

Volume 2 of 2

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO LEE COUNTY
Court of Common Pleas

RECEIVED

MAR 30 2011

The Honorable R. Ferrell Cothran, Jr., Circuit Court Judge S.C. Supreme Court
Case No. 2008-CP-31-0021

DORIAN CAIN, ...RESPONDENT,

v.

STATE OF SOUTH CAROLINA, ... PETITIONER.

APPENDIX

ORIGINAL

ROBERT DUDEK
Appellate Defender

South Carolina Commission on Indigent
Defense
Office of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR RESPONDENT

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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Assistant Deputy Attorney General

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Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211
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ATTORNEYS FOR PETITIONER

INDEX

Trial Transcript (April 6-8, 2004).....	1
Post-Trial Motion Transcript (June 23, 2004).....	385
Appellant's Final Brief.....	440
Final Brief of Respondent.....	462
<u>State v. Cain</u> , Op. No. 2006-UP-387 (S.C. Ct. App. filed November 28, 2006).....	495
Petition for Rehearing.....	505
Order Denying Petition for Rehearing.....	509
Remittitur.....	511
Clerk's Records	512
Application for Post-Conviction Relief(PCR).....	541
Return.....	553
PCR Hearing Transcript (October 26, 2009).....	557
Order of Dismissal.....	639
Applicant's Motion to Reconsider.....	649
Applicant's Amended Motion to Reconsider.....	652
Return to Applicant's Motion to Reconsider.....	656
Applicant's Motion to Compel Deposition.....	659
Return to Applicant's Motion to Compel Deposition.....	662
Order for Deposition.....	666
Deposition of Dr. Pickens K. Moyd.....	667
State's Proposed Order Denying Motion to Alter or Amend.....	728
Order Granting PCR.....	732

II. Probable Cause

Cain argues the trial court erred by denying his motion to dismiss because there was neither probable cause to justify the stop² nor reasonable suspicion to seize the passengers after the stop. We disagree.

“The decision to stop an automobile is reasonable where the police have probable cause to believe a traffic violation has occurred.” State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001) (citing Whren v. United States, 517 U.S. 806 (1996)). Further, “[a] police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity. Id., 344 S.C. at 546, 544 S.E.2d at 295 (citing United States v. Cortez, 449 U.S. 411 (1981)). In determining whether a stop based upon reasonable suspicion violated the Fourth Amendment, the trial court “must consider the totality of the circumstances before the officer and whether these circumstances raise a suspicion that the particular individual being stopped is engaged in criminal activity.” State v. Alexander, 309 S.C. 495, 498, 424 S.E.2d 526, 528-29 (1992) (citing United States v. Cortez, 499 U.S. 411 (1981)).

In the present case, Officer Mosely learned a robbery had recently occurred and immediately proceeded to the scene. He had just exited his police vehicle to interview people in the area when he first observed the automobile. The automobile had four men in it and was traveling too fast for the particular area. Further, Officer Mosely testified the automobile did not completely stop at a stop sign. Additionally, the driver continuously looked

² Although we assume for purposes of this opinion that Cain had standing, we need not decide the issue because we find the officer’s stop of the vehicle was justified in any event. See Whiteside v. Cherokee County Sch. Dist. One, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) (explaining the appellate court need not address an issue already resolved by other means).

back at him instead of observing where he was going. Officer Mosely activated his blue lights and radioed for back up because he believed "the persons inside may be involved with the crime." He noticed Cain, in the backseat, kept moving and appeared to put on a different T-shirt.

From this testimony, there is evidence to support the trial court's conclusion that Officer Mosely had probable cause to stop the vehicle because of the traffic violations the driver committed. Further, Officer Mosely could briefly detain the occupants in the vehicle because he had reasonable suspicion that they were involved in criminal activity: the automobile was within two blocks of where the robbery occurred and both the driver and a rear-seat passenger repeatedly looked back at Officer Mosely. See Alexander, 309 S.C. at 498-99, 424 S.E.2d at 529 (finding officer had reasonable basis to suspect automobile passengers were engaged in criminal activity because automobile was in a high crime area, had out-of-state tags, and passenger kept turning around to watch the police vehicle). Officer Mosely's suspicions were further aroused when Cain took off his white T-shirt. Accordingly, after examining the totality of the circumstances, we find evidence to support the trial judge's refusal to dismiss the case because Officer Mosely had both probable cause to initiate the stop and a reasonable suspicion to detain the passengers.

III. New Trial

Finally, Cain argues the trial court erred in denying his motion for a new trial based upon after discovered evidence. We disagree.

For a defendant to prevail on a motion for a new trial based on after discovered evidence, he must show the evidence (1) "is such as will probably change the result if a new trial is granted;" (2) the evidence has been discovered after the trial has ended; (3) the evidence could not have been discovered by the use of due diligence; (4) "the evidence is material;" and (5) the evidence is not cumulative or impeaching. State v. Needs, 333 S.C. 134, 157-58, 508 S.E.2d 857, 869 (1998) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993)). Further, "the granting of such a motion is not favored

and, absent error of law or abuse of discretion," this court will not disturb the trial court's denial of a motion for a new trial. Id. (citations omitted).

Here, the asserted after-discovered evidence is an affidavit signed by Reames purportedly disavowing his statement at trial identifying Cain as one of the men who robbed him. However, Reames later testified that he did not recant his prior testimony and continued to identify Cain as the robber.

The South Carolina Supreme Court has previously held "recantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). In this case, we are presented with conflicting evidence: an affidavit recanting statements made during trial and the testimony of the affiant during the hearing in which he denied the content of the affidavit. When issues of credibility arise, the trial court, not this court, has the discretion to weigh the evidence. See State v. Parker, 249 S.C. 139, 141, 153 S.E.2d 183, 184 (1967) ("It is a fixed rule that the credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the [trial court] . . . [the trial court] not this court [has] the power to weigh such evidence."). Further, by denying the content of the affidavit, Reames essentially left Cain without any ground for the new trial because at best, the affidavit could only be used to impeach Reames' trial testimony. See Needs, 333 S.C. at 157-158, 508 S.E.2d at 869 (finding a ground for a new trial may not be based upon evidence that is "merely cumulative or impeaching"). Accordingly, we find the trial court properly denied Cain's new trial motion.

Moreover, even if Reames had not disavowed the affidavit and recanted his trial testimony, Cain failed to establish the after-discovered evidence would have changed the outcome of the trial. See id., 333 S.C. at 158, 508 S.E.2d at 869 ("[Although] the State's case against appellant was not overwhelming, especially since the State's key witness had offered so many contradictory statements . . . we do not believe the evidence appellant would present at a new trial would change the outcome of the trial."). The other victim, James Scott also identified Cain as one of the robbers. Furthermore, the State presented evidence that a police officer saw Cain in close proximity

to the scene of the robbery just before it occurred. Officer Mosely testified that he apprehended Cain shortly after the crime. Here, even without Reames' testimony, we find the State presented ample evidence from which the jury could find Cain guilty. Accordingly, Cain has not met his burden in showing how the after-discovered evidence would have changed the outcome of trial.

CONCLUSION

For the foregoing reasons, the trial court properly denied Cain's motion to suppress the victims' pre-trial identification of him. Further, the trial court did not err in finding probable cause existed to initiate the stop. Lastly, the trial court did not err by failing to grant Cain's motion for a new trial based on after-discovered evidence. Accordingly, Cain's conviction is

AFFIRMED.

HEARN, C.J., and HUFF and STILWELL, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEE COUNTY
CLIFTON NEWMAN, CIRCUIT COURT JUDGE
Opinion No. 2006-UP-387

The State,

Respondent,

vs.

Dorian J. Cain,

Appellant.

PETITION FOR REHEARING

Appellant moves, pursuant to Rule 221(a), SCACR, for rehearing and amendment of the Court's opinion in this matter dated November 28, 2006, and would respectfully request that rehearing be granted to address these issues, and that oral argument be scheduled so that this matter may be explored more fully before this Honorable Court. Appellant respectfully avers error in the Court's opinion in the following respects:

1. The court erred in affirming the trial court's denial of Appellant's Motion To Suppress because the trial court did not apply all the factors required by State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 2003).

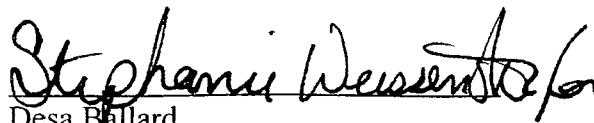
2. The court erred in affirming the trial court's denial of Appellant's motion for a new trial because the appellant needed to prove only that the after-discovered evidence would "*probably*"¹ change the result if a new trial was granted, not that the after-discovered evidence "would have changed the outcome of the trial," as stated in this Court's opinion.
3. In determining that the affidavit of James Reames would only serve as impeachment evidence and was thus not evidence warranting a new trial, the Court erred in failing to consider that Reames' denial of the affidavit during the motion hearing was because he had been intimidated by the police into recanting his written statement, as was established by the testimony of Juanita Robinson, Jimmy Lee Davis, and Captain Thomas Burke.
4. Further, in determining that the affidavit of James Reames was not evidence warranting a new trial on the grounds that the omission of his identification of Appellant would not have changed the outcome of the trial, the Court erred by failing to consider that Reames had been a key-witness in Appellant's trial and his testimony was a material element of proof proffered during the trial; and, had Mr. Reames' identification not been admitted, the jury may have reached a conclusion that the State did not prove its case beyond a reasonable doubt.

Appellant reserves the right to supplement this petition for rehearing at any time prior to the ruling of the appellate court on the instant petition.

[signature appears next page]

¹

State v. Needs, 333 S.C. 134, 157-58, 508 S.E.2d 857, 869 (1998)(emphasis added)



Desa Ballard

Stephanie Weissenstein

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226 State Street

West Columbia, South Carolina 29169

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Facsimile 803.796.1066

E-mail: stephanie@desaballard.com

ATTORNEYS FOR APPELLANT

December 13, 2006

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEE COUNTY
Case No. 04-GS-31-0006

The State,

Respondent,

vs.

Dorian J. Cain,

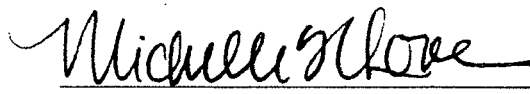
Appellant.

CERTIFICATE OF SERVICE

I, Michelle H. Love, an agent of the Law Offices of Desa Ballard, do hereby certify that I have this date, served one (1) copy of the Petition for Rehearing in the above-captioned case on the following individual by placing same in United States Mail, with sufficient first-class postage affixed, addressed as follows:

Sally Wood Elliott, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

C. Kelly Jackson, Esquire
Third Circuit Solicitor's Office
141 North Main Street
Sumter, South Carolina 29150


Michelle H. Love

December 13, 2006
West Columbia, South Carolina

The South Carolina Court of Appeals

The State,

Respondent,

v.

Dorian J. Cain,

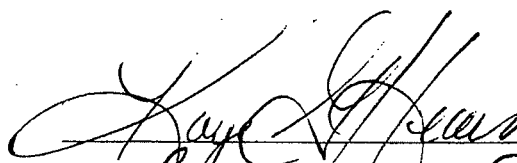
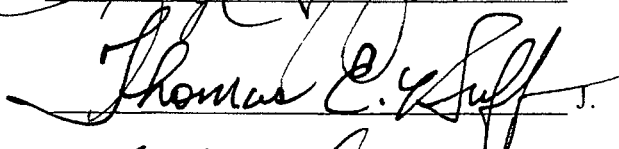
Appellant.

The Honorable Clifton Newman
Lee County
Trial Court Case No. 2004-GS-31-00006

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a 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.

It is, therefore, ordered that the Petition for Rehearing be denied.

 C. J.
 J.
 J.

Columbia, South Carolina
January 29, 2007

cc: Desa Ballard and Jason B. Buffkin
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Senior Assistant Attorney Gen. Norma Mark Rapoport
Cecil Kelly Jackson, Esquire



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MAR - 7 2007

ATTORNEY GENERAL'S
OFFICE

A large, stylized handwritten signature, likely of the Attorney General, written in black ink.

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 5, 2007

REMITTITUR

The Honorable James I. Davis
123 S Main St
PO Box 387
Bishopville, SC 29010-0387

Re: The State v. Cain, Dorian J.
2004-GS-31-00006

Dear Mr. Davis:

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

Sincerely,

A handwritten signature of Kenneth A. Richstad in black ink.
Kenneth A. Richstad
Clerk of Court

KAR/rj

cc: Desa Ballard and Jason B. Buffkin
Senior Assistant Attorney Gen. Norma Mark Rapoport
Cecil Kelly Jackson, Esquire

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LeeSTATE VS.Dorian Jarvis Cain

AKA:

Race: B Sex: M Age: 16DOB: 5/22/87 SS#:Address: 4mg 15 N. MainCity, State, Zip Wichville SC 29010DL# SID#

INDICTMENT/CASE#:

04 -GS- 31 06AW#: H 486629Date of Offense: 12/18/03S.C. Code §: 16-11-330 (A)CDR Code #: 01/1/31☐ CASE RESTORED

SENTENCE

☐ PLEA ☐ TRIALDisposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSO: Armed RobberyViolation of §16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 01139☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

Solicitor

Defendant

Attorney for Defendant

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, or a determinate term of 10 ~~days~~ months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

\$ _____; 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: Court owe

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered.

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

Fine:

4-1-206 (Assessments 107.5%) \$ _____

4-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

4-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

6-5-2995 (DUI-Assessment) \$12 \$ _____

35.13 (Public Def/Prob) \$500 \$ _____

3.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

3.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

0-21-114(BUI Breath Test Fee) \$50 \$ _____

6-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

to County (if paid in installments) \$ 3.75TOTAL \$ 128.25

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Virginia Roland

PRESIDING JUDGE

Judge Code: 0111217Sentence Date: Apr. 18, 2004

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lee
STATE VS.Dorian Jarvis CainAKA: _____
Race: B Sex: M Age: 16DOB: 5/22/87 SS#: _____
Address: Hwy 15 N. MainCity, State, Zip: Bishopville SC 29010
DL# _____ SID# _____

INDICTMENT/CASE#:

04 -GS- 31 06

AW#: H-186628Date of Offense: 12/18/03S.C. Code §: 16-11-330(A)CDR Code #: 011319☐ CASE RESTORED
SENTENCE☐ PLEA ☐ TRIALDisposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSO: Armed RobberyViolation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 011319☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☒ MOST-SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

TEST:

J. S. Payne
Solicitor

Defendant

Attorney for Defendant

HEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered-

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

Fine: \$ _____

4-1-206 (Assessments 107.5%) \$ _____

4-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

4-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

6-5-2995 (DUI Assessment) \$12 \$ _____

35.13 (Public Def/Prob) \$500 \$ _____

3.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

3.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

10-21-114(BUI Breath Test Fee) \$50 \$ _____

6-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

to County (if paid in installments) \$ 3.75TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 0111217Sentence Date: Apr. 18, 2004James S. Payne
Clerk of Court/ Deputy ClerkCourt Reporter: Virginia Roland

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

INDICTMENT FOR
ARMED ROBBERY (TWO COUNTS)

At a Court of General Sessions, convened on February 5, 2004,
the Grand Jurors of LEE County present upon their oath:

COUNT ONE

That DORIAN JARRIOUS CAIN did in Lee County on or about December 18, 2003, violate Section 16-11-330 (A) of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a firearm, did feloniously take from the person in the presence of JAMES REAMES by means of force or intimidation goods or monies of the said EDWARD SCOTT, such goods or monies being described: good and lawful monies.

COUNT TWO

That DORIAN JARRIOUS CAIN did in Lee County on or about December 18, 2003, violate Section 16-11-330 (A) of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: a firearm, did feloniously take from the person in the presence of EDWARD SCOTT by means of force or intimidation goods or monies of the said JAMES REAMES such goods or monies being described: good and lawful monies.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly Jackson
SOLICITOR

WITNESSES

515 BISHOPVILLE POLICE DEPARTMENT

515 Captain T. S. Burke

ARREST WARRANT NO. H486629 (1);

H486628 (2)

D/A: 12/18/03

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreman of Grand Jury

VERDICT

COUNT ONE: guilty

COUNT TWO: guilty

[Signature] 4-8-04
Foreman of Petit Jury Date:

The State of South Carolina,

County of LEE

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2004

THE STATE

IPS

vs.

DORIAN JARRIOUS CAIN

Indictment for

ARMED ROBBERY (TWO COUNTS)

H-486629 ✓

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
BISHOPVILLE

THE STATE
against

CAIN, DORIAN JARRIOUS

Address: ~~CONFIDENTIAL~~
BISHOPVILLE, SC 29010

Phone: _____ SSN: _____
M Race: B Height: ' ' Weight:

DL State: _____ DL #: _____
DOB: 05/22/1987 Agency ORI#: 3101

Prosecuting Agency: BISHOPVILLE POLICE

Prosecuting Officer: CAPT T. S. BURKE

Offense: ROBBERY/ARMED ROBBERY

Offense Code: 0139
Code/Ordinance Sec. 16-11-330 (A)

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant CAIN, DORIAN JARRIOUS
on 12-18-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

CENTRAL COURT
PO BOX 2-115 GREGG ST.
BISHOPVILLE, SC 29010

☐ County/ ☐ Municipality of
BISHOPVILLE

AFFIDAVIT CASE # 03/12/0007

SCCA 518

Personally appeared before me the affiant CAPT T. S. BURKE who
being duly sworn deposes and says that defendant CAIN, DORIAN JARRIOUS
did within this county and state on 12/18/03 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of BISHOPVILLE
in the following particulars:

DESCRIPTION OF OFFENSE: ROBBERY/ARMED ROBBERY
16-11-330 (A)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON DECEMBER 18, 2003 AT APPROXIMATELY 11:00 AM IN THE CITY OF BISHOPVILLE,
LEE COUNTY, SOUTH CAROLINA ONE, DORIAN JARRIOUS CAIN AND TWO CO-DEFENDANTS
DID PRESENT A FIREARM AND YELLED "GIMME YOUR WALLET". ONCE THE DEFENDANT
HAD THE WALLET HE AND THE CO-DEFENDANTS RAN AROUND THE CORNER AND LEFT THE
SCENE.

DEFENDANT WAS IDENTIFIED BY JAMES REAMES AS THE ONE WHO PULLED THE GUN AND
ROBBED HIM.

THIS IS IN VIOLATION OF SECTION 16-11-330 (A) OF THE S C CODE OF LAWS, 1976,
AS AMENDED.

Sworn to and subscribed before me
on DECEMBER 18, 2003

Signature of Issuing Judge (L.S.)

Signature of Affiant [Signature]
Affiant's Address BISHOPVILLE POLICE DEPT
BISHOPVILLE, SC 29010
Affiant's Telephone 803-20000

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BISHOPVILLE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/18/03 defendant CAIN, DORIAN JARRIOUS
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of BISHOPVILLE) as set forth below:

DESCRIPTION OF OFFENSE: ROBBERY/ARMED ROBBERY
16-11-330 (A)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)
Judge Code: 410
CENTRAL COURT

Judge's Address PO BOX 2-115 GREGG ST.
BISHOPVILLE, SC 29010
Judge's Telephone 803 484-6463

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

H-486628✓

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
BISHOPVILLE

THE STATE
against

CAIN, DORIAN JARRIOUS

Address: 720 Hwy 16 N. Main St
BISHOPVILLE, SC 29010

Phone: _____ SSN: _____
M Race: B Height: _____ Weight: _____

DL State: _____ DL#: _____
DOB: 05/22/1987 Agency ORI#: 3101

Prosecuting Agency: BISHOPVILLE POLICE

Prosecuting Officer: CAPT T. S. BURKE

Offense: ROBBERY/ARMED ROBBERY

Offense Code: 0139
Code/Ordinance Sec. 16-11-330 (A)

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant CAIN, DORIAN JARRIOUS
on 12-18-03

582✓
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
CENTRAL COURT
PO BOX 2-115 GREGG ST.
BISHOPVILLE, SC 29010

☐ County/ ☒ Municipality of
BISHOPVILLE

AFFIDAVIT CASE # 03-12-0007

July 20, 1997
SCCA 518

Personally appeared before me the affiant CAPT T. S. BURKE who
being duly sworn deposes and says that defendant CAIN, DORIAN JARRIOUS
did within this county and state on 12/18/03 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of BISHOPVILLE)
in the following particulars:

DESCRIPTION OF OFFENSE: ROBBERY/ARMED ROBBERY
16-11-330 (A) ARMED ROBBERY

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

ON DECEMBER 18, 2003 AT APPROXIMATELY 11:00 AM IN THE CITY OF BISHOPVILLE,
LEE COUNTY, SOUTH CAROLINA ONE, DORIAN JARRIOUS CAIN AND TWO CO-DEFENDANTS
DID PRESENT A FIREARM AND YELLED "GIMME YOUR WALLET". ONCE THE DEFENDANT
HAD THE WALLET HE AND THE CO-DEFENDANTS RAN AROUND THE CORNER AND LEFT THE
SCENE.

DEFENDANT WAS IDENTIFIED BY EDWARD SCOTT AS THE ONE WHO PULLED THE GUN AND
ROBBED HIM.

THIS IS IN VIOLATION OF SECTION 16-11-330 (A) OF THE S.C. CODE OF LAWS, 1976,
AS AMENDED.

Sworn to and subscribed before me
on DECEMBER 18, 2003

C. H. H. H. H. H. (L.S.)
Signature of Issuing Judge

[Signature]
Signature of Affiant
Affiant's Address BISHOPVILLE POLICE DEPT
BISHOPVILLE, SC 29010
Affiant's Telephone 803-484-6463

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
BISHOPVILLE

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/18/03 defendant CAIN, DORIAN JARRIOUS

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of BISHOPVILLE) as set forth below:

DESCRIPTION OF OFFENSE: ROBBERY/ARMED ROBBERY
16-11-330 (A) ARMED ROBBERY

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

C. H. H. H. H. (L.S.)
Signature of Issuing Judge

Judge Code: 410
CENTRAL COURT

Judge's Address PO BOX 2-115 GREGG ST.
BISHOPVILLE, SC 29010
Judge's Telephone 803 484-6463

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

4-06

The State
- U.S. -

P. Sauer

-6-04

Darion Cain

C. B. Burt

1. Laura Stuckey	108	
2. Shelia Rouse	96	
3. Angela Anderson	3	
4. Sybil Walker	140	
Tony Frazier	38	S-
5. Charlie Rogers	94	
6. David Dubose	32	
7. Mae Wilson	127	
Helen Ray	138	D
8. Dean Hancock	135	
Dennis Botzger	12	D
9. Rosa Thomas	111	
James Bullock, Jr.	14	D
10. Robert Hickman	51	
Lucille Briskin	15	S
Sherry A. Wilson	126	S
11. Michael Mearns	80	
12. Ruth McFadden	73	

act:

Jamela Prescott	87	S-1
1. Kathleen King	143	

Witness:

James Reams
 David Scott

Thomas Burke (BPD) (Captain)
 Ernest Mead (BPD)

James Miller (BPD) (Investigator)
 Cote Davidson - King BBI

Caroline Johnson
 Donna Lee

Preliminary Hearing Notice

OF: ☐ Request for Copy of Warrant(s) - Part I

☐ Warrant Dismissal(s) - Part II

STATE vs. CAIN, DORIAN JARRIOUS

PART I

TO: CLERK OF COURT. A preliminary hearing has been requested by the above named defendant and will be held JANUARY 21, 2004 AT 9:35 AM IN THE MAGISTRATES COURTRC
LEE COUNTY JUDICIAL CENTER, 115 GREGG STREET, BISHOPVILLE, S.C.

DATE / TIME / PLACE

Defendant represented by: _____

Please provide a certified copy of the listed criminal warrant(s) for the purpose of a preliminary hearing.

Warrant Number

Warrant Number

- | | |
|------------------------|---------------|
| 1. H486628 | ARMED ROBBERY |
| 2. ~~H~~ 486629 | ARMED ROBBERY |
| 3. | |

- | |
|----|
| 4. |
| 5. |
| 6. |

PART II

TO: SOLICITOR. A preliminary hearing was held in the case of the above named defendant. The warrant(s) listed below was dismissed on the date indicated.

Warrant Number

Date Dismissed

- | | |
|----|--|
| 1. | |
| 2. | |
| 3. | |
| 4. | |
| 5. | |
| 6. | |

Date Transmitted: 12/23/2003

8 9 1

Judge Code

JUDGE C H JACKSON

Signature

Copies to:

Clerk of Court - White
 Summary Court File - Canary
 Solicitor - Pink

 Municipality

/ LEE

 County

STATE OF SOUTH CAROLINA
COUNTY OF Lee
STATE OF SOUTH CAROLINA

Ticket or Warrant No.: H 486628 + H 486
IN THE C COURT OF GENERAL SESSIONS
() MAGISTRATE'S COURT
() MUNICIPAL COURT OF _____

Dorian Tarricus Cain
Name of Defendant

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE
(Bail Proceeding Form 2)

Offense Charged: Armed Robbery (2 cts)

At a bail proceeding conducted by undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact:

[Considerations: Nature and circumstances of the offense charged, the accused's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
2. That the above named defendant be released from custody provided as follows (check one):

CASH IN LIEU OF BOND

- ☐ The defendant, acknowledging himself to be indebted to the State of South Carolina, deposits \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

- ☐ The defendant acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____, his release to be obtained by payment to the court of _____ (%) of this bond in cash, this amount being \$ _____. The defendant will be obligated to the State in the full amount of \$ _____, such sum to be levied on his real and personal property for the use of the State, should he fail to perform the conditions of this Order.

APPEARANCE RECOGNIZANCE WITH SURETY

- ☒ The defendant will provide good and sufficient surety approved in the court in the form set forth on the reverse side, acknowledging an indebtedness to the State in the amount of \$ 50,000 ^{changed to} 25,000.00 ^{AL}

3. That the defendant shall appear at (check one):

- ☒ the term of the court of general sessions beginning on [Date: Feb 9, 2004] at [Time: 9:00 o'clock, A. M., at [Place: Lee County Courthouse, 2nd Floor, Bishopville, SC] and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.
- ☐ the session of magistrate/municipal (circle one) court beginning on [Date: _____] at [Time: _____] o'clock, _____ M., at [Place: _____]. If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Initials of Defendant TR

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described on the reverse side, which are marked.

Starkson
Signature of Judge

12/19/03
Date

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, including any conditions included on the reverse side of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, an additional criminal charge will be instituted against me. If the failure to appear is in connection with a felony charge, or while awaiting sentence, or pending appeal or certiorari after conviction, the penalty is a fine of not more than \$5,000 or imprisonment for not more than five years, or both; if I fail to appear in connection with a misdemeanor charge, the penalty is a fine of not more than \$1,000 or imprisonment for not more than one year, or both.

I acknowledge the receipt of a copy of this Order and understand the conditions of my release and the penalties applicable to me in the event I violate any condition of the Order or fail to appear as required.

726 Hwy 15 N. Main
Address

Bishopville, SC. 29006
City/State/Zip

251-67-3453, 484-3553
Social Security Number/Telephone No.

Dorian Cain
Signature of Defendant

12/19/03
Date

Attorney Representing Accused (If known)

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED.

Original copy for the Trial Court - Copy for the Defendant

FORM A

THIRD JUDICIAL CIRCUIT

OFFENSE:

ARMED ROBBERY (2)

WARRANT:

H486628 + H48666

DATE RELEASED:

JUDGE:

STHACKBORN

DATE FORM GIVEN:

12/14/03INSTRUCTIONS FOR ALL DEFENDANTS RELEASED ON BOND - GENERAL SESSION ONLY

- (1) Your bond is conditioned to report to the Court scheduled to begin in Bishopville, SC FEB. 9, 2004 at 9:00 AM and any subsequent term until final disposition been made of the charge(s) against you. You will receive no further notice. If you are not present you are subject to arrest on a **BRNCH WARRANT**.
- (2) Your bond is also conditioned to report to the Probation and Parole Agent for LEE County within FIFTEEN (15) DAYS. YOU MUST REPORT TO AGENT HOLLAND BY:
 ADDRESS: SHARON HOLLAND
 ROOM #213, SECOND FLOOR, COURTHOUSE
 BISHOPVILLE, SOUTH CAROLINA 29010
 PHONE #803-484-5341 EXT. 343 or 344
- (3) Failure to report as directed will result in your being arrested and held in jail until report can be prepared for the Court by the Probation Agent. The purpose of your report is so the Agent can obtain information to prepare a report for your trial Judge upon sentencing, if you plead guilty, or be found not guilty by a Jury. This report will be destroyed in the event you are found not guilty or dismissed of charges.
- (4) You are further instructed to bring this form with you to the Agent accompanied by copies of Warrants and Bond papers. Failure to do so will delay the process and cause you to report a second time with the information.
- (5) This report is being prepared in accordance with the OMNIBUS CRIMINAL JUSTICE IMPROVEMENT ACT OF 1986. It is strictly **CONFIDENTIAL**. This report does not involve any admission of guilt and you do not waive any of your rights.
- (6) You may be eligible for a Court appointed Attorney. If you need an Attorney, you must contact Mr. James I. Davis, Clerk, Lee County Courthouse, Bishopville, SC so that he may determine your eligibility. If you plan to retain an Attorney, or apply for Court appointed Attorney, Please do so prior to your scheduled Court appearance.

DEFENDANT'S SIGNATURE

SOCIAL SECURITY NUMBER

DATE OF BIRTH

ADDRESS

RACE

SEX

TELEPHONE NUMBER

EMPLOYER

Darion Harrison Cain
Name of Defendant

H 426622 + H 4266
Warrant/Ticket Nos.

County/Municipality of Bishopville

Charges: Aggravated Robbery
2nd ct

Trial Court: ☒ General Sessions
☐ Magistrate
☐ Municipal Court

CHECKLIST FOR MAGISTRATES AND MUNICIPAL JUDGES

DIRECTIONS: Magistrates and municipal court judges must use this checklist for **ALL GENERAL SESSIONS CASES** and for **ALL MAGISTRATE AND MUNICIPAL COURT CASES IN WHICH BOND HAS BEEN SET BY A JUDGE**. The judge should attach this checklist to the charging document (arrest warrant or uniform traffic ticket) when the defendant first appears before a judge for a bond hearing or first appearance, and complete the appropriate sections.

☒ BAIL PROCEEDING
☐ FIRST APPEARANCE (Non-Bailable Offenses)

1. Form used at bail proceeding
 - ☐ a. Bond Form I (personal recognizance)
 - ☒ b. Bond Form II (surety, cash, percentage)
 - ☐ c. None (Non-Bailable Offense)
2. For cases in which bond is set, defendant was informed:
 - ☒ a. Warrant for arrest will be issued for violation of any condition of bail bond order.
 - ☒ b. His right and obligation to be present at trial and that trial will proceed in his absence if he fails to attend.
 - ☒ c. Failure to appear in court as required will result in institution of additional criminal charges. For failure to appear in connection with a felony, additional charge has penalty of fine of not more than \$5,000 or imprisonment for not more than five (5) years, or both. For failure to appear in connection with a misdemeanor, additional charge has penalty of fine of not more than \$1,000 or imprisonment for not more than one (1) year, or both.
3. For cases to be tried in Court of General Sessions, defendant was informed of right to preliminary hearing if requested within ten (10) days:
 - ☒ a. Orally
 - ☒ b. In writing

(NOTE: Defendant must be informed of right both orally and in writing)
- ☒ 4. Defendant was informed of the right to trial by jury.
5. In all general sessions cases and in all magistrate or municipal cases in which a prison sentence is likely to be imposed, defendant was informed of the following:
 - ☒ a. Charges against defendant and nature of the charges.
 - ☒ b. Right to counsel and right to court-appointed counsel if financially unable to employ counsel
 - ☐ c. [(Optional: Local procedures may require judge to refer defendants to indigency screener. If so, note referral here) Required to appear before 12-4 on 12-4, 20 for appointment of counsel.]

Appearance or
Hearing Date: Dec 14 2003

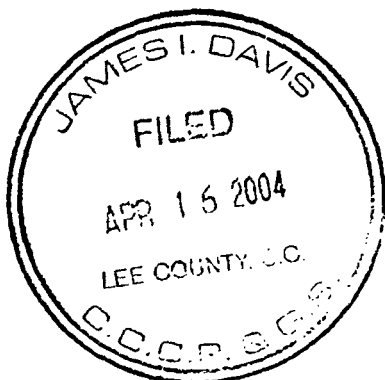
[Signature]
Judge's Signature

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF LEE	)	
	)	
State of South Carolina	)	
	)	
Plaintiff,	)	
	)	MOTION TO SET ASIDE
vs.	)	VERDICT / NEW TRIAL
	)	
	)	
Dorian J. Cain,	)	
	)	Case No: 2004-GS-31-006
Defendant,	)	
	)	
	)	

Pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure, the Defendant moves for the Court to set aside the verdict of Guilty and set a new trial.

The basis of such motion is the after-discovered evidence of one of the victims that submitted a sworn affidavit that the Defendant was not the individual that committed the crime and that the victim's testimony in Court was false.

Respectfully submitted this 16th, day of April, 2004.



Charles T. Brooks, III
 CHARLES T. BROOKS, III
 Law Office of Charles T. Brooks, III
 309 Broad Street
 Post Office Box 3512
 Sumter, SC 29150
 (803) 418-5708
 ATTORNEY FOR THE DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

The State of South Carolina)
Plaintiff,)

vs.)

Dorian J. Cain,)

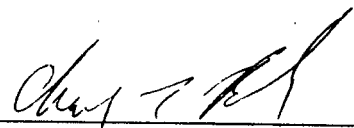
Defendant,)

IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
C/A NO: 2004-GS-31-006

CERTIFICATE OF SERVICE

I, the undersigned, CHARLES T. BROOKS, III, hereby certifies that on April 16, 2004, I did serve the Motion To Set Aside Verdict / New Trial, upon the Lee County Solicitor's Office, by personally hand delivering, to the following address:

Lee County Courthouse
Solicitors Office
123 S. Main Street
Post Office Box 387
Bishopville, SC 29010

By: 

Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708
Attorney For Defendant

April 16, 2004
Sumter, South Carolina

So whom it may concern,

This statement certifies that I am changing my statement back to my original. I am not sure who robbed us on Dec. 18.

I can not clearly identify Durion Cain. I only changed my statement because I was instructed by the police department that Durion was the suspect. ~~He~~ ~~She~~ ~~It~~ could not really identify the suspect because of the dark lighting in the building. Again I can not state Durion Cain robbed me and I am willingly changing my statement.

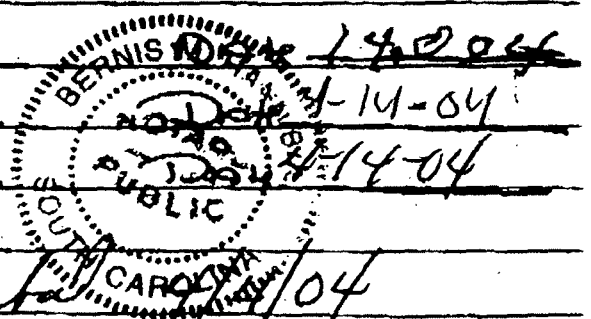
Name June Russell

Date 14 Dec

Witness Michael Dain

Witness John Dink Johnson

Witness [Signature]



Notary - Bernice M. Hamblin 14/04

L-06 Coin

51 photo of Cedar Ln.
52 W. drawn
53 diagram of scene

D1 Carolina Pines Medical Records (4pgs)

Rebecca M. Ludean
4-8-04

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE GENERAL SESSIONS COURT
THIRD JUDICIAL CIRCUIT

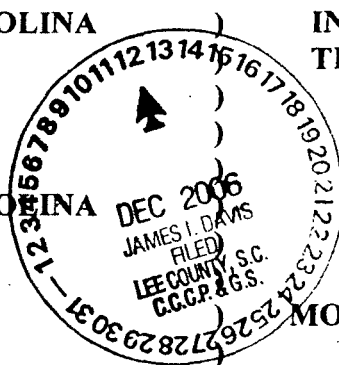
2004-GS-31-006

STATE OF SOUTH CAROLINA

v.

Dorian J. Cain,

DEFENDANT.



NOTICE OF MOTION
AND

MOTION TO MODIFY APPEAL BOND

TO: PAUL M. FATA, ESQUIRE, ASSISTANT SOLICITOR:

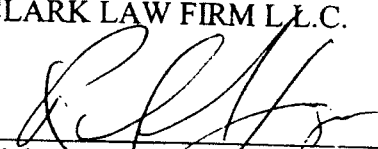
PLEASE TAKE NOTICE that the Defendant by and through his undersigned attorney will move before this Court on December 13, 2006 or as soon thereafter as counsel may be heard, for an Order to modify the Appeal Bond in the above-styled matter originally filed on June 30, 2004. Specifically, defendant seeks to remove house arrest provision from appeal bond. The basis for said motion is as follows:

1. The Honorable Clifton Newman granted the defendant an appeal bond in or about June of 2004. (See Appeal Bond Attached)
2. The Court placed the Defendant on house arrest AND set a bond in the amount of \$25,000.00 surety.
3. Family members of the Defendant pledged certain real property to satisfy the bond. (See Pledge of Real Estate Attached)
4. On or about November 2, 2006, Defendant was detained and continues to be detained by administrators of the house arrest program for alleged violations of house arrest conditions.

5. Defendant asserts technical difficulties with house arrest equipment due to digital phone service in the residence of house arrest.

WHEREFORE, Defendant seeks an Order from the court removing the condition of house arrest from the Defendant's appeal bond.

CLARK LAW FIRM L.L.C.

By: 

Richard W. Turner, Jr., Esquire
Attorney for the Defendant
22 East Liberty Street
Post Office Drawer 880
Sumter, South Carolina 29151
(803) 775-1234 • (803) 775-8590/fax

Sumter, South Carolina
December 12, 2006

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

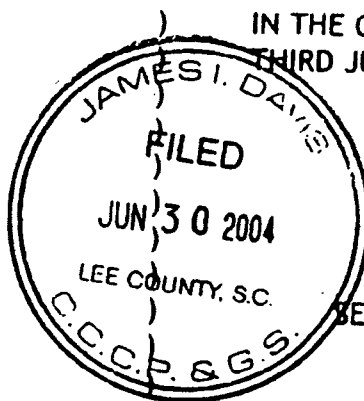
State of South Carolina

Plaintiff,

vs

Dorian J. Cain

Defendant.



2004-GS-31-006

ORDER
SETTING AN APPEAL BOND

The Defendant was convicted on two (2) counts of Arm Robbery and was sentenced to ten (10) years concurrent on both counts. Defendants counsel filed a Notice of Appeal with Proof of Service and subsequently made a verbal motion before the Court to grant the Defendant a bond pending his appeal of his conviction.

After hearing the motion, testimony and arguments of counsel, the Court grants the Defendant an Appellate Bond pursuant to Rule 230 of the South Carolina Appellate Rules. The bond is set at Twenty-five Thousand (\$25,000.00) Dollars Surety subject to the following condition:

- A. The Defendant is placed on house arrest to reside with his mother, Gina Cain at her home; and
- B. The Defendant is to have no contact with victims or the victims' immediate family.

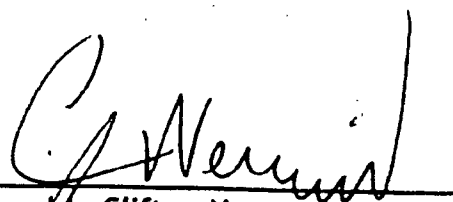
Upon, posting the bond, the Defendant is to be released immediately and subject to the above conditions shall remain out on bond during the course of the appeal process.

CW
#182

Certified as a True Copy

James I. Davis
Clerk of Court of General Sessions
and County Solicitor, Lee
County, South Carolina

IT IS SO ORDERED !!

A handwritten signature in black ink, appearing to read "Clifton Newman", written over a horizontal line.

Honorable Clifton Newman
Third Circuit Judge

STATE OF SOUTH CAROLINA

NOTICE OF PLEDGE

COUNTY OF LEE

TO

OF

Clerk of Court of Lee County
or his successor in office

REAL ESTATE

KNOW ALL MEN by these presents that Joseph & Louise Hickman
owner does hereby pledge the below described real estate to James I. Davis, Clerk
of Court for Lee County, or his successor in office, as collateral for the approval of
surety bond(s) for Devian Cain in the amount of
\$ 25,000.00 Offense armed robbery County of Lee
on appeal bond

SEE ATTACHED FOR DESCRIPTION

In consideration of the issuance of approval of surety bond(s) by James I.
Davis, Clerk of Court of Lee County, the undersigned does agree that said real
estate will not be transferred, conveyed or encumbered without notice to the said
James I. Davis, Clerk of Court for Lee County.

This pledge shall remain in force and effect until cancelled or released by
instrument filed in the Register of Deeds Office for Lee County.

Joseph L. Hickman

+ Louise B. Hickman
Property Owner

IN THE PRESENCE OF:

Certified as a True Copy

James I. Davis
C Cheryl S. Haffins

James I. Davis
Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

Personally appeared before me James I. Davis made oath that
he/she saw the within named Joseph L. Hickman & Louise B. Hickman sign, seal and as he/she
act and deed, deliver the within instrument for the uses and purposes therein
mentioned, and that he/she, with C Cheryl S. Haffins witnessed the execution
thereof.

C Cheryl S. Haffins

Sworn to before me this

30th day of June, 2004My Commission Expires: 6-24-09James I. Davis

STATE OF SOUTH CAROLINA

COUNTY OF LEE

COURT OF GENERAL SESSIONS

THIRD JUDICIAL CIRCUIT

Case No. 04-GS-31-0006

State of South Carolina,

Plaintiff,

vs.

Dorian J. Cain,

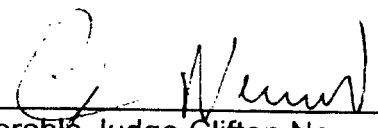
Defendant.

ORDER OF MODIFICATION

The Defendant, Dorian J. Cain has moved for an order modifying the house arrest conditions of his appeal bond which was granted by Order Setting an Appeal Bond filed June 30, 2004. Specifically, Defendant has requested that said Order be modified to allow Defendant to reside with his father Joseph L. Hickman during such times when his mother Gena Cain is incapable of adequately supervising him as a result of a chronic medical condition which may require future hospitalization and/or surgery.

THEREFORE IT IS ORDERED THAT:

The Order Setting an Appeal Bond filed June 30, 2004 is modified to allow Defendant to reside with his father Joseph L. Hickman during such times when his mother Gena Cain is incapable of adequately supervising Defendant as a result of her medical condition.


Honorable Judge Clifton Newman
Third Judicial Circuit

July 20, 2006
Conway, South Carolina



APPEAL TO THE SOUTH CAROLINA SUPREME COURT
LEE COUNTY

Please mail this with copies to the Notice of Appeal and Indictment(s) to:

Charles H. Richardson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

THE STATE v. Dorian J. Cain

Names(s) of Co-defendant(s): None

Indictment Number(s): 04-GS-31-06

Crime(s) Charged: Armed Robbery (two counts)

Trial Judge: Honorable Clifton Newman

Court Reporter:

Date(s) of Trial: April 8, 2004

Crime(s) Convicted: Armed Robbery (two counts)

Was this a guilty plea? No, trial

Date and length of Sentence: ten years on each count to run concurrent

Date Notice of Appeal served: July 8, 2004

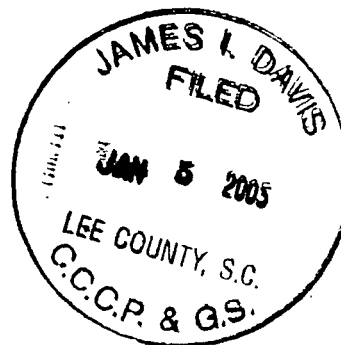
Appellant is: (1) In Jail _____
(2) Free on Bond ☒ X _____

Appellant's Attorney is: (1) Public Defender _____
(2) Court Appointed _____
(3) Retained Counsel ☒ X _____

If retained counsel, Appellant's attorney's address is: Desa Ballard, Esquire, 226 State Street, West Columbia, South Carolina 29169

Attorney for the State: Solicitor C. Kelly Jackson

Comments





Office of Clerk of Court

Lee County

JAMES I. DAVIS, CLERK

Bishopville, S.C. 29010

P. O. BOX 387 • PHONE 484-5341

REBECCA M. BERDEAU
DEPUTY CLERKCHERYL K. WATKINS
COURT COORDINATORKAY M. ELMORE
RMCTo: Lee County Sheriff
Lee County Jail

Please release Dorian J. Cain from
your custody as satisfactory arrangements have been made in this office for
his/her release.

04-AS-31-06

Appeal Bond

Posted -

6-30-04

James I. Davis
James I. Davis
Clerk of Court
Lee County

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

2004-GS-31-006

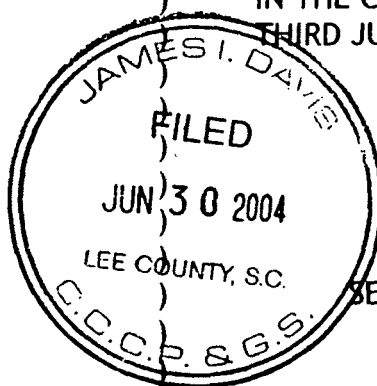
State of South Carolina

Plaintiff,

vs

Dorian J. Cain

Defendant.



ORDER
SETTING AN APPEAL BOND

The Defendant was convicted on two (2) counts of Arm Robbery and was sentenced to ten (10) years concurrent on both counts. Defendants counsel filed a Notice of Appeal with Proof of Service and subsequently made a verbal motion before the Court to grant the Defendant a bond pending his appeal of his conviction.

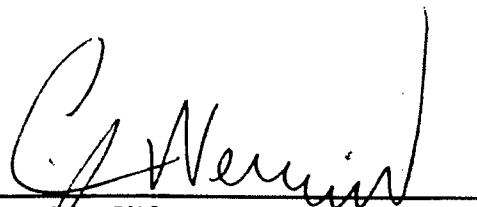
After hearing the motion, testimony and arguments of counsel, the Court grants the Defendant an Appellate Bond pursuant to Rule 230 of the South Carolina Appellate Rules. The bond is set at Twenty-five Thousand (\$25,000.00) Dollars Surety subject to the following condition:

- A. The Defendant is placed on house arrest to reside with his mother, Gina Cain at her home; and
- B. The Defendant is to have no contact with victims or the victims' immediate family.

Upon, posting the bond, the Defendant is to be released immediately and subject to the above conditions shall remain out on bond during the course of the appeal process.

CW
#182

IT IS SO ORDERED !!

A handwritten signature in cursive script, appearing to read "Clifton Newman", written over a horizontal line.

Honorable Clifton Newman
Third Circuit Judge

SPECIAL CONDITIONS OF RELEASE

- a. ☐ Placement in custody. The defendant is placed in the custody of _____

 Address _____ City _____ State/Zip _____ Telephone _____
 who agrees (1) to supervise the defendant in accordance with conditions set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

 Signature of Custodian (If Appointed) _____ Date _____
- b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

- c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ M. to _____ o'clock, _____ M. on _____
 _____ on condition that he return to the custody of _____ as designated.
 _____ at _____
- d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

APPEARANCE RECOGNIZANCE WITH SURETY

On the 30th day of June, 2004, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$25,000.00, such sum to be levied on his real and personal property for the use of the State, if the within named defendant shall fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Joseph Hickman
Louise Hickman
 Name of Surety (Printed or Typed)

109 Ridge St-
 Address of Surety

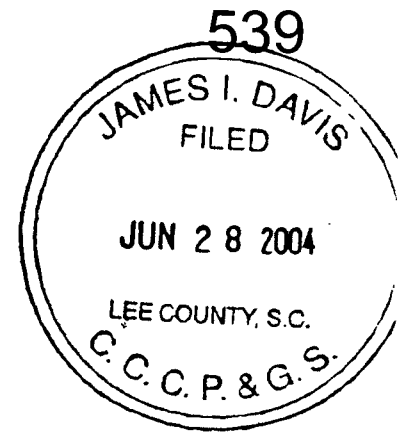
Bishopville S.C. 29010
 City/State/Zip

Louise B Hickman
 Signature of Surety

James J Davis
 Signature of Judge

6-30-04
 Date

THE STATE OF SOUTH CAROLINA
In the Supreme Court



APPEAL FROM LEE COUNTY
Court of General Sessions
Honorable CLIFTON NEWMAN, Circuit Court Judge

Case No: 2004-GS-31-006

The State,.....Respondent
V.
Dorian J. Cain,.....Appellant

NOTICE OF APPEAL

Dorian J. Cain appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Clifton Newman, dated April 8, 2004.

June 24, 2004

Charles T. Brooks, III
Post Office Box 3512
309 Broad Street
Sumter, South Carolina 29151
(803) 418-5708
Attorney for Appellant

Other Counsel on Record:

C. Kelly Jackson
Solicitor-Third Judicial Circuit
Lee County Courthouse
Bishopville, SC 29010
(803) 436-2185
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

**APPEAL FROM LEE COUNTY
IN THE GENERAL SESSIONS COURT**

Honorable CLIFTON NEWMAN, Circuit Court Judge

Case No. 2004-GS-31-006

The State of South Carolina Respondent

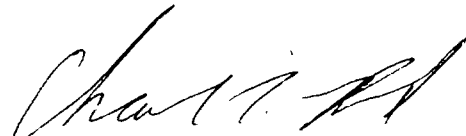
V.

Dorian J. Cain,.....Appellant

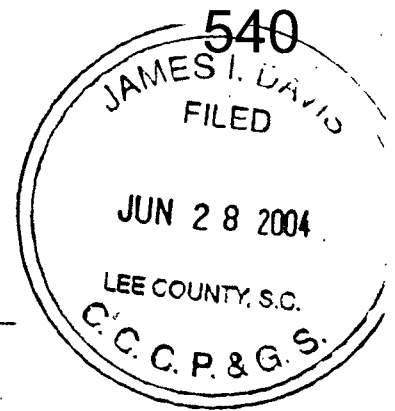
PROOF OF SERVICE

I, the undersigned, do hereby certify that on this 24th day of June, 2004, I served the foregoing Notice of Appeal as well Proof of Service for the Lee County Solicitor by depositing a true copy of it in the United States Mail, postage prepaid, on June 24th, 2004 addressed as indicated below:

**Lee County Courthouse
Solicitors Office
123 S. Main Street
Bishopville, SC 29010**



Charles T. Brooks, III
Attorney for the Appellant
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29150
(803) 418-5708



FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEE

Dorian J. Cain

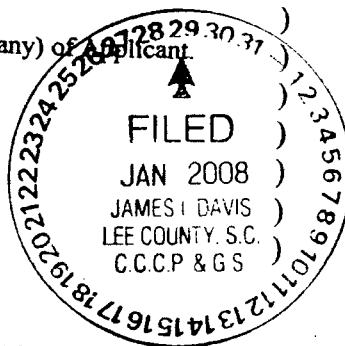
Full name and prison number (if any) of applicant

v.

State of South Carolina

IN THE COURT OF GENERAL SESSIONS

08-CR-31-21

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - 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 Sumter-Lee Detention Center
2. Name and location of Court which imposed sentence Lee County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 04-GS-31-06, Armed Robbery
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 8, 2004, 10 years in the State Department of Corrections; total fine of

\$128.75

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty X

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. November 28, 2006

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2006-UP-387

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) (1) During the Plaintiff's criminal trial the Plaintiff's trial counsel provided ineffective assistance in the following ways: (a) by analogizing support or lack thereof for the Iraq War with the State's burden of proof (T. p. 100, lines 1-2); (b) by failing to obtain and present to the jury evidence corroborating the Plaintiff's defense to allegations that he was seen by one of the victims running from the crime scene, namely that the Plaintiff had had surgery to his testicles less than three weeks prior to the date of the offense (T. p. 289, line 22-p. 290, line 16); (2) Following the Plaintiff's criminal trial the Plaintiff's trial counsel made a motion pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure to set aside the verdict and for a new trial and provided ineffective assistance in presenting that motion in the following ways: (a) by failing to properly interview and prepare witnesses prior to trial; (b) by failing to substantiate the affidavit obtained by the attorney's agents from one of the victim's to the crime; (3) Alternately, the Plaintiff's counsel committed ineffective assistance by ignoring other grounds or failing to discover other grounds to set aside the verdict and obtain a new trial in favor of an affidavit obtained by counsel's agents from a victim of the crime which was disavowed by the affiant during the hearing on the motion.

(b) _____

(c) _____

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. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The ground set forth in (10) is ineffective assistance of counsel and this is the initial application for post-conviction relief.
 - (b) _____
 - (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Charles T. Brooks, III, 309 Broad Street, Sumter, SC 29150
 - ii. Desa Ballard, 226 State Street, West Columbia, SC 29169
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. The Plaintiff's criminal trial and the motion to set aside the verdict/ for a new trial.

- ii. The Plaintiff's direct appeal to the South Carolina Court of Appeals
- iii. _____

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

The South Carolina Court of Appeals has stated that "[t]o establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case." Custodio v. State, 644 S.E.2d 36, 38 (2007), citing, Strickland v. Washington, 466 U.S. 668, 104 S.C. 2052, 80 L.Ed.2d. 674 (1984). In this matter the Plaintiff's trial counsel failed to render reasonably effective assistance of counsel both during the trial and afterwards. First, during the trial, Plaintiff's counsel presented evidence that the Plaintiff had had significant surgery shortly before the crime occurred which the Plaintiff testified would limit his ability to run away from the scene of the crime as the victims stated that they witnessed. Although Plaintiff's counsel provided documentation of the surgery itself he failed to produce evidence to support the limitations to the Plaintiff's range of motion resulting from the surgery. This would have carried considerable weight with the jury to counteract the evidence presented of the victims of the crime. Also, of particular concern was the trial counsel's Rule 29 Motion in which the counsel sought to set aside the verdict and obtain a new trial solely based on an affidavit obtained by counsel's agents from one of the victims of the crime. During the hearing on the motion the affiant completely disassociated himself from the affidavit and counsel provided no attempt to rehabilitate the affidavit or to provide a corroborating evidence or even to provide other grounds to the trial court to justify setting aside the verdict or granting a new trial. Alternately, the Plaintiff's counsel committed ineffective assistance by presenting incompetent and potentially fraudulent evidence to the trial court in the form of the afore-mentioned affidavit rather than making a substantive case for setting aside the verdict or granting a new trial. The Plaintiff was prejudiced his counsel's ineffective assistance by the entry of a guilty verdict and the counsel's failure to have that verdict set aside. Plaintiff seeks relief in the form of an order setting aside the verdict and ordering a new trial.

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

No

STATE OF SOUTH CAROLINA

County of Lee

)
)
)

VERIFICATION

I, Dorian J. Cain, 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.

Dorian J. Cain

SWORN to and subscribed before me this 06
day of January, 2008.

Charlene Sims (L.S.)
Notary Public

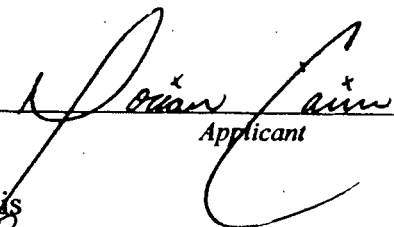
My Commission Expires: 1-31-2016

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

Dorian J. Cain

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

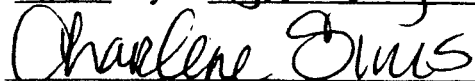
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

06 day of January, 2015



Notary Public

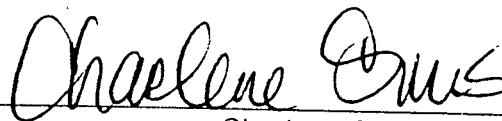
My Commission Expires: 1-31-2015

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, being an employee of the Law Office of Hemphill P. Pride II, certifies that on January 25, 20078 the foregoing Application for Post-Conviction Relief in the case of State v. Dorian J. Cain (Case No.: 2004-GS-31-0006) was served on counsel for the State by the undersigned depositing or causing the deposit of a copy of said Application on said date in the United States mail with sufficient postage affixed thereto and addressed as follows:

Salley W. Elliott, Esq.
Assistant Deputy Attorney General
OFFICE OF THE SOUTH CAROLINA ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211



Charlene Sims

Columbia, South Carolina

January 25, 2008.

LAW OFFICE
OF
HEMPHILL P. PRIDE II

1401 GREGG STREET
COLUMBIA, S C 29201
TELEPHONE (803) 256-8015

TELE-COPIER (803) 771-8014

MAILING ADDRESS
P.O. BOX 4529
COLUMBIA, SC 29240

June 21, 2007

Honorable James I. Davis
Clerk of Court
LEE COUNTY COURTHOUSE
Post Office Box 387
Bishopville, South Carolina 29010

RE: **State v. Dorian J. Cain**
Docket No. 2004-GS-31-006

Dear Mr. Davis:

Enclosed are the original and two (2) copies of Notice of Appearance in the above-referenced matter. Please clock in all copies; file the original; and, return the copies to me in the self-addressed envelope provided herein.

By copy of this letter, a copy of said Notice is being served upon the Honorable C. Kelly Jackson, Solicitor for the Third Judicial Circuit.

Your assistance is greatly appreciated.

Sincerely,


Hemphill P. Pride II

HPPII/pbf

Enclosures

c: Honorable C. Kelly Jackson

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

STATE,

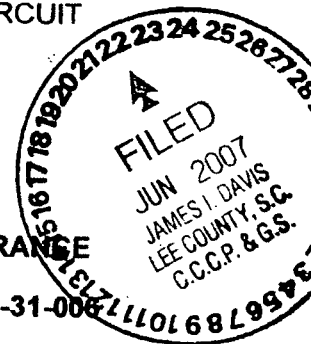
v.

DORIAN J. CAIN,

Defendant.

NOTICE OF APPEARANCE

Docket No. 2004-GS-31-006



The undersigned counsel hereby gives notice to this Honorable Court that he has been retained to represent the Defendant, Dorian J. Cain, in the above-captioned matter and will appear on his behalf at any and all proceedings involving same.

Pursuant to this Notice of Appearance, the undersigned counsel hereby requests this Honorable Court to direct to him any and all further communications relating to the Defendant and the above-captioned matter.

Law Office
of
HEMPHILL P. PRIDE II


Hemphill P. Pride II
1401 Gregg Street
Post Office Box 4529
Columbia, South Carolina 29240
(803) 256-8015

ATTORNEY FOR DEFENDANT

June 21, 2007.

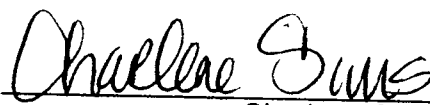
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

CERTIFICATE OF SERVICE

The undersigned, being an employee of the Law Office of Hemphill P. Pride II, certifies that on June 21, 2007 the foregoing Notice of Appearance in the case of *State v. Dorian J. Cain* (Docket No. 2004-GS-31-006) was served on all concerned parties by the undersigned depositing or causing the deposit of a copy of said Notice on that date in the United States mail with sufficient postage affixed thereto and addressed as follows:

Honorable C. Kelly Jackson
Solicitor for the Third Judicial Circuit
OFFICE OF THE SOLICITOR
141 N. Main Street
Sumter, South Carolina 29150

Richard W. Turner, Jr., Esq.
LAW OFFICE OF RICHARD W. TURNER, JR.
Post Office Box 880
Sumter, South Carolina 29151


Charlene Sims

Columbia, South Carolina

June 21, 2007.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF LEE)

FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2008-CP-31-0021

Dorian J. Cain,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

Respondent, making its Return to the application for post conviction relief (PCR) filed January 29, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lee County Clerk of Court. Applicant was indicted at the February 2004 term of the Lee County Grand Jury for two counts of Armed Robbery (2004-GS-31-0006). The Applicant was represented by Charles T. Brooks, III, Esquire. On April 8, 2004, after a jury trial before the Honorable Clifton Newman, the Applicant was convicted and sentenced to ten (10) years on Count One and ten (10) years on Count Two, sentences to be served concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Cain, Op. No. 2006-UP-387 (S.C. Ct. App. filed November 28, 2006). Petition for rehearing was denied on January 29, 2007, and the Remittitur was sent on March 5, 2007.

MX

Attached herewith and incorporated herein by reference are the records of the Lee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in:
 - a. Opening statement (by comparing State's burden of proof beyond a reasonable doubt to Iraq War decision. Tr. P. 100.); and
 - b. Failing to obtain and present to the jury corroborating evidence of Applicant's defense that he would have been unable to run from crime scene as witnesses described because of recent surgery.
2. Ineffective assistance of counsel in presenting Rule 29 motion to set aside verdict and for new trial by:
 - a. Failing to properly interview and prepare witnesses prior to trial; and
 - b. Failing to substantiate the affidavit of one of the victims procured by counsel.
3. Ineffective assistance of counsel in ignoring other grounds or failing to discover other grounds to set aside verdict.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this

prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, *Id.* Applicant must overcome this presumption in order to receive relief. Cherry, *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See* Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

Sept. 5, 2008.

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF LEE) 2009-CP-31-0021

DORIAN CAIN,)
) APPLICANT)
 VS.) TRANSCRIPT OF RECORD
)
STATE OF S.C.,)
RESPONDENT.)

OCTOBER 26, 2009
SUMTER, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., PRESIDING
JUDGE.

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

HEMPHILL P. PRIDE, ESQUIRE
ATTORNEY FOR THE APPLICANT

MARY S. WILLIAMS, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

KATHLEEN RICHARDSON, RPR, CRR
US DISTRICT COURT REPORTER

INDEX OF WITNESSES

GINA CAIN DAVIS

DIRECT BY MR. PRIDE	4
CROSS BY MRS. WILLIAMS	31
DIRECT BY MR. PRIDE	33
CROSS BY MRS. WILLIAMS	39
REDIRECT BY MR. PRIDE	41

CHARLES BROOKS

DIRECT BY MR. PRIDE	41
CROSS BY MRS. WILLIAMS	69
REDIRECT BY MR. PRIDE	75

1 MRS. WILLIAMS: MAY IT PLEASE THE COURT. THIS
2 IS DORIAN CAIN, 2008-CP-31-0021. MR. CAIN WAS
3 REPRESENTED AT A TRIAL BY CHARLES BROOKS. HE WAS
4 CHARGED WITH TWO COUNTS OF ARMED ROBBERY, WAS FOUND
5 GUILTY BY A JURY AND SENTENCED ON APRIL THE 8TH OF
6 2004 TO TWO CONCURRENT TERMS OF 10 YEARS. THERE WAS
7 A POST-TRIAL MOTION IN THE CASE THAT WAS FILED BASED
8 ON NEWLY DISCOVERED EVIDENCE, AND THERE WAS A HEARING
9 ON THAT MOTION ON JUNE 23RD OF 2004, AND YOUR PACKET
10 INCLUDES THAT MOTION, THE AFFIDAVIT, AND A TRANSCRIPT
11 OF THAT HEARING AS WELL AS THE TRANSCRIPT OF THE
12 TRIAL.

13 THERE WAS A DIRECT APPEAL. THAT APPEAL AFFIRMED
14 THE CONVICTION AND SENTENCE, AND HIS PCR WAS TIMELY
15 FILED ON JANUARY THE 29TH OF 2008, AND OF COURSE, HE
16 IS REPRESENTED TODAY BY MR. PRIDE.

17 HE HAS MADE ALLEGATIONS OF INEFFECTIVE
18 ASSISTANCE OF COUNSEL. THERE'S AN ISSUE REGARDING
19 THE OPENING ARGUMENT, SOME ISSUES REGARDING -- SOME
20 EVIDENTIARY ISSUES THAT HE FEELS THAT HIS ATTORNEY
21 FAILED TO PRESENT, AND INEFFECTIVE ASSISTANCE IN
22 PRESENTING THE POST-TRIAL MOTIONS. I WOULD LIKE TO
23 TRY TO GO INTO THIS.

24 BAILIFF: YOU HAVE THE PACKET, PLEASE?

25 MRS. WILLIAMS: OH, YES. APOLOGIZE.

1 THE COURT: ALL RIGHT. MR. PRIDE?

2 MR. PRIDE: MAY IT PLEASE THE COURT. COME
3 AROUND, MR. CAIN, PLEASE.

4 MRS. WILLIAMS: CAN WE APPROACH REAL QUICK? I'M
5 SORRY. CAN WE APPROACH?

6 (WHEREUPON A BENCH CONFERENCE WAS HELD.)

7 GINA CAIN DAVIS, AFTER BEING DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. PRIDE:

11 Q MRS. CAIN, WHERE DO YOU LIVE?

12 A I LIVE AT 122 HARRIS STREET, BISHOPVILLE, SOUTH
13 CAROLINA, 29010.

14 Q AND WHERE ARE YOU EMPLOYED?

15 A I'M CURRENTLY EMPLOYED AT LEE CORRECTIONAL
16 INSTITUTION.

17 Q HOW LONG HAVE YOU BEEN A CORRECTIONAL OFFICER?

18 A APPROXIMATELY 11 YEARS.

19 Q AND HOW MANY CHILDREN DO YOU HAVE, MRS. CAIN?

20 A I HAVE THREE.

21 Q AND SEATED AT COUNSEL TABLE IS DORIAN CAIN. WHAT
22 RELATION IS HE TO YOU?

23 A MY ONE AND ONLY SON.

24 Q NOW, BACK IN APRIL WHEN DORIAN WAS TRIED, WHO DID YOU
25 HIRE TO REPRESENT HIM?

1 A I HIRED ATTORNEY CHARLES BROOKS.

2 Q ALL RIGHT. AND ONCE YOU HIRED MR. BROOKS, DID YOU
3 ALSO PAY AND HIRE A DETECTIVE TO WORK ALONG WITH
4 MR. BROOKS?

5 A YES, SIR.

6 Q AND THAT DETECTIVE WAS TO WORK AT MR. BROOKS'
7 DIRECTION?

8 A YES, SIR.

9 Q AND THAT DETECTIVE WAS TO ASSIST MR. BROOKS IN ANY
10 WAY THAT HE COULD IN THE DEFENSE OF YOUR SON; IS THAT
11 CORRECT?

12 A YES, SIR.

13 Q WAS THE -- WHAT WAS THE NAME OF THE DETECTIVE?

14 A IF I'M NOT MISTAKEN, HIS NAME WAS JOHN WILLIAMS OR
15 JOHN WILSON.

16 Q DID YOU FIND HIM TO BE COMPETENT?

17 A YES, SIR, HE WAS AN EX SLED -- SLED INVESTIGATOR.

18 Q ALL RIGHT. NOW, MRS. CAIN, THE CHARGES THAT YOUR SON
19 WAS FACED WITH, DURING THE TRIAL AND BEFORE THE TRIAL DID
20 MR. BROOKS CONFER WITH YOU ABOUT THE POSSIBILITY OF A
21 PLEA?

22 A NO. NOT AT FIRST HE DID NOT. NOT AT FIRST. LATER
23 ON HE DID.

24 Q LATER ON DURING THE TRIAL OR AFTER THE TRIAL?

25 A JUST BEFORE -- JUST BEFORE THE TRIAL, THINK LIKE A

1 DAY OR SO BEFORE THE TRIAL.

2 Q ALL RIGHT. AND A DAY OR SO BEFORE THE TRIAL, WOULD
3 IT BE CORRECT TO SAY THAT HE ADVISED YOU THAT IF YOUR SON
4 WAS WILLING TO PLEAD GUILTY, THAT HE WOULD BE GIVEN
5 PROBATION?

6 A YES, HE DID.

7 Q AND DID YOU IN FACT -- EVEN THOUGH YOU HAD HIRED
8 MR. BROOKS TO REPRESENT YOUR SON, DID YOU DISCUSS THAT
9 WITH YOUR SON ALSO?

10 A YES, I DID.

11 Q NOW, HOW OLD WAS YOUR SON THEN?

12 A AT THE TIME HE WAS ONLY 16 YEARS OLD.

13 Q ALL RIGHT. AND BEFORE WE GO BACK TO THE PLEA, GIVE
14 THE COURT JUST A LITTLE BACKGROUND ABOUT YOUR SON. HAD
15 YOUR SON -- HAD YOUR SON EVER BEEN CHARGED WITH A CRIMINAL
16 OFFENSE BEFORE?

17 A NO, SIR. MY SON NEVER WAS IN ANY TROUBLE.

18 Q ALL RIGHT. AND YOUR SON HAD A LEARNING DISABILITY,
19 TOO; IS THAT CORRECT?

20 A YES, HE HAD A LEARNING DISABILITY. HE HAS ADHD,
21 DYSLEXIA.

22 Q OKAY. AND YOU KNEW ABOUT HIS DISABILITY AND YOU WERE
23 ADDRESSING THAT DISABILITY IN SCHOOL TO HAVE IT CORRECTED;
24 IS THAT CORRECT?

25 A YES, SIR.

1 Q AND YOUR EFFORTS RESULTED IN YOUR SON'S IMPROVEMENT;
2 IS THAT CORRECT?

3 A YES, SIR.

4 Q AND WHAT GRADE WAS YOUR SON IN WHEN THIS MATTER IN
5 APRIL CAME UP?

6 A IF I'M NOT MISTAKEN HE WAS IN THE 11TH GRADE.

7 Q IN THE 11TH GRADE.

8 A YES, SIR.

9 Q NOW, LET'S GO BACK TO THE PLEA THAT MR. BROOKS TOLD
10 YOU THAT WAS AVAILABLE IF YOUR SON WOULD ENTER A PLEA.
11 YOU HAVE TOLD THE JUDGE THAT MR. BROOKS CONFERRED WITH YOU
12 AND TOLD YOU THAT IF YOUR SON WOULD ENTER A PLEA TO ONE OF
13 THE OFFENSES CHARGED WITH, THAT HE WOULD GET PROBATION; IS
14 THAT CORRECT?

15 A YES, SIR.

16 Q AND YOU FURTHER TOLD THE COURT THAT ONCE MR. BROOKS
17 MADE YOU AWARE OF THIS, THAT YOU DISCUSSED THE MATTER WITH
18 YOUR SON; IS THAT CORRECT?

19 A YES, SIR.

20 Q WAS YOUR SON'S FATHER INVOLVED AND IN SUPPORTING HIM
21 IN HIS EFFORTS DURING HIS TRIAL?

22 A YES, SIR, HE WAS A JOINT VENTURE.

23 Q WAS HE PRESENT ALSO?

24 A YES, SIR.

25 Q DID YOU ALSO -- IS HE HERE IN COURT TODAY?

1 A YES, SIR.

2 Q WOULD YOU STAND UP, PLEASE? THANK YOU VERY MUCH.
3 AND DID YOU ALSO DISCUSS THAT WITH HIS FATHER, THE FACT
4 THAT IF DORIAN WANTED TO PLEAD GUILTY TO ONE OF THE
5 OFFENSES, HE COULD GET PROBATION?

6 A YES, SIR.

7 Q AND AS A RESULT OF THE COLLECTIVE DISCUSSION WHICH I
8 HAVE JUST DESCRIBED, WHAT DECISION DID YOU ALL REACH?

9 A THERE WOULDN'T HAVE BEEN NO DECISION. MY SON FROM
10 DAY ONE SAID THAT HE DID NOT DO THIS, SO WE DECIDED TO GO
11 AHEAD ON TO TRIAL TO PROVE HIS INNOCENCE BECAUSE HE DID
12 NOT DO IT.

13 Q ALL RIGHT. NOW, LET'S GO TO MR. BROOKS. I WOULD
14 ASSUME, AND CORRECT ME IF I'M WRONG, THAT YOU WENT TO
15 MR. BROOKS' OFFICE WHEN YOU HIRED HIM TO REPRESENT YOUR
16 SON; IS THAT CORRECT?

17 A YES, I DID.

18 Q DID YOU HAVE YOUR SON WITH YOU AT THAT TIME?

19 A NOT AT THAT INITIAL -- NOT AT THE INITIAL HIRING OF
20 HIM.

21 Q WHEN YOU WENT TO VISIT WITH MR. BROOKS FOR THE FIRST
22 TIME, WAS YOUR SON INCARCERATED OR WAS HE OUT ON BOND?

23 A HE WAS NOT INCARCERATED. HE GOT OUT AFTER -- THE
24 NEXT DAY. ONCE HE WAS ARRESTED ON THE CHARGES, HE WENT TO
25 A PRELIMINARY HEARING AND THE BOND AND EVERYTHING WAS SET.

1 Q ALL RIGHT. NOW, WHEN YOU WENT TO MR. BROOKS' OFFICE,
2 YOU TOLD THE JUDGE YOUR SON WAS NOT PRESENT; IS THAT
3 RIGHT?

4 A CORRECT.

5 Q AND DID YOU PRIMARILY TELL MR. BROOKS WHAT YOUR SON
6 WAS CHARGED WITH?

7 A YES.

8 Q DID YOU HAVE ANY PAPERS IN YOUR HAND RELATIVE TO THE
9 CHARGES AGAINST YOUR SON?

10 A YES. YES, SIR.

11 Q DID YOU GIVE THOSE PAPERS TO MR. BROCKS?

12 A YES, SIR.

13 Q AND ULTIMATELY DURING YOUR VISIT WITH MR. BROOKS DID
14 YOU RETAIN HIM TO REPRESENT YOUR SON?

15 A YES.

16 Q ALL RIGHT. AND THEREAFTER, DO YOU KNOW WHEN
17 MR. BROOKS FIRST SAW YOUR SON?

18 A WHEN HE FIRST SAW MY SON?

19 Q YEAH. YOU'VE TOLD THE JUDGE HE WASN'T PRESENT WHEN
20 YOU WENT IN TO HIRE THE LAWYER, BEING MR. BROOKS; RIGHT?

21 A YES.

22 Q SO WHEN DID MR. BROOKS FIRST MEET WITH YOUR SON?

23 A THINK IT WAS LIKE A MONTH LATER WE WENT IN. IT WAS
24 ABOUT A MONTH LATER.

25 Q A MONTH LATER?

1 A YES.

2 Q AND AT THAT TIME DESCRIBE FOR THE COURT EXACTLY THE
3 KIND OF INTERVIEW MR. BROOKS CONDUCTED AND WHAT TRANSPIRED
4 AT THAT TIME.

5 A HE SPOKE WITH MY SON AND TOLD HIM THAT HE WOULD BE
6 HIRING AN INVESTIGATOR TO ASSIST HIM WITH THE TRIAL. HE
7 EXPLAINED TO MY SON WHAT HE WAS FACED WITH AT THAT
8 PARTICULAR TIME. THE EVIDENCE THAT THEY HAD, WE DISCUSSED
9 THAT WITH HIM ALSO. AND HE ALSO DISCUSSED WITH MY SON,
10 YOU KNOW, WHAT COULD HAPPEN WITH THE OUTCOME, AND THAT
11 PRETTY MUCH WAS IT.

12 HE NEVER MET -- HE ONLY MET WITH MY SON LIKE ONCE.
13 ALL OF OUR CONVERSATIONS WAS NOT -- WAS DIRECTLY THROUGH
14 MYSELF, MOSTLY MYSELF OR MY -- OR MY SON'S FATHER.

15 Q SO IF I UNDERSTAND YOUR TESTIMONY CORRECT BEFORE THIS
16 JUDGE, JUDGE TODAY, JUDGE COTHRAN, YOU ARE TELLING US THAT
17 MR. BROOKS ONLY MET WITH YOUR SON ONE TIME BEFORE APRIL
18 WHEN THE TRIAL TOOK PLACE?

19 A YES, SIR.

20 Q JUST ONCE?

21 A JUST ONCE.

22 Q AND HOW LONG DID THAT MEETING TAKE PLACE?

23 A IT WAS LESS THAN 30 MINUTES.

24 Q LESS THAN 30 MINUTES.

25 MR. PRIDE: EXCUSE ME PLEASE, YOUR HONOR.

1 BY MR. PRIDE:

2 Q WAS YOUR -- WAS MR. BROOKS MADE AWARE DURING THAT
3 MEETING THAT YOUR SON HAD SURGERY?

4 A YES, HE WAS.

5 Q TELL US ABOUT WHAT YOU TOLD MR. BROOKS ABOUT THAT
6 SURGERY.

7 A I EXPLAINED TO HIM THAT MY SON HAD A SURGERY DOWN
8 BELOW ON HIS TESTICLES. I EXPLAINED TO HIM THAT HE HAS
9 SUTURES THAT WAS HIS...

10 Q I THINK HE HAD STAPLES.

11 A YEAH, HE HAD STAPLES, BUT THEY WAS ATTACHED TO HIS
12 LEG FROM THE INCISION. IT WAS ATTACHED TO HIS LEG BECAUSE
13 THEY WAS TRYING TO BRING DOWN ONE OF HIS TESTICLES.

14 Q SO HIS TESTICLES WERE STAPLED. IN OTHER WORDS, ONE
15 OF THE -- WAS ONE OF HIS TESTICLES REMOVED?

16 A YES.

17 Q AND THEN THE PART THAT WAS REMOVED WAS STAPLED ONTO
18 THE LEG; IS THAT CORRECT?

19 A YES.

20 Q AND AS A RESULT OF IT, WHAT DISABILITY DID YOUR SON
21 SUFFER?

22 A HE COULD NOT -- HE COULD DO LIMITED -- HE HAD LIMITED
23 MOBILITY.

24 Q COULD HE RUN?

25 A NO, SIR. AND WHEN I TOOK HIM BACK TO SCHOOL I HAD

1 TO -- WHEN I TOOK HIM BACK TO SCHOOL, I HAD TO GIVE THE
2 TEACHERS HIS PAPERWORK BECAUSE HE WENT TO ANOTHER SCHOOL
3 AND EXERCISE WAS PART OF THEIR CURRICULUM, SO THEY WERE
4 GIVEN THE INFORMATION THAT HE COULD NOT DO ANY TYPE OF
5 EXERCISE, SO THEY DISMISSED HIM FROM THAT PARTICULAR TIME.

6 Q DID YOU FURNISH MR. BROOKS WITH ANY MEDICAL REPORTS,
7 DOCUMENTATION FROM THE HOSPITAL, THE DOCTOR WHICH
8 DESCRIBED THE NATURE AND EXTENT OF THE SURGERY?

9 A I DID. HE ALSO OBTAINED SOME FROM MY SON'S
10 PHYSICIANS.

11 Q OKAY.

12 A HE ALSO OBTAINED FOR HIMSELF.

13 Q AND BASED ON THE DOCUMENTS THAT YOU'D GIVEN -- STRIKE
14 THAT, PLEASE. BASED ON THE DOCUMENTS THAT YOU GAVE HIM
15 AND THE DOCUMENTS THAT HE INDEPENDENTLY OBTAINED, DO YOU
16 BELIEVE THAT HE HAD A PRETTY GOOD KNOWLEDGE OF -- OR THE
17 KIND OF OPERATION YOUR SON WENT THROUGH?

18 A YES.

19 Q NOW, HOW LONG BEFORE THE TRIAL DID YOUR SON HAVE THAT
20 OPERATION?

21 A IT WAS A WEEK OR -- A WEEK OR TWO PRIOR TO THAT.

22 Q A WEEK OR TWO. AS A MATTER OF FACT, I THINK IT WAS
23 ABOUT 10 DAYS; WASN'T IT?

24 A YES.

25 Q ALL RIGHT. I WANT TO ASK YOU SOMETHING AND I WANT

1 YOU TO LOOK AT ME AND TELL ME. I AM BENT FORWARD TOWARDS
2 THE TOES OF MY SHOES. COULD -- IS THAT THE POSITION THAT
3 YOUR SON ORDINARILY WAS IN BECAUSE OF THAT TESTICLE
4 OPERATION AND BECAUSE HE COULDN'T STAND UP LIKE THAT?

5 A YES, SIR.

6 Q WOULD THE COURT REPORTER PLEASE REFLECT THAT I LOOKED
7 DOWN TOWARDS -- BEND OVER AND LOOKED DOWN TOWARDS THE TOES
8 OF MY SHOES AND THEN I STOOD UP ERECTLY IN TERMS OF MY
9 EXAMINATION OF THE WITNESS. SO, HE COULD NOT STAND ERECT;
10 IS THAT CORRECT?

11 A CORRECT.

12 Q COULD HE RUN?

13 A NO, SIR.

14 Q OKAY. AND DID YOU BELIEVE THAT THAT WOULD HAVE BEEN
15 AN EXCELLENT PART OF HIS DEFENSE TO HAVE EVIDENCE, LIVE
16 EVIDENCE, TO TELL THE JURY OF HIS DISABILITY AND INABILITY
17 TO RUN?

18 A YES, SIR.

19 Q AND OTHER THAN THE PAPERS WHICH MR. BROOKS OBTAINED,
20 DID HE PUT ANY LIVE WITNESS UP AT ALL TO DESCRIBE THE
21 NATURE AND EXTENT OF THE OPERATION THAT YOUR SON WENT
22 THROUGH?

23 A NO, SIR.

24 Q WERE YOU PRESENT AT THAT TRIAL?

25 A EVERY DAY.

1 Q DID YOU TESTIFY?

2 A NO, SIR.

3 Q DID YOU ATTEND YOUR SON THE ENTIRE TIME FROM WHEN HE
4 HAD THE OPERATION TILL WHEN HE WENT TO COURT?

5 A YES, SIR.

6 Q WERE YOU IN A POSITION TO DO AS YOU HAVE DONE TODAY,
7 TO DESCRIBE TO THE JURY THE FACT THAT HIS TESTICLES WAS
8 STAPLED TO HIS LEGS AND ONE WAS REMOVED AFTER THE
9 OPERATION AND THE POSTURE THAT HE WOULD HAVE TO MAINTAIN?

10 A NO, SIR, I WAS NOT AFFORDED THE OPPORTUNITY.

11 Q COULD YOU HAVE DONE THAT IF AFFORDED?

12 A YES, SIR.

13 Q COULD YOU HAVE ALSO DESCRIBE -- DESCRIBE THE FACT
14 THAT HE DIDN'T HAVE THE ABILITY TO RUN, THAT HIS MOVEMENT
15 WAS SEVERELY LIMITED.

16 A I EXPLAINED THAT TO ATTORNEY BROOKS FROM DAY ONE.

17 Q OKAY. AND NO ONE TESTIFIED BEFORE THE JURY ABOUT HIS
18 INABILITY TO RUN AS A RESULT OF HIS OPERATION?

19 A NO, HE JUST -- MY SON WHEN HE WAS THE PERSON WHO
20 TESTIFIED ABOUT HIS ABILITY.

21 Q ALL RIGHT. AND THAT -- AND YOU TOLD US THAT YOUR
22 SON'S -- DID MR. BROOKS KNOW THAT YOUR SON HAD A LEARNING
23 DISABILITY?

24 A YES.

25 Q SO MR. BROOKS KNEW THAT HIS COMMUNICABLE SKILLS WERE

1 LIMITED IN TERMS OF A WITNESS?

2 A YES.

3 Q AND MR. BROOKS KNEW THAT HIS ABILITY EDUCATIONALLY
4 WAS LIMITED BECAUSE OF HIS DISABILITY?

5 A YES, SIR.

6 Q AND THAT WAS -- AND BUT YET MR. BROOKS RELIED ON YOUR
7 SON TO DESCRIBE HIS DISABILITY AND HIS INABILITY TO RUN;
8 IS THAT CORRECT?

9 A YES, SIR.

10 Q AND HE PUT NO OTHER WITNESS UP TO CORROBORATE THE
11 MEDICAL DISABILITY.

12 A NO, SIR.

13 Q MRS. CAIN, DID YOU LISTEN TO THE ENTIRE TRIAL OF THIS
14 CASE?

15 A YES, SIR.

16 Q WERE THERE WITNESSES THAT TESTIFIED THAT AFTER THE
17 ROBBERY THAT THE PERSONS WHO PARTICIPATED IN THE ROBBERY
18 INCLUDING YOUR SON RAN AWAY?

19 A YES, SIR.

20 Q AND WHAT DISTANCE DID THE WITNESS TESTIFY THAT THE
21 PARTICIPANTS RAN?

22 A SEVERAL BLOCKS. THEY RAN AWAY SEVERAL BLOCKS.

23 Q SEVERAL BLOCKS FROM --

24 A FROM THE SCENE.

25 Q -- FROM WHERE THE ROBBERY OCCURRED.

1 A YES.

2 Q OKAY. AND LET ME ASK YOU ABOUT THE NIGHT OF THE
3 ROBBERY. WAS THERE -- WHAT DESCRIPTION WAS GIVEN IN TERMS
4 OF CLOTHING THAT YOU HEARD?

5 MRS. WILLIAMS: OBJECTION. I BELIEVE THE
6 TRANSCRIPT IS THE BEST REFLECTION OF THIS EVIDENCE.

7 MR. PRIDE: I'M ASKING HER BASED AS A PERSON WHO
8 WAS THERE PRESENT AT THE TRIAL AND HEARD THE
9 TESTIMONY, AND I -- IF YOU HEAR IT FULLY, JUDGE,
10 WHERE I'M GOING, I THINK YOU MIGHT UNDERSTAND WHY I'M
11 DOING IT THAT WAY. AND IF I DON'T SATISFY YOU IN
12 GOING THAT WAY, THEN YOU CERTAINLY HAVE THE ABILITY
13 TO STRIKE IT FROM THE RECORD.

14 THE COURT: I WILL ALLOW YOU TO PROCEED THEN.

15 MR. PRIDE: THANK YOU VERY MUCH.

16 BY MR. PRIDE:

17 Q NOW, YOU -- WHAT -- WHAT -- WHAT CLOTHING WAS SAID -
18 THAT YOUR SON HAD ON?

19 A THE ASSAILANTS WAS SUPPOSED TO HAVE ON DARK CLOTHING,
20 DARK CLOTHING, DARK BLUE JACKET, PANTS, BLUE JEANS.

21 Q AND WHAT COLOR JACKET DO YOU KNOW THAT YOUR SON HAD
22 THAT NIGHT?

23 A MY SON -- IT WAS A -- WELL, THE INCIDENT HAPPENED
24 DURING THE DAYTIME.

25 Q ALL RIGHT. I'M SORRY.

1 A IT WAS DURING THE DAYTIME, BUT IT WAS IN A BUILDING.

2 Q UH-HUH.

3 A MY SON HAD ON A YELLOW RACE -- RACING CAR JACKET. IT
4 WAS HIGH YELLOW WITH DIFFERENT PATTERNS IN IT AND WRITING
5 IN IT. HE ALSO HAD ON A PAIR OF BLUE JEANS.

6 Q WELL, WAIT A MINUTE. LET'S DEAL WITH THE JACKET.
7 WAS THE JACKET COLORFUL ENOUGH THAT IT WOULD HAVE BEEN
8 STRIKING? I MEAN, DID IT GLARE?

9 A YES, SIR.

10 Q NOW, THAT JACKET, DID YOU BRING THAT JACKET TO THE
11 COURTROOM?

12 A YES, SIR. WE BROUGHT IT TO THE COURTROOM.

13 Q AND DID YOU CALL MR. -- CALL TO MR. BROOKS' ATTENTION
14 THE FACT THAT THERE IS TESTIMONY THAT DORIAN HAD ON A BLUE
15 JACKET. WE KNOW HE HAD ON A YELLOW COLORFUL JACKET, AND
16 WE HAVE THAT JACKET HERE IN THE COURTROOM TODAY AND WOULD
17 LIKE FOR YOU TO PRESENT IT TO THE COURT AND TO THE JURY.
18 DID YOU DO THAT?

19 A YES, SIR. THAT'S WHEN THE QUESTION WAS ASKED OF THE
20 CHIEF OF POLICE. SHE WAS ASKED THE QUESTION BECAUSE SHE
21 HAD TOLD MYSELF AND MY SON'S FATHER THAT IF THE JACKET WAS
22 STILL AT MRS. JOHNSON'S HOUSE--

23 Q WAIT A MINUTE, NOW. I'M SORRY. I DON'T WANT YOU TO
24 GO THERE YET. I WANT YOU TO STAY RIGHT WHERE I AM. AND
25 I'LL GIVE YOU AN OPPORTUNITY TO BRING THAT IN, BUT I'M NOT

1 THERE YET.

2 A OKAY.

3 Q WHERE I AM NOW IS THE FACT THAT YOU HEARD TESTIMONY
4 THAT AT THE TIME THAT THIS CRIME WAS COMMITTED THAT YOUR
5 SON HAD ON A BLUE JACKET; IS THAT CORRECT?

6 A YES.

7 Q AND AT THE TIME THAT YOU HEARD THAT TESTIMONY, YOU
8 TOLD THE JUDGE THAT YOU HAD INTO THE COURTROOM THE JACKET
9 THAT YOUR SON HAD THAT NIGHT IN QUESTION. IS THAT
10 CORRECT?

11 A YES, I TOLD -- I TOLD ATTORNEY BROOKS.

12 Q OKAY. AND YOU DESCRIBED THAT JACKET, IN MY WORDS, A
13 LOUD YELLOW JACKET.

14 A YES, SIR.

15 Q CAN WE SETTLE ON IT BEING THAT?

16 A YES.

17 Q AND WHAT -- AND WHAT DID YOU -- WHAT DID YOU GIVE
18 THAT TO MR. BROOKS FOR?

19 A AS EVIDENCE.

20 Q AND WHAT WAS--

21 A TO PROVE TO THE COURT TO SHOW TO THE COURT THAT -- OF
22 THE COLOR OF THE JACKET THAT MY SON HAD ON AT THAT -- AT
23 THAT PARTICULAR DAY AND TIME.

24 Q AND WHAT DID -- WHAT WAS MR. BROOKS' EXPLANATION?

25 A HE SAID IT WAS NOT IMPORTANT.

1 Q ALL RIGHT. AND DID HE EVER USE THAT JACKET OR
2 DISPLAY IT BEFORE THE JURY OR THE COURT DURING THE COURSE
3 OF THE TRIAL?

4 A NO, HE DID NOT.

5 Q ALL RIGHT. NOW, YOU ATTEMPTED TO TELL THE JUDGE
6 ABOUT ANOTHER SITUATION REGARDING THE JACKET. ON THE
7 NIGHT IN QUESTION, WHERE WAS YOUR SON? WHERE WAS YOUR SON
8 THAT NIGHT?

9 A HE WAS TAKEN TO ONE OF HIS FRIEND'S HOUSE,
10 MRS. JOHNSON. HE WAS TAKEN TO HER HOUSE, DROPPED OFF
11 THERE. I HAD -- WE HAD JUST CAME -- WELL, HE HAD JUST
12 CAME HOME A DAY PRIOR TO THAT, AND I WAS AT WORK, SO HE
13 WENT TO ONE OF HIS FRIEND'S HOUSE TO LET HIM -- LET THEM
14 KNOW THAT HE WAS IN TOWN, HE WANTED TO SEE THEM, SO HE WAS
15 TAKEN THERE.

16 Q OKAY.

17 A AND DROPPED OFF.

18 Q NOW, WHEN HE WAS DROPPED OFF, WOULD IT BE FAIR TO SAY
19 THAT MRS. JOHNSON WAS SORT OF HIS CUSTODIAN BECAUSE OF HIS
20 AGE?

21 A YES.

22 Q AND DID A QUESTION COME UP DURING THE COURSE OF THE
23 INVESTIGATION IN THIS CASE ABOUT WHAT COLOR JACKET YOUR
24 SON WAS IN POSSESSION OF THE NIGHT OF THE ROBBERY?

25 A YES, SIR.

1 Q AND WHAT WAS THE EXPLANATION GIVEN ABOUT HIS JACKET?
2 WHERE WAS HIS JACKET SUPPOSED TO BE?

3 A AT MRS. JOHNSON'S HOUSE.

4 Q AND WHO QUESTIONED YOU ABOUT THAT JACKET, ABOUT HIS--

5 A THE CHIEF OF POLICE.

6 Q AND WHAT DID YOU -- WHAT DID YOU TELL THE CHIEF?
7 WHAT DID THE CHIEF ASK OF YOU?

8 A SHE ASKED MYSELF AND MY SON'S FATHER THAT IF -- WELL,
9 SHE ADVISED US BECAUSE WE TOLD US THAT HE DID NOT HAVE ON
10 A BLUE COAT, HE ONLY HAS A YELLOW JACKET. 'SO SHE TOLD
11 MYSELF AND MY SON'S FATHER THAT IF THE JACKET IS AT
12 MRS. JOHNSON HOUSE, THAT THEY WAS GOING TO LET HIM GO. SO
13 SHE SENT ERNEST MOSELEY, WHO IS ONE OF THE INVESTIGATORS,
14 DOWN THERE TO PICK UP THE JACKET, AND THEY BOUGHT THE
15 JACKET BACK, BACK TO THE POLICE DEPARTMENT, BUT STILL YET
16 MY SON WAS STILL CHARGED.

17 Q OKAY.

18 MR. PRIDE: JUDGE, I WOULD LIKE TO PROFFER TO
19 THE COURT AND TO THE RECORD, AND I WILL MAKE IT EVEN
20 CLEARER AT SOME POINT IN TIME, AND IT HAS -- AND IT
21 WILL BEAR ON THIS TESTIMONY THAT DURING THE COURSE OF
22 MR. CAIN'S TRIAL, HIS DEFENSE WAS ALIBI. AND I THINK
23 THAT'S IMPORTANT FOR YOU TO KNOW THAT UP FRONT AT
24 THIS -- BECAUSE OF -- THAT MAY -- I'M HOPING THAT
25 THAT MAY -- THAT MAY HELP ME TO INFORM YOU WHERE I'M

1 TRYING TO GO WITH THIS MATTER.

2 THE COURT: OKAY.

3 MR. PRIDE: THANK YOU.

4 BY MR. PRIDE:

5 Q ALL RIGHT. SO, AND DID MRS. JOHNSON TESTIFY AS A
6 WITNESS IN THAT CASE?

7 A YES, SIR.

8 Q AND WHAT WAS HER TESTIMONY IN ESSENCE?

9 A IN ESSENCE SHE SAID THAT MY SON WAS ALONE WITH HER
10 SON AND ANOTHER YOUNG MAN AND THEY HAD LEFT HER HOME TO GO
11 PICK UP SOMETHING FROM A STORE, BUT HER NEPHEW HAD CAME TO
12 THE HOUSE TO PICK THEM UP TO TAKE THEM TO GO GET THE ITEM.

13 Q AND WAS A PHONECALL MADE?

14 A YES. THE OTHER YOUNG MAN WHO WAS WITH MY SON, HE HAD
15 CALLED HIS MOTHER IN -- I THINK IT WAS IN NORTH CAROLINA.

16 Q AND WHERE DID HE MAKE THAT CALL FROM?

17 A MRS. JOHNSON'S HOME.

18 Q AND AT THE TIME THAT HE MADE THAT CALL, DID
19 MRS. JOHNSON SAY YOUR SON WAS PRESENT?

20 A YES.

21 Q DO YOU KNOW WHETHER OR NOT THE DETECTIVE, PURSUANT TO
22 MR. BROOKS' INSTRUCTIONS, EVER GOT THE PHONE RECORDS TO
23 DOCUMENT THE TIME OF THE CALL?

24 A THEY NEVER WAS. NEVER.

25 Q ALL RIGHT. NOW, THAT -- IS IT FAIR FOR ME TO SAY

1 THAT THAT WAS IMPORTANT BECAUSE THAT WAS PART OF THE ALIBI
2 TESTIMONY OF YOUR SON?

3 A YES.

4 Q ALIBI DEFENSE OF YOUR SON; IS THAT CORRECT?

5 A YES.

6 Q AND OTHER THAN MRS. JOHNSON, DID YOUR -- DID
7 MR. BROOKS PUT ANYBODY ELSE ON TO CORROBORATE
8 MRS. JOHNSON'S TESTIMONY THAT AT THE TIME THAT THE ROBBERY
9 WAS BEING COMMITTED THAT YOUR SON WAS THERE AT HER HOUSE
10 AND COULD NOT HAVE BEEN AT -- THAT WAS THE ESSENCE OF HER
11 TESTIMONY -- AND COULD NOT HAVE COMMITTED THE ROBBERY; IS
12 THAT CORRECT?

13 A THAT'S CORRECT.

14 Q DID ANYBODY ELSE BESIDES MRS. JOHNSON TESTIFY TO
15 THAT?

16 A NO, SIR.

17 Q WAS MRS. -- MR. -- STRIKE THAT, PLEASE. WAS
18 MRS. JOHNSON'S SON HOME?

19 A AT THE TIME, YES, SIR.

20 Q AND WAS HE AVAILABLE AS A WITNESS?

21 A YES, HE WAS.

22 Q AND DID MR. BROOKS KNOW THAT HE WAS -- WAS THERE?

23 A HE ALSO KNOW THAT. HE ALSO KNEW THAT PRIOR TO THAT
24 THEY HAD -- HER SON AND THE OTHER YOUNG MAN, DONNIE
25 JEFFERSON, WAS -- WENT TO THE ATTORNEY'S OFFICE THAT WE

1 HAD HIRED FOR THE PRELIMINARY HEARING, THAT THEY HAD SPOKE
2 WITH THEM.

3 Q WAIT A MINUTE. YOU GETTING AHEAD OF ME, NOW. NOW,
4 WHAT -- WHAT I'M TRYING TO ESTABLISH IS RIGHT NOW, HOW
5 MANY PEOPLE TESTIFIED FOR THE ALIBI?

6 A ONLY JOHNSON.

7 Q AND I'M TRYING TO NOW ESTABLISH WAS THERE SOMEONE
8 ELSE WHO COULD HAVE TESTIFIED TO THE ALIBI WHICH WOULD
9 HAVE CORROBORATED MRS. JOHNSON'S TESTIMONY?

10 A HER SON ALSO.

11 Q AND DID MR. BROOKS KNOW THAT HER SON WAS IN THE
12 POSITION TO DO THAT?

13 A HE KNEW THAT.

14 Q AND DID MR. BROOKS PRODUCE HIM AS A WITNESS IN ORDER
15 TO CORROBORATE MRS. JOHNSON'S TESTIMONY?

16 A NO, SIR.

17 Q ALL RIGHT. NOW, WHAT OTHER WITNESSES DO YOU RECALL
18 THAT MR -- DID MR. BROOKS USE ANY OTHER WITNESSES FOR THE
19 DEFENSE OF ALIBI?

20 A NO, SIR.

21 Q AND WOULD IT BE FAIR TO SAY THAT THEREAFTER THE
22 PERSON WHO TESTIFIED ABOUT THE ALIBI WOULD HAVE BEEN
23 YOUNG -- THE 16 YEAR OLD DEFENDANT DORIAN GOT UP AND TOOK
24 THE STAND HIMSELF --

25 A YES.

1 Q -- AND ATTEMPTED TO TELL THE JURY WHAT HAPPENED; IS
2 THAT CORRECT?

3 A YES, SIR.

4 Q OKAY. NOW, I WANT TO ASK YOU ABOUT DURING THE COURSE
5 OF THE TRIAL, THERE WAS -- AND I'M NOT GOING TO
6 NECESSARILY GO BACK. THERE WAS A POLICE OFFICER THAT
7 IDENTIFIED DORIAN AS BEING WITHIN PROXIMITY OF WHERE THE
8 ROBBERY OCCURRED, THAT HE SAW HIM ON THE CORNER; IS THAT
9 CORRECT?

10 A YES, SIR.

11 Q THEN THERE WERE THE TWO VICTIMS, IS THAT CORRECT, ONE
12 BEING MR. REED AND THE OTHER ONE BEING MR -- HELP ME
13 SOMEBODY.

14 A MR. RAMSEY AND MR. SCOTT.

15 Q SCOTT. RIGHT. MR. REED AND MR. SCOTT. AND WE MIGHT
16 NOW SAY FOR THE COURT THAT MR. REED WAS THE ONE THAT WE'LL
17 GET TO LATER ON THAT RECANTED HIS TESTIMONY WHICH -- WHICH
18 MR. BROOKS FILED UNDER RULE 29 FOR A HEARING. IS THAT
19 CORRECT?

20 A CORRECT.

21 Q BUT MR. SCOTT NEVER DID RECONT HIS TESTIMONY.

22 A CORRECT.

23 Q ALL RIGHT. NOW, WHEN THE -- THE IDENTIFICATION OF
24 YOUR SON TOOK PLACE WHERE?

25 A ON THE STREETS.

1 Q ON THE STREETS.

2 A YES.

3 Q AND HOW MANY BOYS WERE WITH YOUR SON?

4 A IT WAS MY SON, DONNIE, DONNIE JEFFERSON, LEQUINTON,
5 AND THE DRIVER. IT WAS A TOTAL OF FOUR OF THEM IN THE
6 VEHICLE.

7 Q OKAY. AND WHEN YOUR SON WAS IDENTIFIED, WHAT DID
8 YOUR SON HAVE ON?

9 A AT THE TIME MY SON HAD ON A -- SUPPOSEDLY A WHITE, A
10 WHITE T-SHIRT, AND HE HAD ON -- HE WAS THE ONLY ONE IN
11 HANDCUFFS. THE REST OF THEM WERE NOT IN HANDCUFFS.

12 Q OKAY. THE REST OF THEM WEREN'T IN HANDCUFFS.

13 A NO, SIR.

14 Q AND WHEN THE WITNESS--

15 MRS. WILLIAMS: YOUR HONOR, I WOULD OBJECT TO
16 THIS. SHE WAS NOT THERE WHEN THIS HAPPENED, AND THE
17 TESTIMONY IS IN THE TRANSCRIPT. SHE WAS NOT PRESENT
18 AT THE TIME OF THE ARREST.

19 MR. PRIDE: JUDGE, I SWEAR TO YOU I WILL -- I
20 WILL SHOW YOU EXACTLY WHERE I'M GOING. SHE WAS
21 PRESENT AT THE TRIAL. SHE'S TALKING ABOUT WHAT SHE
22 HEARD, NOT WHAT SOMEBODY ELSE TOLD HER. SHE HEARD IT
23 DIRECTLY FIRSTHAND FROM THE STAND, AND I -- IF YOU
24 GIVE ME A LITTLE BIT--

25 THE COURT: IS IT IN THE TRANSCRIPT?

1 MR. PRIDE: IT IS IN THE TRANSCRIPT. IT'S
2 UNDISPUTED.

3 THE COURT: OKAY.

4 MR. PRIDE: IT'S UNDISPUTED. I'M NOT GOING
5 ANYWHERE THAT'S NOT IN BLACK AND WHITE.

6 THE COURT: OKAY.

7 MR. PRIDE: I WON'T TAKE YOU OFF THE ROAD.

8 THE COURT: OKAY.

9 MR. PRIDE: OKAY, JUDGE.

10 BY MR. PRIDE:

11 Q NOW LISTEN, WHEN YOUR SON WAS IDENTIFIED, HE WAS
12 IDENTIFIED BECAUSE HE WAS IN HANDCUFFS; IS THAT CORRECT?

13 A CORRECT.

14 Q DID MR. BROOKS EVER ASK FOR A LINE-UP FOR YOUR SON?

15 A NO, SIR.

16 Q ALL RIGHT. DID MR. BROOKS EVER IN COURT CHALLENGE
17 THE IDENTIFICATION?

18 A NO, SIR.

19 Q ALL RIGHT.

20 MR. PRIDE: JUDGE, INDULGE ME JUST ONE MOMENT,
21 PLEASE.

22 BY MR. PRIDE:

23 Q NOW, DO YOU RECALL OR CAN YOU TELL ME -- ONLY IF YOU
24 KNOW -- DID THE DETECTIVE THAT YOU HAVE PAID TO WORK WITH
25 MR. BROOKS EVER GO OUT AND TALK WITH MRS. JOHNSON'S SON?

1 MRS. JOHNSON IS THE PERSON THAT YOUR SON WAS AT HER HOUSE
2 WHO TESTIFIED TO -- FOR THE ALIBI DEFENSE. DID HE EVER
3 SEND THE DETECTIVE TO TAKE A STATEMENT FROM HIM?

4 A NO, SIR.

5 Q ALL RIGHT. NOW, I'M GOING TO SKIP JUST A LITTLE BIT.
6 WHEN THERE CAME A TIME IN JUNE -- I THINK IT WAS JUNE --
7 IT WAS JUNE 23RD, JUDGE, THAT THERE WAS A HEARING IN WHICH
8 THERE WAS AN ATTEMPT TO RECANT TESTIMONY BY A MR. REED.
9 MR. REED WAS ONE OF THE VICTIMS IN THIS CASE. AND AS A
10 RESULT OF IT, MR. BROOKS FILED A MOTION UNDER RULE 29, AND
11 AS A RESULT OF FILING THAT MOTION, A HEARING WAS CONVENED
12 AND TESTIMONY WAS TAKEN.

13 AND I AM WELL AWARE OF THE RULE, JUDGE, AND CAN CITE
14 IT FOR YOU OF -- GENERALLY IT SAYS THAT WHERE A WITNESS
15 RECANTS TESTIMONY, THAT THE COURT IS TO VIEW IT WITH GREAT
16 SKEPTICISM. THAT'S IN ESSENCE OF WHAT I THINK THE RULE IS
17 ABOUT THAT -- ABOUT THAT.

18 THE COURT: OKAY.

19 MR. PRIDE: HOW IT'S TO BE HANDLED, OKAY? BUT I
20 HAVE CASES AND I'M WILLING TO CITE THEM FOR YOU IF
21 YOU DO NEED THEM.

22 THE COURT: OKAY.

23 MR. PRIDE: ALL RIGHT.

24 BY MR. PRIDE:

25 Q NOW, AT THE HEARING WHEN MR. REED RECANTED HIS

1 TESTIMONY, DID MR. -- AND IT WAS REPORTED TO MR. BROOKS,
2 DID MR. BROOKS GO OUT AND TALK TO MR. REED AND GET AN
3 AFFIDAVIT?

4 A NO, SIR.

5 Q DID MR. BROOKS SEND THE DETECTIVE -- THE DETECTIVE
6 THAT YOU OBTAINED OUT TO -- JUDGE, I GOT A BAD EAR AND
7 SOMETIMES I CAN'T HEAR WHEN MOVE BACK THERE. I REALLY
8 CAN'T.

9 THE COURT: OKAY.

10 BY MR. PRIDE:

11 Q OKAY. DID -- STRIKE THAT. WHEN IT WAS DISCOVERED
12 THAT MR. REED PURPORTEDLY WAS WILLING TO COME TO COURT AND
13 RECANT HIS TESTIMONY, DID YOU -- DID YOU FIND OUT ABOUT
14 THAT?

15 A YES, SIR.

16 Q DID YOU REPORT THAT TO MR. BROOKS?

17 A YES, SIR..

18 Q AND WOULD IT BE A FAIR STATEMENT TO SAY THAT HIS
19 RECANTING OF THE TESTIMONY AND THE AFFIDAVIT IN EFFECT
20 SAID THAT YOUR SON WAS THE WRONG PERSON AND THAT THEY
21 DIDN'T -- HE DIDN'T MEAN TO IDENTIFY HIM BECAUSE HE
22 DIDN'T -- HE WASN'T -- HE WASN'T THE PERSON THAT COMMITTED
23 THE CRIME. IS THAT A FAIR STATEMENT?

24 A YES, SIR.

25 Q NOW, YOU TOLD ME THAT MR. BROOKS DIDN'T GO TAKE AN

1 AFFIDAVIT; DID HE?

2 A NO, SIR.

3 Q AND HE TOLD -- YOU TOLD ME THAT HE DIDN'T SEND THE
4 DETECTIVE TO GET THAT AFFIDAVIT EVEN THOUGH HE KNEW ABOUT
5 IT; RIGHT?

6 A CORRECT.

7 Q NOW, WHO -- WHO GOT THE AFFIDAVIT?

8 A ONE OF MY SON'S COUNSELOR. FIRST MR. REAMS, HE
9 CONTACTED SOMEONE IN MY FAMILY AND ME TOLD THEM THAT HE
10 WANTED TO TRY TO MAKE--

11 MRS. WILLIAMS: OBJECTION, YOUR HONOR.

12 BY MR. PRIDE:

13 Q YOU'RE GONE TOO FAR --

14 THE COURT: OKAY. SUSTAINED.

15 BY MR. PRIDE:

16 Q -- THE QUESTION IS VERY LIMITED. IT IS, WHO GOT THE
17 AFFIDAVIT FROM MR. REED. THAT'S ALL I'M ASKING.

18 A BONITA DINKIN ROBINSON.

19 Q ALL RIGHT. NOW, IF YOU CAN TELL ME WHAT
20 MRS. ROBINSON -- OKAY. IF YOU CAN TELL ME, DESCRIBE FOR
21 THE COURT WHAT MRS. ROBINSON'S PROFESSION IS AND WHAT SHE
22 DOES.

23 A AT THE BEGINNING SHE WAS A COUNSELOR AND ALSO A
24 ADVOCATE. SHE'S NOW A TEACHER AND SHE RUNS THE CHARTER
25 SCHOOL IN LEE COUNTY.

1 Q DO YOU KNOW WHETHER OR NOT SHE EVER HAD ANY PARALEGAL
2 TRAINING?

3 A NOT TO MY KNOWLEDGE.

4 Q DO YOU KNOW IF SHE PASSED THE SOUTH CAROLINA BAR AND
5 IF SHE WAS A LAWYER?

6 A NOT TO MY KNOWLEDGE.

7 Q OKAY. AND SHE WAS THE PERSON THAT SECURED THE
8 AFFIDAVIT; CORRECT?

9 A CORRECT.

10 Q AND BASED ON THAT AFFIDAVIT MR. BROOKS FILED THE
11 MOTION FOR THE SECOND HEARING TO TRY AND CONVINCE THE
12 JUDGE TO GIVE YOUR SON A NEW TRIAL; IS THAT CORRECT?

13 A CORRECT.

14 Q ALL RIGHT. NOW, DO YOU KNOW -- AND IF YOU DON'T
15 KNOW, I DON'T WANT YOU TO ANSWER FOR ME -- BUT DO YOU KNOW
16 IF MR. BROOKS SPENT ANY TIME WITH THE -- WHAT'S THE
17 LADY -- MRS. ROBINSON WHO GOT THE AFFIDAVIT?

18 A NOT TO MY KNOWLEDGE.

19 Q OKAY. AND QUITE FRANKLY I'M ALWAYS LEARY ABOUT -- AS
20 A LAWYER ABOUT TALKING TO A VICTIM. DO YOU KNOW WHETHER
21 OR NOT MR. BROOKS TALKED TO MR. REED, WHO RECANTED, WHO
22 CHANGED HIS MIND?

23 A NO, SIR.

24 Q ALL RIGHT.

25 A NOT THAT I KNOW OF.

1 Q ALL RIGHT. ALL RIGHT. ANSWER ANY QUESTIONS, PLEASE,
2 AND YOU VERY MUCH.

3 A THANK YOU.

4 Q OKAY.

5 CROSS-EXAMINATION

6 BY MRS. WILLIAMS:

7 Q IS IT MRS. DAVIS OR CAIN?

8 A YES, CAIN DAVIS.

9 Q OKAY. MRS. CAIN DAVIS, I APOLOGIZE. CAN YOU TELL ME
10 WHEN WAS THE LAST TIME YOU SAW YOUR SON DORIAN BEFORE THIS
11 ROBBERY WAS ALLEGED TO HAVE OCCURRED?

12 A THAT PARTICULAR MORNING BEFORE I WENT TO WORK.

13 Q OKAY. AND I'M JUST -- I'M ASKING QUESTIONS TO CLEAR
14 UP MY NOTES HONESTLY. YOU SAID HE WAS AT MRS. JOHNSON'S
15 HOUSE THE NIGHT BEFORE OR HE WAS DROPPED OFF THAT MORNING?

16 A HE WAS DROPPED OFF THAT MORNING.

17 Q OKAY. AND IS IT YOUR RECOLLECTION THAT THERE WAS NO
18 MOTION TO SUPPRESS THE IDENTIFICATION AT ALL AT THIS
19 TRIAL?

20 A NOT TO MY KNOWLEDGE.

21 Q BUT IF THE TRANSCRIPT REFLECTED SOMETHING ELSE, WOULD
22 YOU DISPUTE THAT?

23 A NO, SIR. NO, MA'AM. I SURELY WOULDN'T.

24 Q OKAY. AND WAS THERE ALSO EVIDENCE PRESENTED THAT
25 DORIAN WAS WEARING A WHITE T-SHIRT WHEN HE WAS ARRESTED?

1 A YES, MA'AM, HE WAS.

2 Q OKAY.

3 A BUT THEY WERE SAYING THAT THE ASSAILANTS HAD ON BLACK
4 T-SHIRTS, BLACK CLOTHING.

5 Q OKAY. AND DO YOU RECALL THAT THERE WAS ALSO
6 TESTIMONY THAT ALL FOUR OF THESE YOUNG MEN WERE HANDCUFFED
7 AT THE TIME THE VICTIMS WERE BROUGHT TO THE SCENE?

8 A NO, MA'AM. AT THE PRELIMINARY HEARING TRANSCRIPTS IS
9 IN THERE, CAPTAIN BURKE STATED THAT MY SON WAS THE ONLY
10 ONE THAT WAS IN HANDCUFFS.

11 Q IS THAT WHAT CAPTAIN BURKE TESTIFIED TO AT THE TRIAL?

12 A HE TESTIFIED AT THE PRELIMINARY HEARING TRANSCRIPT
13 THAT FACT.

14 Q OKAY. BUT DID HE AND SOME OF THE OTHER OFFICERS
15 TESTIFY THAT SAME WAY AT TRIAL?

16 A NO, MA'AM, THEY DID NOT.

17 Q AND CAN YOU TELL ME WHAT DAY OR APPROXIMATELY WHAT
18 DAY YOU AND YOUR SON WENT TO MEET WITH MR. BROOKS THAT
19 FIRST TIME?

20 A LIKE -- IT WAS LIKE A MONTH LATER IF I'M NOT
21 MISTAKEN.

22 Q A MONTH AFTER THE ROBBERY OCCURRED?

23 A THE INDICTMENT, YES.

24 Q OKAY. AND WAS HE ABLE TO WALK AND BE UPRIGHT AT THAT
25 POINT OR WAS HE STILL SUFFERING THE EFFECTS OF SURGERY?

1 A HE STILL WAS SUFFERING THE EFFECTS OF THE SURGERY,
2 BUT HE WAS ABLE TO WALK AND EVERYTHING.

3 Q SO HE WAS NOT BENT OVER AT THAT POINT. HE WAS ABLE
4 TO WALK ERECT I GUESS WOULD BE THE...

5 A CORRECT. BECAUSE THE SUTURES -- THE SUTURES WAS
6 TAKEN OUT AT THAT PARTICULAR TIME.

7 Q OKAY. ALL RIGHT. AND I THINK THAT'S ALL I HAVE FOR
8 YOU RIGHT NOW. I APPRECIATE IT.

9 A THANK YOU.

10 THE COURT: YOU CAN COME DOWN.. THANK YOU.

11 THE WITNESS: YES, SIR. THANK YOU.

12 (WITNESS LEFT THE STAND.)

13 DORIAN CAIN, AFTER BEING DULY SWORN,
14 TESTIFIED AS FOLLOWS:

15 DIRECT EXAMINATION

16 BY MR. PRIDE:

17 Q DORIAN, HOW OLD ARE YOU NOW?

18 A TWENTY-TWO.

19 Q AND HOW LONG HAVE YOU BEEN IN JAIL?

20 A THREE YEARS NOT COUNTING THE LAST TIME. THREE YEARS
21 THIS TIME.

22 Q WELL, EXPLAIN ALL OF THE JAIL TIME. YOU'RE SAYING
23 NOT COUNTING THE LAST TIME. FOR THE OFFENSE THAT YOU WERE
24 CONVICTED ON IN APRIL, HOW OLD WERE YOU WHEN YOU WERE
25 CONVICTED IN APRIL, APRIL 23RD?

1 A SIXTEEN YEARS OLD.

2 Q YOU WERE 16. AND SINCE THAT TIME YOU WERE OUT ON
3 BOND AFTER YOUR--

4 A ON HOUSE ARREST.

5 Q AND HOUSE ARREST. OKAY. AND YOU'RE NOW -- YOU'RE
6 CONVICTED WHEN YOU WERE 16, AND YOU'RE NOW 20...

7 A TWENTY-TWO.

8 Q TWENTY-TWO YEARS OLD. OKAY. DORIAN, WHEN YOU WERE
9 16, COULD YOU READ?

10 A YEAH, BUT NOT -- NOT ON MY LIKE GRADE LEVEL.

11 Q WHEN YOU WERE 15, YOU COULD NOT READ AT ALL; COULD
12 YOU?

13 A SHORTLY, LITTLE.

14 Q AND THEN THERE WAS A PROGRAM CALLED 2020 THAT YOUR
15 MOM AND OTHERS EXPOSED YOU TO; IS THAT CORRECT?

16 A YES, SIR.

17 Q AND AS A RESULT OF BEING IN THAT PROGRAM, YOUR
18 READING AND YOUR WRITING IMPROVED.

19 A YES, SIR.

20 Q SO, WHEN YOU WERE 16 AND YOU GOT IN TROUBLE AND
21 MR. BROOKS WAS REPRESENTING YOU -- DON'T MEAN TO OFFEND
22 YOU WHATSOEVER, BUT YOU WERE NOT A VERY SMART YOUNG MAN
23 AND YOU SUFFERED UNDER A LEARNING DISABILITY. WOULD THAT
24 BE A PRETTY GOOD DESCRIPTION OF YOU?

25 A YES, SIR.

1 Q AND IN THAT CAPACITY, AND THAT -- I'M GOING TO PUT IT
2 IN THAT LIMITED CAPACITY, DID YOU HAVE TO RELY ON FOR
3 ADVICE YOUR LAWYER AND YOUR MOTHER AND YOUR FATHER? WOULD
4 THAT BE THE TRIO THAT SORT OF --

5 A YES, SIR.

6 Q -- GUIDED YOU THROUGH THE PROCESS?

7 A YES, SIR.

8 Q AND YOU -- DO YOU REMEMBER AND WERE YOU MADE AWARE OF
9 THE FACT THAT IF YOU WANTED TO ENTER A PLEA OF GUILTY, YOU
10 COULD HAVE GOTTEN PROBATION. DO YOU REMEMBER THAT?

11 A YEAH, BUT IT WASN'T AT THE BEGINNING.

12 Q WELL, WHENEVER IT WAS, DO YOU RECALL IT?

13 A YES, SIR.

14 Q AND DID YOU TURN IT DOWN?

15 A YEAH, BECAUSE I WASN'T GUILTY.

16 Q WHEN YOU SAY YOU WEREN'T GUILTY, YOU MEAN THAT YOU
17 DIDN'T ROB ANYBODY? IS THAT WHAT YOU'RE SAYING?

18 A YES, SIR.

19 Q OKAY. SO YOU AS A RESULT DECIDED THAT YOU WOULD GO
20 TO TRIAL; IS THAT CORRECT?

21 A YES, SIR.

22 Q AND AS A RESULT OF THE CHANCE OF THE -- STRIKE THAT,
23 PLEASE -- THAT AS A RESULT, EXERCISING YOUR RIGHT TO A
24 JURY TRIAL, YOU WERE CONVICTED AND SENTENCED TO 10 YEARS.

25 A YES, SIR.

1 Q AND SUBSEQUENT TO YOUR CONVICTION, THERE WAS ANOTHER
2 HEARING HELD ABOUT WHETHER OR NOT ONE OF THE VICTIMS HAD
3 CHANGED HIS TESTIMONY OR WANTED TO CHANGE HIS TESTIMONY.
4 YOU REMEMBER ALL OF THAT?

5 A YES, SIR.

6 Q ALL RIGHT. NOW, HERE IS WHAT I WANT TO ASK YOU,
7 DORIAN. YOU DIDN'T HIRE MR. BROOKS; DID YOU?

8 A NO, SIR.

9 Q YOUR MOTHER DID THAT.

10 A YES, SIR.

11 Q AND AFTER YOUR MOTHER HIRED MR. BROOKS, HOW MUCH TIME
12 DID MR. BROOKS SPEND WITH YOU BEFORE YOU WENT TO TRIAL?

13 A NOT MUCH. IT REALLY WASN'T INVESTIGATED.

14 Q WELL, NOT MUCH MEANS DIFFERENT THINGS TO DIFFERENT
15 PEOPLE. I WANT YOU TO CATEGORICALLY, AND WE TALKED ABOUT
16 THIS, TELL ME -- OR LET ME ASK YOU THIS. AFTER -- WHEN IS
17 THE FIRST TIME YOU MET -- STRIKE THAT. STRIKE THAT. WHEN
18 DID -- WHEN IS THE FIRST TIME YOU MET MR. BROOKS?

19 A I THINK THE FIRST TIME I MET HIM WAS -- IT WASN'T THE
20 FIRST TIME MY MOTHER WENT, BUT I KNEW IT WAS LIKE WHEN SHE
21 WENT AND PAID HIM SOME MONEY, I KNOW -- I REMEMBER THAT.

22 Q ANSWER MY QUESTION. YOU'RE TELLING ME -- I WANT YOU
23 TO ANSWER. LISTEN TO THE QUESTION AND ANSWER. WHEN IS
24 THE FIRST TIME THAT YOU MET MR. BROOKS?

25 A IT WAS LIKE -- LIKE A MONTH AFTER I CAUGHT MY CHARGE.

1 BASICALLY AFTER I FIRED THE OTHER -- MY PRELIMINARY
2 HEARING LAWYER.

3 Q JUST DON'T -- JUST STICK TO THE ANSWER. I DON'T WANT
4 TO -- I DON'T WANT ALL OF IT. OKAY?

5 A OKAY.

6 Q NOW, WHEN YOU MET HIM A MONTH AFTER YOUR MOTHER HIRED
7 HIM, DESCRIBE FOR THE COURT WHAT WENT ON AT THAT MEETING.

8 A HE WAS ASKING ME LIKE WHAT HAPPENED, DID YOU HAVE ANY
9 WITNESSES AND STUFF LIKE THAT AND WHO WAS GOING TO BE
10 MY -- BASICALLY -- BASICALLY WHAT HE WAS GOING TO HELP ME
11 ON, BUT IT REALLY AIN'T -- WAS REALLY NOTHING.

12 Q NO, I DON'T -- I DON'T -- DID YOU TELL HIM WHO YOUR
13 WITNESSES WERE?

14 A YES, SIR.

15 Q WHO DID YOU TELL HIM YOUR WITNESSES WERE?

16 A LAQUINT JOHNSON, DONNIE JEFFERSON, DEMITRIUS MCDONALD
17 AND BIG COOT -- WELL, MRS. JOHNSON. MRS. JOHNSON. HER
18 NAME IS MRS. JOHNSON.

19 Q OKAY. AND OUT OF THE WITNESSES THAT YOU HAVE JUST
20 LISTED, HOW MANY DID MR. BROOKS ACTUALLY PRODUCE AT TRIAL?

21 A ONE.

22 Q AND THAT WAS MRS. JOHNSON?

23 A YES, SIR.

24 Q OKAY. AND DID YOU ASK -- AFTER THAT FIRST -- YOU
25 TOLD ME AT THE FIRST MEETING THAT YOU TALKED TO HIM, HE

1 ASKED YOU WHAT HAPPENED, YOU TOLD HIM WHAT HAPPENED, AND
2 YOU GAVE HIM A LIST OF THE WITNESSES THAT YOU THOUGHT
3 WOULD HELP YOU. IS THAT CORRECT?

4 A YES, SIR.

5 Q ALL RIGHT. WHEN IS THE NEXT TIME YOU MET WITH HIM?

6 A WHEN IS -- WHEN IT WAS TIME FOR ME TO GO TO TRIAL.

7 Q DID HE EVER -- NEVER CALLED YOU IN AND SAT DOWN AND
8 SAID THAT THE DETECTIVE THAT YOUR MOTHER PAID FOR WHO
9 CONDUCTED AN INVESTIGATION HAS FILED A REPORT WITH ME THAT
10 I WANT TO DISCUSS WITH YOU? NEVER DISCUSSED ANYTHING THAT
11 THE DETECTIVE DID FOR HIM?

12 A NO. ACTUALLY--

13 Q NOW, JUST -- DORIAN, I DON'T WANT YOU TO GO OFF. I
14 WANT YOU TO STICK RIGHT WITH WHAT I -- DO YOU UNDERSTAND
15 THAT?

16 A YES.

17 Q RIGHT TO WHAT I ASK YOU. DID HE EVER SIT DOWN AND
18 TALK WITH YOU ABOUT WHAT THE DETECTIVE HAD FOUND OR WHAT
19 HIS INVESTIGATION REVEALED?

20 A NO, SIR.

21 Q ALL RIGHT. DID HE EVER SIT DOWN, HE BEING
22 MR. BROOKS, AND DISCUSS WITH YOU THE DISCOVERY INFORMATION
23 THAT HE HAD OBTAINED FROM THE SOLICITOR'S OFFICE?

24 A NO, SIR.

25 Q NEVER DID?

1 A NO, SIR.

2 Q DID HE EVER DISCUSS WITH YOU THE PRELIMINARY HEARING
3 TRANSCRIPT WHICH YOUR MOTHER HAD BOUGHT AND GIVEN TO
4 MR. BROOKS? DID HE EVER ASK YOU ANY QUESTIONS ABOUT THAT
5 OR ANYTHING?

6 A NO, SIR.

7 Q ALL RIGHT. SO DID HE EVER, PRIOR TO YOUR TAKING THE
8 STAND, SIT YOU DOWN AND DISCUSS YOUR TESTIMONY WITH YOU,
9 WHAT HIS EXPECTATIONS WERE, WHAT HE WAS GOING TO ASK? DID
10 HE EVER DO THAT?

11 A NO, SIR.

12 Q WHEN HE PUT YOU ON THE STAND, WHAT -- DID YOU KNOW
13 WHAT YOU WERE GETTING UP THERE FOR?

14 A YES, SIR.

15 Q DID YOU KNOW WHAT YOU WERE SUPPOSED TO SAY?

16 A YES, JUST TELL THE TRUTH.

17 Q OKAY. BUT DID YOU KNOW HOW HE WAS GOING TO ASK YOU
18 TO TELL THE TRUTH?

19 A NO.

20 Q SO HE DIDN'T PREPARE YOU AT ALL?

21 A NO.

22 Q ALL RIGHT. ANSWER ANY QUESTIONS, PLEASE. THANK YOU.

23 CROSS-EXAMINATION

24 BY MRS. WILLIAMS:

25 Q MR. CAIN, HOW DO YOU FEEL THAT MEETING WITH

1 MR. BROOKS WOULD HAVE CHANGED YOUR TRIAL TESTIMONY?

2 A BECAUSE HE WAS MY LAWYER.

3 Q BUT WHAT WOULD YOU HAVE SAID DIFFERENTLY?

4 A WHAT I WOULD HAVE TOLD HIM WHEN I WAS AT THE HOUSE
5 FROM POINT A, WHAT HAPPENED, TO POINT Z.

6 Q AND ARE YOU AWARE OF MR. BROOKS EVER SPEAKING TO YOUR
7 MOM ABOUT THE CASE OR YOUR DAD ABOUT THE CASE?

8 A NO. IT WAS MAINLY THE INVESTIGATOR. I SEEN MORE OF
9 HIM.

10 Q SO YOU SAW THE INVESTIGATOR A FEW TIMES?

11 A YES, MA'AM.

12 Q AND DID HE HELP DO SOME RESEARCH ABOUT THE CASE, LOOK
13 FOR EVIDENCE FOR YOU?

14 A YES. YES, MA'AM.

15 Q OKAY. AND DID YOU BRING HIM SOME RECORDS ABOUT YOUR
16 SURGERY?

17 A YES, MA'AM.

18 Q OKAY. NOW, Y'ALL WERE GOING TO A KEY PLACE,
19 DERRICK'S HARDWARE; IS THAT RIGHT?

20 A YES, MA'AM.

21 Q OKAY. BUT YOU COULDN'T -- COULD YOU WALK AT THAT
22 TIME IN DECEMBER? DECEMBER 18TH, 2003 WERE YOU ABLE TO
23 WALK AT ALL?

24 A YEAH, I COULD HAVE WALKED, BUT YOU KNOW, GETTING
25 AROUND KIND OF SLOW.

1 Q YEAH. I UNDERSTAND. ALL RIGHT. I DON'T THINK I
2 HAVE ANY OTHER QUESTIONS. THANK YOU.

3 MR. PRIDE: JUDGE, JUST VERY BRIEFLY.

4 REDIRECT EXAMINATION

5 BY MR. PRIDE:

6 Q DID MR. BROOKS AT ANY TIME PRIOR TO TRIAL EVER ASK
7 YOU ABOUT YOUR HEALTH, HOW ARE YOU FEELING, ARE YOU READY
8 TO GO TO TRIAL, HAS YOUR CONDITION IMPROVED?

9 A NO, NOT REALLY, NO.

10 Q ALL RIGHT. THANK YOU VERY MUCH.

11 THE COURT: OKAY. YOU CAN STEP DOWN.

12 MR. PRIDE: JUDGE, CAN I ASK HIM SOMETHING HERE?

13 BY MR. PRIDE:

14 Q ARE YOU SATISFIED WITH THE MANNER THAT -- WELL,
15 STRIKE THAT. HE HASN'T SEEN THE WHOLE TRIAL. I WILL --
16 THANK YOU, JUDGE. I WANT TO CALL MR. BROOKS, JUDGE.

17 THE COURT: OKAY.

18 CHARLES BROOKS, AFTER BEING REMINDED OF
19 OATH, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. PRIDE:

22 Q MR. BROOKS, HOW ARE YOU?

23 A I'M DOING GOOD, MR. PRIDE.

24 Q MR. BROOKS, I DON'T TAKE ANY ENVY IN HAVING TO
25 EXAMINE A FELLOW MEMBER OF THE BAR, BUT UNFORTUNATELY I

1 FIND MYSELF IN THAT POSTURE TODAY. YOU UNDERSTAND THAT?
2 AND I WANT YOU --

3 A TOTALLY.

4 Q -- TO KNOW FROM WHAT I KNOW OF YOU, I HAVE GREAT
5 DEFERENCE AND RESPECT FOR YOU.

6 A THANK YOU, SIR. LIKEWISE.

7 Q MR. BROOKS, HOW LONG HAVE YOU BEEN PRACTICING LAW?

8 A AT THIS POINT APPROXIMATELY 13 YEARS.

9 Q AND YOU PRACTICE HERE IN SUMTER?

10 A CORRECT.

11 Q AND WHAT -- HOW WOULD YOU DESCRIBE YOUR PRACTICE OF
12 THE LAW?

13 A HOW WOULD I DESCRIBE IT?

14 Q YEAH. ARE YOU A GENERAL PRACTITIONER OR ARE YOU LIKE
15 ME, WHEN YOU GET BROKE, YOU TAKE WHATEVER COMES THROUGH
16 THE DOOR OR DO YOU SPECIALIZE?

17 A WELL, I GUESS WHEN YOU PUT IT THAT WAY, IT PROBABLY
18 BE GENERAL. I DO A FAIR AMOUNT OF CRIMINAL,
19 POST-CONVICTION RELIEF, FAMILY COURT, SOME REAL ESTATE,
20 PERSONAL INJURY, WORKERS COMP.

21 Q ALL RIGHT. AND I WOULD -- I DON'T HAVE TO ASSUME
22 THIS, I KNOW AS A RESULT OF PRACTICING LAW IN SOUTH
23 CAROLINA, YOU ARE ALSO REQUIRED TO PARTICIPATE IN THE
24 CONTINUING EDUCATION COURSES; IS THAT CORRECT?

25 A THAT'S CORRECT.

1 Q AND YOU WOULDN'T BE HERE TODAY IF YOU DIDN'T -- IF
2 YOU HADN'T COMPLETED THAT REQUIREMENT; RIGHT?

3 A THAT'S CORRECT.

4 Q ALL RIGHT. NOW, HOW MUCH CRIMINAL WORK WOULD YOU
5 SAY, TRIAL -- ACTUALLY TRIAL WORK THAT YOU HAVE DONE?

6 A I WOULD SAY A FAIR AMOUNT BECAUSE I USED TO BE A
7 PUBLIC DEFENDER HERE IN SUMTER COUNTY UNDER THE PART-TIME
8 CONTRACTING THEY HAD. I DID THAT FOR APPROXIMATELY FOUR
9 YEARS, TRIED A FAIR AMOUNT OF CASES, ALL DIFFERENT KINDS,
10 CRIMINAL SEXUAL CONDUCT, MURDER, ARMED ROBBERY, GRAND
11 LARCENY, DRUGS, SO HAD A FAIR AMOUNT OF EXPERIENCE IN THE
12 CRIMINAL TRIAL AREA.

13 Q ALL RIGHT. NOW MR. BROCKS, I'M GOING TO ASK YOU
14 ABOUT DORIAN CAIN, AND MORE ESPECIALLY YOU HAVE HEARD MRS.
15 CAIN'S TESTIMONY, AND THAT IS TO THE EFFECT THAT SHE HIRED
16 YOU TO REPRESENT HER SON. WOULD YOU AGREE WITH THAT?

17 A THAT'S CORRECT.

18 Q AND WHEN SHE FIRST CAME TO SEE YOU, I WOULD ASSUME
19 THAT SHE BROUGHT WARRANTS AND INDICTMENTS AND BOND PAPERS
20 AND WHATEVER SHE WAS IN POSSESSION OF, WHATEVER DOCUMENTS
21 WERE RELATIVE TO HER SON'S CASE; IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AND AFTER YOU AND MRS. CAIN DISCUSSED AND AGREED UPON
24 COMPENSATION, I WOULD ASSUME THAT YOU OPENED UP A FILE AND
25 CONSIDERED YOURSELF TO BE HER SON'S LAWYER.

1 A CORRECT.

2 Q AND AFTER MRS. CAIN LEFT YOUR OFFICE, DID YOU GIVE
3 MRS. CAIN ANY DIRECTION IN TERMS OF WHEN HER SON SHOULD
4 REPORT TO YOU?

5 A I DON'T RECALL IF I DID. I MEAN, IT'S BEEN A WHILE.
6 THINK THIS TRIAL WAS IN -- FIVE YEARS AGO, SO I -- I CAN'T
7 SAY THAT I TOLD HER BRING HIM IN OR GAVE HER ANY TYPE OF
8 SPECIFIC INSTRUCTION.

9 Q DID YOU KNOW THAT HE SUFFERED UNDER A LEARNING
10 DISABILITY?

11 A I KNEW HE HAD ADHD?

12 Q YEAH.

13 A I KNEW HE HAD THAT.

14 Q ALL RIGHT. WOULD IT BE FAIR TO SAY -- AND I'M
15 JUST -- I AM ASSUMING THIS FROM MY OWN PRACTICE. YOU
16 KNOW, IF I GOT A 16 YEAR OLD BOY COMING IN MY OFFICE,
17 FIRST OF ALL, HE CAN'T HIRE ME, HIS PARENTS HAVE TO HIRE
18 ME. AND SECOND OF ALL, HIS PARENTS HAVE TO SORT OF BE
19 RESPONSIBLE FOR THE COMMUNICATIONS BETWEEN ME AND THAT
20 CHILD. WOULD THAT BE THE MANNER IN WHICH YOU OPERATED IN
21 THIS CASE OR DID YOU DO DIFFERENTLY?

22 A JUST AS MRS. CAIN DESCRIBED, THAT'S THE ARRANGEMENT
23 WE HAD. SHE WAS THE ONE THAT CAME IN, GAVE ME THE
24 SPECIFICS ABOUT HER SON'S CASE, AND WE TALKED ABOUT
25 ARRANGEMENTS AS FAR AS HANDLING IT. SHE TOLD ME ABOUT MR.

1 JENNINGS WHO THEY HAD PRIOR TO THAT, THINGS -- HAD TALKED
2 ABOUT AT THE PRELIMINARY HEARING.

3 SHE BROUGHT -- SHE BROUGHT DORIAN IN. I DON'T KNOW
4 IF IT WAS THE MONTH AFTER THAT. I THINK THAT SHE BROUGHT
5 DORIAN IN SHORTLY AFTER THAT AND I MET WITH HIM, KIND OF
6 WENT THROUGH SOME SPECIFICS. OF COURSE, HE WAS 16, SO HE
7 WAS PROBABLY NOT AS ASTUTE TO SAY X AND Y, BUT OF COURSE
8 HIS MOM WAS THERE AND WE ALL TALKED ABOUT WHAT THE
9 SITUATION WAS.

10 Q MR. BROOKS, HAD YOU BEEN AWARE FOR A REASONABLE
11 LENGTH OF TIME THAT THERE WAS AN EXPECTATION OF YOUR
12 COMING TO COURT TODAY AS A WITNESS IN THIS CASE; IS THAT
13 CORRECT?

14 A THAT'S CORRECT.

15 Q AND AS A RESULT OF THAT KNOWLEDGE AND NOTICE, CAN I
16 ASSUME THAT YOU MADE -- EXERCISED DILIGENCE IN REVIEWING
17 YOUR FILE AND REVIEWING YOUR NOTES IN PREPARATION OF YOUR
18 TESTIMONY HERE TODAY?

19 A WELL, I DID REVIEW SOME THINGS THAT I HAD, THAT'S
20 CORRECT.

21 Q AND THAT WAS IN PREPARATION OF MY QUESTIONS TODAY OR
22 MRS. WILLIAMS' QUESTIONS; IS THAT CORRECT?

23 A HONESTLY I DIDN'T DO A LOT OF REVIEW, BECAUSE I HAD
24 TO -- I HAVEN'T LOOKED AT THAT FILE. IT'S BEEN QUITE A
25 LONG PERIOD OF TIME. BUT I DO REMEMBER THE CASE PRETTY

1 ACCURATELY AS FAR AS WHAT PROBLEMS DORIAN HAD. WHEN I SAY
2 WHAT PROBLEMS HE HAD, WHAT -- WHAT THE STATE'S CASE WAS
3 AGAINST HIM THAT CREATED THE PROBLEMS FOR US.

4 Q WELL, CONVERSELY YOU WOULD NOT WANT TO ACCEPT THE
5 FACT THAT YOU KNEW AND HAD NOTICE TO COME HERE TODAY AND
6 THAT YOU ARE NOT PREPARED BECAUSE YOU DID NOT STUDY YOUR
7 FILE AND YOU ARE NOT PREPARED TO ANSWER QUESTIONS.

8 A I'M PREPARED TO ANSWER QUESTIONS.

9 Q ALL RIGHT. THAT'S WHAT I'M GETTING AT.

10 A OKAY.

11 Q YOU ARE PREPARED TODAY --

12 A I AM.

13 Q -- BECAUSE YOU HAVE -- YOU KNEW YOU WERE COMING.

14 A RIGHT, THAT'S CORRECT.

15 Q NOW, WHEN DID MRS. CAIN HIRE YOU, WHAT MONTH, DO YOU
16 REMEMBER, OR CLOSE AS YOU CAN REMEMBER.

17 A I CAN'T REMEMBER THE EXACT MONTH, BUT I WANT TO SAY
18 THE CASE WAS TRIED THE BEGINNING OF APRIL.

19 Q APRIL.

20 A AND I WANT TO SAY SHE MUST HAVE COME IN MAYBE AROUND
21 FEBRUARY.

22 Q ALL RIGHT. SO THERE WAS FEBRUARY...

23 A MARCH AND APRIL.

24 Q MARCH, APRIL.

25 A I WANT TO SAY MAYBE SHE MAY HAVE COME TO SEE ME JUST

1 FOR INITIAL CONSULTATION THE END OF JANUARY, BEGINNING OF
2 FEBRUARY, SHORTLY THEREAFTER, SHE CAME IN AND HIRED ME ON
3 THE CASE.

4 Q DID SHE ALSO HIRE A DETECTIVE?

5 A WE DID HAVE JOHN. WELL, WHEN I SAY THAT SHE HIRED
6 ME, AND I USE JOHN JOHNSON.

7 Q OKAY. WELL, SHE PAID FOR THE--

8 A THAT'S -- YEAH, SHE -- THAT'S CORRECT. WE -- THAT
9 WAS PART OF OUR UNDERSTANDING. I SAID, LOOK, I HAVE AN
10 INVESTIGATOR THAT WILL HELP ME ON THE CASE, AND SHE KNEW
11 ABOUT THAT, THAT'S CORRECT.

12 Q ALL RIGHT. AND I ASSUME THAT WHEN YOU HIRED THAT
13 DETECTIVE THAT YOU OUTLINED FOR HIM WHAT HIS DUTIES AND
14 RESPONSIBILITIES WERE AND WHAT YOU WANTED HIM TO GO LOOK
15 AT; IS THAT CORRECT?

16 A BASICALLY, YEAH. AS I DEALT WITH JOHN JOHNSON ON A
17 NUMBER OF OCCASIONS, WHAT WE DID WAS TALK ABOUT, YOU KNOW,
18 THIS IS THE SITUATION WE HAD. IN THIS PARTICULAR CASE
19 WITH DORIAN, HE HAD -- THE PROBLEM HE HAD IS HE HAD THESE
20 TWO WITNESSES, MR. REAMS AND MR. SCOTT. AND ACCORDING TO
21 MR. SAVERANCE, PAT SAVERANCE WHO--

22 Q WELL, JUST HOLD UP BECAUSE I'M NOT THAT FAR DOWN THE
23 LINE YET. AND WHEN YOU HIRED MR. WILLIAMS, WHO WAS THE
24 DETECTIVE AS YOU JUST TOLD THE JUDGE--

25 A MR. JOHNSON.

1 Q MR. JOHNSON, YOU EXPECTED HIM TO DO SOME WORK FOR YOU
2 AND --

3 A RIGHT.

4 Q -- AND AT YOUR DIRECTION AND THAT HE DID DO SOME WORK
5 FOR YOU.

6 A THAT'S CORRECT.

7 Q AND ALSO YOU FILED WHAT IS CALLED PRETRIAL MOTIONS
8 FOR DISCOVERY IN THIS CASE; DIDN'T YOU?

9 A THAT'S CORRECT.

10 Q AND AS A RESULT OF FILING THOSE MOTIONS, THE
11 SOLICITOR -- IT WAS MANDATORY THAT THE SOLICITOR GIVE YOU
12 THE STATEMENTS, THE WITNESSES, PICTURES, ANYTHING THAT
13 THEY WERE GOING TO USE DURING THE TRIAL FOR PROSECUTING
14 DORIAN; ISN'T THAT CORRECT?

15 A THAT'S CORRECT. THAT'S CORRECT.

16 Q ALL RIGHT. AND I ASSUME THAT YOU REVIEWED ALL OF
17 THAT INFORMATION.

18 A THAT'S CORRECT.

19 Q ALL RIGHT. NOW, WHEN YOU WERE HIRED IN FEBRUARY YOU
20 SAY AND YOU SAW YOUNG MR. CAIN THE NEXT MONTH, HOW MANY
21 TIMES DID YOU SEE HIM BEFORE TRIAL?

22 A NOW, I DO RECALL SEEING HIM MORE THAN ONCE BEFORE
23 TRIAL. THE REASON THAT I RECALL THAT IS I DO REMEMBER
24 THERE WAS SOME INCIDENT THAT OCCURRED BETWEEN THE TIME I
25 WAS HIRED AND THE TIME WE ACTUALLY WENT TO COURT IN LEE

1 COUNTY. SOMETHING HAPPENED IN THE STORE IN FLORENCE. AND
2 WHEN I SAY SOMETHING HAPPENED, IT'S SOME TYPE OF INCIDENT,
3 BUT IT NEVER CAME ANY TYPE OF CRIMINAL CHARGES. AND I
4 REMEMBER MRS. CAIN COMING BACK AND TELLING ME ABOUT IT,
5 AND DORIAN HAD COME IN ON THAT OCCASION.

6 Q BUT MY SCENE -- AND PLEASE LET ME -- WHEN DID YOU
7 NEXT WORK WITH DORIAN IN PREPARATION FOR THIS TRIAL THAT
8 WAS COMING UP IN APRIL?

9 A AFTER TALKING WITH MR. SAVERANCE AND GETTING
10 CONFIRMATION THAT WE'RE GOING TO CALL THIS CASE SUCH AND
11 SUCH A DAY, SUCH AND SUCH A TIME I DO RECALL AT LEAST
12 TALKING WITH MRS. CAIN ABOUT THE CASE. I DON'T KNOW IF
13 SHE HAD BROUGHT DORIAN IN THE WEEKEND BEFORE. WHEN I SAY
14 THE WEEKEND, NOT NECESSARILY THE WEEKEND, BUT THE WEEK
15 PRIOR BECAUSE I WAS -- I WAS TELLING THEM THAT BASED ON
16 WHAT I HAD SEEN, WE GOT -- IT'S NOT LIKE THEY HAD
17 FORENSICS, DNA, FINGERPRINTS, ANYTHING LIKE THIS. THIS
18 WAS STRICTLY A --

19 Q YOU DONE IT.

20 A -- THESE PEOPLE SAYING HE DID IT.

21 Q RIGHT. NOW--

22 A AND WE DID -- I DID SEND MR. JOHNSON TO SOME OF THESE
23 WITNESSES AND I DO RECALL GETTING READY TO START THE TRIAL
24 SOME YOUNG LADY WHO I WAS GIVEN A NAME, THIS YOUNG LADY
25 SHOWED UP AND SAYS SHE REALLY COULDN'T HELP WITH THE CASE.

1 I CAN'T REMEMBER WHAT HER NAME WAS.

2 Q I DON'T EVENT WANT TO GO THERE YET.

3 A OKAY.

4 Q LET'S JUST SLOW DOWN. NOW, I HATE TO USE MYSELF.

5 I'M AN OLDER LAWYER. BUT TWO DAYS BEFORE A CASE I NEVER

6 GET ANY REST BECAUSE I STAY UP ALL DAY AND HALF OF THE

7 NIGHT AND HALF OF THE NIGHT GETTING READY FOR THE CASE.

8 IS THAT THE WAY THAT YOU WORK WHEN YOU GOT AN IMPORTANT

9 TRIAL COMING UP WHERE A YOUNG MAN 16 YEARS OLD IS CHARGED

10 WITH TWO CASES OF ARMED ROBBERY OR DID YOU BRING HIM IN

11 AND THE FAMILY OF THOSE TWO DAYS BEFORE TRIAL OR THE DAY

12 BEFORE TRIAL IN YOUR OFFICE AND SIT DOWN AND TALK TO THEM

13 AND PREPARE THEM?

14 A YOU KNOW, HONESTLY, MR. PRIDE, I CAN'T RECALL, BUT I

15 DO KNOW I HAD AT LEAST SOME CONVERSATION, SOME INTERACTION

16 WITH MRS. CAIN. CAN'T REMEMBER IF SHE BROUGHT DORIAN IN

17 SHORTLY BEFORE, BUT I DO HAVE -- REMEMBER HAVING

18 CONVERSATION. I DO REMEMBER HAVING A CONVERSATION WITH

19 HIS FATHER AT SOME POINT, SO I DON'T RECALL IF THEY

20 BROUGHT DORIAN IN. I MEAN, I JUST DON'T.

21 Q BUT YOU HAVE ACKNOWLEDGED TO ME THAT YOU KNEW THAT

22 YOU HAD A DIFFICULT CASE AND A DIFFICULT CLIENT BECAUSE

23 YOU HAD TO DEAL WITH A 16 YEAR OLD BOY WHO HAD A LEARNING

24 DISABILITY. YOU KNEW THAT?

25 A I DIDN'T SAY HE WAS A DIFFICULT CLIENT.

1 Q WELL, YOU DON'T THINK A 16 YEAR OLD BOY WITH A
2 LEARNING DISABILITY IS A DIFFICULT CLIENT?

3 A DORIAN WASN'T A DIFFICULT CLIENT.

4 Q COULD DORIAN READ?

5 A I DON'T KNOW. I MEAN, HE -- HE APPEARED TO BE ABLE
6 TO UNDERSTAND MY CONVERSATIONS WITH HIM. NOW, WHAT -- I
7 KNEW HE WASN'T, YOU KNOW, A HONOR ROLL STUDENT OR ANYTHING
8 ON THAT LEVEL, BUT HE WASN'T DIFFICULT IN MY
9 COMMUNICATIONS WITH HIM. HE DIDN'T GIVE ME THE IMPRESSION
10 THAT HE DIDN'T UNDERSTAND--

11 Q WELL, LET ME ASK -- LET ME ASK YOU ANOTHER WAY.
12 DON'T YOU THINK THAT A 16 YEAR OLD BOY WITH A LEARNING
13 DISABILITY WHICH YOU PLANNED TO PUT ON THE STAND AS A
14 WITNESS IS SORT OF RED MEAT FOR THE SHARKS WHEN IT COMES
15 TO SOLICITOR AND A CROSS-EXAMINATION?

16 A HE DIDN'T GIVE ME -- HE DIDN'T GIVE ME THE IMPRESSION
17 HE WAS BEING A PROBLEM BECAUSE HE ALWAYS SAID JUST WHAT HE
18 SAID UP HERE, I DIDN'T DO IT, I'M GOING TO TELL THE TRUTH,
19 I WASN'T -- DIDN'T ROB THESE GUYS. THAT'S WHAT HE SAID.
20 THAT'S PRETTY MUCH WHAT HE SAID AT THE TRIAL.

21 AND I THOUGHT THAT THAT WAS GOING TO BE PRETTY
22 CONVINCING BECAUSE HE WAS NOT STUMBLING WITH HIS WORDS AND
23 HE PRETTY MUCH SOUNDED VERY DEFINITIVE THAT HE DIDN'T DO
24 THIS. AND HE -- HE SAID, I DIDN'T DO THIS, MR. BROOKS, I
25 DIDN'T ROB THESE GUYS, THAT'S NOT ME JUST AS HE SAID UP

1 HERE ON THE STAND. AND HE DIDN'T GIVE ME THE IMPRESSION
2 THAT THAT WAS GOING TO BE A PROBLEM COMMUNICATING THAT,
3 AND THAT'S WHAT HE SAID AT THE TRIAL.

4 Q AND YOU -- AND YOU KNEW WHEN YOU -- YOU KNEW BASED ON
5 WHAT YOU HAD -- AND YOUR DEFENSE WAS ALIBI; RIGHT?

6 A CORRECT.

7 Q AND YOU KNEW THAT IN ORDER TO SUBSTANTIATE THE ALIBI
8 THAT YOU WERE GOING TO HAVE TO PUT THE DEFENDANT UP;
9 DIDN'T YOU?

10 A WELL, NOT NECESSARILY BECAUSE WE COULD HAVE PUT UP,
11 JUST AS WE DID, WE PUT UP -- I CAN'T REMEMBER HER NAME.

12 Q MRS. JOHNSON.

13 A MRS. JOHNSON. WE PUT HER UP AND WE HAD TALKED ABOUT
14 THERE POTENTIALLY GOING TO BE SOME OTHER WITNESSES, BUT
15 WHEN THAT DIDN'T PAN OUT, THEN WE WENT WITH MRS. JOHNSON
16 AND WE THOUGHT ABOUT BRINGING DORIAN UP BECAUSE WE WANTED
17 TO GET INTO THE FACT THAT HE HAD THOSE -- THAT TESTICLE
18 SURGERY THAT MRS. CAIN HAD TALKED ABOUT, AND THAT'S ONE OF
19 THE REASONS WE GOT HIM ON THE STAND TO ALSO TALK ABOUT
20 THAT AS WELL--

21 Q WELL, LET'S GO BACK TO MY QUESTION.

22 A OKAY.

23 Q MY QUESTION IS THIS, THAT WHEN YOU -- YOU KNEW THAT
24 YOU WERE GOING TO PUT DORIAN UP AS A WITNESS TO HIS
25 DEFENSE OF ALIBI; ISN'T THAT CORRECT?

1 A IF -- I DIDN'T NECESSARILY SAY THIS -- WE ARE GOING
2 TO PUT HIM UP. BUT AS IT TURNED OUT AS THE TRIAL
3 PROGRESSED AND HE DID NOT APPEAR TO ME TO HAVE ANY PROBLEM
4 TESTIFYING, THEN IT BECAME, NO, WAIT, WAIT, LET'S GO AHEAD
5 AND PUT HIM ON THE STAND.

6 Q WELL, YOU ARE STARTING TO ARGUE WITH ME A LITTLE BIT.
7 ARE YOU TELLING ME THAT YOU DIDN'T AT THE BEGINNING OF THE
8 TRIAL AND DURING YOUR PREPARATION FOR THE TRIAL PLAN TO
9 PUT HIM UP AS A WITNESS?

10 A WHAT I'M SAYING IS AS THINGS PROGRESSED IN THE TRIAL.

11 Q ALL RIGHT. SO--

12 A AND ONE OF THE THINGS, IF I MAY, IN TERMS OF
13 PROGRESSION IS HOW STRONG THE TWO ALLEGED VICTIMS WERE
14 GOING TO TESTIFY. ONE OF THEM WAS NOT AS STRONG AS THE
15 OTHER. MR. SCOTT WAS VERY DEFINITIVE IN HIS TESTIMONY.
16 HE WAS PROBABLY THE CRITICAL STATE'S WITNESS BECAUSE HE
17 NEVER WAVERED NO MATTER HOW MANY TIMES I CROSS-EXAMINED
18 HIM, AND I THOUGHT WE HAD SOME -- SOME LEEWAY TO GO WITH
19 HIM, BUT HE WAS ALWAYS VERY, VERY DEFINITIVE IN HIS
20 QUESTION. MR. REAMS--

21 Q THANK YOU, MR. BROOKS, BUT WHAT I'M -- WHAT I AM
22 REALLY ASKING ABOUT IS NOT WHAT WENT ON AT THE TRIAL.

23 A OKAY.

24 Q I AM SIMPLY AT PREPARATION FOR TRIAL. THAT'S WHAT
25 I'M EXAMINING YOU ON.

1 A OKAY.

2 Q AND IF I UNDERSTAND WHAT YOU ARE TELLING ME, YOU'RE
3 TELLING THE JUDGE, THAT YOU DID NOT PREPARE FOR DORIAN TO
4 TAKE THE STAND, BUT WHEN THE TRIAL COMMENCED, YOU MADE A
5 DECISION DURING THE COURSE OF THE TRIAL THAT YOU WERE
6 GOING TO USE HIM AS A WITNESS. IS THAT A FAIR STATEMENT?

7 A THAT'S PROBABLY A FAIR STATEMENT.

8 Q ALL RIGHT. AND HOW MANY DAYS DID THE TRIAL LAST?

9 A I WANT TO SAY THREE DAYS.

10 Q OKAY.

11 A I CAN'T QUITE REMEMBER, BUT IT WAS -- IT WASN'T ONE
12 OR TWO DAYS I DON'T THINK, AND IT DIDN'T GO ON THE ENTIRE
13 WEEK, SO I WANT TO SAY ABOUT THREE DAYS.

14 Q AND DORIAN TESTIFIED -- DO YOU REMEMBER ON THAT WHAT
15 DAY, THE FIRST DAY OR THE SECOND DAY?

16 A IT WOULD HAVE BEEN TOWARDS THE -- THE LATTER PART OF
17 THE TRIAL.

18 Q THAT WOULD HAVE--

19 A EITHER LATE TUESDAY OR --

20 Q OKAY.

21 A -- ON WEDNESDAY BECAUSE IF I'M NOT MISTAKEN, MAYBE WE
22 STARTED THE JURY QUALIFICATION ON TUESDAY THE WAY THEY DO
23 IT IN LEE COUNTY. I CAN'T REMEMBER THE ACTUAL DAY, WAS IT
24 MONDAY, TUESDAY, WEDNESDAY, TUESDAY, WEDNESDAY, THURSDAY,
25 BUT HE TESTIFIED TOWARD THE LATTER PART OF THE TRIAL.

1 Q OKAY. AND SINCE YOU HAD NOT PREPARED HIM TO TESTIFY
2 DURING THE TRIAL BECAUSE YOU WANTED TO WAIT TO SEE HOW THE
3 TRIAL WAS GOING --

4 A UH-HUH.

5 Q -- AND WHEN YOU DETERMINED THAT YOU WERE GOING TO USE
6 HIM AS A WITNESS, THAT WAS ON ABOUT THE SECOND DAY OF THE
7 TRIAL OR THE LATTER PART OF THE SECOND DAY OF THE TRIAL;
8 IS THAT CORRECT?

9 A PROBABLY FAIR ESTIMATE, THAT'S CORRECT.

10 Q ALL RIGHT. NOW, WHEN DID YOU GET WITH HIM TO PREPARE
11 HIM?

12 A WANT TO TESTIFY THIS IS -- LET'S TALK TO YOU ABOUT
13 TESTIFYING. I CAN'T TELL YOU WHAT PARTICULAR DAY, BUT IT
14 WASN'T...

15 MR. PRIDE: THAT'S NOT MY PHONE, JUDGE. THAT'S
16 THE DESK. GO AHEAD.

17 A IT WASN'T A SITUATION WHERE WE DIDN'T TALK ABOUT YOU
18 GETTING ON THE STAND. WE TALKED ABOUT IT BRIEFLY.

19 Q WELL, YOU -- YOU THINK BRIEF PREPARATION FOR A 16
20 YEAR OLD BOY WITH A LEARNING DEFICIENCY IS GOOD ENOUGH IN
21 A TRIAL WHERE HE IS TRYING -- BEING TRIED FOR TWO ARMED
22 ROBBERY CHARGES? DO YOU THINK THAT'S ENOUGH PREPARATION?

23 A THOUGHT THAT WAS ENOUGH FOR DORIAN CAIN.

24 Q THOUGHT THAT WAS ENOUGH FOR DORIAN CAIN.

25 A YES.

1 Q. OKAY.

2 A BECAUSE HE NEVER GAVE ME ANY IMPRESSION THAT THAT WAS
3 GOING TO BE A PROBLEM. HE ALWAYS SAID -- AND HE ALWAYS
4 SAID IT THE WAY HE SAID IT ON THE STAND, I DIDN'T DO THIS.
5 HE WAS VERY DEFINITIVE.

6 Q OKAY.

7 A IT WAS NO EQUIVOCATION. SO WHAT ELSE DID -- GOING TO
8 GET ON THE STAND, YOU GOING TO TESTIFY TO IT? WE'LL TALK
9 ABOUT, YOU KNOW, YOU GOT THIS MEDICAL CONDITION THAT HIS
10 MOTHER HAS ALREADY TESTIFIED TO ABOUT THE TESTICULAR
11 SURGERY, WHERE YOU WERE. THAT'S PRETTY MUCH WHAT HE DID.

12 Q ALL RIGHT. WHY DIDN'T YOU TALK TO HIM ABOUT
13 CHARACTER?

14 A TALK TO HIM ABOUT CHARACTER?

15 Q WHY DIDN'T YOU PUT HIS CHARACTER IN ISSUE?

16 A I DON'T KNOW. I DIDN'T DO THAT. THAT'S RIGHT.

17 Q HOW DO YOU DO THAT?

18 A NO, NO. I SAID I DIDN'T DO THAT. THAT'S RIGHT. I
19 DIDN'T DO THAT.

20 Q AND HE WAS CHARACTER-ELIGIBLE; WASN'T HE?

21 A YOU KNOW, HE PROBABLY WOULD HAVE BEEN, THAT'S
22 CORRECT.

23 Q OKAY.

24 A BUT I DIDN'T THINK -- I DIDN'T THINK ABOUT THAT AT
25 THE TIME.

1 Q OKAY. AND NEITHER DID YOU PRESENT -- AND EVEN THOUGH
2 YOU -- THE TESTIMONY IN THE TRANSCRIPT GIVES A PICTURE OF
3 A COURTROOM WITH GREAT COMMUNITY CONCERN AND SUPPORT,
4 WOULD YOU NOT AGREE?

5 A THAT WAS AT THE POST-TRIAL MOTION.

6 Q WELL...

7 A THAT WASN'T DURING THE TRIAL.

8 Q DID YOU PUT UP ANY CHARACTER WITNESSES AT THE
9 POST-TRIAL?

10 A NO, SIR, I DID NOT.

11 Q OKAY. THE POINT IS, YOU DIDN'T USE ANYBODY FROM THE
12 COMMUNITY AS A CHARACTER WITNESS; DID YOU?

13 A THAT'S CORRECT.

14 Q AND THIS WAS A KIND OF TRIAL AS YOU PUT IT, WHO DID
15 IT, MY WORD AGAINST THEIR WORD; ISN'T IT? ISN'T THAT
16 CORRECT?

17 A THAT'S CORRECT.

18 Q ALL RIGHT. AND HOW DID YOU HANDLE THE PHYSICAL
19 DISABILITY THAT DORIAN SUFFERED AS IT RELATED TO HIS
20 INABILITY TO RUN AS THE TESTIMONY WAS IN THE RECORD?

21 A HE TALKED ABOUT THAT WHEN HE WAS TESTIFYING, TALKED
22 ABOUT THAT HE HAD THAT SURGERY. BUT AS FAR AS ANY TYPE OF
23 DEMONSTRATIVE EVIDENCE, ANYTHING OF THAT SORT, IF THAT'S
24 WHAT YOU'RE GETTING AT, WE DIDN'T USE ANYTHING LIKE THAT.

25 Q DID YOU PREPARE HIM FOR THAT?

1 A AS FAR AS HIM, HE -- HE'S TOLD THE JURY HE HAD THAT
2 PROBLEM. WE ALSO HAD...

3 Q NO, NO. LET'S STAY ON ONE THING AT A TIME.

4 A OKAY.

5 Q DID YOU PREPARE HIM FOR HIS TESTIMONY AS TO HIS
6 PHYSICAL DISABILITY?

7 A NOW, WHEN YOU SAY -- WHEN YOU SAY PREPARE HIM--

8 Q DID YOU TELL HIM TO SAY, LISTEN SON, YOU NEED TO
9 TESTIFY WITH VERY CLARITY THAT YOUR TESTICLES ARE STAPLED
10 TO YOUR LEGS AND THAT YOU CANNOT STAND UP STRAIGHT AND
11 THAT YOU ARE IN AN EXCRUCIATING PAIN AND YOU HAVE NO
12 DAMN FEEL -- NO ABILITY TO RUN. DID YOU DO THAT?

13 A NO, SIR.

14 Q DON'T YOU THINK THAT WAS IMPORTANT?

15 A I...

16 Q YOU DIDN'T PREPARE DORIAN, DID YOU, FOR THAT TRIAL?

17 A FOR THAT SPECIFIC ASPECT--

18 Q YOU DIDN'T PREPARE HIM AS ADEQUATELY AS HE SHOULD
19 HAVE BEEN PREPARED FOR A 16 YEAR OLD BOY WHO SUFFERED WITH
20 A LEARNING DISABILITY AND ALSO HAD A PHYSICAL DISABILITY
21 WHICH PLAYED AND COULD HAVE PLAYED A VERY IMPORTANT PART
22 IN THIS CASE, DID YOU? STRAIGHT UP.

23 A HE WAS PREPARED. I DISAGREE WITH THAT--

24 Q ALL RIGHT. TELL ME WHAT TESTIMONY YOU USED TO
25 CORROBORATE THE FACT THAT HIS PHYSICAL DISABILITY IMPAIRED

1 HIM FROM RUNNING?

2 A WE DIDN'T USE ANY. WE USED HIM. NO CORROBORATION,
3 WHICH I THOUGHT WAS STRONG ENOUGH CONSIDERING HOW
4 DEFINITIVE AND STRONG HE TESTIFIED AND TOLD ME THAT.

5 Q WELL, TELL THE JUDGE ABOUT WHAT -- DESCRIBE FOR THE
6 COURT THE CORROBORATING TESTIMONY THAT YOU DIDN'T USE.

7 A I DIDN'T USE ANY. I SAID I THOUGHT WAS -- ENOUGH WAS
8 HIS TESTIMONY BEING DEFINITIVE AND UNWAVERING, NO
9 EQUIVOCATION AS FAR AS, I DIDN'T DO THIS, I HAD THIS
10 PROBLEM, ET CETERA, ET CETERA. HE WAS -- HE NEVER GAVE ME
11 ANY PROBLEM, ANY IMPRESSION THAT IT WOULD BE A PROBLEM
12 WITH WHAT HE SAID.

13 HE TESTIFIED JUST AS HE TALKED ABOUT TODAY. HE
14 DIDN'T DO IT. HE ALSO MENTIONED THAT HE HAD THE TESTICLE
15 SURGERY, AND I THOUGHT IT WAS STRONG ENOUGH. IT DIDN'T
16 GIVE ME THE IMPRESSION THAT IT WAS -- IT WAS A PROBLEM.

17 Q ALL RIGHT. NOW, AT THE COMMENCEMENT OF THIS TRIAL --
18 WOULD YOU AGREE -- WOULD YOU WITH ME THAT AN OPENING
19 STATEMENT IS A SORT OF A SITUATION WHERE YOU START OFF
20 LIKE YOU'RE GOING -- YOU OPEN UP PRETTY GOOD, YOU USUALLY
21 END UP PRETTY GOOD. WOULDN'T YOU AGREE?

22 A NOT NECESSARILY.

23 Q ALL RIGHT, SIR. WELL--

24 A BUT I DO AGREE THAT THAT'S IMPORTANT, BUT THAT'S NOT
25 END ALL BE ALL.

1 Q WELL, IT'S AN OPPORTUNITY, WOULD YOU NOT AGREE, FOR A
2 FIRST IMPRESSION BY THE -- BY THE JURORS OF THE LAWYER WHO
3 IS DEFENDING A CLIENT? WOULD YOU NOT AGREE WITH THAT?

4 A I GUESS THAT'S FAIR.

5 Q AND OFTEN TIMES FIRST IMPRESSIONS STICK WITH JURORS;
6 DON'T THEY?

7 A SOMETIMES.

8 Q WHY WOULD YOU -- WHY WOULD YOU MAKE AN ANALOGOUS IN
9 YOUR OPENING ARGUMENT ABOUT THE IRAQ WAR? IF I -- EXCUSE
10 ME. FINISH MY QUESTION, AND I WILL GIVE YOU AN
11 OPPORTUNITY FOR THAT. FIVE YEARS AGO I WOULD SUBMIT TO
12 YOU AND ASK THE COURT TO TAKE JUDICIAL NOTICE THAT
13 PRESIDENT BUSH WAS IN OFFICE AND THE IRAQ WAR WAS A
14 TREMENDOUS CONTROVERSIAL ISSUE IN THIS COUNTRY. NOW, I
15 WANT TO KNOW WHY WOULD YOU IN AN OPENING STATEMENT MAKE AN
16 ANALOGY ABOUT THE STATE AND THE IRAQ WAR?

17 A WELL, LET ME EXPLAIN, MR. PRIDE.

18 Q PLEASE DO.

19 A I WAS -- WHAT I WAS EXPLAINING TO THE JURY, AND I
20 HOPE THAT YOU LOOK AT THE FULL STATEMENT, WHICH WAS TO
21 TALK ABOUT THEIR OATH AS JURORS AND HOW FIRM AND SURE THEY
22 NEED TO BE TO SHOW THAT THE STATE MADE THEIR CASE BEYOND A
23 REASONABLE DOUBT, THAT THIS WAS NOT AN OPINION POLL,
24 WHETHER IT WAS THE RIGHT THING OR WRONG THING TO BE
25 INVOLVED IN THE IRAQ WAR, AND I WAS USING THE IRAQ WAR AS

1 AN EXAMPLE OF HOW PEOPLE MAY BE QUESTIONED, DO YOU THINK
2 IT'S RIGHT OR DO YOU THINK IT'S WRONG. THAT'S AN OPINION.

3 BUT WHEN YOU'RE TALKING ABOUT YOUR OATH AS A JUROR,
4 WHAT YOU NEED TO DO IS YOU NEED TO BE CONVINCED THAT THE
5 STATE HAS MADE THEIR CASE BEYOND A REASONABLE DOUBT, WHICH
6 I WAS TRYING TO SHOW THE JUROR -- JURY THAT THAT'S
7 SOMETHING THAT THEY NEED TO BE STRONGER ON AND NOT JUST
8 VIEW IT AS JUST AN OPINION, DO I THINK HE DID IT OR NOT
9 DID IT.

10 Q WELL, YOUR STATEMENT WAS AS TO GO TO WAR IN IRAQ.
11 THAT'S WHAT YOU SAID.

12 A THAT'S RIGHT. I WAS USING THAT EXAMPLE. THAT'S
13 RIGHT.

14 Q AND -- WELL, I GUESS LET'S PUT IT THIS WAY. THAT
15 STATEMENT AND THAT OPENING ARGUMENT THAT YOU MADE AND THE
16 USE OF THE IRAQ WAR WAS A MATTER OF JUDGMENT. WOULD YOU
17 NOT AGREE?

18 A NO, I DON'T AGREE BECAUSE I REALLY WASN'T TALKING --
19 THE MENTIONING OF THE IRAQ WAR IN TALKING ABOUT IRAQ
20 REALLY WASN'T RELATIVE. THE WHOLE ISSUE I WAS POINTING TO
21 THE JURY IS ABOUT THE DIFFERENCE BETWEEN HAVING AN OPINION
22 VERSUS BEING MORE CONVINCED BEYOND A REASONABLE DOUBT DID
23 THIS YOUNG MAN DO THIS OR NOT DO THIS WHEN A DEFENDANT IS
24 ON TRIAL. SO IT WASN'T A QUESTION OF, YOU KNOW, IRAQ WAR.

25 PLUS WE WERE IN LEE COUNTY, AND LEE COUNTY

1 WOULD'N'T -- I WOULD'N'T THINK WOULD BE SOMETHING THAT I
2 THOUGHT WOULD BE -- MIGHT BE A LITTLE HELPFUL FOR MR. CAIN
3 USING SOMETHING LIKE AN OPINION BECAUSE PEOPLE WOULD
4 UNDERSTAND. I DON'T THINK IT'S SOMETHING WE SHOULD BE IN
5 AS AN OPINION.

6 Q I MISSED YOU. ARE THEY DUMB IN LEE COUNTY? IS THAT
7 WHAT YOU'RE--

8 A NO, NO, NO, NO. WHAT I'M SAYING IS THAT WOULD BE
9 SOMETHING THAT THEY MIGHT NOT -- THEY MIGHT DISAGREE WITH
10 AND THEY MAY HAVE AN OPINION ON IT AND MAY DISAGREE ON
11 WHAT WAS GOING ON, AND I WAS USING THAT TO SHOW AN OPINION
12 VERSUS THEIR OATH AND THEIR POWERS AS A JUROR IN THE CASE.

13 Q WELL, IT GOES BACK TO WHAT I SAID. YOUR USE OF THAT
14 ANALOGY WAS A MATTER OF JUDGMENT. THAT'S WHAT IN YOUR
15 JUDGMENT YOU THOUGHT WAS GOOD TO DO.

16 A I GUESS IF YOU WANT TO PUT THAT IT WAY, MR. PRIDE,
17 THAT'S CORRECT.

18 Q WELL, I DON'T WANT TO PUT WORDS IN YOUR MOUTH.

19 MRS. WILLIAMS: ASKED AND ANSWERED.

20 MR. PRIDE: I WILL ACCEPT THAT, JUDGE, AND MOVE
21 ON.

22 THE COURT: ALL RIGHT.

23 BY MR. PRIDE:

24 Q SO YOU ACKNOWLEDGE THAT THE -- THAT YOU PUT IN NO
25 CORROBORATING EVIDENCE ABOUT THE PHYSICAL DISABILITY THAT

1 MR. CAIN SUFFERED; IS THAT CORRECT?

2 A THAT'S WHAT THE TRANSCRIPT SHOWS. I DON'T HAVE ANY
3 REASON TO DISPUTE THAT.

4 Q OKAY. AND YOU ALSO ACKNOWLEDGE THAT YOUR DEFENSE FOR
5 MR. CAIN WAS ALIBI.

6 A THAT'S CORRECT.

7 Q AND YOU ALSO ACKNOWLEDGE THAT YOU PUT IN NO
8 CORROBORATING TESTIMONY FROM MRS. JOHNSON.

9 A IN ADDITION TO MRS. JOHNSON? IS THAT WHAT YOU'RE
10 ASKING?

11 Q TO CORROBORATE.

12 A THAT'S CORRECT.

13 Q TO CORROBORATE MRS. JOHNSON'S TESTIMONY.

14 A THAT'S CORRECT.

15 Q AND YOU ALSO ACKNOWLEDGE TO THE COURT THAT YOU WERE
16 WELL AWARE OF THE FACT THAT MRS. JOHNSON'S SON WAS THERE
17 AT THAT TIME; IS THAT NOT CORRECT?

18 A YEAH. I FOUND IT -- YOU WANT ME TO TELL YOU ABOUT
19 MRS. JOHNSON'S SON?

20 Q WELL, WHAT I WANT YOU TO DO IS ANSWER MY QUESTIONS,
21 WAS HE THERE AT THAT TIME, NOT PUT IN SOMETHING THAT IS
22 NOT RELEVANT IN THIS CASE.

23 A I KNEW ABOUT MR. JOHNSON -- MRS. JOHNSON'S SON.

24 Q OKAY. WHAT YOU WANT TO PUT IN IS LATER ON HE HAD A
25 CONVICTION. BUT AT THE TIME THAT THIS INCIDENT OCCURRED

1 HE DIDN'T HAVE A CONVICTION; DID HE?

2 A WELL, HE HAD SOME JUVENILE CONVICTIONS --

3 Q WELL--

4 A -- THAT COULD HAVE POSED A PROBLEM.

5 Q SO AS A RESULT OF THOSE JUVENILE CONVICTIONS--

6 MRS. WILLIAMS: ARGUMENTATIVE.

7 MR. PRIDE: IT'S NOT A ARGUMENTIVE. IT'S A
8 MATTER OF HIS JUDGMENT, JUDGE. HE TAKES THE
9 POSITION -- JUDGE, HE TAKES THE POSITION THAT BECAUSE
10 OF A MAN'S JUVENILE RECORD, THAT HE DIDN'T WANT TO
11 PUT HIM UP AS A WITNESS. THAT'S RIDICULOUS.
12 THAT'S -- I WANT YOU TO CONSIDER THAT.

13 THE COURT: I UNDERSTAND THAT, AND HE -- THAT --
14 HE'S STATING WHY HE DIDN'T PUT HIM UP AS A WITNESS
15 BECAUSE HE HAD A JUVENILE RECORD AND HE -- THAT WAS
16 HIS TRIAL STRATEGY, AND I UNDERSTAND THAT.

17 MR. PRIDE: SURE. THAT'S ALL I WANT. YEAH.

18 THE COURT: BUT...

19 MR. PRIDE: YOU WANT TO SAY SOMETHING?

20 THE COURT: BUT ON PAGE 295 OF THE RECORD IT
21 APPEARS THAT SOMETHING WAS INTRODUCED INTO EVIDENCE
22 CONCERNING HIS SURGERY.

23 MR. PRIDE: YEAH, RECORDS.

24 THE COURT: OKAY. MEDICAL RECORDS?

25 MR. PRIDE: RIGHT. I ASKED HIM -- WE'RE TALKING

1 ABOUT LIVE, CORROBORATING TESTIMONY, WITNESSES THAT
2 WERE AVAILABLE THAT WERE NOT CALLED. THAT'S WHERE I
3 AM.

4 THE COURT: OKAY. ALL RIGHT. I UNDERSTAND
5 THAT.

6 MR. PRIDE: THANK YOU.

7 BY MR. PRIDE:

8 Q I'D LIKE TO GO TO THE SITUATION IN JUNE WHICH WAS
9 AFTER THE CONVICTION OF MR. CAIN, AND THERE WAS AN EFFORT
10 BY YOU TO -- NOT AN EFFORT, BUT YOU FILED A MOTION, A RULE
11 29 MOTION. AND AS A RESULT OF FILING THAT MOTION, YOU
12 WERE GRANTED A HEARING.

13 A CORRECT.

14 Q DID YOU THINK THAT THE RECANT BY MR. REED WAS VERY
15 IMPORTANT?

16 A MR. REAMS? IT WAS MR. REAMS.

17 Q REAMS. YES.

18 A REAMS. DID I THINK IT WAS VERY IMPORTANT?

19 Q PLEASE EXCUSE THAT. CORRECT IT. YES.

20 A I THOUGHT IT WAS IMPORTANT. I GOT THAT AFFIDAVIT.

21 Q BUT IT'S HOW YOU GOT THAT AFFIDAVIT.

22 A THAT'S CORRECT.

23 Q WHO -- HOW -- WHO DID YOU GET THAT AFFIDAVIT FROM?

24 A WELL, MRS. CAIN HAD TOLD ME THAT MR. REAMS -- SHE HAD
25 TESTIFIED TO THIS EARLIER -- MR. REAMS HAD CONTACTED SOME

1 OF HER FAMILY AND HAD SAID THAT HE WAS NOT TRUTHFUL AT
2 TRIAL, AND OBVIOUSLY I NEEDED TO BE CAREFUL IN SOMETHING
3 LIKE THAT AS FAR AS MY INVOLVEMENT WITH THAT, AND THE
4 LADY -- I CAN'T REMEMBER THE NAME -- MRS. CAIN HAD
5 TESTIFIED--

6 Q MRS. ROBINSON.

7 A SHE HAD -- SHE WAS THE ONE THAT HAD FURNISHED THE
8 AFFIDAVIT AND BROUGHT IT TO ME. I CONTACTED MR.
9 SAVERANCE, WHO WAS THE PROSECUTOR. FELT I HAD A DUTY TO
10 LET HIM KNOW ABOUT IT OBVIOUSLY. I FILED MY MOTION TO
11 PROTECT THE TIME. WE GET 10 DAYS, YOU KNOW, WE GOT TO
12 PROTECT THIS TIME, SO I FILED A MOTION, AND FILED A
13 MOTION, THINK I HAD SUBMITTED A COPY TO JUDGE NEWMAN ALONG
14 WITH MR. SAVERANCE, AND I BELIEVE I HAD JOHN JOHNSON CHECK
15 IT OUT.

16 WHEN I SAY CHECK IT OUT, GO AND TRY TO TRACK DOWN
17 MR. REAMS AND SEE IF THAT WAS THE CASE. SINCE HE WAS A
18 FORMER SLED INVESTIGATOR HE WOULD KNOW, YOU KNOW, HOW TO
19 CHECK IT OUT WITHOUT DOING SOMETHING IMPROPER.

20 Q BUT YOU WOULD AGREE WITH ME THAT THE TRANSCRIPT OF
21 RECORD FROM THAT HEARING ON THE 23RD BEFORE -- ON THE --
22 IN JUNE BEFORE JUDGE NEWMAN, THE ONLY AFFIDAVIT THAT WAS
23 THERE WAS THE AFFIDAVIT OBTAINED BY MRS. ROBINSON FROM
24 MR. REEVES.

25 A MR. REAMS.

1 Q REAMS.

2 A THAT'S CORRECT.

3 Q OKAY. AND YOU PROCEEDED ON THAT BASIS; IS THAT
4 CORRECT?

5 A THAT'S CORRECT.

6 Q AND YOU CORRECT ME IF I'M WRONG. DID JUDGE NEWMAN
7 SORT OF GET UPSET WITH YOU AND ASK YOU SEVERAL TIMES ABOUT
8 DO YOU HAVE ANY CASE LAW? AND--

9 A WHAT JUDGE NEWMAN DID WAS WE HAD PUT MR. REAMS ON THE
10 STAND. MR. REAMS, IF I RECALL CORRECTLY, AND YOU CAN
11 CHECK IT OUT IN THE TRANSCRIPT, MR. REAMS HAD SAID
12 SOMETHING TO THE EFFECT OF, I CAN'T READ, THEY JUST
13 PRESENTED IT TO ME, I SIGNED IT. AND THEN AGAIN HE SAYS
14 IT IN COURT THAT DORIAN IS THE ONE THAT POINTS DORIAN OUT.
15 DOESN'T SAY DORIAN BECAUSE HE DOESN'T KNOW THE GUY'S NAME.
16 POINTS OUT, SAID, THAT'S THE BOY THAT ROBBED ME. SO THAT
17 IS WHAT MR. REAMS HAD PRETTY MUCH SAID IN THE POST-TRIAL
18 MOTION WHEN HE WAS ON THE STAND.

19 AND BASICALLY WHAT JUDGE NEWMAN WAS SAYING WAS, YOU
20 KNOW, HERE YOU ARE AGAIN, MR. BROOKS, YOU GOT MR. REAMS,
21 AD ALL YOU GOT IS THIS AFFIDAVIT WHICH HE IS NOW
22 DISPUTING, MR. REAMES IS NOW DISPUTING. HE AGAIN DISPUTES
23 THAT HE READ THE AFFIDAVIT BECAUSE HE SAID HE COULDN'T
24 READ, AND HE SAYS THAT -- POINTS YOUR CLIENT OUT THAT HE
25 IS THE ONE THAT ROBBED ME.

1 AND THEN MR -- EXCUSE ME -- JUDGE NEWMAN HAD GONE ON
2 TO SAY -- BECAUSE THERE WAS A LOT OF PEOPLE PRESENT IN THE
3 COURTROOM DURING THE POST-TRIAL MOTION -- HE TALKED ABOUT
4 WHILE THIS CASE NOW HAS -- I SEE HAS GARNERED A LOT OF
5 COMMUNITY ATTENTION VERSUS US HAVING THE CASE FOR THREE
6 DAYS BACK IN APRIL. AND OF COURSE, HE SUBSEQUENTLY DENIED
7 THE MOTION, AND AT THE TIME -- I DON'T KNOW IF I'M GETTING
8 TOO FAR AHEAD.

9 Q NO, THAT'S ALL RIGHT.

10 A HE ADDRESSED MY MOTION FOR AN APPEAL BOND.

11 Q OKAY. HE GAVE YOU AN APPEAL BOND.

12 A RIGHT.

13 Q HERE IS MY QUESTION TO YOU. ORDINARILY A MOTION
14 REQUIRES A MEMORANDUM. DID YOU FILE BEFORE THE COURT A
15 MEMORANDUM IN SUPPORT OF YOUR MOTION FOR -- RULE 29
16 MOTION?

17 A I DON'T THINK I DID, MR. PRIDE.

18 Q DID YOU DO ANY RESEARCH IN TERMS OF LOOKING UP THE
19 LAW? AND THE REASON WHY I ASK YOU THAT IS AND I WANT YOU
20 TO READ --

21 MR. PRIDE: I'M APPROACHING, JUDGE -- JUDGE, MAY
22 I APPROACH THE WITNESS?

23 THE COURT: CERTAINLY.

24 BY MR. PRIDE:

25 Q HERE IS A TRANSCRIPT FROM THAT HEARING. AND ON PAGE

1 38, IF YOU WOULD START RIGHT HERE. MR. BROOKS, READ THAT
2 FOR ME.

3 A JUST IN REGARDS TO ARGUMENT, OUR ARGUMENT REQUESTED A
4 MOTION FOR A NEW TRIAL BASED ON WHAT WE PRESENT TO THE
5 COURT. DO YOU HAVE ANY LAW TO SUPPORT YOUR ARGUMENT?
6 THAT--

7 Q THAT'S -- THAT'S THE COURT TALKING TO YOU; RIGHT?

8 A THAT'S CORRECT.

9 Q RIGHT. AND DID YOU HAVE ANY LAW?

10 A I DID NOT HAVE ANY LAW THAT WAS GOING TO BE HELPFUL.

11 Q AND YOU DO UNDERSTAND, MR. BROOKS, IN YOUR PRACTICE
12 THAT MEMORANDUMS GIVEN TO JUDGES SORT OF LIKE A ROADMAP TO
13 HELP THEM ALONG THE WAY AND TELL THEM WHERE YOU'RE GOING
14 AND ADVISE THEM OF WHAT YOU THINK THE LAW IS; IS THAT
15 CORRECT?

16 A YES, SIR.

17 Q AND DO YOU THINK THEY'RE A GOOD IDEA TO GIVE JUDGES
18 MEMORANDUM?

19 A YES, SIR.

20 MR. PRIDE: THANK YOU VERY MUCH, JUDGE. I
21 APPRECIATE IT.

22 THE COURT: YES, SIR.

23 CROSS-EXAMINATION

24 BY MRS. WILLIAMS:

25 Q HE'S VERY THOROUGH. MR. BROOKS, YOU WERE RETAINED IN

1 JANUARY OR -- JANUARY OR FEBRUARY OF 2004.

2 A THAT'S RIGHT.

3 Q HAD A TRIAL IN APRIL OF 2004.

4 A THAT'S CORRECT.

5 Q DID YOU HAVE A WHOLE LOT OF TIME TO PREPARE THIS
6 CASE?

7 A I WOULDN'T SAY A WHOLE LOT OF TIME, BUT IT WAS -- IT
8 WAS NOT A FORENSIC TYPE CASE WHERE YOU HAD TO WAIT FOR
9 FINGERPRINTS AND DNA AND STUFF LIKE THAT TO COME IN ON
10 SOME OTHER CASES I HAVE HAD. IT WAS BASICALLY THESE TWO
11 WITNESSES SAYING THIS BOY ROBBED ME. AT THAT -- WITHOUT
12 THEM, THERE WOULD HAVE BEEN NO CASE AGAINST DORIAN.

13 AND, I WOULD VENTURE TO SAY THAT, LIKE I SAID,
14 MR. REAMS WAS NOT WHAT I CONSIDER A VERY STRONG WITNESS.
15 THE PROBLEM WAS MR. SCOTT. HE WAS THE STRONG WITNESS IN
16 THE CASE AGAINST DORIAN THAT CREATED A LOT OF PROBLEMS.
17 SO KNOWING THAT, HAVING AN INVESTIGATOR WHO KIND OF CHASED
18 DOWN SOME OF THAT STUFF, THAT'S WHAT -- WERE WE PREPARED
19 FOR TRIAL, SURE.

20 Q OKAY. AND YOU HAD PRETTY GOOD HELP FROM THE
21 INVESTIGATOR. IS THAT SAFE TO SAY?

22 A YES, MA'AM.

23 Q AND TELL ME ABOUT MR. SCOTT AS A WITNESS. HE WAS, --
24 YOU WERE SAYING HE WAS THE STRONGER WITNESS. IS THAT THE
25 Demeanor issue? WHAT IS HIS STRENGTH?

1 A HE WAS A -- IF MEMORY SERVES ME CORRECTLY, MAY HAVE
2 TO LOOK BACK AT THE TRANSCRIPT -- HE TESTIFIED THAT HE WAS
3 A BARBER -- I THINK IT WAS A BARBER, AND THEY WERE --
4 THEY -- HIM AND REAMS WERE MAYBE TRYING TO BUILD A BARBER
5 SHOP, SOME TYPE OF BUILDING THAT THEY HAD.

6 Q COULD THEY BE TEARING IT DOWN?

7 A TEARING IT DOWN. AND MR. REAMS WAS -- WHEN I SAY
8 HE -- HE WAS NOT -- HE WAS AN OLDER -- BOTH OF THEM WERE
9 OLDER GENTLEMEN, BUT MR. SCOTT WAS A BIT MORE
10 SOPHISTICATED IF I WAS TRYING TO COMPARE AND CONTRAST THE
11 TWO. MR. SCOTT, HE WAS DEFINITIVE IN HIS ANSWER. HE WAS
12 DEFINITIVE IN HIS DIRECT EXAMINATION BY MR. SAVERANCE. HE
13 WAS DEFINITIVE IN HIS CROSS-EXAMINATION.

14 NO MATTER WHAT I DID, NO MATTER WHERE I TOOK HIM AS
15 FAR AS MY QUESTIONING, HE ALWAYS -- HE JUST -- HE JUST
16 NEVER WAVERED ON -- HE KEPT POINTING OUT AND WAS STRONG
17 AND DEFINITIVE THAT DORIAN WAS THE ONE THAT ROBBED HIM.

18 Q SO THAT'S WHEN IT BECAME NECESSARY OR IN YOUR THOUGHT
19 IT BECAME NECESSARY TO PUT MR. CAIN ON THE STAND?

20 A TO TRY TO OFFSET THAT, THAT'S CORRECT.

21 Q OKAY. BECAUSE YOU FOUND MR. CAIN TO BE A PRETTY
22 HONEST AND TRUTHFUL FELLOW?

23 A I STILL THINK -- I MEAN, I BELIEVE HIM. HE WAS VERY
24 DEFINITIVE IN WHAT HE SAID ON THE STAND. HE WAS
25 DEFINITIVE BEFORE THAT. HE ALWAYS SAID, I DIDN'T DO IT, I

1 DIDN'T DO IT, I DIDN'T DO IT JUST LIKE HE TESTIFIED HERE
2 TODAY.

3 Q NOW, CAN YOU TELL ME HOW YOU CAME TO FIND OUT THAT
4 THERE MAY HAVE BEEN AN ISSUE WITH MR. REAMS' TESTIMONY
5 POST-TRIAL? HOW DID THAT INFORMATION COME TO YOU?

6 A MRS. CAIN TOLD ME ABOUT IT.

7 Q OKAY. AND DO YOU RECALL WHO MRS. ROBINSON OBTAINED
8 THAT -- WHAT WAS HER LINE OF WORK?

9 A I BELIEVE SHE WAS A COUNSELOR. THAT'S WHAT -- I
10 THOUGHT SHE WAS JUST AS MRS. CAIN, I -- JUST AS MRS. CAIN
11 DESCRIBED.

12 Q DO YOU FEEL SHE WAS A CREDIBLE INDIVIDUAL?

13 A AS FAR AS THE -- MRS. CAIN OR ARE YOU TALKING
14 ABOUT...

15 Q MRS. ROBINSON.

16 A MRS. ROBINSON.

17 Q UH-HUH.

18 A I DIDN'T HAVE ANY REASON TO DISBELIEVE HER. I MEAN,
19 SHE -- SHE, YOU KNOW, BROUGHT THIS AFFIDAVIT, AND I
20 THOUGHT THAT OBVIOUSLY WE -- WE NEEDED TO GO AHEAD AND
21 FILE MOTION BECAUSE THE 10 DAYS WAS RUNNING, AND I WANTED
22 TO AT LEAST FILE THAT MOTION SO THAT HE WOULDN'T BE OUT OF
23 TIME ON THAT.

24 AND THEN, OF COURSE, I -- I HAD JOHN JOHNSON, TOLD
25 HIM ABOUT IT, TOLD MR. SAVERANCE, SENT A COPY TO JUDGE

1 NEWMAN. . . YEAH. . . THAT'S WHAT WE DID.

2 Q AND IN YOUR EXPERIENCE IS AN AFFIDAVIT A FAIRLY GOOD
3 INDICATOR OF WHAT SOMEONE WOULD SAY IF THEY GOT ON THE
4 STAND?

5 A YEAH, I THOUGHT HE WAS GOING TO -- I THOUGHT WE WAS
6 GOING TO -- THOUGHT HE WAS GOING TO STAY WITH WHAT WAS
7 WRITTEN TILL WE GOT TO COURT.

8 Q SO YOU WERE PRETTY SURPRISED AT THE WAY THINGS
9 UNFOLDED. WOULD THAT BE SAFE TO SAY?

10 A AS FAR AS MR. REAMS --

11 Q YES, SIR.

12 A -- AND WHAT HE TESTIFIED TO? YEAH.

13 Q AND DID YOU FEEL LIKE YOU HAD A DUTY TO PRESENT THIS
14 INFORMATION ONCE IT WAS AT YOUR DISPOSAL?

15 A THE AFFIDAVIT?

16 Q UH-HUH.

17 A YEAH, TRY TO DO THE BEST I CAN TO TRY TO MAKE IT --
18 UNDUE A CONVICTION ON MY CLIENT.

19 Q OKAY.

20 A IF I HAVE GOT SOME INFORMATION THAT SAYS THAT ONE OF
21 THE TWO STAR WITNESSES AGAINST MY CLIENT IS -- SAID THAT
22 HE WAS UNTRUTHFUL, SURE.

23 Q NOW, TELL ME ABOUT YOUR CONSIDERATIONS IN THE ALIBI
24 WITNESSES THAT YOU HAD TO CHOOSE FROM. I BELIEVE IT'S
25 BEEN SAID THAT YOU ONLY HAD A FEW, MRS. JOHNSON, HER SON,

1 THE TWO OTHER YOUNG MEN IN THE CAR. HOW DID YOU GO ABOUT
2 SELECTING WHO YOU WOULD PUT UP OUT OF THAT GROUP AND...

3 A I CAN'T RECALL AS MUCH INFORMATION ABOUT THE OTHER
4 TWO YOUNG MEN, BUT I DO -- I DO RECALL LAQUENTIN BECAUSE I
5 HAD FOUND OUT FROM SOME OF THE COURT PERSONNEL, THE
6 BAILIFFS AND THINGS OF THAT NATURE THAT LAQUENTIN HAD
7 SEVERAL RUN-INS AS FAR AS JUVENILE COURT. WHEN I SAY
8 SEVERAL RUN-INS, I MEAN, THEY WERE -- HE WAS ALWAYS
9 ACCUSTOMED TO BEING UP HERE, OKAY, WHAT -- PRETTY
10 SIGNIFICANT RECORD IN THAT REGARD, AND THAT -- THAT GAVE
11 ME GREAT CONCERNS ABOUT HIS RECORD.

12 AND I THINK AT THE TIME HE PROBABLY WAS IN THE
13 JUVENILE FACILITY. I'M NOT SURE ABOUT THAT. BUT I HAD
14 TALKED WITH HIS MOTHER, MRS. JOHNSON, WHO, YOU KNOW,
15 SHE -- THOUGHT SHE WAS PRETTY DECENT WITNESS. I MEAN,
16 HER -- SHE WASN'T GOING TO PUT THE -- YOU KNOW, SHE WASN'T
17 A NUN OR A PRIESTESS OR ANYBODY OF THAT NATURE, BUT SHE --
18 SHE SAID, YOU KNOW, THIS IS WHAT HAPPENED, DORIAN WAS HERE
19 JUST AS MRS. CAIN HAD DESCRIBED IT ON THE STAND, AND
20 THAT'S WHAT SHE SAID.

21 Q AND AN ADULT LIKE THAT MIGHT BE A BETTER...

22 A ADULT, YOU KNOW, PRETTY DECENT WITNESS. I CAN'T
23 RECALL IF MR. SAVERANCE HAD ANYTHING ON HER TO IMPEACH HER
24 WITH. I'M NOT SURE. I DON'T THINK THEY REALLY IMPEACHED
25 HER OR ANYTHING. HAVE TO LOOK BACK AT THE TRANSCRIPT TO

1 BE SURE.

2 MRS. WILLIAMS: IF I CAN BEG THE COURT'S
3 INDULGENCE FOR JUST A MOMENT. BELIEVE THAT'S ALL THE
4 QUESTIONS I HAVE OF MR. BROOKS AT THIS TIME. THANK
5 YOU.

6 THE COURT: OKAY.

7 MR. PRIDE: THANK YOU, JUDGE. JUST...

8 REDIRECT EXAMINATION

9 BY MR. PRIDE:

10 Q MR. BROOKS, YOU TALKED ABOUT MR. SCOTT BEING -- I GOT
11 THE IMPRESSION A SOLID -- WHAT I -- WHAT YOU CALL A SOLID
12 WITNESS IN A CRIMINAL CASE. IS THAT A PRETTY GOOD
13 DESCRIPTION OF IT?

14 A THAT WOULD BE A PRETTY GOOD DESCRIPTION.

15 Q WOULD YOU AGREE THAT THE IDENTIFICATION OF CAIN WAS
16 DONE AT THE SCENE?

17 A THAT'S CORRECT.

18 Q AND WOULD YOU AGREE THAT HE WAS THE ONLY ONE THAT WAS
19 HANDCUFFED?

20 A NOW, I'M GOING TO BE HONEST WITH YOU. I DON'T RECALL
21 IF HE WAS THE ONLY ONE HANDCUFF OR WERE ALL OF THE ONES
22 HANDCUFF. I DO KNOW THAT HE WAS THE ONLY ONE IDENTIFIED,
23 SCENE. THE OTHERS WERE NOT IDENTIFIED BY THE VICTIMS,
24 MR. SCOTT AND MR. REAMS. SO NOW YOU MAY BE CORRECT IF HE
25 WAS THE ONLY -- I CAN'T RECALL.

1 Q DID YOU EVER RAISE THE QUESTION OF A SUGGESTIVE
2 IDENTIFICATION? DID YOU EVER ARGUE THAT?

3 A I THINK WE HAD A -- A PRETRIAL MOTION REGARDS TO
4 THE -- TO THE IDENTIFICATION IF -- I MAY BE -- YOU BACK AT
5 THE TRANSCRIPT TO BE SURE, BUT I BELIEVE WE HAD A MOTION
6 WHERE I TRIED TO ARGUE SOME OF THOSE THINGS. I MIGHT NOT
7 HAVE TALKED ABOUT HIM BEING THE ONLY ONE IN HANDCUFF. I
8 JUST CAN'T RECALL ON THAT.

9 Q AND YOU DO RECALL, YOU -- YOU KNOW FROM YOUR OWN
10 WORDS, YOU DIDN'T RAISE THE LAW, SUGGEST IDENTIFICATION
11 EITHER; DID YOU?

12 A I -- I CAN'T RECALL THAT.

13 Q ALL RIGHT. THE OTHER THING IS, WHY DIDN'T YOU USE
14 THE YELLOW JACKET THAT THE CAINS BROUGHT TO THE COURT?

15 A WELL, I -- AT THE TIME I DIDN'T THINK THAT THAT WOULD
16 BE SOMETHING THAT WOULD REALLY BE SIGNIFICANTLY HELPFUL
17 BECAUSE ON THE FLIP SIDE OF THAT, YOU KNOW, MR. SAVERANCE
18 COULD ARGUE, AND I'M JUST TRYING TO -- YOU'RE ASKING ME
19 ABOUT MY JUDGMENT AND I'M THINKING WHAT HE COULD SAY IS,
20 OH YEAH, MAMA NOW BRINGS A YELLOW JACKET TO COURT NOW, BUT
21 OF COURSE THIS WHOLE THING HAPPENED IN DECEMBER. SURE
22 SHE'S GOING TO BRING A YELLOW JACKET NOW.

23 SO I DIDN'T THINK THAT THAT WAS GOING TO BE SOMETHING
24 THAT WAS GOING TO BE SIGNIFICANTLY HELPFUL BECAUSE, OF
25 COURSE, YOU KNOW, THE STATE COULD ARGUE, YES IT'S EASY TO

1 BRINGING SOMETHING IN NOW. CHALK THAT UP IN MY JUDGMENT
2 IN TRYING THE CASE, BUT THAT'S HOW I -- THAT'S HOW I
3 HANDLED IT.

4 Q AND YOU WOULD HAVE TO AGREE CONVERSELY THAT YOU COULD
5 HAVE ARGUED THAT IT WAS THE YELLOW JACKET, AND MY PROOF IS
6 THE CHIEF OF POLICE BECAUSE SHE WENT TO MRS. JOHNSON'S
7 HOUSE WHERE MRS. CAIN TOLD ME THE YELLOW JACKET WAS ON THE
8 NIGHT OF THE ROBBERY. THAT WOULD HAVE BEEN PRETTY GOOD
9 ARGUMENT AGAINST THAT; WOULDN'T IT?

10 A IT COULD HAVE BEEN A PRETTY GOOD ARGUMENT.

11 Q THANK YOU VERY MUCH. I DON'T HAVE ANY FURTHER
12 QUESTIONS.

13 THE COURT: OKAY. YOU CAN STEP DOWN. I'M
14 SORRY. MRS. WILLIAM, DO YOU HAVE ANYTHING FURTHER?

15 MRS. WILLIAMS: I WILL JUST RESERVE ARGUMENT. I
16 DON'T HAVE ANYTHING TO ASK.

17 THE COURT: I DON'T KNOW. ANY OBJECTION TO --
18 MR. BROOKS, YOU ON NEXT CASE, TOO?

19 MRS. WILLIAMS: YES, HE IS.

20 MR. PRIDE: I DON'T HAVE ANY OBJECTION TO HIM
21 STEPPING DOWN. I DON'T HAVE ANY FURTHER QUESTIONS.

22 MRS. WILLIAMS: I MAY RECALL HIM IF NECESSARY,
23 AND HE'S ON THE NEXT CASE, SO...

24 THE COURT: YOU CAN GET -- CAN'T BE EXCUSED, BUT
25 YOU CAN GET OFF THE STAND.

1 (WITNESS LEFT THE STAND.)

2 THE COURT: OKAY. ANY OTHER WITNESSES?

3 MR. PRIDE: THAT'S IT.

4 THE COURT: OKAY. STATE HAVE ANY WITNESSES?

5 MRS. WILLIAMS: THAT'S IT. NOTHING MORE.

6 THE COURT: OKAY.

7 MRS. WILLIAMS: ANY ARGUMENT YOU'D LIKE--

8 THE COURT: ALL RIGHT. DO Y'ALL WANT TO ARGUE?

9 MR. PRIDE: I WANT TO SHOW YOU THAT I'M AN
10 EXPERIENCED LAWYER BY MAKING MY ARGUMENT VERY BRIEF.

11 THE COURT: OKAY.

12 MR. PRIDE: JUDGE, I WANT YOU TO, WHEN YOU
13 CONSIDER THIS RECORD, TO CONSIDER THE FACT THAT THE
14 BOY THAT WAS BEING TRIED WAS 16. YOU KNOW, RARELY IN
15 MY YEARS OF PRACTICE ALWAYS SO DIFFICULT TO PUT
16 ANYBODY ON THE STAND BECAUSE THEY GOT A RECORD, AND
17 YOU CAN'T TOUCH CHARACTER.

18 BUT WHEN YOU GET CHARACTER AND YOU CAN USE IT,
19 IT IS GOOD TO USE IT AND IT SHOULD BE USED. AND THE
20 LAWYER SORT OF DROPPED A BALL IN THAT AREA BECAUSE
21 HE -- THAT WAS THERE. THAT WAS -- THAT WAS CERTAINLY
22 IN PLAY.

23 AND SECONDLY JUDGE, CONSIDER THE FACT THAT IF
24 YOU HAVE A PERSON WHO HAS A DISABILITY, AND I CRINGE
25 TO THINK ABOUT THE KIND OF DISABILITY THIS KID HAD

1 AND HOW HE WAS STABLED UP. I MEAN, YOU KNOW, I
2 THINK, YOU KNOW, A DOCTOR COULD HAVE GOTTEN UP THERE
3 AND SAID THIS BOY CAN'T RUN, THIS BOY CAN'T RUN FROM
4 HERE TO HERE THE DISTANCE OF THIS COURTROOM, AND THAT
5 WAS SO CRITICAL IN THIS CASE.

6 YOU KNOW, IT SORT OF CUTS BOTH WAYS ABOUT THE
7 IDENTIFICATION. I CAN'T REALLY SAY THAT THAT WAS AN
8 ERROR. AND AGAIN, JUDGE, YOU KNOW, I TAKE NO GREAT
9 PLEASURE IN HAVING TO RAISE THESE KINDS OF ARGUMENTS
10 AGAINST A FELLOW LAWYER. THERE MUST BE A BETTER
11 PRACTICE THAN DOING THIS, BUT IN THIS SITUATION,
12 JUDGE, IT IS IMPORTANT AND I THINK BASED ON WHAT YOU
13 HAVE HEARD TODAY I WOULD SIMPLY ASK YOU FOR YOUR
14 CONSIDERATION AND THE APPROPRIATE LAW TO BE APPLIED.
15 THANK YOU.

16 THE COURT: THANK YOU, MR. PRIDE.

17 MRS. WILLIAMS: I'M NOT A VERY EXPERIENCED
18 LAWYER, BUT I'M GOING TO TAKE SOME ADVICE FROM
19 MR. HEMPHILL PRIDE AND TRY TO KEEP IT BRIEF MYSELF.

20 MR. PRIDE: YOU'RE SUPPOSED TO SAY I'M NOT GOING
21 TO ARGUE AT ALL.

22 MRS. WILLIAMS: I REALLY DON'T HAVE MUCH TO SAY
23 HONESTLY. I BELIEVE THAT WE COVERED SEVERAL OF THESE
24 TOPICS PRETTY THOROUGHLY, AND IT'S THE ISSUE ABOUT
25 THE SURGERY. I THINK IT WAS IN PLAY. THERE WAS NOT

1 A DOCTOR THAT TESTIFIED, BUT MR. CAIN DID, AND I
2 THINK THAT JUDGE NEWMAN SUMS IT UP ON PAGE 295 WHERE
3 HE SAYS, WE DON'T HAVE TO BE ABLE TO RUN TO COMMIT
4 THIS ROBBERY ON THESE -- ON THE FACTS THAT ARE
5 PRESENTED HERE.

6 I'M GOING JUST -- YOU KNOW, I THINK I'M GOING TO
7 LEAVE IT THERE. I THINK MR. BROOKS ARTICULATED HIS
8 THOUGHTS OF THAT, AND I THINK THAT HIS ACTIONS WERE
9 REASONABLE, AND I DON'T THINK THAT ANYTHING POINTED
10 OUT HAS BEEN SOMETHING THAT WOULD CHANGE THE OUTCOME
11 OF THE CASE.

12 I WOULD, IF I MAY, DIRECT YOU TO THE COURT OF
13 APPEALS OPINION REGARDING THE IDENTIFICATION, THAT
14 THERE WAS AN ISSUE THAT WAS TAKEN UP ON APPEAL AS
15 WELL.

16 MR. PRIDE: JUDGE, JUST IN REPLY I WOULD SAY THE
17 BEST EVIDENCE OF THE FACT THAT YOUNG MR. CAIN DIDN'T
18 DO A SUFFICIENT JOB EXPLAINING HIS DISABILITY WAS THE
19 COMMENTS THAT WAS MADE BY JUDGE NEWMAN BECAUSE IF A
20 DOCTOR HAD BEEN THERE AND TOLD THE EXTENT OF THAT
21 DISABILITY, I DON'T THINK JUDGE NEWMAN WOULD HAVE
22 MADE THAT COMMENT. THANK YOU. AND I APPRECIATE IT.

23 THE COURT: YES, SIR. THANK YOU. I WILL READ
24 THIS RECORD AND LET Y'ALL KNOW. THANK YOU, SIR.

25 (END OF REQUESTED TRANSCRIPT OF RECORD.)

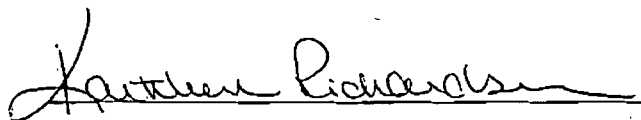
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

I, KATHLEEN RICHARDSON, RPR, CRR, FORMER
OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF
THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN
THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN
THE COURT OF COMMON PLEAS FOR LEE COUNTY, SOUTH CAROLINA,
ON THE TWENTY-SIXTH DAY OF OCTOBER, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 17, 2010



KATHLEEN RICHARDSON, RPR, CRR
US DISTRICT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF LEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

DORIAN CAIN

CASE NO. 2008-CP-31-21

STATE OF SC

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:☐

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☒

ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other

☐

ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other **ORDER FOR JUDGMENT**

☐

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:☐

See attached order. (Formal order to follow)

☐

Statement of Judgment by the Court:

Dated at **BISHOPVILLE**, South Carolina, this 30TH day of **DEC.**, 2009.

PRESIDING JUDGE

This judgment was entered on the 30TH day of **DEC.** 2009, and a copy mailed first class this 30TH day of **DEC.**, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

HEMPHILL PRIDE
ATTORNEY(S) FOR PLAINTIFF

MARY WILLIAMS
ATTORNEY(S) FOR DEFENDANT

JAMES I. DAVIS

CLERK OF COURT

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

Dorian Cain,)

Applicant,)

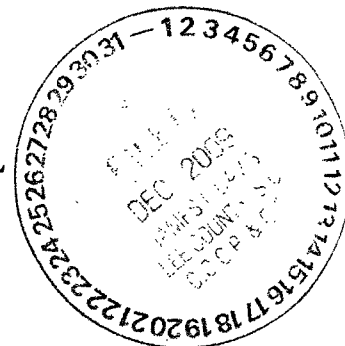
v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2008-CP-31-0021

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 29, 2008. The Respondent made its Return on September 5, 2008. An evidentiary hearing into the matter was convened on October 26, 2009, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Hemphill Pride, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying were the Applicant's mother, Gina Trenise Cain Davis ("Davis") and Charles T. Brooks, III, Esquire ("Counsel"). This Court had before it the records of the Lee County Clerk of Court, the trial transcript, the post-trial motion transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of the Lee County Clerk of Court. Applicant was indicted for two counts of Armed Robbery (2004-GS-31-0006). Charles T. Brooks, III, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable Clifton Newman. On April

8, 2004, the jury returned guilty verdicts on each count. Applicant was sentenced to two concurrent terms of ten (10) years imprisonment. On April 16, 2004, Applicant filed a Motion to Set Aside Verdict pursuant to Rule 29, SCRCrimP. A hearing on the motion was convened on June 23, 2004. The motion was denied.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence were affirmed. State v. Cain, Op. No. 2006-UP-387 (S.C. Ct. App. filed November 28, 2006). Applicant's Petition for Rehearing was denied on January 29, 2007, and the remittitur was sent on the same date.

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

1. Ineffective assistance of counsel.
 - a. "During the Plaintiff's criminal trial the Plaintiff's trial counsel provided ineffective assistance in the following ways:
 - i. by analogizing support or lack thereof for the Iraq War with the State's burden of proof (T. p. 100, lines 1-2);
 - ii. by failing to obtain and present to the jury evidence corroborating the Plaintiff's defense to allegations that he was seen by one of the victims running from the crime scene, namely that the Plaintiff had had surgery on one of his testicles less than three weeks prior to the date of the offense (T. p. 289, line 22 – p. 290, line 16);
 - b. Following the Plaintiff's criminal trial the Plaintiff's trial counsel made a motion pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure to set aside the verdict and for a new trial and provided ineffective assistance in presenting that motion in the following ways:
 - i. by failing to properly interview and prepare witnesses prior to trial;
 - ii. by failing to substantiate the affidavit obtained by the attorney's agents from one of the victims to the crime;
 - c. Alternately, the Plaintiff's counsel committed ineffective assistance by ignoring other grounds or failing to discover other grounds to set aside the verdict and obtain a new trial in favor of an affidavit obtained by counsel's agents from a victim of the crime which was disavowed by the affiant during the hearing on the motion."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300

S.C. at 117, 385 S.E.2d at 625 (citing Strickland, *supra*). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Facts Adduced at Trial

On the morning of December 18, 2003, James Reames ("Reames") and Edward Scott ("Scott") were cleaning out a building that was about to be torn down in Bishopville. Just before 11:00 am, three men entered the building. Two were armed. Reames and Scott complied with their demands for their wallets.

Reames and Scott got a ride to the police station and reported the robbery. They described the perpetrators as "three young, black males... one tall one that was medium complexion and wearing a white t-shirt and two short darker skin but they could not remember what kind of clothes they had on." The description was sent out over the radio to police officers.¹ Shortly thereafter, Officer Ernest Moseley ("Moseley") observed a vehicle within blocks of the scene which he believed was traveling too fast and failed to completely stop at a stop sign. A driver and three passengers were inside the vehicle. Moseley observed that one of the back seat passengers, later identified as Applicant, kept looking back at him. At some point, Moseley observed Applicant remove a white t-shirt, leaving a dark t-shirt underneath. Moseley stopped the vehicle.

Reames and Scott were brought to the traffic stop. Both identified Applicant as one of the

¹ The dispatch card reflected a dark blue jacket as part of the description but did not make reference to a white t-shirt.

perpetrators who had a gun. None of the other vehicle occupants were identified. Officer Thomas Burke ("Burke") testified that he had seen Applicant and two other males near the scene of the robbery shortly before 11:00 am. Burke recalled that Applicant had been wearing a white t-shirt at that time. No guns or wallets were recovered. Applicant had approximately \$12.00 in his pockets at the time of his arrest.

Applicant presented an alibi defense. Applicant testified that he had gone over to the home of Lequin Johnson ("Lequin") that morning until after 11:00 am. Applicant stated that he had then left in a car with Lequin and two others to go get a key made at a nearby hardware store. Lequin's mother, Alphine Johnson ("Johnson") testified that Applicant had come to her house at 9:16 am and left with her son Lequin after 11:00 am. Johnson testified that Applicant wore a white t-shirt and dark jacket. Applicant also presented documents indicating that he had undergone a testicular surgery sometime before the robbery. Applicant testified that due to the surgery and the sutures from the surgery, he had been unable to run at the time of the incident.

In reply, Chief Alta Simon ("Simon") testified that she had gone to Johnson's house after the traffic stop. According to Simon, Johnson told Simon that Applicant and Lequin had left her home on foot about an hour or two before. Simon further stated that the vehicle was not heading in the direction of the hardware store when it was stopped.

At trial, Counsel's motions to suppress the identification as unduly suggestive and to dismiss for lack of probable cause for the traffic stop were denied. In his Motion to Set Aside Verdict, Applicant submitted an affidavit from Reames, obtained by Applicant's counselor Janita Robinson ("Robinson") and Applicant's sister, in which Reames recanted his identification of Applicant. At the motion hearing, Reames repudiated the affidavit and stood by his trial testimony.

Counsel's Opening Argument

Applicant asserts that Counsel's opening argument was deficient and that the argument prejudiced the Applicant. In his opening argument, Counsel explained the concept of reasonable doubt using several analogies. Applicant takes exception to a portion of the opening argument in which Counsel mentions the Iraq War:

... They got to prove the burden beyond a reasonable doubt. That's 90, I look at it as 95 percent to 99 percent. Okay.

This isn't a public opinion poll. Do I think he did it? Do I think he didn't do it? *Do I think we should go to war in Iraq? Do I think we should go to war in Iraq?* Those are what you call public opinion polls. This is a little bit more serious. ...

(Tr. p. 99, line 21 – p. 100, line 3.)

I do not find this portion of the opening argument to be deficient performance. In the context of the whole argument, Counsel's message is clear. Counsel used examples and analogies in his opening argument. In context of the entire and opening argument and of the trial, I further find no evidence that such statement affected the outcome of the trial.

Medical Condition

Applicant asserts that Counsel should have made a more thorough presentation of his medical condition in order to discredit the testimony of Reames and Scott that the perpetrators ran from the scene. At trial, Applicant testified that he had been unable to run at the time of the crime due to surgery to his testicles on December 1, 2003. (Tr. p. 289, line 22 – p. 290, line 2; p. 291, lines 20 – 23.) At trial, Applicant described the surgery as a "testicle drop" and stated, "it was stapled to my leg until they take the staples out." (Tr. p. 290, lines 11-12.) Applicant testified that the staples had not been removed until after his arrest and release from prison. Applicant testified that he had been

unable to take his gym exam at school due to the limitation. (Tr. p, 291, lines 22-23.) The medical report from Applicant's surgery was entered into evidence at trial.

At PCR hearing, Davis testified that as a result of the surgery Applicant had been unable to run for a time. Davis stated that Applicant had been unable to stand up straight immediately following the surgery, moving in a stooped fashion. Davis noted that Applicant was not able to exercise at school due to the surgery. Davis felt that someone other than Applicant should have offered additional testimony on the issue of the surgery. Davis noted that Applicant was young at the time of the trial and suffered from ADHD. Davis testified that she was at trial and could have testified.

Counsel testified that the decision to have Applicant testify was made during the course of the trial. Counsel stated that he had met with Davis several times over the course of the representation and had actually spoken to her more often than he had spoken with Applicant. Counsel was aware that Applicant had ADHD. Counsel testified that Applicant had appeared to understand their conversations. Counsel felt that Applicant made a good witness at trial. Counsel said that Applicant had consistently denied his guilt and never wavered. In deciding to advise Applicant to testify Counsel stated that he considered the strength of the victims' testimony, particularly Scott's. Counsel believed Applicant had been a strong, definitive, and unequivocal witness at trial. Counsel testified that he felt that Applicant's testimony on the issue of the surgery was adequate under the circumstances. Counsel intoned that the verdict turned on whether the jury believed the victims' identification.

I find that under these circumstances, Counsel's performance was within the range of reasonable norms. Counsel articulated his reasoning in presenting the evidence of Applicant's

surgery through Applicant's own testimony. I further find that Applicant has not demonstrated prejudice in this regard. Applicant offered no expert testimony on the issue of Applicant's physical limitations from the surgery. Therefore, it is merely speculative as to whether expert testimony on the subject would have aided the defense. Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005). Davis' testimony at PCR hearing regarding the surgery was largely cumulative to Applicant's own testimony. See Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Finally, Applicant's primary defense was alibi. The issue of whether Applicant could run was, in contrast, a minor one. By Applicant's own testimony, on the day of the robbery, he was able to ride in a car, walk, and visit friends. For these reasons, I find that counsel was not ineffective in this regard.

Failure to Present Additional Witnesses

Applicant asserted at hearing that Counsel should have called additional witnesses from the community as character witnesses on behalf of Applicant. Applicant also inquired as to why Counsel had not called additional alibi witnesses at trial.

Counsel testified that he did not present character witnesses and did not consider putting character in issue. Counsel stated that with regard to the other potential alibi witnesses, he did not feel that their testimony would have assisted the defense. Counsel expressed concern with the fact that at least one of the other boys, Lequin, had a juvenile record. There was also testimony that Lequin had said that Applicant spent the night with him the night before; this would have been inconsistent with testimony of Applicant and Johnson at trial. (See for example p. 248, lines 23-25.) Counsel testified that he believed Johnson was the best witness to assist in the alibi defense, in part because she was an adult.

I find that Counsel's performance in this regard was within reasonable professional norms. Counsel articulated a reasonable strategy for his presentation of the alibi defense through the testimony of Applicant and Johnson. Moreover, Applicant has demonstrated no prejudice in this regard. No additional alibi or character witnesses were presented at hearing. Therefore, it is merely speculative as to what such testimony may have consisted of. See for example Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Post-Trial Motion

Applicant further asserts that Counsel erred in failing to substantiate Reames' affidavit prior to the motion hearing. Counsel testified that the affidavit was brought to him. Counsel felt that Robinson, who had obtained the affidavit, was credible. Counsel stated that he felt he had a duty to bring the affidavit to the court's attention. I find that Counsel's performance in this regard was within reasonable professional norms. Moreover, Applicant has failed to demonstrate how Counsel's performance in this regard affected the outcome of the trial. There was no evidence presented that Reames would have testified differently at the motion hearing had counsel met with him. Had counsel failed to present the motion, the guilty verdict would not have been affected. For these reasons, I find that counsel was not ineffective in this regard.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his

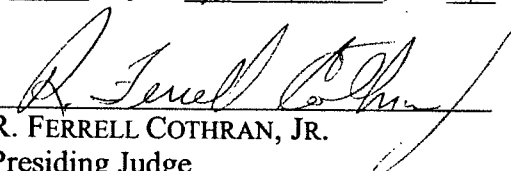
application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

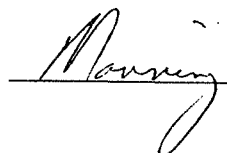
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to Rule 243, SCACR,² for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 22 day of Dec, 2009.


R. FERRELL COTHRAN, JR.
Presiding Judge
Third Judicial Circuit

, South Carolina.

² Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF LEE

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

DORIAN J. CAIN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**DEFENDANTS' MOTION
TO
RECONSIDER ORDER OF DISMISSAL**

Docket No. 2008-CP-31-0021

Now comes the Applicant, Dorian J. Cain, by undersigned counsel, and moves this Honorable Court to reconsider its Order of Dismissal. This motion is based on the following, to wit:

1. The South Carolina Court of Appeals has stated that "[t]o establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case." *Custodio v. State*, 611 S.E.2d 36, 38 (2007), citing, *Strickland v. Washington*, 466 U.S. 688, 104 S.C.2052, 80 L.Ed.2d. 674 (1984).

2. In January 2004, Charles T. Brooks, Esq. ("Attorney Brooks") was employed by Mrs. Gena Cain-Davis, mother of the Applicant who was present during the entire trial; and, who hired a private investigator to assist in the criminal matter.

3. At trial, which commenced on or about April 6, 2004, the Applicant and his mother gave conflicting testimony to that of Attorney Brooks as to the amount of time he spent with them in preparation of Applicant's defense. If the court is to rely upon the testimony of Attorney Brooks, the time spent amounted to less than two hours forty-five minutes. Moreover, it is important for the court to keep in mind the fact that Attorney Brooks was preparing for the trial of an eighteen-year-old boy who had never been in a criminal court before; and, who suffered with Attention Deficit Hyperactivity Disorder ("ADHD").

4. The Applicant's defense during the trial was alibi in that, at the time the alleged crime was committed, he was at the home of Mr. Lequint Johnson along with two (2) other individuals—Messrs. Donnie Jefferson and Demetrius McDonald. However, of the aforementioned

alibi witnesses, only Mr. Johnson was called to testify. Although the other two (2) witnesses were available, they were never called to trial to testify on behalf of the Applicant. Attorney Brooks provided no testimony before this Court as to why he believed it to be unnecessary to call the additional witnesses; to show that they were unavailable at the trial; or, that their testimony would not have supported Applicant's alibi.

5. It is undisputed that the Applicant had been subjected to testicular surgery which required the removal of one testicle; the remaining testicle was in a testicle bag which was stapled to the Applicant's inner thigh for purposes of support and stability; his movement was restricted; and, it was impossible for him to run.

6. Attorney Brooks did not place any emphasis on the Applicant's medical condition as a major factor to show his inability to commit the crime as said factor was only supported by the testimony of the Applicant and vague medical records which did not elaborate on his inability to run.

7. The prosecution's case significantly emphasized that, after the crime was committed, the Applicant ran away from the scene and escaped.

8. The Applicant, eighteen years old at the time of his trial, had no prior criminal record and his counsel failed to put his character in issue to buttress his truthfulness, credibility, reputation, and standing in his community.

9. Attorney Brooks also failed to call Mrs. Cain-Davis as a witness in support of Applicant's character, medical condition, or physiological condition (ADHD).

10. Attorney Brooks, at the hearing before this Court, admitted that he believed the jury's verdict was based on purely the victim's identification of the Applicant.

WHEREFORE, based on all of the above, the Applicant prays that this Honorable Court reconsider its Order of Dismissal.

Law Office
of
HEMPHILL P. PRIDE II


Hemphill P. Pride II
1401 Gregg Street
Post Office Box 4529
Columbia, South Carolina 29240
(803) 256-8015

ATTORNEY FOR APPLICANT

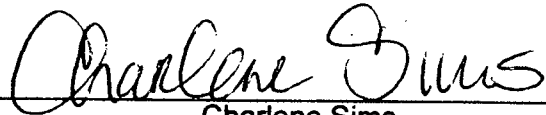
January 6, 2010.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, being an employee of the Law Office of Hemphill P. Pride II, LLC, certifies that on January 6, 2010 the foregoing Defendant's Motion to Reconsider Order of Dismissal in the case of *Dorian J. Cain v. State of South Carolina* (Docket No. 2008-GS-31-0021) was served on all concerned parties by the undersigned depositing or causing the deposit of a copy of said Motion on that date in the United States mail with sufficient postage affixed thereto and addressed as follows:

Mary S. Williams, Esq.
Assistant Attorney General
OFFICE OF THE STATE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211


Charlene Sims

Columbia, South Carolina

January 6, 2010.

STATE OF SOUTH CAROLINA
COUNTY OF LEE

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

DORIAN J. CAIN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**APPLICANT'S AMENDED MOTION
TO
RECONSIDER ORDER OF DISMISSAL**

Docket No. 2008-CP-31-0021

Now comes the Applicant, Dorian J. Cain, by undersigned counsel, and amends his previous Motion to Reconsider Order of Dismissal due to indiscriminate errors and inadvertence (i.e., age of the Applicant stated in paragraphs 3 and 8; and, the name of the resident stated in paragraph 4).

1. The South Carolina Court of Appeals has stated that "[t]o establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case." *Custodio v. State*, 611 S.E.2d 36, 38 (2007), citing, *Strickland v. Washington*, 466 U.S. 688, 104 S.C.2052, 80 L.Ed.2d. 674 (1984).

2. In January 2004, Charles T. Brooks, Esq. ("Attorney Brooks") was employed by Mrs. Gena Cain-Davis, mother of the Applicant who was present during the entire trial; and, who hired a private investigator to assist in the criminal matter.

3. At trial, which commenced on or about April 6, 2004, the Applicant and his mother gave conflicting testimony to that of Attorney Brooks as to the amount of time he spent with them in preparation of Applicant's defense. If the court is to rely upon the testimony of Attorney Brooks, the time spent amounted to less than two hours forty-five minutes. Moreover, it is important for the court to keep in mind the fact that Attorney Brooks was preparing for the trial of a sixteen-year-old boy who had never been in a criminal court before; and, who suffered with Attention Deficit Hyperactivity Disorder ("ADHD").

4. The Applicant's defense during the trial was alibi in that, at the time the alleged crime was committed, the Applicant was at the home of Mrs. Alphine Brooks, mother of Lequint Johnson, along with Lequint and Donnie Jefferson and was, later, joined by Demetrius McDonald who came and picked up Donnie and the Applicant. However, of the aforementioned alibi witnesses, Attorney Brooks only called Mrs. Brooks to testify. Although the other two (2) witnesses were available, they were never called to trial to testify on behalf of the Applicant. Attorney Brooks provided no testimony before this Court as to why he believed it to be unnecessary to call the additional witnesses; to show that they were unavailable at the trial; or, that their testimony would not have supported Applicant's alibi.

5. It is undisputed that the Applicant had been subjected to testicular surgery which required the removal of one testicle; the remaining testicle was in a testicle bag which was stapled to the Applicant's inner thigh for purposes of support and stability; his movement was restricted; and, it was impossible for him to run.

6. Attorney Brooks did not place any emphasis on the Applicant's medical condition as a major factor to show his inability to commit the crime as said factor was only supported by the testimony of the Applicant and vague medical records which did not elaborate on his inability to run.

7. The prosecution's case significantly emphasized that, after the crime was committed, the Applicant ran away from the scene and escaped.

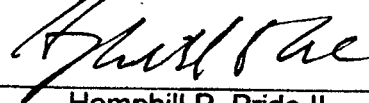
8. The Applicant, sixteen (16) years old at the time of his trial, had no prior criminal record and his counsel failed to put his character in issue to buttress his truthfulness, credibility, reputation, and standing in his community.

9. Attorney Brooks also failed to call Mrs. Cain-Davis as a witness in support of Applicant's character, medical condition, or physiological condition (ADHD).

10. Attorney Brooks, at the hearing before this Court, admitted that he believed the jury's verdict was based on purely the victim's identification of the Applicant.

WHEREFORE, based on all of the above, the Applicant prays that this Honorable Court reconsider its Order of Dismissal.

Law Office
of
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Post Office Box 4529
Columbia, South Carolina 29240
(803) 256-8015

ATTORNEY FOR APPLICANT

January 7, 2010.

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND }

CERTIFICATE OF SERVICE

The undersigned, being an employee of the Law Office of Hemphill P. Pride II, LLC, certifies that on January 7, 2010 the foregoing Applicant's Amended Motion to Reconsider Order of Dismissal in the case of *Dorian J. Cain v. State of South Carolina* (Docket No. 2008-GS-31-0021) was served on all concerned parties by the undersigned depositing or causing the deposit of a copy of said Amended Motion on that date in the United States mail with sufficient postage affixed thereto and addressed as follows:

Mary S. Williams, Esq.
Assistant Attorney General
OFFICE OF THE STATE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211


Charlene Sims

Columbia, South Carolina

January 7, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2008-CP-31-0021

Dorian Cain,)

Applicant,)

v.)

**RETURN TO APPLICANT'S MOTION
TO RECONSIDER**

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of the Applicant's Motion to Reconsider, in which he asks the Court to reconsider its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal of the Honorable R. Ferrell Cothran, Jr., dated November 22, 2009, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

II.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed. However, should the Court

wish to convene a hearing on this matter, Respondent would have no opposition to a hearing being convened.

Respectfully submitted,

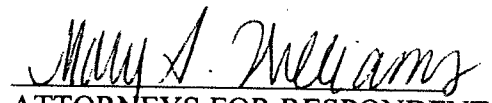
HENRY DARGAN McMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

Columbia, South Carolina.

January 7, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

2008-CP-31-0021

DORIAN CAIN)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

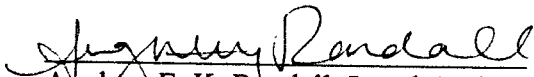
STATE OF SOUTH CAROLINA,)

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 to Applicant's Motion to Reconsider in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Hemphill P. Pride, Esquire
Law Office of Hemphill P. Pride II, LLC
Post Office Box 4529
Columbia SC 29240

DATED this 7th day of January, 2010.


 E. K. Randall, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LEE

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

DORIAN J. CAIN,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

**MOTION TO COMPEL DEPOSITION
OF
PICKENS K. MOYD, M.D.**

Docket No. 2008-CP-31-0021

NOW COMES Defendant Dorian Cain, by undersigned counsel, and moves this Honorable Court to enter an Order compelling the State to allow his undersigned counsel to depose Pickens K. Moyd, M.D., the surgeon who performed testicular surgery on the Applicant. This motion is based on the following, to wit:

1. At the trial of *State v. Dorian J. Cain* (2004-GS-31-0006), the prosecution's case significantly emphasized that, after the alleged crime was committed by the Applicant, he ran away from the scene and escaped.

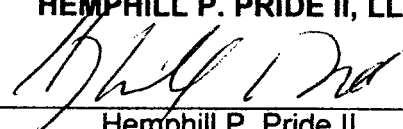
2. As indicated in Applicant's Amended Motion to Reconsider Order of Dismissal, it is undisputed that, prior to the crime at issue, the Applicant had undergone testicular surgery which required the removal of one testicle; the remaining testicle was in a testicle bag which was stapled to the Applicant's inner thigh for purposes of support and stability; his movement was restricted; and, it was impossible for the Applicant to run. Yet, at trial, no emphasis was placed on the Applicant's medical condition as a major factor to show his inability to allegedly "run and escape the scene."

3. Pickens K. Moyd, M.D., the surgeon who performed the Applicant's testicular surgery, was not called as an expert witness at trial to testify as to the medical condition of the Applicant at the time the alleged crime was committed by the Applicant.

4. Although Dr. Moyd was adamant about not having the time to appear in this Honorable Court, he has agreed to be deposed by the Applicant's undersigned counsel at a mutually convenient time.

WHEREFORE, based on the above, the Applicant prays that this Honorable Court will issue its Order allowing the deposition of Pickens K. Moyd, M.D. by his undersigned counsel.

Law Office
of
HEMPHILL P. PRIDE II, LLC



Hemphill P. Pride II
1401 Gregg Street
Post Office Box 4529
Columbia, South Carolina 29240
(803) 256-8015
hppride@bellsouth.net

ATTORNEY FOR APPLICANT

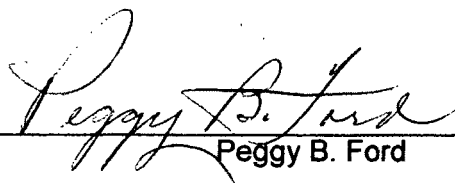
April 21, 2010.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

CERTIFICATE OF SERVICE

The undersigned, being an employee of the Law Office of Hemphill P. Pride II, LLC, certifies that on April 21, 2010, the foregoing Motion to Compel Deposition of Pickens K. Moyd, M.D. in the case of *Dorian J. Cain v. State of South Carolina* (Docket No. 2008-GS-31-0021) was served on the State by the undersigned depositing or causing the deposit of a copy of said Motion on that date in the United States mail with sufficient postage affixed thereto and addressed as follows:

Mary S. Williams, Esq.
Assistant Attorney General
OFFICE OF THE STATE ATTORNEY GENERAL
Post Office Box 11549
Columbia, South Carolina 29211


Peggy B. Ford

Columbia, South Carolina

April 21, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS

2008-CP-31-0021

Dorian Cain,

Applicant,

v.

RETURN TO MOTION
TO COMPEL

State of South Carolina,

Respondent.)
_____)

Applicant has filed a Motion to Compel Deposition dated April 21, 2010. Respondent submits this return in opposition to the proposed order compelling deposition. This court should issue an order ruling upon its opposition to this action.

Pursuant to this court's directive, Respondent set forth its position opposing the taking of additional testimony in the context of a Rule 59, SCRCP, motion in a letter dated April 8, 2010, a copy of which is attached hereto and incorporated herein by reference. In response to Applicant's letter requesting that a deposition be scheduled in this matter, Respondent submitted a letter dated April 15, 2010, a copy of which is attached hereto and incorporated herein by reference.

Respondent submits that this court should issue an order making findings with regard to the objections set forth in its April 8, 2010, letter. Respondent would oppose supplementation of testimony from an additional witness pursuant to the Rule 59, SCRCP, motion to alter or amend. Such a motion may not be

used to present to the court "an issue the party could have raised prior to judgment but did not." Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990). Applicant seeks to supplement additional testimony which could have been raised prior to judgment through the proposed deposition. Therefore, Applicant's motion should be denied.

Should the court order such testimony, Respondent submits that the testimony should be taken such that cross-examination is possible.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

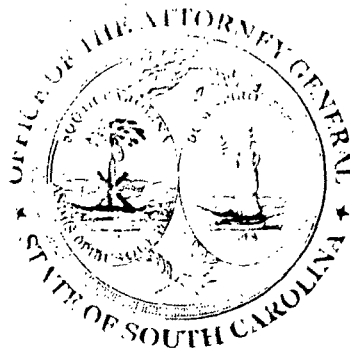
SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

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

4/29, 2010



HENRY McMASTER
ATTORNEY GENERAL

April 8, 2010

Honorable R. Ferrell Cothran, Jr.
Third Judicial Circuit Court
Post Office Drawer 700
Manning, South Carolina 29102

Re: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Judge Cothran:

Pursuant to our conversation in Manning on March 23, this letter briefly outlines the State's position regarding the submission of additional testimony in conjunction with the Applicant's Rule 59, SCRCp, motion.

First, the State would oppose supplementation of testimony from an additional witness pursuant to the motion to alter or amend. Such a motion may not be used to present to the court "an issue the party could have raised prior to judgment but did not." Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (Ct. App. 2009); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (Ct. App. 1990).

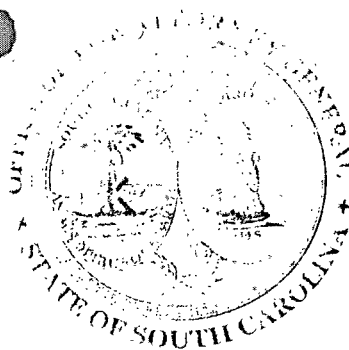
Second, if the court were to consider such testimony over the State's objection, it would be our position that such testimony be taken such that cross-examination would be possible.

Thank you for allowing me to address these issues via letter following the discussion. Please feel free to contact me should you have any questions or concerns. My office phone number is (803) 734-3737 and my email address is MSWilliams@scag.gov.

Best regards,

Mary S. Williams
Assistant Attorney General

CC: Hemphill P. Pride, II, Esq.



HENRY MCMASTER
ATTORNEY GENERAL

April 15, 2010

Honorable R. Ferrell Cothran, Jr.
Third Judicial Circuit Court
Post Office Drawer 700
Manning, South Carolina 29102

Hemphill P. Pride, II, Esquire
Law Office of Hemphill P. Pride, II, LLC
P.O. Box 4529
Columbia, SC 29240

Re: Dorian Cain v. State of South Carolina
2008-CP-31-0021

Dear Judge Cothran and Mr. Pride:

I am in receipt of Mr. Pride's letter of April 8 requesting a deposition be set in this matter. Pursuant to my letter stating the State's objection to such procedure, I would request that an order be entered addressing the State's opposition to the supplementation of additional witnesses at this time so that such issue could be preserved in the event of an appeal. Additionally, if the court does direct the deposition of the additional witness, the State would submit that the expense for such action be the Applicant's responsibility and the court's order should so indicate. Should the court order a deposition, I will certainly work with Mr. Pride to have this matter resolved as expeditiously as possible. I have attached copies of Mr. Pride's April 8 letter and my own for reference.

Please feel free to contact me should you have any questions or concerns. My office phone number is (803) 734-3737 and my email address is MSWilliams@scag.gov.

Best regards,

Mary S. Williams
Assistant Attorney General

STATE OF SOUTH CAROLINA)
 COUNTY OF LEE)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT

CASE NUMBER: 2008-CP-31-0021

DORIAN J. CAIN,)

Applicant)

STATE OF SOUTH CAROLINA,)

Respondant)

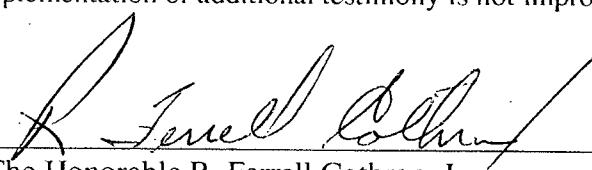
ORDER

Upon motion of Hemphill Pride II, Esq., counsel for the above-named Applicant, and for good cause shown,

IT IS HEREBY ORDERED that the deposition of Pickens K. Moyd, M.D., the physician who performed testicular surgery on the Applicant prior to the alleged crime in the case of *State v. Dorian J. Cain*, shall be taken by Hemphill P. Pride II, Esq. at a mutually convenient time for all concerned parties. The expense of the deposition is the responsibility of the Applicant.

For the purposes of preservation, the Respondant objects to the supplementation of additional testimony from an additional witness. Respondant claims that a motion to alter or amend may not be used to present to the court "an issue the party could have raised prior to judgment but did not." Gartside v. Gartside, 383 S.C. 35, 677 S.E.2d 621 (S.C. Ct. App. 2009); Hickman v. Hickman, 301 S.C. 455, 392 S.E.2d 481 (S.C. Ct. App 1990). This court notes Respondant's objection. However, after review of the testimony at trial, this court finds that the issue of the Applicant's testicular surgery, and it's affect on him, was raised during trial. Thus, the supplementation of additional testimony is not improper.

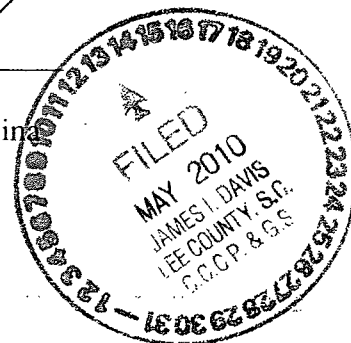
IT IS SO ORDERED.


 The Honorable R. Ferrell Cothran, Jr.
 Judge, Third Judicial Circuit of South Carolina

May 11, 2010
 Manning, South Carolina

Certified as a True Copy


 Clerk of Common Pleas
 County of Lee
 County, South Carolina



1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF LEE

3

4 DORIAN J. CAIN,

5 Applicant,

6 vs. CASE NO. 2008-CP-31-0021

7 STATE OF SOUTH CAROLINA,

8 Respondent.

CERTIFIED COPY

9

10 D E P O S I T I O N

11

12 WITNESS: PICKENS K. MOYD, MD

13 DATE: June 2, 2010

14 TIME: 11:12 a.m.

15 LOCATION: 528 East Carolina Avenue
Hartsville, South Carolina

16

TAKEN BY: Attorneys for the Applicant

17

REPORTED BY: YVONNE R. BOHANNON
Registered Merit Reporter,
Certified Realtime Reporter

18

19

20

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1 APPEARANCES:

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8 Columbia, South Carolina 29201
9 (803) 256-8015
10 hppride@bellsouth.net11 ATTORNEYS FOR THE RESPONDENT
12 STATE OF SOUTH CAROLINA:13 OFFICE OF THE ATTORNEY GENERAL
14 BY: MARY S. WILLIAMS
15 Post Office Box 11549
16 Columbia, South Carolina 29211
17 (803) 734-3737
18 (803) 734-4113 - FAX
19 mswilliams@ag.state.sc.us

20 ALSO PRESENT:

21 Gena Cain Davis
22 Peggy Bradley Ford

23 (INDEX AT REAR OF TRANSCRIPT)

24

25

1 STIPULATIONS: It is stipulated by and
2 between Counsel that this deposition is being taken
3 in accordance with the South Carolina Rules of
4 Civil Procedure; that all objections as to Notice
5 of this deposition are hereby waived; that all
6 objections except as to form are reserved until the
7 time of trial; and that the deponent waives the
8 right to read and sign the deposition transcript.

9 * * * * * * * * *

10 PICKENS K. MOYD, MD, being first
11 duly sworn, testified as follows:

12 EXAMINATION

13 BY MR. PRIDE:

14 Q. Doctor, I bet you've had your
15 deposition taken many a time.

16 A. Many, many, many.

17 Q. Do you want to read it or --

18 A. No, sir, not really.

19 Q. You'll waive it?

20 A. Yes, sir.

21 Q. All right. And, Doctor, just for -- to
22 let the judge know a little bit about you, if you'd
23 just tell us where you went to school --

24 A. All right.

25 Q. -- what degree you attained --

1 A. All right.

2 Q. -- and how long you have been
3 practicing medicine and what kind of medicine you
4 practice.

5 A. All right. I went to Clemson
6 University. I graduated there. Then I went to the
7 Medical College of Virginia for surgery residency
8 program, and that's a five-year program. It's
9 extremely competitive. But, anyway, those that
10 made it to the top graduate, and then we take our
11 surgery boards. I'm board certified in general
12 surgery, and then you go on to -- the highest
13 ranking you get is a fellow of American College of
14 Surgeons, and I'm that. I started practicing -- he
15 won't say it -- in 1961.

16 Q. And you have been practicing the entire
17 time here at Hartsville?

18 A. That's correct.

19 Q. All right. And, Doctor, give us your
20 address, please.

21 A. 528 East Carolina Avenue, Hartsville,
22 South Carolina.

23 Q. All right. And, Doctor, you were the
24 surgeon who performed the operation on Dorian Cain?

25 A. Yes.

1 Q. And according to our records, we think
2 that that surgery occurred on December the 1st,
3 2003; is that correct?

4 A. December 1st, 2003, yes.

5 Q. All right. And, Doctor, would you
6 describe the nature, condition and extent of the
7 surgery performed on the young man.

8 A. This was a 16-year-old boy who was
9 referred by Dr. Leon Hunt in Bishopville with an
10 undescended testicle.

11 Q. Tell us what an undescended --

12 A. All right. During gestation, during
13 the pregnancy, the testicles reside in the abdomen
14 in a little unborn fetus, and then the left
15 testicle usually descends into the scrotum and then
16 later on the right testicle. That's the -- the
17 right one is the last one down. It's not like a
18 piece of machinery, but that's the way it works.

19 If I'm making it sound too definite,
20 then you just have to pardon that or understand in
21 medicine that's the way it is supposed to be in the
22 vast majority of cases, see, but it doesn't matter
23 about all that.

24 This boy had an undescended testicle.
25 The little sac closed off before the testicle got

1 all the way down in the scrotum, and that's
2 technically called an undescended testicle. And
3 sometimes you do a -- remove the testicle under
4 those circumstances, but this boy absolutely did
5 not want that and the mother did not want that.
6 And the testicle was already -- it just barely got
7 trapped up there in the first place.

8 And I made a little note just to be on
9 the safe side in case anybody anywhere ever asked a
10 question. The surgeon noted due to the fact that
11 the patient has a testicle that was residing
12 relatively low in the canal and he very strongly
13 resisted having his testicle removed, which coupled
14 with the fact that the testicle in fact did lay low
15 in the canal as compared to many undescended
16 testicles and many problems of similar undescended
17 testicle problems exist, but since he's only 16
18 years old, it is fair that the orchiopexy was in
19 the best interest of all concerned. X-ray and
20 laboratory findings are recorded on the chart.

21 Q. Orchiopexy is what?

22 A. Bringing that testicle or -- down into
23 the scrotum like it's supposed to be in the first
24 place.

25 Q. Okay.

1 A. And then we put a little elastic band,
2 if you recall. It attaches to the opposite thigh
3 to hold it down into the scrotum until it all fixes
4 itself. This particular boy on postoperative
5 notes -- we wrote very extensive operative report
6 on this fellow, two pages single spaced, the
7 information exactly how we did it, why we did it,
8 why we did each part of the operative procedure so
9 that -- I do that so that if any time ever in the
10 future somebody wondered why something went wrong
11 or why I -- we did what we did, we have a written
12 factual report that's written immediately after I
13 got out of the operating room.

14 And that just makes the management of
15 all surgical procedures airtight. People say,
16 "Well, Pickens, how do you go decades and decades
17 without a lawsuit against you?" That's how. Be
18 sure you don't do malpractice and be sure that you
19 record it on the chart so that everything is just
20 immaculate.

21 And that's what this is. That's what
22 you're looking at here now.

23 Q. Doctor, I'm a third grade student and I
24 want you to explain to me --

25 A. All right.

1 Q. -- in terms that I can and anybody who
2 reads this transcript --

3 A. Yes, sir.

4 Q. -- after we finish they will be able to
5 discern exactly what went on.

6 A. Yes, sir.

7 Q. After you performed the surgery as I
8 understand from reading your medical records and
9 talking to you today --

10 A. Yes, sir.

11 Q. -- the next procedure was -- and this
12 is my terms -- to sort of latch the sac where the
13 testicle was in bound. Is that a good description
14 of what you did?

15 A. Yes, uh-huh.

16 Q. And bag -- and the way you attach that
17 bag that held the testicle was by stapling the bag
18 to one of his legs; is that correct?

19 A. Mr. Pride, you a whole lot smarter than
20 any third grade student, but we'll get on with
21 that. I'm going to give you that little comment.
22 Probably one of the smartest lawyers in this area.

23 Q. Well, that's nice of you to say.

24 A. Let's get back to what you -- your
25 question.

1 The testicle is up in the inguinal
2 canal. It's up above the scrotum, the sac, see,
3 and you have to go up and surgically dissect it
4 free and bring it down from up here into his sac,
5 see. And then if you remember, we make a little
6 tiny opening in the bottom of that sac and attach a
7 rubber band -- it's sterile and all that -- attach
8 it to the testicle and fix it in such a way when
9 the time comes to take it loose, you just clip it
10 and it slides back out.

11 And you recall that he had the little
12 rubber band attaching to the opposite thigh. Once
13 you bring it down -- the cremasteric muscle is the
14 little muscle that pulls the testicle up in the
15 sac. If a person gets real cold, there's a
16 tendency for that testicle to go back up high in
17 the scrotum, but there's a tendency for it to pull
18 back up.

19 Once you've gone through all this
20 trouble to get it down just exactly the way you
21 want it, by all means, do something to keep it from
22 going back up again, and so that's what the little
23 rubber band was, see, and the little 16-year-old
24 boy he's going to be up and down and about no
25 matter what you do to him, but as long as that

1 rubber band is putting a little tension on it --
2 and it will hurt if he pulls it too hard, see.
3 That just holds it down in the scrotum in the sac
4 until it sort of fixes itself there because we have
5 the fixing sutures too to hold it there.

6 But that rubber band -- at the big
7 medical center in Virginia they -- we always
8 demanded that we do that. It's just double safety
9 to keep it reduced down into the scrotum once you
10 get it down there. So that's what that's about.

11 Q. Doc, prior to performing that
12 operation, did you perform a physical examination
13 on him?

14 A. Yes, we did.

15 Q. Would you tell us -- in terms of what
16 the result of that exam was, did you find him to be
17 physically fit? Did you find him to be lacking in
18 fitness?

19 A. He was in excellent general physical
20 shape.

21 Q. Was he developed normally as a
22 16-year-old boy in terms of his physique and
23 muscles? Was he developed more or less than a
24 16-year-old boy?

25 A. He was perfectly normal, nice

1 16-year-old boy --

2 Q. All right.

3 A. -- except for this one little defect.

4 Q. Doctor, I'm going to propose a
5 hypothetical question to you.

6 A. All right.

7 Q. And in order for you to digest this
8 hypothetical proposition, I'm going to have to read
9 statements from different witnesses that testified
10 at his trial. Are you following me so far?

11 A. Of course.

12 Q. And, Doc, these witnesses described
13 what Dorian did in terms of his physical movements,
14 and once I have read what they say he did -- and I
15 can tell you that what I'm going to read you is in
16 fact correct because I extracted it from the trial.

17 Doc, I don't know if you know this or
18 not, but I was not his lawyer at the trial. There
19 was another lawyer named Mr. Brooks who was
20 representing him. So the colloquy that I will read
21 to you will be questions by his lawyer Mr. Brooks
22 from different witnesses who saw --

23 A. See, I don't know anything about a
24 trial or anything.

25 Q. Right. Well, it's good that you don't.

1 That's not relevant.

2 A. See, my job is to do good surgery and
3 good postop care, and, man, they're free to go.

4 Q. And that's good --

5 A. I know. That's fine.

6 Q. -- because that makes you not have a
7 dog in this fight.

8 A. That's right. That's exactly -- that's
9 a well-worded thing. I don't have a dog in this
10 fight.

11 Q. Right.

12 A. And I intend to be fair. Remember, I
13 talked to you on the telephone.

14 Q. Right.

15 A. I intend to be fair and honest.

16 Q. And once you told me that, I think you
17 would recall that my response was that's all I want
18 from you.

19 A. Yes, sir.

20 Q. Now, Doc, this is the testimony --

21 A. So he was tried for armed robbery.

22 Q. Armed robbery?

23 A. Is that right?

24 Q. Right.

25 A. I gotcha.

1 Q. Now, this will be marked --

2 A. I guess I should have known this. I
3 didn't even think about it one way or the other.

4 Q. I didn't tell you that because I don't
5 think that was important.

6 A. And it's not really relevant to my
7 position.

8 Q. To where you come in this pie.

9 MR. PRIDE: Please mark this as
10 Defendant's Exhibit 1.

11 (DEFT. EXH. 1, Edward Scott-Cross By
12 Mr. Brooks, marked for identification.)

13 BY MR. PRIDE:

14 Q. Now, this is the testimony of Edward
15 Scott, and Edward Scott is being examined -- asked
16 questions by Dorian's lawyer, Mr. Brooks.

17 A. All right.

18 Q. And it starts off with if he got -- "He
19 got a very clean face. Anybody could have
20 identified him." That's the answer.

21 And then the question is, "Did he have
22 a moustache?"

23 "He looked just like he look right
24 now." That's the answer.

25 The question, "Okay."

1 "I mean, he had a lot -- he had low --
2 he had a low haircut."

3 "Okay. But I'm talking about --
4 talking --"

5 A. Taking.

6 Q. "-- taking you back to that particular
7 time when you were robbed, when he focused on his
8 face -- when you focused on his face. Did you see
9 where -- whether or not this individual had
10 anything noticeable, features about his face like a
11 moustache, like hair on his chin?"

12 "No. He was -- he was clean-cut,
13 crew-cut haircut man and that was it."

14 "Okay. And when they looked okay and
15 when they looked --"

16 A. "They took."

17 Q. "-- took your money they all looked
18 all -- they all took off running?"

19 "They --"

20 "ANSWER: Took off running."

21 "Including him?" question.

22 "ANSWER: All of them went running,
23 went down the hill, and around the curve."

24 And the question is, "Around the curve
25 and down the hill?"

1 "Yes."

2 "MR. BROOKS: Okay. No other
3 questions, Judge."

4 And then turning to the next page, the
5 question is, "Okay. Did they -- after they got
6 your wallets did they run out of the store?"

7 "Yes."

8 All right. That's all on that page.

9 And then turning to page 111, line 13,
10 it says, "Okay. You and Mr. Scott, after the boys
11 left, you and Mr. Scott, y'all saw them run around
12 the curve?" And the answer is yes.

13 And turning to page 112, line six, it
14 says, "You ain't said nothing about them getting in
15 a car. You said they ran and cut through the
16 field."

17 "They cut through the field but they
18 made the car."

19 All right. The next part of it is on
20 page 125. It says on line 16, "Okay. After they
21 pointed the guns and took your wallets, what did
22 they do?"

23 "They turned around, ran out of the
24 door."

25 "Okay."

1 And now go to page 133, line 20. "Took
2 off out the door. Did they go to the right or to
3 the left?"

4 "They ran out the door, went to the
5 right, ran down the hill, and went to the left and
6 went on across up there to the other side -- other
7 street up there."

8 Now, to page 134, page 18 -- page 114
9 [sic], line 18. "And they all ran together? They
10 were --"

11 "ANSWER: Right after each other.
12 Right behind each other."

13 "They were going pretty fast?"

14 "As fast as they could go."

15 "As fast as they could go. Now, are
16 you sure they were on foot; they weren't in the
17 car?"

18 "They were on foot."

19 I think that's the end of that. I want
20 his testimony now.

21 MR. PRIDE: Please mark that as
22 Defendant's Exhibit 2, please.

23 (DEFT. EXH. 2, Dorian Cain-Direct By
24 Mr. Brooks, marked for identification.)

25 BY MR. PRIDE:

1 Q. Line 22, page 289.

2 A. Okay.

3 Q. It's the very first page. Line 22.

4 "Okay. All right. Now, where you -- were you able
5 to run?"

6 "No, sir."

7 And, doc, this is the testimony of
8 Dorian --

9 A. I understand.

10 Q. -- the young man that you operated on.

11 "No, sir."

12 "Why weren't you able to run?"

13 "I had surgery."

14 "What kind of surgery you had?"

15 "Testicle drop and I had it on December
16 the 1st and I got out -- got it out on, let me see,
17 I got the stitches out on -- when I got from out of
18 D.J.J."

19 D.J.J. is a juvenile facility. Okay.

20 Then the next question is, "Okay. So
21 you say after D.J.J. That was after being
22 arrested?"

23 "Yes, sir."

24 "Okay. Now, I know this is a little
25 uncomfortable?"

1 "ANSWER: Yes, sir."

2 "Tell the jury what procedure was that
3 you had?"

4 "Well, I had a testicle drop and I had
5 this, like, it was stapled to my leg until they
6 take the staples out."

7 "Okay. So was -- so were you able to
8 run? Okay. Who was the doctor --"

9 "No, sir, I wasn't able to run."

10 "Okay. Who was the doctor that did
11 that for you?"

12 "He was in Hartsville. I didn't get
13 his name."

14 A. Huh.

15 Q. This is Mr. Brooks.

16 "All right. May I approach the
17 witness?"

18 Then it goes on. But that is the
19 testimony of -- of Dorian.

20 And now we'll go to page 291. Go to
21 page 290 first at the bottom, line 24. "Can you
22 tell me what that is, Dorian? You can take a few
23 minutes and look at it?"

24 "It's a medical report from the
25 Carolina Pines -- Pins -- Pines."

1 "Okay. Is that where you had the
2 surgery done?"

3 "Yes, sir."

4 "Okay. And when you say stapled what
5 did they actually do?"

6 "Well, they dropped one of my
7 testicles."

8 "Okay."

9 "Because it was, it was, like, stuck to
10 my side. So they had to drop it because I had to
11 take a physical to go to my new school."

12 "Okay. Now, after you got out of
13 D.J.J., that's when they took the staples out?"

14 "Yes, I suppose -- I was supposed to
15 get it taken out like the Friday, but the people in
16 D.J.J. said they had -- they were going to take me,
17 but they never did take me. So I had to wait until
18 I got it out and reschedule an appointment. I had
19 to get it out, like, a week later."

20 "Okay."

21 "Staples."

22 "While you were still -- while you
23 still had those staples in you, were you able to
24 run?"

25 "No, I wasn't able to do my exams at

1 school, my gym exam."

2 "Okay. All right. And that's, is
3 that the medical report from the surgery?"

4 "Yes, sir."

5 "MR. BROOKS: Your Honor, we'd move to
6 have and admit --" I don't think the rest of that
7 is pertinent.

8 Based on the extracts that I have read
9 from the -- excerpts that I have read from the
10 testimony -- and I would point out to you that one
11 of the things that Dorian says, "It hurt if I
12 pulled it too hard," and the fact he said he wasn't
13 able to take his exams in physical ed, is it
14 probable that Dorian could have run from the scene?
15 Could he have been physically able to do that
16 considering the nature of the surgery, the age of
17 the young man and the condition that he was in at
18 the time after the surgery?

19 A. What day was the exam to be given?

20 MS. WILLIAMS: December 18th is the
21 date of the incident.

22 A. All right. Do you want me to dig that
23 out?

24 BY MR. PRIDE:

25 Q. Yeah.

1 A. Do y'all remember what the date is?

2 MS. WILLIAMS: December 1st was the
3 surgery. December 18th was the incident.

4 A. That's what I was -- that was my
5 question.

6 BY MR. PRIDE:

7 Q. The armed robbery took place --

8 A. So it was 18 days.

9 Q. 18 days. And the staples were taken
10 out a week after the 18th --

11 A. Seven days.

12 Q. Seven days?

13 A. Uh-huh.

14 Q. Which would have been the 25th. That
15 would have been the 25th of December.

16 MS. DAVIS: We came after that -- that
17 Monday when we came here, so it was that Monday
18 following that. He read -- you read it to me in
19 the -- in the report.

20 THE WITNESS: Okay.

21 MR. PRIDE: Okay. He testified the
22 staples were taken out -- don't take this down --
23 after the arrest.

24 MS. DAVIS: Yeah, because we had -- his
25 appointment was scheduled for that Friday -- he was

1 at D.J.J.

2 THE WITNESS: But he didn't keep that
3 appointment.

4 MS. DAVIS: No, he came back. You made
5 another appointment. You read it to me in his
6 initial report.

7 THE WITNESS: Okay, so the staples came
8 out -- supposed to come out a week after we do the
9 surgery. But he didn't come back that day, so he
10 came back the following what?

11 MS. DAVIS: No. We had an appointment
12 for that Friday, which would have been -- I think
13 it would have been December -- December the 18th or
14 19th. Whatever that Thursday was. We had an
15 appointment.

16 THE WITNESS: We saw him back on
17 December the 5th --

18 MS. DAVIS: Yes.

19 THE WITNESS: -- 2003.

20 MS. DAVIS: Yes.

21 THE WITNESS: At that time we noted the
22 surgery was doing for well.

23 MS. DAVIS: Yeah, we came for a
24 checkup.

25 THE WITNESS: The undescended testicle

1 was doing well. Everything seemed perfectly all
2 right. Then he came back on 12/22/03.

3 MS. DAVIS: Yes.

4 THE WITNESS: Okay. Okay. So that
5 must have been when he got his staples out.

6 MS. DAVIS: Yes, December the 22nd.

7 THE WITNESS: Okay. And then the --

8 MR. PRIDE: The event took place on
9 December the 15th.

10 MS. DAVIS: 18th.

11 MR. PRIDE: Oh, the robbery?

12 MS. DAVIS: Yes.

13 THE WITNESS: On the 18th?

14 MS. DAVIS: Yes.

15 THE WITNESS: So the -- that -- the
16 staples were not removed --

17 MS. DAVIS: No.

18 THE WITNESS: -- at that time. That's
19 a little unusual, but that's right. He didn't keep
20 that appointment -- --

21 MS. DAVIS: Because he was in D.J.J.
22 He had an appointment for --

23 THE WITNESS: I see. D.J.J. --

24 MR. PRIDE: It's a facility for jail.

25 THE WITNESS: I gotcha.

1 MR. PRIDE: It's a jail for children.

2 MS. DAVIS: They didn't transport --
3 they would not transport.

4 THE WITNESS: Juvenile incarceration.

5 Okay. I got it now.

6 MR. PRIDE: Yeah.

7 THE WITNESS: Okay. So the -- that
8 facility didn't bring him here --

9 MS. DAVIS: No.

10 THE WITNESS: -- as they probably
11 should have.

12 MS. DAVIS: Yes.

13 THE WITNESS: Okay. I got -- I got it
14 now. So he still had his staples 18 days later.

15 As a matter of fact, he had them to 22. That was
16 about three weeks before he got his sutures out.

17 BY MR. PRIDE:

18 Q. About 21 days.

19 A. Three weeks is 21 days.

20 Q. Yeah.

21 A. Okay.

22 Q. What I want you to do, Doc, is take
23 into consideration all that -- this information,
24 sort of filter all this information that we've
25 given you today and give us your professional

1 opinion. And I might preference [sic] my question
2 by telling you that the Court wants to know -- the
3 lawyer who represented him failed to emphasize his
4 medical condition like I claim he should have
5 because I think that would have helped that boy.

6 A. Right.

7 Q. If you was sitting on the jury, you
8 would certainly like to know the extent of the
9 surgery when somebody said he ran real fast as hard
10 as he could, around the curve and up a hill. So
11 I'm asking you as his physician, the person that
12 performed the surgery --

13 A. Two and a half weeks -- two and a half
14 weeks postop -- your question is, as I understand
15 it, two and a half weeks following surgery could he
16 run?

17 Q. Right.

18 A. All right. As I told you earlier,
19 Mr. Pride, the first thing a doctor has got to
20 preface his answer with is the truth, and that is I
21 don't know for sure.

22 My own son had a similar procedure, not
23 undescended testicle, but very similar procedure.
24 He was up and about all over the place in a week's
25 time because it worried me he was up and about so

1 much. A 16-year-old has a tendency -- and I've
2 operated on many, many teenagers -- to get up and
3 about, see.

4 So could he have run? See, I didn't
5 see him run. I didn't see how rapidly he run --
6 ran, but I listened carefully to you when they said
7 he ran around the corner and across the field
8 toward the car. So --

9 Q. And as hard as he could.

10 A. Yeah, well, as hard as he could.
11 Again, a doctor doesn't just talk to God. He
12 doesn't know. But in my expert opinion you'll have
13 to say he would have to be very scared to run that
14 fast, but, see, neither you nor I or anybody in
15 this room knows how "that fast" is because we
16 didn't see it, but apparently he was running pretty
17 fast.

18 Following an undescended testicle
19 operation, could he -- it would be possible but I
20 think not probable that he would run real hard 18
21 days after surgery. But he could run seven days
22 after surgery, but 14 days he could run, 18 days,
23 but can he run hard? I don't know. That's what I
24 told you is the honest truth.

25 It would be unlikely that a boy would

1 do anything that was strenuous 18 days after an --
2 essentially for the same as a hernia -- a hernia
3 repair. But did -- does this mean that it could
4 not have been him? That is really what your
5 question is.

6 Q. That is correct.

7 A. Yes, sir. And I understand that,
8 Mr. Price, and I'm trying to help a teenage boy and
9 everybody concerned, but I'm also trying to be very
10 honest and fair.

11 Q. That's all I ask of you, Doctor.

12 A. See, I know it, and that's what you
13 said on the telephone when you first called me.

14 He -- he could have done that, but it
15 would have been unusual and not likely. However,
16 once you couple with the fact that according to the
17 testimony of some people, he was under a lot of
18 duress, and under those circumstances maybe so, but
19 it would have been hard for him to do.

20 That's a good point that you have, and
21 I respect your opinion on that -- your position on
22 that, see. I don't know. I don't know if he could
23 run hard or not. And, besides, I don't know how
24 hard hard is, but I'm answering you as accurately
25 as possible bearing in mind that I'm here to tell

1 the truth, the whole truth and nothing but the
2 truth, see.

3 Unlikely, but possible. That's my
4 answer.

5 Q. Doc, let me ask you --

6 A. Yes, sir.

7 Q. -- considering again the nature and
8 extent of the operation that he had --

9 A. Yes, sir.

10 Q. -- and hypothetically if he did run in
11 the manner in which people described that he did
12 run hard -- as fast as he can --

13 A. Uh-huh.

14 Q. -- do you think the likelihood would
15 have been during the time he was incarcerated he
16 would have complained, "I'm hurting. I need some
17 attention," or do you think that all of his
18 problems would have subsided and he would not have
19 complained about his condition?

20 If you run that hard, would it hurt
21 him? That's what I'm --

22 A. I got the question. And I'm trying to
23 give you a considerate opinion. I can't just blurt
24 out an answer.

25 Q. You're a considerate man.

1 A. Yes, sir. But did -- did anybody
2 testify in the jail that he did or did not
3 complain?

4 Q. No. There's no evidence that he ever
5 complained. The only evidence that we do have is
6 his direct testimony in which he said that it --
7 that it hurt if he pulled it hard.

8 A. That's right.

9 Q. That's the only testimony.

10 A. I understand that. And I read it. And
11 that sounds very accurate, see.

12 After 18 days -- I don't know how stoic
13 this boy is. A lot of people would complain even
14 if they weren't -- hadn't run, see, after 18 days,
15 but a lot of people would not. 18 days is pretty
16 far out if the surgery is done, very, very
17 carefully. It used to be different, but now we
18 send people back -- we send them back to Sunoco to
19 work in less than seven days, but most of those
20 employees do a sedentary-type of work.

21 But could he -- is it likely that he
22 wouldn't have complained noticeably if the scenario
23 that one side of this issue is clean. In other
24 words, if he did in fact get involved in armed
25 robbery and did have to run hard, would he be

1 complaining? It's possible, but it's not
2 absolutely certain that he would, Mr. Pride.

3 Q. Okay. Doc, when you performed the
4 surgery, what were your recommendations for him
5 as -- in terms of his activities?

6 A. Take it easy. Don't exert himself too
7 much. Certainly don't strain. And I felt like the
8 boy sounded very compliant. The mother was
9 responsible.

10 I remember his case pretty good. You
11 know, we do thousands of operations. We don't
12 remember each one, but I remember undescended
13 testicles because we don't do them all the time.
14 We do a lot of them. He was a -- he was just a
15 normal, well-mannered young man. Now, I do
16 remember that much. That's about all I remember.

17 Q. Doc, if he ran, would it have pulled it
18 hard, being the stitches and the testicular that
19 was --

20 A. Since the rubber band was still on
21 there?

22 Q. Yeah.

23 A. Yeah, I believe it would. Yes. Now,
24 that's a good question. If that rubber band was
25 still intact -- and according to everything that's

1 been said to me, this occurred on the 18th. He
2 didn't get the thing cut loose till the 22nd, so it
3 in fact was present. Yes, that would hurt,
4 because, see, it's attached to the leg and that leg
5 would be running. So it would -- it would have
6 hurt if he had run.

7 Q. And would -- would it be most probable
8 that it would hurt to the extent that he could not
9 run or exert himself? Not possible, but in the
10 area of probability?

11 A. I understand the question.

12 Predicated on the assumption that one
13 side is telling the truth, if he had committed
14 armed robbery, I think his adrenaline would be
15 pumping. We've seen football players play hard
16 with a two bone fracture of the forearm. So
17 teenagers can perform when they're hurting. And
18 I've seen that many times because we did a lot of
19 work for the high school football team here.
20 Actually I probably did almost all of it for a long
21 time.

22 So the question can't -- could he?
23 Yeah, he could. Would it be probable? Well, it
24 just depends on how -- his state of mind and his
25 state of excitement, how much his adrenaline was

1 pumping. Those football players did that. But is
2 this -- this boy is not a football athlete, I don't
3 guess. I don't know.

4 No, you can't say probably not, but it
5 would hurt him. It would hurt him to run with that
6 rubber band on there. They're describing him
7 running. He would have to be hurting, but I don't
8 know.

9 Q. Would it be most probable, assuming
10 that he did run, that after he ran that he would
11 complain?

12 A. He most probably -- he would feel pain.

13 Q. Yes.

14 A. Now, is it probable that he would
15 complain? I don't know that boy well enough. A
16 lot of boys don't complain no matter, and some of
17 them complain at the drop of the hat, see. So it's
18 hard -- this is a hard deposition because I'm
19 trying hard to be completely honest. And I usually
20 don't have any trouble with a deposition because I
21 know the answers, but on some of the stuff you're
22 asking me --

23 Q. It's in the realm of probability. I
24 understand.

25 A. Yeah, and it's in the realm of

1 guesswork, and I don't want to sit here and guess.
2 I'm here to tell the total truth for everybody
3 concerned. And I don't want to guess, Mr. Pride..
4 He would most probably had he -- had he run hard
5 with the rubber band on his leg, he most probably
6 would be hurting when he got to wherever he was
7 going.

8 Q. Okay.

9 A. Would he complain? I don't know, and
10 neither do you or neither does anybody.

11 Q. Doc, when you saw him the last time
12 when you removed the stitches, did he complain?

13 A. I don't remember.

14 Q. And when you removed the stitches, did
15 you see anything that would lead you to believe
16 that there was any kind of rupture down there,
17 anything that was irregular during --

18 A. No, sir. And we -- if we had noted
19 anything irregular --

20 Q. You would have noted it?

21 A. -- at all abnormal, it always goes in
22 my note.

23 Q. Okay.

24 A. And there's no note to that effect, so
25 you could safely say there is no visible evidence

1 of trauma -- unusual trauma. When the stitches are
2 almost two and a half weeks old, almost three weeks
3 old, they embed themselves. It is harder to get
4 stitches out with the skintight clothing around,
5 and it makes it a little more difficult and it's
6 more painful to the patient to get those stitches
7 out once they've grown down into the incision.

8 But outside of that, Mr. Pride, I
9 don't -- I don't know. Certainly there was nothing
10 there that impressed us much when we took the
11 stitches out.

12 MR. PRIDE: Doctor, thank you very much
13 for your deposition.

14 THE WITNESS: Yes, sir.

15 EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Doctor, can you tell me, do you have
18 notes about when you saw him after the operation?

19 A. Yes, sir.

20 Q. Can you tell me what -- do those notes
21 reflect the dates that you saw him?

22 A. Yeah.

23 Q. Okay. And -- and it is the -- December
24 22nd where the stitches were removed?

25 A. Yes.

1 Q. And that's reflected in the notes you
2 have?

3 A. Well, see, he's back to get his
4 stitches out.

5 Q. Okay.

6 A. You know, we don't say, "He took his
7 stitches out." He's back to get his stitches out.
8 I take them out and send them on home.

9 Q. Is that --

10 A. But we do make detailed notes if we see
11 anything abnormal as I already testified. But if
12 there's practically nothing on there and we take
13 stitches out and we take -- during that time when I
14 was doing very much surgery, we'd take many, many
15 stitches out on a number of patients in a day and
16 it's over.

17 If they've done well and they look
18 fine, they're feeling fine, the testicle is in that
19 sac, it's just a routine thing. It would be like a
20 barber saying, "I need to cut your hair." It's --
21 no, you don't write a lot of notes about what's
22 abundantly clear already.

23 Q. Certainly. Is it normal to wait that
24 long to remove the stitches or --

25 A. No, ma'am. It's not normal to wait

1 that long.

2 Q. What is the normal?

3 A. Seven days.

4 Q. Seven days. Do you have any notes
5 about why it was longer than seven days in this
6 instance?

7 A. Well, you heard the testimony. He was
8 in jail and the people in the jail did not bring
9 him as they were supposed to do to get his stitches
10 out --

11 Q. On --

12 A. -- and he had to wait until after he
13 got out of jail to come and get his stitches out as
14 well.

15 Q. But you're --

16 A. I'm sure you have read these records,
17 haven't you?

18 Q. No, sir. I haven't been provided
19 those, I'm sorry.

20 So normally it would have been
21 scheduled before the 18th?

22 A. Yes.

23 Q. Okay. And that --

24 A. You went to law school. Did they do
25 the fiduciary duty course there?

1 Q. Yes, sir.

2 A. Okay. Just ask the question.

3 Q. Well, I can't -- I can't get his
4 records unless they give them to me.

5 A. Oh, you can't?

6 Q. No, sir.

7 A. You can't. You don't have access to
8 records.

9 MR. PRIDE: Well, his records were in
10 the transcript because they were admitted during
11 the trial, right?

12 MS. WILLIAMS: There was some records
13 that were admitted.

14 MR. PRIDE: The same records.

15 MS. WILLIAMS: I haven't seen those
16 either.

17 THE WITNESS: Hey, I don't care,
18 lady -- Ms. Williams. I'm not ridiculing you at
19 all. I was not speaking demeaning at you.

20 BY MS. WILLIAMS:

21 Q. No, I was just asking because he went
22 to jail on the 18th would it be normal --

23 A. Seven days.

24 Q. So that was strange.

25 And you would have put restrictions on

1 his daily activities, do you recall?

2 A. As I testified earlier, take it easy.

3 Q. All right. But just to make sure, this
4 is in the realm of likely, but possible, is that
5 correct, that someone would run that many days
6 after a surgery?

7 A. Unlikely but possible, that's my -- my
8 position in this issue.

9 Q. I understand. I had surgery Thursday.
10 I done a lot of stuff I wasn't supposed to do as
11 well.

12 A. Yes, ma'am. And that's right. And
13 different people would -- it's just so amazing what
14 one person will do and some will lay up in the bed
15 crying their eyes out, and some kids will be out
16 there riding a bicycle. And it really is hard if a
17 doctor -- just trying to be completely honest. And
18 that's my reputation -- to be a hundred percent
19 accurate when you really honest to God do not know
20 the answer.

21 Q. Okay.

22 A. Like I told Mr. Pride, we did the best
23 we could on this deposition.

24 MS. WILLIAMS: Doctor, thank you for
25 your time.

1 THE WITNESS: Yes, ma'am.

2 (The deposition was concluded at

3 11:59 a.m.)

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1 CERTIFICATE OF REPORTER

2 I, Yvonne R. Bohannon, Registered Merit
3 Reporter, Certified Realtime Reporter, and Notary
4 Public for the State of South Carolina at Large, do
5 hereby certify:

6 That the foregoing transcript was taken
7 before me on the date and at the time and location
8 stated on page 1 of this transcript; that the
9 deponent was duly sworn to testify to the truth,
10 the whole truth and nothing but the truth; that the
11 testimony of the deponent and all objections made
12 at the time of the examination were recorded
13 stenographically by me and were thereafter
14 transcribed; that the foregoing deposition as typed
15 is a true, accurate and complete record of the
16 testimony of the deponent and of all objections
17 made at the time of the examination to the best of
18 my ability.

19 I further certify that I am neither
20 related to nor counsel for any party to the cause
21 pending or interested in the events thereof.

22 Witness my hand, I have hereunto
23 affixed my official seal June 15, 2010, at
24 Columbia, Richland County, South Carolina.

25
Yvonne R. Bohannon
Registered Merit
Reporter, CRR
My Commission expires
April 11, 2015



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I N D E X

Page

STIPULATIONS

3

EXAMINATION

BY MR. PRIDE

3

BY MS. WILLIAMS

34

CERTIFICATE OF REPORTER

40

E X H I B I T S

DEFENDANT'S

1 Edward Scott-Cross By Mr. Brooks

13

2 Dorian Cain-Direct By Mr. Brooks

16

A	April 40:19	board 4:11	4:11 40:2	consideration	defect 11:3
abdomen 5:13	area 8:22 31:10	boards 4:11	certify 40:3,11	24:23	Defendant's
ability 40:10	armed 12:21,22	Bohannon 1:17	chart 6:20 7:19	considering	13:10 16:22
able 8:4 17:4,12	21:7 29:24	40:2,17	checkup 22:24	20:16 28:7	41:10
18:7,9 19:23	31:14	bone 31:16	children 24:1	corner 26:7	definite 5:19
19:25 20:13	arrest 21:23	bottom 9:6	chin 14:11	correct 4:18 5:3	DEFT 13:11
20:15	arrested 17:22	18:21	circumstances	8:18 11:16	16:23
abnormal 33:21	asked 6:9 13:15	bound 8:13	6:4 27:18	27:6 38:5	degree 3:25
35:11	asking 25:11	Box 1:22 2:4,10	Civil 3:4	counsel 3:2	demand 10:8
absolutely 6:4	32:22 37:21	boy 5:8,24 6:4	claim 25:4	40:12	demeanor
30:2	assuming 32:9	7:4 9:24 10:22	clean 13:19	County 1:2	37:19
abundantly	assumption	10:24 11:1	29:23	40:14	depends 31:24
35:22	31:12	25:5 26:25	clean-cut 14:12	couple 27:16	deponent 3:7
access 37:7	athlete 32:2	27:8 29:13	clear 35:22	coupled 6:13	40:6,7,9
accurate 29:11	attach 8:16 9:6	30:8 32:2,15	Clemson 4:5	course 11:11	deposition 3:2,5
38:19 40:9	9:7	boys 15:10	clip 9:9	36:25	3:8,15 32:18
accurately	attached 31:4	32:16	closed 5:25	Court 1:1,22	32:20 34:13
27:24	attaches 7:2	Bradley 2:15	clothing 34:4	25:2	38:23 39:2
activities 30:5	attaching 9:12	bring 9:4,13	cold 9:15	cremasteric	40:8
38:1	attained 3:25	24:8 36:8	College 4:7,13	9:13	descends 5:15
address 4:20	attention 28:17	Bringing 6:22	colloquy 11:20	crew-cut 14:13	describe 5:6
admit 20:6	ATTORNEY	Brooks 11:19	Columbia 1:23	CRR 40:18	described 11:12
admitted 37:10	2:9	11:21 13:12	2:5,11 40:14	crying 38:15	28:11
37:13	Attorneys 1:16	13:16 15:2	come 13:8 22:8	curve 14:23,24	describing 32:6
adrenaline	2:2,8	16:24 18:15	22:9 36:13	15:12 25:10	description 8:13
31:14,25	Avenue 1:15	20:5 41:11,12	comes 9:9	cut 15:15,17	detailed 35:10
affixed 40:14	4:21		comment 8:21	31:2 35:20	developed 10:21
age 20:16	a.m 1:14 39:3		Commission		10:23
Agency 1:22		C	40:18	D	different 11:9
ain't 15:14	B	Cain 1:4 2:2,15	committed	D 1:10 41:1	11:22 29:17
airtight 7:15	B 41:8	4:24	31:13	daily 38:1	38:13
amazing 38:13	back 8:24 9:10	Cain-Direct	COMMON 1:1	date 1:13 20:21	difficult 34:5
American 4:13	9:16,18,22	16:23 41:12	compared 6:15	21:1 40:5	dig 20:22
answer 13:20	14:6 22:4,9,10	called 6:2 27:13	competitive 4:9	dates 34:21	digest 11:7
13:24 14:20	22:16 23:2	canal 6:12,15	complain 29:3	Davis 2:15	direct 29:6
14:22 15:12	29:18,18 35:3	9:2	29:13 32:11	21:16,24 22:4	discern 8:5
16:11 18:1	35:7	car 15:15,18	32:15,16,17	22:11,18,20	dissect 9:3
25:20 28:4,24	bag 8:16,17,17	16:17 26:8	33:9,12	22:23 23:3,6	doc 10:11 11:12
38:20	band 7:1 9:7,12	care 12:3 37:17	complained	23:10,12,14	11:17 12:20
answering	9:23 10:1,6	carefully 26:6	28:16,19 29:5	23:17,21 24:2	17:7 24:22
27:24	30:20,24 32:6	29:17	29:22	24:9,12	28:5 30:3,17
answers 32:21	33:5	Carolina 1:1,7	complaining	day 20:19 22:9	33:11
anybody 6:9 8:1	barber 35:20	1:15,15,23 2:5	30:1	35:15	doctor 3:14,21
13:19 26:14	barely 6:6	2:8,11 3:3	complete 40:9	days 21:8,9,11	4:19,23 5:5
29:1 33:10	Based 20:8	4:21,22 18:25	completely	21:12 24:14	7:23 11:4 18:8
anyway 4:9	bearing 27:25	40:3,14	32:19 38:17	24:18,19	18:10 25:19
apparently	bed 38:14	case 1:6 6:9	compliant 30:8	26:21,21,22	26:11 27:11
26:16	believe 30:23	30:10	COMPUSCR...	26:22 27:1	34:12,17
APPEARAN...	33:15	cases 5:22	1:21	29:12,14,15	38:17,24
2:1	best 6:19 38:22	cause 40:12	concerned 6:19	29:19 36:3,4,5	dog 12:7,9
Applicant 1:5	40:10	center 10:7	27:9 33:3	37:23 38:5	doing 22:22
1:16 2:2	bet 3:14	certain 30:2	concluded 39:2	decades 7:16,16	23:1 35:14
appointment	bicycle 38:16	certainly 25:8	condition 5:6	December 5:2,4	door 15:24 16:2
19:18 21:25	big 10:6	30:7 34:9	20:17 25:4	17:15 20:20	16:4
22:3,5,11,15	Bishopville 5:9	35:23	28:19	21:2,3,15	Dorian 1:4 2:2
23:20,22	bit 3:22	CERTIFICA...	considerate	22:13,13,17	4:24 11:13
approach 18:16	blurt 28:23	40:1 41:6	28:23,25	23:6,9 34:23	16:23 17:8
		certified 1:18			

18:19,22 20:11,14 41:12 Dorian's 13:16 double 10:8 Dr 5:9 drop 17:15 18:4 19:10 32:17 dropped 19:6 due 6:10 duly 3:11 40:6 duress 27:18 duty 36:25 D.J.J 17:18,19 17:21 19:13 19:16 22:1 23:21,23	31:25 exert 30:6 31:9 EXH 13:11 16:23 Exhibit 13:10 16:22 exist 6:17 expert 26:12 expires 40:18 explain 7:24 extensive 7:5 extent 5:6 25:8 28:8 31:8 extracted 11:16 extracts 20:8 extremely 4:9 eyes 38:15	fitness 10:18 five-year 4:8 fix 9:8 fixes 7:3 10:4 fixing 10:5 focused 14:7,8 following 11:10 21:18 22:10 25:15 26:18 follows 3:11 foot 16:16,18 football 31:15 31:19 32:1,2 Ford 2:15 forearm 31:16 foregoing 40:4 40:8 form 3:6 fracture 31:16 free 9:4 12:3 Friday 19:15 21:25 22:12 Full-Service 1:22 further 40:11 future 7:10	graduate 4:10 graduated 4:6 Gregg 2:5 grown 34:7 guess 13:2 32:3 33:1,3 guesswork 33:1 guns 15:21 gym 20:1	hurt 10:2 20:11 28:20 29:7 31:3,6,8 32:5 32:5 hurting 28:16 31:17 32:7 33:6 hypothetical 11:5,8 hypothetically 28:10	24:4
E	F	G	H	I	K
E 1:10 41:1,8 earlier 25:18 38:2 East 1:15 4:21 easy 30:6 38:2 ed 20:13 Edward 13:11 13:14,15 41:11 effect 33:24 either 37:16 elastic 7:1 embed 34:3 emphasize 25:3 employees 29:20 entire 4:16 essentially 27:2 event 23:8 events 40:12 everybody 27:9 33:2 evidence 29:4,5 33:25 exactly 7:7 8:5 9:20 12:8 exam 10:16 20:1 20:19 examination 3:12 10:12 34:15 40:7,10 41:4 examined 13:15 exams 19:25 20:13 excellent 10:19 excerpts 20:9 excitement	face 13:19 14:8 14:8,10 facility 17:19 23:24 24:8 fact 6:10,14,14 11:16 20:12 24:15 27:16 29:24 31:3 factual 7:12 failed 25:3 fair 6:18 12:12 12:15 27:10 far 11:10 29:16 fast 16:13,14,15 25:9 26:14,15 26:17 28:12 FAX 2:12 features 14:10 feel 32:12 feeling 35:18 fellow 4:13 7:6 felt 30:7 fetus 5:14 fiduciary 36:25 field 15:16,17 26:7 fight 12:7,10 filter 24:24 find 10:16,17 findings 6:20 fine 12:5 35:18 35:18 finish 8:4 FIRM 2:3 first 3:10 6:7,23 17:3 18:21 25:19 27:13 fit 10:17	Gena 2:15 general 2:9 4:11 10:19 gestation 5:12 getting 15:14 give 4:19 8:21 24:25 28:23 37:4 given 20:19 24:25 go 4:12 7:16 9:3 9:16 12:3 16:1 16:2,14,15 18:20,20 19:11 God 26:11 38:19 goes 18:18 33:21 going 8:21 9:22 9:24 11:4,8,15 16:13 19:16 33:7 good 8:13 11:25 12:2,3,4 27:20 30:10,24 gotcha 12:25 23:25 grade 7:23 8:20	hair 14:11 35:20 haircut 14:2,13 half 25:13,13,15 34:2 hand 40:13 hard 10:2 20:12 25:9 26:9,10 26:20,23 27:19,23,24 27:24 28:12 28:20 29:7,25 30:18 31:15 32:18,18,19 33:4 38:16 harder 34:3 Hartsville 1:15 4:17,21 18:12 hat 32:17 heard 36:7 held 8:17 help 27:8 helped 25:5 HEMPHILL 2:3,4 hereunto 40:13 hernia 27:2,2 Hey 37:17 high 9:16 31:19 highest 4:12 hill 14:23,25 16:5 25:10 hold 7:3 10:5 holds 10:3 home 35:8 honest 12:15 26:24 27:10 32:19 38:17 38:19 Honor 20:5 hpride@bell... 2:6 Huh 18:14 hundred 38:18 Hunt 5:9	identification 13:12 16:24 identified 13:20 II 2:3,4 immaculate 7:20 immediately 7:12 important 13:5 impressed 34:10 incarcerated 28:15 incarceration 24:4 incident 20:21 21:3 incision 34:7 Including 14:21 INDEX 2:17 individual 14:9 information 7:7 24:23,24 inguinal 9:1 initial 22:6 instance 36:6 intact 30:25 intend 12:12,15 interest 6:19 interested 40:12 involved 29:24 irregular 33:17 33:19 issue 29:23 38:8	known 13:2 knows 26:15
					L
					laboratory 6:20 lacking 10:17 lady 37:18 Large 40:3 latch 8:12 law 2:3 36:24 lawsuit 7:17 lawyer 11:18,19 11:21 13:16 25:3 lawyers 8:22 lay 6:14 38:14 lead 33:15 LEE 1:2 left 5:14 15:11 16:3,5 leg 18:5 31:4,4 33:5 legs 8:18 Leon 5:9 Let's 8:24 likelihood 28:14 line 15:9,13,20 16:1,9 17:1,3 18:21 listened 26:6 little 3:22 5:14 5:25 6:8 7:1 8:21 9:5,11,14 9:22,23 10:1 11:3 17:24 23:19 34:5 location 1:15

40:5 long 4:2 9:25 31:20 35:24 36:1 longer 36:5 look 13:23 18:23 35:17 looked 13:23 14:14,15,17 looking 7:22 loose 9:9 31:2 lot 8:19 14:1 27:17 29:13 29:15 30:14 31:18 32:16 35:21 38:10 low 6:12,14 14:1,2	money 14:17 mother 6:5 30:8 moustache 13:22 14:11 move 20:5 movements 11:13 MOYD 1:12 3:10 mswilliams@... 2:12 muscle 9:13,14 muscles 10:23	2:9,10 official 40:14 Oh 23:11 37:5 okay 6:25 13:25 14:3,14,14 15:2,5,10,20 15:25 17:2,4 17:19,20,24 18:7,8,10 19:1 19:4,8,12,20 20:2 21:20,21 22:7 23:4,4,7 24:5,7,13,21 30:3 33:8,23 34:23 35:5 36:23 37:2 38:21 old 6:18 34:2,3 once 9:12,19 10:9 11:14 12:16 27:16 34:7 opening 9:6 operated 17:10 26:2 operating 7:13 operation 4:24 10:12 26:19 28:8 34:18 operations 30:11 operative 7:5,8 opinion 25:1 26:12 27:21 28:23 opposite 7:2 9:12 orchiopexy 6:18 6:21 order 11:7 outside 34:8	patient 6:11 34:6 patients 35:15 Peggy 2:15 pending 40:12 people 7:15 19:15 27:17 28:11 29:13 29:15,18 36:8 38:13 percent 38:18 perfectly 10:25 23:1 perform 10:12 31:17 performed 4:24 5:7 8:7 25:12 30:3 performing 10:11 person 9:15 25:11 38:14 pertinent 20:7 physical 10:12 10:19 11:13 19:11 20:13 physically 10:17 20:15 physician 25:11 physique 10:22 Pickens 1:12 3:10 7:16 pie 13:8 piece 5:18 Pines 18:25,25 Pins 18:25 place 6:7,24 21:7 23:8 25:24 play 31:15 players 31:15 32:1 PLEAS 1:1 please 4:20 13:9 16:21,22 point 20:10 27:20 pointed 15:21 position 13:7 27:21 38:8 possible 26:19 27:25 28:3 30:1 31:9 38:4 38:7 Post 1:22 2:4,10 postop 12:3 25:14	postoperative 7:4 practically 35:12 practice 4:4 practicing 4:3 4:14,16 Predicated 31:12 prcface 25:20 preference 25:1 pregnancy 5:13 present 2:14 31:3 pretty 16:13 26:16 29:15 30:10 Price 27:8 Pride 2:3,4 3:13 8:19 13:9,13 16:21,25 20:24 21:6,21 23:8,11,24 24:1,6,17 25:19 30:2 33:3 34:8,12 37:9,14 38:22 41:5 prior 10:11 probability 31:10 32:23 probable 20:14 26:20 31:7,23 32:9,14 probably 8:22 24:10 31:20 32:4,12 33:4,5 problems 6:16 6:17 28:18 procedure 3:4 7:8 8:11 18:2 25:22,23 procedures 7:15 profccsional 24:25 program 4:8,8 propose 11:4 proposition 11:8 provided 36:18 Public 40:3 pull 9:17 pulled 20:12 29:7 30:17 pulls 9:14 10:2 pumping 31:15 32:1	put 7:1 37:25 putting 10:1
M machinery 5:18 majority 5:22 making 5:19 malpractice 7:18 man 5:7 12:3 14:13 17:10 20:17 28:25 30:15 management 7:14 manner 28:11 mark 13:9 16:21 marked 13:1,12 16:24 MARY 2:10 matter 5:22 9:25 24:15 32:16 ma'am 35:25 38:12 39:1 MD 1:12 3:10 mean 14:1 27:3 means 9:21 medical 4:7 8:8 10:7 18:24 20:3 25:4 medicine 4:3,3 5:21 Merit 1:18 40:2 40:17 mind 27:25 31:24 minutes 18:23 Monday 21:17 21:17	N N 1:10 41:1 name 18:13 named 11:19 nature 5:6 20:16 28:7 nced 28:16 35:20 neither 26:14 33:10,10 40:11 never 19:17 new 19:11 nice 8:23 10:25 normal 10:25 30:15 35:23 35:25 36:2 37:22 normally 10:21 36:20 Notary 40:2 note 6:8 33:22 33:24 noted 6:10 22:21 33:18 33:20 notes 7:5 34:18 34:20 35:1,10 35:21 36:4 Notice 3:4 noticeable 14:10 noticeably 29:22 number 35:15	P P 1:10 2:3,4 page 15:4,8,9,13 15:20 16:1,8,8 16:8 17:1,3 18:20,21 40:5 41:2 pages 7:6 pain 32:12 painful 34:6 pardon 5:20 part 7:8 15:19 particular 7:4 14:6 party 40:12	Q question 6:10 8:25 11:5 13:21,25 14:21,24 15:5 17:20 21:5 25:1,14 27:5 28:22 30:24 31:11,22 37:2 questions 11:21 13:16 15:3	R R 1:17 40:2,17 ran 15:15,23 16:4,5,9 25:9 26:6,7 30:17 32:10 ranking 4:13 rapidly 26:5 read 3:8,17 11:8 11:14,15,20 20:8,9 21:18 21:18 22:5 29:10 36:16 reading 8:8 reads 8:2 real 9:15 25:9 26:20 really 3:18 13:6 27:4 38:16,19 realm 32:23,25 38:4 Realtime 1:18 40:2 REAR 2:17 recall 7:2 9:11 12:17 38:1 recommenda... 30:4 record 7:19 40:9 recorded 6:20 40:7 records 5:1 8:8 36:16 37:4,8,9 37:12,14 reduced 10:9 referred 5:9 reflect 34:21 reflected 35:1 Registered 1:18 40:2,17 related 40:12	

relatively 6:12	17:4 18:16	Scott 13:15,15	24:24	surgeon 4:24	6:3,6,11,13,14
relevant 12:1	20:2,22 23:2	15:10,11	sound 5:19	6:10	6:17,22 8:13
13:6	23:19 25:6,17	Scott-Cross	sounded 30:8	Surgeons 4:14	8:17 9:1,8,14
remember 9:5	25:18 29:8	13:11 41:11	sounds 29:11	surgery 4:7,11	9:16 17:15
12:12 21:1	37:11 38:3,12	scrotum 5:15	South 1:1,7,15	4:12 5:2,7 8:7	18:4 22:25
30:10,12,12	robbed 14:7	6:1,23 7:3 9:2	1:23 2:5,8,11	12:2 17:13,14	25:23 26:18
30:16,16	robbery 12:21	9:17 10:3,9	3:3 4:22 40:3	19:2 20:3,16	35:18
33:13	12:22 21:7	seal 40:14	40:14	20:18 21:3	testicles 5:13
remove 6:3	23:11 29:25	sedentary-type	spaced 7:6	22:9,22 25:9	6:16 19:7
35:24	31:14	29:20	speaking 37:19	25:12,15	30:13
removed 6:13	room 7:13	see 5:22 9:2,5	stapled 18:5	26:21,22	testicular 30:18
23:16 33:12	26:15	9:23 10:2	19:4	29:16 30:4	testified 3:11
33:14 34:24	routine 35:19	11:23 12:2	staples 18:6	35:14 38:6,9	11:9 21:21
repair 27:3	rubber 9:7,12	14:8 17:16	19:13,21,23	snrgical 7:15	35:11 38:2
report 7:5,12	9:23 10:1,6	23:23 26:3,4,5	21:9,22 22:7	surgically 9:3	testify 29:2 40:6
18:24 20:3	30:20,24 32:6	26:5,14,16	23:5,16 24:14	sutures 10:5	testimony 12:20
21:19 22:6	33:5	27:12,22 28:2	stapling 8:17	24:16	13:14 16:20
REPORTED	Rules 3:3	29:11,14 31:4	started 4:14	sworn 3:11 40:6	17:7 18:19
1:17	run 15:6,11	32:17 33:15	starts 13:18		20:10 27:17
Reporter 1:18	17:5,12 18:8,9	35:3,10	state 1:1,7 2:8	T	29:6,9 36:7
1:18 40:1,2,2	19:24 20:14	seen 31:15,18	31:24,25 40:3	T 1:10 41:8	40:7,9
40:18 41:6	25:16 26:4,5,5	37:15	stated 40:5	take 4:10 9:9	thank 34:12
Reporting 1:22	26:13,20,21	send 29:18,18	statements 11:9	18:6,22 19:11	38:24
represented	26:22,23	35:8	stenographica...	19:16,17	thereof 40:12
25:3	27:23 28:10	seven 21:11,12	40:8	20:13 21:22	thigh 7:2 9:12
representing	28:12,20	26:21 29:19	sterile 9:7	24:22 30:6	thing 12:9 25:19
11:20	29:14,25 31:6	36:3,4,5 37:23	stipulated 3:1	35:8,12,13,14	31:2 35:19
reputation	31:9 32:5,10	shape 10:20	STIPULATI...	38:2	things 20:11
38:18	33:4 38:5	sic 16:9 25:1	3:1 41:3	taken 1:16 3:2	think 5:1 12:16
reschedule	running 14:18	side 6:9 16:6	stitches 17:17	3:15 19:15	13:3,5 16:19
19:18	14:20,22	19:10 29:23	30:18 33:12	21:9,22 40:4	20:6 22:12
reserved 3:6	26:16 31:5	31:13	33:14 34:1,4,6	talk 26:11	25:5 26:20
reside 5:13	32:7	sign 3:8	34:11,24 35:4	talked 12:13	28:14,17
residency 4:7	rupture 33:16	similar 6:16	35:7,7,13,15	talking 8:9 14:3	31:14
residing 6:11		25:22,23	35:24 36:9,13	14:4	third 7:23 8:20
resisted 6:13	S	single 7:6	stoic 29:12	team 31:19	thousands
respect 27:21	S 1:10 2:10 41:8	sir 3:18,20 8:3,6	store 15:6	technically 6:2	30:11
Respondent 1:8	sac 5:25 8:12	8:10 12:19	strain 30:7	teenage 27:8	three 24:16,19
2:8	9:2,4,6,15	17:6,11,23	strange 37:24	teenagers 26:2	34:2
response 12:17	10:3 35:19	18:1,9 19:3	street 2:5 16:7	31:17	Thursday 22:14
responsible	safe 6:9	20:4 27:7 28:6	strenuous 27:1	telephone 12:13	38:9
30:9	safely 33:25	28:9 29:1	strongly 6:12	27:13	till 31:2
rest 20:6	safety 10:8	33:18 34:14	stuck 19:9	tell 3:23 5:11	time 1:14 3:7,15
restrictions	saw 11:22 15:11	34:19 36:18	student 7:23	10:15 11:15	4:17 7:9 9:9
37:25	22:16 33:11	37:1,6	8:20	13:4 18:2,22	14:7 20:18
result 10:16	34:18,21	sit 33:1	stuff 32:21	27:25 33:2	22:21 23:18
Richland 40:14	saying 35:20	sitting 25:7	38:10	34:17,20	25:25 28:15
ridiculing 37:18	says 15:10,14	six 15:13	subsided 28:18	telling 25:2	30:13 31:21
riding 38:16	15:20 20:11	skintight 34:4	Sunoco 29:18	31:13	33:11 35:13
right 3:8,21,24	scared 26:13	slides 9:10	suppose 19:14	tendency 9:16	38:25 40:5,7
4:1,5,19,23	scenario 29:22	smarter 8:19	supposed 5:21	9:17 26:1	40:10
5:5,12,16,17	scene 20:14	smartest 8:22	6:23 19:14	tension 10:1	times 31:18
7:25 11:2,6,25	scheduled 21:25	somebody 7:10	22:8 36:9	terms 8:1,12	tiny 9:6
12:8,11,14,23	36:21	25:9	38:10	10:15,22	today 8:9 24:25
12:24 13:17	school 3:23	son 25:22	sure 7:18,18	11:13 30:5	told 12:16 25:18
13:23 15:8,19	19:11 20:1	sorry 36:19	16:16 25:21	testicle 5:10,15	26:24 38:22
16:2,5,11,12	31:19 36:24	sort 8:12 10:4	36:16 38:3	5:16,24,25 6:2	top 4:10

total 33:2	10:7	witnesses 11:9	15 40:14	734-3737 2:11
transcribed	visible 33:25	11:12,22	15th 23:9	734-4113 2:12
40:8	vs 1:6	wondered 7:10	16 6:17 15:20	
transcript 2:17	W	words 29:24	41:12	8
3:8 8:2 37:10	wait 19:17	work 29:19,20	16-year-old 5:8	803 2:6,11,12
40:4,5	35:23,25	31:19	9:23 10:22,24	
transport 24:2	36:12	works 5:18	11:1 26:1	
24:3	waive 3:19	worried 25:25	18 16:8,9 21:8,9	
trapped 6:7	waived 3:5	wouldn't 29:22	24:14 26:20	
trauma 34:1,1	waives 3:7	write 35:21	26:22 27:1	
trial 3:7 11:10	wallets 15:6,21	written 7:11,12	29:12,14,15	
11:16,18,24	want 3:17 6:5,5	wrong 7:10	18th 20:20 21:3	
37:11	7:24 9:21	wrote 7:5	21:10 22:13	
tried 12:21	12:17 16:19	www.compus...	23:10,13 31:1	
trouble 9:20	20:22 24:22	1:24	36:21 37:22	
32:20	33:1,3	X	19th 22:14	
true 40:9	wants 25:2	X 41:1,8	1961 4:15	
truth 25:20	wasn't 18:9	X-ray 6:19	2	
26:24 28:1,1,2	19:25 20:12	Y	2 1:13 16:22,23	
31:13 33:2	38:10	Yeah 20:25	41:12	
40:6,6,6	way 5:18,21 6:1	21:24 22:23	20 16:1	
trying 27:8,9	8:16 9:8,20	24:6,20 26:10	2003 5:3,4	
28:22 32:19	13:3	30:22,23	22:19	
38:17	week 19:19	31:23 32:25	2008-CP-31-0...	
turned 15:23	21:10 22:8	34:22	1:6	
turning 15:4,9	weeks 24:16,19	years 6:18	2010 1:13 40:14	
15:13	25:13,14,15	young 5:7 17:10	2015 40:19	
two 7:6 25:13	34:2,2	20:17 30:15	21 24:18,19	
25:13,15	week's 25:24	Yvonne 1:17	22 17:1,3 24:15	
31:16 34:2	well-mannered	40:2,17	22nd 23:6 31:2	
typed 40:8	30:15	y'all 15:11 21:1	34:24	
U	well-worded	I	24 18:21	
uh-huh 8:15	12:9	1 13:10,11 40:5	25th 21:14,15	
21:13 28:13	went 3:23 4:5,6	41:11	256-8015 2:6	
unborn 5:14	7:10 8:5 14:22	1st 5:2,4 17:16	289 17:1	
uncomfortable	14:23 16:4,5,6	21:2	290 18:21	
17:25	36:24 37:21	1-803-988-0086	291 18:20	
understand	weren't 16:16	1:23	29201 2:5	
5:20 8:8 17:9	17:12 29:14	1-888-988-0086	29202 1:23	
25:14 27:7	we'll 8:20 18:20	1:24	29211 2:11	
29:10 31:11	we've 24:24	11 40:19	29240 2:4	
32:24 38:9	31:15	11:12 1:14	3	
undescended	Williams 2:10	11:59 39:3	3 41:3,5	
5:10,11,24 6:2	20:20 21:2	111 15:9	34 41:5	
6:15,16 22:25	34:16 37:12	112 15:13	4	
25:23 26:18	37:15,18,20	114 16:8	40 41:6	
30:12	38:24 41:5	11549 2:10	4529 2:4	
University 4:6	witness 1:12	12/22/03 23:2	5	
unusual 23:19	18:17 21:20	125 15:20	5th 22:17	
27:15 34:1	22:2,7,16,19	13 15:9 41:11	528 1:15 4:21	
usually 5:15	22:21,25 23:4	133 16:1	7	
32:19	23:7,13,15,18	134 16:8	7172 1:22	
V	23:23,25 24:4	14 26:22		
vast 5:22	24:7,10,13	1401 2:5		
Virginia 4:7	34:14 37:17			
	39:1 40:13			

1 A HE GOT A VERY CLEAN FACE. ANYBODY COULD HAVE
2 IDENTIFIED HIM.

3 Q DID HE HAVE A MOUSTACHE?

4 A HE LOOKED JUST LIKE HE LOOK RIGHT NOW.

5 Q OKAY.

6 A I MEAN, HE HAD A LOW HAIRCUT.

7 Q OKAY. BUT I'M TAKING YOU BACK TO THAT PARTICULAR TIME
8 WHEN YOU WERE ROBBED, WHEN YOU FOCUSED ON HIS FACE. DID
9 YOU SEE WHETHER OR NOT THIS INDIVIDUAL HAD ANYTHING
10 NOTICEABLE, FEATURES ABOUT HIS FACE LIKE A MOUSTACHE, LIKE
11 HAIR ON HIS CHIN?

12 A NO. HE WAS A CLEAN-CUT, CREW-CUT HAIRCUT MAN AND THAT
13 WAS IT.

14 Q OKAY. AND WHEN THEY TOOK YOUR MONEY THEY ALL TOOK OFF
15 RUNNING?

16 A TOOK OFF RUNNING.

17 Q INCLUDING HIM?

18 A ALL OF THEM WENT RUNNING, WENT DOWN THE HILL, AND
19 AROUND THE CURVE.

20 Q AROUND THE CURVE, DOWN THE HILL?

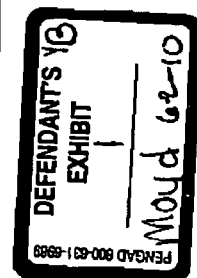
21 A YES.

22 MR. BROOKS: OKAY. NO OTHER QUESTIONS, JUDGE.

23 THE COURT: REDIRECT.

24 MR. SAVERANCE: NO, SIR, YOUR HONOR.

25 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.



1 Q OKAY. DID THEY, AFTER THEY GOT YOUR WALLETS DID THEY
2 RUN OUT THE STORE?

3 A YES. IF I GET MY WALLET BACK MIGHT WOULDN'T HAVE BEEN
4 NONE OF THIS HERE.

5 Q BUT YOU HAVEN'T GOT IT BACK?

6 A I AIN'T GOT IT BACK.

7 Q OKAY. DID YOU CALL THE POLICE AND TELL THEM YOU WERE
8 ROBBED?

9 A YES, WE WENT AND GOT THE POLICE.

10 Q OKAY. DID THEY TAKE YOU TO COME SEE IF YOU COULD
11 IDENTIFY THE DEFENDANT LATER ON?

12 A YES.

13 Q OKAY. TELL ME WHAT YOU SAW WHEN YOU GOT THERE?

14 A FOUR FELLOWS IN THE CAR, IN A LITTLE CAR.

15 Q OKAY. SCOOT UP A LITTLE BIT SO WE CAN HEAR YOU.
16 SPEAK INTO THE MICROPHONE?

17 A FOUR FELLOWS IN A CAR.

18 Q THERE WERE FOUR FELLOW IN A CAR?

19 A UH-HUH.

20 Q DID THEY GET OUT THE CAR?

21 A THEY HAD THEM OUT WHEN I GOT THERE.

22 Q THEY WERE OUT THE CAR?

23 A ALL BUT THE DRIVER. THREE OF THEM ON THE OUTSIDE.

24 Q DID YOU IDENTIFY THE DEFENDANT AS ONE OF THE PEOPLE?

25 A YES.

1 Q AND THE OTHER ONE POINT THE GUN AT YOU?

2 A YES.

3 Q AND YOU GAVE THEM YOUR WALLET?

4 A YES. HE GOT IT NOW. I RECKON HE GOT IT IN THE WOODS
5 SOMEWHERE.

6 Q HAVE YOU EVER GOT IT BACK?

7 A NO. I DIDN'T GET NOTHING BACK.

8 Q TOOK TEN DOLLARS AND YOUR PERSONAL PAPERS OUT OF
9 THERE?

10 A ALL THE PAPERS AND IT COST ME TO GET THEM BACK.

11 Q IT, THAT'S REALLY MADE YOU PRETTY MAD, DIDN'T IT?

12 A SURE DID.

13 Q OKAY. YOU AND MR. SCOTT, AFTER THE BOYS LEFT, YOU AND
14 MR. SCOTT, Y'ALL SAW THEM RUN AROUND THE CORNER?

15 A YES.

16 Q DID YOU SEE A CAR?

17 A YES, GET IN A CAR.

18 Q YOU SAW THEM GET IN A CAR?

19 A UH-HUH.

20 Q YOU SAW HIM AND THE OTHER BOYS GET IN THE CAR?

21 A YES, THEY GOT IN THE CAR.

22 Q OKAY. ALL RIGHT.

23 A THAT BOY DRIVING THE CAR HE BEEN IN MY HOUSE A LOT OF
24 TIMES.

25 Q OKAY. NOW, YOU EARLIER GAVE A STATEMENT TO LAW

1 ENFORCEMENT; IS THAT NOT RIGHT?

2 A HUH?

3 Q YOU GAVE A STATEMENT TO LAW ENFORCEMENT ABOUT WHAT
4 HAPPENED, RIGHT?

5 A UH-HUH.

6 Q YOU AIN'T SAID NOTHING ABOUT THEM GETTING IN A CAR.
7 YOU SAID THEY RAN AND CUT THROUGH A FIELD?

8 A THEY CUT THROUGH THE FIELD BUT THEY MADE THE CAR.

9 Q WHEN YOU SAW THEM LEAVE AFTER THEY ROBBED YOU, YOU
10 DIDN'T SEE THEM GET IN THE CAR?

11 A I AIN'T SEEN THEM BUT THEY WERE IN THAT CAR.

12 Q WHEN THEY LEFT YOU TAKING YOUR MONEY?

13 A YES.

14 Q YOU JUST SAW THEM RUNNING AWAY?

15 A THEY RUN AWAY BUT THEY GOT IN THE CAR.

16 Q NOW, THE SECOND TIME YOU SAW THEM THAT WAS WHEN YOU
17 SAW THEM IN THE CAR?

18 A YES, WHEN THE FELLOW TOLD ME TO COME BACK THERE. THE
19 CAR COME RIGHT THERE.

20 Q WHO TOLD YOU THAT?

21 A THE FELLOW BACK THERE ON THE BACK STREET.

22 Q BUT YOU DON'T KNOW THAT FIRSTHAND?

23 A NO. BUT I KNOW THEY BE IN THAT CAR.

24 Q OKAY. THE POLICE TOLD YOU THAT?

25 A NO. WHEN THEY CARRY US UP THERE, THEY BE IN THERE.

1 Q WERE YOU NERVOUS?

2 A WELL, IT SCARED ME TO DEATH. I DIDN'T HAVE TIME TO
3 GET TOO NERVOUS, SCARED TO DEATH.

4 Q AND YOU GAVE HIM YOUR WALLET?

5 A YES.

6 Q OKAY. HOW LONG WERE THEY THERE POINTING THE GUNS AT
7 YOU?

8 A HOW LONG WHAT NOW?

9 Q HOW LONG WERE THEY THERE POINTING THE GUNS AT YOU?

10 A WELL, IT WASN'T LONG, TWO OR THREE MINUTES, SOMETHING
11 LIKE THAT.

12 Q OKAY. DID YOU GET A GOOD LOOK AT THE DEFENDANT?

13 A YES.

14 Q AND YOU SURE THAT'S HIM?

15 A YES, SIR.

16 Q OKAY. AFTER THEY POINTED THE GUNS AND TOOK YOUR
17 WALLETS, WHAT DID THEY DO?

18 A THEY TURNED AROUND, RAN OUT THE DOOR.

19 Q OKAY. AND YOU SAW THEM LEAVE?

20 A YES, WHEN THEY RAN OUT OF THE DOOR, I WATCHED THEM
21 GOING UP THE HILL. THEY HAD ABOUT FAR AS FROM HERE TO GO
22 ACROSS THAT ROAD PRETTY GOOD HIDE THEMSELVES AND WATCHED
23 THEM TO SEE WHERE THEY WENT.

24 Q SO YOU WERE WATCHING THEM TO SEE WHERE THEY RAN TO?

25 A YES.

1 Q OKAY. DID THE DEFENDANT HAVE SOME SORT OF T-SHIRT ON
2 OR LIGHT SHIRT ON?

3 A WELL, SEEM TO ME HE HAD ON A COAT BUT UNDER THAT COAT
4 HE COULD HAVE HAD ON A T-SHIRT OR SOMETHING.

5 Q WAS IT A WHITE ---

6 A I DIDN'T HAVE TIME TO LOOK AT HIS CLOTHES. I WAS
7 LOOKING AT HIS FACE.

8 Q WAS THERE A LIGHT-COLORED SHIRT UNDER THE COAT?

9 A WELL, SOMETHING.

10 Q DID YOU SAY YES?

11 A HE HAD ON A KIND OF COAT, A COAT BUT I COULDN'T SEE
12 UNDER THAT COAT WHAT HE HAD ON BUT I KNOW THEY AIN'T GOING
13 TO BE, THEY REALLY CHANGE CLOTHES, I SAY THEY CHANGE
14 CLOTHES OR SOMETHING.

15 Q OKAY. ALL RIGHT. AFTER THEY LEFT WHAT DID YOU DO?

16 A AFTER THEY LEFT I RAN OUT THE DOOR AND WATCHED TO SEE
17 WHERE THEY WENT AND I RAN BACK TO THE HIGHWAY AND I SAW THE
18 CAR COMING. I SIGNED HIM DOWN AND ASKED HIM TO TAKE ME TO
19 THE POLICE STATION AND THEN HE SAID HE DIDN'T HAVE A PHONE.
20 HE TAKE ME TO THE POLICE STATION, WENT TO THE POLICE
21 STATION.

22 Q IS THE POLICE STATION NEARBY WHERE THIS HAPPENED?

23 A THE POLICE STATION RIGHT THERE ON CORNER STREET.

24 Q MAYBE A BLOCK OR TWO FROM WHERE THIS HAPPENED OR?

25 A HUH?

- 1 A YOU KNOW, LOOKING DOWN A GUN BARREL STRAIGHT DOWN THE
2 FRONT OF IT, YOU CAN'T SEE ON THE SIDE THE MAKE OF THE GUN.
- 3 Q OKAY. YOU JUST KNOW IT WAS A GUN?
- 4 A YES, IT WAS A GUN.
- 5 Q OKAY.
- 6 A BECAUSE I LOOKED DOWN THE BARREL.
- 7 Q YOU SURE IT WAS A GUN, RIGHT?
- 8 A I SEED DOWN THE BARREL.
- 9 Q ALL RIGHT. ALL RIGHT. SO, YOU WERE LOOKING RIGHT AT
10 THE BARREL ON THAT GUN; ISN'T THAT RIGHT?
- 11 A YES.
- 12 Q OKAY. AND YOU PUT YOUR LIFE ON THE LINE. YOU KNEW
13 THAT THAT GUN WAS POINTED RIGHT AT YOU WHEN YOU LOOKED DOWN
14 THE BARREL OF THAT GUN; IS THAT RIGHT?
- 15 A YES, SIR.
- 16 Q OKAY. NOW, AFTER YOU GAVE UP THE WALLET AND
17 MR. BOOGEY GAVE UP THE WALLET, THE BOYS TOOK OFF; IS THAT
18 RIGHT?
- 19 A YES.
- 20 Q TOOK OFF OUT THE DOOR. DID THEY GO TO THE RIGHT OR TO
21 THE LEFT?
- 22 A THEY RAN OUT THE DOOR, WENT TO THE RIGHT, RAN DOWN THE
23 HILL, WENT TO THE LEFT, AND WENT ON AROUND UP THERE TO THE
24 OTHER STREET UP THERE.
- 25 Q DO YOU REMEMBER WHAT STREET THAT WAS?

1 A I DON'T KNOW WHAT THE NAME OF THAT STREET, TRYING THE
2 NAME OF THE STREET SO, CEDAR LANE IS ABOUT THE ONLY ONE I
3 CAN SAY THEY WENT DOWN THE STREET AROUND THE CURVE.

4 Q ONLY REASON I'M TRYING TO DO THIS, MR. SCOTT, IS I'M
5 NOT FROM BISHOPVILLE. I'M TRYING TO GET AN IDEA OF
6 EVERYTHING THAT WAS IN THE AREA AND SO CAN YOU THINK A
7 LITTLE BIT HARDER AND SEE IF YOU REMEMBER WHAT STREET THAT
8 WAS AFTER THEY MADE THE RIGHT AND THEN MADE THE LEFT AND
9 RAN UP THE HILL?

10 A YES.

11 Q CAN YOU RECALL WHAT STREET THAT WAS?

12 A WELL, I NEVER LOOKED AT THE NAME OF THAT STREET.

13 Q OKAY.

14 A I SAY I NEVER LOOKED AT THE NAME OF IT. THEY WENT,
15 CEDAR LANE RUN THIS WAY. THEY CAME OUT THE BUILDING AND
16 WENT THAT WAY AND WENT AROUND ON THE NEXT STREET TO THE
17 NEXT STREET.

18 Q AND THEY ALL RAN TOGETHER. THEY WERE ---

19 A RIGHT AFTER EACH OTHER. RIGHT BEHIND EACH OTHER.

20 Q THEY WERE GOING PRETTY FAST?

21 A AS FAST AS THEY COULD GO.

22 Q AS FAST AS THEY COULD GO. NOW, ARE YOU SURE THEY WERE
23 ON FOOT; THEY WEREN'T IN A CAR?

24 A THEY WAS ON FOOT AT THAT TIME.

25 Q OKAY. BUT YOU DIDN'T SEE THEM RUN OUT THAT STORE DOOR

1 A YES, SIR.

2 Q THAT CAME FROM DISPATCH?

3 A IT CAME OVER RADIO DISPATCH AS I WAS HEADING TOWARD
4 THAT LOCATION.

5 Q WERE THEY SUPPOSED TO BE YOUNG MEN, YOUNG MALES?

6 A THEY WERE SUPPOSED TO BE YOUNG, BLACK MALES. THAT WAS
7 THE DESCRIPTION.

8 Q WHEN YOU HEAR ARMED ROBBERY IN THAT AREA, WHAT DOES
9 THAT DO; WHAT DO YOU START?

10 A NORMALLY PATROL SATURATES THE AREA AND PAYS ATTENTION
11 TO DETAIL AND WILL OBSERVE THINGS THAT ARE GOING ON.
12 NORMALLY I GET OUT IN THAT AREA AND I WILL START TO RELATE
13 PEOPLE IN THE STREETS, COMMUNITIES, THE COMMUNITY AND FIND
14 OUT AS MUCH AS POSSIBLE TO RELAY IT TO THE INVESTIGATORS.

15 Q DO YOU HAVE A PUBLIC SAFETY CONCERN WHEN YOU HEAR
16 SOMETHING LIKE THAT?

17 A VERY MUCH ESPECIALLY WHEN IT'S AN ARMED ROBBERY, THAT
18 MEANS THERE IS A WEAPON INVOLVED.

19 Q AND THERE WAS, SUPPOSEDLY WAS, A WEAPON INVOLVED?

20 A YES.

21 Q DO YOU RECALL, WELL, TELL ME WHAT HAPPENED NEXT. YOU
22 WERE ON FOOT; YOU WERE WALKING AROUND; WHAT HAPPENED NEXT?

23 A AFTER I, I PROCEEDED TO THE AREA AND ONCE I GOT TO THE
24 AREA, I WENT PAST THE LOCATION WHERE IT ORIGINALLY HAPPENED
25 BUT I NEVER DID STOP. I WENT INTO THE DIRECTION WHERE THE

1 ALLEGED HAD RAN OFF TO. I WENT IN THAT AREA, GOT OUT MY
2 VEHICLE AND WAS ABOUT TO PURSUE INFORMATION FROM PEOPLE
3 THAT I WOULD RUN INTO CONTACT TO IN THAT AREA. JUST AS I
4 WAS EXITING MY VEHICLE I OBSERVED A VEHICLE GOING THROUGH
5 THE AREA AT A UNKNOWN, UNUSUAL RATE OF SPEED.

6 THAT WAS THE FIRST THING THAT CAUGHT MY EYE. AS
7 THEY WENT BY ME I WAS AT THE INTERSECTION OF BIRD AND LEVY
8 STREET AT THIS TIME. AS THEY WENT BY ME I OBSERVED THAT
9 THE PASSENGER IN THE BACK KEPT LOOKING BACK AT ME. I THEN
10 GOT INTO MY VEHICLE, PROCEEDED TOWARD THEM AS THEY TURNED
11 ONTO WILBUR STREET. AT THAT POINT I HAD CAUGHT UP WITH
12 THEM, RAN, AT THAT TIME I RAN THE TAG. I DISPATCHED IT TO
13 THE DISPATCHER. THEY RELAYED THE INFORMATION. AT THAT
14 POINT I HAD KNOWLEDGE THAT I WAS GOING ACTIVATE A TRAFFIC
15 STOP.

16 Q OKAY. LET'S GO BACK A MINUTE. YOU SAID YOU WERE
17 WALKING WHEN THE CAR PASSED BY AND THERE WERE SOME YOUNG
18 BLACK MALES IN THE CAR?

19 A YES, SIR.

20 Q OKAY.

21 A I OBSERVED THE CAR WAS FULL.

22 Q HOW FAR WAS THIS FROM CEDAR LANE WHERE THE CRIME
23 OCCURRED?

24 A FROM WHERE THE CRIME OCCURRED IF I WAS TO KEEP
25 STRAIGHT DOWN BEEBEE STREET, IT'S ONE BLOCK FROM WHERE THE

1 LOCATION WHERE THE VICTIMS WERE AND THE RADIUS IS A
2 TWO-BLOCK RADIUS.

3 Q OKAY. SO IT WAS WITHIN TWO BLOCKS OF WHERE THE CRIME
4 OCCURRED?

5 A YES, SIR.

6 Q OKAY. ALL RIGHT. WHAT DO YOU MEAN BY, WHAT DO YOU
7 MEAN BY SOMEBODY IN THE BACK IS LOOKING BACK AT YOU?

8 A I OBSERVED ONE OF THE YOUNG MEN IN THE BACK SEAT
9 TURNING CONTINUOUSLY TOWARD ME. AT LEAST TWICE HE TOOK A
10 LOOK AT ME. AT THAT POINT I GOT IN MY VEHICLE AND
11 PROCEEDED BECAUSE THEY DID FIT THE DESCRIPTION AND THE CAR
12 WAS MOVING AT A KIND OF RAPID SPEED THERE CONSIDERING THE
13 AREA THEY WERE IN.

14 Q OKAY. BEFORE YOU MADE THE STOP DID, WAS THE DRIVER
15 DOING ANYTHING THAT MADE YOU A LITTLE ---

16 A THE DRIVER, THE DRIVER HIMSELF I OBSERVED HIM LOOKING
17 THROUGH THE MIRRORS CONTINUOUSLY INSTEAD OF OBSERVING WHERE
18 HE WAS GOING, THE DIRECTION HE WAS GOING IN MORE SO LOOKING
19 AT ME THROUGH THE MIRROR. I DID OBSERVE THAT AND THAT KIND
20 OF GOT MY CONCERN BECAUSE OF THE WAY HE WAS OPERATING THE
21 VEHICLE.

22 Q ONCE YOU MADE A STOP DID YOU ACTIVATE THE BLUE LIGHTS?

23 A YES, I TURNED ON MY BLUE LIGHTS AND IF THEY WOULD NOT
24 HAVE SLOWED, IF THEY HAD NOT STOPPED, THEN I WOULD TURN ON
25 THE SIREN AT THAT POINT.

1 SAYING ANYTHING?

2 A HE THE ONE, WELL, HE THE FIRST ONE OF THEM IDENTIFY
3 ME.

4 Q OKAY.

5 A THEY DIDN'T IDENTIFY AT THE SAME TIME.

6 Q OKAY. ALL RIGHT. DO YOU REMEMBER ANYTHING ELSE THAT
7 HAPPENED WHILE EVERYBODY WAS AT THAT PARTICULAR LOCATION?

8 A YES, WELL, WHEN, WHEN THEY SAID IT COULDN'T BE THE
9 DRIVER, HE LEFT EVERYTHING ALONE. THEY AIN'T QUESTION
10 NOBODY NO MORE ABOUT IT. HE JUST SAID, WELL, THAT'S THE
11 GUY. WE STICKING TO THIS. THAT'S THE GUY. YOU GOING TOS
12 COLUMBIA. SO I DIDN'T SAID NOTHING. THEY WAS ASKING
13 QUESTIONS.

14 Q OKAY. WHO SAID THAT'S THE GUY; YOU GOING TO COLUMBIA?

15 A MR. BURKE BECAUSE HE SAID HE SEEN ME AT THE SCENE,
16 SOMETHING LIKE THAT.

17 Q OKAY.

18 A BEFORE IT HAPPENED.

19 Q ALL RIGHT. WERE YOU AT THE SCENE BEFORE THIS
20 HAPPENED?

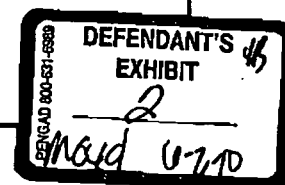
21 A NO, SIR.

22 Q OKAY. ALL RIGHT. NOW, WERE YOU ABLE TO RUN?

23 A NO, SIR.

24 Q WHY WEREN'T YOU ABLE TO RUN?

25 A I HAD SURGERY.



1 Q WHAT KIND OF SURGERY YOU HAD?

2 A TESTICLE DROP AND I HAD IT ON DECEMBER THE 1ST AND I
3 GOT IT OUT ON, LET ME SEE, I GOT THE STITCHES OUT WHEN I
4 GOT FROM OUT OF D.J.J.

5 Q OKAY. SO YOU SAY AFTER D.J.J. THAT WAS AFTER BEING
6 ARRESTED?

7 A YES, SIR.

8 Q OKAY. NOW, I KNOW THIS IS A LITTLE UNCOMFORTABLE?

9 A YES, SIR.

10 Q TELL THE JURY WHAT THAT PROCEDURE WAS THAT YOU HAD?

11 A WELL, I HAD A TESTICLE DROP AND I HAD THIS, LIKE, IT
12 WAS STAPLED TO MY LEG UNTIL THEY TAKE THE STAPLES OUT.

13 Q OKAY.

14 A SO I WASN'T ABLE TO RUN.

15 Q OKAY. WHO WAS THE DOCTOR THAT DID THAT FOR YOU?

16 A HE'S IN HARTSVILLE. I DIDN'T GET HIS NAME.

17 MR. BROOKS: ALL RIGHT. MAY I APPROACH THE
18 WITNESS, YOUR HONOR?

19 MR. SAVERANCE: YOUR HONOR, CAN I TAKE A LOOK AT
20 WHAT HE'S GOT?

21 (ATTORNEYS CONFER.)

22 THE COURT: YOU MAY PROCEED.

23 BY MR. BROOKS:

24 Q CAN YOU TELL ME WHAT THAT IS, DORIAN? YOU CAN TAKE A
25 FEW MINUTES AND LOOK AT IT?

1 A IT'S A MEDICAL REPORT FROM CAROLINA PINES.

2 Q OKAY. IS THAT WHERE YOU HAD THE SURGERY DONE?

3 A YES, SIR.

4 Q OKAY. AND WHEN YOU SAY STAPLED WHAT DID THEY ACTUALLY
5 DO?

6 A WELL, THEY DROPPED ONE OF MY TESTICLES.

7 Q OKAY.

8 A BECAUSE IT WAS, IT WAS, LIKE, STUCK ON MY SIDE. SO
9 THEY HAD TO DROP IT BECAUSE I HAD TO TAKE A PHYSICAL TO GO
10 TO MY NEW SCHOOL.

11 Q OKAY. NOW, AFTER YOU GOT OUT OF D.J.J., THAT'S WHEN
12 THEY TOOK THE SUTURES OUT?

13 A YES, I SUPPOSED TO GET IT TAKEN OUT LIKE THAT FRIDAY
14 BUT THE PEOPLE IN D.J.J. THEY SAID THEY WAS GOING TAKE ME
15 BUT THEY NEVER DID TAKE ME. SO I HAD TO WAIT UNTIL I GET
16 OUT AND RESCHEDULE AN APPOINTMENT. I HAD TO GET IT OUT,
17 LIKE, A WEEK LATER.

18 Q OKAY.

19 A STAPLES.

20 Q WHILE YOU STILL HAD THOSE STAPLES IN YOU, WERE YOU
21 ABLE TO RUN?

22 A NO, I WASN'T ABLE TO DO MY EXAMS AT SCHOOL, MY GYM
23 EXAM.

24 Q OKAY. ALL RIGHT. AND THAT'S, IS THAT THE MEDICAL
25 REPORT FROM YOUR SURGERY?

1 A YES, SIR.

2 MR. BROOKS: OKAY. YOUR HONOR, WE'D MOVE THIS
3 INTO EVIDENCE.

4 MR. SAVERANCE: YOUR HONOR, I. . .

5 THE COURT: YES, SIR.

6 MR. SAVERANCE: I WOULD OBJECT BECAUSE THERE IS
7 NO REFERENCE TO DOCTOR AND NURSE. IT'S HEARSAY. IT'S NOT,
8 THERE IS NO, I DON'T BELIEVE YOU CAN GET IT IN LIKE THAT.
9 I DON'T HAVE ANYBODY TO CROSS-EXAMINE ABOUT IT OR ANYTHING
10 LIKE THAT.

11 MR. BROOKS: RESPOND JUDGE?

12 THE COURT: THAT WHAT THAT FINGER MEANS.

13 MR. BROOKS: YES. I DIDN'T WANT TO INTERRUPT
14 WHILE YOU TALKING TO HIM, JUDGE.

15 THE COURT: ALL RIGHT. NOW, LADIES AND
16 GENTLEMEN, WE'LL TAKE UP A MATTER OUTSIDE OF YOUR PRESENCE.
17 PLEASE GO TO THE JURY ROOM. PLEASE DO NOT DISCUSS THE
18 CASE.

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 MR. BROOKS: JUDGE, UNDER RULE 803, SUBSECTION
22 (3) (4) GETS INTO EXCEPTIONS TO THE HEARSAY RULE IN REGARDS
23 TO MEDICAL DIAGNOSIS OR MEDICAL CONDITIONS PAST OR PRESENT
24 DEALING WITH THE WITNESS AT THAT PARTICULAR TIME AND WE
25 WOULD SAY THAT THAT FALLS IN UNDER THAT HEARSAY EXCEPTION

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF LEE	)	
	)	2008-CP-31-0021
Dorian Cain,	)	
	)	
Applicant,	)	
	)	
v.	)	ORDER DENYING APPLICANT'S MOTION
	)	MOTION TO ALTER OR AMEND
State of South Carolina,	)	
	)	
Respondent.	)	

This post-conviction relief matter came before the Court for an evidentiary hearing at the Sumter County Courthouse on October 26, 2008. The Applicant was present in court and represented by Hemphill P. Pride, II, Esquire, and the State was represented by Mary S. Williams, Assistant Attorney General. After taking the matter under advisement, this Court issued an Order of Dismissal dated December 22, 2009, and filed and mailed to counsel for both parties on December 30, 2009. Applicant submitted a Motion to Reconsider dated January 6, 2010.

Over Respondent's objection¹, this Court allowed the Applicant to present additional testimony on his claim of ineffective assistance of counsel in failing to present evidence of his medical condition in the form of a deposition of Dr. Pickens Moyd ("Dr. Moyd."). The deposition was taken on June 2, 2010, at Dr. Moyd's office. Dr. Moyd stated that he had performed a surgical procedure on Applicant on December 1, 2003. (Depo. Tr. p. 5, lines 1-4.) The procedure was performed to treat an undescended testicle. (Depo. Tr. p. 5, line 8 – p. 6, line 20.) Other than this "little defect," Applicant's pre-operative physical examination showed that he was in good health. (Depo. Tr. p. 10, line 11 – p. 11, line 3.) After the procedure, a rubber band attached to the patient's leg would keep the testicle in place until staples were removed. (Depo. Tr. p.

7, lines 1-4; p. 9, line 1- p. 10, line 10.) Dr. Moyd again saw Applicant on December 5, 2003, and found him to be well. (Depo. Tr. p. 22, line 16 – p. 23, line 2.) Applicant was convicted of a robbery which occurred on December 18, 2003. Dr. Moyd removed the staples from Applicant thereafter, noting no abnormality or complaints of pain. (Depo. Tr. p. 23, lines 1-6; p. 33, line 11- p. 34, line 11; p. 35, lines 6-22.) Dr. Moyd stated that the staples would normally have been removed much sooner (Depo. Tr. p. 22, lines 8-9; p. 23, lines 18-20; p. 35, line 23 – p. 36, line 3.)

Applicant asserts that Dr. Moyd's testimony should have been presented at trial in order to cast doubt on the victims' identification of him as he could not run the short distance from the scene as described by witnesses on December 18, 2003. (Trial Tr. p. 108, lines 1-4; p. 111, lines 13-21; p. 112, line 3 – p. 113, line 7; p. 125, lines 16-25; p. 126, lines 16-21; p. 133, line 17 – p. 135, line 5; p. 184, line 23 – p. 185, line 5; p. 185, line 22 – p. 186, line 5.) When asked whether Applicant could have run on December 18 following the procedure on December 1, Dr. Moyd stated he was not sure but would say it was possible, if unlikely, that Applicant could run. While Applicant may have felt pain if running as described, Dr. Moyd stated that Applicant would indeed be able to run, especially if under fear or duress as described in the trial transcript. (Depo. Tr. p. 25, lines 20-21; p. 26, lines 10-24; p. 27, lines 14-19; p. 31, line 22 – p. 32, line 12; p. 38, lines 3-20.) Dr. Moyd provided several examples where individuals would indeed perform actions which may be painful following injury or surgery: (Depo. p. 26, lines 1-3; p. 31, line 12 – p. 32, line 3; p. 38, lines 7-20.), noting his own teenage son had been "all over the place" within a week of similar surgery. (Depo. Tr. p. 25, lines 22-25.)

In its order of dismissal, this Court previously found that Applicant had failed to demonstrate prejudice from Counsel's failure to investigate additional witnesses regarding medical testimony:

...I further find that Applicant has not demonstrated prejudice in this

¹ Respondent was permitted to state its objection in the form of a letter directed to this Court.

regard. Applicant offered no expert testimony on the issue of Applicant's physical limitations from the surgery. Therefore, it is merely speculative as to whether expert testimony on the subject would have aided the defense. Lorenzen v. State, 376 S.C. 521, 657 S.E.2d 771 (2008); Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005). Davis' testimony at PCR hearing regarding the surgery was largely cumulative to Applicant's own testimony. See Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Finally, Applicant's primary defense was alibi. The issue of whether Applicant could run was, in contrast, a minor one. By Applicant's own testimony, on the day of the robbery, he was able to ride in a car, walk, and visit friends. For these reasons, I find that counsel was not ineffective in this regard.

Even with the addition of Dr. Moyd's testimony, I find that Applicant has failed to demonstrate prejudice in this regard. Applicant testified at trial that he had undergone a surgical procedure on December 1, and documentation to support this claim in the form of a medical report was entered into evidence at trial. In his trial testimony, Applicant averred that he could not run on December 18 as a result of the procedure. (See Trial Tr. p. 289, lines 22-25; p. 290, line 14; p. 291, lines 20-23.) To the contrary, Dr. Moyd's testimony is that Applicant could indeed run. Dr. Moyd further had no note of the extreme pain and other physical impairment that Applicant and his mother described. Dr. Moyd's testimony provides no aid to the Applicant's position. Rather, it could actually have an adverse effect, serving to cast serious doubt upon Applicant's claim that he was unable to run. The order's previous findings regarding alibi and Applicant's ability to ride in a car, walk, and visit with friends are unchanged.

With regard to the remaining assertions by Applicant, having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.² Therefore, this Court hereby denies the Applicant's Rule 59 Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty (30) days** of the service of

² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

this Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this _____ day of _____, 2010.

R. FERRELL COTHAN, JR.

Presiding Judge

Third Judicial Circuit

_____, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEE)

COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

DORIAN J. CAIN,

Applicant,

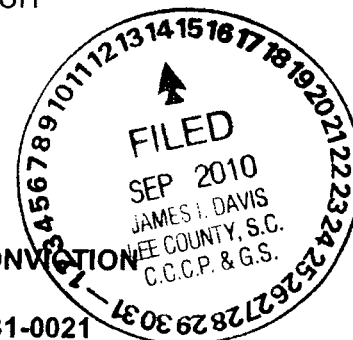
v.

STATE OF SOUTH CAROLINA,

Respondent.

ORDER TO SET ASIDE CONVICTION

Docket No. 2008-CP-31-0021



This matter is before the Court pursuant to the verified Application for Post Conviction Relief ("PCR"), filed January 29, 2008, and related motions filed by the Applicant. The Applicant seeks an Order of the Court granting Applicant's Post-Conviction motions.

At the scheduled hearing on October 26, 2009, the Applicant appeared with counsel, Hemphill P. Pride II, Esq.; and, testified on his own behalf. Also present was Mary S. Williams, Esq., Assistant Attorney General ("AAG Williams") for the State of South Carolina ("Respondent"). Witnesses who appeared and gave testimony were Ms. Gina Trenise Cain-Davis ("Ms. Cain-Davis"), mother of the Applicant, and Charles T. Brooks III, Esq. ("Attorney Brooks"), Applicant's former attorney.

Following the October 26, 2009 PCR hearing, the Court accepted a proposed Order of Dismissal, submitted by AAG Williams, and entered that Order of Dismissal on December 30, 2009, denying and dismissing with prejudice Applicant's PCR.

Applicant filed his Motion to Reconsider Order of Dismissal on January 6, 2010; and, his Amended Motion to Reconsider Order of Dismissal on January 7, 2010. Respondent's Return to Motion to Reconsider was filed on that same date, January 7, 2010.

Certified as a True Copy

James I. Davis

Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

This Court convened a hearing in this matter on March 23, 2010, during which counsel for both parties appeared and offered argument. And, after having considered all of the materials presented for review, together with the argument of counsel, the Court is persuaded that a mixed question of law and fact is before this Court, to wit: whether Attorney Brooks' failure to produce testimony--on the part of Applicant's surgeon, Pickens K. Moyd, M.D., as an expert witness, Applicant's mother, and alibi witnesses at the trial of Applicant--was deficient assistance; and, whether that deficiency prejudiced the outcome of that trial.

DISCUSSION

As previously noted in this Court's Order of December 30, 2009, Applicant must prove by a preponderance of the evidence that he received ineffective assistance of counsel. *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e) SCRCP). And, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984). The *Strickland* Court elaborated:

Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process.

These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. **In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.**

Strickland, supra, 466 U.S. at 688, 104 S. Ct. at 2065; (citations omitted). (Emphasis added.)

Additionally, where trial counsel articulates a valid reason for employing certain trial strategy, counsel will not be deemed ineffective. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

But, in the case at bar, Attorney Brooks' only explanation for failing to produce medical expert testimony, on the question of whether Applicant was incapable of running on the date of the robberies, was that he felt Applicant's testimony on that subject was adequate. He offered no explanation for having spent less than two hours and forty-five minutes, total, with Applicant in preparing him for trial; nor for his failure to offer the testimony of Applicant's mother as to her first-hand knowledge of Applicant's physical and mental condition and their resulting limitations.

Our Supreme Court recently reiterated "strategic choices made by counsel after an incomplete investigation are reasonable only to the extent that reasonable professional judgment supports the limitations on the investigation." *McKnight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (S.C. 2008) (internal quotation marks omitted); (quoting *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); and, *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003)).

In *McKnight, supra*, our Supreme Court held that trial counsel's failure to procure favorable expert medical testimony, opposing the prosecution's main theory of the case, was unreasonable; and, it further found "that there is a **reasonable probability that this deficiency prejudiced McKnight.**" *McKnight, supra*, 378 S.C. at 45, 661 S.E.2d at 360. (Emphasis added.) The Court also found that "neglecting to elicit favorable testimony from other experts when such testimony was known to exist and readily available, represents counsel's **inadequate preparation for trial rather than a valid trial strategy.** Accordingly, we find that counsel's performance in this regard was deficient. Because we further find that this deficient performance prejudiced McKnight's case,

we hold that the PCR court erred in determining that counsel was not ineffective on these grounds." *Id.* (Emphasis added.)

As a result of the October 26, 2009 PCR hearing, this Court's Order included the determination that prejudice to the Applicant was only speculative, without any evidence as to what Applicant's expert witness testimony would have been. (Order of December 30, 2009, p. 8) Following the hearing on this matter, conducted on March 23, 2010, Applicant's counsel deposed the surgeon¹ whose testimony was allegedly crucial to acquittal at trial, Pickens K. Moyd, M.D., on June 2, 2010; and, the transcript of that deposition has been presented to and reviewed by this Court.

And, after having reconsidered the Order of December 30, 2009, and all submitted materials, law, and argument, the Court is of the opinion that Applicant's PCR should be granted on the basis of the following, to wit:

FINDINGS OF FACT

1. The record before the Court reflects that the Application for Post-Conviction Relief was timely filed and verified by the Applicant; and, that it alleges that Attorney Brooks provided ineffective assistance of counsel at and after the armed robbery trial of the Applicant. (Application for PCR, pp. 3, 5-6)

2. Regarding ineffective assistance of counsel at the trial, the record before the Court reflects that there is no dispute that the Applicant was age sixteen at the time of trial; that he suffered from Attention Deficit Hyperactivity Disorder (ADHD); and, that he had no criminal record of any kind prior to being charged with two counts of armed robbery -- alleged to have been committed by him on December 18, 2003, for which he was tried on April 6 through April 8, 2004.

¹State objected to additional testimony as part of Rule 59 motion, SCRCP. Applicant took no exception to the form in which the motion was presented (i.e., letter dated 04-08-2010)

3. The record before the Court reflects no dispute that the Applicant had testicular surgery, on December 1, 2003, seventeen days before the crimes in question; nor that Attorney Brooks did not offer available corroborating testimony as to the physical significance and impairments caused by the surgery, from Applicant's mother, Ms. Cain-Davis, nor any expert witness testimony.

4. The record reflects that Attorney Brooks presented alibi testimony at trial to the effect that the Applicant was at the home of Mrs. Alphine Brooks until after the time of the robberies, together with her son Lequint Johnson and Donnie Jefferson; and, that they were joined by Demetrius McDonald who came to Mrs. Brooks' home to pick up Donnie Jefferson and the Applicant in a vehicle. However, only the testimony of Mrs. Brooks was offered as to this alibi.

5. At the October 26, 2009 hearing on Applicant's PCR, Attorney Brooks offered no explanation for failing to call Lequint Johnson, Donnie Jefferson and/or Demetrius McDonald as alibi witnesses at trial in addition to that of Mrs. Brooks. He did not show that they were unavailable, nor that their testimony would not have supported the alibi, nor that they lacked credibility.

6. The Transcript of the trial reflects that a victim, Mr. Edward Scott ("Mr. Scott"), repeatedly testified that Applicant was one of several young black men who robbed him at gunpoint, taking his wallet and money; and, that after they robbed him, Applicant and others fled the scene running at high speed for several blocks. The arresting Officer, Ernest Mosely ("Officer Mosely") offered conflicting testimony that the Applicant and other suspects were apprehended in a car, rather than on foot, and only one block from the crime scene. Further conflicting evidence came from the Applicant who testified that his recent testicular surgery prevented him from running on the date of the crime. Attorney Brooks did not offer any expert witness or other corroborating evidence to support Applicant's testimony that he could not run on that date.

7. At the October 26, 2009 hearing on Applicant's PCR, Attorney Brooks admitted that he believes the jury's guilty verdict turned on Mr. Scott's identification of the Applicant as one of the robbers.

8. Specifically, the trial Transcript shows that the identifying victim, Mr. Scott, testified that Applicant 'ran, ' and/or answered 'yes' when questioned whether he ran, a minimum of ten times:

A . . . running, went down the hill, and around the curve.

(T². p. 47, lines 18-19);

Q . . . [D]id they run out the store?

A Yes. . . .

(T. p. 108, lines 1-3);

Q . . . [Y]'all saw them run around the corner?

A Yes.

(T. p. 111, lines 14-15);

A They run away but they got in the car.

(T. p. 112, line 15);

A They turned around, ran out the door.

_____ Q Okay. And you saw them leave?

²All parenthetical references to "T" are to the Official Transcript of the trial, April 6, 7 and 8, 2004, in Lee County Court of General Sessions, in the matter of *The State v. Dorian J. Cain*, 2004-GS-41-0006.

A Yes, when they ran out of the door, I watched them going up the hill. They had about far as from here to go across that road pretty good hide themselves and watched them to see where they went.

Q So you were watching them to see where they ran to?

A Yes.

(T. p. 125, lines 18-25);

A They ran out the door, went to the right, ran down the hill, went to the left, and went on around up there to the other street up there. . . . I don't know what the name of that street, trying the name of the street so, Cedar Lane is about the only one I can say they went down the street around the curve.

Q Only reason I'm trying to do this, Mr. Scott, is I'm not from Bishopville. I'm trying to get an idea of everything that was in the area and so can you think a little bit harder and see if you remember what street that was after they made the right and then made the left and ran up the hill?

A Yes They came out the building and went that way and went around on the next street to the next street.

Q And they all ran together

A Right after each other.

Q They were going pretty fast?

A As fast as they could go They was on foot at that time.

(T. p. 133, line 22 through p. 134, line 24)

9. Officer Mosely testified that he first observed the Applicant riding as a passenger in a car one block from the robbery site:

A . . . From where the crime occurred if I was to keep straight down Beebee Street, it's one block from where the location where the victims were and the radius is a two-block radius.

(T. p. 185, line 24 through p. 186, line 2)

10. Applicant testified that Mr. Scott did not identify Applicant as a suspect initially but, instead, that the other victim, Mr. Burke, did so first, claiming to recognize him from the scene; and, Applicant denied being on the scene and denied being able to run:

Q . Okay. Who said that's the guy; you going to Columbia?

A Mr. Burke because he said he seen me at the scene, something like that.

Q Okay.

A Before it happened.

Q All right. Were you at the scene before this happened?

A No, sir.

Q Okay. All right. Now, were you able to run?

A No, sir.

Q Why weren't you able to run?

A I had surgery.

Q What kind of surgery you had?

A Testicle drop and I had it on December the 1st . . . Well, I had a testicle drop and I had this, like, it was stapled to my leg until they take the staples out.

_____ Q Okay.

A So I wasn't able to run.

(T. p. 289, line 14 through p. 290, line 14)

11. Applicant testified to the effect that, at the time of the robbery, his scrotum was stapled to his leg; and, the staples were not removed until after his release following arrest:

Q Okay. Now, after you got out of D.J.J., that's when they took the sutures out?

- A. Yes, I supposed to get it taken out like that Friday but . . . I had to wait until I get out and reschedule an appointment. I had to get it out, like, a week later Staples.

(T. p. 291, lines 11-19)

12. The June 2, 2010 deposition testimony of Pickens K. Moyd, M.D. includes the following persuasive expert testimony:

- A. . . . I'm board certified in general surgery, and then you go on to -- the highest ranking you get is a fellow of American College of Surgeons, and I'm that. I started practicing -- he won't say it -- in 1961.

Q. And you have been practicing the entire time here at Hartsville?

- A. That's correct.

(Moyd Dep. p. 4, lines 11-18)

A. . . . This boy had an undescended testicle. The little sac closed off before the testicle got all the way down in the scrotum, and ~~testis was not in the scrotum. And some say a -- and testis was not in the scrotum. But he didn't~~ did not want that and the mother did not want that. And the testicle was already -- it just barely got trapped up there in the first place.

And I made a little note just to be on the safe side in case anybody anywhere ever asked a question. The surgeon noted due to the fact that the patient has a testicle that was residing relatively low in the canal and he very strongly resisted having his testicle removed, which coupled with the fact that the testicle in fact did lay low in the canal as compared to many undescended testicles and many problems of similar undescended testicle problems exist, but since he's only 16 years old, it is fair that the orchiopexy was in the best interest of all concerned. X-ray and laboratory findings are recorded on the chart.

Q. Orchiopexy is what?

- A. Bringing that testicle or -- down into the scrotum like it's supposed to be in the first place.

Q. Okay.

- A. And then we put a little elastic band, if you recall. It attaches to the opposite thigh to hold it down into the scrotum until it all fixes itself.

(Moyd Dep. p. 5, line 24 through p. 7, line 4)

- A. ... The testicle is up in the inguinal canal. It's up above the scrotum, the sac, see, and you have to go up and surgically dissect it free and bring it down from up here into his sac, see. And then if you remember, we make a little tiny opening in the bottom of that sac and attach a rubber band -- it's sterile and all that -- attach it to the testicle and fix it in such a way when the time comes to take it loose, you just clip it and it slides back out.

And you recall that he had the little rubber band attaching to the opposite thigh. Once you bring it down -- the cremasteric muscle is the little muscle that pulls the testicle up in the sac. If a person gets real cold, there's a tendency for that testicle to go back up high in the scrotum, but there's a tendency for it to pull back up.

Once you've gone through all this trouble to get it down just exactly the way you want it, by all means, do something to keep it from going back up again, and so that's what the little rubber band was, see, and the little 16-year-old boy he's going to be up and down and about no matter what you do to him, but as long as that rubber band is putting a little tension on it -- and it will hurt if he pulls it too hard, see. That just holds it down in the scrotum in the sac until it sort of fixes itself there because we have the fixing sutures too to hold it there.

But that rubber band -- at the big medical center in Virginia they -- we always demanded that we do that. It's just double safety to keep it reduced down into the scrotum once you get it down there. So that's what that's about.

(Moyd Dep. p. 9, line 1 through p. 10, line 10)

- A. ... A 16-year-old has a tendency -- and I've operated on many, many teenagers -- to get up and about, see.

So could he have run? See, I didn't see him run. I didn't see how rapidly he run -- ran, but I listened carefully to you when they said he ran around the corner and across the field toward the car. So --

- Q. And as hard as he could.

- A. Yeah, well, as hard as he could. Again, a doctor doesn't just talk to God. He doesn't know. But in my expert opinion you'll have to say he would have to be very scared to run that fast, but, see, neither you nor I or anybody in this room knows how "that fast" is because we didn't see it, but apparently he was running pretty fast.

Following an undescended testicle operation, could he -- it would be possible but I think not probable that he would run real hard 18 days after surgery. But he could run seven days after surgery, but 14 days he could run, 18 days, but can he run hard? I don't know. That's what I told you is the honest truth.

It would be unlikely that a boy would do anything that was strenuous 18 days after an -- essentially for the same as a hernia -- a hernia repair. But did -- does this mean that it could not have been him? That is really what your question is.

Q. That is correct.

- A. Yes, sir. And I understand that, Mr. Price, [sic] and I'm trying to help a teenage boy and everybody concerned, but I'm also trying to be very honest and fair.

Q. That's all I ask of you, Doctor.

- A. See, I know it, and that's what you said on the telephone when you first called me.

He -- he could have done that, but it would have been unusual and not likely. However, once you couple with the fact that according to the testimony of some people, he was under a lot of duress, and under those circumstances maybe so, but it would have been hard for him to do.

That's a good point that you have, and I respect your opinion on that -- your position on that, see. I don't know. I don't know if he could run hard or not. And, besides, I don't know how hard hard is, but I'm answering you as accurately as possible bearing in mind that I'm here to tell the truth, the whole truth and nothing but the truth, see.

Unlikely, but possible. That's my answer.

(Moyd Dep. p. 26, line 1, through p. 28, line 4)

Q. Doc, if he ran, would it have pulled it hard, being the stitches and the testicular that was --

A. Since the rubber band was still on there?

Q. Yeah.

A. Yeah, I believe it would. Yes. Now, that's a good question. If that rubber band was still intact -- and according to everything that's been said to me, this occurred on the 18th. He didn't get the thing cut loose till the 22nd, so it in fact was present. Yes, that would hurt, because, see, it's attached to the leg and that leg would be running. So it would -- it would have hurt if he had run.

(Moyd Dep. p. 30, line 17 through p 31, line 6)

Q. And when you removed the stitches, did you see anything that would lead you to believe that there was any kind of rupture down there, anything that was irregular during --

A. No, sir. And we -- if we had noted anything irregular --

Q. You would have noted it?

A. -- at all abnormal, it always goes in my note.

(Moyd Dep. p. 33, lines 14-22)

CONCLUSIONS OF LAW

1. Under the existing legal standards stated in Discussion above, this Court must determine whether Attorney Brooks' assistance was reasonable considering all the circumstances. *Strickland, supra*, 466 U.S. at 688, 104 S. Ct. at 2065

2. Considering all the circumstances, Attorney Brooks did not "articulate a valid reason" for failing to investigate; obtain and offer the expert witness testimony of Dr. Moyd; for failing to offer corroborating testimony of Applicant's mother as to Applicant's physical condition; nor, for failing to offer additional witnesses' testimony corroborating Applicant's alibi. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995).

3. Considering all the circumstances, "reasonable professional judgment" does not support Attorney Brooks' failure to investigate the availability of, and to offer, additional evidence to refute the Prosecution's main theory of the case that Applicant fled the robbery scene running. *McKnight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (S.C. 2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); and, *Wiggins v. Smith*, 539 U.S. 510, 533, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003).

4. Attorney Brooks' failure to procure favorable expert medical testimony supporting Applicant's claim that he could not run on the date of the robberies; and, failure to present additional witness testimony corroborating his alibi was unreasonable under all the circumstances of this case.

5. Attorney Brooks' failures to investigate and elicit available favorable testimony from Dr. Moyd as an expert, from Applicant's mother in corroboration of Applicant's condition, and from additional alibi witnesses, combined with Attorney Brooks' admission of having spent only two hours and forty-five minutes with Applicant in preparation for trial, represent his inadequate preparation for trial rather than a valid trial strategy; and, Attorney Brooks' assistance was, thus, deficient and unreasonable.

6. Attorney Brooks' deficient assistance prejudiced Applicant because it undermined the proper functioning of the adversarial process and the trial cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984).

WHEREFORE, IT IS HEREBY ORDERED, that the Applicant's Amended Motion to Reconsider Order of Dismissal is granted;

IT IS FURTHER HEREBY ORDERED that the Applicant's Application for Post-Conviction Relief is granted;

IT IS FURTHER HEREBY ORDERED that the State has thirty (30) days in which to appeal this Order, Rule 243, SCRCP; and,

IT IS FURTHER HEREBY ORDERED that Applicant is entitled to a new trial and has the right to make application for bond while in the custody of the Respondent.

AND, IT IS SO ORDERED.



R. Ferrell Cothran, Jr., Presiding Judge
Court of Common Pleas
Third Judicial Circuit

Manning, South Carolina

September 13 2010.