsel respectfully request that the direct appeal for Brian Cornelius Foster, Jr. be reinstated.

Respectfully submitted,


Beverly Dorine Jones

June 12, 2019

The South Carolina Court of Appeals

The State, Respondent,

v.

Brian Cornelius Foster, Jr., Appellant.

Appellate Case No. 2019-000699

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas C. Hoff

J.

Paul W. Thomas

J.

U. Ke

J.

Columbia, South Carolina

cc:

Beverly Dorine Jones, Esquire
Robert Michael Dudek, Esquire
Spenser Holloran Smith, Esquire
Alan McCrory Wilson, Esquire
William M. Blich, Jr., Esquire

FILED

July 30, 2019



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

October 03, 2019

The Honorable Amy W. Cox
PO Box 3483
Spartanburg SC 29304-3483

REMITTITUR

Re: The State v. Brian C. Foster, Jr.
Lower Court Case No. 2018GS4202086, 2018GS4202087, 2018GS4202090
Appellate Case No. 2019-000699

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Beverly Dorine Jones, Esquire
Robert Michael Dudek, Esquire
Spenser Holloran Smith, Esquire
Alan McCrory Wilson, Esquire
William M. Blicht, Jr., Esquire

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of SpartanburgBrian C. Foster #371789

Full name and prison number (if any) of Applicant

2019-CP-42-3664

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

Attorney General**INSTRUCTIONS - READ CAREFULLY**

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

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

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

1. Place of detention Lee County Correctional Institution
990 Wisacky Highway Bishopville, SC 29010
2. Name and location of Court which imposed sentence Spartanburg Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) NO
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2018GS4202086, 2018GS4202086A, 2018GS4202087,
 - (b) 2018GS4202087A, 2018GS4202090

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 11, 2018
- (b) Life, 5, 5, 30 years and concurrent
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (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. no
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. no
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. no
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. no
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Trial counsils was ineffective by failure to
- (b) file it's notice of appeal.

2019 OCT 6 AM 9:00
CLERK OF COURT
SPARTANBURG COUNTY
ADM. VL CCX

FILED

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 6th amendment
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel was ineffective by failure to file
- (b) it's notice of appeal see white v state belated
- (c) appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. no
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. no
- ii. _____
- iii. _____
- iv. _____

FILED
OCT 15 2015
9:00 AM
CLERK OF COURT
SOUTH CAROLINA
JUDICIAL SYSTEM
COLUMBIA, SC

(c) the disposition thereof:

- i. no
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. no
- ii. _____
- iii. _____
- iv. _____

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

- i. no
- ii. _____
- iii. _____
- iv. _____

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

no

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

(a) which grounds have been presented:

- i. no
- ii. _____
- iii. _____

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

- i. no
- ii. _____
- iii. _____

FILED
 2019 OCT 16 AM 9:00
 CLERK OF COURT
 STANTISBURG COUNTY
 MISSOURI

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
 (b) _____
 (c) _____

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

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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

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

i. Beverly D. Jones Seventh Judicial Circuit
Public Defender 366 N Church Street, Suite 3000
Spartanburg, SC 29303
 ii. _____
 iii. _____

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

i. Trial
 ii. _____
 iii. _____

FILED
 2019 OCT 30 AM 9:00
 CLERK OF COURT
 SPARTANBURG COUNTY
 ARCHIVE BOX

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

Requesting for a belated appeal.

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

no

STATE OF SOUTH CAROLINA)

County of Bishopville)

VERIFICATION

I, Brian Cornelius Foster, 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.

Brian Foster

SWORN to and subscribed before me this 11th day of Oct, 2019.

James McLeke (L.S.)
Notary Public

My Commission Expires: 09/04/2029

FILED
OCT 16 AM 9:00
CLERK OF COURT
SOUTH CAROLINA
BISHOPVILLE COUNTY
CLERK'S OFFICE

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Brian C. Foster, #371789,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-42-03664

RETURN

FILED
2020 OCT -2 PM 4:41
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

NOW COMES the Respondent, and making its Return to the Post-Conviction Relief (hereafter "PCR") Application, filed on October 16, 2019, by Brian C. Foster (hereafter "Applicant"). Respondent respectfully offers the following in support of its Return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2018 term, the Spartanburg County Grand Jury indicted Applicant for Murder and Possession of Firearm during Commission of a Violent Crime (2018-GS-42-2086), Attempted Murder and Possession of a Weapon during a Violent Crime (2018-GS-42-2087), and Possession of a Firearm or Ammunition by Person Convicted of a Violent Crime (2018-GS-42-2090). Applicant was represented by Assistant Public Defender Beverly D. Jones of the Seventh Circuit Public Defender's Office. Assistant Solicitors Spenser H. Smith and Candace F. Clark of the Seventh Circuit Solicitor's Office prosecuted the case. On April 8-11, 2019, Applicant proceeded to jury trial before the Honorable J. Derham Cole. The jury convicted Applicant as indicted.¹ Judge Cole

¹ The jury also acquitted Applicant of two counts of attempted murder and two counts of possession of a weapon during a violent crime (2018-GS-42-2089 and -2090).

sentenced Applicant to life imprisonment for murder and possession (-2086), thirty years for attempted murder and possession (-2087), five years for possession, count two (-2089), five years for possession of a firearm by a person convicted of a violent felony (-2090), sentences running concurrently.

Applicant filed a Notice of Appeal, served on April 23, 2019. On June 3, 2019, the South Carolina Court of Appeals dismissed Applicant's appeal for failing to timely serve the Notice of Appeal pursuant to Rule 221(b), SCACR. Applicant, through Counsel, submitted a motion to Reinstate, filed June 26, 2019. The Court of Appeals denied motion through written order, filed on July 30, 2019, for failure to discover any material fact or principal of law either overlooked or disregarded. The Remittitur was issued on October 3, 2019.

II. Statement of Facts

On February 18, 2018, Eric Morris and Joel A. Campbell, Jr. were hanging out when Applicant appeared. (Tr. 140). Morris invited Applicant to stay and both men started showing one another their guns. (Tr. 140-41). A couple of Morris's friends, Darryl J. Lewis and Thomas Michael Koepke, showed up shortly thereafter. (Tr. 142, 187-88). Initially, they were standing around talking amiably in the parking lot. (Tr. 174, 189).

Applicant and Morris went into Morris's house to look at Morris's new gun. (Tr. 144, 175, 189). Shortly thereafter, the other people on scene started hearing gunshots from inside the house. (Tr. 145, 175, 190). Upon hearing gunshots, Koepke ran into the house, thinking the gun was fired by accident. (Tr. 145-46, 190). Koepke ran into the kitchen, where more shots rang out. (Tr. 146, 190). Applicant then came around the corner, holding a gun to Koepke's face. (Tr. 190). Koepke immediately began pleading with Applicant not to kill him. (Tr. 146, 190, 193). They went to the back porch, where Applicant, at one point, pointed the gun at Lewis and

Campbell instead. (Tr. 193).

Lewis and Campbell began running away while Applicant fired more shots. (Tr. 147-50, 176-77). Campbell and Lewis told the neighbor to call the police because Morris was shot. (Tr. 150-51, 177). Koepke began running away and was shot in the hip, causing him to fall several times while attempting to flee. (Tr. 193-94). After being unable to run anymore due to blood loss, Applicant confronted Koepke again, who began pleading with Applicant not to shoot him again, while Applicant stood overtop him, pointing the gun at him. (Tr. 151, 197-98). The gun kept jamming, preventing it from firing. (Tr. 198). After the gun jammed several times, Applicant began running away. (Tr. 198). Koepke got up, ran to the neighbors' yard, and cried again, crying for help. (Tr. 199). Law enforcement arrived shortly thereafter. (Tr. 199-200, 202, 177-78). Koepke was transported to the hospital and treated for his injuries. (Tr. 200).

Campbell and Lewis were separated from one another by law enforcement and asked to choose Applicant out of a lineup. (Tr. 152-54, 178). Both men chose Applicant. (Tr. 152-54, 178). Koepke was presented with a lineup while heavily medicated and in the hospital, but could not pick Applicant out of a lineup. (Tr. 203). Two of the neighbors were also asked to pick Applicant out of a lineup. (Tr. 211-12, 222-23). They both chose Applicant. (Tr. 212, 223). The house had video surveillance that documented movement at the time the incident occurred, including footage of a vehicle pulling into the parking lot and footage of Koepke and Applicant running around the house. (Tr. 250-51, 470).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Trial Counsel was ineffective by failure to file its notice of appeal, *see White v. State*, belated appeal."

2020 OCT -2 PM 4:41
CLERK OF COURT
JANET W. COX
JANET W. COX

FILED

Attached to and incorporated herein are the Spartanburg County Clerk of Court Records regarding the Applicant's case, the Applicant's South Carolina Department of Corrections records, the trial transcript, and the current PCR application. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Allegation that Applicant is Entitled to Belated Appellate Review Pursuant to White²

Applicant alleges he was denied effective assistance of counsel because his plea counsel did not inform him of his option to appeal from a trial. However, in *White v. State*, our Supreme Court held that even if the PCR court found the applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction over granting a belated appellate review. 263 S.C. 110, 119, 208 S.E.2d 35, 39-40 (1974). However, where an applicant establishes upon an appeal of the PCR decision, our Supreme Court will review the trial record and pass upon all issues properly raised and argued as if the direct appeal was perfected. *Id.*

Applicant has not presented any specific fact or evidence in support of the allegation. Thus, he cannot meet his burden in showing entitlement to a belated appeal pursuant to *White*. However, because this allegation presumably raises questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing solely on this issue.

V. Other Allegations Denied

Each and every other allegation in the Applicant's post-conviction relief application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

² *White v. State*, 263 S.C. 110, 119, 208 S.E.2d 35, 39 (1974).

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20 OCT - 2 PM 3:4
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

VI. Assertion of Rights to Notice of Amendments, Experts

The Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, the Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 428 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain

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2023 OCT -2 PM 4:31
CLERK OF COURT
SPRINGFIELD COUNTY
JAN W. FOX

discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VII. Conclusion

WHEREFORE, Respondent respectfully requests that the Court hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMES
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: _____/s Chelsey F. Marto_____
ATTORNEYS FOR RESPONDENT

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

April 16, 2020

FILED
2020 OCT -2 PM 4:01
CLERK OF COURT
SPARTANBURG COUNTY
AMY B. COLE

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2019-CP-42-03664

BRIAN C. FOSTER, #371789

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person via electronic mail:

Rodney W. Richey, Esquire
richeyandrichey@yahoo.com

DATED this the 16th day of April, 2020.

/s Chelsey F Marto
Chelsey F. Marto, Attorney
For Respondent

FILED
2020 OCT -2 PM 4:41
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Brian Foster,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2019-CP-42-03664
7 The State.) June 7, 2022
8) Spartanburg, South Carolina
9
10

11 B E F O R E :

12 HONORABLE WILLIAM A. MCKINNON, JUDGE
13
14

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

16 RODNEY RICHEY, ESQUIRE
17 Attorney for the Applicant

18 CHELSEY FAITH MARTO, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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No exhibits entered into evidence.

1 (Proceedings June 7, 2022)

2 MS. MARTO: Good afternoon, Your Honor. May it please
3 the Court.

4 We are here today in the case of Brian Foster vs. the
5 State of South Carolina, Docket No. 2019-CP-42-03664.

6 My name is Chelsey Marto and I represent the
7 respondent. Mr. Rodney Richey represents the applicant in
8 this matter.

9 Applicant is presently confined in the South Carolina
10 Department of Corrections.

11 In May of 2018 the Spartanburg County Grand Jury
12 indicted applicant for murder and possession of a firearm
13 during the commission of a violent crime, attempted murder
14 and possession of a weapon during a violent crime,
15 possession of a firearm or ammunition by a person convicted
16 of a violent crime.

17 He was represented by Ms. Beverly Jones, and Assistant
18 Solicitors Spenser Smith and Candace Clark prosecuted the
19 case.

20 April 8th through 11th of 2019 he proceeded to jury
21 trial before the Honorable J. Derham Cole, and the jury
22 convicted applicant as indicted.

23 Judge Cole sentenced him to life imprisonment for
24 murder, 30 years for attempted murder, five years for
25 weapons possession, five years for possession of a firearm

Brian Foster
Direct examination by Mr. Richey

1 by a person convicted of a violent felony. And all
2 sentences ran concurrently.

3 Applicant filed a notice of appeal. On June 3rd of
4 2019 the South Carolina Court of Appeals dismissed it for
5 failure to timely serve the notice of appeal.

6 Applicant submitted a motion to reinstate filed June
7 26th of 2019. The Court of Appeals denied the motion
8 through written order filed on July 30th of 2019 for
9 failure to discover any material fact, principle of law
10 overlooked or disregarded.

11 The remittitur was issued October the 3rd of 2019.
12 Post conviction relief application was filed
13 October 16th of 2019. The return was made April 16th of
14 2020.

15 With that, I'll turn it over to Mr. Richey.

16 THE COURT: Mr. Richey.

17 MR. RICHEY: Thank you, Your Honor. We call
18 Mr. Foster.

19 BRIAN FOSTER, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. RICHEY

22 Q Sir, can you state your name, please?

23 A Brian Foster.

24 Q Mr. Foster, are you currently in the Department of
25 Corrections?

Brian Foster
Direct examination by Mr. Richey

- 1 A That is correct.
- 2 Q Okay. What are -- what are you in there for?
- 3 A A lost trial.
- 4 Q Huh?
- 5 A A lost trial.
- 6 Q Okay. For what charges?
- 7 A For murder, attempted murder.
- 8 Q Okay. And you believed -- and you filed an application
- 9 for post conviction relief, didn't you?
- 10 A Yes.
- 11 Q Because you -- who represented you on those charges?
- 12 A Ms. Beverly Jones.
- 13 Q And you believe that Ms. Jones did not effectively
- 14 represent you, correct?
- 15 A Correct.
- 16 Q Okay. And one of the things in this case, did
- 17 Ms. Jones do anything that you -- did you ask her to come
- 18 visit you?
- 19 A That is correct.
- 20 Q Did she visit you?
- 21 A No, sir.
- 22 Q She -- did she ever visit you while you were in jail
- 23 awaiting trial?
- 24 A She came to see me. I got arrested May the 20th of
- 25 2018. Her first time coming to see me was March 8th of

Brian Foster
Direct examination by Mr. Richey

1 2019.

2 Q Okay. And did she come see you any time after that?

3 A Yes.

4 Q And March. That was a month before your trial, right?

5 A Yes, sir.

6 Q Okay. So she came to see you in March of 2019, and
7 April 8th of 2019 you went to trial. Is that about right?

8 A Yes, sir.

9 Q So how many times did she come to see you between
10 March 19th and April?

11 A Altogether, five times.

12 Q So she came five times within a month.

13 A Yes, sir.

14 Q Right before your trial.

15 A Yes, sir.

16 Q Okay. And what did y'all talk about when she came down
17 there five times? Did y'all talk about the case?

18 A No. Really all I was -- really was trying to do was
19 get her relieved off my case, because I didn't have my
20 motion of discovery at the time. And once I did that, not
21 only was I trying to get my motion of discovery. I
22 didn't -- I wasn't able to go up for a bond or anything. I
23 didn't get mentally evaluated, and it's on file that I'm
24 mental health, my mom is mental health through the D.S.S.
25 courts.

Brian Foster
Direct examination by Mr. Richey

1 Q Okay. That's a lot. Hold on. Let me separate some of
2 this.

3 Your motion of discovery on March 2019 when she came to
4 the jail to see you the first time, did you have your motion
5 for discovery?

6 A No, sir.

7 Q Okay. When did you get that?

8 A I received my motion of discovery that following week
9 after.

10 Q Okay. So you had it prior to the trial date.

11 A Right.

12 Q And did she give it to you, or somebody in her office?

13 A Yes, sir. She brought it to me.

14 Q Did you go over that with her?

15 A No, sir.

16 Q Okay. What? She just gave it to you and said here it
17 is?

18 A Yes, sir.

19 Q Did she go over the case with you?

20 A No, sir.

21 Q Not at all.

22 A No, sir.

23 Q Okay. She didn't tell you why you were charged with
24 murder or any of that stuff.

25 A No, sir.

Brian Foster
Direct examination by Mr. Richey

1 Q Okay. So --

2 THE COURT: Let me stop.

3 Mr. Foster, what did y'all talk about for those five
4 visits?

5 THE WITNESS: The whole time that the -- the whole
6 time -- the first two visits, it was really just a whole
7 bunch of beef. Well, like I ain't gonna say beef.

8 Animosity as far as like me trying to get her relieved
9 off my case and her just driving down my neck telling me,
10 oh, I've been appointed to you by the state, I'm not going
11 nowhere until you get relieved off my -- she said I'm not
12 going nowhere until the state relieves you off my case, I
13 mean, off of my case.

14 And I said that I feel like it's unfair because I'm
15 not getting the best representation. I said I'm not trying
16 to say that you are a bad attorney or whatever, I heard a
17 lot of great things about you. But as far as me with my
18 case and my freedom, I'm not getting the best
19 representation.

20 When I told her that she said, well, I will have to
21 get you in front of the judge and we'll see what the judge
22 will say. I said okay.

23 The next week she came and visited me. This is the
24 third time her coming to visit me, now. When she came to
25 visit me, this was either the 25th or the 26th. But one of

Brian Foster
Direct examination by Mr. Richey

1 those days when she came to visit me she said that she's
2 trying a trial at the courthouse. But she said if her guy
3 would've -- pleads guilty today and she can get me in front
4 of a judge, like state my issue. But she said if he
5 doesn't plead guilty and the trial continues to go on, that
6 she will see if she could get me in front of a judge later
7 on that week.

8 She left. Thirty minutes later they call me and say,
9 Foster, we need you to get dressed for court. And as soon
10 as I get dressed ended being transported and come over
11 here, that's when I get in front of a judge. I got in
12 front of Judge Couch. And when I got in front of Judge
13 Couch, we stated everything.

14 She -- in her defense she was saying that, oh, I was
15 nervous to go to trial or something and she's dealt with a
16 whole bunch of young patients or whatever before. I said
17 that's not the case, the case is I'm not getting the best
18 representation that I'm entitled to, you just popping up
19 outta nowhere and you giving me all of this last minute,
20 you cramming all of this down on me, how can I possibly
21 understand this. And really it's --

22 THE COURT: Mr. Foster, but you're claiming you never
23 discussed your case with your attorney. But you cited she
24 was not doing a good job and asked for her to be relieved?

25 THE WITNESS: Yes, sir.

Brian Foster
Direct examination by Mr. Richey

1 THE COURT: What was your basis of deciding she wasn't
2 doing a good job if you never talked about the case with
3 her?

4 THE WITNESS: Because she -- she -- hold on. What you
5 say?

6 THE COURT: Well, you just told me you never talked
7 about the case with her. And so my question is how did you
8 know she wasn't doing a good job if you never talked about
9 the case with her.

10 THE WITNESS: Because I never came and seen her, and
11 you just pop up outta nowhere talking about trial in three
12 and a half weeks. That's not representation.

13 THE COURT: Okay. So you made the decision because in
14 your opinion her visit -- she took too long to visit you,
15 therefore she was not a good attorney?

16 THE WITNESS: Right.

17 BY MR. RICHEY

18 Q Okay. Sir, let me ask.

19 You got discovery, correct? At some point you got it,
20 right?

21 A Correct.

22 Q Okay. And you had a 3-day trial, correct?

23 A Four. Monday, Tuesday, Wednesday and Thursday.

24 Q You had a 4-day trial, correct?

25 A Yes, sir.

Brian Foster
Direct examination by Mr. Richey

1 Q So you had a lot of documents on your case that she had
2 given to you, or somebody had given to you, correct? When
3 she came down did you ever confront her about, hey, look, I
4 got all of this stuff, you need to help me with this? Did
5 you do that?

6 A Yes.

7 Q Okay.

8 A And she told me out of her mouth that she got
9 everything covered, she's the one that's trying the trial.

10 Q She got everything covered? What does that mean?

11 A She said -- I don't know.

12 Q Okay.

13 A She said she has everything covered, she's the one that
14 that is trying the trial. I said, Ms. Beverly Jones, that's
15 not setting right with me because this is my freedom.

16 Q And so your -- one of your biggest problems, I guess,
17 on here is just the lack of communication. The lack of
18 communication is the big thing, right?

19 A Right.

20 Q Okay. You -- you had -- did you request for her to go
21 into a plea negotiation with the state?

22 A Yes.

23 Q And what happened with that?

24 A She never brought for me any type of plea bargain or
25 anything stating that they was in agreement to, you know.

Brian Foster
Direct examination by Mr. Richey

1 Q Okay. Did she -- and in this discovery, was it similar
2 to what's in this trial? They allege that you went to the
3 guy's house and shot him, shot and all of this stuff? Your
4 discovery -- was that in your discovery as well, that they
5 allege you did this? I'm not saying you did it.

6 A Right.

7 Q But they -- there's allegations you went in the house
8 and shot the guy, took the gun, shot another guy and
9 basically did all of this stuff.

10 Did you know that was the allegations against you
11 before the trial?

12 (Pause.)

13 Q Well, let me say this. I'll say it this way.

14 Before the trial did you know they were charging you
15 for shooting a guy, murdering him? Did you know that?

16 A Yeah.

17 Q Okay. You knew that, right?

18 A Yes.

19 Q Okay. Did you -- and your position was you did not do
20 that, correct?

21 A Correct.

22 Q Correct?

23 A Correct.

24 Q Did you talk to Ms. Jones and say, hey, these people
25 saying I did this stuff but I didn't do it? Did you tell

Brian Foster
Direct examination by Mr. Richey

1 her that?

2 A Yes.

3 Q Okay. And what was her response to that?

4 A She said that it's not looking good in my favor.

5 Q Okay. And why did she think it wasn't?

6 A She said she thought I did it.

7 Q She thought you did it.

8 A Yes.

9 Q Okay. What did she base that off of?

10 A That would be for her to say. I -- if I said anything,
11 then I would just be making something up. I don't know.

12 Q Okay. And -- and okay. And at the time your position
13 was that you were not at that house, correct?

14 A Correct.

15 Q That you had an alibi for not being -- for that day
16 when that happened, correct?

17 A Correct.

18 Q Did you talk to her about that too?

19 A Correct.

20 Q And --

21 A And she didn't take that into consideration.

22 Q What do you mean, she didn't take in consideration?

23 A The alibi. She -- she didn't even -- when I told her I
24 had alibi before, I even said it that -- she didn't even say
25 anything about the alibi, and when I said something about

Brian Foster
Direct examination by Mr. Richey

1 alibi she said that that wouldn't help me.

2 Q Okay. Tell me what you said to her about this alibi.

3 Did you say, hey, for lack of a better name, Rodney Richey

4 is my alibi?

5 A No.

6 Q Did you tell her --

7 A No, no. I never stated a specific person, no.

8 Q But you did say you had an alibi, right?

9 A Right.

10 Q So you understand the alibi that -- you're saying that

11 I got a person who can vouch for where I was at the time,

12 correct?

13 A Correct.

14 Q And -- and so -- so did you discuss that personally

15 with Ms. Jones?

16 A No. Like I said, a lot of things, we weren't able to

17 really get into deep in because I was so adamant about

18 getting her relieved from my case.

19 Q So, because -- because y'all just had a bad

20 relationship, you couldn't go into the preparation of

21 discussing --

22 A Right.

23 Q -- the evidence and everything.

24 A Right. And also --

25 Q And it just -- the whole thing.

Brian Foster
Direct examination by Mr. Richey

1 A Right. And also when I had wrote her up for
2 ineffective assistant counsel, however you say it, the
3 Supreme Court had wrote me back and notified me that she was
4 under investigation for breaking laws of Rule 413.

5 So from my understanding the reason why I had fell back
6 and didn't talk to her or say anything, because I just
7 didn't think that I would end up going to trial and get
8 trial, represented my attorney is under investigation for
9 ineffective assistance of counsel in my case.

10 Q And -- and do you know the outcome of that
11 investigation? Did the Supreme Court send you something
12 back saying the outcome?

13 A No, sir.

14 Q Okay. So as far as you know since 2019 she's been
15 under investigation for three years. And nobody has
16 responded back to you?

17 A No, sir.

18 Q Okay.

19 A No, sir. The Supreme Court had wrote me and let me
20 know that she was under investigation. They asked me if I
21 had any further information provided, but I didn't because
22 it wasn't any further information. I would have felt like
23 anything else that I said would have just been personal.

24 Q So you contacted them, the Supreme Court.

25 A That is correct.

Brian Foster
Direct examination by Mr. Richey

- 1 Q Okay. And pursuant to you contacting them, they sent
2 you a letter back.
- 3 A Right. I wrote the Supreme Court, and Supreme Court
4 wrote me back.
- 5 Q And did they write you back and tell you the outcome of
6 their investigation?
- 7 A No. They wrote -- no. I just have one message from
8 them on March the 13th when they wrote me back notifying me
9 that she's under investigation --
- 10 Q Okay.
- 11 A -- for breaking laws of Rule 413.
- 12 Q Okay. Now, this -- this alibi you had, I believe you
13 talked -- said his name was Joseph, is that correct?
- 14 A Correct.
- 15 Q Huh?
- 16 A Correct.
- 17 Q Okay. And where is Joseph at right now, do you know?
- 18 A He's not living.
- 19 Q Huh?
- 20 A He's not living.
- 21 Q Okay. And when did he die?
- 22 A I heard from a friend that he died in 2022.
- 23 Q Okay. And from your knowledge was he alive in 2019?
- 24 A That's correct.
- 25 Q He was?

Brian Foster
Cross-examination by Ms. Marto

1 A That was correct.

2 Q And do you think Ms. Jones could have contacted him at
3 that point?

4 A Yes, sir.

5 Q Okay. And so I missed this, but did you talk -- you
6 didn't talk to her about it because you were upset with her
7 representation. You've got to answer. You didn't talk to
8 Ms. Jones about Joseph because you were upset with her about
9 her representation. Is that what you said?

10 A No. That's not what I said.

11 Q Okay. Did you talk to Ms. Jones about Joseph?

12 A No. I told her that I had an alibi. I never stated
13 who my alibi was.

14 Q Okay. So -- so did you want her to investigate it or
15 prepare, to do anything with this alibi?

16 A Yeah. I wanted to. I wanted to, and she told me it
17 wouldn't help me out.

18 Q Okay. She told you an alibi wouldn't help you out.

19 A It wouldn't help me out.

20 Q Do you understand what an alibi is now?

21 A Yes, sir.

22 Q And do you understand now how helpful it is?

23 A Yes, sir.

24 Q Okay. All right. This appeal, what happened on your
25 appeal? Did you want to appeal your case?

Brian Foster
Cross-examination by Ms. Marto

1 A Right.

2 Q Okay. And what happened on you appealing your case?

3 A From my understanding, it got denied.

4 Q And do you know the basis for the denial?

5 A Because trial counsel failed to meet the deadline.

6 Q Okay. And so you're asking the Court to grant you a
7 belated appeal, correct?

8 A Correct.

9 Q And do you believe that if Ms. Jones had adequately
10 represented you, do you believe the outcome of the trial
11 would have been different?

12 A Most likely. Like I say, I -- I'm not saying she's a
13 bad attorney or whatever.

14 Q No. We're not saying that.

15 A I just didn't get the re -- I just didn't get -- you
16 might as well say I didn't get represented, yeah.

17 Q So we're going to -- and so the question is do you
18 think the outcome would have been different.

19 A Yes, sir.

20 Q Okay. Thank you. Answer any questions the attorney
21 general has.

22 CROSS-EXAMINATION

23 BY MS. MARTO

24 Q Good afternoon, sir.

25 A Good afternoon.

Brian Foster
Cross-examination by Ms. Marto

1 Q So before you even met Ms. Jones you wanted her off
2 your case, correct?

3 A Before I met her?

4 Q Yeah.

5 A No.

6 Q When did you decide that you wanted her off the case?

7 A When she -- when she came to visit me.

8 Q Her first meeting with you?

9 A Yes, ma'am.

10 Q Okay. And, now, what are the facts of this case? What
11 does the state allege you did?

12 A The state is accusing me of killing a man and shooting
13 another man.

14 Q Okay. Is the state saying you killed a man with his
15 own gun?

16 A I don't know. I just know the state is saying that I
17 killed a man, and they saying that I shot someone.

18 Q Did you receive any discovery in this case?

19 A Yes.

20 Q And did you look at that discovery?

21 A Yes.

22 Q Okay.

23 A But I -- I don't really understand it.

24 Q Okay. Now, you had several people that were in and
25 around the house testify that you were the shooter, correct?

Brian Foster
Cross-examination by Ms. Marto

- 1 A Correct.
- 2 Q And all of these people previously knew you, correct?
- 3 A No. That's not correct.
- 4 Q They had no idea who you were.
- 5 A No. You just said that all of those people knew me.
- 6 No. They did not.
- 7 Q So they were strangers to you, is that correct? Do you
- 8 remember Mr. Campbell?
- 9 A No.
- 10 Q would you be surprised if a man named Joel Campbell
- 11 testified at your trial?
- 12 A No.
- 13 Q would you be surprised that he said y'all were in the
- 14 same house for a while before the shoot rang out?
- 15 A I'm trying to figure out why are you -- why are you
- 16 saying surprised like? I'm like --
- 17 Q I'm trying to figure out what you know about the trial,
- 18 sir, because you're saying that you know nothing beyond the
- 19 fact that you were charged with murder. Is that true? The
- 20 only thing you know is that you were charged with murder.
- 21 You have no idea what any of the facts are.
- 22 A I didn't say that.
- 23 Q well, then I'm trying to ask you what are the facts.
- 24 what does the state say you did?
- 25 A I don't know. That's what I'm saying. Y'all confusing

Brian Foster
Cross-examination by Ms. Marto

1 me. I don't know.

2 Q Okay. Do you have any idea -- where were you the day
3 of the incident, do you know?

4 A Yeah.

5 Q where were you?

6 A I wasn't there.

7 Q Okay. why do you think that they blamed you for it if
8 you weren't there?

9 A I don't know.

10 Q So all of these people, were they strangers to you?

11 A Yeah.

12 Q So why would they come up with your name?

13 A Maybe I fit the description.

14 Q And, again, you never gave a name to counsel concerning
15 the alibi, correct?

16 A Correct.

17 Q If you felt like your attorney wasn't prepared, why
18 didn't you bring that up to the Court's attention before the
19 trial?

20 A I did. That was the whole purpose of me having the
21 hearing that I had when I was trying to get her relieved off
22 my case. And the judge -- Judge Couch -- he told me that he
23 will be sending me a letter in the mail notifying me his
24 decision and said that he would be sending her and Mr. Smith
25 an email.

Beverly Dorine Jones
Direct examination by Mr. Richey

1 I never got a letter in the mail, and she told me a
2 couple of days later that she and Mr. Smith got email and
3 that the email said that it wasn't, they wasn't, being
4 relieved off my case. I didn't see that email or any
5 black-and-white, but that's what she said.

6 Q And you appeared before Judge Cole for trial, correct?

7 A Correct.

8 Q Why didn't you tell Judge Cole that you were unhappy
9 with your lawyer and you needed more time to prepare for
10 trial?

11 A I didn't know that I could speak since I wasn't in
12 agreement to testify.

13 Q Okay. So did you tell your counsel that the day of
14 trial, that you wanted a continuance and you felt like you
15 weren't prepared?

16 A No. Because, like I said, I didn't know that I could
17 speak since I agreed not to testify.

18 Q You didn't believe you could talk to your counsel who
19 was sitting next to you?

20 A I didn't believe that I could just say anything, just
21 blurt it out. This is court.

22 Q Okay. So you didn't say one word to your counsel the
23 entire trial.

24 A No. It's on record.

25 Q Do you still want a direct appeal in this case?

Beverly Dorine Jones
Direct examination by Mr. Richey

1 A Yes, ma'am.

2 MS. MARTO: No further questions.

3 THE COURT: Mr. Richey.

4 MR. RICHEY: No other questions.

5 THE COURT: You can step down, sir.

6 MR. RICHEY: We call Ms. Beverly Jones.

7 BEVERLY DORINE JONES, having
8 been first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. RICHEY

10 Q Ma'am, will you state your name?

11 A It's Beverly Jones.

12 Q And, Ms. Jones, where were you employed on April 8th of
13 2019?

14 A I was employed by the public defender's office.

15 Q And is -- was that in Spartanburg County?

16 A That's correct.

17 Q Okay. And do you recall representing Brian Foster?

18 A Yes, sir. I do.

19 Q Okay. And you've been in the courtroom. You've heard
20 the testimony. Did -- he said that you -- your initial
21 visit -- well, let me go back. Let me start over.

22 Okay. Can you tell me how many times you went to the
23 jail to see him? And do you know any time, any of the
24 dates, in them, or close to it?

25 A I probably went to the jail to see him, and saw him in

Beverly Dorine Jones
Direct examination by Mr. Richey

1 the courthouse also, probably ten total.

2 Q And when you saw him, did y'all have any discussions
3 about the case?

4 A We did, but I need to clarify one thing.

5 At the time I first started representing Mr. Foster on
6 this case, I was also representing him on another case. I
7 had represented him from, I think, it was either May or
8 March of 2017 on another gun charge. It was still pending
9 when he got arrested for these.

10 Q So this was an additional.

11 A It was additional, and that arrest triggered the filing
12 of a motion to revoke that old bond. And when I received
13 that in March of '18 from Mr. Smith, I went to the jail to
14 see him.

15 That was actually before he had even engaged us on this
16 case. We had a discussion about the motion, about the new
17 charges, and he had at that time prior to my visit executed
18 a document with one of our investigators from the jail
19 saying his family was going to hire an attorney and he
20 didn't want us. But during the course of that conversation
21 he, in fact, said they weren't hiring an attorney and he did
22 want us to represent him. And that would be me, and he knew
23 that.

24 And so as a result of that conversation I instructed my
25 staff in our office to go back and interview him and do the

Beverly Dorine Jones
Direct examination by Mr. Richey

1 screening paperwork. And we undertook the representation
2 that led to the trial in this case.

3 Q Okay. So -- so he gets arrested for this charge. He's
4 down at the jail and the initial -- I want to make sure I
5 understand the process.

6 He's down at the jail. They go in and say, hey, do you
7 want the public defender. He says no, I'm going to hire.
8 So -- so the P D.'s office is never in the case. And then,
9 low, about March he says I want y'all involved.

10 A Yes.

11 Q And that's when y'all pick up the case.

12 A That was about --

13 Q Okay.

14 A -- three weeks, I think, after his arrest when I
15 received the motion from Mr. Smith.

16 Q Right.

17 A So I went to discuss that issue with him, and that's
18 when I was told and asked, no, we don't have a lawyer, I
19 need a lawyer, I want you to be the lawyer.

20 THE APPLICANT: That's not correct.

21 THE COURT: Sir.

22 Q Okay. Well, let me ask.

23 THE COURT: Hold on just a minute. I need to explain
24 this.

25 Mr. Foster, let's make sure you understand. You have

Beverly Dorine Jones
Direct examination by Mr. Richey

1 an attorney. Okay. That attorney speaks for you. So
2 you're not permitted to speak. Okay. If you're on the
3 witness stand, of course, you can speak, but you can't make
4 outbursts like that. Your attorney speaks for you.

5 If you need to speak to your attorney, that's fine,
6 but you can't make outbursts in court. Do you understand
7 that?

8 THE APPLICANT: Yes, sir.

9 BY MR. RICHEY

10 Q Ms. Jones, tell me. When -- when is the first time
11 y'all talked about the facts of this case?

12 A That very first meeting we talked generally about the
13 facts.

14 Q Okay.

15 A Because I knew what the charges were and I talked to
16 him about it in general.

17 Q Okay. And then when did you come back, do you recall?

18 A It was some months later, but also I -- I want -- well,
19 you're going to probably get to this, the issue of the
20 discovery.

21 The discovery was sent to him in August or September.
22 Everything that I had at that point, which was probably
23 close to a couple of hundred pages, was sent to him at the
24 jail. So the contention that he didn't have it until the
25 month before the trial is absolutely incorrect.

Beverly Dorine Jones
Direct examination by Mr. Richey

1 Q Okay. Let me ask you this. When did you, or did you,
2 discuss the discovery with him, like what happened, they're
3 alleging that you shot and killed this guy?

4 A We discussed it before the trial, like I said, probably
5 six or seven or eight times in great detail.

6 Q What did you discuss because he -- because it's his
7 position he doesn't understand what happened. What did
8 y'all discuss? I mean, when you sat down with him and said,
9 hey, what's the state alleging?

10 A We discussed the facts. We discussed the fact that he
11 was alleged to have gone into -- gone to a home of a young
12 man. He walked up. And also the evidence, which he was
13 allowed to view, showed that this young man had surveillance
14 cameras. There was a -- he walked up, or an individual
15 walked up, up the driveway where the owner of the home and
16 two of his friends were in the back yard.

17 He was acknowledged, according to what would be the
18 testimony later, and the statements as I received in
19 discovery -- acknowledged by the homeowner. He knew him.
20 He had, in fact, allowed Mr. Foster to live in that home for
21 some period of time in about the prior two months prior to
22 the death.

23 Two of the other individuals in the home also -- that
24 were present that day also knew him. According to how the
25 testimony developed from their statements and their

Beverly Dorine Jones
Direct examination by Mr. Richey

1 testimony, the homeowner introduced him to the remaining
2 person who didn't know him.

3 Now, this was a young man, this victim. Apparently had
4 a habit of letting other people stay in his home. He had a
5 multiple-bedroom home.

6 At the time of his death he had two other guys living
7 in the house, one of which -- maybe both of which -- had
8 been there during the time that Mr. Foster and his
9 girlfriend had stayed in the home.

10 So we discussed the fact that these were people, with
11 the exception of one of them, that knew him, and they even
12 later identified him from a lineup.

13 We also discussed the fact that the young man had
14 surveillance equipment on the outside of his house. And for
15 some reason -- I never got a real concrete answer for this
16 one -- he had a surveillance camera in his bedroom, and so
17 there was a video from that afternoon of the victim and a
18 person who appeared to be, because it was very clear, Brian
19 Foster going into the victim's bedroom and looking at a new
20 gun that the victim had gotten and was very excited to share
21 with everyone.

22 They had had some -- some target practice earlier
23 amongst the friends, but there was a video from that
24 afternoon prior to the death of this individual in the house
25 in the hallway right outside of the bedroom of Mr. Foster

Beverly Dorine Jones
Direct examination by Mr. Richey

1 handling this gun, another gun and passing the gun back and
2 forth.

3 They were friendly. They were sharing a cigarette.
4 They may have even been smoking some weed. I don't remember
5 that part.

6 Q But --

7 A But those are the kind of discussions we had.

8 Q Did he tell you that he was not guilty of the charge?

9 A He never acknowledged his guilt. That's correct.

10 Q Okay. And did he -- did he say anything about an alibi
11 not being there? He just said I'm not guilty.

12 A That's right. And he did not believe he would be found
13 guilty.

14 Q Okay. Did you -- when he said that he is not guilty,
15 did you ask him for an alibi witness or anything?

16 A I did. I repeatedly asked him do you have witnesses,
17 let's talk about defenses.

18 Initially -- and this happened prior to me even talking
19 to him in March -- within a couple of days of his arrest --
20 and I learned this when I got the discovery -- there was a
21 victim's advocate at the jail who believed or who was
22 receiving information from family members of the victims or
23 friends that people that knew Mr. Foster, or on his behalf,
24 were contacting them or making unkind statements on social
25 media or some of that kind of drama.

Beverly Dorine Jones
Direct examination by Mr. Richey

1 This young lady went into pod five where Mr. Foster was
2 to, she says, admonish him not to have any victim contact or
3 ask or direct any of his friends or family from doing that.

4 She ultimately wrote a 2-page statement in which,
5 although she knew and he told her he had already invoked his
6 right to counsel to an investigator -- she continued to talk
7 to him and engage him in a conversation about what happened.

8 She couched it as though he was the one initiating the
9 statement, saying he is very confused, he needed somebody to
10 talk to, would she be willing to help him.

11 But, ultimately, during this 2-page, what ended up
12 being a 2-page, statement he tried to set forth, and did in
13 the statement set forth, the self-defense argument, that he
14 and the individual had been in the bedroom and they had
15 fought each other, the man had become -- the victim had
16 become angry with him for some reason and attacked him.

17 The problem was -- and he and I discussed this later --
18 the problem was he didn't know about the video in the
19 bedroom clearly, because the video in the bedroom totally
20 refuted that. They were perfectly friendly and happy.

21 But we discussed that. We discussed defenses. I
22 repeatedly asked him for witnesses. He didn't give me any.

23 He did one of the last times I visited before the trial
24 date give me a list of family members he wanted me to
25 contact. And I -- either I did directly, or me and my

Beverly Dorine Jones
Direct examination by Mr. Richey

1 paralegal did it together. But we contacted what might have
2 been four, five or six family members for him. But he never
3 gave me any witnesses, and he certainly never gave me an
4 alibi.

5 Q Okay. Was he -- did y'all have any -- was any
6 difficulty in representation? Was he wanting you off the
7 case and all of this stuff?

8 A Well, clearly, he did, because, but I learned about it
9 in a kind of back-door way. He never -- he never told me
10 you're not being a good lawyer, I don't want you to be my
11 lawyer, I want you to withdraw.

12 In the process of -- in the runup to the actual trial
13 date, one of the things that happened in the last three
14 weeks, two or three weeks, one of my investigators went to
15 the jail and had dedicated an entire day to show all of the
16 different videos.

17 I had talked -- I had talked about them to him, and
18 then I sent him -- sent the investigator to go show them.

19 well, at lunchtime my investigator came back and told
20 me two things. First of all, he said Mr. Foster is not
21 interested in watching those videos, he says he doesn't want
22 to see the rest of them. And then he said, oh, and he says,
23 told me, he doesn't want you as his lawyer any more that the
24 Supreme Court is investigating you.

25 well, I knew at that point what that meant. I've been

Beverly Dorine Jones
Cross-examination by Ms. Marto

1 doing this for over 30 years. I had not yet gotten a
2 letter, but I knew that's what that meant.

3 I actually did get a letter from disciplinary sometime
4 before the trial of this case, in the last month. I of
5 course had to get an extension so that I could try this
6 case, dedicate my time to that rather than worrying about
7 writing a letter, which ultimately was submitted in May.
8 But that was the first time I heard of that, pretty much
9 instantaneously from finding it out. I think I contacted
10 Mr. Smith and said we need to get him in front of a judge.

11 Q What about -- let me ask you. After the trial was over
12 did he discuss appealing the case with you?

13 A I don't know if we talked about it directly, but I knew
14 I was going to do it.

15 Q Okay.

16 A And I did -- I was totally responsible for the error of
17 the day. It was a miscalculation on my part and I knew --
18 well, as soon as I realized that I contacted appellate
19 defense about how to file the motion --

20 Q Right.

21 A -- to reinstate it.

22 Q Right.

23 A We tried that mechanism. That didn't work, and when it
24 was clear that that was not going to work --

25 Q Right.

Beverly Dorine Jones
Cross-examination by Ms. Marto

1 A -- I arranged a telephone conversation with Mr. Foster
2 at the Department of Corrections to tell him about the error
3 and explained to him that he should file a post conviction
4 relief because he would be entitled to a delayed appeal and
5 it was my fault.

6 At that point he told me he had already received mail
7 and understood that. He may have told me he had already
8 filed, but he understood that process. But I made a point
9 to call him and make sure he knew that, because I wanted him
10 to understand how to protect himself at that point.

11 Q Thank you. Answer any questions the attorney general
12 has for you.

13 CROSS-EXAMINATION

14 BY MS. MARTO

15 Q Good afternoon, ma'am.

16 So all three guys in the house that did not pass away,
17 they all knew Mr. Foster, correct?

18 A Well, if I recollect, I think there was one that didn't
19 know him.

20 Q Okay.

21 A I can't remember which one it was. I know that the
22 Koepke individual, and also the one whose last name was
23 Lewis, actually lived in the house, and I think they had
24 been there when he had lived there. So I'm assuming by the
25 process of elimination that the Campbell guy who was outside

Beverly Dorine Jones
Cross-examination by Ms. Marto

1 working on a moped the whole time was the one who did not
2 know him.

3 Q Did all -- did all three of them identify him at trial
4 to your recollection?

5 A My recollection was that Mr. Koepke could not. He
6 was -- they offered him a lineup, I think, during the course
7 when he was in the hospital being treated. In my review of
8 the trial testimony I saw he attributed his failure to
9 identify to the fact that he was woozy and medicated and all
10 of that. But no. He did not.

11 Q So he did not identify him immediately but he
12 identified him at trial, correct?

13 A No. He did not. Well, maybe he did. I don't know
14 that he was -- I don't think he did that at trial.

15 There was also another individual who lived down the
16 street who identified him as having run through his yard in
17 a very suspicious fashion in a time, close in time, to when
18 the fellows in the yard said he ran out of the yard. So
19 there was one, two, three -- third I.D. -- third or fourth
20 lineup I.D. of him.

21 Q Okay. I'm looking at page two of one of the trial
22 transcripts, and says starting with line 16. Essentially
23 what they were talking about was he was given pictures to
24 see if he could identify who shot you.

25 Says, "Yes, sir, very briefly. It was very brief. I

Beverly Dorine Jones
Cross-examination by Ms. Marto

1 was in shock. I lost a lot of blood and was on medication,
2 so I wasn't -- I don't think I was able to pick him out at
3 the time, but I can definitely pick him out today."

4 Does that ring any bells?

5 A Oh, it's in the transcript. I can't argue with that.

6 Q Okay. And there was also a neighbor that testified at
7 trial, correct?

8 A That was the individual I was talking about. I think
9 his name might have been Moore.

10 Q Okay.

11 A Right.

12 Q He testified that Mr. Foster crashed through his
13 20-foot bamboo --

14 A Yes.

15 Q -- and used his phone?

16 A That was the neighbor.

17 Q Okay. Now, all of this was discussed with Mr. Foster,
18 correct?

19 A Yes. Very much so.

20 Q And he seemed to understand that fact?

21 A Yes. He did.

22 Q And it was always his contention that it wasn't him,
23 that he was, I guess, innocent of the charges, correct?

24 A Correct.

25 Q So was he willing to entertain pleading in any

Beverly Dorine Jones
Cross-examination by Ms. Marto

1 capacity?

2 A well, early on, I think, at one time he asked me if
3 there had been a plea offer and I told him no, and which
4 there hadn't been at that point.

5 The discussion about plea -- plea opportunities was
6 undertaken on the very last day of the trial. I don't
7 remember if -- probably it was before the case went to the
8 jury. I don't remember the exact timing of it, but a lot of
9 it took place out in the hall right out there.

10 The solicitor made an offer of a straight-up plea to
11 murder and maybe the attempted murder. I can't recollect
12 which one of the other charges. Dismissed some of the
13 charges of the remainder.

14 Mr. Foster rejected that. And that process, that
15 discussion, was had in front of his grandmother who was one
16 of the individuals I had brought, I made the call to be
17 there. And so she sat in with me to talk to him. I do that
18 sometimes to see if it will help.

19 And then he rejected that offer. I came back to Mr.
20 Smith with a 40-year offer. He rejected that, I believe,
21 because he couldn't get the family to agree. But that was
22 just my assessment of that. But that's where it ended.

23 Q Okay.

24 MS. MARTO: One moment, Your Honor.

25 (Pause.)

Spenser Smith
Direct examination by Ms. Marto

1 Q And at trial he was acquitted of several offenses,
2 correct?

3 A He was, yes.

4 Q Do you recall what those were?

5 A He was acquitted of two counts of attempted murder and
6 the companion gun charges.

7 He was -- factually, one person was killed in the home.
8 At the time of the shot the testimony developed that one of
9 the other friends, one of the guys that lived in the house,
10 ran up the back steps and into the house to see what was
11 happening. He thought someone -- one of these two guys who
12 he had seen go in to go look at this gun had accidentally
13 discharged the gun. And he wanted to go make sure, see if
14 he could help.

15 But he went up. He testified he was confronted in
16 about the kitchen area by Mr. Foster coming out with the gun
17 in his hand. And, ultimately, that individual, Mr. Koepke,
18 was shot in the hip.

19 He ultimately falls down on the deck, but he comes out.
20 Foster comes down the deck. The two other individuals in
21 the back yard take off. One goes in the back; one cuts out
22 and climbs a -- goes over a fence the other way.

23 They were -- he was -- Mr. Foster was charged with
24 shooting at them, and the jury did not believe that the
25 evidence showed that so that Mr. Foster was acquitted of

Spenser Smith
Direct examination by Ms. Marto

1 those charges.

2 Q would you say that this was a relatively strong case
3 for the state?

4 A I believe it was as the testimony developed.

5 Q so the likelihood of being acquitted at trial of all
6 offenses was relatively low.

7 A Yes. Especially in light of the very clear video from
8 the bedroom.

9 MS. MARTO: No further questions.

10 THE COURT: Mr. Richey.

11 MR. RICHEY: No other questions.

12 THE COURT: Thank you, ma'am. You can step down.

13 MR. RICHEY: No other witnesses.

14 THE COURT: All right.

15 MS. MARTO: One moment, Your Honor.

16 (Pause.)

17 MS. MARTO: We would call Spenser Smith to the stand.

18 SPENSER SMITH, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MS. MARTO

21 Q Good afternoon.

22 A Good afternoon.

23 Q So you were the prosecutor in this case, correct?

24 A Yes, originally, and then Candice Clark helped me at
25 the trial.

Spenser Smith
Direct examination by Ms. Marto

1 Q Okay. Can you give us a rundown of what evidence
2 existed in the matter?

3 A So that Ms. Jones did a good job. He -- he did also
4 have another armed robbery charge that got dismissed once he
5 got the life sentence. That was relatively strong, and it
6 involved a red gun that actually became a part of this one.
7 One of the guns in this actually, like, painted red, very
8 distinct that you could see.

9 But one of the things she left, she talked about the
10 neighbor who basically was out smoking a cigarette with his
11 Shih Tzu out on the back porch, and Mr. Foster comes
12 flipping over from the bamboo forest and basically tells him
13 that his mother had been raped and shot and that he needs
14 him to call 9-1-1.

15 Mr. Moore goes inside. He calls 9-1-1 before he goes
16 outside to talk to Mr. Foster again. And when he hands Mr.
17 Foster the phone, Mr. Foster hangs up the telephone and
18 starts calling somebody else and telling them, hey, you need
19 to come and pick me up and get me outta here.

20 Mr. Moore says what are you doing. He says he called
21 9-1-1 and grabs the phone from him, calls -- basically hands
22 him the phone back.

23 He walks. Mr. Foster walks away again, and again
24 starts calling somebody else to get him out of there.
25 Probably, fortunately for Mr. Moore, given what happened to

Spenser Smith
Direct examination by Ms. Marto

1 everybody else in this case that interacted with Mr. Foster
2 that day, sheriff's deputies showed up to his house because
3 of the 9-1-1 hangup.

4 At that point Mr. Foster ran away, and they did not
5 catch him. He was able to get outta the area.

6 They did find a backpack underneath a shed in his
7 direct neighbor's house that had boxers that came back with
8 D.N.A. to Brian Foster and the gun that is the murder
9 weapon, and the gun also that was stolen. So, basically,
10 the two guns that were taken from the victim's house in a
11 bag with his D.N.A. right where he was.

12 To add onto that, the deputies actually get the call
13 log of the people that he called from Mr. Moore's phone.
14 When Mr. -- you know, obviously, we're contending that that
15 person was Brian Foster. They're saying it was not, is how
16 the trial went down.

17 Well, Mr. Foster who was actually in the jail, his
18 first two phone calls from jail were to the exact same
19 numbers that were dialed from Mr. Moore's phone. So the
20 probability of that happening to me seemed extremely
21 unlikely.

22 Those would be -- I mean, the video -- I think a lot of
23 those on their own could have been a sufficient basis to
24 convict him, but combined I think it was a very strong case,
25 which is why we didn't make a plea offer essentially in the

Spenser Smith
Cross-examination by Mr. Richey

1 case because a lot of murder cases -- there is one in
2 particular on somebody his age. I'm trying to remember if
3 there was anything else.

4 Q So you thought that the chance of success at trial from
5 the state was quite high, correct?

6 A Yes. Now, the two attempted murders that he was found
7 not guilty of, I'll be -- Ms. Jones did a really good job
8 of -- actually made one of the victims basically cry on the
9 stand, which to me essentially they were so scared they
10 turned away and they did not see what happened. They did
11 not see where he was shooting, but they heard gunshots going
12 off as they ran away.

13 They presumed that they were coming towards them, but
14 there was nobody that could testify that they saw him
15 shooting at them at that time because they weren't
16 interested in turning around and seeing. Mr. Koepke ran
17 around the front of the house. Mr. Foster actually runs
18 around the other side of the house, and some neighbors pick
19 him up.

20 And, oh, we had -- we had a jail call as well where
21 Mr. Foster -- I think we introduced this at trial -- where
22 Mr. Foster talks about how he had done shaved his head for
23 nothing, or something like he said, because when he gets
24 picked up by law enforcement he's changed his appearance.
25 He shaved his head. You know, the implication was,

Spenser Smith
Cross-examination by Mr. Richey

1 obviously, he knew he was guilty and he was trying to change
2 his appearance.

3 And I know Ms. Jones was talking about the statement,
4 about the self-defense, and there could have been some
5 issues about whether, you know, that was gotten properly,
6 although she wasn't an investigator. I don't think she went
7 in there planning on what happened and it happened, but we
8 didn't use that at the trial just because we thought we had
9 a sufficient case without to prove that it was him there
10 without the self-defense story coming in.

11 Q And all discovery was shared with the defense, correct?

12 A Yes.

13 MS. MARTO: No further questions.

14 THE COURT: Mr. Richey.

15 MR. RICHEY: Thank you.

16 CROSS-EXAMINATION

17 BY MR. RICHEY

18 Q You -- you had -- there was a lot of discovery in this
19 case, correct?

20 A Yes.

21 Q A lot.

22 A I would say almost all murder cases have a lot.

23 Q And you had the case from day one, correct, from when
24 it happened? You got it day one.

25 A I did.

Spenser Smith
Cross-examination by Mr. Richey

1 Q And there was a period of time where no lawyer was on
2 the case, correct?

3 A Yes. I believe so.

4 Q So -- so at that period, point in time, you didn't have
5 anybody to discuss the case with or send discovery with too
6 at that point, correct?

7 A Probably not. I don't -- I don't recall if Ms. Jones
8 and I talked about it.

9 I mean, usually when I have somebody charged with a
10 serious thing and they haven't gotten an attorney and
11 they're already represented by the public defender, you'll
12 reach out to them and say, hey, you know, do you want to
13 send somebody by.

14 If people go forever and ever without getting an
15 attorney, we'll usually bring them in front of the chief
16 judge and see if.

17 Q Right. But in this case there was a substantial period
18 where you had no conversation with a defense lawyer or
19 anybody about the case, correct?

20 A I don't know when she got retained. I don't have the
21 file in front of me.

22 Q Well, when you first got the case there was nobody you
23 could contact to say here's the discovery in the case,
24 correct?

25 A I don't think so.

Spenser Smith
Cross-examination by Mr. Richey

1 Q Okay. So there was a period of time where the case was
2 just out there because the P.D.s -- Ms. Jones testified that
3 he hadn't been screened for them or anything. So the case
4 was just out there, correct?

5 A Yeah. I mean, so I actually prosecuted him in the
6 past, and he was represented by Rick Vieth in that case. I
7 think there was some belief that he was going to get a
8 private attorney like he had in the past.

9 Q That's what I'm saying. There was nobody on the case
10 at that point, correct?

11 A Sure.

12 Q And -- and so -- so at some point Ms. Jones came into
13 the case, correct?

14 A Yes.

15 Q But at that point you had had the case for -- for some
16 months, correct?

17 A Yeah. I mean, I'm not, you know, testifying to when
18 she got her Rule 5, but, I mean, it's in the record, I'm
19 sure.

20 Q Yeah. But -- but it was some months before she got
21 that Rule 5, correct?

22 A Probably.

23 Q And -- and this case was a substantial amount of
24 information, correct?

25 A Yes.

Spenser Smith
Cross-examination by Mr. Richey

1 Q And you had ample time from your standpoint -- talking
2 about your standpoint. You would ample time to prepare for
3 the case, correct?

4 A Yes.

5 Q And you had ample time because you had the case from
6 day one, correct?

7 A Yes.

8 Q And would you -- and the question is would you think a
9 month is enough time to prepare for this case.

10 A I mean, I've never been a defense attorney, but, I
11 mean, my personal opinion, if I went over the discovery with
12 a rational mind, I would've thought that he needed to enter
13 a guilty plea in this case.

14 Q No, no. That's not what I asked you.

15 I asked you do you believe -- you -- you used more than
16 a month to prepare for this case, correct? You had -- you
17 used more time than one month to prepare for this trial.

18 A Well, I mean, you review a case and you indict it. And
19 a lot of times they do kinda just set there for a while. I
20 mean, you're not actively looking every day at this case.

21 I mean, I looked at it initially and thought it was an
22 overwhelmingly strong case that would likely result in a
23 guilty plea and probably didn't do a whole lot on it until
24 we got into a trial posture, which would probably be about a
25 month out because that's kinda when our dockets are

Spenser Smith
Cross-examination by Mr. Richey

1 published. They're published, and this was not -- this was
2 not number one as I recall. I do recall, I think, calling
3 Ms. Jones on the weekend saying that I think it was looking
4 like we were going to be number one. We were in the top
5 group of cases.

6 Q So you prepared the case to take to the grand jury,
7 correct? You looked at the case before you took it to the
8 grand jury, correct?

9 A Yes.

10 Q And you looked at it for more than an hour, correct?

11 A Probably.

12 Q And more than -- so send that case to the grand jury.
13 It takes some time in review for you because you just don't
14 want to sit up there and not have looked at it, correct?

15 A Sure.

16 Q So -- so when you got the case prepared for the month,
17 you'd already looked at it. You'd already sent it to the
18 grand jury, reviewed it for months, correct?

19 A Yes.

20 Q So -- so really you take more than a month to prepare
21 the case, this case, you did.

22 A Yeah. I mean, I'm looking at it over a period of
23 beyond a one-month, but, I mean, I'm not working solely on
24 the case for one month probably.

25 Q Right. But you have the case for an extended period of

Spenser Smith
Redirect examination by Ms. Marto

1 time that you're able to look at it, get away from it, look
2 at it, get away from it, look at it. This is not a case
3 that you want thrown in your lap a month before a trial and
4 say go get prepared, right?

5 A If I was going to get a murder case, this would
6 probably be the one I would want to get in front of me with
7 a month to go.

8 Q So you would prefer to have the case a month before
9 it's tried versus when you got it? Which one do you prefer
10 to have it?

11 A No. Of course I'd want it for longer.

12 Q Okay.

13 A My point is if somebody left the office and this was on
14 the docket in, say, like July -- of all murder cases I've
15 ever been assigned, this would be the one that I would have
16 wanted to have to be put in that position.

17 Q But you don't believe that that would be proper to try
18 this case with this defendant's life on the line in a
19 month's time. You don't think that's proper, correct?

20 A No.

21 Q Okay. Thank you.

22 A I mean, that's what happened.
23
24
25

Spenser Smith
Redirect examination by Ms. Marto

1 REDIRECT EXAMINATION

2 BY MS. MARTO

3 Q Were you ever given any indication from Ms. Jones that
4 she was unprepared for trial?

5 A No. I mean, defense attorneys move for continuances
6 all the time on cases that are serious that are at the top.
7 It's -- I mean, from the prosecutor's perspective you're
8 almost expecting it, not necessarily from Ms. Jones but from
9 -- from others. I mean, that's almost like -- I mean,
10 you're either going to get a continuance request or you're
11 going to get a request of fire-the-attorney, which we kind
12 of -- kind of got in this case, I guess.

13 Q And how long have you been prosecuting for?

14 A Since August of '14, so almost eight years.

15 Q Have you ever dealt with similar experiences where
16 somebody's charged with a large charge and is given a short
17 period of time to go to trial?

18 A From the defense perspective or have I ever been --

19 Q Have you ever kinda witnessed a similar situation in
20 terms of timeline on the defense side?

21 A I mean, we're assuming that Ms. Jones only talked to
22 him for the one month like he's testified to or because -- I
23 mean, to me -- and we -- we have somebody that's leaving our
24 office that's got a murder case in August, and I'm taking
25 that. I'm going to plan to leave it on the docket, and

Spenser Smith
Recross-examination by Mr. Richey

1 that's three months from -- two and a half months from now
2 but...

3 Q was it your understanding Ms. Jones only had a few
4 weeks to prepare for trial in this case?

5 A No.

6 Q No. what was your understanding, do you recall?

7 A I mean, to me she was on the case for -- for a long
8 time.

9 we didn't have a whole lot of -- we didn't have a whole
10 lot of productive plea discussions, I mean, so it wasn't
11 like a case where -- like some of these drug traffickings
12 and stuff, they go back and forth where it's mandatory life.
13 And then the prosecutor says 18, and then they say 12, and
14 then you get 15.

15 I mean, I met with the family, Morris family, and, you
16 know, my -- my first meeting at the sheriff's office, they
17 wanted to seek the death penalty on him.

18 So, I mean, it was -- it was not a we're going to offer
19 30 or we're going to offer manslaughter. And, I mean, I've
20 talked with defense attorneys. Sometimes they -- you know,
21 the defendant takes it as that they're not coming to see
22 them and they don't care about the case and not working on
23 it, but they don't have anything to say.

24 I mean, Ms. Jones can prepare for the case without
25 talking to him about some aspects of it. Some, she's gotta

Spenser Smith
Recross-examination by Mr. Richey

1 meet with him. But if there's not a plea offer or anything
2 to discuss or trial date to discuss -- I mean, she has other
3 clients and other cases that are on plea dockets -- plea
4 dockets, trial dockets that she's got to deal with.

5 So the fact that, you know, some period of time might
6 go by between her talking to him, you know, some time goes
7 by between me looking at a case and then, you know,
8 indicting the case and it coming for trial.

9 So, but, you know, like she's been doing it for 30
10 years. So if she felt like she was totally unprepared, I
11 have no doubt she would have said she's not ready to try the
12 case. And that then puts judges in difficult positions, and
13 a lot of times it leads to continuances, because his life
14 was on the line. But-and she did manage to get him
15 acquitted on half the charges.

16 Q It was your understanding that this was a much longer
17 timeline, again, than what Mr. Foster has known.

18 A Yes.

19 MS. MARTO: No further questions.

20 THE COURT: Mr. Richey.

21 RECROSS-EXAMINATION

22 BY MR. RICHEY

23 Q You don't know how much she prepared the case, correct?

24 A No. I don't.

25 Q You don't know whether she prepared a month before or

1 two months before, correct?

2 A All I know is -- I did watch the hearing today, so I've
3 heard his contention, and I've heard hers.

4 Q No. I'm asking for your personal knowledge. Do you
5 know how much she prepared this case?

6 A No.

7 Q Do you know if she prepared it a month before? You
8 don't know if she prepared it six months before, correct?

9 A No idea.

10 Q Okay. So -- so based off your knowledge she could have
11 prepared 30 days before the case. Based off what you know,
12 could have, right?

13 A She would have never looked at the file for all I know.

14 Q Thank you.

15 THE COURT: Ms. Marto.

16 MS. MARTO: No further questions.

17 THE COURT: Thank you, sir. You can step down.

18 Ms. Marto.

19 MS. MARTO: No further witnesses.

20 THE COURT: Argument, Mr. Richey?

21 MR. RICHEY: Your Honor, I would say as to the appeal
22 issue, the belated appeal, I think that counsel's testimony
23 substantiated a belated white appeal. I think counsel's
24 testified she miscalculated the days. So I think he's
25 entitled to a white appeal.

1 As to the issue about preparing, I think the testimony
2 it was -- went around and round, but my client testified
3 that counsel only went down and saw him in March of '19.

4 I think counsel, she, testified that she went down in
5 March. And when I make this argument, counsel stated that
6 my client -- the process of getting a P.D., and understand
7 that is that they go to the jail and say, hey, do you want
8 a public defender. If the guy says no, they don't screen
9 them. But at some point it seems like by March 2019 she's
10 down at the jail seeing him and they're discussing the
11 case, because I think she said that he said that she came
12 down there within five times from March to April of the
13 trial date.

14 The solicitor also testified that there was a long
15 period of time where nobody was on the case, and the
16 solicitor also testified that there was a large amount of
17 volume in the case. And it's going to be our position that
18 in this type of trial with the amount of information that
19 30 days was not sufficient time to prepare and try the
20 case.

21 I understand that counsel testified that she went down
22 there, she discussed it. And to counsel's -- I use the
23 word defense -- that's when she got the case because -- and
24 we just believe based off the testimony of counsel and the
25 solicitor that it was not adequate time to prepare for this

1 particular trial.

2 THE COURT: Mr. Richey, now, I hear you and-but can
3 you point me to any specific deficiencies other than sort
4 of this number of days is not enough, like, well, this
5 witness, the cross was poor because she was unprepared or
6 something like? Because I haven't heard anything like
7 that.

8 MR. RICHEY: Well, what my client testified, because
9 the delay so long, that -- that he lost trust with counsel
10 and he wasn't able to effectively communicate with her,
11 because he said, hey, we're this close to trial, you're
12 talking to me, I want to be relieved, because I think half
13 of the time was him wanting a new lawyer. And so, Your
14 Honor, I think the delay in the representation or going
15 that quickly caused the relationship to be somewhat broken
16 between Mr. Foster and counsel.

17 And I'm not -- I'll just say some of this counsel,
18 because when she got the case through the screening
19 process, I understand that the screening process was -- was
20 late, and that was no fault of hers.

21 THE COURT: I just feel like to argue that you get a
22 P.C.R. because counsel is unprepared, you've got to
23 identify a deficiency in their representation, and I don't
24 think I've heard that yet.

25 MR. RICHEY: Well, the deficiency is that it doesn't

1 give client enough time to cooperate with --

2 (Pause for cell phone ringing.)

3 MR. RICHEY: I think that what this did, it caused a
4 breakup of the representation.

5 I mean, we all -- and I said I could try a case
6 without the client's cooperation, but I think when you
7 don't have the client hand in hand, you know, that -- that
8 affects the representation, because your client is, as
9 Mr. Foster testified, that, hey, we doing all of this all
10 at once, hey, I want -- I want a new lawyer.

11 And I'll tell you, you know, Ms. Jones has been doing
12 this a while and we can -- I use to phrase it -- we can try
13 cases without clients. That's a fact. I mean, we can come
14 here and say you don't want to cooperate, we can do it.

15 And Ms. Jones is an excellent lawyer and an
16 experienced lawyer that she can try the case without him.
17 Okay. And -- and it's going to -- because of her
18 experience and her talent, she's going to do a good job
19 but -- but your client has to be a participant in the case
20 to make the representation total.

21 And that's -- and when your client says I've been
22 sitting out here for whatever time and here you come and
23 now we're all mad at each other, that affects the
24 representation of this client. I don't -- and, as I say,
25 Ms. Jones, hey, I've tangled with Ms. Jones when she was a

1 solicitor and I -- she's a talented lawyer and she can do
2 that.

3 THE COURT: Thank you, Mr. Richey.

4 MR. RICHEY: Thank you, Your Honor.

5 THE COURT: Ms. Marto, if you could address the white
6 issue first, and then the rest, please.

7 MS. MARTO: I mean, Your Honor, you heard testimony
8 that it was counsel's failure to file an appeal, that she
9 attempted to file an appeal. It was untimely and then that
10 was through no fault of applicant.

11 And so I -- I think there was testimony that she was
12 unclear as to whether or not he actually wanted an appeal,
13 but I think applicant testified that he did. And so I
14 think we have to concede white relief in this case.

15 In all honesty, I don't know how we made contrary
16 given the record. But concerning all other allegations, it
17 would be our position that no deficiency has been shown on
18 the part of Ms. Jones, or prejudice.

19 Both the solicitor and counsel testified that the
20 evidence in this case was overwhelming, and it was. You
21 had three men in the house that identified him. You have a
22 neighbor who said he ran through a 20-foot bamboo and
23 called saying he was going to call the police but instead
24 that he called an individual to come and help pick him up.
25 And then they find D.N.A. evidence in the case.

1 And so I haven't heard any evidence that there was a
2 deficiency beyond perhaps brevity of time spent in
3 consultation or preparing, but brevity alone isn't enough
4 to find deficiency or prejudice. Something more needs to
5 be presented, and I don't think anything has been presented
6 in this case concerning deficiency in terms of failure to
7 review the discovery or anything like that.

8 I think that Ms. Jones had an understanding that he
9 would likely be found guilty at trial and that Mr. Foster
10 is claiming that, you know, he -- he wasn't there, that he
11 didn't want anything to do with it. That indicated he
12 wasn't going to plead straight up to murder, and so the
13 option was trial.

14 And I don't think any other attorney, regardless of
15 any tension that might exist between her and her client,
16 could have gotten a different result, nor do I think she
17 showed any deficiencies on her own in the trial transcript,
18 and so because of that we would request you deny relief on
19 all remaining allegations.

20 THE COURT: I'm going to deny relief other than I'm
21 going to grant the White relief.

22 MR. RICHEY: Thank you, Your Honor.

23 MS. MARTO: Thank you, Your Honor.

24 END OF REQUESTED TRANSCRIPT OF RECORD

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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 Common Pleas Court for Spartanburg County, South Carolina, on the 7th day of June 2022.

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

May 22, 2023

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	FOR THE SEVENTH JUDICIAL CIRCUIT
	)	
Brian Foster, #371789,	)	Case No.: 2019-CP-42-03664
Applicant,	)	
	)	ORDER GRANTING APPLICANT
v.	)	BELETED APPELLATE REVIEW
	)	PURSUANT TO <i>WHITE V. STATE</i>
State of South Carolina,	)	AND DISMISSING ALL OTHER
Respondent.	)	CLAIMS WITH PREJUDICE

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This matter comes before this Court by way of Applicant's post-conviction relief application filed October 16, 2019. Respondent made its return on April 16, 2020, requesting that an evidentiary hearing be convened. An evidentiary hearing was held on June 7, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Beverly Jones and Prosecutor Spenser Smith also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its May 2018 term, the Spartanburg County Grand Jury indicted Applicant for murder and possession of firearm during commission of a violent crime (2018-GS-42-2086), attempted murder and possession of a weapon during a violent crime (2018-GS-42-2087), and possession of a firearm

or ammunition by person convicted of a violent crime (2018-GS-42-2090). Applicant was represented by Assistant Public Defender Beverly D. Jones of the Seventh Circuit Public Defender's Office. Assistant Solicitors Spenser H. Smith and Candace F. Clark of the Seventh Circuit Solicitor's Office prosecuted the case. On April 8-11, 2019, Applicant proceeded to jury trial before the Honorable J. Derham Cole. The jury convicted Applicant as indicted.¹ Judge Cole sentenced Applicant to life imprisonment for murder and possession (-2086), thirty years for attempted murder and possession (-2087), five years for possession, count two (-2089), and five years for possession of a firearm by a person convicted of a violent felony (-2090). All these sentences were set to run concurrently.

Applicant filed an untimely notice of appeal on April 25, 2019, that was dismissed by the South Carolina Court of Appeals for failure to timely serve the notice of appeal, as required by Rule 203, SCACR. Counsel filed a motion to reinstate the appeal on June 17, 2019. This was denied by written order filed July 30, 2019. The remittitur was issued on October 3, 2019.

Summary of Relevant Facts

On February 18, 2018, Eric Morris and Joel A. Campbell, Jr. were hanging out when Applicant appeared. (Tr. 140). Morris invited Applicant to stay and both men started showing one another their guns. (Tr. 140-41). A couple of Morris's friends, Darryl J. Lewis and Thomas Michael Koepke, showed up shortly thereafter. (Tr. 142, 187-88). Initially, they were standing around talking amiably in the parking lot. (Tr. 174, 189).

Applicant and Morris went into Morris's house to look at Morris's new gun. (Tr. 144, 175, 189). Shortly thereafter, the other people on scene started hearing gunshots from inside the

¹ The jury also acquitted Applicant of two counts of attempted murder and two counts of possession of a weapon during a violent crime (2018-GS-42-2089 and -2090).

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house. (Tr. 145, 175, 190). Upon hearing gunshots, Koepke ran into the house, thinking the gun was fired by accident. (Tr. 145-46, 190). Koepke, ran into the kitchen, where more shots rang out. (Tr. 146, 190). Applicant then came around the corner, holding a gun to Koepke's face. (Tr. 190). Koepke immediately began pleading with Applicant not to kill him. (Tr. 146, 190, 193). They went to the back porch, where Applicant, at one point, pointed the gun at Lewis and Campbell instead. (Tr. 193).

Lewis and Campbell began running away while Applicant fired more shots. (Tr. 147-50, 176-77). Campbell and Lewis told the neighbor to call the police because Morris was shot. (Tr. 150-51, 177). Koepke began running away and was shot in the hip, causing him to fall several times while attempting to flee. (Tr. 193-94). After being unable to run anymore due to blood loss, Applicant confronted Koepke again, who began pleading with Applicant not to shoot him again, while Applicant stood overtop him, pointing the gun at him. (Tr. 151, 197-98). The gun kept jamming, preventing it from firing. (Tr. 198). After the gun jammed several times, Applicant began running away. (Tr. 198). Koepke got up, ran to the neighbors' yard, and fell again, crying for help. (Tr. 199). Law enforcement arrived shortly thereafter. (Tr. 151-52, 177-78). Koepke was transported to the hospital and treated for his injuries. (Tr. 200).

Campbell and Lewis were separated from one another by law enforcement and asked to choose Applicant out of a lineup. (Tr. 152-54, 178). Both men chose Applicant. (Tr. 152-54, 178). Koepke was presented with a lineup while heavily medicated and in the hospital but could not pick Applicant out of a lineup. (Tr. 203). Two of the neighbors were also asked to pick Applicant out of a lineup. (Tr. 211-12, 222-23). They both chose Applicant. (Tr. 212, 223). The house had video surveillance that documented movement at the time the incident occurred, including footage of a vehicle pulling into the parking lot and footage of Koepke Applicant

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running around the house. (Tr. 250-51, 470).

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. "Trial Counsel was ineffective by failure to file its notice of appeal, *see White v. State*, belated appeal."

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective assistance of counsel
 - a. Failure to ensure Counsel was relieved prior to the hearing.
 - b. Brevity of time in consultation.
 - c. Failure to ensure Counsel had more than one month to prepare for trial.
 - d. Failure to discuss the case with Applicant.
 - e. Failure to secure a plea deal.
 - f. Failure to pursue an alibi defense.
 - g. Failure to file a timely notice of appeal.
 - h. Failure to ensure Applicant understood the discovery.
 - i. Failure to explain the facts of the case.

Summary of the Testimony

Applicant Testimony

Upon the Court's questioning, Applicant stated he discussed with his attorney Applicant himself, his freedom, and how he was not getting the best representation. He stated that on the third visit he was under the impression he would get a hearing on a to relieve counsel.

On direct examination, Applicant stated Counsel visited him on March 18, 2019, which was about a month before his trial. He stated Counsel visited him five times within a month. Applicant stated that Counsel tried to get a motion for discovery and a mental health evaluation. He stated he got a discovery motion before the trial. He stated Counsel did not discuss his case with him. He stated he had a four-day trial. He stated Counsel had the trial covered. He stated that lack of communication with Counsel was a major issue for him. He stated he never

provided a negotiated plea deal.

Applicant stated that he knew the allegations against him and that he talked to Counsel about his innocence. He stated that Counsel thought he committed the crime. He stated Counsel did not take his alibi into consideration. He stated that he filed a grievance against Counsel and the Supreme Court wrote him back, stating that Counsel was under investigation for disciplinary issues. He stated he did not know the outcome of the investigation. He stated that he thought his direct appeal was denied but that he wanted a belated appeal.

On cross-examination, Applicant stated he knew he wanted Counsel off his case the first time she visited him. He stated he received his discovery but did not understand it. He stated that he had people testify that he was the shooter. He stated he did not know the facts of the case, only that he was charged with murder. He stated he never provided Counsel with the name of his alibi witness. He stated he did not talk to Counsel once during the trial, nor did he tell the Court that he was satisfied with her services.

Counsel Testimony

Counsel stated that she was representing Applicant on another case when she inherited this matter. She stated they discussed his new charges, the facts of the case, and the discovery. She stated they discussed the facts, including that he allegedly went into the home of a young man who had surveillance cameras inside the home. She stated Applicant knew the people in the home and that he stayed in the home in the past. Counsel testified that there was surveillance camera footage captured Applicant handling a gun inside the home. Counsel testified that he never acknowledged his guilt. She testified that Applicant got his family and friends to threaten the victim's family on social media. She stated that Applicant gave her a list of family members to contact, but never provided her with any alibi witnesses. She testified that she

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investigator go to the jail to show the applicant the videos, but that Applicant did not want to see them. She testified that she made an error on the date of appeal, which led to it getting dismissed. She testified that she arranged a telephone conversation to tell Applicant to file a PCR application for a belated appeal.

On cross-examination, she testified that some of the witnesses knew Applicant. At least one of the victims identified Applicant. She stated she discussed this with Applicant. She stated a plea offer was open until the last day of the trial, but the offer was rejected. She testified that Applicant was acquitted of two counts of attempted murder. She testified that the State had a relatively strong case. She stated that the evidence of the crime was clear, especially given the surveillance footage.

Prosecutor Testimony

Prosecutor stated that evidence in the case consisted of 911 calls, a backpack with boxers, a gun that was identified as the murder weapon, another stolen gun, and jail calls. He stated that there was DNA evidence on the gun. He stated that this was a very strong case for the State and that the likelihood of success at trial was high for the State.

On cross-examination, Prosecutor testified that there was a period when there was no attorney representing Applicant. He stated that Counsel joined in on the case months later. He stated that he thought both sides had sufficient time to prepare the case. He stated that he thought Counsel could get up to speed within a month's time on this case but would have preferred more time. On re-direct, Prosecutor testified that he thought Counsel had the case for more than a month. He stated that she was also handling other cases at the time.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the

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testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, 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 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), SCRPC ("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 in the range of legitimate decisions regarding how to best represent a criminal defendant").

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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 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result 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.

Failure to Ensure Counsel was Relieved

Applicant claims he was under the impression that Counsel was relieved of trial

This Court finds this implausible on its face. Applicant was apparently willing to proceed to trial while being represented by Counsel. Even so, because there is no showing of deficiency or prejudice, relief is denied.

Brevity of Time in Consultation

Applicant alleges that Counsel was ineffective for failure to communicate with Applicant enough. “[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation.” *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence indicating “how additional preparation or communication would have resulted in a different outcome.” *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant has failed to establish how additional communication would have resulted in a different outcome at trial. Applicant has failed to meet his burden of proof and relief is denied accordingly.

Failure to Ensure Counsel had Enough Time to Prepare for Trial

Applicant claims Counsel was ineffective for failing to ensure she had enough time to prepare for trial. Applicant failed to point to anything specific that Counsel should have prepared but did not. Counsel and Prosecutor both credibly testified that she had enough time to prepare for trial. Accordingly, Applicant has not met his burden of proof and relief is denied.

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Failure to Discuss Case

Applicant claims Counsel was ineffective for failing to discuss the case. Counsel credibly testified that she discussed the case, discover, and facts surrounding the case with Applicant. Applicant has failed to point to anything specific that Counsel should have discussed with him that would have changed the outcome at trial. Accordingly, Applicant has not met his burden of proof and relief is denied.

Failure to Secure a Plea Offer

Applicant claims Counsel was ineffective for failure to secure a negotiated plea offer. “[A] defendant has no constitutional right to plea bargain.” *Reed v. Becka*, 333 S.C. 676, 684, 511 S.E.2d 396, 400-01 (Ct. App. 1999). (citing *State v. Easter*, 322 S.C. 333, 471 S.E.2d 745 (Ct. App. 1996), *aff’d as modified*, 327 S.C. 121, 489 S.E.2d 617 (1997)). “Prosecutors have broad powers in the plea bargain process[.]” *Id.* Prosecutors may pursue a case to trial, or they may plea bargain it down to a lesser offense, or they can simply decide not to prosecute the offense in its entirety.” *Id.*, 333 S.C. at 684, 511 S.E.2d at 400-01. “The Judicial Branch is not empowered to infringe on the exercise of this prosecutorial discretion; however, on occasion, it is necessary to review and interpret the results of the prosecutor’s actions.” *Id.* Yet, plea offers must be analyzed within the bounds of judicial restraint. *Id.*

There have been no allegations of a failure to convey an offer, only that a an offer of a negotiated plea was never extended. Counsel credibly testified that there was an offer in the case that lapsed the day of trial. Applicant is not entitled to a negotiated plea offer. Accordingly, relief is denied on this ground.

Failure to Pursue an Alibi Defense

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Applicant claims Counsel was ineffective for failure to pursue an alibi defense. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). One component of the duty to reasonably investigate the case includes a “duty . . . to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable.” *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness’s testimony is insufficient to establish prejudice. *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993). “In most PCR cases in which the applicant seeks relief for trial counsel’s failure to call witnesses, the PCR court’s analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks.” *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel’s performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his

testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

Further, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may corroborated with the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

This Court finds Counsel was reasonable in concluding that an alibi witness was not an option because Applicant was caught on tape committing the crime and multiple eyewitnesses identified him as the perpetrator. Additionally, any attempt to create an alibi defense would have been deemed not credible in light of the overwhelming evidence and, accordingly, would not have impacted the outcome at trial. Accordingly, relief is denied on this ground.

Failure to Ensure Applicant Understood the Discovery

Applicant claims Counsel was ineffective for failure to ensure Applicant understood the discovery. Counsel credibly testified she explained the discovery to Applicant and that the evidence against him was strong and clear. Accordingly, relief is denied on this ground.

Failure to Explain the Facts of the Case

Applicant claims Counsel was ineffective for failure to explain the facts of the case.

Counsel credibly testified she discussed the facts surrounding the incident and accompanying charges. Accordingly, relief is denied on this ground.

Belated Appeal Granted

Applicant alleges that counsel provided ineffective assistance when she failed to effectuate his direct appeal. This Court agrees that Applicant did not knowingly, voluntarily, and intelligently waive his right to a direct appeal, and therefore grants his request for relief on this narrow issue.

Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal. *Turner v. State*, 380 S.C. 223, 224-25, 670 S.E.2d 373, 374 (2008) (internal citations omitted). In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738 (1967). *Id.*

South Carolina's Appellate Courts have no jurisdiction to entertain appeals when the notice of appeal is not timely given and served. *White*, 263 S.C. at 119, 208 S.E.2d at 40. Nevertheless, if a PCR court finds that an applicant has been denied his right to direct appeal from trial due to counsel's errors, his request for post-conviction relief may be denied, but he may be permitted to seek belated review of trial errors in conjunction with his appeal of the order dismissing his PCR application. *Id.*

At the PCR hearing, Counsel assumed responsibility for the failure to properly effectuate the appeal. Accordingly, this Court finds that counsel's failure to timely file and serve the notice of appeal deprived Applicant of an opportunity to seek appellate review of his conviction. The testimony shows that he did not knowingly, voluntarily, and intelligently waive this right. Therefore, this Court finds that he is entitled to belated review of his conviction, pursuant to *White*, 263 S.C. 110, 208 S.E.2d 35.

Conclusion

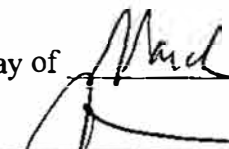
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies 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 22 day of March, 2023.


 WILLIAM A. MCKINNON
 Presiding Judge
 Seventh Judicial Circuit

Spartanburg, South Carolina.

FILED
 2023 APR -4 AM 9:04
 CLERK OF COURT
 SPARTANBURG COUNTY
 AMY W. COX



ALAN WILSON
ATTORNEY GENERAL

FILED
2023 APR -4 AM 9:32
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

March 31, 2023

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Brian Foster, #371789 v. State of South Carolina
2019-CP-42-03664

Dear Ms. Cox:

Enclosed please find the original Order Granting Applicant Belated Appellate Review Pursuant to White v. State and Dismissing all other claims with Prejudice signed by the Honorable William A. McKinnon, in the above-captioned case, for filing in your office. In addition, please forward proof of service and a time stamped copy back to our office for our file.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/jbh

cc: Rodney W. Richey, Esquire

WITNESSES

667

Spartanburg Sheriff's Office

Jimmy W. Owens

KGM

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: MAY 4 2018

VERDICT

Guilty

James R. Kellam
Foreperson of Petit Jury
Date: 4/11/19

DOCKET NO. -

18-GS-42-2090

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 14 2018

TERM

THE STATE

vs.

Brian Cornelius Foster

Indictment for

POSSESSION OF A FIREARM OR
AMMUNITION BY PERSON
CONVICTED OF A VIOLENT CRIME

SC Code: 16-23-500 (A)

CDR Code: 3434

Class FEL/F

FILED
CLERK OF COURT
SPARTANBURG COUNTY
MAY-9 2018
MARCO BLANCHLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 04 2018 the

Grand Jurors of Spartanburg County present upon their oath:

POSSESSION OF A FIREARM OR AMMUNITION BY PERSON
CONVICTED OF A VIOLENT CRIME

That Brian Foster, did in Spartanburg County on or about February 18, 2018, have in his possession a handgun after having previously been convicted of a violent felony as defined by §16-1-60

, in violation of Code §16-23-500 (A),
CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

66

Spartanburg County Sheriff's Office

Computer

KGM

Jimmy W. Savers

ARREST WARRANT NUMBER

COUNT ONE: 2018A4210200602

COUNT TWO: 2018A4210200599

ACTION OF GRAND JURY

True Bill

MAY 4 2018

Foreperson of Grand Jury
Date:

VERDICT

Not Guilty - Count 1

Not Guilty - Count 2

James H. Kollam
Foreperson of Petit Jury
Date: 4/11/19

DOCKET NO. 18-GS-42-2089

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 14 2018

TERM

**THE STATE
vs.**

Brian Cornelius Foster

Indictment for

**ATTEMPTED MURDER AND
POSSESSION OF A WEAPON DURING A
VIOLENT CRIME**

SC Code: 16-3-0029; 16-23-490

CDR Code: 3410; 549

Class FEL-A; FEL-F

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE: ATTEMPTED MURDER

That Brian Cornelius Foster, did in Spartanburg County on or about February 18, 2018, with malice aforethought attempt to kill Joel Campbell, by shooting at the victim, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

COUNT TWO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That Brian Cornelius Foster, did in Spartanburg County on or about February 18, 2018, possess or visibly display a firearm during the commission of a violent crime, to-wit: ATTEMPTED MURDER, 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.



ASSISTANT SOLICITOR

WITNESSES

671 Spartanburg County Sheriff's Office

James W. Powers

KGM

ARREST WARRANT NUMBER

COUNT ONE: 2018A4210200603

COUNT TWO: 2018A4210200600

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date: MAY 4 2018

VERDICT

Not Guilty - Count 1

Not Guilty - Count 2

James R. Holloway
Foreperson of Petit Jury
Date: 4/11/19

DOCKET NO.

18-GS-42-2088

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 14 2018

TERM

**THE STATE
vs.**

Brian Cornelius Foster

Indictment for

**ATTEMPTED MURDER AND
POSSESSION OF A WEAPON DURING A
VIOLENT CRIME**

SC Code: 16-3-0029; 16-23-490

CDR Code: 3410; 549

Class FEL-A; FEL-F

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 24 2018, the
 Grand Jurors of Spartanburg County present upon their oath:

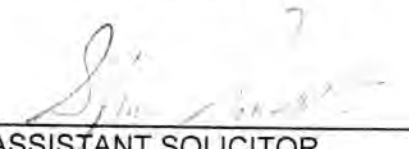
COUNT ONE: ATTEMPTED MURDER

That Brian Cornelius Foster, did in Spartanburg County on or about February 18, 2018, with malice aforethought attempt to kill Thomas Keopke, by shooting the victim in the hip and/or shooting at the victim, with the intent to kill the said victim, in violation of §16-03-0029, of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

COUNT TWO: POSSESSION OF A WEAPON DURING A VIOLENT CRIME

That Brian Cornelius Foster, did in Spartanburg County on or about February 18, 2018, possess or visibly display a firearm during the commission of a violent crime, to-wit: ATTEMPTED MURDER, 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.


 ASSISTANT SOLICITOR

673

WITNESSES

Spartanburg County Sheriff's Office

Jimmy W. Barnes

KGM

ARREST WARRANT NUMBER

COUNT ONE: 2018A4210200595

COUNT TWO: 2018A4210200596

ACTION OF GRAND JURY

True Bill

[Signature]

MAY 4 2018

Foreperson of Grand Jury
Date:

VERDICT

Guilty - Count 1

Guilty - Count 2

James S. Hollman

Foreperson of Petit Jury

Date: 4/11/19

DOCKET NO.

18-GS-42-2086

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 14 2018

TERM

THE STATE

VS.

Brian Cornelius Foster

**Indictment for
MURDER AND POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME**

SC Code 16-03-0010, 0020; 16-23-490

CDR CODE: 0116: 0549

CLASS: FEL-EXM: FEL/F

FILED
MAY 14 2018
CLERK OF COURT
Spartanburg County

C

674

Spartanburg

County

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on February 14, 2018, the

Grand Jurors of Spartanburg County present upon their oath:

COUNT ONE—MURDER

That Brian Cornelius Foster, did in Spartanburg County on or about February 18, 2018, feloniously, willfully and with malice aforethought, kill one Eric Morris, by shooting the victim in the head, 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).

**COUNT TWO—POSSESSION OF FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

That Brian Cornelius Foster, did in Spartanburg County on or about February 18, 2018, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: MURDER, 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.



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

SPARTANBURG

VS.

Brian Cornelius Foster

AKA:

Race: BLACK Sex: M Age: 19

DOB: SS#:

Address: Old Canaan Rd Ext

City, State, Zip: Spitz, SC 00000-0000

DL#: SID#:

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

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

TO: Possession of Firearm or Ammunition by Person Convicted of Violent Felony (0-Syr)

INDICTMENT/CASE#: 2018GS4202090

A/W#: 2018GS4202090

Date of Offense: 2/18/2018

S.C. Code § 16-23-0500(A)

CDR Code #: 3434

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0500(A) of the S.C. Code of Laws, bearing CDR Code # 3434
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC within 1st or 2nd 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: Spencer Smith SC101370 Brian Foster Beverly Jones SCB07913
SMITH, SPENSER H SC Bar# Defendant Jones, Beverly Dorine SC Bar#
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 9 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 FTUP Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (DUI 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: KG McKinnon
Court Reporter: Linda Moffitt

SCCA/217 (04/2018)

 days/hours Public Service EmploymentObtain 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.Presiding Judge Judge Code: Sentence Date: April 11, 2019

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURGO

VS.

Brian Cornelius Foster

AKA:

Race: BLACK Sex: M Age: 19

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] Old Canaan Rd Ext

City/State/Zip: Spbg, SC 00000-0000

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: Poss. weapon during violent crime (5yr)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4202087A

A/W#: 2018A4210200597

Date of Offense: 2/18/2018

S.C. Code §: 16-23-0490

CDR Code #: 0349

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0349
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: SMITH, SPENSER H SC101370 Brian Foster Jones, Beverly Daine SC807913
SC Bar# Defendant Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 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 PTUFTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (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(I) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2015)

Presiding Judge

Judge Code:

Sentence Date:

 days/hours Public Service EmploymentObtain 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.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Brian Cornelius Foster

AKA:

Race: BLACK Sex: M Age: 19

DOB: SS#:

Address: Old Canaan Rd Ext

City/State/Zip: Spivey, SC 29000-0000

DL#: SID#:

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

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

TO: Murder (30-Life)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4202086

A/W#: 2018A4210200595

Date of Offense: 2/18/2018

S.C. Code § : 16-03-0010; 16-03-0020

CDR Code #: 0116

SENTENCE SHEET

☒ 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

w/minor 1st or Lowd 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: Spencer H. Smith SC101370 Brian Foster SCB07913
SMITH, SPENSER H. SC Bar# Defendant Jones, Beverly DeLoe SC Bar#
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 11 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 \$ 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(f) (Vehicle Assessment) \$40/cv \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: KG McKinneyCourt Reporter: Linda M. Smith

SCCA/217 (04/2018)

 days/hours Public Service EmploymentObtain 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.

Presiding Judge

Judge Code: Sentence Date: April 11, 2018

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Brian Cornelius Foster

AKA:

Race: BLACK Sex: M Age: 19

DOB: SS#:

Address: Old Caman Rd Ext

City, State, Zip: Sptbg. SC 29000-0000

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Poss. weapon during violent crime (5yr)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS4202086A

A/W#: 2018A4210200596

Date of Offense: 2/18/2018

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd 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: SMITH, SPENSER H SC101370 Brian Foster SCB07913
SC Bar# Defendant Jones, Beverly Dorn
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of _____ 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 FTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fees:		\$
§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(D) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: K. McInerney
Court Reporter: Linda Moffett

SCCA/217 (04/2018)

_____ 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: _____

Sentence Date: April 18, 2019

CASE#	18020931		VOLUNTARY STATEMENT		PAGE 1 of 3
STATEMENT OF:	Joel A CAMPBELL		AGE:	36	DATE: 2/18/18
ADDRESS:	[REDACTED] Spartanburg SC				
PHONE #	[REDACTED]	DOB:	[REDACTED]	SSN:	[REDACTED]

My name is Joel Anthony Campbell JR.
 And I text Eric Morris ~~at~~ at approx. ~~8~~
 108 pm on Feb. 18th well when I got
 to Eric Morris house on this date he wanted
 me to help him with his 4 wheeler so I
 was doing that with him. I couldn't figure
 out what was wrong with it so he wanted
 me to help with his moped so I started workin
 on that well this friend of Eric walks up
 he was a young Black male with a hoodie
 on well him and Eric get to talking about
 what kind of gun each one of them has
 well the black male shows Eric a red gun
 that kinda looked like a 9mm but I
 was working and not really paying attention
 so the black male put the gun away and
 Eric's cousin JoJo pulls up and Eric's
 Roomate comes out of the house and all
 five people was sitting outside the garage

I have read this statement consisting of 3 pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and
 nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 450 P M. on the 18th day of FEB 20 18

WITNESS:

[Signature]
JOJO WEAVER

[Signature]
 Signature of person giving voluntary statement

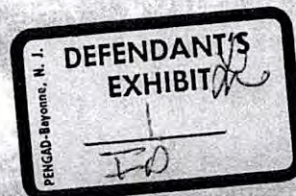
SWORN to before me this _____

day of _____, 20__.

Notary Public of South Carolina

My Commission expires: _____

(Seal)



SH104

CASE# 18020931		VOLUNTARY STATEMENT		PAGE 2 of 3
STATEMENT OF: Joel A. Campbell		AGE: 36	DATE: 2/18/18	
ADDRESS: [REDACTED] Spartanburg, SC		SSN: [REDACTED]		
PHONE # [REDACTED] 1350	DOB: [REDACTED]			

Page 2 I contened to work on the moped and they ate a piece of pizza and eric and the Black Male walked inside eric was going to show him a 9mm sky of something named like that. that eric had shown me and ~~he~~ ^{at 13pm} he wanted me to shoot when I got there. Well it was 3:20pm when Eric and the ~~Black~~ Black male walked inside and me, Jo Jo and ~~Eric's Roomate~~ ~~Eric's Roomate~~ stayed outside and I continued to work on the Moped Well approx a min. later we heard a gun shot and a thud. Well Eric's Roomate went to look and I told him to be careful and no longer than he walked in the back door 2 to 3 shots went off and he came out the back door running and screaming for the black male not to shoot him anymore and run behind the

I have read this statement consisting of _____ pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at _____ M. on the _____ day of _____ 20____.

WITNESS: _____

Signature of person giving voluntary statement

SWORN to before me this _____

day of _____, 20____.

(Seal)
Notary Public of South Carolina

CASE# 18020931

VOLUNTARY STATEMENT

PAGE 3 of 3

STATEMENT OF: Joel A. Campbell

AGE: 36

DATE: 2/18/18

ADDRESS: [REDACTED], Spartanburg, SC

PHONE # [REDACTED] 1350

DOB: [REDACTED]

SSN: [REDACTED]

#3 house well me a jo jo started to run when the gun man turned and fired at us 2 to 3 times and I ran til the shooter was out of site and had a ladie call for help and when I seen the caps I felt safe enough to come back to the scene.

I could ID suspect by Photo or face but I did not know his name. Any help you need from me you will have my full cooperation! Eric Family has helped raise me.

I have read this statement consisting of _____ pages(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at _____ M. on the _____ day of _____ 20____.

WITNESS: _____

SWORN to before me this _____

day of _____, 20____.

(Seal)

Notary Public of South Carolina

My Commission expires: _____

Signature of person giving voluntary statement

CHIM

CASE# 18020931

VOLUNTARY STATEMENT

PAGE 1 of 1

STATEMENT OF: Darryl Jay Lewis

AGE: 29

DATE: 2-18-2018

ADDRESS: [REDACTED]

PHONE # [REDACTED]

9-12-5

DOB: [REDACTED]

SSN: [REDACTED]

I came home from my friends got out of my car and michael mike. I was working on mow pad. Cirk and Guy walk in house heard Gun go off and Mike was Bagging him not to shoot him I was beside of my car and Then I run To The next Door. The ~~guy~~ guy was skinny medium built black guy had a hoodie on and had short hair

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 5:15 P M. on the 18th day of Feb 2018.

WITNESS:

[Signature]
Notary Public

X Darryl Jay Lewis
Signature of person giving voluntary statement

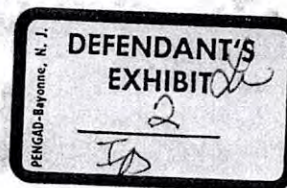
SWORN to before me this _____

day of _____, 20____.

Notary Public of South Carolina

(Seal)

My Commission expires: _____



SH104-2

CASE# 18020931	VOLUNTARY STATEMENT		PAGE 1 of 1
STATEMENT OF: Jim Moore	AGE: 57	DATE: 2/18/18	
ADDRESS: [REDACTED]			
PHONE # [REDACTED]	DOB: [REDACTED]	SSN: [REDACTED]	

This person jumped my fence in the back yard and ran up to me. He said a man was chasing him and that the Guy had raped and killed his mother. He wanted to use the phone so I let him. When he didn't call 911 I took the phone from him and called 911 myself. He took the phone from me. I didn't know he had hung up on 911. He called somebody else. I told him to hang the phone up and lay it down. He did. We started to walk out the Gate. I was going to give him a ride. When we opened the gate a police car pulled up. He ran back to the other side of the yard and went thru the gate to the front yard.

I have read this statement consisting of 1 page(s), and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement. This statement was completed at 1758 P M. on the 18 day of FEB 2018.

WITNESS:

Chiff P J
C. J. JUVINS

[Signature]
Signature of person giving voluntary statement

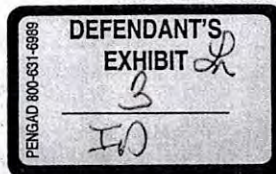
SWORN to before me this

day of _____, 20__.

Notary Public of South Carolina

My Commission expires: _____

(Seal)



SH104-2



Spartanburg County Sheriff's Office

CHUCK WRIGHT, SHERIFF

PRESENTATION INSTRUCTION AND AFFIDAVIT OF IDENTIFICATION OF PHOTOGRAPH

Case Number: 18020931 Date: 2-18-18
 Time: 1804 Location: SRMC ER room 67

Prior to the presentation of the photographs, I have instructed the witness as follows:

the suspect may or may not be among the subjects in the lineup; the witness is not compelled to make an identification; the suspect may not appear exactly as they did in the incident due to changes in hairstyle, facial hair and/or quality of the photograph and the witness is not to discuss the procedure or results with other witnesses.

Presenting officer initials

WRH

I, Thomas Michael Koepke, have viewed a group of _____
 photographs this _____ day of _____, 20____, from which I have positively
 identified photograph number _____ displayed to me by
 _____ of the Spartanburg County Sheriff's Office
 as the person who Did Not Identify

on the _____ day of _____, 20____

Signature: _____

Print Name: _____

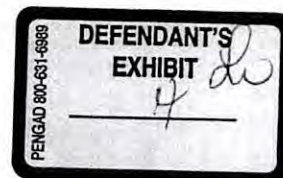
Address: _____

Phone: _____

SWORN to before me this _____ day of _____, 20____

Notary Public for South Carolina

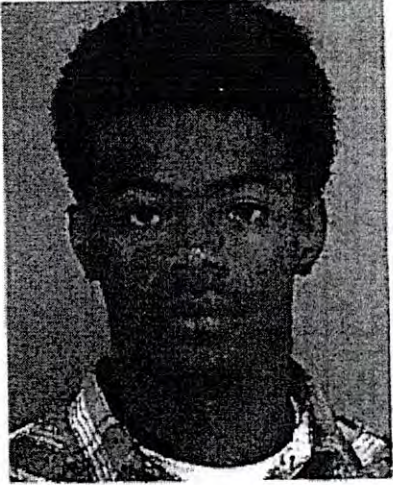
My commission expires; _____



Revised 9/24/13 jdp

Lineup: 4219

2/18/2018 5:32:32 PM

**1****2****3****4****5****6**



Spartanburg County Sheriff's Office

CHUCK WRIGHT, SHERIFF

PRESENTATION INSTRUCTION AND AFFIDAVIT OF IDENTIFICATION OF PHOTOGRAPH

Case Number: 18020931 Date: 2-18-18
 Time: 1743 Location: [REDACTED] Bayberry Dr.

Prior to the presentation of the photographs, I have instructed the witness as follows:

the suspect may or may not be among the subjects in the lineup; the witness is not compelled to make an identification; the suspect may not appear exactly as they did in the incident due to changes in hairstyle, facial hair and/or quality of the photograph and the witness is not to discuss the procedure or results with other witnesses.

Presenting officer initials

MG/ JAM

Court's
Exhibit

1

I, James E. Moore, have viewed a group of 6
 photographs this 18th day of FEB, 20 18, from which I have positively
 identified photograph number 5 displayed to me by
Inv. Gaddy of the Spartanburg County Sheriff's Office
 as the person who Came up in my back yard saying
His mother had been shot & raped on

on the 18th day of FEB, 20 18

Signature:

Print Name:

Address:

Phone:

SWORN to before me this 18th day of

FEB

20 18

Notary Public for South Carolina

My commission expires; 11-15-2027



Revised 9/24/13 jdp

Lineup: 4219

2/18/2018 5:32:32 PM



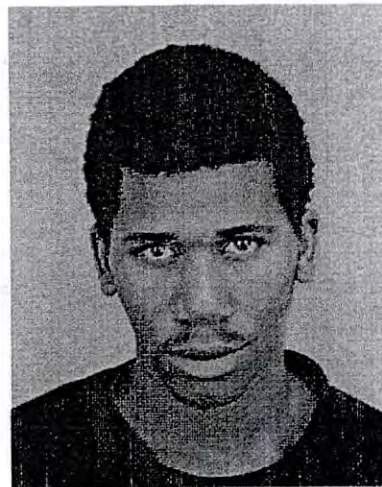
1



2



3



4



5



6

JPM
2/18/18

Lineup: 4219

2/18/2018 5:32:32 PM

Position	Name Number	Name
1.	90965	WEBSTER, ANTONIO RASHAD
2.	139200	RICE, LAMAR THOMAS
3.	73636	PARKS, LAMONTE QUADAREZ
4.	173837	HULL-SMITH, JAVARIS RAKEEM
5.	280829	FOSTER, BRIAN CORNELIUS
6.	355808	COLEMAN-TUCKER, ROBERT LIQUZZIE



Spartanburg County Sheriff's Office

CHUCK WRIGHT, SHERIFF

PRESENTATION INSTRUCTION AND AFFIDAVIT OF IDENTIFICATION OF PHOTOGRAPH

Case Number: 18020931 Date: 2/18/18
 Time: 1730 Location: [REDACTED] Old Canaan Rd

Prior to the presentation of the photographs, I have instructed the witness as follows:

the suspect may or may not be among the subjects in the lineup; the witness is not compelled to make an identification; the suspect may not appear exactly as they did in the incident due to changes in hairstyle, facial hair and/or quality of the photograph and the witness is not to discuss the procedure or results with other witnesses.

Presenting officer initials [Signature]

I, Joel Campbell, have viewed a group of 6 photographs this 18 day of 2, 2018, from which I have positively identified photograph number 5 displayed to me by Det Jon Guest of the **Spartanburg County Sheriff's Office** as the person who shot Eric Morris, his roommate, and who shot at me and Daryl Lewis

on the 18 day of 2, 2018
 Signature: [Signature]
 Print Name: Joel A Campbell
 Address: [REDACTED]

Phone: [REDACTED]

Court's
Exhibit

2

SWORN to before me this 18 day of

February, 2018
[Signature]
 Notary Public for South Carolina

My commission expires; 11-15-27

Revised 9/24/13 jdp

Lineup: 4219

2/18/2018 5:32:32 PM



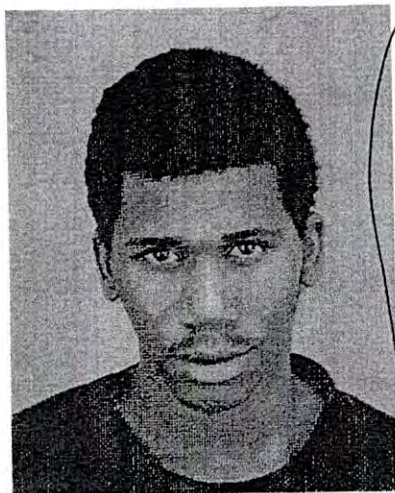
1



2



3



4



5



6

JC
2/18/18

Lineup: 4219

2/18/2018 5:44:22 PM

Position	Name Number	Name
1.	90965	WEBSTER, ANTONIO RASHAD
2.	139200	RICE, LAMAR THOMAS
3.	73636	PARKS, LAMONTE QUADAREZ
4.	173837	HULL-SMITH, JAVARIS RAKEEM
5.	280829	FOSTER, BRIAN CORNELIUS
6.	355808	COLEMAN-TUCKER, ROBERT LIQUZZIE



Spartanburg County Sheriff's Office

CHUCK WRIGHT, SHERIFF

PRESENTATION INSTRUCTION AND AFFIDAVIT OF IDENTIFICATION OF PHOTOGRAPH

Case Number: 18020931 Date: 2/18/18
 Time: 1742 Location: [REDACTED] Old Canaan Rd

Prior to the presentation of the photographs, I have instructed the witness as follows:

the suspect may or may not be among the subjects in the lineup; the witness is not compelled to make an identification; the suspect may not appear exactly as they did in the incident due to changes in hairstyle, facial hair and/or quality of the photograph and the witness is not to discuss the procedure or results with other witnesses.

Presenting officer initials [Signature]

I, Darryl Lewis, have viewed a group of 6 photographs this 18 day of 2, 20 18, from which I have positively identified photograph number 5 displayed to me by Det Ten Guest of the Spartanburg County Sheriff's Office as the person who shot my cousin, Eric Morris,

on the 18 day of 2, 20 18

Signature: Darryl Lewis

Print Name: Darryl Lewis

Address: [REDACTED]

Phone: [REDACTED]



SWORN to before me this 18 day of

February 20 18
[Signature]
 Notary Public for South Carolina

My commission expires; 11-15-27

Revised 9/24/13 jdp

2/18/2018 5:44:22 PM



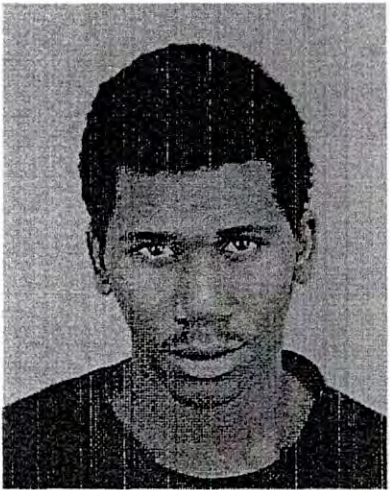
1



2



3



4



5



6

DL
2-18-2018

Position	Name Number	Name
1.	90965	WEBSTER, ANTONIO RASHAD
2.	139200	RICE, LAMAR THOMAS
3.	73636	PARKS, LAMONTE QUADAREZ
4.	173837	HULL-SMITH, JAVARIS RAKEEM
5.	280829	FOSTER, BRIAN CORNELIUS
6.	355808	COLEMAN-TUCKER, ROBERT LIQUZZIE